

date selected by the Court. (Resp. at 1.) Since Defendants filed their Response, the Court has placed this matter on its Motions Docket for Thursday, May 21, 2026, at 9:00 a.m. Central Time. (re:SearchTX Hearing ID 8020b55d-5a77-4484-8569-83cc13a5541f.) Those concessions and the Court's setting resolve the threshold issues of whether and when a hearing should occur.

The remaining disputes are (1) whether the May 21 hearing must be evidentiary or may be conducted on the papers; (2) the scope of the matters properly before the Court at the hearing; and (3) whether Defendants' competing proposed order should be filed on the docket.

II.

CONTROLLING TEXAS SUPREME COURT AND SEVENTH COURT AUTHORITY REQUIRES AN EVIDENTIARY HEARING

Defendants assert that "Texas courts routinely resolve Rule 306a issues based on sworn filings, declarations, and the existing record." (Resp. at 2.) Defendants cite no authority for that proposition because the controlling authority is the other way.

A. The Texas Supreme Court Requires Trial Courts to Hold a Rule 306a Hearing.

In *Cantu v. Longoria*, 878 S.W.2d 131 (Tex. 1994) (per curiam), the Texas Supreme Court conditionally granted mandamus where a trial court refused to hold a Rule 306a hearing on a sworn motion to determine the date of notice. The Court held: "The trial court clearly abused its discretion. ... Such a party is required to prove the date of notice in the trial court, *and the trial court is required to hold a hearing* and make the requested finding." *Id.* at 132 (emphasis added). The directive is mandatory.

The Texas Supreme Court has reaffirmed this procedural mechanism. In *In re Lynd Co.*, 195 S.W.3d 682, 685 (Tex. 2006) (per curiam), the Court held that the sworn motion under Rule 306a(5) "establishes a prima facie case that the party lacked timely notice and invokes a trial court's otherwise-expired jurisdiction *for the limited purpose of holding an evidentiary hearing to determine the date on which the party or its counsel first received notice or acquired knowledge.*" *Id.* (emphasis added). The trial court in *Lynd* held precisely such a hearing, and the Court relied on the live testimony of the movant's president and his secretary in implying the date-of-notice finding. *Id.* at 686–87.

The earlier controlling authority is to the same effect. In *Memorial Hospital of Galveston County v. Gillis*, 741 S.W.2d 364 (Tex. 1987) (per curiam), the Court held that a Rule 306a movant must "*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." *Id.* at 365 (emphasis added). The Court vacated the order in *Gillis* because the record contained "nothing . . . to indicate that the trial court considered" the relevant evidence "at the hearing"

and no statement of facts demonstrated that the movant had “sustained her burden of proof at the reinstatement hearing.” *Id.*

Texas appellate courts — including the Seventh Court of Appeals, within whose jurisdiction this Court sits — have applied this rule with consistency. *See Nathan A. Watson Co. v. Employers Mut. Cas. Co.*, 218 S.W.3d 797, 800 (Tex. App.—Fort Worth 2007, no pet.) (Rule 306a sworn motion “invokes a trial court’s otherwise-expired jurisdiction for the limited purpose of holding an evidentiary hearing”); *Cont’l Cas. Co. v. Davilla*, 139 S.W.3d 374, 379 (Tex. App.—Fort Worth 2004, pet. denied) (same; live testimony elicited at the hearing from district clerk and claims specialists); *Corniello v. State Bank & Trust*, 344 S.W.3d 601, 605 (Tex. App.—Dallas 2011, no pet.) (same); *Strong v. Brooks*, No. 07-21-00004-CV, 2022 Tex. App. LEXIS 562, at *3 (Tex. App.—Amarillo Jan. 26, 2022, no pet.) (mem. op.) (Seventh Court reversal where Rule 21a presumption of notice was negated by proof of non-receipt and the record contained “no evidence that Strong received notice of the trial setting”).

B. The Question Is Factual, Not Legal, and Turns on Credibility.

Defendants frame the dispute as “legal, not factual.” (Resp. at 2.) That characterization inverts the inquiry. The Rule 306a(4) determination — when Plaintiff first received notice and when Plaintiff first acquired actual knowledge of the signing — is a pure question of historical fact that, where contested, turns on credibility. Texas appellate courts review the trial court’s Rule 306a finding under “the legal and factual sufficiency standards of review.” *Texaco, Inc. v. Anh Thi Phan*, 137 S.W.3d 763, 767 (Tex. App.—Houston [1st Dist.] 2004, no pet.). And in *Shull v. United Parcel Service*, 4 S.W.3d 46, 51 (Tex. App.—San Antonio 1999, pet. denied), the appellate court affirmed because “the trial court, acting a factfinder, *judged the credibility of the witnesses* and information provided” at the new-trial hearing. (Emphasis added.) The procedure is evidentiary precisely because the question is factual and credibility-bound.

C. Defendants’ Cite-Free “Courts Routinely” Assertion Is Unsupported.

Defendants ask the Court to resolve a contested factual question on the papers without identifying a single Texas case in which a trial court did so over the movant’s request for a hearing. There is no such case. To the contrary, where a trial court has refused to hold the Rule 306a hearing the Texas Supreme Court has issued mandamus to compel it. *See Cantu*, 878 S.W.2d at 132.

Defendants drafted their April 29 Response with Plaintiff’s April 23, 2026 Reply in Support of Sworn Motion Under Rule 306a(5) and Motion for New Trial in front of them. That Reply, on the docket six days before Defendants filed their Response, marshals the controlling 2024–2025 Texas Supreme Court authority on actual-versus-constructive knowledge (*Red Bluff, LLC v. Tarpley*, 713 S.W.3d 412 (Tex. 2025); *Tabakman v. Tabakman*, No. 24-0919 (Tex. Dec. 5, 2025)), the rule that

“any doubts about a default judgment must be resolved against the party who secured the default” — a principle Lakeside expressly extends “more broadly than doubts about service” (*In re Lakeside Resort JV, LLC*, 689 S.W.3d 916, 922 (Tex. 2024)), and the dispositive-hearing due-process rule of *Mabon Ltd. v. Afri-Carib Enterprises, Inc.*, 369 S.W.3d 809, 813 (Tex. 2012) (per curiam). Defendants’ Response engages none of these authorities and offers no contrary controlling authority. The asserted “courts routinely” proposition is contradicted by the very authorities Defendants chose not to address.

III.

THE QUESTIONS ARE FACTUAL AND CREDIBILITY-BOUND

Defendants’ merits position is that “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.” (Resp. at 2.) That position presents a contested question of *subjective fact*. Under Rule 306a(4), the trigger is actual knowledge of the *signing* of the order — and “[t]o 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); *accord LDF Construction, Inc. v. Texas Friends of Chabad Lubavitch, Inc.*, 459 S.W.3d 720, 725 (Tex. App.—Houston [14th Dist.] 2015, no pet.) (“The rules do not impose a prerequisite obligation on the party to inquire about whether an order has been signed.”); *Tabakman v. Tabakman*, No. 24-0919 (Tex. Dec. 5, 2025) (per curiam). Plaintiff’s April 23 Reply MNT §III sets forth the full doctrinal framework. The point for present purposes is procedural: contested subjective awareness is credibility-bound and cannot be resolved on the papers in Defendants’ favor without affirmative evidence taken at a hearing. *Cf. Mathis v. Lockwood*, 166 S.W.3d 743, 745 (Tex. 2005) (per curiam) (“Even if the trial judge disbelieved Mathis’s testimony, that would not provide affirmative evidence that service occurred.”).

IV.

DUE PROCESS REQUIRES THE OPPORTUNITY TO BE HEARD WHERE THE ADVERSE PARTY’S THEORY IS A CREDIBILITY ATTACK

Where the adverse party seeks to defeat a Rule 306a motion by attacking the movant’s credibility on subjective knowledge, due process requires the movant be permitted to be heard and examined. Federal due process requires “notice reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them the *opportunity to present their objections*.” *Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80, 84 (1988) (quoting *Mullane v. Cent.*

Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)). The Texas Supreme Court has applied that requirement to any “dispositive hearing” entered without the non-moving party’s participation. *Mabon Ltd. v. Afri-Carib Enterprises, Inc.*, 369 S.W.3d 809, 813 (Tex. 2012) (per curiam). And the principle that “any doubts about a default judgment must be resolved against the party who secured the default” extends “more broadly than doubts about service.” *In re Lakeside Resort JV, LLC*, 689 S.W.3d 916, 922 (Tex. 2024). Plaintiff’s April 23 Reply MNT §VI sets forth the full *Peralta / Lopez / Mathis / Mabon / LBL Oil / Lakeside* framework, including the Seventh Court’s application of the rule in *McDaniel v. Hale*, 893 S.W.2d 652 (Tex. App.—Amarillo 1994, writ denied), and *Strong v. Brooks*, No. 07-21-00004-CV, 2022 Tex. App. LEXIS 562 (Tex. App.—Amarillo Jan. 26, 2022, no pet.) (mem. op.). Resolving Plaintiff’s contested actual-knowledge date on the papers, in Defendants’ favor, would invert the *Lakeside* tiebreaker and deny Plaintiff the *Peralta* opportunity to be heard.

V.

SCOPE: 306a AND THE 329b MOTION IT MAKES TIMELY ARE BOTH PROPERLY BEFORE THE COURT

Plaintiff agrees that the hearing’s scope is set by what is properly before the Court. The Sworn Motion presents (1) the Rule 306a(5) determination of the date Plaintiff first received notice and the date he first acquired actual knowledge, and (2) the Motion for New Trial under Rule 329b. As Plaintiff’s Reply in Support of the Sworn Motion (filed April 23, 2026) establishes, the Motion for New Trial is timely under Rule 329b(a) on its face — independent of any Rule 306a(5) finding — because Plaintiff filed it eight days after the March 26 signing, well within the thirty-day window. The Rule 306a(5) finding is properly sought as a record-preservation measure under Texas Rule of Appellate Procedure 4.2(c). Both grounds are properly evidentiary.

Defendants’ competing proposed order would restrict the hearing to “narrow Rule 306a(5) issues” only, foreclosing the development of any record on the Rule 329b grounds the Sworn Motion already places before the Court. That restriction has no basis in the rules. Once the Court reaches the Rule 329b grounds — including the *Peralta/Lopez/Mathis/Mabon* due-process grounds the Sworn Motion presents — reaching the merits of those grounds is not “re-litigation”; it is the relief Rule 329b authorizes. Treating Rule 329b new-trial review as forbidden re-litigation would collapse the rule itself.

What the hearing properly will not relitigate is the substance of the Court’s prior Plea-to-the-Jurisdiction ruling on its own terms. Plaintiff does not seek to do so. The Sworn Motion seeks Rule 329b new-trial relief on independently sufficient due-process grounds.

VI. ANTICIPATED EVIDENCE

To assist the Court in setting the hearing, Plaintiff identifies the categories of evidence he will present:

1. **Plaintiff's testimony.** Plaintiff will testify to his subjective knowledge state on the dates relevant under *Red Bluff*'s subjective-awareness standard — specifically, on March 26 (the signing date), April 2 (the date of his re:SearchTX docket discovery), and April 3, 2026, at 12:15 a.m. Central Time (the time of the FDB52DC0.zip eFileTexas download corroborating that discovery on the forensic record). The questions are credibility-bound and require live examination.
2. **The FDB52DC0.zip forensic record.** The eFileTexas zip-package download identified by Order number fdb52dc0-204e-46f1-a4c6-fde614a3b931 and Zip Reference number 7736a2c5-5cd1-4845-ba72-b58e46365846, with file-system modification time 00:15:45 Central Time on April 3, 2026, and SHA-256 digest fbe7ca4c2e6c1608bcc6ff96885f6248b4fef46a853a36f913815304ad466b5 — fixing the outer bound of Plaintiff's actual knowledge as a matter of machine-generated record. This evidence is described in detail in Plaintiff's April 23 Reply Supplemental Declaration and the Exhibit H Metadata document.
3. **The eFileTexas service-error documentary record.** The Automated Certificates of eService on multiple filings have shown service to Plaintiff at “kbassphiladelphi@gmail.com” — a misspelled, nonexistent address (omitting the second “a” in “philadelphia”) that originated in the Court's case-management system rather than Plaintiff's eFileTexas user profile. The error has continued to produce ERROR-status entries through the most recent filings: Plaintiff's April 28, 2026 Motion to Set Evidentiary Hearing (Envelope 114179135) and Defendants' April 29, 2026 Response (Envelope 114263350) both reflect ERROR status. The defect was the subject of Plaintiff's April 14, 2026 Notice of Correction of Case Contact Information.
4. **Counsel's direct-email-channel record.** AAG Scott D. Smith's January 26, 2026 email in this state case acknowledging that “Service via this email is fine” (Reply Ex. K), and counsel's continuing direct-email correspondence with Plaintiff at the correct address through March 30, 2026 (Reply Exs. F-1 through F-4), bearing on the *Mathis/Ewton* analysis of whether Defendants' continued reliance on the failing eFileTexas channel — when they held and used the correct direct-email channel — was ser-

vice “reasonably calculated . . . to apprise” Plaintiff of the proceedings under *Mullane* and *Peralta*.

5. **Cross-examination of any defense witness or affiant** Defendants may offer to support their assertion that Plaintiff had actual knowledge of the signing prior to April 2, 2026.

VII.

ANY COMPETING PROPOSED ORDER SHOULD BE FILED ON THE DOCKET

The parties have submitted competing proposed orders on this Motion. Plaintiff’s Proposed Order Setting Evidentiary Hearing is on the docket via the eFileTexas “Proposed Order” filing code (ORSH1, Envelope 114179432, accepted April 29, 2026). Defendants’ competing proposed order, titled “Order on Motion to Set Evidentiary Hearing,” was transmitted to the District Clerk by email of Karla Gutierrez to Brittany Deatherage on April 29, 2026, with copy to Plaintiff and to Scott D. Smith, Assistant Attorney General. Defendants’ competing order is not on the docket.

Texas Rule of Civil Procedure 21 requires every “pleading, plea, motion, or application to the court for an order” to be “filed with the clerk of the court in writing.” Tex. R. Civ. P. 21(a). A competing proposed order, by its nature, is an application to the court for an order, and the docket is the public record of what is properly before the Court. The eFileTexas system is designed to receive proposed orders through the dedicated “Proposed Order” filing code, and Plaintiff’s competing order has already been received and entered through that mechanism. Plaintiff respectfully suggests that any competing proposed order considered by the Court should be tendered through the same channel so the record reflects both submissions and the basis for the Court’s selection between them.

VIII.

CONCLUSION AND PRAYER

The May 21, 2026, 9:00 a.m. Central Time setting on the Court’s Motions Docket should be confirmed as an evidentiary hearing, properly scoped to the Sworn Motion under Rule 306a(5) and the Motion for New Trial under Rule 329b that the Sworn Motion already places before the Court.

Plaintiff respectfully requests that the Court (1) confirm that the hearing set for May 21, 2026, at 9:00 a.m. Central Time is an evidentiary hearing on Plaintiff’s Sworn Motion Under Rule 306a(5) and Motion for New Trial Under Rule 329b, conducted by Zoom videoconference or in person as the Court may direct; (2) direct the Clerk of this Court and the district’s case-management-system administrator to transmit notice of the hearing setting — and all subsequent notices in this cause — to Plaintiff in parallel through the eFileTexas electronic filing system and by direct email to kbassphiladelphia@gmail.com, and to continue to do so until the Automated Certificate of eService

reports Plaintiff's status as "SENT" to the correct email address; (3) direct that any competing proposed order considered by the Court in this matter be filed on the docket through the eFileTexas "Proposed Order" filing code; and (4) grant such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

/s/ Kevin N. Bass

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply was served on the following counsel of record via the eFileTexas electronic filing system and via direct email on this 4th day of May, 2026:

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/s/ Kevin N. Bass

KEVIN N. BASS

Automated Certificate of eService

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Filing Code Description: RSPN - Response

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

Status as of 5/4/2026 8:57 AM CST

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