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ROOM 521

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION - CIVIL

Matthew Meyers and Emily Meyers, h/w;
and Investment Grade Books, LLC

: DECEMBER TERM 2016

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Certified Guaranty Company, LLC *et al.*

NO. 1182

Control No. 24080581

COMMERCE PROGRAM

ORDER

AND NOW, this 27th day of November 2024, upon consideration of the Motion for Post-Trial Relief of defendants Certified Guaranteed Company LLC, Classic Collectible Services LLC, and Matthew Nelson, it is **ORDERED** that the motion is **DENIED**. An accompanying opinion will also be docketed.



Abbe F. Fletman, J.

ORDOP-Meyers Etal Vs Certified Guaranty Company, Llc Etal [RCP]



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COMMERCE PROGRAM

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OPINION

Fletman, J.

November 27, 2024

After a five-day jury trial in July 2024, defendants Certified Guaranteed Company LLC (“CGC”), Classic Collectible Services LLC (“CCS”), and Mathew Nelson (collectively, the “CGC Defendants”) filed the pending post-trial motion.¹ The CGC Defendants seek judgment notwithstanding the verdict, a new trial, and remittitur. For the reasons discussed below, the motion is denied.

FACTS

a. The Meyers

In 2013, plaintiff Matthew Meyers was working as a bartender and plaintiff Emily Meyers was working at a medical office. Trial Transcript (“Tr.”) 7/17/24 P.M., Emily Meyers testimony (“E. Meyers”) at 5:23-25. Looking to make some extra income, Mr. Meyers started “a side hustle” selling comic books that his uncle, who was a collector, had given him. *Id.* at 5:25-6:2. He learned that there were companies that graded the quality of comic books and that graded

¹ Heritage Auctioneers & Galleries, Inc. (“Heritage Auctioneers”), was originally a defendant but was excused from trial after it executed a Pro-Rata Joint Tortfeasor Release, Confidentiality, and Settlement Agreement with plaintiffs on October 24, 2023. Order, Dkt. at 7/8/24.

comic books generally sold for more money than ungraded books. *Id.* at 6:9-11. At first, he alone started restoring comic books *Id.* at 5:25-6:2. Using markers and ink, he began working on their kitchen island, then moved to their dining table and eventually into Mr. Meyers's parents' basement. *Id.* at 7:3-5. As the business grew, Ms. Meyers also became involved with business operations and, eventually, restoration. *Id.* at 6:19-23, 7:9-14. The two ultimately quit their jobs and exclusively restored and traded in comic books. *Id.* at 6:18-19.

b. Defendants CGC, CCS, and Mathew Nelson

CGC is one of the largest companies that grades collectible comic books. Tr. 7/17/24 A.M., Matthew Nelson testimony ("Nelson") at 33:12-22. Collectors, dealers, and investors in the industry trust CGC's grades to buy comic books with confidence. *Id.* at 33:18-22.

CGC owns CCS, a company that restores, conserves, removes restorations, and presses comic books for collectors. Tr. 7/16/24 A.M., Nelson at 91:2-20; Tr. 7/17/24 A.M., Nelson at 47:4-8.

Matthew Nelson is a trusted authoritative figure in the comic book industry. Tr. 7/16/24 A.M., Nelson at 90:15-18; Tr. 7/17/24 A.M., E. Meyers at 11:17-20; Plaintiff's ("Pl.") Exhibit ("Ex.") 157, (Trial Transcript of Marcos Mercado ("Mercado")) at 7:17-21.² Mr. Nelson has been the president of CGC since 2021. Tr. 7/16/24 P.M., Nelson at 67:15-6. He also previously owned, and is currently employed, by CCS. Tr. 7/16/24 A.M., Nelson at 91:21-25.

² Mr. Mercado, a comic book collector who discussed the Meyers with Mr. Nelson, was unavailable to testify at trial and a videotape of his trial deposition was played for the jury. The transcript of Mr. Mercado's testimony was not made part of the record. Instead, only the videotape of his testimony was filed on the record via flash drive. *See* Trial/Hearing Exhibits Filed, Dkt. at 7/29/24. The Court was provided with a copy of the transcript, however, and is citing to that transcript for ease of reference. A copy of the transcript is attached to this opinion as Exhibit A.

CGC operates a message board on its website where anyone interested in comic books can post or join discussions in subject-matter sections, such as golden-age comics³ or restorations. Tr. 7/17/24 A.M., Nelson at 22:4-8, 52:1-13. CGC employees, including Mr. Nelson, monitor and moderate the message boards. Tr. 7/16/24 A.M., Nelson at 20:17-20. Moderators can hide and delete posts from the boards. *Id.*

c. The Grading Process

When CGC considers a comic book for grading, a team carefully examines the entire book, confirms it is complete, and checks for restoration Tr. 7/17/24 A.M., Nelson at 21:15, 22:10. Graders carefully take notes during the process, documenting unacceptable restoration methods. Pl. Ex. 60 (CGC Grading Notes – In Date Order); Defendants’ (“D.”) Ex. 2 (2018 Website Description of CGC Grading Process); Tr. 7/17/24 A.M., Nelson at 21:12-13, 22:12-14, 22:22-23:1. Once examination is complete, the grading team deliberates before assigning a final grade. *Id.* All notes that the graders take are recorded in CGC’s system. *Id.* at 22:12-14. Once a book is graded, it is sealed in a secure, tamper-evident plastic holder that cannot be opened. D. Ex. 2 (2018 Website Description of CGC Grading Process); *see also* D. Ex. 3 (2018 Website Description of CGC Holder).

A final grade consists of three categories: a grade from 0.5 to 10 for the overall condition of the book; a grade from A to C for the quality of any restoration; and a grade between 1 to 5 for the quantity of any restoration. D. Ex. 6 (2018 Website Description of CGC Restoration Grading Scale). The grading system in use at CGC in 2014 used the terms “slight, moderate, and

³ The golden age of comic books started in 1938, with the first appearance of Superman, and continued until 1955, with the institution of the Comics Code Authority, a McCarthy-era organization that regulated the content of comic books. Tr. 7/17/24 A.M., Nelson at 94:6-8 and 95:1-9.

extensive” to describe the quality of restoration. *Id.* If CGC finds that a book is not “real” because techniques have been used that it does not recognize as restoration, it can refuse to grade a book. Tr. 7/16/24 A.M., Nelson at 111:5-15. Techniques CGC considers as improper include overcoloring, over glossing, and using techniques that give a cover a cardboard feel. *Id.* at 96:23-25-97:1-8; Tr. 7/17/24 A.M., Nelson at 100:9-15.

d. Comic Book Restoration

The goal of restoration is to return a comic book as close to the original as possible. Tr. 7/16/24 A.M., Nelson at 6:1-4. The less restoration applied to a comic book, the more valuable it is. D. Ex. 6 (CGC Restoration Grading Scale); Tr. 7/17/24 A.M., Nelson at 50:10-18; Tr. 7/17/24 A.M., Nelson at 51:1-22. Restoration also must be reversible. Tr. 7/17/24 A.M., Nelson at 123:8-14.

In high-quality restorations, any holes or defects are mended, missing paper is replaced, or piece filled, and the original thickness of the cover or page is maintained. D. Ex. 6 (CGC Restoration Grading Scale); Tr. 7/17/24 A.M., Nelson at 37:4-13; 37:19-25; 38:1-3, 86:21-25, 87:1-4. Practitioners of high-quality restorations also touch up faded portions of covers and books using approved materials such as rice paper, wheat paste, acrylic paint, or watercolor paint. D. Ex. 6 (CGC Restoration Grading Scale); Tr. 7/16/24 A.M., Nelson at 111:21-112:1. “Pressing,” or removing wrinkles in the pages by flattening the books, can increase a comic book’s grades. Tr. 7/17/24 A.M., Nelson at 47:8-14.

In contrast, comic book covers subject to low-quality restoration may have a stiff, cardboard-like texture with improper gloss. Tr. 7/16/24 A.M., Nelson at 96:23-25, 97:1-8. While glossing is a standard industry technique that adds a natural barrier to a restored comic book, proper archival materials, like methylcellulose gloss, must be used. Tr. 7/16/24 A.M., Nelson at

84:2-9; Tr. 7/17/24 A.M., Nelson at 61:2-24, 68:11-15. Improper glosses include Golden Gel or spray Krylon gloss, which is thick, irreversible, and can distort the feeling of an unrestored comic book. Tr. 7/16/24 A.M., Nelson at 96:23-97:8; Tr. 7/17/24 A.M., Nelson at 123:8-14. Comic books that have their original paper removed, or “trimmed,” also receive low grades. Tr. 7/16/24 P.M., Nelson at 9:7-16.

In addition to grading quality, CGC grades the quantity of restoration. D. Ex. 6 (CGC Restoration Grading Scale). Slight restorations are those in which “all conservation work,” re-glossing, or color touching fill no more than two bindery chips. D. Ex. 6 (CGC Restoration Grading Scale). Color touching is a restoration technique by which a comic book is re-painted with acrylic paint to enhance its original color. Tr. 7/17/24 P.M., E. Meyers at 9:17-21, 65:4-13. Bindery chips are chips on a page with an area of less than one-half inch by one-half inch. Tr. 7/17/24 A.M., Nelson at 43:7-13; Tr. 7/18/24 A.M., M. Meyers at 75:11-13.

An extensive restoration may be referred to as a re-creation. Tr. 7/16/24 A.M., Nelson at 113:1-11. CGC defines extensive restorations as those that have recreated interior pages or covers and any piece fill larger than 2”x2” or color touch larger than 4”x4”. D. Ex. 6 (CGC Restoration Grading Scale). Examples of re-creations are when covers are replaced, photocopied, Xeroxed, or glossed such that the original cover is masked and unrecognizable. Tr. 7/16/24 A.M., Nelson at 113:1-11; Pl. Ex. 2.148 (Nelson 1/19/19) at 148:5-12; Tr. 7/17/24 A.M., Paul Litch testimony (“Litch”) at 154:18-22. Re-creation can sometimes be referred to as “reprinting,” a “replica,” or even a “fake.” Pl. Ex. 2.148 (Nelson 1/19/19) at 148:5-12; Tr. 7/17/24 A.M., Litch at 154:18-22; Tr. 7/17/24 P.M., E. Meyers at 31:8-14. A restorer’s reputation may be damaged if they attempt to pass off a recreated cover as a restoration. Pl. Ex. 2.148 (Matthew Nelson 1/19/19) at 148:14-18; 7/18/24 P.M., Timothy Luke testimony (“Luke”) at 76:1-5.

A. The Meyers's Technique

When the Meyers began restoring comic books in 2014, they were amateurs with no experience. Tr. 7/17/24 P.M., E. Meyers at 9:4-6. Because they came from outside the insular world of comic books, they were willing to experiment and develop unique techniques that other restorers did not employ. *Id.* at 7:9-14, 74: 15-16; Tr. 7/18/24 A.M., M. Meyers at 81:5-7. For example, some comic books are printed using a dot matrix that approximates paint. Tr. 7/17/24 P.M., E. Meyers at 32:18-22. Restoring such comic books using paint results in a flat look. *Id.* at 32:23-24. "But," as Ms. Meyers testified, "the amazing thing would be to actually have a technique where you could make that look more legitimate. So Matt chased that for years." *Id.* at 32:25-33:4. "So we bought microscopes and we bought a teeny tiny paint brush and cut half the bristles and just started doing the dotting by hand." *Id.* at 33:9-11; Tr. 7/18/24 A.M., M. Meyers at 81:3-4; Pl. Ex. 122 (Video of Dot Matrix for Bat 1)⁴.

To mend tears in the books, the Meyers use a specialized Japanese tissue called Tengucho, a standard archival material for all restorers. Tr. 7/18/24 A.M., M. Meyers at 79:1-4. Using these tissues, the Meyers developed a proprietary technique to repair creases in comic books. *Id.* at 79:14-23, 81:5-25, 82:1-15. Generally, restorers place mending tissue over a crease to strengthen it and then they paint over the added tissue. *Id.* at 80:21-24. Instead, Mr. Meyers pioneered a technique to reinforce the page from inside. *Id.* The new technique involves splitting the creased paper with a small spatula, putting the mending paper between the split pages, and using archival materials to reinforce the book. *Id.* The Meyers then paint over the tissue, which hides the crease. *Id.*

⁴ A video of the Meyers's dotting technique was played for the jury at trial. See Tr. 7/17/24 P.M., E. Meyers at 33:1-7. The video was filed on the record via flash drive. See Dkt. at 7/29/24 (Trial/Hearing Exhibits Filed).

As Mr. Meyers described:

So the real mystery here is that we found a way to basically split paper. And we do that under a microscope by taking a spatula, a very tiny spatula and carefully -- . . . And it's microscopic. It's even smaller than Emily's brushes. And we kind of pry open that paper and open it just enough to be able to get that tissue in there.

So a summary is other restorers put the tissue on top and then they paint over it. You can obviously see that. What we do is we hide it.

Id. at 82: 2-15.

The Meyers also used a specialized technique starkly different from traditional restoration to mend missing or damaged paper. *Id.* at 82:18-25, 83:10-25, 84:1-3. Rather than wetting the entire book and recreating paper using old comic book paper, the Meyers used a small syringe to wet only the damaged area and slowly built up the missing piece to avoid creating a seam. *Id.*

Mr. Meyers testified that he and his wife considered their techniques proprietary and did not reveal them to Mr. Nelson as they considered him a competitor because CGC's sister company, CCS, also restores comic books for sale. *Id.* at 20:20-21, 54:12-22.

B. Matthew Nelson Makes Contact

In 2014, when the Meyers were beginning their restoration business, they submitted approximately 100 books to CGC for grading. Tr. 7/17/24 P.M., E. Meyers at 8:8. Forty-six of those books received professional grades. *Id.* at 8:14; Tr. 7/16/24 P.M., Nelson at 35:18-20; Tr. 7/18/24 P.M., M. Meyers at 73:16.

In July 2014, Mr. Nelson contacted the Meyers after having seen one of the Meyers's restored books. D. Ex. 8 (Email chain Meyers Nelson (2014-07-08 to 2015-07-15); Tr. 7/17/24 A.M., M. Nelson at 8:14. Mr. Nelson admired the Meyers's talent and offered to give them advice on how to improve their restoration grades. *Id.* Specifically, he suggested that the Meyers

stop trimming, or intentionally removing the original paper from comic books, because it is frowned upon in the industry. Tr. 7/16/24 P.M., Nelson at 9:10-16. Mr. Nelson also advised the Meyers to stop using Krylon spray gloss, a heavy archival spray gloss, and instead to use methylcellulose gloss, a natural, protective gloss. Tr. 7/17/24 A.M., Nelson at 60:8-25, 61:4-24; Tr. 7/17/24 P.M., E. Meyers at 13:11-25. The Meyers trusted Mr. Nelson and incorporated his suggestions into their work. D. Ex. 11 (Email chain Meyers-Nelson (2014-10-16 to 2014-10-20)).

In January 2015, Mr. Nelson requested to meet with the Meyers after they had flown to Florida, where CGC is located, to personally drop off three valuable books that they were submitting for grading: Batman 1, Amazing Fantasy 15, and Action 13.⁵ Tr. 7/17/24 P.M., E. Meyers at 11:12-20; Tr. 7/17/24 A.M., Nelson at 62:8-20. Mr. Nelson complimented the Meyers's work, describing their restoration of Batman 1 as "gorgeous" and "one of the best" he had ever seen. Tr. 7/17/24 P.M., E. Meyers at 11:21-25, 12:1-2. The initial grades for the books were: 9.2 for the Batman 1, 9.4 for the Amazing Fantasy, and 8.5 for the Action Comics 13. Pl. Ex. 59.7 (Graders Notes Meyers Submissions). Mr. Nelson suggested that the Meyers could improve their grades if they fixed a minor bindery chip and warp in the spine of the Batman 1 and Amazing Fantasy 15. Tr. 7/17/24 P.M., E. Meyers at 12:21-25, 13:1-5. Mr. Nelson further offered to increase the value of their books by pressing them to remove folds and other imperfections. Tr. 7/17/24 P.M., E. Meyers at 13:6-10, 85:4-14; Tr. 7/17/24 A.M., Nelson at 47:8-14.

⁵ These comic books are valuable collectors' books where popular superhero characters appear. Tr. 7/17/24 P.M., E. Meyers at 11:12-14. Batman 1 is a rare book where the Joker and Catwoman appear for the first time. Tr. 7/17/24 A.M., Nelson at 32:1-10. Amazing Fantasy 15 is the first appearance of Spiderman. Tr. 7/17/24 A.M., Nelson at 68:8-9. Action 13 is a book where Superman appears on a cover for the fourth time. Tr. 7/17/24 A.M., Nelson 94:6-8.

Grateful for Mr. Nelson's advice, the Meyers fixed the bindery chip in the Batman 1 and gave the Amazing Fantasy 15 to Mr. Nelson to press. Tr. 7/17/24 P.M., E. Meyers at 83:21-22. CGC returned the Batman 1 with the same grade even though the grading notes no longer noted the bindery chip defects. Tr. 7/17/24 P.M., E. Meyers at 16:10-19; Tr. 7/18/24 A.M., M. Meyers at 75:19-25, 76:1-18; Pl. Ex. 60.1 (Grading Notes Chronological 2015). CGC returned the Amazing Fantasy 15 on March 10, 2015, with the lower right corner of the book torn off and mended by Mr. Nelson. D. Ex. 21 (Email chain Meyers Nelson (2015-03-12)); Tr. 7/17/24 A.M., Nelson at 69:11-25, 70:1-5.

C. The Meyers's Business Between January and June 2015

From January to June 2015, the Meyers trusted Mr. Nelson and his advice and continued to follow Mr. Nelson's recommendations. Tr. 7/17/24 A.M., Nelson at 114:8-10; Tr. 7/17/24 P.M., E. Meyers at 21:8-11. They used only the methylcellulose gloss Mr. Nelson recommended and stopped trimming books after their January 2015 meeting. Tr. 7/17/24 P.M., E. Meyers at 21:8-11, 22:18-21. On March 2015, the Meyers also submitted to CGC for grading restorations performed on already-trimmed and lower-quality books they had purchased and restored. *Id.* at 20:10-15, 22:14-17. On April 2015, one of the books they worked on, Pep Comics 22,⁶ received an "A" restoration grade and a high quality 9.5 grade. Pl. Ex. 60 (CGC Grading Notes – In Date Order).

Despite the Meyers's compliance with industry-accepted techniques and advancement of their skill, they received some low "C" grades from CGC in 2015. Pl. Ex. 60 (CGC Grading Notes – In Date Order). CGC continuously purported that it was because the books were glossed

⁶ Pep 22 is a high-value book where the popular character Archie appears for the first time. Tr. 7/17/24 A.M., Nelson at 67:15-16; Tr. 7/17/24 P.M., E. Meyers at 125:19-22.

and trimmed. Tr. 7/17/24 P.M. E. Meyers at 22:3-21, 24:15-22; Tr. 7/16/24 P.M., Nelson at 53:3-19. For example, in June 2015, the Meyers submitted a restoration of Detective Comics 29. *Id.* at 23:3-8; Pl. Ex. 60 (CGC Grading Notes – In Date Order). They received an 8.0 grade on the restoration because of re-glossing and a back cover crease. Pl. Ex. 60 (CGC Grading Notes – In Date Order). The Meyers were surprised because they had repaired the crease in the book. Tr. 7/17/24 P.M. E. Meyers at 23:17-25, 24:1-8. The Meyers also were frustrated at Mr. Nelson’s and CGC’s assertion that they used a Golden Gel or another unacceptable glossing agent. *Id.* at 22:3-9. The Meyers, however, testified that they never used or told Mr. Nelson they were using Golden Gel. Tr. 7/17/24 P.M., E. Meyers at 13:11-19. In fact, they testified they had advised Mr. Nelson that after he instructed them on the proper materials to use, they were not using any non-archival materials. *Id.* at 24:15-20.

Perturbed by receiving low grades despite their compliance with Mr. Nelson’s advice, the Meyers started to submit their books to a competitor grading service, Comic Book Certification Service (“CBCS”), instead of to CGC. Tr. 7/17/24 P.M., E. Meyers at 24:9-20. When they submitted a restoration of Detective Comics 29 to CBCS, they received a 9.0, or an extensive professional restoration grade, instead of the 8.0 grade they had received from CGC. D. Ex. 30 (Email chain Meyer Nelson (2015-06-10)); Pl. Ex. 60 (CGC Grading Notes – In Date Order); Tr. 7/17/24 A.M., Nelson at 97:1-9. When Mr. Meyers emailed Mr. Nelson about the higher grade from CBCS, Mr. Nelson stated that CBCS gave higher grades because the company had just started business in 2014. D. Ex. 30 (Email chain Meyer Nelson (2015-06-10)); Tr. 7/17/24 A.M., Nelson at 121:2-18. Mr. Nelson further encouraged the Meyers to “continue to use [CGC] and follow [his] advice.” D. Ex. 30 (Email chain Meyer Nelson (2015-06-10)).

D. Mr. Nelson and CGC's Statements About the Meyers's Work

The Meyers submitted no books to CGC in the second half of 2015. Tr. 7/17/24 P.M., E. Meyers at 24:21-25. Mr. Nelson did not see or grade any of the Meyers's books from June to December 2015. Tr. 7/16/24 P.M., Nelson at 39:18-21; Pl. Ex. 58.32 (Grade History CGC/Meyers). The only book Mr. Nelson saw during that time was at the San Diego Comic Convention in 2015 and it was encased in a CBCS protective holder. Tr. 7/16/24 P.M., Nelson at 41:4-7; Pl. Ex. 157, Mercado at 9:11-14. At the convention, Mr. Nelson had a discussion with a comic book collector, Marcos Mercado, about the Meyers's work. Pl. Ex. 157, Mercado at 7:22-24, 11:14-20. Mr. Mercado trusted Mr. Nelson's opinion because Mr. Nelson was "pretty highly regarded in [the] hobby." *Id.* at 7:17-21. Mr. Nelson represented that the Meyers's work was more "re-creation than restoration." *Id.* at 12:24. He also claimed that CGC was "in limbo", trying to decide whether to continue grading the Meyers's books. *Id.* at 14:16-21.

In December 2015, public posts started appearing on CGC's message boards, accusing the Meyers of "re-creating" comic books. Pl. Ex. 51.76 (CGC Production to 1 February 2017 Discovery Requests); D. Ex. 123 (Chat Board Posts). The Meyers responded by denying those allegations and explaining their techniques. *Id.* Mr. Nelson responded with the following message, which publicly questioned the Meyers's work:

... Up to the point [CGC] stopped receiving submissions there were issues with the work, reflected in our assigning either a B or C classification. A decision was going to be made whether to stop taking books that exhibited questionable work, but submissions ceased . . . The point of professional restoration is to return a book back to as close to its original state as possible using reversible materials. When work becomes so extensive that it becomes hard to tell what is real and what is re-created, it is impossible to accurately and fairly represent a grade to the market.

Id.

Several third parties replied to the thread, stating that the Meyers are selling fakes and that CGC is refusing to grade the Meyers's books. Tr. 7/17/24 P.M., E. Meyers at 26:6-11; Pl. Ex. 26.343 (Collectors Society Forum Re: There's a Restored 9.4 Tec 33 Blowing Up on Ebay). Mr. Nelson responded to these posts in January 2016, publicly questioning the Meyers's work:

I've been following this thread closely, and have resisted the urge to post many times . . . There are two particular aspects I hope to have been resolved. They were present on the books we graded (hence the B and C notations we gave) which were subsequently cross graded by CBCS, who gave them professional designations and usually a higher grade. One was the large amount of color touch being applied to the covers, and the other was the material used as a glossing agent over that color touch.

...

I believe [the Meyers] used a product called Golden Gel, which is irreversible[.] To achieve all of these 9.6's and 9.8's (according to CBCS), either these flaws must be masked with a glossing agent, or only very high grade copies are chosen for restoration. Based on the information I've seen, I don't believe that you are restoring books that were previously unrestored high grade copies. And I don't think there are enough 'perfect' candidates out there to produce the large number of ultra high grade books that have entered the market in only the past few months.

Pl. Ex. 26.361 (Collectors Society Forum Re: There's a Restored 9.4 Tec 33 Blowing Up on Ebay).

He also posted that until the time the Meyers stopped submitting books to CGC, "there were issues with the work" and that CGC was planning to decide "whether to stop taking books that exhibited questionable work. . . ." Tr. 7/17/24 P.M., Nelson at 26-7; Pl. Ex. 51 (Nelson post dated 12/30/15).

Mr. Nelson and CGC further communicated that the Meyers's books were fakes. On June 8, 2016, when a potential buyer emailed Mr. Nelson to ask about the quality of the Meyers's restoration, Mr. Nelson replied that he "felt [the restoration] was too extreme and the books felt

and appeared fake. . . .” Pl. Ex. 50:52 (Matt Nelson Production to 1 Feb 2017 Discovery Requests). Mr. Nelson also referred the buyer to the CGC discussion boards. *Id.*

Another CGC primary grader, Paul Litch, similarly advised a consignor at Heritage Auctioneers, a multibillion-dollar auction house that deals in collectible comic books, that CGC had “caught the Meyers with a fake book” on October 7, 2014. Tr. 7/17/24 A.M., Litch at 133:3-12, 139:21-140:1; Pl. Ex. 52:208 (Heritage Production to 6 February 2017 Discovery). Consignors at Heritage Auctioneers often communicate with both CGC and each other about the quality of comic books to determine which books to sell. Tr. 7/17/24 A.M., Litch at 148:11-21; Tr. 7/16/24 P.M., Nelson at 16:11-22. When he made his statements, Mr. Litch was aware that part of the job of a Heritage Auctioneers consignor was to gather information about comic books and communicate that information to others in the industry. Tr. 7/17/24 A.M., Litch at 148:11-21. Mr. Litch testified that he should not have said that the Meyers’s book was fake and that he knew his statement was “reckless.”⁷ *Id.* at 148:8-10, 150:16-23.

Both Mr. Nelson and Mr. Litch testified at trial that notwithstanding their statements to a collector, an auction house and on message boards, they never “caught” the Meyers with a “fake” comic book. Mr. Nelson testified:

Q. At any point in time do you believe that the Meyers work is fake?

A. No.

Q. The Meyers do not make fake books; correct?

A. Correct.

⁷ On cross examination, Mr. Litch also testified:

Q. At the time you made that statement, you knew that it was false?

A. At the time I made the statement, I literally fired off a response without thinking much of it.
Tr. 7/17/24 A.M., Litch at 150:15-19.

Q. CGC then never caught the Meyers with a fake book; correct?

A. Correct.

Tr. 7/16/24 A.M., Nelson at 87:11-19. Further, Mr. Litch testified:

Q. . . . [C]an we agree that at no point in time did CGC ever catch the Meyers with a fake book?

A. No, we never did.

Q. Can we agree you told folks at Heritage Auctions that CGC caught the Meyers with a fake book?

A. Yes, I did.

Tr. 7/17/24 A.M., Litch at 136:4-11.

Further, CGC's grading notes from 2015 identified that all the Meyers's books employed average to high-quality color touch, piece fill cover, reinforcements, and archival material. Pl. Ex. 60 (Grading Notes Chronological 2015). Out of 13 books submitted for grading during 2015, only two books received a "C", or poor, grade. *Id.* Ms. Meyers testified that those comics, the Batman 1 and the Action Comics 7, were books that the Meyers received already trimmed and highly damaged. Tr. 7/17/24 P.M., E. Meyers at 17:2-10, 20:10-15. She further testified that, when the books were graded, Mr. Nelson was aware of the books' condition when the Meyers received them. *Id.* at 18:15-24, 20:23.

E. The Meyers's Reputation Declines

After the posts of Mr. Nelson and CGC, the Meyers attempted to defend their reputation in the community by commenting on discussion board posts with pictures and videos of their restoration process. Tr. 7/17/24 P.M., E. Meyers at 26:16-23, 29:14:25, 30:1-4; Pl. Ex. 26.118 (Collectors Society Forum Re: There's a Restored 9.4 Tec 33 Blowing Up on Ebay). Despite this, Ms. Meyers testified, whenever the Meyers submitted books to auction houses, new threads would appear "trashing the books, saying it was fake, saying anyone who buys this is stupid,

these books are counterfeit.” Tr. 7/17/24 P.M., E. Meyers at 36:18-25, 37:1-8; Pl. Ex. 123 (Thread Posts (Defamatory Meanings)). The Meyers also submitted some books to CGC in 2016 to defend their reputation. Tr. 7/17/24 P.M., E. Meyers at 35:3-17. All of them returned with a grade ranging from 6.00 to 9.60. Pl. Ex. 58.32 (Grade History CGC/Meyers).

F. Damages Evidence

At trial, the Meyers presented the testimony of Dennis Houser, a certified public accountant who the Court accepted as an expert in forensic accounting and business valuation with no objection by the CGC Defendants. Tr. 7/18/24 P.M. at 100:6-15. Using 2016 as a base year and based on his review of the Meyers’s financial documents and discussions with the Meyers, Mr. Houser calculated lost earnings of \$9,338,130 if they continued to work another 15 years; \$12,450,840 if they continued to work another 20 years; and \$15,563,550 if they continued to work another 20 years. Tr. 7/18/24 P.M., Dennis Houser testimony at 108:11-22.

In addition, the Meyers testified that they “struggled” after losing a hobby and business that brought them and their marriage joy. Tr. 7/18/24 A.M., M. Meyers at 101:16-25, 102:1-13.

As Mr. Meyers testified:

[I]magine . . . spend[ing] 40 years of your life doing something that doesn’t bring you joy, working in bars or medical offices, going down to Atlantic City from PA every day – or on the weekends, and you find something where you have autonomy and you’re creative and you can get into a flow because you get a reward at the end of it . . . And not only is it that joy, but you get to do it with your best friend.

Id. at 62:9-18. Mr. Meyers testified that, as a result of losing their comic book business, Ms. Meyers was “just so lost and sad.” *Id.* at 101:20. Mr. Meyers said he was affected when he realized he could not help his wife and that he was “in a really bad place” and became suicidal. *Id.* at 102:2-11.

G. The Meyers's Business after December 2015

After the statements by Mr. Nelson and Mr. Litch, Ms. Meyers testified that they had to switch their business model. Tr. 7/17/24 P.M., E. Meyers at 37:5-8. Rather than restoring and selling books under their own name, they partnered with others in the industry, who would buy books on their behalf, which the Meyers would restore and split the profits. *Id.* at 37:13-23. Their business efforts were further hindered when CGC began requiring individuals they suspected were submitting books on the Meyers's behalf to provide a certification declaring that the Meyers had no share or ownership interest in the book. *Id.* at 48:4-7. Ms. Meyers testified that this was devastating for the Meyers because there was "no way" for them to sell any books because "all of the collectors want books in CGC holders." *Id.* at 49:20-25. While the Meyers attempted to sell collectibles other than comic books to supplement their income, they were unsuccessful because they "became an easy target for the community to say that [they] were fraudsters." *Id.* at 50:1-11.

H. Procedural History

1. The Meyers File Suit

On December 13, 2016, the Meyers filed suit against CGC, CCS, Mr. Nelson, and Heritage Auctioneers with a jury demand. Complaint ("Compl."), Trial Court Docket ("Dkt.") at 12/13/16. They asserted five causes of action against all defendants: defamation, false light invasion of privacy, intentional interference with existing business relations, intentional interference with prospective contractual relations, and civil conspiracy. *Id.* Defendants denied all material allegations. Answer, Dkt. at 03/09/17.

After the suit was filed, one of CGC's lawyers posted the complaint on a CGC message board discussion thread called "CGC, et al." Tr. 7/17/24 P.M., E. Meyers at 46:18-25. The post

accused the Meyers of filing a false and frivolous suit. *Id.* The Meyers could not comment to defend themselves because their account had been permanently banned. Pl. Ex. 54.1 (Forum Re: No access to Meyers (2016)); Tr. 7/17/24 P.M., E. Meyers at 47:4-15.

2. Pre-Trial Motions

Heritage Auctioneers filed for summary judgment on June 21, 2018. Heritage Motion (“Mtn”) for Summary Judgment, Dkt. at 06/21/18. CGC, CCS, and Mr. Nelson also filed a separate motion. Nelson, CCS, and CGC Mtn. For Summary Judgment, Dkt. at 06/21/18. The trial court granted the motions for summary judgment in favor of all defendants in January 2019. Order Granting Summary Judgment, Dkt. at 1/23/19. The Meyers appealed, and the Superior Court reversed the trial court as to the defamation and false light claims against CGC, CCS and Mr. Nelson. *Meyers v. Certified Guaranty Company, LLC*, 221 A.3d 662, 674 (Pa.Super. 2019).

Before trial, the Meyers and the CGC Defendants filed a number of motions in limine:

1. The Meyers filed an omnibus motion to preclude the CGC Defendants from introducing “speculative, impertinent, and irrelevant” evidence of the Meyers’s alcohol consumption, marital problems, and inflammatory text messages. Pl. Mtn. in Limine, Dkt. at 10/10/23 (Control No. 23101999). This motion was granted. Order, Dkt. at 7/12/24. The CGC Defendants were further precluded from introducing “any evidence of or making any reference to treatment notes of Dr. William T. Nealy or Dr. B. Kenneth Nelson, any diagnosis of mental illness of plaintiff Matther Meyers or any medication taken by Mr. Meyers.” *Id.*
2. The CGC Defendants filed a motion in limine to exclude an October 7, 2014, email between Mr. Litch and a potential comic book buyer. D. Mtn. in Limine, Dkt. at 10/16/23 (Control No. 23102993). This motion was denied. Order, Dkt. at 7/11/24.

3. The CGC Defendants filed a motion in limine to exclude a June 8, 2016, email between Mr. Nelson and a potential comic book buyer. D. Mtn. in Limine, Dkt. at 10/16/23 (Control No. 23102994). This motion was denied. Order, Dkt. at 7/12/24.
4. The CGC Defendants filed a motion in limine to exclude or bifurcate punitive damages. D. Mtn. in Limine, Dkt. at 10/16/23 (Control No. 23102998). While the motion to preclude all evidence of punitive damages was denied, the motion to bifurcate was granted. Order, Dkt. at 7/15/24. The jury was permitted to deliberate on punitive damages “if, and only if,” actual malice was found. *Id.*
5. The CGC Defendants filed a motion in limine to preclude the Meyers from offering any evidence, testimony, or argument regarding the Meyers’s emotional distress. D. Mtn. in Limine, Dkt. at 10/16/23 (Control No. 23103001). This motion was denied. Order, Dkt. at 7/12/24.
6. The CGC Defendants filed a motion in limine to preclude the Meyers from offering any evidence, testimony, or argument of unsubstantiated and false rumors that CGC refused to grade their books. D. Mtn. in Limine, Dkt. at 10/16/23 (Control No. 23103010). This motion was granted, and the Meyers were precluded from offering any evidence of rumors “except to the extent they have evidence that defendant or defendants published information about such rumors.” Order, Dkt. at 7/8/24 (Control No. 23103010).

On June 10, 2024, Heritage Auctioneers, which had settled with the Meyers, filed a motion to be excused from trial. Heritage Mtn. to be Excused from Trial, Dkt. at 6/10/24 (Control No. 24061928). The Meyers did not “inten[d] to pursue a separate action for civil conspiracy” against Heritage Auctioneers after settlement. Pl. Answer in Opposition of Motion in Limine (Control No. 23102947). The motion was granted. Order, Dkt. at 7/8/24. Heritage

Auctioneers was excused and excluded from the verdict sheet. Order, Dkt. at 7/22/24 (Control No. 24072514).

3. Trial

A jury trial was held on July 16, 17, 18, 22, and 23, 2024. During trial, the CGC Defendants objected to the verdict slip on grounds that Heritage Auctioneers should be included as a joint tortfeasor because there was “ample evidence in [the] record” of Heritage Auctioneers’ liability. Tr. 7/22/24 A.M., 21:21-25, 22:1-6. After argument, this Court decided to exclude Heritage Auctioneers from the verdict slip. Order, Dkt. at 7/22/24; Tr. 7/23/24 A.M. at 15:20-23.

The CGC Defendants further objected because there was no specific question on the verdict slip asking the jury to consider causation. Tr. 7/23/24 A.M. at 9:18-23, 13:12-19. They argued that a separate causation question was necessary because subsuming causation in a damages question did not allow the jury to deliberate clearly on the issue, especially because co-defendant Heritage Auctioneers was not included on the verdict slip. *Id.* at 15:1-11. No separate question was added, but the jury was instructed to “write the amount of damages . . . award[ed] to the Meyers for harm **caused** by the CGC defendants . . .” Tr. 7/23/24 P.M., 8:3-9; Verdict Slip, Dkt. at 7/25/24 (emphasis added).

The jury found for the Meyers on both surviving counts for defamation and false light invasion of privacy. Verdict Slip, Dkt. at 7/25/24. The jury awarded \$5 million in compensatory damages and, after a separate proceeding, \$5 million in punitive damages. Verdict Slip, Dkt. at 7/25/24. After the close of the Meyers’s case, the CGC Defendants moved for nonsuit on the issue of defamation and actual malice, which was denied. Tr. 7/22/24 A.M. at 47:22-25, 48:1-11; 49:5-10; Tr. 7/22/24 P.M. at 49:23-25, 50:1. The CGC Defendants also moved for a directed verdict after the conclusion of trial. Tr. 7/22/24 P.M. at 47:4-15. While the CGC Defendants

handed up to the bench a memorandum in support of nonsuit at trial, it was not filed as of record. Tr. 7/22/24 A.M. at 47:10-15. This motion was also denied at trial. Tr. 7/22/24 A.M. at 52:8-9; Tr. 7/22/24 P.M. at 47:16-17, 54:2.

4. Post-Trial Motion Filed

The CGC Defendants filed a post-trial motion on August 2, 2024. D. Post Trial Mtn., Dkt. at 8/2/24. The Meyers filed an answer in opposition on October 7, 2024. P. Answer in Opposition, Dkt. at 10/7/24. The CGC Defendants filed a reply on October 14, 2024. D. Reply in Support, Dkt. at 10/14/24. The Court held oral argument on October 17, 2024.

DISCUSSION

I. Standard of Review

Post-trial relief is granted only if grounds for relief were raised in pre-trial proceedings or at trial and the issue is specified in the motion. Pa.R.C.P. 227.1(b). Any grounds not specified are deemed waived. Pa.R.C.P. 227.1(b)(2).

The trial court should enter judgment notwithstanding the verdict (“J.N.O.V.”) if “the movant is entitled to judgment as a matter of law”; and/or “the evidence was such that no two reasonable minds could disagree that the outcome should have been rendered in favor of the movant.” *Simmons v. Pacor, Inc.*, 674 A.2d 232, 236 (Pa. 1996). In reviewing a motion for J.N.O.V., “the evidence must be considered in the light most favorable to the verdict winner, and he must be given the benefit of every reasonable inference of fact arising therefrom, and any conflict in the evidence must be resolved in his favor.” *Id.* (quoting *Moure v. Raeuchle*, 604 A.2d 1003, 1007 (Pa. 1992) (internal citations omitted)).

A trial court reviewing a request for a new trial must evaluate whether a mistake was made and whether the movant suffered prejudice as a result. *Bey v. Sacks*, 789 A.2d 232, 236

(Pa. Super. 2001). A new trial is granted only “when the jury’s verdict is so contrary to the evidence as to shock one’s sense of justice.” *Armbruster v. Horowitz*, 813 A.2d 698, 703 (Pa. 2002).

Remittitur is granted only if the award is “plainly excessive or exorbitant.” *Haines v. Raven Arms*, 640 A.2d 367, 369 (Pa. 1994). An award is excessive or exorbitant if the verdict suggests that “the jury was influenced by partiality, prejudice, mistake, or corruption.” *Id.*

II. No J.N.O.V. is Required Because the Meyers Presented Sufficient Proof To Establish a Prima Facie Case of Defamation

In a defamation claim, plaintiffs have the burden of proving: “(1) The defamatory character of the communication; (2) Its publication by the defendant; (3) Its application to the plaintiff; (4) The understanding by the recipient of its defamatory meaning; (5) The understanding by the recipient of it as intended to be applied to the plaintiff; (6) Special harm resulting to the plaintiff from its publication; [and] (7) Abuse of a conditionally privileged occasion.” 42 Pa. Stat. and Cons. Stat. Ann. § 8343(a) (West, Westlaw through 2024 Act 96).

A. The Jury Was Entitled to Find that the Statements of CGC and Mr. Nelson Were Defamatory

The CGC Defendants argue that J.N.O.V. is required because the evidence does not establish a prima facie case of defamation. D. Post Trial Mtn, Dkt. at 8/2/24, ¶ 2. Further, CGC argues that a new trial is required because the jury’s finding that it published a statement that was capable of defamatory meaning and neither an opinion nor substantially true was against the weight of the evidence. *Id.*

Generally, statements of opinion are not defamatory. *Kurowski v. Burroughs*, 994 A.2d 611, 618 (Pa. Super. 2010). Statements that are true or substantially true are not defamatory. 42 Pa. Stat. and Cons. Stat. Ann. § 8343(b) (West, Westlaw through 2024 Act 96). (“In an action for defamation, the defendant has the burden of proving, when the issue is properly raised[,] the

truth of the defamatory communication”) A statement of opinion based on “incorrect or incomplete” facts that “imply a false assumption of fact,” however, is defamatory. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 18-9 (1990); *see also Kurowski v. Burroughs*, 994 A.2d 611, 618 (Pa. Super. 2010); *Braig v. Field Communications*, 456 A.2d 1366, 1373 (Pa. Super. 1983).

In this case, there was sufficient evidence for the jury to find that Mr. Nelson’s and CGC’s statements were neither true nor statements of opinion because they were based on incorrect or incomplete facts. Mr. Nelson and CGC made statements that the Meyers’s work was “fake” and “re-creation” rather than “restoration.” Pl. Ex. 51.76 (CGC Production to 1 February 2017 Discovery Requests); D. Ex. 123 (Chat Board Posts); Tr. 7/17/24 A.M., Litch at 133:3-12, 139:21-140:1; Pl. Ex. 52:208 (Heritage Production to 6 February 2017 Discovery); Pl. Ex. 157, Mercado at 12:24. Stating that a restored comic book is “fake” is not an opinion but rather a statement, especially when it is expressed by a “pretty highly regarded” professional in the field. Pl. Ex. 157, Mercado at 7:17-21; *see also* Tr. 7/16/24 A.M., Nelson at 90:15-18.

Even if the statements of CGC and Mr. Nelson were opinions, there was sufficient evidence for the jury to find that Mr. Nelson and CGC made such statements based on incorrect or incomplete facts. For example, CGC’s grading notes nowhere mention that the Meyers’s work was extensively restored, recreated, or even fake. Pl. Ex. 60 (CGC Grading Notes – In Date Order). In fact, at trial, Mr. Nelson and Mr. Litch, another CGC primary grader, admitted that the company “never” caught the Meyers with a fake book. Tr. 7/16/24 A.M., Nelson at 87:11-19; Tr. 7/17/24 A.M., Litch at 136:4-11.

Further, Mr. Nelson, as an individual and as an agent employee of CGC, claimed that the Meyers continuously received “B and C” classifications in their 2015 submissions because they used Golden Gel to mask flaws in their comic books. Pl. Ex. 26.361 (Collectors Society Forum

Re: There's a Restored 9.4 Tec 33 Blowing Up on eBay). The Meyers, however, testified that they "never" used Golden Gel. Tr. 7/17/24 P.M. E Meyers at 13:11-19, 21:8-11, 22:18-21. Instead, Ms. Meyers testified that they only used methylcellulose, a gloss recommended by Mr. Nelson in 2015. *Id.* The only other gloss the Meyers used was used Krylon gloss, but they stopped applying it in 2015 when Mr. Nelson advised them to stop using it. Tr. 7/17/24 A.M., Nelson at 60:8-25, 61:4-24; Tr. 7/17/24 P.M., E. Meyers at 13:11-25, 21:8-11, 22:18-21. It was the province of the jury to weigh that evidence as well as evidence that Mr. Nelson had no way to know what techniques the Meyers were using after June 2015 because he had no access to their restored books. Tr. 7/17/24 A.M., E. Meyers at 129:23-130:6. The Meyers also received A and B grades for their books from CGC in 2015, in contrast with Mr. Nelson's statements that they only received B and C classifications. Pl. Ex. 60 (CGC Grading Notes – In Date Order).

Because there is sufficient evidence to support a finding by the jury that Mr. Nelson and the CGC defendants made statements that are neither opinions nor truthful, the jury was entitled to find that the statements were defamatory.

B. The Jury Was Entitled to Find That the Statements of CGC and Mr. Nelson Caused Actual Injury

The CGC defendants argue that a J.N.O.V. is required because the evidence is insufficient as a matter of law to establish that their statements caused actual harm to the Meyers's reputation. D. Post Trial Mtn, Dkt. at 8/2/24, ¶ 2c, 2e. To the contrary, the evidence is sufficient for the jury to have found actual harm to the Meyers's reputation and their business. *Id.*

A prima facie case of defamation requires that the plaintiffs incur actual injury. 42 Pa. Stat. and Cons. Stat. Ann. § 8343(a) (West, Westlaw through 2024 Act 96); *Joseph v. Scranton Times L.P.*, 129 A.3d 404, 426 (Pa. 2015). In Pennsylvania damage to a plaintiff's reputation is "a prerequisite to the recovery of damages for other actual injuries, including mental and

emotional injuries.” *Joseph*, 129 A.3d at 429. Damage to reputation occurs when the defendant’s statement “tends to harm the reputation of another as to lower him in the estimation of the community or to deter third parties from associating or dealing with him.” *Id.* at 430 (*quoting Tucker v. Philadelphia Daily News*, 848 A.2d 113, 124 (Pa. 2004)).

In this case, there was sufficient evidence for the jury to find that CGC’s and Mr. Nelson’s defamatory statements caused reputational harm. There was both testimony and documentary evidence that following CGC’s and Mr. Nelson’s statements, the Meyers received backlash from comic book collectors, buyers, and auction houses. *See Meyers*, 221 A.3d at 666; Tr. 7/17/24 P.M., E. Meyers at 36:18-25, 37:1-8; Pl. Ex. 123 (Thread Posts (Defamatory Meanings)). There was testimony that Mr. Nelson is a trusted figure in the industry and that when Mr. Nelson accused the Meyers of selling fakes and re-creations, collectors and comic book traders believed his opinion and stopped doing business with the Meyers. Tr. 7/16/24 A.M., Nelson at 90:15-18; Tr. 7/17/24 A.M., E. Meyers at 11:17-20; Pl. Ex. 157, Mercado at 7:17-21.

Specifically, Ms. Meyers testified that after the December 2015 posts, many collectors posted threads “trashing the [Meyers’s] books, saying it was fake, saying anyone who buys this is stupid, these books are counterfeit.” Tr. 7/17/24 P.M., E. Meyers at 36:18-25, 37:1-8; Pl. Ex. 123 (Thread Posts (Defamatory Meanings)). Further, there is evidence that this negatively affected the Meyers’s business. Pl. Ex. 20.18-20.20 (Expert Report and CV of FFC); Tr. 7/17/24 P.M., E. Meyers at 40:15-19; Tr. 7/18/24 P.M., Houser at 103:15-18. In 2016, while the Meyers expected gross revenue of \$1,272,000 on all books sold, they received only \$838,730. Pl. Ex. 20.20 (Expert Report and CV of FFC). The Meyers testified that they eventually had to partner with third parties to make any sales. Tr. 7/17/24 P.M., E. Meyers at 37:5-8. They testified that their soured reputation even affected their attempts to sell other collectibles because they were

“an easy target for the [comic book] community to say that [the Meyers] were fraudsters.” *Id.* at 50:1-11.

There was also sufficient evidence for the jury to find that Mr. Nelson and CGC caused the Meyers reputational harm when they claimed that CGC would stop grading the Meyers’s books.⁸ Pl. Ex. 51.76 (CGC Production to 1 February 2017 Discovery Requests); D. Ex. 123 (Chat Board Posts); Tr. 7/17/24 P.M., Matthew Nelson at 26-7; Pl. Ex. 51 (Nelson post dated 12/30/15). It is undisputed that CGC is one of the largest and most influential companies that grades and certifies comic books. Tr. 7/17/24 A.M., Nelson at 33:12-22.

Further, there is evidence that the Meyers lost business with Heritage Auctioneers, a premier auction house, after CGC’s primary grader, Mr. Litch, emailed them that he had “caught” the Meyers with a fake cover. Tr. 7/18/24 A.M., E. Meyers at 64:10-24. Heritage Auctioneers is a “premier” auction house that frequently relied on CGC and its graders to inform its decisions about which comic books to sell. Tr. 7/17/24 A.M., Litch at 148:11-21; Tr. 7/16/24 P.M., Nelson at 16:11-22. Mr. Litch testified that he knew that his email to the Heritage Auctioneers employee would be circulated and relied on by other employees. Tr. 7/17/24 A.M., Litch at 148:11-21. Because there was evidence that Heritage Auctioneers trusted Mr. Litch’s

⁸ The CGC Defendants argue that the Court should grant a new trial because it impermissibly admitted evidence of “rumors” posted on the CGC message boards that CGC would not grade the Meyers’s books, despite the Court’s in limine ruling precluding the introduction of evidence of rumors. D. Post Trial Mtn, Dkt. at 8/2/24, ¶ 18, 19; Tr. 7/17/24 P.M., E. Meyers at 26:6-11; Order, Dkt. at 7/8/24 (Control No. 23103010) (“Plaintiffs may not offer any evidence of rumors except to the extent they have evidence that defendant or defendants published information about such rumors.”). Ms. Meyers’s testimony refers to chat board posts and comments made in the CGC discussion boards in December 2015. Tr. 7/17/24 P.M., E. Meyers at 25:12-25, 26:1-11. The Court properly admitted this testimony because they were third-party reactions to the statements of Mr. Nelson and CGC and were relevant to the jury determinations of the recipients’ understanding of allegedly defamatory statements and damages.

opinion, the jury was free to infer that Heritage Auctioneers believed Mr. Litch's opinion that the Meyers's books were fake and acted accordingly. Tr. 7/18/24 A.M., E. Meyers at 64:10-24.

Because there is sufficient evidence for the jury to have found reputational damage, the jury was entitled to award the Meyers compensatory damages.

III. No J.N.O.V. or New Trial is Required on the False Light Claim Because the CGC Defendants Waived These Arguments

The CGC Defendants argue that they are entitled to J.N.O.V., a new trial, or remittitur on the Meyers's false light claim. D. Post Trial Mtn, Dkt. at 8/2/24, at ¶ 2b, 2d, 4, 7e, 22. They failed, however, to preserve this argument. Their oral motions for nonsuit and directed verdict addressed only issues of defamation, actual malice, the inclusion of Heritage Auctioneers on the verdict sheet, and the admissibility of Mr. Litch's email. Tr. 7/22/24 A.M. at 47:22-25, 48:1-11; 49:5-10; Tr. 7/22/24 P.M. at 49:23-25, 50:1; Tr. 7/22/24 P.M. at 47:4-15. While the CGC Defendants' memorandum in support of nonsuit did mention false light, the document was not filed of record. Tr. 7/22/24 A.M. at 47:10-15; D. Ex. A, Dkt. at 10/14/24. Because the issue of false light was not preserved, no post-trial relief can be awarded on that issue. *See* Pa.R.C.P. 227.1(b)(2) ("post-trial relief may not be granted unless . . . the motion [. . .] state[s] how the grounds were asserted in pre-trial proceedings or at trial").⁹

IV. No J.N.O.V or New Trial Is Required Because There Was Sufficient Evidence of Actual Malice to Support an Award of Punitive Damages

The CGC Defendants argue that J.N.O.V. and a new trial is required because there was no evidence of actual malice to establish defamation, false light, and support an award of punitive damages. D. Post Trial Mtn, Dkt. at 8/2/24, ¶ 2d, 4, 5, 7f, 10, 14.

⁹ The Court will nonetheless address the CGC Defendants' arguments about the Meyers's false light claim substantively.

In a defamation case, plaintiffs may recover punitive damages if they demonstrate actual malice by clear and convincing evidence. *Smith v. Wade*, 461 U.S. at 50; *Joseph*, 129 A.3d at 428. Actual malice requires that the statements were made with actual knowledge of falsity or a reckless disregard for the truth. *Joseph*, 129 A.3d at 437; *Tucker v. Philadelphia Daily News*, 848 A.2d 113, 129 (Pa. 2004). There is a reckless disregard for truth when a defendant makes a publication with a “high degree of awareness . . . of probable falsity” or after “entertaining serious doubts as to the truth of his publication.” *Joseph*, 129 A.3d at 437. Plaintiffs may prove actual malice with circumstantial evidence. *Id.*

In this case, there was sufficient evidence for the jury to find actual malice because there was factual support that Mr. Nelson’s and CGC’s assertions that the Meyers’s books were “fake” or “extensive[ly]” restored were made with knowledge of their falsity or reckless disregard for the truth. Pl. Ex. 51.76 (CGC Production to 1 February 2017 Discovery Requests); D. Ex. 123 (Chat Board Posts); Pl. Ex. 50.52 (Matt Nelson Production to 1 Feb 2017 Discovery Requests); Tr. 7/17/24 A.M., Litch at 133:3-12, 139:21-140:1; Pl. Ex. 52:208 (Heritage Production to 6 February 2017 Discovery). CGC’s grading notes for the Meyers’s restored books never identified that the Meyers’s books were fake or overly restored. Pl. Ex. 60 (Grading Notes Chronological 2015). In fact, the notes describe that the books exhibited average to high-quality color touch, piece fill cover, reinforcements, and archival material. *Id.* Mr. Nelson, as a primary grader at CGC and president of sister company CCS, was privy to those grading notes. Tr. 7/16/24 A.M., Nelson at 67:15-6, 91:21-25. Mr. Nelson also examined several of the Meyers’s restored books in early 2015 and never mentioned that the books looked like fakes or were extensively restored. D. Ex. 21 (Email chain Meyers Nelson (2015-03-12)). Once the Meyers

stopped submitting books to CGC, he had no basis to make statements about the techniques the Meyers used.

In fact, Mr. Nelson admitted that he neither believed that the Meyers's work was fake nor caught the Meyers with a fake book. Tr. 7/16/24 A.M., Nelson at 87:11-19. Mr. Litch also stated that he told Heritage Auctioneers that the Meyers's cover was fake "without thinking much of it." Tr. 7/17/24 A.M., Litch at 150:16-19. Mr. Litch even admitted that it was "reckless" to represent to Heritage Auctioneers that the Meyers's books were fake. *Id.* at 150:20-23. Based on this evidence, the jury had a sufficient basis to find that CGC and Mr. Nelson were aware that their statements were false, that they had seriously doubts about the truth of their statements, or that they were made with reckless disregard of the truth.¹⁰ Thus, the jury was free to award punitive damages.¹¹

V. No New Trial Is Necessary Because the Court's Evidentiary Rulings Were Proper

A. The Statute of Limitations Does Not Bar Two Admitted Emails

The CGC Defendants argue that a new trial is required because the Court improperly admitted Mr. Litch's October 7, 2014, email and Mr. Nelson's June 8, 2016, email. Pl. Ex. 52:208 (Heritage Production to 6 February 2017 Discovery); Pl. Ex. 50.52 (Matt Nelson

¹⁰ For similar reasons, the Court denies the CGC Defendants' motion for J.N.O.V. and a new trial on the Meyers's false light claim. In Pennsylvania, plaintiffs are required to demonstrate that "a) the false light in which the other was placed would be highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed." *Vivian v. Blank Rome, LLP*, 318 A.3d 890, 903 (Pa.Super. 2024) (quoting *Meyers*, 221 A.3d at 674). In this case, for reasons stated above, the jury was entitled to find that CGC and Mr. Nelson put the Meyers in a false light before the public. Dkt. at 7/25/24.

¹¹ The CGC Defendants also argue that a new trial is warranted because the Court should have granted a motion in limine to exclude punitive damages. D. Post Trial Mt, Dkt. at 8/2/24, ¶ 14; D. Mtn. in Limine, Dkt. at 10/16/23. (23102998). Because there is sufficient evidence to demonstrate actual malice, the Court properly denied the motion in limine.

Production to 1 Feb 2017 Discovery Requests). The statute of limitations for defamation in Pennsylvania is one year. 42 See 42 Pa. Stat. and Cons. Stat. Ann. § 5523(1) (West, Westlaw through 2024 Act 96).

i. The CGC Defendants waived their statute of limitations argument.

The statute of limitations is an affirmative defense that must be raised in a new matter. Pa.R.C.P. 1030(a); *Bisher v. Lehigh Valley Health Network, Inc.*, 265 A.3d 383, 409 (Pa. 2021) (statute of limitations exist “so that the passage of time does not damage the defendant’s ability to adequately defend against claims made”); *Johns v. Hunt-Irving*, 2023 WL 5925975, at *2 (Pa.Super. 2023) (quoting *Rellick-Smith v. Rellick*, 261 A.3d 506, 518 (Pa. 2021))¹². If the defense is not raised in a new matter, it is waived. *Id.* A party may not raise the statute of limitations defense for the first time in a post-trial motion. *Croyle v. Dellape*, 832 A.2d 466, 476 (Pa.Super. 2003); *Johns*, 2023 WL 5925975, at *2.

In this case, the CGC Defendants did not raise the statute of limitations in any responsive pleading nor at trial. Instead, the CGC Defendants first raised the issue in two motions in limine. D. Mtn. in Limine, Dkt. at 10/16/23 (Control No. 23102993); D. Mtn. in Limine, Dkt. at 10/16/23 (Control No. 23102993). Thus, the CGC Defendants’ statute of limitations argument is waived.

ii. The Meyers did not have to separately plead each defamatory statement.

Even if the CGC Defendants had properly preserved the statute of limitations issue, it is unavailing. The CGC Defendants contend that the statute of limitations bars the admission of both Mr. Litch’s and Mr. Nelson’s emails because they neither specifically pled each statement

¹² This is a non-precedential decision cited for persuasive value.

as a separate cause of action in their original complaint nor amended their complaint to include the statements. D. Post Trial Mtn, Dkt. at 8/2/24, ¶ 12, 13.

There is no case law holding that the plaintiff in a defamation case must plead each defamatory statement as its own cause of action. While plaintiffs are entitled to allege more than one cause of action for multiple defamatory publications, they are not required by law to do so. *See* 42 Pa. Stat. and Cons. Stat. Ann. § 8341 (West) (“No person shall have more than one cause of action . . . founded upon any single publication . . .”); *Graham v. Today’s Spirit*, 468 A.2d 454, 458 (Pa. 1983). In fact, Pennsylvania courts have held that defamatory statements that support a single theory and are based upon the same relationships between parties are correctly pleaded as one cause of action. *Walder v. Lobel*, 488 A.2d 622, 628 (Pa. Super. 1985) (ruling that an amended complaint that described the “same letters” as the original complaint did not contain a new cause of action barred by the statute of limitations because the information “did not allege an entirely different theory or different relations between the parties, but only amplified the existing cause of action which was sufficiently stated in the original complaint”).

The Meyers were not required to amend their complaint once they learned of the emails because the existing allegations encompassed both Mr. Litch’s and Mr. Nelson’s statements. The Meyers’s complaint generally alleged that CGC and Mr. Nelson made defamatory representations that the Meyers “trim” comic books, that their books were “re-creations,” and that the Meyers’s books had an “unnatural look and feel.” *See* Complaint, Dkt. at 12/13/16. Mr. Litch’s email represented that the “[Meyers’s] stuff is usually moderate or extensive work and all three edges are trimmed,” and “we caught a fake cover on one.” Tr. 7/17/24 A.M., Litch at 133:3-12, 139:21-140:1; Pl. Ex. 52:208 (Heritage Production to 6 February 2017 Discovery). Similarly, Mr. Nelson’s email represented to a buyer that the books looked “fake.” Tr. 7/17/24

P.M., Nelson at 26-7; Pl. Ex. 51 (Nelson post dated 12/30/15). These statements merely amplify the allegations already made in the complaint and accordingly are not time-barred by the statute of limitations.

B. The Court Properly Admitted Evidence of Mr. Meyers's Emotional Distress

The CGC Defendants argue that a new trial is required because the Court committed a prejudicial error of law and abused its discretion by limiting evidence and cross examination of Mr. Meyers's emotional distress. D. Post Trial Mtn, Dkt. at 8/2/24, ¶ 15, 17. The CGC Defendants also argue that the Court issued contradictory ruling on their motions in limine that hampered their defense. *Id.* at ¶ 16.

Plaintiffs in a defamation case may present testimonial evidence of emotional distress to support their claim for compensatory damages. *See Joseph v. Scranton Times's L.P.*, 959 A.2d at 345 (Pa. Super. 2008); *Wilson v. Benjamin*, 481 A.2d 328, 333 (Pa. Super. 1984).

In this case, the Court properly allowed testimony that CGC's and Mr. Nelson's posts caused emotional distress. While the Court ruled on a motion in limine precluding "speculative, impertinent and irrelevant" evidence related to the Meyers's emotional state, the testimony is not precluded under those grounds because the admitted testimony was relevant to the issue of compensatory damages. *See Pl. Mtn. in Limine*, Dkt. at 10/10/23 (Control No. 23101999); *Joseph*, 959 A.2d at 345.

There also was no error in precluding the CGC defendants from introducing "treatment notes . . . , any diagnosis of mental illness of plaintiff Matthew Meyers or any medication taken by Mr. Meyers." Pl. Mtn. in Limine, Dkt. at 10/10/23 (Control No. 23101999); *Joseph*, 959 A.2d at 345. When Mr. Meyers testified that his wife's reaction to losing their comics business caused him to become suicidal, that evidence of this condition was in his therapist's notes and that he

was on medication to treat his condition, Mr. Meyers potentially opened the door to questions about his therapist notes and mental health at trial, despite the earlier *in limine* ruling. Tr. 7/18/24 A.M., M. Meyers at 102:5-10. After argument, the Court ruled that it would examine the propriety of cross-examination about Mr. Meyers's mental health records on a "question by question" basis. Tr. 7/18/24 AM, 121:13-25, 122:1-12. CGC was subsequently permitted to cross examine Mr. Meyers about the fact that he was seeing a psychiatrist and a psychologist and his diagnosis, but after one objection to a single question was sustained, defense counsel did not continue their line of questioning. Tr. 7/18/24 P.M., M. Meyers cross-examination at 55:16-25, 56:1-6. Having abandoned the line of questioning, the CGC Defendants have no entitlement to a new trial based on an unsupported claim that they were prevented from exploring Mr. Meyers's mental health at trial.

VI. No New Trial Is Required Because the Verdict Sheet Was Proper

A new trial based on a faulty verdict sheet is proper only when a "trial court has committed of law or abuse of discretion." *Boyle v. Independent Lift Truck, Inc.*, 6 A.3d 492, 494 (Pa. 2010). The movant must demonstrate that it suffered prejudice because of the verdict slip.¹³ *Id.* at 496.

A. The Court Did Not Commit a Prejudicial Error of Law or Abuse of Discretion By Excluding Heritage Auctioneers On the Verdict Sheet.

The CGC Defendants argue that a new trial is warranted because Heritage Auctioneers was not included on the verdict sheet. D. Post Trial Mtn, Dkt. at 8/2/24, ¶ 21. A trial court may

¹³ The CGC Defendants also argue that a new trial is required because the Court rejected their supplemental jury instruction based on the Communication Decency Act. D. Post Trial Mtn, Dkt. at 8/2/24, ¶ 19. This argument is unconvincing because the Superior Court previously ruled that the Communication Decency Act does not apply in this case. *See Meyers*, 221 A.3d at 673 (note 12) ("The content at issue here was provided by Nelson, in his capacity as a member of CGC, so CGC was both a service provider and a provider of the subject content, making the Act inapplicable.")

refuse to put a settling co-defendant on a verdict slip if there is no evidence of liability. *Hyrca v. West Penn Allegheny Health System, Inc.*, 978 A.2d 961, 969 (Pa. Super. 2009).

In this case, the Court properly excluded Heritage Auctioneers from the verdict slip because there is no evidence of Heritage Auctioneers' liability. Heritage Auctioneers executed a *Pro-Rata* Joint Tortfeasor Release, Confidentiality, and Settlement Agreement with the Meyers on October 24, 2023, and was excused from attending trial. Order, Dkt. at 7/8/24. The Meyers did not have the "intent to pursue a separate action for civil conspiracy" against Heritage Auctioneers after settlement. Pl. Answer in Opposition of Motion in Limine (Control No. 23102947). There is also no evidence of a separate case for defamation against Heritage Auctioneers. The mere fact that Heritage Auctioneers was included in the Meyers's complaint is not evidence of Heritage Auctioneers' potential liability.

B. The Court Did Not Commit a Prejudicial Error Of Law or Abuse of Discretion By Excluding a Separate Question on Causation.

There is no case law demonstrating that a finder of fact must deliberate on causation separate from damages in a defamation case. The only requirement is that a plaintiff must demonstrate that the defendant caused reputational harm from a publication to recover compensatory damages. *Joseph*, 959 A.2d at 344; *see also* 42 Pa. Stat. and Cons. Stat. Ann. § 8343(a) (West, Westlaw through 2024 Act 96) (A plaintiff must demonstrate ". . . special harm resulting to the plaintiff from its publication . . .")

The CGC Defendants fail to demonstrate that they were prejudiced by the exclusion of a causation question on the verdict sheet. D. Post Trial Mtn, Dkt. at 8/2/24, ¶ 20. The question at issue asked the jury to "write the amount of damages . . . award[ed] to the Meyers for harm *caused* by the CGC defendants to reputation, emotional distress, mental anguish, humiliation, past and future economic harm, and special injuries suffered, in a lump sum." Tr. 7/23/24 P.M.,

8:3-9; Verdict Slip, Dkt. at 7/25/24 (emphasis added). The Court also thoroughly instructed the jury on causation. Tr. 7/23/24 A.M. at 146:11-25 (“If you find that the communication or any portion of it was defamatory and false and the CGC Defendants were negligent in publishing it, you must decide whether it **caused** actual injury to the Meyers)(emphasis added), 146:25-147:3 (“A false and defamatory communication is not a **cause of injury** if it has no connection or only an insufficient connection with the injury.”)(emphasis added). Because the question and instructions sufficiently invited the jury to deliberate on causation, the Court committed no error and the CGC Defendants suffered no prejudice.

VII. No Remittitur is Necessary Because the Punitive Damages Award Was Not Excessive

The CGC Defendants finally argue that a substantial remittitur is required because the compensatory and punitive damage verdict was grossly excessive.¹⁴ D. Post Trial Mtn, Dkt. at 8/2/24, ¶ 29, 30. While there are no “bright-line ratio[s]” to an acceptable punitive damages award, courts must ensure that awards are “reasonable and proportionate to the amount of harm to the plaintiff.” *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 426 (2003). The Pennsylvania Supreme Court has upheld an award with a 6:1 ratio between punitive and compensatory damages. *Bert Co. v. Turk*, 298 A.3d 44, 73 (Pa. 2023).

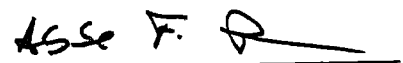
In this case, the jury awarded \$5 million in compensatory damages and \$5 million in punitive damages, a 1:1 ratio. Verdict Slip, Dkt. at 7/25/24. The CGC Defendants have provided

¹⁴ The CGC Defendants argue that the jury did not properly award the Meyers compensatory damages. D. Post Trial Mtn, Dkt. at 8/2/24, ¶ 2f, 7h, 8, 23, 26, 27, 29. A court may reduce compensatory damages only if the “award is plainly excessive and exorbitant.” *Doe v. Raezer*, 664 A.2d 102, 105 (Pa.Super. 1995) (citing *Haines v. Raven Arms*, 640 A.2d 367, 369 (Pa. 1994)). The compensatory damages award was not plainly excessive or exorbitant as it was notably less than the \$9,338,130, \$12,450,840, and \$15,563,550 in lost earnings to which the plaintiffs’ damages expert testified. Tr. 7/18/24 P.M., Houser at 108:11-22.

no support for their argument that the jury verdict was excessive, let alone grossly excessive and no remittitur is required.

CONCLUSION

For the foregoing reasons, the motion for judgment notwithstanding the verdict, new trial, and remittitur of defendants Certified Guaranteed Company LLC, Classic Collectible Services LLC, and Mathew Nelson is denied.


Abbe F. Fletman, J.

IN THE COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY

- - -

MATTHEW MEYERS AND EMILY	:	DECEMBER TERM, 2016
MEYERS, H/W AND INVESTMENT	:	
GRADE BOOKS, LLC,	:	
	:	
Plaintiffs,	:	NO. 01182
	:	
-vs-	:	
	:	
CERTIFIED GUARANTY COMPANY,	:	
LLC, et al.,	:	
	:	
Defendants.	:	

- - -

Videotaped trial deposition of
MARCOS MERCADO was taken pursuant to notice,
held REMOTELY VIA VIDEOCONFERENCE,
commencing at 5:49 p.m. on July 17, 2024,
before April J. Foga, Certified Court
Reporter, License No. 30XI00221300,
Certified Realtime Court Reporter, Delaware
Certified Shorthand Reporter, License No.
238-RPR, and Notary Public, there being
present:

- - -

ZANARAS REPORTING & VIDEO
A Magna Legal Services Company
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Philadelphia, PA 19103
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ALSO PRESENT:

Christopher Dinya, Videographer
 (Magna Legal Services)
 Rachel Phillips, Intern
 (The Beasley Firm, LLC)

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EXHIBITS

EXHIBIT NO.	DESCRIPTION	PAGE
	(NONE MARKED)	

- - -

LITIGATION SUPPORT INDEX

DIRECTION TO WITNESS NOT TO ANSWER

PAGE LINE	PAGE LINE	PAGE LINE
(NONE)		

(NONE)

REQUEST FOR PRODUCTION OF DOCUMENTS

PAGE LINE	PAGE LINE	PAGE LINE
(NONE)		

(NONE)

STIPULATION

PAGE	LINE
(NONE)	

(NONE)

THE VIDEOGRAPHER: We are now on the record. This begins video number one in the deposition of Marcos Mercado in the matter of Matthew Meyers and Emily Meyers v. Certified Guaranty Company, LLC, et al. Today is Wednesday, July 17th, 2024, and the time is 5:49 p.m.

The videographer for today's deposition is Christopher Dinya of Magna Legal Services. Our court reporter is April Foga.

Will counsel and all parties present please state their appearance and whom they represent for the record?

MR. JUBB: Good evening. Lane Jubb with The Beasley Firm for Plaintiff.

MR. ZAID: Yes. Mark Zaid from Mark Zaid, P.C., representing Certified Guaranty Company, CCS and Matt Nelson. And I also have, in the room, Co-Counsel Dino Privitera

<p style="text-align: right;">Page 6</p> <p>1 and Michael Rosenthal and the 2 Defendant, Matt Nelson. 3 THE VIDEOGRAPHER: And if that 4 is everyone, will the court reporter 5 please swear in the witness? 6 MARCOS MERCADO, after having 7 been first duly sworn, was examined 8 and testified as follows: 9 THE COURT REPORTER: Thank 10 you. 11 BY MR. JUBB: 12 Q. Good evening, sir. Could you 13 please state your name for the record and 14 tell folks on the jury where you're 15 currently located? 16 A. My name is Marcos Mercado. 17 I'm in Sacramento, California. 18 Q. Mr. Mercado, what do you do 19 for a living? 20 A. I'm a realtor. 21 Q. And do you have any 22 involvement with comic books? 23 A. I -- I mean, I collect. I 24 used to buy, sell, trade, but, yeah, primary</p>	<p style="text-align: right;">Page 7</p> <p>1 -- primarily a collector. 2 Q. Do you know the Meyers at all? 3 A. Yeah, I do. 4 Q. Do you know who Matt Nelson 5 is? 6 A. Yes. I know who Matt Nelson 7 is. 8 Q. We're going to be talking 9 about the 2015, 2016 time frame. Have you 10 ever had occasion to speak to Matt Nelson? 11 A. Just informally at 12 conventions. Specifically San Diego 13 Comic-Con is the time more often than not 14 that I'd run into him, but -- 15 Q. How long have you known who 16 Matt Nelson is? 17 A. I think anybody who's a 18 serious collector knows who Matt Nelson is. 19 So, I mean, for myself, since I started 20 collecting graded books. Matt Nelson is 21 pretty highly regarded in this hobby. 22 Q. In July of 2015, did you 23 attend the San Diego comic convention? 24 A. Yep.</p>
<p style="text-align: right;">Page 8</p> <p>1 Q. Did you see Matt Nelson at 2 that event? 3 A. I did. Yeah. He was -- I 4 mean, CGC was there in full force, and he 5 was in and around the -- the convention 6 center from what I remember. 7 Q. Were you by yourself or were 8 you with anyone at that time? 9 A. No. I was with a friend of 10 mine. 11 Q. And did you actually speak 12 personally with Mr. Nelson at that event? 13 A. So the -- I just kind of 14 walked into a conversation that he was 15 having with a friend of mine, a guy by the 16 name of Cyrus Irani. And I -- I mean, I had 17 very little interaction with him, maybe had 18 a couple of questions for him while they 19 were having a conversation, but it wasn't, 20 like, a one-on-one conversation at that 21 point. 22 Q. Did you overhear Mr. Nelson 23 say anything about the Meyers or their work? 24 A. Yeah, specifically Cyrus had</p>	<p style="text-align: right;">Page 9</p> <p>1 asked them about their work. He knew that 2 they had submitted quite a bit of stuff -- 3 MR. ZAID: Sorry. I have an 4 objection. I was on mute. We need 5 to go, I understand, off the 6 recording for the camera so I can 7 preserve my objection for the 8 written record for the judge to rule 9 on before any testimony would be 10 played in open court. 11 THE VIDEOGRAPHER: The time is 12 now 5:53 p.m., and we are off the 13 video record. 14 MR. ZAID: So we continue with 15 the stenography. I object on the 16 grounds of hearsay for anything 17 where he's repeating what Cyrus 18 said. 19 MR. JUBB: And obviously the 20 rules of hearsay are inapplicable 21 when you're not offering it for the 22 truth, and I believe that to be 23 frivolous and interruptive of my 24 examination.</p>

1 So we can go back on the
2 record. And then, Ms. Foga, would
3 you please repeat to me, before we
4 go back on video, my question and
5 where the witness left off for the
6 witness? And then I'll have the
7 witness repeat his answer that was
8 interrupted and continue.

9 (The court reporter read back
10 the following testimony:

11 "Question, did you overhear
12 Mr. Nelson say anything about the
13 Meyers or their work?

14 Answer, yeah, specifically
15 Cyrus had asked them about their
16 work. He knew that they had
17 submitted quite a bit of stuff --")

18 - - -
19 MR. JUBB: Okay. So,
20 Mr. Mercado, we're going to go back
21 on the video record. I would like
22 for you to start your answer over
23 again and continue, please. And the
24 objection to that is on the record.

1 expensive.

2 So anyhow, we were -- we were
3 outside the CGC booth, and he approached
4 Matt to ask him about the -- the Meyers
5 work, and specifically some of the past work
6 that they have done, and that's when he had
7 asked them. And specifically, you know, he
8 was asking about their techniques, their
9 quality of work, why people -- why so many
10 people on the boards were having problems
11 with the work and some of the -- the thing
12 -- the items that were coming up on the CGC
13 boards. And so, you know, he was truthful
14 and he told him, you know, hey, we've had
15 open discussions with the Meyers. You know,
16 they do some good work but they're using
17 certain techniques that we're trying to get
18 comfortable with or decide, you know, how
19 we're going to proceed with because this is
20 kind of uncharted territory. And in the
21 discussion, he -- he categorized it as -- he
22 says, you know, I can't say it's not -- that
23 it's more -- he said I believe it's more
24 re-creation than restoration with some of

1 THE VIDEOGRAPHER: Stand by,
2 please. The time is now 5:54 p.m.,
3 and we are back on the video record.

4 BY MR. JUBB:

5 Q. You can continue your answer,
6 sir.

7 A. Start from the beginning or
8 just --

9 Q. Yes, please.

10 A. -- just jump back to where we
11 were.

12 Q. You can start from the
13 beginning.

14 A. Yeah. So a friend of mine,
15 Cyrus, had -- had approached Matt and asked
16 him, point blank, you know, he -- he'd seen
17 the work. He considered buying some of the
18 work. We've -- I thought they did some neat
19 work from stuff that I had seen, and so --
20 in our discussions. And so he goes, you
21 know, I -- I want to talk to Matt Nelson
22 about this and just kind of get a little bit
23 more information before I start buying
24 because some of their books are pretty

1 the techniques that they're using. And so,
2 anyhow, that was kind of how the -- the
3 conversation evolved. And, you know, I
4 obviously -- Matt had seen the books up
5 close and personal and had known -- and he
6 knows more about restoration techniques than
7 just about anybody that we know in the
8 industry, so, you know, it was good -- good
9 insight to get from -- from the man himself.

10 Q. And that's something that any
11 potential buyer would want to know, how the
12 work is being perceived, if it's actually a
13 re-creation or a restoration. Is that fair?

14 A. Yeah. And I -- you know, I
15 don't -- on the boards, I didn't see too
16 much being labeled as re-creation. It --
17 there were lots of questions, and depending
18 on, you know, who was chiming in, some
19 people thought -- there are truists in the
20 hobby industry in which people believe comic
21 books should never be touched. And then
22 there are others that believed if you can
23 restore and preserve something, that there
24 is something to be said for that, to make

Page 14	Page 15
<p>1 sure a book will last, you know, the test of 2 time. So anyhow, there's others, like 3 myself and my buddy, Cyrus, who are not 4 opposed to restored books or preserved 5 books. But some of the bad -- some of the 6 bad press that they were getting, some of 7 the comments that were being made on the 8 boards just kind of gave -- gave both of us 9 pause, specifically Cyrus before he would 10 buy anything. So, you know, he just wanted 11 to know more before he proceeded. And I 12 don't -- I don't blame him.</p> <p>13 Q. At any point in time, did 14 Mr. Nelson express that CGC could not 15 encapsulate the Meyer -- the Meyers books?</p> <p>16 A. I think at that point, they 17 were in -- in limbo trying to decide if they 18 were going to proceed with that. I don't 19 know if they had made a definitive decision 20 on whether or not they'd be grading their 21 books from that point going forward. I 22 think some -- at some point shortly after 23 that, a decision was made. And I -- you 24 know, I don't know all the ins and outs in</p>	<p>1 terms of those conversations, but from what 2 I heard, that CGC had put a halt on grading 3 some of their books until, you know, certain 4 techniques had gotten worked out.</p> <p>5 Q. Sir, thank you so much for 6 your time. Those are all the questions I 7 have. Thank you.</p> <p>8 A. You're welcome.</p> <p>9 BY MR. ZAID:</p> <p>10 Q. Good afternoon and evening for 11 us, Mr. Mercado.</p> <p>12 A. How are you, Mark?</p> <p>13 Q. I'm trying to remember. I 14 don't think we have met.</p> <p>15 A. I don't think so.</p> <p>16 Q. Okay. I'm getting older and 17 my memory isn't as good.</p> <p>18 With respect -- you had read 19 the thread about the Detective 33 that was 20 on the CGC boards that Mrs. Meyers and Matt 21 Nelson posted in?</p> <p>22 A. Yeah, I read portions of it. 23 I mean, that thread kind of took a life of 24 its own. It -- I mean, it kind of evolved</p>
Page 16	Page 17
<p>1 over a period of time to the point where I 2 -- I stopped following it. I felt like a 3 lot of the same stuff was being said over 4 and over again. I felt there was some 5 people throwing stones that maybe didn't 6 involve -- didn't belong in the 7 conversation, but I couldn't cite specifics 8 or any dates regarding that conversation.</p> <p>9 Q. Would you agree with me that 10 prior to Matt Nelson posting in that thread, 11 there were many negative comments posted 12 about the Meyers' work by third parties? 13 And I'm not asking if it fair or not, just 14 that there were negative comments before 15 Matt Nelson posted.</p> <p>16 A. I remember there were negative 17 comments more universally stated about large 18 restoration being done on books. I can't -- 19 you know, I -- I'd like to say I remember 20 people -- and I'm sure there were 21 individuals that were critical of their 22 work. I believe there was a couple -- one 23 or two voices that were pretty loud about 24 it, but I couldn't -- I couldn't recall any</p>	<p>1 specific names or what they had said 2 specifically.</p> <p>3 Q. I'm -- I'm good. I have 4 nothing further.</p> <p>5 MR. JUBB: Mr. Mercado, thank 6 you for your time.</p> <p>7 THE WITNESS: Yeah. No 8 problem, guys.</p> <p>9 THE VIDEOGRAPHER: And the 10 time is now 6:01 p.m., and we are 11 off the record.</p> <p>12 THE COURT REPORTER: Copies of 13 the transcript, Mr. Zaid and/or 14 Mr. Rosenthal?</p> <p>15 MR. ZAID: You can just send 16 it to me.</p> <p>17 THE COURT REPORTER: And do 18 you all need this as soon as 19 possible?</p> <p>20 MR. ZAID: Yes.</p> <p>21 MR. JUBB: Yeah. I'm not 22 going to be playing it first thing 23 in the morning or anything like 24 that, so I don't need it tonight,</p>

<p style="text-align: right;">Page 18</p> <p>1 but the sooner the better. 2 THE COURT REPORTER: Great. 3 We'll get it to you tomorrow morning 4 then. 5 (The deposition concluded at 6 6:02 p.m.) 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p style="text-align: right;">Page 19</p> <p>1 CERTIFICATION 2 3 4 I, April J. Foga, a Certified 5 Court Reporter, Certified Realtime Court 6 Reporter, Delaware Certified Shorthand 7 Reporter and Notary Public, do hereby 8 certify the foregoing to be a true and 9 accurate transcript of my original 10 stenographic notes taken at the time and 11 place hereinbefore set forth. 12 13 14 April J. Foga 15 Certified Court Reporter 16 Certified Realtime Court Reporter 17 Delaware Certified Shorthand Reporter 18 Notary Public 19 20 DATED: July 17, 2024 21 22 (The foregoing certification of 23 this transcript does not apply to any 24 reproduction of the same by any means, unless under the direct control and/or supervision of the certifying court reporter.)</p>
<p style="text-align: right;">Page 20</p> <p>1 LAWYER'S NOTES 2 3 LINE PAGE 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	