

**IN THE CIRCUIT COURT OF ROBERTSON COUNTY, TENNESSEE
AT SPRINGFIELD**

PEPPER BLACK AND)
S. BRAD DOZIER,)
)
 Plaintiffs,)
)
 v.) Case No. 74CC1-2022-CV-247
)
 THERESA BALDWIN,)
)
 Defendant.)

FILED
KRISTY A. CHOWNING, CLERK

JAN 02 2024
AT 1:56 O'CLOCK P M
BY # [Signature]

**ORDER GRANTING DEFENDANT’S TENN. CODE ANN. § 20-17-104(a) PETITION TO
DISMISS THE PLAINTIFFS’ AMENDED COMPLAINT PURSUANT TO THE
TENNESSEE PUBLIC PARTICIPATION ACT**

This matter came before the Court for hearing on December 5, 2023, upon Defendant Theresa Baldwin’s *Tenn. Code Ann. § 20-17-104(a) Petition to Dismiss the Plaintiffs’ Amended Complaint Pursuant to the Tennessee Public Participation Act*. Upon consideration of the Defendant’s TPPA Petition, the Defendant’s Memorandum of Law in Support of her TPPA Petition, and the exhibits appended to the Defendant’s Memorandum (filed April 24, 2023); the Plaintiffs’ Response in opposition to the Defendant’s TPPA Petition and the exhibits appended to the Plaintiffs’ Response (filed July 5, 2023); the Defendant’s Reply to the Plaintiffs’ Response (filed July 7, 2023); the Plaintiffs’ supplemental filing titled “The Testimony of Theresa Baldwin” and the deposition testimony cited by the Plaintiffs in that filing (filed November 22, 2023); the Defendant’s Response to the Plaintiffs’ supplemental filing and the deposition testimony cited by the Defendant in that filing (filed November 30, 2023); Plaintiff S. Brad Dozier’s October 17, 2023 public censure, of which the Court has taken judicial notice; and the arguments of counsel, the Court rules as follows:

1. Under Tenn. Code Ann. § 20-17-105(a), the Defendant has met her “burden of making a prima facie case that a legal action against the petitioning party is based on, relates to, or is in response to that party’s exercise of the right to free speech, right to petition, or right of association.”

2. Under Tenn. Code Ann. § 20-17-105(b), the Plaintiffs’ Amended Complaint must be dismissed because the Plaintiffs have failed to meet their burden of establishing a prima facie case for each essential element of their claims. *See id.* (“If the petitioning party meets this burden, the court shall dismiss the legal action unless the responding party establishes a prima facie case for each essential element of the claim in the legal action.”).

3. Even if the Plaintiffs had met their burden under Tenn. Code Ann. § 20-17-105(b), the Plaintiffs’ Amended Complaint must be dismissed because the Defendant has established valid defenses to the Plaintiffs’ claims. *See* Tenn. Code Ann. § 20-17-105(c) (“Notwithstanding subsection (b), the court shall dismiss the legal action if the petitioning party establishes a valid defense to the claims in the legal action.”).

4. Because the Court has dismissed the Plaintiffs’ Amended Complaint pursuant to the Defendant’s TPPA petition, the Plaintiffs’ claims are dismissed with prejudice. *See* Tenn. Code Ann. § 20-17-105(a) (“If the court dismisses a legal action pursuant to a petition filed under this chapter, the legal action or the challenged claim is dismissed with prejudice.”).

5. Under the mandatory provisions of Tenn. Code Ann. § 20-17-107(a)(1), the Defendant is awarded her court costs, reasonable attorney’s fees, discretionary costs, and other expenses incurred in filing and prevailing upon the petition, which the Defendant shall quantify by motion and set for hearing. *See id.* (“If the court dismisses a legal action pursuant to a petition filed under this chapter, the court shall award to the petitioning party: (1) Court costs, reasonable

attorney's fees, discretionary costs, and other expenses incurred in filing and prevailing upon the petition").

6. The Defendant having sought sanctions under Tenn. Code Ann. § 20-17-107(a)(2), the Parties shall submit supplemental briefing as to the propriety of an award of sanctions, if any, and set the matter for hearing.

As grounds for these rulings, the Court FINDS and ORDERS as follows:

I. LEGAL STANDARD

Tenn. Code Ann. § 20-17-104(a) provides that: "If a legal action is filed in response to a party's exercise of the right of free speech, right to petition, or right of association, that party may petition the court to dismiss the legal action." *See id.* "Such a petition may be filed within sixty (60) calendar days from the date of service of the legal action or, in the court's discretion, at any later time that the court deems proper." Tenn. Code Ann. § 20-17-104(b). "A response to the petition, including any opposing affidavits, may be served and filed by the opposing party no less than five (5) days before the hearing or, in the court's discretion, at any earlier time that the court deems proper." Tenn. Code Ann. § 20-17-104(c).

A Tennessee Public Participation Act (TPPA) petition filed under Tenn. Code Ann. § 20-17-104(a) is subject to a three-step inquiry. *See Pragnell v. Franklin*, No. E2022-00524-COA-R3-CV, 2023 WL 2985261, at *8–12 (Tenn. Ct. App. Apr. 18, 2023) (addressing the "first step of the TPPA dismissal analysis," the "second step of the TPPA dismissal procedure[,] and the "third step of the TPPA's dismissal procedure"). When adjudicating a TPPA petition, only "admissible evidence" may be considered. *See* Tenn. Code Ann. § 20-17-105(d) ("The court may base its decision on supporting and opposing sworn affidavits stating admissible evidence upon which the liability or defense is based and on other admissible evidence presented by the parties.").

At step one of the TPPA's dismissal procedure, the Court must determine whether the petitioning party has "made a 'prima facie case that a legal action against the petitioning party is based on, relates to, or is in response to that party's exercise of the right to free speech[.]'" *Pragnell*, 2023 WL 2985261, at *11 (quoting Tenn. Code Ann. § 20-17-105(a)). If the petitioning Defendant meets her burden at step one, the Court then turns to the second step of the TPPA's dismissal procedure.

At step two of the TPPA's dismissal procedure, the burden shifts to the Plaintiffs to establish a prima facie case for each essential element of their claims. *See Pragnell*, 2023 WL 2985261, at *10 ("The TPPA's burden-shifting framework provides that '[i]f the petitioning party meets this burden [of 'making a prima facie case that a legal action against the petitioning party is based on, relates to, or is in response to that party's exercise of the right to free speech'], the court shall dismiss the legal action unless the responding party establishes a prima facie case for each essential element of the claim in the legal action.'") (quoting Tenn. Code Ann. § 20-17-105(b)). If the Plaintiffs fail to meet their evidentiary burden at this stage, then the Court "shall dismiss" the Plaintiffs' claims. *See* Tenn. Code Ann. § 20-17-105(b).

If the Plaintiffs meet their burden at step two of the TPPA's dismissal procedure, then the Court turns to the third step: whether the Defendant has "establish[ed] a valid defense to the claims in the legal action." *Pragnell*, 2023 WL 2985261, at *12 (quoting Tenn. Code Ann. § 20-17-105(c)). If the Defendant has established a valid defense to the Plaintiffs' claims, then the Court "shall dismiss" the Plaintiffs' claims. *See* Tenn. Code Ann. § 20-17-105(c) ("Notwithstanding subsection (b), the court shall dismiss the legal action if the petitioning party establishes a valid defense to the claims in the legal action.").

For the sake of completeness, all three steps of the TPPA's dismissal procedure are

analyzed below.

II. ADMISSIBLE EVIDENCE

On April 10, 2023—while the Defendant’s original Tennessee Public Participation Act Petition to dismiss the Plaintiffs’ Complaint was pending—the Plaintiffs filed an Amended Complaint. Under Tennessee law, the effect of the Plaintiffs filing an Amended Complaint was to “supersede[] and destroy[] the original as a pleading[,]” *see Hanson v. Levan*, 647 S.W.3d 85, 90 (Tenn. Ct. App. 2021), *app. denied* (Tenn. Jan. 13, 2022), thereby rendering the Plaintiffs’ original complaint “a legal nullity.” *Duffer v. Keystops, LLC*, No. M2011-01484-COA-R3CV, 2012 WL 3104903, at *10 (Tenn. Ct. App. July 31, 2012). Further, “[a]n “amended complaint”, complete *without adoption or reference to the original*, supersedes and destroys the original as a pleading. On the other hand, an “amendment” to a complaint merely modifies the complaint which remains before the court as modified.” *McBurney v. Aldrich*, 816 S.W.2d 30,33 (Tenn. Ct. App. 1991) citing *Louisville & N.R. Co. v. House*, [104 Tenn. 110] 56 S.W. 836 (1900). The Plaintiffs did not adopt or reference the original pleading in the Amended Complaint. Accordingly, only the Plaintiffs’ Amended Complaint and the filings concerning the Plaintiffs’ Amended Complaint are being considered by the Court, and all motions/petitions related to the Plaintiffs’ original complaint are denied as moot.

A. Defendant’s Evidence

On April 24, 2023 the Defendant filed a Tennessee Public Participation Act Petition to dismiss the Plaintiffs’ Amended Complaint and a Memorandum of Law in Support. In support of her TPPA Petition, the Defendant submitted the following evidence:

1. A Declaration from Defendant Baldwin attesting to the truth of her statements, the

facts upon which she based them, and her reasons for making them;¹

2. Plaintiff Black's handwritten apology letter to Ms. Baldwin assuring Ms. Baldwin that Plaintiff Black would not further interfere in Ms. Baldwin's relationship with her daughter and apologizing for doing so;²

3. Plaintiff Dozier's suspension from the practice of law due to his unethical conduct toward multiple clients;³

4. A photograph of the starter fuse that the Plaintiffs removed from Gracie Baldwin's car preventing her from escaping from the Plaintiffs' household;⁴

5. Gracie's email to the Plaintiffs' counsel stating that Ms. Baldwin's statements are true;⁵

6. Photographic evidence that Plaintiff Black had assaulted her own daughter,⁶ which prompted Ms. Baldwin's DCS report;

7. Ms. Baldwin's report to DCS regarding the assault and accompanying evidence that this lawsuit was filed promptly after she made her report;⁷

8. The sworn Declaration of Gracie Baldwin—every page of which was initialed by Gracie Baldwin, and one paragraph of which (§ 25) Gracie Baldwin made a correction to by hand—attesting, among other things, to the truth of all of Ms. Baldwin's statements and the Plaintiffs' attempts to manipulate Gracie;⁸

9. A statement from the Plaintiffs' daughter (Cayenne Black) to Ms. Baldwin stating

¹ Ex. A to Def.'s Mot. and Pet. to Dismiss Amended Compl.

² Ex. A to Def.'s Mot. and Pet. to Dismiss Amended Compl. at Ex. 1.

³ Ex. A to Def.'s Mot. and Pet. to Dismiss Amended Compl. at Ex. 2.

⁴ Ex. A to Def.'s Mot. and Pet. to Dismiss Amended Compl. at § 50.

⁵ Ex. A to Def.'s Mot. and Pet. to Dismiss Amended Compl. at Ex. 3.

⁶ Ex. A to Def.'s Mot. and Pet. to Dismiss Amended Compl. at Ex. 4.

⁷ Ex. A to Def.'s Mot. and Pet. to Dismiss Amended Compl. at Ex. 5.

⁸ Ex. B to Def.'s Mot. and Pet. to Dismiss Amended Compl.

that: “DCS just showed up at my house looking for Gracie. she still doesn’t have her phone and neither do I. i don’t know what is gonna happen but Gracie wants to be with you.”⁹;

10. A Declaration from Brooke Modlin, Gracie’s therapist, attesting that she shared with Ms. Baldwin her opinion that “Pepper Black and Brad Dozier through their actions with Gracie have proven themselves to be unsafe and meddling” toward Gracie;¹⁰

11. Plaintiff Black’s many public postings about her children, her preexisting medical conditions, and the fact that she sometimes wants “to go postal on” her children;¹¹

12. Plaintiff Dozier’s pre-existing financial difficulties, his unpaid taxes, substantial debts, his mistreatment of his children, and his in-court admissions regarding his preexisting financial difficulties;¹²

13. Plaintiff Dozier’s poor professional reputation as recounted by his clients both before and after his suspension from the practice of law due to multiple ethical violations toward his clients;¹³ and

14. The Better Business Bureau’s characterization of Plaintiff Black’s company as a “[m]ultilevel marketing” company.¹⁴

After the Court permitted the Plaintiffs to depose the Defendant, the Defendant additionally submitted the following evidence as permitted by the Court’s order:

15. Pages 60:9–13; 91:11–16, and 190:7–226:7 of the Defendant’s deposition; the exhibits that accompany that testimony; and the additional limited portions of her deposition cited in the Defendant’s “Response to Plaintiffs’ Supplemental Filing Titled ‘The Testimony of Theresa

⁹ Ex. C to Def.’s Mot. and Pet. to Dismiss Amended Compl.

¹⁰ Ex. D to Def.’s Mot. and Pet. to Dismiss Amended Compl.; *id.* at ¶¶ 7, 10.

¹¹ *See generally* Ex. E to Def.’s Mot. and Pet. to Dismiss Amended Compl.

¹² Ex. F. to Def.’s Mot. and Pet. to Dismiss Amended Compl.

¹³ Ex. G to Def.’s Mot. and Pet. to Dismiss Amended Compl.

¹⁴ Ex. H to Def.’s Mot. and Pet. to Dismiss Amended Compl.

Baldwin”); and

16. Plaintiff S. Brad Dozier’s October 17, 2023 public censure from the Board of Professional Responsibility of the Tennessee Supreme Court, of which the Court has taken judicial notice.

In their Response to the Defendant’s Tennessee Public Participation Act Petition to dismiss the Plaintiffs’ Amended Complaint, the Plaintiffs have not objected to the admissibility of any of the evidence submitted by the Defendant other than the Declaration of Brooke Modlin. *See* Pls.’ Jul. 5, 2023 Resp. at 10. Accordingly, the Court determines that all of the evidence submitted by the Defendant to which the Plaintiffs have not objected is admissible, and the Court considers the evidence for its natural probative effects. *See Bannor v. Bannor*, No. E2022-00507-COA-R3-CV, 2023 WL 3071341, at *9 (Tenn. Ct. App. Apr. 25, 2023) (“We have explained that when a party fails to object to the admissibility of evidence, ‘the evidence becomes admissible notwithstanding any other Rule of Evidence to the contrary, and the [trier of fact] may consider that evidence for its ‘natural probative effects as if it were in law admissible.’ ”) (quoting *Pearson v. Ross*, No. W2011-00321-COA-R3CV, 2011 WL 6916194, at *4 (Tenn. Ct. App. Dec. 28, 2011) (in turn quoting *Dixon v. Cobb*, No. M2006-00850-COA-R3-CV, 2007 WL 2089748, at *8 (Tenn. Ct. App. July 12, 2007))).

As to Ms. Modlin’s Declaration, the Plaintiffs have characterized it as an incompetent expert declaration, and they assert that “[s]hould the Court consider this junk science pronouncement, Plaintiffs should have the right to depose her, as expressly permitted by the Tennessee Rules of Civil Procedure.” *See* Pls.’ Jul. 5, 2023 Resp. at 10. The Defendant has explained, however, that:

Ms. Modlin’s Declaration has not been offered to establish the truth or even the correctness of her opinion. Instead, Ms. Modlin’s Declaration proves that Ms.

Baldwin was told by Gracie’s therapist that the Plaintiffs were unsafe toward Gracie—an opinion that Ms. Baldwin was entitled to believe was true whether it was correct or not.”

Def.’s Jul. 7, 2023 Resp. at 4–5.

Thus, the declaration is not being tendered as an expert opinion, and it is relevant to Ms. Baldwin’s state of mind even if the conclusions that Ms. Modlin reached were not true. *See Finney v. Jefferson*, No. M2019-00326-COA-R3-CV, 2020 WL 5666698, at *6 (Tenn. Ct. App. Sept. 23, 2020) (“The statements by school staff members to the Jeffersons about Ms. Finney’s conduct are relevant even if they are not true.”). The Plaintiffs also did not file a motion to lift the TPPA’s discovery stay for the purpose of deposing Ms. Modlin, and they were permitted to examine the Defendant without restriction, including as to her state of mind. As a result, the Declaration of Brooke Modlin is admitted and will be considered by the Court.

B. Plaintiff’s Evidence

In their Response to the Defendant’s TPPA Petition to Dismiss the Plaintiffs’ Amended Complaint, the Plaintiffs reference the following evidence:

1. Text messages between Gracie Baldwin and Theresa Baldwin, which the Plaintiffs’ Response describes as “Exhibit 1”;
2. “Gracie’s possessions in the garage,” which the Plaintiffs’ Response describes as “Exhibit 2”; and
3. “Records of the Robertson County Sheriff’s Office,” which the Plaintiffs’ Response describes as “Exhibit B to Brad Dozier’s Declaration; and
4. “The Preliminary Investigative Report of December 7, 2020,” which the Plaintiffs’ Response describes as “Exhibit A. to Brad Dozier’s Declaration.”

None of these documents were actually filed with the Court, however. Nor did the

Plaintiffs file any Declaration from Brad Dozier with their Response to the Defendant's TPPA Petition to Dismiss the Plaintiffs' Amended Complaint. Accordingly, none of the above evidence, which was not filed, is being considered by the Court or admitted into the TPPA evidentiary record. This determination moots the Defendant's other objections to the evidence.

After filing their Response to the Defendant's TPPA Petition to Dismiss the Plaintiffs' Amended Complaint, the Court granted the Plaintiffs leave to conduct party depositions. *See* Order (Aug. 15, 2023). The Court also permitted the parties "to submit further evidence and arguments derived from the depositions." *See id.* The Plaintiffs then deposed the Defendant.

After taking the Defendant's deposition, on November 22, 2023, the Plaintiffs filed the Defendant's deposition transcript and a supplemental filing titled "The Testimony of Theresa Baldwin" that included citations to the Defendant's deposition testimony. Because the Defendant's deposition testimony is admissible against her, the Court admits the portions of the deposition transcript that have been cited by the Plaintiffs in their supplemental filing. However, only the portions of the Defendant's testimony that have been cited by the Plaintiffs are being considered as the Plaintiffs' evidence for purposes of the TPPA evidentiary record. *Cf. State v. \$133,429 in U.S. Currency*, No. W2022-01075-COA-R3-CV, 2023 WL 6843430, at *3 (Tenn. Ct. App. Oct. 17, 2023) ("We have often noted that " '[j]udges are not like pigs, hunting for truffles that may be buried in the record, or, for that matter, in the parties' briefs on appeal.' " ") (quoting *State ex rel. Comm'r of Dep't of Transp. v. Pagidipati Fam. Gen. P'ship*, No. W2022-00078-COA-R3-CV, 2023 WL 4714915, at *7 (Tenn. Ct. App. July 25, 2023) (quoting *Nunley v. Farrar*, No. M2020-00519-COA-R3-CV, 2021 WL 1811750, at *6 (Tenn. Ct. App. May 6, 2021))); *see also State v. Bristol*, 654 S.W.3d 917, 924–25 (Tenn. 2022) (holding that the party-presentation principle is a judicial mandate).

III. TPPA DISMISSAL ANALYSIS

A. Step One

“[T]he threshold step in [this Court’s] analysis must be to determine whether the claim falls within the TPPA’s parameters.” *Reiss v. Rock Creek Constr., Inc.*, No. E2021-01513-COA-R3-CV, 2022 WL 16559447, at *6 (Tenn. Ct. App. Nov. 1, 2022). “This is determined by analyzing whether the petitioning party has demonstrated ‘a prima facie case that a legal action against the petitioning party is based on, relates to, or is in response to that party’s exercise’ of certain protected rights.” *Id.* (quoting Tenn. Code Ann. § 20-17-105(a)).

Here, as the petitioning party, the Defendant asserts that the Plaintiffs’ claims are based on, relate to, or were filed in response to both her “exercise of the right of free speech” and her “right to petition” within the meaning of Tenn. Code Ann. § 20-17-103(3) and Tenn. Code Ann. § 20-17-103(4). Upon review, the Court finds that the Defendant has met her burden of establishing a prima facie case that the Plaintiffs’ legal action is based on, relates to, or is in response to the Defendant’s exercise of the right to free speech and their right to petition as defined by the TPPA under Tenn. Code Ann. § 20-17-105(a) (“The petitioning party has the burden of making a prima facie case that a legal action against the petitioning party is based on, relates to, or is in response to that party’s exercise of the right to free speech, right to petition, or right of association.”). The grounds for this finding are set forth below.

i. Exercise of the right of free speech

Under Tenn. Code Ann. § 20-17-103(3), “[e]xercise of the right of free speech’ means a communication made in connection with a matter of public concern or religious expression that falls within the protection of the United States Constitution or the Tennessee Constitution[.]” *Id.* Further, under Tenn. Code Ann. § 20-17-103(6):

“Matter of public concern” includes an issue related to:

- (A) Health or safety;
- (B) Environmental, economic, or community well-being;
- (C) The government;
- (D) A public official or public figure;
- (E) A good, product, or service in the marketplace;
- (F) A literary, musical, artistic, political, theatrical, or audiovisual work; or
- (G) Any other matter deemed by a court to involve a matter of public concern; and

Id.

Upon consideration of the admissible evidence in the TPPA record, the Court finds that the Defendant has met her burden of making a prima facie case that she has been sued for speech-based tort claims arising from statements concerning an issue of “[h]ealth or safety” (her daughter’s), *see* § 20-17-103(6)(A); broader issues of “community well-being[,]” *see* § 20-17-103(6)(B); “[t]he government” (law enforcement, child custody proceedings, and DCS), *see* § 20-17-103(6)(C); and other “matter[s] of public concern” (including, for instance, two adults allegedly taking a minor child into their home, into their bed, and across state lines without her mother’s permission, or Ms. Black’s alleged abuse of her own child), *see* § 20-17-103(6)(G). Thus, absent countervailing proof, the evidence submitted by Ms. Baldwin establishes a prima facie case that the alleged communications over which she has been sued fall within the protection of the United States Constitution or the Tennessee Constitution.

The Plaintiffs’ contrary arguments are not persuasive. In their written submission, as part of a section titled “MS. BALDWIN’S TIKTOK POSTS DO NOT SPEAK TO MATTERS OF PUBLIC CONCERN,” the Plaintiffs assert that:

Theresa Baldwin was resentful of the relationship Plaintiffs had with her daughter. Hoping to find allegations she could publish to harass and humiliate Ms. Black and Mr. Dozier, she sought out Ms. Black's former husband, Ted Aulds concerning a supposed "assault" upon Ms. Black's daughter by her mother.

Aulds allegedly told her of this "assault," but he did not witness it if it occurred at all. This was a year and a half after the trip to Florida. No admissible evidence from him has been tendered to this Court. [Baldwin Dep. 153:3 – 154:23].

The right to free speech concerning public issues and the right to petition Congress and elected officials are precious rights. To use these important constitutional rights merely to advance private grievances trivializes the First Amendment and was never contemplated by our founders.

Pls.' Filing "The Testimony of Theresa Baldwin" at 2. Plaintiffs' counsel also argued at the hearing of this matter that the TPPA only applies to political speech.

The above passage from the Plaintiffs' filing titled "The Testimony of Theresa Baldwin" does not address or concern the alleged statements over which the Plaintiffs have sued the Defendant, however. The Plaintiffs' claim that the Tennessee Public Participation Act only concerns political speech is also wrong. *See, e.g.*, Tenn. Code Ann. § 20-17-103(6) (defining as a "[m]atter of public concern" several issues unrelated to political speech); *Nandigam Neurology, PLC v. Beavers*, 639 S.W.3d 651, 654 (Tenn. Ct. App. 2021) (applying the TPPA to "an online Yelp! review regarding [a private neurologist] and his practice"). As a result, the Court finds that the Defendant has established a prima facie case that the Plaintiffs' legal action against her is based on, relates to, or is in response to her exercise of the right of free speech as defined by Tenn. Code Ann. § 20-17-103(3) and (6).

ii. Exercise of the right to petition

Under Tenn. Code Ann. § 20-17-103(4),

"Exercise of the right to petition" means a communication that falls within the protection of the United States Constitution or the Tennessee Constitution and:

(A) Is intended to encourage consideration or review of an issue by a

federal, state, or local legislative, executive, judicial, or other governmental body; or

(B) Is intended to enlist public participation in an effort to effect consideration of an issue by a federal, state, or local legislative, executive, judicial, or other governmental body;

Id.

Here, the Court finds that the Defendant has established a prima facie case that the Plaintiffs' legal action against her is based on, relates to, or is in response to the Defendant's exercise of her right to petition. Absent countervailing proof, Ms. Baldwin has established with admissible evidence that this action was filed shortly after and in response to Ms. Baldwin reporting the Plaintiffs to DCS. As a result, the Court finds that the Defendant has established that the Plaintiffs have sued her for a presumptively protected communication that was intended to encourage consideration or review of an issue by a governmental body. *See* Tenn. Code Ann. § 20-17-103(4)(A).

* * *

For the foregoing reasons, the Court finds that the Defendant has met her burden at step one of the TPPA's dismissal procedure "of making a prima facie case that a legal action against [her] is based on, relates to, or is in response to [her] exercise of the right to free speech, right to petition, or right of association." *See* Tenn. Code Ann. § 20-17-105(a).

B. Step Two

Where, as here, a petitioning party has met her burden at step one of the TPPA's dismissal procedure, "the court shall dismiss the legal action unless the responding party establishes a prima facie case for each essential element of the claim in the legal action." *See* Tenn. Code Ann. § 20-17-105(b); *see also Pragnell*, 2023 WL 2985261, at *11 ("Following its determination that Defendants had met their burden of establishing a prima facie case in step one, the trial court

appropriately shifted the burden to Plaintiffs to establish a ‘prima facie case for each essential element of the claim in the legal action,’ *see* Tenn. Code Ann. § 20-17-105(b), which in this case would require establishment of a *prima facie* case of defamation.”). Because only “admissible evidence” may be considered at this stage, *see* Tenn. Code Ann. § 20-17-105(d), the unsworn allegations in the Plaintiffs’ Amended Complaint may not be considered.

Here, the Plaintiffs have the “burden of presenting a prima facie case” by establishing, at minimum: (1) that the allegedly false statements over which they have sued were made; (2) their asserted damages; and (3) that the statements at issue were made by Ms. Baldwin with the requisite mens rea. This burden must be met with “admissible evidence.” *See* Tenn. Code Ann. § 20-17-105(d). As a result, a plaintiff’s failure to respond to a TPPA Petition with admissible evidence makes dismissal “mandatory.” *Nandigam Neurology, PLC*, 639 S.W.3d at 668. As the Court of Appeals explained in *Nandigam*:

The record reflects that the general sessions court was well-founded in its conclusion that Plaintiffs failed to meet their burden of proof under section 20-17-105(b), insofar as Plaintiffs essentially failed to respond to Defendant's TPPA petition at all. Indeed, under section 20-17-105(b), dismissal of Plaintiffs’ legal action was mandatory unless Plaintiffs “establishe[d] a prima facie case for each essential element of the[ir] claim[s].”

Id. (alterations in original).

Upon review of the admissible evidence submitted by the Plaintiffs, the Court initially finds that the Plaintiffs have made no attempt to explain or develop an argument about which portions of Ms. Baldwin’s testimony are being used to support their respective tort claims in this case. This results in waiver. As the Tennessee Supreme Court has held, “[i]t is not the role of the courts, trial or appellate, to research or construct a litigant’s case or arguments for him or her, and where a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived.” *See Sneed v. Bd. of Pro. Resp. of Supreme Ct.*, 301 S.W.3d 603,

615 (Tenn. 2010).

Waiver notwithstanding, the Court finds that the Plaintiffs have not introduced into the TPPA record evidence of the statements over which they are suing. The Court finds that the statements have not been introduced into the TPPA evidentiary record either in context or at all, though the statements must be introduced in context to allow the trier of fact to determine whether they may be actionable. *See, e.g., Loftis v. Rayburn*, No. M2017-01502-COA-R3CV, 2018 WL 1895842, at *5 (Tenn. Ct. App. Apr. 20, 2018) (“When considering whether a statement is capable of being defamatory, it must be judged within the context it is made.”); *Evans v. Nashville Banner Pub. Co.*, No. 87-164-II, 1988 WL 105718, at *5 (Tenn. Ct. App. Oct. 12, 1988) (“All parts of a published article should be construed as a whole. . . . Thus, we must view the photograph and its outline in the context of the entire article.” (citing *Black v. Nashville Banner Publishing Co.*, 141 S.W.2d 908, 912 (Tenn. 1939))), *no app. filed*. Further, when asked during her deposition about a specific statement that is critical to the Plaintiffs’ claims in this case, the Court finds that Ms. Baldwin denied making it. *See Depo. of Theresa Baldwin at 91:11–16* (Q. “Why did you call Mr. Dozier a pedophile?” . . . A “I never called him a pedophile.”). Thus, the only admissible evidence in the TPPA record regarding this statement is that it was *not* made. *Id.*

The Court finds that the Plaintiffs have the burden to introduce into the TPPA evidentiary record the statements over which they are suing. *See McGuffey v. Belmont Weekday Sch.*, No. M2019-01413-COA-R3-CV, 2020 WL 2754896, at *15–*18 (Tenn. Ct. App. May 27, 2020) (“At trial, Ms. McGuffey identified the first statement (the February 1, 2015 email) as defamatory, but failed to identify the other three communications. The burden of proof is on the plaintiff to establish the elements of the prima facie case of defamation, which include establishing that there was a defamatory statement. . . . Ms. McGuffey’s false light claims fail for much the same reasons

as her defamation claims. As to all but one of the communications, she failed to identify the communication alleged to be a violation of her privacy at trial and, therefore, failed to establish a key element of her claim.”). The Court finds that the Plaintiffs have not met this burden.

As an explanation for failing to introduce the statements over which they are suing into the TPPA record, Plaintiffs’ counsel argued at the TPPA hearing that the allegations set forth in the Plaintiffs’ Amended Complaint are sufficient to prevail at this stage in proceedings. A TPPA Petition is an evidentiary motion, however. As a result, only “admissible evidence” may be considered, and the unsworn allegations in the Plaintiffs’ Amended Complaint do not qualify. *See* Tenn. Code Ann. § 20-17-105(d). As a result, the Court finds that the Plaintiffs have failed to meet their burden of establishing a prima facie case for their claims because they have not introduced into the record, in context, the statements over which they are suing.

The Court also finds that the Plaintiffs have failed to introduce any admissible evidence into the TPPA record establishing their claimed damages. “Under Tennessee law, a plaintiff is required to prove actual damages in all defamation cases.” *Hibdon v. Grabowski*, 195 S.W.3d 48, 68 (Tenn. Ct. App. 2005). Thus, the Court rejects the Plaintiffs’ argument that the allegations of their Amended Complaint suffice to establish their damages or that Tennessee law allows any of the Plaintiffs’ claims to survive dismissal on a defamation per se theory. The Court accordingly finds that the Plaintiffs’ failure to introduce any admissible evidence—as opposed to mere allegations—of their damages into the TPPA evidentiary record is fatal to their pending claims.¹⁵

¹⁵ Before amending their complaint, the Plaintiffs filed declarations to which the Defendant objected. The Plaintiffs then amended their complaint and modified their allegations, including as to damages. In response to the Plaintiffs’ TPPA Petition to dismiss the Plaintiffs’ Amended Complaint, though, the Plaintiffs did not submit any declarations, and Plaintiffs’ counsel argued at the TPPA hearing that the allegations of damages in the Plaintiffs’ Amended Complaint sufficed. Accordingly, no declarations from the Plaintiffs are in the TPPA record; the pre-amendment declarations filed by the Plaintiffs are not being considered by the Court; and the Defendant’s earlier objections to the Plaintiffs’ declarations are pretermitted as moot.

The Court finds that dismissal of the Plaintiffs' defamation and other claims¹⁶ is "mandatory" as a result. *See Nandigam Neurology, PLC*, 639 S.W.3d at 668.

Nor do the Plaintiffs' filings demonstrate how or why they believe that the evidence they have submitted satisfies each essential element of the tort claims they have asserted in this action. The Plaintiffs' supplemental filing titled "The Testimony of Theresa Baldwin" makes no attempt to connect the cited portions of Ms. Baldwin's deposition to the essential elements of their respective tort claims in this action or to demonstrate how those claims have been established based on the testimony provided. Much of the filing has nothing to do with the tort claims asserted in this case.

For instance, both Plaintiffs have sued Ms. Baldwin for "intentional interference with business relationships." *See* Pls.' Amended Answer at 15–16. What they have not done, though, is introduced evidence: (1) that any such relationships exist; (2) of any customer or prospective customer allegedly interfered with; (3) that the Defendant communicated with any such customer; (4) that any customer or prospective customer attributes their alleged decision not to do business with the Plaintiffs to the Defendant; or (5) that anything the Defendant said—as opposed to, for example, Mr. Dozier's widely publicized and serious professional misconduct—caused whatever

¹⁶ "A party may not skirt the requirements of defamation law by pleading another, related cause of action." *Boladian v. UMG Recordings, Inc.*, 123 F. App'x 165, 169 (6th Cir. 2005) (unpublished) (citing *Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 53 (1988)). As a result, a litigant may not seek to "bypass the First Amendment" by asserting claims for torts like intentional interference with business or intentional infliction of emotional distress. *See Seaton v. TripAdvisor LLC*, 728 F.3d 592, 601 n.9 (6th Cir. 2013) ("Seaton's claims for false-light invasion of privacy, trade libel/injurious falsehood, and tortious interference with prospective business relationships appear to be an attempt to bypass the First Amendment." (citing *Compuware Corp. v. Moody's Inv'rs Servs., Inc.*, 499 F.3d 520, 529 (6th Cir. 2007))). Thus, all of the Plaintiffs' additional tort claims are subject to the same heightened constitutional requirements as their defamation claims, *see id.*, because a plaintiff "may not use related causes of action to avoid the constitutional requisites of a defamation claim." *Moldea v. N.Y. Times Co.*, 22 F.3d 310, 319–20 (D.C. Cir. 1994) ("a plaintiff may not use related causes of action to avoid the constitutional requisites of a defamation claim"); *Montgomery v. Risen*, 875 F.3d 709, 713 (D.C. Cir. 2017). *Cf. Loftis v. Rayburn*, No. M2017-01502-COA-R3-CV, 2018 WL 1895842, at *8 (Tenn. Ct. App. Apr. 20, 2018) ("For the reasons we found the statements in Mr. Myers' article fail to imply a defamatory meaning, we also find they are not susceptible to the requisite inferences casting Mr. Loftis in a false light." (citing *West v. Media General Convergence, Inc.*, 53 S.W.3d 640, 645 n.5 (Tenn. 2001))), *no app. filed*.

business loss they claim to have suffered. The Court is thus left to guess why the Plaintiffs believe that these claims and others have been substantiated with evidence and why they should not be dismissed, even though the Defendant has made robust factual and legal arguments supporting her position that the Plaintiffs' claims are inactionable.¹⁷ It is not the Court's role to construct an argument for the Plaintiffs or to search for uncited testimony that could theoretically suffice to meet the Plaintiffs' burden, though, and the Plaintiffs' failure to do so themselves results in waiver. *See Sneed*, 301 S.W.3d at 615 (Tenn. 2010); *\$133,429 in U.S. Currency*, 2023 WL 6843430, at *3; *Bristol*, 654 S.W.3d at 924–25 (Tenn. 2022). Thus, the Court finds that the Plaintiffs have failed to meet their evidentiary burden at step two of the TPPA's dismissal analysis.

* * *

For the foregoing reasons, the Court finds that the Plaintiffs have failed to establish a prima facie case for each essential element of the claims they have asserted in their Amended Complaint. As a result, “the court shall dismiss the legal action” under Tenn. Code Ann. § 20-17-105(b).

C. Step Three

Even if the Court were to reach step three of the TPPA's dismissal procedure, the Court finds that the Defendant has established valid defenses to liability in this action. *See* Tenn. Code Ann. § 20-17-105(c). In particular, for the reasons set forth in the Defendant's filings in support of her TPPA Petition, which are incorporated into this order by reference, the Court finds that the Defendant has submitted admissible evidence establishing that “[t]he Plaintiffs' claims fail for want of actual malice or even negligence[,]” that “[t]he statements alleged in Plaintiff's Complaint are true or substantially true[,]” that “[t]he Defendant is entitled to immunity based on the common interest privilege[,]” and that “Plaintiff Dozier—at minimum—is libel-proof, and the Plaintiffs did

¹⁷ Many of the Defendant's arguments for dismissal—for instance, as to the Plaintiffs' IIED claims and invasion of privacy claim—were not met with a meaningful response.

not suffer actual damages.”¹⁸ The Court finds that these defenses have not been rebutted with countervailing admissible evidence, which requires that this action be dismissed under Tenn. Code Ann. § 20-17-105(c). *See id.* (“Notwithstanding subsection (b), the court shall dismiss the legal action if the petitioning party establishes a valid defense to the claims in the legal action.”).

For instance, the Court observes that the Defendant has been sued for characterizing Plaintiff Black as a member of a “multi-level marketing group.” *See* Pls.’ Amended Compl. at ¶ 47. The Defendant has not only proven that this statement is true, *see* Ex. H to Def.’s Mot. and Pet. to Dismiss Amended Compl.; instead, as established by her deposition, she has also proven that Plaintiff Black herself posted about her multi-level marketing company “rocking the MLM industry.” *See* Baldwin Depo. at Ex. 7.

Further, the Defendant is the only party to have introduced admissible evidence into the TPPA record bearing on the truth of the statements at issue in this case. Thus, the declarations that the Defendant has submitted—which are admissible and establish the truth of her statements—supply the only evidence of truth in the TPPA record. The Plaintiffs, by contrast, have not submitted any admissible evidence bearing on the truth of the statements over which they are suing. As a result, the Defendant’s proof of truth is unrebutted, and she must prevail on her defenses of truth and substantial truth as a result.

Separately, Tennessee recognizes the libel-proof plaintiff doctrine, which provides that a plaintiff with a severely tarnished reputation may not maintain a defamation action. *See Rogers v. Jackson Sun Newspaper*, No. CIV. A. C-94-301, 1995 WL 383000, at *1 (Tenn. Cir. Ct. Jan. 30, 1995) (“This Court finds and holds, as a matter of law, Plaintiff’s reputation in the community at the time of the article’s publication was so severely tarnished, he is ‘libel-proof’ and may not

¹⁸ *See* Def.’s Mot. and Pet. to Dismiss Amended Compl. at 42–54.

maintain this defamation action for an allegedly erroneous report of his criminal record.”), *no app. filed*. The doctrine “essentially holds that ‘a notorious person is without a “good name” and therefore may not recover for injury to it.” *Davis*, 83 S.W.3d at 128 (quoting ROBERT D. SACK, SACK ON DEFAMATION: LIBEL, SLANDER AND RELATED PROBLEMS 35 (Cum. Supp. 1998)). The libel-proof plaintiff doctrine is premised upon the notion that “[t]o suffer injury to one’s standing in the community, or damage to one’s public reputation, one must possess good standing and reputation for good character to begin with.” *Id.* at 130.

Here, Ms. Baldwin has demonstrated that Mr. Dozier is libel-proof. She has proven that his professional reputation has been severely and recently tarnished based on his extensive and adjudicated ethical misconduct. *See, e.g.*, Def.’s Mot. and Pet. to Dismiss Amended Compl. at Ex. A at Ex. 2 (noting BPR suspension and corresponding finding that “Mr. Dozier’s ethical misconduct violated Rules of Professional Conduct 1.1, Diligence; 1.4, Communication; 1.15, Safekeeping Property and Funds; 8.4, Misconduct.”). Mr. Dozier was also sanctioned by the BPR yet again during this proceeding. *See* Def.’s Mot. to Take Judicial Notice of S. Brad Dozier’s Oct. 17, 2023 Public Censure.

The Defendant has also proven that the Plaintiffs’ claims of damages are unbelievable. In particular, she has demonstrated that—although one plaintiff has dropped out of this action and the remaining Plaintiffs modified or dropped some of their claims since initiating this lawsuit—the Plaintiffs’ claimed damages remain identical to the penny. *Compare* Compl., *with* Amended Compl. The Plaintiffs’ Amended Complaint also alleges in several places that Gracie Baldwin—who is not a party to this action—was the one injured by Ms. Baldwin’s conduct, not the Plaintiffs. *See* Amended Compl. ¶ 67 (“Ms. Baldwin intentionally interfered with Gracie Baldwin’s relationship with her lawyers.”); *Id.* at ¶ 70 (“[T]he lawyer forbade communication between Gracie

and her attorneys[.]”); *Id.* at ¶ 99 (“Defendant intentionally intruded upon Plaintiff’s private affairs or concerns by posting on social media false details of Gracie’s history[.]”). Further, following his suspension from the practice of law, Plaintiff Dozier’s pre-existing financial problems—including foreclosures, repossession of property, debt, failure to satisfy his alimony and support obligations, and a federal tax lien—were detailed at length by his ex-wife and then acknowledged by Plaintiff Dozier during custody proceedings almost a year before this lawsuit was initiated. *Def.’s Mot. and Pet. to Dismiss Amended Compl. at Ex. F at 5–7.*

For all of these reasons—and because the Plaintiffs failed to establish that they had any good reputation to begin with—admissible evidence demonstrates that the Plaintiffs were not, in fact, damaged as they alleged.¹⁹ Further, even if they had been damaged and proved that they were damaged, both the incremental harm doctrine and the subsidiary meaning doctrine would preclude a claim of defamation under the circumstances regardless, both on damages grounds and on malice grounds.

“The incremental harm doctrine . . . reasons that when unchallenged or non-actionable parts of a publication are damaging, an additional statement, even if maliciously false, might be non-actionable because it causes no appreciable additional harm.” *See Church of Scientology Int’l v. Behar*, 238 F.3d 168, 176 (2d Cir. 2001) (citing *Herbert v. Lando*, 781 F.2d 298, 310 (2d Cir. 1986), *Simmons Ford, Inc. v. Consumers Union*, 516 F. Supp. 742, 750 (S.D.N.Y. 1981) (holding that, in the context of an article evaluating plaintiffs’ new electrical car and rating it “Not Acceptable” for a range of unchallenged reasons, a portion of the article wrongly implying that the car did not meet federal safety standards “could not harm [plaintiffs’] reputations in any way beyond the harm already caused by the remainder of the article.”)). Separately, and “[b]y contrast

¹⁹ Plaintiffs’ counsel stated during the Parties’ TPPA hearing that his asserted *ad damnum* does not generally reflect the damages that his clients actually suffered.

with the incremental harm doctrine”:

the subsidiary meaning doctrine does “bear upon” whether a defendant has acted with actual malice. In *Herbert*, for example, th[e] court held that nine of eleven allegedly libelous statements were not actionable because they were not maliciously published; the published statements were backed by evidence that was not known to be false, and as to the reliability of which the defendants had not shown reckless disregard. See *Herbert*, 781 F.2d at 305–07. Because the defendants’ overall “view” of the plaintiff rested on such evidence, we held that they “could not be said to have had actual malice in publishing [it].” *Id.* at 311. In light of this conclusion, it would have been illogical to hold, based on other statements, that the plaintiffs in fact had such actual malice. See *id.* (holding that recovery was barred as to an “incorrect” statement in part because “given the amount of other evidence supporting this view, the [defendants] did not publish this view with actual malice”); *id.* at 312 (holding that recovery was barred as to another statement because “[w]e have already held ... that the [defendants] did not have actual malice in publishing their view”). To avoid that contradiction, we enunciated the subsidiary meaning doctrine.

Id.

Here, after suing Ms. Baldwin for calling him “unethical” and asserting extraordinary damages based on that claim, Plaintiff Dozier withdrew the claim in response to a dispositive motion because the truth of Ms. Baldwin’s statement was not contestable given his extensive and public BPR issues. That means that any additional harm he suffered to his professional reputation must have been incremental, and that Plaintiff Dozier must demonstrate that other statements caused some “appreciable additional harm” that is actionable. *See id.* He must also explain why—having accurately characterized Plaintiff Dozier as being unethical—the Defendant was unreasonable in believing what she was told about Plaintiff Dozier when she was told other damaging things about him. *See id.* Plaintiff Dozier has made no attempt to do these things, however, so the Defendant’s valid defenses are sustained.

Additionally, with the exception of the kidnapping-based statement over which the Defendant has been sued (the facts of which she confirmed independently and which are not seriously disputed), the balance of the statements over which the Defendant has been sued were

based on information that she received from others and believed.²⁰ The Defendant has testified that she did not have any reason to disbelieve the detailed information that Gracie’s therapist or Gracie herself shared with her, particularly after corroborating Gracie’s accounts. *See e.g.*, Depo. of Theresa Baldwin at 60:9–13 (A. “Alex Dozier also confirmed that prayer time was a nightly event when he lived with them.” Q. “Who is Alex Dozier?” A. “Brad’s son.”); *id.* at 216:4–8 (“I had asked Alex Dozier while on the phone with his mother once, we were on speaker and he was talking, if he participated in daily prayer sessions when he was at their home, and he said he did.”); *see also generally id.* at 190:7–226:7; Ex. A to Def.’s Mot. and Pet. to Dismiss Amended Compl. (Baldwin Decl.). The Defendant has thus demonstrated with admissible evidence that she did not speak with actual malice or even negligently. The Plaintiffs cannot sustain their claims against her as a result. *Cf. Finney*, 2020 WL 5666698, at *6 (“The statements by school staff members to the Jeffersons about Ms. Finney’s conduct are relevant even if they are not true. What matters for purposes of actual malice—a subjective standard that ‘focuses on the defendant’s state of mind’—is what the Jeffersons thought was true, even if it was not actually true.”).

* * *

²⁰ *See, e.g.*, Def.’s Mot. and Pet. to Dismiss Amended Compl. at Ex. A at Ex. 3 (“Her videos describe what I confessed to her back in 2020.”); *id.* at Ex. D ¶ 6 (“Ms. Baldwin is absolutely correct that Pepper Black and her husband Brad Dozier have manipulated and controlled Gracie, and Gracie did report this to me on many occasions.”); *id.* at Ex. A ¶ 13 (“On January 5, 2021, I got Gracie back. She told me what occurred from December 8, 2020 until that day, January 5, 2021, while she lived with Mr. Dozier and Ms. Black.”); *id.* at Ex. A ¶ 14 (“Gracie explained Pepper Black’s erratic outbursts in which she would scream, have a complete meltdown, then beg for forgiveness claiming the devil had entered her body. Gracie described Ms. Black as having these sorts of outbursts daily.”); *id.* at Ex. A ¶ 15 (“Gracie stated that she and Cayenne were often in trouble and she had experienced Ms. Black being physically violent with her children.”); *id.* at Ex. A ¶ 16 (“Gracie also detailed Pepper’s outrage and swearing at both Gracie and Cayenne for small mistakes, such as not being in the car ready to leave by an exact time.”) (emphasis added); *id.* at Ex. A ¶ 18 (“Gracie also informed me of Mr. Dozier and Ms. Black’s requirement that Gracie get into their bed with them each night for a group prayer session, which I found disturbing.”); *see also id.* at Ex. B ¶ 11 (“When it was time for them to go to Florida they put me in their van and seemed to have no fear of my mom’s demands to stay away from me.”); *id.* at Ex. B ¶ 16 (“[Pepper] was saying I could come back to their house if I was still unhappy. I could have their car to drive. I could even use her credit card while I was at home to order food from door dash. She said I could have all the freedoms again if I could find a way to get back to their house.”); *id.* at Ex. B ¶ 21 (“At one point Pepper was drunk and beat up her daughter.”); *id.* at Ex. B ¶ 26 (“They said we did not have prayer time in bed. We did. It was a nightly event. It happened and we definitely had to do it.”).

For the foregoing reasons, the Court finds that the Plaintiffs' Amended Complaint must be dismissed under both Tenn. Code Ann. § 20-17-105(b) and Tenn. Code Ann. § 20-17-105(c). As a result, the Plaintiffs' Complaint, and all causes of action asserted in it, shall be dismissed with prejudice. *See* Tenn. Code Ann. § 20-17-105(e) ("If the court dismisses a legal action pursuant to a petition filed under this chapter, the legal action or the challenged claim is dismissed with prejudice.").

IV. COSTS, FEES, AND SANCTIONS

Because the Court has dismissed the Plaintiffs' legal action "pursuant to a petition filed under" the TPPA, the Defendant must be awarded her court costs, reasonable attorney's fees, discretionary costs, and other expenses incurred in filing and prevailing upon the petition under the mandatory provisions of Tenn. Code Ann. § 20-17-107(a)(1). *See id.* ("If the court dismisses a legal action pursuant to a petition filed under this chapter, the court shall award to the petitioning party: (1) Court costs, reasonable attorney's fees, discretionary costs, and other expenses incurred in filing and prevailing upon the petition"). The Defendant shall quantify her court costs, reasonable attorney's fees, discretionary costs, and other expenses incurred in filing and prevailing upon the petition by motion, to which the Plaintiffs may respond in opposition. Thereafter, the Defendant's motion shall be set for hearing.

The Defendant has also sought sanctions under Tenn. Code Ann. § 20-17-107(a)(2). *See id.* ("If the court dismisses a legal action pursuant to a petition filed under this chapter, the court shall award to the petitioning party: . . . (2) Any additional relief, including sanctions, that the court determines necessary to deter repetition of the conduct by the party who brought the legal action or by others similarly situated."). Given the absence of controlling authority bearing on the issue, the Parties may submit supplemental briefing as to the propriety of an award of sanctions, if any.

Thereafter, the Defendant's claim for sanctions shall be set for hearing.

IT IS SO ORDERED.

ENTERED this the 2nd day of January, 2024.


HON. ADRIENNE FRY
CIRCUIT COURT JUDGE PART 1

CERTIFICATE OF SERVICE

I hereby certify that on this the 2nd day of January, 2024, a copy of the foregoing was transmitted via hand-delivery, via the Court's electronic filing system, via USPS mail, and/or via email to the following parties or their counsel:

Gary Blackburn (#3484)
Bryant Kroll (#33394)
213 5th Ave. North, Suite 300
Nashville, TN 37219
Telephone: (615) 254-7770
gblackburn@wgaryblackburn.com
bkroll@wgaryblackburn.com

Counsel for Plaintiffs

DANIEL A. HORWITZ, BPR #032176
LINDSAY SMITH, BPR #035937
MELISSA K. DIX, BPR #038535
HORWITZ LAW, PLLC
4016 WESTLAWN DR.
NASHVILLE, TN 37209
daniel@horwitz.law
lindsay@horwitz.law
melissa@horwitz.law
(615) 739-2888

Counsel for Defendant