

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

MAR 18 2021

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

AUDREY L. KIMNER,

No. 20-15861

Plaintiff-Appellant,

D.C. No. 5:19-cv-07576-EJD

v.

CAPITAL TITLE OF TEXAS, LLC; et al.,

MEMORANDUM\*

Defendants-Appellees.

Appeal from the United States District Court  
for the Northern District of California  
Edward J. Davila, District Judge, Presiding

Submitted March 16, 2021\*\*

Before: GRABER, R. NELSON, and HUNSAKER, Circuit Judges.

Audrey L. Kimner appeals pro se from the district court's order dismissing her action alleging federal and state law claims arising from Texas state court cases in which Kimner claimed fraud in the sale of her condominium. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under the

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*Rooker-Feldman* doctrine, *Noel v. Hall*, 341 F.3d 1148, 1154 (9th Cir. 2003), and under 28 U.S.C. § 1915(e)(2)(B), *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). We affirm.

The district court properly dismissed Kimner's claims against all defendants (except Margaret A. Poissant) for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine because her claims are a "de facto appeal" of the Texas state court decisions. *Noel*, 341 F.3d at 1163-65.

The district court properly dismissed nonresident defendant Poissant because Kimner failed to allege facts sufficient to establish that the district court had personal jurisdiction over her. *See Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801-02 (9th Cir. 2004) (discussing requirements for general and specific personal jurisdiction).

We reject as unpersuasive Kinmer's contentions that Magistrate Judge Cousins was biased or conspired against her.

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

**AFFIRMED.**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

APR 09 2021

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

AUDREY L. KIMNER,

Plaintiff - Appellant,

v.

CAPITAL TITLE OF TEXAS, LLC; et  
al.,

Defendants - Appellees.

No. 20-15861

D.C. No. 5:19-cv-07576-EJD  
U.S. District Court for Northern  
California, San Jose

**MANDATE**

The judgment of this Court, entered March 18, 2021, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule  
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER  
CLERK OF COURT

By: David J. Vignol  
Deputy Clerk  
Ninth Circuit Rule 27-7

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AUDREY L. KIMNER,

Plaintiff,

v.

MARGARET A. POISSANT,

Defendant.

Case No. 5:19-cv-07576-EJD

**ORDER DISMISSING PLAINTIFF'S  
CLAIMS WITH PREJUDICE**

Re: Dkt. No. 13

On January 29, 2020, this Court determined that the *Rooker-Feldman* doctrine prevented Plaintiff Audrey Kimner from proceeding with her case and dismissed certain Defendants from the action. *See* Dkt. 13. The Court determined, however, that *Rooker-Feldman* did not affect Plaintiff's claim against Defendant Margaret Poissant. *Id.* But, because Plaintiff's Complaint failed to state a claim against Defendant Poissant, the Court granted Plaintiff until February 28, 2020 to amend her complaint. *Id.* The Court warned Plaintiff that the amended complaint must cure the deficiencies or Plaintiff's claims would be dismissed. *See id.* at 4. Plaintiff subsequently filed a motion for reconsideration, which the Court denied. *See* Dkt. 15. In its Order Denying Reconsideration, the Court again informed Plaintiff that she had until February 28, 2020 to file her amended complaint or her claims would be dismissed. *See* Dkt. 15. Despite this, Plaintiff has failed to file an amended complaint. Accordingly, Plaintiff's case is **DISMISSED with prejudice**. The Clerk shall close the file

**IT IS SO ORDERED.**

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Dated: March 4, 2020

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27

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EDWARD J. DAVILA  
United States District Judge

Case No.: 5:19-cv-07576-EJD  
**ORDER DISMISSING PLAINTIFF'S CLAIMS WITH PREJUDICE**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

AUDREY L. KIMNER,

Plaintiffs,

V.

MARGARET A. POISSANT.

## Defendants.

Case No.: 19-cv-07576-EJD

## **CERTIFICATE OF SERVICE**

10 I, the undersigned, hereby certify that:

(1) I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California; and

(2) On 4/13/2020, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's office.

Audrey L. Kimner  
P.O. Box 1493  
Carmel, CA 93921

Dated: 4/13/2020

Susan Y. Soong  
Clerk, United States District Court

By: Adriana M. Kratzmann  
Adriana M. Kratzmann, Deputy Clerk to  
the Honorable Edward J. Davila

AUDREY L. KIMNER,  
Plaintiff,

CAPITAL TITLE OF TEXAS, LLC, et al.,  
Defendants.

Case No. 19-cv-07576-NC

**ORDER GRANTING  
PLAINTIFF'S MOTION TO  
PROCEED IN FORMA  
PAUPERIS; SCREENING  
COMPLAINT UNDER 28 U.S.C.  
§ 1915**

Re: Dkt. No. 2

Pro se plaintiff Audrey L. Kimner seeks to proceed in forma pauperis against defendants Capital Title of Texas, LLC, JEM Advisory Group, LLC, Tanglewood Condominium Owners, First Service Residential, Ceasons Holdings, LLC, various individuals associated with those entities, and her former lawyer, Margaret A. Poissant. *See* Dkt. Nos. 1, 2. For the reasons stated below, the Court (1) GRANTS Kimner's motion for leave to proceed in forma pauperis; (2) FINDS that Kimner's complaint fails to state a claim against corporate Defendants and related individuals; (3) FINDS that Kimner's complaint fails to establish personal jurisdiction over Poissant; and (4) GRANTS Kimner leave to amend.

## I. Allegations in the Complaint

Kimner owned a midrise condominium in Houston, Texas. *See* Dkt. No. 1 (“Compl.”) at 7. In 2017, Kimner lost her home and valuable furniture within it. *Id.* at 7–

1       8. Kimner alleged that defendants Capital Title, JEM Advisory, and their agents  
2       fraudulently took her property. *Id.* at 8–9. She then hired Poissant to represent her in an  
3       unsuccessful lawsuit against the other Defendants. *Id.* at 10, 13–15.

4       Kimner now sues the Defendants for fraud, violation of her civil rights, and  
5       unlawful foreclosure. *See id.* at 2; *see also* Dkt. No. 1-1.

6       **II. Application for Leave to Proceed In Forma Pauperis**

7       Under 28 U.S.C. § 1915, a district court may authorize the commencement of a civil  
8       action in forma pauperis if it is satisfied that the would-be plaintiff cannot pay the filing  
9       fees necessary to pursue the action. *See* 28 U.S.C. § 1915(a)(1). Here, Kimner submitted  
10      the required documentation, and it is evident from the application that the listed assets and  
11      income are insufficient to enable her to pay the filing fees. *See* Dkt. No. 2. Accordingly,  
12      the Court GRANTS Kimner’s application for leave to proceed in forma pauperis.

13       **III. Screening Under 28 U.S.C. § 1915**

14       The Court must screen every civil action brought in forma pauperis under 28 U.S.C.  
15       § 1915(a) and dismiss any case that is “frivolous or malicious,” “fails to state a claim on  
16       which relief may be granted,” or “seeks monetary relief against a defendant who is  
17       immune from relief.” 28 U.S.C. § 1915(e)(2)(B); *see Lopez v. Smith*, 203 F.3d 1122,  
18       1126–27 (9th Cir. 2000) (en banc).

19       **A. Claims Against Corporate Defendants and Related Individuals**

20       Under the *Rooker-Feldman* doctrine federal courts cannot hear appeals from state  
21       court judgments. *See Cooper v. Ramos*, 704 F.3d 772, 778 (9th Cir. 2012). The *Rooker-*  
22       *Feldman* doctrine prohibits federal lawsuits that are “explicitly styled as a direct appeal  
23       [and] also over the ‘de facto equivalent’ of such an appeal.” *Id.* (citing *Noel v. Hall*, 341  
24       F.3d 1148, 1155 (9th Cir. 2003)).

25       Here, Kimner’s claims largely revolve around the foreclosure of her condominium,  
26       but that foreclosure was the subject of a state court lawsuit. Indeed, Kimner’s civil cover  
27       sheet indicates that this suit is intended to be a removal of her state court foreclosure

1 proceedings in Harris County District Court. *See* Dkt. No. 1-1.<sup>1</sup> Those proceedings have  
2 since ended and final judgment has been entered. *See Kimner v. Capital Title of Texas*  
3 *LLC*, Dkt. No. 201752170 (Harris Cnty. Dist. Ct.) (dismissed for lack of prosecution Oct.  
4 9, 2019); *Kimner v. Ceasons Holding LLC*, Dkt. No. 201752170A (Harris Cnty. Dist. Ct.)  
5 (summary judgment entered Dec. 10, 2018); *Kimner v. Tanglewood Condominium Owners*  
6 *Assoc.*, Dkt. No. 201752170B (Harris Cnty. Dist. Ct.) (summary judgment entered Jan. 29,  
7 2019). Kimner's lawsuit now seeks damages for the loss of her home. Such relief,  
8 however, "would effectively reverse the state court decision or void its ruling." *Fontana*  
9 *Empire Ctr., LLC v. City of Fontana*, 307 F.3d 987, 992 (9th Cir. 2002) (citation omitted).

10 Accordingly, the Court FINDS that Kimner has failed to state a claim against the  
11 corporate Defendants and their agents.

12 **B. Claims Against Poissant**

13 Kimner also sues Poissant, complaining of deficient or unethical representation  
14 during her state court lawsuits. *See* Compl. at 10–12, 14–16. It is not clear, however, that  
15 the Court has personal jurisdiction over Kimner's claims against Poissant.

16 A federal court must have personal jurisdiction over a defendant to exercise  
17 jurisdiction over that defendant. *See Walden v. Fiore*, 571 U.S. 277, 284 (2014). Personal  
18 jurisdiction exists in two forms: general and specific. *See Schwarzenegger v. Fred Martin*  
19 *Motor Co.*, 374 F.3d 797, 801–02 (9th Cir. 2004).

20 A court may exercise general personal jurisdiction over an individual when that  
21 individual resides in the forum state. *See Daimler AG v. Bauman*, 571 U.S. 117, 137  
22 (2014). Kimner alleged that Poissant resides in Houston, Texas. *See* Compl. at 5. Thus,  
23 the Court does not have general personal jurisdiction over Poissant.

24 A court may exercise specific personal jurisdiction over an individual when "the

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25  
26 <sup>1</sup> Kimner's civil cover sheet states that the docket number for her state court proceedings is  
27 20175210. *See id.* The Court was unable to find any cases originating from Harris County  
28 District Court with that number. The Court did, however, find three related lawsuits  
between Kimner and defendants Capital Title, Ceasons Holding, and Tanglewood with  
docket numbers 201752170, 201752170A, and 201752170B. For the purposes of this  
order, the Court assumes that those are the state court cases Kimner intended to reference.

1 defendant's suit-related conduct must create a substantial connection with the forum  
2 State." *Axiom Foods, Inc. v. Acerchem Int'l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017)  
3 (quoting *Walden*, 571 U.S. at 284). Poissant's suit-related conduct is her representation of  
4 Kimner in the Texas court proceedings. The only connection between Poissant's conduct  
5 and California is the fact that Poissant was Kimner's attorney, but "a defendant's  
6 relationship with a plaintiff or third party, standing alone, is an insufficient basis for  
7 jurisdiction." *Id.* (quoting *Walden*, 571 U.S. at 286). Thus, the Court also does not have  
8 specific personal jurisdiction over Poissant.

9 Accordingly, the Court FINDS that it does not have personal jurisdiction over  
10 Poissant.

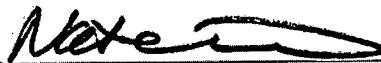
11 **IV. Conclusion**

12 The Court GRANTS Kimner's application for leave to proceed in forma pauperis.  
13 Screening Kimner's complaint under 28 U.S.C. § 1915, the Court FINDS that Kimner fails  
14 to state a claim against corporate Defendants and related individuals. The Court also  
15 FINDS that Kimner failed to establish personal jurisdiction over Poissant. The Court  
16 GRANTS Kimner leave to file an amended complaint by **December 27, 2019**. The  
17 amended complaint must cure the deficiencies noted in this order or the Court will  
18 recommend dismissal.

19 The Court directs Kimner to the Federal Pro Se Program, which provides free  
20 information and limited-scope legal advice to pro se litigants in federal civil cases. The  
21 Federal Pro Se Program is located in Room 2070 in the San Jose United States Courthouse,  
22 and is available by appointment Monday to Thursday 9:00 a.m.–4:00 p.m. The Program  
23 can also be reached by calling (408) 297-1480.

24 **IT IS SO ORDERED.**

25  
26 Dated: November 21, 2019

  
27 NATHANAEL M. COUSINS  
United States Magistrate Judge

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

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AUDREY L. KIMNER,  
Plaintiff,

v.

CAPITAL TITLE OF TEXAS, LLC, et al.,  
Defendants.

Case No. 5:19-cv-07576-EJD

**ORDER DENYING PLAINTIFF'S  
MOTION FOR RECONSIDERATION**

Re: Dkt. No. 22

13 Before the Court is Plaintiff Audrey Kimner's motion for reconsideration.<sup>1</sup> Plaintiff asks  
14 this Court to reconsider its March 2020 order, which dismissed Plaintiff's claims with prejudice.  
15 See Dkt. 16. Plaintiff subsequently appealed that order.<sup>2</sup> Dkt. 17.

16 Reconsideration of a final judgment, order, or proceeding is appropriate if the district court  
17 (1) is presented with newly discovered evidence; (2) committed clear error or the initial decision  
18 was manifestly unjust; or (3) if there is an intervening change in controlling law. *See, e.g., School*  
19 *Dist. No. IJ, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). A motion  
20 for reconsideration may not be used to raise arguments or present evidence for the first time when  
21 they could reasonably have been raised earlier in the litigation. *Carroll v. Nakatani*, 342 F.3d 934,  
22 945 (9th Cir. 2003).

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<sup>1</sup> In this District, parties must first file a motion for *leave* to file a motion for reconsideration. *See* N.D. Cal. Civ. L.R. 7-9(a). Plaintiff Kimner only filed a motion for reconsideration. Given Plaintiff's pro se status, the Court interprets Plaintiff's motion as asking for leave to file a motion for reconsideration. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (discussing the lower standard for pro se plaintiffs, namely that they are held to "less stringent standards" with respect to pleadings).

<sup>2</sup> This ground alone prevents the Court from granting Plaintiff's motion for reconsideration. *See* N.D. Cal. Civ. L.R. 7-9(a) (requiring the motion to be brought before entry of judgment).

Case No.: 5:19-cv-07576-EJD

**ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION**

1

2 UNITED STATES DISTRICT COURT  
3 NORTHERN DISTRICT OF CALIFORNIA

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5 AUDREY L. KIMNER,  
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7 Plaintiff,  
8

v.

9 CAPITAL TITLE OF TEXAS, et al.,  
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11 Defendants,  
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13 Case No.19-cv-07576 NC  
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15 NOTICE OF IMPENDING  
16 REASSIGNMENT TO A UNITED  
17 STATES DISTRICT COURT  
18 JUDGE AND CERTIFICATE OF  
19 SERVICE

20 The Clerk of the Court will now randomly reassign this case to a United States District  
21 Judge because one or more parties has not consented to the jurisdiction of a United States  
22 Magistrate Judge. You will be informed by separate notice of the district judge to whom this case  
23 is reassigned. ALL HEARING DATES PRESENTLY SCHEDULED BEFORE THE  
24 MAGISTRATE JUDGE ARE VACAED.

25 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.  
26 District Court, Northern District of California.

27 That on 12/3/2019, I SERVED a true and correct copy of this notice, by placing said copy  
28 in a postage paid envelope addressed to the person hereinafter listed, by depositing said envelope  
in the U.S. Mail, or by placing said copy into an inter-office delivery receptacle located in the  
Clerk's office.

29  
30 Audrey L. Kimner  
31 P.O. Box 1493  
32 Carmel, CA 93921

33 Dated: 12/3/2019

34 Susan Y. Soong  
35 Clerk, United States District Court

36 By: Lili Harrell  
37 Lili Harrell, Deputy Clerk to the  
38 Honorable NATHANIEL M. COUSINS

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8 AUDREY L. KIMNER,  
9 Plaintiff,  
10 v.  
11 CAPITAL TITLE OF TEXAS, LLC, et al.,  
12 Defendants.

Case No. 19-cv-07576-EJD

**CLERK'S NOTICE RESETTING CASE  
MANAGEMENT CONFERENCE  
FOLLOWING REASSIGNMENT**

13 TO ALL PARTIES AND COUNSEL OF RECORD:

14 YOU ARE NOTIFIED THAT a case management conference has been set for February  
15 27, 2020 at 10:00 AM in Courtroom 4, 5th Floor, 280 S. 1st Street, San Jose, California before  
16 Edward J. Davila. On or before February 17, 2020, the parties shall file a joint case management  
17 conference statement. The Court does not issue a revised Initial Case Management Scheduling  
18 Order with ADR Deadlines. Standing orders can be downloaded from the court's web page at  
19 [www.cand.uscourts.gov/ejdorders](http://www.cand.uscourts.gov/ejdorders).

20 Dated: 12/5/2019

21 Susan Y. Soong  
22 Clerk, United States District Court

23 

24 Adriana M. Kratzmann, Deputy Clerk to the  
25 Honorable EDWARD J. DAVILA

26  
27  
28 Case No.: 19-cv-07576-EJD  
CLERK'S NOTICE RESETTING CASE MANAGEMENT CONFERENCE FOLLOWING  
REASSIGNMENT

1 Your name: Audrey Kimmer

2 Address: P. O. Box 1493

3 Carmel, California 93921

4 Phone Number: 843-754-1543

5 Fax Number:  

6 E-mail Address: Audrey.Kimmer10@gmail.com

7 Pro Se [Select one: Plaintiff or Defendant] Plaintiff

8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 [Select one location: San Francisco / Oakland / San Jose / Eureka]

11 Audrey L. Kimmer ) Case Number: 19-CV-07576 EJD  
12 )  
13 )  
14 Plaintiff(s), ) Title of Document:  
15 vs. ) MOTION to reconsider  
16 Capital Title of Texas ) based on evidence and  
17 LLC, et. al. ) defendants self admitting  
18 ) knowledge and willful  
19 ) knowledge of fraud in this  
20 ) case, torting my property  
21 ) and land in 2017.  
22 Defendant(s). )

4/12/2020  
(Attached)

23 Dear honorable Navila,

24 You closed my proven fraud case on  
25 March 4, 2020 unknownst to me, as the  
26 court was closed due to the virus. I had a  
27 hearing scheduled 4/9/2020 to go over  
28 proof you have not viewed. I am asking

TITLE OF DOCUMENT: MOTION to reconsider CASE NO.: 19-CV-07576 EJD

## Defendant No. 1

Name  
 Job or Title (if known)  
 Street Address  
 City and County  
 State and Zip Code  
 Telephone Number  
 E-mail Address (if known)

Capital Title of Texas, LLC  
 Title Company CEO Bill Shadduck  
 7001 Preston Rd # 120  
 DALLAS DALLAS County  
 TX - 75205  
 214-219-7300  
 BShadduck@ctot.com, CEO

## Defendant No. 2

Name  
 Job or Title (if known)  
 Street Address  
 City and County  
 State and Zip Code  
 Telephone Number  
 E-mail Address (if known)

Long, Kevin  
 Lawyer, Oldenettel & Long  
 2101 Coronado St.  
 Houston Harris  
 TX 77009  
 713-622-5161  
 Klong@oldenettelaw.com

## Defendant No. 3

Name  
 Job or Title (if known)  
 Street Address  
 City and County  
 State and Zip Code  
 Telephone Number  
 E-mail Address (if known)

Shadduck, Bill  
 CEO of Capital Title  
 7001 Preston Rd #120  
 DALLAS DALLAS County  
 TX 75205  
 214-219-7300  
 BShadduck@ctot.com

## Defendant No. 4

Name  
 Job or Title (if known)  
 Street Address  
 City and County  
 State and Zip Code  
 Telephone Number  
 E-mail Address (if known)

Baker, Nichole  
 Capital Title Escrow Manager Office  
 21021 Springbrook PLAZA Drive  
 Spring Harris County Suite 150  
 TX 77379  
 281-715-3440  
 NDAKER@CTOT.COM  
 NBaker@ctot.com

Defendant No. 9

Name

Job or Title (if known)

Street Address

City and County

State and Zip Code

Telephone Number

E-mail Address (if known)

Lein Lender, previous defendant, John Ceasons Holdings, LLC

6008 Gentle Knoll Davenport, TX 75248  
Dallas

TX 75248

469-233-0450

john@ceasonsholdings.com

Defendant No. 10

Name

Job or Title (if known)

Street Address

City and County

State and Zip Code

Telephone Number

E-mail Address (if known)

Poissant, Margaret, A.

Plaintiff's ex Lawyer

301 Fannin Rm 245

Houston Harris County

TX 77002

713-274-2800

mp@poissantlawfirm.com

Defendant No. 11

Name

Job or Title (if known)

Street Address

City and County

State and Zip Code

Telephone Number

E-mail Address (if known)

Tapp, Michael

Real estate Lawyer

12611 Jones Rd #101

Houston

TX 77070

281-890-8277

michael@michaeltapplaw.com

Defendant No. 12

Name

Job or Title (if known)

Street Address

City and County

State and Zip Code

Telephone Number

E-mail Address (if known)

Irelan, Bradford W.

TX STATE BAR # 10411550 Defendant

440 Louisiana, Suite 1800

Houston

TX

713-222-7666

birelan@imtexaslaw.com

Defendant No. 13

Name

Job or Title (*if known*)

Street Address

City and County

State and Zip Code

Telephone Number

E-mail Address (*if known*)

Vida, Sarah, M.  
Lawyer, Roberts, Marille, Weinburg  
5307 E. Mockingbird Ln. Butler Hair  
DALLAS Suite 685 Dallas County  
TX 75206  
713-840-9404  
avida@rmwhhlaw.com

Defendant No. 14

Name

Job or Title (*if known*)

Street Address

City and County

State and Zip Code

Telephone Number

E-mail Address (*if known*)

Hearn, Clayton R.  
Lawyer, Roberts, Marille, Weinburg  
5307 E. Mockingbird Ln. Butler Hair  
DALLAS Suite 685 Dallas County  
TX 75206  
713-840-9404  
chearn@rmwhhlaw.com

Defendant No.

Name

Job or Title (*if known*)

Street Address

City and County

State and Zip Code

Telephone Number

E-mail Address (*if known*)

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Defendant No.

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Job or Title (*if known*)

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Defendants  
page 4

**Additional material  
from this filing is  
available in the  
Clerk's Office.**