

Plaintiff asserts that an evidentiary hearing is required because Rule 306a(5) requires proof “in the trial court.” But Texas courts routinely resolve Rule 306a issues based on sworn filings, declarations, and the existing record where, as here, the relevant facts concerning notice and actual knowledge are not genuinely disputed. Nor does the rule entitle a movant to present live testimony where the material facts are established by the movant’s own sworn filings.

Here, Plaintiff’s own filings establish that he had actual notice that service to him was failing well before the Court’s ruling and took no action to correct it. The parties’ dispute is therefore legal, not factual, and does not require the development of additional testimony. Plaintiff’s request for an evidentiary hearing would improperly expand this narrow procedural inquiry into a broader re-litigation of issues the Court has already resolved. Under these circumstances, no live testimony or further evidentiary development is warranted.

If the Court determines that a hearing would assist in resolving the motion, any such hearing should be strictly limited to the Rule 306a(5) issues concerning notice and actual knowledge.

Accordingly, Defendants respectfully request that the Court deny Plaintiff’s request for a broad evidentiary hearing and, if a hearing is set, limit it to the narrow Rule 306a issues presented.

Respectfully submitted,

KEN PAXTON
Attorney General

BRENT WEBSTER
First Assistant Attorney General

RALPH MOLINA
Deputy First Assistant Attorney General

AUSTIN KINGHORN
Deputy Attorney General for Civil Litigation

KIMBERLY GDULA
Chief, General Litigation Division

/s/ Scott D. Smith

SCOTT D. SMITH

Assistant Attorney General

Texas Bar No. 24011874

OFFICE OF THE ATTORNEY GENERAL OF TEXAS

General Litigation Division

P.O. Box 12548, Capitol Station

Austin, Texas 78711-2548

Telephone: (512) 917-3132

Division Fax: (512) 477-2348

Email: scott.smith@oag.texas.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the foregoing instrument was served in accordance with Rule 21a of the Texas Rules of Civil Procedure upon the counsel of record below on this 29th day of April 2026.

Kevin N. Bass

Via E-File and E-Mail

████████████████████
████████████████████

Phone: 512-333-4092

Email: kbassphiladelphia@gmail.com

Pro Se Plaintiff

/s/ Scott D. Smith

SCOTT D. SMITH

Assistant Attorney General

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.

Karla Gutierrez on behalf of Scott Smith

Bar No. 24011874

karla.gutierrez@oag.texas.gov

Envelope ID: 114263350

Filing Code Description: RSPN - Response

Filing Description: 20260429_Defendants Response to Plaintiffs Motion to Set Evidentiary Hearing

Status as of 4/29/2026 1:31 PM CST

Associated Case Party: Darrin D'Agostino

Name	BarNumber	Email	TimestampSubmitted	Status
Karla Gutierrez		karla.gutierrez@oag.texas.gov	4/29/2026 1:29:17 PM	SENT
Scott D. Smith		scott.smith@oag.texas.gov	4/29/2026 1:29:17 PM	SENT

Associated Case Party: Kevin Bass

Name	BarNumber	Email	TimestampSubmitted	Status
Kevin N. Bass		kbassphiladelphia@gmail.com	4/29/2026 1:29:17 PM	ERROR