

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

**MICHELLE FOREMAN,  
PLAINTIFF,**

**vs.**

**DAVE ROSENBERG,  
DEFENDANT.**

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**CASE NO.: 23C891**

**ORDER ON DEFENDANT’S MOTION FOR T.C.A. § 20-17-107(a)(2) SANCTIONS**

This matter came to be heard on August 25, 2023, before the Honorable Lynne T. Ingram of the Eighth Circuit Court for Davidson County, Tennessee, upon Defendant Dave Rosenberg’s Motion for an Award of Tennessee Code Annotated § 20-17-107(a)(2) Sanctions against Plaintiff Michelle Foreman. Based on the entire record, the arguments of the parties, and the applicable law, the Court finds the following:

**I. LEGAL STANDARD**

**A. T.C.A. § 20-17-107. Award of costs, expenses, attorney fees, and other relief.**

(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.

(b) If the court finds that a petition filed under this chapter was frivolous or was filed solely for the purpose of unnecessary delay, and makes specific written findings and conclusions establishing such finding, the court may award to the responding party court costs and reasonable attorney's fees incurred in opposing the petition. *Id.*

## **B. SLAPP Suits**

The term “SLAPP” stands for “strategic lawsuits against public participation.” *Nandigam Neurology, PLC v. Beavers*, 639 S.W.3d 651, 657 (Tenn. Ct. App. 2021). SLAPP suits are “lawsuits aimed at preventing citizens from exercising their political rights or punishing those who have done so.” *Nandigam Neurology, PLC*, 639 S.W.3d at 657–58 (quoting *Wright Dev. Group, LLC v. Walsh*, 238 Ill.2d 620, 939 N.E.2d 389, 395 (2010)). SLAPP suits “use the threat of money damages or the prospect of the cost of defending against the suits to silence citizen participation.” *Nandigam Neurology, PLC*, 639 S.W.3d at 658 (quoting *Wright Dev. Group, LLC*, 939 N.E.2d at 395). Rather than intend to win, Plaintiffs in SLAPP suits aim to “chill a defendant's speech or protest activity and discourage opposition by others through delay, expense, and distraction.” *Nandigam Neurology, PLC*, 639 S.W.3d at 658; *John C. Barker, Common-Law and Statutory Solutions to the Problem of Slapps*, 26 Loy. L.A. L. Rev. 395, 403-05 (1993).

### **i. Factors Used to Determine an Award of a Public Participation Sanction**

The determination of the appropriate sanction amount is a discretionary decision left to the judgment of the trial court. *Pegues v. Illinois Cent. R. Co.*, 288 S.W.3d 350, 353 (Tenn. Ct. App. 2008). Because Tennessee does not provide explicit factors for a trial court to use to determine the appropriate sanction amount, the Court has independently researched whether each of the fifty states has a public participation act, and if so, whether such act allows for an award of sanctions to deter repeat conduct by the party who brought the action. The Court found thirty-three states and Washington D.C. have some form of anti-SLAPP statute. Of those thirty-three states, four states permit a court to award to the defending party sanctions for the filing of a SLAPP suit pursuant to statute (KS; OK; TN; and TX). Two of these four states provide

guidance for the court on how to reach an amount for an award of sanctions for the filing of a SLAPP suit under current case law (KS and TX).

Kansas's anti-SLAPP statute, the Public Speech Protection Act, is codified at Kan. Stat. Ann. § 60-5320. Subsection (g)(2) states the court shall award the defending party "such additional relief, including sanctions upon the responding party and its attorneys and law firms, as the court determines necessary to deter repetition of the conduct by others similarly situated." Kan. Stat. Ann. § 60-5320(g)(2). Although a Kansas court has never granted an award of sanctions to deter the conduct of the filer, Kansas case law provides persuasive authority to determine such an award. In *Roberts v. Goldizen*, 499 P.3d 1162, 2021 WL 5990114 (Kan. Ct. App. 2021), the Court of Appeals of Kansas affirmed the Dickinson County District Court which granted, in part, and denied, in part, Defendant's Motion to Strike, specifically dismissing a defamation claim filed against Plaintiff and allowing a tortious interference with a contract claim to proceed. *Id.* at \*1. The trial court found an award of additional relief was unnecessary as a deterrent, and therefore, did not impose sanctions against either party. *Id.* at \*1, \*3. The Court of Appeals of Kansas held the trial court appropriately analyzed the issue of whether to impose sanctions under Kan. Stat. Ann. § 60-5320(g) and affirmed the trial court's ruling in full. *Id.* at \*3.

In *Zaid v. Boyd*, No. 22-1089-EFM, 2022 WL 4534633 (D. Kan. Sept. 28, 2022), the United States District Court for the District of Kansas granted Defendant's Motion to Strike and dismissed the action under Kansas's anti-SLAPP statute. *Id.* at \*1. The District Court granted Defendant's request for attorney's fees. *Id.* at \*11. The District Court denied Defendant's request for an award of sanctions, finding sanctions not to be warranted by the case, and held, "(Plaintiff) Zaid's claim fails the test of the [Kansas anti-SLAPP statute], but only by not alleging and

presenting specific evidence in support of his position.” *Id.* Finally, in *Caranchini v. Peck*, No. 18-2249-CM-TJJ, 2019 WL 4168801 (D. Kan. Sept. 3, 2019), the United States District Court for the District of Kansas did not award sanctions under Kansas’s anti-SLAPP statute, but held the court “must first consider the Legislature’s motivation in including this particular provision” when considering what “additional relief” may be necessary under Kan. Stat. Ann. § 60-5320(g). *Caranchini*, 2019 WL 4168801 at \*5. To this point, the District Court found the intent of the Kansas Legislature was to protect against SLAPP suits which, for example, are used to “silence people of limited means who exercise their first amendment rights of free speech.” *Id.* The District Court held this case was not the type of lawsuit the statute is meant to provide protection against, and therefore, concluded the action was not one for which the Kansas Legislature intended sanctions be awarded. *Id.* at \*7. Of note, the District Court also declined to apply Texas’s anti-SLAPP statute, finding the facts of *Caranchini* distinguishable from *Landry’s, Inc. v. Animal Legal Def. Fund*, 566 S.W.3d 46 (Tex. App. 2018), *aff’d in part, rev’d in part*, 631 S.W.3d 40 (Tex. 2021).

Texas’s anti-SLAPP statute, the Texas Citizens Participation Act (“TCPA”), is codified at Tex. Civ. Prac. & Rem. Code Ann. § 27.001 *et seq.* If a court orders dismissal of the action under this chapter, the court “may award to the moving party sanctions against the party who brought the legal action as the court determines sufficient to deter the party who brought the legal action from bringing similar actions described in this chapter.” Tex. Civ. Prac. & Rem. Code Ann. § 27.009(a)(2). If the court orders sanctions, “the court shall issue findings regarding whether the legal action was brought to deter or prevent the moving party from exercising constitutional rights and is brought for an improper purpose, including to harass or to cause unnecessary delay or to increase the cost of litigation.” Tex. Civ. Prac. & Rem. Code Ann. §

27.007. The Fourteenth [District] Court of Appeals, Houston, Texas, in the *Landry's, Inc.* case provides guidance for a court on how to reach an amount for an award of sanctions. *Landry's, Inc.*, 566 S.W.3d at 41. The Court of Appeals found *Low v. Henry*, 221 S.W.3d 609 (Tex. 2007), addresses sanctions under Chapter 10 of the Texas Civil Practice and Remedies Code, and further held *Low* offers guidance in imposing sanctions under the TCPA. *Id.* at 71; *Low*, 221 S.W.3d at 621. Furthermore, the Court of Appeals in *Landry's Inc.* found the TCPA to resemble Chapter 10 of the Texas Civil Practice and Remedies Code: Sanctions for Frivolous Pleadings and Motions. *Landry's, Inc.*, 566 S.W.3d at 71. A trial court assessing sanctions under Chapter 10 is to consider the following non-exhaustive list of factors to the extent the factors are relevant:

- a. the good faith or bad faith of the offender;
- b. the degree of willfulness, vindictiveness, negligence, or frivolousness involved in the offense;
- c. the knowledge, experience, and expertise of the offender;
- d. any prior history of sanctionable conduct on the part of the offender;
- e. the reasonableness and necessity of the out-of-pocket expenses incurred by the offended person as a result of the misconduct;
- f. the nature and extent of prejudice, apart from out-of-pocket expenses, suffered by the offended person as a result of the misconduct;
- g. the relative culpability of client and counsel, and the impact on their privileged relationship of an inquiry into that area;
- h. the risk of chilling the specific type of litigation involved;
- i. the impact of the sanction on the offender, including the offender's ability to pay a monetary sanction;
- j. the impact of the sanction on the offended party, including the offended person's need for compensation;
- k. the relative magnitude of sanction necessary to achieve the goal or goals of the sanction;
- l. burdens on the court system attributable to the misconduct, including

consumption of judicial time and incurrence of juror fees and other court costs;

...

- n. the degree to which the offended person's own behavior caused the expenses for which recovery is sought[.]

*Id.* at 71-2; *Low*, 221 S.W.3d at 621.

#### **ii. Other Considerations of the Court to Determine an Award of a Public Participation Sanction**

Unlike Texas's anti-SLAPP statute, T.C.A. § 20-17-107(2)(a) does not require a court include in its order for sanctions specific findings the court used to determine the award of sanctions. However, Tenn. R. Civ. P. 52.01 states, "[i]n all actions tried upon the facts without a jury, the court shall find the facts specially and shall state separately its conclusions of law and direct the entry of the appropriate judgment." *Id.* The Rule also provides, "[i]f an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein." *Id.*

The Circuit Court for Sumner County, Tennessee, in *Adamson v. Grove et al.*, No. 83CC1-2020-CV-616 (Tenn. Cir. Ct. for Sumner Cnty. 2020), granted Defendants' Motion to Alter or Amend the Judgment and T.C.A. § 20-17-104(a) Petition to Dismiss Plaintiff's Complaint with Prejudice Pursuant to the TPPA. (Order, ¶ 5, *Adamson v. Grove et al.*, No. 83CC1-2020-CV-616 (Tenn. Cir. Ct. for Sumner Cnty. 2020)). The Order stated, "for the reasons set forth in the Defendants' Motion and TPPA Petition and the Defendants' October 1, 2020, and November 5, 2020, *Replies*, which are incorporated herein by reference," before the Court made its findings. *Id.* (emphasis added by trial court). The Order dismissed with prejudice Plaintiff's Amended Complaint; awarded Defendants reasonable attorney's fees in the amount of fifteen thousand dollars (\$15,000.00) pursuant to T.C.A. § 20-17-107(a)(1); and assessed sanctions against Plaintiff in the amount of twenty-four thousand dollars (\$24,000.00) pursuant

to T.C.A. 20-17-107(a)(2) to “deter repetition of the conduct by the party who brought the legal action or by others similarly situated.” *Id.* The Order was made a Final Order pursuant to Tenn. R. Civ. P. 58. *Id.* at ¶ 8.

The Circuit Court of Overton County, Tennessee, in *Lee v. Mitchell et al.*, No. 2020-CV-50 (Tenn. Cir. Ct. of Overton Cnty. 2021), dismissed with prejudice Plaintiff’s Complaint following Defendants’ TPPA Motion. (Order of the Court, p. 2, ¶ 2, *Lee v. Mitchell et al.*, No. 2020-CV-50 (Tenn. Cir. Ct. of Overton Cnty. 2021)). The Order awarded Defendants court costs, reasonable attorney’s fees, discretionary costs, and filing expenses. *Id.* at ¶ 3. The Order also assessed sanctions against Plaintiff in the amount of \$10,000.00 “to deter repetition of this conduct by [Plaintiff] and others similarly situated who may file similar actions [sic].” *Id.* at ¶ 5. Footnote number 13 states, “[t]he Court would assess more [sanctions], but understands that the Plaintiff is a school teacher with limited income.” *Id.* at 26 n.13.<sup>1</sup>

In *ADB Int., LLC v. Wallace*, 606 S.W.3d 413 (Tex. App. 2020), the First [District] Court of Appeals, Houston, Texas, found the trial court did not abuse its discretion when it determined a \$125,487.50 sanction was required “to deter further actions” by Plaintiffs pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 27.009(a)(2). *Id.* at 446. In its ruling, the trial court considered lawsuits previously filed by Plaintiffs in its determination of the appropriate sanction amount. Plaintiffs brought the instant lawsuit, and Plaintiffs also previously filed other similar lawsuits, suing individuals for criticizing Plaintiffs and their business products. *Id.* at 445.

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<sup>1</sup> The Court recognizes this matter is at a different stage procedurally than the two Tennessee cases referenced by the Court because Defendant’s Motion to Dismiss and T.C.A. § 20-17-104(a) Petition to Dismiss Plaintiff’s Amended Complaint Pursuant to the TPPA was previously granted by Order entered July 11, 2023. The issue before the Court is whether to award sanctions pursuant to T.C.A. § 20-17-107(a)(2). Therefore, the Court looks to these cases strictly for the limited guidance offered on Tennessee sanction orders in this context.

## II. PROCEDURAL POSTURE

On July 11, 2023, the Court entered an Order in Case No. 23C891 on Defendant's Motion to Dismiss and T.C.A. § 20-17-104(a) Petition to Dismiss Plaintiff's Amended Complaint Pursuant to the TPPA, which granted Defendant's Motion and dismissed with prejudice Plaintiff's Amended Complaint pursuant to T.C.A. § 20-17-105(e). (Order, ¶ 3, Jul. 11, 2023, No. 23C891 (Tenn. Cir. Ct. of Davidson Cnty. 2023)). The Order made the finding that an award of reasonable attorney's fees is mandatory pursuant to T.C.A. § 20-17-107(a)(1), and deferred ruling on attorney's fees and expenses pending further briefing. *Id.* at ¶ 6. The Order also stated, "[t]he Defendant may file a motion for sanctions at the same time or after the Defendant files his motion for attorney's fees." *Id.* at ¶ 7. On September 1, 2023, the Court entered an Order granting Defendant's Motion for Attorney's Fees, Costs, and Expenses. *See generally* Order, Sept. 1, 2023, No. 23C891 (Tenn. Cir. Ct. of Davidson Cnty. 2023). The Order entered judgment in favor of Defendant against Plaintiff in the amount of \$35,455.00 as a reasonable and mandatory award of attorney's fees pursuant to T.C.A. § 20-17-107(a)(1). (Order, ¶¶ 1, 3, Sept. 1, 2023, No. 23C891 (Tenn. Cir. Ct. of Davidson Cnty. 2023)).

Defendant filed the instant Motion for an Award of T.C.A. § 20-17-107(a)(2) Sanctions on August 11, 2023. The Court heard oral argument on the Motion on August 25, 2023, and took the matter under advisement following the hearing for further consideration. Plaintiff filed a Motion to Revise/Reconsider or Alter or Amend this Court's July 11, 2023, Order on August 21, 2023. On September 12, 2023, the Court entered an Order holding the ruling on Defendant's Motion for T.C.A. § 20-17-107(a)(2) Sanctions in abeyance until such time the Court had ruled on Plaintiff's Motion to Revise/Reconsider. On November 17, 2023, the Court entered an Order Denying Plaintiff's Motion to Revise/Reconsider or Alter or Amend the Court's July 11, 2023,



Order.

Defendant requests this Court enter an order (i) finding sanctions under T.C.A. § 20-17-107(a)(2) are necessary to deter repetition of Plaintiff's conduct and the conduct of her counsel, and (ii) awarding sanctions, jointly and severally, against Plaintiff and her counsel in the amount of \$300,000. (D's M. for T.C.A. § 20-17-107(a)(2) Sanctions, p. 21, No. 23C891 (Tenn. Cir. Ct. of Davidson Cnty. 2023)). Specifically, Defendant asserts he filed the instant Motion because, Defendant alleges:

“(1) the Plaintiff has filed multiple SLAPP-suits; (2) the Plaintiff still has a third SLAPP-suit pending against another critic right now; (3) the Plaintiff has strategically maximized litigation costs, including costs that are not subject to fee-shifting, during her SLAPP-suit campaigns in an effort to impose maximum expense on her critics; (4) the Plaintiff is a politician; (5) the Plaintiff has sought to exploit extra-judicial benefits from her SLAPP-suits; (6) the Plaintiff is unrepentant and, to the contrary, views herself as the victim; and (7) the Plaintiff has committed to maintaining and did maintain SLAPP-suits even after being confronted with TPPA petitions in the past[.]” *Id.* at 2.

Defendant also argues sanctions are necessary to deter those similarly situated – namely, Plaintiff's counsel, who Defendant asserts initiated a new SLAPP suit the same day this Court entered its Order Granting Defendant's Motion to Dismiss and T.C.A. § 20-17-104(a) Petition to Dismiss Plaintiff's Amended Complaint Pursuant to the TPPA. *Id.* at 11.

Defendant argues Case No. 23C891 presently before the Court is a SLAPP suit. *Id.* at 6. Defendant asserts the way Plaintiff has litigated this case is sanctionable and argues Plaintiff's claims had no chance of success. *Id.* In support, Defendant alleges: “(1) the Plaintiff lived in Davidson County, (2) the Defendant lived in Davidson County, (3) Ms. Foreman was running for office in Davidson County, and (4) the statements were made in Davidson County as part of a

Davidson County Metro Council Member’s constituent newsletter,” and “Plaintiff intentionally filed this action in Williamson County, where she knew it did not belong,” leading to “six months of litigation [sic] before this action even reached the correct court.” *Id.* at 6-7. Following transfer to Davidson County Circuit Court, Defendant alleges Plaintiff’s sanctionable conduct continued, including seeking an award of \$300,000.00, which Defendant asserts is “ridiculous,” and delaying the filing of an Amended Complaint Plaintiff was ordered to file. *Id.* at 7. Once Plaintiff filed her Amended Complaint, Defendant claims Plaintiff responded in opposition to Defendant’s Motion to Dismiss and T.C.A. § 20-17-104(a) Petition to Dismiss Plaintiff’s Amended Complaint Pursuant to the TPPA without supporting evidence. *Id.* Defendant argues at the hearing on Defendant’s TPPA Petition, Plaintiff attempted to again delay litigation by requesting for the first time the action be stayed to allow for a limited amount of discovery and until such time the Attorney General is involved. *Id.* at 7-8.

Defendant further argues Case No. 23C891 is “at least the third” SLAPP suit Plaintiff has filed. *Id.* at 8. Defendant alleges *Foreman v. St. Clair*, No. 22C1315 (Tenn. Cir. Ct. of Davidson Cnty. 2022), which is currently pending in Davidson County First Circuit Court, is a SLAPP suit filed by Plaintiff against a citizen critic on July 1, 2022. *Id.* at 8. Defendant also alleges *Foreman v. Hemmer et. al.*, No. 23C218 (Tenn. Cir. Ct. of Davidson Cnty, 2023), was a SLAPP suit “strategically nonsuited minutes before hearing in response to a TPPA Petition to dismiss it,” with the intent to refile the matter. *Id.* at 8-9; (Exh. 3, ¶ 2c, D’s M. for T.C.A. § 20-17-107(a)(2) Sanctions, No. 23C891 (Tenn. Cir. Ct. of Davidson Cnty. 2023)). Defendant cites Exhibit 9 to his TPPA Petition to allege Plaintiff has sought to exploit extra-judicial benefits from her SLAPP suits by “tout[ing] the fact that one of her victims had been sued [sic] as a supposed indication that there was a credible basis for impugning him.” (D’s M. for T.C.A. § 20-17-107(a)(2)

Sanctions, p. 9, No. 23C891 (Tenn. Cir. Ct. of Davidson Cnty. 2023)); (Exh. 9, D's M. to Dism. and T.C.A. § 20-17-104(a) Pet., No. 23C891 (Tenn. Cir. Ct. of Davidson Cnty. 2023)).

Additionally, Defendant argues Plaintiff views herself as a victim. *See* Exh. 5, D's M. for T.C.A. § 20-17-107(a)(2) Sanctions.

Plaintiff argues the "July 11, 2023, Order was granted, at least in part, based on fraud which should foreclose Defendant, Rosenberg, from seeking sanctions against Plaintiff and her counsel." (Pl. Resp. to D's M. for T.C.A. § 20-17-107(a)(2) Sanctions, p. 1, No. 23C891 (Tenn. Cir. Ct. of Davidson Cnty. 2023)). Plaintiff's Response "adopts its Rule 54.02 Motion" and related filings "as if copied herein verbatim." *Id.* Wherefore, the Court makes the finding the November 17, 2023, Order Denying Plaintiff's Motion to Revise/Reconsider or Alter or Amend resolved all of the issues before it upon Plaintiff's Rule 54.02 Motion, and such issues are not within the scope of the Court's consideration upon adjudication of Defendant's Motion for T.C.A. § 20-17-107(a)(2) Sanctions.

Plaintiff does not dispute the factors identified by Defendant to determine the appropriate sanction amount. Plaintiff objects to the Court's consideration of the alleged SLAPP suit filed the same day the Court entered its Order Granting Defendant's Motion to Dismiss and T.C.A. § 20-17-104(a) Petition to Dismiss Plaintiff's Amended Complaint Pursuant to the TPPA because Plaintiff argues this lawsuit is not relevant pursuant to Tenn. R. Evid. 402, and because "even if admissible [sic], [the lawsuit has] been adjudicated and [is] therefore irrelevant." *Id.* at 2. Plaintiff further argues Defendant has failed to provide a basis upon which the Court can impose sanctions. *Id.* at 2-3. Finally, Plaintiff references two cases cited by Defendant in his Motion which Plaintiff argues are distinguishable to the case at hand because in those cases, the sanctioned party had brought multiple actions against the same Defendant. *Id.* at 3.

### III. DISCUSSION

The Court finds this is the type of case T.C.A. § 20-17-107(a)(2) is meant to provide protection against, and thus, the Court further finds an award of additional relief is necessary to deter repetition of the conduct of Plaintiff. T.C.A. § 20-17-107(a)(2). The Court concludes the award of sanctions in this case must be of such degree to deter Plaintiff from continuing this reprehensible behavior. The Court finds the following *Landry's, Inc.* factors apply to in case:

- a. the good faith or bad faith of the offender;
- b. the degree of willfulness, vindictiveness, negligence, or frivolousness involved in the offense;
- c. the knowledge, experience, and expertise of the offender;
- d. any prior history of sanctionable conduct on the part of the offender;
- e. the reasonableness and necessity of the out-of-pocket expenses incurred by the offended person as a result of the misconduct;
- f. the nature and extent of prejudice, apart from out-of-pocket expenses, suffered by the offended person as a result of the misconduct;
- ...
- i. the impact of the sanction on the offender, including the offender's ability to pay a monetary sanction;
- ...
- k. the relative magnitude of sanction necessary to achieve the goal or goals of the sanction;
- l. burdens on the court system attributable to the misconduct, including consumption of judicial time and incurrence of juror fees and other court costs;
- ...

*Landry's, Inc.*, 566 S.W.3d at 71-2; *Low*, 221 S.W.3d at 621.

#### A. Others Similarly Situated

The Court is not awarding sanctions against Plaintiff's counsel as another "similarly situated." T.C.A. § 20-17-107(a)(2). The Court is not considering the alleged SLAPP suit filed

the same day the Court entered its Order Granting Defendant's Motion to Dismiss and T.C.A. § 20-17-104(a) Petition to Dismiss Plaintiff's Amended Complaint Pursuant to the TPPA for this purpose. (D's M. for T.C.A. § 20-17-107(a)(2) Sanctions, p. 11, No. 23C891 (Tenn. Cir. Ct. of Davidson Cnty. 2023)). Nonetheless, the Court is considering this alleged SLAPP suit for a limited purpose. The Court finds Plaintiff's representations this lawsuit is not relevant to the issue of sanctions, and that "even if admissible [sic], [the lawsuit has] been adjudicated," unequivocally demonstrate Plaintiff does not see anything wrong with this conduct and is likely to file similar lawsuits in the future. (Pl. Resp. to D's M. for T.C.A. § 20-17-107(a)(2) Sanctions, p. 2, No. 23C891 (Tenn. Cir. Ct. of Davidson Cnty. 2023)). Consequently, the Court finds the imposition of a sanction against Plaintiff is necessary to deter Plaintiff from filing similar lawsuits in the future. T.C.A. § 20-17-107(a)(2).

Plaintiff argues Defendant has failed to provide a basis upon which it can impose sanctions, but the Court finds Plaintiff herself fails to provide a foundation for this argument. (Pl. Resp. to D's M. for T.C.A. § 20-17-107(a)(2) Sanctions, pp. 2-3, No. 23C891 (Tenn. Cir. Ct. of Davidson Cnty. 2023)). The Court did not consider these cases in its sanction analysis. Even so, the Court finds erroneous Plaintiff's attempt to distinguish and dismiss two specific cases cited by Defendant in his Motion. For clarity of the record, Tennessee Code Annotated § 20-17-107(a)(2) focuses on the need to deter repetitive conduct of the party who brought the legal action. T.C.A. § 20-17-107(a)(2). The Court finds the language makes no reference this statute is concerned solely with repeat conduct brought against the same party.

#### **B. Previously Filed Lawsuits**

The Court relies on Texas law as persuasive authority for this Court to consider previously filed lawsuits when considering an award of sanctions. *ADB Int., LLC*, 606 S.W.3d at

445. The Court notes the Complaint in Case No. 23C891 filed in Williamson County on October 24, 2022, predates *Foreman v. Hemmer et. al.*, No. 23C218 (Tenn. Cir. Ct. of Davidson Cnty, 2023), filed on January 27, 2023. Because Case No. 23C218 was filed by Michelle Foreman and is currently pending in Davidson County First Circuit Court, the Court finds it relevant to its sanctions analysis.

Defendant argues *Foreman v. St. Clair*, No. 22C1315 (Tenn. Cir. Ct. of Davidson Cnty. 2022), is a SLAPP suit filed by Plaintiff. (D's M. for T.C.A. § 20-17-107(a)(2) Sanctions, p. 8.). The Court notes this action is not a SLAPP suit because a TPPA Petition has not been filed nor granted in this case. However, upon review of the Complaint filed on July 1, 2022, the Court finds the facts of Case No. 22C1315 are similar to the facts of Case No. 23C891 in that Plaintiff Michelle Foreman sued Ms. St. Clair for allegedly defaming Plaintiff by criticizing her online. *See generally* Complaint, *Foreman v. St. Clair*, No. 22C1315 (Tenn. Cir. Ct. of Davidson Cnty. 2022). The Court considers this in its analysis below.

Similarly, Defendant argues *Foreman v. Hemmer et. al.*, No. 23C218, was nonsuited before hearing took place on Defendant's TPPA Petition. (D's M. for T.C.A. § 20-17-107(a)(2) Sanctions, pp. 8-9, No. 23C891 (Tenn. Cir. Ct. of Davidson Cnty. 2023)); (Exh. 3, ¶ 2c, D's M. for T.C.A. § 20-17-107(a)(2) Sanctions, No. 23C891 (Tenn. Cir. Ct. of Davidson Cnty. 2023)). The Court finds Plaintiff filed a short Response to the TPPA Petition alleging the Petition was untimely and failed with respect to Tennessee defamation law and Tenn. R. Civ. P. 12. *See generally* Response to TPPA Petition, *Foreman v. Hemmer et. al.*, No. 23C218 (Tenn. Cir. Ct. of Davidson Cnty, 2023). Four days later, Plaintiff filed her Notice of Voluntary Dismissal Without Prejudice on the same day Defendant's TPPA Petition was set to be heard. It is the Court's understanding from a reading of the record Plaintiff represented she intends to refile this action.

While this is her legal right, the Court finds this behavior demonstrates prior sanctionable conduct by Plaintiff. *Landry's, Inc.*, 566 S.W.3d at 71-2; *Low*, 221 S.W.3d at 621. The Court finds Plaintiff nonsuited Case No. 23C218 in bad faith to avoid adjudication of Defendant's TPPA Petition. *Id.* Plaintiff then stated her intent to refile the lawsuit, resulting in unreasonable and unnecessary litigation costs incurred at the expense of the Defendant. *Id.*

### **C. The Instant Lawsuit**

The Defendant argues Case No. 23C891 presently before the Court is a SLAPP suit that should aid this Court's decision in finding sanctions are necessary to deter repetition of Plaintiff's conduct and awarding sanctions against Plaintiff pursuant to T.C.A. § 20-17-107(a)(2). (D's M. for T.C.A. § 20-17-107(a)(2) Sanctions, pp. 6, 21, No. 23C891 (Tenn. Cir. Ct. of Davidson Cnty. 2023)). The Court finds Case No. 23C891 was filed in Williamson County on October 24, 2022, although Plaintiff and Defendant lived in Davidson County and the statements were made in Davidson County as part of a Davidson County Metro Council Member's constituent letter. The Court further finds Plaintiff delayed litigation in the appropriate venue and increased litigation costs by filing this action in Williamson County and necessitating it be transferred to Davidson County. The Court finds this conduct by Plaintiff was frivolous and performed in bad faith. *Landry's, Inc.*, 566 S.W.3d at 71-2; *Low*, 221 S.W.3d at 621. This conduct also resulted in burdens on the court system, including consumption of judicial time and unnecessary court costs. *Id.*

The Court finds Plaintiff delayed the filing of an Amended Complaint as she was required to do within ten (10) days of the February 21, 2023, Order to temporarily avoid dismissal of this matter. Plaintiff's Amended Complaint was not filed until May 31, 2023. The Court finds this act was performed in bad faith and resulted in delay and great prejudice to be

suffered by Defendant in litigating this matter. *Id.* Additionally, the Court finds Plaintiff requested the Court stay the ruling on Defendant's TPPA Petition to allow for a limited amount of discovery. (Tr. Of Jun. 30, 2023, Proceedings, 21:8-11, No. 23C891 (Tenn. Cir. Ct. of Davidson Cnty. 2023)). The Court finds both parties had timely filed responsive pleadings to Defendant's TPPA Petition with no mention of this request. The Court also finds Plaintiff has filed several frivolous pleadings throughout the life of this case which have provided no new information or legal argument for the Court's consideration. Many of these pleadings have been filed at a time when the Court was ruling on a motion on the pleadings, thereby delaying the order of the Court. The Court finds this is the type of repetitive conduct T.C.A. § 20-17-107(a)(2) was created to deter.

Furthermore, the Court finds Plaintiff has filed at least two similar lawsuits (Case Nos. 22C1315 and 23C218), one of which is still pending, which evinces Plaintiff's determined degree of willfulness to continue to file actions, even after being faced with multiple TPPA Petitions, to maximize litigation costs to impose extreme expense on those she sees as critics. *Landry's, Inc.*, 566 S.W.3d at 71-2; *Low*, 221 S.W.3d at 621. This summation of cases exhibits Plaintiff's knowledge and experience in filing frivolous lawsuits. *Id.* Plaintiff is a politician, which the Court finds demonstrates Plaintiff's expertise surrounding the facts upon which she has based these frivolous lawsuits. *Id.* The Court also finds Plaintiff is not an indigent party or a school teacher, nor is she a victim. Plaintiff is a knowledgeable initiator, and the Court considers this when deciding the impact of the sanction on the offender and the offender's ability to pay a monetary sanction. *Id.* Plaintiff's conduct is the type T.C.A. 20-17-107(a)(2) was enacted to provide relief against. The Court finds ample proof that absent imposition of the appropriate sanction, Plaintiff will repeat this conduct, just as she has already in other lawsuits.



#### D. CONCLUSION

1. It is, therefore, **ORDERED, ADJUDGED, and DECREED** Defendant's Motion for an Award of T.C.A. § 20-17-107(a)(2) Sanctions is **GRANTED**, in part, as it pertains to an award of sanctions to deter repetition of the conduct of Plaintiff. T.C.A. § 20-17-107(a)(2).
2. For all of the reasons outlined in this Order, it is **ORDERED** Defendant Dave Rosenberg shall be awarded sanctions against Plaintiff Michelle Foreman in the amount of **one hundred thousand dollars (\$100,000.00)** to deter repetition of this conduct. T.C.A. § 20-17-107(a)(2).
3. The Court is not assessing sanctions against Plaintiff's counsel. Therefore, Defendant's Motion is **DENIED**, in part, as it pertains to an award of sanctions to deter repetition of the conduct of Plaintiff's counsel. T.C.A. § 20-17-107(a)(2).
4. The Court finds there are no outstanding claims remaining for adjudication in this action. Court costs are taxed to Plaintiff, for which execution shall issue, if necessary.
5. This Order shall operate as a **FINAL ORDER** pursuant to Tenn. R. Civ. P. 54.02(1).

IT IS SO **ORDERED**.

  
LYNNE T. INGRAM, CIRCUIT JUDGE

Entered this 4th day of December, 2023.

## CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of this Order was sent electronically through the Court's Electronic Filing System or by U.S. Postal Mail to the following on this the 4<sup>th</sup> day of December 2023, to the following:

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