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III. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the Defendants should recover their attorney's fees, costs, and expenses associated with this appeal.

IV. STANDARDS OF REVIEW

1. “A party that properly recovers fees in the trial court need not show that an appeal is independently meritless: the rationale supporting fees in the trial court carries over and supports the defense of the award on appeal.” *Milan Supply Chain Sols., Inc. v. Navistar, Inc.*, 627 S.W.3d 125, 161 (Tenn. 2021).

V. INTRODUCTION

Before this case was dismissed under the Tennessee Public Participation Act, it may have been the worst SLAPP-suit¹ this jurisdiction has seen. The Plaintiffs are three elected officials who serve as Aldermen for the City of Fayetteville. The Defendants—Jon Law and Tina Sanders—are Fayetteville residents who petitioned the Aldermen about local issues on Facebook. Mr. Law petitioned the Aldermen to express his opposition to a proposed local tax increase. Ms. Sanders did so in the hopes that the City of Fayetteville would improve its maintenance of a public park.

The Aldermen were upset about Mr. Law and Ms. Sanders' petitioning campaigns. Thus, the Aldermen sued Mr. Law and Ms. Sanders for \$750,000.00, plus punitive damages, plus attorney's fees.

The Aldermen's lawsuit asserted that the Defendants' petitioning campaigns tortiously invaded the Aldermen's privacy because the Defendants' Facebook posts included the Aldermen's personal cell phone numbers. As a matter of law, no element of an invasion of privacy claim could be met under the circumstances presented here, though.

The Aldermen's theory of relief also suffered from factual problems.

¹ “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.’” *Nandigam Neurology, PLC v. Beavers*, 639 S.W.3d 651, 657 (Tenn. Ct. App. 2021) (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*.

For example, two of the Aldermen had published and disseminated *their own* cell phone numbers on their public candidate nominating petitions, while the third had allowed her cell phone number to be published by the City of Fayetteville in connection with her government service. Alderman Martinez had also published his own cell phone number to the public in an online advertisement. All three Aldermen had used their cell phones to conduct official city business, too.

After being sued, Mr. Law and Ms. Sanders petitioned to dismiss the Aldermen's Complaint under the Tennessee Public Participation Act. The Aldermen opposed dismissal through hearing and afterward.

Ultimately, the trial court granted Mr. Law and Ms. Sanders' TPPA petition to dismiss the Aldermen's Complaint. Having granted Mr. Law and Ms. Sanders' TPPA Petition, an award of reasonable attorney's fees, discretionary costs, and other expenses was mandatory under Tennessee Code Annotated § 20-17-107(a)(1). Thus, in addition to dismissing the Aldermen's Complaint, the trial court awarded Mr. Law and Ms. Sanders their reasonable attorney's fees, discretionary costs, and other expenses.

The Aldermen then appealed. As a result, Mr. Law and Ms. Sanders dug in to defend this appeal, and their attorneys devoted additional time and expense to their defense of this case through appeal.

When it finally came time for the Aldermen to prosecute their appeal, though, they demurred. Thus, after imposing months of extra expenses related to this appeal, the Aldermen moved to dismiss their appeal during their briefing period.

Following this Court's May 28, 2024 Order—which dismissed the Aldermen's appeal but allowed Mr. Law and Ms. Sanders to proceed as

Appellants—this appeal is now limited to a single issue: Whether Mr. Law and Ms. Sanders should recover their attorney’s fees, costs, and expenses associated with the Aldermen’s appeal. The answer is yes. As the Tennessee Supreme Court has explained, where—as here—a party “properly recovers fees in the trial court[,]” that party “need not show that an appeal is independently meritless: the rationale supporting fees in the trial court carries over and supports the defense of the award on appeal.” *Milan Supply Chain Sols., Inc.*, 627 S.W.3d at 161. Further, the TPPA’s mandatory fee-shifting provision “allows for an award of reasonable attorney’s fees incurred on appeal, provided that the court dismisses a legal action pursuant to a petition filed under this chapter and that such fees are properly requested in an appellate pleading.” *Nandigam Neurology, PLC v. Beavers*, 639 S.W.3d at 670.

Given these standards—and because Mr. Law and Ms. Sanders are the prevailing parties in this TPPA appeal—this Court should order that Mr. Law and Ms. Sanders’ “request for attorney’s fees is well-taken.” *Id.* Afterward, this Court should remand “for a determination of the proper amount of reasonable fees incurred by Defendant[s] during this appeal.” *Id.*

VI. STATEMENT OF THE CASE

In October 2023, three City of Fayetteville Aldermen—Plaintiffs Dorothy Small, Tonya Allen, and Roger Martinez—sued Fayetteville residents Jon Law and Tina Sanders (whom the Plaintiffs’ Complaint misnamed Tina Osgood) for invasion of privacy.² Mr. Law and Ms. Sanders responded to the Aldermen’s Complaint by petitioning to dismiss it under the Tennessee Public Participation Act.³ The Aldermen opposed Mr. Law and Ms. Sanders’ TPPA Petition.⁴

Mr. Law and Ms. Sanders’ TPPA Petition then came before the trial court for hearing on December 13, 2023.⁵ After taking the Parties’ dispute under advisement, on January 23, 2024, the trial court entered a memorandum order granting Mr. Law and Ms. Sanders’ TPPA Petition and dismissed the Aldermen’s Complaint.⁶ Based on the mandatory provisions of Tennessee Code Annotated § 20-17-107(a)(1), the trial court also awarded Mr. Law and Ms. Sanders “their court costs, reasonable attorney’s fees, discretionary costs, and other expenses incurred in filing and prevailing upon the petition[.]”⁷

The Aldermen then exercised their right to an immediate appeal under Tenn. Code Ann. § 20-17-106.⁸ Afterward, further litigation

² R. (Vol. 1) at 1–9.

³ *Id.* at 14–16 (TPPA Petition); *id.* at 28–89 (Memorandum in Support of TPPA Petition).

⁴ *Id.* at 90–97.

⁵ R. (Vol. 2) at 121–161.

⁶ *Id.* at 195–218.

⁷ *Id.* at 217.

⁸ *Id.* at 219.

related to the Aldermen’s appeal—including cross-Rule 24 statements about the documents to be included in the appellate record—unfolded in the trial court.⁹ On March 1, 2024, the Aldermen filed notice of the issues that they intended to present in this appeal.¹⁰ Counsel for Mr. Law and Ms. Sanders then began preparing for the Aldermen’s appeal.

The appellate record was filed on May 2, 2024, thus commencing the Aldermen’s briefing period. One week later, the Aldermen filed a Notice and Motion for Voluntary Dismissal of Appeal.¹¹ Mr. Law and Ms. Sanders responded the same day.¹² Mr. Law and Ms. Sanders’ response stated that they “do not oppose the Appellants’ motion to dismiss their appeal” but notified this Court that—notwithstanding that dismissal—Mr. Law and Ms. Sanders intended to litigate an appellate issue of their own concerning their right to appellate attorney’s fees.¹³

On May 28, 2024, this Court entered an order stating that “the appeal of Dorothy Small, Tonya Allen, and Roger Martinez is dismissed under Tenn. R. App. P. 15.”¹⁴ This Court further ordered that this appeal “shall proceed solely as to issue of attorney’s fees raised by Jon Law and Tina Marie Sanders.”¹⁵

⁹ *Id.* at 231–233; *id.* at 237–38; *id.* at 239–41.

¹⁰ **Ex. 1**, Mar. 1, 2024 Docketing Statement, Case No. M2024-00255-COA-R3-CV.

¹¹ Appellants’ Notice and Motion for Voluntary Dismissal of Appeal (May 9, 2024).

¹² Appellees’ Resp. to Appellants’ Mot. for Voluntary Dismissal of Appeal and Notice of Intent to Litigate Appellate Issues (May 9, 2024).

¹³ *Id.* at 1.

¹⁴ Order (May 28, 2024).

¹⁵ *Id.*

VII. STATEMENT OF FACTS

The Plaintiffs are three elected officials who serve as Aldermen for the City of Fayetteville, Tennessee.¹⁶ The Aldermen sued two Fayetteville residents—Mr. Law and Ms. Sanders—in response to their online petitions advocating their opposition to a proposed tax increase and their support for improving maintenance of a city park, respectively.¹⁷ The Aldermen sued Mr. Law and Ms. Sanders for \$750,000.00, plus punitive damages, plus attorney’s fees.¹⁸

The Aldermen’s Complaint asserted that Mr. Law and Ms. Sanders’ publication of the Aldermen’s “personal and private mobile phone numbers” as part of their petitioning campaigns tortiously invaded the Aldermen’s privacy and caused them to suffer massive damages in the form of “severe mental anguish, emotional distress, worry, and embarrassment.”¹⁹ Legally, this transparently retaliatory theory of relief was preposterous, as no element of an invasion of privacy claim could be met as a matter of law under the circumstances presented. For a host of reasons, though, the Aldermen’s theory of relief was even worse as a *factual* matter. Among them:

1. Two of the Aldermen—Tonya Allen and Roger Martinez—had published and disseminated *their own* cell phone numbers on their own public candidate nominating petitions;²⁰

¹⁶ R. (Vol. 1) at 2, ¶ 7.

¹⁷ *Id.* at 6; *id.* at 8.

¹⁸ *Id.* at 3–4.

¹⁹ *Id.* at 1–4.

²⁰ *Id.* at 56; *id.* at 61.

2. Alderman Martinez had published his cell phone number to the public on the internet while trying to sell a Honda CRV;²¹

3. Alderman Small's cell phone number was published to the public by the Fayetteville Regional Planning Commission in accordance with official city business;²² and

4. As Fayetteville's Mayor attested, all three Aldermen used their personal cell phones in their official capacities to conduct the public's business.²³

After being confronted with Mr. Law and Ms. Sanders' TPPA Petition to dismiss their Complaint,²⁴ the Aldermen attempted both to extend this litigation and evade consequences for it. They began by responding in opposition to Mr. Law and Ms. Sanders' TPPA Petition²⁵ and arguing against it at hearing.²⁶ The Aldermen did not respond in a way that was plausibly calculated to prevail, though. In particular, although the TPPA required the Aldermen to come forward with "admissible evidence" supporting their claims, *see* Tenn. Code Ann. § 20-17-105(a)–(d), the Aldermen's response included no evidence whatsoever,²⁷ thereby affording them no chance of success. *Cf. Nandigam Neurology, PLC*, 639 S.W.3d at 658 ("Plaintiffs in SLAPP

²¹ *Id.* at 67.

²² R. (Vol. 2) at 166.

²³ R. (Vol. 1) at 78, ¶¶ 4–6.

²⁴ *Id.* at 14–16 (TPPA Petition); *id.* at 28–89 (Memorandum in Support of TPPA Petition).

²⁵ *Id.* at 90–97.

²⁶ R. (Vol. 2) at 121–61.

²⁷ R. (Vol. 1) at 90–97.

suits do not intend to win but rather to chill a defendant’s speech or protest activity and discourage opposition by others through delay, expense, and distraction.”).

Weeks after hearing—but just before the Court’s scheduled ruling on Mr. Law and Ms. Sanders’ TPPA Petition—the Aldermen attempted to evade the TPPA’s mandatory consequences by voluntarily dismissing their Complaint without prejudice.²⁸ Because, among other things, a motion for summary judgment was pending at the time, though,²⁹ the Aldermen could not nonsuit as of right. Thus, Mr. Law and Ms. Sanders objected to the Aldermen’s attempted nonsuit,³⁰ and the trial court sustained their objections.³¹

The trial court then granted Mr. Law and Ms. Sanders’ TPPA Petition and dismissed the Aldermen’s Complaint with prejudice.³² Based on the mandatory provisions of Tennessee Code Annotated § 20-17-107(a)(1), the trial court further ordered that Mr. Law and Ms. Sanders would be awarded “their court costs, reasonable attorney’s fees, discretionary costs, and other expenses incurred in filing and prevailing upon the petition[.]”³³

The Aldermen then exercised their right to an immediate appeal under Tenn. Code Ann. § 20-17-106.³⁴ Afterward, the Parties filed cross-

²⁸ R. (Vol. 2) at 169–170.

²⁹ R. (Vol. 1) at 17–27.

³⁰ R. (Vol. 2) at 171–174.

³¹ *Id.* at 196.

³² *Id.* at 195–218.

³³ *Id.* at 217.

³⁴ *Id.* at 219.

Rule 24 statements in the trial court about the documents to be included in the record on appeal and whether the transcript should be filed as part of the appellate record.³⁵

On March 1, 2024, the Aldermen filed notice of the issues they intended to present in this appeal.³⁶ Further evidencing that the true purpose of this SLAPP-suit was not “to win,” see *Nandigam Neurology, PLC*, 639 S.W.3d at 658, the Aldermen did not even plan to contest the merits of the trial court’s order granting Mr. Law and Ms. Sanders’ TPPA Petition.³⁷ Instead, the Aldermen proposed to challenge only:

1. “Whether or not the trial court erred in granting defendants’ Tenn. Code Ann. § 20-17-104(a) Petition to Dismiss the Plaintiffs’ Complaint pursuant to the Tennessee Public Participation Act after plaintiffs had filed a Notice of Voluntary Dismissal Without Prejudice[;]” and
2. “Whether or not defendants’ motion for summary judgment was procedurally deficient as it did not include a statement of material undisputed facts as required by Rule 56.03 of the Tennessee Rules of Civil Procedure[.]”³⁸

Counsel for Mr. Law and Ms. Sanders then began preparing for this appeal. A week into the Aldermen’s briefing period, though, the Aldermen filed a Notice and Motion for Voluntary Dismissal of Appeal.³⁹ As an explanation, the Aldermen stated: “Upon further careful

³⁵ *Id.* at 231–233; *id.* at 237–38; *id.* at 239–41.

³⁶ **Ex. 1**, Mar. 1, 2024 Docketing Statement, Case No. M2024-00255-COA-R3-CV.

³⁷ *Id.* at 2.

³⁸ *Id.*

³⁹ Appellants’ Notice and Motion for Voluntary Dismissal of Appeal (May 9, 2024).

consideration of the merits of the issues to be raised on appeal and in the interest of saving further costs of litigation associated with the appeal, appellants have decided to voluntarily dismiss their appeal.”⁴⁰ The Aldermen did not state their willingness to pay Mr. Law and Ms. Sanders for the extra expenses the Aldermen had imposed related to their appeal, however.⁴¹ Thus, Mr. Law and Ms. Sanders notified this Court of their intent to pursue that issue notwithstanding the Aldermen’s dismissal of their own appeal,⁴² and this appeal followed.

⁴⁰ Memorandum in Supp. of Appellants’ Notice and Motion for Voluntary Dismissal of Appeal (May 9, 2024), at 1.

⁴¹ *Id.* at 1–2.

⁴² Appellees’ Resp. to Appellants’ Mot. for Voluntary Dismissal of Appeal and Notice of Intent to Litigate Appellate Issues (May 9, 2024).

VIII. ARGUMENT

A. THE DEFENDANTS HAVE A RIGHT TO RECOVER THEIR ATTORNEY'S FEES, COSTS, AND EXPENSES ASSOCIATED WITH THIS APPEAL.

Mr. Law and Ms. Sanders have a right to recover their attorney's fees, costs, and expenses associated with this appeal on three grounds.

First, Mr. Law and Ms. Sanders properly recovered fees in the trial court, and the rationale supporting fees in the trial court carries over on appeal.

Second, the TPPA's fee-shifting provision is mandatory, and it extends to appellate expenses.

Third, Mr. Law and Ms. Sanders are the prevailing parties in this appeal based on the Aldermen's voluntary dismissal of their appeal. As a result, Mr. Law and Ms. Sanders have a right to recover their expenses in this TPPA appeal under Tennessee Code Annotated § 20-17-107(a)(1).

For all of these reasons—or for any of them—this Court should rule that Mr. Law and Ms. Sanders' "request for attorney's fees is well-taken" and remand "for a determination of the proper amount of reasonable fees incurred by [them] during this appeal." *Nandigam Neurology, PLC*, 639 S.W.3d at 670.

1. Mr. Law and Ms. Sanders properly recovered fees in the trial court, and the rationale supporting fees in the trial court carries over on appeal.

"A party that properly recovers fees in the trial court need not show that an appeal is independently meritless: the rationale supporting fees in the trial court carries over and supports the defense of the award on appeal." *Milan Supply Chain Sols., Inc.*, 627 S.W.3d at 161. Here, the trial court properly awarded Mr. Law and Ms. Sanders their fees and

expenses under Tenn. Code Ann. § 20-17-107(a)(1), a mandatory fee-shifting provision.⁴³

The sole determination that controls whether fees and expenses must be awarded under Tenn. Code Ann. § 20-17-107(a)(1) is whether “the court dismisses a legal action pursuant to a petition filed under” the Tennessee Public Participation Act. *Id.* That happened below.⁴⁴ By dismissing their own appeal here, the Aldermen have also abandoned any claim that the trial court’s order dismissing their Complaint pursuant to Mr. Law and Ms. Sanders’ TPPA Petition was erroneous. Thus, “the rationale supporting fees in the trial court carries over” to this appeal, and Mr. Law and Ms. Sanders should be awarded their costs, reasonable attorney’s fees, and other expenses associated with this appeal. *Milan Supply Chain Sols., Inc.*, 627 S.W.3d at 161.

2. The TPPA’s fee-shifting provision is mandatory, and it extends to appellate expenses.

Tenn. Code Ann. § 20-17-107(a)(1) provides that: “(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[.]” *Id.* Further, as the Tennessee Supreme Court has explained, “legislative provisions for an award of reasonable attorney’s fees need not make a specific reference to appellate work to support such an award where the legislation has broad remedial aims.” *Killingsworth v. Ted Russell Ford, Inc.*, 205 S.W.3d 406, 409

⁴³ R. (Vol. 2) at 217 (citing Tenn. Code Ann. § 20-17-107(a)(1)).

⁴⁴ *Id.*

(Tenn. 2006).

Taking these considerations together, this Court has “conclude[d] that the TPPA allows for an award of reasonable attorney’s fees incurred on appeal, provided that the court dismisses a legal action pursuant to a petition filed under this chapter and that such fees are properly requested in an appellate pleading.” *Nandigam Neurology, PLC*, 639 S.W.3d at 670 (citing Tenn. Code Ann. § 20-17-107; *Killingsworth*, 205 S.W.3d at 409). These standards are met here. In particular, due to this Court’s May 28, 2024 Order dismissing the Aldermen’s appeal, the trial court’s order dismissing the Aldermen’s Complaint pursuant to Mr. Law and Ms. Sanders’ TPPA Petition is now final and unappealable. Further, Mr. Law and Ms. Sanders have requested appellate fees and expenses in their briefing in this appeal, and they have expressly raised their entitlement to appellate fees and expenses as an issue in their Statement of the Issues, *see supra* at 5. *Cf. Killingsworth*, 205 S.W.3d at 412 (“In order to be awarded such fees, a [litigant] must initially request them in his or her appellate pleadings in a timely manner.”); *Stormes v. FF Prop. Holdings, LLC*, No. E2023-01430-COA-R3-CV, 2024 WL 2783129, at *4 (Tenn. Ct. App. May 30, 2024) (“A request for attorney fees on appeal is waived if not included in the statement of issues.”); *Charles v. McQueen*, No. M2021-00878-COA-R3-CV, 2022 WL 4490980, at *2, n.1 (Tenn. Ct. App. Sept. 28, 2022), *appeal granted*, No. M2021-00878-SC-R11-CV, 2023 WL 2470285 (Tenn. Mar. 9, 2023) (a claim to appellate TPPA fees must be “expressly raise[d] as an issue in [the] brief”).

Mr. Law and Ms. Sanders also had to maintain their defense of this

action through appeal to secure the ultimate relief they sought: a final and unappealable judgment that the Aldermen’s claims against them are dismissed under the TPPA. Thus, absent their willingness to defend this litigation through appeal after the Aldermen filed their notice of appeal, Mr. Law and Ms. Sanders would not have achieved the favorable outcome they did. As a result, an award compensating Mr. Law and Ms. Sanders for all further proceedings related to this appeal is not only warranted; it is *mandated*. See Tenn. Code Ann. § 20-17-107(a)(1); *cf. Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1305 (11th Cir. 1988) (“To paraphrase the acute observation of baseball great Yogi Berra, a case ain’t over till it’s over. This means that [attorneys] are entitled to compensation until all benefits obtained by the litigation are in hand.”).

For these reasons, this Court should rule that Mr. Law and Ms. Sanders’ “request for attorney’s fees is well-taken” and remand “for a determination of the proper amount of reasonable fees incurred by [them] during this appeal.” *Nandigam Neurology, PLC*, 639 S.W.3d at 670.

3. The Defendants are the prevailing parties in this TPPA appeal.

Mr. Law and Ms. Sanders are the prevailing parties in this TPPA appeal, which independently justifies an award under Tenn. Code Ann. § 20-17-107(a)(1). With respect to Mr. Law and Ms. Sanders’ prevailing party status, the issue is not just that they succeeded in securing a voluntary dismissal of this appeal, though that alone would be sufficient. *Cf. Freeman v. CSX Transp., Inc.*, 359 S.W.3d 171, 180 (Tenn. Ct. App. 2010) (“Tennessee courts have held that a defendant is a prevailing party when a plaintiff voluntarily dismisses her suit . . . regardless of whether

the plaintiff has re-filed her suit, or intends to.”); *JPMorgan Chase Bank v. Franklin Nat. Bank*, No. M2005-02088-COA-R3-CV, 2007 WL 2316450, at *8 (Tenn. Ct. App. Aug. 13, 2007) (“For the purpose of Tenn. R. Civ. P. 54.02(2), FNB was the prevailing party because Chase voluntarily dismissed its suit.”); *Est. of Burkes ex rel. C.T.A. v. St. Peter Villa, Inc.*, No. W2006-02497-COA-R3-CV, 2007 WL 2634851, at *7 (Tenn. Ct. App. Sept. 12, 2007) (“It makes more sense to simply hold, as did the Court in *JP Morgan*, that a defendant in a case that is voluntarily dismissed is necessarily the ‘prevailing party’ simply because the plaintiff ‘voluntarily dismissed its suit.’”) (quoting *JPMorgan Chase Bank*, 2007 WL 2316450, at *8); Tenn. Code Ann. § 20-12-110 (“In cases of nonsuit, dismissal, . . . or discontinuance, the defendant is the successful party, within the meaning of § 20-12-101.”); PARTY, Black’s Law Dictionary (11th ed. 2019) (a prevailing party is the party “in whose favor judgment is rendered, regardless of the amount of damages awarded[.]”); *CRST Van Expedited, Inc. v. E.E.O.C.*, 578 U.S. 419, 431 (2016) (“Common sense undermines the notion that a defendant cannot ‘prevail’ unless the relevant disposition is on the merits. Plaintiffs and defendants come to court with different objectives. . . . The defendant has . . . fulfilled its primary objective whenever the plaintiff’s challenge is rebuffed, irrespective of the precise reason for the court’s decision. The defendant may prevail even if the court’s final judgment rejects the plaintiff’s claim for a nonmerits reason.”).

Instead, the issue is that—by securing final merits relief under the TPPA *and then* securing dismissal of the Aldermen’s appeal of the order

granting them that relief—Mr. Law and Ms. Sanders successfully defended the trial court’s merits ruling from an attempt to modify it.

This chronology matters, because litigants who win fee-shifting awards based on a merits judgment need not win successive merits judgments afterward to maintain their prevailing party status. *Binta B. ex rel. S.A. v. Gordon*, 710 F.3d 608, 625 (6th Cir. 2013) (“After that initial determination, [parties] are not again required to establish prevailing party status in the conventional sense of requiring a judicially-sanctioned material change in the legal relationship of the parties.”). Instead, a party who wins an initial decree is entitled to be treated as a prevailing party for successfully defending or otherwise opposing the modification of the earlier decree alone. *Id.*; see also *Pottinger v. City of Miami*, 805 F.3d 1293, 1299 (11th Cir. 2015) (“attorneys’ fees can be awarded **for defending, enforcing, opposing the modification of, or monitoring compliance with an**” earlier-obtained decree) (emphases added).

Put another way: Mr. Law and Ms. Sanders prevailed on the merits below—and they won the right to fee-shifting under Tenn. Code Ann. § 20-17-107(a)(1)—when they secured an order from the trial court “dismiss[ing] [the Aldermen’s] legal action pursuant to” Mr. Law and Ms. Sanders’ TPPA Petition. *Id.* Afterward, Mr. Law and Ms. Sanders maintained their prevailing-party status by successfully opposing the Aldermen’s attempt to modify the trial court’s TPPA order on appeal. As a result, regardless of whether their success on appeal came as a result of a voluntary nonsuit, Mr. Law and Ms. Sanders are entitled to fee-shifting under Tenn. Code Ann. § 20-17-107(a)(1) for successfully “defending” and “opposing the modification of” the trial court’s earlier

decree. *Pottinger*, 805 F.3d at 1299 (“attorneys’ fees can be awarded for defending, enforcing, opposing the modification of, or monitoring compliance with an” earlier-obtained decree).

* * *

For all of these reasons—or for any of them—Mr. Law and Ms. Sanders have a right to recover their attorney’s fees, costs, and expenses associated with this appeal.

IX. CONCLUSION

Mr. Law and Ms. Sanders have a right to recover their attorney’s fees, costs, and expenses associated with this appeal. Thus, this Court should order that their “request for attorney’s fees is well-taken” and remand “for a determination of the proper amount of reasonable fees incurred by Defendant[s] during this appeal.” *Nandigam Neurology, PLC*, 639 S.W.3d at 670.

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CERTIFICATE OF ELECTRONIC FILING COMPLIANCE

Under Tennessee Supreme Court Rule 46, § 3.02, the relevant sections of this brief contain 4,112 words pursuant to § 3.02(a)(1)(a), as calculated by Microsoft Word, and it was prepared using 14-point Century Schoolbook font pursuant to § 3.02(a)(3).

By: /s/ Daniel A. Horwitz
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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of June, 2024, a copy of the foregoing was served via USPS mail, postage prepaid, via email, and/or via the Court's electronic filing system upon:

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