

No. 20-1002

The Supreme Court of Texas

IN RE TOBY TOUDOUZE

*On Petition for Writ of Mandamus
from the 14th District Court of Dallas County, Texas
Cause No. DC-19-08531, Hon. Eric V. Moyé, Presiding*

MANDAMUS RECORD

Volumes 1 and 2 Combined*

*Per request from Clerk (see verification)

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VERIFICATION

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Marla D. Broaddus, a person whose identity is known to me. After I administered an oath to her, upon her oath she said the following:

“My name is Marla D. Broaddus. I am over twenty-one (21) years of age, of sound mind, and am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct. I am an attorney with Enoch Keever PLLC, representing Toby Toudouze, the Relator who is filing this Petition for Writ of Mandamus. I am licensed to practice in the State of Texas and along with co-counsel prepared the Petition for Writ of Mandamus.

I have reviewed the documents that are included in the Mandamus Record filed with the Petition for Writ of Mandamus.

Originally, we filed two volumes of the Mandamus Record, referred to as “1MR” and “2MR” in the Petition for Volumes 1 and 2, respectively. However, after filing both volumes, the Court’s Clerk asked my firm to combine the volumes into one. Thus, there is only one volume of the Mandamus Record before the Court. The citations in the Petition to “1MR” and “2MR” have not been changed, but the Court can ignore them. All the Court needs to follow for record citations is the Tab number

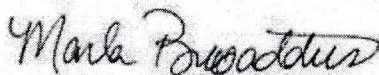
following the 1MR and 2MR citation, because the Tab numbers are correctly represented as Tabs 1 through 65 in the single combined volume of the Mandamus Record.

The documents included under Tabs 1 through 2, are true and correct copies of filings in the proceedings *In re Toby Toudouze*, No. 05-20-00540-CV in the Fifth Court of Appeals;

The documents included under Tabs 3 through 26, are true and correct copies of filings in the proceedings in *Estate of Brian U. Loncar*, No. PR-16-04115-1, in the Probate Court, Dallas County, Texas; and

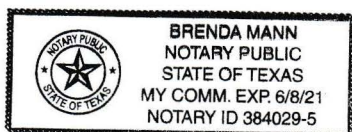
The documents included under Tabs 27 through 65, are true and correct copies of filings in the proceedings in *Brian Loncar, P.C. v. Toby Toudouze*, No. DC-19-08531, in the 14th Judicial District Court, Dallas County, Texas.

Signed this 28th day of December 2020.



Marla D. Broaddus, Affiant

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on December 28th, 2020.



Notary Public – State of Texas

My Commission Expires: 6-8-21

Tab 1

DENIED and Opinion Filed November 18, 2020



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-20-00540-CV

IN RE TOBY TOUDOUZE, Relator

**Original Proceeding from the 14th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-19-08531**

MEMORANDUM OPINION

Before Justices Schenck, Partida-Kipness, and Nowell
Opinion by Justice Schenck

Before the Court is relator's May 15, 2020 petition for writ of mandamus. In the petition, relator challenges the trial court's order disqualifying his attorney and attorney's firm from representing him in the underlying lawsuit.

Entitlement to mandamus relief requires relator to show that the trial court has clearly abused its discretion and that relator has no adequate appellate remedy. *In re Prudential Ins. Co.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). Based on the petition, real parties in interest's response, relators' reply, and the record before us, we conclude that relator has failed to show his entitlement to the

relief requested. Accordingly, we deny the petition for writ of mandamus. *See* TEX.
R. APP. P. 52.8(a).

/David J. Schenck/
DAVID J. SCHENCK
JUSTICE

200540F.P05

Tab 2

Order entered November 18, 2020



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-20-00540-CV

IN RE TOBY TOUDOUZE, Relator

**Original Proceeding from the 14th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-19-08531**

ORDER

Before Justices Schenck, Partida-Kipness, and Nowell

Based on the Court's opinion of this date, we **DENY** relator's petition for writ of mandamus.

/s/ **DAVID J. SCHENCK**
 JUSTICE

Tab 3

Case Information

PR-16-04115-1 | ESTATE OF BRIAN U. LONCAR

Case Number

PR-16-04115-1

File Date

12/21/2016

Court

Probate Court

Case Type

DECEDENT - WILL
(LETTERS
TESTAMENTARY)

Judicial Officer

THOMPSON, BRENDA H

Case Status

OPEN

Party

DECEDENT

LONCAR, BRIAN U.

Gender

Male

Address

Active Attorneys ▼

Lead Attorney

MCLEAREN, GARRETT

Retained

APPLICANT

LONCAR, PHILLIP EDWARD

Address

Active Attorneys ▼

Lead Attorney

MCCRURY, PHILLIP

WAYNE

Retained

Events and Hearings

12/21/2016 MOTION ▼

Comment

MOTION TO SEAL RECORDS

12/22/2016 POSTED NOTICE ▼

Served

12/22/2016

Anticipated Server

CONSTABLE 1

Anticipated Method

CONSTABLE

Actual Server

CONSTABLE 1

Returned

12/27/2016

Comment

RTN: 12/27/16

12/28/2016 NOTICE ▼

Comment

-NOTICE OF MOTION TO SEAL COURT RECORD

01/13/2017 MOTION - SEAL ▼

Judicial Officer(s)

THOMPSON, BRENDA H, PEYTON, JOHN B

Hearing Time

9:30 AM

Comment

& Application for Probate of Will and Issuance of Letters Testamentary

01/13/2017 ORDER - SEAL

01/13/2017 ORDER - PROBATE OF WILL AND LETTERS TESTMENTARY ▼

ORDER - PROBATE OF WILL AND LETTERS TESTMENTARY

01/13/2017 PROOF OF DEATH AND OTHER FACTS ▼

PROOF OF DEATH AND OTHER FACTS

01/17/2017 OATH FILED ▼

OATH FILED

01/24/2017 RESIGNATION ▼

Loncar Estate Resignation.pdf

Comment

-RESIGNATION OF INDEPENDENT EXECUTOR

02/06/2017 WAIVER ▼

Loncar--Wm Sena Declination_OCR.pdf

Comment

WILLIAM THOMAS SENA, JR.

02/09/2017 NOTICE TO CREDITORS ▼

Loncar Notice to Creditors_OCR.pdf

Comment

W/ PUBLISHER'S AFFIDAVIT

02/21/2017 APPLICATION ▼

Ody - Application

Comment

APPLICATION FOR PROBATE OF WILL & LETTERS TESTAMENTARY TO SUCCESSOR INDEPENDENT EXECUTOR

02/22/2017 ORDER - PROBATE OF WILL AND LETTERS TESTMENTARY ▼

ORDER - PROBATE OF WILL AND LETTERS TESTMENTARY

02/22/2017 PROOF OF DEATH AND OTHER FACTS ▼

PROOF OF DEATH AND OTHER FACTS

Comment

-PROOF REGARDING QUALIFICATION OF SUCCESSOR INDEPENDENT EXECUTOR AND OTHER FACTS

02/22/2017 OATH FILED ▼

OATH FILED

02/22/2017 ORDER ▼

ORDER

Comment

ORDER ACCEPTING RESIGNATION OF INDEPENDENT EXECUTOR. IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED THAT THE RESIGNATION OF PHILLIP EDWARD LONCAR AS THE INDEPENDENT EXECUTOR OF THE ESTATE, EFFECTIVE AS JANUARY 24, 2017, IS HEREBY ACCEPTED, AND PHILLIP EDWARD LONCAR IS HEREBY DISCHARGED FROM ANY FURTHER OBLIGATIONS AS THE INDEPENDENT EXECUTOR OF THE ESTATE.

02/22/2017 NOTICE - APPEARANCE ▼

Ody - Notice - Appearance

Comment

- ABBY LONCAR

02/27/2017 VACATION LETTER ▼

Ody - Vacation Letter

Comment

- ATTORNEY MICHAEL BERRY

04/10/2017 CLAIM DEPOSITED ▼

Comment

COMERICA BANK, N.A.-\$1,098.217.94

04/11/2017 NOTICE ▼

Notice w exhibits.pdf

Comment

JETVUE TEXAS, LLC'S APPEARANCE and NOTICE OF SECURED CLAIMS AGAINST ESTATE

04/11/2017 CLAIM DEPOSITED ▼

Comment

DISCOVER BANK-\$1,929.89

05/03/2017 AFFIDAVIT OF NOTICE TO BENEFICIARIES AFTER PROBATE OF WILL ▼

Affidavit_001.pdf

05/18/2017 APPLICATION -INVENTORY EXTENSION ▼

extension application_001.pdf

05/18/2017 CORRESPONDENCE - LETTER TO FILE ▼

letter to clerk_001.pdf

proposed order_001.pdf

Comment

PROPOSED ORDER

05/24/2017 ORDER - APPROVING INVENTORY EXTENSION ▼

ORDER - APPROVING INVENTORY EXTENSION

Comment

IS EXTENDED TO SEPTEMBER 5, 2017

07/14/2017 NOTICE - APPEARANCE ▼

notice of appearance loncar for efile prodoc.pdf

07/14/2017 TEMPORARY INJUNCTION ▼

TEMPORARY INJUNCTION

07/14/2017 TRO BOND ▼

TRO BOND

07/14/2017 APPLICATION - TEMPORARY RESTRAINING ORDER ▼

APPLICATION - TEMPORARY RESTRAINING ORDER

Comment

AND TEMPORARY INJUNCTIVE RELIEF

07/14/2017 TEMPORARY INJUNCTION ▼

TEMPORARY INJUNCTION

07/14/2017 TEMPORARY INJUNCTION ▼

TEMPORARY INJUNCTION

07/14/2017 ORDER - TEMPORARY RESTRAINING ORDER ▼

ORDER - TEMPORARY RESTRAINING ORDER

Comment

ORDER SETTING HEARING FOR PRELIMINARY INJUNCTION

07/14/2017 TRO AND CITATION (SERVICE) ▼

Unserved

Anticipated Server

PRIVATE PROCESS SERVER

Anticipated Method

PRIVATE PROCESS SERVER

Comment

TRN:

07/14/2017 TRO AND CITATION (SERVICE) ▼

Unserved

Anticipated Server

PRIVATE PROCESS SERVER

Anticipated Method

PRIVATE PROCESS SERVER

Comment

RTN:

07/14/2017 TRO AND CITATION (SERVICE) ▼

Unserved

Anticipated Server

PRIVATE PROCESS SERVER

Anticipated Method

PRIVATE PROCESS SERVER

Comment

RTN:

07/18/2017 JURY DEMAND ▼

Request for Jury Trial.pdf

Comment

JETVUE TEXAS, LLC's REQUEST FOR JURY TRIAL

07/18/2017 MOTION ▼

Mot. to Increase TRO bond w exhibits.pdf

Comment

JETVUE TEXAS, LLC'S MOTION TO INCREASE TRO BOND

07/21/2017 RESPONSE ▼

VerifiedDeniel- JetVue-signed.pdf

Comment

VERIFIED DENIAL AS TO JETVUE TEXAS LLC'S NOTICE OF SECURED CLAIMS AND
SUIT ON SWORN ACCOUNT

07/27/2017 TRO HEARING ▼

Judicial Officer

THOMPSON, BRENDA H

Hearing Time

03:00 PM

Comment

& JetVue Texas, LLC's Motion to Increase \$500 TRO Bond & Request to Appoint Receiver- F
7/18/17

07/27/2017 MOTION - CONTINUANCE ▼

Cont. Mot. w exhibits 7.27.17.pdf

Continuance Order.pdf

Comment

JETVUE TEXAS, LLC'S MOTION FOR CONTINUANCE OF TRO, SEQUESTRATION,
MOTION TO INCREASE \$500 DOLLAR TRO BOND POSTED BY
P;LAINTIFF/INDEPENDENT EXECUTOR CLAY JENKINS FOR THE ESTATE OF BRIAN
U. LONCAR & REQUEST TO APPOINT RECEIVER

07/27/2017 ORDER - CONTINUANCE ▼

ORDER - CONTINUANCE

Comment

ORDER ON DEFENDANT / CREDITOR JETVUE TEXAS, LLC MOTION FOR
CONTINUANCE

08/08/2017 SPECIAL SETTINGS ▼

Judicial Officer

THOMPSON, BRENDA H

Hearing Time

1:00 PM

Comment

Continuation Hearing from 7/27/17 (TRO Hearing & JetVue Texas, LLC's Motion to Increase
\$500 TRO Bond & Request to Appoint Receiver- F 7/18/17)

08/14/2017 ADVERSE ACTIONS ▼

Counter Petition against Clay Jenkins, Estate of BL.pdf

Comment

**JETVUE TEXAS, LLC, CHRISTOPHER HILL AND JET LINKS, LLC ORIGINAL ANSWER
& COUNTER-PETITION AGAINST CLAY JENKINS, INDEPENDENT EXECUTOR OF
THE ESTATE OF BRIAN U. LONCAR, DECEASED**

08/15/2017 BRIEF FILED ▼

exhibit 1 brief.pdf

exhibit 2.pdf

BRIEF POSSESSION OF AIRCRAFT signed.pdf

Comment

**BRIEF IN SUPPORT OF THE ESTATE BEING ENTITLED TO POSSESSION OF THE
ESTATE PROPERTY**

08/16/2017 SPECIAL SETTINGS ▼

Judicial Officer

THOMPSON, BRENDA H

Hearing Time

2:30 PM

08/21/2017 CORRESPONDENCE - LETTER TO FILE ▼

Ltr. enclosing Order increase surety bond.pdf

Order#2 of the Court 8 17 2017.pdf

Comment

-W/PROPOSED ORDER

08/22/2017 ORDER ▼

ORDER

Comment

-OF THE COURT

08/23/2017 CORRESPONDENCE - LETTER TO FILE ▼

20170823110512-signed.pdf

08/31/2017 NOTICE ▼

depo.ntc CLAY JENKINS.pdf

Comment

NOTICE OF INTENTION TO TAKE ORAL DEPOSITION OF CLAY JENKINS

08/31/2017 MOTION - COMPEL ▼

Compel Mot. C.Jenkins w exhibits.pdf

Order on Mot. Compel.pdf

Comment

CREDITOR/DEFENDANT JETVUE TEXAS, LLC'S MOTION TO COMPEL PLAINTIFF EXECUTOR CLAY JENKINS TO WITHDRAW OBJECTIONS, PROVIDE DISCOVERY RESPONSES & FOR SANCTIONS

09/01/2017 MOTION - QUASH ▼

motion to quash loncar.pdf

Comment

PLAINTIFF'S MOTION TO QUASH DEPOSITION OF CLAY JENKINS

09/05/2017 APPLICATION -INVENTORY EXTENSION ▼

Proposed Order Approving Additional Extension of T

Application for Additional Extension of Time to Fi

09/05/2017 ORDER - APPROVING INVENTORY EXTENSION ▼

ORDER - APPROVING INVENTORY EXTENSION

09/05/2017 NOTICE OF HEARING ▼

Notice of hearing Compel and Plaintiff's quash depo.pdf

Comment

-ON 9/19/17 @9AM

09/08/2017 PETITION (PROBATE) ▼

Verified Petition to Take Deposition Before Suit t

Comment

PETITION TO TAKE DEPOSITION BEFORE SUIT TO INVESTIGATE POTENTIAL CLAIMS

09/08/2017 ORDER - APPROVING INVENTORY EXTENSION ▼

ORDER - APPROVING INVENTORY EXTENSION

Comment

CORRECTED ORDER APPROVING APPLICATION FOR ADDITIONAL EXTENSION OF TIME IN WHICH TO FILE INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS

09/12/2017 MOTION - STRIKE ▼

Motion to Strike-Jenkins.pdf

Comment

JETVUE TEXAS LLC'S MOTION TO TO STRIKE PLEADINGS OF EXECUTOR CLAY JENKINS FOR FAILURE TO PROVIDE COURT ORDERED SECURITY BOND

09/12/2017 NOTICE OF HEARING ▼

Notice of hearing Motion to Strike Pleading.pdf

09/12/2017 MOTION - VACATE ▼

bond app.pdf

motion to vacate bond order SIGNED.pdf

Comment

MOTION TO VACATE ORDER ON BOND REQUIREMENT

09/14/2017 CORRESPONDENCE - LETTER TO FILE ▼

Ltr. enclosing Sheduling Order.pdf

scheduling order #2 .court.pdf

Comment

-W/PROPOSED SCHEDULING ORDER

09/14/2017 NOTICE OF HEARING ▼

hearing notice signed.pdf

Comment

NOTICE OF HEARING ON PLAINTIFF'S MOTION TO VACATE ORDER ON BOND REQUIREMENT

09/25/2017 ORIGINAL ANSWER ▼

Counter Petition #2 against Clay Jenkins, Estate of BL.pdf

Comment

JETVUE, TEXAS, LLC, CHRISTOPHER HILL AND JETLINKS, LLC FIRST AMENDED ORIGINAL ANSWER & COUNTER-PETITION AGAINST CLAY JENKINS, INDEPENDENT EXECUTOR OF THE ESTATE OF BRIAN U. LONCAR, DECEASED

10/02/2017 SPECIAL SETTINGS ▼

Judicial Officer

THOMPSON, BRENDA H

Hearing Time

4:00 PM

Comment

Creditor/Defendant JetVue Texas, LLC's Motion to Compel Plaintiff Executor Clay Jenkins to Withdraw Objections, Provide Discovery Responses & For Sanctions- F 8/31/17; Plaintiff's Motion to Quash Deposition of Clay Jenkins- F 9/1/17; JetVue Texas, LLC's Motion to Strike Pleadings of Executor Clay Jenkins for Failure to Provide Court Ordered Security Bond- F 9/12/17; Motion to Vacate Order on Bond Requirement- F 9/12/17

10/05/2017 MOTION ▼

INSPECT planes motion against Clay jenkins.pdf

Comment

CREDITOR/DEFENDANT JETVUE TEXAS, LLC'S MOTION TO INSPECT PROPERTY

10/23/2017 MOTION ▼

Compel response Jenkins w exhibits.pdf

Comment

CREDITORS/ DEFENDNT JETVUE TEXAS, LLC'S RESPONSE TO MOTION TO COMPEL FILED BY PLAINTIFF EXECUTOR CLAY JENKINS

10/26/2017 NOTICE OF HEARING ▼

Amended Notice of Hearing

Comment

AMENDED NOTICE OF HEARING

10/30/2017 OBJECTION ▼

Objection - Toudouze.pdf

Comment

OBJECTION AND OPPOSITION TO CLAY JENKINS' VERIFIED PETITION TO TAKE DEPOSITION BEFORE SUIT INVESTIGATE POTENTIAL CLAIMS

10/31/2017 NOTICE OF HEARING ▼

Amended Notice of Hearing

Comment

AMENDED NOTICE OF HEARING

11/01/2017 ISSUE CITATION

11/01/2017 ISSUE CITATION ▼

Unservd

Anticipated Server

PRIVATE PROCESS SERVER

Anticipated Method

PRIVATE PROCESS SERVER

Comment

RTN:

11/02/2017 RESPONSE ▼

Reply to Respondent's Objections and Opposition to

Comment

**REPLY TO RESPONDENT'S OBJECTIONS AND OPPOSITION TO VERIFIED PETITION
TO TAKE DEPOSITION BEFORE SUIT**

11/13/2017 CONFERENCE ▼

Judicial Officer

THOMPSON, BRENDA H

Hearing Time

04:00 PM

Comment

Scheduling Conference

12/05/2017 MOTION ▼

Brief Regarding Petitioner's Verified Petition to

Comment

**BRIEF REGARDING PETITIONER'S VERIFIED PETITION TO TAKE DEPOSITION
BEFORE SUIT**

12/11/2017 NOTICE - APPEARANCE ▼

2017-12-11 Notice of Appearance.pdf

12/11/2017 RESPONSE ▼

E O Loncar Respondent's Reply Brief.pdf

Comment

RESPONDENT'S REPLY BRIEF

12/12/2017 PETITION ▼

Judicial Officer
THOMPSON, BRENDA H

Hearing Time
11:00 AM

Comment
Verified Petition to Take Deposition Before Suit to Investigate Potential Claims- F 9/8/17

12/12/2017 BRIEF FILED ▼

E O Brian Loncar v3.pdf

Comment
**RESPONDENT'S AMENDED REPLY BRIEF REGARDING PETITIONER'S VERIFIED
PETITION TO TAKE DEPOSITION BEFORE SUIT**

12/21/2017 ISSUE CITATION ▼

Citation in Probate - Decedent

12/21/2017 ISSUE CITATION ▼

Served
02/01/2018

Anticipated Server
PRIVATE PROCESS SERVER

Anticipated Method
PRIVATE PROCESS SERVER

Actual Server
PRIVATE PROCESS SERVER

Returned
02/06/2018

Comment
RTN: 2/6/18

01/16/2018 SUBPOENA ▼

NOTICE OF INTENT TO SERVE SUBPOENA DUCES TECUM ON

Comment
**NOTICE OF INTENT TO SERVE SUBPOENA DUCES TECUM ON NON-PARTY BANK
OF AMERICA**

01/18/2018 NOTICE OF HEARING ▼

<p>Amended Notice of Hearing</p> <p>Comment</p> <p>AMENDED NOTICE OF HEARING</p>
<p>01/22/2018 VACATION LETTER ▼</p> <p>Comment</p> <p>LARRY FRIEDMAN</p>
<p>01/22/2018 MOTION - SUBSTITUTE SERVICE ▼</p> <p>Petitioner's Motion for Substitute Service</p>
<p>01/23/2018 CORRESPONDENCE - LETTER TO FILE ▼</p> <p>Proposed Order Granting Substitute Service of Proc Letter to Court</p>
<p>01/23/2018 ORDER - SUBSTITUTE SERVICE ▼</p> <p>ORDER - SUBSTITUTE SERVICE</p> <p>Comment</p> <p>ORDER GRANTING SUBSTITUTE SERVICE OF PROCESS</p>
<p>01/26/2018 CORRESPONDENCE - LETTER TO FILE ▼</p> <p>Proposed Order Granting Substitute Service of Proc Letter to the Court</p>
<p>01/26/2018 NOTICE OF HEARING ▼</p> <p>Amended Notice of Hearing</p> <p>Comment</p> <p>AMENDED NOTICE OF HEARING</p>
<p>01/26/2018 NOTICE - APPEARANCE ▼</p> <p>2018.01.26 Notice of Appear MW.pdf</p> <p>Comment</p> <p>MARQUETTE WOLF</p>
<p>01/26/2018 NOTICE - APPEARANCE ▼</p> <p>2018.01.26 Notice of Appear TBL.pdf</p>

<p>Comment TED LYON</p>
<p>01/31/2018 ORDER - SUBSTITUTE SERVICE ▼</p> <p>ORDER - SUBSTITUTE SERVICE</p> <p>Comment OF PROCESS (note from the court-"this order has different address-not same as the January 23, 2018- Order-a copy of this Order was walked over to the Service Section for processing and given to Dawn the service clerk</p>
<p>02/06/2018 RETURN PERSONAL CITATION ▼</p> <p>RETURN PERSONAL CITATION</p>
<p>02/12/2018 RESPONSE ▼</p> <p>Respondent's_Amended_Reply_Brief_Regarding_Peitioner's_Verified_Petition.pdf</p> <p>Comment RESPONDENT'S AMENDED REPLY BRIEF REGARDING PETITIONER'S VERIFIED PETITON TO TAKE DEPOSITION BEFORE SUIT</p>
<p>02/13/2018 MOTION - QUASH ▼</p> <p>Motion_to_Quash_and_Motion_for_Protective_Order.pdf</p>
<p>02/27/2018 MOTION ▼</p> <p>2018.02.27 Motion for Hearing on Toudouze Obj..pdf</p> <p>Comment CLAY JENKINS MOTION FOR HEARING AND TO OVERRULE OBJECTIONS IN TOBY TOUDOUZE'S MOTION TO QUASH AND PROTECTIVE ORDER</p>
<p>03/01/2018 NOTICE OF HEARING ▼</p> <p>2018.03.01 Notice of Hearing for April 2 2018.pdf</p>
<p>03/05/2018 APPLICATION -INVENTORY EXTENSION ▼</p> <p>Application for Third Extension of Time in Which t</p> <p>Comment APPLICATION FOR THIRD EXTENSION OF TIME IN WHICH TO FILE INVENTORY</p>
<p>03/05/2018 CORRESPONDENCE - LETTER TO FILE ▼</p>

Proposed Order

Letter forwarding proposed order

03/06/2018 ORDER - APPROVING INVENTORY EXTENSION ▼

ORDER - APPROVING INVENTORY EXTENSION

Comment

THIRD EXTENSION OF TIME TO FILE INVENTORY

03/28/2018 AFFIDAVIT IN LIEU OF INVENTORY ▼

Affidavit in Lieu of Inventory, Appraisalment and L

Comment

AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT AND LIST OF CLAIMS

03/29/2018 MOTION - SUBSTITUTION OF COUNSEL ▼

3.29.18 Motion to Substitutue Attorney SZ.pdf

3.29.18 Order Granting Substitution of Messina SZ - for merge.pdf

Comment

W/PROPOSED DOCUMENTS

03/29/2018 NOTICE - APPEARANCE ▼

3.29.18 Messina Notice of Appearance SZ.pdf

04/02/2018 MOTION - HEARING ▼

Judicial Officer

THOMPSON, BRENDA H

Hearing Time

1:30 PM

Comment

Clay Jenkins' Motion for Hearing and to Overrule Objections in Tony Toudouze's 2-13-2018 Motion to Quash and for Protective Order- F 2/27/18

04/17/2018 PETITION ▼

Judicial Officer

THOMPSON, BRENDA H

Hearing Time

10:00 AM

Comment

Verified Petition to Take Deposition Before Suit to Investigate Potential Claims- F 9/8/17

04/17/2018 PLEA TO JURISDICTION ▼

Toby Toudouze's Plea to the Jurisdiction.pdf

Comment

TOBY TOUDOUZE'S PLEA TO THE JURISDICTION

04/18/2018 ORDER - DENY ▼

ORDER - DENY

Comment

**ORDER DENYING PETITIONER'S VERIFIED PETITION TO TAKE PRESUIT
DEPOSITION OF TOBY TOUDOUZE**

01/30/2019 MOTION - PROTECT ▼

Motion for Protection.pdf

Affidavit - Ex A.pdf

Comment

MOTION FOR PROTECTIVE ORDER

05/14/2019 MOTION - COMPEL ▼

Defs App to Compel Arb Motion to Abate.pdf

Comment

**DEFENDANTS' APPLICATION TO COMPEL ARBITRATION & VERIFIED MOTION TO
ABATE PROCEEDINGS PENDING A IT' 'TION**

05/14/2019 ORIGINAL ANSWER - GENERAL DENIAL ▼

Defendants' Original Answer.PDF

Comment

**DEFENDANTS LAWRENCE FRIEDMAN, ROBERT E. FEIGER, AND FRIEDMAN &
FEIGER, LLP'S ORIGINAL ANSWER**

09/13/2019 NOTICE - APPEARANCE ▼

VE Notice of Appearance.pdf

09/13/2019 MISC. EVENT ▼

Probate Court Cert of Conference.pdf

Comment

CERTIFICATE OF CONFERENCE ON MOTION FOR PROTECTIVE ORDER

09/16/2019 NOTICE OF HEARING ▼

Notice of Hearing.pdf

09/16/2019 VACATION LETTER ▼

Larry Friedman Vacation Ltr1.pdf

09/16/2019 NOTICE OF HEARING ▼

Amended NOH Probate Court.pdf

Comment

AMENDED NOTICE OF HEARING ON MOTION FOR PROTECTIVE ORDER

09/18/2019 NOTICE - APPEARANCE ▼

2019.09.18 - NOA Weitzel.pdf

09/18/2019 NOTICE - APPEARANCE ▼

2019.09.18 - 1st Amen NOA Weitzel.pdf

Comment

FIRST AMENDED NOTICE OF APPEARANCE FOR DENNIS WEITZEL

10/14/2019 MOTION ▼

Motion to Auth. Sale of Estate Property to Executor (2019.10.14).pdf

Ex. A - Hayse letter.pdf

Ex. B - Proposal_Offer.pdf

Ex. C - Liquidation Analysis.pdf

Ex. D - Stock Purchase Agreement.pdf

Comment

MOTION TO AUTHORIZE SALE OF ESTATE PROPERTY TO EXECUTOR

10/18/2019 MOTION ▼

Executor's Motion to Quash.pdf

Exhibit A-quash.pdf

Exhibit B - quash.pdf

Exhibit C-quash.pdf

Exhibit D-quash.pdf

Comment

EXECUTOR'S MOTION TO QUASH DEPOSITION NOTICES SERVED BY THE FRIEDMAN/FEIGER FIRM AND FOR PROTECTIVE ORDER

10/21/2019 OBJECTION ▼

2019-10-21 - Objection to Sale of Estate w-Exhibits A-G.pdf

Comment

**CYNTHIA SUE LONCAR AS CREDITOR OF THE ESTATE OF BRIAN LONCAR
OBJECTION TO MOTION TO AUTHORIZE SALE OF ESTATE PROPERTY TO
EXECUTOR**

10/22/2019 CORRESPONDENCE - LETTER TO FILE ▼

2019-10-22 - proposed Order Denying Sale of Estate.pdf

Comment

PROPOSED ORRDER

10/23/2019 NOTICE ▼

Notice of Filing of Verification Page (2019.10.23).pdf

Comment

NOTICE OF FILING VERIFICATION PAGE

10/23/2019 NOTICE ▼

2019-10-23 - Notice of Supplemental Exhibit to Objection.pdf

Comment

**NOTICE OF SUPPLEMENTAL EXHIBIT TO CYNTHIA SUE LONCAR'S CREDITOR OF
THE ESTATE OF BRIAN LONCAR'S OBJECTION TO MOTION TO AUTHORIZE SALE
OF ESTATE PROPERTY TO EXECUTOR**

10/23/2019 RETURN OF SERVICE ▼

Return of Service

Comment

ATTU CREATED

10/23/2019 OBJECTION ▼

Int. Party Phil Loncar's Objection to Mot. to sell Loncar & Assoc, PC.pdf

Comment

**INTERESTED PARTY PHIL LONCAR S OBJECTION TO MOTION TO SELL LONCAR &
ASSOCIATES, P.C.**

10/23/2019 OBJECTION ▼

Executor's Objection to SL's Filings Related to Sale of Estate Property.pdf

Comment

EXECUTOR'S OBJECTION TO SUE LONCAR'S FILINGS RELATED TO THE SALE OF ESTATE PROPERTY

10/23/2019 MOTION ▼

MOTION TO QUASH SUBPOENA AND FOR PROTECTIVE ORDER..pdf

Comment

MOTION OF ABBY LEIGH LONCAR TO QUASH SUBPOENA AND FOR PROTECTIVE ORDER

10/23/2019 OBJECTION ▼

2019.10.23 Objection to Subpoena to Hailey Loncar.pdf.PDF

Comment

OBJECTION TO SUBPOENA DIRECTED TO HAILEY LONCAR

10/24/2019 MOTION - HEARING ▼

Judicial Officer

THOMPSON, BRENDA H

Hearing Time

09:30 AM

Comment

Motion to Authorize Sale of Estate Property to Executor- F 10/14/19

10/24/2019 PROOF OF SERVICE BY CERTIFIED MAIL ▼

Executor's Proof of Notice (356.654) (2019.10.23).pdf

Letter of Proof.pdf

Comment

EXECUTOR'S PROOF OF NOTICE UNDER ESTATES CODE SECTION 356.654

10/24/2019 PROOF (GENERAL) ▼

Return of Service

Comment

PROOF OF SERVICE OF SUBPOENA

10/24/2019 PROOF (GENERAL) ▼

Return of Service

Comment

PROOF OF SERVICE OF SUBPOENA

10/25/2019 APPLICATION - PROTECTIVE ORDER ▼

Ex 1 McCrury Declaration.pdf

Ex 2 Rule 202 Petition.pdf

2019.10.25 Amended MPO.pdf

Comment

KELLY HART & HALLMAN, LLP AND PHILLIP W. MCCRURY'S AMENDED MOTION FOR PROTECTIVE ORDER

10/25/2019 NOTICE ▼

Second Amended NOH on MPO.pdf

Comment

SECOND AMENDED NOTICE OF HEARING ON MOTION FOR PROTECTIVE ORDER

10/30/2019 MOTION - PROTECT ▼

Judicial Officer

THOMPSON, BRENDA H

Hearing Time

01:30 PM

Comment

Motion for Protective Order- F 1/30/19

11/04/2019 RETURN OF SERVICE ▼

Return of Service

Comment

ABBY LEIGH LONCAR- ATTY CREATED

11/04/2019 RETURN OF SERVICE ▼

Return of Service

Comment

HAILEY LONCAR- ATTY CREATED

11/04/2019 ORDER - PROTECTIVE ▼

ORDER - PROTECTIVE

Comment

- ORDER PARTIALLY KELLY HART & HALLMAN, LLP AND PHILLIP W. MCCRURY'S AMENDED MOTION FOR PROECTIVE ORDER

11/25/2019 MOTION ▼

2019-11-25 - Verified Motion for Continuance.pdf

Comment

CYNTHIA SUE LONCAR'S VERIFIED MOTION FOR CONTINUANCE

11/25/2019 ORIGINAL ANSWER ▼

EXECUTOR'S ANSWER TO CYNTHIA SUE LONCAR'S OBJ TO SALE OF ESTATE PROPERTY TO EXECUTOR.pdf

Comment

EXECUTOR'S ANSWER TO SUE LONCAR'S OBJ TO SALE OF ESTATE PROPERTY TO EXECUTOR

11/26/2019 NOTICE OF HEARING ▼

2019-11-26 - Notice of Hearing - M-Cont of Hearing - 12-02-2019.pdf

11/27/2019 RESPONSE ▼

2019.11.27 Hailey Loncar's Response to Motion for Continuance.pdf

Comment

HAILEY LONCAR'S RESPONSE TO MOTION FOR CONTINUANCE

11/27/2019 MOTION ▼

EXECUTOR'S MOTION FOR RECONSIDERATION OF HIS OBJECTION TO SUE LONCAR'S PARTICIPATION.pdf

Comment

EXECUTOR'S MOTION FOR RECONSIDERATION OF HIS OBJECTION TO SUE LONCAR'S PARTICIPATION

11/27/2019 MOTION ▼

Motion to Vacate

Comment

PHILLIP EDWARD LONCAR'S MOTION TO VACATE ORDER ACCEPTING RESIGNATION OF PHILLIP EDWARD LONCAR AS INDEPENDENT EXECUTOR, TO VACATE ORDER APPOINTING CLAY

12/02/2019 MOTION - HEARING ▼

Judicial Officer
THOMPSON, BRENDA H

Hearing Time
09:30 AM

Comment
Continuation Hearing from 10/24/19 (Motion to Authorize Sale of Estate Property to Executor- F 10/14/19); Cynthia Sue Loncar's Verified Motion for Continuance- F 11/25/19

12/02/2019 OBJECTION ▼

OBJECTION__MOTION_TO_QUASH_AND_MOTION_TO_QUASH.pdf

Comment
OBJECTION, MOTION TO QUASH AND MOTION TO QUASH TRIAL SUBPOENA ISSUED IN THE NAME OF PHILLIP EDWARD LONCAR, AND FOR PROTECTIVE ORDER

12/02/2019 MOTION ▼

WITHDRAWAL BY SUE LONCAR OF OBJECTION TO MOTION TO AUTHORIZE SALE - APPROVED BY VITULLO.pdf

Comment
CYNTHIA SUE LONCAR S WITHDRAWAL OF HER OBJECTION TO THE MOTION TO AUTHORIZE SALE OF ESTATE PROPERTY TO EXECUTOR

12/02/2019 ADVERSE ACTIONS ▼

OPPOSITION TO MOTION FOR CONTINUANCE.pdf

12/02/2019 ORDER - SALE OF PERSONAL PROPERTY ▼

ORDER - SALE OF PERSONAL PROPERTY

Comment
- ORDER AUTHORIZING SALE OF ESTATE PROPERTY

12/02/2019 ORDER - DISMISSAL ▼

ORDER - DISMISSAL

Comment
- ORDER DISMISSING PHIL LONCAR'S FILED OBJECTION

12/03/2019 MOTION - HEARING ▼

Judicial Officer
THOMPSON, BRENDA H

Hearing Time

09:30 AM

Cancel Reason

OTHER REASONS

Comment

Continuation Hearing from 10/24/19 (Motion to Authorize Sale of Estate Property to Executor- F 10/14/19)

01/08/2020 RESPONSE ▼

Response to Motion to Vacate.2020.01.08.pdf

Ex. A - Resp to Vacate - Order Dismissing Phil Loncar's Filed Objection.pdf

Ex B - Resp to Vacate - Order Accepting Resignation of IE.pdf

Ex C - Resp to Vacate - Order Appt SIE & Authorizing LT.pdf

Comment

EXECUTOR'S RESPONSE TO PHILLIP EDWARD LONCAR'S MOTION TO VACATE ORDERS OR, ALTERNATIVELY, TO REMOVE EXECUTOR, AND MOTION FOR SANCTIONS

01/09/2020 NOTICE ▼

Int. Party PEL's Notice of Withdrawal of Motion to Vacate Order.pdf

Comment

INTERESTED PARTY PHILLIP EDWARD LONCAR S NOTICE OF WITHDRAWAL OF MOTION TO VACATE ORDER ACCEPTING RESIGNATION OF PHILLIP EDWARD LONCAR AS INDEPENDENT EXECUTOR, TO VACATE ORDER APPOINTING CLAY JENKINS SUCCESSOR INDEPENDENT EXECUTOR AND ALTERNATIVE MOTION TO REMOVE CLAY JENKINS AS SUCCESSOR INDEPENDENT EXECUTOR

Tab 4

PR-16-04115-1

ESTATE OF § IN THE PROBATE COURT
BRIAN U. LONCAR § OF
DECEASED §
§
§ DALLAS COUNTY, TEXAS
§

**VERIFIED PETITION TO TAKE DEPOSITION BEFORE SUIT TO INVESTIGATE
POTENTIAL CLAIMS**

Petitioner, Clay Jenkins on Behalf of the Estate of Brian U. Loncar (“Clay Jenkins”) asks the Court for permission to take a deposition by oral examination as allowed by Texas Rule of Civil Procedure 202.

I. INTRODUCTION

1. Clay Jenkins is the independent executor for the Estate of Brian U. Loncar (the “Estate”).
2. Toby Toudouze (“Mr. Toudouze”) is a former employee of the decedent’s law firm Brian Loncar, P.C. (“the Firm”), and as an employee, Mr. Toudouze was responsible for overseeing the finances of Brian Loncar, P.C. and all related entities. The Firm is an asset of the Estate.
3. Upon information and belief, Mr. Toudouze resides in Dallas County, Texas at
and his telephone number is
4. The Estate seeks to depose Toby Toudouze to investigate potential claims against Mr. Toudouze regarding financial issues arising during his employment with the Firm that may have a bearing on the value of the Estate.

5. This petition is filed in Dallas County, Texas, pursuant to Texas Rule of Civil Procedure 202.2(b)(2), in the county in which the witness resides. This Court has jurisdiction over this matter under Estates Code Section 32.001(b).

II. FACTS

6. The Estate has sought to question Mr. Toudouze about the Firm's finances and decisions regarding the Firm's finances when Mr. Toudouze was employed by the Firm that may have an effect on the value of the Estate.

7. Mr. Toudouze has not cooperated with the Estate's attempts to discuss these issues with him. Instead, Mr. Toudouze has engaged an attorney and expressed concern about a criminal investigation.

III. REQUEST TO DEPOSE

8. The Estate asks the Court to issue an order authorizing him to conduct an oral deposition of Mr. Toudouze.

9. The Estate expects to elicit the following testimony from Mr. Toudouze:

- a. Information regarding the finances of Brian Loncar, P.C. and related entities;
- b. Mr. Toudouze's involvement and knowledge of decisions regarding the finances of Brian Loncar, P.C. and related entities.

10. The likely benefit of allowing the Estate to take the requested deposition to investigate the Estate's potential claims outweighs the burden or expense of the procedure. The testimony of Mr. Toudouze will provide the Estate insight as to whether it should pursue further legal action. This discovery will preserve testimony and/or may lead to the conclusion that there is no need to seek further legal action, thus, saving all potential parties time and money and not waste the Court's resources.

V. HEARING

11. After service of this petition and notice, Rule 202.3(a) requires the Court to hold a hearing on the petition.

VI. PRAYER

12. For these reasons, the Estate asks the Court to set this petition for hearing and, after the hearing, order the deposition of Mr. Toudouze.

DATED: September 8, 2017

Respectfully submitted,

/s/ Carrie B. Hoffman

Carrie B. Hoffman
State Bar No. 00787701

Keith V. Novick
State Bar No. 15121100

Christopher M. Deskin
State Bar No. 24050510

GARDERE WYNNE SEWELL LLP

2021 McKinney Ave.

Dallas, Texas 75201

(214) 999-4262 (Telephone)

(214) 999-3262 (Fax)

choffman@gardere.com

knovick@gardere.com

Cdeskin@gardere.com

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

Pursuant to Rule 202.3(a), the undersigned hereby certifies that on September 8, 2017, the foregoing document was served via certified mail return receipt requested and electronic mail on counsel for Toby Toudouze at the following:

Larry Friedman
Friedman & Feiger, LLP
5301 Spring Valley Road, Suite 200,
Dallas, Texas 75254
lfriedman@flawoffice.com

/s/ Carrie B. Hoffman _____

Carrie B. Hoffman

VERIFICATION

STATE OF TEXAS

§

DALLAS COUNTY

§

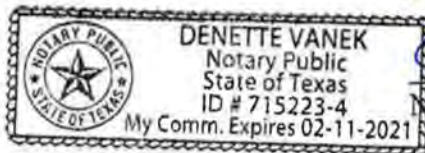
§

Before me, the undersigned notary, on this day personally appeared Clay Jenkins, a person whose identity is known to me. After I administered an oath to him, upon his oath he said he read the foregoing Verified Petition to Take Deposition Before Suit and that the facts stated in paragraphs 4 through 9 are within his personal knowledge and are true and correct.



Clay Jenkins

SIGNED before me on September 8th, 2017.





Notary Public in and for The State of Texas

My commission expires on: _____

Tab 5

PR-16-04115-1

ESTATE OF § IN THE PROBATE COURT
BRIAN U. LONCAR § OF
DECEASED § DALLAS COUNTY, TEXAS
§

AMENDED NOTICE OF HEARING

PLEASE TAKE NOTICE that Petitioner’s Verified Petition to Take Deposition Before Suit in this matter has been rescheduled for **Tuesday, October 31, 2017 at 2:00 p.m.** before Honorable Brenda Hull Thompson, at 1201 Elm Street, 24th Floor, Suite 2400-A, Dallas, Texas 75270.

Date: October 26, 2017

Respectfully submitted,

GARDERE WYNNE SEWELL LLP

By: /s/ Carrie B. Hoffman

Carrie B. Hoffman
Texas Bar No. 00787701

Keith V. Novick
Texas Bar No. 15121100

Christopher M. Deskin
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choffman@gardere.com

knovick@gardere.com

cdeskin@gardere.com

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

Pursuant to Rule 202.3(a), the undersigned hereby certifies that the foregoing document was served on:

Larry Friedman
Friedman & Feiger, LLP
5301 Spring Valley Road, Suite 200
Dallas, Texas 75254
lfriedman@flawoffice.com

/s/ Carrie B. Hoffman _____
Carrie B .Hoffman

Tab 6

CAUSE No. PR-16-04115-1

<i>Estate of</i>	§	IN THE PROBATE COURT
	§	
	§	
Brian U. Loncar	§	OF
	§	
	§	
DECEASED	§	DALLAS COUNTY, TEXAS

RESPONDENT’S OBJECTIONS AND OPPOSITION TO CLAY JENKINS’ VERIFIED PETITION TO TAKE DEPOSITION BEFORE SUIT TO INVESTIGATE POTENTIAL CLAIMS

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Respondent Toby Toudouze (“Respondent”) who respectfully objects to Petitioner **Clay Jenkins’ (“Petitioner” or “Potential Petitioner”)** **Verified Petition to take Deposition Before Suit to Investigate Potential Claims** (“Application”) and, for cause, would respectfully show unto this Honorable Court as follows:

SUM AND SUBSTANCE OF RELIEF SOUGHT

1. Petitioner’s request for pre-suit deposition is fatally deficient because it does not meet the requirements of Texas Rules of Civil Procedure Rule 202 and, as such, the Petitioner’s Application must be dismissed as a matter of law.
2. Petitioner has failed to plead sufficient grounds and cannot prove that granting the Petition is necessary to: (1) perpetuate or obtain Respondent Toby Toudouze’s testimony for an anticipated suit; or, (2) to investigate a potential claim or suit.
3. In this case, there is no credible risk that Toby Toudouze’s testimony would be lost if not recorded immediately.

4. Moreover, while Rule 202 allows potential Plaintiff's to investigate potential claims, the Applicant must prove, and the court must find, that: (1) allowing the Petitioner to take the requested deposition may prevent a failure or delay of justice in an anticipated suit; or, (2) the likely benefit of allowing the Petitioner to take the requested deposition to investigate a potential claim outweighs the burden of the expense of the procedure. The Applicant in this case has not met, nor can it meet, its burden of proof to satisfy the prerequisites of Rule 202 such that the Court can lawfully grant a Rule 202 deposition.

5. In addition, Rule 202 requires Petitioner to give mandatory notice and service on potential parties. Applicant did not send notice or serve any potential parties. Potential parties in this case include, but are not limited to:

- a. Clay Jenkins, Individually
- b. The Law Firm of Jenkins & Jenkins
- c. Stephen Daniel
- d. Phil McCrory
- e. The Law Firm of Kelly Hart
- f. The Armino Accounting Firm
- g. Dave Roberts
- h. John Schweisberger
- i. The Law Firm of Gibson Dunn & Crutcher
- j. Plus, potentially other persons and entities, known by Clay Jenkins, who have:
(1) committed wrongful acts; (2) caused monetary damages; and, (3) tortuously interfered with the business and operations--of the Estate, of Brian Loncar ("the Estate"); the Brian U. Loncar Revocable Trust ("the Trust"); the Loncar

- Law Firm (“the Law Firm”, the “Loncar Law Firm” or “Loncar & Associates”), and Respondent.
- k. And, potentially others who have aided and abetted, acted in concert, and conspired with Clay Jenkins to: (1) commit statutory and common law violations; (2) tortuously interfere with the business and operations of Estate, the Trust, the Loncar Law Firm Respondent, and related and associated Brian Loncar Entities; and, (3) breach the fiduciary duties Jenkins owes to the Estate, the Trust, the Loncar Law Firm and Respondent, and related and associated Brian Loncar Entities.
 - l. Sue Loncar for the purposes of increasing her recovery under her Partition Agreement with Brian Loncar.
 - m. Abby Loncar for the purpose of increasing her inheritance.
 - n. Hailey Loncar for the purpose of increasing her inheritance.

Since the Petitioner has not given notice to any potential parties, Petitioner’s Application is fatally defective and his request must be denied.

6. Rule 202 was not intended for routine use and the use of a Rule 202 deposition is not to be taken lightly. Petitioner’s Application is frivolous, was not filed in good faith or for a proper purpose. To the contrary, Clay Jenkin’s Petition was filed against Toby Toudouze to frighten Mr. Toudouze to keep him from exposing Clay Jenkin’s “questionable activities” as Executor of Brian Loncar’s Estate and the person running the Loncar law Firm. Accordingly, Applicant’s request for Respondent’s deposition should be denied.

FACTUAL BACKGROUND

1. Brian Loncar died on December 4, 2016, a week after Brian's daughter Grace committed suicide. That day, while all the Loncar's were mourning the two untimely deaths in their family, Clay Jenkins was thinking about Clay Jenkins. He saw Brian Loncar's death as an opportunity for himself, not as a tragedy.

2. Seven (7) days later, December 11, 2016, Clay Jenkins ("Jenkins") convened a meeting at the law firm of Loncar & Associates and, without any official title or authority took control of the Loncar Law Firm.

3. Since that time, Clay Jenkins' motives have become clear, he wants to own and operate the Loncar Firm for the purpose of enriching himself – his plan is succeeding.

4. Phil Loncar, Brian's Dad, was appointed Executor of Brian's Estate pursuant to Brian's Last Will and Testament. Clay Jenkins was the third alternate executor after Brian's Dad and Brian's personal financial advisor, Bill Sena.

5. Clay Jenkins took advantage of Brian's Dad during a time when Brian's Dad was mourning the tragic deaths of his son and grand-daughter. Jenkins began giving Brian's Dad "legal advice" relating to the Estate. Jenkins did this without consulting any of the people with the best knowledge about Brian's financial affairs and the Loncar Law Firm, including Michael Press, Brian's accountant, Bill Sena, Brian's financial advisor, and Toby Toudouze, Loncar & Associates' Chief Financial Officer. These people were the persons most familiar with Loncar's personal matters, business interests, and his law firm.

6. Instead of consulting with the people who had worked the most closely with Brian for years, Jenkins isolated and ignored these people and went in another direction.

He had his own "hand-picked guy", Phil McCrury ("McCrury"), installed as "the attorney for the Estate, the Trust, and L&A."

7. Phil Loncar had not previously known Phil McCrury before Clay Jenkins picked him to be the attorney for Brian's Estate. McCrury knew nothing about Loncar's history, personal matters, business affairs or the volume personal injury business. While Phil Loncar was Executor of Brian Loncar's Estate, McCrury had very little contact with Brian's Dad about customary probate matters – gathering assets and paying debts.

8. At that time, even though Phil Loncar was the Executor of the Estate, Clay Jenkins ran the ship. Unbeknownst to anyone, Jenkins had a secret plan: he wanted to buy and own L&A for his own personal gain; and, for political purposes, he wanted to keep all of this a secret.

9. Upon his death, Brian's plan was to liquidate L&A and distribute the proceeds to the beneficiaries. That's what Phil Loncar, as Executor of Brian's Estate, planned to do.

10. However, that was not Clay Jenkins' plan. Jenkins decided not to liquidate L&A, and to persuade Phil Loncar, while Phil was in his most defenseless and vulnerable state, to sell L&A to him. To that end, Jenkins persuaded Phil Loncar to sign an "Exclusive Letter of Intent" giving Clay Jenkin the exclusive right to purchase L&A.

11. On information and belief, there were other potential purchasers interested in buying the assets of the Loncar Firm and taking over L&A's clients' cases. These purchasers were willing to do their transactions legally, in the open, and in accordance with the Texas State Bar Rules. Unfortunately, neither Jenkins nor McCrury pursued any of the numerous interested prospective purchasers of L&A—some of whom were cash buyers and most, if not all, of whom offered more money and better terms than Clay

Jenkins. Notably, neither Clay Jenkins or Phil McCrury ever offered the assets of the Loncar Law Firm for sale publicly or put it out for bid when the value of the firm was at its highest (even after Jenkins and McCrury announced that there would be open bidding for the firm).

12. Instead, Jenkins prepared an Exclusive Letter of Intent for himself to purchase L&A on very soft terms favorable to Jenkins. Then, Jenkins and McCrury persuaded Phil Loncar to sign Jenkins' Letter of Intent representing to him that it was in the best interest of the Estate that he do so.

13. Jenkins's low-ball offer was never disclosed to or approved by the court and, in fact, on information and belief, it was an illusory offer for the purchase of L&A—it was for less than the true value of the law firm, no real money out of Jenkins's pocket, and no personal guaranty by Jenkins.

14. Upon information and belief, Jenkins's offer was also less than the cash on account in the practice and much less than the liquidation value of L&A's assets. Jenkins's offer was not the highest bid, not the best value for the practice, not the best deal for the Estate, and certainly not the best bargain for the beneficiaries. It was simply the best deal for Jenkins, who essentially made himself the primary beneficiary of Brian Loncar's Estate.

15. On information and belief, Jenkins ran L&A without specific court orders or permission from the State Bar. Jenkins spent huge sums of L&A money on advertising to generate new business (for Jenkins) without court oversight.

16. Jenkins did not notify all of L&A's clients that Brian had died, that other lawyers had taken over their cases, that no lawyer owned or was responsible for the Loncar Law Firm.

17. Even worse, Clay Jenkins continued to operate Loncar & Associates deceptively as if Brian Loncar were still alive, using Brian's name, likeness, voice, and image on L&A's website, on social media, on T.V. and in other promotional material. Brian's name is used in T.V advertisement, ads with Brian Loncar as the Law Firm's principal attorney are still played, Brian's name and image are still used to promote the Law Firm and attract clients. Moreover, to further deceive the public, Jenkins continued to use Brian Loncar's tag line, "The Strong Arm" but changed it slightly so it would look the same in advertising and sound the same to the uninformed. Now, Jenkins uses the tag line, "The Strong Arm[y]." it is confusingly similar to the "Strong Arm" which was Brian Loncar's brand.

18. On information and belief, this is also in the context of the several conflicts of interest that Jenkins has.

- a. Jenkins, was a principal in the law firm of Jenkins & Jenkins and, now, Jenkins & Associates (Clay Jenkins' law firms) in Waxahachie, Texas. Those firms had cases that were referred to them by L&A before Brian Loncar's death.
- b. Jenkins had an obligation to account for expenses incurred and as Executor of Brian Loncar's Estate, Jenkins is currently referring L&A cases to his own law firm. Jenkins owes the Estate an inventory and accounting of all of the cases that he has referred to himself and law firm, Jenkins & Jenkins and Jenkins & Associates, by L&A.
- c. The Estate has never had and an accounting of all of the cases Jenkins has referred to his own law firm and all fees recovered on all the cases. The Estate is entitled to know that all the cases that Jenkins has referred to his

own law firm are accounted for and that Loncar's Estate and L&A have received the correct amount of referral fees from Jenkins, and that no fees were held, are being held, or have been diverted elsewhere.

- d. There is a chance that Jenkins currently owes referral fees to Loncar and L&A or that the Estate may have claims against Jenkins for fees owed for tortious interference, negligence, breaches of fiduciary duty and other matters. Consequently, Jenkins may be acting without State Bar approval or oversight, and in the face of numerous clear conflicts of interest.
- e. Disclosures are inadequate. Some clients responding to L&A's advertising think they are getting Brian Loncar as their attorney. They have no idea that Brian is deceased, and that no lawyer owns L&A or is ultimately responsible for their cases. Moreover, these clients don't know that if their cases have substantial value they will be referred to Jenkins & Associates.

19. On information and belief, Jenkins may have deferred payment of one or more referral fees to hide the money from Sue Loncar when Brian Loncar and Sue were collaborating about the division of their community estate so that Sue would not get the share of those fees she was lawfully entitled to. If so, Jenkins may have liability to the Estate, the Loncar Law firm and Sue Loncar for withholding payments to defraud Sue.

20. Even worse, upon information and belief, Jenkins has not fulfilled the duties and responsibilities imposed by the Texas Disciplinary Rules of Professional Conduct.

- a. Jenkins does not have an attorney-client relationship with the former clients of L&A.

- b. Brian Loncar ceased providing legal services upon Loncar's death in December, 2016.
- c. Jenkins did not notify all of L&A's Clients that Brian Loncar had died, was no longer representing them, and given the Clients an opportunity to choose a new lawyer – inside or out of the Loncar Law Firm.
- d. On information and belief, under certain circumstances, the law firm can be operated for a short period of time to wind down and transition the existing client matters to another lawyer or law firms.
- e. Jenkins's duties include but are not limited to: notifying the State Bar, every L&A client, every court, every adverse party, and every other interested person of Loncar's death, that the law firm has no principal, that Brian Loncar has ceased providing legal services and the law firm is winding down, that the clients should seek new counsel, and such other pertinent information as each situation requires. (Some matters involve minors with next friends and next of kin, some matters involve wrongful death with many beneficiaries, some matters have multiple addresses for each identified client, and some matters may be involved in probate court and guardianship proceedings and may require notice and approval of the Court.). On information and belief, these notifications were not made by Clay Jenkins or by L&A under his control.
- f. Jenkins and his law firm have no attorney-client relationship with the clients of L&A and are not permitted to solicit L&A's clients.
- g. Jenkins is not allowed to solicit new clients in the name of L&A or any deceased lawyer.

- h. Lawyers are not allowed to solicit clients on behalf of any deceased lawyer or any firm that is not owned and operated by a living lawyer.
 - i. It is entirely possible that all of L&A's clients that have retained L&A after Brian Loncar's death on December 4, 2016 have "void" contracts with the firm because they signed up to be represented by a deceased lawyer. If so, Jenkins has a duty to notify those clients that their contracts are "void".
21. On information and belief, Jenkins has fiduciary duties to the Estate.
- a. He has fiduciary duties to the consumers of legal services he has solicited under the L&A name.
 - b. Jenkins has a duty to disclose all material facts to them, to the beneficiaries of the Estate, and a duty to disclose all current and potential conflicts of interest.
 - c. Jenkins also has a duty to disclose potential claims against Jenkins and his law firms. The Estate, the Beneficiaries, the Trust, Loncar & Associates, Phil Loncar, Sue Loncar, putative L&A clients, et al. may have claims against Jenkins and his law firms; and, at the very least, Jenkins is a potential adverse party or a fact witness in certain contested matters adverse to the Estate, the Beneficiaries, the Trust, Loncar & Associates, Phil Loncar, Sue Loncar, putative clients of L&A and other people/entities or related matters.
22. That being said, upon information and belief, Jenkins has engaged in various activities that involve L&A and other companies owned by Loncar that are assets of the Loncar Estate, potentially exposing those companies to liabilities to the detriment of the Loncar Estate and the beneficiaries of the Estate.

Unfortunately, the Respondent is an individual that Jenkins is attempting to blame for his own questionable acts. The Respondent was a loyal and integral part of L&A and the operations of other Loncar entities. However, when Jenkins took control of L&A and the Loncar Entities he never had a substantive conversation with Respondent, and he specifically did not have any substantive communications with Respondent about L&A or another other Loncar entity.

In fact, Jenkins specifically excluded the Respondent, placed him on administrative leave then terminated him without cause. Now in an effort to protect his questionable acts from being exposed, Jenkins is attempting to frighten Respondent and isolate him.

OBJECTIONS

23. Texas Rule of Civil Procedure 202.2 sets forth the required contents of a Rule 202 Petition, and failure to comply with this Rule mandates dismissal of the petition. TEX. R. CIV. P. 202.2 (stating “The petition must....” and listing the required contents) (emphasis added). Accordingly, the Respondent objects to the Petition for failing to comply with the requirements of Rules 202.2 (g), specifically as set forth below:

THE PETITION PRESENTS NO EVIDENCE TO MEET ITS BURDEN

24. The law is clear that a petitioner seeking a pre-suit deposition must present evidence to meet its burden to establish the facts necessary to obtain the deposition. *See, e.g., In re Hochheim Prairie Farm Mut. Ins. Ass'n*, 115 S.W.3d at 796; *see also In re Dallas Cnty. Hosp. Dist.*, No. 05-14-00249-CV, 2014 Tex. App. LEXIS 3542, 2014 WL 1407415, at *2 (Tex. App.-Dallas Apr. 1, 2014, orig. proceeding) (mem. op.). In examining this evidentiary requirement, we are cognizant that sworn, verified pleadings are generally not considered competent evidence to prove the facts asserted in the pleading. *See Laidlaw*

Waste Sys. (Dallas), Inc. v. City of Wilmer, 904 S.W.2d 656, 660 (Tex. 1995). Moreover, the argument of counsel is not evidence. See *Love v. Moreland*, 280 S.W.3d 334, 336 n. 3 (Tex. App.-Amarillo 2008, no pet.); *Potter v. GMP, L.L.C.*, 141 S.W.3d 698, 704 (Tex. App.-San Antonio 2004, pet. dismiss'd). *In re E.*, 476 S.W.3d 61, 68 (Tex. App. 2014).

25. In this case, the Petition contains no competent evidence whatsoever. Accordingly, this Honorable Court must deny the Petitioner's request in its entirety.

THE PETITION DOES NOT CONTAIN SUFFICIENTLY DETAILED RECITATIONS TO SATISFY THE BURDEN OF PROOF

26. The Dallas, Tyler, and Amarillo courts of appeals have rejected the assertion that a verified petition constitutes competent evidence in support of a pre-suit deposition. See, e.g., *In re Dallas Cnty. Hosp. Dist.*, 2014 Tex. App. LEXIS 3542, 2014 WL 1407415, at *2; *In re Noriega*, 2014 Tex. App. LEXIS 3462, 2014 WL 1415109, at *2; *In re Contractor's Supplies, Inc.*, 2009 Tex. App. LEXIS 6396, 2009 WL 2488374, at *5; *In re Rockafellow*, 2011 Tex. App. LEXIS 5495, 2011 WL 2848638, at *4. *In re E.*, 476 S.W.3d 61, 69 (Tex. App. 2014).

27. In this case, the Petition contains no competent evidence whatsoever. The Petitioner's sole allegation which is conclusory, baseless and set forth without any evidence is that, "The Estate seeks to depose Toby Toudouze to investigate potential claims against Mr. Toudouze regarding financial issues arising during his employment with the Firm that may have a bearing on the value of the Estate." Accordingly, this Honorable Court must deny the Petitioner's request in its entirety.

28. Toby Toudouze was employed for approximately 8 months after Brian Loncar's death. Clay Jenkins ran L&A during that time. Not once did he ask Toby Toudouze any substantive questions about L&A matters. This constitutes a waiver.

THE PETITION IS VAGUE AND CONCLUSORY

29. The Petition is vague and conclusory insofar as it merely tracks the language of the statute and does not include any explanatory facts regarding why allowing the depositions would prevent an alleged failure or delay of justice in an anticipated suit, or why the benefit of allowing the depositions outweighs the burden or expense of the procedure. A petition that merely tracks the language of Rule 202 in averring the necessity of a pre-suit deposition, without including any explanatory facts, is insufficient to meet the petitioner's burden. *See In re Does*, 337 S.W.3d at 865 (noting that the petitioner “made no effort to present the trial court with a basis for the [Rule 202] findings” where the allegations in its petition and motion to compel were “sketchy”); *In re Reassure Am. Life Ins. Co.*, 421 S.W.3d at 173 (stating that the petition must do more reiterate the language of the rule and must include explanatory facts). It is not sufficient to articulate a “vague notion” that evidence will become unavailable by the passing of time without producing evidence to support such a claim, *See In re Hochheim Prairie Farm Mut Ins. Ass'n*, 115 S.W.3d at 795-796; *see also In re Dallas Cnty. Hosp. Dist.*, 2014 Tex. App. LEXIS 3542, 2014 WL 1407415, at *2. *In re E.*, 476 S.W.3d 61, 69 (Tex. App. 2014).

30. In this case, the Petition contains no competent evidence whatsoever. The Petition's sole allegation which is conclusory, baseless and set forth without any evidence is that, “The Estate seeks to depose Toby Toudouze to investigate potential claims against Mr. Toudouze regarding financial issues arising during his employment with the Firm that may have a bearing on the value of the Estate.” Accordingly, this Honorable Court must deny the Petitioner's request in its entirety.

ARGUMENT AND AUTHORITIES

31. The Petition should be denied because it fails to plead essential facts. In other words, a petition must rise and fall on the grounds pleaded. *In re Denton*, 2009 WL 471524 (Tex. App.–Waco, no pet.) (“The language of the rule is clear—the trial court’s finding must coincide with the reason requested for the Rule 202 deposition.”) (emphasis added). If the Petitioner does not plead and prove facts supporting his basis for seeking a deposition, then the petition must be denied. *Id.* (holding that a court may only grant a Rule 202 petition for the grounds pleaded and may not take an “either/or” approach, finding the trial court abused its discretion for granting petition on unpled grounds).

32. The two grounds for a Rule 202 petition are as follows. First, if the petitioner anticipates suit, he must plead and prove the deposition will “prevent failure or delay of justice.” See TEX. R. CIV. P. 202.4(a)(1); *In re Legate*, 2011 WL 4828192, at *1-2 (Tex. App.–San Antonio 2011, orig. proceeding). Second, if the petitioner is investigating a claim, he must plead and prove that “investigating the potential claim outweighs the burden or expense of the procedure.” See TEX. R. CIV. P. 202.4(a)(2); *In re Legate*, 2011 WL 4828192, at *2.

33. In this case, it appears that the Petitioner’s Petition’s defective. Petitioner has sought a petition “to investigate potential claims;” however, he has failed to plead and prove the prerequisites under Rule 202 that would justify a pre-suit deposition. Moreover, Petitioner has failed to plead and prove that “investigating the potential claim outweighs the burden or expense of the procedure.” Accordingly, this Honorable Court must deny the Petitioner’s request in its entirety.

PRAYER

For the foregoing reasons, Respondent Toby Toudouze requests that the Court DENY Petitioner's Rule 202 Petition and grant any and all further relief at law or equity to which Respondent has shown himself entitled.

Respectfully submitted,

/s/ Lawrence J. Friedman

Lawrence J. Friedman, Esq.
State Bar No. 07469300
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Dallas, Texas 75254
(972) 788-1400 (Telephone)
(972) 788-2667 (Telecopier)

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document has been served in compliance with the Texas Rules of Civil Procedure upon all counsel of record on this 30th day of October, 2017.

/s/ Lawrence J. Friedman
Lawrence J. Friedman

Tab 7

CERTIFICATE OF SERVICE

Pursuant to Rule 202.3(a), the undersigned hereby certifies that the foregoing document was served on:

Larry Friedman
Friedman & Feiger, LLP
5301 Spring Valley Road, Suite 200
Dallas, Texas 75254
lfriedman@flawoffice.com

/s/ Carrie B. Hoffman

Carrie B .Hoffman

Tab 8

PR-16-04115-1

ESTATE OF § IN THE PROBATE COURT
BRIAN U. LONCAR § OF
DECEASED § DALLAS COUNTY, TEXAS

**REPLY TO RESPONDENT’S OBJECTIONS AND OPPOSITION TO VERIFIED
PETITION TO TAKE DEPOSITION BEFORE SUIT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Petitioner and files this Reply to Respondent’s Objections and Opposition to Verified Petition to Take Deposition Before Suit and would show the Court as follows:

Introduction

Respondent Toby Toudouze (“Toudouze”) is a disgruntled former employee of Loncar & Associates, the law firm of decedent Brian U. Loncar (“Decedent”). Rather than address his objections and opposition to the merits of whether Petitioner is entitled to depose him under the Texas Rules of Civil Procedure, Toudouze chose instead to sling mud at Clay Jenkins (“Jenkins”) about matters that are false and malicious and about which he has no standing to raise. Reading his “Factual Background” section, anyone would believe that Toudouze was a beneficiary of the Estate of Brian U. Loncar. Toudouze hopes that this mud-slinging will disguise the true facts that he likely has information about assets of the Estate and continues to refuse to provide that information to the Petitioner. In fact, Toudouze has never denied that he has relevant information but is instead hiding behind false allegations in effort to avoid answering for his own conduct.

Response to Factual Background

Petitioner does not believe that the Court should consider any of the unrelated (and therefore irrelevant) allegations contained in pages 4 through 15 of the Objections and Opposition. However, Petitioner also cannot let such slanderous allegations go unaddressed.

Decedent named his father Phil Loncar as his first choice to be the executor of his Estate. William Sena, a trusted financial advisor to the decedent was the first alternate successor, and Jenkins was the second alternate successor. Jenkins and Decedent were both friends and colleagues and had a relationship based on respect for each other's skills as lawyers. Prior to Decedent's death, he and Jenkins had a referral relationship between their respective law firms in which they referred matters to each other. Decedent had similar referral relationships with other law firms in Dallas and other firms throughout the United States. Prior to accepting the position as executor of the Estate, Jenkins continued to have that type of referral relationship with the Decedent's law firm. However, after assuming the position of executor, Jenkins has ceased accepting referrals from Loncar & Associates to avoid any appearance of impropriety despite the fact that the referral relationship was mutually beneficial to both Jenkins and Loncar & Associates.

Additionally, **prior to** Phil Loncar's decision to step down as executor of the Estate, Jenkins did make an offer to purchase Loncar & Associates. He was not the only person/law firm who made such an offer. No purchase offers were accepted by the Estate at that time. Jenkins was not serving as executor when that offer was made nor was he privy to any other offers that were made. The Estate did not act on Jenkins' offer before Phil Loncar resigned. Jenkins thereafter withdrew the offer to purchase Loncar & Associates to accept the role of executor and trustee at the request of the beneficiaries.

Jenkins played absolutely no role in Phil Loncar's decision to step down as executor nor did he have any involvement in the first alternate, William Sena's decision to decline the position. At that time, Jenkins could also have declined to serve as executor of the Estate. Instead, as family friend and colleague, Jenkins believed that he was fulfilling his friend and colleague's wishes by accepting the position and has worked to fulfill his obligations as executor in accordance with his obligations under the Estates Code.

Response to Rule 202 Issues

While Toudouze spends little effort on responding to the substantive Rule 202 issues, it is apparent that he is angry that he was terminated. As the former CFO of Loncar & Associates, the Estate has questions that Toudouze needs to answer about referral fees and various related matters about the finances of the firm. These issues affect both the value of Loncar & Associates and the amounts available to beneficiaries. Both while employed and after his termination, Toudouze apparently concedes to have relevant information but refuses to provide it. Toudouze had knowledge of decedent's financial dealings, investments and other financial matters. There are open issues about these matters that Toudouze refuses to provide the information. Given that there are potential assets of the Estate at issue and that the Estate needs to have control over to prevent their misuse, time is of the essence. Toudouze instead continues to avoid providing this crucial information.

The Court should ignore the mudslinging and focus on the real issues at stake. Specifically, Toudouze may have knowledge of the Estate's assets and, if allowed to continue to hide from answering these questions, the assets may be squandered. Therefore, the Court should order Toudouze to appear for a deposition.

Date: November __, 2017

Respectfully submitted,

GARDERE WYNNE SEWELL LLP

By: /s/ Carrie B. Hoffman

Carrie B. Hoffman

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Keith V. Novick

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ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

Pursuant to Rule 202.3(a), the undersigned hereby certifies that the foregoing document was served on all counsel of record.

/s/ Carrie B. Hoffman _____

Carrie B .Hoffman

Tab 9

PR-16-04115-1

ESTATE OF § IN THE PROBATE COURT
BRIAN U. LONCAR § OF
DECEASED § DALLAS COUNTY, TEXAS

**BRIEF REGARDING PETITIONER’S VERIFIED PETITION TO
TAKE DEPOSITION BEFORE SUIT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Petitioner and files this Brief Regarding Petitioner’s Verified Petition to Take Deposition Before Suit to Investigate Potential Claims (“Rule 202 Petition”) and would show the Court as follows:

Introduction

Petitioner seeks to depose Toby Toudouze to determine whether he has knowledge of the assets of Loncar’s estate. Mr. Toudouze has appeared in this matter through his counsel of record, Larry Friedman of Friedman & Feiger. On October 30, 2017, Mr. Friedman filed a response in opposition to Plaintiff’s Rule 202 petition. On October 31, 2017, Mr. Friedman appeared on behalf of Mr. Toudouze at the original hearing of this matter. Mr. Friedman did not file a special appearance and failed to reserve his rights to object to defect in service. As such, Mr. Toudouze has waived personal service of the petition and this court should consider this matter on the merits.

Background

Mr. Toudouze is the former CFO of Loncar & Associates and has refused to provide information about his role at the firm and/or knowledge of the firm’s finances. Instead, he has engaged Mr. Friedman, who coincidentally served for many years as outside counsel to Loncar

& Associates. The Estate of Brian U. Loncar has an obligation to the beneficiaries of the Estate to determine whether there are assets belonging to the Estate.

As the former CFO of Loncar & Associates, the Estate has questions for Mr. Toudouze regarding referral fees and various related matters about the finances of the firm. Both while employed and after his termination, Mr. Toudouze apparently concedes to have relevant information but refuses to provide it. These issues potentially affect both the value of Loncar & Associates and the amounts available to beneficiaries.

Petitioners filed its Rule 202 Petition on September 7, 2017 to investigate potential claims against Mr. Toudouze regarding financial issues arising during his employment with Loncar & Associates.¹ Petitioners made numerous attempts to communicate with Mr. Toudouze concerning the present matter. Mr. Toudouze filed a response in opposition to Petitioners's Rule 202 Petition and appeared, through counsel of record, at the original hearing on this matter. Mr. Toudouze's filing and appearance demonstrate that Mr. Toudouze has had ample notice of the pending proceeding and has waived personal service. As such, this Court has authority to hear and resolve this matter on the merits.

Argument and Authorities

A. Mr. Toudouze Waived Personal Service By Voluntarily Appearing In the Case.

Texas procedural law and constitutional due process require that a defendant "be served, waive service, or voluntarily appear." *In re J.P.L.*, 359 S.W.3d 695, 707 (Tex. App.—San Antonio 2011, pet. denied); TEX. R. CIV. P. 124. The reason is to assure that the defendant knows about the proceedings and can, therefore, defend against them. *Terry v. Caldwell*, 851 S.W.2d 875, 876 (Tex. App.—Houston [14th Dist.] 1993, no writ). A party's

¹ Despite repeated attempts to personally serve Mr. Toudouze, his wife tells Petitioner's process server that he is out of town indefinitely without additional information. *See* Exhibit 1, Affidavit In Support of Substituted Service.

voluntary appearance in a case submits it to the court's jurisdiction without needing formal service of process. *See Baker v. Monsanto*, 111 S.W.3d 158, 161 (Tex. 2003). General appearance puts defendant before the court for all purposes. *Id.* In *Baker*, Baker filed a petition to intervene in the case by delivering a copy of the petition to Monsanto's attorneys. *Id.* at 159. The law firm, however, did not respond to Baker's claims except to say by letter that they would not accept service on Monsanto's behalf. *Id.* Monsanto subsequently filed an answer to the plaintiff's petition, and in an apparent attempt to avoid appearing generally for purposes of the intervention, the answer stated that it was "in answer to the petitions of those plaintiffs who have served Monsanto." *Id.* The Supreme Court of Texas found that Monsanto made a general appearance when it answered the plaintiff's petition without further questioning the court's jurisdiction. *Id.* at 160. Monsanto's answer did not question the court's jurisdiction, and thus its appearance was not a limited one as provided by Texas Rule of Civil Procedure 120a despite its attempt to restrict its answer only to "those plaintiffs who have served Monsanto." *Id.* The Court concluded that "any defect in the intervenors' service under Rule 21a was cured by [Monsanto's] appearance. *Id.*

Here, Mr. Toudouze voluntarily submitted the present case to the Court's jurisdiction by responding to Petitioner's Rule 202 Petition. Mr. Toudouze did not question the Court's jurisdiction in his response to the Rule 202 Petition. Moreover, Mr. Toudouze failed to state that his appearance was a limited one as provided by Texas Rule of Civil Procedure 120a. Mr. Toudouze, through his counsel of record, filed a brief in opposition and appeared at the hearing regarding the same matter. At the hearing, respondent again failed to make a special and limited appearance, and did not notify the Court that its appearance is not for purpose of waiving service

and/or jurisdiction. Because Toudouze generally appeared in the case, Toudouze voluntarily waived personal service, and the Court should consider this matter on the merits.

B. Mr. Toudouze Failed to Specially Appear and Reserve His Rights to Object to Defect in Service.

Texas Rules of Civil Procedure provide a mechanism for a defendant in a proceeding to appear without waiving citation/jurisdiction. TEX. R. CIV. P. 120a. Rule 120a provides that a special appearance may be made by any party for the purpose of objecting to the jurisdiction of the court over the person or property of the defendant on the ground that such party or property is not amenable to process issued by the court. *Id.* To do so, the defendant must make a sworn motion. *Id.*

Instead of making a special appearance, by filing a response to the verified pleading on the merits, Mr. Toudouze has waived service of process and has appeared before this court. As such, this Court has authority to hear and resolve this matter.

C. Mr. Toudouze Had Sufficient Notice of the Pending Suit.

Service of process is waived if the adverse party voluntarily appears in the case and demonstrates that it has notice of the judicial suit. *Gordon v. Conroe Indep. School Dist.*, 789 S.W.2d 395, 397 (Tex. App.—Beaumont 1990, no writ). In *Gordon*, the School District instituted eminent domain proceedings against Gordon. *Id.* at 396. Gordon filed objections to the monetary award made by the special commissioners. *Id.* The School District filed a motion to enter judgment alleging that Gordon had failed to serve the School District. *Id.* The Court found that the School District had entered an appearance and waived the issuance of service. *Id.* at 397. Filing of a pleading demonstrates that a party has notice of the suit and waives the necessity for issuance of citation. *Id.* The Court held that the School District had notice of the judicial suit and hence the issue of citation was waived. *Id.*

Here, the response filed in opposition to the Rule 202 Petition and Mr. Toudouze's appearance for the hearing indicate that Mr. Toudouze has sufficient notice of the judicial suit. Mr. Toudouze is well-informed about the proceedings and can, therefore, defend against them. The fact that Mr. Toudouze has sufficient notice of the suit waives the necessity for personal service.

Conclusion

Mr. Toudouze filed a response in opposition to Plaintiff's Rule 202 petition and subsequently appeared at the original hearing of this matter. Mr. Toudouze did not file a special appearance and failed to reserve his rights to object to defect in service. As such, Mr. Toudouze has waived personal service of the petition and this court should consider this matter on the merits. For the foregoing reasons, Petitioner requests that the Court resolve this matter in favor of Petitioner and order Mr. Toudouze to appear for a deposition.

Date: December 5, 2017

Respectfully submitted,

GARDERE WYNNE SEWELL LLP

By: /s/ Carrie B. Hoffman

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ATTORNEYS FOR PETITIONER

CERTIFICATE OF CONFERENCE

On December 4, 2017, I conferred with Larry Friedman regarding this matter who informed that he would not consent because the Court ordered personal service.

/s/ Carrie B. Hoffman _____

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served on all counsel of record in compliance with the Texas Rules of Civil Procedure.

/s/ Carrie B. Hoffman _____
Carrie B .Hoffman

CAUSE NO. PR-16-04115-1

ESTATE OF

BRIAN U. LONCAR

DECEASED

§
§
§
§

IN THE PROBATE COURT

OF

DALLAS COUNT, TEXAS

AFFIDAVIT IN SUPPORT OF MOTION FOR SUBSTITUTED SERVICE

On this day, before me the undersigned authority, personally appeared Ernesto Martin Herrera, known to me to be the person whose name is subscribed hereto and under oath states:

"My name is Ernesto Martin Herrera. I am over the age of eighteen (18) years, fully competent to testify to the matters stated herein, and am not a party to or interested in the outcome in the above styled and numbered cause. I am authorized and certified by the Texas Supreme Court under T.R.C.P. 103 to serve process. I have personal knowledge of the facts and statements contained in this affidavit and aver that each is true and correct.

It is impractical to secure service of process on Defendant **TOBY TOUDOUZE**; in the above entitled and numbered cause, in person, a true and correct copy of the citation with the date of delivery endorsed and with a copy of the petition attached thereto. Personal service is impractical because said defendant absents himself and thereby evades service of said Citation.

I believe the most reasonable, effective way to give said Defendant actual notice of this suit is to deliver a copy of the CITATION IN PROBATE AND VERIFIED PETITION TO TAKE DEPOSITION BEFORE SUIT TO INVESTIGATE POTENTIAL CLAIMS to anyone over the age of sixteen (16), or by affixing to the front door at the defendant's usual place of Abode, [REDACTED], DALLAS, TX 75214.

I have attempted to personally deliver said citation upon the defendant on the following days and times, at the above-mentioned address, but have been unsuccessful for the following reasons:



11/03/17 2:50 PM – First attempt - I arrived at [REDACTED], Dallas, Texas 75214. I knocked at the front door. There was no answer at the front door. I left my business card with my information attached to the front door.

11/04/17 10:50 AM – Second attempt - I arrived at [REDACTED], Dallas, Texas 75214. I knocked at the front door. There was no answer at the front door. My business card was no longer attached to the front door. I left my business card with my information attached to the front door. There is a vehicle parked in the driveway. The license plate is [REDACTED]. I conducted basic address research using available public records. Records show that the owner of the vehicle is Toby E. Toudouze and the car is registered to the same address given for service. Please see exhibit "A". The Dallas Central Appraisal District's records indicate that the property at [REDACTED] is owned by Toby E. Toudouze. Please see exhibit "B". Saturday attempt.

11/07/17 9:12 AM – Third attempt - I arrived at [REDACTED] Dallas, Texas 75214. I knocked at the front door. There was no answer at the front door. My business card was no longer attached to the front door. I left my business card attached to the front door. I have not received any telephone calls from the defendant.

11/09/17 4:58 PM – Fourth attempt - I arrived at [REDACTED], Dallas, Texas 75214. I knocked at the front door. A Caucasian female opened the front door. I stated to her that I was trying to deliver court documents to Toby Toudouze. She confirmed that this is the place of abode for the defendant, but he was out of town at the moment. She stated that the Defendant would not be back until after Thanksgiving. She identified herself as Renee Toudouze, wife of Toby Toudouze. She stated that she has my business card.

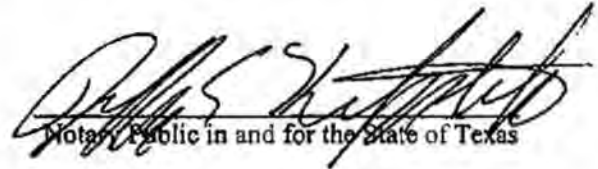
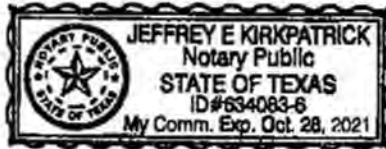
11/18/17 9:38 AM – Fifth attempt - I arrived at [REDACTED], Dallas, Texas 75214. I knocked at the front door. Renee opened the front door. She stated that the defendant was still out of town and won't be back until after Thanksgiving. I left my business card with her, asking her to please give it to her husband Toby Toudouze. Saturday attempt.

11/25/17 7:25 PM – Sixth attempt - I arrived at [REDACTED], Dallas, Texas 75214. I knocked at the front door. Renee opened the front door. I stated to her that I was back trying to deliver court documents to Toby Toudouze because it was a few days after Thanksgiving now. She stated that she had just gotten home from out of town, but her husband Toby Toudouze did not make back from out of town. I have not received any telephone calls from the defendant.



Ernesto Martin Herrera ID# PSC4418 - Exp 11/30/19

Subscribed and Sworn to by **Ernesto Martin Herrera**, Before Me, the undersigned authority, on this 5th day of December, 2017.



Notary Public in and for the State of Texas

12/04/2017

TEXAS DEPARTMENT OF MOTOR VEHICLES
VEHICLE TITLES AND REGISTRATION DIVISION

LIC CRESTV APR/2018 OLD # CRESTV APR/2017 EWT 6000 GWT 6000
TEXAS BLACK 1845 C, STKR REG CLASS 25 \$ 79.75 DALLAS CNTY
TITLE 28695342135007663 ISSUED 05/13/2015 ODOMETER 7 REG DT 04/20/2017
YR:2013 MAK:LEKS MODL:LX5 BDY STYL:LL VEH CLS:PASS-TRK SALE PRC: \$84586.94
VIN: JTJHY7AXXD4116978 BODY VIN: N/A COLOR: GRAY
PREV TTL: JUR TX TTL # 05701741414113023 ISSUE 05/31/2013
PREV OWN TOBY E TOUDOUZE, DALLAS, TX
OWNER TOBY E TOUDOUZE, [REDACTED] DALLAS, TX, 75214
RNWL RCP TOBY TOUDOUZE, [REDACTED], DALLAS, TX, 75214
PLATE AGE: 2 LAST ACTIVITY 05/06/2017 IRENEW OFC: 057
REMARKS ACTUAL MILEAGE. DATE OF ASSIGNMENT: 2013/04/30. E-REMINDER & PAPER RENE
WAL NOTICE. SPECIAL PLATE. PAPER TITLE. E-TITLE PRINT DATE: 05/13/2015. DUPLICATE
REG - RECORD 1 OF 2.

TITLE AND REGISTRATION VERIFICATION

EXHIBIT "A"



Home | Find Property | Contact Us

Residential Account #00000120427000000

Location Owner Legal Desc Value Main Improvement Additional Improvements Land Exemptions
Estimated Taxes History

Property Location (Current 2018)

Address: [REDACTED]
 Neighborhood: [REDACTED]
 Mapsco: [REDACTED] B (DALLAS)

DCAD Property Map

2017 Appraisal Notice

Electronic Documents (ENS)

File Homestead Exemption Online



Print Homestead Exemption Form

Owner (Current 2018)

TOUDOUZE TOBY E & ROBIN R
 [REDACTED]
 DALLAS, TEXAS 75214 [REDACTED]

Multi-Owner (Current 2018)

Owner Name	Ownership %
TOUDOUZE TOBY E & ROBIN R	100%

Legal Desc (Current 2018)

- 1: [REDACTED]
 - 2: BLK [REDACTED] 43FT LT [REDACTED]
 - 3: 37FT LT 13
 - 4: INT20080101321 DD03202008 CO-DC
 - 5: 0681 00C 000 1000681 00C
- Deed Transfer Date: 3/28/2008

Value

2017 Certified Values	
Improvement:	\$750,000
Land:	+ \$160,000
Market Value:	= \$910,000
Tax Agent: HEGWOOD GROUP INC	
Revaluation Year:	2017
Previous Revaluation Year:	2016

Main Improvement (Current 2018)

Building Class	Construction Type	# Baths (Full/Half)
25	FRAME	2/1

Year Built	1913	Foundation	PIER AND BEAM	# Kitchens	1
Effective Year Built	1913	Roof Type	GABLE	# Bedrooms	3
Actual Age	105 years	Roof Material	TILE	# Wet Bars	0
Desirability	GOOD	Fence Type	WOOD	# Fireplaces	2
Living Area	4,140 sqft	Ext. Wall Material	STUCCO	Sprinkler (Y/N)	Y
Total Area	4,140 sqft	Basement	PARTIAL	Deck (Y/N)	Y
% Complete	100%	Heating	CENTRAL FULL	Spa (Y/N)	N
# Stories	TWO STORIES	Air Condition	CENTRAL FULL	Pool (Y/N)	Y
Depreciation	45%			Sauna (Y/N)	N

Additional Improvements (Current 2018)

#	Improvement Type	Construction	Floor	Exterior Wall	Area (sqft)
1	GREENHOUSE		UNASSIGNED	UNASSIGNED	228
2	DETACHED GARAGE		UNASSIGNED	FRAME	682
3	DETACHED QUARTERS		UNASSIGNED	UNASSIGNED	682
4	BASEMENT		UNASSIGNED	SOLID MASONRY	351
5	POOL		UNASSIGNED	CC-CONCRETE (POOL)	100

Land (2017 Certified Values)

#	State Code	Zoning	Frontage (ft)	Depth (ft)	Area	Pricing Method	Unit Price	Market Adjustment	Adjusted Price	Ag Land
1	SINGLE FAMILY RESIDENCES	PLANNED DEVELOPMENT DISTRICT	80	241	18,823.0000 SQUARE FEET	FRONT FOOT	\$2,000.00	0%	\$160,000	N

* All Exemption information reflects 2017 Certified Values. *

Exemptions (2017 Certified Values)

	City	School	County and School Equalization	College	Hospital	Special District
Taxing Jurisdiction	DALLAS	DALLAS ISD	DALLAS COUNTY	DALLAS CO COMMUNITY COLLEGE	PARKLAND HOSPITAL	UNASSIGNED
HOMESTEAD EXEMPTION	\$182,000	\$116,000	\$182,000	\$182,000	\$182,000	\$0
Taxable Value	\$728,000	\$794,000	\$728,000	\$728,000	\$728,000	\$0

Exemption Details

Estimated Taxes (2017 Certified Values)

	City	School	County and School Equalization	College	Hospital	Special District
Taxing Jurisdiction	DALLAS	DALLAS ISD	DALLAS COUNTY	DALLAS CO COMMUNITY COLLEGE	PARKLAND HOSPITAL	UNASSIGNED
Tax Rate per \$100	\$0.7804	\$1.282085	\$0.2531	\$0.124238	\$0.2794	N/A
Taxable Value	\$728,000	\$794,000	\$728,000	\$728,000	\$728,000	\$0
Estimated Taxes	\$5,681.31	\$10,179.75	\$1,842.57	\$904.45	\$2,034.03	N/A
Tax Ceiling	N/A	N/A	N/A	N/A	N/A	N/A
Total Estimated Taxes:						\$20,642.12

DO NOT PAY TAXES BASED ON THESE ESTIMATED TAXES. You will receive an **official tax bill** from the appropriate agency when they are prepared. Please note that if there is an Over65 or Disabled Person **Tax Ceiling** displayed above, **It is NOT reflected** in the Total Estimated Taxes calculation provided. Taxes are collected by the agency sending you the **official tax bill**. To see a listing of agencies that collect taxes for your property. [Click Here](#)

The estimated taxes are provided as a courtesy and should not be relied upon in making financial or other decisions. The Dallas Central Appraisal District (DCAD) does not control the tax rate nor the amount of the taxes, as that is the responsibility of each Taxing Jurisdiction. Questions about your taxes should be directed to the appropriate taxing jurisdiction. We cannot assist you in these matters. These tax estimates are calculated by using the most current certified taxable value multiplied by the most current tax rate. It does not take into account other special or unique tax scenarios, like a tax ceiling, etc.. If you wish to calculate taxes yourself, you may use the TaxEstimator to assist you.

History

History

© 2017 Dallas Central Appraisal District.
All Rights Reserved.

Tab 10

PR-16-04115-1

ESTATE OF
BRAIN U. LONCAR
DECEASED

§
§
§
§

IN THE PROBATE COURT
OF
DALLAS COUNTY, TEXAS

**RESPONDENT'S REPLY BRIEF REGARDING PETITIONER'S VERIFIED
PETITION TO TAKE DEPOSITION BEFORE SUIT**

TO THE HONORABLE JUDGE OF SAID COURT:

Respondent Toby Toudouze ("**Respondent**") files this Reply Brief Regarding Petitioner Clay Jenkins' ("**Petitioner**" or "**Potential Petitioner**") **Verified Petition to Take Deposition Before Suit**, and would respectfully show the Court the following:

INTRODUCTION

1. Petitioner's attempt to take the deposition of Toby Toudouze, former CFO of Loncar and Associates, to inquire about transactions of a company called KMA is groundless, made in bad faith, and not made for a proper purpose under T.R.Civ.P. Rule 202 which very narrowly permits depositions only: (1) to perpetuate Toby Toudouze's testimony for use in an anticipated suit; or, (2) to investigate a potential claim or suit.

1. Petitioner, Clay Jenkins, himself, was involved in KMA transactions by and through his law firm, Jenkins & Jenkins. See Exhibit "B" attached hereto and made a part hereof.
2. Petitioner, Clay Jenkins, made over \$250,000 in payments to KMA.

3. The transactions Petitioner seeks to examine Toby Toudouze about occurred between 5 and 15 years ago -- way beyond all applicable statutes of limitations. Thus, Petitioner wants to inquire about transactions that cannot be claims or become potential claims. There is no claim or potential claim against Toby Toudouze to investigate.
4. After Petitioner performed a full forensic audit of Loncar & Associates by the national accounting firm of the Armanino Accounting Firm that did not uncover any evidence of any claims against Toby Toudouze the best argument Petitioner could come up with involved transactions: (1) that he was not involved in; (2) are beyond any statute of limitations between KMA; and, (3) involved The Lanier Law Firm, Laminack Pirtle & Martines, LLP; and, Loncar & Associates.
5. KMA has not ever been owned by Toby Toudouze.
6. Toby Toudouze has never been an officer, director or employee.

SUMMARY OF ARGUMENT

2. Here, Petitioner argues that it is no longer necessary to personally serve Respondent Toby Toudouze because Mr. Toudouze has appeared in this matter through his counsel of record, Larry Friedman of Friedman & Feiger. Petitioner is required by Texas Rule of Civil Procedure 202.3(a) to personally serve Respondent. Petitioner has, to date, neither personally served Respondent nor asked the Court to approve of alternate means of service upon Respondent. Petitioner is not in compliance with the applicable

Rule and should not be allowed to proceed with a hearing on his request for a pre-suit deposition of Respondent.

3. In addition, Petitioner claims his goal in deposing Respondent is to obtain information on KMA Capital, Inc. The Respondent is not the best source of information on this entity. There are better sources of information about KMA Capital, Inc. including Petitioner himself who transacts business with KMA.

4. Furthermore, the Statute of Limitations bars any inquiry into the transactions described in the documents Petitioner's counsel, Carrie Hoffman, showed the court. These transactions occurred more than four (4) years prior to the filing of Petitioner's Motion, in 2009, and 2010, respectively.

ARGUMENT

5. Petitioner has neither personally served respondent per the Texas Rule of Procedure 202.3, nor requested that the Court allow him to use alternate means of service. Not only does the statute require personal service upon Respondent, but **the Court ordered Petitioner to effect personal service during the hearing on October 31, 2017.** In his Brief Regarding Petitioner's Verified Petition To Take Deposition Before Suit, rather than request the Court to allow Petitioner to utilize an alternate means of service, Petitioner submitted a brief alleging that Respondent had waived his right to service. *See Id.* In other words, Petitioner ignored the Court's explicit instructions.

6. Petitioner's brief was an inappropriate document to file, as it is essentially a brief disguised as a Motion for Reconsideration. In the brief, Petitioner argues that personal service is unnecessary because of Respondent objecting to Petitioner's Petition and appearing through counsel at a hearing. Additionally, Petitioner states that

Respondent did not file a special appearance nor reserve his rights to object to a defect in service. *Id* at 1. The apparent goal of the brief is to convince the Court to ignore the defect in service and proceed with hearing the merits of Petitioner's Motion. Yet the Court has already ruled on the issue of service; Petitioner must effect personal service on Respondent. By submitting this Motion for Reconsideration masquerading as a brief, Petitioner is continuously disregarding the Court's order.

7. Petitioner argues that a pre-suit deposition of Respondent is necessary to learn more about KMA Capital, Inc., when in fact Respondent is not the best source of information about KMA Capital, Inc.

8. Petitioner argues that Mr. Toudouze can shed light on KMA Capital, Inc. and this company's relationship with Loncar and Associates. However, Mr. Toudouze has never been a shareholder, officer, director, or employee of KMA Capital Inc., ever. Furthermore, though KMA Capital, Inc. was formed in Texas, it has no registered office street address, and lists an Illinois address as its mailing address. Exhibit "A". Mr. Toudouze has no known ties to Illinois. The best person available to depose under oath about KMA is Petitioner himself, Clay Jenkins, who mostly likely has an irreconcilable conflict of interest. Mr. Jenkins has done business with KMA Capital, Inc. and paid hundreds of thousands of dollars, for unknown reasons. Exhibit "B".

9. Furthermore, any potential claims arising from the transactions Petitioner wants to investigate are barred by the Statute of Limitations. Tex. Civ. Prac. & Rem. Code § 16.004. Petitioner showed the Court five documents that his auditors, Stroz Friedberg, a third party, found when conducting a forensic review of the computer records and related

documents of Loncar and Associates. *Aff. of Carrie B. Hoffman*, 1. A Rule 202 Petition is allowed only to investigate a potential claim or suit. *In re DePinho*, 505 S.W.3d, 621, 24 (Tex. 2016). Two documents, Exhibits 1 and 2, show both Mr. Toudouze's name and KMA Capital, Inc. *Id* at Exhibits 1, 2. The Petitioner would like, in a pre-suit deposition, to ask Mr. Toudouze about the transactions described within these documents. Yet not only does Respondent know little, if anything, about these transactions between KMA Capital, Inc. and other companies, any potential claims arising from these documents are beyond the Statute of Limitations period, as it has been over six years. Tex. Civ. Prac. & Rem. Code § 16.004. Exhibit 1, an email, is dated December 15, 2009. *Aff. of Carrie B. Hoffman*, Exhibit 1. Exhibit 2, another email, is dated as November 24, 2010. *Id* at Exhibit 2. Therefore, a Rule 202 pre-suit deposition would not be proper for the purpose of inquiring about the transactions within Exhibits 1 and 2, because any potential claims from these documents have expired.

CONCLUSION

10. In sum, Petitioner does not have a valid reason to depose Mr. Toudouze before suit has been filed. Therefore, the whole effect of Petitioner's requested Texas Rule of Civil Procedure 202 deposition must be for purposes of harassment. The desire to harass Respondent likely arises out of Mr. Jenkins blaming Mr. Toudouze for thwarting Mr. Jenkins' efforts to steal the deceased's practice.

PRAYER

WHEREFORE, Respondent requests that the Court deny Petitioner's Rule 202 Petition, and Respondent prays for all such other and further relief, in law or in equity, to which Respondent may be entitled.

Respectfully submitted,

By:


LAWRENCE J. FRIEDMAN, ESQ.

State Bar No. 07469300

Email: lfriedman@fflawoffice.com

ANDREA N. SEFFENS

State Bar No. 24100977

Email: aseffens@fflawoffice.com

FRIEDMAN & FEIGER, LLP.

5301 Spring Valley Road, Suite 200

Dallas, Texas 75254

Telephone (972) 788-1400

Facsimile (972) 788-2667

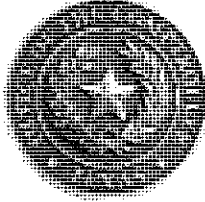
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served upon all counsel of record on this the **11th day of December 2017**, in accordance with the TEXAS RULES OF CIVIL PROCEDURE.


LAWRENCE J. FRIEDMAN

Exhibit A



Franchise Tax Account Status

As of : 12/07/2017 14:36:39

This Page is Not Sufficient for Filings with the Secretary of State

KMA CAPITAL, INC.

Texas Taxpayer Number

Mailing Address

Right to Transact Business in Texas FRANCHISE TAX INVOLUNTARILY ENDED
Request tax clearance to reinstate entity

State of Formation TX

Effective SOS Registration Date 12/11/2009

Texas SOS File Number 0801204378

Registered Agent Name Not on file

Registered Office Street Address

<https://mycpa.cpa.state.tx.us/coa/coaSearchBtn#>

1/1

Exhibit B



Capture Date: 02/04/2013 Sequence #: 6582906864

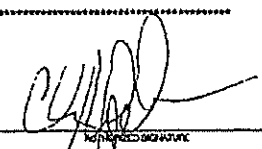
JENKINS & JENKINS P.C./CLJ TRUST ACCOUNT		 88-162-1119	3562
PAY TO THE ORDER OF KMA Capital		12/27/2012	Security Features. Details on back.
One Hundred Seventy Thousand and 00/100		\$ 170,000.00	
KMA Capital			DOLLARS
MEMO Attorneys fees & expense: Shrodric McGee		AUTHORIZED SIGNATURE	

No Electronic Endorsements Found

PAY TO THE ORDER OF
BANK OF AMERICA, NA
FOR DEPOSIT ONLY
KMA CAPITAL, INC.



Capture Date: 02/04/2013 Sequence #: 6582906865

JENKINS & JENKINS P.C./CLJ		CNB Citizens Regional Bank of Texas New York, Texas, and Washington, D.C. Member FDIC 88-162-1119	3530
		12/14/2012	Secondary Account Death in Book B
PAY TO THE ORDER OF	KMA Capital	\$ **90,623.52	
Ninety Thousand Six Hundred Twenty-Three and 52/100			DOLLARS
KMA Capital			
MEMO	Attorneys fees & expense, Andrea Smith		

PAY TO THE ORDER OF
BANK OF AMERICA, NA
FOR DEPOSIT ONLY
KMA CAPITAL, INC.

No Electronic Endorsements Found

Tab 11

PR-16-04115-1

ESTATE OF § **IN THE PROBATE COURT**
BRIAN U. LONCAR § § **OF**
DECEASED § § **DALLAS COUNTY, TEXAS**

**RESPONDENT'S AMENDED REPLY BRIEF REGARDING PETITIONER'S
VERIFIED PETITION TO TAKE DEPOSITION BEFORE SUIT**

TO THE HONORABLE JUDGE OF SAID COURT:

Respondent Toby Toudouze ("**Respondent**") files this Amended Reply Brief Regarding Petitioner Clay Jenkins' ("**Petitioner**" or "**Potential Petitioner**") **Verified Petition to Take Deposition Before Suit**, and would respectfully show the Court the following:

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3. In addition, Petitioner claims his goal in deposing Respondent is to obtain information on KMA Capital, Inc. The Respondent is not the best source of information on this entity. There are better sources of information about KMA Capital, Inc. including Petitioner himself who transacts business with KMA.

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PRAYER

WHEREFORE, Respondent requests that the Court deny Petitioner's Rule 202 Petition, and Respondent prays for all such other and further relief, in law or in equity, to which Respondent may be entitled.

Respectfully submitted,

By:


LAWRENCE J. FRIEDMAN, ESQ.

State Bar No. 07469300

Email: lfriedman@fllawoffice.com

ANDREA N. SEFFENS

State Bar No. 24100977

Email: aseffens@fllawoffice.com

FRIEDMAN & FEIGER, LLP.

5301 Spring Valley Road, Suite 200

Dallas, Texas 75254

Telephone (972) 788-1400

Facsimile (972) 788-2667

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served upon all counsel of record on this the **12th day of December 2017**, in accordance with the TEXAS RULES OF CIVIL PROCEDURE.


LAWRENCE J. FRIEDMAN

Exhibit A



Franchise Tax Account Status

As of : 12/07/2017 14:36:39

This Page is Not Sufficient for Filings with the Secretary of State

KMA CAPITAL, INC.

Texas Taxpayer Number

Mailing Address

Right to Transact Business in Texas **FRANCHISE TAX INVOLUNTARILY ENDED**
Request tax clearance to reinstate entity

State of Formation TX

Effective SOS Registration Date 12/11/2009

Texas SOS File Number 0801204378

Registered Agent Name Not on file

Registered Office Street Address

<https://mycpa.cpa.state.tx.us/coa/coaSearchBtn#>

1/1

Exhibit B



Capture Date: 02/04/2013 Sequence #: 6582906864

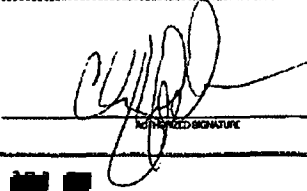
JENKINS & JENKINS P.C./CLJ		CNB Citizens 88-162-1119	3562
		12/27/2012	
PAY TO THE ORDER OF	KMA Capital	\$ 170,000.00	
One Hundred Seventy Thousand and 00/100			DOLLARS
KMA Capital			
MEMO	Attorneys fees & expense: Shrodric McGee		

PAY TO THE ORDER OF
BANK OF AMERICA, NA
FOR DEPOSIT ONLY
KMA CAPITAL, INC.

No Electronic Endorsements Found



Capture Date: 02/04/2013 Sequence #: 6582906865

JENKINS & JENKINS P.C./CLJ 1829		CNB Citizens Bank 1829 88-162-1119	3530
PAY TO THE ORDER OF KMA Capital		12/14/2012	DOLLARS
Ninety Thousand Six Hundred Twenty-Three and 52/100		\$ 90,623.52	
MEMO Attorneys fees & expense, Andrea Smith			

PAY TO THE ORDER OF
BANK OF AMERICA, NA
FOR DEPOSIT ONLY
KMA CAPITAL, INC.

No Electronic Endorsements Found

Tab 12

PR-16-04115-1

ESTATE OF § **IN THE PROBATE COURT**
BRIAN U. LONCAR § **OF**
DECEASED § **DALLAS COUNTY, TEXAS**

**NOTICE OF INTENT TO SERVE SUBPOENA DUCES TECUM
ON NON-PARTY BANK OF AMERICA.**

Please take notice that, as required by the TEXAS FINANCE CODE section 59.006(b), no earlier than ten (10) days after the service hereof, the subpoena duces tecum attached hereto will be served upon the following non-party:

**Bank of America
c/o its registered agent,
CT Corporation System,
1999 Bryan St. Suite 900,
Dallas Texas 75201-3136.**

The subpoena duces tecum, as authorized under Texas Rule of Civil Procedure 205, shall be served on Bank of America, c/o its registered agent, CT Corporation System, 1999 Bryan St. Suite 900, Dallas Texas 75201-3136, commanding that it produce copies of designated documents in the possession, custody, or control of said witness to counsel for the parties as specified in the subpoena attached hereto as Exhibit 1. The requested documents will be used in the aforementioned cause as evidence upon trial.

Date: January 16, 2018

Respectfully submitted,

GARDERE WYNNE SEWELL LLP

By: /s/ Carrie B. Hoffman

Carrie B. Hoffman

Texas Bar No. 00787701

Keith V. Novick

Texas Bar No. 15121100

Christopher M. Deskin

State Bar No. 24050510

2021 McKinney Ave., Ste. 1600

Dallas, Texas 75201

Telephone: (214) 999-4262

Facsimile: (214) 999-3262

choffman@gardere.com

knovick@gardere.com

cdeskin@gardere.com

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served on all counsel of record: The undersigned also certifies that KMA Capital, Inc. and Bank of America were also served with the notice, including a notice of customer rights, and the document requests as required by Texas Finance Code 59.006(c)(2) and 59.006(e).

/s/ Carrie B. Hoffman

Carrie B. Hoffman

EXHIBIT 1

**SUBPOENA FOR THE PRODUCTION OF DOCUMENTS TO
NON-PARTY BANK OF AMERICA.**

THE STATE OF TEXAS

TO ANY SHERIFF OR CONSTABLE OF THE STATE OF TEXAS OR OTHER PERSON AUTHORIZED TO SERVE AND EXECUTE SUBPOENAS AS PROVIDED IN RULES 176 AND 205 OF THE TEXAS RULES OF CIVIL PROCEDURE, GREETINGS:

YOU ARE HEREBY COMMANDED TO SUMMON:

**BANK OF AMERICA.
c/o its registered agent,
CT Corporation System,
1999 Bryan St. Suite 900,
Dallas Texas 75201-3136.**

to produce and permit inspection and copying of the documents or tangible things within the scope of discovery and within your possession, custody or control that are identified on **Exhibit "A"** on or before **Wednesday, February 7, 2018 at 9:00 a.m.** at the offices of Gardere Wynne Sewell LLP, 2021 McKinney Avenue, Suite 1600, Dallas, Texas 75201, Attn.: Carrie Hoffman.

DUTIES OF PERSONS SERVED WITH SUBPOENA

You are advised that under Texas Rule of Civil Procedure 176, a person served with a discovery subpoena has certain rights and obligations. Rule 176.6 provides:

(a) *Compliance required.* Except as provided in this subdivision, a person served with a subpoena must comply with the command stated therein unless discharged by the court or by the party summoning such witness. A person commanded to appear and give testimony must remain at the place of deposition, hearing, or trial from day to day until discharged by the court or by the party summoning the witness.

(b) *Organizations.* If a subpoena commanding testimony is directed to a corporation, partnership, association, governmental agency, or other organization, and the matters on which examination is requested are described with reasonable particularity, the organization must designate one or more persons to testify on its behalf as to matters known or reasonably available to the organization.

(c) *Production of documents or tangible things.* A person commanded to produce documents or tangible things need not appear in person at the time and place of production unless the person is also commanded to attend and give testimony, either in the same subpoena or a separate one. A person must produce documents as they are kept in the usual course of business or must organize and label them to correspond with the categories in the demand. A person may withhold material or information claimed to be privileged but must comply with Rule 193.3. A nonparty's production of a document authenticates the document for use against the nonparty to the same extent as a party's production of a document is authenticated for use

against the party under Rule 193.7.

(d) *Objections.* A person commanded to produce and permit inspection and copying of designated documents and things may serve on the party requesting issuance of the subpoena—before the time specified for compliance—written objections to producing any or all of the designated materials. A person need not comply with the part of a subpoena to which objection is made as provided in this paragraph unless ordered to do so by the court. The party requesting the subpoena may move for such an order at any time after an objection is made.

(e) *Protective orders.* A person commanded to appear at a deposition, hearing, or trial, or to produce and permit inspection and copying of designated documents and things may move for a protective order under Rule 192.6(b)—before the time specified for compliance—either in the court in which the action is pending or in a district court in the county where the subpoena was served. The person must serve the motion on all parties in accordance with Rule 21a. A person need not comply with the part of a subpoena from which protection is sought under this paragraph unless ordered to do so by the court. The party requesting the subpoena may seek such an order at any time after the motion for protection is filed.

WARNING

FAILURE TO OBEY THIS SUBPOENA MAY BE TREATED AS A CONTEMPT OF COURT. TEXAS RULE OF CIVIL PROCEDURE 176.8(a) PROVIDES AS FOLLOWS:

- (a) *Contempt.* Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both.

This subpoena is issued at the request of Petitioner Clay Jenkins on Behalf of the Estate of Brian U. Loncar (“Petitioner”) whose attorneys of record include Keith Novik, Carrie Hoffman, and Chris Deskin.

HEREIN FAIL NOT, but of this writ make due return showing how you have executed the same.

GIVEN UNDER MY HAND, AS AN OFFICER OF THE COURT, this 16th day of January 2018.

Issued by:

By: /s/ Carrie B. Hoffman

Carrie B. Hoffman

Texas Bar No. 00787701

Keith V. Novick

Texas Bar No. 15121100

Christopher M. Deskin

State Bar No. 24050510

2021 McKinney Ave., Ste. 1600

Dallas, Texas 75201

Telephone: (214) 999-4262

Facsimile: (214) 999-3262

choffman@gardere.com

knovick@gardere.com

cdeskin@gardere.com

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all counsel of record and the below named entities in accordance with the Texas Rules of Civil Procedure and the Texas Finance Code on this the 16th day of January, 2018 at the following:

Via Certified Mail, Return Receipt Requested and Regular Mail:

**Bank of America
c/o its registered agent,
CT Corporation System,
1999 Bryan St. Suite 900,
Dallas Texas 75201-3136.**

***KMA Capital, Inc.
Service of Process
Secretary of State
James E. Rudder Building
1019 Brazos, Room 105
Austin, Texas 78701**

*The Texas Secretary of State involuntarily terminated KMA Capital, Inc. for failure to maintain a registered agent in Texas. Service is therefore proper on the Texas Secretary of State.

/s/ Carrie Hoffman _____
Carrie B. Hoffman

OFFICER'S RETURN

Came to hand the ____ day of _____, 2018, at _____ o'clock ____m., and executed the ____ day of _____, 2018, at _____ o'clock ____m., by delivering a true copy of this subpoena to Bank of America, c/o c/o its registered agent, CT Corporation System, At _____(location of service)), in _____ County, Texas, and tendering the witness the sum of ten dollars (\$10.00).

I, _____, was unable to deliver a copy of this subpoena to the **Custodian of Records for** _____ for the following reasons:
_____.

By: _____

(Print Name)

(Print Address)

(Telephone Number)

**ACCEPTANCE OF SERVICE OF SUBPOENA BY
WITNESS UNDER TEXAS RULE OF CIVIL PROCEDURE 176**

I, the undersigned witness named in the Subpoena, acknowledge receipt of a copy thereof, and hereby accept service of the attached Subpoena.

SIGNATURE OF WITNESS

DATE

FEE FOR SERVICE OF SUBPOENA: \$_____

EXHIBIT A

DEFINITIONS AND INSTRUCTIONS

1. “Documents” is used in its broadest sense and means and includes all written, printed, typed, recorded, or graphic matter of any kind and description, both originals and copies, and all attachments and appendices thereto. Without limiting the foregoing, “document(s)” includes all agreements, contracts, communications, correspondence (including emails and their attachments, text messages, SMS messages, and MMS messages), letters, telegrams, telexes, memoranda, records, reports, books, summaries, and any other records or telephone conversations, summary or other records of personal conversations, notes or other records of negotiations, diaries, diary entries, calendars, appointment books, time records instructions, work assignments, visitors records, worksheets, work papers, drafts, graphs, charts, accounts, notes, notices, marginal notations, notebooks, records, files, lists, recommendations, printouts, compilations, tabulations, folders or similar containers, studies, surveys, transcripts of conversations, tape or disc recordings, sound recordings, video recordings, film, tape, photographs, data compilation from which information can be obtained (including matter used in data processing) and other printed, written, handwritten, typewritten, recorded, stenographic, computer generated, computed stored, or electronically stored information, however and by whomever produced, prepared, reproduced, disseminated or made. Any email produced must be produced in its entirety, including the full text of any attachment. The term “document(s)” expressly includes all digital files, databases, emails, and other documents maintained in digital and/or electronic form.
2. Unless otherwise indicated, the use in these Requests of the name of any party, person, or business organization shall include all agents, employees, shareholders, owners, officers, directors, joint venturers, representatives, general partners, limited partners, predecessors, successors, heirs, assigns, attorneys, affiliates, divisions, subsidiaries, parent corporations and all other persons acting or purporting to act through, on behalf of, at the direction of, or under the control of the subject party, person, or business organization.
3. “And” and “or” shall be construed either disjunctively or conjunctively to bring within the scope of the request all information and responses within the general scope of the request.
4. “KMA Capital” means, both individually and collectively, any partnership, company or business organization known or believed to be owned by, controlled by, or doing business as KMA Capital, Inc., including but not limited to 1st Health Clinic.
5. “KMA Account(s)” means all bank accounts held at Bank of America by KMA Capital, as described in paragraph 2 and 3 of the Definitions and Instructions, including but not limited to Bank of America Account Number [REDACTED] which utilized the following mailing address for at least some period of time, including August 2013: KMA Capital Inc. DBA 1st Health Clinic, General Account, STE 195, 444 N. Northwest HWY, Park Ridge, IL 60068-3296.
6. “Toudouze” means Toby Toudouze described in paragraphs 2 and 3 of the Definitions and Instructions, including his criminal and civil attorneys.

7. “Press” means Michael Press and all persons and entities described in paragraphs 2 and 3 of the Definitions and Instructions.
8. “The Firm” shall mean Brian Loncar, P.C., located at 424 S. Cesar Chavez Blvd., Dallas, Texas 75201.
9. “Communications” means and includes any transmittal or exchange of information between two or more persons, whether orally or in writing, including without limitation any conversation by means of letter, note, email, memorandum, telephone, telegraph, telex, telecopies, cables or some other electronic or other medium.
10. “Concerning” means pertain, discuss, refer, indicate, contain, evidence, explain, review, analyze, describe, mention, relate, detail or be in any way logically or factually connected with the referenced topic.
11. “ESI” means information that is electronically, magnetically or optically stored as:
 - a. Digital communications (e.g., e-mail, voicemail, instant messaging, text messages);
 - b. Word processed documents (e.g., Word and WordPerfect);
 - c. Spreadsheets and tables (e.g., Excel and Lotus 123);
 - d. Accounting application data (e.g., Quickbooks, Juris);
 - e. Image and Facsimile files (e.g., .pdf, .tiff, .jpg, .gif);
 - f. Sound recordings (e.g., .wav and .mp3);
 - g. Video and animation (e.g., .avo and .mov);
 - h. Databases (e.g., Access, Oracle SQL Server, SAP);
 - i. Contact and relationship management data (e.g., Outlook, ACT!);
 - j. Calendar and diary application data (e.g., Outlook PST, Yahoo);
 - k. Online access data (e.g., temporary internet files, history, cookies);
 - l. Presentations (e.g., PowerPoint, Corel Presentations);
 - m. Network access and server activity logs;
 - n. Project management application data;
 - o. Computer aided design/drawing files;
 - p. Backup and archival files (e.g., Zip, .gho); and/or
 - q. Web-based e-mail (e.g., Yahoo, MSN, Mac, Gmail).
12. “Information” means information in all forms in which it is stored and communicated, and includes DOCUMENTS and ESI.
13. “Loan” means any extension of credit or advance of money that must or is intended to be repaid.
14. “Person” means and includes natural persons, groups of natural persons acting in a collegial capacity (e.g., a committee or council), corporations, partnerships, associations, joint ventures, and any other incorporated or unincorporated business, governmental, public, social or legal entity. A reference to any person includes, when applicable, its subsidiaries, controlled persons, controlling persons, shareholders, officers, directors, employees, agents, or other persons acting or purporting to act on its behalf.
15. Production of ESI:

- a. Production of electronic or magnetic data responsive to these requests is specifically requested in the form in which it is kept in the ordinary course of business. Specifically, all documents responsive to these request should be produced in electronic or digital format with all metadata intact in the following forms:
 - i. Delimited text files (.txt.), in which the TAB character (ASCII Character code 009) typically separates each field of text; or,
 - ii. Comma separated values text files (.csv), in which the comma character (,) typically separates each field of text.
 - b. To the extent that electronic or magnetic data responsive to these requests exists, which cannot be produced in the format in which it is kept in the ordinary course of business and as set forth in 3.a above, you are instructed to produce it in its native format, along with all metadata, and to convert the items into a format reasonably compatible with and readable by computers running the Windows operating systems and Microsoft Office software. Specifically, image files of such documents should be produced in PDF or TIF format; text data should be produced in ASCII format; any field-based data should be produced in an ASCII delimited text format, identifying the delimiters. You are requested to identify each such document that was converted, the file format from which it was converted, and the program needed to access the file in its native format.
 - c. In the event that the electronic and magnetic data responsive to these requests cannot be converted into formats as described above, you are instructed to make the hard drives containing such information and documents responsive to these requests available for inspection and review.
16. Unless stated otherwise, the relevant time period is January 1, 2010 to present.

II. REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Documents reflecting the identity of all current and former authorized signatories, including but not limited to, signature cards, account applications, and depository agreements, on all KMA Account(s), including but not limited to Bank of America Account Number [REDACTED];
2. Copies of all account statements (including a detailed statement of all deposits and withdrawals) relating to all KMA Account(s), including but not limited to Bank of America Account Number [REDACTED];
3. All Communications by, between or among BOA and KMA Capital. This Request specifically includes but is not limited to Communications with Michael Press and/or Toby Toudouze about opening of the KMA Account(s) including but not limited to Bank of America Account Number [REDACTED] and subsequent transactions;
4. All Communications pertaining to all KMA Account(s) including but not limited to Bank of America Account Number [REDACTED]. This Request specifically includes but is not limited to communications to or from Michael Press or to or from Toby Toudouze.
5. All agreements or contracts pertaining to the the KMA Account(s) including but not limited to Bank of America Account Number [REDACTED];
6. Copies of all checks associated with the KMA Account(s) including but not limited to Bank of America Account Number [REDACTED], including but not limited to checks to or from Frost National Bank Account Number [REDACTED] and checks referencing any of the following words in the Memo: attorney; fee; expense.
7. Cancelled checks and wire transfer Documents pertaining to the KMA Account(s) including but not limited to Bank of America Account Number [REDACTED].

Tab 13

PR-16-04115-1

ESTATE OF	§	IN THE PROBATE COURT
	§	
BRIAN U. LONCAR	§	OF
	§	
DECEASED	§	DALLAS COUNTY, TEXAS

AMENDED NOTICE OF HEARING

PLEASE TAKE NOTICE that Petitioner’s Verified Petition to Take Deposition Before Suit in this matter has been rescheduled for **Wednesday, February 21, 2018 at 10:00 a.m.** before Honorable Brenda Hull Thompson, at 1201 Elm Street, 24th Floor, Suite 2400-A, Dallas, Texas 75270.

Date: January 18, 2018

Respectfully submitted,

GARDERE WYNNE SEWELL LLP

By: */s/ Carrie B. Hoffman*
Carrie B. Hoffman
 Texas Bar No. 00787701
Keith V. Novick
 Texas Bar No. 15121100
Christopher M. Deskin
 State Bar No. 24050510
 2021 McKinney Ave., Ste. 1600
 Dallas, Texas 75201
 Telephone: (214) 999-4262
 Facsimile: (214) 999-3262
choffman@gardere.com
knovick@gardere.com
cdeskin@gardere.com

ATTORNEYS FOR PETITIONER

Copy from re:SearchTX

CERTIFICATE OF SERVICE

Pursuant to Rule 202.3(a), the undersigned hereby certifies that the foregoing document was served on:

Larry Friedman
Friedman & Feiger, LLP
5301 Spring Valley Road, Suite 200
Dallas, Texas 75254
lfriedman@flawoffice.com

/s/ Carrie B. Hoffman

Carrie B .Hoffman

Tab 14

PR-16-04115-1

ESTATE OF § IN THE PROBATE COURT
BRIAN U. LONCAR § OF
DECEASED § DALLAS COUNTY, TEXAS

PETITIONER’S MOTION FOR SUBSTITUTE SERVICE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Petitioner Clay Jenkins on Behalf of the Estate of Brian U. Loncar (“Petitioner”) and files this Motion for Substitute Service (“Motion”) pursuant to Texas Rule of Civil Procedure 106(b) and would show the Court as follows:

I. INTRODUCTION

1. Petitioner is the independent executor for the Estate of Brian U. Loncar (the “Estate”). For five months, the Estate has sought to depose Toby Toudouze (“Mr. Toudouze”) under Texas Rule of Civil Procedure 202 to investigate potential claims it may have against Mr. Toudouze. Such potential claims may have a bearing on the value of the Estate.

2. For five months, Mr. Toudouze has evaded all of Petitioner’s attempts to serve him with the Petition and a copy of the Notice of Hearing. Petitioner has served Mr. Toudouze’s attorney of record with the Petition and Notice of Hearing. Petitioner has also sent these documents directly to Mr. Toudouze via mail and commercial delivery – both of which are methods of service authorized by Texas Rule of Civil Procedure 21a. Petitioner has since made six attempts via a process server to serve Mr. Toudouze in person at his confirmed residence. Exhibit A, Hoffman Affidavit. Petitioner now requests the Court grant the Motion and authorize Petitioner to serve the Amended Petition and Second Amended Notice of Hearing via reasonable substitute service to avoid continual delay in investigating potential claims the Estate may have against Mr. Toudouze.

II. RELEVANT FACTUAL BACKGROUND

3. On September 8, 2017, Petitioner filed the Petition in this Court (the “Petition”). *See Verified Petition to Take Deposition Before Suit to Investigate Potential Claims.* The Petition sought authorization to depose Mr. Toudouze pursuant to Texas Rule of Civil Procedure 202. *Id.* The hearing was originally scheduled for October 26, 2017 at 11:00 a.m. Exhibit A, Hoffman Affidavit.

4. On September 11, 2017, counsel for Petitioner emailed a copy of the Petition to Mr. Toudouze’s attorney of record, Mr. Friedman. *Id.*

5. On October 4, 2017, counsel for Petitioner emailed Mr. Friedman a copy of the Notice of Hearing. *Id.*

6. Despite being Mr. Toudouze’s attorney of record, Mr. Friedman refused to accept service on behalf of his client, yet communicated regularly via email with counsel for Petitioner regarding Petitioner’s desire to investigate potential claims against Mr. Toudouze. *Id.*

7. On October 11, 2017, counsel for Petitioner sent a copy of the Petition and the Notice of Hearing directly to Mr. Toudouze via mail and commercial delivery service. *Id.* Counsel for Petitioner received confirmation from the commercial delivery service that the Petition and Notice of Hearing had successfully been delivered to Mr. Toudouze’s residence. *Id.*

8. The hearing was scheduled for October 31, 2017 at 2:00 p.m. *Id.*

9. On October 30, 2017, Mr. Toudouze, through his counsel, appeared before the Court in a fifteen page brief complaining of ineffective service. He also complained that the Petition was “vague and conclusory” and lacked explanatory facts. Respondent’s Objections and Opposition, p. 15 at ¶¶ 29-30. In this brief, Mr. Toudouze urged the Court that the Petition “should be denied,” and that the Court “must deny the Petitioner’s request” and also requested

the Court “grant any and all further relief at law or equity” to which Mr. Toudouze was entitled. *Id.*, pgs. 14 at ¶¶ 31, 33, and pg. 15; Exhibit A, Hoffman Affidavit.

10. At the hearing on October 31 2017, the Court ordered Petitioner to personally serve Mr. Toudouze with the Petition and Amended Hearing which was set for December 12, 2017. Exhibit A, Hoffman Affidavit.

11. Petitioner hired Ernesto Martin Herrera (“Mr. Herrera”), who is authorized and certified by the Texas Supreme Court under Texas Rule of Civil Procedure 103 to serve process, to serve the Petition and Amended Notice of Hearing on Mr. Toudouze at his residence of 4026 ~~_____~~ Dallas, Texas 75214. *Id.*; Exhibit B, Herrera Affidavit.

12. Petitioner has made all efforts to verify that Mr. Toudouze actually lives at 4026 ~~_____~~ Dallas, Texas 75214. *Id.*; Exhibit A, Hoffman Affidavit.

13. Mr. Herrera has made at least six attempts to personally serve Mr. Toudouze at 4026 ~~_____~~ Dallas, Texas 75214. Exhibit B, Herrera Affidavit.

14. On Friday, November 3, 2017 at 2:50 p.m., Mr. Herrera made his first attempt to serve Mr. Toudouze at 4026 ~~_____~~ Dallas, Texas 75214. *Id.* Mr. Herrera arrived at 4026 ~~_____~~ Dallas, Texas 75214 and knocked at the front door. *Id.* There was no answer at the front door. *Id.* Mr. Herrera left his business card with his information attached to the front door. *Id.*

15. The next day, on Saturday November 4, 2017 at 10:50 a.m., Mr. Herrera made his second attempt to serve Mr. Toudouze at 4026 ~~_____~~ Dallas, Texas 75214. *Id.* He knocked at the front door. *Id.* There was no answer at the front door. *Id.* Mr. Herrera’s business card was no longer attached to the front door. *Id.* Mr. Herrera left his business card with his information attached to the front door. *Id.* There was a vehicle parked in the driveway. *Id.* The

license plate was "CRE8TV." *Id.* Mr. Herrera conducted basic address research using available public records. *Id.* Records show that the owner of the vehicle is Toby E. Toudouze and the car is registered to the same address given for service. *Id.* The Dallas Central Appraisal District's records indicate that the property at 4926 Swiss Avenue is owned by Toby E. Toudouze. *Id.*

16. On November 7, 2017 at 9:12 a.m., Mr. Herrera made his third attempt to serve Mr. Toudouze at 4926 Swiss Avenue Dallas, Texas 75214. *Id.* Mr. Herrera arrived at 4926 Swiss Avenue Dallas, Texas 75214. *Id.* He knocked at the front door. *Id.* There was no answer at the front door. *Id.* Mr. Herrera's business card was no longer attached to the front door. *Id.* Mr. Herrera left his business card attached to the front door. *Id.* He has not received any telephone calls from Mr. Toudouze. *Id.*

17. On November 9, 2017 at 4:58 p.m. Mr. Herrera made his fourth attempt to serve Mr. Toudouze at 4926 Swiss Avenue Dallas, Texas 75214. *Id.* Mr. Herrera arrived at 4926 Swiss Avenue Dallas, Texas 75214. He knocked at the front door. *Id.* A Caucasian female opened the front door. *Id.* Mr. Herrera stated to her that he was trying to deliver court documents to Toby Toudouze. *Id.* She confirmed that this is the place of abode for Toby Toudouze, but he was out of town at the moment. *Id.* She stated that Toby Toudouze would not be back until after Thanksgiving. *Id.* She identified herself as Renee Toudouze, wife of Toby Toudouze. *Id.* She stated that she has Mr. Herrera's business card. *Id.*

18. On Saturday, November 18, 2017 at 9:38 a.m. Mr. Herrera made his fifth attempt to serve Mr. Toudouze at 4926 Swiss Avenue Dallas, Texas 75214. *Id.* Mr. Herrera arrived at 4926 Swiss Avenue Dallas, Texas 75214. *Id.* He knocked at the front door. *Id.* Renee Toudouze opened the front door. *Id.* She stated that the defendant was still out of town and won't be back

until after Thanksgiving. *Id.* Mr. Herrera left his business card with her, asking her to please give it to her husband Toby Toudouze. *Id.*

19. On November 25, 2017, at 7:25 p.m., Mr. Herrera made his sixth attempt to serve Mr. Toudouze at 4926 Spring A ██████████ Dallas, Texas 75214. *Id.* Mr. Herrera knocked at the front door. *Id.* Renee opened the front door. *Id.* Mr. Herrera stated that he was back trying to deliver court documents to Toby Toudouze because it was a few days after Thanksgiving. *Id.* She stated that she had just gotten home from out of town, but her husband Toby Toudouze did not make it back from out of town. *Id.* Mr. Herrera has not received any telephone calls from Mr. Toudouze. *Id.*

20. During the weeks leading up to the rescheduled hearing, counsel for Mr. Toudouze communicated regularly with counsel for Petitioner via email. Exhibit A, Hoffman Affidavit. Counsel for Petitioner sought to arrange a meeting with Mr. Toudouze and his counsel whereby Mr. Toudouze would answer questions relating to Petitioner's potential claims. *Id.* Counsel for Petitioner and counsel for Mr. Toudouze eventually agreed to a meeting on December 9, 2017 at the office of Gardere Wynne Sewell. *Id.* Just ninety (90) minutes before the meeting, however, counsel for Mr. Toudouze informed counsel for Petitioner that Mr. Toudouze would not attend the meeting. *Id.*

21. At the hearing on December 11, 2017, Mr. Toudouze appeared for a second time before the Court through his counsel, claiming service was ineffective and seeking relief on the merits. *Id.* Specifically, Mr. Toudouze argued that "Petitioner does not have a valid reason to depose Mr. Toudouze before suit has been filed." Respondent's Reply Brief, p. 5 at ¶ 10. Mr. Toudouze further prayed that the Court deny the Petition and prayed for "all such other and further relief, in law or in equity, to which [Mr. Toudouze] may be entitled. *Id.*

22. On December 12, 2017, at the hearing, the Court held that service was ineffective. Exhibit A, Hoffman Affidavit. The Court instructed the attorneys of record to come to an agreement about service. *Id.*

23. On December 14, 2017, counsel for Petitioner emailed counsel for Mr. Toudouze asking about an agreed method and manner of service. *Id.* Counsel for Mr Toudouze has not provided a substantive response other than to threaten to seek a Rule 202 petition against Petitioner. *Id.*

24. In December, 2017, counsel for Petitioner hired a private investigator to assist in locating Mr. Toudouze to personally serve him. *Id.* Despite watching Mr. Toudouze's residence, Petitioner has not been able to serve Mr. Toudouze.

25. Petitioner has amended the Petition to address Mr. Friedman's complaints that the Petition was vague, conclusory, and lacked explanatory facts. *Id.* Petitioner now seeks to serve Mr. Toudouze with its Amended 202 Petition to Take Deposition Before Suit to Investigate Potential Claims (the "Amended Petition") and Second Amended Notice of Hearing via substitute service. *Id.*

III. ARGUMENTS AD AUTHORITIES

Texas Rule of Civil Procedure 202 governs the process for seeking a pre-suit deposition. Rule 202.3 provides that service of the petition and notice of hearing must be made "in accordance with Rule 21a on all persons petitioner seeks to depose..." Tex. R. Civ. P. 202.3. Rule 21a provides that "every pleading, plea, motion, or other form of request required to be served under Rule 21 ... may be served by delivering a copy to the party to be served, or the party's ... attorney of record[.]" *Ordonez v. Solorio*, 480 S.W.3d 56, 62 (Tex. App. El Paso 2015) (quoting Tex. R. Civ. P. 21a(a)); *see also* Tex. R. Civ. P. 8 (requiring that all

communications be made through the attorney in charge after that attorney has made an appearance on behalf of the litigant). An attorney becomes an “attorney of record” of a party by filing pleadings or appearing in open court on a party's behalf. *Ordonez*, 480 at 62. Rule 21a also provides that documents not electronically filed “may be served in person, by mail, by commercial delivery service, by fax, by email, or by any such other manner as the court in its discretion may direct.” Tex. R. Civ. P. 21a(a)(2).¹

Moreover, a party waives any objection regarding timely notice of a hearing where such party participates in the hearing. *Wyatt v. Furr's Supermarkets, Inc.*, 908 S.W.2d 266, 270 (Tex. App.—El Paso 1995), *writ denied* (Apr. 4, 1996) (“Since appellant participated in the hearing and failed to apprise the trial court of her complaint, appellant has waived any objection to lack of notice, and cannot raise it for the first time on appeal.”); *see also, Houston Crushed Concrete, Inc. v. Concrete Recycling Corp.*, 879 S.W.2d 258, 260 (Tex. App. Houston [14th Dist.] 1994) (holding party waived any requirement of personal service by appearing in court to contest timeliness of counterclaim and lack of service.).

A. Petitioner Served Mr. Toudouze Three Times in Accordance with Rule 202 and 21a.

Mr. Friedman has filed three pleadings² and appeared in open court twice³ on behalf of Mr. Toudouze in this matter. Mr. Friedman is Mr. Toudouze’s attorney a record – a fact Mr. Friedman has openly represented to the Court and to Petitioner’s knowledge, has never disputed.

¹ For documents that are to be filed electronically, the document may be served electronically if the email address of the party or attorney to be served is on file with the electronic filing manager. Here, Mr. Toudouze’s attorney representing him on this matter has refused to accept service on behalf of Mr. Toudouze. Accordingly, service on Mr. Toudouze’s counsel under 21a(a)(1) is not possible as he is actively evading service. The Rule provides that where this service is not possible, service under subsection (2) is permissible. Tex. R. Civ. P. 21a(a)(1).

² Respondent’s Objections and Opposition to Clay Jenkins’ Verified Petition to Take Deposition Before Suit to Investigate Potential Claims (filed October 30, 2017), Respondent’s Reply Brief Regarding Petitioner’s Verified Petition to Take Deposition Before Suit (filed December 11, 2017), Respondent’s Amended Reply Brief Regarding Petitioner’s Verified Petition to Take Deposition Before Suit (filed December 12, 2017).

³ October 31, 2017 Hearing; December 12, 2017 Hearing.

Accordingly, Texas Rules of Civil Procedure 8 and 21a dictate that service on Mr. Friedman is effective service on Mr. Toudouze.

In accordance with Rules 202 and 21a, Petitioner served Mr. Toudouze's via his attorney of record. Exhibits 2, 3. In light of Mr. Friedman's refusal to accept service as contemplated by the Texas Rules of Civil Procedure on behalf of Mr. Toudouze, Petitioners also served Mr. Toudouze directly on October 11, 2017. Exhibit 4, Letter to Toudouze. Petitioners sent the Petition and Notice of Hearing to Mr. Toudouze by two manners authorized for service by Rule 202 and 21a: by mail and commercial delivery service. *Id.* Mr. Toudouze was therefore served a total of three times with the Petition and Notice of hearing in manners authorized by Rule 202 and 21a. More importantly, however, Mr. Toudouze waived any objection to notice of the hearing from lack of service by appearing at and participating in the hearing through his attorney of record.

B. Petitioner Complied with the Court's Instructions to Personally Serve Mr. Toudouze.

At the October 31, 2017 hearing, the Court instructed Petitioner to serve Mr. Toudouze in person. To comply, Petitioners hired a professional process server who made six attempts over the course of approximately three weeks to serve Mr. Toudouze at his known place of abode: [REDACTED] Dallas, Texas 75214. Exhibit A, Hoffman Affidavit. Petitioner's process server spoke three times to a woman at the [REDACTED] address who identified herself as Mr. Toudouze's wife and confirmed that [REDACTED] Dallas Texas 75214 is, in fact, Mr. Toudouze's residence. *Id.* Despite these diligent and numerous attempts spanning various days of the week and different times of the day, Mr. Toudouze effectively evaded service time and time

again. Indeed, contrary to Mr. Toudouze's assertion that Petitioner "ignored"⁴ the Court's instructions to personally serve Mr. Toudouze, Petitioner has gone to extensive lengths to comply with the Court's instructions. It is only Mr. Toudouze's evasive and uncooperative tactics that has prevented Petitioner from fully complying.

C. The Court Should Authorize Substitute Service on Mr. Toudouze as Authorized by Rules 106 and 21a.

Texas Rule of Civil Procedure 106 empowers the Court to authorize a substitute manner of service where service has been attempted via personal service but has not been successful. Tex. R. Civ. P. 106(b). Personal service does not have to be attempted at multiple locations before a court may authorize substituted service. *See, James v. Comm'n for Lawyer Discipline*, 310 S.W.3d 586, 590 (Tex. App.—Dallas 2010) (rejecting arguments that service was ineffective where process server's affidavit describe four unsuccessful attempts to effect personal service over two months at the subject's office). Specifically, the Court may authorize substitute service:

- 1) by leaving a true copy of the citation, with a copy of the petition attached, with anyone over sixteen years of age at the location specified in such affidavit, or
- 2) in any other manner that the affidavit or other evidence before the court shows will be reasonably effective to give the defendant notice of the suit.

Tex. R. Civ. P. 106(b); *see also Solis v. State*, No. 2-05-319-CV, 2006 WL 1791714, at *1 (Tex. App.—Fort Worth June 29, 2006) (reversing and remanding dismissal of petition for pre-suit deposition for want of service where hearing was never set so service rule was never activated.).

Despite serving Mr. Toudouze's counsel of record in this matter and making numerous, targeted attempts to serve Mr. Toudouze in person, Mr. Toudouze has effectively evaded service

⁴ In his Reply Brief filed one day before the December 12, 2017 hearing, Mr. Toudouze throws mud at Petitioner, claiming that Petitioner's argument that Mr. Toudouze had waived service somehow amounted to "ignor[ing] the Court's explicit instructions" to personally serve Mr. Toudouze. Respondent's Reply Brief, p. 3 at ¶ 5. On the contrary, in direct obedience of the Court's instructions, Petitioner hired a private investigator and professional process server who made at least six attempts to personally serve Mr. Toudouze. Mr. Toudouze effectively evaded every single attempt.

in person. These tactics have resulted in **months** of unnecessary and unreasonable delay in the Estate's attempt to investigate its potential claims against Mr. Toudouze. The Court should therefore authorize substitute service on Mr. Toudouze according to the following, which is supported by the process server's affidavit:

1. By leaving a true copy of the Amended Petition and Notice of Hearing with anyone over sixteen years of age at [REDACTED] [REDACTED] [REDACTED] Dallas Texas 75214; or
2. By affixing a copy of the Amended Petition and Notice of Hearing enclosed in an envelope to the front door of [REDACTED] [REDACTED] [REDACTED] Dallas Texas 75214.

Furthermore, as discussed above, the Court should order that Petitioner may serve Mr. Toudouze through electronic service on Mr. Toudouze's attorney of record, as authorized and required by Texas Rule of Civil Procedure 21a. These manners of service will be reasonably effective to give Mr. Toudouze notice of the Petition and hearing.

C. CONCLUSION

Petitioner has made numerous, diligent attempts to properly serve Mr. Toudouze with the petition and notice of hearing to no avail. Petitioner seeks to avoid continual delays in moving forward with its desire to investigate potential claims against Mr. Toudouze. Accordingly, the Court should authorize Petitioner to serve Mr. Toudouze by all three substitute service methods.

Dated: January 22, 2018

Respectfully submitted,

GARDERE WYNNE SEWELL LLP

By: /s/ Carrie B. Hoffman

Carrie B. Hoffman

Texas Bar No. 00787701

Keith V. Novick

Texas Bar No. 15121100

Christopher M. Deskin

State Bar No. 24050510

2021 McKinney Ave., Ste. 1600

Dallas, Texas 75201

Telephone: (214) 999-4262

Facsimile: (214) 999-3262

choffman@gardere.com

knovick@gardere.com

cdeskin@gardere.com

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served on all counsel of record in compliance with the Texas Rules of Civil Procedure.

/s/ Carrie B. Hoffman

Carrie B. Hoffman

ESTATE OF
BRIAN U. LONCAR
DECEASED

PR-16-04115-1

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IN THE PROBATE COURT
OF
DALLAS COUNTY, TEXAS

AFFIDAVIT OF CARRIE B. HOFFMAN

Carrie B. Hoffman, being first duly sworn, sates as follows:

1. I am an attorney with Gardere Wynne Sewell LLP, counsel for Clay Jenkins, independent executor of the Estate of Brian U. Loncar (the "Estate"). I submit this Affidavit in support of Petitioner's Motion for Substitute Service.

2. I am admitted to the practice of the State of Texas. I am a member in good standing of the State Bar of Texas.

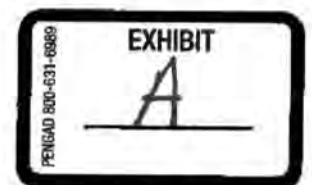
3. On September 8, 2017, Petitioner filed the Petition in this Court (the "Petition"). *See Verified Petition to Take Deposition Before Suit to Investigate Potential Claims.* The Petition sought authorization to depose Mr. Toudouze pursuant to Texas Rule of Civil Procedure 202. The hearing was originally scheduled for October 26, 2017 at 11:00 a.m.

4. On September 11, 2017, I emailed a copy of the Petition to Mr. Toudouze's attorney of record, Mr. Friedman. Exhibit 1, Email to Friedman Transmitting Petition.

5. On October 4, 2017, I emailed Mr. Friedman a copy of the Notice of Hearing. Exhibit 2, Email to Friedman Transmitting Notice of Hearing.

6. Despite being Mr. Toudouze's attorney of record in this matter, Mr. Friedman refused to accept service on behalf of his client, yet communicated regularly via email with me regarding Petitioner's desire to investigate potential claims against Mr. Toudouze.

7. On October 11, 2017, I sent a copy of the Petition and Notice of Hearing directly to Mr. Toudouze via mail and commercial delivery service. Exhibit 3, Letter to Toudouze. I



received confirmation from the commercial delivery service that the Petition and Notice of Hearing had successfully been delivered to Mr. Toudouze's residence. Exhibit 4.

8. The hearing was scheduled for October 31, 2017 at 2:00 p.m.

9. At the hearing on October 30, 2017, Mr. Toudouze, through his counsel, appeared before the Court in a fifteen page brief complaining of ineffective service. He also complained that the Petition was "vague and conclusory" and lacked explanatory facts. Respondent's Objections and Opposition, p. 15 at ¶¶ 29-30. In this brief, Mr. Toudouze urged the Court that the Petition "should be denied," and that the Court "must deny the Petitioner's request" and also requested the Court "grant any and all further relief at law or equity" to which Mr. Toudouze was entitled. *Id.*, pgs. 14 at ¶¶ 31, 33, and pg. 15.

10. On October 31, 2017, the Court ordered Petitioner to personally serve Mr. Toudouze with the Petition and Amended Notice of Hearing which was set for December 12, 2017.

11. Petitioner hired Ernesto Martin Herrera ("Mr. Herrera"), who I understand is authorized and certified by the Texas Supreme Court under Texas Rule of Civil Procedure 103 to serve process, to serve the Petition and Amended Notice of Hearing on Mr. Toudouze at his residence of [REDACTED] Dallas, Texas 75214.

12. Petitioner has made all efforts to verify that Mr. Toudouze actually lives at [REDACTED] [REDACTED] Dallas, Texas 75214.

13. Mr. Herrera reported to me that he made six attempts to personally serve Mr. Toudouze at [REDACTED] Dallas, Texas 75214.

14. During the weeks leading up to the rescheduled hearing, Mr. Friedman communicated regularly with me via email. I sought to arrange a meeting with Mr. Toudouze

and his counsel whereby Mr. Toudouze would answer questions relating to Petitioner's potential claims. Mr. Friedman eventually agreed to a meeting on December 9, 2017 at my law firm's offices. Just ninety (90) minutes before the meeting, however, Mr. Friedman informed me via email that Mr. Toudouze would not attend the meeting.

15. On December 11, 2017, Mr. Toudouze appeared for a second time before the Court through his counsel of record Mr. Friedman, claiming service was ineffective and seeking relief on the merits. Specifically, Mr. Toudouze argued that "Petitioner does not have a valid reason to depose Mr. Toudouze before suit has been filed." Respondent's Reply Brief, p. 5 at ¶ 10. Mr. Toudouze further prayed that the Court deny the Petition and prayed for "all such other and further relief, in law or in equity, to which [Mr. Toudouze] may be entitled. *Id.*

16. On December 12, 2017, at the hearing, the Court held that service was ineffective. The Court instructed the attorneys of record to come to an agreement about service.

17. On December 14, 2017, I emailed Mr. Friedman asking about an agreed method and manner of service. Exhibit 5. Mr. Friedman has not responded, other than to threaten a Rule 202 deposition of Petitioner. Exhibit 6.

18. In December 2017, I hired a private investigator to assist in locating Mr. Toudouze to personally serve him. Despite making every effort to locate Mr. Toudouze we have been unable to serve him.

19. Petitioner has amended the Petition to address Mr. Friedman's complaints that the Petition was vague, conclusory, and lacked explanatory facts. *Id.* Petitioner now seeks to serve Mr. Toudouze with its Amended 202 Petition to Take Deposition Before Suit to Investigate Potential Claims (the "Amended Petition") and Second Amended Notice of Hearing via substitute service.

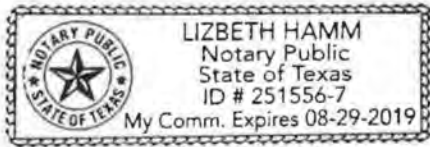
FURTHER AFFIANT SAYETH NOT.




Carrie B. Hoffman

STATE OF TEXAS)
)
COUNTY OF DALLAS)

SUBSCRIBED AND SWORN TO before me, the undersigned authority, this 12th day of January, 2018, to which I place my hand and seal of office.





Notary Public, State of Texas

11016869.1

Jonas, Sandra

From: Hoffman, Carrie <choffman@gardere.com>
Sent: Monday, September 11, 2017 10:40 AM
To: LFriedman@fflawoffice.com
Cc: Novick, Keith; Deskin, Chris
Subject: Deposition of Toby Toudouze
Attachments: Petition to Take Depo FILED.pdf

Larry:

Attached please find a Rule 202 petition to depose Mr. Toudouze. Please advise whether you will agree to the deposition without the need for a hearing. If not, I will set it for a hearing as soon as possible with the appropriate 15 days' notice.

As I indicated when we last discussed this, I am willing to discuss time limits on the deposition.

Please advise.

Carrie B. Hoffman

Partner
t 214.999.4262 f 214.999.3262 m 214.356.2668
2021 McKinney Avenue, Suite 1600, Dallas, Texas 75201

GARDERE

AUSTIN | DALLAS | DENVER | HOUSTON | MEXICO CITY

[LinkedIn](#) | [Twitter](#) | [Bio](#) | [vCard](#)

NOTICE BY GARDERE WYNNE SEWELL LLP

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Unless expressly stated otherwise, nothing contained in this message should be construed as a digital or electronic signature, nor is it intended to reflect an intention to make an agreement by electronic means.

From: Hamm, Liz
Sent: Monday, September 11, 2017 10:07 AM
To: Hoffman, Carrie
Subject: Loncar



Jonas, Sandra

From: Hoffman, Carrie <choffman@gardere.com>
Sent: Wednesday, October 04, 2017 10:39 AM
To: LFriedman@fflawoffice.com; LFPARA (lfpara@fflawoffice.com)
Cc: Deskin, Chris; Novick, Keith
Subject: Notice of Hearing
Attachments: 10764101_1.docx

Larry:

Attached is a notice of hearing on the Rule 202 petition for Mr. Toudouze for 11 am on October 31. Please advise whether you will accept service for Mr. Toudouze. If so, I will remove him from the service list and serve this notice. If not (or I don't hear from you by the close of business on Friday), I will have Mr. Toudouze served.

Again, if you are willing to present Mr. Toudouze without the need for a hearing, please advise.

Carrie B. Hoffman

Partner

t 214.999.4262 f 214.999.3262 m 214.356.2668

2021 McKinney Avenue, Suite 1600, Dallas, Texas 75201

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AUSTIN | DALLAS | DENVER | HOUSTON | MEXICO CITY

[LinkedIn](#) | [Twitter](#) | [Bio](#) | [vCard](#)



GARDERE

October 11, 2017

Via U.S. Mail and FedEx

Toby Toudouze

[REDACTED]
Dallas, Texas 75214

Re: *Estate of Brian U. Loncar Deceased*; PR-16-04115-1

Dear Mr. Toudouze:

Enclosed are the following documents in the captioned case:

- 1) Verified Petition to Take Deposition Before Suit to Investigate Potential Claims
- 2) Notice of Hearing

We are serving you personally because Mr. Friedman has not agreed to accept service of the documents. We are also serving Mr. Friedman as a courtesy.

Sincerely,



Carrie Hoffman

t: 214.999.4262

f: 214.999.3262

choffman@gardere.com

Enclosures

cc: Larry Friedman (via email and fax)



PR-16-04115-1

ESTATE OF § IN THE PROBATE COURT
BRIAN U. LONCAR § OF
DECEASED §
§
§
§
§
§ DALLAS COUNTY, TEXAS

**VERIFIED PETITION TO TAKE DEPOSITION BEFORE SUIT TO INVESTIGATE
POTENTIAL CLAIMS**

Petitioner, Clay Jenkins on Behalf of the Estate of Brian U. Loncar ("Clay Jenkins") asks the Court for permission to take a deposition by oral examination as allowed by Texas Rule of Civil Procedure 202.

I. INTRODUCTION

1. Clay Jenkins is the independent executor for the Estate of Brian U. Loncar (the "Estate").

2. Toby Toudouze ("Mr. Toudouze") is a former employee of the decedent's law firm Brian Loncar, P.C. ("the Firm"), and as an employee, Mr. Toudouze was responsible for overseeing the finances of Brian Loncar, P.C. and all related entities. The Firm is an asset of the Estate.

3. Upon information and belief, Mr. Toudouze resides in Dallas County, Texas at [REDACTED] Dallas TX 75214 and his telephone number is 214-[REDACTED].

4. The Estate seeks to depose Toby Toudouze to investigate potential claims against Mr. Toudouze regarding financial issues arising during his employment with the Firm that may have a bearing on the value of the Estate.

5. This petition is filed in Dallas County, Texas, pursuant to Texas Rule of Civil Procedure 202.2(b)(2), in the county in which the witness resides. This Court has jurisdiction over this matter under Estates Code Section 32.001(b).

II. FACTS

6. The Estate has sought to question Mr. Toudouze about the Firm's finances and decisions regarding the Firm's finances when Mr. Toudouze was employed by the Firm that may have an effect on the value of the Estate.

7. Mr. Toudouze has not cooperated with the Estate's attempts to discuss these issues with him. Instead, Mr. Toudouze has engaged an attorney and expressed concern about a criminal investigation.

III. REQUEST TO DEPOSE

8. The Estate asks the Court to issue an order authorizing him to conduct an oral deposition of Mr. Toudouze.

9. The Estate expects to elicit the following testimony from Mr. Toudouze:

- a. Information regarding the finances of Brian Loncar, P.C. and related entities;
- b. Mr. Toudouze's involvement and knowledge of decisions regarding the finances of Brian Loncar, P.C. and related entities.

10. The likely benefit of allowing the Estate to take the requested deposition to investigate the Estate's potential claims outweighs the burden or expense of the procedure. The testimony of Mr. Toudouze will provide the Estate insight as to whether it should pursue further legal action. This discovery will preserve testimony and/or may lead to the conclusion that there is no need to seek further legal action, thus, saving all potential parties time and money and not waste the Court's resources.

V. HEARING

11. After service of this petition and notice, Rule 202.3(a) requires the Court to hold a hearing on the petition.

VI. PRAYER

12. For these reasons, the Estate asks the Court to set this petition for hearing and, after the hearing, order the deposition of Mr. Toudouze.

DATED: September 8, 2017

Respectfully submitted,

/s/ Carrie B. Hoffman

Carrie B. Hoffman

State Bar No. 00787701

Keith V. Novick

State Bar No. 15121100

Christopher M. Deskin

State Bar No. 24050510

GARDERE WYNNE SEWELL LLP

2021 McKinney Ave.

Dallas, Texas 75201

(214) 999-4262 (Telephone)

(214) 999-3262 (Fax)

choffman@gardere.com

knovick@gardere.com

Cdeskln@gardere.com

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served on the following parties pursuant to the Texas Rules of Civil Procedure on the 11th day of October, 2017.

Larry Friedman
Friedman & Feiger, LLP
5301 Spring Valley Road, Suite 200,
Dallas, Texas 75254
lfriedman@fflawoffice.com

Toby Toudouze
[REDACTED]
Dallas, Texas 75214


Carrie B. Hoffman

VERIFICATION

STATE OF TEXAS

§

DALLAS COUNTY

§

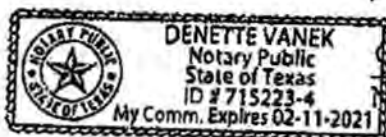
§

Before me, the undersigned notary, on this day personally appeared Clay Jenkins, a person whose identity is known to me. After I administered an oath to him, upon his oath he said he read the foregoing Verified Petition to Take Deposition Before Suit and that the facts stated in paragraphs 4 through 9 are within his personal knowledge and are true and correct.



Clay Jenkins

SIGNED before me on September 8th, 2017.





Notary Public in and for The State of Texas

My commission expires on: _____

PR-16-04115-1

ESTATE OF § IN THE PROBATE COURT
BRIAN U. LONCAR § OF
DECEASED § DALLAS COUNTY, TEXAS

NOTICE OF HEARING

PLEASE TAKE NOTICE that Petitioner's Verified Petition to Take Deposition Before Suit in this matter has been scheduled for **Tuesday, October 31, 2017 at 11:00 a.m.** before Honorable Brenda Hull Thompson, at 1201 Elm Street, 24th Floor, Suite 2400-A, Dallas, Texas 75270.

Date: October 4, 2017

Respectfully submitted,

GARDERE WYNNE SEWELL LLP

By: */s/ Carrie B. Hoffman*

Carrie B. Hoffman

Texas Bar No. 00787701

Keith V. Novick

Texas Bar No. 15121100

Christopher M. Deskin

State Bar No. 24050510

2021 McKinney Ave., Ste. 1600

Dallas, Texas 75201

Telephone: (214) 999-4262

Facsimile: (214) 999-3262

choffman@gardere.com

knovick@gardere.com

cdeskin@gardere.com

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served on the following parties pursuant to the Texas Rules of Civil Procedure on the 11th day of October, 2017.

Larry Friedman
Friedman & Feiger, LLP
5301 Spring Valley Road, Suite 200
Dallas, Texas 75254
lfriedman@fflawoffice.com

Toby Toudouze
[REDACTED]
Dallas, Texas 75214


Carrie B. Hoffman

Hamm, Liz

From: Hernandez, Courtney
Sent: Thursday, October 12, 2017 9:56 AM
To: Hamm, Liz
Subject: FW: FedEx Shipment 770476168239 Delivered - Loncar

-----Original Message-----

From: TrackingUpdates@fedex.com [<mailto:TrackingUpdates@fedex.com>]
Sent: Thursday, October 12, 2017 9:55 AM
To: Hernandez, Courtney
Subject: FedEx Shipment 770476168239 Delivered

This tracking update has been requested by:

Company Name: Gardere Wynne Sewell LLP
Name: Carrie Hoffman
E-mail: chernandez@gardere.com

Our records indicate that the following shipment has been delivered:

Reference: 143709.000002
Ship date: Oct 11, 2017
Signed for by: Signature not required
Delivery location: DALLAS, TX
Delivered to: Residence
Delivery date: Thu, 10/12/2017 9:52 am
Service type: FedEx Priority Overnight
Packaging type: FedEx Envelope
Number of pieces: 1
Weight: 0.50 lb.
Special handling/Services: Deliver Weekday
Residential Delivery
Standard transit: 10/12/2017 by 10:30 am
Tracking number: 770476168239

Shipper Information	Recipient Information
Dallas	DALLAS
TX	TX
US	US

Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 9:54 AM CDT on 10/12/2017.

All weights are estimated.



The shipment is scheduled for delivery on or before the **scheduled delivery** displayed above. FedEx **does not** determine money-back guarantee or **delay claim requests based** on the scheduled delivery. Please **see** the FedEx Service Guide for terms and conditions of service, including the FedEx Money-Back Guarantee, or contact your FedEx customer support representative.

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<https://www.fedex.com/apps/fedextrack/?action=track&tracknumbers=770476168239&language=en&opco=FX&clientype=lvother>

Standard transit is the date and time the package is scheduled to be delivered by, based on the selected service, destination and ship date. Limitations and exceptions may apply. Please see the FedEx Service Guide for terms and conditions of service, including the FedEx Money-Back Guarantee, or contact your FedEx Customer Support representative.

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Thank you for your business.

Jonas, Sandra

From: Hoffman, Carrie <choffman@gardere.com>
Sent: Thursday, December 14, 2017 2:42 PM
To: Larry Friedman
Cc: Anthony Lyons; Deskin, Chris; Novick, Keith
Subject: RE: [Toudouze] Loncar Estate

Larry:

While I see no benefit to responding point by point to these emails that you send, please understand that I do disagree with your characterization of the facts set forth below. I simply see no benefit to my client in continuing to disagree over the facts in this forum.

I ask that we reach an agreement on the issues of service and the deposition. The judge certainly asked us to try to work out the issues of service and the Estate's request for a deposition. If you will tell me a time and location, I am happy to serve Mr. Toudouze at a convenient time and place. If not, I will seek other avenues for service.

Thank you for your attention.

Carrie



Jonas, Sandra

From: Larry Friedman <lfriedman@fflawoffice.com>
Sent: Sunday, December 17, 2017 10:58 PM
To: Hoffman, Carrie
Cc: Anthony Lyons; Deskin, Chris; Novick, Keith
Subject: Re: [Toudouze] Loncar Estate

Carrie: let's get to the bottom of all of this. I am going to file a 202 Request to Take Clay Jenkins deposition. Will you accept service for him?

FRIEDMAN & FEIGER
ATTORNEYS AT LAW

Laurence J. Friedman, Esq.
Friedman & Feiger, LLP | 5301 Spring Valley Road, Suite 200, Dallas, Texas 75254
Tel: 972-788-1400 | Fax: 972-788-2667 | lfriedman@fflawoffice.com
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(pr) 787-945-5055 | Toll Free: 1-855-FFLAW60 | Fax: 787-945-5057
www.fflawofficepr.com



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CAUSE NO. PR-16-04115-1

ESTATE OF

BRIAN U. LONCAR

DECEASED

§
§
§
§

IN THE PROBATE COURT

OF

DALLAS COUNTY, TEXAS

AFFIDAVIT IN SUPPORT OF MOTION FOR SUBSTITUTED SERVICE

On this day, before me the undersigned authority, personally appeared Ernesto Martin Herrera, known to me to be the person whose name is subscribed hereto and under oath states:

"My name is Ernesto Martin Herrera. I am over the age of eighteen (18) years, fully competent to testify to the matters stated herein, and am not a party to or interested in the outcome in the above styled and numbered cause. I am authorized and certified by the Texas Supreme Court under T.R.C.P. 103 to serve process. I have personal knowledge of the facts and statements contained in this affidavit and aver that each is true and correct.

It is impractical to secure service of process on Defendant **TOBY TOUDOUZE**; in the above entitled and numbered cause, in person, a true and correct copy of the citation with the date of delivery endorsed and with a copy of the petition attached thereto. Personal service is impractical because said defendant absents himself and thereby evades service of said Citation.

I believe the most reasonable, effective way to give said Defendant actual notice of this suit is to deliver a copy of the CITATION IN PROBATE AND VERIFIED PETITION TO TAKE DEPOSITION BEFORE SUIT TO INVESTIGATE POTENTIAL CLAIMS to anyone over the age of sixteen (16), or by affixing to the front door at the defendant's usual place of Abode, [REDACTED] DALLAS, TX 75214.

I have attempted to personally deliver said citation upon the defendant on the following days and times, at the above-mentioned address, but have been unsuccessful for the following reasons:



11/03/17 2:50 PM – First attempt - I arrived at [REDACTED] Dallas, Texas 75214. I knocked at the front door. There was no answer at the front door. I left my business card with my information attached to the front door.

11/04/17 10:50 AM – Second attempt - I arrived at [REDACTED] Dallas, Texas 75214. I knocked at the front door. There was no answer at the front door. My business card was no longer attached to the front door. I left my business card with my information attached to the front door. There is a vehicle parked in the driveway. The license plate is CRE8TV. I conducted basic address research using available public records. Records show that the owner of the vehicle is Toby E. Toudouze and the car is registered to the same address given for service. Please see exhibit "A". The Dallas Central Appraisal District's records indicate that the property at [REDACTED] is owned by Toby E. Toudouze. Please see exhibit "B". Saturday attempt.

11/07/17 9:12 AM – Third attempt - I arrived at [REDACTED], Dallas, Texas 75214. I knocked at the front door. There was no answer at the front door. My business card was no longer attached to the front door. I left my business card attached to the front door. I have not received any telephone calls from the defendant.

11/09/17 4:58 PM – Fourth attempt - I arrived at [REDACTED] Dallas, Texas 75214. I knocked at the front door. A Caucasian female opened the front door. I stated to her that I was trying to deliver court documents to Toby Toudouze. She confirmed that this is the place of abode for the defendant, but he was out of town at the moment. She stated that the Defendant would not be back until after Thanksgiving. She identified herself as Renee Toudouze, wife of Toby Toudouze. She stated that she has my business card.

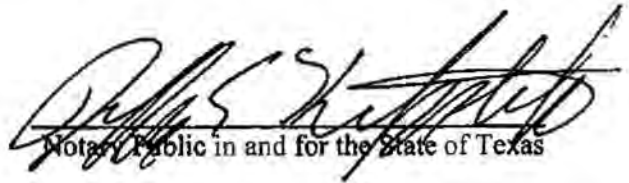
11/18/17 9:38 AM – Fifth attempt - I arrived at [REDACTED] Dallas, Texas 75214. I knocked at the front door. Renee opened the front door. She stated that the defendant was still out of town and won't be back until after Thanksgiving. I left my business card with her, asking her to please give it to her husband Toby Toudouze. Saturday attempt.

11/25/17 7:25 PM – Sixth attempt - I arrived at [REDACTED] Dallas, Texas 75214. I knocked at the front door. Renee opened the front door. I stated to her that I was back trying to deliver court documents to Toby Toudouze because it was a few days after Thanksgiving now. She stated that she had just gotten home from out of town, but her husband Toby Toudouze did not make back from out of town. I have not received any telephone calls from the defendant.



Ernesto Martin Herrera ID# PSC4418 - Exp 11/30/19

Subscribed and Sworn to by **Ernesto Martin Herrera**, Before Me, the undersigned authority, on this 5th day of December, 2017.



Notary Public in and for the State of Texas

12/04/2017
TEXAS DEPARTMENT OF MOTOR VEHICLES
VEHICLE TITLES AND REGISTRATION DIVISION

LIC CRE8TV APR/2018 OLD # CRE8TV APR/2017 EWT 6000 GWT 6000
TEXAS BLACK 1845 C, STKR REG CLASS 25 \$ 79.75 DALLAS CNTY
TITLE 28695342135007663 ISSUED 05/13/2015 ODOMETER 7 REG DT 04/20/2017
YR:2013 MAK:LEXS MODL:LX5 BDY STYL:LL VEH CLS:PASS-TRK SALE PRC: \$84586.94
VIN: JTJHY7AXXD4116978 BODY VIN: N/A COLOR: GRAY
PREV TTL: JUR TX TTL # 05701741414113023 ISSUE 05/31/2013
PREV OWN TOBY E TOUDOUZE, DALLAS, TX
OWNER TOBY E TOUDOUZE, [REDACTED], DALLAS, TX, 75214
RNWL RCP TOBY TOUDOUZE, [REDACTED], DALLAS, TX, 75214
PLATE AGE: 2 LAST ACTIVITY 05/06/2017 IRENEW OFC: 057
REMARKS ACTUAL MILEAGE. DATE OF ASSIGNMENT: 2013/04/30. E-REMINDER & PAPER RENE
WAL NOTICE. SPECIAL PLATE. PAPER TITLE. E-TITLE PRINT DATE: 05/13/2015. DUPLICATE
REG - RECORD 1 OF 2.

TITLE AND REGISTRATION VERIFICATION

EXHIBIT "A"



Residential Account #0000120427000000

Location Owner Legal Desc Value Main Improvement Additional Improvements Land Exemptions
 Estimated Taxes History

Property Location (Current 2018)

Address: [REDACTED]
 Neighborhood: 1DSS08
 Mapsco: 46-B (DALLAS)

DCAD Property Map

2017 Appraisal Notice

Electronic Documents (ENS)

File Homestead Exemption Online



Print Homestead Exemption Form

Owner (Current 2018)

TOUDOUZE TOBY E & ROBIN R
 [REDACTED]
 DALLAS, TEXAS 75214 [REDACTED]

Multi-Owner (Current 2018)

Owner Name	Ownership %
TOUDOUZE TOBY E & ROBIN R	100%

Legal Desc (Current 2018)

- 1: [REDACTED] BLAGE
 - 2: [REDACTED] 43FT LT 12
 - 3: 37FT LT 13
 - 4: INT20080101321 DD03202008 CO-DC
 - 5: 0681 00C 000 1000681 00C
- Deed Transfer Date: 3/28/2008

Value

2017 Certified Values	
Improvement:	\$750,000
Land:	+ \$160,000
Market Value:	= \$910,000
Tax Agent: HEGWOOD GROUP INC	
Revaluation Year:	2017
Previous Revaluation Year:	2016

Main Improvement (Current 2018)

Building Class	25	Construction Type	FRAME	# Baths (Full/Half)	2/ 1
----------------	----	-------------------	-------	---------------------	---------

Year Built	1913	Foundation	PIER AND BEAM	# Kitchens	1
Effective Year Built	1913	Roof Type	GABLE	# Bedrooms	3
Actual Age	105 years	Roof Material	TILE	# Wet Bars	0
Desirability	GOOD	Fence Type	WOOD	# Fireplaces	2
Living Area	4,140 sqft	Ext. Wall Material	STUCCO	Sprinkler (Y/N)	Y
Total Area	4,140 sqft	Basement	PARTIAL	Deck (Y/N)	Y
% Complete	100%	Heating	CENTRAL FULL	Spa (Y/N)	N
# Stories	TWO STORIES	Air Condition	CENTRAL FULL	Pool (Y/N)	Y
Depreciation	45%			Sauna (Y/N)	N

Additional Improvements (Current 2018)

#	Improvement Type	Construction	Floor	Exterior Wall	Area (sqft)
1	GREENHOUSE		UNASSIGNED	UNASSIGNED	228
2	DETACHED GARAGE		UNASSIGNED	FRAME	682
3	DETACHED QUARTERS		UNASSIGNED	UNASSIGNED	682
4	BASEMENT		UNASSIGNED	SOLID MASONRY	351
5	POOL		UNASSIGNED	CC-CONCRETE (POOL)	100

Land (2017 Certified Values)

#	State Code	Zoning	Frontage (ft)	Depth (ft)	Area	Pricing Method	Unit Price	Market Adjustment	Adjusted Price	Ag Land
1	SINGLE FAMILY RESIDENCES	PLANNED DEVELOPMENT DISTRICT	80	241	18,823.0000 SQUARE FEET	FRONT FOOT	\$2,000.00	0%	\$160,000	N

* All Exemption information reflects 2017 Certified Values. *

Exemptions (2017 Certified Values)

	City	School	County and School Equalization	College	Hospital	Special District
Taxing Jurisdiction	DALLAS	DALLAS ISD	DALLAS COUNTY	DALLAS CO COMMUNITY COLLEGE	PARKLAND HOSPITAL	UNASSIGNED
HOMESTEAD EXEMPTION	\$182,000	\$116,000	\$182,000	\$182,000	\$182,000	\$0
Taxable Value	\$728,000	\$794,000	\$728,000	\$728,000	\$728,000	\$0

Exemption Details

Estimated Taxes (2017 Certified Values)

	City	School	County and School Equalization	College	Hospital	Special District
Taxing Jurisdiction	DALLAS	DALLAS ISD	DALLAS COUNTY	DALLAS CO COMMUNITY COLLEGE	PARKLAND HOSPITAL	UNASSIGNED
Tax Rate per \$100	\$0.7804	\$1.282085	\$0.2531	\$0.124238	\$0.2794	N/A
Taxable Value	\$728,000	\$794,000	\$728,000	\$728,000	\$728,000	\$0
Estimated Taxes	\$5,681.31	\$10,179.75	\$1,842.57	\$904.45	\$2,034.03	N/A
Tax Ceiling	N/A	N/A	N/A	N/A	N/A	N/A
Total Estimated Taxes:						\$20,642.12

DO NOT PAY TAXES BASED ON THESE ESTIMATED TAXES. You will receive an **official tax bill** from the appropriate agency when they are prepared. Please note that if there is an Over65 or Disabled Person **Tax Ceiling** displayed above, **it is NOT reflected** in the Total Estimated Taxes calculation provided. Taxes are collected by the agency sending you the **official tax bill**. To see a listing of agencies that collect taxes for your property. [Click Here](#)

The estimated taxes are provided as a courtesy and should not be relied upon in making financial or other decisions. The Dallas Central Appraisal District (DCAD) does not control the tax rate nor the amount of the taxes, as that is the responsibility of each Taxing Jurisdiction. Questions about your taxes should be directed to the appropriate taxing jurisdiction. We cannot assist you in these matters. These tax estimates are calculated by using the most current certified taxable value multiplied by the most current tax rate. It does not take into account other special or unique tax scenarios, like a tax ceiling, etc.. If you wish to calculate taxes yourself, you may use the TaxEstimator to assist you.

History

History

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All Rights Reserved.

Tab 15

PR-16-04115-1

 ORIGINAL

ESTATE OF

BRIAN U. LONCAR

DECEASED

§
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§
§

IN THE PROBATE COURT

OF

DALLAS COUNTY, TEXAS

ORDER GRANTING SUBSTITUTE SERVICE OF PROCESS

The Court has considered Petitioner's Motion for Substitute Service pursuant to Rule 106(b) of the Texas Rules of Civil Procedure. The Court is of the opinion that Petitioner has attempted but failed to personally serve Toby Toudouze at the last known usual place of abode. The Court is also of the opinion that the manner of service ordered herein will be reasonably effective to give Toby Toudouze notice of the Petition and hearing.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Motion for Substitute Service is **GRANTED**.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that personal service of process may be made upon Toby Toudouze either by (1) leaving a true copy of the Petition and Notice of Hearing with anyone over sixteen years of age at [REDACTED], Dallas Texas 75214; or (2) affixing a copy of the Petition and Notice of Hearing enclosed in an envelope to the front door of [REDACTED] Dallas Texas 75214.

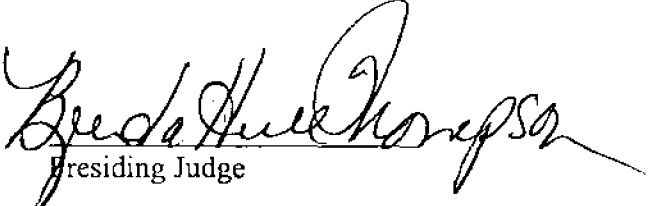
IT IS FURTHER ORDERED, ADJUDGED, and DECREED that personal service may be made upon Toby Toudouze by electronically serving his attorney of record.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that service of process will be deemed complete upon compliance with this Order.

PR - 16 - 04116 - 1
COSS
ORDER - SUBSTITUTE SERVICE
1737600



SIGNED on Jan. 23, 2018,


Residing Judge

Order Granting Motion for Substitute Service

PR 16-04115-7
PAGE 2

Tab 16

CERTIFICATE OF SERVICE

Pursuant to Rule 202.3(a), the undersigned hereby certifies that the foregoing document was served on:

Larry Friedman
Friedman & Feiger, LLP
5301 Spring Valley Road, Suite 200
Dallas, Texas 75254
lfriedman@flawoffice.com

/s/ Carrie B. Hoffman

Carrie B .Hoffman

Tab 17

 ORIGINAL

PR-16-04115-1

ESTATE OF § IN THE PROBATE COURT
BRIAN U. LONCAR § OF
DECEASED § DALLAS COUNTY, TEXAS

ORDER GRANTING SUBSTITUTE SERVICE OF PROCESS

The Court has considered Petitioner's Motion for Substitute Service pursuant to Rule 106(b) of the Texas Rules of Civil Procedure. The Court is of the opinion that Petitioner has attempted but failed to personally serve Toby Toudouze at the last known usual place of abode. The Court is also of the opinion that the manner of service ordered herein will be reasonably effective to give Toby Toudouze notice of the Petition and hearing.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Motion for Substitute Service is **GRANTED**.

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IT IS FURTHER ORDERED, ADJUDGED, and DECREED that personal service may be made upon Toby Toudouze by electronically serving his attorney of record.

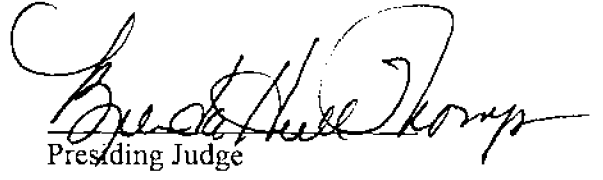
IT IS FURTHER ORDERED, ADJUDGED, and DECREED that service of process will be deemed complete upon compliance with this Order.

PR-16-04115-1
CLASS
ORDER - SUBSTITUTE SERVICE
1/4/16



SIGNED on

1/31/18


Presiding Judge

Tab 18

PR-16-04115-1

ESTATE OF

BRIAN U. LONCAR

DECEASED

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IN THE PROBATE COURT

OF

DALLAS COUNTY, TEXAS

**RESPONDENT'S AMENDED REPLY BRIEF REGARDING PETITIONER'S
VERIFIED PETITION TO TAKE DEPOSITION BEFORE SUIT**

COMES NOW, Toby Toudouze ("Toudouze"), and files his Objections to Petitioner's Notice of Intent to Serve Subpoena Duces Tecum on Bank of America and the as yet unserved Subpoena Duces Tecum on Bank of America, Clay Jenkins on Behalf of the Estate of Brian U. Loncar ("Petitioner") as follows:

BACKGROUND

1. Petitioner purportedly served a Notice of Intent to Serve Subpoena Duces Tecum on non-party Bank of America (the "Subpoena Notice"). The Subpoena Notice relates to documents maintained by Bank of America for accounts owned by Bank of America's customer, KMA Capital, Inc. ("KMA Capital"), a non-party to these proceedings. Petitioner attached a proposed Subpoena Duces Tecum (the "Proposed Subpoena") that Petitioner maintained would be served upon Bank of America on or after the expiration of 10 days following the date of the Subpoena Notice pursuant to Tex.R.Civ.P. 205.2.

2. Petitioner has failed to comply with the express provisions set forth in the Texas Rules of Civil Procedure and the Texas Finance Code applicable to the

Subpoena Notice and the Proposed Subpoena. Toudouze, accordingly, objects to the Subpoena Notice and the Proposed Subpoena as follows:

- a. Toudouze objects to the Subpoena Notice because Petitioner failed to serve the notice on KMA Capital, Bank of America's customer, in the manner required under Texas law;
- b. Toudouze objects to the Subpoena Notice and the Proposed Subpoena because Bank of America is not provided with the minimum, 24-hour, statutorily required time-period in which to respond to the Proposed Subpoena;
- c. Toudouze objects to the Subpoena Notice and the Proposed Subpoena because Petitioner failed to serve KMA Capital, or any of the interested parties, with the required notices set forth in the Texas Finance Code.
- d. Toudouze objects to the Certificate of Service signed by Carrie Hoffman in the Subpoena Notice because Ms. Hoffman inaccurately certifies to the Court that Petitioner served KMA Capital and Bank of America with the notice of customer rights required to be served under Texas Finance Code, §59.006(c)(2) the notices required to be served under the Texas Finance Code were served upon KMA Capital.

FACTUAL BACKGROUND

3. On January 16, 2018, Petitioner "served" a notice of subpoena duces tecum to Bank of America, requesting information regarding the accounts of KMA Capital, Inc. A true and correct copy of this notice is attached as Exhibit A.

4. The subpoena duces tecum seeks records of bank accounts belonging to KMA Capital, Inc., a non-party to these proceedings.

5. Petitioner "served" KMA Capital with a copy of the Subpoena Notice by serving the Texas Secretary of State; alleging that KMA Capital is dissolved and had not maintained a registered agent.

6. Petitioner “served” the Texas Secretary of State even though Petitioner knew that Michael Press, a person with whom Petitioner had dealings in the past on behalf of KMA Capital, was the director, president and a person acting for and on behalf of KMA Capital at the time of its dissolution. Petitioner did not serve or deliver a copy of the Subpoena Notice to Michael Press.

7. In the Proposed Subpoena attached to the Subpoena Notice, Petitioner set the date for production by Bank of America as February 7, 2018 (the “Proposed Production Date”); 22 days from the date the Subpoena Notice was served and 12 or less days from the date Petitioner maintained in the Subpoena Notice that it intended to serve the actual subpoena on Bank of America (had it been served).

8. The Texas Secretary of State received the Subpoena Notice on January 22, 2018, and forwarded a copy to KMA Capital through Michael Press by letter dated January 29, 2018 (the “TxSOS Package”), a true and correct copy of which is attached hereto as Exhibit B.

9. Neither the Subpoena Notice nor the TxSOS Package contain any of the required disclosures or requests for consent required under Texas Finance Code, §59.006 for a subpoena of documents on a non-party’s account (hereinafter referred to as the “59.006 Requirements”). Notwithstanding such failure, Petitioner nonetheless certified to the Court that the 59.006 Requirements had been complied with and that KMA Capital had been served with the required disclosures and requests for consent. The certificate is false.

10. Toudouze objects to the Subpoena Notice, to the Proposed Subpoena and

to any production of documents by Bank of America on the basis that the exclusive means for obtaining such documents as set forth under the Texas Finance Code have not been complied with and Petitioner is seeking the production of that contain confidential and privileged information belonging to a non-party to these proceedings and as to which Petition has not, and cannot, demonstrate a basis for production.

ARGUMENTS AND AUTHORITIES

11. KMA Capital, Inc. asks the Court to quash the Subpoena and issue a Protective Order because the Subpoena is procedurally defective and should be struck as a matter of law. Further, the Subpoena is unreasonably frivolous, oppressive and harassing. The burden of expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the parties' resources, the importance of the issues in the litigation, the importance of the proposed discovery in resolving the issues. Tex. R. Civ. P.192.6(b).

KMA Capital Was Not Properly Served

12. It is undisputed that KMA Capital has been dissolved. Inexplicably, Petitioner chose to serve the Subpoena Notice on KMA Capital by serving who Petitioner *maintains* was, by law, KMA Capital's last registered agent, the Texas Secretary of State. Even if the Texas Secretary of State was deemed to be KMA Capital's last known registered agent for service, which is denied, service upon such registered agent is not effective under Texas law.

13. In Texas, there is an express rule that provides for the service of dissolved entities. Rule 29 sets forth the means for serving a dissolved entity and

provides as follows:

When no receiver has been appointed for a corporation which has dissolved, suit may be instituted on any claim against said corporation as though the same had not been dissolved, ***and service of process may be obtained on the president, directors, general manager, trustee, assignee, or other person in charge of the affairs of the corporation at the time it was dissolved***, and judgment may be rendered as though the corporation had not been dissolved.

Tex. R. Civ. P. 29 (emphasis added).

14. Rule 29 ***does not include a dissolved entity's registered agent nor does it include the Texas Secretary of State***. Yet, despite knowing of Michael Press and his positions with KMA Capital as its director, president and the person in charge of its affairs, Petitioner chose not to provide KMA Capital with proper notice of the Subpoena Notice by ignoring him, and serving a person or entity completely outside of the ambit of permissible persons to be served and was improper. Petitioner's attempts to circumvent KMA Capital's due process and notice rights are clearly evident and should not be condoned.

Unreasonable Requests

1. Rule 205.2 of the Texas Rules of Civil Procedure provides that a "party seeking discovery by subpoena from a nonparty must serve, on the nonparty and all parties, a copy of the form of notice required under the rules governing the applicable form of discovery." Tex. R. Civ. P. 205.2. "A notice to produce documents or tangible things under Rule 205.3 must be served at least 10 days before the subpoena compelling production is served." *Id.* As such, the earliest date that Petitioner may serve the Subpoena, pursuant to Rule 205.2, is **January 26, 2018**. If Petitioner, in

fact, complied with the requirements of Rule 205.2 and served the Subpoena on January 26, 2018, Bank of America would have only twelve additional days to review the Subpoena and respond, accordingly. Furthermore, the applicable finance code provision, states that a bank shall produce records only if “it is served with the record request not later than the 24th day before the date that compliance with the record request is required.” Tex. Fin. Code § 59.006(b). Therefore, the earliest date that Bank of America had to respond would be **February 19, 2018**.

Furthermore, of these twelve days, only six are normal business days. This is unreasonable, inappropriate, and unduly burdensome. *See* Tex. R. Civ. P. 205.3 (requiring a “reasonable time” for a response to production of documents). Therefore, Petitioner’s requirement of compliance by February 7, 2018 is wholly improper under the Texas Rules. For this reason alone, Defendant respectfully requests that this Court protect Bank of America from complying with Petitioner’s unreasonable document request, as it is procedurally ineffective.

Undue Burden and Expense on Non-Parties

2. Further, a party causing a subpoena to issue must take reasonable steps to avoid imposing undue burden or expense on the person served. In ruling on objections or motions for protection, the court must provide a person served with a subpoena an adequate time for compliance, protection from disclosure of privileged material or information, and protection from undue burden or expense. The court may impose reasonable conditions on compliance with a subpoena, including compensating the witness for undue hardship. TEX. R. CIV. P. 176.7.

3. The Subpoena is replete with overbroad requests for production, not reasonably limited as to time, scope or subject matter and constituting an impermissible fishing expedition.¹ For instance, the Subpoena requests various documentation with **no limitations as to time or scope**.² Further, the Subpoena requests “all account statements,” “all communications,” “all agreements” and other overly broad request.³ The requests are improperly overbroad and constitute a fishing expedition; instead of clearly defining the sought-after information, Petitioner seeks to be allowed to generally peruse all evidence” held by Bank of America.⁴ As such, the Subpoena violates Rule 176.3(b) of the Texas Rules of Civil Procedure, which prohibits a subpoena from being used in a manner other than as provided by the applicable discovery rules.⁵

Protective Order is Proper

4. The Texas Rules of Civil Procedure expressly allow the Court to protect KMA Capital, Inc. and Bank of America from Petitioner’s discovery requests:

To protect a movant from undue burden, unnecessary expense, harassment, annoyance, or invasion of personal, constitutional, or property rights, the court may make any order in the interest of justice and may – among other things – order that: (1) the requested discovery not be sought in whole or part; (2) the extent or subject matter of discovery be limited; (3) the discovery not be undertaken at the time or place specified; [or] (4) the discovery be undertaken only such method or

¹ See *In re American Optical Corp.*, 988 S.W.2d 711, 713 (Tex. 1998).

² See Exhibit “A”.

³ See Exhibit “A”.

⁴ See *Loftin v. Martin*, 776 S.W.2d 145 (Tex. 1989).

⁵ See Tex. R. Civ. P. 176.3(b).

upon such terms and conditions or at the time and place directed by the Court...

Tex. R. Civ. 192.6(b).

5. To protect the KMA Capital, Inc. and Bank of America from undue burden, unnecessary expense, harassment, annoyance, invasion of personal, constitutional, or property rights, the Court may make any order in the interest of justice and may--among other things--order that:

- (1) the requested discovery not be sought in whole or in part;
- (2) the extent or subject matter of discovery be limited;
- (3) the discovery not be undertaken at the time or place specified;
- (4) the discovery be undertaken only by such method or upon such terms and conditions or at the time and place directed by the Court;
- (5) the results of discovery be sealed or otherwise protected, subject to the provisions of Rule 76a.

6. Because this motion is filed within the requisite time period provided under the Texas Rules of Civil Procedure, the Subpoena is stayed until the motion can be determined by the Court.⁶

⁶ Tex. R. Civ. P. 205.3 provides for production of documents and tangible things from a nonparty. *See* Tex. R. Civ. P. 205.3. Any objections to discovery under Rule 205.3 must be in accordance with Rule 176. *See* Tex. R. Civ. P. 176.6. *In re Univ. of Tex. Health Ctr.*, 198 S.W.3d 392, 396 (Tex. App. Texarkana 2006).

PRAYER

WHEREFORE PREMISES CONSIDERED, KMA Capital, Inc. requests that the Court enter a protective order, stating that (1) the requested discovery not be sought in whole or in part; (2) the extent or subject matter of discovery be limited; (3) the discovery not be undertaken at the time or place specified by Plaintiffs; (4) the discovery be undertaken only by such method or upon such terms and conditions or at the time and place directed by the Court; and/or (5) the results of discovery be sealed or otherwise protected, subject to the provisions of Rule 76a, and for such other and further relief that KMA Capital, Inc. may be awarded, in both law and equity.

Respectfully submitted,

By: /s/ F. Colby Roberts

LAWRENCE J. FRIEDMAN

State Bar No. 07469300

Email: lfriedman@fflawoffice.com

F. COLBY ROBERTS

State Bar No. 24102419

Email: croberts@fflawoffice.com

ANDREA N. SEFFENS

State Bar No. 24100977

Email: aseffens@fflawoffice.com

FRIEDMAN & FEIGER, LLP.

5301 Spring Valley Road, Suite 200

Dallas, Texas 75254

Telephone (972) 788-1400

Facsimile (972) 788-2667

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served upon all counsel of record on this the **12th day of February 2018**, in accordance with the TEXAS RULES OF CIVIL PROCEDURE.

/s/ F. Colby Roberts

F. COLBY ROBERTS

PR-16-04115-1

ESTATE OF	§	IN THE PROBATE COURT
	§	
BRIAN U. LONCAR	§	OF
	§	
DECEASED	§	DALLAS COUNTY, TEXAS

**NOTICE OF INTENT TO SERVE SUBPOENA DUCES TECUM
ON NON-PARTY BANK OF AMERICA.**

Please take notice that, as required by the TEXAS FINANCE CODE section 59.006(b), no earlier than ten (10) days after the service hereof, the subpoena duces tecum attached hereto will be served upon the following non-party:

**Bank of America
c/o its registered agent,
CT Corporation System,
1999 Bryan St. Suite 900,
Dallas Texas 75201-3136.**

The subpoena duces tecum, as authorized under Texas Rule of Civil Procedure 205, shall be served on Bank of America, c/o its registered agent, CT Corporation System, 1999 Bryan St. Suite 900, Dallas Texas 75201-3136, commanding that it produce copies of designated documents in the possession, custody, or control of said witness to counsel for the parties as specified in the subpoena attached hereto as Exhibit 1. The requested documents will be used in the aforementioned cause as evidence upon trial.

**RECEIVED
SECRETARY OF STATE
JAN 22 2018
Service of Process**

287775

Date: January 16, 2018

Respectfully submitted,

GARDERE WYNNE SEWELL LLP

By: /s/ Carrie B. Hoffman

Carrie B. Hoffman

Texas Bar No. 00787701

Keith V. Novick

Texas Bar No. 15121100

Christopher M. Deskin

State Bar No. 24050510

2021 McKinney Ave., Ste. 1600

Dallas, Texas 75201

Telephone: (214) 999-4262

Facsimile: (214) 999-3262

choffman@gardere.com

knovick@gardere.com

cdeskin@gardere.com

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served on all counsel of record: The undersigned also certifies that KMA Capital, Inc. and Bank of America were also served with the notice, including a notice of customer rights, and the document requests as required by Texas Finance Code 59.006(c)(2) and 59.006(e).

/s/ Carrie B. Hoffman

Carrie B. Hoffman

EXHIBIT 1

**SUBPOENA FOR THE PRODUCTION OF DOCUMENTS TO
NON-PARTY BANK OF AMERICA.**

THE STATE OF TEXAS

TO ANY SHERIFF OR CONSTABLE OF THE STATE OF TEXAS OR OTHER PERSON
AUTHORIZED TO SERVE AND EXECUTE SUBPOENAS AS PROVIDED IN RULES 176
AND 205 OF THE TEXAS RULES OF CIVIL PROCEDURE, GREETINGS:

YOU ARE HEREBY COMMANDED TO SUMMON:

**BANK OF AMERICA.
c/o its registered agent,
CT Corporation System,
1999 Bryan St. Suite 900,
Dallas Texas 75201-3136.**

to produce and permit inspection and copying of the documents or tangible things within the
scope of discovery and within your possession, custody or control that are identified on **Exhibit
"A"** on or before **Wednesday, February 7, 2018 at 9:00 a.m.** at the offices of Gardere Wynne
Sewell LLP, 2021 McKinney Avenue, Suite 1600, Dallas, Texas 75201, Attn.: Carrie Hoffman.

DUTIES OF PERSONS SERVED WITH SUBPOENA

You are advised that under Texas Rule of Civil Procedure 176, a person served with a
discovery subpoena has certain rights and obligations. Rule 176.6 provides:

(a) *Compliance required.* Except as provided in this subdivision, a person served
with a subpoena must comply with the command stated therein unless discharged by the court or
by the party summoning such witness. A person commanded to appear and give testimony must
remain at the place of deposition, hearing, or trial from day to day until discharged by the court
or by the party summoning the witness.

(b) *Organizations.* If a subpoena commanding testimony is directed to a corporation,
partnership, association, governmental agency, or other organization, and the matters on which
examination is requested are described with reasonable particularity, the organization must
designate one or more persons to testify on its behalf as to matters known or reasonably available
to the organization.

(c) *Production of documents or tangible things.* A person commanded to produce
documents or tangible things need not appear in person at the time and place of production
unless the person is also commanded to attend and give testimony, either in the same subpoena
or a separate one. A person must produce documents as they are kept in the usual course of
business or must organize and label them to correspond with the categories in the demand. A
person may withhold material or information claimed to be privileged but must comply with
Rule 193.3. A nonparty's production of a document authenticates the document for use against
the nonparty to the same extent as a party's production of a document is authenticated for use

against the party under Rule 193.7.

(d) *Objections.* A person commanded to produce and permit inspection and copying of designated documents and things may serve on the party requesting issuance of the subpoena—before the time specified for compliance—written objections to producing any or all of the designated materials. A person need not comply with the part of a subpoena to which objection is made as provided in this paragraph unless ordered to do so by the court. The party requesting the subpoena may move for such an order at any time after an objection is made.

(e) *Protective orders.* A person commanded to appear at a deposition, hearing, or trial, or to produce and permit inspection and copying of designated documents and things may move for a protective order under Rule 192.6(b)—before the time specified for compliance—either in the court in which the action is pending or in a district court in the county where the subpoena was served. The person must serve the motion on all parties in accordance with Rule 21a. A person need not comply with the part of a subpoena from which protection is sought under this paragraph unless ordered to do so by the court. The party requesting the subpoena may seek such an order at any time after the motion for protection is filed.

WARNING

FAILURE TO OBEY THIS SUBPOENA MAY BE TREATED AS A CONTEMPT OF COURT. TEXAS RULE OF CIVIL PROCEDURE 176.8(a) PROVIDES AS FOLLOWS:

- (a) *Contempt.* Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both.

This subpoena is issued at the request of Petitioner Clay Jenkins on Behalf of the Estate of Brian U. Loncar (“Petitioner”) whose attorneys of record include Keith Novik, Carrie Hoffman, and Chris Deskin.

HEREIN FAIL NOT, but of this writ make due return showing how you have executed the same.

GIVEN UNDER MY HAND, AS AN OFFICER OF THE COURT, this 16th day of January 2018.

Issued by:

By: /s/ Carrie B. Hoffman

Carrie B. Hoffman

Texas Bar No. 00787701

Keith V. Novick

Texas Bar No. 15121100

Christopher M. Deskin

State Bar No. 24050510

2021 McKinney Ave., Ste. 1600

Dallas, Texas 75201

Telephone: (214) 999-4262

Facsimile: (214) 999-3262

choffman@gardere.com

knovick@gardere.com

cdeskin@gardere.com

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all counsel of record and the below named entities in accordance with the Texas Rules of Civil Procedure and the Texas Finance Code on this the 16th day of January, 2018 at the following:

Via Certified Mail, Return Receipt Requested and Regular Mail:

**Bank of America
c/o its registered agent,
CT Corporation System,
1999 Bryan St. Suite 900,
Dallas Texas 75201-3136.**

***KMA Capital, Inc.
Service of Process
Secretary of State
James E. Rudder Building
1019 Brazos, Room 105
Austin, Texas 78701**

*The Texas Secretary of State involuntarily terminated KMA Capital, Inc. for failure to maintain a registered agent in Texas. Service is therefore proper on the Texas Secretary of State.

/s/ Carrie Hoffman

Carrie B. Hoffman

OFFICER'S RETURN

Came to hand the ____ day of _____, 2018, at ____ o'clock ____m., and executed the ____ day of _____, 2018, at ____ o'clock ____m., by delivering a true copy of this subpoena to Bank of America, c/o c/o its registered agent, CT Corporation System, At _____ (location of service), in _____ County, Texas, and tendering the witness the sum of ten dollars (\$10.00).

I, _____, was unable to deliver a copy of this subpoena to the Custodian of Records for _____ for the following reasons:

By: _____

(Print Name)

(Print Address)

(Telephone Number)

**ACCEPTANCE OF SERVICE OF SUBPOENA BY
WITNESS UNDER TEXAS RULE OF CIVIL PROCEDURE 176**

I, the undersigned witness named in the Subpoena, acknowledge receipt of a copy thereof, and hereby accept service of the attached Subpoena.

SIGNATURE OF WITNESS

DATE

FEE FOR SERVICE OF SUBPOENA: \$ _____

EXHIBIT A

DEFINITIONS AND INSTRUCTIONS

1. "Documents" is used in its broadest sense and means and includes all written, printed, typed, recorded, or graphic matter of any kind and description, both originals and copies, and all attachments and appendices thereto. Without limiting the foregoing, "document(s)" includes all agreements, contracts, communications, correspondence (including emails and their attachments, text messages, SMS messages, and MMS messages), letters, telegrams, telexes, memoranda, records, reports, books, summaries, and any other records or telephone conversations, summary or other records of personal conversations, notes or other records of negotiations, diaries, diary entries, calendars, appointment books, time records instructions, work assignments, visitors records, worksheets, work papers, drafts, graphs, charts, accounts, notes, notices, marginal notations, notebooks, records, files, lists, recommendations, printouts, compilations, tabulations, folders or similar containers, studies, surveys, transcripts of conversations, tape or disc recordings, sound recordings, video recordings, film, tape, photographs, data compilation from which information can be obtained (including matter used in data processing) and other printed, written, handwritten, typewritten, recorded, stenographic, computer generated, computed stored, or electronically stored information, however and by whomever produced, prepared, reproduced, disseminated or made. Any email produced must be produced in its entirety, including the full text of any attachment. The term "document(s)" expressly includes all digital files, databases, emails, and other documents maintained in digital and/or electronic form.
2. Unless otherwise indicated, the use in these Requests of the name of any party, person, or business organization shall include all agents, employees, shareholders, owners, officers, directors, joint venturers, representatives, general partners, limited partners, predecessors, successors, heirs, assigns, attorneys, affiliates, divisions, subsidiaries, parent corporations and all other persons acting or purporting to act through, on behalf of, at the direction of, or under the control of the subject party, person, or business organization.
3. "And" and "or" shall be construed either disjunctively or conjunctively to bring within the scope of the request all information and responses within the general scope of the request.
4. "KMA Capital" means, both individually and collectively, any partnership, company or business organization known or believed to be owned by, controlled by, or doing business as KMA Capital, Inc., including but not limited to 1st Health Clinic.
5. "KMA Account(s)" means all bank accounts held at Bank of America by KMA Capital, as described in paragraph 2 and 3 of the Definitions and Instructions, including but not limited to Bank of America Account Number ██████████ which utilized the following mailing address for at least some period of time, including August 2013: KMA Capital Inc. DBA 1st Health Clinic, General Account, STE 195, 444 N. Northwest HWY, Park Ridge, IL 60068-3296.
6. "Toudouze" means Toby Toudouze described in paragraphs 2 and 3 of the Definitions and Instructions, including his criminal and civil attorneys.

7. "Press" means Michael Press and all persons and entities described in paragraphs 2 and 3 of the Definitions and Instructions.
8. "The Firm" shall mean Brian Loncar, P.C., located at 424 S. Cesar Chavez Blvd., Dallas, Texas 75201.
9. "Communications" means and includes any transmittal or exchange of information between two or more persons, whether orally or in writing, including without limitation any conversation by means of letter, note, email, memorandum, telephone, telegraph, telex, teletypes, cables or some other electronic or other medium.
10. "Concerning" means pertain, discuss, refer, indicate, contain, evidence, explain, review, analyze, describe, mention, relate, detail or be in any way logically or factually connected with the referenced topic.
11. "ESI" means information that is electronically, magnetically or optically stored as:
 - a. Digital communications (e.g., e-mail, voicemail, instant messaging, text messages);
 - b. Word processed documents (e.g., Word and WordPerfect);
 - c. Spreadsheets and tables (e.g., Excel and Lotus 123);
 - d. Accounting application data (e.g., Quickbooks, Juris);
 - e. Image and Facsimile files (e.g., .pdf, .tiff, .jpg, .gif);
 - f. Sound recordings (e.g., .wav and .mp3);
 - g. Video and animation (e.g., .avo and .mov);
 - h. Databases (e.g., Access, Oracle SQL Server, SAP);
 - i. Contact and relationship management data (e.g., Outlook, ACT!);
 - j. Calendar and diary application data (e.g., Outlook PST, Yahoo);
 - k. Online access data (e.g., temporary internet files, history, cookies);
 - l. Presentations (e.g., PowerPoint, Corel Presentations);
 - m. Network access and server activity logs;
 - n. Project management application data;
 - o. Computer aided design/drawing files;
 - p. Backup and archival files (e.g., Zip, .gho); and/or
 - q. Web-based e-mail (e.g., Yahoo, MSN, Mac, Gmail).
12. "Information" means information in all forms in which it is stored and communicated, and includes DOCUMENTS and ESI.
13. "Loan" means any extension of credit or advance of money that must or is intended to be repaid.
14. "Person" means and includes natural persons, groups of natural persons acting in a collegial capacity (e.g., a committee or council), corporations, partnerships, associations, joint ventures, and any other incorporated or unincorporated business, governmental, public, social or legal entity. A reference to any person includes, when applicable, its subsidiaries, controlled persons, controlling persons, shareholders, officers, directors, employees, agents, or other persons acting or purporting to act on its behalf.
15. Production of ESI:

- a. Production of electronic or magnetic data responsive to these requests is specifically requested in the form in which it is kept in the ordinary course of business. Specifically, all documents responsive to these request should be produced in electronic or digital format with all metadata intact in the following forms:
 - i. Delimited text files (.txt.), in which the TAB character (ASCII Character code 009) typically separates each field of text; or,
 - ii. Comma separated values text files (.csv), in which the comma character (,) typically separates each field of text.
 - b. To the extent that electronic or magnetic data responsive to these requests exists, which cannot be produced in the format in which it is kept in the ordinary course of business and as set forth in 3.a above, you are instructed to produce it in its native format, along with all metadata, and to convert the items into a format reasonably compatible with and readable by computers running the Windows operating systems and Microsoft Office software. Specifically, image files of such documents should be produced in PDF or TIF format; text data should be produced in ASCII format; any field-based data should be produced in an ASCII delimited text format, identifying the delimiters. You are requested to identify each such document that was converted, the file format from which it was converted, and the program needed to access the file in its native format.
 - c. In the event that the electronic and magnetic data responsive to these requests cannot be converted into formats as described above, you are instructed to make the hard drives containing such information and documents responsive to these requests available for inspection and review.
16. Unless stated otherwise, the relevant time period is January 1, 2010 to present.

II. REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Documents reflecting the identity of all current and former authorized signatories, including but not limited to, signature cards, account applications, and depository agreements, on all KMA Account(s), including but not limited to Bank of America Account Number [REDACTED];
2. Copies of all account statements (including a detailed statement of all deposits and withdrawals) relating to all KMA Account(s), including but not limited to Bank of America Account Number [REDACTED];
3. All Communications by, between or among BOA and KMA Capital. This Request specifically includes but is not limited to Communications with Michael Press and/or Toby Toudouze about opening of the KMA Account(s) including but not limited to Bank of America Account Number [REDACTED] and subsequent transactions;
4. All Communications pertaining to all KMA Account(s) including but not limited to Bank of America Account Number [REDACTED]. This Request specifically includes but is not limited to communications to or from Michael Press or to or from Toby Toudouze.
5. All agreements or contracts pertaining to the the KMA Account(s) including but not limited to Bank of America Account Number [REDACTED];
6. Copies of all checks associated with the KMA Account(s) including but not limited to Bank of America Account Number [REDACTED], including but not limited to checks to or from Frost National Bank Account Number 98002113 and checks referencing any of the following words in the Memo: attorney; fee; expense.
7. Cancelled checks and wire transfer Documents pertaining to the KMA Account(s) including but not limited to Bank of America Account Number [REDACTED].

The State of Texas



Service of Process
P.O. Box 12079
Austin, Texas 78711-2079

Phone: 512-463-5560
Fax: 512-463-0873
TTY (800) 735-2989
www.sos.state.tx.us

Secretary of State

January 29, 2018

KMA Capital Inc.
Michael Press
444 North Northwest Highway #195
Park Ridge, IL 60068

2018-287775-1
Include reference number in
all correspondence

RE: Estate of Brian U. Loncar Deceased
Probate Court of Dallas County, Texas
Cause No: PR16041151

Dear Sir/Madam,

Pursuant to the Laws of Texas, we forward herewith by CERTIFIED MAIL, return receipt requested, a copy of process received by the Secretary of State of the State of Texas on January 22, 2018.

CERTIFIED MAIL #71901046470100858168

Refer correspondence to:

Carrie B Hoffman
Gardere
2021 McKinney Avenue, Suite 1600
Dallas, TX e

Sincerely,

A handwritten signature in black ink that reads "Venita Okpegbue".

Venita Okpegbue
Team Leader, Service of Process
GF/vm
Enclosure

The State of Texas



Service of Process
P.O. Box 12079
Austin, Texas 78711-2079

Phone: 512-463-5560
Fax: 512-463-0873
TTY: (800) 735-2989
www.sos.state.tx.us

Secretary of State

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KMA Capital Inc.
Michael Press
444 North Northwest Highway #195
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RE: Estate of Brian U. Loncar Deceased
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CERTIFIED MAIL #71901046470100858168

Refer correspondence to:

Carrie B Hoffman
Gardere
2021 McKinney Avenue, Suite 1600
Dallas, TX e

Sincerely,

A handwritten signature in black ink that reads "Venita Okpegbue".

Venita Okpegbue
Team Leader, Service of Process
GF/vm
Enclosure

Tab 19

PR-16-04115-1

ESTATE OF

BRIAN U. LONCAR

DECEASED

§
§
§
§
§

IN THE PROBATE COURT

OF

DALLAS COUNTY, TEXAS

**TOBY TOUDOUZE MOTION TO QUASH AND MOTION FOR PROTECTIVE
ORDER**

COMES NOW, Toby Toudouze (“Toudouze”), and files his Objections to Petitioner’s Notice of Intent to Serve Subpoena Duces Tecum on Bank of America and the as yet unserved Subpoena Duces Tecum on Bank of America, Clay Jenkins on Behalf of the Estate of Brian U. Loncar (“Petitioner”) as follows:

BACKGROUND

1. Petitioner purportedly served a Notice of Intent to Serve Subpoena Duces Tecum on non-party Bank of America (the “Subpoena Notice”). The Subpoena Notice relates to documents maintained by Bank of America for accounts owned by Bank of America’s customer, KMA Capital, Inc. (“KMA Capital”), a non-party to these proceedings. Petitioner attached a proposed Subpoena Duces Tecum (the “Proposed Subpoena”) that Petitioner maintained would be served upon Bank of America on or after the expiration of 10 days following the date of the Subpoena Notice pursuant to Tex.R.Civ.P. 205.2.

2. Petitioner has failed to comply with the express provisions set forth in the Texas Rules of Civil Procedure and the Texas Finance Code applicable to the

Subpoena Notice and the Proposed Subpoena. Toudouze, accordingly, objects to the Subpoena Notice and the Proposed Subpoena as follows:

- a. Toudouze objects to the Subpoena Notice because Petitioner failed to serve the notice on KMA Capital, Bank of America's customer, in the manner required under Texas law;
- b. Toudouze objects to the Subpoena Notice and the Proposed Subpoena because Bank of America is not provided with the minimum, 24-hour, statutorily required time-period in which to respond to the Proposed Subpoena;
- c. Toudouze objects to the Subpoena Notice and the Proposed Subpoena because Petitioner failed to serve KMA Capital, or any of the interested parties, with the required notices set forth in the Texas Finance Code.
- d. Toudouze objects to the Certificate of Service signed by Carrie Hoffman in the Subpoena Notice because Ms. Hoffman inaccurately certifies to the Court that Petitioner served KMA Capital and Bank of America with the notice of customer rights required to be served under Texas Finance Code, §59.006(c)(2) the notices required to be served under the Texas Finance Code were served upon KMA Capital.

FACTUAL BACKGROUND

3. On January 16, 2018, Petitioner "served" a notice of subpoena duces tecum to Bank of America, requesting information regarding the accounts of KMA Capital, Inc. A true and correct copy of this notice is attached as Exhibit A.

4. The subpoena duces tecum seeks records of bank accounts belonging to KMA Capital, Inc., a non-party to these proceedings.

5. Petitioner "served" KMA Capital with a copy of the Subpoena Notice by serving the Texas Secretary of State; alleging that KMA Capital is dissolved and had not maintained a registered agent.

6. Petitioner “served” the Texas Secretary of State even though Petitioner knew that Michael Press, a person with whom Petitioner had dealings in the past on behalf of KMA Capital, was the director, president and a person acting for and on behalf of KMA Capital at the time of its dissolution. Petitioner did not serve or deliver a copy of the Subpoena Notice to Michael Press.

7. In the Proposed Subpoena attached to the Subpoena Notice, Petitioner set the date for production by Bank of America as February 7, 2018 (the “Proposed Production Date”); 22 days from the date the Subpoena Notice was served and 12 or less days from the date Petitioner maintained in the Subpoena Notice that it intended to serve the actual subpoena on Bank of America (had it been served).

8. The Texas Secretary of State received the Subpoena Notice on January 22, 2018, and forwarded a copy to KMA Capital through Michael Press by letter dated January 29, 2018 (the “TxSOS Package”), a true and correct copy of which is attached hereto as Exhibit B.

9. Neither the Subpoena Notice nor the TxSOS Package contain any of the required disclosures or requests for consent required under Texas Finance Code, §59.006 for a subpoena of documents on a non-party’s account (hereinafter referred to as the “59.006 Requirements”). Notwithstanding such failure, Petitioner nonetheless certified to the Court that the 59.006 Requirements had been complied with and that KMA Capital had been served with the required disclosures and requests for consent. The certificate is false.

10. Toudouze objects to the Subpoena Notice, to the Proposed Subpoena and

to any production of documents by Bank of America on the basis that the exclusive means for obtaining such documents as set forth under the Texas Finance Code have not been complied with and Petitioner is seeking the production of that contain confidential and privileged information belonging to a non-party to these proceedings and as to which Petition has not, and cannot, demonstrate a basis for production.

ARGUMENTS AND AUTHORITIES

11. KMA Capital, Inc. asks the Court to quash the Subpoena and issue a Protective Order because the Subpoena is procedurally defective and should be struck as a matter of law. Further, the Subpoena is unreasonably frivolous, oppressive and harassing. The burden of expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the parties' resources, the importance of the issues in the litigation, the importance of the proposed discovery in resolving the issues. Tex. R. Civ. P.192.6(b).

KMA Capital Was Not Properly Served

12. It is undisputed that KMA Capital has been dissolved. Inexplicably, Petitioner chose to serve the Subpoena Notice on KMA Capital by serving who Petitioner *maintains* was, by law, KMA Capital's last registered agent, the Texas Secretary of State. Even if the Texas Secretary of State was deemed to be KMA Capital's last known registered agent for service, which is denied, service upon such registered agent is not effective under Texas law.

13. In Texas, there is an express rule that provides for the service of dissolved entities. Rule 29 sets forth the means for serving a dissolved entity and

provides as follows:

When no receiver has been appointed for a corporation which has dissolved, suit may be instituted on any claim against said corporation as though the same had not been dissolved, ***and service of process may be obtained on the president, directors, general manager, trustee, assignee, or other person in charge of the affairs of the corporation at the time it was dissolved***, and judgment may be rendered as though the corporation had not been dissolved.

Tex. R. Civ. P. 29 (emphasis added).

14. Rule 29 ***does not include a dissolved entity's registered agent nor does it include the Texas Secretary of State***. Yet, despite knowing of Michael Press and his positions with KMA Capital as its director, president and the person in charge of its affairs, Petitioner chose not to provide KMA Capital with proper notice of the Subpoena Notice by ignoring him, and serving a person or entity completely outside of the ambit of permissible persons to be served and was improper. Petitioner's attempts to circumvent KMA Capital's due process and notice rights are clearly evident and should not be condoned.

Unreasonable Requests

1. Rule 205.2 of the Texas Rules of Civil Procedure provides that a "party seeking discovery by subpoena from a nonparty must serve, on the nonparty and all parties, a copy of the form of notice required under the rules governing the applicable form of discovery." Tex. R. Civ. P. 205.2. "A notice to produce documents or tangible things under Rule 205.3 must be served at least 10 days before the subpoena compelling production is served." *Id.* As such, the earliest date that Petitioner may serve the Subpoena, pursuant to Rule 205.2, is **January 26, 2018**. If Petitioner, in

fact, complied with the requirements of Rule 205.2 and served the Subpoena on January 26, 2018, Bank of America would have only twelve additional days to review the Subpoena and respond, accordingly. Furthermore, the applicable finance code provision, states that a bank shall produce records only if “it is served with the record request not later than the 24th day before the date that compliance with the record request is required.” Tex. Fin. Code § 59.006(b). Therefore, the earliest date that Bank of America had to respond would be **February 19, 2018**.

Furthermore, of these twelve days, only six are normal business days. This is unreasonable, inappropriate, and unduly burdensome. *See* Tex. R. Civ. P. 205.3 (requiring a “reasonable time” for a response to production of documents). Therefore, Petitioner’s requirement of compliance by February 7, 2018 is wholly improper under the Texas Rules. For this reason alone, Defendant respectfully requests that this Court protect Bank of America from complying with Petitioner’s unreasonable document request, as it is procedurally ineffective.

Undue Burden and Expense on Non-Parties

2. Further, a party causing a subpoena to issue must take reasonable steps to avoid imposing undue burden or expense on the person served. In ruling on objections or motions for protection, the court must provide a person served with a subpoena an adequate time for compliance, protection from disclosure of privileged material or information, and protection from undue burden or expense. The court may impose reasonable conditions on compliance with a subpoena, including compensating the witness for undue hardship. TEX. R. CIV. P. 176.7.

3. The Subpoena is replete with overbroad requests for production, not reasonably limited as to time, scope or subject matter and constituting an impermissible fishing expedition.¹ For instance, the Subpoena requests various documentation with **no limitations as to time or scope**.² Further, the Subpoena requests “all account statements,” “all communications, “all agreements” and other overly broad request.³ The requests are improperly overbroad and constitute a fishing expedition; instead of clearly defining the sought-after information, Petitioner seeks to be allowed to generally peruse all evidence” held by Bank of America.⁴ As such, the Subpoena violates Rule 176.3(b) of the Texas Rules of Civil Procedure, which prohibits a subpoena from being used in a manner other than as provided by the applicable discovery rules.⁵

Protective Order is Proper

4. The Texas Rules of Civil Procedure expressly allow the Court to protect KMA Capital, Inc. and Bank of America from Petitioner’s discovery requests:

To protect a movant from undue burden, unnecessary expense, harassment, annoyance, or invasion of personal, constitutional, or property rights, the court may make any order in the interest of justice and may – among other things – order that: (1) the requested discovery not be sought in whole or part; (2) the extent or subject matter of discovery be limited; (3) the discovery not be undertaken at the time or place specified; [or] (4) the discovery be undertaken only such method or

¹ See *In re American Optical Corp.*, 988 S.W.2d 711, 713 (Tex. 1998).

² See Exhibit “A”.

³ See Exhibit “A”.

⁴ See *Loftin v. Martin*, 776 S.W.2d 145 (Tex. 1989).

⁵ See Tex. R. Civ. P. 176.3(b).

upon such terms and conditions or at the time and place directed by the Court...

Tex. R. Civ. 192.6(b).

5. To protect the KMA Capital, Inc. and Bank of America from undue burden, unnecessary expense, harassment, annoyance, invasion of personal, constitutional, or property rights, the Court may make any order in the interest of justice and may--among other things--order that:

- (1) the requested discovery not be sought in whole or in part;
- (2) the extent or subject matter of discovery be limited;
- (3) the discovery not be undertaken at the time or place specified;
- (4) the discovery be undertaken only by such method or upon such terms and conditions or at the time and place directed by the Court;
- (5) the results of discovery be sealed or otherwise protected, subject to the provisions of Rule 76a.

6. Because this motion is filed within the requisite time period provided under the Texas Rules of Civil Procedure, the Subpoena is stayed until the motion can be determined by the Court.⁶

⁶ Tex. R. Civ. P. 205.3 provides for production of documents and tangible things from a nonparty. *See* Tex. R. Civ. P. 205.3. Any objections to discovery under Rule 205.3 must be in accordance with Rule 176. *See* Tex. R. Civ. P. 176.6. *In re Univ. of Tex. Health Ctr.*, 198 S.W.3d 392, 396 (Tex. App. Texarkana 2006).

PRAYER

WHEREFORE PREMISES CONSIDERED, KMA Capital, Inc. requests that the Court enter a protective order, stating that (1) the requested discovery not be sought in whole or in part; (2) the extent or subject matter of discovery be limited; (3) the discovery not be undertaken at the time or place specified by Plaintiffs; (4) the discovery be undertaken only by such method or upon such terms and conditions or at the time and place directed by the Court; and/or (5) the results of discovery be sealed or otherwise protected, subject to the provisions of Rule 76a, and for such other and further relief that KMA Capital, Inc. may be awarded, in both law and equity.

Respectfully submitted,

By: /s/ F. Colby Roberts

LAWRENCE J. FRIEDMAN

State Bar No. 07469300

Email: lfriedman@fflawoffice.com

F. COLBY ROBERTS

State Bar No. 24102419

Email: croberts@fflawoffice.com

ANDREA N. SEFFENS

State Bar No. 24100977

Email: aseffens@fflawoffice.com

FRIEDMAN & FEIGER, LLP.

5301 Spring Valley Road, Suite 200

Dallas, Texas 75254

Telephone (972) 788-1400

Facsimile (972) 788-2667

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served upon all counsel of record on this the **13th day of February 2018**, in accordance with the TEXAS RULES OF CIVIL PROCEDURE.

/s/ F. Colby Roberts

F. COLBY ROBERTS

Tab 20

Route Clerk RR
Data Entry Clerk: RR
Disposition Clerk: _____

46E



Date	1-22-18
Rct. No.	1028305
Ch. No.	CASH
Pct. 5	\$ 80.00

426pm
Rene
Toudouze

CITATION IN PROBATE
THE STATE OF TEXAS
PROBATE COURT NO. 1

CAUSE NO.: PR-16-04115-1
ESTATE OF BRIAN U. LONCAR, DECEASED

TO ANY SHERIFF OR ANY CONSTABLE WITHIN THE STATE OF TEXAS – GREETINGS:
YOU ARE HEREBY COMMANDED TO SUMMON:

TOBY TOUDOUZE

DALLAS, TX 75214

To appear by filing a WRITTEN CONTEST or ANSWER, before Probate Court of Dallas County, Texas at 10:00 o'clock A.M., on the first Monday after the expiration of Ten (10) days from the date of service of this citation, then and there to answer the petition of:

CLAY JENKINS

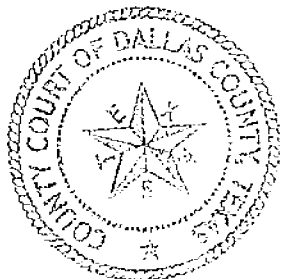
filed in said Court on 09/08/2017 A.D. in the matter of the estate No. PR-16-04115-1 on the Probate Docket of said court, the nature of which petition is as follows:

VERIFIED PETITION TO TAKE DEPOSITION BEFORE SUIT TO INVESTIGATE POTENTIAL CLAIMS. All is more fully set out in the attached copy of said VERIFIED PETITION TO TAKE DEPOSITION BEFORE SUIT TO INVESTIGATE POTENTIAL CLAIMS.

And you will deliver to the said TOBY TOUDOUZE, a true copy of this Citation.

FAIL NOT, but have you then and there before said Court this writ, with your return there on, showing how you executed the same.

WITNESS: JOHN F. WARREN, Clerk of the Probate Courts of Dallas County, Texas
GIVEN UNDER MY HAND AND SEAL OF OFFICE, at Dallas County, Texas, and issued December 21, 2017



JOHN F. WARREN, CLERK PROBATE COURTS,
DALLAS COUNTY, TEXAS

By: [Signature]
Mark Toliver, Deputy Clerk

FILED
2018 FEB -6 PM 2:36
JOHN F. WARREN
COUNTY CLERK
DALLAS COUNTY

PR - 16 - 04115 - 1
CRPC - PR
RETURN PERSONAL CITATION
1751526



0-1-18

1-26-18 330 PM

1-31-18 @ 700 AM NC

2-1-18 @ 1155 AM - Maid answered door
(Mayra Giran)

left business card w/ maid

Escalade was in drive way inside
property.

CONSTABLE PRECINCT 5

18 JAN 22 PM 4:07

 ORIGINAL

PR-16-04115-1

ESTATE OF

BRIAN U. LONCAR

DECEASED

§
§
§
§
§

IN THE PROBATE COURT

OF

DALLAS COUNTY, TEXAS

ORDER GRANTING SUBSTITUTE SERVICE OF PROCESS

The Court has considered Petitioner's Motion for Substitute Service pursuant to Rule 106(b) of the Texas Rules of Civil Procedure. The Court is of the opinion that Petitioner has attempted but failed to personally serve Toby Toudouze at the last known usual place of abode. The Court is also of the opinion that the manner of service ordered herein will be reasonably effective to give Toby Toudouze notice of the Petition and hearing.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Motion for Substitute Service is **GRANTED**.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that personal service of process may be made upon Toby Toudouze either by (1) leaving a true copy of the Petition and Notice of Hearing with anyone over sixteen years of age at [REDACTED], Dallas Texas 75214; or (2) affixing a copy of the Petition and Notice of Hearing enclosed in an envelope to the front door of [REDACTED] Dallas Texas 75214.

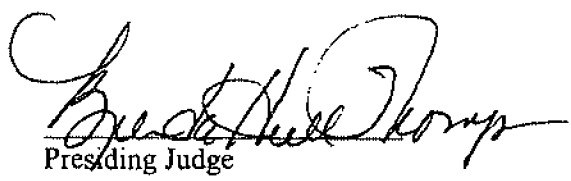
IT IS FURTHER ORDERED, ADJUDGED, and DECREED that personal service may be made upon Toby Toudouze by electronically serving his attorney of record.

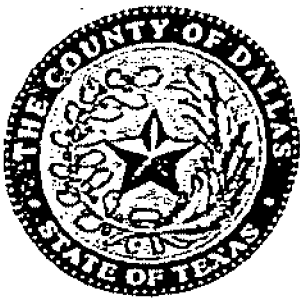
IT IS FURTHER ORDERED, ADJUDGED, and DECREED that service of process will be deemed complete upon compliance with this Order.

Order Granting Motion for Substitute Service

SIGNED on

1/31/18


Presiding Judge



BETH VILLARREAL
DALLAS COUNTY
CONSTABLE PRECINCT 5

OFFICER'S RETURN

Received this Summons on the 22 day of January, 2018

at 4:07 o'clock P M, and executed in Dallas, County of Dallas, State of Texas on the 1 day of FEBRUARY, 2018 at 4:20 o'clock P M, by delivering to the within named Rene Tardozze

a true copy of the Summons and executed at [REDACTED] [REDACTED]
DALLAS, TX 75214

Returned unexecuted for the following reason at:

FEE \$ 80⁰⁰

BETH VILLARREAL

PRECINCT 5, DALLAS COUNTY, TX.

[Signature] #518

DEPUTY CONSTABLE

Tab 21

CAUSE NO. PR 16-04115-1

ESTATE OF § IN THE PROBATE COURT
BRIAN U. LONCAR § OF
DECEASED § DALLAS COUNTY, TEXAS

**CLAY JENKINS'S MOTION FOR HEARING AND TO OVERRULE
OBJECTIONS IN TONY TOUDOUBE'S 2-13-2018
MOTION TO QUASH AND FOR PROTECTIVE ORDER**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Clay Jenkins, Independent Executor of the Estate of Brian U. Loncar, and files this Motion for Hearing and to Overrule Objections in Tony Toudouze's 2-13-2018 Motion to Quash and For Protective Order. Mr. Jenkins respectfully shows:

I.

On February 13, 2018, Toby Toudouze through counsel filed a motion to quash and motion for protective order. Pages 1-2 of Mr. Toudouze's 2-13-2018 motion voice "Objections" to discovery requested by Mr. Jenkins and the motion repeatedly states (four times on page 2) that Mr. Toudouze "objects" on various grounds to discovery requested by Mr. Jenkins.

II.

It used to be the law that persons objecting to discovery had the burden to request a hearing on their objections to discovery. *See McKinney v. National Union Fire Insurance Co.*, 772 S.W.2d 72, 74-75 (Tex. 1989) (quoting *Peeples v. Fourth Court of Appeals*, 701 S.W.2d 635, 637 (Tex. 1985)). However, the law now is instead: "(a) *Hearing*. **Any** party may at any reasonable time may request a hearing on an objection or claim of privilege under this rule. The party making the objection or asserting the privilege must present any evidence necessary to support the privilege." Tex. R. Civ. P. 193.4(a) (emphasis supplied). Our supreme court has explained the purpose for the change:

It is hoped that this procedure will permit the parties to work through discovery disputes without court intervention, thereby making discovery more economical. At a minimum, it will encourage the existence of a real and substantial controversy prior to the involvement of a trial court. The party resisting discovery will no longer feel compelled to obtain an immediate ruling on its objections to discovery in order to reduce the risk of an inadvertent waiver. Further, the party seeking discovery will not impose on the trial court's limited resources unless it is serious about its request and doubts the validity of the other party's objection.

McKinney v. National Union Fire Insurance Co., 772 S.W.2d 72, 75 (Tex. 1989).

Mr. Toudouze has filed objections but has *zero* incentive to request a hearing, at which time he would bear the burden of supporting his objections with evidence.

WHEREFORE, PREMISES CONSIDERED, Clay Jenkins, Independent Executor of the Estate of Brian U. Loncar prays that the Court schedule an oral hearing hearing, overrule the objections in Tony Toudouze's 2-13-2018 Motion to Quash and For Protective Order, and grant Mr. Jenkins all other relief, both general or special, at law and in equity, to which he is entitled.

Respectfully submitted,

TED B. LYON & ASSOCIATES, P.C.

By: /s/ Ted B. Lyon

TED B. LYON

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MARQUETTE WOLF

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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was duly served pursuant to the Texas Rules of Civil Procedure via certified mail, return receipt requested, facsimile, electronic mail and/or first class mail on all counsel of record on this 27th day of February, 2018.

/s/ Ted B. Lyon
TED B. LYON

Tab 22

CAUSE NO. PR 16-04115-1

ESTATE OF § **IN THE PROBATE COURT**
BRIAN U. LONCAR § **OF**
DECEASED § **DALLAS COUNTY, TEXAS**

NOTICE OF HEARING

PLEASE TAKE NOTICE that a hearing on Clay Jenkins’ Motion for Hearing to Overrule Objections on Toby Toudouze’s Motion to Quash and for Protective Order is set for **Monday, April 2, 2018 at 1:30 p.m.** in Dallas County Probate Court No. 1, located at Renaissance Tower, 1201 Elm St., 24th Floor, Suite 2400-A, Dallas, TX 75207 before Honorable Judge Brenda Hull Thompson.

Respectfully submitted,

TED B. LYON & ASSOCIATES, P.C.

By: /s/ Ted B. Lyon
TED B. LYON
State Bar No. 12741500
tblyon@tedlyon.com

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Mesquite, Texas 75150
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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was duly served pursuant to the Texas Rules of Civil Procedure via certified mail, return receipt requested, facsimile, electronic mail and/or first class mail on all counsel of record on this 1st day of March, 2018.

/s/ Ted B. Lyon
TED B. LYON

Tab 23

PR-16-04115-1

ESTATE OF

BRIAN U. LONCAR

DECEASED

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IN THE PROBATE COURT

OF

DALLAS COUNTY, TEXAS

TOBY TOUDOUZE'S PLEA TO THE JURISDICTION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Toby Toudouze ("Toudouze" or "Movant") who brings this motion file this Plea to the Jurisdiction challenging Petitioner's standing to bring a Petitioner for Presuit deposition in this Court, and in support thereof Toudouze would respectfully show unto this Honorable Court the following:

ARGUMENT & AUTHORITIES

A. Standard

1. A party may challenge a court's subject-matter jurisdiction by filing a plea to the jurisdiction. *Tex. Dep't of Transp. V. Jones*, 8 S.W.3d 636, 638 (Tex. 1999). Whether the trial court has subject matter jurisdiction is a question of law. *Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 928 (Tex. 1998). Subject-matter jurisdiction cannot be waived, and can be raised at any time. *Alfonso v. Skadden*, 251 S.W.3d 52, 55 (Tex. 2008).

2. The plaintiff has the burden to allege facts that affirmatively show the trial court's jurisdiction to hear the case. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). The purpose of the plea is not to force a plaintiff to preview his case on the merits, but rather to establish a reason why the merits of the plaintiff's claims should never be reached. *Blue*, 34 S.W.3d at 554. If the pleadings affirmatively negate the existence of jurisdiction, then a plea to the jurisdiction may be granted without allowing the plaintiff an opportunity to amend. *Id.*

B. A Rule 202 Petitioner Must Prove Jurisdiction

3. The Rules of Civil Procedure governing pre-suit depositions require that a petition must “be filed in a proper court.” TEX. R. CIV. P. 202.2(b). The Texas Supreme Court has stated that a Court “certainly” cannot order a Rule 202 deposition, when it lacks jurisdiction of the subject matter. *In re Doe*, 444 S.W.3d 603, 608 (Tex. 2014). (“while Rule 202 is silent on the subject, we think it implicit . . . that the court must have subject matter jurisdiction over the anticipated action.”).

4. In the same opinion, the Supreme Court also found that the Court must have personal jurisdiction over the proposed Defendant. *See Id.* at 608-610 (“*First*: To allow discovery of a potential claim against a defendant over which the court would not have personal jurisdiction *denies him the protection Texas procedure would otherwise afford* . . . *Second*: To allow a Rule 202 court to order discovery without personal jurisdiction over a potential defendant unreasonably expands the rule.”) (emphasis added).

C. The Probate Court Does Not have Subject Matter Jurisdiction Over Any Claim Which Might be Brought Against Toby Toudouze

5. In Texas, Statutory Probate Courts have original jurisdiction over all probate proceedings and causes of action related to the probate proceeding. TEX. ESTATES CODE ANN. § 32.005 (West) (“A cause of action related to the probate proceeding must be brought in a statutory probate court unless the jurisdiction of the statutory probate court is concurrent with the jurisdiction of a district court as provided by Section 32.007 or with the jurisdiction of any other court.”). Although these courts enjoy wide jurisdiction, their jurisdiction extends only to claims by or against the personal representative of the estate itself. *See* TEX. ESTATES CODE ANN. § 31.002 (West).

6. A claim is not related to the probate proceeding when it merely may have some effect on the assets of the estate. *See Frank Smith's, Inc. v. Sheffield*, 03-02-00109-CV, 2003 WL 192099, at *4 (Tex. App.—Austin Jan. 30, 2003, no pet.) (The Probate Court did not have jurisdiction when “[Plaintiff’s] claims, however, [were] not against [Decedent’s] estate and relate[d] to the settlement of his estate only to the extent that [Decedent] owned stock in the defendant Corporation at the time of his death”).

7. Any claim which may be instituted against Toby Toudouze regarding financials of the Firm are claims that can only be made on behalf of the Firm. Petitioner has not tried to hide this fact. Indeed, his petition states that the Estate wishes to depose Toudouze in order to “investigate potential claims against Mr. Toudouze regarding financial issues arising during his employment with the *Firm that may have a bearing on the value of the Estate.*” *See* Petitioner’s Verified Petition to Take Deposition Before Suit to Investigate Potential Claims, a true and correct copy

of which is attached hereto as Exhibit A (emphasis added). It is clear from Petitioner's own filing that the Estate does not have a potential claim against Mr. Toudouze.

8. A claim by or against the estate is essential for this Court to have subject matter jurisdiction. Subject matter jurisdiction is required in order for this Court to order the pre-suit deposition of Mr. Toudouze. Petitioner has failed to give any indication as to what alleged "claims" may be brought against Mr. Toudouze, and nothing in the Estate's Petition suggests that *the Estate* has claims against Mr. Toudouze. Petitioner has the burden to prove that it has subject matter jurisdiction over this matter.

9. Moreover, the Firm cannot bring a claim against Mr. Toudouze because it is not organized or operating properly. The Firm is not owned by a lawyer and, as such, must be wound down.

Prayer

10. For the reasons stated herein, Defendants' plea to the jurisdiction must be granted.

Dated: April 17, 2018

Respectfully submitted,

FRIEDMAN & FEIGER, L.L.P.

/s/Lawrence J. Friedman

By:

Lawrence Friedman

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ATTORNEYS FOR TOBY TOUDOUZE

CERTIFICATE OF SERVICE

I certify that a true copy of the above was served on each attorney of record in accordance with the Texas Rules of Civil Procedure.

/s/ Lawrence J. Friedman

Tab 24

Tab 25

PR-16-04115-1

ESTATE OF § IN THE PROBATE COURT
BRIAN U. LONCAR, § OF
DECEASED § DALLAS COUNTY, TEXAS

MOTION TO AUTHORIZE SALE OF ESTATE PROPERTY TO EXECUTOR

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Abby Leigh Loncar (“Abby Loncar”) and Hailey Blair Loncar (“Hailey Loncar”), the primary beneficiaries of the Brian U. Loncar Living Trust (the “Trust”), which is the sole beneficiary of the Estate of Brian U. Loncar (the “Estate”), joined by Clay Jenkins, the duly-appointed successor independent executor of the Estate and trustee of the Trust, and jointly make and file this their *Motion to Authorize Sale of Estate Property to Executor* and, in support of same, would respectfully show the Court as follows:

I.

BASIS OF THE MOTION

Clay Jenkins, as independent executor of the Estate, has been asked by Abby Loncar and Hailey Loncar, the daughters of Brian U. Loncar (“Decedent”), to purchase the stock in Decedent’s law firm, Brian Loncar, PC (the “Law Firm”) and thereby facilitate distribution of this Estate. Under section 356.654 of the Texas Estates Code, such a sale can be permitted by this Court if it is in the Estate’s best interests, and the parties therefore request authorization and confirmation of the sale under this specific statutory basis. In addition, under section 356.652 of the Texas Estates Code, such sale is permissible because it is authorized under Decedent’s Last Will and Testament dated April 29, 2014 (the “Will”). Clay Jenkins, as the trustee of the Trust, Abby Loncar, Hailey Loncar and Clay Jenkins, as independent executor of the Estate, therefore request the following:

- a. Confirmation that the Law Firm stock owned by the Estate may be sold pursuant to Texas Estates Code section 356.652 and/or 356.654;
- b. Confirmation that no creditors of the Estate presented claims within six months of the date letters testamentary were granted that remain unsettled as set forth in the notice provision under that statute;
- c. Authorization for the Executor to complete the sale, as is more fully described below, on the basis that it is in the best interests of the Estate; and
- d. Confirmation that the sale is authorized under subparagraph (7) of paragraph A of Article IX of the Will.

II.

FACTS SUPPORTING THE MOTION

The following facts support the relief requested:

1. Decedent died on December 4, 2016.
2. Decedent is survived by his two adult children, Abby Loncar and Hailey Loncar.
3. The Will was admitted to probate in this Court on January 13, 2017. Clay Jenkins was duly appointed by this Court and qualified to serve as the independent executor of the Estate (the “Executor”) on February 22, 2017.
4. The Estate administration has proceeded in this Court at all times from January 13, 2017 onward.
5. On the same day he executed his Will, Decedent also created the Trust, naming himself as trustor and its initial trustee.
6. Under the “pour over” provisions of the Will, all of Decedent’s probate assets pass to the Trust upon his death.
7. Following Decedent’s death, on February 15, 2017, Clay Jenkins became the successor trustee of the Trust (the “Trustee”)
8. Under the express terms of the Trust, the assets of the Trust, including the assets to be received from the Estate pursuant to the terms of the Will, are to pass as follows:

- a. Abby Loncar and Hailey Loncar each receive an equal share of the tangible personal property;
 - b. Isabel Cabrera receives the sum of \$800,000; and
 - c. The remaining property all passes into two equal trusts to benefit Abby Loncar and Hailey Loncar, of which Clay Jenkins is the acting trustee of each trust.
9. During his lifetime, Decedent was a Texas attorney and operated his law practice through the Law Firm which is a Texas professional corporation.
10. As set forth above in paragraph 6, *supra* all of the assets of the Estate, which includes all of the Law Firm stock, are to pass to the Trust upon Decedent's death. However, because the Law Firm is a professional corporation, it must be owned solely by one or more licensed attorneys or entities owned by licensed attorneys. Because the Trust is a non-lawyer, it is prohibited from either owning an equity interest in the Law Firm or receiving or sharing any legal fees from the Law Firm.
11. Consequently, as part of the Estate administration, the Executor must either sell the Law Firm to another licensed attorney, group of licensed attorneys, or one or more entities owned by licensed attorneys, or liquidate and dissolve the Law Firm, with the resulting sale or liquidation proceeds passing to the Trust in accordance with the Will.
12. In light of the foregoing, on February 6, 2018, the Executor engaged Hayse, LLC ("Hayse"), a business advisory firm located in Dallas, Texas that specializes in sales, acquisitions and mergers of law firms, to assist with the marketing and sale of the Law Firm.
13. At the direction of the Executor, Hayse made extensive efforts to market and sell the Law Firm to other attorneys. In fact, Hayse prepared a letter dated August 31, 2019 (the "Hayse Letter") that summarizes the work and efforts made to market and sell the Law Firm. The Hayse Letter is attached hereto as **Exhibit "A"** and is incorporated herein by reference.

14. Despite the professional efforts by Hayse to market and sell the Law Firm, as reflected in the Hayse Letter, there was a very limited response to those marketing efforts.

15. Ultimately, only one seemingly legitimate purchaser of the Law Firm emerged, and that was a group of three lawyers (collectively, the “Potential Purchaser Group”) who notified the Executor of their interest in acquiring the Law Firm on December 31, 2018.

16. After months of negotiations, and proposals and counter-proposals between Hayse and the Potential Purchaser Group, two of the lawyers comprising the Potential Purchaser Group withdrew as potential purchasers, leaving the other lawyer of the Potential Purchaser Group (“Lawyer A”) as the sole remaining potential purchaser.

17. The negotiations with Lawyer A continued until Lawyer A submitted a non-binding proposal to purchase the Law Firm on July 17, 2019, which Lawyer A subsequently stated on September 10, 2019 was Lawyer A’s final proposal (the “Final Lawyer A Proposal”). The key terms of the Final Lawyer A Proposal are set forth in the column entitled “Final Lawyer A Proposal” of the Proposal/Offer Comparison Analysis which is attached hereto as **Exhibit “B”** and incorporated herein by reference.

18. While these various negotiations were ongoing, the Executor also did due diligence about the possible and likely outcomes of liquidation of the Law Firm by working with the Law Firm’s accountants to prepare an analysis of the projected economic benefits to the Estate if the Law Firm were liquidated and dissolved rather than sold (the “Liquidation Alternative”). The most recent version of that analysis (“Liquidation Analysis”) is attached hereto as **Exhibit “C”** and is incorporated herein by reference.

19. In the interests of full transparency, the Executor had several meetings with Abby Loncar, Hailey Loncar, and their respective attorneys to review the overall marketing and promotion efforts

with respect to the sale of the Law Firm, the responses received, the terms of the Final Lawyer A Proposal, and the projected economic benefits and value of the Liquidation Alternative.

20. Abby Loncar and Hailey Loncar did not find either the Final Lawyer A Proposal or the Liquidation Alternative to be acceptable, and, working through their attorneys, they submitted a written request asking Clay Jenkins, in his individual capacity, to make an offer to purchase the Law Firm from the Estate.

21. Clay Jenkins explained that because he is serving as Executor he is generally prohibited from purchasing Estate assets, with the exception under section 356.654 of the Texas Estates Code whereby an executor can purchase estate assets if the probate court determines that it is in the estate's best interest. They also reviewed the language in the Will which allows the Executor to enter into transaction with himself, individually. Soon thereafter, Clay Jenkins engaged separate counsel and conducted his own due diligence about the potential purchase at no expense to the Estate.

22. Ultimately, on August 27, 2019, Clay Jenkins and another attorney, Ted B. Lyon, Jr., as equal co-investors (collectively, the "Jenkins/Lyon Group"), submitted a formal offer to purchase the Law Firm from the Estate, contingent upon this Court determining that such sale is in the best interests of the Estate (the "Initial Jenkins/Lyon Offer"). The key terms of the Initial Jenkins/Lyon Offer are set forth in the column entitled "Initial Jenkins/Lyon Offer" of the Proposal/Offer Comparison Analysis attached hereto as **Exhibit "B"**.

23. On August 28, 2019, Abby Loncar and Hailey Loncar, through their respective attorneys, submitted a counteroffer (the "Initial Counteroffer") to the Jenkins/Lyon Group. The key terms of the Initial Counteroffer are set forth in the column entitled "Initial Counteroffer" of the Proposal/Offer Comparison Analysis attached hereto as **Exhibit "B"**.

24. On September 10, 2019, the Jenkins/Lyon Group submitted to the Executor, Abby Loncar, and Hailey Loncar, through their respective attorneys, a revised offer to purchase the Law Firm (the “Second Jenkins/Lyon Offer”). The key terms of the Second Jenkins/Lyon Offer are set forth in the column entitled “Second Jenkins/Lyon Offer” of the Proposal/Offer Comparison Analysis attached hereto as **Exhibit “B”**.

25. On September 11, 2019, Abby Loncar and Hailey Loncar, through their respective attorneys, submitted another counteroffer (“9-11-19 Counteroffer”) to the Jenkins/Lyon Group. The key terms of the 9-11-19 Counteroffer are set forth in the column entitled “9-11-19 Counteroffer” of the Proposal/Offer Comparison Analysis attached hereto as **Exhibit “B”**.

26. The Jenkins/Lyon Group subsequently accepted the terms of the 9-11-19 Counteroffer. Immediately thereafter, the Executor, the Jenkins/Lyon Group, Abby Loncar, and Hailey Loncar, through their respective attorneys, began negotiating the specific terms of a stock purchase agreement to memorialize their agreement for the Estate to sell the Law Firm to the Jenkins/Lyon Group based on the terms of the 9-11-19 Counteroffer.

27. On October 11, 2019, the Executor and the Jenkins/Lyon Group executed a Stock Purchase Agreement (the “Stock Purchase Agreement”) pursuant to which the Jenkins/Lyon Group agreed to purchase the Law Firm from the Estate based on the terms of the 9-11-19 Counteroffer conditioned upon this Court approving such transaction as being in the best interest of the Estate. Abby Loncar and Hailey Loncar signed the Stock Purchase Agreement to acknowledge their approval of the transaction described therein. A copy of the Stock Purchase Agreement is attached hereto as **Exhibit “D”**, and is incorporated herein for all purposes.

28. Abby Loncar, Hailey Loncar, the Trustee, and the Executor all believe that (i) the transaction described in the Stock Purchase Agreement is substantially superior to the Final Lawyer A Proposal and the Liquidation Alternative, and (ii) the Executor selling the Law Firm to

the Jenkins/Lyon Group in accordance with the terms of the Stock Purchase Agreement is in the best interests of the Estate.

29. Abby Loncar, Hailey Loncar, the Trustee, and the Executor therefore request a finding that the sale of the Law Firm to the Executor pursuant to the terms of the Stock Purchase Agreement is in the Estate's best interest and, therefore, is permitted under section 356.654 of the Texas Estates Code, and, in addition or in the alternative, that such sale is authorized under the terms of the Will and, therefore, is permitted under section 356.652 of the Texas Estates Code.

III.

THE PURCHASE IS IN THE ESTATE'S BEST INTERESTS

30. The ability of Abby Loncar and Hailey Loncar to receive the full benefits that their father intended for them in the Will and the Trust is dependent upon them receiving the value of his primary asset, the Law Firm. Because the Trustee of the Trust is the sole beneficiary under the Will and Abby Loncar and Hailey Loncar are the primary beneficiaries under that Trust, they are the parties whose approval of the sale is the most important.¹ They have therefore joined together with the Executor in setting forth the following bases for this Court to find that the sale of the Law Firm to the Executor pursuant to the terms of the Stock Purchase Agreement is in the Estate's best interests:

- a. The sale will aid in bringing order and stability to the Estate administration.
- b. The sale will put an end to the lack of certainty regarding the handling of the Law Firm stock.
- c. The sale will put an end to any cost and expense involved in marketing and promoting the sale of the Law Firm.
- d. The sale will put an end to any cost and expense involved in negotiating offers and counter offers related to the Law Firm or considering any liquidation alternatives.

¹ There is a specific cash bequest to Isabel Cabrera under the Trust, but payment of that bequest was previously satisfied and is not in any way dependent upon or related to the sale of the Law Firm.

- e. The sale will be at the best price that has been offered, and it will therefore ultimately confer a greater economic benefit on Abby Loncar and Hailey Loncar, the ultimate beneficiaries of the Estate's assets.
 - f. Because Clay Jenkins and Ted B. Lyon, Jr. are licensed attorneys in Texas, the ownership of the stock by them is permitted under the ethical requirements and will not expose the Estate to further inquiry or challenge on that issue.
 - g. Finding the sale is in the Estate's best interests is a judicial finding that protects both the fiduciary and the beneficiaries.
 - h. The sale of the Law Firm to the Executor helps to move this Estate toward a final resolution under the terms of the Will.
31. As these reasons demonstrate, the Estate is benefitted by this transaction and then, ultimately, so are the beneficiaries. All such reasons show why the transaction should be found to be in the Estate's best interest.

IV.

APPLICABLE LAW AND ANALYSIS

32. Under section 356.651 of the Texas Estates Code, an individual serving as executor of an estate is generally prohibited from purchasing, directly or indirectly, assets from such estate. However, there are three statutory exceptions to that general prohibition.

33. First, under section 356.653 of the Texas Estates Code, an individual serving as executor of an estate may purchase estate assets pursuant to a contract signed by the decedent that was in place at the time of the decedent's death. This exception is clearly not applicable here.

34. Second, under section 356.652 of the Texas Estates Code, an individual serving as executor of an estate may purchase estate assets if the executor was appointed in the decedent's will, the will has been admitted to probate, and the will expressly authorizes the sale. Here, the Will appoints Clay Jenkins to serve as Executor, and the Will has been admitted to probate. Additionally, subparagraph (7) of paragraph A of Article IX of the Will gives the Executor the

power to enter into transactions with himself which would therefore include his participation in the Jenkins/Lyon Group:

“To enter into any transaction on behalf of my estate (including loans to beneficiaries for adequate security and adequate interest) despite the fact that another party to any such transaction may be (i) a trust of which any Executor under this Will is also a trustee; (ii) an estate of which any Executor under this Will is also an executor, personal representative or administrator, including my estate; (iii) a business or trust controlled by any Executor under this Will or of which any such Executor, or any director, officer or employee of any such corporate Executor, is also a director, officer or employee; or (iv) any beneficiary or Executor under this Will acting individually.”

35. The above provision authorizes the Executor to enter into any transaction on behalf of the Estate with himself, individually, and this basis is presented to the Court as a reason to confirm this transaction.

36. Third, in the alternative, under section 356.654 of the Texas Estates Code, an individual serving as executor of an estate may purchase estate assets “on the court's determination that the sale is in the estate's best interest.” Section 356.654 of the Texas Estates Code further provides that, before purchasing estate property authorized by that section, the executor must give notice of the purchase by certified mail, return receipt requested to (i) each distributee of the estate and (ii) each creditor whose claim remains unsettled after being presented within 6 months of the date letters testamentary were originally granted to the executor.

37. As illustrated above, the only potential alternatives to selling the Law Firm to the Jenkins/Lyon Group pursuant to the more favorable terms of the Stock Purchase Agreement are to either (i) liquidate the Law Firm and collect the resulting proceeds pursuant to the Liquidation Alternative, or (ii) attempt to negotiate a sale of the Law Firm to Lawyer A pursuant to the Final Lawyer A Proposal.

38. The Executor and the beneficiaries of the Estate all agree that the transaction set forth in the Stock Purchase Agreement is substantially superior to the Liquidation Alternative because,

based on the projections of the Law Firm's CPAs as set forth in the Liquidation Analysis, the net, after-tax proceeds the Estate is expected to receive under the Liquidation Alternative is approximately \$6,000,000 less than the net, after-tax proceeds the Estate is expected to receive under the Stock Purchase Agreement.

39. The Executor and the beneficiaries of the Estate all agree that the transaction set forth in the Stock Purchase Agreement is superior to the Final Lawyer A Proposal in the following ways:

- a. The overall purchase price is \$1,000,000 more than in the Final Lawyer A Proposal;
- b. The cash down payment is \$1,000,000 more than in the Final Lawyer A Proposal;
- c. Clay Jenkins has been successfully managing the Law Firm as a profitable business since his appointment as Executor and, therefore, in the opinion of the beneficiaries of the Estate, selling to the Jenkins/Lyon Group provides more certainty that the Law Firm will continue to be profitable and that the deferred payment obligations will be repaid in full and on time; and
- d. Due to the Jenkins/Lyon Group's familiarity with the Law Firm, the Jenkins/Lyon Group is not requiring any additional time for due diligence prior to closing the sale which the beneficiaries of the Estate expect to increase the likelihood that the sale will be promptly consummated.

40. The term "distributee" is defined in section 22.010 of the Texas Estates Code to mean "a person who is entitled to a part of the estate of a decedent under a lawful will or the statutes of descent and distribution." Therefore, the only potential distributees of the Estate are: the Trustee, Abby Loncar, Hailey Loncar and Isabel Cabrera. Isabel Cabrera is the only distributee of the Estate who would need to receive notice under section 365.654(b) of the Texas Estates Code since the other distributees are the movants in this proceeding.

41. There are no creditors of the Estate whose claim was presented within 6 months of the date letters testamentary were originally granted to the Executor and remains unsettled.

V.

RELIEF REQUESTED

To meet the statutory language and requirements of section 356.652 and/or 356.654 of the Texas Estates Code, Abby Loncar, Hailey Loncar, the Trustee, and the Executor request the following findings and relief from the Court:

- a. A finding that the Law Firm as an Estate asset is subject to the provisions of section 356.652 and/or 356.654 of the Texas Estates Code;
- b. A finding that Decedent's daughters, as the primary beneficiaries of the Trust, which is the sole beneficiary of the Estate, having been represented by counsel throughout the administration the Estate, have requested the application of these statutes to the facts at hand and believe that the sale of the Law Firm to the Jenkins/Lyon Group pursuant to the terms of the Stock Purchase Agreement will benefit the Estate and ultimately will benefit them and is in the best interest of the Estate;
- c. A finding that the notice provision in section 356.654(b) of the Texas Estates Code was met by giving notice to Isabel Cabrera since all of the other distributees of the Estate are movants herein;
- d. A finding that the notice provision in section 356.654(b) of the Texas Estates Code was further met because there is no creditor of the Estate whose claim remains unsettled after being presented within 6 months of the date the letters testamentary were granted;
- e. A finding that the sale of the Law Firm to the Jenkins/Lyon Group pursuant to the terms of the Stock Purchase Agreement is in the best interests of the Estate and is therefore permitted under section 356.654 of the Texas Estates Code;
- f. A finding that the sale of the Law Firm to the Jenkins/Lyon Group pursuant to the terms of the Stock Purchase Agreement is expressly authorized by the language of subparagraph (7) of paragraph A of Article IX of the Will and is therefore permitted under section 356.652 of the Texas Estates Code.
- g. That the Court enter an order confirming its findings outlined above, and authorizing the Executor to sell the Law Firm to the Jenkins/Lyon Group pursuant to the terms of the Stock Purchase Agreement.

WHEREFORE, PREMISES CONSIDERED, the movants herein request that, upon final hearing, they have the relief requested above and all such other and further relief, both general and special, both at law or in equity, as to which Abby Loncar, Hailey Loncar, the Trustee, and the Executor shall be justly entitled.

Respectfully submitted,

CARRINGTON, COLEMAN, SLOMAN
& BLUMENTHAL, L.L.P.

By: /s/ Bret Madole

Bret Madole
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James Austin Fisher
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LONCAR

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ATTORNEYS FOR CLAY JENKINS,
INDEPENDENT EXECUTOR OF THE
ESTATE OF BRIAN U. LONCAR AND
TRUSTEE OF THE BRIAN U. LONCAR
LIVING TRUST

FOLEY & LARDNER LLP

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ATTORNEYS FOR CLAY JENKINS,
INDEPENDENT EXECUTOR OF THE
ESTATE OF BRIAN U. LONCAR AND
TRUSTEE OF THE BRIAN U. LONCAR
LIVING TRUST

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this document was served on all counsel of record by e-service on this 14th day of October, 2019.



P. KEITH STAUBUS

Tab 26

2019.01.11

ESTATE OF	§	IN THE PROBATE COURT
BRIAN U. LONCAR,	§	OF
DECEASED	§	DALLAS COUNTY, TEXAS

**ORDER AUTHORIZING SALE
OF ESTATE PROPERTY**

On October 24, 2019 and December 2, 2019 came on to be considered by the Court the Motion to Authorize Sale of Estate Property to Executor filed by Abby Leigh Loncar (“Abby Loncar”) and Hailey Blair Loncar (“Hailey Loncar”), the primary beneficiaries of the Brian U. Loncar Living Trust (the “Trust”), and Clay Jenkins, as the trustee of the Trust, the sole residuary beneficiary of the Estate of Brian U. Loncar (the “Estate”), joined by Clay Jenkins, the duly-appointed successor independent executor of the Estate. The Court finds that Cynthia Sue Loncar caused to be filed with this Court on November 29, 2019, Cynthia Sue Loncar’s Withdrawal of her Objection to the Motion to Authorize Sale of Estate Property to Executor, and did not appear in person or by Attorney at the continuation of the hearing on December 2, 2019. The Court further finds that Phillip Edward Loncar was previously determined by this Court prior to the commencement of the hearing on the Motion to Authorize Sale of Estate Property to Executor on October 24, 2019 to lack standing to object to the subject Motion. Having considered the Motion and hearing evidence and arguments of counsel, the Court finds the following:

- a. As an Estate asset, the 1,000 shares of common stock of Brian Loncar, P.C. is subject to the provisions of sections 356.652 and 356.654 of the Texas Estates Code;
- b. Abby Loncar and Hailey Loncar, Decedent’s daughters, are the primary beneficiaries of the Trust, which is the sole residuary beneficiary of the Estate, having been represented by counsel throughout the administration the Estate, have requested that the sale of Brian Loncar P.C. to the Jenkins/Lyon Group pursuant to the terms of the Stock Purchase Agreement dated as of October 11, 2019 by and among Jenkins & Jenkins, LLC, Ted Lyon, LLC and Clay Jenkins as the



Independent Executor of the Estate of Brian U. Loncar (“the Stock Purchase Agreement”) is in the Estate’s best interest;

- c. The notice provision of section 356.654(b) of the Texas Estates Code was satisfied;
- d. The sale of Brian Loncar, P.C. to Jenkins & Jenkins, LLC and Ted Lyon, LLC pursuant to the terms of the Stock Purchase Agreement is in the Estate’s best interest and is therefore permitted under section 356.654 of the Texas Estates Code;
- f. The sale of Brian Loncar, P.C. to Jenkins & Jenkins, LLC and Ted Lyon, LLC pursuant to the terms of the Stock Purchase Agreement is expressly authorized by the language of subparagraph (7) of paragraph A of Article IX of the Will and is therefore permitted under section 356.652 of the Texas Estates Code.
- g. The Executor is authorized to sell Brian Loncar, P.C. to Jenkins & Jenkins, LLC and Ted Lyon, LLC pursuant to the terms of the Stock Purchase Agreement.

IT IS THEREFORE ORDERED that the Executor is authorized sell the stock of Brian Loncar, P.C. to Jenkins & Jenkins, LLC and Ted Lyon, LLC pursuant to the terms of the Stock Purchase Agreement.

SIGNED THIS 2nd day of December, 2019.


JUDGE PRESIDING

Tab 27

Case Information

DC-19-08531 | BRIAN LONCAR, P.C. vs. TOBY TOUDOUZE

Case Number

DC-19-08531

File Date

06/13/2019

Court

14th District Court

Case Type

OTHER PERSONAL INJURY

Judicial Officer

MOYE', ERIC

Case Status

OPEN

Party

PLAINTIFF

BRIAN LONCAR, P.C.,

Aliases

DBA Loncar Associates

Active Attorneys ▼

Lead Attorney

WEITZEL, DENNIS

Retained

Attorney

LYON, TED B

Retained

Attorney

WOLF, TRACY G

Retained

DEFENDANT

TOUDOUZE, TOBY

Address

Active Attorneys ▼

Attorney

FRIEDMAN, LAWRENCE J

Retained

Attorney
HUNNICUTT, JAMES E.
Retained

Attorney
BRIDGES, NEAL M.
Retained

Attorney
SPENCER, JENNIFER J
Retained

Attorney
BACA, DIMPLE A
Retained

Lead Attorney
ENOCH, CRAIG T
Retained

Attorney
BROADDUS, MARLA
Retained

DEFENDANT
JENKINS, CLAY LEWIS

Address

Active Attorneys ▼

Lead Attorney
WOLF, TRACY G
Retained

Events and Hearings

06/13/2019 NEW CASE FILED (OCA) - CIVIL

06/13/2019 CASE FILING COVER SHEET ▼

Civil Case Information Sheet

06/13/2019 ORIGINAL PETITION ▼

Plaintiff's Original Petition & Request For Disclosure

06/13/2019 ISSUE CITATION ▼

ISSUE CITATION

06/13/2019 JURY DEMAND ▼

JURY DEMAND

06/19/2019 CITATION ▼

Served

06/27/2019

Anticipated Server

ESERVE

Anticipated Method

06/28/2019 RETURN OF SERVICE ▼

EXECUTED CITATION - TOBY TOUDOUZE

Comment

EXECUTED CITATION - TOBY TOUDOUZE

07/16/2019 NOTICE OF DISMISSAL FOR WANT OF PROSECUTION ▼

NOTICE OF DISMISSAL FOR WANT OF PROSECUTION

Comment

MAILED

08/05/2019 AMENDED ANSWER - AMENDED GENERAL DENIAL ▼

Defendant's 1st Amended Original Answer and RFD.pdf

Comment

D/1ST
<p>08/05/2019 ORIGINAL ANSWER - GENERAL DENIAL ▼</p> <p>Def's Original Answer & Affirmative Defenses (TT).pdf</p>
<p>08/05/2019 MOTION - MISCELLANEOUS ▼</p> <p>Motion to Show Authority.pdf</p> <p>Comment MOTION TO SHOW AUTHORITY</p>
<p>08/05/2019 MOTION - DISMISS ▼</p> <p>Rule 91a Motion to Dismiss.pdf</p>
<p>08/05/2019 MOTION - MISCELLANEOUS ▼</p> <p>Amended Motion to Show Authority.pdf</p> <p>Comment AMENDED MOTION TO SHOW AUTHORITY</p>
<p>08/15/2019 NOTICE OF TRIAL ▼</p> <p>NOTICE OF TRIAL</p> <p>Comment MAILED - LVL 3</p>
<p>08/30/2019 DISMISSAL FOR WANT OF PROSECUTION ▼</p> <p>Judicial Officer MOYE', ERIC</p> <p>Hearing Time 11:00 AM</p> <p>Cancel Reason BY COURT ADMINISTRATOR</p>
<p>09/04/2019 NOTICE OF APPEARANCE ▼</p> <p>2019 0904 Notice of Appearance.pdf</p> <p>Comment JENNIFER J SPENCER, JAMES E HUNNICUTT & N NEAL BRIDGES</p>
<p>09/04/2019 COUNTER CLAIM ▼</p>

COUNTERCLAIM

Comment
AND JURY DEMAND

09/04/2019 JURY DEMAND ▼

JURY DEMAND FORM

09/04/2019 ISSUE CITATION ▼

ISSUE CITATION

09/05/2019 RESPONSE ▼

Plaintiff's Response to Motion to Dismiss.pdf

Comment
PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS

09/12/2019 CITATION ▼

Unserved

Anticipated Server
ESERVE

Anticipated Method
Served
09/20/2019

Anticipated Server
ESERVE

Anticipated Method
Actual Server
PRIVATE PROCESS SERVER

Returned
10/07/2019
Comment
CLAY LEWIS JENKINS

09/20/2019 Scheduling Conference ▼

Judicial Officer
MOYE', ERIC

Hearing Time
10:00 AM

Cancel Reason
BY COURT ADMINISTRATOR

Comment
NOT A HEARING - HAS S/O BEEN RECEIVED?

09/26/2019 NOTE - ADMINISTRATOR ▼

Comment
LVL 3 S/O NOT RECEIVED - MAILED LVL 2 S/O

09/26/2019 SCHEDULING ORDER ▼

SCHEDULING ORDER

Comment
LEVEL 2

10/07/2019 RETURN OF SERVICE ▼

EXECUTED CITATION - CLAY LEWIS JENKINS

Comment
EXECUTED CITATION - CLAY LEWIS JENKINS

10/23/2019 MOTION - MISCELLANEOUS ▼

2019.10.23 - M-Disqualify.pdf

Comment
MOTION TO DISQUALIFY FRIEDMAN & FEIGER, LLP, OR IN THE ALTERNATIVE,
LAWRENCE J. FRIEDMAN, INDIVIDUALLY

10/30/2019 CERTIFICATE OF DEPOSITION ▼

REPORTER'S CERTIFICATION CLAY LEWIS JENKINS

Comment
CLAY LEWIS JENKINS

02/06/2020 NOTICE OF APPEARANCE ▼

NOTICE OF APPEARANCE OF COUNSEL

02/07/2020 CERTIFICATE OF CONFERENCE ▼

CERTIFICATE OF CONFERENCE

02/10/2020 AMENDED PETITION ▼

PLAINTIFF'S FIRST AMENDED PETITION

Comment

PLAINTIFF'S FIRST AMENDED PETITION
02/12/2020 VACATION LETTER
02/12/2020 NOTICE OF HEARING / FIAT ▼ HEARING NOTICE Comment MOTION TO DISQUALIFY
02/18/2020 NOTICE OF APPEARANCE ▼ NOTICE OF APPEARANCE
02/20/2020 ORIGINAL ANSWER - GENERAL DENIAL ▼ PLTF/ORIGINAL ANSWER
02/26/2020 NOTICE OF HEARING / FIAT ▼ HEARING NOTICE Comment MOTION DISQUALIFY
04/06/2020 NO EVIDENCE MOTION FOR SUMMARY JUDGMENT ▼ NO-EVIDENCE MOTION SUMMARY JUDGMENT
04/14/2020 CORRESPONDENCE - LETTER TO FILE ▼ RE: PROPOSED ORDER ON P M-DISQUALIFY Comment RE: PROPOSED ORDER ON P M-DISQUALIFY
04/14/2020 NON-SIGNED PROPOSED ORDER/JUDGMENT ▼ PROPOSED ORDER ON P M-DISQUALIFY Comment ORDER GRANTING PLAINTIFF'S MOTION TO DISQUALIFY FRIEDMAN & FEIGER, LLP, OR IN THE ALTERNATIVE, LAWRENCE J. FRIEDMAN, INDIVIDUALLY
04/16/2020 MOTION - COMPEL ▼ AMENDED MOTION COMPEL Comment

AMENDED

04/17/2020 MOTION - QUASH ▼

MOTION QUASH

04/17/2020 NOTICE OF APPEARANCE ▼

NOTICE OF LIMITED APPEARANCE OF COUNSEL FOR FRIEDMAN & FEIGER, LLP & LAWRENCE J. FRIEDMAN

Comment

LIMITED

04/20/2020 MOTION HEARING ▼

2019.10.23 - M-Disqualify.pdf

CERTIFICATE OF CONFERENCE

Judicial Officer

MOYE', ERIC

Hearing Time

10:00 AM

Comment

30MINS SET BY LORI 972-392-9888 *COURTESY IS REQUIRED BY JUDGE * ***VIA ZOOM***

04/20/2020 RETURN OF SERVICE ▼

EXECUTED SUBPOENA: CLAY LEWIS JENKINS

Comment

EXECUTED SUBPOENA: CLAY LEWIS JENKINS

04/20/2020 NON-SIGNED PROPOSED ORDER/JUDGMENT ▼

PROPOSE ORDER

Comment

ORDER DENYING MOTION TO DISQUALIFY

04/20/2020 ORDER - MISC. ▼

ORDER - MISC. DISQUALIFY

Comment

DISQUALIFY

04/20/2020 RESPONSE ▼

DEF/RESPONSE TO MOTION TO DISQUALIFY

Comment

DEF/RESPONSE TO MOTION TO DISQUALIFY

04/20/2020 MISCELLANEOUS EVENT ▼

UNSWORN DECLARATION OF TOBY TOUDOUZE

Comment

UNSWORN DECLARATION OF TOBY TOUDOUZE

04/20/2020 MISCELLANEOUS EVENT ▼

UNSWORN DECLARATION OF LARRY FRIEDMAN

Comment

UNSWORN DECLARATION OF LARRY FRIEDMAN

05/11/2020 NON-SIGNED PROPOSED ORDER/JUDGMENT ▼

PROPOSED PLAINTIFF'S ORDER TO QUASH

Comment

PROPOSED PLAINTIFF'S ORDER TO QUASH

05/11/2020 RULE 11 ▼

RULE 11

Comment

AGREEMENTS

05/13/2020 Motion - Quash ▼

Judicial Officer

MOYE', ERIC

Hearing Time

10:15 AM

Cancel Reason

REQUESTED BY ATTORNEY/PRO SE

Comment

15MINS/SET BY KOURTNEY 972-942-5708 ***VIA SUBMISSION***

05/26/2020 NOTICE OF TRIAL ▼

NOTICE OF TRIAL

Comment

TRIAL RESET - NOTICES MAILED

06/05/2020 MOTION - CONTINUANCE ▼

UNOPPOSED MOTION TO CONTINUE & RESET TRIAL DATE

Comment

UNOPPOSED MOTION TO CONTINUE & RESET TRIAL DATE

09/28/2020 NOTICE OF TRIAL ▼

NOTICE OF TRIAL

Comment

TRIAL RESET - NOTICES AND LVL 2 S/O MAILED

09/28/2020 SCHEDULING ORDER ▼

SCHEDULING ORDER

Comment

LEVEL 1

10/05/2020 COA - POST CARD ▼

COA - POST CARD

11/19/2020 OPINION ▼

OPINION

Comment

MEMORANDUM

11/19/2020 COA - CORRESPONDENCE LETTER ▼

COA - CORRESPONDENCE LETTER

11/19/2020 5TH COA ORDER ▼

5TH COA ORDER

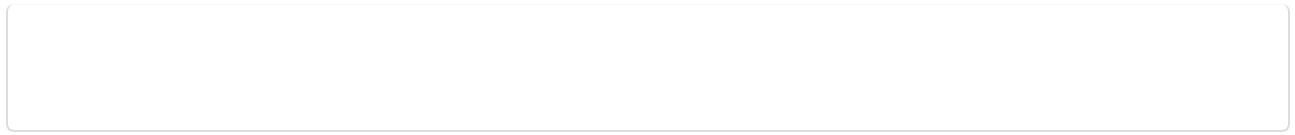
03/09/2021 Jury Trial - Civil ▼

Judicial Officer

MOYE', ERIC

Hearing Time

9:30 AM



Tab 28

JURY DEMAND

DC-19-08531

JAVIER HERNANDEZ

CAUSE NO. _____

BRIAN LONCAR, P.C., D/B/A	§	IN THE DISTRICT COURT
LONCAR ASSOCIATES	§	
	§	
Plaintiff,	§	
	§	
vs.	§	14TH
	§	_____ JUDICIAL DISTRICT
	§	
TOBY TOUDOUZE	§	
	§	
Defendant.	§	DALLAS COUNTY, TEXAS

PLAINTIFF’S ORIGINAL PETITION & REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES **BRIAN LONCAR, P.C., D/B/A LONCAR ASSOCIATES** (hereinafter referred to as “Plaintiff” or “Loncar”) and files this original petition against **TOBY TOUDOUZE** (“Defendant” or “Toudouze”), and would respectfully show the Court as follows:

I. DISCOVERY-CONTROL PLAN

1. Plaintiff intends to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.4 and affirmatively pleads that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because Plaintiff seeks equitable relief or, in the alternative, monetary relief over \$100,000.

II. CLAIM FOR RELIEF

2. Plaintiff seeks equitable relief in the form of the return of property including trade secrets and confidential information of the Plaintiff law firm.

3. In the alternative, Plaintiff seeks monetary relief over \$1,000,000. Tex. R. Civ. P. 47(c)(5).

III. PARTIES

4. Plaintiff is a professional corporation doing business in Dallas County, Texas at 424 S. Cesar Chavez Blvd., Dallas, Texas 75201.

5. Defendant, Toby Toudouze, an individual, may be served with process at Defendant's home in Dallas County at [REDACTED], Dallas, Texas 75214, or wherever Defendant may be found.

IV. JURISDICTION

6. The Court has subject matter jurisdiction over the lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

7. The Court has personal jurisdiction over Toudouze because he is a resident of the State of Texas and Dallas County and was a resident of Texas at the time the theft occurred.

V. VENUE

8. Venue is permissive in Dallas County under Texas Civil Practice & Remedies Code section 134.004 because this is a brought under the Texas Theft Liability Act, and Dallas County is where the theft occurred.

VI. FACTS

9. Toby Toudouze was previously an employee of Plaintiff and served as the Chief Financial Officer of Loncar up until April, 2017.

10. On or about March 31, 2017, Toudouze removed boxes of records from the offices of Loncar Associates. These records were the personal property, including trade secrets and financial records of Plaintiff.

11. Additionally, on March 31, 2017 Toudouze removed hard drives and digital information from computers owned by Loncar, which contained additional files and information that were the personal property and trade secrets of Loncar Associates.

12. Toudouze has failed to return the stolen items even though demand has been made that he do so.

13. As an employee of Plaintiff with access to its financial records, Toudouze was entrusted by Plaintiff to act in the interest of Loncar in Defendant's capacity as an employee of Plaintiff with access to privileged and sensitive information.

VII. CAUSES OF ACTION

Count 1 – Theft Liability Act – Theft of Personal Property

14. Plaintiff brings this action under the Texas Theft Liability Act for an unlawful appropriation of physical and digital property, including trade secrets and private financial information under the Texas Civil Practices and Remedies Code Sec. 134.001-134.005 and the Texas Penal Code section 31.03.

15. Loncar was the owner of the written and digital information at issue and was entitled to possession of the boxes of records, the hard drives, and the files contained on the hard drives.

16. Toudouze unlawfully appropriated Plaintiff's personal property and trade secrets in violation of Texas Penal Code section 31.03 in March, 2017.

17. Defendant's unlawful appropriation was made with intent to deprive Plaintiff of the property and information.

18. Defendant's wrongful conduct caused injury to Plaintiff, which resulted in actual damages.

19. Upon proof of actual damages, Plaintiff is entitled to additional statutory damages of up to \$1,000 from Defendant under Texas Civil Practice & Remedies Code section 134.005(a)(1) plus actual damages resulting from the theft.

20. Plaintiff seeks damages within the jurisdictional limits of this Court.

21. Exemplary damages. Loncar's injury resulted from Defendant's malice or actual fraud, which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).

22. Loncar's injury resulted from Defendant's felony theft in the third degree or higher under the Texas Penal Code that was committed intentionally and knowingly, which exempts this claim from the cap on exemplary damages under Texas Civil Practice & Remedies Code section 41.008(c).

23. Court costs. Plaintiff is entitled to recover court costs under Texas Civil Practice & Remedies Code section 134.005(b).

24. Attorney fees. Loncar is entitled to recover reasonable and necessary attorney fees under Texas Civil Practice & Remedies Code section 134.005(b).

Count 2 – Breach of Fiduciary Duty

25. Toudouze had a fiduciary relationship with Loncar given his employee status and his position of access to private and confidential financial and trade secret information. Defendant was a long-time employee of Plaintiff and was given access to sensitive and private financial and confidential records and trade secrets at Loncar Associates.

26. Toudouze breached his fiduciary duty to Loncar by stealing from Plaintiff.

27. Defendant's breach of fiduciary duty injured Plaintiff by depriving Plaintiff

of its rightful property, and benefited Defendant by giving Defendant access to private, client records and trade secrets which resulted in actual damages.

28. Plaintiff seeks damages within the jurisdictional limits of this Court.

29. Exemplary damages. Plaintiff's injury resulted from Defendant's malice, fraud, or gross negligence, which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).

VIII. EQUITABLE RELIEF

30. Plaintiff seeks equitable relief in the form of the return of all stolen property.

IX. JURY DEMAND

31. Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

X. REQUESTS FOR DISCLOSURE

32. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2

XI. PRAYER

For these reasons, Plaintiff asks that the Court issue citation for Defendant to appear and answer, and that the Plaintiff be awarded a judgment against Defendant for all damages that resulted from the Defendant's breach of contract. Plaintiff also asks that it be awarded prejudgment and post judgment interest, court costs, attorney fees, and all other appropriate relief, general or special, in law or in equity, to which Plaintiff may be entitled.

Respectfully submitted,

TED B. LYON & ASSOCIATES, P.C.

By: /s/ Dennis Weitzel

TED B. LYON, JR.

State Bar No. 12741500

tblyon@tedlyon.com

DENNIS WEITZEL

State Bar No. 21118200

dennis@tedlyon.com

Town East Tower – Suite 525

18601 LBJ Freeway

Mesquite, Texas 75150

Phone: 972-279-6571

Fax: 972-279-3021

ATTORNEYS FOR PLAINTIFF

Tab 29

Felicia Pitre

AFFIDAVIT OF SERVICE

State of Texas

County of Dallas

14th District Court

Case Number: DC-19-08531

Plaintiff:

Brian Loncar, P.C., d/b/a Loncar Associates

vs.

Defendant:

Toby Toudouze

Received by Certified Corp. & Process Services LLC on the 24th day of June, 2019 at 3:32 pm to be served on **Toby Toudouze, [REDACTED], Dallas, Dallas County, TX 75214.**

I, Tony Glenn Hitt, being duly sworn, depose and say that on the **27th day of June, 2019 at 3:23 pm, I:**

Personally by delivering to: Toby Toudouze, accepting, Tracy Head, legal assistant to Mr. Friedman, Citation; Plaintiff's Original Petition & Request for Disclosure, a true copy of the specified civil process, having first endorsed the date of delivery, at 5301 Spring Valley Road, Suite 200, Dallas, Dallas County, TX 75254 and informed said person of the contents therein.

I am over the age of 18; and I am not a party to nor interested in the outcome of the above styled and numbered suit; and I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Before me, a notary public, on this day personally appeared the above named person, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are within his/her personal knowledge and experience to be true and correct. given under my hand and seal of office on the 27th day of June, 2019

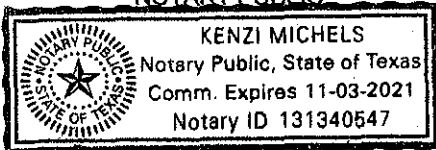
Kenzi Michels
NOTARY PUBLIC

Tony Glenn Hitt

Tony Glenn Hitt
PSC 11703 Exp. Date 11/30/2020

**Certified Corp. & Process Services LLC
P.O. Box 496448
Garland, TX 75049
(972) 279-6100**

Our Job Serial Number: LGD-2019001458



Tab 30



14TH JUDICIAL DISTRICT COURT
GEORGE L. ALLEN COURTS BUILDING
600 COMMERCE STREET
DALLAS, TEXAS 75202-4604

July 16, 2019

File Copy

DC-19-08531
BRIAN LONCAR, P.C. vs. TOBY TOUDOUZE

ALL COUNSEL OF RECORD AND PRO SE PARTIES:

The above case is set for dismissal, pursuant to Rule 165A, Texas Rules of Civil procedure and pursuant to the inherent power of the Court, on:

August 30, 2019 at 11:00 AM

If no answer has been filed you are expected to have moved for a default judgment on or prior to that date. Your failure to have done so will result in the dismissal of the case on the above date.

If you have been unable to obtain service of process and you wish to retain the case on the docket, you must appear on the above date, unless you have obtained a new setting from the court coordinator.

Sincerely,

ERIC V. MOYÉ, DISTRICT JUDGE
14TH DISTRICT COURT
Dallas County, Texas

Cc:
DENNIS WEITZEL
18601 LBJ FREEWAY
SUITE 525
MESQUITE TX 75150

Tab 31

CAUSE NO. DC-19-08531

BRIAN LONCAR, P.C. d/b/a LONCAR ASSOCIATES,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
vs.	§	14th JUDICIAL DISTRICT
	§	
TOBY TOUDOUZE,	§	
	§	
Defendant.	§	DALLAS COUNTY, TEXAS

AMENDED MOTION TO SHOW AUTHORITY

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Toby Toudouze (“**Defendant**”), named Defendant in the above cause, filing his Amended Motion to Show Authority pursuant to TEX. R. CIV. P. 12, and files this verified motion requesting Counsel for Plaintiff *to show his authority to prosecute* this suit on behalf of Plaintiff Brian Loncar, P.C. d/b/a Loncar Associates, as allowed by TEXAS RULE OF CIVIL PROCEDURE 12.

INTRODUCTION

1. Plaintiff Brian Loncar, P.C., d/b/a Loncar Associates, sued Defendant, Toby Toudouze, alleging Defendant breached his fiduciary duties and stole company property.

BACKGROUND

2. Defendant believes that Counsel for Plaintiff is *prosecuting* this suit without the authority of Plaintiff Brian Loncar, P.C., d/b/a Loncar Associates.

ARGUMENT & AUTHORITIES

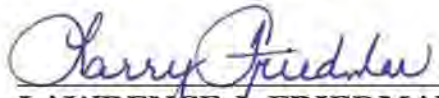
3. When a party alleges that an attorney is prosecuting or defending a suit on behalf of another party without authority, the challenged attorney must appear before the court to show his or her authority to act. TEX. R. CIV. P. 12.

4. Under Tex. R. Civ. P. 12, the Court should cite Counsel for Plaintiff and require *him* to appear for a hearing to show *his* authority to *prosecute* on behalf of Plaintiff Brian Loncar, P.C., d/b/a Loncar Associates.

PRAYER

For these reasons, the Defendant respectfully requests asks the Court to cite Counsel for Plaintiff to appear before the Court and show *his* authority to act on behalf of Plaintiff Brian Loncar, P.C., d/b/a Loncar Associates.

Respectfully Submitted,



LAWRENCE J. FRIEDMAN

Texas Bar No. 07469300

Email: lfriedman@flawoffice.com

FRIEDMAN & FEIGER, LLP

5301 Spring Valley Road, Suite 200

Dallas, Texas 75254

Telephone (972) 788-1400

Facsimile (972) 788-2667

ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on **August 5, 2019**, a true and correct copy of the foregoing pleading has been served on all parties in this proceeding, pursuant to the Texas Rules of Civil Procedure.



LAWRENCE J. FRIEDMAN

VERIFICATION OF TOBY TOUDOUZE

STATE OF TEXAS §
 §
DALLAS COUNTY §

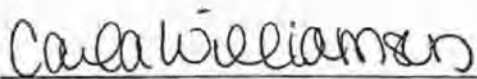
BEFORE ME, the undersigned notary, on this day personally appeared Toby Toudouze, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

“My name is Toby Toudouze. I am capable of making this verification. I have read the Amended Motion to Show Authority and the facts stated in paragraph 2 are within my personal knowledge and are true and correct.”

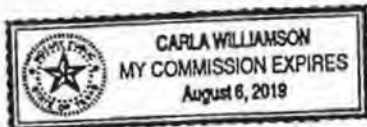


TOBY TOUDOUZE

SWORN TO and subscribed before me by TOBY TOUDOUZE on this, the 5th day of August 2019.



Notary Public, State of Texas



Tab 32

CAUSE NO. DC-19-08531

**BRIAN LONCAR, P.C. d/b/a
LONCAR ASSOCIATES,**

Plaintiff,

vs.

TOBY TOUDOUZE,

Defendant.

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

14TH JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

DEFENDANT’S FIRST AMENDED ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Toby Toudouze (“**Defendant**”), named Defendant in the above cause, filing his Defendant’s Original Answer, in response to Plaintiff Brian Loncar, P.C., d/b/a Loncar Associates’ Original Petition and Request for Disclosure and, for cause, would respectfully show unto the Court as follows:

GENERAL DENIAL

1. As permitted by the Texas Rules of Civil Procedure, Rule 92, Defendant generally denies the material allegations contained in Plaintiff’s Original Petition for and Request for Disclosure, and any supplement or amendment thereto, and demands strict proof thereof in accordance with the laws of the State of Texas.

VERIFIED PLEAS

2. Defendant pleads that Plaintiff lacks standing and the legal capacity to sue.

AFFIRMATIVE AND ADDITIONAL DEFENSES

3. By alleging the matters set forth below under the heading “Affirmative Defenses,” Defendant does not allege or admit that they have the burden of proof and/or

the burden of persuasion with respect to any of these matters. As their affirmative defenses to the claims set forth by Plaintiff, Defendant sets forth his defenses as follows:

4. Defendant pleads that Plaintiff's claims are barred, in whole or in part, by the affirmative defense of LACK OF STANDING.

5. Defendant pleads that Plaintiff's claims are barred, in whole or in part, by the affirmative defense of UNCLEAN HANDS.

6. Defendant pleads that Plaintiff's claims are barred, in whole or in part, by the affirmative defense of STATUTE OF LIMITATIONS to the Texas Theft Liability Act claim.

7. Defendant pleads that Plaintiff's claims are barred, in whole or in part, by the affirmative defense of RELEASE.

8. Defendant further asserts that any damages allegedly suffered by Plaintiff, which damages Defendant vigorously denies, is the result of Plaintiff's own fraud, misrepresentations, omissions, and any concealment thereof.

9. Defendant affirmatively pleads that Plaintiff's claims fail to state a claim upon which relief may be granted.

10. Pleading in the alternative, and without waiver of any other defenses, Defendant affirmatively asserts that Plaintiff failed to mitigate its damages in this suit and, therefore, should not recover any damages that it could have prevented and/or mitigated.

NO WAIVER

11. By filing this pleading, Defendant does not waive or release any rights, claims, causes of action, defenses, or make any elections of remedies that it may have, but expressly reserves such rights, claims, causes of actions, and defenses.

REQUEST FOR DISCLOSURE

9. Pursuant to RULE 194 of the TEXAS RULES OF CIVIL PROCEDURE, the Plaintiff is hereby requested to disclose the information or material described in Rule 194.2. This is a continuing duty and requires supplementation in accordance with the TEXAS RULES OF CIVIL PROCEDURE.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Plaintiff take nothing in connection with its claims asserted against Defendant; denying any and all of the relief requested against Defendant in Plaintiff's Original Petition and Request for Disclosure, and any amendments or supplements thereto, that Defendant be awarded his costs, attorneys' fees pursuant to TEX. CIV. PRAC. & REM. CODE §134.005(b), and for such other and further relief, at law and in equity, to which Defendant may show himself to be justly entitled.

Respectfully Submitted,



LAWRENCE J. FRIEDMAN

Texas Bar No. 07469300

Email: lfriedman@flawoffice.com

FRIEDMAN & FEIGER, LLP

5301 Spring Valley Road, Suite 200

Dallas, Texas 75254

Telephone (972) 788-1400

Facsimile (972) 788-2667

ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on **August 5, 2019**, a true and correct copy of the foregoing pleading has been served on all parties in this proceeding, pursuant to the TEXAS RULES OF CIVIL PROCEDURE.

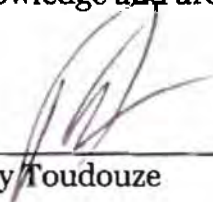


LAWRENCE J. FRIEDMAN

VERIFICATION

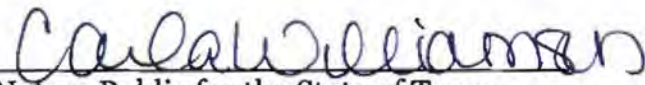
STATE OF TEXAS §
 §
COUNTY OF DALLAS §

On this 5th day of August 2019, before me, the undersigned Notary Public, personally appeared Toby Toudouze, who by me duly sworn on his oath deposed and said that he has read the above and foregoing Verified Pleas section and, that the statements contained therein are within his personal knowledge and are true and correct.



Toby Toudouze

Subscribed to and sworn to before me by Toby Toudouze on the 5th day of August 2019, to certify which witness my hand and official seal.



Notary Public for the State of Texas

My Commission Expires: 08/06/23



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Tab 33

CAUSE No. DC-19-08531

BRIAN LONCAR, P.C., D/B/A	§	IN THE DISTRICT COURT
LONCAR ASSOCIATES,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	14th JUDICIAL DISTRICT
	§	
	§	
TOBY TOUDOUZE,	§	
	§	
Defendant.	§	DALLAS COUNTY, TEXAS

DEFENDANT’S MOTION TO DISMISS BASELESS CAUSES OF ACTION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Toby Toudouze (“Defendant”), who respectfully request that this Honorable Court dismiss Plaintiff’s cause of action for Texas Theft Liability Act because it has no basis in *law*, and, for cause, would show unto this Honorable Court as follows:

FACTS

1. On June 13, 2019, Plaintiff filed Plaintiff’s Original Petition and Request for Disclosure (“Petition”) against Defendant containing causes of action for Texas Theft Liability Act, Breach of Fiduciary Duty and Exemplary Damages. The claim for Texas Theft Liability Act has no basis in law. A cause of action for conversion is two (2) years. TEX. CIV. PRAC. REM. CODE §16.003(a). On the face of the Petition the Plaintiff was clear that the alleged “unlawful appropriation,” occurred in March 2017. The statute of limitations for the Plaintiff’s Texas Theft Liability Act claim expired in March of 2019, two (2) month prior to the filing of the Petition. These are precisely the types of claims for which Rule 91a was enacted.

ARGUMENT & AUTHORITIES

2. Defendant files this motion to dismiss Plaintiff's cause of action for Texas Theft Liability Act under the authority of Texas Rule of Civil Procedure 91a. TEX. R. CIV. P. 91a.1, 91a.2. Under Rule 91a, the Court can dismiss a cause of action that has no basis in law or fact. TEX. R. CIV. P. 91a.1.

3. The Court should dismiss Plaintiff's cause of action against Defendant because for Texas Theft Liability Act because it has no basis in law. TEX. R. CIV. P. 91a.1, 91a.2. A cause of action has no basis in law if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle the plaintiff to the relief sought. TEX. R. CIV. P. 91a.1. Plaintiff's cause of action against for Texas Theft Liability Act has no basis in law and must be dismissed.

ATTORNEYS' FEES & COSTS

4. Under Rule 91a, the prevailing party on a motion to dismiss must be awarded reasonable and necessary attorneys' fees and all costs incurred as a result of plaintiff's cause of action. *See* Tex. R. Civ. P. 91a.7.

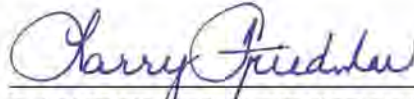
5. Therefore, if the Court grants Defendant's motion to dismiss, either in whole or in part, the Court must award Defendant reasonable and necessary attorneys' fees and all costs incurred as a result of analyzing the Plaintiff's pleading, preparing this motion to dismiss and presenting this motion to the Court.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully requests the Court to set this motion for hearing and, after the hearing, grant this motion and sign

an order dismissing the challenged cause of action and awarding Defendant reasonable and necessary attorneys' fees and all costs.

Respectfully Submitted,



LAWRENCE J. FRIEDMAN

Texas Bar No. 07469300

Email: lfriedman@flawoffice.com

FRIEDMAN & FEIGER, LLP

5301 Spring Valley Road, Suite 200

Dallas, Texas 75254

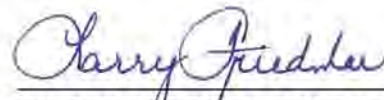
Telephone (972) 788-1400

Facsimile (972) 788-2667

ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on **August 5, 2019**, a true and correct copy of the foregoing pleading has been served on all parties in this proceeding, pursuant to the TEXAS RULES OF CIVIL PROCEDURE.



LAWRENCE J. FRIEDMAN

Tab 34

CAUSE NO. DC-19-08531

BRIAN LONCAR, P.C., D/B/A LONCAR ASSOCIATES,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
vs.	§	14th JUDICIAL DISTRICT
	§	
TOBY TOUDOUZE,	§	
	§	
Defendant.	§	DALLAS COUNTY, TEXAS

MOTION TO SHOW AUTHORITY

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Toby Toudouze (“Defendant”), named Defendant in the above cause, filing his Motion to Show Authority pursuant to Tex. R. Civ. P. 12, files this verified motion requesting Counsel for Plaintiff *to show his authority to prosecute* this suit on behalf of Plaintiff Brian Loncar, P.C., d/b/a Loncar Associates, as allowed by Texas Rule of Civil Procedure 12.

INTRODUCTION

1. Plaintiff Brian Loncar, P.C., d/b/a Loncar Associates, sued Defendant, Toby Toudouze, alleging Defendant breached his fiduciary duties and stole company property.

BACKGROUND

2. Defendant believes that Counsel for Plaintiff is *prosecuting* this suit without the authority of Plaintiff Brian Loncar, P.C., d/b/a Loncar Associates.

ARGUMENT & AUTHORITIES

3. When a party alleges that an attorney is prosecuting or defending a suit on behalf of another party without authority, the challenged attorney must appear before the court to

show his or her authority to act. TEX. R. CIV. P. 12.

4. Under Tex. R. Civ. P. 12, the Court should cite Counsel for Plaintiff and require *him* to appear for a hearing to show *his* authority to *prosecute* on behalf of Plaintiff Brian Loncar, P.C., d/b/a Loncar Associates.

PRAYER

For these reasons, the Defendant respectfully requests asks the Court to cite Counsel for Plaintiff to appear before the Court and show *his* authority to act on behalf of Plaintiff Brian Loncar, P.C., d/b/a Loncar Associates.

Respectfully Submitted,

FRIEDMAN & FEIGER, L.L.P.

/s/ Lawrence J. Friedman

By: _____

Lawrence J. Friedman
State Bar No. 07469300
lfriedman@flawoffice.com

5301 Spring Valley Road, Suite 200
Dallas, Texas 75254
(972) 788-1400 (Telephone)

ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2019, a true and correct copy of the foregoing pleading has been served on all parties in this proceeding, pursuant to the Texas Rules of Civil Procedure.

/s/ Lawrence J. Friedman


Attorney

VERIFICATION OF TOBY TOUDOUZE

**STATE OF TEXAS
DALLAS COUNTY**

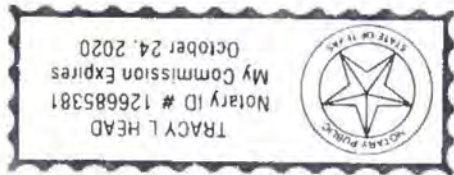
Before me, the undersigned notary, on this day personally appeared Toby Toudouze, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

“My name is Toby Toudouze. I am capable of making this verification. I have read the Motion to Show Authority and the facts stated in paragraph 3 are within my personal knowledge and are true and correct.”



Toby Toudouze.

Sworn to and subscribed before me by August on
5th, 2019.
Tracy L. Head Notary Public in and for the State of Texas.



Tab 35

CAUSE No. DC-19-08531

**BRIAN LONCAR, P.C., D/B/A
LONCAR ASSOCIATES,**

Plaintiff,

vs.

TOBY TOUDOUZE,

Defendant.

§
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§
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§
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§

IN THE DISTRICT COURT

14th JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

DEFENDANT’S ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Toby Toudouze (“Defendant”), named Defendant in the above cause, filing his Defendant’s Original Answer, in response to Plaintiff Brian Loncar, P.C., d/b/a Loncar Associates’ Original Petition and Request for Disclosure and, for cause, would respectfully show unto the Court as follows:

GENERAL DENIAL

1. As permitted by the Texas Rules of Civil Procedure, Rule 92, Defendant generally denies the material allegations contained in Plaintiff’s Original Petition for and Request for Disclosure, and any supplement or amendment thereto, and demands strict proof thereof in accordance with the laws of the State of Texas.

AFFIRMATIVE AND ADDITIONAL DEFENSES

2. By alleging the matters set forth below under the heading “Affirmative Defenses,” Defendant does not allege or admit that they have the burden of proof and/or the burden of persuasion with respect to any of these matters. As their affirmative defenses to the claims set forth by Plaintiff, Defendant sets forth his defenses as follows:

3. Defendant pleads that Plaintiff's claims are barred, in whole or in part, by the affirmative defense of LACK OF STANDING.

4. Defendant pleads that Plaintiff's claims are barred, in whole or in part, by the affirmative defense of UNCLEAN HANDS.

5. Defendant pleads that Plaintiff's claims are barred, in whole or in part, by the affirmative defense of STATUTE OF LIMITATIONS to the Texas Theft Liability Act claim.

6. Defendant pleads that Plaintiff's claims are barred, in whole or in part, by the affirmative defense of RELEASE.

7. Defendant further asserts that any damages allegedly suffered by Plaintiff, which damages Defendant vigorously denies, is the result of Plaintiff's own fraud, misrepresentations, omissions, and any concealment thereof.

8. Defendant affirmatively pleads that Plaintiff's claims fail to state a claim upon which relief may be granted.

9. Pleading in the alternative, and without waiver of any other defenses, Defendant affirmatively asserts that Plaintiff failed to mitigate its damages in this suit and, therefore, should not recover any damages that it could have prevented and/or mitigated.

NO WAIVER

10. By filing this pleading, Defendant does not waive or release any rights, claims, causes of action, defenses, or make any elections of remedies that it may have, but expressly reserves such rights, claims, causes of actions, and defenses.

REQUEST FOR DISCLOSURE

9. Pursuant to RULE 194 of the TEXAS RULES OF CIVIL PROCEDURE, the Plaintiff is hereby requested to disclose the information or material described in Rule 194.2. This is a continuing duty and requires supplementation in accordance with the TEXAS RULES OF CIVIL PROCEDURE.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Plaintiff take nothing in connection with its claims asserted against Defendant; denying any and all of the relief requested against Defendant in Plaintiff's Original Petition and Request for Disclosure, and any amendments or supplements thereto, that Defendant be awarded his costs, attorneys' fees pursuant to TEX. CIV. PRAC. & REM. CODE §134.005(b), and for such other and further relief, at law and in equity, to which Defendant may show himself to be justly entitled.

Respectfully Submitted,

FRIEDMAN & FEIGER, L.L.P.

/s/ Lawrence J. Friedman

By: _____

Lawrence J. Friedman
State Bar No. 07469300
lfriedman@fflawoffice.com

5301 Spring Valley Road, Suite 200
Dallas, Texas 75254
(972) 788-1400 (Telephone)

ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2019, a true and correct copy of the foregoing pleading has been served on all parties in this proceeding, pursuant to the Texas Rules of Civil Procedure.

/s/ Lawrence J. Friedman

Attorney

Tab 36



14TH DISTRICT COURT
GEORGE L. ALLEN, SR. COURTS BUILDING
600 COMMERCE STREET, ROOM 360
DALLAS, TEXAS 75202-4606
Chambers of JUDGE ERIC V. MOYÉ

August 15, 2019

File Copy

DC-19-08531 BRIAN LONCAR, P.C. vs. TOBY TOUDOUZE

ALL COUNSEL OF RECORD AND PRO SE PARTIES:

Please take note of the following settings:

Jury Trial - Civil June 09, 2020 9:30 AM

THIS IS A LEVEL 3 CASE. THE PARTIES SHOULD PREPARE THEIR OWN AGREED SCHEDULING ORDER **(WHICH MUST INCLUDE A MEDIATOR)** AND SUBMIT IT TO THE COURT WITHIN 30 DAYS OF THIS NOTICE. IF NO AGREEMENT IS REACHED, PLEASE ADVISE THE COURT.

Trial announcements must be made in accordance with Rule 3.02, Dallas Civil Court Rules.

When no announcement is made for defendant, defendant will be presumed ready. If plaintiff fails to announce or to appear at trial, the case will be dismissed for want of prosecution in accordance with Rule 165a, Texas Rules of Civil Procedure.

Plaintiff/Plaintiff's counsel shall serve a copy of this notice on any currently named defendant(s) answering after this date.

Sincerely,

ERIC V. MOYÉ
DISTRICT JUDGE
14TH DISTRICT COURT

Required scheduling order format available:

https://www.dallascounty.org/government/courts/civil_district/14th/StandardOrders.php

Cc:
DENNIS WEITZEL
18601 LBJ FREEWAY SUITE 525
MESQUITE TX 75150

LAWRENCE J FRIEDMAN
5301 SPRING VALLEY RD STE 200
DALLAS TX 75254

Tab 37

CAUSE NO. DC-19-08531

**BRIAN LONCAR, P.C., D/B/A
LONCAR ASSOCIATES**

Plaintiff,

v.

TOBY TOUDOUZE,

Defendant.

§ **IN THE DISTRICT COURT**
§
§
§
§ **14TH JUDICIAL DISTRICT**
§
§
§
§
§ **DALLAS COUNTY, TEXAS**

NOTICE OF APPEARANCE

Please take notice that the undersigned counsel are appearing on behalf of Defendant/Counter-Plaintiff Toby Toudouze. All correspondence, pleadings, and other documents should be directed to:

Jennifer J. Spencer
jspencer@jacksonspencerlaw.com
James E. Hunnicutt
jhunnicutt@jacksonspencerlaw.com
M. Neal Bridges
nbridges@jacksonspencerlaw.com
Jackson Spencer Law pllc
Three Forest Plaza
12221 Merit Drive, Suite 160
Dallas, Texas 75251
(972) 458-5301 (Telephone)
(972) 770-2156 (Facsimile)

Dated: September 4, 2019

Respectfully submitted,

/s/ Jennifer J. Spencer

Jennifer J. Spencer
State Bar No. State Bar No. 10474900
jspencer@jacksonspencerlaw.com
James E. Hunnicutt
State Bar No. 24054252
jhunnicut@jacksonspencerlaw.com
M. Neal Bridges
State Bar No. 24092171
nbridges@jacksonspencerlaw.com
Jackson Spencer Law pllc
12221 Merit Drive
Three Forest Plaza, Suite 160
Dallas, Texas 75251
(972) 458-5301 (Telephone)
(972) 770-2156 (Fax)

**ATTORNEYS FOR DEFENDANT/COUNTER-
PLAINTIFF TOBY TOUDOUZE**

CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2019, a true and correct copy of the foregoing document was served on counsel of record for all parties through the Court's e-filing system.

/s/ Jennifer J. Spencer

Jennifer J. Spencer

Tab 38

3. Clay Lewis Jenkins (“Jenkins”) operates a law firm in Waxahachie, Texas, claims to be executor of the Loncar Estate, and controls the business and operations of the Loncar Firm. At all times relevant to the Counterclaims, Clay Lewis Jenkins has unlawfully and illegally controlled, operated and manipulated Counter-Defendant Brian Loncar, P.C. d/b/a Loncar Associates for Clay Jenkins’s own self-interests and as otherwise discussed herein. He may be served with process at his residence at [REDACTED], in Highland Park, Dallas County, Texas, 76205.

4. Counter-Defendant Brian Loncar, P.C. d/b/a Loncar Associates (“the Loncar Firm”), is the Plaintiff/Counter-Defendant in the above-styled action, and has previously appeared in this lawsuit.

II. BACKGROUND

5. Toudouze was a long-time employee of the Loncar Firm and Brian Loncar’s close, trusted, and personal friend. Toudouze formerly held the position of Chief Financial Officer of the Loncar Firm.

6. Brian Loncar died unexpectedly on December 4, 2016, by a self-inflicted overdose of cocaine. Initially, the executor of the Loncar Estate was his father, Phillip Loncar.

7. It is undisputed that, at all relevant times, the law firm of Brian Loncar & Associates was owned one hundred percent by Brian Loncar, P.C. Brian Loncar was the 100% owner of Brian Loncar, P.C. until June 1, 2014, when his ownership interest in the firm was transferred to the Brian U. Loncar Living Trust (the “Loncar Trust”). While alive, Brian Loncar was the trustee of the Loncar Trust. Phillip Loncar became sole trustee of the Loncar Trust upon Brian Loncar’s death.

8. Prior to Brian Loncar’s death, Jenkins was the recipient of a steady stream of referrals and income, worth millions of dollars, from the Loncar Firm. With his connection to the Loncar Firm gone, Jenkins needed another “hook” to keep his revenue stream alive and to secure his history of ill-gotten gains that he reaped from the firm. Jenkins pounced on Phillip Loncar, the appointed

trustee of the Loncar Trust and executor of Brian Loncar's estate (the "Loncar Estate") and pressured him to retain him as his legal counsel. Having just suffered the horrific, consecutive losses of his granddaughter and his son within one week of each other, Phillip Loncar succumbed to Jenkins's solicitations and retained him as his legal counsel.

9. Jenkins abused his position as legal counsel to Phillip Loncar to: first, assume; then solidify; and ultimately, to entrench his control over the Loncar Firm and to ensure his steady stream of income derived from it. After a failed attempt to purchase the Loncar Firm from his client, Phillip Loncar as trustee of Loncar Trust at a ludicrously low price, Jenkins, who had been named the third choice as executor of the Loncar Estate, manipulated his way into being appointed executor of the Loncar Estate by: counseling Phillip Loncar to resign as executor; and then "persuading" William Sena, Phillip Loncar's successor as executor, to waive his appointment. This allowed Jenkins to assume the role of executor of the Loncar Estate.¹ Although clearly *not an asset of the Loncar Estate*, and legally not capable of becoming an asset of the Loncar Estate, Jenkins, once he manipulated his way into being appointed successor executor, simply started controlling and operating the Loncar Firm as if it were an asset of the Loncar Estate; going so far as to file fraudulent documents with the Texas Secretary of State falsely representing that the Estate of Brian Loncar was the sole member and 100% owner of Brian Loncar, PC.

10. Jenkins's control over, and operation of, the Loncar Firm through his position as successor executor of the Loncar Estate is both unauthorized and unlawful.

1. ¹Although not germane to the instant suit, Jenkins has also claimed that Phillip Loncar resigned as Trustee of the Loncar Trust, thus helping to pave the way for Jenkins to assume that role as well. Phillip Loncar, however, disputes that he ever resigned and Jenkins has blocked Mr. Loncar's repeated efforts to obtain his legal files, including any resignation documents. For purposes of this litigation, however, the issue is irrelevant as Jenkins has unlawfully and illegally operated Brian Loncar, P.C. and the Loncar Firm as if it was an asset of the Loncar Estate, not the Loncar Trust.

11. As previously discussed, effective as of June 1, 2014, two and one-half years before his death, Brian Loncar transferred and assigned his 100% ownership interest in Brian Loncar, P.C. to the Trust (the “Loncar Trust Transfer”).

12. At the time of his death, neither Brian Loncar, P.C. nor the Loncar Firm were assets of the Estate. Moreover, given the pour-over provisions of Brian Loncar’s will and the Loncar Trust Agreement, and pursuant to Texas law, neither Brian Loncar, P.C. nor the Loncar Firm could legally become an asset of the Estate. In other words, even the legitimate executor of the Loncar Estate, whomever that might be, had absolutely no authority or ability to exercise any control over, or to assert any interest in, Brian Loncar, P.C. or the Loncar Firm.

13. Brian Loncar clearly set forth his intention, both before and after the Loncar Trust Transfer, to liquidate the Loncar Firm within six months of his death; and this presented a problem for Jenkins and the continuation of the gravy-train of referrals and income he had been receiving. Prior to the Loncar Trust Transfer, Brian Loncar had a succession agreement in place for Brian Loncar, P.C. that required the Loncar Firm to immediately cease operations (except for wind down) and to fully wind down and liquidate the firm within six months of his death. Similarly, the Loncar Trust Agreement requires that all assets of the trust, including but not necessarily limited to the Loncar Firm, be liquidated within six months of Brian Loncar’s death.

14. Neither Brian Loncar, P.C. nor the Loncar Firm has been liquidated, as required under the Loncar Trust agreement and as legally compelled. Instead, in the over two and one-half years since Brian Loncar’s death, Jenkins has illegally and wrongfully exercised complete and unfettered dominion and control over Brian Loncar, P.C. and the Loncar Firm, to both funnel millions of dollars to himself personally and to cover-up and conceal illegal and wrongful activities that he engaged in with the firm in the past.

15. As part of his scheme, Jenkins had to wrest Brian Loncar, P.C. and the Loncar Firm from the Trust and “transfer” it to someone or something that Jenkins thought he could control. The vehicle that Jenkins chose to implement his plan was the Estate, an estate which Jenkins, through fraud, deceit, artifice, breaches of duties and unethical conduct, had gotten himself appointed the successor executor of.

16. Sometime after January 2017, after a failed attempt to effectuate a self-dealing, lowball purchase of the Loncar Firm individually from his then client, Phillip Loncar, the Trustee of the Loncar Trust, Jenkins brazenly, unlawfully and fraudulently began controlling and operating the Loncar Firm for his own personal purposes; using his position as successor trustee of the Loncar Estate as cover. As previously stated, neither Brian Loncar, P.C. nor the Loncar Firm are, nor can they be, assets of the Loncar Estate.

17. From that point forward, Jenkins used the Loncar Firm and Brian Loncar, P.C. to advance his own personal financial gain and other interests, and to attempt to destroy, annoy, harass, intimidate, silence, and retaliate against anyone that stood in his way, including, in particular, Counter-Plaintiff Toudouze.

18. Specifically, but without limitation, Toudouze and others have attempted to keep Jenkins from wrongfully and personally profiting from Brian Loncar’s death by attempting to keep Jenkins from diverting cases, monies and assets from the Loncar Firm.

19. To “silence” Toudouze, for example, and to ensure his own continued receipt of millions of dollars that he siphons from the Loncar Firm, Jenkins first caused Brian Loncar, P.C. to fire Counter-Plaintiff, and then, filed this lawsuit, all in the name of Brian Loncar, P.C., but without any legal or actual authority for Jenkins to do so.

20. In actuality, Jenkins is illegally using Brian Loncar, P.C. and the Loncar Firm to advance his own personal interests and as a shield to protect himself personally from anyone and

everyone who seeks to stop him. Brian Loncar, P.C. is Jenkins's alter ego. Additionally, the Court can and should pierce the corporate shield normally associated with legitimate entities and determine that the acts and omissions by Jenkins and by Brian Loncar, P.C. are deemed to be the acts of the other.

21. Counter-Plaintiff Toudouze was a threat to Jenkins and his money-grab and cover-up of his past transgressions. Jenkins, for self-preservation, had to get rid of him.

22. For instance, at the time of Brian Loncar's death, Jenkins owed the Loncar Firm at least \$1.4 million in unpaid referral fees (the "Unpaid Referral Fees"). Toudouze, as the CFO of the Loncar Firm, was aware of the Unpaid Referral Fees and insisted that the fees be paid. After Jenkins unlawfully and wrongfully took control of the Loncar Firm, he tried to get Toudouze to forego payment of the Unpaid Referral Fees. When Toudouze notified Jenkins that he would not engage in his fraudulent scheme, Jenkins offered a bribe to Toudouze - a share of the \$1.4 Million if Toudouze went along with it. Toudouze refused the bribe and insisted that Jenkins pay the Unpaid Referral Fees to the Loncar Firm. Jenkins's response to Toudouze's refusal, as well as his refusal to engage in or accommodate other unlawful, illegal and unethical conduct by Jenkins (some of which is discussed below), was to, ultimately, terminate Toudouze's employment with the Loncar Firm.

23. Some, though not all, of Toudouze's refusal to condone Jenkins's unlawful, illegal and wrongful conduct, that ultimately led to his termination, are set forth below.

24. Following Brian Loncar's death, Jenkins initiated a scheme to use the Loncar Firm's capital to continue marketing and advertising for new clients and new cases as if Brian Loncar were still alive. Ads continued to run as "Loncar & Associates", highlighting both "Loncar" and the phrase "The Strong Arm", which Brian Loncar used as his advertising tag line in Texas. As clients then engaged Brian Loncar and the Loncar Firm after Brian Loncar's death, Jenkins dictated that the cases identified as being likely the most lucrative were to be "referred" to his Waxahachie-based firm,

leaving the less-lucrative cases to be handled by the Loncar Firm. Such a scheme constitutes the illegal act of barratry because clients were not fully appraised of the identity of the actual lawyer or law firm that was soliciting their case.

25. Later, Jenkins altered Loncar & Associates' advertising to remove the "&" only, but still highlighted "Loncar" and "The Strong Arm". Moreover, as the Loncar Firm continued to engage in, and pay for, very expensive advertising on various media such as television, radio, social media, the internet, and other platforms, Jenkins and his Waxahachie law firm reaped the benefits of such advertising without paying a dime, thereby fraudulently diverting both cases and money from the Loncar Firm and, thus, both the Trust and Estate, to the sole benefit of Jenkins and the law firm he owns. In other words, Jenkins uses the marketing and advertising of the Loncar Firm to solicit the high-paying cases for himself, his cronies and his Waxahachie-based firm. Additionally, as discovery will demonstrate, standard referral fees for the deceptively transferred cases have not been paid by Jenkins' firm to the Loncar Firm, further defrauding the Trust and Estate.

26. Toudouze was made aware of Jenkins' scheme as described in the foregoing paragraphs, and he refused to participate in it, but instead demanded that Jenkins cease and desist from such unlawful and illegal actions. Jenkins refused to cease such activities and ordered first the isolation of Toudouze by requiring that he only work from home, and then by terminating Toudouze's employment.

27. Additionally, following Brian Loncar's death, legitimate, credible offers were received from various parties seeking to purchase the Loncar Firm's law practice and its assets for \$10 million to \$20 million; all with a quick closing date.

28. Jenkins, aware of these lucrative offers, as well as financial projections of millions of dollars in profits generated by the Loncar Firm in the short term, and while representing Phillip Loncar as his legal counsel, refused to consider the offers and, instead, offered to purchase the law

practice and its assets for the miniscule price of \$1,000,000; which sum, he proposed, would be paid for by a loan from an insurance trust that Brian Loncar had set up (the “Insurance Trust”). Thus Jenkins proposed to use the Insurance Trust’s assets for his personal benefit, while also acting as the attorney for both the Estate and the Trust, a clear irreconcilable conflict of interest and violation of his ethical obligations both as an attorney and as a fiduciary.

29. Toudouze objected to Jenkins’ proposed terms as wrongful, unethical, and as a breach of Jenkins’ fiduciary duty to the Estate and Trust, and accordingly refused demands by Jenkins that Toudouze downplay other offers and instead falsely advise Phillip Loncar that Jenkins had an exclusive right to purchase the Loncar’s Firm’s assets. Jenkins had no such right, and it would have been participation in fraud if Toudouze had acquiesced to Jenkins’ instructions. Instead, Toudouze convinced Phillip Loncar to not accept Jenkins’ offer as there had been better offers received for the Loncar Firm.

30. Brian Loncar’s relationship with Toudouze was close, as Toudouze had assisted him in building the Loncar Firm into a very lucrative and successful personal injury firm. For that reason, Brian Loncar repeatedly promised both verbally, and in writing, that Toudouze would receive three years’ salary and bonus compensation in the event of the termination of Toudouze’s employment from Loncar’s law firm. Such promises constituted a contract, and Toudouze relied upon them in forgoing other offers of employment both before and after Brian Loncar’s death. However, the Loncar Firm and Jenkins have refused to pay such promised severance amount to Toudouze.

31. Another act of refusal by Toudouze to participate in Jenkins’s illegal and unlawful conduct was his refusal to commit perjury that Jenkins asked him to commit. Specifically, following Brian Loncar’s death, an issue arose concerning large life insurance policies taken out by Brian Loncar several years prior to his death. Toudouze had knowledge of certain facts relating to those policies, and he was questioned by both Jenkins and Phillip McCrury, an attorney Jenkins had

brought in to ostensibly represent Phillip Loncar, along with himself, because of McCrury's expertise in probate matters and his political connections in Tarrant County.

32. Jenkins expressed the desire to bring a lawsuit against the attorney who had drafted Loncar's Last Will and Testament, and stated that by doing so he hoped to bankrupt the law firm involved, as he in particular hated one of its name partners because he believed that partner had prevented Jenkins from buying the Loncar law practice for his proposed \$1,000,000 offer. Jenkins expected to reap \$10 Million as damages from that firm.

33. Toudouze expressly rejected that any legal malpractice had occurred and recited detailed facts that demonstrated there had been no malpractice. Both Jenkins and McCrury were very dissatisfied with Toudouze's recitation of the facts as it did not support the claims Jenkins wanted to bring against the law firm that had performed Brian Loncar's estate planning, nor the desired success of Jenkins' planned vendetta against the law firm's name partner. In sum, Toudouze disclosed to Jenkins and McCrury that Brian Loncar had made the decision to transfer his existing life insurance policies to the Trust, that Brian Loncar was aware of the three (3) year IRS rule, and that Brian Loncar personally made the decision to nevertheless transfer the policies despite having been fully informed about the tax risks and consequences by his estate planning lawyer and others. Toudouze's disclosure of the facts was unassailable. Toudouze was present when the representation occurred; Jenkins and McCrury were not. Toudouze had actual knowledge of the facts relating to the representation; Jenkins and McCrury had only their desire for vengeance.

34. Clearly irritated by the truth that Toudouze disclosed, Jenkins and McCrury demanded to Toudouze that "you need to reconsider your recollection". Given the context, substance and tone of the command, the import of Jenkins's and McCrury's command was clear; he was being instructed to change his truthful testimony so that Jenkins could recover money to which neither he nor the Loncar Estate were entitled. Toudouze responded that he had a clear recollection of the events at

issue and would not alter his recollection. His refusal to agree to engage in perjury contributed to the termination of his employment.

35. Following his refusals to participate in the illegal acts referenced above, Toudouze was “suspended” from his position at the Loncar Firm on the pretext that the Loncar Firm was conducting “an investigation”. Toudouze, seeing that it was very possible that Jenkins, et al would never reinstate him to his CFO position, packed his books and some personal items and took them home.

36. Toudouze has learned that initially, on or about May 24, 2017, and at times thereafter, the Loncar Firm and Jenkins published false and disparaging statements concerning Toudouze, including allegations that Toudouze was engaged in criminal conduct. The disparaging statements included: that Toudouze had made “terroristic threats” that he would come to the Dallas office to “shoot up the office” and those in it, and was coming to the office to steal firm property. Those statements were false and constitute slander *per se*. Nevertheless, they were spoken by agents of the Loncar Firm, at Jenkin’s direction, including Christina Cabrera, an office administrator, and Bill Hymes, the Loncar Firm’s managing pre-litigation attorney at the time; and were published to numerous, and possibly all, non-managerial employees of the Dallas office of the Loncar Firm, and to others, including former Chief of Police, David Brown, and employees of his security company.

37. So too, Jenkins, through his control and manipulation of the Loncar Firm, caused the firm and its agents and employees, to publish other false and defamatory statements, including statements that Toudouze had stolen funds from Brian Loncar & Associates and the Loncar Firm. For example, Hymes has stated numerous times in the past six months that Toudouze has bank accounts in the Cayman Islands into which he has deposited up to \$10,000,000.00 in funds belonging to Brian Loncar & Associates and Loncar Associates. Those statements are absolutely false as well and constitute slander *per se*.

38. The defamatory statements recited above about Toudouze were manifestly and wholly untrue and, because they involve false accusations of criminal misconduct, constitute slander *per se*. The false statements were made willfully and with malice by the Loncar Firm, by Jenkins and by their agents in the course and scope of their employment, and at the direction of the Loncar Firm and Jenkins. The Loncar Firm and Jenkins were seeking, at the time of such defamation, to discredit Toudouze due to his refusals to engage in illegal acts demanded by Jenkins and the Loncar Firm, their agents, and those acting in concert with them. The defamatory verbal statements were likely also reduced to writing by the Loncar Firm and Jenkins, and sent to third parties, including David Brown, the accounting firm of Armanino, and also communicated by the Loncar Firm and Jenkins, along with those acting on their behalf and at their behest, to prospective employers of Toudouze, thus both interfering with and precluding his prospective employment by such employers.

39. Toudouze has been severely damaged by the defamatory statements of the Loncar Firm and Jenkins. The defamatory statements of the Loncar Firm and Jenkins constitute both slander *per se* and *per quod*. Toudouze has been severely damaged by such defamation due to the harm of his reputation, as well as to his employment prospects and opportunities.

40. Toudouze has suffered severe emotional distress, mental anguish, embarrassment, and humiliation. The foregoing actions of the Loncar Firm and of Jenkins were taken recklessly, intentionally, and with malice. Toudouze is entitled to both compensatory and exemplary damages, jointly and severally, from the Loncar Firm and Jenkins. Such defamatory statements additionally falsely imputed to Toudouze the pending commission of, and/or intent to commit, a crime, and exposed Toudouze to scorn and ridicule. Moreover, such defamatory statements were intentionally designed and meant to cause Toudouze emotional distress, mental anguish, embarrassment, and humiliation once he learned of them.

41. Jenkins, upon information and belief, is not and has not been, an official employee of the Loncar Firm, but has at all times acted as, and has been regarded by employees and attorneys of the Loncar Firm and others as the person that controls the firm. Nevertheless, Jenkins has actively and tortiously interfered in personnel matters at that firm following the death of Brian Loncar and Jenkins' subsequent position as executor of the Loncar Estate, and Jenkins' unproven claim that he is also the trustee of the Loncar Trust. In short, Jenkins assumed unfettered control and putative authority over all personnel and financial matters at the Loncar Firm.

42. The Loncar Firm and Jenkins have interfered with Toudouze's ability to gain employment and to otherwise contract with other law firms by spreading and repeating, to prospective employers and to others, false and disparaging statements concerning Toudouze, including the defamatory statements described above. Such interference by the Loncar Firm and Jenkins was intentional and malicious in nature, and is part of the continuing retaliation by them against Toudouze because of his refusal to accede to their demands that he commit illegal acts.

43. Additionally, Jenkins, as the person that unlawfully controlled, manipulated and coopted the Loncar Firm, tortiously interfered with Toudouze's employment and his employment agreements with the firm; all of which was done to advance Jenkins's own financial, professional and personal self-interests.

III. ALTER EGO/PIERCING THE CORPORATE VEIL LIABILITY

44. Toudouze hereby incorporates the allegations contained in the paragraphs above.

45. Jenkins, has unlawfully and illegally used Brian Loncar, P.C. and the Loncar Firm for his own personal interests and purposes, including for purposes of engaging in unlawful and illegal activities, to shield himself from the consequences of his fraudulent and unlawful activities, as a sham to perpetuate fraudulent activities, to evade existing obligations and insulate against future illegal

activities, to conceal and protect against the discovery of illegal activities and to justify wrongs that Jenkins has perpetrated. Brian Loncar, P.C.

46. Under the circumstances of this case, Brian Loncar, P.C. and the Loncar Firm are Jenkins's alter egos. As such, Jenkins is jointly and severally liable for all of the acts, omissions and liabilities of Brian Loncar, P.C. and the Loncar Firm in his individual capacity.

IV. JURY DEMAND

47. Counter-Plaintiff demands a jury trial and has tendered the appropriate fee.

V. CAUSES OF ACTION

A. Breach of Contract and Detrimental Reliance

48. Toudouze hereby incorporates the allegations contained in the paragraphs above.

49. Toudouze was promised, both in 2015 and earlier, in writing and verbally, by Brian Loncar and by Brian Loncar as president of Brian Loncar & Associates, P.C. that his law firm would pay Toudouze the cash equivalent of three years' salary and bonuses upon the termination of his employment at that firm. Such compensation promises constituted an enforceable contract.

50. Toudouze remained at the law firm in reliance upon those promises and performed the services requested of him. By doing so, Toudouze forewent opportunities for employment elsewhere prior to the wrongful termination of his employment by the Loncar Firm.

51. Counter-Defendant the Loncar Firm has refused to pay Toudouze the severance amounts repeatedly promised to him, and in doing so have breached the contract made on behalf of the law firm by Brian Loncar.

52. All conditions precedent to Toudouze's right to recovery have been performed, excused, or waived.

53. Toudouze has suffered damages due to this breach in the amount of at least \$3,000,000, plus interest. Additionally, Toudouze is entitled to an award of his reasonable attorneys' fees incurred in prosecuting this claim, pursuant to Section 38.001 of the Texas Civil Practice & Remedies Code.

54. Demand has been made for such unpaid severance amounts concurrently with the filing of this counterclaim.

B. Defamation

55. Toudouze incorporates herein the allegations contained in the paragraphs above.

56. On or about May 24, 2017, and continuing thereafter, Counter-Defendants, through their agents Christina Cabrera and Bill Hymes, falsely informed both non-management employees and attorneys at the Loncar Firm that Toudouze had made terroristic threats against that law firm and personnel, and that Toudouze was also returning to the firm's premises to steal items from the firm. Such statements about Toudouze were wholly false and no such threats were ever made by Toudouze. Upon information and belief, Jenkins directed Cabrera and Hymes to make such false statements about Toudouze. Thereafter, Jenkins has also made and published false and defamatory statements alleging that Toudouze had stolen funds from Brian Loncar & Associates.

57. Counter-Defendants further published the defamatory statements recited above to David Brown and employees of his security firm, to the Dallas Police Department, to employees of the accounting firm utilized by the Loncar Firm, Armanino, and to prospective employers of Toudouze.

58. Counter-Defendants' false statements of alleged criminal conduct constitute slander *per se*.

59. Counter-Defendants acted with malice in intentionally publishing such false statements about Toudouze, and are consequently liable, jointly and severally, for exemplary

damages in not less than three (3) times the amount of Toudouze's actual damages or a minimum of \$9,000,000.

60. Toudouze has suffered emotional distress, mental anguish, embarrassment and humiliation as a result of such wrongful actions by Counter-Defendants, and Toudouze is entitled to compensatory damages from Counter-Defendants the Loncar Firm and Jenkins, jointly and severally, in an amount which is not less than Ten Million Dollars (\$10,000,000). Additionally, as Toudouze has incurred attorney's fees in connection with the defamatory statements alleging that he had stolen funds from Brian Loncar & Associates, he is entitled in damages to payment of such fees by Counter-Defendants, jointly and severally.

C. Wrongful Discharge

61. Toudouze incorporates herein the allegations contained in the paragraphs above.

62. Toudouze was the Chief Financial Officer of Brian Loncar, P.C. and the Loncar Firm, as of the time of Brian Loncar's death and had served faithfully in that position for many years,

63. As a result of the repeated refusal by Toudouze to engage in illegal conduct as was sought by Counter-Defendants, their agents, and those acting in concert with them, the employment of Toudouze was terminated in violation of the public policy of the State of Texas as recited in *Sabine Pilot*.

64. Toudouze is entitled to damages for his loss of wages and benefits, as well as exemplary damages, in an amount of not less than Ten Million Dollars (\$10,000,000.00).

65. The action of the Loncar Firm in terminating the employment of Toudouze for his refusal to engage in unlawful actions was malicious and wholly improper, especially as it was directed by the Loncar Firm, a law firm, and by Jenkins, who is both an attorney and public official.

D. Tortious Interference with Employment (Counter-Defendant Jenkins only)

66. Toudouze incorporates herein the allegations contained in the paragraphs above.

67. Jenkins caused Counter-Defendant Brian Loncar, P.C. to terminate and breach its employment relationship and employment agreements, including the severance agreement, with Toudouze.

68. Jenkins, in causing and inducing Brian Loncar, P.C.'s termination of these existing relationships and agreements, was acting in his own self-interest -- business, financial, social and personal.

69. Jenkins's acts and omissions constitute tortious interference with Toudouze's employment relationship and employment agreements. As a result of Jenkins's tortious interference, Toudouze has suffered damages within the jurisdictional limits of the Court, for which Toudouze now sues Jenkins, together with prejudgment interest, post-judgment interest and costs of Court.

70. Jenkins committed the foregoing acts knowingly, maliciously, fraudulently and with the intent to cause harm to Toudouze. As a result, Toudouze is entitled to recover exemplary damages of at least three times the amount of economic damages, for which amount Toudouze now sues Jenkins.

E. Tortious Interference with Prospective Contractual Relations

71. Toudouze incorporates herein the allegations contained in the paragraphs above.

72. Counter-Defendants have intentionally and maliciously interfered with prospective contractual relations between Toudouze and potential employers such as law firms and other entities.

73. Toudouze has suffered damages in lost wages, bonuses, and benefits as a direct and proximate cause due to the acts of interference by Counter-Defendants the Loncar Firm and its alter-ego Jenkins. Such damages are no less than Ten Million Dollars (\$10,000,000), plus interest, for which the Loncar Firm and its alter-ego Jenkins are jointly and severally liable.

F. Punitive/Exemplary Damages

74. Additionally, Counter-Defendants are each liable for exemplary damages in an amount not less than Three Million Dollars (\$3,000,000) jointly and severally, due to their unlawful and malicious interference.

75. Counter-Plaintiff Toby Toudouze has retained the law firm of Jackson Spencer Law, PLLC to prosecute his claims and agreed to pay them a reasonable fee for services rendered.

VI. RELIEF REQUESTED

WHEREFORE, PREMISES CONSIDERED, Counter-Plaintiff Toudouze respectfully requests that the Court:

- A. Issue citation for Counter-Defendant Jenkins to appear and answer;
- B. Award to Counter-Plaintiff a judgment against Counter-Defendants the Loncar Firm and Jenkins for:
 - 1. Actual damages, including without limitation lost wages and benefits (both past and future), the sum to be determined at time of trial;
 - 2. Compensatory and punitive damages in the maximum amount allowed by law;
 - 3. Such other equitable relief as may be appropriate;
 - 4. Attorneys' fees;
 - 5. Pre- and post-judgment interest; and
 - 6. Costs.

Counter-Plaintiff also requests that the Court award all other relief to which Counter-Plaintiff is entitled in equity and at law.

VII. REQUEST FOR DISCLOSURE

76. Pursuant to Tex. R. Civ. P. 194, Counter-Defendant Jenkins is requested to disclose, within 50 days of the service of this request, the information or material described in Rule 194.2

Dated: September 4, 2019

Respectfully submitted,

/s/ Jennifer J. Spencer

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**ATTORNEYS FOR DEFENDANT TOBY
TOUDOUZE**

CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2019, a true and correct copy of the foregoing document was served on counsel of record for all parties through the Court's e-filing system.

/s/ Jennifer J. Spencer

Jennifer J. Spencer

Tab 39

CAUSE NO. DC-19-08531

**BRIAN LONCAR, P.C., D/B/A
LONCAR ASSOCIATES**

Plaintiff,

vs.

TOBY TOUDOUZE

Defendant.

§
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IN THE DISTRICT COURT

14th JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS

Plaintiff, Brian Loncar, P.C., D/B/A Loncar Associates, asks the Court to deny Defendant's motion to dismiss and for any other relief associated with the Defendant's filing.

BACKGROUND

1. On June 13, 2019 Plaintiff filed its lawsuit making claims for theft of trade secrets, client files and financial records of Plaintiff. Suit was also brought for breach of fiduciary duty by Defendant who was hired as a financial officer of the Plaintiff law firm. 2. On August 5, 2019, Defendant filed and served a Motion to Dismiss certain portions of the suit requesting that the Court dismiss Plaintiff's cause of action under Rule 91a of the Texas Rules of Civil Procedure, claiming that the cause of action has no basis in law or fact. TEX. R. CIV. P. 91a.1.
2. Specifically, Defendant alleges that the two-year statute of limitations has expired for Plaintiff's causes of action under the Texas Theft Liability Act. TEX. CIV. PRAC. REM. CODE §16.003(a).

ARGUMENT & AUTHORITIES

A. Rule 91a Motion to Dismiss

3. Defendant files its motion under the authority of Rule 91a of the Texas Rules of Civil Procedure, claiming that the cause of action has no basis in law or fact because the two-year statute of limitations for Plaintiff's under the Texas Theft Liability Act has expired.

4. However, Plaintiff would show that the Court should deny the Defendant's Motion to Dismiss because Defendant has relied on a narrow and erroneous, reading of the applicable statute of limitations under the Texas Theft Liability Act.

5. The Texas Theft Liability Act does prevent suits on theft of *personal property* after two years. However, as plainly stated in the Plaintiff's Original Petition, Plaintiff's claim is for the "unlawful appropriation of physical and digital property, including *trade secrets* and *private financial information*."

6. Plaintiff is not suing Defendant for theft of personal property, but is suing for theft of trade secrets and private financial information. The statute of limitations for theft of trade secrets is **three years**. TEX. CIV. PRAC. REM. CODE §16.010; *Academy of Allergy & Asthma in Primary Care v. Quest Diagnostics Incorporated*, 2019 WL 919203 (W.D. Tex. Feb. 22, 2019). Defendant unlawfully appropriated the private physical and digital files of firm clients, trade secrets of the Plaintiff and financial records of the firm. *See id.*

7. Additionally, although there is no specific limitations period set out which applies to the theft of "private financial information," Texas Civil Practice and Remedies Code §16.051 states that the Court should apply a four-year limitations period to actions wherein

no specific limitations period applies. TEX. CIV. PRAC. REM. CODE §16.051. Therefore, the proper limitations period for the theft of private financial information is **four years**.

8. Accordingly, because the proper limitations period for Plaintiff's claims under the Texas Theft Liability Act are three years and four years, Plaintiff's claims are timely and have a basis in law and fact.

9. Therefore, the Court should deny Defendant's Motion to Dismiss Plaintiff's claims under the Texas Theft Liability Act.

PRAYER

For these reasons, Plaintiff respectfully asks that the Court deny Defendant's Motion to Dismiss and for such other and further relief as Plaintiff may show is justly deserved.

Respectfully submitted,
TED B. LYON & ASSOCIATES, P.C.

By: /s/ Dennis Weitzel
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on **September 5, 2019**, a true and correct copy of the foregoing pleading has been served on all parties in this proceeding, pursuant to the Texas Rules of Civil Procedure.

Via E-Service

Lawrence J. Friedman
Friedman & Feiger, LLP
5301 Spring Valley Road
Suite 200
Dallas, Texas 75254
lfriedman@fflawoffice.com

/s/ Dennis Weitzel
DENNIS WEITZEL

Tab 40

CAUSE NO. DC-19-08531-A

BRIAN LONCAR, P.C.	§	IN THE DISTRICT COURT
	§	
vs.	§	
	§	14 TH JUDICIAL DISTRICT
TOBY TOUDOUZE	§	
	§	
	§	STATE OF TEXAS

UNIFORM SCHEDULING ORDER (LEVEL 2)

In accordance with Rules 166, 190 and 192 of the Texas Rules of Civil Procedure, the Court makes the following order to control discovery and the schedule of this cause:

1. This case will be ready and is set for **JURY TRIAL JUNE 09, 2020 at 9:30 a.m.** (the "Initial Trial Setting"). All counsel of record as well as all parties are required to appear at the Initial Trial Setting. Reset or continuance of the Initial Trial Setting will not alter any deadlines established in this Order or established by the Texas Rules of Civil Procedure, unless otherwise provided by order. If not reached as set, the case may be carried to the next week. **FAILURE TO COMPLY WITH THE DEADLINES CONTAINED HEREIN SHALL NOT SUPPORT A MOTION TO CONTINUE THIS MATTER.**

2. Unless otherwise ordered, discovery in this case will be controlled by:

(X) Rule 190.3 (Level 2)

of the Texas Rules of Civil Procedure. Except by agreement of the party, Leave of court, or where expressly authorized by the Texas Rules of Civil Procedure, no party may obtain discovery of information subject to disclosure under Rule 194 by any other form of discovery.

3. Any objection or motion to exclude or limit expert testimony due to qualification of the expert or reliability of the opinions must be filed no later than seven (7) days after the close of the discovery period, or such objection is waived. Any motion to compel responses to discovery (other than relation to factual matters arising after the end of the discovery period) must be filed no later than seven (7) days after the close of the discovery period or such complaint is waived, except for the sanction of exclusion under Rule 193.6.

4. Any amended pleadings asserting new causes of action or affirmative defenses must be filed no later than thirty (30) days before the end of the discovery period and any other amended pleadings must be filed no later than seven (7) days after the end of the discovery period. Amended pleadings responsive to timely filed pleadings under this schedule may be filed after the deadline for amended pleadings if filed within two (2) weeks after the pleading to which they respond. Except with leave of court, TRCP 166a(c) motions must be heard no later than thirty (30) days before trial.

5. No additional parties may be joined more than five (5) months after the commencement of this case except on motion for leave showing good cause. This paragraph does not otherwise alter the requirements of Rule 38. The party joining an additional party shall serve a copy of this order on the new party concurrently with the pleading joining that party.

6. The parties shall mediate this case no later than thirty (30) days before the Initial Trial Setting, unless otherwise provided by court order. Mediation will be conducted in accordance with the Standing Dallas County Civil District Court Order Regarding Mediation, which is available from the Dallas County ADR Coordinator. All parties shall contact the mediator to arrange the mediation.

(X) Unless otherwise ordered by the Court, the parties shall select a mediator by agreement; if the parties are unable to agree on a mediator, they shall advise the Court within one hundred twenty (120) days of the date of this order; the Court will then appoint a mediator.

7a. Fourteen (14) days before the Initial Trial Setting, the parties shall exchange a list of exhibits, including any demonstrative aids and affidavits, and shall exchange copies of any exhibits not previously produced in discovery; over-designation is strongly discouraged and may be sanctioned. Except for records to be offered by way of business record affidavits, each exhibit must be identified separately and not by category or group designation. Rule 193.7 applies to this designation. On or before ten (10) days before the Initial Trial Setting, the attorneys in charge for all parties shall meet in person to confer on stipulations regarding the materials to be submitted to the Court under this paragraph and attempt to maximize agreement on such matters. By 4 pm on the Thursday before the Initial Trial Setting, the parties shall file with the Court the materials stated in Rule 166(e)-(1), an estimate of the length of trial, designation of deposition testimony to be offered in direct examination, and any motions in limine. Failure to file such materials may result in dismissal for want of prosecution or other appropriate sanction.

7b. Fourteen (14) days before the Initial Trial Setting, in non-jury cases, the parties shall exchange and file with the Court Proposed Findings of Fact and Conclusions of Law.

****Please refer to the County website for Court specific rules and standard orders**:**
http://www.dallascounty.org/government/courts/civil_district/14th/

Plaintiff/Plaintiff's counsel shall serve a copy of this Order on any currently named defendant(s) answering after this date.

DEADLINES SET FORTH BY THE COURT IN THIS ORDER MAY NOT BE AMENDED EXCEPT BY LEAVE OF THIS COURT.

SIGNED September 26, 2019



District Judge

cc: Counsel of Record/Pro Se Parties

Tab 41

Daniel Macias

**FORM NO. 353-3 - CITATION
THE STATE OF TEXAS**

To:

CLAY LEWIS JENKINS
[REDACTED]
HIGHLAND PARK TX 76205

GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and **COUNTERCLAIM** petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the **14th District Court** at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

Said Counter-Plaintiff being **TOBY TOUDOUZE**

Filed in said Court **4th day of September, 2019** against

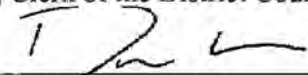
CLAY LEWIS JENKINS

For Suit, said suit being numbered **DC-19-08531**, the nature of which demand is as follows:
Suit on **OTHER PERSONAL INJURY** etc. as shown on said petition **REQUEST FOR DISCLOSURE**, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.

Given under my hand and the Seal of said Court at office this 12th day of September, 2019.

ATTEST: FELICIA PITRE, Clerk of the District Courts of Dallas, County, Texas

By , Deputy
DANIEL MACIAS



<u>ESERVE</u>
CITATION
DC-19-08531
BRIAN LONCAR, P.C. vs. TOBY TOUDOUZE
ISSUED THIS 12th day of September, 2019
FELICIA PITRE Clerk District Courts, Dallas County, Texas
By: DANIEL MACIAS, Deputy
Attorney for Counter-Plaintiff JENNIFER J. SPENCER 12221 MERIT DRIVE THREE FOREST PLAZA SUITE 160 DALLAS TX 75251 972-458-5301 jspencer@jacksonspencerlaw.com

**DALLAS COUNTY
SERVICE FEES
NOT PAID**

OFFICER'S RETURN

Case No. : DC-19-08531
Court No. 14th District Court
Style: BRIAN LONCAR, P.C.

vs.
TOBY TOUDOUZE

TED LYONS, ASSOC
#525

Came to hand on the 12th day of September 2019, at 4:00 o'clock P. M. Executed at 18601 LBJ Fwy. 75150
within the County of DALLAS at 11:25 o'clock A. M. on the 20th day of SEPTEMBER
2019, by delivering to the within named

LYONS LAW FIRM / DENNIS WETZEL / ATTORNEYS- for CLAYTON TORRES
18601 LBJ Fwy, SUITE 525, MESQUITE, TX 75150

each, in person, a true copy of this Citation together with the accompanying copy of this pleading, having first endorsed on same date of delivery. The distance actually traveled by me in serving such process was 21 miles and my fees are as follows: To certify which witness my hand.

For serving Citation \$ 75⁰⁰
For mileage \$ _____
For Notary \$ _____

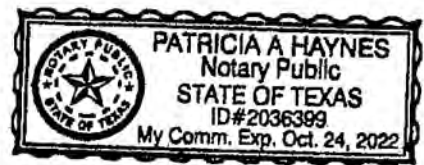
JOHN FARLEY PC11960
of COLLIN County, TEXAS
By John Farley Deputy ROBERT
SEPTEMBER

(Must be verified if served outside the State of Texas.)

Signed and sworn to by the said JOHN FARLEY before me this 23rd day of SEPTEMBER 2019
to certify which witness my hand and seal of office.

Patricia A. Haynes

Notary Public _____ County _____



Tab 42

CAUSE NO. DC-19-08531

**BRIAN LONCAR, P.C., D/B/A
LONCAR ASSOCIATES**

Plaintiff,

vs.

TOBY TOUDOUZE

Defendant.

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IN THE DISTRICT COURT

14th JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

**PLAINTIFF’S MOTION TO DISQUALIFY FRIEDMAN & FEIGER, LLP, OR IN THE
ALTERNATIVE, LAWRENCE J. FRIEDMAN, INDIVIDUALLY**

Plaintiff Brian Loncar, PC files this Motion to disqualify Friedman & Feiger, LLP, and Lawrence J. Friedman, individually, and would respectfully show the Court the following:

I. INTRODUCTION

Lawrence J. Friedman and his law firm, Friedman & Feiger, LLP (collectively known as “Friedman”), should be disqualified from representing the Defendant herein because this representation is a violation of Rule 1.09 of the Texas Disciplinary Rules of Professional Conduct. Further, because Friedman’s representation of Brian Loncar, P.C. substantially relates to the current matter, Friedman may be a fact witness.

II. EXHIBITS

To support the facts in this motion to compel and response, Plaintiff offers the following exhibits attached to this motion and incorporates the exhibits into this response by reference.

Exhibit 1: Invoices and Payments between Brian Loncar, P.C. and Friedman & Feiger¹

¹ In the interest of the Court’s time, Plaintiff has only included 10 pages which represent the relationship of Brian Loncar, P.C. and Friedman & Feiger. The entire compilation of invoices and payments, from only 2013-2015, encompasses hundreds of pages.

III. FACTS OF THE CASE

This is a theft case brought under the Texas Theft Liability Act. Defendant Toudouze served as Chief Financial Officer (“CFO”) of Loncar, PC up until April of 2017. On or about March 31, 2017, Toudouze removed boxes of records, hard drives, and digital information from Plaintiff’s office. On June 13, 2019, Plaintiff filed suit against Defendant Toudouze for theft of personal property and breach of fiduciary duty. On August 5, 2019, by and through his counsel, Lawrence J. Friedman of Friedman & Feiger, LLP, Defendant filed his Original Answer and his First Amended Answer.

The law firm of Friedman & Feiger, LLP, and specifically, Lawrence J. Friedman, have worked with and represented the Plaintiff in the past on general corporate matters, real estate matters and has specifically represented Loncar, PC in ongoing litigation. Specifically, Friedman & Feiger worked extensively with Defendant Toudouze in his capacity as CFO. *See* Exhibit 1. In his capacity as CFO, Toudouze received hundreds of invoices from Friedman & Feiger and subsequently issued hundreds of payments to Friedman & Feiger for work they conducted for the Plaintiff with payments totaling hundreds of thousands of dollars. This work encompassed a wide range of dealings for the Plaintiff, such as tax planning, purchases of assets for the Plaintiff, preparation of human resources documents for the Plaintiff and work specifically on litigation in which Loncar PC was a party. Much of the work carried out by Friedman & Feiger and Mr. Friedman individually was directly with Toby Toudouze and Friedman and other lawyers for his firm are likely to be called as witnesses in the instant case.

IV. ARGUMENTS AND AUTHORITIES

Disqualification of an attorney is a severe remedy. *Spears v. Fourth Court of Appeals*, 797 S.W.2d 654, 656 (Tex. 1990). Hence, “[m]ere allegation of unethical conduct or evidence showing

a remote possibility of a violation of the disciplinary rules will not suffice[.]” *Id.* “The fact that a lawyer serves as both an advocate and a witness does not in itself compel disqualification.” *In re Sanders*, 153 S.W.3d 54, 57 (Tex. 2004). “Disqualification is only appropriate if the lawyer’s testimony is ‘necessary to establish an essential fact.’” *Id.* (citing TEX. DISCIPLINARY R. PROF’L CONDUCT 3.08(a)). “Consequently, the party requesting disqualification must demonstrate that the opposing lawyer’s dual roles as attorney and witness will cause the party actual prejudice.” *Id.* (citing *Ayres v. Canales*, 790 S.W.2d 554, 557-58 (Tex. 1990)).

Rule 1.09 of the Texas Disciplinary Rules of Professional Conduct states, “Without prior consent, a lawyer who personally has formally represented a client in a matter shall not thereafter represent another person in a matter adverse to the former client ... (2) if the representation in reasonable probability will involve a violation of Rule 1.05; or (3) if it is the same or a substantially related matter.” Here, Plaintiff would show that Lawrence Friedman and Friedman & Feiger’s dealings with Plaintiff, and specific knowledge, as it relates to the facts of this case, substantially prejudices the Plaintiff in its case moving forward. Specifically, this representation in reasonable probability will involve a violation of the rules of attorney-client privilege under Rule 1.05 and the issues of the current matter are substantially related to the previous matters in which Friedman represented the Plaintiff.

Further, the extensive nature of Friedman’s work with both the Plaintiff and Defendant has intertwined them with the facts of this case in such a way that the Plaintiff would be substantially prejudiced if Friedman were to continue in his role as counsel for the Defendant. Additionally, due to the scope of Friedman’s work with Defendant Toudouze and the Plaintiff, it is highly likely that Friedman’s testimony will be essential to establish a necessary fact of the current matter.

V. PRAYER

Therefore, in the interest of Rule 1.09 of the Texas Disciplinary Rules of Professional Conduct, Friedman and Friedman & Feiger's ethical obligations, and to prevent undue prejudice to the Plaintiff, the Brian Loncar, PC respectfully prays that the Court grant its motion to disqualify both Lawrence J. Friedman and the law firm of Friedman & Feiger from further representation of Defendant Toudouze. Plaintiff further prays for any other such relief to which it may be entitled.

Respectfully submitted,
TED B. LYON & ASSOCIATES, P.C.

By: /s/ Dennis Weitzel
TED B. LYON, JR.
State Bar No. 12741500
tblyon@tedlyon.com
DENNIS WEITZEL
State Bar No. 21118200
dennis@tedlyon.com
Town East Tower – Suite 525
18601 LBJ Freeway
Mesquite, Texas 75150
Phone: 972-279-6571
Fax: 972-279-3021

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on **October 23, 2019**, a true and correct copy of the foregoing pleading has been served on all parties in this proceeding, pursuant to the Texas Rules of Civil Procedure.

Via E-Service

Lawrence J. Friedman
Friedman & Feiger, LLP
5301 Spring Valley Road
Suite 200
Dallas, Texas 75254
lfriedman@flawoffice.com

/s/ Dennis Weitzel
_____ **DENNIS WEITZEL**

EXHIBIT 1

FRIEDMAN & FEIGER, LLP
 Attorneys at Law
 5301 Spring Valley Road, Suite 200
 Dallas, TX 75254
 972-788-1400

July 8, 2015

Loncar & Associates, PC
 Attn: Toby Toudouze
 424 S. Cesar Chavez Blvd
 Dallas, TX 75201

Invoice #: 99655
 Client #: 8272 00001 REF
PAYMENT TERMS: NET 10 DAYS
 Date Of Last Payment On This Matter:
 04/27/2015

Billing Email Address: ttoudouze@brianloncar.com
 Re: General Corporate

**FOR A QUICK AND EASY PAYMENT OPTION GO ONLINE TO OUR WEBSITE
 WWW.FFLAWOFFICE.COM AND FOLLOW THE BILL PAYMENT LINKS.**

<u>PROFESSIONAL SERVICES:</u>			<u>Hours</u>	<u>Amount</u>
05/29/15	CJL	Research re Deposition for Foreign Jurisdiction in Texas;	1.90	475.00
05/29/15	MA	Prepare for Hearing; Conference with Case Attorney re same; Draft proposed Order;	0.80	100.00
06/01/15	JHF	Review correspondence from Opposing Counsel re Proposed Order; Correspondence to Client re Order Denying Plaintiff's Petition;	0.30	82.50
06/08/15	REF	Review and revise corporate formation documents for Loncar Odessa Property, LLC;	3.10	1,472.50
06/09/15	REF	Review and revise Tourmaline Partners Properties, LLC Series Addendums and Special Warranty Deeds;	4.20	1,995.00
06/10/15	REF	Office conference with T. Toudouze;	2.00	950.00
06/11/15	REF	Review of file; Update Loncar corporate minute book;	2.90	1,377.50
			15.20	\$6,452.50

REIMBURSABLE EXPENSES:

05/28/15	Local Travel - Court, Hearing	26.40
05/29/15	LexisNexis Research	109.37
06/25/15	Reproduction Scanning	1.50
06/25/15	Copy Charges	0.60

8272	00001	Invoice # 99655	Page 2
06/25/15	Facsimile		3.00
06/25/15	Postage		8.69
06/25/15	Copy Charges		1.35
			<hr/>
			\$150.91

TOTAL FEES:	\$6,452.50
TOTAL EXPENSES:	\$150.91
TOTAL NEW CHARGES:	\$6,603.41
NET BALANCE FORWARD	\$0.00
INTEREST CHARGED @ 8% PER ANNUM	\$0.00
BALANCE DUE ON MATTER	\$6,603.41

10% of any retainer received is held for out-of-pocket expenses paid on the client's behalf. Any unused portion of these heldback funds will be applied to the final bill. Disputes regarding any portion of the invoice must be received within 30 days of invoice date. Interest is charged on all unpaid balances over 30 days past due at a rate of 8% per annum. Tax Id: [REDACTED]

FRIEDMAN & FEIGER, LLP
Attorneys at Law
5301 Spring Valley Road, Suite 200
Dallas, TX 75254
972-788-1400

February 3, 2015

Loncar & Associates, PC
Attn: Toby Toudouze
424 S. Cesar Chavez Blvd
Dallas, TX 75201

Invoice #: 97681
Billed through: 02/02/2015
Client #: 8272 00003 REF

PAYMENT DUE UPON RECEIPT

Client Email Address: ttoudouze@brianloncar.com

Re: Tax Planning

<u>PROFESSIONAL SERVICES:</u>			<u>Hours</u>	<u>Amount</u>
01/09/15	REF	Telephone conference with T. Toudouze and M. Press re tax matters;	0.40	190.00
01/21/15	REF	Telephone conference with T. Toudouze; Preparation and drafting of Certificate of Formation, Bylaws and Unanimous Consent Of Organizational Meeting of Directors of Theatre Center for the Arts, Inc.;	4.40	2,090.00
01/22/15	RJ	Draft additional edits to Certificate of Formation;	1.80	270.00
01/23/15	REF	Review and revise formation documents for Theatre Center for the Arts, Inc.;	1.40	665.00
01/28/15	RJ	Draft final edits to Certificate of Formation, Company Agreement and Unanimous Consent; Memo to Case Attorney;	2.80	420.00
			<hr/>	<hr/>
			10.80	\$3,635.00

REIMBURSABLE EXPENSES:

01/23/15	Federal Express delivery to Secretary of State of Texas	60.59	1.00	60.59
01/23/15	Texas Secretary of State; Filing Fee - CK#60713		1.00	25.00

8272	00003		Invoice # 97681	Page 2
02/02/15		Long Distance	0.50	19.74
02/02/15		Copy Charges	0.15	0.75
02/02/15		Postage	1.25	0.60
02/02/15		Copy Charges	0.15	4.35
				<hr/>
				\$111.03

TOTAL FEES:	\$3,635.00
TOTAL EXPENSES:	\$111.03
INTEREST BILLED (see below)	\$0.00
TOTAL NEW CHARGES:	\$3,746.03
NET BALANCE FORWARD	\$3,382.95
BALANCE DUE ON MATTER:	<u><u>\$7,128.98</u></u>

IMPORTANT BILLING INFORMATION

10% of any retainer received is held for out of pocket expenses paid on the clients behalf. Any used portion of these heldback funds will be applied to the final bill.

Disputes regarding any portion of this invoice must be received within 30 days of invoice date.

Interest is charged on all unpaid balances over 30 days past due at a rate of 8% per annum.

TAX ID [REDACTED]

FRIEDMAN & FEIGER, LLP
Attorneys at Law
5301 Spring Valley Road, Suite 200
Dallas, TX 75254
972-788-1400

January 13, 2015

Loncar & Associates, PC
Attn: Toby Toudouze
424 S. Cesar Chavez Blvd
Dallas, TX 75201

Invoice #: 97301
Billed through: 01/05/2015
Client #: 8272 00009 MRK

PAYMENT DUE UPON RECEIPT

Client Email Address: ttoudouze@brianloncar.com

Re: Franklin D. Azar & Associates

<u>PROFESSIONAL SERVICES:</u>			<u>Hours</u>	<u>Amount</u>
12/16/14	LC	Research and organize documents in bankruptcy for several entities re F. Azar matter;	0.75	112.50
12/17/14	MRK	Telephone conference with Client; Review docket sheet and pleadings on file; Correspondence to and from Client;	0.50	162.50
12/18/14	MRK	Correspondence from and to Client; Prepare and file Answer; Draft and file Motion to Dissolve; Research re same; Review and analyze bankruptcy filings; Telephone conference with Opposing Counsel; Correspondence to and from same; Draft Order to Dismiss;	3.75	1,218.75
12/18/14	LC	Retrieve documents re PI Advertising Bankruptcy;	0.40	60.00
12/19/14	MRK	Correspondence to and from Opposing Counsel; Prepare and file Order to Dismiss; Telephone conference with Court;	0.45	146.25
12/19/14	LC	Research and retrieve bankruptcy documents for J. Bryant;	3.00	450.00
12/22/14	LC	Continue to research and retrieve bankruptcy documents for J. Bryant;	1.00	150.00
12/26/14	MRK	Correspondence to and from Opposing Counsel;	0.10	32.50
			<u>9.95</u>	<u>\$2,332.50</u>

REIMBURSABLE EXPENSES:

12/18/14	Lexis Research	1.00	82.78
12/18/14	Electronic Filing Charges - Dallas County 298th DC - Original Answer	1.00	8.34
12/19/14	Pacer Research	1.00	30.40
12/19/14	Electronic Filing Charges - Dallas County 298th DC - Letter	1.00	8.34
12/19/14	Electronic Filing Charges - Dallas County 298th DC - Motion	1.00	23.34
01/05/15	Reproduction Scanning	0.10	2.50
01/05/15	Long Distance	0.50	1.88
01/05/15	Copy Charges	0.15	0.45
01/05/15	Copy Charges	0.15	48.15
			\$206.18

TOTAL FEES:	\$2,332.50
TOTAL EXPENSES:	\$206.18
INTEREST BILLED (see below)	\$0.00
TOTAL NEW CHARGES:	\$2,538.68
BALANCE DUE ON MATTER:	<u><u>\$2,538.68</u></u>

IMPORTANT BILLING INFORMATION

10% of any retainer received is held for out of pocket expenses paid on the clients behalf. Any used portion of these heldback funds will be applied to the final bill.

Disputes regarding any portion of this invoice must be received within 30 days of invoice date.
Interest is charged on all unpaid balances over 30 days past due at a rate of 8% per annum.

TAX ID [REDACTED]

FRIEDMAN & FEIGER, LLP
Attorneys at Law
5301 Spring Valley Road, Suite 200
Dallas, TX 75254
972-788-1400

June 9, 2014

Loncar & Associates, PC
Attn: Toby Toudouze
424 S. Cesar Chavez Blvd
Dallas, TX 75201

Invoice #: 94352
Billed through: 06/02/2014
Client #: 8272 00001 MRK

PAYMENT DUE UPON RECEIPT

Client Email Address: ttoudouze@brianloncar.com

Re: General Corporate

Payments Since Last Invoice	\$1,052.60
Prepaid Balance	\$0.00

PROFESSIONAL SERVICES:

			<u>Hours</u>	<u>Amount</u>
05/31/14	MRK	Review, analyze and revise Employee Handbook; Correspondence to Client;	4.70	1,527.50
			<u>4.70</u>	<u>\$1,527.50</u>

TOTAL FEES:	\$1,527.50
INTEREST BILLED (see below)	\$0.00
TOTAL NEW CHARGES:	\$1,527.50
BALANCE DUE ON MATTER:	<u>\$1,527.50</u>

IMPORTANT BILLING INFORMATION

10% of any retainer received is held for out of pocket expenses paid on the clients behalf. Any used portion of these heldback funds will be applied to the final bill.

Disputes regarding any portion of this invoice must be received within 30 days of invoice date.

Interest is charged on all unpaid balances over 30 days past due at a rate of 8% per annum.

TAX ID [REDACTED]

FRIEDMAN & FEIGER, LLP
Attorneys at Law
5301 Spring Valley Road, Suite 200
Dallas, TX 75254
972-788-1400

March 19, 2014

Loncar & Associates, PC
Attn: Toby Toudouze
424 S. Cesar Chavez Blvd
Dallas, TX 75201

Invoice #: 93408
Billed through: 03/12/2014
Client #: 8272 00003 REF

PAYMENT DUE UPON RECEIPT

Client Email Address: ttoudouze@brianloncar.com

Re: Tax Planning

Payments Since Last Invoice	\$9,977.23
Prepaid Balance	\$0.00

<u>PROFESSIONAL SERVICES:</u>			<u>Hours</u>	<u>Amount</u>
02/13/14	RPB	Prepare Deeds for 5601 Sears and 424 S. Cesar Chavez;	0.60	180.00
02/14/14	REF	Preparation and drafting of Addendums to Tourmaline Partners Properties Company Agreement for 2205 Laurel Str., 5770 Gateway East, Herschel Ave., Arcady Ave. and Parkdale Beaumont Series entities; Review of deeds and deeds of trust re same;	4.80	2,280.00
02/18/14	REF	Review and revise addendums for Tourmaline Partner Properties, LLC; Conference with R. Bobowski re property transfers;	3.30	1,567.50
02/18/14	RPB	Conference with R. Feiger re real property transfers; Review correspondence re same; Review Addenda to Company Agreement and related real estate documents; Conference re same;	1.20	360.00
02/18/14	DO	Preparation of Tourmaline Partners Properties Addendums;	4.90	735.00
02/21/14	RPB	Review correspondence re transfers; Review Jefferson and Lubbock County records and deeds; Conference re same;	0.90	270.00
02/25/14	RPB	Review and revise Beaumont, Sears Street and Cesar Chavez Deeds;	1.60	480.00
02/26/14	RPB	Draft Deeds; Revise documents re Tyler property; Finalize Addendum; Correspondence to Client;	3.10	930.00
02/27/14	REF	Review of Tourmaline Series LLC real property	1.70	807.50

		deeds; Conference with T. Toudouze;		
02/27/14	RPB	Review and revise correspondence to Client; Finalize Member and Manager Consent;	0.40	120.00
03/06/14	REF	Preparation of estate planning documents;	2.80	1,330.00
			25.30	\$9,060.00

REIMBURSABLE EXPENSES:

02/11/14	Search Fee - Texas Secretary of State	1.00	6.00
03/12/14	Reproduction Scanning	0.10	0.60
03/12/14	Copy Charges	0.15	1.20
03/12/14	Copy Charges	0.15	13.20
			\$21.00

TOTAL FEES:	\$9,060.00
TOTAL EXPENSES:	\$21.00
INTEREST BILLED (see below)	\$0.00
TOTAL NEW CHARGES:	\$9,081.00
BALANCE DUE ON MATTER:	<u>\$9,081.00</u>

IMPORTANT BILLING INFORMATION

10% of any retainer received is held for out of pocket expenses paid on the clients behalf. Any used portion of these heldback funds will be applied to the final bill.

Disputes regarding any portion of this invoice must be received within 30 days of invoice date.

Interest is charged on all unpaid balances over 30 days past due at a rate of 8% per annum.

TAX ID [REDACTED]

FRIEDMAN & FEIGER, LLP
Attorneys at Law
5301 Spring Valley Road, Suite 200
Dallas, TX 75254
972-788-1400

February 25, 2014

Loncar & Associates, PC
Attn: Toby Toudouze
424 S. Cesar Chavez Blvd
Dallas, TX 75201

Invoice #: 93080
Billed through: 02/19/2014

Client #: 8272 00006

Payment Terms Net 30 days From Date of Invoice

Billing MRK

Re: Juanita Ortiz - Policy Number: [REDACTED]; Tax ID [REDACTED];

<u>PROFESSIONAL SERVICES:</u>			<u>Hours</u>	<u>Amount</u>
01/24/14	LJF	Telephone conference with K & E Attorney;	0.50	162.50
01/27/14	MRK	Correspondence to and from Client (.4); Correspondence from Carrier (.2); Correspondence to and from Keithly & English's Opposing Counsel (.4);	1.00	325.00
01/29/14	LJF	Confer with Case Attorney re settlement and case wrap up;	0.40	130.00
01/29/14	MRK	Revise Settlement Agreement documents (1.2); Correspondence to and from Opposing Counsel (.8); Correspondence to and from Carrier (.4); Telephone conference with Carrier (.3); Correspondence to and from Client (.8);	3.50	1,137.50
01/30/14	LJF	Review correspondence from Insurance Carrier;	0.20	65.00
01/31/14	MRK	Correspondence to and from Client (.3); Correspondence to and from Opposing Counsel (.3);	0.60	195.00
02/03/14	MRK	Correspondence to Carrier (.4) Correspondence from A. Barlow (.3); Review and analyze Keithly & English's Cross Claim (.8); Research re same (.7);	2.20	715.00
02/04/14	MRK	Correspondence to and from Carrier;	0.20	65.00
02/05/14	MRK	Telephone conference with Carrier (.5); Telephone conference with Client (.3);	0.80	260.00
02/18/14	MRK	Correspondence to and from A. Barlow (.6); Review and analyze Keithly & English's Amended Answer (.8); Draft Nonsuit (.4); Correspondence to Carrier (.2); Correspondence to Client (.2);	2.20	715.00
02/19/14	MRK	Correspondence to and from A. Barlow (.4); Correspondence to Client (.4); Correspondence to Carrier (.2); Review Arizona Dismissal (.3); Review Substitution of Counsel in Texas case (.2);	1.50	487.50
			13.10	\$4,257.50

REIMBURSABLE EXPENSES:

01/15/14	Out of Town Travel - Phoenix, Mediation, Airport Parking	18.00
02/04/14	Copy Charges	0.20
02/19/14	Reproduction Scanning	6.30
02/19/14	Facsimile	8.00
02/19/14	Postage	3.24
02/19/14	Copy Charges	0.10
02/19/14	Copy Charges	0.10
02/19/14	Copy Charges	0.10
		<hr/>
		\$36.04

TIMEKEEPER SUMMARY

ID	NAME	HOURS
LJF	Friedman, Lawrence J.	1.10
MRK	Kingston, Melissa R.	12.00
TOTAL		13.10

TOTAL FEES:	\$4,257.50	
TOTAL EXPENSES:	\$36.04	
PREPAID APPLIED	\$0.00	CR
TOTAL NEW CHARGES:	\$4,293.54	

FRIEDMAN & FEIGER, LLP
Attorneys at Law
5301 Spring Valley Road, Suite 200
Dallas, TX 75254
972-788-1400

February 25, 2014

Loncar & Associates, PC
Attn: Toby Toudouze
424 S. Cesar Chavez Blvd
Dallas, TX 75201

Invoice #: 93082
Billed through: 02/19/2014
Client #: 8272 00008 MRK

PAYMENT DUE UPON RECEIPT

Client Email Address: ttoudouze@brianloncar.com

Re: Elizabeth Ralston

Payments Since Last Invoice	\$0.00
Prepaid Balance	\$0.00

PROFESSIONAL SERVICES:

			<u>Hours</u>	<u>Amount</u>
01/27/14	MRK	Telephone conference with E. Ralston;	0.50	162.50
01/30/14	MRK	Telephone conferences with Client's sister;	0.80	260.00
01/31/14	MRK	Telephone conference with Client; Telephone conference with Client's brother; Conference with L. Friedman;	1.00	325.00
02/03/14	MRK	Conference with Client;	1.50	487.50
02/05/14	MRK	Telephone conference with Client;	0.20	65.00
02/11/14	MRK	Correspondence to and from Client;	0.20	65.00
02/12/14	MRK	Correspondence to GISD; Correspondence to and from Client;	0.50	162.50
02/13/14	MRK	Correspondence to and from GISD; Telephone conference with Counsel for GISD; Correspondence to Client;	1.00	325.00
02/14/14	MRK	Correspondence to and from Client; Telephone conference with Client;	0.50	162.50
02/17/14	MRK	Review and analyze materials from Client; Correspondence to and from Client;	0.50	162.50
02/18/14	MRK	Correspondence from Client; Telephone conference with Client;	0.40	130.00
02/19/14	MRK	Prepare for and attend conference with Client;	0.85	276.25
			7.95	\$2,583.75

REIMBURSABLE EXPENSES:

02/19/14	Reproduction Scanning	0.10	0.80
02/19/14	Copy Charges	0.15	9.00
02/19/14	Facsimile	0.50	1.00
02/19/14	Postage	0.50	3.48
02/19/14	Copy Charges	0.15	1.50
			<hr/>
			\$15.78

TOTAL FEES:	\$2,583.75
TOTAL EXPENSES:	\$15.78
INTEREST BILLED (see below)	\$0.00
TOTAL NEW CHARGES:	\$2,599.53
BALANCE DUE ON MATTER:	<hr/> <hr/> \$2,599.53

IMPORTANT BILLING INFORMATION

10% of any retainer received is held for out of pocket expenses paid on the clients behalf. Any used portion of these heldback funds will be applied to the final bill.

Disputes regarding any portion of this invoice must be received within 30 days of invoice date.

Interest is charged on all unpaid balances over 30 days past due at a rate of 8% per annum.

TAX ID [REDACTED]

FRIEDMAN & FEIGER, LLP
 Attorneys at Law
 5301 Spring Valley Road, Suite 200
 Dallas, TX 75254
 972-788-1400

August 12, 2014

Loncar & Associates, PC
 Attn: Toby Toudouze
 424 S. Cesar Chavez Blvd
 Dallas, TX 75201

Invoice #: 95127
 Billed through: 08/04/2014
 Client #: 8272 00001 MRK

PAYMENT DUE UPON RECEIPT

Client Email Address: ttoudouze@brianloncar.com

Re: General Corporate

Payments Since Last Invoice	\$195.00
Prepaid Balance	\$0.00

PROFESSIONAL SERVICES:

			<u>Hours</u>	<u>Amount</u>
07/01/14	MRK	Draft updates to Employee Handbook; Correspondence to and from Client re same;	0.75	243.75
07/29/14	REF	Office conference with T. Toudouze;	1.40	665.00
			<u>2.15</u>	<u>\$908.75</u>

REIMBURSABLE EXPENSES:

08/04/14	Reproduction Scanning	0.10	0.60
08/04/14	Copy Charges	0.15	0.30
08/04/14	Postage	1.25	0.60
08/04/14	Copy Charges	0.15	0.90
			<u>\$2.40</u>

TOTAL FEES:	\$908.75
TOTAL EXPENSES:	\$2.40
INTEREST BILLED (see below)	\$0.00
TOTAL NEW CHARGES:	\$911.15
BALANCE DUE ON MATTER:	<u><u>\$911.15</u></u>

FRIEDMAN & FEIGER, LLP
Attorneys at Law
5301 Spring Valley Road, Suite 200
Dallas, TX 75254
972-788-1400

February 25, 2014

Mr. Brian Loncar
424 S. Cesar Chavez Blvd.
Dallas, TX 75201

Invoice #: 93081
Billed through: 02/19/2014
Client #: 8272 00007 MRK

PAYMENT DUE UPON RECEIPT

Client Email Address: bloncar@brianloncar.com

Re: Grievance Defense

Payments Since Last Invoice	\$6,453.63
Prepaid Balance	\$0.00

PROFESSIONAL SERVICES:

			<u>Hours</u>	<u>Amount</u>
01/27/14	LJF	Review response from State Bar; Confer with M. Kingston; Correspondence to Client;	0.50	237.50
01/27/14	MRK	Correspondence to State Bar of Texas; Correspondence to Client; Telephone conference with Expert; Correspondence to Expert;	0.50	162.50
01/28/14	LJF	Confer with Case Attorney re SBT Response;	0.30	142.50
01/28/14	MRK	Correspondence from Expert; Correspondence to and from Client;	0.50	162.50
02/03/14	MRK	Correspondence to State Bar of Texas;	0.35	113.75
			<u>2.15</u>	<u>\$818.75</u>

TOTAL FEES:	\$818.75
INTEREST BILLED (see below)	\$0.00
TOTAL NEW CHARGES:	\$818.75
BALANCE DUE ON MATTER:	<u>\$818.75</u>

IMPORTANT BILLING INFORMATION

10% of any retainer received is held for out of pocket expenses paid on the clients behalf. Any used portion of these heldback funds will be applied to the final bill.

Disputes regarding any portion of this invoice must be received within 30 days of invoice date.
Interest is charged on all unpaid balances over 30 days past due at a rate of 8% per annum.

FRIEDMAN & FEIGER, LLP
 Attorneys at Law
 5301 Spring Valley Road, Suite 200
 Dallas, TX 75254
 972-788-1400

February 25, 2014

Loncar & Associates, PC
 Attn: Toby Toudouze
 424 S. Cesar Chavez Blvd
 Dallas, TX 75201

Invoice #: 93082
 Billed through: 02/19/2014
 Client #: 8272 00008 MRK

PAYMENT DUE UPON RECEIPT

Client Email Address: ttoudouze@brianloncar.com

Re: Elizabeth Ralston

Payments Since Last Invoice	\$0.00
Prepaid Balance	\$0.00

PROFESSIONAL SERVICES:

			<u>Hours</u>	<u>Amount</u>
01/27/14	MRK	Telephone conference with E. Ralston;	0.50	162.50
01/30/14	MRK	Telephone conferences with Client's sister;	0.80	260.00
01/31/14	MRK	Telephone conference with Client; Telephone conference with Client's brother; Conference with L. Friedman;	1.00	325.00
02/03/14	MRK	Conference with Client;	1.50	487.50
02/05/14	MRK	Telephone conference with Client;	0.20	65.00
02/11/14	MRK	Correspondence to and from Client;	0.20	65.00
02/12/14	MRK	Correspondence to GISD; Correspondence to and from Client;	0.50	162.50
02/13/14	MRK	Correspondence to and from GISD; Telephone conference with Counsel for GISD; Correspondence to Client;	1.00	325.00
02/14/14	MRK	Correspondence to and from Client; Telephone conference with Client;	0.50	162.50
02/17/14	MRK	Review and analyze materials from Client; Correspondence to and from Client;	0.50	162.50
02/18/14	MRK	Correspondence from Client; Telephone conference with Client;	0.40	130.00
02/19/14	MRK	Prepare for and attend conference with Client;	0.85	276.25
			7.95	\$2,583.75

REIMBURSABLE EXPENSES:

02/19/14	Reproduction Scanning	0.10	0.80
02/19/14	Copy Charges	0.15	9.00
02/19/14	Facsimile	0.50	1.00
02/19/14	Postage	0.50	3.48
02/19/14	Copy Charges	0.15	1.50
			<hr/>
			\$15.78

TOTAL FEES:	\$2,583.75
TOTAL EXPENSES:	\$15.78
INTEREST BILLED (see below)	\$0.00
TOTAL NEW CHARGES:	\$2,599.53
BALANCE DUE ON MATTER:	<hr/>
	\$2,599.53

IMPORTANT BILLING INFORMATION

10% of any retainer received is held for out of pocket expenses paid on the clients behalf. Any used portion of these heldback funds will be applied to the final bill.

Disputes regarding any portion of this invoice must be received within 30 days of invoice date.
Interest is charged on all unpaid balances over 30 days past due at a rate of 8% per annum.

TAX ID [REDACTED]

Tab 43

CAUSE NO. DC-19-08531

BRIAN LONCAR, P.C. d/b/a	§	IN THE DISTRICT COURT
LONCAR ASSOCIATES,	§	
Plaintiff/Counterclaim	§	
Defendant,	§	
	§	
v.	§	
	§	
TOBY TOUDOUZE,	§	
Defendant/Counterclaim	§	14TH JUDICIAL DISTRICT
Third-Party Plaintiff,	§	
	§	
v.	§	
	§	
CLAY LEWIS JENKINS,	§	
as Alter-Ego of Brian	§	
Loncar, P.C./Counter-	§	
claim Defendant.	§	OF DALLAS COUNTY, TEXAS

CERTIFICATE OF NONAPPEARANCE
OF
CLAY LEWIS JENKINS AS THE
REPRESENTATIVE OF THE ESTATE OF
BRIAN U. LONCAR
October 24, 2019

I, Tommi Rutledge Gray, Certified Shorthand Reporter, Registered Professional Reporter, and Certified Realtime Reporter in and for the State of Texas, hereby certify to the following facts to wit:

That I appeared on the 24th day of October, 2019 at the Law Offices of Ted B. Lyon & Associates, P.C., 18601 LBJ Freeway, Suite 525, Mesquite, Texas

1 75150 for the purpose of taking the Oral Deposition of
2 Clay Lewis Jenkins as the Representative of the Estate
3 of Brian U. Loncar, scheduled to begin at 9:30 a.m.
4 pursuant to Defendant Toby Toudouze's Notice of Intent
5 to Take the Oral and Video Deposition of Clay Lewis
6 Jenkins as the Representative of the Estate of Brian U.
7 Loncar.

8 That also appearing at said time and place was
9 Jennifer J. Spencer, Esq., Counsel for Toby Toudouze,
10 Defendant/Counterclaim and Third-Party Plaintiff, who is
11 with the Law Offices of Jackson Spencer Law located at
12 12221 Merit Drive, Suite 160, Dallas, TX 75251.

13 At 9:42 a.m., CLAY LEWIS JENKINS AS THE
14 REPRESENTATIVE OF THE ESTATE OF BRIAN U. LONCAR having
15 failed to appear, the following statement was made:

16 MS. SPENCER: Okay. So we're on the record
17 today in a duly noticed deposition of Clay Jenkins as
18 the Representative of the Estate of Brian U. Loncar in
19 the case Brian Loncar, P.C., d/b/a Loncar Associates
20 versus Toby Toudouze, T-O-U-D-O-U-Z-E, versus Clay Lewis
21 Jenkins.

22 For the record, I will have Exhibit 1 marked,
23 which is the Deposition Notice.

24 (Exhibit 1 marked for identification.)

25 The Notice was sent first on Wednesday, October

1 16th, 2019 at 5:30 p.m., and the confirmation of that
2 will be marked as Exhibit 2.

3 (Exhibit 2 marked for identification.)

4 Following that, we sent a courtesy Notice to
5 Mr. Weitzel and Mr. Lyon on Wednesday, October 16th,
6 again attaching the Deposition Notice, and that service
7 was opened and read by Dennis Weitzel on October 16th,
8 2019 at 6:46 p.m.

9 And for the record, I will label the courtesy
10 service with the last page of the confirmation that it
11 was read by Mr. Weitzel as Exhibit 3 to this deposition.

12 (Exhibit 3 marked for identification.)

13 No Motion to Quash has been filed in this case,
14 no objection to the time and date has been provided to
15 me or to Mr. Friedman, no notice has been provided to
16 Mr. Friedman or to me that the witness was not showing
17 up today, no notice was provided that there was any
18 issue at all with the scheduling of this deposition in
19 this case today, so at 9:45, having waited for the
20 witness and counsel for 15 minutes, I am taking a
21 Certificate of NonAppearance.

22 I am advised as of ten minutes ago that Mr.
23 Jenkins is in court today. No one advised me of that.
24 There is no hearing in this case in which Mr. Jenkins
25 was duly noticed to attend his deposition today, no

1 indication whatsoever that there was a conflicting
2 hearing with the witness or that Mr. Weitzel or that
3 some other counsel for Mr. Jenkins would fail to show.

4 So at that point I will take the Certificate
5 of NonAppearance and take it up with the Court.

6 I'm going to add one more thing, that I've
7 made an appearance in this case, and, as I stated, no
8 one's notified me or Mr. Friedman that Mr. Jenkins would
9 not appear for this deposition.

10 GIVEN UNDER MY HAND of office on this 29th day
11 of October, 2019.

12

13

14

15

16



TOMMI RUTLEDGE GRAY, Texas CSR 1693

17

Expiration Date: 10/31/21

ELITE DEPOSITION TECHNOLOGIES, INC.

18

Firm Registration #10110

400 North St. Paul Street

19

Suite 1340

Dallas, Texas 75201

20

214.698.5199

www.EliteDeps.com

21

22

23

CUSTODIAL ATTORNEY Lawrence Friedman

24

TAXABLE COST 463.52

25

<p>A</p> <p>a.m 2:3,13 add 4:6 advised 3:22 3:23 ago 3:22 Alter-Ego 1:9 appear 2:15 4:9 appearance 4:7 appeared 1:23 appearing 2:8 Associates 1:2 1:24 2:19 attaching 3:6 attend 3:25</p> <hr/> <p>B</p> <p>B 1:24 Brian 1:2,9,15 2:3,6,14,18 2:19</p> <hr/> <p>C</p> <p>case 2:19 3:13 3:19,24 4:7 CAUSE 1:1 Certificate 1:13 3:21 4:4 Certified 1:19 1:21 certify 1:22 claim 1:10 Clay 1:8,14 2:2 2:5,13,17,20 confirmation 3:1,10 conflicting 4:1 counsel 2:9 3:20 4:3 COUNTY 1:10 court 1:2 3:23 4:5 courtesy 3:4,9 CSR 4:16</p> <hr/> <p>D</p> <p>d/b/a 1:2 2:19 Dallas 1:10 2:12 4:19</p>	<p>date 3:14 4:17 day 1:23 4:10 DC-19-08531 1:1 Defendant 1:3 1:10 2:4 Defendant/C... 1:6 2:10 Dennis 3:7 deposition 2:1 2:5,17,23 3:6 3:11,18,25 4:9,17 DISTRICT 1:2 1:6 Drive 2:12 duly 2:17 3:25</p> <hr/> <p>E</p> <p>ELITE 4:17 Esq 2:9 Estate 1:14 2:2 2:6,14,18 Exhibit 2:22 2:24 3:2,3,11 3:12 Expiration 4:17</p> <hr/> <p>F</p> <p>facts 1:22 fail 4:3 failed 2:15 filed 3:13 Firm 4:18 first 2:25 following 1:22 2:15 3:4 Freeway 1:25 Friedman 3:15 3:16 4:8</p> <hr/> <p>G</p> <p>GIVEN 4:10 going 4:6 Gray 1:19 4:16</p> <hr/> <p>H</p> <p>HAND 4:10 hearing 3:24 4:2</p>	<p>I</p> <p>identification 2:24 3:3,12 indication 4:1 Intent 2:4 issue 3:18</p> <hr/> <p>J</p> <p>J 2:9 Jackson 2:11 Jenkins 1:8,14 2:2,6,13,17 2:21 3:23,24 4:3,8 Jennifer 2:9 JUDICIAL 1:6</p> <hr/> <p>K</p>	<p>L</p> <p>label 3:9 Law 1:24 2:11 2:11 LBJ 1:25 Lewis 1:8,14 2:2,5,13,20 located 2:11 Loncar 1:2,2,9 1:15 2:3,7,14 2:18,19,19 Lyon 1:24 3:5</p> <hr/> <p>M</p> <p>marked 2:22 2:24 3:2,3,12 Merit 2:12 Mesquite 1:25 minutes 3:20 3:22 Motion 3:13</p> <hr/> <p>N</p> <p>NonAppeara... 1:13 3:21 4:5 North 4:18 notice 2:4,23 2:25 3:4,6,15 3:17 noticed 2:17 3:25 notified 4:8</p>	<p>O</p> <p>objection 3:14 October 1:15 1:23 2:25 3:5 3:7 4:11 office 4:10 Offices 1:24 2:11 Okay 2:16 one's 4:8 opened 3:7 Oral 2:1,5</p> <hr/> <p>P</p> <p>P.C 1:2,25 2:19 P.C./Counter- 1:9 p.m 3:1,8 page 3:10 Paul 4:18 place 2:8 Plaintiff 1:6 2:10 Plaintiff/Cou... 1:3 point 4:4 Professional 1:20 provided 3:14 3:15,17 purpose 2:1 pursuant 2:4</p> <hr/> <p>Q</p> <p>Quash 3:13</p> <hr/> <p>R</p> <p>read 3:7,11 Realtime 1:21 record 2:16,22 3:9 Registered 1:20 Registration 4:18 Reporter 1:20 1:20,21 Representati... 1:14 2:2,6,14 2:18</p>	<p>Rutledge 1:19 4:16</p> <hr/> <p>S</p> <p>scheduled 2:3 scheduling 3:18 sent 2:25 3:4 service 3:6,10 Shorthand 1:19 show 4:3 showing 3:16 Spencer 2:9,11 2:16 St 4:18 State 1:21 stated 4:7 statement 2:15 Street 4:18 Suite 1:25 2:12 4:19</p> <hr/> <p>T</p> <p>T-O-U-D-O-... 2:20 take 2:5 4:4,5 TECHNOL... 4:17 Ted 1:24 ten 3:22 Texas 1:10,22 1:25 4:16,19 thing 4:6 Third-Party 1:6 2:10 time 2:8 3:14 Toby 1:5 2:4,9 2:20 today 2:17 3:17,19,23 3:25 Tommi 1:19 4:16 Toudouze 1:5 2:9,20 Toudouze's 2:4 TX 2:12</p> <hr/> <p>U</p>	<p>U 1:15 2:3,6,14 2:18</p> <hr/> <p>V</p> <p>v 1:4,7 versus 2:20,20 Video 2:5</p> <hr/> <p>W</p> <p>waited 3:19 we're 2:16 Wednesday 2:25 3:5 Weitzel 3:5,7 3:11 4:2 whatsoever 4:1 wit 1:22 witness 3:16 3:20 4:2 www.EliteDe... 4:20</p> <hr/> <p>X</p> <hr/> <p>Y</p> <hr/> <p>Z</p> <hr/> <p>0</p> <hr/> <p>1</p> <p>1 2:22,24 10/31/21 4:17 10110 4:18 12221 2:12 1340 4:19 14TH 1:6 15 3:20 160 2:12 1693 4:16 16th 3:1,5,7 18601 1:25</p> <hr/> <p>2</p> <p>2 3:2,3 2019 1:15,24 3:1,8 4:11 214.698.5199 4:20 24 1:15 24th 1:23</p>
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29th 4:10					
<hr/> 3					
3 3:11,12					
<hr/> 4					
400 4:18					
<hr/> 5					
5:30 3:1					
525 1:25					
<hr/> 6					
6:46 3:8					
<hr/> 7					
75150 2:1					
75201 4:19					
75251 2:12					
<hr/> 8					
<hr/> 9					
9:30 2:3					
9:42 2:13					
9:45 3:19					

taken by non-stenographic videotape recording by Steve Page of FRIEDMAN & FEIGER, LLP, 5301 Spring Valley Road, Suite 200, Dallas, Texas 75254. You are invited to attend.

Respectfully submitted,

By: 
LAWRENCE J. FRIEDMAN
Texas Bar No. 07469300
Email: lfriedman@fflawoffice.com

FRIEDMAN & FEIGER, LLP
5301 Spring Valley Road, Suite 200
Dallas, Texas 75254
Telephone (972) 788-1400
Facsimile (972) 788-2667

**ATTORNEY FOR DEFENDANT
TOBY TOUDOUZE**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served upon all counsel of record on this the **16th day of October 2019**, in accordance with the TEXAS RULES OF CIVIL PROCEDURE.


LAWRENCE J. FRIEDMAN

taken by non-stenographic videotape recording by Steve Page of FRIEDMAN & FEIGER, LLP, 5301 Spring Valley Road, Suite 200, Dallas, Texas 75254. You are invited to attend.

Respectfully submitted,

By: 
LAWRENCE J. FRIEDMAN
Texas Bar No. 07469300
Email: lfriedman@fflawoffice.com

FRIEDMAN & FEIGER, LLP
5301 Spring Valley Road, Suite 200
Dallas, Texas 75254
Telephone (972) 788-1400
Facsimile (972) 788-2667

**ATTORNEY FOR DEFENDANT
TOBY TOUDOUZE**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served upon all counsel of record on this the **16th day of October 2019**, in accordance with the TEXAS RULES OF CIVIL PROCEDURE.


LAWRENCE J. FRIEDMAN

[« Back to All Filings](#)

[Print Page](#)

Date:

Wednesday, October 16, 2019

Time:

5:30:59 PM

Envelope Information

Envelope Number: 37720015
Case Category: Civil - Injury or Damage
Cause Number: DC-19-08531
Judge for the Case: Not Available

Court Assignment: Dallas County - 14th District Court
Case Type: Assault/Battery
Case Title: BRIAN LONCAR, P.C. vs. TOBY TOUDOUZE

Envelope Fee

Est.Amount

Total Envelope Fees: \$0.00

Payment Information

Account Name: walver1
Payment Method: Waiver

Personal Information

Filer: Carla Williamson
Attorney of Record: Larry Friedman
Firm or Organization: Friedman & Feiger
Bar Number: 7469300

Service Recipients

Amanda Stansbury

Email: astansbury@jacksonspencerlaw.com
Status: Sent
Service Opened: No

Patricia Haynes

Email: phaynes@jacksonspencerlaw.com
Status: Sent
Service Opened: Yes
Served Date/Time: 10/16/2019 5:31:47 PM
Service Opened Date/Time: 10/16/2019 5:32:12 PM

M. Bridges

Email: nbridges@jacksonspencerlaw.com
Status: Sent
Service Opened: No

James Hunnicutt

Email: jhunnicutt@jacksonspencerlaw.com
Status: Sent
Service Opened: No

Jennifer Spencer

Email: jspencer@jacksonspencerlaw.com
Status: Sent
Service Opened: No

Ted Lyon, Jr.

Email: tblyon@tedlyon.com
Status: Sent
Service Opened: No



Larry Friedman
 Email: lfriedman@fflawoffice.com
 Status: Sent
 Service Opened: No

DENNIS WEITZEL
 Email: DENNIS@TEDLYON.COM
 Status: Sent
 Service Opened: No

Carla Williamson
 Email: lfpara@fflawoffice.com
 Status: Sent
 Service Opened: No

Tracy Head
 Email: lfsec@fflawoffice.com
 Status: Sent
 Service Opened: No

Scott Scher
 Email: sscher@fflawoffice.com
 Status: Sent
 Service Opened: No

DEFENDANT TOBY TOUDOUZE'S NOTICE OF INTENT TO TAKE THE ORAL AND VIDEO DEPOSITION OF CLAY LEWIS JENKINS AS THE REPRESENTATIVE OF THE ESTATE OF BRIAN

Filing Fees

Total Filing Fees: \$0.00

Filing Information

Current Status: ✓ *served*
Docket Date/Time: 10/16/2019 5:31:01 PM
Filing Description: DEFENDANT TOBY TOUDOUZE'S NOTICE OF INTENT TO TAKE THE ORAL AND VIDEO DEPOSITION OF CLAY LEWIS JENKINS AS THE REPRESENTATIVE OF THE ESTATE OF BRIAN
Reference Number: 8712.003
Comments for Clerk:

Document Information

Document(s) Filed:

Service Document(s):

-  [DN - Clay Jenkins \[10.24.2019\].pdf](#) [Does not contain sensitive data]
-  [Transmitted - DN - Clay Jenkins \[10.24.2019\].pdf](#) [Does not contain sensitive data]

- Document Description:** DN - Clay Jenkins as Rep of Estate of BUL [10.24.2019].pdf
- Document Description:** DN - Clay Jenkins as Rep of Estate of BUL [10.24.2019].pdf

10/23/2019

ProDoc® eFiling 2 - Filing Details

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[« Back to All Filings](#)

[Print Page](#)

Filing Envelope Information

Date: Wednesday, October 16, 2019	Time: 5:30:59 PM
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Envelope Information

Envelope Number: 37720015
Case Category: Civil – Injury or Damage
Cause Number: DC-19-08531
Judge for the Case: Not Available
Court Assignment: Dallas County - 14th District Court
Case Type: Assault/Battery
Case Title: BRIAN LONCAR, P.C. vs. TOBY TOUDOUZE

Envelope Fee	Est.Amount
Total Envelope Fees:	
	\$0.00

Payment Information
Account Name: waiver1
Payment Method: Waiver

Personal Information
Filer: Carla Williamson
Attorney of Record: Larry Friedman
Firm or Organization: Friedman & Feiger
Bar Number: 7469300

Service Recipients	
Amanda Stansbury	
Email:	astansbury@jacksonspencerlaw.com
Status:	Sent
Service Opened:	No
	View Log
Patricia Haynes	
Email:	phaynes@jacksonspencerlaw.com
Status:	Sent
Service Opened:	Yes
Served Date/Time:	10/16/2019 5:31:47 PM
Service Opened Date/Time:	10/16/2019 5:32:12 PM
	View Log
M. Bridges	
Email:	nbridges@jacksonspencerlaw.com
Status:	Sent
Service Opened:	No
	View Log
James Hunnicutt	
Email:	jhunnicutt@jacksonspencerlaw.com
Status:	Sent
Service Opened:	No
	View Log
Jennifer Spencer	
Email:	jspencer@jacksonspencerlaw.com
Status:	Sent
Service Opened:	No
	View Log
Ted Lyon, Jr.	
Email:	tblyon@tedlyon.com
Status:	Sent
Service Opened:	No

[View Log](#)

Larry Friedman

Email: lfriedman@fflawoffice.com
Status: Sent
Service Opened: No

[View Log](#)

DENNIS WEITZEL

Email: DENNIS@TEDLYON.COM
Status: Sent
Service Opened: No

[View Log](#)

Carla Williamson

Email: lfpara@fflawoffice.com
Status: Sent
Service Opened: No

[View Log](#)

Tracy Head

Email: lfsec@fflawoffice.com
Status: Sent
Service Opened: No

[View Log](#)

Scott Scher



Email: sscher@fflawoffice.com
Status: Sent
Service Opened: No

[View Log](#)

DEFENDANT TOBY TOUDOUZE'S NOTICE OF INTENT TO TAKE THE ORAL AND VIDEO DEPOSITION OF CLAY LEWIS JENKINS AS THE REPRESENTATIVE OF THE ESTATE OF BRIAN

Filing Fees	
Total Filing Fees:	\$0.00

Filing Information
Current Status: ✓ served
Docket Date/Time: 10/16/2019 5:31:01 PM
Filing Description: DEFENDANT TOBY TOUDOUZE'S NOTICE OF INTENT TO TAKE THE ORAL AND VIDEO DEPOSITION OF CLAY LEWIS JENKINS AS THE REPRESENTATIVE OF THE ESTATE OF BRIAN
Reference Number: 8712.003
Comments for Clerk:

Document Information	
Document(s) Filed:	
Service Document(s):	
 DN - Clay Jenkins [10.24.2019].pdf [Does not contain sensitive data]	Document Description: DN - Clay Jenkins as Rep of Estate of BUL [10.24.2019].pdf
 Transmitted - DN - Clay Jenkins [10.24.2019].pdf [Does not contain sensitive data]	Document Description: DN - Clay Jenkins as Rep of Estate of BUL [10.24.2019].pdf

Loading...

From: Carla Williamson <lpara@flawoffice.com>
Sent: Wednesday, October 16, 2019 5:31 PM
To: tblyon@tedlyon.com; dennis@tedlyon.com
Cc: Larry Friedman
Subject: Cause No. DC-19-08531; Brian Loncar P.C. v. Toby Toudouze
Attachments: DN - Clay Jenkins as Rep of Estate of BUL [10.24.2019].pdf

Counsel,

Attached is a courtesy copy of *Defendant Toby Toudouze's Notice of Intent to Take the Oral and Video Deposition of Clay Lewis Jenkins as the Representative of the Estate of Brian U. Loncar* which has also been served through e-service. Please contact our office should you have any questions.

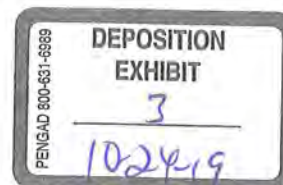
Thank you,

Carla Williamson

FRIEDMAN & FEIGER
ATTORNEYS AT LAW

CARLA WILLIAMSON | PARALEGAL TO LAWRENCE J. FRIEDMAN
FRIEDMAN & FEIGER, LLP | 5301 Spring Valley Road, Suite 200, Dallas, Texas 75254
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lpara@flawoffice.com

CONFIDENTIALITY NOTICE: This email is covered by the Electronic Communications Privacy Act, 48 U.S.C. 2510-2521 and is legally privileged. The information contained in this email is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution, or duplication of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (972-788-1400) and destroy the original message. Thank you.



taken by non-stenographic videotape recording by Steve Page of FRIEDMAN & FEIGER, LLP,
5301 Spring Valley Road, Suite 200, Dallas, Texas 75254. You are invited to attend.

Respectfully submitted,

By: 

LAWRENCE J. FRIEDMAN
Texas Bar No. 07469300
Email: lfriedman@flawoffice.com

FRIEDMAN & FEIGER, LLP
5301 Spring Valley Road, Suite 200
Dallas, Texas 75254
Telephone (972) 788-1400
Facsimile (972) 788-2667

**ATTORNEY FOR DEFENDANT
TOBY TOUDOUZE**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served upon all counsel of record on this the **16th day of October 2019**, in accordance with the TEXAS RULES OF CIVIL PROCEDURE.



LAWRENCE J. FRIEDMAN

From: Dennis Weitzel <dennis@tedlyon.com>
To: Carla Williamson
Sent: Wednesday, October 16, 2019 6:46 PM
Subject: Read: Cause No. DC-19-08531; Brian Loncar P.C. v. Toby Toudouze

Your message

To: Dennis Weitzel
Subject: Cause No. DC-19-08531; Brian Loncar P.C. v. Toby Toudouze
Sent: Wednesday, October 16, 2019 5:31:15 PM (UTC-06:00) Central Time (US & Canada)

was read on Wednesday, October 16, 2019 6:46:17 PM (UTC-06:00) Central Time (US & Canada).

From: Carla Williamson <lfpara@fflawoffice.com>
Sent: Wednesday, October 16, 2019 5:31 PM
To: tblyon@tedlyon.com; dennis@tedlyon.com
Cc: Larry Friedman
Subject: Cause No. DC-19-08531; Brian Loncar P.C. v. Toby Toudouze
Attachments: DN - Clay Jenkins as Rep of Estate of BUL [10.24.2019].pdf

Counsel,

Attached is a courtesy copy of *Defendant Toby Toudouze's Notice of Intent to Take the Oral and Video Deposition of Clay Lewis Jenkins as the Representative of the Estate of Brian U. Loncar* which has also been served through e-service. Please contact our office should you have any questions.

Thank you,

Carla Williamson

FRIEDMAN & FEIGER
ATTORNEYS AT LAW

CARLA WILLIAMSON | PARALEGAL TO LAWRENCE J. FRIEDMAN

FRIEDMAN & FEIGER, LLP | 5301 Spring Valley Road, Suite 200, Dallas, Texas 75254

Telephone: (972) 788-1400 | Direct: (972) 450-7322 | Mobile: (214) 882-1506 | Facsimile: (972) 788-2667 | Email:

lfpara@fflawoffice.com

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taken by non-stenographic videotape recording by Steve Page of FRIEDMAN & FEIGER, LLP,
5301 Spring Valley Road, Suite 200, Dallas, Texas 75254. You are invited to attend.

Respectfully submitted,

By: 

LAWRENCE J. FRIEDMAN
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Telephone (972) 788-1400
Facsimile (972) 788-2667

**ATTORNEY FOR DEFENDANT
TOBY TOUDOUZE**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served upon all counsel of record on this the **16th day of October 2019**, in accordance with the TEXAS RULES OF CIVIL PROCEDURE.



LAWRENCE J. FRIEDMAN

From: Dennis Weitzel <dennis@tedlyon.com>
To: Carla Williamson
Sent: Wednesday, October 16, 2019 6:46 PM
Subject: Read: Cause No. DC-19-08531; Brian Loncar P.C. v. Toby Toudouze

Your message

To: Dennis Weitzel
Subject: Cause No. DC-19-08531; Brian Loncar P.C. v. Toby Toudouze
Sent: Wednesday, October 16, 2019 5:31:15 PM (UTC-06:00) Central Time (US & Canada)

was read on Wednesday, October 16, 2019 6:46:17 PM (UTC-06:00) Central Time (US & Canada).

Tab 44

CAUSE NO. DC-19-08531

**BRIAN LONCAR, P.C., D/B/A
LONCAR ASSOCIATES**

Plaintiff,

vs.

TOBY TOUDOUZE

Defendant.

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IN THE DISTRICT COURT

14th JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

CERTIFICATE OF CONFERENCE

On the 7th day of February, 2020, the undersigned, Dennis Weitzel, conferred with Counsel for Defendant Toby Toudouze, Lawrence J. Friedman. An agreement could not be reached concerning the merits of PLAINTIFF'S MOTION TO DISQUALIFY FRIEDMAN & FEIGER, LLP, OR IN THE ALTERNATIVE, LAWRENCE J. FRIEDMAN, INDIVIDUALLY, necessitating a hearing on same.


DENNIS WEITZEL

Respectfully submitted,
TED B. LYON & ASSOCIATES, P.C.

By: /s/ Dennis Weitzel
TED B. LYON, JR.
State Bar No. 12741500
tblyon@tedlyon.com
DENNIS WEITZEL
State Bar No. 21118200
dennis@tedlyon.com
Town East Tower – Suite 525
18601 LBJ Freeway
Mesquite, Texas 75150
Phone: 972-279-6571
Fax: 972-279-3021
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2020, a true and correct copy of the foregoing pleading has been served on all parties in this proceeding, pursuant to the Texas Rules of Civil Procedure.

/s/ Dennis Weitzel
DENNIS WEITZEL

Tab 45

CAUSE NO. DC-19-08531

**BRIAN LONCAR, P.C., D/B/A
LONCAR ASSOCIATES**

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IN THE DISTRICT COURT

Plaintiff,

vs.

14th JUDICIAL DISTRICT

TOBY TOUDOUZE

Defendant.

DALLAS COUNTY, TEXAS

PLAINTIFF’S FIRST AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES **BRIAN LONCAR, P.C., D/B/A LONCAR ASSOCIATES** (hereinafter referred to as “Plaintiff” or “Loncar”) and files this First Amended Petition against **TOBY TOUDOUZE** (“Defendant” or “Toudouze”), and would respectfully show the Court as follows:

I. DISCOVERY-CONTROL PLAN

1. Plaintiff intends to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.4 and affirmatively pleads that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because Plaintiff seeks equitable relief or, in the alternative, monetary relief over \$100,000.

II. CLAIM FOR RELIEF

2. Plaintiff seeks equitable relief in the form of the return of property including trade secrets and confidential information of the Plaintiff law firm.

3. In the alternative, Plaintiff seeks monetary relief over \$1,000,000. Tex. R. Civ. P. 47(c)(5).

III. PARTIES

4. Plaintiff is a professional corporation doing business in Dallas County, Texas at 424 S. Cesar Chavez Blvd., Dallas, Texas 75201.

5. Defendant, Toby Toudouze, an individual who has been served and has filed an answer in this lawsuit.

IV. JURISDICTION

6. The Court has subject matter jurisdiction over the lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

7. The Court has personal jurisdiction over Toudouze because he is a resident of the State of Texas and Dallas County and was a resident of Texas at the time the theft occurred.

V. VENUE

8. Venue is permissive in Dallas County under Texas Civil Practice & Remedies Code section 134.004 because this is a brought under the Texas Theft Liability Act, and Dallas County is where the theft occurred.

VI. FACTS

9. Plaintiff is an industry-leading provider of accident and personal injury litigation representation in the United States. The company focuses on providing clients with experienced counsel to represent clients in their civil disputes. The law firm provides services in the areas of car accidents, traumatic brain injuries, wrongful death, oilfield accidents, truck accidents, and more.

10. Client expends a great deal of time, money, and effort in developing its customer lists and pricing structure. Access to Plaintiffs' proprietary business information

is limited to certain managerial-level employees. These employees are required to sign Non-Disclosure and Non-Compete Agreements in order to protect Client's business information and trade secrets.

11. Over the years, Client's efforts have been met with financial success. The company has established a wealth of goodwill with its clients, and has amassed certain confidential information and trade secrets that provide it with a competitive advantage over its competitors. Such information includes, but is not limited to: information about the company's operations, processes, and procedures; trade secrets; agent lists; adjuster lists; rating techniques; rates, coverage, and accounting rules; employee information; insurance companies; computer, marketing, and advertising techniques; know-how; finances, business plans, costs, pricing, and sales; customer lists; needs and demands of customers; and vendor lists, including lists and contacts with insurance companies ("Confidential Information and Trade Secrets").

12. Toby Toudouze was previously an employee of Plaintiff and served as the Chief Financial Officer of Loncar up until April of 2017.

13. In his capacity as Chief Financial Officer, Defendant had regular, direct contact and communication with Plaintiff's clients, including frequent access to the company's Confidential Information and Trade Secrets related to its customer plans, needs, contract terms, and contract expiration dates.

14. The above-described information is entitled to trade secret protection under Texas law because Plaintiff has taken reasonable measures under the circumstances to keep the information secret, and the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through

proper means by, another person who can obtain economic value from the disclosure or use of the Confidential Information and Trade Secrets.

15. Plaintiffs maintain their Confidential Information and Trade Secrets on secure computer hard drives, as well as in a secure storage room within the office. Furthermore, Plaintiffs require employees—including Defendant—to enter into certain agreements that obligate them to not misuse or disclose their information and further obligating the employee to not engage in unfair competition with the companies during or after their employment.

16. Specifically, Defendant agreed to maintain the confidentiality of Plaintiffs' Confidential Information and Trade Secrets.

17. On or about March 31, 2017, Toudouze removed boxes of client and firm financial records from the offices of Loncar Associates. These records were the personal property, including trade secrets and financial records of Plaintiff.

18. Additionally, on March 31, 2017 Toudouze removed hard drives and digital information from computers owned by Loncar, which contained additional files and information that were the personal property and trade secrets of Loncar Associates.

19. Toudouze has failed to return the stolen items even though demand has been made that he do so.

20. As an employee of Plaintiff with access to its financial records, Toudouze was entrusted by Plaintiff to act in the interest of Loncar in Defendant's capacity as an employee of Plaintiff with access to privileged and sensitive information.

VII. CAUSES OF ACTION

Count 1 – Theft Liability Act – Theft of Personal Property

21. Plaintiff brings this action under the Texas Theft Liability Act for an unlawful appropriation of physical and digital property, including trade secrets and private financial information under the Texas Civil Practices and Remedies Code Sec. 134.001-134.005 and the Texas Penal Code section 31.03.

22. Loncar was the owner of the written and digital information at issue and was entitled to possession of the boxes of records, the hard drives, and the files contained on the hard drives.

23. Toudouze unlawfully appropriated Plaintiff's personal property and trade secrets in violation of Texas Penal Code section 31.03 in March, 2017.

24. Defendant's unlawful appropriation was made with intent to deprive Plaintiff of the property and information.

25. Defendant's wrongful conduct caused injury to Plaintiff, which resulted in actual damages.

26. Upon proof of actual damages, Plaintiff is entitled to additional statutory damages of up to \$1,000 from Defendant under Texas Civil Practice & Remedies Code section 134.005(a)(1) plus actual damages resulting from the theft.

27. Plaintiff seeks damages within the jurisdictional limits of this Court.

28. Exemplary damages. Loncar's injury resulted from Defendant's malice or actual fraud, which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).

29. Loncar's injury resulted from Defendant's felony theft in the third degree

or higher under the Texas Penal Code that was committed intentionally and knowingly, which exempts this claim from the cap on exemplary damages under Texas Civil Practice & Remedies Code section 41.008(c).

30. Court costs. Plaintiff is entitled to recover court costs under Texas Civil Practice & Remedies Code section 134.005(b).

31. Attorney fees. Loncar is entitled to recover reasonable and necessary attorney fees under Texas Civil Practice & Remedies Code section 134.005(b).

Count 2 – Breach of Fiduciary Duty

32. Toudouze had a fiduciary relationship with Loncar given his employee status and his position of access to private and confidential financial and trade secret information. Defendant was a long-time employee of Plaintiff and was given access to sensitive and private financial and confidential records and trade secrets at Loncar Associates.

33. Toudouze breached his fiduciary duty to Loncar by stealing client and firm records from Plaintiff.

34. Defendant's breach of fiduciary duty injured Plaintiff by depriving Plaintiff of its rightful property, and benefited Defendant by giving Defendant access to private, client records and trade secrets which resulted in actual damages.

35. Plaintiff seeks damages within the jurisdictional limits of this Court.

36. Exemplary damages. Plaintiff's injury resulted from Defendant's malice, fraud, or gross negligence, which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).

Count 3 – Trade Secret Misappropriation, Tex. Civ. Prac. & Rem. Code Ch. 134A

37. Defendant is liable for trade secret misappropriation under the Texas Uniform Trade Secrets Act (“TUTSA”).

38. Plaintiff’s Confidential Information and Trade Secrets qualify for trade secret protection under Texas law. Plaintiff’s took reasonable efforts to maintain the secrecy of this information, and the information has actual or potential independent economic value to third parties because it is not generally known and is not readily ascertainable by proper means.

39. Upon information and belief, Defendant misappropriated Plaintiff’s trade secrets by using or disclosing them without Plaintiffs’ consent. Upon information and belief, Defendant has breached his duty to maintain the secrecy of, and to limit the use of, the trade secrets provided to him by Plaintiff for the exclusive use with respect to the business he was conducting on behalf of Plaintiff.

40. Plaintiff seeks an order from the Court enjoining Defendant from both actual and threatened misappropriation of Plaintiff’s trade secrets.

41. In addition to injunctive relief, Plaintiff seeks damages from Defendant based on his acts of trade secret misappropriation. Plaintiff’s damages include both the actual loss caused by Defendant’s misappropriation, as well as recovery of the unjust enrichment to Defendant that is not taken into account when calculating Plaintiff’s actual losses.

42. Furthermore, Plaintiff seeks exemplary damages not to exceed twice their actual damages due to Defendant’s willful and malicious acts of misappropriation.

VIII. EQUITABLE RELIEF

43. Plaintiff seeks equitable relief in the form of the return of all stolen property.

IX. JURY DEMAND

44. Plaintiff demands a jury trial and has tendered the appropriate fee with the original petition.

X. PRAYER

For these reasons, Plaintiff asks that the Court issue citation for Defendant to appear and answer, and that the Plaintiff be awarded a judgment against Defendant for all damages that resulted from the Defendant's breach of contract. Plaintiff also asks that it be awarded prejudgment and post judgment interest, court costs, attorney fees, and all other appropriate relief, general or special, in law or in equity, to which Plaintiff may be entitled.

Respectfully submitted,

TED B. LYON & ASSOCIATES, P.C.

By: /s/ Dennis Weitzel

TED B. LYON, JR.

State Bar No. 12741500

tblyon@tedlyon.com

DENNIS WEITZEL

State Bar No. 21118200

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Town East Tower – Suite 525

18601 LBJ Freeway

Mesquite, Texas 75150

Phone: 972-279-6571

Fax: 972-279-3021

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2020, a true and correct copy of the foregoing pleading has been served on all parties in this proceeding, pursuant to the Texas Rules of Civil Procedure.

/s/ Dennis Weitzel
DENNIS WEITZEL

Tab 46

Loaidi Grove

CAUSE NO. DC-19-08531

**BRIAN LONCAR, P.C., D/B/A
LONCAR ASSOCIATES**

Plaintiff,

vs.

TOBY TOUDOUZE

Defendant.

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IN THE DISTRICT COURT

14th JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

**NOTICE OF HEARING ON PLAINTIFF’S MOTION TO DISQUALIFY
FRIEDMAN & FEIGER, LLP, OR IN THE ALTERNATIVE,
LAWRENCE J. FRIEDMAN, INDIVIDUALLY**

COMES NOW **Brian Loncar, P.C.**, Plaintiff in the above-numbered and styled cause, and serves this notice hearing on Plaintiff’s Motion to Disqualify Friedman & Feigler, LLP or in the alternative Lawrence J. Friedman in this matter.

Please take notice that the hearing on Plaintiff’s Motion to Disqualify Friedman & Feigler, LLP or in the alternative Lawrence J. Friedman is set for Monday, March 23, 2020 beginning at 10:00 am in the 14th District Court Dallas County in the George Allen Sr. Courts Building, 600 Commerce Street, Room 360, Dallas, Texas 75202.

Respectfully submitted,

TED B. LYON & ASSOCIATES, P.C.

By: /s/ Dennis Weitzel
DENNIS WEITZEL
State Bar No. 21118200
dennis@tedlyon.com
Town East Tower – Suite 525
18601 LBJ Freeway
Mesquite, Texas 75150
Phone: 972-279-6571
Fax: 972-279-3021

ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was duly served pursuant to the Texas Rules of Civil Procedure to all counsel of record on this 12th day of February, 2020.

/s/ Dennis Weitzel _____
DENNIS WEITZEL

Tab 47

II. AFFIRMATIVE DEFENSES

2. Plaintiff/Counter-Defendants terminated Toudouze's employment for permissible reasons not in violation of any law.

3. The conduct alleged by Toudouze which led to his termination was not in violation of any law.

4. Toudouze's claims are barred, in whole or in part, by contributory negligence in that his own acts or omissions caused or contributed to his alleged damages, if any.

5. Pleading further and without waiver of the foregoing, Plaintiff/Counter-Defendants assert the affirmative defenses of waiver and equitable estoppel.

6. Pleading further and without waiver of the foregoing, Toudouze's claims are barred, in whole or in part, by the doctrine of unclean hands.

7. Pleading further and without waiver of the foregoing, Toudouze's claims are barred, in whole or in part, by the statute of frauds (breach of contract).

8. Pleading further and without waiver of the foregoing, Toudouze's claims are barred, in whole or in part, by justification (tortious interference).

9. Without conceding that Toudouze's claims have merit or that Toudouze has suffered any damages, Plaintiff/Counterclaim-Defendants affirmatively allege that Toudouze's alleged damages are remote, contingent, speculative, and/or conjectural.

10. Toudouze's actions are the sole proximate cause of his own damages, if any.

11. Toudouze's actions are superseding, intervening causes of their own damages, if any.

12. Pleading further and without waiver of the foregoing, to the extent necessary, Plaintiff/Counter-Defendants also invoke any applicable exemplary damages limitations contained in Chapter 41 of the Texas Civil Practice and Remedies Code.

13. Any award of exemplary damages is controlled and limited by the Due Process Clause of the 14th Amendment of the United States Constitution, and by the Due Process clause of the Texas Constitution.

14. Pleading further and without waiver of the foregoing, Plaintiff/Counter-Defendants contend Toudouze's general claim for prejudgment interest is limited by the dates and amounts set forth in Chapter 304 of the Texas Finance Code and/or any other applicable statute.

15. Plaintiff/Counter-Defendants reserve the right to assert any additional affirmative or other defense it may have that is not asserted herein.

III. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff/Counter-Defendant BRIAN LOCAR, P.C., D/B/A LONCAR ASSOCIATES and CLAY LEWIS JENKINS respectfully prays that Defendant/Counter-Plaintiff TOBY TOUDOUZE take nothing by his suit, that Plaintiff/Counter-Defendant recover its costs, and for such other relief, both at law and in equity, to which Plaintiff/Counter-Defendant may be justly entitled.

Respectfully submitted,

/s/ Tracy Graves Wolf

Tracy Graves Wolf

Texas Bar No. 24004994

Tracy.Wolf@lewisbrisbois.com

Brent Sedge

Texas Bar No. 24082120

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Lewis Brisbois Bisgaard & Smith, LLP

2100 Ross Avenue, Suite 2000

Dallas, TX 75201

(214) 722-7144 - Telephone
(214) 722-7111 - Fax

**ATTORNEYS FOR COUNTERCLAIM-
DEFENDANTS
BRIAN LONCAR, P.C. D/B/A LONCAR
ASSOCIATES AND CLAY LEWIS
JENKINS**

CERTIFICATE OF SERVICE

In accordance with Texas Rule of Civil Procedure 21a, I certify that I served the foregoing document on February 20, 2020, on the following parties *via eServe*:

Jennifer J. Spencer (jspencer@jacksonspencerlaw.com)
James E. Hunnicutt (jhunnicutt@jacksonspencerlaw.com)
M. Neal Bridges (nbridges@jacksonspencerlaw.com)
JACKSON SPENCER LAW PLLC
Three Forest Plaza
12221 Merit Drive, Suite 160
Dallas, Texas 75251

Lawrence J. Friedman (lfriedman@fflawoffice.com)
FRIEDMAN & FEIGER, LLP
5301 Spring Valley Road, Suite 200
Dallas, Texas 75254

ATTORNEYS FOR DEFENDANT TOBY TOUDOUZE

/s/ Brittney Angelich
Brittney Angelich

Tab 48

CAUSE NO. DC-19-08531

BRIAN LONCAR, P.C., D/B/A LONCAR ASSOCIATES	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
vs.	§	14th JUDICIAL DISTRICT
	§	
TOBY TOUDOUZE	§	
	§	
Defendant.	§	DALLAS COUNTY, TEXAS

**AMENDED NOTICE OF HEARING ON PLAINTIFF’S MOTION TO DISQUALIFY
FRIEDMAN & FEIGER, LLP, OR IN THE ALTERNATIVE,
LAWRENCE J. FRIEDMAN, INDIVIDUALLY**

COMES NOW **Brian Loncar, P.C.**, Plaintiff in the above-numbered and styled cause, and serves this amended notice hearing on Plaintiff’s Motion to Disqualify Friedman & Feigler, LLP or in the alternative Lawrence J. Friedman in this matter.

Please take notice that the hearing on Plaintiff’s Motion to Disqualify Friedman & Feigler, LLP or in the alternative Lawrence J. Friedman is set for Monday, April 20, 2020 beginning at 10:00 am in the 14th District Court Dallas County in the George Allen Sr. Courts Building, 600 Commerce Street, Room 360, Dallas, Texas 75202.

Respectfully submitted,

TED B. LYON & ASSOCIATES, P.C.

By: /s/ Dennis Weitzel
DENNIS WEITZEL
State Bar No. 21118200
dennis@tedlyon.com
Town East Tower – Suite 525
18601 LBJ Freeway
Mesquite, Texas 75150
Phone: 972-279-6571
Fax: 972-279-3021

ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was duly served pursuant to the Texas Rules of Civil Procedure to all counsel of record on this 26th day of February, 2020.

/s/ Dennis Weitzel _____
DENNIS WEITZEL

Tab 49

has presented no evidence to support any of its claims. Thus, Defendant seeks summary judgment of each of these claims as follows:

Count 1, Theft Liability Act – Theft of Personal Property, is alleged against Toudouze, who moves for no-evidence summary judgment on Count 1 under 166a(i) because Loncar has no evidence of each essential element of this claim.

Count 2, Breach of Fiduciary Duty -- is alleged against Toudouze who moves for no-evidence summary judgment on Count 1 under 166a(i) because Loncar has no evidence of each essential element of this claim.

SUMMARY JUDGMENT EVIDENCE

During the ten months of discovery that have passed, Toudouze has propounded numerous requests for discovery to Loncar in the form of: (1) Requests for Disclosures; (2) Requests for Production; and, numerous requests for the deposition for Plaintiff's deposition seeking support for the causes of action asserted against Toudouze. To date, Loncar has not presented any evidence to support any of the allegations within Loncar's Original Petition.

ARGUMENTS AND AUTHORITIES

A. Rule 166a(i) requires summary judgment to be granted when the plaintiff cannot put forward more than a scintilla of evidence supporting each element of his claim.

Under TEX. R. CIV. P. 166a(i) and after adequate time for discovery, a party is entitled to summary judgment if there is no evidence on one or more essential elements of a claim. The motion for summary judgment must state the elements for which there is no evidence. The Court must grant the motion if the non-moving party fails to produce competent summary judgment evidence on the challenged elements raising a genuine issue of material fact. To survive a no-evidence motion for summary judgment, the non-moving party must present more than a scintilla

of evidence on each challenged element. *Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 581-82 (Tex. 2006).

Loncar initiated this lawsuit on June 13, 2019. The Court's Scheduling Order set the close of discovery as May 9, 2020. Loncar has had approximately *ten months* to conduct discovery. Loncar has, therefore, had more than adequate time for discovery. Toudouze has sought Plaintiff's deposition since this lawsuit was filed. Ten months have passed and Plaintiff has failed and refused to appear for his deposition: once, Plaintiff was properly noticed and did not appear; the second time, Plaintiff "No Showed. After being properly noticed;" the third time Plaintiff agreed to the deposition date and then added new counsel and used that as an excuse to request a new deposition date; and, the fourth time, Plaintiff "No Showed" again. Plaintiff is not serious about the claims Plaintiff filed. Plaintiff's claims were filed in bad faith, and Toudouze does not believe that Plaintiff even has a good faith basis to file its suit.

B. Defendant is entitled to summary judgment as to Plaintiff's Count 1, Theft Liability Act – Theft of Personal Property.

1. Elements of Theft of Personal Property

The elements of a cause of action under the Texas Theft Liability Act ("TTLA"), based on § 31.03(a) of the Texas Penal Code are: (1) the plaintiff had a possessory right to property; (2) the defendant unlawfully appropriated property in violation of the Texas Penal Code; and (3) the plaintiff sustained damages as a result of the theft. *See Dixon v. Bank of New York Mellon*, Civil Action No. 3:130CV-4235-L, 2014 WL 2991742, *4 (N.D.Tex. July 3, 2014). *Simmonds Equip., LLC v. GGR Intern., Inc.*, 126 F. Supp. 3d 855, 869 (S.D. Tex. 2015). Loncar has no evidence of any of the above elements that would show that Toudouze committed theft of personal property.

2. Plaintiff has no evidence that Defendant has committed theft of personal property against Plaintiff.

Loncar claims that Toudouze unlawfully appropriated physical and digital property, including trade secrets and private financial information; however, it has not provided evidence to support any of these allegations. Loncar has not specified what physical property, digital property, trade secrets or private financial information Toudouze has allegedly appropriated despite numerous requests and numerous opportunities for Plaintiff to do so.

Loncar has not specified what materials were allegedly taken nor when the appropriation of such materials allegedly took place. Loncar has not specified where these alleged acts occurred nor established what Toudouze has allegedly done with the allegedly appropriated information.

Loncar has not specified what injury Toudouze allegedly caused nor what injury to Loncar that allows it to claim for actual damages. Loncar has also not specified any injuries it sustained as a result from the theft it is alleging Toudouze committed. Loncar has failed to provide evidence of any intent on the part of Toudouze to support its claim that Toudouze acted with malicious intent, intentionally and knowingly

C. Defendant is entitled to summary judgment as to Plaintiff's Count 2, Breach of Fiduciary Duty.

1. Elements of Breach of Fiduciary Duty

“A fiduciary relationship is an extraordinary one and will not be created lightly.” *Clarke v. Dillard's, Inc.*, 460 S.W.3d 714, 728 (Tex. App.—Dallas 2015, no pet.). To prove his cause of action for breach of fiduciary duty, Plaintiff must prove: 1. The existence of a fiduciary relationship; 2. A breach of a fiduciary duty arising from the relationship; and 3. Either damages to the plaintiff or a benefit to the defendant. *Jones v. Blume*, 196 S.W.3d 440, 447 (Tex. App.—Dallas 2006, pet. denied). Loncar has presented no evidence of any of the above elements that: (1) establishes a fiduciary relationship; (2) that, if there was one, any such fiduciary relationship

was breached; or, (3) that there were any damages to the Plaintiff or benefit to the defendant, that would show that Toudouze breached a fiduciary duty that was owed to Loncar.

2. Plaintiff has no evidence that Defendant breached a fiduciary duty owed to Plaintiff resulting in damages to them or a benefit to the Defendant.

Loncar has claimed that as an employee Toudouze, and due to the access he was given to Loncar's financial information and trade secrets, Toudouze had a fiduciary relationship with Loncar. Loncar claims that Toudouze stole from Loncar and therefore breached this fiduciary duty, which caused Loncar injury by depriving Loncar of its property. Loncar also alleged Toudouze was benefitted by giving Toudouze access to the private client records and trade secrets. Loncar again has failed to provide any evidence to support that Toudouze has stolen any of the information referenced. Loncar has also failed to identify what the financial information, trade secrets, or client records are that Toudouze allegedly stole. To the extent Loncar has therefore asserted a claim for breach of fiduciary duties owed to them, Toudouze moves for no-evidence summary judgment under Rule 166a(i) because, Loncar has no evidence of: 1. The existence of a fiduciary relationship between the Toudouze and Loncar; 2. Toudouze breached his fiduciary duties arising from Toudouze's relationship with Loncar; and 3. Toudouze's breach caused damages to Loncar or a benefit to Toudouze.

Because Loncar cannot come forward with more than a scintilla of evidence on any of the foregoing elements, Toudouze is entitled to no-evidence summary judgment on Loncar's claim for breach of fiduciary duty owed to them.

V. CONCLUSION AND RELIEF REQUESTED

For these reasons, Defendant respectfully prays the Court grant Defendant's motion for summary judgment on each of Loncar's claims, enter judgment that Loncar take nothing, and grant

Defendant any other and further relief to which they may be entitled, including but not limited to attorney's fees, costs, and expenses with respect to Plaintiff's alleged claims.

Respectfully Submitted,

/s/ Jennifer J. Spencer

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**ATTORNEYS FOR DEFENDANT TOBY
TOUDOUBE**

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was served on counsel of record, Tracy Graves Wofe for Counter-Defendant Clay Lewis Jenkins on April 6, 2020, through the court's eFiling system.

/s/ Jennifer J. Spencer

Jennifer J. Spencer

Tab 50

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April 14, 2020

Via E-Filing

14th District Court
600 Commerce Street
Dallas, Texas 75202

Re: Cause No. DC-19-08531; *Brian Loncar et al, vs. Toby Toudouze, et al*; In the 14th
District Court, Dallas County, Texas

Dear Clerk,

Please see the attached proposed order on Plaintiff's Motion to Disqualify which is currently
set for hearing on Monday, April 20, 2020.

Please do not hesitate to contact me with any questions.

With kind regards,

TED B. LYON & ASSOCIATES, PC



Lorrie McKeever
Paralegal to Dennis Weitzel

CC Via E-filing:
All Counsel of record

Tab 51

I. SUMMARY OF ARGUMENT

Toudouze moves to compel the following:

1. Production of documents by Loncar in response to Defendant's Request for Production for Rule 12 Motion to Show Authority served on August 5, 2019 ("First RFP"). No documents have been produced in response to the First RFP.

2. Production of documents by Counter-Defendants in response to Counter-Plaintiff's Second Request for Production to Counter-Defendants Brian Loncar, P.C. d/b/a Loncar Associates and Clay Lewis Jenkins, served on Loncar and Jenkins on December 31, 2019 ("Second RFP"). Counter-Defendants waived their objections by failing to object or respond timely and yet have produced only a handful of documents.¹

3. Counter-Defendants' Responses to Requests for Disclosures, served on Loncar on August 5, 2019 and on Jenkins on September 5, 2019. No Responses have been made by either Counter-Defendant.

Counter-Defendants have had ample opportunity over the past several months to provide responses to Disclosures and to produce responsive documents to the First and Second Requests for Production, but, despite numerous requests from Toudouze's counsel, have refused to do so.

II. FACTS

1. On August 5, 2019 Loncar was served with the First RFP by Toudouze. On the same day, Toudouze filed his Original Answer, which also included Request for Disclosures to Plaintiff Loncar.

¹ Counter-Defendants provided a few untimely documents, Bates Labeled "Loncar 0000001-000206," on February 21, 2020, 52 days after being served with Toudouze's Second Request for Production, with no correlating written responses, and no indication which requests the documents are in response to.

2. On or about September 4, 2019, Toudouze filed the Original Counter-Claim of Toby Toudouze, Request for Disclosures, and Request for Jury Trial against both Counter-Defendants Loncar and Jenkins. Jenkins was served by agreement through personal service on his attorney Dennis Weitzel on September 20, 2019 and his fifty days to respond to the Request for Disclosure began running on that day. *See Exhibit A, App. 024-025, hereto, the Return of Service of Toudouze's Counterclaim against Counter Defendants Brian Loncar, P.C. D/b/a Loncar Associates and Clay Jenkins.*

3. On December 31, 2019, Counter-Plaintiff served his Second RFP on counsel for both Counter-Defendants through the Court's e-filing system *See Exhibit B, App. 026-027, Proof of Service of Toudouze's Second Request for Production to Counter Defendants Brian Loncar, P.C. d/b/a Loncar Associates and Clay Jenkins.*

4. At 3:51 p.m. on the same day of service, December 31, 2019, counsel for Counter-Defendants, Ted Lyon opened the email to which the Second Set of RFPs were attached. *Exhibit B.²*

5. On February 21, 2020 well past the due date for objections and responses to the Second RFP, Counter-Defendants provided a generic cover letter attached to 206 pages of documents, which, for the most part, appear to be at least a portion of Toudouze's personnel file. A true and correct of the cover letter attaching the few produced documents is attached hereto as Exhibit C, App. 028. Under Rule 193.2(e) of the Texas Rules of Civil Procedure, "an objection that is not made within the time required, or that is obscured by numerous unfounded objections,

² The Requests for Production at issue in this Motion are not attached as Exhibits because they exceed the 25 page limit for exhibits set forth in the Court's April 6, 2020 General Order. A copy will be provided at the hearing on this Motion or earlier if the Court so desires.

is waived unless the court excuses the waiver for good cause shown.” Here, there were no objections made within the 30-day period for Counter-Defendants to object to the Second RFP.

6. To date, neither Loncar nor Jenkins has responded to the RFDs.

III. ARGUMENT

A. Toudouze’s First Request for Production – Loncar has refused to produce any documents.

Plaintiff Loncar has not provided any documents in response to Toudouze’s First RFP 1-4. Instead Plaintiff has improperly objected to all four requests, citing attorney/client privilege. It is Defendant Toudouze’s assertion that the documents requested are not privileged and Plaintiff’s response to this request fails to provide the information requested by in the instructions set forth in paragraphs a. and b. on page 7 of Defendant’s First RFP entitled Amendment or Supplementation of Response, with respect to the documents being withheld on the basis of privilege. Also, Plaintiff also has not served a privilege log as is required pursuant to Rule 193.3(b).

The requests and responses are as follows:

REQUEST FOR PRODUCTION NO. 1: Please produce all communications, documents, and ESI evidencing all agreements relating to your legal representation in this Lawsuit executed by Clay Jenkins (“Jenkins”).
--

RESPONSE: Plaintiff objects to this request because it is overbroad, general, vague, indefinite and infringes upon attorney/client privilege and privileged financial information.

Plaintiff has refused to produce any documents responsive to this Request and yet seeks an award of attorney’s fees from Toudouze in this Lawsuit.

REQUEST FOR PRODUCTION NO. 2:

Please produce all communications, documents, and ESI evidencing all agreements relating to your legal representation in this Lawsuit including but not limited to receipts, invoices, statements, checks and bank statements.
--

RESPONSE: Plaintiff objects to this request because it is overbroad, general, vague, indefinite and infringes upon attorney/client privilege.
--

Plaintiff has refused to produce any documents responsive to this Request and yet seeks an award of attorney's fees from Toudouze in this Lawsuit.

REQUEST FOR PRODUCTION NO. 3:
Please produce all communications, documents, and ESI evidencing Counsel for Plaintiff's authority to represent Plaintiff.
RESPONSE: Plaintiff objects to this request because it is overbroad, general, vague, indefinite and infringes upon attorney/client privilege.

Plaintiff has refused to produce any documents responsive to this Request and yet seeks an award of attorney's fees in this Lawsuit.

REQUEST FOR PRODUCTION NO. 4:
Please produce all documents, communications and ESI evidencing the ownership of any accounts used to reimburse attorney expenses in this case.
RESPONSE: Plaintiff objects to this request because it is overbroad, general, vague, indefinite and infringes upon attorney/client privilege and privileged financial information.

Plaintiff has refused to produce any documents responsive to this Request and it is relevant to the claim of alter-ego made herein.

B. Toudouze's Second Request for Production – Counter-Defendants have refused to provide any written responses and have waived all objections to these requests. They have also refused to produce almost all documents responsive to these requests for production.

Counter-Defendants Loncar and Jenkins have refused to respond to Toudouze's Second Requests for Production 1-286 and have produced only a small set of documents which are almost exclusively Toudouze's personnel file or portions thereof and a few other cherry-picked documents. Instead of serving written responses or timely objections to Toudouze Second RFP, Counter-Defendants Loncar and Jenkins only provided a cover letter, Exhibit D, attaching these selective documents. Counter-Defendants have not properly complied with Rule 193.1, and therefore any objections that Counter-Defendants would have asserted within their written

responses have been waived as pursuant to Rule 193.6(a). Further, under Rule 193.2(e) of the Texas Rules of Civil Procedure, “an objection that is not made within the time required, or that is obscured by numerous unfounded objections, is waived unless the court excuses the waiver for good cause shown.”

Counter-Defendants have failed to provide any responses to Counter-Plaintiff Toudouze’s Second Request for Production Nos. 1-92, 95-170, 172-237, 239-286.

1. Plaintiff’s Refusal to Produce Documents Relevant to the Allegations Made Against Toudouze

REQUEST FOR PRODUCTION NO. 1 – 21, 107-146: All documents and ESI evidencing, supporting, and/or relating to each and every allegation in Paragraph 9 - 29 of Brian Loncar, P.C.’s Original Petition.
--

RESPONSE: (None made)

Knowing that Counter-Defendants would object to a single request for documents evidencing, supporting or relating to the allegations made against Toudouze in the Petition, Toudouze broke up the requests to specify different paragraphs and allegations. Counter-Defendants refused to provide any written responses or documents to support any of the allegations contained in Plaintiff’s Original Petition. Counsel has complained orally about the number of requests contained in the Second RFP. However, many of these requests ask for documents supporting or relating the allegations made against Toudouze in the Petition, making them clearly relevant and documents that presumably were assembled prior to filing the Petition against Toudouze.

2. Counter-Defendants refused to provide responses or documents to support any of allegations contained in Toudouze’s Original Counterclaim.

REQUEST FOR PRODUCTION NO. 22 – 91, 239-275: All documents and ESI evidencing, supporting, and/or relating to each and every allegation in Paragraph 5 - 75 of Original Counterclaim of Toby Toudouze.

RESPONSE: (None made)

Counter-Defendants provided no response. Counsel has complained orally about the number of requests contained in the Second RFP. However, all of these requests ask for documents supporting or relating the allegations made by Toudouze in the Counter-Claim and are, therefore, clearly relevant to this lawsuit.

- 3. Counter-Defendants refused to provide any documents to support their responses to Requests for Disclosures (and they did not provide any responses to Requests for Disclosures).**

REQUEST FOR PRODUCTION NO. 92: All documents and ESI evidencing, supporting, and/or relating to each and every statement and/or allegation made in Counter-Defendants' Disclosures.

RESPONSE: (None made)

Counter-Defendants provided no response and no Disclosures have been made.

- 4. Counter-Defendants refused to provide any documents for the remaining requests for production.**

REQUEST FOR PRODUCTION NO. 95: All performance reviews relating to Toudouze, including all performance reviews by Brian Loncar, Clay Jenkins, Armanino, John Schwarzberger, or anyone else.

Only one performance evaluation of Toudouze was produced (for the year 2005). No statement was made that these were all of the performance evaluations.

REQUEST FOR PRODUCTION NO. 96: All written warnings, complaints, write-ups, and/or reprimands provided to or given to Toudouze during his employment with the Loncar Firm.

REQUEST FOR PRODUCTION NO. 97: All job descriptions provided to or given to Toudouze, whether written or oral, during his employment with the Loncar Firm.

REQUEST FOR PRODUCTION NO. 98: Documents and ESI evidencing all of Toby Toudouze's job duties during his employment with the Loncar Firm.

REQUEST FOR PRODUCTION NO. 99: All documents and ESI evidencing communications between Toudouze and Jenkins from January 1, 2014 to the present, including but not limited to emails and text messages.

REQUEST FOR PRODUCTION NO. 100: All documents and ESI evidencing communications between Jenkins and Phillip Loncar from January 1, 2014 to the present, including but not limited to emails and text messages.

REQUEST FOR PRODUCTION NO. 101: All documents and ESI evidencing communications between Jenkins and Brian Loncar from January 1, 2014 to December 4, 2016, including but not limited to emails and text messages

REQUEST FOR PRODUCTION NO. 102: All documents and ESI evidencing money paid by Jenkins and his law firms to Brian Loncar and his law firm from December 4, 2016 to the present, including but not limited to emails and text messages.

REQUEST FOR PRODUCTION NO. 103: All documents and ESI evidencing communications between Jenkins and Bill Hymes from December 4, 2016 to the present, including but not limited to emails and text messages.

REQUEST FOR PRODUCTION NO. 104: All documents and ESI evidencing communications between Jenkins and Christine Cabrera from December 4, 2016 to the present, including but not limited to emails and text messages.

REQUEST FOR PRODUCTION NO. 105: All documents and ESI evidencing communications between Jenkins and Phil McCrury, Esq. from December 4, 2016 to the present, including but not limited to emails and text messages.

REQUEST FOR PRODUCTION NO. 106: All documents and ESI evidencing communications between Jenkins and Kelly Hart from December 4, 2016 to the present, including but not limited to emails and text messages.

REQUEST FOR PRODUCTION NO. 147: All documents and ESI evidencing, referring to, or relating to the ownership of Brian Loncar, P.C. from January 1, 2014 to the present.

REQUEST FOR PRODUCTION NO. 148: All documents and ESI with names and contact information identifying all persons with personal knowledge of the ownership of Brian Loncar, P.C. from January 1, 2014 to the present.

REQUEST FOR PRODUCTION NO. 149: All documents and ESI evidencing, referring to, or relating to the trustees of the Loncar Trust from January 1, 2014 to the present.

REQUEST FOR PRODUCTION NO. 150: All documents and ESI evidencing, referring to, or relating to the appointment of the trustees and substitute trustees of the Loncar Trust from January 1, 2014 to the present.

REQUEST FOR PRODUCTION NO. 151: All documents and ESI evidencing, referring to, or relating to the resignation of trustees and substitute trustees of the Loncar Trust from January 1, 2014 to the present.

REQUEST FOR PRODUCTION NO. 152: All documents and ESI with names and contact information identifying all persons with personal knowledge of the trustees of the Loncar Trust from January 1, 2014 to the present.

REQUEST FOR PRODUCTION NO. 153: All documents and ESI evidencing, referring to, or relating to the executor(s) of the Loncar Estate from January 1, 2014 to the present.

REQUEST FOR PRODUCTION NO. 154: All documents and ESI evidencing, referring to, or relating to the appointment of executor(s) of the Loncar Estate from January 1, 2014 to the present.

REQUEST FOR PRODUCTION NO. 155: All documents and ESI evidencing, referring to, or relating to the resignation of executor(s) of the Loncar Estate from January 1, 2014 to the present.

REQUEST FOR PRODUCTION NO. 156: All documents and ESI with names and contact information identifying all persons with personal knowledge of the Loncar Estate from January 1, 2014, to the present.

REQUEST FOR PRODUCTION NO. 157: All documents and ESI and communications, both internal and external, evidencing, referring to, or relating to case referrals from anyone at the Loncar Firm to Jenkins' law firms, including Clay Jenkins, Jenkins & Jenkins, and Jenkins and Associates, from January 1, 2014 to the present, including names of cases.

REQUEST FOR PRODUCTION NO. 158: All documents and ESI and communications, both internal and external, evidencing, referring to, or relating to dispositions of cases, including but not limited to dates, settlement, recoveries, costs, expenses, names of each such case and amounts paid from the Loncar Firm to Jenkins' law firms, including Clay Jenkins, Jenkins & Jenkins, and Jenkins and Associates, from January 1, 2014 to the present.

REQUEST FOR PRODUCTION NO. 159: All documents and ESI and communications, both internal and external, evidencing, referring to, or relating to income and/or potential income from case referrals from the Loncar Firm to Jenkins' law firm from January 1, 2014 to

the present, including but not limited to emails and text messages.

REQUEST FOR PRODUCTION NO. 160: All documents and ESI and communications, both internal and external, evidencing any and all notices given to clients of the Loncar Firm about the identity of Jenkins from December 4, 2016 to the present.

REQUEST FOR PRODUCTION NO. 161: A complete list of all clients referred from the Loncar Firm to Jenkins' firms, including Clay Jenkins, Jenkins & Jenkins, Jenkins & Associates, and Jenkins' partner, Stephen Daniels, from January 1, 2014 to December 4, 2016.

REQUEST FOR PRODUCTION NO. 162: A complete list of all clients referred from the Loncar Firm to Jenkins' firm, including Clay Jenkins, Jenkins & Jenkins, Jenkins & Associates, and Jenkins' partner, Stephen Daniels, from December 4, 2016 to the present.

REQUEST FOR PRODUCTION NO. 163: All documents and ESI with names and contact information identifying all persons with personal knowledge of clients referred from the Loncar Firm to Jenkins' firm, including Clay Jenkins, Jenkins & Jenkins, Jenkins & Associates, and Jenkins' partner, Stephen Daniels, from December 4, 2016 to the present.

REQUEST FOR PRODUCTION NO. 164: All communications to and from all clients referred from the Loncar Firm to Jenkins' firm including Clay Jenkins, Jenkins & Jenkins, Jenkins & Associates, and Jenkins' partner, Stephen Daniels, from December 4, 2016 to the present referring to, evidencing, or relating to Jenkins.

REQUEST FOR PRODUCTION NO. 165: All communications to and from all clients referred from the Loncar Firm to Jenkins' firm including Clay Jenkins, Jenkins & Jenkins, Jenkins & Associates, and Jenkins' partner, Stephen Daniels, from December 4, 2016 to the present referring to, evidencing, or relating to Jenkins' law firms.

REQUEST FOR PRODUCTION NO. 166: All communications to and from all clients referred from the Loncar Firm to Jenkins' firm including Clay Jenkins, Jenkins & Jenkins, Jenkins & Associates, and Jenkins' partner, Stephen Daniels, from December 4, 2016 to the present referring to, evidencing, or relating to the transfer from the Loncar Firm to Jenkins' firms.

REQUEST FOR PRODUCTION NO. 167: All documents and ESI and communications, both internal and external, evidencing, referring to, or relating to referral fees paid by the Loncar Firm to Jenkins' law firms from January 1, 2014 to the present.

REQUEST FOR PRODUCTION NO. 168: All documents and ESI and communications, both internal and external, evidencing, referring to, or relating to income received by Jenkins' law firms as a result of referrals from the Loncar Firm to Jenkins' law firms, including Clay Jenkins, Jenkins & Jenkins, Jenkins & Associates, and Jenkins' partner, Stephen Daniels, from January 1, 2014 to the present.

REQUEST FOR PRODUCTION NO. 169: All documents and ESI and communications, both internal and external, evidencing, referring to, or relating to referral fees owed by Jenkins and/or his law firms to the Loncar Firm from January 1, 2014 to the present.

REQUEST FOR PRODUCTION NO. 170: All documents and ESI and communications, both internal and external, evidencing, referring to, or relating to referral fees owed by Jenkins' law firm to the Loncar Firm from January 1, 2014 to the present.

REQUEST FOR PRODUCTION NO. 172: All internal policies and procedures of the Loncar Firm regarding, concerning, referring to, or relating to referring cases, sharing work, splitting fees, and/or referral fees to outside or third party law firms.

REQUEST FOR PRODUCTION NO. 173: All documents and ESI and communications evidencing, referring to, or relating to any meetings held between Phillip Loncar and Jenkins after December 4, 2016.

REQUEST FOR PRODUCTION NO. 174: All documents and ESI and communications evidencing, referring to, or relating to Phillip Loncar's retention of Jenkins as legal counsel after December 4, 2016.

REQUEST FOR PRODUCTION NO. 175: All documents and ESI and communications ever evidencing, referring to, or relating to Phillip Loncar's retention of Jenkins as legal counsel.

REQUEST FOR PRODUCTION NO. 176: All documents and ESI and communications evidencing, referring to, or relating to Jenkins' representation of Phillip Loncar as legal counsel on or after December 4, 2016.

REQUEST FOR PRODUCTION NO. 177: All documents and ESI and communications evidencing, referring to, or relating to any offer by Jenkins to purchase the Loncar Firm, including but not limited to drafts and final versions of all letters of intent and asset purchase agreements.

REQUEST FOR PRODUCTION NO. 178: All documents and ESI and communications evidencing, referring to, or relating to any legal work Jenkins did for Phillip Loncar.

REQUEST FOR PRODUCTION NO. 179: All documents and ESI and communications evidencing, referring to, or relating to any legal work Jenkins did for the Loncar Estate.

REQUEST FOR PRODUCTION NO. 180: All documents and ESI and communications evidencing, referring to, or relating to any legal work Jenkins did for the Loncar Trust.

REQUEST FOR PRODUCTION NO. 181: All documents and ESI and communications evidencing, referring to, or relating to any offer made by Jenkins to purchase the Loncar Firm, including the amounts of all offers.

REQUEST FOR PRODUCTION NO. 182: All documents and ESI and communications evidencing, referring to, or relating to Phillip Loncar's resignation as executor from the Loncar Estate.

REQUEST FOR PRODUCTION NO. 183: All documents and ESI and communications evidencing, referring to, or relating to Phillip Loncar's resignation as Trustee from the Loncar Trust.

REQUEST FOR PRODUCTION NO. 184: All documents and ESI and communications evidencing, referring to, or relating to William Sena's waiver of his position as executor of the Loncar Estate.

REQUEST FOR PRODUCTION NO. 185: All documents and ESI and communications evidencing, referring to, or relating to William Sena's waiver of his position as Trustee of the Loncar Trust.

REQUEST FOR PRODUCTION NO. 186: All communications between Jenkins and William Sena from December 4, 2016 to the present.

REQUEST FOR PRODUCTION NO. 187: All documents and ESI evidencing, referring to, or relating to Brian Loncar, P.C. as an asset of the Loncar Estate.

REQUEST FOR PRODUCTION NO. 188: All documents and ESI evidencing, referring to, or relating to Brian Loncar, P.C. as an asset of the Loncar Trust.

REQUEST FOR PRODUCTION NO. 189: All documents and ESI evidencing, referring to, or relating to the Loncar Firm as an asset of the Loncar Estate.

REQUEST FOR PRODUCTION NO. 190: All documents and ESI evidencing, referring to, or relating to the Loncar Firm as an asset of the Loncar Trust.

REQUEST FOR PRODUCTION NO. 191: All documents and ESI evidencing, referring to, or relating to the Loncar Trust as an asset of the Loncar Firm.

REQUEST FOR PRODUCTION NO. 192: All documents and ESI filed with the Texas Secretary of State referring to the Estate of Brian Loncar.

REQUEST FOR PRODUCTION NO. 194: All work papers not filed relating to US Federal Income tax returns and all documents filed with each such returns that refer to or were filed on behalf of the Estate of Brian Loncar.

REQUEST FOR PRODUCTION NO. 195: All documents and ESI filed with the Texas Secretary of State referring to Brian Loncar, P.C.

REQUEST FOR PRODUCTION NO. 196: Documents and ESI reflecting all US Federal Tax returns filed by, referring to or filed on behalf of Brian Loncar, P.C. and all documents filed with each such tax return.

REQUEST FOR PRODUCTION NO. 197: All work papers not filed relating to US Federal Tax returns filed by, referring to or filed on behalf of Brian Loncar, P.C. and all documents filed with each such tax return.

REQUEST FOR PRODUCTION NO. 198: All documents and ESI filed with the Texas Secretary of State referring to the Loncar Trust.

REQUEST FOR PRODUCTION NO. 199: All documents and ESI evidencing, referring to, or relating to Jenkins' position as successor executor of the Loncar Estate.

REQUEST FOR PRODUCTION NO. 200: All documents and ESI evidencing, referring to, or relating to Jenkins' position as Trustee of the Loncar Trust.

REQUEST FOR PRODUCTION NO. 201: All documents and ESI evidencing, referring to, or relating to Jenkins' appointment to the position as successor executor of the Loncar Estate.

REQUEST FOR PRODUCTION NO. 202: All documents and ESI evidencing, referring to, or relating to Jenkins' appointment to the position as Trustee of the Loncar Trust.

REQUEST FOR PRODUCTION NO. 203: All documents and ESI evidencing, referring to, or relating to Jenkins' operation of the Loncar Firm.

REQUEST FOR PRODUCTION NO. 204: All documents and ESI evidencing, referring to, or relating to Jenkins' operation of the Loncar Trust.

REQUEST FOR PRODUCTION NO. 205: All internal and external communications discussing or referring to Jenkins' job duties at the Loncar Firm.

REQUEST FOR PRODUCTION NO. 206: All internal and external communications discussing or referring to Jenkins' job duties at his law firms, including Jenkins & Jenkins and Jenkins & Associates.

REQUEST FOR PRODUCTION NO. 207: All internal and external communications discussing or referring to Jenkins' income at each of his law firms, including Jenkins & Jenkins and Jenkins & Associates, since Brian Loncar's death on December 4, 2016.

REQUEST FOR PRODUCTION NO. 208: All internal and external communications discussing or referring to Jenkins' job duties as a County Judge.

REQUEST FOR PRODUCTION NO. 209: All documents and ESI evidencing, referring to, or relating to Jenkins' employment with the Loncar Firm.

REQUEST FOR PRODUCTION NO. 210: All documents and ESI evidencing, referring to, or relating to Jenkins' job application(s) to the Loncar Firm.

REQUEST FOR PRODUCTION NO. 211: All documents and ESI evidencing, referring to, or relating to the decision to hire Jenkins as an employee of the Loncar Firm.

REQUEST FOR PRODUCTION NO. 212: All documents and ESI with names and contact information identifying all persons with personal knowledge of the decision to hire Jenkins as an employee of the Loncar Firm.

REQUEST FOR PRODUCTION NO. 213: All documents and ESI evidencing, referring to, or relating to Jenkins' job description(s) and job duties with the Loncar Firm.

REQUEST FOR PRODUCTION NO. 214: Jenkins' W2, W4, and any other tax documents and ESI for Jenkins' employment with the Loncar Firm.

REQUEST FOR PRODUCTION NO. 215: All organizational charts for the Loncar Firm from January 1, 2014 to the present, including without limitation those mentioning Jenkins.

REQUEST FOR PRODUCTION NO. 216: All documents and ESI evidencing, referring to, or relating to Jenkins' representation of himself in regards to his position at the Loncar Firm.

REQUEST FOR PRODUCTION NO. 217: All documents and ESI evidencing, referring to, or relating to Jenkins' compensation or payments from the Loncar Firm, including but not limited to salary, benefits, reimbursement for cases referred to him or his law firms, including Jenkins & Jenkins and Jenkins & Associates.

REQUEST FOR PRODUCTION NO. 218: All documents and ESI evidencing, referring to, or relating to Stephen Daniels' compensation or payments from the Loncar Firm, including but not limited to salary, benefits, reimbursement for cases referred to him or his law firms, including Jenkins & Jenkins and Jenkins & Associates.

REQUEST FOR PRODUCTION NO. 219: All financial records, pay stubs, checks, or other record of payment from the Loncar Firm to Jenkins.

REQUEST FOR PRODUCTION NO. 220: All job descriptions for Jenkins while employed at the Loncar Firm.

REQUEST FOR PRODUCTION NO. 221: All documents and ESI and communications evidencing, referring to, or relating to Brian Loncar's transfer of his ownership interest in Brian Loncar, P.C. to the Loncar Trust.

REQUEST FOR PRODUCTION NO. 222: The succession plan for Brian Loncar, P.C. set forth by Brian Loncar before his death.

REQUEST FOR PRODUCTION NO. 223: Brian Loncar's Last Will and Testament.

REQUEST FOR PRODUCTION NO. 224: Copies of every Last Will and Testament of Brian Loncar.

REQUEST FOR PRODUCTION NO. 225: The Loncar Trust Agreement, including any and all revisions, additions, or deletions made to the Loncar Trust Agreement since January 1, 2014.

REQUEST FOR PRODUCTION NO. 226: All documents and ESI and communications referring to, relating to, or evidencing the transfer of Brian Loncar, P.C. out of the Loncar Trust.

REQUEST FOR PRODUCTION NO. 227: All documents and ESI and communications referring to, relating to, or evidencing the transfer of Brian Loncar, P.C. to the Loncar Trust.

REQUEST FOR PRODUCTION NO. 228: All documents and ESI and communications referring to, relating to, or evidencing the transfer of Brian Loncar, P.C. from the Loncar Trust.

REQUEST FOR PRODUCTION NO. 229: All documents and ESI and communications referring to, relating to, or evidencing the transfer of the Loncar Firm out of the Loncar Trust.

REQUEST FOR PRODUCTION NO. 230: All documents and ESI and communications referring to, relating to, or evidencing the transfer of Brian Loncar, P.C. to the Loncar Estate.

REQUEST FOR PRODUCTION NO. 231: All documents and ESI and communications referring to, relating to, or evidencing the transfer of the Loncar Firm to the Loncar Estate.

REQUEST FOR PRODUCTION NO. 232: All documents and ESI and communications referring to, relating to, or evidencing the transfer of Brian Loncar, P.C. from the Loncar Trust to the Loncar Estate.

REQUEST FOR PRODUCTION NO. 233: All documents and ESI and communications referring to, relating to, or evidencing the transfer of the Loncar Firm from the Loncar Trust to the Loncar Estate.

REQUEST FOR PRODUCTION NO. 234: All documents and ESI and communications referring to, relating to, or evidencing the instruction that Toudouze work only from home while employed with the Loncar Firm.

REQUEST FOR PRODUCTION NO. 235: All documents and ESI and communications referring to, relating to, or evidencing the Toudouze's suspension from the Loncar Firm.

REQUEST FOR PRODUCTION NO. 236: All documents and ESI and communications referring to, relating to, or evidencing the decision to place Toudouze on suspension from his position at the Loncar Firm.

REQUEST FOR PRODUCTION NO. 237: All documents and ESI and communications referring to, relating to, or evidencing the investigation conducted by the Loncar Firm regarding Toudouze, including any conclusions, reports, or findings from that investigation.

REQUEST FOR PRODUCTION NO. 278: For each affirmative defense pled by Brian Loncar, P.C., all documents and ESI supporting, refuting, referring to, or relating to the affirmative defense

REQUEST FOR PRODUCTION NO. 279: For each affirmative defense pled by Jenkins, all documents and ESI supporting, refuting, referring to, or relating to the affirmative defense.

REQUEST FOR PRODUCTION NO. 280: All documents and ESI that the Loncar Firm expects to use at trial or at any hearing in this matter.

REQUEST FOR PRODUCTION NO. 281: All documents and ESI that Jenkins expects to use at trial or at any hearing in this matter.

REQUEST FOR PRODUCTION NO. 282: All diaries, journals, notes, calendars, appointment books, compilations, summaries, or chronologies of events kept by Brian Loncar, P.C. or any employee of Brian Loncar, P.C. regarding or mentioning Toudouze.

REQUEST FOR PRODUCTION NO. 283: All diaries, journals, notes, calendars, appointment books, compilations, summaries, or chronologies of events kept by Jenkins regarding or mentioning Toudouze.

REQUEST FOR PRODUCTION NO. 284: All bills, invoices, statements, or other requests for payment, together with all attachments and supporting documentation, reflecting charges for the time or service of any expert who you expect to call to testify at any trial of this matter.

REQUEST FOR PRODUCTION NO. 285: All contracts or other written agreements

entered into by and between you and any expert who you expect to call to testify at any trial of this matter.

REQUEST FOR PRODUCTION NO. 286: All documents and ESI or statements, affidavits, transcripts, testimony, or other documents and ESI, sworn or unsworn, which you believe constitute evidence of any admission or statement against interest of Toudouze.

Counter-Defendants provided no response nor produced any responsive documents to these requests. All are relevant to the allegations made against Toudouze, Toudouze's allegations of *Sabine Pilot* liability of Counter-Defendants because of his refusal to commit the illegal acts requested of him, and/or to the potential conflicts of interest of Plaintiff's counsel.

- 5. Counter-Defendant Loncar provided partial responses to the following requests, Toudouze requests the Court order Counter-Defendants to provide a complete response.**

REQUEST FOR PRODUCTION NO. 93: Toudouze's complete personnel file covering the entirety of his employment at the Loncar Firm.

RESPONSE: (None made but some documents produced)

Plaintiff produced documents presumably from the personnel file for Toudouze, but which only contains a few documents for certain years: initial employment agreements and policies regarding sexual harassment (only for 2001 and 2002), W-2, employment agreement, confidentiality agreement, one personnel policy, health and life insurance, ADP payroll register only for 2017, termination letter, memoranda regarding sick leave requests, 2 jury summons, promissory loan payment schedule with check copies, 3 airline trip expense receipts (2004 and 2006). Toudouze worked for Loncar from 2007 through 2019. No documents were produced for many of these years. No performance evaluations have been produced except one from 2005.

REQUEST FOR PRODUCTION NO. 94: All documents and ESI relating to all of Toudouze's compensation and benefits paid to Toby Toudouze as an employee of the Loncar

Firm, including but not limited to salary, bonuses, employee benefits, retirement plans, insurance, vacation time, comp time, etc.

RESPONSE: (None made but a few documents produced)

Plaintiff produced only 2015 W-2s and a 2017 ADP payroll register providing compensation for Defendant and a few sporadic memos for requested leave and bonus information. Clearly, the document production does not cover all years of employment.

REQUEST FOR PRODUCTION NO. 171: All internal policies and procedures of Brian Loncar, P.C. regarding, concerning, referring to, or relating to referral fees to outside law firms.

RESPONSE: (None made and only one document produced)

Although Loncar provided one policy regarding sexual harassment, this cannot include all policies and procedures of Loncar. If it is the only policy or procedure of Loncar, Counter-Defendants need to so state.

III. ARGUMENTS AND AUTHORITY

Rule 215.1 of the Texas Rules of Civil Procedure permits a motion to compel discovery where a party fails to provide responses to discovery requests that have been properly propounded on them. Rule 215.1(b)(3)(d) further states:

the discovering party may move for an order compelling a designation, an appearance, an answer or answers, or inspection or production in accordance with the request, or apply to the court in which the action is pending for the imposition of any sanctions authorized by Rule 215.2(b) without the necessity of first having obtained a court order compelling such discovery.

Toudouze's evidence shows that he properly propounded RFDs and RFPs on Loncar and Jenkins' counsel. Loncar's responses to the RFD were due on September 4, 2019 and Jenkins'

responses to the RFD were due on November 11, 2019. Almost six months have passed since Toudouze propounded his RFD on Loncar and almost 4 months have passed since Toudouze propounded his RFD on Jenkins. Yet, neither Loncar's or Jenkins' counsel have served Toudouze with any response to these RFDs. Loncar's and Jenkins' responses to the Second RFPs were due on January 30, 2020. Three months have passed since Toudouze propounded his Second RFPs on Loncar's and Jenkins' counsel, and yet they have failed to provide any written responses or a complete set of responsive documents.

Under Rule 193.2(e) of the Texas Rules of Civil Procedure, "an objection that is not made within the time required, or that is obscured by numerous unfounded objections, is waived unless the court excuses the waiver for good cause shown." Due to neither Counter-Defendant serving written responses or any objections to the Second RFP within the 30-day deadline from when it was properly propounded, Counter-Defendants have waived those objections.

A party is required to comply with written discovery to the extent no objection is made. *Kia Motors Corp. v. Ruiz*, 348 S.W.3d 465, 486 (Tex.App.-Dallas 2011, pet. granted). To object to a discovery request, the responding party must make a timely objection in writing and "state specifically the legal or factual basis for the objection and the extent to which the party is refusing to comply with the request." *In re CI Host, Inc.*, 92 S.W.3d 514, 516 (Tex.2002) (citing Tex.R. Civ. P. 193.2(a)). A trial court does not clearly abuse its discretion in ordering the production of documents when the party from whom production is sought does not meet its burden to support its objection under the rules of civil procedure governing discovery. *Id.*

Here there have been no objections or responses made to date to the Second RFP, and therefore any objections or responses that would be raised at this time would be untimely and therefore waived.

PRAYER

Toudouze respectfully requests the Court to order Counter-Defendants to provide the following: 1) All responsive documents to Toudouze's First Request for Production, 2) All responsive documents to Toudouze's Second Requests for Production, 3) All responses to Requests for Disclosures that were propounded to both Counter-Defendants, 4) the respective bates numbers of the documents produced in response to each request, 5) Toudouze also requests that the Court order Counter-Defendants be prevented from asserting any objections to the Second RFP, as they have been waived, and instead be compelled to provide all the documents that have been requested, and 6) Toudouze further respectfully requests such further relief at law or in equity to which he is entitled.

Respectfully Submitted,

/s/ Jennifer J. Spencer

Jennifer J. Spencer
State Bar No. 10474900
jspencer@jacksonspencerlaw.com
James E. Hunnicutt
State Bar No. 24054252
jhunnicutt@jacksonspencerlaw.com
JACKSON SPENCER LAW PLLC
Three Forest Plaza
12221 Merit Drive, Suite 160
Dallas, Texas 75251
(972) 458-5301 (Telephone)
(972) 770-2156 (Fax)

Lawrence J. Friedman
Texas Bar No. 07469300
lfriedman@fflawoffice.com
FRIEDMAN & FEIGER, LLP
5301 Spring Valley Road, Suite 200
Dallas, Texas 75254
(972) 788-1400 (Telephone)
(972) 788-2667 (Fax)

**ATTORNEYS FOR DEFENDANT TOBY
TOUDOUZE**

CERTIFICATE OF CONFERENCE

The undersigned certifies that on several occasions, including February 13 and March 9, 2020, she and Lawrence Friedman have spoken with counsel for Counter-Defendants Dennis Weitzel and Tracy Wolf regarding the matters set forth in this Motion. However, no agreement has been reached and it is presented to the Court for determination.

/s/ Jennifer J. Spencer

Jennifer J. Spencer

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was served on Plaintiff and Counter-Defendants' counsel of record, Tracy Graves Wolf, Dennis Weitzel and Ted B. Lyon on April 16, 2020 through the court's eFiling system.

/s/ Jennifer J. Spencer

Jennifer J. Spencer

Daniel Macias

**FORM NO. 353-3 - CITATION
THE STATE OF TEXAS**

To:

CLAY LEWIS JENKINS
[REDACTED]
HIGHLAND PARK TX 76205

GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and **COUNTERCLAIM** petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the **14th District Court** at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

Said Counter-Plaintiff being **TOBY TOUDOUZE**

Filed in said Court **4th day of September, 2019** against

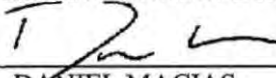
CLAY LEWIS JENKINS

For Suit, said suit being numbered **DC-19-08531**, the nature of which demand is as follows: Suit on **OTHER PERSONAL INJURY** etc. as shown on said petition **REQUEST FOR DISCLOSURE**, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.

Given under my hand and the Seal of said Court at office this 12th day of September, 2019.

ATTEST: FELICIA PITRE, Clerk of the District Courts of Dallas, County, Texas

By , Deputy
DANIEL MACIAS



<u>ESERVE</u>
CITATION
DC-19-08531
BRIAN LONCAR, P.C. vs. TOBY TOUDOUZE
ISSUED THIS 12th day of September, 2019
FELICIA PITRE Clerk District Courts, Dallas County, Texas
By: DANIEL MACIAS, Deputy
Attorney for Counter-Plaintiff JENNIFER J. SPENCER 12221 MERIT DRIVE THREE FOREST PLAZA SUITE 160 DALLAS TX 75251 972-458-5301 jspencer@jacksonspencerlaw.com

**DALLAS COUNTY
SERVICE FEES
NOT PAID**

EXHIBIT A

OFFICER'S RETURN

Case No. : DC-19-08531
Court No. 14th District Court
Style: BRIAN LONCAR, P.C.

vs.

TOBY TOUDOUZE

TED LYONS, ASSOC
#525

Came to hand on the 12th day of September 2019 at 4:00 o'clock P. M. Executed at 18601 LBJ Fwy. 75150
within the County of DALLAS at 11:25 o'clock A. M. on the 20th day of SEPTEMBER

20 19, by delivering to the within named
LYONS LAW FIRM / DENNIS WETZEL / ATTORNEYS- FOR CREDITORS
18601 LBJ Fwy, SUITE 525, MESQUITE, TX 75150

each, in person, a true copy of this Citation together with the accompanying copy of this pleading, having first endorsed on same date of delivery. The distance actually traveled by me in serving such process was 21 miles and my fees are as follows: To certify which witness my hand.

For serving Citation \$ 75⁰⁰
For mileage \$ _____
For Notary \$ _____

JOHN FARLEY PC11960
of COLLIN County, TEXAS
By John Farley Deputy
SERVER

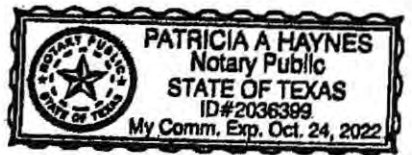
(Must be verified if served outside the State of Texas.)

Signed and sworn to by the said JOHN FARLEY before me this 23rd day of SEPTEMBER, 2019

to certify which witness my hand and seal of office.

Patricia A. Haynes

Notary Public _____ County _____



App. 025

Case # DC-19-08531 - BRIAN LONCAR, P.C. vs. TOBY TOUDOUZE**Envelope Information**

Envelope Id 39587022	Submitted Date 12/31/2019 1:53 PM CST	Submitted User Name mwhistler@spencerscottlaw.com
--------------------------------	---	---

Case Information

Location Dallas County - 14th District Court	Category Civil – Injury or Damage	Case Type Assault/Battery
Case Initiation Date 6/13/2019	Case # DC-19-08531	
Assigned to Judge MOYE', ERIC		

Filings

Filing Type Serve	Filing Code Service Only
-----------------------------	------------------------------------

Filing Description
Defendant and Counter-Plaintiff's Second Request for Production to Counter-Defendants Brian Loncar, P.C. D/B/A Loncar Associates and Clay Jenkins

Client Reference Number
2240.001

Filing Status
Served

Service Document

File Name	Description	Security	Download
2019 1231Toudouze 2nd RFP.pdf	2019 1231Toudouze 2nd RFP.pdf	Does not contain sensitive data	Original File Court Copy

eService Details

Status	Name	Firm	Served	Date Opened
Sent	Lorrie L McKeever	Ted B. Lyon & Associates	Yes	1/3/2020 2:18 PM CST

EXHIBIT B**App. 026**

Status	Name	Firm	Served	Date Opened
Sent	DENNIS WEITZEL		Yes	Not Opened
Sent	Scott Scher	Friedman & Feiger	Yes	Not Opened
Sent	Jennifer J. Spencer		Yes	Not Opened
Sent	James E. Hunnicutt		Yes	Not Opened
Sent	M. Neal Bridges		Yes	12/31/2019 2:11 PM CST
Sent	Tracy Head	Friedman & Feiger	Yes	1/10/2020 10:35 AM CST
Sent	Larry Friedman	Friedman & Feiger	Yes	Not Opened
Sent	Carla Williamson	Friedman & Feiger	Yes	Not Opened
Sent	Ted B. Lyon, Jr.	Friedman & Feiger	Yes	12/31/2019 3:51 PM CST
Sent	Patricia Haynes		Yes	Not Opened

Parties with No eService

Name	Address
CLAY LEWIS JENKINS	[REDACTED] HIGHLAND PARK Texas 76205

Fees

Service Only

Description	Amount
Filing Fee	\$0.00
Filing Total:	\$0.00

Total Filing Fee	\$0.00
Envelope Total:	\$0.00

Party Responsible for Fees	TOBY TOUDOUZE
Filing Attorney	Jennifer Jackson Spen...
Filer Type	Not Applicable



Tracy Graves Wolf
Board Certified in Labor & Employment
by the Texas Board of Legal Specialization
2100 Ross Avenue, Suite 2000
Dallas, Texas 75201
Tracy.Wolf@lewisbrisbois.com
Direct: 972.638.8672

February 21, 2020

File No. 27350.2084

VIA ELECTRONIC SERVICE

Re: Brian Loncar, P.C. v. Toby Toudouze
Cause No. DC-19-08531 in the 14th Judicial District of Dallas County

Counsel:

Attached, please find documents Bates Numbered LONCAR000001-LONCAR000206.
Please consider this Brian Loncar P.C. and Clay Jenkins' initial document production.

Very truly yours,

/s/ Tracy Graves Wolf

Tracy Graves Wolf of
LEWIS BRISBOIS BISGAARD & SMITH LLP

TGW

EXHIBIT C

Tab 52

Respectfully submitted,

By: /s/ Craig T. Enoch

Craig T. Enoch (SBN 00000026)

cenoch@enochkever.com

Marla D. Broaddus (SBN 24001791)

mbroaddus@enochkever.com

ENOCH KEVER PLLC

5918 W. Courtyard Drive, Suite 500

Austin, TX 78730

(512) 615-1200 (Telephone)

(512) 615-1198 (Facsimile)

ATTORNEYS FOR COUNTERCLAIM

PLAINTIFF, TOBY TOUDOUZE

(APPEARANCES FOR DISQUALIFICATION

PROCEEDINGS ONLY)

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document has been served on all counsel of record on this 17th day of April 2020 in accordance with the Texas Rules of Civil Procedure.

/s/ Craig T. Enoch

Craig T. Enoch

Tab 53

the date, time, location and topics for the depositions beforehand. Instead, Defendant/Counter-Plaintiff's Deposition Notice unilaterally specifies that the deposition of Plaintiff/Counter-Defendant's corporate representatives will take place prior to May 15, 2020, in-person, in Dallas, Texas. As all parties and counsel to this lawsuit are aware, Dallas County is under a shelter-in-place Order ("Order") that prevents non-essential in-person contacts. The Order is set to be lifted on April 30, 2020, but may be extended given the current public health crisis of COVID-19. Defendant/Counter-Plaintiff's Deposition Notice unilaterally notices the deposition for the offices of Ted B. Lyon & Associates, which is currently not open to the public for in-person depositions, pursuant to the Order.

Further, Defendant/Counter-Plaintiff's Deposition Notice lists fifty-six (56) corporate representative topics. Counsel for Defendant/Counter-Plaintiff did not provide advance notice of the topics prior to issuing the Notice. Thus, Plaintiff/Counter-Defendant's counsel would need to review the fifty-six deposition topics with their client, determine appropriate persons to respond to each topic, prepare for the depositions, and produce multiple corporate representatives for deposition in less than thirty days. Given the current climate with all parties and counsel working from home, Plaintiff/Counter-Defendant and their counsel cannot appear for the depositions prior to May 15, 2020. Plaintiff/Counter-Defendant and their counsel will present corporate representatives on each non-objectionable topic on a mutually agreeable date and time.

Argument and Authorities

Texas Rule of Civil Procedure 199.4 permits parties to object to the time and place designated for an oral deposition via a motion to quash. Tex. R. Civ. P. 199.4. A motion to quash that is filed within the third business day after service of a notice of oral deposition stays the deposition until the motion to quash can be determined. *Id.* Here, Plaintiff/Counter-Defendant files this *Motion to Quash* within three business days of Defendant/Counter-Plaintiff serving his

Deposition Notice. In accordance with Texas Rule of Civil Procedure 199.4, the deposition of Plaintiff/Counter-Defendant's corporate representative is stayed until such time that this *Motion to Quash* can be determined by the Court.

Conclusion and Prayer

Plaintiff/Counter-Defendant prays that the Court grants this *Motion to Quash* and grants Plaintiff/Counter-Defendant any further relief to which the Court determines it is justly entitled.

Respectfully submitted,

/s/ Tracy Graves Wolf

Tracy Graves Wolf

Texas Bar No. 24004994

Tracy.Wolf@lewisbrisbois.com

Brent Sedge

Texas Bar No. 24082120

Brent.Sedge@lewisbrisbois.com

Andrew Katon

Texas Bar No. 24101992

Andrew.Katon@lewisbrisbois.com

Brittney Angelich

Texas Bar No. 24109591

Brittney.Angelich@lewisbrisbois.com

Lewis Brisbois Bisgaard & Smith, LLP

2100 Ross Avenue, Suite 2000

Dallas, TX 75201

(214) 722-7144 - Telephone

(214) 722-7111 - Fax

**ATTORNEYS FOR COUNTERCLAIM-
DEFENDANTS**

**BRIAN LONCAR, P.C. D/B/A LONCAR
ASSOCIATES AND CLAY LEWIS
JENKINS**

CERTIFICATE OF SERVICE

In accordance with Texas Rule of Civil Procedure 21a, I certify that I served the foregoing document on April 17, 2020, on the following parties *via eServe*:

Jennifer J. Spencer (jspencer@jacksonspencerlaw.com)
James E. Hunnicutt (jhunnicutt@jacksonspencerlaw.com)
M. Neal Bridges (nbridges@jacksonspencerlaw.com)
JACKSON SPENCER LAW PLLC
Three Forest Plaza
12221 Merit Drive, Suite 160
Dallas, Texas 75251

Lawrence J. Friedman (lfriedman@fflawoffice.com)
FRIEDMAN & FEIGER, LLP
5301 Spring Valley Road, Suite 200
Dallas, Texas 75254

ATTORNEYS FOR DEFENDANT TOBY TOUDOUZE

/s/ Tracy Graves Wolf
Tracy Graves Wolf

Tab 54

5. On April 17, 2020, Ms. Wolf agreed to accept service of the subpoena on behalf of Jenkins. A true and correct copy of that email is attached hereto as Exhibit C.

6. I declare under penalty of perjury that the foregoing statements are true and correct.

Executed on April 19, 2020, in Dallas County, Texas.



Jennifer J. Spencer

BRIAN LONCAR, P.C., D/B/A LONCAR ASSOCIATES,

Plaintiff/Counterclaim-Defendant,

v.

TOBY TOUDOUZE,

Defendant/Counterclaim and Third-Party Plaintiff,

v.

CLAY LEWIS JENKINS,

As Alter-Ego of Brian Loncar, P.C./Counterclaim-Defendant.

§
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§

IN THE DISTRICT COURT

14TH JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

**THE STATE OF TEXAS
SUBPOENA REQUIRING APPEARANCE AT HEARING**

COUNTY OF DALLAS

To the sheriff, constable, or any other person authorized to serve and execute subpoenas as provided in Rule 176, Texas Rules of Civil Procedure:

GREETINGS:

You are hereby commanded to subpoena and summon the following witness:

Clay Lewis Jenkins
c/o Attorney Tracy Graves Wolf
2100 Ross Avenue, Suite 2000
Dallas, Texas 75201

to be and appear at a hearing in this matter in the courtroom of the Hon. Eric J. Moyé, 600 Commerce Street, 5th Floor, New Tower, on **Monday, April 20, 2020, at 10:00 o'clock a.m.** to appear and give testimony in the above-numbered and -styled cause. This witness shall continue in attendance from day to day and from time to time until the hearing is completed.

Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both.

This subpoena is being issued at the request of Defendant and Counter-Plaintiff Toby Toudouze, whose attorneys of record are Jennifer J. Spencer, Jackson Spencer Law pllc and Lawrence J. Friedman, Friedman & Feiger, LLP.

WITNESS MY HAND this the 17th day of April, 2020.

EXHIBIT A



Jennifer J. Spencer
Jackson Spencer Law pllc
ATTORNEYS FOR TOBY TOUDOUZE

MEMORANDUM OF ACCEPTANCE

I accepted service of a copy of this subpoena and the attached Agreed Protective Order, and I was tendered \$10.00, on this the ____ day of April, 2020.

OFFICER'S RETURN

Came to hand this the ____ day of April, 2020, and executed this the ____ day of April, 2020, at ____: ____ .m., in the following manner: by delivering to the within named Clay Lewis Jenkins a true copy of the Subpoena, and tendering him \$10.00.

Returned this the ____ day of _____, 2020.

Service \$ _____

Officer's Signature

Name: _____

Title: _____

From: [Jennifer Spencer](#)
To: [Patricia Haynes](#)
Subject: Fwd: Subpoena for Jenkins
Date: Sunday, April 19, 2020 11:47:02 AM
Attachments: [2020 0417 Jenkins Hearing Subpoena.pdf](#)
[ATT00001.htm](#)

Respectfully,
Jennifer J. Spencer
Jackson Spencer Law, PLLC
Three Forest Plaza
[12221 Merit Drive](#)
[Suite 160](#)
[Dallas, TX 75251](#)
[972-458-5304](#)

-
Texas Super Lawyers (2009-2019)
D Magazine Best Lawyers in Dallas, 2019
America's Top 100 High Stakes Litigators, 2018
Top 50 Women Lawyers in Texas, 2017
America's Best Lawyers (2016-2019)

Begin forwarded message:

From: Jennifer Spencer <jspencer@jacksonspencerlaw.com>
Date: April 17, 2020 at 1:29:00 PM CDT
To: "Wolf, Tracy" <Tracy.Wolf@lewisbrisbois.com>, Dennis Weitzel
<dennis@tedlyon.com>
Cc: Larry Friedman <lfriedman@fflawoffice.com>
Subject: Subpoena for Jenkins

Tracy,
My attempt at trying to be nice and ask if you or Dennis would accept service appears to have been misconstrued. Rule 176.5(a) says, "If the witness is a party and is represented by an attorney of record in the proceeding, the subpoena may be served on the witness's attorney of record." Accordingly, you cannot just refuse to accept service. The only open question from my research is whether I need to serve you or Dennis personally or if service by email is binding. Given that open question, please advise if you accept service by email or if you require that I send a process server out to your home (or wherever you are working) today. I will need your address to give to the process server if that is the route you choose. I need to hear from you timely on this issue.

EXHIBIT B

*Jennifer Jackson Spencer
Jackson Spencer Law, pllc
Three Forest Plaza
12221 Merit Drive
Suite 160
Dallas, TX 75251
972-458-5304*

From: [Jennifer Spencer](#)
To: [Patricia Haynes](#)
Subject: Fwd: Subpoena for Jenkins
Date: Sunday, April 19, 2020 11:46:07 AM
Attachments: [image001.png](#)

Respectfully,
Jennifer J. Spencer
Jackson Spencer Law, PLLC
Three Forest Plaza
[12221 Merit Drive](#)
[Suite 160](#)
[Dallas, TX 75251](#)
[972-458-5304](#)

-
Texas Super Lawyers (2009-2019)
D Magazine Best Lawyers in Dallas, 2019
America's Top 100 High Stakes Litigators, 2018
Top 50 Women Lawyers in Texas, 2017
America's Best Lawyers (2016-2019)

Begin forwarded message:

From: "Wolf, Tracy" <Tracy.Wolf@lewisbrisbois.com>
Date: April 17, 2020 at 2:12:15 PM CDT
To: Jennifer Spencer <jspencer@jacksonspencerlaw.com>, Dennis Weitzel <dennis@tedlyon.com>
Cc: Larry Friedman <lfriedman@fflawoffice.com>
Subject: RE: Subpoena for Jenkins

Jennifer—

I have a copy of this subpoena now. You don't need to send a process server.

I have not been able to reach Clay Jenkins at all. I know he is not available Monday and cannot be available for the hearing. We can take it up with the judge on Monday.

Tracy



Tracy Graves Wolf

Partner | Vice Chair, Employment and Labor Practice
Board Certified by the Texas Board of Legal Specialization | Labor & Employment
Tracy.Wolf@lewisbrisbois.com

T: 972.638.8672 F: 214.722.7111 C: 903.238.3888

2100 Ross Avenue, Suite 2000, Dallas, Texas 75201 | LewisBrisbois.com

[Representing clients from coast to coast. View our locations nationwide.](#)

This e-mail may contain or attach privileged, confidential or protected information intended only for the use of the intended recipient. If you are not the intended recipient, any review or use of it is strictly prohibited. If you have received this e-mail in error, you are required to notify the sender, then delete this email and any attachment from your computer and any of your electronic devices where the message is stored.

EXHIBIT C

From: Jennifer Spencer [mailto:jspencer@jacksonspencerlaw.com]
Sent: Friday, April 17, 2020 11:30 AM
To: Wolf, Tracy; Dennis Weitzel
Cc: Larry Friedman
Subject: [EXT] Subpoena for Jenkins

External Email

Tracy,

My attempt at trying to be nice and ask if you or Dennis would accept service appears to have been misconstrued. Rule 176.5(a) says, "If the witness is a party and is represented by an attorney of record in the proceeding, the subpoena may be served on the witness's attorney of record." Accordingly, you cannot just refuse to accept service. The only open question from my research is whether I need to serve you or Dennis personally or if service by email is binding. Given that open question, please advise if you accept service by email or if you require that I send a process server out to your home (or wherever you are working) today. I will need your address to give to the process server if that is the route you choose. I need to hear from you timely on this issue.

*Jennifer Jackson Spencer
Jackson Spencer Law, PLLC
Three Forest Plaza
12221 Merit Drive
Suite 160
Dallas, TX 75251
972-458-5304*

Tab 55

Cause No. DC-19-08531

BRIAN LONCAR, P.C. d/b/a,	§	IN THE DISTRICT COURT
LONCAR ASSOCIATES,	§	
Plaintiff / Counterclaim	§	
Defendant,	§	
v.	§	
TOBY TOUDOUZE,	§	
Defendant / Counterclaim and	§	14th JUDICIAL DISTRICT
Third-Party Plaintiff,	§	
v.	§	
CLAY LEWIS JENKINS,	§	
as Alter-Ego of Brian Loncar,	§	
P.C. / Counterclaim Defendant.	§	DALLAS COUNTY, TEXAS

**RESPONSE IN OPPOSITION TO MOTION TO DISQUALIFY
FRIEDMAN & FEIGER, LLP, OR IN THE ALTERNATIVE,
LAWRENCE J. FRIEDMAN, INDIVIDUALLY**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Toby Toudouze (“Toudouze” or “Defendant”) files this Response in Opposition to Motion to Disqualify Friedman & Feiger, LLP, or in the alternative, Lawrence J. Friedman, individually (“Motion to Disqualify”) and shows the following:

SUMARRY

The Motion to Disqualify Larry Friedman and his law firm Friedman & Feiger, LLP (“Friedman”) is an untimely, improper effort by opposing counsel to remove Toudouze’s long-time trial counsel, attempting to disarm him in this ongoing dispute and late in the game. According to the Purchase and Sale Agreement, only the estate owns the claim asserted against Toudouze in this matter. Thus, neither the Plaintiff Brian Loncar, PC (the “Loncar, PC”) nor the new owners Clay Jenkins and Ted Lyon, have a right to pursue the claims asserted in this action.

Even assuming the claims that the estate owns were properly brought by the executor in this matter and the conflict of interest objection properly lodged, the Motion to Disqualify would still fail as matter of law. There is no evidence or even an attempt to demonstrate the grounds for disqualification. The Motion offers no facts showing the claims raised against Toudouze are substantially related to any representation Friedman provided to Brian Loncar or to Loncar, PC when Mr. Loncar owned it. Further, the Motion offers no indicia that a conflict now exists, or ever existed, as a result of Friedman's long-time representation of Toudouze, defending him against the claims of the estate in the probate matter. Given the utter lack of evidence or explanation for the supposed conflict here, the Motion concedes this effort is no more than an attempt to deprive Toudouze of his choice in advocates – an advocate who has and, Plaintiff fears, will continue to successfully defend Toudouze against meritless claims.

There is also no doubt that the Motion is made far too late and is nothing more than a dilatory tactic. For the past three years, the executor of the estate, Jenkins, has repeatedly recognized Friedman as counsel for Toudouze and dealt with him on matters pertaining to Toudouze's alleged knowledge of the Loncar, PC's business. Indeed, in the Loncar probate proceedings, Friedman appeared in court, filed motions, objected to subpoenas, and obtained relief, all as lead counsel for Toudouze, and against the interests of Loncar PC, as pursued by Jenkins. Not one objection based on a purposed conflict was lodged by any party claiming a right to object to Friedman's representation.

Finally, the only facts that Friedman knows related to these allegations are those he acquired while acting as counsel for Toudouze. If Loncar, PC, its owners, the executor, or the lawyers who drafted the Motion believed the spurious allegations made, the lawyers would not have directly served the lawsuit on Friedman when it was originally filed. As such, the Court

should deny the belated and groundless attempt to strip Toudouze of his counsel of choice—a choice on which he has relied for years in dealing with the estate’s allegations concerning the Loncar, PC’s business. The Court should not waste any further time on the baseless allegations, because Texas law mandates it be denied.¹

BACKGROUND

Mr. Toudouze is the former Chief Financial Officer of Loncar, PC, a sole proprietorship of a successful attorney who died by his own hand tragically in December 2016. Toudouze was the Chief Financial Officer of the Loncar, PC when Mr. Loncar owned the business and continued in the position after his death until August 2017.

Jenkins is a lawyer whose firm reaped the benefits of his business relationship with Mr. Loncar through referrals from the Loncar, PC to Jenkins’ Waxahachie law firm. When Mr. Loncar passed away, Jenkins finagled his way into the position of executor of the Loncar estate and, as part of this role, commandeered the business of the Loncar, PC without regard to those who rightfully objected to his authority to do so.

While Jenkins assumed control over Loncar, PC for his own financial gain, Jenkins attempted, unsuccessfully, to have Toudouze commit unlawful acts. Just before Jenkins terminated Toudouze’s employment, he ordered Toudouze to work at home. When Jenkins ultimately terminated Toudouze, he ordered the return of any company files Toudouze possessed. It was Friedman, serving as counsel for Toudouze, who returned files to the Loncar, PC as Jenkins requested. he requested the return of company property Toudouze possessed. The Request. was

¹ While evidence is not necessary to support this opposition to disqualification given the failure of Plaintiff to meet its burden of proof, we attach to demonstrate the support for denying the Motion: two declarations, one provided by Toudouze and one provided by Larry Freidman. *See* Exhibit A and B.

made through Friedman and it was Friedman, serving as counsel for Toudouze, who returned the property to the Loncar, PC as Jenkins requested.

In June 2019, the Loncar, PC brought this lawsuit against Toudouze. Loncar, PC served **Friedman, without any objection to his representation of Toudouze**, after Friedman had successfully represented Toudouze in other matters adverse to Jenkins as executor in the probate proceedings and after Friedman objected to the planned purchase by Jenkins and Lyon of Loncar, PC and defeated Jenkins' efforts aimed at conducting extensive discovery from Toudouze.

The Firm waited four months after it served Friedman with the Petition, until October 23, 2019, to file the Motion to Disqualify. The Motion was filed, "coincidentally," immediately after Friedman, representing Brian Loncar's father, Phil Loncar, filed an objection in the probate court objecting to Clay Jenkins's and Ted Lyon's (Loncar PC's counsel in this case) attempt to acquire the Loncar firm. The circumstances underscore how the Motion to Disqualify Friedman and his firm Friedman Feiger is blatantly tactical. It was filed for the purpose of "chilling" Friedman's advocacy on behalf of his client, Toudouze.

Most egregious is the fact that the Loncar, PC, its new owners, and its counsel have known about and affirmed Toudouze's right to have Friedman serve as his counsel **for more than three years**. Specifically, before this lawsuit, Friedman represented Toudouze in the probate proceeding of Brian Loncar where Jenkins, acting as the executor of the estate, sought extensive discovery from Toudouze concerning the business affairs of the Loncar, PC. Friedman appeared in the probate court on behalf of Toudouze, objected to the discovery, and obtained relief from the court. Yet, not a single party or counsel raised the objection that Friedman had a conflict of interest due to his past representation of the Loncar, PC. No such conflict existed then, nor does it exist now.

Without proof of the alleged conflict of interest brought by the party that holds the right to assert such a conflict, the baseless Motion fails on its face and should be denied.

ARGUMENT

A. There Is No Conflict of Interest Arising from Friedman’s Representation of Toudouze and the Facts He Knows About the Claims Are Based on His Representation of Toudouze Only.

The Motion to Disqualify contends that Friedman’s representation of Toudouze in this matter violates the conflict of interest principle set forth in Rule 1.09 of the Texas Professional Rules Professional Conduct. Motion at 3. This assertion requires proof that the specific facts of Friedman’s previous representation are so related to the facts in the pending litigation that a genuine threat exists that confidences revealed to former counsel will be divulged to a present adversary. *NCNB Tex. Nat’l Bank v. Coker*, 765 S.W.2d 398, 400 (Tex.1989); *Metro. Life Ins. Co. v. Syntek Fin. Corp.*, 881 S.W.2d 319, 320–21 (Tex. 1994). Disqualification of counsel implicates competing policies: honoring a client’s right to choose its counsel and protecting a former client’s confidences, preventing confusion to the trier of fact, and shielding the legal community from the appearance of impropriety. Thus, disqualification simply because the issues resemble each other is not sufficient for a court to find the matters to be “substantially related”—the two cases must have specific factual similarities capable of described by the court in its order. *NCNB Tex. Nat’l Bank*, 765 S.W.2d at 400.

In the Motion to Disqualify here, Loncar, PC does not come close to meeting the settled standard. Rather, the Motion vaguely states that “Plaintiff would show that Lawrence Friedman and Friedman & Feiger’s dealings with Plaintiff, and specific knowledge, as it relates to the facts of this case, substantially prejudices the Plaintiff in its case moving forward. Specifically, this representation in reasonable probability will involve a violation of the rules of attorney-client privilege under Rule 1.05 and the issues of the current matter are substantially related to the

previous matters in which Friedman represented the Plaintiff.” Motion at 3. These allegations provide no detail about the facts involved in Friedman’s prior representation—or the facts relevant to the current claims of civil theft and breach of fiduciary duty—that would establish the requisite substantial relationship test between the representations.

Indeed, this case is much like that presented in a recent court of appeals decision that reversed the trial court’s order disqualifying counsel from the case. The attorney represented a company in a suit against a former major shareholder who the attorney had also represented in the past. The movant shareholder had made generalized allegations to suggest a conflict as the movant here, but it failed to provide the specific facts necessary in the representations at issue to establish the substantial relationship test. The court reversed based on the lack of any evidence of this connection, finding the lawyer’s prior representation on several occasions was not enough. *In re Elusive Holdings, Inc.*, No. 03-19-00809-CV, 2020 WL 1869029, at **4-5 (Tex. App.—Apr. 15, 2020, no pet. hist.).

Finally, the Motion makes a passing reference to Friedman knowing too many facts such that he is disqualified under Rule 8 of the Professional Rules of Conduct, which prohibits an attorney from testifying as witness on a matter “necessary to establish an essential fact.” Tex. Disciplinary R. Prof’l Conduct 3.08(a). The fact that a lawyer serves as both an advocate and a witness does not in itself compel disqualification. *Ayres v. Canales*, 790 S.W.2d 554, 557–58 (Tex.1990) (orig. proceeding); *See In re Lavizadeh*, 353 S.W.3d 903, 904 (Tex. App.—2011 Dallas, orig. proceeding) (“The trial court, having been presented no evidence of the necessity of [attorney] Turner's testimony, could not have reasonably concluded that Turner's testimony was necessary to establish an essential fact of the other relators' case.”). Loncar, PC has to show the roles as attorney and witness will cause the party actual prejudice. *Ayres*, 790 S.W.2d at 558. Here,

Plaintiff does not even attempt to explain what facts Friedman possesses that are essential to any claim. It has failed, therefore, to raise even the need to make an inquiry into the impact of Friedman's representation of Toudouze.

In short, the Motion falls far short of raising even the specter of improper representation. The "extensive nature of Friedman's work with both the Plaintiff and Defendant," even if it were true, is enough to establish a conflict exists warranting the disqualification of Toudouze's chosen counsel. There is no conflict, and any notion that disqualification is necessary to protect Plaintiff is patently false.

B. The Delay in Raising the Purported Conflict and Evasion of Discovery in this Case by Jenkins is Enough to Conclude the Court should not Grant the Severe Remedy of Disqualification.

Texas courts treat disqualification as a most severe remedy. *NCNB Tex. Nat'l Bank v. Coker*, 765 S.W.2d 398, 399 (Tex.1989, orig. proceeding). As a result, the movant alleging a conflict exists is held to an exacting standard. Courts strongly discourage parties' use of disqualification motions as a dilatory trial tactic or as a weapon to gain litigation advantage. *Id.*; *In re Nitla S.A. de C.V.*, 92 S.W.3d 419 (Tex. 2002).

Because taking away a party's choice of counsel is the harshest result, waiver of the right to claim disqualification can result when a claimant fails to move to disqualify opposing counsel in a timely manner. *Grant v. Thirteenth Court of Appeals*, 888 S.W.2d 466, 468 (Tex.1994). The untimely urging of a disqualification motion is strong support that the motion is being used as a tactical weapon. *Id.*; *Litman v. Litman*, 402 S.W.3d 280, 288 (Tex. App.—Dallas 2013, pet denied). If a party delays in challenging the party's representation, the attorney shall not be disqualified. To allow otherwise may cause "immediate and palpable harm, disrupt trial court proceedings, and deprive a party of the right to have counsel of choice." *In re Nitla S.A. de C.V.*, 92 S.W.2d at 422.

Here, Loncar, PC, assuming it could properly assert the claims in this matter for the estate properly, delayed for far too long in raising its objections. In the probate proceedings, the executor Jenkins, purporting to act on behalf of Loncar, PC, failed to challenge Friedman when he represented Toudouze for over three years in the battle with Jenkins over access to the information Toudouze supposedly knew about the financial affairs of the Loncar, PC. Had there been a conflict of interest then, Jenkins as executor of the estate, which he believed included Loncar, PC, assuredly would have asserted the conflict when he was dealing with Friedman over the business knowledge of Toudouze back then. But no conflict or objection to Friedman's representation was raised then; there certainly could be no conflict raised now, particularly when the Petition rehashes the same vague claims that Toudouze has business information and knowledge that belong about the Loncar, PC.

As if the past failure to object was not enough, Friedman's representation of Toudouze in this particular matter was affirmed by all, including opposing counsel, when they chose to serve Friedman the Petition against his client Toudouze in this very matter. This acknowledgment that Friedman represents Toudouze does not just raise significant questions about the Firm's motives in moving to disqualify Friedman. It establishes that the Motion is only intended to harass, delay, and deprive Toudouze of his chosen litigator, tactic that in and of itself justify denial of the relief sought.

Additionally, Jenkins, as the executor of the estate and new claimed owner of Loncar, PC, has refused repeatedly to appear for deposition as promised and, at a minimum, allow Toudouze to question him about the bases for the vague claims asserted in the Petition. This occurred several times even after assurances by his counsel that Jenkins would appear.² The disregard he has for

² Jenkins has refused to appear for his deposition four times, though he was properly noticed. Three of those times Jenkins promised to appear on agreed dates, then backed out. Most recently, Jenkins counsel

this litigation that undoubtedly he had a hand in bringing demonstrates he has little care or respect for his colleagues, the parties, or the Court, and he certainly does not believe there is evidence to support the claims and hence nothing to offer in support of the contention that a conflict exists given a substantial relation between Friedman's prior representation of the Loncar Firm and the current claims against Toudouze.

Toudouze has every right to ask his chosen counsel, Friedman, to probe with discovery the basis for the causes of action against him in this lawsuit, not to mention ask for just what facts give rise to the objection that a conflict of interest exists to support an attack on an opponent's lawyer. The vague allegations in the Petition provide no basis whatsoever understanding what was purportedly taken from Loncar, PC or still in the possession of Toudouze, what is the substantial connection between what Friedman's work for Loncar, PC and Brian Loncar that is substantially related to the representation of Toudouze. As it stands now, the Motion to Disqualify simply surmises a conflict given Friedman represented the Loncar, PC in discrete unrelated matters when Brian Loncar owned the firm. This, as a matter of law, is not enough to require disqualification and exemplifies how the Loncar Firm has wasted this Court's and the parties' time.

PRAYER

For the reasons just expressed, the Motion should fail on its face and disqualification be denied.

agreed to present Jenkins for his deposition before the hearing on disqualification, but Jenkins unilaterally refused, under the guise that he was "too busy." This excuse is no defense to the executor of an estate that owns the claims asserted in the action refusing to appear for deposition.

Respectfully submitted,

Enoch Kever, PLLC

By: /s/ Craig T. Enoch

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**ATTORNEYS FOR DEFENDANT AND
COUNTERCLAIM PLAINTIFF,
TOBY TOUDOUZE**

CERTIFICATE OF SERVICE

I hereby certify that, on April 17, 2020, a true and correct copy of the foregoing document was served on all counsel of record via the court's filing system.

/s/ Marla D. Broaddus

Marla D. Broaddus

Tab 56

behalf of Loncar PC, objected to or raised any issues with my legal representation of Toby at that time. This is the extent of my personal knowledge surrounding his termination of employment.

4 I represent Toby as the defendant in this matter with respect to the claims of his former law firm employer for civil theft and breach of fiduciary duty. My co-counsel Jennifer Spencer and I have tried on multiple occasions to obtain discovery about the claims against our client from the Brian Loncar, PC's owner Clay Jenkins who is also the executor of the estate that owns the claims against Toby. Mr. Jenkins, through his counsel, promised to appear for his deposition several times and, so far, has broken that promise and continues to break his promise each time. It has been at least four times that Mr. Jenkins has done this. His lawyers even promised to present him for deposition and told us not to move to compel written discovery. We relied on their promises, which their client has repeatedly broken. It has been since nearly six months and they still have not told us the basis for the motion to disqualify.

5 In October 2019, Mr. Jenkins' law firm filed a motion seeking to disqualify me from representing Toby in the lawsuit against him. This is a serious motion with profound consequences that I do not take lightly. Texas courts do not take these types of motion lightly either. These are serious allegations.

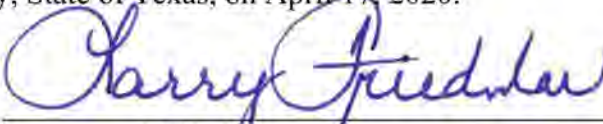
6 Unfortunately, counsel for Plaintiff and Jenkins do not take the allegations seriously. I cannot discern from the vague allegations in the motion and the Plaintiff's Petition what the conflict of interest alleged is and what I could possibly know factually that it is

essential I testify about in the case, as the Brian Loncar, PC alleges against me in order to contend I am disqualified from representing Toby in this case.

7 Before this lawsuit, I represented Toby in the probate proceedings wherein Jenkins tried to obtain discovery from him about his knowledge of the business affairs of the Brian Loncar, PC. I filed motions, lodged objections, attended hearings, and obtained relief as counsel for Toby Toudouze. Not once did Jenkins, the Loncar Firm, or any other individual claim I had a conflict of interest in representing Toby Toudouze.

“My name is Larry Friedman. I am the managing partner of Friedman & Feiger, LLP. My date of birth is [REDACTED], I reside in Dallas, Texas and my regular address is [REDACTED], Dallas, Texas 75254. I declare under penalty of perjury that the facts stated in this document are true and correct.”

Executed in Dallas County, State of Texas, on April 17, 2020.


Lawrence J. Friedman

Tab 57

Cause No. DC-19-08531

BRIAN LONCAR, P.C. d/b/a, LONCAR ASSOCIATES, Plaintiff / Counterclaim Defendant,	§	IN THE DISTRICT COURT
	§	
	§	
	§	
v.	§	
	§	
TOBY TOUDOUZE, Defendant / Counterclaim and Third-Party Plaintiff,	§	14th JUDICIAL DISTRICT
	§	
	§	
v.	§	
	§	
CLAY LEWIS JENKINS, as Alter-Ego of Brian Loncar, P.C. / Counterclaim Defendant.	§	DALLAS COUNTY, TEXAS
	§	

UNSWORN DECLARATION OF TOBY TOUDOUZE

1. My name is Toby Toudouze. I am the individual defendant and the counterclaim and third-party plaintiff in the lawsuit brought by Brian Loncar, PC dba Loncar Associates.


2. Larry Friedman and his law firm Friedman & Feiger, LLP has been a long-time attorney who has represented me in various matters. Larry is my family attorney and someone I trust, as he knows about many important aspects and goals in my life.

3. I have known Larry for many years. He has provided me legal counsel on many matters unrelated to my work with my previous employer Brian Loncar, PC. He also represented me over the course of the last almost three years after I was terminated from my position at that firm. For example, Larry was the lawyer who defended me when the executor of the estate of my former boss, Brian Loncar, was attempting to serve me with discovery and take my deposition. Larry helped me feel secure, and his advice was always just what I needed to help me understand the process and support me in achieving my goals. I call on Larry whenever a family member is in need of legal counsel.

4. In the current lawsuit in which I have been sued, Larry has been my attorney since the lawsuit was filed. He was served with the Petition in on my behalf. I cannot think of any other lawyer I would trust more to defend me. If he were not able to defend me in this lawsuit or other matters I need counsel, I would not feel as comfortable as I do now in seeking his advice. It would take years for me to develop that feeling with any other lawyer.

“My name is Toby Toudouze. I am an individual defendant in the above referenced lawsuit, as well as the Counterclaim and Third-Party Plaintiff. My date is birth is [REDACTED] [REDACTED], and my address is [REDACTED] [REDACTED] [REDACTED] Dallas, Texas 75214. I declare under penalty of perjury that the facts stated in this document are true and correct.”

Executed in Dallas County, State of Texas, on April 17, 2020.



Toby Toudouze.

Tab 58

1 REPORTER'S RECORD
2 VOLUME 1 OF 1 VOLUME
3 TRIAL COURT CAUSE NO. DC-19-08531-A

4 BRIAN LONCAR, P.C., d/b/a) IN THE DISTRICT COURT
5 LONCAR ASSOCIATES,)
6 Plaintiff/Counterclaim)
7 Defendant,)
8 VS.)
9 TOBY TOUDOUZE,)
10 Defendant/Counterclaim) DALLAS COUNTY, TEXAS
11 and Third-Party)
12 Plaintiff,)
13 VS.)
14 CLAY LEWIS JENKINS,)
15 as Alter-Ego of Brian)
16 Loncar, P.C./)
17 Counterclaim Defendant.) 14TH JUDICIAL DISTRICT

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PLAINTIFF'S MOTION TO DISQUALIFY
FRIEDMAN & FEIGER, L.L.P., OR IN THE ALTERNATIVE,
LAWRENCE J. FRIEDMAN, INDIVIDUALLY

On the 20th day of April, 2020, the following
proceedings came on to be held in the above-titled and
numbered cause before the Honorable Eric V. Moyé, Judge
Presiding, in a Zoom proceeding held in Dallas, Dallas
County, Texas.

DIANE L. ROBERT
14TH JUDICIAL DISTRICT COURT * DALLAS COUNTY, TEXAS

1 Proceedings reported by computerized stenotype
2 machine.

3 DIANE L. ROBERT, CSR, RPR
4 TEXAS CSR NO. 2179
5 Expiration Date: 11/30/2021
6 Official Court Reporter of the 14th
7 Judicial District Court
8 Dallas County, Texas
9 600 Commerce Street, Dallas, Tx 75202
10 214-653-7298
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DIANE L. ROBERT
14TH JUDICIAL DISTRICT COURT * DALLAS COUNTY, TEXAS

1 APPEARANCES

2 REPRESENTING PLAINTIFF/COUNTERCLAIM-DEFENDANTS BRIAN
3 LONCAR, P.C., d/b/a LONCAR ASSOCIATES AND CLAY LEWIS
4 JENKINS:

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13 - and -

14 MR. DENNIS WEITZEL
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16 MR. MARQUETTE WOLF
17 SBOT NO. 00797685
18 MR. BILL HYMES
19 SBOT NO. 24029624
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- and -

REPRESENTING LARRY FRIEDMAN AND FRIEDMAN & FEIGER:
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mbroaddus@enochkever.com

DIANE L. ROBERT
14TH JUDICIAL DISTRICT COURT * DALLAS COUNTY, TEXAS

1 - and -

2 REPRESENTING DEFENDANT/COUNTERCLAIM PLAINTIFF,
3 TOBY TOUDOUZE:

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13 - and -

14 MS. JENNIFER SPENCER
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21 Facsimile: 972.770.2156
22 E-mail: jspencer@jacksonspencerlaw.com

23 Also present: Scott Scher
24
25

DIANE L. ROBERT
14TH JUDICIAL DISTRICT COURT * DALLAS COUNTY, TEXAS

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VOLUME 1

Plaintiff's Motion to Disqualify Friedman & Feiger,
LLP, or in the alternative, Lawrence J. Friedman,
Individually
April 20, 2020

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1 P R O C E E D I N G S

2 (Open Court; Proceedings commenced at 10:09 a.m.)

3 THE COURT: We are on the record in
4 19-08531, Loncar versus Toby Toudouze.

10:09:24 5 May I have announcements, please.

6 MR. WEITZEL: Dennis Weitzel for Brian
7 Loncar, P.C.

8 THE COURT: Good morning, Mr. Weitzel.
9 Justice Enoch, it looks like you're
10 speaking but I'm -- your mouth is moving, but I'm not
11 hearing anything.

12 MR. ENOCH: Well, --

13 THE COURT: There you go.

14 MR. ENOCH: -- rough deal for a hearing.
15 So, anyway, my name is Craig Enoch, and
16 I'm representing Larry Friedman and his firm in the
17 disqualification hearing that's before you today.

18 THE COURT: Thank you.

19 MR. FRIEDMAN: My name is Larry Friedman,
20 and I represent Toby Toudouze.

21 MR. ENOCH: I'm sorry, Your Honor. Marla
22 Broaddus is with me as well.

23 THE COURT: All right.

24 MR. WOLF: Marquette Wolf here on the
25 phone just -- I'm just listening in, Judge. I may not

10:09:24

10:09:39

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10:10:00

10:10:13

10:10:15

1 be able to stay the whole time; I've got an 11:00
2 o'clock.

3 THE COURT: All right.

10:10:21

4 MR. LYON: Ted Lyon. I'm here
5 representing the law firm.

6 MR. FRIEDMAN: And my paralegal Scott
7 Scher is on the phone as well, Your Honor.

8 THE COURT: Okay.

10:10:34

9 MS. TRACY WOLF: Your Honor, this is Tracy
10 Wolf. I'm representing Brian Loncar, P.C., and Clay
11 Jenkins.

12 THE COURT: All right. I think that's
13 everybody.

10:10:52

14 All right. We've got the Motion to
15 Disqualify. Who's going to drive this bus?

16 MR. WEITZEL: Probably me, Your Honor.

17 THE COURT: All right, Mr. Weitzel, the
18 floor is yours.

10:11:02

19 Since we've got so many people, please
20 make it easy on my court reporter, before you start to
21 speak, identify yourself even though I may know who you
22 are. Thank you.

23 MR. WEITZEL: Your Honor, this is Dennis
24 Weitzel on behalf of Brian Loncar, P.C.

10:11:16

25 Your Honor, we filed this Motion to

10:11:18 1 Disqualify the Friedman & Feiger firm and Mr. Friedman
2 in regards to this litigation. There are many, many,
3 many of the allegations, especially in the counterclaim,
4 and that's what I'll be addressing more than the lawsuit
10:11:35 5 that we have filed, which was simply to have certain
6 items that Mr. Toudouze removed from the law firm
7 returned to the law firm.

8 He was the CFO of the law firm for many
9 years. When he left in early 2017 a good bit of
10:11:57 10 information was taken. We needed it back. That's what
11 the lawsuit was about.

12 This -- was filed in June of 2019.

13 THE COURT: I'm sorry. You broke up on
14 us, Mr. Weitzel. You said "this" and then there was a
10:12:19 15 pause and something filed in June.

16 MR. WEITZEL: The original lawsuit by the
17 law firm against Mr. Toudouze was filed in June of 2019.

18 THE COURT: Right.

19 MR. WEITZEL: They filed -- Mr. Friedman
10:12:36 20 filed an answer on his behalf and in September of 2019
21 filed a counterclaim --

22 THE COURT: Uh-huh.

23 MR. WEITZEL: -- alleged -- suing
24 Mr. Jenkins personally and alleging all kinds of things,
10:12:53 25 which I'll call the great conspiracy that's also been

10:12:59

1 alleged in a Rule 202 motion in Collin County that was
2 nonsuited. It was -- The same things were alleged in
3 the Probate Court, all of which were found invalid in
4 the Probate Court, and they're now in the Toudouze
5 lawsuit, which I would say the allegations have little,
6 if anything, to do with Mr. Toudouze and almost entirely
7 a -- allegations of grand conspiracy by Mr. Jenkins.

10:13:14

8 But many, many of these allegations have
9 to deal with work actually done by the Friedman & Feiger
10 firm for Loncar & Associates when Mr. Loncar was alive,
11 for Brian Loncar personally, and for -- and briefly for
12 the estate after Mr. Loncar passed away.

10:13:41

13 I have no reason to doubt that
14 Mr. Friedman has, in fact, represented Mr. Toudouze in
15 other matters, but his firm and Mr. Friedman personally
16 represented Brian Loncar, P.C., and Brian Loncar for a
17 number of years prior to Mr. Loncar's passing.

10:14:12

18 Mr. Feiger was involved for the firm and
19 so was Mr. Friedman in drafting employee handbooks, real
20 estate transactions, representing -- Mr. Friedman
21 represented the firm in state bar matters. Mr. Feiger
22 did all of the corporate books, worked directly with
23 Mr. Toudouze and the accounting people for the corporate
24 books. Mr. Friedman was involved in a lawsuit in 2015
25 for the firm regarding another law firm in Denver run by

10:14:33

10:14:53

10:15:01 1 a man named Frank Azar; and then for Mr. Loncar
2 personally they prepared the estate planning documents,
3 they prepared tax matters, they prepared the life
4 insurance trust, all of which are subjects to --
10:15:18 5 subjects of the counterclaim and the grand conspiracy by
6 Mr. Clay Jenkins.

7 And specifically Paragraphs 8, 9, 10, 13,
8 14, 16 --

9 THE COURT: Slow down just -- Slow down
10:15:33 10 for me just a minute because we're now at the heart of
11 the matter.

12 You said Paragraphs 8 through 10, 13
13 through 16?

14 MR. WEITZEL: 22, 28, 32, 33. All of
10:15:50 15 these deal with actions taken and documents produced by
16 the Friedman Feiger firm.

17 THE COURT: Uh-huh.

18 Okay. Continue.

19 MR. WEITZEL: And we believe they're
10:16:14 20 disqualified from serving as counsel --

21 THE COURT: Mr. Weitzel, I'm sorry.
22 That's a conclusion that you want this Court to reach.

23 I want the -- I want the underlying facts
24 applied to the law. For example, I'm now looking at the
10:16:30 25 background section of the counterclaim.

10:16:33

1 Why don't you take a paragraph or two of
2 that counterclaim, link them to actions that you allege
3 were done by Friedman & Feiger firm and let's proceed in
4 that manner.

10:16:52

5 MR. WEITZEL: All right. The Friedman &
6 Feiger firm prepared the Will that was actually
7 probated. The Will was in Dallas County.

8 THE COURT: Uh-huh.

10:17:13

9 MR. WEITZEL: And the allegations there
10 are that Mr. Jenkins used his position to persuade other
11 people to do things that were unlawful, the allegation
12 that the Loncar firm was clearly not an estate -- not a
13 part of the Loncar estate. All of this has to do with
14 the math -- the Will that was actually drafted by
15 Friedman & Feiger.

10:17:42

16 They -- In Paragraph 13 there is a long
17 paragraph there about what Mr. Loncar's intentions were
18 with the Trust Agreement and the estate. All of these
19 things have previously been reviewed and handled in the
20 Probate Court but they somehow made it back into this
21 counterclaim. And the actions taken by the
22 Friedman & Feiger firm, as far as the trust and probate
23 plan, are going to be things that are going to have to
24 be hashed out in the counterclaim.

10:18:04

10:18:26

25 Again, Paragraph 16 talks about the fact

10:18:29 1 that the Loncar Firm, and Brian Loncar, P.C., can't be
2 an asset of the Loncar estate. The Probate Court, Judge
3 Thompson, has already dealt with that issue but we're
4 back to it.

10:18:43 5 Also, there's allegations regarding an
6 insurance trust and a claim about an insurance trust in
7 Paragraphs 28, 32 to 33. The insurance trust was
8 prepared by Friedman & Feiger. The insurance trust is
9 the subject of a JAMS arbitration right now and the
10:19:15 10 estate making a claim against Friedman & Feiger over the
11 manner in which the trust was prepared.

12 Interestingly in Paragraphs 32 and 33 it
13 doesn't mention the fact that the law firm that drafted
14 the trust, the Will, the insurance trust all happened to
10:19:42 15 be Friedman & Feiger and Mr. Friedman's law firm.

16 So we just believe that they're so
17 intertwined in all the things that have gone on here
18 that they can't represent Mr. Toudouze in this
19 counterclaim.

10:19:58 20 THE COURT: All right.

21 MR. WEITZEL: I think I can go on and on
22 about these allegations and all the law firms that were
23 involved in Brian Loncar's estate.

24 THE COURT: That probably is not going to
10:20:08 25 assist this Court in determining whether or not the

10:20:11

1 disqualification is appropriate.

2 MR. WEITZEL: And that's the reason I
3 hesitated.

10:20:19

4 THE COURT: All right. Let me hear from
5 the -- the Respondent.

6 Mr. Enoch, that's going to be you, I
7 assume?

8 MR. ENOCH: Yes, sir.

10:20:29

9 They -- A couple of things. One, is we
10 submitted to the Court Exhibits 1 through 5 that are all
11 from the Probate Court that we believe is relevant to
12 the things that are being argued today. We would ask
13 the Court to take judicial notice of those. And we have
14 a couple of affidavits. I'm not sure we're even going
15 to need evidence in the case, but let me start with just
16 Exhibits 1 through 5 and ask the Court to take judicial
17 notice of those.

10:20:50

18 The court reporter has it, but we have one
19 exhibit that we'll share with the Court as a part of --
20 as part of our presentation.

10:21:02

21 It actually would be -- My introduction
22 simply is this: We are not here arguing about the
23 merits of whether Toby Toudouze wins or if Clay Jenkins
24 or Brian Loncar win.

10:21:22

25 There are only two issues today before the

10:21:24 1 Court. One is: Has there been a waiver of the claim of
2 disqualification; and the second one is: If there was
3 not a waiver of the disqualification, the burden is on
4 the person seeking disqualification to demonstrate that
10:21:37 5 the issues in this case are substantially related to
6 issues that Larry Friedman worked on for Brian Loncar.

7 On the first question of waiver, this
8 issue --

9 MR. WEITZEL: Your Honor, sorry to
10:21:52 10 interrupt.

11 THE COURT: No, no. I don't want you to
12 interrupt. I would not let Mr. Enoch interrupt you, I
13 want you to give him the same courtesy.

14 MR. WEITZEL: Yes, sir.

10:22:01 15 MR. ENOCH: The -- in this -- The issue of
16 Tony Tou- -- of Toby Toudouze taking files from the
17 firm, whether he stole them or whether he had permission
18 to take the files from the firm, whether they ever were
19 returned, which we believe they were, all of those
10:22:16 20 questions were brought in a complaint in 1917, in an
21 action to --

22 THE COURT: I'm sorry. You said in
23 "1917"?

24 MR. ENOCH: I'm sorry. 2017, 2017.

10:22:28 25 THE COURT: Oh, okay.

10:22:28

1 MR. ENOCH: Your Honor, I'm still living
2 in that old age.

10:22:42

3 -- in 2017 by the executor -- or the
4 executor of the estate, which was Clay Jenkins, who
5 brought a 202 claiming that Toby Toudouze had files, was
6 seeking inquiry among Toby Toudouze's files, and
7 importantly as executor he was bringing the complaint on
8 behalf of Brian Loncar, P.C.

10:23:00

9 This is when Brian Loncar, P.C., was a
10 corporation that was still in the trust for which Clay
11 Jenkins was the trustee.

10:23:16

12 Now, there -- we're not arguing about
13 whether it was a trust asset or an estate asset. Clay
14 Jenkins was the trustee and he was executor. But his
15 claim was brought on behalf of Brian Loncar, P.C.

16 There were four hearings. Three of them
17 were contested. And Larry Friedman represented Toby
18 Toudouze in those hearings, all of those hearings. They
19 were hotly contested.

10:23:31

20 And, in fact, the estate -- the estate,
21 Clay Jenkins on behalf of Brian Loncar, relied on Larry
22 Friedman as the attorney for Toby Toudouze to serve Toby
23 Toudouze for those 202 claims. And that is litigation.
24 That is a lawsuit filed to seek a predetermination of
25 liability under 202.

10:23:51

10:23:53

1 So that was fought and that was lost.
2 Those records are before the Court from the Probate
3 Court.

10:24:06

4 In 2020 now Brian Loncar, P.C., asserts
5 the identical claims against Toby Toudouze as a
6 Defendant. They now assert in this case that Toby
7 Toudouze took files from the firm.

10:24:21

8 The merits of whether they were stolen or
9 they were taken by permission or whether they were
10 returned is all in the merits, that's later to be
11 decided.

12 But this is exactly the issue that was
13 brought by the estate on behalf of Brian Loncar before
14 its sale.

10:24:33

15 In 2019 Brian Loncar -- Brian Loncar
16 corporation was sold by Clay Jenkins, the
17 trustee/executor, to Clay Jenkins and Ted Lyon as the
18 buyers with permission of the beneficiaries.

10:24:51

19 Now Brian Loncar Law Firm, P.C.,
20 corporation is owned by Clay Jenkins and Ted Lyon. They
21 are bringing the identical claim against Toby Toudouze
22 which is that Toby Toudouze stole files.

10:25:09

23 My final comment, Your Honor, is Exhibit
24 Number 1 -- I would like to display Exhibit Number 1 --
25 THE COURT: You may.

10:25:11 1 MR. ENOCH: Marla's going to try and share
2 that with us if we can, but I'll call the Court's
3 attention -- Exhibit Number 1 is the Buy/Sell Agreement
4 between Clay Jenkins, as the executor of the estate, to
10:25:24 5 Clay Jenkins and to Ted Lyon as buyers in that case.

6 Paragraph 5.12 says that Brian Loncar, the
7 corporation, is selling its claim against Toby Toudouze
8 to the estate, to the estate, Brian Loncar's estate. So
9 the claim is exactly the same that they've been fighting
10:25:50 10 over for three years.

11 Let's see if we can get that up here and
12 I'll just show you the language.

13 I'm sorry, Your Honor. We've got to learn
14 how this technology works.

10:26:24 15 THE COURT: That's why we have young
16 people around.

17 MR. BROADDUS: Well, we didn't -- Is it
18 not showing up?

19 THE COURT: No, it's not.

10:26:33 20 MR. ENOCH: It's not.

21 MS. BROADDUS: It's telling me to stop
22 share so that --

23 MR. ENOCH: Why don't you stop share. I
24 don't think it's necessary if the Judge has --

10:26:44 25 We'll just point out, it's Section 5.12 of

10:26:47

1 the Buy/Sell Agreement where the cause of action is
2 retained by the estate. In fact, it's sold to the
3 estate.

10:26:56

4 And if we get to the merits of the thing
5 I'll argue the significance of that, but I think all
6 that's necessary to show waiver is the identical issue
7 is being litigated in 2020 that was litigated over
8 three years in 2017, and it's Toby Toudouze for which
9 Larry Friedman was representing him.

10:27:13

10 So we think waiver is clear. It's
11 established by the record from the Probate Court.

12 And I think on the second element of
13 substantially related issues, they argue -- and
14 substantially related is a different question on the
15 second point.

10:27:27

16 The second point is assuming -- assuming
17 that Larry Friedman had been representing Brian Loncar
18 in their battle with Toby Toudouze, then in this case
19 they have the burden to show that the issues in the
20 battle between Toby Toudouze are substantially related
21 to the work they did for Friedman -- for Brian Loncar.

10:27:41

22 A defense of a malpractice claim, a
23 defense of a financing claim, a defense of sharing
24 referral fees is not the type of exact same issues that
25 are floating around against Toby Toudouze.

10:28:06

10:28:07

1 This is a stealing files. That's what
2 this is. The estate brought it, they lost on the 202
3 motion and contested hearing in the Probate Court of
4 Dallas County. They are simply trying to bring it now,
5 and we believe that it is too late to disqualify Larry
6 Friedman.

10:28:20

7 THE COURT: All right.

8 MR. FRIEDMAN: May I, Your Honor?

9 THE COURT: Sure.

10:28:31

10 MR. FRIEDMAN: May I --

11 THE COURT: Mr. Friedman.

12 MR. FRIEDMAN: I think Justice Enoch
13 covered most of this. I just wanted to clarify a few
14 things if it's -- if it's significant.

10:28:42

15 I've looked at the evidence that the
16 moving parties -- the moving party has presented to the
17 Court. And the 16 pages of e-mails and the rest of
18 these invoices do not demonstrate any related, let alone
19 substantially related matter to this litigation.

10:29:05

20 And, for example, the 16 e-mails
21 demonstrating that I may have had a conference call with
22 Brian Loncar in November of 2013, I don't recall if I
23 did or not, but I may have; that I may have had lunch
24 with Brian Loncar in January of 2015, I may have had
25 lunch with Brian, I don't recall that either; and that I

10:29:27

DIANE L. ROBERT
14TH JUDICIAL DISTRICT COURT * DALLAS COUNTY, TEXAS

10:29:30 1 may have had breakfast at the end of the year with Brian
2 in 2015 are not significant to the matters that they are
3 moving on.

4 And they have all the invoices of all the
10:29:42 5 work that my law firm has done for the Loncar law firm.
6 Contrary to what Mr. Weitzel has said, I've looked at
7 every single page of those invoices. You can see that I
8 personally didn't do much, if any, work. Melissa
9 Kingston of my firm handled the three malpractice
10:30:10 10 defense matters. I got involved in the grievance
11 defense, and I assisted in the malpractice defense, but
12 Melissa handled most of it.

13 And Robert Feiger did the estate planning
14 work for Mr. Loncar. Those are not core matters before
10:30:27 15 this Court.

16 The other thing is, as you heard
17 Mr. Weitzel say, these are the exact same matters that
18 were dealt with in a different way in the Probate Court.

19 And I take Mr. Weitzel at his word on
10:30:42 20 that. And I'm the only one that was -- has been
21 involved in this since the beginning. I've been
22 involved in this for three years in the Probate Court
23 and now in this court. And I can tell you we're
24 fighting the same matters all of this time. So I don't
10:31:01 25 believe it's substantially related. If it is

10:31:05

1 substantially related, which it's not, this has been
2 waived over and over and over again.

10:31:20

3 One clarification for Justice Enoch is
4 that there were four contested hearings over the 202
5 that Loncar filed against Toby Toudouze. I was at all
6 the hearings, Gardere promoted it for the first two
7 hearings. Mr. Lyon's law firm promoted it for the
8 second two hearings, and the Judge denied the relief
9 requested in the deposition --

10:31:41

10 THE COURT: I'm going to interrupt you for
11 just a minute because I'm not sure that helps the
12 Court's analysis.

13 MR. FRIEDMAN: All right.

10:31:49

14 THE COURT: The original counterclaim --
15 and I didn't hear either you or Mr. Enoch address the
16 issues raised in the counterclaim. The initial
17 counterclaim was filed in September of 2019, correct?

18 MR. FRIEDMAN: Yes.

10:32:05

19 THE COURT: Okay. And the Motion to
20 Disqualify was filed when?

21 MR. LYON: October, Your Honor.

22 THE COURT: Mr. Weitzel, anything you wish
23 to add?

10:32:27

24 MR. WEITZEL: Your Honor, I do apologize
25 to Justice Enoch for trying to interrupt him.

10:32:30

1 All of their responses, all of their
2 declarations I think were filed less than 48 hours ago,
3 and we don't waive that. I mean, our motion has been on
4 file since October of last year.

10:32:43

5 THE COURT: Yeah, let me -- let me ask you
6 a question about that, Mr. Weitzel. Tell me why the
7 delay between October 23rd and today.

10:32:57

8 MR. WEITZEL: First we had a hearing,
9 Mr. Friedman asked us to take it down. The Court
10 rescheduled it for March. Mr. Friedman said he had a
11 family trip he had to go on, so we then scheduled it
12 again here.

10:33:10

13 THE COURT: When was it first set for
14 hearing? And if you don't know, that's fine. That's
15 kind of a --

16 MR. WEITZEL: Your Honor, I do not have
17 that in front of me; I apologize.

10:33:20

18 THE COURT: Okay. The reason I ask is
19 that we -- this may have -- this may take the record for
20 being the longest time between a hearing being -- a
21 motion being filed and a hearing being set that I can
22 recall, and I'm just curious about the delay.

10:33:37

23 MR. FRIEDMAN: I can address the delay,
24 Your Honor. That's not a complete answer.
25 The answer is that I had a promise by

10:33:39

1 Mr. Weitzel that I would be permitted to take Clay
2 Jenkins' deposition since this lawsuit was originally
3 filed. That has been delayed over and over and over
4 again.

10:33:51

5 THE COURT: Okay. That answers my
6 question.

7 MR. FRIEDMAN: That's why the hearings
8 were delayed.

10:33:56

9 THE COURT: All right. Thank you. I
10 appreciate that.

11 Mr. --

12 MR. ENOCH: Your Honor, this is Craig --
13 I'm sorry, Your Honor.

10:34:04

14 Also the counterclaim against Clay
15 Jenkins, Clay Jenkins is not a Movant in this Motion to
16 Disqualify: It is the Loncar, P.C. And as I -- as I
17 said from the beginning, that's what the issue is with
18 Loncar, P.C., and so --

19 THE COURT: All right.

10:34:18

20 MR. ENOCH: -- I think that's -- I call
21 the Court's attention to that.

22 THE COURT: Thank you very much.

10:34:29

23 Mr. Weitzel, I interrupted you with that
24 question. I'll let you get back to where you were
25 headed.

10:34:31

1 MR. WEITZEL: Well, I think that, you
2 know, mainly is we don't waive the fact that all this
3 was filed so late. I saw it literally for the first
4 time Saturday morning, and we have not had an
5 opportunity to respond, and so -- Not that that makes
6 any difference, the Court may make its mind up anyway.

10:34:44

7 We feel like the counterclaim is addressed
8 to both the law firm and Mr. Jenkins. Mr. Toudouze was
9 never an employee of Clay Jenkins. He was an employee
10 of Brian Loncar, P.C.

10:35:03

11 These claims of the counterclaims seeking
12 millions and millions of dollars for defamation,
13 wrongful termination, and all kinds of things, the
14 defamation specifically addresses the CEO of Brian
15 Loncar, P.C., and Mr. Hymes who's on this call, others
16 that were employees of Brian Loncar, P.C. And so we
17 feel like these allegations in the counterclaim are
18 important for purposes of this hearing on the
19 qualification of Mr. Friedman to continue to represent
20 Mr. Toudouze.

10:35:36

21 THE COURT: All right.

22 MR. FRIEDMAN: I'm not sure I made myself
23 clear, Your Honor.

24 THE COURT: No, I understood you clearly,
25 Mr. Friedman. Thank you.

10:35:42

10:35:47

1 All right. I'm going to spend a little
2 bit more time digesting the response that was filed over
3 the weekend, but I will have an order on file before --

10:36:02

4 I'm sorry. Mr. Lyon, I didn't ask you if
5 there was anything -- I let two folks speak for the
6 Respondent, I'll let two folks speak for the Movant if
7 you've got something you wish to add.

10:36:16

8 MR. LYON: No, Your Honor, I don't have
9 anything to say. I appreciate you taking your time and
10 letting us have this hearing.

11 THE COURT: My time is your time, ladies
12 and gentlemen. Thank you all very much.

13 I'll have an order on file before the end
14 of the day.

10:36:26

15 MR. FRIEDMAN: Thank you, Your Honor.

16 MR. ENOCH: Thank you, Your Honor.

17 MR. WEITZEL: Thank you, Your Honor.

18 MS. BROADDUS: Thank you, Your Honor.

19 THE COURT: You are all excused.

10:36:28

20 Everybody be safe.

21 MR. WEITZEL: You, too, Judge.

22 THE COURT: Thank you.

23

24 (Proceedings adjourned at 10:36 a.m.)

25

1 STATE OF TEXAS

2 COUNTY OF DALLAS

3 I, Diane L. Robert, Official Court Reporter in
4 and for the 14th District Court of Dallas County, State
5 of Texas, do hereby certify that the above and foregoing
6 contains a true and correct transcription of all
7 portions of evidence and other proceedings requested in
8 writing by counsel for the parties to be included in
9 this volume of the Reporter's Record in the above-styled
10 and numbered cause, all of which occurred in open court
11 or in chambers and were reported by me.

12 I further certify that this Reporter's Record
13 of the proceedings truly and correctly reflects the
14 exhibits, if any, offered by the respective parties.

15 WITNESS MY OFFICIAL HAND, on this the 21st day
16 of April, 2020.

17 BY: /s/ *Diane L. Robert*

18 Diane L. Robert, CSR
19 Texas CSR 2179
20 Official Court Reporter
21 14th District Court
22 Dallas County, Texas
23 600 Commerce Street
24 Dallas, Texas 75202
25 Telephone: 214.653.7298
Expiration: 11/30/2021
drobert@irareporting.com

DIANE L. ROBERT
14TH JUDICIAL DISTRICT COURT * DALLAS COUNTY, TEXAS

Tab 59

CAUSE NO. DC-19-08531

BRIAN LONCAR, P.C., D/B/A
LONCAR ASSOCIATES

Plaintiff,

vs.

TOBY TOUDOUZE

Defendant.

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

14th JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

ORDER GRANTING PLAINTIFF'S MOTION TO DISQUALIFY FRIEDMAN & FEIGER, LLP, [REDACTED], LAWRENCE J. FRIEDMAN, INDIVIDUALLY

RVD

On the 20th day of April, 2020 came on to be heard PLAINTIFF'S MOTION TO DISQUALIFY FRIEDMAN & FEIGER, LLP, OR IN THE ALTERNATIVE, LAWRENCE J. FRIEDMAN, INDIVIDUALLY, and the Court having reviewed the pleadings of the parties, the Motion and having heard the arguments of counsel for the parties has determined that PLAINTIFF'S MOTION TO DISQUALIFY FRIEDMAN & FEIGER, LLP, OR IN THE ALTERNATIVE, LAWRENCE J. FRIEDMAN, INDIVIDUALLY should be granted and the relief sought should be granted.

It is therefore, Ordered, Adjudged and Decreed that PLAINTIFF'S MOTION TO DISQUALIFY FRIEDMAN & FEIGER, LLP, OR IN THE ALTERNATIVE, LAWRENCE J. FRIEDMAN, INDIVIDUALLY is hereby Granted and that the law firm of Friedman & Feiger, LLP and Lawrence J. Friedman are hereby Disqualified from serving as counsel for Defendant Toby Toudouze and should immediately withdraw from any such representation.

Signed this 20 day of April, 2020.

Judge Presiding

Tab 60

Cause No. DC-19-08531

BRIAN LONCAR, P.C. d/b/a, LONCAR ASSOCIATES, Plaintiff / Counterclaim Defendant,	§	IN THE DISTRICT COURT
	§	
	§	
	§	
	§	
v.	§	
	§	
TOBY TOUDOUZE, Defendant / Counterclaim and Third-Party Plaintiff,	§	14th JUDICIAL DISTRICT
	§	
	§	
	§	
v.	§	
	§	
CLAY LEWIS JENKINS, as Alter-Ego of Brian Loncar, P.C./ Counterclaim Defendant.	§	DALLAS COUNTY, TEXAS

**TOUDOUZE’S NOTICE OF FILING RULE 11
AGREEMENT**

Defendant and Counterclaim Plaintiff Toby Toudouze hereby gives notice of filing the Rule 11 Agreement signed by the parties, attached hereto as Exhibit A.

Respectfully Submitted,

/s/ Jennifer J. Spencer

Jennifer J. Spencer

State Bar No. 10474900

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James E. Hunnicutt

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(972) 770-2156 (Fax)

**ATTORNEYS FOR DEFENDANT AND
COUNTERCLAIM PLAINTIFF TOBY
TOUDOUZE**

CERTIFICATE OF SERVICE

I hereby certify that, on May 11, 2020, a true and correct copy of the foregoing document was served on all counsel of record via the court's eFiling system.

/s/ Jennifer J. Spencer

Jennifer J. Spencer

EXHIBIT A



Craig T. Enoch
(512) 615-1202
cenoch@enochkever.com

April 30, 2020

Via Email

J. Dennis Weitzel
Ted B. Lyon & Associates, P.C.
18601 Lyndon B. Johnson Freeway, Suite 525
Mesquite, Texas 75150-5614
Email: dennis@tedlyon.com

Re: *Brian Loncar, P.C. dba Loncar Associates v. Toby Toudouze v. Clay Lewis Jenkins, as Alter-Ego of Brian Loncar, P.C.*; Cause No. DC-19-08531-A; 14th Judicial District Court, Dallas County, Texas

Dear Mr. Weitzel:

This confirms our agreement that all parties, Brian Loncar, PC, Tony Toudouze, and Clay Jenkins, have agreed under Rule 11 of the Texas Rules of Civil Procedure to stay all discovery efforts for 90-days from the date of this letter in this case, at which time the parties will revisit whether they can agree to continue the stay or proceed in the usual course. Toudouze intends to initiate a Petition for Writ of Mandamus to review the trial court's order of disqualification signed April 20, 2020. If the mandamus action is ruled on in the court of appeals or by the Texas Supreme Court in less than the 90-day stay period, the parties agree this agreed stay will expire and the case will proceed in due course. Toudouze reserves the right to seek a stay if not agreed to by the parties after the 90-day period expires and he has not exhausted all relief available in the court of appeals and Texas Supreme Court.

Please confirm this agreement with your signature and return a copy to me.

Sincerely,
ENOCK KEVER PLLC

Craig T. Enoch

J. Dennis Weitzel (for Brian Loncar, PC and Clay Jenkins)

J. Dennis Weitzel

ENOCK KEVER PLLC	7600 N. Capital of Texas Hwy. Building B, Suite 200 Austin, Texas 78731	p: 512.615.1200 f: 512.615-1198	enochkever.com
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EXHIBIT A

Tab 61



14TH JUDICIAL DISTRICT COURT
GEORGE L. ALLEN COURTS BUILDING
600 COMMERCE STREET
DALLAS, TEXAS 75202-4604

5/26/2020

File Copy

DC-19-08531
BRIAN LONCAR, P.C. vs. TOBY TOUDOUZE

ALL COUNSEL OF RECORD/PRO SE LITIGANTS:

PLEASE TAKE NOTE OF THE FOLLOWING SETTING:

JURY TRIAL: September 29, 2020 at 9:30 AM

TRIAL ANNOUNCEMENTS MUST BE MADE IN ACCORDANCE WITH RULE 3.02, LOCAL RULES OF THE CIVIL COURTS OF DALLAS COUNTY, TEXAS.

WHEN NO ANNOUNCEMENT IS MADE FOR DEFENDANT, DEFENDANT WILL BE PRESUMED READY. IF PLAINTIFF FAILS TO ANNOUNCE OR TO APPEAR AT TRIAL, THE CASE WILL BE DISMISSED FOR WANT OF PROSECUTION IN ACCORDANCE WITH RULE 165a, TEXAS RULES OF CIVIL PROCEDURE.

Sincerely,

ERIC V. MOYÉ, DISTRICT JUDGE
14TH DISTRICT COURT
Dallas County, Texas

Cc:
TRACY G WOLF
2100 ROSS AVENUE SUITE 2000
DALLAS TX 75201

DENNIS WEITZEL
18601 LBJ FREEWAY SUITE 525
MESQUITE TX 75150

CRAIG T ENOCH
600 CONGRESS AVENUE SUITE 2800
AUSTIN TX 78701

Tab 62

Cause No. DC-19-08531

BRIAN LONCAR, P.C. d/b/a, LONCAR ASSOCIATES, Plaintiff / Counterclaim Defendant,	§	IN THE DISTRICT COURT
	§	
	§	
	§	
	§	
v.	§	
	§	
TOBY TOUDOUZE, Defendant / Counterclaim and Third-Party Plaintiff,	§	14th JUDICIAL DISTRICT
	§	
	§	
	§	
v.	§	
	§	
CLAY LEWIS JENKINS, as Alter-Ego of Brian Loncar, P.C./ Counterclaim Defendant.	§	DALLAS COUNTY, TEXAS

**UNOPPOSED MOTION TO CONTINUE AND RESET TRIAL DATE
TO A DATE IN EARLY 2021**

TO THE HONORABLE JUDGE OF SAID COURT:

Pursuant to Rule 251 of the TEXAS RULES OF CIVIL PROCEDURE and LOCAL RULE 3.1, Defendant/Third-Party/Counterclaim Plaintiff Toby Toudouze files this Unopposed Motion for the Court to Continue and Reset the Trial until a date in early 2021 and shows the following:

MOTION TO CONTINUE AND RESET TRIAL DATE

1. On April 30, 2020, the parties entered into a Rule 11 Agreement, filed with this Court on May 11, 2020. A copy of the Rule 11 Agreement is attached as Exhibit A.
2. In the Rule 11 Agreement, the parties agreed to stay discovery in this matter for 90 days while Toudouze seeks mandamus relief from the appellate courts regarding this Court's order disqualifying Mr. Friedman and his law firm from further representing Toudouze in this matter. *See* Exhibit A. Upon the expiration of 90 days, if Toudouze has not exhausted the available avenues to obtain mandamus relief, the parties agreed to revisit whether they could agree to continue the stay

of discovery or proceed in the usual course. *Id.* Toudouze reserved the right to seek a stay if no agreement can be reached between the parties after the 90-day period expires and the proceedings in the Court of Appeals or Texas Supreme Court had not yet concluded. *Id.*

3. On May 15, 2020, Toudouze filed his Petition for Writ of Mandamus with the Fifth Court of Appeals. The Petition remains pending before the appellate court.

4. On May 26, 2020, the Parties received notice from this Court stating that the trial in this matter is set to begin on **September 26, 2020**. Dennis Weitzel, counsel for Plaintiff/Counter Defendant Brian Loncar PC and Third-Party Defendant Clay Jenkins, contracted Craig Enoch, counsel for Toudouze in the disqualification proceedings here and in the appellate court, to discuss the trial setting.

5. Mr. Enoch subsequently advised Mr. Weitzel that Toudouze planned to move for a continuance in view of the Rule 11 Agreement and concern there would not be time to conduct adequate discovery before the trial date. Mr. Enoch advised the motion would ask for the Court to reset the trial date in early 2021. Mr. Weitzel advised Mr. Enoch that Plaintiff/Counter Defendant Brian Loncar PC and Third-Party Defendant Clay Jenkins **would not oppose the motion**.

6. This is the first continuance requested by Toudouze, and this motion is made before the matter has pended for one year. This request is not made for delay but so the parties' Rule 11 Agreement is given effect and will not be prejudiced by having insufficient time to prepare for trial.

7. Toudouze thus requests that the Court continue the trial date currently set for September 26, 2020 and reset the trial date on a date in early 2021 so that justice can be done.

8. If Toudouze has not exhausted the available avenues for obtaining mandamus relief from the court of appeals and Texas Supreme Court, and the parties cannot agree to further stay discovery and/or seek to continue the new trial date after 90 days from the Rule 11 Agreement's

date expires, Toudouze reserves the right to seek a stay of discovery and/or to again reset the trial date, if necessary, from this Court or the appellate court. All other parties reserve the right to oppose such further relief if a request is made.

PRAYER

Toudouze respectfully asks the Court to grant this unopposed motion and reset the trial date to a date in 2021. Toudouze also asks the Court to grant any other relief to which he is entitled.

Respectfully Submitted,

/s/ Jennifer J. Spencer

Jennifer J. Spencer

State Bar No. 10474900

jspencer@jacksonspencerlaw.com

James E. Hunnicutt

State Bar No. 24054252

jhunnicutt@jacksonspencerlaw.com

JACKSON SPENCER LAW PLLC

Three Forest Plaza

12221 Merit Drive, Suite 160

Dallas, Texas 75251

(972) 458-5301 (Telephone)

(972) 770-2156 (Fax)

**ATTORNEY FOR COUNTERCLAIM
PLAINTIFF, TOBY TOUDOUZE**

EXHIBIT A

Cause No. DC-19-08531

BRIAN LONCAR, P.C. d/b/a, LONCAR ASSOCIATES, Plaintiff / Counterclaim Defendant,	§	IN THE DISTRICT COURT
	§	
	§	
	§	
	§	
v.	§	
	§	
TOBY TOUDOUZE, Defendant / Counterclaim and Third-Party Plaintiff,	§	14th JUDICIAL DISTRICT
	§	
	§	
v.	§	
	§	
CLAY LEWIS JENKINS, as Alter-Ego of Brian Loncar, P.C./ Counterclaim Defendant.	§	DALLAS COUNTY, TEXAS

**TOUDOUZE’S NOTICE OF FILING RULE 11
AGREEMENT**

Defendant and Counterclaim Plaintiff Toby Toudouze hereby gives notice of filing the Rule 11 Agreement signed by the parties, attached hereto as Exhibit A.

EXHIBIT A

Respectfully Submitted,

/s/ Jennifer J. Spencer

Jennifer J. Spencer

State Bar No. 10474900

jspencer@jacksonspencerlaw.com

James E. Hunnicutt

State Bar No. 24054252

jhunnicutt@jacksonspencerlaw.com

Dimple A. Baca

State Bar No. 24060049

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State Bar No. 24092171

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JACKSON SPENCER LAW PLLC

Three Forest Plaza

12221 Merit Drive, Suite 160

Dallas, Texas 75251

(972) 458-5301 (Telephone)

(972) 770-2156 (Fax)

**ATTORNEYS FOR DEFENDANT AND
COUNTERCLAIM PLAINTIFF TOBY
TOUDOUZE**

CERTIFICATE OF SERVICE

I hereby certify that, on May 11, 2020, a true and correct copy of the foregoing document was served on all counsel of record via the court's eFiling system.

/s/ Jennifer J. Spencer

Jennifer J. Spencer

EXHIBIT A



Craig T. Enoch
(512) 615-1202
cenoch@enochkever.com

April 30, 2020

Via Email

J. Dennis Weitzel
Ted B. Lyon & Associates, P.C.
18601 Lyndon B. Johnson Freeway, Suite 525
Mesquite, Texas 75150-5614
Email: dennis@tedlyon.com

Re: *Brian Loncar, P.C. dba Loncar Associates v. Toby Toudouze v. Clay Lewis Jenkins, as Alter-Ego of Brian Loncar, P.C.*; Cause No. DC-19-08531-A; 14th Judicial District Court, Dallas County, Texas

Dear Mr. Weitzel:

This confirms our agreement that all parties, Brian Loncar, PC, Tony Toudouze, and Clay Jenkins, have agreed under Rule 11 of the Texas Rules of Civil Procedure to stay all discovery efforts for 90-days from the date of this letter in this case, at which time the parties will revisit whether they can agree to continue the stay or proceed in the usual course. Toudouze intends to initiate a Petition for Writ of Mandamus to review the trial court's order of disqualification signed April 20, 2020. If the mandamus action is ruled on in the court of appeals or by the Texas Supreme Court in less than the 90-day stay period, the parties agree this agreed stay will expire and the case will proceed in due course. Toudouze reserves the right to seek a stay if not agreed to by the parties after the 90-day period expires and he has not exhausted all relief available in the court of appeals and Texas Supreme Court.

Please confirm this agreement with your signature and return a copy to me.

Sincerely,
ENOCK KEVER PLLC

Craig T. Enoch

J. Dennis Weitzel (for Brian Loncar, PC and Clay Jenkins)

J. Dennis Weitzel

ENOCK KEVER PLLC	7600 N. Capital of Texas Hwy. Building B, Suite 200 Austin, Texas 78731	p: 512.615.1200 f: 512.615-1198	enochkever.com
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EXHIBIT A

CERTIFICATE OF CONFERENCE

On June 3, 2020, counsel for Toudouze in the disqualification proceeding before this Court and in the mandamus proceeding pending before the Fifth Court of Appeals, Craig Enoch, conferred with counsel for Dennis Weitzel about the relief requested in this motion, and Mr. Weitzel advised that Brian Loncar, PC and Clay Jenkins are unopposed. On June 5, 2020, I sent a draft of this motion to Mr. Weitzel to confirm Toudouze would be filing this motion as unopposed by Brian Loncar, PC and Mr. Jenkins.

/s/ Jennifer J. Spencer

Jennifer J. Spencer

CERTIFICATE OF SERVICE

I hereby certify that on June 5,2020, a true and correct copy of the foregoing document was served on all counsel of record via the court's eFiling system.

/s/ Jennifer J. Spencer

Jennifer J. Spencer

Tab 63



Marla Broaddus
(512) 615-1226
mbroaddus@enochkever.com

July 22, 2020

VIA EMAIL

Sean Higgins
Lewis Brisbois
2100 Ross Avenue
Suite 2000
Dallas, TX 75201

Re: *Brian Loncar, P.C. dba Loncar Associates v. Toby Toudouze v. Clay Lewis Jenkins, as Alter-Ego of Brian Loncar, P.C.*; Cause No. DC-19-08531-A; 14th Judicial District Court, Dallas County, Texas

Dear Counsel:

This confirms the agreement among all parties, Brian Loncar, PC, Tony Toudouze, and Clay Jenkins, under Rule 11 of the Texas Rules of Civil Procedure to continue the stay of all discovery efforts for 60 more days once the stay already in place under the parties' previous Rule 11 Agreement expires on July 29, 2020. When those additional 60 days expire, we agree the parties will revisit whether they can agree to continue the stay or proceed in the usual course. Toudouze reserves the right to seek a stay if not agreed to by the parties after the stay expires, if necessary.

Sincerely,
ENOCH KEVER PLLC

Marla Broaddus

AGREED BY BRIAN LONCAR, PC AND CLAY JENKINS

Sean Higgins by perm MBroaddus
Counsel, Sean Higgins

ENOCH KEVER PLLC

7600 N. Capital of Texas Hwy.
Building B, Suite 200
Austin, Texas 78731

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f: 512.615-1198

enochkever.com

Tab 64



14TH JUDICIAL DISTRICT COURT
GEORGE L. ALLEN COURTS BUILDING
600 COMMERCE STREET
DALLAS, TEXAS 75202-4604

9/28/2020

File Copy

DC-19-08531

BRIAN LONCAR, P.C. vs. TOBY TOUDOUZE

ALL COUNSEL OF RECORD/PRO SE LITIGANTS:

PLEASE TAKE NOTE OF THE FOLLOWING SETTING:

JURY TRIAL: March 09, 2021 at 9:30 AM

TRIAL ANNOUNCEMENTS MUST BE MADE IN ACCORDANCE WITH RULE 3.02, LOCAL RULES OF THE CIVIL COURTS OF DALLAS COUNTY, TEXAS.

WHEN NO ANNOUNCEMENT IS MADE FOR DEFENDANT, DEFENDANT WILL BE PRESUMED READY. IF PLAINTIFF FAILS TO ANNOUNCE OR TO APPEAR AT TRIAL, THE CASE WILL BE DISMISSED FOR WANT OF PROSECUTION IN ACCORDANCE WITH RULE 165a, TEXAS RULES OF CIVIL PROCEDURE.

Sincerely,

ERIC V. MOYÉ, DISTRICT JUDGE
14TH DISTRICT COURT
Dallas County, Texas

Cc:

TRACY G WOLF
2100 ROSS AVENUE SUITE 2000
DALLAS TX 75201

DENNIS WEITZEL
18601 LBJ FREEWAY SUITE 525
MESQUITE TX 75150

CRAIG T ENOCH
7600 N CAPITAL OF TEXAS HWY
BUILDING B SUITE 200
AUSTIN TX 78731

Tab 65

BRIAN LONCAR, P.C.

vs.

TOBY TOUDOUZE

§
§
§
§
§
§
§

IN THE DISTRICT COURT

14th JUDICIAL DISTRICT

STATE OF TEXAS

UNIFORM SCHEDULING ORDER (LEVEL 1)

In accordance with Rules 166, 190 and 192 of the Texas Rules of Civil Procedure, the Court makes the following order to control discovery and the schedule of this cause:

1. This case will be ready and is set for **JURY TRIAL MARCH 09, 2021 at 9:30 a.m.** (the "Initial Trial Setting"). All counsel of record as well as all parties are required to appear at the Initial Trial Setting. Reset or continuance of the Initial Trial Setting will not alter any deadlines established in this Order or established by the Texas Rules of Civil Procedure, unless otherwise provided by order. If not reached as set, the case may be carried to the next week. **FAILURE TO COMPLY WITH THE DEADLINES CONTAINED HEREIN SHALL NOT SUPPORT A MOTION TO CONTINUE THIS MATTER.**

2. Unless otherwise ordered, discovery in this case will be controlled by:

(X) Rule 190.2 (Level 1)

of the Texas Rules of Civil Procedure. Except by agreement of the party, Leave of court, or where expressly authorized by the Texas Rules of Civil Procedure, no party may obtain discovery of information subject to disclosure under Rule 194 by any other form of discovery.

3. Any objection or motion to exclude or limit expert testimony due to qualification of the expert or reliability of the opinions must be filed no later than seven (7) days after the close of the discovery period, or such objection is waived. Any such objection not heard 30 days prior to the Initial Trial Setting is waived. Any motion to compel responses to discovery (other than relation to factual matters arising after the end of the discovery period) must be filed no later than seven (7) days after the close of the discovery period or such complaint is waived, except for the sanction of exclusion under Rule 193.6.

4. Any amended pleadings asserting new causes of action or affirmative defenses must be filed no later than thirty (30) days before the end of the discovery period and any other amended pleadings must be filed no later than seven (7) days after the end of the discovery period. Amended pleadings responsive to timely filed pleadings under this schedule may be filed after the deadline for amended pleadings if filed within two (2) weeks after the pleading to which they respond. Except with leave of court, TRCP 166a(c) motions must be heard no later than thirty (30) days before trial.

5. No additional parties may be joined more than five (5) months after the commencement of this case except on motion for leave showing good cause. This paragraph does not otherwise alter the requirements of Rule 38. The party joining an additional party shall serve a copy of this order on the new party concurrently with the pleading joining that party.

6. Fourteen (14) days before the Initial Trial Setting, in jury trial, the parties shall exchange a list of exhibits, including any demonstrative aids and affidavits, and shall exchange copies of any exhibits not previously produced in discovery; over-designation is strongly discouraged and may be sanctioned. Except for records to be offered by way of business record affidavits, each exhibit must be identified separately and not by category or group designation. Rule 193.7 applies to this designation. On or before ten (10) days before the Initial Trial Setting, the attorneys in charge for all parties shall meet in person to confer on stipulations regarding the materials to be submitted to the Court under this paragraph and attempt to maximize agreement on such matters. By 4 pm on the Thursday before the Initial Trial Setting, the parties shall file with the Court the materials stated in Rule 166(e)-(1), an estimate of the length of trial, designation of deposition testimony to be offered in direct examination, and any motions in limine. Failure to file such materials may result in dismissal for want of prosecution or other appropriate sanction.

7b. Fourteen (14) days before the Initial Trial Setting, in non-jury cases, the parties shall exchange and file with the Court Proposed Findings of Fact and Conclusions of Law.

Plaintiff/Plaintiff's counsel shall serve a copy of this Order on any currently named defendant(s) answering after this date.

****Please refer to the County website for Court specific rules and standard orders**:**

http://www.dallascounty.org/government/courts/civil_district/14th/

Counsel and Parties should pay particular attention to the Emergency Orders of the Supreme Court of Texas as well as the Emergency Orders of the Civil District Courts sitting in Dallas County and of this Court. Note that deadlines contained herein which refer to the Initial Trial Setting or of the date of filing shall **NOT** change when the trial setting is moved unless specifically noted in an Order of this Court.

DEADLINES SET FORTH BY THE COURT IN THIS ORDER MAY NOT BE AMENDED EXCEPT BY LEAVE OF THIS COURT.

SIGNED September 28, 2020



District Judge

cc: Counsel of Record/Pro Se Parties

CERTIFICATE OF SERVICE

I hereby certify that, on December 28, 2020, a true and correct copy of the above and foregoing has been served via electronic service on the following:

Ted B. Lyon, JR.
tblyon@tedlyon.com
Dennis Weitzel
dennis@tedlyon.com
TED B. LYON & ASSOCIATES, P.C.
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18601 LBJ Freeway
Mesquite, Texas 75150
*Attorneys for Real Party in
Interest Brian Loncar, P.C*

Tracy Graves Wolf
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Brent Sedge
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Andrew Katon
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**LEWIS BRISBOIS BISGAARD &
SMITH, LLP**
2100 Ross Avenue, Suite 2000
Dallas, Texas 75201
*Attorneys for Real Party in Interest
Brian Loncar, P.C.*

/s/ Marla Broaddus
Marla Broaddus

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below:

Brenda Mann on behalf of Marla Broaddus
Bar No. 24001791
bmann@enochkever.com
Envelope ID: 49252742
Status as of 12/28/2020 4:35 PM CST

Associated Case Party: TOBY TOUDOUZE

Name	BarNumber	Email	TimestampSubmitted	Status
Marla DBroaddus		mbroaddus@enochkever.com	12/28/2020 4:00:51 PM	SENT
Brenda Mann		bmann@enochkever.com	12/28/2020 4:00:51 PM	SENT
Nora LMata		nmata@enochkever.com	12/28/2020 4:00:51 PM	SENT

Associated Case Party: BRIAN LONCAR PC

Name	BarNumber	Email	TimestampSubmitted	Status
Tracy Graves Wolf	24004994	tracy.wolf@lewisbrisbois.com	12/28/2020 4:00:51 PM	SENT
Dennis Weitzel	21118200	dweitzel@tedlyon.com	12/28/2020 4:00:51 PM	SENT
Theodore B. Lyon	12741500	tblyon@tedlyon.com	12/28/2020 4:00:51 PM	SENT
Sean Higgins	24001220	sean.higgins@lewisbrisbois.com	12/28/2020 4:00:51 PM	SENT