

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

CHRISTOPHER A. FAULKNER, et al.

Defendants.

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Civil Action No. 3:16-CV-1735-D

**STATE COURT PLAINTIFFS’ UNOPPOSED MOTION FOR LEAVE TO FILE
DOCUMENTS UNDER SEAL IN SUPPORT OF THEIR RESPONSE TO
RECEIVER’S MOTION FOR A BAR ORDER, AND
REPLY TO THIRD MOTION TO LIFT STAY**

Pursuant to Local Rule 79.3, Jinsun, L.L.C., Silver Star Holdings Trust, TPH Holdings, L.L.C., Vertical Holdings, L.L.C., Steven M. Plumb, and J. Leonard Ivins (collectively “State Court Plaintiffs”) file this *Unopposed* Motion for Leave to File Documents Under Seal in Support of their Response to Receiver’s Motion for a Bar Order and their Reply to Receiver’s Response to State Court Plaintiffs’ Third Motion to Lift Stay and would respectfully shows the Court as follows:

**I.
Argument**

As this Court is aware from its various rulings with respect to its Stay Order, on November 28, 2017, State Court Plaintiffs sued Rothstein Kass under Cause No. CC-17-06249-C in County Court at Law No. 3 for Dallas County (“State Court Lawsuit”) for, *inter alia*, misrepresentations made to State Court Plaintiffs by Rothstein Kass.

In the State Court Lawsuit, there is a Protective Order, which allows the parties to designate certain documents as confidential. Under Section 4(a) of the Protective

Order, the parties in the State Court Lawsuit are allowed to show protected documents to any judge asserting jurisdiction over the matter.

In so far as Receiver's Motion to Enter a Bar Order is concerned, the amount of insurance that insures Rothstein Kass, its cash and indemnity reserves, and monies it received when it sold its assets to KPMG in June of 2014 have become directly relevant. That is, Receiver and Rothstein Kass have put Rothstein Kass' resources to pay Receiver and State Court Plaintiffs' claims in controversy. If leave is granted to file these documents under seal, they will prove that State Court Plaintiffs' claims pose absolutely no threat to the dissipation of assets in the receivership—notwithstanding the fact that Receiver does not own State Court Plaintiffs' claims. Furthermore, in order to prove that State Court Plaintiffs have direct claims that do not belong to Receiver, it has become necessary to file under seal certain documents which prove that Rothstein Kass knew that State Court Plaintiffs were relying upon the audited financials before the audit opinion was issued. This point of proof is important because it shows that State Court Plaintiffs have their own independent claims for, inter alia, negligent misrepresentation against Rothstein Kass, which clearly do not belong to Receiver.

The documents State Court Plaintiffs seek to file under seal have been designated as confidential under the Protective Order. Consequently, if leave of court is granted to file certain documents under seal, State Court Plaintiffs will be in a position to prove several contested issues, which have become relevant in light of positions taken by Receiver and Rothstein Kass. To this end, State Court Plaintiffs seek leave to file under seal the following bates labeled documents, which were otherwise designated as confidential under the State Court Lawsuit's Protective Order: RK-Jinsun 6851-6858;

RK-Jinsun 46791-46793; 42599-42600; 7524-7575; Kenneth Stephens depo: pp.'s 7-8, 11, 12, 150-151; KPMG 2837, 2844-2845; 2848-2849, 2862-2864, 17, 1253, and 1258. Along with a brief summary with citations, the documents State Court Plaintiffs seek to file under seal in the Appendix are numbered 1-87.

II.
Conclusion

In conclusion, this Court should grant State Court Plaintiffs' Motion for Leave to file the aforementioned documents under seal.

Certificate of Conference

On Tuesday, May 18, 2021, State Court Plaintiffs notified Receiver, Rothstein Kass, and KPMG that they would be seeking leave to file the aforementioned bates ranges under seal. All parties are *unopposed* to the relief sought herein. State Court Plaintiffs' Counsel therefore will send a proposed order to the Court for its consideration.

/s/ Brian P. Lauten

BRIAN P. LAUTEN

Respectfully Submitted,

BRIAN LAUTEN, P.C.



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VERTICAL HOLDINGS, L.L.C.**

CERTIFICATE OF SERVICE

In accordance with Rule 5b of the Federal Rules of Civil Procedure, the undersigned certifies that a true and correct copy of the foregoing instrument has been served upon all counsel of record via the ECF case manager system on this the 19th day of May 2021.

/s/ Brian P. Lauten

BRIAN P. LAUTEN