

CAUSE NO. DC-2025-CV-1817

TB

KEVIN N. BASS,	§ IN THE DISTRICT COURT
	§ OF LUBBOCK COUNTY, TEXAS
Plaintiff,	§
	§ 237 th JUDICIAL DISTRICT
v.	§
	§
DARRIN D'AGOSTINO, D.O.,	§
M.P.H., M.B.A., in his official	§
capacity as Provost and Executive	§
Vice President of Academics of Texas	§
Tech University Health Sciences	§
Center; and	§
AMANDA McSWEEN, in her official	§
capacity as Managing Director of	§
Enrollment Services and University	§
Registrar of Texas Tech University	§
Health Sciences Center,	§
	§
Defendants.	§

**PLAINTIFF'S REPLY IN SUPPORT OF SWORN MOTION UNDER RULE 306a(5) AND
MOTION FOR NEW TRIAL UNDER RULE 329b**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, KEVIN N. BASS, Plaintiff in the above-entitled and numbered cause, proceeding pro se, and files this Reply in Support of his Sworn Motion Under Rule 306a(5) and Motion for New Trial Under Rule 329b, and respectfully shows the Court as follows:

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In re Lynd Co., 195 S.W.3d 682 (Tex. 2006) (orig. proceeding) (per curiam)

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Exhibit A — Electronic Service Undeliverable notifications of March 3, 2026

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Exhibit B — Notice of Submission, March 13, 2026, 3:42 p.m. (Envelope ID 112412497)

Exhibit B-2 — Amended Notice of Submission, March 13, 2026, 4:40 p.m. (Envelope ID 112418015)

Exhibit C — Proposed Order, March 13, 2026 (Envelope ID 112411933) and March 26 ERROR certificate

Exhibit D — Reply in Support of Defendants' Plea, March 18, 2026 (Envelope ID 112584730)

Exhibit E — Clerk's Notice of Judgment, April 2, 2026

Exhibit F-1 — AAG Smith direct email to Plaintiff, March 12, 2026 (FERPA records; state case)

Exhibit F-2 — AAG Smith direct email to Plaintiff, March 13, 2026 (TTUHSC follow-up; state case)

Exhibit F-3 — AAG Smith direct email to Plaintiff, March 22, 2026 (page limit; parallel federal case)

Exhibit F-4 — AAG Smith direct email to Plaintiff, March 30, 2026 (leave to amend; parallel federal case)

Exhibit G — Plaintiff's eFileTexas profile showing correct registered email

Exhibit H — FDB52DC0.zip metadata and contents (tendered as Exhibit H Metadata PDF)

Exhibit I — April 15, 2026 Gutierrez direct email to Plaintiff (courtesy copy of Defendants' Response; Gmail Message ID 19d921bfa9f0f0ab)

Exhibit J — Timeline of Events

Exhibit K — Scott Smith January 26, 2026 state-case direct email ("Service via this email is fine"; Gmail Message ID 19bfc077acc15dc1)

Exhibit L — Proposed Form of Fifth Amended Verified Original Petition, tendered with this Reply for the Court's Miranda inspection under *Texas Department of Parks & Wildlife v. Miranda*, 133 S.W.3d 217 (Tex. 2004), in support of Section VII below; not filed as the operative pleading of this cause

I. INTRODUCTION

Defendants secured the March 26, 2026 Order on their Plea to the Jurisdiction through an electronic-filing channel they knew, and had known for twenty-three days, was not reaching Plaintiff — while holding Plaintiff’s correct direct-email address and actively using it for other state-case correspondence. On January 26, 2026, thirty-six days before the eFileTexas truncation defect arose, AAG Scott D. Smith wrote Plaintiff directly at kbassphiladelphia@gmail.com in this state case (DC-2025-CV-1817): **“Service via this email is fine.”** Exhibit K. Counsel thus affirmatively acknowledged in the state case, on the record, that the direct-email channel to Plaintiff’s correct address was a valid method of service. Over the ensuing seventy-nine days, Defendants filed every challenged pleading through an eFileTexas system that reported service to Plaintiff as ERROR or as sent to a nonexistent truncated address; they corrected no certificate, re-served no document, and declined to use the direct-email channel they had already certified as valid — until April 15, 2026 at 12:06 p.m. Central Time, the day after they filed their Response in Opposition and twenty days after this Court had signed the Order. Exhibit I. Five consecutive Automated Certificates of eService, spanning March 3 through April 14, 2026, reported service to Plaintiff as ERROR or as SENT to a nonexistent truncated address. Plaintiff first acquired actual knowledge of the signed Order on April 2, 2026 through re:SearchTX docket review; at approximately 12:15 a.m. on April 3, 2026, he downloaded the four missed filings in a single eFileTexas zip package. Exhibit H. He filed the Motion for New Trial fourteen hours and forty-one minutes later.

Rule 306a(4) is therefore satisfied, Rule 21a was not complied with, and due process requires that the Order be vacated and new trial granted. Defendants’ Response rests on the theory that Plaintiff had a duty to discover Defendants’ broken service before the judgment existed. The Texas Supreme Court rejected that conflation of constructive with actual knowledge eleven months ago:

To acquire actual knowledge of information, a person must in fact become subjectively aware of the information. That the information was available to the person does not establish his actual knowledge, even if he reasonably should have become aware of it.

Red Bluff, LLC v. Tarpley, 713 S.W.3d 412, 415 (Tex. 2025) (per curiam) (citation omitted). Defendants’ Response does not cite Red Bluff. Nor does it cite Tabakman v. Tabakman, No. 24-0919 (Tex. Dec. 5, 2025) (per curiam) (applying Red Bluff and reaffirming that “mere knowledge of a pending suit” does not impose a duty to act); LBL Oil Co. v. International Power Services, Inc., 777 S.W.2d 390 (Tex. 1989) (per curiam) (reversing a post-appearance dispositive judgment for want of notice); Lopez v. Lopez, 757 S.W.2d 721 (Tex. 1988) (per curiam); Mathis v. Lockwood, 166 S.W.3d 743 (Tex. 2005) (per curiam); Wilson v. Dunn, 800 S.W.2d 833 (Tex. 1990); In re

E.A., 287 S.W.3d 1 (Tex. 2009); or LDF Construction, Inc. v. Texas Friends of Chabad Lubavitch, Inc., 459 S.W.3d 720 (Tex. App.—Houston [14th Dist.] 2015, no pet.). Each is binding on this Court. Each forecloses the position Defendants take.

II.

PLAINTIFF’S FIRST ACTUAL KNOWLEDGE OF THE SIGNING WAS APRIL 2, 2026; IN ALL EVENTS NO LATER THAN APRIL 3, 2026 AT 12:15 A.M. CENTRAL TIME

Plaintiff first acquired actual knowledge that this Court had signed an Order on Defendants’ Plea to the Jurisdiction on April 2, 2026, through review of publicly available docket data on the re:SearchTX court records system. Motion ¶ 4; Motion Declaration; Reply Supplemental Declaration ¶ 1. Plaintiff then logged in to his eFileTexas account and, at approximately 12:15 a.m. Central Time on April 3, 2026, downloaded a zip package containing copies of the four underlying filings — the March 13 Notice of Submission, the March 13 Proposed Order, the March 18 Reply, and the April 2 Notice of Judgment. Reply Supplemental Declaration ¶¶ 1–5. The zip package was identified by the eFileTexas system as Order fdb52dc0-204e-46f1-a4c6-fde614a3b931 / Zip Reference 7736a2c5-5cd1-4845-ba72-b58e46365846. The file bears a file-system modification time of April 3, 2026 at 00:15:45 Central Time (05:15:45 UTC), unaltered since download, and a SHA-256 digest of fbe7ca4c2e6c1608bcc6fff96885f6248b4fef46a853a36f913815304ad466b5. Plaintiff tenders authentication of the zip and its contents through the accompanying Exhibit H Metadata document; the native zip file itself remains preserved on Plaintiff’s computer and is available for the Court’s or Defendants’ forensic inspection on request.

The April 3, 2026 zip is the machine-generated forensic record of Plaintiff’s acquisition of the four missed filings. Before April 2, 2026, Plaintiff did not possess, had not seen, and had no actual knowledge of the signed Order or any of the underlying March 13, March 18, or April 2 filings. The simultaneous download of all four missed filings in a single package hours after Plaintiff’s April 2 discovery of the signed Order — none of which had reached Plaintiff as each was filed — is itself incompatible with Defendants’ theory that Plaintiff, having received the March 3 service-undeliverable notifications, understood that service to him would fail prospectively. Had Plaintiff so understood, he would have corrected the case service-contact entry on March 3 and received the March 13, March 18, and April 2 filings in real time, as every other service contact did.

Plaintiff asks the Court to find first actual knowledge on April 2, 2026, which is the date established on Plaintiff’s sworn declaration and corroborated by his subsequent zip download hours later. In the alternative, and at the latest, the Court should find first actual knowledge no later than April 3, 2026 at 12:15 a.m. Central Time — the moment at which the zip-package timestamp, SHA-256 digest, and eFileTexas Order and Zip Reference numbers together conclusively establish

Plaintiff's possession of the signed Order. Either finding satisfies Rule 306a(4), falls well within the ninety-day outer limit, and properly preserves the date for purposes of Texas Rule of Appellate Procedure 4.2(c).

III.

THE MARCH 3, 2026 NOTIFICATIONS ARE NOT ACTUAL KNOWLEDGE OF A MARCH 26 ORDER

On March 3, 2026 at 7:16 a.m. Central Time, the eFileTexas system transmitted two “Electronic Service Undeliverable” notifications to Plaintiff’s Gmail address in connection with Plaintiff’s just-filed 78-page Response to the Plea and Fourth Amended Petition. Plaintiff does not contest receipt of the notifications; they remain in his Gmail inbox and are within Exhibit A to the Motion. On their face, the notifications reported that Plaintiff’s own outgoing filing had been undeliverable to four service contacts (one of whom was Plaintiff himself, listed at a truncated address) and directed “the filer” — for purposes of that instruction, Plaintiff’s adversary — to “serve the document using a different method.”

The Order Plaintiff moves to set aside was signed on March 26, 2026. It did not exist on March 3. Rule 306a(4) is triggered when a party “has neither received the notice required by [306a(3)] nor acquired actual knowledge” of “the signing” of the judgment. Tex. R. Civ. P. 306a(4). Defendants’ argument collapses “actual knowledge of the signing” into “actual knowledge of facts that, in hindsight, foreshadowed later non-receipt of the signing.” Rule 306a(4) does not permit that substitution. Red Bluff forecloses it:

To acquire actual knowledge of information, a person must in fact become subjectively aware of the information. That the information was available to the person does not establish his actual knowledge, even if he reasonably should have become aware of it.

713 S.W.3d 412, 415 (Tex. 2025) (citation omitted). Red Bluff expressly adopts LDF’s governing rule — “[t]he rules do not . . . provide that the timetable commences on the date the party should have acquired actual knowledge.” Red Bluff, 713 S.W.3d at 415 (quoting LDF Construction, 459 S.W.3d at 725). If receipt of the clerk’s email transmitting a signed judgment does not establish actual knowledge of that judgment — as Red Bluff held — then receipt of pre-judgment service-undeliverability emails about a different document cannot establish actual knowledge of a judgment that does not yet exist.

The Texas Supreme Court reaffirmed Red Bluff four months ago in *Tabakman v. Tabakman*, No. 24-0919 (Tex. Dec. 5, 2025) (per curiam), which applied the actual-versus-constructive-knowledge distinction to a litigant’s claimed awareness derived from a procedure short of actual service. *Tabakman* quoted *Wilson v. Dunn* for the governing rule: “Absent service, waiver, or citation, mere knowledge of a pending suit does not place any duty on a defendant to act.” *Tabak-*

man (slip op.) (quoting *Wilson v. Dunn*, 800 S.W.2d 833, 837 (Tex. 1990)). Tabakman further reaffirmed that “[r]eceiving suit papers or actual notice through a procedure not authorized for service is treated the same as never receiving them.” Tabakman (slip op.) (quoting *Fid. & Guar. Ins. Co. v. Drewery Constr. Co.*, 186 S.W.3d 571, 574 n.1 (Tex. 2006)). The March 3 notifications put Plaintiff, at most, on generalized notice that his own outgoing filing had encountered a service failure. Under *Red Bluff*, *Tabakman*, and *Wilson v. Dunn*, that generalized notice did not impose on Plaintiff a duty to anticipate and correct a service defect for the benefit of an opposing party’s filings not yet made, much less a judgment not yet signed.

Defendants’ three principal Rule 306a authorities each support Plaintiff, not Defendants. *Mem’l Hosp. v. Gillis*, 741 S.W.2d 364, 366 (Tex. 1987), reversed because the movant failed to plead and prove her non-receipt in the trial court, not because she had constructive knowledge; here, Plaintiff has pleaded and proved non-receipt on sworn declaration and forensic record. In *re Lynd Co.*, 195 S.W.3d 682, 684–85 (Tex. 2006), conditionally granted mandamus in favor of the party seeking Rule 306a relief, on the holding that “the trial court had jurisdiction to grant Lynd’s motion for new trial pursuant to Rule 306a.” *John v. Marshall Health Services, Inc.*, 58 S.W.3d 738, 740–41 (Tex. 2001), likewise reversed in favor of the movant. None of the three establishes the reasonable-inquiry rule Defendants urge.

LDF Construction forecloses the duty-of-inquiry theory at its root. There, opposing counsel argued that a litigant who stopped checking the docket and waited for the clerk’s mailed notice had “play[ed] ostrich.” The Fourteenth Court of Appeals rejected the framing: “The rules do not impose a prerequisite obligation on the party to inquire about whether an order has been signed or provide that the timetable commences on the date the party should have acquired actual knowledge.” 459 S.W.3d at 725. The “play ostrich” theory Defendants now advance is the theory LDF expressly rejects.

Plaintiff’s post-notice conduct confirms what the forensic record reflects. On April 3, 2026 at 2:56 p.m. — fourteen hours and forty-one minutes after the April 3 zip download — Plaintiff e-filed a 53-page Sworn Motion Under Rule 306a(5) and Motion for New Trial with exhibits (Envelope ID 113237136). On April 6, he filed a corrective Erratum substituting Lopez, Mathis, and Cruz for the original citations (Envelope ID 113303288). On April 14, he filed a Notice of Correction of Case Contact Information. On April 23, he files this Reply. That is the diligence record Rule 306a(5) calls for.

IV.

THE MOTION IS TIMELY UNDER RULE 329b(a); RULE 306a(4)'S PREDICATES ARE SATISFIED AND UNCONTESTED

The Motion for New Trial is timely under Rule 329b(a) on its face, independent of Rule 306a. The Order was signed March 26, 2026. Rule 329b(a) requires a motion for new trial to be filed “prior to or within thirty days after the judgment or other order complained of is signed.” Plaintiff filed the Motion on April 3, 2026 — eight days after signing, well within the thirty-day window that expires on April 25, 2026. The Court’s plenary power to grant new trial runs from that same March 26 signing date until at least seventy-five days thereafter. Tex. R. Civ. P. 329b(e). Relief under Rule 329b does not depend on any Rule 306a(5) finding.

Plaintiff seeks a Rule 306a(5) finding of the date of first actual knowledge (April 2, 2026) not to render the Motion timely — it is timely under Rule 329b(a) — but to fix that date on the record for purposes of Texas Rule of Appellate Procedure 4.2(c) should Plaintiff require an appellate timetable keyed to actual knowledge rather than signing. The Rule 306a(5) finding is thus requested as a prophylactic record-preservation measure; Plaintiff does not rely on Rule 306a(4)’s extension of time to establish the timeliness of this Motion.

Turning to Rule 306a(4)’s two predicates: Plaintiff did not receive Rule 306a(3) notice from the Clerk, and Plaintiff did not acquire actual knowledge of the signing until April 2, 2026. Neither predicate fact is contested by Defendants.

No Rule 306a(3) notice. The Clerk’s April 2, 2026 Notice of Judgment lists mailing addresses for eight Defendants and does not list an address for Plaintiff. Exhibit E. The Clerk’s file contains no record of transmittal to Plaintiff. As of the date of this Reply, Plaintiff has never received Rule 306a(3) notice from the Clerk.

First actual knowledge April 2, 2026. Plaintiff first acquired actual knowledge of the signing on April 2, 2026, seven days after the Order was signed on March 26. Reply Supplemental Declaration ¶ 1; Motion ¶ 4. Defendants identify no moment prior to April 2, 2026 at which Plaintiff is alleged to have had actual knowledge of the signing. Defendants’ argument is constructive knowledge imputed from the March 3 service-undeliverable notifications. Rule 306a(4) distinguishes actual knowledge from constructive knowledge. Red Bluff, 713 S.W.3d at 415.

Mabon forecloses a duty-to-monitor diligence requirement. Defendants’ Argument B separately urges that Plaintiff’s “lack of diligence independently defeats his motion” because he did not check the docket after the March 3 notifications. Response § III.B at 4. The Texas Supreme Court rejected that theory in Mabon Ltd. v. Afri-Carib Enterprises, Inc., 369 S.W.3d 809, 813 (Tex. 2012) (per curiam): “we have never held that a party must show that it diligently monitored the case status” to determine whether opposing counsel has filed a dispositive motion, and “[t]he

law requires no further showing of diligence” once no-notice is established. *Id.* The Eighth Court of Appeals reads Mabon the same way: a no-notice party’s “failure to respond or even show it monitored a case post-answer” is not a ground for denying relief. *Cruz v. Sanchez*, 528 S.W.3d 104, 110 (Tex. App.—El Paso 2017, no pet.) (citing Mabon, 369 S.W.3d at 813). The diligence-to-monitor theory Defendants advance is the theory Mabon forecloses.

V.

RULE 21a DOES NOT IMMUNIZE SERVICE DEFENDANTS KNEW WAS FAILING

Defendants argue (Response at 4–5) that filing through the eFileTexas system is “an authorized method of service” under Rule 21a and that nothing more was required. That reading is incomplete on the facts of this case.

At the threshold, Rule 21a(b)(3)’s “complete on transmission” rule does not rescue service to a truncated, nonexistent address. Rule 21a(b)(3) provides that electronic service is “complete on transmission of the document to the serving party’s electronic filing service provider.” The rule presupposes transmission to the addressee. It does not purport to validate transmission to a recipient that does not exist. The address “kbassphiladelphi@gmail.com” is not Plaintiff; no such address has ever been associated with Plaintiff. Transmission by the eFileTexas system to that address is not transmission to Plaintiff in any meaningful sense, and the eFileTexas system itself recorded the fact of non-transmission to Plaintiff on the face of every Automated Certificate — reporting service status as ERROR on the Proposed Order, Notice of Submission, Amended Notice of Submission, and April 14 Response, and reporting “SENT” only to a nonexistent truncated address on the March 18 Reply. Rule 21a(b)(3) “complete on transmission” is a rule for adjudicating the timeliness of proper service, not a rule for validating service to an address where no recipient exists.

Service under Rule 21a is subject to the constitutional requirement that it be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); accord *Peralta v. Heights Med. Ctr.*, 485 U.S. 80, 84 (1988). Rule 21a(e) expressly permits an addressee to offer proof of non-receipt. *Tex. R. Civ. P.* 21a(e). “Receipt is an element of service.” *Strobel v. Marlow*, 341 S.W.3d 470, 476 (Tex. App.—Dallas 2011, no pet.); accord *Payton v. Ashton*, 29 S.W.3d 896, 898 (Tex. App.—Amarillo 2000, no pet.); *Cruz v. Sanchez*, 528 S.W.3d 104, 110–11 (Tex. App.—El Paso 2017, no pet.). The Texas Supreme Court has long held that the presumption of service arising under Rule 21a “is not ‘evidence’ and it vanishes when opposing evidence is introduced that [a document] was not received.” *Cliff v. Huggins*, 724 S.W.2d 778, 780 (Tex. 1987); accord *In re E.A.*, 287 S.W.3d 1, 5 (Tex. 2009) (reversing for lack of Rule 21a service where the presumption of service was negated

by the document's return as unclaimed). Service by a method the filer knows is failing is not service reasonably calculated to achieve notice; it is service by a method known to be ineffective.

The Seventh Court of Appeals, within whose jurisdiction this Court sits, has squarely applied the Rule 21a proof-of-non-receipt rule to due-process analysis. In *Strong v. Brooks*, the Amarillo court reversed and remanded where the serving party had sent notice of trial by certified mail to the correct address of record, but the mail returned as “unclaimed.” The court held: “The presumption that notice properly sent under Rule 21a was also received is negated when the document is returned as unclaimed. . . . Without this presumption, there was no evidence that Strong received notice of the trial setting.” No. 07-21-00004-CV, 2022 Tex. App. LEXIS 562, at *4–5 (Tex. App.—Amarillo Jan. 26, 2022, no pet.) (mem. op.) (citing *In re E.A.*, 287 S.W.3d 1, 5 (Tex. 2009); *Mathis*, 166 S.W.3d at 745). The rule applies a fortiori here, where the Automated Certificate of eService on every challenged envelope did not merely raise “proof of non-receipt” — it affirmatively recorded the system's own delivery status to Plaintiff as ERROR or as sent to a nonexistent address.

Strong's narrow carve-out for constructive notice — recognized where a serving party shows “selective acceptance or refusal of certified mail” or a pattern of refused deliveries, *id.* at 5 — *does not apply here*. *The constructive-notice cases within Strong's carve-out involved litigants who actively refused or ignored service of items actually addressed to them. See, e.g., Nichols v. Goodger*, No. 03-16-00044-CV, 2017 Tex. App. LEXIS 6674, at 5–6 (Tex. App.—Austin July 20, 2017, no pet.) (mem. op.) (plaintiff left mail in mailbox, refused certified mail, ignored phone calls). Here, the system's delivery was not to Plaintiff at all — it was to a truncated nonexistent address over which Plaintiff had no control, populated in the case-management service-contact list by a source other than Plaintiff's own eFileTexas profile (which correctly shows kbassphiladelphia@gmail.com, Exhibit G). Passive non-correction of a system-populated truncation is not “selective acceptance or refusal” of items addressed to the party. Strong's carve-out presupposes that the addressee is correctly identified and is refusing delivery; that predicate is absent here.

That is the posture of this case. Defendants' counsel received the identical March 3 “Electronic Service Undeliverable” notifications Defendants now argue put Plaintiff on notice. Over the next forty-two days, every envelope Defendants filed generated an Automated Certificate of eService reporting service to Plaintiff's truncated address as ERROR or as sent to a nonexistent address:

- March 13, 2026, 3:36 p.m. — Proposed Order (Envelope ID 112411933; signed by this Court on March 26, 2026): ERROR. Exhibit C.
- March 13, 2026, 3:42 p.m. — Notice of Submission (Envelope ID 112412497): ERROR. Exhibit B.

- March 13, 2026, 4:40 p.m. — Amended Notice of Submission (Envelope ID 112418015): ERROR. Defendants corrected a defect in the original Notice of Submission within fifty-eight minutes by amendment; they did not correct the service-to-Plaintiff defect that the eFileTexas system was simultaneously flagging on the face of the paper.
- March 18, 2026, 3:29 p.m. — Reply in Support of the Plea (Envelope ID 112584730): SENT to the nonexistent truncated address. Exhibit D.
- April 14, 2026, 3:28 p.m. — Response in Opposition: ERROR. Response at 9.

Three features of this record compound the defect. First, the Proposed Order ERROR certificate — on the document this Court signed — remained ERROR for the thirteen days between filing and signing; the certificate was re-refreshed by re:SearchTX at 4:09 p.m. on March 26 and still reported ERROR. Exhibit C, page 3. Defendants had thirteen days to correct or redirect service of the very document that became the judgment. They did neither. Second, on the face of the March 13, 2026 Notice of Submission itself, Defendants’ counsel hand-typed a Certificate of Service listing Plaintiff’s correct email “kbassphiladelphia@gmail.com,” while on the same page, immediately below, the eFileTexas Automated Certificate of eService reported service to Plaintiff’s truncated “kbassphiladelphi@gmail.com” as ERROR. Exhibit B. Counsel thus typed the correct address by hand on the same document, on the same page, where the automated system simultaneously reported failed delivery to the incorrect address. Third, on March 13, 2026 at 3:17 p.m. — nineteen minutes before Defendants filed the Notice of Submission through the eFileTexas system that recorded ERROR — Defendants’ counsel emailed Plaintiff at his correct address, kbassphiladelphia@gmail.com, about the FERPA-records subject matter of this state-court case. Exhibit F-2. Counsel held the correct address, was actively using it, and typed it by hand on the face of the very filing whose electronic service the system was flagging as failed.

Defendants’ counsel’s asymmetric conduct is controlling. Counsel had Plaintiff’s correct email address throughout and used it for direct correspondence with Plaintiff on a continuing basis — beginning well before the March 3 service defect arose and continuing through March 30, 2026. On January 26, 2026, AAG Scott D. Smith emailed Plaintiff directly at kbassphiladelphia@gmail.com in this state case (DC-2025-CV-1817) regarding Plaintiff’s courtesy copy of the Amended Petition and Notice of Nonsuit, expressly writing: “Service via this email is fine.” Exhibit K (Gmail Message ID 19bfc077acc15dc1; subject “Re: DC-2025-CV-1817 — Courtesy copy of today’s eFiled Amended Petition and Notice of Nonsuit”). Counsel continued to use the correct address on March 12 and March 13, 2026 concerning the FERPA-records subject matter of this state-court action and on March 22 and March 30, 2026 concerning the parallel federal case (Bass v. TTUHSC, No. 5:25-cv-00244-H-BV). Exhibits F-1 through F-4. Plaintiff’s Motion ¶ 40 and Exhibit F summary-list at Motion page 12 referred to counsel’s January 26, 2026 email as the most

recent use of Plaintiff’s correct address; that reference was correct as to the January 26 email’s existence and content but erroneous as to recency, because counsel continued to use the correct address in the months following. The four March emails from counsel are re-tendered with this Reply as Exhibits F-1 through F-4. The January 26, 2026 email is tendered with this Reply as Exhibit K, authenticated by its Gmail Message ID, with the original .eml preserved and available for the Court’s or Defendants’ forensic inspection upon request.

On April 15, 2026 at 12:06 p.m. Central Time — the day after filing the Response in Opposition, and twenty days after this Court signed the Order on Defendants’ Plea — Karla Gutierrez of the Office of the Attorney General transmitted the Response to Plaintiff by direct email at kbassphiladelphia@gmail.com, with Assistant Attorney General Scott D. Smith copied, under the subject line “Courtesy Copy of Filed Response to Motion.” Exhibit I (Gmail Message ID 19d921bfa9f0f0ab). The same direct-email channel, with the same two counsel, was available on March 13 (Notice of Submission, Amended Notice of Submission, Proposed Order), March 18 (Reply in Support), and April 2 (Clerk’s Notice of Judgment). Defendants declined to use it for any filing that would have permitted Plaintiff to be heard before the Order was signed. They used it the day after the Order secured them their relief.

A party that knows its chosen method of service is failing, holds the opposing party’s correct address, and continues to rely on the failing method until after dispositive relief is obtained has not served by a method reasonably calculated to apprise the opposing party of the pendency of the proceedings. See *Ewton v. Gayken*, 130 S.W.3d 382, 384–85 (Tex. App.—Beaumont 2004, pet. denied) (court clerk erred by relying on address of record when a correct forwarding address was known); see also *Mathis*, 166 S.W.3d at 746 (citing *Ewton* as contrary authority to duty-to-keep-current-address rule). Defendants’ Argument C — that Rule 21a imposed no duty on them to verify or troubleshoot Plaintiff’s profile — is beside the point. The question is not whether Rule 21a required Defendants to maintain Plaintiff’s profile; it is whether Rule 21a permitted Defendants to rely on service they knew was failing. It did not. *Cruz*, 528 S.W.3d at 110 (“Failure to provide proper notice results in a due process violation and mandates reversal.”).

VI.

PERALTA, LOPEZ, AND MATHIS REQUIRE NEW TRIAL

Defendants argue (Response § III.D) that “due process is satisfied where a party is afforded a meaningful opportunity to present his case” and that because Plaintiff filed a 78-page response to the Plea, the opportunity was afforded. Response at 5 (citing *Peralta*, 485 U.S. at 84–86). That reading inverts *Peralta*.

The Texas Supreme Court’s recent framing of dispositive rulings entered without the non-moving party’s participation forecloses Defendants’ approach before it begins. Four months ago

in *Tabakman v. Tabakman*, No. 24-0919 (Tex. Dec. 5, 2025) (per curiam), the Court restated the governing principles from *In re Lakeside Resort JV, LLC*, 689 S.W.3d 916 (Tex. 2024): “Default judgments are ‘greatly disfavor[ed]’ under Texas law, consistent with the strong policy preference for adjudicating cases on the merits.” *Tabakman* (slip op. at 3) (citing *Lakeside Resort*, 689 S.W.3d at 921, 925). The “adversarial clash” “increases the likelihood that accurate and truthful results will emerge” through the “collision of evidence and ideas.” *Lakeside Resort*, 689 S.W.3d at 920. “Accordingly, any doubts about a default judgment — **not just doubts about service** — ‘must be resolved against the party who secured the default.’” *Tabakman* (slip op. at 4) (quoting *Lakeside Resort*, 689 S.W.3d at 922). Mabon’s “dispositive hearing” formulation (discussed below) brings the March 26 Order within the *Lakeside Resort* category: dispositive relief obtained without the non-moving party’s participation. Any doubt about whether Plaintiff received the Rule 21a service or the Peralta notice due process requires must be resolved against Defendants, not against Plaintiff.

The Texas Supreme Court has held — with binding effect on this Court — that “[o]nce a defendant has made an appearance in a cause, he is entitled to notice of the trial setting as a matter of due process under the Fourteenth Amendment to the federal constitution.” *LBL Oil Co. v. International Power Services, Inc.*, 777 S.W.2d 390, 390–91 (Tex. 1989) (per curiam) (citing *Peralta*, 485 U.S. 80, and *Lopez*, 757 S.W.2d at 723). *LBL Oil* applied that rule on facts materially indistinguishable from these: a post-appearance defendant had been denied notice of the motion for default judgment, “which effectively was his trial setting since it was dispositive of the case.” *Id.* at 391. The Court reversed. *Id.* Here, Plaintiff was denied notice of every filing leading to the March 26 Order — the March 13 Notice of Submission, the March 13 Amended Notice of Submission, the March 13 Proposed Order itself, and the March 18 Reply in Support of the Plea — and of the Clerk’s April 2 Notice of Judgment. The Plea to the Jurisdiction was, like the default motion in *LBL Oil*, dispositive of the case. *LBL Oil* controls.

Peralta reversed the Texas courts for denying relief from a judgment entered without notice. “Failure to give notice violates ‘the most rudimentary demands of due process of law.’” 485 U.S. at 84 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965)). The “meaningful opportunity” language in *Peralta* summarizes the standard; it does not supply an exception that would have required the Peralta Court to affirm. The rule Defendants derive — that a party who once filed may thereafter be denied notice of subsequent dispositive filings without a due-process violation — is the rule *Peralta* rejected.

Peralta’s rule is stated at the level of general due-process principle: “An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” 485 U.S. at 84 (quoting *Mullane*, 339 U.S. at 314). The Texas Supreme Court has applied that requirement beyond the

default-judgment context to any dispositive ruling entered without adequate notice and opportunity to be heard. See *Union Carbide Corp. v. Moye*, 798 S.W.2d 792, 794 (Tex. 1990) (“the court effectively deprived Union Carbide of its fundamental due process right to notice and a hearing”; reversing venue ruling entered after movant was misled about the form of proof at the hearing). The Court reaffirmed and refined that principle in *Mabon Ltd. v. Afri-Carib Enterprises, Inc.*, 369 S.W.3d 809, 813 (Tex. 2012) (per curiam): “Entry of a post-answer default judgment against a defendant who did not receive notice of the trial setting **or dispositive hearing** constitutes a denial of due process under the Fourteenth Amendment of the United States Constitution.” Mabon’s “dispositive hearing” formulation is controlling on the facts of this case. The March 13 Notice of Submission set Defendants’ Plea to the Jurisdiction for submission on the papers; the March 26 Order disposing of the Plea is the “dispositive hearing” within Mabon. Plaintiff received no notice of the submission, of the March 18 Reply, of the Proposed Order, or of the Proposed Order’s signing. The due-process rule applies and Mabon controls.

The Texas Supreme Court adopted Peralta for Texas in *Lopez*: “[B]ecause the record here establishes that Guadalupe had no actual or constructive notice of the trial setting, the lower courts erred in requiring him to show that he had a meritorious defense as a condition to granting his motion for new trial,” and imposing that requirement “in the absence of notice, violates due process rights under the Fourteenth Amendment to the federal constitution.” 757 S.W.2d at 723. Mathis extended *Lopez*: “When the first element [of Craddock] is established by proof that the defaulted party was not given notice of a trial setting, we have dispensed with the second element for constitutional reasons.” 166 S.W.3d at 744.

Mathis also addressed, and rejected, the argument Defendants make here. The court of appeals below had reasoned that a litigant has a duty “to keep the court and parties apprised of their correct and current address.” 166 S.W.3d at 746. The Texas Supreme Court replied: “[E]ven assuming there is such a duty, unless noncompliance was intentional rather than a mistake, due process requires some lesser sanction than trial without notice or an opportunity to be heard.” *Id.* The eFileTexas truncation is a data-entry mistake. Defendants do not argue otherwise. Under Mathis, even if Plaintiff had a duty to audit his eFileTexas profile, the sanction Defendants seek — a final judgment on the merits of the Plea without opportunity to respond to the Reply or contest the form of the Order — is not constitutionally available.

This Court sits within the jurisdiction of the Seventh Court of Appeals, which has applied the Peralta/Lopez rule in Texas, including in recent decisions on closely analogous facts. See *McDaniel v. Hale*, 893 S.W.2d 652 (Tex. App.—Amarillo 1994, writ denied). The Seventh Court most recently applied the Lopez first-prong rule in *Strong v. Brooks*: “When a party receives no notice of a trial setting, she satisfies the first prong of Craddock and does not have to meet the remaining prongs of the test to be entitled to a new trial.” No. 07-21-00004-CV, 2022 Tex. App. LEXIS 562,

at *4 (Tex. App.—Amarillo Jan. 26, 2022, no pet.) (mem. op.) (citing Lopez, 757 S.W.2d at 723). Strong reversed and remanded for no-notice where the Rule 21a-authorized method — certified mail — had failed to effect receipt. The same rule forecloses Defendants’ position here, where the Rule 21a-authorized method — eFileTexas transmission to the service-contact list — affirmatively reported its own failure to effect receipt on every envelope.

Defendants’ Response (at 5) recasts Plaintiff’s position as a complaint that he was “denied” the right to file a sur-reply. That is not Plaintiff’s position. Plaintiff did not see the March 13 Notice of Submission, the March 13 Amended Notice of Submission, the March 13 Proposed Order, or the March 18 Reply. The absence of notice is not the absence of sur-reply rights — it is the absence of the notice on which every downstream procedural choice depends: whether to request oral argument, whether to object to submission on the papers, whether to seek leave to file a sur-reply, and whether to object to the form of the Proposed Order Defendants had pre-drafted for the Court’s signature.

Defendants’ Response does not cite Mabon, Lopez, Mathis, Strong, or McDaniel.

VII.

THE CRADDOCK/STRACKBEIN HARM SHOWING IS NOT REQUIRED AND IS SATISFIED

Defendants cite Strackbein v. Prewitt, 671 S.W.2d 37 (Tex. 1984), for a harm standard Lopez and Mathis dispense with in no-notice cases. 757 S.W.2d at 723; 166 S.W.3d at 744. Strackbein itself, moreover, is the wrong side of Defendants’ own case: the Texas Supreme Court there affirmed the court of appeals’ reversal of the trial court and ordered new trial, holding that the uncontroverted affidavits established the Craddock elements and required the grant of new trial. 671 S.W.2d at 39. Defendants cite, as authority against new trial, a Texas Supreme Court case that granted new trial.

The harm showing, if it applied, is satisfied. Defendants’ March 18 Reply introduced three arguments Plaintiff’s March 3 Response did not address — because he did not see the March 18 Reply until April 3.

First, academic deference, elevated. The Plea cited Ewing, Than, and Alcorn in one paragraph on sovereign immunity (Plea at 4–5). The March 18 Reply promoted the line into a titled section — “Academic Record Administration Is Entitled to Judicial Deference” (§ II.D) — and extended it for the first time to records administration. Plaintiff’s Fourth Amended Petition expressly disclaims any challenge to academic or disciplinary determinations; he seeks ultra vires relief for non-performance of Tex. Gov’t Code § 559.004 and OP 77.13 records procedures. A responsive brief could have distinguished records administration from academic judgment and shown that the Ewing line has never been extended by the Texas Supreme Court to immunize the failure to discharge § 559.004 procedures.

Second, the FERPA-analogy ripeness argument. The Reply introduced for the first time the argument that OP 77.13’s access language should be narrowly construed by analogy to FERPA, 20 U.S.C. § 1232g, and 34 C.F.R. § 99.10. Reply § II.E at 5–6. The Plea cited neither provision. A responsive brief could have shown that TTUHSC’s refusal to amend, after the 45-day OP 77.13 window expired on February 13, 2026, is by its own terms a final and definitive position, and that *Texas Dep’t of Protective & Regulatory Servs. v. Mega Child Care, Inc.*, 145 S.W.3d 170 (Tex. 2004), is distinguishable on its face.

Third, the Miranda futility argument. The Reply invoked for the first time the argument that further amendment would be “futile” under *Texas Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217 (Tex. 2004). Reply § II.G at 7. The Plea cited *Miranda* only for a general sovereign-immunity proposition (Plea at 4). A responsive brief would have identified specific factual allegations, including records produced since the Fourth Amended Petition, that support a Fifth Amended Petition directly addressing *Miranda*’s negation standard. To demonstrate concrete non-futility of amendment, Plaintiff tenders with this Reply, as Exhibit L, a proposed form of Fifth Amended Verified Original Petition for the Court’s inspection subject to granting of new trial and leave under Tex. R. Civ. P. 63. Exhibit L is not filed as the operative pleading of this cause; it is tendered as an exhibit so that the Court may inspect, under *Miranda*, the particularized allegations Plaintiff would assert upon leave. The proposed form supplies, on its face, the particularized jurisdictional allegations responsive to *Miranda*, the ministerial-versus-discretionary distinction, the scope of academic deference, the inapplicability of FERPA analogy, and the expiration of OP 77.13’s forty-five-day window — defeating any assertion that amendment is futile.

Beyond the substantive rebuttal opportunity, Plaintiff was prevented from (i) objecting to submission without oral hearing and requesting oral argument on the Plea; (ii) filing a sur-reply responsive to the three new arguments Defendants introduced in the March 18 Reply; (iii) seeking leave under Tex. R. Civ. P. 63 to file a Fifth Amended Petition with particularized allegations addressing *Miranda*’s negation standard, including records produced since the Fourth Amended Petition (a proposed form of which Plaintiff tenders with this Reply as Exhibit L, for the Court’s inspection only — not as the operative pleading of this cause); (iv) moving to strike the portions of the March 18 Reply that exceeded rebuttal by raising new matter; (v) filing supplemental evidence and affidavits in opposition, including documents produced by Defendants and agency counsel since the Plea was filed; (vi) moving for continuance of the submission date to permit preparation of the foregoing; and (vii) objecting to the form of the Proposed Order Defendants had pre-drafted on March 13 and tendered for the Court’s signature. Each of these steps was procedurally available to a timely-notified opposing party; several would have been pursued as of right. The Court signed that Proposed Order on March 26. Had Plaintiff been present — by direct email, as Defendants’ counsel has since demonstrated was possible — the record before the Court at signing would have

differed in identifiable ways. That is the Peralta harm. It also independently satisfies the Craddock framework Strackbein applies: where the movant’s affidavits set forth uncontroverted facts that, if true, entitle the movant to relief, a new trial must be granted. Strackbein, 671 S.W.2d at 38–39.

VIII.

UNDISPUTED PREDICATE FACTS

The following facts are established on the record and uncontested in Defendants’ Response:

1. Electronic service to Plaintiff was undeliverable as of March 3, 2026, by reason of a truncated email address in the county case management system’s service-contacts list — not in Plaintiff’s eFileTexas registration (Motion ¶ 24; Exhibit G; Response at 2).
2. The March 3 system notification instructed the filer to “serve the document using a different method” (Motion ¶ 26; Exhibit A).
3. Defendants’ counsel held Plaintiff’s correct email address and used it for direct correspondence with Plaintiff about this case and the parallel federal case on March 12, March 13, March 22, and March 30, 2026 (Motion ¶¶ 27–30; Exhibits F-1 through F-4).
4. Plaintiff did not receive the March 13 Notice of Submission, the March 13 Amended Notice of Submission, the March 13 Proposed Order, the March 18 Reply, or the April 2 Notice of Judgment until no earlier than April 2, 2026 and no later than April 3, 2026 at 12:15 a.m. Central Time (Exhibit H).
5. The Automated Certificate of eService on Defendants’ April 14 Response still records Plaintiff’s email as “kbassphiladelphi@gmail.com” and service status as “ERROR” (Response at 9); on April 15, 2026 at 12:06 p.m. Central Time, the same counsel transmitted the Response to Plaintiff by direct email at the correct address as a “courtesy copy.”

These predicates establish (i) the absence of Rule 306a(3) notice, (ii) the absence of Plaintiff’s actual knowledge of the signing until April 2, 2026, (iii) the failure of service under Rule 21a, and (iv) the Peralta/Lopez due-process violation.

Clarifications to the Motion. Plaintiff clarifies two references in his April 3, 2026 Motion that the above record supersedes. First, Motion ¶¶ 14, 35(d), and 36(d) refer to a “March 19 hearing” on the Plea. No oral hearing was held on March 19. The March 19 entry on which the Motion was based was a submission-docket listing reflecting that the Plea was set for submission on the papers pursuant to Defendants’ March 13 Notice of Submission; no oral argument occurred, and the Court decided the Plea on the papers on March 26. The correct factual premise is that Plaintiff had no notice of the March 13 Notice of Submission or the setting of the Plea for submission, and no opportunity to object to submission without oral hearing or to request oral argument. Second, Motion ¶ 40 referred to AAG Smith’s January 26, 2026 state-case email as counsel’s most recent use

of Plaintiff’s correct email address (“as recently as January 26, 2026”). The January 26, 2026 email is authentic and is properly identified above at Section V; the recency qualifier was mistaken because counsel continued to use the correct address through March 30, 2026, as reflected in Exhibits F-1 through F-4. Both clarifications enlarge rather than diminish the factual record supporting this Motion.

IX.

CONCLUSION

The question before the Court is narrow. Was Plaintiff afforded the notice and opportunity to be heard that due process requires before the March 26 Order was signed? The forensic record — the re:SearchTX docket review that fixed first actual knowledge on April 2, the April 3 zip-file timestamp and SHA-256 digest corroborating the timing, the eFileTexas Order ID, five consecutive ERROR certificates across Defendants’ challenged filings, the Clerk’s Notice of Judgment listing no address for Plaintiff, and Defendants’ counsel’s own direct-email usage of Plaintiff’s correct address at every juncture except the challenged filings, beginning with Smith’s January 26, 2026 state-case acknowledgment that “Service via this email is fine” — answers the question. Plaintiff was not afforded Rule 306a(3) notice, was not afforded service reasonably calculated to apprise him of the pendency of the proceedings, and was not afforded the opportunity to be heard that Peralta, Lopez, Mathis, Mabon, and Union Carbide command. The Motion for New Trial is timely under Rule 329b(a) on its face, and the Rule 306a(5) finding is a proper record-preservation fallback. Due process and Rule 329b require that the March 26 Order be set aside and new trial granted.

X.

PRAYER

WHEREFORE, Plaintiff Kevin N. Bass respectfully requests that this Court:

1. Set the Motion for oral hearing so that Plaintiff may present Exhibit H and the supporting forensic record, and, in conjunction with Rule 306a(5), enter the finding contemplated by Texas Rule of Appellate Procedure 4.2(c) fixing the date on which Plaintiff first acquired actual knowledge of the signing of the March 26, 2026 Order;
2. Find, pursuant to Rule 306a(4) and (5) and Texas Rule of Appellate Procedure 4.2(c), that Plaintiff first acquired actual knowledge of the signing of the March 26, 2026 Order on April 2, 2026 (corroborated by the April 3, 2026 zip-download forensic record), or in the alternative no later than April 3, 2026 at 12:15 a.m. Central Time, for purposes of preserving the date of first actual knowledge on the record as a record-preservation measure;

3. Grant new trial pursuant to Rule 329b, set aside the Order on Defendants' Plea to the Jurisdiction signed March 26, 2026, and set Defendants' Plea for oral hearing; and
4. Direct the Clerk and the case-management system administrator to correct Plaintiff's service email to kbassphiladelphia@gmail.com and to require direct-email service on Plaintiff in parallel with eFileTexas transmission until the Automated Certificate of eService reports service to Plaintiff as SENT to the correct address.

Plaintiff is contemporaneously filing a separate Motion to Set Evidentiary Hearing on this Motion, with an accompanying Proposed Order Setting Evidentiary Hearing, and incorporates that Motion and Proposed Order by reference as the procedural vehicle for Prayer ¶ 1 above.

Respectfully submitted,

/s/ Kevin N. Bass

KEVIN N. BASS

Pro Se Plaintiff

[REDACTED]

[REDACTED]

Telephone: (512) 333-4092

Email: kbassphiladelphia@gmail.com

**SUPPLEMENTAL UNSWORN DECLARATION UNDER TEXAS CIVIL PRACTICE &
REMEDIES CODE SECTION 132.001**

My name is Kevin N. Bass. My date of birth is December 7, 1984. My address is [REDACTED]
[REDACTED]

I am the Plaintiff in Cause No. DC-2025-CV-1817. I have read the foregoing Reply in Support of my Sworn Motion Under Rule 306a(5) and Motion for New Trial. The factual statements contained therein are within my personal knowledge and are true and correct. This declaration supplements, and does not replace, the Unsworn Declaration I executed and filed with my April 3, 2026 Motion.

I specifically declare the following facts concerning Exhibit H to this Reply:

1. On April 2, 2026, I first learned that this Court had signed an Order on Defendants' Plea to the Jurisdiction, through review of publicly available docket data on the re:SearchTX court records system. I then logged in to my account on the eFileTexas system at efile.txcourts.gov to obtain copies of the filings underlying the docket entries I had just seen.
2. At approximately 12:15 a.m. Central Time on April 3, 2026, I requested a zip package download of case documents from my eFileTexas account. The eFileTexas

- system issued the download request an Order number of fdb52dc0-204e-46f1-a4c6-fde614a3b931 and a Zip Reference number of 7736a2c5-5cd1-4845-ba72-b58e46365846. The system delivered the zip package to my computer, where it was saved with the filename “FDB52DC0.zip.”
3. The file-system modification time that my computer’s operating system recorded for FDB52DC0.zip at the moment of download is April 3, 2026 at 00:15:45 Central Time (05:15:45 Coordinated Universal Time). The SHA-256 digest of the preserved file is fbe7ca4c2e6c1608bcc6fff96885f6248b4fef46a853a36f913815304ad466b5. I have not modified the file since its download. The timestamp and digest can be verified by any person with access to the file; the eFileTexas Order number and Zip Reference number can be verified against Tyler Technologies’ eFileTexas server records on request.
 4. FDB52DC0.zip contains five items: (i) a PDF of the March 13, 2026 Notice of Submission; (ii) a PDF of the March 13, 2026 Proposed Order (the same document this Court subsequently signed on March 26, 2026); (iii) a PDF of the March 18, 2026 Reply in Support of Defendants’ Plea to the Jurisdiction; (iv) a PDF of the Notice of Judgment; and (v) a plain-text file named “zip-receipt.txt” listing the four PDFs and recording the Order and Zip Reference numbers identified in paragraph 2.
 5. The April 3, 2026 12:15 a.m. download described above was my first acquisition of any of the four Defendants’ filings enumerated in paragraph 4. Prior to 12:15 a.m. on April 3, 2026, I had not received, seen, possessed, or otherwise had access to any of those four filings.
 6. The March 13, 2026 Amended Notice of Submission was not included in FDB52DC0.zip. I obtained a copy of the Amended Notice of Submission from eFileTexas on or after April 3, 2026, through a separate download requested after the events described in paragraphs 1 through 5 above.
 7. Between March 3, 2026 and April 2, 2026, I received no electronic notifications from the eFileTexas system relating to this case. The last eFileTexas notification I received before April 2, 2026 was on March 3, 2026, confirming the acceptance of my own filings that day.
 8. The native FDB52DC0.zip file is preserved on my computer and is available for the Court’s or Defendants’ forensic inspection upon request. The accompanying Exhibit H Metadata document reproduces the zip-receipt.txt contents, the operating-system mtime, and the SHA-256 digest, and serves as the filing artifact for Exhibit H.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Lubbock County, State of Texas, on the 23rd day of April, 2026.

/s/ Kevin N. Bass
KEVIN N. BASS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply in Support of Plaintiff's Sworn Motion Under Rule 306a(5) and Motion for New Trial was served on the following counsel of record via the eFileTexas electronic filing system and via direct email on this 23rd day of April, 2026:

Scott D. Smith
Assistant Attorney General
Office of the Attorney General of Texas
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Email: scott.smith@oag.texas.gov

Karla Gutierrez
Office of the Attorney General of Texas
Email: karla.gutierrez@oag.texas.gov

Tristan Garza
Office of the Attorney General of Texas
Email: tristan.garza@oag.texas.gov

/s/ Kevin N. Bass
KEVIN N. BASS

ADDITIONAL EXHIBITS

All exhibits referenced in this Reply (Exhibits A, A-2, B, B-2, C, D, E, F-1, F-2, F-3, F-4, G, H, I, J, K, and L) are tendered together in the accompanying Exhibits Bundle, which contains a titled cover page preceding each exhibit. Exhibits A through G were previously tendered with Plaintiff's April 3, 2026 Motion for New Trial (with the Motion's lump Exhibit F now broken out as Exhibits F-1 through F-4 corresponding to the four counsel emails); they are re-tendered here as convenience copies. Exhibits B-2, H, I, J, K, and L are newly tendered with this Reply and are individually described below.

Exhibit B-2: Amended Notice of Submission filed March 13, 2026 at 4:40 p.m. Central Time (Envelope ID 112418015), the face of which bears the Automated Certificate of eService reporting service to Plaintiff's truncated "kbassphiladelphi@gmail.com" as ERROR. Tendered as companion to Exhibit B (original Notice of Submission of the same date).

Exhibit H: FDB52DC0.zip — zip package downloaded from Plaintiff's eFileTexas account on April 3, 2026 at 12:15 a.m. Central Time (file-system modification time 00:15:45 Central Time / 05:15:45 UTC; SHA-256 digest fbe7ca4c2e6c1608bcc6fff96885f6248b4fef46a853a36f913815304ad466b5), containing:

- (i) 20260313_Notice of Submission.pdf;
- (ii) 20260313_Proposed Order.pdf (the order subsequently signed by the Court on March 26, 2026);
- (iii) 20260318_Reply in Support of Defendants PTJ and Plea in Abatement.pdf;
- (iv) Notice Of Judgment.pdf;
- (v) zip-receipt.txt recording the eFileTexas Order number (fdb52dc0-204e-46f1-a4c6-fde614a3b931) and Zip Reference number (7736a2c5-5cd1-4845-ba72-b58e46365846) for the download request.

Plaintiff tenders Exhibit H through the accompanying Exhibit H Metadata document (which reproduces the zip-receipt.txt contents, the file-system timestamp, and the SHA-256 digest on their face); the native zip file is preserved on Plaintiff's computer and is available for the Court's or Defendants' forensic inspection upon request.

Exhibit I: April 15, 2026 direct email from Karla Gutierrez (karla.gutierrez@oag.texas.gov), Office of the Attorney General, to Plaintiff at kbassphiladelphia@gmail.com, with Assistant Attorney General Scott D. Smith (scott.smith@oag.texas.gov) copied, sent at 12:06:36 p.m. Central Time (17:06:36 UTC), subject "Courtesy Copy of Filed Response to Motion," transmitting as attachment a PDF identical to Envelope ID 113642659 (Defendants' Response in Opposition filed April 14, 2026). Preserved with Gmail Message ID 19d921bfa9f0f0ab.

Exhibit J: Timeline of Events — single-page chronology of the fifty-one days from March 3, 2026 (the eFileTexas notifications and Plaintiff's 78-page Response to the Plea) through April 23, 2026 (this Reply), showing every filing, every Automated Certificate of eService status, every direct counsel email, and the April 3, 2026 zip download that fixes the outer bound of Plaintiff's actual knowledge.

Exhibit K: January 26, 2026 direct email from AAG Scott D. Smith (Scott.Smith@oag.texas.gov) to Plaintiff at kbassphiladelphia@gmail.com, sent at 2:38 p.m. Central Time (20:38 UTC), subject "Re: DC-2025-CV-1817 — Courtesy copy of today's eFiled Amended Petition and Notice of Nonsuit." Smith expressly writes: "Service via this email is fine. Thank you for sending." Establishes, thirty-six days before the March 3, 2026 eFileTexas

service defect arose, counsel's affirmative acknowledgment in this state case that the direct-email channel to Plaintiff's correct address was valid for service. Preserved with Gmail Message ID 19bfc077acc15dc1 and SHA-256 digest 355b5a8582f033274b2134a886373ce7922d198b508f4663916d828524a04116.

Exhibit L: Proposed Form of Fifth Amended Verified Original Petition, tendered with this Reply for the Court's inspection under *Texas Department of Parks & Wildlife v. Miranda*, 133 S.W.3d 217 (Tex. 2004), in support of Section VII above. The Prefatory Statement on the face of the document confirms it is not filed as the operative pleading of this cause and would activate only upon the Court's granting of new trial and entry of leave to amend under Tex. R. Civ. P. 63. The proposed form supplies, on its face, the particularized jurisdictional allegations responsive to *Miranda* — including the ministerial-versus-discretionary distinction, the scope of academic deference, the inapplicability of the FERPA analogy, and the expiration of OP 77.13's forty-five-day window — demonstrating concrete non-futility of amendment.

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Tristan A Garza		tristan.garza@oag.texas.gov	4/23/2026 8:44:04 AM	SENT
Karla Gutierrez		karla.gutierrez@oag.texas.gov	4/23/2026 8:44:04 AM	SENT
Scott D. Smith		scott.smith@oag.texas.gov	4/23/2026 8:44:04 AM	SENT
Kevin N. Bass		kbassphiladelphi@gmail.com	4/23/2026 8:44:04 AM	ERROR