

Order entered July 25, 2018



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-18-00546-CV
No. 05-18-00675-CV
No. 05-18-00676-CV
No. 05-18-00774-CV

RUTH TORRES, Appellant

V.

MARIE DIAZ, ET AL., Appellees

On Appeal from the 44th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-16-08711

ORDER

Before the Court is appellant's July 21, 2018 "Motion for Shared Records for Companion Cases." By opinion and judgment dated July 3, 2018, the Court dismissed the appeal in appellate cause number 05-18-00546-CV for want of jurisdiction. By order dated July 17, 2018, the Court designated the appeals in appellate cause numbers 05-18-00675-CV and 05-18-00676-CV as companion cases. We directed the Clerk of this Court to transfer a copy of the clerk's record and reporter's records filed in appellate cause number 05-18-00675-CV into appellate cause number 05-18-00676-CV. Appellate cause number 05-18-00774-CV is a mandamus proceeding and not

APPENDIX A, Exhibit 1: DENY sharing of records, issued July 25, 2018

a companion case to appellant's remaining two appeals. For these reasons, we **DENY** appellant's motion.

/s/ CAROLYN WRIGHT
CHIEF JUSTICE

Order entered October 2, 2018



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-18-00774-CV

IN RE RUTH TORRES, Relator

Original Proceeding from the 44th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-16-08711

ORDER

Before Justices Lang-Miers, Fillmore, and Stoddart

Before the Court are relator's motion for free appellate record and relator's second motion for order to release records. We **GRANT IN PART** the motion for free appellate record. and **DENY AS MOOT** relator's second motion for order to release records.

We **DIRECT** the Clerk of this Court to transfer a copy of each of the following into appellate cause number 05-18-00774-CV:

- The Clerk's Record filed on May 15, 2018 in appellate cause number 05-18-00546-CV;
- The Clerk's Record filed on July 5, 2018 in appellate cause number 05-18-00676-CV; and
- The Clerk's Record filed on July 31, 2018 in appellate cause number 05-18-00676-CV.

The Court does not require relator to file any additional record materials at this time.

APPENDIX A, Exhibit 2: DENY full release of Clerk Records, Issued October 2, 2018

/s/ ELIZABETH LANG-MIERS
JUSTICE

Order entered October 4, 2018



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-18-00774-CV

IN RE RUTH TORRES, Relator

Original Proceeding from the 44th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-16-08711

ORDER

Before Justices Lang-Miers, Fillmore, and Stoddart

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

/s/ ELIZABETH LANG-MIERS
JUSTICE

APPENDIX A, Exhibit 3: DISMISS Writs due to lack of record, issued October 4, 2018

DENY; and Opinion Filed October 4, 2018.



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-18-00774-CV

IN RE RUTH TORRES, Relator

Original Proceeding from the 44th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-16-08711

MEMORANDUM OPINION

Before Justices Lang-Miers, Fillmore, and Stoddart
Opinion by Justice Lang-Miers

In this original proceeding, relator Ruth Torres complains of an agreed temporary injunction signed September 13, 2016 and fifteen other orders signed between February 14, 2018 and June 7, 2018. Relator seeks a writ of mandamus directing the trial court to dissolve the agreed temporary injunction and vacate the other fifteen orders addressed in the petition. Relator also seeks a writ of prohibition and a writ of injunction. We deny the relief requested.

To be entitled to mandamus relief, a relator must show both that the trial court has clearly abused its discretion and that relator has no adequate appellate remedy. *In re Prudential Ins. Co.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). Based on the record before us, we conclude relator has not established her right to mandamus relief as to any of the orders at issue. We, therefore, deny relator's petition for writ of mandamus.

A writ of prohibition is used to protect the subject matter of an appeal or to prohibit an unlawful interference with enforcement of an appellate court's judgment. *Holloway v. Fifth Court*

of Appeals, 767 S.W.2d 680, 683 (Tex.1989) (orig. proceeding). The writ is designed to operate like an injunction issued by a superior court to control, limit, or prevent action in a court of inferior jurisdiction. *Id.* at 682–83. This Court may issue a writ of prohibition in only limited circumstances, none of which are present here. *In re Bolton*, No. 05-10-01115-CV, 2010 WL 4011041, at *1 (Tex. App.—Dallas Oct. 14, 2010, orig. proceeding) (mem. op.); *Humble Expl. Co., Inc. v. Walker*, 641 S.W.2d 941, 943 (Tex. App.—Dallas 1982, no writ).

Here, relator seeks a writ of prohibition that would prohibit the trial court from (1) ordering removal, alteration or destruction of documents in the record or in any party’s possession, (2) finding contempt based on the temporary injunction or confidentiality order (3) engaging in ex-parte communications with any party on substantive issues, (4) admitting or using relator’s privileged communications with her clergy, (5) infringing on relator’s rights of freedom of speech and religion, and (6) ordering relator or her entities in default. Relator argues that the trial court’s rulings have infringed on her rights of freedom of speech and freedom of religion and have permitted witness tampering and spoliation of evidence. Based on the record before us, we conclude relator has not established a basis for the issuance of a writ of prohibition. Relator has not shown that any actions by the trial court are interfering with this proceeding or any of relator’s other pending appeals. Accordingly, we deny relator’s petition for writ of prohibition.

Finally, relator seeks a writ of injunction to enjoin the real parties in interest from filing litigation against potential witnesses, from filing new claims against relators, from tampering with witnesses or spoliation of evidence, or from infringing on relator’s rights to freedom of speech and religion. The courts of appeals have limited injunctive powers. “Each court of appeals ... may issue ... all ... writs necessary to enforce the jurisdiction of the court.” TEX. GOV’T CODE ANN. § 22.221(a) (West Supp. 2017). A court of appeals does not have “original jurisdiction to grant writs of injunction, except to protect its jurisdiction over the subject matter of a pending appeal, or to

prevent an unlawful interference with the enforcement of its judgments and decrees.” *Ott v. Bell*, 606 S.W.2d 955, 957 (Tex. Civ. App.—Waco 1980, no writ). Here, relator has not shown that a writ of injunction is necessary to protect our jurisdiction over a pending appeal in this Court or to prevent the interference with the enforcement of one of this Court’s judgments. Accordingly, we deny relator’s petition for writ of injunction.

Based on the record before us, we conclude relator has not shown she is entitled to the relief requested as to any of the orders of which she complains. Accordingly, we deny relator’s petition for writ of mandamus, petition for writ of prohibition, and petition for writ of injunction. *See* TEX. R. APP. P. 52.8(a) (the court must deny the petition if the court determines relator is not entitled to the relief sought).

/Elizabeth Lang-Miers/
ELIZABETH LANG-MIERS
JUSTICE

180774F.P05



**Court of Appeals
Fifth District of Texas at Dallas
MANDATE**

TO THE 44TH JUDICIAL DISTRICT COURT OF DALLAS COUNTY, GREETINGS:

Before the Court of Appeals for the Fifth District of Texas, on the 3rd day of July, 2018, the cause on appeal to revise or reverse the judgment between

RUTH TORRES, Appellant

No. 05-18-00546-CV V.

MARIE DIAZ, MARK GALVAN,
PURSUIT OF EXCELLENCE, INC., AND
DALLAS / FORT WORTH
INTERNATIONAL AIRPORT, Appellees

On Appeal from the 44th Judicial District
Court, Dallas County, Texas

Trial Court Cause No. DC-16-08711.

Opinion delivered by Chief Justice Wright.
Justices Evans and Brown participating.

was determined; and this Court made its order in these words:

In accordance with this Court's opinion of this date, the appeal is **DISMISSED**.

It is **ORDERED** that appellees MARIE DIAZ, MARK GALVAN, PURSUIT OF EXCELLENCE, INC., AND DALLAS / FORT WORTH INTERNATIONAL AIRPORT recover their costs of this appeal from appellant RUTH TORRES.

WHEREFORE, WE COMMAND YOU to observe the order of the Court of Appeals for the Fifth District of Texas, in this behalf, and have it duly obeyed and executed.

APPENDIX A, Exhibit 4: Mandate Dismissing & Order Assigning Costs: COA Case No. 05-18-00546-CV

WITNESS the HON. CAROLYN WRIGHT, Chief Justice of the Court of Appeals, with
the Seal thereof affixed, at the City of Dallas, this 8th day of October, 2018.



Lisa Matz

LISA MATZ, Clerk



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-18-00676-CV

RUTH TORRES, Appellant
V.
PURSUIT OF EXCELLENCE, INC., Appellee

On Appeal from the 44th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-16-08711

MEMORANDUM OPINION

Before Justices Myers, Osborne, and Nowell
Opinion by Justice Myers

Appellant Ruth Torres files this interlocutory appeal of the trial court's denial of her motion to dismiss under the Texas Citizens Participation Act (TCPA). *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 27.008, 51.014(a)(12). Torres brings six issues on appeal, four concerning the motion's untimeliness, one addressing its merits, and one questioning whether an automatic stay was in place at the time the motion was denied. We affirm the trial court's denial of Torres's motion to dismiss.

BACKGROUND

The underlying dispute in this case concerns a contract in which Torres was to provide human resources consulting services to appellee, Pursuit of Excellence (POE). Due to the nature of the agreement, Torres received access to a broad range of POE's confidential and proprietary

APPENDIX A, Exhibit 5: DENY TCPA, Case No. 0518-00676-CV, issued July 2, 2019

information. Appellee alleged Torres prematurely terminated her contract with the company and transmitted POE's confidential and proprietary information to her personal electronic storage device. On July 20, 2016, POE filed suit against Torres for breach of contract, breach of fiduciary duty, misappropriation of trade secrets, unjust enrichment, tortious interference with contract and business relationships, and commercial disparagement. Torres filed an answer, denying allegations and asserting claims against POE and other parties. On February 7, 2018 POE filed its first amended petition, containing no new causes of action. POE filed a second amended petition adding violations of the Texas Finance Code and the Texas Harmful Access by Computer Act on March 14, 2018.

On May 15, 2018 Torres filed a motion to dismiss POE's claims against her pursuant to the TCPA. POE filed a response, objecting that the motion was untimely because it was filed over two years after the inception of all claims except two, and sixty-two days after those claims, and also objecting that Torres failed to meet her burden of proof under the TCPA. Torres responded, seeking leave to file her motion on the basis that she was "pro se and was unaware of this statute." The trial court held a hearing on Torres's motion to dismiss, and the court denied that motion on June 6, 2018. The next day, Torres filed a notice of appeal challenging the order denying her motion to dismiss, among other orders.¹

TEXAS CITIZENS PARTICIPATION ACT

We review a trial court's denial of a TCPA motion to dismiss de novo. *Dyer v. Medoc Health Servs., LLC*, No. 05-18-00472-CV, 2019 WL 1090733, at *3 (Tex. App.—Dallas Mar. 8, 2019, pet filed). A party triggers the TCPA's dismissal procedure by filing a motion to

¹ We ordered Torres to file a brief in this case limited to the trial court's denial of Torres's motion to dismiss under the TCPA. We determined that we lack jurisdiction over numerous other orders listed in Torres's notice of appeal, and that review of the trial court's order on DFW Airport's jurisdictional plea would proceed under a separate case number.

dismiss. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 27.003(a). A motion to dismiss must be filed not later than the 60th day after the date of service of the legal action. *Id.* § 27.003(b). If the motion is not filed within the statutory deadline, the movant forfeits the early-dismissal protections of the statute. *See, e.g., Braun v. Gordon*, No. 05-17-00176, 2017 WL 4250235, at *1, 3 (Tex. App.—Dallas Sept. 26, 2017, no pet.) (mem. op.). But, the trial court may extend the time to file a motion on a showing of good cause. TEX. CIV. PRAC. & REM. CODE ANN § 27.003(b).

ANALYSIS

I. Torres's Motion Was Untimely

Torres's first four issues concern the timeliness of her TCPA motion to dismiss. First, Torres asks whether the petitions and pleadings of the parties are sufficient to support dismissal under the TCPA without Torres explicitly invoking the Act. Both parties agree that Torres did not mention the TCPA in anything she filed prior to May 15. Relief under the TCPA requires the filing of a motion to dismiss under the Act. *See* TEX. CIV. PRAC. & REM. CODE § 27.003(a), (b). Until Torres filed her motion to dismiss under the Act, the trial court had no motion before it on which it was empowered to rule in accordance with the TCPA. The Act empowers the court to rule on a motion pending before it; it does not empower the court to apply the TCPA sua sponte. TEX. CIV. PRAC. & REM. CODE § 27.005. The trial court could not have granted this relief without a pending motion. *See* TEX. CIV. PRAC. & REM. CODE § 27.003(c). We decide against Torres on this issue.

In her second issue, Torres asks whether her TCPA Motion to Dismiss was “considered filed timely if one day late due to technical difficulty per [TEX. R. CIV. P. 21(f)(6)].” Torres filed her motion to dismiss on May 15, 2018. The parties do not dispute that this was more than sixty days after she was served with the second amended petition. *See* TEX. CIV. PRAC. & REM. CODE ANN § 27.003(b). In defense of her late filing, Torres argues to this Court that she was unable to file timely due to a “technical difficulty” in the e-filing system. In the trial court, however, she

justified her untimeliness with different explanations, arguing first that “the record did not show service of the citation” for POE’s amended February 7, 2018 pleading; second, that the record did not show “service of the citation for POE’s March 14, 2018 pleading”; and third, that she “is prone and unaware [of the TCPA].”

Under Texas law, POE’s certificates of service for both pleadings create a presumption of service because they constitute prima facie evidence of service. *Mathis v. Lockwood*, 166 S.W.3d 743, 745 (Tex. 2005). The record shows that Torres was served with both of POE’s amended pleadings. Torres did not argue or attempt to rebut such a presumption. Also, she provided no evidence at trial to support her claim of technical difficulty. Because she provided no evidence of her alleged technical difficulty in the trial court, there is no evidence for us to review here. Torres did not meet the statutory deadline. We overrule Torres’s second issue.

In Torres’s third issue, she asks whether POE’s First Amended Original Petition “restart[s] the count for purposes of the TCPA.” At the time Torres filed her TCPA Motion to Dismiss, POE had filed a Second Amended Original Petition, which the trial court reviewed under the TCPA. The record shows Torres was served with the Second Amended Original Petition on March 14, 2018. Torres filed her motion to dismiss under the TCPA on May 15, 2018, which is more than sixty days later. We need not address whether the clock was “restarted” by the February 7 filing and service, because even if it was, Torres’s TCPA motion to dismiss would have been filed more than sixty days after she was served with the Second Amended original petition, making her motion untimely. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 27.003(b).

Torres’s fourth issue contending her TCPA motion was timely is that it was filed within sixty days after service of other motions by POE, making it timely as to those motions. However, Torres moved only to dismiss POE’s pleaded causes of action in her motion; she did not move to dismiss any legal actions by POE filed within the sixty-day period. Because she did not move to

dismiss any of POE's interim motions, we need not determine whether any of POE's interim motions constitute "legal actions" within the TCPA's statutory definition of that term. *See* TEX. CIV. PRAC. & REM. CODE §27.001(6). We overrule Torres's fourth issue.

II. Torres's Untimely Motion Makes It Unnecessary to Address the Merits of Her Remaining Arguments

Torres raises two additional issues before this Court. In her fifth issue, she asks this Court to address the motion on its merits. In light of our conclusion that the motion was untimely, we need not examine its merits. *See Braun v. Gordon*, No. 05-17-00176, 2017 WL 4250235, at *1, 3 (Tex. App.—Dallas Sept. 26, 2017, no pet.) (mem. op.). In her sixth issue, Torres asks whether there was an automatic stay under section 51.014(b) at the time the motion to dismiss was denied. Because the motion was untimely, we need not examine the possible existence of a stay. *See id.* (concluding that the movant's failure to have the case set for a timely hearing results in the movant forfeiting the TCPA's protections, and the case should continue as if the motion to dismiss was never filed).

CONCLUSION

We affirm the trial court's denial of the motion to dismiss.

/Lana Myers/
LANA MYERS
JUSTICE

180676F.P05



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

JUDGMENT

RUTH TORRES, Appellant

No. 05-18-00676-CV V.

PURSUIT OF EXCELLENCE, INC.,
Appellee

On Appeal from the 44th Judicial District
Court, Dallas County, Texas
Trial Court Cause No. DC-16-08711.
Opinion delivered by Justice Myers.
Justices Osborne and Nowell participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is
AFFIRMED.

Judgment entered this 2nd day of July, 2019.

NO. DC-16-08711

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PURSUIT OF EXCELLENCE, INC.	§	IN THE DISTRICT COURT OF
	§	
PLAINTIFF	§	
	§	
vs.	§	DALLAS COUNTY, TEXAS
	§	
RUTH TORRES,	§	
	§	
DEFENDANT	§	44TH JUDICIAL DISTRICT

TEMPORARY INJUNCTION

ON THIS DAY the Court considered Plaintiff's Original Petition and Application for Injunctive Relief filed by Pursuit of Excellence, Inc. ("Plaintiff") against Defendant Ruth Torres ("Defendant"). The Court has read the verified pleadings and has considered the argument of counsel and applicable law.

It appears from the papers on file, the evidence presented at hearing, and the documents produced and entered into evidence, that Plaintiff can show a probable injury and a probable recovery for a cause of action based on that injury, specifically that Defendant probably misappropriated, converted, and/or wrongfully retained certain of Plaintiff's Confidential Information (as defined below), remains in possession thereof, and is in all probability utilizing the Confidential Information in violation of common law obligations as well as contractual language or course of conduct, to Plaintiff's irreparable detriment and probable benefit to Defendant.

It appears from the papers on file, the evidence presented at hearing, and the documents produced and entered into evidence that if Defendant is allowed to continue in this course of

Appendix B, Exhibit 1: TI

behavior, Plaintiff will probably lose or suffer harm to its customer relationships, workplace, good will, and operations.

It also appears from the papers on file, the evidence presented at hearing, and the documents produced and entered into evidence that Plaintiff has suffered and will continue to suffer irreparable harm for which it has or will have no adequate remedy at law because the relationships damaged by continued use or disclosure of Confidential Information will in all likelihood cause irreparable damage to Plaintiff's business model and existence, and there is an immediate and real threat of irreparable harm in that Plaintiff has been and will continue to be damaged and injured by Defendant's conduct, including, but not limited to the loss of customers, the loss of profits, the loss of Confidential Information and the loss of business good will.

The Court finds that Plaintiff is likely to succeed on the merits of this case and that these threats are imminent. Therefore, Plaintiff is entitled to injunctive relief.

It is therefore ORDERED, ADJUDGED AND DECREED that Defendant:

1. Desist and refrain from directly or indirectly utilizing or disclosing any of Plaintiff's "Confidential Information" (any and all technical information of Company, including, without limitation, copyrights, patents, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, systems information, software programs, software source documents, formulae related to Company's current, future, and proposed products and services, and information concerning research, experimental work, development, design details and specifications, and engineering; non-technical information regarding the business and affairs of Company, including, without limitation, commercial, operational, and financial information, business forecasts and developmental leads, marketing strategies, plans, and related information, procurement requirements, purchasing and manufacturing information, rates and pricing information, sales and merchandising information, customer lists, customer contract terms, supplier/vendor contract terms, carrier contract terms, schedules of inventory and accounts receivable, and facility blue prints; and notes, analyses, schedules, compilations, studies or other material prepared by Company, whether in written form or recorded electronically or otherwise, containing or based in whole or in part on those items described above);
2. Desist and refrain from directly or indirectly disposing of any of Plaintiff's Confidential Information;

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CAUSE NO. DC-16-08711

PURSUIT OF EXCELLENCE, INC.,
Plaintiff

v.

RUTH TORRES

Defendant

§
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IN THE DISTRICT COURT FOR

THE 44TH JUDICIAL DISTRICT

IN DALLAS COUNTY, TEXAS

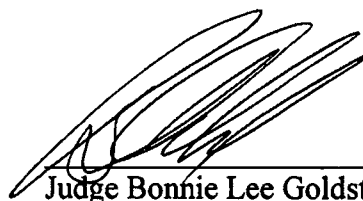
ORDER RELATIVE TO

APPOINTMENT OF THE AGREED UPON INDEPENDENT IT EXPERT

On this date, the Court having reviewed the pleadings on file, noted that it is a suit involving confidential information, including information deemed confidential by law. In order to ensure judicial efficiency, and in the interest of protecting and preserving the confidential nature of the information that may be stored on Defendant's ESBs, consistent with the agreed upon Temporary Injunction issued September 13, 2016, the Court appoints Trident Response Group ("Trident") as the agreed upon IT Expert as set forth in the Temporary Injunction. Trident shall remain neutral and independent in performing services under the Temporary Injunction, shall ensure compliance with the Temporary Injunction and shall protect the confidentiality of the Defendant's personal and professional information unrelated to Pursuit of Excellence, Inc.'s confidential information as well as Plaintiff's confidential information. Such confidentiality shall include non-disclosure of any such information to the opposing party. Any disputes relative to the identification of confidential information, protocol or protective orders shall be submitted to the court for *in camera* review and resolution.

The parties shall arrange for payment of the services to be rendered by the IT Expert.

SIGNED on October 14, 2016.



Judge Bonnie Lee Goldstein

Appendix B, Exhibit 2: Court Appointment of IT Expert

44TH JUDICIAL DISTRICT

the services outlined in the Agreed Temporary Injunction and specifically mandated that “[a] disputes relative to the identification of confidential information, protocol or protective orders shall be submitted to the court for *in camera* review and resolution.”

3. The Motion for Contempt and for Sanctions was set for hearing on April 4, 2018 under the Court's Order Setting Show Cause hearing. The Show Cause hearing was held on May 9, 2018.
4. Based upon the arguments presented, although the IT complied with the services to be performed under the Agreed Temporary Injunction relative to the electronic storage devices (“ESD”), Confidential Information subject of the Agreed Temporary Injunction remained in the possession of the Defendant Ms. Torres in her iCloud email account and was thereafter downloaded onto the ESDs and used contrary the express prohibitions outlined in the Agreed Temporary Injunction.
5. At no time prior to the May 9th show cause hearing, did Defendant Ms. Torres advise the Court of her retention of the Confidential Information, nor did Defendant Torres present the same to the Court for *in camera* review to resolve the dispute prior to attaching same to pleadings on file with this Court.
6. Defendant Torres currently has Plaintiff's Confidential Information on her electronic storage devices (ESD) in violation of the Agreed Temporary Injunction.

7. Defendant Torres has knowingly accessed and downloaded Plaintiff's Confidential Information on her ESD via her personal email account in violation of the Agreed Temporary Injunction.
8. Defendant Torres has utilized and/or disclosed Plaintiff's Confidential Information by filing the following materials in court records:
 - a. 2/19/2018 Motion for Summary Judgment, Special Exceptions, Verified Denials, Original Answer, and Affirmative Defenses to Plaintiff's 1st Amended Original Petition
 - b. 3/14/2018 2nd Amended Counter-Claim
 - c. 4/2/2018 Certificate of Verified Response to Discovery
 - d. 4/9/2018 Torres's Original Answer, Motion to Dismiss, Motion for Summary Judgment, Special Exceptions, Verified Denials and Affirmative Defenses to Plaintiff's 2nd Amended Original Petition and 1st Set of Discovery to Defendant
 - e. 4/9/2018 Entity Defendants' Original Answer, Motion to Dismiss, Motion for Summary Judgment, Special Exceptions, Verified Denials and Affirmative Defenses to Plaintiff's 2nd Amended Original Petition and 1st Set of Discovery to Defendant
 - f. 4/11/2018 Verified Application for Emergency TRO, Temporary Injunction, and Permanent Injunction
 - g. 4/11/2018 Verified Application for Emergency TRO, Temporary Injunction, and Permanent Injunction (filed in related case Cause No. DC-17-08581 in the 101st District Court of Dallas County)
 - h. 4/13/2018 Answer to Plaintiff's Motion to Dismiss
 - i. 4/16/2018 Motion to Strike or Reconsider Temporary Injunction
 - j. 4/16/2018 Motion for Contempt, Motion for Spoliation, Motion to Compel Discovery, Motion for Protective Order and Sanctions

- k. 4/16/2018 Motion to Compel Discovery, Motion for Protective Order and Sanctions (filed in related case Cause No. DC-17-08581 in the 101st District Court of Dallas County)
 - l. 4/16/2018 Response to Motion for Protective Order (filed in related case Cause No. DC-17-08581 in the 101st District Court of Dallas County)
 - m. 5/7/2018 Answer to Plaintiffs' Motion for Contempt & Sanctions, Verified Motion to Strike or Reconsider Temporary Injunction
 - n. 5/7/2018 Notice of Non-Party Subpoenas
- (collectively, the "Court Records"); and further
9. Defendant Torres has had substantial and continuous contacts with DFW and other POE clients, including adding DFW as a party to this lawsuit and issuing subpoenas to workers and clients.
10. Defendant Torres acknowledges that she is in possession of everything the Agreed Temporary Injunction was intended to take away.
11. At the Show Cause hearing on May 9th, the Court made clear and ordered that Defendant Torres, consistent with the Agreed Temporary Injunction, was:
- a. not to use or disclose the Confidential Information for any purpose, without leave of court upon good cause shown.
 - b. not to use any of the files that Defendant Torres had access to under her Google email account without leave of court.

c. not to use in any court proceeding or attaching any documents to pleadings without leave of court and were required to be submitted in a sealed envelope for *in camera* review and determination.

12. The Court was not inclined to enter death penalty sanctions at the time of the Show Cause hearing but was considering lesser sanctions, including imposition of monetary sanctions and attorneys' fees, notwithstanding the fact that it was unlikely Defendant Torres would be able to pay due to declared indigency.

13. Notwithstanding the clear, unequivocal and express language utilized by the Court in its order as outlined in subparagraph 11, relative to the requirements of the Agreed Temporary Injunction and acknowledged by Defendant Torres, Defendant Torres continued to file among the papers of the Court, the very documents at issue and previously identified in prior pleadings.

14. Based upon Defendant Torres' subsequent violations, Plaintiffs filed another Motion for Contempt and for Sanctions and set the matter for hearing on June 1, 2018.

15. On June 1, 2018, it was brought to this Court's attention that Defendant Torres filed the following pleadings attaching the documents at issue:

a. May 15, 2018, Motion to Dismiss Under Texas Citizens Participation Act.

b. May 29, 2018, 3rd Amended Counterclaim.

16. The Court finds that notwithstanding the clear language of the Agreed Temporary Injunction, the historic admonishments and verbal order on May 9, 2018, from the Court and express acknowledgement by Defendant Torres of the requirements, Defendant Torres continues to violate the terms of the Agreed Temporary Injunction and that such continuous contemptuous conduct merits appropriate sanctions.

IT IS THEREFORE

ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion for Contempt and Sanctions is GRANTED in part;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Ruth Torres is hereby held in contempt for utilizing, disclosing, and retaining Plaintiff's Confidential Information in violation of the Agreed Temporary Injunction by specifically retaining Plaintiff's Confidential Information in all forms, including on electronic storage devices, by purposefully downloading them from Defendant Torres' email account.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Court Records shall be immediately locked to restrict public access to the Court Records until the Court determines which portions contain Plaintiff's Confidential Information. The Court Records containing Plaintiff's Confidential Information shall be unfiled, removed from the records of this case and refiled without the Confidential Information;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Ruth Torres is also held in contempt for knowingly contacting Plaintiff's client Dallas Fort Worth International Airport in violation of the Agreed Temporary Injunction;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Ruth Torres is hereby sanctioned for her violations of the Temporary Agreed Injunction and hereby ORDERS that:

1. Defendant Torres shall not file any pleading or document without leave of Court;
2. Defendant Torres shall not engage in any discovery, including but not limited to non-party subpoenas, without leave of Court;
3. Defendant Torres shall not access, use, or disclose any of Plaintiff's Confidential Information, including but not limited to, all emails and documents she sent from her Pursuit of Excellence email account to her personal email account on or about June 27 and June 28, 2016, without leave of Court;
4. Defendant Torres shall not contact Plaintiff's customers, clients, licensees, vendors, licensors, employees, contractors, or any other third parties by use or disclosure of Plaintiff's Confidential Information; including but not limited to, all emails and documents she sent from her Pursuit of Excellence email account to her personal email account on or about June 27 and June 28, 2016, without leave of Court;
5. Defendant Torres shall copy onto a thumb drive or similar ESD all POE documents in her personal email account that she transferred from her Pursuit of Excellence email account on or about June 27 and June 28, 2016, including subsequent emails or copies thereof, however maintained or stored, whether electronically or in hard copy which shall be delivered in a sealed envelope and tender the same to David Langford, Official Court Reporter of the 44th Judicial District Court within 7 days of the date of this Order. Defendant Torres after copying all POE documents to the thumb drive, shall delete all email records and files obtained or copied from Pursuit of Excellence from her personal ESDs and google email account, including any iCloud or virtual storage account.

6. Defendant Torres shall execute a verified Affidavit attesting to full and complete compliance with the removal of the Pursuit of Excellence documents as stated in subparagraph 5 above, and deletion of all identified POE records within 7 days of this Order.
7. Defendant Torres shall immediately notify the parties and Court if she comes into possession of any of Plaintiff's Confidential Information.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Torres shall pay Plaintiff Pursuit of Excellence, Inc. the sum of \$2500.00 within 7 days of this Order by delivering said payment to the offices of Scheef & Stone, LLP.

CONTINUED VIOLATIONS SANCTIONS

The Court further finds that based upon the continued violations after the Show Cause hearing on the Motion for Contempt and for Sanctions held on May 9, 2018, that the lesser sanctions contemplated by this Court, and as ordered herein, will not deter Defendant Torres from continued contempt of Court or violation of the Agreed Temporary Injunction and therefore, the Court hereby advises that violation of any one provision of this Order of Contempt, and sanctions imposed other than the monetary sanction of \$2500 shall constitute immediate direct contempt of this Court's Order. If Defendant Torres commits a further violation under the listed sanctions imposed, numbers 1-7 at pages 7-8 of this Order, this Court will supplement this contempt order to strike Defendant Torres' Causes of Action for

Quantum Meruit and Unjust Enrichment. Any further violations of the Agreed Temporary Injunction may result in additional death penalty sanctions.

SIGNED: June 4, 2018.


JUDGE PRESIDING

CAUSE NO. DC-16-08711

PURSUIT OF EXCELLENCE,
INC.,

Plaintiff,

v.

RUTH TORRES, THE HR
DOCTOR, LLC, AND HR
STRATEGIC CONSULTING, INC.,

Defendants.

§ IN THE DISTRICT COURT
§ OF
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§

§ DALLAS COUNTY, TEXAS
§
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§ 44TH JUDICIAL DISTRICT
§

**SUPPLEMENTAL ORDER ON PLAINTIFF'S MOTION FOR CONTEMPT
AND SANCTIONS**

On May 9, 2018, the Court, having heard Plaintiff Pursuit of Excellence, Inc.'s Motion for Contempt and Sanctions and its Supplement thereto, the Response of Defendant Ruth Torres, the pleadings, evidence, and arguments of counsel and parties, entered an Order on Plaintiff's Motion for Contempt and Sanctions on June 4, 2018 ("Order of Contempt"). That Order specifically held Defendant Torres in Contempt and among the sanctions ordered that

1. Defendant Torres shall not file any pleading or document without leave of Court;

The Court further advised in the Order of Contempt that continued violations would result in additional sanctions, specifically

The Court further finds that based upon the continued violations after the Show Cause hearing on the Motion for Contempt and for Sanctions held on May 9, 2018, that the lesser sanctions contemplated by this Court, and as ordered herein, will not deter Defendant Torres from

SUPPLEMENTAL ORDER GRANTING MOTION FOR CONTEMPT AND SANCTIONS

PAGE 1

Appendix B, Exhibit 4: Supplemental Contempt

continued contempt of Court or violation of the Agreed Temporary Injunction and therefore, the Court hereby advises that violation of any one provision of this Order of Contempt, and sanctions imposed other than the monetary sanction of \$2500 shall constitute immediate direct contempt of this Court's Order. If Defendant Torres commits a further violation under the listed sanctions imposed, numbers 1-7 at pages 7-8 of this Order, this Court will supplement this contempt order to strike Defendant Torres' Causes of Action for Quantum Meruit and Unjust Enrichment. Any further violations of the Agreed Temporary Injunction may result in additional death penalty sanctions.

Notwithstanding the Order of Contempt and the specific sanctions enumerated therein, Defendant Torres filed among the papers of the Court a document on June 5, 2018, at 11:54 a.m. in the form of correspondence directed to the Court relative to the call to trial and outstanding motions and issues. The Court finds that such filing after the Order of Contempt and Sanctions was issued and filed of record on this Court's docket to be direct contempt of this Court's Order of Contempt and therefore:

IT IS ORDERED ADJUDGED AND DECREED THAT Defendant Torres' Causes of Action for Quantum Meruit and Unjust Enrichment are stricken for all purposes and shall not be presented as causes of action in the trial of the merits.

SIGNED:

June 5, 2018



JUDGE PRESIDING

CAUSE NO. DC-16-08711

PURSUIT OF EXCELLENCE,
INC.,

Plaintiff,

v.

RUTH TORRES, THE HR
DOCTOR, LLC, AND HR
STRATEGIC CONSULTING, INC.,

Defendants.

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IN THE DISTRICT COURT
OF

DALLAS COUNTY, TEXAS

44TH JUDICIAL DISTRICT

**ORDER DENYING MOTION TO
STRIKE OR RECONSIDER TEMPORARY INJUNCTION**

The Court, having heard the Motion to Strike or Reconsider Temporary Injunction ("Motion") filed by Defendant Ruth Torres on April 16, 2018, the response, evidence, pleadings, and arguments of counsel and parties, finds the Motion lacks merit and should be DENIED.

IT IS THEREFORE ORDERED that Defendant Ruth Torres's Motion is DENIED in its entirety.

SIGNED: June 6, 2018


JUDGE PRESIDING

Appendix B, Exhibit 6: Deny Strike or Reconsider TI

CAUSE NO. DC-16-08711

PURSUIT OF EXCELLENCE,
INC.,

Plaintiff,

v.

RUTH TORRES, THE HR
DOCTOR, LLC, AND HR
STRATEGIC CONSULTING, INC.,

Defendants.

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IN THE DISTRICT COURT
OF

DALLAS COUNTY, TEXAS

44TH JUDICIAL DISTRICT

**ORDER DENYING DEFENDANT'S MOTION TO DISMISS
UNDER TEXAS CITIZENS PARTICIPATION ACT**

The Court, having heard the Motion to Dismiss Under Texas Citizens Participation Act ("Motion") filed by Defendant Ruth Torres on May 14, 2018, the response, evidence, pleadings, and arguments of counsel and parties, finds the Motion should be DENIED.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant Ruth Torres's Motion is DENIED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court further finds that the Motion is untimely as being filed close to two years after the filing of the suit as to the majority of the claims, after the 60th day after the date of legal service of the two new claims in the Amended Petition filed March 14, 2018, and less than one month before the current trial setting of June 11, 2018, for the sole purpose of increasing Plaintiff's litigation costs. As a result, Defendant Torres is ORDERED to pay Plaintiff attorney's fees to reimburse Plaintiff for the attorney's

1 | Page

Order Denying Defendants' Motion to Dismiss under TCPA

Appendix B, Exhibit 7: DENY
TCPA

fees incurred in filing a response the Motion and appearing for the hearing on the Motion, said fees to be assessed upon submission of an Affidavit establishing said fees at the time of pretrial, June 8, 2018.

SIGNED: June 6, 2018



JUDGE PRESIDING

CAUSE NO. DC-16-08711

PURSUIT OF EXCELLENCE,
INC.,

Plaintiff,

v.

RUTH TORRES, THE HR
DOCTOR, LLC, AND HR
STRATEGIC CONSULTING, INC.,

Defendants:

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IN THE DISTRICT COURT
OF

DALLAS COUNTY, TEXAS

44TH JUDICIAL DISTRICT

**ORDER REGARDING DEFENDANT'S MOTION FOR SANCTIONS AND
FOR LEAVE TO FILE AMENDED PLEADING**

The Court, having considered the Motion for Sanctions and for Leave to File Amended Pleading ("Motion") filed by Defendant Ruth Torres on May 17, 2018, the response if any, the pleadings, and arguments of counsel and parties, finds the Motion for Sanctions and Leave lacks merit and should be DENIED.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant Ruth Torres's Motion for Sanctions and for Leave to file Amended Pleading is DENIED.

SIGNED: June 6, 2018


JUDGE PRESIDING

Order

Solo Page

..Appendix B, Exhibit 8: DENY Sanctions & Leave to Amend..

PURSUIT OF EXCELLENCE,
INC.,

Plaintiff,

v.

RUTH TORRES, THE HR
DOCTOR, LLC, AND HR
STRATEGIC CONSULTING, INC.,

Defendants.

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IN THE DISTRICT COURT
OF

DALLAS COUNTY, TEXAS

44TH JUDICIAL DISTRICT

**ORDER REGARDING DEFENDANT'S 3RD MOTION FOR LEAVE TO FILE
AMENDED PLEADING**

The Court, having considered the 3rd Motion for Leave to File Amended Pleading ("Motion") filed by Defendant Ruth Torres on May 29, 2018, the response if any, the pleadings, and arguments of counsel and parties, finds the Motion for Leave should be DENIED, in part and GRANTED in part;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant Ruth Torres's Motion for Leave to file the 3rd Amended Counterclaim is is DENIED to the extent it seeks to file any new claim or amend any claim subject to a prior dispositive motion and order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Ruth Torres's Motion for Leave to file the 3rd Amended Counterclaim is GRANTED to the extent the 3rd Amended Counterclaim is responsive to the remaining live claims that were subject to the Orders on Special Exceptions for Breach of

Order Regarding Defendant's 3rd Motion for Leave to File Amended Pleading

Solo Page

Appendix B, Exhibit 9: DENY 3rd Motion to Amend

Contract/Breach of Duty-Contort, Quantum Meruit and Unjust Enrichment as against Pursuit of Excellence, Marie Diaz and Mark Galvan.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that nothing herein shall affect prior Orders of this Court; specifically:

1. The Court issued an Order of Contempt on June 4, 2018, with sanctions requiring the refilling of enumerated pleadings without attachments, which includes the Third Amended Counterclaim. This Order shall apply to the re-filed Third Amended Counterclaim without attachments.
2. Further, the Court issued a Supplemental Order of Contempt on June 5, 2018, striking Defendant Torres' causes of action for Quantum Meruit and Unjust Enrichment. This Order does not affect the striking of those causes of action.

SIGNED: June 6, 2018


JUDGE PRESIDING

PURSUIT OF EXCELLENCE,
INC.,

Plaintiff,

v.

RUTH TORRES, THE HR
DOCTOR, LLC, AND HR
STRATEGIC CONSULTING, INC.,

Defendants.

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IN THE DISTRICT COURT
OF

DALLAS COUNTY, TEXAS

44TH JUDICIAL DISTRICT

**ORDER DENYING DEFENDANT'S MOTION TO
RECONSIDER ORDER ON POE PARTIES' MOTION TO DISMISS**

The Court, having considered the Motion to Reconsider Order on POE Parties' Motion to Dismiss ("Motion") filed by Defendant Ruth Torres, the response if any, pleadings, and arguments of counsel and parties, finds the Motion lacks merit and should be DENIED, and therefore ORDERS that Defendant Ruth Torres's Motion is DENIED.

SIGNED: 

PHH


JUDGE PRESIDING

Order Denying Defendant's Motion to Reconsider 91a Order

Solo Page

.Appendix B, Exhibit 12: DENY Reconsideration of Order 91a

PURSUIT OF EXCELLENCE,
INC.,

v.

RUTH TORRES, THE HR
DOCTOR, LLC, AND HR
STRATEGIC CONSULTING, INC.,

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IN THE DISTRICT COURT

DALLAS COUNTY, TEXAS

44th JUDICIAL DISTRICT

ORDER DENYING DEFENDANT'S MOTION FOR RECUSAL

The Court, having considered the Verified Motion for Recusal ("Motion") filed by Defendant Ruth Torres and the Plaintiff's response, finds the following:

T.R.C.P 18a "RECUSAL AND DISQUALIFICATION OF JUDGES" provides that a motion to recuse that does not comply with Rule 18a may be denied without an oral hearing. Under T.R.C.P 18a, the motion must not be based solely on the judge's ruling in the case and must not be filed after the tenth day before the date set for trial.

The Plaintiff's motion to recuse is based solely upon the trial judge's rulings in the case and it was filed less than ten days before the pre-trial hearing date. Therefore, the motion does not comply with the requirements of T.R.C.P. 18b.

IT IS, THEREFORE, ORDERED that the motion to recuse filed by Ruth Torres should be, and it hereby is, DENIED.

SIGNED: JUNE 7, 2018


JUDGE RAY WHELESS
REGIONAL PRESIDING JUDGE
FIRST ADMINISTRATIVE REGION

Order Denying Defendant's Motion for Recusal

Solo Page

PURSUIT OF EXCELLENCE, INC.,	§	IN THE DISTRICT COURT
	§	OF
Plaintiff,	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
RUTH TORRES,	§	
	§	
Defendant.	§	44TH JUDICIAL DISTRICT

ORDER DENYING DEFENDANT'S MOTION TO SHOW AUTHORITY

After considering Defendant's *Verified Motion to Show Authority, Amended Special Exceptions on Plaintiff's Original Petition, Amended Motion to Strike, Amended Motion for Contempt and Sanctions, and Amended Motion to Reconsider Orders* (the "Motion"), the POE Parties' (Pursuit of Excellence, Inc., Marie Day and Ruth Torres) response thereto, the evidence, and pleadings, the Court FINDS AND ORDERS AS FOLLOWS:

1. The Motion ~~lacks merit~~ and is DENIED.
2. Littler Mendelson, P.C. had authority to represent the POE Parties in this lawsuit until it withdrew as counsel on December 7, 2017;
3. Scheef & Stone, LLP has authority to represent the POE Parties in this lawsuit; ~~and~~
4. ~~Defendant is ORDERED to pay the POE Parties' their reasonable and necessary attorneys' fees in the amount of \$ [REDACTED] incurred in responding to the Motion.~~

SIGNED and ENTERED on February 20, 2018.


JUDGE PRESIDING

ORDER DENYING DEFENDANT'S MOTION FOR CONTEMPT AND SANCTIONS

SOLO PAGE

.Appendix B, Exhibit 13: DENY Show Authority

Appendix B, Exhibit 14: DENY Motion to Strike

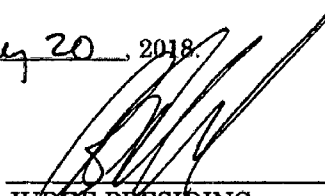
PURSUIT OF EXCELLENCE, INC.,	§	IN THE DISTRICT COURT
	§	OF
Plaintiff,	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
RUTH TORRES,	§	
	§	
Defendant.	§	44TH JUDICIAL DISTRICT

ORDER DENYING DEFENDANT'S MOTION TO STRIKE

After considering Defendant's *Motion to Strike Original Petition, Special Exceptions, Verified Denials, Original Answer, and Affirmative Defenses, Motion to Withdraw as Counsel of Plaintiff and Order on Motion to Withdraw as Counsel of Plaintiff* (the "Motion"), *and reconsider of prior orders, specifically Motion for Summary Judgment* (Plaintiff's response thereto, and the pleadings filed herein, the Court finds the Motion ~~lacks merit~~ and should be DENIED.

IT IS THEREFORE ORDERED that the Motion is DENIED.

SIGNED and ENTERED on February 20, 2018.



JUDGE PRESIDING

ORDER DENYING MOTION TO STRIKE

SOLO PAGE

PURSUIT OF EXCELLENCE,
INC.,

Plaintiff,

v.

RUTH TORRES, THE HR
DOCTOR, LLC, AND HR
STRATEGIC CONSULTING, INC.,

Defendants.

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IN THE DISTRICT COURT
OF

DALLAS COUNTY, TEXAS

44TH JUDICIAL DISTRICT

ORDER ON PLAINTIFF'S MOTION TO STRIKE

On this date, came on to be heard, Plaintiff Pursuit of Excellence, Inc.'s Motion to strike the pleadings of corporate entity Defendants The HR Doctor, LLC and HR Strategic Consulting, Inc., and considered the pleadings, the response thereto and the argument of the parties, the Court.

GRANTS the motion and strikes Defendants The HR Doctor LLC and HR Strategic Consulting, Inc.'s pleadings. Defendants have thirty (30) days to retain a duly authorized attorney and file an amended pleading, on or before June 11, 2018. Failure to retain an attorney and file an amended pleading will be treated as no answer for purpose of dispositive motions.

SIGNED: May 11, 2018


JUDGE PRESIDING

PURSUIT OF EXCELLENCE,
INC.,

v.

RUTH TORRES, THE HR
DOCTOR, LLC, AND HR
STRATEGIC CONSULTING, INC.,

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IN THE DISTRICT COURT

DALLAS COUNTY, TEXAS

44th JUDICIAL DISTRICT

ORDER DENYING DEFENDANT'S MOTION FOR RECUSAL


The Court, having considered the Verified Motion for Recusal ("Motion") filed by Defendant Ruth Torres and the Plaintiff's response, finds the following:

T.R.C.P. 18a "RECUSAL AND DISQUALIFICATION OF JUDGES" provides that a motion to recuse that does not comply with Rule 18a may be denied without an oral hearing. Under T.R.C.P. 18a, the motion must not be based solely on the judge's ruling in the case and must not be filed after the tenth day before the date set for trial.

The Plaintiff's motion to recuse is based solely upon the trial judge's rulings in the case and it was filed less than ten days before the pre-trial hearing date. Therefore, the motion does not comply with the requirements of T.R.C.P. 18b.

IT IS, THEREFORE, ORDERED that the motion to recuse filed by Ruth Torres should be, and it hereby is, DENIED.

SIGNED: JUNE 7, 2018


JUDGE RAY WHELESS
REGIONAL PRESIDING JUDGE
FIRST ADMINISTRATIVE REGION

Order Denying Defendant's Motion for Recusal

Solo Page

Appendix B, Exhibit 16: DENY Recusal

FILE COPY

RE: Case No. 19-0130
COA #: 05-18-00774-CV
STYLE: IN RE TORRES

DATE: 4/12/2019
TC#: DC-16-08711

Today the Supreme Court of Texas denied Relator's Motion for Emergency Stay is denied, as supplemented, and denied the petition for writ of mandamus in the above-referenced case.

MS. RUTH TORRES

* DELIVERED VIA E-MAIL *

Appendix C, Texas Supreme Court: DENY Mandamus