

NO. GN 1-23456

ABC SERVICES CORPORATION OF AUSTIN, L.P.	§	IN THE DISTRICT COURT OF AUSTIN,
	§	
	§	
Plaintiff,	§	
	§	
vs.	§	TRAVIS COUNTY, TEXAS
	§	
XYZ, INC.	§	
	§	
Defendant.	§	261st JUDICIAL DISTRICT

PLAINTIFF’S DESIGNATION OF ITEMS TO BE INCLUDED IN CLERK’S RECORD

TO: AMALIA RODRIQUEZ-MENDOZA, District Clerk, 302 Courthouse, 1000 Guadalupe Street, P.O. Box 1748, Austin, Texas 78767-1748

Under Texas Rule of Appellate Procedure 34.5, Plaintiff ABC Services Corporation of Austin, L.P. (“ABC Services”) files this designation of items to be included in the Clerk’s Record in the appeal of the final judgment in the above case.

REQUEST FOR MANDATORY ITEMS

ABC Services designates the following mandatory items specified in Texas Rule of Appellate Procedure 34.5 for inclusion in the sworn record:

1. all pleadings on which the summary judgment proceedings were held;
2. the court’s docket sheet;
3. the court’s order that is being appealed namely, the Final Judgment dated January 10, 2007;
4. any post-order motions and the court’s orders thereon;
5. all notices of appeal; and
6. all requests for preparation of the Clerk’s Record.

REQUEST FOR ADDITIONAL ITEMS

In addition, ABC Services designates the items listed below, all of which are specifically described below to make them readily identifiable:

06/06/05	Plaintiff's Original Petition, Application for Temporary Restraining Order and Application for Temporary and Permanent Injunction
06/06/05	Defendant's Opposition to Application for Temporary Restraining Order
06/06/05	Plaintiff's Temporary Restraining Order
06/28/05	Defendant's Original Answer
07/11/05	Defendant's Motion for Summary Judgment
07/25/05	Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment
08/19/05	Plaintiff's Motion to Reconsider Decision to Grant Summary Judgment
11/28/05	Plaintiff's Motion for Summary Judgment & Motion to Exclude Evidence With Notice of Hearing (with Attached Exhibits 1-5)
01/03/06	Defendant's Response to Plaintiff's Motion for Summary Judgment & Motion to Exclude Evidence (with Attached Exhibits A-G)
01/09/06	Motion for Leave to File Further Affidavit in Response to Plaintiff's Motion for Summary Judgment with Proposed Order (with Attached Exhibit 1)
01/10/06	Plaintiff's Response to Defendant's Motion for Leave to File Further Affidavit in Response to Plaintiff's Motion for Summary Judgment
01/17/06	Reply Brief in Further Support of Motion for Leave to File Further Affidavit in Response to Plaintiff's Motion for Summary Judgment
01/23/06	Plaintiff's Reply to Defendant's Reply Brief in Further Support of Motion for Leave to File Further Affidavit in Response to Plaintiff's Motion for Summary Judgment (with attached Exhibit 1)
08/15/05	Order Granting Defendant's Partial Summary Judgment
11/14/06	Order on Special Exceptions Filed by Plaintiff (Overruled)

11/14/06 Order Denying Defendant's Motion for Leave to File Further Affidavit in Response to Plaintiff's Motion for Summary Judgment
12/29/06 Plaintiff's Notice of Non-Suit as to Remaining Claims
01/10/07 Final Judgment

Under Texas Rule of Appellate Procedure 37.3, ABC Services will pay for the preparation of the Clerk's Record.

Respectfully submitted,

SMITH, FRANKLIN & JONES

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CERTIFICATE OF SERVICE

On February ____, 2007, a copy of the foregoing instrument was served, in compliance with Texas Rules of Civil Procedure 21 and 21a, on the following in the manner listed below:

Mary J. Green
RODGERS & HAMMERSTEIN
515 Congress Ave., Suite 0000
Austin, Texas 78701

Via Regular Mail

Counsel for Appellee/Defendant

John M. Smith