

have been discovered in time for Plaintiff to move for a new trial under Rule 59(b),² as such evidence was withheld.

2. Plaintiff in a previous suit had requested for all documents and other evidence from Bank of America N.A. (BANA), but was denied by Defendants.

3. The newly discovered evidence being the “1998 – Assignment of Deed of Trust” was intentionally withheld by Defendants during District Court’s adjudication proceedings, thus, depriving Plaintiff of a fair trial.

4. Defendants’ misconduct of intentionally withholding evidence from the Plaintiff, during official proceedings, resulted in Plaintiff not having the opportunity to fully litigate at trial all his rights or defenses that could have been asserted.

5. Plaintiff was denied due process of law as guaranteed by the Fifth Amendments to the U.S. Constitution.³ “The claim and exercise of a Constitution right cannot be converted into a crime”... “a denial of them would be a denial of due process of law”.⁴

6. The newly discovered evidence provides beyond any reasonable doubt

² Rule 60(b)(2)

³ The Fifth Amendments to the United States Constitution guarantee of due process for all citizens require the government to respect all rights that are guaranteed, protected and provided by the U.S. Constitution and all applicable statutes before the government can deprive a person of life, liberty, or property.

⁴ *Simmons v. United States*, 390 U.S. 377 (1968) *In Boyd v. United*, 116 U.S. 616 at 635 (1886), Justice Bradley.

Defendants' "2012-Corporation Assignment of Deed of Trust/Mortgage" (D.E. 31-4) was created fraudulently to represent that BANA had a lawful interest in the Plaintiff's real property.

7. Defendants intentionally interfered with the judicial system's ability to impartially adjudicate by improperly influencing the Court with false information that unfairly hampered the presentation of the Plaintiff's claim and defense.

8. Thus, Defendants' judgment was obtained by fabricated evidence, misrepresentation of evidence, and concealment of evidence which resulted in fraud upon the court, thus, the Court's judgment should be declared void, and for reasons defined by law, the Plaintiff is justified for relief, as matter of law.⁵

9. Under Federal Rule of Civil Procedure 60(b)(2)(3)(4)(6), a court may relieve a party from a final judgment on the basis of newly discovered evidence, evidence of misconduct on the part of an adverse party, or "any other reason justifying relief from the operation of the judgment."⁶

⁵ Rule 60(b)(3)(4), (d)(3).

⁶ Rule 60(b) provides that a court may: relieve a party ... from a final judgment ... for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud ..., misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

10. Defendants' attorney, Matt Manning, should be sanctioned for filing false claims and falsify evidence and defending those claims under oath and penalty of perjury.⁷

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

11. This is the third occasion that this case has been before this Court, a brief recapitulation of history of this litigation is necessary.

A. Plaintiff's first suit

12. On September 25, 2012, Plaintiff, Joe O. Rodriguez JR., filed suit in the 79th Judicial District Court, Jim Wells County, Texas, against "Countrywide Home Loans Servicing, L.P. or Bank of America, N.A., as Successor by Merger to BAC Home Loans Servicing, L.P."

13. The action was removed by Defendants to this Court as Civil Action No. 2:12-cv-325. (D.E. 1-2).

14. On March 6, 2013, the case was dismiss against Plaintiff, Rodriguez, without prejudice. (D.E. 12).

⁷ Local Rules of the United States District Court for the Southern District of Texas - LR83.1. Admission to Practice in the U.S. District Court provides an: (I.) Oath. On admission, the lawyer will take this oath before any judicial officer of the United States: I do solemnly swear [affirm] that I will discharge the duties of attorney and counselor of this court faithfully, that I will demean myself uprightly under the law and the highest ethics of our profession, and that I will support and defend the Constitution of the United States.

B. Plaintiff's second suit

15. Since the first case 2:12-cv-325, was dismissed without prejudice the Plaintiff, Rodriguez, filed this current case on May 1, 2013, in the 79th Judicial District Court, Jim Wells County, Texas, against "Countrywide Home Loans Servicing, LP or Bank of America, N.A., as Successor by Merger to BAC Home Loans Servicing, LP, and ReconTrust Company, N.A." See (D.E. 1-1) in case no. 2:12-cv-325.

16. On May 15, 2013, the action was removed by Defendants to this Court as Civil Action No. 2:13-cv-00133. (D.E. 1).

17. Plaintiff factual allegations are Defendants filed or caused to be filed a "2012-Corporation Assignment of Deed of Trust/Mortgage" in the Jim Well County land records which falsely represented that BANA has a lawful interest in Plaintiff's real property, thus, they have deceitfully foreclosed on Plaintiff's home located at 1211 Washington Street, Alice, Texas. Plaintiff alleges that Defendants knew or should have known the "2012-Corporation Assignment of Deed of Trust/Mortgage" was ineligible to be filed. Plaintiff also alleges that the "2012- Corporation Assignment of Deed of Trust/Mortgage" was filed with the intention to financially injure him.⁸ Plaintiff's claims were made on (D.E. 36, p.11), (D.E. 43, p.4).

⁸ Texas Civil Practice and Remedies Code § 12.002, Liability, the Code provide that: (a) A person may not make, present, or use a document or other record with: (1) knowledge that the document or other record is a fraudulent court record or a fraudulent lien or claim against real

18. On June 14, 2013, Plaintiff filed a Motion for Summary Judgment. (D.E. 13)

19. On August 7, 2013, Plaintiff's Summary Judgment was denied. (D.E. 26)

20. On December 26, 2013, Defendants filed for a summary judgment on the basis of res judicata⁹,¹⁰ and collateral estoppel. (D.E. 31)

21. In support of Defendants' Motion for Summary Judgment, Defendants relied upon and incorporated and referenced the following evidence which is attached to Defendants' Motion (D.E. 31) and filed the following: December 24, 2013, Declaration of Jessica L. Valdez. (D.E. 31-1); October 21, 1998, Promissory Note; (D.E. 31-2); October 21, 1998, Deed of Trust; (D.E. 31-3); May 1, 2012, Corporation Assignment of Deed of Trust/Mortgage; (D.E. 31-4); Loan History of

or personal property or an interest in real or personal property; (2) intent that the document or other record be given the same legal effect as a court record or document of a court created by or established under the constitution or laws of this state or the United States or another entity listed in Section 37.01, Penal Code, evidencing a valid lien or claim against real or personal property or an interest in real or personal property; and (3) intent to cause another person to suffer: (A) physical injury; (B) financial injury; or (C) mental anguish or emotional distress.

⁹ *Federated Dept. Stores v. Moitie*, 452 U.S. 394 (1981) - An erroneous conclusion reached by the court in the first suit does not deprive the plaintiff in the second action of their right to rely upon the plea of res judicata.

¹⁰ Res judicata consequences will not be applied to a void judgment which is one which, from its inception, is a complete nullity and without legal effect, *Allcock v. Allcock*, 437 N.E. 2d 392 (Ill. App. 3 Dist. 1982).

Plaintiff's Account; (D.E. 31-5); July 16, 2012, Substitute Trustee's Deed. (D.E. 31-6).

22. On December 31, 2013, Plaintiff filed for Default Judgment on the basis of Rule 26. Defendants breached its duty to disclose of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control. (D.E. 34)

23. Defendants did not respond to Plaintiff's Motion to Default.

24. On January 2, 2014, the Court denied Plaintiff's Motion for Default. (D.E. 40)

25. On January 21, 2014, Plaintiff Responded to Defendants' Motion for Summary Judgment. (D.E. 43).

26. On January 28, 2014, the Court grants Defendants' Motion for Summary Judgment on the basis of res judicata. (D.E. 46).

27. On January 28, 2014, Defendants' Motion for Summary Judgment was before the court. (D.E. 31). In response (D.E. 43, 44), Plaintiff sought an order striking Defendants' affidavit evidence. (D.E. 31-1, 31-4). The Court OVERRULED Plaintiff's hearsay objection.

28. Finally, the Court gave its conclusion, "For the reason set out above, the Court DENIES Rodriguez's Motion to Strike (D.E. 44), GRANTS IN PART Defendants' Motion for Summary Judgment (D.E. 31) and dismisses Rodriguez's

action, and DENIES IN PART Defendants' Motion for Summary Judgment with respect to the request for a pre-filing injunction against Plaintiff." (D.E 45).

C. Case on Appeal

29. On January 31, 2014, Plaintiff filed notice of appeal and Plaintiff appealed to the Court of Appeals for the Fifth Circuit. (D.E. 48)

30. On December 22, 2014, The Court of Appeals for the Fifth Circuit affirmed the Trial Court opinion.

31. On January 27, 2015, Court of Appeals for the Fifth Circuit denied Plaintiff's Motion for Rehearing En Banc.

32. On April 24, 2015, Plaintiff's Petition for Writ of Certiorari was due to The United States Supreme Court.

33. On October 6, 2015, U.S. Supreme Court denied hearing Plaintiff's Writ of Certiorari due to lack of jurisdiction.

III. FACTS

34. On February 02, 2015, two months before the Writ was due to be filed in the U.S. Supreme Court, Rodriguez filed a complaint against BANA with Consumer Financial Protection Bureau (CFPB), case no. 150202-001915.

35. On February 3, 2015, The Office of the Chairman and CEO at BANA received Rodriguez's complaint, which was forward from CFPB on behalf of Joe O. Rodriguez JR.

36. On March 4, 2015, BANA's agent, Andrew M. LaBreche, with McGuire Woods, LLP, responded to CFPB complaint with a copy of the contents of the "collateral file" which included a copy of Rodriguez's original title work that BANA held in its possession and was withheld till such time as it appeared that the Court Mandate(s) were considered final.

37. Mr. LaBreche submitted an unrecorded "Assignment of Deed of Trust" dated October 21, 1998, the same date as the original Deed of Trust, Warranty Deed, and Promissory Note.

38. Information in response to the CFPB evidences Countrywide Home Loan Inc. purported to transfer and assign interest and rights, under the Deed of Trust and Promissory Note dated October 21, 1998, to Government National Mortgage Association (GNMA).

39. GNMA or an agent failed to record the 1998- Assignment of Deed of Trust as required by Texas Local Government Code 192.007,¹¹ and Texas Property

¹¹ Texas Local Government Code 192.007, Records Of Releases And Other Actions, the Code provides (a) To release, transfer, assign, or take another action relating to an instrument that is filed, registered, or recorded in the office of the county clerk, a person must file, register, or record another instrument relating to the action in the same manner as the original instrument

Code 51.008, whereas such failure to recorded and comply with the Code, rendered the deed of trust unenforceable and nullity by operation of law.¹²

40. GNMA purchasing guidelines denotes that the “Collateral File” was to contain the “1998-Assignment of Deed of Trust” in recordable form.¹³

41. Plaintiff has incorporated and referenced a copy of the original deed of trust, warranty deed, assignment of deed of trust, and note as evidence and is attached to this Motion to support his motion for relief of Defendants’ summary judgment.

42. BANA’s agent, Mr. LaBreche, did not include or reference to the CFPB, the May 1, 2012, Corporation Assignment of Deed of Trust/Mortgage (D.E. 31-4), and July 16, 2012, Substitute Trustee’s Deed (D.E. 31-6), as being part of Rodriguez’s original title work. Therefore, a prudent minded layperson could only reach one conclusion, the May 1, 2012, Assignment was a fabricated instrument created in anticipation of legal action.

was required to be filed, registered, or recorded. (b) An entry, including a marginal entry, may not be made on a previously made record or index to indicate the new action.

¹² Texas Property Code Sec. 13.001. VALIDITY OF UNRECORDED INSTRUMENT. (a) A conveyance of real property or an interest in real property or a mortgage or deed of trust is void as to a creditor or to a subsequent purchaser for a valuable consideration without notice unless the instrument has been acknowledged, sworn to, or proved and filed for record as required by law.

¹³ Texas Property Code 51.008, Certain Liens On Real Property, (a) A lien on real property created under this code or another law of this state in favor of a governmental entity **MUST be recorded** as provided by Chapters 11 and 12 in the real property records of the county in which the property or a portion of the property is located.

43. On December 26, 2013, Defendants' local counsel, Matt Manning, in his capacities as counsel for BANA entered into Court's record falsify documents and a false declaration from BANA's AVP Operation Team Manager to support their Summary Judgment which includes December 24, 2013, Jessica L. Valdez's declaration (D.E. 31-1), May 1, 2012, Corporation Assignment of Deed of Trust/Mortgage (D.E. 31-4), and July 16, 2012, Substitute Trustee's Deed (D.E. 31-6).

44. The District Court was unable to impartially adjudicate on the merits of Plaintiff's claims due to Defendants' misconduct of concealment of evidence, falsify evidence, misrepresentation of evidence, and fraud upon the court, therefore, the final judgment should be void, as a matter of law.

III. LEGAL STANDARD

Motion For Relief From Summary Judgment Evidence

45. In support of Plaintiff's Motion for relief from Summary Judgment, Plaintiff incorporates and references the following evidence which is attached to Plaintiff's Motion and filed the following:

Exhibit "A" March 4, 2015, Letter from Andrew M. LaBreche with McGuire Woods LLP with certified mail receipt;

Exhibit "A-1" April 10, 2012, Notice of Assignment;

Exhibit "A-2" October 21, 1998 Deed of Trust;

Exhibit “A-3” October 21, 1998 Warranty Deed with Vendor’s Lien;

Exhibit “A-4” **October 21, 1998 Assignment of Deed of Trust;**

Exhibit “A-5” October 21, 1998 Promissory Note;

46. FEDERAL RULE OF CIVIL PROCEDURE 60(b)(3)(4), permits any party to a civil action to move for relief from a judgment that was obtain by fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party causing the judgment to be void.

47. To prevail under Rule 60(b)(3), the movant must show by clear and convincing evidence that his opponent engaged in a fraud or misrepresentation that prevented the movant from fully and fairly presenting his case.¹⁴

48. The statute of frauds requires that all conveyances of real property be in writing and signed by the party to be charged.¹⁵ .

49. The Statute of Frauds is a factor in determining whether a contract is lawful.

50. In situations where a contract makes references to other documents, a party is limited to when extrinsic evidence can be used. The Texas Supreme Court

¹⁴ *Atkinson v. Prudential Property Co.* 43 F.3d 367, 372-73 (8th Cir.1994).

¹⁵ See Tex. Bus. & Com. Code Ann. § 26.01(b)(4) (Vernon 2002)

has repeatedly held that multiple writings pertaining to the same transaction will be construed as one contract.¹⁶

51. Extrinsic fraud is fraud that denies a party the opportunity to fully litigate at trial all the rights or defenses that could have been asserted.¹⁷ “Moreover, fraud destroys the validity of everything into which it enters. It affects fatally even the most solemn judgments and decrees.”¹⁸

52. FEDERAL RULE OF CIVIL PROCEDURE 60(d)(3), permits any party to a civil action to move to set aside a judgment for fraud on the court.

53. The “fraud on the court” standard is distinct from the more general fraud standard of Rule 60(b)(3).¹⁹ “A finding of fraud on the court is justified only by the most egregious misconduct directed to the court itself, such as bribery of a judge or jury or “fabrication of evidence by counsel”²⁰ [emphasis added].

54. Accordingly, a party seeking to show fraud on the court must present clear and convincing evidence of the following elements: "1) [conduct] on the part of an officer of the court; that 2) is directed to the judicial machinery itself; 3) is

¹⁶ *Owen v. Hendricks*, 433 S.W.2d 164 (Tex. 1968); see also *Fort Worth Indep. Sch. Dist. v. City of Fort Worth*, 22 S.W.3d 831, 840 (Tex. 2000).

¹⁷ *Browning v. Prostok*, 165 SW 3d 336 - Tex: Supreme Court 2005.

¹⁸ *Diehl v. United States*, 438 F. 2d 705 - Court of Appeals, 5th Circuit 1971.

¹⁹ See 11 *Charles A. Wright, Arthur R. Miller & Mary Kay Kane*, Federal Practice and Procedure, § 2870 at p. 415 (2d ed.1995).

²⁰ *Landscape Properties, Inc. v. Vogel*, 46 F.3d 1416, 1422 (8th Cir.), cert. denied, 516 U.S. 823, 116 S. Ct. 86, 133 L.Ed.2d 43 (1995) (quotations omitted).

intentionally false, willfully blind to the truth, or is in reckless disregard of the truth;
4) is a positive averment or a concealment when one is under a duty to disclose; and
5) deceives the court.²¹"

55. Chief Justice, John Marshall, acknowledged that a court may grant relief from judgment where a new matter clearly proves it to be against conscience to execute a judgment, and of which the injured party could not have availed himself before judgment.²² He further emphasized that an Article III court can grant relief where the equity of the applicant [is] free from doubt, and where a judgment would be against conscience for the person who has obtained it to avail himself.²³

56. Specifically, Federal Rule of Civil Procedure 60(b) offers a party relief from a judgment on motion when it is "inequitable to permit a judgment to stand."²⁴

57. The court has the power "to vacate judgments whenever such action is appropriate to accomplish justice."²⁵ Thus, as presently interpreted, Rule 60(b)

²¹ *Johnson v. Bell*, 605 F.3d 333, 339 (6th Cir. 2010); (quoting *Carter v. Anderson*, 585 F.3d 1007, 1011-12 (6th Cir. 2009)).

²² *See Marine Ins. Co. of Alexandria v. Hodgson*, 11 U.S. (7 Cranch) 332, 336 (1813).

²³ *Id.* at 337 (emphasis supplied).

²⁴ *Ackerman v. United States*, 340 U.S. 193, 202 (1950) (Black, J., dissenting).

²⁵ *Klapprott v. United States*, 335 U.S. 601 (1949).

contains the substance of the older remedies while simplifying the procedure for Rodriguez to obtain such relief.

IV. RULES OF DISCIPLINE, STATUTES, AND AUTHORITIES

A. Rules Of Discipline

58. According to Rules of Discipline for the United States District Court Southern District of Texas, Rule 1, provides Standards of Conduct, (B.) Violation of the Texas Disciplinary Rules of Professional Conduct shall be grounds for disciplinary action, but the court is not limited by the code.

59. Defendants' attorneys, Matt Manning, has breached his duty of Rule 1.02 (c), (d), (e), (f) Scope and Objectives of Representation, when he assisted or counseled his client, BANA, to engage in conduct that he knew or should have known was criminal or fraudulent. Matt Manning had or should have had this information that clearly established that his client, BANA, was likely to commit a criminal or fraudulent act that is likely to result in substantial injury to Rodriguez. Matt Manning continued BANA's legal action without having legal right(s), he failed to promptly make reasonable efforts under the circumstances to dissuade his client from committing the crime or fraud. Matt Manning knew or should have known that his client, BANA, expected representation not permitted by the rules of professional conduct or other law, he failed to consult with his client, BANA, regarding the relevant limitations of his conduct.

60. Defendants' attorneys, Matt Manning and Jeffrey Seewald, have breached their OATH to the District Court. They promise to discharge their duties as attorneys of the District Court faithfully, and would demean themselves uprightly under the law and the highest ethics of their profession, and that they will support and defend the Constitution of the United States.²⁶

61. Defendants' attorney, Mr. Manning, knowingly assisted BANA to committed criminal act that reflects adversely on his honesty, trustworthiness or fitness as lawyer in other respects; he has engaged in conduct involving dishonesty, fraud, deception, and misrepresentation; he has also engaged in conduct constituting obstruction of justice; he has implied an ability to influence improperly a government official.²⁷

62. Defendants' attorney, Matt Manning, knowingly filed false pleadings, motions or other papers with the court or the assertion in an adjudicatory proceeding and knew or should have known it was a false.²⁸

²⁶ Local Rules of the United States District Court for the Southern District of Texas - LR83.1. Admission to Practice in the U.S. District Court provides an: (I.) Oath. On admission, the lawyer will take this oath before any judicial officer of the United States: I do solemnly swear [affirm] that I will discharge the duties of attorney and counselor of this court faithfully, that I will demean myself uprightly under the law and the highest ethics of our profession, and that I will support and defend the Constitution of the United States.

²⁷ Texas Disciplinary Rules Of Professional Conduct 8.04

²⁸ Texas Disciplinary Rules Of Professional Conduct 3.01

63. Defendants' attorney, Matt Manning, as a lawyer knew or should have known that false statements of material fact were being made to the District Court, also with the failure to disclose a fact to the tribunal when disclosure was necessary to avoid assisting a criminal or fraudulent act.²⁹

64. Defendants' attorney, Matt Manning, unlawfully obstructed Rodriguez's access to evidence; in anticipation of a dispute, intentionally aided in concealing a document and other material that a competent lawyer would believe has potential or actual evidentiary value.³⁰

65. Defendants' attorney, Jeffrey Seewald, is subject to discipline because of Matt Manning's violations of these rules of professional conduct when Mr. Seewald is a partner and supervising lawyer and orders, encourages, or knowingly permits the conduct involved. Mr. Seewald is a partner in the law firm in which the other lawyers practices and has direct supervisory authority over Matt Manning, and had knowledge of Mr. Manning's violations of these rules and knowingly failed to take reasonable remedial action to avoid or mitigate the consequences of Mr. Manning's violations.³¹

²⁹ Texas Disciplinary Rules Of Professional Conduct 3.03

³⁰ Texas Disciplinary Rules Of Professional Conduct 3.04

³¹ Texas Disciplinary Rules Of Professional Conduct 5.01

B. Statutes

66. Defendants' attorney, Mr. Manning, is liable for Perjury. He took an oath to the tribunal that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true; but then he enter into the Court's record fabrication of evidence and defended those false statements and documents.³²

67. Defendants' attorney, Mr. Manning, is liable for his misconduct of falsified statement made before the District Court. The tribunal should with open eyes note the crimes of perjury and obstruction of justice and violation(s) of the U.S Constitution, thus, their summary judgment should be void, or to not take effect.³³

69. Defendants' attorney, Mr. Manning, is liable for concealing the 1998-assignment of deed of trust with the intention to impair the object's integrity or availability for use in the Court's adjudication proceeding or otherwise obstructs,

³² **18 U.S. Code § 1621** - Perjury generally whoever—(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or (2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true; is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both.

³³ **18 U.S. Code § 1506**, Alteration of process - The elements required for a violation of 18 U.S. Code § 1506, in United States is whoever falsifies proceeding, in any court of the United States, whereby any judgment is reversed, made void, or does not take effect.

influences, or impedes the Court's adjudication proceeding.³⁴ Defendants' attorney, Mr. Manning, has devised a scheme to defraud or obtain money, or property by false or fraudulent pretenses.³⁵

70. Defendants' attorney, Mr. Manning, is liable for misconduct of fabrication of evidence, perjury, and falsification of documents, fraud upon the court, and obstructing the administration of justice in performing it responsibility.³⁶

71. Defendants attorney, Mr. Manning, is liable for intentionally withholding the 1998-assignment of deed of trust from the Court to prevent the Court from adjudicating the case according to law.³⁷

³⁴ **18 U.S. Code § 1512** - Tampering victim, (c) Whoever corruptly (1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or (2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.

³⁵ **18 U.S. Code § 1341**, Frauds and Swindles – The elements required for a violation of 18 U.S. Code § 1341, in United States is anyone that devises or intends to devise a scheme to defraud, or obtain money or property by false or fraudulent pretenses shall be fined no more than \$1,000,000 or imprisoned for a maximum term of 30 years, or both.

³⁶ **18 U.S. Code § 401**, Power of the Court - The elements required for a violation of 18 U.S. Code § 401, in United States is (1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice; (2) Misbehavior of any of its officers in their official transactions. The Court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other.

³⁷ **18 U.S. Code § 1505** - Obstruction of proceedings, Whoever, with intent to avoid, evade, prevent, or obstruct compliance, in whole or in part, with any civil investigative demand duly and properly made under the Antitrust Civil Process Act, willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, which is the subject of such demand.

72. For all the reason above, Defendants attorneys, Matt Manning and Jeffrey Seewald, warrant a disciplinary action and sanction against them for their misconduct of perjury, fraud, obstruction of justice, and fraud upon the court, and the Court should grant Rodriguez's Motion to Vacate Judgment and grant him the original relief requested, **MOTION FOR DEFAULT**.

73. **RIGHT FOR JURY TRIAL**, Under 28 U.S. Code § 1861, Declaration of policy, it is the policy of the U.S. that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes. Under Fed. R. Civ. P. 38, provides that Rodriguez has a statutory right to a Jury Trial if demanded, the rule provides a party a (a) Right to preserved a trial by jury as declared by the Seventh Amendment to the Constitution or as provided by a federal statute is preserved to the parties inviolate. (b) Demand. On any issue triable of right by a jury, a party may demand a jury trial. Plaintiff, Rodriguez, is demanding a jury trial which is guarantee by seventh amendment.

PRAYER

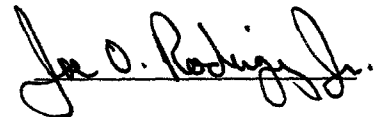
Plaintiff, Joe O. Rodriguez JR. requested this court to issue an order that relieves him from an unlawfully obtained ordered, and grant him all previous requested relief and all other reliefs that he is entitled to.

/S/ Joe O. Rodriguez JR.
Joe O. Rodriguez JR.

CERTIFICATE OF CONFERENCE

As required by Federal Rule of Civil Procedure 7.1, on October 14, 2015, I, Joe O. Rodriguez Jr., certify that I have made a reasonable attempt to confer with Defendants through their representative, Matt D. Manning, at (713) 335-2119 about the merits of this motion with the following results:

XX I have left a detailed voice mail in which I explained my intention to file this Motion to Vacate Summary Judgment, and the basis of my complaint. I left my contact information, and I requested for a return call to discuss reasonable means to resolve this dispute prior to filing this Petition, and if there were any means of avoiding more litigation to avoided any further hardship and monetary injuries to both parties. I've since received no response from opposing counsel, Mr. Manning, attorney-in-charge.

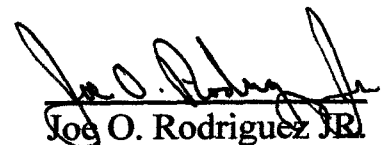


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Pro Se- Litigant

VERIFICATION

Pursuant to Federal Rules of Civil Procedure, I, Joe O. Rodriguez JR., verify under penalty of perjury that the foregoing pleadings and claims are based on my personal knowledge and are true and correct.

Executed on October 31, 2015.

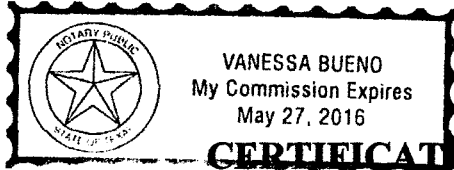


Joe O. Rodriguez JR.

State of Texas
County of TRAVIS

§
§

SIGNED under oath before me on October 31, 2015
Vanessa Bueno
Notary Public, State of Texas



CERTIFICATE OF SERVICE

I, Joe O. Rodriguez JR., certify that on October 31, 2015, a correct copy of the foregoing was filed with the Clerk of the Court via certified mail and that a correct copy of same was forwarded to the following:

Via Certified Mail Return Receipt
Requested # 7015 1520 0000 4154 0159
Matt D. Manning
State Bar. No. 24070210
MCGLINCHEY STAFFORD
1001 McKinney, Suite 1500
Houston, Texas 77002
Telephone (713)520-1900
Facsimile (713)520-1025
Attorney-in Charge for Defendants

Supervisor of Counsel:
Jeffery R. Seewald
State Bar. No. 17986640
MCGLINCHEY STAFFORD
1001 McKinney, Suite 1500
Houston, Texas 77002
Telephone (713) 520-1900
Facsimile (713) 520-1025

/s/ Joe O. Rodriguez JR.