

EXHIBIT
"HCA RAMBO LITIGATION"
(TEXT ONLY)

Kingwood Hospital

- **News**
 - **HCA Healthcare**
 - **HCA Lawyers**
 - **Nicole Andrews**
 - **Madison Addicks**
 - **Benjamin Hamel**
 - **John Serpe**
 - **Harris County District Court**
 - **Clerk Shannon North**
 - **Court Reporter Norma Thieme**
 - **Judge Lauren Reeder**
 - **Houston Police Department**
 - **Kingwood Hospital**
 - **Memorial Hermann Humble**
 - **Texas Law**
 - **US Marshal Service**
- **Legal**
 - **Fair Use**
 - **Privacy**
 - **Terms**
- **What is a Gripe Site?**
 - **Defamation**
 - **Discovery Disputes**
 - **Lawyer as a Witness**
- **Join the 2024 HCA Healthcare Lawsuit**
- **Contact**

Archives

- **October 2023**
- **September 2023**
- **August 2023**
- **July 2023**
- **June 2023**
- **May 2023**
- **April 2023**
- **March 2023**
- **February 2023**
- **January 2023**
- **December 2022**
- **November 2022**
- **October 2022**
- **September 2022**
- **August 2022**

Kingwood Hospital

The Imposter Doctor Facility

- **News**

- **HCA Healthcare**
- **HCA Lawyers**
 - **Nicole Andrews**
 - **Madison Addicks**
 - **Benjamin Hamel**
 - **John Serpe**
- **Harris County District Court**
 - **Clerk Shannon North**
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- **What is a Gripe Site?**

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PLAINTIFF’S REPLY TO HCA HOUSTON HEALTHCARE KINGWOOD’S RESPONSE TO PLAINTIFF’S PLEA IN ABATEMENTOriginally Published: Dec. 20, 2022 | Republished: Dec. 20, 2022

Mark Burke, Plaintiff and Counterclaim Defendant (“Plaintiff”), files this reply for the following reasons:

DEFENDANT(S) ARE INTENTIONALLY DELAYING BY MULTIPLYING PROCEEDINGS AND ACTING WITH MALICE TOWARDS PLAINTIFF WITH A BASELESS COUNTERCLAIM

Kinney v. Barnes, 443 S.W.3d 87, 100-01 (Tex. 2014)

(“there is **no basis** for qualifying the level of First Amendment scrutiny that should be applied to this medium.”

521 U.S. at 870, 117 S.Ct. 2329.

In this way, the Supreme Court has taken a definitive stance guaranteeing equal First Amendment protection for speech over the Internet. ”)

Plaintiff presents herein his legal arguments and reasons why Defendant(s) conduct is premeditated, egregious, malicious, unethical and warrants sanctions[**1**] for their baseless, harassing counterclaim with application for temporary and permanent injunctions which is brought in bad faith and continues to be pursued despite no evidentiary support[**2**] by Defendants, per their response on Friday, Dec. 16, 2022.

The **Plea in Abatement** is valid and existing.

TEX. R. CIV. P. 54

To begin, Plaintiff rejects and denies Defendant(s) false pleadings [at 37, Defendant’s Original Counterclaim, filed Nov. 23, 2022]; “All conditions precedent to recovery have been performed.”

THE DEFENDANT(S) RESPONSE (DEC. 16, 2022)

On late Friday afternoon, HCA Houston Healthcare Kingwood (“HCA”) through counsel – incorporated and trading as Serpe Andrews, PLLC, (“HCA Lawyers”) presented two baseless arguments in their response to the Plea in Abatement.

DEFENDANT’S COUNTERCLAIM IS SOAKED IN DEFAMATION CLAIMS

First, HCA and HCA Lawyers (“Defendant(s)”) response attempts to abandon their **defamation** claims in hopes to evade the active Plea in Abatement. That attempt fails miserably, as detailed in this reply.

DEFENDANT’S GENERALIZED CLAIMS ARE INSUFFICIENT TO WARRANT INJUNCTIVE RELIEF

Second, HCA and HCA Lawyers maintain another untenable position, namely the

criminal statutes relied upon to **falsely charge Plaintiff** with **Stalking** and **Harassment** in this civil action, along with the **Tortious Interference with Contracts** claim, as well as the other damages and relief stated in their original counterclaim are meritorious and warrant injunctive relief. The Plaintiff disagrees.

DEFENDANT(S) ORIGINAL COUNTERCLAIM ANALYZED

As best Plaintiff can decipher, considering the overbroad and vague counterclaim **[3]**, the first allegation of **defamation** is now being walked back to unlawfully evade Texas law, namely the **Texas Defamation Mitigation Act** ("DMA") which currently abates this frivolous filing by Defendant(s) for 60 days without a court order after 11 days post filing of the Plea in Abatement, and includes the now abated Jan. 9, 2023 injunction(s) hearing. To clarify;

Hardy v. Commc'n Workers of Am. Local 6215 Afl-Cio, 536 S.W.3d 38, 42 (Tex. App. 2017)

("The suit is automatically abated, without a court order, beginning on the eleventh day after the date the plea in abatement is filed, if the plea in abatement:

- is verified and alleges that the person against whom the suit is pending did not receive the written request as required by Section 73.055 ; and
- is not controverted in an affidavit filed by the person bringing the claim before the 11th day after the date on which the plea in abatement is filed. Id. § 73.062(b).

The abatement continues until the sixtieth day after the date the written request is served or a later date agreed to by the parties.")

In this case, the Plea in abatement was filed on Dec. 8 and the response was timely filed before the 11th day, on Dec. 16, 2022.

However, the filing is untimely and void, as there is no affidavit filed by the person bringing the claim per (2) above. **[4]** The deadline of Dec. 19, 2022 has now passed to correct the record.

See; Rizk v. Financial Guardian Insurance Agency, Inc., 584 S.W.2d 860 (Tex. 1979) – Holding affidavit stating that **"the facts and statements contained [in answer] are true and correct of [affiant's] own personal knowledge"** satisfied requirements of Rule 185.

Here there is no such statement anywhere in Defendant(s) response **[5]** which could possibly be construed as an affidavit.

PLAINTIFF CREATED A WEBSITE DESIGNED TO DEFAME

"10. Unsatisfied with their conclusion, Burke created a website, www.kingwooddr.com, **designed to defame**, intimidate, and harass **[6] HCA Kingwood and its employees, agents, representatives, and attorneys."**

Response: Contrary to Defendant's claim, this opening attack on Plaintiff and his

gripe site includes the text; **“designed to defame”** and is part of a sentence which includes verbs **intimidate** and **harass**. The final part of sentence presents multiple subsets of people and corporations, as listed by Defendant(s). It is overbroad, vague and fails to meet the high specificity requirements for injunctions.

See; **Clark v. Hastings Equity Partners, LLC**, No. 01-20-00749-CV, at *7 (Tex. App. Jan. 20, 2022) (“Temporary injunctions are an extraordinary remedy and do not issue as a matter of right”).

PLAINTIFF MIRRORS THE PUBLICLY ACCESSIBLE DOCKET ON HIS WEBSITE

“Burke’s website also includes each filing related to his lawsuit against HCA Kingwood.”

Response: Absurd, it’s perfectly legal. See; ThomasReuters.com (Westlaw), Courtlistener.com, Justia.com, AbovetheLaw.com, ABAJournal.com, Dolcefino.com, Reuters.com, and many, many more online legal web publishing portals, investigative journalists, blogs and news media, **including filings related to lawsuits**. And addressing Defendant specifically, look to web publishing portals as mentioned here and republished on KingwoodDr.com.

IT’S DEFAMATORY AND A CRIME FOR PLAINTIFF TO PUBLISH OR REPUBLISH ANY ARTICLES ABOUT HCA HEALTHCARE

“11. Through his website, Burke **continuously posts negative articles** about HCA Healthcare, Inc. regarding allegations of kickbacks, excessive billing practices, and the necessity of structural reorganization.”

Response: A gripe site lawfully reposting select health-related vertical content via articles available on the internet is not actionable. How Defendant(s) wish to perceive the website does not change or challenge the law. It’s all perfectly legal.

Plaintiff notes that Defendant uses the word **‘negative’** in a manner consistent with **‘defamation’** claims. In context, it certainly does not qualify as a verb to describe harassment, stalking or tortious interference with contracts.

DON’T RESEARCH OR WRITE ABOUT HCA LAWYERS

“12. Burke has endeavored on **a campaign** to not only **target** HCA Kingwood, but also its retained counsel, Nicole Andrews and Madison Addicks of Serpe Andrews, PLLC.”

Response: Too general to meet injunction requirements.

THE GLASS DOOR IS SHATTERED

“Burke also published a Glassdoor article from a prior, disgruntled Serpe Andrews employee, with the words “How They Treat Staff,” to portray the firm **in a negative light.**”

Response: The Glassdoor article is republished, based on fact, and the title is an opinion. Texas courts recognize that opinion statements are not actionable[7]. All perfectly legal on a gripe site. This is another claim founded in **defamation** by

Defendant(s)[8].

A DISCUSSION ABOUT MONEY IN TEXAS POLITICS AND JUDICIAL CAMPAIGNS

“Further, Burke posted the profile and corporate headshot of another Serpe Andrews attorney, Margaret Layrisson, showing yet another involvement of representation on HCA Kingwood’s behalf in a separate litigation.”

Response: The “corporate headshot” of Partner Margaret Layrisson[9] is perfectly legal, as covered by **fair use** described herein. Republishing civil actions or press articles involving Defendant(s) is perfectly legal and does not warrant baseless injunctions as requested by Defendant(s), or you’d shut down the internet’s web publishing and republishing marketplace.

Margaret Layrisson Donations to Judge Lauren Reeder in 2022

Plaintiff maintains it is of great public concern when legally researching Margaret Layrisson using public records, to find she donated with her lawyer husband, currently at **Baker Botts**, Louis “Louie” Layrisson, to the 2022 Judicial campaign for the re-election to a second term of Democratic candidate and incumbent, Judge Lauren Reeder. Louie Layrisson also donated separately in 2017, detailed below.

Plaintiff holds the opinion these donations were somewhat obfuscated by the naming conventions used by the Layrissons’ when making these donations.

First, there was the joint donation under the name; **“Margaret Louie & Layrisson”** for a total sum of \$2,326[10] to Judge Lauren Reeder, documented as “In-Kind Contribution: Food Beverages & Valet for Reception” on **05/06/2022**.

Second, there was the individual donation under the name; **“Louie Layrisson”** for the total sum of \$500[11] on **08/10/2017** to Judge Lauren Reeder as well as donations to various Judges and Justices.

Third, there was the individual donations to various Judges and Justices under the name; **“Louis Layrisson”** (no donation to Judge Lauren Reeder).

John Serpe’s Past Contribution and Serpe Andrews, PLLC, Individual and Corporate Donations to Judge Lauren Reeder in 2022

Whilst on this subject, Plaintiff has identified John Serpe donated in 2017 and Serpe Andrews, PLLC donated to Judge Reeder’s 2022 campaign.

John Serpe donated \$250[12] on **09/26/2017**.

What is notable about the corporate donation by Serpe Andrews, PLLC, is this was the only Judge in Harris County District Court who would benefit from a sizeable donation in 2022 for a total sum of \$2,500[13] to Judge Lauren Reeder, documented as “In-Kind Contribution: Food Beverages & Valet for Reception” on **05/06/2022**.

Notably, this is the same date as the Margaret Louie & Layrisson contribution and for the same event. One is left to assume that all these individuals attended the fundraiser event they essentially paid for.

Clearly, at a time where the judiciary is under immense public scrutiny and criticism, this information is a matter of public concern.

Judicial Campaign Contributions Under the Spotlight in Texas

It is well documented citizens and indeed some Texas Justices, for example, **Hon. Tom Phillips**, former Chief Judge of Texas Supreme Court and currently Partner at **Baker Botts**, Judges, and lawyers in the legal profession are extremely vocal in denouncing money in politics and where much of this money is donated by lawyers, law firms and their PAC's (e.g., 60 Minutes[**14**]; Proposed Reforms to Texas Judicial Selection [2019 Texas Chapters Conference][**15**] and; "Judicial Selection Reform: Examples from Six States", **linked from** TXCourts.Gov (last visited, Dec. 20, 2022).

Appearance of Bias

It is also of grave concern to Mark Burke personally, where the **appearance of bias[16]** and related Judicial ethics, rules and canons become operative considerations in this recently filed State lawsuit.

This includes the important question, based on these donations and considering how specific these payments were allocated to one Judge. Should this Judge have automatically self-recused upon assignment in a State court proceeding, similar to a Federal court?

Analogy: A Federal Judge with Shareholding in HCA

Applying a hypothetical analogy, consider a United States District Judge at Southern District Court in Rusk Street, Houston, holds shares in for-profit HCA Healthcare (NYSE Symbol: HCA), and he or she was 'randomly' assigned this case. Prior to this year, self-recusal or conflict checks using the federal court's existing methods (for automatic recusal) would be debatable, even though the shareholding Judge was legally mandated to recuse.

131 Judges Broke the Law – WSJ

However, with public outcry after a '**negative**' article by Wall Street Journal was released, naming every Judge and violation over an extended number of years[**17**], this resulted in swift intervention by Congress and specific amendments to the current interpretation of the law. It is now without doubt mandatory Judges recuse in cases where a party before the court is listed on the stock exchange and where the Judge actively holds shares in that stock listed entity.

It is Plaintiff's understanding the database of Judge's **private** shareholdings is **public information** and will be constantly updated by US Courts Administration Office (USAO).

Indeed, it appears this database is currently 'scraped' and 'republished' by the Free Law Project under the heading "**Judge and Disclosure Database**" (last visited Dec. 18, 2022).

The Wall Street Journal was lauded for their criticism of the Judiciary with their

published article **"131 Federal Judges Broke the Law..."** and related articles.

The new law has already been recognized in Texas, when referencing the December 2022 Wal-Mart case opinion from the Fifth Circuit, which also went viral when published online[18].

On the contrary, Defendant(s) wish to make it a crime to operate a web publishing platform under remarkably similar circumstances, and unconstitutionally chill free speech[19].

GENERALIZED TARGETING IS NON-SPECIFIC

"13. Further, Burke has **targeted healthcare attorneys in Houston generally** by posting their **corporate headshots and resumes** that previously have, and currently, represent both sides of HCA Kingwood cases, with a proposed **intent to provide negative publicity of the facility, as well as its representatives.**"

Response: This is more **defamation** claims; the publications are not false, the content and images referred to are 'fair use' of same, and; the generalized attack by Defendant(s) is insufficient in detail to even request, let alone obtain an injunction, temporary and/or permanent.

A PUBLIC FIGURE'S IMAGE ON A BLOG

"Even the Honorable Judge Lauren Reeder's **image** has been included in Burke's **blog post** about filing a petition against HCA Kingwood for the allegations listed above."

Response: The **image** is publicly available and fair use of Judge Reeder's **online images**, of which **there are many**, as she is a **public figure**.

APPARENTLY, PLAINTIFF CROSSED A LINE WITH A PASSING MENTION

"14. Burke's publications on his website recently **crossed a line** in a post **mentioning** an attorney assigned to the matter, Madison Addicks, as well as her parents, who are irrelevant to the matter at hand."

Response: **First**, "**crossed a line**" is a statement Plaintiff found in a Federal criminal case which completely supports Plaintiff's argument as it covers the same constitutionally protected issues here, including threats, harassment and more.

See; **U.S. v. Carmichael**, 326 F. Supp. 2d 1267, 1282 (M.D. Ala. 2004) ("**It is only when speech crosses the line** separating insults from 'true threats' that it loses its First Amendment protection.") – Denying protective order.

Second, Background checks are standard practice by lawyers before representing a client. Similarly, background checks are conducted by government agencies.

Third, background checks are conducted by citizens[20]. Here, Mark Burke was performing a background check on new associate Madison J. Addicks from publicly available information.

Finally, "Mentioning" is not an actionable verb which could possibly allow one to obtain injunctions as a passing statement.

YOU'RE NOT A LICENSED HAR REALTOR, STOP MAKING HOME MOVIES

"Not only did Burke post each of her **parent's resumes**, but he also **created a video compiled from online images of their house, including their street address.**"

Response: Again, this is publicly available information which is also covered by the fair use doctrine. The resumes provided valuable insight, namely that Addicks parents **Sharon Lowman Addicks** and **Jeffrey Allen Addicks** are both Texas lawyers and Addicks mother works in the healthcare arena, is extremely knowledgeable about being an expert witness for healthcare facilities like Defendant in adversary proceedings and is a qualified nurse. Clearly, this information is very relevant to the case at hand, especially when Plaintiff is considering amending his original complaint to add parties, subpoena witnesses and seeking to disqualify Serpe Andrews, PLLC, including Addicks.

Moving on, creating a video from a real estate portal at Realtor.com which includes pictures of a residential listed property, including the street address and republishing this information is most certainly not a crime[21]. This is another generalized, malicious, and baseless attack by Defendant(s) which is insufficient in detail to obtain an injunction, temporary and/or permanent.

PLAINTIFF'S WEBSITE IS A WEAPON

"Burke is clearly utilizing his website to **intimidate** and **harass** HCA Kingwood's counsel in a designed attempt to **interfere** with counsel's ability to represent HCA Kingwood in this lawsuit."

Response: The Defendant(s) fail to provide sufficient specifics of 'intimidate' or 'harass' or how this post 'interferes' as a legal gripe site sharing publicly available information.

TARGETING MATTERS OF PUBLIC CONCERN

"Burke's **targeting** is **unrelated to the case, troubling**, and certainly **not** a matter of **public concern.**"

Response: The article is extremely relevant to the case as stated above. It is a matter of public concern because it shows nepotism overlapping in both the legal and healthcare verticals, and this research provides immense value to Plaintiff's past and future pleadings in this lawsuit.

PLAINTIFF CROSSED THE LINE AGAIN BY FILING A MOTION TO DISQUALIFY AND PUBLICLY DISPLAYING IT ONLINE

15. Most recently, Burke admitted his intent to "disqualify" Plaintiff's counsel, by filing a Motion for Sanctions, alleging Serpe Andrews as a "a suspected shell sham legal entity," that has failed to adequately respond to his filings and requests.

Response: Correct. Plaintiff has legally filed said "**Motion for Sanctions, to Disqualify Serpe Andrews PLLC, Nicole G. Andrews, and Madison J. Addicks and Order Release of Video Surveillance Footage to Plaintiff**" with proof of claims as filed on the docket, dated Nov. 22, 2022. This was one day before Defendant(s) filed their bad faith **Counterclaim and Application for Temporary and Permanent Injunctions** – clearly a knee-jerk reaction, in retaliation. However, Defendant's maintaining the groundless Counterclaim in their Friday reply only cements the facts and evidence presented in Plaintiff's pleadings. Thus, the motion to disqualify and all other relief therein should be granted.

PLAINTIFF TOLD THE TRUTH IN HIS MOTION(S) AND THAT'S JUST WRONG

"Burke even attempts to besmirch the reputation of HCA Kingwood's counsel by claiming they are "unethical.""

Response: Plaintiff hasn't "attempted", rather he's filed at least two pleadings proving HCA Lawyer(s) are unethical. The sanctions and disqualification motion above, and "**Plaintiff's Objections and Request for Relief Related to Defendant's Boilerplate and Unconstitutional Violation of Rule 193.7**", filed onto the docket on Dec. 9, 2022.

Injunctive relief is not an available remedy when Plaintiff is zealously pursuing his lawsuit within the boundaries of the law, and where Plaintiff's motions are based on fact with irrefutable supporting evidence – unlike Defendant(s) malicious, baseless counterclaim and application for injunctions, citing to criminal Texas Harassment and Stalking statutes.

HCA LAWYERS: LET'S WALK BACK OUR DEFAMATION CLAIMS

"Burke's publications **are not only false**, but an attack **on the reputation of the firm**, and **character of its attorneys.**"

Response: This is more **defamation** claims; the publications are not false and Defendant(s) have not expanded on what publications are false nor why they are claimed to be false, and; the generalized attack by Defendant(s) is insufficient in detail to obtain an injunction, temporary and/or permanent.

PLAINTIFF AGREES, HCA KINGWOOD SAFETY SUCKS, THEY ALLOW IMPOSTER DOCTORS TO ATTEND TO PATIENTS

16. To **protect** the **reputation** and **safety** of **HCA Kingwood and its retained counsel** and HCA Kingwood's ability to retain counsel to defend its interests, as well as **prohibit Burke** from **engaging in further prohibited conduct**, HCA Kingwood requests the Court grant a Temporary Injunction **and all further requested herein** and as the Court deems appropriate.

Response: More **defamation** claims "to protect **the reputation...**"; "**safety**"; "**engaging in further prohibited conduct**"; "**and all further requested herein**", without more, is insufficient, it's a generalized attack by Defendant(s) is insufficient in detail to obtain an injunction, temporary and/or permanent.

The counterclaim, including their allegations which are extracted and republished here, intentionally exclude the most important details;

PLAINTIFF OWNS AND OPERATES A GRIPE SITE

First, the blog at **kingwoodr.com** is legally known as a "gripe site"[22], which benefits from protected speech as well as the maliciously false allegations Defendant's make in their counterclaim and application for injunctions, both temporary and permanent. This information **is published** on the gripe site, including a precedential opinion from the Fifth Circuit, and which is good law to this very day[23].

Second, the gripe site was launched on **August 14, 2022**, with the first article titled "**Spoilation Letter to HCA Kingwood**"[24], 5 days after Mark Burke checked out of HCA's Kingwood Hospital. Plaintiff filed his lawsuit just over 2 months later, on **October 18, 2022**. [25] This is important because of the allegations by Defendant(s), discussed herein.

Third, and equally important, the gripe site provides a "legal menu", which includes separate pages in this dropdown menu, labeled "**Fair use**", "**Privacy**" and "**Terms**", as well as a separate menu labeled "**Contact**", directing visitors to a Contact page with functioning contact form. [26]

Fourth, the Defendant(s) are guilty of cherry-picking **some content** from kingwoodr.com to present the information in their baseless, malicious counterclaim in the most "**negative light**" (sounds familiar).

Fifth, the footer text unambiguously reads; "Kingwood Hospital – A Gripe Site by Former Emergency Care Patient Mark Burke". Plaintiff avers, nobody could read this in conjunction with the **sitemap**, menu navigation, pages and post published therein, and not know this is a free speech web publishing platform, which is for purposes such as criticism, comment, news reporting, teaching, scholarship, education and research.

In relation to "fair use", the content of the published page is included below, which confirms Defendant(s) charges should be dismissed as baseless. Texas law clearly favors Plaintiff. There is no civil or criminal liability for criticism, fair use of content and images or other publicly available material from the web and republishing it in a manner which is standard for a gripe site, including kingwoodr.com[27];

FAIR USE ACT DISCLAIMER

This site is for educational purposes only.

Fair Use

Copyright Disclaimer under section 107 of the Copyright Act of 1976, allowance is made for "fair use" **for purposes such as criticism, comment, news reporting, teaching, scholarship, education and research.**

Fair use is a use permitted by copyright statute that might otherwise be infringing.

Fair Use Definition

Fair use is a doctrine in United States copyright law that allows limited use of copyrighted material **without requiring permission from the rights holders, such as commentary, criticism, news reporting, research, teaching or scholarship**. It provides for the legal, non-licensed citation or incorporation of copyrighted material in another author's work under a four-factor balancing test.

GOVERNING LAW AND JURISDICTION

This Fair Use Policy constitutes a contract made under and shall be governed by and construed in accordance with the laws of the State of Texas.

Non-lawyer

KingwoodDr.com is a personal Gripe Site operated by Texas resident, Mark Burke ("MB"). KingwoodDr.com is operated by a non-lawyer in the State of Texas and does not offer legal advice.

LAST UPDATE

This Fair Use Policy was last updated on August 14, 2022.

CONTACT INFORMATION

Questions or comments regarding the Web Site should be sent by e-mail to **** or by fax toll free; +1 866-705-0576.

Sixth, Plaintiff and his 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).

THE JOHN SERPE DEFAMATION DEFENSE CASE

Plaintiff is convinced another reason Defendant(s) are intentionally trying to walk back their defamation claim is after Mark Burke provided **detailed evidence** of the Serpe case in New Mexico, which included allegations of **defamation** and which contradicted all the arguments presented by Serpe Andrews, PLLC in this case. **[28]**

In short, HCA Lawyers were caught in a lie.

Now they are [unsuccessfully] trying to wriggle out of the embarrassing situation for themselves and their client.

If defamation was never a counterclaim in this lawsuit, why is it mentioned and inferred at all, based on the language of their pleading by these healthcare defense trial lawyers with decades of legal and trial experience at both state and federal level?

Defendant(s) argument is absurd.

HARASSMENT (Tex. Pen. Code § 42.07)

1. Harassment

17. HCA Kingwood incorporates paragraphs 7-16 as if fully set forth in this section.
18. Through the use of his website, Burke **published, and continues to publish, several statements** that meet the threshold of **Texas Penal Code Section 42.07(a)(8)**.

Burke's sole intent in these posts is to **harass, annoy, alarm, abuse, and/or torment** HCA Kingwood, and its retained counsel. Burke continues to target HCA Kingwood's retained counsel, and most recently, family members.

These posts, mentioned above, are in no way **a matter of public concern**.

Defendant(s) are without question **retaliating**, by harassing Plaintiff with this malicious counterclaim of **harassment** (criminal, not civil).

It is a crude and unethical attempt to delay, distract, harass, annoy, alarm, abuse, and/or torment Plaintiff due to the seriousness of the misdemeanor or even felony criminal charges which can be brought after an injunction is granted as well as the restrictions to life, liberty and property any injunction may demand during or after the lawsuit has concluded. It is a premeditated and evil act.

Defendant(s) seek to distract and delay this Court from the actual lawsuit, which focuses on real criminal acts, namely "Imposter Doctor", Dr. Aguilar attending to Mark Burke for two days without intervention at HCA's Kingwood Hospital.

STALKING (Tex. Pen. Code § 42.072)

1. **Stalking**

19. HCA Kingwood incorporates paragraphs 7-18 as if fully set forth in this section.
20. The statements contained on Burke's website fall squarely within the statutory definition of stalking under Texas Penal Code Section 42.072.

Specifically, Burke's recent **stalking** of counsel for HCA Kingwood, **by posting their profiles, resumes, corporate headshots, prior cases in which they have, or currently are associated, and even a video of an attorney's parent's house**, clearly rises to the level that would cause a "reasonable person" to feel "harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended." **Tex. Pen. Code § 42.072(3)(D)**.

Defendant(s) are without question **retaliating**, by harassing Plaintiff with a malicious counterclaim of criminal **stalking[29]**.

It is a crude and unethical attempt to delay, distract, harass, annoy, alarm, abuse, and/or torment Plaintiff due to the seriousness of the criminal felony charges which can be brought after an injunction is granted as well as the restrictions to life, liberty and property any injunction may demand during or after the lawsuit has concluded. It is a premeditated and evil act.

Defendant(s) seek to distract and delay this Court from the actual lawsuit, which focuses on real criminal acts, namely "Imposter Doctor", Dr. Aguilar attending to Mark

Burke for two days without intervention at HCA's Kingwood Hospital.

TORTIOUS INTERFERENCE WITH CONTRACTS

Defendant(s) are without question **retaliating**, by harassing Plaintiff with a malicious counterclaim of **tortious interference with contracts**.

Defendant(s) seek to distract and delay this Court from the actual lawsuit, which focuses on real criminal acts, namely "Imposter Doctor", Dr. Aguilar attending to Mark Burke for two days without intervention at HCA's Kingwood Hospital.

"The elements of tortious interference with an existing contract are: (1) an existing contract subject to interference, (2) and a willful and intentional act of interference with the contract (3) that proximately caused the plaintiff's injury and (4) that caused actual damages or loss. – **Prudential Ins. Co. of Am. v. Financial Review Servs., Inc.**, 29 S.W.3d 74, 77 (Tex. 2000).

"A defendant may negate liability by showing that his conduct was privileged or justified."

"To prevail on a tortious interference claim, a plaintiff must present evidence that the defendant interfered with **a specific contract**"—that "some obligatory provision of a contract has been breached."

– Better Bus. Bureau of Metro. Hous., Inc. v. John Moore Servs., Inc., 441 S.W.3d 345, 361 (Tex. App.—Houston [1st Dist.] 2013, pet. denied) (quoting Funes v. Villatoro, 352 S.W.3d 200, 213 (Tex. App.—Houston [14th Dist.] 2011, pet. denied)). – **Amini v. Spicewood Springs Animal Hosp.**, No. 03-18-00272-CV, at *14 (Tex. App. Nov. 7, 2019).

Here, Defendant(s) have not carried their burden of showing a prima facie case of at least one essential element of each claim;

NO EVIDENCE OF EXISTING CONTRACT SUBJECT TO INTERFERENCE

"22. HCA Kingwood has an existing, valid attorney-client **relationship** with Serpe Andrews, PLLC whereby Serpe Andrews, PLLC provides legal representation to HCA Kingwood **in exchange for compensation**."

HCA nor HCA lawyers have provided a valid **contract[30]**, establishing "an attorney-client relationship" which is provided "in exchange for compensation" (consideration).

If Defendant(s) actually have a contract, they have not provided one, nor a date this engagement took effect in this lawsuit.

ATTORNEY-CLIENT PRIVILEGE IS LIMITED

"It is well settled that the attorney-client privilege belongs to the client, not the attorney, and can be invoked only on the client's behalf." – **Emami v. Emami**, No. 02-21-00319-CV, at *8 (Tex. App. Aug. 11, 2022).

If Defendant(s) contracted via an Engagement Letter, this is not privileged;

"Not all communications between attorney and client are privileged. Our decisions have recognized that the identity of the client, the amount of the fee, the identification of payment by case file name, and the general purpose of the work performed are usually not protected from disclosure by the attorney-client privilege." – **Clarke v. American Commerce Nat. Bank**, 974 F.2d 127, 129 (9th Cir. 1992).

As such, without evidence of the Engagement Letter, including date of engagement, Defendant(s) have not carried their burden of showing a prima facie case.

NO WILLFUL INTERFERENCE

"Burke is **intentionally and willfully attempting to interfere** with this relationship by publishing statements **designed to harass and intimidate** Serpe Andrews, PLLC in hopes of Serpe Andrews, PLLC **withdrawing** as counsel.

As detailed in this reply, Plaintiff admits he has submitted a Motion to Disqualify Serpe Andrews PLLC, Nicole Andrews and Madison Addicks.

There is nothing illegal in filing a Motion, but Defendant(s) seek to twist this by blaming Plaintiff for;

"publishing statements designed to harass and intimidate"...in the hopes of Serpe Andrews, PLLC withdrawing as counsel".

Before Plaintiff responds to this maliciously false statement, let's record the date this statement was first made, which was in Defendant(s) baseless counterclaim dated **November 23, 2022** (the eve of Thanksgiving).

Having ascertained the date, let's obtain the date the gripe site was launched, which was **August 14, 2022**. At the time of the counterclaim, the published gripe site had been online for 102 days.

The first email communication from Mark Burke utilizing the email address from the gripe site was sent to HCA, on **September 30, 2022**, via ****, and where the email provided the following signature and statement;

Cheers

Mark Burke

Cell: +1 (832) 781-6887

Fax: +1 (866) 705-0576

Email: ****

Web: **KingwoodDr.com**

Disclaimer; Critically acclaimed for my digital publishing platform[s] and strategic approach to public communications, it would be remiss not to 'practice what you preach'. As such, I have launched a public 'gripe site' at **KingwoodDr.com** which maintains a record of all communications between HCA and myself in this matter, along with other articles of public concern, including "**HCA holds the record for the largest Health Care FRAUD in American history**". This article confirms Congress is currently seeking another federal probe into HCA (as at Sept 2022).

From the date of this first email communication from Plaintiff to Defendant, to when Defendant filed the counterclaim with application for injunctions, they had full knowledge of the published gripe site for 55 days.

What articles were published on, or prior to, September 30, 2022? Answer; Articles related to Mark Burke's complaints sent directly to HCA, including articles about the attending doctors, imposter doctor and HCA's past and present fraud cases, as detailed in the signature above.

The next email dated **October 10, 2022 (Exhibit: "Email Sent to Known Counsel Nicole Andrews and HCA on Oct. 10, 2022")** to HCA included HCA Lawyer Nicole G. Andrews, having obtained her v-card including email address from the SerpeAndrews.com website. The content of that email was very specific to Andrews;

Reminder II:

Letter in Response to HCA.

I have included HCA's known legal counsel, Ms. Nicole G. Andrews who would be responsible for addressing the Perpetuate Testimony filing in Harris County District Court.

Furthermore, I am still waiting for a response from HCA re **Spoilation Letter II.**

I look forward to a response by email.

Cheers
Mark Burke

Cell: +1 (832) 781-6887
Fax: +1 (866) 705-0576
Email: ****
Web: **KingwoodDr.com**

Disclaimer; Critically acclaimed for my digital publishing platform[s] and strategic approach to public communications, it would be remiss not to 'practice what you preach'. As such, I have launched a public 'gripe site' at **KingwoodDr.com** which maintains a record of all communications between HCA and myself in this matter, along with other articles of public concern, including "**HCA holds the record for the largest Health Care FRAUD in American history**". This article confirms Congress is currently seeking another federal probe into HCA (as at Sept 2022).

From the date of this second email communication from Plaintiff to Defendant, to when Defendant filed the counterclaim with application for injunctions, was a period of 45 days.

On **October 18, 2022 (Exhibit "Dr. Who 1")**, Plaintiff filed this lawsuit and the same day Plaintiff emailed HCA and Nicole Andrews a copy of the complaint with the following extracted request;

"The attached Petition was filed into Harris County District Court this afternoon. Case:

202268307. **Please advise if you will waive service or not by return."**

From the date of this third email communication from Plaintiff to Defendant, to when Defendant filed the counterclaim with application for injunctions, was a period of 37 days.

No response was ever received in relation to waiving service by Defendant(s), which resulted in the Motion to Disqualify filed on **November 22, 2022 (Exhibit "Dr. Who 5")**; Plaintiff filed a "Motion for Sanctions, to Disqualify Serpe Andrews PLLC, Nicole G. Andrews, and Madison J. Addicks and Order Release of Video Surveillance Footage to Plaintiff".

Returning to the statement by Defendant(s), and considering the all-important timeline above, it confirms Plaintiff's arguments. There is no imminent danger as the Defendant(s) claim and this is expanded upon further on in this reply. This is unequivocally **"retaliation"**, which is classified as a disciplinary violation by HCA counsel. It is bad faith misconduct which can and should result in sanctions[31] against all Defendant(s).

NO PROXIMATE CAUSE OR INJURY

"Burke's **conduct** has already **proximately caused damages** to HCA Kingwood by forcing HCA Kingwood to incur legal fees and expenses to address Burke's **interference.**"

Defendant(s) actions, in particular counsel refusing to reply to Plaintiff's request to waive service and other obstructive behavior, caused its own proximate cause or injury, rather than the Plaintiff's actions, who legally pursued a motion to disqualify counsel, obtain sanctions and other relief, as a direct result.

NO ACTUAL DAMAGES OR LOSS

"However, if Burke's attempts to **harass and intimidate HCA Kingwood's counsel** is allowed to continue, **HCA Kingwood would suffer irreparable injury** by impeding its ability to retain counsel of its choosing. As a result, **HCA Kingwood seeks injunctive relief.**"

Defendant(s) actions and **retaliation** by filing a baseless counterclaim and applications for injunctions caused its own damages, rather than Plaintiff's actions.

DEFENDANT(S) RETALIATION CONFIRMED BY TIMELINE

As stated, Defendant(s) have **retaliated** by filing a baseless and harassing counterclaim with application for injunctions in violation of Texas laws and rules pertaining to Texas lawyers.

See; State ex Rel. Hill v. Pirtle, 887 S.W.2d 921, 946 (Tex. Crim. App. 1994) ("Rule 4.04(b) of the Texas Disciplinary Rules of Professional Conduct states that a lawyer shall not present or participate in presenting criminal charges solely to gain an advantage in a civil matter. ").

The **retaliation** by Defendant(s) was immediate and filed one day after (Nov. 23) the Plaintiff's Sanction and Disqualification Motion (Nov. 22).

Plaintiff recently filed a Violation of Rule 193.7 Notice of Objection, again requesting Sanctions, Disqualification, Referral to the State Bar of Texas for Discipline and other relief to be granted. Both these filings are currently pending before this court.

THE DEFENDANT(S) DID NOT IMMEDIATELY ACT ON ALLEGED FEARS, PERCEIVED THREATS AND/OR IMMINENT DANGER

"In this State, the practice of issuing temporary injunctions without notice has long been disapproved where a temporary restraining order would afford adequate protection until notice could be given and a hearing had.

The granting of an injunction is the exercise of an extraordinary power and under sound rules of equity such power should be exercised with caution and only when the necessity for granting the relief is clearly shown.

The courts uniformly hold that they will not exercise such power without notice to the parties to be restrained, except when the necessity therefor is pressing and the threatened injury imminent and irreparable if not prevented.

In other words, to authorize an ex parte injunction without a hearing, the applicant must state all the essential elements entitling him to the relief sought and negative every reasonable inference that the petitioner might not, under other pertinent supposable facts, be entitled to such relief.

– **Int'l Harvester v. Farm. Merch. Nat**, 126 S.W.2d 690, 692 (Tex. Civ. App. 1939).

IT'S A SHAM

In this case, the danger could not have been pressing or imminent as the Defendant(s) could have taken immediate action, either by (i) filing a Police report (as Plaintiff, on same day he was release from HCA Kingwood Hospital), and/or; (ii) filing for an Ex-Parte Temporary Restraining Order ("TRO").

Instead, Defendant(s) are patiently waiting from Nov. 23, 2022, to Jan. 9, 2023 for the original hearing, which is abated for 60 days at least, extending the "imminent threats" months without protection from Mark Burke's alleged criminal harassment and stalking.

Furthermore, Defendant(s) have been aware of the gripe site since at least September 30, 2022 and yet they waited all this time, until November 23, 2022 to file for injunctive relief.

It's a sham brought [im]purely for the purposes of delay and harassment of Plaintiff;

Lujan v. Navistar, Inc., 555 S.W.3d 79, 86 (Tex. 2018) ("the rules of procedure require the court to determine whether a proffered fact issue is "genuine," which means "authentic or real." Genuine , BLACK'S LAW DICTIONARY (10th ed. 2014). A "sham" is, by definition, "not genuine." Sham , WEBSTER'S NEW INT'L DICTIONARY

(3rd ed. 1961).”).

IF NECESSARY, THE DEFENDANT(S) APPLICATION FOR INJUNCTIONS SHOULD BE DISMISSED SUA SPONTE AND WITHOUT THE EXPENSE OF A HEARING

“A hearing upon an application for a temporary injunction is a poor substitute for a trial upon the merits of such an action as is represented by this case. ” – **City of Port Arthur v. Mosely**, 586 S.W.2d 915, 920 (Tex. Civ. App. 1979).

The above citation mirrors the facts in this case and mandate the baseless counterclaim and application for injunctive relief be dismissed.

Plaintiff maintains that Defendant(s) are seeking to “ambush”**[32]** the Plaintiff at the scheduled hearing as their request included the following statement;

“36. HCA Kingwood requests the Court set its Application for Permanent Injunction **for a full trial on the merits** and, **after the trial, issue a permanent injunction** against Burke requiring him to remove the harassing and threatening statements and, similarly, prohibiting and enjoining him from re-publishing any similar remarks regarding HCA Kingwood and its retained counsel.”

Interpreting the above statement leaves the Plaintiff under no illusions. Defendant(s) are not seeking a jury trial as they elected and paid for in their first reply to the lawsuit, rather, they now wish to unilaterally change the (now abated) January 9, 2023 hearing to a full trial on the merits – a no-evidence bench trial – and most likely relying upon the fact Plaintiff is pro se. Plaintiff objects.

Certainly, Plaintiff is not familiar with of all the rules, laws, and malicious tactics being implemented in this case by unethical counsel, as he is a non-prisoner, non-attorney, and lacks the 27 years, 7 months, 16 days of legal and trial experience which Texas attorney Nicole Andrews boasts**[33]**.

That stated, Andrews is experiencing extreme amnesia when it comes to the **Texas Disciplinary Rules of Professional Conduct** and **the Texas Lawyer’s Creed**, including but not limited to, responding to requests to waive service, conferring, and discussing availability for scheduling of hearings, or sending Plaintiff copies of pleadings filed in this court.

Whilst judicial privilege and immunity applies, there are limits to this sweeping immunity and there is relief available for sanctioning misconduct, including referral by a Judge to the State Bar of Texas. Hence, Plaintiff has and is pursuing the available remedies to seek sanctions and/or discipline for the continuing unethical misconduct by opposing counsel as discussed herein.

Let it be known, Plaintiff will not be “ambushed”.

Prior Restraint

“While the trial court considered no testimony before granting injunctive relief, even if there had been testimony consistent with World’s pleadings, it would not have entitled World to injunctive relief.

This is because "testimony of 'fear,' 'apprehension' and 'possibilities' is not sufficient to establish any injury, let alone 'irreparable' injury."

Moreover, **"an injunction will not lie to prevent an alleged threatened act, the commission of which is speculative and the injury from which is purely conjectural."**

"[A] trial court abuses its discretion in granting a temporary injunction unless it is clearly established by the facts that one seeking such relief **is threatened with an actual irreparable injury** if the injunction is not granted." World has clearly failed to meet this burden. – **Markel v. World Flight, Inc.**, 938 S.W.2d 74, 79-80 (Tex. App. 1996);

The reasoning in Markel would apply here;

"The injunctive relief granted is so broad it arguably constitutes the most restrictive means to prevent any alleged harm, short of enjoining appellants from speaking to anyone on any subject.

In short, World **has neither alleged nor offered proof of any threatened conduct or imminent harm that would conceivably justify the imposition of such a harsh prior restraint on free expression.**" – **Markel v. World Flight, Inc.**, 938 S.W.2d 74, 81 (Tex. App. 1996).

THE RULE 193.7 VIOLATION SHOWS DEFENDANT(S) COMPLETE DISREGARD IN ADHERING TO THE RULES OF THIS COURT

"The violation of one disciplinary rule is sufficient to support a finding of professional misconduct."

Cantu v. Comm'n for Lawyer Discipline, No. 13-16-00332-CV, 2020 WL 7064806, at *20 (Tex. App.-Corpus Christi Dec. 3, 2020, no pet.) (mem. op.). " **Ponce v. Comm'n For Lawyer Discipline**, No. 04-20-00267-CV, at *12 (Tex. App. May 25, 2022)."

The "Plaintiff's Objections and Request for Relief Related to Defendant's Boilerplate and Unconstitutional Violation of Rule 193.7" was filed on Dec. 9, 2022[34]. At a minimum, Texas lawyer Nicole G. Andrews, co-founder of Serpe Andrews, PLLC, should be sanctioned and reported to the State Bar of Texas for her unethical, dishonest, fraudulent, deceitful and cumulative misconduct[35] in this case.

MARK BURKE CANNOT BE BOUND BY A COURT ORDER

"A court order cannot "prevent [the media] . . . or anyone else from disseminating the substance of information already in the public domain."

Tavoulaareas v. Washington Post Co., 111 F.R.D. 653, 660 (D.D.C. 1986).

Indeed, even a party "may disseminate the identical information covered by the protective order as long as the information is gained through means independent of the court's processes."

Seattle Times Co. v. Rhinehart, 467 U.S. 20, 34 (1984).

It is even clearer that this Court and the litigants in this case—non-parties to cases such as *Weamer*, *Newsom*, and the other cases cited above—may freely use information about the plaintiff’s identity obtained from the public records in other cases. A protective order may not “restrict the dissemination of information obtained from other sources.”

Anderson v. Cryovac, Inc., 805 F.2d 1, 14 (1st Cir. 1986).

– **Luo v. Wang** (1:20-cv-02765) District Court, D. Colorado, Doc. 213, Sep. 21, 2022.”[36].

AS A ‘MEDIA DEFENDANT’ MARK BURKE IS IMMUNE FROM THE COUNTERCLAIM

Mark Burke’s a media defendant in this frivolous counterclaim. See;

“**media-defendant status to individual** whose allegedly defamatory statements were published as editorials in traditional newspapers, **on internet websites**, and during radio broadcast because that subsection “applies to anyone whose communication appears in electronic or print media **when the claims or defenses involved arise under the free speech clause of the First Amendment – State v. Valerie Saxon, Inc.**, 450 S.W.3d 602, 610 (Tex. App. 2014).

AS A PARTY, MARK BURKE IS IMMUNE FROM THE COUNTERCLAIM

Privileges and Immunity: Judicial Proceedings

In Texas, communications concerning matters published preliminary to or part of judicial proceedings are absolutely privileged – so long as the communications are relevant to the proceedings, as they are in this lawsuit and counterclaim.

Shell Oil Co. v. Writt, 464 S.W.3d 650, 655 (Tex. 2015) (“As to communications preliminary to a proposed judicial proceeding, the rule ... applies only when the communication has some relation to a proceeding that is actually contemplated in good faith and under serious consideration by the witness or a possible party to the proceeding.”).

Furthermore, for absolute privilege to apply, an actual proceeding need not occur, and the communication will be absolutely privileged if the judicial proceeding was a serious consideration at the time the statements were made, and as admitted by Defendant(s) in their counterclaim, at 10.

Note; the same privilege and immunity in judicial proceedings applies to Harassment, Stalking and Tortious Interference with Contracts.

THE REQUESTED \$500 BOND IS ABSURD

The \$500 bond requested by Defendant(s) is wholly inadequate to protect Plaintiff’s interest, when the litigation damages and monetary relief requested is at least \$5 million US Dollars[37].

See; **GTE Mobilnet of South Texas Ltd. Partnership v. Cellular Max, Inc.**, 123 S.W.3d 801, 804 (Tex. App. 2003).

SUMMARIZING THE DEFAMATION CLAIMS BY DEFENDANT(S) SEC. 73.001. ELEMENTS OF LIBEL

Quoting directly from the act;

"A libel is a **defamation** expressed in **written or other graphic form** that tends to blacken the memory of the dead or that tends to **injure a living person's reputation** and thereby **expose the person to public hatred, contempt or ridicule, or financial injury** or to **impeach any person's honesty, integrity, virtue, or reputation** or to **publish** the natural defects of anyone and thereby **expose the person to public hatred, ridicule, or financial injury**.

As presented in finite detail above, the Defendant(s) Counterclaim is replete with **defamation** claims, and to hold otherwise would be absurd. As such, their attempts to walk back these claims proves once more, Defendant(s) are acting **with malice** and **unclean hands[38]** and as such their Counterclaim should be dismissed using the court's inherent powers, avoiding further time, cost and delay submitting a Rule 91a motion or partial summary judgment motion.

RELIEF REQUESTED

Plaintiff has previously filed for disqualification of HCA Lawyers, sanctions, and referral to the State Bar of Texas, along with an expedited Order to obtain the video surveillance footage as described.

See; Motion for Sanctions, to Disqualify Serpe Andrews PLLC, Nicole G. Andrews, and Madison J. Addicks and Order Release of Video Surveillance Footage to Plaintiff (Nov. 22, 2022, **Exhibit "Dr. Who 5"**).

Plaintiff further requests Defendant(s) baseless Counterclaim and Application for Injunctive Relief in the form of Temporary and Permanent Injunctions be dismissed sua sponte under this court's inherent power, sanction Defendant(s) misconduct under the laws and rules as concisely summarized in **K. Griff Investigations v. Cronin**, 633 S.W.3d 81 (Tex. App. 2021), and all other relief requested herein, be granted.

CONCLUSION

Plaintiff has proven that the defamation complained of in the original Counterclaim, which was walked back by Defendants in their reply is a mischievous act.

Plaintiff has proven the torts of harassment, stalking and interference which Defendant(s) now rely upon, a desperate attempt to defeat the current Plea in Abatement, are all soaked in defamation. In short, they are one and the same.

Plaintiff's website, speech and other baseless claims by Defendant(s) are protected by the First Amendment, and/or Article I, Section 8 of the Texas Constitution, and/or Privilege.

Before this lawsuit commenced, Defendant sought to delay Plaintiff's direct complaints. This has continued in this lawsuit and it needs to be stopped, without further

harassment.

Plaintiff urges this court to apply its inherent powers to swiftly deal with the unethical lawyers for HCA and hold HCA Houston Healthcare Kingwood equally liable for pursuing fraudulent and outrageous claims, including criminal charges that Plaintiff is "repeatedly" threatening Defendant(s) and a myriad of others by operating a website, without a scintilla of evidence. They have **crossed the line**.

The fact these frivolous claims are being presented by one of the nation's top healthcare providers who have resubmitted these abhorrent claims to this court whilst knowing these are fabricated, untruthful allegations designed to abuse, torment, intimidate and harass Plaintiff. This is cause for alarm. Defendant(s) are clearly acting with malice.

The intentional delays and distraction tactics (the counterclaim) should be addressed sua sponte by this court. Plaintiff suggests and requests this can be achieved by dismissing the baseless counterclaim, as well as granting the other relief requested above.

RESPECTFULLY submitted this 20th day of December, 2022.

I declare under penalty of perjury that the foregoing is true and correct (Texas Civil Practice & Remedies Code 132.001)

Mark Burke
State of Texas / Pro Se

[1] Zeifman v. Nowlin, 322 S.W.3d 804 (Tex. App. 2010) – Stating trial court's imposition of sanctions can be affirmed on any legal basis relied upon by court.

[2] Zeifman v. Nowlin, 322 S.W.3d 804, 810 (Tex. App. 2010) ("Zeifman was aware that the petition in this case contained allegations and other factual contentions that lacked evidentiary support and were not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.").

[3] See; Kareem K. v. Ida I., No. 21-P-687 (Mass. App. Ct. Mar. 30, 2022), rejecting similar counterclaim allegations – "The plaintiff again claimed that the defendant committed three or more acts of **harassment** by "**slandering**" him on social media and "**harassing** [his] staff through email, phone calls, as well as **stalking** them on social media." He further claimed that he "employ[ed] a lot of young ladies . . . , and they were extremely concerned for their **safety**.""

[4] As stated, Plaintiff has checked the response which was filed on Friday, 16 Dec., 2022, however, affidavits and exhibits should be filed separately. There was no affidavit submitted before the deadline of Monday, Dec. 2022 as per the screenshot, taken on Dec. 20, 2022 shows. See Exhibit:

"Screenshot of Docket in Case No. 202268307 taken on Tuesday, Dec. 20, 2022 at 1400 hrs CST".

[5] Exhibit "**Response to Plea in Abatement with No Affidavit is Untimely and Void**".

[6] **Penn Warranty v. Digiovanni**, 10 Misc. 3d 998, 1007 (N.Y. Sup. Ct. 2005) ("The court has already held in this decision that the Web site **constitutes constitutionally protected opinion**. Since defendant has the right to express his opinion to the public about plaintiff's services, the "**threat**" to express such personal opinion cannot be actionable **as coercion, extortion or any related tort.**"). – This included **harassment** in the opinion.

[7] **Brewer v. Capital Cities/ABC, Inc.**, 986 S.W.2d 636, 643 (Tex. App. 1998).

[8] **Glassdoor, Inc. v. Andra Grp., LP**, 575 S.W.3d 523 (Tex. 2019).

[9] See Exhibit: "**Tagged Articles Layrisson**"

[10] Exhibit: "**Margaret Louie & Layrisson \$2,326 Donation to Judge Lauren Reeder (2022)**".

[11] Exhibit: "**Louie Layrisson \$500 Donation to Judge Lauren Reeder (2022)**".

[12] Exhibit: "**John Serpe \$250 Donation to Judge Lauren Reeder (2022)**".

[13] Exhibit: "**Serpe Andrews, PLLC, \$2,500 Donation to Judge Lauren Reeder (2022)**".

[14] **Rogers v. Bradley**, 909 S.W.2d 872, 873 (Tex. 1995) ("Footage of then-Justice Mauzy, who did not participate in the forum, was taken from a 1987 **CBS 60 Minutes** broadcast entitled "**Justice for Sale,**" in which he appeared to defend the then current system of financing Texas judicial campaigns. ").

[15] See; Federalist Society YouTube Video, Oct 2, 2019.
<https://www.youtube.com/watch?v=SJeZGzGpxJM> , last visited Dec. 18, 2022.

[16] **Rogers v. Bradley**, 909 S.W.2d 872, 873 (Tex. 1995) ("**Rule 18b** provides in relevant part that a judge "**shall recuse** himself in any proceeding in which . . . his impartiality might reasonably be questioned." Tex.R.Civ.P. 18b(2)(a). **The language is imperative and mandatory, not permissive or discretionary**; the standard is objective, not subjective.").

[17] "**131 Federal Judges Broke the Law by Hearing Cases Where They Had a Financial Interest** – The judges failed to recuse themselves from 685 lawsuits from 2010 to 2018 involving firms in which they or their family held shares, a Wall Street Journal investigation found." – Wall Street Journal, **Sept. 28, 2021** – last visited Dec. 18, 2022.

[18] See; **Roberts v. Wal-Mart La., LLC**, No. 22-30067 (5th Cir. Dec. 8, 2022); Above the Law article, **Dec. 14, 2022**: "Sure, This Federal Judge Was Supposed To Recuse Herself But 5th Circuit Says Too Bad, So Sad – There's definitely a message here"

[19] "We must rebuild our legal culture so that both the legal profession and the

People re-embrace the principle, implicit in a written constitution, that the law is not something to be shaped—as a potter molds clay. Rather, it is to be dispassionately applied. **The judge's task is to apply the law, not to invent it.**", Sen. Cruz: **We Have the Opportunity to Revive the Rule of Law in America**, Sen. Ted Cruz, **Nov 18, 2016**. (Last visited Dec. 18, 2022).

[20] For example, online background check vendors include, but not exhaustive; Instantcheckmate.com, Truthfinder.com, Seekverify.com, and Intelius.com.

[21] **U.S. v. White**, 779 F. Supp. 2d 775, 803 (N.D. Ill. 2011) ("And this highly protective standard applies to the type of speech at issue here—internet communications disclosing personal information about others—even when that speech may tend to alarm or intimidate the persons so identified or expose them to unwanted attention from others").

[22] **Lamparello v. Falwell**, 420 F.3d 309, 311 (4th Cir. 2005) ("Christopher Lamparello appeals the district court's order **enjoining him from maintaining a gripe website critical of Reverend Jerry Falwell**. For the reasons stated below, **we reverse.**"). Note: Plaintiff is asserting the **definition of a gripe site**, not trademark, or cybersquatting of domain name(s), which is not an issue in this case.

[23] **TMI, Inc. v. Maxwell**, 368 F.3d 433 (5th Cir. 2004).

[24] Exhibit: "**Spoilation Letter I**".

[25] See Exhibit "**Dr. Who 1**".

[26] A full site map of the gripe site at kingwooddr.com is provided as Exhibit "**Sitemap Page**" (as at Dec. 19, 2022); as well as Exhibit copies of the pages mentioned in the legal and contact menu (as at Dec. 19, 2022), namely; Exhibit "**What is a Gripe Site?**"; Exhibit "**Contact Page**"; Exhibit "**Fair Use Page**"; Exhibit; "**Privacy Page**"; Exhibit "**Terms Page**".

[27] Mark Burke owns and operates another personal gripe site at **lennoxaircon.com**. To date, Lennox Industries has not filed any copyright, stalking, harassment, defamation or tortious interference lawsuits or counterclaims whilst defending Mark Burke's small claims case currently pending a date for trial in Harris County Justice of the Peace Precinct 4, Place 2, cause no. 224200352205.

[28] See Plaintiff's **Plea in Abatement**, Dec. 8, 2022, p. 11, including footnote 6.

[29] Plaintiff published his gripe site (kingwooddr.com) 5 days after his own Police report, (Exhibit: "**Imposter Doctor Police Report and Follow Up**" 😊 categorized by Kingwood Police Officer Brown in his report as "**Stalking**", (Exhibit: "**Police Report Incident Receipt: Stalking by Imposter Doctor**") in part, to alert citizens of **a threat to their own privacy and safety** while attending HCA Kingwood Hospital (a roaming Imposter Doctor, calling himself Dr. Aguilar), as a matter of serious public concern.

[30] **Hill v. Heritage Resources, Inc.**, 964 S.W.2d 89, 115 (Tex. App. 1998) ("All contracts are not subject to interference. There must at least be a "valid" contract.").

[31] Johnson v. Whitney Sand and Gravel, 828 S.W.2d 801, 805 (Tex. App. 1992) (“**deliberate hindrance** of the discovery process justifies the conclusion that **their counterclaim lacked merit** and because of their **callous disregard for their responsibilities** of discovery, **dismissal of the counterclaim did not violate their due-process rights.** ”)

[32] “...or getting ambushed at the hearing”, February 20, 2012, (**last visited Dec. 18, 2022**). – Exhibit: “**Turning a TRO Into an Injunction (Ambush)**”.

[33] Relying upon State Bar of Texas **profile for Nicole G. Andrews**, Bar Card Number: 00792335, TX License Date: 05/05/1995.

[34] Exhibit: “**Rule 193.7 Violation**”.

[35] Ponce v. Comm’n For Lawyer Discipline, No. 04-20-00267-CV, at *10 (Tex. App. May 25, 2022) (“Rule 8.04(a)(3) provides that “[a] lawyer shall not: . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation.” Tex. Disciplinary R. Prof’l Conduct 8.04(a)(3). Fraud is defined under the rules as conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information. Id. Any conduct involving dishonesty, deceit, or misrepresentation is also prohibited by Rule 8.04(a)(3). See id.”)

[36] Eugene Volokh, pro se, First Amendment Clinic UCLA School of Law (Institutional affiliation for identification purposes only).

[37] The per event indemnity insurance limit on HCA claims is \$5,000,000. See; DEFENDANT CHCA WEST HOUSTON, L.P. D/B/A HCA HOUSTON HEALTHCARE WEST F/K/A WEST HOUSTON MEDICAL CENTER’S FIRST AMENDED RESPONSE TO PLAINTIFF’S REQUEST FOR DISCLOSURES AND DESIGNATION OF EXPERT WITNESSES: “Produce any discoverable indemnity and insuring agreements. RESPONSE: Defendant is self-insured for up to five million dollars per occurrence.”, **Zhang v HCA Houston Healthcare West et al**, CAUSE NO. 2020-21253, p. 35, filed Jul. 11, 2022.

[38] Brecheisen v. Tessa Dawn Brecheisen, Michael Keith Brecheisen, & Rabo Agrifinance, Inc., No. 07-14-00105-CV, at *12 (Tex. App. Feb. 22, 2016) (“The doctrine of “unclean hands” bars equitable relief sought by “one whose conduct in connection with the same matter or transaction has been unconscientious, unjust, or marked by a want of good faith, or one who has violated the principles of equity and righteous dealing.””).

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- **ATTORNEY-CLIENT PRIVILEGE,**
- **ATTORNEY-CLIENT PRIVILEGE IS LIMITED,**
- **attorneys,**
- **automatic recusal,**
- **Background checks,**
- **baker botts,**
- **Barrett v. Rosenthal,**
- **baseless Counterclaim,**
- **bench trial,**
- **besmirch the reputation of HCA Kingwood's counsel,**
- **blogs,**
- **boilerplate,**
- **burden of showing a prima facie case,**
- **Cantu v. Comm'n for Lawyer Discipline,**
- **chill free speech,**
- **Clarke v. American Commerce Nat. Bank,**
- **congress,**
- **Copyright Disclaimer under section 107 of the Copyright Act of 1976,**
- **corporate headshots,**
- **COUNTERCLAIM IS SOAKED IN DEFAMATION CLAIMS,**
- **Courtlistener.com,**
- **CROSSED THE LINE,**
- **cumulative misconduct,**

- **D. Colorado,**
- **database of Judge's private shareholdings is public information,**
- **deceitful,**
- **Democratic candidate,**
- **digital publishing platform,**
- **dishonest,**
- **disqualification,**
- **District Court,**
- **Dolcefino.com,**
- **donations to judicial campaigns in texas,**
- **Dr Aguilar,**
- **Emami v. Emami,**
- **embarrassed,**
- **Engagement Letter,**
- **evil act,**
- **Ex-Parte Temporary Restraining Order ("TRO"),**
- **expert witness,**
- **fair use,**
- **fair use doctrine,**
- **Fair Use Policy,**
- **Federal criminal case,**
- **federalist society,**
- **felony criminal charges,**
- **fifth circuit,**
- **first amendment,**
- **First Amendment protection for speech over the Internet,**
- **for-profit HCA Healthcare (NYSE Symbol: HCA),**
- **former Chief Judge of Texas Supreme Court,**
- **Former Emergency Care Patient,**
- **fraudulent,**
- **Free Law Project,**
- **freedom of speech,**
- **full trial on the merits,**
- **GENERALIZED CLAIMS ARE INSUFFICIENT TO WARRANT INJUNCTIVE RELIEF,**
- **GENERALIZED TARGETING IS NON-SPECIFIC,**
- **glassdoor reviews,**
- **gripe site,**
- **GTE Mobilnet of South Texas Ltd. Partnership v. Cellular Max Inc.,**
- **harassed,**
- **Harassment,**
- **Harris County District Court,**
- **hca healthcare,**
- **hca healthcare rambo litigation,**
- **HCA holds the record for the largest Health Care FRAUD in American history,**
- **hca houston lawyers,**
- **hca kingwood hospital,**
- **HCA KINGWOOD SAFETY SUCKS,**

- **HCA LAWYERS: LET'S WALK BACK OUR DEFAMATION CLAIMS,**
- **healthcare facilitie,**
- **healthcare vertical,**
- **Hon. Tom Phillips,**
- **Honorable Judge Lauren Reeder,**
- **How They Treat Staff,**
- **immediate action,**
- **immense public scrutiny,**
- **IMMINENT DANGER,**
- **immunity,**
- **imposter doctor,**
- **In-Kind Contribution,**
- **Inc.,**
- **Int'l Harvester v. Farm. Merch. Nat,**
- **INTENTIONALLY DELAYING BY MULTIPLYING PROCEEDINGS,**
- **intimidate,**
- **investigative journalists,**
- **Jeffrey Allen Addicks,**
- **John Serpe,**
- **judges,**
- **Judicial Campaign Contributions Under the Spotlight in Texas,**
- **judicial privilege,**
- **Jury Trial,**
- **Justia.com,**
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- **kingwooddr.com,**
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- **lawyers,**
- **life liberty and property,**
- **louie layrisson,**
- **louis layrisson,**
- **Luo v. Wang,**
- **Madison Addicks,**
- **malicious tactics,**
- **Margaret Layrisson,**
- **Margaret Louie and Layrisson,**
- **Markel v. World Flight,**
- **misdemeanor criminal charges,**
- **negative light,**
- **negative publicity,**
- **nepotism,**
- **New Mexico,**
- **news media,**
- **nicole andrews,**
- **Nicole Andrews of Serpe Andrews,**
- **NICOLE G. ANDREWS,**
- **NO ACTUAL DAMAGES OR LOSS,**

- **NO PROXIMATE CAUSE OR INJURY,**
- **NO WILLFUL INTERFERENCE,**
- **no-evidence bench trial,**
- **non-attorney,**
- **non-prisoner,**
- **Notice of Objection,**
- **offended,**
- **online legal web publishing portals,**
- **partial summary judgment,**
- **PERCEIVED THREATS,**
- **permanent injunction,**
- **perpetuate testimony,**
- **PLAINTIFF TOLD THE TRUTH IN HIS MOTION(S) AND THAT'S JUST WRONG,**
- **PLAINTIFF'S WEBSITE IS A WEAPON,**
- **plea in abatement,**
- **police report,**
- **Ponce v. Comm'n For Lawyer Discipline,**
- **premeditated,**
- **prior cases,**
- **Prior Restraint,**
- **pro se,**
- **profiles,**
- **protective order,**
- **public communications,**
- **publishing statements designed to harass and intimidate,**
- **qualified nurse,**
- **rambo litigation,**
- **Referral to the State Bar of Texas for Discipline,**
- **republishing content,**
- **resumes,**
- **retaliation,**
- **Reuters.com,**
- **Rizk v. Financial Guardian Insurance Agency Inc.,**
- **RULE 193.7,**
- **rule 91a,**
- **Sanction and Disqualification Motion,**
- **sanctions,**
- **scraped,**
- **Seattle Times Co. v. Rhinehart,**
- **SEC. 73.001. ELEMENTS OF LIBEL,**
- **Section 230 of the Communications Decency Act (CDA),**
- **self-recusal or conflict checks,**
- **sen. ted cruz,**
- **serpe andrews,**
- **serpe andrews pllc,**
- **Sharon Lowman Addicks,**
- **Shell Oil Co. v. Witt,**

- **shell sham legal entity,**
- **Southern District Court in Rusk Street Houston,**
- **Spoilation Letter,**
- **STALKING (Tex. Pen. Code § 42.072),**
- **Stalking and Tortious Interference with Contracts,**
- **State ex Rel. Hill v. Pirtle,**
- **State v. Valerie Saxion Inc,**
- **statebartx.com,**
- **STOP MAKING HOME MOVIES,**
- **subpoena witnesses,**
- **TARGETING MATTERS OF PUBLIC CONCERN,**
- **Tavoulaareas v. Washington Post Co,**
- **ted cruz,**
- **Temporary injunctions are an extraordinary remedy,**
- **Tex. Pen. Code § 42.072(3)(D),**
- **TEX. R. CIV. P. 54,**
- **Texas Civil Practice & Remedies Code 132.001,**
- **Texas Disciplinary Rules of Professional Conduct,**
- **Texas Judicial Selection,**
- **Texas lawyers,**
- **Texas Penal Code Section 42.072,**
- **THE GLASS DOOR IS SHATTERED,**
- **THE JOHN SERPE DEFAMATION DEFENSE CASE,**
- **THE REQUESTED \$500 BOND IS ABSURD,**
- **the Texas Lawyer's Creed,**
- **THEY ALLOW IMPOSTER DOCTORS TO ATTEND TO PATIENTS,**
- **ThomasReuters.com (Westlaw),**
- **tormented,**
- **tortious interference claim,**
- **TORTIOUS INTERFERENCE WITH CONTRACTS,**
- **TRCP for dummies,**
- **txcourts.gov,**
- **U.S. v. Carmichael,**
- **Unconstitutional Violation of Rule 193.7,**
- **unethical,**
- **United States District Judge,**
- **US Courts Administration Office (USAO),**
- **video surveillance footage,**
- **Violation of Rule 193.7,**
- **waive service,**
- **Wal-Mart,**
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