

NO. 18-003225-CV-CCL2

MARGARET MEECE
Plaintiff

VS.

GABRIEL GARCIA
Defendant

IN THE DISTRICT COURT

OF BRAZOS COUNTY, TEXAS

272ND JUDICIAL DISTRICT COURT

**PLAINTIFF'S RESPONSE TO DEEFENDANT'S
REPLY TO PLAINTIFF'S RESPONSE TO
MOTION TO DISMISS ANTI-SLAPP ACTION**

NOW COMES, MARGARET MEECE, Plaintiff in the above styled and numbered cause and files this, her Response to Defendant's Motion to Dismiss Anti-SLAPP Action, and for cause would show:

I. Introduction

1.1 Plaintiff and Defendant participated in the 2018 election for Brazos County District Clerk. Plaintiff seeks recovery of damages in this cause against Defendant for acts committed by Defendant in violation of the Texas Election Code. *Plaintiff's Original Petition, ¶¶ 11-12; Exhibit I.A, 17, §253.131, Texas Election Code and See, Exhibit I.A, pp. 43 and 44, §254.131, Texas Election Code, attached to Plaintiff's Original Petition.*

1.2 Plaintiff complains of Defendant's acceptance of multiple corporate contributions in violation of Title 15 Subchapter D of the Texas Election Code. *Plaintiff's Original Petition, ¶¶ 14-17; Exhibits I.A, p. 10, §253.003(e), Texas Election Code, and Exhibit I.B, attached to Plaintiff's Original Petition.* Plaintiff has provided clear and specific evidence of these corporate contributions from Boss-Chem. Corp., Valley Valve & Pipe Supply Company, Inc., K.D. Timmons, Inc., and Mobil. *Exhibits XIII.A-D, attached to Plaintiff's Original Petition.*

1.3 Plaintiff complains of Defendant's political expenditures made from political contributions in violation of Title 15 of the Texas Election Code. *Plaintiff's Original Petition, ¶ 19; Exhibit I.A, p. 11, §253.005, Texas Election Code, attached to Plaintiff's Original Petition.* Plaintiff additionally complains of Defendant's misrepresentation of the identity and source in political advertising or campaign communications. *Exhibit I.A, p. 46 §255.004 and 255.005 of the Texas Election Code, attached to Plaintiff's Original Petition.* Plaintiff complains of Defendant's failure to file or filing incomplete and deceptive reports and personal financial

statements required by law. *Plaintiff's Original Petition*, ¶20-22; *Local Gov't Code*, §§159.0071-008, *Exhibits I.A*, pp. 36, 42, and 43 §§254.065, 254.201, and 254.202, *Texas Election Code*, attached to *Plaintiff's Original Petition*. Plaintiff has provided clear and specific evidence of Defendant's violations. *IV.C*, p.4, attached to *Plaintiff's Original Petition*; see also *Exhibits I.A, I.B, II.A, IV.A* pp. 9, 11-20, 23, 24, *IV.B, IV.C, V.A, V.B, V.C, VI.A-XI.B, XIII.A-XIII.E, XIV, XV, XVI, XVII.A, and XVII.B.*

1.4 Plaintiff complains of Defendant's misrepresentation of businesses and corporations in which he claims or has an ownership interest. *Plaintiff's Original Petition*, ¶ 39. Plaintiff has provided clear and specific evidence of Defendant's deception. *Exhibits XIII.D, E, attached to Plaintiff's Original Petition.*

1.5 Plaintiff complains of Defendant's acceptance of a campaign contribution from a deceased person. *Plaintiff's Original Petition*, ¶ 42-44; *Exhibit I.A*, p. 18, § 253.133 and 253.134, *Texas Election Code*. Plaintiff has provided clear and specific evidence of Defendant's actions. *Exhibits IX.A, p. 11; XI.A, pp. 4, 12; and XVI.*

1.6 In response, Defendant has filed a Motion to Dismiss Plaintiff's claims pursuant to Chapter 27 of the Texas Civil Practice and Remedies Code, known as the Texas Citizens Participation Act (TCPA).

II. Applicability of the TCPA

2.1 Plaintiff seeks recovery from Defendant for acts committed by Defendant in violation of the Texas Election Code. The Texas Election Code *supersedes* any conflicting statute outside the Texas Election Code, *i.e.* the TCPA, unless the Texas Election Code or the outside statute, *i.e.* the TCPA, expressly provides otherwise. **TEX. ELECT. CODE §1.002(b).**

2.1.A. The Texas Election Code makes no provision authorizing the TCPA to supersede any of its provisions.

2.1.B. The TCPA makes no provision authorizing its imposition in claims arising under the Texas Election Code.

2.2 Therefore, the terms of the Texas Election Code **prohibit** application of the TCPA to Plaintiff's claims against Defendant. Defendant's Motion to Dismiss must be summarily denied.

III. Argument and Authorities

3.1 **TCPA Applicability.** Does the TCPA apply to Plaintiff's case? No.

3.2 The TCPA was enacted in 2011. Acts 2011, 82nd Leg., ch. 341, § 2, eff. June 17, 2011.

3.3 The Texas Election Code, §1.002, was enacted in 1985. Acts 1985, 69th Leg. Ch. 211, Sec. 1, eff. Jan. 1, 1986.

3.4 "With presumed full awareness of the statutory procedure for seeking judicial review of Commission orders finding violations of chapter 305, the legislature cannot have intended to undermine that very procedure in enacting the TCPA, especially considering the TCPA's purpose." *Sullivan v. Texas Ethics Commission*, 552 S.W.3d 848, 856 (Tex. App. – Austin Dec. 18, 2018, no pet. h.). The *Sullivan* court dealt with the issue of TCPA's applicability to appeals under the lobbyist registration act.

3.5 The *Sullivan* court noted that to "preserve and maintain the integrity of the legislative and administrative processes, it is necessary to disclose publicly and regularly the identity, expenditures, and activities of certain persons who, by direct communication with government officers, engage in efforts to persuade members of the legislative or executive branch to take specific actions." *Sullivan*, 552 S.W.3d at 854. This is also true of the Texas Election Code requirements that candidates for public office "disclose publicly and regularly the identity, expenditures, and activities of certain persons." See, *Texas Election Code* § 253.003 (*Exhibit IA, p. 15, attached to Plaintiff's Original Petition*), §§ 253.094 and 253.095 (*Exhibit I.A, p. 10, attached to Plaintiff's Original Petition*), § 253.005 (*Exhibit I.A, p. 11, attached to Plaintiff's Original Petition*), §§ 255.004 and 255.005 (*Exhibit I.A, p. 46, attached to Plaintiff's Original Petition*), §§ 254.065, 254.201 and 254.202 (*Exhibit I.A., pp. 36, 42, and 43, attached to Plaintiff's Original Petition*), § 254.041, (*Exhibit I.A., p. 34, attached to Plaintiff's Original Petition*), § 253.091, (*Exhibit I.A., p. 15, attached to Plaintiff's Original Petition*); *Local Gov't Code* §§159.0071-008.

3.6 As in *Sullivan*, within the regulatory statute, in this case the Texas Election Code, the legislature has identified government and individuals who may enforce the Texas Election Code's provisions, and it has outlined procedures for that enforcement. See, *Sullivan*, 552 S.W.3d at 854. Relevant to this suit, *inter alia*, are those provisions identified in paragraphs 11 and 12 of Plaintiff's Original Petition, providing a candidate's liability to candidates and authorizing recovery of damages. See, § § 253.131 and 254.231, **TEX. ELECT. CODE**, (*Exhibits I.A., pp. 17, 43 and 44, attached to Plaintiff's Original Petition*).

3.7 As in *Sullivan*, the regulatory statute, here the Texas Election Code, *presumes* that a complaint lodged against a candidate will be based on, relate to, or be in response to Defendant's exercise of rights identified under the TCPA. See, *Sullivan*, 552 S.W.3d at 854. *Sullivan* also acknowledges that the TCPA "does not protect the *unfettered* constitutional rights of free speech and to petition but, rather, expressly protects those rights only "to the maximum extent permitted by law." *Sullivan*, 552 S.W.3d at 853-854 (citing Tex. Civ. Prac. & Rem. Code § 27.002).

3.8 Well established rules of statutory construction prohibit application of the TCPA in this case. “A statute is presumed to have been enacted by the legislature with complete knowledge of the existing law and with reference to it.” *Sullivan*, 552 S.W.3d at 855 (citing *Acker v. Texas Water Comm’n*, 790 S.W.2d 299, 301 (Tex. 1990)). *Sullivan* held “[w]ith presumed full awareness of the statutory procedure for seeking judicial review of Commission orders finding violations of chapter 305, the legislature cannot have intended to undermine that very procedure in enacting the TCPA, especially considering the TCPA’s purpose ... we hold that the TCPA does not apply to the circumstances here.” *Sullivan*, 552 S.W.3d at 856. In our case, the holding applies to those provisions of the Texas Election Code cited in Plaintiff’s Original Petition.

3.9 It is incumbent on Defendant, if he seeks relief under the TCPA, to establish that he is entitled to relief under that Act. For the same reasons cited by Texas courts in *Sullivan*, Defendant cannot invoke the TCPA in this case. The TCPA does not apply to the circumstances in this case. Defendant’s Motion to Dismiss must be denied.

IV. Defendant’s Reply

4.1 Defendant, in his Reply to Plaintiff’s Response to Defendant’s Motion to Dismiss (hereinafter Defendant’s Reply) complains that Plaintiff impermissibly attempts to limit the TCPA protections afforded by TX or US Constitutions. Defendant’s Reply ¶6.

4.2 Defendant complains that Plaintiff incorrectly states the burden Garcia must establish to invoke the TCPA by limiting his claims to “constitutionally” protected rights and further limiting his conduct to “the maximum extent permitted under law.” Defendant’s Reply, Section I.A, ¶¶2-5 (constitutionally protected rights) and Section I.B, ¶¶6-7 (limited to maximum extent permitted by law).

4.3 Defendant then accuses Plaintiff of “continu[ing to] mislead the Court by citing alleged conduct for which she cannot claim relief...” Defendant Reply, Section I.C, ¶¶9-10.

4.4 Garcia claims he “established his defense by a preponderance of the evidence”. Defendant’s Reply, Section I.D, ¶¶11-13. Garcia claims Plaintiff has distorted and misrepresented Garcia’s affidavit testimony. Defendant’s Reply, ¶11-12.

V. Argument and Authorities

5.1 In response to Defendant’s claim identified in paragraphs 4.1 and 4.2 above that Plaintiff impermissibly attempts to limit the TCPA to protections afforded by TX or US Constitutions and limiting Defendant’s exercise of those rights to the maximum extent permitted by law. Defendant’s Reply ¶6. However, that limitation was expressly stated by the legislature in the language of the TCPA itself. “The purpose of this chapter is to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law and, at the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury.” *Tex. Civ. Prac. & Rem. Code*, § 27.002. “It’s ‘purpose is to identify and summarily dispose of lawsuits designed only to chill First

Amendment Rights, not to dismiss meritorious lawsuits.” *Sullivan* 552 S.W.3d @ 853 (citing *In re Lipsky*, 460 S.W.3d 579, 589 (Tex. 2015)) and (quoting **TEX. CIV. PRAC. & REM. CODE § 27.002**)).

5.2 Clearly the legislature intended, and Texas courts have upheld, a constitutional component to application of the TCPA *and* a limitation on Defendant’s rights to those exercised to the maximum extent permitted by law. Texas courts also clearly upheld the TCPA’s stated purpose of identifying and dismissing lawsuits “designed only to chill First Amendment Rights, not to dismiss meritorious lawsuits.” *Sullivan*, 552 S.W.3d @ 853. The TCPA recognizes Plaintiff’s right to bring a meritorious lawsuit is equal to Defendant’s right to exercise his First Amendment Rights to the maximum extent permitted by law equally and at the same time. **TEX. CIV. PRAC. & REM. CODE § 27.002**. For these reasons, Defendant’s Motion to Dismiss on these grounds fails. Defendant’s Motion to Dismiss must be denied.

5.3 In response to Defendant’s claim that Plaintiff is misleading the Court by citing conduct for which Plaintiff cannot recover, Plaintiff submits that even Defendant acknowledges that mere notice pleadings are insufficient in this case. Defendant’s Motion to Dismiss, p. 12, ¶¶ 29-30. “Consequently, the TCPA requires more than a mere notice pleading.” Defendant’s Motion to Dismiss, p. 12, ¶ 29. Plaintiff presented a significant amount of evidence with her Original Petition to specifically identify Defendant’s wrongful conduct and the recovery Plaintiff seeks from Defendant.

5.4 As indicated in Plaintiff’s Original Petition, some of the conduct by Defendant must have been committed knowingly. Plaintiff has offered substantial evidence of Defendant’s engaging in identical conduct, despite repeated warning against it, and has signed the reports complained of – under oath – repeatedly. These instances of conduct evidences Defendant’s knowing and intentional course of conduct. Defendant cannot change these facts or this law regardless of the number of cheap shots he takes at Plaintiff.

5.5 Defendant filed his Motion to Dismiss pursuant to the TCPA. Nothing in the TCPA allows a reviewing court to dismiss any portion of Plaintiff’s claims or to strike any portion of Plaintiff’s pleadings for the reason stated by Defendant. Therefore, Defendant’s Motion to Dismiss on these grounds fails. Defendant’s Motion to Dismiss must be denied.

5.6 In response to Defendant’s claim that he established his defense by a preponderance of the evidence. Defendant’s Reply, Section I.D, ¶¶11-13. Defendant has claimed only one defense – that he amended his filings in a timely manner, and therefore, he is absolved any wrongdoing. Defendant’s Motion to Dismiss, pp. 14-15, ¶¶35-39. However, Defendant provides no legal authority supporting his claim, even if it were true, that amending or supplementing filings is a defense to Plaintiff’s suit, albeit Defendant filed his amended or corrected reports:

5.6.A. Fifty-four (54) days after he allegedly refunded illegal corporate contributions he had previously accepted and spent; and

5.6.B. Approximately seventy-eight (78) days after Defendant admits in his sworn Affidavit that he learned he had accepted contributions that “were not permitted under the Texas Election Code.” Defendant’s Affidavit, *Exhibit 1*, attached to Defendant’s Motion to Dismiss.

5.7. And still, there are obvious problems with Defendant’s “corrected” filings. By way of example, Defendant filed a corrected report for the 30th day before the general election, **swearing “that I am filing this corrected report not later than the 14th business day after the date I learned that the report as originally filed is inaccurate or incomplete. I swear, or affirm, that any error or omission in the report as originally filed was made in good faith.”** *Exhibit 7*, attached to Defendant’s Affidavit, attached to Defendant’s Motion to Dismiss.

5.8. The **problem** with Defendant’s filing is that Defendant never filed an original report for the 30th day before the general election period. Defendant’s sworn affirmation as set forth in paragraph 5.7 above, made **under penalty of perjury and at a time when he was represented by legal counsel**, is false.

5.9. Defendant did not file an original report for the 8th day before the general election period. Defendant filed a corrected report for the 8th day before the general election, **swearing “that I am filing this corrected report not later than the 14th business day after the date I learned that the report as originally filed is inaccurate or incomplete. I swear, or affirm, that any error or omission in the report as originally filed was made in good faith.”** *Exhibit 8*, attached to Defendant’s Affidavit, attached to Defendant’s Motion to Dismiss. Another obvious problem with Defendant’s corrected report, *Exhibit 4*, attached to Defendant’s Affidavit, attached to Defendant’s Motion to Dismiss, and relating to the 2018 Runoff Election, is that on the first page of this amended report for the period 1/26/2018 through 2/24/2018, Defendant identifies this report as “30th day before election” report, and the second page of this report identifies this report as “8th day before election” report. It cannot be both. Defendant makes these obvious misstatements on these corrected reports **after** he has been served with Plaintiff’s Original Petition and discovery requests and while he is represented by legal counsel. Defendant’s statements made **under oath and penalty of perjury and at a time when he is represented by legal counsel**, is false. Further, pursuant to the § 571.0771 of the Texas Government Code, the report required to be filed pursuant to § 254.064(c) of the Texas Election Code – 8th day before election reports – cannot be amended or corrected under the circumstances of this case. *TEX. GOV’T. CODE § 571.0771(c)*.

5.10. The **problem** with Defendant’s filing is that Defendant never filed an original report for the 8th day before the general election period. Defendant’s sworn affirmation as set forth in paragraph 5.9 above, made **under penalty of perjury and at a time when he was represented by legal counsel**, is false.

5.11. Defendant’s continuous false and inconsistent filings, under oath and penalty of perjury, beg the question. “Can I believe anything Defendant says.”

5.12. Defendant, by raising this “defense” admits that his original filings “fail to report in whole or in part a campaign contribution or campaign expenditure as required...” Defendant’s Motion to Dismiss, pp. 14-15, ¶¶35-39. Defendant admits an element of Plaintiff’s claims against

him. In fact, Defendant admits under oath that he violated the Texas Election Code regarding accepting and using illegal campaign contributions.

5.12.A. Defendant apparently believes that by filing amended or corrected filings, making the same oath he made previously about the accuracy and limitations associated therewith, and by filing another sworn statement claiming a lack of knowledge, he has established his defense by a preponderance of the evidence. Defendant ignores the following:

5.12.A.i. On November 10, 2017, Defendant filed his designation of campaign treasurer, stating directly above his signature, “I am aware of my responsibility to file timely reports as required by title 15 of the Election Code. I am aware of the restrictions in title 15 of the Election Code on contributions from corporations and labor organizations.” *Exhibit VI.A, attached to Plaintiff’s Original Petition.*

5.12.A.ii. On January 17, 2018, Defendant filed his January 15, 2018, Semiannual Campaign Finance Report. Defendant filed the report one day late, despite his acknowledgments in ¶ 5.12.A.i. Defendant filed this Report **under oath**, directly below the following statement, “I swear, or affirm, under penalty of perjury, that the accompany report is true and correct and includes all information required to be reported by me under Title 15, Election Code.” *Exhibit VII.A, attached to Plaintiff’s Original Petition.* Plaintiff has shown each area where Defendant’s January 15, 2018, Semiannual Campaign Finance Report, is inaccurate and incomplete, identifying the unlawful and criminal conduct, as defined by the Texas Election Code, associated with that report. *Exhibit VII.B, attached to Plaintiff’s Original Petition.* The Texas Election Code does not permit an amendment or correction to this report under the circumstances of this case. *See, TEX. ELECT. CODE § 254.0405(c).* The Election Code allows amendment of this semiannual report on or after the eighth day after the original report was filed if: “(1) the amendment is made before any complaint is filed with regard to the subject of the amendment, and (2) the original report was made in good faith and without an intent to mislead or to misrepresent the information contained in the report.” *TEX. ELECT. CODE § 254.0405(c), Exhibit I.A., pp. 33-34.* Here, Defendant had been served with Plaintiff’s Original Petition and discovery requests *before* he attempted to amend his report. The question of Defendant’s intent and good faith remains to be adjudicated. There is no question, however, that Defendant is prohibited from amending this report.

5.12.A.iii. On February 5, 2018, Defendant filed his 30th day before election Campaign Finance Report. Defendant filed this Report **under oath**, directly below the following statement, “I swear, or affirm, under penalty of perjury, that the accompany report is true and correct and includes all information required to be reported by me under Title 15, Election Code.” *Exhibit VIII.A, attached to Plaintiff’s Original Petition.* Plaintiff has shown each area where Defendant’s 30th day before election Campaign Finance Report, is inaccurate and incomplete, identifying the unlawful and criminal conduct, as defined by the Texas Election Code, associated with that report. *Exhibit VIII.B, attached to Plaintiff’s Original Petition.*

5.12.A.iv. On February 27, 2018, Defendant filed his 8th day before election Campaign Finance Report. Defendant filed this report one day late. Defendant filed this Report **under oath**, directly below the following statement, “I swear, or affirm, under penalty of perjury, that the accompany report is true and correct and includes all information required to be reported by me under Title 15, Election Code.” *Exhibit IX.A, attached to Plaintiff’s Original Petition.* Plaintiff has shown each area where Defendant’s 30th day before election Campaign Finance Report, is untimely, inaccurate and incomplete, identifying the unlawful and criminal conduct, as defined by the Texas Election Code, associated with that report. *Exhibit IX.B, attached to Plaintiff’s Original Petition.*

5.12.A.v. On May 14, 2018, Defendant filed his Runoff Campaign Finance Report. Defendant filed this Report **under oath**, directly below the following statement, “I swear, or affirm, under penalty of perjury, that the accompany report is true and correct and includes all information required to be reported by me under Title 15, Election Code.” *Exhibit X.A, attached to Plaintiff’s Original Petition.* Plaintiff has shown each area where Defendant’s Runoff Campaign Finance Report, is inaccurate and incomplete, identifying the unlawful and criminal conduct, as defined by the Texas Election Code, associated with that report. *Exhibit X.B, attached to Plaintiff’s Original Petition.*

5.12.A.vi. On July 17, 2018, Defendant filed his July 15, 2018, Semiannual Campaign Finance Report. Defendant filed this Report **under oath**, directly below the following statement, “I swear, or affirm, under penalty of perjury, that the accompany report is true and correct and includes all information required to be reported by me under Title 15, Election Code.” *Exhibit XI.A, attached to Plaintiff’s Original Petition.* According to the sworn report, Defendant accepted contributions from Boss-Chem Corp., Valley Valve & Pipe Supply Company, Inc., and reported two contributions from K.D. Timmons. Plaintiff has shown each area where Defendant’s July 15th Semiannual Campaign Finance Report, is untimely, inaccurate and incomplete, identifying the unlawful and criminal conduct, as defined by the Texas Election Code, associated with that report. *Exhibit XI.B, attached to Plaintiff’s Original Petition.*

5.12.A.vii. Defendant attempted to file a corrected July 15, 2018, Semiannual Campaign Finance Report on December 18, 2018. The Texas Election Code does not permit an amendment or correction to this report under the circumstances of this case. *See, TEX. ELECT. CODE § 254.0405(c).* The Election Code allows amendment of this semiannual report on or after the eighth day after the original report was filed if: “(1) the amendment is made before any complaint is filed with regard to the subject of the amendment, and (2) the original report was made in good faith and without an intent to mislead or to misrepresent the information contained in the report.” *TEX. ELECT. CODE § 254.0405(c), Exhibit I.A., pp. 33-34.* Here, Defendant had been served with Plaintiff’s Original Petition and discovery requests *before* he attempted to amend his report. The question of Defendant’s intent and good faith remains to be adjudicated. There is no question, however, that Defendant is prohibited from amending this report.

5.12.A.viii. As further evidence of Defendant's knowledge, intent, motive, and course of conduct, Plaintiff has shown that, in connection with his 2016 campaign for Brazos County Commissioner, Defendant filed:

a. his designation of campaign treasurer, stating directly above his signature, "I am aware of my responsibility to file timely reports as required by title 15 of the Election Code. I am aware of the restrictions in title 15 of the Election Code on contributions from corporations and labor organizations." *Exhibit XII.A, attached to Plaintiff's Original Petition.* Plaintiff has shown each area where Defendant's 2016 designation of campaign treasurer is inaccurate and incomplete, identifying the unlawful and criminal conduct, as defined by the Texas Election Code, associated with that report. *Exhibit XII.B, attached to Plaintiff's Original Petition.*

b. his January 15, 2016, Campaign Finance Report. Defendant filed this Report **under oath**, directly below the following statement, "I swear, or affirm, under penalty of perjury, that the accompany report is true and correct and includes all information required to be reported by me under Title 15, Election Code." *Exhibit XII.A, attached to Plaintiff's Original Petition.* Plaintiff has shown each area where Defendant's January 15, 2016, Campaign Finance Report, is inaccurate and incomplete, identifying the unlawful and criminal conduct, as defined by the Texas Election Code, associated with that report. *Exhibit XII.B, attached to Plaintiff's Original Petition.*

c. his 30th day before election, Campaign Finance Report. Defendant filed this Report **under oath**, directly below the following statement, "I swear, or affirm, under penalty of perjury, that the accompany report is true and correct and includes all information required to be reported by me under Title 15, Election Code." *Exhibit XII.A, attached to Plaintiff's Original Petition.* Plaintiff has shown each area where Defendant's 30th day before election, Campaign Finance Report, is inaccurate and incomplete, identifying the unlawful and criminal conduct, as defined by the Texas Election Code, associated with that report. *Exhibit XII.B, attached to Plaintiff's Original Petition.*

d. his 8th day before election, Campaign Finance Report. Defendant filed this Report **under oath**, directly below the following statement, "I swear, or affirm, under penalty of perjury, that the accompany report is true and correct and includes all information required to be reported by me under Title 15, Election Code." *Exhibit XII.A, attached to Plaintiff's Original Petition.* Plaintiff has shown each area where Defendant's 8th day before election, Campaign Finance Report, is inaccurate and incomplete, identifying the unlawful and criminal conduct, as defined by the Texas Election Code, associated with that report. *Exhibit XII.B, attached to Plaintiff's Original Petition.*

5.13. Plaintiff has shown clear and specific evidence that Defendant signed **more than eight (8)** official reports in connection with his campaigns, **under oath and penalty of perjury**, stating that the reports are true and correct and includes all information required to be reported by me under Title 15, Election Code.

5.14. Subsequently, Defendant has filed his affidavit, **at least his 9th statement under oath and penalty of perjury**, now claiming that he “never knowingly accepted a corporate campaign contribution that was in violation of the Texas Election Code.” Defendant’s Affidavit, p. 3, ¶15, *Exhibit 1, attached to Defendant’s Motion to Dismiss*.

5.14.A. Defendant’s official unsworn or sworn statement directly contradicts the sworn statements he made, as identified in paragraphs 5.12.A.ii-vii above.

- *Exhibit VII.A, Schedule A1*, attached to Plaintiff’s Original Petition, provides clear and specific evidence of a campaign contribution accepted from Boss-Chem Corp., in the amount of \$1,000.00;
- *Exhibit XIII.A*, attached to Plaintiff’s Original Petition, provides clear and specific evidence that Boss-Chem Corp. is a corporation;
- *Exhibit VII.A, Schedule F1*, attached to Plaintiff’s Original Petition, provides clear and specific evidence of political expenditures made in excess of political contributions accepted, including in excess of the Boss-Chem Corp., contribution; thereby establishing clear and specific evidence of expenditures from the illegal corporate contribution. As stated above, Defendant, although he tried, may not lawfully amend this report. Plaintiff incorporates paragraphs 5.12.A.vi and 5.12.A.vii as if fully restated here.
- *Exhibit VIII.A., Schedule A1*, attached to Plaintiff’s Original Petition, provides clear and specific evidence of a campaign contribution accepted from Valley Valve & Pipe Supply Company, Inc., in the amount of \$200.00;
- *Exhibit XIII.B*, attached to Plaintiff’s Original Petition, provides clear and specific evidence that Valley Valve & Pipe Supply Company, Inc., is a corporation.
- *Exhibit VIII.A, Schedule F1*, attached to Plaintiff’s Original Petition, provides clear and specific evidence of political expenditures made in excess of political contributions accepted, including in excess of the Valley Valve & Pipe Supply Company, Inc., contribution; thereby

establishing clear and specific evidence of expenditures from the illegal corporate contribution.

- **Exhibit IX.A, Schedule A1**, attached to Plaintiff's Original Petition, provides clear and specific evidence of a campaign contribution accepted from K.D. Timmons, in the amount of \$250.00;
- **Exhibit XIII.C.**, attached to Plaintiff's Original Petition provides clear and specific evidence that K.D. Timmons is either a corporation or a deceased person.
- **Exhibit IX.A, Schedule F1**, attached to Plaintiff's Original Petition, provides clear and specific evidence of political expenditures made in excess of political contributions accepted, including in excess of the K.D. Timmons, contribution; thereby establishing clear and specific evidence of expenditures from the illegal corporate or deceased person contribution.
- **Exhibit X.A, Schedule F1**, attached to Plaintiff's Original Petition, provides clear and specific evidence of political expenditures made in excess of political contributions accepted, including in excess of improper contributions complained of herein; thereby establishing clear and specific evidence of expenditures from the illegal corporate contribution.
- **Exhibit XI.A**, attached to Plaintiff's Original Petition, provides clear and specific evidence of Defendant's acceptance of illegal corporate contributions and expenditures of those sums. As stated above, Defendant, although he tried, may not lawfully amend this report. Plaintiff incorporates paragraphs 5.12.A.vi and 5.12.A.vii as if fully restated here.
- **Exhibit XI.A, Schedule A1**, attached to Plaintiff's Original Petition, again provides clear and specific evidence of a campaign contribution accepted from K.D. Timmons in the amount of \$250.00, Valley Valve & Pipe Supply Company, Inc., in the amount of \$200.00, and Boss-Chem. Corp. in the amount of \$1,000.00.

5.15. Plaintiff has established by clear and specific evidence that Defendant has engaged in the unlawful conduct alleged in Plaintiff's Original Petition and that he did so knowingly and under oath and penalty of perjury. The fact that the handwritten campaign reports appear to be written in Defendant's handwriting, further diminishes his conclusory statement that he did not

Certificate of Service

I certify that a true and correct copy of the above and foregoing document has been delivered to the parties/counsel identified below in accordance with the Texas Rules of Civil Procedure on this 3rd day of February, 2019.

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