IN THE DISTRICT COURT, HARRIS COUNTY

**189th Judicial District**

| | | |
|---|---|---|
| Robert J. Kruckemeyer, | ) | VERIFIED [TCPA] MOTION TO DISMISS |
| Plaintiff. | ) | No. 2023-11266 |
| vs. | ) | |
| Blogger Inc., D/B/A, LAWIN TEXAS.COM | ) | |
| Defendant. | ) | |

## VERIFIED [TCPA] MOTION TO DISMISS

Defendants, Counter-Plaintiffs and Third-Party Plaintiffs Mark Burke, individually, and on behalf of Blogger Inc., ~~and Joanna Burke~~ ("Defendants" or "media defendants"), file this motion to dismiss Plaintiff Robert Kruckemeyer of The Kruckemeyer Law Firm's ("Bob") complaint with prejudice.

## TABLE OF CONTENTS

## TIMELINE OF EVENTS

**On Feb 21, 2023**, the Plaintiff's Original Petition And Application For Permanent Injunction docketed.

**On April 10, 2023,** the registered agent for Blogger Inc. in Delaware accepted Process of Service.

**On May 1, 2023**, "Defendant's Original Answer and Jury Demand" was filed by Imposters and Co-Conspirators David Oubre and Jason Powers of Lewis Brisbois on behalf of Berkshire Hathaway Direct Insurance Company ("Imposters and Co-Conspirators") allegedly representing Blogger, Inc. without capacity, nor any documented authority to do so.

**On May 11, 2023**, Bob registered "The Kruckemeyer Law Firm" as a DBA in Harris County.

**On May 30, 2023**, "Defendant's Motion to Dismiss Pursuant to the Texas Anti-Slapp Law, Texas Civil Practice & Remedies Code 27.001 et seq."

was filed by Imposters and Co-Conspirators David Oubre and Jason Powers of Lewis Brisbois on behalf of Berkshire Hathaway Direct Insurance Company ("Imposters and Co-Conspirators") allegedly representing Blogger, Inc. without capacity, nor any documented authority to do so.

**On Jun 5, 2023, "**Plaintiff's First Amended Original and Application for Permanent Injunction" docketed, adding new parties. The causes of action remain the same.

**On Jun 6, 2023,** Imposters and Co-Conspirators file **"**Motion to Withdraw" with a hearing scheduled for July 25, 2023, walked back mid-afternoon the same day to a setting by submission (date, Jun 19, 2023).

**On Jun 15, 2023**, "Defendants Mark Burke and Joanna Burkes' Original Answer and Jury Demand" and "ORIGINAL COUNTERCLAIM AND APPLICATION FOR PERMANENT INJUNCTION" by the real parties in interest docketed. It is without a shadow of a doubt, this court was on notice

that lack of jurisdiction, standing and authority controlled the Defendants and real parties in interest arguments in the answer and counterclaim.

**On Jun 26, 2023**, Plaintiffs Notice of Dismissal of Joanna Burke without Prejudice filed.

**On Jun 27, 2023**, the "First Amended Counterclaim/Third Party Petition and Application for Permanent Injunction" by the real parties in interest docketed.

**On Jul 10, 2023**, the Motion to Strike Defendants Imposters Original [sic] and TCPA Motion to Dismiss and Notice of Hearing, scheduled for Sep. 26, 2023 at 10 am, in-person was e-filed.

**On Jul 11, 2023,** the Notices' were rejected.

**On Jul 11, 2023** an "ORDER GRANTING WITHDRAWAL OF ATTORNEY SIGNED" is visible on the docket showing a docketed filing date of Jul 11, 2023, but it was not presented on that date. It's backdated.

**On Jul 13, 2023,** Defendants filed "Request Hearing on Motion to Strike Plaintiff's First Amended Petition" and "Request for Hearing on Defendant Mark Burke's Motion to Transfer and Consolidate". This would be rejected despite the dates being pre-approved by the court.

**On Jul 13, 2023,** and after a further flurry of emails between the court and the parties regarding available hearing dates, Defendants refiled Notice of Hearing on Motion to Strike Plaintiff's First Amended Petition and Notice of Hearing on Defendant Mark Burke's Motion to Transfer and Consolidate which would be docketed, originally setting the hearings for Oct. 24, 2023 at 9 am by Zoom. The court sua sponte amended this to October 31, 2023 at 9.50 am by Zoom.

**On Jul 26, 2023,** Defendants filed a Verified Motion to Dismiss and despite further attempts to obtain an emergency hearing due to TCPA statutory timeliness deadlines to hold a hearing, this court would

consistently blank Defendants requests and/or provide dates which were beyond the allowed timeframes. This will be addressed in more detail in this motion.

**On August 21, 2023,** Defendants filed a motion to disqualify lead counsel and a hearing has been set for submission, October 23, 2023.

**On August 24, 2023,** lead counsel for Plaintiff, Randall O. Sorrels filed a motion to withdraw, and a hearing has been reset from October 24 to October 31, 2023 by zoom.

**On September 26, 2023,** by the operation of law and governing statute, the 120 day time to hear the Verified Motion to Dismiss expired, thus triggering Plaintiffs' 30 day deadline to furnish the Request for Disclosure, First Set of Interrogatories, Request for Production of Documents, Request for Admissions and Request for Privilege Log to Defendant, Blogger Inc. d/b/a LawIn Texas.com. Thus, the resetting of the Court's hearing to October

31, 2023 appears to Defendants as premeditated.

**On October 10, 2023,** Bob filed his first Notice of Hearing on Plainitffs [sic] Application for Temporary Injunction. Surprisingly, this would be allowed to be added to the October 31, 2023 hearing docket, as modified sua sponte by the court, when it usually requires at least 2-3 months' notice to schedule a hearing before Judge Craft.

**On October 20, 2023**, Bob filed "PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISQUALIFY RANDALL O. SORRELS OF SORRELS LAW AS LEAD COUNSEL FOR PLAINTIFF", seeking to moot the motion, despite the matter being set for submission and a related motion to withdraw set for oral hearing on March 31, 2023, at Randy's request.

## FACTS, ARGUMENT AND AUTHORITIES

### Background

This civil action is complicated by several material issues which have

been addressed in prior petitions and pleadings as listed on the docket and referred to herein. As such they are incorporated as part of this motion.

## A Texas Lawyer and His Fake Law Firm File a Defamation Lawsuit

In this case, we have a public figure—a Texas lawyer—who has filed a defamation lawsuit. However, it becomes evident that this lawyer falsely portrayed himself as the owner and operator of a non-existent entity. Despite this deception, he remains an active lawyer registered with the State Bar of Texas.

### *A History of Bob's Governmental Positions Raises Concerns*

See nomination; NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES ROBERT JOSEPH KRUCKEMEYER, OF TEXAS, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE HUMANITIES FOR A TERM EXPIRING JANUARY 26, 2022, and more about his governmental roles from the Pachyderms website bio, as transcribed here.

Bob's private law practice focuses on debt collection, and more recently representing a tax scam promoters as discussed on LIT ("Bandit Lawyer Bob Kruckemeyer Switches Client Industries: From Air Fuel to Tax Scam Promoters"), however, this is intermingled with his dubious history of governmental positions as a trusted wingman for both Texas and the United States Government.

The media defendants' concerns are undeniably heightened by the real-life experiences of state and federal government agencies meddling in Blogger Inc.'s interests and the founder's personal life. These incidents have raised legitimate concerns about undue influence and power dynamics.

Particularly worrisome is Bob's seemingly contradictory role as a private lawyer with government allegiances, targeting a seemingly innocuous article on LIT. This situation ominously echoes the takeover of Twitter by the United States government, where a private social media

company was exploited as a means to pursue a covert agenda—to control negative press and stifle free speech by citizens and journalists under the pretext of combating 'misinformation.'

Here, it is evident that the government has intervened under the guise of a 'private citizen,' which has grave implications for Blogger Inc.'s voice and expression, particularly on its legal and financial services related blogs.

By way of comparison, LIT has faced significant censorship on its Twitter accounts, with Texas Attorney General Ken Paxton even going as far as blocking the account from his Twitter Account until the matter was resolved through a federal lawsuit. This incident was reported in the article "As Twitter Sues Texas Attorney General Ken Paxton, LIT is Considering a Motion to Intervene", published on Mar. 9, 2021. Subsequently the article, "LIT Reviews Government Employees Blocking Twitter Users Lawsuits", published on Aug. 1, 2021 sheds light on the broader issue.

Alas, the indicted top attorney for Texas has once again blocked LIT, just after his impeachment hearing.

However, the challenges for LIT did not end there. The original LIT Twitter account, which had been the target of previous censorship, faced a permanent suspension shortly after due to alleged violations of Twitter's rules.

The suspension was attributed to the sharing of public information concerning alleged PPP loan fraud by Texas lawyers and tagged government agencies, including the FBI. LIT addressed this incident in the article titled "Twitter Suspends Our Account For A Tweet Which Only Shares Public Information," published on Mar. 2, 2022.

These events highlight the ongoing struggle faced by LIT in navigating the complexities of free speech and social media platforms, where the actions of government entities and private companies intertwine with

villainous agendas.

This ongoing litigation, alongside related legal matters, reaffirms LIT's unwavering commitment to pursuing its mission statement and subscriber growth. LIT remains dedicated to engaging citizens who share a common desire for an open and transparent government. Despite the formidable odds, LIT and its founder, Mark Burke, encourage their support in fostering positive changes for a better government, one that upholds the true values outlined in the United States Constitution and State of Texas Constitution.

As LIT continues down this arduous path, it is hoped the government will take notice of the collective voices demanding a return to the principles that shape a just and law-abiding society, and where the people who stand before the courts and those in positions of authority and trust in government can once more cultivate mutual respect. With perseverance and understanding, LIT envisions a future where harmony and co-existence

prevail, fostering a society built on the bedrock of unity and shared values.

## The Law Asserts Media Defendants Activities Are Highly Protected

Bob was apparently alerted to the media defendants legal blog at LawsinTexas.com ("LIT") which focuses on investigating and publishing allegations of legal, judicial and public corruption in the State of Texas, and which is of public concern. See; *Treviño v. Cantu*, No. 13-16-00109-CV (Tex. App. Feb. 2, 2017) holding that articles were matters of public concern because they concern the practice of law, public corruption, cases filed in our judicial system, and disciplinary actions. The blog is protected by Section 230 of the Communications Decency Act (CDA), including republishing content. See; *Barrett v. Rosenthal*, 146 P.3d 510 (Cal. S.C. 2006).

Recently in *Monacelli v. Bennett*, No. 12-22-00044-CV, at *6 (Tex. App. Aug. 30, 2022) the court cited: "Speech concerning matters of public interest is protected by the First and Fourteenth Amendments to the United States Constitution, Article 1, Section 8 of the Texas Constitution, and Chapter 73

of the Texas Civil Practice and Remedies Code." *Williams v. Cordillera Commc'ns, Inc.*, 26 F.Supp.3d 624, 633 (S.D. Tex. 2014); *Channel 4, KGBT v. Briggs*, 759 S.W.2d 939, 944 (Tex. 1988):

("Article 1, section 8 of the Texas Constitution provides: Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. This is more expansive than the United States Bill of Rights which states: "Congress shall make no law . . . abridging the freedom of speech or of the press. . . ." U.S. Const. amend. I.").

Furthermore, Defendants are pursuing counterclaims, as recognized in *Jones v. Memorial Hosp*, 746 S.W.2d 891 (Tex. App. 1988) which addressed the Texas Constitution, article 1, section 8 as "an independent legal basis for a cause of action" and citing out-of-state authorities allowing relief, including money damages, for violations of state constitutional rights.

It is important to recognize the State of Texas has an interest in ensuring that the free-speech rights of Texas citizens are not abridged. Bob's lawsuit raises serious concerns about the government punishing protected speech through litigation by state and governmental lawyers, operating as private lawyer(s) registered in the State who do not have standing to sue. See; *Holcomb v. Waller Cnty.*, 546 S.W.3d 833 (Tex. App. 2018).

### *The Media Defendants are Protected by both the State of Texas Constitution and United States Constitution*

The legal blog at LawsInTexas.com ("LIT") is a legal non-profit entity established in Delaware in 2020 by founder and editor Mark Burke. The blog and its sole director as media defendants are highly insulated and protected from lawsuits such as the one described here, relying upon both the Texas and Federal Constitution. For example, in *Carr v. Brasher*, the Texas Supreme court held that "All assertions of opinion are protected by the first amendment of the United States Constitution and article I, section 8 of the

Texas Constitution," (776 S.W.2d 567, 570, Tex. 1989).

### *The Media Defendants Assert Absolute Privilege and Affirmative Defenses including Substantial Truth*

Furthermore, in *UTV of San Antonio, Inc. v. Ardmore, Inc.*, 82 S.W.3d 609, 611 (Tex. App. 2002) and *Neely v. Wilson*, 418 S.W.3d 52 (Tex. 2014), it was determined that truth is an affirmative defense in a defamation case, and a media defendant defeats a libel claim by proving the "substantial truth" of the statement, as applicable here. It should be remembered that truth is an absolute privilege in Texas, according to Texas Civil Practice and Remedies Code § 73.005. See also, Sec. 73.002: "PRIVILEGED MATTERS. (a) The publication by a newspaper or other periodical of a matter covered by this section is privileged and is not a ground for a libel action." (A libel is defamation expressed in written or other graphic form).

In Texas, it is not enough for the plaintiff to prove that the allegedly defamatory statement is literally false. They must show that the statement(s)

is *substantially* false. Bob has failed to meet this standard.

Since Defendants are clearly media defendants, this requirement is imposed on Bob by constitutional considerations of free speech and free press. See; *Mcilvain v. Jacobs*, 794 S.W.2d 14 (Tex. 1990). This immunization did not deter Bob.

## Bob's Lawsuit

The blog includes an article about Bob, in particular Bob's debt collection practices. Bob responded to the article by commenting on the article itself, asserting LIT's article was untrue and unless the article was removed, litigation would be forthcoming. LIT refused and litigation was initiated by Bob.

## The Media Defendants Ensured they Were Insured

Blogger Inc., aware that owning and operating publishing platforms

which investigates lawyers, judges and public corruption could lead to litigation, Mark Burke ensured his non-profit entity was protected by obtaining and maintaining an insurance policy to cover the type of claims made by Bob in his lawsuit.

### *The Media Defendants Claim was Underwritten and Approved by the Insurance Carrier: BHDIC Knew Media Defendants Refused to Remove the Article about Bob Prior to Granting the Claim*

Indeed, this is the very first claim after Blogger Inc. was formed in 2020. Mark Burke timely initiated the insurance claim which would be underwritten and approved by the insurance carrier, Berkshire Hathaway Insurance Direct Company ("BHDIC").

### *The Media Defendants Were Advised by BHDIC that their Preferred Counsel Lewis Brisbois Conducted 'Conflict Checks'*

BHDIC designated Lewis Brisbois' Houston offices to handle the legal action. However, Mark Burke as founder and owner of entity Blogger Inc. strongly objected on multiple grounds, including conflicts of interest, but his

objections were consistently overruled.

### *The Insurance Carrier, Appointed Counsel and Bob Conspired Together Against the Media Defendants*

One critical concern was the omission of a fundamental tenet in the case—Lewis Brisbois's duty to Blogger Inc. over and above the interests and contractual relationship with BHDIC. See Addendum B, p. 11-12, citing; *Parsons v. Continental National American Group*, 113 Ariz. 223, 227 (Ariz. 1976). Despite never approving, authorizing, or signing any contracts with Lewis Brisbois, Mark Burke and his entity, Blogger Inc. found himself facing court motions that he had never been informed about beforehand.

In support, Lewis Brisbois attorney Jason Powers filed a "Proposed Order Granting Defendant's Motion to Dismiss Pursuant to the Texas Anti-Slapp Law, Texas Civil Practice & Remedies Code 27.001 et seq.", Image No. 108407197, 05/30/2023.

When compared with a similar TCPA motion in an independent and recent case filed in Harris County District Court by the law firm of Hoover Slovacek LLP (for their client), the "Proposed Order Granting Defendant Anita Fred Kawajas Motion to Dismiss Pursuant to the Texas Citizen Participation Act (Tex. Civ. Prac. & Rem. Code 21.007 et seq)", Image No. 97936374, 09/17/2021 in civil action, 202118043 - OBIALO, DEREK U vs. BROWN, JERALD ANTHONY (Court 055), requests attorney fees and sanctions.

Alarmingly, Lewis Brisbois proposed order asks for neither related to their unauthorized and fraudulent TCPA-driven motion to dismiss, confirming Defendants assertions that there is a co-conspiracy against the media defendants, even by their own insurer and appointed legal counsel.

The lawyers were acting like imposters, taking advantage of Mark Burke's not-for-profit small business status, and leveraging this fact along

with their collusion with Bob, leaving Defendants with limited options to halt their actions.

### *The Insurance Carrier (BHDIC) and Appointed Counsel's (Lewis Brisbois) Reasoning for Terminating Representation of the Media Defendants is Absurd*

The termination of representation of the media defendants by the insurance carrier (BHDIC) and its appointed counsel, Lewis Brisbois, appears to be based on absurd and questionable reasoning. BHDIC and Lewis Brisbois sought to shirk their legal obligations by attempting to justify actions which infringe upon the defendants protected constitutional rights. They acted as both jury and judge, insisting that Mark Burke remove the article and any future articles about Bob under the guise of a 'settlement' they intended to enforce. Such actions not only infringe upon Blogger Inc.'s constitutional rights but also involve the intimidation of the insured with the threat of immediate termination.

Mark Burke vehemently rejected this outrageous "offer" on multiple occasions, providing detailed written responses and engaging in direct communication with the insurance carrier. However, BHDIC and the lawyers from Lewis Brisbois proceeded with a malicious and premeditated scheme to extricate themselves from the ongoing civil action.

Their plan appeared to involve collaborating with Bob and unlawfully divulging privileged information, as seen in the case of *Emami v. Emami*, No. 02-21-00319-CV (Tex. App. Aug. 11, 2022). It is crucial to emphasize that the attorney-client privilege belongs to the client, not the attorney, and can only be invoked on behalf of the client.

Attorney Jason Powers of Lewis Brisbois, on Jun. 6, 2023, initially scheduled a motion to withdraw from representing Blogger Inc. for a hearing but later changed it to a notice by submission a few hours later on the same day.

This sequence of events raises significant concerns about the integrity and ethics of the involved parties. The attempts to manipulate legal proceedings, violate constitutional rights, and disclose privileged information are alarming and demand scrutiny. It is imperative that these actions are thoroughly investigated and addressed to uphold the principles of justice and protect the rights of all parties involved.

### *The Media Defendants are Entitled to the Appointment of New Counsel by the Insurance Carrier under the terms of the Media Defendant's Policy*

The media defendants have a clear entitlement to the appointment of new counsel by their insurance carrier, BHDIC, as outlined in the terms of their policy with the insurer. The Defendants have expressed their desire not to retain Lewis Brisbois as their legal representatives due to the reasons provided. Consequently, they are well within their rights to seek replacement representation from their insurance carrier, BHDIC, and owing to the documented conflicts and potentially illegal acts that have surfaced

during the course of this legal proceeding involving their preferred and designated law firm, Lewis Brisbois.

## The Real Parties In Interest Answer and Plea to the Jurisdiction

When Mark Burke answered the complaint after service of citation by Bob on Jun. 15, 2023, he responded on behalf of himself and his entity, which included counter and third-party claims. His first statement was to address whether this court had jurisdiction, which he contests. He suggested the court either ask for supplemental briefs or a hearing on this subject matter. The court remained unmoved. The court's first official act would be to assert jurisdiction  by signing an Order on Jul. 11, 2023, allowing Lewis Brisbois to withdraw from representation of Blogger Inc.

## Lack of Subject-Matter Jurisdiction

A court must assure itself there is jurisdiction to hear a suit. See *City of Houston v. Rhule*, 417 S.W.3d 440, 442 (Tex. 2013) (per curiam). Whether

subject-matter jurisdiction exists is a question of law.

Furthermore, lack of subject-matter jurisdiction generally bars a court from doing anything other than dismissing the suit. See; *Fin. Comm'n of Tex. v. Norwood*, 418 S.W.3d 566, 578 (Tex. 2013); *State v. Morales*, 869 S.W.2d 941, 949 (Tex. 1994).

This court erred in asserting jurisdiction by issuing the Jul. 11, 2023 Order allowing the Imposters and Co-conspirators to withdraw and Defendants provide conclusive controlling arguments and authorities in support. To address this decisive matter, the motion revisits the core issues raised in the complaint.

Setting aside the plea to the jurisdiction for a moment, the Defendants assert that Bob's lawsuit lacks merit and is based on unfounded and defamatory claims aimed at causing harassment, emotional distress and mental anguish.

## The Real Truth About the Opposition

### The Media Defendants Insurer ("BHDIC") and Appointed Counsel ("Lewis Brisbois) are Imposters and Co-Conspirators

The Defendants' Insurer and Appointed Counsel have acted as imposters and co-conspirators. Previous filings, including the Defendants' Third Party Petition with Addendum[s], statements, and arguments raise material concerns about the authority of the biglaw firm of Lewis Brisbois to represent Blogger Inc. in these proceedings. BHDIC and Lewis Brisbois have failed to provide sufficient evidence of their authority to act on behalf of Blogger Inc. Despite the real parties in interest's pleadings, by its own actions this court concluded the opposite in a no-evidence, no-hearing ORDER GRANTING WITHDRAWAL OF ATTORNEY SIGNED, docketed Jul. 11, 2023. In doing so, the court erroneously asserted jurisdiction. This submission seeks to present the true facts with supporting authorities, asserting that the complaint should be dismissed with prejudice.

## The Kruckemeyer Law Firm Did Not Exist at Time of Filing the Lawsuit

The core of Plaintiff Robert Kruckemeyer of The Kruckemeyer Law Firm's ("Bob") complaint centers around an article published on LawsInTexas.com which involves Bob and his self-proclaimed but non-existent "law firm." This issue has been addressed in the official court records for this case. Notably, it raises concerns about Bob's activities as a debt collector in the State of Texas, which appears to be in violation of Sec. 392.304 of Texas laws.

Sec. 392.304 prohibits debt collectors from engaging in fraudulent, deceptive, or misleading practices, including the use of a name other than their true business or professional name while conducting debt collection activities. Bob's unincorporated business was not registered until May 11, 2023, and prior to that date, it did not legally exist. However, Bob has promoted this unincorporated entity's name on his website and in Harris

County Court Civil Action proceedings related to his admitted debt collection activities. The original article on LIT, which Bob is complaining about, was published on Jun. 22, 2022.

Based on these indisputable facts alone, Bob's lawsuit should be dismissed with prejudice. His continuous presentation of fraudulent, deceptive, or misleading representations to the court and defendants further supports this stance, as evident in the legal precedent of *Ponce v. Comm'n For Lawyer Discipline*, No. 04-20-00267-CV.

Bob's attempt to rectify the situation through his May 11, 2023 application for a DBA (Doing Business As) does not absolve him of the fraud, deception, and misleading representations he has made. Even filing an amended petition would not address these issues, as established in *United States ex rel. Solomon v. Lockheed Martin Corp.*, Civil Action No. 3:12-CV-4495-D.

Given these decisive facts, the complaint should be dismissed with prejudice, safeguarding the integrity of the legal process and upholding the principles of justice.

## Randall Sorrels of The Sorrels Law Firm is a Co-Conspirator ("Randy")

In the legal matter at hand, it appears that Bob, acting as a "pro se" litigant, filed a first amended complaint on a Sunday afternoon, making a surprising claim that Randy is the lead attorney without prior formal notice.

This assertion goes against established legal procedures, as per Tex. R. Civ. P. 8, which states that any change in the designation of the attorney in charge of representing a party must be communicated in writing to the court and all other involved parties in accordance with Rule 21a. Until such a designation is formally changed, the previously appointed attorney in charge remains responsible for the case on behalf of the said party.

It is crucial to note that this sudden amendment to the complaint,

coupled with its alleged defamatory and baseless nature, has caused significant emotional distress and mental anguish to the defendants. Furthermore, there are claims of intentional harassment and targeting of a non-party, law-abiding elder citizen, which have only served to waste the valuable time and resources of both the defendants and the court.

The evidence is clear and substantiates that the first amended complaint was indeed filed by Bob, acting as lead counsel, without any involvement or authorization from Randy. This fact is further supported by Bob's own admission when he hastily filed the notice of lead counsel after the defendants' motion was already submitted. The relevant court documents, "Motion to Strike Plaintiffs First Amended Petition" (Image No. 109076997) and "Designation of Attorney-in-Charge" (Image No. 109079376), dated Jul. 10, 2023, provide additional corroboration.

Given the gravity of the situation and the apparent violations of

standard court practices, it is advisable to consider striking the first amended petition from the record as defendants have previously requested and dismissing the complaint with prejudice.

### *Judge Tamika Craft is Constitutionally Disqualified*

Defendants assert that Judge Tamika Craft, also known as Tamika Craft-Demming, is constitutionally disqualified from presiding over this case due to several conflicts of interest. It has come to the attention of the Defendants that Judge Craft filed a personal civil action alongside Pamela Craft, wherein Randall Sorrels ("Randy") appeared without prior announcement.

The case in question is identified as 201972692 - CRAFT, PAMELA vs. AUTO CLUB MUTUAL INSURANCE COMPANY, presided over by Judge C. Elliott Thornton (Court 164).

In this earlier lawsuit, Randy entered the proceedings without proper authority, and with the apparent consent of Judge Craft, removed Samuel

Webb from the case through a non-suit, as documented on March 31, 2023. Notably, at the time of filing, Judge Craft was listed as co-Plaintiff and acted as counsel for Pamela Craft while representing herself pro se.

Contrary to the docketed records, Randy filed on behalf of Plaintiffs Pamela Craft and Tami Craft (Judge Craft) while she is an active judge in the current proceedings. This false claim was made on the pretext of representing Samuel Webb, despite lacking any "Designation of Counsel or Attorney-in-charge" naming Randy as counsel.

To further support the disqualification request, reference is made to two relevant filings, namely "Defendant Auto Club County Insurance Company's Motion To Quash Defendant Evans' Amended Notice Of Intention To Take The Oral Deposition Of Defendant Samuel Webb", Image No. 100576147, 02/25/2022, and "Defendant, Samuel Webbs Response and Motion to Strike Defendant Evans Cross Claim Against Defendant Samuel

Webb", Image No. 99105215, 11/23/2021 (denied). Both filings do not recognize Randy in their motion signature pages or certificates of e-service.

Given the circumstances outlined above, it is evident that Judge Craft's involvement in this matter creates a conflict of interest. Until recently, she was actively engaged in Harris County District Court as a *pro se* litigant while also serving as a sitting judge, handling a case with similar legal issues and concerns involving Randy's relationship with the parties and his authority to act.

As a result, Judge Craft is constitutionally mandated to be disqualified from continuing to preside over this case. The Defendants urge for her replacement without any incident, notice, or further filings. Additionally, the perception of bias is heightened by the fact that Judge Craft received a financial donation of $789.18 on August 3, 2022, towards her 2022 election campaign from Randy.

Furthermore, as listed in the timeline of events above; on August 21, 2023, Defendants filed amotion to disqualify lead counsel and a hearing has been set for submission, October 23, 2023, and; on August 24, 2023, lead counsel for Plaintiff, Randall O. Sorrels filed a motion to withdraw, and a hearing has been reset from October 24 to October 31, 2023 by zoom.

The filings by Randy are clearly an admission of the conflict of interest in this civil action. However, despite his decision to withdraw Judge Tami Craft's has continued to schedule these motions and decide the issues herself.

Judge Craft may argue that if she approves the withdrawal of Randy and his law firm from representing Bob in these proceedings, she is no longer conflicted. That argument would fail, as she did not self-recuse when mandated to do so after Randy's notice of appearance was lodged with the court and continued to act even though the Defendants filed their objections

in prior pleadings, submitted well before Randy's actions. The appearance of bias is overwhelming, when considered along with the dilatory actions of the court in these underlying proceedings.

To ensure a fair and impartial legal process, it is essential that these conflict of interest concerns are addressed promptly and appropriately.

**Protecting Free Speech Rights of Texas Citizens and Media Defendants**

Plaintiff Robert Kruckemeyer of The Kruckemeyer Law Firm ("Bob") alleges violations of free speech, but his claims fail to hold up under scrutiny.

**Firstly**, a similar claim by HCA Healthcare, its lawyers, and family members was defeated earlier this year by Mark Burke. In that case, the law firm of Serpe Andrews, PLLC attempted to disguise their defamation claim as harassment, stalking, and tortious interference with contracts. See; Original Counterclaim and Application for Temporary Injunction and Permanent Injunction, Image No. 105260883, 11/23/2022 and Plaintiffs

Plea in Abatement, Image No. 105473353, 12/08/2022. However, the court recognized that Mark Burke's actions, which involved republishing content on the gripe site KingwoodDr.com, were protected under the constitutional right to free speech.

This precedent should apply to the current case, wherein Bob also seeks injunctive relief. Therefore, the arguments and case citations related to free speech rights under both state and federal constitutions are incorporated herein. See; 202268307 - BURKE, MARK vs. KPH-CONSOLIDATION INC (DBA HCA HOUSTON HEALTHCARE (Court 234), including ORDER SIGNED DENYING TEMPORARY INJUNCTION, Image No. 105941882, docketed Jan. 10, 2023. This court may take judicial notice of this case, see; *Goad v. Goad*, 768 S.W.2d 356, 359 (Tex. App. 1989).

**Secondly**, Bob's lawsuit appears to be a Strategic Lawsuit Against Public Participation (SLAPP), aimed at punishing a private citizen and media

defendant (Blogger Inc.) for engaging in protected speech. Such punitive litigation goes against the spirit of the Texas Citizens Participation Act (TCPA), Civil Practice & Remedies Code chapter 27, which was enacted to prevent these types of cases. As per *State v. Valerie Saxion, Inc.*, 450 S.W.3d 602, 610 (Tex. App. 2014), Bob's case is a quintessential example of a SLAPP suit.

**Thirdly**, Bob's dissatisfaction with the media defendant's published article on LawsInTexas.com concerns a matter of public concern, as established in *Better Business Bureau of Metro. Dall., Inc. v. Ward*, 401 S.W.3d 440, 444 (Tex. App. 2013). However, Bob has not presented clear and specific evidence to establish a prima facie case for each essential element of his claims, as required by Tex. Civ. Prac. & Rem.Code Ann. § 27.005(c). Consequently, his claims in this regard are unfounded.

**Fourthly**, the article on LIT, which is the subject of this civil

proceeding (202151467A - ASSOCIATED ENERGY GROUP, LLC vs. MASTERCARD TECHNOLOGIES, LLC, Court 189), is related to a previous case (202151467 - ASSOCIATED ENERGY GROUP LLC vs. CONGO AIRWAYS, Court 189). Evidence and federal case law presented on LIT indicate that the original lawsuit by AEG, represented by Bob, may have obtained a judgment against Congo Airways, a foreign entity, without proper jurisdiction. See; *Associated Energy Group, LLC v. Air Cargo Germany GMBH* (4:13-cv-02019), District Court, S.D. Texas, Doc. 31, Jun. 4, 2014.

**In conclusion**, Bob's attacks on free speech rights in this case are baseless and meritless. The earlier case involving Mark Burke provides a precedent for the protection of free speech, and Bob's lawsuit appears to be a SLAPP suit, contravening the Texas Citizens Participation Act. Additionally, his claims regarding the media defendant's article lack sufficient evidence. Moreover, related cases raise concerns about the jurisdiction of Bob's previous representation. Therefore, these arguments and case citations

collectively demonstrate the invalidity of Bob's claims concerning free speech rights of Texas citizens and media defendants.

## Addressing Indiscriminate Dismissals for Want of Prosecution ("DWOP")

It is essential to highlight the concerning disparity in the treatment of case 202151467A, which was listed as 'active' for over 15 months despite being dormant since the letter from Lorraine Bunting, docketed on Jun 6, 2022. The letter clarifies that Bob's attempt to garnish a third-party payment processor, Mastercard, is legally untenable since Mastercard is not a bank where the debtor's money is held. This contrasts with another Garnishment After Judgment case before this court, 202252461A - KNIGHTSBRIDGE FUNDING LLC vs. GOLDEN BANK NATIONAL ASSOCIATION (Court 189).

In the Knightsbridge garnishment proceeding, the case was DISMISSED FOR WANT OF PROSECUTION ("DWOP'd") on Jul. 7, 2023, after remaining dormant for 9 months since the 'rush' service of citation was

docketed on Sep. 30, 2022. The court's decision to dismiss the case is in accordance with the principle established in *Walker v. Harrison*, 597 S.W.2d 913, 915 (Tex. 1980), wherein it was ruled that the time limits provided in rule 165a are mandatory and jurisdictional. Additionally, *GANTT v. GETZ*, No. 14-10-00003-CV (Tex. App. May 12, 2011), supports the notion that adherence to these time limits is crucial.

However, Bob's case, despite remaining dormant for over 15 months, has not been subjected to similar action. Only after Defendants notice in an earlier filing on this docket would this case be dismissed for want of prosecution on Sep. 26, 2023, image no. 110466918, in an order signed by Judge Tami Craft.

This inconsistency is perplexing, especially considering that the defendant, Mastercard, cannot be legally garnished. The situation seems absurd, as the case has been inactive and lacks a valid legal basis for

continuing against Mastercard.

It is imperative for the court to address this discrepancy promptly and take appropriate action in line with the principles of fairness and justice. Bob's case should be treated consistently with the Knightsbridge case and be subjected to the same procedural rules and time limits. Any case which remains dormant for an extended period, particularly when pursuing an unattainable legal action, should not be allowed to continue indefinitely. To maintain the integrity of the judicial system and protect the rights of all parties involved, indiscriminate dismissals for want of prosecution should be applied consistently and diligently. This did not occur in the aforementioned Associated Energy Group proceeding.

## Debt Collecting Law Firm Regent & Associates, LLP and Lawyer Ahn Regent Are Consistently Headline News on LIT

In addition to the ongoing litigation involving Knightsbridge, another concerning issue is the consistent spotlight on Regent & Associates, LLP,

and its lawyer, Ahn H. Regent, in the headlines of LawsInTexas.com ("LIT"). LIT has published numerous articles discussing Regent's non-compliance with the Texas Finance Code and related Surety Bond requirement, highlighting the law firm's track record as a serial violator of Texas law.

What sets Regent apart is the fact that the law firm maintained an active Surety Bond with the State of Texas for over a decade, from 2002 to 2016. However, they deliberately discontinued this compliance and have since engaged in debt collection practices without adhering to the necessary regulations. This continuous violation of the law is evident in the proceedings presented in Harris County District Court on an almost daily basis.

Despite the undeniable evidence of Regent's non-compliance, which the court is well aware of, the law firm is allowed to continue its actions in direct contravention of the laws meant to protect consumers in Texas. This

situation not only undermines the integrity of Texas law but also raises concerns about its constitutionality. Allowing Regent to persistently violate regulations that are in place to safeguard consumers reflects poorly on the legal system and the rights of Texas citizens.

Furthermore, the case studies presented on LIT concerning debt collecting practices, which bear resemblance to Bob's claims, clearly highlight the inconsistency in the treatment of Regent's actions. Given the unassailable facts regarding Regent's non-compliance and its habitual violation of consumer protection laws, it is only fair that Bob's claims be given due consideration and dismissed with prejudice.

In light of the evident pattern of Regent's non-compliance and the spotlight on their practices in media outlets such as LIT, it is imperative for the court to take decisive action to protect the interests of consumers in Texas and maintain the integrity of the legal system. Dismissing Bob's

claims with prejudice would be a just course of action and send a strong message that non-compliance with the law will not be tolerated in Texas courts.

## Texas Attorney General's Enforcement of Texas Laws and Bob's Capacity to Sue

Bob's claims regarding the Texas Finance Code and Texas debt collecting laws appear to interfere with the Attorney General's statutory duty to enforce Texas law. In his comments on LIT, Bob asserted that he is not required to file a surety bond as per the Texas Finance Code Section 392.101 et seq. However, he did not provide any detailed explanation to support his claim. Subsequently, Bob argued that he is neither a "Credit bureau" nor a "Third-party debt collector," based on the definitions in the Texas Finance Code Section 392.001.

Defendants contested this stance, stating that evidence presented in their counterclaim, Addendum K, and Motion to Strike Plaintiff's First

Amended Petition suggests Bob operates as a third-party debt collector.

In response to Defendants' evidence, Bob mentioned this lawsuit which he filed against the media defendants, implying that they have been sued for their actions. However, Bob's comments and references to the law do not constitute proper rebuttals or independent evidence to prove that he is not a third-party debt collector.

The capacity to sue is a legal authority to act in a legal matter. Defendants have raised concerns about Bob's capacity to sue in both their counterclaim and motion to strike Plaintiff's first amended petition. Texas Rule of Civil Procedure 93(1) requires a verified pleading when arguing about a party's capacity to sue. This motion is duly verified, and thus, the complaint should be dismissed with prejudice as Bob lacks capacity to sue. In support, *Nootsie, Ltd. v. Williamson Cty. Appraisal Dist.*, 925 S.W.2d 659, 661 (Tex. 1996) highlights the principle of legal capacity to sue. Capacity

refers to the legal authority of a person or entity to bring a lawsuit, regardless of whether they have a justiciable interest in the controversy. Considering the evidence presented and Bob's failure to demonstrate his capacity to sue, it appears that he lacks the legal authority to pursue the claims against the media defendants.

In conclusion, Bob's claims seem to interfere with the Texas Attorney General's enforcement of the law, and he has not adequately demonstrated why he is not a third-party debt collector as per the evidence presented by the media defendants. Additionally, the verified motion raises valid concerns about Bob's capacity to sue, and as such, his complaint should be dismissed with prejudice.

## The Texas Attorney General accused Tami Craft of engaging in Bribery and Extortion

The involvement of Judge Tamika 'Tami' Craft in a prior federal lawsuit against MD Anderson Cancer Center, during her time as a private plaintiff

before being appointed to the bench, raises concerns regarding her ability to impartially decide on this important section of the Defendant's motion.

Moreover, the Texas Attorney General's accusations of bribery and extortion against her add to these concerns. As such, the media defendants' motion to dismiss the complaint with prejudice aligns with the principles of legal capacity and seeks to uphold the integrity of the legal system.

The Texas Attorney General accused Tami Craft of engaging in Bribery and Extortion, in part (*Tamika Craft-Demming v. MD Anderson Cancer Center*, Case 4:18-cv-03296 Document 46 Filed on 01/26/20 in TXSD before Judge Hanks Jr.);

> "MD Anderson contends that Plaintiff engaged in self-help discovery by unlawfully taking the EEO HR Regulations Open Case Log Reports in order to use them in her discrimination litigation against MD Anderson. Plaintiff had no reason to have personal possession of these reports outside her official duties as an EEO and HR Regulations Specialist. Nor possession of reports that were produced after she had already gone on leave on July

> 15, 2016. Yet, Plaintiff was in possession of reports dated as recently as March 29, 2017."

Given these circumstances, there are legitimate reasons to question Judge Tamika 'Tami' Craft's ability to maintain a fair and unbiased stance in this case. Her constitutional and mandatory disqualification is both a compelling and compounding concern which should be timely addressed to ensure the integrity and fairness of the legal proceedings.

## Lewis Brisbois Failed to Disclose its Representation of the Texas Attorney General including the Whistleblower Report

Lewis Brisbois's failure to disclose its representation of the Texas Attorney General, including its involvement in preparing a whistleblower report, has come to light during the course of these proceedings. In addition to this failure, the Defendants have recently uncovered evidence suggesting that Lewis Brisbois has repeatedly represented the State of Texas and various governmental agencies. Notably, they were involved in writing a report for impeached and suspended Texas Attorney General Ken Paxton, despite

apparent conflicts of interest.

Relevant articles on LIT titled "Lewis Brisbois Paid at Least $519,000 by Impeached AG Ken Paxton for Report, Despite Glarin' Conflicts", published on Jul. 2, 2023; "Texas PIA: Open Records Request Litigation Involving Friendswood Police Defended n' Quashed by Lewis Brisbois", published on LIT, Jul. 15, 2023, and other related articles, highlight the biglaw firm's questionable actions.

The information contained in these articles suggests that Lewis Brisbois' representation of the media Defendants in this case would be automatically disqualified due to their connection with adverse articles published on LawsInTexas.com. The legal and investigative blog at LIT has consistently challenged or republished content that questions the integrity of the State, its agencies and private law firms hired to defend it, as supported by verifiable facts, data, and studies.

Given these newly discovered facts and potential conflicts of interest, it is

imperative to address the issue of Lewis Brisbois's representation in order to ensure a fair and impartial legal process for all parties involved. Transparency and disclosure are essential elements in upholding the integrity of these proceedings.

## **Lack of Standing**

A central issue at hand is the lack of standing on the part of Bob to bring this lawsuit. In accordance with legal principles and authorities such as *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993) (quoting *Bd. of Water Eng'rs v. City of San Antonio*, 283 S.W.2d 722, 724 (Tex. 1955)), standing requires the existence of a genuine controversy between the parties that can be resolved through a judicial declaration. Bob's lawsuit fails to meet both elements essential for establishing standing.

The primary reason for Bob's lack of standing is that there is no actual controversy between him and the Defendants. The real dispute lies between Bob and the Secretary of State, who, on their website, clearly state that questions concerning Texas Finance Code infringements are referred to the

Attorney General. Notably, the Texas Attorney General is not a party in this case.

Bob's lawsuit seeks a declaration that he and his non-existent law firm is in compliance with Texas law. However, the Defendants, as a non-profit entity and a private citizen, lack the authority to enforce the law against Bob. The sole authority to enforce Texas Finance Code violations against Bob rests with the Attorney General. Any declaration on this matter would originate from the Attorney General's office, not from this court or the Defendants. Until such time as the Attorney General addresses this issue, Bob cannot establish standing to sue, particularly in the absence of evidence proving he is not a third-party debt collector under Texas law, which he has failed to provide.

Moreover, even if Bob were to proceed, he would face significant challenges, as the Defendants possess substantial evidence indicating that

the current law is unconstitutionally vague and citing to *Int'l Ass'n of Drilling Contractors v. Orion Drilling Co.*, 512 S.W.3d 483, 487 (Tex. App. 2016), the Defendants argue the law's application in Texas courts is arbitrary and capricious.

Additionally, it is important to note that the Defendants, Counter-Plaintiffs, and Third-Party Plaintiffs have already filed a third-party petition to address this very issue, as demonstrated in Addendum A , Image No. 108883356, 06/27/2023. Given these circumstances, Bob's complaint should be dismissed with prejudice.

## Bob's Lawsuit Disregards the Legislature's Statutory Procedure for Dispute Resolution

Bob's lawsuit presents several concerns that undermine the legislative process for resolving disputes of this nature.

**First,** there are questions regarding Bob's capacity and standing to initiate such a civil action.

**Second**, the lawsuit attempts to resolve the dispute through a different proceeding, without involving the Attorney General, which goes against the intended design of the legislative process.

**Third**, Bob's lawsuit seeks to punish Defendants for referencing the relevant statute, potentially discouraging other citizens from participating in the statutory process. This not only wastes the time and resources of the Defendants but also puts a strain on the limited judicial and taxpayer resources.

**Fourth**, it is essential to preserve the integrity of the statutory process and prevent individuals from undermining it to evade accountability for alleged violations of Texas law. Therefore, Bob's attempt to circumvent the statutory process should not be permitted.

**Fifth**, Bob's lawsuit appears to violate the Texas Citizens Participation Act by retaliating against Defendants for exercising their statutory and

constitutional speech and petition rights. These rights are vital aspects of freedom and must be safeguarded with utmost vigilance.

**Finally**, Defendants have made their case by stating in their answer, operative counterclaim, and first amended third-party petition that the Texas Finance Code is currently being unconstitutionally applied by the judiciary and by debt collecting law firms and attorneys in Texas. However, the involvement of the Texas Attorney General or the Acting Attorney General, considering Ken Paxton's suspension and impeachment, is both mandatory and necessary to properly address this issue.

Considering these factors, it is appropriate to dismiss the complaint with prejudice to maintain the sanctity of the legislative process and protect the essential rights of Texas citizens.

## **Bob's a Public Figure**

In the realm of law and freedom of speech, this contentious dispute

between the Defendants and Plaintiff has stemmed from an article published by the Defendants, which scrutinized Bob's legal practice. The article touches on various aspects related to the Plaintiff's legal services and how he conducts his profession.

However, the media defendants argue that such articles fall under the category of matters of public concern, protected by the TCPA (Texas Citizens Participation Act) as an exercise of free speech. In support, cases like *Treviño v. Cantu*, No. 13-16-00109-CV (Tex. App. Feb. 2, 2017) and *Avila v. Larrea*, 394 S.W.3d 646, 655 (Tex. App.—Dallas 2012, no pet.) established that reporting on attorneys' legal services and practice of law is indeed a matter of public concern.

Furthermore, in the opening, Defendants cite to Bob's history of governmental positions as a trusted wingman for both Texas and the United States Government and aver this adds to the proposition that Bob's a public

figure.

Despite this, Bob is attempting to build a defamation case against the Defendants. As peppered liberally throughout this motion, for a successful defamation claim, Bob needs to prove three elements; that the Defendants published a defamatory statement concerning the Plaintiff while acting negligently regarding the truth of the statement.

Bob has failed to provide clear and specific evidence to support his defamation claim. Bob has failed to demonstrate that the article in question was defamatory or that the Defendants acted negligently in publishing it.

To add to the challenge, the Plaintiff also failed to show that the article has caused any damage to Bob's reputation, such as public hatred, contempt, ridicule, or financial harm. See; Sec. 73.001.

Defendants argue Bob's claims are merely a response to the Defendants exercising their right to free speech. Furthermore, since Bob has not fulfilled

all the necessary elements of his defamation action, the Defendants contend the TCPA's early dismissal provisions should apply, leading to the dismissal of the Plaintiff's claims.

## Bob's First Amended Complaint Does Not Meet the Demanding Standards to Prove Falsity or Actual Malice

### Introduction

In the amended complaint filed by Bob, it is asserted that the article published by the defendant does not meet the standards to prove falsity or actual malice. Additionally, Bob contends that the case should be dismissed on jurisdictional grounds. This response addresses these issues and provides arguments to support the dismissal. That said, Defendants will address the latest amendment to his First Amended Petition, as docketed on October 10, 2023, labeled incorrectly as a Notice of Hearing on Plainitffs [sic] Application for Temporary Injunction, image no. 110723498.

### Insufficient Content and True Statements

The article subject to the lawsuit is allegedly minuscule in content. In Addendum K, Defendants incorporate a detailed response, asserting that the article headlines, content, and comments are true or substantially true. True statements cannot be considered defamatory, and this aspect should be considered while evaluating Bob's claims.

### Selective Inclusion of Articles

Bob has selectively included one new article from LawsinTexas.com as evidence in his amended complaint at No. 24. However, he failed to include several other articles that were published well before the date of his amended petition.

### Public Concern and Protected Speech

All articles published by LawsinTexas.com during the litigation are considered matters of public concern and are protected speech. This fact has

been confirmed in the related case 2022-68307's Jan. 10, 2023 Order in BURKE, MARK vs. KPH-CONSOLIDATION INC. The privileged nature of these articles further supports the defendant's right to publish them without facing legal repercussions.

## Texas Defamation Mitigation Act

Bob also fails to acknowledge the Texas Defamation Mitigation Act, which requires a plaintiff to make a timely and sufficient request for a correction, clarification, or retraction from the defendant before initiating a defamation lawsuit. Bob's failure to make such a request in relation to the new article in question may materially affect the validity of his new complaint. See; *Canidae, LLC v. Cooper*, Civil Action 6:21-CV-0019-H-BU, at *1 (N.D. Tex. Aug. 4, 2022); Klocke v. Watson, 597 F. Supp. 3d 1019, 1038 (N.D. Tex. 2022) ("Finally, the parties agree that failure to comply with the DMA requirement that a plaintiff request correction, clarification, or

retraction bars recovery of exemplary damages. *Hogan v. Zoanni*, 627 S.W.3d 163 (Tex. 2021) ; *Warner Bros. Ent., Inc. v. Jones,* 538 S.W.3d 781, 812 (Tex. App.–Austin 2017), aff'd, 611 S.W.3d 1 (Tex. 2020). Plaintiff did not timely make such a request.").

## Actual Malice Standard

In defamation cases involving public figures like Bob, the actual malice standard applies. This standard requires Bob to prove that the defendant published the alleged defamatory statement with knowledge of its falsity or with reckless disregard for its truth or falsity. Defendants deny any actual malice applies to the article on LIT, and Bob does not provide sufficient evidence to meet this demanding standard.

## Legal Precedents Supporting Dismissal

Several authoritative legal precedents bolster the argument for dismissal. In *Netflix, Inc. v. Barina*, No. 04-21-00327-CV, at *6 (Tex. App. Aug.

31, 2022), it was established that the burden of proving falsity rests on the plaintiff when dealing with media outlets and public figures.

Similarly, in *Flores-Demarchi v. Smith*, No. 13-21-00303-CV, at *6 (Tex. App. June 30, 2022), statements that are not verifiable as false or are clearly opinions cannot form the basis of a defamation complaint. *Forbes Inc. v. Granada Biosciences, Inc.,* 124 S.W.3d 167, 174 (Tex. 2003) clarifies that mere poor choice of words or content, without additional evidence of malicious intent, does not amount to actual malice.

## Bobs's Second Amended Complaint

### The Addition of Temporary Injunction is an Amended Petition

There has never been a request for a *temporary* injunction by Bob in his original or first amended petition. As such, Defendants construe this as Bob's Second Amended Petition. Hence, Defendants rely upon it to file this Verified Motion to Dismiss Pursuant to the Texas Anti-Slapp Law, Texas

Civil Practice & Remedies Code 27.001 et seq. The Texas Supreme Court and Appellate Courts' support this theory. In *Patriot*, they discuss in detail two recent opinions from Texas Supreme Court, *Montelongo* and *Kinder Morgan*. And during this discussion they cite to C.T.H; *Patriot Contracting, LLC v. Mid-Main Props.*, 650 S.W.3d 819, 825 n.5 (Tex. App. 2022) ("See, e.g., In re C.T.H. , 617 S.W.3d 57, 61-62 (Tex. App.—Dallas 2020, no pet.) (holding renewed request for injunctive relief did not start new sixty-day period because the **"request for injunctive relief was essentially unchanged"** compared to the original pleading containing the request)") (emphasis added).

### *TCPA Applies*

Here, Bob's request for injunctive relief has changed, from his original and subsequent [First] Amended Petition - requesting a Permanent Injunction - to now adding an Application for a *Temporary* Injunction. As explained above, the TCPA applies, triggering a new sixty-day deadline.

### *The October 31, 2023 Hearings*

This motion mandates and stays the hearings scheduled for October 31 at 0930 hrs. In relation to the Temporary Injunction hearing, scheduled for the same date at 1040 hrs, Defendants object.

First, there is an *implied* Application for a Temporary Injunction. It is implied because Bob knew that he would have to submit an amended Petition to incorporate the Application for a Temporary Injunction which was not present in his active petition. However, Bob willfully and maliciously hatched a scheme to try and bypass that procedural requirement in an attempt that Defendants would not notice. Defendants suggest this latest legal maneuver by Plaintiff implicates a prior restraint on free speech, due to its tardiness and Bob's prior amendment to include a second LIT article about Bob and his unincorporated law firm. That decision is fatal.

Without an *actual* Application which specifies what relief Plaintiff

actually seeks at the hearing on the Temporary Injunction, it is too vague;

See *Davenport v. EOG Res.*, No. 04-23-00385-CV, at *9 (Tex. App. Aug. 9, 2023) (“Ordinarily, "[t]he party applying for a temporary injunction 'must plead and prove three specific elements: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable[,] imminent, and irreparable injury in the interim.'" *Abbott v. Anti-Defamation League Austin, Sw., & Texoma Regions*, 610 S.W.3d 911, 916 (Tex. 2020) (per curiam) (quoting *Butnaru*, 84 S.W.3d at 204)”);

And, as personally witnessed in 202268307 - BURKE, MARK vs. KPH-CONSOLIDATION INC (DBA HCA HOUSTON HEALTHCARE (Court 234), Image No. 105260883 (Nov. 23, 2022) and, where there is no suggested bond amount, see; *“33. HCA Kingwood is willing to post bond as ordered by the Court. HCA Kingwood believes a bond in the amount of $500.00 would be appropriate.”* – **Application for Injunctive Relief Denied** (emphasis added);

As indicated above, this *implied* Application for a “gag order” is deemed by Defendants as a plot to unconstitutionally restrain free speech as Bob added another article from LIT referencing Plaintiff in his First

Amended Petition, and which is protected speech;

See; *In re Nelson,* No. 08-22-00056-CR, at *3 (Tex. App. Apr. 29, 2022) ("Because they implicate free speech concerns, gag orders are subject to baseline constitutional restrictions under both the First Amendment to the United States Constitution and under Article I, Section 8 of the Texas Constitution. See *Davenport v. Garcia*, 834 S.W.2d 4, 8-9 (Tex. 1992) (orig. proceeding).")

Second, due to the first issue, there is insufficient notice for Defendants to adequately prepare to defend themselves at the scheduled hearing, and as such Defendants object to the hearing.

## Conclusion

Bob's amended complaint does not meet the rigorous standards required to prove falsity or actual malice. The provided legal authorities and precedents support the dismissal of the complaint with prejudice.

Additionally, the lack of a valid jurisdictional basis further strengthens the argument for dismissal. Based on these points, it is evident that the lawsuit should not proceed and must be dismissed.

## REQUEST FOR A MOTION HEARING

Defendants previously relied upon and cited to *In re Dror*, No. 14-22-00646-CV, at *5 (Tex. App. Oct. 5, 2022), wherein the Defendants formally requested a motion hearing within the time allowed by statute and herein request 2 available dates so Defendants may confer with Plaintiff. Despite the legal precedent and the formal reminders as visible on the docket, the court allowed the statute of limitations to run out without response.

*In re Dror*, No. 14-22-00646-CV, at *7 (Tex. App. Oct. 5, 2022) asserts Defendant forfeits TCPA's protections if it does not timely file its motion "and obtain a hearing". In other words, the responsibility to obtain a timely hearing is that of the party seeking the hearing, and mandamus or expedited

appeal is the alternative to obtaining such timely relief (before the statutory clock runs out).

Defendants aver the judiciary and courts in Texas are violating litigants due process rights to a hearing by applying unconstitutional requirements on litigants to enforce a district judge to follow precedent and the rule of law at a cost and imposition of an unnecessary appeal by the parties involved. This position is both untenable and absurd.

Litigants are not part of the judiciary and not employed to manage the rules, laws, and daily activities applicable to an active district judge, including setting a hearing within the prescribed time to comply with the TCPA.

Indeed, as a pre-cursor to this motion, Defendants approached the Clerks' Office at Court 189 via email on Wednesday, Oct. 11, 2023, and after a reminder on Oct 12, Clerk Deandra Mosley emailed in response;

> "Good Afternoon, We have January 23rd at 9:00 for Oral Settings. November 20th at the 27th at 8:00 a.m. by Submission.".

Now, assuming the filing was presented on the same day, Oct. 12 with a proposed motion hearing date of Jan. 23, 2023, that is well beyond the statutory timeframe of 60 days. To be precise, the hearing date offered is 3 months and 11 days out. The Defendants are left with either appealing or accepting one of the "by submission" dates which fall within the 60 day timeline, thus waiving a right to be heard at an oral hearing. This is an unacceptable restriction.

Relying once again on *In re Dror*, Defendants formally request herein an emergency oral hearing within the 60 day timeframe.

## REQUEST FOR RELIEF, CONCLUSION & VERIFIED DECLARATION

In light of the numerous independent grounds presented by the Defendants, which unequivocally support the granting of this motion, it is

evident that Bob's threadbare and baseless lawsuit has been initiated solely for the purpose of harassment.

As a result, Defendants Blogger, Inc. d/b/a LawIn Texas.com [sic], et al, respectfully urges the Court to dismiss all of Plaintiff's claims and causes of action against the Defendants with prejudice. Furthermore, the Defendants request any other relief that they may be entitled to under the law.

The actions of the Plaintiff have caused undue burden and unnecessary expenditure of time and resources on the part of the Defendant.

This motion for dismissal with prejudice seeks to put an end to this frivolous and vexatious litigation once and for all. By granting this relief, the Court will send a clear message that such abuse of the legal system will not be tolerated.

It is with utmost sincerity that Defendants Blogger, Inc. d/b/a LawIn

Texas.com [sic] submits this request for relief to the Court on the 23rd day of October, 2023. The Defendant firmly believes that the evidence and arguments presented in this motion overwhelmingly support the call for dismissal with prejudice.

In closing, I, Mark Stephen Burke, both individually and on behalf of Blogger Inc., and as a presiding resident of Kingwood in the livable forest of Harris County, Texas, born on June 20, 1967 in Harare, Zimbabwe, and currently holding a valid British Passport and U.S. Permanent Residency Card (last 3 digits are 529), a valid State of Texas Driver License (last 3 digits are 949), and a Social Security Card (last 3 digits are 162), do solemnly declare under penalty of perjury that the foregoing statements are true and correct. This verified declaration, made under Chapter 132, Civil Practice and Remedies Code, holds significant weight in legal precedent, as evident in *ACI Design Build Contractors Inc. v. Loadholt*, 605 S.W.3d 515, 518 (Tex. App. 2020), *McMahan v. Izen*, No. 01-20-00233-CV, at *15-17 (Tex. App. Sep.

2, 2021), and *In re Whitfield*, No. 03-21-00170-CR, at *1 n.1 (Tex. App. Nov. 10, 2021).

The Defendants shall await the hearing dates and/or a ruling on this verified motion for dismissal with prejudice.

RESPECTFULLY submitted this 23rd day of October, 2023.

_____

Mark Burke
State of Texas / Pro Se
46 Kingwood Greens Dr
Kingwood, Texas 77339
Phone Number: (346) 763-2074
Fax: (866) 705-0576
Email: browserweb@gmail.com

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing request has been forwarded to Plaintiff/ Counter-Defendants / Third-Parties and counsel by electronic filing notification and/or electronic mail and/or facsimile and/or certified mail, return receipt requested, this the 23rd day of October, 2023.

_____

Mark Burke
State of Texas / Pro Se

# Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 80863226
Filing Code Description: Motion (No Fee)
Filing Description: VERIFIED TCPA MOTION TO DISMISS
Status as of 10/23/2023 2:06 PM CST

Case Contacts

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---|---|---|---|---|
| Robert Joseph Kruckemeyer | 11735700 | bob@kruckemeyerlaw.com | 10/23/2023 12:56:44 PM | SENT |
| Randall Sorrels | 10000000 | Randy@SorrelsLaw.com | 10/23/2023 12:56:44 PM | SENT |
| Kathy Truong | | Kathy.Truong@lewisbrisbois.com | 10/23/2023 12:56:44 PM | SENT |
| David Oubre | | David.Oubre@lewisbrisbois.com | 10/23/2023 12:56:44 PM | SENT |
| Jason Powers | | Jason.Powers@lewisbrisbois.com | 10/23/2023 12:56:44 PM | SENT |
| Mark Burke | | browserweb@gmail.com | 10/23/2023 12:56:44 PM | SENT |
| Joanna Burke | | joanna@2dobermans.com | 10/23/2023 12:56:44 PM | SENT |
| Mark Burke | | browserweb@gmail.com | 10/23/2023 12:56:44 PM | SENT |