Filed: 8/22/2024 3:25 PM
Michael Gould
District Clerk
Collin County, Texas
By Migdalia S Martinez Deputy
Envelope ID: 91226452

CAUSE NO. 429-04031-2024

FREDERICK FRAZIER,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	COLLIN COUNTY, TEXAS
	§	
PAUL CHABOT,	§	
	§	
Defendant.	§	429th JUDICIAL DISTRICT

Defendant Paul Chabot's TCPA Motion to Dismiss

COMES NOW Defendant Paul Chabot and files this Motion to Dismiss pursuant to the Texas Citizens Participation Act, TEX. CIV. PRAC. & REM. CODE Chapter 27 (the "TCPA"). Pursuant to TEX. CIV. PRAC. & REM. CODE § 27.003 and § 27.009, Chabot respectfully moves this Court to dismiss this legal action against him and assess court costs, reasonable attorneys' fees, and sanctions against Plaintiff Frederick Frazier.

INTRODUCTION

Plaintiff Frederick Frazier, an elected public official, should have known better than to file this baseless lawsuit. As someone who has served in public office, Frazier is no stranger to the scrutiny that accompanies public service. Yet, instead of accepting responsibility for his own misconduct—misconduct that led to his criminal charges, his dishonorable discharge from the Dallas Police Department, and his defeat at the polls—Frazier seeks to silence one of his many critics through litigation.

When individuals run for public office, they accept more than just the privilege of representing their constituents. They take on a higher responsibility to uphold the public trust, to lead by example, and to serve with integrity. Moreover, under modern First Amendment

Copy from re:SearchTX

jurisprudence, they must also accept that their actions, especially those related to their official duties, will be subject to public scrutiny and criticism. This is an essential aspect of democracy—holding public officials accountable through free expression and open debate.

Frazier got caught cutting down Paul Chabot's campaign signs—an act unbecoming of any public servant, much less an elected representative. When Chabot rightfully complained, Frazier found himself facing criminal charges. He was indicted for impersonating a code services officer, and ultimately, he chose to settle the criminal cases against him, resulting in probation and a dishonorable discharge from the Dallas Police Department.

In May, Frazier's constituents sent him a resounding message by rejecting him in the primary runoff election. Instead of reflecting on his defeat and accepting the consequences of his crimes, Frazier now seeks to rewrite history by filing this defamation lawsuit. While Frazier may have ultimately been discharged from his probation and thereafter taken steps to redesignate his discharge from dishonorable to general, those subsequent procedural maneuvers do not erase the underlying facts. Frazier's crimes are a matter of public record, and accurate reporting on those crimes is neither false nor defamatory.

Typically, a criminal conviction and defeat at the polls is a time for introspection, but instead, Frazier has chosen to lash out at one of his many critics through this vindictive lawsuit. His attempt to punish legitimate criticism through legal action cannot be allowed to succeed. As a public official, Frazier cannot meet the high bar of proving a prima facie case for defamation. Accordingly, this Court should dismiss this lawsuit with prejudice and award attorneys' fees to Defendant Paul Chabot. Additionally, given the nature of this frivolous lawsuit, this court should

Copy from re:SearchTX

impose sanctions to send a clear message: abusive litigation aimed at silencing critics is unacceptable in a free society.

TABLE OF CONTENTS

INTRODUCTION 1

BACKGROUND FACTS 4

ARGUMENT 10

I. THE TCPA PROVIDES EXPEDITED DISMISSAL AND PROTECTS DEFENDANTS FROM THE BURDENS OF LITIGATION AND DISCOVERY WHERE CLAIMS CHALLENGE THEIR FREE SPEECH RIGHTS. 10

II. TCPA STEP ONE: THE TCPA APPLIES TO FRAZIER'S DEFAMATION CLAIMS. 13

A. Frazier complains of Chabot's statements regarding his qualifications for office. 13

B. The statements qualify for protection under the TCPA. 13

C. Frazier's Petition Alone Confirms the TCPA Applies. 14

III. TCPA STEP TWO: FRAZIER CANNOT DEMONSTRATE A PRIMA FACIE CASE. 16

A. Some of the statements at issue were, in context, not a statement of fact that could be proved false. 17

B. Alternatively, the statements at issue are substantially true. 20

C. Regardless of whether they were fact or opinion, the statements can be viewed as rhetorical hyperbole. 22

D. The statements at issue were not defamatory per se. 23

E. Frazier cannot prove actual malice. 25

F. Frazier did not suffer any damages as a result of the statements. 26

G. Frazier's vague references to other unidentified statements do not support a prima facie case under the TCPA. 28

Copy from re:SearchTX

IV. TCPA STEP THREE: CHABOT CAN DEMONSTRATE AFFIRMATIVE DEFENSES. 29

A. Frazier's claims are barred as a libel-proof reputation because no statement can further harm his reputation. 29

B. Frazier's claims are barred because he did not comply with the Defamation Mitigation Act. 30

V. CHABOT IS ENTITLED TO HIS ATTORNEYS' FEES & COSTS. 34

VI. THIS COURT SHOULD AWARD SANCTIONS AGAINST FRAZIER. 35

PRAYER FOR RELIEF 36

BACKGROUND FACTS

Plaintiff Frederick Frazier is a public official as an elected Texas state representative.[1] He was defeated for re-election on May 28, 2024, in the Republican primary runoff. His current term in office will end in January 2025.

Defendant Paul Chabot was Frazier's previous political opponent in 2022, when they were both candidates for Texas State House District 61. In December of 2023, Chabot created and then ran a political action committee called Collin County Citizens for Integrity PAC with the purpose of defeating Plaintiff Frazier in the Republican Primary. Collin County Citizens for Integrity PAC is a Texas Ethics Commission registered special purpose political committee.

Frazier was indicted on two felonies for his activities targeting Defendant Chabot, a case brought forward by a special prosecutor after a lengthy criminal investigation by the McKinney Police Department and the Texas Rangers. Frazier entered a plea on December 5, 2023, which resulted in fines, victim restitution, and deferred adjudication. In a separate case, he pled guilty in

[1] All facts stated herein are supported by the attached Declaration of Paul Chabot in Support of TCPA Motion to Dismiss and its attached exhibits as described more fully herein.

Copy from re:SearchTX

McKinney Municipal Court for another crime of targeting Defendant Chabot's campaign signs based on video evidence. This guilty conviction resulted in an additional fine for Frazier. These criminal matters were widely covered by local and statewide media.

Frazier was dishonorably discharged from the Dallas Police Department in December 2023. This, too, was widely covered by local and statewide media and confirmed by the Dallas Police Department in a public release of records and an audio message from a Deputy Chief within the Dallas Police Department.

Due to his crimes, Frazier's peace officer license was placed on an "administrative hold" on July 22, 2022, and that hold remains today.

In 2022, the media reported that Frazier was placed on the "Brady List," which requires past misconduct to be disclosed to defense lawyers. Brady-listed officers are often not retained for employment because their lack of credibility can be damaging in criminal cases. They are seen as not trustworthy. Ethics and integrity are the pillars of police work, and Frazier's inclusion on the Brady list demonstrates his lack of either.

In 2024, it was revealed that the Dallas Police Department's Internal Affairs Division had conducted a lengthy review of Frazier, including conducting an interview with him. Their final report concluded that all "allegations" being investigated were "sustained" on February 11, 2023, and the final report states that "Frazier Retired Under Investigation." Additionally, a publicly released Dallas Police Department internal memo states that Plaintiff Frazier is not eligible for rehire, as he had a pending investigation in the Internal Affairs Division.

Copy from re:SearchTX

Dallas Police Deputy Chief Monique Alex confirmed in a recorded phone message to Chabot that Frazier would receive a dishonorable discharge instead of termination due to his submission for retirement pending the internal affairs investigation.

Chabot does not believe that Frazier had any arrangement with the Dallas Police Department to change his discharge status from a dishonorable discharge to a general discharge. While he has heard that Frazier appealed his discharge status to a state agency in Austin and that the agency made some determination with regard to the discharge status, Frazier has provided no copy of any document to Chabot to confirm any change in status of the discharge. Chabot does not believe Frazier has ever published any documentation to the public to confirm a change in his discharge status.

On the other hand, Defendant Paul Chabot is a decorated law enforcement officer and naval intelligence commander. Chabot retired with 21 years of service as a Deputy Sheriff Reserve and 21 years as a Naval Intelligence Officer with Top Secret Clearance. He retired "honorably." He also served as a former California State Parole Board Commissioner, determining parole release and revocation on thousands of cases. Chabot also served in the White House Office of National Drug Control Policy with Top Secret Clearance. His reputation is well documented and evident by his over two decades of holding our Nation's highest security clearance level, including standard five-year re-evaluations and a polygraph based on trustworthiness and character.

Attached to Chabot's Declaration are Exhibits showing that Chabot's statements regarding Frazier were true at the time they were made and remain substantially true if published today.

Copy from re:SearchTX

Exhibits A, B, C, D, and E show Frazier accepted a plea deal for felony charges of impersonating a public official, according to media reports. Media also reported on his two felony indictments, which led to the two plea deals.

Exhibits F and G also show media reporting that Frazier delayed court action using his legislative position.

Exhibits H and I show Frazier pled guilty in McKinney Municipal Court. The court found Frazier guilty and fined him. The arrest warrant (Exhibit I) states Frazier "did then and there intentionally or knowingly unlawfully damage or destroy tangible property . . . BY CUTTING ZIP TIES FROM A POLITICAL SIGN THAT WERE ANCHORING THE SIGN TO A T-POST, without the effective consent of the owner of the property. . . . PAUL CHABOT."

Exhibit J shows Frazier was ordered to pay Chabot victim restitution in connection with the McKinney Municipal Court case.

Exhibit K is video evidence obtained by the McKinney Police Department showing Frazier cutting down, then taking, then discarding one of Chabot's 8x4 campaign signs.

Exhibit L is a report from the Texas Ranger Investigation. Section 1.8 reports that Frazier impersonated a public servant under the fake name of John Roberts, then told a told a manager at a Walmart that he "took the sign down and would do it again." The sign belonged to Chabot. Chabot filed a theft report on December 3, 2021. Frazier stole the sign based on his admission to the Walmart employee. Additionally, the Texas Rangers categorized Frazier's crime as "theft" under the "offenses" section of their report.

Exhibit M is an audio recording of the Texas Ranger interview of Frazier that outlines the crimes he committed that led to his two felony indictments and arrest and plea agreement.

Copy from re:SearchTX

Exhibits N and O are True Bills of Indictment in cause # 219-82366-2022 and 219-82367-2022, through which a grand jury indicted Frazier for two 3rd degree felony counts of impersonating a public servant.

Exhibit P is a docket sheet for The State of Texas vs. Frederick Eugene Frazier, II, based on his two felony indictments. The Court found: "that the evidence and Defendant's plea substantiate the Defendant's guilt of the offense beyond a reasonable doubt as charged in the indictment."

Exhibit Q are the "Written Plea Admonishments" signed by Frazier in which he "enter[ed] a plea of guilty" in cause # 219-82367-2022. Frazier further agreed, if trial were necessary, to "judicially confess [his] guilt." He stated: "I am pleading guilty in this case because I am criminally responsible for the offense charged, and I agree that any testing would confirm . . . my guilt of this offense."

Exhibit R shows Frazier was dishonorably discharged from Dallas PD according to the Dallas Police records.

Exhibit S is a letter showing Frazier is not eligible for re-hire according to Dallas Police Department records.

Exhibit T shows Frazier was dishonorably discharged from Dallas PD in lieu of likely termination, according to an audio message from Deputy Chief Alex of Dallas PD. Included with Exhibit T is a transcript of the audio message.

Exhibit U is a Dallas Police Department record showing Frazier retired under investigation.

Exhibit V is media reporting on Frazier's dishonorable discharge, "North Texas state lawmaker to be dishonorably discharged from DPD after 'no contest' plea"—Dallas Morning News.

Copy from re:SearchTX

Exhibit W is media reporting on Frazier's dishonorable discharge, "North Texas state representative will be Dishonorably Discharged from Dallas Police Department; pleads 'no contest' to misdemeanor charges"—WFAA ABC News.

Exhibit X is media reporting on Frazier's status on the "Brady List."

Exhibit Y is a Dallas Police Department Internal Affairs report sustaining all three allegations against Frazier.

Exhibit Z is a letter from Texas State Rep Tinderholt calling on the Texas House General Investigating Committee to investigate Frazier based on his plea, dishonorable discharge and "serious and criminal charges."

Exhibit AA is a compilation of media reports showing Frazier lied to the media, denying his involvement in crimes he was later found "guilty" of.

Exhibit BB is a June 28, 2022, letter Chabot sent to Frazier demanding he retract various dishonest statements. The letter specifically addressed Frazier's lies about Chabot's status as a 100% disabled veteran.

Exhibit CC is a letter Chabot received on or about May 9, 2024, from an attorney for Frazier demanding Chabot "cease and desist from defamation" of Frazier.

Copy from re:SearchTX

ARGUMENT

Frederick Frazier's Petition should be dismissed because he will be unable to marshal "clear and specific" evidence for each element of his defamation claims. Texas law imposes this burden on plaintiffs who sue their fellow citizens on account of their First Amendment-protected speech—such as speech made during a political campaign about a public official's qualifications for office.

This is a special kind of motion—an Anti-SLAPP Motion under the TCPA[2]—that proceeds in three steps. As discussed below, Chabot need only show here, in TCPA Step 1, that his speech falls within the scope of the TCPA. In TCPA Step 2, Frazier must meet a very high burden to show that he can carry every element of a defamation claim. And in TCPA Step 3, if Frazier does meet that high bar, dismissal is still appropriate if Chabot can establish an affirmative defense. The remainder of this brief meets Chabot's burden on step 1, then shows that Frazier cannot meet step 2, and establishes that Chabot is entitled to judgment as a matter of law under step 3.

I. THE TCPA PROVIDES EXPEDITED DISMISSAL AND PROTECTS DEFENDANTS FROM THE BURDENS OF LITIGATION AND DISCOVERY WHERE CLAIMS CHALLENGE THEIR FREE SPEECH RIGHTS.

The TCPA provides for expedited dismissal of certain legal actions that fall within its broad scope. "If a legal action is based on or is in response to a party's exercise of the right of free speech, right to petition, or right of association or arises from any act of that party in furtherance of the party's communication or conduct described by Section 27.010(b), that party may file a motion to dismiss the legal action." TEX. CIV. PRAC. & REM. CODE § 27.003(a). The TCPA is meant "to

2 Chapter 27 of the Civil Practice & Remedies Code, is more commonly known as the Texas Citizens Participation Act ("TCPA").

Copy from re:SearchTX

encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law 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. It "protects citizens ... from retaliatory lawsuits that seek to intimidate or silence them." *In re Lipsky*, 460 S.W.3d 579, 584 (Tex. 2015) (orig. proceeding). When a motion to dismiss is filed under § 27.003, all discovery in the legal action is suspended until the court has ruled on the motion. TEX. CIV. PRAC. & REM. CODE § 27.003(b).

The first step—the main purpose of this Motion—is to determine whether the TCPA applies to the legal action at issue. TEX. CIV. PRAC. & REM. CODE § 27.005(b). If the moving party—here, Chabot—shows that the action is *based on* or *in response to* his exercise of the right of free speech or arises from an act described by Section 27.010(b), then the court *must* dismiss the legal action unless the plaintiff satisfies step two of the analysis. *Id.*

The TCPA defines "exercise of the right of free speech" as "a communication made in connection with a matter of public concern." TEX. CIV. PRAC. & REM. CODE § 27.001(3). "Matter of public concern" is broadly defined to include, amongst other things, statements or activities regarding "a matter of political, social or other interest to the community" or "a subject of concern to the public." TEX. CIV. PRAC. & REM. CODE § 27.001(7). Texas courts have noted that the "expansive definitions" in the TCPA operate to bring within its scope a wide variety of communications. *Serafine v. Blunt*, 466 S.W.3d 352, 357 at n.1 (Tex. App.—Austin 2015, no pet.). The TCPA also applies to any legal action that arises from any act in furtherance of communication or conduct as described by Section 27.010(b). That section states that if a party's conduct is described by Section 27.010(b), and a legal action "arises from [acts] of that party in furtherance of

Copy from re:SearchTX

the party's . . . conduct described" by that section, then the legal action is subject to the Act. Conduct described by Section 27.010(b) includes:

> **[A]ny act of [a] person, whether public or private, related to** the gathering, receiving, posting, or processing of information for **communication to the public**, whether or not the information is actually communicated to the public, for the creation, dissemination, exhibition, or advertisement or other similar promotion **of a** dramatic, literary, musical, **political**, journalistic, or otherwise artistic **work**, including audio-visual work regardless of the means of distribution, a motion picture, a television or radio program, or an article published in a newspaper, website, magazine, or other platform, no matter the method or extent of distribution.
>
> TEX. CIV. PRAC. & REM. CODE § 27.010(b) (emphasis added).

In the second step, the court examines whether the plaintiff has established by *clear and specific evidence* a prima facie case for *each essential element of his claims*. TEX. CIV. PRAC. & REM. CODE § 27.005(c) (emphasis added). If he has done so, then the court may not dismiss the legal action unless the movant satisfies step three of the analysis. *Id.*

In the third step, even if the plaintiff has established a prima facie case for each essential element of his claims, the court must still "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 judgement as a matter of law." TEX. CIV. PRAC. & REM. CODE § 27.005(d).

As shown below, under TCPA Step 1, this matter is covered under the TCPA. Under step 2, Frazier will be unable to meet his burden. And even if he did, Chabot is entitled to judgment as a matter of law under step 3 because Frazier's reputation has been so tarnished by his own widely-reported misconduct that he is "libel-proof" and because he has failed to comply with the statutory prerequisites of suit under the Defamation Mitigation Act.

Copy from re:SearchTX

II. TCPA STEP ONE: THE TCPA APPLIES TO FRAZIER'S DEFAMATION CLAIMS.

A. Frazier complains of Chabot's statements regarding his qualifications for office.

Frazier seeks to hold Chabot liable for alleged defamation, which at the most basic level requires him to prove that Chabot made a false statement of fact about him. While Frazier's Petition complains generally about Chabot's "systematic and public campaign of defamation" targeted at voters during Frazier's reelection campaign, *see, e.g.* Petition at ¶7, Frazier's Petition provides a list of complained-of phrases that he believes are actionable at ¶20:

- Frazier pled no contest to felony charges of impersonating a public official.
- Frazier used his legislative position to delay justice.
- Frazier engaged in criminal acts of petty thievery.
- Frazier is a "dirty cop."
- Frazier is a "dishonorable cop."
- Frazier is dishonorably discharged from the Dallas Police Department.
- Frazier lied to voters.
- Frazier slandered a disabled veteran.

As explained in this Motion, these statements are all substantially true, were substantially true at the time they were made, or constitute non-actionable opinion or rhetorical hyperbole.

B. The statements qualify for protection under the TCPA.

Under the TCPA, to qualify as an "exercise of the right of free speech" the subject matter of the speech must be a "matter of public concern." TEX. CIV. PRAC. & REM. CODE § 27.001(2). "Matter of public concern" is broadly defined to include "**a statement** or activity **regarding**:

> (A) **a public official**, public figure, or other person who has drawn substantial public attention due to the person's official acts, fame, notoriety, or celebrity;
> (B) **a matter of political**, social, or other **interest to the community**; or
> (C) **a subject of concern to the public**.

TEX. CIV. PRAC. & REM. CODE § 27.001(7) (emphasis added).

Copy from re:SearchTX

This broad definition easily embraces the subject matter alleged in Frazier's Petition. It is undisputed Frazier is a public official and that the statements at issue in this suit were made to voters regarding Frazier's qualifications for reelection. Likewise, these statements arose from Chabot's actions related to his promotion of various political works, triggering application of the statute under TEX. CIV. PRAC. & REM. CODE § 27.1010(b).

C. Frazier's Petition Alone Confirms the TCPA Applies.

Frazier's petition alone meets Chabot's burden of showing the TCPA applies, because "[i]n determining whether a legal action is subject to or should be dismissed under this chapter, the court shall consider the pleadings, evidence a court could consider under Rule 166a, Texas Rules of Civil Procedure, and supporting and opposing affidavits stating the facts on which the liability or defense is based." TEX. CIV. PRAC. & REM. CODE § 27.006. Chabot could rely only on the Petition itself, because "[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). Indeed, the Court in *Hersh* held that the basis of a legal action is not determined by the defendant's admissions or denials, but by the plaintiff's allegations. *Id.* Thus, if a plaintiff alleges a defendant engaged in communications covered by the Act, the Act still applies even if the defendant denies making the communication. *Id.*

According to Frazier's Petition, his suit concerns Chabot's speech about Frazier's reelection. *See* Petition §8 ("Defendant promulgated false information about Mr. Frazier to undermine Mr. Frazier's credibility and tarnish his image in the eyes of the electorate."); Petition ¶9 ("Defendant persisted with a campaign . . . [to] injure Mr. Frazier's efforts for reelection."). In complaining about the website www.firefrazier.com, Frazier states that Chabot's

Copy from re:SearchTX

statements were designed to "decimat[e] the public's trust and confidence in [Frazier's] capacity to serve." Petition at ¶15. These statements were allegedly "spread far and wide to reach as many voters as possible . . . ." *Id.* Likewise, Frazier complains about Chabot's efforts in the midst of a political campaign, stating "[t]throughout the campaign, Chabot continued to spread false information about Mr. Frazier to tarnish Mr. Frazier's image in the eyes of the electorate." Petition at ¶17.

Frazier thus concedes Chabot's statements regarding his behavior were serious matters of interest to the community. For example, with regard to the allegation that Frazier "engaged in criminal acts of petty thievery by stealing campaign signs" Frazier states that this is "a serious accusation of unlawful behavior that would be unbefitting of a police officer or legislator." Petition at ¶10.

Chabot need show nothing more, and the Court need not engage in any further analysis to trigger application of the Act and to move on to step two of the TCPA analysis. *See AOL, Inc. v. Malouf*, No. 05-13-01637-CV, 2015 WL 1535669, at *2 (Tex. App.—Dallas Apr. 2, 2015) (finding statements that dentist was charged in Medicaid scam to be connected with matters of health or safety, government, and community well-being, even though statements were ultimately determined to be substantially true and not defamation per se); *Watson v. Hardman*, 497 S.W.3d 601, 607 (Tex. App.—Dallas 2016) (statements alleging misappropriation of publicly solicited charitable funds relate to community well-being, specifically the well-being of donors).

Whether the alleged statements give rise to civil liability is determined in the second step of the analysis and is not relevant to the first step of determining whether the TCPA applies. *Kinney v. BCG Attorney Search, Inc.*, 03-12-00579-CV, 2014 WL 1432012, at *5 (Tex. App.—Austin Apr.

Copy from re:SearchTX

11, 2014, pet. denied) (op. on reh'g) ("Whether Kinney's statements were defamatory and thus actionable is reviewable in the second part of an appellate court's analysis, under section 27.005(c), . . ."); *In re Lipsky*, 411 S.W.3d 530, 543 (Tex. App.—Fort Worth 2013, no pet.) (rejecting the argument that statements underlying the claim were outside the scope of the TCPA because they were defamatory and thus not protected, holding instead that "[C]hapter 27 dictates that we should review evidence concerning whether relators' statements were defamatory and thus actionable in the second part of [the court's] review.").

Accordingly, it cannot be reasonably disputed that Frazier's suit is based on Chabot's exercise of his freedom of speech as defined under Chapter 27. On top of this, Chabot's declaration and exhibits confirm he had a good faith belief in sharing the events regarding Frazier's misconduct, which were faithfully reported to voters in the midst of a political campaign. Accordingly, because the TCPA applies to this legal action, Frazier is required to show a prima facie case for each essential element of his claims. This is impossible, as shown below.

III. TCPA STEP TWO: FRAZIER CANNOT DEMONSTRATE A PRIMA FACIE CASE.

Frazier cannot satisfy the second step of the TCPA analysis. The elements of defamation are (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. *Lipsky*, 460 S.W.3d at 593 (citing *WFAA-TV, Inc. v. McLemore*, 978 S.W.2d 568, 571 (Tex. 1998)).

The TCPA requires him 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). "Clear and specific" evidence is "unambiguous," "free from doubt," and "explicit" or "referring to a particular named thing." *Lipsky*, 460 S.W.3d at 590 (quoting *KTRK Television v. Robinson*, 409

Copy from re:SearchTX

S.W.3d 682, 689 (Tex. App.—Houston [1st Dist.] 2013, pet. denied)). Thus, the term "clear and specific" pertains to the quality of evidence required to establish a prima facie case, and the term "prima facie case" pertains to the amount of evidence necessary for a plaintiff to carry its minimal factual burden to support a rational inference establishing each essential element of a claim. *Grant v. Pivot Tech. Sols., Ltd.*, 556 S.W.3d 865, 882 (Tex. App.—Austin 2018, pet. denied). Multiple elements of Frazier's claims for defamation are missing from this case and he will be unable to present clear and specific evidence to satisfy those elements.

A. Some of the statements at issue were, in context, not a statement of fact that could be proved false.

Frazier's claim fails because a public official must prove the allegedly defamatory statement is false. *Bentley v. Bunton*, 94 S.W.3d 561, 586 (Tex. 2002)) (Proving falsity in a public-official defamation case is the plaintiff's burden of proof; in such a case, the defendant does not have the burden of proving substantial truth as an affirmative defense.). Under the circumstances alleged, even if Chabot made certain of the statements at issue—to pick one example, "Frazier is a dirty cop"—that statement was not false either because it was not presented by Chabot as a statement of fact based on his own knowledge, or was an opinion or consisted of rhetorical hyperbole.

"[T]he meaning of a publication, and thus whether it is false and defamatory, depends on a reasonable person's perception of the entirety of [the] publication and not merely on individual statements… A defamatory statement must be sufficiently factual to be susceptible of being proved objectively true or false, as contrasted from a purely subjective assertion." *Vice v. Kasprzak*, 318 S.W.3d 1, 17-18 (Tex. App.—Houston [1st Dist.] 2009) (internal citations omitted).

Here, the statements are in the context of a political campaign. Frazier complains of certain statements that are based on widespread news reporting, such as "Frazier pled no contest to felony

Copy from re:SearchTX

charges of impersonating a public official." Petition at ¶ 20. He complains of a statement of opinion, that "Frazier used his legislative position to delay justice." *Id.* Likewise, he complains that Chabot called him a "dirty cop" and a "dishonorable cop." *Id.* Likewise, he complains that he was accused during the campaign of "[lying] to voters]" and "[slandering] a disabled veteran." *Id.*

Beyond his specific list of statements contained at ¶20, in his Petition at ¶11, Frazier complains of a February 5, 2024 Facebook post that "describe[ed] Mr. Frazier in deeply pejorative terms" including referring to him as "dirty," and a "dishonorable cop." Later at ¶13 and Plaintiff's Petition Exhibit D, Frazier complains that Chabot "shared a tweet on X" stating that Frazier "lied to voters" and "slandered a disabled veteran."

"Statements that are not verifiable as false cannot form the basis of a defamation claim. Therefore, in distinguishing between fact (verifiable as false) and opinion, we focus on a statement's verifiability. But we note that even if a statement is verifiable as false, we consider the entire context of the statement which may disclose that it is merely an opinion masquerading as fact. The question of whether a statement is non-actionable opinion is a question of law." *Scripps NP Operating, Ltd. Liab. Co. v. Carter*, 573 S.W.3d 781, 794-95 (Tex. 2019) (internal citations and quotations omitted). The determination of whether a publication is an actionable statement of fact or a constitutionally protected statement of opinion, like the determination whether a statement is false and defamatory, is a question of law and depends upon a reasonable person's perception of the entirety of the publication. *Bentley*, 94 S.W.3d at 580.

On February 24, 2023, in *Lilith Fund for Reprod. Equity v. Dickson*, 662 S.W.3d 355 (Tex. 2023), the Texas Supreme Court clarified the standard for distinguishing between constitutionally protected opinion and a false statement of fact in defamation cases. The Court emphasized that

Copy from re:SearchTX

determining whether a statement constitutes an opinion or a verifiable falsehood is a question of law. Citing *Dall. Morning News v. Tatum*, 554 S.W.3d 614, 639 (Tex. 2018), the Court stated that this determination must be made from the perspective of a reasonable person considering the entirety of the communication, rather than isolated statements.

The Court explained that even if statements are verifiably false, they are not defamatory if the context of those statements reveals that they reflect an opinion. "Accordingly, statements that are verifiably false are not legally defamatory if the context of those statements discloses that they reflect an opinion. A reasonable person reads communications in their entirety and is aware of relevant contemporary events." *Lilith Fund*, 662 S.W.3d at 363.

To distinguish between fact and opinion, the Texas Supreme Court follows the U.S. Supreme Court's guidance in *Milkovich v. Lorain Journal Co.* See *Bentley*, 94 S.W.3d at 579 (citing *Milkovich*, 497 U.S. 1 (1990)). The Texas Supreme Court extrapolated from *Milkovich* the following principles that apply in determining whether a statement is one of opinion or fact: (1) the statement must be provable as false, at least "where public-official or public-figure plaintiffs [are] involved"; (2) constitutional protection is afforded to "statements that cannot 'reasonably be interpreted as stating actual facts' " in order to assure "that public debate will not suffer for lack of 'imaginative expression' or... 'rhetorical hyperbole.' "; (3) "where a statement of 'opinion' on a matter of public concern reasonably implies false and defamatory facts regarding public figures or officials, those individuals must show that such statements were made with knowledge of their false implications or with reckless disregard of their truth"; and (4) the statements must be given "enhanced appellate review" to assure that these determinations are made in a manner that does not "constitute a forbidden intrusion" into free speech. *Bentley,* 94 S.W.3d at 580.

Copy from re:SearchTX

Here, the bulk of the statements Frazier complains about are nothing more than Chabot's personal view of Frazier's qualifications for office. Statements like "Frazier is a dirty cop" are not objectionably verifiable. They are precisely the type of comments that a public official such as Frazier should expect when seeking reelection while battling various criminal charges based on his behavior while licensed as a peace officer.

Expressions of opinion may be derogatory and disparaging but nevertheless are protected by the First Amendment of the United States Constitution and by Article I, Section 8 of the Texas Constitution. *See Falk & Mayfield L.L.P. v. Molzan,* 974 S.W.2d 821, 824 (Tex. App.—Houston [14th Dist.] 1998, pet. denied); *Yiamouyiannis v. Thompson,* 764 S.W.2d 338, 340 (Tex. App.—San Antonio 1988, writ denied).

Any complained-of statements that are opinion cannot be the basis of a defamation claim.

B. Alternatively, the statements at issue are substantially true.

Alternatively, if the statements at issue were ones of fact, they nevertheless cannot give rise to defamation liability because the statements are substantially true. "[The common law] overlooks minor inaccuracies and concentrates upon substantial truth." *Masson v. New Yorker Magazine*, 501 U.S. 496, 516 (1991). "Minor inaccuracies do not amount to falsity so long as 'the substance, the gist, the sting, of the libelous charge be justified.'" *Id.* (quoting *Heuer v. Kee*, 59 P.2d 1063, 1064 (Cal. 1936)).

"Put another way, the statement is not considered false unless it 'would have a different effect on the mind of the reader from that which the pleaded truth would have produced.'" *Masson*, 501 U.S. at 516. "The test used in deciding whether a statement is substantially true involves considering whether the alleged defamatory statement was more damaging to the plaintiff's

Copy from re:SearchTX

reputation, in the mind of the average listener, than a truthful statement would have been." *Weber v. Fernandez*, No. 02-18-00275-CV, 2019 WL 1395796, at *9 (Tex. App.—Fort Worth Mar. 28, 2019) (citation omitted).

Most of the statements Frazier complains of fit more accurately in the category of opinion. However, some statements might be seen as (true) statements of fact. For example, Frazier complains in his Petition at ¶12 that that Chabot on February 5, 2024—during the final month of Frazier's primary election—that Frazier was "being dishonorably discharged in lieu of possible termination" and that he "received a dishonorable discharge from Dallas PD." In his list at ¶20, the following statements, for example, could be viewed as "statements of fact": "Frazier pled no contest to felony charges of impersonating a public official," "Frazier engaged in criminal acts of petty thievery," "Frazier [was] dishonorably discharged from the Dallas Police Department."

As shown in the attached Declaration of Paul Chabot and its exhibits, these statements were true when Chabot made them and remain substantially true if the statements were published today. For example, Exhibit Q contains Frazier's signed "written plea admonishments" in which he "judicially confess[ed his] guilt" and stated, "I am pleading guilty in this case because I am criminally responsible for the offense charged, and I agree that any testing would confirm . . . my guilt of this offense." Likewise, Exhibits H and I show Frazier pleaded guilty to the charge of destroying personal property. And Exhibits R and T confirm Frazier was dishonorably discharged from the Dallas Police Department.

To the extent that Frazier attempts to rewrite history by citing his discharge from probation or his efforts to convert his dishonorable discharge to a general discharge, these distinctions would not have any different effect on a reasonable listener.

Copy from re:SearchTX

Consider Chabot's alleged statement: "Frederick Frazier was dishonorably discharged from the Dallas Police Department." This would not have had a different effect on the mind of a reasonable listener than if Chabot had said: "Frederick Frazier was dishonorably discharged, but if he completes his probation, he can get it changed to a general discharge, which is still less than an honorable discharge." Thus, the alleged defamatory statement was no more damaging than the truth would have been.

Likewise, Chabot's alleged statement, "Frazier engaged in criminal acts of petty thievery," is no more damaging than a more thorough statement such as: "Frazier was arrested and plead guilty in McKinney Municipal Court to the criminal charge of tampering with personal property after he was caught cutting down his opponent's campaign sign."

This is true for any of the subsequent developments with regard to Frazier's dishonorable discharge and criminal cases. Accordingly, because any of Chabot's alleged statements regarding these facts were substantially true, Frazier cannot maintain a case for defamation based upon them.

C. Regardless of whether they were fact or opinion, the statements can be viewed as rhetorical hyperbole.

Likewise, the complained-of statements can be viewed as rhetorical hyperbole. "'Rhetorical hyperbole' has been defined as 'extravagant exaggeration [that is] employed for rhetorical effect.'" *Backes v. Misko*, 486 S.W.3d 7, 26 (Tex. App.—Dallas 2015) (citation omitted). The colorful use of terms which might otherwise refer to criminal conduct is often found to be rhetorical hyperbole rather than an actual accusation that a crime was committed. "For example, the use of 'rewarding,' 'ripping off,' and 'bilking' when reviewed in context have been considered rhetorical hyperbole." *Id.* (citation omitted). The United States Supreme Court held that the use of the term "blackmail," when used in the context of a report on heated public debates regarding

Copy from re:SearchTX

pending land negotiations, was merely rhetorical hyperbole and not an accusation that the actual crime of blackmail was committed. *Greenbelt Co-op. Pub. Ass'n v. Bresler*, 398 U.S. 6, 13 (1970); *see also Old Dominion Branch No. 496, Nat. Ass'n of Letter Carriers, AFL-CIO v. Austin*, 418 U.S. 264, 284, (1974) (use of words like "traitor" cannot be construed as representations of fact); *California Com. Inv. Grp., Inc. v. Herrington*, No. 05-19-00805-CV, 2020 WL 3820907, at *8 (Tex. App.—Dallas July 8, 2020) (defendant's conclusion that plaintiff stole property was subjective opinion); *Garcia v. Seguy*, No. 13-16-00616-CV, 2018 WL 898032, at *4 (Tex. App.—Corpus Christi Feb. 15, 2018) (nonactionable rhetorical hyperbole to write a review describing a truck dealer as "[r]ipp [sic] off place, if you want to get scammed go to this dealer").

In the context of a political campaign, to the extent any complained-of statements were not perfectly accurate, the complained-of statements can be seen as nothing more than rhetorical hyperbole. If so, they cannot be the basis of a defamation claim.

D. The statements at issue were not defamatory per se.

To be actionable, an allegedly false statement must be defamatory. "The communication to a third party must be in such way that the third party understood the words in a defamatory sense; and, absent any proof upon the issue that at least one hearer understood the words in the defamatory sense, there is no actionable publication of slander." *Glenn v. Gidel*, 496 S.W.2d 692, 697 (Tex. App.—Amarillo 1973).

It is Frazier's burden to identify which of his complained-of statements are allegedly defamatory *per se* and which are defamatory *per quod*. In his petition, Frazier appears to label only two of the eight statements defamation *per se* because Chabot "accused Mr. Frazier of committing a crime and being dishonorably discharged from the Dallas Police Department." Petition at ¶25.

Copy from re:SearchTX

Frazier concedes the "[o]ther statements" are defamation *per quod*, meaning he is required to show the statements caused him special damages. Petition at ¶26.

The Texas Supreme Court has identified various categories of statements under the common law that were considered defamation *per se*, including accusing someone of a crime, of having a foul or loathsome disease, or of engaging in serious sexual misconduct." *In re Lipsky*, 460 S.W.3d 579, 596 (Tex. 2015).

While the statement, "Frederick Frazier was dishonorably discharged" could be construed as reflecting on Frazier's fitness to conduct his business, there does not appear to be any precedent where a court has found that accusing a person of being dishonorably discharged was defamation *per se*. In a remarkably similar case to this one, however, a California superior court found the statement, in the context of a political campaign, met California's anti-SLAPP law's requirement for protected activity. *See Collins v. Waters*, 2021 Cal. Super. LEXIS 35732 (judge's copy attached hereto). The court ultimately granted the California anti-SLAPP motion and dismissed the case, finding the plaintiff failed to present evidence of actual malice, and never reaching the question of whether the statement constituted defamation *per se*. *Id* at *23.

Similarly, as discussed above with regard to substantial truth, the complained-of statement "Frazier engaged in criminal acts of petty thievery," is a substantially true statement which describes Frazier's arrest and conviction for a property crime in McKinney Municipal Court. This is not an accusation of a crime, but rather a reporting of the criminal case to which Frazier himself pleaded guilty, which can be fairly described as "petty theft." Chabot is permitted to summarize Frazier's class C misdemeanor property crime conviction by calling it "petty theft." Failure to call

Copy from re:SearchTX

it "criminal tampering with tangible property" does not convert Chabot's accurate statements into defamation *per se*.

Accordingly, even the statements that Frazier identifies as allegedly defamatory *per se* fail to meet that test.

E. Frazier cannot prove actual malice.

However, like the California court in *Collins*, this Court need not parse which statements would be defamation *per se* versus *per quod* because Frazier cannot meet his burden to show actual malice.

The status of the person allegedly defamed determines the requisite degree of fault. *Lipsky*, 460 S.W.3d at 593. A public official must prove actual malice. *WFAA-TV, Inc.*, 978 S.W.2d at 571. "Actual malice" means that the statement was made with knowledge of its falsity or with reckless disregard for its truth. *Lipsky*, 460 S.W.3d at 593 (citing *Huckabee v. Time Warner Entm't Co.*, 19 S.W.3d 413, 420 (Tex. 2000)). Frazier concedes he is a public official. *See* Petition at ¶17 ("Frazier is a Texas House Representative for District 61."). Consequently, Frazier must prove actual malice.

To establish actual malice, the plaintiff must prove that the defendant published a defamatory falsehood "with knowledge that it was false or with reckless disregard of whether it was false or not." *WFAA-TV*, 978 S.W.2d at 571 (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80 (1964)). When the defendant's words lend themselves to more than one interpretation, the plaintiff must establish that the defendant either knew that the words would convey a defamatory message or had reckless disregard for their effect. *New Times, Inc. v. Isaacks*, 146 S.W.3d 144, 162 (Tex. 2004), *cert. denied*, 545 U.S. 1105 (2005). Failure to investigate before publishing, even when

Copy from re:SearchTX

a reasonably prudent person would have done so, is not sufficient to establish reckless disregard. *Harte-Hanks Commc'ns v. Connaughton*, 491 U.S. 657, 688.

Here, Frazier has no evidence that Chabot knew any statement he made was false or had reckless disregard to its falsity. On the contrary, the attached declaration of Paul Chabot shows his statements were not only accurate at the time he made them, he continues to stand by them today. Indeed, to the extent anything has changed with regard to Frazier's dishonorable discharge status, Chabot states that he has never seen any documentation to confirm this fact.

Although the Court need never reach this point as the statements at issue are not false as a matter of law, Frazier cannot offer any clear and specific evidence of actual malice.

F. Frazier did not suffer any damages as a result of the statements.

Frazier's petition contains no specific allegations when it comes to damages. On the other hand, in his Petition at ¶29, Frazier only recites that he has suffered "impairment of reputation and standing in the community; personal humiliation; and mental anguish and suffering" and the statements "also impaired Mr. Frazier's campaign efforts, potentially causing loss of employment, loss of business, and loss of clients."

In other words, Frazier lost his job, lost his election, and he's embarrassed. But there is no evidence these losses are attributable to any statements made by Paul Chabot. If Frazier was harmed, it was caused by his own misconduct. Further, as addressed in the attached declaration of Paul Chabot and exhibits, Frazier's crimes, convictions, and resignation were widely reported in the media. Moreover, Frazier made his own choices to resign in lieu of termination and to accept plea bargains in his criminal cases rather than seek vindication at trial.

Copy from re:SearchTX

It is Frazier's burden to show that the statements he complains of caused him actual damages—not that he was hurt as a consequence of his own actions and Chabot allegedly talked about those actions and consequences. Proof of actual injury is required to obtain actual damages for a statement on a matter of public concern lest the "uncontrolled discretion of juries to award damages" chill speech. *Brady v. Klentzman*, 515 S.W.3d 878, 891 n.3 (Tex. 2017). When faced with a TCPA motion, the plaintiff must present specific facts demonstrating they suffered damages and that those damages resulted from the statement at issue. *See Lipsky*, 460 S.W.3d at 592-3, 595-6.

Nor is Frazier entitled to presumed damages. First, as already addressed, the alleged statements are not defamatory *per se*, because Chabot merely reported about Frazier's criminal conviction and plea bargains and resignation in lieu of termination, rather than accusing him of another crime.

Second, because the statements at issue were public and about matters of public concern, the First Amendment requires competent evidence to support an award of actual or compensatory damages when the speech is public or the level of fault is less than actual malice. *See Firestone,* 424 U.S. at 459, 96 S.Ct. 958; *Gertz,* 418 U.S. at 349–50, 94 S.Ct. 2997. Thus, the Constitution only allows juries to presume the existence of general damages in defamation *per se* cases where: (1) the speech is not public, or (2) the plaintiff proves actual malice. *See Dun & Bradstreet,* 472 U.S. at 761, 105 S.Ct. 2939; *Gertz,* 418 U.S. at 349–50, 94 S.Ct. 2997." *Hancock v. Variyam*, 400 S.W.3d 59, 65–66 (Tex. 2013). Because the speech at issue is public and Frazier cannot prove actual malice, he is not entitled to presumed damages.

Likewise, although Frazier seeks exemplary damages, ¶30(e), "exemplary damages may be awarded only if damages other than nominal damages are awarded." TEX. CIV. PRAC. & REM. CODE

Copy from re:SearchTX

§ 41.004. Because Frazier has no actual damages and is not entitled to presumed damages, he cannot recover exemplary damages.

G. Frazier's vague references to other unidentified statements do not support a prima facie case under the TCPA.

Finally, with regard to Frazier's blanket allegations that Chabot has made other unidentified defamatory statements, the Petition lacks any specificity to support the submission of clear and specific evidence. *See, e.g.,* Petition at ¶7 (Chabot has perpetuated a systematic and public campaign of defamation . . . . Defendant's sweeping and relentless defamatory crusade against Mr. Frazier encompasses a series of false and injurious statements distributed across various platforms, including social media, public forums [a website], and video content.); Petition at ¶14 ("Each of these statements, **and many more**, are published for the world to see . . . ." (emphasis added)).

Frazier seemingly complains about the entirety of Chabot's website: www.firefrazier.com but never specifies what statements on the website are allegedly defamatory. *See* Petition ¶ 14. Indeed, the only statements quoted from the website are an admonition to voters to "learn the truth, then tell others" and the statement that "ultimately the decision lies with Collin County voters, who will have their say on May 28th. *Id.*

These vague complaints of additional statements are not enough. In *Lipsky*, the Texas Supreme Court explained how the TCPA's evidentiary standard should be applied, stating, "mere notice pleading—that is, general allegations that merely recite the elements of a cause of action—will not suffice. Instead, a plaintiff must provide enough detail to show the factual basis for [his] claim." 460 S.W.3d at 590–91 (internal citations omitted). Frazier has no allegations, much less evidence, upon which he can base his other claims of defamation.

Copy from re:SearchTX

IV. TCPA STEP THREE: CHABOT CAN DEMONSTRATE AFFIRMATIVE DEFENSES.

Finally, even if Frazier could show clear and specific evidence to support a prima facie case of defamation, Chabot nevertheless can prove that Frazier is barred from recovery as a libel-proof plaintiff, and because he failed to comply with the Defamation Mitigation Act. For those independent reasons, this case must be dismissed.

A. Frazier's claims are barred as a libel-proof reputation because no statement can further harm his reputation.

Chabot also prevails at TCPA Step 3 under the Libel-Proof Plaintiff Doctrine. At the time of Chabot's complained-of statements, Frazier's reputation had already been destroyed by his own crimes, plea deals, dishonorable discharge, and other misconduct, all of which were widely reported. In short, after Frazier ruined his own reputation, there was nothing left of it to be harmed by Chabot's allegedly defamatory statements. Texas law does not permit such a plaintiff to proceed in a defamation case.

"A libel-proof plaintiff is one whose reputation on the matter at issue is so diminished that, at the time of an otherwise libelous publication, it could not be damaged further." *Bui v. Fort Worth Star-Telegram*, No. 2-06-206-CV, 2007 WL 530078, at *2 (Tex. App.—Fort Worth Feb. 22, 2007, pet. denied) (citing *McBride v. New Braunfels Herald-Zeitung*, 894 S.W.2d 6, 9 (Tex. App.—Austin 1994, writ denied) and *Langston v. Eagle Publ'g Co.*, 719 S.W.2d 612, 621 (Tex. App.—Waco 1986, writ ref'd n.r.e.)). The libel-proof plaintiff doctrine applies where the evidence of record shows (1) that the plaintiff engaged in criminal or antisocial behavior in the past and (2) that his activities were widely reported to the public. *McBride*, 894 S.W.2d at 10. Application of the doctrine is most compelling in those cases "in which criminal convictions for behavior similar to that alleged in the

Copy from re:SearchTX

challenged communication are urged as a bar to the [defamation] claim." *Finklea v. Jackson Daily Progress*, 742 S.W.2d 512, 515 (Tex. App. – Tyler 1987, writ dism'd) (plaintiff with extensive criminal record was libel-proof and could not hold newspaper liable for misstating new criminal charges); *see also Bui*, 2007 WL 530078, at *2 (plaintiff, a convicted murderer, held libel-proof in defamation case arising from newspaper articles that referred to plaintiff's murder conviction and reputed gang affiliation); *Swate v. Schiffers*, 975 S.W.2d 70, 74 (Tex. App. – San Antonio 1998, pet. denied) (physician whose reputation had already been ruined by derogatory newspaper articles and public censure by state medical board was libel-proof and could not hold newspaper liable for defamation).

The evidence submitted in support of this Motion shows that Frazier was charged, indicted, convicted, or plead guilty to multiple crimes. *See* Exhibits H, I, J, N, O, P, and Q. As a result, Frazier was dishonorably discharged from the Dallas Police Department. *See* Exhibits R and T. He was also placed on the "Brady List" of dishonorable cops whose testimony is not to be viewed as reliable in court. *See* Exhibit X. The evidence further shows that these facts were widely reported by multiple media outlets because Frazier is an elected official who, at the time, was running for reelection. *See* Exhibits A, B, C, D, E, V, W, and AA. It is clear that Frazier's reputation was ruined by his own crimes—not by any statements Chabot published about those crimes or their consequences. Accordingly under the Libel-Proof Plaintiff Doctrine, Chabot is entitled to judgment as a matter of law.

B. Frazier's claims are barred because he did not comply with the Defamation Mitigation Act.

Additionally, this Court is required to dismiss this legal action because Frazier is barred from maintaining this legal action for failure to comply with the Defamation Mitigation Act, TEX. CIV. PRAC. & REM. CODE § 73.051 et seq. Pursuant to TEX. CIV. PRAC. & REM. CODE §73.058(c),

Copy from re:SearchTX

Chabot hereby challenges the sufficiency and timeliness of Frazier's request for correction, clarification, or retraction and asks the Court to declare that Frazier's request was legally insufficient.

On May 9, 2024, Joseph E. Legere, an attorney for Frederick Frazier, sent the letter attached as Exhibit CC. In the letter, Legere states:

> This letter is a demand that you immediately cease and desist your defamation of Representative Frederick Frazier ("Rep. Frazier").
>
> You have published emails and other messages, often forwards of defamatory statements from the Colin County Citizens for Integrity PAC, indicating that Rep. Frazier has been 'convicted' and is 'dishonorably discharged'. These statements are of course incorrect and are defamatory to Rep. Frazier.
>
> The indisputable facts in this mater are that all criminal charges that were pending in Collin County District Court against Rep. Frazier have been dismissed. Rep. Frazier is not dishonorably discharged and is eligible for rehire as a law enforcement officer.
>
> We demand that you immediately retract and remove, as applicable, all emails, mailers, signs, advertisements, and other materials containing these defamatory statements. Further, we demand that you issue a public retraction and correction in the same medium and manner as your defamatory statements were made. Failure to take both of these corrective measures will result in legal action being taken against you personally and anyone else that is spreading these defamatory statements.

Under TEX. CIV. PRAC. & REM. CODE §73.055(a), "a person may maintain an action for defamation only if . . . the person has made a timely and sufficient request for a correction, clarification, or retraction from the defendant . . ." Section 73.054 clarifies that the Defamation Mitigation Act applies to "a claim for relief, however characterized, from damages arising out of harm to personal reputation caused by the false content of a publication." The term "publication" is defined broadly to include "writings, broadcasts, oral communications, electronic transmissions, or other forms of transmitting information." *Id.* Accordingly, the Defamation Mitigation Act applies to the statements allegedly made by Chabot.

Copy from re:SearchTX

Under TEX. CIV. PRAC. & REM. CODE § 73.055(d), in order for a request for correction, clarification, or retraction to be sufficient, it must "reasonably ident[y] the person making the request," . . . "state[] with particularity the statement alleged to be false and defamatory and, to the extent known, the time and place of publication; . . . allege[] the defamatory meaning of the statement; and . . . specif[y] the circumstances causing a defamatory meaning of the statement if it arises from something other than the express language of the publication."

The May 9, 2024, letter seems to have been a half-hearted attempt to comply with the Defamation Mitigation Act, but it totally fails the DMA's requirements. It refers only generally to statements that Frazier is "convicted" and "is dishonorably discharged" without identifying any particular statements, the time and place of their publication, or the circumstances causing them to have a defamatory meaning.

It also is unclear whether the letter was sent on behalf of Frazier's campaign, or from him personally, or in his capacity as a state representative. The letter is on what appears to be campaign letterhead, entitled "Frederick Frazier State Representative." Adding to the confusion, Chabot testifies that the letter was also sent to Frazier's opponent, Keresa Richardson, and to another board member for Collin County Citizens for Integrity PAC, who Frazier has not sued.

Since Frazier served an insufficient request that did not comply with the DMA, what are the consequences? There are two sides on the answer. One side says the failure to comply results only in abatement and denial of exemplary damages. The other, more persuasive side says that failure to comply results in a complete bar to litigation.

The Texas Supreme Court recently split on this question without providing a majority opinion. In *Hogan v. Zoanni*, 627 S.W.3d 163 (Tex. 2021), *reh'g denied* (Sept. 3, 2021), a four-justice

Copy from re:SearchTX

plurality led by Justice Devine concluded the DMA only prescribes abatement and a loss of exemplary damages, not dismissal, as a remedy. Devine was joined by Justices Lehrmann, Busby, and Guzman, who has since resigned from the court. *Id.*

On the other hand, C. J. Hecht, joined by Justices Blacklock and Huddle, concluded that Section 73.055(a) means precisely what it says—because a person may not maintain an action for defamation if they fail to make a timely request for correction, clarification, or retraction, the failure to serve such a request requires dismissal.

On this particular question, in a separate concurrence, Justice Boyd agreed. *Hogan*, 627 S.W.3d at 182-183. Justice Boyd concurred in the judgment, however, because he concluded that when a plaintiff makes no request at all, as opposed to a botched one, then the remedy is abatement. *Id.* at 189.

Justice Bland did not participate in the *Hogan* decision and Justice Young was not yet on the Court. *Id.* at 163.

The Dallas Court of Appeals has addressed this issue before, but only with regard to a plaintiff who—like the cases identified by Justice Boyd—did not attempt to make *any* request for correction, clarification, or retraction at all. *See Hardy v. Commun. Workers of Am. Local 6215*, 536 S.W.3d 38 (Tex. App.—Dallas 2017, pet. denied). In what it called "an issue of first impression for a Texas state appellate court" at the time, the court of appeals concluded that abatement, not dismissal, was the appropriate remedy. *Id.* at 44. In light of *Hogan*, the issue of the consequences for those, who like Frazier, serve up a half-hearted request for correction, clarification, or retraction without complying with the statute's requirements should be addressed afresh, both in the trial court and on appeal, if necessary.

Copy from re:SearchTX

Given the plain language of the statute and the lack of definitive guidance from the Texas Supreme Court or the Dallas Court of Appeals to the contrary, Chabot moves for dismissal of this suit on the grounds stated by C.J. Hecht in *Hogan*. Because of Frazier's failure to serve a sufficient request for correction, clarification or retraction, dismissal of this suit is required as a matter of law pursuant to TEX. CIV. PRAC. & REM. CODE §73.055.

V. CHABOT IS ENTITLED TO HIS ATTORNEYS' FEES & COSTS.

When a legal action is dismissed under the TCPA, the defendant is entitled to court costs, attorney fees, and other expenses incurred in defending against the action as justice and equity may require. TEX. CIV. PRAC. & REM. CODE § 27.009(a)(1) ("if the court orders dismissal of a legal action under this chapter, the court *shall award* to the moving party . . . court costs, reasonable attorney's fees, and other expenses incurred in defending against the legal action as justice and equity may require") (emphasis added); *see also Sullivan v. Abraham*, 488 S.W.3d 294, 299 (Tex. 2016) (court forced to award reasonable attorneys' fees for an action dismissed under the TCPA).

When seeking fees, the applicant must provide evidence thereof to the court, including the services performed, who performed them at what hourly rate, when they were performed, and how much time the services required. *Sullivan*, 488 S.W.3d at 299 (citing *El Apple I, Ltd. v. Olivas*, 370 S.W.3d 757, 760–65 (Tex. 2012)). Texas courts have adopted the lodestar method as an acceptable way to calculate attorneys' fees. *El Apple I, Ltd.*, 370 S.W.3d at 760. Under the lodestar method, calculating reasonable attorneys' fees involves two steps: (1) determining the hours spent by counsel and a reasonable hourly rate for the attorneys involved, and (2) multiplying the number of hours spent by the applicable rate. *Id.* An affidavit providing evidence of these factors is sufficient, and billing records or other documentation is not required. *See Texas Commerce Bank, Nat. Ass'n v.*

Copy from re:SearchTX

New, 3 S.W.3d 515, 517–18 (Tex. 1999); *In re A.B.P.*, 291 S.W.3d 91, 99 (Tex. App.—Dallas 2009, no pet.).

Services provided and a reasonable rate for such services will be detailed in an affidavit to be filed with the Court following a ruling on this Motion. The affidavit will identify the attorneys who performed work on this matter, the hourly rate charged by the attorneys, and the work the attorneys performed. The billing entries provided as exhibits to the affidavit will delineate the date of, and amount of, and time expended by each attorney for the services provided. Accordingly, this Court should award Chabot the attorneys' fees he has incurred in defending against this action as well as conditional attorney's fees incurred in any subsequent appeal. This court should request evidence and briefing from the litigants on the amount of such fees incurred.

VI. THIS COURT SHOULD AWARD SANCTIONS AGAINST FRAZIER.

Finally, while the award of fees and costs is non-discretionary, the Court may also impose sanctions under TEX. CIV. PRAC. & REM. CODE § 27.009(a)(2). A court may impose sanctions sufficient to deter a plaintiff from bringing similar actions in the future, and Chabot requests this Court do so in order to deter Frazier from filing similar lawsuits in the future against other political opponents. Indeed, Chabot testifies that Frazier has threatened at least two other persons with a lawsuit similar to this one. Chabot suggests double the amount of his reasonable attorneys' fees in this action as a reasonable sanction amount, though the amount of a sanction, if any, is fully in the discretion of this Court.

This lawsuit is the quintessential "SLAPP" suit. Frazier is a public official, whose reputation has been destroyed through his own actions. Instead of taking personal responsibility, he is lashing out at one of the chief critics in his reelection campaign with hair-splitting arguments

Copy from re:SearchTX

regarding defamation. This is not permitted in a free society, where citizens are allowed to criticize their elected officials. The TCPA was made for a Petition like this, and it should be dismissed with sanctions.

PRAYER FOR RELIEF

For the foregoing reasons, Defendant Paul Chabot respectfully requests the Court grant the following relief:

a. Dismiss this action against Chabot with prejudice;

b. Award Chabot his reasonable attorneys' fees incurred in defending this action and conditional attorneys' fees on appeal;

c. Award sanctions against Plaintiff Frederick Frazier in an amount sufficient to deter him from bringing similar actions in the future; and

d. Grant Chabot such other and further relief to which he may be entitled.

Copy from re:SearchTX

Respectfully Submitted,

/s/ Tony K. McDonald
Tony K. McDonald
tony@tonymcdonald.com
State Bar No. 24083477
Connor Ellington
connor@tonymcdonald.com
State Bar No. 24128592
The Law Offices of Tony McDonald
1308 Ranchers Legacy Trail
Fort Worth, TX 76126
(512) 200-3608
(815) 550-1292 (fax)

Steven E. Ross
sross@maxuslegal.com
State Bar No. 17305500
MAXUS Legal PLLC
5050 Quorum Drive, Suite 700
Dallas, Texas 75254
(972) 661-9400
(972) 661-9401

Attorneys for Defendant Paul Chabot

CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2024, a true and correct copy of the above and foregoing has been e-filed and e-served via Texas e-File to all counsel of record for those parties that have appeared in this action in accordance with the Texas Rules of Civil Procedure.

/s/ Tony K. McDonald

Copy from re:SearchTX

Collins v. Waters

Superior Court of California, County of Los Angeles

April 5, 2021, Filed

20STCV37401

Reporter
2021 Cal. Super. LEXIS 35732 *

JOE E COLLINS, III v. MAXINE WATERS, et al.

Counsel: **[*1]** For Plaintiff:Donna Carrera Bullock (Video)

For Defendant: Thomas Vincent Reichert (Video)

Judges: Honorable Yolanda Orozco, Judge

Opinion by: Yolanda Orozco

Opinion

NATURE OF PROCEEDINGS: Hearing on Special Motion to Strike under CCP Section 425.16(Anti-SLAPP motion); Case Management Conference

Pursuant to Government Code sections 68086, 70044, and California Rules of Court, rule 2.956, Lawanna Walters Corson, CSR #7135, certified shorthand reporter is appointed as an official Court reporter pro tempore in these proceedings, and is ordered to comply with the terms of the Court Reporter Agreement. The Order is signed and filed this date.

The Court's tentative ruling is posted online for parties to review.

The matter is called for hearing.

After hearing oral argument, the Court adopts its tentative ruling as the final order of the Court as follows:

The Special Motion to Strike under CCP Section 425.16 (Anti-SLAPP motion) Plaintiff's Complaint -[Res ID:_8717] filed by Citizens for Waters, entity form unknown, Maxine Waters on 02/25/2021 is Granted.

DEFENDANTS' SPECIAL MOTION TO STRIKE IS GRANTED.

Background

On September 30, 2020, Plaintiff Joe E. Collins III filed the instant action against Defendants Maxine Waters ("Waters"); Citizens for Waters ("Citizens"); and Does 1 through 200. The Complaint asserts causes of action for:

(1) **[*2]** Slander;
(2) Libel; and

Copy from re:SearchTX

(3) Violation of Statute under Penal Code Section 115.2 and Civil Code Section 3344.6.

Defendants Waters and Citizens (collectively referred to herein as "Defendants") now move to strike Plaintiff's Complaint as a Strategic Lawsuit Against Public Participation ("SLAPP").

Legal Standard

Code of Civil Procedure section 425.16 sets forth the procedure governing anti-SLAPP motions.In pertinent part, the statute provides, "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (Code Civ. Proc., § 425.16, subd. (b)(1).) "[A]n anti-SLAPP motion, like a conventional motion to strike, may be used to attack parts of a count as pleaded." (Baral v. Schnitt (2016) 1 Cal.5th 376, 393.) The purpose of the statute is to identify and dispose of lawsuits brought to chill the valid exercise of a litigant's constitutional right of petition or free speech. (Code Civ. Proc., § 425.16, subd. (a); Sylmar Air Conditioning v. Pueblo Contracting Services, Inc. (2004) 122 Cal.App.4th 1049, 1055-1056.)

Courts employ a two-step process to evaluate anti-SLAPP motions. (Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal.4th 53, 61.) To invoke the protections of the statute, the defendant must **[*3]** first show that the challenged lawsuit arises from protected activity, such as an act in furtherance of the right of petition or free speech. (Ibid.) From this fact, courts "'presume the purpose of the action was to chill the defendant'sexercise of First Amendment rights. It is then up to the plaintiff to rebut the presumption by showing a reasonable probability of success on the merits.'" (Ibid.) In determining whether the plaintiff has carried this burden, the trial court considers "the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." (Code Civ. Proc., § 425.16, subd. (b)(2); see Soukup v. Law Offices of Herbert Hafif (2006) 39 Cal.4th 260, 291 (Soukup).)

Request for Judicial Notice

The court may take judicial notice of "official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States," "[r]ecords of (1) any court of this state or (2) any court of record of the United States or of any state of the United States," and "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination byresort to sources of reasonably indisputable accuracy." (Evid. Code § 452, subds. (c), (d), and (h).)

The party requesting judicial notice must (a) give each adverse **[*4]** party sufficient notice of the request toenable the adverse party to prepare to meet the request and (b) provide the court with sufficient information to enable it to take judicial notice of the matter. (Cal. Evid. Code § 453.)

Defendants request that the Court take judicial notice of the certified results of the November 3, 2020 general election for the Forty Third Congressional District obtained from the California Secretary of State's website. The request is GRANTED.

Plaintiff requests that the Court take judicial notice of The Certificate of Release or Discharge from Active Duty, United States Navy Form DD-214 of Plaintiff Joe E. Collins III dated October 27, 2017.

Copy from re:SearchTX

The Court notes that while the request indicates that "a true and correct copy" of the certificate is attached to the Request for Judicial Notice, the attached document appears to be a screenshot of a Facebook Messenger image. Moreover, the document which is claimed to be a "true and correct copy" has a number of markings on it. The request also fails to indicate how the document was accessed and from where it was retrieved. The Court thus finds that Plaintiff has failed to provide the Court with sufficient information to enable it to take **[*5]** judicial notice of the matter. The request is DENIED.

Evidentiary Objections

Plaintiff objects to the Declarations of Maxine Waters and Thomas Reichert filed in Reply to Plaintiff□sOpposition. The objections are immaterial to the Court"s disposition of the motion. The Court thus declines to rule upon them.

Discussion

Timeliness

ode of Civil Procedure section 425.16(f) provides, in relevant part: "The special motion may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper." "[A] court has the discretion to consider, and grant or deny on the merits, a special motion to strike filed after the 60-day deadline even if the moving defendant fails to request leave of court to file an untimely motion." (Chitsazzadeh v. Kramer & Kaslow (2011) 199 Cal.App.4th 676, 684.)

As a preliminary matter, Plaintiff opposes the instant motion as untimely. Plaintiff argues that service was completed no later than October 13, 2020 as to Waters and October 2, 2020 as to Defendant Citizens. Plaintiff asserts that the instant motion is thus untimely.

In reply, Defendants argue that Plaintiff has not offered any argument or evidence of prejudice arising from the delay an has offered no case law in which a court refused **[*6]** to entertain an anti-SLAPP motion where absolutely nothing of substance occurred prior to the filing of the motion. Defendants assert that the 60-day deadline is not jurisdictional, the motion was made within 60 days of Defendants actually receiving the summons and complaint, and there isabsolutely no prejudice accruing to Plaintiff from the delay.

The Court finds that while the instant motion as not filed within 60 days of service of the Complaint, nodiscovery has been conducted in this action, the has not case progressed in any substantive way, nor has Plaintiff presented any evidence of prejudice should this motion be heard on its merits. Accordingly, the Court finds that the filing of the anti-SLAPP in this instance was proper and the Court exercises its discretion to consider it on its merits.

First Prong: Protected Activity

An anti-SLAPP motion requires the moving party to bear the initial burden of establishing a prima facie showing that the plaintiff's cause of action arises from the defendant's free speech or petition activity. (Wilbanksv. Wolk (2004) 121 Cal.App.4th 883, 894.)

Code of Civil Procedure section 425.16(e) states, "As used in this section, 'act in furtherance of a person's right of petition or free speech **[*7]** under the United States or California Constitution in connection with a public issue' includes: (1) any written or oral statement or writing made before alegislative, executive,

Copy from re:SearchTX

or judicial proceeding, or any other official proceeding authorized by law, (2) any written ororal statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in aplace open to the public ora public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest."

There exists a "legislative mandate to construe section 425.16 broadly. Thus, section 425.16, subdivision (a), states: 'The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued **[*8]** participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.'" (Vergos v. McNeal (2007) 146 Cal.App.4th 1387, 1395.)

"In determining "whether the challenged claims arise from acts in furtherance of the defendants' right of free speech or right of petition under one of the categories set forth in section 425.16, subdivision (e). [Citation.] .... '[w]e examine the principal thrust or gravamen of a plaintiff's cause of action to determine whether the anti-SLAPP statute applies.'' [Citation.] The "gravamen is defined by the actson which liability is based, not some philosophical thrust or legal essence of the cause of action." [Citation.] In other words, "for anti-SLAPP purposes [the] gravamen [of plaintiff's cause of action] is defined by the acts on which liability is based." [Citation.]" (Optional Capital, Inc. v. Akin Gump Strauss, Hauer & Feld LLP (2017) 18 Cal.App.5th 95, 111.)

"'[T]he constitutional guarantee [of free speech] has its fullest and most urgent application precisely to the conduct of campaigns for political office.' [Citation.] Thus, those engaged in political debate are entitled not only to speak responsibly but to speak foolishly and without moderation. [Citation.]" (Beilenson v. Superior Court (1996) 44 Cal.App.4th 944, 949-950.) "Indeed, "'[t]he right to speak on political **[*9]** matters is the quintessential subject of our constitutional protections of the right of free speech. "Public discussion about the qualifications of those who hold or who wish to hold positions of public trust presents the strongest possible case for applications of the safeguards afforded by the First Amendment."' [Citation.] 'The character and qualifications of a candidate for public office constitutes a 'public issueor public interest'' for purposes of section 425.16. [Citation.] "Section 425.16 [therefore] applies to suits involving statements made during political campaigns." [Citation.]" (Collier v. Harris (2015) 240 Cal.App.4th 41, 52-53.)

The Complaint alleges that "[o]n or about September 17, 2020, in advance of the November 3, 2020 election for the 43rd Congressional District seat between Plaintiff Collins and Defendant Waters, Defendants … published a two sided piece of campaign literature (the "Hit Piece") in a colored card format, containing false and defamatory statements about Plaintiff Collins military separation[.]" (Complaint ¶ 11.) "Defendant Waters purports to support veterans while attacking Plaintiff Collins by falsely stating he was 'dishonorably discharged[,]' defaming Plaintiff Collins, who is a disabled combat Veteran." (Complaint ¶ 12.)"All statements **[*10]** by Defendants & stating that Plaintiff Collins was dishonorably discharged from his military service are false as it pertains to Plaintiff." (Complaint ¶ 13.)

The Complaint further alleges that □on or after September 17, 2020, and repeated daily in the ongoing campaign radio advertisements of Defendant Waters, done in advance of the November 3, 2020 election,

Copy from re:SearchTX

Defendant Waters as the incumbent candidate, has published through radio broadcast a campaign advertisement, in her own voice, stating as follows, in pertinent part: " … Joe Collins was kicked out of the Navy and was given a dishonorable discharge.'"(Complaint ¶ 26.)

Defendants argue that Plaintiff□s three causes of action all rest on the same statement: that Plaintiff was dishonorably discharged from the Navy and that this bears on his qualifications for electoral office as a member of the U.S. House of Representatives. Defendants assert that such statements about the qualifications and fitness for officeof a political candidate are core First Amendment speech about a "public issue or an issue of public interest" and plainly meet the first-prong test under Section 425.16(e)(4). Defendants contend that the statement at issue □ that Plaintiff was dishonorably discharged **[*11]** and doesn□t deserve your vote - is a statement about Plaintiff's qualifications and suitability for public office. Defendants argue that it thus plainly meets the first-prong test.

In opposition, Plaintiff does not argue his suit does not arise from Defendants' free speech or petition activity. Instead, Plaintiff focuses on the second prong, his probability of success on the merits.

The Court finds that the gravamen of Plaintiff's Complaint against Defendants constitutes protected activity under Section 425.16, specifically, as statements made during political campaigns, as the statements concerned Plaintiff's character and qualifications to hold public office.

Based on the foregoing, the Court concludes that Defendants have prevailed as to the first prong.

Prong 2: Probability of Success on the Merits

On the second prong of the analysis, courts employ a "summary-judgment-like" procedure, "accepting as true the evidence favorable to the plaintiff and evaluating the defendant's evidence only to determine whether the defendant has defeated the plaintiff's evidence as a matter of law." (Gerbosi v. Gaims, Weil, West & Epstein, LLP (2011) 193 Cal.App.4th 435, 444.) In other words, the Court does not assesscredibility, and the plaintiff is not required to meet the preponderance **[*12]** of the evidence standard. The Court accepts as true the evidence favorable to the plaintiff, who need only establish that his or her claim has "minimal merit" to avoid being stricken as a SLAPP. (Soukup v. Law Offices of Herbert Hafif (2006) 39 Cal.4th 260, 291.) The plaintiff is required to present facts which would, if proved at trial, support a judgment in the plaintiff's favor. (Code ofCiv. Proc., ¶ 425.16(b); Shekhter v. Financial Indemnity Co. (2001) 89 Cal.App.4th 141, 150-151.)

"[A]n action may not be dismissed under this statute if the plaintiff has presented admissible evidence that, if believed by the trier of fact, would support a cause of action against the defendant." (Taus v. Loftus (2007) 40 Cal.4th 683, 729.) "The plaintiff need only establish that his or her claim has 'minimal merit' [citation] to avoid being stricken as a SLAPP." (Soukup, supra, 39 Cal.4th at 291.) "In makingthis assessment, the court must consider both the legal sufficiency of and evidentiary support for the pleaded claims, and must also examine whether there are any constitutional or nonconstitutional defenses to the pleaded claims and, if so, whether there is evidence to negate any such defenses. [Citation.]" (McGarry v. University of San Diego (2007) 154 Cal.App.4th 97, 108.)

"[P]roperly submitted admissible evidence should be considered, and a court evaluating a probability of success should draw any non-speculative inferences favorable to the plaintiff. [Citations.]" (Monster Energy Co. v. Schechter (2019) 7 Cal.5th 781, 795.)

Copy from re:SearchTX

First Cause of Action **[*13]** for Slander, Second Cause of Action for Libel, and Third Cause of Action for Violation of Statute under Penal Code Section 115.2 and Civil Code Section 3344.6

"Defamation constitutes an injury to reputation; the injury may occur by means of libel or slander. [Citation.] In general, leaving aside certain qualifications that are not relevant in this case, a written communication that is false, that is not protected by any privilege, and that exposes a person to contempt or ridicule or certain other reputational injuries, constitutes libel. [Citations.] A false and unprivileged oral communication attributing to aperson specific misdeeds or certain unfavorable characteristics or qualities, or uttering certain other derogatory statements regarding a person, constitutes slander. [Citations.]" (Shively v. Bozanich (2003) 31 Cal.4th 1230, 1242.)

"'A statement is defamatory when it tends "directly to injure [a person] in respect to his office, profession, trade or business, either by imputing to him general disqualification in those respects whichthe office … peculiarly requires, or by imputing something with reference to his office … that has a natural tendency to lessen its profits." [Citation.] Statements that contain such a charge directly, and without the need for explanatory matter, **[*14]** are libelous per se. [Citation.] A statement can also be libelous per se if … a listener could understand the defamatory meaning without the necessity of knowing extrinsic explanatory matter.' [Citation.] If the false statement is not libelous per se, a plaintiff must prove special damages. [Citation.]" (Ballav. Hall (2021) 59 Cal.App.5th 652, 716.)

"Public figures have the "burden of proving both that the challenged statement is false, and that [defendant] acted with 'actual malice.'" [Citations.] … An "all purpose" public figure has "'achiev[ed] such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts.'" [Citation.] A "'limited purpose'" public figure is one who """voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues."'" [Citations.]" (Id.)

"[A] defendant acts with 'actual malice' when publishing a knowingly false statement or where he entertained serious doubts as to [its] truth.' [Citation.]" (Christian Research Institute v. Alnor (2007) 148 Cal.App.4th 71, 81.) "The quoted language establishes a subjective test, under which the defendant's actual belief concerning the truthfulness of the publication is the crucial **[*15]** issue. [Citation.] Thistest directs attention to the "defendant's attitude toward the truth or falsity of the material published … [not] thedefendant's attitude toward the plaintiff." [Citation.]" (Reader's Digest Assn. v. Superior Court (1984) 37 Cal.3d 244, 257.)

"To prove actual malice, a plaintiff must show that statements were made with "'knowledge that [they were] false or with reckless disregard of whether [they were] false or not.'" [Citation.]" There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth,' and the evidence must be clear and convincing. ([Citation]; see Copp, supra,45 Cal.App.4th at p. 846, 52 Cal.Rptr.2d 831 ["burden of proof by clear and convincing evidence requires a finding of high probability'; must 'leave no substantial doubt' "].) (Balla, supra, 59 Cal.App.5th at 722.)

"The failure to conduct a thorough and objective investigation, standing alone, does not prove actual malice, nor even necessarily raise a triable issue of fact on that controversy. [Citations.] Similarly, mere proof of ill will on the part of the publisher may likewise be insufficient. [Citations.]" (Reader's Digest Assn., supra, 37 Cal.3d at 258.)

Copy from re:SearchTX

Civil Code section 3344.6(a) provides: "Any candidate for elective office whose election or defeat is expressly advocated in any campaign advertisement which violates subdivision (a) of Section 115.2 of the Penal Code shall have a civil cause of action **[*16]** against any person committing the violation." Penal Code section 115.2(a), in turn, provides: "No person shall publish or cause to be published, with actual knowledge, and intent to deceive, any campaign advertisement containing false or fraudulent depictions, or false or fraudulent representations, of official public documents or purported official public documents."

Defendants argue that Plaintiff cannot show a probability of success on the merits as to his causes of action for slander, libel, and statutory violations as Plaintiff cannot show by clear and convincing evidence that Defendants acted with constitutional actual malice or with actual knowledge of their falsity and intent to deceive for the simple reason that Waters, in making her statements, was expressly relying on the statements made by a federal district court judge in dismissing Plaintiff's own lawsuit against the Navy. (Waters Decl. ¶ 12-13, 15, Exh, 4.) Defendants assert that as can be seen from the campaign mailer, the exact language of the Court order was reprinted on the mailer. Defendants contend that Waters relied on the statement of U.S. District Judge Michael M. Anello as accurate. Defendants argue that while Plaintiff has heatedly insisted **[*17]** that his discharge was not dishonorable, he has a long history of questionable conduct that should undermine any confidence as to his integrity or veracity. (Waters Decl. ¶ 3-4, 6-11, 15-16.) Defendants assert that, furthermore, in his filings in his lawsuit against the Navy, Plaintiff asked that his discharge by "updated to honorable, and stated in his in forma pauperisapplication that he was not receiving any government benefits - all consistent with a finding of a dishonorable discharge. Defendants contend that finally, although Judge Anello issued his decision in August 2018, Plaintiff never sought reconsideration or any other means to have this statement corrected. (Reichert Decl. ¶ 2.)

Defendants argue that Plaintiff cannot introduce clear and convincing evidence that Waters realized that her statement was false or that she subjectively entertained serious doubt as to the truth of her statement. Defendants assert that as her declaration demonstrates, Waters did not know, and does not even know today, that the statement was false, and she based her statement on the statement of a federal judge in a formal order dismissing Plaintiff's lawsuit. Defendants contend that the Court need **[*18]** not decide whether Plaintiff was, in fact, dishonorably discharged; it merely needs to find that Plaintiff cannot establish constitutional actual malice by clear and convincing evidence. Defendants argue that Waters' statements that Plaintiff was dishonorably discharged were not "completely fabricated" nor were they "inherently improbable," as a federal judge expressly stated that Plaintiff received a dishonorable discharge. (Annette F. v. Sharon S. (2004) 119 Cal.App.4th 1146, 1170.) Defendants assert that, indeed, it is inherently probable that he was in fact dishonorably discharged - his purported discharge papers state that he was discharged for "misconduct (serious offense)" and that he is not eligible to re-enlist. Defendants contend that a person should be able to rely on a statement in a judicial opinion to such effect, and there was ample available information suggesting it was both probable and likely. Defendants argue that because Plaintiff cannot establish a probability of prevailing at trial by clear and convincing evidence, his claims must be dismissed.

In opposition, Plaintiff argues that the service of documents containing proof of Plaintiff's discharge under honorable conditions proves actual malice. Plaintiff asserts that **[*19]** he provided and produced his Certificate of Release or Discharge from Active Duty, Form DD-214 ("Form DD-214" or "DD-214"), a matter of public record, and served it on Defendants on several occasions throughout the period of

Copy from re:SearchTX

Defendants□ publication and republication of the false statement, from August 2020 to date. (Carlin Decl. ¶ 2-7.) Plaintiff contendsthat Defendants were informed over a month before the General Election, and as early as August of 2020 that Plaintiff had never been dishonorably discharged from the United States Navy and that Defendants' oral and written public statements making that claim were false.

Plaintiff argues that Defendants continued to make the statement that Plaintiff was dishonorably discharged despite service of the Form DD-214 and Waters' radio advertisement admitting that she knew as early as September of 2020 that Plaintiff was receiving health care benefits from the Navy. (Bullock Decl. ¶ 7-8.) Plaintiff asserts that he could not have been "dishonorably discharged" and receive "healthcare benefits from the Navy,"as the two statements are mutually inconsistent, as military benefits are not available to anyone dishonorably discharged.

Plaintiff contends **[*20]** that Defendants rely upon an August 8, 2018 Order of Dismissal in Collins v. United States Navy, Case No. 17cv-2451-MMA (BGS) ("Dismissal Order"), which Defendants argue is a more credible statement about Plaintiff's military discharge than the actual record of his military discharge in the NavyDD-214 determination. (Waters Decl., Exh. 4.) Plaintiff argues that a review of the Dismissal Order reveals a fataldefect in Defendants' argument that it is more credible: it is a ruling on a Federal Rules of Civil Procedure 16(b) Motion to Dismiss for Lack of Subject Matter Jurisdiction. Plaintiff asserts that there was no adjudication of fact, no findings of fact, no evidence, no witnesses, no hearing, and no proceedings over than the motion where Judge Anello declined to exercise any jurisdiction based only upon review of the pleadings. Plaintiff contends that Judge Anello's statement about the character of Plaintiff's discharge was dicta as Judge Anello did not have jurisdiction todecideany change in Plaintiff's discharge or his request for an upgrade. Plaintiff argues that he was a layperson acting in pro se and so he did not dispute the dismissal because of an incorrect statement in the dicta of that Dismissal Order.

Finally, **[*21]** Plaintiff asserts that the evidence supports a finding of actual malice.

In reply, Defendants argue that Plaintiff has not met his burden as Plaintiff has not shown anything about Defendants' actual state of mind, either that they knew their statements were false or that they subjectively entertained some serious doubt about their truth. The Waters declaration explains in detail what she actually believed and why. Waters relied on the statement in a federal district court decision and her understanding of Plaintiff's past history left her highly suspicious regarding anything he said or proffered as "evidence" in support ofhis assertion about the nature of his Navy discharge. Defendants argue that Plaintiff has not and cannot introduce clearand convincing evidence that Waters realized that her statement was false or that she subjectively entertained serious doubt as to the truth of her statement.

The Court finds that Plaintiff has failed to carry his burden establishing a probability of success on the merits as to his causes of action for slander, libel, and violation of Penal Code section 115.2, specifically as to the issues of actual malice and actual knowledge of falsity. As noted by the authorities above, **[*22]** actual malice is a subjective test "under which the defendant's actual belief concerning the truthfulness of the publication is the crucial issue." (Reader's Digest Assn. v. Superior Court (1984) 37 Cal.3d 244, 257.) Plaintiff has failed to provide clear and convincing evidence that Defendants knew their statements were false or that they entertained serious doubt as to the statements' truth. As provided in Waters' declaration, in making her statements, Waters reliedon the statements in the Dismissal Order, as well as her subjective beliefs about Plaintiff's integrity and veracity, founded upon Waters' knowledge of Plaintiff's past conduct. While Plaintiff relies on the service of the Complaint, which attaches the same Facebook

Copy from re:SearchTX

Messenger image of the alleged Form DD-214, on Defendants as proof of actual malice and Defendants' knowledge of the falsity of their statements, Waters' declaration makes clear that Waters believed that she had reason to doubt the "evidence" provided by Plaintiff and instead relied on what she deemed to be a more reliable source, Judge Anello's Dismissal Order. As noted above, "[t]he failure to conducta thorough and objective investigation, standing alone, does not prove actual malice." (Reader's Digest Assn., supra, 37 Cal.3d at 258.) Here, aside from service of the **[*23]** Complaint on Defendants, Plaintiff has failed to provide evidence, much less clear and convincing evidence, that Defendants subjectively knew that their statements were false or that they entertained serious doubt as to statements' truth.

Based on the foregoing, the Court finds that Defendants have prevailed as to the second prong. Defendants' special motion to strike is GRANTED. Conclusion

Defendants' special motion to strike is GRANTED. As no claims remain, the Complaint in this case is dismissed with prejudice.

Case Management Conference is continued to 06/10/2021 at 09:00 AM in Department 31 at Stanley Mosk Courthouse.

Moving parties are to give notice.

The parties are strongly encouraged to attend all scheduled hearings virtually or by audio.

Effective July 20, 2020, all matters will be scheduled virtually and/or with audio through the Court's LACourtConnect technology. The parties are strongly encouraged to use LACourtConnect for all their matters. All social distancing protocols will be observed at the Courthouse and in the courtrooms.

End of Document

Copy from re:SearchTX

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 91226452
Filing Code Description: Motion to Dismiss
Filing Description: Defendant Paul Chabot's TCPA Motion to Dismiss
Status as of 8/23/2024 12:23 PM CST

Associated Case Party: Frederick Frazier

Name	BarNumber	Email	TimestampSubmitted	Status
Cliff PRiley		criley@dykema.com	8/22/2024 3:25:45 PM	SENT
Christopher Kratovil		ckratovil@dykema.com	8/22/2024 3:25:45 PM	SENT
Kathy Lowery		klowery@dykema.com	8/22/2024 3:25:45 PM	SENT
Jennifer Schmitt		jschmitt@dykema.com	8/22/2024 3:25:45 PM	SENT
Yvonne Jacobus		yjacobus@dykema.com	8/22/2024 3:25:45 PM	SENT
Daniel Hall		dhall@dykema.com	8/22/2024 3:25:45 PM	SENT

Associated Case Party: Paul Chabot

Name	BarNumber	Email	TimestampSubmitted	Status
Steven Ross	17305500	sross@maxuslegal.com	8/22/2024 3:25:45 PM	SENT
Tony McDonald		tony@tonymcdonald.com	8/22/2024 3:25:45 PM	SENT
Connor Ellington		connor@tonymcdonald.com	8/22/2024 3:25:45 PM	SENT

Copy from re:SearchTX