

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 MOTION TO SET EVIDENTIARY HEARING ON 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 respectfully moves this Court to set an evidentiary hearing on Plaintiff's Sworn Motion Under Rule 306a(5) and Motion for New Trial Under Rule 329b, filed April 3, 2026, and as supplemented by Plaintiff's Erratum filed April 6, 2026 and Plaintiff's Reply in Support filed April 23, 2026. A Proposed Order Setting Hearing accompanies this Motion. In support, Plaintiff shows the Court as follows:

I.

RULE 306a(5) REQUIRES PROOF ON SWORN MOTION AND NOTICE

Rule 306a(5) provides: "In order to establish the application of paragraph (4) of this rule, the party adversely affected is required to prove in the trial court, on sworn motion and notice, the date on

which the party or his attorney first either received a notice of the judgment or acquired actual knowledge of the signing and that this date was more than twenty days after the judgment was signed.” Tex. R. Civ. P. 306a(5) (emphasis added).

The Rule’s three operative terms — “prove in the trial court,” “on sworn motion and notice,” and “the date on which” — presuppose an evidentiary hearing at which the movant may tender testimony and documentary proof, and at which the opposing party may examine the movant’s showing. The Texas Supreme Court has repeatedly treated the 306a(5) hearing as the occasion on which the movant’s proof is developed and tested. See *In re Lynd Co.*, 195 S.W.3d 682, 684–85 (Tex. 2006) (orig. proceeding) (appellate disposition of 306a(4) claim turned on the trial-court hearing record supporting an implied finding of late notice); *John v. Marshall Health Services, Inc.*, 58 S.W.3d 738, 740–41 (Tex. 2001) (per curiam) (remanding to the trial court for adjudication of the 306a(5) predicate on the record).

II.

THE MOTION IS RIPE FOR HEARING AND TURNS ON TESTIMONIAL FACTS

Plaintiff’s April 3, 2026 Motion is supported by an Unsworn Declaration under Texas Civil Practice and Remedies Code § 132.001 and by contemporaneous documentary evidence (Exhibits A through G). Plaintiff’s April 23, 2026 Reply in Support is supported by a Supplemental Unsworn Declaration and by Exhibit H — the FDB52DC0.zip eFileTexas download package, file-system modification time 00:15:45 Central Time on April 3, 2026, SHA-256 cryptographic hash fbe7ca4c2e6c1608bcc6fff96885f6248b4fef46a853a36f913815304ad466b5 — together with an Exhibit H Metadata Certification filed herewith.

Defendants’ April 14, 2026 Response presents no contrary evidence. Defendants do not contest (a) that electronic service to Plaintiff was undeliverable as of March 3, 2026; (b) that the truncated address “kbassphiladelphia@gmail.com” originated in the county case management system, not in Plaintiff’s eFileTexas registration; (c) that Defendants’ counsel had Plaintiff’s correct email address and used it for direct communications with Plaintiff on March 12, 13, 22, and 30, 2026; or (d) that Plaintiff did not receive the March 13 Notice of Submission or the March 18 Reply. Response at 2, 5. Defendants contest only the legal consequence of the March 3 notifications.

An evidentiary hearing will permit Plaintiff to testify under oath to the facts set forth in the two Unsworn Declarations; to authenticate Exhibit H and demonstrate its forensic artifacts on the record (file-system modification time, SHA-256 hash, and embedded eFileTexas Order and Zip Reference numbers); and to answer any questions the Court may have regarding the April 2–3, 2026 actual-knowledge timeline. It will also permit Defendants to examine Plaintiff on any issue they elect to contest.

III.
**THE HEARING PRESERVES A COMPLETE RECORD FOR ANY APPELLATE
REVIEW**

Whether this Court grants or denies the Motion, its ruling is subject to review — under *Strackbein v. Prewitt*, 671 S.W.2d 37, 38 (Tex. 1984) (abuse-of-discretion standard for motions for new trial generally) — and, on the central question whether the *Craddock/Strackbein* meritorious-defense-and-harm showing is required on this record, under the de novo standard applicable to the federal constitutional question the Texas Supreme Court identified in *Lopez v. Lopez*, 757 S.W.2d 721, 723 (Tex. 1988) (per curiam), and *Mathis v. Lockwood*, 166 S.W.3d 743, 744 (Tex. 2005) (per curiam).

Each standard of review depends on the completeness of the trial-court record. A hearing at which Plaintiff authenticates Exhibit H, testifies under oath, and responds to any questions the Court may pose creates the record on which review proceeds. A denial of the Motion on the papers alone, without an evidentiary hearing, would generate an independent procedural question concerning the adequacy of proceedings under Rule 306a(5).

IV.
PROPOSED HEARING

Plaintiff respectfully requests that this Court set an evidentiary hearing by Zoom videoconference at the Court's earliest convenience, with notice transmitted to Plaintiff both through eFileTexas and by direct email to kbassphiladelphia@gmail.com. Plaintiff anticipates the hearing will require no more than one hour. Plaintiff is prepared to testify and to authenticate Exhibit H and all other exhibits. Plaintiff does not anticipate calling additional witnesses but reserves the right to do so should issues arise at the hearing.

The Proposed Order Setting Hearing filed herewith proposes Thursday, May 14, 2026, at 9:00 a.m. Central Time, by Zoom videoconference, or such other date and time as may be convenient for the Court.

Plaintiff respectfully notes, for the Court's scheduling convenience, that under Texas Rule of Civil Procedure 329b(c) the Court's authority to grant the underlying Motion for New Trial by written order expires seventy-five days after the controlling date. The controlling date is March 26, 2026 (the date the Order on Plea to the Jurisdiction was signed) or, if Rule 306a(4) applies on the showing made in the underlying Sworn Motion, April 3, 2026 (the date of Plaintiff's first actual knowledge). The corresponding outside dates are June 9, 2026 and June 17, 2026, respectively. Plaintiff respectfully requests that any hearing setting fall before the earlier of those two dates so that the Court's ruling on the Motion for New Trial may issue within the window prescribed by Rule 329b(c).

V.

PRAYER

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

1. Grant this Motion and set an evidentiary hearing on Plaintiff's Sworn Motion Under Rule 306a(5) and Motion for New Trial Under Rule 329b at the Court's earliest convenience, by Zoom videoconference;
2. Direct the Clerk and the district's case management system administrator to transmit notice of the hearing setting to Plaintiff both through the eFileTexas electronic filing system and by direct email to kbassphiladelphia@gmail.com, in parallel, until the Automated Certificate of eService reports Plaintiff's service status as "SENT" to the correct address; and
3. Grant all other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

/s/ Kevin N. Bass
KEVIN N. BASS, PhD, MS
Pro Se Plaintiff

Telephone: (512) 333-4092
Email: kbassphiladelphia@gmail.com

CERTIFICATE OF CONFERENCE

Pursuant to local practice, on April 18, 2026, Plaintiff conferred with Defendants' counsel, Scott D. Smith, Assistant Attorney General, by direct email regarding the relief requested in this Motion. On April 20, 2026, AAG Smith responded. Defendants are unopposed to the Court setting the matter at the Court's convenience by Zoom videoconference. Defendants oppose the request insofar as it seeks an evidentiary hearing, taking the position that any hearing should be narrowly limited to the Rule 306a(5) notice and actual-knowledge issues. The Motion is therefore opposed in part. Plaintiff's original Motion to Set Hearing was rejected by the eFileTexas clerk because the motion and the proposed order were filed in a single envelope rather than in separate envelopes. On April 27, 2026, Plaintiff renewed conference with AAG Smith by direct email proposing Thursday, May 14, 2026 at 9:00 a.m. Central Time as the hearing date. On April 28, 2026, AAG Smith responded

by direct email confirming, “May 14th is fine.” Defendants are therefore unopposed to the May 14, 2026 setting.

/s/ Kevin N. Bass
KEVIN N. BASS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Set Evidentiary Hearing on Sworn Motion Under Rule 306a(5) and Motion for New Trial Under Rule 329b, together with the accompanying Proposed Order Setting Hearing, was served on the following counsel of record via the eFileTexas electronic filing system and via direct email on this 28th 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
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/s/ Kevin N. Bass
KEVIN N. BASS, PhD, MS

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.

Envelope ID: 114179135

Filing Code Description: Motion (No Fee)

Filing Description: Motion to Set Evidentiary Hearing on Sworn Motion Under Rule 306a(5) and Motion for New Trial Under Rule 329b

Status as of 4/28/2026 8:23 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Tristan A Garza		tristan.garza@oag.texas.gov	4/28/2026 7:03:00 AM	SENT
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Scott D. Smith		scott.smith@oag.texas.gov	4/28/2026 7:03:00 AM	SENT
Kevin N. Bass		kbassphiladelphi@gmail.com	4/28/2026 7:03:00 AM	ERROR