ELECTRONICALLY FILED
3/29/2023 3:11 PM
05-CV-2023-900163.00
CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
BRENDA Q. GANEY, CLERK

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

LAKE FOREST PROPERTY OWNERS' ASSOCIATION, INC.,	)	
Plaintiff,	)	
v.	)	CASE NO: CV-2023-900163
LAKE FOREST STRONG, DOREEN KNIGHT, EVE GRAY, DEXTER CURRY, CATHIE MARX, LYNN DAVIS, AND FICTITIOUS PARTIES 1-100,	)	
Defendants.	)	

MOTION TO DISMISS OF DEFENDANTS LYNN DAVIS AND CATHIE MARX

COME NOW Defendants, LYNN DAVIS and CATHIE MARX (together, "Defendants"), pursuant to Rule 12(b)(6) of the *Alabama Rules of Civil Procedure*, and move this Honorable Court to dismiss all claims asserted against them by Plaintiff, LAKE FOREST PROPERTY OWNERS' ASSOCIATION, INC.

Lake Forest Property Owners' Association, Inc. filed this lawsuit against several of its own dues-paying members, including Ms. Davis and Ms. Marx, and others residing in the Lake Forest subdivision to stifle its membership's valid exercise of their right of free speech and to discourage opposition to its Board of Directors. The Complaint, which contains causes of action against "all Defendants" for Libel (Count I), Slander (Count II), Invasion of Privacy-False Light (Count III) and Conspiracy (Count IV), completely fails to allege any specific act or omission of Ms. Davis or Ms. Marx that would lend any factual support to the Association's claims. As a result, the Association's claims against Ms. Davis and Ms. Marx are due to be dismissed for failure to state a claim upon which relief may be granted.

The arguments in support of this Motion are fully set out in the Brief in Support filed herewith.

Respectfully submitted,

s/ Tyler W. Thull

LAURA M. COKER (STR 085)
TYLER W. THULL (THU009)
Attorneys for Defendants Cathie Marx and Lynn Davis
STONE CROSBY, P.C.
8820 US Highway 90
Daphne, Alabama 36526
(251) 626-6696
lcoker@stonecrosby.com

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of March, 2023, I filed the foregoing document with the Clerk of the Court and served a copy of on all parties as I deposited a copy of the same in the United States Mail, postage-paid, addressed and/or via the electronic notification system of AlaFile/AlaCourt to the following:

William G. Chason
Attorney for the Plaintiffs
MCDOWELL KNIGHT ROEDDER & SLEDGE, LLC
11 North Water St., Ste. 13290
Mobile, Alabama 36602
wchason@mcdowellknight.com

Adam M. Milam
Attorney for Defendants Doreen Knight, Dexter Curry, and Lake Forest Strong
MILAM & MILAM, LLC
20252 Highway 181, Suite C
Fairhope, Alabama 36532
amilam@milam-law.com

Eve Gray
114 Malibu Circle
Daphne, Alabama 36526
Pro Se Defendant

s/ Tyler W. Thull

ELECTRONICALLY FILED
3/29/2023 3:11 PM
05-CV-2023-900163.00
CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
BRENDA Q. GANEY, CLERK

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

LAKE FOREST PROPERTY OWNERS' ASSOCIATION, INC.,	)	
Plaintiff,	)	
v.	)	CASE NO: CV-2023-900163
LAKE FOREST STRONG, DOREEN KNIGHT, EVE GRAY, DEXTER CURRY, CATHIE MARX, LYNN DAVIS, AND FICTITIOUS PARTIES 1-100,	)	
Defendant.	)	

BRIEF IN SUPPORT OF MOTION TO DISMISS FILED BY DEFENDANTS LYNN DAVIS AND CATHIE MARX

I. INTRODUCTION

The Plaintiff, Lake Forest Property Owners' Association, Inc. (the "Association"), filed this lawsuit against several of its dues-paying members, including Ms. Davis and Ms. Marx, who allegedly voiced their concerns related to the Board's management of their residential subdivision and circumstances surrounding elections to the Board in a direct and obvious attempt to silence its membership and penalize those who challenge the Board's actions. (Complaint (Doc. 2) at ¶¶ 16-18). In its Complaint, the Association seeks compensatory and punitive damages against these members for Libel (Count I), Slander (Count II), Invasion of Privacy – False Light (Count III) and Conspiracy (Count IV). The Association's claims, and the damages sought, are serious and substantial; yet, Ms. Marx and Ms. Davis are wholly unable to determine from reading the Complaint what their alleged involvement even was in the events giving rise to these claims. As

discussed herein, these spurious and nonspecific claims against Ms. Marx and Ms. Davis are due to be dismissed for failure to state a claim upon which relief may be granted.

II. LAW AND ARGUMENT

A. STANDARD OF REVIEW.

The appropriate legal standard of review under Rule 12(b)(6) of the *Alabama Rules of Civil Procedure* for a motion to dismiss is whether, when the allegations of the complaint are viewed most strongly in the pleader's favor, it appears that the pleader could prove any set of circumstances that would entitle it to relief. E.g., *Raley v. Citibanc of Alabama/Andalusia*, 474 So. 2d 640, 641 (Ala. 1985). In making this determination, the court does not consider whether the plaintiff will ultimately prevail, but only whether it may possibly prevail. *E.g., Fontenot v. Bramlett*, 470 So. 2d 669, 671 (Ala. 1985). A Rule 12(b)(6) dismissal is proper when it appears beyond doubt from the allegations in the complaint that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief. *Garrett v. Hadden*, 495 So. 2d 616, 617 (Ala. 1986).

B. THE ASSOCIATION'S ALLEGATIONS PERTAINING TO MS. DAVIS AND MS. MARX.

Even assuming, *arguendo*, that the Association's allegations are true, the Complaint is devoid of specific factual allegations of any act or omission by Ms. Davis or Ms. Marx. In fact, quoted below are the only actual facts alleged in the Complaint that even mention Ms. Davis or Ms. Marx:

> 16. A small, vocal minority of LFPOA members and non-members, including Knight, Gray, Curry, Marx, and Davis, formed Lake Forest Strong in an ill-conceived, miscalculated attempt to overthrow the Board and replace the Board with members of Lake Forest Strong. Lake Forest Strong was organized into three groups: an "Interim Board", and "Advocacy Team", and an "Advisory Team". Marx and Gray were elected as the president and vice president of the Interim Board, respectively. They were also members of the Advisory Team. Curry was a member of the Interim Board, a member of the Advocacy Team, and a member of the

> Advisory Team. Knight managed and controlled the Advocacy Team. Davis was a member of the Advisory Team.
>
> 19. On May 27, 2022, Carl Winners ("Winners"), the administrator of REFORM, posted on the page that he would admit members of Lake Forest Strong on the page. In response, Davis posted on REFORM: "Thank you for allowing cooperative posts, but it's time to think beyond watchdog now. We have had the last segment of control or influence taken from the membership by chicanery, bullying and back door deals. It is time for action." Knight then responded, stating, in part: "I'm not even a member of the POA, so have little to gain from this beyond fulfilling a promise to a friend – and I will continue to contribute my monthly pledge until we win this fight because I believe it is the right thing to do."

Nowhere in the Complaint does the Association allege any fact suggesting that either of them published any statement, penned any letter, made any false representation, or conspired with any other defendant to commit any wrongful act.

C. THE ASSOCIATION'S CLAIMS AGAINST MS. DAVIS AND MS. MARX FOR LIBEL (COUNT I) AND SLANDER (COUNT II) ARE DUE TO BE DISMISSED BECAUSE THE ASSOCIATION FAILS TO ALLEGE A SINGLE FALSE OR DEFAMATORY STATEMENT CONCERNING THE ASSOCIATION NEGLIGENTLY MADE BY EITHER OF THEM TO ANOTHER.

The Association asserts claims against "the Defendants and fictitious parties 1-100" for libel and slander, both of which are due to be dismissed for failure to state a claim upon which relief may be granted. (Compl. ¶¶ 39, 45).

Libel is defamation *in writing*, while slander is *spoken* defamation, but both forms require the same basic elements to be established as to a defendant's actions. *See Ceravolo v. Brown*, 364 So. 2d 1155 (Ala. 1978). The elements of a defamation claim are as follows:

(a) Publication of a false and defamatory statement to another;

(b) Which concerns the plaintiff; and

(c) Which were at least negligently made.

E.g., Delta Health Grp., Inc. v. Stafford, 887 So. 2d 887 (Ala. 2004).

This case is not the first time the Association has sued its own member for defamation. In *Ponder v. Lake Forest Prop. Owners Ass'n*, 214 So. 3d 339, 350 (Ala. Civ. App. 2015), the Court of Civil Appeals of Alabama clarified the standard for making claims for libel and slander:

> The foundation of an action for libel or slander is a malicious injury to reputation, and any false and malicious imputation of crime or moral delinquency by one published of and concerning another, which subjects the person to disgrace, ridicule, odium, or contempt in the estimation of his friends and acquaintances, or the public, with resulting damage to his reputation, is actionable either per se or per quod....
>
> There is a distinction between actions of libel predicated on written or printed malicious aspersions of character, and actions of slander resting on oral defamation. ... This distinction, however, is merely in respect to the question as to whether the imputed language or words are actionable per se.
>
> In cases of libel, if the language used exposes the plaintiff to public ridicule or contempt, though it does not embody an accusation of crime, the law presumes damage to the reputation, and pronounces it actionable per se. While to constitute slander actionable per se, there must be an imputation of an indictable offense involving infamy or moral turpitude....

Ponder v. Lake Forest Prop. Owners Ass'n, 214 So. 3d 339, 350 (Ala. Civ. App. 2015) (internal citations omitted). Here, no allegation has been made that Ms. Marx made or published any false or defamatory statement to any platform.

Whether the claim is for libel or slander, the plaintiff must allege a false and defamatory statement made by the defendant. See, *Gary v. Crouch*, 867 So. 2d 310, 315 (Ala. 2003). Here, there are no allegations of *any statement*, oral or written, made by Ms. Davis or Ms. Marx. The Association alleges that “the Defendants” created a Facebook group known as “Lake Forest Strong” to “feed a false, defamatory narrative to the media” and that “the Defendants” promoted the idea of a petition for homeowners to sign to “overthrow” the current Board but never alleges any involvement by Ms. Marx or Ms. Davis nor does the Association identify what information was allegedly published by Ms. Marx or Ms. Davis that it contends is false. Further, the

"defamatory narrative" mentioned throughout the Complaint is never defined or explained so Ms. Davis and Ms. Marx are left guessing what statement the Association claims they made that was false or defamatory.

Throughout the entire Complaint, the Association never alleges which of the Defendants made which alleged defamatory statement referring instead only to "the Defendants" generally. For example, the Association does not allege that Ms. Davis or Ms. Marx drafted or signed or sent any of the allegedly defamatory letters to the Alabama Attorney General, the IRS or the FBI. Rather, it makes the broad, general allegation that all Defendants "conspired to send" such letters:

> 22. The Defendants conspired to send hundreds of letters to the Alabama Attorney General, Internal Revenue Service, and Federal Bureau of Investigation in an attempt to cause a criminal investigation directed at the Board's activities or, at a minimum, create the appearance that the Board had engaged in a crime.

Further, sending letters, absent any specific allegation of defamatory content of those letters, is not an action that gives rise to a defamation claim. The Association has not alleged what, if anything, in those letters was false and defamatory, or even who wrote or sent them. The Association does not allege that Ms. Marx or Ms. Davis created the petition or wrote the description on the Go Fund Me post, or even that either of them sent a single letter. Because the Association has failed to allege a single fact regarding Ms. Marx and Ms. Davis's involvement in any of the acts giving rise to its purported claims of libel and slander, those claims against them are due to be dismissed.

To the extent the Association is relying on its allegation in paragraph 19 regarding a Facebook post allegedly made by Ms. Davis, that statement cannot serve as the basis for a defamation claim because it is nothing more than an expression of opinion. The Association never alleges such statement was false or exposed the Association to public ridicule or contempt. A statement of opinion is not actionable as defamation. *Sanders v. Smitherman*, 776 So. 2d 68, 74

(Ala. 2000). "One cannot recover in a defamation action because of another's expression of an opinion based upon disclosed, nondefamatory facts, no matter how derogatory the expression may be… This is so because the recipient of the information is free to accept or reject the opinion, based on his or her independent evaluation of the disclosed, nondefamatory facts." *Id.* (citing *Restatement (Second) of Torts* § 566 cmt. c (1977)).

Therefore, even assuming the Association's allegations were true, the Complaint fails to state a claim for libel or slander against Ms. Marx or Ms. Davis because the Association has failed to allege a single false or defamatory statement made by Ms. Davis or Ms. Marx.

D. THE ASSOCIATION'S CLAIM FOR INVASION OF PRIVACY – FALSE LIGHT (COUNT III) IS DUE TO BE DISMISSED FOR FAILURE TO STATE A CLAIM.

1. The Association's Allegations As To How Ms. Davis And Ms. Marx Invaded the Association's Privacy and Placed it in a False Light is Fatally Non-specific.

The Alabama Supreme Court has stated the elements necessary to state a claim of invasion of privacy by putting one in a false light:

> One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if
>
> (a) the false light in which the other was placed would be highly offensive to a reasonable person, and
>
> (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.

S.B. v. Saint James Sch., 959 So. 2d 72, 93 (Ala. 2006) (citing *Butler v. Town of Argo*, 871 So. 2d 1, 12 (Ala. 2003)).

As with the Association's claims for libel and slander, its invasion of privacy claim suffers from a wholesale lack of detail and consists solely of formulaic recitations of the elements of an invasion of privacy claim:

> 51. The Defendants and fictitious parties 1-100 caused inaccurate and misleading information to be published to the AG, the IRS, LFPOA members, the media, and other third parties that placed the LFPOA and its Board in a false light.
>
> 52. The false impressions created by the Defendants would be highly offensive to a reasonable person.
>
> 53. The Defendants knew the true facts, or recklessly disregarded the true facts, when publicizing the false information about the LFPOA and its Board.
>
> 54. The Defendants' acts and omissions proximately caused the LFPOA and its Board to suffer damages.

These allegations are mere recitations of the legal elements of an invasion of privacy claim; however, no facts supporting any of these conclusory statements have been alleged to apprise Ms. Marx and Ms. Davis of what actions they may have taken that gave rise to this claim or what damage was suffered by the Association, the party in interest in this action. The Association never alleges that Ms. Marx or Ms. Davis gave publicity to any inaccurate or misleading information regarding the Association. Instead, the Association broadly alleges that *all Defendants*, including the potential 100 fictitious parties, caused "inaccurate and misleading information to be published to the AG, the IRS, LFPOA members, the media, and other third parties that placed the LFPOA and its Board in a false light". (Complt. (Doc. 2) at ¶ 51. However, the Association never alleges that Ms. Marx or Ms. Davis ever drafted, signed or sent – or that either of them were even involved in the drafting, signing or sending of – any such letters, nor does it allege that Ms. Marx or Ms. Davis published, represented, wrote, or posted anything inaccurate or misleading so as to place it in a false light.

The Association's claim for Invasion of Privacy-False Light against all Defendants, including 100 fictitious ones, with no specificity as to what statement gave rise to the claim is

fatally nonspecific and due to be dismissed for failure to state a claim upon which relief may be granted.

2. The Association Does Not Have a Corporate Right of Privacy.

The Association is a nonprofit corporation and has no privacy right such that it can assert a cognizable claim for invasion of privacy. Privacy rights are uniquely individual rights, and the tort of invasion of privacy is contemplated by Alabama courts in terms that require an analysis of the subjective feelings of an individual asserting that claim:

> This Court defines the tort of invasion of privacy as the intentional wrongful intrusion into one's private activities in such a manner as to outrage or cause mental suffering, shame, or humiliation to a person of ordinary sensibilities.

Ex parte Bole, 103 So. 3d 40, 51 (Ala. 2012). A corporation is not a "person of ordinary sensibilities," and as such cannot be damaged by an invasion of privacy as an individual can be. *Id*.

A thorough review of Alabama case law has not revealed any case wherein an Alabama court has recognized a corporate right to privacy. Numerous courts in other jurisdictions have held that a corporation has no privacy right upon which it may base an invasion of privacy claim. *See Felsher v. Univ. of Evansville*, 755 N.E.2d 589, 592-93 (Ind. 2001) ("Well established privacy law . . . precludes corporations from bringing an action for invasion of privacy… Amici accurately assert that no other state has recognized a claim for invasion of privacy by a corporation.") (internal citations omitted). *See also Doggett v. Travis Law Firm, P.C.*, 555 S.W.3d 127, 130-31 (Tex. App. 2018) ("No Texas authority has recognized a corporation's right to privacy") (citing, among others, Michol O'Connor, TEXAS CAUSES OF ACTION 409 (2017) (noting corporations do not have right to privacy and cannot recover for invasion of privacy by appropriation of name or likeness)).

E. THE ASSOCIATION'S CONSPIRACY CLAIMS AGAINST MS. DAVIS AND MS. MARX ARE DUE TO BE DISMISSED FOR FAILURE TO STATE A CLAIM.

1. The Association's Conspiracy Claim is Due to Be Dismissed Because the Association's Complaint Fails to Sufficiently State a Claim for an Underlying Tort.

A civil conspiracy requires a combination of two or more individuals to accomplish a lawful end by unlawful means. *Triple J Cattle v. Chambers*, 621 So. 2d 1221, 1225 (Ala. 1993). "Conspiracy is not an independent cause of action; therefore, when alleging conspiracy, a plaintiff must have a viable underlying cause of action," *Drill Parts & Serv. Co. v. Joy Mfg. Co.*, 619 So. 2d 1280, 1290 (Ala. 1993), *see also* *Allied Supply Co. v. Brown*, 585 So. 2d 33, 36 (Ala. 1991). "A conspiracy claim must fail if the underlying act itself would not support an action." *Triple J Cattle, Inc. v. Chambers*, 621 So. 2d 1221, 1225 (Ala. 1993).

The Association's claims for libel and slander fail because the Association has not alleged a single false or defamatory statement made by Ms. Marx or Ms. Davis. *See*, Section B, supra. The Association's invasion of privacy claim likewise fails for a lack of facts necessary to support such a claim but also because the Association has no corporate right of privacy which it may claim was invaded. Because the Association has failed to state a claim for an underlying tort, its claim for conspiracy to commit those torts is due to be dismissed.

2. Even if the Association Stated a Claim for an underlying tort, its Conspiracy Claim is Still Due to Be Dismissed Because the Complaint Fails to identify any overt act taken by Ms. Marx or Ms. Davis in furtherance of the alleged conspiracy.

To state a claim for civil conspiracy, "**the plaintiff must plead with particularity the conspiracy as well as the overt acts within the forum taken in furtherance of the conspiracy**." *Ex parte McInnis*, 820 So. 2d 795, 806-07 (Ala. 2001). The Association's conclusory allegations that "[t]he Defendants worked together" (Complt. ¶¶ 56-57) falls far short of stating a claim for civil conspiracy.

In evaluating the merits of a motion to dismiss a civil conspiracy claim, the Alabama Supreme Court held that “'[b]ald speculation' or a 'conclusionary statement' that individuals are co-conspirators is insufficient to establish personal jurisdiction under a conspiracy theory.” *Ex parte McInnis*, 820 So. 2d 795, 806-07 (Ala. 2001) (internal citations omitted). “Instead, the plaintiff must plead with particularity 'the conspiracy as well as the overt acts within the forum taken in furtherance of the conspiracy.'” *Id.* Thus, a defendant’s overt acts leading to their involvement in a civil conspiracy must be alleged as to that particular defendant. See also, *First Bank v. Florey*, 676 So. 2d 324, 327 (Ala. Civ. App. 1996). In *First Bank v. Florey*, 676 So. 2d 324 (Ala. Civ. App. 1996), the Court explained as follows:

> In order to prove conspiracy, a plaintiff must allege and prove that the defendant (here Baker, as an agent of the Bank) agreed with at least one other coconspirator (here, Diana) to accomplish an unlawful end (here, to enable Sam and Diana to acquire the Dead Hollow property fraudulently) and intended to have that unlawful end brought about. See *Eidson v. Olin Corp.*, 527 So. 2d 1283 (Ala. 1988). The essence of a conspiracy is an agreement, a meeting of the minds between the conspirators. *Id*. One cannot inadvertently become a member of a civil conspiracy. *Rogers v. R.J. Reynolds Tobacco Co.*, 761 S.W.2d 788, 797 (Tex. App. 1988).
>
> The plaintiff must allege and prove that the claimed conspirators had actual knowledge of, and the intent to bring about, the object of the claimed conspiracy.

676 So. 2d at 327.

Here, the Association bases its conspiracy claim on what is nothing more than conclusory allegations that “the Defendants” defamed the Association and invaded its privacy:

> 56. The Defendants worked together to secretly plan to replace the LFPOA Board with the Interim Board by maliciously publishing defamatory statements about the Board to the AG, the ORS, LFPOA members, the media and other third parties.
>
> 57. The Defendants worked together to invade the privacy of the LFPOA Board and place the Board members in a false light.

(Compl. ⁋⁋ 56-57). The Association never alleges any facts tending to suggest the existence of an agreement, or meeting of the minds, between Ms. Marx or Ms. Davis and another to commit any wrongful act or that Ms. Marx or Ms. Davis had actual knowledge of any defamatory statement or that Ms. Marx or Ms. Davis intended to invade the Association's privacy or place it in a false light.

The Association must do more than merely name Ms. Marx and Ms. Davis as defendants—it must allege the basis for its entitlement to relief from each of them, and it must *show* such an entitlement with its facts. The Complaint lacks sufficient factual content upon which this Court could draw the reasonable inference that Ms. Marx or Ms. Davis conspired with any other Defendant to defame or invade the Association's right of privacy, albeit nonexistent. Therefore, the Association's claim against Ms. Marx and Ms. Davis for Civil Conspiracy in Count IV is due to be dismissed for failure to state a claim.

F. THE ASSOCIATION CANNOT RECOVER FOR PERSONAL CLAIMS OF ITS BOARD MEMBERS.

It is most concerning that the Board is utilizing the Association's funds and resources to advance claims which are personal to the Board members and to punish the Association's members for voicing their concerns by forcing them to expend their own funds to defend themselves against these frivolous claims. The Association's Complaint asserts claims arising out of alleged damages sustained by individual members of the Association's Board of Directors, **not** by the Association as a whole. However, not surprisingly, none of those Board members are named as plaintiffs in this action.

The Association has failed to state cognizable claims for defamation and invasion of privacy because it is clear from the Complaint that those claims are based on damage allegedly suffered by individual Board members who are not even parties to this lawsuit. Accordingly, those claims are due to be dismissed for failure to state a claim for which relief can be granted. *See City*

Ambulance of Ala., Inc. v. Haynes Ambulance of Ala., 431 So. 2d 537, 537 (Ala. 1983) ("Factual development is unnecessary and a motion to dismiss is appropriate when one pleads a claim for which no relief is authorized as a matter of law."). None of the members of the Association's Board of Directors have joined this action as party plaintiffs and if they wish to recover for any embarrassment they may have experienced by criticism of their actions, then they should join this litigation. Otherwise, all claims by the Association for damages allegedly suffered by individual board members—that is, all claims brought in this action—do not give rise to any liability for damage to the Association and are due to be dismissed.

G. THE COMPLAINT IS AN IMPERMISSIBLE SHOTGUN PLEADING THAT IS DUE TO BE DISMISSED OR, IN THE ALTERNATIVE, AMENDED TO MORE DEFINITIVELY STATE THE FACTUAL BASIS OF ITS CLAIMS AGAINST MS. DAVIS AND MS. MARX.

The Complaint as a whole is a "shotgun" pleading in violation of Rule 8(a) of the *Alabama Rules of Civil Procedure* and is due to be dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief may be granted. The Association's nonspecific Complaint referring throughout to "the Defendants" (which includes not just Ms. Davis and Ms. Marx but also __ other named Defendants and 100 potential fictious defendants) is a quintessential "shotgun" pleading and is due to be dismissed for failure to state a claim upon which relief may be granted.

Rule 8(a) of the *Alabama Rules of Civil Procedures* provides, in pertinent part, that a complaint should contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Ala. R. Civ. P. 8(a). "Each averment of a pleading shall be simple, concise, and direct." *Id.* at (e)(1). "A complaint that fails to follow Rules 8 and 10 may be classified as a shotgun pleading." *Muhammad v. Muhammad*, 654 F. App'x 455, 457 (11th Cir. 2016). "With a shotgun pleading, it is virtually impossible to know which allegations of fact are intended to support which claims for relief." *Goodykoontz v. May Trucking*, No. CV 19-01124-JB-B, 2020 WL 1018564, at

*2 (S.D. Ala. Feb. 3, 2020), report and recommendation adopted, No. CV 19-01124-JB-B, 2020 WL 998822 (S.D. Ala. Mar. 2, 2020).

The Association's Complaint purports to assert four claims against "the Defendants," without specifying in any way which actions were taken by which defendants to give rise to the claims asserted. The Complaint's nonspecific, conclusory allegations cannot serve as any basis for the Association's claims against Ms. Marx or Ms. Davis under any interpretation of the Complaint but are instead intended to do nothing more than harass and intimidate them and cause them to incur attorneys' fees and other costs of litigation. Because the Complaint does not apprise Ms. Marx or Ms. Davis of any wrongful act by either of them, the Association's claims against them are due to be dismissed.

III. CONCLUSION

It is in the public interest to encourage participation by homeowners in the governance of their property owners' association; however, the Association filed this frivolous lawsuit as a means of stifling public participation and free speech. For the reasons discussed herein, all claims against Ms. Marx and Ms. Davis should be dismissed for failure to state a claim upon which relief may be granted.

Respectfully submitted,

s/ Tyler W. Thull

LAURA M. COKER (STR 085)
TYLER W. THULL (THU009)
Attorneys for Defendants Lynn Davis and Cathie Marx
STONE CROSBY, P.C.
8820 US Highway 90
Daphne, Alabama 36526
(251) 626-6696
lcoker@stonecrosby.com

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of March, 2023, I filed the foregoing document with the Clerk of the Court and served a copy of on all parties as I deposited a copy of the same in the United States Mail, postage-paid, addressed and/or via the electronic notification system of AlaFile/AlaCourt to the following:

William G. Chason
Attorney for the Plaintiffs
MCDOWELL KNIGHT ROEDDER & SLEDGE, LLC
11 North Water St., Ste. 13290
Mobile, Alabama 36602
wchason@mcdowellknight.com

Adam M. Milam
Attorney for Defendants Doreen Knight,
Dexter Curry, and Lake Forest Strong
MILAM & MILAM, LLC
20252 Highway 181, Suite C
Fairhope, Alabama 36532
amilam@milam-law.com

Eve Gray
114 Malibu Circle
Daphne, Alabama 36526
Pro Se Defendant

s/ Tyler W. Thull