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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**

PLAINTIFF'S SUR-REPLY TO DEFENDANTS' REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANTS' AMENDED MOTION TO DISMISS PURSUANT TO THE TEXAS CITIZENS PARTICIPATION ACT

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Henry Mishkoff now files this Sur-Reply to Defendants' Reply (the "Reply") to Plaintiff's Response (the "Response") to Defendants' Amended Motion to Dismiss Pursuant to Chapter 27 of the Texas Civil Practice and Remedies Code (the "Texas Citizens Participation Act," or the "TCPA"), and in support thereof, would respectfully show the Court as follows.

Earlier today (August 24, 2022), Defendants submitted their Reply to Plaintiff's Response. Defendants' obvious intent was to deny Plaintiff enough time to draft an adequate sur-reply, but Plaintiff submits this hastily assembled Sur-Reply in an effort to expose the fallacious nature of Defendants' most outrageous claims.

1. Defendants claim that "Plaintiff bases his entire Response on hyperbole and hypothetical, fictious references to pedophilia, serial murder, the

September 11, 2001 terrorist attacks, the assassination of President Kennedy, and intentional poisoning." Plaintiff is astounded that Defendants would make a claim in a legal filing that is so easily proven to be false. Even a quick glance at Plaintiff's Response reveals that **Plaintiff devoted about one page to the hypotheticals mentioned by Defendants in a document of more than 40 pages in length.** Some quick math reveals that Plaintiff devoted about 2.5% of his Response to the hypotheticals in question, meaning that Defendants' astonishing claim that Plaintiff's "entire Response" was based on the hypotheticals was off by a mere 97.5%. In other words, the overwhelming majority of Plaintiff's Response was devoted to providing the "clear and specific evidence required to survive a Motion to Dismiss under the TCPA" (as suggested by Defendants), so Defendants' claim is entirely fictitious.

2. Defendants claim that "Plaintiff concedes that he cannot produce any evidence of a false statement of fact." In fact, the opposite is true. Plaintiff even went so far as to define and explain the "clear and specific evidence" requirement of the TCPA as mandated by the Texas Supreme Court (a definition that Defendants have not even bothered to address) and then to provide evidence that meets that definition. However, as it turns out, Plaintiff need not have provided any evidence of the falsity of Defendants'

defamatory statement because Defendants' Reply is overflowing with admissions that Plaintiff, contrary to Defendants' defamatory claim, did **not**, in fact, expose himself – which means that Defendant's defamatory statement is, in fact, false.

3. Defendants claim that "Plaintiff limits his argument on the challenged statement's defamatory meaning by parsing only two words ('exposing himself') out of the entire publication and then applies an out-of-context, deviant definition to that phrase." The exact opposite is true. Plaintiff actually explores the meanings and implications of every word in the defamatory statement. And the only definition that Plaintiff offers for "exposing himself" is the definition promulgated by English-language dictionaries and easily understood by English-speaking people everywhere. Defendants' characterization of Plaintiff's definition of the phrase "exposing himself" as being "deviant" is not only false, it emphasizes Defendants' proclivity for hurling words loaded with negative sexual connotations in a continual attempt to bully and intimidate their opponents.
4. In a misguided effort to lead the Court to believe that Defendants' accusation that Plaintiff enjoys "exposing himself" bears some relation to a trespassing Counterclaim, Defendants claim that "The statement filed in

the Counterclaim concerned the manner of Plaintiff's trespass and subjectively described *what* the author believed Plaintiff appeared to be doing *while* trespassing" (emphasis in the original). Defendants are effectively claiming that *anything* that Defendants accuse Plaintiff of doing while on Defendant Bryant's property is automatically related to trespass, a specious argument that seeks to render meaningless the requirement that, to be non-defamatory, a statement must bear some relation to the subject of their Counterclaim.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that this Court:

A. Deny Defendants' TCPA Motion to Dismiss.

B. Impose sanctions against Defendants in an amount the Court determines sufficient to deter the bringing of similar actions by Defendants in the future. As Defendants have suggested, no less than $10,000 would be "an appropriate sanction."

C. Grant Plaintiff such other and further relief, special or general, legal or equitable, that Plaintiff may be justly entitled to receive.

Respectfully submitted,

Henry Mishkoff

/s/ Henry Mishkoff

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CERTIFICATE OF SERVICE

I certify that on August 24, 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/ Henry Mishkoff