

Case No. 09-cv-1894

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROY E. ERWIN; RUTH ILENE ERWIN ROBERTS; TED BOOHER; ELIZABETH ANN MCKINNEY, as attorney-in-fact for MARY M. LUNSFORD; TODD REYNOLDS; CLIFTON MUZYKA; CAROL FITZPATRICK; and PHILLIP KRUMNOW, JR., as representative of the ESTATE OF PHILLIP KRUMNOW, SR., KRUMNOW FAMILY TRUST, and PHIL KRUMNOW, INC. EMPLOYEE PENSION TRUST,

Plaintiffs,

vs.

BRYAN F. RUSS, JR.; JAMES H. MCCULLOUGH; NESTOR LEAMON; PALMOS, RUSS, MCCULLOUGH & RUSS, L.L.P.; L K & P, L.L.C; OAKS & DIAMONDS, L.L.C.; VELNON, L.L.C.; DEMINIMUS MANAGEMENT, L.L.C.; FLARE ROYALTIES, L.L.C.; FLARE ROYALTIES, L.P.; TRAVIS T. MORGAN; ALMA IONE MORGAN; MICHAEL T. MORGAN; LEOR ENERGY, L.P.; ENCANA OIL & GAS (USA), INC.; ZEIG ENTERPRISES, INC.; JAMES ZEIG; HEARNE BUSINESS PARK, L.L.C.; MOLLY HEDRICK; STEPHEN BOYKIN; DONA E. HARRIS; PAM KRUMNOW; BETTIE MENDENHALL; NORA CORA WITHEM; DELAWARE DEVELOPMENT COMPANY, L.L.C; LARRY A. AIKENS; W. SCOTT CARLSON; METROPOLITAN WATER COMPANY, L.P.; BLUE WATER SYSTEMS, L.P.; ELEANOR FUNK, individually and as trustee for J.B. NEWTON TRUST and J.B. NEWTON ESTATE; GERALD YEZAK; JOE DAVIS; KAREN BOX; KENNETH SWICK; FIRST STAR BANK OF BREMOND; MICHAEL MUZYKA; and CATHERINE MOTLEY,

Defendants

ORIGINAL COMPLAINT

The Plaintiffs allege and state the following on information and belief:

1. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343 insofar as the Plaintiffs brings claims against the Defendants under 18 U.S.C. §1964 and 42 U.S.C. §1983.

2. Venue is proper under 29 U.S.C. §1391(b) insofar as Defendants W. Scott Carlson, Bryan F. “Trey” Russ, III, and Mark Milstead reside in the Houston Division of the U.S. District Court of the Southern District of Texas, and because the principal place of business for Defendant Leor Energy, L.P. is in the Houston Division.¹

Parties

3. Plaintiff Roy E. Erwin is resident of Reagan, Texas. He is the rightful owner of a portion of the Mineral Interest described below. He brings claims on behalf of himself and all others similarly situated. He is a member of the “Erwin Heir Minority,” described hereinafter.

4. Plaintiff Ruth Ilene Erwin Roberts is a resident of Robertson County, Texas. She is a member of the “Erwin Heir Majority” (described below) and a rightful owner of a portion of the “Mineral Interest” (also described below).

5. Plaintiff Raymond F. Martine is a resident of College Station, Texas. He is a member of the Erwin Heir Majority and a rightful owner of a portion of the Mineral Interest.

6. Plaintiff Timothy R. Stone is a resident of Santa Barbara, California. He is a member of the Erwin Heir Majority and a rightful owner of a portion of the Mineral Interest.

7. Plaintiff Lucinda R. Warnstaff is a resident of Robinson, Texas. She is a member of the Erwin Heir Majority and a rightful owner of a portion of the Mineral Interest.

8. Plaintiff Brenda Tunnell is a resident of Las Vegas, Nevada. She is a member of the “Erwin Heir Majority” and a rightful owner of a portion of the Mineral Interest.

9. Plaintiff Steve Stokely is a resident of Robertson County, Texas.

10. Plaintiffs Brian and Madeline Moore are a married couple residing in Robertson

¹ *Roy E. Erwin, Jr. v. Bryan F. Russ, Jr., et al.*, W09-CA-127 (W.D. Tex.) was filed in Waco by some of the Plaintiffs herein. Afterward, the Plaintiffs determined that they would more likely receive a fair trial in Houston. The former case will therefore be dismissed.

County. They bring claims on behalf of themselves and as next friend of R.M., their son.

11. Plaintiff Cindy Nichols is a resident of Robertson County, Texas. She brings claims on behalf of herself and as next friend of J.H., her granddaughter.

12. Plaintiff Cassandra Butler is a resident of Hearne, Texas.

13. Plaintiff Alan Eppers is a resident of Harris County, Texas.

14. Plaintiffs Cheryl and Wayne Maxwell are a married couple residing in Bryan, Texas.

15. Plaintiff Jimmy Czajkowski is a resident of Bremond, Texas.

16. Plaintiff Estella Scott is a resident of Hearne, Texas.

17. Plaintiff Nancy Erickson is a resident of California.

18. Plaintiff Janna Gossen is a resident of California.

19. Plaintiff Ted Booher is a resident of Harris County, Texas.

20. Plaintiff Elizabeth Ann McKinney is a resident of Kennard, Texas. She is the legal representative of the estate of Mary M. Lunsford, which is an owner of a portion of the Mineral Interest described below.

21. Plaintiff Todd Reynolds is a resident of Milano, Texas.

22. Plaintiff Clifton Muzyka is a resident of Bremond, Texas.

23. Plaintiff Carol Fitzpatrick is a resident of Bremond, Texas. She is the wife of Plaintiff Muzyka.

24. Plaintiff Phillip Krumnow, Jr. is the legal representative of the Estate of Phillip Krumnow, Sr., the Krumnow Family Trust, and the Phil Krumnow, Inc. Employees Pension Trust.

25. Defendant Bryan F. Russ, Jr. ("Rusty Russ") is an attorney practicing in Hearne,

Texas and residing in Robertson County, Texas. He is the city attorney for Hearne, Calvert, and Franklin.

26. Defendant Bryan F. Russ, III (“Trey Russ”) is an attorney practicing in Hearne, Texas and residing in Brazos County, Texas.

27. Defendant James H. McCullough is an attorney practicing in Hearne, Texas and residing in Robertson County, Texas. He is the former district attorney of Robertson County, Texas.

28. Defendant Nestor Leamon is a real estate agent in Franklin, Texas.

29. Defendant Pamos, Russ, McCullough, & Russ, L.L.P. (hereinafter “The Firm”) is a law firm in Hearne, Texas and a limited liability partnership organized under the laws of Texas.

30. Defendant L K & P, L.L.C. (hereinafter “L K & P”) is a limited liability company organized under the laws of Texas. It is owned by Defendants Russ and McCullough.

31. Defendant Oaks & Diamonds, L.L.C. (hereinafter “Oaks & Diamonds”) is a limited liability company organized under the laws of Texas. It is owned by Defendants Russ and McCullough.

32. Defendant Velnon, L.L.C. (hereinafter “Velnon”) is a limited liability company organized under the laws of Texas. It is owned by Defendants Russ and McCullough.

33. Defendant Deminimus Management, L.L.C. (hereinafter “Deminimus”) is a limited liability company organized under the laws of Texas. It is owned by Defendants Russ and McCullough.

34. Defendant Flare Royalties, L.L.C. is a limited liability company organized under the laws of Texas. It is owned by Defendants Russ and McCullough.

35. Defendant Flare Royalties, L.P. is a limited partnership whose general partner is

Flare Royalties, L.L.C.

36. Defendant Leor Energy, L.P. (hereinafter “Leor Energy”) is a limited partnership headquartered in Houston, Texas.

37. Defendant Encana Oil & Gas (USA), Inc. (hereinafter “Encana”) is a corporation headquartered in Denver, Colorado.

38. Defendant Zeig Enterprises, Inc. (hereinafter “Zeig Enterprises”) is a corporation organized under the laws of Texas and headquartered in Hearne, Texas.

39. Defendant James Zeig is a resident of Robertson County, Texas. He is the president of Defendant Zeig Enterprises, Inc.

40. Defendant Hearne Business Park, L.L.C. (hereinafter “Hearne Business Park”) is a limited liability company organized under the laws of Texas.

41. Defendant Molly Hedrick is an attorney practicing in Hearne, Texas and a member of The Firm.

42. Defendant Stephen Boykin is an attorney practicing in Franklin, Texas. He is the owner of Defendant Guaranty Title Company, also in Franklin, Texas.

43. Defendant Dona E. Harris is an attorney practicing in Franklin, Texas.

44. Defendant Pam Krumnow is the mother of Plaintiff Krumnow.

45. Defendant Bettie Mendenhall is the sister of Plaintiff Krumnow.

46. Defendant Nora Cora Withem is the sister of Plaintiff Krumnow.

47. Defendant Delaware Development Company, L.L.C. (“DDC”) is a Texas limited liability company.

48. Defendant Larry A. Aikens is an officer of DDC.

49. Defendant Metropolitan Water Company, L.P. (“MWC”) is a Texas limited

partnership.

50. Defendant W. Scott Carlson is partner in MWC.

51. Defendant Blue Water Systems, L.P. ("Blue Water") is a Texas limited partnership. It is the successor to MWC.

52. Eleanor Funk is a resident of Yardley, Pennsylvania and she is trustee for the J.B. Newton Trust and J.B. Newton Estate. She is sued individually and as trustee.

53. Defendant Gerald Yezak is the Robertson County Sheriff.

54. Defendant Joe Davis is a commander in the Robertson County Sheriff's Department.

55. Defendant Karen Box is a deputy in the Robertson County Sheriff's Department.

56. Defendant Kenneth Swick is the former president of Defendant First Star Bank of Bremond.

57. Defendant First Star Bank of Bremond ("First Star Bank") is a bank organized under the laws of the State of Texas.

58. Defendant John Paschall is the district attorney of Robertson County, Texas.

59. Defendant Gene Wilganowski is the former chief of police of Hearne, Texas.

60. Defendants Tracey and Timothy Moore are a married couple residing in Robertson County, Texas.

61. Defendant Heather Wheeler is an employee of Texas Child Protective Services.

62. Defendant Roderick Jackson is an employee of Texas Child Protective Services.

63. Defendant Amy Zachmeyer is an employee of Texas Child Protective Services.

64. Defendant Jerry Wayne Nichols is a resident of Robertson County, Texas.

65. Defendant Michael Werlinger is a resident of Hearne, Texas.

66. Defendant Marc Catalina is a resident of Hearne, Texas.
67. Defendant Hollie Elliott is a resident of Robertson County, Texas.
68. Defendant Michael Muzyka is a resident of Robertson County, Texas.
69. Defendant Catherine Motley is a resident of Robertson County, Texas.
70. Defendant Shirley Bielamowicz is a resident of Robertson County, Texas.
71. Defendant Guaranty Title of Robertson County, Inc. (“Guaranty Title”) is a Texas corporation headquartered in Franklin, Texas.
72. MACRU, LLC is a Texas limited liability company owned by Defendant Rusty Russ and McCullough.
73. Defendant Dick Milstead is a resident of Robertson County, Texas.
74. Defendant Mark Milstead is a resident of Magnolia, Texas.
75. Defendant Jerry Baxter is a resident of Robertson County, Texas. He is the president of Defendant Hearne Business Park.

Introduction

76. Robertson County first gained widespread notoriety for its endemic corruption following the June 3, 1961 shooting of Henry Marshall. Mr. Marshall, a federal agriculture inspector, had been investigating a cotton-subsidy scam involving Billie Sol Estes, an associate of then-Vice President Lyndon B. Johnson. Mr. Marshall was shot five times with a bolt-action .22 rifle, but Sheriff Howard Stegall and a local justice of the peace declared Marshall’s death a suicide. No photographs were taken of the crime scene, no fingerprints were taken from the rifle or Marshall’s truck, no blood samples were taken, and Marshall’s truck was washed and waxed the day after the shooting. Bryan F. Russ, Sr., the father of Defendant Bryan F. Russ, Jr. and part of the local Democratic political machine, served as the county’s prosecutor at the time of the

shooting, and he oversaw the presentation of evidence to the grand jury. During that time, Mr. Marshall's cause of death officially remained suicide, notwithstanding overwhelming evidence that Mr. Marshall was murdered. After Estes was released from federal prison in 1983, he told another Robertson County grand jury that he arranged the murder of Marshall at the direction of Johnson. The grand jury rejected Estes's testimony, but a district judge later changed the cause of death on Marshall's death certificate from suicide to homicide.

77. Robertson County's political culture has not changed much since 1961. The Firm and a handful of elected officials run the county and its municipalities as racketeering enterprises. Among the foremost of The Firm's co-conspirators is District Judge Robert M. Stem. Accordingly, and as detailed below, almost any litigation or transaction that touches the Firm or passes through the Robertson County Courthouse is likely to be tainted.

78. In one ongoing scheme, Defendants Russ and McCullough, with assistance from Judge Stem, have stolen land and mineral interests throughout Robertson County. Russ and McCullough have targeted three primary groups: poor people, African-Americans, and outsiders, *i.e.*, people who reside outside of Robertson County. When stealing land or mineral interests, Russ and McCullough often use shell companies to create sham transactions. Shell Company A, for example, will purport to transfer its land or mineral interests to Shell Company B, even though Shell Company A never owned the land or mineral interest in the first place. Russ and McCullough, acting through The Firm, then seek a declaratory judgment that Shell Company B owns the land or mineral interest. Judge Stem grants Russ and McCullough permission to serve notice on the allegedly undetermined owners by publication in local newspapers.² After the

² In at least one instance (described below), where some of the actual owners resided in Robertson County, Judge Stem allowed Russ and McCullough to avoid detection by posting notice in the courthouse and two city halls rather than following the procedural norm of notice by publication.

actual owners fail to respond, Judge Stem, at the behest of Russ and McCullough, appoints Defendant Dona Harris as attorney ad litem, ostensibly to represent the interests of the actual landowners. On the same day he is appointed, Defendant Harris declares that he cannot locate the actual owners (even though most of them are readily identifiable), and Judge Stem appoints Defendant Nestor Leamon as receiver to sell the property. Leamon then sells the property to Russ and McCullough at prices far below market value, and the proceeds are put into the registry of the court. If the actual owners fail to claim the money within seven years, Judge Stem gives it back to Shell Company B, *i.e.*, back to Russ and McCullough.

79. Another scheme commonly employed by Russ and McCullough involves court-sanctioned extortion. Two pipeline companies in particular have been attempting to lay pipeline to connect their gas wells in Robertson County. Whenever they seek to acquire pipeline right-of-way from landowners, The Firm recruits the landowners as clients and demands prices far above the market rate. If they decline to pay the extortionate prices and instead seeks to obtain right-of-way by condemnation, Judge Stem consistently appoints the same three special commissioners to determine the right-of-way price, and these commissioners consistently fix prices at 5-10 times the market rate. If the companies wish to build the pipeline, they must pay the extortionate price or deposit the amount into the court's registry pending appeal.

80. Judge Stem often meets with Russ and/or McCullough *ex parte* before hearings, and it is widely known in and around Robertson County that Judge Stem will rule in favor of the clients of The Firm with no regard for the law or the facts. In fact, outside plaintiff's attorneys sometimes partner with The Firm, even where a case has little or no connection to Robertson County, because they know that Judge Stem will rule that venue is proper when The Firm requests it, and because they know Judge Stem will rule in The Firm's favor thereafter. For

example, *Denise Nichols, et al. v. T.J. Lambrecht Construction, Inc.*, Cause No. 06-11-17666-CV, arose from an automobile accident that killed four people at a Brazos County highway construction site. None of the legitimate parties had any connection to Robertson County. The plaintiffs' attorneys, however, named as defendant a subcontractor from Robertson County that had no relationship to the crash. Judge Stem forced the defendants to go to trial in Robertson County, and the jury awarded more than \$3 million to the plaintiffs. The Firm was not satisfied with that amount, however, so it asked Judge Stem to disregard the jury's award and order a new trial on the grounds that the award was too low. Judge Stem ordered a new trial, and the defendants finally settled for an undisclosed amount. In other words, The Firm appears to have used its connections with Judge Stem to extort a higher settlement from the defendants.

81. In the following section, the Plaintiffs will set forth specific cases of tortious and, in some cases, criminal acts by The Firm, Judge Stem, and their co-conspirators. These acts range from court-sanctioned child stealing to the district attorney's attempts to block a murder investigation in which his brother-in-law was a suspect.

Facts

The Murder of Hank Johnson

82. In the summer of 2008, Hank Johnson of Pasadena lived temporarily in a motel in Hearne while he worked at a power plant near Franklin. On July 10, 2008, he was severely beaten in his motel room. He died 11 days later without regaining consciousness.

83. Sergeant Steve Stokely, a detective with the Hearne police, quickly identified several suspects in the attack, including Ester Martinez, Ralph Martinez and Brian Blackburn, the brother-in-law of District Attorney John Paschall. Sgt. Stokely informed Phil Crowell³, an

³ Mr. Crowell recently gained attention for trying to dissuade business owners from advertising a movie

investigator for Defendant Paschall, about the assault on July 11, 2008, according to a report written by Brian Bancroft, another investigator for Mr. Paschall. According to the Bancroft report, on July 12, 2008 Defendant Paschall took it upon himself to personally interview his brother-in-law about the circumstances of the assault. Aside from the obvious conflict of interest, it appears that Mr. Paschall breached basic investigative procedure by failing to include a law enforcement officer (such as the case detective, Sgt. Stokely) in the interview, thereby rendering himself the only witness to what Mr. Blackburn said. In a normal world, this would disqualify Mr. Paschall from prosecuting the case pursuant to Rule 3.08 of the Texas Disciplinary Rules of Professional Conduct. Likewise, the conflict of interest would, in a normal world, disqualify Mr. Paschall.

84. According to Mr. Stokely, he met with Mr. Blackburn's wife at the police department shortly after the assault. During the meeting, Mr. Blackburn called her on her cell phone, cursed at her, and threatened her. Mrs. Blackburn left the police department immediately thereafter.

85. According to the Bancroft report, on July 14, 2008 Mr. Paschall exonerated his brother-in-law by claiming "there were no visible signs on Blackburn's hands that he had recently been in an altercation." There is no indication that Mr. Paschall – or anyone else – looked for injuries elsewhere on Mr. Blackburn's body, asked to see the clothes he had worn the previous day, etc. Mr. Blackburn implicated Mr. Martinez in the assault, and Mr. Paschall relayed this information to Mr. Bancroft. On July 16, 2008, Mr. Martinez and his girlfriend, Patricia Nelson, appeared uninvited at Mr. Paschall's office to tell him they were not involved in the assault on Mr. Johnson. According to the Bancroft report, both Mr. Martinez and Ms. Nelson

critical of the district attorney's office. See <http://www.theeagle.com/local/Screening-stirs-community>.

had injuries consistent with a serious assault, and they gave conflicting accounts of what happened. Mr. Martinez claimed Ms. Nelson had hit him with “a small baseball bat” on Sunday, July 13, 2008. Ms. Nelson claimed the assault had happened on Friday, July 11, 2008.

According to the Bancroft report, Mr. Martinez later failed a polygraph exam. Ester Martinez, his sister, told police she had been with her brother the entire evening of the assault. When she was called to testify before the grand jury on August 4, 2008, however, Ms. Martinez invoked her Fifth Amendment rights and refused to testify.

86. On July 24, 2008, investigators recovered two guitars that had been stolen from Mr. Johnson’s motel room on the night of the assault. Trae Thompson first claimed to know nothing about the stolen guitars, then he claimed to have purchased them from Samuel Henderson, and finally he claimed he stole them from the back seat of a black sports car.

87. During the murder investigation, Defendant Gene Wilganowski, who was then the interim police chief, asked Mr. Stokely to join him on a car ride. While in the car, Mr. Wilganowski showed Mr. Stokely a piece of paper with three names on it and suggested that Mr. Stokely might be placing himself in jeopardy by aggressively investigating the Johnson murder. Around the same time, Mr. Paschall called Mr. Stokely, cursed at him, insulted him, told him he would not be working with the police department very long, and told him he needed to go back to Madisonville (where he had worked previously). On October 17, 2008, Mr. Paschall’s office sent a letter to Mr. Wilganowski informing him that Mr. Paschall’s office was taking over the investigation of Hank Johnson’s murder.

88. Mr. Stokely left his position as an investigator and transferred to the patrol division. Mr. Stokely met with FBI agents to express his concerns about the handling of the murder investigation. Defendant Wilganowski later demoted Mr. Stokely from sergeant to

patrolman.

89. Before and after Mr. Johnson died, medical workers, family members, and funeral home employees noticed blood under Mr. Johnson's fingernails. Family members repeatedly urged investigators to take samples of the blood, but they did not. Likewise, Dr. Patricia Moore, a pathologist at the Southeast Texas Forensic Center⁴, failed to take samples of the blood under Mr. Johnson's fingernails.

90. In the year that followed, Sandi Johnson, the mother of Hank Johnson, repeatedly demanded that Mr. Paschall and his investigators exhume her son's body and take samples of the blood under his fingernails. Several television stations began covering Ms. Johnson's crusade, and Mr. Paschall finally agreed to exhume the body for further testing. Ms. Johnson was told the body would be exhumed on July 25, 2009, and Mr. Bancroft even made arrangements with the cemetery where Mr. Johnson was buried. The exhumation was cancelled without explanation.

91. On July 28, 2009, Mr. Bancroft told Ms. Johnson that Mr. Paschall wanted to meet with her before any exhumation. When Ms. Johnson asked why, Mr. Bancroft told her the media coverage she had generated was hurting the murder investigation. Ms. Johnson declined the request for a meeting. To date, the district attorney's office has not explained why the exhumation was cancelled, nor will the DA's office tell her whether the body will be exhumed in the future. In a September 2, 2009 e-mail, Mr. Bancroft wrote that Mr. Paschall "believes that further communications between you and this office would be detrimental and counterproductive to the investigation," and "If we make an arrest directly related to the death of your son, we will

⁴ According to its website (which contains several spelling and grammatical errors), the Southeast Texas Forensic Center ("STFC") is not a medical examiner's office. See <http://www.setfc.com/about.php>. According to the Texas Secretary of State's Office, STFC was founded as a for-profit corporation in 2003 by Tommy Brown, a Beaumont osteopath. The website includes a "Gift Shop" tab that is linked to <http://www.morguenovelties.com>. It is unclear whether STFC is regulated or certified by any government or other outside entity.

contact you, otherwise please do not call or email this office anymore.”

92. Thus far, no one has been charged with Mr. Johnson’s murder.

The Murders of Chandell Lewis and Harry Munson

93. Chandell Lewis was shot to death in his pickup truck in Hearne, Texas on October 25, 2008. Harry Munson, a neighbor who apparently stepped outside to see what was happening, was shot to death as well. Witnesses observed Shedrick Darnell rummaging through Mr. Lewis’s clothing immediately after the shooting, removing cash and personal items, including Mr. Lewis’s keys. The day after the shooting, Mr. Darnell entered Mr. Lewis’s house without permission and searched through Mr. Lewis’s belongings.

94. Shortly after the shooting, Torrance Proctor called a friend and her sister and said he had just shot two men. The sister provided a statement to Chief Wilganowski shortly after the shooting, but she has never been contacted by investigators since giving the original statement.

95. Investigators with Mr. Paschall’s office soon arrested DeNard Anderson, Derrick Bible, and Dameon Law and charged them with capital murder.

96. LaToshia Boxley, a cousin of Mr. Lewis and sister-in-law of Mr. Darnell, began asking investigators with Paschall’s office why they had not pursued evidence against additional suspects, namely Mr. Proctor and Mr. Darnell. She provided investigators a copy of Mr. Darnell’s cell phone records, which she had obtained from her sister, *i.e.*, Mr. Darnell’s wife. The cell phone records indicated Mr. Darnell called Mr. Lewis shortly before he was murdered.

97. On January 13, 2009, Mr. Darnell confronted Ms. Boxley about providing the phone records to law enforcement. He assaulted Ms. Boxley, hitting her in the face and giving her a bloody lip. Hearne Officer Thomas Williams arrived on the scene and asked Ms. Boxley to go to the police station to give a statement. A dispatcher took photographs of the injuries, and

emergency medical personnel were summoned to the police station. Ms. Boxley declined treatment and saw her personal doctor the following day.

98. Under the Texas Penal Code, an assault with injury is a Class A misdemeanor. Tex. Penal Code §22.01. However, an assault in retaliation against a witness or prospective witness is a third-degree felony. Tex. Penal Code § 36.06. After the assault, Ms. Boxley called the Hearne police to check on the status of her case against Mr. Darnell. Officer Williams informed her that Phil Crowell, one of Mr. Paschall's investigators, directed him to charge Mr. Darnell with a Class C misdemeanor assault – the equivalent of a speeding ticket. The case is currently pending in Hearne municipal court, where it is scheduled to be tried by Defendant Trey Russ, the city's prosecutor.

99. On the night of the murder, Officer Williams drove Mr. Lewis's truck to the police station. The truck apparently was not searched for fingerprints or microscopic evidence. Officer Williams recently demanded that Mr. Lewis's sister remove the truck from the police parking lot, but he no longer has the keys.

100. Mr. Darnell is reputed to be an informant for Mr. Paschall. Further discovery likely will reveal that Mr. Paschall is protecting Mr. Darnell from prosecution because he is an informant.

101. Ms. Boxley has appeared on a local television station and organized family members to demand answers from the district attorney's office. In a September 3, 2009 e-mail, Investigator Bancroft wrote that Ms. Boxley would be "charged with harassment" if she made any further contact with the district attorney's office.

Hearne I.S.D., et al. v. Nolan Griffin

102. As noted previously, Defendant Rusty Russ is the city attorney for Hearne. In

Hearne I.S.D., et al. v. Nolan Griffin, Cause No. 03-07-06862, the Hearne school district, the City of Hearne and Robertson County sued Mr. Griffin for unpaid taxes. Mr. Russ represented Mr. Griffin, who has since died, and now he represents Mr. Griffin's daughter, Judith Werlinger, as the case continues. In other words, Defendant Rusty Russ is representing one client, Mrs. Werlinger, against another client, the City of Hearne.

103. According to the former mayor, a former councilwoman, and a current councilwoman, Defendant Rusty Russ never disclosed the fact that he was representing someone against the City of Hearne. Judge Stem knew Mr. Russ was the city attorney, and he knew Mr. Russ was representing Mrs. Werlinger, who is the official court reporter for Judge Stem, yet he failed to disqualify Mr. Russ.

The Estate of Marium Oscar

104. Before her death on November 20, 2004 at age 95, Marium Oscar was the sole survivor of a once-thriving Jewish community that had arrived in Calvert before the Civil War. Sadly, Ms. Oscar wandered the streets of Calvert as a pauper during many of her later years, notwithstanding considerable wealth that she inherited from her family.

105. In 1992, one of Ms. Oscar's friends took her to see Defendant Paschall, the newly-elected Robertson County District Attorney, to help get her possessions in order following the death of her sister, Rebecca Oscar, in 1991. Marium Oscar was the sole heir of her sister. According to an appraisal dated October 12, 1989, Rebecca Oscar's estate included several buildings and more than 100 acres of real estate, and it was worth \$302,781.65, all of which was inherited by Marium Oscar in 1991.

106. In a will dated July 10, 1992⁵, and apparently prepared by Mr. Paschall, Ms.

⁵ The date is scratched out and September 21st, 1992 is substituted in handwriting, but it is not initialed.

Oscar designated Mr. Paschall as executor and bequeathed her estate to the “trustee of the Marium Oscar 1992 Trust.” The wording is critical, because it directs the estate proceeds to the trustee, who is likely Mr. Paschall, rather than to the trust itself, as Ms. Oscar almost certainly intended. In other words, the trustee is free to do with the money as he wishes, notwithstanding the directions of the trust (which has never been made public). None of the pages of the will is initialed, as is common practice, thus any page but the last (which bears her signature) could have been substituted.

107. On August 21, 1996, a document entitled “General Durable Power of Attorney” was filed with the Robertson County Clerk. The document is dated August 7, 1996, and Ms. Oscar’s signature appears at the bottom, though the signature differs somewhat from the signature on Ms. Oscar’s 1992 will. The document gave Mr. Paschall entire control over Ms. Oscar’s affairs, financial and otherwise, and it named J.C. Woods as the successor attorney in fact. Mr. Woods was a witness to Ms. Oscar’s signature, as was Wendy Marchbanks (Mr. Paschall’s secretary) and notary public Mildred Zan.

108. Beginning in 1985, the Internal Revenue Service placed several liens against Mr. Paschall’s property for failure to pay income taxes, and he was also sued for failure to pay a school loan. In 1997, the year after Mr. Paschall gained the power of attorney, he paid off the last tax lien and he has not had another tax lien since.

109. On November 22, 2004, Mr. Paschall filed Ms. Oscar’s will with the Robertson County Clerk to be probated. In 2006, the county judge removed Mr. Paschall as executor because he failed to file an inventory of the estate as required by law. However, even though Mr. Paschall no longer had standing as executor, his attorney immediately asked the county judge to transfer the case to the district court, ostensibly because there were issues of stock and

real estate ownership that might require a declaratory judgment. After the case was transferred to district court, Judge Stem immediately reappointed Mr. Paschall as executor. To this date, Mr. Paschall has never sought a declaratory judgment regarding any of the estate properties.

110. Mr. Paschall finally filed an estate inventory on November 17, 2006. Numerous items, however, are missing from the inventory. Several properties listed on the inventory already had been sold by Mr. Paschall, including a 109-acre tract of land that he sold to DonMichael L. Triolo of Bryan on April 8, 2005. On the other hand, Mr. Paschall failed to list another tract of roughly 100 acres that the estate still owned. And he failed to notify the court that he had sold the mineral estate belonging to the latter tract to Virginia Jackson on February 2, 2005, even though he had retained the surface estate. It is not clear what Mr. Paschall did with the proceeds of the sale of the mineral estate.

111. According to a former member of the Calvert city council, Ms. Oscar asked that her estate proceeds be used to build a Jewish museum in Calvert, and that some of her family's antique furniture be displayed in the museum. This wish may or may not be found in the trust documents, but in any event Mr. Paschall is not obligated to follow these wishes since the will gave the money to the trustee (likely him) rather than to the trust. No proceeds have been used for a museum, and most of the antique furniture has since been destroyed as a result of neglect. Ms. Oscar made only one specific request in her will, namely, that "my body shall be buried in a Mausoleum, above ground, in a proper and decent manner." Mr. Paschall had Ms. Oscar buried beneath ground in what one witness described as the cheapest casket that the funeral home had to offer. In fact, Ms. Oscar's body would have been embalmed – a grave violation of Jewish burial customs – but for the fact that two of her Gentile friends intervened to prevent it.

112. On April 15, 2008, Mr. Paschall asked Judge Stem to retain jurisdiction over the

Oscar estate, and it is still pending in Judge Stem's court. Further discovery will likely reveal that Mr. Paschall has been pilfering from the Oscar estate. This would not be surprising for a man of Mr. Paschall's reputation and character. According to the December 5, 2005 edition of *The Bryan-College Station Eagle*, Mr. Paschall was arrested for public intoxication at a Houston Texans football game after he cursed at a police officer and refused to sit in his seat as requested. According to Houston police, Mr. Paschall identified himself as a district attorney, but he was arrested anyway. Mr. Paschall is frequently absent from his office during work hours for prolonged periods, usually during afternoons.

Brian and Madeline Moore

113. On May 8, 2007, Defendant Box and Defendant Wheeler went to the home of Brian and Madeline Moore, ostensibly to check on the welfare of the Moore's son, R.M., who was then 15 months old. While Mrs. Moore went inside her home to retrieve her son, Defendants Box and Wheeler entered the house without permission, searched under a couch, and found part of a marijuana cigarette. Defendants Box and Wheeler immediately seized R.M. and removed him from the home, and Mrs. Moore was charged with misdemeanor marijuana possession.

114. Brian and Madeline Moore subsequently learned that Brian's mother, Defendant Tracey Moore, had told third parties before R.M. was even born that she was going to get custody of the baby. They also learned that Defendant Moore and her husband, Defendant Timothy Moore (Brian's stepfather), had hired The Firm to represent them in this endeavor.

115. When the case came before Judge Stem, Defendant Roderick Jackson, a CPS caseworker, insisted that Madeline Moore complete drug rehabilitation, a psychological evaluation, anger management courses, and parenting classes. Judge Stem agreed, and Madeline

was required to spend four days per week in drug rehabilitation for two months on the basis of a misdemeanor marijuana charge. She was also required to submit to the psychological evaluation and take several anger management courses as well as more than 20 parenting classes. Brian Moore likewise was ordered to attend parenting classes, and he ultimately lost his job because he repeatedly had to miss work for parenting classes.

116. Brian and Madeline Moore agreed with CPS officials to place R.M. temporarily with her father, Michael McCartney. As is standard under such circumstances, CPS requested a home study for Mr. McCartney, which found that Mr. McCartney's home would be a good placement for R.M.. At the request of Defendant Russ, however, and against the recommendations of CPS, Judge Stem removed R.M. from Mr. McCartney's home. He placed R.M. in the home of Tracey and Timothy Moore, even though Timothy Moore is a convicted felon.⁶ Notwithstanding Defendant Moore's criminal record, Judge Stem refused to order a home study. Judge Stem has kept R.M. with the elder Moores for more than two years, even though Brian and Madeline Moore long ago met all the requirements imposed by Judge Stem and CPS. Brian and Madeline Moore have since obtained videotaped evidence that the elder Moores allowed R.M. to be in the presence of a convicted sex offender. R.M. has suffered numerous injuries since CPS placed him with his grandparents, most of which have been photographed. However, Defendant Amy Zachmeyer, another CPS worker, refused to take action because she said she did not want to go before Judge Stem.

117. R.M. is still in the custody of his grandparents, and Brian and Madeline Moore have been forced to sell their home to pay legal bills. Further discovery will likely reveal that

⁶ Brian Moore was adopted as a teenager by Defendant Timothy Moore. As an adult, Brian learned that his biological father's parental rights were terminated by Judge Stem without notice, even though Brian's true father had remained in contact with him after moving out of state. The adoption records were sealed and placed in the Falls County courthouse, even though the adoption occurred in Robertson County.

The Firm, acting at the best of Defendants Tracey and Timothy Moore, corruptly colluded with Judge Stem, the CPS defendants, and Defendant Box to wrongfully remove R.M. from his parents.

118. Brian and Madeline Moore are expecting another child in November, and they fear that Judge Stem, Defendant Russ, and Defendants Tracey and Timothy Moore will take their new baby just as they did R.M..

Cindy Nichols and J.H.

119. On June 28, 2007, Cindy Nichols was viciously assaulted by her then-husband, Defendant Jerry Wayne Nichols, in the presence of her son and her granddaughter, J.H., who was four years old at the time and resided with the Nichols. A local police officer and state trooper responded and arrested Mr. Nichols for family violence.

120. Defendant Nichols quickly retained Defendant Rusty Russ as a criminal defense and divorce lawyer, and then Mrs. Nichols's problems began in earnest. Notwithstanding all the evidence of assault, the Robertson County grand jury no-billed Defendant Nichols. Further discovery will likely reveal that Defendants Rusty Russ and Paschall used their influence with the grand jury to obtain the no-bill.

121. A few weeks after the assault, Judge Stem ordered Ms. Nichols – the victim – and J.H. out of the house by August 21, 2007, notwithstanding the fact that J.H. had serious heart problems and she and her grandmother had no place to go. They have been homeless for much of the time since Judge Stem ordered them out of the house.

122. Judge Stem finally recused himself in February of 2009, and a visiting judge was appointed to replace him. On March 18, 2009, the court awarded the house and 2.39 acres to Defendant Nichols. The court awarded 2.07 acres – and no house – to Mrs. Nichols. Defendant

Nichols has since erected a gate on the public road leading to Mrs. Nichols's property.

Defendant Nichols leaves the gate open until Ms. Nichols drives onto the property (which she is trying to sell), then he closes the gate behind her, placing her in fear for her life.

Cassandra Butler

123. Cassandra Butler was elected to the Hearne City Council in 2007 as one of several reformers intent on deposing the "good old boys" who had long run city government. Foremost among these good old boys is Defendant Rusty Russ, who serves as city attorney for Hearne and two other Robertson County municipalities: Calvert and Franklin. According to Mrs. Butler, Defendant Russ boasted to council members that he had the district judge, *i.e.*, Judge Stem, "in his back pocket." Defendant Russ further boasted that one of his sons had freely driven around Robertson County when he was too young to drive, because local law enforcement officers knew better than to stop Defendant Russ's son.

124. Mrs. Butler soon incurred the wrath of Defendant Russ when she began questioning the allocation of funds through various city committees. Mrs. Butler noted that a new hotel partly owned by Defendant Russ had received \$150,000.00 from the city. The three-story hotel is higher than the city water tower, so the hotel required a pump to deliver water to the third floor. Further discovery will likely reveal that the city paid an additional amount – approximately \$60,000.00 – to install a pump in the hotel. Similarly, a new restaurant located adjacent to the hotel and owned by Mayor Ruben Gomez's sister received \$75,000.00 from the city. Mayor Gomez, one of Defendant Russ's cronies, served on the committee that awarded the funds, but city records did not reveal when (or if) the committee met and whether Mayor Gomez participated in the decision.

125. Soon after Mrs. Butler was elected, Robertson County began taxing the inventory

of a business owned by Isaac Butler, the husband of Mrs. Butler. While this is permissible, the inventory had never been taxed before. When Mrs. Butler asked a tax appraisal official why her husband's business was taxed differently, he replied that "that's what happens when you get involved in city politics." Mr. Butler closed the business in 2008, partly because of the higher taxes.

126. In an attempt to force Mrs. Butler off the city council, Defendant Rusty Russ and two of his cronies on the council, Defendants Werlinger and Catalina, claimed that Mrs. Butler was ineligible to serve on the council because she had not paid her electric utilities. In fact, the utilities for Mrs. Butler's home had been paid, but the utilities for Mr. Butler's business were past due. These defendants insisted that Mrs. Butler was responsible for the utilities of her husband's business, even though she was not the owner of record nor was she listed as a responsible party. On the other hand, a business owned by Defendant Werlinger and his mother (Judy Werlinger, Judge Stem's court reporter) was six months overdue and more than \$5,000.00 in the red. These defendants made no attempt to force Defendant Werlinger from the council. Defendants Russ and Werlinger are white. Defendant Butler is African-American.

127. In September of 2007, during a televised interview, Mrs. Butler said that because of all the harassment, she was planning to resign from the city council. Defendants Werlinger and Catalina, along with another council member, voted to remove her from the council based on this statement, calling it a resignation. The city charter requires a written resignation, and Mrs. Butler never submitted a resignation orally or in writing. When she objected to her fellow council members, they expelled her anyway.

128. Further discovery will likely reveal that Defendant Russ and his cronies maintain control over the Hearne city council by intimidating any challengers to his preferred candidates.

Alan Eppers

129. Alan Eppers and his ex-wife Hollie Elliot were divorced in 2002. They had one son, B.E., from the marriage. After the divorce, Defendant Elliott and B.E. moved to Robertson County and Defendant Elliott transferred the custody case there.

130. On April 4, 2008, Mr. Eppers learned that his son had been corresponding with Doyle Veston Hodges, an inmate serving 10 years in prison for a 1990 burglary and 40 years for a 1990 aggravated robbery in which a victim was shot to death. In 2000, while he was still behind bars, Hodges was convicted of another felony for possessing drugs in prison. Mr. Eppers learned from MySpace pages that his ex-wife and Hodges were romantically involved, and that Defendant Elliott had been taking B.E. to visit Hodges in prison.

131. On April 4, 2008, Mr. Eppers asked to see the letters B.E. had received from Hodges. Defendant Elliot became furious and immediately stopped all visitation between Mr. Eppers and B.E., notwithstanding Mr. Eppers's court-ordered visitation rights.

132. Defendant Elliot is related to Defendant Rusty Russ's wife. Defendant Elliot retained him and The Firm and, naturally, Judge Stem refused to enforce Mr. Eppers's visitation rights. Instead, Judge Stem curtailed Mr. Eppers's visitation rights. For more than a year, Mr. Eppers was unable to see his son. Mr. Hodges is scheduled to be paroled on October 1, 2009, and Mr. Eppers fears that his nine-year-old son will soon be living with a dangerous criminal. However, Mr. Eppers has little hope of removing his son from this environment so long as Judge Stem and The Firm control the case.

Theft from the United States Government

133. The First National Bank of Hearne was closed on December 10, 1920, and thereafter a receiver was appointed by the Comptroller of the Currency. On February 14, 1924,

R.M. Johnson, the receiver, sold to James A. Thompson a 61.85-acre tract of land that had belonged to the bank. Mr. Johnson reserved ownership of the tract's mineral estate, and thereafter he never sold nor conveyed it. As a result, the mineral estate was held in trust by the United States Government.

134. On October 21, 1999, Defendant L K & P, a shell company, purported to transfer ownership of the aforementioned 61.85-acre mineral estate to Oaks & Diamonds, another shell company. Both companies are owned by Defendants Russ and McCullough, and those Defendants knew that L K & P had no legal title to the mineral estate.

135. On October 25, 1999, Defendant McCullough and The Firm filed suit in the 82nd Judicial District of Robertson County on behalf of Oaks & Diamonds, seeking a declaratory judgment in Cause No. 99-10-15849-CV that Oaks & Diamonds owned the mineral estate. Oaks & Diamonds purported to sue the heirs of R.M. Johnson along with the heirs of bank officials and a subsequent receiver, but neither Johnson nor any other defendants were proper parties insofar as the receivers were merely officers of the United States Government and never owned the 61.85-acre tract nor its mineral estate. The United States was never notified of the suit, nor was it represented. Oaks & Diamonds, Defendant McCullough, and the Firm claimed neither the named defendants nor their heirs could be found, and Judge Robert M. Stem granted permission to serve notice by publication.

136. In a November 4, 1999 letter to Marsha Rekieta, court coordinator for Judge Stem, Defendant McCullough wrote that Mr. Harris had "agreed to serve as an ad litem in [Cause No. 99-10-15849-CV] and be appointed on December 13, 1999, the default date in the citation by posting." On December 13, 1999, Judge Stem appointed Mr. Harris attorney ad litem for the unrepresented parties. In other words, Judge Stem allowed Mr. McCullough to select the

attorney for the opposing parties.

137. On the same day he was appointed, Mr. Harris entered an answer for the unrepresented heirs, and Judge Stem signed an order in favor of Oaks & Diamonds without any further inquiry or proceedings. Judge Stem also appointed Defendant Leamon that same day as receiver for the sale of the mineral estate. Mr. Harris's answer and Judge Stem's order were printed in the exact same font and format as Defendant McCullough's original petition, thus it appears that Judge Stem and Mr. Harris were simply following the script prepared for them by Defendant McCullough and The Firm. Moreover, no attorney ad litem can purport to have made reasonable efforts to contact his unknown clients in less than one day. Mr. Harris knew this, and Judge Stem knew this. Accordingly, one can only conclude that Mr. Harris and Judge Stem colluded with the other Defendants to convert assets that were in the legal possession of the United States.

138. On January 20, 2000, Mr. Leamon filed his report of sale in a font and format identical to that used previously by Defendant McCullough in his petition, and the report was notarized by Mr. McCullough's secretary. Thus it appears that Mr. Leamon, too, was following the script prepared for him by Defendant McCullough and The Firm. According to his report, Mr. Leamon sold the alleged defendants' interest in the mineral estate to Oaks & Diamonds for \$6,185.00, a sum far below its actual value. On January 24, 2000, Judge Stem signed a decree confirming the sale to Oaks & Diamonds, and he ordered the money paid into the registry of the court and held for seven years, after which time it would be returned to Oaks & Diamonds. Judge Stem also awarded the Firm \$2,500.00 and Defendant Harris \$500 in legal fees. In other words, Judge Stem paid The Firm for its role in orchestrating the fraud. The \$6,185.00 sales price was returned to Oaks & Diamonds in 2007.

139. On January 20, 2005, Oaks & Diamonds sold one-half of its purported interest in the 61.85-acre mineral estate to Gary and Loretta Waldrop.

Estella Scott

140. Estella Scott owned an interest in approximately 30 acres in Robertson County, but her interest was spread among numerous heirs. In the early 1990s, she and her elderly aunt visited Bryan F. Russ, Sr. (the father of Defendant Rusty Russ and grandfather of Defendant Trey Russ) and Defendant McCullough about locating the property and obtaining clear title. Ms. Scott's aunt was paying taxes on the property, which had been purchased in their heirs in the 1800s after they were released from slavery, but she was not sure of its exact location.

141. The senior Mr. Russ and Defendant McCullough told the ladies that they could not locate the property because it was somewhere in Grimes County. They further told the ladies that it would not be worthwhile to try to obtain clear title because there were so many heirs. The family stopped paying taxes on the property in 1997, and it was sold at a tax sale in 2007.

142. Defendant MACRU, one of the aforementioned shell companies, purchased the land at the tax sale. Rather than distribute the proceeds to the heirs, Defendant McCullough immediately asked Judge Stem to return the money to his company, *i.e.*, MACRU. The tax attorney for the county and the attorney ad litem for the family objected, and the matter is still pending before Judge Stem.

143. Ms. Scott alleges that Mr. Russ and Defendant McCullough knew the exact location of the property belonging to her family, and they knew what it would take to clear the title, but they convinced her family to stop paying the taxes so they could purchase it for themselves at a tax sale. As in the case of the Erwins (described below), agents of The Firm decided to deceive its clients and then wait for an opportune time to steal their land.

The Erwin Heirs

144. In 1998, Plaintiff Ruthie Roberts and her sister met with Defendant Russ at his office to discuss their family's one-half mineral interests in a roughly 157-acre tract in Robertson County (the "Mineral Interest"). Defendant Russ told the ladies that there were so many heirs to the property (hereinafter "Erwin heirs") that it would not be worthwhile to try to determine their interests.

145. During 2003 and 2004, gas exploration in Robertson County increased dramatically, and the value of mineral interests likewise increased dramatically.

146. Travis T. Morgan, Alma Ione Morgan, and Michael T. Morgan collectively own the surface estate of the 157-acre Mineral Interest. On November 8, 2005, the Morgans and Defendant Russ, acting on behalf of Defendant Flare Royalties, L.P., executed a "Confirmation of Royalties" with Defendant Leor Energy, L.P. The document identified the Morgans and Flare Royalties as the owners of royalties attributable to slightly more than 552 acres. The 157-acre Mineral Interest belonging to the Erwin heirs was included in that tract. This document was not filed with the Robertson County Clerk, however, until August 23, 2006. The delay in filing is explained by the fact that at the time the document was executed, Defendant Flare Royalties did not own any interest whatsoever in the 157-acre tract, a fact that was known to Defendant Russ, Defendant Flare Royalties, and Defendant Leor Energy. These Defendants had conspired to steal the Mineral Interest belonging to the Erwin heirs, therefore they hid the transaction.

147. In order to create some pretense of a claim to the Mineral Estate, Defendant Russ instigated a series of sham transactions. On November 22, 2005, Defendant Deminimus, a shell company owned by Russ and McCullough, filed a deed purporting to transfer 90 percent of the Mineral Interest to Defendant Velnon, another shell company owned by Russ and McCullough.

Defendant Russ knew that Defendants Deminimus and Velnon did not own any interest in the Erwin property, but he created the sham transactions so he could ultimately purport to transfer the Erwin heirs' property to Defendant Flare Royalties.

148. On the same day, Defendant Russ filed an Original Petition for Appointment of a Receiver and for Declaratory Judgment in *Velnon, L.L.C. vs. Unknown Heirs of Elizabeth Warren*, Case No. 05-11-17388-CV, 82nd District Court of Robertson County. He also filed a Motion for Substituted Service Other Than Publication (By Posting), seeking to post notice of the lawsuit rather than publish it in the local newspaper, where some of the Erwin heirs might see it. Judge Stem granted the motion, and the notice was posted at the Hearne and Calvert city halls, and at the Robertson County Courthouse.

149. On January 9, 2006, Judge Stem appointed Mr. Harris as attorney ad litem. As usual, Mr. Harris filed a general denial but with no defenses under Rule 93 (or on any other grounds), not motions for continuance, and no other pleadings or motions on behalf of the Erwin heirs.

150. The same day, Judge Stem signed an Order Appointing Receiver, Ordering Sale of Property, and an Order Placing Funds in the Registry of the Court. Defendant Leamon was appointed receiver and also filed a notice of private sale on the same day.

151. On January 20, 2006, the Receiver's Report of Sale was filed stating that the Mineral Interest was sold to Defendant Flare Royalties, L.P., another shell company owned by Russ and McCullough. On January 30, 2006, without further effort to serve or notify the Erwin heirs, and with no objections or defenses raised by Mr. Harris, who ostensibly was representing their interests, Judge Stem signed the Decree Confirming Sale, Authorizing Payment of Fees and Costs, Placing Funds in the Registry of the Court and Authorizing Disbursement After Seven

Years. Judge Stem then awarded The Firm \$5,253.00 in fees and costs. Once again, Judge Stem awarded The Firm attorney fees for orchestrating a fraud.

152. As noted above, Defendant Russ did not file the November 8, 2005 “Confirmation of Royalties” until August 23, 2006, *i.e.*, after Judge Stem had ratified the fraudulent transfer and after Flare Royalties began receiving royalty checks from Defendant Encana.

153. On March 27, 2006, Velnon assigned its interest in the proceeds from the sale to Flare Royalties, L.P.

154. Defendant Leor Energy and Defendant Encana conspired with Russ and McCullough to deprive the Erwin heirs of the royalties from the Mineral Interest. Along with these Defendants, Burlington Resources owned an interest in the production unit into which the Mineral Interest was pooled. Based on its review of public records, Burlington Resources knew that the Mineral Interest belonged to the Erwin heirs and, to its credit, it held their payments in escrow. Defendant Encana, on the other hand, made payments to Russ and McCullough, via Flare Royalties, even though it knew the Mineral Interest belonged to the Erwin heirs. Both Defendant Leor Energy and Defendant Encana were warned about the fraudulent scheme, and Defendant Leor Energy even dispatched a petroleum landman to investigate. The landman met with Kenneth Lunsford, son of Mary M. Lunsford, and subsequently verified what Leor Energy already knew, *i.e.*, that the Erwin heirs were the rightful owners. Despite the warnings, Defendant Encana continued to mail royalty checks to Defendant Flare Royalties.

155. After learning about the fraud, various Erwin heirs (the “Erwin Heir Majority”) filed a motion for new trial in the aforementioned *Velnon, L.L.C. vs. Unknown Heirs of Elizabeth Warren* on May 5, 2007. Most of the heirs in that action, including Plaintiff Roberts, were represented by Porter & Hedges, L.L.P., a Houston law firm. Other heirs, including Mrs.

Lunsford, were represented by Wilshire, Scott, & Dyer, P.C., another Houston law firm. When asked about his participation in the fraud during a deposition, Defendant Leamon said he was only doing what Judge Stem told him to do. Defendant McCullough was present during the deposition and, according to witnesses, Defendant McCullough glared at Defendant Leamon, signaling him to quit talking. The Firm, Russ and McCullough, and the various shell companies quickly settled the claims.

156. After the motion for new trial was filed, some of the Erwin heirs, including Plaintiff Erwin, asked one of the Houston firms about joining the case. Even though there was no apparent conflict with the interests of the other heirs, these heirs were told they would have to find their own attorneys elsewhere.

157. When asked whether Russ and McCullough, et al. could be required to pay attorney fees, attorneys from the Houston firms either told their respective clients that attorney fees could not be awarded or that Judge Stem would not award them. The Houston firms did not disclose the availability of attorney fees, multiple damages, and punitive damages if the Erwin heirs were to file a separate lawsuit bringing claims of statutory theft, racketeering, and fraud. Likewise, the Houston firms did not disclose the option of bringing suit in federal court or a state court outside of Robertson County, nor did they disclose the possibility of seeking Judge Stem's disqualification or recusal. Moreover, the Houston firms failed to disclose that Russ and McCullough would be allowed to retain ownership of the mineral interests belonging to the Erwin heirs who had not joined the motion for new trial (the "Erwin Heir Minority"), which amounted to nearly 20 percent of the overall Mineral Estate.

158. On May 16, 2007, *The Bryan-College Station Eagle* ran a front-page story about the Erwin heirs' motion for new trial. Early that morning, a Robertson County resident observed

Russ, McCullough, and others removing boxes from the offices of The Firm.

159. At the time settlement was reached in the summer of 2007, it was abundantly clear to Judge Stem and all the attorneys involved – including the Houston firms – that Russ and McCullough had perpetrated an enormous fraud, and it was equally clear that, under the terms of the proposed settlement agreement, they would be allowed to retain almost 20 percent of the mineral interests they had stolen. No one, however, lifted a finger to protect the interests of the remaining victims of Russ and McCullough’s fraud. Judge Stem did not appoint another attorney ad litem, and he did not order the stolen royalties placed into the registry of the court. He simply allowed the ongoing theft to continue. Plaintiff Erwin was among the heirs whose stolen interest was retained by Russ and McCullough after the settlement. Further discovery will likely reveal that Defendant Encana is still mailing Plaintiff Erwin’s royalty payments to Russ and McCullough (via Flare Royalties, L.P.).⁷

160. As Plaintiff Ruth Roberts investigated the theft from her family’s estate, as well as other crimes by Russ & McCullough, she and a friend were repeatedly followed at the courthouse by Defendant Trey Russ, who apparently was attempting to intimidate them. Defendant Trey Russ is the heir apparent to the criminal enterprise begun by his grandfather and carried on by his father.

⁷ Pursuant to Tex. Disciplinary R. Prof. Conduct 8.03(a), the undersigned filed a grievance against Defendant Russ and Defendant McCullough with the State Bar of Texas regarding the misconduct set forth in Paragraphs 31-36 of the Original Complaint. The undersigned included a copy of *United States ex. rel. Ty Clevenger v. Bryan F. Russ, et al.*, Case No. 6:08-cv-00259-WSS (W.D. Tex.) which also summarized the misconduct set forth in Paragraphs 38-54 of the Original Complaint. The Office of Chief Disciplinary Counsel dismissed the grievance on the grounds that it failed to state a violation of the disciplinary rules. The Board of Disciplinary Appeals upheld the dismissal. This leads the undersigned to wonder how many felonies a lawyer must commit in order to merit an investigation, much less disciplinary action, by the State Bar of Texas. It is worth noting that Defendant Russ served on the District 8-A Grievance Committee for over 16 years.

Ted Booher

161. During August of 2006, Plaintiff Ted Booher contracted with Defendant Zeig Enterprises, Inc., to purchase 15.4 acres of real estate in Hearne, Texas for \$400,000.00. Plaintiff Booher gave \$10,000.00 to The Firm to be held in escrow. After the agreement was reached, but before closing, Plaintiff Booher learned about environmental hazards on the property, and he spent approximately \$150,000.00 to clean up the property. The Small Business Administration had tentatively approved a loan for the purchase, but it could not be finalized until the property was decontaminated.

162. With the permission of Defendant Zeig Enterprises, Inc., Plaintiff Booher began storing some of his equipment on the property in Hearne.

163. At some point between the initial contract and closing, Defendant McCullough, Defendant Russ, and Defendant Baxter decided they wanted the real estate, and they colluded with Defendant James Zeig, president of Defendant Zeig Enterprises, to subvert the contract. On October 4, 2007, Defendant Zeig Enterprises sent a notice scheduling the closing for October 12, 2007, even though the decontamination had not yet been completed. On October 10, 2007, Defendant McCullough, Defendant Russ, and Defendant Baxter formed Defendant Hearne Business Park, LLC. On or about October 15, 2007 Defendant Hearne Business Park, LLC purchased the property from Defendant Zeig Enterprises.

164. Plaintiff Booher immediately filed suit in state court, and he filed a lis pendens with the Robertson County Clerk for the \$150,000.00 in improvements he had made to the property. Shortly thereafter, the lis pendens was inexplicably set aside by Judge Stem. Plaintiff Booher filed a motion to disqualify Defendants Russ, McCullough, and The Firm since The Firm was serving as escrow for the transaction, but Judge Stem denied the motion to disqualify. Judge

Stem denied Plaintiff's request for a temporary restraining order and ultimately granted summary judgment in favor of Defendants Zeig Enterprises and Hearne Business Park as well as one other defendant.

165. In 2008, The Firm filed suit on behalf of Defendant Hearne Business Park against Plaintiff Booher, seeking approximately \$200,000.00 for the purported rent due because Mr. Booher's equipment had been stored on the property. Defendant McCullough was seeking to coerce Mr. Booher to abandon his claims to the disputed property. On January 28, 2009, the case went to trial before Judge Stem. Near the end of the trial, Mr. McCullough announced a surprise fact witness – none other than Trey Russ, the man who had been sitting next to Mr. McCullough throughout the trial and serving as his co-counsel. When Mr. Booher's trial attorney, Lee Giddens, asked the purpose of Mr. Russ's testimony, Mr. McCullough simply stated, "Rebuttal." When Mr. Giddens asked, "To what?", Mr. McCullough responded, "To [Mr. Booher's] lies." Notwithstanding Mr. Giddens objections, Judge Stem then permitted Trey Russ to offer a factual rebuttal to Mr. Booher's testimony.⁸

166. Judge Stem issued a \$175,000.00 lien against the equipment, allegedly attributable to 16 months worth of rent for the property, even though the entire purchase price of the property was only \$400,000.00. As a result, Plaintiff Booher was unable to remove nearly \$1 million worth of his equipment. Defendant McCullough, Russ, and Baxter, acting through Judge Stem, sought to extort money from Plaintiff Booher by forcing him to pay outrageous rental

⁸ This was not just an error, but an egregious one. "The practice of attorneys furnishing from their own lips and on their own oaths the controlling testimony for their client is one not to be condoned by judicial silence... nothing short of actual corruption can more surely discredit the profession." *Ferraro v. Taylor*, 265 N.W. 829, 833 (Minn. 1936), quoted with approval in *Warrilow v. Norrell*, 791 S.W.2d 515, 523 (Tex.App. – Corpus Christi 1989, reh'g overruled). Rule 3.08 of the Texas Rules of Disciplinary Procedure plainly prohibits a lawyer from serving as a witness for his client except under five circumstances, none of which was present.

charges or lose the use of his equipment. After the Original Complaint was filed, the defendants permitted Mr. Booher to remove his equipment, but only after he paid \$225,000.00 into the registry of the state court.

Todd Reynolds

167. On July 29, 2002, Plaintiff Todd Reynolds filed suit against Defendants Carlson, MWC, and Funk in Cause No. 28,283 in the 20th District Court of Milam County, Texas. All the pleadings of that case are incorporated herein by reference.

168. As set forth in the case cited above, Defendant Carlson, acting through Defendant MWC and in conjunction with Defendant Funk, clouded the title to Plaintiff Reynolds's property by filing a fraudulent Memorandum of Groundwater Lease with the Milam County Clerk.

169. In 2002, Plaintiff Reynolds retained Defendant Russ and The Firm to represent him in the case cited above. Defendant Russ listed the addresses for the defendants in the original petition, but he never made any attempt to serve them. Defendant Russ repeatedly assured Mr. Reynolds that The Firm was attempting to serve the defendants when, in fact, The Firm was making no attempt to serve those defendants. As the limitations deadline approached in 2005, Mr. Reynolds learned that Defendant Russ had been lying about his attempts to serve the defendants. Mr. Reynolds then took matters into his own hands and attempted to serve the defendants himself.

170. Further discovery will likely reveal that Defendant Carlson, a con man and a convicted felon, conspired with Defendant Russ to sabotage Plaintiff Reynolds's case.

Phillip M. Krumnow, Jr.

171. On June 17, 2002, Plaintiff Krumnow filed an application in the Falls County Court to probate the will of his father, Phillip Krumnow, Sr. Defendants Pam Krumnow,

Mendenhall, and Withhem retained The Firm and Defendants Russ and Hedrick to try to remove Plaintiff Krumnow as independent executor. As set forth in *Krumnow v. Krumnow*, Cause No. 34,538, 82nd District Court of Falls County, the case was removed from county court to district court, where Judge Stem presided.

172. In April of 2003, Judge Stem removed Plaintiff Krumnow as executor without notice or a hearing and appointed Defendant Boykin to replace him. According to correspondence obtained by the undersigned, Defendant Rusty Russ was simultaneously serving as Judge Stem's personal attorney in a real estate dispute – an egregious conflict of interest that neither of them disclosed to Mr. Krumnow nor anyone else.⁹ On May 25, 2004, Judge Stem appointed Defendant Harris as receiver to sell the property of the estate. On June 17, 2005, Defendant Boykin and Defendant Harris conspired with Defendant Aiken, who represented DDC, to sell 824.57 acres of estate property at a below-market price. Specifically, these defendants conspired to sell the Krumnow property to DDC for an amount lower than what had already been offered by another buyer. On June 22, 2005, Defendant Harris filed a report with the court attempting to sell the property to DDC at the below-market price, and he mailed copies of the report and fraudulent contract to at least seven people on that day.

173. In *Krumnow v. Krumnow*, the appeals court reversed Judge Stem, holding that he had no authority to appoint Defendant Boykin as a successor representative to Mr. Krumnow; the court further held that Judge Stem abused his discretion in appointing Defendant Harris as receiver on his own motion. 174 S.W.3d 820 (Tex.App.-Waco 2005).

174. Since 2002, Judge Stem has abused the power of his office egregiously, trying to

⁹ On June 25, 2009, the undersigned filed a complaint with the State Commission on Judicial Conduct and submitted copies of the correspondence wherein Defendant Russ represented Judge Stem. The matter is tentatively scheduled to be heard at the commission's October meeting.

force Plaintiff Krumnow to “back off” so he and his co-conspirators could parcel up the Krumnow estate. Further discovery will likely reveal that Defendants Boykin, Harris, The Firm, Russ, Hedrick, Aikens, and DDC – and possibly Judge Stem – attempted to profit from the estate and the trusts by selling estate and trust property to DDC for less than what it was worth.

Cheryl and Wayne Maxwell

175. On February 18, 2006, Cheryl and Wayne Maxwell signed a contract with Defendant Bielamowicz, a real estate agent working for Defendant Leamon, to purchase 10 acres in Robertson County from the estate of Adell McIntosh at \$1,175.00 per acre, including the mineral estate.

176. Before closing, Defendant Bielamowicz called the Maxwells and told them they needed to retrieve their earnest money deposit, because Defendant Guaranty Title was unable to determine clear title to the land.

177. Shortly thereafter, Defendant Oaks & Diamonds purchased the 10 acres from the estate of Adell McIntosh by general warranty deed. In other words, Defendant Guaranty Title had been able to determine clear title, contrary to Defendant Bielamowicz’s statement. Defendant McCullough then called the Maxwells on behalf of Oaks & Diamonds and offered to sell them the same real estate for \$3,000.00 per acre, minus the mineral estate (which Oaks & Diamonds reserved for itself). The Maxwells reluctantly agreed to purchase the property at more than twice the original price.

178. Defendants McCullough, Bielamowicz, Leamon and Guaranty Title conspired to defraud both the Maxwells and the McIntosh estate. Defendants Bielamowicz and Leamon were able to “double-dip” on real estate commissions by selling the property twice. Meanwhile, the Maxwells paid more than the contract price, the McIntosh estate received less than what the

property was worth, and Defendant Oaks and Diamonds got to keep the difference (as well as the mineral estate). Further discovery will likely reveal that Defendant Boykin, acting through Guaranty Title, personally participated in the fraudulent scheme.

Jimmy Czajkowski

179. Like the Maxwells, Jimmy Czajkowski contracted with Defendant Leamon's real estate firm in 2006 to purchase property that was part of the Adell McIntosh estate. Mr. Czajkowski signed a contract to purchase the house and the lot – variously described as 0.76 and 0.801 acres – across the street from his house for \$15,000.00.

180. Before closing, Defendant Bielamowicz called Mr. Czajkowski and told him he needed to retrieve his earnest money deposit, because Defendant Guaranty Title was unable to determine clear title to the land. When Mr. Czajkowski and his attorney objected, Defendant Bielamowicz told each of them they just needed to trust Defendant Leamon.

181. Shortly thereafter, Defendant Oaks & Diamonds purchased the property from the estate of Adell McIntosh by general warranty deed. In other words, Defendant Guaranty Title had been able to determine clear title, contrary to Defendant Bielamowicz's statement. Defendant McCullough then called Mr. Czajkowski on behalf of Oaks & Diamonds and offered to sell him the same real estate for the same price, minus the mineral estate (which Oaks & Diamonds reserved for itself). Someone else purchased the property and later offered it to Mr. Czajkowski for \$40,000.00. He declined the offer.

182. Once again, Defendants McCullough, Bielamowicz, Leamon and Guaranty Title conspired to defraud both the McIntosh estate and the original buyer. Further discovery will likely reveal that Defendant Boykin, acting through Guaranty Title, personally participated in the fraudulent scheme.

The Erickson Estate

183. In May of 1998, Leroy and Nancy Erickson drove from their home in Southern California to Robertson County to view 30 acres that Mr. Erickson had inherited from his mother. Janna Gossen, Mr. Erickson's sister, also inherited an interest in the acreage. The Ericksons were trying to decide whether to build a home and retire in Robertson County or sell the land. When they drove to the landlocked property, Defendant Dick Milstead, a neighboring landowner, greeted them and allowed them to cross his property to get to theirs. The Ericksons decided to sell the property, and they signed a sales agreement with Defendant Leamon before returning to California.

184. In December of 2000, the Ericksons learned from Defendant Leamon that Mr. Milstead had offered \$200 per acre for the estate, and they declined the offer. Mr. Erickson died in May of 2003. In January of 2004, shortly after gas drilling boomed in Robertson County, Defendant Leamon called with an offer of \$500 per acre from Defendant Milstead. The offer was to include the mineral estate as well as the surface estate. On January 27, 2004, Defendant Steve Boykin, acting by and through Defendant Guaranty Title, issued a title policy to Dick Milstead for \$15,000.00.

185. Mrs. Erickson informed Defendant Leamon that Mr. Erickson had died without a will, and she needed to work with her in-laws to reach a decision. She also informed Mr. Leamon repeatedly that she was not interested in selling the mineral estate, only the surface estate. She also spoke with Defendant Milstead directly.

186. Since he could not purchase the property, Defendant Dick Milstead decided to steal it. On June 12, 2006, his son, Defendant Mark Milstead, filed an "Original Petition for Appointment of a Receiver, for Trespass to Try Title, For Suit to Quiet Title, and for Declaratory

Judgment” in Judge Stem’s court. Naturally, he was represented by The Firm. Among the named defendants were Mrs. Erickson and Mrs. Gossen. Defendant Mark Milstead claimed he acquired the property from his father under a 1998 deed. No such deed had been filed in the county clerk’s office in 1998, and in fact the deed was forged, most likely by Defendant McCullough. Defendant Dick Milstead claimed he had obtained ownership of the 30 acres by adversely possessing it for more than 25 years, and on that basis he purported to transfer ownership to his son. This is truly remarkable, because just three years before Defendant Boykin had issued a title insurance policy to Defendant Milstead declaring Myrtle Erickson’s estate to be the rightful owner of the property. Moreover, Defendants Milstead and Leamon had been actively negotiating with Nancy Erickson to purchase the property.

187. In conjunction with the filing of the lawsuit, Defendant McCullough filed an affidavit to permit service upon the defendants by publication. Defendant McCullough claimed that he was unable to locate the defendants, including Mrs. Erickson and Mrs. Gossen, despite having searched courthouse records. This was absurd, as Mrs. Erickson had been paying the taxes on the property and her contact information was still listed in the county tax assessor-collector’s office. Moreover, at least six energy companies had searched the title on the property and found contact information for Mrs. Erickson, Mrs. Gossen, and the other defendants. The Milsteads and Defendant McCullough knew the defendants resided in California, therefore they sought to publish notice in Robertson County newspapers so no one would find out about their land-stealing scheme.

188. Judge Stem once again appointed Defendant Harris to serve as attorney ad litem, ostensibly to represent the interests of the heirs. He also appointed Defendant Leamon as receiver. On November 20, 2006, Judge Stem ratified the theft and declared Defendant Mark

Milstead the owner of the property. He awarded Defendants Leamon and Harris each a \$1,000.00 fee. He also awarded The Firm \$7,500.00 for attorney fees – roughly twice the market rate for the services they provided.

189. In August of 2007, Mrs. Erickson's daughter, Tina DeSoto, offered to help sort out the various tax bills from the properties that had originally belonged to Myrtle Erickson, the mother of Leroy Erickson and Janna Gossen. She discovered that there was no tax bill for 2007. Further research revealed that Myrtle Erickson was no longer listed as the owner. Instead, Defendant Mark Milstead, the son of Defendant Dick Milstead, was listed as the owner on county tax records.

Clifton Muzyka

190. In 1996, Plaintiff Clifton Muzyka's mother died, leaving him a one-third undivided interest in approximately 500 acres. Defendants Michael Muzyka and Catherine Motley, his brother and sister, each inherited an undivided one-third interest. Some time in 2004, Defendants Russ and McCullough decided they wanted the mineral estate attached to the 500 acres, and they conspired with Defendants Muzyka and Motley to take Plaintiff Muzyka's interest in the estate. Specifically, Defendants Russ and McCullough recruited Defendants Muzyka and Motley to sue their brother.

191. In early 2007, officials with the Robertson County Sheriff's Office, acting at the direction of Defendants Yezak and Davis, arrested Plaintiff Muzyka and charged him with 60 counts of animal cruelty. These defendants alleged that Mr. Muzyka was starving his livestock. The Plaintiffs are aware of other instances in which the sheriff's department refused to take action when livestock were in far worse condition. Further discovery will reveal that Defendants Yezak and Davis undertook this scheme, in conjunction with Defendants Russ, McCullough,

Swick, Paschall and First Star Bank, in order to put financial pressure on Plaintiff Muzyka. The day *before* the sheriff's department arrested Plaintiff Muzyka and seized his livestock, Defendants Swick and First Star Bank initiated foreclosure proceedings on a loan secured by Plaintiff Muzyka's livestock. Moreover, Defendants Russ, McCullough and Paschall colluded with a local justice of the peace to set Mr. Muzyka's bond at \$600,000.00 even though the maximum fine for the 60 *misdemeanor* counts was \$240,000.00. These defendants were attempting to force Plaintiff Muzyka to relinquish his interest in the estate.

192. After arresting Mr. Muzyka, the sheriff's department did not feed Mr. Muzyka's livestock for days. The sheriff's department took 25 horses belonging to Mr. Muzyka and allegedly gave them away to a non-profit organization, but in fact Defendant Davis kept several mares for himself. Moreover, two witnesses observed Defendant Davis and Defendant Box loading 57 head of cattle into trailers, and those cattle remain unaccounted for to this day. In total, the sheriff's department cannot account for nearly 130 head of cattle that belonged to Mr. Muzyka.

193. Plaintiff Muzyka was later convicted of three counts of animal cruelty. He sought to appeal the conviction, but County Judge Jan Roe told him he would be jailed immediately if he did not waive his right to appeal. Under duress, Plaintiff Muzyka waived his right to appeal. He subsequently filed a motion for new trial after learning that Defendant Davis had withheld exculpatory videotape evidence and tampered with the videotape evidence that was presented at his trial. Judge Roe denied the motion for new trial.

194. In late June of 2007, Plaintiff Muzyka evicted a surveyor from the 500-acre estate. The surveyor claimed that Plaintiff Muzyka threatened him with a sledgehammer, and the Robertson County Sheriff's Department charged Plaintiff Muzyka with aggravated assault with a

deadly weapon. Defendants Russ, McCullough, and Paschall again conspired with a local justice of the peace, this time setting Plaintiff Muzyka's bond at \$1 million, all for the purpose of pressuring Mr. Muzyka to relinquish his interest in the estate. While Mr. Muzyka was still in jail, Defendants Russ & McCullough sent him documents trying to get him to sign away most of his interest in the estate.

195. The Muzyka estate was put into receivership, with none other than Defendant Leamon serving as receiver. Plaintiff Muzyka and his wife, Plaintiff Fitzpatrick, sought a \$25,000 loan to purchase the home in which they were living on the estate property, and they were approved for the loan. Ms. Fitzpatrick needed various documents from Mr. Leamon to secure the loan, but Mr. Leamon refused to provide them. As a result, Plaintiffs Muzyka and Fitzpatrick could not get the loan, and Defendant Leamon sold the property to someone else. Judge Stem then ordered Plaintiffs and Muzyka out of the house within 30 days. Further discovery will reveal that Defendant Leamon colluded with Defendants Muzyka, Motley, Russ, McCullough, Swick, Paschall and First Star Bank to force Plaintiffs Muzyka and Fitzpatrick from the home.

196. On February 4, 2008, Mr. Muzyka signed a deed of trust securing a \$122,500.00 loan against his interest in the 500-acre estate. To avoid further persecution in Robertson County's Third World justice system, Mr. Muzyka agreed to pay his brother and sister \$122,500.00 to settle their bogus claim that the share of the estate he received was worth more than the shares they received. The defendants are now trying to foreclose on Mr. Muzyka's interest in the real estate, and Mr. Muzyka seeks to void the deed and the settlement agreement.

Claims

Civil Conspiracy

197. All the Defendants participated in a civil conspiracy and therefore are liable for the acts of one another. However, *notwithstanding any other provision of this complaint*, the members of the Erwin Heir Majority do not bring any claims of any kind against the Defendants with whom they have already settled, *i.e.*, Defendants Russ, McCullough, The Firm, Leamon, L K & P, Oaks & Diamonds, Deminimus, Velnon, Flare Royalties, L.P., and Flare Royalties, L.L.C., nor do they seek any damages from them.

Racketeering

198. All previous paragraphs are incorporated herein by reference.

199. All Defendants, except Defendant Hollie Elliott, are liable for damages under 18 U.S.C. §1964 insofar as they participated in or colluded with a racketeering enterprise that caused damage to the Plaintiffs' businesses or property. These defendants repeatedly used the United States mail in furtherance of their schemes to defraud the Plaintiffs.

200. All the Plaintiffs, except Plaintiff Eppers, bring claims against the aforementioned defendants for racketeering. The Erwin Heir Majority members, however, do not bring racketeering claims against those defendants with whom they have previously settled, *i.e.*, Defendants Russ, McCullough, Leamon, The Firm, Velnon, Deminimus, Flare Royalties, L.L.C., and Flare Royalties, L.P.

Civil Rights Act

201. All previous paragraphs are incorporated herein by reference.

202. Defendants Russ, McCullough and The Firm conspired with Judge Stem and various other officials to deny the Plaintiffs their rights to due process and equal protection

guaranteed by the United States Constitution. All the remaining Defendants conspired to participate in the schemes that led to the denial of these rights, therefore all Defendants are liable for damages under 42 U.S.C. §1983.

203. All the Plaintiffs bring claims under 42 U.S.C. §1983 against all the Defendants. The members of the Erwin Heir Majority, however, *do not* bring claims against those with whom they have previously settled, *i.e.*, Defendants Russ, McCullough, Leamon, The Firm, Velnon, Deminimus, Flare Royalties, L.L.C., and Flare Royalties, L.P.

204. Plaintiff Steve Stokely brings claims under 42 U.S.C. §1983 against Defendants Paschall and Wilganowski for First Amendment retaliation.

205. Plaintiff Cassandra Butler brings claims under 42 U.S.C. §1983 against Defendants Russ, Werlinger, and Catalina for First Amendment retaliation.

Fraud

206. All previous paragraphs are incorporated herein by reference.

207. Plaintiffs Erwin, Booher, Reynolds, Muzyka, Fitzpatrick, Krumnow, Cheryl Maxwell, Wayne Maxwell, Czajkowski, Scott, Erickson, Gossen, Reynolds, and Krumnow bring claims for fraud against Defendants Rusty Russ, McCullough, Leamon, The Firm, L K & P, Oaks & Diamonds, Velnon, Deminimus, Flare Royalties, L.L.C., Flare Royalties, L.P., Leor Energy, Encana, Hearne Business Park, Hedrick, Boykin, Harris, Pam Krumnow, Mendenhall, Withem, DDC, Aikens, MWC, Carlson, Blue Water, Funk, Yezak, Davis, Box, Swick, First Star Bank, Michael Muzyka, Motley, Bielowicz, Guaranty Title, MACRU, LLC, Dick Milstead, Mark Milstead, and Baxter as set forth in the preceding paragraphs.

208. The Erwin Heir Majority plaintiffs bring fraud claims as set forth in the preceding paragraph except that they do not bring fraud claims against those with whom they have

previously settled, *i.e.*, Defendants Russ, McCullough, Leamon, The Firm, Velnon, Deminimus, Flare Royalties, L.L.C., and Flare Royalties, L.P.

Theft Liability Act

209. All previous paragraphs are incorporated herein by reference.

210. Plaintiffs Erwin, Booher, Reynolds, Muzyka, Fitzpatrick, Krumnow, Cheryl Maxwell, Wayne Maxwell, Czajkowski, Scott, Erickson, Gossen, Reynolds, and Krumnow bring claims under the Texas Theft Liability Act, Tex. Civ. Prac. & Rem. Code §§134.001-134.005 against Defendants Rusty Russ, McCullough, Leamon, The Firm, L K & P, Oaks & Diamonds, Velnon, Deminimus, Flare Royalties, L.L.C., Flare Royalties, L.P., Leor Energy, Encana, Hearne Business Park, Hedrick, Boykin, Harris, Pam Krumnow, Mendenhall, Withem, DDC, Aikens, MWC, Carlson, Blue Water, Funk, Yezak, Davis, Box, Swick, First Star Bank, Michael Muzyka, Motley, Bielamowicz, Guaranty Title, MACRU, LLC, Dick Milstead, Mark Milstead, and Baxter as set forth in the preceding paragraphs.

211. The Erwin Heir Majority plaintiffs bring theft claims as set forth in the preceding paragraph except that they do not bring theft claims against those with whom they have previously settled, *i.e.*, Defendants Russ, McCullough, Leamon, The Firm, Velnon, Deminimus, Flare Royalties, L.L.C., and Flare Royalties, L.P.

Breach of Fiduciary Duty

212. All previous paragraphs are incorporated herein by reference.

213. The Plaintiffs bring claims against the Defendants to the extent they breached their fiduciary duties or conspired with others to breach their fiduciary duties as set forth in the preceding paragraphs. The Erwin Heir Majority plaintiffs do not, however, bring claims against any parties with whom they have previously settled.

Conversion

214. All previous paragraphs are incorporated herein by reference.

215. The Plaintiffs bring claims against the Defendants to the extent they converted property or conspired with others to convert property as set forth in the preceding paragraphs. The Erwin Heir Majority plaintiffs do not, however, bring claims against any parties with whom they have previously settled.

Tortious Interference

216. All previous paragraphs are incorporated herein by reference.

217. Defendants McCullough, Baxter, The Firm, and Hearne Business Park are liable to Plaintiff Booher for damages for tortuously interfering with his contract and his business relationship with Defendant Zeig Enterprises.

Abuse of Process

218. All previous paragraphs are incorporated herein by reference.

219. Defendants Russ, McCullough, The Firm, Muzyka, Motley, Yezak, Davis, Box, and Swick used criminal proceedings to try to coerce Plaintiff Muzyka to forego his cattle and his real estate interests, therefore they are liable to him for an abuse of process.

Equitable Accounting

79. All previous paragraphs are incorporated herein by reference.

80. Plaintiff Erwin, on behalf of himself and all others similarly situated, demands an equitable accounting from Defendants Russ, McCullough, Leamon, The Firm, L K & P, Oaks & Diamonds, Velnon, Deminimus, Flare Royalties, L.L.C., Flare Royalties, L.P., Leor Energy, and Encana. The Erwin Heir Majority plaintiffs demand an equitable accounting from Defendants Leor Energy, and Encana.

Prayer for Relief

Wherefore, the Plaintiffs request that this Court:

- a. Award compensatory damages against the Defendants;
- b. Award treble damages against the Defendants;
- c. Award punitive damages against the Defendants;
- d. Award costs of this action to the Plaintiffs;
- e. Award reasonable attorney fees and costs to the Plaintiffs;
- f. Order an equitable accounting; and
- e. Award all other relief to which the Plaintiffs are entitled.

Respectfully submitted,

/s/ Ty Clevenger

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