

IN THE DISTRICT COURT, HARRIS COUNTY

**189<sup>th</sup> Judicial District**

Robert J. Kruckemeyer	)	REQUEST FOR AN
	)	EMERGENCY MOTION
Plaintiff	)	HEARING
	)	No. 2023-11266
	)	
vs.	)	
	)	
Blogger Inc. D/B/A/, LAWIN	)	
TEXAS.COM	)	
	)	
	)	
Defendant	)	
	)	
	)	
	)	

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**REQUEST FOR AN EMERGENCY MOTION HEARING:**

**MOTION TO EXTEND ~~DEFENDANT'S~~ IMPOSTERS' TCPA  
MOTION TO DISMISS STATUTORY HEARING DEADLINE**

Defendants, Counter-Plaintiffs and Third-Party Plaintiffs Mark  
Burke, individually, and on behalf of Blogger Inc., ~~and Joanna Burke~~ ("The

Burkes”), file this motion for the following reasons;

### **TIMELINE OF EVENTS**

**On Feb 21, 2023**, the Plaintiff’s Original Petition And Application For Permanent Injunction [docketed](#).

**On April 10, 2023**, the registered agent for Blogger Inc. in Delaware accepted Process of Service.

**On May 1, 2023**, “Defendant’s Original Answer and Jury Demand” was filed by Imposters and Co-Conspirators David Oubre and Jason Powers of Lewis Brisbois on behalf of Berkshire Hathaway Direct Insurance Company (“Imposters and Co-Conspirators”) allegedly representing Blogger, Inc. without capacity, nor any documented authority to do so.

**On May 11, 2023**, Bob registered “The Kruckemeyer Law Firm” as a DBA in Harris County.

**On May 30, 2023**, “Defendant’s Motion to Dismiss Pursuant to the Texas Anti-Slapp Law, Texas Civil Practice & Remedies Code 27.001 et seq.” was filed by Imposters and Co-Conspirators David Oubre and Jason

Powers of Lewis Brisbois on behalf of Berkshire Hathaway Direct Insurance Company (“Imposters and Co-Conspirators”) allegedly representing Blogger, Inc. without capacity, nor any documented authority to do so.

**On Jun 5, 2023**, “Plaintiff’s First Amended Original and Application for Permanent Injunction” [docketed](#), adding new parties. The causes of action remain the same.

**On Jun 6, 2023**, Imposters and Co-Conspirators file “Motion to Withdraw” with a hearing scheduled for July 25, 2023, walked back mid-afternoon the same day to a setting by submission (date, Jun 19, 2023).

**On Jun 15, 2023**, “Defendants Mark Burke and Joanna Burkes’ Original Answer and Jury Demand” and “ORIGINAL COUNTERCLAIM AND APPLICATION FOR PERMANENT INJUNCTION” by the real parties in interest docketed.

**On Jun 26, 2023**, Plaintiffs Notice of Dismissal of Joanna Burke without Prejudice filed.

**On Jun 27, 2023**, the “First Amended Counterclaim/Third Party Petition and Application for Permanent Injunction” by the real parties in interest docketed.

**On Jul 10, 2023**, the Motion to Strike Defendants Imposters Original and TCPA Motion to Dismiss and Notice of Hearing, scheduled for Sep. 26, 2023 at 10 am, in-person was e-filed.

**On Jul 11, 2023**, the notice was rejected with the following statements; Envelope Number: 77366480

**Court:**

Harris County District Civil

**Returned Reason:**

Illegible/Unreadable - Please resubmit in legible format

**Returned Comments**

This date is no longer available. and the4 [sic] 189th court does not hold hearings in-person.

## **Hearings:**

Please contact the court clerks to schedule any hearings, oral and submission dockets, at 832-927-2735. The court will not be holding dockets for the month of **August 2023. (emphasis added, as Mark Burke's agreed hearing date is for September 2023).**

## **FACTS, ARGUMENT AND AUTHORITIES**

Relying upon real parties in interest The Burkes appearance, pleadings including addendums, verifications, and declarations, the “Defendant's Motion to Dismiss Pursuant to the Texas Anti-Slapp Law, Texas Civil Practice & Remedies Code 27.001 et seq.” (“TCPA Motion to Dismiss”) as docketed on Jun 5, 2023, this motion is live and the ‘clock is ticking’. The real parties have formally tabled a motion arguing this TCPA Motion to Dismiss be stricken from the record relying upon the truth of the real parties in interest’s allegations. The allegations assert Lewis Brisbois and assigned attorneys Jason Powers and David Oubre are acting in bad faith and in consort with BHDIC and they filed these pleadings without

either approval, capacity nor authority from either Blogger Inc or Mark Burke. In short, they acted as imposters.

### **REQUEST FOR A MOTION HEARING**

The Burkes formally requested a motion hearing be set. On July 10, 2023, Mark Burke spoke with Ashley Lopez, Assistant Clerk and asked for the earliest availability for a hearing regarding this motion and she confirmed the dates of September 26, 2023 at 10am and October 10, 2023 at 10am.

Immediately thereafter, Mark Burke emailed all parties seeking to confer on their availability and Jason Powers for Lewis Brisbois responded with "I am available", which is assumed to read that either date is acceptable.

However, as of this morning, this date is apparently no longer available, based on the rejection of the notice per envelope no. 77366480 as described above. This creates an issue in relation to the TCPA Motion to Dismiss.

## **REQUEST FOR AN EMERGENCY MOTION HEARING**

Relying upon *In re Dror*, No. 14-22-00646-CV, at \*5 (Tex. App. Oct. 5, 2022) the latest a hearing can be held in this case, pertaining to the active TCPA Motion to Dismiss filed by the imposters at Lewis Brisbois would be within 60 days of May 30. A review of the settings in this proceeding show that Jason Powers set a timely hearing for July 27, 2023 and then he “passed” on the hearing.

As it stands, Blogger Inc’s narrative and position after the real parties were forced to inject themselves into proceedings to defend this fraudulent and frivolous civil action, is the case warrants dismissal based on; (i) The Kruckemeyer Law Firm did not legally exist, and no harm could result from LIT’s article about the Firm. As such, the lawsuit should be dismissed for lack of jurisdiction and/or fraud; (ii) The imposters at Lewis Brisbois/BHDIC and Kruckemeyer (“Bob”) all conspired to injure plaintiff. Lewis Brisbois and BHDIC by impersonation and filing into this civil action without any approval, capacity or authority, and as such any and all pleadings have to be

stricken in law, and; (iii) as a result of (i) and (ii), there is no actual deadlines or hearings as the case would be at an end.

That recorded, it is most likely the imposters and/or Bob will erroneously rely upon *Pecos Cnty. Appraisal Dist. v. Iraan-Sheffield Indep. Sch. Dist.*, No. 22-0313, at \*24 (Tex. May 19, 2023);

“As we recently observed in related litigation, “[w]hile Rule 12 requires the trial court to dismiss counsel who fails to show authority to prosecute or defend the proceeding, pleadings filed by any such counsel are not nullified and may only be stricken ‘if no person who is authorized to prosecute or defend appears.’” *Kinder Morgan SACROC*, 622 S.W.3d at 846. The leniency and flexibility of this remedy recognizes that claims and defenses in litigation belong to the parties, not their lawyers.”.

Arguments aside, the real parties suggest the court should allow opposing parties the opportunity to mitigate their potential losses. As such, it would be prudent for this court to set this motion before the expiration of the allowed 60, 90 or 120 days as permitted in law to hold a hearing on the active and unauthorized motion.

Plaintiff obtained a hearing date before the 120 day deadline, namely



Sep. 26, 2023. This date could have been equally applied to hearing the TCPA Motion to Dismiss and both decided on that day. Remember, this date is the first available date the court advised Mark Burke an oral hearing could be held - for any motion or setting. Jason Powers for Lewis Brisbois confirmed his availability for this date. However, that was prior to this morning's rejection and notice.

For clarification;

“Hearings on TCPA Dismissal Motions A. Section 27.004 of the Texas Civil Practices and Remedies Code TCPA dismissal motions must be heard and resolved on an expedited basis. The hearing generally must be held within sixty days after the motion is served. Tex. Civ. Prac. & Rem. Code Ann. § 27.004(a). The deadline can be extended to ninety days if the court's docket conditions require it, good cause exists, or the parties agree to an extension. Id. § 27.004(a), (b). The deadline can be extended to 120 days if the trial court allows discovery, but that is the maximum extension permitted.. § 27.004(c). Once a TCPA motion is heard, the trial court must rule on it within thirty days or the motion is denied by operation of law. §§ 27.005(b), 27.008(a). A TCPA movant forfeits the motion if he fails to get a timely hearing of his motion.”

## CONCLUSION

Mark Burke along with Blogger Inc.'s mission statement and values seek to ensure transparency, access to justice and fairness being prescribed to all litigants before the court.

This motion seeks to apply this standard and as such it should be GRANTED with the RELIEF requested, namely an emergency hearing within the TCPA's statutory framework of either 60, 90 or 120 days from the date the motion was filed, as the court allows.

Mark Burke seeks an Order in writing which will address and/or dispose of this motion without the need for verbal communication, which as documented, has proven to be unreliable and wastes valuable time and resources for all parties.

RESPECTFULLY submitted this 11th day of July, 2023.  
I declare under penalty of perjury that the foregoing is true and correct.  
This declaration under Chapter 132, Civil Practice and Remedies Code.

A handwritten signature in black ink, appearing to read "Mark Burke". The signature is written in a cursive style with a large, sweeping initial "M".

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Mark Burke  
State of Texas / Pro Se

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing request has been forwarded to Plaintiff/ Counter-Defendants / Third-Parties and counsel by electronic filing notification and/or electronic mail and/or facsimile and/or certified mail, return receipt requested, this the 11<sup>th</sup> day of July, 2023.



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Mark Burke  
State of Texas / Pro Se

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 77384718

Filing Code Description: Request

Filing Description: REQUEST FOR AN EMERGENCY MOTION HEARING

Status as of 7/11/2023 10:19 AM CST

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
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