CAUSE NO. D-1-GN-24-000486

ZACHARIAH HILL and ELIZABETH HILL,	§	**IN THE DISTRICT COURT OF**
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	**TRAVIS COUNTY, TEXAS**
SYCAMORE COURT PROPERTY OWNERS' ASSOCIATION, INC. and TEAM GROUP SYSTEMS, INC.	§	
	§	
Defendants.	§	
		250th JUDICIAL DISTRICT

DEFENDANTS SYCAMORE COURT PROPERTY OWNERS' ASSOCIATION, INC. AND TEAM GROUP SYSTEMS, INC.'S MOTION TO DISMISS UNDER THE TEXAS CITIZENS PARTICIPATION ACT (TCPA)

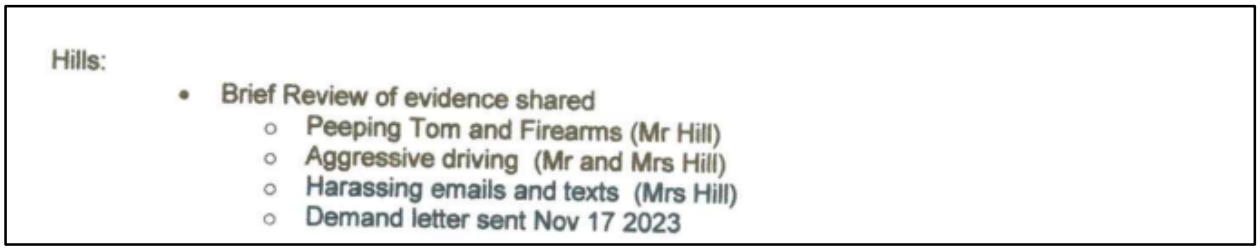
TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Defendants Sycamore Court Property Owners' Association ("SCPOA") and Team Group Systems, Inc., and file their Motion to Dismiss Pursuant to the Texas Citizens Participation Act:

INTRODUCTION

This case involves a pattern of blatant harassment, terrorization, and the complete disregard of social decency on behalf of Plaintiffs—who are residents of the Sycamore Court neighborhood in south Austin, Texas—against their fellow neighbors and the board of directors of the Sycamore Court Property Owners' Association over what can only be characterized as personal grudges, resentment, and juvenile grievances relating to neighborhood politics. This disturbing behavior started when Plaintiff Elizabeth Hill was voted off the associations' board of directors, at which point an onslaught of threats and provocation ensued from Plaintiffs. After months of harassment,

endless threats of legal action, and overt acts of intimidation involving sports cars and assault rifles, Defendants called for a special meeting of all association members to address concerns about: (a) Plaintiff Zach Hill patrolling the neighborhood and photographing members' homes at all hours of the day/night while armed with an assault rifle; (b) Plaintiffs' aggressive and loud driving in the neighborhood; and (c) Plaintiffs' threatening and harassing communications to members of the neighborhood. In doing so, Defendants circulated an agenda for the meeting which stated, in relevant part, as follows:


Hills:

- Brief Review of evidence shared
  - Peeping Tom and Firearms (Mr Hill)
  - Aggressive driving (Mr and Mrs Hill)
  - Harassing emails and texts (Mrs Hill)
  - Demand letter sent Nov 17 2023

Plaintiffs now bring defamation claims against Defendants for circulating the meeting agenda, alleging the above language constitutes defamation and defamation *per se*. However, for the reasons set out below, Plaintiffs' defamation claims are barred by the Texas Citizens Participation Act, codified in Chapter 27 of the Texas Civil Practice and Remedies Code, and should be dismissed accordingly.

LEGAL STANDARD

The TCPA provides an expedited procedure for the early dismissal of groundless legal actions that impinge on protected communications, *i.e.*, "SLAPP suits" (Strategic Lawsuits Against Public Participation). TEX. CIV. PRAC. & REM. CODE § 27.003(a); *Segundo Navarro Drilling, Ltd. v. San Roman Ranch Mineral Partners, Ltd.*, 612 S.W.3d 489, 492 (Tex. App.—San Antonio 2020, pet. denied). The TCPA is a bulwark against retaliatory lawsuits meant to intimidate or silence citizens on matters of public concern. *Dallas Morning News, Inc. v. Hall*, 579 S.W.3d 370, 376 (Tex. 2019); *KB Home Lone Star Inc. v. Gordon*, 629 S.W.3d 649, 654-55 (Tex. App.—

San Antonio 2021, no pet.). Indeed, the TCPA was specifically crafted to address frivolous retaliatory claims like Plaintiffs' defamation claims against Defendants.

A motion to dismiss under the TCPA must be filed "on or before 60 days from the date of service of the legal action." TEX. CIV. PRAC. & REM. CODE § 27.003(b). "[A]n amended or supplemental pleading that asserts a new claim involving different elements than a previously asserted claim also asserts a new legal action that triggers a new sixty-day period for filing a motion to dismiss that new claim." *Montelongo v. Abrea,* 622 S.W.3d 290, 301 (Tex. 2021). Effective upon the filing of a motion to dismiss under the TCPA, "all discovery in the legal action is suspended until the court has ruled on the motion to dismiss." TEX. CIV. PRAC. & REM. CODE §27.003(c).

The TCPA hearing must originally be set on or before 60 days from the date of service of the motion, subject to continuance as specified by the statute. *Id.* § 27.004(a)-(c). "The court must rule on a motion under Section 27.003 not later than the 30th day following the date of the hearing on the motion concludes." *Id.* § 27.005(a). The statutory deadline to rule applies only to the dismissal portion of the motion; the court may bifurcate the issue of monetary relief and rule on that issue subsequently. *Day v. v. Fed'n of State Med. Boards of the United States, Inc.*, 579 S.W.3d 810 (Tex. App.—San Antonio 2019, pet. denied) (evidence in support of fees is not required to be presented at the dismissal hearing; it can be presented later to support fee award in connection with final judgment); *see also e.g., Farhat v. Wilson Scott, LLC,* No. 02-19-00438-CV, 2020 WL 1949624, at *7 (Tex. App.—Fort Worth Apr. 23, 2020, no pet.) ("[T]he TCPA does not require the trial court to rule on the question of attorney's fees within [thirty days]. Rather, the trial court may resolve the issue of attorney's fees in a separate, later order.").

To accomplish its objective, the TCPA provides a three-step process for dismissing a "legal action" to which it applies. *Montelongo,* 622 S.W.3d at 295-96. First, the party invoking the TCPA files a motion to dismiss, in which the movant must "demonstrate" that the respondent's "legal action" is "based on or is in response to" the movant's exercise of a right protected by the statute—primarily, the rights of free speech, petition, or association, as defined by the TCPA. TEX. CIV. PRAC. & REM. CODE §§ 27.003(a), .005(b). "When it is clear from the [non-movant's] pleadings that the action is covered by the Act, the [movant] need show no more." *Hersh v. Tatum,* 526 S.W.3d 462, 466 (Tex. 2017); *see also West v. Quintanilla,* 573 S.W.3d 237, 243 n.8 (Tex. 2019) (explaining that at Step 1, the nonmovant's pleadings "are the best and all-sufficient evidence of the nature of the action") (internal quotations and citations omitted).

If the movant meets this threshold burden, then the court "shall dismiss" the legal action unless the nonmovant "establishes 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). Even if the nonmovant does so, the court must still dismiss the legal action 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.* § 27.005(d).

Upon dismissing a legal action under the TCPA, the trial court "shall award to the moving party costs and reasonable attorney's fees incurred in defending against the legal action." *Id.* § 27.009(a)(1). The trial court "may award . . . sanctions against the party who brought the legal action as the court determines sufficient to deter [that party] from bringing similar actions" in the future. *Id.* § 27.009(a)(2).

ARGUMENT AND AUTHORITIES

A. Defendants' motion to dismiss is timely.

Absent a showing of good cause, a motion to dismiss under the TCPA "must be filed *not later than the 60th day* after the date of service of the legal action." TEX. CIV. PRAC. & REM. CODE §27.003(b) (emphasis added). Service was effected upon Defendants on January 26, 2024.[1] The 60th day after the date of service is March 26, 2024. Defendants are filing this motion on March 12, 2024; therefore, the instant motion is timely.

B. Step 1: the TCPA applies to Plaintiffs' defamation claims.

1. Plaintiffs' defamation claims are a legal action.

The TCPA defines "legal action" as "a lawsuit, cause of action, petition, complaint, cross-claim, or counterclaim or any other judicial pleading or filing that requests legal or equitable relief." TEX. CIV. PRAC. & REM. CODE § 27.001(6) (emphasis added). Plaintiffs' Original Petition, which brings a defamation claims against Defendants, unquestionably satisfies the TCPA's precise definition of "legal action." *Id.*

2. Plaintiffs' defamation claims are based on Defendants' communications.

The protected rights of free speech and association are both defined by the TCPA to be forms of "communication." TEX. CIV. PRAC. & REM. CODE § 27.001(3)-(4). In turn, "communication" is defined to "include[] the making or submitting of a statement or document in any form or medium, including oral, visual, written, audiovisual, or electronic." *Id.* § 27.001(1). "The TCPA casts a wide net. . . . Almost every imaginable form of communication, in any medium, is covered." *Adams v. Starside Custom Builders, LLC,* 547 S.W.3d 890, 894 (Tex. 2018). The nonmovant's pleadings "are the best" source to determine the nature of the movant's

[1] *See* Exhibit A.

communications underlying the asserted claims. *Quintanilla,* 573 S.W.3d at 243 n.8; *Hersh,* 526 S.W.3d at 466.

Plaintiffs' defamation claims, as pled in their Original Petition, demonstrate that the claims are based on alleged communications by Defendants. Specifically, the Plaintiffs allege:

> 12. On or about December 20, 2023, Defendants published an email memorandum to residents which included defamatory statements in the January 4, 2024, meeting agenda (See Exhibit A).
>
> 13. Specifically, Defendants' agenda included a section titled "Hills" with the subtopic and items "Brief review of evidence shared – Peeping Tom and Firearms (Mr. Hill); Aggressive driving (Mr. and Mrs. Hill); Harassing emails and texts (Mrs. Hill)."

See Plaintiffs' Original Petition, pg. 3, ¶¶ 12-13.

> **B. Defamation Per Se**
>
> 20. Defendants' statements accused Plaintiffs' of participating in crimes. Specifically, Defendants stated to other residents that Plaintiff Zachariah Hill was a "Peeping Tom" and also stated that both Plaintiffs were aggressive drivers in the residential neighborhood. Such statements and accusations are actionable as defamation *per se* as the statements were so obviously harmful to Plaintiffs' reputations.

Id. at pg. 4, ¶ 20. Although Defendants firmly disagree with Plaintiffs' allegations, the merits of the communication are irrelevant for purposes of applying the TCPA at Step 1. *Adams,* 547 S.W.3d at 897 ("We emphasize that whether Adams's colorful allegations were valid, partly valid, or completely concocted by a disgruntled resident with an axe to grind is not the question before us. . . . The question at this stage is whether Adams's challenged statements involve a [protected right] as defined by the TCPA."); *see also QBE Americas, Inc. v. Walker*, No. 05-20-00439-CV, 2021 WL 1976459, at *5 (Tex. App.—Dallas May 18, 2021, no pet.) (rejecting nonmovant's argument that allegedly false, defamatory statements cannot constitute a matter of public concern because,

under *Adams*, "the truthfulness of the complained-of statements is not determinative of whether the TCPA applies") (collecting additional cases).

Taking Plaintiffs' pleading at face value for purposes of applying the TCPA, it is undeniable that publishing an email memorandum is a form of "communication" as defined by the TCPA. TEX. CIV. PRAC. & REM. CODE § 27.001(1). The next element in Defendants' Step 1 burden to demonstrate that the TCPA applies is to show that these communications constitute an exercise of the rights of free speech. Under well-established Texas law, they do.

3. Plaintiffs' defamation claims are based on or in response to Defendants' protected right of free speech.

The TCPA applies to a "legal action that is based on or is in response to a party's exercise of the right of free speech." TEX. CIV. PRAC. & REM. CODE § 27.003(a). Under the TCPA, "'[e]xercise of the right of free speech' means a communication made in connection with a matter of public concern." TEX. CIV. PRAC. & REM. CODE § 27.001(3). "The TCPA broadly defines a 'matter of public concern' to include a statement or activity about (1) 'a matter of political, social, or other interest to the community,' or (2) 'a subject of concern to the public.'" *Shepard v. Voss*, No. 01-23-00515-CV, 2024 WL 748396, at *6 (Tex. App.—Houston [1st Dist.] Feb. 22, 2024, no pet. hist.) (quoting TEX. CIV. PRAC. & REM. CODE § 27.001(7)(B), (C)). "When it is clear from the plaintiff's pleadings that the action is covered by the Act, the defendant need show no more." *Hersh*, 526 S.W.3d at 467.

Here, the Court need not look further than Plaintiffs' allegations that Defendants "published an email memorandum to residents which included defamatory statements,' which "included a section titled 'Hills' with the subtopic and items 'Brief review of evidence shared – Peeping Tom and Firearms (Mr. Hill); Aggressive driving (Mr. and Mrs. Hill); Harassing emails and texts (Mrs. Hill).'" *See Plaintiffs' Original Petition*, pg. 3, ¶¶ 12-13. From these allegations

alone, it is clear that Plaintiffs' defamation claims involve a matter of public concern—as a matter of law—given that they plainly relate to the safety and well-being of the community. *Adams v. Starside Custom Builders, LLC*, 547 S.W.3d 890, 897 (Tex. 2018) ("The allegation that a neighborhood developer and the HOA it controls have chopped down residents' trees, generally made life miserable for the residents, and engaged in unspecified other corrupt or criminal activity is of public concern for the residents of the neighborhood."); *Cobb Dev. v. McCabe*, No. 03-21-00524-CV, 2023 WL 4003513, at *6 n.6 (Tex. App.—Austin June 15, 2023, pet. filed) (explaining that, despite the intervening amendments to the TCPA, "*Adams* remains instructive because the supreme court made clear that *Adams*' allegation was a matter of public concern even if viewed 'apart from the non-exclusive statutory list.'" (quoting *Adams*, 547 S.W.3d at 896)).

Moreover, Texas courts have consistently held that "accusations that a person engaged in criminal conduct is considered a matter of public interest under the TCPA." *Whitelock v. Stewart*, 661 S.W.3d 583, 597 (Tex. App.—El Paso 2023, pet. denied); *see Garcia v. Semler*, 663 S.W.3d 270, 281 (Tex. App.—Dallas 2022, no pet.) ("It is well-settled that even after the 2019 amendments, 'criminal acts are matters of public concern.'") (quoting *Austin v. Amundson*, No. 05-22-00066-CV, 2022 WL 16945911, at *3 (Tex. App.—Dallas Nov. 15, 2022, no pet.) (mem. op.)); *see also Lyden v. Aldridge*, 2023 WL 6631528, at *3 (Tex. App.—Fort Worth Oct. 12, 2023, no pet.) (mem. op.) ("By taking the position that the alleged communication at the heart of his lawsuit constitutes an accusation of criminal conduct, Aldridge has, in effect, conceded that it involved a matter of public concern ....").

In light of the above and given that Plaintiffs allege that Defendants' statements accuse Plaintiffs of participating in "illegal activity," Defendants' statements were made in connection with a matter of public concern as a matter of law. Therefore, Defendants have satisfied their initial

burden of showing the TCAP applies to Plaintiffs' defamation claims.

C. Step 2: Plaintiffs cannot present clear and specific evidence establishing a prima facie case for each essential element of their defamation claims.

Because the TCPA applies at Step 1, the burden shifts to Plaintiffs as the nonmovants at Step 2 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); *KB Home,* 629 S.W.3d at 654. This requirement helps fulfill the TCPA's purpose of ensuring that lawsuits to which the statute applies are "meritorious." *See* TEX. CIV. PRAC. & REM. CODE § 27.001. Plaintiffs cannot satisfy this burden.[2]

To be clear and specific, evidence "must provide enough detail to show the factual basis for [the] claim." *D Magazine Partners, L.P. v. Rosenthal,* 529 S.W.3d 429, 434 (Tex. 2017). This standard requires evidence that is "unambiguous, sure, or free from doubt" and is "explicit or relating to a particular named thing." *In re Lipsky,* 460 S.W.3d at 590-91. The evidence should establish the facts of when, where, and what occurred, the nature of the conduct, and any damages. *Id.* A prima facie case "refers to evidence sufficient as a matter of law to establish a given fact if it is not rebutted or contradicted." *Id.* at 590. Establishing a prima facie case "requires more [than] mere notice pleading. . . . [G]eneral allegations that merely recite the elements of a cause of action [] will not suffice." *Id.* "Bare, baseless opinions," "general averments," and "conclusory" statements do not satisfy this burden. *Id.* at 592-93.

Plaintiffs must present clear and specific evidence of each of the following elements: "(1) the defendant published a false statement; (2) that defamed the plaintiff; (3) with the requisite degree of fault regarding the truth of the statement (negligence if the plaintiff is a private

[2] Because the burden at Step 2 belongs solely to the Plaintiffs, Defendants reserve the right to address any further arguments and submit their own evidence on this stage of the analysis in its Reply.

individual); and (4) damages (unless the statement constitutes defamation per se)." *D Magazine Partners, L.P. v. Rosenthal*, 529 S.W.3d at 434 (citing *In re Lipsky*, 460 S.W.3d at 593; *WFAA-TV, Inc. v. McLemore*, 978 S.W.2d 568, 571 (Tex. 1998)). Plaintiffs cannot establish each essential element of their defamation cause of action, much less can they do so under the clear and specific evidence standard as required under the TCPA.

D. Step 3: Plaintiffs' defamation claims fail as a matter of law.

Without analyzing the Plaintiffs' defamation claims under Step 2 of the analysis, the Court can dismiss the claims with prejudice by proceeding directly to Step 3 and concluding that Defendants have satisfied their burden to establish that Plaintiffs' defamation claims fail as a matter of law. In a defamation case, the threshold question is whether the words used "are reasonably capable of a defamatory meaning." *Dallas Morning News, Inc. v. Tatum*, 554 S.W.3d at 624 (citing *Musser v. Smith Protective Servs., Inc.*, 723 S.W.2d 653, 655 (Tex. 1987)). This is an objective rather than a subjective examination. *Id*. Thus, "if a statement is not verifiable as false, it is not defamatory." *Id*. (citing *Neely v. Wilson*, 418 S.W.3d 52, 62 (Tex. 2013)).

"Similarly, even when a statement is verifiable as false, it does not give rise to liability if the 'entire context in which it was made' discloses that it is merely an opinion masquerading as a fact." *Id*. (citing *Bentley v. Bunton*, 94 S.W.3d 561, 581 (Tex. 2002)). Texas courts have consistently held that words or phrases which, from their context, are opinions or rhetorical hyperbole are not actionable. *See Scripps NP Operating, LLC v. Carter*, 573 S.W.3d 781, 795 (Tex. 2019) (discussing when opinion may be non-actionable); *Backes v. Misko*, 486 S.W.3d 7, 26 (Tex. App.—Dallas 2015, no pet.) (observing that rhetorical hyperbole is inactionable).

In the current case, Plaintiffs allege that Defendants published an email memorandum to residents that included defamatory statements; specifically, Plaintiffs allege "Defendants' agenda

included a section titled 'Hills' with the subtopic and items 'Brief review of evidence shared – Peeping Tom and Firearms (Mr. Hill); Aggressive driving (Mr. and Mrs. Hill); Harassing emails and texts (Mrs. Hill).' *See Plaintiffs' Original Petition*, pg. 3, ¶ 13. Plaintiffs further allege that Defendants' statements accused Plaintiffs of "participating in crimes." *Id*. at pg. 4, ¶ 20. Plaintiffs do not identify any specific crime or statute supposedly implicated by Defendants' agenda. Instead, Plaintiffs allege "Defendants stated to other residents that Plaintiff Zachariah Hill was a 'Peeping Tom' and also stated that both Plaintiffs were aggressive drivers in the residential neighborhood." *Id*. Defendants will address each statement in turn.

First, "Peeping Tom" is not a legal term, nor is it a verifiable fact. Rather, "Peeping Tom," in this instance—where Mr. Hill was repeatedly seen (and recorded) patrolling the neighborhood and taking photos of peoples' homes at all hours of the day/night while armed with an assault rifle—is a clear example of the type of "'loose, figurative or hyperbolic' language that is immunized from defamation claims." *See Mogged v. Lindamood*, No. 02-18-00126-CV, 2020 WL 7074390, at *15 (Tex. App.—Fort Worth Dec. 3, 2020, pet. denied) (mem. op.) (recognizing that calling someone a "sex predator," which does not have an "objective, verifiable meaning," as opposed to making a statement that someone was a "convicted felon," which is in fact a verifiable statement, "is the sort of 'loose, figurative or hyperbolic' language that is immunized from defamation claims"); *see also Whitelock v. Stewart*, 661 S.W.3d at 600 (noting that generally calling someone a "horse abuser," standing alone, might simply be interpreted as being "loose, figurative or hyperbolic" language that is immune from defamation liability).

Because a "Peeping Tom" accusation is not a verifiable fact, and because Defendants' agenda did not reference a specific crime or statute, Plaintiffs' allegation that Defendants accused Mr. Hill of a crime is erroneous and imprecise. *Lilith Fund for Reproductive Equity v. Dickson*,

662 S.W.3d 355, 357–63 (Tex. 2023) (concluding that challenged TCPA statements about "murder" were protected opinions about abortion law because whether an alleged defamatory statement constitutes an opinion rather than a verifiable falsity is a question of law answered from the perspective of a reasonable person's perception of the communication's entirety, not from isolated statements.).

Second, Defendants' statements that Plaintiffs were driving aggressively in the neighborhood are nothing more than opinions that are immune from defamation liability. *See Mogged v. Lindamood*, No. 02-18-00126-CV, 2020 WL 7074390, at *16 (Tex. App.—Fort Worth Dec. 3, 2020, pet. denied) (discussing the broader principle that a speaker's individual judgment that "rests solely in the eye of the beholder" is mere opinion.) (quoting *Falk & Mayfield, L.L.P. v. Molzan*, 974 S.W.2d 821, 824 (Tex. App.—Houston [14th Dist.] 1998, pet. denied)); *see also Whitelock v. Stewart*, 661 S.W.3d at 599 (statements that the plaintiffs were "total idiots" and were "nothing but liars and a bunch of frauds" could have been considered opinions that were not objectively verifiable).

In sum, Plaintiffs' defamation claims fail as a matter of law given that Defendants' statements constitute opinions or rhetorical hyperbole, which are immunized from defamation liability. As such, Defendants request that the Court dismiss Plaintiffs' defamation claims with prejudice by proceeding directly to Step 3 and concluding that Defendants have satisfied their burden to establish that Plaintiffs' defamation claims fail as a matter of law.

E. Monetary Relief: If the Court grants Defendants' motion, then an award of attorneys' fees and costs is mandatory under the TCPA.

When a TCPA motion is granted in whole or in part, the trial court "shall award to the moving party court costs and reasonable attorney's fees incurred in defending against the legal

action" and "may award to the moving party sanctions" sufficient to deter the nonmoving party from bringing similar actions. TEX. CIV. PRAC. & REM. CODE § 27.009(a)(1), (2).

Under the plain statutory language, the award of court costs and reasonable attorney's fees is mandatory. *1st & Trinity Super Majority, LLC v. Milligan,* No. 08-20-00230-CV, 2022 WL 2759049, at *18 (Tex. App.—El Paso July 14, 2022, no pet. h.) (citing *Sullivan v. Abraham,* 488 S.W.3d 294, 299 (Tex. 2016)). Although the Court has discretion to determine the amounts to be awarded, the Court lacks discretion to deny an award of fees and costs under Section 27.009(a)(1). *See, e.g., Broder v. Nexstar Broad. Group, Inc.,* No. 03-19-00484-CV, 2021 WL 2273470, at *15-16 (Tex. App.—Austin June 4, 2021, no pet.) (affirming $113,510 in trial fees and $60,000 in appellate fees to successful TCPA movant); *ADB Interest, LLC v. Wallace,* 606 S.W.3d 413, 440 (Tex. App.—Houston [1st Dist.] 2020, pet. denied) (affirming awards to successful TCPA movant of $125,000 in trial attorney's fees and $110,000 in conditional appellate fees).

Importantly, "the TCPA does not limit a successful movant to recovering only those fees incurred in connection with the motion to dismiss. Instead, the TCPA requires the trial court to award 'reasonable attorney's fees incurred in defending against the legal action.'" *Cardio Group, LLC v. Kring,* No. 05-22-00101-CV, 2022 WL 17817971, at *6 (Tex. App.—Dallas Dec. 20, 2022, no pet.) (citing TEX. CIV. PRAC. & REM. CODE § 27.009(a)(1)). Thus, fees may be recovered "for 'defensive work' including investigating the plaintiff's claims, answering the petition, responding to motions for discovery, attending the hearing on the motion to dismiss, filing motions for protection to and quash subpoenas, and attending the hearing on attorney's fees." *Id.* (collecting cases); *see also Cobb Dev. v. McCabe,* No. 03-21-00524-CV, 2023 WL 4003513, at *12 (Tex. App.—Austin June 15, 2023, pet. filed) (affirming $150,000 fee award to successful TCPA movant for handling the motion in addition to "negotiating and drafting a Rule 11 agreement,

investigating the factual basis of [plaintiff's] claims, preparing third party subpoenas, writing and reviewing pleadings, drafting a motion for expedited discovery, drafting evidentiary objections, and responding to [plaintiff's] objections.").

As a matter of judicial economy, Defendants request a bifurcated hearing to present proof in support of the amount of fees and costs to be awarded after the Court has ordered that Defendants' TCPA motion is granted. *See Day v. v. Fed'n of State Med. Boards of the United States, Inc.*, 579 S.W.3d 810 (Tex. App.—San Antonio 2019, pet. denied) (evidence in support of fees is not required to be presented at the dismissal hearing; it can be presented later to support fee award in connection with final judgment); *see also e.g., Farhat v. Wilson Scott, LLC,* No. 02-19-00438-CV, 2020 WL 1949624, at *7 (Tex. App.—Fort Worth Apr. 23, 2020, no pet.) ("[T]he TCPA does not require the trial court to rule on the question of attorney's fees within[thirty days].").

PRAYER

For the foregoing reasons, Defendants respectfully request that the Court grant the TCPA motion; dismiss Plaintiffs' defamation claims with prejudice; order that Defendants are entitled to mandatory awards of attorneys' fees and costs; and set another hearing to determine the amount of monetary relief to which Defendants are entitled.

Respectfully Submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

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CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2024, a true and correct copy of the foregoing document was served in accordance with the Texas Rules of Civil Procedure upon all known parties and counsel of record.

/s/ Case Kennedy Donovan
Case K. Donovan

Automated Certificate of eService

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Associated Case Party: SYCAMORE COURT PROPERTY OWNERS' ASSOCIATION, INC

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