IN THE CIRCUIT COURT FOR THE NINETEENTH JUDICIAL CIRCUIT LAKE COUNTY, ILLINOIS, CHANCERY DIVISION

STERICYCLE, INC. and CHARLES ALUTTO, **Plaintiffs,**	)	**Case No. 16CH522**
v.	)	**The Hon. Margaret A. Marcouiller, Judge Presiding**
CREATED EQUAL PAC, MARK HARRINGTON, and DOES 1 through 100, inclusive, **Defendants.**	)	

NOTICE OF MOTION

PLEASE TAKE NOTICE that at 9:15 a.m. on Thursday, July 28, 2016, counsel for Defendants will present Defendants' Unopposed Motion for Leave to File their Reply in Support of their Motion to Dismiss Plaintiffs' Amended Complaint *Instanter* and In Excess of Five Pages, a copy of which is served herewith, including a copy of the Reply as Exhibit 1, at the already scheduled hearing before the Honorable Margaret A. Marcouiller or any other judge sitting in her stead presiding over Courtroom C301 of the Lake County Courthouse located at 18 N. County St., Waukegan, Illinois, 60085.

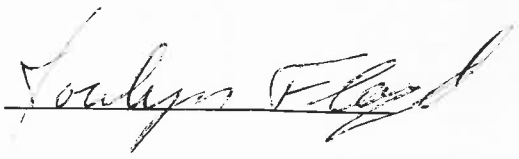
Jocelyn Floyd

Of Counsel:
Thomas Brejcha (#288446)
Peter Breen (#6271981)
Jocelyn Floyd (#6303312)
Thomas More Society
19 S. LaSalle, Ste 603
Chicago, IL 60603
312-782-1680
tbrejcha@thomasmoresociety.org
pbreen@thomasmoresociety.org
jfloyd@thomasmoresociety.org
docketing@thomasmoresociety.org

Joan Mannix
Joan Mannix, Ltd.
135 S. LaSalle, Ste 2200
Chicago, IL 60603
312-521-5848
jmannixlaw@gmail.com

CERTIFICATE OF SERVICE

I, Jocelyn Floyd, an attorney of record in this matter, certify that I caused this Notice of Motion to be served on Frank J. Favia, Jr., and Jason Marsico, Plaintiffs' attorneys of record, by e-mail at ffavia@sidley.com and jmarsico@sidley.com, respectively, on July 19, 2016.



IN THE CIRCUIT COURT FOR THE NINETEENTH JUDICIAL CIRCUIT LAKE COUNTY, ILLINOIS, CHANCERY DIVISION

STERICYCLE, INC. and CHARLES ALUTTO, **Plaintiffs,**	)	**Case No. 16CH522**
v.	)	**The Hon. Margaret A. Marcouiller, Judge Presiding**
CREATED EQUAL PAC, MARK HARRINGTON, and DOES 1 through 100, inclusive, **Defendants.**	)	

DEFENDANTS' UNOPPOSED MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT *INSTANTER* AND IN EXCESS OF FIVE PAGES

Defendants Created Equal PAC and Mark Harrington ("Defendants"), by their undersigned counsel, move that this Court grant them leave to file Defendants' Reply in Support of their Motion to Dismiss Plaintiffs' Amended Complaint ("Reply") *instanter* and In Excess of Five Pages, and state in support as follows:

1. Due to various competing deadlines, Defendants' counsel were not able to finalize Defendants' Reply in order to meet the deadline set in this Court's briefing schedule on Defendants' Motion to Dismiss, originally set for Friday, July 15, 2016.

2. Further, due to the number of arguments raised by Plaintiffs in their Response, Defendants required an extra page, for a total of six pages, to adequately reply to Plaintiffs' arguments in a manner that they believe will be of assistance to the Court in considering the Parties' respective positions.

3. Defendants have communicated with Plaintiffs' counsel and been advised that they do not object to Defendants filing their Motion to Dismiss *instanter*, two business days after the original deadline, nor do they object to the addition of a sixth page.

WHEREFORE Defendants respectfully request this Court grant them leave to file Defendants' Reply in Support of their Motion to Dismiss Plaintiffs' Amended Complaint *instanter* and In Excess of Five Pages, and that it grant them all other relief to which they may be entitled on the premises.

Respectfully submitted,

Jocelyn Floyd
Counsel for Defendants

Of Counsel:
Thomas Brejcha (#288446)
Peter Breen (#6271981)
Jocelyn Floyd (#6303312)
Thomas More Society
19 S. LaSalle, Ste 603
Chicago, IL 60603
312-782-1680
tbrejcha@thomasmoresociety.org
pbreen@thomasmoresociety.org
jfloyd@thomasmoresociety.org
docketing@thomasmoresociety.org

Joan Mannix
Joan Mannix, Ltd.
135 S. LaSalle, Ste 2200
Chicago, IL 60603
312-521-5848
jmannixlaw@gmail.com

CERTIFICATE OF SERVICE

I, Jocelyn Floyd, an attorney of record in this matter, certify that I caused this Motion to be served on Frank J. Favia, Jr., and Jason Marsico, Plaintiffs' attorneys of record, by e-mail at ffavia@sidley.com and jmarsico@sidley.com, respectively, on July 19, 2016.

Jocelyn Floyd

IN THE CIRCUIT COURT FOR THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS, CHANCERY DIVISION

STERICYCLE, INC. and CHARLES ALUTTO,	)	
Plaintiffs,	)	**Case No. 16CH522**
v.	)	**The Hon. Margaret A. Marcouiller, Judge Presiding**
CREATED EQUAL PAC, MARK HARRINGTON, and DOES 1 through 100, inclusive,	)	
Defendants.	)	

DEFENDANTS' REPLY IN SUPPORT
OF THEIR MOTION TO DISMISS AMENDED COMPLAINT

Now come Defendants, Created Equal PAC ("Created Equal") and Mark Harrington ("Harrington") (collectively "Defendants"), by their undersigned counsel and submit Defendants' Reply in Support of their Motion to Dismiss Amended Complaint Pursuant to Section 2-619.1 of the Illinois Code of Civil Procedure.

I. The First Amendment Protects Defendants' Activities.

Plaintiffs argue that they do not seek to interfere with Defendants' First Amendment rights, but instead "seek to hold Defendants responsible for malicious falsehoods and egregious invasions of privacy" not protected by the First Amendment. (Pl. Resp., p. 4). Plaintiffs' predilection for the liberal use of adjectives, however, does not overcome the absence of allegations of fact to support Plaintiffs' defamation, false light, and IIED claims.[1] Moreover, contrary to Plaintiffs' assertion, interference with Defendants' First Amendment rights is precisely what Plaintiffs seek to do. They seek to control how and where Defendants' message is communicated; they seek to ban "disturbing imagery or messaging" from Lake Forest, the suburb in which Alutto's home is located, and where apparently, according to Plaintiffs, no one should ever have to see or think about the horrifying

[1] Plaintiffs cite *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), for the proposition that "false statements of fact" are not protected by the First Amendment. As discussed *infra*, and in Defendants' Motion to Dismiss, Plaintiffs have not adequately pled Defendants made any false statements of fact.

deaths suffered by unborn children as a consequence of abortion. (*See*, *e.g.*, Pl. Resp., p. 3).

In support of their claim that Defendants' conduct violates the First Amendment, Plaintiffs assert that time, place, and manner restrictions that ban speech from "the home of an unwilling listener" are appropriate. (Pl. Resp., p. 4, citing *Frisby v. Schultz*, 48 U.S. 474 (1988)). Plaintiffs' reliance on *Frisby* is, however, misplaced. At issue in *Frisby* was the facial validity of an ordinance that purported to ban picketing focused on and taking place in front of a particular residence (as opposed to "marching through residential neighborhoods, or even walking a route in front of an entire block of housing"). *See Frisby*, 48 U.S. at 482-483. The Court noted the limited restriction imposed by the ordinance, recognizing it did not prevent protestors from, among other things, going door-to-door to proselytize their views and distribute literature. *Id.* at 483.

The Court concluded that the ordinance's limited prohibition against picketing *in front of a single home* was acceptable because it balanced other alternatives and protecting against an intrusion upon a captive audience in their home. *Frisby*, 487 U.S. at 482. In this case, unlike the circumstances presented in *Frisby*, Defendants have not held a protest outside Alutto's home, nor have Plaintiffs alleged that Defendants have any intention of doing so. Instead, according to the allegations of the Amended Complaint, Defendants have engaged in precisely the alternative types of First Amendment activity the Supreme Court emphasized as permissible when upholding the ordinance at issue in *Frisby*, but which Plaintiffs nevertheless seek to enjoin in this case.

Defendants seek to spread information to Plaintiffs' community, both in person and through internet postings. While, as noted by the Plaintiffs, the Supreme Court has acknowledged the right of an unwilling listener to prevent speech from coming into *his own* home, (Pls.' Resp., pp. 4-5, citing *Rowan v. U.S. Post Office Dep't*, 397 U.S. 728 (1970) (upholding homeowner right to have own name removed from mailing lists)), it has also repeatedly refused to conflate that right with a right to prevent *other* listeners from receiving the speech. *See*, *e.g.*, *Lamont v. Postmaster General*, 381 U.S. 301, 308 (1965) (Brennan, J., concurring) (requirement that individual must affirmatively notify post office of desire to receive "communist political propaganda" unconstitutional); *Martin v. Struthers*, 319 U.S. 141, 143 (1943) (right to freedom of speech and

press "necessarily protects the right to receive" information; therefore ordinance prohibiting door-to-door distribution of handbills unconstitutional). In addition to Defendants' right to publish criticism of Plaintiffs' business practices (*see* Def. Mot., p. 6, (discussing *Org. for a Better Austin v. Keefe*, 402 U.S. 415 (1971)), listeners other than Plaintiffs possess a vital constitutional right to *receive* this information, without censorship from Plaintiffs.

II. There Are No Questions of Fact Which Preclude Dismissal of Plaintiffs' Claims.

A. As a Matter of Law, Defendants' Communications Do Not Impute Criminal Action.

Plaintiffs maintain that the words "killer" and "enables killing children" "make the most serious assertions of criminal activity that could possibly be made," or at the very least require a jury's determination as to the "proper interpretation" of the words. (Pl. Resp., p. 6). In the specified anti-abortion context in which Defendants used those terms, which included images of aborted fetuses and references to abortion, as a matter of law those terms could not reasonably be construed as accusations that Defendants criminally murder, or "enable" the criminal murder of born children. *See Van Dyun v. Smith*, 173 Ill. App. 3d 523 (3d Dist. 1988). Plaintiffs try to distinguish *Van Dyun* by claiming that a footnote in the "Wanted" poster at issue in that case foreclosed a reasonable interpretation of a literal accusation of murder—but in fact, the court in *Van Dyun* made clear that the use of "killing" itself was never sufficient to be the basis for either defamation or IIED. *Id.* at 537-38. Rather, the abortion context in which the statements were made removed the text from even a question of fact regarding a literal interpretation of criminal accusations. *Id.* Plaintiffs offer nothing from *Van Dyun* to support their claim that the footnote disclaimer was any sort of deciding factor in the court's determination of law, especially here, where the word "kill" is used in conjunction with pictures of aborted fetuses.

B. As a Matter of Law, Plaintiffs Have Not Alleged Facts Showing Defendants' Claims Are False.

Plaintiffs attempt to dispute the significance of the Ohio Attorney General's finding that a Planned Parenthood location used Stericycle to dispose of its aborted fetuses, apparently suggesting that Defendants are required to show that Stericycle disposed of fetal remains from

more than one abortion clinic for something longer than "a limited period of time." (Pl. Resp., p. 8). Plaintiffs, however, do not deny or dispute the Ohio Attorney General's finding, instead conceding it in their Amended Complaint (A.C, ¶17). Nor do they explain how Stericycle's purported policy establishes that Stericyle never accepted fetuses, much less fetal remains, and they simply ignore Stericycle's acceptance of the instruments used in abortions. (*See* A.C., Ex. 3). Instead, they attempt a diversionary tactic, stating that Defendants' arguments "ignore the gravity of the charges Defendants have leveled against Plaintiffs." (Pl. Resp., p. 8). That, however, is not a response to the fact that Plaintiffs' own allegations and the matters appended to their complaint establish, as a matter of law, the truthfulness of Defendants' statements.

C. As A Matter of Law, Plaintiffs Have Not Alleged Facts to Support Their Allegations that Defendants Acted with Actual Malice.

Plaintiffs also misapply the actual malice standard. Plaintiffs acknowledge that the standard includes acting with "reckless disregard" as to the potential falsity of the statements (Pl. Resp., pp. 8-9), but again discount the Ohio Attorney General's finding that, notwithstanding Stericycle's purported prohibition, Planned Parenthood disposed of, and Stericycle accepted, fetuses as medical waste. Plaintiffs do not ever allege that Defendants had, or even should have had, any knowledge of Stericycle's alleged attempts to enforce its Waste Acceptance Policy—a policy that, while it purports to forbid acceptance of complete fetuses, allows disposal of aborted fetal body parts, tissues, and organs. Instead, Plaintiffs characterize Defendants' request for information to Plaintiffs as "inflammatory and threatening," and argue they had no "duty to respond." (Pl. Resp., p. 9). That is, however, not the point. The point is that Defendants *did* investigate the veracity of their statements, relying on official statements from a government investigation and attempting to obtain from Plaintiffs information about Stericycle's business practices. Defendants' investigation shows they did not act with "reckless disregard."

D. Alutto Has Failed To Adequately Allege False Light Invasion Of Privacy Or Intentional Infliction of Emotional Distress Claims.

With regard to his false light invasion of privacy claim, Alutto asserts Defendants'

allegedly false statements "surely offend the average person, especially when those statements were made to his friends, neighbors, wife, and children." (Pl. Resp., p. 10). As discussed *supra*, the statements are not false, and—offensive or not—are subject to a First Amendment privilege. Plaintiffs' suggestion that the sensibilities of children are at issue because they were "forced to view the disturbing imagery and messaging on [the postcards at issue]" (Pl. Resp., p. 3), is meritless. The Amended Complaint does not allege Alutto's children (or anyone else's) viewed the postcards. Moreover, the possibility that children might view Defendants' message does not defeat the protection offered that message by the First Amendment. *See e.g.*, *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 252 (2002) ("[s]peech within the rights of adults to hear may not be silenced … in an attempt to shield children from it"); *Reno v. ACLU*, 521 U.S. 844, 875 (1997) (quoting *Bolger v. Youngs Drug Prod. Corp.*, 463 U.S. 60, 74–75 (1983), "'the level of discourse reaching a mailbox simply cannot be limited to that which would be suitable for a sandbox'"); *see also Brown v. Ent. Merch. Ass'n*, 131 S. Ct. 2729, 2736 (2011) (the government cannot constitutionally prohibit minors from purchasing or playing "violent video games," because the government does not have "a free-floating power to restrict the ideas to which children may be exposed.").

With regard to Alutto's IIED claim, Plaintiffs repeat their legally untenable claim that Defendants "falsely imput[ed] a heinous crime to Mr. Alutto." (Pl. Resp., p. 11). They also maintain that hundreds of voicemails and e-mails sent to Alutto's "personal office address," constitute conduct "beyond all bounds of human decency." (Pl. Resp., pp. 2-3, 11). Plaintiffs' sole exemplar of these hundreds of allegedly "intimidating" emails, attached as an exhibit to their complaint, is a message filled with gracious language such as "I plead with you to sever your connection with Planned Parenthood," "I pray that you see how wrong it is to be in partnership" with them, and "I'm taking this opportunity to encourage you" to end that relationship. (A. C., Ex. 5). Complaining about this sort of communication is risible. Advocacy campaigns frequently communicate with business leaders by email to object to business practices. *See*, *e.g.*, Campaign for Safe Cosmetics, www.safecosmetics.org/take-action/action-alerts; Greenpeace,

www.greenpeace.org/usa/actions; Organic Consumers Ass'n, https://www.organicconsumers.org/campaigns; *see also* Ex. A (sample email forms). There are even entire software businesses that offer automated programs to effect such communications. *See, e.g.*, Salsa Labs, Inc. https://www.salsalabs.com/ (providing online advocacy advertising to "persuade certain segments of the public" by facilitating individuals' participation in emailing messages). There is no factual question as to whether the voicemails and emails, sent to Plaintiff's *business*, exceed the bounds of human decency—they do not.

Further, while Alutto attempts to characterize his emotional reaction as "severe" by claiming it has endured for months (Pl. Resp., p. 11), he makes no effort whatsoever to explain how an allegation of mere "embarrassment"—regardless of duration—meets the pleading requirements for "severe" emotional distress. *See* Def. Mot., pp. 16-17. Illinois law is clear that Defendants' conduct is within the realm of standard advocacy and Alutto's claimed emotional response is nowhere near the required level of severity necessary to state an IIED claim.

WHEREFORE, for the above and foregoing reasons, Defendants respectfully request that this Court dismiss Plaintiffs' Amended Complaint in its entirety, with prejudice.

Respectfully submitted,

Jocelyn Floyd
Counsel for Defendants

Of Counsel:
Thomas Brejcha (#288446)
Peter Breen (#6271981)
Jocelyn Floyd (#6303312)
Thomas More Society
19 S. LaSalle, Ste 603
Chicago, IL 60603
312-782-1680
tbrejcha@thomasmoresociety.org
pbreen@thomasmoresociety.org
jfloyd@thomasmoresociety.org
docketing@thomasmoresociety.org

Joan Mannix
Joan Mannix, Ltd.
135 S. LaSalle, Ste 2200
Chicago, IL 60603
312-521-5848
jmannixlaw@gmail.com

>

(http://safecosmetics.org/)

CAMPAIGN for SAFE COSMETICS

Demand Unilever disclose their fragrance ingredients

Eighteen year old Brandon Silk and countless others like him suffer serious, sometimes deadly, reactions to the secret ingredients in fragranced cosmetics and personal care products. In Brandon's case his mom, Rosa, reports for the last eight years she has been struggling to keep her son, an otherwise happy and healthy young man, in school and out of hospital emergency rooms to protect him from a severe, life-threatening allergy to one or more of the fragrance ingredients used in Axe Body Spray. Despite Rosa's pleas, Unilever the manufacturer of Axe Body Products refuses to disclose this vital information.

Although it's just one little word on an ingredient label, fragrance can contain dozens, even hundreds, of chemicals—including known carcinogens, hormone-disruptors, environmental toxicants and other chemicals of concern. In fact, fragrance allergies affect two to 11 percent of the general population. This translates into tens of millions of people who are globally affected by fragrance and studies suggest that this chemical sensitivity is on the rise. Without required fragrance ingredient disclosure, it is impossible for consumers to avoid problematic ingredients or for researchers and regulators to understand the full universe of ingredients used to formulate cosmetic products.

Take action and demand Unilever fully disclose the fragrance ingredients in Axe Body Spray and other Unilever products.

Recipients

External Affairs Director, Tom Langan
CEO, Paul Polman

ACT NOW

Contact

Required fields

Message

Subject:

EXHIBIT A

First Name:

Last Name:

Your Email:

State / Province:

MESSAGE

Subject:

Walmart Must Stop Ocean Destruction and Guarantee the Protection of Seafood Workers

Dear Doug McMillon, President and CEO, Walmart Stores, Inc.

Personalize your message

I demand Walmart provide more sustainable, ethical canned tuna in its stores. Walmart must guarantee the health of ocean life and the fair treatment of workers throughout its supply chain – from the fishing vessels at sea, to factories on land, and to your stores here in the United States.

Sincerely,
[Your Name]
[Your Address]
[City, State ZIP]

Want to receive the most important and urgent alerts to your phone? Just enter your mobile number. Reply "STOP" to unsubscribe at any time. Privacy Policy

Mobile Phone:

(https://www.organicconsumers.org/)

Tell Starbucks CEO Howard Schultz: Stop Supporting Efforts to Kill GMO Labeling Laws. Quit the GMA!

Starbucks wants you to think the company is on your side when it comes to GMO labeling laws.

But it isn't. As long as Starbucks is a dues-paying member of the Grocery Manufacturers Association (GMA), which is party to a lawsuit

(http://www.washingtonpost.com/blogs/govbeat/wp/2014/04/29/how-vermont-plans-to-defend-the-nations-first-gmo-law/) against the state of Vermont intended to overturn Vermont's recently passed GMO labeling law, the coffee peddler's profits are being used to defeat your right to know.

TAKE ACTION: Tell Starbucks CEO Howard Schultz: Stop Supporting Efforts to Kill GMO Labeling Laws. Quit the GMA!

In response to a blog post (http://www.organicconsumers.org/articles/article_31493.cfm) by singer/songwriter Neil Young, proclaiming his support for a Starbucks boycott, Starbucks posted this statement (http://news.starbucks.com/views/starbucks-response-to-questions-and-litigation-regarding-gmo-labeling?hootPostID=f36eeabceea1e39fcb501095d7d87e95) on its website:

Starbucks Response to Questions and Litigation Regarding GMO Labeling

Starbucks is not a part of any lawsuit pertaining to GMO labeling nor have we provided funding for any campaign. And Starbucks is not aligned with Monsanto to stop food labeling or block Vermont State law.

The petition claiming that Starbucks is part of this litigation is completely false and we have asked the petitioners to correct their description of our position.

Starbucks has not taken a position on the issue of GMO labeling. As a company with stores and a product presence in every state, we prefer a national solution.

"Completely false"? Not quite.

Take Action:

Subject: Quit the GMA! Stop Supporting Efforts to Kill GMO Labeling Laws!

Your Letter:

Dear Mr. Shultz,

I read with interest the statement on the Starbucks website claiming that Starbucks "is not a part of any lawsuit pertaining to GMO labeling nor have we provided funding for any campaign."

That's not entirely true. As a member of the Grocery Manufacturers Association, (GMA) your membership dues support the GMA's work. The GMA's work includes filing suit against the state

First Name*

Last Name*

Street

Street 2

City

State/Province

Select a state

Zip/Postal Code*

Email*

Phone

SUBMIT

As this subsequent article (http://www.reuters.com/article/2014/11/17/us-starbucks-gmo-idUSKCN0J12D320141117) by Reuters points out:

Internal GMA documents filed last year as part of a lawsuit in Washington State revealed [GMA] members contribute to a "Defense of Brands Strategic Account" designed "to help the industry fund programs to address the threats from motivated and well financed activists" and to "shield individual companies from criticism for funding of specific efforts."

When asked by Reuters if Starbucks has contributed to this "special" account, Starbucks did not respond.

No big surprise. Because not only does Starbucks' membership in the GMA support the GMA's lawsuit against Vermont, it also supports a bill (http://salsa3.salsalabs.com/o/50865/p/dia/action3/common/public/?action_KEY=13738) awaiting a hearing in Congress, written by the GMA, that would strip states of the right to pass mandatory GMO labeling laws.

If Starbucks wants consumers to believe that the company is not, at least indirectly, party to the GMA's lawsuit against Vermont, Starbucks needs to quit the GMA immediately.

More here. http://www.organicconsumers.org/starbucks/index.cfm (http://www.organicconsumers.org/starbucks/index.cfm)

Organic Consumers Association · 6771 South Silver Hill Drive, Finland MN 55603 · **Contact Us (https://www.organicconsumers.org/contact)** · Activist or Media Inquiries: 218-226-4164 · Fax: 218-353-7652
Please support our work: Send a tax-deductible donation to the OCA