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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91220386
Party	Defendant Alliance Riggers & Constructors, Ltd
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Submission	Motion to Dismiss - Rule 12(b)
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Attachments	TTAB Motion to Dismiss.pdf(448855 bytes) Exhibit 1 to Motion to Dismiss.pdf(3810145 bytes) Exhibit 2 to Motion to Dismiss.pdf(1274430 bytes) Exhibit 3 to Motion to Dismiss.pdf(1022031 bytes) Exhibit 4 Part 1.pdf(3442341 bytes) Exhibit 4 Part 2.pdf(3807636 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

DR. LINDA S. RESTREPO,	§	
	§	
Opposer,	§	
	§	
v.	§	Opposition No. 91220386
	§	
ALLIANCE RIGGERS & CONSTRUCTORS, LTD.,	§	
	§	
Applicant.	§	

APPLICANT’S RULE 12B(6) MOTION TO DISMISS AND BRIEF IN SUPPORT THEREOF

TO THE HONORABLE JUDGE OF SAID COURT:

Now Comes, ALLIANCE RIGGERS & CONSTRUCTORS, LTD., Applicant and through its attorney of record, R. Wayne Pritchard, P.E., of the law firm R. Wayne Pritchard, P.C., files this its Rule 12b(6) Motion to Dismiss and Brief in support thereof as follows:

**I.
BACKGROUND**

LINDA S. RESTREPO, Opposer, is the wife of Carlos E. Restrepo. On June 20, 2012, ALLIANCE RIGGERS & CONSTRUCTORS, LTD., filed suit against Carlos E. Restrepo and LINDA S. RESTREPO, in Texas in El Paso County Court at Law #5, Case Number 2012-DCV04523 (the “State Court Action”), alleging, among other things, breach of contract and trademark infringement in connection with a web page (www.allianceriggersandconstructors.com)(the “Web Page”), that CARLOS E. RESTREPO and LINDA S. RESTREPO were hired to design. Attached hereto as Exhibit 1 is a true and correct copy of the Notice of Removal that Opposer filed in connection with one of the Federal Court actions between her and Applicant. Contained within Exhibit 1, as Exhibits 2 and 4, are copies of both the Original as well as First Amended Original Petition filed by Applicant against Opposer in the State Court Action. Since the filing of the State Court Action, LINDA S.

RESTREPO in conjunction with her husband, have filed nine appeals from the State Court Action¹ and have attempted to remove such action to Federal Court five different times². LINDA S. RESTREPO, as reflected in the orders from both the State Court Action as well as the actions in Federal Court collectively attached hereto as Exhibit 2, along with her husband, has been determined by the Judge in the State Court Action as well as by two separate Federal Judges to be a vexatious litigant.

Attached hereto as Exhibit 3 is a true and correct copy of the Complaint filed by Opposer in one of the Federal Court actions between her and Applicant. As reflected on page 3 of the Complaint, Opposer produces, develops, advertises, markets, distributes and licenses a number of computer Internet web pages, corporate videos, Internet podcasts, MP3's, slide shows, social media content, corporate strategic marketing and original design computer html codes. On the other hand, as reflected in its trademark application, Serial Number 76716209, Applicant provides crane and erector services and has used the mark "ALLIANCE RIGGERS & CONSTRUCTORS" in connection with such services since 1997.

Attached as Exhibit 1 to the First Amendment Emergency Verified Plea to the Jurisdiction of County Court at Law Number Five, filed by Opposer in one of her appellate cases against Applicant, a true and correct copy of which is attached hereto as Exhibit 4, is a copy of the contract ("Contract") between LINDA S. RESTREPO and ALLIANCE RIGGERS & CONSTRUCTORS, LTD., dated March 11, 2011. Pursuant to the terms of the Contract, Applicant hired Opposer to, among

1

Texas Eighth Court of Appeals, 08-14-00292-CV, 08-14-00288-CV, 08-14-00270-CV, 08-14-00159-CV, 08-14-00075-CV, 08-13-00183-CV, 08-13-00153-CV and 08-13-00007-CV, all of which have been denied/dismissed. The Court of Appeals has indicated that it will dismiss Case Number 08-15-00011-CV for want of jurisdiction on February 5, 2015

2

In the United States District Court, Western District of Texas, El Paso Division; Case No. EP-13-cv-0211-DCG; Case Number 3:14-cv-00277-PRM; Case number 3:14-cv-00408-DCG; Case Number 3:14-cv-00359-KC; and Case Number 3:14-cv-0408-DCG, all of which were remanded and/or dismissed.

other things, design a web page. The domain name, www.allianceriggersandconstructors.com, (“Domain Name”) was purchased by Carlos Restrepo on March 3, 2012. (See GoDaddy WhoIs attached as Exhibit “A” to Plaintiff’s First Amended Original Petition, Exhibit 2 to Exhibit 1 of this Motion). Attached as Exhibit 7 to Exhibit 4 to this motion is a true and correct copy of the web page Opposer was attempting to design for Applicant.

Which brings us to the current opposition proceeding. LINDA S RESTREPO, notwithstanding the fact that she is not the registered owner of the Domain Name (her husband is), a name identical to the Mark; purchased 15 years after Applicant began using the Mark; purchased in connection with the services she was performing as part of the Contract; who is not the owner of Registration Number 36004909 for the mark “Alliance”; who has no connection to crane and erector services, has filed this proceeding stating, among other things, that “she believes that she will be damaged by registration of the mark . . .” As shown above as well as below, clearly Opposer assertions are incorrect and she has no standing to bring this opposition. For such reason, this opposition should be dismissed.

II. MOTION TO DISMISS

A motion to dismiss for failure to state a claim upon which relief may be granted is a test solely of the legal sufficiency of the complaint. *Advanced Cardiovascular Sys., Inc. v. SciMed Life Sys., Inc.*, 988 F.2d 1157, 26 USPQ2d 1038, 1041 (Fed. Cir. 1993). In order to withstand such a motion, a complaint need only allege such facts as would, if proven, establish that the plaintiff is entitled to the relief sought; that is, (1) the plaintiff has standing to maintain the proceeding; and (2) a valid ground exists for denying the registration sought. *Young v. AGB Corp.*, 152 F3d 1377, 47 USPQ2d 1752, 1754 (Fed. Cir. 1998).

Standing is a threshold issue that must be proved in every inter partes case. *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 188 (CCPA 1982). Section

13 of the Trademark Act, 15 USC §1063 provides that any person who believes that he/she will be damaged by the registration of a mark upon the principal register may, upon payment of the prescribed fee file an opposition in the Patent & Trademark Office. A belief in likely damage can be shown by establishing a direct commercial interest. *Cunningham v. Laser Gold Corp.*, 222 F. 3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000). A plaintiff's belief in damage must have some reasonable basis in fact. *Coach Services, Inc. v. Triumph Learning LLC*, 668 F3d 1356, 101 USPQ2d 1713, 1727 (Fed Cir. 2012). To establish standing, it must be shown that the plaintiff has a real interest in the outcome of a proceeding, that is, the plaintiff must have a direct and personal stake in the outcome of the opposition. *Ritchie v. Simpson*, 170 F3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999).

It is clear that Opposer cannot, as a matter of law have any intellectual property interest in the Domain Name for such interest would be in violation of 15 USC §1125(d). Additionally, even if Opposer could somehow hold the Domain Name for ransom, there cannot as a matter of law be any likelihood of confusion. First, Opposer is a junior user, that is to say, the Domain Name was purchased 15 years after Applicant began using the identical name as its trademark and it was purchased when Opposer had full knowledge of Applicant's Mark. Second, at least 4 of the 6 most relevant factors enunciated in *In re E.I du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973); those being (1) the relatedness of the goods or service; (2) the similarity or dissimilarity of established likely to continue trade channels; (3) impulse versus careful sophisticated buyers; and (4) the non existence of a valid consent agreement; favor holding against likelihood of confusion. Beyond the *du Pont* factors, common sense dictates no less of a finding against likelihood of confusion. How exactly could there ever be confusion between Opposer, a developer of web pages, and Applicant, a provider of crane and erector services.

Since Opposer does not have any legal interest in the Domain Name and because there could never be any likelihood of confusion between Opposer's illegal use of the Domain Name and

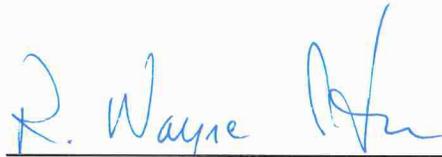
Applicant's use of its valid Mark, there is no reasonable basis in fact that Opposer has any direct personal or commercial interest in the outcome of this proceeding. Without such interest, Opposer does not have standing and this opposition must be dismissed.

WHEREFORE, PREMISES CONSIDERED, Applicant requests that this motion be granted, that this case be dismissed and that Applicant be awarded such other and further relief to which it is entitled.

Respectfully submitted,

R. WAYNE PRITCHARD, P.C.
300 East Main, Suite 1240
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Tel. (915) 533-0080
Fax (915) 533-0081

By:



R. WAYNE PRITCHARD
State Bar No. 16340150

ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE

I, R. WAYNE PRITCHARD, do hereby certify that on the 2nd day of February, 2015, a true and correct copy of the foregoing document was delivered as required by the Federal Rules of Civil Procedure by mailing a copy of same via first class mail, postage pre-paid to **LINDA RESTREPO**, P.O. Box 12066, El Paso, Texas 79913, Pro Se Defendant.



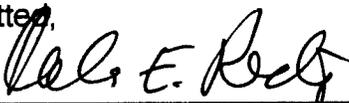
R. WAYNE PRITCHARD

3. Put another way, the United States Supreme Court clarified and established, clear back in 1966: "The petition is now filed in the first instance in the federal court. After notice is given to all adverse parties and a copy of the petition is filed with the state court, removal is effected and state court proceedings cease unless the case is remanded. 28 U. S. C. § 1446 (1964 ed.). See generally, American Law Institute, Study of the Division of Jurisdiction Between State and Federal Courts, Tentative Draft No. 4, p. 153 et seq. (April 25, 1966)." Georgia v. Rachel, 384 U.S. 780, 809 n27, 86 S. Ct. 1783, 16 L. Ed. 2d 925 (1966). (emphasis added).
4. Because this cause is now removed, the instant Court is without jurisdiction to effect any judgment in these proceedings (28 U.S.C. § 1446(c)(3)).
5. The Petition for Removal to the United States District Court is attached hereto as required by the express language of federal law, as Exhibit # 1.

WHEREFORE, the undersigned Defendants, Linda S. Restrepo and Carlos E. Restrepo, notify the Court and all other parties that this cause is now removed, that this court now has absolutely no jurisdiction for any judgment in this cause, bar none, unless and until the United States District Court may or may not remand, and further moves for all other relief that is just and proper in the premises.

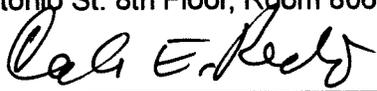
Respectfully submitted,


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CERTIFICATE OF SERVICE

I, certify that a copy of this Notice of Removal were served upon the following this 31st day of October 2014: to Wayne Pritchard, P.C., Attorney of Record, 300 East Main, Suite 1240, El Paso, Texas 79901, (915)533-0080 and the Honorable Judge Carlos Villa, County Court at Law Number Five, 500 East San Antonio St. 8th Floor, Room 806, El Paso, Texas 79901.


Carlos E. Restrepo, Pro Se

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

ALLIANCE RIGGERS & CONSTRUCTORS, LTD. §

Plaintiff, §

v. §

LINDA S. RESTREPO, CARLOS E. RESTREPO §
D/B/A COLLECTIVELY RDI GLOBAL SERVICES §
and R&D INTERNATIONAL §

Defendants. §

RECEIVED

OCT 31 2014

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY DEPUTY

CASE NO. _____

(Formerly TC No. 2012-DCV-04523
County Court at Law No. 5
El Paso County, Texas)

EP 14 CV 0408

JUDGE DAVID GUADERRAMA

**DEFENDANTS LINDA S. RESTREPO AND CARLOS E. RESTREPO
NOTICE OF REMOVAL AND MEMORANDUM IN SUPPORT OF NOTICE**

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Federal Statutes

- 28 U.S.C. §§ 1331, 1332, 1338, 1404(a), 1441(a), 1441(b) and 1446(b)
- Federal Copyright Act of 1976
- Const. Art. I, § 13
- App. C, U.S. Const. Amend I
- 28 U.S.C. § 1331.
- 28 USC §1441(a)
- 28 USC § 1331
- 28 U.S.C. § 1446.
- 28 U.S.C. § 1338.
- Copyright Act of 1976 and 28 U.S.C § 1338
- 28 U.S.C. §§ 2201 and 2202, 28 U.S.C. §§ 1331 and 1338, and 15 U.S.C. § 1121.
- Copyright Act of 1976 and 28 U.S.C. §1338

State Statutes

- Texas Const., Art. 1 § 27
- Tex. Const. art. I, § 13
- Tex.R. Civ. P. 107

STATEMENT AS TO IDENTITY OF THE PARTIES

For clarity of Interpretation, Linda S. Restrepo and Carlos E. Restrepo wrongly brought into the frivolous case as Defendants in the County Court at Law Number Five Cause No. 2012-DCV-04523 will be referred to as "Restrepo's". Plaintiff Alliance Riggers & Constructors, Ltd. will be referred to as "Alliance". Third Party Defendant GoDaddy Arizona corporation intentionally left out of the Plaintiff Alliance original and first amended petitions will be referred to as: "GoDaddy".

NOTICE OF APPEAL

The Restrepo's object to any expedited summarily remand of this case back to County Court at Law Number Five and give Notice of Appeal to any expedited remand. Restrepo's invoke their right to appeal any expedited remand, to the opportunity accorded by federal law to contest any expedited remand of this case, and to a Stay of any expedited remand in order to file a proper appeal in accordance with Federal Appellate Procedures to the Fifth Circuit Court of Appeals before this case is remanded.

This Notice of Removal and Memorandum in Support is filed in accordance with the instructions of the United States District Court for the Western District of Texas El Paso Division, the Honorable Judge Kathleen Cardone Order dated October 29, 2014 which states in relevant part that: "..If Plaintiffs wish to remove a state court proceeding, they must file a Notice of Removal....".

PREAMBLE
RESTREPOS CLAIM
FOURTEENTH AMENDMENT PROTECTIONS

Restrepos plead protection under the U.S. Constitution Fourteenth Amendment, which requires in relevant part that a state is forbidden to enter judgment attempting to bind person over whom it has no jurisdiction, and it has even less right to enter judgment purporting to extinguish interest of such person in property over which court has no jurisdiction; and any state court judgment purporting to bind person "or Defendant" over whom court has not acquired 'in personam' jurisdiction or purporting to exercise jurisdiction over property outside state is void both within and without state.

U.S.C.A.Const. Amend. 14.

Restrepos bring a claim against Judge Carlos Villa, presiding Judge of County Court at Law Number Five, El Paso County, Texas in his individual capacity, pursuant to 42 U.S.C. § 1983 alleging that Judge Villa failure to abide by Federal Copyright Act of 1976 28 U.S.C., deprived Restrepos of their Rights To Due Process under the Fourteenth Amendment to the U.S. Constitution.

A constitutional court cannot acquire jurisdiction by agreement or stipulation. Either it has or has no jurisdiction. If it does not have

jurisdiction, any judgment entered is void ab initio and has no legal effect. Jurisdiction should not be sustained upon the doctrine of estoppel, especially where personal liberties are involved. *In Re Wesley v. Schneckloth*, 346 P. 2d 658 - Wash: Supreme Court 1959. Thus, because the Honorable Judge Carlos Villa lacks jurisdiction to hear a cause, "any judgment entered is void ab initio and is, in legal effect, no judgment at all." *Id.* It. The exercise of such abuse of power by Judge Carlos Villa has resulted in injury to the Restrepos for which there is no adequate remedy.

Alliance threw the Court a "red herring" frivolously and fraudulently¹ claiming that:

"Defendants have, without permission or authority from Plaintiff, registered the domain name "www.alliancereggersandconstructors.com", and in fact, launched a web page at such address in which they make multiple use of Plaintiff's trademark".

The fact is and the Restrepos ask this Court to take Judicial Notice of Appx. Exh. 5, which documents that the domain name "www.alliancereggersandconstructors.com subject of Alliance Petition

¹ The Plaintiff's allegation represents a false and perjured statement knowingly, wantonly made to the Court with malice. Defendants NEVER registered the cited purported domain name, Defendants have NEVER purchased the cited purported domain name, Defendants have NEVER used the cited purported domain name. The Petition is premised on a blatant lie and a malicious, groundless, bad faith and harassment lawsuit by the Plaintiffs and their attorney of record Wayne R. Pritchard.

is for sale and was never purchased, was never utilized or was never claimed by the Restrepos. The owner of the domain name GoDaddy, a foreign Arizona corporation was purposely not brought into the suit by Alliance to avoid federal jurisdiction. The Restrepos are the wrong Defendants in this case because they have never had or claimed ownership of the domain name "alliancereggersandconstructors.com". Without GoDaddy the true owners of the domain name Judge Villa has never obtained subject matter jurisdiction.

As a matter of law deprivation of a Federal Right is a violation of a Constitutional Right which arise under the Laws of the United States. Article III, Section 2, of the Constitution extends the judicial power of the federal government to all cases "arising under ... the Laws of the United States." Such cases are commonly referred to as "federal question" cases. In the instant case deprivation of the Restrepos Federal Copyrights by the state County Court is a violation of their Constitutional Rights.

County Court at Law Number Five never had jurisdiction over alliancereggersandconstructors.com. There is complete diversity in that alliancereggersandconstructors.com is owned by an Arizona corporation that is not a party to this litigation. The County Court has

no authority or rule on any issue concerning the domain name alliancereggersandconstructors.com

Federal courts' actual subject-matter jurisdiction derives from Congressional enabling statutes, such as 28 U.S.C. §§ 1330–1369 and 28 U.S.C. §§ 1441–1452. The United States Congress has not extended federal courts' subject-matter jurisdiction to its constitutional limits. The enabling statute for federal question jurisdiction, 28 U.S.C. § 1331, provides that the district courts have original jurisdiction in *all civil actions arising under the Constitution, laws, or treaties of the United States*.

FEDERAL COURT REMOVAL JURISDICTION

In the United States, removal jurisdiction refers to the right of a defendant to move a lawsuit filed in state court to the federal district court for the federal judicial district in which the state court sits. This is a general exception to the usual American rule giving the plaintiff the right to make the decision on the proper forum. Restrepo's file a "notice of removal" in the state court where the lawsuit is presently filed to the Western District of Texas El Paso Division federal court.

Restrepo's removal is governed by statute, 28 U.S.C. § 1441 et seq. At the time of the initial filing, this case should have been filed in federal court. The removal of this case is based on an independent ground for subject-matter jurisdiction and federal question jurisdiction. A case must be removed to the federal district court that encompasses the state court where the action was initiated. Once removed, the case can be transferred to, or consolidated in, another federal court, despite the plaintiff's original intended venue. Alliance original complaint was

an attempt in bad faith to evade federal jurisdiction by knowingly, wantonly and with malice deleting GoDaddy an Arizona corporation as a defendant by which Go Daddy is the only owner of the domain name "allianceregressandconstructors" stated in the original complaint.

Restrepos invoke removal of the state law claim base on complete federal jurisdiction and supplemental jurisdiction in that they share a common nucleus of operative fact with claims based on federal Copyright Law.

Supplemental jurisdiction is the authority of United States federal courts to hear additional claims substantially related to the original claim even though the court would lack the subject-matter jurisdiction to hear the additional claims independently. 28 U.S.C. § 1367 is a codification of the Supreme Court's rulings on ancillary jurisdiction (*Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365 (1978)) and pendent jurisdiction (*United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966)) and a superseding of the Court's treatment of pendent party jurisdiction (*Finley v. United States*, 490 U.S. 545 (1989)).

The Western District of Texas, El Paso Division federal court has supplemental jurisdiction over "all other claims that are so related . . . that they form part of the same case or controversy" (§ 1367(a)). The true test being that the new claim "arises from the same set of operative facts." This means a federal court hearing a federal claim can also hear substantially related state law claims, thereby encouraging efficiency by only having one trial at the federal level rather than one trial in federal court and another in state court.

Restrepos claim Pendent jurisdiction which is the authority of a United States federal court to hear a closely related state law claim against Alliance already facing a federal claim for violation of Restrepo copyright, described by the Supreme Court as "jurisdiction over nonfederal claims between parties litigating other matters properly before the court." Restrepos plead federal jurisdiction to encourage both "economy in litigation", and fairness by eliminating the need for a separate federal and state trial hearing essentially the same facts yet potentially reaching opposite conclusions.

Pendent jurisdiction refers to the court's authority to adjudicate claims it could not otherwise hear. The related concept of pendent party jurisdiction by contrast is the court's authority to adjudicate claims against a party not otherwise under the court's jurisdiction because the claim arises from the same nucleus of facts as Restrepos federal copyright claim properly before the federal court.

The leading case on pendent jurisdiction is *United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966). *Gibbs* has been read to require that (1) there must be a federal claim (whether from the Constitution, federal statute, or treaty) and (2) the non-federal claim arises "from a common nucleus of operative fact" such that a plaintiff "would ordinarily be expected to try them in one judicial proceeding."

Restrepo's claim Ancillary jurisdiction which allows this Federal Court to hear non-federal claims sufficiently logically dependent on Restrepo's federal copyright "anchor claim" (i.e., a federal claim serving as the basis for supplemental jurisdiction), despite that such courts would otherwise lack jurisdiction over such claims. Like pendent

jurisdiction, a federal court can exercise ancillary jurisdiction if the anchor claim has original federal jurisdiction either through federal-question jurisdiction or diversity jurisdiction.

Areas where ancillary jurisdiction can be asserted include counterclaims (Fed. R. Civ. P. 13), cross-claims (Fed. R. Civ. P. 13), impleader (Fed. R. Civ. P. 14), interpleader (Fed. R. Civ. P. 22) and interventions (Fed. R. Civ. P. 24). *Moore v. New York Cotton Exchange* and *Owen Equipment & Erection Co. v. Kroger* are seminal cases relating to ancillary jurisdiction.

Ancillary jurisdiction has been replaced entirely by supplemental jurisdiction, per 28 U.S.C. § 1367(b), part of the U.S. supplemental jurisdiction statute:

28 U.S. Code § 1367 - Supplemental jurisdiction

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

Without removal of this case to federal court the federal courts will be jurisdictionally stripped of their complete federal right to exercise jurisdiction over federal copyright cases such as the instant case.

The federal court for the Western District of Texas, El Paso Division has complete jurisdiction over the instant copyright law case both jurisdiction over the parties or things (personal jurisdiction) and

jurisdiction over the subject matter. This rule applies to every cause of action and every party in a case.

The County Court at Law Number Five lack of subject matter jurisdiction was never waivable; the county court never had it, and cannot assert it. Furthermore, Restrepo's can raise lack of subject matter jurisdiction at any time; there are no time restraints on when such an objection can be raised thus removal of this case to federal court is proper and timely. FRCP 12(h)(3).

Federal district courts have jurisdiction over this case where a federal question has been raised. 28 U.S.C. § 1331 provides: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." Jurisdiction under § 1331 is sometimes referred to as "federal question jurisdiction."

Congress has extended the federal trial courts' jurisdiction to other matters, including cases involving: federal patents, copyrights and trademarks, 28 U.S.C. § 1338.

Alliance claimed Federal Jurisdiction by making a claim for a domain name which is a Federal Question based on Restrepo's Copyrights to the domain name subject of the litigation.

It is important to note that federal subject matter jurisdiction was achieved based on the allegations contained Alliance complaint.

It is also important to note that even if Alliance attempts to avoid federal jurisdiction by failing to allege a question of federal law in the complaint and only pleading state law in a claim filed in state court,

where the claim under state law is completely trumped by federal law, the federal courts will retain subject matter jurisdiction over the case. See *Avco Corp. v. Aero Lodge No. 735*, 390 U.S. 557, 88 S.Ct. 1235, 20 L.Ed.2d 126 (1968). In such a situation, the case can be removed to federal court by the Restrepos.

Unlike diversity of citizenship jurisdiction, for federal question jurisdiction, there is no minimum for the amount in controversy, nor must the parties be citizens of different states.

The Federal court for the Western District of Texas El Paso Division has exclusive jurisdiction over the Copyright law case of the Restrepos surreptitiously filed by Alliance in the County Court at Law Number Five to avoid federal jurisdiction.

PROSE DEFENDANTS INVOKE THEIR FIRST AMENDMENT RIGHTS IN FILING THIS NOTICE OF REMOVAL

ProSe Defendants invoke the First Amendment Right to the United States Constitution which affords access to the courts, including the right to petition the government for redress of grievances. App. C, U.S. Const. Amend I; see also Texas Const., Art. 1 § 27. The right to petition the government is "among the most precious of the liberties safeguarded by the Bill of Rights." *United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass'n*, 389 U.S. 217, 222 (1967). Tex. Const. art. 1, § 13 ("All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law")

PROSE DEFENDANTS INVOKE THE FEDERAL COURT'S PROTECTION

Defendants, Linda S. Restrepo and Carlos E. Restrepo, Pro Se, bring this action on the behalf of themselves. They respectfully come before this Honorable Court in the instant cause as Pro Se litigants. Defendants relied on *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991), where the Court stated that; "A Pro Se litigant's pleading are to be construed liberally and to a less stringent standard than formal pleadings drafted by lawyers...If a Court can reasonably read the pleadings to state a valid claim on which Plaintiff could prevail, it should do so despite the Plaintiff's failure to site proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction or his unfamiliarity with pleading requirements" (Citation Omitted)." See also *Riley v. Greene*, 149 F. Supp. 2d 1256 (D. Colo. 2001).

NOTICE OF REMOVAL AND MOTION TO TRANSFER VENUE

Pursuant to the removal statutes 28 U.S.C. §§ 1331, 1332, 1338, 1404(a), 1441(a), 1441(b) and 1446(b) and under the provisions of the Copyright Act of 1976 and other applicable federal law, ProSe Defendants Linda S. Restrepo and Carlos E. Restrepo D/B/A/ Collectively as RDI GLOBAL SERVICES and R&D INTERNATIONAL, hereby file their Motion to Remove this case Number 2012-DCV-04523 based solely on Alliance June 20, 2012 original petition and Alliance first amended petition filed June 20, 2014, from the County Court at Law Number Five, El Paso County, Texas, the Honorable Carlos Villa presiding, to the United States District Court, Western District of Texas, El Paso Division for acquired exclusive federal copyright jurisdiction, subject matter jurisdiction, amount in controversy and serves the interest of justice.

Because Restrepo's case involves important Federal legal issues of substantial public importance to safeguard the integrity of Copyright laws, the authority of Federal Agencies and Acts of Congress, presenting issues of first impression pertaining to interpretation of Federal Copyright laws, Federal Preemption, Exclusive Jurisdiction of Federal Courts, Authority of Federal Agencies, and mandates of the U.S. Congress, this matter should be removed to Federal Court.

No actions or pleadings by Restrepo's constitute an acquiescence or waiver of procedural or other defects in the Notice of Removal. This Motion is supported by the Memorandum of Points and Authorities below.

MEMORANDUM OF POINTS AND AUTHORITIES.

I. FACTUAL BACKGROUND. (SEE INFOGRAPHIC I)

1. This case arises out of a domain name dispute between the Restrepo's and Alliance where the Restrepo's authorized by Alliance designed an original artistic webpage which Restrepo's Copyrighted, and upload it to the Internet utilizing GoDaddy and Arizona corporation domain names and hosting services. There were other Defendants Copyrighted artistic compositions, corporate videos, articles and ancillary services produced as original works by the Restrepo's under the contract that Alliance received and has benefited from but has refused to pay the Restrepo's for.

2. Defendants acquired Copyright under the provisions of the Federal Copyright Act of 1976 and claim removal jurisdiction based on Federal question jurisdiction due to the fact that copyright claims are being brought under the Federal Copyright statute for all their original artistic and technical productions i.e., original photographs, original video footage, original narrative compilations, original graphic designs, music composition in the videos, original voice narrations, creation of the html computer code utilized to upload the webpage to the Internet, the web page and its contents, the corporate videos and their content, and to the domain name "allianceriggersdandconstructors.com" by Restrepo's purchase of the domain from GoDaddy an Arizona corporation as sole and only principal property owners and forever grandfather owners of such domain name.

3. Restrepo's claimed, asserted, utilized, made visible and known to all their Copyright ownership by labeling and dating all the pages in the webpage with the "Copyright" symbol which Alliance acquiesced and approved by signing their initials in the webpage (**Exhibit 1**). Restrepo's also inserted a comprehensive Notice of Copyright at the end of all videos produced, the article written by Restrepo's and published in the SEAA Connector Magazine 2012 Edition. Alliance never made any claims to the contrary and surrendered by operation of law any claims it might have had to the domain name "allianceriggersandconstructors.com", the words thereof, the webpage and its artistic compositions, the videos, articles, photographs et al produced as original artistic work product by the Restrepo's.

4. This case involves an exclusive federal question of Restrepo's Copyright ownership to the entire original webpage, html codes, video productions, names, the copyrighted Internet domain name "allianceriggersandconstructors.com" pursuant to 28 U.S.C. § 1338(a).

5. Alliance non-suited their original petition on June 20, 2014 and thus their amended petition filed on the same date is barred by res judicata. Alliance a vexatious litigant and serial filer of Breach of Contract lawsuits in El Paso, Texas courts, filed a First Amended Petition (**Exhibit 2**) in Texas state County Court at Law Number 5 against Restrepo's alleging trademark infringement by the utilization by Restrepos of a domain name "allianceriggersandconstructors.com",

breach of contract among other ancillary superficial and substantively lacking pleadings.

6. Alliance concurred with the Restrepo's copyrighted original creative work product as attested by the Judicial Admissions (**Exhibit 3**) filed by Alliance General Manager Phillip H. Cordova and Operations Manager Terry Stevens.

7. On June 20, 2012 Alliance filed a vexatious frivolous original Petition (**Exhibit 4**) predicated on fraud against Restrepo's alleging trademark infringement by the utilization by Restrepo's of a domain name "alliancereggersandconsdtructors.com", breach of contract among other ancillary superficial and substantively lacking pleadings. Alliance fraudulently, knowingly, maliciously and wantonly filed false and perjured statements to the court knowing that Restrepo's were never Defendants in this cause.

8. Restrepo's never purchased, utilized, owned, or uploaded a webpage to the Internet utilizing the alleged name "alliancereggers&constructors.com" as fraudulently alleged by Alliance in the original petition and maintained by Alliance for 27 months of litigation. Factually the domain name "alliancereggers&constructors.com" is and has been available for purchase from GoDaddy for \$12.99 and a Google search of the Internet disclosed that there is no webpage uploaded to the Internet via GoDaddy hosting services by the Restrepo's.

9. On April,18, 2014, Alliance invoked for the second time the exclusive jurisdiction of a Federal agency by filing a second application for trademark to the name "alliance riggers & constructors" before the United States Patent and Trademark Office (USPTO) (**Exhibit 5**).

10. Previously on May 22, 2012 Alliance invoked Federal Jurisdiction by filing a first application for a trademark to the name "alliance riggers & constructors" to the USPTO.

11. On September 14, 2012 the USPTO: (1) denied Alliance's Trademark application, (2) informed Alliance and attorney Pritchard that the name Alliance was the sole legal trademark previously owned by Alliance Steel, Inc. an Oklahoma corporation domiciled at 3333 South Council Road, Oklahoma City, Oklahoma under Trademark registration No. 3604909, (3) ordered Alliance to disclaim the use of the words "riggers & constructors", (4) ordered Alliance to make an "Entity Clarification" in that Alliance "has not indicated the names and citizenship of the partners", (5) informed Alliance that the words "riggers & constructors" were common English language words not subject to trademark registration which Alliance failed to comply with. (**Exhibit 6**).

12. Alliance never appealed the negative ruling of the USPTO and the Federal Agency ruled on April 15, 2013 that Alliance trademark application had been abandoned. (**Exhibit 7**).

On April 21, 2014, Alliance for the second time in sworn federal documents under penalty of perjury officially disclaimed any rights to

the common English words "riggers and constructors" as documented by the official USPTO document attached herein as **Exhibit 9** and incorporated herein by reference as if set forth in its entirety.

Alliance cannot claim any trademark rights to the name "Alliance" because it is the legally owned trademark of Alliance Steel corporation domiciled at 3333 South Council Road, Oklahoma City, Oklahoma, 73179 under trademark registration number 3604909 showing in **Exhibit 6** incorporated herein by reference as if set forth in its entirety.

Alliance disclaimer to the words "riggers and constructors" and their inability to claim any trademark rights to the word "Alliance" completely and entirely voids the lawsuit filed against Restrepo's for lack of standing on the part of Alliance.

Therefore, as a matter of law County Court at Law Number Five never acquired jurisdiction and has no subject matter jurisdiction because Alliance has no standing before the court, or any rights to the name "Alliance" or the word "riggers and constructors". No cause of actions, no lawsuit, no standing, no basis in fact or in law exists for Alliance vexatious frivolous lawsuit to proceed in the courts.

Alliance consented by signing a written contract to: (1) a venue and forum selection in federal district court, (2) To GoDaddy Universal Terms of Service requiring venue in Arizona federal district court and (3) To the Department of Commerce ICANN (Internet Corporation of Assigned Names and Numbers) headquartered in California to resolve any tort claims and/or domain names disputes.

Alliance non-suit and amended petition were fraudulent lawsuits in which the Texas County Court at Law Number 5 lacked and never

acquired personal jurisdiction due to improper service of Linda S. Restrepo and neither subject matter jurisdiction. By non-suit of the original petition and refiling with the state County Court substantiates Restrepo's position that the prior petition, that was filed, was fraudulent, as supported by the modified petition which removed the language in the original pleadings.

14. Alliance aided by attorney R. Wayne Pritchard and aided and abetted by others known and unknown to the Restrepo's, and aiding and abetting others known and unknown to the Restrepo's, devised and intended to devise a scheme and artifice predicated on the conscious doing of wrong for dishonesty and malicious purposes to defraud the Restrepo's and five other national and international corporations through extortion, bribery and the concealment of material information.

15. Pritchard and Alliance with the intent to defraud, devised a scheme and artifice to defraud and obtain money and personal property by materially false and fraudulent pretenses, representations, that is they conspired among themselves and devised a scheme to defraud Restrepo's and five other National and International corporations of their computer html codes, personal property, intellectual property, trade secrets, copyrighted and trademark property and payment due Restrepo's by filing a frivolous lawsuit in County Court at Law Number 5, El Paso County, Texas.

16. The unlawful intent of Attorney Pritchard and Alliance in filing the suit against Restrepo's was to disguise a Federal Copyright question under a frivolous bogus "breach of contract" claim to cajole a Texas County Court at Law judge to grant Alliance rights to a federal

trademark name legally owned by Alliance Steel an Oklahoma corporation (See **Exhibit 6** USPTO Determination). Through this unlawful scheme attorney Pritchard and Alliance sought to abrogate established federal laws and dilute the congressionally mandated authority of federal agencies to wit: the USPTO, and the Internet Corporation for Assigned Names and Numbers ICANN a federal agency which has the exclusive jurisdiction over domain name disputes. (**Exhibit 8** Go Daddy Legal Agreement Section 23 Governing Law).

II. THE REMOVAL IS TIMELY

This Notice of Removal is a timely filed Constitutional claim within the time frame of the federal court acceptance of Restrepo's federal copyright lawsuit filed on October 16, 2014 and within one year of Alliance June 20, 2014 amended petition.

III. LEGAL STANDARD

A. 28 U.S.C. § 1331. FEDERAL QUESTION:

Section 1331 establishes that district courts shall have original jurisdiction when Motions to Transfer venue under 28 USC §1441(a) and 28 USC § 1331 require that: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." Federal question jurisdiction exists when a claim arises pursuant to federal law.

Further, 28 U.S.C. §1446 allows transfer of this cause for original Federal Court jurisdiction. See e.g. *Hayes v. Livermore*, 279 F2d 818 (D.C. Cir. 1960; *Amerio Contact Plate Freezers, Inc. v. Knowles*, 274 F2d 755 (D.C. Cir. 1960)

Alliance sought and is currently under the exclusive jurisdiction of a federal agency the USPTO when they applied for a trademark for the second time on April 18, 2014 thus invoking the exclusive application of federal law involving a federal question. Given this fact along with the Restrepo's Copyright and the fact that the Restrepo's have a current and pending appeal of Alliance trademark application Number 76/716209, the removal of this case to the Federal District Court for the Western District of Texas, El Paso Division is warranted. The facts in this case easily satisfy the criteria of exclusive federal law, federal jurisdiction, and venue are proper and the case should be transferred to the Western District of Texas, El Paso Division.

IV. ARGUMENT

A. This Matter Should Be Removed to the United States District Court, Western District of Texas, El Paso Division for the Complaint Alleges Claims Which Create Complete Federal Question Jurisdiction.

"Chasing the Rabbit Down the Hole"

Alliance non-suited and first Amended Petition artfully and maliciously attempts to disguise a federal Copyright matter by claiming trademark infringement by Restrepo's for allegedly using the common English words "alliance riggers and constructors".

Alliance by their own statements under oath to the County Court at Law Number Five have documented that this is a federal case involving federal questions of a domain name ownership of Restrepo's Copyrighted "allianceriggersandconstructors.com" domain name as attested by the court transcript excerpt presented below, **Exhibit 10**. Court Transcript Reporter's Record May 3, 2013.

MR. PRITCHARD: yeah, your Honor, this is a real simple case. i mean, and not to belabor any of the legal issues we've already talked about,, but the simplicity of the case is this: is that they have a domain name that is---

MR. PRITCHARD: --- is similar to our trademark. All we want them to do is transfer the domain name to us. That's what we want. We don't want them having another --- and the law is that you can't have domain name that is confusingly similar to a trademark. That's what this case is about."

However, we must look deeper into the real motivation of Alliance which is to deceitfully gain all the original Copyrighted domain name and product originally created by Defendants contained in the webpage, the html code, the videos, the published articles, the music score, the MP3's (original narrations), slide shows, original footage movies, et. al which are and have been used as Copyrighted original creative work product by Restrepo's thus covered by and subject to determination by Federal District Court under 28 U.S.C. § 1338.

We must also look into the factual dishonest intent of Alliance merittless allegations that his "alliance riggers & constructors" words domain name belongs exclusively to Alliance in light of the fact that there are currently FOUR GoDaddy available for purchase domain names all containing the words "alliance riggers and constructors" to wit: (1) allianceriggersandconstructors.org sells for \$12.99; (2) allianceriggersandconstructors.co sells for \$6.99; (3) allianceriggersandconstructors.info sells for \$2.99; and (4) allianceriggersandconstructors.us sells for \$4.99.

The question is then: (1) Why Alliance has not sued GoDaddy the legal owner of the aforementioned domain names all containing the allegedly trademark name "alliance riggers & constructors"? (2) Why

Alliance does not purchase anyone of the four domain names, or better yet, all four of the domain names containing the words "alliance riggers and constructors" which can either or all be used as equal identifiers of the webpage?.

Alliance's disclaimer to the words "riggers and constructors" and their inability to claim any trademark rights to the word "Alliance" completely and entirely voids the lawsuit filed against Restrepo's for lack of standing on the part of Alliance.

Therefore, as a matter of law County Court at Law Number Five never acquired jurisdiction and has no subject matter jurisdiction because Alliance has no standing before the court, or any rights to the name "Alliance" or the generic words "riggers and constructors".

Further, by Alliance's own court recorded admissions this is a federal question domain name ownership copyright case that belongs in the Western District of Texas El Paso Division federal court.

Factually the Federal USPTO has already ruled that Alliance cannot claim title to the word "Alliance" because it is a legal registered trademark of Alliance Steel an Oklahoma corporation. Further, the Federal USPTO has also informed Plaintiff that it cannot register and claim title to the words "riggers" and "constructors" which have been determined to be common usage words contained in the English Dictionary and thus NOT subject to trademark registration.

To the extent that Alliance claims alleged rights to the federal copyrighted domain name "alliance riggers & constructors" those rights are weak, narrow, and exist in a crowded field of merely competing descriptive names, uses and ordinary plain English words as evidenced

by the Federal USPTO ruling against Plaintiffs application dated September 14, 2012.

Alliance contractually agreed and consented to jurisdiction and forum selection in Federal district court for resolution of any domain names disputes by signing the contract and accepting GoDaddy's Universal Terms of Service for GoDaddy software and services as follows: *"For the adjudication of disputes concerning the use of any domain name registered with GoDaddy, You agree to submit to jurisdiction and venue in the U.S. District Court for the district of Arizona located in Phoenix, Arizona."*

It is then obvious to the casual observer as well as to the Federal Court that Alliance, with no investigation, or exercise of prudent due diligence, and in contradiction to his sworn testimony and judicial admissions asserts a variety of scurrilous, sensational and unfounded accusations against the Restrepo's. Alliance original and non-suited Petition and subsequent Amended Petition have no standing, no basis in fact or in law, defies common sense, and therefore County Court at Law Number Five never obtained, and cannot exercise any jurisdiction over a federal Copyrighted domain name.

Alliance filed his first Amended Petition without any substantive change from his first Petition and with the knowledge that it was and would be groundless. Thus, his pleading has been, by definition, made in bad faith and for the purpose of harassment. Therefore, Alliance is subject to sanctions. See *Tanner*, 856 S.W.2d at 730.

Alliance Amended Petition fails to comply with new Supreme Court rules by refusing to classify the damages sought into categories but instead proceed to make his own nebulous category. Plaintiff has

made a claim for damages which are within and in excess of the minimum jurisdictional limits of the Court at the same time.

Restrepo's request that the Alliance Amended Petition be stricken because it is substantially insufficient in law and in fact, or that the action should be dismissed with prejudice.

B. This Matter Should Be Removed To The United States District Court, Western District Of Texas, El Paso Division

Transfer to Federal District Court is mandatory because a Federal Question Jurisdiction exists by virtue of the Copyright Act of 1976 and 28 U.S.C § 1338. Federal question jurisdiction exists where the complaint "establishes either that [1] federal law creates the cause of action or [2] that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law, in that 'federal law is a necessary element of one of the well-pleaded ... claims'."

Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 808-09 (1988) (quoting *Franchise Tax Bd.*, 463 U.S. at 27-28); 28 U.S.C. § 1331. "[I]n order for a complaint to state a claim 'arising under' federal law, it must be clear from the face of the plaintiff's well-pleaded complaint that there is a federal question." *Duncan v. Stuetzle*, 76 F.3d 1480, 1485 (9th Cir. 1996). Restrepo's have copyrighted the domain name "allianceriggersandconstructors.com" and all original work relating to their original creative video and Internet web page product.

A claim to determine copyright ownership is a federal court claim when interpretation of a copyright statute controls as in this case.

Suits whose purpose is to decide these federal copyright matters are exclusive federal court suits.

Restrepos contend that Alliance other claims of breach of contract, declaratory judgment and violation of the Texas Deceptive Trade Practices Act invoke federal question jurisdiction because all claims are based on and are covered under the umbrella of the protections afforded by the Federal Copyright Act and 28 U.S.C. § 1338.

The U.S. District Court, Western District of Texas, El Paso Division has exclusive subject matter jurisdiction over this case under 28 U.S.C. §§ 2201 and 2202, 28 U.S.C. §§ 1331 and 1338, and 15 U.S.C. § 1121. The federal district court shall have original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and related claim under the copyright protection afforded by the Copyright Act of 1976 and 28 U.S.C. §1338 as in this case.

Alliance filing in state County Court however ambiguous and purposely concealed by the ancillary claims of Unfair Competition and Texas Deceptive Trade Practices Act is an attempt to evade the operation of mandatory provisions of Federal statutes and law.

There is not a scintilla of fact or evidence offered by Alliance that the Restrepo's line of business which consists of strategic marketing research and video productions, web page creations, and public relations services are in any way directly or indirectly, or that Restrepo's have the technical, equipment and financial capacity to engage in a competing offering of crane and rigging and steel erection services. Alliance claims otherwise are ludicrous and fail to meet the test of veracity and common sense.

Neither is any factual evidence offered by Plaintiff that Restrepos have engaged in Breach of Contract for all services rendered to Alliance by the Restrepo's were under a contract signed by Alliance for the intended purpose, approved verbally and in writing by Alliance. The Court record reflects that Alliance wrote complimentary E-mails to Defendants for their outstanding work. Further, Alliance has made filed judicial admissions through General Manager Phillip Cordova and Operations Manager Terry Stevens that that they gave permission to the Restrepos to utilize its alleged name in the web page, videos, and all other productions.

A judicial admission once made still is a judicial admission that completely obliterates Alliance claims of any "unauthorized use" of "alliance riggers & constructors" name. Alliance by their own judicial admissions in fact totally defeat any claims against Restrepo's and reflects Alliance lawsuit for what it really is: a vexatious frivolous lawsuit without any basis in fact or in law that defies all common sense and made only for the purpose of harassment of a disabled U.S. Army Veteran senior citizen and his wife.

Alliance claims under Common Law are unsubstantiated as well. Alliance is and has engaged in Interstate commerce outside of El Paso County, across interstate boundaries by having registered to offer its services in the State of New Mexico and other U.S. locations and operated across international borders in Mexico.

The copyrighted domain name "allianceriggersandconstructors.com" subject of Alliance's First Amended Petition is the Restrepo's legally owned and claimed

Copyright protected under Federal statutes. Every original creative work product, every document, contains the Restrepo's Copyright symbol and Notice of Copyright thus endowing the jurisdiction of and power of federal courts by statutes and Constitutional protection to adjudicate claims. See *Stockman v. Fed. Election Comm'n*, 138 F. 3d 144, 151 (5th Cir. 1998) (citing *Veldhoen v. United States Coast Guard*, 35 F. 3d 222, 225 (5th Cir. 1994)).

C. Lack of Subject Matter Jurisdiction of State County Court

The Restrepos rely on the following established case precedent: (1) "Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but, rather, should dismiss the action." *Melo v. US*. 505 F2d 1026. (2) "The law provides that once State Jurisdiction has been challenged, it must be proven." *Main v; Thiboutot*. 100 S. Ct. 2502 (1980). (3) "Jurisdiction can be challenged at any time." and "Jurisdiction, once challenged, cannot be assumed and must be decided." *Basso v; Utah Power & Light Co.*. 495 F 2d 906, 910. (4) "Defense of lack of jurisdiction over the subject matter may be raised at any time, even on appeal." *HUI Top Developers v; Holiday Pines Service Corp.*. 478 So. 2d. 368 (Fla 2nd DCA 1985). (5) "Once challenged, jurisdiction cannot be assumed, it must be proved to exist." *Stucl v. Metiical Examiners*. 94 Ca 2d 751. 211 P2d 389. (6) "There is no discretion to ignore that lack of jurisdiction." *Jovce v: US*. 474 F2d 215. (7) "The burden shifts to the court to prove jurisdiction." *Rosemond v: Lambert*. 469 F2d 416. (8) "A universal principle as old as the law is that a proceedings of a court without jurisdiction are a

nullity and its judgment therein without effect either on person or property." *Norwood v: Benfield*. 34 C 329; *Ex. parte Giambonini*, 49 P. 732. (9) "Jurisdiction is fundamental and a judgment rendered by a court that does not have jurisdiction to hear is void ab initio." In *Re Application of Wyatt*. 300 P. 132; *Re Qmd11*. 118 P2d 846. (10) "Thus, where a judicial tribunal has no jurisdiction of the subject matter on which it assumes to act, its proceedings are absolutely void in the fullest sense of the term." *DU/on v: DU/on*. 187 P 27. (11) "A court has no jurisdiction to determine its own jurisdiction, for a basic issue in any case before a tribunal is its power to act, and a court must have the authority to decide that question in the first instance." *Rescue Army v. Municipal Court of Los Angeles*. 171 P2d 8; 331 US 549, 91 L. ed. 1666, 67 S.Ct. 1409. (12) "A departure by a court from those recognized and established requirements of law, however close apparent adherence to mere form in method of procedure, which has the effect of depriving one of a constitutional right, is an excess of jurisdiction." *Wuest v: Wuest*. 127 P2d 934, 937. (13) "Where a court failed to observe safeguards, it amounts to denial of due process of law, court is deprived of juris." *Merritt v: Hunter*. C.A. Kansas 170 F2d 739.

D. Defective Service

The Record reflect that Restrepos have vigorously contested the lack of personal jurisdiction of County Court at Law Number Five because of insufficient process and insufficient service upon Linda S. Restrepo who never personally received and signed the citation of service. The Record before this Honorable Court document that Linda

S. Restrepo has made a standing and running objection to defective/insufficient service and the fact that she has not been properly served.

The Court Record documents that service upon Linda Restrepo was defective in that the "certified mail", "restricted delivery" return receipt does not contain the addressee's signature (CR. Return Service). "A return of citation served by registered or certified mail must contain the return receipt, and the latter must contain the addressee's signature". Tex.R. Civ. P. 107; See *Keeton v. Carrasco*, 53 S.W.3d 13, 19 (Tex.App.-San Antonio 2001, pet. denied). If the return receipt is signed by someone else, then service of process is defective; See *All Comm. Floors, Inc. v. Barton & Rasor*, 97 S.W.3d 723, 726-27 (Tex. App.- Fort Worth 2003, no pet.) (holding that service was defective because the return receipt was signed by neither the addressee or registered agent for the entity). Because the service is defective, the attempted service is invalid and of no effect. *Wilson v. Dunn*, 800 S.W.2d 833, 836 (Tex.1990). The County Court has proceeded in this case without personal jurisdiction and contrary to Tex. R. Civl P. Rule 124, No Judgment Without Service.

Alliance alleged claims of ownership of a domain name, Breach of Contract, Unfair Competition, violations of the Texas Deceptive Trade Practices Act necessitate the resolution of a substantial question of federal law because all claims fall within the source of Restrepos copyrightable subject matter, are based on and hinge on the resolution of the disputed domain name Copyrights of Restrepos versus the alleged ownership rights claimed by Alliance.

This matter should be removed to the U.S. District Court, Western District of Texas, El Paso Division since there are complete and exclusive federal questions before the Court.

E. Transferring the Case to the Western District of Texas, El Paso Division Would Serve the Interests of Justice.

The traditional factor - the interest of justice - also supports a transfer to the Western District of Texas. Alliance would not be disadvantaged by a transfer of this case to the Western District of Texas. Because their fraudulent trademark claims and trademark infringement of the registered name "Alliance" and its disclaimer to the words "riggers and constructors" all raise issues of federal law, no one state district court is presumed to be any more or less familiar with the legal standards applicable to those claims. Moreover, the fraudulent Alliance breach of contract claims are based on a "surreptitious phantom trademark" claim that require that any domain name dispute arising under federal law shall be resolved in accordance with the federal jurisdiction of the federal District courts." The transferee District court, sitting in El Paso, Texas, may be presumed to have greater familiarity with the federal copyright, patent and trademark laws underlying these claims.⁵⁵ *1.£11Jl Vistaprint. Ltd.*, 628 F.3d 1342, 1346-47 & n.3 (Fed. Cir. 2010).

F. Defendants Request Equal Protection under the Law

Restrepo's request transfer to the U.S. District Court for the Western District of Texas, El Paso Division based on their claim to Equal Protection under the law. The County Court at Law Number 5

has treated Restrepo's as one class of people differently than another class of people. County Court at Law Number Five has singled out Restrepo's abuse of process and malicious persecution, differential treatment based on their claims of fraud against Alliance in the on-going El Paso County public corruption case. Restrepo's further state that they have been stripped in County Court at Law Number Five of their 1st Amendment Rights and their Rights to Due Process. The presiding Judge Carlos Villa is a state actor acting under the Color of Law under section 1983, who due to his bias against the Restrepo's for the fact that his nephew was part of the public corruption case which the Restrepo's have sought claims against Alliance, has decided to allow the Alliance to operate without complying with discovery, requests for production, disclosure, without stating a cause of action and without standing all in violation of the Restrepo's Constitutional and Due Process Rights which makes this a federal case.

V. CONCLUSION

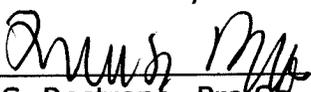
This case is based on complete Federal Issues and complete Federal Copyright Law and does not belong in the County Court at Law Number Five of El Paso, Texas. It belongs in the Western District of Texas, El Paso Division - the exclusive Federal Forum originally acquired and required by the Federal Copyright Laws. Alliance alleged claims require an interpretation of federal copyright law in a federal court. A transfer to the Western District of Texas, El Paso Division would square with both common sense and fundamental fairness, particularly when the key witnesses in this case, and all of Alliance's owners, officers, currently employees identified to date that could

provide critical testimony work and reside in the Western District of Texas.

By this Notice of Removal and Motion to Transfer Venue, the Restrepo's do not waive any objections they may have as to appeal remand of the case to state court, service,, jurisdiction or venue, or any other defenses and objections it may have to any expedited rulings in this action. Restrepo's intend no admissions of fact, law, or liability by this Notice and Motion, and expressly reserve all appeals, defenses, motions and/or pleas. Restrepo's reserve the right to amend and/or supplement this Notice of Removal and Motion. This Notice of Removal is not brought for the purpose of delay but so that justice may be served.

Respectfully Submitted,

Dated this 31st Day of October.



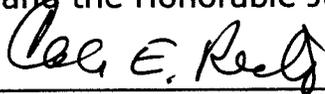
Linda S. Restrepo- Pro Se
P.O. Box 12066
El Paso, Texas 79912
(915) 581-2732



Carlos E. Restrepo- Pro Se
P.O. Box 12066
El Paso, Texas 79912
(915) 581-273

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 31st day of October 2014 a copy of Defendants Motion to Transfer Venue Memorandum in Support, Declaration of Linda S. Restrepo and Declaration of Carlos E. Restrepo were served upon the following via E-mail to :
wpritchard@pritchlaw.com, and the Honorable Judge Carlos Villa at:
pbustmante@epcounty.com



Carlos E. Restrepo- Pro Se

Exhibits

- Exhibit 1: Plaintiffs Initials on Webpage Acceptance
- Exhibit 2: Plaintiffs First Amended Petition-non-suit of Original Petition
- Exhibit 3: Plaintiffs Judicial Admissions
- Exhibit 4: Plaintiffs Original Petition
- Exhibit 5: Plaintiffs USPTO Application
- Exhibit 6: USPTO Ruling
- Exhibit 7: Abandonment of Trademark Ruling
- Exhibit 8: Go Daddy Forum Selection Clause
- Exhibit 9: Plaintiffs disclaim of the words riggers & constructors to the
USPTO
- Exhibit 10: Court Record

000026

Exhibit 1: Plaintiffs Initials on Webpage Acceptance



[click here](#)



[click here](#)



[click here](#)

PROJECT SLIDESHOWS



WELCOME TO ALLIANCE RIGGERS & CONSTRUCTORS, LTD.

Alliance Riggers & Constructors is a Southwest Regional Services provider offering precision service throughout Texas and New Mexico. Our skilled and professional team offers an extensive menu of services and the expertise and equipment to assist YOUR Clients and Construction Partners in making YOUR Vision a reality... safely, on time and within budget. Founded in 1977, Alliance Riggers & Constructors is a family owned business doing business in El Paso, Crane & Riggings, as well as Dallas, a family owned business doing business in El Paso, Texas and the surrounding areas for nearly 40 years.

000028

Exhibit 2: Plaintiffs First Amended Petition

IN THE COUNTY COURT AT LAW NUMBER 5
EL PASO COUNTY, TEXAS

ALLIANCE RIGGERS & CONSTRUCTORS, LTD.,

Plaintiff,

v.

LINDA S. RESTREPO and CARLOS E. RESTREPO
D/b/a Collectively RDI Global Services and R&D
International,

Defendants.

§
§
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§
§
§

Cause No. 2012-DCV04523

PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Now Comes, ALLIANCE RIGGERS & CONSTRUCTORS, LTD., by and through its attorney of record, R. Wayne Pritchard, P.E., of the law firm R. Wayne Pritchard, P.C., complaining of LINDA S. RESTREPO and CARLOS E. RESTREPO d/b/a Collectively RDI Global Services and R&D International, Defendants, and for cause of action would respectfully show the court as follows:

**I.
DISCOVERY LEVEL**

1. Discovery is to be conducted in accordance with Rule 190.3 of the Texas Rules of Civil Procedure, Level 2.

**II.
PARTIES**

2. Plaintiff is limited partnership having its principal place of business in El Paso, Texas.

3. CARLOS E. RESTREPO has appeared and answered herein.

4. LINDA S. RESTREPO has appeared and answered herein.

**III.
TRADEMARK INFRINGEMENT/UNFAIR COMPETITION**

5. By virtue of its long time use both here in El Paso County, Texas as well as elsewhere, Plaintiff is the owner of the well known common law trademark, ALLIANCE RIGGERS & CONSTRUCTORS.

6. As shown on the attached Exhibit "A", incorporated by reference for all purposes herein, on March 19, 2012, Defendants, without permission or authority from Plaintiff, registered the domain name "www.allianceriggersandconstructors.com", and have in fact, launched a web page at such address in which they make multiple use of Plaintiff's common law trademark. Despite this lawsuit, Defendants continue to maintain and assert ownership over the afore-referenced domain name.

7. The use by Defendants of Plaintiff's trademark without permission or authority constitutes trademark infringement and unfair competition under the laws of the State of Texas.

8. As a direct and proximate result of the actions complained of above, Plaintiff has suffered damages in excess of the minimum jurisdictional limits of this court, meaning, damages above the minimum jurisdictional limit. Put another way, Plaintiff is requesting damages within the jurisdictional limits of this Court.

**IV.
BREACH OF CONTRACT**

9. On or about March 2011, Plaintiff and Defendants entered into a contract ("Contract"), the primary purpose of which was to design for Plaintiff a web page. Defendants have breached the Contract by failing to design for Plaintiff the web page as

agreed. As a direct and proximate result of the conduct of Defendants described above, Plaintiff has suffered damages in excess of the minimum jurisdictional limits of this court, meaning, damages above the minimum jurisdictional limit. Put another way, Plaintiff is requesting damages within the jurisdictional limits of this Court.

**V.
DECLARATORY JUDGMENT REQUEST**

10. By letter dated June 12, 2012, Defendant alleged that Plaintiff had breached the Contract and made demand that Plaintiff pay Defendants \$3,500.00.

11. As shown above, Plaintiff has not breached the Contract as alleged by Defendants and furthermore, does not owe Defendants any sum of money.

12. Plaintiff requests that pursuant to Section 37.001 et seq., of the Texas Civil Practice and Remedies Code, commonly referred to as the Texas Declaratory Judgment Act, this Court declare that Plaintiff is not in breach of the Contract and does not owe Defendants any amounts of money.

13. Plaintiff is entitled to recover from Defendants, jointly and severally, pursuant to Section 37.009 of the Texas Declaratory Judgment Act, its reasonable and necessary attorneys' fees incurred in this action.

**VI.
VIOLATION OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT**

14. In connection with the their agreement to design for Plaintiff a web page, Defendants:

- A. Represented that services had characteristics, uses or benefits which they did not have in violation of Section 17.46(b)(5) of the Texas Deceptive Trade Practices Act ("TDPA");

- B. Represented that services were of a particular standard, quality or grade when they were of another in violation of Section 17.46(b)(7) of the TDPA;
- C. Represented that an agreement conferred or involved rights, remedies or obligations which it did not have or involve in violation of Section 17.46(b)(12) of the TDPA;
- D. Failed to disclose information concerning services which was known at the time of the transaction, when such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed in violation of Section 17.46(b)(24) of the TDPA;
- E. Engaged in unconscionable actions or course of actions in violation of Section 17.50(a)(3) of the TDPA;

15. The actions of Defendants complained of in paragraph 10, were a producing cause of damages to Plaintiff and are therefore actionable under Section 17.50(a) of the TDPA.

16. The conduct of Defendants as described above was committed knowingly entitling Plaintiff to recover three times its economic damages as provided in Section 17.50(b)(1) of the TDPA.

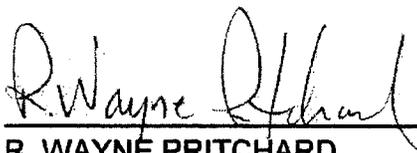
**VII.
ATTORNEYS' FEES**

17. Plaintiff is entitled to recover its reasonable attorneys' fees incurred in this action pursuant to Sections 37.009 and 38.001 et seq. of the Texas Civil Practice and Remedies Code as well as under the Texas Deceptive Trade Practices Act.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon final hearing in this matter, after proper notice to Defendants, that it recover from Defendants, jointly and severally, its actual damages, its economic damages, three times its economic damages, as well as court costs and reasonable attorneys' fees together with prejudgment and post-judgment interest as allowed by law, and such other and further relief to which it is entitled.

Respectfully submitted,

R. WAYNE PRITCHARD, P.C.
300 East Main, Suite 1240
El Paso, Texas 79901
Tel. (915) 533-0080
Fax (915) 533-0081

By: 

R. WAYNE PRITCHARD
State Bar No. 16340150

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I, R. WAYNE PRITCHARD, do hereby certify that on the 20th day of June 2014, a true and correct copy of the foregoing document was delivered as required by the Texas Rules of Civil Procedure to Defendants, LINDA S RESTREPO and CARLOS E. RESTREPO d/b/a RDI Global Services and R&D International, P.O. Box 12066, El Paso, Texas 79912



R. WAYNE PRITCHARD, P.E.

United States - English USD

24/7 Support (480) 505-8877

Sign In Register



All Products Domains Websites Hosting & SSL NEW Get Found Email & Tools Support

WHOIS search results for:
ALLIANCERIGGERSANDCONSTRUCTORS.CO...
(Registered)

Is this your domain?

GO

Want to buy this domain?

GO

Add hosting, email and more.

Get it with our Domain Buy service.

Domain Name: ALLIANCERIGGERSANDCONSTRUCTORS.COM
 Registry Domain ID: 1707909851_DOMAIN_COM-VRSN
 Registrar WHOIS Server: whois.godaddy.com
 Registrar URL: http://www.godaddy.com
 Update Date: 2014-02-17 12:13:15
 Creation Date: 2012-03-19 11:38:57
 Registrar Registration Expiration Date: 2015-03-19 11:38:57
 Registrar: GoDaddy.com, LLC
 Registrar IANA ID: 148
 Registrar Abuse Contact Email: abuse@godaddy.com
 Registrar Abuse Contact Phone: +1.480.624.2505
 Domain Status: clientTransferProhibited
 Domain Status: clientUpdateProhibited
 Domain Status: clientRenewProhibited
 Domain Status: clientDeleteProhibited
 Registry Registrant ID:
 Registrant Name: Carlos Restrepo
 Registrant Organization: R D International
 Registrant Street: P. O. Box 12068
 Registrant City: El Paso
 Registrant State/Province: Texas
 Registrant Postal Code: 79912
 Registrant Country: United States
 Registrant Phone: +1.9159999999
 Registrant Phone Ext:
 Registrant Fax:
 Registrant Fax Ext:
 Registrant Email: pd-lal@zianet.com
 Registry Admin ID:
 Admin Name: Carlos Restrepo
 Admin Organization: R D International
 Admin Street: P. O. Box 12068
 Admin City: El Paso
 Admin State/Province: Texas
 Admin Postal Code: 79912
 Admin Country: United States
 Admin Phone: +1.9159999999
 Admin Phone Ext:
 Admin Fax:
 Admin Fax Ext:
 Admin Email: pd-lal@zianet.com
 Registry Tech ID:
 Tech Name: Carlos Restrepo
 Tech Organization: R D International
 Tech Street: P. O. Box 12068
 Tech City: El Paso
 Tech State/Province: Texas
 Tech Postal Code: 79912
 Tech Country: United States
 Tech Phone: +1.9159999999
 Tech Phone Ext:
 Tech Fax:
 Tech Fax Ext:
 Tech Email: pd-lal@zianet.com
 Name Server: NS19.DOMAINCONTROL.COM
 Name Server: NS20.DOMAINCONTROL.COM
 DNSSEC: unsigned
 URL of the ICANN WHOIS Data Problem Reporting System: http://wdpra.internic.net
 Last update of WHOIS database: 2014-08-19T16:00:00Z

The data contained in GoDaddy.com, LLC's WHOIS database, while believed by the company to be reliable, is provided "as is" with no guarantee or warranties regarding its accuracy. This information is provided for the sole purpose of assisting you in obtaining information about domain name registration records. Any use of this data for any other purpose is expressly forbidden without the prior written permission of GoDaddy.com, LLC. By submitting an inquiry, you agree to these terms of usage and limitations of warranty. In particular, you agree not to use this data to allow, enable, or otherwise make possible, dissemination or collection of this data, in part or in its entirety, for any purpose, such as the transmission of unsolicited advertising and solicitations of any kind, including spam. You further agree not to use this data to enable high volume, automated or robotic electronic processes designed to collect or compile this data for any purpose, including mining this data for your own personal or commercial purposes.

Please note: the registrant of the domain name is specified in the "registrant" section. In most cases, GoDaddy.com, LLC is not the registrant of domain names listed in this database.

[See Underlying Registry Data](#)

Domain already taken?

Enter Domain Name

.com

Search

NameMatch Recommendations

GoDaddy.com NameMatch has found similar domain names related to your search. Registering multiple domain names may help protect your online brand and enable you to capture more Web-traffic, which you can then direct to your primary domain.

Domains available for new registration:

Alternate TLDs	SAVE!	Price
<input type="checkbox"/> allianceriggersandconstruc...info	SAVE!	\$2.99*/yr
<input type="checkbox"/> allianceriggersandconstruc...net	SAVE!	\$8.99*/yr
<input type="checkbox"/> allianceriggersandconstruc...org	SAVE!	\$12.99*/yr
<input type="checkbox"/> allianceriggersandconstruc...us	SAVE!	\$3.98/yr
<input type="checkbox"/> allianceriggersandconstruc...biz	SAVE!	\$7.99*/yr
<input type="checkbox"/> allianceriggersandconstruc...mobi	SAVE!	\$9.99*/yr
<input type="checkbox"/> allianceriggersandconstruc...ca		\$12.99/yr
<input type="checkbox"/> allianceriggersandconstruc...me	SAVE!	\$9.99/yr
Similar Premium Domains ?		
<input type="checkbox"/> TireAndRims.com		\$1,998.00*
<input type="checkbox"/> UsedTireAndRims.com		\$1,249.00*
<input type="checkbox"/> CheapRimsAndTires.com		\$1,699.00*
<input type="checkbox"/> ActionAlliance.com		\$3,488.00*
<input type="checkbox"/> AdvancedAlliance.com		\$1,988.00*
<input type="checkbox"/> AllianceAcquisitions.com		\$3,588.00*

ADD TO CART

Domains available at Go Daddy Auctions@:

<input type="checkbox"/> gdnoper.com Ends on: 9/18/2014 3:58:00 AM PDT	\$2,400.00*
<input type="checkbox"/> fruitsandvegetables.net Ends on: 9/17/2014 8:35:00 PM PDT	\$2,488.00*
<input type="checkbox"/> hispanicalliance.com Ends on: 9/17/2014 7:11:00 PM PDT	\$1,100.00*
<input type="checkbox"/> nursingalliance.com Ends on: 9/17/2014 3:55:00 PM PDT	\$4,488.00*
<input type="checkbox"/> newsandstuff.com Ends on: 9/17/2014 1:40:00 PM PDT	\$688.00*
<input type="checkbox"/> needleandpins.com Ends on: 9/17/2014 1:12:00 PM PDT	\$4,088.00*

VIEW LISTING

Learn more about

[Private Registration](#) ?

[Online Registration](#) ?

[Business Registration](#) ?

[Protected Registration](#) ?



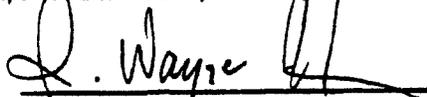
...er domain name year.
 ...registered through Go Daddy Domains Canada, Inc., a CIRA certified registrar.

000036

Exhibit 3: Plaintiffs Judicial Admissions

CERTIFICATE OF SERVICE

I, R. WAYNE PRITCHARD, do hereby certify that on the 20th day of December 2012, a true and correct copy of the foregoing document was delivered as required by the Texas Rules of Civil Procedure to Defendants, LINDA S RESTREPO and CARLOS E. RESTREPO d/b/a RDI Global Services and R&D International, P.O. Box 12066, El Paso, Texas 79912



R. WAYNE PRITCHARD, P.E.

REQUEST FOR ADMISSION NUMBER 10:

Admit that Plaintiff submitted a reversed typeset Alliance Logo to the Defendants to be utilized in the webpage.

RESPONSE:

Plaintiff admits that it permitted Defendants to use its trademark in connection with the design of its web page. Plaintiff denies the remaining portions of this request.

REQUEST FOR ADMISSION NUMBER 11:

Admit that Exhibit "A" is an accurate copy of the reversed typeset Alliance Logo Plaintiff submitted to the Defendants. A true and correct copy of the reversed typeset Alliance Logo submitted to Defendants by Plaintiff is attached hereto as Exhibit "A."

RESPONSE:

Plaintiff admits that Exhibit "A" contains a copy of its trademark and that it allowed Defendants to use such trademark in connection with the design of Plaintiff's web page. Plaintiff denies the remaining portions of this request.

REQUEST FOR ADMISSION NUMBER 12:

Admit that the Alliance Logo (Exhibit "A") was submitted by Plaintiff to Defendants with instructions to be utilized in the webpage.

RESPONSE:

Plaintiff admits that Exhibit "A" contains a copy of its trademark and that it allowed Defendants to use such trademark in connection with the design of Plaintiff's web page. Plaintiff denies the remaining portions of this request.

REQUEST FOR ADMISSION NUMBER 13:

Admit that Plaintiff edited and approved the webpage and submitted said edits to the Defendants.

RESPONSE:

Plaintiff admits that some but not all edits, changes and modifications to its web page were submitted to Plaintiff for approval. Plaintiff denies the remaining portions of this request.

REQUEST FOR ADMISSION NUMBER 14:

Admit that Exhibit "B" is an accurate copy of Alliance Riggers web edit submitted to the Defendants by Plaintiff. A true and correct copy of an email from Plaintiff with attached Alliance Riggers web edit.pdf is attached hereto as Exhibit "B."

000040

Exhibit 4: Plaintiffs Original Petition

FILED
NORMA L. FAVELA
DISTRICT CLERK

2012 JUN 20 PM 1 49

EL PASO COUNTY, TEXAS

BY



DEPUTY

Cause No. 2012-DCV 04523

ALLIANCE RIGGERS & CONSTRUCTORS, LTD.,

Plaintiff,

v.

LINDA S. RESTREPO and CARLOS E. RESTREPO
D/b/a Collectively RDI Global Services and R&D
International,

Defendants.

US
CA
9
TH
CIR
COURT
DISTRICT
EL PASO
COUNTY
TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Now Comes, ALLIANCE RIGGERS & CONSTRUCTORS, LTD., by and through its attorney of record, R. Wayne Pritchard, P.E., of the law firm R. Wayne Pritchard, P.C., complaining of LINDA S. RESTREPO and CARLOS E. RESTREPO d/b/a Collectively RDI Global Services and R&D International, Defendants, and for cause of action would respectfully show the court as follows:

I.

DISCOVERY LEVEL

1. Discovery is to be conducted in accordance with Rule 190.3 of the Texas Rules of Civil Procedure, Level 2.

II.

PARTIES

2. Plaintiff is limited partnership having its principal place of business in El Paso, Texas.

3. CARLOS E. RESTREPO is an individual residing in El Paso County, Texas who may be served with process at his principal place of residence located at 804 Pintada Place, El Paso, Texas 79912.

4. LINDA S. RESTREPO is an individual residing in El Paso County, Texas, who may be served with process at her principal place of residence located at 804 Pintada Place, El Paso, Texas 79912.

III.

TRADEMARK INFRINGEMENT/UNFAIR COMPETITION

5. Plaintiff is the owner of the well known common law trademark, ALLIANCE RIGGERS & CONSTRUCTORS.

6. Defendants have, without permission or authority from Plaintiff, registered the domain name "www.alliancereggersandconstructors.com", and have in fact, launched a web page at such address in which they make multiple use of Plaintiff's trademark.

7. The use by Defendants of Plaintiff's trademark without permission or authority constitutes trademark infringement and unfair competition under the laws of the State of Texas.

8. As a direct and proximate result of the actions complained of above, Plaintiff has suffered damages in excess of the minimum jurisdictional limits of this court.

IV.

BREACH OF CONTRACT

9. On or about March 2011, Plaintiff and Defendants entered into a contract ("Contract"), the primary purpose of which was to design for Plaintiff a web page. Defendants have breached the Contract by failing to design for Plaintiff the web page as

agreed. As a direct and proximate result of the conduct of Defendants described above, Plaintiff has suffered damages in excess of the minimum jurisdictional limits of this court.

**V.
DECLARATORY JUDGMENT REQUEST**

10. By letter dated June 12, 2012, a true and correct copy of which is attached hereto as Exhibit "A" and incorporated by reference for all purposes, Defendant alleged that Plaintiff had breached the Contract and made demand that Plaintiff pay Defendants \$3,500.00.

11. As shown above, Plaintiff has not breached the Contract as alleged by Defendants and furthermore, does not owe Defendants any sum of money.

12. Plaintiff requests that pursuant to Section 37.001 et seq., of the Texas Civil Practice and Remedies Code, commonly referred to as the Texas Declaratory Judgment Act, this Court declare that Plaintiff is not in breach of the Contract and does not owe Defendants any amounts of money.

13. Plaintiff is entitled to recover from Defendants, jointly and severally, pursuant to Section 37.009 of the Texas Declaratory Judgment Act, its reasonable and necessary attorneys' fees incurred in this action.

**VI.
VIOLATION OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT**

14. In connection with the their agreement to design for Plaintiff a web page, Defendants:

- A. Represented that services had characteristics, uses or benefits which they did not have in violation of Section 17.46(b)(5) of the Texas Deceptive Trade Practices Act ("TDPA");

- B. Represented that services were of a particular standard, quality or grade when they were of another in violation of Section 17.46(b)(7) of the TDPA;
- C. Represented that an agreement conferred or involved rights, remedies or obligations which it did not have or involve in violation of Section 17.46(b)(12) of the TDPA;
- D. Failed to disclose information concerning services which was known at the time of the transaction, when such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed in violation of Section 17.46(b)(24) of the TDPA;
- E. Engaged in unconscionable actions or course of actions in violation of Section 17.50(a)(3) of the TDPA;

15. The actions of Defendants complained of in paragraph 10, were a producing cause of damages to Plaintiff and are therefore actionable under Section 17.50(a) of the TDPA.

16. The conduct of Defendants as described above was committed knowingly entitling Plaintiff to recover three times its economic damages as provided in Section 17.50(b)(1) of the TDPA.

**VII.
ATTORNEYS' FEES**

17. Plaintiff is entitled to recover its reasonable attorneys' fees incurred in this action pursuant to Sections 37.009 and 38.001 et seq. of the Texas Civil Practice and Remedies Code as well as under the Texas Deceptive Trade Practices Act.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon final hearing in this matter, after proper notice to Defendants, that it recover from Defendants, jointly and severally, its actual damages, its economic damages, three times its economic damages, as well as court costs and reasonable attorneys' fees together with prejudgment and post-judgment interest as allowed by law, and such other and further relief to which it is entitled.

Respectfully submitted,

R. WAYNE PRITCHARD, P.C.
300 East Main, Suite 1240
El Paso, Texas 79901
Tel. (915) 533-0080
Fax (915) 533-0081

By:



R. WAYNE PRITCHARD
State Bar No. 16340150

ATTORNEYS FOR PLAINTIFF

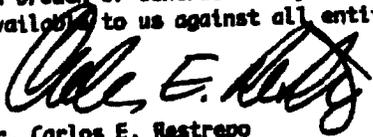
June 12, 2012

Certified Mail Return Receipt Requested
7010 2780 0002 4346 6730
THIRD NOTICE REQUEST FOR OVERDUE PAYMENT

Subject: ALLIANCE CORPORATE VIDEO
Mr. Phil Cordova
CEO/General Manager
Alliance Riggers & Constructors
1200 Kastrin
El Paso, Texas 79907

Mr. Cordova:

We have not received a response from you regarding our continued requests for payment for past due invoices on your Corporate Video. We renew our request for immediate payment for outstanding invoices and amounts due on the Corporate Video. Alliance Riggers is unjustly enriching itself at our expense. Alliance Riggers is required to make restitution for benefits received, retained or appropriated. Please be advised that we consider you to be in breach of contract and your actions theft of services and will take every legal remedy available to us against all entities and parties involved.


Dr. Carlos E. Restrepo
(915) 581-2732



Invoice

Attention: Phillip H. Cordova
 Company Name: Alliance Riggers & Constructors
 Address: 1200 Kastrin
 City, State Zip Code: El Paso, Texas 79907
 Date: 4/24/12

Project Title: Alliance Corporate Video
 Close Out Invoice: ALLI 4-24-12
 Terms: Cash

Description	Included in Basic Contract	Additional Work Requested/ Approved by Client	Paid	PAST DUE
Corporate Video - 5 minutes	X		\$17,500	\$1,000.00
Additional Corporate Video Minutes (4min. 32Sec)		X	\$0.00	\$2,500.00
Total Amount Past Due				\$3,500.00

Sincerely yours,

 Dr. Carlos E. Restrepo
 P.O. Box 12088
 El Paso, Texas 79912

000048

Exhibit 5: Plaintiffs USPTO Application

000049



04-21-2014

U.S. Patent & TMO/™ Mail Rpt. Dt. #22

Applicant:

Applicant's Address:

Goods recited in application:

Alliance Riggers & Constructors, Ltd..

1200 Kastrin Street

El Paso, Texas 79907

Crane and Erectors Services, namely: Structural Steel Erection, Tilt-up and Precast Erection, Crane and Rigging, Overhead Crane Systems, Machinery Moving, In-Plant Heavy Hauling, Welding Service, Crane Lift Drafting, Trans-Loading, and Pre-Engineered Metal Building Erection, in International Class 037



TRADEMARK



76716209

000050

TRADEMARK APPLICATION:

SERIAL NO. 76716209

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

FEE SHEET

04/21/2014 SWILSON1 00000009 76716209

01 FC:6001

375.00 OP

000051

R. WAYNE PRITCHARD, P.C.
Intellectual Property Law

R. Wayne Pritchard, P. E.

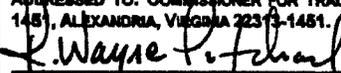
Admitted to Practice before the United States Patent & Trademark Office

300 East Main, Suite 1240
El Paso, Texas 79901
Telephone: (915) 533-0080
Facsimile: (915) 533-0081
wpritchard@pritchlaw.com

April 18, 2014

Via Express Mail

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS EXPRESS MAIL NO. EI 498 588 363 US, IN AN ENVELOPE ADDRESSED TO: COMMISSIONER FOR TRADEMARKS, P.O. BOX 1451, ALEXANDRIA, VIRGINIA 22313-1451. 
R. WAYNE PRITCHARD
DATE <u>04/18/2014</u>

Re: Applicant: Alliance Riggers & Constructors, Ltd
Mark: ALLIANCE RIGGERS & CONSTRUCTORS (with design)

Dear Sirs:

In connection with the above referenced marks, please find enclosed the original actual use trademark application for the mark "Alliance Riggers & Constructors" (with design), one specimen; and a check made payable to the Commissioner for Trademarks in the amount of \$375.00. Should you have any questions relating to the foregoing, please do not hesitate to contact me.

Respectfully,



R. Wayne Pritchard, P.E.
Registration Number 34,903

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK/SERVICE MARK APPLICATION**

MARK: ALLIANCE RIGGERS & CONSTRUCTORS with Design
 INT. CL. NO. : 037
 INT. CL. TITLE: BUILDING CONSTRUCTION; REPAIR; INSTALLATIONS
 SERVICES

TO THE ASSISTANT SECRETARY AND
 COMMISSIONER OF PATENTS AND TRADEMARKS:

APPLICANT: Alliance Riggers & Constructors, Ltd
 APPLICANT IS: A Texas Limited Partnership
 BUSINESS ADDRESS: 1200 Kastrin Street
 El Paso, Texas 79907
 GOODS OR SERVICES: Crane and Erectors Services, namely: Structural Steel
 Erection, Tilt-up and Precast Erection, Crane and Rigging,
 Overhead Crane Systems, Machinery Moving, In-Plant
 Heavy Hauling, Welding Service, Crane Lift Drafting, Trans-
 Loading, and Pre-Engineered Metal Building Erection, in
 International Class 037

Applicant requests registration of the above identified trademark/service mark shown on the accompanying drawing in the United States Patent and Trademark Office on the Principal Register established by the Act of July 25, 1946 (15 U.S.C. §1051, et seq.) as amended for the above identified goods/services.

The Applicant is using the mark in commerce or in connection with the above identified goods/services (15 U.S.C. §1051(a), as amended). Pursuant to Section 904.1 of the TMEP, Applicant submits one specimen showing the mark as used in commerce.

Date of first use of the mark anywhere: July 1, 1997

Date of first use of the mark in interstate commerce: July 1, 1997

POWER OF ATTORNEY

The Applicant hereby appoints R. Wayne Pritchard of the firm R. Wayne Pritchard, P.C., 300 East Main, Suite 1240, El Paso, Texas 79901, Telephone Number (915) 533-0080, Facsimile

Number (915) 533-0081, e-mail address wpritchard@pritchlaw.com, to prosecute and pursue this mark and this application to register, to transact all business with the Patent and Trademark Office in connection therewith, and to receive the Certificate of Registration. The USPTO is authorized to communicate with the applicant through its designated agent at the above stated e-mail address.

DECLARATION

The undersigned being hereby warned that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful, false statements may jeopardize the validity of the application or any resulting registration, declares that he/she believes the applicant to be the owner of the mark sought to be registered, or, if the application is being filed under 15 U.S.C. §1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use said mark in commerce either in identical form thereof or in such near resemblance thereto as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Alliance Riggers & Constructors, Ltd

By: 
 Name: Phillip H. Cordova
 Its: General Manager
 Date: April 17, 2014

000054

Exhibit 6: USPTO Ruling

EXHIBIT B

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

APPLICATION SERIAL NO. 76711574

MARK: ALLIANCE RIGGERS & CONSTRUCTORS

76711574**CORRESPONDENT ADDRESS:**
R. WAYNE PRITCHARD
Wayne Pritchard, P.C.
300 E MAIN DR STE 1240
EL PASO, TX 79901-1359**CLICK HERE TO RESPOND TO THIS LETTER**
http://www.uspto.gov/trademarks/teas/response_forms/

APPLICANT: Alliance Riggers & Constructors, Ltd

CORRESPONDENT'S REFERENCE/DOCKET NO :
N/A

CORRESPONDENT E-MAIL ADDRESS:

OFFICE ACTION**STRICT DEADLINE TO RESPOND TO THIS LETTER****TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE BELOW.****ISSUE/MAILING DATE:**

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issues below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

Summary of Issues

- Section 2(d) Refusal – Likelihood of Confusion
- Identification of Services
- Disclaimer Required
- Entity Clarification

SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION

Registration of the applied-for mark is refused because of a likelihood of confusion with the marks in U.S.

00 228

Welding Service, Crane Lift Drafting, Trans- Loading, and Pre-Engineered Metal Building Erection, din" in the identification of services is indefinite and must be clarified because it is too broad and could include services in other international classes. See TMEP §§1402.01, 1402.03. Applicant must further specify the nature of the particular services and in some instances indicate the purpose of the services is for construction purposes.

Additionally, welding is a Class 40 service. Applicant must correctly classify the services or delete the services from the application.

Applicant may substitute the following wording, if accurate:

Class 037: Construction and pre-construction services, namely, providing crane and erectors services in the nature of structural steel erection, tilt-up and pre-cast concrete erection, and pre-engineered metal building erection; providing crane and rigging services for heavy lifting and hoisting, machinery moving, in-plant heavy hauling, and trans-loading for construction purposes; rental of overhead crane systems for construction purposes; Providing crane lift drafting, namely, _____ (specify with more particularity the nature of the services)

And/or

Class 039: Crane services for loading and unloading purposes; Transportation services, namely, transloading of building materials

And/or

Class 040: Welding services

Guidelines for Amending the Identification of Services

Identifications of services can be amended only to clarify or limit the services; adding to or broadening the scope of the services is not permitted. 37 C.F.R. §2.71(a); see TMEP §§1402.06 *et seq.*, 1402.07. Therefore, applicant may not amend the identification to include services that are not within the scope of the services set forth in the present identification.

For assistance with identifying and classifying goods and/or services in trademark applications, please see the online searchable *Manual of Acceptable Identifications of Goods and Services* at <http://tess2.uspto.gov/netahtml/tidm.html>. See TMEP §1402.04.

Disclaimer

Applicant must disclaim the descriptive wording "RIGGERS & CONSTRUCTORS" apart from the mark as shown because it merely describes a feature or purpose of applicant's services. See 15 U.S.C. §§1052(e)(1), 1056(a); *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005); *In re Gyulay*, 820 F.2d 1216, 1217-18, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987); TMEP §§1213, 1213.03(a).

Applicant seeks registration of the wording "ALLIANCE RIGGERS & CONSTRUCTORS" for "Crane

If applicant has questions about its application or needs assistance in responding to this Office action, please telephone the assigned trademark examining attorney.

/Kathleen Lorenzo/
Examining Attorney
Law Office 109
(571) 272-5883
kathleen.lorenzo@uspto.gov

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using TEAS, to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/teas/eTEASpageE.htm>.

000058

EXHIBIT E

Print: Sep 12, 2012

77225637

DESIGN MARK

Serial Number
77225637

Status
REGISTERED

Word Mark
ALLIANCE

Standard Character Mark
No

Registration Number
3604909

Date Registered
2009/04/14

Type of Mark
TRADEMARK

Register
PRINCIPAL

Mark Drawing Code
(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner
Alliance Steel, Inc. CORPORATION OKLAHOMA 3333 South Council Road
Oklahoma City OKLAHOMA 73179

Goods/Services
Class Status -- ACTIVE. IC 006. US 002 012 013 014 023 025 050. G
& S: Pre-engineered buildings made of metal, namely, prefabricated
buildings made of metal; components for pre-engineered buildings made
of metal, namely, metal framing, metal beams, metal ceiling and door
panels, metal trim, metal flashing and metal gutters. First Use:
1971/07/01. First Use In Commerce: 1971/07/01.

Colors Claimed
Color is not claimed as a feature of the mark.

Filing Date
2007/07/10

Examining Attorney
RICHARDS, LESLIE

Attorney of Record

000059

Exhibit 7: Abandonment of Trademark Ruling

Side - 1



NOTICE OF ABANDONMENT
MAILING DATE: Apr 15, 2013

The trademark application identified below was abandoned in full because a response to the Office Action mailed on Sep 17, 2012 was not received within the 6-month response period.

If the delay in filing a response was unintentional, you may file a petition to revive the application with a fee. If the abandonment of this application was due to USPTO error, you may file a request for reinstatement. Please note that a petition to revive or request for reinstatement must be received within two months from the mailing date of this notice.

For additional information, go to <http://www.uspto.gov/teas/petinfo.htm>. If you are unable to get the information you need from the website, call the Trademark Assistance Center at 1-800-786-9199.

SERIAL NUMBER: 76711574
MARK: ALLIANCE RIGGERS & CONSTRUCTORS
OWNER: Alliance Riggers & Constructors, Ltd

Side - 2

UNITED STATES PATENT AND TRADEMARK OFFICE
COMMISSIONER FOR TRADEMARKS
P.O. BOX 1451
ALEXANDRIA, VA 22313-1451

FIRST-CLASS
MAIL
U.S. POSTAGE
PAID

R. WAYNE PRITCHARD
Wayne Pritchard, P.C.
300 E MAIN DR STE 1240
EL PASO, TX 79901-1358

C01780

EXHIBIT 8

GO DADDY UNIVERSAL TERMS OF SERVICE AGREEMENT

PLEASE READ THIS UNIVERSAL TERMS OF SERVICE AGREEMENT CAREFULLY, AS IT CONTAINS IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS AND REMEDIES.

1. OVERVIEW

This Universal Terms of Service Agreement (this "Agreement") is entered into by and between GoDaddy.com, LLC, a Delaware limited liability company ("Go Daddy") and you, and is made effective as of the date of your use of this website ("Site") or the date of electronic acceptance. This Agreement sets forth the general terms and conditions of your use of the Site and the products and services purchased or accessed through this Site (individually and collectively, the "Services"), and is in addition to (not in lieu of) any specific terms and conditions that apply to the particular Services.

Whether you are simply browsing or using this Site or purchase Services, your use of this Site and your electronic acceptance of this Agreement signifies that you have read, understand, acknowledge and agree to be bound by this Agreement, along with the following policies and the applicable product agreements, which are incorporated herein by reference:

Agreements

Auctions Agreement	Membership Program	CashParking® Buy	ServiceChange of Registrant Agreement
Direct Affiliate Agreement	Domain Name	ProxyDomain Name	ServiceDomain Name Appraisal Agreement
Domain Name Agreement	Hosting Agreement	Marketing Agreement	RegistrationDomain Name Transfer Agreement
Professional Design Agreement	ServicesQuick	Blogcast	ServiceQuick Shopping Cart Agreement
Reseller Agreement	Website Design	and Web Design Service	StoreWebsite Builder Service Agreement
Website Agreement	ProtectionWorkspace	Agreement	ServiceGet Found Service Agreement

Policies

Privacy Policy	Subpoena Policy	AttorneyDispute on Transfer Away Form
Uniform Domain Name ICANN Registrar Transfer Dispute Resolution Policy	Name ICANN Registrant Rights and Responsibilities	ICANN Registrar Transfer Dispute Resolution Policy
Trademark Infringement	Copyright Brand Guidelines and Permissions	and Patent Notice

The terms "we", "us" or "our" shall refer to Go Daddy. The terms "you", "your", "User" or "customer" shall refer to any individual or entity who accepts this Agreement, has access to your account or uses the Services. Nothing in this Agreement shall be deemed to confer any third-party rights or benefits.

Go Daddy may, in its sole and absolute discretion, change or modify this Agreement, and any policies or agreements which are incorporated herein, at any time, and such changes or modifications shall be effective immediately upon posting to this Site. Your use of this Site or the Services after such changes or modifications have been made shall constitute your acceptance of this Agreement as last revised. If you do not agree to be bound by this Agreement as last revised, do not use (or continue to use) this Site or the Services. In addition, Go Daddy may occasionally notify you of changes or modifications to this Agreement by email. It is therefore very important that you keep your shopper account ("Account") information current. Go Daddy assumes no liability or responsibility for your failure to receive an email notification if such failure results from an inaccurate email address.

2. ELIGIBILITY; AUTHORITY

This Site and the Services are available only to Users who can form legally binding contracts under applicable law. By using this Site or the Services, you represent and warrant that you are (i) at least eighteen (18) years of age, (ii) otherwise recognized as being able to form legally binding contracts under applicable law, and (iii) are not a person barred from purchasing or receiving the Services found under the laws of the United States or other applicable jurisdiction.

If you are entering into this Agreement on behalf of a corporate entity, you represent and warrant that you have the legal authority to bind such corporate entity to the terms and conditions contained in this Agreement, in which case the terms "you", "your", "User" or "customer" shall refer to such corporate entity. If, after your electronic acceptance of this Agreement, Go Daddy finds that you do not have the legal authority to bind such corporate entity, you will be personally responsible for the obligations contained in this Agreement, including, but not limited to, the payment obligations. Go Daddy shall not be liable for any loss or damage resulting from Go Daddy's reliance on any instruction, notice, document or communication reasonably believed by Go Daddy to be genuine and originating from an authorized representative of your corporate entity. If there is reasonable doubt about the authenticity of any such instruction, notice, document or communication, Go Daddy reserves the right (but undertakes no duty) to require additional authentication from you. You further agree to be bound by the terms of this Agreement for transactions entered into by you, anyone acting as your agent and anyone who uses your account or the Services, whether or not authorized by you.

3. ACCOUNTS; TRANSFER OF DATA ABROAD

Accounts. In order to access some of the features of this Site or use some of the Services, you will have to create an Account. You represent and warrant to Go Daddy that all information you submit when you create your Account is accurate, current and complete, and that you will keep your Account information accurate, current and complete. If Go Daddy has reason to believe that your Account information is untrue, inaccurate, out-of-date or incomplete, Go Daddy reserves the right, in its sole and absolute discretion, to suspend or terminate your Account. You are solely responsible for the activity that occurs on your Account, whether authorized by you or not, and you must keep your Account information secure, including without limitation your customer number/login, password, Payment Method(s) (as defined below), and shopper PIN. For security purposes, Go Daddy recommends that you change your password and shopper PIN at least once every six (6) months for each Account. You must notify Go Daddy immediately of any breach of security or unauthorized use of your Account. Go Daddy will not be liable for any loss you incur due to any unauthorized use of your Account. You, however, may be liable for any loss Go Daddy or others incur caused by your Account, whether caused by you, or by an authorized person, or by an unauthorized person.

Transfer of Data Abroad. If you are visiting this Site from a country other than the country in which our servers are located, your communications with us may result in the transfer of information (including your Account information) across international boundaries. By visiting this Site and communicating electronically with us, you consent to such transfers.

4. AVAILABILITY OF WEBSITE/SERVICES

Subject to the terms and conditions of this Agreement and our other policies and procedures, we shall use commercially reasonable efforts to attempt to provide this Site and the Services on a twenty-four (24) hours a day, seven (7) days a week basis. You acknowledge and agree that from time to time this Site may be inaccessible or inoperable for any reason including, but not limited to, equipment malfunctions; periodic maintenance, repairs or replacements that we undertake from time to time; or causes beyond our reasonable control or that are not reasonably foreseeable including, but not limited to, interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion or other failures. You acknowledge and agree that we have no control over the availability of this Site or the Service on a continuous or uninterrupted basis, and that we assume no liability to you or any other party with regard thereto.

From time to time, Go Daddy may offer new Services (limited preview services or new features to existing Services) in a pre-release version. New Services, new features to existing Services or limited preview services shall be known, individually and collectively, as "Beta Services". If you elect to use any Beta Services, then your use of the Beta Services is subject to the following terms and conditions: (i) You acknowledge and agree that the Beta Services are pre-release versions and may not work properly; (ii) You acknowledge and agree that your use of the Beta Services may expose you to unusual risks of operational failures; (iii) The Beta Services are provided as-is, so we do not recommend using them in production or mission critical environments; (iv) Go Daddy reserves the right to modify, change, or discontinue any aspect of the Beta Services at any time; (v) Commercially released versions of the Beta Services may change substantially, and programs that use or run with the Beta Services may not work with the commercially released versions or subsequent releases; (vi) Go Daddy may limit availability of customer service support time dedicated to support of the Beta Services; (vii) You acknowledge and agree to provide prompt feedback regarding your experience with the Beta Services in a form reasonably requested by us, including information necessary to enable us to duplicate errors or problems you experience. You acknowledge and agree that we may use your feedback for any purpose, including product development purposes. At our request you will provide us with comments that we may use publicly for press materials and marketing collateral. Any intellectual property inherent in your feedback or arising from your use of the Beta Services shall be owned exclusively by Go Daddy; (viii) You acknowledge and agree that all information regarding your use of the Beta Services, including your experience with and opinions regarding the Beta Services, is confidential, and may not be disclosed to a third party or used for any purpose other than providing feedback to Go Daddy; (ix) The Beta Services are provided "as is", "as available", and "with all faults".

To the fullest extent permitted by law, Go Daddy disclaims any and all warranties, statutory, express or implied, with respect to the Beta Services including, but not limited to, any implied warranties of title, merchantability, fitness for a particular purpose and non-infringement.

5. GENERAL RULES OF CONDUCT

You acknowledge and agree that:

- i. Your use of this Site and the Services, including any content you submit, will comply with this Agreement and all applicable local, state, national and international laws, rules and regulations.
- ii. You will not collect or harvest (or permit anyone else to collect or harvest) any User Content (as defined below) or any non-public or personally identifiable information about another User or any other person or entity without their express prior written consent.
- iii. You will not use this Site or the Services in a manner (as determined by Go Daddy in its sole and absolute discretion) that:
 - Is illegal, or promotes or encourages illegal activity;
 - Promotes, encourages or engages in child pornography or the exploitation of

19. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

20. NO THIRD-PARTY BENEFICIARIES

Nothing in this Agreement shall be deemed to confer any third-party rights or benefits.

21. U.S. EXPORT LAWS

This Site and the Services found at this Site are subject to the export laws, restrictions, regulations and administrative acts of the United States Department of Commerce, Department of Treasury Office of Foreign Assets Control ("OFAC"), State Department, and other United States authorities (collectively, "U.S. Export Laws"). Users shall not use the Services found at this Site to collect, store or transmit any technical information or data that is controlled under U.S. Export Laws. Users shall not export or re-export, or allow the export or re-export of, the Services found at this Site in violation of any U.S. Export Laws. None of the Services found at this Site may be downloaded or otherwise exported or re-exported (i) into (or to a national or resident of) any country with which the United States has embargoed trade; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Denied Persons List, or any other denied parties lists under U.S. Export Laws. By using this Site and the Services found at this Site, you agree to the foregoing and represent and warrant that you are not a national or resident of, located in, or under the control of, any restricted country; and you are not on any denied parties list; and you agree to comply with all U.S. Export Laws (including "anti-boycott", "deemed export" and "deemed re-export" regulations). If you access this Site or the Services found at this Site from other countries or jurisdictions, you do so on your own initiative and you are responsible for compliance with the local laws of that jurisdiction, if and to the extent those local laws are applicable and do not conflict with U.S. Export Laws. If such laws conflict with U.S. Export Laws, you shall not access this Site or the Services found at this Site. The obligations under this section shall survive any termination or expiration of this Agreement or your use of this Site or the Services found at this Site.

22. COMPLIANCE WITH LOCAL LAWS

Go Daddy makes no representation or warranty that the content available on this Site or the Services found at this Site are appropriate in every country or jurisdiction, and access to this Site or the Services found at this Site from countries or jurisdictions where its content is illegal is prohibited. Users who choose to access this Site or the Services found at this Site are responsible for compliance with all local laws, rules and regulations.

23. GOVERNING LAW; JURISDICTION; VENUE; WAIVER OF TRIAL BY JURY

Except for disputes governed by the Uniform Domain Name Dispute Resolution Policy referenced above and available here, this Agreement shall be governed by and construed in accordance with the federal law of the United States and the state law of Arizona, whichever is applicable, without regard to conflict of laws principles. You agree that any action relating to or arising out of this Agreement shall be brought in the state or federal courts of Maricopa County, Arizona, and you hereby consent to (and waive all defenses of lack of personal jurisdiction and forum non conveniens with respect to) jurisdiction and venue in the state and federal courts of Maricopa County, Arizona. You agree to waive the right to trial by jury in any action or proceeding that takes place relating to or arising out of this Agreement.

24. TITLES AND HEADINGS; INDEPENDENT COVENANTS; SEVERABILITY

The titles and headings of this Agreement are for convenience and ease of reference only and shall not be utilized in any way to construe or interpret the agreement of the parties as otherwise set forth

herein. Each covenant and agreement in this Agreement shall be construed for all purposes to be a separate and independent covenant or agreement. If a court of competent jurisdiction holds any provision (or portion of a provision) of this Agreement to be illegal, invalid, or otherwise unenforceable, the remaining provisions (or portions of provisions) of this Agreement shall not be affected thereby and shall be found to be valid and enforceable to the fullest extent permitted by law.

25. CONTACT INFORMATION

If you have any questions about this Agreement, please contact us by email or regular mail at the following address:

Go Daddy Legal Department
14455 North Hayden Rd.
Suite 219
Scottsdale, AZ 85260
legal@godaddy.com

GO DADDY UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY

(As Approved by ICANN on October 24, 1999)

1. PURPOSE

This Uniform Domain Name Dispute Resolution Policy (the "Policy") has been adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN"), is incorporated by reference into your Registration Agreement, and sets forth the terms and conditions in connection with a dispute between you and any party other than us (the registrar) over the registration and use of an Internet domain name registered by you. Proceedings under Paragraph 4 of this Policy will be conducted according to the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules of Procedure"), which are available at [dispute policy](#), and the selected administrative-dispute-resolution service provider's supplemental rules.

2. YOUR REPRESENTATIONS

By applying to register a domain name, or by asking us to maintain or renew a domain name registration, you hereby represent and warrant to us that (a) the statements that you made in your Registration Agreement are complete and accurate; (b) to your knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party; (c) you are not registering the domain name for an unlawful purpose; and (d) you will not knowingly use the domain name in violation of any applicable laws or regulations. It is your responsibility to determine whether your domain name registration infringes or violates someone else's rights.

3. CANCELLATIONS, TRANSFERS, AND CHANGES

We will cancel, transfer or otherwise make changes to domain name registrations under the following circumstances:

- i. subject to the provisions of Paragraph 8, our receipt of written or appropriate electronic instructions from you or your authorized agent to take such action;
- ii. our receipt of an order from a court or arbitral tribunal, in each case of competent jurisdiction, requiring such action; and/or
- iii. our receipt of a decision of an Administrative Panel requiring such action in any administrative proceeding to which you were a party and which was conducted under this Policy or a later version of this Policy adopted by ICANN. (See Paragraph 4(i) and (k) below.)

We may also cancel, transfer or otherwise make changes to a domain name registration in accordance with the terms of your Registration Agreement or other legal requirements.

4. MANDATORY ADMINISTRATIVE PROCEEDING

This Paragraph sets forth the type of disputes for which you are required to submit to a mandatory administrative proceeding. These proceedings will be conducted before one of the administrative-dispute-resolution service providers listed here (each, a "Provider").

- i. A. Applicable Disputes. You are required to submit to a mandatory administrative proceeding in the event that a third party (a "complainant") asserts to the applicable Provider, in compliance with the Rules of Procedure, that
- your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
 - you have no rights or legitimate interests in respect of the domain name; and
 - your domain name has been registered and is being used in bad faith.

In the administrative proceeding, the complainant must prove that each of these three elements are present.

- B. Evidence of Registration and Use in Bad Faith. For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

- C. How to Demonstrate Your Rights to and Legitimate Interests in the Domain Name in Responding to a Complaint. When you receive a complaint, you should refer to Paragraph 5 of the Rules of Procedure in determining how your response should be prepared. Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

- before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

- you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.
- D. **Selection of Provider.** The complainant shall select the Provider from among those approved by ICANN by submitting the complaint to that Provider. The selected Provider will administer the proceeding, except in cases of consolidation as described in Paragraph 4(f).
- E. **Initiation of Proceeding and Process and Appointment of Administrative Panel.** The Rules of Procedure state the process for initiating and conducting a proceeding and for appointing the panel that will decide the dispute (the "Administrative Panel").
- F. **Consolidation.** In the event of multiple disputes between you and a complainant, either you or the complainant may petition to consolidate the disputes before a single Administrative Panel. This petition shall be made to the first Administrative Panel appointed to hear a pending dispute between the parties. This Administrative Panel may consolidate before it any or all such disputes in its sole discretion, provided that the disputes being consolidated are governed by this Policy or a later version of this Policy adopted by ICANN.
- G. **Fees.** All fees charged by a Provider in connection with any dispute before an Administrative Panel pursuant to this Policy shall be paid by the complainant, except in cases where you elect to expand the Administrative Panel from one to three panelists as provided in Paragraph 5(b)(iv) of the Rules of Procedure, in which case all fees will be split evenly by you and the complainant.
- H. **Our Involvement in Administrative Proceedings.** We do not, and will not, participate in the administration or conduct of any proceeding before an Administrative Panel. In addition, we will not be liable as a result of any decisions rendered by the Administrative Panel.
- I. **Remedies.** The remedies available to a complainant pursuant to any proceeding before an Administrative Panel shall be limited to requiring the cancellation of your domain name or the transfer of your domain name registration to the complainant.
- J. **Notification and Publication.** The Provider shall notify us of any decision made by an Administrative Panel with respect to a domain name you have registered with us. All decisions under this Policy will be published in full over the Internet, except when an Administrative Panel determines in an exceptional case to redact portions of its decision.
- K. **Availability of Court Proceedings.** The mandatory administrative proceeding requirements set forth in Paragraph 4 shall not prevent either you or the complainant from submitting the dispute to a court of competent jurisdiction for independent resolution before such mandatory administrative proceeding is commenced or after such proceeding is concluded. If an Administrative Panel decides that your domain name registration should be canceled or transferred, we will wait ten (10) business days (as observed in the location of our principal office) after we are informed by the applicable Provider of the Administrative Panel's decision before implementing that decision. We will then implement the decision unless we have received from you during that ten (10) business day period official documentation (such as a copy of a complaint, file-stamped by the clerk of the court) that you have commenced a

lawsuit against the complainant in a jurisdiction to which the complainant has submitted under Paragraph 3(b)(xiii) of the Rules of Procedure. (In general, that jurisdiction is either the location of our principal office or of your address as shown in our Whois database. See Paragraphs 1 and 3(b)(xiii) of the Rules of Procedure for details.) If we receive such documentation within the ten (10) business day period, we will not implement the Administrative Panel's decision, and we will take no further action, until we receive (i) evidence satisfactory to us of a resolution between the parties; (ii) evidence satisfactory to us that your lawsuit has been dismissed or withdrawn; or (iii) a copy of an order from such court dismissing your lawsuit or ordering that you do not have the right to continue to use your domain name.

5. ALL OTHER DISPUTES AND LITIGATION

All other disputes between you and any party other than us regarding your domain name registration that are not brought pursuant to the mandatory administrative proceeding provisions of Paragraph 4 shall be resolved between you and such other party through any court, arbitration or other proceeding that may be available.

6. OUR INVOLVEMENT IN DISPUTES

We will not participate in any way in any dispute between you and any party other than us regarding the registration and use of your domain name. You shall not name us as a party or otherwise include us in any such proceeding. In the event that we are named as a party in any such proceeding, we reserve the right to raise any and all defenses deemed appropriate, and to take any other action necessary to defend ourselves.

7. MAINTAINING THE STATUS QUO

We will not cancel, transfer, activate, deactivate, or otherwise change the status of any domain name registration under this Policy except as provided in Paragraph 3 above.

8. TRANSFERS DURING A DISPUTE

Transfers of a Domain Name to a New Holder

You may not transfer your domain name registration to another holder (i) during a pending administrative proceeding brought pursuant to Paragraph 4 or for a period of fifteen (15) business days (as observed in the location of our principal place of business) after such proceeding is concluded; or (ii) during a pending court proceeding or arbitration commenced regarding your domain name unless the party to whom the domain name registration is being transferred agrees, in writing, to be bound by the decision of the court or arbitrator. We reserve the right to cancel any transfer of a domain name registration to another holder that is made in violation of this subparagraph.

Changing Registrars

You may not transfer your domain name registration to another registrar during a pending administrative proceeding brought pursuant to Paragraph 4 or for a period of fifteen (15) business days (as observed in the location of our principal place of business) after such proceeding is concluded. You may transfer administration of your domain name registration to another registrar during a pending court action or arbitration, provided that the domain name you have registered with us shall continue to be subject to the proceedings commenced against you in accordance with the terms of this Policy. In the event that you transfer a domain name registration to us during the pendency of a court action or arbitration, such dispute shall remain subject to the domain name dispute policy of the registrar from which the domain name registration was transferred.

9. POLICY MODIFICATIONS

We reserve the right to modify this Policy at any time with the permission of ICANN. We will post our revised Policy at this location at least thirty (30) calendar days before it becomes effective. Unless this Policy has already been invoked by the submission of a complaint to a Provider, in which event the version of the Policy in effect at the time it was invoked will apply to you until the dispute is over, all such changes will be binding upon you with respect to any domain name registration dispute, whether the dispute arose before, on or after the effective date of our change. In the event that you object to a change in this Policy, your sole remedy is to cancel your domain name registration with us, provided that you will not be entitled to a refund of any fees you paid to us. The revised Policy will apply to you until you cancel your domain name registration.

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United States Patent and Trademark Office

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Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Tue Oct 28 03:21:02 EDT 2014

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List At: OR to record: **Record 1 out of 2**

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 (Use the "Back" button of the Internet Browser to return to TESS)



Word Mark ALLIANCE RIGGERS & CONSTRUCTORS

Goods and Services IC 037. US 100 103 106. G & S: Crane and erector services, namely, structural steel erection. FIRST USE: 19970701. FIRST USE IN COMMERCE: 19970701

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 17.07.04 - Carpenter squares; Drawing triangles; T-squares
 26.01.02 - Circles, plain single line; Plain single line circles
 26.17.13 - Letters or words underlined and/or overlined by one or more strokes or lines; Overlined words or letters; Underlined words or letters

Serial Number 76716209

Filing Date April 21, 2014

Current Basis 1A;1B

Original Filing Basis 1A;1B

Published for Opposition September 30, 2014

Owner (APPLICANT) Alliance Riggers & Constructors, Ltd Cordova Alliance, LLC, a Texas limited liability company
LIMITED PARTNERSHIP TEXAS 1200 Kastrin Street El Paso TEXAS 79907

Attorney of Record R. WAYNE PRITCHARD

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "RIGGERS & CONSTRUCTORS" APART FROM THE MARK AS SHOWN

Description of Mark Color is not claimed as a feature of the mark. The mark consists of a representation of the end of a three-pronged architectural ruler superimposed across a circle. The wording "ALLIANCE RIGGERS & CONSTRUCTORS" appears below the three-pronged design with a solid triangle between "ALLIANCE" and the rest of the wording.

Type of Mark SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	SEARCH OG	TOP	HELP	PREV LIST	CURR LIST	NEXT LIST
FIRST DOC	PREV DOC	NEXT DOC	LAST DOC							

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EXHIBIT 10

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RECEIVED

REPORTER'S RECORD

COPY

VOLUME 1 OF 1 VOLUME

TRIAL COURT CAUSE NO. 2012-DCV04523

ALLIANCE RIGGERS & CONSTRUCTORS,)
LTD.,)

Plaintiff,)

v.)

LINDA S. RESTREPO and CARLOS E.)
RESTREPO, d/b/a Collectively)
RDI GLOBAL SERVICES and R&D)
INTERNATIONAL,)

Defendants.)

IN THE COUNTY COURT
AT LAW NUMBER FIVE
EL PASO COUNTY, TEXAS

MOTIONS HEARING

On the 7th day of December, 2012, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable Carlos Villa, Judge
Presiding, held in El Paso, Texas:

Proceedings reported by machine shorthand.

A P P E A R A N C E S

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Mr. R. Wayne Pritchard
Attorney at Law
SBOT NO. 16340150
300 E. Main Street #1240
El Paso, Texas 79901
PHONE: 915-533-0080
FAX: 915-533-0081
ATTORNEY FOR PLAINTIFF

Mr. Carlos E. Restrepo
Pro Se
Ms. Linda S. Restrepo
Pro Se
804 Pintada Place
El Paso, Texas 79912

1 appealable either. But if they want to try it, fine.

2 You certainly --

3 MR. RESTREPO: May I approach the Court,
4 Your Honor?

5 MR. PRITCHARD: Oh, before we go, Your
6 Honor, I have the responses to those other motions that
7 weren't taken up today -- the first ones that were -- I
8 just want to give it to them.

9 THE COURT: I know there is some trademark
10 infringement here. Would going to mediation help
11 anything?

12 MR. PRITCHARD: Yeah, Your Honor, this is a
13 real simple case. I mean, and not to belabor any of the
14 legal issues we've already talked about, but the
15 simplicity of the case is this: Is that they have a
16 domain name that is --

17 MS. RESTREPO: Your Honor --

18 MR. PRITCHARD: -- is similar to our
19 trademark. All we want them to do is transfer the domain
20 name to us. That's what we want. We don't want them
21 having another -- and the law is that you can't have a
22 domain name that is confusingly similar to a trademark.
23 That's what the case is about.

24 MS. RESTREPO: Your Honor, objection to him
25 arguing the case before the Court before it's called on

IN THE COUNTY COURT AT LAW NUMBER 5
EL PASO COUNTY, TEXAS

EL PASO COUNTY
DISTRICT

2014 NOV -3 AM 10:50

EL PASO COUNTY
BY [Signature]
DEPUTY

ALLIANCE RIGGERS & CONSTRUCTORS, LTD.,
Plaintiff,

v.

Cause No. 2012-DCV04523

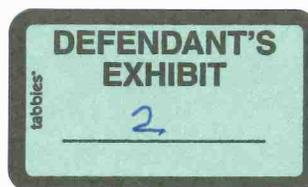
LINDA S. RESTREPO and CARLOS E. RESTREPO
D/b/a Collectively RDI Global Services and R&D
International,
Defendants.

11/03/2014 11:44

**ORDER GRANTING PLAINTIFF'S MOTION FOR ORDER DETERMINING
LINDA S. RESTREPO AND CARLOS E. RESTREPO TO BE VEXATIOUS LITIGANTS**

On the 3 day of Nov, 2014, came on to be heard the Motion for Order Determining Linda S. Restrepo and Carlos E. Restrepo to be Vexatious Litigants and Requesting Security Pursuant to Section 11.051 of the Texas Civil Practice and Remedies Code ("Motion") filed by Plaintiff, ALLIANCE RIGGERS & CONSTRUCTORS, LTD. Plaintiff appeared by and through its attorney of record, R. Wayne Pritchard. CARLOS E. RESTREPO and LINDA S. RESTREPO, although duly notified of this hearing, did not appear. Mike Garcia, Bailiff for County Court at Law Number 5, called the names of CARLOS E. RESTREPO and LINDA S. RESTREPO and they did not respond.

The Court is in receipt from CARLOS E. RESTREPO and LINDA S RESTREPO of a document purporting to be a notice of removal to Federal Court, Case Number 14-CV-0408-DCG. Upon receipt of the foregoing document, the Court contacted the U.S. Clerk's Office and was informed that because the application of CARLOS E. RESTREPO and LINDA S. RESTREPO, to proceed as paupers in Federal Court, has not (as of 10:15 a.m., 11/03/2014) been ruled upon yet, the notice of removal has not been filed but only received



at the U.S. Clerk's Office. Based upon the foregoing the Court proceeded to hear Plaintiff's Motion.

The Court having heard the evidence, arguments of counsel and having reviewed the pleadings filed in this matter, is of the opinion that the Motion should be and the same is hereby GRANTED.

The Court finds that there is no reasonable probability that CARLOS E. RESTREPO and LINDA S. RESTREPO would have prevailed in the third party claims alleged against El Paso Crane & Rigging, Inc., Cordova Alliance, LLC, Phillip Cordova, Phillip Pruett, Melody Pruett, Nick Delgado (Lugo), Terry Stevens, Paul D. Cordova, and Frank H. Cordova in Defendants/Counterclaimants Linda Restrepo and Carlos Restrepo's Original Answer and Counterclaim, Jury Demand, Suit on Sworn Account and Request for Disclosure filed on April 18, 2013. The Court further finds that in the seven (7) years immediately preceding the filing of the Motion, CARLOS E. RESTREPO and LINDA S. RESTREPO have commenced, prosecuted or maintained at least five litigations as a pro se litigant other than in small claims court that have been finally determined against them.

The Court further finds that CARLOS E. RESTREPO and LINDA S. RESTREPO, after litigation has been finally determined against them, repeatedly re-litigated or attempted to re-litigate pro se, the cause of action, claim, controversy or issues of fact or law and that CARLOS E. RESTREPO and LINDA S. RESTREPO have been previously declared to be vexatious litigants.

The Court additionally finds that by amended answer, CARLOS E. RESTREPO and LINDA S. RESTREPO, elected not to pursue and dismissed all claims which have been pending against El Paso Crane & Rigging, Inc., Cordova Alliance, LLC, Phillip Cordova,

Phillip Pruett, Melody Pruett, Nick Delgado (Lugo), Terry Stevens, Paul D. Cordova, and Frank H. Cordova since April 2013. Notwithstanding the foregoing, CARLOS E. RESTREPO and LINDA S. RESTREPO have propounded discovery to the dismissed parties and continue to list them as parties in the style of this case.

IT IS, THEREFORE ORDERED that CARLOS E. RESTREPO and LINDA S. RESTREPO are VEXATIOUS LITIGANTS.

IT IS FURTHER ORDERED that should CARLOS E. RESTREPO and LINDA S. RESTREPO desire to pursue any claims involving the issues which are the subject matter of this case in any court, State or Federal, against El Paso Crane & Rigging, Inc., Cordova Alliance, LLC, Phillip Cordova, Phillip Pruett, Melody Pruett, Nick Delgado (Lugo), Terry Stevens, Paul D. Cordova, and Frank H. Cordova, they must, in addition to obtaining permission from the appropriate local administrative judge as described below, furnish security (cash or corporate surety) for the benefit of such parties, in the amount of \$25,000.00, each (\$25,000 for CARLOS E. RESTREPO and \$25,000 for LINDA S. RESTREPO), within seven (7) days of filing same. The foregoing security is an undertaking by CARLOS E. RESTREPO and LINDA S. RESTREPO to assure payment of reasonable expenses incurred in or in connection with the claims commenced by CARLOS E. RESTREPO and LINDA S. RESTREPO against El Paso Crane & Rigging, Inc., Cordova Alliance, LLC, Phillip Cordova, Phillip Pruett, Melody Pruett, Nick Delgado (Lugo), Terry Stevens, Paul D. Cordova, Frank H. Cordova, including costs and attorney's fees. In the event that CARLOS E. RESTREPO and LINDA S. RESTREPO do not furnish the amount of security ordered above within the time period specified, the court in which such claims are pending, shall dismiss all claims of CARLOS E. RESTREPO and LINDA S.

RESTREPO against El Paso Crane & Rigging, Inc., Cordova Alliance, LLC, Phillip Cordova, Phillip Pruett, Melody Pruett, Nick Delgado (Lugo), Terry Stevens, Paul D. Cordova, Frank H. Cordova, without further notice.

IT IS ADDITIONALLY ORDERED that CARLOS E. RESTREPO and LINDA S. RESTREPO, as VEXATIOUS LITIGANTS, are prohibited from filing, pro se, any new litigation in any court, state or federal, including cases before any appellate court, state or federal, without obtaining permission from the appropriate local administrative judge.

A copy of this Order is to be provided to the Office of Court Administration of the Texas Judicial System within 30 days of the date such order is signed as required pursuant to Section 11.104 of the Texas Civil Practice and Remedies Code.

SIGNED this 3 day of NOV., 2014.



The Honorable Carlos Villa, Presiding Judge
County Court at Law Number 5

(“Plaintiff”) Original Petition, filed on June 20, 2012, did not provide the Court with subject matter jurisdiction to adjudicate the parties’ dispute. *Restrepo I*, Case No. 13–CV–00211–DCG, ECF No. 9, at *23 (“Given . . . that neither diversity jurisdiction nor a federal question is present in this case, removal to federal court under 28 U.S.C. §§ 1441 and 1446 was improper.”).

Defendants sought removal of this action a second time, on July 21, 2014. The second removal attempt was predicated on Plaintiff’s First Amended Original Petition, filed on June 20, 2014. *Alliance Riggers & Construction, LTD. v. Restrepo*, Case No. 14–CV–00277–PRM (W.D. Tex. 2014) (“*Restrepo II*”), ECF No. 3, at *2. Finding Plaintiff’s First Amended Original Petition to be substantially similar to Plaintiff’s Original Petition, Judge Martinez concluded that there was no subject matter jurisdiction to adjudicate Plaintiff’s lawsuit in a federal forum. *Id.* at *3 (concluding that the court lacked “subject matter jurisdiction to hear this case for the reasons stated in Judge Guaderrama’s earlier decision granting remand”). Indeed, Judge Martinez found that the “two complaints differ only in two insignificant ways: (1) a misspelling of the domain name at issue in the case, . . . and (2) the addition of language indicating that the damages requested are ‘within the jurisdictional limits of’ the state court.” *Id.* (citations omitted).

On October 28, 2014, Defendants filed their third removal attempt in this court. *See Restrepo v. Alliance Riggers Constructors, LTD.*, Case No. 14–CV–00359–KC (W.D. Tex. 2014) (“*Restrepo III*”), ECF No. 15. The next day, on October 29, 2014, Judge Cardone denied Defendants’ removal attempt. Judge Cardone found that Defendants had impermissibly sought to merge a pending state action into a federal case filed by Defendants against Plaintiff. *Restrepo III*, Case No. 14–CV–00359–KC, ECF No. 16, at *1. Defendants filed the Notice of Removal presently before the Court—their fourth for the underlying state action—two days later.

II. IFP Motion

A court is authorized to allow the commencement of a civil action without prepayment of filing fees by a person who submits an affidavit that includes a statement of all assets the person possesses as well as the nature of the action and the affiant's belief that the person is entitled to redress. 28 U.S.C. § 1915(a)(1). In accordance with 28 U.S.C. § 1915(a)(1), Defendants' IFP Motion states that Defendants receive income from Social Security totaling \$955 per month and disabled veteran benefits of \$1,400 per month. IFP Motion 1. In addition, Defendants indicate that they currently have \$300 in liquid assets. *Id.* at 2. Finally, Defendants state that their monthly expenses total \$2,700. *Id.* After due consideration, the Court finds that Defendants are unable to pay the filing fee to remove this action. Thus, Defendants' IFP Motion is granted.

III. LACK OF SUBJECT MATTER JURISDICTION

The Notice of Removal presently before the Court alleges various grounds purporting to make removal proper. These grounds are as baseless now as they were the first three times Defendants sought removal. Defendants "Motion to Remove this [state action is] based solely on Alliance[']s June 20, 2012, original petition and Alliance[']s first amended petition filed June 20, 2014" Notice of Removal 12;² *see also id.* at 9 ("It is important to note that federal subject matter jurisdiction was achieved based on the allegations contained [in] Alliance[']s complaint."). Defendants do not aver, and the Court is not aware of, the existence of further complaints against Defendants giving the Court subject matter jurisdiction over the underlying state action.

As discussed in the Court's first order remanding this action to state court, without jurisdiction endowed by statute or the Constitution, the Court lacks the power to adjudicate the parties' claims. *See Stockman v. Fed. Election Comm'n*, 138 F.3d 144, 151 (5th Cir. 1998)

² This Order cites to the pagination in Defendants' Notice of Removal.

(citing *Veldhoen v. United States Coast Guard*, 35 F.3d 222, 225 (5th Cir. 1994)). The removing party bears the burden of proving by preponderance of the evidence that federal jurisdiction exists. *New Orleans & Gulf Coast Ry. Co. v. Barrois*, 533 F.3d 321, 327 (5th Cir. 2008) (citation omitted). “Any ambiguities are construed against removal because the removal statute should be strictly construed in favor of remand.” *Manguno v. Prudential Prop. & Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002). A review of the present Notice of Removal and those filed by Defendants in *Restrepo I* and *Restrepo II* reveals no new arguments in favor of recognizing jurisdiction over Plaintiff’s claims. To the extent that this fourth incarnation of Defendants’ removal attempt asserts new counterclaims purporting to raise federal questions and giving the Court subject matter jurisdiction, the Court once again notes that a defendant’s counterclaims or defenses are insufficient to confer federal jurisdiction. *See, e.g., Metro Ford Truck Sales, Inc. v. Ford Motor Co.*, 145 F.3d 320, 326–27 (5th Cir. 1998). A court’s determination of federal-question jurisdiction depends upon the allegations of the plaintiff’s well-pleaded complaint. *Medina v. Ramsey Steel Co., Inc.*, 238 F.3d 674, 680 (5th Cir. 2001) (citation omitted).

Finally, Defendants’ Notice of Removal appears to assert claims against the presiding judge in the state court action below under 42 U.S.C. § 1983:

Restrepos bring a claim against Judge Carlos Villa, presiding Judge of County Court at Law Number Five, El Paso County, Texas in his individual capacity . . . alleging that Judge Villa failure [sic] to abide by Federal Copyright Act of 1976 [sic] . . . deprived Restrepos of their Rights To Due Process under the Fourteenth Amendment to the U.S. Constitution.

See Notice of Removal 2. Regarding this allegation, Defendants cryptically add:

Resprepo’s [sic] further state that they have been stripped . . . of their 1st Amendment Rights and their Rights to Due Process. The presiding Judge Carlos Villa is a state actor acting under the Color of Law under section 1983, who due to his bias against Restrepo’s [sic] . . . has decided to allow the Alliance to operate [in a way that violates] the Restrepo’s [sic] Constitutional and Due Process Rights which makes this a federal case.

Id. at 31. But allegations by a defendant against a new party, whatever their merit, cannot serve as the basis for the Court's subject matter jurisdiction when that jurisdiction is not given by the plaintiff's complaint. *See, e.g., Gutierrez v. Flores*, 543 F.3d 248, 251–52 (5th Cir. 2008) (explaining that a federal court has removal jurisdiction only if a federal question appears on the face of the plaintiff's well-pleaded complaint).

For the reasons set out in the Court's July 29, 2013, Order in *Restrepo I*, Case No. 13–CV–00211–DCG, ECF No. 9, and in this Order, the Court finds it lacks subject matter jurisdiction to adjudicate this action. Accordingly, the action is (again) remanded to state court. *See* 28 U.S.C. § 1447(c) (“If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.”).

IV. DEFENDANTS ARE VEXATIOUS LITIGANTS

The Court is cognizant of its duty to construe pro se pleadings liberally and to treat pro se litigants more leniently than represented parties. *See, e.g., Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*). But the Court's leniency need not be limitless. A pro se party is not exempt “from compliance with the relevant rules of procedure and substantive law.” *Birl v. Estelle*, 660 F.2d 592, 593 (5th Cir. 1981) (citing *Faretta v. California*, 422 U.S. 806, 834 n.46 (1975)). “Those who venture into federal court without the assistance of counsel cannot . . . be permitted to enjoy much or protracted advantage by reason of that circumstance.” *Brinkmann v. Johnston*, 793 F.2d 111, 113 (5th Cir. 1986) (*per curiam*).

A. Defendants' Litigation History

Defendants have attempted to remove this state action four times. The first order remanding the action in *Restrepo I* detailed the reasons why this federal court lacks subject matter jurisdiction to hear the lawsuit. In *Restrepo II*, Judge Martinez explained that Plaintiff's First Amended Original Petition did not make any substantive changes to the Original Petition

such that a federal court could adjudicate the parties' dispute as filed by Plaintiff.

Notwithstanding the order remanding the action in *Restrepo II*, and despite the lack of a new amended complaint, Defendants attempted to remove a third time. *See Restrepo III*, Case No. 14-CV-00359-KC, ECF No. 15. That third attempt resulted in another remand to the state court. The fourth removal attempt, presently before the Court, was also filed despite the lack of a new or amended complaint.

Defendants' insistence on litigating this action in federal court follows from Defendants' apparent litigiousness. The county court before which the state action is proceeding found Defendants to be vexatious litigants in that forum. That court found that in the past seven years Defendants "have commenced, prosecuted or maintained at least five litigations as pro se litigant[s] other than in small claims court[, which] have been finally determined against them."³ That court further found that Defendants, "after litigation has been finally determined against them, repeatedly re-litigated or attempted to re-litigate pro se, the cause of action, claim, controversy or issues of fact or law and that [Defendants] have been previously declared to be vexatious litigants."⁴ That court additionally found that, after dismissing all counterclaims brought by Defendants against certain parties in the state action, Defendants "propounded discovery to the dismissed parties and continued to list them as parties in the style of [the state action]."⁵

³ *Alliance Riggers & Constructors, LTD. v. Linda S. Restrepo and Carlos E. Restrepo D/b/a Collectively RDI Global Services and R&D International*, Cause No. 2012-DCV04523, Order Granting Pl.'s Mot. for Order Determining Linda S. Restrepo and Carlos E. Restrepo To Be Vexatious Litigants, at *2 (Tex. County Court at Law Number Five, El Paso County, Nov. 3, 2014).

⁴ *Id.*

⁵ *Id.* at 2-3.

B. The Court's Authority To Impose Sanctions

“A district court has jurisdiction to impose a pre-filing injunction to deter vexatious, abusive, and harassing litigation. A pre-filing injunction must be tailored to protect the courts and innocent parties, while preserving the legitimate rights of litigants.” *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 187 (5th Cir. 2008) (citations and internal quotation marks omitted). The ability to impose such an injunction stems from “the inherent power of the court to protect its jurisdiction and judgments and to control its docket.” *Ferguson v. MBank Houston, N.A.*, 808 F.2d 358, 360 (5th Cir. 1986). Included in this inherent authority is “the power to levy [monetary] sanctions in response to abusive litigation practices.” *In re Stone*, 986 F.2d 898, 902 (5th Cir. 1993) (citing *Roadway Express Inc. v. Piper*, 447 U.S. 752, 766 (1980)); *see also Newby v. Enron Corp.*, 302 F.3d 295, 302 (5th Cir. 2002) (“[F]ederal courts also have the inherent power to impose sanctions against vexatious litigants.”).

That Defendants are proceeding pro se does not make them immune to sanctions. *See, e.g., Ferguson*, 808 F.2d at 359 (“That his filings are pro se offers [the party] no impenetrable shield, for one acting pro se has no license to harass others, clog the judicial machinery with meritless litigation, and abuse already overloaded court dockets.”). Nor can Defendants find protection in their status as defendants, for the Court’s inherent power to guard against vexatious filings is not limited by a party’s status as either plaintiff or defendant. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 46 (1991) (explaining that while other mechanisms to impose sanctions reach only certain individuals or conduct, “the inherent power extends to a full range of litigation abuses”).

After carefully considering Defendants’ conduct and their repeated attempts to remove, without just cause, the underlying state action to the United States District Court for the Western

District of Texas, the Court concludes that Defendants are vexatious litigants and that sanctions are appropriate.

Accordingly, **IT IS HEREBY ORDERED** that Defendants Linda S. Restrepo and Carlos E. Restrepo's Application to Proceed *in forma pauperis* (ECF No. 1) is **GRANTED**.

IT IS ALSO ORDERED that the Clerk of the Court shall **FILE**, without prepayment of the filing fee, Defendants Linda S. Restrepo and Carlos E. Restrepo's Notice of Removal (ECF No. 1-3).

IT IS FURTHER ORDERED that the instant action is **REMANDED** to the County Court at Law Number Five in El Paso County, Texas.

IT IS FURTHER ORDERED that the Clerk of the Court shall **MAIL** a certified copy of this Order to the Clerk of the County Court at Law Number Five in El Paso County, Texas.

IT IS FURTHER ORDERED that the Court **FINDS** Defendants Linda S. Restrepo and Carlos E. Restrepo to be vexatious litigants.

IT IS FURTHER ORDERED that Defendants Linda S. Restrepo and Carlos E. Restrepo are jointly **SANCTIONED** \$100.00 and are **BARRED** from filing another notice of removal or application to proceed in *forma pauperis* in relation to the underlying state action until Defendants have satisfied this monetary sanction.

IT IS FURTHER ORDERED that Defendants Linda S. Restrepo and Carlos E. Restrepo **SHALL NOT FILE** another notice of removal or application to proceed in *forma pauperis* in relation to the underlying state action without first obtaining **LEAVE** of the Court.

IT IS FURTHER ORDERED that, upon receipt of any filings attempting to remove once again the underlying state action, the Clerk of the Court shall mark those filings as “RECEIVED,” but shall not file them until the Court gives leave to do so.

So **SIGNED** and **ORDERED** this 4th day of December, 2014.


DAVID C. GUADERRAMA
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

LINDA S. RESTREPO; and CARLOS	§	
E. RESTREPO, D/B/A Collectively	§	
RDI GLOBAL SERVICES and R&D	§	
INTERNATIONAL,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	EP-14-CV-359-KC
	§	
ALLIANCE RIGGERS &	§	
CONSTRUCTORS, LTD., Collectively	§	
with CORDOVA ALLIANCE, LLC.,	§	
and EL PASO CRANE AND	§	
RIGGING INC.,	§	
	§	
Defendants.	§	

ORDER

On this day, the Court *sua sponte* considered the above-captioned case (the “Case”). On June 20, 2012, Defendant Alliance Riggers & Constructors, LTD. (“Alliance”) filed a breach of contract and state trademark infringement action against Plaintiffs in El Paso County Court at Law No. 5 (“State Proceeding”). Rather than litigate the merits of the State Proceeding, Plaintiffs have spent the last year and a half using the statutory rules governing removal jurisdiction of the federal courts as a weapon against their state court opponents. In total, Plaintiffs have removed the State Proceeding to federal court on four separate occasions,¹ the most recent of which led to Judge Guaderrama sanctioning Plaintiffs and declaring them to be

¹ See *Alliance Riggers & Constructors, LTD. et al. v. Restrepo et al.*, No. EP-13-CV-211-DCG (W.D. Tex. 2013); *Alliance Riggers & Constructors, LTD. et al. v. Restrepo et al.*, No. EP-14-CV-277-PRM (W.D. Tex. 2014); *Restrepo et al. v. Alliance Riggers & Constructors, LTD. et al.*, No. EP-14-CV-359-KC (W.D. Tex. 2014); *Alliance Riggers & Constructors, LTD. et al. v. Restrepo et al.*, No. EP-14-CV-408-DCG (W.D. Tex. 2014).

vexatious litigants.² Judge Guaderrama’s decision followed a similar order from the state court, which also declared Plaintiffs to be vexatious litigants based on their obstructive and harassing tactics in the State Proceeding.³ After considering Plaintiffs’ litigation history, including their behavior in this Case, the Court is of the opinion that it would be patently unfair to Defendants to allow the Case to proceed without first fashioning certain protective measures.

Before proceeding with a discussion regarding what protective measures are appropriate, the Court briefly recounts the relevant factual circumstances and procedural background surrounding this Case.

I. BACKGROUND

On September 24, 2014, in the wake of Plaintiffs’ second unsuccessful attempt to remove the State Proceeding to federal court, Plaintiffs filed the instant Case alleging, among other claims, federal copyright and trademark infringement against Alliance, Cordova Alliance, LLC., and El Paso Crane and Rigging Inc. (collectively, “Defendants”). *See* Proposed Compl. 5-8, ECF No. 1-1. Acting *sua sponte* pursuant to its authority under 28 U.S.C. § 1915(e)(2), the Court ordered Plaintiffs to file a more definite statement on the ground that their Proposed Complaint consisted “almost entirely of legal conclusions.” *See* October 3, 2014, Order 1, ECF No. 2. Plaintiffs ultimately decided to file a “Motion for Leave to File Amended Complaint,” ECF No. 7, which the Court granted on October 23, 2014. *See* October 23, 2014, Order 2, ECF No. 8.

² *See* Order Granting Mot. to Proceed In Forma Pauperis and Remanding Action to State Ct. at 5, *Alliance Riggers & Constructors, LTD. et al. v. Restrepo et al.*, No. EP-14-CV-408-DCG (W.D. Tex. 2014), ECF No. 3.

³ *See* Order Granting Pl.’s Mot. for Order Determining Linda S. Restrepo and Carlos E. Restrepo to be Vexatious Litigants at 2, *Alliance Riggers & Constructors, LTD. v. Restrepo et al.*, No. 2012-DCV04523 (Tex. Cnty. Ct. No. 5, Nov. 3, 2014).

On October 28, 2014, Plaintiffs filed their third Notice of Removal and Memorandum in Support of Notice (“Third Notice”), ECF No. 15, once again purporting to remove the State Proceeding to federal court. The Third Notice came just five days after this Court granted Plaintiffs leave to file their Amended Complaint in the instant Case, and less than a week before the state court was set to have a hearing on Alliance’s motion to declare Plaintiffs vexatious litigants in the State Proceeding. While the Third Notice employed the exact same substantive arguments regarding federal jurisdiction that both Judge Guaderrama and Judge Martinez previously considered and rejected, it differed procedurally from its predecessors in one significant way: it purported to remove the State Proceeding *into* an existing federal action—namely, the instant Case. *See* Third Notice 1. Concluding that the Third Notice amounted to nothing more than an end-run around the statutory rules governing removal jurisdiction, this Court struck the Third Notice from the docket and remanded the State Proceeding to state court, “to the extent it was ever removed.” *See* October 29, 2014, Order 2, ECF No. 16.

Undeterred, Plaintiffs have continued to misuse this Case as a forum to air their grievances regarding the State Proceeding. For example, after Defendants filed a Rule 12(b)(6) Motion to Dismiss (“Motion”), ECF No. 25, Plaintiffs filed a thirty-seven page response (“Response”), ECF No. 26, in which they (1) argued extensively that the state court lacks subject matter jurisdiction over the State Proceeding, (2) accused Defendants of participating “in the ongoing El Paso public corruption scheme to bribe public officials in exchange for City contracts,” and (3) attacked the character of their state court judge by, among other contentions, accusing him of acting “as protector of Alliance.” *See* Resp. 2-8, 16-19, 21, 24-25, 29-36. While this Court ultimately struck the Response from the docket based on Plaintiffs’ failure to comply with the Local Court Rules governing page limitations, it also provided Plaintiffs with a clear

warning: “the Court . . . will not entertain irrelevant arguments and ad hominem attacks relating to the parties’ ongoing state court litigation.” *See* November 19, 2014, Order 2, ECF No. 27.

Unfortunately, the Court’s warning has gone largely unheeded. On December 3, 2014, Plaintiffs filed an Amended Response to the Motion (“Amended Response”), ECF No. 34. By the Amended Response, Plaintiffs continued to argue that “there is no basis in law or in fact for the frivolous lawsuit filed in state court.” *See* Am. Resp. 14. Plaintiffs likewise maintained their character attacks against both the state court judge and Defendants, contending that “Judge Villa is predisposed to rule against them and has allowed Alliance to proceed without responding to requests for production and disclosure in an attempt to hide what the facts of the case are and in order to withhold any information of Alliance’s alleged participation in the El Paso County public corruption case.” *Id.* at 18. In addition, Plaintiffs renewed their request for the Court to terminate the State Proceeding, this time by requesting “leave of the Court to consolidate the state court action . . . with this federal cause of action in order to protect Plaintiff[s’] First and Fourteenth Amendment Constitutional Rights to Due Process.” *Id.* at 19. The Court has not yet ruled on either the Motion or the Amended Response, the latter of which essentially asks this Court to intervene in the State Proceeding.

II. DISCUSSION

“A court’s exercise of its inherent powers sometimes collides with a litigant’s right of access to the courts.” *Rumbough v. Equifax Info. Servs., LLC*, 464 F. App’x 815, 817 (11th Cir. 2012). “That right of access, however, is ‘neither absolute nor unconditional.’” *Id.* (quoting *Miller v. Donald*, 541 F.3d 1091, 1096 (11th Cir. 2008)). Thus, the Fifth Circuit has joined numerous other courts in holding that “a district court has inherent power to require security for costs when warranted by the circumstances of the case.” *Ehm v. Amtrak Bd. of Dirs.*, 780 F.2d

516, 517 (5th Cir. 1986); *see also, e.g., Gay v. Chandra*, 682 F.3d 590, 594 (7th Cir. 2012) (“The district court correctly reasoned that its authority to award costs to a prevailing party implies a power to require the posting of a bond reasonably calculated to cover those costs, even though no statute or rule expressly authorizes such an order.”); *Pedraza v. United Guar. Corp.*, 313 F.3d 1323, 1335 (11th Cir. 2002) (“[F]ederal courts possess the inherent power to require the posting of cost bonds and to provide for the award of attorneys’ fees.”); *Simulnet E. Assocs. v. Ramada Hotel Operating Co.*, 37 F.3d 573, 574 (9th Cir. 1994) (“[T]he federal district courts have inherent power to require plaintiffs to post security for costs.”); *Hawes v. Club Ecuestre El Comandante*, 535 F.2d 140, 143 (1st Cir. 1976) (“Even in the absence of a standing local rule, a federal district court has the inherent power to require security for costs when warranted by the circumstances of the case.”).

While it is clear that a district court is authorized to impose a security requirement, a court abuses its discretion if it does not “settle upon an assurance which is fair in the light not only of the case itself and of the exigencies faced by the defendant, but also fair when illuminated by the actual financial situation of the plaintiff.” *Aggarwal v. Ponce Sch. of Med.*, 745 F.2d 723, 728 (1st Cir. 1984). Thus, in considering both the appropriateness and the amount of a bond, courts should look to the following three factors for guidance: “(1) the merits of the case, (2) the prejudice to the defendant of not requiring a bond, and (3) the prejudice to the plaintiff of requiring a bond.” *Gay*, 682 F.3d at 594 (citing *Aggarwal*, 745 F.2d at 727-28); *see also Ehm*, 780 F.2d at 517.

Applying these standards here, the Court is convinced that requiring Plaintiffs to post a modest bond to pursue their claims in federal court is an appropriate protective measure under the facts of this Case. At the outset, while Plaintiffs’ federal copyright claim does not appear to

be facially meritless, their own conduct suggests that its true value to Plaintiffs lies as an improper anchor for federal jurisdiction over the state law claims against them. Indeed, Plaintiffs devoted a great deal of their pleadings to this very subject. *See* Am. Resp. 2-4, 17-19. Plaintiffs' fixation on the State Proceeding, as well as their conduct before three federal judges, causes this Court to question their true motivations in bringing this Case. As for Plaintiffs' other federal claim sounding in federal trademark, Defendants correctly observe that Plaintiffs' assertion of trademark protection over the website "www.allianceriggersandconstructors.com," is akin to arguing that "a cybersquatter who buys the domain name www.mcdonalds.com from a domain name provider, obtains by virtue of such purchase better trademark rights than McDonalds." *See* Mot. 8 n.2 (emphasis removed). This contention by Plaintiffs is unlikely to carry the day on a motion to dismiss.

Because Plaintiffs' federal claims are of questionable merit and their conduct in federal court calls into question their true motivations behind the instant Case, the prejudice to Defendants in not requiring a bond is significant. In contrast to Plaintiffs, who have litigated this dispute entirely as *pro se* litigants and without associated costs and fees, Defendants have incurred substantial expenses in both state and federal court. Indeed, as Defendants point out in their Motion, "the case initiated in June 2012 as a simple breach of contract/trademark infringement claim now involves County Court at Law Number 5, the [Texas] Eighth Court of Appeals (8 different times), the United States District Court for the Western District of Texas, El Paso Division (4 different times) and the United States Trademark Office, all of which [Plaintiffs] have prosecuted pro se, as paupers." *See* Mot. 3. While Plaintiffs have every right to proceed with their federal claims in this forum, the Court is of the opinion that they should no longer be able to do so with impunity. *See Ferguson v. MBank Houston, N.A.*, 808 F.2d 358,

359 (5th Cir. 1986) (“[O]ne acting *pro se* has no license to harass others, clog the judicial machinery with meritless litigation, and abuse already overloaded court dockets.”). Instead, if Plaintiffs decide to move forward, they will do so with the knowledge and understanding that they may be required to cover Defendants’ legal expenses if they are ultimately unsuccessful on the merits, and that they must post a bond with this Court to secure a portion of this possible liability.

Finally, the Court considers the prejudice resulting to Plaintiffs in requiring them to post security before proceeding with their claims. Based upon Plaintiffs’ sworn representations regarding their current economic status, this Court granted them permission to proceed *in forma pauperis* on October 23, 2014. *See* October 23, 2014, Order 2, ECF No. 8. Thus, in setting the bond amount, the Court must ensure that Plaintiffs are not foreclosed completely from pursuing their claims simply by virtue of their economic hardship. *See Aggarwal*, 745 F.2d at 728-29; *Rumbough*, 464 F. App’x at 817-18. After due consideration, the Court is of the opinion that a \$10,000 cash or corporate surety bond is appropriate under the circumstances. While Defendants’ legal expenses associated with the Case may have already exceeded this figure, the Court finds that this amount is proper in light of Plaintiffs’ financial circumstances. *See Aggarwal*, 745 F.2d at 728 (“While it is neither unjust nor unreasonable to expect a suitor ‘to put his money where his mouth is,’ toll-booths cannot be placed across the courthouse doors in a haphazard fashion.” (internal citation omitted)).

III. CONCLUSION

For the reasons set forth above, the Court **ORDERS** the following relief:

IT IS HEREBY ORDERED that Plaintiffs’ **REQUEST TO CONSOLIDATE** this Case with the State Proceeding is **DENIED**.

IT IS FURTHER ORDERED that Plaintiffs **SHALL POST A CASH OR CORPORATE SURETY BOND ACCEPTABLE TO THE COURT** in the amount of \$10,000 with the Clerk of Court.

IT IS FURTHER ORDERED that Plaintiffs **SHALL FILE** a signed affidavit stating that they have read Federal Rule of Civil Procedure 11 and agree to abide by the terms listed therein.

IT IS FURTHER ORDERED that Plaintiffs **SHALL PAY** the \$100 sanction set forth in Judge Guaderrama's December 4, 2014, Order, and **SHALL FILE** notice of such compliance in this Case.

IT IS FURTHER ORDERED that the Clerk of Court shall not accept any materials for filing in this Case other than those delineated above.

IT IS FURTHER ORDERED that this Case is **STAYED** until Plaintiffs satisfy the above-listed conditions.

IT IS FURTHER ORDERED that failure to comply with any of the above-listed conditions by **January 20, 2015**, will result in the dismissal of the Case.

SO ORDERED.

SIGNED this 12th day of December, 2014.



KATHLEEN CARDONE
UNITED STATES DISTRICT JUDGE

RECEIVED

SEP 24 2014

CLERK, U.S. DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
DEPUTY

JUDGE KATHLEEN CARDONE

LINDA S. RESTREPO, and CARLOS E.
RESTREPO, D/B/A/ Collectively RDI GLOBAL
SERVICES and R&D INTERNATIONAL,

Plaintiffs,

V.

ALLIANCE RIGGERS & CONSTRUCTORS,
LTD., Collectively with CORDOVA ALLIANCE,
LLC., and EL PASO CRANE AND RIGGING INC.

Defendants.

CASE No.

"JURY TRIAL DEMANDED"

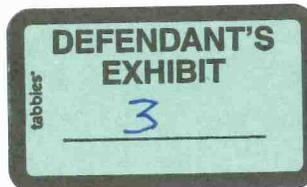
EP 14 CV 0359

COMPLAINT

Linda S. Restrepo and Carlos E. Restrepo ("Restrepo") brings this action against Defendants Alliance Riggers & Constructors Ltd., a Texas corporation, a/k/a its partnership Cordova Alliance, LLC., and El Paso Crane & Rigging, Inc. ("Defendants") and any other past and present affiliates, assigns, and covert front organizations, alleging that it engaged in copyright and trademark infringement; false designation of origin, false description and representation; and unfair competition. Restrepo seeks damages, an accounting, the imposition of a constructive trust upon Defendant's illegal profits, and injunctive relief.

THE PARTIES

1. Plaintiffs Linda S. Restrepo and Carlos E. Restrepo d//b/a/ RDI Global Services and R&D International are Marketing and Internet Consultants with its principal place of business located at P.O. Box 12066, El Paso, Texas 79912, Tel. No. (915) 581-2732. Restrepo develops,



produces, markets, distributes and licenses corporate marketing videos, Internet Marketing podcasts, Internet Web Pages, Social Media Content and Corporate Strategic Marketing.

2. Defendants ALLIANCE RIGGERS & CONSTRUCTORS, LTD., Collectively with CORDOVA ALLIANCE, LLC., and EL PASO CRANE AND RIGGING INC., with its principal place of business located at 1200 Kastrin Street, El Paso, Texas 79907, Tel. No. 915) 591-4513. Upon information and belief, Defendant Alliance does business on Internet websites and in El Paso county, also state wide throughout Texas, the State of New Mexico and international cross border in the country of Mexico. Alliance is engaged in the business of steel erection, crane and rigging, construction, welding, crane and rigging testing and certification training among other unknown activities.

JURISDICTION

3. This Court has subject matter jurisdiction over Restrepo claims for trademark infringement, copyright infringement and related claims pursuant to The federal 1976 Copyright Act, codified in Title 17 of the United States Code.

4. This court has supplemental jurisdiction over Restrepo's claims arising under the laws of Texas pursuant to 28 U.S.C. § 1367(a) because these claims are so related to Restrepo's claims under federal law that they form part of the same case or controversy and derive from a common nucleus of operative fact.

VENUE

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and § 1400(a) because (a) a substantial part of the events giving rise to Restrepo's claims occurred in the Western District of Texas, (b) Defendants resides in the Western District of Texas for the

purposes of determining venue, and (c) Defendants has a sufficient connection with the Western District of Texas to make venue proper in this district, all as alleged in this Complaint.

FACTS COMMON TO ALL CLAIMS

6. Restrepo produces, develops, advertises, markets, distributes, and licenses a number of computer Internet Web Pages, Corporate Videos, Internet Podcasts, MP3's, Slide Shows, Social Media Content, Corporate Strategic Marketing and original design computer html codes. Restrepo's marketing programs are recorded on discs, posted to the Internet, published in YouTube, Facebook, LinkedIn, and they are packaged and distributed together with associated proprietary notices such as Notices of Copyright, Notices of End User license Agreements, Trademarks and other components.

7. Restrepo has developed, advertised, marketed, distributed, and licensed a proprietary marketing package known as "Corporate Marketing Videos". It performs a number of computer based operations including, but not limited to, providing marketing support for various applications according to customer needs. Restrepo holds valid copyrightable materials to include html computer code applications, and "grandfather" Copyright ownership rights to the domain name: "allianceriggersandconstructors.com", Alliance Riggers & Constructors full content webpage, computer html codes, MP3's, Alliance Riggers & Constructors Corporate Marketing Video, Alliance Riggers & Constructors SEAA Project of the Year 2011 Video, High Definition photos, original technical content write-ups, Alliance Riggers & Constructors project Slide Shows, Liebherr Crane Videos, under Copyright Registration Application No. 1-1641450854.

Defendant's Infringement

8. On information and belief, Defendants advertises that the Alliance Corporate Marketing Video, the Steel Erectors Association of America Project of the Year 2011 award winning marketing video, the Power Point Engineering presentation, the photographs, video clips, platforms, marketing narrations and web page contents among other copyrighted products produce by Restrepo were reproduced by Alliance Riggers & Constructors, Ltd., and in its advertisements, Defendant misappropriates and infringes Restrepo's copyrights, advertising ideas, style of doing business, slogans, trademarks and/or service mark.

9. The project proposals sold by Defendant Alliance Riggers & Constructors Ltd., actually have infringing copies of Restrepo Copyrighted Marketing products installed.

10. By numerous Notice of Copyrights and End User Notices Plaintiffs warned Defendants that it violates copyright and trademark laws to claim, make and distribute unauthorized copies of Restrepo marketing programs. Restrepo also informed Defendants of the consequences of such infringement in all Copyright Notices and End User Notices affixed to all videos and webpage contents.

11. On information and belief, this is not an isolated incident. Rather, Defendants have been and continues to be involved in advertising, marketing, installing, offering, and/or distributing counterfeit and infringing copies of Restrepo's marketing products and/or related components to include computer html codes to unidentified persons or entities.

12. On information and belief, Defendants have committed and is continuing to commit acts of copyright and trademark infringement against Restrepo. On information and belief, at a minimum, Defendants were willfully blind and acted in reckless disregard of Restrepo's copyrights, trademarks and service marks.

13. On information and belief, Restrepo has been harmed by Defendant's activities,

including its advertising activities and unauthorized use of Restrepo's copyright protected material, and the unauthorized use of Restrepo's marks to describe the items that Defendants are promoting, contracting through and distributing.

First Claim
[Copyright Infringement 17 U.S.C. § 501, et seq.1
Against Defendant

13. Restrepo repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 13, inclusive.

14. Restrepo is the sole owner of the domain name“allianceriggersandconstructors.com”, and of the corresponding copyright and GoDaddy Certificate of Registration.

15. Defendant has infringed the copyrights in Restrepo's marketing products, including but not limited to the SEAA POY 2011 marketing video, the Alliance Corporate Marketing Video, the Alliance WebPage, the Alliance Power Point presentations, photographic materials by claiming, advertising, marketing, installing, offering, and/or distributing infringing materials in the United States of America and on information and belief through interstate and international commerce outside the United States without approval or authorization from Restrepo.

16. At a minimum, Defendants acted with willful blindness to and in reckless disregard of Restrepo's registered copyrights.

17. As a result of its wrongful conduct, Defendants are liable to Restrepo for copyright infringement. 17 U.S.C. § 501. Restrepo has suffered statutory damages. Restrepo is entitled to recover damages, which include any and all profits Defendants have made as a result of its actions, contracts, and royalties.

18. In addition, for the reasons set forth above, the award of statutory damages should

be enhanced in accordance with 17 U.S.C. § 504(c)(2).

19. Restrepo is also entitled to injunctive relief pursuant to 17 U.S.C. § 502 and to an order impounding any and all infringing materials pursuant to 17 U.S.C. § 503. Restrepo has no adequate remedy at law for Defendant's wrongful conduct because, among other things, (a) Restrepo's copyrights are unique and valuable property which have no readily determinable market value, (b) Defendant's infringement harms Restrepo such that Restrepo could not be made whole by any monetary award, and (c) Defendant's wrongful conduct, and the resulting damage to Restrepo, is continuing.

20. Restrepo is also entitled to recover the amounts owed by Defendants for worked performed and delivered which Defendant has failed to pay to include interest, punitive and treble damages.

21. Restrepo is also entitled to recover its attorneys' fees and costs of suit. 17 U.S.C. § 505.

Second Claim

**[Trademark Infringement - 15 U.S.C. § 1114]
Against Defendant**

22. Restrepo repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 21, inclusive.

23. Defendant's activities constitute infringement of Restrepo's trademarks and service mark in violation of the Lanham Trademark Act, including but not Limited to 15 U.S.C. § 1114(1).

24. Because Restrepo advertises, markets, distributes, and licenses its products under the trademarks and service mark described in this Complaint, these trademarks and service mark are the means by which Restrepo's software is distinguished from the software and related items

of others in the same or related fields.

25. Because of Restrepo's long, continuous, and exclusive use of these trademarks and service mark, they have come to mean, and are understood by customers, end users, and the public to signify, software programs or services of Restrepo.

26. The infringing materials that Defendants have and is continuing to claim, advertise, market, install, offer, and distribute are likely to cause confusion, mistake, or deception as to their source, origin, or authenticity.

27. Further, Defendant's activities are likely to lead the public to conclude, incorrectly, that the infringing materials that Defendants are claiming, advertising, marketing, installing, offering, and/or distributing originate with or are authorized by Restrepo, to the damage and harm of Restrepo, its licensees, and the public.

28. Upon information and belief, Defendants advertised, marketed, installed, offered or distributed infringing material with the purposes of misleading or confusing customers and the public as to the origin and authenticity of the infringing materials and of trading upon Restrepo's business reputation.

29. At a minimum, Defendants acted with willful blindness to and in reckless disregard of Restrepo's Copyrights and registered marks.

30. As a result of its wrongful conduct, Defendants are liable to Restrepo for Trademark infringement. 15 U.S.C. § 1114(1). Restrepo has suffered damages. Restrepo is entitled to recover damages, which include any and all profits Defendants have made as a result of its wrongful conduct. 15 U.S.C. § 1117(a).

31. In addition, because of Defendant's infringement of Restrepo's trademarks and

service mark as described above, the award of actual damages and profits should be trebled pursuant to 15 U.S.C. § 1117(b). Alternatively, Restrepo is entitled to statutory damages under 15 U.S.C. § 1117(c).

32. Restrepo is also entitled to injunctive relief pursuant to 15 U.S.C. § 1116(a) and to an order compelling the impounding of all infringing materials advertised, marketed, installed, offered or distributed by Defendants pursuant to 15 U.S.C. § 1116, subsections (a) and (d)(1) (A).

33. Restrepo has no adequate remedy at law for Defendant's wrongful conduct because, among other things, (a) Restrepo's Copyrights trademarks and service mark are unique and valuable property which have no readily determinable market value, (b) Restrepo's infringement constitutes harm to Restrepo's such that Restrepo could not be made whole by any monetary award, (c) if Defendant's wrongful conduct is allowed to continue, the public is likely to become further confused, mistaken, or deceived as to the source, origin or authenticity of the infringing materials, and (d) Defendant's wrongful conduct, and the resulting damage to Restrepo, is continuing.

34. Restrepo is also entitled to recover its attorneys' fees and costs of suit. 15 U.S.C. § 1117.

Third Claim

[False Designation Of Origin, False Description And Representation -

15 U.S.C. § 1125 et seq.]

Against Defendant

35. Restrepo repeats and incorporates by this reference each and every allegation set

forth in paragraphs 1 through 34, inclusive.

36. Because Restrepo advertises, markets, distributes, and licenses its products under the Copyrights trademarks and service mark described in this Complaint, these trademarks and service mark are the means by which Restrepo's marketing products is distinguished from the marketing video or products Of others in the same field or related fields.

37. Because Of Restrepo's long, continuous, and exclusive use Of these copyrights trademarks and service mark, they have come to mean, and are understood by customers, end users, and the public to signify, videos or marketing services Of Restrepo.

38. Restrepo has also designed distinctive and aesthetically pleasing displays, logos, icons, graphic images, and packaging (collectively, "Restrepo visual designs") for its marketing programs.

39. Defendant's wrongful conduct includes the use Of Restrepo's marks, name, and/or imitation visual designs, specifically videos, logos, icons, graphic designs, and/or packaging virtually indistinguishable from Restrepo visual designs, in connection with its goods and services.

40. Upon information and belief, Defendants engaged in such wrongful conduct with the purpose Of misleading or confusing customers and the public as to the origin and authenticity Of the goods and services claimed, advertised, marketed, installed, offered or distributed in connection with Restrepo's marks, name, and imitation visual designs, and Of trading upon Restrepo's goodwill and business reputation. Defendant's conduct constitutes (a) false designation Of origin, (b) false or misleading description, and (c) false or misleading

representation that the imitation visual images originate from or are authorized by Restrepo, all in violation of § 43(a) of the Lanham Trademark Act, set forth at 15 U.S.C. § 1125(a).

41. Defendant's wrongful conduct is likely to continue unless restrained and enjoined.

42. As a result of Defendant's wrongful conduct, Restrepo has suffered and will continue to suffer damages. Restrepo is entitled to injunctive relief and to an order compelling the impounding of all imitation marks and visual designs being used, advertised, marketed, installed, offered or distributed by Defendants. Restrepo has no adequate remedy at law for Defendant's wrongful conduct because, among other things, (a) Restrepo's marks, copyrights, name and visual designs are unique and valuable property which have no readily-determinable market value, (b) Defendant's advertising, marketing, installation, or distribution of imitation visual designs constitutes harm to Restrepo such that Restrepo could not be made whole by any monetary award, and (c) Defendant's wrongful conduct, and the resulting damage to Restrepo, are continuing.

Fourth Claim

[Texas Common Law Unfair Competition]

Against Defendant

43. Restrepo repeats, and incorporates by this reference, each and every allegation set forth in paragraphs 1 through 42, inclusive.

44. The acts and conduct of Defendants as alleged above in this complaint constitute unfair competition pursuant to the common law of the State of Texas.

45. Defendant's acts and conduct as alleged above have damaged and will continue to damage Restrepo and have resulted in an illicit gain of profit to Defendants in an amount that is

unknown at the present time.

Fifth Claim

[For Imposition Of A Constructive Trust Upon Illegal Profits]

Against Defendant

46. Restrepo repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 45, inclusive.

47. Defendant's conduct constitutes deceptive and wrongful conduct in the nature of passing off the infringing materials as genuine Restrepo products or related components approved or authorized by Restrepo.

48. By virtue of Defendant's wrongful conduct, Defendants have illegally received money and profits that rightfully belong to Restrepo.

49. Upon information and belief, Defendants holds the illegally received money and profits in the form of bank accounts, real property, or personal property that can be located and traced.

50. Defendants holds the money and profits that it has illegally received as constructive trustee for the benefit of Restrepo.

Sixth Claim

[Accounting]

Against Defendant

51. Restrepo repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 50, inclusive.

52. Restrepo is entitled, pursuant to 17 U.S.C. § 504 and 15 U.S.C. § 1117, to recover any and all profits of Defendants that are attributable to its acts of infringement.

53. Restrepo is entitled, pursuant to 17 U.S.C. § 504 and 15 U.S.C. § 1117, to actual damages or statutory damages sustained by virtue of Defendant's acts of infringement.

54. The amount of money due from Defendants to Restrepo is unknown to Restrepo and cannot be ascertained without a detailed accounting by Defendants of the precise number of times of infringing material claimed, advertised, marketed, installed, offered or distributed by Defendant.

PRAYER FOR RELIEF

WHEREFORE, Restrepo respectfully requests judgment as follows:

(1) That the Court enter a judgment against Defendants as indicated below:

(a) that Defendants have willfully infringed Restrepo's rights in the following federally registered Copyright Registration Application No. 1-1641450854., in violation of 17 U.S.C. § 501:

(b) that Defendants have willfully infringed Restrepo's rights in the following federally registered trademarks and service mark, in violation of 15 U.S.C. s1114:

- (1) "LINDA S. RESTREPO";
- (2) "CARLOS E. RESTREPO";
- (3) "RDI GLOBAL SERVICES"; and
- (4) "R&D INTERNATIONAL";

(c) that Defendant have committed and is committing acts of false designation of origin, false or misleading description of fact, and false or misleading representation against Restrepo, in violation of 15 U.S.C. § 1125(a);

(d) that Defendants have engaged in unfair competition in violation of Texas common law;

(e) that Defendants have otherwise injured the business reputation and business of Restrepo by the acts and conduct set forth in this Complaint.

(2) That the Court issue injunctive relief against Defendants, and that Defendants, its directors, principals, officers, agents, representatives, servants, employees, attorneys, successors and assigns, and all others in active concert or participation with Defendants, be enjoined and restrained from:

(a) claiming, imitating, copying, or making any other infringing use or infringing distribution of the marketing programs, components, marketing videos, the domain name "allianceriggersandconstructors.com", photographs, webpage, video animations, power points, and/or items protected by the following copyright or the computer programs, components and/or items protected by Restrepo's trademarks and service mark, including, but not limited to, the following.:

- (1) "LINDA S. RESTREPO";
- (2) "CARLOS E. RESTREPO";
- (3) "RDI GLOBAL SERVICES"; and
- (4) "R&D INTERNATIONAL";

and any other items or works now or hereafter protected by any Restrepo trademark or copyright;

(b) filming, assembling, producing, duplicating, distributing, offering for distribution, circulating, selling, offering for sale, advertising, importing, promoting, or displaying any marketing program, component, and/or item bearing any simulation, reproduction, counterfeit, copy, or colorable imitation of any of Restrepo's trademarks, service mark, or copyrights, including, but not limited to, the Notice of Copyrights, Trademark, Service Mark, and claimed Copyright listed in Sections (2)(a) above;

(c) using any simulation, reproduction, counterfeit, copy, or colorable imitation of Restrepo's registered trademarks, service mark, or copyright including, but not limited to the Trademark, Service Mark, and Copyright Registration listed in Section (2)(a) above, in connection with the filming, assembly, production, distribution, offering for distribution, circulation, sale, offering for sale, import, advertisement, promotion, or display of any videos, marketing program, component, and/or item not authorized or licensed by Restrepo;

(d) using any false designation of origin or false or misleading description or false or misleading representation that can or is likely to lead the trade or public or individuals erroneously to believe that any marketing program, videos, webpage, component, and/or item has been filmed, assembled, produced, distributed, offered for distribution, circulation, sold, offered for sale, imported, advertised, promoted, displayed, licensed, sponsored, approved, or authorized by or for Restrepo, when such is not true in fact;

(e) engaging in any other activity constituting an infringement of any of Restrepo's trademarks, service mark and/or copyrights, or of Restrepo's rights in, or right to use or to exploit, these trademarks, service mark, and/or copyrights; and assisting, aiding, or abetting any

other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (a) through (e) above.

(3) That the Court enter an order pursuant to 15 U.S.C. § 1116(a)(d)(1)(A) and 17 U.S.C. § 503 impounding all counterfeit and infringing copies of purported Restrepo videos and/or materials bearing any of Restrepo's trademarks or service mark, and any related item, including business records, that is in Defendant's possession or under its control;

(4) That the Court enter an order declaring that Defendants holds in trust, as constructive trustee for the benefit of Restrepo, its illegal profits obtained from its distribution of counterfeit and infringing copies of Restrepo's software, and requiring Defendants to provide Restrepo a full and complete accounting of all amounts due and owing to Restrepo as a result of Defendant's illegal activities.

(5) That the Court order Defendants to pay Restrepo's general, special, actual, and statutory damages as follows:

(a) Restrepo's damages and Defendant's profits pursuant to 17 U.S.C. § 504(b), or alternatively, enhanced statutory damages pursuant to 17 U.S.C. § 504(c), and 17 U.S.C. § 504(c)(2);

(b) Restrepo's damages and Defendant's profits pursuant to 15 U.S.C. § 1117(a), trebled pursuant to 15 U.S.C. § 1117(b), or in the alternative, statutory damages pursuant to 15 U.S.C. § 1117(c) for each counterfeit mark; and law.

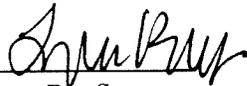
(c) Restrepo's damages and Defendant's profits pursuant to Texas common Law.

(6) That the Court order Defendants to pay to Restrepo both the costs of this action and the reasonable attorneys' fees incurred by it in prosecuting this action; and

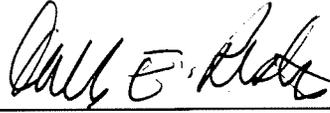
(7) That the Court grant to Restrepo such other and additional relief as is just and proper.

Respectfully submitted,

This 24th Day of September 2014



Linda S. Restrepo, Pro Se
P.O. Box 12066
El Paso, Texas 79912
(915) 581-2732



Carlos E. Restrepo, Pro
P.O. BOX 12066
El Paso, Texas 79912
(915) 581-2732

PLAINTIFFS DEMAND A TRIAL BY JURY AS TO ALL COUNTS

SERVE BY CERTIFIED MAIL

Defendants Address:
Alliance Riggers & Constructors, Ltd., Cordova Alliance, LLC.,
and El Paso Crane and Rigging, Inc.
1200 Kastrin Street,
El Paso, Texas 79907
Tel. No. 915) 591-4513

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 LINDA S. RESTREPO and CARLOS E. RESTREPO,
 D/B/A RDI GLOBAL SERVICES and R&D INTERNATIONAL

(b) County of Residence of First Listed Plaintiff EL PASO
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 LINDA S. RESTREPO and CARLOS E. RESTREPO, PRO SE
 P.O. BOX 12066, EL PASO, TEXAS 79912
 TEL. NO. (915) 581-2732

DEFENDANTS
 ALLIANCE RIGGERS & CONSTRUCTORS, LTD., EL PASO CRANE
 & RIGGING, INC. and CORDOVA ALLANCE, LLC.

County of Residence of First Listed Defendant EL PASO
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
 THE SUBJECT OF LAND INVOLVED.

JUDGE KATHLEEN CARDONE
EP 14 CV 0359

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
COPYRIGHT ACT OF 1976; 28 U.S.C. § 1331

Brief description of cause:
Federal Copyright Infringement

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** _____ **CHECK YES only if demanded in complaint: JURY DEMAND:** Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 09/24/2014 SIGNATURE OF ATTORNEY OF RECORD: Linda S. Restrepo Carlos E. Restrepo

FOR OFFICE USE ONLY: RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

**COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS,
EL PASO, TEXAS**

LINDA S. RESTREPO and	§
CARLOS E. RESTREPO	§
D/B/A COLLECTIVELY RDI GLOBAL SERVICES	§
and R&D INTERNATIONAL,	§ No. 08-13-000183-CV
	§
Appellants,	§ Appeal from the
	§ County Court at Law No. 5
v.	§ of El Paso County, Texas
	§ (TC No. 2012 DCV-04523)
ALLIANCE RIGGERS & CONSTRUCTORS, LTD.,	§
et.al.	§
Appellees.	§

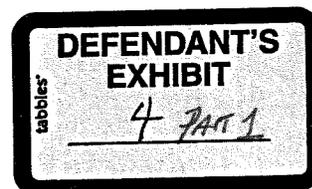
**APPELLANTS FIRST AMENDMENT
EMERGENCY VERIFIED PLEA TO THE JURISDICTION
OF COUNTY COURT AT LAW NUMBER FIVE**

TO THE HONORABLE COURT:

Appellants Linda Restrepo and Carlos E. Restrepo seeking to protect their First Amendment and Due Process Rights bring this First Amendment Emergency Verified Plea to the Jurisdiction of County Court at Law Number Five under the provisions of TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(8) (Vernon 2008), Texas Rules of Civil Procedure 166b and in support therein show: "Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but, rather, should dismiss the action." *Melo v. US*, 505 F2d 1026.

I. LACK OF SUBJECT MATTER JURISDICTION

In *Miranda*, 133 S.W.3d at 226, the supreme court was clear that the trial court must determine subject matter jurisdiction at its earliest opportunity and the



court must determine whether it has the constitutional or statutory authority to decide the case before allowing the litigation to proceed.¹ A plea to the jurisdiction is a dilatory plea that seeks dismissal of a case for lack of subject-matter jurisdiction. *Harris County v. Sykes*, 136 S.W.3d 635, 638 (Tex. 2004); see *Bland Indep. Sch. Dist.*, 34 S.W.3d at 554. Subject matter jurisdiction is essential to the authority of a court to decide a case and cannot be waived. *Waco Indep. Sch. Dist. v. Gibson*, 22 S.W.3d 849, 853–54 (Tex. 2000) (reiterating that courts are obliged to ascertain if they have subject matter jurisdiction even if the parties do not raise it) *Tex. Ass’n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993). Appellants state that County Court at Law No. 5 of El Paso County, Texas is proceeding without subject matter jurisdiction premised on the following established law, case precedent, the Plaintiffs/Appellees own statements, a valid Forum Selection contract, and Plaintiffs/Appellees own admissions and facts.

“Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted.” *Latana v. Hopper*, 102 F. 2d 188; *Chicago v. New York*, 37 F Supp. 150. “The law provides that once State and Federal Jurisdiction has been challenged, it must be proven.” *Main v. Thiboutot*, 100 S. Ct. 2502 (1980).

¹ *Miranda*, 133 S.W.3d at 226. “The trial court must determine at its earliest opportunity whether it has the constitutional or statutory authority to decide the case before allowing the litigation to proceed.” *Id.* The supreme court referenced its language in *Bland* acknowledging the trial court’s discretion to decide whether the jurisdictional determination should be made at a preliminary hearing or await fuller development of the case, but concluded “that this determination must be made as soon as practicable.” *Id.* at 227.

"Jurisdiction can be challenged at any time" and "Jurisdiction, once challenged, cannot be assumed and must be decided." *Basso v. Utah Power & Light Co.*, 495 F 2d 906, 910. There are incurable jurisdictional defects apparent from the face of the Plaintiffs/Appellees pleadings, rendering it impossible for the Plaintiffs/Appellees' petition to confer jurisdiction on the court." *Bland Indep. Sch. Dist.*, 34 S.W.3d at 554. The Appellees' claim and the record along with the Appellee's own admissions support the fact that the Appellees Petition is a sham and was made fraudulently for the purpose of obtaining jurisdiction. Citing *Bland*, the supreme court held that the trial court was required to fully examine the evidence to determine whether a fact issue existed regarding the alleged gross negligence.²

II. INTRODUCTION

Plaintiffs/Appellees original Petition stems from contractual arrangements that have specific, broad based, mandatory forum selection clauses which require dismissal of this lawsuit. Plaintiff/Appellees jettisoned their contract claims apparently recognizing that the forum selection clause would require dismissal of this suit. Plaintiffs/Appellees are not the first litigant to travel this road and Texas Courts uniformly reject such artful pleading strategy. The Court Record

² *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000). According to the recreational use statute, the Department's duty for premises defects would be that owed to a trespasser—to refrain from causing injury willfully, wantonly, or through gross negligence. *Id.* at 225 (citing TEX. CIV. PRAC. & REM. CODE ANN. § 75.002 (Vernon Supp. 2008)).

documents that the Appellees have attempted to play fast and loose with the truth and the facts in this case by: (1) signing a contract incorporating terms and conditions; (2) agreeing to and receiving the benefits of those terms and conditions; and then (3) in an effort to escape the effect of the terms and conditions and the contracts forum selection clause declare “**Kings X**”.

III. TIMELINE

1. **On March 11, 2011** Appellant Linda Restrepo entered into a written contract with Plaintiff/Appellee Phillip H. Cordova as registered Agent for Alliance Riggers & Constructors, Ltd. (CR Vol. V. pg. 1834)(Appx. Exh. 1). The “Contract” subject of this litigation was for the production of a 5-minute HD Corporate video and the production of a six-page interstate commerce³ Internet Platform which required registration of an interstate commerce domain name.

2. The contract was to have the webpage platform uploaded to GoDaddy an Arizona Corporation. The first page of GoDaddy’s website unequivocally states:

“Use of this Site is subject to express terms of use. By using this site, you signify that you agree to be bound by these Universal Terms of Service”.
(Appx. Exh. 2).

Utilization of GoDaddy requires that the users, or in this case the Appellee and the Appellants agree to be bound by GoDaddy’s Universal Terms of Service (CR Vol. V. Pgs. 1758-1761), Venue, Contract Forum, Legal and Privacy Policies. The

³ **§1337. Commerce and antitrust regulations; amount in controversy, costs**
(a) The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies

work performed on the contract was on an interstate commerce, internet global forum. The Appellees never objected to the terms and conditions of the contract⁴.

One Texas case has squarely addressed the issue of forum selection in an electronic contract: the Eleventh Court of Appeal's 2001 decision in *Barnett v. Network Solutions Inc.*, 28 S.W.3d 200 (Tex. App. --Eastland 2001, pet. denied). This case involves the validity of a forum selection clause in a contract between *Randall Barnett and Network Solutions, Inc.* (NSI). In 2001, Network Solutions Inc., a Virginia-based corporation, was the exclusive registrar of internet domain names in the United States (now GoDaddy is one of the largest). A party seeking to register a domain name would do so via NSI's website and would-be domain registrants were informed of the terms and conditions that NSI required before NSI would provide services. One such condition required any lawsuit arising out of the contract to be brought in the State of Virginia. Plaintiff Randall Barnett sought damages for breach of contract in a Taylor County, Texas District Court. NSI moved to dismiss Barnett's suit based on the contract's forum selection clause. The trial court held that the forum selection clause was valid and dismissed Barnett's suit. The Eleventh Court of Appeals' affirmed the decision.

The same set of facts are present in this case: in a legally binding contract the Appellants and the Appellee contractually chose a forum in District Court

⁴ TEX. BUS. & COM. CODE ANN. § 2.201(b) requires a party to object to written contents of a contract within ten days after it is received.

based on their electronic contractual agreement to have the webpage platform uploaded to GoDaddy an Arizona corporation.

3. In this case it is an undisputed fact that both the Appellant and Appellee signed the contract subject of this lawsuit and incorporated into the agreement were GoDaddy's Universal Terms of Service. A party's signature on a written contract is "strong evidence" that the party unconditionally assented to its terms. *In re Dec. Nine Co., Ltd.*, 225 S.W.3d 693, 699 (Tex. App. - El Paso 2006, orig. proceeding) citing in *Re Bunzl USA, Inc.*, 155 S.W.3d 202,209, (Tex. App. - El Paso 2004, orig. proceeding). See *In re Big 8 Food Stores, Ltd.*, 166 S.W.3d 869, 876 (Tex. App. El Paso 2005; orig. proceeding). A person who signs a contract "must be held to have known what words were used in the contract and to have known their meaning, and he must also be held to have known and fully comprehended the legal effect of the contract." *Nguyen Ngoc Giao v. Smith & Lamm*, P.C. 714 S.W.2d 144, 146 (Tex. App. - Houston [1st Dist] 1986, no writ).

4. Any proper legal analysis should turn on the facts, and the law applicable to the facts. As the four corners of the "Contract" document Appellants and Appellees/Alliance Riggers and Constructors, Ltd., consented to all terms and conditions of the contract by signing the contract to have the Alliance Riggers & Constructors webpage and Corporate Video uploaded to the internet through GoDaddy Hosting service (CR. Vol. V pgs. 1801-1813).

5. Go Daddy Universal Terms of Service requires: (1) a venue and Forum selection in Federal District Court; (2) Go Daddy Universal Terms of Service require venue in Arizona federal district court; and (3) the jurisdiction of the Department of Commerce ICANN (Internet Corporation of Assigned Names and Numbers) headquartered in California to resolve any tort claims and/or domain name related disputes. (CR Vol. V. Pgs. 1758-1761) (Appx. Exh. 3).

6. On or about **June 20, 2012**, Plaintiffs/Appellees filed a frivolous, harassment lawsuit (the "Lawsuit") in County Court at Law No. 5 (CR Vol 1. Pgs. 015-022) against Appellants Linda S. Restrepo and Carlos E. Restrepo. Plaintiffs/Appellees alleged various causes of action, including Breach of Contract, Trademark Infringement/Unfair Competition, Deceptive Trade Practices, arising out of and relating to the Contact between Linda Restrepo and Alliance Riggers & Constructors, Ltd. In their original Petition Appellees alleged that:

"Defendants have, without permission or authority from Plaintiff, registered the domain name "www.allianceriggersandconstructors.com", and in fact, launched a web page at such address in which they make multiple use of Plaintiff's trademark".

The Appellees have pled themselves out of court by claiming damages in excess of the jurisdictional limits of the court, refusing to state a cause of action, pleading Federal Statutory Rights, and alleging a cause of action that does not exist.

Despite bringing claims in the contract, Plaintiffs/Appellee failed to alert the Court to the forum selection clause, and negated the Courts jurisdiction by claiming damages *in excess of the minimum jurisdictional limits* of County Court at Law No. 5. El Paso County, Texas (CR Vol 1. pgs. 015-022). Ostensibly, this deficiency in the Plaintiffs Pleading was designed to avoid drawing attention to the mandatory forum-selection clause in the relevant contract. The contract entered into between the Appellants and the Appellees contain a mandatory forum-selection provision mandating venue in Federal District Court. Therefore, venue is not proper in El Paso County, Texas and this Honorable Court should dismiss the lawsuit due to lack of jurisdiction and improper venue.

A. The Agreement entered into by the Restrepo's and Alliance Riggers & Constructors, Ltd. was premised on utilization of the internet through GoDaddys Universal Terms of Services which contains in part the following language:

**GO DADDY
UNIVERSAL TERMS OF SERVICE AGREEMENT
23. GOVERNING LAW; JURISDICTION; VENUE**

Except for disputes governed by the Uniform Domain Name Dispute Resolution Policy referenced above and available [here](#), this Agreement shall be governed by and construed in accordance with the federal law of the United States and the state law of Arizona, whichever is applicable, without regard to conflict of laws principles. You agree that any action relating to or arising out of this Agreement shall be brought in the state or federal courts of Maricopa County, Arizona, and you hereby consent to (and waive all defenses of lack of personal jurisdiction and forum non conveniens with respect to) jurisdiction and venue in the state and federal courts of Maricopa County, Arizona. You agree to waive the right to trial by jury in any action or proceeding that takes place relating to or arising out of this Agreement.

**GO DADDY
UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY**

Last Revised: February 16, 2012

(As Approved by ICANN on October 24, 1999)

1. PURPOSE

This Uniform Domain Name Dispute Resolution Policy (the "Policy") has been adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN"), is incorporated by reference into your Registration Agreement, and sets forth the terms and conditions in connection with a dispute between you and any party other than us (the registrar) over the registration and use of an Internet domain name registered by you. Proceedings under Paragraph 4 of this Policy will be conducted according to the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules of Procedure"), which are available at [dispute_policy](#), and the selected administrative-dispute-resolution service provider's supplemental rules.

The Contract entered into between Appellants and Appellee incorporate the Terms and conditions therein. Hence, with respect the Contract Appellee Alliance Riggers & Constructors agreed to be bound by the Terms and Conditions applicable to the Universal Terms of Service agreement specified in GoDaddy. The applicable Terms and Conditions all provide for mandatory venue in a state other than Texas, thus, it is clear that Contracts/agreements entered into between the Appellants Restrepo's and Appellee Alliance Riggers & Constructors, Ltd., et.al. contained a mandatory forum selection clause mandating a venue in a state other than Texas.

IV. FORUM SELECTION CLAUSE ARGUMENT AND AUTHORITIES

A trial in a forum other than that contractually agreed upon will be a **meaningless waste of judicial resources**" and justified review by mandamus. *In re AIU Ins. Co.*, 148 S.W.3d 109, 118 (Tex. 2004). The Appellees have signed a contract (CR Vol. V. pg. 1834)(Appx. Exh. 1) and have also signed another contract (CR Vol. V, pg. 1800-1813) (Appx. Exh. 4) in which they have

contractually agreed to the terms and conditions of ICANN (domain disputes) and GoDaddy's forum selection clause. The Appellees cannot avoid the language and effectively admit that the basis of this lawsuit is contractual. The Court only need to briefly review the Original Petition to know that this is a contractual dispute wrapped in tort clothing. The question then becomes, what is the state of the law given the relationship at issue.

Where, as here, the claims arise from, arise out of, or are related to the parties' contractual relations, such claims relate to the Agreements executed by the parties and implicate the Agreements' forum-selection clauses. *In re int'l Profit Assocs., Inc.*, 274 S.W. 3d 672, 677-78 (Tex. 2009)(per curiam) the Texas Supreme Court found contractual forum-selection clause applicable to tort claims that arose from the contractual relationship between the parties); *Rouse v. Texas Capital Bank, N.A.* No. 05-11-0422-CV, 2011 Tex. App. LEXUS 9371 (Tex. App.--Dallas, Nov. 30, 2011) (a suit on tort claims that arose out of or pertained to the contractual relations between the parties is subject to contractual forum-selection clauses); *Accelerated Christian Edu. v. Oracle Corp.*, 925 S.W.2d 66, 72 (Tex. App.--Dallas 1996, no writ). Texas Court have made it clear that pleading non-contractual theories of recovery will not avoid a forum selection clause if the non-breach of contract claims arise out of the contractual relations and implicate the contract's terms.

In cases, such as this one, where the mandatory forum-selection clause covers suits “arising out of or related to the subject matter of this Agreement” or “arising from or in connection with this Agreement”, the mandatory forum-selection clause applies to Plaintiff’s/Appellees alleged tort, statutory DTPA and Trademark Infringement claims. *Cotton Patch Cafe,, Inc. v. Micros Systems, Inc.* No. 12-10-00030-CV, 2011 Tex. App. LEXIS 1520 (Tex. App.--Tyler March 2, 2011).

Once Appellant established the existence of the contractual Terms and Conditions and subject forum selection clauses, the burden shifted to Appellee to establish defenses to their enforcement. *In re Lyon Fin. Servs.* 257 S.W.3d 228, 231-32 (Tex. 2008). Appellants established the existence of the subject forum selection clauses and satisfied its evidentiary burden. Appellees/Alliance have failed to present any arguments or case law to contradict the forum selection clause and have therefore failed to meet their burden and the lower Court lacked the authority to act as an advocate for the Appellees making arguments for them which they have not made for themselves.

The sole relationship between Restrepo’s/Appellants and Alliance/Appellee was based on a written contract to produce an internet platform. Anything that happened between the parties necessarily sprang from that contractual relationship. There can be no legitimate question that the Appellee’s alleged claims of DTPA and trademark infringement are significantly related to the

contracts between the parties. Therefore, the forum-selection clauses mandate dismissal of this lawsuit.

Actions taken by a court that lacks jurisdiction – other than to dismiss – are void and subject to correction by mandamus. *In re John G. & Stella Kenedy Mem. Found.*, 315 S.W.3d 519, 522 (Tex. 2010). The U.S. Supreme Court has made it clear that forum-selection clauses are enforceable. *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 10 (1972); see also *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 593-94 (1991) (explaining that forum-selection clauses aid in avoiding confusion among Party regarding the proper forum, limiting litigation expenses, and “conserving judicial resources that otherwise would be devoted to deciding [venue disputes].” (citing *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 33 (1988) (Kennedy, J., concurring)).

Appellees/Plaintiff’s have frivolously sued the Appellants for allegedly registering a **domain name** and allegedly launching a webpage to said domain name (CR Vol. 1 Pg. 016). By mandate the United States Department of Commerce, a Federal Agency, has stated that any domain name disputes are to be determined by ICANN⁵. (CR Vol. V Pgs. 1762-1767) therefore as a matter of law County Court at Law No. 5, El Paso County Texas lacks any jurisdiction over

⁵ The United States Government June 5, 1998 “Statement of Policy Management of Internet Names and Addresses”, 63 Fed. Reg. 31741 (1998) established ICANN the Internet Corporation for Assigned Names and Numbers with operating offices in California, Washington, D.C. and the European Union nation of Belgium.

the “domain name”⁶ subject of this case and any issues regarding domain name disputes are the exclusive jurisdiction of the federal government ICANN agency. Furthermore due to the fact that the Plaintiffs/Appellees have failed to exhaust Federal administrative remedies of ICANN the lower court lacks the subject matter jurisdiction to entertain their claims.

The Case before the lower Court has proceeded contrary to the forum selection clause, without subject matter jurisdiction and in violate of Federal Jurisdiction. U.S.C.A. Const. Art. 4, § 1; 28 U.S.C.A. § 1738. Texas is required to enforce a valid judgment presented from another state.

A forum-selection clause is properly enforced via 28 USC § 1404(a) when the Parties have entered into a contractual forum-selection clause as in this case. Having reviewed the Interstate Commerce Web Platform on the Internet as well as the domain name, Plaintiffs/Appellee contractually agreed to the forum-selection (CR Vol. 1. Page 112)(CR Vol. V, pg. 1800-1813)(Appx. Exh. 4). The contract provisions in existence relevant to this case and thus the only contract provisions that could possible apply to this matter were that both the Corporate Video and the web platform were to be designed for the utilization of Appellee/ Plaintiff Alliance Riggers & Constructors and uploaded to the Internet. Based on the provisions of the contract, the only name that could have been utilized in the

⁶ Because the lower Court lacks the power to effect a remedy that would resolve the dispute at issue, the case does not present a justiciable issue. *Di Portanova v. Monroe*, 229 S.W.3d 324, 330 (Tex. App.-- Houston [1 Dist.] 2006, pet. denied).

production of the Video and Web Internet Platform was the name of the contract client Alliance Riggers & Constructors and the forum selection contractually agreed to was federal district court.

Because the lower Court lacks the power to effect a remedy that would resolve the dispute at issue, the case does not present a justiciable issue. *Di Portanova v. Monroe*, 229 S.W.3d 324, 330 (Tex. App.-- Houston [1 Dist.] 2006, pet. denied).

V. THE PLAINTIFF/APPELLEE LACKS STANDING

Subject matter jurisdiction requires that the party bringing the suit have standing, that there be a live controversy between the parties, and that the case be justiciable. *State Bar of Tex. v. Gomez*, 891 S.W.2d 243, 245 (Tex. 1994). County Court at Law No. 5 lacks the power to effect a remedy that would resolve the dispute at issue, thus Appellees' Petition does not present a justiciable issue. *Di Portanova v. Monroe*, 229 S.W.3d 324, 330 (Tex. App.-- Houston [1 Dist.] 2006, pet. denied). "The absence of subject-matter jurisdiction may be raised by a plea to the jurisdiction. . ." *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000), *Employees Pension Sys. v. Ferrell*, 248 S.W.3d 151, 156 (Tex. 2007).

The Supreme Court held that "because the named Plaintiff was unable to allege and show that he personally had been injured by the defendant's actions, his lack of individual standing preclude the trial court's exercise of subject matter

jurisdiction . . . The court explained that [o]ur state constitution contemplates, that Plaintiffs seeking redress in the courts must first demonstrate standing. Because the Texas Constitution requires the presence of a proper party to raise issue before the court, standing is a threshold inquiry regardless of whether the Plaintiff brings an individual or class action” *Polaris Industries, Inc. v. McDonald*, 119 S.W. 3d 331, 338,339.

The Record before this Court documents that Appellee/Alliance has instigated a wrongful civil action without probable cause and primarily for a purpose other than that of proper adjudication of the underlying claim. To protect abuse of the legal system Appellants respectfully request that this Court dismiss the Plaintiffs/Appellees original Petition with prejudice against Alliance Riggers & Constructors, Ltd.

To prevail on a claim for breach of contract, the Appellee must establish the following elements: (1) the existence of a valid contract; (2) performance or tendered performance by the plaintiff/Appellee; (3) breach of the contract by the defendant/Appellants; and (4) damages sustained by the plaintiff/Appellee as a result of the breach. *Wright v. Christian & Smith*, 950 S.W.2d 411, 412 (Tex. App.-Houston [1st Dist.] 1997, no writ). To recover compensatory damages, the plaintiff must prove that he suffered some pecuniary loss as a result of the breach. *Abraxas Petroleum Corp. v. Hornburg*, 20 S.W.3d 741, 758 (Tex. App.-El Paso 2000, no pet.); *Multi-Moto Corp. v. ITT Comm. Fin. Corp.*, 806 S.W.2d 560,

569 (Tex. App.-Dallas 1990, writ denied). Such losses must be the natural, probable, and foreseeable consequence of the defendant's conduct. *Mead v. Johnson Group, Inc.*, 615 S.W.2d 685, 687 (Tex. 1981) (citing *Hadley v. Baxendale*, 9 Exch. 341, 354 (1854)); see, e.g., *Stuart v. Bayless*, 964 S.W.2d 920, 921 (Tex. 1998).

Appellee has failed to raise a fact issue that it suffered any damages as a foreseeable result of the Appellants alleged breach. See *Swanson*, 2003 WL 22945646. Further, a party may not recover damages for breach of contract if those damages are remote, contingent, speculative, or conjectural. *City of Dallas v. Vills. of Forest Hills, L.P., Phase I*, 931 S.W.2d 601, 605 (Tex. App.-Dallas 1996, no writ); see also *Westech Eng'g, Inc. v. Clearwater Constructors, Inc.*, 835 S.W.2d 190, 205 (Tex. App.-Austin 1992, no writ) (holding that plaintiff's consequential damages were too speculative because no evidence connected damages to defendant's breach of contract); *A.B.F. Freight Sys., Inc. v. Austrian Import Serv., Inc.*, 798 S.W.2d 606, 615 (Tex. App.-Dallas 1990, writ denied) (holding that no recovery exists for speculative damages).

In this case the Appellees claim for “damages in excess of the jurisdictional limits of the court” are not only speculative but a sham. At the same time that the Appellees have abused the judicial system, making wild and frivolous allegations and claims in “excess of the jurisdictional limits of the courts” they have accepted and benefitted from the Appellants work and utilization of the words “riggers &

constructors” and “alliance”. The Court record before this Court documents that the Appellees: (1) are benefitting from the Appellants written article and submission of said written article to the SEAA Connector Magazine (CR Vol. V Pgs. 1792 - 1796) through the full color cover page and 4 page full color article in the SEAA Connector based on Appellants work; (2) the price of said publications if the Appellees had paid for it (which they did not) would have been approximately \$9,000 (CR Vol. V. pg. 1824); (3) Appellees signed contract/ authorization approves all contents of the webpage as well as utilization of the words “riggers & constructors and alliance” (CR. Vol. V pgs. 1801-1813); (4) Appellees acceptance of and benefitting from Appellants work in North Carolina and New Orleans “two years” in a row while maintaining this frivolous litigation (CR Vol. V Pgs. 1722-1723); (5) the “Contract” specified the uploading up a web platform in the name Alliance Riggers & Constructors; (6) Alliance Riggers & Constructors have accepted and are being recognized for Appellants work (CR Vol. IV pg. 1241).

The final element in a breach of contract cause of action includes a causation requirement. *See Prudential Sec., Inc. v. Haugland*, 973 S.W.2d 394, 397 (Tex.App.--El Paso 1998, pet. denied). The plaintiff must show that it suffered a monetary injury, as the result of the defendant’s breach. *See Haugland*, 973 S.W.3d at 396-97. Accordingly, to have standing before the Court Appellee was required to demonstrate that their case is justiciable and it is Appellees burden to

establish that they were damaged, and that the alleged damage was caused by the Restrepo's/Appellants breach. Appellee has failed to address these issues in their Petition and therefore failed to carry its burden to establish liability. Because Appellee have failed to demonstrate standing before the Court this case should be dismissed.

VI. THE PLAINTIFF/APPELLEE'S JUDICIAL ADMISSIONS

At some point in this litigation common sense, equity and statutory laws need to be implemented to protect the public interest in conserving judicial resources. It is an "utter waste of private and judicial resources" when the fact is and the record documents that Appellees "admit" that they gave the Appellants permission to utilize their purported "trademark" (CR Vol. I. Page 276)(Appx. Exh. 5 Appellees Admissions). In an El Paso Bar Journal June 2013 article, www.elpasobar.com "Avoiding a Permanent 'Waive': Preservation of Error Part V", Chief Justice Ann McClure 8th Court of Appeals stated in relevant part: "An admission, once admitted, is a judicial admission such that a party may not introduce testimony to contradict it". (Appx. Exh. 6).

The fact that Appellees "admit" that they gave the Appellants permission to utilize their purported "trademark" (CR Vol. I. page 276)(Appx. Exh. 5 - Appellees Admissions) documents the fact that their Petition is premised on fraud and therefore because Appellees lack standing, the lower Court lacks jurisdiction and is clearly abusing its discretion by acting without authority.

There is no live controversy in that the Appellees have “admitted” they gave the Appellants authorization to utilize their alleged “trademark” and the Appellants had both written and verbal authorization to use Plaintiffs/Appellees alleged “trademark” name in accordance with a valid contract for the stated purpose (CR Vol. V. pg. 1834)(Appx. Exh. 1)(Appx. Exh. 4)(Appx. Exh. 5).

If a party has made admissions, or had admissions deemed admitted, the party cannot contradict those admissions, even with affidavits or live testimony. See, e.g., *Smith v. Home Indem. Co.*, 683 S.W.2d 559, 562 (Tex. App.—Fort Worth 1985, no writ). It is a complete waste of valuable judicial resources and manifestly unjust to permit Plaintiff/Appellee to continue their frivolous litigation after they have sworn themselves out of court by a clear and unequivocal judicial admissions. Therefore, Appellees admissions mandate dismissal of this lawsuit. Subject-matter jurisdiction is essential to the authority of a court to decide a case and is never presumed. *Tex. Ass’n of Bus.*, 852 S.W.2d at 443–44. In the instant case the Plaintiffs/Appellees have failed their burden to allege facts affirmatively demonstrating the trial Court has subject-matter jurisdiction and thus any additional claims they may make are moot. The existence of subject-matter jurisdiction is a question of law. *State Dep’t of Hwys. & Pub. Transp. v. Gonzalez*, 82 S.W.3d 322, 327 (Tex. 2002).

The record before this Court documents that Plaintiffs/Appellees viewed the Internet Platform uploaded to GoDaddy and gave written approval of its

content and functionality on GoDaddy by inserting their approval signatures on the copies they made themselves of the web page submitted to Appellants (CR Vol. 1. page 112)(CR Vol. III Pgs. 776-787)(Appx. Exh. 4). The descriptive words “riggers & constructors” are common words found in the English dictionary utilized to describe the type of work which the Plaintiffs/Appellees are engaged.

As a matter of law Plaintiffs/Appellees Admissions document that they lack standing, therefore the trial court lacks jurisdiction. Plaintiffs/Appellees verbally and in writing accepted the terms of the contract including the forum selection clause (CR Vol. II Pgs. 556-557). The only method available to upload an Internet Platform is through a domain name with an Internet domain name supplier and host such as GoDaddy. At no time did the Plaintiffs/Appellees object to the terms and conditions of the contract or any of the work performed by the Appellants. TEX. BUS. & COM. CODE ANN. § 2.201(b) requires a party to object to written contents of a contract within ten days after it is received.

VII. THE LOWER COURT LACKS SUBJECT MATTER JURISDICTION OVER FEDERAL COPYRIGHT LAWS

County Court at Law No. 5, El Paso County Texas has never obtained subject matter jurisdiction in this case and is acting without authority. The Appellees have pled themselves out of court by claiming damages in excess of the jurisdictional limits of the court, refusing to state a cause of action, pleading Federal Statutory Rights, and alleging a cause of action that does not exist.

As documented by the record (Appx. Exh. 4) the Appellees authorized the contents of the webpage and **as original producers of the** videos and the interstate commerce Internet Platform, the Restrepo's/Appellants claimed Intellectual property and copyright to their work and trade secrets in both the web platform and the videos (Appx. Exh. 7). The federal courts have been granted exclusive jurisdiction over cases arising under the Copyright Act. 28 U.S.C. § 1338(a) (Appx. Exh. 8). The Appellees bogus state-law claims, however understood, will necessarily depend on the resolution of substantial disputed question(s) of federal law and the deprivation of Appellants rights under Federal Copyright (Appx. Exh. 8) laws, over which the lower Court lacks jurisdiction and accordingly, this case should be dismissed.

Appellee's/Plaintiff's Original Petition attempts to subterfuge Federal Jurisdiction and Federal law by initiating a claim in County Court for alleged violations of a non existent trademark premised on the registration of an interstate commerce domain name and interstate commerce⁷ usage of an internet platform "copyrighted" by the Appellants Linda Restrepo and Carlos E. Restrepo. Plaintiffs/Appellees are not the first litigant to travel this road and Texas Courts uniformly reject such artful pleading strategy.

⁷ **§1337. Commerce and antitrust regulations; amount in controversy, costs**
(a) The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies

The Appellees' original pleadings seek relief under Federal Law. Appellees are attempting to have the lower Court: (1) abuse its discretion on issues the lower Court has no subject matter jurisdiction; (2) to violate interstate commerce laws (28 USC §1337); (3) to grant Appellees an unlawful monopoly on generic words ("riggers & constructors"); (4) to abrogate two legally Federally registered Trademarks; and (5) to subterfuge Federal Laws and Federal Question jurisdiction (28 USC §1331, 28 USC §1367). Conflict arises when it is constitutionally impermissible for the lower Court to impose obstacles to the achievement of Congress's discernible objectives. *Gade v. National Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992).

If a federal statute completely preempts an area of state law, any claim purportedly based on that pre-empted state law is considered, from its inception, a federal claim, and therefore arises under federal law. *Caterpillar*, 482 U.S. at 393 (citation omitted). The Fifth Circuit has held that Section 301(a) of the Copyright Act completely preempts the substantive field. Therefore, based on Federal copyright law and case precedent a federal forum for federal claims is certainly the Appellants' constitutional right which has clearly been usurped by County Court at Law No. 5. The federal courts have been granted exclusive jurisdiction over cases arising under the Copyright Act. 28 U.S.C. § 1338(a).

VIII. COMPLETE FEDERAL PREEMPTION APPLIES

Under Article VI, Clause 2 of the United States Constitution (the Supremacy Clause) any state law that conflicts with a federal law is preempted. *Gibbons v. Ogden*, 22 U.S. 1 (1824).

Federal copyright law may preempt certain state law claims. See *GlobeRanger Corp. v. Software AG*, 691 F.3d 702, 706 (5th Cir. 2012); *Alcatel USA, Inc. v. DGI Techs.Inc.*, 166 F.3d 772, 785 (5th Cir. 1999) (maintaining that state law causes of action that fall within the scope of the Federal Copyright Act are subject to preemption) *Daboub v. Gibbons*, 42 F.3d 285, 288-89 (5th Cir. 1995); 17 U.S.C. § 301. The Texas Supreme Court has issued mandamus relief to correct an incorrect ruling on a plea to the jurisdiction when the trial court's ruling interferes with the jurisdiction of a state agency or with the jurisdiction of another court. *In re Entergy Corp.*, 142 S.W.3d 316, 321-22 (Tex. 2004). In this case the lower Court lacks subject matter jurisdiction over Federal Copyright Laws, the issues before this case fall within the scope of the Federal Copyright Act and are subject to preemption.

IX. THE LOWER COURT IS REQUIRED TO ENFORCE A VALID JUDGEMENT PRESENTED FROM ANOTHER STATE

Relations Among States Under the Constitution of United States.

Under constitutional principles of federalism and comity, full faith and credit must be given in each state to the public acts, records, and judicial proceedings of every other state. U.S.C.A. Const. Art. 4, § 1; 28 U.S.C.A. § 1738. Texas is

required to enforce a valid judgment presented from another state. U.S.C.A. Const. Art. 4, § 1; 28 U.S.C.A. § 1738.

1. On **May 22, 2012** prior to the filing of the lawsuit in County Court at Law Number Five, Appellees invoked the exclusive jurisdiction of the federal court by filing an application for a trademark to the name “alliance riggers & constructors” with the United States Patent and Trademark Office (USPTO). (CR Vol. II, Pgs. 264- 266) giving Attorney R. Wayne Pritchard Power of Attorney and thus making attorney Pritchard a critical/viable witness to this litigation (Appx. Exh. 9).
2. On **September 14, 2012** the USPTO denied the trademark application and informed the (Plaintiffs) Appellees and Attorney R. Wayne Pritchard that Alliance Steel an Oklahoma based diverse citizenship corporation was the legal owner of the trademark name “Alliance” under registration number 3600905 (CR Vol. I. page 235) as well as Alliance (and Design) under a second Trademark Registration Number 3604909 both granted by the Federal USPTO. The USPTO required that the (Plaintiffs) Appellees and Attorney R. Wayne Pritchard had to “disclaim the use of the name “riggers & constructors” in that said words are merely “**descriptive**” (CR Vol. 1. page 63) neither Attorney R. Wayne Pritchard nor the Plaintiffs/Appellees appealed such decision. Due to the fact

that the (Plaintiffs) Appellees have failed to exhaust administrative remedies⁸ the lower court lacks the subject matter jurisdiction to entertain their claims.

3. On **April 15, 2013** the USPTO ruled that Attorney R. Wayne Pritchard's and (Plaintiffs) Appellees trademark application had been abandoned (CR Vol. II. Pgs. 648 - 650)(CR Vol. V. pg. 1780). Neither Attorney R. Wayne Pritchard nor the (Plaintiffs) Appellees appealed this decision (Appx. Exh. 10). Due to the fact that the (Plaintiffs) Appellees have failed to exhaust administrative remedies the lower court lacks the subject matter jurisdiction to entertain their claims.

4. Further, the Texas Secretary of State has verified that the Plaintiff/Appellee has never applied for a trademark in the state of Texas.

When state law and federal law conflict, federal law displaces, or preempts, state law, due to the Supremacy Clause of the U.S. Constitution. In this case adjudication of the Plaintiffs/Appellees claims revolve on Federal Questions, Federal issues, and Federal Copyright Laws which County Court at Law No. 5, El Paso, County Texas lacks the jurisdiction to rule on. Const. Art. VI., § 2. ***Preemption applies regardless of whether the conflicting laws come from legislatures, courts, administrative agencies, or constitutions.*** County Court at Law No. 5, El Paso County Texas lacks jurisdiction and therefore is acting without reference to any guiding rules or principles of law. *McGough v.*

⁸ City of Strawn v. Bd. of Water Eng'rs of Tex., 134 S.W.2d 397, 398–99 (Tex. Civ. App. —Austin 1939, writ ref'd).

First Court of Appeals, 842 S.W.2d 637, 640 (Tex. 1992) (per curiam) and contrary to Federal Law, the U.S. Constitution.

The lower Court lacks jurisdiction in that the Plaintiffs/Appellees have gone forum shopping in an attempt to proceed in the County Court contrary to the USPTO's determinations which is an abuse of the legal system.

X. THE PLAINTIFF/APPELLEE LACKS STANDING

"It is axiomatic that standing is the first prerequisite to maintaining a suit. *Hunt v. Bass*, 664 S.W.2d 323, 324... In order to establish individual standing, a person must show that: (1) he has suffered an actual or threatened injury as a result of the actions of the defendant; (2) the injury is "fairly traceable" to the defendant's actions; and (3) the injury will likely be redressed if he prevails in his lawsuit. In the instant case, Plaintiff's/Appellees Petition fails to state a cause of action upon which relief may be granted and Appellants can respond. The Plaintiffs'/Appellees claims are mere conclusions unsupported by factual allegations, which their own "admissions" and actions nullify (Appx. Exh. 5) thus this case should be dismissed.

TRCP 91a – "[N]o reasonable person could believe the facts pleaded." To protect abuse of the legal system, Plaintiff's/Appellees Petition should be dismissed by the Court pursuant to Rule 12(b)(6)⁹ and Tex. R. 91(a). *In Allied Chemical Corporation, et. al.*, S.W.3rd, No 04-1023 (Tex. June 15, 2007) the

⁹ The Plaintiff must plead specific facts, not conclusory allegations, to avoid dismissal. *E.G. Guidry v. Bank of La place*, 954 F.2d 278, 281 (5th Cir. 1992)

Texas Supreme Court Citing *Gaulding v. Celotox Corporation*, 772 S.W.2d 66,68 (Tex. 1989) has held that, "it has long been the rule in Texas that Plaintiffs bear the burden of pleading and proving how they were injured and by whom. They cannot simple file suit against everyone in the vicinity and demand that the Defendants prove otherwise".

A plea to the jurisdiction is proper to challenge frivolous allegations to fabricate or confer jurisdiction. Texas follows a "fair notice" standard for pleading, in which the question is whether the opposing party can ascertain from the pleading the nature and basic issues of the controversy. *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 896 (Tex.2000). "The purpose of this rule is to give the opposing party information sufficient to enable him to prepare a defense." *Roark v. Allen*, 633 S.W. 2d 804, 810 (Tex.1982). To this date the Restrepo's/Appellants have no idea why Alliance has sued them since everything that transpired between them was in compliance with a contractual relationship, Alliance accepted and benefitted from the work and at no time did Alliance disagree with any of Appellants work performance but in fact praised their work (CR. Vol. IV pg. 1236) (Appx. Exh. 11)

The fact that Appellees "admit" that they gave the Appellants permission to utilize their alleged "trademark name" (CR Vol. I. page 276) (Appx. Exh. 5) documents the fact that their Petition is premised on fraud and therefore because Plaintiffs lack standing, the lower Court lacks jurisdiction. The Record before

this Court documents that the Appellees have instigated and maintained for the last 16 months, a frivolous wrongful civil action without probable cause and primarily for a purpose other than that of proper adjudication of the underlying claim. To protect abuse of the legal system Appellants respectfully request that this Court dismiss the Appellees/Plaintiff's Petition with prejudice against the Plaintiff.

XI. APPELLANTS/DEFENDANTS CLAIM FOURTEENTH AMENDMENT PROTECTIONS

Appellants plead protection under the Fourteenth Amendment, a state is forbidden to enter judgment attempting to bind person over whom it has no jurisdiction, and it has even less right to enter judgment purporting to extinguish interest of such person in property over which court has no jurisdiction; and any state court judgment purporting to bind person of defendant over whom court has not acquired 'in personam' jurisdiction or purporting to exercise jurisdiction over property outside state is void both within and without state. U.S.C.A.Const. Amend. 14. Because the lower Court lacks the power to effect a remedy that would resolve the dispute at issue, the case does not present a justiciable issue. *Di Portanova v. Monroe*, 229 S.W.3d 324, 330 (Tex. App.-- Houston [1 Dist.] 2006, pet. denied).

XII. PLAINTIFFS/APPELLEES PLEADINGS NEGATE THE LOWER COURT JURISDICTION

County Court at Law No. 5 lacks jurisdiction because as stated by Plaintiffs/Appellees Original Petition, the amount in controversy exceeds the Court's jurisdictional limits (CR Vol. 1. page 16, Par. 8 and page 17, Par. 9) (Appx. Exh. 12). The lower Court has clearly abused its discretion by continuing in this case when the Plaintiff's/Appellees Pleadings gave it no jurisdictional authority to do so. Citing The Court of Appeals of Texas, Eighth District, El Paso, No. 08-11-00262-CV, "A plaintiff has the burden of pleading facts which affirmatively show that the trial court has jurisdiction". *Texas. Ass'n of Bus. v Tex. Air Control Bd.*, 852 S.W.2d 440,446 (Tex. 1993) and The Court of Appeals for the First District of Texas No *NO. 01-11-00029-CV* "Because we hold that the amount in controversy in the partition action exceeded the civil court at law's jurisdiction, we reverse and dismiss for lack of jurisdiction". "When a plea to the jurisdiction challenges the pleadings, we determine if the pleader has alleged facts that affirmatively demonstrate the court's jurisdiction to hear the cause." *Miranda*, 133 S.W.3d at 226; *see also Lopez*, 259 S.W.3d at 150; *Taylor*, 106 S.W.3d at 696; *Miller*, 51 S.W.3d at 587 (quoting *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993)). ***If the pleadings affirmatively negate the existence of jurisdiction, then a plea to the jurisdiction may be granted without allowing the plaintiffs an opportunity to amend.*** *Miranda*, 133 S.W.3d at 227. The record before this Court is explicit, the Plaintiffs

Pleadings have negated the existence of the lower Court’s jurisdiction.

“Because we have held that *Lueck*’s pleadings affirmatively negate the trial court’s jurisdiction **as a matter of law**, we need not consider whether the trial court should have considered the TxDOT’s evidence at a hearing on its plea to the jurisdiction”. See *Miranda*, 133 S.W.3d at 227. The Appellees pleadings are undisputed and fail to raise a fact question on the jurisdictional issue, therefore the appellate court can rule on the plea to the jurisdiction as a matter of law.¹⁰

It is a clear abuse of discretion for the lower Court to grant relief to the Plaintiffs/Appellees which they themselves have negated and which they are not entitled either in law or in equity. *Bird v. Kornman*, 152 S.W.3d 154,161, (Tex.App.-Dallas 2004, pet. denied) (“a trial court may not grant relief to a party in the absence of pleadings to support that relief”, citing *Cunningham v. Parkdale Bank*, 660 S.W.2d 810, 813 (Tex.1983)); *Stoner v. Thompson*, 578 S.W.2d 679, 682 (Tex.1979); Tex. R. Civ. P. 301 (judgment must conform to pleadings).

XIII. LACK OF PROPER SERVICE AND JURISDICTION

The record documents that service upon Appellant Linda Restrepo was defective in that the “certified mail”, “restricted delivery” return receipt does not contain the addressee’s signature (CR. Return Service) (Appx. Exh. 13). Because the service is defective, the attempted service is invalid and of no effect. *Wilson v. Dunn*, 800 S.W.2d 833, 836 (Tex.1990), quoting *Uvalde Country Club v.*

¹⁰ Tex. Dep’t of Parks & Wildlife v. *Miranda*, 133 S.W.3d 217, 227 (Tex. 2004).

Martin Linen Supply Co., 690 S.W.2d 884, 885 (Tex.1985); *Webb v. Oberkampff Supply of Lubbock, Inc.*, 831 S.W.2d at 64. The Court has proceeded in this case without jurisdiction and contrary to Tex. R. Civ. P. Rule 124. No Judgment Without Service which states in relevant part: “In no case shall judgment be rendered against any defendant unless upon service, or acceptance or waiver of process, or upon an appearance by the defendant. . . “. In addition to special appearance motions filed by the Appellants in accordance with Tex. R. Civ. P. 120a(1)¹¹ to challenge the Court’s jurisdiction the Appellants filed Motions to Quash (CR Vol.I Pgs. 83-89). The special appearance Motions by Appellants were part of the discovery process and did not waive their special appearance. Under Tex. R. Civ. P. 120a(1) “Any motion to challenge the jurisdiction provided for herein shall be heard and determined before a motion to transfer venue or any other plea or pleading may be heard. No determination of any issue of fact in connection with the objection to jurisdiction is a determination of the merits of the case or any aspect thereof”.

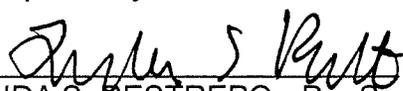
“A return of citation served by registered or certified mail must contain the return receipt, and the latter must contain the addressee's signature”. Tex.R. Civ. P. 107; *Keeton v. Carrasco*, 53 S.W.3d 13, 19 (Tex.App.-San Antonio 2001, pet. denied). If the return receipt is signed by someone else, then service of process is defective. *Keeton v. Carrasco*, 53 S.W.3d at 19; see *All Comm. Floors, Inc. v.*

¹¹ The statute does not limit discovery to only those issues that are related to the special appearance. See Tex. R. Civ. P. 120a(1).

Barton & Rasor, 97 S.W.3d 723, 726-27 (Tex. App.-Fort Worth 2003, no pet.) (holding that service was defective because the return receipt was signed by neither the addressee or registered agent for the entity). As of the day this Motion is being filed, the Plaintiff has refused to perfect service and has failed to exercise due diligence in perfecting service after the suit was filed and are therefore barred from recovering and the lower court lacks jurisdiction. *In Ramirez v. Consolidated HGM Corp.*, 124 S.W.3d 914 (Tex.App.—Amarillo 2004, no pet.). The Appellant Linda Restrepo has not and will not waive her Constitutional right to proper service.

WHEREFORE PREMISES CONSIDERED the Appellants request that the Plaintiffs/Appellees Petition be dismissed for lack of jurisdiction with prejudice against the Plaintiffs/Appellees. Appellants ask that treble and punitive damages be assessed against the Plaintiffs/Appellee for bringing a frivolous lawsuit, that Linda Restrepo and Carlos Restrepo be awarded comparable lawyer fees spent by Appellants and all legal costs to be paid by Plaintiff/Appellees; that the Court render judgment in Appellants favor dismissing with prejudice all Alliance Riggers & Constructors claims; render judgment in favor of Appellants in the amount of \$120,000.00 plus interest and for such other and further relief, in law and in equity to which Appellants Linda S. Restrepo and Carlos E. Restrepo may show themselves justly entitled.

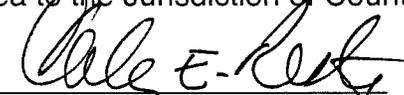
Respectfully submitted,


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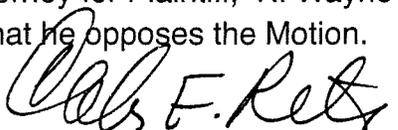
CERTIFICATE OF COMPLIANCE

As required by Texas Rule of Appellate Procedure Rule 9.4, and the local rules of the 8th Court of Appeals I certify that this computer generated Appellants First Amendment Emergency Verified Plea to the Jurisdiction of County Court a Law Number Five contains 8,323 words.


Carlos E. Restrepo – Pro Se

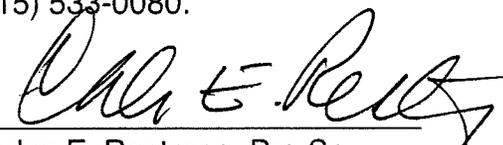
CERTIFICATE OF CONFERENCE

As required by Texas Rule of Appellate Procedure 10.1(a)(5), I certify that I have conferred, or made a reasonable attempt to confer, with all other parties—which are listed below—about the merits of this Appellants First Amendment Emergency Verified Plea to the Jurisdiction of County Court a Law Number Five with the following results: I spoke via telephone call with attorney for Plaintiff, R. Wayne Pritchard, P.C, on October ~~31st~~ 2013 who manifested that he opposes the Motion.


Carlos E. Restrepo – Pro Se

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October 2013 a true and correct copy of the foregoing document was delivered by U.S. Postal Service mail delivery to the following: Wayne R. Pritchard, P.C., 300 East Main, Suite 1240, El Paso, Texas 79901, (915) 533-0080.


Carlos E. Restrepo, Pro Se

NO. 08-13-00183-CV
COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

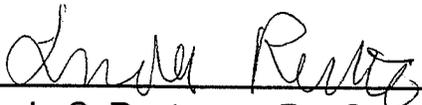
STATE OF TEXAS §
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EL PASO COUNTY §

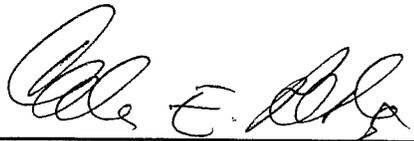
VERIFIED PLEA TO JURISDICTION

BEFORE ME, THE UNDERSIGNED AUTHORITY, on this day personally appeared, Linda S. Restrepo and Carlos E. Restrepo, who after being duly sworn upon oath, stated to me that they are the Appellants in the above-entitled and numbered cause, and that the facts presented in the Verified Plea to Jurisdiction are based upon personal knowledge, information and belief and are true and correct to the best of their ability and knowledge.

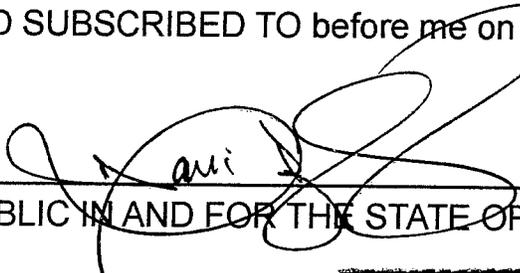
FURTHER AFFIANT SAYETH NOT.

Signed this ____ Day of October, 2013.


Linda S. Restrepo - Pro Se


Carlos E. Restrepo - Pro Se

SWORN AND SUBSCRIBED TO before me on this 20 Day of October, 2013.


NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

My commission expires: _____

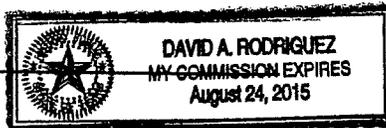


EXHIBIT 1

RESEARCH, DEVELOPMENT AND/OR TECHNICAL ASSISTANCE AGREEMENT

1. AGREEMENT made this 11th day of March 2011 by and between DR. LINDA S. RESTREPO (hereinafter called CONSULTANT), having principal offices at P.O. Box 12066, El Paso, Texas 79912, and MR. PHILLIP H. CORDOVA, President, as Representative of ALLIANCE RIGGERS & CONSTRUCTORS (hereinafter called CLIENTS), with domicile at 1200 Kastria, El Paso, Texas 79907.

2. STATEMENT OF WORK: The herein named CONSULTANT agrees to provide the following itemized services to CLIENT:

- (a) To produce a Five minute High Definition Corporate Marketing Video for CLIENT to include professional English narration, graphics, music score, and signage.
- (b) To produce an E-Commerce Internet Platform to include mounting the High Definition Corporate Marketing Video to the Internet Platform.

3. TERMS AND CONDITIONS:

- (a) Video Sites located in El Paso, Texas to be filmed included Veterans Administration Parking Structure (in progress); Fort Bliss East completed Dining Facilities and Brigade Buildings; UTEP completed buildings; El Paso Texas Tech University Medical Center completed buildings; Alliance Riggers Cranes site display. Other large Work in Progress sites within a 90 days of the contract performance dates to be negotiated on per site basis.
- (b) Sites located outside of El Paso, Texas are not included and will be billed separately.
- (c) For any elevated film takes Alliance will supply suitable safe and proper lift with operator.
- (d) Client will be provided 100 HD DVD copies of the Corporate Marketing Video.

4. SCHEDULE OF SERVICES: The herein named CONSULTANT and the CLIENT hereby mutually agree that services to be rendered will begin upon the date of Agreement on the 11th of March 2011 pursuant to receipt of payment as stipulated below, and terminate within 90 days upon completion of the work effort. The CLIENT and CONSULTANT upon mutual accord reserve the right to extend the terms and conditions of this AGREEMENT.

5. COMPENSATION:

- (a) As consideration for the Consulting Assistance herein named CLIENT agree to reimburse CONSULTANT the total amount of \$18,500.00 for the Corporate Video production payable as follows: \$9,000.00 at signature of the Contract paid and received on the 11th of March 2011; \$8,500.00 on the 11th day of April 2011, and a final payment of \$1,000.00 due and payable upon completion of the video.
- (b) CLIENT agrees to reimburse CONSULTANT the total amount of \$4,500.00 for the production of the E-Commerce Internet Platform only if purchased in conjunction with the Corporate Video payable as follows: \$3,500.00 at signature of the Contract; a final payment of \$1,000.00 due and payable upon completion of the E-Commerce Internet Platform.
- (c) All payments are to be made to the order of CONSULTANT Dr. Linda S. Restrepo.
- (d) The CLIENT and CONSULTANT upon mutual accord reserve the right to extend the terms and conditions of this AGREEMENT and negotiate compensation as needed.

6. ACCEPTANCE - The CONSULTANT and the CLIENT agree to the services and terms as set forth in this AGREEMENT for the consideration stated herein.

Accepted this 11th Day of March 2011.

ALLIANCE RIGGERS & CONSTRUCTORS


PHILLIP H. CORDOVA

CONSULTANT:


DR. LINDA S. RESTREPO

CO1834

EXHIBIT 2

[Create an account](#) or [Log In](#)

24/7 Support: (480) 505-8877
Hablamos Español

- Products
- Domain Names
- Websites
- Hosting
- Web Tools
- Support

[My Account](#) [Cart](#) 0

Search for a new domain

.com

Domain Names

Own your corner of the Web.
Create your online presence with a personal or business domain name.

[SEARCH NOW](#)

Go Daddy Email

Customize your communication.
Personalized email includes mobile access and a FREE calendar.

[BUY NOW](#)

Web Hosting

Put your site in expert hands.
Plans include unlimited storage and bandwidth with FREE setup.

[BUY NOW](#)

Website Builder

Build your website with ease.
Point-and-click your way to a winning site - no experience required!

[BUY NOW](#)

Plus ICANN fee of \$0.18 per domain name per year. \$0.99 price good for the first year of one new or transfer .COM per customer. Additional years or .COMs may be purchased for \$9.99 per year. Discounts cannot be used in conjunction with any other offer or promotion. Customers may not use gift cards, In-Store Credit, Skrill, PayPal@ or AliPay to redeem this offer. After the first year, discounted products will renew at the then-current renewal list price. Your discount will be applied in your shopping cart. Offer valid for customers in the US and Canada only. Go Daddy reserves the right to deny use of this offer and/or cancel domains purchased using this offer if the offer is abused or used fraudulently, as determined by Go Daddy in its sole discretion.

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- [News Releases](#)
- [Careers](#)
- [Inside GoDaddy](#)
- [Legal](#)
- [Bob's Video Blog](#)
- [Blake's Blog](#)

Support

- [Phone Support & Sales](#)
- [Product Support](#)
- [Discussion Forums](#)
- [Submit Support Ticket](#)
- [Site Suggestions](#)
- [Report Abuse](#)

Resources

- [Webmail](#)
- [WHOIS Search](#)
- [ICANN Confirmation](#)
- [Affiliates](#)
- [Small Business Center](#)
- [Site Map](#)

Global Sites

- [GoDaddy \(English\)](#)
- [GoDaddy \(Español\)](#)
- [GoDaddy Australia](#)
- [GoDaddy Canada](#)
- [GoDaddy India](#)
- [GoDaddy U.K.](#)

Mobile

- [iPhone Application](#)
- [iPad Application](#)
- [Android Application](#)
- [Visit GoDaddy Mobile](#)

Shopping

- [Product Catalog](#)
- [Deals of the Day](#)

Account

- [My Account](#)
- [My Renewals](#)
- [Create Account](#)

Social Pages

Sign up for special offers:

[Submit](#)

Currency:

Use of this Site is subject to express terms of use. By using this site, you signify that you agree to be bound by these Universal Terms of Service.

[Legal](#) [Privacy Policy](#)

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CLOSE WINDOW

EXHIBIT 3

GO DADDY UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY

Last Revised: February 16, 2012

(As Approved by ICANN on October 24, 1999)

1. PURPOSE

This Uniform Domain Name Dispute Resolution Policy (the "Policy") has been adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN"), is incorporated by reference into your Registration Agreement, and sets forth the terms and conditions in connection with a dispute between you and any party other than us (the registrar) over the registration and use of an Internet domain name registered by you. Proceedings under Paragraph 4 of this Policy will be conducted according to the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules of Procedure"), which are available at [dispute policy](#), and the selected administrative-dispute-resolution service provider's supplemental rules.

2. YOUR REPRESENTATIONS

By applying to register a domain name, or by asking us to maintain or renew a domain name registration, you hereby represent and warrant to us that (a) the statements that you made in your Registration Agreement are complete and accurate; (b) to your knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party; (c) you are not registering the domain name for an unlawful purpose; and (d) you will not knowingly use the domain name in violation of any applicable laws or regulations. It is your responsibility to determine whether your domain name registration infringes or violates someone else's rights.

3. CANCELLATIONS, TRANSFERS, AND CHANGES

We will cancel, transfer or otherwise make changes to domain name registrations under the following circumstances:

- i. subject to the provisions of Paragraph 8, our receipt of written or appropriate electronic instructions from you or your authorized agent to take such action;
- ii. our receipt of an order from a court or arbitral tribunal, in each case of competent jurisdiction, requiring such action; and/or
- iii. our receipt of a decision of an Administrative Panel requiring such action in any administrative proceeding to which you were a party and which was conducted under this Policy or a later version of this Policy adopted by ICANN. (See Paragraph 4(i) and (k) below.)

We may also cancel, transfer or otherwise make changes to a domain name registration in accordance with the terms of your Registration Agreement or other legal requirements.

4. MANDATORY ADMINISTRATIVE PROCEEDING

This Paragraph sets forth the type of disputes for which you are required to submit to a mandatory administrative proceeding. These proceedings will be conducted before one of the administrative-

dispute-resolution service providers listed here (each, a "Provider").

i. A. Applicable Disputes. You are required to submit to a mandatory administrative proceeding in the event that a third party (a "complainant") asserts to the applicable Provider, in compliance with the Rules of Procedure, that

- your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- you have no rights or legitimate interests in respect of the domain name; and
- your domain name has been registered and is being used in bad faith.

In the administrative proceeding, the complainant must prove that each of these three elements are present.

B. Evidence of Registration and Use in Bad Faith. For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

C. How to Demonstrate Your Rights to and Legitimate Interests in the Domain Name in Responding to a Complaint. When you receive a complaint, you should refer to Paragraph 5 of the Rules of Procedure in determining how your response should be prepared. Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

- before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

- you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
 - you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.
- D. Selection of Provider. The complainant shall select the Provider from among those approved by ICANN by submitting the complaint to that Provider. The selected Provider will administer the proceeding, except in cases of consolidation as described in Paragraph 4(f).
- E. Initiation of Proceeding and Process and Appointment of Administrative Panel. The Rules of Procedure state the process for initiating and conducting a proceeding and for appointing the panel that will decide the dispute (the "Administrative Panel").
- F. Consolidation. In the event of multiple disputes between you and a complainant, either you or the complainant may petition to consolidate the disputes before a single Administrative Panel. This petition shall be made to the first Administrative Panel appointed to hear a pending dispute between the parties. This Administrative Panel may consolidate before it any or all such disputes in its sole discretion, provided that the disputes being consolidated are governed by this Policy or a later version of this Policy adopted by ICANN.
- G. Fees. All fees charged by a Provider in connection with any dispute before an Administrative Panel pursuant to this Policy shall be paid by the complainant, except in cases where you elect to expand the Administrative Panel from one to three panelists as provided in Paragraph 5(b)(iv) of the Rules of Procedure, in which case all fees will be split evenly by you and the complainant.
- H. Our Involvement in Administrative Proceedings. We do not, and will not, participate in the administration or conduct of any proceeding before an Administrative Panel. In addition, we will not be liable as a result of any decisions rendered by the Administrative Panel.
- I. Remedies. The remedies available to a complainant pursuant to any proceeding before an Administrative Panel shall be limited to requiring the cancellation of your domain name or the transfer of your domain name registration to the complainant.
- J. Notification and Publication. The Provider shall notify us of any decision made by an Administrative Panel with respect to a domain name you have registered with us. All decisions under this Policy will be published in full over the Internet, except when an Administrative Panel determines in an exceptional case to redact portions of its decision.
- K. Availability of Court Proceedings. The mandatory administrative proceeding requirements set forth in Paragraph 4 shall not prevent either you or the complainant from submitting the dispute to a court of competent jurisdiction for independent resolution before such mandatory administrative proceeding is commenced or after such proceeding is concluded. If an Administrative Panel decides that your domain name registration should be canceled or transferred, we will wait ten (10) business days (as observed in the location of our principal office) after we are informed by the applicable Provider of the Administrative Panel's decision before implementing that decision. We will

then implement the decision unless we have received from you during that ten (10) business day period official documentation (such as a copy of a complaint, file-stamped by the clerk of the court) that you have commenced a lawsuit against the complainant in a jurisdiction to which the complainant has submitted under Paragraph 3(b)(xiii) of the Rules of Procedure. (In general, that jurisdiction is either the location of our principal office or of your address as shown in our Whois database. See Paragraphs 1 and 3(b)(xiii) of the Rules of Procedure for details.) If we receive such documentation within the ten (10) business day period, we will not implement the Administrative Panel's decision, and we will take no further action, until we receive (i) evidence satisfactory to us of a resolution between the parties; (ii) evidence satisfactory to us that your lawsuit has been dismissed or withdrawn; or (iii) a copy of an order from such court dismissing your lawsuit or ordering that you do not have the right to continue to use your domain name.

5. ALL OTHER DISPUTES AND LITIGATION

All other disputes between you and any party other than us regarding your domain name registration that are not brought pursuant to the mandatory administrative proceeding provisions of Paragraph 4 shall be resolved between you and such other party through any court, arbitration or other proceeding that may be available.

6. OUR INVOLVEMENT IN DISPUTES

We will not participate in any way in any dispute between you and any party other than us regarding the registration and use of your domain name. You shall not name us as a party or otherwise include us in any such proceeding. In the event that we are named as a party in any such proceeding, we reserve the right to raise any and all defenses deemed appropriate, and to take any other action necessary to defend ourselves.

7. MAINTAINING THE STATUS QUO

We will not cancel, transfer, activate, deactivate, or otherwise change the status of any domain name registration under this Policy except as provided in Paragraph 3 above.

8. TRANSFERS DURING A DISPUTE

Transfers of a Domain Name to a New Holder

You may not transfer your domain name registration to another holder (i) during a pending administrative proceeding brought pursuant to Paragraph 4 or for a period of fifteen (15) business days (as observed in the location of our principal place of business) after such proceeding is concluded; or (ii) during a pending court proceeding or arbitration commenced regarding your domain name unless the party to whom the domain name registration is being transferred agrees, in writing, to be bound by the decision of the court or arbitrator. We reserve the right to cancel any transfer of a domain name registration to another holder that is made in violation of this subparagraph.

Changing Registrars

You may not transfer your domain name registration to another registrar during a pending administrative proceeding brought pursuant to Paragraph 4 or for a period of fifteen (15) business days (as observed in the location of our principal place of business) after such proceeding is concluded. You may transfer administration of your domain name registration to another registrar during a pending court action or arbitration, provided that the domain name you have registered with us shall continue to be subject to the proceedings commenced against you in accordance with the terms of this Policy. In

the event that you transfer a domain name registration to us during the pendency of a court action or arbitration, such dispute shall remain subject to the domain name dispute policy of the registrar from which the domain name registration was transferred.

9. POLICY MODIFICATIONS

We reserve the right to modify this Policy at any time with the permission of ICANN. We will post our revised Policy at this location at least thirty (30) calendar days before it becomes effective. Unless this Policy has already been invoked by the submission of a complaint to a Provider, in which event the version of the Policy in effect at the time it was invoked will apply to you until the dispute is over, all such changes will be binding upon you with respect to any domain name registration dispute, whether the dispute arose before, on or after the effective date of our change. In the event that you object to a change in this Policy, your sole remedy is to cancel your domain name registration with us, provided that you will not be entitled to a refund of any fees you paid to us. The revised Policy will apply to you until you cancel your domain name registration.

Revised: 2/16/2012

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CLOSE WINDOW

GO DADDY UNIVERSAL TERMS OF SERVICE AGREEMENT

Last Revised: October 24, 2013

PLEASE READ THIS UNIVERSAL TERMS OF SERVICE AGREEMENT CAREFULLY, AS IT CONTAINS IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS AND REMEDIES.

1. OVERVIEW

This Universal Terms of Service Agreement (this "Agreement") is entered into by and between GoDaddy.com, LLC, a Delaware limited liability company ("Go Daddy") and you, and is made effective as of the date of your use of this website ("Site") or the date of electronic acceptance. This Agreement sets forth the general terms and conditions of your use of the Site and the products and services purchased or accessed through this Site (individually and collectively, the "Services"), and is in addition to (not in lieu of) any specific terms and conditions that apply to the particular Services.

Whether you are simply browsing or using this Site or purchase Services, your use of this Site and your electronic acceptance of this Agreement signifies that you have read, understand, acknowledge and agree to be bound by this Agreement, along with the following policies and agreements, which are incorporated herein by reference:

- Privacy Policy
- Subpoena Policy
- Dispute On Transfer Away Form
- Uniform Domain Name Dispute Resolution Policy
- ICANN Transfer Dispute Resolution Policy
- Trademark and/or Copyright Infringement Policy
- Brand Guidelines and Permissions
- Direct Affiliate Program Service Agreement

The terms "we", "us" or "our" shall refer to Go Daddy. The terms "you", "your", "User" or "customer" shall refer to any individual or entity who accepts this Agreement, has access to your account or uses the Services. Nothing in this Agreement shall be deemed to confer any third-party rights or benefits.

Go Daddy may, in its sole and absolute discretion, change or modify this Agreement, and any policies or agreements which are incorporated herein, at any time, and such changes or modifications shall be effective immediately upon posting to this Site. Your use of this Site or the Services after such changes or modifications have been made shall constitute your acceptance of this Agreement as last revised. If you do not agree to be bound by this Agreement as last revised, do not use (or continue to use) this Site or the Services. In addition, Go Daddy may occasionally notify you of changes or modifications to this Agreement by email. It is therefore very important that you keep your shopper account ("Account") information current. Go Daddy assumes no liability or responsibility for your failure to receive an email notification if such failure results from an inaccurate email address.

2. ELIGIBILITY; AUTHORITY

This Site and the Services are available only to Users who can form legally binding contracts under

contracts under applicable law. By using this Site or the Services found at this Site, you represent and warrant that you are (i) at least eighteen (18) years of age, (ii) otherwise recognized as being able to form legally binding contracts under applicable law, and (iii) are not a person barred from purchasing or receiving the Services found at this Site under the laws of the United States or other applicable jurisdiction.

If you are entering into this Agreement on behalf of a corporate entity, you represent and warrant that you have the legal authority to bind such corporate entity to the terms and conditions contained in this Agreement, in which case the terms "you", "your", "User" or "customer" shall refer to such corporate entity. If, after your electronic acceptance of this Agreement, Go Daddy finds that you do not have the legal authority to bind such corporate entity, you will be personally responsible for the obligations contained in this Agreement, including, but not limited to, the payment obligations. Go Daddy shall not be liable for any loss or damage resulting from Go Daddy's reliance on any instruction, notice, document or communication reasonably believed by Go Daddy to be genuine and originating from an authorized representative of your corporate entity. If there is reasonable doubt about the authenticity of any such instruction, notice, document or communication, Go Daddy reserves the right (but undertakes no duty) to require additional authentication from you. You further agree to be bound by the terms of this Agreement for transactions entered into by you, anyone acting as your agent and anyone who uses your account or the Services, whether or not authorized by you.

3. ACCOUNTS; TRANSFER OF DATA ABROAD

Accounts. In order to access some of the features of this Site or use some of the Services found at this Site, you will have to create an Account. You represent and warrant to Go Daddy that all information you submit when you create your Account is accurate, current and complete, and that you will keep your Account information accurate, current and complete. If Go Daddy has reason to believe that your Account information is untrue, inaccurate, out-of-date or incomplete, Go Daddy reserves the right, in its sole and absolute discretion, to suspend or terminate your Account. You are solely responsible for the activity that occurs on your Account, whether authorized by you or not, and you must keep your Account information secure, including without limitation your customer number/login, password, Payment Method(s) (as defined below), and shopper PIN. For security purposes, Go Daddy recommends that you change your password and shopper PIN at least once every six (6) months for each Account you have with Go Daddy. You must notify Go Daddy immediately of any breach of security or unauthorized use of your Account. Go Daddy will not be liable for any loss you incur due to any unauthorized use of your Account. You, however, may be liable for any loss Go Daddy or others incur caused by your Account, whether caused by you, or by an authorized person, or by an unauthorized person.

Transfer of Data Abroad. If you are visiting this Site from a country other than the country in which our servers are located, your communications with us may result in the transfer of information (including your Account information) across international boundaries. By visiting this Site and communicating electronically with us, you consent to such transfers.

4. AVAILABILITY OF WEBSITE/SERVICES

Subject to the terms and conditions of this Agreement and our other policies and procedures, we shall use commercially reasonable efforts to attempt to provide this Site and the Services available at this Site on a twenty-four (24) hours a day, seven (7) days a week basis throughout the term of this Agreement. You acknowledge and agree that from time to time this Site may be inaccessible or inoperable for any reason including, but not limited to, equipment malfunctions; periodic maintenance, repairs or replacements that we undertake from time to time; or causes beyond our reasonable control or that are not reasonably foreseeable including, but not limited to, interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion or other failures. You acknowledge and agree that we have no control over the availability of this Site or the

Service available at this Site on a continuous or uninterrupted basis, and that we assume no liability to you or any other party with regard thereto.

5. GENERAL RULES OF CONDUCT

You acknowledge and agree that:

- i. Your use of this Site and the Services found at this Site, including any content you submit, will comply with this Agreement and all applicable local, state, national and international laws, rules and regulations.
- ii. You will not collect or harvest (or permit anyone else to collect or harvest) any User Content (as defined below) or any non-public or personally identifiable information about another User or any other person or entity without their express prior written consent.
- iii. You will not use this Site or the Services found at this Site in a manner (as determined by Go Daddy in its sole and absolute discretion) that:
 - Is illegal, or promotes or encourages illegal activity;
 - Promotes, encourages or engages in child pornography or the exploitation of children;
 - Promotes, encourages or engages in terrorism, violence against people, animals, or property;
 - Promotes, encourages or engages in any spam or other unsolicited bulk email, or computer or network hacking or cracking;
 - Violates the Ryan Haight Online Pharmacy Consumer Protection Act of 2008 or similar legislation, or promotes, encourages or engages in the sale or distribution of prescription medication without a valid prescription;
 - Infringes on the intellectual property rights of another User or any other person or entity;
 - Violates the privacy or publicity rights of another User or any other person or entity, or breaches any duty of confidentiality that you owe to another User or any other person or entity;
 - Interferes with the operation of this Site or the Services found at this Site;
 - Contains or installs any viruses, worms, bugs, Trojan horses or other code, files or programs designed to, or capable of, disrupting, damaging or limiting the functionality of any software or hardware; or
 - Contains false or deceptive language, or unsubstantiated or comparative claims, regarding Go Daddy or Go Daddy's Services.
- iv. You will not copy or distribute in any medium any part of this Site or the Services found at this Site, except where expressly authorized by Go Daddy.
- v. You will not modify or alter any part of this Site or the Services found at this Site or any of its related technologies.
- vi. You will not access Go Daddy Content (as defined below) or User Content through any technology or means other than through this Site itself, or as Go Daddy may designate.
- vii. You agree to back-up all of your User Content so that you can access and use it when needed. Go Daddy does not warrant that it backs-up any Account or User Content, and you agree to accept as a risk the loss of any and all of your User Content.
- viii. You will not re-sell or provide the Services for a commercial purpose, including any of Go Daddy's related technologies, without Go Daddy's express prior written consent.

- ix. You agree to provide government-issued photo identification and/or government-issued business identification as required for verification of identity when requested.
- x. You are aware that Go Daddy may from time-to-time call you about your account, and that, for the purposes of any and all such call(s), you do not have any reasonable expectation of privacy during those calls; indeed you hereby consent to allow Go Daddy, in its sole discretion, to record the entirety of such calls regardless of whether Go Daddy asks you on any particular call for consent to record such call. You further acknowledge and agree that, to the extent permitted by applicable law, any such recording(s) may be submitted in evidence any legal proceeding in which Go Daddy is a party.

Go Daddy reserves the right to modify, change, or discontinue any aspect of this Site or the Services found at this Site, including without limitation prices and fees for the same, at any time.

6. YOUR USE OF GO DADDY CONTENT AND USER CONTENT

In addition to the general rules above, the provisions in this Section 5 apply specifically to your use of Go Daddy Content and User Content posted to Go Daddy's corporate websites (i.e., those sites which Go Daddy directly controls or maintains). The applicable provisions are not intended to and do not have the effect of transferring any ownership or licensed rights (including intellectual property rights) you may have in content posted to your hosted websites.

Go Daddy Content. Except for User Content, the content on this Site and the Services found at this Site, including without limitation the text, software, scripts, source code, API, graphics, photos, sounds, music, videos and interactive features and the trademarks, service marks and logos contained therein ("Go Daddy Content"), are owned by or licensed to Go Daddy in perpetuity, and are subject to copyright, trademark, and/or patent protection in the United States and foreign countries, and other intellectual property rights under United States and foreign laws. Go Daddy Content is provided to you "as is", "as available" and "with all faults" for your information and personal, non-commercial use only and may not be downloaded, copied, reproduced, distributed, transmitted, broadcast, displayed, sold, licensed, or otherwise exploited for any purposes whatsoever without the express prior written consent of Go Daddy. No right or license under any copyright, trademark, patent, or other proprietary right or license is granted by this Agreement. Go Daddy reserves all rights not expressly granted in and to the Go Daddy Content, this Site and the Services found at this Site, and this Agreement do not transfer ownership of any of these rights.

User Content. Some of the features of this Site or the Services found at this Site may allow Users to view, post, publish, share, store, or manage (a) ideas, opinions, recommendations, or advice ("User Submissions"), or (b) literary, artistic, musical, or other content, including but not limited to photos and videos (together with User Submissions, "User Content"). By posting or publishing User Content to this Site or to the Services found at this Site, you represent and warrant to Go Daddy that (i) you have all necessary rights to distribute User Content via this Site or via the Services found at this Site, either because you are the author of the User Content and have the right to distribute the same, or because you have the appropriate distribution rights, licenses, consents, and/or permissions to use, in writing, from the copyright or other owner of the User Content, and (ii) you do not violate the rights of any third party.

Security. You agree not to circumvent, disable or otherwise interfere with the security-related features of this Site or the Services found at this Site (including without limitation those features that prevent or restrict use or copying of any Go Daddy Content or User Content) or enforce limitations on the use of this Site or the Services found at this Site, the Go Daddy Content or the User Content therein.

7. GO DADDY'S USE OF USER CONTENT

The provisions in this Section 7 apply specifically to Go Daddy's use of User Content posted to Go

Daddy's corporate websites (i.e., those sites which Go Daddy directly controls or maintains). The applicable provisions are not intended to and do not have the effect of transferring any ownership or licensed rights (including intellectual property rights) you may have in content posted to your hosted websites.

Generally. You shall be solely responsible for any and all of your User Content or User Content that is submitted through your Account, and the consequences of, and requirements for, distributing it.

With Respect to User Submissions. You acknowledge and agree that:

- i. Your User Submissions are entirely voluntary.
- ii. Your User Submissions do not establish a confidential relationship or obligate Go Daddy to treat your User Submissions as confidential or secret.
- iii. Go Daddy has no obligation, either express or implied, to develop or use your User Submissions, and no compensation is due to you or to anyone else for any intentional or unintentional use of your User Submissions.
- iv. Go Daddy may be working on the same or similar content, it may already know of such content from other sources, it may simply wish to develop this (or similar) content on its own, or it may have taken / will take some other action.

Go Daddy shall own exclusive rights (including all intellectual property and other proprietary rights) to any User Submissions posted to this Site, and shall be entitled to the unrestricted use and dissemination of any User Submissions posted to this Site for any purpose, commercial or otherwise, without acknowledgment or compensation to you or to anyone else.

With Respect to User Content (Other Than User Submissions).

If you have a website hosted by Go Daddy or another service provider, you shall retain all of your ownership or licensed rights in User Content posted to your website.

However, if you post or publish your User Content to this Site, you authorize Go Daddy to use the intellectual property and other proprietary rights in and to your User Content to enable inclusion and use of the User Content in the manner contemplated by this Site and this Agreement. Accordingly, you hereby grant Go Daddy a worldwide, non-exclusive, royalty-free, sublicensable (through multiple tiers), and transferable license to use, reproduce, distribute, prepare derivative works of, combine with other works, display, and perform your User Content in connection with this Site and Go Daddy's (and Go Daddy's affiliates') business(es), including without limitation for promoting and redistributing all or part of this Site in any media formats and through any media channels without restrictions of any kind and without payment or other consideration of any kind, or permission or notification, to you or any third party. You also hereby grant each User of this Site a non-exclusive license to access your User Content (with the exception of User Content that you designate "private" or "password protected") through this Site, and to use, reproduce, distribute, prepare derivative works of, combine with other works, display, and perform your User Content as permitted through the functionality of this Site and under this Agreement. The above licenses granted by you in your User Content terminate within a commercially reasonable time after you remove or delete your User Content from this Site. You understand and agree, however, that Go Daddy may retain (but not distribute, display, or perform) server copies of your User Content that have been removed or deleted. The above licenses granted by you in your User Content are perpetual and irrevocable. Notwithstanding anything to the contrary contained herein, Go Daddy shall not use any User Content that has been designated "private" or "password protected" by you for the purpose of promoting this Site or Go Daddy's (or Go Daddy's affiliates') business(es).

8. SUPPORT COMMUNITY

EXHIBIT 4

From: "Phillip Pruett"

s.com (+)

To: rdilsr@zianet.com

Date: 23 Mar 2012, 05:17:35 PM

Subject: Allianceriggers.com website editing

HTML content follows

Linda,

Please find attached the edits we made to the website verbiage.

Please let me know if you have any questions.

Thank you,

Phillip Pruett

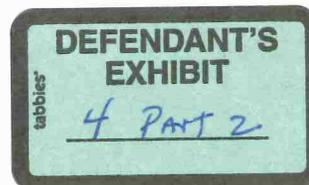
Alliance Riggers & Constructors, Ltd.

1200 Kastrin St.

El Paso, TX 79907

P- 915-591-4513 F- 915-593-4718 M- 575-644-8735

Attachment: Alliance Riggers web edit.pdf



ABOUT US 1/2

PAC	16 MAR 12
PHIP	3/15/12
TERI	3/15/12
MEL	3/16/12
NICK	



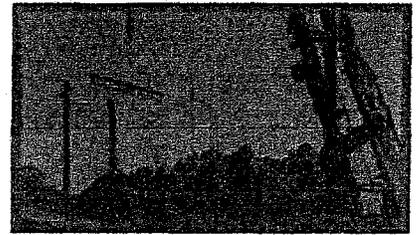
FEATURED PROJECT

[click here](#)



CORPORATE VIDEO

[click here](#)



TECHNOLOGY

[click here](#)

PROJECT SLIDESHOWS



WELCOME TO ALLIANCE RIGGERS & CONSTRUCTORS, LTD.

Alliance Riggers & Constructors is a Southwest Regional Services provider offering premier service throughout Texas and New Mexico. Our qualified and professional team offers an extensive menu of services and the expertise and equipment to assist YOU-our Clients and Construction Partners in making YOUR Vision a reality .. safety, on time and within budget

Founded in 1977, Alliance Riggers & Constructors, with limited partner, El Paso Crane & Rigging (founded in 1974) is a family owned business doing business in El Paso Texas and the surrounding area for nearly 40 years.

1997

217

EXHIBIT 5

IN THE COUNTY COURT AT LAW NUMBER 5
EL PASO COUNTY, TEXAS

ALLIANCE RIGGERS & CONSTRUCTORS, LTD.,

Plaintiff,

v.

LINDA S. RESTREPO and CARLOS E. RESTREPO
D/b/a Collectively RDI Global Services and R&D
International,

Defendants.

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Cause No. 2012-DCV04523

PLAINTIFF'S RESPONSE TO REQUEST FOR ADMISSIONS OF CARLOS E. RESTREPO

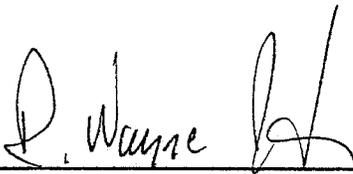
TO: Defendants, LINDA S RESTREPO and CARLOS E. RESTREPO d/b/a RDI Global Services and R&D International, P.O. Box 12066, El Paso, Texas 79912

COMES NOW ALLIANCE RIGGERS & CONSTRUCTORS, LTD, and serves these their Objections and Answers to Defendant, CARLOS E. RESTREPO's Request for Admissions in accordance with the Texas Rules of Civil Procedure.

Respectfully submitted,

R. WAYNE PRITCHARD, P.C.
300 E. Main, Suite 1240
El Paso, Texas 79901
Tel. (915) 533-0080
Fax (915) 533-0081

By:



R. WAYNE PRITCHARD
State Bar No. 16340150

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I, R. WAYNE PRITCHARD, do hereby certify that on the 20th day of December, 2012, a true and correct copy of the foregoing document was delivered as required by the Texas Rules of Civil Procedure to Defendants, LINDA S RESTREPO and CARLOS E. RESTREPO d/b/a RDI Global Services and R&D International, P.O. Box 12066, El Paso, Texas 79912



R. WAYNE PRITCHARD, P.E.

REQUEST FOR ADMISSION NUMBER 10:

Admit that Plaintiff submitted a reversed typeset Alliance Logo to the Defendants to be utilized in the webpage.

RESPONSE:

Plaintiff admits that it permitted Defendants to use its trademark in connection with the design of its web page. Plaintiff denies the remaining portions of this request.

REQUEST FOR ADMISSION NUMBER 11:

Admit that Exhibit "A" is an accurate copy of the reversed typeset Alliance Logo Plaintiff submitted to the Defendants. A true and correct copy of the reversed typeset Alliance Logo submitted to Defendants by Plaintiff is attached hereto as Exhibit "A."

RESPONSE:

Plaintiff admits that Exhibit "A" contains a copy of its trademark and that it allowed Defendants to use such trademark in connection with the design of Plaintiff's web page. Plaintiff denies the remaining portions of this request.

REQUEST FOR ADMISSION NUMBER 12:

Admit that the Alliance Logo (Exhibit "A") was submitted by Plaintiff to Defendants with instructions to be utilized in the webpage.

RESPONSE:

Plaintiff admits that Exhibit "A" contains a copy of its trademark and that it allowed Defendants to use such trademark in connection with the design of Plaintiff's web page. Plaintiff denies the remaining portions of this request.

REQUEST FOR ADMISSION NUMBER 13:

Admit that Plaintiff edited and approved the webpage and submitted said edits to the Defendants.

RESPONSE:

Plaintiff admits that some but not all edits, changes and modifications to its web page were submitted to Plaintiff for approval. Plaintiff denies the remaining portions of this request.

REQUEST FOR ADMISSION NUMBER 14:

Admit that Exhibit "B" is an accurate copy of Alliance Riggers web edit submitted to the Defendants by Plaintiff. A true and correct copy of an email from Plaintiff with attached Alliance Riggers web edit.pdf is attached hereto as Exhibit "B."

EXHIBIT 4
R. WAYNE PRITCHARD, P.C.
Intellectual Property Law

R. Wayne Pritchard, P. E.

Admitted to Practice before the United States Patent & Trademark Office

300 East Main, Suite 1240
El Paso, Texas 79901
Telephone: (915) 533-0080
Facsimile: (915) 533-0081
wpritchard@pritchlaw.com

June 19, 2013

Carlos and Linda Restrepo
P.O. Box 12066
El Paso, Texas 79912

Re: *Alliance Riggers & Constructors, Ltd. v. Linda S. Restrepo and Carlos E. Restrepo*; In the County Court at Law Number 5, El Paso County, Texas;
Cause Number 2012-DCV04523

Dear Mr. and Mrs. Restrepo:

Please find enclosed:

1. Alliance Riggers & Constructors, Ltd's Responses to Request for Disclosure;
2. Responses of Terry Stevens to Request for Admissions;
3. Responses of Phillip Pruett to Request for Admissions;
4. Responses of Frank H. Cordova to Request for Admissions;
5. Responses of Terry Stevens to Interrogatories;
6. Responses of Terry Stevens to Request for Production;
7. Responses of Phillip Pruett to Interrogatories;
8. Responses of Phillip Pruett to Request for Production;
9. Responses of Frank H. Cordova to Interrogatories; and
10. Responses of Frank H. Cordova to Request for Production.

Should you have any questions relating to the foregoing, please do not hesitate to contact me.

Respectfully,



R. Wayne Pritchard, P.E.

IN THE COUNTY COURT AT LAW NUMBER 5
EL PASO COUNTY, TEXAS

ALLIANCE RIGGERS & CONSTRUCTORS, LTD.,

Plaintiff,

v.

LINDA S. RESTREPO and CARLOS E. RESTREPO
D/b/a Collectively RDI Global Services and R&D
International,

Defendants.

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Cause No. 2012-DCV04523

RESPONSE OF TERRY STEVENS TO REQUEST FOR ADMISSIONS OF CARLOS E. RESTREPO

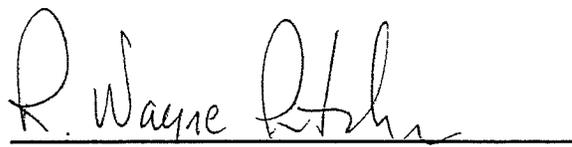
TO: Defendants, LINDA S RESTREPO and CARLOS E. RESTREPO d/b/a RDI Global Services
and R&D International, P.O. Box 12066, El Paso, Texas 79912

COMES NOW TERRY STEVENS and serves these his Objections and Answers to
Defendant, CARLOS E. RESTREPO's Request for Admissions in accordance with the Texas Rules
of Civil Procedure.

Respectfully submitted,

R. WAYNE PRITCHARD, P.C.
300 E. Main, Suite 1240
El Paso, Texas 79901
Tel. (915) 533-0080
Fax (915) 533-0081

By:



R. WAYNE PRITCHARD
State Bar No. 16340150

ATTORNEYS FOR TERRY STEVENS

RESPONSE:

Terry Stevens objects to this request as being irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NUMBER 15:

Counter Defendant Terry Stevens concurs with Phillip Cordova's statement that Alliance Riggers & Constructors "permitted Linda S. Restrepo and Carlos E. Restrepo to use its trademark in connection with the design of its web page."

RESPONSE:

Admit.

REQUEST FOR ADMISSION NUMBER 16:

Counter Defendant Terry Stevens know that it is unlawful to encourage another individual to commit perjury, an offense call subornation of perjury.

RESPONSE:

Terry Stevens objects to this request as being irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NUMBER 17:

Counter Defendant Terry Stevens has made false statements regarding a material or pertinent fact in this case.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NUMBER 18:

Counter Defendant Terry Stevens knew that information was withheld from the Federal subpoena which was issued a company owned by Frank H. Cordova.

RESPONSE:

Terry Stevens objects to this request as being irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NUMBER 19:

Counter Defendant Terry Stevens knows that Debra Cordova has bragged about withholding information from a Federal subpoena.

Avoiding a Permanent "Waive": Preservation of Error

Part V

BY CHIEF JUSTICE ANN McCLURE
8th Court of Appeals



Chief Justice Ann
McClure
8th Court of Appeals

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This really falls under Preserving Error Post Trial, but to insert it as "D" in that category simply dilutes its importance. So, in fervent hope that this stylistic approach grabs your attention, a level one heading is devoted to the topic. Make no mistake about it -- more appeals from nonjury trials are lost here than anywhere else. Are you listening?

Findings of fact and conclusions of law reflect the factual and legal basis for the trial court's judgment after a nonjury trial. If there is only one theory of liability or defense, the basis of the court's judgment can be inferred from the judgment itself, even without findings and conclusions. However, if more than one legal theory, or more than one set of factual determinations, could serve as the basis for the trial court's judgment, then it can be very difficult to brief the appellate attack on the judgment, since you must handle several different approaches to the case in 50 pages. Because the party wishing to appeal the trial court's judgment must request findings of fact and conclusions of law within 20 days of the date the judgment is signed, the trial attorney must be conscientious about requesting findings and conclusions in a timely way. It sometimes happens that a trial lawyer does not bring an appellate lawyer into the case until just before the motion for new trial is due, or until after the motion for new trial has been overruled. In such a situation, if the trial lawyer has not timely requested findings of fact and conclusions of law, and if the trial court does not permit a late request, or elects not to give findings and conclusions because there is no obligation to do so, then the ability to successfully pursue an appeal could already be impaired. And the appeal has not even yet commenced.

A. TEXAS RULES OF CIVIL PROCEDURE, RULE 296: Findings and Conclusions

Requesting findings of fact and conclusions of law is one of the most frequently overlooked

steps in preparing the nonjury case for appeal. It is the first step you should take after an adverse judgment is signed by the trial court.

1. ENTITLEMENT

Findings of fact and conclusions of law as a general rule are not available after a jury trial. Texas Rules of Civil Procedure, Rule 296 provides that findings and conclusions are available in any case tried in the district or county court without a jury. *See Roberts*, 433 (Tex. App. --El Paso 1999, no pet.). In *Baley v. W/W Interests, Inc.*, 754 S.W.2d 313, (Tex. App.--Dallas 1988, no writ), the appellate court concluded that it is not reversible error for the trial court to refuse a request for findings after a jury trial where the complaining party suffers no injury. *See also, Cravens v. Transport Indem. Co.*, 738 S.W.2d 364 (Tex.App.--Fort Worth 1987, writ den.).

In a jury trial, the answers to the questions posed contain the findings on disputed factual issues. When a case is tried to the court, however, there is no ready instrument by which one can determine how the trial court resolved the disputed fact issues. Nor can the appellate court determine upon which of the alternate theories of recovery or defense the trial court rested the judgment.

Given the assumption that findings and conclusions are appropriate in a bench trial but not in a jury trial, what happens when the two are combined? Perhaps the suit involves domestic torts and the jury will determine the personal injury or fraud issues while the judge will decide the ultimate division of property. Also, it is not unusual for the court to permit separate trials on the issues of property and custody, with a jury deciding issues of conservatorship and the judge deciding issues of characterization, valuation and division of property. If one party chooses to appeal from the property division, is it entitled to findings and conclusions? If the jury and nonjury portions of the case are conducted via separate trials, findings and conclusions are available in

the nonjury trial. *Roberts*, at 433; *Operation Rescue - National v. Planned Parenthood of Houston and Southeast Texas, Inc.*, 937 S.W.2d 60 (Tex.App. -- Houston [14th Dist.] 1996), *aff'd. as modified*, 975 S.W.2d 546 (Tex. 1998); *Shenandoah Associates v. J & K Properties, Inc.* 741 S.W.2d 470, 484 (Tex.App.--Dallas 1987, writ den.).

In *Roberts*, the trial court submitted questions to the jury concerning the grounds for divorce, the validity of a deed executed by the wife to the husband and a percentage distribution of the community estate. 999 S.W.2d at 428-29. After the trial court entered the divorce decree, the husband filed his initial request for findings of fact and conclusions of law pursuant to Rule 296 of the Texas Rules of Civil Procedure. In response, the trial court advised the parties that it would be inappropriate for him to enter findings at all since the matter had been tried to a jury. *Id.* at 430. The El Paso Court of Appeals disagreed, stating:

In this case, the jury findings on the grounds for divorce and the validity of deed were binding on the court while the percentage distribution of the community estate was merely advisory. We conclude that Husband was entitled to findings of fact relating to the property division.

Id. at 434. In addition, when the judgment of the court differs substantially from or exceeds the scope of the jury verdict, findings are also available. *See Rothwell v. Rothwell*, 775 S.W.2d 888 (Tex.App.--El Paso 1989, no writ). These cases are a departure from the earlier view espoused in *Conrad v. Judson*, 465 S.W.2d 819 (Tex.Civ.App.--Dallas 1971, writ ref'd n.r.e.) and *Aubey v. Aubey*, 264 S.W.2d 484 (Tex.Civ.App.--Beaumont 1954, no writ). In *Aubey*, the court noted that it makes no difference that the issues submitted

to the jury were advisory only, holding that Rule 296 does not require a trial court to split a trial and make findings on the issues as to which the verdict may be advisory. If at least one of the issues tried in the court below was tried to the jury, the entire trial was to a jury within the meaning of the rules. One more recent opinion has specifically distinguished *Conrad* and *Aubey*. In *Heafner & Associates v. Koecher*, 851 S.W.2d 309, 312-13 (Tex.App.--Houston [1st Dist.] 1992, no writ), the appellee relied upon the older cases to persuade the trial court that there was no need to make findings on an intervention for attorneys' fees because the divorce case had been tried to a jury. The appellate court disagreed:

Both cases cited by husband are distinguishable from the case at bar. In *Conrad*, no issues were submitted to the judge; the case was strictly a jury trial. The appellant requested findings of fact and conclusions of law, arguing that the court's judgment went beyond the jury findings. The court held that the appellant's argument was without merit in a jury trial. . . . In *Aubey*, also a jury trial, the trial court refused to file findings of fact and conclusions of law. Even though the jury verdict may have been advisory only, the judgment was consistent with the verdict and the *Aubey* court concluded it was not reversible error for the trial court to refuse to file findings of fact and conclusions of law . . .

In the case at bar, the judgment regarding attorney's fees resulted from findings made by the trial court, after a bench trial, independent of the jury's verdict. Therefore, *Heafner & Associates* has a right to have the trial court file findings of fact and conclusions of law in order to urge error on appeal.

In the event the trial court does give findings of fact in a jury case, those findings will be considered by the court of appeals only for the purpose of determining whether facts recited are conclusively established and support the decree as a matter of law. *Holloway v. Holloway*, 671 S.W.2d 51 (Tex.App.--Dallas 1984, writ dismissed). Thus, if the evidence does not support the jury verdict, the judgment cannot be supported merely by

the findings of fact and conclusions of law submitted by the trial court.

Findings and conclusions are not authorized in some nonjury cases. Courts have held that findings are **not** authorized in the following circumstances:

- when the cause is dismissed without a trial. *Eichelberger v. Balette*, 841 S.W.2d 508, 510 (Tex.App.--Houston [14th Dist.] 1992, writ denied); *Timmons v. Luce*, 840 S.W.2d 582, 586 (Tex.App.--Tyler 1992, no writ); *Kendrick v. Lynaugh*, 804 S.W.2d 153 (Tex.App.--Houston [14th Dist.] 1990, no writ);
- when the cause is withdrawn from the jury by directed verdict due to the general rule that the trial court can grant an instructed verdict only where there are no fact issues to be resolved by the jury. *Yarbrough v. Phillips Petroleum Co.*, 670 S.W.2d 270 (Tex.App.--Houston [1st Dist.] 1983, writ ref'd n.r.e.); *Spiller v. Spiller*, 535 S.W.2d 683 (Tex.Civ.App.--Tyler 1976, writ dismissed);
- when a judgment notwithstanding the jury verdict is entered. *Fancher v. Cadwell*, 159 Tex. 8, 314 S.W.2d 820 (1958);
- when a summary judgment is granted. *Linwood v. NCNB Texas*, 885 S.W.2d 102, 103 (Tex. 1994); *Chavez v. El Paso Housing Authority*, 897 S.W.2d 523 (Tex.App.--El Paso 1995, writ denied); *Chopin v. Interfirst Bank*, 694 S.W.2d 79 (Tex.App.--Dallas 1985, writ ref'd n.r.e.); *City of Houston v. Morgan Guaranty International Bank*, 666 S.W.2d 524 (Tex.App.--Houston [1st Dist.] 1983, writ ref'd n.r.e.);
- in an appeal to district court from an administrative agency. *Valentino v. City of Houston*, 674 S.W.2d 813 (Tex.App.--Houston [1st Dist.] 1983, writ ref'd n.r.e.);
- when a default judgment is granted. *Wilemon v. Wilemon*, 930 S.W.2d 295 (Tex.App.--Waco 1996, no writ); *Harmon v. Harmon*, 879 S.W.2d 213 (Tex.App.--Houston [14th Dist.] 1994, writ denied); and
- when a case is dismissed for want of subject matter jurisdiction, without an evidentiary hearing. *Zimmerman v. Robison*, 862 S.W.2d 162 (Tex.App.--Amarillo 1993, no writ).

Rule 385(b) of the Texas Rules of Civil Procedure provides for an option on the part of the trial judge in appeals from interlocutory orders. The court is not required to file findings and conclusions, but may do so within thirty days after the judgment is signed. *Smith Barney Shearson, Inc. v. Finstad*, 888 S.W.2d

111 (Tex.App.--Houston [1st Dist.] 1994, no writ) (involving interlocutory appeal of denial of motion for arbitration). One court of appeals has admonished trial courts to give findings and conclusions to aid the appellate court in reviewing class certification decisions. *Franklin v. Donoho*, 774 S.W.2d 308, 311 (Tex.App.--Austin 1989, no writ).

2. IMPORTANCE OF OBTAINING

Many practitioners fail to obtain findings of fact and conclusions of law. In the absence of findings and conclusions, the judgment of the trial court must be affirmed if it can be upheld on any available legal theory that finds support in the evidence. *Point Lookout West, Inc. v. Whorton*, 742 S.W.2d 277 (Tex. 1987); *In re W.E.R.*, 669 S.W.2d 716 (Tex. 1984); *Lassiter v. Bliss*, 559 S.W.2d 353 (Tex. 1977); *Temperature Systems, Inc. v. Bill Pepper, Inc.*, 854 S.W.2d 669 (Tex.App.--Dallas 1993, no writ). Absent findings of fact, it doesn't make any difference whether the trial court selected the right approach or theory. If the appellate court determines the evidence supports a theory raised by the pleadings or tried by consent, then it is presumed that the trial court made the necessary findings and conclusions to support a recovery on that theory. *Lemons v. EMW Mfg. Co.*, 747 S.W.2d 372 (Tex. 1988). These presumptions are tantamount to implied findings. These implied findings can be challenged by legal and factual insufficiency points, provided a reporter's record is brought forward. Further, presumptions will not be imposed if findings are properly requested but are not given.

It is far better to tie the judge to a specific theory and to challenge the evidentiary support for that theory, than it is to engage in guesswork about implied findings.

3. FILING REQUEST FOR FINDINGS OF FACT AND CONCLUSION OF LAW EXTENDS APPELLATE DEADLINES

The timely filing of a request for findings of fact and conclusions of law extends the time for perfecting appeal from 30 days to 90 days after the judgment is signed by the court. TEX.R.APP.P. 26.1(a)(4). The timely filing of a request for findings and conclusions also extends the deadline for filing the record from the 60th to the 120th day after judgment was signed. TEX.R.APP.P. 35.1(a). A timely request for findings and conclusions does **not** extend the trial court's period of plenary power. See TEX.R.CIV.P. 329b (no provision is made for an extension of plenary power due to the filing

of such a request).

The foregoing rules regarding the extension of appellate deadlines by filing a timely request for findings and conclusions **do not apply** where findings and conclusions cannot properly be requested. For example, findings of fact are not available on appeal from a summary judgment. Where a party appeals from the granting of a summary judgment, files a request for findings of fact and conclusions of law, but files no motion for new trial, the filing of the request for findings will not extend the appellate timetable. *Linwood v. NCNB of Texas*, 885 S.W.2d 102, 103 (Tex. 1994) (“[T]he language ‘tried without a jury’ in rule 41(a) (1) does not include a summary judgment proceeding.”). See also, *Chavez v. El Paso Housing Authority*, 897 S.W.2d 523 (Tex. App.--El Paso 1995, writ denied). Another case holds that a matter which is dismissed for lack of subject matter jurisdiction, or in which there has been no evidentiary hearing, has not been “tried without a jury” as used in the rule, so that a request for findings does not extend the 30-day deadline for perfecting appeal. *Zimmerman v. Robinson*, 862 S.W.2d 162 (Tex.App.--Amarillo 1993, no writ). *Accord, O'Donnell v. McDaniel*, 914 S.W.2d 209 (Tex. App.--Fort Worth 1995, writ requested)(where appeal is from dismissal rendered without evidentiary hearing, a request for findings of fact and conclusions of law does not extend any applicable deadlines); *Smith v. Smith*, 835 S.W.2d 187, 190 (Tex.App.--Tyler 1992, no writ) (in divorce case tried to jury, request for findings of fact and conclusions of law did not extend appellate timetable even though the trial judge was not bound by some of the jury's answers).

4. SEQUENCE FOR OBTAINING FINDINGS

a. Initial Request

Rule 296 of the Texas Rules of Civil Procedure requires that the request for findings and conclusions be filed within twenty days after the judgment is signed. **FILING A MOTION FOR NEW TRIAL DOES NOT EXTEND THE TIME PERIOD FOR FILING A REQUEST FOR FINDINGS AND CONCLUSIONS.** Often, the decision to appeal is made after the motion for new trial is filed and often after it is presented to the court or overruled by operation of law. Frequently, appellate counsel is employed to handle the appeal after the overruling of the motion for new trial. At that point, it is too late

for appellate counsel to file the initial request for findings of fact and conclusions of law. A basic rule of thumb should be that if the client is the slightest bit unhappy with a portion of the judgment, submit the request for findings within the required time period. If an appeal is later perfected, you have preserved the right to findings. If no appeal is taken, the request can always be withdrawn or ignored.

Note that under Rule 296, the request must be specifically entitled “Request for Findings of Fact and Conclusions of Law”. The request should be a separate instrument and not coupled with a motion for new trial or a motion to correct or reform the judgment.

If you miss the deadline, you will have waived your right to complain of the trial court's failure to prepare the findings. Keep in mind, however, that you can still make the request, even if it is untimely. The trial court can give you findings and conclusions even though it is not obligated to do so. The timetables set out by Rule 296 and 297 of the Texas Rules of Civil Procedure are flexible if there is no gross violation of the filing dates and no party is prejudiced by the late filing. *Wagner v. GMAC Mortg. Corp. of Iowa*, 775 S.W.2d 71 (Tex.App.--Houston [1st Dist.] 1989, no writ). Also, Rule 5, Texas Rules of Civil Procedure, “Enlargement of Time,” appears to permit the trial court to enlarge the time for requesting findings and conclusions.

b. Presentment Not Necessary

Older case law required that the request for findings of fact and conclusions of law be actually presented to the judge; it was insufficient to simply file the request among the papers of the cause. *Lassiter v. Bliss*, 559 S.W.2d 353 (Tex. 1977). The Supreme Court, in *Cherne Industries, Inc. v. Magallanes*, 763 S.W.2d 768 (Tex. 1989), abandoned the requirement of presentment to the trial judge. Rule 296 now provides that the request shall be filed with the clerk of the court “who shall immediately call such request to the attention of the judge who tried the case.” Notice to the opposing party of the filing of the request is still required under the rule. Presentment to the trial judge is no longer required.

c. Response by Court

Rule 297 of the Texas Rules of Civil Procedure provides that, upon timely demand, the court shall prepare its findings of fact and conclusions of law and file them within 20 days after a timely request is filed. The court is required to mail a copy of its findings and

conclusions to each party to the suit. Deadlines for requesting additional or amended findings run from the date the original findings and conclusions are filed, as noted below.

d. Untimely Filing by Court

The procedural time limits in the rules do not prevent the trial court from issuing belated findings. *Robles v. Robles*, 965 S.W.2d 605 (Tex.App.--Houston [1st Dist.] 1998, pet. denied); *Jefferson County Drainage Dist. No. 6 v. Lower Neches Valley Authority*, 876 S.W.2d 940 (Tex. App.--Beaumont 1994, writ denied); *Morrison v. Morrison*, 713 S.W.2d 377 (Tex. App.--Dallas 1986, no writ). Unless injury is demonstrated, litigants have no remedy for the untimely filing of findings. *Jefferson County*, 876 S.W.2d at 960; *Morrison*, 713 S.W.2d at 381. Injury may be shown if the litigant was unable to request additional findings or if the litigant has been prevented from properly presenting the appeal. *Id.*

In *Robles*, the appellant made both a timely original and reminder request for findings, but the trial court had not filed them by the time the appellant filed his original appellate brief. Thereafter, a supplemental transcript was filed containing the findings and the appellant was given the opportunity to file an amended brief. Claiming the trial court's untimely filing deprived him of the ability to request additional findings and caused him economic harm due to the added expense of filing an amended brief, the appellant sought a reversal and remand. The appellate court concluded that he had suffered no injury as he had made no request for additional findings nor had he requested the appellate court to abate the appeal in order to secure additional findings.

Similarly, in *Morrison*, the husband appealed the property division in a divorce and requested findings and conclusions. In the original findings, the court stated that the marriage had become insupportable. The wife requested additional findings on the issues of cruelty, adultery and desertion. The judge made the additional findings, noting that the husband was at fault in the breakup of the lengthy marriage due to his drinking, adultery and spending community assets on other women. The husband attempted to have the additional findings disregarded because they were filed untimely. The appellate court determined that the only issue raised by the late filing was that of injury to the appellant, not the trial court's jurisdiction to make the findings. The court also noted that the husband had not demonstrated any harm which he suffered because of the

late filing.

From the standpoint of preservation of error, note that to complain of the untimely filing, the appellant may be required to file a motion to strike. See, *Narisi v. Legend Diversified Investments*, 715 S.W.2d 49 (Tex.App.--Dallas 1986, writ ref'd n.r.e.), which contains the following footnote at page 50:

Although not made a point of error, Narisi complains about when the supplemental findings and conclusions were filed. Even if they were filed late, which we do not decide here, we may consider them because appellant neither filed a motion to strike, *City of Roma v. Gonzales*, 397 S.W.2d 943, 944 (Tex.Civ.App.--San Antonio 1965, writ ref'd n.r.e.), nor has she shown that she was harmed by the delay in the filing. *Fonseca v. County of Hidalgo*, 527 S.W.2d 474, 480 (Tex.Civ.App.--Corpus Christi 1975, writ ref'd n.r.e.).

See also, *Summit Bank v. The Creative Cook*, 730 S.W.2d 343 (Tex.App.--San Antonio 1987, no writ), where the court specifically stated that a reviewing court will consider late filed findings of facts and conclusions of law where there has been no motion to strike. Thus, if the appellant has been prejudiced in his/her appeal because of the late filing, s/he should consider filing a motion to strike, but s/he must also be prepared to demonstrate injury.

Note also that if the findings and conclusions are filed too far past the deadline, the appellate court may disregard them. *Stefek v. Helvey*, 601 S.W.2d 168 (Tex.Civ.App.--Corpus Christi 1980, writ ref'd n.r.e.). In *Labar v. Cox*, 635 S.W.2d 801 (Tex.App.--Corpus Christi 1982, writ ref'd n.r.e.), the court determined a late filing to be reversible error because it prevented the appellant from requesting additional findings. The court declined to permit the trial court to correct its procedural errors because other errors existed which required a reversal.

e. Reminder Notice

Rule 297 of the Texas Rules of Civil Procedure provides that if the trial court fails to submit the findings and conclusions within the 20 day period, the requesting party must call the omission to the attention of the judge within 30 days after filing the original request.

Failure to submit a timely reminder waives the right to complain of the court's failure to make findings. *Averyt v. Grande, Inc.*, 717 S.W.2d 891 (Tex. 1986); *Employees Mutual Casualty Co. v. Walker*, 811 S.W.2d 27 (Tex. App.--Houston [14th Dist.] 1991, writ denied); *Saldana v. Saldana*, 791 S.W.2d (Tex.App.--Corpus Christi 1990, no writ). Where the reminder is filed, the time for the filing of the court's response is extended to 40 days from the date the original request was filed.

f. Additional or Amended Findings

If the court files findings and conclusions, either party has a period of ten days in which to request specified additional or amended findings or conclusions. The court shall file any additional or amended findings and conclusions within ten days after the request, and again, cause a copy to be mailed to each party. No findings or conclusions shall be deemed or presumed by any failure of the court to make any additional findings or conclusions. Tex.R.Civ.P. 298.

(1) FAILURE TO REQUEST

When a party fails to timely request additional findings of fact and conclusions of law, it is deemed to have waived the right to complain on appeal of the court's failure to enter additional findings. *Briargrove Park Property Owners, Inc. v. Riner*, 867 S.W.2d 58, 62 (Tex.App.--Texarkana 1993, writ denied); *Cities Services Co. v. Ellison*, 698 S.W.2d 387, 390 (Tex.App.--Houston [14th Dist.] 1985, writ ref'd n.r.e.). Further, where the original findings omit a finding of a specific ground of recovery which is crucial to the appeal, failure to request an additional finding will constitute a waiver of the issue. *Poulter v. Poulter*, 565 S.W.2d 107 (Tex.Civ.App.--Tyler 1978, no writ)(the failure to request a specific finding on reimbursement waived any reimbursement complaints on appeal). In *Keith v. Keith*, 763 S.W.2d 950 (Tex.App.--Fort Worth 1989, no writ), the trial court refused to set aside the good will of a community partnership business as the husband's separate property. The findings of fact and conclusions of law found the value of the businesses to be \$262,400. The husband made no request for additional findings as to whether the partnership had any good will or whether any such good will was professional good will attributable to him personally. He challenged the failure to make those findings on appeal. The court of appeals affirmed, noting that the failure to request additional findings constitutes a

waiver on appeal.

(2) COURT'S FAILURE TO RESPOND

A trial court's failure to make additional findings upon request is not reversible error if the requested finding is covered by and directly contrary to the original findings filed. *Asai v. Vanco Insulation Abatement, Inc.*, 932 S.W.2d 118 (Tex.App.--El Paso 1996, no writ); *San Antonio Villa Del Sol Homeowners Association v. Miller*, 761 S.W.2d 460 (Tex.App.--San Antonio 1988, no writ).

g. Effect of Premature Request

Rule 306(c) of the Texas Rules of Civil Procedure provides that no motion for new trial or request for findings of fact and conclusions of law will be held ineffective because of premature filing. Instead, every such request shall be deemed to have been filed on the date of but subsequent to the signing of the judgment. *Fleming v. Taylor*, 814 S.W.2d 89 (Tex.App.--Corpus Christi 1991, no writ).

5. WHAT FORM IS REQUIRED?

Findings of fact and conclusions of law need not be in any particular form as long as they are in writing and are filed of record. *Hamlet v. Silliman*, 605 S.W.2d 663 (Tex.App.--Houston [1st Dist.] 1980, no writ). It is permissible for the trial court to list its findings in a letter to the respective attorneys, as long as the letter is filed of record. *Villa Nova Resort, Inc. v. State*, 711 S.W.2d 120 (Tex.App.--Corpus Christi 1986, no writ). Remember, however, that oral statements as to findings made by the judge on the record will not be accepted as findings of fact and conclusions of law. *In re W.E.R.*, 669 S.W.2d 716 (Tex. 1984); *Stevens v. Snyder*, 874 S.W.2d 241 (Tex.App.--Dallas 1994, writ denied); *Giangrosso v. Crosley*, 840 S.W.2d 765, 769 (Tex.App.--Houston [1st Dist.] 1992, no writ); *Ikard v. Ikard*, 819 S.W.2d 644 (Tex.App.--El Paso 1991, no writ). Nor may the court have those statements prepared as a reporter's record and filed as findings of fact and conclusions of law. *Nagy, v. First National Gun Banque Corporation*, 684 S.W.2d 114 (Tex.App.--Dallas 1984, writ ref'd n.r.e.). The Supreme Court ruled in one case, however, that appellate courts must give effect to **intended** findings of the trial court, even where the specific findings made do not quite get the job done, provided they are supported by the evidence, the record and the judgment. See *Black v. Dallas County Child Welfare*, 835 S.W.2d 626 (Tex. 1992).

6. WHAT FINDINGS ARE AVAILABLE?

As indicated above, the courts of appeals are not consistent in their discussions of what findings are available to an appellant. But without question, the court must make findings on each material issue raised by the pleadings and evidence, but not on evidentiary issues. Findings are required only when they relate to ultimate or controlling issues. *Roberts v. Roberts*, 999 S.W.2d 424, 434 (Tex. App. – El Paso 1999, no pet.); *Dura-Stilts v. Zachry*, 697 S.W.2d 658 (Tex.App.--Houston [1st Dist.] 1985, writ ref'd n.r.e.); *Loomis International v. Rathburn*, 698 S.W.2d 465 (Tex.App.--Corpus Christi 1985, no writ); *Lettieri v. Lettieri*, 654 S.W.2d 554 (Tex.App.--Fort Worth 1983, writ dismissed).

7. CONFLICTING FINDINGS FINDINGS AT VARIANCE WITH THE JUDGMENT

When the findings of fact appear to conflict with each other, they will be reconciled if reconciliation is possible. If they are not reconcilable, they will not support the judgment. *Yates Ford, Inc. v. Benevides*, 684 S.W.2d 736 (Tex.App.--Corpus Christi 1984, writ ref'd n.r.e.). Where Rule 296 findings appear to conflict with findings recited in the judgment, the Rule 296 findings control for purposes of appeal. TEX.R.CIV.P. 299a. This rule was in accord with the practice of the appellate courts, even before TEX.R.CIV.P. 299a was adopted. See *Southwest Craft Center v. Heilner*, 670 S.W.2d 651 (Tex.App.--San Antonio 1984, writ ref'd n.r.e.); *Law v. Law*, 517 S.W.2d 379, 383 (Tex.Civ.App.--Austin 1974, writ dismissed); *Keith v. Keith*, 763 S.W.2d 950 (Tex.App.--Fort Worth 1989, no writ).

A problem can arise if an amended judgment is signed after findings and conclusions have been given. In *White v. Commissioner's Court of Kimble County*, 705 S.W.2d 322 (Tex.App.--San Antonio 1986, no writ), judgment was entered on November 12, 1984. Findings of fact and conclusions of law were requested and filed. An amended judgment was entered on January 25, 1985, in response to a motion to correct. The appellate court ruled that the findings could not be relied upon to support the corrected judgment because they pertained only to the November 12 judgment.

Note also that if there are conflicts between statements made by the trial judge on the record and findings of fact and conclusions of law actually prepared, the formal findings will be deemed controlling. *Ikard v. Ikard*,

819 S.W.2d 644 (Tex.App.--El Paso 1991, no writ).

8. CONFLICT BETWEEN FINDINGS AND ADMISSIONS

The Supreme Court has considered whether a reviewing court is bound by admissions of parties as to matters of fact when the record shows that the admissions were not truthful and that the opposite of the admissions was in fact true. In *Marshall v. Vise*, 767 S.W.2d 699 (Tex. 1989), the plaintiff submitted requests for admissions which were never answered. Prior to the nonjury trial, the court granted the plaintiff's motion that his requests for admissions be deemed admitted. Nevertheless, the defendant presented testimony in direct contravention of the deemed admissions. Plaintiff, who had filed no motion for summary judgment, failed to urge a motion *in limine*, failed to object to the evidence when offered and failed to request a directed verdict. The court rendered judgment contrary to the facts deemed admitted and made findings of fact and conclusions of law contrary to the facts deemed admitted. The court of appeals concluded that the trial court's findings were directly contrary to the deemed admissions and were so against the great weight and preponderance of the evidence as to be manifestly erroneous. The Supreme Court concluded that unanswered requests for admission are in fact automatically deemed admitted unless the court permits them to be withdrawn or amended. An admission, once admitted, is a judicial admission such that a party may not introduce testimony to contradict it. Here, however, the plaintiff had failed to object; in fact he elicited much of the controverting testimony himself. Thus, he was found to have waived his right to rely on the admissions which were controverted by testimony admitted at trial without objection.

9. WHICH JUDGE MAKES THE FINDINGS?

Suppose a trial judge hears the evidence in a case and enters judgment, but before s/he is able to make his/her findings of fact and conclusions of law, s/he dies, or is disabled, or fails to win re-election? In *Ikard v. Ikard*, 819 S.W.2d 644 (Tex.App.--El Paso 1991, no writ), the family court master heard the evidence by referral with regard to a requested increase in child support. The master prepared a written report and the order was signed by the judge of the referring court. In the intervening time between trial and entry of the order, the court master won the November election to

a district court bench, and left the master's bench. Findings of fact and conclusions of law were prepared following a timely request. Due to the absence of the court master who had heard the evidence, the findings were approved by another court master and signed by the referring judge, neither of whom had heard the evidence. On appeal, Mr. Ikard claimed this procedure was reversible error. The appellate court disagreed, noting that a successor judge has full authority to sign the findings, which in most cases, have been prepared by counsel for the prevailing party and not by the trier of fact. The findings then become those of the trial court, regardless of who prepared them. See also, *Robert*, 999 S.W.2d at 430 n.5 (Tex. App. – El Paso 1999, no pet.); *Lykes Bros. Steamship Co., Inc. v. Benben*, 601 S.W.2d 418 (Tex.Civ. App.--Houston [14th Dist.] 1980, writ ref'd n.r.e.); *Horizon Properties Corp. v. Martinez*, 513 S.W.2d 264 (Tex.Civ.App.--El Paso 1974, writ ref'd n.r.e.).

Other courts have taken a different approach where the trial judge is no longer available. In *FDIC v. Morris*, 782 S.W.2d 521 (Tex.App.--Dallas 1989, no writ), the appellate court noted that the trial judge was no longer on the bench and was unavailable to respond to the order to prepare findings. Citing *Anzaldua v. Anzaldua*, 742 S.W.2d 782, 783 (Tex.App.--Corpus Christi 1987, writ denied), the court reversed the judgment.

10. EFFECT OF COURT'S FAILURE TO FILE

a. Must Complain In Brief

Where findings and conclusions were properly requested, but none were filed by the trial court, and the trial court was properly reminded of its failure to file the findings and conclusions, the injured party must then complain about the failure to file by point of error in the brief, or else the complaint is waived. *Seaman v. Seaman*, 425 S.W.2d 339, 341 (Tex. 1968); *In Interest of Hidalgo*, 938 S.W.2d 492 (Tex.App.--Texarkana 1996, no writ); *Southwest Livestock & Trucking Co. v. Dooley*, 884 S.W.2d 805 (Tex.App.--San Antonio 1994, writ denied); *Owens v. Travelers Ins. Co.*, 607 S.W.2d 634, 637 (Tex.Civ.App.--Amarillo 1980, writ ref'd n.r.e.).

b. When Does the Failure to File Cause Harmful Error?

The general rule is that the failure of the trial court to file findings of fact constitutes error

where the complaining party has complied with the requisite rules to preserve error. *Wagner v. Riske*, 142 Tex. 337, 342; 178 S.W.2d 117, 199 (1944); *FDIC v. Morris*, 782 S.W.2d at 523. There is a presumption of harmful error unless the contrary appears on the face of the record. *In the Matter of the Marriage of Combs*, 958 S.W.2d 848, 851 (Tex.App.--Amarillo 1997, no writ); *City of Los Fresnos v. Gonzalez*, 830 S.W. 2d 627 (Tex.App.--Corpus Christi 1992, no writ). Thus, the failure to make findings does not compel reversal if the record before the appellate court affirmatively demonstrates that the complaining party suffered no harm. *Las Vegas Pecan & Cattle Co. v. Zavala County*, 682 S.W.2d 254, 256 (Tex. 1984). Where there is only one theory of recovery or defense pleaded or raised by the evidence, there is no demonstration of injury. *Guzman v. Guzman*, 827 S.W.2d 445 (Tex.App.--Corpus Christi 1992, writ denied); *Vickery v. Texas Carpet Co., Inc.*, 792 S.W.2d 759 (Tex.App.--Houston [14th Dist.] 1990, writ denied). *Accord, Landbase, Inc. v. T.E.C.*, 885 S.W. 2d 499, 501-02 (Tex. App.--San Antonio 1994, writ denied) (failure to file findings and conclusions harmless where the basis for the court's ruling was apparent from the record).

The test for determining whether the complainant has suffered harm is whether the circumstances of the case would require an appellant to guess the reason or reasons that the judge has ruled against it. *Elizondo v. Gomez*, 957 S.W.2d 862 (Tex.App.--San Antonio 1997, no writ); *Martinez v. Molinar*, 953 S.W.2d 399 (Tex.App.--El Paso 1997, no writ); *Sheldon Pollack Corp. v. Pioneer Concrete*, 765 S.W.2d 843, 845 (Tex.App.--Dallas 1989, writ denied); *Fraser v. Goldberg*, 552 S.W.2d 592, 594 (Tex. Civ.App.--Beaumont 1977, writ ref'd n.r.e.). The issue is whether there are disputed facts to be resolved. *FDIC v. Morris*, 782 S.W.2d at 523.

c. Remedy

Rule 44.4(b) of the Texas Rules of Appellate Procedure provides that if the trial court's failure to enter findings prevents a proper presentation of the case on appeal and if the trial court can correct its failure, the court of appeals must direct the trial court to correct the error and then proceed as if the failure to act had not occurred. Abatement rather than reversal is now required by the rules.

d. Failure to Make Additional Findings

With regard to additional findings, the case should not be reversed if most of the additional

findings were disposed of directly or indirectly by the original findings and the failure to make the additional findings was not prejudicial to the appellant. *Landscape Design & Const., Inc. v. Harold Thomas Excavating, Inc.*, 604 S.W.2d 374 (Tex.Civ.App.--Dallas 1980, writ ref'd n.r.e.). Refusal of the court to make a requested finding is reviewable on appeal if error has been preserved. TEX.R.Civ.P. 299.

11. EFFECT OF COURT'S FILING

The Texas Rules of Civil Procedure, Rule 299, provide that where findings of fact are filed by the trial court, they shall form the basis of the judgment upon all grounds of recovery. The judgment may not be supported on appeal by a presumption or finding upon any ground of recovery no element of which has been found by the trial court. Where one or more of the elements have been found by the court, however, any omitted unrequested elements, if supported by the evidence, will be supplied by presumption in support of the judgment. This presumption does not apply where the omitted finding was requested by the party and refused by the trial court. *Chapa v. Reilly*, 733 S.W.2d 236 (Tex.App.--Corpus Christi 1987, writ ref'd n.r.e.).

Findings of fact are accorded the same force and dignity as a jury verdict. *McPherren v. McPherren*, 967 S.W.2d 485 (Tex.App.--El Paso 1998, no pet.) When they are supported by competent evidence, they are generally binding on the appellate court. Where a reporter's record is available, challenged findings are not binding and conclusive if manifestly wrong. The same is true of patently erroneous conclusions of law. *Reddell v. Jasper Federal Savings & Loan Association*, 722 S.W.2d 551 (Tex.App.--Beaumont 1987) *rev'd on other grounds* 730 S.W.2d 672 (1987); *De La Fuente v. Home Savings Association*, 669 S.W.2d 137 (Tex.App.--Corpus Christi 1984, no writ). Where no reporter's record is presented, the court of appeals must presume that competent evidence supported not only the express findings made by the court, but any omitted findings as well. *D&B, Inc. v. Hempstead*, 715 S.W.2d 857 (Tex.App.--Beaumont 1986, no writ); *Mens' Wearhouse v. Helms*, 682 S.W.2d 429 (Tex.App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.), *cert. denied*, 474 U.S. 804, 106 S.Ct. 38 (1985).

12. DEEMED FINDINGS

When the trial court gives express findings on at least one element of a claim or affirmative defense, but omits other elements, implied

findings on the omitted unrequested elements are deemed to have been made in support of the judgment. In other words, if a party secures an express finding on at least one element of an affirmative defense, then deemed findings arise as to the balance of the elements. *Linder v. Hill*, 691 S.W.2d 590 (Tex. 1985); *Dunn v. Southern Farm Bureau Casualty Insurance Co.*, 991 S.W.2d 467 (Tex.App.--Tyler 1998, pet. denied); *Sears, Roebuck & Co. v. Nichols*, 819 S.W.2d 900 (Tex.App.--Houston [14th Dist.] 1991, writ denied). Where deemed findings arise, it is not an appellee's burden to request further findings or to complain of other findings made. It is the appellant's duty to attack **both the express and implied findings**.

13. PECULIARITIES OF CONCLUSIONS OF LAW

Conclusions of law are generally lumped in with all discussions of findings of fact but, in reality, they are rather unimportant to the appellate process. The primary purpose is to demonstrate the theory on which the case was decided. A conclusion of law can be attacked on the ground that the trial court did not properly apply the law to the facts. *Foster v. Estate of Foster*, 884 S.W.2d 497 (Tex.App.--Dallas 1994, no writ). However, erroneous conclusions of law are not binding on the appellate court and if the controlling findings of fact will support a correct legal theory, are supported by the evidence and are sufficient to support the judgment, then the adoption of erroneous legal conclusions will not mandate reversal. *Leon v. Albuquerque Commons Partnership*, 862 S.W.2d 693 (Tex.App.--El Paso 1993, no writ); *Westech Engineering, Inc. v. Clearwater Constructors, Inc.*, 835 S.W.2d 190, 196 (Tex.App.--Austin 1992, no writ); *Bellaire Kirkpatrick Joint Venture v. Loots*, 826 S.W.2d 205, 210 (Tex.App.--Fort Worth 1992, writ denied); *Sears, Roebuck & Co. v. Nichols*, 819 S.W.2d 900, 903 (Tex.App.--Houston [14th Dist.] 1991, writ denied); *Matter of Estate of Crawford*, 795 S.W.2d 835, 838 (Tex.App.--Amarillo 1990, no writ); *Valencia v. Garza*, 765 S.W.2d 893, 898 (Tex.App.--San Antonio 1989, no writ). "If an appellate court determines a conclusion of law is erroneous, but the judgment rendered was proper, the erroneous conclusion of law does not require reversal." *Town of Sunnyvale v. Mayhew*, 905 S.W.2d 234, 243 (Tex.App.--Dallas 1994, writ requested). The standard of review for legal conclusions is whether they are correct, *Zieben v. Platt*, 786 S.W.2d 797, 801-02 (Tex. App.--Houston [14th Dist.] 1990, no writ),

and they are reviewable *de novo* as a question of law. *State v. Evangelical Lutheran Good Samaritan Society*, 981 S.W.2d 509, 511 (Tex. App.--Austin 1998, no pet.); *Nelkin v. Panzer*, 833 S.W.2d 267, 268 (Tex. App.--Houston [1st Dist.] 1992, writ dismissed w.o.j.). In other words, the appellate court must independently evaluate conclusions of law to determine their correctness when they are attacked as a matter of law. *U.S. Postal Serv. v. Dallas Cty. App. D.*, 857 S.W.2d 892, 895-96 (Tex. App.--Dallas 1993, writ dismissed).

14. CHALLENGES ON APPEAL

a. Challenging the Trial Court's Failure to Make Findings of Fact

The trial court's failure to make findings upon a timely request must be attacked by point of error on appeal or the complaint is waived. *In Interest of Hidalgo*, 938 S.W.2d 492 (Tex. App.--Texarkana 1996, no writ); *Perry v. Brooks*, 808 S.W.2d 227, 229-30 (Tex. App.--Houston [14th Dist.] 1991, no writ); *Belcher v. Belcher*, 808 S.W.2d 202, 206 (Tex. App.--El Paso 1991, no writ).

b. Challenging Findings and Conclusions on Appeal

Unless the trial court's findings of fact are challenged by point of error in the brief, the findings are binding on the appellate court. *S&A Restaurant Corp. v. Leal*, 883 S.W.2d 221, 225 (Tex. App.--San Antonio 1994), *rev'd on other grounds*, 892 S.W.2d 855 (Tex. 1995) (*per curiam*); *Wade v. Anderson*, 602 S.W.2d 347, 349 (Tex. Civ. App.--Beaumont 1980, writ ref'd n.r.e.); see 6 MCDONALD, TEXAS CIVIL APPELLATE PRACTICE § 18:12 n. 120 (1992).

Frequently, trial courts include disclaimers to the effect that "any finding of fact may be considered a conclusion of law, if applicable" and vice-versa. There is a difference, however, in the standard of review. Findings of fact are the equivalent of a jury answer and should be attacked on the basis of legal or factual sufficiency of the evidence. *Associated Telephone Directory Publishers, Inc. v. Five D's Publishing Co.*, 849 S.W.2d 894, 897 (Tex. App.--Austin 1993, no writ); *Lorenson v. Weaver*, 840 S.W. 2d 644 (Tex. App.--Dallas 1992) *rev'd on other grounds sub nom.*; *Exxon Corp. v. Tidwell*, 816 S.W.2d 455, 459 (Tex. App.--Dallas 1991, no writ); *A-ABC Appliance of Texas, Inc. v. Southwestern Bell Tel. Co.*, 670 S.W.2d 733, 736 (Tex. App.--Austin 1984, writ ref'd n.r.e.). Conclusions of law should be attacked on the ground that the law was

incorrectly applied.

Sometimes, however, findings of fact are mislabeled as conclusions of law, as in *Posner v. Dallas County Child Welfare*, 784 S.W.2d 585 (Tex. App.--Eastland 1990, writ denied). There, the ultimate and controlling findings of fact were erroneously labeled as conclusions of law, and instead of challenging these, the appellant challenged the immaterial evidentiary matters which were included in the findings of fact. The appellate court found that the appellant was bound by the unchallenged findings which constituted undisputed facts.

B. Findings In Sanction Orders

1. TEXAS RULES OF CIVIL PROCEDURE: RULE 13 SANCTIONS

The imposition of Rule 13 sanctions lies within the discretion of the trial court and will not be reversed absent an abuse of discretion. *Stewart v. Transit Mix Concrete & Materials Co.*, 988 S.W.2d 252 (Tex. App.--Texarkana 1998, pet. denied). Rule 13 provides:

The signatures of attorneys or parties constitute a certificate by them that they have read the pleading, motion, or other paper; that to the best of their knowledge, information, and belief formed after reasonable inquiry the instrument is not groundless and brought in bad faith or groundless and brought for the purpose of harassment . . . If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, after notice and hearing, shall impose an appropriate sanction available under Rule 215-2b, upon the person who signed it, a represented party, or both. . .

. . . **No sanctions under this rule may be imposed except for good cause, the particulars of which must be stated in the sanction order.** 'Groundless' for purposes of this rule means no basis in law or fact and not warranted by good faith argument for the extension, modification, or reversal of existing law . . .

[Emphasis added].

Several recent appellate decisions have considered the language of the Rule and determined that its requirements are mandatory. *Keever v. Finlan*, 988 S.W.2d 300, 312 (Tex.

App. -- Dallas 1999, pet. dismissed); *Thomas v. Thomas*, 917 S.W.2d 425 (Tex. App.--Waco 1996, no writ). Requiring a trial court to enunciate its reasons in the sanction order serves two purposes. First, it invites the trial court to reflect on the order before sanctions are imposed. Second, it informs the party of the offensive conduct in order to prevent its recurrence. *Keever*, 988 S.W.2d at 312.

In *GTE Communications Systems Corp. v. Curry*, 819 S.W.2d 652 (Tex. App.--San Antonio 1991, *orig. proceeding*), the appellate court determined that a rule of civil procedure is to be interpreted by the same rules that govern statutes. When a rule is clear and unambiguous, the language must be construed according to its literal meaning. *Id.* at 653; *RepublicBank Dallas, N.A. v. Interkal, Inc.*, 691 S.W.2d 605, 607 (Tex. 1985); *Hidalgo, Chambers & Co. v. FDIC*, 790 S.W.2d 700, 702 (Tex. App.--Waco 1990, writ denied). The court in *GTE* found the language of Rule 13 to be clear and unambiguous in its provisions that no sanctions may be imposed except for good cause shown. The court further noted that the trial court must enumerate the particulars of the good cause in the sanction order and that this requirement of the rule is mandatory.

Other courts of appeals have held that the complaining parties may waive the particularity requirement of Rule 13 if they fail to make a timely complaint and that the trial court's failure to make particular findings in the order may constitute harmless error. *Alexander v. Alexander*, 956 S.W.2d 712, 714 (Tex. App.--Houston [14th Dist.] 1997, pet. denied); *Bloom v. Graham*, 825 S.W.2d 244, 247 (Tex. App.--Fort Worth 1992, writ denied); *Powers v. Palacios*, 771 S.W.2d 716, 719 (Tex. App.--Corpus Christi 1989, writ denied). The El Paso Court of Appeals has determined that error may indeed be waived but a legitimate effort at obtaining findings will require an abatement similar to that utilized in the area of traditional findings of fact. *Campos v. Ysleta General Hospital, Inc. et al*, 879 S.W.2d 67 (Tex. App.--El Paso 1994, writ denied).

2. TEXAS RULES OF CIVIL PROCEDURE: RULE 215 SANCTIONS

b. *Sanctions by Court In Which Action is Pending.* If a party or an officer, director, or managing agent of a party of a person designated under Rules 200-2b, 201-4 or 208 to testify on behalf of a party fails to comply

with proper discovery requests or to obey an order to provide or permit discovery, including an order made under paragraph 1 of this rule or Rule 167a, the court in which the action is pending may, after notice and hearing, make such orders in regard to the failure as are just, and among others the following.

* * * * *

(8) In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him, or other, to pay, at such time as ordered by the court, the reasonable expenses, including attorney fees, caused by the failure, **unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.** Such an order shall be subject to review on appeal from the final judgment.

[Emphasis added].

There is no requirement that the complaining party have requested or obtained formal findings of fact and conclusions of law with regard to the sanctions order. The Supreme Court has ruled that formal findings are unnecessary. *Otis*

Elevator Company v. Parmelee, 850 S.W.2d 179 (Tex. 1993).

C. Findings In Child Support Orders

Section 154.130 of the Family Code provides that, without regard to Texas Rules of Civil Procedure, Rules 296 through 299, in rendering an order of child support, the court shall make written findings of fact if (1) the party files a written request with the court not later than ten days **after the date of the hearing**; (2) the party makes an oral request in open court during the hearing; or (3) the amount of child support ordered by the court varies from the child support guidelines. TEX. FAM.CODE ANN. § 154.130.

[Emphasis added].

D. Findings In Visitation Orders

Section 153.258 of the Family Code provides that without regard to Rules 296 through 299 of the Texas Rules of Civil Procedure, in all cases in which possession of a child by a parent is contested and the possession of the child varies from the standard possession order, the trial court shall state in the order the specific reasons for the variance from the standard order. TEX.FAM.CODE ANN. § 153.258 (Vernon 1997). A written request must be filed with the court not later than ten days **after the date of the hearing**. An oral request must be made in open court during the hearing.

E. Findings in Dissolution of Marriage

Section 6.711 of the Family Code provides that in a suit for dissolution of a marriage in which the court has rendered a judgment dividing the estate of the parties, on request by a party, the court shall state in writing its findings of fact and conclusions of law concerning (1) the characterization of each party's assets, liabilities, claims, and offsets on which disputed evidence has been presented; and (2) the value or amount of the community estate's assets, liabilities, claims, and offsets on which disputed evidence has been presented. These findings are controlled by the Texas Rules of Civil Procedure, Rule 296, *et. seq.*

VIII. CONCLUSION

Litigants tend to believe that if they are unsuccessful at the trial court, they will get a second bite at the apple on appeal. Appeals are not trials de novo, and only where the trial court has actually committed reversible error will the fruits of labor be sweet. How tragic to have a client lose an opportunity to get that second taste because a truly reversible error was not adequately preserved. Our rules of procedure and interpreting decisions require that the practitioner get it right the first time.

ANN CRAWFORD MCCLURE

is Chief Justice of the 8th Court of Appeals.

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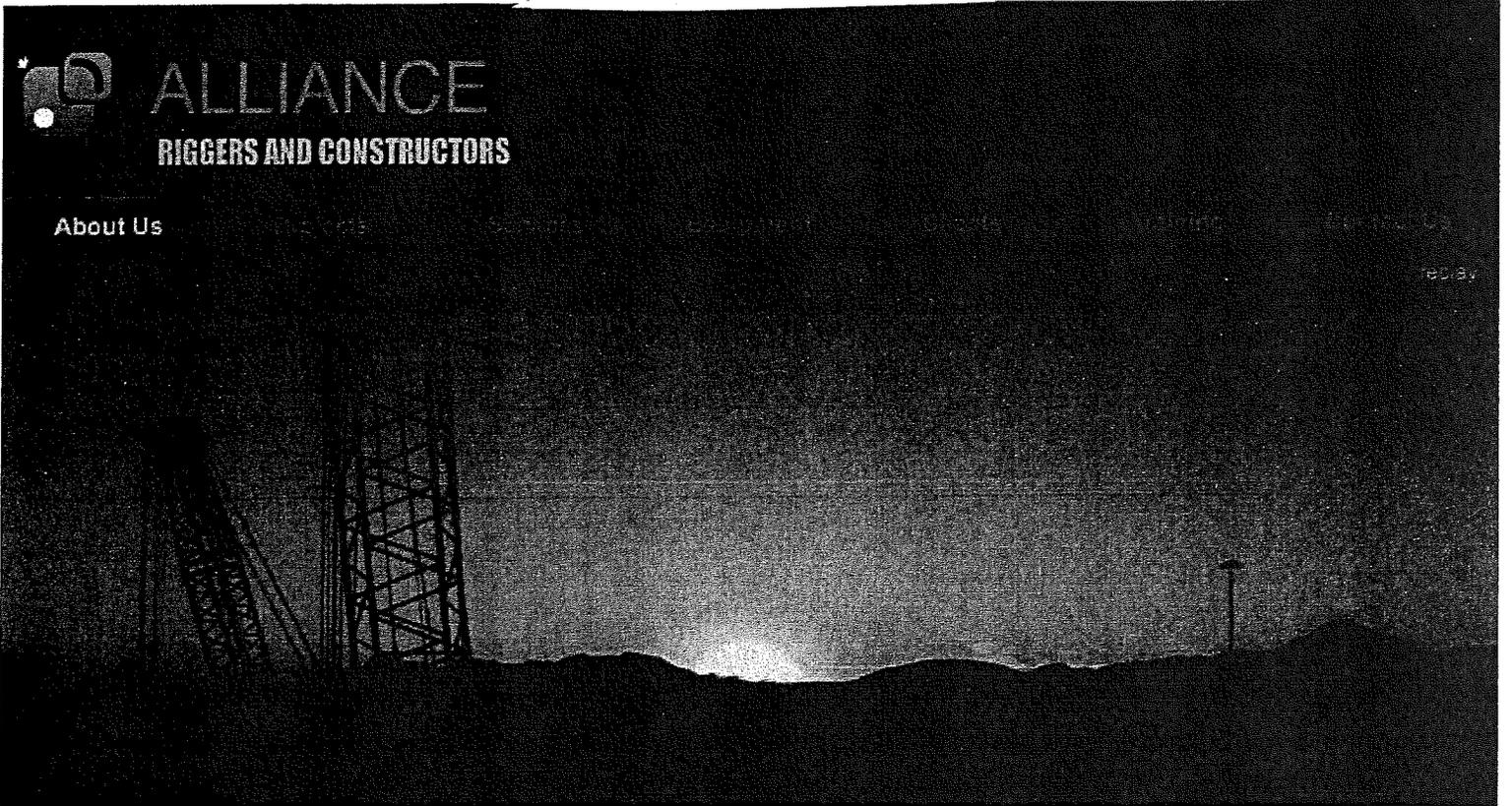


LITTLE YELLOW BOOKS ARE HERE!!!!

EPCLSA 2013 LEGAL DIRECTORIES

You may pick up your 2013 Legal Directories at Kemp Smith LLP, 221 N. Kansas, 17th Floor, El Paso, Texas, 79901 between the hours of 8:00 to 5:00 Monday - Friday. If you have any questions, please call Jerri Boone at 546-5342.

Directory cost remains \$10 each and you may pay by cash or check (made payable to EPCLSA).



ALLIANCE
RIGGERS AND CONSTRUCTORS

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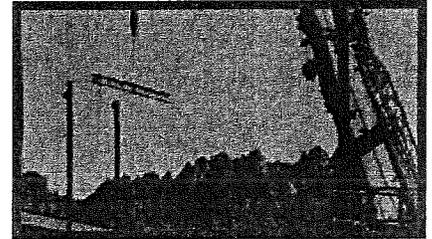
FEATURED PROJECT

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CORPORATE VIDEO

[click here](#)



SLIDESHOW

[click here](#)

PROJECT SLIDESHOWS

Click Pictures

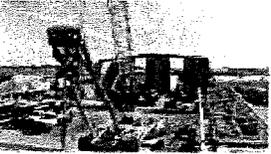


WELCOME TO ALLIANCE RIGGERS & CONSTRUCTORS, LTD.

Alliance Riggers & Constructors is a Southwest Regional Services provider offering premier service throughout Texas and New Mexico. Our qualified and professional team offers an extensive menu of services and the expertise and equipment to assist YOU-our Clients and Construction Partners in making YOUR Vision a reality... safely, on time and within budget. Founded in 1997, Alliance Riggers & Constructors, with limited partner, El Paso Crane & Rigging (founded in 1974) is a family owned business doing business in El Paso Texas and

the surrounding area for nearly 40 years.

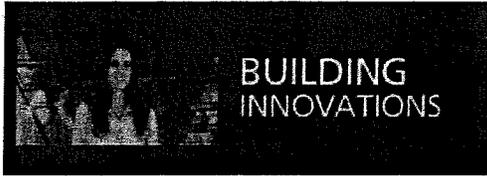
FEATURED PROJECTS



Alliance Riggers & Constructors, Ltd. was awarded the Steel Erectors Association of America (SEAA) Project of the Year for 2011 for its outstanding work on the University of Texas at El Paso (UTEP) Pedestrian Bridge construction and installation.

Alliance Riggers & Constructors is engaged in a magnitude of government projects such as the modernization of the 1st Armored Division and Fort Bliss, Texas Military Base through its construction of facilities that include maintenance buildings, dormitories, dining facilities, medical complex, parking structures, combined Brigade Battalion Buildings, the new Fort Bliss Commissary and the Joint Desalination Plant.

Alliance Riggers & Constructors has contributed to the private sector U.S.- Mexico Border area through its building of Industrial Parks, Manufacturing and Warehousing, infrastructure projects including Sewage and Water Treatment Plants, Hospitals and Educational facilities such as the University of Texas at El Paso School of Nursing and Bio-sciences Facility and Computer Sciences Buildings.



OUR PARTNERS



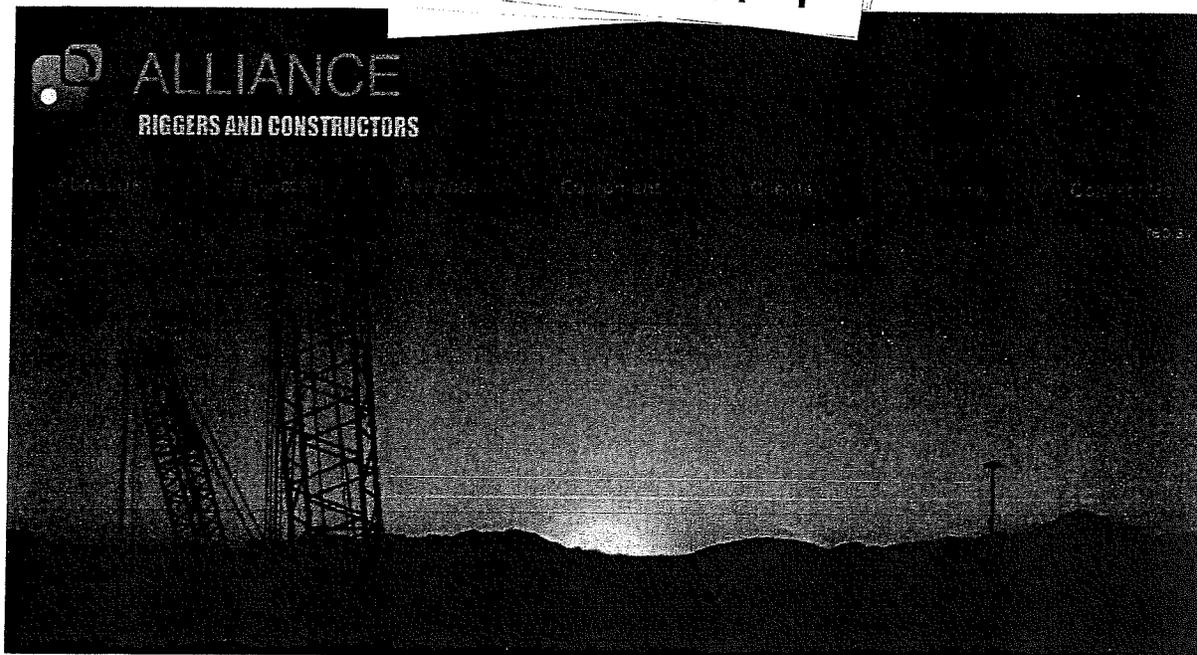
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EXHIBIT 8

 SEARCH

Project hosted by: Berkman Center for Internet & Society

Copyright

A basic understanding of [copyright](#) principles is essential for any blogger, researcher, reporter, photographer, or anyone who publishes their creative works. It's important for two reasons. First, you would understand how you can properly [make use of someone else's work](#) – quoting from it, reprinting summarizing it, even satirizing it. And second, you should understand how you can [protect your own legal rights](#) in what you create, so that others don't take unfair (even unlawful) advantage of it.

Like any area of the law, copyright can get complex at its outer limits. However, a working knowledge of copyright law is not hard to acquire and will guide you through nearly all the situations you are likely to face in your day to day work.

What Copyright Covers

Let's start with some of the building blocks. First, all copyright law is [federal](#) law and therefore uniform across the country (in theory). States have no role, because the [Constitution](#) gives Congress the sole power . . . [t]o promote the Progress of Science and the useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Congress first exercised this power to establish copyrights (and patents) in its first meeting in 1791, and it has regularly revised and updated the law ever since. Though the last comprehensive copyright revision was acted in 1976, Congress has passed many new copyright laws and amended others – sometimes after highly contentious lobbying and debate – in the digital era.

In broad, [copyright law covers](#) an extraordinarily broad range of creative work. The law calls them "works of authorship" but copyright protects almost all creative work that can be written down or otherwise captured in a tangible medium:

- *Literary works* – which is basically prose, whether a news story, scientific paper, novel, poetry, or any other form of "words-only" (or words-and-pictures) creative work.
- *Musical works* – both the lyrics and the music, whether from advertising jingles to symphonies.
- *Dramatic works* – plays, including any accompanying music.
- *Pictorial, graphic, and sculptural works* – photographs, drawings, paintings, and any other kind of two- or three-dimensional art.
- *Motion pictures and other audiovisual works* – movies, television shows, YouTube videos, and any kind of multimedia.
- *Sound recordings* – in addition to the copyright on words and music (above) a separate copyright protects a recording artist's rendition of a work
- *Architectural works* – blueprints and similar plans for buildings.

For more information on works protected under copyright law, see the section in this guide on [Copyrightable Subject Matter](#).

Copyright Ownership

Owning a copyright gives you the [exclusive right](#) to publish, copy or otherwise reproduce the work; to distribute the work publicly (or not so publicly); and to perform or display the work, if it is a work of performance or visual art. Owning a copyright also gives you the exclusive right to prepare "derivative works," which are the original works in new forms – for example, a translation into another language, a movie made from a novel, or a revised or expanded edition of an existing work. Someone who does these things without your permission is infringing your copyright, and the law provides recourse to you.

For more details on the exclusive rights granted to a copyright owner, see the section on [Rights Granted Under Copyright](#).

Copyright is extraordinarily easy to acquire. In fact, you really need do nothing at all – the law provides that copyright springs to life and protects an author's work from the time the work is "fixed in a tangible

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- [Browse Guide Sections](#)
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- ▶ [Dealing with Legal Threats and Risks](#)
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EXHIBIT 9

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE TRADEMARK/SERVICE MARK APPLICATION

MARK: ALLIANCE RIGGERS & CONSTRUCTORS with Design
INT. CL. NO. : 037
INT. CL. TITLE: BUILDING CONSTRUCTION; REPAIR; INSTALLATIONS
SERVICES

TO THE ASSISTANT SECRETARY AND
COMMISSIONER OF PATENTS AND TRADEMARKS:

APPLICANT: Alliance Riggers & Constructors, Ltd
APPLICANT IS: A Texas Limited Partnership
BUSINESS ADDRESS: 1200 Kastrin Street
El Paso, Texas 79907
GOODS OR SERVICES: Crane and Erectors Services, namely: Structural Steel
Erection, Tilt-up and Precast Erection, Crane and Rigging,
Overhead Crane Systems, Machinery Moving, In-Plant
Heavy Hauling, Welding Service, Crane Lift Drafting, Trans-
Loading, and Pre-Engineered Metal Building Erection, in
International Class 037

Applicant requests registration of the above identified trademark/service mark shown on the accompanying drawing in the United States Patent and Trademark Office on the Principal Register established by the Act of July 25, 1946 (15 U.S.C. §1051, et seq.) as amended for the above identified goods/services.

The Applicant is using the mark in commerce or in connection with the above identified goods/services (15 U.S.C. §1051(a), as amended). Pursuant to Section 904.1 of the TMEP, Applicant submits one specimen showing the mark as used in commerce.

Date of first use of the mark anywhere: July 1, 1997

Date of first use of the mark in interstate commerce: July 1, 1997

POWER OF ATTORNEY

The Applicant hereby appoints R. Wayne Pritchard of the firm R. Wayne Pritchard, P.C., 300 East Main, Suite 1240, El Paso, Texas 79901, Telephone Number (915) 533-0080, Facsimile

Number (915) 533-0081, e-mail address wpritchard@pritchlaw.com, to prosecute and pursue this mark and this application to register, to transact all business with the Patent and Trademark Office in connection therewith, and to receive the Certificate of Registration. The USPTO is authorized to communicate with the applicant through its designated agent at the above stated e-mail address.

DECLARATION

The undersigned being hereby warned that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful, false statements may jeopardize the validity of the application or any resulting registration, declares that he/she believes the applicant to be the owner of the mark sought to be registered, or, if the application is being filed under 15 U.S.C. §1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use said mark in commerce either in identical form thereof or in such near resemblance thereto as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Alliance Riggers & Constructors, Ltd

By: *Phillip H. Cordova*
Name: Phillip H. CORDOVA
Its: GENERAL MANAGER
Date: 17 MAY 2012

EXHIBIT 10

Side - 1



NOTICE OF ABANDONMENT MAILING DATE: Apr 15, 2013

The trademark application identified below was abandoned in full because a response to the Office Action mailed on Sep 17, 2012 was not received within the 6-month response period.

If the delay in filing a response was unintentional, you may file a petition to revive the application with a fee. If the abandonment of this application was due to USPTO error, you may file a request for reinstatement. Please note that a petition to revive or request for reinstatement **must be received within two months from the mailing date of this notice.**

For additional information, go to <http://www.uspto.gov/teas/petinfo.htm>. If you are unable to get the information you need from the website, call the Trademark Assistance Center at 1-800-786-9199.

SERIAL NUMBER: 76711574
MARK: ALLIANCE RIGGERS & CONSTRUCTORS
OWNER: Alliance Riggers & Constructors, Ltd

Side - 2

UNITED STATES PATENT AND TRADEMARK OFFICE
COMMISSIONER FOR TRADEMARKS
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001780



Office of the Secretary of State

Certificate of Fact

The undersigned, as Secretary of State of Texas, does hereby certify that a diligent search of the records of this office reveals no active registration or pending application for a trademark or service mark by the name ALLIANCE RIGGERS & CONSTRUCTORS, LTD.

However, there are the following corporations, limited partnerships or limited liability companies with similar names:

ALLIANCE RIGGERS & CONSTRUCTORS, LTD.

In testimony whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in Austin, Texas on January 17, 2013.



A handwritten signature in black ink, appearing to read "John Steen".

John Steen
Secretary of State

EXHIBIT 11

From: "Phillip Pruett" <pruetteallianceriggers.com> (+)
To: rdilsr@zianet.com (+)
Date: 26 Jan 2012, 08:06:49 AM
Subject: FW: SEAA Project of the Year

HTML content follows

Linda and Carlos, We just received this e-mail from SEAA. Alliance won the Class I category! Thank you very much for your professional assistance, your quality product and aiding in our VICTORY. Phillip Pruett Alliance Riggers & Constructors, Ltd. 1200 Kastrin St. El Paso, TX 79907 P- 915-591-4513 F- 915-593-4718 M- 575-644-8735 From: Alan Sears [mailto:ASears@vulcraft-sc.com] Sent: Thursday, January 26, 2012 6:17 AM To: phil@allianceriggers.com Cc: Tom Underhill Subject: SEAA Project of the Year Good Morning Phillip! I am so happy to inform you that the University of Texas El Paso Sun Bowl Pedestrian Overpass was the Class I winner! The Awards Ceremony will be Saturday evening March 10th during the 40th Anniversary Gala. I'm looking forward to seeing you in March at the SEAA National Convention & Trade Show in Myrtle Beach. Again Congratulations! Alan B. Sears SEAA Awards Chairman

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3. CARLOS E. RESTREPO is an individual residing in El Paso County, Texas who may be served with process at his principal place of residence located at 804 Pintada Place, El Paso, Texas 79912.

4. LINDA S. RESTREPO is an individual residing in El Paso County, Texas, who may be served with process at her principal place of residence located at 804 Pintada Place, El Paso, Texas 79912.

**III.
TRADEMARK INFRINGEMENT/UNFAIR COMPETITION**

5. Plaintiff is the owner of the well known common law trademark, ALLIANCE RIGGERS & CONSTRUCTORS.

6. Defendants have, without permission or authority from Plaintiff, registered the domain name "www.alliancereggersandcontractors.com", and have in fact, launched a web page at such address in which they make multiple use of Plaintiff's trademark.

7. The use by Defendants of Plaintiff's trademark without permission or authority constitutes trademark infringement and unfair competition under the laws of the State of Texas.

8. As a direct and proximate result of the actions complained of above, Plaintiff has suffered damages in excess of the minimum jurisdictional limits of this court.

**IV.
BREACH OF CONTRACT**

9. On or about March 2011, Plaintiff and Defendants entered into a contract ("Contract"), the primary purpose of which was to design for Plaintiff a web page. Defendants have breached the Contract by failing to design for Plaintiff the web page as

agreed. As a direct and proximate result of the conduct of Defendants described above, Plaintiff has suffered damages in excess of the minimum jurisdictional limits of this court.

**V.
DECLARATORY JUDGMENT REQUEST**

10. By letter dated June 12, 2012, a true and correct copy of which is attached hereto as Exhibit "A" and incorporated by reference for all purposes, Defendant alleged that Plaintiff had breached the Contract and made demand that Plaintiff pay Defendants \$3,500.00.

11. As shown above, Plaintiff has not breached the Contract as alleged by Defendants and furthermore, does not owe Defendants any sum of money.

12. Plaintiff requests that pursuant to Section 37.001 et seq., of the Texas Civil Practice and Remedies Code, commonly referred to as the Texas Declaratory Judgment Act, this Court declare that Plaintiff is not in breach of the Contract and does not owe Defendants any amounts of money.

13. Plaintiff is entitled to recover from Defendants, jointly and severally, pursuant to Section 37.009 of the Texas Declaratory Judgment Act, its reasonable and necessary attorneys' fees incurred in this action.

**VI.
VIOLATION OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT**

14. In connection with the their agreement to design for Plaintiff a web page, Defendants:

- A. Represented that services had characteristics, uses or benefits which they did not have in violation of Section 17.46(b)(5) of the Texas Deceptive Trade Practices Act ("TDPA");

- B. Represented that services were of a particular standard, quality or grade when they were of another in violation of Section 17.46(b)(7) of the TDPA;
- C. Represented that an agreement conferred or involved rights, remedies or obligations which it did not have or involve in violation of Section 17.46(b)(12) of the TDPA;
- D. Failed to disclose information concerning services which was known at the time of the transaction, when such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed in violation of Section 17.46(b)(24) of the TDPA;
- E. Engaged in unconscionable actions or course of actions in violation of Section 17.50(a)(3) of the TDPA;

15. The actions of Defendants complained of in paragraph 10, were a producing cause of damages to Plaintiff and are therefore actionable under Section 17.50(a) of the TDPA.

16. The conduct of Defendants as described above was committed knowingly entitling Plaintiff to recover three times its economic damages as provided in Section 17.50(b)(1) of the TDPA.

**VII.
ATTORNEYS' FEES**

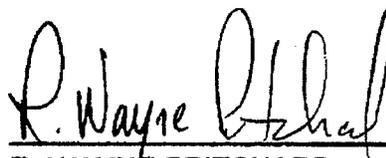
17. Plaintiff is entitled to recover its reasonable attorneys' fees incurred in this action pursuant to Sections 37.009 and 38.001 et seq. of the Texas Civil Practice and Remedies Code as well as under the Texas Deceptive Trade Practices Act.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon final hearing in this matter, after proper notice to Defendants, that it recover from Defendants, jointly and severally, its actual damages, its economic damages, three times its economic damages, as well as court costs and reasonable attorneys' fees together with prejudgment and post-judgment interest as allowed by law, and such other and further relief to which it is entitled.

Respectfully submitted,

R. WAYNE PRITCHARD, P.C.
300 East Main, Suite 1240
El Paso, Texas 79901
Tel. (915) 533-0080
Fax (915) 533-0081

By:



R. WAYNE PRITCHARD
State Bar No. 16340150

ATTORNEYS FOR PLAINTIFF

EXHIBIT 13

THE STATE OF TEXAS

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

TO: **LINDA S. RESTREPO**, who may be served with process at **P.O. BOX 12066, EL PASO, TX 79913**

Greetings:

You are hereby commanded to appear by filing a written answer to the Plaintiff's Original Petition at or before ten o'clock A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable **County Court at Law Number 5**, El Paso County, Texas, at the Court House of said County in El Paso, Texas.

Said Plaintiff's Original Petition was filed in said court on the 20th day of June, 2012, by Attorney at Law R WAYNE PRITCHARD, 300 E MAIN ST, #1240, EL PASO, TX 79901 in this case numbered **2012DCV04523** on the docket of said court, and styled:

ALLIANCE RIGGERS & CONSTRUCTORS, LTD.
VS.
LINDA S. RESTREPO, CARLOS E. RESTREPO

The nature of Plaintiff's demand is fully shown by a true and correct copy of the Plaintiff's Original Petition, Request for Disclosure, Plaintiff's Request for Production, Plaintiff's First Set of Interrogatories to Defendants accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and seal of said Court at El Paso, Texas, on this the 23rd day of August, 2012

Attest: **NORMA L. FAVELA**, District Clerk, El Paso County, Texas.

CLERK OF THE COURT
NORMA L. FAVELA
District Clerk
El Paso County Courthouse
500 E. San Antonio Ave, RM 103
El Paso Texas, 79901

By *Chandri Bocanegra* Deputy
Chandri Bocanegra

CERTIFICATE OF DELIVERY BY MAIL

I hereby certify that on the 19th day of

SEPTEMBER, 2012 at 5:00PM I mailed to

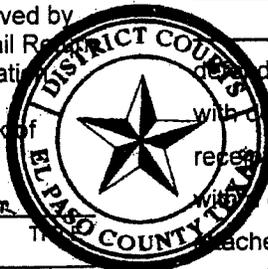
LINDA S. RESTREPO

ATTACH
RETURN RECEIPTS
WITH
ADDRESSEE'S SIGNATURE

Rule 106 (a) (2) the citation shall be served by mailing to the defendant by Certified Mail Return receipt requested, a true copy of the citation. Sec. 17.027 Rules of Civil Practice and Remedies Code if not prepared by Clerk of Court.

Defendant(s) by registered mail or certified mail with delivery restricted to addressee only, return receipt requested, a true copy of this citation with copy of the Plaintiff's Original Petition attached thereto.

JOEL PAVAN PROCESS SERVER
*NAME OF PREPARER
300 E. MAIN, SUITE 1024
ADDRESS
EL PASO
CITY TEXAS 79901
STATE ZIP



[Signature] SCH# 2253 EXP. 8/31/2015
PROCESS SERVER FOR RASBERRY & ASSOCIATES, INC.
TITLE

RETURN OF SERVICE

Delivery was completed on OCTOBER 9, 2012, delivered to LINDA S. RESTREPO, CITATION, PLAINTIFF'S ORIGINAL
DEFENDANT'S REQUEST FOR DISCLOSURE, REQUEST FOR PRODUCTION, PLAINTIFF'S FIRST
SET OF INTERROGATORIES TO DEFENDANTS as evidence by Domestic Return Receipt PS Form 3811

attached hereto.

The described documents were not delivered to the named recipient. The certified mail envelope was returned
undelivered marked _____.

This forwarding address was provided: _____

El Paso County, Texas

By: _____
Deputy District Clerk

[Signature]
OR
Name of Authorized Person

SCN# 2253 EXP. 8/31/2015

By: JOEL PAVAN

BY _____
EL PASO COUNTY, TEXAS
2012 OCT 10 PM 2:52
[Signature]

VERIFICATION BY AUTHORIZED PERSON

County of Texas
County of El Paso

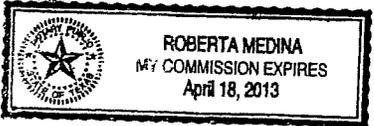
Before me, a notary public, on this day personally appeared JOEL PAVAN, known to me to be the person
whose name is subscribed to the foregoing Return of Service, and being by me first duly sworn, declared, "I am
an interested party qualified to make an oath of that fact and statements contained in the Return of Service and true and
correct."

Subscribed and sworn to be on this 10 day
of October, 2012

[Signature]

Notary Public, State of Texas

My commission expires: 4/18/2013



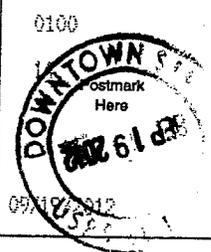
7011 2000 0000 8024 5802

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$ 1.70
Certified Fee	\$2.95
Return Receipt Fee (Endorsement Required)	\$2.35
Restricted Delivery Fee (Endorsement Required)	\$4.55
Total Postage & Fees	\$ 11.55



Sent To LINDA S. RESTREPO
 Street, Apt. No., or PO Box No. P.O. Box 12066
 City, State, ZIP+4 EL PASO, TEXAS 79913

PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Linda S. Restrepo
 P.O. Box 12066
 El Paso, Texas 79913

RESTRICTED DELIVERY

COMPLETE THIS SECTION ON DELIVERY

A. Signature X [Signature] Agent Addressee

B. Received by (Printed Name) _____ C. Date of Delivery _____

D. Delivery address different from item 1? Yes No
 If different, enter delivery address below: _____

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

R.I. FITCHARD: 201A-DCV04533
 Article Number (Transfer from sender) 7011 2000 0000 8024 5802