

09-18-00281-CV

No. _____

**IN THE COURT OF APPEALS
FOR THE NINTH DISTRICT OF TEXAS
BEAUMONT, TEXAS**

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**OFFSHORE EXPRESS, INC.; OFFSHORE SPECIALTY FABRICATORS,
LLC; OFFSHORE INTERNATIONAL GROUP; OFFSHORE
SHIPBUILDING, INC.; AVID, LLC; AVID AIR, LLC; FAIRWAYS, INC.;
FAIRWAYS EXPLORATION & PROD., LLC; PISCO PORTON, LLC; and
FS AIR SERVICE, INC.,
Appellant**

vs.

**KLEIN INVESTMENTS, INC.,
Appellee**

**On Appeal from the 60th District Court of Jefferson County, Texas
Trial Court Cause No. B-199,953-A**

PETITION FOR WRIT OF MANDAMUS

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IDENTITY OF PARTIES AND COUNSEL

Appellee certifies the following is a complete list of the parties, the attorneys, and any other person who has any interest in the outcome of this matter:

PARTIES

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Real Parties in Interest

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Honorable Justin Sanderson
Second Respondent

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STATEMENT OF THE CASE

This mandamus stems from the unlawful participation of Thomas Retzlaff, a Vexatious Litigant, in this lawsuit. Mr. Dorrell represents the Defendants. Mr. Retzlaff always becomes directly, and unlawfully, involved in cases on the side of Mr. Dorrell's clients, when Mr. Dorrell's cases involve Philip Klein, the Undersigned, and Mr. McGibney. The underlying issue in this mandamus proceeding is Relator's efforts to enforce the Texas Vexatious Litigant Statute, Tex. Civ. Prac. & Rem. Code § 11.001 *et. seq.* against Mr. Retzlaff.

Plaintiff Klein Investigations & Consulting, a Division of Klein Investments, Inc. (Klein or Relators) filed suit against all Defendants, collectively, for breach of a contract in which the Defendants were joint obligors vis-à-vis Klein.

On July 7, 2017, the trial court conducted a default bench trial. On July 17, 2017 the trial court signed a Default Final Judgment (Final Judgment) in favor of Klein and against Defendants, which are currently the Appellants in Cause No. 09-17-00333-CV; Offshore Express, Inc., et al (Appellants) v. Klein Investments, Inc. (Appellee); In the Court of Appeals for the Ninth District of Texas, Beaumont Division. On August 18, 2017, the trial

court denied Appellants' Motion for New Trial.

On August 18, 2017, Defendants appealed the Final Judgment, but they did not supercede the Final Judgment. Relator, therefore, began collection proceedings.

On October 2, 2017, Appellants filed a Suggestion of Bankruptcy for one of the Appellants, Offshore Express, Inc. (Offshore). Offshore had filed a Chapter 11 Bankruptcy. Appellants stated in their Suggestion of Bankruptcy that Offshore's automatic stay applied for all Appellants.

Since that was a false statement of law, Appellee filed a Motion for Sanctions against Appellants and their attorney. In response, Appellants filed a Motion to Dismiss under the Texas Citizens Participation Act, which is also currently on appeal to this Honorable Court.

Before Defendants' TCPA Motion to Dismiss was denied by operation of law, Relators filed a motion to continue the TCPA hearing and requested discovery on Defendants' TCPA motion. In response, Defendants filed a Response to Klein's Motions for (1) Continuance of TCPA Hearing; and (2) Discovery on Defendants' TCPA Motion (Appendix "1") that contained defamatory and ad hominem content, and included filings and correspondence from Mr. Retzlaff, a Vexatious Litigant, when Mr. Retzlaff

had not obtain pre-filing authority as required by Tex. Civ. Prac. & Rem. Code § 11.101.

Mr. Retzlaff is a Vexatious Litigant, who employs internet terror tactics on behalf of Mr. Dorrell's clients. The original judge in this case was Honorable Justin Sanderson (the Second Respondent), who recused himself after Mr. Retzlaff threatened to file a judicial grievance against Judge Sanderson, because the judge had ruled unfavorably to Defendants on a particular issue.

Mr. Retzlaff filed pleadings and sent letters on behalf of the Defendants and in support of Mr. Dorrell's arguments in this case. Prior to his self-recusal, Judge Sanderson entered an Order (Appendix "2") prohibiting the Jefferson County District Clerk from accepting any filings of Mr. Retzlaff, because he is a Vexatious Litigant who did not obtain pre-suit filing authority under Tex. Civ. Prac. & Rem. Code § 11.101 (Appendix "3"). After the District Clerk refused Mr. Retzlaff's filings, Mr. Dorrell took these illegal filings and filed these unlawful documents in the court's record as his exhibits in Defendants' response to Klein's motion on the TCPA issues. Appendix "1." Mr. Dorrell ignored Judge Sanderson's Order, and enabled a Vexatious Litigant to file unlawful pleadings and other documents that Mr.

Retzlaff was precluded from filing under Tex. Civ. Prac. & Rem. Code § 11.101 *et. seq.*

Klein moved to strike these unlawful filings by Mr. Dorrell, but Judge Sanderson denied Relator's motion and ruled Relator had to file a formal motion to seal under Rule 76a (Appendix "4," pp. 38-42). That is, Judge Sanderson ruled on the record Klein had to follow the procedures of Tex. R. Civ. P. 76a in order to seal Mr. Retzlaff's abusive filings, even though the Retzlaff documents filed by Mr. Dorrell cannot constitute "court records" within the meaning of Tex. R. Civ. P. 76a, because these documents cannot be lawfully filed in court.

Klein contends in this Petition for Writ of Mandamus Judge Sanderson's ruling was an abuse of discretion that requires correction on mandamus. That is, Judge Sanderson clearly erred on an issue of law, when he ruled Relator had to apply Tex. R. Civ. P. 76a in order to enforce the court's Order prohibiting Mr. Retzlaff's participation in this case. After Judge Sanderson recused himself from this case due to threats from Mr. Retzlaff, the Honorable Judge John Coselli was appointed to preside over this case.

Klein then filed a Motion to Seal, a Supplemental Motion to Seal, and a

Second Amended Motion to Seal Defendants' Response with Exhibits, to Plaintiffs' Motion for Continuance and for Discovery on Defendants' TCPA Motion and Motion for Contempt. Appendix "5."

Relator's motion was not opposed by Mr. Dorrell or his clients. Klein posted a public notice of the hearing pursuant to Tex. R. Civ. P. 76a, and the trial court heard Relator's Second Amended Motion to Seal Defendants' Response, with Exhibits, to Plaintiffs' Motions for Continuance and for Discovery on Defendants' TCPA Motion, and Motion for Contempt, on June 19, 2018.

The trial court ruled on June 20, 2018, that Klein's Second Amended Motion to Seal was denied, reasoning the public notice was inadequate. The trial court's ruling is Appendix "6."

Klein respectfully submits that the Judge Coselli's ruling was an abuse of discretion and a clear error of law, entitling Relator to mandamus relief. This Court should order Judge Coselli to change his ruling, and grant Klein's Unopposed Second Amended Motion to Seal.

STATEMENT OF JURISDICTION

This Court has jurisdiction as an original proceeding under Tex. R. App. P. 52.1. This Court has jurisdiction to issue mandamus, because it is a

remedy “to correct a clear abuse of discretion or the violation of a duty imposed by law when there is no adequate remedy by law.” *Walker v. Packer*, 827 S.W.2d 833, 839-40 (Tex. 1992). This Court can grant mandamus, because there are “extraordinary circumstances” in the matter before it justifying emergency, mandamus relief. *CSR Ltd. v. Link*, 925 S.W.2d 591, 596-7 (Tex. 1996).

SUMMARY OF ARGUMENT

Klein's Petition for Mandamus stems from the unlawful involvement of a Vexatious Litigant, Mr. Thomas Retzlaff, in this litigation. Mr. Retzlaff was sending correspondence and filing pleadings in violation of Tex. Civ. Prac. & Rem. Code § 11.001 *et. seq.*, because Mr. Retzlaff did not obtain pre-filing authority from the presiding judge (Honorable Judge Donald Floyd) to either file anything in this case, or to participate as an illegal co-counsel with Mr. Dorrell.

Klein submits that both the former presiding judge, Honorable Justin Sanderson, as well as the current presiding judge, Honorable John Coselli, abused their discretion and made clear errors of law that require mandamus relief. Without mandamus relief, the Texas Vexatious Litigant Statute will be unenforceable in this jurisdiction.

The first issue presented is Judge Coselli's error in denying Klein's Second Amended Motion to Seal. It is undisputed Relator provided public notice, with the proper time requirements, that was in substantial compliance with the wording of Rule 76a. It is undisputed Mr. Dorrell and the Defendants did not oppose Klein's Motion to Seal. It is undisputed the hearing was held publically. It is undisputed nobody showed up for the public hearing, except for Klein's attorney.

Judge Coselli denied Klein's Second Amended Motion to Seal, ruling Relator's Rule 76a notice was inadequate, because it did not track, word for word, Rule 76a(3). Specifically, Relator's notice did not contain the clause the public was "invited to participate in the hearing." Klein's notice, however, was clear the hearing on Relator's Second Amended Motion to Seal was a public hearing, and in fact this occurred. There is no case law of which Klein is aware that construes the notice requirement under Rule 76a(3) as strictly as Judge Coselli construed it in this case. That is, Relator is not aware of any case law requiring the public notice to contain word for word the exact contents of Rule 76a(3). To the contrary, Texas law holds a public notice under Tex. R. Civ. P. 76a is adequate if it provides fourteen (14) day public notice of a hearing on a motion to seal. This provides any

interested party with notice of their right to participate. *See, e.g., Roberts v. West*, 123 S.W.3d 436, 443 (Tex. App. - - San Antonio 2003, review denied). In all material aspects, Klein's public notice for this Rule 76a(3) hearing was in compliance with Rule 76a and the case law.

Furthermore, the factors for sealing court papers in Rule 76a were satisfied by Klein's motion, if this Court finds Mr. Retzlaff's unlawful filings constitute "court records" within Rule 76a. Specifically, Klein demonstrated enforcing the Texas Vexatious Litigant Statute and sealing Mr. Retzlaff's unlawful filings are supported by specific, serious and substantial interests [Rule 76a(1)(2)], which clearly outweighs: (1) a presumption of openness [which does not exist for filings from a vexatious litigant] [Rule 76a(1)(a)(1)]; (2) any probable adverse effect that sealing would have upon the general public health or safety [Rule 76a(1)(a)(2)]; (3) and there are no less restrictive means than sealing the records to protect the interests asserted. Tex. R. Civ. P. 76a(1)(b). Since Klein's motion was unopposed, and no persons, except for Relator's attorney, attended the hearing, Judge Coselli abused his discretion in denying Klein's Second Amended Motion to Seal, because Klein's public notice was sufficient to apprise any interested

party, when the public hearing would occur, and there was a right for any interested party to participate.

Judge Sanderson also abused his discretion in ruling Klein had to comply with Rule 76a in order to enforce the Vexatious Litigant Statute, Tex. Civ. Prac. & Rem. Code § 11.001 *et. seq.* Under this statutory scheme, the enforcement method to preclude Mr. Retzlaff's filings is: (1) for the clerk of court to reject Mr. Retzlaff's filings [§11.103(2)]; (2) for the trial court to issue an order prohibiting any filings by Mr. Retzlaff [§11.101(a)]; and (3) for the court to hold Mr. Retzlaff in contempt of court [§11.101(b)]. **The Texas Vexatious Litigant Statute does not require the sealing of any unlawful filings under Rule 76a.** Instead, all unlawful filings must be rejected and/or stricken from the record. Judge Sanderson's ruling requiring Klein to comply with Rule 76a, therefore, was a clear error of law that added a new requirement into the Texas Vexatious Litigant statute, and therefore the court's ruling was a clear abuse of discretion.

Relator has no adequate remedy at law, because if this Court denies this Petition for Writ of Mandamus, then vexatious litigants will be permitted to file whatever they want, whenever they want, through a surrogate attorney (which is Mr. Dorrell in this case), in open and notorious

defiance of Tex. Civ. Prac. & Rem. Code § 11.001 *et. seq.* That is, unless this Court grants this Petition for Writ of Mandamus, the Texas Vexatious Litigant Statute will have been effectively overruled and rendered meaningless by these trial court rulings that do comply with controlling Texas law. Mr. Retzlaff, acting individually or through filings made by Mr. Dorrell, will be empowered to cause as much havoc and harm to others as possible. That result would be unconscionable.

ISSUES ON MANDAMUS

ISSUE ONE

The First Respondent abused his discretion by denying Relator's Unopposed Second Amended Motion to Seal Defendants' Response to Klein's Motions for (1) Continuance of TCPA Hearing and (2) Discovery on Defendants' TCPA Motion.

1) Background

Mr. Dorrell filed on behalf of Defendants on January 2, 2018, a Response to Klein's Motion for (1) Continuance of TCPA Hearing and (2) Discovery on Defendants' TCPA Motion that attached as exhibits prohibited content from Mr. Dorrell's employee, Mr. Thomas Retzlaff, a Vexatious Litigant. Appendix "1." Prior to Mr. Dorrell filing those materials, Judge Sanderson had issued an Order prohibiting any filings by Mr. Retzlaff,

pursuant to the Texas Vexatious Litigant Statute, Tex. Civ. Prac. & Rem. Code § 11.001 *et. seq.* Appendix "2." By filing Mr. Retzlaff's prohibited filings, Mr. Dorrell deliberately violated the trial court's Order prohibiting filings in this case by Mr. Thomas Retzlaff, a Vexatious Litigant. Appendix "7" is the Order declaring Thomas Retzlaff a Vexatious Litigant. Appendix "8" is the notice of Mr. Retzlaff's employment with Hanzen LaPorte Law Firm, where Mr. Dorrell is a partner. Appendix "9," GoDaddy business records corroborating Mr. Retzlaff's employment with Mr. Dorrell's law firm.

Specifically, the content of Defendants' Response, and its attached exhibit 4; exhibit 5, with sub exhibit 1 and sub exhibit 2; exhibit 6; and exhibit 7, all are Mr. Retzlaff's prohibited filings. These exhibits willingly violate Judge Sanderson's Order prohibiting Mr. Retzlaff's filings in this case, and also Judge Pozza's Order declaring Thomas Retzlaff a Vexatious Litigant. Mr. Dorrell's prohibited exhibits contain content from Mr. Retzlaff designed only to harass and insult several people, including the 60th District Court's court reporter, a highly respected member of the Bar in this legal community who is neither a party nor a witness in this case, as well as Mr. Klein and the Undersigned.

2) Klein's unopposed Second Amended Motion to Seal Defendants' Response satisfied Rule 76a's requirements.

After Judge Sanderson ruled Klein could not strike Mr. Retzlaff's unlawful content filed by Mr. Dorrell, and Klein had to utilize the sealing procedure in Tex. R. Civ. P. 76a, Relator moved the trial court to seal Defendants' Response and all its exhibits. Defendants did not oppose this request.

Relator's motion to seal Defendants' Response sought to enforce Judge Sanderson's Order pursuant to the Texas Vexatious Litigant statute, Tex. Civ. Prac. & Rem. Code § 11.001 *et seq.*, prohibiting Mr. Retzlaff's involvement in this case, by sealing Defendants' response containing Mr. Retzlaff's prohibited contents.

Under Rule 76a, the evidence demonstrated there is a specific, serious and substantial interest in sealing Mr. Retzlaff's documents which clearly outweigh: (1) the presumption of openness in court proceedings; (2) any probable adverse effect that sealing will have on the general public's health or safety; and (3) there is no less restrictive means than sealing the records that will adequately and effectively protect the specific interests asserted.

The public, the court system, and the integrity of this court proceeding all provide specific, serious and substantial interests which is furthered by

sealing Mr. Retzlaff's records. Sealing these records enforces the Texas Vexatious Litigant Statute, codified at Tex. Civ. Prac. & Rem. Code § 11.001 *et. seq.* (Appendix "3"). Mr. Retzlaff has been declared a vexatious litigant by Judge Karen Crouch in Bexar County, Texas. His status as a Vexatious Litigant has been affirmed two (2) times on appeal in *Retzlaff v. GoAmerica Corp.*, 356 S.W.3d 689 (Tex. App. - - El Paso 2011, no pet.); and *Retzlaff v. Klein*, No. 04-16-00675-CV, 2017 WL 3270368 (Tex. App. - - San Antonio 2017, pet. denied). If this Court does not grant this mandamus to seal these documents, this Court would in essence be holding the Texas Vexatious Litigant Statute is not enforceable. This would, respectfully, be an act of judicial nullification of Tex. Civ. Prac. & Rem. Code § 11.001 *et. seq.* Only the Texas Legislature can repeal the Texas Vexatious Litigant statute.

The public has a strong interest in ensuring the legal system functions normally and properly. It is neither normal nor proper for the Texas Vexatious Litigant Statute to have no meaning, or for a vexatious litigant to file unlawful pleadings through a participating attorney. Mr. Dorrell's tactic of working with Mr. Retzlaff literally highjacks cases by Mr. Retzlaff's vexatious filings, threats, emails containing terroristic threats, multiple grievances against attorneys filed with the State Bar, judicial grievances

against judges who rule against Mr. Dorrell's clients, threats against judges, frivolous interlocutory appeals, etc. Mr. Retzlaff's filings destroy professionalism and decorum in all court proceedings involving himself. In short, all Texas courts, and the public, have a serious, specific and substantial interest in enforcing Texas law in order to maintain decorum and professionalism in court proceedings.

There is a specific, serious and substantial interest in sealing these documents to preclude the public record from containing Mr. Retzlaff's unlawful content that includes, but is not limited to, baseless defamation, falsely accusing a prestigious member of the Bar of criminal activity, and a plethora of threats. Mr. Dorrell has made Mr. Retzlaff's prohibited defamation per se part of the public record. Mr. Retzlaff's constant lies and defamation expose all his victims to public ridicule, anxiety and distress. The purposes of Mr. Retzlaff's filings are to create chaos and to cause emotional distress among all of his victims. Likewise, the purpose of Mr. Dorrell filing Mr. Retzlaff's prohibited filings is to cause distress, harassment, and chaos in court proceedings. Texas courts and the public, therefore, have a specific, serious and substantial interest in preventing this type of activity in a court of law.

The substantial interest of Texas courts in sealing these documents is not outweighed by the presumption of openness in a court proceeding. This presumption of openness does not apply to any filings by Mr. Retzlaff, because he is a Vexatious Litigant. Tex. Civ. Prac. & Rem. Code § 11.001 *et. seq.* The Honorable Judge Donald Floyd, Presiding Judge in Jefferson County, Texas, denied Mr. Retzlaff pre-filing authority under the Texas Vexatious Litigant Statute on two (2) separate occasions in this case. Appendix "10." Simply put, there is no presumption of openness for Mr. Retzlaff's filings, because a vexatious litigant uses any presumption of openness for cynical purposes of creating chaos, threatening the parties, attorneys, judges, and to maliciously defame these persons, and third-parties who are neither witnesses nor parties in the case. Simply put, Mr. Retzlaff is a pathological liar who uses the legal system as a forum to wage a terror campaign against his victims. Mr. Retzlaff's activities are entirely illegitimate, and therefore prohibiting his participation in court does not negate any legitimate presumption of openness.

The sealing of Mr. Retzlaff's documents will not have any probable, adverse effect on the general public's health or safety. The public health and safety is not furthered or supported by Mr. Retzlaff's cynical, vicious

filings. To the contrary, terroristic threats, constant defamation, stalling legal proceedings through repetitive interlocutory appeals and frivolous motions, is adverse to the public health and safety. Mr. Retzlaff's terroristic threats are clearly adverse to public safety, and to the safety of Mr. Retzlaff's individual victims. If Mr. Retzlaff were to carry out any of his terroristic threats, his attempt to actually kill or physically injure his threatened victims could result in dire harm to the victims, and also to any other person who might be in the same vicinity. This Court has a duty to stop this behavior. Sealing these records, therefore, promotes the general public's health and safety.

Finally, due to Judge Sanderson's ruling requiring Relator to comply with Tex. R. Civ. P. 76a, there is no less restrictive means than sealing these records, which will adequately and effectively protect the specific interests asserted. Relator had argued to the Honorable Justin Sanderson that Rule 76a did not apply, because Mr. Dorrell's filings of Mr. Retzlaff's prohibited documents cynically nullified the Texas Vexatious Litigant statute, and prohibited filings are not "court records" within Rule 76a's scope. Mr. Dorrell, in an attempt to keep these unlawful documents in the public domain, argued Klein had to comply with the statutory requirements of Rule

76a. As briefed *infra*, Judge Sanderson erroneously accepted Mr. Dorrell's argument.

3) The trial court's ruling denying Relator's Second Amended Motion to Seal interprets Rule 76a's notice requirement too narrowly.

Judge Coselli's Order Denying Klein's Second Amended Motion to Seal is Appendix "6." The court held Klein's notice was improper under Tex. R. Civ. P. 76a(3), because Klein's notice did not explicitly state "any person may intervene and be heard concerning the sealing of court records." The court ruled Klein's notice correctly stated: "The hearing will be open to the public." The Judge admitted the hearing being "open to the public" "may suggest that the hearing 'will be held in open court.'" The court ruled, however, Klein's public notice did not precisely state there was a "right to intervene and be heard," as in Rule 76a(3). In short, Judge Coselli denied Klein's unopposed Second Amended Motion to Seal, because the public notice did not use the exact language of Rule 76a(3).

The trial court's ruling is unreasonably restrictive of Rule 76a, and therefore was an abuse of discretion. The court acknowledged Klein's notice of hearing substantially tracked the language in Rule 76a(3), and contained language substantially similar to Rule 76a(3)'s requirement the notice indicates "any person may intervene and be heard concerning the

sealing of the court records." It is undisputed Klein's public notice (Appendix "5") contained virtually word for word every requirement in Rule 76a(3). Furthermore, it is undisputed: (1) the trial court held a hearing on Klein's motion to seal that was open to the public; and (2) nobody showed up for the hearing, except for (a) the Undersigned on behalf of Klein, and (b) Judge Coselli. A copy of the Reporter's Record to this hearing is attached as Appendix "11." Furthermore, it is undisputed Klein's notice complied with the scheduling deadlines under Rule 76a(4).

The issue, therefore, becomes whether Rule 76a's public notice must track exactly, word for word, the language in Tex. R. Civ. P. 76a(3), or whether a public notice is satisfactory if it contains essentially the same information. This issue was essentially addressed in *Roberts v. West*, 123 S.W.3d 436, 443 (Tex. App. - - San Antonio 203, review denied). In *Roberts*, the court ruled a notice under Rule 76a is adequate if it is a "fourteen day public notice... ." The court's holding strongly implies the public notice, by its very nature, makes it clear any interested party can attend or intervene at the public hearing.

Since Klein's motion to seal was unopposed, and since there was a public hearing with more than fourteen (14) days notice, and no person or

entity attended (except for Klein's counsel), the trial court's basis of denial was arbitrary and an abuse of discretion. Relator's motion was unopposed and no party or person showed up for the hearing. The First Respondent (Judge Coselli) abused his discretion by not granting Klein's unopposed Second Amended Motion to Seal. This Court, therefore, should grant Klein mandamus relief and instruct the First Respondent to grant Klein's Second Amended Motion to Seal.

ISSUE TWO

Alternatively, it was unnecessary for Klein to follow the procedures in Tex. R. Civ. P. 76a. Mr. Retzlaff's filings are prohibited by the Texas Vexatious Litigant Statute. The Second Respondent's ruling requiring Relator to utilize Rule 76a, therefore, was an abuse of discretion that should be corrected on mandamus.

Relator argued before Judge Sanderson there was no requirement for Klein to follow the procedures in Rule 76a, because that Rule did not apply to the illegal filings of Mr. Retzlaff, a Vexatious Litigant. Rule 76a applies to court records, which are defined as: "All documents of any nature filed in connection with any matter before any civil court, except: (1) documents filed with the court in-camera, solely for the purpose of obtaining a ruling regarding the discoverability of those documents; (2) documents in court files to which access is otherwise restricted by law; and (3) documents filed

in an action originally arising under the Texas Family Code. Rule 76a(2)(a)(1)(2)&(3). Court records under Rule 76a also include settlement agreements, and "discovery, not filed of record, concerning matters that have a probable adverse effect upon the general health or safety... ."

On its face, Rule 76a does not apply to documents that were illegally filed in violation of the Texas Vexatious Litigant Statute, Tex. Civ. Prac. & Rem. Code § 11.001 *et. seq.* As stated *supra*:

1. Judge Karen Crouch declared Thomas Retzlaff a Vexatious Litigant. Appendix "7."

2. Mr. Retzlaff's status as a Vexatious Litigant was affirmed by two (2) Courts of Appeals in *Retzlaff v. GoAmerica Communications Corp.*, 356 S.W.3d 689 (Tex. App. - - El Paso 2011, no pet.); and in *Klein v. Retzlaff*, No. 04-16-00675-CV, 2017 WL 3270368 (Tex. App. - San Antonio 2017, pet denied).

3. Judge Sanderson signed an Order prohibiting Thomas Retzlaff from filing anything in this case. Appendix "2."

4. Judge Floyd on two (2) occasions denied Mr. Retzlaff filing authority pursuant to Tex. Civ. Prac. & Rem. Code § 11.101. Appendix "10." Mr.

Retzlaff, therefore, never had any authority to file any pleadings, correspondence or documents in this case.

Mr. Dorrell nevertheless ignored the Orders of three (3) judges and two (2) courts of appeals, and illegally filed Mr. Retzlaff's unlawful materials. Documents that cannot be filed due to the effect of the Texas Vexatious Litigant Statute cannot be defined as "court records" within the meaning of Rule 76a. Relator has not been able to find a case directly on point, probably because the situation presented to this Court is absurd. It is ridiculous that an attorney would deliberately disregard multiple court rulings and several court Orders to file prohibited materials for the sole purpose of harassing and humiliating the opposing party, the attorneys, and a highly respected member of the Bar who is not involved in this case as either counsel or as a witness. A review of the pertinent case law demonstrates that "court records" within the meaning of Rule 76a can apply only to legitimate court filings, and not to the prohibited, defamatory rantings of a vexatious litigant who did not obtain pre-filing authority from the Presiding Judge, Honorable Donald Floyd. *See In Re Continental General Tire, Inc.*, 979 S.W.2d 609, 614 (Tex. 1998) (considering trade

secrets under Rule 76a); *General Tire, Inc. v. Kepple*, 970 S.W.2d 520, 525 (Tex. 1998) (considering "unfiled discovery" under Rule 76a).

There are no provisions within Chapter 11 of the Texas Civil Practice & Remedies Code (the Texas Vexatious Litigant Statute) requiring the use of Tex. R. Civ. P. 76a to remove filings on behalf of a vexatious litigant who did not obtain pre-filing authority. To the contrary, Tex. Civ. Prac. & Rem. Code § 11.101(b), provides a party who violates Chapter 11 "is subject to contempt of court." If the Texas Legislature wanted Rule 76a to be the method of enforcement of the Texas Vexatious Litigant Statute, the Legislature would have written the law to reference Rule 76a as a means of enforcement.

In short, the prohibited pleadings or documents of a vexatious litigant, that are filed by a facilitating attorney in violation of Texas law, do not constitute "court records" within the meaning of Rule 76a. A ruling of contempt of court is the enforcement mechanism of the Texas Vexatious Litigant Statute. Judge Sanderson abused his discretion by denying Relator's motion to strike Mr. Dorrell's response, ruling Klein had to comply with the requirements of Tex. R. Civ. P. 76a. This Court, therefore, should issue mandamus to the Second Respondent, ruling Mr. Retzlaff's prohibited

filings in Defendants' response are not within the purview of Tex. R. Civ. P. 76a, and should be automatically stricken in accordance with Judge Sanderson's original Order. Appendix "2."

CONCLUSION

For the reasons set forth above, Relator asks this Court to grant mandamus on two (2) alternative grounds. Relator asks this Court to rule Judge Coselli abused his discretion in denying Klein's unopposed Second Amended Motion to Seal, because Judge Coselli's ruling is erroneous regarding the notice requirement of Rule 76a(3), and there was no showing that any party or person would have intervened or would have otherwise been adversely affected by Relator's notice not tracking Rule 76a(3) word for word.

Second, the illegal filing of Mr. Retzlaff, a Vexatious Litigant, that Mr. Dorrell attached as exhibits to Defendants' response, are not "court records" within the meaning of Rule 76a. Accordingly, Judge Sanderson abused his discretion by refusing to strike Mr. Dorrell's response, pursuant to Judge Sanderson's initial Order, and by ordering Klein to proceed with a motion to seal under Tex. R. Civ. P. 76a.

RELIEF REQUESTED

Relator, Klein Investments, Inc., prays this Court issue mandamus, and Order the Honorable Judge John Coselli to issue a written Order granting Klein's Second Amended Motion to Seal Defendants' Response, with Exhibits, to Plaintiffs' Motions for Continuance and for Discovery on Defendants' TCPA Motion for Contempt, or alternatively rule Tex. R. Civ. P. 76a does not apply for removing from the record unauthorized documents from Mr. Retzlaff, who did not obtain pre-filing authority under the Texas Vexatious Litigant Statute, and grant Relator such other and further relief, at law or in equity, to which Relator may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was forwarded to the following counsel of record via electronic filing on this 25th day of July, 2018:

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