

Cause No. CL-19-4410-D

LAW OFFICE OF CHRIS SANCHEZ	§	IN THE COUNTY COURT
	§	
V.	§	
	§	COURT AT LAW NO. 4
	§	
TREVOR NIKOS KOCAOGLAN	§	
and PABLO TREJO	§	HIDALGO COUNTY, TEXAS

DEFENDANTS' MOTION TO DISMISS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME **TREVOR NIKOS KOCAOGLAN** and **PABLO TREJO**, Defendants in the above styled and numbered cause, and files this their **DEFENDANTS' MOTION TO DISMISS**, and would respectfully show unto the Court as follows:

The Texas Legislature enacted the Texas Citizens Participation Act (TCPA) "to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law." Tex. Civ. Prac. & Rem. Code §27.002. Thus, the TCPA provides a mechanism for dismissing, at an early stage, actions that impinge on those rights. Tex. Civ. Prac. & Rem. Code §27.003(a).

A defendant invokes the statute by filing a motion to dismiss (commonly referred to as an "Anti-SLAPP Motion") within 60 days after service. Tex. Civ. Prac. & Rem. Code §27.003(b). Once filed, "all discovery in the legal action is suspended until the court has ruled on the motion." Tex. Civ. Prac. & Rem. Code § 27.003(c). This Court must set a hearing on the motion within sixty (60) days of filing. Tex. Civ. Prac. & Rem. Code §27.004. Finally, this Court

must then decide the motion within 30 days of its hearing. Tex. Civ. Prac. & Rem. Code §27.005(a).

In deciding an Anti-SLAPP Motion, this Court must construe the TCPA liberally to fully effectuate its purpose and intent to encourage and safeguard a defendant's constitutional rights. Tex. Civ. Prac. & Rem. Code §27.011. If dismissal is warranted, the Court must award "court costs, reasonable attorney's fee, and other expenses incurred in defending against the legal action as justice and equity may require" as well as sanctions to deter the plaintiff from filing similar actions in the future. Tex. Civ. Prac. & Rem. Code §27.009(a)(1)-(2).

Initially under the TCPA, Defendants must demonstrate that Plaintiff's claims involve protected constitutional rights. This determination can be based on the pleadings alone. *Hersh v. Tatum*, 526 S.W.3d 462, 467 (Tex. 2017). Because this matter involves free speech and commercial matters affecting the public, the TCPA applies. *Adams v. Starside Custom Builders, LLC*, 547 S.W.3d 890 (Tex. 2018).

Because TCPA applies to Plaintiff's claims, to continue, Plaintiff has the burden to present "clear and specific evidence" of each and every element of its causes of action. *Young v. Krantz*, 434 S.W.3d 335, 342 (Tex. App.--Dallas 2014, no pet.). While the statute itself does not supply a definition of "clear and specific evidence," the phrase has been interpreted by the courts to mean evidence that is "unaided by presumptions, inferences, or intendments". *Rehak Creative Servs. v. Witt*, 404 S.W.3d 716, 726 (Tex. App.--Houston [14th

Dist.] 2013, pet. denied). Such evidence must be “sure,” “explicit,” “unambiguous,” or “free from doubt”. In re Lipsky, 460 S.W.3d 579, 590 (Tex. 2015).

Furthermore, Plaintiff’s evidence cannot be conclusory. Evidence is conclusory if it expresses “a factual inference without stating the underlying facts on which the inference is based.” Arkoma Basin v. FMF Assocs. 1990-A, Ltd., 249 S.W.3d 380, 390 n. 32 (Tex. 2008). Conclusory statements lack probative value and do not establish a prima facie case. In re Crestcare Nursing and Rehabilitation Center, 222 S.W.3d 68, 74 (Tex. App.--Tyler 2006, pet. denied). Bare, baseless assertions—even if offered in the form of testimony or an affidavit—are insufficient for the clear and specific evidence required to establish a prima facie case under the TCPA. In re Lipsky, 460 S.W.3d at 592.

In the case a bar, Plaintiff will be unable to present the required clear and specific evidence of each and every element of its causes of action. Accordingly, its claims must be dismissed, with attorney's fees and sanctions be awarded.

WHEREFORE, PREMISES CONSIDERED, **TREVOR NIKOS KOCAOGLAN** and **PABLO TREJO**, Defendants in the above styled and numbered cause, respectfully pray that this matter be dismissed with prejudice, that Defendants recover their damages and attorney’s fees, that Plaintiff be sanctioned for its conduct, that Plaintiff be liable for pre-judgment and post-judgment interest, all costs of court, and for all other and further relief, either at law or in equity, to which Defendants show themselves justly entitled.

Respectfully submitted,

LIVESAY LAW OFFICE

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CERTIFICATE OF SERVICE

I, **KEITH C. LIVESAY**, do hereby certify that I have caused a true and correct copy of the above and foregoing document to be delivered by regular mail, certified mail, and/or electronic delivery, to the following:

Christopher Sanchez
104 South 23rd Street
McAllen, Texas 78501

on the 14th day of September, 2019.

BY: __/S/_Keith C. Livesay_____
KEITH C. LIVESAY