

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

**LOUIS D. GOMEZ, DAVID JACKSON,
DON KELLEY, and FRED WHITE** §
Plaintiffs, §

v. §

CASE NO. 4:08CV150

**UNITED STATES DEPARTMENT
OF THE ARMY, UNITED STATES
ARMY CORPS OF ENGINEERS,
TULSA DISTRICT, and
GRAYSON CENTRAL APPRAISAL
DISTRICT,** §
Defendants §

AGREED ORDER

The plaintiffs Louis D. Gomez, David Jackson, Don Kelley, and Fred White ("Plaintiffs") and Defendant Grayson Central Appraisal District ("GCAD") in the above-captioned case have reached full and complete settlement of all claims brought by Plaintiffs in this case and the plaintiffs in related proceedings in State District courts. Therefore, the Parties (Plaintiffs and GCAD) mutually agree, as expressly and more fully provided in their Settlement and Compromise Agreement, executed on August 13 and 14, 2009 ("Settlement Agreement"), a copy of which (except for the confidential Exhibit C) is attached hereto, to fully compromise, settle, and resolve all claims asserted by Plaintiffs in this action with finality and without the need for further litigation, and without any admission of liability by any party. In light of the foregoing, Plaintiffs and GCAD have jointly moved for entry of this Agreed Order. Accordingly, it is hereby

1. **ORDERED** that **GCAD** is enjoined as follows:

(a) from utilizing any of the Protected Information that is described in the Settlement Agreement;

(b) to purge its appraisal rolls of Protected Information as provided in the Settlement Agreement; and

(c) to return the Protected Information as provided in the Settlement Agreement.

2. **ORDERED** that, except as provided in paragraph 1 herein, Plaintiffs' claims against **GCAD** set forth in their First Amended Complaint be, and hereby are, **DISMISSED WITH PREJUDICE**, with the respective parties bearing their own fees, costs, and expenses.

It is so ORDERED.

SIGNED this 24th day of August, 2009.

A handwritten signature in black ink, reading "Michael H. Schneider", written over a horizontal line.

MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

LOUIS D. GOMEZ, DAVID JACKSON,
DON KELLEY, and FRED WHITE
Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF THE ARMY, UNITED STATES
ARMY CORPS OF ENGINEERS,
TULSA DISTRICT, and
GRAYSON CENTRAL APPRAISAL
DISTRICT,
Defendants

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CASE NO. 4:08CV150

SETTLEMENT & COMPROMISE AGREEMENT

This Settlement & Compromise Agreement ("Agreement") is entered into by Plaintiffs **LOUIS D. GOMEZ, DAVID JACKSON, DON KELLEY and FRED WHITE** ("Federal Plaintiffs") and Defendant, **GRAYSON CENTRAL APPRAISAL DISTRICT** ("GCAD"). The Federal Plaintiffs and Defendant GCAD are referred to collectively herein as "the Parties." The United States Department of the Army (along with the United States Army Corps of Engineers, Tulsa District) is a co-defendant with GCAD in this matter, and is not a signatory to this Agreement because it has reached a separate settlement with the Federal Plaintiffs, thereby resulting in this Agreement between the Parties.

DEFINITIONS

1. For purposes of this Settlement and Compromise Agreement, the following definitions apply:
 - a. "**Federal Defendant**" means the United States Department of the Army (including its component, the United States Army Corps of Engineers, Tulsa District).
 - b. "**GCAD**" is the Grayson Central Appraisal District, a political subdivision of the State of Texas in Grayson County, Texas.

- c. "**Texoma Shoreline Management Plan**" is the published guidance by which the Federal Defendant administers Lake Texoma, Denison Dam, and the portion of the Red River under its control.
- d. "**SUP**" is a Shoreline Use Permit issued by the Federal Defendant pursuant to the Texoma Shoreline Management Plan, under the authority of 36 C.F.R. § 327.30(f)(1).
- e. "**FOIA**" means the federal Freedom of Information Act, 5 U.S.C. § 552.
- f. "**Protected information**" means: (i) "files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" under 5 U.S.C. § 552(b)(6); (ii) "any record which is contained in a system of records" under 5 U.S.C. § 552a(b), specifically including SUP applications and the name, address, and SUP number of the holder of an SUP; and (iii) any information provided by the Federal Defendant to GCAD pursuant to FOIA requests made in 2007—2008, and which is held by GCAD and any of its agents, assigns, or contractors, including the Grayson County Appraisal Review Board, which was derived from (i) and (ii) of this sub-paragraph.
- g. "**Privacy Act**" means the federal Privacy Act, 5 U.S.C. § 552a.
- h. "**AR 340-21**" means the Department of Army Regulation 340-21, entitled "The Army Privacy Program."
- i. "**AR 25-55**" means the Department of Army Regulation 25-55, entitled "The Department of the Army Freedom of Information Act Program."
- j. "**TPIA**" means the Texas Public Information Act, TEX. GOV'T CODE ANN. § 552.001, *et seq.* (Vernon 2008).
- k. "**Tax Code**" means the Texas Tax Code § 1.01, *et seq.* (Vernon 2008).
- l. "**State Court Cases**" means the following matters involving GCAD and various plaintiffs that are currently pending in the state district courts or court of appeals identified below:
 - (i) Cause No. 08-1548-397; *Gene & Jo Adair, et. al. v. Grayson Central Appraisal District and Grayson County Appraisal Review Board*; In the 397th District Court of Grayson County, Texas, currently on appeal to the Dallas Court of Appeals as Docket No. 05-09-0443-CV;
 - (ii) Cause No. 1625-015, *Nancy J. Harris and Lynda K. Delosantos v. Grayson Central Appraisal District and Grayson County Appraisal Review Board*, In the 15th District Court of Grayson County, Texas; and
 - (iii) Cause No. 07-1878-336, *Randy C. Phillips v. Grayson Central Appraisal District and Grayson County Appraisal Review Board*, In the 397th District Court of Grayson County, Texas.

- m. "**The Property**" means the private "boat docks" located on Lake Texoma in Grayson County, as identified on Exhibit C, attached hereto, including those owned by the Federal Plaintiffs in this case and the plaintiffs in the State Court Cases (who are more fully identified in the various original and amended petitions or complaints).

RECITATIONS

2. The original complaint by Federal Plaintiffs, as well as other plaintiffs since voluntarily dismissed, was filed on April 29, 2008, against the Federal Defendant and GCAD, alleging the following:

- a. That the Federal Defendant violated the Privacy Act by disclosing protected information to GCAD pursuant to FOIA requests made by GCAD in 2007 and 2008.
- b. That GCAD violated TPIA because its use of information provided by the Federal Defendant in response to GCAD's FOIA requests in 2007 and 2008 constitutes an improper distribution of information deemed confidential under law, prohibited by TEX. GOV'T CODE §§ 552.007(a), 552.101, and 552.352(a).
- c. That GCAD breached a contract with the Federal Defendant regarding GCAD's limited official use of the information provided GCAD by the Federal Defendant, and that Federal Plaintiffs were third party beneficiaries of said contract and were harmed by its breach.

3. Federal Plaintiffs' Amended Complaint was filed on August 5, 2008, and alleged the following:

- a. That the Federal Defendant violated the Privacy Act and the federal Administrative Procedure Act by disclosing protected information to GCAD pursuant to FOIA requests made in 2007 and 2008 by GCAD.
- b. That the Federal Defendant violated the federal Administrative Procedure Act by disclosing protected information to GCAD pursuant to GCAD's FOIA requests in 2007 and 2008.
- c. That GCAD violated TPIA because its use of information provided by the Federal Defendants in response to GCAD's FOIA requests in 2007 and 2008 constitutes an improper distribution of information deemed confidential under law, prohibited by TEX. GOV'T CODE §§ 552.007(a), 552.101, and 552.352(a).
- d. That GCAD breached a contract with the Federal Defendant regarding GCAD's limited official use of the information provided GCAD by the Federal Defendant,

and that Federal Plaintiffs were third party beneficiaries of said contract and were harmed by its breach

4. The State Court Cases were brought by various property owners whose information and records were disclosed to GCAD by the Federal Defendant in response to GCAD's FOIA requests in 2007 and 2008. The 2007 information was used to identify and list property on the official Grayson County Appraisal roll in 2007.

5. The State Court Cases were brought against GCAD pursuant to Tax Code section 25.25 or after the exhaustion of administrative remedies required by Chapter 41 of the Tax Code and pursuant to Chapter 42 of the Tax Code.

6. The State Court Cases alternatively and generally plead the following claims:

- a. The Property is excessively appraised;
- b. The Property is unequally appraised;
- c. The Property is exempt from taxation; and
- d. GCAD's appraisal roll contains an error regarding the Property pursuant to section 25.25 of the Tax Code.

7. The Federal Defendant has subsequently entered into a settlement agreement with Federal Plaintiffs resolving all legal and fact issues relating to the allegations raised against them in the Federal Plaintiffs' Amended Complaint. Without admitting liability or a violation of any law, the Federal Defendant agreed that it has determined that: its disclosures to GCAD, in response to GCAD FOIA requests in 2007 and 2008, of protected information about SUP holders were not fully consistent with the requirements of AR 25-55, ¶ 5-103; the owner names, addresses, and telephone numbers associated with any SUP are exempt from release under FOIA pursuant to FOIA Exemption 6; and any disclosure of protected information about SUP holders by the Corps to GCAD, either directly or indirectly, or to anyone acting on GCAD's behalf is subject to the specific requirements of the Privacy Act.

8. The Parties agree that the Federal Defendant's disclosure of SUP information to GCAD in 2007 and 2008 and the subsequent settlement between the Federal Defendant and Federal Plaintiffs in this cause has negatively affected GCAD's substantive claims and assertions concerning taxability and valuation of the Property for the 2007 and 2008 tax year in the pending State Court Cases, and whether such issues would be reached and/or resolved therein.
9. For tax year 2007 and later, the Parties agree that the taxable status of the Property remains in dispute. In light of this agreement, and the fact that the valuation and taxable status is disputed by the parties for tax year 2007 and later, and as consideration for a global resolution of all legal and factual matters between the Parties, and solely for the purposes of settlement and compromise, the Parties agree that it is in the best interest of the Parties to settle all cases (state and federal) and all ancillary issues, including any criminal allegations against GCAD, or any of its employees, agents or staff, that arose out of these cases.
10. The Parties now mutually agree to fully compromise, settle, and resolve all claims asserted by Federal Plaintiffs in this action with finality and without the need for further litigation, and without any admission of liability by any party, on the terms and conditions set forth below.

SETTLEMENT TERMS & CONDITIONS

11. Simultaneously with the execution and delivery of this Agreement, the Parties shall execute, deliver, and cause to be filed immediately in the United States District Court for the Eastern District of Texas an Agreed Judgment, in the form appended hereto as *Exhibit A*, along with a joint motion requesting signing and entry of the Agreed Judgment.

12. Within thirty (30) days of the entry of the Agreed Judgment (referenced in paragraph 11), GCAD will enter into agreed final judgments in the State Court Cases which will contain operative language to delete the accounts from GCAD's appraisal rolls, in a form which is substantially similar to that appended as *Exhibit B*.
13. The Agreed Final Judgments in the State Court Cases will direct the Chief Appraiser of GCAD to issue supplemental appraisal rolls to reflect the changes to the appraisal rolls and to notify the appropriate assessor-collector for the constituent taxing units for Grayson County of such changes so that refunds of the 2007 taxes paid (under protest or otherwise) by those individuals or entities whose Protected Information GCAD either received or derived from the Federal Defendant in 2007 or 2008 may be processed. All of the individuals or entities to receive refunds pursuant to this paragraph, and the Property as to which they are entitled to receive these refunds, are identified in the list appended as *Exhibit C*, the entire list of which is to receive such refunds. The individuals or entities and Property listed on Exhibit C constitute all the individuals or entities and accounts to be included in the refund part of this Agreement. The Parties further agree that *Exhibit C* shall remain confidential and not be publicly disclosed and that its use is to be strictly limited to carrying out, and ensure and monitor by Plaintiffs and Defendant the carrying out, of this Agreement and for no other purpose. The Parties still further agree that, for those individuals or entities and Property indicated with an # on Exhibit C, the refunds shall be delivered to Mr. Thomas Scott Smith, 120 South Crockett Street, P. O. Box 354, Sherman, Texas 75091-0354, to be held in trust by him. The Parties still further agree that, for those individuals or entities and Property indicated with an * on Exhibit C, GCAD will extract the boat dock value from that account and create a new account which shall constitute the

basis on which the relevant refund shall be calculated. Upon completion of the refund process set forth herein, the new account will be deleted through the step outlined in *Exhibit D*.

14. For the 2007 – 2009 tax years, except as set forth above in paragraphs 12 and 13, GCAD agrees that it will not issue or create supplemental appraisal rolls related to those individuals or entities whose Protected Information GCAD received from the Federal Defendants in 2007 or 2008 and identified in the full listing in *Exhibit C*.
15. Within ten (10) days after the entry of the last of the final judgments in the State Court Cases, counsel for the plaintiffs in the State Court Cases will submit a letter or letters to the Grayson County Criminal District Attorney withdrawing any and all criminal complaints and allegations, against any and all current and former GCAD employees, agents, officers, members of GCAD's board of directors, and other GCAD staff, including but not limited to Chief Appraiser Teresa Parsons.
16. With regard to the individuals or entities whose property was identified, contained in, or derived from the records and information GCAD received from the Federal Defendant in 2007 or 2008, and currently listed on GCAD's 2007 appraisal roll, GCAD will delete such individuals or entities and Property from the official 2007-2009 Grayson County Appraisal Rolls. *Exhibit C* lists these individuals or entities and the Property entitled to such deletion of information. The deletion of the information shall be through the steps outlined in appended *Exhibit D*. The property of any individual whose property is not located on Lake Texoma or as to whom information was not released to GCAD by the Federal Defendant may remain listed on the official 2007-2009 Grayson County Appraisal Rolls and will be excluded from this settlement.

17. Without admitting liability, and without admitting a violation of TPIA or any other law, and within thirty days after the constituent taxing units issue tax refunds, as referenced in paragraph 13, GCAD will purge, using the steps outlined in *Exhibit D*, the records and information it received from the Federal Defendant in 2007 and 2008 from its files, and return all copies, electronic or otherwise, it, its agents or its contractors may have of such information, to the Federal Defendants.
18. For the 2007 – 2009 tax years the Parties agree that the valuation and taxable status of the Property is not resolved. In light of this understanding, and as consideration for the global settlement contained herein, GCAD agrees to the entry of an order which permanently enjoins GCAD from accessing or utilizing any of the Protected Information which it received from the Federal Defendant in 2007 or 2008.
19. The Parties agree that the Protected Information is voluminous, and that there is a future and continuing possibility that, even after full implementation of this Agreement, including the purge using the steps outlined in *Exhibit D*, GCAD nonetheless may discover a discrete portion of the Protected Information that was inadvertently not returned to the Federal Defendant. In the event this occurs, and notwithstanding any other limitation herein, the Parties agree that GCAD will notify the Federal Defendant of the existence of the Protected Information and return it to the Federal Defendant no later than seven days after such discovery. Such delivery will be presumed to be made if the Protected Information is placed into the United States Postal Service, certified mail return receipt requested, to the Federal Defendant. A copy of the notification letter to the Federal Defendant will be contemporaneously placed into the United States Postal Service, certified mail return

receipt requested to Thomas Scott Smith, 120 South Crockett Street, P. O. Box 354, Sherman, Texas 75091-0354.

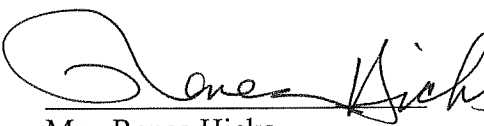
20. The Parties agree not to contest the alleged valuation or taxable status of the Property in Grayson County, Texas, until at least tax year 2010, absent a material change in the applicable law or a material change in facts relevant to this dispute regarding the manner in which the Federal Defendant administers the Texas Shoreline Management Plan related to its operation of Lake Texoma.
21. The Parties agree that, upon GCAD's compliance with the terms of this agreement, including Paragraphs 16, 17, and 19, nothing in this Agreement addresses whether GCAD may list the Property on the Grayson County Appraisal Roll beginning in tax year 2010 or at any point thereafter; provided, however, that any such listing may not be based on or related to any of the Protected Information. The Parties further agree that nothing in this Agreement constitutes a determination or agreement concerning the valuation or taxability of any such listed Property beginning in tax year 2010 or at any point thereafter.
22. The Parties agree that nothing in this Agreement precludes GCAD from its continuing constitutional and statutory obligation to review and reconfirm the valuation and taxable status of all property located in Grayson County, Texas. The Parties agree that nothing in this Agreement precludes GCAD from its continuing constitutional and statutory to add omitted property (including, but not limited to new construction) to the appraisal roll as it is discovered and that any such obligation applies to the 2010 tax year or at any point thereafter.
23. This Agreement, in whole or in part, is not and shall not be construed as an admission by GCAD to the truth of any allegation or the validity of any claim asserted in this action, the

State Court Cases, or GCAD's liability therein. Nor is this Agreement, in whole or in part, a concession or an admission of any fault or omission in any act or failure to act.

24. Except in judicial proceedings concerning breach of, or requiring judicial construction of, this Agreement, this Agreement, in whole or in part, shall not be offered or received into evidence against GCAD, any and all GCAD employees, agents, board of directors members or other GCAD staff, in any civil, criminal, or administrative action or be referred to against GCAD, any and all GCAD employees, agents, officers, members of GCAD's board of directors or other GCAD staff, or construed against GCAD, any and all GCAD employees, agents, members of GCAD's board of directors or other GCAD staff, as an admission or presumption of wrongdoing.
25. Federal Plaintiffs hereby forever fully, absolutely, and unconditionally release, acquit, and forever discharge GCAD, any and all GCAD employees, agents, officers, members of GCAD's board of directors or other GCAD staff from any and all claims, counter-claims, defenses asserted, liabilities, or damages, known or unknown, real or contingent, relating or pertaining to or arising out of the above-captioned litigation, the subject matter thereof, or the actions taken for or on behalf of GCAD relating thereto.
26. The Parties agree to be responsible for their own attorneys' fees, costs, and expenses incurred in this litigation.
27. The terms of the Agreement, and the attachments thereto, constitute the entire agreement of the Parties, and no statement, remark, agreement or understanding, oral or written, which is not contained herein, shall be recognized or enforced; nor does this Agreement reflect any agreed-upon purpose other than the desire of the Parties to reach a full and final conclusion of this action and to resolve the matter without the time and expense of further litigation.

28. This Agreement cannot be modified or amended except by an instrument, in writing, signed by the Parties therewith; nor shall any provision hereof be waived other than by a writing setting forth such waiver and signed by the party to be charged with such waiver.
29. This Agreement shall be subject to the approval of the Grayson Central Appraisal District's Board of Directors at a duly noticed and posted meeting of the Board, which meeting shall be convened no later than August 13, 2009. At a duly noticed and posted meeting of the Board on August 13, 2009, the Board approved this Agreement.

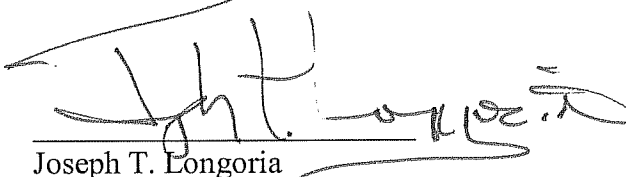
Dated: August 13, 2009

By: 
Max Renea Hicks
101 West 6th Street
Austin, Texas 78701
(512) 480-8231
(512) 480-9105 fax
Email: rhicks@renea-hicks.com

ATTORNEY FOR PLAINTIFFS

Dated: August 14, 2009

**PERDUE, BRANDON, FIELDER,
COLLINS & MOTT, L.L.P.**

By: 
Joseph T. Longoria
SBN: 12544860
1235 North Loop West, Suite 600
Houston, Texas 77008
(713) 862-1860
(713) 869-0030 Facsimile
Email: jlongoria@pbfc.com

**ATTORNEYS FOR DEFENDANT, GRAYSON
CENTRAL APPRAISAL DISTRICT**

EXHIBIT A
IN THE UNITED STATES COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

LOUIS D. GOMEZ, DAVID JACKSON, §
DON KELLEY and FRED WHITE §
Plaintiffs §

v. §

CASE NO. 4:08CV150

UNITED STATES ARMY CORPS OF §
ENGINEERS, TULSA DISTRICT, and §
GRAYSON CENTRAL APPRAISAL §
DISTRICT §
Defendants §

AGREED ORDER

Whereas the plaintiffs Louis D. Gomez, David Jackson, Don Kelley, and Fred White ("Plaintiffs") and the Grayson Central Appraisal Defendant("GCAD") in the above-captioned case have reached full and complete settlement of all claims brought by Plaintiffs in this case and the plaintiffs in related proceedings in State District courts. The Parties mutually agree, as expressly and more fully provided in their Settlement and Compromise Agreement, a copy of which, except for the confidential Exhibit C, is attached hereto, and executed on August __, 2009 ("Settlement Agreement"), to fully compromise, settle, and resolve all claims asserted by Plaintiffs in this action with finality and without the need for further litigation, and without any admission of liability by any party. Accordingly, it is hereby

1. **ORDERED** that **GCAD** is enjoined as follows:

(a) from utilizing any of the Protected Information that is described in the Settlement Agreement;

(b) to purge its appraisal rolls of Protected Information as provided in the Settlement Agreement; and

(c) to return the Protected Information as provided in the Settlement Agreement.

2. **ORDERED** that, except as provided in paragraph 1 herein, Plaintiffs' claims against the **GCAD** set forth in their First Amended Complaint be, and hereby are, **DISMISSED WITH PREJUDICE**.

Dated this _____ day of _____, 2009.

HONORABLE MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE

EXHIBIT B

CAUSE NO. 07-1878-336

RANDY C. PHILLIPS

IN THE DISTRICT COURT

Plaintiff,

v.

336TH JUDICIAL DISTRICT

**GRAYSON CENTRAL APPRAISAL DISTRICT
and GRAYSON COUNTY
APPRAISAL REVIEW BOARD,**

Defendants

GRAYSON COUNTY, TEXAS

AGREED JUDGMENT

CAME TO BE HEARD, Randy C. Phillips, Plaintiff, and Grayson Central Appraisal District and Grayson County Appraisal Review Board, Defendants, appearing by and through their attorneys of record, and announced to the Court that the parties desired to resolve and settle the matters in controversy in order to avoid the trouble, expense, and uncertainty of litigation. The parties announced that they have reached a final settlement regarding all issues of law and fact, including the appraised value of Plaintiff's property. Having heard these announcements and reviewed the evidence and arguments of counsel, the Court is of the opinions that such terms and conditions are well taken and should form the basis of judgment.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the following stipulations are agreed by the parties and entered by the Court as its judgment.

1. As of January 1, 2007, the Subject Property (GCAD Account # 262346), should be deleted from the Grayson Central Appraisal District's 2007 Appraisal Roll.

2. Pursuant to Tax Code section 42.41, the Defendant, Grayson Central Appraisal District, shall forthwith modify and correct the Grayson Central Appraisal District's 2007

Appraisal Roll for the Subject Property (GCAD Account # 262346), by deleting this account as set forth herein.

3. That the Defendant, Grayson Central Appraisal District, shall advise the appropriate assessor-collector to (1) change the tax roll and other appropriate records according to the terms of this Agreement; (2) prepare and deliver a corrected supplemental tax bill as required by Chapters 31 and 42, Texas Tax Code; and (3) refund the amount due pursuant to Section 42.43, Texas Tax Code.

4. All costs and attorneys' fees are to be borne by the party incurring them.

5. All other relief not specifically granted herein is denied. This is a final judgment that disposes of all issues between all parties.

Signed this _____ day of _____, 2009.

HONORABLE JUDGE PRESIDING

APPROVED AS TO FORM AND SUBSTANCE:

Thomas Scott Smith
State Bar No. 18688900
P.O. Box 354
Sherman, Texas 75091-0354
(903) 868-8686
(903) 870-1446 (fax)

ATTORNEY FOR PLAINTIFF
RANDY C. PHILLIPS

Robert Mott
State Bar No. 14596450
Sandra Griffin
State Bar No. 00791280
Christopher S. Jackson
State Bar No. 00796816
Carol Barton
State Bar No. 00783610
Michael W. Balczak
State Bar No. 24012236
**Perdue, Brandon, Fielder,
Collins & Mott, L.L.P.**
3301 Northland Dr., Ste. 505
Austin, Texas 78731
(512) 302-0190
(512) 323-6963 (fax)

ATTORNEYS FOR DEFENDANT
GRAYSON CENTRAL APPRAISAL DISTRICT

David B. Tabor
State Bar No. 24037577
Shackelford, Melton & McKinley, LLP
3333 Lee Parkway 10th Floor
Dallas, Texas 75219
(214) 780-1487
(214) 780-1401 (fax)

ATTORNEY FOR DEFENDANT
GRAYSON COUNTY APPRAISAL REVIEW BOARD

EXHIBIT C

CONFIDENTIAL LISTING OF PROPERTY AND PROPERTY OWNERS

EXHIBIT D

PURGING PROCESS TO BE UTILIZED BY GCAD

1. GCAD will direct its software vendor to adjust each original account to a zero value.
2. GCAD will direct its software vendor to generate dummy accounts with no names.
3. Wherever the original account exists in the database, GCAD will direct its software vendor to replace it with the new dummy account.
4. GCAD will direct its software vendor to delete the original records.