



AUSTIN ★ DALLAS ★ DECATUR ★ HOUSTON

SARAH HOLLEY LONG

Partner

sarah.long@wbclawfirm.com

**Service of Documents:**

LongEDocsNotifications@wbclawfirm.com

(214) 347-8342 - Direct Line

(214) 347-8343 - Direct Fax

September 15, 2017

LeAnn W. Diamond      *Via Facsimile: 972-632-1301*  
Eric B. Klocke  
Luce Law, P.C.  
5900 S. Lake Forest Dr., Suite 200  
McKinney, Texas 75070

W. Todd Albin      *Via Facsimile: 214-423-5111*  
John J. Mongogna  
Albin Roach, PLLC  
5665 Dallas Pkwy., Suite 200  
Frisco, Texas 75034

**RE:    *JEVIN, INC., a Texas corporation; and DANIEL E. PTAK, an individual VS. SKY VIEW YOUTH FOOTBALL, a Utah organization; WASATCH FRONT FOOTBALL LEAGUE, INC., a Utah corporation; JARED FURGESON, et al.; and HEATHER DOBROTT, an individual***

**Cause Number:    199-00984-2017**

**Court:            199<sup>th</sup> Judicial District Court, Collin County, Texas**

**Our File Number:    1341-82466**

Dear Counsel:

Please find enclosed *Defendant Heather Dobrott's Motion to Dismiss Pursuant to Chapter 27 of the Texas Civil Practice and Remedies Code as to Plaintiffs' Second Amended Petition* which has been electronically filed with the Court regarding the above referenced matter.

WALTERS BALIDO & CRAIN L.L.P.

MEADOW PARK TOWER 10440 NORTH CENTRAL EXPRESSWAY SUITE 1500 DALLAS, TEXAS 75231

FAX: 214.760.1670 TELEPHONE: 214.749.4805

www.wbclawfirm.com

September 15, 2017

Page 2

If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

*/s/ Sarah Holley Long*

SARAH HOLLEY LONG

SHL/EAS/lk

Enclosure

September 15, 2017

Page 3

bcc: With Enclosure

Deonna McNeill      *Via Email: [Deonna.McNeill@Safeco.com](mailto:Deonna.McNeill@Safeco.com)*  
Safeco Insurance Companies  
P. O. Box 515097  
Los Angeles, CA 90051-5097

**RE:    *JEVIN, INC., a Texas corporation; and DANIEL E. PTAK, an individual VS.  
SKY VIEW YOUTH FOOTBALL, a Utah organization; WASATCH FRONT  
FOOTBALL LEAGUE, INC., a Utah corporation; JARED FURGESON, et al.;  
and HEATHER DOBROTT, an individual***

**Cause Number:      199-00984-2017**  
**Court:                199<sup>th</sup> Judicial District Court, Collin County, Texas**  
**Our File Number:    1341-82466**  
**Claim Number:      586708256002**  
**Insured:              Heather Dobrott**

Heather Dobrott      *Via Email: [hdobrott@gmail.com](mailto:hdobrott@gmail.com)*  
2518 Suncrest Dr.  
Garland, Texas 75044

CAUSE NO. 199-00984-2017

JEVIN, INC., a Texas corporation;  
and DANIEL E. PTAK, an individual  
Plaintiffs

VS.

SKY VIEW YOUTH FOOTBALL,  
a Utah organization; WASATCH  
FRONT FOOTBALL LEAGUE, INC.,  
a Utah corporation; JARED FURGESON,  
et al.; and HEATHER DOBROTT,  
an individual  
Defendants

§ IN THE DISTRICT COURT  
§  
§  
§  
§ 199<sup>TH</sup> JUDICIAL DISTRICT  
§  
§  
§  
§  
§  
§  
§ COLLIN COUNTY, TEXAS

**DEFENDANT HEATHER DOBROTT'S MOTION TO DISMISS PURSUANT TO  
CHAPTER 27 OF THE TEXAS CIVIL PRACTICE AND REMEDIES CODE AS TO  
PLAINTIFFS' SECOND AMENDED PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW HEATHER DOBROTT, hereinafter referred to as "Defendant", and files this Motion to Dismiss Pursuant to Chapter 27 of the Texas Civil Practice and Remedies Code as to Plaintiffs' Second Amended Petition and respectfully shows the Court the following:

**I. FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff Daniel E. Ptak ("Ptak") is the president of Plaintiff Jevin, Inc. ("Jevin"), which provides software and services to aid in the registration and management of particular events and acts as an agent to accept payments on behalf of organizations and remit such payments less the applicable fees to the organizations. *See* Plaintiffs' Second Amended Petition on file with the Court. Heather Dobrott ("Defendant" or "Dobrott") runs a volunteer website entitled *Realscam.com – Is it, or isn't it? You decide.*, which is a general discussion website on which individuals can review and openly discuss issues of public concern in the community, including financial fraud and scams, reviews of products and services in the marketplace, issues of public

concern reported in the news, and other issues that affect economic or community well-being. *See* Affidavit of Heather Dobrott, attached hereto as Exhibit A. Anyone is welcome to post on the site. *Id.* The site does not generate income. *Id.* As a former board member of the Garland Soccer Association, a 501-C3 nonprofit charitable organization, Defendant became familiar with Jevin, Inc.'s software and the issues the Garland Soccer Association had with obtaining timely registration fees and other payments from Jevin, Inc. and Daniel E. Ptak as early as June, 2013. *Id.* Through subsequent news articles and contact with parents and board members associated with other nonprofit charitable youth organizations that have used Jevin, Inc.'s software, Defendant was made aware of several other youth organizations that reported complaints with Jevin, Inc., including complaints of late or missing payments from Jevin, Inc. *Id.* Defendant joined with board members of leagues and parents across the country to collectively express their concerns with Jevin, Inc. and the inability to fund sports seasons for the children in various leagues due to missing or untimely payments from Jevin, Inc. and how to promote their interests and achieve justice for the parents, children, and leagues. *Id.* They communicated regarding the ways different organizations were coping with the late or missing funds in connection with the proceedings taking place in and before the managing boards of the various charitable organizations. *Id.* They also exchanged information concerning the police reviews and investigations taking place in this regard across the country and how persons had participated in an effort to effect police consideration. *Id.* Defendant communicated with parents and representatives of nonprofit charitable organizations and posted information concerning the reports that various persons and organizations concerned or affected by the operations of Jevin, Inc. and Mr. Ptak had already made or could make to police and governmental investigative bodies in an effort to encourage their review and investigation into the operations. *Id.* Defendant

and other parents and representatives of nonprofit charitable organizations communicated regarding their shared concerns with the operations of Jevin, Inc. and Mr. Ptak and how various groups affected could pursue and obtain the missing or late funds owed to the organizations necessary to fund the sports seasons for the children in the leagues. *Id.* Any and all of Defendant's communications related to Mr. Ptak and Jevin, Inc. and their activities were made in an effort to jointly discuss and bring awareness to the complaints reported by other customers and charitable organizations concerning their experiences with Jevin, Inc. and Mr. Ptak out of concern for economic and community wellbeing, charitable organizations, children, and parents. *Id.* The statements were expressions of Defendant's opinions concerning the products and services offered by Jevin, Inc. and Mr. Ptak and their apparent negative affect on economic and community wellbeing. *Id.* At no time did Defendant engage in any plan or agreement to commit unlawful activity or achieve some unlawful purpose, nor did Defendant engage in any actions or plans to deceive or interfere with Plaintiffs' existing or prospective contractual relationships or ability to conduct lawful business. *Id.*

Plaintiffs originally sued Defendant Heather Dobrott for defamation, libel, and slander, for which Defendant was served on March 22, 2017. *See* Plaintiffs' First Amended Petition on file with the Court. Defendant timely filed a Motion to Dismiss Pursuant to Chapter 27 of the Texas Civil Practice and Remedies Code on May 19, 2017, within 60 days of service of the legal action, in which she demonstrated Plaintiffs' legal action against her was based on, related to, or in response to Defendant's exercise of the right of free speech, the right of association, and/or the right to petition such that the Texas Citizens Participation Act (the "TCPA" or "Act"), codified in Chapter 27 of the Texas Civil Practice and Remedies Code, applied. *See* Defendant's Motion to Dismiss Pursuant to Chapter 27 of the Texas Civil Practice and Remedies Code on file with

the Court. In response thereto, Plaintiffs failed to meet their burden of proof of establishing by clear and specific evidence a prima facie case for each and every element of their claims as required under the Texas Civil Practice and Remedies Code to avoid dismissal. On the morning of July 17, 2017, the date Defendant's Motion to Dismiss Pursuant to Chapter 27 of the Texas Civil Practice and Remedies Code was set for hearing, without seeking leave of Court, Plaintiffs filed their Second Amended Petition, in which Plaintiffs maintained their defamation, libel, and slander claims and asserted the following additional causes of action against Defendant based on the same alleged communications that formed the basis of Plaintiffs' original legal action: conspiracy to defraud and tortious interference with existing and prospective contracts. *See* Plaintiffs' Second Amended Petition on file with the Court. Then, at the commencement of the July 17, 2017 hearing scheduled for Defendant's Motion to Dismiss Pursuant to Chapter 27 of the Texas Civil Practice and Remedies Code, in a desperate attempt to avoid the application of the TCPA and a hearing on Defendant's motion, counsel for Plaintiffs provided oral notice of Plaintiffs' intention to nonsuit the causes of action for defamation, libel, and slander alleged against Defendant in Paragraph XII of Plaintiffs' Second Amended Petition (filed the same morning). Counsel for Defendant orally moved to strike Plaintiffs' Second Amended Petition, which included two new causes of action against Defendant, as untimely and operating as surprise to Defendant under Texas Rule of Civil Procedure 63 as Plaintiffs never sought leave to amend within seven days of the hearing on the dispositive motion (nor leave for additional time to respond to Defendant's motion), which the Court denied, and argued in the alternative that the new causes of action asserted in Plaintiffs' Second Amended Petition should be encompassed by Defendant's motion and disposed of through the hearing already scheduled for July 17, 2017 as the new causes of action were still based on, related to, or in response to Defendant's

communications made in the exercise of rights guaranteed under the First Amendment addressed in the motion already set for hearing that day. Over the objections of Defendant's attorney, the Court granted Plaintiffs' non-suit without prejudice as to the claims of defamation, libel, and slander, and declined to hear or rule on Defendant Heather Dobrott's Motion to Dismiss Pursuant to Chapter 27 of the Texas Civil Practice and Remedies Code. *See* Order Granting Nonsuit on file with the Court.

Defendant now moves to dismiss all remaining claims against Defendant that make up Plaintiffs' legal action against her as reflected in Plaintiffs' Second Amended Petition pursuant to Chapter 27 of the Texas Civil Practice and Remedies Code. When an amendment adds new parties or claims, the deadline for filing an anti-SLAPP motion is reset for those claims and runs from the date the amended legal action was served. *See Better Bus. Bureau of Metro. Dallas v. Ward*, 401 S.W.3d 440, 443 (Tex. App.—Dallas 2013, pet. denied). Defendant was served with Plaintiffs' Second Amended Petition, in which Plaintiffs first asserted conspiracy to defraud and tortious interference with existing and prospective contracts against Defendant, on July 17, 2017. Accordingly, Defendant has timely filed this motion within 60 days of service of the legal action, in accordance with Section 27.003 of the Texas Civil Practice and Remedies Code.

Notably, Plaintiffs' counsel moved for the nonsuit as to the original claims of defamation, libel, and slander in an effort to avoid a hearing on Defendant's original motion on July 17, 2017 based on arguments that her clients were in a no-win situation in that Plaintiffs would be responsible for court costs, reasonable attorney's fees, and other expenses incurred in defending against the legal action if Defendant's motion was granted, and Defendant would have the ability to file an interlocutory appeal if her motion was denied. However, this was the clear intent and decision of the Texas Legislature. *See* Tex. Civ. Prac. & Rem Code § 27.008; 27.009(a). As



discussed in detail below, the stated purpose of Chapter 27 of the Texas Civil Practice and Remedies Code 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. Texas intended to effectuate this purpose by “ensuring that courts will dismiss SLAPP suits quickly and without the need for prolonged and costly proceedings.” *San Jacinto Title Servs. Of Corpus Christi, LLC v. Kingsley Properties*, 452 S.W.3d 343, 348-49 (Tex. App.—Corpus Christi 2013, pet. denied) (emphasis added). However, Plaintiffs have already forced Defendant to incur the time, burden, and expense of moving to dismiss Plaintiffs’ legal action and setting the same for hearing, and Plaintiffs thereafter nonsuited the causes of action addressed by such motion—which had been on file with the Court since May 19, 2017— at the commencement of the July 17, 2017 hearing on such motion in an effort to avoid an early dismissal and paying for Defendant’s attorney’s fees and costs as statutorily required under the Act. Moreover, Plaintiffs added new causes of action on the date of the hearing, which had been scheduled almost a full two months in advance, as a way to prolong the proceedings and issues to be decided by the Court, and have thus forced Defendant to incur additional time, resources, and expense addressing Plaintiffs’ additional claims that clearly also fall under the Act through a second motion to dismiss that must also be set for hearing in front of the Court on a later date, all of which the Texas Legislature intended to prevent through enacting the TCPA. *See* Tex. Civ. Prac. & Rem. Code § 27.001 et seq. Not only do Plaintiffs’ actions and the results thereof run in direct contradiction to the Act and its stated purpose, but Defendant would point out that a motion to dismiss seeking dismissal with prejudice, attorney’s fees, and sanctions under the TCPA constitutes a claim for affirmative relief

that survives a nonsuit. *See Rauhauser v. McGibney*, 508 S.W.3d 377, 382-83 (Tex. App.—Fort Worth 2014, no pet.); *Villafani v. Trejo*, 251 S.W.3d 466, 469 (Tex. 2008) (pointing out that Rule 162 states that a nonsuit ‘shall not prejudice the right of an adverse party to be heard on a pending claim for affirmative relief’).

When dismissal under a statutory provision enacted for the purpose of deterring the filing of frivolous lawsuits would grant the defendant moving for dismissal under that statutory provision more relief than the nonsuit, the defendant's dismissal motion survives the nonsuit without regard to the defendant's knowledge of the upcoming nonsuit or the plaintiff's good faith in filing the nonsuit. *See, e.g., Villafani v. Trejo*, 251 S.W.3d 466, 470 (explaining that when purpose of statutory provision authorizing a motion for dismissal, sanctions, and attorney's fees is deterrence of frivolous claims, "[r]emoving a defendant's ability to appeal a denial of [the motion for dismissal, sanctions, and attorney's fees] after a nonsuit frustrates this purpose; a claimant could simply nonsuit a meritless claim and later re-file the claim with impunity").

*Rauhauser*, 508 S.W.3d 377 at 382-83. Regardless, Defendant would show the same protected communications addressed in Defendant's original motion still form the basis of Plaintiffs' live causes of action asserted against Defendant in Plaintiffs' Second Amended Petition to be addressed by this motion, and Plaintiffs cannot rely on the nonsuit of their defamation claims to avoid the application of the Act and the dismissal of their legal action as it currently stands against Defendant Heather Dobrott.

## II. EVIDENCE

In support of this Motion, Defendant relies upon all of the pleadings on file, including Plaintiffs' Second Amended Petition, as well as the following evidence, which is incorporated by reference as if fully set forth herein:

Exhibit A      Affidavit of Heather Dobrott

### III. ARGUMENT AND AUTHORITIES

The Texas Citizens Participation Act (the “TCPA” or “Act”), codified in Chapter 27 of the Texas Civil Practice and Remedies Code, provides for the early dismissal of precisely this type of legal action. *See* Tex. Civ. Prac. & Rem. Code § 27.001 et seq. This statute is known as an “anti-SLAPP” statute because it protects citizens from “Strategic Lawsuits Against Public Participation,” a term referring to legal actions that are primarily brought for the purpose of silencing citizens who are exercising their First Amendment freedoms. *See Deaver v. Desai*, 483 S.W.3d 668, 672 (Tex. App.—Houston [14th Dist.] 2015, no pet.). The TCPA provides a means for a party, early in the course of a lawsuit, to seek quick and inexpensive dismissal of meritless or frivolous lawsuits that are based on, related to, or in response to a party’s exercise of the right to petition, speak, or associate freely. *Id.*; *Better Bus. Bureau of Metro. Dallas v. BH DFW, Inc.*, 402 S.W.3d 299, 305 (Tex. App.—Dallas 2013, pet. denied). The stated purpose of Chapter 27 of the Texas Civil Practice and Remedies Code 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. Texas intended to effectuate this purpose by “ensuring that courts will dismiss SLAPP suits quickly and without the need for prolonged and costly proceedings.” *San Jacinto Title Servs. Of Corpus Christi, LLC v. Kingsley Properties*, 452 S.W.3d 343, 348-49 (Tex. App.—Corpus Christi 2013, pet. denied). Importantly, Chapter 27 of the Texas Civil Practice and Remedies Code “shall be construed liberally to effectuate its purpose and intent fully.” Tex. Civ. Prac. & Rem. Code § 27.011.

Pursuant to the Act, if a legal action is based on, relates to, or is in response to a party's exercise of the right of free speech, right to petition, or right of association, that party may file a motion to dismiss the legal action. Tex. Civ. Prac. & Rem. Code § 27.003(a). The motion must be filed not later than the 60th day after the date of service of the legal action, but the court may extend the time to file on a showing of good cause. *Id.* § 27.003(b). When an amendment adds new parties or claims, the deadline for filing an anti-SLAPP motion is reset for those claims and runs from the date the amended legal action was served. *See Better Bus. Bureau of Metro. Dallas v. Ward*, 401 S.W.3d 440, 443 (Tex. App.—Dallas 2013, pet. denied). On the filing of the motion to dismiss, all discovery in the legal action is suspended until the court has ruled on the motion to dismiss. Tex. Civ. Prac. & Rem. Code § 27.003(c). A hearing on a motion under Section 27.003 must be set not later than the 60th day after the date of service of the motion unless the docket conditions of the court require a later hearing, upon a showing of good cause, or by agreement of the parties. Tex. Civ. Prac. & Rem. Code § 27.004(a).

“A court shall dismiss a legal action against the moving party if the moving party shows by a preponderance of the evidence that the plaintiff's legal action is based on, related to, or in response to the defendant's exercise of the right of free speech, the right to petition, or the right of association.” Tex. Civ. Prac. & Rem. Code § 27.005(b). In determining whether a legal action should be dismissed under this chapter, the court shall consider the pleadings and supporting and opposing affidavits stating the facts on which the liability or defense is based. Tex. Civ. Prac. & Rem. Code § 27.006(a). **The TCPA does not require the movant to present testimony or other evidence to satisfy its Section 27.005(b) burden.** *MacFarland v. Le-Vel Brands LLC*, No. 05-16-00672-CV, 2017 Tex. App. LEXIS 2569 at \*40 (Tex. App.—Dallas March 23, 2017) (citing *Watson v. Hardman*, 497 S.W.3d 601, 607-8 (Tex. App.—Dallas 2016, no pet.) (holding

defendant was not required to produce additional evidence beyond pleadings to meet his burden when the plaintiff's pleadings alleged facts related to a matter of public concern)); *Serafine v. Blunt*, 466 S.W.3d 352, 360 (Tex. App.—Austin 2015, no pet.)). **In fact, “[a] plaintiff’s own live pleading can satisfy a movant’s 27.005(b) burden.”** *MacFarland*, LEXIS 2569 at \*40 (holding the defendant satisfied his Section 27.005(b) burden where the plaintiff’s petition described its business of marketing and selling of products in the market place and the plaintiff’s lawsuit was based on a post by the defendant in which he discussed the plaintiff, its products, and its business model, including statements that the plaintiff company appeared to be operating as a “pay-to-play scheme,” a “pyramid scheme,” and a “scam.”). “When it is clear from the plaintiff’s pleadings that the action is covered by the Act, the defendant need show no more.” *Hersh v. Tatum*, NO. 16-0096, 2017 Tex. LEXIS 649, \*9 (Tex. June 30, 2017). If the defendant meets its preliminary burden, the burden shifts to the plaintiff to establish by clear and specific evidence a prima facie case for each essential element of the claim in question to avoid dismissal. Tex. Civ. Prac. & Rem. Code § 27.005(c). If the plaintiff fails to meet its burden, the court must grant the defendant’s motion to dismiss. Tex. Civ. Prac. & Rem. Code § 27.005(b). Even if the plaintiff does meet its burden of establishing each and every essential element of its claim, the court still must dismiss the legal action if the defendant establishes by a preponderance of the evidence each essential element of a valid defense to the plaintiff’s claim. Tex. Civ. Prac. & Rem. Code § 27.005(d). As such, the plaintiff is required to overcome a movant’s affirmative defenses to avoid dismissal. *Kinney v. BCG Att’y. Search, Inc.*, No. 03-12-00579-CV, 2014 Tex. App. LEXIS 3998, at \*15-16 (Tex. App.—Austin Apr. 11, 2014). Upon dismissal of the legal action, the court shall award the moving party “court costs, reasonable attorney’s fees, and other expenses incurred in defending against the legal action as justice and equity may require” and

“sanctions against the party who brought the legal action as the court determines sufficient to deter the party who brought the legal action from bringing similar actions described in this chapter.” Tex. Civ. Prac. & Rem. Code § 27.009(a)(1) & (2).

Pursuant to Chapter 27 of the Texas Civil Practice and Remedies Code, Defendant moves to dismiss all of the remaining claims that make up Plaintiffs’ legal action against her as reflected in Plaintiffs’ Second Amended Petition on file with the Court, in which Plaintiffs first asserted conspiracy to defraud and tortious interference with existing and prospective contracts against Defendant. Defendant would show Plaintiffs’ legal action against her is based on, related to, and/or in response to Defendant’s exercise of her constitutionally protected legal right of free speech relating to matters of public concern, the right to associate, and/or the right to petition. Furthermore, Plaintiffs cannot meet their burden of establishing by clear and specific evidence a prima facie case for each and every element of each of their claims against Defendant as required under the Texas Civil Practice and Remedies Code. As such, Plaintiffs’ legal action against Defendant Heather Dobrott must be dismissed.

**1. Plaintiffs’ Legal Action Against Defendant Heather Dobrott Is Based on, Related to, or in Response to Defendant’s Exercise of the Right of Free Speech, the Right of Association, and/or the Right to Petition Such that the Texas Citizens Participation Act Applies and Mandates Dismissal**

Pursuant to the Act, a court “shall dismiss a legal action against the moving party if the moving party shows by a preponderance of the evidence that the plaintiff’s legal action is based on, related to, or in response to the defendant’s exercise of the right of free speech, the right to petition, or the right of association.” Tex. Civ. Prac. & Rem. Code § 27.005(b). “Legal action” is defined within the Act as a lawsuit, cause of action, petition, complaint, cross-claim, or counterclaim or any other judicial pleading or filing that requests legal or equitable relief. Tex. Civ. Prac. & Rem. Code § 27.001(6). The definition of “legal action” in the statute is broad and

evidences a legislative intent to treat any claim by any party on an individual and separate basis. *Better Bus. Bureau of Metro. Dallas v. Ward*, 401 S.W.3d 440, 443 (Tex. App.—Dallas 2013, pet. denied). When an amendment adds new parties or claims, the deadline for filing an anti-SLAPP motion is reset for those claims and runs from the date the amended legal action was served. *See id.*; *Hicks v. Grp. & Pension Adm'rs, Inc.*, 473 S.W.3d 518, 530 (Tex. App.—Corpus Christi 2015, no pet.). Plaintiffs' causes of action for conspiracy to defraud and tortious interference with existing and prospective contracts, which were first asserted against Defendant Heather Dobrott in Plaintiffs' Second Amended Petition on July 17, 2017, constitute a "legal action" against Defendant. *See* Plaintiffs' Second Amended Petition on file with the Court; Tex. Civ. Prac. & Rem. Code § 27.001(6). Further, such legal action is clearly based on, related to, or in response to Defendant's exercise of the right of free speech, the right of association, and/or the right to petition. *See* Plaintiffs' Second Amended Petition; Exhibit A. As reflected in Plaintiffs' Second Amended Petition, the factual allegations specifically incorporated and relied on in support of Plaintiffs' remaining causes of action against Defendant Dobrott include the following communications:

1. June 24, 2016: "Jevin, which clearly seems to be a Ponzi in imminent collapse, has customers bailing in droves."
2. August 9, 2016: "It seems quite clear that Jevin is operating as a Ponzi... I advised those out money to do chargebacks as that has been a successful strategy for other groups that couldn't get their money."
3. October 4, 2016: "Dan Ptak runs Jevin out of his home in Allen, TX and as the law stands Jevin is likely uncollectable... Hopefully, more chargebacks will put an end to the Jevin scam for good."
4. October 19, 2016: "I encouraged them to contact the Allen, TX police and to initiate chargebacks as that seems the most effective means to get the money that is owed from Jevin."
5. October 21, 2016: "Jevin's Dan Ptak is one of the dirtiest businessmen I have come across... No one will use this dirty and dishonest company seeing the way he has repeatedly abused his customers."

6. March 13, 2017: “No one in their right mind will ever do business with Jevin again. Dan Ptak is such a low life creep that he pays weeks late and then sues his desperate customers.”

*See* Plaintiffs’ Second Amended Petition. Although Plaintiffs failed to incorporate the entirety of the above-mentioned statements in their Second Amended Petition, the entirety of the statements were attached thereto as exhibits and Defendant has also attached and incorporated the entirety of the alleged statements in her Affidavit, attached hereto as Exhibit A, for the Court’s review as such statements should be viewed in the context in which they were made. *See* Plaintiffs’ Second Amended Petition; Exhibit A. Notably, Defendant’s post from June 24, 2016, which Plaintiffs attached to their Second Amended Petition as Exhibit “E” further provides, “Most former Jevin users are going to Sports Illustrated Play. Others have gone to Team Snap, which I used for several reasons to manage my team in place of Jevin and absolutely loved for communication, and Blue Sombrero, which has partnered with Dick’s Sporting Goods. There are plenty of options that are having no payment issues whatsoever.” *Id.* This demonstrates Defendant’s communications were made in connection with a good, product, or service in the market place. *See* Exhibit A. Further, the post from August 9, 2016 attached to Plaintiffs’ Second Amended Petition as Exhibit “F” demonstrates concern for the community and economic wellbeing and opinions as to Plaintiffs’ product and services. *Id.* The October 4, 2016 post attached to Plaintiffs’ Second Amended Petition as Exhibit “G” demonstrates the shared concerns of Defendant and the parents and representatives of charitable organizations regarding Plaintiffs’ business operations and the ability of parents and others affected to obtain justice and encourage review by a governing body. *Id.* The October 19, 2016 post referenced in Plaintiffs’ Second Amended Petition and attached as Exhibit “H” thereto should be reviewed in the context in which it was made. *Id.* The beginning of such post provides, “Another group has reported that



Jevin owes them money. That would be #17 for 2016. I encouraged them to contact the Allen, TX police to initiate chargebacks as that seems the most effective means to get the money that is owed from Jevin.” *Id.* The communication was clearly protected in that it was made in connection with an issue related to economic and community wellbeing and a good or service in the marketplace. It was also a communication between individuals who joined to collectively express, promote, pursue, or defend common interest. Moreover, it was a communication reasonably likely to enlist participation in an effort to effect consideration or encourage consideration or review of an issue by an executive or other governmental body. Further, the post from October 21, 2017 attached as Exhibit “I” to Plaintiffs’ Second Amended Petition makes clear Defendant was communicating out of concern for Ptak’s customers, charities serving children, and in the hope that a governmental body would review and take action against Ptak and solve the problems affecting the charities and their families. *Id.* Moreover, the communication was in connection with an issue under review by an executive or other governmental body, as the article from June 23, 2016 reflects representatives of the Sky View Youth Football League had filed a police report and instructed parents to report fraudulent activity to their banks. *Id.* Defendant’s post on March 13, 2017, attached to Plaintiffs’ Second Amended Petition as Exhibit “J,” was clearly a communication made in connection with goods or services and community and economic wellbeing and in reference to the judicial proceedings instigated by Plaintiffs. *Id.*

As discussed in more detail below, the only other specific “conduct” complained of with regard to Plaintiffs’ conspiracy cause of action against Dobrott is her “advising these Defendants as well as other organizations which had contracts with Plaintiff Jevin to engage in chargeback activity.” *See* Plaintiffs’ Second Amended Petition. Thus, the only conduct of Defendant

complained of is communicating in the exercise of the right of free speech, the right of association, and/or the right to petition. There are no unlawful purposes or lawful purposes by unlawful means even pleaded by Plaintiffs, but Plaintiffs state Defendants' communications were made "in an apparent scheme to drive Plaintiff Jevin out of business for reasons known to Defendant Dobrott and which have been made public by Defendant Dobrott through her blog Soapboxmom.com as well as through posting on multiple social media sites *as detailed above*," referring to Defendant's statements listed in the factual section of Plaintiffs' Second Amended Petition. *See* Plaintiffs' Second Amended Petition. Thus, Plaintiffs claims necessarily are based on, related to, or in response to Defendant's communications. Moreover, as to Plaintiffs' tortious interference claims, there are no factual allegations concerning any conduct by Dobrott that was independently tortious or unlawful or how she allegedly interfered with any existing contracts; rather, the only conduct complained of on the part of Dobrott supposedly in support of Plaintiffs' tortious interference claims is that she made online communications, which the pleadings and affidavits on file show were made in the exercise of rights protected under the First Amendment. *See* Plaintiffs' Second Amended Petition; Exhibit A.

A review of the definitions provided under the TCPA and the case law interpreting the same makes clear that Plaintiffs' legal action is clearly based on, related to, or in response to Defendant's exercise of the right of free speech, the right of association, and/or the right to petition.

**A. The Exercise of the Right of Free Speech**

The "exercise of the right of free speech" is defined within the TCPA as a communication made *in connection with* a matter of public concern. Tex. Civ. Prac. & Rem. Code § 27.001(3) (emphasis added). Notably, the legislature intentionally drafted the definition of

“communication” to include “the making or submitting of a statement or document in any form or medium, including oral, visual, written, audiovisual, or electronic.” Tex. Civ. Prac. & Rem. Code § 27.001(2). There is no requirement under the TCPA that the speech must be made in the form of public communication as long as it is made in connection with an issue of public concern. *Lippincott v. Whisehunt*, 462 S.W.3d 507, 509 (Tex. 2015); *Hicks v. Grp. & Pension Adm’rs, Inc.*, 473 S.W.3d 518, 530 (Tex. App.—Corpus Christi 2015, no pet.) (holding “communication” includes both public and private communication such that private emails were considered communications made in connection with matters of public concern). “A matter of public concern” is defined as *an issue related to* any of the following:

- (A) health or safety;
- (B) environmental, economic, or community well-being;
- (C) the government;
- (D) a public official or public figure; or
- (E) a good, product, or service in the market place.

Tex. Civ. Prac. & Rem. Code § 27.001(7) (emphasis). Importantly, the Texas Supreme Court recently clarified,

The TCPA does not require that the statements specifically “mention” health, safety, environmental, or economic concerns, nor does it require more than a “tangential relationship” to the same; rather, TCPA applicability requires only that the defendant’s statements are “in connection with” “issue[s] related to” health, safety, environmental, economic, and other identified matters of public concern chosen by the Legislature.

*ExxonMobil Pipeline Co. v. Coleman*, 512 S.W.3d 895, 900 (Tex. 2017) (holding the filing of a financing statement qualified as free speech communications made in connection with an issue related to a good, product, or service in the marketplace as their filing provided notice to the public of an encumbrance on nonmovant’s mineral interests offered for sale in public marketplace and therefore related to a matter of public concern). Moreover, in another very recent case concerning a letter from a hospital to its employee regarding her job performance in

which she was told not to engage in clinical duties for the hospital, the court noted that whether a privately-employed person satisfactorily performs her job is generally not a matter that would be considered a public concern for First Amendment purposes, but the TCPA defines “matter of public concern” to include issues *related to* health or safety, and statements concerning a healthcare professional’s competence relate to matters of public concern under the TCPA such that the letter from the hospital brought the legal action under the TCPA. *Mem’l Hermann Health Sys. v. Khalil*, No. 01-16-00512-CV, 2017 Tex. App. LEXIS 7474, at \*13;15 (Tex. App.—Houston [1st Dist.] August 8, 2017, no pet. h).

The definitions under the TCPA and the case law interpreting the same make clear that Defendant’s communications were made in connection with matters of public concern related to economic or community well-being or a good, product, or service in the market place. *See* Exhibit A; Plaintiffs’ Second Amended Petition; Tex. Civ. Prac. & Rem. Code § 27.001(7). Although “economic or community well-being” is not further defined in the TCPA, courts have held statements relate to economic or community well-being in a variety of contexts similar to the case at hand. *See Watson v. Hardman*, 497 S.W.3d 601, 607 (Tex. App.—Dallas 2016, no pet.) (holding statements accusing plaintiffs of stealing publicly solicited charitable funds related to community wellbeing); *Deaver v. Seasi*, 483 S.W.3d 668, 673 (Tex. App.—Houston [14th Dist.] 2015, no pet.) (holding statements that attorney should be criminally charged based on allegations of identity theft related to community wellbeing); *AOL, Inc. v. Malouf*, No. 05-13-01637-CV, 2015 Tex. App. LEXIS 3312, at \*5 (Tex. App.—Dallas Apr. 2, 2015, no pet.) (mem. op.) (holding statement that a dentist was charged with defrauding taxpayers out of millions of dollars in a Medicaid scam was connected with matters of health or safety, government, and community well-being, as well as a service in the market place, and qualified as a matter of

public concern); *Lippincott v. Whisehunt*, 462 S.W.3d 507, 508-09 (Tex. 2015) (holding emails sent by movant administrator of hospital that summarized reports the movant claimed to have received and, in some instances, investigated about plaintiff certified registered nurse anesthetist who had contracted to provide services for the hospital were communications made in connection with a matter of public concern where reports alleged plaintiff falsely represented himself to be doctor, endangered patients for his own financial gain, and sexually harassed employees); *Neyland v. Thompson*, No. 03-13-00643-CV, 2015 Tex. App. LEXIS 3337, at \*5 (Tex. App.—Austin Apr. 7, 2015, no pet.) (mem. op.) (holding statements by homeowners association members about possible misconduct by the association’s property manager related to community wellbeing); *see also Hicks v. Grp. & Pension Adm’rs, Inc.*, 473 S.W.3d 518, 530 (Tex. App.—Corpus Christi 2015, no pet.) (holding emails sent to school district to convey that if nonmovant was awarded contract and selected as school district’s third-party administrator of self-funded health insurance plan, the insurance claims made by teachers of the school district would not be promptly and satisfactorily paid and expressing concern that the nonmovant was “difficult” to deal with in the past related to the health and economic well-being of the school district’s employees and also related to a service offered by the nonmovant in the market place such that the TCPA applied to the conspiracy and coercion of a public servant claims). The statements made the basis of Plaintiffs’ legal action against Defendant were clearly made in a connection with a matter of public concern in that they were in connection with an issue related to economic or community well-being. *See* Exhibit A; Plaintiffs’ Second Amended Petition.

Furthermore, Defendant’s communications were made in connection with an issue related to a good, product, or service in the marketplace. *See* Exhibit A; Plaintiffs’ Second Amended Petition; *ExxonMobil Pipeline Co. v. Coleman*, 512 S.W.3d 895, 901 (Tex. 2017) (holding the

filing of a financing statement qualified as free speech communications made in connection with an issue related to a good, product, or service in the marketplace as the filing provided notice to the public of an encumbrance on nonmovant's mineral interests offered for sale in public marketplace and therefore related to a matter of public concern); *Better Bus. Bureau of Metro. Dallas v. BH DFW, Inc.*, 402 S.W.3d 299, 305 (Tex. App.—Dallas 2013, pet. denied) (business review and rating of “F” for a company posted on a nonprofit's website to assist the public in selecting reliable companies with which to transact business were considered communications related to a good, product, or service in the marketplace and therefore related to a matter of public concern); *Better Bus. Bur. v. John Moore Servs.*, 441 S.W.3d 345, 353-54 (Tex. App.—Houston [1st Dist.] 2013, pet. denied) (ratings and reviews of area businesses posted on nonprofit's website for consumer use were matters of public concern); *Deaver v. Desai*, 483 S.W.3d 668, 672-73 (Tex. App.—Houston [14th Dist.] 2015, no pet.) (holding statements on website criticizing attorney's practices and ethics were matters of public concern protected by right of free speech); *Avila v. Larrea*, 394 S.W.3d 646, 655 (Tex. App.—Dallas 2012, pet. denied) (holding communication about lawyer's handling of cases was matter of public concern); *Newspaper Holdings, Inc. v. Crazy Hotel Assisted Living, Ltd.*, 416 S.W.3d 71, 81 (Tex. App.—Houston [1st Dist.] 2013, pet. denied) (holding newspaper articles reporting investigation of assisted living facility involved matter of public concern). Importantly, “[u]nder section 27.001, a communication need only be ‘in connection with a matter of public concern,’ which includes issues ‘related to a good, product, or service in the marketplace.’” *Kinney v. BCG Atty. Search, Inc.*, 2014 Tex. App. LEXIS 3998, \*16-17, NO. 03-12-00579-CV (Tex. App.—Austin Apr. 11, 2014) (holding since the record showed the defendant's online statements related to the plaintiff's business operations and the plaintiff's claims were based on those statements, the

defendant met his initial burden of showing by a preponderance of the evidence that his statements were made in connection with a matter of public concern and that the legal action related to those statements so that the TCPA applied). Again, “[a] plaintiff’s own live pleading can satisfy a movant’s 27.005(b) burden.” *MacFarland v. Le-Vel Brands LLC*, No. 05-16-00672-CV, 2017 Tex. App. LEXIS 2569 at \*40 (Tex. App.—Dallas March 23, 2017) (holding the defendant satisfied his Section 27.005(b) burden where the plaintiff’s petition described its business of marketing and selling of products in the market place and the plaintiff’s lawsuit was based on a post by the defendant in which he discussed the plaintiff, its products, and its business model, including statements that the plaintiff company appeared to be operating as a “pay-to-play scheme,” a “pyramid scheme,” and a “scam.”). In the case at hand, Defendant would point out that Plaintiffs’ Second Amended Petition reflects that Daniel E. Ptak is the president of Jevin, Inc., a corporation which provides software and services to aid in the registration and management of particular events and acts as an agent to accept payments on behalf of organizations before remitting such payments less the applicable fees to the organizations. Like in *MacFarland*, all of the communications made the basis of Plaintiffs’ legal action against Heather Dobrott as reflected in Plaintiffs’ Second Amended Petition were made in connection with issues related to such services or goods in the market place (in addition to economic and community wellbeing).

Defendant has met her burden of showing by a preponderance of the evidence that Plaintiffs’ legal action is based on, relates to, or is in response to Defendant’s exercise of free speech such that the TCPA applies and mandates dismissal of Plaintiffs’ legal action against Defendant Heather Dobrott.

## **B. The Exercise of the Right of Association**

Although Defendant has already met her burden of showing the TCPA applies as Plaintiffs' legal action is based on, relates to, or is in response to Defendant's exercise of free speech, Defendant would further show that Plaintiffs' legal action is also based on, relates to, or is in response to Defendant's exercise of the right of association. *See* Exhibit A; Plaintiffs' Second Amended Petition. The "exercise of the right of association" means a communication between individuals who join together to collectively express, promote, pursue, or defend common interests. Tex. Civ. Prac. & Rem. Code § 27.001(2). Again, the legislature intentionally drafted the definition of "communication" to include "the making or submitting of a statement or document in any form or medium, including oral, visual, written, audiovisual, or electronic." Tex. Civ. Prac. & Rem. Code § 27.001(2).

Defendant's communications on which Plaintiffs' legal action is based, related to, or in response to were part of a collective expression among other parents and board members of leagues across the country regarding their concerns with Jevin, Inc. and the ability to fund sports seasons for the children in various leagues due to missing or untimely payments from Jevin, Inc. and how to achieve justice. *See* Exhibit A. Defendant's statements were made to and in response to other individuals with common interests, who were contacting her with their concerns, reviewing and posting on her website, and even "liking" the statements on her website in this regard. *See* Exhibit A. For example, a review of Defendant's statement posted on October 4, 2016 reflects her statement to "encourage every parent to initiate a chargeback with their credit card" in an effort to "put an end to the Jevin scam for good" was "liked" by another individual, and was in reference to a previous post by another individual that posted on her website concerning interests helping children of a charitable league continue playing ball despite the lack



of timely payments from Jevin, Inc. *See* Exhibit A. Defendant and other parents and representatives of nonprofit charitable organizations communicated regarding their shared concerns with the operations of Jevin, Inc. and Mr. Ptak and how various groups affected could pursue and obtain the missing or late funds owed to the organizations and necessary to fund the sports seasons for the children in the leagues. *Id.* They communicated regarding the ways different organizations were coping with the late or missing funds in connection with the proceedings taking place in and before the managing boards of the various charitable organizations. *Id.* They also exchanged information concerning the police reviews and investigations taking place and the reports that various persons and organizations concerned or affected by the operations of Jevin, Inc. and Mr. Ptak had already made or could make to police and governmental investigative bodies in an effort to encourage their review and investigation into the operations. *Id.* The communications at issue relate to the right of association and are protected as communications between individuals who joined together to collectively express, promote, pursue, or defend common interests on Defendant's website and social media sites. *See* Exhibit A; *Backes v. Misko*, 486 S.W.3d 7, 20-21 (Tex. App.—Dallas 2015, pet. denied) (social media discussions criticizing counter-plaintiff's business practices in horse-breeding industry were communications protected by right of association). As such, the TCPA clearly applies and mandates dismissal of Plaintiff's legal action against Defendant Heather Dobrott.

### **C. The Exercise of the Right to Petition**

Although the pleadings and affidavits make clear the TCPA applies such that the burden is now on Plaintiffs to avoid dismissal, Defendant would further show Plaintiffs' legal action is based on, related to, or is in response to Defendant's exercise of the right to petition. Tex. Civ.

Prac. & Rem. Code § 27.001(4). Section 27.001(4) provides that the "exercise of the right to petition" includes:

- (A) a communication in or pertaining to:
  - (i) a judicial proceeding;
  - (ii) an official proceeding, other than a judicial proceeding, to administer the law;
  - (iii) an executive or other proceeding before a department of the state or federal government or a subdivision of the state or federal government;
  - (iv) a legislative proceeding, including a proceeding of a legislative committee;
  - (v) a proceeding before an entity that requires by rule that public notice be given before proceedings of that entity;
  - (vi) a proceeding in or before a managing board of an educational or eleemosynary institution supported directly or indirectly from public revenue;
  - (vii) a proceeding of the governing body of any political subdivision of this state;
  - (viii) a report of or debate and statements made in a proceeding described by Subparagraph (iii), (iv), (v), (vi), or (vii); or (ix) a public meeting dealing with a public purpose, including statements and discussions at the meeting or other matters of public concern occurring at the meeting;
- (B) a communication in connection with an issue under consideration or review by a legislative, executive, judicial, or other governmental body or in another governmental or official proceeding;
- (C) a communication that is reasonably likely to encourage consideration or review of an issue by a legislative, executive, judicial, or other governmental body or in another governmental or official proceeding;
- (D) a communication reasonably likely to enlist public participation in an effort to effect consideration of an issue by a legislative, executive, judicial, or other governmental body or in another governmental or official proceeding; and
- (E) any other communication that falls within the protection of the right to petition government under the Constitution of the United States or the constitution of this state.

Tex. Civ. Prac. & Rem. Code § 27.001(4).

Defendant would show the statements at issue are protected as communications in or pertaining to a report of a proceeding in or before a managing board of an educational or

nonprofit institution supported directly or indirectly by public revenue; communications in connection with an issue under consideration or review by an executive or other governmental body (including police departments); communications reasonably likely to encourage consideration or review of an issue by a legislative, executive, judicial, or other governmental body; and/or as communications reasonably likely to enlist public participation in an attempt to effect consideration of an issue by a legislative, executive, judicial, or other governmental body. *See* Exhibit A; Tex. Civ. Prac. & Rem. Code § 27.001(4). The pleadings and affidavits on file show Defendant communicated with parents and representatives of nonprofit charitable organizations in connection with the proceedings taking place in and before the managing boards of the various charitable organizations; the reports that various persons and organizations concerned or affected by the operations of Jevin, Inc. and Mr. Ptak had already made or could make to police and governmental investigative bodies in an effort to encourage their review and investigation into the operations; police reviews and investigations taking place across the country in this regard; and other communications reasonably likely to enlist public participation in an effort to effect consideration of the issues by an executive or other governmental body. *See* Exhibit A. Moreover, Defendant's communications also pertained to judicial proceedings involving Plaintiffs. *Id.*

Defendant has gone beyond what is required and has shown by a preponderance of the evidence that Plaintiffs' legal action against Defendant is based on, related to, or in response to Defendant's exercise of the right of free speech, the right of association, and the right to petition, although Defendant is only required to show Plaintiffs' legal action is based on, related to, or in response to Defendant's exercise of any one of these rights. As such, this is clearly a case in which the TCPA applies and warrants dismissal of Plaintiffs' legal action against Defendant.

**2. Plaintiffs Cannot Meet Their Burden of Establishing by Clear and Specific Evidence a Prima Facie Case for Each Essential Element of Their Claims**

As Defendant has established that this legal action is based on, relates to, or is in response to Defendant's exercise of the right of free speech, right to petition, or right of association, Plaintiffs' legal action must be dismissed unless Plaintiffs establish by clear and specific evidence a prima facie case for each and every essential element of their claims. Tex. Civ. Prac. & Rem. Code § 27.005(c). The Court must dismiss Plaintiffs' causes of action if Plaintiffs fail to provide clear and specific evidence of a prima facie case on any required element. *Id.* The nonmovant must present evidence as to each and every essential element of their claim to avoid dismissal. *See Young v. Krantz*, 434 S.W.3d 335, 344 (Tex. App.—Dallas 2014, no pet.). "Clear and specific evidence' of each essential element of a claim is more than 'mere notice pleading.'" *MacFarland v. Le-Vel Brands LLC*, No. 05-16-00672-CV, 2017 Tex. App. LEXIS 2569, at \*20 (Tex. App.—Dallas March 23, 2017). A plaintiff must provide enough detail to show the factual basis for its claim." *In re Lipsky*, 460 S.W.3d 579, 591 (Tex. 2015). "Bare, baseless opinions do not create fact questions, and neither are they a sufficient substitute for the clear and specific evidence required to establish a prima facie case under the TCPA." *In re Lipsky*, 460 S.W.3d 579, 592 (Tex. 2015). "Opinions must be based on demonstrable facts and reasoned basis." *Id.* General averments of direct economic losses and lost profits do not satisfy the minimum requirements of the TCPA. *Id.* (holding an affidavit stating the nonmovant suffered direct pecuniary and economic losses was insufficient as it was devoid of any specific facts illustrating how the movant's alleged remarks about the nonmovant's activities actually *caused* such losses) (citing *Burbage v. Burbage*, 447 S.W.3d 249, 262 (Tex. 2014) (noting a jury could not reasonably infer that cancellations for a funeral home business were caused by the defendant's communications when any number of reasons could have caused cancelations)).

Plaintiffs previously failed to meet their burden of establishing by clear and specific evidence a prima facie case for each essential element of their defamation causes of action, including libel and slander, which Defendant addressed in her original motion to dismiss and which were nonsuited by Plaintiffs. Plaintiffs will also fail to meet their burden of proof with regard to their remaining causes of action asserted in Plaintiffs' Second Amended Petition: (1) conspiracy to defraud; and (2) tortious interference with existing and prospective contracts. Furthermore, without waiving the foregoing and subject thereto, to the extent Plaintiffs are able to meet their burden, Defendant's motion must still be granted if Defendant establishes a valid defense by the preponderance of the evidence, and Defendant reserves the right to supplement the record with additional evidence in support of the same pending Plaintiffs' response to this motion.

### **1. Conspiracy to Defraud**

Although the burden is entirely on the Plaintiffs to establish by clear and specific evidence a prima facie case for each and every essential element of their claims to survive dismissal, and Defendant has no burden to even challenge any specific elements thereto, Defendant would point out for the Court that the elements one must prove for a conspiracy cause of action are as follows: (1) the defendant was a member of a combination of two or more persons; (2) the object of the combination was to accomplish (a) an unlawful purpose, or (b) a lawful purpose by unlawful means; (3) the members had a meeting of the minds on the object or course of action; (4) one of the members committed an unlawful, overt act to further the object or course of action; and (5) the plaintiff suffered injury as a proximate result of the wrongful act. *Chon Tri v. J.T.T.*, 162 S.W.3d 552, 556 (Tex. 2005); *Ernst & Young, L.L.P. v. Pacific Mut. Life Ins.*, 51 S.W.3d 573, 583 (Tex.2001). "Civil conspiracy, generally defined as a combination of

two or more persons to accomplish an unlawful purpose, or to accomplish a lawful purpose by unlawful means, might be called a derivative tort. That is, a defendant's liability for conspiracy depends on participation in some underlying tort for which the plaintiff seeks to hold at least one of the named defendants liable.” *Tilton v. Marshall*, 925 S.W.2d 672, 681 (Tex. 1996). If the underlying claim fails because the plaintiff cannot prove one of its elements, the conspiracy claim also fails. *See Grant Thornton LLP v. Prospect High Income Fund*, 314 S.W.3d 913, 930-31 (Tex.2010). Because the elements of conspiracy require participation in some underlying intentional tort, if no intentional tort was committed, the plaintiff has no claim for conspiracy. *Firestone Steel Products Co. v. Barajas*, 927 S.W.2d 608, 617 (Tex. 1996). Conspiracy requires intent, and the parties must be aware of the harm or wrongful conduct at the beginning of the agreement. *Id.*

As for Defendant Dobrott specifically, Plaintiffs merely allege that “Defendant Dobrott conspired with these Defendants as well as others” by “advising these Defendants as well as other organizations which had contracts with Plaintiff Jevin to engage in chargeback activity.” *See* Plaintiffs’ Second Amended Petition. In other words, the only basis for lumping Defendant Dobrott into this section of the petition in which Plaintiffs assert conspiracy to defraud is that she communicated in the exercise of the right of free speech, the right of association, and/or the right to petition as discussed above. There are no unlawful purposes or lawful purposes by unlawful means pleaded by Plaintiffs, although Plaintiffs merely state Defendants’ actions were for reasons known to her and which have been made public through her blog and posting on social media sites “as detailed above,” such that Plaintiffs claims necessarily are based on, related to, or in response to her statements. *See* Plaintiffs’ Second Amended Petition. Plaintiffs own live pleading proves by a preponderance of evidence that the conspiracy cause of action is based on

Defendant Dobrott's postings on her blog and social media sites on which she made her reasons for advising others to engage in chargeback activity known – reasons which are clearly in connection with matters of public concern or as part of the right to associate and/or right to petition as discussed in this motion. *See id.* Moreover, such communications by Defendant do not amount to an independent intentional tort necessary to support a conspiracy cause of action. To the extent Plaintiffs allege Dobrott was one of “these Defendants” who allegedly engaged in a “conspiracy to deprive Plaintiff of property through fraud and misrepresentation that would result in Plaintiff Jevin allowing access to its goods and services for which Participant Defendants’ accepted and ultimately charged back payments,” which Plaintiffs do not appear to be asserting against Dobrott and for which there is absolutely no evidence as to Dobrott, Defendant would show that a plaintiff is required to prove the following elements to support an underlying claim for fraud: (1) that the defendant made a misrepresentation of material fact to the plaintiff; (2) the representation was false; (3) when the defendant made the representation, the defendant either knew the representation was false or made the representation recklessly, as a positive assertion, and without knowledge of its truth; (4) the defendant made the representation with the intent that the plaintiff act on it; (5) the plaintiff justifiably relied on the representation; and (6) the representation caused the plaintiff injury. *Zorrilla v. Aypco Constr. II, LLC*, 469 S.W.3d 143, 153 (Tex.2015); *Better Bus. Bur. v. John Moore Servs.*, 441 S.W.3d 345, 358 (Tex. App.—Houston [1st Dist.] 2013, pet. denied). Fraudulent inducement is a distinct category of common-law fraud that shares the same elements but involves a promise of future performance made with the intent and purpose to deceive and with no intention of performing at the time it was made. *Id.* Plaintiffs have not and cannot by clear and convincing evidence make a prima facie case for each essential element of fraud or any other intentional tort necessary to support a

conspiracy cause of action against Defendant, much less for each essential element of the alleged conspiracy cause of action itself, including a meeting of the minds on an unlawful purpose or lawful purpose to be achieved by unlawful means.

## **2. Tortious Interference with Existing and Prospective Contracts**

Again, although the burden is entirely on the Plaintiffs to establish by clear and specific evidence a prima facie case for each and every essential element of their claims to survive dismissal, Defendant would point out that the elements of an action for tortious interference with an existing contract are the following: (1) the plaintiff had a valid contract subject to interference; (2) the defendant willfully and intentionally interfered with the contract; (3) the interference proximately caused the plaintiff's injury; and (4) the plaintiff incurred actual damage or loss. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 207 (Tex. 2002). The elements of a cause of action for tortious interference with prospective business relations are the following: (1) there was a reasonable probability that the plaintiff would have entered into a business relationship with a third person; (2) the defendant intentionally interfered with the relationship; (3) the defendant's conduct was independently tortious or unlawful; (4) the interference proximately caused the plaintiff's injury; and (5) the plaintiff suffered actual damage or loss as a result. *Hicks v. Grp. & Pension Adm'rs, Inc.*, 473 S.W.3d 518, 535 (Tex. App.—Corpus Christi 2015, no pet.) (holding declaration submitted by nonmovant, which stated the representative of the third party company had informed the plaintiff that it had won the company's business but after the subject emails were sent by movant the representative of the third party company advised plaintiff did not end up getting the business after all despite what the representative had said earlier, provided no evidence of causation such that plaintiff did not establish by clear and



specific evidence a prima facie case on the essential element of causation in its claim for tortious interference with prospective business relations to avoid dismissal under the TCPA).

In support of the tortious interference cause(s) of action in Plaintiffs' Second Amended Petition, Plaintiffs have merely asserted Jevin "had a valid contract" and "would have entered into a business relationship with a third party," without even identifying any third party with which it would have entered into a business relationship with nor any existing contract with which Dobrott allegedly willfully and intentionally interfered. *See* Plaintiffs' Second Amended Petition. Again, there is no indication of how Dobrott allegedly interfered with any existing contract or proximately caused Plaintiff to suffer actual damage, and Plaintiffs have not even asserted any conduct that was independently tortious or unlawful; rather, the only conduct complained of on the part of Dobrott supposedly in support of Plaintiffs' tortious interference claims is that she made communications, which the pleadings and affidavits on file show were made in the exercise of rights protected under the First Amendment. *See* Plaintiffs' Second Amended Petition; Exhibit A. Furthermore, Plaintiffs cannot show by clear and specific evidence that Defendant's statement(s) caused any third party (although none are even named) to award a contract to another bidder. Plaintiffs cannot show causation for any injury to support their claims. Moreover, the evidence makes clear that any possible injury on the part of Plaintiffs resulted from Plaintiffs' own actions, although Defendant denies there is any evidence of injury. *See id.*

The additional causes of action asserted in Plaintiffs' Second Amended Petition on July 17, 2017 reflect a thinly veiled attempt to evade the application of the TCPA, which was put in place to protect against precisely this type of legal action. This lawsuit has already resulted in Defendant incurring extensive time and expense defending herself against claims the Act was put in place to prevent through early dismissal. Plaintiffs cannot meet their burden of proof with

regard to each essential element of any of their causes of action against Defendant such that Plaintiffs' legal action against Defendant Heather Dobrott must be dismissed in its entirety.

### **CONCLUSION**

The stated purpose of Chapter 27 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*," and it "shall be construed liberally to effectuate its purpose and intent fully." Tex. Civ. Prac. & Rem Code § 27.0002 (emphasis added); *Id.* at § 27.011. Heather Dobrott has shown that Plaintiffs' causes of action are based on, relate to, and are in response to, Defendant's exercise of the right of free speech, right to association, and right to petition. Plaintiffs cannot establish by clear and specific evidence and a prima facie case on each essential element of their causes of action against Defendant. This is not a case involving meritorious claims and demonstrable injuries to be balanced against the First Amendment rights of the person being sued. Construing Chapter 27 liberally to effectuate its purpose and intent fully can only result in the dismissal of Plaintiffs' claims against Heather Dobrott. Accordingly, Plaintiffs' lawsuit against Defendant Heather Dobrott must be dismissed in its entirety, and Defendant must be awarded attorneys' fees and costs and other expenses incurred in defending against the legal action as justice and equity may require.

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully requests that the Court dismiss Plaintiff's legal action with prejudice and award Defendant court costs, reasonable attorney's fees, other expenses incurred in defending against this legal action as justice may require; sanctions against Plaintiff in a sufficient amount to deter Plaintiff from bringing similar

actions in the future; and for such other and further relief to which Defendant may be justly entitled and will ever pray.

Respectfully submitted,

**WALTERS BALIDO & CRAIN, L.L.P.**

*/s/ Sarah Holley Long*

BY: \_\_\_\_\_

SARAH HOLLEY LONG - 24036798  
Meadow Park Tower, Suite 1500  
10440 North Central Expressway  
Dallas, Texas 75231  
Telephone: 214-749-4805  
Facsimile: 214-760-1670  
LongEDocsNotifications@wbelawfirm.com

**CERTIFICATE OF SERVICE**

This is to certify that on this the 15<sup>th</sup> day of September, 2017, a true and correct copy of the above document has been forwarded to all counsel of record.

*/s/ Sarah Holley Long*

\_\_\_\_\_  
SARAH HOLLEY LONG

# **EXHIBIT**

## **A**

CAUSE NO. 199-00984-2017

JEVIN, INC., a Texas corporation;  
and DANIEL E. PTAK, an individual  
Plaintiffs

VS.

SKY VIEW YOUTH FOOTBALL,  
a Utah organization; WASATCH  
FRONT FOOTBALL LEAGUE, INC.,  
a Utah corporation; JARED FURGESON,  
et al.; and HEATHER DOBROTT,  
an individual  
Defendants

§ IN THE DISTRICT COURT  
§  
§  
§  
§ 199<sup>TH</sup> JUDICIAL DISTRICT  
§  
§  
§  
§  
§  
§  
§  
§ COLLIN COUNTY, TEXAS

AFFIDAVIT OF HEATHER DOBROTT

STATE OF TEXAS

§  
§  
§

COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared Heather Dobrott, who, after being duly sworn by me, deposed and stated as follows:

My name is Heather Dobrott. I am of sound mind and body and capable of making this affidavit. I am over the age of 18, and I have never been convicted of a felony or crime of moral turpitude. I have personal knowledge of the facts in this affidavit and know them to be true and correct.

I run a volunteer website entitled *Realscam.com – Is it, or isn't it? You decide.*, which is a general discussion website on which individuals can review and openly discuss issues of public concern in the community, including financial fraud and scams, reviews of products and services in the marketplace, issues of public concern reported in the news, and other issues that affect economic or community well-being. Anyone is welcome to post on the site. The site does not generate income.

I am also a former board member of the Garland Soccer Association, which is a 501-C3 nonprofit charitable organization. In 2012, I was elected to be the director of the U6 Girls' League for the Garland Soccer Association. The Garland Soccer Association has used Jevin, Inc. ("Jevin") for its sports management software in connection with registration, scheduling, and other website operations since 2009. Through my experience as a former board member of the Garland Soccer Association, I became familiar with Jevin, Inc.'s software and issues the Garland Soccer Association had with obtaining timely registration fees and other payments from Jevin, Inc. and Daniel E. Ptak ("Ptak") as early as June, 2013. Through subsequent news articles and reports from other parents and board members associated with other charitable youth organizations that have used Jevin, Inc.'s software, I continued to discover multiple other

organizations claiming to have experienced problems with late or missing payments from Jevin, Inc. and Daniel E. Ptak. Representatives of various nonprofit charitable organizations and I communicated regarding our shared concerns with the operations of Jevin, Inc. and Mr. Ptak and the challenges they were presenting to organizations, parents, and children across the country with regard to funding and maintaining the youth programs, as well as how various organizations were pursuing the funds they were owed from Mr. Ptak and Jevin, Inc. necessary to fund the sports seasons for the children in the leagues. Our communications included the ways different organizations were coping with the late or missing funds in connection with the proceedings taking place in and before the managing boards of the various charitable organizations, the reports that had or could be made to the police and governmental bodies by persons and organizations concerned or affected by the operations of Jevin, Inc. and Mr. Ptak, and methods these leagues were using to pursue the funds they were owed.

Prior to the time I even made any of the statements made the basis of Plaintiffs' legal action against me as provided in Plaintiffs' Second Amended Petition, multiple organizations had begun to come forward and news articles had been published regarding issues with Jevin, Inc. and Daniel E. Ptak – namely, issues receiving payments in a timely manner—and the steps various leagues were taking to report the same to the police and credit card companies. Prior to my June 24, 2016 post, I had learned of ten organizations claiming late or missing funds from Jevin, Inc., and online searches reflected that Jevin, Inc.'s number of customers was decreasing. I had also read news articles providing that leagues were making police reports and advising parents to do chargebacks in an effort to recoup funds they were owed by Jevin. By the time of the August 9, 2016 post referenced in Plaintiffs' Second Amended Petition, I was contacted by a representative of a 12th league reporting late or missing funds from Jevin, Inc. By the time of my October 4, 2016 post, I had learned of 15 organizations that had reported late or missing funds from Jevin, Inc. I had learned of 17 organizations that had reported late or missing funds prior to my posts from October 19, 2016 and October 21, 2016 referenced in Plaintiffs' Second Amended Petition. By the time of my March 13, 2017 statement referenced in Plaintiffs' Second Amended Petition, I had learned of 19 such organizations through either direct contact with league representatives and parents or news articles. The entirety of my statements made on the above mentioned dates and referred to in Plaintiffs' Second Amended Petition are attached hereto as Exhibit 1 and incorporated herein for the Court's review.

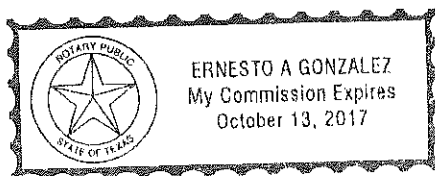
Any and all of my communications related to Mr. Ptak and Jevin, Inc. made the basis of Plaintiffs' legal action against me have been in accordance with my rights of free speech, the right to associate, and the right to petition out of concern for other parents, youth members, and charitable organizations based on my own experience and the experiences of other customers of Jevin, Inc. that have been reported to me directly or through the media. I posted the statements alleged in Plaintiffs' Second Amended Petition to express my opinions concerning the products and services offered by Jevin, Inc. and the negative impact I believe Jevin, Inc. and Mr. Ptak are having on economic and community wellbeing, charitable organizations, children, and parents and to bring awareness to the complaints reported by other customers and charitable organizations concerning their experiences with Jevin, Inc. and Mr. Ptak. My statements were made in the interest of encouraging a review of the operations and protecting other charitable organizations, children, and parents, and my statements were made on a forum in which individuals could join and collectively express, promote, and defend their interests. I was joined


by board members of leagues across the country and parents to collectively express and promote our concerns with Jevin, Inc. and the ability to fund sports seasons for the children in various leagues due to missing or untimely payments from Jevin, Inc. and how to achieve justice for the parents, children, and leagues. I never engaged in any plan or agreement with anyone else to commit unlawful activity or achieve some unlawful purpose against Mr. Ptak or Jevin, Inc. I never acted or made any plans to deceive or interfere with Plaintiffs' existing or prospective contractual relationships or Mr. Ptak's ability to conduct lawful business.

Further, affiant sayeth not.

  
Heather Dobrott

SWORN TO AND SUBSCRIBED before me on this the 15 day of September,  
2017.



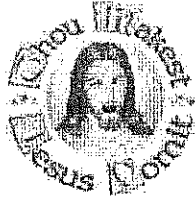
  
Notary Public  
State of Texas

# Exhibit 1



06-24-2016, 11:36 AM

#43



**Soapboxmom**  
Administrator

Join Date	Jun 2010
Location	Mars
Posts	7,914
Blog Entries	3

**re: Jevin Inc. / Dan Ptak / Online Sports Organization Management Software / David Arciniega / Garland Soccer / Chargebacks**

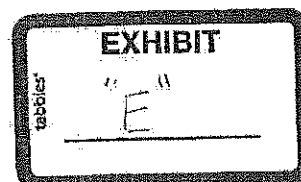
Dan Ptak is so clueless that instead of removing my comments on his Youtube videos and blocking me from commenting, he has taken down his only free advertising. Now on his business pages one clicks on his video links and gets this. Jevin, which clearly seems to be a Ponzi in imminent collapse, has customers bailing in droves.

Most former Jevin users are going to Sports Illustrated Play. Others have gone to Team Snap, which I used for several seasons to manage my team in place of Jevin and absolutely loved for communication, and Blue Sombrero, which has partnered with Dick's Sporting Goods. There are plenty of options that are having no payment issues whatsoever.

Jevin Youtube Account.JPG

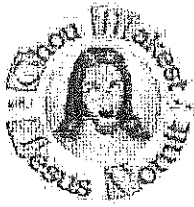
Share

Anyone needing assistance please feel free to use this e-mail in addition to the PM system here to contact me: [soapboxmom@hotmail.com](mailto:soapboxmom@hotmail.com)



03/19/2015 06:32 PM

452



**Soapboxmom**  
Administrator

Join Date	Jun 2010
Location	Mars
Posts	7,913
Blog Entries	2

**Re: Jevin Inc. / Dan Ptak / Online Sports Organization Management Software / David Arciniega / Garland Soccer / Chargeba**

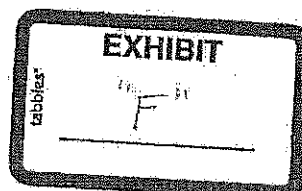
A 12th league out money contacted me today. An attorney on that board claims that they are owed about \$50,000.00 from spring registration. Jevin is clearly imploding and David Arciniega continues to force Garland Soccer to use this software even though it is obviously a tremendously risky proposition. It seems quite clear that Jevin is operating as a ponzi. Existing customers are having a hellacious time getting their money, so it is quite possible that new customers or other existing customers money is being used to pay the oldest debts. I checked online and the number of customers is obviously shrinking rapidly, so the complete collapse of this deal is likely imminent.

I advised those out money to do chargebacks as that has been a successful strategy for other groups that couldn't get their money. It is always advisable to file a police report, but as it appears Jevin doesn't have the money to pay and collection is difficult in Texas with litigation (that can run hundreds of thousands of dollars) that chargebacks are a good option and may be the only way to get any funds back.

When the chargeback bonanza ends if not sooner, the credit card companies will stop Jevin from being able to even accept credit card payments and those companies may file litigation or criminal charges themselves to cover the chargebacks that Jevin does not have funds to cover in its accounts. The credit card companies / payment processors / banks are going to be out a bundle due to Dan Ptak and his Jevin debacle. This circus show is just beginning!

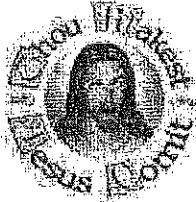
[Share](#)

Anyone needing assistance please feel free to use this e-mail in addition to the PM system here to contact me: [soapboxmom@hotmail.com](mailto:soapboxmom@hotmail.com)



10-04-2016, 05:43 PM

#66



**Soapboxmom**  
Administrator

Join Date: Jun 2010  
Location: Mars  
Posts: 7,918  
Blog Entries: 3

**Re: Jevin Inc. / Dan Ptak / Online Sports Organization Management Software / David Arciniega / Garland Soccer / Chargebacks**

Originally Posted by **Typhoto**

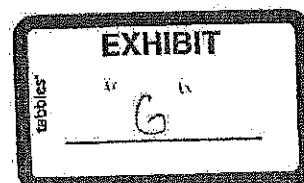
*The Northeast Little League has set up a GoFundMe page for anyone interested in helping our little ones continue playing ball this season. My daughter is on the T-ball team and she is 4 years old. She loves it so much and it gives me great pride to see her trying her best at such a young age. If you can help out the team, please do so here: <https://www.gofundme.com/2r6vryc?ssid=752266639&pos=1>*

Please encourage every parent to initiate a chargeback with their credit card. They may reference a police report number. That is an almost guaranteed to get money owed and it leaves the credit card company to fight with Jevin. Dan Ptak runs Jevin out of his home in Allen, TX and as the law stands Jevin is likely uncollectable. The chargebacks are probably the reason that Dan Ptak is admitting to reporters that all of Jevin's accounts are frozen. Hopefully, more chargebacks will put an end to the Jevin scam for good.

Share

#bshaw likes this.

Anyone needing assistance please feel free to use this e-mail in addition to the PM system here to contact me: [soapboxmom@hotmail.com](mailto:soapboxmom@hotmail.com)



10-19-2016, 02:37 PM

#78



**Soapboxmom**  
Administrator

Join Date	Jun 2010
Location	Mars
Posts	7,964
Blog Entries	3

**Re: Jevin Inc. / Dan Ptak / Online Sports Organization Management Software / David Arciniega / Garland Soccer / Chargeba**

Another group has reported that Jevin owes them money. That would be #17 for 2016. I encouraged them to contact the Allen, TX police and to initiate chargebacks as that seems the most effective means to get the money that is owed from Jevin.

[Share](#)

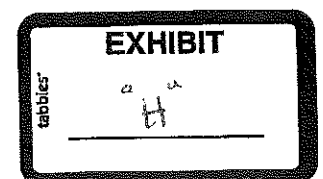
Anyone needing assistance please feel free to use this e-mail in addition to the PM system here to contact me: [soapboxmom@hotmail.com](mailto:soapboxmom@hotmail.com)

[Garland Soccer Association / David Arciniega / Jevin Inc. / Dan Ptak / Online Sports Organization Management Software](#)

[Love some Bunny! I do!](#)

[Soapboxmom Kicks Tim Darnell to the Curb!](#)

[Scandal / Corruption Garland Soccer Association / David Arciniega / North Texas State Soccer / US Youth Soccer](#)



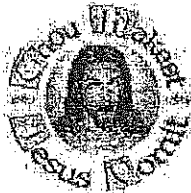
Page 31 of 33

3/18/2017

Jevin Inc. / Dan Ptak / Online Sports Organization Management Software / David Arciniega / Garland Soccer / Chargebacks - Page 4

10-21-2016, 12:39 PM

#79



**Soapboxmom**  
Administrator

Join Date	Jun 2010
Location	Mars
Posts	7,918
Blog Entries	3

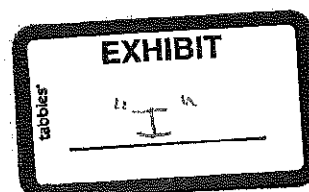
**Re: Jevin Inc. / Dan Ptak / Online Sports Organization Management Software / David Arciniega / Garland Soccer / Chargeba**

I have counted a total of 17 leagues that had late or missing payments. The total is around \$400,000.00. As Jevin's accounts are now frozen due to chargebacks from across the country, Jevin cannot conduct business at all (including accepting credit card payments.) Jevin has been collapsing for years and now it has finally hit critical mass. Group #17, that I learned of just this week, has not been able to get a single dime of its registration money for fall ball and has joined the numerous others in filing with the police.

Jevin's Dan Ptak is one of the dirtiest businessmen I have come across. Those fees he is trying to trick the charity into paying were likely due to the tens of thousands in chargebacks that had to be initiated by the parents (credit card holders). Jevin / Dan Ptak are wholly responsible for all of that as they did not pay this league the money that was owed in a timely manner. Jevin was 2 months late in paying money that should have been paid in 3 days. Now, he wants to totally screw over these fine folks yet again! Skyview did all the right things by sharing their horror story with the media, filing police reports and doing chargebacks as they are a charity that must look out for the children and families that they serve. I hope the authorities can take action against Ptak and end this nightmare! No one will use this dirty and dishonest company seeing the way he has repeatedly abused his customers (charities serving children.)

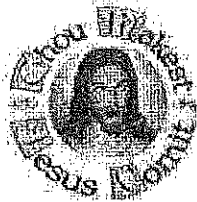
[Share](#)

Anyone needing assistance please feel free to use this e-mail in addition to the PM system here to contact me: [soapboxmom@hotmail.com](mailto:soapboxmom@hotmail.com)



03-13-2017, 10:31 AM

#108



**Soapboxmom**  
Administrator

Join Date	Jun 2010
Location	Mars
Posts	7,918
Blog Entries	3

**Re: Jevin Inc. / Dan Ptak / Online Sports Organization Management Software / David Arciniega / Garland Soccer / Chargeba**

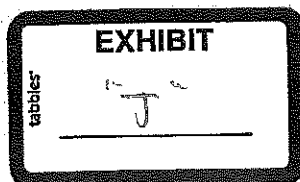
Can I pass on charge-back fees to my customers?

*However, as Brennan points out, passing along charge-back fees could seem unethical, so I would think hard about whether you want to attempt this. Competition among merchants is fierce, and customers in the U.S. expect generous refund policies. If you inadvertently shipped broken merchandise and a credit was warranted, how would the customer feel to see you pass along a charge-back fee on his next month's statement? Maybe he would dispute that charge, too, resulting in another charge-back for you.*

Really sad that I must point out the obvious, but no one in their right mind will ever do business with Jevin again. Dan Ptak is such a low life creep that he pays weeks late and then sues his desperate customers that were left with no choice but to do a chargeback to get their money for their little kids sports charity.

[Share](#)

Anyone needing assistance please feel free to use this e-mail in addition to the PM system here to contact me: [soapboxmom@hotmail.com](mailto:soapboxmom@hotmail.com)





AUSTIN ★ DALLAS ★ DECATUR ★ HOUSTON

SARAH HOLLEY LONG

Partner

sarah.long@wbclawfirm.com

**Service of Documents:**

LongEDocsNotifications@wbclawfirm.com

(214) 347-8342 - Direct Line

(214) 347-8343 - Direct Fax

September 15, 2017

Collin County District Clerk  
199th Judicial District Court  
Collin County Courthouse  
2100 Bloomdale Road, Suite 10030  
McKinney, TX 75071

*Via E-File*

**RE: JEVIN, INC., a Texas corporation; and DANIEL E. PTAK, an individual VS. SKY VIEW YOUTH FOOTBALL, a Utah organization; WASATCH FRONT FOOTBALL LEAGUE, INC., a Utah corporation; JARED FURGESON, et al.; and HEATHER DOBROTT, an individual**

**Cause Number: 199-00984-2017**

**Court: 199<sup>th</sup> Judicial District Court, Collin County, Texas**

**Our File Number: 1341-82466**

Dear Clerk:

Please find enclosed the proposed *Order Granting Defendant Heather Dobrott's Motion to Dismiss Pursuant to Chapter 27 of the Texas Civil Practice and Remedies Code as to Plaintiffs' Second Amended Petition* to be submitted to the Court for consideration regarding the above referenced matter. Please forward a conformed copy of the order to my office at your earliest convenience.

By copy of this letter, we are serving same upon all counsel of record.

WALTERS BALIDO & CRAIN L.L.P.

MEADOW PARK TOWER 10440 NORTH CENTRAL EXPRESSWAY SUITE 1500 DALLAS, TEXAS 75231

FAX: 214.760.1670 TELEPHONE: 214.749.4805

www.wbclawfirm.com

September 15, 2017  
Page 2

Thank you for your assistance in this matter.

Very truly yours,

*/s/ Sarah Holley Long*

SARAH HOLLEY LONG

SHL/EAS/lk  
Enclosure

cc: With Enclosure

LeAnn W. Diamond                    ***Via Facsimile: 972-632-1301***  
Eric B. Klocke  
Luce Law, P.C.  
5900 S. Lake Forest Dr., Suite 200  
McKinney, Texas 75070

W. Todd Albin                        ***Via Facsimile: 214-423-5111***  
John J. Mongogna  
Albin Roach, PLLC  
5665 Dallas Pkwy., Suite 200  
Frisco, Texas 75034



September 15, 2017

Page 3

bcc: With Enclosure

Deonna McNeill      *Via Email: [Deonna.McNeill@Safeco.com](mailto:Deonna.McNeill@Safeco.com)*  
Safeco Insurance Companies  
P. O. Box 515097  
Los Angeles, CA 90051-5097

**RE:    *JEVIN, INC., a Texas corporation; and DANIEL E. PTAK, an individual VS. SKY VIEW YOUTH FOOTBALL, a Utah organization; WASATCH FRONT FOOTBALL LEAGUE, INC., a Utah corporation; JARED FURGESON, et al.; and HEATHER DOBROTT, an individual***

**Cause Number:      199-00984-2017**  
**Court:                199<sup>th</sup> Judicial District Court, Collin County, Texas**  
**Our File Number:    1341-82466**  
**Claim Number:      586708256002**  
**Insured:              Heather Dobrott**

Heather Dobrott      *Via Email: [hdobrott@gmail.com](mailto:hdobrott@gmail.com)*  
2518 Suncrest Dr.  
Garland, Texas 75044

CAUSE NO. 199-00984-2017

JEVIN, INC., a Texas corporation;  
and DANIEL E. PTAK, an individual  
Plaintiffs

VS.

SKY VIEW YOUTH FOOTBALL,  
a Utah organization; WASATCH  
FRONT FOOTBALL LEAGUE, INC.,  
a Utah corporation; JARED FURGESON,  
et al.; and HEATHER DOBROTT,  
an individual  
Defendants

§ IN THE DISTRICT COURT  
§  
§  
§  
§ 199<sup>TH</sup> JUDICIAL DISTRICT  
§  
§  
§  
§  
§  
§  
§  
§ COLLIN COUNTY, TEXAS

**ORDER GRANTING DEFENDANT HEATHER DOBROTT'S MOTION TO DISMISS  
PURSUANT TO CHAPTER 27 OF THE TEXAS CIVIL PRACTICE AND  
REMEDIES CODE AS TO PLAINTIFFS' SECOND AMENDED PETITION**

The Court, having considered Defendant Heather Dobrott's Motion to Dismiss Pursuant to Chapter 27 of the Texas Civil Practice and Remedies Code as to Plaintiffs' Second Amended Petition, the pleadings, the evidence, and arguments of counsel, is of the opinion that the relief requested in such motion should be in all things GRANTED.

It is, therefore, ORDERED, ADJUDGED AND DECREED that the Plaintiffs' claims and causes of action against Defendant Heather Dobrott are hereby dismissed in their entirety with prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Heather Dobrott is awarded all costs of court, reasonable attorney's fees, and other expenses incurred in defending against Plaintiffs' legal action. Defendant is ordered to submit evidence of fees, costs, and expenses by affidavit within \_\_\_\_\_ days from the date of this order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that to deter Plaintiffs from bringing similar actions in the future, Plaintiffs will pay sanctions in the amount of \$\_\_\_\_\_.

Such payment must be made on or before \_\_\_\_\_, or within \_\_\_\_\_ days of the execution of this order.

SIGNED on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
JUDGE PRESIDING