

1 Robert C. Brown (019011)  
2 **WALDRON EVANS, PLC**  
3 9590 E. Ironwood Square Drive, Suite 105  
4 Scottsdale, Arizona 85258  
5 Telephone: (480) 477-3209  
6 Email: [rbrown@waldronevans.com](mailto:rbrown@waldronevans.com)  
7 *Attorneys for Defendants*

8 **IN THE ARROWHEAD JUSTICE COURT OF THE STATE OF ARIZONA**  
9 **IN AND FOR THE COUNTY OF MARICOPA**

10 JOHN T. CHRISTIANA, an individual,

11 Plaintiff,

12 vs.

13 TARGETED JUSTICE, an Arizona non-  
14 profit corporation; *et al.*,

15 Defendants.

Case No. CC2020-024852

**DEFENDANTS' REPLY IN SUPPORT  
OF MOTION FOR SUMMARY  
JUDGMENT**

(Oral Argument Requested)

**(Assigned to the Hon. Craig Wismer)**

16 Defendants Targeted Justice, Doris Clause and Winter Owen Calvert (collectively,  
17 the "Defendants") hereby submit their Reply in support of their Motion for Summary  
18 Judgment (the "Motion") on all of the causes of action asserted in Plaintiff's First  
19 Amended Complaint ("FAC"). As will be demonstrated, the Defendant's Motion should  
20 be granted because Plaintiff's Response neither creates genuine issues of material fact nor  
21 rebuts Plaintiffs' claim they are entitled to judgment as a matter of law. This Reply is  
22 supported by the following Memorandum of Points and Authorities, the Defendants'  
23 Statement of Facts ("SOF") supporting their Motion and the record in this case.

**MEMORANDUM OF POINTS AND AUTHORITIES**

24 **I. INTRODUCTION**

25 Plaintiff contends Defendants' Motion should be denied outright because it does not  
26 contain the preliminary statement mandated by Rule 129(c)(2) of the Justice Court Rules of  
27 Civil Procedure (the "Preliminary Statement"). The Preliminary Statement informs non-  
28 moving parties they are required to respond to a Motion for Summary Judgment with: 1) a

1 Statement of Facts supported by admissible evidence; and 2) a Memorandum of Law which  
2 provides legal authority justifying the denial of a Motion for Summary Judgment. The  
3 Preliminary Statement also warns non-moving parties “[i]t is not enough for you to simply  
4 deny facts.” This warning is derived from the well established rule that a non-moving  
5 party cannot oppose a Motion for Summary Judgment simply by citing its pleadings, such  
6 as allegations in a Complaint. *Gibbons v. Globe Dev., Nevada Inc.*, 113 Ariz. 324, 325,  
7 553 P.2d 1198, 1199 (1976)(holding the non-moving party “cannot stand upon unverified  
8 pleadings” if the moving party “has met its burden on summary judgment . . .”).

9 Plaintiff cites no legal authority for his contention Defendants’ Motion should be  
10 summarily denied because of their failure to quote the Preliminary Statement at the  
11 beginning of their Motion. No such authority likely exists as Defendants can simply refile  
12 their Motion with the Preliminary Statement to cure the defect. Moreover, it is self evident  
13 the Preliminary Statement is intended for persons who are not represented by counsel and  
14 have no legal experience, but yet are faced with responding to a Motion for Summary  
15 Judgment. Plaintiff does not fit into the category of such persons because he claims to  
16 have attended law school and has legal experience. In fact, at one time Plaintiff sat on  
17 Targeted Justice’s Board of Directors (the “Board”) as its Legal Director.

18 More importantly, Plaintiff does not follow the Preliminary Statement’s directives.  
19 The only admissible evidence offered by Plaintiff in response to Defendants’ Motion is a  
20 Declaration signed by the Plaintiff. Plaintiff’s Declaration, however, does not rebut any of  
21 the contentions made in the Defendants’ Motion. Indeed, Plaintiff impermissibly relies on  
22 the allegations in his FAC to rebut the arguments made in Defendants’ Motion.

23 Concurrently with filing his Response, Plaintiff filed six (6) Requests for Judicial  
24 Notice (collectively, the “Requests”). The Requests ask the Court to take judicial notice of  
25 information contained in various documents, such as emails, purchase receipts, etc.

26 Plaintiff’s Response cites numerous exhibits to the Requests. This practice violates  
27 the Preliminary Statement’s directive that the non-moving party’s Response rely on a  
28 Statement of Facts supported by admissible evidence which “shows a genuine dispute of

1 the facts.” While Defendants omitted quoting the Preliminary Statement, they are not  
2 guilty of violating its directives. Therefore, Defendants respectfully request that the Court  
3 disregard any citations in Plaintiff’s Response to exhibits attached to the Requests and, for  
4 the reasons demonstrated below, grant summary judgment in their favor.

## 5 **II. ARGUMENT**

### 6 **A. The Court Lacks Personal Jurisdiction Over Calvert.**

7 Defendants’ Motion is supported by a Declaration signed by Defendant Winter  
8 Owen Calvert (“Calvert”) in which he avows under the penalty of perjury concerning his  
9 lack of contacts with the State of Arizona, such as:

- 10 • Calvert is a resident of Houston, Texas and has never been a resident of Arizona;
- 11 • Calvert works for a company located in Houston, Texas. Calvert has never worked  
12 for a company located in Arizona nor traveled to Arizona as part of his employment  
13 with the company he now works for;
- 14 • Calvert does not currently and has not in the past ever owned real property located  
15 in the State of Arizona;
- 16 • Calvert has never held an ownership interest in a business located in the State of  
17 Arizona; and
- 18 • Calvert last traveled to Arizona in 2014 for vacation that lasted a few days.

19 (SOF, ¶¶ 20-25).

20 Plaintiff contends “Exhibits 1 through 12” attached to one of his Requests prove this  
21 Court has personal jurisdiction over Calvert. (Response, p. 7). Notwithstanding the fact  
22 these exhibits are not attached to Plaintiff’s Statement of Facts, the exhibits do not establish  
23 Calvert has had sufficient contacts with the State of Arizona so as to justify the exercise of  
24 personal jurisdiction. The exhibits consist of e-mails sent by Calvert to other members of  
25 Targeted Justice, a print out from the Arizona Corporation Commission showing Targeted  
26 Justice is an Arizona non-profit corporation, and a print out from Targeted Justice’s  
27 website showing Calvert is an Advisory Member to Targeted Justice’s Board.

28

1 The fact Calvert sent emails to members of an Arizona corporation and is an  
2 advisory member to the corporation's Board of Directors does not constitute evidence of  
3 substantial or continuous and systematic contacts sufficient to justify the exercise of  
4 general jurisdiction. *Helicopteros Nacionales de Colombia S.A. v. Hall*, 466 U.S. 408  
5 (1984). Indeed, Plaintiff offers no evidence the persons who received Calvert's e-mails  
6 reside in Arizona or he traveled to Arizona as part of business relating to Targeted Justice.

7 Specific jurisdiction is also lacking because Plaintiff offers no evidence establishing:  
8 (1) Calvert purposefully availed himself of the privilege of conducting business in Arizona;  
9 (2) Plaintiff's claims against Calvert arise out of or relate to his contacts with the State of  
10 Arizona; and (3) the exercise of jurisdiction is reasonable. *Shute v. Carnival Cruise Lines*,  
11 897 F.2d 377, 381 (9<sup>th</sup> Cir. 1990), *reversed on other grounds*, 499 U.S. 585 (1991).

12 Plaintiff has the burden of proving the Court has personal jurisdiction over Calvert.  
13 *Coast to Coast Mktg. Co. v. G&S Metal Prods. Co.*, 130 Ariz. 506, 507, 637 P.2d 308, 309  
14 (App. 1981). To meet this burden, the Plaintiff is required to come forward with facts  
15 supporting personal jurisdiction. *MacPherson v. Tagilone*, 158 Ariz. 309, 311-12, 762  
16 P.2d 596, 598-99 (App. 1999). Plaintiff has not met his burden, and therefore, any and all  
17 claims against Calvert must be dismissed with prejudice.

18 **B. Plaintiff's Causes of Action Should Be Dismissed With Prejudice.**

19 As demonstrated below, none of Plaintiff's causes of action in his FAC should  
20 survive but instead warrant being dismissed with prejudice. In response to Defendants'  
21 Motion, Plaintiff supports his causes of action with conclusory statements, reliance on the  
22 allegations in his FAC and at times, fanciful arguments such as he is a shareholder of  
23 Targeted Justice, an non-profit corporation. Indeed, Plaintiff presents contradictory  
24 arguments in support of his First and Second Causes of Action so that one is left wondering  
25 what he is alleging for these causes of action. In the end, Plaintiff's Response presents  
26 neither admissible evidence sufficient to create an issue of fact nor legal authority  
27 supporting his claims asserted in the FAC.

1 Plaintiff has the burden of proving the following elements for his defamation claim:

2 One who publishes false and defamatory communication concerning a  
3 private person . . . is subject to liability if, but only if, he (a) knows that the  
4 statement is false and it defames the other, (b) acts in reckless disregard of  
these matters, or (c) acts negligently in failing to ascertain them.”

5 *Rowland v. Union Hills Country Club*, 157 Ariz. 301, 306, 757 P.2d 105, 110 (App.  
6 1988)(quoting Restatement (Second) of Torts § 580B (1977)).

7 ““To be defamatory, a publication must be false and must bring the defamed person  
8 into disrepute, contempt, or ridicule, or must impeach plaintiff's honesty, integrity, virtue,  
9 or reputation.”” *Turner v. Devlin*, 174 Ariz. 201, 203-04, 848 P.2d 286, 288-89  
10 (1993)(quoting *Godbehere v. Phoenix Newspapers, Inc.* 162 Ariz. 335, 341, 783 P.2d 781,  
11 787 (1989)). Whether a statement is capable of defamatory meaning is a question of law  
12 for the court to decide. *Dube v. Likins*, 216 Ariz. 406, 419, 167 P.3d 93, 106 (App. 2007).

13 Here, the Plaintiff contends the following statement made by Calvert (the  
14 “Statement”) constitutes the basis for his defamation claim:

15 A letter has been circulating in the T.I. community regarding my published  
16 ebooks. I am the sole author of my ebooks, and my name is clearly shown  
17 on the book cover. It is truly unfortunate when one individual, finds it  
18 necessary to misrepresent what I have published. I will continue to express  
19 my opinions, which are protected under the U.S. Constitution. Any real  
20 lawyer can confirm this – Opinions are protected speech. It is perfectly  
legal to publish my opinions on any subject. The Board of Directors at  
Targeted Justice has informed me, they fully support my efforts.

21 (Response, p. 8).

22 The Statement does not identify the Plaintiff by name or in any other manner. Thus,  
23 a reader would not know who was the Statement's subject. Moreover, the Statement’s tone  
24 and tenor is not to ridicule, or to call into question another’s honesty, integrity, virtue, or  
25 reputation. Instead, the Statement is a defense made by Calvert of his expressed opinions  
26 under the First Amendment to the United States Constitution.

27 Plaintiff also does not identify any falsehoods made in the Statement or present  
28 evidence Calvert acted recklessly or negligently in making the Statement. Without any

1 explanation by Plaintiff, one is left to guess what part of the Statement is false and how  
2 Calvert acted recklessly or negligently in making the Statement.

3 Like the allegations in his FAC, Plaintiff offers only conclusory allegations to  
4 support his Defamation claim. Plaintiff does not provide admissible evidencing proving:  
5 1) he was defamed by the Statement; 2) why the Statement is defamatory; 3) what part of  
6 the Statement is false; and 4) Calvert acted recklessly or negligently in making the  
7 Statement. Plaintiff's claim Calvert "libeled Plaintiff" is, like the allegations in his FAC,  
8 conclusory and not sufficient to defeat Defendant's Motion. (Response, p. 8); *Brown*  
9 *Wholesale Elec. Co. v. Safeco Ins. Co.*, 135 Ariz. 154, 158, 659 P.2d 1299, 1303 (App.  
10 1982)(holding "[a] party cannot defeat a motion for summary judgment based solely on the  
11 unsupported contention that a dispute exists; it has the burden of showing that competent  
12 evidence is available to justify a trial.").

13 Plaintiff also fails in trying to escape the burden of proving he incurred damages.  
14 Plaintiff contends the Statement is "libelous per se," and thus damages are presumed.  
15 Plaintiff, however, offers no evidence or explanation as to how and why the Statement  
16 constitutes libel *per se*. Conclusory allegations made in response to a Motion for Summary  
17 Judgment are not sufficient to defeat such a motion. *Florez v. Sargeant*, 185 Ariz. 521,  
18 526, 917 P.2d 250, 255 (1996)(holding "[s]elf-serving assertions without factual support in  
19 the record will not defeat a motion for summary judgment."). Simply labeling the  
20 Statement as libel *per se* does not make it so. As directed by the Preliminary Statement,  
21 Plaintiff has the burden of producing admissible evidence and legal authority proving the  
22 Statement is libel per se. Plaintiff has done neither, and therefore, his Defamation claim  
23 should be dismissed with prejudice.<sup>1</sup>

---

24  
25  
26  
27 <sup>1</sup> Plaintiff makes contradictory claims in support of his Defamation claim. Plaintiff contends he  
28 "has suffered non-pecuniary damages as a result of the [S]tatement," but the Statement injured "his  
trade." (Response, p. 8). Notwithstanding the fact Plaintiff never identifies his "trade," Plaintiff  
offers no evidence the Statement caused Plaintiff to incur monetary damages.

1 *Intentional Infliction of Emotional Distress (“IIED”)*

2 Plaintiff’s claim for IIED is based on his contention the Defendants threatened law  
3 enforcement personnel and committed acts of terrorism against others. (Response, p. 9).  
4 Plaintiff’s allegations make it clear his IIED claim is based on conduct directed towards  
5 others and not himself.

6 Given Defendants’ alleged conduct was directed against others, the Plaintiff has the  
7 burden of proving the following to sustain his IIED claim:

8 Where such conduct is directed at a third person, the actor is subject to  
9 liability if he intentionally or recklessly causes severe emotional distress:

10 (a) to a member of such person's immediate family who is  
11 present at the time, whether or not such distress results in  
12 bodily harm, or

13 (b) to any other person who is present at the time, if such  
14 distress results in bodily harm.

15 Restatement (Second) of Torts § 46(2)(a-b) (1965); *Ford v. Revlon*, 153 Ariz. 38, 43, 734  
16 P.2d 580, 585 (1987)(holding Arizona courts follow the Restatement (Second) of Torts §  
17 46’s “standard of liability.”).

18 Here, the Plaintiff does not offer any evidence the alleged outrageous conduct was  
19 directed against members of his family. Therefore, Plaintiff has the burden of proving: 1)  
20 he was present when the alleged conduct was directed against others; and 2) he suffered  
21 bodily harm. Plaintiff has offered no evidence of either, and therefore, his claim for IIED  
22 fails as a matter of law.

23 *Breach of Board of Director Duty of Care*

24 Plaintiff’s Response makes clear he does not know what he is alleging for his FAC’s  
25 first two causes of action which allege Breach of Board of Director Duty of Care. The  
26 Plaintiff contends these causes of action are “not a derivative claim.” (Response, p. 10).  
27 Plaintiff then contradicts this claim by highlighting the alleged harm Targeted Justice  
28 incurred at the hands of the Defendants:

- 1 • Defendants violated Targeted Justice’s Bylaws;
- 2 • Defendants’ mismanaged their duties causing damage to Targeted Justice;
- 3 • Targeted Justice is under investigation by law enforcement; and
- 4 • Defendants failed to act in Targeted Justice’s best interests.

5 (Response, p. 11).

6 All of the above allegations are relevant to a derivative claim, which is defined as a  
7 claim “brought by a shareholder or partner to enforce an entity's cause of action against its  
8 officers and directors or third parties.” *Judson C. Ball Revocable Trust v. Phoenix Orchard*  
9 *Group I, L.P.*, 245 Ariz. 519, 431 P.3d 589 n. 3 (App. 2018)(emphasis added).

10 The Defendants are not obligated to decipher what the Plaintiff is alleging in his  
11 First and Second Causes of Action. In a sense, whether Plaintiff is asserting a derivative  
12 claim or not is of no consequence because he offers no evidence either he or Targeted  
13 Justice incurred damages caused by the Defendants. *Lane Title & Trust Co. v. Brannan*,  
14 103 Ariz. 272, 278, 440 P.2d 105, 111 (1968) (holding a claim of breach of  
15 fiduciary duty requires proving that the breach caused the loss). The Plaintiff again fails to  
16 meet this burden by relying on the allegations in his Complaint.

17 In his Response, Plaintiff contends “he alleged several times [in his FAC] that he  
18 was damaged” and “Plaintiff will provide that both Targeted Justice and Plaintiff can allege  
19 damages.” (Response, pp. 10-11). As stated previously, Plaintiff cannot rely on the  
20 allegations in his Complaint to defeat a Motion for Summary Judgment. *Gibbons v. Globe*  
21 *Development, Nevada Inc.*, 113 Ariz. at 325, 553 P.2d at 1199.

22 This is especially true when Defendants supported their Motion with evidence that,  
23 despite Plaintiff’s claims to the contrary, Targeted Justice is growing as an organization.  
24 The presentation of this evidence by Defendants shifted the burden to Plaintiff to produce  
25 admissible evidence proving otherwise. Plaintiff fails to meet this burden when he relies  
26 solely on the allegations in his FAC.

27 Plaintiff also lacks standing to assert the Board and Calvert, while he was a member  
28 of the Board, breached their fiduciary duties. Plaintiff’s claim he has standing because he

1 is a shareholder of Targeted Justice is ridiculous and nonsensical. (Response, p. 11). It is  
2 undisputed Targeted Justice is a non-profit corporation and thus does not have any  
3 shareholders. Indeed, Plaintiff does not present any evidence that he is a current member  
4 of Targeted Justice.

5 Plaintiff is trying to have it both ways: he claims his First and Second Causes of  
6 Action are not derivative claims but alleges Defendants caused Targeted Justice irreparable  
7 harm. Plaintiff also attempts to have it both ways by claiming Defendant's Motion should  
8 be denied because it did not quote the Preliminary Statement, but flouts the statement's  
9 directives by failing to produce evidence he incurred damages and has standing to assert  
10 his First and Second Causes of Action. In the end, Plaintiff's First and Second Causes of  
11 Action should be dismissed with prejudice because when tested, Plaintiff failed to produce  
12 admissible evidence proving these are viable causes of action.

### 13 *Negligence*

14 Plaintiff defends his Negligence claim by alleging it is incorporated into his First  
15 and Second Causes of Action and he "did not [want] to waste the court's time and reallege  
16 all the facts of the case." (Response, p. 13).

17 Plaintiff need not reallege all of the case's facts, but he is required to produce  
18 admissible evidence proving the elements of his negligence claim. To succeed on a  
19 negligence claim, a party must prove: 1) the opposing party owed the claimant a duty of  
20 care; 2) the opposing party breached the duty of care; and 3) the breach of the duty of care  
21 caused the claimant to incur damages. *Wertheim v. Pima County*, 211 Ariz. 422, 424, 122  
22 P.3d 1, 3 (App. 2005). Whether a party owes another a duty of care is a question of law to  
23 be decided by the court. *Guerra v. State*, 237 Ariz. 183 348 P.3d 423 (2015).

24 Here, the Plaintiff offers no explanation supported by legal authority as to why the  
25 Defendants owed him a duty of care. Indeed, it is hard to see why Defendants owed  
26 Plaintiff a duty of care when: 1) their alleged criminal conduct was directed towards  
27 others; and 2) Plaintiff offers no evidence he is currently a member of Targeted Justice.

28

1 Plaintiff cannot demonstrate the Defendants breached a standard of care when the  
2 Plaintiff fails to even identify the standard of care owed by the Defendants. And, as  
3 discussed previously, Plaintiff's reliance on the allegations in his FAC to contend he  
4 incurred damages is not sufficient to defeat Defendant's Motion. Therefore, Plaintiff's  
5 negligence claim should be demised with prejudice because the Plaintiff offers no  
6 admissible evidence in support of this claim.

### 7 *Wrongful Termination*

8 Plaintiff's Wrongful Termination claim is based on 18 U.S.C. § 1513 and the  
9 Arizona Employment Protection Act ("AEPA") found in A.R.S. § 23-1501. As  
10 demonstrated in Defendant's Motion, Section 1513 is a criminal statute, and therefore, a  
11 private right of action is not recognized under this statute. *Shahin v. Darling*, 606  
12 F.Supp.2d 525, 539 (D. Delaware 2009). Plaintiff's Response offers no legal authority  
13 establishing he has a private right of action under 18 U.S.C. § 1513.

14 As to A.R.S. § 23-1501, this statute prohibits employers from retaliating against  
15 employees for disclosing the employer had violated, is violating, or will violate an Arizona  
16 statute or a provision of the Arizona Constitution. A.R.S. § 23-1501(c)(ii). Plaintiff was  
17 not paid any monetary compensation to serve on the Board. (SOF, ¶ 34). However, even if  
18 one were to assume Plaintiff was an employee of Targeted Justice as that term is defined  
19 under Arizona's statutes and he was wrongfully removed from the Board, he cannot cite to  
20 any damages caused by his wrongful termination. Absent any damages, Plaintiff does not  
21 have a claim for Wrongful Termination. *Higgins v. Assman Electronics, Inc.*, 217 Ariz.  
22 289, 294, 173 P.3d 453, 458 (App. 2007). Therefore, there is no legal basis for Plaintiff's  
23 Wrongful Termination claim and this claim must be dismissed with prejudice.

### 24 **III. CONCLUSION**

25 Based on the foregoing, summary judgment should be entered dismissing Plaintiff's  
26 claims against Defendants with prejudice because the undisputed facts in this demonstrate  
27 his claims fail as a matter of law.

