IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

State of Texas,	§	
Movant, Plaintiff,	§	
	§	
v.	§	
	§	
Alabama-Coushatta Tribe of Texas,	§	
Principal Chief Colabe III Clem Sylestine,	§	
Second Chief Skalaaba Herbert Johnson,	§	Civil Action No. 9:01-CV-299
Sr., Tribal Council Chairperson Nita	§	
Battise, Vice-Chairman Ronnie Thomas,	§	
Secretary Johnny Stafford, Treasurer Pete	§	
Polite, Member Clint Poncho, Member	§	
Roland Poncho, and Member Maynard	§	
Williams,	§	
Respondents, Defendants.	§	

PLAINTIFF'S FIRST MOTION FOR CONTEMPT FOR VIOLATION OF THE JUNE 25, 2002 INJUNCTION, AND ALTERNATIVELY FOR EQUITABLE DECLARATORY AND INJUNCTIVE RELIEF

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ATTORNEYS FOR PLAINTIFF
August 15, 2016

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TO THE HONORABLE JUDGE OF SAID COURT:

Movant and Plaintiff, the State of Texas ("Plaintiff" or "Movant"), files this First Motion for Contempt for violation of the June 25, 2002 permanent Injunction,[1] and, alternatively, for equitable declaratory relief,[2] and injunctive relief.[3]

Respondents in this matter recently opened an electronic bingo "entertainment center" in East Texas. It is not readily distinguishable from the slot machine casinos one might find in Louisiana and Las Vegas. But Respondents are operating in Texas, not Louisiana or Nevada, and their entertainment center violates the Court's longstanding injunction prohibiting Respondents from conducting any gaming and gambling activities that violate Texas law. In light of these serious, ongoing violations of the law, the State of Texas seeks relief from this Court and in support thereof, respectfully shows the Court the following:

I. PARTIES

Movant, Plaintiff is the STATE OF TEXAS represented by the Office of Attorney General.

Respondent and Defendant ALABAMA-COUSHATTA TRIBE OF TEXAS is a federally recognized Tribe pursuant to the Restoration Act, 25 U.S.C.A. § 731, *et seq*. and may be served with process by serving its attorneys Mr. Frederick R. Petti, PETTI AND BRIONES, P.L.L.C., 5090 North 40th Street, Phoenix, Arizona 85018 and Mr. Danny S. Ashby, MORGAN, LEWIS & BROCKIUS, L.L.P., 1717 Main Street, Dallas, Texas 75201.

Respondent COLABE III CLEM SYLESTINE is the Principal Chief of the Respondent Tribe, and is sued in his official and individual capacities, and may be served with process by serving his attorneys Mr. Frederick R. Petti, PETTI AND BRIONES, P.L.L.C., 5090 North 40th Street,

[1] Originally filed as "No. 9:01-CV-299" in the trial court. *See Alabama-Coushatta Tribes of Tex. v. Tex.*, 208 F. Supp. 2d 670 (E.D. Tex. 2002) (Lufkin Division).
[2] *See* 28 U.S.C.A. § 2201 and § 2202, The Declaratory Judgment Act of 1934.
[3] *See* footnote 2 *supra, and* Fed. R. Civ. P. 65.

Phoenix, Arizona 85018 and Mr. Danny S. Ashby, MORGAN, LEWIS & BROCKIUS, L.L.P., 1717 Main Street, Dallas, Texas 75201.

Respondent SKALAABA HERBERT JOHNSON, SR., is the Second Chief of the Respondent Tribe, and is sued in his official and individual capacities, and may be served with process by serving his attorneys Mr. Frederick R. Petti, PETTI AND BRIONES, P.L.L.C., 5090 North 40th Street, Phoenix, Arizona 85018 and Mr. Danny S. Ashby, MORGAN, LEWIS & BROCKIUS, L.L.P., 1717 Main Street, Dallas, Texas 75201.

Respondent NITA BATTISE is the Tribal Council Chairperson, and is sued in her official and individual capacities, and may be served with process may be served with process by serving her attorneys Mr. Frederick R. Petti, PETTI AND BRIONES, P.L.L.C., 5090 North 40th Street, Phoenix, Arizona 85018 and Mr. Danny S. Ashby, MORGAN, LEWIS & BROCKIUS, L.L.P., 1717 Main Street, Dallas, Texas 75201.

Respondent RONNIE THOMAS is the is the Tribal Council Vice-Chairman, and is sued in his official and individual capacities, and may be served with process may be served with process by serving his attorneys Mr. Frederick R. Petti, PETTI AND BRIONES, P.L.L.C., 5090 North 40th Street, Phoenix, Arizona 85018 and Mr. Danny S. Ashby, MORGAN, LEWIS & BROCKIUS, L.L.P., 1717 Main Street, Dallas, Texas 75201.

Respondent JOHNNY STAFFORD is the Tribal Council Secretary, and is sued in his official and individual capacities, and may be served with process may be served with process by serving his attorneys Mr. Frederick R. Petti, PETTI AND BRIONES, P.L.L.C., 5090 North 40th Street, Phoenix, Arizona 85018 and Mr. Danny S. Ashby, MORGAN, LEWIS & BROCKIUS, L.L.P., 1717 Main Street, Dallas, Texas 75201.

Respondent PETE POLITE is the Tribal Council Treasurer, and is sued in his official and individual capacities, and may be served with process may be served with process by serving his attorneys Mr. Frederick R. Petti, PETTI AND BRIONES, P.L.L.C., 5090 North 40th Street, Phoenix, Arizona 85018 and Mr. Danny S. Ashby, MORGAN, LEWIS & BROCKIUS, L.L.P., 1717 Main Street, Dallas, Texas 75201.

Respondent CLINT PONCHO is a Member of the Tribal Council, and is sued in his official and individual capacities, and may be served with process may be served with process by serving his attorneys Mr. Frederick R. Petti, PETTI AND BRIONES, P.L.L.C., 5090 North 40th Street, Phoenix, Arizona 85018 and Mr. Danny S. Ashby, MORGAN, LEWIS & BROCKIUS, L.L.P., 1717 Main Street, Dallas, Texas 75201.

Respondent ROLAND PONCHO is a Member of the Tribal Council, and is sued in his official and individual capacities, and may be served with process by serving his attorneys Mr. Frederick R. Petti, PETTI AND BRIONES, P.L.L.C., 5090 North 40th Street, Phoenix, Arizona 85018 and Mr. Danny S. Ashby, MORGAN, LEWIS & BROCKIUS, L.L.P., 1717 Main Street, Dallas, Texas 75201.

Respondent MAYNARD WILLIAMS is a Member of the Tribal Council, and is sued in his official and individual capacities, and may be served with process may be served with process by serving his attorneys Mr. Frederick R. Petti, PETTI AND BRIONES, P.L.L.C., 5090 North 40th Street, Phoenix, Arizona 85018 and Mr. Danny S. Ashby, MORGAN, LEWIS & BROCKIUS, L.L.P., 1717 Main Street, Dallas, Texas 75201.

II. STANDARD

"A movant in a civil contempt proceeding bears the burden of establishing by clear and convincing evidence (1) that a court order was in effect, (2) that the order required certain conduct by the respondent, and (3) that the respondent failed to comply with the court's order." *Seven Arts*

Pictures, Inc., v. Jonesfilm, 512 F. App'x 419, 422 (5th Cir. 2013) (quoting *Martin v. Trinity Indus.*, Inc., 959 F.2d 45, 47 (5th Cir. 1992)).

Declaratory relief is available under the Declaratory Judgments Act to "declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C.A. § 2201(a). Moreover, "[f]urther necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment." *Id*. § 2202. Presumably, this would include permanent injunctive relief, as sought here.

Federal Rule of Civil Procedure 65(d)(2) further provides that all Respondent Tribal entities, officers, agents, employees and attorneys and persons acting in concert with the Respondent Tribe are bound by the injunction orders previously issued by this Court.

III. CASE HISTORY

History of becoming Restoration Act Tribe: On August 18, 1987 Congress restored federal tribal status to the *Alabama-Coushatta Tribe of Texas*[4] Indians. The Restoration Act, 25 U.S.C.A. § 731 *et seq*., provides for the restoration of the trust relationship between the United States and the *Alabama-Coushatta Tribe of Texas*. To secure passage of the Restoration Act, the *Alabama-Coushatta Tribe of Texas* pledged before Congress in their Tribal Council Resolution No. TC-86-07 that ". . . the Alabama-Coushatta Tribe remains firm in its commitment to prohibit outright any gambling or bingo in any form on its Reservation."

Importance of Tribal Council Resolution No. TC-86-07: Congress relied on that Tribal Resolution No. TC 86-07 in adopting the Restoration Act and explicitly references its adoption on August 18, 1987 as the source of the provisions of contained in § 737(a) which provides that:

[4] The Restoration Act refers to the two Tribes as the "Alabama and Coushatta Indian Tribes of Texas" in § 731, but found they would be treated as "as one tribal unit" for all purposes, § 732.

> All gaming activities which are prohibited by the laws of the State of Texas are hereby prohibited on the reservation and on lands of the tribe. Any violation of this prohibition provided in this subsection shall be subject to the same civil and criminal penalties that are provided by the laws of the State of Texas. The provisions of this subsection are enacted in accordance with the tribe's request in Tribal Resolution No. T.C.-86-07 which was approved and certified on March 10, 1986.[5] 25 U.S.C.A. § 737(a).

Plaintiff Texas authorized by Congress to bring injunctive action to correct violations: Congress through 25 U.S.C.A. § 737(c) authorized the State of Texas to bring an action in the courts of the United States to "enjoin violations of the provisions of this section." *Id*.

Naskila Entertainment Center established May 2016: Notwithstanding their own Tribal Resolution No. TC 86-07 pledge to Congress, and in violation of the Restoration Act, the Respondent Alabama-Coushatta Tribe of Texas through their attorneys gave the Plaintiff Texas advance notice of their intent to open the Naskila Entertainment Center to operate electronic bingo gaming in May or June 2016. In early May, the Tribe and Plaintiff Texas entered into a Pre-Litigation Agreement requiring notice of opening and allowing a physical inspection of the premises by Plaintiff Texas to determine whether or not the gaming devices were operating in violation of Texas law, and therefore in violation of federalized law under the Restoration Act. Thereafter, the Naskila Entertainment Center operated by Respondents herein made a "soft" opening on May 16th, then reopened at noon on May 17th and remained open since that time. Their "Grand Opening" was then held on June 2, 2016, where they advertised to the general public that they offered "over 350 electronic gaming machines."[6]

June 15, 2016 physical inspection: Plaintiff Texas performed a physical inspection of the Naskila Entertainment Center on June 15th which showed that hundreds of gambling devices were

[5] *See Alabama-Coushatta Tribes of Tex.*, 208 F. Supp. 2d 670, which further sets out the entire contents of Tribal Resolution No. TC 86-07.
[6] *See* Ex. 1 "Game On!" web flier advertising the June 2nd Grand Opening.

employed there, and leased from six out-of-state vendors who crossed State lines to deliver them to the Center, at 540 State Park Road 56, Livingston, Texas. Although these machines are "described as bingo devices, they are virtually indistinguishable from Las Vegas slot [machines]." *See* Exhibit 5, *East Texas tribe expects big returns on slotlike bingo machines*, My Statesman from *Austin American Statesman* (Feb. 27, 2016). As shown in the Exhibit 2, *Declaration of Captain Daniel Guajardo*, he inserted cash directly into one of the gambling devices, observed six different servers supplying various gambling devices to generate chance, and pushed a single button to play an electronic "bingo" game which yielded a cash prize by voucher, *see* Ex. 2-A.

Federalized Texas law violated by lottery: As shown in Ex. 2 Guajardo Decl., the payment of cash consideration into a game of chance which produces cash prizes is an illegal lottery under Texas law. *See* Texas Penal Code § 47.01(7). Moreover, the operation of this electronic bingo as a lottery means that the Tribal Respondents are gambling under Texas Penal Code § 47.02; operating a gambling promotion under Texas Penal Code § 47.03(a)(1) and (a)(5); keeping a gambling place under Texas Penal Code § 47.04(a); and possess gambling devices, equipment, or paraphernalia under Texas Penal Code § 47.06(a) and (c); and/or Texas Penal Code § 47.06(a) as to the servers owned by the vendors which are a "subassembly or essential part of a gambling device." *Id*.

Alabama Coushatta Tribe held to be a Restoration Tribe: With respect to the other Texas Restoration Act Tribe, the Fifth Circuit held in *Ysleta Del Sur Pueblo v. State of Tex.*, 36 F.3d 1325 (5th Cir. 1994) ("*Ysleta I*") that the Tigua Tribe is organized pursuant to the Restoration Act, 25 U.S.C.A. § 1300g-6(c) and that "All gaming activities which are prohibited by the laws of the state of Texas are prohibited on the reservation and on lands of the tribe." *Ysleta I*, at 1332. The Fifth Circuit went further and held that under the Restoration Act, Texas law "functions as surrogate

federal law . . . the Tribe has already made its 'compact' with the State of Texas, and the Restoration Act embodies that compact. If the Ysleta del Sur Pueblo wishes to vitiate the compact it made to secure passage of the Restoration Act, it will have to petition Congress to amend or repeal the Restoration Act…" *Id*. at 1335. Similarly this Court in 2002 held that the Alabama Coushatta Tribe was also a Restoration Act Tribe.[7]

Permanent Injunction granted June 25, 2005: This Court also found violations of the Texas Penal Code relating to illegal gambling in 2002 and entered a permanent injunction barring Respondents from:

> For the forgoing reasons, the Alabama–Coushatta Tribe, its Tribal Council and all persons acting by, through or under the Tribe and its Tribal Council are ORDERED to cease and desist operating, conducting, engaging in, or allowing others to operate, conduct, or engage in gaming and gambling activities on the Tribe's Reservation which violate State law. The Court GRANTS the Tribe thirty (30) days within which to bring itself into full and complete compliance with its injunction.

Alabama-Coushatta Tribes of Tex., 208 F. Supp. 2d at. at 678–79.

Alabama-Coushatta Tribe had prior notice before opening Naskila Center: As shown in Exhibit 3, the Respondents had notice over four months before they opened that if they opened this gambling operation, they would be the subject of this contempt action. The only interim agreement they made was the Pre-Litigation Agreement referenced above. They opened Naskila Center without any prior approval by Plaintiff State.

COUNT I ILLEGAL GAMBLING DEVICES VIOLATE THIS COURT'S 2002 INJUNCTION

Respondents' electronic bingo violates permanent injunction: As described in Ex. 2, Guajardo Decl., the operation of the gambling devices by Respondents violate the illegal lottery and other gambling prohibitions found in chapter 47 of the Texas Penal Code. Under the

[7] *See Alabama-Coushatta Tribes of Tex.*, 208 F. Supp.2d at 674-675.

Restoration Act, those provisions are federalized, and therefore show a violation of both State and federal law.

June 25, 2005 Permanent Injunction violated: Since the Respondents were enjoined from violating Texas law by the specific terms of the 2002 permanent injunction,[8] and the June 15th physical inspection yielded evidence of multiple violations of the Texas Penal Code, it is clear that the Respondents are currently operating in contempt[9] of this Court's permanent injunction. Movant Texas seeks an Order from this Court forcing the cessation of all gambling as presently conducted at Naskila Entertainment Center and the removal of all illegal gambling devices, and any further equitable relief to which it may show itself entitled.

COUNT II ALTERNATIVE DECLARATORY RELIEF TO FIND THAT THE TRIBE'S ELECTRONIC BINGO IS NOT IGRA CLASS II GAMING

Alternative declaratory relief sought: Pursuant to 28 U.S.C.A. § 2201 Plaintiff Texas seeks declaratory relief[10] from this Court to find that:

A. IGRA[11] does not apply to Defendant Alabama Coushatta Tribe because it did not repeal the Restoration Act.[12]

B. Restoration Act Tribes may not conduct Class II IGRA gaming.

Defendant Tribe contends that the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C.A. §§ 2701–21, impliedly repealed the Restoration Act. Defendant asserts that under IGRA, they are permitted to engage in class II gaming without oversight from the State of Texas, and without being subject to its laws.

[8] *See id.* at 681.
[9] Although contempt is an intentional act, it should be noted that the Respondents and their attorneys have been very cooperative and forthright in the dealings with the Plaintiff Texas. They assert a new defense of IGRA Class II gaming and that matter needs to be settled by this Court as well.
[10] *See Sherwin-Williams Co. v. Holmes Co.*, 343 F.3d 383 (5th Cir. 2003).
[11] *See* the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C.A. §§ 2701– 21.
[12] *See* Restoration Act, 25 U.S.C.A. § 731, *et seq*.

IGRA provides that "class II gaming on Indian lands shall continue to be within the jurisdiction of the Indian tribes, but shall be subject to the provisions of this chapter." 25 U.S.C.A. § 2710(a)(2). An Indian tribe may engage in, license, or regulate class II gaming if such gaming "is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law)." 25 U.S.C.A. § 2710(b)(1).

Fortunately, this issue of implied repeal of the Restoration Act has already been decided both by this Court and by the Fifth Circuit, *see Alabama-Coushatta Tribes of Tex.*, 208 F. Supp. 2d at 675–678, (citing *Ysleta I* decision). Similarly, this Court previously held that the Defendant Tribe is a Restoration Act Tribe, without any ability to engage in IGRA gaming. *Id.*

C. Electronic Bingo at Naskila Entertainment Center is not Class II gaming.

D. Defendants should be enjoined to cease and desist from electronic bingo.

Electronic Bingo is not permitted under Texas law: Under IGRA, class II gaming includes "the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)." 25 U.S.C.A. § 2703(7)(A)(i). Texas law does not permit the gaming at issue—fully automated, essentially instantaneous electronic bingo games that start and end with a single push of a button—for any purpose. Indeed, an uncodified provision adopted as part of the Bingo Enabling Act specifically provides that "[n]othing in this Act shall be construed as authorizing any game using a video lottery machine or machines." Tex. Att'y. Gen. Op. No. GA-0591, 2008 WL 171004, at *3 (quoting Act of May 29, 1995, 74th Leg., R.S., ch. 1057, § 10, 1995 Tex. Gen. Laws 5222, 5225 (House Bill 3021)). This language "expressly provides that [the Bingo Enabling Act] is not to be construed to provide electronic video bingo." *Id*. In 2007, the Texas Attorney General issued an opinion stating that proposed legislation legalizing "electronic pull-tab bingo" would have been an impermissible violation of article III,

section 47(a) of the Texas Constitution. *See* Tex. Att'y. Gen. Op. No. GA-054, 2007 WL 1189841, at *5 (Apr. 19, 2007). The Attorney General explained that when voters amended the Texas Constitution to permit charitable bingo, they contemplated that the game of bingo involved "social interaction," and was not understood to be "a game played electronically." *Id.* at *4. When a game is played by an individual on a computer monitor, "the social interaction present is diminished, if not eliminated." *Id*. Electronic pull-tab bingo therefore ran afoul of the Texas Constitution because it was not the kind of bingo that voters authorized for charitable purposes.

Electronic Bingo is not permitted under IGRA as Class II gaming: Class II gaming does not include "electronic or electromechanical facsimiles of any game of chance or slot machines of any kind." 25 U.S.C.A. § 2703(7)(B)(ii). Such facsimiles of games of chance constitute "class III" gaming, 25 U.S.C.A. § 2703(8), which may only be "conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State." 25 U.S.C.A. § 2710(d)(1)(C). Because electronic bingo is not authorized for any purpose within the State of Texas—it is illegal for anyone, anywhere, to play it—electronic bingo is not a permissible Class II game, and Respondents are prohibited under IGRA from engaging in electronic bingo within the State of Texas.

Electronic bingo by the Tribe is not Class II electronic aid: Defendant Tribe's electronic bingo games also constitute Class III gaming because the games are fully automated electronic facsimiles of paper card bingo games. *See Cabazon Band of Mission Indians v. NIGC*, 14 F.3d 633, 636 (D.C. Cir. 1994) ("'By definition, a device that preserves the fundamental characteristics of a game is a facsimile of the game.'" (citation omitted)). The electronic bingo games at issue replicate all of the elements of paper card bingo and thus constitute class III facsimiles rather than class II electronic aids. *See id*. (holding that IGRA's "exclusion of electronic facsimiles removes

games from the class II category when those games are wholly incorporated into an electronic or electromechanical version.").

NIGC previously held electronic bingo not Class II game: The former Chairman of the National Indian Gaming Commission, Phil Hogen, in his June 4, 2008 letter to the Metlakatla Indian Community already disapproved this same "one touch, fully electronic, fully automated game based on bingo" because it does "not meet the definition of bingo under IGRA." *See* Exhibit 4, Philip N. Hogen, Letter to Mayor Karl S. Cook, Jr., Metlakatla Indian Community, at 1 (June 4, 2008). In this letter, the issue of "first person covering" and "sleeping bingo" are fully analyzed[13] and it is clear from the description that the Defendant Tribe's electronic bingo suffers from the same shortcomings. Here, there is no "'daub' or 'cover' requirement for all players after the bingo numbers are announced and not just for the winning players." *Id*. at 5.

Defendant Tribe's electronic bingo is a facsimile rather than a technological aid: As the electronic bingo operated by the Tribe is a one-button game, it constitutes a "facsimile of a game of chance" under Class III gaming, rather than a technologic aid or even an "electromechanical facsimile." *See* 25 C.F.R. § 502.7(a)(2); *see also* 25 U.S.C.A. § 2703(7)(B)(ii). As set forth in Ex. 4, the NIGC "does not have the authority to shoehorn into Class II a facsimile that IGRA establishes as Class III." *Id.* at p. 10. To conduct this Tribal electronic bingo, the Defendant Tribe would need to engage in Class III gaming, which requires a compact with the State of Texas. 25 U.S.C.A. § 2710(d)(1)(C). Because Respondents do not have a compact with the State of Texas, they are engaging in impermissible class III gaming in violation of IGRA.[14]

[13] *See* Ex. 3, June 4, 2008 letter from NIGC to Metlakatla Indian Community.
[14] As shown in this Count II Plaintiff Texas relies on this Court's previous opinion based on *Ysleta I* for the proposition of law that IGRA does not apply to any gaming by a Restoration Act Tribe like Defendant herein.

COUNT III INJUNCTION

Plaintiff Texas reasserts and incorporates the allegations contained above. A permanent injunction pursuant to both 28 U.S.C.A. § 2202 and Rule 65 of the Federal Rules of Civil Procedure should be granted in this case following hearing on the contempt motion.

Plaintiff further requests a show-cause Order from this Court, and, following hearing, an Order finding all Defendants/Respondents in contempt of the June 25, 2002 Injunction and ordering all Defendants/Respondents to:

A. Cease all electronic bingo operations at Naskila Entertainment Center.

B. Remove all computers, software, hardware, and any other equipment they currently used as a gambling device from the Naskila Entertainment Center that relates to any game with cash prizes or cash equivalent prizes.

C. Defendant Tribe only should pay a civil penalty of $10,000 per day into the registry of the Court from June 2, 2016 until such time as all gambling operations have ceased.

D. Defendant Tribe only should pay costs to Plaintiff State of the June 15th investigation conducted in this case, as well as any Court costs and attorneys' fees incurred after June 15, 2016.

PRAYER

The State of Texas moves this Court to issue a Show Cause Order to require Defendant/Respondents to appear and, following presentation of evidence, to enter an order holding Defendant and Tribal Respondents in contempt of this Court's June 25, 2002 injunction, and to grant such other and further relief, including the equitable relief requested herein, to which this Plaintiff may be entitled.

Respectfully submitted.

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ATTORNEYS FOR MOVANT/PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served via the Court's electronic notification system and e-mail on this the 15h day of August, 2016, to:

Mr. Frederick R. Petti
Mr. Kent Robinson
Ms. Patricia Lane Briones
PETTI AND BRIONES, P.L.L.C.
5090 North 40th Street
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Mr. Danny S. Ashby
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Dallas, Texas 75201

Attorneys for Respondents/Defendants

/s/ *William T. Deane*
WILLIAM T. DEANE
Assistant Attorney General

CERTIFICATE OF CONFERENCE

In accordance with Local Rule CV-47(a)(3) I hereby certify that I conferred with opposing counsel in good faith to resolve the matter that is the subject of this motion without court intervention. Counsel for Respondents/Defendants stated that his is opposed to this motion.

/s/ *William T. Deane*
WILLIAM T. DEANE
Assistant Attorney General