

CAUSE NO. DC-2025-CV-1817

BL

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 OBJECTION TO DEFENDANTS'
COMPETING PROPOSED ORDER**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Kevin N. Bass objects to the proposed "Order on Plaintiff's Motion to Set Evidentiary Hearing" transmitted by Defendants on May 4, 2026, and respectfully shows the following.

I.

PROCEDURAL POSTURE

On April 28, 2026, Plaintiff filed his Motion to Set Evidentiary Hearing on Sworn Motion Under Rule 306a(5) and Motion for New Trial Under Rule 329b (Envelope 114179135), together with Plaintiff's Proposed Order Setting Evidentiary Hearing tendered through the eFileTexas dedicated "Proposed Order" filing code (ORSH1, Envelope 114179432, accepted April 29, 2026). On April 29, 2026, Defendants filed their Response (Envelope 114263350). On May 4, 2026, Plaintiff filed

his Reply in Support of Motion to Set Evidentiary Hearing (Envelope 114419400). Also on May 4, 2026, Defendants transmitted by direct email a competing proposed “Order on Plaintiff’s Motion to Set Evidentiary Hearing,” a true and correct copy of which is attached as **Exhibit 1**. 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.)

Plaintiff’s Reply, filed earlier today, addresses the substantive scope-of-hearing dispute between the parties. This Objection is limited to the four specific provisions of Defendants’ competing proposed order that conflict with controlling Texas Supreme Court authority and impermissibly pre-decide contested questions before the May 21 hearing.

Plaintiff also observes that the Plea-to-the-Jurisdiction-specific foreclosure language addressed in §II.C and the testimony-limitation provisions addressed in §II.D appear in Defendants’ competing proposed order without being argued in Defendants’ April 29 Response.

II.

THE FOUR OBJECTIONABLE PROVISIONS

A. The “Narrow Rule 306a(5) Issues” Restriction Forecloses the Rule 329b Grounds the Sworn Motion Already Places Before the Court.

Defendants’ competing proposed order provides that “the hearing shall be limited to the narrow issues presented under Texas Rule of Civil Procedure 306a(5), specifically the date on which Plaintiff first received notice of the Court’s Order and the date on which Plaintiff first acquired actual knowledge of the signing of the Court’s Order.” That restriction would foreclose the Rule 329b due-process grounds the Sworn Motion already places before the Court for plenary disposition. As Plaintiff’s Reply in Support of Motion to Set Evidentiary Hearing (May 4, 2026) §V 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. Reaching the Rule 329b 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.

B. The “Sworn Filings, Declarations, and the Existing Record” Provision Inverts Controlling Texas Supreme Court Authority Requiring an Evidentiary Hearing.

Defendants’ competing proposed order provides that, “in resolving the Rule 306a(5) issues, the Court may consider the parties’ sworn filings, declarations, and the existing record, and may limit or exclude cumulative or unnecessary testimony.” That language adopts in advance the on-the-papers approach controlling Texas Supreme Court authority forecloses. 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 hearing on a sworn motion to determine the date of notice, holding that

“the trial court is required to hold a hearing and make the requested finding.” *Id.* at 132. In *In re Lynd Co.*, 195 S.W.3d 682 (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 of the judgment.” *Id.* at 685 (emphasis added). And in *Memorial Hospital of Galveston County v. Gillis*, 741 S.W.2d 364 (Tex. 1987) (per curiam), the Court vacated a reinstatement order because the record contained “nothing to indicate that the trial court considered [the relevant evidence] at the hearing.” *Id.* at 365. The Texas Supreme Court has not authorized resolution of contested Rule 306a(5) questions on sworn filings and declarations alone, and Defendants’ proposed order should not order what the Texas Supreme Court has refused to permit.

C. The “Issues Previously Decided” / Plea-to-the-Jurisdiction Foreclosure Improperly Conflates Rule 329b Due-Process Review with the Prior PTJ Ruling on Its Own Merits.

Defendants’ competing proposed order provides that the hearing “shall not serve as a vehicle to reopen the record on the merits, to introduce new evidence unrelated to the Rule 306a(5) inquiry, or to re-litigate issues previously decided by the Court, including issues resolved in connection with Defendants’ Plea to the Jurisdiction.” Plaintiff’s Sworn Motion does not seek to re-litigate the substance of the Court’s Plea-to-the-Jurisdiction ruling on its own terms. The Sworn Motion seeks Rule 329b new-trial relief on independently sufficient due-process grounds — including the dispositive-hearing rule of *Mabon Ltd. v. Afri-Carib Enterprises, Inc.*, 369 S.W.3d 809, 813 (Tex. 2012) (per curiam); the opportunity-to-be-heard rule of *Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80, 84 (1988); and the default-judgment-doubts tiebreaker of *In re Lakeside Resort JV, LLC*, 689 S.W.3d 916, 922 (Tex. 2024) (per curiam) (holding 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”). Foreclosing review of those grounds because they bear on a judgment “previously decided” would collapse Rule 329b new-trial review itself and would, under *Lakeside*, invert the tiebreaker.

D. The “Cumulative or Unnecessary Testimony” Provision Is a Premature Credibility Ruling.

Defendants’ competing proposed order provides that the Court “may limit or exclude cumulative or unnecessary testimony” and that “[a]ny testimony permitted at the hearing shall be limited to matters relevant to notice and actual knowledge under Rule 306a(5).” 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 and on

subjective awareness. *Red Bluff, LLC v. Tarpley*, 713 S.W.3d 412, 415 (Tex. 2025) (per curiam) (“To acquire actual knowledge of information, a person must in fact become subjectively aware of the information.”); *Texaco, Inc. v. Anh Thi Phan*, 137 S.W.3d 763, 767 (Tex. App.—Houston [1st Dist.] 2004, no pet.) (Rule 306a findings reviewed under “the legal and factual sufficiency standards of review”); *Shull v. United Parcel Service*, 4 S.W.3d 46, 51 (Tex. App.—San Antonio 1999, pet. denied) (“the trial court, acting a factfinder, judged the credibility of the witnesses and information provided” at the new-trial hearing). The credibility of Plaintiff’s testimony as to subjective awareness on March 26, April 2, and April 3, 2026 — bracketed by the FDB52DC0.zip eFileTexas zip-package machine record — cannot be characterized as “cumulative” or “unnecessary” before the testimony is heard. Defendants’ proposed order would have the Court pre-decide credibility before the hearing it is supposed to provide.

III.

THE CORRECT ORDER IS PLAINTIFF’S PROPOSED ORDER ALREADY ON THE DOCKET

Plaintiff’s Proposed Order Setting Evidentiary Hearing is already on the docket through the eFile-Texas dedicated “Proposed Order” filing code (ORSH1, Envelope 114179432, accepted April 29, 2026). Plaintiff respectfully requests that the Court adopt that order — which sets the May 21 hearing as an evidentiary hearing on Plaintiff’s Sworn Motion Under Rule 306a(5) and Motion for New Trial Under Rule 329b without the impermissible scope restrictions Defendants seek — rather than the competing proposed order Defendants transmitted on May 4, 2026.

IV.

CONCLUSION AND PRAYER

For the reasons set forth above and in Plaintiff’s Reply in Support of Motion to Set Evidentiary Hearing filed earlier today, Plaintiff respectfully requests that the Court (1) decline to adopt Defendants’ competing proposed order in its current form; (2) adopt Plaintiff’s Proposed Order Setting Evidentiary Hearing already on the docket as ORSH1, Envelope 114179432, accepted April 29, 2026; and (3) grant such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

/s/ Kevin N. Bass
KEVIN N. BASS, PhD, MS

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Objection was served on the following counsel of record via the eFileTexas electronic filing system and via direct email on this 5th day of May, 2026:

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/s/ Kevin N. Bass
KEVIN N. BASS

CAUSE NO. DC-2025-CV-1817

KEVIN N. BASS,

Plaintiff,

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.

[illegible]

EXHIBIT 1

DEFENDANTS' COMPETING PROPOSED ORDER ||| (NOT FOR ENTRY)

The pages following this cover are a true and correct copy of the proposed “Order on Plaintiff’s Motion to Set Evidentiary Hearing” transmitted by Karla Gutiérrez (Office of the Attorney General) to Plaintiff by direct email on May 4, 2026, with the representation that the order had also been filed via eFileTexas. It is the object of Plaintiff’s Objection to Defendants’ Competing Proposed Order, filed concurrently herewith.

THIS IS NOT PLAINTIFF'S PROPOSED ORDER. PLAINTIFF DOES NOT REQUEST THAT THE COURT ENTER OR SIGN THIS DOCUMENT. PLAINTIFF'S PROPOSED ORDER (filing code ORSH1, Envelope 114179432, accepted April 29, 2026) IS THE ORDER PLAINTIFF RESPECTFULLY REQUESTS THE COURT ADOPT.

[illegible]

On this day, the Court considered Plaintiff's Motion to Set Evidentiary Hearing on Plaintiff's Sworn Motion Under Rule 306a(5) and Motion for New Trial, Defendants' Response, and the arguments of counsel, if any.

IT IS, THEREFORE, ORDERED that Plaintiff's Motion is granted solely to the extent that the Court will conduct a hearing on the Rule 306a(5) issues raised in Plaintiff's Sworn Motion Under Rule 306a(5) and Motion for New Trial.

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litigate issues previously decided by the Court, including issues resolved in connection with Defendants' Plea to the Jurisdiction.

IT IS FURTHER ORDERED that, in resolving the Rule 306a(5) issues, the Court may consider the parties' sworn filings, declarations, and the existing record, and may limit or exclude cumulative or unnecessary testimony. Any testimony permitted at the hearing shall be limited to matters relevant to notice and actual knowledge under Rule 306a(5).

IT IS FURTHER ORDERED that the hearing is set for _____, 2026, at _____ .m., by Zoom videoconference or in person, as determined by the Court.

IT IS SO ORDERED.

SIGNED this ____ day of _____, 2026.

JUDGE PRESIDING

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Filing Description: Plaintiff's Objection to Defendants' Competing Proposed Order

Status as of 5/5/2026 9:45 AM CST

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