

harassment” as an example of alleged criminal misconduct.¹ Defendant then went on to assert specific details of how he believes Plaintiff McGibney “harassed” him online.

2. Section 42.07 of the Texas Penal Code is the relevant section for determining guilt of the crime of harassment, including harassment by electronic means. Defendant alleged harassment and then detailed the alleged harassment by asserting specific online activity. Therefore, Plaintiff cited Tex. Penal Code § 42.07 to conclusively demonstrate that the alleged facts, even if taken as true, would not rise to the level of criminal harassment under the statute.

**II. Plaintiffs Maintain that § 42.07(a)(7) is Unconstitutional —
Scott v. State Addressed § 42.07(a)(4), not § 42.07(a)(7)**

3. As to the issue of the constitutionality of § 42.07, Plaintiffs maintain that ¶ 42.07(a)(7) was found unconstitutional and is still considered unconstitutional under Texas law.² It is true that *Karenev* was reversed, but it was reversed on other grounds. Specifically, it was reversed under procedural grounds by the later *Karenev v. State*, 281 S.W.3d 428 (Tex. Crim. App. 2009), not by *Scott v. State*, as Defendant alleges. Such a reversal does not affect the lower court’s holding regarding the constitutionality of the statute itself.

4. The defendant in *Scott v. State* was charged under “the language of § 42.07(a)(4), which we also quoted earlier, but not the language of (a)(7).” *Scott v. State*, 322 S.W.3d 662 (Tex. Crim. App. 2010). Because *Karenev* regards (a)(7) and not (a)(4), the *Scott* holding did not affect the *Karenev* holding in any way.

III. The Tweets at Issue Cannot Be Considered Non-hearsay Statements of a Party Opponent Without Evidence That the Statements Were Made by a Party Opponent

5. Defendant’s pleading of November 9th accuses Plaintiff McGibney of criminal misconduct. In this pleading Defendant cites to various online statements in support of his

¹ Defendant’s Notice of Plaintiffs’ New Criminal Aggravating Misconduct and Request for Non-Monetary TCPA Sanctions, ¶ 1, filed on November 9, 2015

² *Karenev v. State*, 258 S.W.3d 210

allegations. The statements were out-of-court statements offered by Defendant to prove that Plaintiff McGibney committed various offenses. Therefore, under the Texas Rules of Evidence, the legal characterization of those statements is *hearsay*. Unless and until Defendant proves that the statements were made by Plaintiff McGibney, Defendant cannot seek to have those statements admitted as non-hearsay admissions of a party-opponent. This is why Plaintiff analyzed what appeared to be Defendant's most likely avenue of attempting to admit the statements, which was as a statement against the interest of whoever the declarant was.

6. More importantly, Defendant's assertions that opposing counsel Jeffrey Dorrell and his firm Hanszen-Laporte are the subjects of the online statements are without merit. The statements *never* mention Hanszen-Laporte or opposing counsel Jeffrey Dorrell by name or description. Additionally, Plaintiff James McGibney has sworn, under oath:

"I never made that statement. I did not hack into counsel's email system nor did I ever claim to or 'admit' to."³

7. Defendant's new claim that Plaintiff McGibney's alleged hacking of Hanszen-Laporte's email system was "for the stated purpose of inserting exogenous pedophilic pornography into it"⁴ is *entirely* fabricated. Plaintiffs do not merely deny association with this statement; Plaintiffs assert that the statement *does not exist*. There is nothing on the record remotely resembling a statement like this and Plaintiff McGibney emphatically denies making this statement.

"I never claimed to have hacked into the email system of Hanszen-Laporte and I did not hack into the email system of Hanszen-Laporte. Furthermore, I never stated that I inserted exogenous pedophilic pornography into it, nor did I insert data of any kind into their systems or interact with their systems in any way."⁵

³ Exhibit F – Affidavit of James McGibney, pg. 2, ¶ 3

⁴ Defendant Rauhauser's "Reply" in Support of Fees and Sanctions, filed December 3, 2015

⁵ Exhibit F

IV. Defendant's Pleading Is Not a Reply Because Plaintiffs Have Not Responded

8. Plaintiffs have not yet responded to Defendant's request for fees and sanctions, therefore Defendant's pleading of December 3, 2015 is mistitled and mischaracterized as a Reply. Plaintiffs *have responded* to two out of the last three of Defendant Rauhauser's pleadings; Replies to either of these Responses would be appropriate.⁶ Plaintiffs make note of this to ensure that all parties are aware that Plaintiffs are still entitled to their opportunity to respond to the fees and sanctions motion in writing and through an oral hearing.

V. Plaintiffs' Response, When Heard, Will Focus on the Justice and Equity of a Fee Award, and Sanctions, Not Opposing Counsel's Hourly Rate

9. Plaintiffs are not currently disputing the expertise and experience of opposing counsel Jeffrey Dorrell or his hourly rate. Plaintiffs instead plan to focus on the question of justice and equity, which are determinative of the granting and amount of a fee award. When the Court is prepared to hear oral arguments on the question of fees and sanctions, Plaintiffs intend to demonstrate, *inter alia*, that justice and equity require a minimal fee award, if any, for the following reasons: First, at least some of the pleadings attributed to opposing counsel Jeffrey Dorrell were actually drafted or co-drafted by non-party, non-attorney, Thomas Retzlaff. Plaintiffs base this assertion on the online boasting of Thomas Retzlaff, the prophetic nature of his blog posts, and the 45min in-person, pre-hearing meeting between Dorrell and Retzlaff on May 1, 2015. Second, Plaintiffs assert that opposing counsel Dorrell intends to split his contingency fee with Thomas Retzlaff in exchange for Retzlaff's assistance in this case. But Retzlaff is not a client of Dorrell's [in this case], nor is he licensed to practice law in this state or

⁶ Plaintiffs responded to "Rauhauser's Request For Written Submission Of His Motion To Award TCPA Attorney's Fees And Sanctions" filed November 4, 2015, which was a pleading filed to repeat and reemphasize Rauhauser's request that the Court rule by written submission. Plaintiffs also responded to Defendant's "Notice" asserting "Criminal Aggravating Misconduct" filed on November 9, 2015.

any other, making such a fee split both unlawful and unethical. Third, Plaintiffs have now acquired sufficient evidence to support their continued assertions that this entire debacle was one in a planned series of TCPA litigation schemes meant to bait a victim of defamatory speech into filing an unwinnable lawsuit against an insolvent, unservable defendant, then obtaining a windfall fee award under the TCPA for “defending” against the suit. Finally, on information and belief, including the admissions of Defendant Rauhauser himself, Plaintiffs assert that Defendant Rauhauser has not actually incurred any fees in this case and that any fees paid were in fact paid by Thomas Retzlaff. To explain further:

**VI. Thomas Retzlaff and Jeffrey Dorrell Have Worked
With Each Other In This Case and Others**

10. Earlier this year there was a telephonic hearing in which counsel for Plaintiffs regrettably spoke over the Court. The Court responded to this with a raised voice and then disconnected the call. Later that day, the following statement appeared on a WordPress blog administered by Thomas Retzlaff,⁷

“Hey James McGibney, we got a question for you!! When a judge screams and slams down the phone, is that a good thing for your side or a bad thing?”⁸

This post was later removed, ostensibly because it indicates that Retzlaff was listening directly to the telephonic hearing (despite the parties having been expressly instructed by Court Coordinator Becky Holland that the telephonic hearing was for attorneys only). This is supported by an email Retzlaff sent to his daughter Brittany before the hearing in which he states, “Next Thursday I

⁷ The California Superior Court for Santa Clara County has already held that the viaviewfiles blog in question was controlled by Thomas Retzlaff, *ViaView v. Retzlaff*, Case No. 114-CH-005460 (*See* Exhibit H - Transcript of Appeal *ViaView v. Retzlaff*, pg. 181)

⁸ Post from Thomas Retzlaff’s Blog, available at <https://viaviewfiles.wordpress.com/2015/03/26/why-did-judge-cosby-hang-up-on-mcgibney-attorney- evan-stone/>

will be in Houston sitting in a lawyer's office listening in while a court hearing takes place..."⁹

In a subsequent email Retzlaff says, "the judge's scream is like nothing I ever heard before. Jeff and I thought it was like he'd been shot or something. It was that loud and shrill."¹⁰

11. The following hearing in the case was on May 1, 2015 and was an in-person hearing. Prior to the hearing, counsel for Plaintiffs Evan Stone and his associate Marc Traynor discussed the case in the common area of the attorney's lounge of the courts building for 30-45 minutes.¹¹ A few minutes before the hearing began, a door to a private conference room behind them opened and two men exited. These two men were opposing counsel Jeffrey Dorrell and Thomas Retzlaff, both of whom Attorney Stone recognized immediately. Attorney Traynor independently learned their identities when each man identified himself before the Court during the hearing moments later.¹² The most logical inference regarding the purpose of two persons being together in a private conference room prior to a hearing and moreover in a county in which neither person lives, is: to discuss the hearing *that both persons then attended*.

12. In further support of this, Thomas Retzlaff's himself brags that he is working with opposing counsel Dorrell on this case. After Defendant filed his December 3rd, pleading, the following post appeared on Retzlaff's viaviewfiles.net including an excerpt from the pleading and the following caption:

"Wow – we could not put it better ourselves. But since we are Retzlaff & Dorrell (and Rauhauser, Lipton, Lusher, Basko, Camp and a few others), we did write this ourselves, so there."¹³

Retzlaff has bragged similarly to his daughter Brittany concerning these pleadings:

⁹ Exhibit B – Affidavit of Brittany Retzlaff, pg. 4 (sub-exhibit numbering has changed due to Court's filesize limit)

¹⁰ *Id.*

¹¹ Exhibit M – Affidavit of Attorney Marc Traynor

¹² *Id.*

¹³ Exhibit K – Screen Capture of Post Claiming Authorship of Pleading

“So here it is filed yesterday. Check it out and see if you can figure out which parts I did and which parts the attorney did himself.”¹⁴

Retzlaff also openly brags that *he* is entitled to the damages, not *Rauhauser*:

“Decision from TX court of appeals. I won the case. That faggot owes me a ton of money!!”¹⁵

VII. Businesses and Attorneys Opposing Dorrell or Retzlaff Are Repeatedly Attacked In Similar Patterns

13. Former counsel for Plaintiffs in this case, John Morgan, has a long history with opposing counsel Dorrell, which Plaintiffs need not wade into at this time. Suffice it to say, Retzlaff, in his characteristic 3rd person, openly brags about “destroying him” along with other attorneys:

“Thomas Retzlaff is not just the hero that we want. He is the hero that we need...Both he and Houston attorney Jeffrey Dorrell have completely and utterly destroyed blackmail artist James McGibney...The fact that they have also destroyed Paul Gianni, Jay Leiderman, John Morgan, Evan Stone, Rob Holmes, and Philip Klein has just been icing on the cake.”¹⁶

14. Another former attorney for Plaintiffs in this case, Paul Gianni, received some of this “destruction” in the form of threatening emails from “Dean Anderson,” the alleged administrator of viaviewfiles.net (Retzlaff’s new blog). One email, which was included as evidence in the federal “sister case” to the instant case, concluded with the following threats against Attorney Gianni:

“How would you like it if people created a website in YOUR name, Mr. Gianni, and started posting materials that say you are a criminal who steals client’s money or are a drunk or a sex offender ...How would your family feel about it if they were included on such a website, too?”¹⁷

¹⁴ Exhibit B, pg. 2

¹⁵ *Id.*

¹⁶ Exhibit S – Screen Capture Indicating a Pattern of Harassment and a Connection Between Retzlaff and Dorrell

¹⁷ Exhibit A – Email Sent to Attorney Paul Gianni

Notably, these emails were copied to opposing counsel Jeffrey Dorrell.

15. Immediately upon accepting this case from Shannon-Gracey, Attorney Evan Stone became the new target for Retzlaff's and Rauhauser's online ranting. Most of the asserted facts were essentially accurate, albeit oddly personal, ostensibly in an attempt to intimidate Stone.¹⁸ For example, there was a segment naming Stone's ex-wife and her band, a copy of an IRS tax lien and a comment from someone with the nickname "**Astrid is a sexy name.**"¹⁹ (Astrid is the name of Stone's middle school-aged daughter). Direct emails to Stone eventually followed, the most recent of which stated that the author would contact judges and opposing counsel in Stone's cases and send them links to viaviewfiles.net "to make sure people know about you [Stone]."²⁰ As Court Coordinator Becky Holland can attest, this indeed happened in the instant case. This happened again in one of Stone's Denton cases, Case No. CV-2015-01628 in Denton County Court at Law #2. Worse, the email included additional personal references and claims that were far more disturbing than the ones online: The first reference regarded Stone's mother and indicated awareness of her former profession as a schoolteacher.²¹ The second, bizarrely, called out the name of the wife of the CEO of FUNimation Entertainment, Stone's long-time client.²² The author of the email stated that he contacted the FUNimation CEO's wife to tell her that FUNimation (a distributor of cartoons) was now "linked to the sexual blackmail of little girls."²³ It is pointless to delve into the speciousness of the underlying substance of this statement—the notable part is that a CEO's spouse was contacted merely because her husband's

¹⁸ http://viaviewfiles.wordpress.com/2015/03/09/revenge-pornographer-james-mcginney-hires-attorney-evan-stone-whose-legal-specialty-is-unsurprisingly-blackmail_comment-page-1

¹⁹ Exhibit T - Screen Capture Indicating Knowledge of Stone's Child's Identity

²⁰ Exhibit D - Email to Attorney Evan Stone

²¹ *Id.*

²² FUNimation is the largest animated cartoon distributor in the North Texas and is the oldest client of Attorney Stone, who has been working with FUNimation on intellectual property issues since at least 2008.

²³ Exhibit D

company retained an attorney that was also retained by James McGibney. This behavior indicates an extremely disturbed personality, at best.

16. This type of attack is a trademark tactic of opposing counsel's associate, Thomas Retzlaff. Retzlaff has repeatedly contacted James McGibney's employer, Rosendin Electric. Retzlaff recently left a voicemail on the Ethics Hotline of Rosendin Electric, repeating the story about the insertion of pedophilic content into the email systems of Hanszen-Laporte. The voicemail stated:

“He [McGibney] is going on Twitter claiming he's hacked into the email accounts of the attorney representing me in Houston, claiming he's put child porn on this man's computers...I'm coming after **you people** unless you do something about this...I'm coming after **you people** if you don't put a stop to it...next time there's going to be some serious problems for **you people**.”²⁴ (emphasis added)

Retzlaff bolstered the seriousness of this threat by posting a photo of the CEO of Rosendin Electric posing with his wife and grandchildren. Retzlaff captioned the photo with the names of everyone depicted, *including the minor children*.²⁵

17. This voicemail is remarkable for several reasons. First, it is remarkable because the voicemail was left on November 30, 2015, which was before any pleadings were filed that made mention of the new claim of Plaintiff McGibney's having inserted pedophilic material into Hanszen-Laporte's email system. (The previous pleading alleges that McGibney hacked the email system, not that he inserted any content.) Second, the multiple threats in the voicemail reveal the disturbed nature of the caller, self-identified as Thomas Retzlaff. If a person really were aggrieved by another person, why would that victim call the offending party's employer

²⁴ Exhibit F, sub-exhibit A (Voicemail from Thomas Retzlaff, audio available at <https://www.rev.com/file/c/891D5018207A66005AEDB44527D3B07BB8E55045CA5857FFD2EB0209?f=Retzlaff.wav>)

²⁵ Exhibit J - Screen Capture of Rosendin Electric CEO and Grandchildren

and leave voicemails threatening *the employer*? Finally, the voicemail is remarkable because the time it was made, in conjunction with the prescient nature of the content, constitutes further evidence of the working relationship between opposing counsel Dorrell and Thomas Retzlaff.

18. Another example involves a case in San Antonio in which a private investigator, Philip Klein, is being sued for defamation for allegedly failing to expeditiously remove online “WANTED” photos of two former fugitives involved in his investigation after the charges against those persons were dropped.²⁶ Fortunately for Klein, and his defense attorney, his litigation expenses were covered by his company’s E & O insurance policy. But towards the end of the case, when the outcome was looking good for Klein, things took a nasty turn: Klein’s defense attorney, Rick Espey, found himself the new target of Thomas Retzlaff. On information and belief, Retzlaff contacted or otherwise targeted/harassed Espey’s wife, partners, clients and even Espey’s daughter to the point that Espey decided to withdraw from the case, a case in which payment of his fees was guaranteed by Klein’s insurance policy.^{27, 28} As to how this supports a Dorrell-Retzlaff connection: Espey’s opposing counsel was none other than Jeffrey Dorrell.

19. Morgan, Gianni, Stone and Espey are not the only attorneys to suffer Retzlaff’s wrath. A Florida attorney working with Plaintiff McGibney has now had his name and address, along with the names of his minor children and his wife, and a photo of his house, posted on viaviewfiles.net.²⁹ The fate of attorneys and litigants who oppose Dorrell has become so infamous that the insurance carrier covering Klein’s defense was unable to find new counsel to

²⁶ Case No. 2014-CI-17145 in the 73rd Judicial District Court of Bexar County

²⁷ Exhibit Q - Affidavit of Attorney Evan Stone

²⁸ Exhibit E - Documents Pertaining to Attorney Richard Espey's Withdrawal as Counsel for Defendant Philip Klein

²⁹ Exhibit I - Screen Capture of Berkeley Home

represent Klein.³⁰ Ultimately, the carrier resorted to retaining the one attorney that Dorrell and Retzlaff could do no more damage to: John Morgan, Plaintiffs' first attorney in the instant case.

20. In the event that either Dorrell or Retzlaff claims it is a mere coincidence that their opponents are regularly targeted by Retzlaff, Plaintiffs offer this: Retzlaff contacted an Idaho sheriff involved with Klein's investigation and ranted about Klein's "creating bogus evidence," and then *admonished the police*, "**You people** need to report on this and ask the family why they got hooked up with Klein."³¹ (emphasis added, to note Retzlaff's use of the phrase "**you people.**") Sheriff Bowerman responded by asking Retzlaff how he had this information:

"the attorney for these two clients not only don't [sic] want their clients [sic] names used, but use pseudonyms to hide their identity, [sic] and have attempted to seal these records through the Texas Court system..."³²

To which Retzlaff responded, "Jeff Dorrell, the attorney in this case, is a close & personal friend of mine and Klein has been busily attacking him and various clients of his for many, many years."³³

VIII. Retzlaff Has Admitted He Is Behind The Case And That The Case Is A Scam

21. In a series of disturbing, revealing emails to his daughter Brittany, Thomas Retzlaff acknowledges that he baited Plaintiff James McGibney into filing this suit.³⁴ For brief background on the relationship between Thomas Retzlaff and his daughter Brittany Retzlaff, Plaintiffs first cite to the summary made by the Third District Court of Appeals in Austin, Texas:

"Retzlaff testified that he left the children alone in the house, that he kept a loaded gun in the house, that he kept pornographic materials

³⁰ Exhibit Q

³¹ Exhibit C - Email Exchange with Sheriff Bowerman

³² *Id.*

³³ *Id.*

³⁴ Exhibit B - Affidavit of Brittany Retzlaff

in areas of the house that were accessible to the children, and that he participated in sexual acts near the children on more than one occasion...Denise Retzlaff testified that ... he [Retzlaff] masturbated with the aid of pornographic materials, and that **she discovered one of the children imitating Retzlaff's behavior in front of the pornographic materials at the age of six.** Both children told Dr. Pugliese, the Department's expert, that **they witnessed Retzlaff masturbating and/or watching pornographic movies on the television.** One child stated that he occasionally looked through some of the pornographic magazines and watched X-rated movies from his bedroom while Retzlaff was masturbating. He also told a school counselor that **Retzlaff would touch his sister's older friends in their private places.** Both children expressed dislike towards Retzlaff, and one told Dr. Pugliese that she felt uncomfortable around Retzlaff and had no interest in living with him.³⁵ (emphasis added)

This behavior and subsequent incarceration resulted in the termination of Retzlaff's parental rights³⁶ and criminal charges of distribution of pornography to a minor, for which Retzlaff was forced to register as a sex offender.³⁷ Retzlaff continued to email his daughter Brittany and posted nude photos of her online.³⁸ The incessant barrage of this and similar behavior resulted in Brittany's fleeing the United States to Peru, where she now resides.³⁹ Brittany vowed not to return to the United States until Thomas Retzlaff is back in prison.⁴⁰ This behavior also resulted in the issuance of a permanent restraining order against Thomas Retzlaff from the California Superior Court for Santa Clara County.⁴¹ James McGibney and the members of his immediate family are also listed as protected persons in this order, which requires that Retzlaff, *inter alia*, not contact the protected persons directly or indirectly in any way.⁴²

22. Brittany Retzlaff has testified under oath,

³⁵ *Retzlaff v. McDonald*, 2004 Tex. App. LEXIS 2426, *12 (Tex. App. Austin Mar. 18, 2004)

³⁶ *Id.*

³⁷ Exhibit G - Retzlaff's Mandated Registration as Sex Offender

³⁸ Exhibit B

³⁹ *Id.*

⁴⁰ Retzlaff was jailed in 1997 for unlawfully carrying a weapon at a school, then released under probation. He violated that probation and was sentenced to eight years in prison. *Retzlaff v. McDonald*

⁴¹ Exhibit B, sub-exhibit A, Restraining Order

⁴² *Id.*

“Thomas Retzlaff has been sending me emails for the past two years which I have attached to this affidavit as (EXHIBIT “C”). Within the majority of these emails he illustrates the alleged scam that was orchestrated by himself and Neal Rauhauser.”⁴³

Brittany also testifies to having received the following statement from her father:

“Destroying this man and his stupid internet business has been a great deal of fun for me. And he is still crying and trying to unravel just how it is that I am financing and behind the Texas case. You want to hear a funny story? **It was originally started as a trap to get at a man named John Morgan and to try to goad him into filing a lawsuit against me.** It worked amazingly well.”⁴⁴

23. Even on December 30th 2015, the day of the Court’s ruling, Retzlaff’s emails continue. Plaintiff James McGibney received a forwarded email from Brittany Retzlaff in which Thomas Retzlaff boasts, **“Well, bitch, it's official. The judge just ruled and I won it all - all \$1.3 million.”**⁴⁵ Also on the 30th, Thomas Retzlaff sent an email to an accomplished 1st Amendment attorney who has previously weighed in on this litigation, stating, **“I took away McGibney’s Warner’s Brothers TV contract and got his cover story for Rollin Stone magazine canceled, too... I will be seeking garnishment orders and levies from the court here in Texas.”**⁴⁶ Retzlaff bragged similarly on his blog, stating, **“JUDGE COSBY JUST SIGNED THE ORDER FOR \$1.3 MILLION IN SANCTIONS – AND ALL THE OTHER STUFF WE REQUESTED”**⁴⁷ (emphasis added)

IX. Grounds For Granting A New Trial Or Reconsidering The Ruling

24. The Court erred by finding that the fees demanded by Defendant were required by justice and equity because such findings are against the great weight and preponderance of the

⁴³ Exhibit B, pg. 2

⁴⁴ *Id.*, pg. 5

⁴⁵ Exhibit L - Retzlaff’s Email Bragging About Winning

⁴⁶ Exhibit P - Email From Retzlaff Regarding Anti-SLAPP Judgment

⁴⁷ Exhibit N - Screen Capture Indicating Retzlaff Will Receive Damages (not Rauhauser)

evidence and such findings are manifestly unjust. The Court likewise erred in its findings that sanctions in the amount of \$1,000,000 were appropriate to deter Plaintiffs from filing similar suits. On information and belief, this is the largest anti-SLAPP sanction award in United States history and it is entirely disproportionate to the size of Plaintiffs' business and the amount of Plaintiffs' assets. By Retzlaff's own admissions to his daughter these sanctions are grossly disproportionate, "The last time I checked ur stalker friends bank accounts he doesn't have anything close to the \$200,000 in attorney fees he now owes me or \$1 million in sanctions."⁴⁸ Additionally, Plaintiff McGibney has sworn under oath to never file another defamation suit in the State of Texas.

25. The Court also erred by not setting a hearing either for oral or written submission and it erred by not ruling on Defendant's and Plaintiffs' motions concerning Defendant's request for ruling by written submission. The local rules of this Court guarantee an oral hearing if one is requested. Per this rule, Plaintiffs requested an oral hearing through Court Coordinator Becky Holland. Ms. Holland responded by stating, "File you request. [sic]"⁴⁹ Plaintiffs then asked Coordinator Holland for clarification as to whether to re-request the hearing from her in a different format, such as a formal pleading format, or to file an actual pleading with the clerk for the Court to rule on. At this time Plaintiffs reminded Ms. Holland that the local rules state simply that oral hearings "should be requested from the Court Coordinator." and "The Court does not deny a request for oral hearing." -2015 Bench Book - Court Rules and Procedures. pg. 4, ¶ 6 Coordinator Holland responded to this with, "I'm requesting that you file an objection to the

⁴⁸ Exhibit B, pg. 2

⁴⁹ Exhibit R - Email Correspondence Regarding Request for Oral Hearing

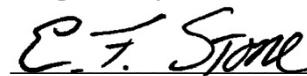
submission.”⁵⁰ As such, Plaintiffs filed a formal response to Defendant’s separate motion requesting a ruling by written submission.⁵¹ The Court never ruled on this motion.

26. If this failure to rule was a refusal to rule, the Court abused its discretion. *Eli Lilly & Co. v. Marshall*, 829 S.W.2d 157 (Tex. 1992) If a ruling is forthcoming, it is too late, as it has severely prejudiced Plaintiffs because Plaintiffs have been preparing for an oral hearing while waiting for the Court to affirm that Plaintiffs are entitled to one. “A trial court is required to consider and rule on a motion within a reasonable time.” *In re Kleven*, 100 S.W.3d 643, 644 (Tex. App. Texarkana 2003)

X. CONCLUSION & PRAYER

27. Plaintiffs have shown that the great weight and preponderance of evidence militate against an award of attorney’s fees in this case. Plaintiffs have also shown that the amount of sanctions awarded are entirely inappropriate in these circumstances and are not necessary to deter Plaintiffs from similar filings. A reasonable trier of fact would conclude that Thomas Retzlaff was **1)** the motivating force behind this litigation, **2)** an active participant in this litigation, and **3)** intimately involved with opposing counsel Dorrell in the handling of this litigation. As such, Plaintiffs pray that the Court grant a new trial/hearing or otherwise revise the ruling to reflect this new evidence.

Respectfully submitted,



Evan Stone

⁵⁰ *Id.*

⁵¹ Plaintiffs’ Response to Defendant’s Request for Oral Argument, filed November 13, 2015

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CERTIFICATE OF SERVICE

I certify that on December 30, 2015, a true copy of this motion was electronically served through efiletexas.gov on all active parties that have appeared in this case.

