IN THE CHANCERY COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT, AT MEMPHIS

DREXEL CHEMICAL CO.,

Plaintiff,

v.

VIVEK SHAH,

Defendant.

ENTERED
JUN 05 2026
M.B.

No. CH-26-0122
Part II

ORDER GRANTING MOTIONS TO DISMISS

This matter came to be heard on May 19, 2026, before the Honorable James R. Newsom III, Chancellor of Part II of the Chancery Court of Shelby County, Tennessee, upon the Tennessee Rule of Civil Procedure 12.02(1), (2), and (6) Motion to Dismiss and Tennessee Public Participation Act Petition to Dismiss filed by Defendant Vivek Shah. The Court has reviewed the parties' submissions and considered the oral argument of counsel and rules as follows:

STANDARD OF REVIEW

A. TENN R. CIV. P. 12.02(1) MOTION TO DISMISS FOR LACK OF SUBJECT-MATTER JURISDICTION

"[S]ubject matter jurisdiction is a threshold inquiry, which may be raised at any time in any court." *Johnson v. Hopkins*, 432 S.W.3d 840, 844 (Tenn. 2013). "Where subject matter jurisdiction is challenged, the party asserting that subject matter jurisdiction exists ... has the burden of proof." *Id.* "[L]ack of jurisdiction over the subject matter" is properly asserted under Tenn. R. Civ. P. 12.02(1). *Redwing v. Catholic Bishop for Diocese of Memphis*, 363 S.W.3d 436, 445 (Tenn. 2012). "[W]henever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." *See* Tenn. R. Civ. P. 12.08; *see also Dishmon v. Shelby State Cmty. Coll.*, 15 S.W.3d 477, 480 (Tenn. Ct. App. 1999) ("The lack of subject matter jurisdiction is so fundamental that it requires dismissal whenever it is raised and demonstrated.") (citing Tenn. R. Civ. P. 12.08).

"Litigants may take issue with a court's subject matter jurisdiction using either a facial challenge or a factual challenge." *See Redwing*, 363 S.W.3d at 445 (citing *Schutte v. Johnson*, 337 S.W.3d 767, 769–70 (Tenn. Ct. App. 2010); *Staats v. McKinnon*, 206 S.W.3d 532, 542 (Tenn. Ct. App. 2006)). "A facial challenge is a challenge to the complaint itself." *Id.* (citing *Schutte*, 337 S.W.3d at 769).

"Thus, when a defendant asserts a facial challenge to a court's subject matter jurisdiction, the factual allegations in the plaintiff's complaint are presumed to be true." *Id.* (citing *Staats*, 206 S.W.3d at 542).

Alternatively, "[a] factual challenge denies that the court actually has subject matter jurisdiction as a matter of fact even though the complaint alleges facts tending to show jurisdiction." *Id.* (citing *Staats*, 206 S.W.3d at 543). When a factual challenge is raised, the Court of Appeals has explained that:

> Factual challenges to subject matter jurisdiction require a different approach both in the trial court and on appeal. A factual challenge denies that the court actually has subject matter jurisdiction as a matter of fact even though the complaint alleges facts tending to show jurisdiction. It controverts the complaint's factual allegations regarding jurisdiction, and puts at issue the sufficiency of the evidence to prove facts that would bring the case within the court's subject matter jurisdiction. Factual challenges to jurisdiction create genuine issues as to material fact, but they do not require courts to convert the motion into one for summary judgment. Instead, the courts must resolve these factual issues, at least preliminarily. The court must determine whether the evidence in favor of finding jurisdiction is sufficient to allow the case to proceed.

Midwestern Gas Transmission Co. v. Reese, No. M2005-00805-COA-R3-CV, 2006 WL 468688, at *12 (Tenn. Ct. App. Feb. 24, 2006) (internal quotations

and citations omitted); *see also Chenault v. Walker*, 36 S.W.3d 45, 55-56 (Tenn. 2001).

B. RULE 12.02(2) MOTIONS TO DISMISS FOR LACK OF PERSONAL JURISDICTION

"A Tenn. R. Civ. P. 12.02(2) motion to dismiss for lack of personal jurisdiction challenges the trial court's ability to proceed with the claim or claims against a defendant." *Gordon v. Greenview Hosp., Inc.*, 300 S.W.3d 635, 643 (Tenn. 2009) (citing 5B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1349, at 56 (3d ed. 2004)).

> A defendant may take issue with personal jurisdiction by filing a 12.02(2) motion prior to filing its answer or by including this defense in its answer. Tenn. R. Civ. P. 12.08. If a defendant raises the defense by motion, the defendant may, but is not required to, support the motion with affidavits or other evidentiary materials. *Humphreys v. Selvey*, 154 S.W.3d 544, 550 n.5 (Tenn. Ct. App. 2004). However, if a defendant supports its motion with affidavits, the plaintiff must establish its prima facie showing of personal jurisdiction over the defendant by filing its own affidavits or other written evidence. *Chenault v. Walker*, 36 S.W.3d at 56; *Mfrs. Consolidation Serv., Inc. v. Rodell*, 42 S.W.3d 846, 854–55 (Tenn. Ct. App. 2000).

Gordon, 300 S.W.3d at 643–44.

Personal jurisdiction is "a threshold issue that normally should be adjudicated early in the proceeding because, if the motion is granted, it will produce an overall savings in time and resources and will also avoid delay in

the disposition of cases." *Id.* at 643 (citing 5B Federal Practice and Procedure § 1349, *supra*, at 56–57). "The plaintiff bears the ultimate burden of demonstrating that the trial court may properly exercise personal jurisdiction over a defendant." *Id.* (citations omitted).

C. RULE 12.02(6) MOTIONS 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). 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)). However, the court 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; these items may be considered by the [trial court] without converting the motion into one for summary judgment." *Western Express, 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. 19, 2009), *app. denied* (Tenn. Aug. 24, 2009)). Such items include court records and public records. *See State v. Nunley*, 22 S.W.3d 282, 288 (Tenn. Crim. App. 1999) ("Court records fall within the general rubric of facts readily and accurately determined."); *Ind. State Dist. Council of Laborers*, 2009 WL 426237, at *9 ("Tennessee law allows for judicial notice (TRE 201) of public records.") (citing Cohen, Shepard, and Paine, *Tennessee Law of Evidence* § 2.01[4][c] (5th ed. 2005)).

The rule that "a court must accept all allegations stated in a complaint as true does not apply to legal conclusions." *State ex rel. Watson v. Waters*, No. E2009-01753-COA-R3-CV, 2010 WL 3294109, at *4 (Tenn. Ct. App. Aug. 20, 2010). Further, "[a]lthough [this Court is] required to construe [a complaint's] factual allegations in [a 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)). A court also is "not required to accept as true the inferences to be drawn from conclusory allegations." *Id.* Thus, "[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 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 Laboratories Int'l, Inc.*, 78 S.W.3d 852, 857 (Tenn. 2002).

D. TPPA PETITIONS TO DISMISS.

The Tennessee Public Participation Act [TPPA] 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 the TPPA. *See* Tenn. Code Ann. § 20-17-104. 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." Tenn. Code Ann. § 20-17-105(a). The Tennessee Supreme Court has explained that:

> To establish a "prima facie" case under the TPPA, a party must present enough evidence to allow the jury to rule in his favor on that issue. This evidence may include "sworn affidavits stating admissible evidence" and "other admissible evidence." Tenn. Code Ann. § 20-17-105(d). As is the case when a court rules on a motion for summary judgment or motion for directed verdict, the court

> should view the evidence in the light most favorable to the party seeking to establish the prima facie case and disregard countervailing evidence. *See, e.g., Griffis v. Davidson Cnty. Metro. Gov't*, 164 S.W.3d 267, 284 (Tenn. 2005) (summary judgment); *Conatser v. Clarksville Coca-Cola Bottling Co.*, 920 S.W.2d 646, 647 (Tenn. 1995) (directed verdict).

Charles v. McQueen, 693 S.W.3d 262, 281 (Tenn. 2024).

If the petitioning party satisfies that burden, a 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). "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." 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." Tenn. Code Ann. § 20-17-105(e).

"[T]o protect the constitutional rights of parties[,]" the TPPA "provide[s] an additional substantive remedy" that "supplement[s] any remedies which are otherwise available . . . under the Tennessee Rules of Civil Procedure." Tenn. Code Ann. § 20-17-109. Thus, nothing in the TPPA "[a]ffects, 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). 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." Tenn. Code Ann. § 20-17-104(b).

In enacting the TPPA, the Tennessee General Assembly stated its purpose, that 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 provides, among other things, that:

1. When parties have been sued in response to their exercise of the right of free speech or the right to petition, they "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" under section 20-17-106.

FACTS

For purposes of ruling on Shah's Motion to Dismiss under Tenn. R. Civ. P. 12.02(6), the factual allegations in the Complaint of Plaintiff Drexel Chemical Company [Drexel] are taken as true.

Drexel is a Tennessee corporation. Compl. at p. 6, ¶ 1. Defendant Vivek Shah [Shah] is a resident of Los Angeles, California. *Id.* at p. 6, ¶ 2.

Before this litigation began, Shah "deliberately accessed, opened, and 'visited' Drexel's website[.]" *Id.* at p. 3. Later, when Shah realized that Drexel had—without his knowledge or consent—embedded hidden tracking scripts in its website that enabled it to surveil him, Shah "served Drexel with an unfiled pro se complaint" through its registered agent in Tennessee, threatening to sue Drexel in the Superior Court for Los Angeles for violating the California Invasion of Privacy Act [CIPA], Cal. Penal Code § 631(a). *Id.* at p. 7, ¶ 7; *see also id.*, Ex. 1, Unfiled Pre-Suit Draft Complaint. Shah also informally offered to resolve the parties' dispute pre-suit without litigation.

See id. at pp. 10-11, ¶ 22 ("Vivek Shah included a letter dated November 12, 2025 with the Pro Se CIPA Complaint which states at the top of the page: 'Re: Informal Dispute Resolution' and includes the following statement: 'This is regarding your violation of California's Invasion of Privacy Act ('CIPA') Cal. Penal Code § 631 (a). You have been sending my data to third parties without my consent. . . . The attached Complaint is prepared and ready to be filed with the Los Angeles Superior Court should this matter remain unresolved.'").

Drexel responded by filing a complaint for declaratory judgment in this Court on January 28, 2026. *See* Pl.'s Compl. As relief, Drexel seeks a declaration that Shah's unfiled Los Angeles Superior Court Complaint is unviable. *See id.* at 24 (seeking, among other things, declarations that "Shah has not met his burden of showing in the Pro Se CIPA Complaint that Drexel purposefully availed itself of California as a forum by merely operating its website[,]"; that "Shah lacks standing to assert a CIPA claim against Drexel[,]"; and that "[t]he purported CIPA claim described by [Shah] in his unfiled Pro Se CIPA Complaint fails to allege a private cause of action for an alleged actual or threatened invasion of his privacy within the provisions of the California Invasion of Privacy Act.").

On February 11, 2026, Mr. Shah filed suit against the Plaintiff in the U.S. District Court for the Central District of California [Federal Lawsuit]. *See* Ex. 1, Cal. Fed. Compl., *Shah v. Drexel Chemical Co.*, No. 2:26-cv-01605 (C.D. Cal.). Thus, although there is now pending tort litigation between the parties in the Federal Lawsuit, that tort litigation does not involve the unfiled draft complaint appended to the Plaintiff's Complaint here. *Compare id.*, *with* Pl.'s Compl. Ex. 1.

ANALYSIS

A. THIS COURT LACKS SUBJECT MATTER JURISDICTION TO ISSUE AN ADVISORY OPINION OVER AN UNRIPE CONTROVERSY.

"The justiciability doctrines recognized by Tennessee courts mirror the justiciability doctrines employed by the United States Supreme Court and the federal courts." *Norma Faye Pyles Lynch Fam. Purpose LLC v. Putnam Cnty.*, 301 S.W.3d 196, 203 (Tenn. 2009). These doctrines include "the prohibition against advisory opinions" and "ripeness[.]" *Id.* Further, "[w]here a case is non-justiciable," it is "outside the bounds of the authority of Tennessee courts to adjudicate the matter[.]" *Dominy v. Davidson Cnty. Election Comm'n*, No. M2022-00427-COA-R3-CV, 2023 WL 3729863, at *4 (Tenn. Ct. App. May 31, 2023) (citing *Hooker v. Haslam*, 437 S.W.3d 409, 433 (Tenn. 2014)) (citations omitted).

Here, both the prohibition against advisory opinions and the ripeness doctrine preclude this Court from adjudicating the viability of an unfiled complaint. Thus, the Court rules that Drexel's Complaint must be dismissed for lack of subject-matter jurisdiction.

1. **Drexel's Complaint seeks an advisory opinion as to the viability of an unfiled complaint.**

Tennessee's Declaratory Judgments Act enables courts "to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations[.]" Tenn. Code Ann. § 29-14-113. It does not, however, enable courts to "render an advisory opinion which may help a party in another transaction[.]" *See State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 193 (Tenn. 2000) (citing *Hodges v. Hamblen Cnty.*, 152 Tenn. 395, 277 S.W. 901, 902 (1925)). Here, an advisory opinion determining the viability of a never-filed complaint is the relief that Drexel seeks.

The purpose of this lawsuit is to have this Court adjudicate the viability of Shah's "unfiled Pro Se CIPA Complaint[.]" *See* Pl.'s Compl. at p. 24; *see also id.* at p. 22, ¶ 66 ("Drexel requests the Court to declare the parties' rights and obligations under the California Invasion of Privacy Act as specifically alleged in the unfiled Pro Se CIPA Complaint[.]"). But courts "limit[] their role to deciding 'legal controversies.'" *Norma Faye Pyles Lynch Fam. Purpose LLC*, 301

S.W.3d at 203 (quoting *White v. Kelton*, 144 Tenn. 327, 335, 232 S.W. 668, 670 (1921)). Further, a proceeding qualifies as a legal controversy only "when the disputed issue is real and existing, . . . and not theoretical or abstract, . . . and when the dispute is between parties with real and adverse interests." *Norma Faye Pyles Lynch Fam. Purpose LLC*, 301 S.W.3d at 203 (internal citations omitted) (citing *Memphis Publ'g Co. v. City of Memphis*, 513 S.W.2d 511, 512 (Tenn. 1974)).

Definitionally, whether an unfiled complaint is viable is not an "existing" controversy. *See, e.g., Ragen v. Hancor, Inc.*, 920 F. Supp. 2d 810, 843 (N.D. Ohio 2013) ("The mere potential for a future suit does not make a justiciable controversy."); *Beavers v. Riley Built, Inc.*, 168 F. Supp. 3d 948, 952 (W.D. Ky. 2016) ("A threat of litigation regarding a patent not yet issued presents no justiciable case or controversy that would support the Court's exercise of jurisdiction in this matter."). That is because "[t]here is an obvious difference between an actual lawsuit and threatened litigation that has not been brought." *In re Bank of Am. AIG Disclosure Sec. Litig.*, 980 F. Supp. 2d 564, 582 (S.D.N.Y. 2013), *aff'd*, 566 F. App'x 93 (2d Cir. 2014). Thus, a request for this Court to assess the viability of an unfiled complaint seeks an advisory opinion, and subject-matter jurisdiction is lacking as a result.

2. **Drexel's Complaint seeks a ruling as to an unripe controversy that never has materialized.**

The ripeness doctrine asks "'whether the dispute has matured to the point that it warrants a judicial decision.'" *West v. Schofield*, 468 S.W.3d 482, 490 (Tenn. 2015) (quoting *B & B Enters. of Wilson Cnty., LLC v. City of Lebanon*, 318 S.W.3d 839, 848 (Tenn. 2010)). "'[R]ipeness is peculiarly a question of timing.'" *West*, 468 S.W.3d at 490 (quoting *Reg'l Rail Reorganization Act Cases*, 419 U.S. 102, 140 (1974)). "'[I]ts basic rationale is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements[.]'" *West*, 468 S.W.3d at 490 (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967), *overruled on other grounds by Califano v. Sanders*, 430 U.S. 99, 105 (1977)).

"'The central concern of the ripeness doctrine is whether the case involves uncertain or contingent future events that may or may not occur as anticipated or, indeed, may not occur at all.'" *West*, 468 S.W.3d at 491 (quoting *B & B Enters.*, 318 S.W.3d at 848). "In determining whether a particular case is ripe, courts typically engage in a two-part analysis, evaluating '(1) the fitness of the issues for judicial decision and (2) the hardship to the parties of withholding court consideration.'" *West*, 468 S.W.3d at 491 (quoting *Abbott Labs.*, 387 U.S. at 149).

When evaluating its subject matter jurisdiction over a case, the Court must look to "the state of things at the time the action is brought." *Keene Corp. v. United States*, 508 U.S. 200, 207 (1993). That means that "[s]ubject matter jurisdiction is to be determined at the time the Complaint was filed." *Alon v. Union Inst. & Univ.*, No. 1:24-cv-334, 2025 WL 2675823, at *3 (S.D. Ohio Sept. 18, 2025) (citing *Klepper v. First Am. Bank*, 916 F.2d 337, 340 (6th Cir. 1990)). Thus, when assessing whether the Plaintiff's Complaint is ripe for review, a court looks to the state of things at the time it was filed, not the circumstances at some later time. *Alon*, 2025 WL 2675823, at *3.

The ripeness doctrine precludes subject-matter jurisdiction here. As noted, when the Plaintiff filed this action, no litigation existed between the Parties. Instead, the Plaintiff sought a ruling from this Court about whether an unfiled complaint that Mr. Shah had merely threatened to file (in California Superior Court) would, if filed, be viable. *See* Pl.'s Compl. at 24; *see also id.* ¶ 66. But because the threatened complaint had not yet been filed, any judicial evaluation of its merits would necessarily be premature.

Moreover, Mr. Shah ultimately did not file the draft state-court lawsuit regarding which the Plaintiff's Complaint here seeks a ruling. Instead, Shah filed a different action in a federal district court. Thus, the unfiled complaint

over which Drexel prematurely sought this Court's review was not only unfiled at the inception of this action: counsel for Shah states that it will never be filed. Instead, the Parties here will litigate—in a federal forum, and under federal procedural rules—the viability of a different pleading entirely.

For these reasons, Drexel's unripe preemptive Complaint targeting an unfiled California state court lawsuit is not fit for judicial resolution herein. Nor would withholding consideration here cause Drexel any hardship. Rather, Drexel may exercise its rights—in its posture as a defendant—to defend against Shah's actual, filed claims in the Central District of California.

At the time the declaratory judgment complaint was filed with this Court, the unfiled *pro se* complaint was just that: unfiled. Shah had merely threatened to file his complaint in the California Superior Court. Without the unfiled complaint being filed, judicial evaluation of its merits is premature. Accordingly, at the time of the filing of Drexel's declaratory judgment complaint, there was no legal controversy to be resolved by this Court. Drexel's declaratory judgment complaint is due for dismissal, and thus is dismissed for lack of subject matter jurisdiction pursuant to Tenn. R. Civ. P. 12.02(1).

B. THIS COURT LACKS PERSONAL JURISDICTION OVER SHAH.

In the event that this Court should have subject matter jurisdiction, despite the foregoing analysis, the Court addresses whether it has personal jurisdiction over Shah. "Tennessee courts follow the 'well-established principle that a court must have jurisdiction over a defendant before it can enter a valid judgment.'" *In re Ethan D.*, No. E2024-01322-COA-R3-PT, 2025 WL 2673874, at *2 (Tenn. Ct. App. Sept. 18, 2025) (quoting *Baskin v. Pierce & Allred Constr., Inc.*, 676 S.W.3d 554, 566 (Tenn. 2023)). Due process also requires that an out-of-state defendant have "such minimum contacts with the foreign state that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *J.I. Case Corp. v. Williams*, 832 S.W.2d 530, 531–32 (Tenn. 1992) (citing *Int'l Shoe Co. v. State of Wash., Off. of Unemployment Comp. & Placement*, 326 U.S. 310 (1945), *overruled in part on other grounds*, *Gordon*, 300 S.W.3d at 649 n. 11). To invoke specific jurisdiction, a plaintiff must show (1) that the nonresident defendant has purposely established significant contact with the forum state, and (2) that the plaintiff's cause of action arises out of or is related to these activities or contacts. *Gordon*, 300 S.W.3d at 647 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)).

"In the absence of continuous and systematic contacts with the forum state"— which Drexel does not allege here, *see generally* Pl.'s Compl.— "personal jurisdiction exists if a 'commercial actor purposely directs his activities toward citizens of the forum state and litigation results from injuries arising out of or relating to those activities.'" *Chenault*, 36 S.W.3d at 53 (quoting *Burger King*, 471 U.S. at 472–73). This standard ensures that defendants will not be haled into a foreign jurisdiction solely because of "random," "fortuitous," or "attenuated" contacts. *Id.* (citing *Burger King*, 471 U.S. at 475–76). Thus, a defendant's contacts must "demonstrate that the defendant has purposefully targeted Tennessee to the extent that the defendant should reasonably anticipate being haled into court here." *State v. NV Sumatra Tobacco Trading Co.*, 403 S.W.3d at 760 (Tenn. 2013). The plaintiff bears the ultimate burden of demonstrating that the trial court may properly exercise personal jurisdiction over the defendant. *See Gordon*, 300 S.W.3d at 643 (citing *Chenault*, 36 S.W.3d at 56).

Here, as Drexel acknowledges, Shah "lives in Los Angeles". Pl.'s Compl. at 1. Even so, Drexel asserts that this Court has personal jurisdiction over Shah because: (1) Shah accessed Drexel's website; (2) the data transmitted to Shah's browser came from the corporate headquarters' servers in Tennessee; and (3)

"[Shah] caused his unfiled draft of a complaint to be delivered via U.S. Mail through Drexel's agent for service of process in Tennessee." *See* Pl.'s Compl. at 1-4. That is the extent of the connections that Drexel alleges connects Shah to this forum. Thus, no injury of any kind or nature in Tennessee—whether arising from Shah's contacts with Tennessee or otherwise—has been alleged. Drexel does not contend that Shah has any contacts with Tennessee other than having visited its website and corresponded with Drexel. *See* Ex. 3, Decl. of Vivek Shah.

Such limited contacts are insufficient to establish Tennessee's personal jurisdiction over Shah. Overwhelming authority establishes that merely accessing (or, for that matter, operating) a website—without more—does not satisfy constitutional due process requirements for exercising personal jurisdiction over an out-of-state defendant. *See, e.g., FDCPA Case Listing Serv., LLC v. Cunningham,* No. 1:08-cv-1768, 2008 WL 11470801, at *11 (N.D. Ga. Oct. 7, 2008) ("[U]se of websites does not establish personal jurisdiction.") (collecting authority), *report and recommendation adopted,* No. 1:08-cv-1768, 2008 WL 11470856 (N.D. Ga. Oct. 30, 2008); *Colur World, LLC v. Schneider Med. Indus.*, No. 2:24-cv-1507, 2024 WL 3889620, at *3 (E.D. Pa. Aug. 21, 2024) ("[T]he mere use of an interactive website does not establish personal jurisdiction.")

(collecting authority) *appeal dismissed*, No. 24-2618, 2024 WL 5442757 (3d Cir. Nov. 4, 2024); *cf. EnhanceWorks, Inc. v. Dropbox, Inc.*, No. M2018-01227-COA-R3-CV, 2019 WL 1220903, at *8 (Tenn. Ct. App. Mar. 14, 2019) ("Applying *NV Sumatra* to Internet contacts, we reason that for a defendant's Internet contacts to be sufficiently meaningful, they must be more than 'passive Internet activity' such that the defendant directs electronic activity into Tennessee 'with the manifested intent of engaging business or other interactions in the State thus creating in a person within the State a potential cause of action cognizable in [Tennessee].'") (citing *ALS Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 714 (4th Cir. 2002)); *Cossaboon v. Maine Med. Ctr.*, 600 F.3d 25, 35 (1st Cir. 2010) ("Cossaboon contends that MMC's 'user-friendly and interactive website,' www.mmc.org, supports the exercise of general jurisdiction. It is clear that 'the mere existence of a website that is visible in a forum and that gives information about a company and its products is not enough, by itself, to subject a defendant to personal jurisdiction in that forum.' . . . Given the 'omnipresence' of internet websites, such a rule would 'eviscerate' the limits on personal jurisdiction over out-of-state defendants. Instead, for website activity to support the exercise of personal jurisdiction, '[s]omething more is necessary, such as interactive features which allow the successful online ordering of the

defendant's products.'") (internal citations omitted); *Toys "R" Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 452 (3d Cir. 2003) ("Since Zippo, several district court decisions from this Circuit have made explicit the requirement that the defendant intentionally interact with the forum state via the web site in order to show purposeful availment and, in turn, justify the exercise of specific personal jurisdiction. . . . As another district court in this Circuit put it, '[c]ourts have repeatedly recognized that there must be "something more" . . . to demonstrate that the defendant *directed its activity towards the forum state*.'") (internal citations omitted) (emphasis by the court); *McFadin v. Gerber*, 587 F.3d 753, 762 (5th Cir. 2009) ("We have distinguished 'passive' and 'active' websites in examining a claimed showing of minimum contacts. Here the website was passive, providing no means for orders, offering only Grenemyer's contact information. We have found similar webpages to be insufficient to meet minimum contacts."); *Soma Med. Int'l v. Standard Chartered Bank*, 196 F.3d 1292, 1297 (10th Cir. 1999) ("Assuming Soma adequately raised the issue of the website before the district court, we have no difficulty concluding that it is the type of website which does not subject its creator, SCB, to personal jurisdiction in Utah, under any standard promulgated by any court. The website appears to be a 'passive Web site that does little more than make information available to

those who are interested' and one in which SCB 'has simply posted information on an Internet Web site which is accessible to users in foreign jurisdictions.' Soma has failed to carry even its relatively light burden of making a prima facie showing that the website is anything more than such a passive informational site.") (internal citations omitted).

Based on the foregoing, the Court finds that Shah could not reasonably anticipate being haled into court in Tennessee simply for using Drexel's website and expressing concerns that its tracking software violated California law. Should this Court have subject matter jurisdiction over Drexel's claim, the Court dismisses Drexel's action against Shah for lack of personal jurisdiction pursuant to Tenn. R. Civ. P. 12.02(2).

C. DREXEL'S COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

Should it have subject matter jurisdiction and personal jurisdiction, the Court reaches Shah's Tenn. R. Civ. P. 12.02(6) motion to dismiss for failure to state a claim. Shah contends that the explicit purpose of Drexel's action is to force Shah into Drexel's preferred forum and have this Court adjudicate the viability of his "unfiled Pro Se CIPA Complaint." *See* Pl.'s Compl. at p. 24; *see also id.* at p. 22, ¶ 66 ("Drexel requests the Court to declare the parties' rights

and obligations under the California Invasion of Privacy Act as specifically alleged in the unfiled Pro Se CIPA Complaint[.]").

Tennessee law has long forbidden preemptive declaratory judgment actions by about-to-be defendants. *See, e.g., Tenn. Farmers Mut. Ins. Co. v. Hammond*, 200 Tenn. 106, 114, 290 S.W.2d 860, 863 (1956) ("The complainant by this suit anticipates that a tort action will be instituted against it based upon its alleged lack of good faith in negotiating a settlement, to Hammond's damage. In seeking a declaratory judgment the complainant would force the defendant into a forum, and at a time of complainant's own choosing and compel him to litigate his tort action in the Chancery Court. For this reason the Chancellor was right in dismissing the complainant's bill."); *Brown & Williamson Tobacco Corp.*, 18 S.W.3d at 194 ("[T]he trial court did not act arbitrarily in declining to render a declaratory opinion to assist the intervenors in their other litigation or otherwise allay their fears as to what might occur in the future. The dismissal of the declaratory judgment action was entirely proper."); *Safeco Ins. Co. of Am. v. Simpson Bridge Co.*, No. 03A01-9510-CH-00361, 1996 WL 87449, at *3 (Tenn. Ct. App. Feb. 29, 1996) ("[*Hammond*] teaches that such 'preemptive strikes' are improper for declaratory judgment"); *see also Charter Oak Fire Ins. Co. v. Broan Nutone, LLC*, 348 F. Supp. 2d 934,

939 (W.D. Tenn. 2004) ("Courts, including Tennessee courts, disfavor the use of declaratory judgment proceedings by alleged tortfeasors to gain judgments of non-liability in tort actions.").

As other courts have recognized, allowing a litigant to abuse declaratory judgment actions through preemptive litigation "would be a perversion of the [Illinois] Declaratory Judgment Act." *See Cunningham Bros. v. Bail*, 407 F.2d 1165, 1167 (7th Cir. 1969); *see also Encore Furniture Thrifts & More, LLC v. Doubletap, Inc.*, 281 F. Supp. 3d 665, 669 (M.D. Tenn. 2017) ("Coercive actions should, with few exceptions, be given precedence over declaratory judgment actions, even when a declaratory judgment action presenting similar parties and issues is filed first."); *Allendale Mut. Ins. Co. v. Bull Data Sys., Inc.*, 10 F.3d 425, 431 (7th Cir. 1993) ("[A] suit for declaratory judgment aimed solely at wresting the choice of forum from the 'natural' plaintiff will normally be dismissed and the case allowed to proceed in the usual way.") (citing *Tempco Electric Heater Corp. v. Omega Engineering, Inc.*, 819 F.2d 746, 749–50 (7th Cir. 1987)).

In light of this, Drexel's Complaint in essence deploys a long-forbidden tactic employed by defendants-to-be. But Tennessee law bars such use of its Declaratory Judgments Act, which is "'obviously contrary to the spirit and

purpose of the Declaratory Judgments Law[,]'" *see Southern Fire & Cas. Co. v. Cooper*, 200 Tenn. 283, 292 S.W.2d 177, 178 (1956) (quoting *McFarland v. Crenshaw*, 160 Tenn. 170, 175, 22 S.W.2d 229, 230 (1929)). As a result, Drexel's Complaint is dismissed for failure to state a claim upon which relief can be granted pursuant to Tenn. R. Civ. P. 12.02(6), assuming that the Court otherwise might have both subject matter jurisdiction and personal jurisdiction herein.

D. DREXEL'S COMPLAINT IS DISMISSED UNDER THE TPPA.

The TPPA states that it may be used as a vehicle for dismissal "[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." Tenn. Code Ann. § 20-17-104(a). "The 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). The Court shall also dismiss a complaint under the TPPA when the petitioning party establishes valid defenses to the claims contained in the complaint. Tenn. Code. Ann. § 20-17-105(c). When the petitioning party satisfies either burden, the burden shifts to the responding party to establish the essential elements of its complaint. Tenn. Code Ann. § 20-17-105(b).

As such, the Court evaluates whether Shah has satisfied his burden of (1) proving the TPPA applies to the instant case and (2) establishing valid defenses to Drexel's Complaint for Declaratory Judgment.

1. **Drexel filed this action in response to Shah's exercise of his right of free speech.**

Drexel filed this legal action in response to—and in relation to—Shah's right to free speech. *See* Tenn. Code Ann. § 20-17-105(a). Under Tennessee Code Annotated 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." Under the TPPA, a "[m]atter 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[.]

Tenn. Code Ann. § 20-17-103(6) (emphases added).

Shah's demand letter to Drexel was a "communication" within the meaning of the TPPA. Tenn. Code Ann. § 20-17-103(1) (defining "communication" as "the making or submitting of a statement or document in any form or medium, including oral, written, audiovisual, or electronic"). Additionally, threatening litigation is widely recognized as First Amendment-protected speech. *See Elvis Presley Enters., Inc. v. City of Memphis*, 620 S.W.3d 318, 322 (Tenn. 2021) (the "threat to sue" is a "protected right[]") (quoting the trial court); *see also, e.g., Goodell v. Ervin*, 591 F. Supp. 3d 232, 240 (E.D. Mich. 2022) ("Plaintiff threatened to file suit, as was his First Amendment right."); *Clinton v. Pollard*, No. 3:23-cv-0119, 2023 WL 3510410, at *7 (S.D. Cal. May 17, 2023) ("[A] plaintiff's threat to sue is protected conduct under the First Amendment.") (citing *Entler v. Gregoire*, 872 F.3d 1031, 1039–40 (9th Cir. 2017) (There is "no distinction between a threat to initiate litigation and the litigation.")); *Palermo v. Wrenn*, No. 11-cv-337, 2012 WL 405493, at *10 (D.N.H. Feb. 8, 2012) ("A threat to file suit is also conduct protected by the First Amendment."), *report and recommendation approved sub nom. Palermo v. NH Dep't of Corr., Com'r*, No. 11-cv-337, 2012 WL 1415118 (D.N.H. Apr. 20,

2012); *MPHJ Tech. Invs., LLC v. Fed. Trade Comm'n*, No. W-14-CV-011, 2014 WL 12495297, at *5 (W.D. Tex. Sept. 16, 2014) ("pre-litigation threats to sue" are protected by the First Amendment), *judgment entered sub nom. MPHJ Tech. Invs., LLC v. F.T.C.*, No. W-14-CV-011, 2014 WL 10222410 (W.D. Tex. Sept. 16, 2014).

Further, by sending a demand letter expressing his objections to Drexel's alleged violations of CIPA and his privacy rights, *see* Ex. 2, Informal Dispute Resolution Letter, Shah communicated about a matter of public concern: Drexel's asserted activity in illicitly surveilling and collecting user data in violation of California law. *See* Tenn. Code Ann. § 20-17-103(6)(E), (G).

For these reasons, Shah has satisfied his burden of proving that Drexel filed this action in response to his exercise of the right to free speech. *See* Pl.'s Compl.; Pl.'s Compl. Ex. 1. Thus, the TPPA applies here. *See* Tenn. Code Ann. § 20-17-104(a).

2. **Drexel filed this action in response to Shah's exercise of his right to petition.**

Drexel's legal action also "relates to" Shah's exercise of his right to petition. *See* Tenn. Code Ann. § 20-17-105(a). 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 [among other things]:
>
> > (A) Is intended to encourage consideration or review of an issue by a federal, state, or local legislative, executive, judicial, or other governmental body;

Tenn. Code Ann. § 20-17-103(4)(A).

Tennessee courts have found this definition to be 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."); *see also Patel v. Patel*, No. M2024-01371-COA-R3-CV, 2026 WL 1393187, at *11 (Tenn. Ct. App. May 19, 2026) (interpreting the TPPA).

Section 20-17-103(4) explicitly recognizes that a communication to a judicial body is a "petition" within the meaning of the TPPA. Section 20-17-103(4)'s explicit recognition that a communication to a "state . . . judicial . . . body" is a "petition" within the meaning of the TPPA also conforms with longstanding U.S. Supreme Court jurisprudence instructing that lawsuits are petitions. *See Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. 379, 387 (2011) ("This Court's precedents confirm that the Petition Clause protects the right

of individuals to appeal to courts and other forums established by the government for resolution of legal disputes.") (citing *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 896-97 (1984) ("[T]he right of access to courts for redress of wrongs is an aspect of the First Amendment right to petition the government[.]"); *BE & K Constr. Co. v. NLRB*, 536 U.S. 516, 524-25 (2002) ("We have recognized this right to petition as one of 'the most precious of the liberties safeguarded by the Bill of Rights,' *Mine Workers v. Illinois Bar Assn.*, 389 U.S. 217, 222 (1967), and have explained that the right is implied by '[t]he very idea of a government, republican in form,' *United States v. Cruikshank*, 92 U.S. 542 (1876)"); *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972) ("[T]he right to petition extends to all departments of the Government. The right of access to the courts is indeed but one aspect of the right of petition.").

Here, Shah communicated to Drexel that he intended to sue, in California Superior Court, over Drexel's alleged violations of the California Invasion of Privacy Act. *See* Ex. 2. Shah also sent Drexel a draft of his contemplated complaint. *Id.* In response, Drexel sued Shah regarding the draft complaint. *See generally* Pl.'s Compl. Thus, Drexel's complaint "relates to" Shah's exercise of his right to petition. *See* Tenn. Code Ann. § 20-17-105(a).

3. Shah has established valid defenses to Drexel's action.

The TPPA instructs that "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). The TPPA explicitly states that the legislative intent is "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.

Shah has raised the valid defense of lack of subject matter jurisdiction pursuant to Tenn. R. Civ. P. 12.02(1) in response to Drexel's complaint. For reasons stated herein, the Court finds this defense to be valid and therefore dismisses Drexel's complaint pursuant to the nondiscretionary legislative directive of Tenn. Code Ann. § 20-17-105(c).

4. Costs, Attorney's Fees, and Sanctions

Tennessee Code Annotated Section 20-17-107(a)(1) states that when a court dismisses a complaint pursuant to the TPPA, the court shall award "court costs, reasonable attorney's fees, discretionary costs, and other expenses incurred in filing and prevailing upon the petition." This section also grants courts the discretion to award "any additional relief, including

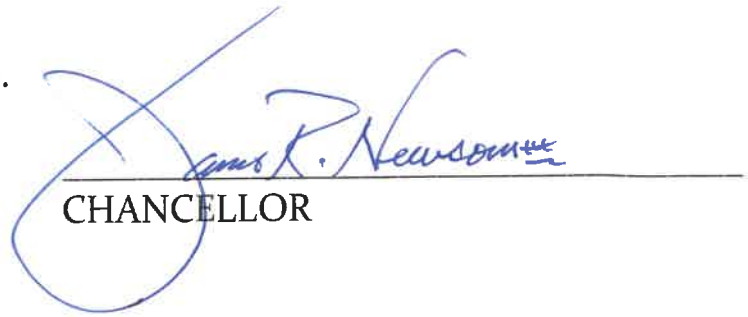
sanctions, that the court determines necessary." Tenn. Code Ann. § 20-17-107(a)(2). Pursuant to Tenn. Code Ann. § 20-17-107(a)(2), the Court awards Shah his costs associated with the filing and litigation of his TPPA petition together with his reasonable attorney's fees to be determined by the Court considering the factors set forth in Tenn. Sup. Ct. Rule 8, Rule of Professional Conduct 1.5.

CONCLUSION

In conclusion, the Court rules that Shah's Tenn. R. Civ. P. 12.02(1) motion to dismiss is **GRANTED**, as this Court lacks subject matter jurisdiction to adjudicate the matter. In the alternative, the Court rules that Shah's Tenn. R. Civ. P. 12.02(2) motion to dismiss is **GRANTED**, as this Court lacks personal jurisdiction over Shah. In the alternative, the Court rules that Shah's Tenn. R. Civ. P. 12.02(6) motion to dismiss is **GRANTED**, as Drexel's Complaint fails to state a claim against Shaw on which relief may be granted. Additionally, the Court finds that Shah's TPPA petition is **GRANTED**. Shah shall be awarded his reasonable fees and expenses incurred in filing and litigating the petition in this Court as provided in Tennessee Supreme Court Rule 8, Rule of Professional Conduct 1.5, to be determined at a writ of inquiry. Court costs are assessed against Plaintiff Drexel Chemical Co.

SO ORDERED.

This 5th day of June, 2026.



CHANCELLOR

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing *Order Granting Motions to Dismiss* has been served via U.S. Mail, hand-delivery and/or electronic mail on the 5th day of June 2026, on the following:

Michael F. Rafferty
6060 Primacy Parkway, Suite 100
Memphis, Tennessee 38119
mrafferty@harrisshelton.com
Attorney for Plaintiff, Drexel Chemical Company

Daniel A. Horwitz
Sarah L. Martin
Laura E. Cantwell
HORWITZ LAW, PLLC
4016 Westlawn Dr.
Nashville, TN 37209
Daniel@Horwitz.Law
Sarah@Horwitz.Law
Laura@Horwitz.Law
Attorneys for Defendant, Vivek Shah

CHANCERY COURT SHELBY COUNTY, TENN.

Deputy Court Clerk