

**IN THE GENERAL SESSIONS COURT OF WILSON COUNTY, TENNESSEE**

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NANDIGAM NEUROLOGY, PLC, and  
KAVEER NANDIGAM, M.D.,

*Plaintiffs,*

*v.*

KELLY BEAVERS

*Defendant.*

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Case No.: 2020-CV-152

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

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This is the Plaintiffs’ second Strategic Lawsuit Against Public Participation (“SLAPP-suit”) regarding a truthful Yelp! review authored by Defendant Kelly Beavers. After previously initiating the same underlying claims against Ms. Beavers in Wilson County Circuit Court Case No.: 2019-cv-663, Nandigam Neurology non-suited its Complaint the moment Ms. Beavers filed a petition to dismiss it under the newly enacted Tennessee Public Participation Act—a protective statute that the General Assembly adopted to ensure prompt dismissal of frivolous speech-based lawsuits like this one.

Unable to state a cognizable claim for relief in Circuit Court, the Plaintiffs now seek to take advantage of what they perceive to be this Court’s more forgiving pleadings standards. For the reasons provided below, however, the Plaintiffs’ claims fare no better here; their Complaint must be dismissed with prejudice; and Ms. Beavers is entitled to costs, fees, and severe sanctions pursuant to Tennessee Code Annotated § 20-17-107(a).

**I. INTRODUCTION**

Upset about Dr. Kaveer Nandigam’s extraordinarily disturbing behavior toward

Ms. Beavers and her father coming to light, the Plaintiffs—Nandigam Neurology, PLC, and Dr. Nandigam himself—have sued Ms. Beavers regarding a constitutionally protected Yelp! review that she posted after taking her father to the doctor. Ms. Beavers’s Yelp! review, of course, was not illegal, and it falls safely within the protections guaranteed by the First Amendment. For a wealth of additional reasons, the Plaintiffs’ Complaint also fails to state a cognizable claim under any pleaded theory of relief. Because the Plaintiffs have baselessly sued Ms. Beavers for exercising her right to free speech, Ms. Beavers further petitions this Court to dismiss the Plaintiffs’ Complaint and to sanction the Plaintiffs and their counsel under the newly enacted Tennessee Public Participation Act. *See* TENN. CODE ANN. § 20-17-104(a)(2).

The Plaintiffs’ Complaint—and every cause of action alleged in it—must be dismissed with prejudice for several independent reasons:

First, the Plaintiffs’ Complaint does not comport with threshold pleading requirements governing defamation claims and fails to set forth the substance of any of the statements that it alleges are defamatory.

Second, for several reasons, the statements in Ms. Beavers’s Yelp! review are inactionable as defamation and are incapable of conveying a defamatory meaning as a matter of law.

Third, Nandigam Neurology, PLC cannot sue Ms. Beavers regarding statements made about Dr. Kaveer Nandigam.

Fourth, Nandigam Neurology, PLC’s claims may not be maintained in any regard, because its previous dismissal of the same claims could only be taken with prejudice.

The Plaintiffs’ Complaint also falls squarely within the protections of the newly enacted Tennessee Public Participation Act. *See* TENN. CODE ANN. § 20-17-101, *et seq.*

Pursuant to the Tennessee Public Participation Act, Ms. Beavers has submitted sworn, admissible evidence setting forth several outcome-determinative defenses to this action. *See Exhibit A*, Affidavit of Kelly Beavers. In furtherance of the Tennessee Public Participation Act's substantive protections, Ms. Beavers additionally demands that the Plaintiffs establish a prima facie case for each essential element of its claims in order to avoid dismissal. *See* TENN. CODE ANN. § 20-17-105(b).

## **II. LEGAL STANDARDS**

### **A. HEIGHTENED CONSTITUTIONAL REQUIREMENTS GOVERNING DEFAMATION CLAIMS**

To establish a prima facie case of defamation under Tennessee law, a plaintiff must prove that: “(1) a party published a statement; (2) with knowledge that the statement was false and defaming to the other; or (3) with reckless disregard for the truth of the statement or with negligence in failing to ascertain the truth of the statement.” *Davis v. The Tennessean*, 83 S.W.3d 125, 128 (Tenn. Ct. App. 2001). Further, given the constitutional requisites of defamation claims, “[a] party may not skirt the requirements of defamation law by pleading another, related cause of action.” *Boladian v. UMG Recordings, Inc.*, 123 F. App'x 165, 169 (6th Cir. 2005) (unpublished) (citing *Hustler Magazine v. Falwell*, 485 U.S. 46, 53 (1988)). *See also Seaton v. TripAdvisor LLC*, 728 F.3d 592, 601, n.9 (6th Cir. 2013) (“Seaton’s claims for false-light invasion of privacy, trade libel/injurious falsehood, and tortious interference with prospective business relationships appear to be an attempt to bypass the First Amendment.” (citing *Compuware Corp. v. Moody’s Inv’rs Servs., Inc.*, 499 F.3d 520, 529 (6th Cir. 2007))). Thus, the Plaintiffs’ false light claims are subject to the same heightened constitutional requirements as their defamation claims. *See id.* *See also Moldea v. New York Times*

Co., 22 F.3d 310, 319–20 (D.C. Cir. 1994) (“a plaintiff may not use related causes of action to avoid the constitutional requisites of a defamation claim”); *Montgomery v. Risen*, 875 F.3d 709, 713 (D.C. Cir. 2017). Cf. *Loftis v. Rayburn*, No. M201701502COAR3CV, 2018 WL 1895842, at \*8 (Tenn. Ct. App. Apr. 20, 2018) (“For the reasons we found the statements in Mr. Myers’ article fail to imply a defamatory meaning, we also find they are not susceptible to the requisite inferences casting Mr. Loftis in a false light.” (citing *West v. Media General Convergence, Inc.*, 53 S.W.3d 640, 645 n.5 (Tenn. 2001))).

Critically, “the Supreme Court of the United States has constitutionalized the law of libel[.]” *Press, Inc. v. Verran*, 569 S.W.2d 435, 440 (Tenn. 1978). See also *N.Y. Times v. Sullivan*, 376 U.S. 254, 269 (1964). Thus, defamation claims present several threshold and outcome-determinative questions of law that do not require any deference to the Plaintiffs’ own characterizations of the statements over which they have sued. See, e.g., *Moman v. M.M. Corp.*, No. 02A01-9608-CV00182, 1997 WL 167210, at \*3 (Tenn. Ct. App. Apr. 10, 1997) (“If the [allegedly defamatory] words are not reasonably capable of the meaning the plaintiff ascribes to them, the court must disregard the latter interpretation.”). See also *Brown v. Mapco Express, Inc.*, 393 S.W.3d 696, 708 (Tenn. Ct. App. 2012); *McWhorter v. Barre*, 132 S.W.3d 354, 364 (Tenn. Ct. App. 2003).

Given the constitutional limitations that govern defamation claims, “ensuring that defamation actions proceed only upon statements which may actually defame a plaintiff is an essential gatekeeping function of the court.” *Pendleton v. Newsome*, 772 S.E.2d 759, 763 (Va. 2015) (internal quotation omitted). With this “essential gatekeeping function” in mind, see *id.*, both our Court of Appeals and our Supreme Court have instructed that in defamation cases, “the issue of whether a communication is capable of conveying a defamatory meaning is a question of law for the court to decide in the first instance . . . .”

*Brown*, 393 S.W.3d at 708. See also *Aegis Scis. Corp. v. Zelenik*, No. M2012-00898-COA-R3CV, 2013 WL 175807, at \*6 (Tenn. Ct. App. Jan. 16, 2013) (“[T]he preliminary question of whether a statement ‘is capable of conveying a defamatory meaning’ presents a question of law.” (quoting *Revis v. McClean*, 31 S.W.3d 250, 253 (Tenn. Ct. App. 2000))); *McWhorter*, 132 S.W.3d at 364 (“The question of whether [a statement] was understood by its readers as defamatory is a question for the jury, but the preliminary determination of whether [a statement] is ‘capable of being so understood is a question of law to be determined by the court.’” (quoting *Memphis Publ’g Co. v. Nichols*, 569 S.W.2d 412, 419 (Tenn. 1978))). If an allegedly defamatory statement is not capable of being understood as defamatory as a matter of law, then a plaintiff’s complaint must be dismissed for failure to state a claim. *McWhorter*, 132 S.W.3d at 364.

In keeping with the heightened constitutional requirements that govern defamation claims, Tennessee courts have also adopted several categorical bars that prevent claimed defamations from being actionable as a matter of law, several of which are outcome-determinative here:

First, our courts have held that opinions enjoy robust constitutional protection under the First Amendment. See generally *Stones River Motors, Inc. v. Mid-S. Publ’g Co.*, 651 S.W.2d 722 (Tenn. Ct. App. 1983), *abrogation on other grounds recognized by Zius v. Shelton*, No. E199901157COAR9CV, 2000 WL 739466, at \*3 (Tenn. Ct. App. June 6, 2000). As a result, “an opinion is not actionable as libel unless it implies the existence of unstated defamatory facts.” *Id.* at 722.

Second, an allegedly defamatory statement “must be factually false in order to be

actionable.”<sup>1</sup> *Moman*, 1997 WL 167210, at \*4. Thus, any statement that is not capable of being proven false as a matter of fact or that constitutes mere rhetorical hyperbole cannot serve as the basis of a defamation claim. *See id.*

Third, merely unpleasant or embarrassing statements are not capable of conveying a defamatory meaning as a matter of law. *Davis v. Covenant Presbyterian Church of Nashville*, No. M2014-02400-COA-R9-CV, 2015 WL 5766685, at \*3 (Sept. 30, 2015).

Instead,

[f]or a communication to be [defamatory], **it must constitute a serious threat to the Plaintiffs’ reputation.** A [defamation] does not occur simply because the subject of a publication finds the publication annoying, offensive or embarrassing. **The words must reasonably be construable as holding the plaintiff up to public hatred, contempt or ridicule. They must carry with them an element “of disgrace.”**

*Id.* (quoting *Brown*, 393 S.W.3d at 708) (emphases added), *appeal denied* (Tenn. Feb. 18, 2016).

Fourth, Tennessee has adopted the “substantial truth doctrine” with respect to defamation cases. *See Isbell v. Travis Elec. Co.*, No. M199900052COAR3CV, 2000 WL 1817252, at \*5 (Tenn. Ct. App. Dec. 13, 2000). Thus, statements that are true or substantially true are not actionable as defamation as a matter of law. *Id.*

Fifth, damages cannot be presumed; instead, a plaintiff is “required to prove actual damages in all defamation cases.” *Hibdon v. Grabowski*, 195 S.W.3d 48, 68 (Tenn. Ct. App. 2005) (citing *Handley v. May*, 588 S.W.2d 772, 776 (Tenn. Ct. App. 1979)).

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<sup>1</sup> In Tennessee, defamatory implications regarding an allegedly tortious publication are governed by a distinct and independent tort. *See Loftis v. Rayburn*, No. M201701502COAR3CV, 2018 WL 1895842, at \*5–6 (Tenn. Ct. App. Apr. 20, 2018) (describing Tennessee’s independent recognition of “defamation by implication or innuendo”). In this case, the Plaintiffs’ Complaint exclusively alleges defamation and false light claims. *See Complaint*.

## **B. THE TENNESSEE PUBLIC PARTICIPATION ACT**

Tennessee’s newly enacted Public Participation Act—which the legislature adopted to deter, to expediently resolve, and to punish SLAPP-suits like this one—provides that “[i]f a legal action is filed in response to a party’s exercise of the right of free speech, right to petition, or right of association, that party may petition the court to dismiss the legal action” subject to the specialized provisions of Tennessee Code Annotated § 20-17-104(a). The Tennessee Public Participation Act “provide[s] an additional substantive remedy to protect the constitutional rights of parties” that “supplement[s] any remedies which are otherwise available . . . under the Tennessee Rules of Civil Procedure.” TENN. CODE ANN. § 20-17-109. As such, nothing in the Act “affects, limits, or precludes the right of any party to assert any defense, remedy, immunity, or privilege otherwise authorized by law[.]” TENN. CODE ANN. § 20-17-108(4).

In enacting the Tennessee Public Participation Act, the Tennessee General Assembly forcefully established that:

The purpose of this chapter is to encourage and safeguard the constitutional rights of persons to petition, to speak freely, to associate freely, and to participate in government to the fullest extent permitted by law and, at the same time, protect the rights of persons to file meritorious lawsuits for demonstrable injury. This chapter is consistent with and necessary to implement the rights protected by Article I, §§ 19 and 23, of the Constitution of Tennessee, as well as by the First Amendment to the United States Constitution, and shall be construed broadly to effectuate its purposes and intent.

TENN. CODE ANN. § 20-17-102. Substantively, the Tennessee Public Participation Act also provides, among other things, that:

(1) When a defendant has been sued in response to the party’s exercise of the right to free speech, he or she is entitled to file a special petition to dismiss the legal action, TENN. CODE ANN. § 20-17-104(a);

(2) Discovery is automatically stayed by statute pending the entry of an order ruling on the petition, TENN. CODE ANN. § 20-17-104(d); and

(3) In the event that the petition is denied, the petitioning party is entitled to an immediate interlocutory appeal to the Court of Appeals as of right. *See* TENN. CODE ANN. § 20-17-106.

A petition to dismiss an action under the Tennessee Public Participation Act “may be filed within sixty (60) calendar days from the date of service of the legal action or, in the court’s discretion, at any later time that the court deems proper.” *See* TENN. CODE ANN. § 20-17-104(b). Under the Act, “[t]he petitioning party has the burden of making a prima facie case that a legal action against the petitioning party is based on, relates to, or is in response to that party’s exercise of the right to free speech, right to petition, or right of association.” TENN. CODE ANN. § 20-17-105(a). Thereafter, the Court “shall dismiss the legal action unless the responding party establishes a prima facie case for each essential element of the claim in the legal action.” TENN. CODE ANN. § 20-17-105(b). Separately, “[n]otwithstanding subsection (b), the court shall dismiss the legal action if the petitioning party establishes a valid defense to the claims in the legal action.” TENN. CODE ANN. § 20-17-105(c).

### **III. FACTS**

The Plaintiffs’ newest Complaint fails to plead the substance of the allegedly defamatory statements at issue in this action in any regard. *See* Plaintiffs’ Complaint. As set forth below, this omission is fatal and compels dismissal. *See infra*, pp. 10–11. Assuming, for the sake of argument, that the facts of this case arise out of the same circumstances as Nandigam Neurology, PLC’s recently non-suited Circuit Court action, however, the underlying facts involved in this action are as follows:



“In early November 2019, Defendant Beavers accompanied her father to a medical consultation at the office of Plaintiff Nandigam.” *See Exhibit B*, Wilson Cty. Cir. Ct. Case No.: 2019-cv-663 Record (Complaint), p. 1, ¶ 6. “On November 7, 2019, Defendant Beavers posted a negative Yelp review on the internet[.]” *Id.* at ¶ 7. The Plaintiffs do not indicate what the Yelp! review at issue says, and they have also failed to append the review as an exhibit. *See* Complaint. Nonetheless, the Plaintiffs assert, without explanation, that Ms. Beavers’ statements were defamatory and placed Dr. Nandigam in a false light. *Id.*

The Yelp! review at issue was posted after Kelly Beavers brought her 67-year-old father—who was experiencing dizziness and memory loss—to a doctor’s appointment. *See Exhibit A*, p. 1, ¶ 5. Ms. Beavers’s father has significant difficulty remembering what occurred during his doctors’ appointments. *Id.* at pp. 1–2, ¶ 6. As a result, once in a private room and away from other patients, Ms. Beavers routinely (and lawfully, *see* TENN. CODE ANN. § 39-13-601) records her father’s medical appointments so that she can later play them for her father and remind him what doctors and other medical professionals have told him in order to ensure that he is following medical advice and receiving proper care. *Id.*

On this occasion, when Dr. Nandigam saw Ms. Beavers recording the visit, he became enraged, slammed his clipboard, demanded Ms. Beavers’s phone, and demanded that she delete the recording. *Id.* at p. 2, ¶¶ 7 & 9. Shocked and frightened by Dr. Nandigam’s behavior, Ms. Beavers complied and deleted the recording. *Id.* at ¶ 10. Ms. Beavers then exercised her constitutional right to post a truthful review on Yelp! about the service she had received. *See id.* at ¶ 11. Her Yelp! review stated, in its entirety:

This “Dr’s” behavior today was totally unprofessional and unethical to put it mildly. I will be reporting him to the State of TN Medical Review Board and be filing a formal complaint. How this guy is in business is beyond me.

Since when did they start allowing Doctors, to throw a complete temper tantrum in front of Patients and slam things when they get upset? He does not belong in the medical field at all.

**Exhibit C**, Yelp! Review. Thereafter, this action followed. *See* Complaint.

#### **IV. ARGUMENT**

##### **A. THE PLAINTIFFS' COMPLAINT FAILS TO STATE ANY CLAIM UPON WHICH RELIEF CAN BE GRANTED.**

###### **1. The Plaintiffs have failed to plead the substance of any of the statements over which they are suing.**

Plaintiffs who sue for defamation—and by extension, false light—are required to plead, at minimum, the substance of the statements over which they are suing. *See, e.g., Rose v. Cookeville Reg'l Med. Ctr.*, No. M200702368COAR3CV, 2008 WL 2078056, at \*4 (Tenn. Ct. App. May 14, 2008) (noting requirement that a plaintiff plead, at minimum, “the substance of the slanderous statement” even under relaxed pleading standards (citing *Handley*, 588 S.W.2d at 774–75)); *Webb v. Stanley Jones Realty, Inc.*, No. 04-1288-T/AN, 2005 WL 1959160, at \*2 (W.D. Tenn. Aug. 11, 2005) (“the substance of the utterance must be set forth” (citing *Handley*, 588 S.W.2d at 775)). A plaintiff’s failure to set forth the substance of an allegedly defamatory statement compels dismissal. *See, e.g., Markowitz v. Skalli*, No. 13-2186-JDT-CGC, 2013 WL 4782143, at \*4 (W.D. Tenn. Sept. 5, 2013) (“In the instant case, Plaintiff merely makes the conclusory statement that Defendant made “slanderous remarks” without providing Defendant with “the substance of the slanderous utterance [ . . . ] along with notice of the time and place of the utterance [to appraise Defendant] of the allegations that he must defend against. Therefore, it is RECOMMENDED that the Court DISMISS the complaint for failure to state a claim on which relief may be granted . . . .” (citing *Handley*, 588 S.W.2d at 775)).

Here, despite describing the statements at issue as defamatory, the Plaintiffs have not bothered to set forth the substance of any of the statements over which they have sued. *See* Complaint. As noted, however, such bald, conclusory allegations are insufficient to state a cognizable claim for defamation as a matter of law. *See, e.g., Rose*, 2008 WL 2078056, at \*4; *Webb*, 2005 WL 1959160, at \*2. Given this context, the Plaintiffs' failure to plead the substance of their defamation and false light claims as required compels dismissal as a matter of law. *See Markowitz*, 2013 WL 4782143, at \*4.

**2. The statements contained in Ms. Beavers's Yelp! review are inactionable as defamation as a matter of law.**

To state a claim for defamation, a statement must, at minimum, be capable of conveying a defamatory meaning. Crucially, "whether a communication is capable of conveying a defamatory meaning is a question of law for the court to decide in the first instance . . . ." *Brown*, 393 S.W.3d at 708. *See also Aegis Scis. Corp.*, 2013 WL 175807, at \*6 ("[T]he preliminary question of whether a statement 'is capable of conveying a defamatory meaning' presents a question of law." (quoting *Revis*, 31 S.W.3d at 253)); *McWhorter*, 132 S.W.3d at 364 ("The question of whether [a statement] was understood by its readers as defamatory is a question for the jury, but the preliminary determination of whether [a statement] is 'capable of being so understood is a question of law to be determined by the court.'" (quoting *Memphis Publ'g Co.*, 569 S.W.2d at 419)).

Consequently, the Plaintiffs' allegations that the statements at issue are reasonably capable of conveying a defamatory meaning represent questions of law that must be decided by this Court without any deference to the Plaintiffs' characterizations. *See Brown*, 393 S.W.3d at 708–09 ("The issue of whether a communication is capable of conveying a defamatory meaning is a question of law for the court to decide in the first

instance . . . To make this determination, courts ‘must look to the words themselves and are not bound by the Plaintiffs’ interpretation of them.’”); *Moman*, 1997 WL 167210, at \*3 (“If the words are not reasonably capable of the meaning the plaintiff ascribes to them, the court must disregard the latter interpretation.”). Additionally, every statement that the Plaintiff insists is defamatory “should be read as a person of ordinary intelligence would understand it in light of the surrounding circumstances.” *Aegis Scis. Corp.*, 2013 WL 175807, at \*6 (quoting *Revis*, 31 S.W.3d at 253).

For the reasons provided in the following subsections, none of the statements that form the basis of the Plaintiffs’ Complaint comes anywhere close to clearing these hurdles. As such, the Plaintiffs have failed to state a cognizable claim for defamation as a matter of law.

- i. The statements in Ms. Beavers’s Yelp! review are not capable of conveying a defamatory meaning as a matter of law.

Setting aside the fact that the Plaintiffs’ Complaint does not set forth the substance of the statements over which they are suing, the statements in Ms. Beavers’s Yelp! review are not capable of conveying a defamatory meaning as a matter of law. The Plaintiffs’ lawsuit is premised entirely upon Ms. Beavers’ Yelp! review, which states—in its entirety—as follows:

This “Dr’s” behavior today was totally unprofessional and unethical to put it mildly. I will be reporting him to the State of TN Medical Review Board and be filing a formal complaint. How this guy is in business is beyond me. Since when did they start allowing Doctors, to throw a complete temper tantrum in front of Patients and slam things when they get upset? He does not belong in the medical field at all.

### **Exhibit C.**

For the reasons detailed below, none of these statements is capable of conveying a

defamatory meaning.

- a. *Subjective opinions based on disclosed facts and statements regarding future intent are not capable of defamatory meaning.*

Because the Plaintiffs have not specified which statements within Ms. Beavers's review they contend are tortious, it is not clear whether the Plaintiffs are claiming that Ms. Beavers's statements that "[t]his 'Dr's' behavior today was totally unprofessional and unethical to put it mildly[,] " [h]ow this guy is in business is beyond me[,] " and "[h]e does not belong in the medical field at all" were defamatory. *See id.* Regardless, none of these statements is capable of a defamatory meaning as a matter of law for several reasons. In particular, these statements: (1) are based on fully disclosed, non-defamatory facts; (2) are statements of subjective opinion; and (3) are incapable of being proven false. *See, e.g., Covenant Presbyterian Church*, 2015 WL 5766685, at \*3 ("[C]omments upon true and nondefamatory published facts are not actionable, even though [the comments] are stated in strong or abusive terms.") (cleaned up); *Weidlich v. Rung*, No. M2017-00045-COA-R3-CV, 2017 WL 4862068, at \*6 (Tenn. Ct. App. Oct. 26, 2017) (holding that "[a] writer's comments upon true and nondefamatory published facts are not actionable" as a matter of law); *Cummins v. Suntrust Capital Markets, Inc.*, 649 F. Supp. 2d 224, 255 (S.D.N.Y. 2009) ("the characterization of the Plaintiffs' complicity in the June 15 option grants as self-interested, dishonest and unethical was a non-actionable statement of opinion based on fully disclosed facts"), *reconsideration denied*, No. 07 CIV. 4633(JGK), 2010 WL 985222, at \*1 (S.D.N.Y. Mar. 17, 2010), *and aff'd*, 416 F. App'x 101 (2d Cir. 2011); *Clark v. Viacom Int'l Inc.*, 617 F. App'x 495, 508 (6th Cir. 2015) ("[T]he falsity requirement is met only if the statement in question makes an assertion of fact—that is, an assertion that is capable of being proved objectively

incorrect.”). As another court recently explained in a similar setting:

Henry’s statements that Tamburo’s actions were “unethical” and “deceitful” are not actionable. The First Amendment protects opinions that do not misstate actual facts. *See Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20, 110 S. Ct. 2695, 111 L. Ed. 2d 1 (1990); *see also Moriarty v. Greene*, 315 Ill. App. 3d 225, 247 Ill. Dec. 675, 732 N.E.2d 730, 739 (2000). A plainly subjective remark is not actionable. *Wilkow v. Forbes*, 241 F.3d 552, 555 (7th Cir. 2001). Whether a person’s actions are ethical or deceptive is not objectively verifiable. *See Lifton v. Bd. of Educ. of the City of Chicago*, 416 F.3d 571, 579 (7th Cir. 2005). *See also Hopewell v. Vitullo*, 299 Ill. App. 3d 513, 233 Ill. Dec. 456, 701 N.E.2d 99, 104 (1998) (concluding that the statement “fired because of incompetence” did not have a “precise and readily understood meaning,” and that “the veracity of the statement” was unverifiable).

*Tamburo v. Dworkin*, 974 F. Supp. 2d 1199, 1213 (N.D. Ill. 2013).

Further, as a statement regarding her future intent, Ms. Beavers’s indication that she “will be reporting [Dr. Nandigam] to the State of TN Medical Review Board and be filing a formal complaint” similarly is not capable of a defamatory meaning as a matter of law because it cannot be proven false. *See, e.g., S. Middlesex Opportunity Council, Inc. v. Town of Framingham*, 752 F. Supp. 2d 85, 120 (D. Mass. 2010) (“Because Orr’s statement is unambiguously an expression of opinion about a future event, he cannot be held liable for defamation as to this statement.”); *Caesars Entm’t Operating Co. v. Appaloosa Inv. Ltd. P’ship I*, No. 652392/2014, 2015 WL 4430268, at \*8 (N.Y. Sup. Ct. July 20, 2015) (“As for the Second Lien Holders’ litigation threats, they too cannot give rise to a defamation claim because they are expressions of future intent, not facts.”).

Put differently: Statements concerning Ms. Beavers’s anticipated future actions cannot be proven false, and they cannot be construed as objectively verifiable false facts as a consequence. *See, e.g., Haynes v. Alfred A. Knopf, Inc.*, 8 F.3d 1222, 1227 (7th Cir. 1993) (“[I]f it is plain that the speaker is expressing a subjective view, an interpretation, a theory, conjecture, or surmise, rather than claiming to be in possession of objectively

verifiable facts, the statement is not actionable.” (citing *Milkovich*, 497 U.S. at 17–21) (other citations omitted)); *Oracle USA, Inc. v. Rimini Street, Inc.*, No. 2:10–CV–00106–LRH–PAL, 2010 WL 4386957, at \*3 (D. Nev. Oct. 29, 2010) (“[Defendant’s] statements are predictions of the future that could not be proven true or false at the time the statements were made. Therefore, these statements are not defamatory. Accordingly, the court will grant [the defendant’s] motion to dismiss as to these allegations of defamation.”).

Nor is Ms. Beavers’s question: “Since when did they start allowing Doctors, to throw a complete temper tantrum in front of Patients and slam things when they get upset?” capable of any defamatory meaning. It is a “widely adopted defamation principle that questions are questions.” *Abbas v. Foreign Policy Grp., LLC*, 783 F.3d 1328, 1339 (D.C. Cir. 2015). Thus, “inquiry itself, however embarrassing or unpleasant to its subject, is not accusation.” *Chapin v. Knight-Ridder, Inc.*, 993 F.2d 1087, 1094 (4th Cir. 1993).

For all of these reasons, Ms. Beavers’s Yelp! review is not capable of a defamatory meaning as a matter of law, and the Plaintiffs’ defamation claim against her must be dismissed as a consequence.

b. *Ms. Beavers’s statements were, at worst, merely annoying, offensive, or embarrassing.*

To provide substantial breathing room to promote free speech, unfettered communication, and commentary on issues of public importance, Tennessee’s courts have additionally held that statements that are merely “annoying, offensive or embarrassing” are categorically inactionable. *Covenant Presbyterian Church*, 2015 WL 5766685, at \*3 (quoting *Brown*, 393 S.W.3d at 708). “[T]he crux of free-speech rights is that generally they can be exercised even if (and perhaps especially when) they cause

disruption and disharmony.” *Bennett v. Metro. Gov’t of Nashville & Davidson Cty.*, No. 3:17-CV-00630, 2019 WL 1572932, at \*12 (M.D. Tenn. Apr. 11, 2019). Consequently,

[f]or a communication to be [defamatory], it must constitute a serious threat to the Plaintiffs’ reputation. A [defamation] does not occur simply because the subject of a publication finds the publication annoying, offensive or embarrassing. The words must reasonably be construable as holding the plaintiff up to public hatred, contempt or ridicule. They must carry with them an element “of disgrace.”

*Covenant Presbyterian Church*, 2015 WL 5766685, at \*3 (quoting *Brown*, 393 S.W.3d at 708).

Here, the Plaintiffs have not sued over any implications. Even if they had, however, the only statements underlying the Plaintiffs’ Complaint that could even plausibly imply statements of fact—whether the Dr. Nandigam “thr[ew] a complete temper tantrum” and whether he “slam[s] things when [he] get[s] upset[,]” see **Exhibit C**—cannot be considered defamatory as a matter of law. Considered in the most generous fashion possible, the Yelp! review at issue, and each statement within it, was—at most—merely “annoying, offensive or embarrassing”—a deficiency that renders the statements at issue inactionable. *Covenant Presbyterian Church*, 2015 WL 5766685, at \*3 (quoting *Brown*, 393 S.W.3d at 708). Certainly, none of the statements at issue can plausibly be considered “disgrace[ful]” or “a serious threat to the Plaintiffs’ reputation.” See *Davis*, 83 S.W.3d at 128 (quoting *Stones River Motors*, 651 S.W.2d at 719). Consequently, notwithstanding the Plaintiffs’ own characterizations, none of the statements in the Yelp! review at issue is capable of conveying a defamatory meaning as a matter of law. See *id.*

- ii. The statements in Ms. Beavers’s Yelp! review are mere rhetorical hyperbole that cannot reasonably be read as objective assertions of false fact.

The statements in Ms. Beavers’s Yelp! review also qualify as constitutionally



protected rhetorical hyperbole, rather than unprotected defamation. The doctrine of rhetorical hyperbole exists to provide essential breathing space for expression in a free society. Ms. Beavers’s innocuous Yelp! review easily falls within its protection.

The U.S. Supreme Court has emphasized that heated and emotionally charged rhetoric is entitled to free-speech protection under the doctrine of rhetorical hyperbole. For example, in *Old Dominion No. 496, Nat’l Ass’n of Letter Carriers v. Austin*, 418 U.S. 264, 284 (1974), the Supreme Court ruled that labor union members did not defame non-union members when they referred to them as “scabs.” *Id.* The Court characterized the use of the term “scab” as “a lusty and imaginative expression of the contempt felt by union members towards those who refuse to join.” *Id.* at 286.

Similarly, in *Greenbelt Co-Op. Publ’g Ass’n, Inc. v. Bresler*, 398 U.S. 6, 14 (1970), the U.S. Supreme Court ruled that a newspaper engaged in constitutionally protected rhetorical hyperbole when it referred to a developer’s contract with a city as “blackmail.” The Court reasoned that “even the most careless reader must have perceived that the word was no more than rhetorical hyperbole, a vigorous epithet used by those who considered [the developer’s] negotiating position extremely unreasonable.” *Id.* at 14. Accordingly, the Court determined that “[n]o reader could have thought that either the speakers at the meetings or the newspaper articles reporting their words were charging [the plaintiff] with the commission of a criminal offense.” *Id.*

In keeping with the U.S. Supreme Court’s guidance on the matter, the Sixth Circuit has similarly held that TripAdvisor’s use of the term “dirtiest” to describe a hotel in a review was protected rhetorical hyperbole. *See Seaton*, 728 F.3d at 598. There, the court explained that: “‘Dirtiest’ is a loose, hyperbolic term because it is the superlative of an adjective that conveys an inherently subjective concept,” and thus, it held that “no reader

of TripAdvisor’s list would understand Grand Resort to be, objectively, the dirtiest hotel in all the Americas, the North American continent, or even the United States.” *Id.* (citing *Greenbelt Coop. Publ’g Ass’n*, 398 U.S. at 14). The Sixth Circuit has similarly held that lyrics in a rap song that referred to someone as “a ‘disgrace to the species’” constituted mere rhetorical hyperbole that could not be deemed defamatory as a matter of law. *Boladian, Inc.*, 123 F. App’x at 170.

Suffice it to say that extensive legal authority supports the proposition that the statements in Ms. Beavers’s Yelp! review referring to Dr. Nandigam as “totally unprofessional and unethical” and having “throw[n] a complete temper tantrum in front of Patients” amounted to plain rhetorical hyperbole—exactly the type of heated and emotional expression protected by the First Amendment. *See supra*, pp. 16–18. *See also* David L. Hudson, Jr., *Rhetorical Hyperbole Protects Free Speech*, FREEDOM FORUM INST. (Oct. 28, 2018), <https://www.freedomforuminstitute.org/2018/10/28/rhetorical-hyperbole-protects-free-speech/>. Accordingly, the statements at issue are inactionable as defamation, and the Plaintiffs’ defamation claim should be dismissed as a result.

iii. The Plaintiffs have failed to plead actual malice.

Where—as here—an allegedly defamatory statement involves a matter of public interest, a plaintiff is required to prove actual malice. *See West*, 53 S.W.3d at 647 (“In *Time, Inc. v. Hill*, 385 U.S. 374, 87 S. Ct. 534, 17 L.Ed.2d 456 (1967), the Court extended the actual malice standard to alleged defamatory statements about matters of public interest.”). Critically, statements about the quality of services offered to the public are *per se* deemed matters of public interest for both First Amendment and Anti-SLAPP purposes. *See* TENN. CODE ANN. § 20-17-103(6)(D). *See also Neumann v. Liles*, 369 P.3d

1117, 1126 (Or. 2016) (finding statements critical of wedding planning services were matters of public concern under Oregon Anti-SLAPP statute, and holding that a defendant’s review was “an expression of opinion on matters of public concern that is protected under the First Amendment”); *Melaleuca, Inc. v. Clark*, 66 Cal. App. 4th 1344, 1363 (1998) (holding that “the public has a well-recognized interest in knowing about the quality and contents of consumer goods” and finding that statements alleging that products were unhealthy were “matters of obvious widespread public interest”); *DuPont Merck Pharmaceutical Co. v. Superior Ct.*, 78 Cal. App. 4th 562, 566 (2000) (holding that statements comparing the quality and effectiveness of drug products were made “in connection with a public issue” for Anti-SLAPP purposes).

In this case, the Plaintiffs’ Complaint is devoid of even an allegation of actual malice. *See* Complaint. As noted, such an allegation is also an affirmative requirement. *See West*, 53 S.W.3d at 647. Dismissal is appropriate as a consequence.

**3. Plaintiff Nandigam Neurology may not sue over statements that do not concern it, and Dr. Nandigam may not maintain his defamation action through a PLC.**

Ms. Beavers’s Yelp! review was expressly about—and it unambiguously concerns—Dr. Kaveer Nandigam *the human being*, making explicit reference to “[t]his ‘Dr,’” “he” “him,” and “this guy.” *See Exhibit C*. That fact is necessarily fatal to Nandigam Neurology’s defamation claims, because “[a] plaintiff may not support a claim for defamation based on an alleged defamatory statement made ‘of and concerning’ a third party.” *Steele v. Ritz*, No. W200802125COAR3CV, 2009 WL 4825183, at \*3 (Tenn. Ct. App. Dec. 16, 2009) (citations omitted). As the Court of Appeals explained in *Stones River Motors*, 651 S.W.2d at 717:

As an essential element of a cause of action for defamation, the plaintiffs must prove a false and defamatory statement *concerning another*. RESTATEMENT (SECOND) OF TORTS § 558 (1977). Otherwise stated at common law, one of the required elements of proof was the “colloquium,” a showing that the language was directed to or concerning *the charging party*.”

(partial emphasis added).

Put differently: Although he may attempt to maintain them himself, Dr. Nandigam cannot prosecute—through the veil of a PLC—defamation claims over statements that concern him personally. *See id.* Accordingly, Nandigam Neurology, PLC’s defamation claims must be dismissed as a matter of law for failure to satisfy colloquium. *See Steele*, 2009 WL 4825183, at \*3 (“This [colloquium] requirement—often referred to as the ‘of and concerning’ requirement—confines actionable defamation to statements made against an ‘ascertained or ascertainable person, and that person must be the plaintiff.’” (quoting 53 C.J.S. LIBEL AND SLANDER; INJURIOUS FALSEHOOD § 35 (2005))).

**4. Plaintiff Nandigam Neurology’s claims may not be maintained because its previous dismissal could only be taken with prejudice.**<sup>2</sup>

Plaintiff Nandigam Neurology additionally may not maintain its claims in the instant case because they have previously been adjudicated. Specifically, given that dismissal of its claims with prejudice was compelled in Wilson County Circuit Court Case No.: 2019-cv-663 after Nandigam Neurology failed to meet its affirmative burden of proof in response to Ms. Beavers’ TPPA Petition, its identical claims in this action are res judicata.

When Plaintiff Nandigam Neurology filed its first baseless action against Ms. Beavers in Wilson County Circuit Court, she responded by filing a petition to dismiss the

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<sup>2</sup> Nandigam Neurology also has not yet paid Ms. Beavers’s discretionary costs following its previous non-suit regarding the same claims. *But see* Tenn. R. Civ. P. 41.04.

Plaintiff's Complaint under the Tennessee Public Participation Act. *See Exhibit B* (Wilson County Circuit Court TPPA Petition). Critically, the Tennessee Public Participation Act mandates that after a petitioning party has met its

burden of making a prima facie case that a legal action against the petitioning party is based on, relates to, or is in response to that party's exercise of the right to free speech, right to petition, or right of association[,] . . . the court **shall dismiss** the legal action unless the responding party establishes a prima facie case for each essential element of the claim in the legal action.

TENN. CODE ANN. § 20-17-105(a)–(b) (emphasis added). The dismissal compelled by the TPPA is also with prejudice. *See* § 20-17-105(e) (“If the court dismisses a legal action pursuant to a petition filed under this chapter, the legal action or the challenged claim is dismissed with prejudice.”).

After Nandigam Neurology sued Ms. Beavers in Wilson County Circuit Court, Ms. Beavers met her initial burden of proving that Nandigam Neurology's claims were based on, related to, or were filed in response to her exercise of the right to free speech. *See Exhibit B* (Wilson County Circuit Court TPPA Petition); § 20-17-105(a). Thereafter, rather than attempting to meet its mandatory and affirmative burden under the Tennessee Public Participation Act, *see* § 20-17-105(b), Plaintiff Nandigam Neurology non-suited its case. *See Exhibit B* (Notice and Order of Voluntary Dismissal). For the reasons set forth above, however, Nandigam Neurology's failure to meet its burden compelled dismissal of its Wilson County Circuit Court Complaint with prejudice,<sup>3</sup> *see* TENN. CODE ANN. § 20-17-105(a)–(b) & (e), and as a consequence, Nandigam Neurology is barred from maintaining its identical and previously dismissed claims in this action.

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<sup>3</sup> A motion to alter or amend the order of dismissal at issue to reflect that mandate is impending.

**B. THE PLAINTIFFS’ COMPLAINT SHOULD BE DISMISSED PURSUANT TO THE TENNESSEE PUBLIC PARTICIPATION ACT.**

**1. Applicability of the Tennessee Public Participation Act**

The Tennessee Public Participation Act provides that “[i]f a legal action is filed in response to a party’s exercise of the right of free speech, right to petition, or right of association, that party may petition the court to dismiss the legal action” subject to the TPPA’s specialized provisions. TENN. CODE ANN. § 20-17-104(a).<sup>4</sup> Under Tennessee Code Annotated § 20-17-103(3), “[e]xercise of the right of free speech’ means a communication made in connection with a matter of public concern or religious expression that falls within the protection of the United States Constitution or the Tennessee Constitution.” In turn, Tennessee Code Annotated § 20-17-103(6) provides that:

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

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

(emphases added).

Here, Ms. Beavers’s statements qualify as “a communication made in connection

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<sup>4</sup> The petition “may be filed within sixty (60) calendar days from the date of service of the legal action or, in the court’s discretion, at any later time that the court deems proper.” *See* TENN. CODE ANN. § 20-17-104(b). As a consequence, having been filed within sixty (60) days of service, Ms. Beavers’s Tennessee Public Participation Act petition to dismiss this action is timely filed. *See id.*

with a matter of public concern” under several independent criteria. *See id.* *See also* **Exhibit B** (Complaint), p. 1, ¶¶ 5 & 7; **Exhibit C**. Consequently, for purposes of the Tennessee Public Participation Act, this action qualifies as one filed in response to Ms. Beavers’s exercise of the right of free speech in several independent regards. *See* TENN. CODE ANN. §§ 20-17-104(a); 20-17-103(3); 20-17-103(6).

## **2. Grounds for Granting Ms. Beavers’ TPPA Petition**

The Tennessee Public Participation Act provides that “[t]he petitioning party has the burden of making a prima facie case that a legal action against the petitioning party is based on, relates to, or is in response to that party’s exercise of the right to free speech, right to petition, or right of association.” TENN. CODE ANN. § 20-17-105(a). As noted above, the Yelp! review over which Ms. Beavers has been sued involves, at minimum, services in the marketplace, and that basis alone—along with several others—qualifies this action as one filed in response to a party’s “exercise of the right of free speech” within the meaning of the Tennessee Public Participation Act. *See* TENN. CODE ANN. §§ 20-17-104(a); 20-17-103(3); 20-17-103(6)(E). *See also* TENN. CODE ANN. § 20-17-103(6)(A), (B), (D), & (G). Thus, Ms. Beavers having met her initial burden of production, *see* TENN. CODE ANN. § 20-17-105(a), this Court “shall dismiss the legal action unless the responding party establishes a prima facie case for each essential element of the claim in the legal action.” TENN. CODE ANN. § 20-17-105(b).

Separately, “[n]otwithstanding subsection (b), the court shall dismiss the legal action if the petitioning party establishes a valid defense to the claims in the legal action.” TENN. CODE ANN. § 20-17-105(c). Pursuant to this section, Ms. Beavers expressly incorporates into this Petition each argument set forth above in support of her defense

that the Plaintiffs have failed to state any cognizable claim for relief. Ms. Beavers has additionally appended a sworn Affidavit as **Exhibit A** to provide further factual support for the defenses raised above; to refute the factual allegations underlying the Plaintiffs' claims; and to establish the following additional defenses to this action:

- (1) The Yelp! review at issue was true or substantially true;
- (2) The Yelp! review at issue was not posted with actual malice or negligence in failing to ascertain the truth; and
- (3) The Plaintiffs—particularly having attributed in excess of \$25,000 in damages to a non-party to this action, *see Exhibit B* (Complaint)—cannot prove actual damages.

*See* TENN. CODE ANN. § 20-17-105(d) (“The court may base its decision on supporting and opposing sworn affidavits stating admissible evidence upon which the liability or defense is based and on other admissible evidence presented by the parties.”).

“Truth is an absolute defense to a claim for defamation when the otherwise defamatory meaning of the words used turns out to be true.”<sup>5</sup> *Sullivan v. Wilson Cty.*, No. M2011-00217-COA-R3CV, 2012 WL 1868292, at \*12 (Tenn. Ct. App. May 22, 2012), *appeal denied* (Tenn. Sept. 18, 2012). Here, Ms. Beavers maintains that everything written in her Yelp! review is true, *see Exhibit A*, p. 1, ¶ 11 & p. 3, ¶¶ 17–18, and she relies on that absolute defense in support of her Tennessee Public Participation Act Petition. Of note, substantially true statements are privileged pursuant to the substantial truth doctrine as well, which Ms. Beavers similarly relies upon as a defense to this action. *See*

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<sup>5</sup> Tennessee law provides that establishing truth is a defendant’s burden. *See Memphis Publ’g Co. v. Nichols*, 569 S.W.2d 412, 420 (Tenn. 1978). Although Ms. Beavers has no difficulty establishing truth as a defense to this action under the circumstances of this case, Ms. Beavers nonetheless preserves and maintains the claim that the presumption of falsity doctrine recognized under Tennessee law should be overruled.



*Isbell*, 2000 WL 1817252, at \*5. Ms. Beavers’s Yelp! review additionally was not posted with actual malice or even negligence. See **Exhibit A**, p. 3, ¶ 19. Instead, it was premised upon her own good-faith recollection and personal observations of Dr. Nandigam’s conduct during her father’s visit. See *generally id.*

## **V. COSTS, ATTORNEY’S FEES, & SANCTIONS**

Pursuant to Tennessee Code Annotated § 20-17-107(a):

If the court dismisses a legal action pursuant to a petition filed under this chapter, the court shall award to the petitioning party:

(1) Court costs, reasonable attorney’s fees, discretionary costs, and other expenses incurred in filing and prevailing upon the petition; and

(2) Any additional relief, including sanctions, that the court determines necessary to deter repetition of the conduct by the party who brought the legal action or by others similarly situated.

The Plaintiffs’ prosecution of this facially frivolous action merits costs, fees, and severe sanctions. The transparent purpose of this lawsuit is to silence, censor, intimidate, and retaliate against Ms. Beavers and her family because Ms. Beavers had the audacity to post a truthful, negative Yelp! review of Dr. Nandigam’s abusive behavior, which this litigation itself evidences in spades. No litigant or attorney acting in good faith could reasonably believe that the Plaintiffs’ claims in this lawsuit had merit—and certainly not after being served with and recognizing Nandigam Neurology’s inability to overcome Ms. Beavers’ first TPPA petition. Both mandatory costs and attorney’s fees and severe sanctions to deter further misconduct should be awarded accordingly.

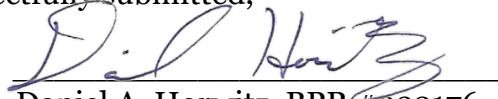
## **VI. CONCLUSION**

For the foregoing reasons, Defendant Beavers’s Tennessee Public Participation Act Petition to dismiss this action should be **GRANTED**; the Plaintiffs should be ordered to

pay Defendant Beavers's court costs, reasonable attorney's fees, and discretionary costs pursuant to Tennessee Code Annotated §§ 20-17-107(a)(1) and § 20-12-119(c); and this Court should assess sanctions against the Plaintiffs and their counsel as necessary to deter repetition of their conduct pursuant to Tennessee Code Annotated § 20-17-107(a)(2).

Respectfully submitted,

By:



Daniel A. Horwitz, BPR #032176  
1803 Broadway, Suite #531  
Nashville, TN 37203  
daniel.a.horwitz@gmail.com  
(615) 739-2888

Sarah L. Martin, BPR #037707  
1020 Stainback Avenue  
Nashville, TN 37207  
Sarahmartin1026@gmail.com  
(615) 335-3118

*Counsel for Defendant Kelly Beavers*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 22nd day of January, 2020, a copy of the foregoing was served via UPS mail, postage prepaid, and/or e-mailed to the following parties:

Angello L. Huong  
435 Park Avenue, Professional Building  
Lebanon, Tennessee 37087

Bennett Hirschhorn  
800 South Gay Street, Suite 700  
Knoxville, TN 37929

*Counsel for Plaintiff*

By:   
Daniel A. Horwitz, Esq.

**NOTICE OF HEARING**

The above petition to dismiss is scheduled to be heard in the General Sessions Court of Wilson County, Tennessee on February 6, 2020 at 9:00 a.m. before Judge Barry Tatum. Failure to respond or appear for the scheduled hearing may result in relief being granted.

# Exhibit A

**IN THE CIRCUIT COURT OF WILSON COUNTY, TENNESSEE**

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NANDIGAM NEUROLOGY, PLC,

*Plaintiff,*

v.

KELLY BEAVERS

and

DEVIN YOUNT,

*Defendants.*

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Case No.: 2019-cv-663

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**AFFIDAVIT OF KELLY BEAVERS**

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1. My name is Kelly Beavers, I have personal knowledge of the facts affirmed in this Affidavit, I am competent to testify regarding them, and I swear under penalty of perjury that they are true.

2. I am a named Defendant in Wilson County Circuit Court Case No.: 2019-cv-663.

3. I am the person who posted the Yelp! review that is referenced in the Plaintiff's Complaint. See Complaint, p. 1, ¶ 7. A true and exact copy of the Yelp! review I posted is attached to my Tennessee Public Participation Act Petition as Exhibit B.

4. Devin Yount had nothing whatsoever to do with the review I posted.

5. After my 67-year-old father—who was experiencing dizziness and memory loss—was referred to Dr. Kaveer Nandigam, I brought my father to Nandigam Neurology for a consultation in early November 2019.

6. Due to my father's condition, he has difficulty remembering what occurred

during his medical appointments, so I routinely attend his medical appointments. Once in a private room and away from other patients, I also record his appointments so that I can later remind him what doctors and other medical professionals told him and ensure that he is following medical advice and receiving proper care.

7. When Dr. Nandigam saw that I was recording my father's medical appointment, Dr. Nadigam began yelling, slammed his clipboard, and demanded my phone.

8. Dr. Nadigam's behavior scared me and deeply upset my father. In my opinion, his behavior was unprofessional and incompatible with, among other things, doctors' ethical responsibility to do no harm.

9. Dr. Nandigam demanded that I delete the recording of my father's medical appointment before leaving his office.

10. Although having recordings of my father's appointments is important to his health, because I was shocked and frightened by Dr. Nandigam's behavior, I deleted the recording as Dr. Nandigam demanded. Thereafter, even though the visit was not complete, my father and I left.

11. I ultimately posted a critical but truthful review on Yelp! about my experience with Dr. Nandigam. The Plaintiff is currently suing me for that review.

12. The Yelp! review I posted was based upon my personal opinion of Dr. Nandigam's behavior. My opinion was based on the facts that I disclosed within the review.

13. I genuinely intend to report Dr. Nandigam to the State of Tennessee Medical Review Board and to file a formal complaint regarding his behavior.

14. I genuinely do not know how, behaving as he did, Dr. Nandigam is still in

business.

15. In my opinion, Dr. Nandigam does not belong in the medical field.

16. I posted the Yelp! review at issue in furtherance of my right of free speech under the Tennessee and United States Constitutions in connection with a matter of public concern.

17. All of the statements in my Yelp! review were based on my truthful recollection of Dr. Nandigam's behavior.

18. I do not and did not have any reason to believe that any of the statements in my Yelp! review were false.

19. I did not communicate any of the information in my Yelp! review with reckless disregard of its falsity or with negligence in failing to ascertain the truth.

20. Instead, I posted the review based on my own personal observations during my father's medial appointment with Dr. Kaveer Nandigam of Nandigam Neurology.

21. No other person requested that I post the Yelp! review, nor did I work with or in conjunction with anyone in posting the Yelp! review. I did not conspire to post the Yelp! review or any other review with Devin Yount or any other person.

22. The other Defendant in Wilson County Circuit Court Case No.: 2019-cv-663, Devin Yount, is the son of a friend of mine.

23. It is my understanding that Mr. Yount posted a review on Google after overhearing a conversation between his mother and I about my father's appointment with Dr. Nandigam.

24. The statements in Mr. Yount's Google review were true.

25. I did not ask or encourage Mr. Yount to post any review of Dr. Nandigam.

26. I did not conspire with Mr. Yount to harm the Plaintiff in any way.

27. The Plaintiff's allegations regarding an alleged conspiracy between Mr. Yount and me are unequivocally false.

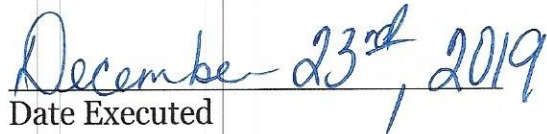
Further affiant sayeth not.

Pursuant to Tennessee Rule of Civil Procedure 72, I declare under penalty of perjury that the foregoing is true and correct.



---

Kelly Beavers



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Date Executed



# Exhibit B

IN THE CIRCUIT COURT OF WILSON COUNTY, TENNESSEE

NANDIGAM NEUROLOGY, PLC, )  
PLAINTIFF )  
VS. )  
KELLY BEAVERS and )  
DEVIN YOUNT )  
DEFENDANTS. )

CASE NO. 2019-CV-663

DEBRA MOORE  
Circuit Clerk  
Wilson County, TN  
2019 NOV 27 PM 2:28  
FILED  
R#

**COMPLAINT**

Comes now the Plaintiff, NANDIGAM NEUROLOGY, PLC, and complains of Defendants KELLY BEAVERS and DEVIN YOUNT, as follows:

**PARTIES**

1. Plaintiff NANDIGAM NEUROLOGY, PLC (hereinafter referred to as "Plaintiff" or "Plaintiff Nandigam"), is a Tennessee professional limited liability company with its principle office located at 516 Uptown Square, Murfreesboro, TN 37129.
2. Defendant KELLY BEAVERS (hereinafter referred to as "Defendant Beavers") is an adult citizen and resident of Wilson County, Tennessee. Her place of residence is 398 Saundersville Ferry Road, Mt. Juliet, TN 37122.
3. Defendant DEVIN YOUNT (hereinafter referred to as "Defendant Yount") is an adult citizen and resident of Wilson County, Tennessee. Upon information and belief, his place of residence is 3025 Cairns Drive, Mt. Juliet, TN 37122.
4. This Court has jurisdiction over the parties and venue is proper.

**BACKGROUND**

5. Plaintiff Nandigam owns and operates a medical office in Murfreesboro, TN which provides neurology treatment and neurological medical services.
6. In early November 2019, Defendant Beavers accompanied her father to a medical consultation at the office of Plaintiff Nandigam.
7. On November 7, 2019, Defendant Beavers posted a negative Yelp review on the internet regarding Plaintiff Nandigam's medical office which contained false, disparaging, and misleading statements.

8. On November 20, 2019, Defendant Yount additionally posted a negative Google regarding Plaintiff Nandigam's medical office which also contained false, disparaging, and misleading statements. Plaintiff Nandigam has never met Defendant Yount and has never had any contact or communication with Defendant Yount. Plaintiff Nandigam does not even know who Defendant Yount is.

9. Upon information and belief, Defendant Yount was an acquaintance of Defendant Beavers who was specifically recruited by Defendant Beavers for the purpose of posting false and misleading statements on Google concerning Plaintiff Nandigam's medical office.

10. Neither Defendant Beavers nor Defendant Young were ever patients of Plaintiff Nandigam's medical office.

#### **COUNT I-DEFAMATION AND LIBEL**

11. Plaintiff Nandigam incorporates each and every allegation set forth above.

12. The actions of Defendant Beavers and Defendant Yount constitute defamation and libel which resulted in injury to Plaintiff Nandigam's business.

13. The actions of Defendant Beavers and Defendant Yount were done in a reckless and/or intentional manner with disregard for the truth and were performed by the Defendants in order to cause damage to Plaintiff's business.

#### **COUNT II-FALSE LIGHT**

14. Plaintiff Nandigam incorporates each and every allegation set forth above.

15. The actions of Defendant Beavers and Defendant Yount constitute statements of false light which resulted in injury to Plaintiff Nandigam's business.

16. The actions of Defendant Beavers and Defendant Yount were done in a negligent, reckless, and/or intentional manner and resulted in damage to Plaintiff's business.

#### **COUNT III-CONSPIRACY**

17. Plaintiff Nandigam incorporates each and every allegation set forth above.

18. The actions of Defendant Beavers and Defendant Yount constitute a civil conspiracy between the two Defendants which resulted in injury to Plaintiff Nandigam's business.

19. The actions of Defendant Beavers and Defendant Yount were intentionally coordinated by the Defendants in order to cause damage to Plaintiff's business reputation.

### DAMAGES


20. Due to the acts of Defendant Beavers and Defendant Yount, Plaintiff Nandigam suffers from damage to its business reputation, potential loss of patients and business revenue, loss of income, internet “clean up” expenses, and legal expenses.

### PRAYER FOR RELIEF

WHEREFORE, Plaintiff Nandigam Neurology, PLC hereby demands:

1. Process be issued upon the Defendants and an *Answer* to this *Complaint* be filed within the time frame prescribed by law.
2. Judgment be entered against Defendant KELLY BEAVERS and Defendant DEVIN YOUNT, jointly and severally, for an amount to be determined at trial, but no less than \$25,000, with interest and costs.
3. An additional award of punitive damages be entered against both Defendant BEAVERS and Defendant DEVIN YOUNT, jointly and severally, for their actions, with interest and costs.
4. The court award Plaintiff’s attorney fees against Defendants.
5. The court order Defendants to remove their defamatory statements from the internet and to pay for any associated costs for such removal.
6. The court issue an injunction against Defendants prohibiting them from posting any further statements against Plaintiff on the internet.
7. Any further legal and equitable relief to which Plaintiff may be entitled.

RESPECTFULLY SUBMITTED:

  
\_\_\_\_\_  
ANGELLO L. HUONG #021209  
Attorney for Plaintiff  
435 Park Avenue, Professional Building  
Lebanon, Tennessee 37087  
Phone (615) 453-7530

**SURETY**

I, Angello L. Huong, state that I am the surety for the costs of this case.

  
\_\_\_\_\_  
ANGELLO L. HUONG

12-2-C-577

DEC 02 2019 RETURN

Phone  
615-444-2042

STATE OF TENNESSEE 15TH JUDICIAL DISTRICT  
WILSON COUNTY, LEBANON, TENNESSEE

CASE NUMBER  
2019-CV-663

T. Rolin 808

Nandigam Neurology, PLC vs. Kelly Beavers and

Devin Yount

PLAINTIFF

DEFENDANT

RECEIVED  
12/4/2019

CIRCUIT COURT SUMMONS

To the above named Defendant: Kelly Beavers, 398 Saundersville Ferry Road, Mt. Juliet, TN

You are summoned to appear and defend a civil action filed against you in Circuit Court, 134 South College Street, Wilson County, Tennessee, and your defense must be made within thirty (30) days from the date this summons is served upon you. You are further directed to file your defense with the Clerk of the Court and send a copy to the Plaintiff's attorney at the address listed below:

ATTORNEY FOR PLAINTIFF Angello L. Huong Phone No. (615) 453-7530  
435 Park Avenue  
Lebanon, TN 37087

In case of your failure to defend this action by the above date, judgment by default will be rendered against you for the relief demanded in the complaint.

ISSUED: 11/27, 20 19

DEBBIE MOSS,  
Circuit Court Clerk, Wilson County

By: Regina Hulse Deputy Clerk

TO THE SHERIFF:  
Please execute this summons and make your return hereon as provided by law.

DEBBIE MOSS,  
Circuit Court Clerk, Wilson County

Received this summons for service this \_\_\_\_\_ day of \_\_\_\_\_, 2019

2019 NOV 2 PM 2:21  
FILED  
RH

SHERIFF

OFFICER'S RETURN  
(Please serve and return within ninety (90) days from date of issuance as provided by law)

I hereby certify and return, that on the 3 day of December, 2019, I served this summons together with the complaint herein as follows: Served Kelly Beavers.

By: Rolin # 808 Wilson County Sheriff  
105 East High St.  
Lebanon, TN 37087

RETURN ON SERVICE OF SUMMONS BY MAIL

I hereby certify and return, that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I sent, postage prepaid, by registered return receipt mail or certified return receipt mail, a certified copy of the summons and a copy of the complaint in Case No. \_\_\_\_\_ to the defendant, \_\_\_\_\_. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I received the return receipt for said registered or certified mail, which had been signed by \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. Said return receipt is attached to this original summons and both documents are being sent herewith to the Circuit Court Clerk for filing.

SWORN TO AND SUBSCRIBED BEFORE ME ON  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_

PLAINTIFF, PLAINTIFF'S ATTORNEY OR OTHER PERSON  
AUTHORIZED BY STATUTE TO SERVE PROCESS

\_\_\_\_ NOTARY PUBLIC or \_\_\_\_\_ DEPUTY CLERK

MY COMMISSION EXPIRES: \_\_\_\_\_

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**TO THE DEFENDANT(S):**

Tennessee law provides a ten thousand dollar (\$10,000.00) Personal Property exemption from execution or seizure to satisfy a judgment. If a judgment should be entered against you in this action and you wish to claim property as exempt, you must file a written list, under oath, of the items you wish to claim as exempt with the clerk of the court. The list may be filed at any time and may be changed by you thereafter as necessary; however, unless it is filed before the judgment becomes final, it will not be effective as to any execution of garnishment issued prior to the filing of the list. Certain items are automatically exempt by law and do not need to be listed; these include items of necessary wearing apparel (clothing) for yourself and your family and trunks or other receptacles necessary to contain such apparel, family portraits, the family Bible, and school books. Should any of these items be seized you would have the right to recover them. If you do not understand your exemption right or how to exercise it, you may wish to seek the counsel of a lawyer.

Pursuant to section T.C.A.26-518-523.

**ATTACH RETURN  
RECEIPT HERE**

**(IF APPLICABLE)**

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2-2-C-599

DEC 02 2019 RETURN

Phone 615-444-2042

STATE OF TENNESSEE 15TH JUDICIAL DISTRICT WILSON COUNTY, LEBANON, TENNESSEE

CASE NUMBER 2019-CV-663

Nandigam Neurology, PLC

Kelly Beavers and

vs. Devin Yount

PLAINTIFF

DEFENDANT

CIRCUIT COURT SUMMONS

RECEIVED 12/14/2019

To the above named Defendant: Devin Yount, 3025 Cairns Drive, Mt. Juliet, TN 37122

You are summoned to appear and defend a civil action filed against you in Circuit Court, 134 South College Street, Wilson County, Tennessee, and your defense must be made within thirty (30) days from the date this summons is served upon you.

ATTORNEY FOR PLAINTIFF Angello L. Huong Phone No. (615) 453-7530 435 Park Avenue Lebanon, TN 37087

In case of your failure to defend this action by the above date, judgment by default will be rendered against you for the relief demanded in the complaint.

ISSUED: 11/27, 20 19

DEBBIE MOSS, Circuit Court Clerk, Wilson County

TO THE SHERIFF:

By: Regina Hulise Deputy Clerk

Please execute this summons and make your return hereon as provided by law.

DEBBIE MOSS, Circuit Court Clerk, Wilson County

Received this summons for service this \_\_\_ day of \_\_\_, 20 19

FILED 2019 NOV 27 2:21 PM SHERIFF

OFFICER'S RETURN

(Please serve and return within ninety (90) days from date of issuance as provided by law)

I hereby certify and return, that on the 2 day of December, 20 19, I served this summons together with the complaint herein as follows: Served Devin Yount

Wilson County Sheriff 105 East High St. Lebanon, TN 37087

By: Charles Boston SHERIFF

RETURN ON SERVICE OF SUMMONS BY MAIL

I hereby certify and return, that on the \_\_\_ day of \_\_\_, 20 \_\_\_, I sent, postage prepaid, by registered return receipt mail or certified return receipt mail, a certified copy of the summons and a copy of the complaint in Case No. \_\_\_ to the defendant, \_\_\_. On the \_\_\_ day of \_\_\_, 20 \_\_\_, I received the return receipt for said registered or certified mail, which had been signed by \_\_\_ on the \_\_\_ day of \_\_\_, 20 \_\_\_. Said return receipt is attached to this original summons and both documents are being sent herewith to the Circuit Court Clerk for filing.

SWORN TO AND SUBSCRIBED BEFORE ME ON THIS \_\_\_ DAY OF \_\_\_, 20 \_\_\_

PLAINTIFF, PLAINTIFF'S ATTORNEY OR OTHER PERSON AUTHORIZED BY STATUTE TO SERVE PROCESS

NOTARY PUBLIC or DEPUTY CLERK

MY COMMISSION EXPIRES: \_\_\_



WALKER COUNTY CLERK  
100 EAST HIGHWAY 201  
LEWISBURG, TN 37541

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**TO THE DEFENDANT(S):**

Tennessee law provides a ten thousand dollar (\$10,000.00) Personal Property exemption from execution or seizure to satisfy a judgment. If a judgment should be entered against you in this action and you wish to claim property as exempt, you must file a written list, under oath, of the items you wish to claim as exempt with the clerk of the court. The list may be filed at any time and may be changed by you thereafter as necessary; however, unless it is filed before the judgment becomes final, it will not be effective as to any execution of garnishment issued prior to the filing of the list. Certain items are automatically exempt by law and do not need to be listed; these include items of necessary wearing apparel (clothing) for yourself and your family and trunks or other receptacles necessary to contain such apparel, family portraits, the family Bible, and school books. Should any of these items be seized you would have the right to recover them. If you do not understand your exemption right or how to exercise it, you may wish to seek the counsel of a lawyer.  
Pursuant to section T.C.A.26-518-523.

**ATTACH RETURN  
RECEIPT HERE**

**(IF APPLICABLE)**

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**IN THE CIRCUIT COURT OF WILSON COUNTY, TENNESSEE**

NANDIGAM NEUROLOGY, PLC,

*Plaintiff,*

*v.*

KELLY BEAVERS

and

DEVIN YOUNT,

*Defendants.*

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Case No.: 2019-cv-663

Judge John Wooten, Jr.

JURY DEMANDED

**FILED**  
**2019 DEC 27 PM 2:32**  
DEBBIE MOSS  
CIRCUIT COURT CLERK  
WILSON COUNTY, TN

**DEFENDANT BEAVERS’S MOTION TO DISMISS AND TENN. CODE ANN. §  
20-17-104(a) PETITION TO DISMISS THE PLAINTIFF’S COMPLAINT  
PURSUANT TO THE TENNESSEE PUBLIC PARTICIPATION ACT**

Comes now Defendant Kelly Beavers, by and through undersigned counsel of record, and pursuant to Tennessee Rule of Civil Procedure 12.02(6) and Tennessee Code Annotated § 20-17-104(a), respectfully moves and petitions this Court to dismiss the Plaintiff’s Complaint with prejudice.

In support of her Motion and Petition, Defendant Beavers has filed an accompanying *Memorandum of Law in Support of Her Motion to Dismiss and Tennessee Code Annotated § 20-17-104(a) Petition to Dismiss the Plaintiff’s Complaint Pursuant to the Tennessee Public Participation Act*.

Respectfully submitted,

By:



Daniel A. Horwitz, BPR #032176  
1803 Broadway, Suite #531  
Nashville, TN 37203  
daniel.a.horwitz@gmail.com  
(615) 739-2888

Sarah L. Martin, BPR #037707  
1020 Stainback Avenue  
Nashville, TN 37207  
Sarahmartin1026@gmail.com  
(615) 335-3118

*Counsel for Defendant Kelly Beavers*

**NOTICE OF HEARING ON MOTION**

In light of Judge Wooten's retirement, a hearing on the above motion has not yet been scheduled. Upon assignment of a new Judge, Ms. Beavers will coordinate with the Court, opposing counsel, and co-defendant Yount to schedule a prompt hearing as soon as possible at the Court's convenience.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 23rd day of December, 2019, a copy of the foregoing was served via UPS mail, postage prepaid, and/or e-mailed to the following parties:

Angello L. Huong  
435 Park Avenue, Professional Building  
Lebanon, Tennessee 37087

Bennett Hirschhorn  
800 South Gay Street, Suite 700  
Knoxville, TN 37929

*Counsel for Plaintiff*

Devin Yount  
3025 Cairns Dr.  
Mt. Juliet, TN 37122

*Co-Defendant*

By:



Daniel A. Horwitz, Esq.



Participation Act. See TENN. CODE ANN. § 20-17-104(a).

The Plaintiff's Complaint—and every cause of action alleged in it—must be dismissed with prejudice for several independent reasons:

First, longstanding, unambiguous, and controlling authority establishes that corporations cannot sue for false light invasion of privacy. See *West v. Media Gen. Convergence, Inc.*, 53 S.W.3d 640, 648 (Tenn. 2001) (“the right to privacy is a personal right. As such, the right cannot attach to corporations or other business entities . . .”). The Plaintiff has inexplicably maintained a false light claim regardless.

Second, the Plaintiff's Complaint does not comport with threshold pleading requirements and fails to set forth the substance of any of the statements that it alleges are defamatory.

Third, Dr. Kaveer Nandigam—the human being about whom Ms. Beavers posted her Yelp! review—is not a party to this action. The actual Plaintiff in this action may not sue over statements that concern a non-party, however, and Dr. Nandigam may not maintain his defamation action through a PLC.

Fourth, for multiple independent reasons, the statements in Ms. Beavers's Yelp! review are inactionable as defamation and are incapable of conveying a defamatory meaning as a matter of law.

Fifth, the Plaintiff's civil conspiracy claim fails as a matter of law because: (1) it is not premised upon any tortious act; (2) it is not premised upon any unlawful purpose or unlawful means; and, in any event, (3) it is not pleaded with the requisite degree of specificity.

Separately, the Plaintiff's Complaint falls squarely within the protections of the newly enacted Tennessee Public Participation Act. See TENN. CODE ANN. § 20-17-101, *et*

seq. Pursuant to the Tennessee Public Participation Act, Ms. Beavers has submitted sworn, admissible evidence setting forth several outcome-determinative defenses to this action. See **Exhibit A**, Beavers Affidavit. In furtherance of the Tennessee Public Participation Act's substantive protections, Ms. Beavers additionally demands that the Plaintiff establish a prima facie case for each essential element of its claims in order to avoid dismissal.

## **II. LEGAL STANDARDS**

### **A. MS. BEAVERS'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

"A motion to dismiss a complaint for failure to state a claim pursuant to Rule 12.02(6) of the Tennessee Rules of Civil Procedure asserts that the allegations in the complaint, accepted as true, fail to establish a cause of action for which relief can be granted." *Conley v. State*, 141 S.W.3d 591, 594 (Tenn. 2004). Where, as here, it "appears that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief[.]" a defendant's motion to dismiss must be granted. *Crews v. Buckman Labs. Int'l, Inc.*, 78 S.W.3d 852, 857 (Tenn. 2002).

### **B. HEIGHTENED CONSTITUTIONAL REQUIREMENTS GOVERNING DEFAMATION CLAIMS**

To establish a prima facie case of defamation under Tennessee law, a plaintiff must prove that: "(1) a party published a statement; (2) with knowledge that the statement was false and defaming to the other; or (3) with reckless disregard for the truth of the statement or with negligence in failing to ascertain the truth of the statement."<sup>1</sup> *Davis v.*

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<sup>1</sup> Where—as here—the alleged defamatory statement involves a matter of public interest, a plaintiff is required to prove actual malice. See *West v. Media Gen. Convergence, Inc.*, 53 S.W.3d 640, 647 (Tenn. 2001) ("In *Time, Inc. v. Hill*, 385 U.S. 374, 87 S. Ct. 534, 17 L.Ed.2d 456 (1967), the Court extended the actual malice standard to alleged defamatory statements about matters of public interest."). Statements about the quality of services offered to the public are *per se* deemed matters of public interest for both First Amendment and Anti-SLAPP purposes. See, e.g., *Neumann v. Liles*, 369 P.3d 1117, 1126 (Or. 2016) (finding

*The Tennessean*, 83 S.W.3d 125, 128 (Tenn. Ct. App. 2001). Critically, however, “the Supreme Court of the United States has constitutionalized the law of libel[.]” *Press, Inc. v. Verran*, 569 S.W.2d 435, 440 (Tenn. 1978). See also *N.Y. Times v. Sullivan*, 376 U.S. 254, 269 (1964). Thus, defamation claims present several threshold and outcome-determinative questions of law that do not require any deference to the Plaintiff’s own characterizations of the statements that it has sued over. See, e.g., *Moman v. M.M. Corp.*, No. 02A01-9608-CV00182, 1997 WL 167210, at \*3 (Tenn. Ct. App. Apr. 10, 1997) (“If the [allegedly defamatory] words are not reasonably capable of the meaning the plaintiff ascribes to them, the court must disregard the latter interpretation.”). See also *Brown v. Mapco Express, Inc.*, 393 S.W.3d 696, 708 (Tenn. Ct. App. 2012); *McWhorter v. Barre*, 132 S.W.3d 354, 364 (Tenn. Ct. App. 2003).

Given the constitutional limitations that govern defamation claims, “ensuring that defamation actions proceed only upon statements which may actually defame a plaintiff is an essential gatekeeping function of the court.” *Pendleton v. Newsome*, 772 S.E.2d 759, 763 (Va. 2015) (internal quotation omitted). With this “essential gatekeeping function” in mind, see *id.*, both our Court of Appeals and our Supreme Court have instructed that in defamation cases, “the issue of whether a communication is capable of conveying a defamatory meaning is a question of law for the court to decide in the first instance . . . .” *Brown*, 393 S.W.3d at 708. See also *Aegis Scis. Corp. v. Zelenik*, No. M2012-00898-

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statements critical of wedding planning services were matters of public concern under Oregon Anti-SLAPP statute, and holding that a defendant’s review was “an expression of opinion on matters of public concern that is protected under the First Amendment.”); *Melaleuca, Inc. v. Clark*, 66 Cal. App. 4th 1344, 1363 (1998) (holding that “the public has a well-recognized interest in knowing about the quality and contents of consumer goods” and finding that statements alleging that products were unhealthy were “matters of obvious widespread public interest”); *DuPont Merck Pharmaceutical Co. v. Superior Court*, 78 Cal. App. 4th 562, 566 (2000) (holding that statements comparing the quality and effectiveness of drug products were made “in connection with a public issue” for Anti-SLAPP purposes).

COA-R3CV, 2013 WL 175807, at \*6 (Tenn. Ct. App. Jan. 16, 2013) (“[T]he preliminary question of whether a statement ‘is capable of conveying a defamatory meaning’ presents a question of law.” (quoting *Revis v. McClean*, 31 S.W.3d 250, 253 (Tenn. Ct. App. 2000))); *McWhorter*, 132 S.W.3d at 364 (“The question of whether [a statement] was understood by its readers as defamatory is a question for the jury, but the preliminary determination of whether [a statement] is ‘capable of being so understood is a question of law to be determined by the court.” (quoting *Memphis Publ’g Co. v. Nichols*, 569 S.W.2d 412, 419 (Tenn. 1978))). If an allegedly defamatory statement is not capable of being understood as defamatory as a matter of law, then a plaintiff’s complaint must be dismissed for failure to state a claim. *McWhorter*, 132 S.W.3d at 364.

Of note, Tennessee courts have also adopted several categorical bars that prevent claimed defamations from being actionable as a matter of law, several of which are outcome-determinative here:

First, our courts have held that opinions enjoy robust constitutional protection under the First Amendment. *See generally Stones River Motors, Inc. v. Mid-S. Publ’g Co.*, 651 S.W.2d 722 (Tenn. Ct. App. 1983), *abrogation on other grounds recognized by Zius v. Shelton*, No. E199901157COAR9CV, 2000 WL 739466, at \*3 (Tenn. Ct. App. June 6, 2000). As a result, “an opinion is not actionable as libel unless it implies the existence of unstated defamatory facts.” *Id.* at 722.

Second, an allegedly defamatory statement “must be factually false in order to be actionable.”<sup>2</sup> *See Moman*, 1997 WL 167210, at \*4. Thus, any statement that is not capable

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<sup>2</sup> In Tennessee, defamatory implications regarding an allegedly tortious publication are governed by a distinct and independent tort. *See Loftis v. Rayburn*, No. M201701502COAR3CV, 2018 WL 1895842, at \*5–6 (Tenn. Ct. App. Apr. 20, 2018) (describing Tennessee’s independent recognition of “defamation by implication or innuendo”). In this case, the Plaintiff’s Complaint exclusively alleges defamation, false light, and conspiracy claims. *See Complaint*.



of being proven false as a matter of fact or that constitutes mere rhetorical hyperbole cannot form the basis for a defamation claim. *See id.*

Third, merely unpleasant or embarrassing statements are not capable of conveying a defamatory meaning as a matter of law. *Davis v. Covenant Presbyterian Church of Nashville*, No. M2014-02400-COA-R9-CV, 2015 WL 5766685, at \*3 (Sept. 30, 2015).

Instead,

**[f]or a communication to be [defamatory], it must constitute a serious threat to the plaintiff's reputation. A [defamation] does not occur simply because the subject of a publication finds the publication annoying, offensive or embarrassing. The words must reasonably be construable as holding the plaintiff up to public hatred, contempt or ridicule. They must carry with them an element "of disgrace."**

*Id.* (quoting *Brown*, 393 S.W.3d at 708) (emphases added), *appeal denied* (Tenn. Feb. 18, 2016).

Fourth, Tennessee has adopted the "substantial truth doctrine" with respect to defamation cases. *See Isbell v. Travis Elec. Co.*, No. M199900052COAR3CV, 2000 WL 1817252, at \*5 (Tenn. Ct. App. Dec. 13, 2000). Thus, statements that are true or substantially true are not actionable as defamation as a matter of law. *Id.*

Fifth, damages cannot be presumed; instead, a plaintiff is "required to prove actual damages in all defamation cases." *Hibdon v. Grabowski*, 195 S.W.3d 48, 68 (Tenn. Ct. App. 2005) (citing *Handley v. May*, 588 S.W.2d 772, 776 (Tenn. Ct. App. 1979)).

### C. THE TENNESSEE PUBLIC PARTICIPATION ACT

Tennessee's newly enacted Public Participation Act—which the legislature adopted to deter, expediently resolve, and punish SLAPP-suits like this one—provides that "[i]f a legal action is filed in response to a party's exercise of the right of free speech, right to petition, or right of association, that party may petition the court to dismiss the legal

action” subject to the specialized provisions of Tennessee Code Annotated § 20-17-104(a). The Tennessee Public Participation Act’s special petition to dismiss “provide[s] an additional substantive remedy to protect the constitutional rights of parties” that “supplement[s] any remedies which are otherwise available . . . under the Tennessee Rules of Civil Procedure.” TENN. CODE ANN. § 20-17-109. As such, nothing in the Act “affects, limits, or precludes the right of any party to assert any defense, remedy, immunity, or privilege otherwise authorized by law[,]” *see* TENN. CODE ANN. § 20-17-108(4), and Ms. Beavers’s special petition to dismiss has been presented in conjunction with her Motion to Dismiss under Tennessee Rule of Civil Procedure 12.02(6) as a result.

In enacting the Tennessee Public Participation Act, the Tennessee General Assembly forcefully established that:

The purpose of this chapter is to encourage and safeguard the constitutional rights of persons to petition, to speak freely, to associate freely, and to participate in government to the fullest extent permitted by law and, at the same time, protect the rights of persons to file meritorious lawsuits for demonstrable injury. This chapter is consistent with and necessary to implement the rights protected by Article I, §§ 19 and 23, of the Constitution of Tennessee, as well as by the First Amendment to the United States Constitution, and shall be construed broadly to effectuate its purposes and intent.

TENN. CODE ANN. § 20-17-102. Substantively, the Tennessee Public Participation Act also provides, among other things, that:

(1) When a defendant has been sued in response to the party’s exercise of the right to free speech, he or she is entitled to file a special petition to dismiss the legal action, TENN. CODE ANN. § 20-17-104(a);

(2) Discovery is automatically stayed by statute pending the entry of an order ruling on the petition, TENN. CODE ANN. § 20-17-104(d); and

(3) In the event that the petition is denied, the petitioning party is entitled to

an immediate interlocutory appeal as of right, TENN. CODE ANN. § 20-17-106.

A petition to dismiss an action under the Tennessee Public Participation Act “may be filed within sixty (60) calendar days from the date of service of the legal action or, in the court’s discretion, at any later time that the court deems proper.” See TENN. CODE ANN. § 20-17-104(b). Under the Act, “[t]he petitioning party has the burden of making a prima facie case that a legal action against the petitioning party is based on, relates to, or is in response to that party’s exercise of the right to free speech, right to petition, or right of association.” TENN. CODE ANN. § 20-17-105(a). Thereafter, the Court “shall dismiss the legal action unless the responding party establishes a prima facie case for each essential element of the claim in the legal action.” TENN. CODE ANN. § 20-17-105(b). Separately, “[n]otwithstanding subsection (b), the court shall dismiss the legal action if the petitioning party establishes a valid defense to the claims in the legal action.” TENN. CODE ANN. § 20-17-105(c).

### **III. FACTS**

“In early November 2019, Defendant Beavers accompanied her father to a medical consultation at the office of Plaintiff Nandigam.” See Complaint, p. 1, ¶ 6. “On November 7, 2019, Defendant Beavers posted a negative Yelp review on the internet[.]” *Id.* at ¶ 7. The Plaintiff’s Complaint does not include any mention of what the Yelp! review at issue says. See generally Complaint. It also does not append the review as an exhibit. See *id.* Nonetheless, the Plaintiff asserts, without explanation, that it “contained false, disparaging, and misleading statements.” *Id.* at ¶ 7. The Plaintiff has additionally sued Defendant Devin Yount over “a negative Google” [sic] that similarly is not described, quoted, or appended to the Plaintiff’s Complaint as an exhibit. *Id.* at p. 2, ¶ 8.

The Yelp! review at issue was posted after Kelly Beavers brought her 67-year-old father—who was experiencing dizziness and memory loss—to a doctor’s appointment. *See Exhibit A*, p. 1, ¶ 5. Ms. Beavers’s father has significant difficulty remembering what occurred during his doctors’ appointments. *Id.* at pp. 1–2, ¶ 6. As a result, once in a private room and away from other patients, Ms. Beavers routinely (and lawfully, *see* TENN. CODE ANN. § 39-13-601) records her father’s medical appointments so that she can later play them for her father and remind him what doctors and other medical professionals have told him in order to ensure that he is following medical advice and receiving proper care. *Id.*

On this occasion, when Dr. Nandigam—who is not a party to this action—saw Ms. Beavers recording the visit, he became enraged, slammed his clipboard, demanded Ms. Beavers’s phone, and demanded that she delete the recording. *Id.* at p. 2, ¶¶ 7 & 9. Shocked and frightened by Dr. Nandigam’s behavior, Ms. Beavers complied and deleted the recording. *Id.* at ¶ 10. Ms. Beavers then exercised her constitutional right to post a truthful review on Yelp! about the service she had received. *See id.* at ¶ 11. Her Yelp! review stated, in its entirety:

This “Dr’s” behavior today was totally unprofessional and unethical to put it mildly. I will be reporting him to the State of TN Medical Review Board and be filing a formal complaint. How this guy is in business is beyond me. Since when did they start allowing Doctors, to throw a complete temper tantrum in front of Patients and slam things when they get upset? He does not belong in the medical field at all.

**Exhibit B**, Yelp! Review.

Devin Yount—Ms. Beavers’s co-defendant—is the son of Ms. Beavers’s friend. **Exhibit A**, p. 3, ¶ 22. After hearing a conversation between his mother and Ms. Beavers about the visit, Mr. Yount posted a truthful review on Google regarding it. *Id.* at ¶ 23.

This action for false light, defamation, and civil conspiracy against both Ms. Beavers and Mr. Yount followed. *See generally* Complaint.

#### **IV. ARGUMENT**

##### **A. THE PLAINTIFF'S COMPLAINT FAILS TO STATE ANY CLAIM UPON WHICH RELIEF CAN BE GRANTED.**

###### **1. Plaintiff's false light claim is inactionable as a matter of law because corporations cannot sue for false light.**

A claim for false light invasion of privacy concerns a “personal right” that is premised upon a natural person’s right to privacy. *See West*, 53 S.W.3d at 648.

Accordingly, the Tennessee Supreme Court has clearly established that:

the right cannot attach to corporations or other business entities, may not be assigned to another, nor may it be asserted by a member of the individual’s family, even if brought after the death of the individual. Therefore, only those persons who have been placed in a false light may recover for invasion of their privacy.

*Id.* (citing RESTATEMENT (SECOND) OF TORTS § 652I cmt. a-c (1977)) (emphases added).

Thus, as a categorical matter, corporations may never maintain false light claims. *Id.* *See also Seaton v. TripAdvisor LLC*, 728 F.3d 592, 601 (6th Cir. 2013) (“Seaton cannot recover on behalf of Grand Resort because it is a business and as such does not have the right under Tennessee law to recover for a violation of its privacy.”).

Here, the Plaintiff’s Complaint reflects that the Plaintiff—Nandigam Neurology, PLC—is “a Tennessee professional limited liability company.” Complaint, p. 1, ¶ 1. As such, the Plaintiff is categorically prohibited from maintaining a false light invasion of privacy claim under any circumstances against any party. *West*, 53 S.W.3d at 648; *Seaton*, 728 F.3d at 601. The Plaintiff’s claims for false light invasion of privacy must be dismissed with prejudice for failure to state a claim as a consequence.

**2. The Plaintiff has failed to plead the substance of any of the statements over which it is suing.**

Plaintiffs who sue for defamation are required to plead—at minimum—the substance of the statements over which they are suing. *See, e.g., Rose v. Cookeville Reg'l Med. Ctr.*, No. M200702368COAR3CV, 2008 WL 2078056, at \*4 (Tenn. Ct. App. May 14, 2008) (noting requirement that a plaintiff plead, at minimum, “the substance of the slanderous statement” even under relaxed pleading standards (citing *Handley*, 588 S.W.2d at 774–75)); *Webb v. Stanley Jones Realty, Inc.*, No. 04-1288-T/AN, 2005 WL 1959160, at \*2 (W.D. Tenn. Aug. 11, 2005) (“the substance of the utterance must be set forth” (citing *Handley*, 588 S.W.2d at 775)). A plaintiff’s failure to set forth the substance of an allegedly defamatory statement compels dismissal. *See, e.g., Markowitz v. Skalli*, No. 13-2186-JDT-CGC, 2013 WL 4782143, at \*4 (W.D. Tenn. Sept. 5, 2013) (“In the instant case, Plaintiff merely makes the conclusory statement that Defendant made “slanderous remarks” without providing Defendant with “the substance of the slanderous utterance [ . . . ] along with notice of the time and place of the utterance [to appraise Defendant] of the allegations that he must defend against. Therefore, it is RECOMMENDED that the Court DISMISS the complaint for failure to state a claim on which relief may be granted . . . .” (citing *Handley*, 588 S.W.2d at 775)).

Here, despite describing the statements at issue as defamatory, the Plaintiff has not bothered to set forth the substance of any of the statements over which it has sued as to either defendant. *See* Complaint, pp. 1–2, ¶¶ 7–13. As noted, however, such bald, conclusory allegations are insufficient to state a cognizable claim for defamation as a matter of law. *See, e.g., Rose*, 2008 WL 2078056, at \*4; *Webb*, 2005 WL 1959160, at \*2.

Nor has the Plaintiff appended the written publications over which it has sued as

exhibits. *But see* Tenn. R. Civ. P. 10.03 (“Whenever a claim or defense is founded upon a written instrument other than a policy of insurance, a copy of such instrument or the pertinent parts thereof shall be attached to the pleading as an exhibit” absent exceptions not present here). A Plaintiff’s failure to comply with Rule 10.03 can similarly warrant dismissal. *See, e.g., Clear Water Partners, LLC v. Benson*, No. E2016-00442-COA-R3-CV, 2017 WL 376391, at \*8 (Tenn. Ct. App. Jan. 26, 2017) (“Rule 10.03 applies to this claim by Clear Water. In response to Clear Water’s argument that Rule 10.03 does not contemplate dismissal as a sanction for failing to comply with the rule, we note that Rule 41.02(1) provides that a plaintiff’s complaint may be dismissed if the plaintiff fails to comply with the rules set forth in the Tennessee Rules of Civil Procedure.” (citing Tenn. R. Civ. P. 41.02(1))). *See also id.* (citing *Maynard v. Meharry Med. Coll.*, No. 01-A-01-9408-CH-00400, 1995 WL 41598, at \*1 (Tenn. Ct. App. Feb. 1, 1995) (granting defendants’ motion to dismiss complaint due to failure to attach copy of contract documents to complaint as required by Rule 10.03)).

Here, the Plaintiff has failed to plead the substance of any of the allegedly defamatory statements at issue or to attach the statements as exhibits to its Complaint. These omissions serve to deprive both the Court and the Defendants themselves—who are being sued for not only their own statements, but also for one another’s allegedly defamatory statements—of any opportunity to determine what, specifically, the Plaintiff alleges is defamatory. Given this context, the Plaintiff’s failure to plead the substance of its defamation claims as required compels dismissal as a matter of law. *See Markowitz*, 2013 WL 4782143, at \*4. Accordingly, as to both defendants, the Plaintiff’s defamation claims should be dismissed.

**3. The Plaintiff may not sue over statements that concern a non-party to this litigation, and Dr. Nandigam may not maintain his defamation action through a PLC.**

Ms. Beavers's Yelp! review was expressly about—and it unambiguously concerns—Dr. Kaveer Nandigam *the human being*, making explicit reference to “[t]his ‘Dr,’” “he” “him,” and “this guy.” See **Exhibit B**. Critically, however, *Dr. Nandigam is not a party to this litigation, and he is not the Plaintiff*. See Complaint. That fact is necessarily fatal to the Plaintiff's defamation claims, because “[a] plaintiff may not support a claim for defamation based on an alleged defamatory statement made ‘of and concerning’ a third party.” *Steele v. Ritz*, No. W200802125COAR3CV, 2009 WL 4825183, at \*3 (Tenn. Ct. App. Dec. 16, 2009) (citations omitted). As the Court of Appeals explained in *Stones River Motors*, 651 S.W.2d at 717:

As an essential element of a cause of action for defamation, the plaintiffs must prove a false and defamatory statement *concerning another*. RESTATEMENT (SECOND) OF TORTS § 558 (1977). Otherwise stated at common law, one of the required elements of proof was the “colloquium,” a showing that the language was directed to or concerning *the charging party*.”

(partial emphasis added).

Put differently: Dr. Nandigam cannot prosecute—through the veil of a PLC—defamation claims over statements that concern him. See *id.* Nothing, of course, prevents the Plaintiff from substituting Dr. Nandigam as the plaintiff in this action, which would subject Dr. Nandigam personally to the inevitable sanctions associated with this bad-faith and facially frivolous lawsuit. Unless and until that happens, however, Dr. Nandigam cannot hide behind his PLC and prosecute his defamation claims through the corporate plaintiff that is actually maintaining this lawsuit. See *id.* Accordingly, the Plaintiff's defamation claims must be dismissed as a matter of law for failure to satisfy colloquium. See *Steele*, 2009 WL 4825183, at \*3 (“This [colloquium] requirement—often referred to



as the ‘of and concerning’ requirement—confines actionable defamation to statements made against an ‘ascertained or ascertainable person, and that person must be the plaintiff.’” (quoting 53 C.J.S. LIBEL AND SLANDER; INJURIOUS FALSEHOOD § 35 (2005)).

**4. The statements contained in Ms. Beavers’s Yelp! review are inactionable as defamation as a matter of law.**

To state a claim for defamation, it goes without saying that a statement must be capable of conveying a defamatory meaning. Crucially, “whether a communication is capable of conveying a defamatory meaning is a question of law for the court to decide in the first instance . . . .” *Brown*, 393 S.W.3d at 708. *See also Aegis Scis. Corp.*, 2013 WL 175807, at \*6 (“[T]he preliminary question of whether a statement ‘is capable of conveying a defamatory meaning’ presents a question of law.” (quoting *Revis*, 31 S.W.3d at 253)); *McWhorter*, 132 S.W.3d at 364 (“The question of whether [a statement] was understood by its readers as defamatory is a question for the jury, but the preliminary determination of whether [a statement] is ‘capable of being so understood is a question of law to be determined by the court.” (quoting *Memphis Publ’g Co.*, 569 S.W.2d at 419)). Consequently, the Plaintiff’s allegations that the statements at issue are reasonably capable of conveying a defamatory meaning represent questions of law that must be decided by this Court without any deference to the manner in which the Plaintiff characterizes them. *See Brown*, 393 S.W.3d at 708–09 (“The issue of whether a communication is capable of conveying a defamatory meaning is a question of law for the court to decide in the first instance . . . . To make this determination, courts ‘must look to the words themselves and are not bound by the plaintiff’s interpretation of them.’”); *Moman*, 1997 WL 167210, at \*3 (“If the words are not reasonably capable of the meaning the plaintiff ascribes to them, the court must disregard the latter interpretation.”).

Additionally, every statement that the Plaintiff insists is defamatory “should be read as a person of ordinary intelligence would understand it in light of the surrounding circumstances.” *Aegis Scis. Corp.*, 2013 WL 175807, at \*6 (quoting *Revis*, 31 S.W.3d at 253).

For the reasons provided in the following subsections, none of the statements that form the basis of the Plaintiff’s Complaint comes anywhere close to clearing these hurdles. As such, the Plaintiff has failed to state a cognizable claim for defamation as a matter of law.

- i. The statements in Ms. Beavers’s Yelp! review are not capable of conveying a defamatory meaning as a matter of law.

Overlooking the fact that the Plaintiff’s Complaint does not set forth the substance of the statements over which it is suing, the statements in Ms. Beavers’s Yelp! review are not capable of conveying a defamatory meaning as a matter of law. With respect to Ms. Beavers, the Plaintiff’s lawsuit is premised entirely upon her online Yelp! review, which states—in its entirety—as follows:

This “Dr’s” behavior today was totally unprofessional and unethical to put it mildly. I will be reporting him to the State of TN Medical Review Board and be filing a formal complaint. How this guy is in business is beyond me. Since when did they start allowing Doctors, to throw a complete temper tantrum in front of Patients and slam things when they get upset? He does not belong in the medical field at all.

**Exhibit B.**

For the reasons detailed below, none of these statements is capable of conveying a defamatory meaning.

- a. *Subjective opinions based on disclosed facts and statements regarding future intent are not capable of defamatory meaning.*

Because the Plaintiff has not specified which statements within Ms. Beavers’s

review it contends are tortious, it is not clear whether the Plaintiff is claiming that Ms. Beavers's statements that "[t]his 'Dr's' behavior today was totally unprofessional and unethical to put it mildly[.]" "[h]ow this guy is in business is beyond me[.]" and "[h]e does not belong in the medical field at all" were defamatory. Regardless, none of these statements is capable of a defamatory meaning as a matter of law for several reasons. In particular, these statements: (1) are based on fully disclosed, non-defamatory facts; (2) are statements of subjective opinion; and (3) are incapable of being proven false. *See, e.g., Covenant Presbyterian Church*, 2015 WL 5766685, at \*3 ("[C]omments upon true and nondefamatory published facts are not actionable, even though [the comments] are stated in strong or abusive terms.") (cleaned up); *Weidlich v. Rung*, No. M2017-00045-COA-R3-CV, 2017 WL 4862068, at \*6 (Tenn. Ct. App. Oct. 26, 2017) (holding that "[a] writer's comments upon true and nondefamatory published facts are not actionable" as a matter of law); *Cummins v. Suntrust Capital Markets, Inc.*, 649 F. Supp. 2d 224, 255 (S.D.N.Y. 2009) ("the characterization of the plaintiff's complicity in the June 15 option grants as self-interested, dishonest and unethical was a non-actionable statement of opinion based on fully disclosed facts"), *reconsideration denied*, No. 07 CIV. 4633(JGK), 2010 WL 985222, at \*1 (S.D.N.Y. Mar. 17, 2010), *and aff'd*, 416 F. App'x 101 (2d Cir. 2011); *Clark v. Viacom Int'l Inc.*, 617 F. App'x 495, 508 (6th Cir. 2015) ("[T]he falsity requirement is met only if the statement in question makes an assertion of fact—that is, an assertion that is capable of being proved objectively incorrect."). As another court recently explained in a similar setting:

Henry's statements that Tamburo's actions were "unethical" and "deceitful" are not actionable. The First Amendment protects opinions that do not misstate actual facts. *See Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20, 110 S. Ct. 2695, 111 L. Ed. 2d 1 (1990); *see also Moriarty v. Greene*, 315 Ill. App. 3d 225, 247 Ill. Dec. 675, 732 N.E.2d 730, 739 (2000). A plainly

subjective remark is not actionable. *Wilkow v. Forbes*, 241 F.3d 552, 555 (7th Cir. 2001). Whether a person's actions are ethical or deceptive is not objectively verifiable. *See Lifton v. Bd. of Educ. of the City of Chicago*, 416 F.3d 571, 579 (7th Cir. 2005). *See also Hopewell v. Vitullo*, 299 Ill. App. 3d 513, 233 Ill. Dec. 456, 701 N.E.2d 99, 104 (1998) (concluding that the statement "fired because of incompetence" did not have a "precise and readily understood meaning," and that "the veracity of the statement" was unverifiable).

*Tamburo v. Dworkin*, 974 F. Supp. 2d 1199, 1213 (N.D. Ill. 2013).

Further, as a statement regarding her future intent, Ms. Beavers's indication that she "will be reporting [Dr. Nandigam] to the State of TN Medical Review Board and be filing a formal complaint" similarly is not capable of a defamatory meaning as a matter of law because it cannot be proven false. *See, e.g., S. Middlesex Opportunity Council, Inc. v. Town of Framingham*, 752 F. Supp. 2d 85, 120 (D. Mass. 2010) ("Because Orr's statement is unambiguously an expression of opinion about a future event, he cannot be held liable for defamation as to this statement."); *Caesars Entm't Operating Co. v. Appaloosa Inv. Ltd. P'ship I*, No. 652392/2014, 2015 WL 4430268, at \*8 (N.Y. Sup. Ct. July 20, 2015) ("As for the Second Lien Holders' litigation threats, they too cannot give rise to a defamation claim because they are expressions of future intent, not facts."). Put differently: Statements concerning Ms. Beavers's anticipated future actions cannot be proven false, and they cannot be construed as objectively verifiable false facts as a consequence. *See, e.g., Haynes v. Alfred A. Knopf, Inc.*, 8 F.3d 1222, 1227 (7th Cir. 1993) ("[I]f it is plain that the speaker is expressing a subjective view, an interpretation, a theory, conjecture, or surmise, rather than claiming to be in possession of objectively verifiable facts, the statement is not actionable." (citing *Milkovich*, 497 U.S. at 17-21) (other citations omitted)); *Oracle USA, Inc. v. Rimini Street, Inc.*, No. 2:10-CV-00106-LRH-PAL, 2010 WL 4386957, at \*3 (D. Nev. Oct. 29, 2010) ("[Defendant's] statements

are predictions of the future that could not be proven true or false at the time the statements were made. Therefore, these statements are not defamatory. Accordingly, the court will grant [the defendant's] motion to dismiss as to these allegations of defamation.”).

Nor is Ms. Beavers's question: “Since when did they start allowing Doctors, to throw a complete temper tantrum in front of Patients and slam things when they get upset?” capable of any defamatory meaning. It is a “widely adopted defamation principle that questions are questions.” *Abbas v. Foreign Policy Grp., LLC*, 783 F.3d 1328, 1339 (D.C. Cir. 2015). Thus, “inquiry itself, however embarrassing or unpleasant to its subject, is not accusation.” *Chapin v. Knight-Ridder, Inc.*, 993 F.2d 1087, 1094 (4th Cir. 1993).

For all of these reasons, Ms. Beavers's Yelp! review is not capable of a defamatory meaning as a matter of law, and the Plaintiff's defamation claim against her must be dismissed as a consequence.

b. *Ms. Beavers's statements were, at worst, merely annoying, offensive, or embarrassing.*

To provide substantial breathing room to promote free speech, unfettered communication, and commentary on issues of public importance, Tennessee's courts have additionally held that statements that are merely “annoying, offensive or embarrassing” are categorically inactionable. *Covenant Presbyterian Church*, 2015 WL 5766685, at \*3 (quoting *Brown*, 393 S.W.3d at 708). “[T]he crux of free-speech rights is that generally they can be exercised even if (and perhaps especially when) they cause disruption and disharmony.” *Bennett v. Metro. Gov't of Nashville & Davidson Cty.*, No. 3:17-CV-00630, 2019 WL 1572932, at \*12 (M.D. Tenn. Apr. 11, 2019). Consequently,

[f]or a communication to be [defamatory], it must constitute a serious

threat to the plaintiff's reputation. A [defamation] does not occur simply because the subject of a publication finds the publication annoying, offensive or embarrassing. The words must reasonably be construable as holding the plaintiff up to public hatred, contempt or ridicule. They must carry with them an element "of disgrace."

*Covenant Presbyterian Church*, 2015 WL 5766685, at \*3 (quoting *Brown*, 393 S.W.3d at 708).

Here, the Plaintiff has not sued over implications. Even if it had, however, the only statements underlying the Plaintiff's Complaint that could even plausibly imply any statements of fact—whether the Dr. Nandigam "thr[ew] a complete temper tantrum" and whether he "slam[s] things when [he] get[s] upset[.]" see **Exhibit B**—cannot be considered defamatory as a matter of law. Considered in the most generous fashion possible, the Yelp! review at issue, and each of its component parts, was—at most—merely "annoying, offensive or embarrassing"—a deficiency that renders the statements at issue inactionable. *Covenant Presbyterian Church*, 2015 WL 5766685, at \*3 (quoting *Brown*, 393 S.W.3d at 708). Certainly, none of the statements at issue can plausibly be considered "disgrace[ful]" or "a serious threat to the plaintiff's reputation." See *Davis*, 83 S.W.3d at 128 (quoting *Stones River Motors*, 651 S.W.2d at 719). Consequently, notwithstanding the Plaintiff's own characterizations, none of the statements in the Yelp! review at issue is capable of conveying a defamatory meaning as a matter of law. See *id.*

ii. The statements in Ms. Beavers's Yelp! review are mere rhetorical hyperbole that cannot reasonably be read as objective assertions of false fact.

The statements in Ms. Beavers's Yelp! review also qualify as constitutionally protected rhetorical hyperbole, rather than unprotected defamation. The doctrine of rhetorical hyperbole exists to provide necessary breathing space for expression in a free society. Ms. Beavers's innocuous Yelp! review easily falls within its protection.

The U.S. Supreme Court has emphasized that heated and emotionally charged rhetoric is entitled to free-speech protection under the doctrine of rhetorical hyperbole. For example, in *Old Dominion No. 496, Nat'l Ass'n of Letter Carriers v. Austin*, 418 U.S. 264, 284 (1974), the Supreme Court ruled that labor union members did not defame non-union members when they referred to them as “scabs.” The Court characterized the use of the term “scab” as “a lusty and imaginative expression of the contempt felt by union members towards those who refuse to join.” *Id.* at 286.

Similarly, in *Greenbelt Co-Op. Publ'g Ass'n, Inc. v. Bresler*, 398 U.S. 6, 14 (1970), the U.S. Supreme Court ruled that a newspaper engaged in constitutionally protected rhetorical hyperbole when it referred to a developer's contract with a city as “blackmail.” The Court reasoned that “even the most careless reader must have perceived that the word was no more than rhetorical hyperbole, a vigorous epithet used by those who considered [the developer's] negotiating position extremely unreasonable.” *Id.* at 14. Accordingly, the Court determined that “[n]o reader could have thought that either the speakers at the meetings or the newspaper articles reporting their words were charging [the plaintiff] with the commission of a criminal offense.” *Id.*

In keeping with the U.S. Supreme Court's guidance on the matter, the Sixth Circuit has similarly held that TripAdvisor's use of the term “dirtiest” to describe a hotel in a review was protected rhetorical hyperbole. *See Seaton*, 728 F.3d at 598. There, the court explained, “‘Dirtiest’ is a loose, hyperbolic term because it is the superlative of an adjective that conveys an inherently subjective concept,” and thus, “no reader of TripAdvisor's list would understand Grand Resort to be, objectively, the dirtiest hotel in all the Americas, the North American continent, or even the United States.” *Id.* (citing *Greenbelt Coop. Publ'g Ass'n*, 398 U.S. at 14). The Sixth Circuit also has held that lyrics in a rap song that

referred to someone as “a ‘disgrace to the species’” constituted mere rhetorical hyperbole that could not be deemed defamatory as a matter of law. *Boladian v. UMG Recordings, Inc.*, 123 F. App’x 165, 170 (6th Cir. 2005) (unpublished).

Suffice it to say that extensive legal authority supports the proposition that the statements in Ms. Beavers’s Yelp! review referring to Dr. Nandigam as “totally unprofessional and unethical” and having “throw[n] a complete temper tantrum in front of Patients” amounted to plain rhetorical hyperbole—exactly the type of heated and emotional expression protected by the First Amendment. *See supra*, pp. 19–21. *See also* David L. Hudson, Jr., *Rhetorical Hyperbole Protects Free Speech*, FREEDOM FORUM INST. (Oct. 28, 2018), <https://www.freedomforuminstitute.org/2018/10/28/rhetorical-hyperbole-protects-free-speech/>. Accordingly, the statements at issue are inactionable as defamation, and the Plaintiff’s defamation claim should be dismissed as a result.

**5. The Plaintiff’s civil conspiracy claim fails as a matter of law for multiple independent reasons.**

Tennessee law does not recognize any freestanding tort for civil conspiracy. Instead, to be actionable, a civil conspiracy requires an underlying predicate tort committed pursuant to the conspiracy. *See Watson’s Carpet & Floor Coverings, Inc. v. McCormick*, 247 S.W.3d 169, 180 (Tenn. Ct. App. 2007) (citations omitted). *See also id.* (“Since liability for civil conspiracy depends on the performance of some underlying tortious act, the conspiracy is not independently actionable; rather, it is a means for establishing vicarious liability for the underlying tort” (quoting *Halberstam v. Welch*, 705 F.2d 472, 479 (D.C. Cir. 1983))).

Additionally, “[a]n essential element of a conspiracy claim is that the conspiring parties intend to accomplish an unlawful purpose, or a lawful purpose by unlawful



means.” *Kincaid v. SouthTrust Bank*, 221 S.W.3d 32, 39 (Tenn. Ct. App. 2006) (citing *Morgan v. Brush Wellman, Inc.*, 165 F. Supp.2d 704, 720 (E.D. Tenn. 2001)). As such, the absence of any unlawful purpose or means is fatal to a civil conspiracy claim.

Separately, given their highly fact-dependent nature, civil conspiracy claims are subject to heightened pleading standards and must be pleaded with some degree of specificity. *See McGee v. Best*, 106 S.W.3d 48, 64 (Tenn. Ct. App. 2002) (“As to civil conspiracy, this Court has stated that “[i]t is well-settled that conspiracy claims must be pleaded with some degree of specificity and that vague and conclusory allegations unsupported by material facts will not be sufficient to state such a claim[.]” (quoting *Haynes v. Harris*, No. 01A01-9810-CV-00518, 1999 WL 317946, at \*2 (Tenn. Ct. App. 1999))).

For the reasons that follow, none of these requirements is satisfied. Accordingly, the Plaintiff’s civil conspiracy claim must be dismissed as a matter of law.

- i. Because there was no underlying tortious act, the Plaintiff’s civil conspiracy claim fails as a matter of law.

Tennessee law does not recognize civil conspiracy as its own freestanding tort. Instead, a civil conspiracy requires an underlying tortious act committed pursuant to the conspiracy. *See Watson’s Carpet*, 247 S.W.3d at 180 (citations omitted). As a consequence, the absence of an underlying predicate tort is fatal to a civil conspiracy claim. *Id.*

Here, for the reasons set forth above, *see supra*, pp. 10–21, the Plaintiff has not stated a cognizable claim for either false light or defamation. As such, the Plaintiff’s civil conspiracy claim is not premised upon any underlying tort. Thus, the Plaintiff’s civil conspiracy claim is necessarily foreclosed—and must be dismissed—as a matter of law.

ii. The Plaintiff's civil conspiracy claim is not premised upon any unlawful purpose or lawful purpose accomplished by unlawful means.

“An essential element of a conspiracy claim is that the conspiring parties intend to accomplish an unlawful purpose, or a lawful purpose by unlawful means.” *Kincaid*, 221 S.W.3d at 39. Here, the only supposedly unlawful purpose that the Plaintiff's Complaint alleges is “a civil conspiracy between the two Defendants which resulted in injury to Plaintiff Nadigam's [sic] business” through actions “intentionally coordinated by the Defendants in order to cause damage to Plaintiff's business reputation.” Complaint, p. 2, ¶¶ 18–19.

Critically, though, even taking the Plaintiff's allegations as true, a coordinated effort to cause economic damages through criticism of a business *is fully protected First Amendment activity that is not unlawful*. See, e.g., *Taubman Co. v. Webfeats*, 319 F.3d 770, 778 (6th Cir. 2003) (“[A]lthough economic damage might be an intended effect of Mishkoff's expression, the First Amendment protects critical commentary when there is no confusion as to source, even when it involves the criticism of a business.”). As such, the Plaintiff's Complaint fails to allege “an unlawful purpose, or a lawful purpose by unlawful means” necessary to state a cognizable civil conspiracy claim. See *Kincaid*, 221 S.W.3d 39. The Plaintiff's civil conspiracy claim must be dismissed accordingly.

iii. The Plaintiff's civil conspiracy claim is not pleaded with the requisite specificity.

“As to civil conspiracy, [the Tennessee Court of Appeals] has stated that ‘[i]t is well-settled that conspiracy claims must be pled with some degree of specificity and that vague and conclusory allegations unsupported by material facts will not be sufficient to state such a claim.’” *McGee*, 106 S.W.3d at 64 (quoting *Harris*, 1999 WL 317946 at \*2)). Here,

the Plaintiff's conspiracy claim is based entirely upon conclusory legal allegations—rather than material factual allegations—that are nowhere near sufficient to sustain the cause of action. *See Kincaid*, 221 S.W.3d at 38 (“Conclusory allegations, however, unsupported by material facts will not be sufficient to state such a claim.”).

Specifically, the Plaintiff's civil conspiracy claim is premised upon the following bare allegations:

9. Upon information and belief, Defendant Yount was an acquaintance of Defendant Beavers who was specifically recruited by Defendant Beavers for the purpose of posting false and misleading statements on Google concerning Plaintiff Nandigam's medical office.

...

18. The actions of Defendant Beavers and Defendant Yount constitute a civil conspiracy between the two Defendants which resulted in injury to Plaintiff Nandigam's business.

19. The actions of Defendant Beavers and Defendant Yount were intentionally coordinated by the Defendants in order to cause damage to Plaintiff's business reputation.

20. Due to the acts of Defendant Beavers and Defendant Yount, Plaintiff Nandigam suffers from damage to its business reputation, potential loss of patients and business revenue, loss of income, internet “clean up” expenses, and legal expenses.

Complaint, pp. 2–3.

These allegations are precisely the sort of “vague and conclusory allegations unsupported by material facts” that are manifestly insufficient to state a civil conspiracy claim and require dismissal. *See McGee*, 106 S.W.3d at 64. The Plaintiff's lack of specificity is also particularly prejudicial in the instant case, where the Plaintiff has sued the Defendants not only over their own statements, but also over unspecified statements made by one another. This failure utterly deprives the Defendants of fair notice of what they must defend against. The Plaintiff's civil conspiracy claim fails and compels

dismissal as a matter of law due to this fatal defect as well. *See id.*

**B. THE PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED PURSUANT TO THE TENNESSEE PUBLIC PARTICIPATION ACT.**

**1. Applicability of the Tennessee Public Participation Act**

The Tennessee Public Participation Act provides that “[i]f a legal action is filed in response to a party’s exercise of the right of free speech, right to petition, or right of association, that party may petition the court to dismiss the legal action” subject to the Act’s specialized provisions. *See* TENN. CODE ANN. § 20-17-104(a).<sup>3</sup> Pursuant to Tennessee Code Annotated § 20-17-103(3), “[e]xercise of the right of free speech’ means a communication made in connection with a matter of public concern or religious expression that falls within the protection of the United States Constitution or the Tennessee Constitution.” In turn, Tennessee Code Annotated § 20-17-103(6) provides that:

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

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

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<sup>3</sup> The petition “may be filed within sixty (60) calendar days from the date of service of the legal action or, in the court’s discretion, at any later time that the court deems proper.” *See* TENN. CODE ANN. § 20-17-104(b). As a consequence, having been filed within sixty (60) days of service, Ms. Beavers’s Tennessee Public Participation Act petition to dismiss this action is timely filed. *See id.*

(emphases added).

Here, Ms. Beavers's statements qualify as "a communication made in connection with a matter of public concern" under several independent criteria. *See id.* *See also* Complaint, p. 1, ¶¶ 1 & 7; **Exhibit B**. Consequently, for purposes of the Public Participation Act, this action qualifies as one filed in response to Ms. Beavers's exercise of the right of free speech in several independent regards. *See* TENN. CODE ANN. §§ 20-17-104(a); 20-17-103(3); 20-17-103(6).

## **2. Grounds for Granting Ms. Beavers' TPPA Petition**

The Tennessee Public Participation Act provides that "[t]he petitioning party has the burden of making a prima facie case that a legal action against the petitioning party is based on, relates to, or is in response to that party's exercise of the right to free speech, right to petition, or right of association." TENN. CODE ANN. § 20-17-105(a). As noted above, the Yelp! review over which Ms. Beavers has been sued involves, at minimum, services in the marketplace, and that basis alone—along with several others—qualifies this action as one filed in response to a party's "exercise of the right of free speech" within the meaning of the Tennessee Public Participation Act. *See* TENN. CODE ANN. §§ 20-17-104(a); 20-17-103(3); 20-17-103(6)(E). *See also* TENN. CODE ANN. § 20-17-103(6)(A), (B), (D), & (G). Thus, Ms. Beavers having met her initial burden of production, *see* TENN. CODE ANN. § 20-17-105(a), this Court "shall dismiss the legal action unless the responding party establishes a prima facie case for each essential element of the claim in the legal action." TENN. CODE ANN. § 20-17-105(b).

Separately, "[n]otwithstanding subsection (b), the court shall dismiss the legal action if the petitioning party establishes a valid defense to the claims in the legal action."

TENN. CODE ANN. § 20-17-105(c). Pursuant to this section, Ms. Beavers expressly incorporates into this Petition each defense set forth above in support of her Motion to Dismiss. In further support of her defenses to this action, Ms. Beavers has appended a sworn Affidavit as **Exhibit A** to provide further factual support for the defenses raised in her Motion to Dismiss; to refute the factual allegations underlying the Plaintiff's claims; and to establish the following additional defenses to this action:

- (1) The Yelp! review at issue was true or substantially true; and
- (2) The Yelp! review at issue was not posted with actual malice or negligence in failing to ascertain the truth.

See TENN. CODE ANN. § 20-17-105(d) (“The court may base its decision on supporting and opposing sworn affidavits stating admissible evidence upon which the liability or defense is based and on other admissible evidence presented by the parties.”).

“Truth is an absolute defense to a claim for defamation when the otherwise defamatory meaning of the words used turns out to be true.”<sup>4</sup> *Sullivan v. Wilson Cty.*, No. M2011-00217-COA-R3CV, 2012 WL 1868292, at \*12 (Tenn. Ct. App. May 22, 2012), *appeal denied* (Tenn. Sept. 18, 2012). Here, Ms. Beavers maintains that everything written in her Yelp! review is true, and she relies on that absolute defense in support of her Tennessee Public Participation Act Petition. Of note, substantially true statements are privileged pursuant to the substantial truth doctrine as well, which Ms. Beavers similarly relies upon as a defense to this action. See *Isbell*, 2000 WL 1817252, at \*5. Ms. Beavers's Yelp! review additionally was not posted with actual malice or negligence. See

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<sup>4</sup> Tennessee law provides that establishing truth is the defendant's burden. See *Memphis Publ'g Co. v. Nichols*, 569 S.W.2d 412, 420 (Tenn. 1978). Although Ms. Beavers has no difficulty establishing truth as a defense to this action under the circumstances of this case, Ms. Beavers nonetheless preserves and maintains the claim that the presumption of falsity doctrine recognized under Tennessee law should be overruled.

**Exhibit A.** Instead, it was premised upon her own good-faith recollection and personal observations of Dr. Nandigam's conduct during her father's visit. *See id.*

#### **V. COSTS, ATTORNEY'S FEES, & SANCTIONS**

Pursuant to Tennessee Code Annotated § 20-17-107(a):

If the court dismisses a legal action pursuant to a petition filed under this chapter, the court shall award to the petitioning party:

- (1) Court costs, reasonable attorney's fees, discretionary costs, and other expenses incurred in filing and prevailing upon the petition; and
- (2) Any additional relief, including sanctions, that the court determines necessary to deter repetition of the conduct by the party who brought the legal action or by others similarly situated.


The Plaintiff's prosecution of this facially frivolous action merits costs, fees, and severe sanctions. The transparent purpose of this lawsuit is to silence, censor, intimidate, and retaliate against Ms. Beavers and her family because Ms. Beavers had the audacity to post a truthful, negative Yelp! review of Dr. Nandigam's abusive behavior, which this litigation itself evidences in spades. No litigant or attorney acting in good faith could reasonably believe that the Plaintiff's claims in this lawsuit had merit. Both mandatory costs and attorney's fees and severe discretionary sanctions to deter further misconduct should be awarded accordingly.

#### **VI. CONCLUSION**

For the foregoing reasons, Defendant Beavers's Motion and Tennessee Public Participation Act Petition to dismiss this action should be **GRANTED**; the Plaintiff should be ordered to pay Defendant Beavers's court costs, reasonable attorney's fees, and discretionary costs pursuant to Tennessee Code Annotated §§ 20-17-107(a)(1) and § 20-12-110(c); and this Court should assess sanctions against the Plaintiff as necessary to deter repetition of its conduct pursuant to Tennessee Code Annotated § 20-17-107(a)(2).

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 23rd day of December, 2019, a copy of the foregoing was served via UPS mail, postage prepaid, and/or e-mailed to the following parties:

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800 South Gay Street, Suite 700  
Knoxville, TN 37929

*Counsel for Plaintiff*

Devin Yount  
3025 Cairns Dr.  
Mt. Juliet, TN 37122

*Co-Defendant*

By:   
Daniel A. Horwitz, Esq.

**FILED**

**2019 DEC 27 PM 2:32**

**DEBBIE MOSS  
CIRCUIT COURT CLERK  
WILSON COUNTY, TN**

**Exhibit A**

IN THE CIRCUIT COURT OF WILSON COUNTY, TENNESSEE

NANDIGAM NEUROLOGY, PLC,

*Plaintiff,*

v.

KELLY BEAVERS

and

DEVIN YOUNT,

*Defendants.*

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Case No.: 2019-cv-663

AFFIDAVIT OF KELLY BEAVERS

1. My name is Kelly Beavers, I have personal knowledge of the facts affirmed in this Affidavit, I am competent to testify regarding them, and I swear under penalty of perjury that they are true.

2. I am a named Defendant in Wilson County Circuit Court Case No.: 2019-cv-663.

3. I am the person who posted the Yelp! review that is referenced in the Plaintiff's Complaint. *See* Complaint, p. 1, ¶ 7. A true and exact copy of the Yelp! review I posted is attached to my Tennessee Public Participation Act Petition as Exhibit B.

4. Devin Yount had nothing whatsoever to do with the review I posted.

5. After my 67-year-old father—who was experiencing dizziness and memory loss—was referred to Dr. Kaveer Nandigam, I brought my father to Nandigam Neurology for a consultation in early November 2019.

6. Due to my father's condition, he has difficulty remembering what occurred

during his medical appointments, so I routinely attend his medical appointments. Once in a private room and away from other patients, I also record his appointments so that I can later remind him what doctors and other medical professionals told him and ensure that he is following medical advice and receiving proper care.

7. When Dr. Nandigam saw that I was recording my father's medical appointment, Dr. Nadigam began yelling, slammed his clipboard, and demanded my phone.

8. Dr. Nadigam's behavior scared me and deeply upset my father. In my opinion, his behavior was unprofessional and incompatible with, among other things, doctors' ethical responsibility to do no harm.

9. Dr. Nandigam demanded that I delete the recording of my father's medical appointment before leaving his office.

10. Although having recordings of my father's appointments is important to his health, because I was shocked and frightened by Dr. Nandigam's behavior, I deleted the recording as Dr. Nandigam demanded. Thereafter, even though the visit was not complete, my father and I left.

11. I ultimately posted a critical but truthful review on Yelp! about my experience with Dr. Nandigam. The Plaintiff is currently suing me for that review.

12. The Yelp! review I posted was based upon my personal opinion of Dr. Nandigam's behavior. My opinion was based on the facts that I disclosed within the review.

13. I genuinely intend to report Dr. Nandigam to the State of Tennessee Medical Review Board and to file a formal complaint regarding his behavior.

14. I genuinely do not know how, behaving as he did, Dr. Nandigam is still in

business.

15. In my opinion, Dr. Nandigam does not belong in the medical field.

16. I posted the Yelp! review at issue in furtherance of my right of free speech under the Tennessee and United States Constitutions in connection with a matter of public concern.

17. All of the statements in my Yelp! review were based on my truthful recollection of Dr. Nandigam's behavior.

18. I do not and did not have any reason to believe that any of the statements in my Yelp! review were false.

19. I did not communicate any of the information in my Yelp! review with reckless disregard of its falsity or with negligence in failing to ascertain the truth.

20. Instead, I posted the review based on my own personal observations during my father's medial appointment with Dr. Kaveer Nandigam of Nandigam Neurology.

21. No other person requested that I post the Yelp! review, nor did I work with or in conjunction with anyone in posting the Yelp! review. I did not conspire to post the Yelp! review or any other review with Devin Yount or any other person.

22. The other Defendant in Wilson County Circuit Court Case No.: 2019-cv-663, Devin Yount, is the son of a friend of mine.

23. It is my understanding that Mr. Yount posted a review on Google after overhearing a conversation between his mother and I about my father's appointment with Dr. Nandigam.

24. The statements in Mr. Yount's Google review were true.

25. I did not ask or encourage Mr. Yount to post any review of Dr. Nandigam.

26. I did not conspire with Mr. Yount to harm the Plaintiff in any way.

27. The Plaintiff's allegations regarding an alleged conspiracy between Mr. Yount and me are unequivocally false.

Further affiant sayeth not.

Pursuant to Tennessee Rule of Civil Procedure 72, I declare under penalty of perjury that the foregoing is true and correct.



Kelly Beavers

December 23<sup>rd</sup>, 2019

Date Executed

**FILED**

**2019 DEC 27 PM 2:32**

**DEBBIE MOSS  
CIRCUIT COURT CLERK  
WILSON COUNTY, TN**

**Exhibit B**

11:56

◀ App Store

◀ Reviews



Kelly B.

👤 236 🌟 3 📷 0



1 month ago

This "Dr's" behavior today was totally unprofessional and unethical to put it mildly. I will be reporting him to the State of TN Medical Review Board and be filing a formal complaint. How this guy is in business is beyond me. Since when did they start allowing Doctors, to throw a complete temper tantrum in front of Patients and slam things when they get upset? He does not belong in the medical field at all.



Useful 31



Funny 4



Cool 6

Teresa G. and 32 others voted for this review



Compliment

◀ Swipe to browse more ▶



Search



Activity



Me



Collections



More



IN THE CIRCUIT COURT OF WILSON COUNTY, TENNESSEE

ORDER FILED

NANDIGAM NEUROLOGY, PLC, )  
PLAINTIFF )  
VS. )  
KELLY BEAVERS and )  
DEVIN YOUNT )  
DEFENDANTS. )

CASE NO. 2019-CV-663

JAN 14 2020

DEBBIE MOSS, CIRCUIT COURT CLERK  
WILSON COUNTY, TN

NOTICE AND ORDER OF VOLUNTARY DISMISSAL

Notice is hereby given that Plaintiff NANDIGAM NEUROLOGY, PLC, by and through its attorneys of record, hereby enters a voluntary dismissal of this case as to Defendant KELLY BEAVERS.

It is accordingly, **ORDERED, ADJUDGED, AND DECREED**, this matter is hereby voluntarily dismissed against Defendant KELLY BEAVERS, without prejudice.

ENTER on this 14 day of January, 2020.

Clara Byrd  
JUDGE CLARA BYRD

APPROVED FOR ENTRY:

Angel L. Huong  
ANGELLO L. HUONG (BPR # 021209)  
Attorney for Nandigam Neurology, PLC  
435 Park Avenue, Professional Building  
Lebanon, Tennessee 37087

Bennett Hirschhorn - Attorney Angel L. Huong signing with permission  
BENNETT HIRSCHHORN #025937  
Attorney for Nandigam Neurology, PLC  
800 South Gay Street  
Suite 700  
Knoxville, TN 37929

ORDER LODGED  
DATE 1-8-2020  
DEBBIE MOSS  
CIRCUIT COURT CLERK  
WILSON COUNTY, TN

**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the within and foregoing *Notice and Order* has been served by first-class, U.S. Postal Service mail to the following parties:

**Daniel A. Horwitz**  
*Attorney for Kelly Beavers*  
1803 Broadway, Suite 531  
Nashville, TN 37203

**Sarah L. Martin**  
*Attorney for Kelly Beavers*  
1020 Stainback Avenue  
Nashville, TN 37207

**John Nefflen**  
SHACKELFORD, BROWN,  
McKINLEY, & NORTON, LP  
*Attorney for Devin Yount*  
47 Music Square East  
Nashville, TN 37203

On this 8<sup>th</sup> day of January, 2020.

  
\_\_\_\_\_  
ANGELLO L. HUONG

# Exhibit C



Kelly B.

236 likes, 3 stars, 0 photos



1 month ago

This "Dr's" behavior today was totally unprofessional and unethical to put it mildly. I will be reporting him to the State of TN Medical Review Board and be filing a formal complaint. How this guy is in business is beyond me. Since when did they start allowing Doctors, to throw a complete temper tantrum in front of Patients and slam things when they get upset? He does not belong in the medical field at all.

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Compliment

Swipe to browse more



Search



Activity



Me



Collections

New



More