

**IN THE FIRST CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE**

SECURE AIR CHARTER, LLC,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
<i>v.</i>	§	Case No.: 24C1828
	§	
MICHAEL JOHN BARRETT, JR.,	§	
	§	
<i>Defendant.</i>	§	

**DEFENDANT’S MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION TO
DISMISS AND TENN. CODE ANN. § 20-17-104(a) PETITION TO DISMISS
THE PLAINTIFF’S COMPLAINT**

I. INTRODUCTION

This is a Strategic Lawsuit Against Public Participation—better known as a “SLAPP suit”¹—filed by Plaintiff Secure Air Charter, Inc., against a former employee who alerted the Federal Aviation Administration about the Plaintiff’s non-compliance with safety standards. Fortunately, the Tennessee Public Participation Act (“TPPA”) exists to enable this Court to punish and expediently resolve such abusive litigation. Thus, Defendant Michael John Barrett, Jr., petitions this Court to dismiss the Plaintiff’s Complaint.

For the reasons detailed below, the Plaintiff’s Complaint fails to state a claim upon which relief can be granted. The Plaintiff is also statutorily immune from this SLAPP-suit

¹ See *Nandigam Neurology, PLC v. Beavers*, 639 S.W.3d 651, 657 (Tenn. Ct. App. 2021) (“The term ‘SLAPP’ stands for ‘strategic lawsuits against public participation,’ meaning lawsuits which might be viewed as ‘discouraging the exercise of constitutional rights, often intended to silence speech in opposition to monied interests rather than to vindicate a plaintiff’s right.’” (citing Todd Hambidge, et al., *Speak Up. Tennessee’s New Anti-SLAPP Statute Provides Extra Protections to Constitutional Rights*, 55 TENN. B.J. 14, 15 (Sept. 2019))), *no app. filed*.

under Tenn. Code Ann. § 4-21-1003(a). As such, the Defendant's Motion and Tennessee Public Participation Act Petition to dismiss should be **GRANTED**. Afterward, Mr. Barrett should be awarded his reasonable attorney's fees, costs, and expenses under Tenn. Code Ann. § 20-17-107(a)(1), and "to deter repetition of" the Plaintiff's misconduct, the Plaintiff should be sanctioned under Tenn. Code Ann. § 20-17-107(a)(2).

II. LEGAL STANDARDS

A. MR. BARRETT'S MOTION TO DISMISS

"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). Generally, a motion to dismiss is resolved by examining the pleadings alone. *Leggett v. Duke Energy Corp.*, 308 S.W.3d 843, 851 (Tenn. 2010) (citing *Cook ex rel. Uithoven v. Spinnaker's of Rivergate, Inc.*, 878 S.W.2d 934, 938 (Tenn. 1994)). This Court, however, may also consider "items subject to judicial notice, matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint whose authenticity is unquestioned . . . without converting the motion into one for summary judgment."² *W. Exp., Inc. v. Brentwood Servs., Inc.*, No. M2008-02227-COA-R3-CV, 2009 WL 3448747, at *3 (Tenn. Ct. App. Oct. 26, 2009) (quoting *Ind. State Dist. Council of Laborers v. Brukardt*, No. M2007-02271-COA-R3-CV, 2009 WL 426237, at *8 (Tenn. Ct. App. Feb.

² "Tennessee law allows for judicial notice (TRE 201) of public records." *Ind. State Dist. Council of Laborers v. Brukardt*, No. M2007-02271- COA-R3-CV, 2009 WL 426237, at *9 (Tenn. Ct. App. Feb. 19, 2009) (citing COHEN, SHEPARD, AND PAINE, TENN. LAW OF EVID. § 2.01(4)(c) (5th ed. 2005)), *app. denied* (Tenn. Aug. 24, 2009). "Court records fall within the general rubric of facts readily and accurately determined." *State v. Nunley*, 22 S.W.3d 282, 288 (Tenn. Crim. App. 1999).

19, 2009) (in turn quoting WRIGHT & MILLER, FED. PRAC. & PROC., CIV. § 1357, at 376 (3d ed. 2004)), *app. denied* (Tenn. Aug. 24, 2009)), *no app. filed*.

Further, “[a]lthough [this Court is] required to construe the factual allegations in [the Plaintiff’s] favor, and therefore accept the allegations of fact as true, [this Court is] not required to give the same deference to conclusory allegations.” *Kincaid v. SouthTrust Bank*, 221 S.W.3d 32, 40 (Tenn. Ct. App. 2006) (citing *Riggs v. Burson*, 941 S.W.2d 44, 48 (Tenn. 1997)). This Court also is “not required to accept as true the inferences to be drawn from conclusory allegations.” *Id.* Accordingly, “[c]onclusory allegations unsupported by material facts will not be sufficient to state such a claim.” *Lane v. Becker*, 334 S.W.3d 756, 763 (Tenn. Ct. App. 2010).

After applying these standards, where—as here—a 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 for failure to state a claim must be granted. *See Crews v. Buckman Lab’ys Int’l, Inc.*, 78 S.W.3d 852, 857 (Tenn. 2002).

B. THE TENNESSEE PUBLIC PARTICIPATION ACT

The Tennessee Public Participation Act (“TPPA”)—which Tennessee enacted in 2019 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 and 20-17-105. *See* Tenn. Code Ann. § 20-17-104(a). The TPPA “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.” *See* Tenn. Code Ann. § 20-17-109. As such, nothing in the Act “[a]ffects,

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).

In enacting the TPPA, 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 the Constitution of Tennessee, Article I, §§ 19 and 23, 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 TPPA also provides, among other things, that:

(1) When a party has been sued in response to his exercise of the right of free speech or the right to petition, he “may petition the court to dismiss the legal action” under section 20-17-104(a);

(2) “[a]ll discovery in the legal action is stayed” automatically by statute “until the entry of an order ruling on the petition” under section 20-17-104(d); and

(3) “[t]he court’s order dismissing or refusing to dismiss a legal action pursuant to a petition filed under this chapter is immediately appealable as a matter of right to the court of appeals.” *See* Tenn. Code Ann. § 20-17-106.

A TPPA petition to dismiss “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 TPPA, “[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.” *See* 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.” *See* 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.” *See* Tenn. Code Ann. § 20-17-105(c). “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.” *See* Tenn. Code Ann. § 20-17-105(e).

III. FACTS

For purposes of the Defendant’s Motion to Dismiss only—but not for purposes of his TPPA Petition—the allegations set forth in the Plaintiff’s Complaint are accepted as true. *See Conley*, 141 S.W.3d 591 at 594.

A. The Plaintiff’s Allegations.

The Plaintiff’s Complaint pleads only one cause of action: a claim for intentional interference with business relationships.³ The Plaintiff alleges that it employed Mr. Barrett as a pilot until it terminated him for cause on or around February 19, 2024.⁴ After Mr. Barrett’s alleged termination, the Plaintiff alleges that Mr. Barrett has:

(1) “filed numerous false reports to the Federal Aviation Administration regarding the Plaintiff’s business and operations”⁵ that “contain false statements related to Plaintiff’s safety procedures”;⁶

(2) “made false written statements to the Federal Aviation Administration with

³ Doc. 1, Compl., at ¶¶ 16–20.

⁴ *Id.* at ¶¶ 5–6.

⁵ *Id.* at ¶ 7.

⁶ *Id.* at ¶ 8.

knowledge that they were false when made”;⁷ and

(3) “made disparaging and threatening statements to various individuals within Plaintiff’s organization in an attempt to interfere in Plaintiff’s business operations.”⁸ The Complaint details none of these supposed reports or statements. Nor are any such statements appended to the Plaintiff’s Complaint. *But see* Tenn. R. Civ. P. 10.03.

The Plaintiff further alleges—in conclusory terms—that:

(1) It “possesses an interest in its prospective business relationships with purchasers of air charter services in the Nashville Area and at large[,]”⁹ and that Mr. Barrett is “aware” of such interests;¹⁰

(2) Mr. Barrett “acted with an improper motive to harm Plaintiff after [his] termination”;¹¹

(3) “through his filing of false reports to the Federal Aviation Administration and extensive disparagement of Plaintiff, [Mr. Barrett] intended to and did interfere with Plaintiff’s prospective business relationships with purchasers of air charter services in the Nashville area and at large as well as Plaintiff’s business operations”;¹² and

(4) Plaintiff “has suffered damages as a direct result of the Defendant, Barrett’s, intentional interference with Plaintiff’s business prospects.”¹³

⁷ *Id.* at ¶ 9.

⁸ *Id.* at ¶ 10.

⁹ *Id.* at ¶ 11.

¹⁰ *Id.* at ¶ 12.

¹¹ *Id.* at ¶ 14.

¹² *Id.* at ¶ 13.

¹³ *Id.* at ¶ 15.

B. Reality.

“To encourage review of an issue by a federal governmental body, and in the hopes of protecting the public, [Mr. Barrett] made truthful reports to the Federal Aviation Administration (FAA) regarding Plaintiff Secure Air Charter, LLC’s non-compliance with certain safety standards.”¹⁴ Mr. Barrett’s reports “included forwarding the FAA verbatim, unmodified emails that [he] received while employed by the Plaintiff.”¹⁵ Mr. Barrett has now been sued in response to his reports to the FAA.¹⁶ Because of his reports to the FAA, the Plaintiff demands “compensatory damages in an amount in excess of \$100,000[,]” “punitive damages in an amount in excess of \$100,000[,]” and a permanent speech-based prior restraint.¹⁷

IV. ARGUMENT**A. PLAINTIFF’S COMPLAINT FAILS TO STATE A COGNIZABLE INTENTIONAL INTERFERENCE WITH BUSINESS RELATIONSHIPS CLAIM.**

Plaintiff has asserted only one claim: intentional interference with business relationships. But the Plaintiff’s skeletal and largely conclusory Complaint fails to state a cognizable claim for intentional interference with business relationships, the elements of which are:

(1) an existing business relationship with specific third parties or a prospective relationship with an identifiable class of third persons; (2) the defendant’s knowledge of that relationship and not a mere awareness of the plaintiff’s business dealings with others in general; (3) the defendant’s intent to cause the breach or termination of the business relationship; (4) the defendant’s improper motive or improper means; and finally, (5) damages resulting from the tortious interference.

¹⁴ **Ex. 1**, Barrett Decl., at ¶ 3.

¹⁵ *Id.* at ¶ 4.

¹⁶ *See generally* Doc. 1, Compl.

¹⁷ *Id.* at 3–4.

Trau-Med of Am., Inc. v. Allstate Ins. Co., 71 S.W.3d 691, 701 (Tenn. 2002) (internal citation omitted).

With respect to the element of “improper motive,” a plaintiff must demonstrate that “the defendant’s predominant purpose was to injure the plaintiff.” *Id.* at n.5. And while “improper means” can include defamation, *id.*, it cannot include constitutionally protected speech, *see Seaton v. TripAdvisor LLC*, 728 F.3d 592, 602 (6th Cir. 2013).

Here, given that Plaintiff’s Complaint is premised on conclusory allegations, the Plaintiff cannot state a cognizable claim. *See Lane*, 334 S.W.3d at 763 (“Conclusory allegations unsupported by material facts will not be sufficient to state such a claim.”). Apart from its Complaint’s conclusory deficiencies, though, the Plaintiff cannot establish “improper” interference as a matter of law. That is because the Plaintiff has neither pleaded the substance of the alleged reports and statements over which it has sued Mr. Barrett nor appended them to the Complaint.¹⁸ Rather, the Plaintiff’s Complaint merely recites that Mr. Barrett’s unspecified reports and statements were “false[,]” “disparaging[,]” and “threatening[.]”¹⁹

This is insufficient. To enable this Court to determine whether the reports and statements over which Mr. Barrett has been sued are tortious, the Plaintiff must, at minimum, identify their substance. *Cf., e.g., Rose v. Cookeville Reg’l Med. Ctr.*, No. M2007-02368-COA-R3-CV, 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” and “the time and place of the utterance” even under relaxed pleading standards) (citing *Handley v. May*, 588 S.W.2d 772, 774–75 (Tenn. Ct. App. 1979)); *Webb*

¹⁸ *See generally* Doc. 1, Compl.

¹⁹ *Id.* at ¶¶ 7, 8, 9, 10, 13.

v. Stanley Jones Realty, Inc., No. 04-1288-T/AN, 2005 WL 1959160, at *2 (W.D. Tenn. Aug. 11, 2005) (holding that “the substance of the utterance must be set forth”) (citing *Handley*, 588 S.W.2d at 775); *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[.]’ . . . 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); *Handley*, 588 S.W.2d at 775 (“If the complaint is so vague that a court cannot ascertain the nature of the alleged slander, it is insufficient.”). Here, the Plaintiff has not done so as to any statement or report over which it is suing. Its Complaint must be dismissed accordingly for failure to state a claim.

The Plaintiff’s second problem is that it has failed to identify the *particular* “purchasers of air charter services in the Nashville Area and at large”²⁰ with whom its prospective relationship has been “harm[ed].” But particularity is required. *See Harris v. Gaylord Ent. Co.*, No. M2013-00689-COA-R3CV, 2013 WL 6762372, at *5 (Tenn. Ct. App. Dec. 19, 2013) (“Ms. Harris does not allege an existing or prospective relationship with any particular third party[.]”), *app. denied* (Tenn. Apr. 9, 2014). Thus, the Plaintiff has failed to state a claim.

The Plaintiff’s third problem is that it has alleged only Mr. Barrett’s “aware[ness]” of “Plaintiff’s interests in its prospective business relationships with purchasers of air charter services in the Nashville Area and at large.”²¹ But a defendant’s “mere awareness

²⁰ *Id.* at ¶ 20.

²¹ *Id.* at ¶ 12.

of plaintiff's business dealings in general" is insufficient to trigger liability; instead, a defendant must have "knowledge" of a plaintiff's business relationships with "specific third parties" or an "identifiable class of third persons." *Trau-Med of Am., Inc.*, 71 S.W.3d at 701. As the Restatement (Second) of Torts § 766 at Comment i explains:

To be subject to liability, . . . the actor must have knowledge of the contract with which he is interfering and of the fact that he is interfering with the performance of the contract. Although the actor's conduct is in fact the cause of another's failure to perform a contract, the actor does not induce or otherwise intentionally cause that failure if he has no knowledge of the contract.

Further, as one court that has applied the Restatement's knowledge requirement under similar circumstances has explained:

[P]laintiffs falter because they have offered no evidence indicating that any of the defendants had actual awareness of plaintiffs' business relationships. . . or that they intentionally sought to interfere with those relationships. Plaintiffs assert that "Defendants knew or should have known the Plaintiffs had customers who enjoyed KBS content and employed wrongful means to interfere with that relationship." (Pls.' Mem. at 25). A generalized allegation of this nature will not pass muster; plaintiffs must show that defendants had *actual knowledge* of the *specific* business relationships with which they allegedly interfered. Courts have repeatedly rejected general claims of this nature because the party claiming interference could not make such a showing. *See, e.g., Boehner v. Heise*, 734 F. Supp. 2d 389, 406–07 (S.D.N.Y. 2010) (granting summary judgment to defendant, a ginseng trade organization, in part because plaintiff, a ginseng wholesaler, could not show that the defendant knew that a particular supplier had sold ginseng to plaintiff in the past or intended to do so in the future); *Sedona Corp. v. Ladenburg Thalmann & Co., Inc.*, No. 03–Civ. 3120, 2009 WL 1492196, at *9 (S.D.N.Y. May 27, 2009) (dismissing claim because, while plaintiff "refers to Defendants' knowledge of [plaintiffs] business model *generally*, at no point does [it] actually allege that Defendants knew about the *specific* business relationships [at issue]" (emphasis added); *800America, Inc. v. Control Commerce, Inc.*, 202 F. Supp. 2d 288, 289–90 (S.D.N.Y. 2002) (holding similarly). Because the record is bereft of evidence indicating that defendants had knowledge of plaintiffs' business relationships with Yoon, Park, or Hahn (or, indeed, with any other specific customer), the Court grants summary judgment to defendants on plaintiffs' claim for tortious interference with prospective business relations.

Yong Ki Hong v. KBS Am., Inc., 951 F. Supp. 2d 402, 423-24 (E.D.N.Y. 2013).

The Tennessee Supreme Court has adopted this same “knowledge” requirement with respect to intentional interference with prospective business relationships claims. *See Trau-Med of Am., Inc.*, 71 S.W.3d at 701. Thus, the Plaintiff’s failure to plead at all—much less plead specific facts supporting—a claim that Mr. Barrett had knowledge of the Plaintiff’s relationships with specific third parties with whom Mr. Barrett was interfering is fatal to the Plaintiff’s Complaint.

The Plaintiff’s fourth problem is that it cannot plausibly prove either “termination of [a] business relationship” or causally connected damages. *See id.* For liability to attach, a defendant “must have directed its actions in some way **toward the third party.**” *Zimmerman v. Philip Morris Inc.*, 78 F. Supp. 2d 1191, 1193 (D. Kan. 1999) (emphasis added); *see also* Restatement (Second) of Torts § 766B (1979) (“Inducement not to enter into a contract is normally of a third party, not the plaintiff.”). Further, “[l]oss of prospective contractual relation must be proved with reasonable certainty.” *Id.*; *cf. Peoples Mortg. Co. v. Fed. Nat. Mortg. Ass’n*, 856 F. Supp. 910, 932 (E.D. Pa. 1994) (“Peoples must also establish that there is a reasonable likelihood that the transaction would have been completed but for Fannie Mae’s interference.”).

These requirements preclude liability here. Specifically, the Plaintiff makes no allegations about any illicit action toward “purchasers of air charter services in the Nashville Area and at large.”²² Instead, the Plaintiff alleges only that Mr. Barrett made “reports to the Federal Aviation Administration”²³ and “various individuals **within Plaintiff’s organization**[.]”²⁴ What’s more, the Plaintiff does not allege that Mr.

²² *Id.* at ¶ 11.

²³ *Id.* at ¶¶ 7, 8, 9.

²⁴ *Id.* at ¶ 10 (emphasis added).

Barrett's reports to the FAA even resulted in the FAA taking action at all—much less allege that its resulting action interfered with the Plaintiff's business relationships and resulted in damages.²⁵ Nor does the Plaintiff explain how Mr. Barrett's alleged interactions with various individuals within Plaintiff's own organization interfered with its business relationships or resulted in cognizable harm.²⁶

For all of these reasons, the Plaintiff's Complaint fails to state a claim upon which relief can be granted.

B. THE PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED UNDER THE TENNESSEE PUBLIC PARTICIPATION ACT.

The Tennessee Public Participation Act governs the Plaintiff's claim in this case. Further, as detailed below, the TPPA mandates that the Plaintiff's claim be dismissed with prejudice. The Plaintiff also should be ordered to pay Mr. Barrett's attorney's fees and costs, and this Court should assess severe sanctions against the Plaintiff and its counsel to deter repetition of their abusive conduct.

1. The Tennessee Public Participation Act applies to this action, which has been filed in response to Mr. Barrett's exercise of the rights of free speech and to petition.

The TPPA—Tennessee's still-relatively-new anti-SLAPP statute—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. *See* Tenn. Code Ann. § 20-17-104(a) (emphasis added).²⁷

²⁵ *See generally id.*

²⁶ *Id.*

²⁷ 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.” Tenn. Code Ann. § 20-17-104(b). Thus, having been filed within sixty (60) days of

Under section 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, section 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[.]

Id. (emphases added).

Here, Mr. Barrett has been sued in response to his exercise of the right of free speech. *See supra* at 6–7. The Plaintiff specifically alleges that Mr. Barrett made statements to the government “related to Plaintiff’s safety procedures.”²⁸ Given that, the reports and statements in response to which Mr. Barrett has been sued qualify as “a communication made in connection with a matter of public concern” under several independent TPPA criteria. *See* Tenn. Code Ann. § 20-17-103(6)(A), (B), (C), (E), (G). Thus, for purposes of the TPPA, this action qualifies as one filed in response to Mr.

purported service, *see* Doc. 3, Aff. of Service, the Defendant’s TPPA Petition is timely filed. *See* Tenn. Code Ann. § 20-17-104(b).

²⁸ Doc. 1, Compl., at ¶ 8.

Barrett's exercise of the right of free speech. *See* Tenn. Code Ann. §§ 20-17-104(a), -103(3), -103(6).

Mr. Barrett also has been sued in response to his exercise of the right to petition.

Under the TPPA:

“Exercise of the right to petition” means a communication that falls within the protection of the United States Constitution or the Tennessee Constitution and:

- (A) **Is intended to encourage consideration or review of an issue by a federal . . . executive . . . governmental body;** or
- (B) Is intended to enlist public participation in an effort to effect consideration of an issue by a federal, state, or local legislative, executive, judicial, or other governmental body[.]

Tenn. Code Ann. § 20-17-103(4) (emphasis added).

This definition is broad. *See Doe v. Roe*, 638 S.W.3d 614, 623 (Tenn. Ct. App. 2021) (“[B]ased on our plain reading of the TPPA, the right to petition merely requires there to be a communication that is either intended to elicit consideration or review by a governmental body or intended to ‘enlist public participation’ to effectuate such consideration.”). Section 20-17-103(4)’s explicit recognition that a communication to a federal executive governmental body is a “petition” within the meaning of the TPPA also conforms with longstanding U.S. Supreme Court jurisprudence that the right to petition extends “to administrative agencies (which are both creatures of the legislature, and arms of the executive)[.]” *Cal. Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 513 (1972). And here, “[t]o encourage review of an issue by a federal governmental body, and in the hopes of protecting the public, [Mr. Barrett] made truthful reports to the Federal Aviation Administration (FAA) regarding Plaintiff Secure Air Charter, LLC’s non-

compliance with certain safety standards.”²⁹

For these reasons, Mr. Barrett has been sued in response to his exercise of the right to petition as well. Mr. Barrett’s alleged reports and statements to the FAA regarding flight safety are petitioning activity. *See* Tenn. Code Ann. § 20-17-103(4); *Cal. Motor Transport Co.*, 404 U.S. at 513. Thus, the TPPA applies here. And having established that the TPPA applies, the burden now shifts to the Plaintiff to “establish[] a prima facie case for each essential element of the claim in the legal action.” *See* Tenn. Code Ann. § 20-17-105(b).

2. Valid defenses preclude the Plaintiff’s claim.

“Notwithstanding subsection (b), the court shall dismiss the legal action if the petitioning party establishes a valid defense to the claims in the legal action.” *See* § 20-17-105(c). Here, several valid defenses preclude liability.

a. The Plaintiff has failed to state a claim on which relief can be granted.

The TPPA “is intended to provide an additional substantive remedy to protect the constitutional rights of parties and to supplement any remedies which are otherwise available to those parties . . . under the Tennessee Rules of Civil Procedure.” *See* Tenn. Code Ann. § 20-17-109. “[U]nder the Tennessee Rules of Civil Procedure,” defendants may raise a plaintiff’s “failure to state a claim upon which relief can be granted” as a defense to liability. *See* Tenn. R. Civ. P. 12.02(6). Thus, in support of his TPPA petition, Mr. Barrett incorporates his valid 12.02(6) defenses as set forth above.

²⁹ **Ex. 1**, Barrett Decl., at ¶ 3.

b. Mr. Barrett's statements to the FAA were true, which negates an essential element of the Plaintiff's cause of action.

True statements cannot form the basis of an intentional interference with business relationships claim. *See* Restatement (Second) of Torts § 772 cmt. b (1979) (“There is of course no liability for interference with a contract or with a prospective contractual relation on the part of one who merely gives truthful information to another. The interference in this instance is clearly not improper.”); *Molloy v. Hrisko*, No. M2014-01351-COA-R3-CV, 2015 WL 4323028, at *11 (Tenn. Ct. App. July 14, 2015) (“The truth of the statements made in Heard’s letter negates the improper motive or means necessary for this cause of action.”), *app. denied* (Tenn. Nov. 24, 2015); *id.* at n.5 (“Many state and federal jurisdictions have relied upon section 772 of the Restatement (Second) of Torts and held that there is no liability for tortious interference with contract for the communication of truthful information.” (citing *Worldwide Primates, Inc. v. McGreal*, 26 F.3d 1089, 1092 (11th Cir. 1994); *George A. Fuller Co. v. Chicago Coll. of Osteopathic Med.*, 719 F.2d 1327, 1332 (7th Cir. 1983); *Landess v. Borden, Inc.*, 667 F.2d 628, 632 n.6 (7th Cir. 1981); *Church of Scientology Int’l v. Eli Lilly & Co.*, 848 F. Supp. 1018, 1031 (D.D.C. 1994); *Weiss v. Lehman*, 713 F. Supp. 489, 503 (D.D.C. 1989); *Vajda v. Arthur Andersen & Co.*, 624 N.E.2d 1343, 1352 (Ill. Ct. App. 1993); *Montrone v. Maxfield*, 449 A.2d 1216, 1217–18 (N.H. 1982); *C.R. Bard, Inc. v. Wordtronics Corp.*, 561 A.2d 694, 697 (N.J. Super. Ct. 1989); *Walnut St. Assocs., Inc. v. Brokerage Concepts, Inc.*, 20 A.3d 468, 470 (Pa. 2011); *Tarleton State Univ. v. Rosiere*, 867 S.W.2d 948, 953 (Tex. Ct. App. 1993); *Liebe v. City Fin. Co.*, 295 N.W.2d 16, 19–20 (Wis. Ct. App. 1980); *Four Nines Gold, Inc. v. 71 Constr., Inc.*, 809 P.2d 236, 238 (Wyo. 1991))).

Here, Mr. Barrett has submitted admissible testimony under penalty of perjury

that his reports to the FAA—which “included forwarding the FAA verbatim, unmodified emails that [he] received while employed by the Plaintiff”³⁰ —were “truthful.”³¹

Under these circumstances, Mr. Barrett’s statements are not actionable. Thus, Mr. Barrett’s TPPA Petition must be granted, and the Plaintiff’s Complaint must be dismissed.

c. Mr. Barrett is immune from suit under Tennessee Code Annotated § 4-21-1003(a).

Tennessee Code Annotated § 4-21-1003(a) provides that:

Any person who in furtherance of such person’s right of free speech or petition under the Tennessee or United States Constitution in connection with a public or governmental issue communicates information regarding another person or entity to any agency of the federal, state or local government regarding a matter of concern to that agency shall be immune from civil liability on claims based upon the communication to the agency.

Id.

The immunity conferred by section 4-21-1003(a) “shall not attach” if the person communicating it “[k]new the information to be false[,]” communicated it “in reckless disregard of its falsity[,]” or “[a]cted negligently in failing to ascertain the falsity of the information[.]” *See* Tenn. Code Ann. § 4-21-1003(b). The import of the statute, though, is that a person who communicates truthful information to the government—or at least communicates information to the government non-negligently—“shall be immune from civil liability on claims based upon the communication to the agency.” *See* Tenn. Code Ann. § 4-21-1003(a). Mr. Barrett’s communications meet this standard.

As noted, Mr. Barrett has submitted admissible testimony under penalty of perjury that—“in the hopes of protecting the public”—he communicated information regarding the Plaintiff to an agency of the federal government regarding a matter of concern to that

³⁰ **Ex. 1**, Barrett Decl., at ¶ 4.

³¹ *Id.* at ¶ 3.

agency.³² The information he reported was truthful, and it included “forwarding the FAA verbatim, unmodified emails that [Mr. Barrett] received while employed by the Plaintiff.”³³ For these reasons, Mr. Barrett is “immune from civil liability on claims” arising out of his truthful reports to the FAA. *See* Tenn. Code Ann. § 4-21-1003(a). Thus, the Plaintiff’s claims must be dismissed based on Mr. Barrett’s statutory immunity from civil liability under section 4-21-1003(a).

V. COSTS, ATTORNEY’S FEES, & SANCTIONS

Under Tenn. Code Ann. § 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.

Here, the Plaintiff’s prosecution of this transparently retaliatory action merits costs, fees, and severe sanctions. No litigant acting in good faith could reasonably believe that this lawsuit has merit. Instead, this lawsuit is a naked attempt “to intimidate a citizen into silence regarding an issue of public concern”—intentional misbehavior that Tennessee’s judiciary properly characterizes as “evil[.]” *See Residents Against Indus. Landfill Expansion, Inc. (RAILE) v. Diversified Sys., Inc.*, No. 03A01-9703-CV-00102, 1998 WL 18201, at *3 & n.6 (Tenn. Ct. App. Jan. 21, 1998), *no app. filed*.

A host of considerations—including the length of time the Plaintiff maintains this lawsuit and its ultimate cost, as well as the fact that its counsel is a prolific SLAPP-suit

³² *Id.* at ¶¶ 3–4.

³³ *Id.*

filer, *see, e.g.*, Davidson County Circuit Court Case No. 23C891, Davidson County Circuit Court Case No. 22C1315, Davidson County Circuit Court Case No. 23C218, Rutherford County Circuit Court Case No. 75-CC1-2023-CV-81200, Williamson County Circuit Court Case No. 23CV-111, Williamson County Circuit Court Case No. 24CV-266³⁴—factor into the appropriate sanctions calculus, though. *See Foreman v. Rosenberg*, No. 23C891, Order (Davidson Cty. Cir. Ct. Dec. 4, 2023) (citing *Landry's, Inc. v. Animal Legal Def. Fund*, 566 S.W.3d 41, 71–72 (Tex. App. 2018), *aff'd in part, rev'd in part on other grounds*, 631 S.W.3d 40 (Tex. 2021)). Thus, after this Court grants his TPPA Petition, Mr. Barrett requests the opportunity to submit supplemental briefing detailing the appropriate sanctions to issue.

VI. CONCLUSION

For the foregoing reasons, the Defendant's Motion to Dismiss and TPPA Petition to dismiss this action should be **GRANTED**. Afterward, the Plaintiff should be ordered to pay the Defendant's court costs, reasonable attorney's fees, and discretionary costs pursuant to Tennessee Code Annotated §§ 20-12-119(c), 20-17-107(a)(1), and 4-21-1003(c). This Court should also assess sanctions against the Plaintiff and its counsel—to be quantified following further briefing—as necessary to deter repetition of their conduct pursuant to section 20-17-107(a)(2).

³⁴ This Court may take judicial notice of these court records. *See Nunley*, 22 S.W.3d at 288.

Respectfully submitted,

By: /s/ Daniel A. Horwitz
DANIEL A. HORWITZ, BPR #032176
SARAH L. MARTIN, BPR #037707
MELISSA K. DIX, BPR #038535
HORWITZ LAW, PLLC
4016 Westlawn Dr.
Nashville, TN 37209
daniel@horwitz.law
sarah@horwitz.law
melissa@horwitz.law
(615) 739-2888

Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this the 11th day of September, 2024, a copy of the foregoing was sent via the Court's e-filing system, via USPS mail, postage prepaid, or via email to the following parties:

G. Kline Preston
Belle Meade Office Park
4515 Harding Pike, Suite 107
Nashville, TN 37205
kpreston@klineprestonlaw.com

Counsel for Plaintiff

By: /s/ Daniel A. Horwitz
DANIEL A. HORWITZ, BPR #032176