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CAUSE NO. 471-03472-2022

HENRY MISHKOFF	§	**IN THE DISTRICT COURT**
Plaintiff	§	
	§	
v.	§	**471ST JUDICIAL DISTRICT**
	§	
T. CHASE GARRETT,	§	
SCHEEF & STONE, LLP, and	§	
SONIA BRYANT	§	
Defendants.	§	**COLLIN COUNTY, TEXAS**

DEFENDANTS' AMENDED MOTION TO DISMISS
PURSUANT TO THE TEXAS CITIZENS PARTICIPATION ACT

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants T. Chase Garrett, Scheef & Stone, LLP, and Sonia Bryant (collectively "Defendants") now file this Motion to Dismiss Pursuant to Chapter 27 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE: (the "Texas Citizens Participation Act" or "TCPA"), and in support thereof, would respectfully show the Court as follows:

I.
BACKGROUND

In March of 2022, Mr. Mishkoff sued his neighbor, Ms. Bryant, in a separate legal action to declare certain real property rights between them (the "Property Lawsuit).[1] In the Property Lawsuit, Mr. Mishkoff sought, among other things, to establish an easement by prescription (i.e. adverse possession) over a portion of Ms. Bryant's real property through his alleged "continued and exclusive use" of that real property.

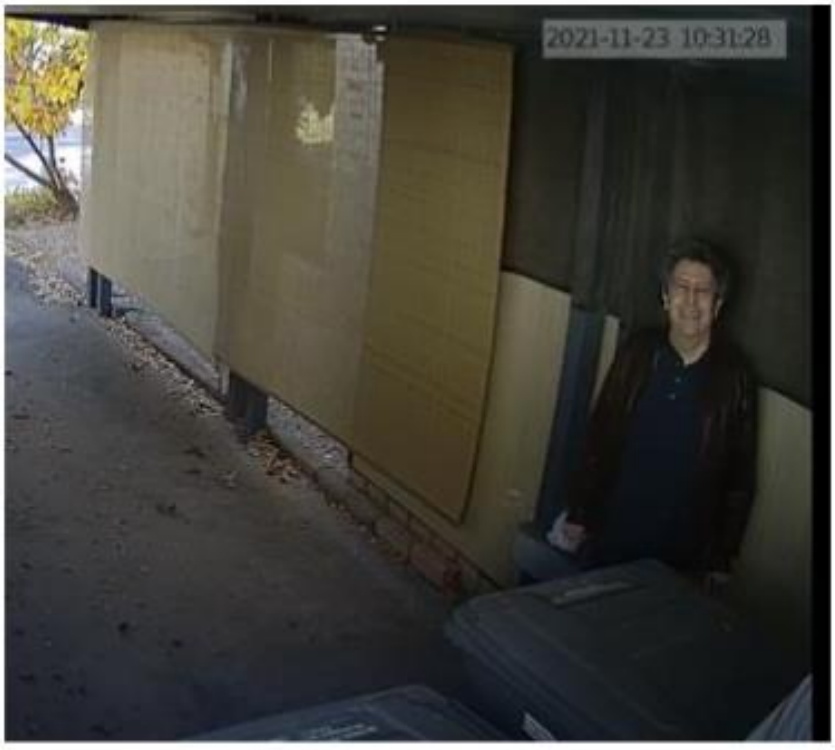
In the Property Lawsuit, Ms. Bryant filed a counterclaim for trespass related

[1] *See* 471-01040-2022; *Henry Mishkoff v. Sonia Bryant,* pending in the 471st District Court, Collin County, Texas.

to Mr. Mishkoff's numerous unauthorized entries onto her real property (the "Counterclaim"). In Paragraph 9 of the Counterclaim, where it discusses Mr. Mishkoff's unauthorized access onto Ms. Bryant's property, her attorney writes that, "[Mr. Mishkoff] simply seems to enjoy exposing himself to [Ms. Bryant's] security cameras:" Below that statement is a (fully clothed) photograph of Mr. Mishkoff standing underneath Ms. Bryant's carport and smiling into Ms. Bryant's security camera. The photograph bears a timestamp in the top right corner.

The allegation in the Counterclaim is that Mr. Mishkoff not only trespassed on Ms. Bryant's real property, but seemed to do so while evincing conspicuousness:

9. He simply seems to enjoy exposing himself to her security cameras:



In this lawsuit, Mr. Mishkoff claims that this statement was not made in reference to him smiling into her security camera as depicted in the photograph, but

rather was an allegation that he "enjoys showing his sex organs to Defendant Bryant's security cameras."[2]

There are no genitals on display in the photograph nor were any alleged to be anywhere in the text of the Counterclaim. The only allegation in the Counterclaim was that Mr. Mishkoff trespassed onto Ms. Bryant's real property and made sure he was in full display of her security cameras when doing so.

The next paragraph of the Counterclaim—time stamped **four seconds later**—shows Mr. Mishkoff walking away from the camera, fully clothed, with no genitalia in view:

10. In one instance, Mr. Mishkoff brought third parties that appeared to be surveyors onto her property without her prior consent and the police were called.

Original Counterclaim 3

Plaintiff alleges that the statement in Paragraph 9 of the Counterclaim will cause him to "suffer the ignominy of being the subject of whispers and nudges

[2] *See* Petition at Paragraph 16.

whenever he's in public, a humiliating spectacle that will haunt Plaintiff for the rest of his life."[3] In other words, he claims to suffer reputational harm from the implication of the words found in the text of the Counterclaim.

Because this lawsuit is brought in response to Ms. Bryant's exercise of her right to petition within the Property Lawsuit, Plaintiff's legal action clearly falls within the ambit of the TCPA. There are two big, substantive reasons to dismiss Plaintiffs' claim at the outset: (1) the statement in Paragraph 9 the Counterclaim made by Ms. Bryant's counsel is absolutely privileged, "regardless of the negligence or malice with which [it was] made." *James v. Brown*, 637 S.W.2d 914, 916 (Tex. 1982) and (2) the doctrine of attorney immunity shields an attorney from liability to non-clients "for actions taken in connection with representing a client in litigation," *Cantey Hanger v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015).

The Court is therefore required to dismiss Plaintiff's claim and award Defendants their attorney's fees pursuant to TEX. CIV. PRAC. & REM. CODE § 27.009(a)(1). The Court is also within its discretion to sanction Plaintiff under TEX. CIV. PRAC. & REM. CODE § 27.009(a)(2) to deter similar actions in the future.

II.
SUPPORTING EVIDENCE

In support of this motion, Defendants rely upon Plaintiff's Original Petition in this case and the factual allegations made therein.

[3] *See* Original Petition at ¶ 61.

III.
LEGAL STANDARD

A. The Fundamental Right to Petition

Both the United States Constitution and the Texas Constitution protect Ms. Bryant's right to petition. *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972); Tex. Const. Article I, §§13, 27. The right to petition has been characterized as one of "the most precious of the liberties safeguarded by the Bill of Rights." *United Mine Workers of Am., Dist. 12 v. Illinois State Bar Ass'n*, 389 U.S. 217, 222 (1967). "It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances. All these, though not identical, are inseparable." *Thomas v. Collins*, 323 U.S. 516, 530 (1945). The right to petition is "implicit in the very idea of government, republican in form." *McDonald v. Smith*, 472 U.S. 479, 482 (1985) (internal quotation omitted).

Texas constitutional rights have been regarded as coextensive with corresponding federal guarantees. *See, e.g.,* Puckett v. State, 801 S.W.2d 188, 192 (Tex. App.—Houston [14th Dist.] 1990, pet. ref'd). The Bill of Rights under Article I of the Texas Constitution (§§13, 27) expressly assures that our courts will be open to all citizens to afford redress for injuries, and protects the correlative right to petition for such redress. The fundamental "right to petition" in constitutional jurisprudence thus informs the scope of the TCPA when that statute mandates, subject to a very narrow exception, that "a court shall dismiss a legal action against the moving party if the moving party demonstrates that the legal action is based on or is in response to

... the right to petition." TCPA § 27.005(b).

B. The TCPA is intended to safeguard constitutionally protected rights.

The very purpose of the TCPA is to "encourage and safeguard the constitutional rights of persons to petition [and] speak freely...and, at the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury." TEX. CIV. PRAC. & REM. CODE § 27.002. The statute thus protects citizens from retaliatory lawsuits that seek to intimidate or silence the exercise of their constitutional rights. *In re Lipsky*, 460 S.W.3d 579, 584 (Tex. 2015). The TCPA "shall be construed liberally to effectuate its purpose and intent fully." TEX. CIV. PRAC. & REM. CODE § 27.011(b).

C. The TCPA Dismissal Process

The TCPA sets forth a three-step analysis. *First*, the movant must demonstrate that the "legal action is based on or is in response to" the movant's right to petition. *Id*. at TEX. CIV. PRAC. & REM. CODE § 27.005(b)(1)(B); see also § 27.003(a). The TCPA broadly defines a "legal action" to include any "lawsuit" that "requests legal, declaratory, or equitable relief." *Id*. at TEX. CIV. PRAC. & REM. CODE § 27.001(6). The "right to petition" is expressly defined to include any "communication in or pertaining to a judicial proceeding." *Id*. at TEX. CIV. PRAC. & REM. CODE § 27.001(4)(i). This broad language reflects a "legislative intent that the definition be consistent with and incorporate the nature and scope of the right to petition that had been established in constitutional jurisprudence." *Long Canyon Phase II & III Homeowners Ass'n, Inc. v. Cashion,* 517 S.W.3d 212, 220 (Tex. App.—Austin 2017, no pet.).

Second, once the movant establishes that the TCPA applies, the burden shifts to the respondent to establish "by clear and specific evidence a prima facie case for each essential element of the claim in question." TEX. CIV. PRAC. & REM. CODE § 27.005(c).

Finally, even if the respondent meets his burden, the Court must still dismiss if the movant establishes "an affirmative defense or other grounds on which the moving party is entitled to judgment as a matter of law." *Id.* at § 27.005(d).

When evaluating the defendant's motion to dismiss within the three-step decisional process, the court must construe the TCPA liberally to fully effectuate its purpose and intent to safeguard the defendant's rights. *See Id.* §§ 27.002, 27.011(b). The court should consider the pleadings, supporting affidavits, and other evidence in the summary judgment context under Rule 166a. *See Id.* § 27.006(a). Nonetheless, "[w]hen it is clear from the plaintiff's pleadings that the action is covered by the Act, the defendant need show no more." *Hersh v. Tatum*, 526 S.W.3d 462, 467 (Tex. 2017).

IV.
ARGUMENT AND AUTHORITIES

A. Mishkoff's "legal action" is factually predicated on Ms. Bryant's exercise of her "right to petition."

Under the TCPA's plain language, this lawsuit is a "legal action" subject to dismissal. Mishkoff's legal action is unquestionably based on and in response to Bryant's exercise of her right to petition and her attorney's written statement in a pleading within that lawsuit:

> "**On page 3 of the Counterclaim**, in the section entitled "Statement of Facts," in paragraph number 9, Defendants

> said, "He simply seems to enjoy exposing himself to her security cameras:" followed by a graphic that appears to be a frame capture from a video (see Exhibit A, page 3). This statement (hereinafter referred to as "the Defamatory Statement") is false in its entirety and is clearly defamatory and libelous in the State of Texas according to the definitions presented in the "Definitions" section of this Petition."[4]

By admitting that the defamatory statement is the written statement in Paragraph 9 of the Counterclaim, Mr. Mishkoff has effectively pled himself into the province of the TCPA. *See Hersh v. Tatum*, 526 S.W.3d 462, 467-68 (Tex. 2017) ("When it is clear from the plaintiff's pleadings that the action is covered by the Act, the defendant need show no more. … By relying on the language used in the [plaintiffs'] pleadings, [defendant] showed that the [plaintiffs'] action is based on her alleged exercise of free speech and thus covered by the Act.").

The TCPA explicitly protects Ms. Bryant from retaliation for filing the Counterclaim. *See, e.g., Serafine v. Blunt*, 466 S.W.3d 352, 360 (Tex. App.—Austin 2015, no pet.) (filing of lawsuit is protected right of petition); *MVS Int'l Corp. v. Int'l Advert. Sols., LLC*, 545 S.W.3d 180, 199 (Tex. App.—El Paso 2017, no pet.) ("Appellants' filing of the lawsuit, however, is additionally protected by the right to petition as defined by the TCPA."); *Howard v. Matterhorn Energy, LLC*, 628 S.W.3d 319, 332 (Tex. App.—Texarkana 2021, no pet.) (TCPA applied to counterclaims that were based on filing of a lawsuit, as such claims concerned the exercise of the right to petition); *Martin v. Bravenec*, 2015 WL 2255139, at *6 (Tex. App.—San Antonio May 13, 2015, pet. denied) (TCPA applied to claims based on filing of a lawsuit).

[4] *See* Original Petition at ¶ 13.

Not only was Ms. Bryant's Counterclaim self-evidently protected by the TCPA, her attorney's statement is also protected in carrying out her exercise of the protected right to petition. TCPA, § 27.001(4). *See Youngkin v. Hines*, 546 S.W.3d 675, 680-81 (Tex. 2018) (attorney's recitation of a Rule 11 agreement during trial fell within TCPA's definition of the right to petition); *Marshall v. Marshall*, 14-18-00094-CV, 2021 WL 208459, at *4-5 (Tex. App.—Houston [14th Dist.] Jan. 21, 2021, pet. filed) ("Under the plain terms of the [TCPA], the filing of a petition and an affidavit are communications in or pertaining to a judicial proceeding, and thus, implicate Elaine's exercise of the right to petition."); *Beving v. Beadles*, 563 S.W.3d 399, 406 (Tex. App.—Fort Worth 2018, pet. denied) (holding affidavit and deposition testimony of law firm's former comptroller in underlying action between law firm and former partners constituted exercise of comptroller's right to petition); *Brann v. Guimaraes*, 01-19-00439-CV, 2021 WL 2690869, at *6-7 (Tex. App.— Houston [1st Dist.] July 1, 2021, pet. denied) (testimony provided during two prior trials was an exercise of the right to petition).[5]

In sum, Mr. Mishkoff's libel claim is a legal action that is factually predicated on Ms. Bryant's right to petition and her right to communicate freely within the Property Lawsuit. Therefore, the TCPA applies.

[5] Independent of the right to petition, the TCPA also separately protects the right of free speech. TEX. CIV. PRAC. & REM. CODE, § 27.003(a). Although not necessary to sustain a dismissal in this matter, it is arguable that Mishkoff's Petition also implicates this separate constitutional right of free speech under section 8 of the Texas Bill of Rights.

B. Plaintiff cannot carry his burden to present clear and specific evidence of a prima facie case for every essential element of his claim for defamation.

Based on the statements contained within Plaintiff's Original Petition, Defendants have demonstrated that the instant case is based on and in response to Defendants' right to petition. As such, the burden now shifts to Plaintiffs to establish by "clear and specific evidence" a prima facie case for each essential element of the claims in question. TEX. CIV. PRAC. & REM. CODE §27.005(c).

Here, Plaintiff must establish each essential element of his claim for defamation, including: (1) the publication of a false statement of fact to a third party, (2) that was defamatory concerning the plaintiff, (3) with the requisite degree of fault, and (4) damages, in some cases." *In re Lipsky*, 460 S.W.3d at 593.

By way of example only, Plaintiff will be unable to prove that the statement in Paragraph 9 of the Counterclaim is anything other than the author's opinion that Mr. Mishkoff enjoys being caught on Ms. Bryant's security cameras.

"[S]tatements that cannot be verified, as well as statements that cannot be understood to convey a verifiable fact, are opinions." *Dallas Morning News, Inc. v. Tatum*, 554 S.W.3d 614, 639 (Tex. 2018). "[S]tatements that are not verifiable as false cannot form the basis of a defamation claim." *Neely v. Wilson*, 418 S.W.3d 52, 62 (Tex. 2013).

As such, because a reasonable person could only interpret such statement as an opinion, the Plaintiff will be unable to meet his burden of establishing, by "clear

and specific evidence" a prima facie case for each essential element of the claims in question. TEX. CIV. PRAC. & REM. CODE §27.005(c).

By way of further example, Plaintiff will be unable to prove that the statement in Paragraph 9 of the Counterclaim has any defamatory meaning, particularly since the picture that immediately follows the colon at the end of that paragraph depicts a fully-clothed man staring at a security camera. There are no words or other depictions in the Counterclaim that remotely suggest that Plaintiff traversed onto Ms. Bryant's real property for the purpose of committing a sex crime in view of her security cameras. Accordingly, Plaintiff will be unable to meet his burden of establishing, by "clear and specific evidence" a prima facie case for each essential element of the claims in question. TEX. CIV. PRAC. & REM. CODE §27.005(c).

Defendants contend that Plaintiff will be unable to meet this burden, and as a result, Plaintiff's claims against Defendants must be dismissed. However, in the event Plaintiff can meet this burden, Plaintiff's legal action must be dismissed on the account of Defendants' affirmative defense and other grounds for dismissal set forth in Sections C and D below.

C. The alleged defamatory statement in the Counterclaim is protected by the judicial proceedings privilege.

Pursuant to TEX. CIV. PRAC. & REM. CODE §27.005(d), the Court shall dismiss a legal action against the moving party if the moving party establishes an affirmative defense or other grounds on which the moving party is entitled to judgment as a matter of law." TEX. CIV. PRAC. & REM. CODE § 27.005(d). This standard is like the standard applied by the Court when determining traditional motions for summary

judgment. TEX. R. CIV. P. 166a(c). Therefore, a movant who conclusively negates at least one essential element of a cause of action or establishes each element of an affirmative defense as a matter of law is entitled to dismissal. *See IHS Cedars Treatment Ctr. of DeSoto, Texas, Inc. v. Mason*, 143 S.W.3d 794, 798 (Tex. 2004) (citing *Sw. Elec. Power Co. v. Grant*, 73 S.W.3d 211, 215 (Tex. 2002)); TEX. CIV. PRAC. & REM. CODE § 27.005(d).

Similar to the TCPA, the "judicial-proceedings privilege exists to facilitate the proper administration of the justice system. It does so by relieving the participants in the judicial process from fear of retaliatory lawsuits for statements they make in connection with the proceeding itself." *Landry's, Inc. v. Animal Legal Def. Fund*, 631 S.W.3d 40, 48 (Tex. 2021). *See* also *Bird v. W.C.W.*, 868 S.W.2d 767, 772 (Tex. 1994) ("[T]he administration of justice requires full and free disclosure from witnesses unhampered by fear of retaliatory lawsuits."). The privilege is an "absolute privilege that covers any statement made by the judge, jurors, counsel, parties or witnesses, and attaches to all aspects of the proceedings, including statements made in open court, pre-trial hearings, depositions, affidavits and any of the pleadings or other papers in the case." *Landry's*, 631 S.W.3d at 46. The privilege is "tantamount to immunity," meaning the communications are ones "for which no remedy exists in a civil action." *Hernandez v. Hayes*, 931 S.W.2d 648, 650 (Tex. App.—San Antonio 1996, writ denied).

The absolute privilege bars claims that are based on communications that are related to a judicial proceeding in which the claimant seeks damages for reputational

harm. *Deuell v. Tex. Right to Life Comm., Inc.*, 508 S.W.3d 679, 689 (Tex. App.—Houston [1st Dist.] 2016, pet. denied). Such communications "will not serve as the basis of a civil action for libel or slander, regardless of the negligence or malice with which they are made." *James,* 637 S.W.2d at 916; *see also Deuell,* 508 S.W.3d at 689.

"The falsity of the statement or the malice of the utterer is immaterial, and the rule of nonliability prevails even though the statement was not relevant, pertinent and material to the issues involved in the case." *Reagan v. Guardian Life Ins.* Co., 140 Tex. 105, 166 S.W.2d 909, 912 (1942).Therefore, the absolute privilege is "more properly thought of as an immunity" from a claim that contains allegations of reputational harm from a communication in a judicial proceeding. *Shell Oil Co. v. Writt,* 464 S.W.3d 650, 654 (Tex. 2015) (quoting *Hurlbut v. Gulf Atl. Life Ins. Co.*, 749 S.W.2d 762, 768 (Tex. 1987)).

In his Original Petition, Mr. Mishkoff argues that the absolute privilege does not protect irrelevant statements. The standard is not "relevance," but a lesser standard: the statement must only bear "some relation to the proceeding," *Russell v. Clark*, 620 S.W.2d 865, 869 (Tex.Civ.App.—Dallas 1981, writ ref'd n.r.e.), and all doubt should be resolved in favor of "some relation." Russell, 620 S.W.2d at 870. Further, this standard is necessarily minimal so as to occasion no fear, by any witness, of retaliatory damage suits for defamation and thereby hamper the original purpose of the privilege to encourage testimony. *Runge v. Franklin*, 72 Tex. 585, 10 S.W. 721 (1889). Under this limited standard, there can be no question that the statement concerning the manner of Mr. Mishkoff's trespass had enough of a

"relation" to the proceeding to be afforded the protection of an absolute privilege.

Mishkoff seeks to recover for harm to his reputation based on statements made by Ms. Bryant's attorney in the Counterclaim. However, it is undisputed that these statements were made explicitly in a pleading and had some relation to that proceeding. Therefore, the statement in the Counterclaim filed in the Property Lawsuit is absolutely privileged and cannot serve as a basis for Mishkoff's defamation claim, see *James,* 637 S.W.2d at 916–17*; Deuell,* 508 S.W.3d at 689.

D. The doctrine of attorney immunity precludes Plaintiffs' claims against Ms. Bryant's counsel.

The attorney immunity doctrine is another "affirmative defense…which the moving party is entitled to judgment as a matter of law." TEX. CIV. PRAC. & REM. CODE § 27.005(d). As a general rule, attorneys are immune from civil liability to non-clients 'for actions taken in connection with representing a client in litigation,'" *Cantey Hanger v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015) in order "to ensure loyal, faithful, and aggressive representation by attorneys employed as advocates." *Landry's, Inc. v. Animal Legal Defense Fund*, 631 S.W.3d 40, 47 (Tex. 2021). Attorney immunity "is a comprehensive affirmative defense protecting attorneys from liability to non-clients." *Cantey Hanger,* 467 S.W.3d at 481. The defense provides that an attorney "may only be liable to nonclients for conduct outside the scope of his representation of his client or for conduct foreign to the duties of a lawyer." *McDill v. McDill*, No. 03-19-00162-CV, 2020 WL 4726634, at *8 (Tex. App.—Austin July 30, 2020, pet. denied) (mem. op.).

In applying the doctrine of attorney immunity, Texas courts focus on the

"*kind*," rather than the nature of the alleged conduct. *Haynes,* 631 S.W.3d at 78; see also *Taylor v. Tolbert*, --- S.W.3d ---, 2022 WL 1434659, at *4 (Tex. May 6, 2022) ("In determining whether conduct is 'the kind' immunity protects, the inquiry focuses on the type of conduct at issue rather than the alleged wrongfulness of that conduct.").

To allow an adverse party to allege a claim against counsel representing an opponent in litigation, as Plaintiff seeks to do here, would create a conflict of interest between zealously advocating for a client's best interest and avoiding personal exposure to liability from non-parties in the discharge of an attorney's duties within the scope of client representation. *Haynes and Boone,* 631 S.W.3d at 74.

Thus, the threshold question in this Motion to Dismiss is whether the challenged communication is an action taken by Ms. Bryant's counsel that involves the "unique office, professional skill, training, and authority of an attorney." Id.; *McDill,* 2020 WL 4726634 at *8. The challenged communication "must bear some relation to a judicial proceeding in which the attorney is employed and must be in furtherance of that representation." *Russell v. Clark*, 620 S.W.2d 865, 868 (Tex. Civ. App.—Dallas 1981, writ ref's n.r.e.) (holding "all doubt should be resolved in favor of its relevancy"); see also *Odeneal v. Wofford*, 668 S.W.2d 819, 820 (Tex. App.—Dallas 1984, writ ref'd n.r.e.).

Here, attorney immunity shields the statement made in the Counterclaim because the statement was made within the scope of counsel's representation of Ms. Bryant and does not constitute conduct foreign to the duties of a lawyer. See *Youngkin*, 546 S.W.3d at 682 (concluding attorney's conduct "was directly within the

scope of his representation of his clients, regardless of any disagreement over the substance" of work and, thus, protected by attorney immunity doctrine).

The statement in the Counterclaim by Ms. Bryant's counsel involved the provision of legal services involving the "unique office, professional skill, training, and authority of an attorney" to "fulfill [his] duties in representing [Ms. Bryant] within an adversarial context." *Haynes and Boone,* 631 S.W.3d at 74. Even an "unwarranted inference from the evidence" is protected by the attorney privilege. RESTATEMENT (SECOND) OF TORTS § 586 cmt. c.

The statement in Paragraph 9 of the Counterclaim bears "some relation" to the trespass proceeding because it alleges that Mr. Mishkoff appears to enjoy being caught by Ms. Bryant's security cameras during his unauthorized presence on her real property. Whether this statement is true or made with ill intent is irrelevant. *Landry's, Inc.,* 631 S.W.3d at 47 (explaining wrongful conduct by attorney "is not actionable if it is part of the discharge of the lawyer's duties in representing his or her client"). Accordingly, the Court must grant this Motion to Dismiss.

E. Attorney's Fees and Sanctions.

Pursuant to TEX. CIV. PRAC. & REM. CODE § 27.009(a)(1), Defendants are entitled to a mandatory award of their costs of court and reasonable attorney's fees incurred in defending against Plaintiff's lawsuit. Defendants will introduce evidence of their fees and costs at the hearing on this TCPA motion or such other time as allowed by the Court.

Plaintiff should never have brought this patently meritless lawsuit designed purely to chill Ms. Bryant's Counterclaim for trespass. As such, Defendants ask the Court to award sanctions under TEX. CIV. PRAC. & REM. CODE § 27.009(a)(2) against Plaintiff to deter him from bringing similar actions in the future. Since this is the second lawsuit brought by Plaintiff against Ms. Bryant, there is a high likelihood that his serial litigation patterns will continue. The Court should impose no less than one percent of the damages sought by Plaintiff or $10,000 as an appropriate sanction.

VI.
Prayer

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that this Court:

A. Set a hearing on their TCPA Motion to Dismiss within sixty (60) days of its filing;
B. Grant their TCPA Motion to Dismiss within thirty (30) days of the conclusion of said hearing;
C. Dismiss Henry Mishkoff's claim for libel with prejudice;
D. Award Defendants all court costs and attorney's fees incurred in defending against Plaintiff's claims pursuant to Section 27.009(a)(1) of the TEXAS CIVIL PRACTICE AND REMEDIES CODE;
E. Impose sanctions against Plaintiff in an amount the Court determines sufficient to deter the bringing of similar actions by Plaintiff in the future pursuant to Section 27.009(a)(2) of the TEXAS CIVIL PRACTICE AND REMEDIES CODE; and
F. Grant Defendants such other and further relief, special or general, legal or equitable, that Defendants may be justly entitled to receive.

Respectfully submitted,

SCHEEF & STONE, LLP

/s/ *T. Chase Garrett*

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CERTIFICATE OF SERVICE

I certify that on July 13, 2022, a true and correct copy of the foregoing was sent to all parties who have made an appearance or their attorney of record in accordance with Texas Rules of Civil Procedure 21 and 21a.

/s/ *T. Chase Garrett*