No. 04-16-00675-CV

IN THE COURT OF APPEALS
FOR THE FOURTH DISTRICT OF TEXAS
SAN ANTONIO, TEXAS

TOM RETZLAFF,
APPELLANT

VS.

PHILIP R. KLEIN, KLEIN INVESTIGATIONS & CONSULTING AND JAMES W. LANDESS,
APPELLEES

On Appeal from the 73RD District Court
of Bexar County, Texas
Trial Court Cause No. 2014-CI-17145

APPELLEES' BRIEF

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APPELLEES REQUEST ORAL ARGUMENT

IDENTITY OF PARTIES AND COUNSEL

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

PARTIES	COUNSEL
Thomas Retzlaff *Appellant*	Pro Se P.O. Box 46424 Phoenix, AZ 85063-6424 (210) 317-9800
Philip R. Klein and Klein Investigations and Consulting *Appellees*	John S. Morgan Morgan Law Firm 2175 North Street, Suite 101 Beaumont, Texas 77701 Telephone: 409-239-5984 Facsimile: 409-895-2839 Attorney for Appellees
E.M. and V.B.M. *Plaintiffs*	Jeffrey L. Dorrell Hanszen LaPorte 11767 Katy Frwy., Suite 850 Houston, Texas 77079 (713) 522-9444 (713) 524-2580 facsimile
James W. Landess *Defendant*	Louis A. Wenzel Schmidt and Wenzel, P.C. 14350 Northbrook Drive, Suite 245 San Antonio, Texas 78232 (210) 340-5297 (210) 340-9088 facsimile

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TO THE HONORABLE COURT:

Appellees Philip R. Klein and Klein Investigations & Consulting file their Appellees' Brief.

STATEMENT OF THE CASE

Nature of the Case.

Plaintiffs are E.M. and V.B.M., represented by attorney Jeffrey Dorrell. The Defendants are Philip R. Klein, Klein Investigations & Consulting (collectively, Klein Appellees), and James W. Landess. Plaintiffs alleged they were defamed by Klein Appellees and by Landess. Specifically, Plaintiffs allege all Defendants published false statements that included: (1) Plaintiffs kidnaped Mr. Landess' children; (2) Plaintiffs interfered with a Bexar County child custody Order; and (3) V.B.M. was a wanted fugitive with an active warrant for her arrest.

Course of Proceedings.

Relevant to this appeal, Mr. Retzlaff (Retzlaff), Appellant, who is not a party or a witness in this case, or an Intervenor, and who works for Mr. Dorrell, filed several pleadings in this case without obtaining pre-filing authorization, notwithstanding that Mr. Retzlaff is a Vexatious Litigant.

Appellees filed a Motion to Strike all of Mr. Retzlaff's Unlawful Pleadings on September 13, 2016. CR V. 1, p. 426. Klein Appellees also filed a Motion for Contempt against Retzlaff, because Texas statutory law provides the Order declaring Retzlaff a Vexatious Litigant can be enforced through a contempt proceeding. CR V. 2, p. 450. On September 16, 2016, Retzlaff filed a Motion to Dismiss the Klein Appellees' Motion for Contempt of Court under the Texas Citizens' Participation Act (TCPA). On October 5, 2016, Klein Appellees filed their Opposition to Mr. Retzlaff's TCPA Motion to Dismiss. CR V. 2, p. 830. On October 10, 2016, the Klein Appellees filed an Amended Motion for Contempt against Mr. Retzlaff. CR V. 2, p. 830 On October 11, 2016, the trial court held a hearing on Klein Appellees' Motion to Strike Retzlaff's Unauthorized Pleadings, which was granted by Judge Arteaga. CR V. 2, p. 1331-32. Judge Arteaga's Order was then set aside by Judge Casseb on October 17, 2016, after Mr. Dorrell filed a Motion to Reconsider.

Retzlaff filed his Notice of Appeal on October 17, 2016, and this matter has been in the Court of Appeals since then. CR V. 2, p. 1331.

STATEMENT OF JURISDICTION

Klein Appellees contest jurisdiction in this Court. Retzlaff is neither

a party, nor a witness, nor an Intervenor in this case. He is a Vexatious Litigant, and he filed pleadings in this case at the trial court level and in this Court without complying with the pre-filing requirements for a Vexatious Litigant, Tex. Civ. Prac. & Rem. Code §11.001 *et seq*. (Appendix "1") Since Appellant did not comply with the mandatory pre-filing requirements to maintain this appeal, Retzlaff has no standing to pursue this appeal. The Klein Appellees also contest this Court has jurisdiction under Tex. Civ. Prac. & Rem. Code §51.014(a)(12) (Appendix "2"), because the TCPA, Tex. Civ. Prac. & Rem. Code §27.001 *et seq*. (Appendix "3") does not apply to the Klein Appellees' Motion for Contempt and Amended Motion for Contempt.

STANDARD OF REVIEW

Assuming Appellant could legitimately file a valid Motion to Dismiss under the TCPA (which Klein Appellees contest), and can legitimately invoke this Court's jurisdiction, the standard of review on appeal of a trial court ruling on the TCPA is de novo. *Walker v. Schion*, 420 S.W.3d 454, 457 (Tex. App. – Houston [14th Dist.] 2014, no pet.)

STATEMENT REGARDING ORAL ARGUMENT

Klein Appellees respectfully request oral argument. Appellant is a

Vexatious Litigant and pathological liar who practices law illegally with Mr. Jeffrey Dorrell. Their practice includes the regular use of terroristic threats and intimidation tactics. CR V. 3, p. 697; CR V. 1, pp. 293-96; CR V. 2, pp. 889-90; CR V. 2, pp. 915-928; CR V. 2, pp. 892-913. Appellant has, figuratively speaking, hijacked this case through his unlawful filings and this interlocutory appeal, in order to continue the third trial date scheduled by the trial court's Second Docket Control Order. Third Supplemental CR dated December 14, 2016, p. 683. Mr. Retzlaff's pleadings and his Brief are full of false statements and ad hominem arguments that are not relevant to any issue in this case. Oral argument should assist this Court in viewing Retzlaff's pleadings and this interlocutory appeal for what they are – a cynical method of delaying a trial date. Further, since Appellant's pleadings and his Briefs are full of false, defamatory statements and misrepresentations, oral argument will assist this Court in separating the facts from Appellant's fictional world.

STATEMENT OF FACTS

The underlying dispute was a divorce and child custody case involving V.B.M. and her ex-husband, Landess, and their two (2) children. V.B.M. is a Mexican national. Her current husband, E.M., is an American

citizen. The Bexar County custody Order permitted V.B.M. to return to Mexico after the divorce from Landess, with a requirement for V.B.M. to bring her children to the Mexican/American border for regular visitation with Landess, or permit Landess to visit his children in Mexico. After arriving in Mexico, however, V.B.M. ignored the Bexar County custody Order and went to a Mexican court, which gave her exclusive custody. V.B.M. then denied Landess any visitation. V.B.M. then refused to comply with the Bexar County custody Order, and she refused Landess visitation with his children. Landess subsequently hired Klein Appellees, which are in the business of international child rescue, in an effort to reunite Landess with his children.

The Bexar County District Attorney's Office indicted V.B.M. for the felony of interference with child custody, and also indicted her current husband, E.M. Klein Appellees are specialists in returning kidnaped children who have been taken out of the United States. E.M. was captured and jailed for a short time, when he entered the United States. V.B.M. was never arrested, because she did not attempt to re-enter the United States. Eventually, the Bexar County District Attorneys' Office dismissed the criminal charges against V.B.M. and E.M. Prior to the dismissal of the charges, Klein Investigations & Consulting

(Klein Investigations) posted on the internet a "Wanted Fugitive" Notice for V.B.M. This internet posting was taken down after Klein Investigations determined the criminal charges against V.B.M. and E.M. had been dismissed.

Plaintiffs filed an Original Petition, and then non-suited the case without prejudice. Plaintiffs then filed a new Original Petition in early November, 2014. Klein Appellees filed their Original Answer on or about November 24, 2014. CR, V. 3, p. 149 The Parties entered into an Agreed Docket Control Order on November 24, 2014. CR V. 3, p. 153 There have been three (3) trial settings in this case. After the trial court continued the second trial setting at the request of Mr. Dorrell on behalf of the Plaintiffs, the trial court ruled the court would grant no further continuances in this case. In an effort to postpone the third trial setting, Thomas Retzlaff, a Vexatious Litigant, who works for and with Jeffrey Dorrell in litigation (CR V. 1, pp. 270-291), began filing pleadings in this case on behalf of Plaintiffs. Appellant is neither a party nor a witness in this case. Appellant is not an Intervenor in this case. In short, Retzlaff has nothing to do with the facts of this case, other than as a pro se Appellant working for Mr. Dorrell, Plaintiffs' counsel.

The Klein Appellees filed a Motion to Strike all of Retzlaff's Pleadings

(CR V.1, p. 426), because Appellant did not comply with the pre-filing procedures under the Texas Vexatious Litigant statute that include: (1) obtain pre-filing permission from the Local Administrative Judge, Honorable David Peeples; and (2) post a bond set by Judge Peeples prior to filing Appellant's pleadings.

This lawsuit was set for a final trial in May, 2016. Klein Appellees were originally represented by the San Antonio law firm of Espey & Associates, PC, but Mr. Espey and his firm withdrew from representing Klein Appellees after receiving a threatening email from Appellant on behalf of Plaintiffs' counsel Mr. Dorrell, which caused Mr. Espey to withdraw out of fear for his physical safety, as well as out of fear for the physical safety of his family. Appellant and Mr. Dorrell have also sent several threatening emails to Undersigned Counsel and to Mr. Klein directly, using the pseudonym of "James Smith."[1] Many of these emails have been filed in this case's court records. Plaintiffs' live Petition is their Second Amended Original Petition, which was filed February

[1]Since Appellant works for Mr. Dorrell and his law firm (CR V. 1, pp. 270, 273) [(Appellant wrote: "Mr. Dorrell has asked me to handle this matter for him."); p. 286 (Appellant is identified as working for: "Requestor Company: Jeff Dorrell of Hanszen-Laporte Law Firm"); through p. 291 (the GoDaddy business records contain emails from Mr. Dorrell to Retzlaff and both of them to GoDaddy)], the direct contact by Retzlaff to Klein violates Tex. R. Prof. Conduct 4.02, entitled "Communication with One Represented by Counsel."

12, 2015. CR V. 1, p. 1.

SUMMARY OF ARGUMENT

Although Appellant's Brief is not a model of clarity, Appellant essentially raises the following issues. First, Appellant claims the TCPA overrules Texas law's restrictions on vexatious litigants codified at Tex. Civ. Prac. & Rem. Code §11.001, *et seq*. Appellant contends those statutory provisions allegedly interfere with Retzlaff's First Amendment Right to Freedom of Speech and to Petition the government.

This argument fails. The TCPA does not overrule the Texas Vexatious Litigant statute. Multiple Texas courts have held the Texas Vexatious Litigant statute is constitutional and does not unreasonably infringe on a vexatious litigant's First Amendment rights, because the vexatious litigant has court access if he or she complies with the pre-filing procedures authorized under the statute. These pre-filing procedures permit petitioning of the government through a court proceeding. If this Court accepts Appellant's overly broad interpretation of the TCPA, then the TCPA shall essentially overrule all aspects of Texas law which regulate a party's method of petitioning in court. Under Appellant's argument, the TCPA would effectively repeal the Texas

Vexatious Litigant statute. Moreover, a ruling in favor of Appellant could be interpreted to overrule multiple Texas Rules of Civil Procedure including, without limitation, Tex. R. Civ. P. 91 (Appendix "4"), entitled Special Exceptions (this rule of procedure can control contents in a party's pleadings that petition a court), a Motion to Dismiss under Tex. R. Civ. P. 91a (Appendix "5"), a Motion for Summary Judgment under Tex. R. Civ. 166a (Appendix "6"), a Motion in Limine, etc. The TCPA was not intended to overrule either certain procedural aspects of Texas law in court proceedings, or the pre-filing procedures under Texas' Vexatious Litigant statute. Simply put, the TCPA was never intended to permit a vexatious litigant unfettered access to the Texas legal system.

Moreover, the TCPA does not ordinarily apply to a defendant in a civil case. The Klein Appellees are Defendants in this case. The TCPA can only apply when a plaintiff files a new lawsuit or a pleading seeking affirmative relief against a defendant, or if a defendant files a pleading such as counterclaim or third-party petition seeking affirmative relief from a third party or a plaintiff. In this case, Klein Appellees have not filed a counterclaim or a third party claim against Appellant. In an effort to convince this Court the

Klein Appellees violated the TCPA, Appellant claims Klein Appellees' attorney John S. Morgan (Morgan) appeared Pro Se in this case, and in his alleged Pro Se capacity sought a contempt ruling against Appellant. This is false. The Klein Appellees' Motions for Contempt provide throughout the Motions the Klein Appellees were the party seeking contempt against Appellant for violating the Texas Vexatious Litigant statute. There was one (1) typographical error in the Klein Appellees' original Motion, stating the Klein Appellees' attorney John S. Morgan appeared pro se, but that one (1) typographical error was neither in the Klein Appellees' Motion for Contempt's title, introduction, main body, closing, nor in the Motion's Prayer for Relief. CR V. 2, pp. 450-60. Further, Morgan did not file any Notice of Appearance as a Pro Se litigant in this case. Morgan has not asserted any affirmative claims against Appellant. This Court has already removed Morgan's name as a pro se litigant from this Court's appellate Docket Sheet, after Appellant fraudulently informed this Court that Morgan was a pro se litigant.

Second, Appellant argues Klein Appellees' issuance of a Notice of Intent to Take Deposition Upon Written Questions of GoDaddy pursuant to Tex. R. Civ. P. 200 (Appendix "7") somehow forced Appellant to become a part of this

lawsuit. Appellant argues he must defend himself from Klein Appellees' discovery that allegedly is tailored towards him. This argument misrepresents the material facts. The Klein Appellees never propounded any discovery to Retzlaff. Instead, the Klein Appellees issued a Rule 200 Notice of Intent to Take Deposition Upon Written Questions in order to obtain admissible business records from GoDaddy. GoDaddy did not object to the production of its business records. Furthermore, neither Mr. Dorrell on behalf of the Plaintiffs, nor Appellant, timely filed any objections to Klein Appellees' Notice for a Deposition on Written Questions for GoDaddy's business records within the required ten (10) days of Tex. R. Civ. P. 200.3(b) (Appendix "8"). Accordingly, Appellant waived his right to object. Nevertheless, GoDaddy did not produce these business records in this case, due to the untimely Motions for Protection filed separately by Mr. Dorrell and Retzlaff. GoDaddy waited until another court overruled Appellant's untimely Motion for Protection for the same request for these business records, pursuant to an identical Rule 200 Notice of Intent to Take Deposition Upon Written Questions.

Since Klein Appellees obtained these GoDaddy business records in admissible form in another court proceeding (Appendix "9"); CR V. 1, pp. 270-

291, the Klein Appellees withdrew their Rule 200 Notice of Intent to Take Deposition Upon Written Questions from GoDaddy in this case. As such, any issues regarding that withdrawn Deposition Notice Upon Written Questions are **moot**. Further, Klein Appellees propounded no discovery to Appellant. Retzlaff could have either: (1) timely filed objections to Klein Appellees' discovery propounded to GoDaddy by following the pre-filing procedures of the Texas Vexatious Litigant statute; or (2) hired an attorney to timely file objections, if he had any valid objections. Klein Appellees' issuance of a Notice of Intent to Take Deposition Upon Written Questions from GoDaddy did not "invite" or require Appellant into the case, and did not overrule the pre-filing requirements for Retzlaff under Texas' Vexatious Litigant statute.

ARGUMENT AND AUTHORITIES

OVERVIEW OF THE TCPA

1) The TCPA protects only the legitimate exercise of a person's constitutional rights.

The Texas Citizen Participation Act (TCPA) is an anti-SLAPP statute, which is an acronym for "Strategic Lawsuits Against Public Participation." The statute's purpose is to prevent lawsuits from being filed "against politically and socially active individuals–not with the goal of prevailing on the

merits, but instead, of chilling those individuals' First Amendment Activities." *Cheniere Energy, Inc. v. Lotfi*, 449 S.W.3d 210 (Tex. App.–Houston [1st Dist.] 2014, no pet.). The Anti-SLAPP provisions in Texas law are codified at Tex. Civ. Prac. & Rem. Code §27.001, *et. seq*. The intended scope of these provisions is to defend the legitimate "exercise of the right of free speech," which Texas law defines as a "communication made in connection with a matter of public concern." § 27.001(3). A defendant loses constitutional protection for his or her speech if the communication is made with actual malice, knowledge of falsity, with reckless disregard for the truth or is otherwise unlawful. A matter of "public concern" includes "an issue related to: (A) health or safety; (B) environmental, economic or community well-being; [C] the government; (D) a public official or public figure... ." § 27.001(7).

The Texas legislature stated the TCPA's purpose "is to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law, and, at the same time, protect the rights of a person to file meritorious lawsuits for a demonstrable injury." §27.002. The TCPA is intended only to protect the legitimate expression of constitutional rights of

American citizens, and not to become a vehicle for unlawful or abusive activity. That is, the statute's purpose and its intended scope are to protect citizens' rights to "participate in government to the maximum extent permitted by law... ." *Rauhauser v. McGibney, et al*., No. 02-14-00215-CV; 2014 WL 6996819 (Tex. App. – Fort Worth 2014, no pet.).

2) The TCPA does not overrule the Texas Vexatious Litigant Statute, which has been repeatedly held constitutionally acceptable.

The central issue in this appeal is whether the Klein Appellees' (1) Motion to Strike All Pleadings Filed by Mr. Retzlaff, a Vexatious Litigant (CR V. 1, p. 426), or (2) Motion for Contempt and Amended Motion for Contempt (CR V. 2, pp. 450-60; CR V. 2, pp. 1075-1086), violate the TCPA. A necessary corollary to this issue is whether the TCPA legislatively overrules Texas' Vexatious Litigant statute, because the statutory provisions in Texas' Vexatious Litigant statute (*i.e.*, the pre-filing requirements for vexatious litigants) form the basis of both of Klein Appellees' Motions at issue.

These issues have already been answered adversely to Appellant. Texas' Vexatious Litigant statute, codified at Tex. Civ. Prac. & Rem. Code §11.001 *et seq*., has uniformly been held constitutional by Texas courts. The TCPA only prohibits persons from attempts to chill or stifle another person's

exercise of his or her constitutional rights. Since Texas' Vexatious Litigant statute is constitutional, Klein Appellees' motions to enforce this statute against Appellant cannot, as a matter of law, violate the TCPA. *See In Re: Potts*, 357 S.W.3d 766, 768 (Tex. App. – Houston [14th Dist.] 2011, no pet.) (vexatious litigant statute does not violate the Texas Constitution's Open Courts provision, or the Due Process Clauses of the state and federal Constitutions, because the statute's pre-filing procedures permits a vexatious litigant reasonable court access); *See also Johnson v. Sloan*, 320 S.W.3d 388, 389-90 (Tex. App. – El Paso 2010, pet. denied) (substantially similar holding); *Clifton v. Walters*, 308 S.W.3d 94, 101-02 (Tex. App. – Fort Worth 2010, pet. denied); *In Re: Johnson*, No. 07-07-0245-CV, 2008 WL 2681314 at p. 2 (Tex. App. – Amarillo 2008, orig. proceeding).

The *Potts* court reasoned the vexatious litigant's right to file meritorious litigation is constitutionally protected under the statute, by permitting the vexatious litigant to apply to the local administrative judge for (1) permission to file a lawsuit, and (2) to post a required bond. The *Potts* court ruled: "The purpose of the statute is to make is possible for courts to control their dockets rather than permitting courts to be burdened with repeated filings of frivolous

and malicious litigation by litigants, without hope of success while, at the same time, providing protections for litigants' constitutional rights to open courts when they have genuine claims that can survive the scrutiny of the administrative judge and the posting of security to protect defendants." *Id*. at 768, *citing In Re: Douglas*, 333 S.W.3d 273, 284 (Tex. App. – Houston [1st Dist.] 2010, pet. denied); Tex. Civ. Prac. & Rem. Code §11.102. Since Texas' Vexatious Litigant statute passes constitutional muster, Klein Appellees' attempts to enforce ths statute against Appellant's pleadings in this case cannot, as a matter of law, violate the TCPA.

3) Appellant is a Vexatious Litigant.

Thomas Retzlaff was declared a Vexatious Litigant by the Honorable Judge Karen Crouch on October 15, 2008, in Cause No. 338,432; *Thomas Retzlaff v. GoAmerica Communications Corporation, et al*; In the County Court at Law No. 3 of Bexar County, Texas. *See* Appendix "10," certified copy of Judge Crouch's Order. This finding of Mr. Retzlaff as vexatious was affirmed on appeal in *Retzlaff v. GoAmerica Communications Corp.*, 356 S.W.3d 689 (Tex. App. – El Paso 2011, no pet.). The *GoAmerica* court held: "In conclusion, the trial court's Order of June 26, 2008, which contained various

injunctive provisions, is vacated in toto... . The cause is remanded for further proceedings consistent with this Opinion. Nothing stated herein should be construed to case doubt on the trial court's conclusion that Retzlaff is a vexatious litigant or on the court's prohibition against Retzlaff filing any new litigation in this State. The cause is remanded solely for the purpose of disbursing of the remaining Defendants." *Id*. at 704. (emphasis added)

Mr. Retzlaff challenged his vexatious status on constitutional grounds in the *GoAmerica* decision. GoAmerica sought to declare Mr. Retzlaff vexatious due to the same type of threatening and abusive behavior he has demonstrated in this case. Similar to Appellant's threats throughout this case (that caused attorney Rick Espey to withdraw as attorney for the Klein Appellees), GoAmerica informed the trial court that the "continuing threats" of additional lawsuits and continuing threats to its personnel, together with pleadings that were "replete with vulgar language" required Mr. Retzlaff to be declared vexatious on an expedited basis. *Id*. at 693. In his sixth issue on appeal, Retzlaff challenged the constitutionality of the Vexatious Litigant statute. He argued the statute violated his First Amendment rights to Free Speech, to Petition and Freedom of Association, and the Due Process and

Equal Protection clauses of the U.S. Constitution. In ruling, the *GoAmerica* court was guided by the axiom that: "There is no constitutional right to file frivolous litigation." *Id*. at 702, *citing Wolfe v. George*, 486 F.3d 1120, 1125 (9th Cir. 2007). The court held the Texas Vexatious Litigant statute was not unconstitutionally vague, and it did not violate Retzlaff's First Amendment rights, or the Due Process and Equal Protection clauses of the U.S. Constitution. *Id*. at 704. The statute's pre-filing procedures guaranteed the vexatious litigant's constitutional rights. The court also noted the statute permits a vexatious litigant, such as Appellant, to obtain review of an Administrative Judge's decision, if the Administrative Judge denies a vexatious litigant a right to file a meritorious lawsuit. *Id*.; *citing In re: Johnson*, No. 07-09-0035-CV, 2009 WL 2632800 at pp. 1-2 (Tex. App. – Amarillo 2009, orig. proceeding); Tex. Civ. Prac. & Rem. Code §11.102(c) (expressly authorizing mandamus review of an administrative judge's denial of a vexatious litigant's request to file a meritorious lawsuit).

The *GoAmerica* court also held the trial court Order prohibiting Retzlaff from filing more litigation did not violate his First Amendment Right to Freedom of Speech or Petition, because Retzlaff's "false statements" and

"baseless litigation" are "not immunized by the First Amendment Right to Petition." *Id*. at 705, *citing Bill Johnson Restaurants, Inc. v. NLRB*, 461 U.S. 731 (1983). As such, the Order declaring Mr. Retzlaff a Vexatious Litigant did not violate his Right to Free Speech or Petition, or any other constitutional form of expression. *Id*., *citing Owens-Corning Fiberglass Corp. v. Baker*, 838 S.W.2d 838, 842-43 (Tex. App. – Texarkana 1992, no writ). While Appellant denies his Vexatious Litigant status, Mr. Dorrell, Retzlaff's litigation partner and employer, admitted in open court Appellant is, in fact, a Vexatious Litigant. RR V. 1, dated 10-7-2016, p. 18, lines 16-18.

Texas' Vexatious Litigant statute states a vexatious litigant who does not obtain permission of the local administrative judge prior to initiating "new litigation" "is subject to contempt of court." Section 11.101(b). Although the term "new litigation" is not statutorily defined, a reasonable interpretation of this provision should prohibit the multitude of court filings by Appellant, none of which were authorized by the Administrative Judge, and all of which were intended to do the following: (1) obtain a continuance of the trial date in violation of a trial court Order prohibiting a further continuance; and (2) harass Klein Appellees and their attorney of record, Morgan. Klein Appellees

did not sue Appellant in this case. Klein Appellees never propounded any discovery to Appellant. Retzlaff's pleadings, therefore, are the equivalent of sua sponte new litigation asserting affirmative claims against Klein Appellees and their counsel, Morgan.

4) Klein Appellees' Response to Appellant's false contents in his Statement of Facts.

Appellant stresses Morgan's alleged pro se status, which is entirely false. Appellant's cynical use of the TCPA, and use of the statute's provisions permitting an interlocutory appeal under Tex. Civ. Prac. & Rem. Code §51.014(a)(12) as a method to obtain another continuance on behalf of Plaintiffs, are also used by Retzlaff in his Opening Brief as a platform for defamation against Klein Appellees and their counsel.

There has been no Notice of Appearance by John S. Morgan as a pro se litigant in this case. Appellant falsely claimed the Klein Appellees' attorney appeared pro se, because Retzlaff's TCPA Motion to Dismiss could only theoretically apply **if** there was a new legal action against Appellant that sought affirmative relief, and that also violated Appellant's constitutional rights. Tex. Civ. Prac. & Rem. Code §27.003(b). In this case, Klein Appellees filed the pleadings at issue. Klein Appellees are the Defendants, not

independent plaintiffs asserting new grounds for relief. Klein Defendants' motions, therefore, do not trigger the TCPA. Accordingly, Retzlaff lied to this Court by claiming Morgan was a new, pro se plaintiff who triggered the TCPA's protections.

Appellant's Statement of Facts is essentially nothing but defamation and false statements impugning Mr. Klein, his attorney and James McGibney. Mr. Retzlaff's Brief states on page 12, the "Center of this maelstrom is James McGibney, operator of a revenge pornography/sexual blackmail website based in San Jose, CA... ." Mr. McGibney, like Retzlaff, is not involved in this case as either a party or a witness. Appellant falsely claims, "McGibney's attorney is John Morgan." Mr. McGibney's attorney in his Fort Worth litigation involving Mr. Dorrell and Retzlaff was Mr. Paul Gianni, who lost his associate attorney position at the Shannon Gracey Law firm after Appellant launched defamatory internet attacks against Shannon Gracey, to such an extent the law firm terminated Mr. Gianni as a way of stopping Retzlaff's internet defamation of the firm. Mr. McGibney's current attorney is Mr. Evan Stone. Mr. Morgan only represented Mr. McGibney for a very short period of time at the start of the

case.[2]

Appellant falsely claims the Klein Appellees' attorney "is notorious for filing SLAPPS around the case." The cases cited by Mr. Retzlaff, however, do not support his allegation. For example, the first case: *In Re: Does 1-2*, 337 S.W.3d 862 (Tex. 2011), was only a proceeding under Tex. R. Civ. P. 200, to investigate a possible lawsuit on behalf of Mr. Klein. That Rule 200 proceeding did not result in any lawsuits or any findings violative of the TCPA. The third case cited by Mr. Retzlaff, *Rauhauser, et al v. McGibney & Viaview*, No. 02-14-00215-CV; 2014 WL 6996819 (Tex. App. – Fort Worth 2014, no pet.) involved Mr. McGibney, who was represented in the underlying proceedings through the first appeal by Mr. Paul Gianni, formerly associated with Shannon Gracey Law Firm in Fort Worth, Texas. Mr. Evan Stone is currently the attorney for Mr. McGibney and Viaview in that case. Morgan filed the Original Petition on

[2]Mr. McGibney is not an operator of a revenge pornography/sexual blackmail website. On the contrary, Mr. McGibney cooperates with FBI and other law enforcement authorities to shut down revenge pornography and child porn websites. Mr. Klein has also been involved in shutting down these illegal websites. Mr. Retzlaff was one of the administrators of the websites www.texxxan.com and www.texxxans.com. The Klein Appellees' attorney Morgan represented several women in that case, and was successful in shutting down these child pornography and revenge pornography websites. Mr. Retzlaff, and on information and belief Mr. Dorrell, derived significant revenue from these illegal websites, and therefore they have targeted Mr. McGibney, Mr. Klein and Morgan with internet harassment, death threats, and vexatious litigation in an order to harass them as much as possible.

behalf of Plaintiffs, but dismissed the case upon client request and then withdrew immediately before any substantive proceedings occurred. The fourth case, *McGibney, et al v. Retzlaff*, 2015 U.S. Dist. LEXIS 79434 (N.D. Cal. 2015), in California, does not involve Morgan in any way. Morgan is not licensed to practice law in California. The attorney for Mr. McGibney in that California case was Mr. Jay Leiderman. Morgan has not met Jay Leiderman or even talked with him. The next case, *Johnson-Todd v. Morgan*, No. 09-15-00073-CV; 2015 WL 2255438 (Tex. App. – Beaumont, pet. denied) was the Ninth Court of Appeals dissolution of the trial court's temporary injunction order. That appeal did not involve the TCPA.

The **only** lawsuit Morgan handled that resulted in a court finding of a TCPA violation is the sixth one on Mr. Retzlaff's list, *Johnson-Todd v. Morgan*, 480 S.W.3d 605 (Tex. App. – Beaumont 2015, pet. denied), in which the Ninth Court ruled Morgan violated the TCPA by seeking to prevent Johnson-Todd from publishing sealed records and information about Morgan.[3]

[3]Mr. Dorrell, attorney for Ms. Todd, sought $132,000.00 in TCPA attorneys' fees against Mr. Morgan and $250,000.00 in sanctions on remand. The trial court, however, ordered $5,000.00 in fees, and a sanction of $2,500.00. Mr. Dorrell was so angry at this ruling that Retzlaff threatened the Judge. When that did not work, Mr. Dorrell moved to recuse the Judge, which Administrative Judge Olen Underwood denied and reprimanded Mr. Dorrell for filing a frivolous Motion to Recuse.

The seventh case, *Viaview, Inc. v. Retzlaff*, Cal. App. 5th 198 (2016), was in California and was handled by attorney Jay Leiderman. Again, Morgan is not admitted to practice law in California, and he had no involvement in that case. Appellant again lies to this Court by claiming Morgan was the attorney for McGibney when the trial court entered an order for approximately $450,000.00 in attorney's fees and sanctions against Mr. McGibney on or about April 14, 2016, in Fort Worth, Texas. The attorney at that time was, and remains on appeal, Mr. Evan Stone.

Appellant argues he was "involuntarily brought into the underlying lawsuit" when Morgan and Klein "served" "by fax" Arizona-based GoDaddy.com...", due to Klein Appellees' Deposition on Written Questions pursuant to Tex. R. Civ. P. 200. This is false for several reasons. First, the Klein Appellees propounded this discovery only to GoDaddy, to obtain certain GoDaddy business records in admissible form. Klein Appellees never propounded any discovery to Retzlaff. Second, Mr. Dorrell and Appellant did not timely file any objections to this Tex. R. Civ. P. 200 Notice to Take Deposition Upon Written Questions to GoDaddy. GoDaddy also filed no objections. GoDaddy produced the responsive business records in another

case (CR Vo. 1, pp. 270-291), demonstrating that contrary to the sworn Affidavit of Mr. Dorrell (CR V. 2, pp. 931-933), Mr. Dorrell and Mr. Retzlaff actually work together in litigation handled by Mr. Dorrell, and Appellant works for Mr. Dorrell and his law firm. In the GoDaddy records, they were working together to enforce portions of the judgment against Mr. James McGibney in the Fort Worth litigation. That is, the GoDaddy business records prove Mr. Dorrell, a licensed Texas attorney, works with Mr. Retzlaff, a Vexatious Litigant, multiple convicted criminal and pedophile, whose tactics include terroristic threats, extortion, bragging of ex parte communications with courts, and email and internet harassment, etc.

Contrary to Appellant's protestations, Klein Appellees never propounded any discovery to Mr. Retzlaff. The discovery at issue was propounded only for the business records of GoDaddy, and GoDaddy did not object to producing these documents. Appellant, therefore, was not "brought into" this litigation.

Appellant drones on about the validity of Klein Appellees' subpoenas issued pursuant to Tex. R. Civ. P. 200, ignoring that Plaintiffs' counsel, Mr. Dorrell, and also Appellant filed no timely objections to the Klein Appellees' GoDaddy business records subpoena within the required ten (10) business

days, as required under Tex. R. Civ. P. 200.3. No person or party filed any timely objections to the Klein Appellees' Rule 200 Notice to Take Deposition Upon Written Questions of GoDaddy. When these records were produced in one of the companion cases, Klein Appellees withdrew the GoDaddy Deposition Notice on Written Questions in this case. Accordingly, there is no pending Rule 200 Deposition Notice on Written Questions, for any trial court to rule on. Appellant's arguments on this issue, therefore, are irrelevant and moot.

REPLY ISSUE NO. 1

The Klein Appellees do not oppose the relief Mr. Retzlaff seeks in his Issue No. 1, even though Mr. Retzlaff is falsely representing this case's status.

Mr. Retzlaff's Issue No. 1 is puzzling. He argues the trial court (Judge Soloman Casseb) lacked authority to vacate Judge Arteaga's October 11, 2016 Order, in which Judge Arteaga granted the Klein Appellees' Motion to Strike All Pleadings Filed by Retzlaff, that were filed in violation of the pre-filing requirements of Texas' Vexatious Litigant statute. Judge Casseb vacated Judge Arteaga's Order on October 17, 2016, which is the same day Appellant filed his Notice of Appeal.

Appellant asks this Honorable Court to put back in place Judge

Arteaga's Order striking Retzlaff's pleadings, notwithstanding that Mr. Dorrell requested Judge Casseb vacate Judge Arteaga's Order, which Judge Casseb did. The Klein Appellees previously informed this Court that due to Judge Casseb's Order dated October 17, 2016, Appellant's TCPA Motion was neither denied nor stricken, because Judge Casseb set aside Judge Arteaga's Order striking all of Retzlaff's pleadings. Accordingly, Appellant's appeal is technically premature, because his TCPA Motion, although filed in violation of the Texas Vexatious Litigant statute, has neither been denied or stricken at the trial court level.

Appellant, however, wants to create a legal fiction that his TCPA Motion has been denied, by arguing against the validity of Judge Casseb's Order. Mr. Dorrell and Retzlaff did not attend the hearing before Judge Arteaga on October 11, 2016, and they did not contest the relief obtained by the Klein Appellees from Judge Arteaga. Instead, they forced the Klein Appellees' counsel to travel back to Bexar County again on October 17, 2016, in order for Mr. Dorrell to convince Judge Casseb to vacate Judge Arteaga's Order, even though neither Mr. Dorrell nor Mr. Retzlaff articulated any valid reason why they did not attend the hearing on October 11, 2016.

Appellant's Issue No. 1 does not state why Judge Casseb allegedly lacked jurisdiction to set aside Judge Arteaga's Order. Retzlaff claims there was an automatic stay by virtue of him filing his TCPA Motion, which he argues was technically denied when Judge Arteaga struck this Motion from the record, because it was filed in violation of the pre-filing requirements of Texas' Vexatious Litigant statute. There is no basis for claiming Judge Casseb lacked jurisdiction to set aside Judge Arteaga's Order, because: (1) only six (6) days elapsed between Judge Arteaga's Order and Judge Casseb's inconsistent, second Order; and (2) Retzlaff had not filed a Notice of Appeal for his TCPA claim, until after Judge Casseb ruled. Appellant, therefore, is incorrect by asserting "the procedural posture of this case is that Retzlaff's anti-SLAPP motion has been denied and Retzlaff's interlocutory appeal of that denial is now properly before this Court in the instant appeal." Retzlaff's Brief, p. 28. Appellant is also in error, because he has no right to file any interlocutory appeal, or any other appeal before the Fourth Court of Appeals, since he is a Vexatious Litigant who has not obtained permission from the Administrative Judge to file or pursue this appeal.

If this Court finds Appellant's pleadings have not been stricken by Judge

Casseb's second Order, this would have the unfortunate effect of further delaying this case's progress. The Parties would have to return to the trial court to reconsider all of the underlying motions that were pending or which would result in another interlocutory appeal and a longer time for this case to proceed to trial. Accordingly, Klein Appellees do not oppose this Court considering Mr. Retzlaff's appeal at this time.

REPLY ISSUE NO. 2

Mr. Retzlaff is a Vexatious Litigant.

Appellant argues he is not a Vexatious Litigant. This has been briefed *supra*. Mr. Dorrell, the litigation partner and employer of Retzlaff, told the court, in CR Vol. 1, p. 18, that Appellant is a Vexatious Litigant. *See also* Appendix "10," a certified copy of the court Order of Honorable Karen Crouch dated October 15, 2008, declaring Mr. Retzlaff vexatious. Appellant appealed this ruling. The El Paso Court of Appeals upheld the finding of Retzlaff as vexatious in *Retzlaff v. GoAmerica Corporation*, 356 S.W.3d 689 (Tex. App. – El Paso 2011, no pet.). The *GoAmerica* court rejected all of Mr. Retzlaff's arguments that the Texas Vexatious Litigant statute was unconstitutional, ruling the statute is constitutional. Appellant's litigation tactics, therefore, are

not constitutionally-protected activities. Mr. Retzlaff's claim he is not a Vexatious Litigant, therefore, is another falsehood to this Court.

REPLY ISSUE NO. 3

The Klein Appellees did not file suit against Appellant or propound any discovery to Appellant. Therefore, Retzlaff did not come "into court involuntarily."

Appellant is neither a party, nor a witness, nor an Intervenor in the underlying case. Appellant claims he was "dragged out of the chariot wheels of Morgan's lust for retribution when Morgan sought discovery of Retzlaff's personal business records and private email correspondence of no conceivable relevance in the case at bar." This statement is false on many levels. The progress of this case has been hampered by Appellant's terroristic threats for the purpose of scaring away attorneys for Klein Appellees. This tactic was successful in causing Mr. Rick Espey to withdraw as the attorney of record for the Klein Appellees. Appellees' current counsel, Morgan, has received a veritable avalanche of terroristic threats, extortion emails, and continual harassment and intimidation by Appellant. Klein Appellees submit Mr. Dorrell is using this litigation as a method to harass Klein Appellees, in violation of Tex. R. Civ. P. 13 (Appendix "11"), and Tex. Civ. Prac. & Rem. Code §11.001 *et*

seq.

1) Klein Appellees did not sue Appellant or propound any discovery to him. Klein Appellees, therefore, never sought discovery of Retzlaff's personal business records or private email correspondence.

Klein Appellees sought discovery of business records from GoDaddy pursuant to a Notice of Intent to Take Deposition Upon Written Questions with a business records affidavit under Tex. R. Civ. P. 200. Klein Appellees propounded this discovery on July 12, 2016. CR V. 1, p. 29 Under Tex. R. Civ. P. 200.3(a)&(b), any objections to this Notice, and any cross-questions, had to be filed "within ten days... " after Klein Appellees propounded their Notice under Tex. R. Civ. P. 200. GoDaddy did not object. Neither did Mr. Dorrell on behalf of Plaintiffs. Appellant also did not timely object. Instead, Retzlaff filed an untimely Motion to Quash on July 29, 2016. 1st CR, p.29 The GoDaddy business records were produced in another case, and Klein Appellees withdrew the Rule 200 Notice in this case.

These GoDaddy business records (Appendix "9") demonstrate conclusively Mr. Dorrell had lied in court when he had claimed to have no business or working relationship with Mr. Retzlaff. The GoDaddy records demonstrate Retzlaff and Mr. Dorrell do, in fact, work together on cases, and

Appellant works for Mr. Dorrell and his law firm (CR V. 1, pp. 270, 273, 286, through 291). These facts implicate Mr. Dorrell directly in Appellant's terroristic threats and internet harassment activities. The GoDaddy business records, therefore, support Klein Appellees' affirmative defense of unclean hands.

Klein Appellees disagree with Appellant's interpretation of the Vexatious Litigant statute, which in §11.001(5) defines a plaintiff as "an individual who commences or maintains a litigation pro se." Retzlaff claims, without citing any authority, that his pleadings are exempt from the statute's pre-filing requirements. Assuming Appellant had valid objections to the GoDaddy business records deposition notice (which he did not), Appellant certainly could have retained counsel to file an appropriate objection within ten (10) days. No objection by any party or person was filed within the ten (10) day time period of Tex. R. Civ. P. 200.3(b). Instead, Appellant filed a variety of untimely and incendiary pleadings in this case, as follows:

1. Nonparty Tom Retzlaff's Motion to Quash/Motion for Protection from Discovery and Request for Sanctions Against Klein Investigations for Violation of CPRC Ch. 27 Anti-SLAPP Discovery Stay – filed July 29, 2016 (CR V. 1, p. 35);

2. Supplement to Nonparty Tom Retzlaff's Motion to Quash and for

Sanctions – filed August 3, 2016 (CR V. 1, p. 116);

3. Second Supplement to Nonparty Tom Retzlaff's Motion to Quash and for Sanctions – filed September 12, 2016 (CR V. 1, p. 180);

4. Retzlaff's Motion to Dismiss and for Sanctions Pursuant to the Texas Citizens' Participation Act Regarding Klein's Motion for Contempt – filed September 16, 2016 (CR V. 2, p. 689);

5. Retzlaff's Motion for Telephonic Hearing – filed September 19, 2016 (Appendix "12");

6. Retzlaff's Brief in Support of his Request for Sanctions Against Philip Klein, Klein Investigations & Consulting and John Morgan – filed October 3, 2016 (CR V. 2, p. 728);

7. Retzlaff's Motion to Disqualify Opposing Counsel – filed October 6, 2016 (Appendix "13");

8. Retzlaff's Notice of Stay in Proceedings – filed October 7, 2016 (Appendix "14"); and

9. Retzlaff's Notice of Adoption and Joining of Plaintiff's Motion to Vacate – filed October 14, 2016 (Appendix "15").

Instead of obtaining counsel, Appellant filed eight (8) pleadings in this case, without even once seeking permission from the Administrative Judge of the District, in violation of Tex. Civ. Prac. & Rem. Code §11.003. This decision by Appellant is particularly puzzling, because the GoDaddy records demonstrate Appellant works for Mr. Dorrell, so certainly Mr. Dorrell could

have filed Appellant's various pleadings. That is, there was no necessity for Retzlaff to file any pleadings or motions in this case.

Contrary to Appellant's contentions, the Klein Appellees never requested any private emails or private information about Retzlaff. There are no privileged emails of either Appellant or Mr. Dorrell in their business dealings with GoDaddy. Retzlaff and Mr. Dorrell emailed GoDaddy repeatedly in a joint effort to abscond with Mr. McGibney's internet domains. During that process, Appellant identified himself several times as working for Mr. Dorrell and his law firm, with Mr. Dorrell copied on Appellant's emails. Together, they were trying to convince GoDaddy to confiscate Mr. McGibney's internet domains through the use of false statements to GoDaddy. Again, Appellant affirmatively told GoDaddy he works for Mr. Dorrell, and both men were included in the GoDaddy email chain.[4]

The Klein Appellees did **not** subpoena Appellant for deposition. The Klein Appellees did **not** issue a deposition notice on written questions to Appellant. The Klein Appellees did **not** propound any interrogatories or

[4]GoDaddy did not turn over Mr. McGibney's internet domains to Mr. Dorrell and Appellant, because the court records provided by Appellant and Mr. Dorrell to GoDaddy did not support Appellant's and Mr. Dorrell's request. Instead, GoDaddy "locked" the internet domains, because Appellant and Mr. Dorrell provided false information to GoDaddy.

requests for production of documents to Mr. Retzlaff. Klein Appellees' discovery was propounded solely to GoDaddy. A review of the GoDaddy records demonstrates that no possible privilege could apply, since Appellant identified himself to GoDaddy in writing as someone working for Mr. Dorrell and Hanszen LaPorte Law Firm. CR V. 1, pp. 270, 273, 286, through 291.

Appellant voluntarily filed pleadings in this Court, including this TCPA Motion, because, in Klein Appellees' opinion, Mr. Dorrell sought another continuance of the trial date, in order for Mr. Dorrell and Retzlaff to continue to post on their website, www.viaviewfiles.net, that Mr. Dorrell has sued the Klein Appellees for $8,000,000.00 in Bexar County, Texas. If Klein Appellees were permitted to go to trial and win this case outright, or even sustain a verdict substantially below the ridiculous amount Mr. Dorrell claims he will recover, then the ongoing damage occurring to Klein Appellees' business reputation by Appellant's continued publication about this alleged $8,000,000.00 lawsuit would cease. Klein Appellees assume Mr. Dorrell is cognizant it is extremely unlikely this case can achieve an $8,000,000.00 result. The most Appellant can accomplish in this harassment campaign, therefore, is to keep this litigation going for as long as possible without a trial.

Appellant's TCPA Motion accomplishes this objective of postponing the trial, because the TCPA qualifies for an interlocutory appeal.

2) Mr. Dorrell and Appellant have targeted Klein Appellees for defamation and litigation for many years.

For many years, attorney Jeffrey Dorrell has maintained a strange obsession with Philip Klein. Mr. Dorrell works with Appellant in internet harassment claims, internet stalking, terroristic threats, extortion, etc. Mr. Retzlaff, prior to filing this Motion, posted on the website www.viaviewfiles.net, run by Mr. Retzlaff (see Brittany Retzlaff Affidavit) (CR V. 2, pp. 849-885), a posting acknowledging he was a Vexatious Litigant and he was going to try to obtain $1,000,000.00 in sanctions against Mr. Klein and Undersigned Counsel. CR V. 2, p. 878. The website www.viaviewfiles.net is an extremely immature blog, calling for the death of Morgan, Mr. Klein, Mr. McGibney, and also viciously slandering all attorneys who work for Mr. Klein or Mr. McGibney. Pursuant to Tex. R. Evid. 201, Klein Appellees request this Court take judicial notice of this website's contents. The targeting of Mr. Klein's attorneys included Klein Appellees' former counsel, Rick Espey, Mr. Klein's civil rights attorney in Jefferson County, Mr. Larry Watts, as well as all the attorneys who have represented Mr. James McGibney. The reason for the hatred is because

Mr. McGibney and Mr. Klein have taken aggressive action to shut down child pornography and revenge porn websites that have been operated profitably by Appellant and his cohorts. *See* www.thomasretzlaff.com. The threats against Mr. Espey and his family are at CR V. 2, pp. 889-890. Death threats to Mr. Klein and his family are at CR V. 2, pp. 892-913. Threats against Morgan are at CR V. 2, pp. 915-928. Recently, Mr. Dorrell perjured himself in an Affidavit filed in the Ninth Court of Appeals, which is at CR V. 2, pp. 930-933. Mr. Dorrell claimed in his Affidavit to have no working relationship with Appellant. The business records from GoDaddy, however, prove Mr. Dorrell made several falsehoods in his Affidavit. Those records are at CR V. 1, pp. 270-291 (Appellant and Mr. Dorrell were jointly trying to defraud GoDaddy via email, and abscond with certain internet domains, and Appellant represents several times he works for Mr. Dorrell and the Hanszen LaPorte Law Firm). Mr. Retzlaff's internet article bragging about his employment status with Mr. Dorrell's law firm, and about the existence of the "Dorrell-Retzlaff Death Threats Team," are at CR V. 2, pp. 950-961. Mr. Klein's Affidavits, testifying as an Investigator that Appellant is the sender of all the terroristic emails at issue under the pseudonym "James Smith," are at CR V. 2, pp. 991-1023,

Appellant has posted on his www.viaviewfiles.net website the purpose of this case is to drive up Klein Appellees' insurance rates. That is why Mr. Dorrell will not present his clients for deposition in the State of Texas, will not bring them for mediation, and seeks only perpetual postponement of the trial date.

Consistent with these goals of prolonging this litigation and harassing Klein Appellees, Appellant sent an email to Rick Espey (CR V. 2, pp. 889-890), which threatened Mr. Espey's wife and his daughter, causing Mr. Espey to withdraw in fear from his representation of the Klein Appellees. Appellant has also sent numerous emails to Morgan, collectively attached at CR V. 2, pp. 915-928, in which Appellant repeatedly informed Morgan that court rulings by the Ninth Court of Appeals in Beaumont are fixed against him, that Mr. Dorrell has ex parte communications with the Ninth Court of Appeals, Mr. Dorrell has control over other courts in the State of Texas, and these emails also call for Morgan's death, either by suicide or by murder. The www.viaviewfiles.net website contains postings calling for Morgan's "murder" due to his representation of the Klein Appellees.

Appellant issued thirty-four (34) terroristic threats against Mr. Klein and

his family, threatening to kill him, his daughter, his son, his wife, etc. CR V. 2, pp. 892-913.

Appellant's TCPA Motion asks the trial court to ignore his Vexatious Litigant status and sanction Morgan and Klein $1,000,000.00 for seeking to enforce a court Order which is expressly enforceable via contempt. This motion is absurd, and it exemplifies the problems Appellant causes. Once Retzlaff becomes obsessed with harming someone, his tactic is to continually file pleadings, motions, and appeals, as well as to bombard his target with threatening emails, thus making it impossible for the victim's attorney to work other cases. This is precisely why Appellant was declared Vexatious. Appellant, due to the existence of the vexatious litigant Order, is not entitled to file any pleadings in Texas without prior approval.

Appellant asks this Court to follow a California case, *John v. Superior Court of Los Angeles*, 369 P. 3d 238 (Cal. 2016). In that case, the California court held California's Vexatious Litigant statute's pre-filing requirements did not apply to a vexatious litigant who sought to appeal an adverse judgment in an action **where the vexatious litigant was the defendant**. In this case, Appellant is not now, nor has he ever been, a defendant. The Klein Appellees

did not sue Appellant. The Klein Appellees did not propound discovery to Appellant. Instead, Appellant voluntarily injected himself into this case right before the case was set for trial. This interlocutory appeal postponed the trial date. The California cases cited by Mr. Retzlaff, which hold the pre-filing requirements of California's Vexatious Litigant statute do not apply "to a person involuntarily brought into court" [Appellant's Brief, p. 33], deal with situations where the vexatious litigant has actually been sued and is the defendant. That is not the case in this situation. This Court, therefore, should overrule Appellant's Issue No. 3.

REPLY ISSUE NO. 4

The Klein Appellees' Motions for Contempt are not "legal actions" within the meaning of the TCPA.

Mr. Dorrell and Mr. Retzlaff continually file TCPA motions in all cases involving Philip Klein, Mr. James McGibney or the Klein Appellees attorney, Morgan. In *John S. Morgan v. Sheryl Johnson-Todd*, 480 S.W.3d 605 (Tex. App. – Beaumont 2016, pet. denied), Mr. Dorrell filed a recent TCPA Motion, essentially claiming every motion filed by Morgan violates the TCPA, reasoning every motion impacts in some measure upon his client's Right to Petition a court. Specifically, Mr. Dorrell filed a TCPA Motion, arguing Morgan's Motions

for Sanctions against him and his client for making false statements to a tribunal violate the TCPA by infringing on his and his client's alleged constitutional right to tell falsehoods to courts. There is nothing in the TCPA that could possibly support such an overly broad interpretation in this case in favor of Appellant, particularly when a vexatious litigant has no constitutional right to lie to a court or file frivolous litigation. *Retzlaff v. GoAmerica Communications Corp.*, 356 S.W. 3d 689, 704 (Tex. App. – El Paso, 2011, no pet.).

1) Appellant, as a Vexatious Litigant, can be held in contempt for violating Texas' Vexatious Litigants statute.

As set forth *supra*, the TCPA's purpose is to prevent retaliatory lawsuits that chill the legitimate exercise of a person's First Amendment Rights. A Motion for Contempt is neither retaliatory nor a lawsuit, within the meaning of the TCPA. There is a valid Court Order affirmed on appeal declaring Mr. Retzlaff vexatious, which can be enforced via a contempt proceeding. Tex. Civ. Prac. & Rem. Code §11.101(b). Since the court Order declaring Mr. Retzlaff vexatious permits a contempt proceeding for enforcement via statute, Klein Appellees engaged in their First Amendment Right to Petition by seeking to enforce the court's Order declaring Appellant vexatious, that was affirmed on

appeal.

Klein Appellees' Motions for Contempt are not retaliatory against Mr. Retzlaff. Appellant is a Vexatious Litigant, who routinely sends death threats and engages in internet terror campaigns, as well as administers a website that contains deranged contents, www.viaviewfiles.net. Klein Appellees sought to protect themselves from Appellant's harassment and frivolous pleadings. There is no case law holding a defendant seeking to enforce a valid court order violates the TCPA.

2) The judicial communications privilege does not negate the court Order ruling Appellant is a Vexatious Litigant.

Appellant falsely claims the *GoAmerica* court overturned the court Order declaring him vexatious. The Klein Appellees have previously demonstrated that is a false statement.

Appellant claims the judicial communications privilege provides him a valid defense against the Klein Appellees' Motions for Contempt. Appellant cites *James v. Brown*, 637 S.W.2d 914, 916 (Tex. 1982), which holds statements made in the due course of judicial proceedings cannot serve as the basis for a civil lawsuit. **The Klein Appellees have not filed a civil lawsuit against Appellant based on his filings in violation of the court Order**

declaring him vexatious. The Klein Appellees are merely seeking to enforce a valid court Order, pursuant to §11.101(b).

Retzlaff references a case involving Undersigned Counsel, *Johnson-Todd v. Morgan*, 480 S.W.3d 605 (Tex. App. - - Beaumont 2015, pet. denied), in which the Ninth Court of Appeals ruled Morgan violated the TCPA statute by filing a lawsuit against his ex-wife's attorney who published sealed documents and information pertaining to Morgan. The Ninth Court's Opinion does not rule an effort to enforce a court Order declaring a litigant vexatious violates the TCPA. Accordingly, *Johnson-Todd* has no applicability to the facts of this case.

Likewise, the TCPA has no provisions supporting Appellant's argument that filing a Motion for Contempt, which is expressly authorized under §11.101(b) of the Texas Vexatious Litigant statute, can violate the TCPA. In order for this Court to arrive at such a holding, this Court would have to necessarily hold the TCPA legislatively overruled or repealed the Texas Vexatious Litigant statute. Such a holding would necessarily require this Court finding the Texas Vexatious Litigant statute is unconstitutional, which is contrary to multiple courts which upheld the statute's constitutionality. *See*

citations *supra*.

Klein Appellees followed the Texas Vexatious Litigant statute as worded, and filed a Motion for Contempt against Appellant, because he did not fulfill the pre-filing requirements under the Vexatious Litigant statute prior to filing any of Appellant's eight (8) court filings in this case. Following the law cannot violate the TCPA.

Furthermore, the TCPA applies only to new legal actions asserted by a plaintiff or a defendant asserting a counter claim or third-party complaint. *See e.g., In re Estate of Check*, 438 S.W.3d 829, 836 (Tex. App. – San Antonio 2014, no pet.); *Bacharach v. Garcia*, 485 S.W.3d 600, 602 (Tex. App. – Houston [14th Dist.] 2016, no pet.). The Klein Appellees are among the Defendants in this case. In order to create the fiction that somehow Appellees' Motion for Contempt was filed by a plaintiff (when it was not), Appellant and Mr. Dorrell both falsely claimed Klein Appellees' attorney Morgan appeared pro se in Klein Appellees' Motion for Contempt.[5] Klein Appellees have previously addressed this issue in their Motion to Remove Designation of their Attorney as Appellee. This Court ruled on October 21, 2016, that Morgan is not a pro se litigant in

[5]Mr. Dorrell asserted this argument to Judge Casseb, who did not accept Mr. Dorrell's argument.

either this case or in this appeal. As such, Morgan did not appear as a pro se litigant in this case.

Appellant's reliance on *Johnson-Todd v. Morgan*, 480 S.W.3d 605, 611 (Tex. App. – Beaumont 2015, pet. denied), is misplaced. In that case, Morgan was the plaintiff, and Johnson-Todd was the defendant. Johnson-Todd filed a TCPA Motion to Dismiss. The Ninth Court held simply that Johnson-Todd was petitioning the court when she disseminated sealed information and records of Morgan, thereby literally unsealing those records. Although Morgan respectfully disagrees with the Ninth Court's holding that Todd was petitioning the court (because Todd was representing her client and therefore only her client was petitioning the court), the court's ruling in no way applies to Appellant's situation in this case. Ms. Johnson-Todd was a defendant in Morgan's pro se action, while in this case Appellant is not a party, not a witness, not a defendant, and Klein Appellees did not propound any discovery to him. Appellant simply chose to appear pro se without seeking pre-filing authority, in violation of Texas' Vexatious Litigant statute.

REPLY ISSUE NO. 5

Klein Appellees are statutorily authorized to file a Motion for Contempt against Retzlaff for violating Texas' Vexatious Litigant statute under Tex. Civ. Prac. & Rem. Code §11.101(b).

Appellant argues Appellees' Motion for Contempt could not have been successful for a variety of reasons. This Court should ignore those arguments, because those issues are not ripe. Klein Appellees' Motion for Contempt was never heard by the trial court, and thus it has neither been granted nor denied.

The Klein Appellees have a statutory right to file a Motion for Contempt, because Tex. Civ. Prac. & Rem. Code §11.101(b) provides a vexatious litigant "who disobeys an order under subsection (a) [the pre-filing requirements for vexatious litigants] is subject to contempt of court." The Klein Appellees' Motion to hold Appellant in Contempt, therefore, is statutorily authorized under Texas' Vexatious Litigant statute.

As previously stated, Appellant literally terrorized Klein Appellees' first attorney, Rick Espey, to such an extent that Mr. Espey withdrew from representing the Klein Appellees, out of fear for the safety of himself, his wife and his daughter. Appellant and Mr. Dorrell have made it a goal to try to remove all attorneys from representing Klein Appellees, for the goal of leaving

Klein Appellees without counsel. Appellant's Brief, p. 38, requests this Court rule that Klein Appellees' current attorney, Morgan, and also the attorney for Defendant Landess, Mr. Louis Wenzel, who has no role in the present appeal, "MUST be removed from this case upon remand by this Court due to State Bar rules." Appellant provides no State Bar rules requiring the removal of either Morgan or Mr. Wenzel. There is no disciplinary rule violation when an attorney follows the specific requirements of Tex. Civ. Prac. & Rem. Code §11.101(b), by filing a Motion for Contempt on behalf of his client. Appellant's argument is nonsensical. Furthermore, Klein Appellees sought civil contempt, and not criminal contempt, against Appellant. The Klein Appellees are not the Bexar County District Attorney. Only the District Attorney of Bexar County is authorized to file criminal proceedings or to pursue criminal charges against Retzlaff. The Klein Appellees filed a motion for civil contempt, asking for appropriate fines, jail time (which can be ordered for civil contempt) and sanctions in the court's discretion. At no time did the Klein Appellees attempt to become the Bexar County District Attorney's Office.

Appellant argues his violations of Texas' Vexatious Litigant statute require him being held in constructive contempt, but not held in direct

contempt, citing *Johnson v. Clark*, No. 07-11-00122-CV; 2011 WL 5118775 (Tex. App. – Amarillo, October 28, 2011, no pet.). In *Johnson*, the court held constructive contempt occurs when the party defending the contempt proceeding is given notice of the contempt hearing, an opportunity to be heard, and an opportunity to obtain an attorney. Similar to this case, the *Johnson* court dealt with a vexatious litigant. The trial judge issued an Order of Contempt against Johnson, the vexatious litigant, which the Court of Appeals vacated. The Court of Appeals ruled the trial court erred in holding Johnson directly in contempt, and instead Johnson had to be held in constructive contempt. The court reasoned that contemptuous conduct is a direct contempt of court if it occurs within the presence of the trial court, but contemptuous conduct is constructive contempt if it occurs outside the court's presence. *Id, citing Ex Parte Gordon*, 584 S.W.2d 686, 688 (Tex. 1979) (orig. proceeding). A vexatious litigant's filing unauthorized pleadings occurs outside the court's presence.

In this case, it is abundantly clear Klein Appellees' Motion for Contempt was a motion for constructive contempt, because Klein Appellees requested a hearing, provided notice to Appellant, and were prepared to let Appellant

testify and then to cross-examine Appellant about his unauthorized court filings, all of which would have given Appellant an opportunity to be heard. Judge Arteaga did not hold Retzlaff in direct contempt of court. In fact, Judge Arteaga did not hold Appellant in contempt.

Klein Appellees' Motion for Contempt was properly noticed for hearing, and nothing prevented Appellant from hiring an attorney to defend the contempt allegations. When Appellant did not shop up for the hearing, Judge Arteaga declined to hear Klein Appellees' Motion for Contempt, because Appellant was not present. As such, Klein Appellees sought to hold Retzlaff in constructive contempt, and asked the trial court to hear the evidence and make a final ruling whether Appellant was in contempt of court. Appellant's failure to appear at the hearing caused the trial court to pass the hearing.

1) Appellant's arguments regarding alleged defects in Klein Appellees' Motion and Amended Motion for Contempt are not ripe.

The remainder of Appellant's arguments regarding civil contempt proceedings versus criminal contempt are both redundant and irrelevant to this appeal. Since Klein Appellees' Motion and Amended Motion for Contempt were not heard by Judge Arteaga, these arguments are premature and not ripe. Assuming the Klein Appellees' Motion and Amended for Contempt was

defective in some way (which Appellees deny), Appellant could have presented those alleged defects and argued those points to the trial court, which could have issued a ruling on Appellant's objections. Appellant is asking this Court to issue an advisory ruling regarding the merits or lack of merits of the Klein Appellees' Motions for Contempt. Since the trial court never heard Klein Appellees' Motions for Contempt, these issues are not ripe for adjudication.

Ripeness is a component of a court's subject matter jurisdiction. *Robinson v. Parker*, 353 S.W.3d 753, 755 (Tex. 2011). To evaluate ripeness, a court must consider "whether at the time a lawsuit is filed, the facts are sufficiently developed 'so that an injury has occurred or is likely to occur, rather than being contingent or remote... .'" *Waco Independent School District v. Gibson*, 22 S.W.3d 849, 851-52 (Tex. 2000), *quoting Patterson v. Planned Parenthood of Houston*, 971 S.W.2d 439, 442 (Tex. 1998). In this case, Appellant's arguments that characterize Klein Appellees' Motions for Contempt as an impermissible criminal contempt proceeding is simply not ripe for review. Without a trial court ruling on Appellant's objections, the facts are not sufficiently developed for this Court to determine whether an injury had occurred or was likely to occur. That is, any alleged prejudice to Appellant, if

any, due to any alleged defects in Appellees' Motion for Contempt, if any, are at this time contingent or remote. Accordingly, these issues are not ripe for appellate review. *Id*; *Riner v. City of Hunters Creek*, 403 S.W.3d 919 (Tex. App. – Houston [14th Dist.] 2013, no pet.).

REPLY ISSUE NO. 6

The Klein Appellees' Motions for Contempt do not violate the TCPA.

Mr. Dorrell and Appellant file TCPA motions repetitively, in multiple states, in response to virtually every motion or proceeding filed by Mr. Dorrell's opponents. The standard refrain is that all motions filed by a party in the context of litigation relate in some measure to the opposing party's exercise of his or her First Amendment Right to Petition. In a very general sense, that statement is a truism. In court, every pleading constitutes a petition to the court. Any motion filed, such as special exceptions, a motion for summary judgment, a motion for sanctions, a motion for contempt, etc., necessarily seeks to limit the other party in some manner in that party's expression of his or her Right to Petition, because the moving party contends the opponent is either violating a rule of civil procedure, violating a Texas statute, has a baseless lawsuit, etc.

Appellant relies on this general truism, that all pleadings in all cases somehow implicate a litigant's right to petition, to assert his argument that a party seeking to enforce Texas' Vexatious Litigant statute through a motion for contempt violates the TCPA, and should therefore be held liable for attorney's fees and a sanction. To accept this argument, this Court must find the TCPA legislatively overruled, or severely limits, Texas' Vexatious Litigant statute, to such an extent to make it unenforceable. Appellant cites no authority to support this radical interpretation of the TCPA. Furthermore, since multiple courts have held Texas' Vexatious Litigant statute is constitutional (because the Vexatious Litigant, such as Appellant, has a right to petition the Administrative Judge to pre-approve his court filings), there is no basis to conclude the TCPA overruled Texas' Vexatious Litigant statute.

This is particularly important, because Appellant's Motion for Protection and other pleadings were untimely under the ten (10) day window for filing proper objections to the GoDaddy discovery under Tex. R. Civ. P. 200.3(b). Since Appellant was untimely in his attempt to curtail Klein Appellees' discovery to GoDaddy, Appellant petitioning the Administrative Judge, Honorable David Peeples, for permission to file and for posting of a bond,

would have not affected the timeliness of Appellant's pleadings. Furthermore, if Appellant had sought permission from Judge Peeples and posted a required bond, the Klein Appellees would have had no basis to seek contempt against Retzlaff pursuant to §11.101(b).

Appellant cites *Watson v. Hardman*, No. 05-15-01355-CV, 2016 WL 3626091 (Tex. App. – Dallas 2016, no pet.). The *Watson* case supports Klein Appellees' position. In *Watson*, the movant filed a TCPA Motion to Dismiss in a separate lawsuit, not in the underlying Tex. R. Civ. P. 202 (Appendix "6") proceeding, which is a legal proceeding to investigate a possible lawsuit. The TCPA movant sought to dismiss the plaintiff's defamation claims against him in the separate lawsuit, arguing the claims violated his TCPA protected Right to Petition, because they were based in part on statements made by the movant in a Rule 202 Petition. The Court of Appeals held the TCPA movant demonstrated his opponent's defamation claims were based on his protected Right to Petition. The court held a Rule 202 Petition constitutes a judicial proceeding within the meaning of the TCPA, and therefore statements made in a Rule 202 Petition are part of a person's constitutional Right to Petition. The court also determined the non-movant's claims should have been

dismissed, because they were barred by the defense of judicial communications privilege, because the comments at issue were contained in a Rule 202 Petition.

In this case, the Klein Appellees' Motion for Contempt and Amended Motion for Contempt were not separate lawsuits, or a Tex. R. Civ. P. 202 proceeding, that contained any defamation of Retzlaff. Appellant's Brief, p. 51, quotes from the Klein Appellees' Motion for Contempt, Count Nos. 1, 2, & 3. It is clear from this quotation the Klein Appellees' Motion for Contempt recited only that Appellant should be held in contempt for violating the Order declaring him a Vexatious Litigant by filing the following pleadings without approval of the Administrative Judge:

1. Nonparty Tom Retzlaff's Motion to Quash/Motion for Protection from Discovery and Request for Sanctions Against Klein Investigations for Violation of CPRC Ch. 27 Anti-SLAPP Discovery Stay – filed July 29, 2016;

2. Supplement to Nonparty Tom Retzlaff's Motion to Quash and for Sanctions – filed August 3, 2016; and

3. Second Supplement to Nonparty Tom Retzlaff's Motion to Quash and for Sanctions – filed September 12, 2016.

Klein Appellees did not file a separate lawsuit for damages against Appellant. Klein Appellees' Motions for Contempt were filed in the underlying

case on the basis of Appellant's violation of the Order declaring him Vexatious, not because Appellant had asserted a defamation claim against the Klein Appellees.

The illogic of Appellant's argument becomes very apparent if this Court considers this situation in reverse. That is, hypothetically if this Court rules a motion for contempt, even when it is statutorily authorized, violates the TCPA, then Mr. Retzlaff's three (3) motions identified above would also violate the TCPA, because it is abundantly clear they were filed in retaliation for Klein Appellees' constitutional Right to Petition the court by propounding a Deposition Notice Upon Written Questions to GoDaddy under Tex. R. Civ. P. 200. This creates a conundrum. If the TCPA is construed to hold that every pleading filed in every court proceeding violates the TCPA, because the fundamental basis underlying every pleading is to limit or effect an opposing party's expression of their Right to Petition, then the TCPA will effectively overrule all of the Texas Rules of Civil Procedure and virtually every other Texas law that is a basis of a lawsuit or a motion seeking relief in court.

Appellant then argues he had an absolute judicial communications privilege, citing several cases on pages 53 and 54 of his Brief, to file pleadings

in violation of his vexatious status. This argument was directly addressed and rejected by the *GoAmerica* court, which held, among other things, Texas' Vexatious Litigant statute does not violate Appellant's right to Free Speech or Right to Petition. The judicial communications privilege stems from the First Amendment Right to Petition. The judicial communications privilege, therefore, does not support Appellant's argument. There is nothing in Klein Appellees' Motions for Contempt which specifically attacks or seeks retaliation against any defamatory, false statement made by Appellant in his various pleadings. Klein Appellees only sought only to enforce the Order declaring Retzlaff vexatious, to hold Appellant in contempt because he deliberately chose to violate Tex. Civ. Prac. & Rem. Code §11.101, by not seeking approval from Judge Peoples before filing his pleadings.

If Appellant's arguments are accepted by this Court, then no party will be able to enforce any court Order declaring a litigant vexatious. All motions for contempt under Tex. Civ. Prac. & Rem. Code §11.101(b) would violate the TCPA. This would cause the judicial overturning of Texas' Vexatious Litigant statute, and would set Appellant and other vexatious litigants free to clog up any and all cases they choose to clog up, with cynical filings, letters to judges

and mediators containing curse words, terroristic threats sent via email, and like or similar mis-behavior exhibited by Appellant in this case.

REPLY ISSUE NO. 7

John S. Morgan, Klein Appellees attorney, did not appeared Pro Se and did not file suit against Appellant.

Appellant's argument for his Issue No. 7 begins with more defamatory statements against the Klein Appellees and their counsel, Morgan. Klein Appellees' original Motion for Contempt contained one typographical error, which stated "Morgan, pro se" in the motion's body. The title of the Motion for Contempt, the body of the Motion, the Prayer for Relief, the Signature Bar and the Certificate of Service all clearly reflect Morgan was appearing as an attorney on behalf of the Klein Appellees. In fact, Klein Appellees' Motion for Contempt states the movants are the Klein Defendants approximately twenty-three (23) times. Klein Appellees' Amended Motion for Contempt corrected that one (1) typographical error at issue.

Further, the trial court's Docket Sheet contains no filings demonstrating Morgan appeared Pro Se. Morgan filed a Motion with this Court on October 19, 2016 asking the Court to rule that Morgan is not a pro se litigant in this case. One typographical error does not constitute a pro se appearance. Further, this

Court ruled that Morgan is not a pro se litigant in this case.

Appellant then points to various portions in the Klein Appellees' Motion for Contempt, where Appellees sought recovery of attorney's fees in Morgan's individual name, as the attorney for the Klein Appellees. Morgan was entitled to seek a court Order for payment of attorney's fees to him directly after a finding of contempt for Appellant, if any, since Morgan is the attorney of record for the Klein Appellees. This does not constitute a pro se appearance, or a pro se lawsuit, by Morgan. Further, Appellant's complaints regarding specific portions of Klein Appellees' Motions for Contempt are not ripe for this Court's review, because Klein Appellees' Motions for Contempt have never been ruled on by the trial court.

Appellant's reliance on *Rauhauser v. McGibney*, No. 02-14-00215-CV, 2014 WL 6996819 (Tex. App. – Fort Worth 2014, no pet.), is also misplaced. In that case, McGibney non-suited the Plaintiff's Original Petition almost immediately. Mr. Rauhauser had not yet been served when Morgan non-suited Plaintiff's Original Petition. Mr. Rauhauser, without service, filed an answer literally a few hours before Mr. McGibney dismissed his lawsuit, however, on the same day. Morgan then withdrew as the attorney on behalf of Mr.

McGibney and his company, and the Texas litigation was handled by attorneys Mr. Paul Gianni and Mr. Evan Stone, both of whom received terroristic threats, email and internet harassment, by Appellant on his webblog www.viaviewfiles.net.

Klein Appellees' Amended Motion for Contempt only took out the one (1) statement "Morgan pro se." The Klein Appellees still have a right to enforce Texas' Vexatious Litigant statute against Appellant, because Texas' Vexatious Litigant statute has been declared constitutional by multiple Texas courts. In short, Klein Appellees have not abandoned their contempt claim against Appellant by correcting one typographical error in their original Motion for Contempt.

REPLY ISSUE NO. 8

The TCPA is not applicable to Appellees' Motion for Contempt against Appellant. Therefore, Retzlaff did not have a burden under the TCPA to present by a preponderance of the evidence each essential element of any alleged, valid defense to Klein Appellees' Motion for Contempt.

Similar to Appellant's other arguments, this argument necessarily assumes: (1) Klein Appellees' Motions necessarily violate the TCPA; and (2) the TCPA overrules Texas' Vexatious Litigant statute. For the reasons briefed above, Klein Appellees reiterate their Motions for Contempt against Appellant

do not violate the TCPA for several reasons, the most important of which is that Appellees have a statutory right under Texas' Vexatious Litigant statute to seek contempt against Appellant for his unauthorized court filings. Tex. Civ. Prac. & Rem. Code §11.101(b). Since Texas' Vexatious Litigant statute has been held constitutional repeatedly, Klein Appellees' original Motion and Amended Motion for Contempt do not violate Appellant's constitutional rights to either Free Speech, Petition or Association, which are protected under the TCPA, §27.005(b).

Appellant relies on *In re: Lipsky*, 411 S.W.3d 530, 542 (Tex. App. – Fort Worth, 2013, orig. proc.), *mandamus denied*, 460 S.W.3d 579 (Tex. 2015), to argue his violation of the Texas Vexatious Litigant statute is protected under the TCPA. This argument is absurd. The case *In re: Lipsky* considered whether a TCPA motion to dismiss was timely when it was filed in response to new allegations in a counterclaim that defamed an environmental services contractor. *Lipsky* did not address a vexatious litigant's rights, if any, under the TCPA, and *Lipsky* did consider any facts remotely analogous to the facts at issue in this case.

The remainder of authority cited by Appellant in his Brief, p. 63-64, do

not hold a party seeking to enforce Texas' Vexatious Litigant statute violates the TCPA. Klein Appellees are not aware of any court ever making such a ruling. Likewise, none of Appellant's cited cases hold the TCPA permits a vexatious litigant to avoid the pre-filing requirements of Texas' Vexatious Litigant statute. That is, Appellant has not cited a single case which would permit him to file unauthorized pleadings in this case.

Furthermore, Appellant has no judicial communication privilege. Klein Appellees did not file suit against Retzlaff based on any statement Appellant made in court. Klein Appellees merely sought to enforce the court Order declaring Appellant vexatious, pursuant to the contempt procedure authorized by statute. Tex. Civ. Prac. & Rem. Code § 11.101(b). In short, there is no "communication" to the court by Appellant that is subject to a separate defamation suit by the Klein Appellees.

REPLY ISSUE NO. 9

The Klein Appellees are not required to marshal "clear and specific evidence" in support of their Motions for Contempt to enforce the Texas Vexatious Litigant statute against Appellant.

Appellant's argument under Issue No. 9 suffers from the same fatal defect as his other arguments. Appellant assumes the TCPA applies for Klein

Appellees' Motions for Contempt, and the TCPA overrules Texas' Vexatious Litigant statute. Since that argument has no basis in law or in fact, the remainder of Appellant's argument under his Issue No. 9 is nonsensical and does not need to be addressed.

That being said, Klein Appellees have, in fact, provided very strong and compelling evidence that Appellant violated the pre-filing requirement of the Texas Vexatious Litigant statute, Tex. Civ. Prac. & Rem. Code §11.101 et seq. Klein Appellees established: (1) Judge Karen Crouch in a Court Order declared Mr. Retzlaff a Vexatious Litigant; (2) Judge Crouch's Order was affirmed on appeal; (3) Mr. Retzlaff filed multiple pleadings in this case without complying with the statutory pre-filing requirements – Appellant did not produce or file any authorization from Judge Peeples to file his pleadings, and Appellant did not post a bond; and (4) Mr. Retzlaff was neither a defendant nor a party when he filed his pleadings. As such, Appellant was not exempt under Texas' Vexatious Litigant statute to avoid the statute's pre-filing requirements. This evidence supports fully Klein Appellees' Motions for Contempt against Appellant.

Appellant argues these facts are insufficient to defeat his TCPA Motion to

Dismiss, which necessarily assumes Mr. Retzlaff's Motion has any merit. This Court need not consider Appellant's argument, because Appellant's TCPA Motion to Dismiss has no basis in law or in fact, and is instead intended to serve as a platform for more defamation against Klein Appellees and their attorney Morgan, and to obtain another postponement of the trial date, so Mr. Dorrell and Retzlaff can continue to publish on their webblog www.viaviewfiles.net the Klein Appellees are being sued for $8,000,000.00 in Bexar County, Texas.

REPLY ISSUE NO. 10

Appellant's Motion for Protection from Klein Appellees' Notice to Take Deposition Upon Written Questions of GoDaddy under Tex. R. Civ. P. 200 is moot, because Klein Appellees withdrew their discovery request for these GoDaddy business records in this case, since the same business records were produced in admissible form in a different case.

Appellant asks this Court to rule the trial court abused its discretion in denying Appellant's untimely Motions for Protection. This argument is absurd. The trial court did not rule on Appellant's Motion for Protection. Second, Appellant's Motions for Protection were untimely and missed the ten (10) day window under Tex. R. Civ. P. 200.3 for filing any objections to the Klein Appellees' Rule 200 Notice of Intent to Take Deposition Upon Written

Questions of GoDaddy. Third, the Klein Appellees withdrew their Rule 200 Notice to GoDaddy in this case, because these business records had already been obtained in admissible form in another case and can be used in this case.

Appellant points out Klein Appellees' attorney, Morgan, issued three (3) identical deposition notices on written questions in three (3) different cases. Appellant argues these cases were unrelated to the records being served. This is false. In each of these cases, Mr. Dorrell, with Appellant's involvement, appears either representing the opposing party, or Mr. Dorrell was implicated as being involved in the litigation in a posture adverse to Morgan and his clients. The GoDaddy documents are very important for the orderly administration of justice in this case and others, because they demonstrate Mr. Dorrell and Appellant actively work together in handling litigation, which is the exact opposite of Mr. Dorrell's sworn Affidavit he provided to the Ninth Court of Appeals.

Appellant then confuses the Texas Rule of Civil Procedure pertaining to a deposition on written questions to obtain admissible business records (Tex. R. Civ. P. 200) with the Texas Rule of Civil Procedure pertaining to a witness subpoena under Tex. R. Civ. P. 176 (Appendix "17"), to attend either an oral

deposition or a trial. Klein Appellees did not subpoena a GoDaddy employee to provide an oral deposition. Likewise, Klein Appellees did not subpoena a GoDaddy employee to attend either a trial or a hearing in Bexar County, Texas. The 150 mile subpoena range applies only for compelling a witness's attendance at trial or in a deposition. Tex. R. Civ. P. 176. A deposition on written questions under Tex. R. Civ. P. 200, however, can be served nationwide, and its purpose is to permit litigants to obtain business records in an orderly fashion for use at trial. Accordingly, the 150 mile subpoena range is entirely irrelevant to Klein Appellees' obtaining GoDaddy's business records.

Appellant cites this Court to *In re: Shell E & P, Inc.*, 179 S.W.3d 125, 130 (Tex. App. – San Antonio 2005, orig. proc.), which held a non-party has a right under Tex. R. Civ. P. 192.6(a) to seek protection from discovery propounded in a case. *In re: Shell* applied only for discovery addressed to the non-party. Klein Appellees propounded no discovery to Appellant, a non-party in this case. Also, the *In Re: Shell* court did not exonerate the non-party from complying with the relevant time frames in the Texas Rules of Civil Procedure. Appellant did not comply with the ten (10) day time frame for valid objections under Tex. R. Civ. P. 200.3(b). A non-party has a right to file certain pleadings

under the Texas Rules of Civil Procedure, within the time frame allowed. All of Appellant's Motions for Protection, however, were filed outside the ten (10) day limit for filing objections under Tex. R. Civ. P. 200.3.

Ultimately, Appellant is asking this Court to shield an illicit operation involving himself and Mr. Dorrell, by which they terrorize attorneys, such as the Honorable Rick Espey, former attorney for Klein Appellees, send terroristic threats through email using a "hide my IP address" program, commit extortion, intimidation, and continually lie to courts. Mr. Retzlaff wants this Court to rule that this type of activity should be protected under the law and should continue. Appellant wants this Court to rule the TCPA either repealed Texas' Vexatious Litigant statute, or that Appellant has a right to violate Texas law. Appellant's requested relief must be denied by this Court.

CONCLUSION

For the reasons set forth above, this Court should deny Appellant the relief he seeks, and remand this case for a firm trial date as soon as possible.

WHEREFORE, PREMISES CONSIDERED, Klein Appellees requests this Court deny all of Appellant's issues on appeal, dismiss Appellant's appeal, and

remand this matter to the trial court for a trial on the merits. Klein Appellees also request such other and further relief, at law or in equity, to which they may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This hereby certify that a true and correct copy of the foregoing document has been provided to all parties of record, via electronic filing on this 20th day of March, 2017.

/s/ John S. Morgan
JOHN S. MORGAN

CERTIFICATE OF WORD COUNT COMPLIANCE

In compliance with Tex. R. App. P. 9.4, relying on the word count function in the word processing software used to produce this document, I certify that the number of words in this document including footnotes (excluding captions, identity of parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of jurisdiction, statement of procedural history, signature, proof of service, certification, certificate of compliance, and appendix) is 14,003.

/s/ John S. Morgan
JOHN S. MORGAN