

**Affirmed and Memorandum Opinion filed April 11, 2017.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-16-00118-CV**

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**ALPER KARAALI, Appellant**

**V.**

**EXXONMOBIL CORP. AND PETROLEUM WHOLESALE, L.P., Appellees**

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**On Appeal from the 152nd District Court  
Harris County, Texas  
Trial Court Cause No. 2014-67306**

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**M E M O R A N D U M   O P I N I O N**

Alper Karaali, appearing pro se, appeals two orders, one declaring him a vexatious litigant and the other rendering summary judgment in favor of appellee ExxonMobil Corporation.<sup>1</sup> In two issues, Karaali challenges the trial court's refusal to grant his (1) motion to compel discovery and (2) motions for continuance to conduct additional discovery. We affirm.

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<sup>1</sup> Karaali does not challenge the sufficiency of the evidence supporting the two orders.

## I. BACKGROUND

Karaali and Tien Shan, Inc., owned and operated a convenience store located in Houston, Harris County, Texas. In 2014, Karaali filed the instant suit against Exxon and Petroleum Wholesale, L.P. (“PW”), for damages arising from PW’s foreclosure on the store. Karaali alleged causes of action against Exxon and PW for fraud, products liability, and breach of fiduciary duty.

PW moved for summary judgment. The trial court granted PW’s summary-judgment motion and dismissed Karaali’s claims with prejudice. Karaali did not appeal the attendant order. PW subsequently moved the trial court to issue an order declaring Karaali a vexatious litigant pursuant to chapter 11 of the Texas Civil Practice and Remedies Code. Karaali responded, indicating that additional discovery with Exxon will enable him to address the vexatious-litigant motion. Karaali did not label this response as a motion for continuance, nor did he attach an affidavit to it. The trial court granted PW’s vexatious-litigant motion in an order signed December 3, 2015.

As to Exxon, on September 3, 2015, Karaali filed a motion to compel the production of documents. On September 10, 2015 Exxon moved for summary judgment. Karaali subsequently moved for a continuance but he did not attach an affidavit to the motion. On September 25, 2015, Karaali filed a response to Exxon’s summary-judgment motion. The trial court granted Exxon’s motion for summary judgment and dismissed Karaali’s claims with prejudice in an order signed February 2, 2016.

## II. ANALYSIS

### A. Karaali’s first issue is inadequately briefed.

A brief must contain a clear and concise argument for the contentions made,

with appropriate citations to legal authority and the record. Tex. R. App. P. 38.1(i); *see Collins v. Walker*, 341 S.W.3d 570, 575 (Tex. App.—Houston [14th Dist.] 2011, no pet.) (applying rule 38 and holding that appellant waived second issue because he failed to cite appropriate legal authority under that issue); *Tesoro Petroleum Corp. v. Nabors Drilling USA, Inc.*, 106 S.W.3d 118, 128 (Tex. App.—Houston [1st Dist.] 2002, pet. denied) (“Rule 38 requires . . . discussion of the facts and the authorities relied upon” to maintain the point at issue).

In his “ISSUES PRESENTED FOR REVIEW,” Karaali appears to raise a challenge regarding the trial court’s refusal to grant his motion to compel, stating: “The Court refused to hear Appellant’s/ Plaintiffs [sic] ‘motion to compel’ for depositions and discovery.” However, under the argument portion of his brief, Karaali fails to cite legal authority regarding, and does not discuss, the motion to compel. Because Karaali’s first issue does not comply with rule 38, he has waived it on appeal. *See Collins*, 341 S.W.3d at 575; *Tesoro*, 106 S.W.3d at 128.

**B. Karaali’s second issue is not preserved for appellate review.**

Karaali next appears to challenge the trial court’s refusal to grant Karaali’s motions for continuance, relying on *Barron v. Vanier*, 190 S.W.3d 841, 851 (Tex. App.—Fort Worth 2006, no pet.) (holding that trial court abused its discretion in denying a motion for continuance). To preserve a complaint for appellate review, the record must show that the complaint was made to the trial court by a timely motion that, among other requirements, stated grounds for the ruling with sufficient specificity and complied with the Texas Rules of Civil or Appellate Procedure. *See Tex. R. App. P. 33.1.* Rule 251 of the Texas Rules of Civil Procedure requires that a motion for continuance be in writing, state the specific facts supporting the motion, and be supported by an affidavit. *See Tex. R. Civ. P.*

251.<sup>2</sup> We liberally construe Karaali's pro se filings but "we still hold him to the same standards as a licensed attorney." *Nabelek v. Bradford*, 228 S.W.3d 715, 717 (Tex. App.—Houston [14th Dist.] 2006, pet. denied). Neither of the two motions for continuance to which Karaali directs us was sworn or supported by an affidavit. Therefore, Karaali's second issue is not preserved for appellate review. *See Rogers v. Cont'l Airlines, Inc.*, 41 S.W.3d 196, 201 (Tex. App.—Houston [14th Dist.] 2001, no pet.) ("[appellant] has waived his contention that he was denied a continuance to conduct discovery" because he failed to attach affidavits in support of his need for a continuance); *see also Smalley v. Smalley*, No. 09-11-00261-CV, 2012 WL 1448433, at \*3 (Tex. App.—Beaumont Apr. 26, 2012, no pet.) (mem. op.) (failing to verify or provide affidavit supporting motion for continuance did not preserve issue regarding same for review).

We overrule Karaali's second issue.

### III. CONCLUSION

We affirm the judgment of the trial court.

/s/ Marc W. Brown  
Justice

Panel consists of Justices Donovan, Brown, and Jewell.

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<sup>2</sup> Rule 251 also permits a trial court to grant a motion for continuance based upon consent of the parties or operation of law. *See* Tex. R. Civ. P. 251. Neither circumstance is present here.