

**CAUSE NO. 2018-06745**

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

vs.

18 SHALLOWFORD PL., LLC  
JAVIER DUARTE DE OCHOA, JOSE A.  
BANDIN, and MONICA BABAYAN

*Defendants.*

§ IN THE DISTRICT COURT OF

§  
§ 334TH JUDICIAL DISTRICT

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§ HARRIS COUNTY, TEXAS

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**JURY TRIAL DEMANDED**

**PLAINTIFF'S EMERGENCY MOTION FOR SANCTIONS AND TO COMPEL  
DEPOSITIONS OF DEFENDANTS JOSE BANDIN AND MONICA BABAYAN**

TO THE HONORABLE JUDGE KIRKLAND:

As this Court is well aware it ordered the depositions of Defendants Jose Bandin and Monica Babayan to take place prior to August 3, 2018. See Exhibit A. Upon receiving this Order, Defendants attempted to mandamus this Court and stay discovery. Yesterday, the appeals court DENIED the motion to stay discovery. See Exhibit B. In other words, the appellate court denied Defendants' mandamus, at least in part, and approved of the depositions proceeding. Despite this Court's clear Order, and now the appellate court's denial of the discovery stay, Defendants' still refuse to be deposed. See Exhibit C. Accordingly, Plaintiff is left with no choice but to file an emergency motion for sanctions and to compel these depositions.

Plaintiff hereby move for sanctions and an order compelling the above listed Defendants to sit for depositions on August 3, 2018 in Madrid, Spain, or, alternatively, sanction these Defendants by striking their motion to dismiss pursuant to the TCPA. Defendants' conduct contravenes the letter and spirit of the Texas Rules of Civil Procedure, the Order of this Court, and now the ruling of the appellate court. Defendants' brazen disregard of these various court

orders should not be countenanced. Defendants may not care about the rule of law – they are currently fugitives from the law hiding out in Spain, but this Court should. Accordingly, and pursuant to TEX. R. CIV. P. 215.1(b) & 199.3, Plaintiff hereby requests that this Court compel the depositions of Defendants, or strike the Defendants’ motion to dismiss. Defendants cannot have it both ways – move to dismiss Plaintiff’s case based on a lack of information and then refuse to participate in the discovery ordered by this Court.

## **II. ARGUMENT & AUTHORITIES**

Depositions are governed by TEX. R. CIV. P. 199. A Plaintiff may take the oral deposition of a Defendant by issuing proper notice and providing a “reasonable time and place.” See TEX. R. CIV. P. 199.2. If the witness is a party to the lawsuit, “service of the notice of oral deposition upon the party’s attorney has the same effect as a subpoena served on the witness.” TEX. R. CIV. P. 199.3. A party or witness may object to the deposition by way of a Motion for Protective Order, or through a Motion to Quash the notice of deposition. TEX. R. CIV. P. 199.4. However, sanctions are proper if a properly served party either: (1) fails to designate a corporate representative; or (2) fails “to appear before the officer who is to take his deposition, after being served with a proper notice.” TEX. R. CIV. P. 215.1(b)(1)-(2); See *Brantley v. Etter*, 677 S.W.2d 503, 504 (Tex. 1984) (Courts may award attorney’s fees as a sanction for violations of the discovery process.). In this case, a proper deposition notice was served. This Court ordered the deposition take place, and then the appeals court upheld this Court’s discovery ruling. However, Defendants still refuse to comply with this Court’s Order. Defendants should be sanctioned and these depositions should occur immediately.

Respectfully submitted,

**THE BUZBEE LAW FIRM**

By: /s/ Christopher J. Leavitt

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**ATTORNEYS FOR PLAINTIFF**

### **CERTIFICATE OF CONFERENCE**

Counsel for movant and counsel for respondent have personally conducted a conference at which there was a substantive discussion of every item presented to the Court in this motion, and despite best efforts the counsel have not been able to resolve those matters presented.

Certified on July 31, 2018, by

/s/ Christopher J. Leavitt

Christopher J. Leavitt

### **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 1, 2018, as set forth below:

**Via Facsimile: (713) 574-3224**

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