



evidence is committed to the trial court's sound discretion. *Gee v. Liberty Mut. Fire Ins. Co.*, 765 S.W.2d 394, 396 (Tex. 1989).

## II. OBJECTIONS

### A. Plaintiff has not authenticated Exhibits 1 through 17.

Plaintiff has not authenticated or otherwise provided the Court with any foundation to admit the exhibits attached to its Response by affidavit. It is now too late for Plaintiff to attempt to authenticate its Exhibits 1 through 33 by affidavit. Under Rule 120a, affidavits must be served at least 7 days before the hearing on the special appearance. Tex. R. Civ. P. 120a(3); *Tempest Broad. Corp. v. Imlay*, 150 S.W.3d 861, 870 (Tex. App.–Houston [14th Dist.] 2004, no pet.) (upholding trial court's refusal to consider untimely affidavit at special appearance hearing). The Court has some discretion to order a continuance under Rule 120a(3), but only in response to the affidavit of the party opposing the special appearance who claims it cannot adequately prepare for the special appearance hearing. *Id.* That part of the rule is inapplicable here because Plaintiff has been given a full opportunity for jurisdictional discovery and prepared a lengthy Response—any affidavit subsequently filed by Plaintiff is simply untimely.

As a result, Plaintiff's Exhibits 1–33 are unauthenticated and inadmissible evidence. Rule 901(a) of the Rules of Evidence requires authentication as a condition precedent to admissibility of evidence. Tex. R. Evid. 901. At this juncture, Plaintiff lacks any authentication of Exhibits 1–33. Plaintiff did not, and now cannot, authenticate Exhibits 1–33 by supporting affidavit. Any subsequent supporting affidavit purporting to authenticate Exhibits 1–33 would be untimely under Rule 120a.

**B. Plaintiff has not authenticated Exhibits 1 through 17 because Plaintiff did not file them with his Response.**

ECSBC objects to Exhibits 1 through 17 of Plaintiff's Response because Plaintiff did not file those documents with the Court. It is therefore impossible to confirm whether they are authentic under Rule 901(a), and Plaintiff has therefore not established the necessary foundation for their consideration by the Court.

ECSBC reserves the right to make additional objections to Exhibits 1 through 17 if and when such exhibits are offered into evidence and can be evaluated for admissibility.

**C. The Guidepost Report (Exhibit 1) and Appendix (Exhibit 15) are hearsay and irrelevant.**

Plaintiff's Response indicates that Exhibits 1 and 15 are the Guidepost Report and Appendix, respectively. In addition to not filing these exhibits with the Court or authenticating them, Exhibits 1 and 15 are inadmissible on hearsay and relevance grounds.

Exhibits 1 and 15 are hearsay because they are out-of-court statements offered to prove the truth of the matter asserted. *See* Tex. R. Evid. 801. They constitute out-of-court statements by Guidepost, they are offered to prove the truth of the matter asserted, and they do not fall within any of the exceptions listed in Rules 801(e) or 802. They are therefore inadmissible.

Further, Exhibits 1 and 15 also contain hearsay-within-hearsay, in that those hearsay documents also contain out-of-court statements by declarants other than Guidepost. That hearsay-within-hearsay also does not fall within any of the exceptions listed in Rules 801(e) or 802 and is therefore inadmissible.

ECSBC further objects to Exhibit 1 and Exhibit 15 as irrelevant under Rule 402 to the Court's determination of whether it has jurisdiction over ECSBC. As briefed in detail in ECSBC's Memorandum in Support to Its Amended Special Appearance, this Court may only exercise specific jurisdiction if there is "a substantial connection between" ECBSC's contacts with Texas

“and the operative facts of [this case.]” *Watamar Holding, S.A. v. SFM Holdings, S.A.*, 583 S.W.3d 318, 326 (Tex. App.—Houston [14th Dist.] 2019, no pet.). Plaintiff uses the Guidepost Report and Appendix to advance his theory that ECSBC engaged in a “decades-long cover-up,” but there is nothing to connect anything in the Guidepost Report or Appendix to any such coverup. The required substantial connection simply does not exist. Exhibits 1 and Exhibit 15 are therefore irrelevant to this Court’s jurisdictional determination. *See* Tex. R. Evid. 401, 402.

**D. The SBC’s initial disclosures (Exhibit 21) are inadmissible against ECSBC.**

ECSBC objects to Plaintiff’s attempted use of the Rule 194 disclosures of Defendant the Southern Baptist Convention (“SBC”) because initial disclosures may only be used against the responding party. *See* § 2 Requests for Disclosure—Cases filed before 1-1-2021, O’Connor’s Texas Rules Civil Trials Ch. 6-E § 2.6 (2021 ed.) (“The procedures for using disclosures as evidence is similar to that for using answers to interrogatories”); Tex. R. Civ. P. 197.3 (“Answers to interrogatories may be used only against the responding party.”).

ECSBC likewise objects to the insurance policy attached to SBC’s disclosures because Plaintiff has not authenticated it. *See* Tex. R. Evid. 901. Documents produced by SBC are not authenticated *as to ECSBC*. *See* Tex. R. Civ. P. 193.7 (“A party’s production of a document in response to written discovery authenticates the document for use *against that party* in any pretrial proceeding or at trial . . . .” (emphasis added)).

**E. The 501(c)(3) letter (Exhibit 22) is hearsay, not authenticated, and irrelevant.**

ECSBC objects to Exhibit 22 (the “501(c)(3) letter”) as inadmissible hearsay. Plaintiff attempts to offer the contents of the 501(c)(3) letter as an out-of-court statement for the truth of the matter asserted. *See* Tex. R. Evid. 801, 802. Further, the 501(c)(3) letter is not addressed, dated, or signed, and it is therefore impossible to ascertain the identity of the declarant. There are no

exceptions to the hearsay rule that justify Plaintiff's use of Exhibit 22. *See* Tex. R. Evid. 801(e), 802.

ECSBC also objects to the 501(c)(3) letter because it is not authenticated as to ECSBC because ECSBC did not produce this document. *See* Tex. R. Civ. P. 193.7; Tex. R. Evid. 901.

ECSBC objects to Exhibit 22 as irrelevant under Rule 402 to the Court's determination of whether it has jurisdiction over ECSBC. Plaintiff uses the letter as evidence of ECSBC's alleged control over churches. However, as stated above, there is no way to determine that this letter was in fact sent to a church. More importantly, Plaintiff attempts to use the phrase "legal counsel" to constitute control. The letter, however, provides no such evidence. Legal advice does not equate to actual control, but merely evidence that ECSBC fulfills its advisory role promulgated by its Bylaws. Plaintiff must show *actual* atypical or abnormal control between SBC and ECSBC. The letter does not even mention SBC. The letter is irrelevant to the Court's jurisdictional determination. *See* Tex. R. Evid. 401, 402.

**F. The Houston Chronicle article (Exhibit 26) is inadmissible hearsay and irrelevant.**

ECSBC objects to Exhibit 26 on the grounds that the Houston Chronicle article ("Article") is inadmissible hearsay. The entire Article and the excerpt cited by Plaintiff are hearsay because they are out-of-court statements offered to prove the truth of the matter asserted. *See* Tex. R. Evid. 801. They constitute out-of-court statements by the author of the Article, they are offered to prove the truth of the matter asserted, and they do not fall within any of the exceptions listed in Rules 801(e) or 802. They are therefore inadmissible.

Further, Exhibit 26 contains hearsay-within-hearsay, in that those hearsay documents also contain out-of-court statements by declarants other than the author of the Article. That hearsay-within-hearsay also does not fall within any of the exceptions listed in Rules 801(e) or 802 and is therefore inadmissible.

ECSBC further objects to Exhibit 26 as irrelevant to the Court’s determination of whether it has jurisdiction over ECSBC. The Article does not evidence or relate to any connection between ECSBC and Texas nor connection with the operative facts of this case—the Article was published decades after the conduct alleged in the Petition. Exhibit 26 is therefore irrelevant to this Court’s jurisdictional determination. *See* Tex. R. Evid. 401, 402.

**G. The “Alleged Abuser List” (Exhibit 29) is hearsay and irrelevant.**

ECSBC objects to Exhibit 29 on the grounds that the “Alleged Abusers List” (“List”) is inadmissible hearsay. The List is hearsay because it is an out-of-court statement offered to prove the truth of the matter asserted. *See* Tex. R. Evid. 801. It constitutes out-of-court statements by the author of the List, it is offered to prove the truth of the matter asserted, and it does not fall within any of the exceptions listed in Rules 801(e) or 802. It is therefore inadmissible.

Further, Exhibit 29 contains hearsay-within-hearsay, in that the hearsay document also contains out-of-court statements by declarants other than the author of the List. That hearsay-within-hearsay also does not fall within any of the exceptions listed in Rules 801(e) or 802 and is therefore inadmissible.

ECSBC further objects to Exhibit 29 on the grounds that the List is irrelevant to the Court’s jurisdictional determination. First, Plaintiff attributes a redacted entry on the List as ECSBC including Pressler on the List, the contents of which cannot be proved by Exhibit 29. *See* Tex. R. Evid. 1002. Second, Plaintiff glosses over the fact that the supposed “Pressler” entry was added to the List in 2017, the same year Plaintiff filed this Action. This List has no bearing on ECSBC’s contacts with Texas nor the operative facts of this Action, because those operative facts occurred no later than 2003. Exhibit 29 is therefore irrelevant. *See* Tex. R. Evid. 401, 402.

#### **H. Evidentiary Objections to the Greg Warner articles (Exhibit 31 and Exhibit 32)**

ECSBC objects to Exhibits 31 and 32 as inadmissible hearsay. Plaintiff attempts to use these articles as out-of-court statements offered for the truth of the matter asserted. Plaintiff cites to the articles to purportedly prove that ECSBC had knowledge of child sex abuse in 1989. This is inadmissible hearsay and improper evidence. *See* Tex. R. Evid. 801; Tex. R. Evid. 802.

ECSBC also objects to Exhibits 31 and 32 as irrelevant to the Court's jurisdictional determination. To confer jurisdiction, Plaintiff must prove that ECSBC had knowledge of the sexual abuse *against him* alleged in his Petition. The child abuse article (Exhibit 31) fails to demonstrate anything but general recognition of child sex abuse. The article does even not attribute that general recognition to ECSBC, rather it focuses on the individual church efforts to combat and prevent child sex abuse. The survey article (Exhibit 32) likewise fails to demonstrate ECSBC's knowledge. The survey was not conducted by ECSBC and there is no indication ECSBC was ever made aware of the results. Lastly, these articles cannot overcome Plaintiff's testimony that he never told ECSBC or SBC, or anyone else, about the events alleged in his Petition.

Exhibits 31 and 32 are therefore irrelevant to personal jurisdiction. *See* Tex. R. Evid. 401, 402.

### **III. CONCLUSION**

For these reasons, the Court should strike all of the Exhibits attached to Plaintiff's Response to ECSBC's Amended Special Appearance for not being authenticated, and strike Exhibits 1–17, 21–22, 26, 29, and 31–32 for the additional reasons stated above.

Dated: February 24, 2023

Respectfully submitted,

By: /s/ Gene R. Besen

**GENE R. BESEN**

Texas Bar No. 24045491

[gbesen@bradley.com](mailto:gbesen@bradley.com)

**WILLIAM S. SNYDER**

Texas Bar No. 00786250

[wsnyder@bradley.com](mailto:wsnyder@bradley.com)

**ROBERT FORD**

Texas Bar No. 24074219

[rford@bradley.com](mailto:rford@bradley.com)

**JARED B. CAPLAN**

Texas Bar No. 24031913

[jcaplan@bradley.com](mailto:jcaplan@bradley.com)

**BRIAN M. GILLETT**

Texas Bar No. 24069785

[bgillett@bradley.com](mailto:bgillett@bradley.com)

**LAUREN M. GREEN**

Texas Bar No. 24114574

[lagreen@bradley.com](mailto:lagreen@bradley.com)

**BRADLEY ARANT BOULT CUMMINGS LLP**

JPMorgan Chase Tower

600 Travis Street, Suite 5600

Houston, Texas 77002

Telephone (713) 576-0300

Facsimile (713) 576-0301

**ATTORNEYS FOR THE EXECUTIVE  
COMMITTEE OF THE SOUTHERN BAPTIST  
CONVENTION**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served on all counsel of record, in accordance with the Texas Rules of Civil Procedure, on this, the 24th day of February, 2023.

/s/ Gene R. Besen

**GENE R. BESEN**



## 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.

Tiffany Noullet on behalf of Gene Besen  
Bar No. 24045491  
tnoullet@bradley.com  
Envelope ID: 73109830  
Status as of 2/27/2023 7:03 AM CST

### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Kevin T.Jacobs		kevin.jacobs@bakerbotts.com	2/24/2023 5:08:50 PM	SENT
Jennifer DAufricht		jaufricht@thompsoncoe.com	2/24/2023 5:08:50 PM	SENT
Cassie Dallas		cdallas@thompsoncoe.com	2/24/2023 5:08:50 PM	SENT
Edward Tredennick		Ted@dtlawyers.com	2/24/2023 5:08:50 PM	SENT
Joni Sullivan		jsullivan@thompsoncoe.com	2/24/2023 5:08:50 PM	SENT
Douglas A.Daniels		doug.daniels@dtlawyers.com	2/24/2023 5:08:50 PM	SENT
Shelby G.Hall		shall@thompsoncoe.com	2/24/2023 5:08:50 PM	SENT
Edward Tredennick	24070760	ted@dtlawyers.com	2/24/2023 5:08:50 PM	SENT
David B. Dowell	6077950	bdowell@namanhowell.com	2/24/2023 5:08:50 PM	SENT
Tracy Graves Wolf	24004994	tracy.wolf@huschblackwell.com	2/24/2023 5:08:50 PM	SENT
Jay Ronald Aldis	785656	jaldis@grayreed.com	2/24/2023 5:08:50 PM	SENT
Jennifer Dechamplain Aufricht	1429050	jaufricht@thompsoncoe.com	2/24/2023 5:08:50 PM	SENT
Starla Barker		starla.barker@bakerbotts.com	2/24/2023 5:08:50 PM	SENT
Barry Flynn		bflynn@grsm.com	2/24/2023 5:08:50 PM	SENT
Michael S.Goldberg		michael.goldberg@bakerbotts.com	2/24/2023 5:08:50 PM	SENT
Andrea Wilson		awilson@thompsoncoe.com	2/24/2023 5:08:50 PM	SENT
Jared Brandon Caplan	24031913	jcapan@bradley.com	2/24/2023 5:08:50 PM	SENT
Robert Ford	24074219	rford@bradley.com	2/24/2023 5:08:50 PM	SENT
Tiffany Noullet		tnoullet@bradley.com	2/24/2023 5:08:50 PM	SENT
Gene Ross Besen	24045491	gbesen@bradley.com	2/24/2023 5:08:50 PM	SENT
Brian Gillett	24069785	bgillett@bradley.com	2/24/2023 5:08:50 PM	SENT
William Sandy Snyder	786250	wsnyder@bradley.com	2/24/2023 5:08:50 PM	SENT
Lu Pham	15895430	lpham@phamharrison.com	2/24/2023 5:08:50 PM	SENT
Antonio Allen	24069045	aallen@phamharrison.com	2/24/2023 5:08:50 PM	SENT

## 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.

Tiffany Noullet on behalf of Gene Besen  
Bar No. 24045491  
tnoullet@bradley.com  
Envelope ID: 73109830  
Status as of 2/27/2023 7:03 AM CST

### Case Contacts

Amanda Roark	24084831	aroark@phamharrison.com	2/24/2023 5:08:50 PM	SENT
Stephen AWood		swood@thompsoncoe.com	2/24/2023 5:08:50 PM	ERROR
Yvonne Rager		yvonne.rager@bakerbotts.com	2/24/2023 5:08:50 PM	SENT
Sasannah Dolan-Williams		Sasannah.Williams@lewisbrisbois.com	2/24/2023 5:08:50 PM	ERROR
Kathy Truong		Kathy.Truong@Lewisbrisbois.com	2/24/2023 5:08:50 PM	SENT
Halley Yzquierdo		Halley.Yzquierdo@lewisbrisbois.com	2/24/2023 5:08:50 PM	SENT
Lauren Monroe		lmonroe@namanhowell.com	2/24/2023 5:08:50 PM	SENT
Diana Dobson		ddobson@namanhowell.com	2/24/2023 5:08:50 PM	SENT
David Oubre		David.Oubre@Lewisbrisbois.com	2/24/2023 5:08:50 PM	SENT
Shashi Patel		Shashi.Patel@lewisbrisbois.com	2/24/2023 5:08:50 PM	SENT
Terre Meza		Terre.Meza@lewisbrisbois.com	2/24/2023 5:08:50 PM	SENT
Claire Harbert		charbert@namanhowell.com	2/24/2023 5:08:50 PM	SENT
Elizabeth Pacheco		epacheco@namanhowel.com	2/24/2023 5:08:50 PM	ERROR
Angela Davis		adavis@bradley.com	2/24/2023 5:08:50 PM	SENT
Christopher C.White		Chris.White@lewisbrisbois.com	2/24/2023 5:08:50 PM	SENT
Travis LGray		travis.gray@bakerbotts.com	2/24/2023 5:08:50 PM	SENT
Jacob Wirfel		jacob.wirfel@bakerbotts.com	2/24/2023 5:08:50 PM	SENT
Kendall Black		kendall.black@bakerbotts.com	2/24/2023 5:08:50 PM	SENT
Ryan Owen		Rowen@thompsoncoe.com	2/24/2023 5:08:50 PM	SENT
Gordan Truong		gtruong@thompsoncoe.com	2/24/2023 5:08:50 PM	SENT
Kasia Olkowski		kasia@dtlawyers.com	2/24/2023 5:08:50 PM	SENT
Sabrina R.Tour		sabrina@dtlawyers.com	2/24/2023 5:08:50 PM	SENT
Katherine Henderson		khenderson@bradley.com	2/24/2023 5:08:50 PM	SENT
Madeleine Bourdon		mbourdon@bradley.com	2/24/2023 5:08:50 PM	SENT
Nandita Dasrath		ndasrath@bradley.com	2/24/2023 5:08:50 PM	SENT

### 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.

Tiffany Noullet on behalf of Gene Besen  
Bar No. 24045491  
tnoullet@bradley.com  
Envelope ID: 73109830  
Status as of 2/27/2023 7:03 AM CST

#### Case Contacts

Lauren Green		lagreen@bradley.com	2/24/2023 5:08:50 PM	SENT
--------------	--	---------------------	----------------------	------

Associated Case Party: H.PaulPressler

Name	BarNumber	Email	TimestampSubmitted	Status
Edward Tredennick		Ted@dtlawyers.com	2/24/2023 5:08:50 PM	SENT
Douglas A.Daniels		doug.daniels@dtlawyers.com	2/24/2023 5:08:50 PM	SENT
Kasia Olkowski		kasia@dtlawyers.com	2/24/2023 5:08:50 PM	SENT