

**CAUSE NO. 2018-06480**

FREE AND SOVEREIGN STATE OF  
VERACRUZ DE IGNACIO DE LA LLAVE  
*Plaintiff,*

vs.

83 WEST JAGGED RIDGE, LLC, 87 WEST  
JAGGED RIDGE, LLC, 175 W NEW  
HARMONY, LLC, 18 GRIFFIN HILL, LLC,  
138 BRYCE BRANCH, LLC, MONICA M.  
TUBILLA, 43 SPINNING WHEEL, LLC,  
JAVIER DUARTE DE OCHOA, JOSE A.  
BANDIN, MONICA BABAYAN, and  
BANBA OFFICES, LLC

*Defendants.*

§ IN THE DISTRICT COURT OF

§ 295TH JUDICIAL DISTRICT

§ HARRIS COUNTY, TEXAS

§ **JURY TRIAL DEMANDED**

**PLAINTIFF'S MOTION FOR CONTINUANCE AND MOTION TO COMPEL**

**A. Introduction**

Defendants Bandin, Babayan, and a host of the entities they own or control, recently filed a motion to dismiss pursuant to CPRC Chpt. 27 – the Anti-SLAPP statute. The Anti-SLAPP statute provides that upon a showing of good cause the Court may allow specified and limited discovery relevant to the motion. CPRC § 27.006(b). Two other courts in this county recently ordered Jose Bandin and Monica Babayan to be deposed in Spain. Those depositions occurred last week. In those depositions, both Defendants took the Fifth Amendment to each and every substantive question. As such, Defendants again refused to participate in discovery. Plaintiff now requests that the current hearing on Defendant's motion be continued until such time as motion practice can occur on Defendants' ability to assert the protections of the US Constitution, and these depositions can occur again without Defendants' obstructionist behavior.

**B. These Defendants have no Fifth Amendment rights**

The Bandin Defendants are not entitled to the protections of the Fifth Amendment. As provided in the Supreme Court's decision in *United States v. Verdugo-Urquidez*, 494 U.S. 259, 110 S.Ct. 1056, 108 L.Ed.2d 222 (1990), US Constitutional protections are not available to foreign nationals not living in the United States. Under *Verdugo-Urquidez*, the Fourth Amendment does not apply to searches and seizures of nonresident aliens who have “no previous significant voluntary connection with the United States.” 494 U.S. at 271, 110 S.Ct. 1056; *see also Hernandez v. United States*, 785 F.3d 117, 124 (5th Cir. 2015) (en banc) (Jones, J., concurring) (“This en banc court recognizes that the Supreme Court has foreclosed extraterritorial application of the Fourth Amendment to aliens where the violation occurs on foreign soil and the alien plaintiff lacks any prior substantial connection to the United States.” (citing *Verdugo-Urquidez*, 494 U.S. at 261, 110 S.Ct. 1056)). Although it is a different Constitutional right implicated, the reasoning applies to the Fifth Amendment, as well.

Accordingly, Plaintiff requests that Defendant's motion to dismiss hearing be continued until such time as this issue can be determined by this Court. Plaintiff requests that Defendants be re-deposed with a Court order prohibiting any assertion of the Fifth Amendment. Alternatively, in the unlikely event the Court determines that the Defendants have a Fifth Amendment right against self-incrimination, Plaintiff will request discovery sanctions for Defendants unwillingness to participate in discovery – likely the striking of their motion to dismiss. Either way, more discovery and some motion practice needs to occur on this issue – and good cause exists based upon Defendants' unwillingness to participate in the discovery process.

### **C. Conclusion**

The Bandin Defendants filed the instant motion to dismiss, yet refuse to participate in discovery. And even after a Harris County Court ordered that they be deposed, Defendants still refused to answer any questions based upon a Constitutional right they are not entitled to. As such, because these Defendants have flagrantly disregarded a Court order to participate in discovery, Plaintiff has good cause to request additional time to conduct motion practice and potentially additional discovery on these same issues. Plaintiff requests this hearing be continued, and a hearing be set on Plaintiff's motion to compel Defendants' answers to the previously asked deposition questions.

Respectfully submitted,

**THE BUZBEE LAW FIRM**

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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document has been duly served on all known counsel of record and pro se parties in accordance with the Texas Rules of Civil Procedure on August 14, 2018.

**Via E-filing**

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/s/ Christopher J. Leavitt

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Unofficial Copy Office of Chris Daniel District Clerk