

**IN THE CIRCUIT COURT OF TENNESSEE
ELEVENTH JUDICIAL DISTRICT AT CHATTANOOGA**

**MIKE BEDSOLE, d/b/a)
TINY HOUSE CHATTANOOGA,)**

Plaintiff,)

v.)

**SINCLAIR BROADCAST GROUP, INC.;)
WTVC LICENSEE, LLC; AMERICAN)
BROADCASTING COMPANIES, INC.;)
WTVC-TV NEWS CHANNEL 9;)
SAM LUTHER; KELLY CURTIN;)
ABC HOLDING COMPANY, INC.;)
KABC-TV ABC 7 EYEWITNESS NEWS;)
THE WALT DISNEY COMPANY;)
and LETICIA JUAREZ,)**

Defendants.)

Case No. 20-C-649

Division IV

Hon. Kyle R. Hedrick

JURY DEMAND

**ABC DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND FOR
FAILURE TO STATE A CLAIM**

Defendants The Walt Disney Company (“TWDC”), American Broadcasting Companies, Inc. (“American Broadcasting Companies”), ABC Holding Company Inc. (“ABC Holding Company”), KABC-TV ABC 7 Eyewitness News (“KABC”), and Leticia Juarez (collectively, the “ABC Defendants”) respectfully submit this memorandum of law in support of their motion to dismiss Plaintiff’s complaint in this lawsuit (the “Complaint”) pursuant to Tenn. R. Civ. P. 12.02(2) for lack of personal jurisdiction over the ABC Defendants and pursuant to Tenn. R. Civ. P. 12.02(6) for failure to state a claim upon which relief may be granted against the ABC Defendants.

SUMMARY OF ARGUMENT

This defamation case should be dismissed for either of two reasons. First, this Court lacks personal jurisdiction over the ABC Defendants, all of whom are out-of-state. This case is based on a news report by a local television station in Los Angeles (KABC) that was broadcast to television viewers within Southern California. None of the ABC Defendants are generally subject to jurisdiction in Tennessee, and the only way anyone in Tennessee could access the stories would be to find them on the internet on KABC’s website. Under well-established principles of due process governing defamation claims against out-of-state defendants whose publications are accessible in the forum state only through the internet, this Court lacks personal jurisdiction over these Defendants. The case should be dismissed on that basis alone.

Alternatively, even if this Court were to determine it has personal jurisdiction over the ABC Defendants, the Complaint against them should be dismissed because it fails to state a claim. Plaintiff’s causes of action against the ABC Defendants are all based on the allegation that a KABC news report implied that Plaintiff, who builds “tiny houses,” illegally obtained possession of one of those homes. But even a cursory examination of the KABC report reveals that it does

not say that Plaintiff illegally obtained possession of the home in question. To the contrary, the story reports that Plaintiff acted with legal authority.

That alone requires that the defamation case against the ABC Defendants be dismissed as a matter of law. In every defamation case, whether the challenged news story is reasonably capable of conveying the defamatory meaning the plaintiff alleges is a question of law for the Court that is properly resolved on a motion to dismiss. Since the KABC story does not accuse Plaintiff of acting illegally, the defamation claim must be dismissed. As for the rest of Plaintiff's causes of action, they are all based on the same allegedly defamatory statements and necessarily fail once the primary defamation claim is dismissed. They also fail on their own terms as well. The Complaint should therefore be dismissed as to the ABC Defendants.

STATEMENT OF FACTS

Plaintiff's claims against the ABC Defendants stem from a news report, consisting of a video (the "Broadcast", attached as Ex. B to the Complaint) and an accompanying article (the "Article," attached as Ex. C to the Complaint, and together with the Broadcast, the "KABC News Story"). Both the Broadcast and Article were posted as a single, integrated story on KABC's website at <https://abc7.com/tiny-homes-house-nation-ae-reality-tv/5358023/>. Compl. ¶ 77.

I. THE PARTIES

A. The ABC Defendants¹

KABC is a local television station in Los Angeles, California. Declaration of Molly Fish ("Fish Decl.") ¶ 2. The local market of television viewers it serves is an area within Southern

¹ The Declarations cited in Section A.1 of this Statement of Facts are only submitted in support of the ABC Defendants' Motion to Dismiss for Lack of Personal Jurisdiction pursuant to Tenn. R. Civ. P. 12.02(2). See *Gordon v. Greenwood Hosp., Inc.*, 300 S.W.3d 635, 644 (Tenn. 2009) (stating that motions to dismiss pursuant to Rule 12.02(2) may be supported by declarations). They are not submitted in support of the ABC Defendants' Motion to Dismiss for Failure to State a Claim pursuant to Tenn. R. Civ. P. 12.02(6).

California. *Id.* Defendant Leticia Juarez is a news reporter who lives in Riverside, California and reported the KABC News Story from California. Declaration of Leticia Annas (“Annas Decl.”)

¶ 3. All of the work that Ms. Juarez did for the KABC News Story was done in California. *Id.* Ms. Juarez interviewed Ben and Rebecah Richards, the main subjects of the story, in Fullerton, California where they were living at that time. *Id.*

No one who worked on the story traveled to Tennessee in connection with it. *Id.* ¶ 5. The only contacts by any of the ABC Defendants with anyone in Tennessee alleged in the Complaint are a couple of telephone calls and one email made by the KABC Eyewitness News team. Compl. ¶¶ 42, 45, 48. Nor did persons in Tennessee actually read and/or watch the KABC News Story on KABC’s website in any unusually large numbers. To the contrary, as of the date the Complaint was filed, roughly 193,000 people had visited the webpage of the KABC News Story. Fish Decl. ¶ 4. Less than 1.3% of those visits were made from devices located in Tennessee, which is significantly less than Tennessee’s proportion of the country’s population as a whole.² By contrast, 53% of the visits were from California, and fifteen states (as well as devices located abroad) had *more* visitors to the story than did Tennessee. *Id.*

None of the ABC Defendants owns any television stations in Tennessee, nor does any have any office in Tennessee. Declaration of Chakira Gavazzi (“Gavazzi Decl.”) ¶¶ 3, 6, 7; Compl. ¶ 34. KABC is not a legal entity, but rather, it is owned by Defendant ABC Holding Company, a Delaware corporation whose principal place of business is in California. Gavazzi Decl. ¶ 6; Compl. ¶¶ 32-33. The remaining corporate ABC Defendants have no connection at all with the KABC News Story but are simply parent or subsidiary entities of ABC Holding Company.

² As of 2019 Tennessee’s population was 6,829,000, which is 2.1% of the total U.S. population of 328,200,000. *See* <https://www.census.gov/quickfacts/fact/table/US/PST045219>;

Defendant American Broadcasting Companies is a Delaware corporation with its principal place of business in New York and is a subsidiary of Defendant ABC Holding Company. Gavazzi Decl. ¶ 7; Compl. ¶ 29. Defendant TWDC is a Delaware corporation with its principal place of business in California. Gavazzi Decl. ¶ 2. It is a remote parent company of Defendant ABC Holding Company, separated by multiple layers of subsidiaries. *Id.* ¶ 4.

B. The Sinclair Defendants

The Complaint also alleges defamation and other related claims based on a different news story about the same events that was reported by Defendant WTVC News Channel 9 (“WTVC”) in Chattanooga (the “WTVC News Story”). Compl. ¶¶ 79-96 & Compl. Exs. D-F. The Complaint pleads claims against various Defendants connected to the WTVC News Story: two reporters, the entity holding the station’s license (WTVC Licensee, Inc.), and the station’s owner, Defendant Sinclair Broadcast Group, Inc., a Maryland corporation (collectively “the Sinclair Defendants”). *Id.* ¶¶ 26-30. None of the ABC Defendants have, or are alleged to have, any ownership interest, either directly or indirectly, with any of the Sinclair Defendants.

II. THE DISPUTE OVER THE TINY HOUSE AND THE KABC NEWS STORY

A. The Factual Allegations of the Complaint

According to the Complaint, Plaintiff and his company Tiny House Chattanooga entered into a sale agreement with the Richards, pursuant to which Plaintiff and Tiny House Chattanooga would manufacture and sell a tiny house to the Richards. Compl. ¶¶ 5-6. The purchase price for the tiny house was \$157,000.00, of which the Richards paid \$11,500.00 to Tiny House Chattanooga, with the remaining amount to be paid via third-party financing. *Id.* ¶ 6. The manufacture of the tiny house was featured on the A&E reality television show *Tiny House Nation*. *Id.* ¶ 7. However, the Richards made no further payments toward the purchase of the tiny house and did not obtain third-party financing. *Id.* ¶¶ 12-14. Plaintiff therefore initiated a

civil action and detainer warrant against Mr. Richards to evict him from the tiny house, resulting in the judge issuing an order granting possession of the tiny house to Plaintiff. *Id.* ¶¶ 16-17.

B. The KABC News Story

Turning to the substance of the KABC News Story, the Article portion of the story begins by explaining that “a Southern California family” thought they had a home in Tennessee, “only to discover the home they thought belonged to them did not and now the home has disappeared.” Compl. Ex. C. The Article describes how the Richards agreed to purchase a “tiny house” from Plaintiff in connection with a planned move to Nashville and appeared on *Tiny House Nation* in the process. *Id.* The Article reports that the Richards paid Plaintiff \$11,500 for the trailer on which the house sat. *Id.*

The Article explains that the Richards never obtained financing to pay the balance they owed to purchase the home, but they were also unable to get Plaintiff to give them a firm amount due after improvements to the home were provided by the television show. *Id.* It reports that the Richards stayed at the home for a while, until they learned that Plaintiff was being evicted from his business property where the home was located. *Id.* At that point the Richards learned that Plaintiff held the title to the home, and Plaintiff told the Richards to vacate it. *Id.* The Article specifically reports that the Richards were only evicted by order of a judge, following a judicial proceeding:

They went to court and because the title is in Bedsole’s name, the judge considered the couple tenants and evicted them.

Based on the fact that the builder has the title in his name he [the judge] had to rule in position to the builder and he gave [the Richards] 10 days to vacate the property.

Id. The Article concludes by reporting that the Richards moved back to California and have since been unable to contact Plaintiff or obtain any assistance from the producers of *Tiny House Nation*.

Id.

The Broadcast reports materially the same story. Compl. Ex. B. As it is embedded on the KABC website, there is a caption summarizing the Broadcast that makes clear the home did not in fact belong to the Richards: “A Southern California family thought they had the perfect home to start a new life in Tennessee, *only to discover the home they thought belonged to them did not.*” Compl. Ex. C (emphasis added). The Broadcast goes on to repeat that point. It reports “the Richards learned the home they thought was theirs, turns out did not belong to them.” Compl. Ex. B at 2:16.³ It shows Ben Richards explaining that before the Richards were evicted, an attorney informed them that “you don’t own the title to that – to the house,” *id.* at 2:29, and that in fact Plaintiff “had put the trailer in his name,” *id.* at 2:32. The Broadcast reports that after the Richards had returned to California, they discovered that Plaintiff had listed the home for sale. *Id.* at 2:49.

III. PLAINTIFF’S CLAIMS AGAINST THE ABC DEFENDANTS

A. Plaintiff’s Claims Against the ABC Defendants Based on the KABC News Story

The Complaint pleads claims against all the ABC Defendants arising out of the KABC News Story. *See* Compl. ¶¶ 129-135, 147-153. Although the Complaint is quite long, the crux of Plaintiff’s primary cause of action for defamation (Count I) against all the ABC Defendants is the allegation that the KABC News Story falsely reported that Plaintiff illegally took possession of the house from the Richards. *Id.* ¶ 124. The Complaint further alleges the KABC News Story ignored that the Richards were lawfully evicted pursuant to a court order. *Id.* ¶¶ 118-120. It also alleges that the story conveyed the Richards’ allegedly false claims that the tiny house was “missing” or “stolen.” *Id.* ¶¶ 129, 133-34, 136, 138-139.

³ Citations to the Broadcast refer to the time at which the statements appear in Exhibit C to the Complaint.

In addition to defamation (Count I), the Complaint pleads claims for false light invasion of privacy (Count II), intentional infliction of emotional distress (Count III), and negligent infliction of emotional distress (Count IV), which are all based on the same allegedly defamatory statements. *See, e.g., id.* ¶¶ 143-45, 161-62, 167-68. Finally, the Complaint pleads a claim for intentional interference with business relationships (Count V). That cause of action is also based on the same allegedly defamatory statements, as well as an alleged query from a KABC reporter to the person [Mr. Harrell] who had listed Plaintiff's home for sale after the Richards returned to California. *Id.* ¶¶ 170-72.

B. Plaintiff's Claims Against Defendant American Broadcasting Companies Based on the WTVC News Story

The Complaint alleges the same causes of action against the Sinclair Defendants arising out of the WTVC News Story. In addition, the Complaint pleads those claims against one of the ABC Defendants, American Broadcasting Companies. Plaintiff alleges that American Broadcasting Companies jointly "published" the WTVC News Story along with the Sinclair Defendants and, therefore, is also liable for the WTVC News Story. *See, e.g., Compl.* ¶¶ 136-141. The only fact pled in support of that legal conclusion is that American Broadcasting Companies maintains an affiliation agreement with Sinclair and WTVC, pursuant to which WTVC is an ABC affiliate. *Id.* ¶ 29. A copy of the Primary Television Affiliation Agreement the Complaint references, which is a public record available on the website of the Federal Communication Commission, is attached as Exhibit 1 to this Motion.⁴ *See also*

⁴ For purposes of a motion to dismiss filed under Tenn. R. Civ. P. 12.02(6), in addition to the Complaint, the Court may properly consider any exhibits attached to the Complaint or referred to in the Complaint. *Burns v. State*, 601 S.W.3d 601, 606 (Tenn. Ct. App. 2019). In addition, where a complaint pleads the existence of a contract and premises its legal conclusions based on that contract, the contract is properly considered by the Court on a motion to dismiss. *See Belton v. City of Memphis*, No. W2015-01785-COA-R3-CV, 2016 WL 2754407, at *5 (Tenn. Ct. App. May 10, 2016) (holding that where claim was based on contract between the parties that was not attached to the complaint, "the trial court was entitled to consider

<https://publicfiles.fcc.gov/tv-profile/wtvc/fcc-authorizations/additional-documents/network-affiliation-agreement/63a89ffa-35a4-b36f-a1fb-e638d14dce72/>.

ARGUMENT

I. THE COURT DOES NOT HAVE PERSONAL JURISDICTION OVER THE ABC DEFENDANTS.

Plaintiff has sued a host of out-of-state ABC Defendants based on a news story posted on the website of a Los Angeles television station that was equally accessible to anyone in the world. Well-established principles of due process, which were recently adopted by the Tennessee Court of Appeals, reject the idea that “a person’s act of placing information on the Internet subjects that person to personal jurisdiction in each State in which the information is accessed” – a premise that would “eviscerate[]” any “notions of limited State sovereignty” or “fair play and substantial justice.” *ALS Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 711-13 (4th Cir. 2002), cited by *EnhanceWorks, Inc. v. Dropbox, Inc.*, M2018-01227-COA-R3-CV, 2019 WL 1220903, at *7-8 (Tenn. Ct. App. Mar. 14, 2019). Rather, personal jurisdiction based on content posted on an out-of-state website only arises if the website specifically targeted readers in Tennessee.

Here, both the KABC News Story and KABC’s website were not aimed at a Tennessee audience, but rather, they targeted KABC’s viewers in Southern California. Therefore, posting the KABC News Story cannot support the assertion of personal jurisdiction over the ABC Defendants here in Tennessee. Nor can the two phone calls and e-mail the Complaint alleges were made to persons in Tennessee give rise to jurisdiction because they are precisely the type of

the pleadings and the parties’ written contract in determining Appellees’ motions to dismiss”). Here, the Complaint attaches the Broadcast (as Exhibit B) and the Article (as Exhibit C). The Complaint also specifically refers to the Primary Television Affiliation Agreement and bases the legal conclusion that ABC “published” the WTVC News Story on that contract. Compl. ¶ 29.

isolated contacts Tennessee courts have found insufficient to support jurisdiction over out-of-state defendants.

A. The Due Process Clause Permits a Court to Exercise Jurisdiction Only When a Defendant Has “Minimum Contacts” With Tennessee.

Tennessee’s long-arm statute authorizes Tennessee courts to exercise jurisdiction on “[a]ny basis not inconsistent with the constitution of this state or of the United States.” Tenn. Code Ann. §§ 20-2-214(a)(6), 20-2-225(2). Therefore, the question of personal jurisdiction over a defendant “becomes simply whether the trial court’s exercise of personal jurisdiction meets due process requirements.” *Manufactures Consolidation Serv., Inc. v. Rodell*, 42 S.W.3d 846, 855 (Tenn. Ct. App. 2000). To comport with due process requirements, each defendant must have sufficient “minimum contacts” with Tennessee “such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *Walden v. Fiore*, 571 U.S. 277, 283 (2014) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). Plaintiff has the burden of making a *prima facie* showing that sufficient minimum contacts exist. *First Community Bank, N.A. v. First Tennessee Bank, N.A.*, 489 S.W.3d 369, 38 (Tenn. 2015). A defendant filing a motion to dismiss under Tenn. R. Civ. P. 12.02(2) may support the motion with affidavits or other written evidence, as the ABC Defendants do here. *Gordon v. Greenwood Hosp., Inc.*, 300 S.W.3d 635, 644 (Tenn. 2009).

A two-part test determines whether a defendant meets the “minimum contacts” requirement. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474–75 (1985); *State v. NV Sumatra Tobacco Trading Co.*, 403 S.W.3d 726, 751 (Tenn. 2013). First, the court must identify the contacts between the non-resident and the forum state. *Id.* Second, the court must determine whether exercising personal jurisdiction based on these contacts would comport with traditional notions of fair play and substantial justice. *Id.* A court may have either general or specific

jurisdiction over a defendant. *Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915, 919 (2011).

B. This Court Does Not Have General Jurisdiction Over the ABC Defendants.

General jurisdiction, which exposes the defendant to suits of any kind within the forum state, exists *only* where a defendant has “continuous and systematic” contacts that “render [it] *essentially* at home in the forum State.” *Id.* The United States Supreme Court has made clear that a corporation is almost always only “at home” in a state where it is incorporated or has its principal place of business, and individuals are only “at home” in the states where they reside. *Daimler AG v. Bauman*, 571 U.S. 117, 138-39 (2014). Otherwise, the only “exception[]” might be a corporation whose activities are so uniquely focused on Tennessee that it too can be said to be “at home” as if it were headquartered here. *First Community Bank*, 489 S.W.2d at 385-87. Merely “doing business” in Tennessee along with many other states is not sufficient to support general jurisdiction. *Id.* at 386. The Complaint does not appear to allege that the Court has general jurisdiction over any of the ABC Defendants, nor could it: none of the ABC corporate defendants is incorporated or headquartered in Tennessee, none have offices here, and Ms. Juarez is not a resident of Tennessee. Gavazzi Decl. ¶¶ 2, 3, 5, 6, 7; Annas Decl. ¶ 3.

C. This Court Does Not Have Specific Jurisdiction over the ABC Defendants.

Specific jurisdiction requires a showing that “the defendant has ‘purposefully directed’ his activities at residents of the forum and the litigation results from alleged injuries that ‘arise out of or relate to’ those activities.” *Burger King*, 471 U.S. at 472-73 (citations omitted). To establish specific jurisdiction, “the plaintiff must show (1) that the nonresident defendant has purposefully established significant contacts with the forum state and (2) that the plaintiff’s cause of action arises out of or is related to these activities or contacts. *Gordon*, 300 S.W.3d at 647

(citing *Burger King*, 471 U.S. at 472). Under this test, a defendant's contacts with Tennessee support the exercise of personal jurisdiction "when they demonstrate that the defendant has purposefully targeted Tennessee to the extent that the defendant should reasonably anticipate being haled into court here." *NV Sumatra*, 403 S.W.3d at 760. The analysis focuses on whether the defendant targeted Tennessee itself and not merely a Tennessee resident. *First Community Bank*, 489 S.W.3d at 390 ("[I]n performing the minimum contacts analysis discussed herein, we must look 'to the defendant's contacts with the forum state itself, not the defendant's contacts with persons who reside there.'" (quoting *Walden v. Fiore*, 571 U.S. 277, 1122 (2014))).

1. To Establish Specific Jurisdiction Plaintiff Must Show that KABC's Website Deliberately Targeted Readers in Tennessee.

The Complaint initially alleges that KABC aired the Broadcast to its "television viewers" on or about June 22, 2019. Compl. ¶¶ 50-52. The Complaint does not allege, nor could it, that KABC's local television viewing market is anywhere outside Southern California – let alone that it extends to Tennessee. Fish Decl. ¶ 2. Merely airing a television program in a locale across the country could not conceivably constitute "purposefully target[ing] Tennessee" to support the exercise of personal jurisdiction here. *NV Sumatra*, 403 S.W.3d at 760; *see also Afi Holdings of Ill., Inc. v. NBC*, 239 F. Supp. 3d 1097, 1101 (N.D. Ill. 2017) (holding that a broadcast of a news report by a local television station in Florida could not support personal jurisdiction in Illinois).

The Complaint also alleges that the ABC Defendants posted both the Broadcast and the Article on KABC's website, where they may be accessed by persons in Tennessee on the internet. Compl. ¶¶ 51, 76-77. The Tennessee Court of Appeals recently analyzed to what extent personal jurisdiction may be asserted over an out-of-state defendant on the basis of material posted online. *EnhanceWorks*, 2019 WL 1220903, at *7-8. Noting that Tennessee courts have not previously addressed that issue, the court looked to and adopted the framework articulated by the federal

Fourth Circuit to determine whether a defendant has “targeted” Tennessee in such cases. *Id.*; see also *ALS Scan*, 293 F.3d 707 at 714. Under the *ALS Scan* test, personal jurisdiction may be exercised over a nonresident when that person “(1) directs electronic activity into the State, (2) with the manifested intent of engaging in business or other interactions within the State, and (3) that activity creates, in a person within the State, a potential cause of action cognizable in the State’s courts.” *EnhanceWorks*, 2019 WL 1220903, at *7 (quoting *ALS Scan*, 293 F.3d at 714). The Court of Appeals made clear that merely placing information on the internet that may be accessed in the forum state does not constitute “direct[ing] activity into the State.” *Id.*

The Fourth Circuit has applied the *ALS Scan* test that Tennessee now follows to circumstances remarkably similar to those alleged here: a defamation claim brought by a resident of the forum state against out-of-state newspapers which posted on their websites an allegedly defamatory article that discussed the plaintiff. *Young v. New Haven Advocate*, 315 F.3d 256 (4th Cir. 2002). Specifically, in *Young* a Virginia prison warden brought defamation charges against two Connecticut newspapers on the basis of stories published on the newspapers’ websites critical of the conditions in the plaintiff’s prison. *Id.* at 259.

Applying *ALS Scan*, the Fourth Circuit held that Virginia courts did not have personal jurisdiction over the Connecticut newspapers. *Id.* at 262-63. *Young* held that jurisdiction in that circumstance is proper only when the defendant, through its publications, “manifest[s] an intent to target and focus on [forum-state] readers.” *Id.* at 263 (emphasis added). Absent such evidence, the court held that the fact that the alleged injury was felt within the forum state could not suffice to establish jurisdiction. *Id.* at 262-63.

Applying this standard, the Fourth Circuit found that personal jurisdiction in Virginia over the Connecticut newspapers was not proper because they had targeted their local Connecticut

readers, not a Virginia audience. *Id.* In support of its conclusion, the court noted that the “general thrust and content” of the websites on which the articles were posted was “decidedly local,” featuring local news and weather forecasts and advertisements for Connecticut colleges. *Id.* at 263. In addition, while the articles discussed events taking place in Virginia, their focus was debating a Connecticut policy of sending prisoners to Virginia. *Id.* at 263-64.

In *EnhanceWorks*, the Tennessee Court of Appeals adopted the Fourth Circuit’s framework and likewise held that the dispositive issue is whether the plaintiff has demonstrated that an out-of-state defendant that posted material on its website “deliberately directed its message or any electronic activity at an audience in the forum state.” 2019 WL 1220903, at *8 (quoting *Shrader v. Biddinger*, 633 F.3d 1235, 1241 (10th Cir. 2011) (alterations omitted)). That test has also been widely applied by courts in many jurisdictions in internet defamation cases similar to this one, where a resident of the forum state sued a local media entity from another state.⁵

2. The KABC Website Did not Target Readers in Tennessee.

Applying the *ALS Scan* framework test to this case, this Court lacks personal jurisdiction over the ABC Defendants because, as in *Young*, the KABC website on which the KABC News Story appears is “decidedly local.” It targets a Southern California audience and in no way targets Tennessee readers. *See Young*, 315 F.3d at 263. For example, the browser tab for the homepage reads “Los Angeles and Southern California News,” and a banner at the top of the homepage has

⁵ *See, e.g., Shrader v. Biddinger*, 633 F.3d 1235, 1241-46 (10th Cir. 2011); *AFI Holdings of Illinois, Inc.*, 239 F. Supp. 3d at 1107 (finding no personal jurisdiction over a local Florida television station based on a news story allegedly defaming an Illinois company, where the station’s website was “directed towards Ft. Myers/Naples, Florida” residents); *Shirlington Limousine & Transp., Inc. v. San Diego Union-Tribune*, 566 F. Supp. 2d 1, 6-7 (D.D.C. 2008) (finding no personal jurisdiction over defendants in Washington, D.C. because the newspaper’s website on which the articles appeared “is clearly targeted at San Diego residents”); *Jackson v. California Newspapers Partnership*, 406 F.Supp.2d 893, 898 (N.D. Ill. 2005) (finding no personal jurisdiction over a local California newspaper based on article allegedly defaming an Illinois resident, where the newspaper’s website “is directed at California residents”); *Realuyo v. Villa Abrille*, No. 01 Civ. 10158(JGK), 2003 WL 21537754, at *30-32 (S.D.N.Y. July 8, 2003).

links for “Los Angeles,” “Orange County,” “Inland Empire,” “Ventura County,” and “California.” Fish Decl. Ex. 2. The default weather forecast on the homepage is for Los Angeles (Fish Decl. Ex. 2), and aside from reporting on national weather events the website’s “Weather” page is limited to forecasts and weather maps from the Los Angeles area. *Id.*; *see also Young*, 315 F.3d at 263 (citing local weather forecasts as evidence of website’s intended audience); *Shirlington Limousine & Transp., Inc.*, 566 F. Supp. 2d at 6 (same). Similarly, the “Traffic” page features only traffic reports and news from the Los Angeles area. Fish Decl. Ex. 2; *see also Young*, 315 F.3d at 263 (citing local traffic information as evidence of website’s intended audience). The website’s live webcams are located in “Downtown L.A.,” “LAX,” “Burbank,” and “Long Beach.” Fish Decl. Ex. 2; *see also Shirlington Limousine & Transp., Inc.*, 566 F. Supp. 2d at 6 (citing local webcams as evidence of website’s intended audience). The website also prominently features a section titled “Localish,” featuring stories focused on the Los Angeles area. Fish Decl. Ex. 2; *see also Young* (citing stories focused on local events as evidence of website’s intended audience). Conversely, the website is devoid of any indication that it is aimed at Tennessee residents. *See also Young*, 315 F.3d at 263 (noting newspaper websites were clearly directed at Connecticut residents and showed no sign of targeting a Virginia audience); *Shirlington Limousine & Transp., Inc.*, 566 F. Supp. 2d at 6-7 (noting website clearly targeted San Diego residents and showed no indication of targeting a Washington, D.C. audience); *Shrader*, 633 F.3d at 1241 (noting website on which allegedly defamatory message appeared targeted “a trading community with no particular tie to [the forum state]”).

And while the nature of the KABC website alone precludes the exercise of jurisdiction over the ABC Defendants, the content of the KABC New Story itself reinforces what the website makes clear: that its target audience is residents of the Los Angeles area. To begin with, the title

– “Small Dream Ends in Big Nightmare for Tiny House Buyers from SoCal” – signals that the KABC’s News Story’s focus is on a Southern California family. Compl. Ex. C. The byline of the Article lists its locale as “FULLERTON, Calif.” *Id.* The opening paragraph introduces the story as a local interest story about a local family’s attempt to purchase a home. *Id.* By contrast, the Broadcast and the Article each mention Tennessee only a couple of times, because the locale of the tiny house is incidental to the focus of the story on the experiences of a California family. *Id.* Exs. B & C.

Consistent with the focus of the website, the data regarding who actually accessed the KABC website and even the KABC News Story itself supports the conclusion that the only state targeted was California. During the month of June 2019, when the KABC News Story was published, less than 0.3% of visitors to the KABC website came from devices located in Tennessee, while 75% came from California. Fish Decl. ¶ 3. And while such numbers would alone preclude the exercise of jurisdiction, even the geographic distribution of the persons who actually accessed the KABC News Story itself further supports the conclusion that the only state targeted was California. Devices located in California accounted for more than half of visitors to the KABC News Story. *Id.* ¶ 4. Otherwise, readers were scattered throughout the country (and even the world), and Tennessee readers did not account for any large portion of that audience. To the contrary, Tennessee ranked 16th among states from which readers accessed the KABC News Story, and it is the 16th most populous state. *Id.* ¶ 4; *see also* <https://worldpopulationreview.com/states>. Moreover, the number of persons accessing the KABC News Story from Tennessee was considerably *less* than Tennessee’s proportion of the country’s population – about 1.3% of visitors, even though the state holds 2.1% of the country’s

population. Fish Decl. ¶ 4.⁶ Such relatively small numbers of visits to a website from the forum state is further evidence that an allegedly defamatory report was not targeted at an audience in the forum state. *See Blankenship v. Napolitano*, No. 19-cv-00236, 2020 WL 1548060, at *20 n.19 (S.D.W.Va. Mar. 31, 2020) (finding no personal jurisdiction where West Virginia residents accounted for about 0.3% of total user traffic to the defendant’s website, and 1.1% of total user traffic to the article involving the plaintiff).

In short, the present case is materially indistinguishable from *Young*. Just as the allegedly defamatory articles at issue in *Young* appeared on out-of-state newspaper websites unambiguously aimed at their local Connecticut audience, *see Young*, 315 F.3d at 263, the KABC News Story here appears on an out-of-state television station website clearly targeted at its local, California audience. And much like the articles in *Young*, the KABC News Story describes events in the forum state only in the context of an article aimed at an out-of-state audience. As the court in *Young* recognized, publication of an allegedly defamatory story under such circumstances is insufficient to support personal jurisdiction over out-of-state defendants. *Id.* at 262-63. The Complaint should therefore be dismissed against all the ABC Defendants for lack of personal jurisdiction.

3. A Few Telephone Calls Cannot Support Jurisdiction.

The Complaint also alleges two telephone calls and one email to persons in Tennessee by KABC: a message left for Plaintiff, a conversation with his attorney, and an email to the agent who listed the home for sale. Compl. ¶¶ 42, 44-48. Tennessee courts have repeatedly held that

⁶ In fact, since California is the country’s most populous state, it would be reasonable to infer that many, if not most, of the persons who accessed the KABC website and the KABC News Story from other states were California residents who follow their local news while traveling outside of California. Thus, the actual number of Tennessee residents who accessed the KABC News Story was likely substantially lower than the number of those who viewed the story from Tennessee, which is the only metric that internet analytics data captures.

such isolated communications with Tennessee residents do not rise to the level of “significant contacts” necessary to support the exercise of personal jurisdiction over out-of-state defendants.⁷ In fact, in *Young* the defendant reporters likewise “made a few telephone calls into Virginia to gather some information for the articles.” *Young*, 315 F.3d at 260. But even the plaintiff in *Young* did not contend those contacts alone would suffice to support personal jurisdiction. *Id.* at 261.

4. The WTVC News Story Cannot Support Personal Jurisdiction over Defendant American Broadcasting Companies.

Finally, in addition to pleading claims against all the ABC Defendants for the KABC News Story, Plaintiff also pleads claims against Defendant American Broadcasting Companies arising from the WTVC News Story. But as the Complaint acknowledges, American Broadcasting Companies has no ownership interest in WTVC, which is owned by an entirely different television company based in Maryland, Defendant Sinclair. The Complaint also does not allege any facts indicating that American Broadcasting Companies played any part in reporting, broadcasting, or publishing the WTVC News Story. Nor did it – KABC was not involved in reporting that story, let alone a remote, indirect parent company. Annas Decl. ¶ 6. Nonetheless, the Complaint makes the conclusory allegation that American Broadcasting Companies jointly “published” the WTVC News Story along with the Sinclair Defendants. *See, e.g.*, Compl. ¶¶ 136-141. The sole basis for that allegation is that pursuant to a contract between American Broadcasting Companies, WTVC, and Sinclair, WTVC is an American Broadcasting

⁷ *See, e.g., Riebsame v. Schemel*, No. E2018-01798-COA-R3-CV, 2019 WL 4667586, at *6-7 (Tenn. Ct. App. Sept. 24, 2019) (holding that single phone call to corporation headquartered in Tennessee, in which defendant allegedly defamed plaintiff, was insufficient to confer personal jurisdiction over the defendant); *Humphreys v. Selvey*, 154 S.W.3d 544, 552 (Tenn. Ct. App. 2004) (“[T]elephone calls by the non-resident to the forum state alone are not sufficient to give the forum court jurisdiction.” (quoting *Garrett v. R.H. Macy & Co., Inc.*, 360 F. Supp. 872, 877 (E.D. Tenn. 1972))); *see also Rice v. Karsch*, 154 F. App’x 454, 462-63 (6th Cir. 2005) (finding Tennessee court did not have jurisdiction over defendant based on one email and one phone call, where communications did not evince any intent by defendant to expand business or create “continuous or substantial” consequences in Tennessee).

Companies affiliate. *Id.* ¶ 29.

But that contractual relationship provides no basis for jurisdiction over this case because it does not apply to the content of WTVC's local news stories. Rather, the affiliate contract only applies to the content of *national* American Broadcasting Companies network programs (like ABC News programs and prime-time dramas and sitcoms). The affiliate contract requires WTVC to broadcast national network television programs and to generally display the American Broadcasting Companies logo. Mot. Ex. A at 1 ("Your Station Agrees to serve as our primary affiliate to broadcast Network Television Programs."). But the affiliate contract gives American Broadcasting Companies no role in or control over reporting, producing, or distributing WTVC's *local* programming, including its local news programs.⁸ The contract therefore cannot provide a basis for the exercise of specific jurisdiction over American Broadcasting Companies in this case because Plaintiff's causes of action challenging the content of a WTVC local news story do not "arise[] out of" nor are they "related to th[ose] activities or contacts." *Gordon*, 300 S.W.3d at 647. The fact that a television programmer directs unrelated programming into the forum state cannot support personal jurisdiction over a claim that is not based on that programming. *CBS, Inc. v. Snyder*, 798 F. Supp. 1019, 1027-28 (S.D.N.Y. 1992) (finding allegation that Washington, D.C. television station supplied television segments to New York was insufficient to establish personal jurisdiction over station, where the alleged claims were not based on any of those programs).

In addition to all the reasons discussed herein, there is no basis at all for the exercise of

⁸ The only portion of the contract that mentions WTVC's local television news programs specifies that those programs shall be "locally produced." Mot. Ex. A at 6, ¶ E(1). The contract merely speaks to the time of day that those locally produced television programs should air. *Id.* Moreover, even that requirement has no conceivable bearing on jurisdiction over this lawsuit because it only applies to the timing of local news programs on weekdays. *Id.* The WTVC broadcast states that it was aired as part of the "News Channel 9 *weekend*" program (emphasis added). Compl. Ex. D at 00:07.

jurisdiction over TWDC, which is alleged to have no relationship to any other ABC Defendant other than being a remote parent company. *Dean v. Motel 6 Operating L.P.*, 134 F.3d 1269, 1274 (6th Cir. 1998) (“[A] company does not purposefully avail itself merely by owning all or some of a corporation subject to jurisdiction.” (citations omitted)). In fact, courts in Tennessee and elsewhere have found that they lack personal jurisdiction over TWDC and other TWDC subsidiaries when they are sued based on the alleged actions of their subsidiaries. *See, e.g., G.C. ex rel Conner v. Disney Destinations Group*, No. 3:12-CV-54, 2012 WL 1205637, at *3-5 (E.D. Tenn. Apr. 11, 2012) (Tennessee courts lack personal jurisdiction over Walt Disney Parks and Resorts, Inc. for the alleged acts of other TWDC-related entities); *Lahera v. The Walt Disney Co.*, No. 08-11677, 2008 WL 3990987, at *1-2 (E.D. Mich. Aug. 22, 2008) (court lacked personal jurisdiction over TWDC in a case arising out of an ABC program).

For all the foregoing reasons, this Court lacks personal jurisdiction over the ABC Defendants, and the Complaint should be dismissed as to them.

II. THE COMPLAINT ALSO FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED AGAINST THE ABC DEFENDANTS.

Alternatively, even if this Court were to determine that it has personal jurisdiction over any of the ABC Defendants, the case should be dismissed pursuant to Tenn. R. Civ. P. 12.02(6) because the Complaint fails to state a claim against them. The crux of Plaintiff’s case is his allegation that KABC reported that he illegally “stole” the tiny house from the Richards. Compl. ¶ 124 (“The Defendants’ broadcasts gave the viewers and online subscribers the false impression that Mr. Bedsole had committed criminal theft or done something illegal to gain possession of the tiny home from the Richards, and that he did not have legal rights or legal authority to possess the tiny home the Richards claim was their tiny home.”). But the KABC News Story simply did

not report that. And since the remaining causes of action are based on the same allegedly defamatory statements, they necessarily fall with the primary defamation claim.

A. The Legal Standard

To survive a motion to dismiss, a complaint “must contain sufficient factual allegations to articulate a claim for relief.” *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 427 (Tenn. 2011) (quoting *Abshire v. Methodist Healthcare-Memphis Hosps.*, 325 S.W.3d 98, 103-104 (Tenn. 2010)). This requires that the complaint “contain direct allegations on every material point necessary to sustain a recovery on any legal theory . . . or contain allegations from which an inference may fairly be drawn that evidence on these material points will be introduced at trial.” *Id.* (quoting *Leach v. Taylor*, 124 S.W.3d 87, 92 (Tenn. 2004)). While the factual allegations stated in the complaint must be accepted as true, the court need only accept the inferences drawn from those facts if they are reasonably drawn. *Runyon v. Zacharias*, 556 S.W.3d 732, 737 (Tenn. Ct. App. 2018) (“The facts pleaded, and the inferences reasonably drawn from these facts, must raise the pleader’s right to relief beyond the speculative level. However, courts are not required to accept as true assertions that are merely legal arguments or ‘legal conclusions’ couched as facts.” (citations and quotation marks omitted)).

B. The Complaint Fails to State a Claim for Defamation Against the ABC Defendants Based on the KABC News Story.

1. The Court Must Determine Whether the KABC News Story Is Reasonably Capable of the Defamatory Meaning Plaintiff Alleges.

To establish a *prima facie* claim for defamation, “the plaintiff must establish that: (1) a party published a statement; (2) with knowledge that the statement is false and defaming to the other; or (3) with reckless disregard for the truth of the statement or with negligence in failing to ascertain the truth of the statement.” *Brown v. Mapco Exp., Inc.*, 393 S.W.3d 696, 708 (Tenn. Ct. App. 2012). Thus, the tort requires that “there must be publication of matter that is both

defamatory and false.” *Id.* And in every defamation case “the issue of whether a communication is capable of conveying a defamatory meaning is a question of law for the court to decide in the first instance” *Id.* If the publications at issue are not reasonably capable of the meaning the plaintiff ascribes to them, then a complaint fails to state a claim for defamation as a matter of law. *Aegis Sciences Corp. v. Zelenik*, No. M2012-00898-COA-R3-CV, 2013 WL 175807, at *6 (Tenn. Ct. App. Jan. 16, 2013); *see also Clark v. Viacom Int’l, Inc.*, 617 F. App’x 495, 509-10 (6th Cir. 2015) (upholding dismissal of complaint where the plaintiff’s interpretation of the articles was untenable).

This Court’s assessment of whether the publication at issue is defamatory must be guided by several principles. First, because it is a question of law, courts “must look to the words themselves and are not bound by the plaintiff’s interpretation of them.” *Brown*, 393 S.W.2d at 709; *see also Grant v. Commercial Appeal*, No. W2015-00208-COA-R3-CV, 2015 WL 5772524, at *10 (Tenn. Ct. App. Sept. 18, 2015) (“[C]ourts are not bound to the plaintiff’s interpretation of the allegedly defamatory material, and if the words do not reasonably have the meaning plaintiff ascribes to them, the court must disregard the plaintiff’s interpretation.” (citations and quotation marks omitted)). Second, the court’s assessment of whether statements are capable of the alleged defamatory meaning must be made by looking at the statements within their “full context, and read as a person of ordinary intelligence would understand them in light of surrounding circumstances.” *Aegis*, 2013 WL 175807, at *6; *see also Grant*, 2015 WL 5772524, at *10 (providing that courts must “consider not just isolated statements, but also the import of the language as a whole to determine whether a communication may be deemed defamatory” (citations and punctuation omitted)). Therefore, a news story must be viewed as a whole in determining whether it is capable of the alleged defamatory meaning. *Weidlich v. Rung*, No.

M2017-00045-COA-R3-CV, 2017 WL 4862068, at *6 (Tenn. Ct. App. Oct. 26, 2017). Applying these principles, Tennessee courts regularly dismiss defamation claims that are based on statements incapable of the defamatory meaning alleged by the plaintiff.⁹

Here, on the KABC website, the Article and Broadcast are posted as one integrated report, the KABC News Story. The KABC News Story posted at the URL provided in the Complaint, <https://abc7news.com/realestate/tiny-house-nightmare-for-family-who-appeared-on-tv-show/5360727/> (Compl. ¶ 51), has a single headline: “Small dream ends in a big nightmare for tiny house buyers from SoCal.” Below the headline is the Broadcast, which is embedded within the Article, between the headline and the rest of the Article’s text. Because the Broadcast and the Article are posted as a single, integrated story, both must be read and watched as an integrated whole to determine whether the KABC News Story is capable of the alleged defamatory meaning. *See, e.g., Weidlich*, 2017 WL 4862068, at *6 (stating that, where allegedly defamatory comment appeared on the same internet page as a photograph, assessment of defamatory meaning required the statement and photograph to be considered together).

2. The KABC News Story Does Not Report that Plaintiff Illegally Gained Possession of the Tiny House from the Richards.

While the Complaint alleges the KABC News Story implied that Plaintiff illegally took possession of the tiny house, it fails to point to a single statement within the Broadcast or Article

⁹ *See, e.g., Loftis v. Rayburn*, No. M2017-01502-COA-R3-CV, 2018 WL 1895842, at *5-9 (Tenn. Ct. App. Apr. 20, 2018) (affirming grant of motion to dismiss and noting that “the statements at issue must be capable of implying a defamatory meaning to survive a motion to dismiss a defamation by implication or innuendo claim” (citation omitted)); *Tidwell v. Holston Methodist Federal Credit Union*, No. E2019-0111-COA-R3-CV, 2020 WL 3481537, at *4-8 (Tenn. Ct. App. June 25, 2020) (affirming grant of motion to dismiss defamation claim where statements were not capable of defamatory meaning); *Patterson v. Grant-Herms*, No. M2013-00287-COA-R3-CV, 2013 WL 5568427, at *3-4 (Tenn. Ct. App. Oct. 8, 2013) (same); *cf. Davis v. Covenant Presbyterian Church of Nashville*, No. M2014-02400-COA-R9-CV, 2015 WL 5766685, at *4 (Tenn. Ct. App. Sept. 30, 2015) (trial court erred by not dismissing defamation claim where statements in question were not capable of defamatory meaning).

that actually says that. In fact, there are none. The Complaint also repeatedly alleges the KABC News Story conveyed the Richards' claims that the tiny house was "missing" or "stolen," Compl. ¶¶ 129, 133-34, 136, 138-139, but neither word *ever* appears in either the Broadcast or the Article. To the contrary, the KABC News Story repeatedly states that Plaintiff had title to the tiny house and had the legal right to evict the Richards.

The very first sentence of the Article, as well as the caption summarizing the Broadcast, states that the home "did not belong to them [the Richards]." That the Richards did not have legal title to the home is then repeated throughout the KABC News Story,¹⁰ and the Article specifically reports that the Richards were evicted because *a judge* ruled in Plaintiff's favor after a court proceeding.¹¹ Because, viewed as a whole, the KABC News Story simply does not accuse the Plaintiff of illegally obtaining the house, it is not reasonably capable of the defamatory meaning Plaintiff ascribes to it. The defamation claim against the ABC Defendants based on the KABC News Story should therefore be dismissed.

In an effort to find a meaning that is not conveyed by the KABC News Story, the Complaint also points to two isolated statements from the Broadcast (and *none* from the Article) which it alleges to be false. Compl. ¶ 65. Neither statement supports any defamatory meaning for either of two reasons. First, once again the Complaint ascribes to the KABC News Story two statements it simply does not make. Second, even if it had made either statement in isolation,

¹⁰ See, e.g., Compl. Ex. B at 2:19 (the home "did not belong to [the Richards]."); *id.* at 2:28 (an attorney informed the Richards that the Richards "don't own the title to that – to the house."); Compl. Ex. C (Plaintiff "actually registered the trailer in his name, not in [the Richards']"); *Id.* ("[B]ecause the title is in Bedsole's name, the judge considered the couple tenants and evicted them.").

¹¹ See Compl. Ex. C ("They went to court and because the title is in Bedsole's name, the judge considered the couple tenants and evicted them. Based on the fact that the builder has the title in his name he had to rule in position to the builder and he gave [the Richards] 10 days to vacate the property.").

within the context of the entire KABC News Story, neither statement could be defamatory because the story as a whole makes clear that Plaintiff had legal authority to take possession of the tiny house.

First Alleged Statement. The Complaint alleges that the Broadcast states that Plaintiff “had put the trailer in his name shortly after [the Richards’] tiny home disappeared from the property.” *Id.* ¶ 65. That is not what the Broadcast reports. Rather, it states that the Richards first learned that Plaintiff held the title to the home shortly after they confronted him, *while they were still living in the home*. But to try to create some other alleged meaning, the Complaint plucks out Ms. Juarez’s words in the Broadcast in mid-sentence to misquote what it actually says.

The Broadcast first reports that Plaintiff dealt with registering the title before the filming of the reality show started. *Id.* Ex. B at 1:01. That was before the Richards even moved in, let alone were evicted. Subsequently, the Broadcast reports that after the television show was filmed and they had moved in, the Richards learned Plaintiff had been evicted from the property on which the tiny house sat, and they confronted him. *Id.* at 1:45. The Broadcast then reports that “[s]oon after their confrontation with Bedsole, the Richards learned that the home they thought was theirs, turned out *did not belong to them*.” *Id.* at 2:14 (emphasis added). The Broadcast then explains how Ben Richards says they learned that: “we [the Richards] spoke to the lawyer and he said if you move the tiny house we’ll have you arrested for stealing. And we said, what are you talking about? And he said you don’t own the title to the house.” *Id.* at 2:21. Ms. Juarez then reports, “Richards said that Bedsole had put the trailer in his name.” *Id.* at 2:31.

Having explained how the Richards learned the title was in Plaintiff’s name, Ms. Juarez then proceeds to report that “[s]hortly after [the events just described], the tiny home disappeared from the property,” followed immediately by another excerpt of her interview with Ben Richards

explaining the couple's efforts to learn to where the home had been moved. *Id.* at 2:35. To try to create some alleged false statement, the Complaint strings together fragments of two different sentences Ms. Juarez spoke ("Bedsole had put the trailer in his name" and "Shortly after the tiny home disappeared") and quotes them as if they were one.

Even more importantly, the Complaint ignores everything the Broadcast reported before and after those few words, which makes clear that Plaintiff held the title in this name before the tiny house was gone. So even if viewed entirely in isolation and the sentence fragments the Complaint quotes could somehow be construed to suggest otherwise, it would make no difference because the Court must "consider not just isolated statements, but also the import of the language as a whole to determine whether a communication may be deemed defamatory." *Grant*, 2015 WL 5772524, at *10 (quotation marks and citation omitted). Viewed as a whole, the KABC News Story makes clear that Plaintiff had title to the tiny house at the time the Richards were evicted, and indeed the Article even specifically reports that the Richards were evicted only *after* a judge ruled that Plaintiff held legal title to home. *See Croce v. New York Times Co.*, 930 F.3d 787, 793 (6th Cir. 2019) (upholding dismissal of defamation claim, explaining that while the headline in isolation may have been capable of defamatory meaning, "the headline is not the whole story, and consequently the headline cannot be considered standing alone." (citations omitted)). In fact, Plaintiff's characterization of the Broadcast would render it nonsensical. If the home had already been moved by Plaintiff before the Richards learned the title was in his name, then the threat by Plaintiff's attorney to have them arrested "*if you* [the Richards] move the tiny house" would make no sense.

Second Alleged Statement. The second allegedly false statement the Complaint pleads alleges the Broadcast reports that it was Plaintiff who was "evicted" from the tiny house, not the

Richards. Compl. ¶ 65. That too misstates what the Broadcast says. The Broadcast makes it clear that Plaintiff was evicted from the property where the house was located, not from the house itself. The Broadcast reports the Richards moved into the tiny house while it was still located at Plaintiff's business. *Id.* Ex. B at 1:30. It then reports: "The Richards confronted Bedsole after they learned he was being evicted from the property. 'So you're being evicted from the property for being five months late on your payments. And so, **this house needs to be moved from the property.**'" (emphasis added). *Id.* at 1:45. Likewise, the Article reports a judge evicted the Richards – not Plaintiff. *Id.* Ex. C ("[T]he judge considered the couple tenants and evicted them.").

The very fact that the Complaint takes these liberties with the words of the KABC News Story to try to come up with some allegedly defamatory meaning is telling evidence that there is none. Because the KABC News Story is not reasonably capable of conveying that Plaintiff stole the tiny home, Count I should be dismissed as to the ABC Defendants as a matter of law.

Finally, even if viewed in isolation the Broadcast's report that the tiny house "disappeared" could somehow be defamatory, which it is not and is not even alleged to be, it could not be actionable for several reasons. First, that was substantially true. The gist of the KABC News Story is not that Plaintiff acted unlawfully in evicting the Richards and removing the tiny house from his property. Rather, it reports that Plaintiff did not tell the Richards where the house was moved to, and sometime later they found it online being listed for sale. The Complaint never alleges that any of that is false, and so the defamation claim against the ABC Defendants should be dismissed for that reason as well. *Brown*, 393 S.W.3d at 708.

Moreover, the statement that the tiny house "disappeared" is merely an opinion based on disclosed, non-defamatory facts and therefore is not actionable as defamation. *See Stones River*

Motors, Inc. v. Mid-South Publ'g Co., 651 S.W.2d 713, 722 (Tenn. Ct. App. 1983) (“As long as the true facts on which the opinion is based are published, the opinion itself is not actionable.”). Here, the facts underlying that statement – that Plaintiff removed the tiny house from his property without telling the Richards where it was – were clearly stated in the KABC News Story. *See* Compl. Ex. C (“[D]uring those 10 days the builder took the house off the property.”). Moreover, the term “disappeared” is also a classic example of protected “rhetorical hyperbole.” *Id.* Obviously it does not mean the tiny house literally went up in thin air, but it is just a way of expressing that the Richards did not know where it went.

C. The Remaining Tag-Along Causes of Action Against the ABC Defendants Must Also Be Dismissed.

1. The Dismissal of the Defamation Claim Requires the Dismissal of All Other Tort Theories Based on the Same Statements.

In Counts II through V, the Complaint also pleads causes of action for false light invasion of privacy, intentional and negligent infliction of emotional distress, and intentional interference with business relations against the ABC Defendants. However, those causes of action just replead the defamation under the label of different torts. Like the defamation claim in Count I, they are all based on the allegation that the KABC News Story stated or implied that Plaintiff illegally obtained possession of the tiny house. Because the KABC News Story is not reasonably capable of that interpretation, as a matter of law those “tag along” claims necessarily fail as well.

The United States Supreme Court has held that where a claim fails to satisfy the elements of defamation, the First Amendment generally precludes plaintiffs from challenging the same words through the guise of some other tort. *See Hustler Magazine v. Falwell*, 485 U.S. 46, 57 (1988) (holding that plaintiff could not prevail on claim of intentional infliction of emotional distress where words were not defamatory); *Snyder v. Phelps*, 562 U.S. 443, 458 (2011) (holding that plaintiffs could not prevail on claims of invasion of privacy and intentional infliction of

emotional distress premised on speech about a matter of public concern that was not defamatory). Likewise, Tennessee courts have held that where alternative tort theories are based on the same words that fail to support a defamation claim, they must be dismissed if the primary defamation claim fails.¹² The remaining causes of action must therefore be dismissed for this reason alone.

2. The Tag-Along Causes of Action also Fail for Independent Reasons.

In addition, the additional causes of action also fail for other, independent reasons.

False Light Invasion of Privacy. In order to state a claim for false light invasion of privacy (Count II), Plaintiff must show that “(a) the false light in which [Plaintiff] was placed would be highly offensive to a reasonable person, and (b) [Defendants] had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which [Plaintiff] would be placed.” *West v. Media Gen. Convergence, Inc.*, 53 S.W.3d 640, 643-44 (Tenn. 2001). As a threshold matter, this requires Plaintiff to show that the light in which he was placed was *false*. *See Loftis*, 2018 WL 1895842, at *8 (“To prevail on his false light invasion of privacy claim, Mr. Loftis must show that the statements he asserts Mr. Rayburn made through Mr. Myers’ article placed him in a false light.”). The Complaint fails to clear this first hurdle because Plaintiff’s false light claim is based on the same statements as the defamation claim and, for the reasons explained above, the KABC News Story is not capable of the false meaning that the

¹² *See Loftis*, 2018 WL 1895842, *8 (affirming dismissal of claim for false light invasion of privacy where statements were not capable of the defamatory meaning plaintiff alleged); *Sullivan v. Wilson County*, 2012 WL 1868292, No. M2011-00217-COA-R3-CV, at *14 (Tenn. Ct. App. May 22, 2012) (affirming dismissal of intentional infliction of emotional distress claim where it was based on allegedly defamatory statements, and plaintiff was estopped from litigating defamation claim); *Seaton v. TripAdvisor LLC*, 728 F.3d 592, 603 (6th Cir. 2013) (affirming dismissal of tortious interference with business relationship claim based on allegedly defamatory statements where statements were not capable of defamatory meaning); *see also Boladian v. UMG Recordings, Inc.*, 123 F. App’x 165, 169-70 (6th Cir. 2005) (holding that plaintiff’s claims for false light and intentional infliction of emotional distress failed because they were derivative of a nonviable defamation claim, and “[a] party may not skirt the requirements of defamation by pleading another, related cause of action”).

Complaint alleges. *Id.* (“For the reasons we found the statements in [the defendant’s] article fail to imply a defamatory meaning, we also find they are not susceptible to the requisite inferences casting Mr. Loftis in a false light.”).

Intentional and Negligent Infliction of Emotional Distress. The tort of intentional infliction of emotional distress (Count III) requires Plaintiff to show that the ABC Defendants’ conduct 1) was intentional or reckless, 2) was so outrageous that it is not tolerated by civilized society, and 3) resulted in serious mental injury to the Plaintiff. *Rogers v. Louisville Land Co.*, 367 S.W.3d 196, 205 (Tenn. 2012). The claim of negligent infliction of emotional distress (Count IV) requires Plaintiff to show the elements of a general negligence claim and also that the ABC Defendants’ conduct was outrageous. *Brown*, 393 S.W.3d at 705-706. The burden to demonstrate outrageous conduct is a heavy one. *Oates v. Chattanooga Pub. Co.*, 205 S.W.3d 418, 218 (Tenn. Ct. App. 2016). It is a question for the Court to determine, in the first instance, whether a defendants’ alleged conduct can reasonably be regarded as outrageous pursuant to that high standard. *McBee v. Greer*, No. E2009-01760-COA-R3-CV, 2010 WL 2290560, *3 (Tenn. App. June 8, 2010).

The alleged implication that Plaintiff illegally evicted a tenant from a home falls far short of the type of behavior that courts have held to be “outrageous.” Tennessee courts have dismissed intentional infliction of emotional distress claims based on the publication of allegedly false accusations that were far more serious than anything alleged here on the grounds that such accusations were not “outrageous.”¹³ In addition, Plaintiff’s negligent infliction of emotional

¹³ See, e.g., *Malmquist v. Hearst Corp.*, No. 2:09-cv-2416-JPM-cgc, 2010 WL 1257800, at *6 (W.D. Tenn. Mar. 26, 2010) (granting motion to dismiss IIED claim, stating that “[a]lthough publishing an article which falsely portrays Plaintiff as an abusive spouse may be a serious harm, it does not rise to the level of conduct so outrageous in character and so extreme in degree as to go beyond all bounds of decency”); *Brown*, 393 S.W.3d at 706 (accusing customer of a “money switch” was not outrageous); *Crowley v. Anderson County, Tennessee*, No. 3:17-cv-169, 2018 WL 8919395, at *8-9 (E.D. Tenn. Aug. 6, 2018) (preparing

distress claim also fails because the Complaint does not establish any basis for a duty owed to Plaintiff by the ABC Defendants. *See Parks v. Nelson*, No. E2000-02943-COA-R3-CV, 2002 WL 523458, at *3 (Tenn. Ct. App. Apr. 9, 2002) (affirming dismissal of negligent infliction of emotional distress claim where plaintiff failed to establish a basis for the duty allegedly breached by defendants). The Complaint alleges that the ABC Defendants owed Plaintiff a duty to report “fairly and accurately” all the circumstances of the events in question. Compl. ¶ 166. Essentially, the Complaint alleges that a news organization owes a general duty of fairness to every person they report anything about that is actionable in negligence. Not only is there no legal basis for such a duty, the recognition of one would violate the First Amendment because the Constitution imposes far more barriers to challenging speech than merely alleging a story was unfair or inaccurate. *See Compuware Corp. v. Moody’s Investor Servs.*, 499 F.3d 520, 533 (6th Cir. 2007) (stating that plaintiff may not plead other tort theories as “a backdoor attempt to assert a defamation claim” without satisfying the standards of defamation); *Warren v. Warrior Golf Capitol LLC*, 126 F.Supp.3d 988, 993-94 (E.D. Tenn. 2015). Thus, courts consistently hold that journalists do not owe a general duty actionable in negligence to the people about whom they report.¹⁴

Intentional Interference with Business Relations. Finally, to state a claim for intentional interference with business relationships, a plaintiff must allege 1) an existing business relationship

memorandum and investigative report that allegedly contained material omissions contributing to plaintiff’s arrest and prosecution was not outrageous), *rev’d on other grounds*, 783 F. App’x 556 (6th Cir. 2019).

¹⁴ *See, e.g., Newcombe v. Adolph Coors Co.*, 157 F.3d 686, 695 (9th Cir. 1998) (“[A] claim for negligent publication is essentially the same as either a claim for misappropriation or for defamation, and [] the constitutional and statutory principals regarding those standards cannot be circumvented by artful pleading.”); *DiLeo v. Davis*, Civ. A No. 89-2485, 1995 WL 5908, at *2 (E.D. La. Jan. 5, 1995) (holding that a defamation claim cannot be stated as one for negligence, “[o]therwise the First Amendment and all of the case law of Louisiana concerning defamation would be rendered meaningless”).

with specific third parties or a prospective relationship with an identifiable class of third persons; 2) defendant's knowledge of that specific relationship; 3) defendant's intent to cause the breach or termination of the business relationship; and 4) defendant's improper motive or improper means in doing so. *Trau-Med of America, Inc. v. Allstate Ins. Co.*, 71 S.W.3d 691, 701 (Tenn. 2002). In addition to pleading a claim for intentional interference based on the allegedly defamatory KABC News Story, the Complaint also alleges that an individual who had listed the tiny home for sale online, Stephen Harrell, stopped listing the house and sent a message to Plaintiff explaining, "Hey man. I decided to mark your tiny house as sold. I even got an email from a news agency asking to do a story about it. I don't want to be involved in all of that kind of stuff. Hope you understand." Compl. ¶¶ 47-48. On that basis, the Complaint alleges that the ABC Defendants intended for Mr. Harrell and anyone else to terminate their business relationships with Plaintiff. *Id.* ¶ 171. It further alleges that the ABC Defendants acted with the improper motive "to enhance their television ratings by broadcasting and disseminating sensationalized news stories, to further their reputations in broadcasting, for financial reasons, and to deflect criticism away from them and onto Mr. Bedsole and Tiny House Chattanooga." *Id.* ¶ 172.

That claim fails for either of two reasons. First, an "improper motive" for purpose of this tort means "that the defendant's predominant purpose was to injure the plaintiff." *Trau-Med of America, Inc.*, 71 S.W.3d at 701 n.5. Here, the Complaint alleges that the ABC Defendants were primarily motivated by concerns about ratings, their own reputations, and susceptibility to public criticism – not to inflict injury on Plaintiff. That alone requires dismissal. *See Brown & Williamson Tobacco Corp. v. Jacobson*, 713 F.2d 262, 274 (7th Cir. 1983) (providing that the

allegation that broadcaster's motive was "to increase the audience ratings of and attract attention to" it was not an improper motive for purposes of a tortious interference claim).

Second, Mr. Harrell's message merely states that he received an e-mail "asking to do a story about it." Compl. ¶ 48. That provides no support at all for the Complaint's conclusory assertion that the ABC Defendants either intended to cause Mr. Harrell to stop listing the home or acted with any improper motive or means. Moreover, as a matter of law, merely alleging that a journalist contacted a potential source of information "asking to do a story about it" cannot satisfy the requisite "improper motive" or "improper means" for purposes of a claim for tortious interference. *See Seminole Tribe of Florida v. Times Pub. Co., Inc.*, 780 So. 310, 318 (Fl. App. DCA 4th 2001) (granting motion to dismiss because a reporter's request to a source for information cannot support a claim for tortious interference). Notably, the Tennessee Supreme Court has provided fifteen examples of the types of conduct that could constitute "improper means" for purposes of this tort, none of which apply here. *Trau-Med of America, Inc.*, 71 S.W.3d at 701 n.5. If the law were otherwise, then any routine inquiry by any journalist related to a business or an individual's finances could be the basis for pleading a claim of intentional interference with business relationships. That would eviscerate the First Amendment. *Seminole Tribe of Florida*, 780 So. at 316-18; *see also Brown & Williamson Corp.*, 713 F.2d at 274 ("[T]his approach would make every case of defamation of a corporation actionable as wrongful interference" which would have "constitutional implications").

Thus, in addition to the defamation claim, all of Plaintiff's other causes of action against the ABC Defendants based on the KABC News Story should be dismissed.

D. The Complaint Also Fails to State a Claim Against Defendant American Broadcasting Companies Based on the WTVC News Story.

Finally, the Complaint also pleads a claim for defamation against Defendant American Broadcasting Companies based on the WTVC News Story. Compl. ¶¶ 136-141. That cause of action also fails to state a claim for either of two reasons. First, American Broadcasting Companies understands that the Sinclair Defendants are also filing a motion to dismiss all claims against them based on the WTVC News Story. That motion is hereby incorporated by reference, and if the Sinclair Defendants' motion is granted, the same claims against American Broadcasting Companies necessarily fail as well.

But regardless of whether the claims against the Sinclair Defendants are dismissed, the Complaint fails to plead a basis for imputing any liability to American Broadcasting Companies for the WTVC News Story. Another essential element of any defamation claim is that the defendant must have "published" the story in question. *Brown*, 393 S.W.3d at 708. To potentially be a publisher, the defendant must have played some "actual part in composing and publishing" the news story in question. *Knoxville Pub. Co. v. Taylor*, 215 S.W.2d 27, 30 (Tenn. Ct. App. 1948).

The Complaint alleges no such facts. Rather, the only basis for the conclusory allegation that American Broadcasting Companies "published" the WTVC News Story is that WTVC has a contractual, affiliate relationship with American Broadcasting Companies. Compl. ¶ 29. But pursuant to that contract, American Broadcasting Companies only provides national network programs to WTVC, not local news programs, and the contract gives American Broadcasting Companies no role at all in creating or broadcasting WTVC's local news. *See* Mot Ex. A. The Complaint therefore alleges no facts to support its conclusory statement that American

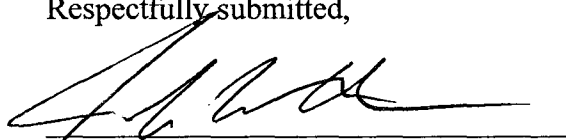
Broadcasting Companies “published” the WTVC story, and so all causes of action pled against it based on that story must be dismissed.¹⁵

CONCLUSION

For the foregoing reasons, the Complaint should be dismissed as to the ABC Defendants for lack of personal jurisdiction over them. If it is not dismissed for that reason, the Complaint should be dismissed because it fails to state a claim against the ABC Defendants.

August 25, 2020

Respectfully submitted,



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¹⁵ Finally, while the ABC Defendants do not construe the Complaint to allege that any other ABC Defendant published the WTVC News Story, even if it did, it certainly alleges no facts that could support any such legally conclusory allegation against any of them either.

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CERTIFICATE OF SERVICE

I hereby certify that on August 25th, 2020, a true and correct copy of the foregoing was sent via Federal Express to the Court for filing. I also certify that a true and accurate copy of the foregoing is being served via email and U.S. Mail, first class postage pre-paid, on the following:

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