CAUSE NO. 2023-07385

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WAJHAT ALI KHAN

VS.

GEORGE A. OGGERO

IN THE DISTRICT COURT 295TH JUDICIAL DISTRICT OF HARRIS COUNTY, TEXAS

DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S UNTIMELY JURY REQUEST

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant George A. Oggero ("**Oggero**") files this Motion to Strike Defendant's Untimely Jury Request ("**Motion**") and, in support, respectfully shows the Court as follows:

MOTION SUMMARY

1. On February 3, 2023 (<u>not</u> February 22, 2023, as Plaintiff's counsel claimed in his *Objection to Trial Setting and Motion for Continuance*), Plaintiff filed this lawsuit, requesting a jury trial. However, Plaintiff, at that time, did not pay the jury fee.

2. On April 10, 2023, Plaintiff filed his *First Amended Petition*, again demanding a jury trial.

3. On April 27, 2023, Plaintiff filed a letter with this Court, communicating that the fee for the jury requested on February 3, 2023, and again on April 10, 2023, had been paid. *See* Ex. 1, Payment for Jury Trial.

4. The case file reflects the jury fee was paid on April 27, 2023, 4 days prior to the trial setting. *See* Ex. 2, Jury Fee Transaction Detail.

5. Plaintiff grossly delayed in paying the jury fee until a point in time when Plaintiff's request will impose additional injury upon Oggero. For all these reasons and those stated below, Plaintiff's jury request should be denied as untimely and improper under Texas Rule of Civil Procedure 216.

ARGUMENTS AND AUTHORITIES

6. The decision to deny a party's request for a jury trial is within the discretion of the trial court and is reviewed, on appeal, for abuse of discretion. *Monroe v. Alternatives in Motion*, 234 S.W.3d 56, 69 (Tex. App.—Houston [1st Dist.] 2007, no pet.). Abuse of discretion will only be found when the trial court's decision is arbitrary, unreasonable, and without reference to guiding principles. *Id.* "It is within the discretion of the trial court to deny a jury trial in the absence of a timely request or payment of a jury fee." *Id.*

PLAINTIFF FAILED TO TIMELY PAY THE JURY FEE.

7. The Texas Rules of Civil Procedure are clear regarding timely requesting a jury trial: "No jury trial shall be had in any civil suit, unless a written request for a jury trial is filed with the clerk of the court a reasonable time before the date set for trial of the cause on the non-jury docket, **but not less than thirty days in advance**." TEX. R. CIV. P. 216(a) (emphasis added).

8. Furthermore, as to payment of the jury fee, Texas Rule of Civil Procedure 216(b) provides that "[u]nless otherwise provided by law, a fee of ten dollars if in the district court and five dollars if in the county court <u>must be deposited with the clerk of the court within the time for making a written request for a jury trial</u>. The clerk shall promptly enter a notation of the payment of such fee upon the court's docket sheet. TEX. R. CIV. P. 216(b) (emphasis added).

9. Plaintiff requested a jury trial when he filed this lawsuit on February 3, 2023, which would have been timely, but he <u>never</u> paid the jury fee within the time for making the written jury request.

10. When Plaintiff amended his lawsuit on April 10, 2023, he again requested a jury trial, 21 days before the trial setting. Plaintiff did pay the jury fee this time, on April 27, 2023, 4 days prior to the trial setting. Although a fee was paid, it and the written jury request were both made less than thirty days prior to the trial setting.

11. As such, Plaintiff failed to timely file a written jury request and to timely deposit the jury fee within the time prescribed by the Texas Rules of Civil Procedure, requiring that Plaintiff's request for jury trial be denied.

PRAYER

For the foregoing reasons, Oggero prays that this Court grant Defendant's Motion, strike Plaintiff's jury request, and award and reimburse Oggero for all costs and reasonable and necessary attorney's fees, and grant any such other relief to which Oggero may be justly entitled.

Respectfully submitted,

THE OGGERO LAW FIRM

George A. Oggero

Attorney for George A. Oggero Texas Bar No.: 24060360 1220 Blalock Rd., Suite 300 Houston, Texas 77055 Phone: 713.364.5759 Fax: 844.438.6546 Email: george@golawtexas.com

CERTIFICATE OF SERVICE

I certify that a true copy of this document was served on all parties of record in accordance with Rule 21a of the Texas Rules of Civil Procedure on the following on May 1, 2023.

George A. Oggero Attorney for George A. Oggero

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.

George Oggero on behalf of George Oggero Bar No. 24060360 george@golawtexas.com Envelope ID: 75159139 Filing Code Description: Motion (No Fee) Filing Description: Motion to Strike Plaintiff's Untimely Jury Request Status as of 5/1/2023 9:03 AM CST

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