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AND DEBTOR-IN-POSSESSION

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KERWIN BURL STEPHENS DEBTOR  
AND DEBTOR-IN-POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

In re:

**KERWIN BURL STEPHENS,  
THUNDERBIRD OIL & GAS, LLC,  
THUNDERBIRD RESOURCES, LLC,  
Debtors.**

§ **Chapter 11 (V)**  
§  
§ **Case No.: 21-40817-elm-11**  
§  
§ **Case No.: 21-41010-elm-11**  
§  
§ **Case No.: 21-41011-elm-11**  
§  
§ **Jointly Administered Under**  
§ **Case No. 21-40817-elm-11**  
§

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**BRIEF IN SUPPORT OF  
DEBTOR’S APPLICATION FOR ORDER PURSUANT TO  
11 U.S.C. § 327(a) AND BANKRUPTCY RULE 2014 AUTHORIZING  
THE EMPLOYMENT OF JOHN G. BROWNING AS EXPERT WITNESS**

TO THE HONORABLE EDWARD LEE MORRIS, UNITED STATES BANKRUPTCY JUDGE:

Kerwin Burl Stephens (the “Debtor”), as debtor-in-possession, provides this brief in support of his July 8, 2021 application (the “Application,” Document No. 132) pursuant to section 327 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for entry of order authorizing the employment of John G. Browning (“Mr. Browning”) as an expert witness on behalf of the Debtor.

The Debtor respectfully shows the Court as follows:

## SUMMARY OF ARGUMENT

1. Plaintiffs<sup>1</sup> have been seeking a return to the state trial court for months, by way of various motions to lift bankruptcy stays and motions to remand. If they return to state court, Plaintiffs hope to obtain another multi-million dollar judgment against Debtor Stephens, which would result in another appeal through the Texas appellate system. Plaintiffs' various arguments for returning these proceedings to state court rest heavily upon two faulty premises:

- (1) that the trial judge in the 32<sup>nd</sup> Judicial District of Texas (Hon. Glen Harrison, presiding) is better suited to administer Plaintiffs' claims than other judges, including the present bankruptcy judge, because of his historical involvement in the state court litigation that caused Debtor's bankruptcy; and
- (2) that this trial judge will be presiding over state-court proceedings in order to administer Plaintiff's claims.

For responding to Plaintiffs' arguments (particularly, in their recent remand motion and lift-stay motion<sup>2</sup>), Debtor Stephens seeks to employ expert John G. Browning. Mr. Browning's testimony that Judge Harrison ought to recuse himself from any further proceedings involving the Debtor Kerwin B. Stephens, or ought to be forced to do so, entirely undermines and vanquishes both faulty premises. If any part of the current proceedings returns to state court, Judge Harrison should not (and in all likelihood will not) preside over it.

2. Remarkable and voluminous evidence supports Mr. Browning's testimony in favor of recusing Judge Harrison. During the bizarre trial leading to Debtor's financial troubles – and especially during the critical post-verdict and pre-appeal litigation following that trial – Judge Harrison routinely engaged in highly inappropriate social media behavior; he had numerous Twitter interactions with legal counsel opposed to Debtor Stephens and openly

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<sup>1</sup> As the Court knows, Plaintiffs are Tiburon Land and Cattle, LP (project investor Collen Clark's entity) and Trek Resources, Inc. (project investor Michael E. Montgomery's entity), both based in Dallas, and represented by attorneys Eric Stahl and John Dee Spicer.

<sup>2</sup> Namely, "State Court Plaintiffs' Motion to Remand" filed July 28, 2021, and "State Court Plaintiffs' Second Motion to Lift Automatic Stay" filed July 29, 2021.

demonstrated his bias and prejudice against Stephens and his partiality for Stephens's opposition (the Intervenor and Plaintiffs). Judge Harrison's Twitter interaction with opposing counsel is voluminous and canvasses various topics: some personal, some playful, but – of greatest concern – some pertaining to the very merits of the case against Debtor Stephens, such as Stephens's personal demeanor/conduct and the noteworthiness of a \$90 million+ verdict against him. Efforts have been made to take down much of this Twitter activity and to prevent the general public from viewing it. See generally **Exhibits 1-8** to Browning Affidavit (**Exhibit A**), much of which can no longer be viewed at <https://twitter.com>.

3. Judge Harrison endorsed (by "liking" on Twitter) opposing counsel's negative view of Stephens and his conduct in the underlying business transaction. Concurrently from the bench Judge Harrison (a) would deny *all* arguments by Stephens for relief JNOV or for new trial (most of which subsequently succeeded on appeal) and (b) would hinder Stephens's ability to supersede the \$50 million+ judgment he had imposed (until the court of appeals ruled in 2017 that Stephens had a right to supersede the judgment and that Judge Harrison had abused his discretion by disallowing supersedeas).

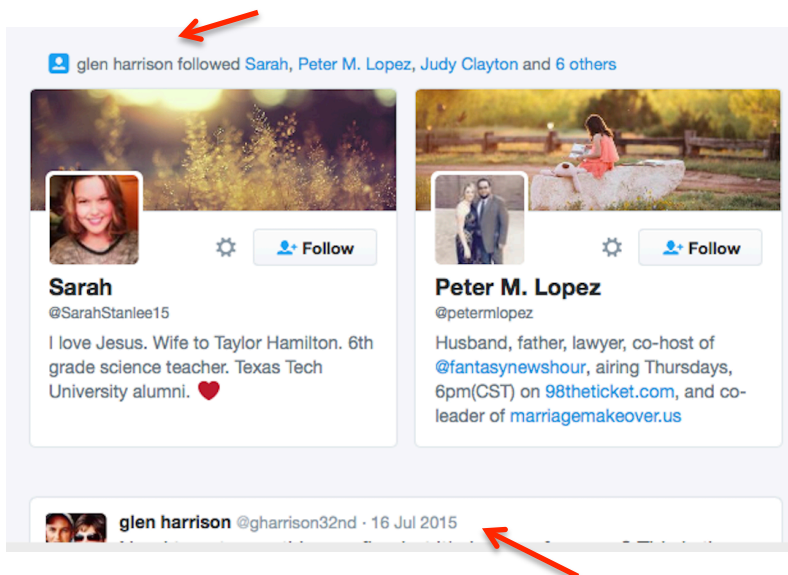
4. Fortunately, the standards for judicial recusal speak to this troubling situation. The Texas Rules of Civil Procedure allow for Debtor Stephens to move for Judge Harrison's recusal because his "impartiality might reasonably be questioned" and he "has a personal bias or prejudice concerning the subject matter [namely, the bizarre jury trial] or a party [namely, Kerwin B. Stephens]." See TEX. R. CIV. P. 18b(b)(1)-(2); see generally *id.* 18a-18b. Stephens would need to prove the state trial judge's partiality, bias and prejudice with factual "detail and particularity" (see *id.* 18a(a)(4)) – thus making appropriate the substantial evidentiary and timeline review appearing in this Brief and in the Browning affidavit (**Exhibit A**).

5. Debtor Stephens and his counsel are convinced – and respectfully submit to this Court – that no efficiency gains or administration-of-justice gains will result from returning all or part of these proceedings to state court. If remand occurred, the trial judge who oversaw the

trial and post-verdict litigation will not be presiding any longer over matters involving Debtor Stephens. If that judge were allowed to do so, Texas would be perpetuating a years-long grave injustice against a small Texan businessman.

### **BACKGROUND**

6. As of at least July 16, 2015, on Twitter the state trial judge was following Jordyn Gingras (“@JordynJGingras”) and Michael Hurst (“@MichaelTrialLaw”) *during* the trial (lasting from July 29, 2015 to August 19, 2015), as shown by images here:



[Hitting “6 others” in the foregoing image then results in:]



See Exhibit B.1.

7. While following plaintiffs’ counsel Gingras and Hurst during the trial, the state trial judge tweeted about happenings during the trial. Thus, an observer (including, potentially, a juror) viewing his Twitter handle @gharrison32nd could have learned that Judge Harrison or the 32<sup>nd</sup> Judicial District Court were following plaintiffs’ counsel, but not any of defendants’ counsel, while that judge was making various trial observations. Here are some of those during-trial tweets:



See Exhibit B.2.

8. On August 20, 2015, a single day after the conclusion of the trial, the state trial judge liked Jordyn Gingras’s tweet that “The truth doesn’t cost you anything, but a lie could cost you everything” (and her tweet contained her related Instagram post with the trial-related

hashtags “#rumbleinroby,” “#sweetwaterproud,” and “proudlawyermoment”):



See **Exhibit 1** to Browning Affidavit (**Ex. A**).

9. On November 16, 2015, the state trial judge liked Jordyn Gingras’s tweet about her CLE presentation at the Dallas Bar Association titled “Landman or Lawyer? \$70MM+ Reasons Why You Should Care” (and “Landman or Lawyer” in this context necessarily means Kerwin B. Stephens):



See **Exhibit 4** to Browning Affidavit (**Ex. A**).

10. On May 13, 2016, the state trial judge liked a tweet by another member of the Intervenors’ trial team (Christina Mullen, “@mullencm”) about obtaining the “#15 verdict in the nation for [her] first trial with” Michael Hurst and Jonathan Childers:



See **Exhibit 5** to Browning Affidavit (**Ex. A**).

11. On May 24, 2016, the state trial judge like Jordyn Gingras’s tweet about the “power couple,” meaning Plaintiffs’ trial counsel Frank Branson and his wife:



See **Exhibit 6** to Browning Affidavit (**Ex. A**).

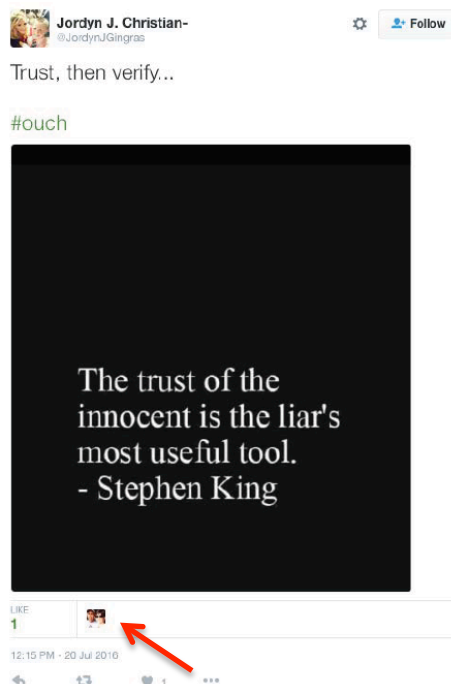
12. The foregoing Twitter activity occurred shortly before and shortly after the state trial judge on March 30, 2016 had rendered a judgment exceeding \$50 million against Kerwin B. Stephens and his co-defendants. Also, the activity occurred contemporaneously with the judge's consideration of Stephens's substantial post-judgment motions: Motions for JNOV, Motion for New Trial and Motion to Modify the Judgment (all Motions' arguments being unsuccessful before Judge Harrison, but mostly successful before the Eastland Court of Appeals, *Stephens v. Three Finger Black Shale P'ship*, 580 S.W.3d 687 (Tex. App.— Eastland 2019, no pet.)).

13. In summer and fall of 2016, the state trial judge engaged in almost daily Twitter interaction with plaintiffs' counsel Jordyn Gingras, over a variety of personal and professional topics. See **Exhibit 8** to Browning Affidavit (**Ex. A**). This activity is particularly troubling because it coincided with Debtor Kerwin Stephens's lengthy and costly efforts to supersede the multi-million dollar March 30, 2016 judgment, a matter on which the Eastland Court of Appeals in early 2017 reversed the trial judge's ruling that was preventing Stephens from superseding the judgment. See generally *Stephens v. Three Finger Black Shale P'ship*, No. 11-16-00177-CV, 2017 Tex. App. LEXIS 2579, 2017 WL 3495390 (Tex. App. – Eastland Mar. 23, 2017, no pet.) (holding that the 32<sup>nd</sup> Judicial District Court abused its discretion in refusing the request by Kerwin Stephens to subordinate judgment liens to security interests of the Oklahoma bank willing to provide a letter of credit for a supersedeas bond).

14. Not including tens of thousands in attorney's fees necessary for forcing the state trial judge to allow for supersedeas (see 2017 Tex. App. LEXIS 2579, 2017 WL 3495390), Debtor Stephens spent \$1.1 million from 2017 through 2020 in order to supersede the \$50 million+ judgment rendered by the state trial judge. On April 23, 2020, that trial judge signed an order denying Debtor Stephens's request for lowered supersedeas obligations – thereby forcing Stephens to liquidate IRA savings accounts in order to pay the yearly \$285,000.00 in supersedeas-bond costs. (Because Mr. Stephens was forced to liquidate the IRA accounts for

this purpose, divorce-related litigation between Gail Stephens and Kerwin Stephens will focus on that decision.)

15. During the midst of the lengthy supersedeas-related litigation, the state trial judge liked the following tweet about “trust” by counsel Jordyn Gingras, just days before he had ruled<sup>3</sup> that Stephens could not supersede the multi-million dollar judgment:



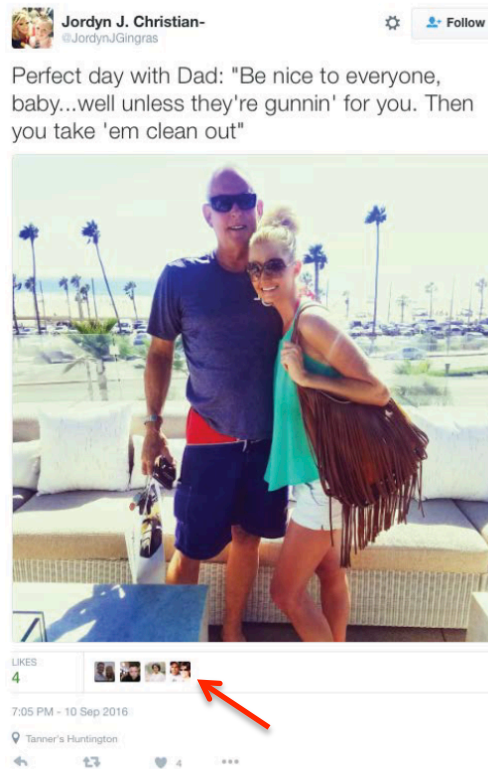
See **Exhibit 8** to Browning Affidavit (**Ex. A**).

16. Likewise the state trial judge liked the following tweet by counsel Gingras, just

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<sup>3</sup> Judge Harrison’s August 3, 2016 ruling on Debtor Stephens’s efforts to supersede the multi-million dollar judgment: “But, despite the characterization that repeated and diligent efforts have been made to get the bond or the Letter of Credit, *based on the testimony presented, the demeanor, and the credibility of the witnesses, I don’t find that sufficient efforts have been made to get that* when you go to a bank that couldn’t have given the Letter of Credit even if they wanted to and then certainly try to bring in somebody else and then a friend, also. I really don’t find that there’s – the Defendants have made sufficient efforts to show me that a bond could not be obtained. And, therefore, Defendants’ Motion for an Order for Alternate Security is denied.” **Exhibit C.1**, Supp. Reporter’s Record, Vol. 2, at 377 (emphasis added).

days before he ruled<sup>4</sup> a second time that Stephens could not supersede the multi-million dollar judgment:



See **Exhibit 8** to Browning Affidavit (**Ex. A**).

17. There is a body of daily or weekly tweets between Judge Glen Harrison and opposing counsel (particularly Jordyn Gingras) in the months preceding the third time he ruled<sup>5</sup>

<sup>4</sup> Judge Harrison's September 12, 2016 ruling on Debtor Stephens's efforts to supersede the multi-million dollar judgment: "*But, I do feel like we're kind of in the same song, second verse, a little bit faster, a little bit worse. I'm still hearing things like 'hopefully,' 'typically,' and 'for some amount.'*" I'm not – still not impressed with the Defendants' efforts to secure either a sale or this bond. And so Defendants' Motion for Alternate Security and Motion to Release Abstracts to Specific Properties is denied." **Exhibit C.2**, Supp. Reporter's Record, Vol. 3, at 83 (emphasis added).

<sup>5</sup> Judge Harrison's January 29, 2017 ruling on Debtor Stephens's efforts to supersede the multi-million dollar judgment: "[to James Holmes, Stephens's counsel:] You're telling me, essentially, we've got competing essential rights. They [*i.e.*, Plaintiffs and Interveners] have a right to execute on their judgment, you've got a right to make a supersedeas bond. You want me to stop them from proceeding on their right so you can proceed on yours? . . . I think you've kind of seen my thought process here today. *I haven't been trying to hide the ball as to the*

that Stephens could not supersede the multi-million dollar judgment and, indeed, that Plaintiffs and Intervenor could begin levy sales of Stephens's land and other assets.

18. Even as of today, Judge Harrison continues to follow Jordyn Gingras (“@JCGLegalGroup”) and Michael Hurst (“@MichaelTrialLaw”). He has never followed any Twitter account associated with any of defendants' counsel, even assuming it is proper for a judge to “follow” any counsel on Twitter while they work on a case in his court.

19. The quantity of Judge Harrison's Twitter activity with opposing counsel is staggering. **Exhibits 1-8** to the Browning Affidavit (**Exhibit A**) contain a mere sampling of tweets to/from Judge Harrison, which Twitter-active people (who have been following this case) have shared with legal counsel for Debtor Stephens.

### **ARGUMENT**

20. In responding to Plaintiffs' remand and lift-stay motions, particularly those filed July 28-29, 2021, Debtor Stephens intends to use Mr. Browning's testimony and opinions on judicial recusal. By seeking to employ John Browning as expert for this purpose, Debtor Stephens does not seek to convince this Court that Judge Harrison's recusal is inevitable, but rather that the parties will engage in substantial recusal-related litigation if they are returned, even in part, to state court. That litigation, or the threat of such litigation, will likely cause Judge Harrison's voluntary or involuntary recusal. The relevant administrative judge (namely, Hon. Dean Rucker, Presiding Judge of Texas's Seventh Administrative Judicial Region) will have to find a new state trial judge to consider Plaintiffs' varied and tenuous arguments for a post-remand judgment. See TEX. R. CIV. P. 18a(g)(7) (“If the [recusal] motion is granted, the regional presiding judge must transfer the case to another court or assign another judge to the case.”)

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*direction I was leaning and hit a hurdle that I don't believe I was prepared to even try to attempt with these levies.”* **Exhibit C.3**, Supp. Reporter's Record, Vol. 6, at 64 & 116 (emphasis added).

21. Given its substantial review of the underlying business transaction to date, this Court is far better suited to consider Plaintiffs' arguments for judgment than a newly appointed state judge. And, this Court can administer Plaintiffs' arguments for judgment far more quickly and efficiently than the state-court process of having trial-court rulings leading to appellate review.

22. Texas Rule of Civil Procedure 18b(b)(1) provides that a trial judge "must recuse" when "the judge's impartiality might reasonably be questioned." As to the impartiality factor, "[t]he movant bears the burden of proving recusal is warranted. . . . The test for recusal is 'whether a reasonable member of the public at large, knowing all the facts in the public domain concerning the judge's conduct, would have a reasonable doubt that the judge is actually impartial.'" *Drake v. Walker*, 529 S.W.3d 516, 528 (Tex. App. – Dallas 2017, no pet.); all relevant cases appear behind **Exhibit D**. Any thinking member of the general public would not hesitate to doubt Judge Harrison's impartiality over Debtor Stephens; rather, any thinking person would readily conclude that Judge Harrison would act in favor of Stephens's opponents and against Stephens. Judge Harrison should recuse or should be forced to recuse under Rule 18b(b)(1). See Browning Affidavit at ¶ 12 (**Ex. A**).

23. Texas Rule of Civil Procedure 18b(b)(2) provides that a trial judge "must recuse" when "the judge has a personal bias or prejudice concerning the subject matter or a party." Because a trial judge rarely confesses to bias or prejudice against a litigant, proving such bias or prejudice usually depends on a totality-of-circumstances analysis. See, e.g., *Youkers v. State*, 400 S.W.3d 200, 206-07 (Tex. App. – Dallas 2013, pet. ref'd); *In re Slaughter*, 480 S.W.3d 842, 853-54 (Tex. Spec. Ct. Rev. 2015) (per curiam) (both evaluating a trial judge's potential bias based upon factual circumstances and context); see **Exhibit D**. A totality-of-circumstances test would promptly result in the recusal of Judge Harrison. He maintained active Twitter interaction with lawyers opposed to Debtor Stephens from late 2015 through at least late 2016; endorsed (by "liking") negative views of Stephens as tweeted by opposing

counsel; and – all the while – denied post-verdict relief sought by Stephens (*i.e.*, Motions JNOV, MNT) while rendering a multi-million dollar judgment against Stephens and preventing him from superseding that judgment. (The Eastland Court of Appeals first corrected Judge Harrison’s error in disallowing supersedeas and then granted most of the post-verdict relief Stephens had been requesting. *See generally Stephens v. Three Finger Black Shale P’ship*, No. 11-16-00177-CV, 2017 Tex. App. LEXIS 2579, 2017 WL 3495390 (Tex. App. – Eastland Mar. 23, 2017, no pet.); *Stephens v. Three Finger Black Shale P’ship*, 580 S.W.3d 687 (Tex. App.—Eastland 2019, no pet.).)

24. Debtor Stephens can prove the existence of actual and active partiality, bias and prejudice against him before Judge Harrison. However, many Texas appellate courts have urged recusal even when a trial judge only *appears* to have bias or prejudice, without actual proof of bias or prejudice. *See Slaughter*, 480 S.W.3d at 853 (“Sometimes the judge may need to recuse herself, or be recused, even though she has no actual bias and would do her very best to weigh the scales of justice equally between contending parties. . . . The judiciary must strive to not only give all parties a fair trial, but also maintain a high level of public trust and confidence.” (citing *Keene Corp. v. Rogers*, 863 S.W.2d 168, 180 (Tex. App.—Texarkana 1993, no writ) & *Indemnity Ins. Co. v. McGee*, 356 S.W.2d 666, 668 (Tex. 1962))). These courts adhere to the decades-old directive from the Texas Supreme Court that “[t]he judiciary must not only attempt to give all parties a fair trial, but it must also try to maintain the trust and confidence of the public at a high level [and] it is of great importance that the courts should be free from reproach or the suspicion of unfairness.” *Indemnity Insurance Co.*, 356 S.W.2d at 668. An appearance of partiality, bias or prejudice test would promptly result in the recusal of Judge Harrison. His behavior (described in the preceding paragraph and elsewhere in this Brief) destroys “the trust and confidence of the public” in the Texas judiciary and subjects that judiciary to “reproach [and] the suspicion of unfairness.” *See* Browning Affidavit at ¶ 12 (**Ex. A**) (“Such Twitter activity [by Judge Harrison] does not promote confidence in the integrity and impartiality

of the judiciary; on the contrary, it undermines it.”).

25. By his Application, the Debtor seeks Court approval, pursuant to section 327(a) of the Bankruptcy Code and Rule 2014(a) of the Bankruptcy Rules, to employ and retain Mr. Browning as an expert witness, effective as of June 8, 2021, in the area of legal and judicial ethics. No party has opposed this Application. In order to counter Plaintiffs’ arguments for returning these proceedings to state court, the Debtor expects that Mr. Browning will render expert opinions as to the recusal of the Honorable Glen Harrison from any further state-court proceedings involving Kerwin B. Stephens or his companies. The Debtor further expects that Mr. Browning will render expert opinions as to recusal-related litigation in the event Judge Harrison does not voluntarily recuse.

**CONCLUSION AND REQUESTED RETENTION OF JOHN G. BROWNING**

26. Mr. Browning is highly qualified to render these expected opinions. He is a partner at Spencer Fane, LLP in Plano, Texas; a former Justice on the Dallas Court of Appeals; and a sought-after commentator on legal and judicial ethics, including ethics in the area of technology and social media.

27. The Debtor submits that his employment of Mr. Browning would be in the best interests of the Debtor, his estate, and his creditors.

28. In support of the Application, the Browning Declaration has been executed in accordance with the provisions of section 327 of the Bankruptcy Code, Bankruptcy Rule 2014, N.D. Tex. L.B.R. 2014-1, and U.S. Trustee Guidelines. The Debtor’s knowledge, information and belief regarding the matters set forth herein are based and made in reliance upon the Browning Declaration.

WHEREFORE the Debtor respectfully requests that the Court grant the application and other relief as to which the Debtor is justly entitled.

Dated: August 9, 2021

Respectfully submitted,

*/s/ James Holmes*

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**ATTORNEYS FOR DEBTOR  
KERWIN BURL STEPHENS**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served upon the parties listed below via email or via ECF electronic Notice, if available, on August 9, 2021.

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*/s/ James Holmes*

James Holmes

# **Exhibit A**

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SPECIAL LITIGATION COUNSEL FOR  
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**IN THE UNITED STATES BANKRUPTCY COURT  
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§ **Jointly Administered Under**  
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**AFFIDAVIT OF JOHN G. BROWNING**

STATE OF TEXAS           §  
  §  
COUNTY OF COLLIN       §

BEFORE ME, the undersigned authority, on this day personally appeared John G. Browning, who, being by me duly sworn, on oath testifies as follows:

1.       “My name is John G. Browning. I am above the age of eighteen (18) years old, have never been convicted of a crime, and am otherwise competent to make this Affidavit. I have personal knowledge of the facts set forth herein, and they are true and correct. I am a partner in the law firm of Spencer Fane, LLP, and my office address is 5700 Granite Parkway, Suite 650, Plano, Texas, 75024.

2. I am licensed to practice law in Texas, and have been so licensed since November 1989. In addition to being an attorney, I am a former Justice on the Fifth District Court of Appeals in Dallas. I am the author of four books on social media and the law, including *Legal Ethics and Social Media: A Practitioner's Handbook* (ABA Publishing, 2017; co-authored with Prof. Jan Jacobowitz). I am also the author of approximately 40 academic articles, and hundreds of other legal articles. I am an adjunct law professor at SMU Dedman School of Law, and I have held adjunct appointments at Texas A&M University School of Law and Texas Tech University School of Law as well. I frequently guest lecture and present at legal symposia at law schools all over the country. In addition, I am a widely-recognized authority on judicial ethics. I have served on the faculty for the Federal Judicial Center, the National Center for State Courts, the Appellate Judges Educational Institute, and the Texas Center for the Judiciary, and I have also given judicial ethics presentations for specific courts including the Supreme Court of Texas, the Fifth District Court of Appeals, and the Southern District of Texas. As both a lawyer and a jurist, I have presented as a panelist at multiple judicial conferences in other states, such as Wisconsin and Arkansas. My work has been cited as authority by courts in Texas, California, New York, Florida, Maryland, Tennessee, Washington, D.C., and Puerto Rico. Most recently, on April 28, 2021, my work was cited as authority by the California Supreme Court Committee on Judicial Ethics Opinions in its Expedited Opinion 2021-042, which advises judges to be “mindful of how the public may perceive social media activity” and to “refrain from any online statements or communications that call into question the impartiality of the judiciary.”

3. From November 24, 2015 until August 20, 2019, I worked as counsel for Kerwin Stephens in a disciplinary proceeding by the Texas State Bar styled *Commission for Lawyer Discipline v. Kerwin B. Stephens*, No. 201506240, Evidentiary Panel of District 14, Grievance

Committee. Although I no longer serve as counsel in this matter, I understand that the State Bar has suspended proceedings at this time.

4. I am very familiar—as an attorney, a judge, and as a legal ethics scholar—with the standards and procedure for judicial recusal in Texas, and with the Canons of the Texas Code of Judicial Conduct. In the Preamble to the Code of Judicial Conduct, judges are admonished to “strive to enhance and maintain confidence in our legal system.” Canon 2A mandates that “A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” Canon 2B admonishes that “A judge shall not allow any relationship to influence judicial conduct or judgment...nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge.” In addition, Canon 3B(5) requires a judge to perform his judicial duties “without bias or prejudice.”

5. As judicial governing bodies and ethics authorities throughout the United States have recognized, while there are certainly benefits to judges using social media platforms, judges must also be mindful of ethical risks posed by social media use, such as ex parte communications or the appearance of impropriety. Here in Texas, the only two reported cases dealing with judicial use of social media have echoed that concern. In *Youkers v. State*, the Fifth District Court of Appeals noted that social media use by judges presents concerns “unique to the role of the judiciary in our justice system,” and that in using such platforms “judges must be mindful of their responsibilities under applicable judicial codes of conduct.” *Youkers*, 400 S.W.3d 200 at 205 (Tex. App.—Dallas 2013, pet. ref’d). In *In re Honorable Michelle Slaughter*, a Special Court of Review appointed by the Texas Supreme Court observed that while the social media activity of the judge at issue (who had been recused in connection with Facebook posts about the

case before her) did not warrant judicial discipline, judges should nevertheless be aware that their conduct on social media is subject to existing rules of judicial conduct and that such online behavior by judges about their own proceedings “create the very real possibility of a recusal (or even a mistrial) and may detract from the public trust and confidence in the administration of justice.” 480 S.W.3d 842 (Tex. Spec. Rev. Ct. 2015).

6. Activity by a judge on Twitter, including following someone connected to the case before him, retweeting, or “liking” the tweets of others, is a type of social media activity that has resulted in judges facing recusal motions or even being recused. In December 2016, Judge Staci Williams of the 101<sup>st</sup> Judicial District Court in Dallas County recused herself after a motion to recuse was filed in Cause No. DC-15-04484, *State Fair of Texas v. Riggs & Ray, P.C.* In that matter, pursuant to Tex. R. Civ. P. 18b(b), the movant pointed to Judge Williams’ activity on Twitter as grounds for a claim that the judge’s impartiality might reasonably be questioned. Judge Williams had retweeted a tweet by a local political commentator about the case, which linked to a newspaper opinion piece supporting one side of the dispute. On a different day, the judge had “liked” a tweet from a local political official which linked to another article by the same newspaper columnist in support of one of the sides in the case. In light of her publicly posted approval of tweets linked to two articles highly critical of one party’s position in the case, one could reasonably question the judge’s impartiality; at the very least, the judge’s Twitter activity created the appearance of bias or impropriety.

7. In the 2015 Denton County case of *Texas Ethics Commission v. Michael Quinn Sullivan*, No. 02-15-00103-CV, 2015 Tex. App. LEXIS 11518, 2015 WL 6759306 (Tex. App.—Fort Worth Nov. 5, 2015, pet. denied) (mem. op.), involving Cause No. 14-06508-16 in the 158<sup>th</sup> Judicial District Court, a judge was recused for even more tenuous Twitter activity. In that case,

Judge Steve Burgess had previously dismissed the Texas Ethic Commission's earlier ruling against conservative political activist Michael Quinn Sullivan. After learning that Judge Burgess followed Mr. Sullivan on Twitter, the TEC moved to recuse based on at least the appearance of impropriety and partiality on the part of the judge, while also raising (without any evidence) the issue of possible ex parte communications between the judge and Sullivan via Twitter. A visiting judge granted the recusal motion, and the case was assigned to a different judge.

8. And in a case that nearly reached the U.S. Supreme Court, a federal judge in California was nearly recused because of his Twitter activity. In the 2017 case of *U.S. v. Sierra Pacific Industries, Inc.*, U.S. District Court Judge William B. Shubb was presiding over a case arising out of a 2007 wildfire that had devastated nearly 65,000 acres in California. 862 F.3d 1157 (9<sup>th</sup> Cir. 2017). The federal government, which blamed lumber producer Sierra Pacific for the wildfire, reached a settlement that the lumber company sought to vacate. Judge Shubb denied Sierra Pacific's motion. It appealed, pointing out that not only was Judge Shubb a Twitter follower of the federal prosecutors on the case—and had received tweets about the merits of the case from the prosecutors' Twitter account—but also that he himself had tweeted about the case from his then-public Twitter account (@Nostalgist1). Shubb allegedly tweeted “Sierra Pacific still liable for Moonlight Fire damages,” and linked to a news article about the case. All of this was done while the case was still pending. As Sierra Pacific's lawyers pointed out, the tweet was not only inaccurate (no finding of liability was ever made), it also increased the appearance of bias and prejudiced the defendants in their appeal.

9. In July 2017, the U.S. Court of Appeals for the Ninth Circuit affirmed the trial court's ruling and declined to require Judge Shubb's recusal on procedural grounds. However, the Court recognized the significance of the issues arising out of the judge's Twitter activity,

saying “[T]his case is a cautionary tale about the possible pitfalls of judges engaging in social media activity relating to pending cases, and we reiterate the importance of maintaining the appearance of propriety both on and off the bench.” Undaunted, Sierra Pacific filed a petition for writ of certiorari to the U.S. Supreme Court. The question presented asked whether a district court judge’s impartiality might reasonably be questioned “when he not only follows the prosecution on social media, but also, just hours after denying relief to the opposing party, tweets a headline and link to a news article concerning the proceedings pending before him.” Despite the questions raised, however, in June 2018, the U.S. Supreme Court denied the petition for writ of certiorari.

10. I have reviewed Judge Harrison’s activity on Twitter relevant to the Kerwin Stephens case. Through his Twitter account and using the Twitter handle @gharrison32nd (which he named after the 32<sup>nd</sup> District Court of Texas), Judge Harrison engaged in the following activity on Twitter after following one or more of the plaintiffs’ lawyers, including Jordyn Gingras and Michael Hurst:

- On August 20, 2015, a single day after the conclusion of the trial, Judge Harrison likes Jordyn Gingras’ tweet about “The truth doesn’t cost you anything, but a lie could cost you everything” (and this tweet contained the hashtags “#rumbleinrobby,” “#sweetwaterproud,” and “proudlawyermoment”), Exhibit 1 to this Affidavit;
- On August 20, 2015, a single day after the conclusion of the trial, Judge Harrison likes Jordyn Gingras’ tweet about “new friends” in Sweetwater and Roby (and this tweet contained a hyperlink to Jordyn Gingras’ Instagram post with the Stephens trial-related hashtags “#wefilledthebucket,” “#sweetwaterproud,” “#rumbleinrobby,” and “proudlawyermoment”), Exhibit 2;
- On August 22, 2015, mere days after the trial ends, Judge Harrison likes Jordyn Gingras’ tweet thanking her paralegal, Amber Schrandt, Exhibit 3;
- On November 16, 2015, Judge Harrison likes Jordyn Gingras’ tweet about her CLE presentation at the Dallas Bar Association titled “Landman or Lawyer? \$70MM+ Reasons Why You Should Care” (and “Landman or Lawyer in this context necessarily means Kerwin Stephens), Exhibit 4;

- On May 13, 2016, Judge Harrison likes a tweet by another member of the intervenors' trial team, Christina Mullen, about obtaining the #15 verdict in the country, Exhibit 5;
- On May 24, 2016, Judge Harrison likes Jordyn Gingras' tweet about the "power couple," counsel for the plaintiffs Frank Branson and his wife, Exhibit 6; and
- On June 29, 2016, Judge Harrison likes Jordyn Gingras' tweet about receiving "top billing" on the 2015 Top Texas Verdicts and Settlement Report, Exhibit 7.

11. Judge Harrison engaged with plaintiffs' counsel on Twitter substantially more than the foregoing instances. Attached as Exhibit 8 are further samples of this Twitter interaction between Judge Harrison and plaintiffs' counsel. Indeed, he still actively follows Twitter accounts associated with Jordyn Gingras and Michael Hurst.

12. Collectively, all of this Twitter activity, along with the fact that Judge Harrison followed and commented (in the form of likes) on tweets by one side of the litigants in a matter before him, indicates at the very least the appearance of partiality and prejudgment against Kerwin Stephens and his Thunderbird entities. Although judicial rulings are rarely enough by themselves to demonstrate bias sufficient to warrant recusal, the fact that the presiding judge made rulings that were incorrect—at least three times out of five, according to the Eastland Court of Appeals—and in favor of the side of the case he followed and commented on via Twitter reinforces Kerwin Stephens', and a reasonable person's, concerns about impartiality. Making no judgment about actual bias or prejudice, it is clear in my opinion that recusal of the presiding judge from this case is required. Judges in Texas have been recused for less, and certainly for more innocuous activity on social media platforms like Twitter. In order to avoid creating even the appearance of partiality and impropriety, Judge Harrison either never should have followed a lawyer from only one side of the case, or should have followed lawyers from both sides. Moreover, his likes of tweets from and referencing lawyers on only one side of what was a high



# Exhibit 1



**Jordyn J. Christian-**

@JordynJGingras



Follow

The truth doesn't cost you anything, but a lie could cost you everything.

#rumbleinroby

#sweetwaterstrong

#proudlawyermoment

LIKES

3



1:25 AM - 20 Aug 2015



# Exhibit 2



**Jordyn J. Christian-**

@JordynJGingras



 Follow

Thinking of all the new friends we made in Sweetwater & Roby. You will be missed, and we will see you... [instagram.com/p/6nOt0wsiQc/](https://www.instagram.com/p/6nOt0wsiQc/)

LIKE

1



12:06 PM - 20 Aug 2015





Jordynjane

Follow

14 likes

42w

Jordynjane Thinking of all the new friends we made in Sweetwater & Roby. You will be missed, and we will see you again!!

#wefilledthebucket

#rumbleinroby

#sweetwaterstrong

#proudlawyermoment

cjbasinger Cue the song from the Lion King, "Be Prepaaaaaared!"

#NantsingonyamabagithiBaba

Jordynjane Hahahahaaa!!



Add a comment...



# Exhibit 3



**Jordyn J. Christian-**

@JordynJGingras



 **Follow**

In every big victory there are people who don't receive the recognition they deserve. This woman... [instagram.com/p/6sfM3sMiXC/](https://www.instagram.com/p/6sfM3sMiXC/)

LIKES

2



1:07 PM - 22 Aug 2015



2





Jordynjane

Follow

16 likes

41w

Jordynjane In every big victory there are people who don't receive the recognition they deserve. This woman spent months with me staying up past 2am to make the case a success. She poured her heart and soul into the courtroom seeking justice for our clients and their families.

Amber Schrandt, THANK YOU & I LOVE YOU!! #beckmenlaw #lovewhatyoudo

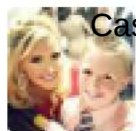
amberdwn Thank you!!!!!!



Add a comment...



# Exhibit 4



**Jordyn J. Christian-**

@JordynJGingras



Follow

Excited to present this Wednesday at the DBA Energy monthly CLE luncheon: "Landman or Lawyer? \$70MM+ Reasons Why You Should Care"

#DontMiss

LIKE

1



1:43 PM - 16 Nov 2015



# Exhibit 5

Christina Mullen  
@mullen

#15 verdict in the nation for my first trial with @MichaelTrialLaw & Jonathan Childers! #LPCH



RETWEET 1 LIKES 4



12:11 PM - 13 May 2016

# Exhibit 6



Jordyn J. Christian  
@JordynJChristian

Follow

Old article but they reminded me today what "power couple" really means Great article & so much truth!!

#respect

[flbranson.com/wp-content/upl...](http://flbranson.com/wp-content/upl...)

LIKE

1



5:06 PM - 24 May 2016

# Exhibit 7



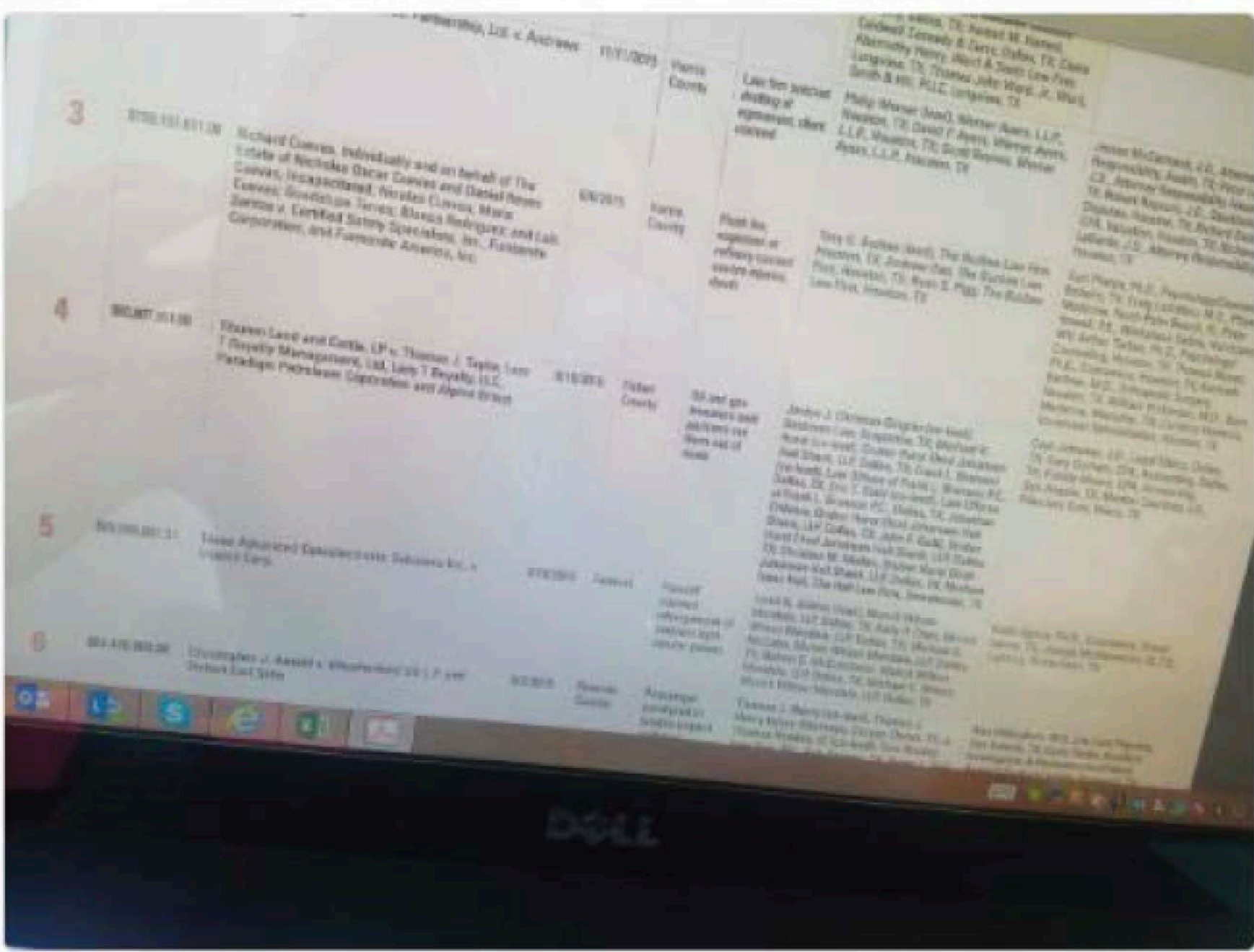
**Jordyn J. Christian-**  
@JordynJGingras



Follow

# Not allergic to "top billing" on the 2015 Top TX Verdicts & Settlements Report!!

#ilovelawyering #whosnext #winning



LIKE  
1

6:50 PM - 29 Jun 2016

# Exhibit 8



**glen harrison**

@gharrison32nd



Follow

After 6 mos.....shoulder injury and surgery.....IM BACK. Goodbye beard, hello training wheels.



LIKES

9



3:16 PM - 12 May 2016





**Jordyn J. Christian-**  
@JordynJGingras



Follow

BEFORE...



0:03

LIKES

2



10:01 PM - 19 Jun 2016

Denver, CO





**Jordyn J. Christian-**

@JordynJGingras



Follow

AFTER...



LIKES

3



10:04 PM - 19 Jun 2016

Denver, CO





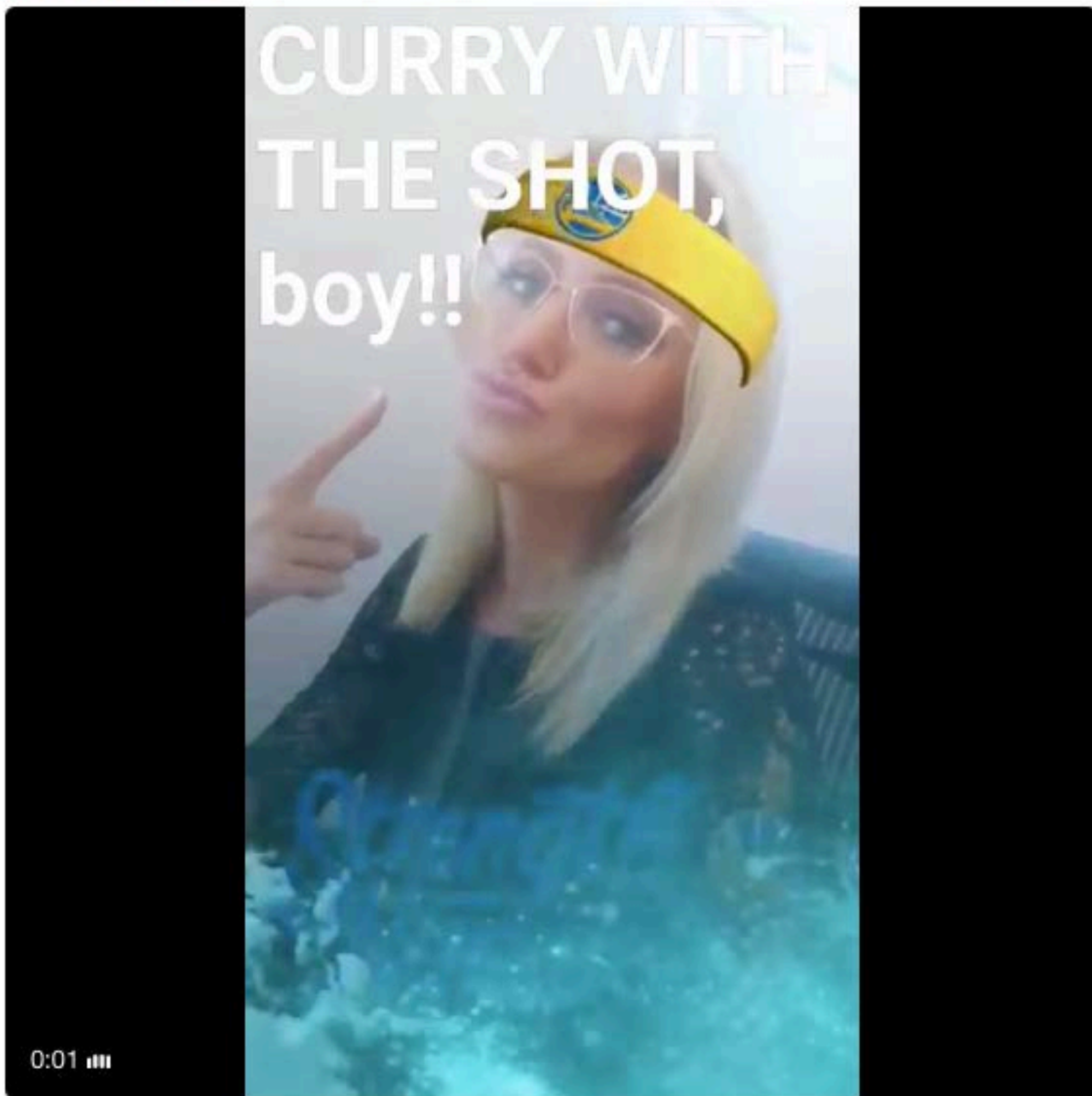
**Jordyn J. Christian-**

@JordynJGingras



Follow

This is ALL MY FAULT for not posting my support earlier!!!



0:01

LIKES

5



10:44 PM - 16 Jun 2016



**Jordyn J. Christian-**  
@JordynJGingras



Follow

HAPPY 4TH!!

#bucketlist  
#GoBigOrGoHome  
#Merica  
#GetToThaChoppa  
#blackhawkUP  
#hiGranbury



LIKES

2



6:38 PM - 3 Jul 2016

Granbury, TX





glen harrison  
@gharrison32nd



Follow

"Uncle Glen" wishes you a Happy 4th of July!  
#IndependenceDay



LIKES  
7



7:46 AM - 4 Jul 2016





Jordyn J. Christian

@JordynJGingras



Follow

HAPPY 4TH, Y'ALL!!



#MERICA

#FourthofJuly

#truelove

#Granbury

#hometown4thofJuly

#myhappyplace



LIKES

4



4:59 PM - 4 Jul 2016

Granbury, TX



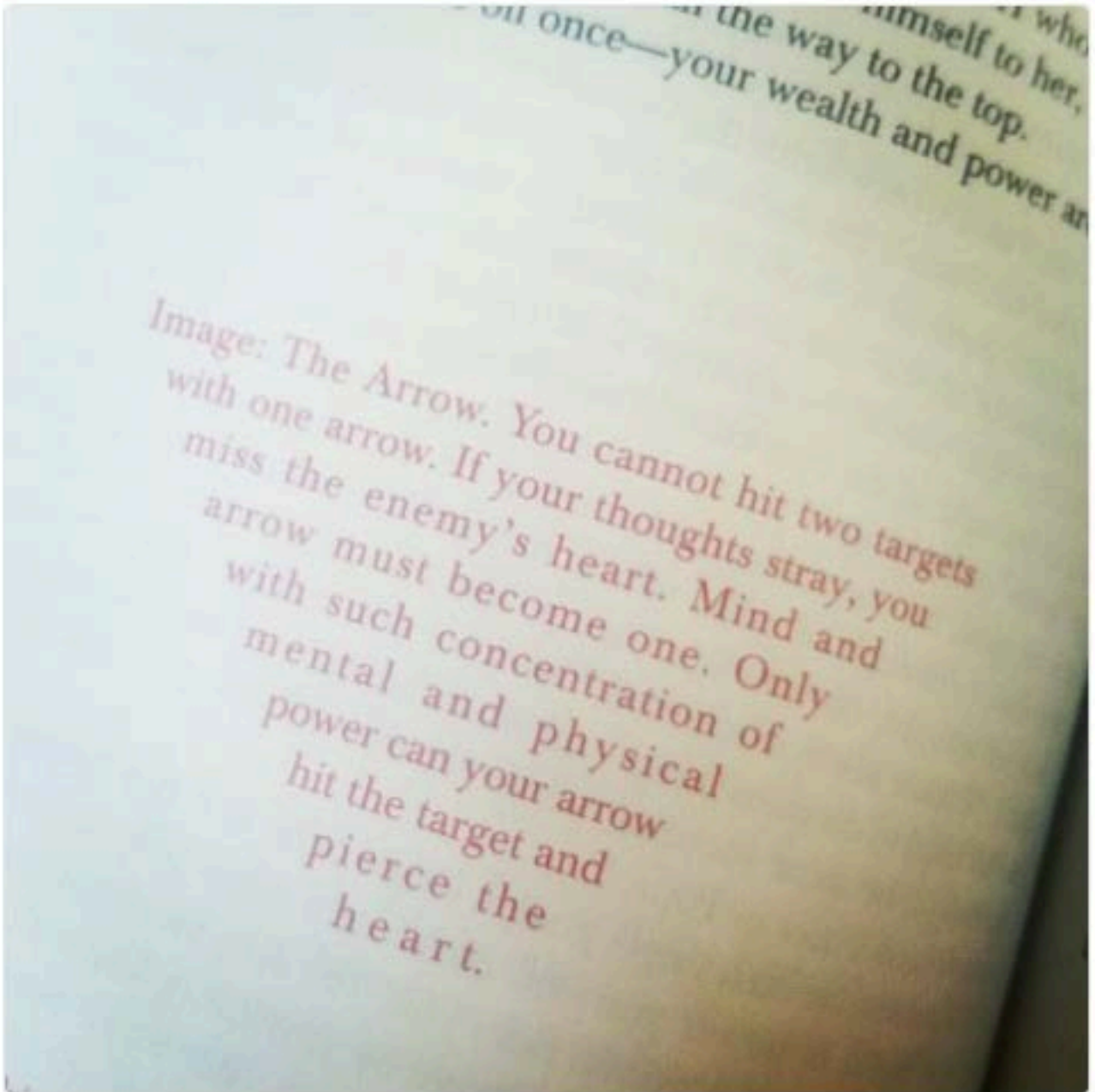
**Jordyn J. Christian-**  
@JordynJGingras



Follow

Monday-est Tuesday EVER!!

#arrows #discipline #strategy #target #aimhigh  
#SLAY #winning #lawyerlife  
@RobertGreene



LIKES

2



1:46 PM - 5 Jul 2016





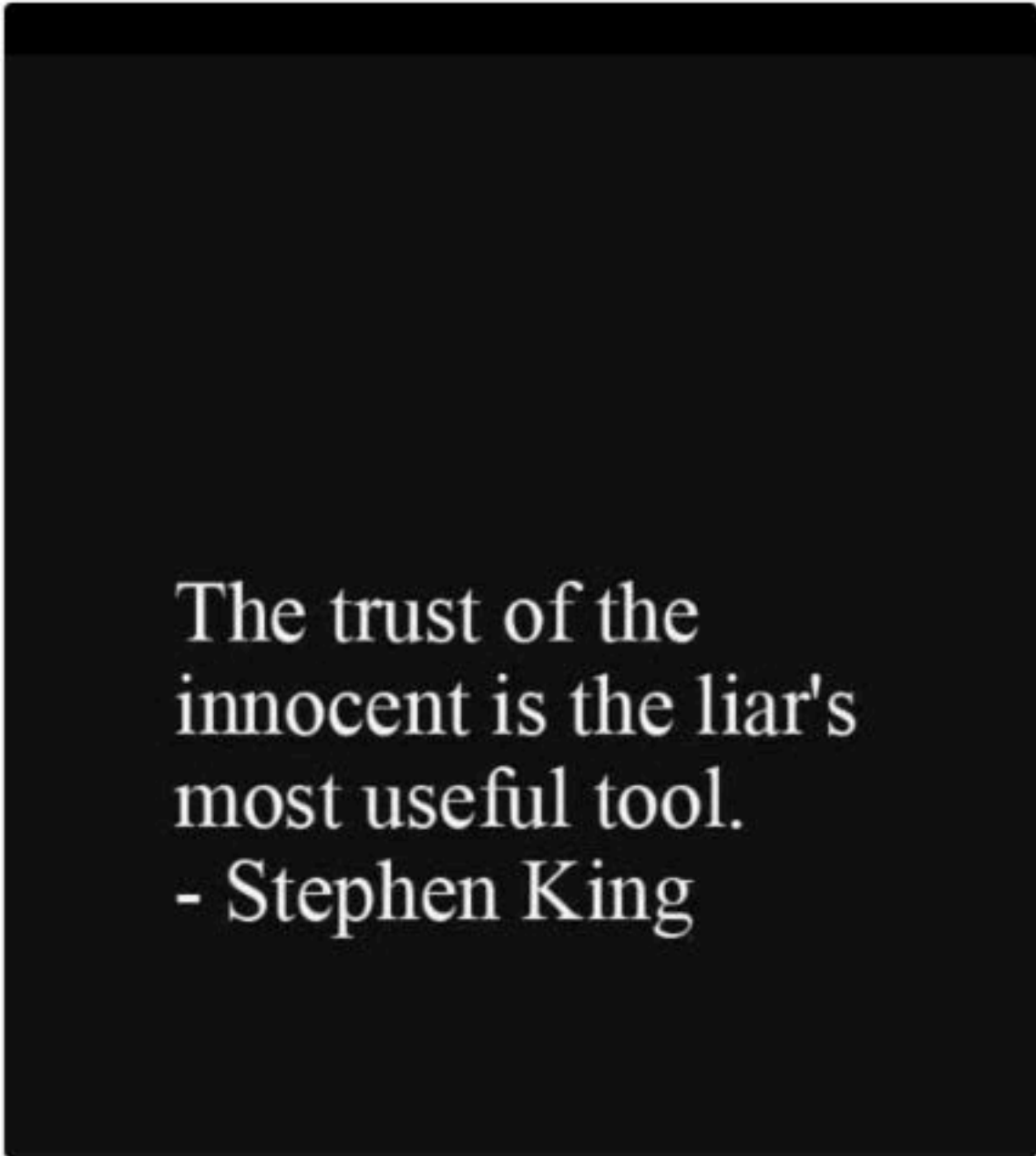
**Jordyn J. Christian-**  
@JordynJGingras



Follow

Trust, then verify...

#ouch



LIKE

1



12:15 PM - 20 Jul 2016





**Jordyn J. Christian-**  
@JordynJGingras



Follow

This picture does NO JUSTICE to this double rainbow!!! The whole airport is in complete awe!!

#DENVER

#summerlovin



LIKES

2



9:17 PM - 23 Jul 2016

Colorado, USA



2





**Jordyn J. Christian-**  
@JordynJGingras



Follow

Love this!!

#perception  
#mondaymotivation  
#nofear  
#SLAY



RETWEETS

2

LIKES

6



7:19 AM - 25 Jul 2016

Highland Village, TX



2

6





**Jordyn J. Christian-**  
@JordynJGingras



Follow

Lunching to discuss new venture COMING SOON!!  
Stay tuned!

#master  
#newbeginnings  
@CapitalGrille  
@PlainsCapital



RETWEET

1

LIKES

2



4:04 PM - 17 Aug 2016



1

2





**Jordyn J. Christian-**

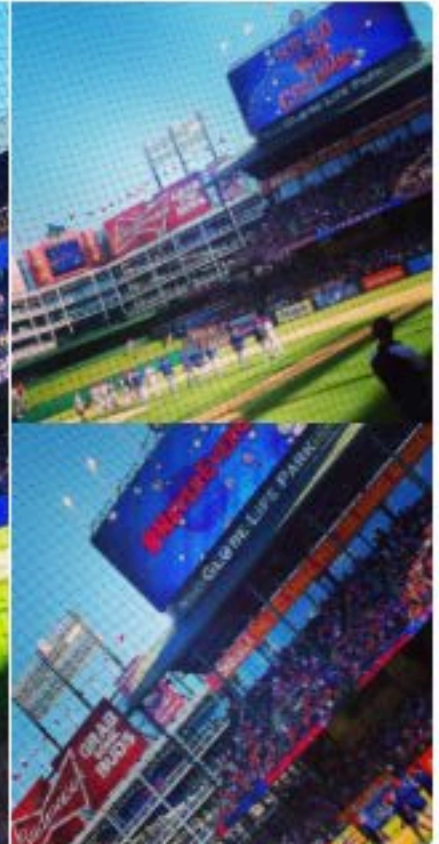
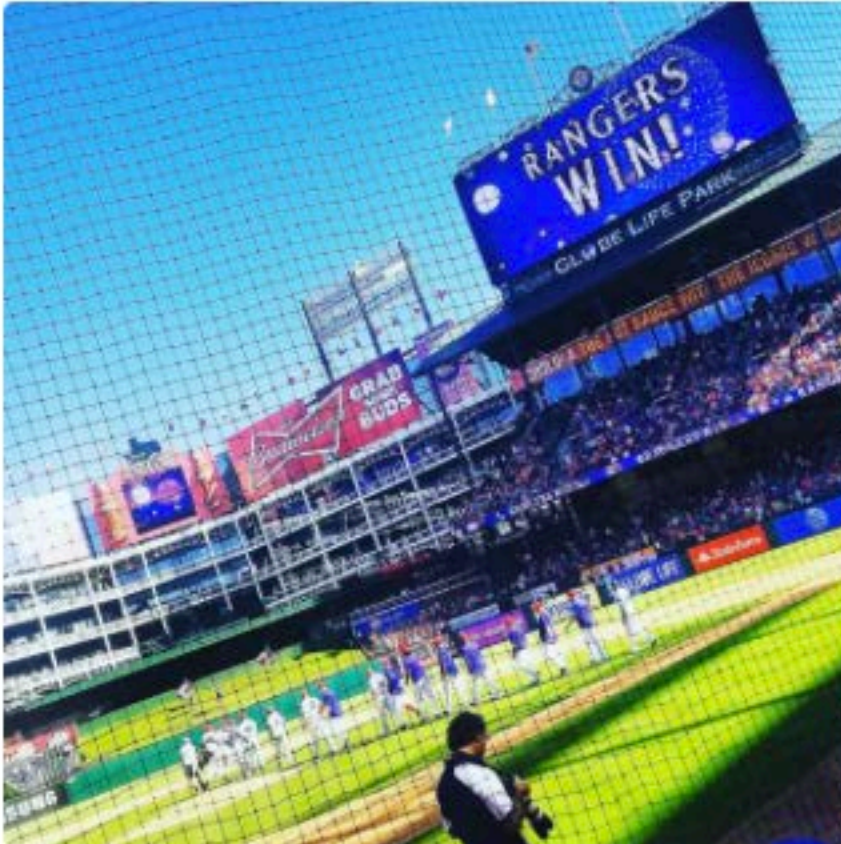
@JordynJGingras



Follow

It was a great day at the YARD!!

#nevereverquit   
#MyTexasRangers  
#hellowincolumn  
#WORLD SERIES BOUND  
@Rangers



LIKES

2



9:53 PM - 28 Aug 2016

Highland Village, TX



2





**Jordyn J. Christian-**  
@JordynJGingras



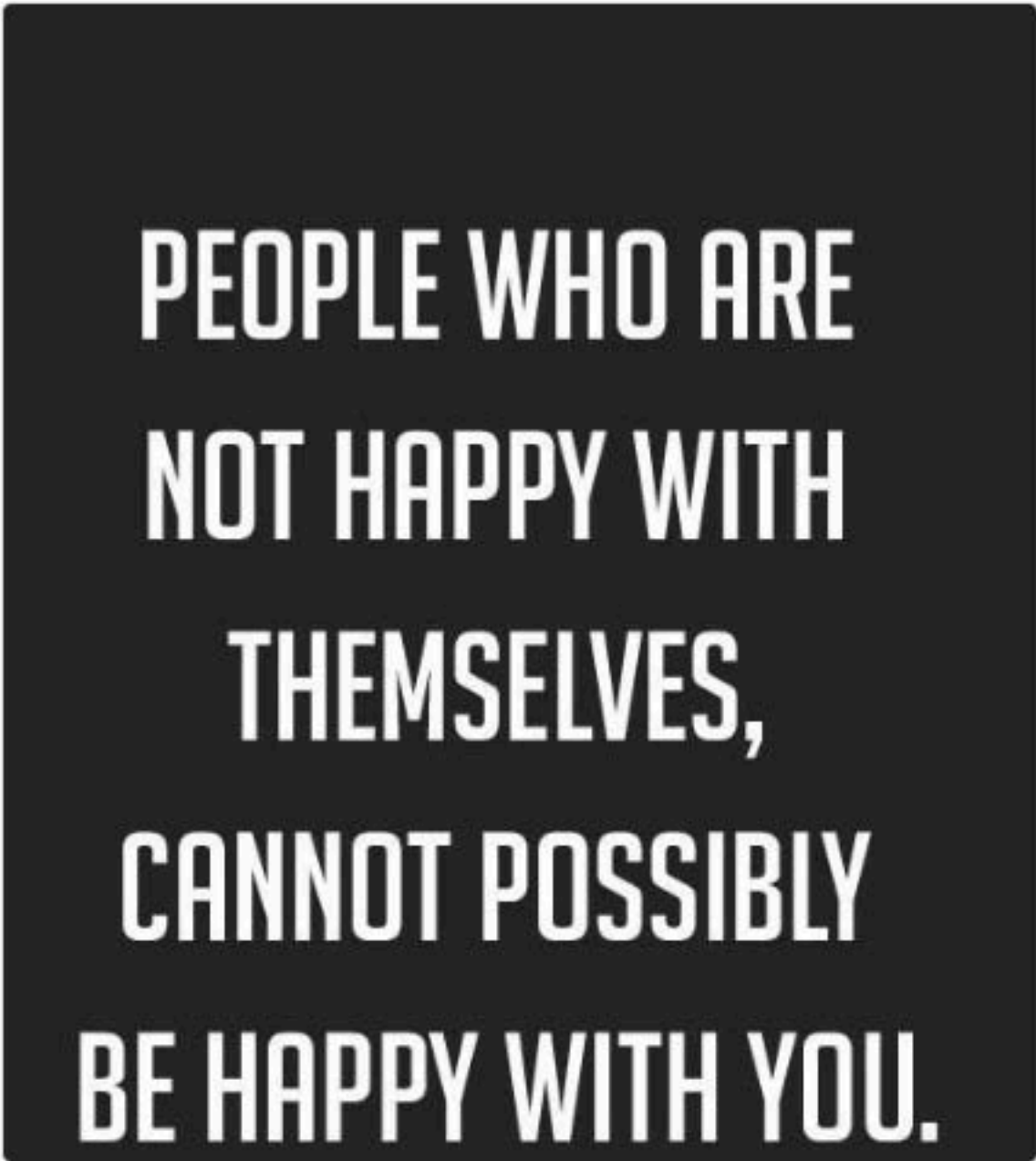
Follow

My Monday morning 2 cents...

Wish more of my girl friends would grasp this concept!!

#doyou

#yourbestisgoodenough



LIKES

3



11:04 AM - 29 Aug 2016

Highland Village, TX



3





**Jordyn J. Christian-**

@JordynJGingras



Follow

[msn.com/en-us/sports/n ...](https://msn.com/en-us/sports/n...) Salty 4 the WIN!!  
"Until there's significant change": When will he decide he's satisfied with our nation's progress?

LIKE

1



11:49 AM - 30 Aug 2016



**Jordyn J. Christian-** @JordynJGingras · Aug 30

@gharrison32nd I literally LOL'd when I read: "However Monday, Tavarres' agent said his client would be standing during the anthem Thursday"



**Jordyn J. Christian-** @JordynJGingras · Aug 30

@gharrison32nd "Oh, no you don't, you little punk. WE NOT DOIN' THAT."



**glen harrison** @gharrison32nd · Aug 30

@JordynJGingras Hahahaha.....you are on a tear!!



**Jordyn J. Christian-** @JordynJGingras · Aug 30

@gharrison32nd - It's too easy on this point. The amount of people not even in the right ballpark with their commentary is frightening.





**Jordyn J. Christian-**  
@JordynJGingras



Follow

"Sisters or mother/daughter? When you walked in I thought WOW they're almost identical!"  
#twinning @lifetimefitness



LIKES

2



4:25 PM - 4 Sep 2016

Highland Village, TX





**glen harrison**

@gharrison32nd



 Follow

Are the guys at Buffalo Wild Wings controlling this game?? #NDvsTex

LIKE

1



10:31 PM - 4 Sep 2016



**Jordyn J. Christian-** @JordynJGingras · Sep 4

@gharrison32nd #1 & #3 most valuable teams in college football in 2OT...everybody wins!! \$\$\$\$\$  
#NDvsTex





**Jordyn J. Christian-**  
@JordynJGingras



Follow

A-MEN!!

1 of my fav pieces of advice: Identify your weaknesses & work on making them your strengths!

#nowgoslay



LIKES

2



3:41 PM - 5 Sep 2016

Highland Village, TX



2





**Jordyn J. Christian-**  
@JordynJGingras



Follow

And this: DO IT FOR YOU & nobody else!!Life generally...

#loveYOU1st  
#trustmeonthisone  
#HAPPYMONDAY  
#startitoffright



LIKES

2



4:05 PM - 5 Sep 2016

Highland Village, TX



2





**Jordyn J. Christian-**

@JordynJGingras



 Follow

We go HARD & then shamelessly sip wine (& Diet Coke) on the patio b4 playing football with friends ❤️🏈❤️ #truelove



LIKES

3



7:43 PM - 5 Sep 2016





**Jordyn J. Christian-**  
@JordynJGingras



Follow

Sometimes selfish is a good thing...

#WednesdayWisdom

#momlife



LIKES

5



10:40 AM - 7 Sep 2016

Flower Mound, TX



5





**Jordyn J. Christian-**

@JordynJGingras



 Follow

7 Texas QBs starting in Week 1 - Most of any state...DUH!!!

Dalton, Griffin, Stafford, Luck, Keenum, Tannehill, Brees

#TexasPride

LIKES

5



6:12 PM - 8 Sep 2016



5





**Jordyn J. Christian-**

@JordynJGingras



Follow

Perfect day with Dad: "Be nice to everyone, baby...well unless they're gunnin' for you. Then you take 'em clean out"



LIKES

4



7:05 PM - 10 Sep 2016

Tanner's Huntington





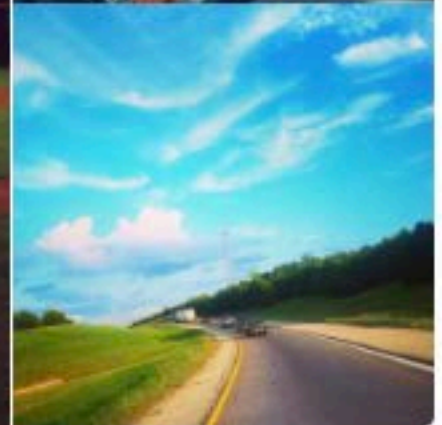
**Jordyn J. Christian-**

@JordynJGingras



Follow

That time of year when it's football & baseball season, weather is perfect & sunsets are breathtaking!!  
#doworkbaby



LIKES

2



8:14 PM - 13 Sep 2016

Harrington Baseball Field





**Jordyn J. Christian-**

@JordynJGingras



Follow

DAYDREAMING NOW about these waters...nothing beats the perfectly smooth, almost glass like FL moments in @30a



**30A** @30a

RT @Yoloboard: Yes please! @jesse.foy [ift.tt/2ct2a7v](https://ift.tt/2ct2a7v)

LIKES

2



8:24 AM - 15 Sep 2016





**@gharrison32nd**

You can love your job, but it won't love you back. Go home and spend time with your family. #weekend



1



6



**Jordyn J. Christian-**

@JordynJGingras



Follow

@gharrison32nd

Oh, AMEN, YOUR HONOR!!



#preach

RETWEET

1



2:57 PM - 16 Sep 2016

Highland Village, TX



1





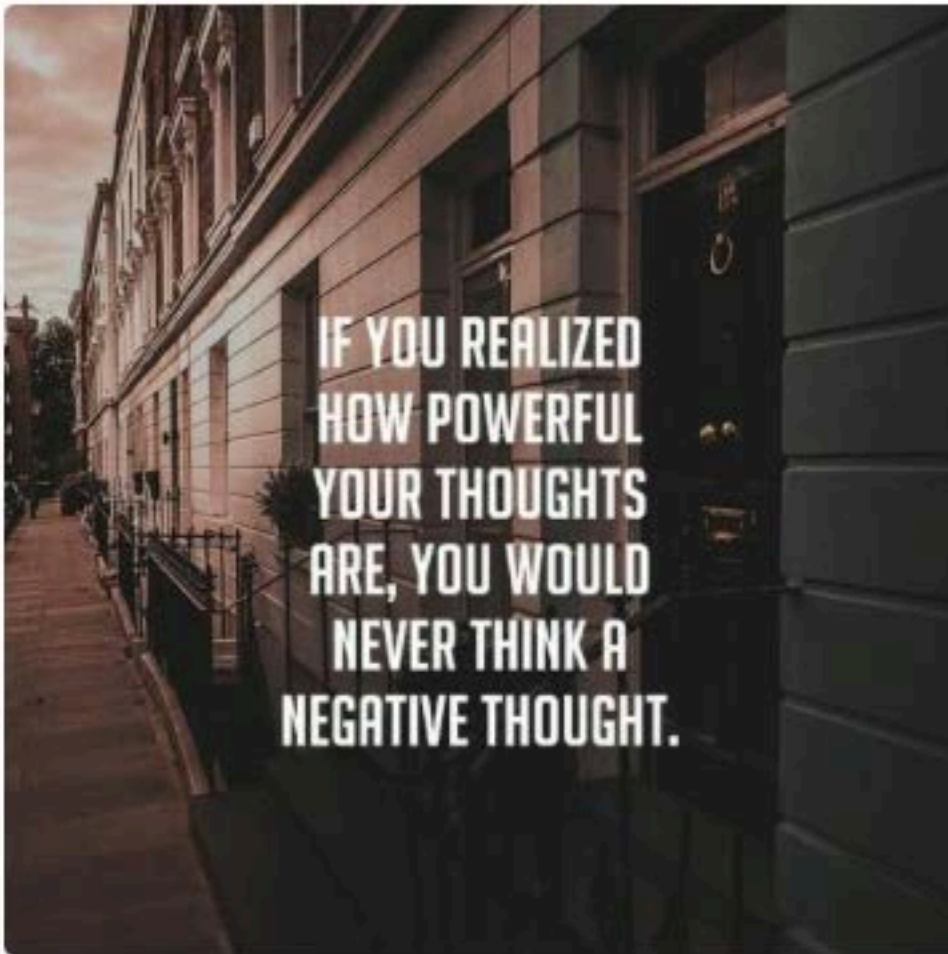
**Jordyn J. Christian-**  
@JordynJGingras



Follow

Happy FRIDAY!!!  
Yours truly,  
TEXAS TWITTER

#keepitreal  
#bealight  
#staystrong  
#staypositive  
#staybeautiful  
#power



LIKE

1



3:03 PM - 16 Sep 2016

Highland Village, TX





**Jordyn J. Christian-**

@JordynJGingras



Follow

FROGS WIN - AGAIN!!!



"If you feelin' froggy...JUMP, SON!!!"

#TCU #homecoming #ProtectTheCarter  
#GameDay



**TCU Football** @TCUFootball

Three TCU running backs have carries ... all three have TD 🙌!

Frogs driving again now early in 4Q

LIKES

3



2:55 PM - 17 Sep 2016





**Jordyn J. Christian-**  
@JordynJGingras



Follow

We see you, #4!!!

#howyoulikedak @dallascowboys @15\_DakP  
@NFL #DALvsWAS #wedemboyz #ouryear  
#wecomin4you #weredy



LIKES

4



4:54 PM - 18 Sep 2016

Highland Village, TX



4





**Jordyn J. Christian-**

@JordynJGingras



 Follow

To anybody that's ever dated or been married to a lawyer...I'm praying for you!!



Bless your hearts!

#InternationalPeaceDay #YOUdarealMVP

RETWEET

1

LIKES

3



1:46 PM - 21 Sep 2016

 Flower Mound, TX





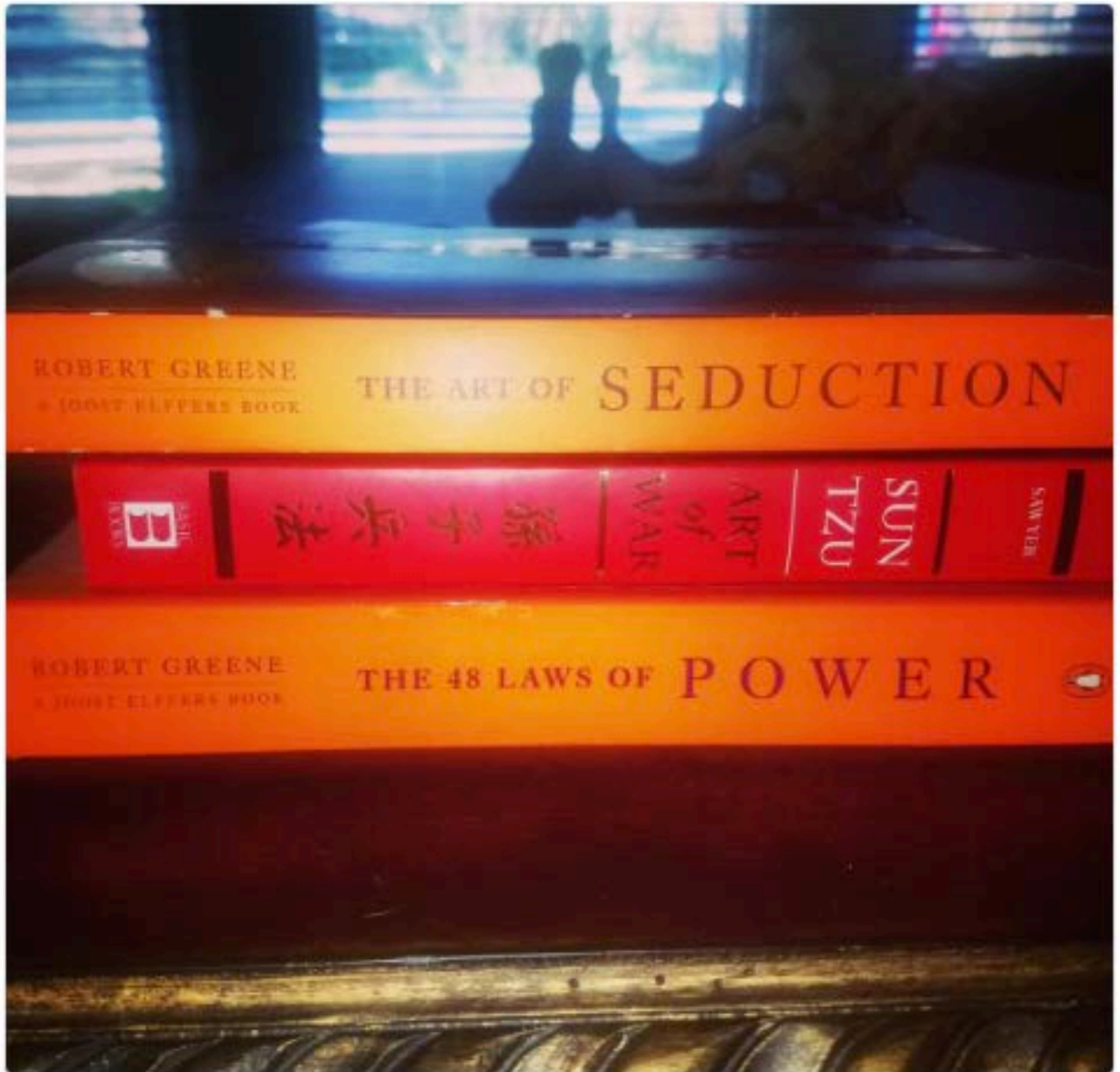
**Jordyn J. Christian-**  
@JordynJGingras



Follow

Leave these out for the grown woman's version of your Dad cleaning his guns when your date picks you up...

#urwelcomeladies #artofwar #power



LIKE

1



1:32 PM - 22 Sep 2016





**Jordyn J. Christian-**  
@JordynJGingras



Follow

"Love her, but leave her wild."

HAPPY FRIDAY, LOVERS!!  
XOXO

#juicejunkie #wildatheart #lovehard #SMILEBIG



LIKES  
2



8:51 AM - 23 Sep 2016

Highland Village, TX





**Jordyn J. Christian-**

@JordynJGingras

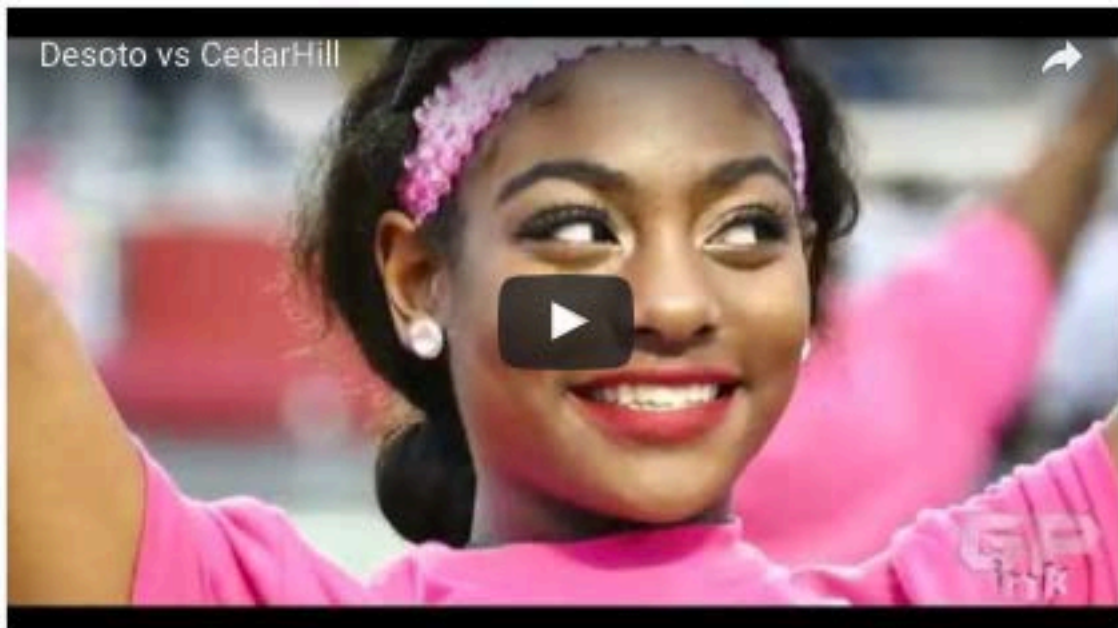


Follow

So excited 4 Maddox 2 feel the Friday Night Lights for the 1st time w his best bud!!



@CHLonghorns @UAFootball



**Desoto vs CedarHill**

Typical epic match up, then add the pouring rain and you get Friday Night Football gold. Watch all the happenings of this game from Cheerleaders to fan...

[youtube.com](https://youtube.com)

LIKE

1



4:37 PM - 23 Sep 2016

Texas, USA



1





**Jordyn J. Christian-**  
@JordynJGingras



Follow

Good thing he doesn't have Twitter or Snapchat!!

#meanmommy

#classic

@LINEDRIVEBOYZ

#gohard

@MarcusBaseball

@baseball @BaseballRealest



LIKES

3



2:42 PM - 24 Sep 2016

Highland Village, TX





**Jordyn J. Christian-**  
@JordynJGingras



Follow

Representin'!!!

#wedemboyz @dallascowboys @NFL  
#everythingisbetterinTexas #southerngirls



LIKES

2



8:12 PM - 25 Sep 2016





**Jordyn J. Christian-**

@JordynJGingras



 Follow

Ummm, can I just vote NO?

#debatenight  #Debates2016   
#PresidentialDebate #HELP



RETWEETS

2

LIKE

1



9:52 PM - 26 Sep 2016

 Highland Village, TX



2



1





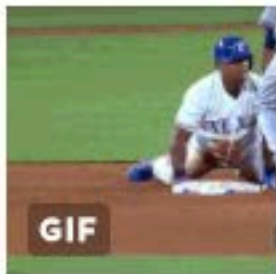
**Jordyn J. Christian-**

@JordynJGingras



 **Follow**

I love this man.



**Texas Rangers** @Rangers

Pattycake, pattycake, Beltre's having fun. 😂

LIKE

1



9:34 PM - 28 Sep 2016





glen harrison  
@gharrison32nd

Follow

Harrison has made it to Texas and is ready for game day! #GoRed



RETWEET 1 LIKES 8



8:47 AM - 30 Sep 2016

Reply 1 Like 8 More



Jordyn J. Christian- @JordynJGingras · Sep 30  
@gharrison32nd He needs a picture in the courtroom!

Reply Retweet Like More



glen harrison @gharrison32nd · Sep 30  
@JordynJGingras He's coming to the Court House today.  
#ShowAndTell

Reply Retweet Like More



Jordyn J. Christian- @JordynJGingras · Sep 30  
@gharrison32nd YESSSSS!!!

Reply Retweet Like More



Jordyn J. Christian- @JordynJGingras · Sep 30  
@gharrison32nd 🍷🍷🍷🍷🍷

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**glen harrison**

@gharrison32nd



Follow

Nothing puts a judge in a good mood like visit from a grandson! #HarrisonJudeTaylor



RETWEETS

2

LIKES

7



12:03 PM - 30 Sep 2016



2



7





Jordyn J. Christian

@JordynJGingras



Follow

See you soon, Toronto!!!

#WildCard 📄 @Rangers #madeforOctober  
#BringIt #OurYear #DontMessWithTexas



RETWEET

1

LIKES

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10:39 PM - 4 Oct 2016



1



2





**Jordyn J. Christian-**

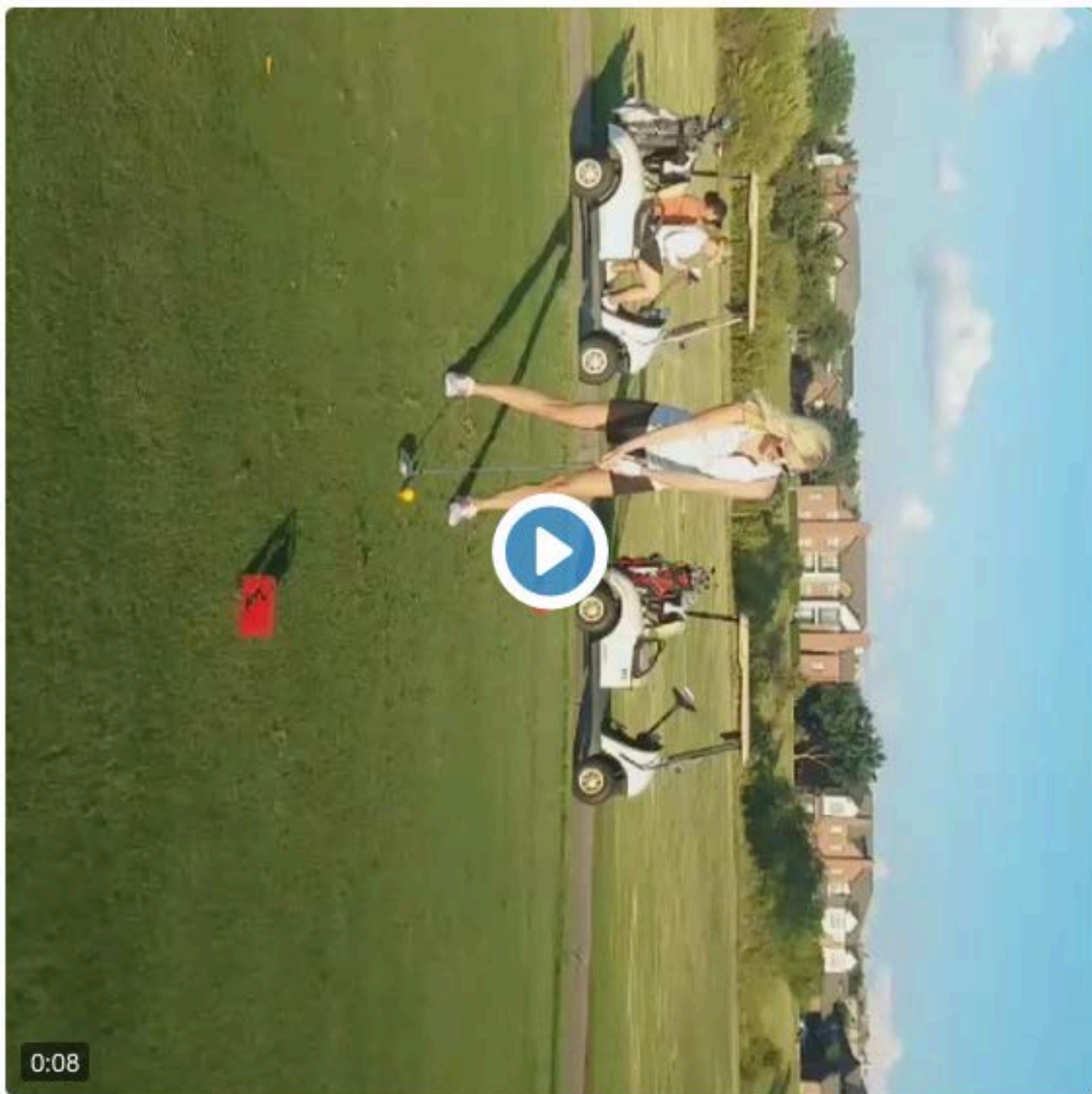
@JordynJGingras



Follow

Welp - Rangers didn't show up today but we did! 3 under & had a blast!!

#backtheblue #arlingtonpolicefoundation  
#MASTER #girlswholovesports



LIKES

2



6:49 PM - 6 Oct 2016



**Jordyn J. Christian-**

@JordynJGingras



Follow

& ZEEEEEEKkkKEEEE!!!



@dallascowboys @EzekielElliott #runbabyrun  
#wedemboyz



LIKES

2



5:08 PM - 9 Oct 2016



2





**Jordyn J. Christian-**

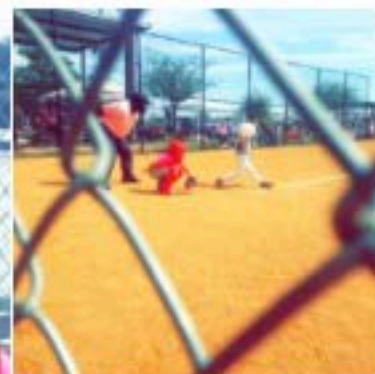
@JordynJGingras



Follow

Tough loss by 1 today for the @LINEDRIVEBOYZ with tying run on 3rd...but we'll be back stronger & better to get the next W!!

#baseballboys



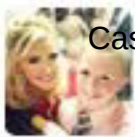
LIKES

3



6:29 PM - 9 Oct 2016





Jordyn J. Christian-

@JordynJGingras



Follow

MADDOX(angrily): "Well - yeah! You can't throw him a slider RIGHT DOWN the freaking MIDDLE!!"

#Rangers #Game3 #wth #wellthatescalatedquickly

LIKE

1



7:01 PM - 9 Oct 2016

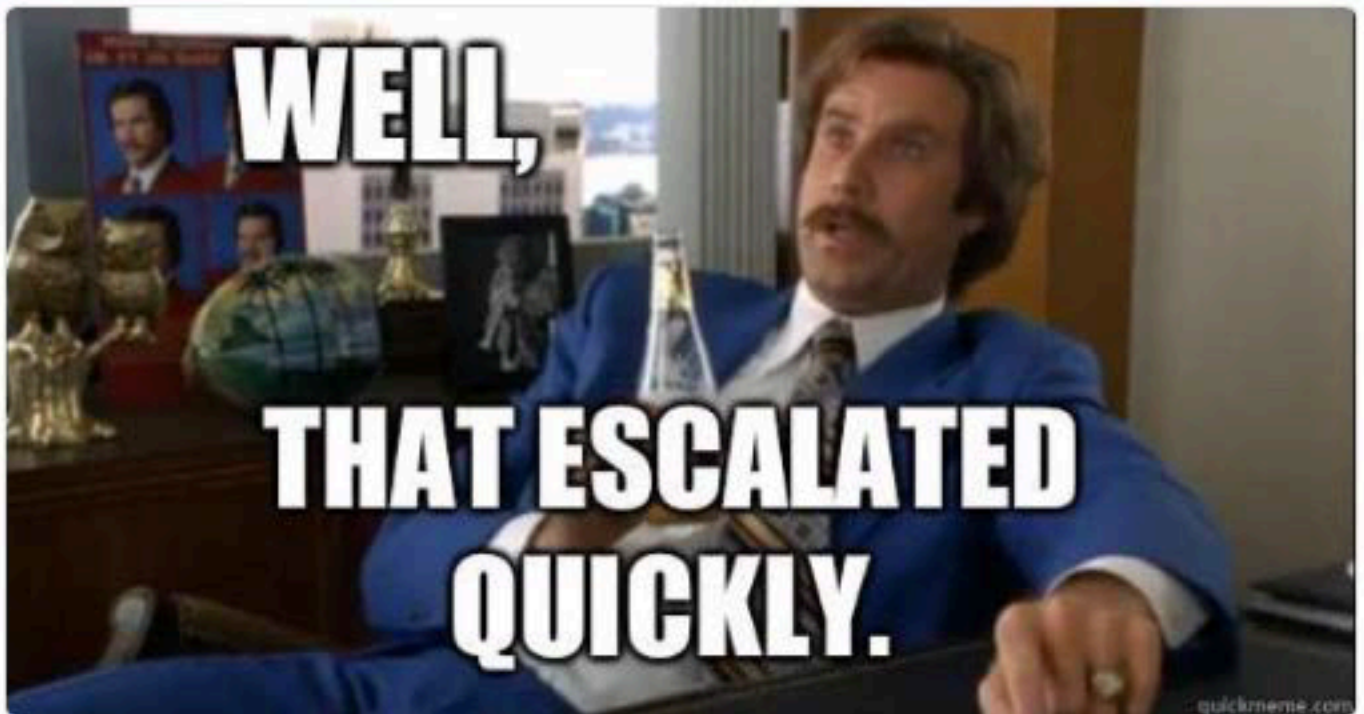


1



glen harrison @gharrison32nd · Oct 9

@JordynJGingras Hahaha.....call it like you see it!



1



Jordyn J. Christian- @JordynJGingras · Oct 9

@gharrison32nd - He's very important. He has many leather-bound books and smells of rich mahogany!



**Jordyn J. Christian-**

@JordynJGingras



Follow



**glen harrison** @gharrison32nd

Adios Big Papi. You will be missed by RedSoxNation and all of MLB (except the yankees). #FutureHOF

9:05 PM - 10 Oct 2016





**Jordyn J. Christian-**

@JordynJGingras



Follow

Because the time & energy to do so never outweighed my subsequent motivation to rise above & dominate life...& them  
[#WhyWomenDontReport](#)

LIKES

5



1:27 AM - 14 Oct 2016





**Jordyn J. Christian-**

@JordynJGingras

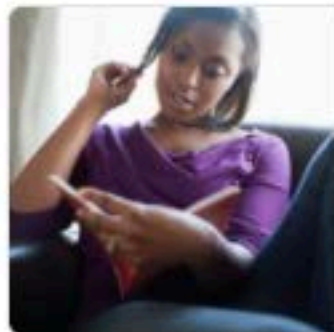


 Follow

Ya don't say...

#runtheworldinheels #suckitupbuttercup

#becarefulwhatyouwishforboys



**Men Love Smart Women in Theory**

You can't win.

[nymag.com](http://nymag.com)

LIKE

1



6:17 PM - 24 Oct 2016



1





**glen harrison**

@gharrison32nd



Follow

The 32nd District(Fisher, Mitchell and Nolan Counties) is setting early voting records. The people are very excited, or scared!? [#motivated](#)

LIKES

2



11:17 AM - 25 Oct 2016



2



using significant energy. Closing it may improve the responsiveness of your Mac.

- 
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Tweet

← **glen harrison**  
@gharrison32nd

Followers Following

- @RevSHenderson**  
Husband, Father, Reformed, Evangelical, Conservative, Presbyterian, Pastor @SierraViewPCA
- michelle higgins**  
@AfroRising [Follow](#)  
Pastor of St. John's Church, Co-host of Truth's Table. Cheerleader for Action St. Louis and Electoral Justice for Black Lives.
- Shai Linne** ✓  
@ShaiLinne [Follow](#)  
The best thing about me is that I'm accepted by God through the death and resurrection of His Beloved Son. I exist to know Jesus Christ and make Him known.
- Peter Sagan** ✓  
@petosagan [Follow](#)  
Official Twitter account of Peter Sagan, Three-time Cycling World Champion. Business inquiries: marketing@petersagan.com
- JCG Legal Group PLLC**  
@jclegalgroup [Follow](#)
- Robert**  
@Robert443198031 [Follow](#)  
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  - Bill Siegel**  
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All about sports [Follow](#) ✕
- NBA**  
Basketball league [Follow](#) ✕

Today Notifications

Tuesday, June 8

CALENDAR

No Events

WEATHER

9:50 AM Dallas 75°

STOCKS

DOW J	34,586.62	- 0.13%
S&P 500	4,225.03	- 0.04%
AAPL	127.33	+ 1.14%
BA	255.65	+ 1.18%
BRK-B	287.89	- 0.54%

Show More...

TOMORROW  
You have no events scheduled for tomorrow.

using significant energy. Closing it may improve the responsiveness of your Mac.

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  - Lists
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  - More
- [Tweet](#)

**glen harrison**  
@gharrison32nd

**Followers** **Following**

**Thom Rainer** ✓  
@ThomRainer  
CEO of Church Answers. Husband to Nellie Jo. Dad to Sam, Art, Jess. Granddad to Canon Maggie Nathaniel Will Harper Bren Joshua Collins Joel Dominic James.

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**Phil Miller**  
@TXB\_Phil

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**Michael K. Hurst**  
@MichaelTrialLaw  
Empowering clients with important and large cases often through trial for over 28 years. 2018 DBA President

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**Judge Emily Miskel**  
@emilymiskel  
470th District Court, Collin County, TX. Stanford Mech Eng, Harvard Law School. Double Board Certified. Political advertising by Emily Miskel.

[Follow](#)

**Richie Whitt** ✓  
@richiewhitt  
Writing 🗣️ Radio 📻 TV 📺 DFW sports media dork since 1986  
[CowboysSI.com](#) ★ [DallasBasketball.com](#) ★ [@FanNation](#) ★  
[@TheCrossover](#) ★ [@Dallas\\_Observer](#) ★ [@onairmediaco](#)

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**Judge Victor Villarreal**  
@JudgeVillarreal  
Husband, father, and judge of Webb County Court-at-Law II. The Court was designated a Judicial Center of Excellence by the Texas Judicial Council on November 15

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@GetReverera  
Promoted

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@bsiegel... Follows you

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**600 Commerce**  
@600Co... Follows you

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All about sports

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**NBA**  
Basketball league

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**Rap**  
Music genre

[Follow](#) ✕

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Today **Notifications**

Tuesday, June 8

CALENDAR

No Events

WEATHER

9:49 AM Dallas 75°

STOCKS

DOW J	34,586.62	- 0.13%
S&P 500	4,224.80	- 0.04%
AAPL	127.35	+ 1.15%
BA	255.70	+ 1.20%
BRK-B	287.82	- 0.57%

[Show More...](#)

TOMORROW

You have no events scheduled for tomorrow.

Weather information provided by The Weather Channel, LLC  
Stock information provided by YAHOO!

# **Exhibit B.1**

 glen harrison followed [Sarah](#), [Peter M. Lopez](#), [Judy Clayton](#) and [6 others](#)



 Follow

**Sarah**

@SarahStanlee15

I love Jesus. Wife to Taylor Hamilton. 6th grade science teacher. Texas Tech University alumni. ❤️



 Follow

**Peter M. Lopez**

@petermlopez

Husband, father, lawyer, co-host of [@fantasynewshour](#), airing Thursdays, 6pm(CST) on [98theticket.com](#), and co-leader of [marriagemakeover.us](#)



**glen harrison** @gharrison32nd · 16 Jul 2015

glen harrison followed



**Judy Clayton** @judyclayton73

Retired Physician. Mother of three.  
Grandmother of four. Christ follower.  
Blessed.



Follow



**Taylor** @ProudTechsan

Follower and lover of Jesus Christ. Loving Sarah, Friends, and Family. Texas Tech grad. Middle school math.



Follow



**Jordyn J. Christian-** @JordynJGingras

Baseball MOM - Attorney - Sports Fanatic  
- Lover of laughing with my squad, WINE, food & FIREWORKS...preferably over the ocean



Follow



**Michael K. Hurst** @MichaelTrialLaw

Empowering clients with important and large cases for over 25 years



Follow



**Carola Martin** @L3cmartin

Instructional Technology Specialist for SISD and Varsity Girls Golf Coach.



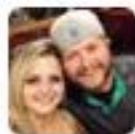
Follow



**David Richards** @humblekanye



Follow



**TJ Wilson** @tarrell20



Follow

# **Exhibit B.2**



**glen harrison**

@gharrison32nd



Follow

Told the jury that I would not allow the lawyers to honeyfugle them. An objection from the 1890s. To deceive through sweet talk. [#enunciate](#)

RETWEETS

3

LIKES

5



9:24 PM - 18 Aug 2015



3



5





**glen harrison**

@gharrison32nd



**Follow**

Late night Charge Conference has become early morning Charge Conference. [#CivilLitigation](#)  
[#MidnightInRoby](#)

12:43 AM - 18 Aug 2015



# Exhibit C

J. Robert Forshey  
State Bar No. 07264200  
Lynda L. Lankford  
State Bar No. 11935020  
**FORSHEY & PROSTOK LLP**  
777 Main St., Suite 1550  
Fort Worth, Texas 76102  
(817) 877-8855 Tel.  
(817) 877-4151 Fax  
[bforshey@forsheyprostok.com](mailto:bforshey@forsheyprostok.com)  
[llankford@forsheyprostok.com](mailto:llankford@forsheyprostok.com)

James Holmes  
State Bar No. 00795424  
Andrea Seldowitz  
State Bar No. 24088389  
**HOMES PLLC**  
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Dallas, Texas 75201  
(214) 520-8292 Tel.  
[holmes@holmeslawpllc.com](mailto:holmes@holmeslawpllc.com)  
[seldowitz@holmeslawpllc.com](mailto:seldowitz@holmeslawpllc.com)

ATTORNEYS FOR  
KERWIN BURL STEPHENS DEBTOR  
AND DEBTOR-IN-POSSESSION

SPECIAL LITIGATION COUNSEL FOR  
KERWIN BURL STEPHENS DEBTOR  
AND DEBTOR-IN-POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

**In re:**

**KERWIN BURL STEPHENS,  
THUNDERBIRD OIL & GAS, LLC,  
THUNDERBIRD RESOURCES, LLC,  
Debtors.**

§ **Chapter 11 (V)**  
§  
§ **Case No.: 21-40817-elm-11**  
§  
§ **Case No.: 21-41010-elm-11**  
§  
§ **Case No.: 21-41011-elm-11**  
§  
§ **Jointly Administered Under**  
§ **Case No. 21-40817-elm-11**  
§

---

**AFFIDAVIT AUTHENTICATING TRANSCRIPT EXCERPTS**

James Holmes, being duly sworn, states as follows:

1. “My name is James Holmes. I am over the age of 18, of sound mind, have never been convicted of a felony, and am fully competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct.

2. I am counsel of record for the Debtor Kerwin B. Stephens in the above bankruptcy cases and have knowledge of the contents of Exhibits 1 to 3 to this Affidavit, the authenticity of which should be undisputed as they are portions of a state-court trial record called a Reporter’s Record under Texas practice.

3. Attached hereto and incorporated herein are true and correct copies of the following hearing transcripts from the Reporter’s Record in the state-court litigation leading to these bankruptcy proceedings:

**Exhibit 1:** Pages 1 to 7 and pages 373 to 379 of the Supplemental Reporter's Record, Vol. 2, including the following passage:

“But, despite the characterization that repeated and diligent efforts have been made to get the bond or the Letter of Credit, based on the testimony presented, the demeanor, and the credibility of the witnesses, I don't find that sufficient efforts have been made to get that when you go to a bank that couldn't have given the Letter of Credit even if they wanted to and then certainly try to bring in somebody else and then a friend, also. I really don't find that there's – the Defendants have made sufficient efforts to show me that a bond could not be obtained. And, therefore, Defendants' Motion for an Order for Alternate Security is denied.” [Page 377.]

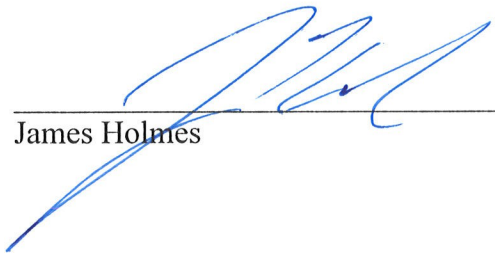
**Exhibit 2:** Pages 1 to 7 and pages 81 to 85 of the Supplemental Reporter's Record, Vol. 3, including the following passage:

“But, I do feel like we're kind of in the same song, second verse, a little bit faster, a little bit worse. I'm still hearing things like 'hopefully,' 'typically,' and 'for some amount.' I'm not – still not impressed with the Defendants' efforts to secure either a sale or this bond. And so Defendants' Motion for Alternate Security and Motion to Release Abstracts to Specific Properties is denied.” [Page 83.]

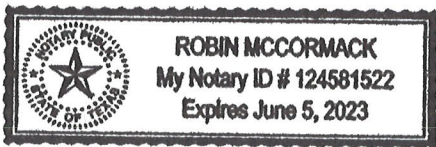
**Exhibit 3:** Pages 1 to 9, pages 62 to 65, pages 115 to 117, and pages 157 to 160 of the Supplemental Reporter's Record, Vol. 6, including the following passages:


“You're telling me, essentially, we've got competing essential rights. They have a right to execute on their judgment, you've got a right to make a supersedeas bond. You want me to stop them from proceeding on their right so you can proceed on yours? . . . I think you've kind of seen my thought process here today. I haven't been trying to hide the ball as to the direction I was leaning and hit a hurdle that I don't believe I was prepared to even try to attempt with these levies.” [Pages 64 & 116.]

4. Further affiant sayeth not.”

  
James Holmes

Sworn to before me this 9<sup>th</sup> day of August, 2021, to certify which witness my hand and official seal.



  
Robin McCormack  
Notary Public, State of Texas

My commission expires: June 5, 2023

# Exhibit C.1

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SUPPLEMENTAL REPORTER'S RECORD  
VOLUME 2 OF 5 VOLUME  
APPELLATE CASE NO. 11-16-00177-CV  
TRIAL COURT CAUSE NO. DC2013-0016

TIBURON LAND AND CATTLE,	)	IN THE DISTRICT COURT
LP AND TREK RESOURCES,	)	
INC.,	)	
	)	
Plaintiffs,	)	
	)	
VS.	)	
	)	
THOMAS J. TAYLOR, LAZY T	)	
ROYALTY MANAGEMENT, LTD.;	)	
CHESTER CARROLL, PARADIGM	)	FISHER COUNTY, TEXAS
PETROLEUM CORP., KERWIN	)	
STEPHENS, THUNDERBIRD OIL	)	
& GAS, LLC, ET AL, ALPINE	)	
PETROLEUM, AND STEPHENS &	)	
MYERS, LLP,	)	
	)	
Defendants.	)	
	)	
L. W. HUNT RESOURCES, LLC	)	
AND RICHARD RAUGHTON,	)	
	)	
Intervenors	)	32ND JUDICIAL DISTRICT

-----  
 THUNDERBIRD DEFENDANTS' MOTION TO ORDER ALTERNATE  
 SECURITY; MOTION FOR PROTECTIVE ORDER  
 -----

On the 3rd day of August, 2016, the following  
 proceedings came on to be heard in the above-entitled  
 and numbered cause before the Honorable Glen Harrison,  
 Judge presiding, held in Roby, Fisher County, Texas;  
 Proceedings reported by machine shorthand.

A P P E A R A N C E S

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FOR THE PLAINTIFFS:

MR. DARRELL W. COOK  
DARRELL W. COOK & ASSOCIATES  
5005 GREENVILLE AVE, SUITE 200  
DALLAS, TEXAS 75206  
SBOT NO. 00787279

MR. FRANK BRANSON  
SBOT NO. 02899000  
MR. ERIC STAHL  
SBOT NO. 00794685  
LAW OFFICES OF FRANK L. BRANSON  
81TH FLOOR, HIGHLAND PARK PLACE  
4514 COLE AVENUE  
DALLAS, TEXAS 75205-4185

FOR THE DEFENDANTS:

MR. DAVID KELTNER  
MR. JODY SANDERS  
KELLY HART  
201 MAIN STREET, SUITE 2500  
FORT WORTH, TEXAS 76102

MR. JAMES HOLMES  
HOLMES PLLC  
3012 FAIRMOUNT STREET  
DALLAS, TEXAS 75201  
SBOT NO. 00795424

MR. ALAN CARMICHAEL  
WETZEL AND CARMICHAEL  
P. O. BOX 78  
SWEETWATER, TEXAS 79556  
SBOT NO. 16934100

FOR THE INTERVENORS:

MR. JONATHAN CHILDERS  
LYNN PINKER COX & HURST  
2100 ROSS AVENUE, SUITE 2700  
DALLAS, TEXAS 75201

MR. MICHAEL HALL  
HALL LAW FIRM  
314 E. 3RD  
SWEETWATER, TX 79556  
SBOT NO. 24057881

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5	By Mr. Cook			21	
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AUGUST 3, 2016

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I-2	Mortgage, Deed of Trust, Assignment, Security Agreement Financing Statement (376)		82	83	2
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1 THE COURT: Let's go on the record in Cause  
2 No. DC2013-0016 on, I believe, Defendants' Motion for  
3 Alternate Security.

4 What says the Defendant?

5 MR. KELTNER: We're ready to go, Your  
6 Honor.

7 THE COURT: Plaintiffs?

8 MR. COOK: Yes, Your Honor.

9 THE COURT: Okay. And Intervenors?

10 MR. CHILDERS: Ready, Your Honor.

11 THE COURT: Okay. Let's go ahead and get  
12 into it. Looks like y'all are --

13 MR. BRANSON: Can we invoke the rule?

14 THE COURT: Do we have witnesses in the  
15 courtroom?

16 MR. KELTNER: We do, Your Honor. We have a  
17 number.

18 THE COURT: Identify them and have them  
19 stand, please.

20 MR. HOLMES: Your Honor, James Holmes for  
21 Defendants. Presently, we have Kerwin Stephens' party  
22 and we have expert witness, Scott Barnes. There are  
23 witnesses out in the hallway. I can call them in and  
24 have them sworn in.

25 THE COURT: If you can instruct them if

1 they're not here. That's fine.

2 The Plaintiffs have any witnesses?

3 MR. STAHL: No, Your Honor.

4 THE COURT: Intervenors have any witnesses?

5 MR. CHILDERS: No, Your Honor. But, we may  
6 call someone depending on who they call or don't call.

7 THE COURT: Okay. Well, they're going to  
8 be under the rule. So, if you think that they're here  
9 in the courtroom, you will need to get them out at this  
10 time. Do you understand that?

11 MR. CHILDERS: I do, Your Honor.

12 THE COURT: Okay. I believe rule having  
13 been invoked, if you're a witness in this matter, I  
14 believe they've been identified, you will not be allowed  
15 to remain in the courtroom during the testimony that is  
16 presented. You're not to discuss your testimony or that  
17 of any other witness with anyone except for the  
18 attorneys involved in this case. Do not allow it to be  
19 discussed in your presence. And people who are found to  
20 have violated this rule could be excluded from  
21 testifying, could be subject to a contempt finding of  
22 the Court.

23 Other than the party, Mr. Stephens,  
24 obviously, may stay. If you're a designated the  
25 witness, unless you're the first one called, you're

1 excused at this time.

2 MR. HOLMES: Your Honor, Mr. Barnes was  
3 going to be our first witness. I can have him wait in  
4 the hallway while Mr. Keltner addresses the Court or he  
5 can just stay here with Mr. Keltner's address.

6 THE COURT: That's fine. Go ahead and stay  
7 during the address.

8 MR. KELTNER: Your Honor, we have taken  
9 care of a number of matters that are on the docket but  
10 don't need to be considered.

11 First is our Motion for Protective Order.  
12 The parties have agreed to a protective order that I'm  
13 going to hand you and ask you on behalf of all parties  
14 to sign.

15 THE COURT: No objection from the  
16 Plaintiffs or Intervenors?

17 MR. CHILDERS: Correct, Your Honor, no  
18 objection.

19 MR. COOK: No objection, Your Honor.

20 THE COURT: Okay.

21 MR. KELTNER: Your Honor -- I'll wait till  
22 you do that.

23 Your Honor, there was one other thing,  
24 Motion to Stay. The Motion to Stay was a cap holder for  
25 execution pending the time of this hearing, so we don't

1 discretion lies with you. And I'm not arguing  
2 otherwise.

3 It does require an order. I've never  
4 suggested that it does not. It doesn't require  
5 substantial economic harm, and the Supreme Court tells  
6 you that, despite what Mr. Childers argues. That can't  
7 be right. Don't be misled.

8 THE COURT: Does it require the lack of  
9 liquidity assets to come in and to get the bond?

10 MR. KELTNER: That is not clear, but I  
11 would suspect yes. But, to that, let me answer --

12 THE COURT: You're not in that category,  
13 are you?

14 MR. KELTNER: Yes, because the assets I  
15 have, or Mr. Stephens has can't get a Letter of Credit.

16 Let me answer one additional thing that  
17 came up for the first time on the response from the  
18 Intervenors, and that is the homestead. The homesteads  
19 are listed in the net worth, so that's really not an  
20 issue. The homestead stuff we're talking about is  
21 within the net worth. The posting of what we have  
22 suggested with the appraiser goes past that amount in  
23 any event. So, I don't think that's an issue.

24 Let me get to -- return to the question you  
25 just asked me, and that is liquidity. And remember,

1 liquidity is completely different than assets. You may  
2 have assets worth so much, but the liquidity necessary  
3 to get a Letter of Credit is a completely different  
4 issue.

5           The only testimony you've heard today, the  
6 only testimony is we can't do that. They suggest maybe  
7 if you'd ask somebody else. That's where I think the  
8 rubber meets the road in this case. And if that's what  
9 they're saying -- I mean we've got this. I think that  
10 this is -- this was a long trial well tried by you with  
11 good lawyers on both sides. We raised what I think are  
12 important legal issues, especially on the Intervenors'  
13 claim, and some of the Plaintiffs' claims as well.

14           The Supreme Court in In re Longview and In  
15 re Nalle both, two Chief Justices, both unanimous  
16 opinions, says, "the right to an appeal is important."  
17 And that's what the Legislature is trying to get. And  
18 if you balance the equities, the Supreme Court does give  
19 guidance. And it says you balance them in favor of  
20 doing that without dissipating assets. That's all we're  
21 after.

22           If there's another way to do this -- and  
23 I'm making this offer because the appeal hangs in the  
24 balance. If there's another way to do this, we're open  
25 to it. If there's another way to put this together, we

1 will work through that. I think you've seen us be  
2 willing to do that.

3           So, those are the -- that is what I think  
4 guides your decision. Please don't misunderstand me,  
5 and I don't want to be misunderstood by my friends on  
6 the other side. It requires an order. There's no doubt  
7 about that. It is -- I don't know that it's equitable  
8 so much. I know what the Supreme Court says the  
9 equities are, and they are towards a meaningful appeal  
10 without dissipating assets. That's what we're after.

11           And we contest all the stuff that Frank has  
12 argued about what happened at the trial, the veracity of  
13 the witnesses, and all that. That's probably not where  
14 our appeal is going. It's going to the legal basis for  
15 their claims. And that's what we want to try to bring.  
16 We'll let the Court decide it. Again, well tried by  
17 you, well tried by them. I do think their issues in the  
18 right of appeal is what we're trying to protect.

19           And, Your Honor, that's it. Happy to  
20 answer any questions. And you've been very patient, by  
21 the way.

22           MR. CARMICHAEL: Or we could dance.

23           THE COURT: I think y'all have been dancing  
24 a little bit here.

25           MR. BRANSON: I've got just a short

1 response.

2 THE COURT: Might as well.

3 MR. BRANSON: I've got to thank the Court.  
4 We've tried a lot of lawsuits. Our clients have gotten  
5 an absolute fair trial, so did Kerwin Stephens. I've  
6 been in some trials where both sides couldn't say that.

7 When you're considering the equities, as  
8 David called them, any time I've been in court and dealt  
9 with equities, part of what is considered is clean  
10 hands. And I haven't seen any clean hands on Mr.  
11 Stephens' side of this case. He's made his bed and now  
12 he doesn't want to lie in it. And I just submit the  
13 Court to consider that when you make your decision.

14 Having said that, I think the Court knows  
15 we'll work with the Court whatever the Court's decision,  
16 and it's totally discretionary. Thank you.

17 THE COURT: Promise you the final word.  
18 Want to --

19 MR. KELTNER: That's fine. Everybody  
20 deserves the right to go home, too.

21 THE COURT: Well, I really do like the idea  
22 of alternate security. And I think this case needs to  
23 be appealed. And while I'm tempted to put this -- work  
24 out something else and delay, try to figure something  
25 else out, Defendants have brought this to me today to

1 decide on the evidence that's presented here and brought  
2 the evidence before me today that causes me to make a  
3 decision today and not try to fashion some remedy on out  
4 in the future to do something else.

5           But, despite the characterization that  
6 repeated and diligent efforts have been made to get the  
7 bond or the Letter of Credit, based on the testimony  
8 presented, the demeanor, and the credibility of the  
9 witnesses, I don't find that sufficient efforts have  
10 been made to get that when you go to a bank that  
11 couldn't have given the Letter of Credit even if they  
12 wanted to and then certainly try to bring in somebody  
13 else and then a friend, also. I really don't find that  
14 there's -- the Defendants have made sufficient efforts  
15 to show me that a bond could not be obtained.

16           And, therefore, Defendants Motion for an  
17 Order for Alternate Security is denied.

18           MR. KELTNER: Your Honor, may I ask one  
19 question? I'm certainly never going to argue the  
20 ruling.

21           THE COURT: Certainly.

22           MR. KELTNER: We will go back and still  
23 attempt and see what we can do. The issue for a stay  
24 now becomes important because I'm dealing with an  
25 abstract of judgment now. And on top of that, if they

1 start collection efforts, I'll never be able to get any  
2 additional stuff. Will Your Honor consider a stay for,  
3 let's say, 45 days or 60 days for us to attempt to do  
4 that?

5 MR. BRANSON: Your Honor, this is the  
6 second time we've had this hearing. It's been a year  
7 since the case was tried.

8 THE COURT: I think this case needs to be  
9 appealed and I hope you can get there. I'll grant a  
10 stay of this for 30 days, a protective order to see if  
11 you can go about getting a bond written and sufficient  
12 exploration of that.

13 MR. KELTNER: We will send you an order on  
14 this, and I'll circulate it.

15 MR. BRANSON: Can we agree, Your Honor, if  
16 they don't post a bond in 30 days, the order that the  
17 Court has entered, it will be enforced?

18 THE COURT: We won't have to have another  
19 hearing. 30 days from today's date, or let's just pick  
20 a date. That will be September 4th.

21 MR. CHILDERS: Please the Court, I think we  
22 can hammer this out in five minutes and we can sign it.

23 THE COURT: Put that together.

24 We're off the record.

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REPORTER'S CERTIFICATE

THE STATE OF TEXAS )  
COUNTY OF FISHER )

I, Mary Margaret Sparks-Cox, Official Court Reporter in and for the 32nd District Court of Fisher County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

WITNESS MY OFFICIAL HAND this the 12th day of September, 2016.

/s/ Mary Margaret Sparks-Cox  
Mary Margaret Sparks-Cox  
Texas CSR 1946  
Expiration Date: 12/31/17  
Official Court Reporter  
32nd District Court  
P. O. Box 28  
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235-235-3133

# Exhibit C.2

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SUPPLEMENTAL REPORTER'S RECORD  
VOLUME 3 OF 5 VOLUME  
APPELLATE CASE NO. 11-16-00177-CV  
TRIAL COURT CAUSE NO. DC2013-0016

TIBURON LAND AND CATTLE,	)	IN THE DISTRICT COURT
LP AND TREK RESOURCES,	)	
INC.,	)	
	)	
Plaintiffs,	)	
	)	
VS.	)	
	)	
	)	
KERWIN STEPHENS,	)	FISHER COUNTY, TEXAS
THUNDERBIRD LAND SERVICES,	)	
ET AL, AND CHESTER	)	
CARROLL, ET AL,	)	
	)	
Defendants,	)	
	)	
L. W. HUNT RESOURCES, LLC,	)	
AND RICHARD RAUGHTON,	)	
	)	32ND JUDICIAL DISTRICT
Intervenors	)	

-----  
 THUNDERBIRD DEFENDANTS' SUPPLEMENTAL MOTION FOR  
 ALTERNATE SECURITY  
 AND MOTION TO RELEASE ABSTRACTS TO SPECIFIC PROPERTIES  
 -----

On the 12th day of September, 2016, the following  
 proceedings came on to be heard in the above-entitled  
 and numbered cause before the Honorable Glen Harrison,  
 Judge presiding, held in Sweetwater, Nolan County,  
 Texas;  
 Proceedings reported by machine shorthand.

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EXHIBIT INDEX

**SEPTEMBER 12, 2016**

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D-2	Affidavit of Stewart Heighten	14			3
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1 THE COURT: On the record in Cause --  
2 Fisher County case Cause No. DC2013-0016 on the  
3 Thunderbird Defendants' Motion for Alternate --  
4 Supplemental Motion for Alternate Security and Motion to  
5 Release Abstracts as to specific properties.

6 Defendants ready to proceed on your motion?

7 MR. KELTNER: Yes, Your Honor.

8 THE COURT: Okay. And the Plaintiffs  
9 ready?

10 MR. COOK: Plaintiffs are ready, Your  
11 Honor.

12 THE COURT: And Intervenors?

13 MR. CHILDERS: Intervenors are ready, Your  
14 Honor.

15 THE COURT: Okay. Anyone else that wants  
16 to play here today?

17 MR. KELTNER: I think Mr. Strange is here  
18 for --

19 MR. STRANGE: Yes, sir. Rick Strange for  
20 the Gail Stephens.

21 THE COURT: Thank you very much.  
22 You may proceed.

23 MR. KELTNER: Your Honor, this is going to  
24 be real quick given our previous hearings. And I very  
25 much appreciate you giving us this hearing today.

1           Let me give a brief introduction to what  
2 has changed since the last time we were here. We filed  
3 the supplemental motion, which I know you've seen.  
4 There's a slight change in net worth. We have a  
5 proposed sale of the property. We also have the  
6 possibility of a bond. Let me explain.

7           At the end of the last hearing, Your Honor  
8 candidly stated on the record that you did not think  
9 that we had carried the burden to prove everything for  
10 alternative security. And I promised to you that we  
11 would increase our efforts and try to meet the  
12 criticisms that had been raised primarily by the  
13 Intervenors but by the Plaintiffs as well. And we have  
14 done that.

15           Let me tell you we have an affidavit form  
16 for you, three banks; one national, one regional, and  
17 Texas Farm Credit, which has denied us Letter of Credit  
18 on anything but cash. And we'll submit those to you.  
19 Additionally, we found one bonding company that might be  
20 willing to do a bond based on property, but we'll need  
21 some time to get that done. By time, I mean just  
22 several weeks. We also have a potential sale of the  
23 property. The Intervenors criticized us for not  
24 attempting to sale property, and there is some case law  
25 to that indication as well.

1                   We have a sale to Mr. Heighten. Let me  
2 explain. We purchased the property, initially, a lot of  
3 this property from Mr. Heighten, not all of it but a  
4 significant amount. He knew it, so it cut down on the  
5 due diligence.

6                   Now, let me tell you a little bit about  
7 those two things. To get either of the bond approved or  
8 the sale consummated, we will need to lift the abstracts  
9 of judgment. We have asked both the Plaintiffs and  
10 Intervenors. They have objected to doing that. That's  
11 the reason for our request to you.

12                   Let me tell you about the sale. There has  
13 been a title commitment issued. The lender in a letter  
14 has indicated that things look good, but they're --  
15 we're not there yet because the loan committee has to  
16 approve that. You will see those. There is some --  
17 there's some issues there that you need to know about.

18                   The purchase property's about 20 percent,  
19 not quite, a little less, 20 percent short of what the  
20 appraisals on the property are. And we negotiated, but  
21 that's the best we could do. We will also have to pay  
22 capital gains tax on the sale, which we have attempted  
23 to calculate at the present purchase price. Now, we,  
24 obviously, would prefer not to sell it because we're  
25 taking a haircut; two, we're going to pay taxes we

1 A. Yes.

2 Q. -- by Turner Appraisal out of Wichita Falls?

3 A. Correct.

4 MR. HOLMES: Pass the witness.

5 CROSS-EXAMINATION

6 BY MR. COOK:

7 Q. But, all of that was after August 17th, right?

8 A. That would be correct.

9 Q. And our hearing was August 3rd, for your  
10 information, two weeks before that. First time you  
11 heard of anything formally was August 17th, right?

12 A. It would have probably been before August 17th.  
13 I don't know the exact date. Only reason I say this, we  
14 contacted a few sureties in between finding somebody who  
15 had interest before we got HCC, and they asked us to  
16 fill out an application. So, could have been  
17 August 15th or 16th. I don't know the exact date, but  
18 before we actually filled out the application. The  
19 surety that was interested would have been the 17th.

20 MR. COOK: Pass the witness, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. CHILDERS:

23 Q. Mr. DeWitt, if you turn to Exhibit 2 of the  
24 Stephens Affidavit, you'll see that it is three sheets  
25 of paper. That's not the final application, right?

1 A. No. Well, there's always attached documents  
2 that go to it, that's correct.

3 Q. All right, sir. So, if Mr. Stephens in his  
4 Affidavit swore that, "I completed the civil court bond  
5 application. The application is a true and correct copy  
6 of what it purports to be or an exact duplicate of the  
7 original." That's not right, is it?

8 MR. HOLMES: Objection; misleading. It's  
9 misleading.

10 THE COURT: Overruled.

11 A. That's just an application to get started with  
12 the process. In the end, there's a whole different  
13 indemnity agreement and different documents that are  
14 called up. So, I guess there's some credence to that  
15 application in the fact that we're looking for the  
16 information and the pieces with that case. But, it's  
17 not the whole thing.

18 Q. (BY MR. CHILDERS) And this bond, whatever  
19 Exhibit 2 is, that was signed on August 17th, correct?

20 A. I guess, yeah. I don't have it in front of me.  
21 That sounds correct.

22 MR. CHILDERS: Pass the witness.

23 MR. HOLMES: No further questions, Your  
24 Honor.

25 THE COURT: You may step down. Anything

1 else?

2 MR. KELTNER: That's all we have, Your  
3 Honor, on evidence.

4 THE COURT: Plaintiffs have anything to  
5 present?

6 MR. COOK: Plaintiffs have no witnesses,  
7 Your Honor.

8 THE COURT: Intervenors?

9 MR. CHILDERS: No witnesses for  
10 Intervenors, Your Honor.

11 THE COURT: Okay. I do appreciate this.  
12 But, I do feel like we're kind of in the same song,  
13 second verse, a little bit faster, a little bit worse.  
14 I'm still hearing things like "hopefully," "typically,"  
15 and "for some amount." I'm not -- still not impressed  
16 with the Defendants' efforts to secure either a sale or  
17 this bond.

18 And so Defendants' Motion for Alternate  
19 Security and Motion to Release Abstracts to Specific  
20 Properties is denied. Thank you.

21 MR. CHILDERS: Your Honor, I have a  
22 proposed order.

23 THE COURT: Thank you.

24 (Conference with attorneys off record.)

25 THE COURT: Let's go on the record. Court

1 will come to order. Back on the record in DC2013-0016.

2 Court has just signed an order denying the  
3 Defendants' Supplemental Motion for Alternate Security  
4 and to Release Abstracts to Specific Properties, and  
5 further ordered that the stay of execution as set forth  
6 in the Court's August 3, 2016 order and in the Court's  
7 September 1, 2016 order is hereby vacated due to this  
8 ruling today.

9 Mr. Keltner, you had a motion?

10 MR. KELTNER: Yes. Your Honor, at the  
11 bench, we discussed in presence of all counsel, I  
12 alerted the Court that we would be filing a Motion for  
13 Mandamus, which you kindly said you understood. And I  
14 asked for a stay of seven days to be of your order in  
15 order to be able to pursue the Petition for Writ of  
16 Mandamus. And I renew that now.

17 THE COURT: Okay. And just as I said  
18 earlier, in as much as y'all had 40 days to do all that  
19 you've sought, you've had 40 days to do a mandamus. And  
20 that request for additional seven days is denied.

21 MR. KELTNER: Thank you, Your Honor.

22 MR. HALL: Thank you, Your Honor.

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REPORTER'S CERTIFICATE

THE STATE OF TEXAS )  
COUNTY OF FISHER )

I, Mary Margaret Sparks-Cox, Official Court Reporter in and for the 32nd District Court of Fisher County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

WITNESS MY OFFICIAL HAND this the 14th day of September, 2016.

/s/ Mary Margaret Sparks-Cox  
Mary Margaret Sparks-Cox  
Texas CSR 1946  
Expiration Date: 12/31/07  
Official Court Reporter  
32nd District Court  
P. O. Box 28  
Colorado City, Texas 79512

# Exhibit C.3

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REPORTER'S RECORD  
VOLUME 1 OF 1 VOLUMES  
APPELLATE CASE NO. 11-16-00177-CV  
TRIAL COURT CAUSE NO. DC2013-0016

TIBURON LAND AND CATTLE, \* IN THE DISTRICT COURT  
LP AND TREK RESOURCES, \*  
INC., \*  
Plaintiffs, \*  
VS. \* FISHER COUNTY, TEXAS  
KERWIN STEPHENS, \*  
THUNDERBIRD LAND SERVICES, \*  
ET AL, AND CHESTER \*  
CARROLL, ET AL, \*  
Defendants, \*  
L.W. HUNT RESOURCES, LLC, \*  
AND RICHARD RAUGHTON, \*  
Intervenors. \* 32ND JUDICIAL DISTRICT

\*\*\*\*\*

Motions

\*\*\*\*\*

On the 29th day of January, the following  
proceedings came on to be heard in the above-entitled  
and numbered cause before the Honorable Glen Harrison,  
Judge presiding, held in Roby, Fisher County, Texas:  
Proceedings reported by shorthand method.

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I N D E X

VOLUME 1

(Motions)

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1 P R O C E E D I N G S

2 THE COURT: Let's go on the record in  
3 DC2013-0016, Tiburon, et al versus the -- I guess, well,  
4 for lack of a better word, let's just go with the  
5 Tiburon and Stephens, defendants' motions.

6 Are the defendants ready to proceed, the  
7 movants in this matter?

8 MR. HOLMES: Alan Carmichael and James  
9 Holmes here for movants/defendants. We're ready, Your  
10 Honor.

11 THE COURT: Okay. And the  
12 plaintiffs/respondents ready to proceed?

13 MR. COOK: Darrell Cook and Eric Stahl on  
14 behalf of the plaintiffs, and we're ready, Your Honor.

15 THE COURT: And the intervenors?

16 MR. CHILDERS: Yes, Your Honor. Jonathan  
17 Childers, Christina Mullen, and Michael Hall.

18 THE COURT: Okay. Good to see everybody  
19 again.

20 Mr. Holmes, if you want to address, I think  
21 initially I want to talk about the motion to release the  
22 abstracts and allow supersedeas via cash deposit or  
23 supersedeas bond.

24 MR. HOLMES: Thank you, Your Honor, I will.  
25 As Your Honor knows, we had hearings on this matter on

1 August 3rd and September 12th. Both hearings received a  
2 lot of evidence. We have incorporated by reference the  
3 evidentiary record from those hearings.

4           The long and short of it is that after  
5 August 3rd, when it became apparent we were not able to  
6 obtain alternative security as a means of superseding  
7 the judgment, a full court press occurred to find  
8 someone to provide a supersedeas bond, and that person,  
9 largely, was Mark Dewitt of a bond agency firm in  
10 Dallas, Holmes Murphy & Associates.

11           Mr. Dewitt and I have been working together  
12 with Mr. Stephens since at least the second week of  
13 August to obtain a supersedeas bond. The biggest  
14 obstacle, and this was an immense learning process for  
15 all of us, is how to turn over nine million dollars of  
16 farm ground into collateral that a bank would accept for  
17 purposes of issuing a letter of credit. That's not  
18 easy. It requires a specialty bank.

19           Mark Dewitt, because of family connections,  
20 farming connections in Oklahoma, had identified a couple  
21 of rural Oklahoma banks that did a lot of agricultural  
22 lending. Those are places in Alva, Oklahoma, and stuff  
23 not too far from Amarillo, but I have never driven  
24 through there. But these were remarkably savvy bankers  
25 with a group called BancCentral in Alva, Oklahoma.

1           They got involved the first week of  
2 September, right before the September 12th hearing, and  
3 when we also didn't receive alternate security at the  
4 September 12th hearing, we really stepped up the pace  
5 with the Oklahoma bank, BancCentral.

6           So throughout mid-September to mid-October,  
7 it was daily work to get BancCentral comfortable with  
8 accepting the farmland as collateral, and the farm  
9 equipment, and it just required a lot of due diligence.  
10 And it was a daily effort by Stephens' office, by my  
11 office, and by the BancCentral folks.

12           It had become apparent by mid-September  
13 that we had very good news. BancCentral did want to  
14 accept the farmland as collateral, and the farm  
15 equipment, so we had good news. We had bad news, too.  
16 It was going to take one to two months of due diligence  
17 for them to close the transaction. They have to check  
18 with their regulator, their FDIC man, who, in turn, has  
19 to check with his higher-ups. That process took at  
20 least two months. Meanwhile, they had to reappraise the  
21 farmland, they had to inspect the farm equipment, they  
22 had to actually come from Oklahoma and drive through the  
23 farmland. So BancCentral, coordinating with Stephens'  
24 office and with my office, have been working very  
25 diligently through October, through right up until a

1 week ago to get the farmland acceptable as collateral  
2 for BancCentral.

3           BancCentral now finds the farmland as  
4 acceptable collateral. It's willing to issue the  
5 6.3-million-dollar letter of credit. That amount of  
6 money is the one-half of net worth of Stephens,  
7 individually, plus the one-half of net worth of  
8 Thunderbird Resources, it comes up to 6.3 million and  
9 some change. BancCentral, with the backing of Bank of  
10 Oklahoma, will issue the letter of credit. That was  
11 another month-long delay in the story, as BancCentral  
12 wasn't quite big enough to make it onto the preferred  
13 lender's list for the bond surety company.

14           The bond surety company needed another  
15 big-name bank involved. So BancCentral reached out to  
16 Bank of Oklahoma. The two of them together will provide  
17 the letter of credit I've described.

18           Finally, the ball got kicked back over to  
19 Mark Dewitt. He had sort of been sitting on the  
20 sidelines for two and a half months while this bank due  
21 diligence took place. Mr. Dewitt then resurfaced and  
22 said the nation's biggest supersedeas bond company, HCC  
23 Surety in Los Angeles, finds BancCentral backed by Bank  
24 of Oklahoma to be acceptable.

25           Within 24 to 48 hours of the bank's issuing

1 the letter of credit, HCC Surety will issue a  
2 supersedeas bond. That's how quickly this can move.

3           So if we have relief from the Court today  
4 by means of a subordination of the judgment-related  
5 liens that the parties opposing us are ordered to  
6 subordinate their judgment-related liens so that  
7 BancCentral is the first lienholder on the farmland and  
8 on the farm equipment, then that takes about a week and  
9 a half from today's ruling for the letter of credit to  
10 officially issue, and within 24 to 48 hours, we have the  
11 supersedeas bond. So that's what we're looking at.

12           THE COURT: So you believe that can be  
13 accomplished within 10 to 12 days?

14           MR. HOLMES: It absolutely can be. It can  
15 be. The banks are represented by a very competent sharp  
16 lawyer from Crowe & Dunlevy in Oklahoma City. He is --  
17 he understands the urgency of the situation and he  
18 wanted to close tomorrow.

19           He said if I can get a ruling from the  
20 court on Wednesday, I can close by Friday. They very  
21 much wanted to close before the calendar year 2016.  
22 Mr. Bryant is his name. I said, "Mr. Bryant, it cannot  
23 happen by Wednesday. At the earliest, it would be  
24 Thursday." And he said, "Well, then we're going to have  
25 to do it the first week of January, if we can."

1 THE COURT: You're saying it's akin to  
2 appealing a writ?

3 MS. MULLEN: Your Honor, yes, we agree that  
4 this is akin to appealing a writ and the case law that  
5 we found says that this is not appropriate, to appeal a  
6 writ. I haven't found case law --

7 THE COURT: Okay. What about quashing a  
8 writ?

9 MS. MULLEN: I have not found case law  
10 where quashing a writ was allowed. I did find a case  
11 where -- actually where a Court did quash a writ and  
12 didn't assist the party recovering -- the party that had  
13 the judgment -- let me rephrase.

14 The party in whose favor the judgment was  
15 rendered was trying to execute on that judgment. When  
16 the Court quashed the writ, the court of appeals  
17 actually overturned and said it was inappropriate for  
18 that Court to undo his previous writ because it wasn't  
19 helping execute on the judgment.

20 I do not have that case in my head, what  
21 the title is, and I can get that to you and opposing  
22 counsel.

23 THE COURT: Thank you.

24 MR. CHILDERS: You know, I think Ms. Mullen  
25 answered your question, but I will further state that I

1 don't think that's an issue here, even assuming you can  
2 quash the writ, because this writ is fine. The  
3 complaint would be if a defendant was misnamed, that  
4 doesn't exist here. It just doesn't. Thank you,  
5 Your Honor.

6 And also I made the point about the Rule 11  
7 and the constructive notice and the quitclaim deed.

8 THE COURT: Anything else, Mr. Holmes?

9 MR. HOLMES: No. Other than I've asked the  
10 Court to issue orders that we not dissipate assets, sell  
11 properties that are not subject to subordination of  
12 liens. We would voluntarily not do that anyway. We'll  
13 sign whatever agreement needs to be signed to ensure  
14 that the house in Fort Worth, which is not necessary for  
15 the bank's collateral, we'll not sell it or do anything  
16 with it, and we can back that up with a court order. It  
17 wouldn't be necessary because we'll just voluntarily not  
18 do anything.

19 There are ways to protect them that are  
20 much superior to forced sales of land, which at the rate  
21 we're going, number one, will disrupt my client's  
22 ability to get a supersedeas bond in place and, number  
23 two, will certainly result in satellite litigation in  
24 various counties. Every county in which they try to do  
25 a forced sale, there's a new lawsuit created. And

1 that's going to be what we have to do to try to protect  
2 ourselves.

3 THE COURT: You're telling me, essentially,  
4 we've got competing essential rights. They have a right  
5 to execute on their judgment, you've got a right to make  
6 a supersedeas bond. You want me to stop them from  
7 proceeding on their right so you can proceed on yours?

8 MR. HOLMES: Essentially, yes, Your Honor.  
9 Because if, for instance, we had gone to a bankruptcy  
10 judge or if we had gone to a federal court that had some  
11 sort of preferential right over -- a court -- a  
12 bankruptcy court or another Texas state court or a  
13 federal court could certainly issue an order that stops  
14 writs of execution.

15 I don't know where this is coming from. I  
16 don't think the attorneys in the room have done  
17 sufficient research, but the writs of execution are not  
18 sacrosanct missiles, that once sent into flight cannot  
19 be returned or quashed or stopped. That certainly is  
20 not the law. We feel as though if we get an order from  
21 the Court that quashes the writs, that we will be able  
22 to take that order and stop any kind of levy sale  
23 pursuant to the writs. We feel very confident we will  
24 be able to do that. And we have to have that, because  
25 if those writs are in place, we can't get the financing

1 from the Oklahoma banks and we can't get the bond in  
2 place.

3 THE COURT: I mean, there's a specific  
4 statute to quash a writ of garnishment.  
5 Correspondingly, any other authority, other than these  
6 cases to recall the missiles?

7 MR. HOLMES: Yeah. Your Honor, I  
8 appreciate it. Let me mention some other cases here.  
9 Okay. Here's a case. Raymond, O-U-K-R-O-P, is his last  
10 name, Oukrop, vs. Tatsch, T-A-T-S-C-H, Austin Court of  
11 Appeals. I have a LEXIS cite, 2014 Tex. App. LEXIS 7873  
12 or 2014 Westlaw 3734192. The Westlaw, 2014 Westlaw  
13 3734192. Reading from the case, Austin Court of Appeals  
14 writes, "A writ of execution is the principal process  
15 for the collection of money judgments." It cites Texas  
16 Rule of Civil Procedure 621. "It's issued by the clerk  
17 of the court where the judgment was signed and delivered  
18 to a sheriff or constable in Texas. The writ empowers  
19 the officer to levy on a debtor's nonexempt real and  
20 personal property within the officer's jurisdiction.  
21 Sell the property at public auction and apply the  
22 proceeds towards satisfaction of the judgment." Then  
23 the Court cites Rule of Civil Procedure 622, 627, and  
24 637. "The term 'issue' as applied to an execution means  
25 more than the mere clerical preparation and attestation

1 THE COURT: I'll sustain. Let's just stay  
2 with the redirect.

3 MR. HALL: Nothing further, Your Honor.

4 MR. HOLMES: No further questions.

5 THE COURT: You may step down.

6 MR. HOLMES: Your Honor, I think what --  
7 the wheels have been turning as we've put these  
8 witnesses on and we want to re-urge the motion to  
9 release in this respect. If we --

10 THE COURT: No, thank you. I've heard your  
11 arguments to that and this was just for, essentially, a  
12 bill upon my consideration of -- further consideration  
13 of the testimony of Mark Dewitt, Stewart Heighten, and  
14 Kerwin Stephens, the ruling of the Court to deny the  
15 motion to re-tax bill of cost, motion to quash execution  
16 of writs, and motion to release abstracts to obtain a  
17 cash deposit or supersedeas bond are overruled and  
18 denied.

19 MR. CHILDERS: Your Honor, I have written  
20 orders, if it will please the Court.

21 MR. HOLMES: And, Your Honor, before we get  
22 to the orders, I simply want to say, if we have a  
23 partial relief on the motion to release abstracts, we  
24 may be able to get the bond. And what I'm thinking here  
25 is, we have a subordination of the judgment liens and we

1 do not speak to the levies, and they can continue to  
2 charge forward on the levy executions, I will then, of  
3 course, explore with the Oklahoma banks and the bond  
4 surety whether they would issue a bond with that risk  
5 out there, that would be their choice.

6 THE COURT: You can certainly pursue that,  
7 but at this point, the title company wants the levies  
8 released and that seems to be a big impediment. At this  
9 point, the Court is not prepared to do that.

10 MR. HOLMES: Understood. Speaking nothing  
11 to the levies, would the Court be willing to order that  
12 the judgment liens be subordinated, just that? Just the  
13 abstracts of judgment, which is --

14 THE COURT: I think you've kind of seen my  
15 thought process here today. I haven't been trying to  
16 hide the ball as to the direction I was leaning and hit  
17 a hurdle that I don't believe I was prepared to even try  
18 to attempt with these levies. You said, without that,  
19 you couldn't make the bond.

20 MR. HOLMES: Correct. And as I stand here  
21 today, in light of what I know about the title policy  
22 that's going to be required and in light of what I know  
23 about the Oklahoma banks and what they're going to  
24 require in the title policy, I am probably going to have  
25 to address the levies at some point. That's what I know

1 today.

2                   However, if we had a ruling that the  
3 judgment liens are subordinated to the bank's liens for  
4 the letter of credit, and the levies are left alone and  
5 untouched by any judicial order from here, I would then  
6 go to work working on the title policy group and the  
7 Oklahoma banks to see what they would do, what they  
8 would be willing to accept in terms of the risk that  
9 those levies present, and they may not -- they may issue  
10 a policy and letter of credit without them.

11                   THE COURT: That's exactly the type of risk  
12 that I wanted to avoid. I wanted a date certain what  
13 would happen, when it would happen, and there's not  
14 evidence here that convinces me that that could happen.

15                   I know you would try and do your best, but  
16 in the meantime, it's still an open-ended question and  
17 I'm not prepared to leave the courtroom without those  
18 details tied up.

19                   MR. HOLMES: Okay. Thank you, Your Honor.

20                   MR. CHILDERS: May I approach?

21                   THE COURT: Yes.

22                   MR. CHILDERS: I've handed counsel copies  
23 of the proposed orders, the written orders.

24                   THE COURT: Are there any other matters  
25 that we need to take up at this point, except for the

1 to happen on it before the 13th? Tarrant County, which  
2 is not an issue. That's the only one, as I see it.

3 THE COURT: So because they can't act on  
4 it, I can before the 13th?

5 MR. CARMICHAEL: Your Honor, I think you --  
6 I do think you can subordinate the judgment lien and the  
7 levy until the 13th, conditioned upon bringing me a  
8 supersedeas bond in the 6.3-million-dollar amount that's  
9 been discussed, and if not by that date, we're back to  
10 where we are and they can still go forward unprejudiced  
11 by what you've done.

12 THE COURT: You're skipping over all the  
13 conditions of paying their costs, too.

14 MR. CARMICHAEL: No, sir. I'm just trying  
15 to get to that first issue. If that's what's standing  
16 in the way of getting this done --

17 THE COURT: I mean, that was part of the  
18 whole direction it was going. That was an issue, but  
19 there were other issues that were still there.

20 MR. CARMICHAEL: I haven't looked to see.  
21 Has there been a showing of what their costs are?

22 THE COURT: There has not been.

23 MR. CARMICHAEL: Okay. I would think, if  
24 upon showing that it's spent in reliance upon or it's  
25 allowed under the rules, then you could tax that as

1 additional costs in this matter, which also goes to  
2 the -- but that needs to be taxed by someone in the  
3 clerk's office, not by counsel.

4 THE COURT: Well, I understand y'all  
5 disagree with what the clerk issued as a bill of cost,  
6 but that's what's issued. And so we're talking about  
7 costs -- post-judgment costs that they've incurred.

8 MR. CARMICHAEL: Sure. And I think -- I  
9 would suggest that if the Court is inclined to go that  
10 way, then we'll see what their costs are and, you know,  
11 I hate to agree to them without knowing what they are.

12 THE COURT: Certainly.

13 MR. CARMICHAEL: But I think there's a  
14 method for making them whole on that issue.

15 MR. CHILDERS: Your Honor, may I be heard  
16 briefly?

17 THE COURT: In as much as you can't act or  
18 you're not going to be able to act on Young County until  
19 February, whatever date that is, how are you harmed at  
20 this point to subordinate until then or until  
21 mid-January?

22 MR CHILDERS: Sure. I'm harmed because my  
23 clients have a judgment lien in Young, Stephens, Johnson  
24 County, and Tarrant County. The Young County assets are  
25 indisputably many, and I can give you the number. It

1 may take me a few minutes of the properties that are  
2 subject to this bank -- proposal by BancCentral, which  
3 is a financing agreement and is not a letter of credit  
4 yet, and that financing agreement says "as collateral."  
5 It requires a first-deed-of-trust lien. That cannot  
6 happen. It is an impossibility, given that writs of  
7 execution have issued. It is impossible for them, based  
8 upon their evidence, without any bankers here, even with  
9 the testimony we heard from Mr. Dewitt, to make this  
10 work. They do not have a first lien. They cannot have  
11 it subordinated because my clients have a judgment lien  
12 on that that has issued.

13 THE COURT: And I think that's ultimately  
14 where we come back to. What you may agree to, I don't  
15 know that I can order at this point, so the objection --  
16 or request is again denied, and we are in recess.

17 (End of hearing)

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