

CAUSE NO. 06-00857

UDO BIRNBAUM
Plaintiff

v.

PAUL BANNER
Defendant

RON CHAPMAN
Defendant

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IN THE DISTRICT COURT

294th JUDICIAL DISTRICT

VAN ZANDT COUNTY, TEXAS

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ORIGINAL PETITION

Comes now UDO BIRNBAUM ("Birnbaum"), Plaintiff, *Pro Se*, complaining of PAUL BANNER ("Banner") and RON CHAPMAN ("Chapman") and for cause of action would respectfully show the Court the following:

Udo Birnbaum is an individual residing in Van Zandt County, Texas. He may be served with process at 540 VZ CR 2916, Eustace, Texas 75124.

Paul Banner is a retired Texas judge who may be served with process at First Administrative Judicial Region, 133 N. Industrial Blvd., LB 50. Dallas, Texas 75207

Ron Chapman is a retired Texas judge who may be served with process at First Administrative Judicial Region, 133 N. Industrial Blvd., LB 50. Dallas, Texas 75207

1. Discovery is intended to be conducted under Level 3. (RCP Rule 190.4)

STATEMENT ON JUDICIAL IMMUNITY

2. Defendant **Chapman's** conduct complained of was NOT in a judicial capacity -- there was nothing to adjudicate -- and nothing to magistrate -- and Defendant's conduct was also objectively unreasonable.

3. Defendant **Banner's** conduct complained of was as a WITNESS -- and also objectively unreasonable.

STATEMENT OF THE CASE

4. Plaintiff complains under 18 U.S.C. § 1964(c) ("civil RICO") of injury to his property by reason of Defendant's violation of 18 U.S.C. §1961 *et seq.* ("RICO").

"State courts have concurrent jurisdiction to consider civil claims arising under RICO". *Tafflin v. Levitt, 493 U.S. 455 (1990)*.

"For the purposes of this chapter, the term **"scheme or artifice to defraud"** includes a scheme or artifice to **deprive** another of the **intangible right of honest services"**. *18 U.S.C. § 1346*

5. The scheme and pattern of racketeering activity complained of is open ended.
6. Injury amounting to \$125,770 was discovered shortly after Oct. 24, 2006.

THE SCHEME

7. Plaintiff Birnbaum complains of a scheme to punish and silence Birnbaum for having exercised his right of access to the courts, and to execute the scheme by a *"scheme to deprive of the intangible right of honest services"*.

8. Defendant's use of the U.S. Mail and interstate capable communications equipment to execute such scheme provides the *"predicate acts"* of *"racketeering activity"* constituting the outlawed *"pattern of racketeering activity"* as defined under RICO.

THE PATTERN OF RACKETEERING ACTIVITY

9. Ever after April 1, 2004 Defendants came together to use a DEAD case in the 294th District Court of Van Zandt County. FINAL JUDGMENT had issued way back on July 30, 2002. (Exhibit B)

10. **Chapman** knew that his April 1, 2004 pronouncement of \$125,770 sanctions against Birnbaum was not proper -- as indicated by his NOT then following through with an Order.
11. **Chapman** hiding this original wrong for over TWO years constitutes another wrong.
12. **Chapman** on October 24, 2006 actually issuing \$125,770 Order is the latest wrong.
13. **Banner** willingly participated against Birnbaum as a WITNESS, fully knowing that the case was DEAD, he himself having issued FINAL JUDGMENT way back on July 30, 2002.
14. **Banner**, having personally observed Chapman pronounce unlawful \$125,770 punishment on Birnbaum, did NOTHING to protect Birnbaum from the wrong Chapman was doing.
15. **Banner** for over TWO YEARS did NOTHING to report the wrong he had witnessed on April 1, 2004.

16. The acts of "*racketeering activity*" shown above constitute a "*pattern of racketeering activity*" within the meaning of 18 U.S.C. § 1961(5). The acts complained of are not isolated events, but relate to each other by virtue of a common participant, a common method of commission, and the common purpose and common result of defrauding of honest service these defendants owed to the state of Texas by their oaths of office and positions as public servants.
17. Defendants' use of the U.S. Mail and interstate capable communications equipment to execute such scheme provides the "*predicate acts*" of "*racketeering activity*" constituting the outlawed "*pattern of racketeering activity*" as defined under RICO.
18. Plaintiff's injury to his property was "*by reason of*" Defendant's violation of RICO.

THE VIOLATION OF RICO

18 U.S.C. § 1962(c)

"to conduct or participate, directly or indirectly, in the conduct of an enterprise's affairs through a pattern of racketeering activity"

19. The 294th District Court of Van Zandt County, Texas is an "enterprise" under RICO.
20. This "enterprise" has some effect upon interstate commerce
21. Defendants were associated with the enterprise.
22. Defendants played some part in directing the affairs of the enterprise
23. Defendants engaged in the pattern of racketeering activity as outlined above
24. Defendants' association with the enterprise facilitated the commission of the acts
24. The commission of these predicate acts did indeed have some effect on the "enterprise"

INJURY

"by reason of the RICO violation"

25. Injury of \$125,770 is as indicated and detailed in Exhibit "A", *Order on Motion for Sanctions* (signed Oct. 24, 2006).
26. The injury flowed from both the pattern of racketeering activity and from the acts of racketeering activity.

PRAYER FOR RELIEF

Wherefore, Plaintiff Birnbaum seeks judgment against Defendants jointly and severally. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Birnbaum. Birnbaum is therefore entitled to an award of punitive damages. Birnbaum seeks judgment as follows:

- (a) \$377,310 as treble damages as proscribed by RICO
- (b) For the costs of suit, including reasonable attorney's fees, if any
- (c) Pre-judgment interest at the maximum rate allowed by law
- (d) Post-judgment interest at the maximum rate allowed by law
- (e) Punitive damages in an amount as the jury may award at its discretion
- (f) A permanent injunction prohibiting Defendants from sitting as "visiting judges" in the 294th District Court of Van Zandt County.
- (g) Such other relief, legal and equitable, special or general, as the Court deems proper and just

Defendants' conduct is a menace to society that extends into the indefinite future.

BIRNBAUM HEREBY DEMANDS A TRIAL BEFORE A JURY

Respectfully submitted,

Udo Birnbaum

Udo Birnbaum, *Pro Se*

540 VZ CR 2916

Eustace, Texas 75124

(903) 479-3929

Exh. "A", ***Order on Motion for Sanctions – \$125,770 (Oct. 24, 2006)***
(On a FOUR year old DEAD case!)

Exh. "B", ***Final Judgment – signed by Defendant Banner himself (July 30, 2002)***
(The DEAD case, page 1 and 7 only)

It is therefore, **ORDERED, ADJUDGED, and DECREED** that the motion by the defendant, Udo Birnbaum, that Judge Paul Banner be recused from further matters effecting this cause of action is denied.

It is therefore, **FURTHER ORDERED, ADJUDGED, and DECREED** that the Plaintiff, G. David Westfall, P.C., and Counter-Defendants, Christina Westfall and Stefani Podvin, are awarded damages as a sanction against and to be paid by defendant, Udo Birnbaum, to G. David Westfall, P.C., Christina Westfall, and Stefani Podvin as follows:

- A. A monetary sanction in the amount of \$1,000.00 as actual damages, representing the reasonable value of the legal services rendered to the Sanctions Movants by their attorney for the defense of Birnbaum's Motion to Recuse and the prosecution of the Sanctions Movants' Motion for Sanctions.
- B. A monetary sanction in the amount of \$124,770.00 as exemplary and/or punitive damages to serve as a deterrent to prevent Birnbaum from committing further similar acts again in the future.

IT IS FURTHER ORDERED THAT the judgment here rendered shall bear interest at the rate of five percent (5%) from the date of the signing of this order, until paid.

All other relief regarding any motions for relief on file in this cause of action not expressly granted in this order is hereby denied.

With regard to the award of sanctions, the Court makes the following findings and conclusions in support of the Court's award of sanctions and in support of the type and dollar amount of the sanctions imposed:

Findings of Fact

1. Birnbaum's claims regarding the attempt to have Judge Paul Banner recused were groundless, vacuous, manufactured, and totally unsupported by any credible evidence whatsoever.
2. Birnbaum's claims regarding the attempt to have Judge Paul Banner recused were without merit and brought for the purpose of harassment and/or delay.
3. The testimony of Birnbaum regarding the attempt to have Judge Paul Banner recused was biased, not credible, and totally uncorroborated by any other evidence.
4. The sole purpose of Birnbaum filing the motion regarding the attempt to have Judge Paul Banner recused was an attempt to harass, intimidate, and inconvenience the Sanctions Movants.
5. Birnbaum has a track record and history of filing lawsuits, motions, and writs of mandamus against judges that rule against him in litigation.
6. Birnbaum filed a pleading containing a completely false and outrageous allegation that Judge Paul Banner had conducted himself in a manner that showed bias and a lack of impartiality.
7. Birnbaum's difficulties with judges and the repeated allegations of a lack of impartiality have had nothing at all to do with the conduct of the judges that Birnbaum has appeared before, but instead, is a delusional belief held only inside the mind of Birnbaum.
8. Birnbaum will seemingly go to any length, even filing new lawsuits in State and Federal courts in an attempt to re-litigate issues which a court has already ruled upon and which all appropriate courts of appeal have affirmed.
9. Birnbaum's filing of this Motion to recuse Judge Banner was consistent with a proven pattern and practice of behavior engaged in by Birnbaum over many years and currently ongoing now in this court and in other federal courts.

Order on Sanctions

PAGE 3 of 8

10. Birnbaum has a track record and history of bickering and quarreling with judges that have ruled against him in litigation.
11. Birnbaum has a track record and history of filing lawsuits without merit against judges, attorneys, and other individuals in an attempt to gain tactical advantage in other ongoing litigation.
12. Prior to this hearing, Birnbaum filed in March 2004, new legal action in Federal District Court against Judge Paul Banner, G. David Westfall, Christina Westfall, and Stefani Podvin. This new Federal lawsuit attempts to re-litigate the same issues Birnbaum unsuccessfully raised in this lawsuit.
13. Prior to this hearing, Birnbaum has initiated a lawsuit against the attorney for the Sanctions Movants, Frank C. Fleming. Birnbaum admitted in open court that he has never had any dealings with Frank C. Fleming other than in connection with Mr. Fleming's representation of the Plaintiff and the counter-defendants in this cause of action. Birnbaum admitted in open court that the legal basis of his lawsuit against Mr. Fleming, civil RICO, is the same basis Birnbaum was previously sanctioned in this lawsuit for attempting to bring against Christina Westfall and Stefani Podvin.
14. The behavior of Birnbaum himself in prosecuting the Motion to recuse Judge Banner has been vindictive, unwarranted, mean-spirited, frivolous, and totally without substantiation on any legally viable theory for the recusal of Judge Banner.
15. The Motion itself to Recuse Judge Banner without any ounce of evidence to support it, was frivolous, vindictive, and brought for the purpose of harassment.
16. The conduct of Birnbaum giving rise to the award of exemplary and/or punitive damages was engaged in by Birnbaum willfully and maliciously with the intent to harm the Sanctions Movants, Judge Paul Banner, and the attorney for the Sanctions Movants, Mr. Fleming.

17. Prior to the hearing on the Motion to Recuse, the Court admonished Birnbaum that if his Motion to Recuse Judge Banner was not withdrawn, that if it became appropriate, the Court would hear the Motion for Sanctions. In response to this admonition, Birnbaum unequivocally elected to move forward with a hearing on his Motion in an attempt to have Judge Banner recused.

18. The type and dollar amount of the sanctions award is directly related to the harm done. The Court has not been presented with any evidence to believe that the amount of the sanctions award is excessive in relation to the net worth of Birnbaum.

19. The type and dollar amount of the sanctions award is appropriate in order to gain the relief which the Court seeks, which is to stop this litigant and others similarly situated from filing frivolous motions, frivolous lawsuits, frivolous defenses, frivolous counter-claims, and new lawsuits which attempt to re-litigate matters already litigated to a conclusion.

20. The amount of the exemplary and/or punitive damage award is an amount narrowly tailored to the amount of harm caused by the offensive conduct to be punished.

21. The Sanctions Movants have suffered damages as a result of Birnbaum's frivolous counter-claims and Birnbaum's motion to recuse. These damages include expenses (in addition to taxable court costs), attorney's fees, harassment, inconvenience, intimidation, and threats.

Conclusions of Law

1. On the issue of the recusal of Judge Paul Banner, Birnbaum wholly failed to provide any credible evidence to substantiate any of his claims.

2. All of Birnbaum's claims were as a matter of law unproved and untenable on the evidence presented at the hearing.

3. The court concludes as a matter of law that Birnbaum's claim that Judge Paul Banner acted biased and with a lack of impartiality, was brought for the purpose of harassment. The Court makes

Order on Sanctions

this conclusion based upon the fact that Birnbaum was not a credible witness, that other credible witnesses totally contradicted Birnbaum's version of the facts, and that evidence was presented establishing that Birnbaum has had a track record and history of harassment towards other opposing litigants, opposing counsels, and other judges before whom Birnbaum has appeared.

4. The Plaintiffs behavior in bringing and prosecuting this frivolous motion to recuse Judge Banner was a violation of one or more of the following: §§10.001, et seq., Tex. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.
5. The Court has the power to award both actual and exemplary (and/or punitive) damages against Birnbaum for the filing and prosecution of a frivolous motion. This authority stems from one or more of the following: §§10.001, et seq., Tex. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.
6. The behavior and attitude of Birnbaum in filing and prosecuting this Motion to Recuse claim against Judge Paul Banner calls out for the award of both actual and exemplary (and/or punitive) damages to be assessed against Birnbaum.
7. The appropriate award for actual damages as a result of the filing and prosecution of the frivolous Motion to Recuse, is an award of \$1,000.00 in attorney's fees. The Court makes this award under power granted to the Court by §§10.001, et seq., Tex. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.
8. The appropriate exemplary and/or punitive sanction for the filing and full prosecution of the frivolous Motion to Recuse is an award of \$124,770.00 to be paid by Birnbaum to the Sanctions Movants.
9. The award of exemplary and/or punitive damages is directly related to the harm done.
10. The award of exemplary and/or punitive damages is not excessive.

Order on Sanctions

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11. The award of exemplary and/or punitive damages is an appropriate amount to seek to gain the relief sought by the Court which is to stop Birnbaum and others like him from filing similar frivolous motions and other frivolous lawsuits.
12. The amount of the exemplary and/or punitive damage award is narrowly tailored to the harm done.
13. The amount of the exemplary and/or punitive damages is narrowly tailored to exactly coincide with the amount (in total) assessed against Birnbaum to date in this litigation. This amount was selected by the Court deliberately and on purpose to send a clear message to Birnbaum. The message this award of damages is intended to relay to Mr. Birnbaum is that this litigation is over, final, and ended. The message is that further attempts to re-open, re-visit, and re-litigate matters which have already been decided in court, reduced to judgment, and affirmed on appeal will not be tolerated; and that further attempts by this litigant to engage in such activity will not be conducted without the imposition of very serious and substantial monetary sanctions imposed upon Mr. Birnbaum.
14. Authority for an exemplary and/or punitive damage award is derived from §§10.001, et seq., Tex. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.

Any finding of fact herein which is later determined to be a conclusion of law, is to be deemed a conclusion of law regardless of its designation in this document as a finding of fact. Any conclusion of law herein which is later determined to be a finding of fact, is to be deemed a finding of fact regardless of its designation in this document as a conclusion of law.

THIS JUDGMENT RENDERED ON APRIL 1, 2004, AND SIGNED THIS

24 day of Oct, 2006.


JUDGE PRESIDING

- A. Actual damages in the amount of \$15,817.60 plus pre-judgment interest up through the date of this Order which the Court finds to be \$2,156.15.
- B. Attorney's fees in the amount of \$41,306.91.
- C. An additional award of attorney's fees as follows:
1. \$20,000.00 in the event of an appeal to the Court of Appeals.
 2. \$5,000.00 in the event of an application for writ of error is filed with the Supreme Court of Texas.
 3. \$10,000.00 in the event of an application for writ of error is filed with the Supreme Court of Texas and the writ is granted.
- D. Taxable Court costs in the amount of \$926.80.

IT IS FURTHER ORDERED THAT the judgment here rendered shall bear interest at the rate of ten percent (10%) from April 11, 2002 until paid.

All costs of court expended or incurred in this cause are adjudged against Udo Birnbaum, Defendant/ Counter-Plaintiff. All writs and process for the enforcement and collection of this judgment or the costs of court may issue as necessary. All other relief not expressly granted in this order is hereby denied.

THIS JUDGMENT RENDERED ON APRIL 11, 2002, AND SIGNED THIS 30
day of July, 2002.


JUDGE PRESIDING

COPY

CAUSE NO. 06-00857

UDO BIRNBAUM,
Plaintiff,

v.

PAUL BANNER AND RON CHAPMAN,
Defendants.

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IN THE DISTRICT COURT

VAN ZANDT COUNTY,
TEXAS

249TH JUDICIAL DISTRICT

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S ORIGINAL PETITION

NOW COME Defendants the Honorable Judges Paul Banner and Ron Chapman and file this Answer and Affirmative Defenses to Plaintiff's Original Petition, and would respectfully show the Court as follows:

**I.
GENERAL DENIAL**

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendants deny each and every, all and singular, of Plaintiff's allegations, and demand strict proof thereof.

**II.
AFFIRMATIVE DEFENSES**

1. Defendants assert sovereign immunity as an affirmative defense to the claims asserted by Plaintiff.
2. Defendants assert the applicable statute of limitations to any claim made outside the limitations period.
3. Defendants assert the defense of absolute judicial immunity to the fullest extent applicable to all claims against them.

4. Plaintiff has failed to mitigate his damages.
5. Defendants assert the defense of official immunity to the fullest extent applicable to all claims against them.
6. Defendants assert the affirmative defenses of res judicata and collateral estoppel to the fullest extent applicable to all claims against them.
7. Defendants reserve the right to assert additional affirmative defenses as they become apparent.

**III.
PRAYER**

ACCORDINGLY, Defendants the Honorable Judges Banner and Chapman pray that Plaintiff take nothing by way of this frivolous and harassing lawsuit and that they recover all such other and further relief, special or general, at law or in equity, to which they may show themselves justly entitled, including but not limited to attorneys' fees and costs incurred herein.

Respectfully submitted,

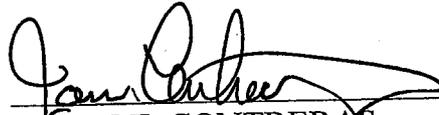
GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil Litigation

ROBERT B. O'KEEFE

Chief, General Litigation Division



JASON T. CONTRERAS
Texas Bar No. 24032093
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2120
(512) 320-0667 FAX

Attorneys For Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent via Certified Mail Return Receipt Requested on March 18, 2009, to:

Udo Birnbaum,
540 VZ CR 2916
Eustace, TX 75124



JASON T. CONTRERAS
Assistant Attorney General

Cause No. 06-00857

May 20, 2009

John M. Bales, US Attorney
350 Magnolia Ave, Suite 150
Beaumont, TX 77701-2237

**CERTIFIED MAIL
RESTRICTED DELIVERY
7008 1300 0001 4353 5112**

Re: "public corruption", "under color of law"
TWO huge punitive contempts – unlawfully by civil process
Retaliation for First Amendment access to the courts
"failure to keep from harm"
And this is just the tip of the iceberg!

FILED FOR RECORD
2009 MAY 20 PM 2:56
HARREN WILSON
DISTRICT CLERK
VAN ZANDT COUNTY, TEXAS
DEP.

Why am I coming directly to you?

Because my complaints, since 1995, to the Tyler FBI and Tyler US Attorney office are falling on deaf ears:

- Starting in 1995, fraudulent suit upon me under **Texas Water Code**, for damage by **beavers** on Steve's Creek on my farm, with fraudulent questions to the jury. Still ongoing 2009! See below.
- Dallas lawyer soliciting and conning me into paying him \$20,000 up-front to sue the "beaver" judges under civil RICO. When federal case kicked out under real weird circumstances, tells me "he never saw it", i.e. our judge never saw our case! I fire lawyer. Then he sues me for supposed legal fee "open account". See below.
- **\$62,885 court FINE**, for making counter-claim against my ex-lawyer, judge finding me "**well-intentioned**", just that **he** did not see the evidence as showing my case. Had of course been a jury case. Again, fraudulent questions to the jury.
- **Additional \$125,770 FINE**, for mere motion for recusal, to get \$62,885 judge off the case, to stop him, over one year later, from fabricating "findings" to CYA re his **\$62,885 FINE**, i.e. cover up his "**well-intentioned**".
- In 2009, after **FOURTEEN (14) YEARS** ongoing of the "beaver dam" case, **perpetual injunction** against me to forever make sure **beavers** not building dams too tall on Steve's Creek, with wild hogs down there, and me 72 years old!

And because of the responses I get – see attached video CD of extemporaneous video "deposition" of companion I took along to Tyler – has to be seen to be believed!

- "It is a civil matter."
- "I can't give you legal advice"

- “But that \$125,770 does seem a little high.”
- “But even if you could do something about that \$125,770, you would still have that \$62,885, because that was too far back.”
- “Why don’t you just pay them?”
- “Maybe you could borrow the money?”
- “Try to see if they will take maybe a little less.”
- “See if they will take maybe \$5 per month.”
- “Take bankruptcy.”
- “Go on with your life. Be happy.”
- “Shoot them.”

Anyhow, after looking at US Attorney and FBI websites – they are both good – both urged citizens to come forward on “**public corruption**” and “**under color of law**”, in particular, because of the corrosive effect such has on democracy:

“We have agents specifically trained to uncover corruption, and our agents always have an eye out for **new and evolving angles**”

“**What should people do** if they come across evidence of public corruption activities?

“**By all means, call us!**”

So here I am.

And the “**new and evolving angle**” is to hide in plain sight, in an institution we normally associate with doing good – the courts – and **do evil**.

And rather than put out a lot of new words, I instead present, as attachments, just some of the evidence as it is **of record** in the 294th District Court of Van Zandt County:

- **First Interrogatories to Judge Ron Chapman** – re his \$125,770 sanction Chapman’s “findings” in his sanction, and my **short questions** thereon, clearly points out the “under color of law”, “due process”, “public corruption”, “First Amendment retaliation”, and “official oppression”.

- **First Interrogatories to Judge Paul Banner** – re his \$62,885 sanction Same.
- **Original Petition** – has Judge Chapman \$125,770 sanction as exhibit Civil RICO cause for injury “by reason of” **conduct violative of criminal law.** (for use with Interrogatories to Judge Ron Chapman)
- **Findings of Fact and Conclusions of Law** – Judge Banner \$62,885 sanction (for use with Interrogatories to Judge Paul Banner)
- **Happy April Fools Day**
This whole matter, in extemporaneous, less formal format. Status as of fall 2004.
- **CD “deposition”** – extemporaneous – “shoot them”
recollection of trip to Tyler FBI and US Attorney
- **Yet another sanction** – by Judge Andrew Kupper

What all bad can come from “beavers”, would make a good focus to explain “public corruption” in terms that everyone can understand!

Certain judges themselves have the “corruption” disease you guys are trying to cure!

I have already done the work for you, per the U.S. Supreme Court in Rotella vs. Wood, for victims to become “private attorneys general”, filing civil RICO cases in the public good, only to be FINED hundred of thousands of dollars.

But it is all of record in the cases. And it is time for change.

Sincerely,

Udo Birnbaum

Udo Birnbaum
540 VZ CR 2916
Eustace, TX 75124
(903) 479-3929
BRNBM@AOL.COM

Attachments:

- First Interrogatories to Judge Ron Chapman
- First Interrogatories to Judge Paul Banner
- Original Petition – has Chapman \$125,770 sanction
- Findings of Fact and Conclusions of Law – re Banner \$62,770 sanction
- Happy April Fools Day
- CD – video “deposition” – re trip to Tyler FBI, Tyler US Attorney
- Yet another sanction – Judge Andrew Kupper

Copy of this document, including attachments, to:

Judge Paul Banner, 24599 CR 3107, Gladewater, TX 75647-9620
CERTIFIED MAIL
7008 1300 0001 4353 5129

Judge Ron Chapman, 108 Ellen Lane, Trinidad, TX 75163
CERTIFIED MAIL
7008 1300 0001 4353 5136

Gregg Abbott, Texas A/G – (for defendants Banner and Chapman)
Office of the Attorney General, 300 W. 15th Street, Austin, TX 78701
CERTIFIED MAIL
RESTRICTED DELIVERY
7008 1300 0001 435 5143

Judge John Ovard, Presiding Judge, First Administrative Judicial Region
133 N. Industrial / LB50, Dallas, TX 75207
CERTIFIED MAIL
RESTRICTED DELIVERY
7008 1300 0001 4353 5150

UDO BIRNBAUM
Plaintiff

v. PAUL BANNER
Defendant

PAUL BANNER
Defendant

RON CHAPMAN
Defendant

§ IN THE DISTRICT COURT
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§ 294th JUDICIAL DISTRICT
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§ VAN ZANDT COUNTY, TEXAS
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FIRST INTERROGATORIES TO JUDGE PAUL BANNER

PLEASE NOTE: Standard rules apply: responses to be verified, answers to be preceded by the question, 30 days, etc.

Background to Interrogatories No. 1, No. 2, No. 3, No. 4

Regarding a certain **\$62,885.00 Sanction** titled **Order on Motion for Sanctions**, as you rendered at a hearing on July 30, 2002, and as you signed Aug. 9, 2002, **Findings of Fact and Conclusions of Law** thereon made **over one year later**, Sept. 30, 2003, all in Cause 00-619, **The Law Offices of G. David Westfall, P.C. vs. Udo Birnbaum**, 294th District Court of Van Zandt County, you found:

“In assessing the sanctions, the Court has taken into consideration that although Mr. Birnbaum may be **well-intentioned** and may believe that he **had** some kind of real claim as far as **RICO** there **was** nothing presented to the court in any of the proceedings since I’ve been involved that suggest he **had** any basis in law **or** in fact to support his suits against the individuals, **and I think** – can find that such sanctions as I’ve determined are appropriate. And if you will provide me with an appropriate sanctions order, I will reflect it.” Hearing transcript, July 30, 2002.

“8. The conduct of the Defendant/Counter-Plaintiff giving rise to the award of **punitive damages** was engaged in **willfully** and **maliciously** by the Defendant/Counter-Plaintiff with the **intent to harm** the Plaintiff and the Counter-Defendants.” Findings p.3.

“7. The court concludes as a **matter of law** that Defendant/Counter-Plaintiff’s claims concerning RICO civil conspiracy were brought **for the purpose of harassment**. Findings p. 5.

INTERROGATORY NO. 1

RECONCILE, with specificity, your **extemporaneous** pronouncement of “**well-intentioned**”, as documented by the court reporter at the hearing on *Motion for Sanctions* on **July 30, 2002**, with all the “**willfully**”, “**maliciously**”, “**intent to harm**”, “**for the purpose of harassment**”, and all those other negative words in your *Findings of Fact and Conclusions of Law* as you signed on **Sept. 30, 2003**.

INTERROGATORY NO. 2

IDENTIFY, with specificity, **what necessity**, and **what jurisdiction**, if any, you had on **Sept. 30, 2003**, to sign and journalize with the Clerk *Findings of Fact and Conclusions of Law*, you having signed *Final Judgment* way back on **July 30, 2002**.

INTERROGATORY NO. 3

IDENTIFY, with specificity, the “**keys to your own release**”, if any, as you provided to Birnbaum to **purge** this contempt, so as to make this sanction indeed “**coercive**” and **civil** in nature, rather than **unconditional** and upon a **completed act** and **punitive** and “**criminal**” in nature, such contempt being **unlawful under civil process**, as requiring the due constitutional safeguards of full criminal process, including a finding of “**beyond a reasonable doubt**”, instead of “*and I think*” as you expressed at the sanctions hearing.

INTERROGATORY NO. 4

IDENTIFY, with specificity, the **circumstances and date** on which you first learned that the **\$62,885 FINE** you were imposing on Birnbaum was **outlawed** under civil process, **and such action**, if any, as you thereupon took to keep Birnbaum **from being harmed** by what you had rendered and entered.

Background to Interrogatory No. 5, No. 6, No. 7

In same *Findings of Fact and Conclusions of Law*, you state:

“14. The sanctions award is an appropriate amount in order to gain the relief which the Court seeks, which is **to stop** the Defendant/Counter-Plaintiff **and others** similarly situated **from filing frivolous lawsuits.**” Findings p. 4.

INTERROGATORY NO. 5

IDENTIFY, with specificity, **exactly how and why** this particular \$62,885 sanction for **filing a lawsuit**, does not run afoul of the **First Amendment Right** of free and unfettered access to the courts, without fear of adverse action thereon, of **this litigant**, and **others**.

INTERROGATORY NO.6

IDENTIFY, with specificity, the **circumstances and date** on which you **first learned** that the \$62,885 FINE you were imposing on Birnbaum violated the First Amendment, **and such action**, if any, as you thereupon took to keep Birnbaum **from being harmed** by what you had rendered and entered.

INTERROGATORY NO. 7

EXPLAIN, with specificity, how you, a **public official**, taking a **\$62,885 exemplary and/or punitive** action for filing a lawsuit, as your Order states, why such does not satisfy all of the elements of the offense of **Official Oppression**.

Background to Interrogatory No. 8

On April 1, 2004, Judge Ron Chapman held a hearing in your old Cause No. 00-619, assignment for *Motion to Recuse Judge Banner*, at which you appeared **as a witness**, and at which Judge Chapman rendered and entered **\$125,770** sanction against Birnbaum, exactly TWO TIMES such **\$62,885** as you had previously assessed against Birnbaum.

INTERROGATORY NO. 8

EXPLAIN, with specificity, **why it would not strike you as sort of strange**, to see Judge Chapman, on **April 1, 2004**, conduct a hearing on ***Motion to Recuse Judge Banner***, much less impose **\$125,770 FINE** on Birnbaum, when you knew that neither he nor you could have jurisdiction, you yourself having signed and journalized with the Clerk ***Final Judgment*** on **July 30, 2002, and such action**, if any, as you thereupon took to keep Birnbaum **from being harmed** by what you had just seen and learned.

INTERROGATORY NO. 9

IDENTIFY, with specificity, the **circumstances and date** on which you **first learned** that Judge Ron Chapman had on **Oct. 24, 2006**, over FOUR (4) YEARS after you, as trial judge in 00-619 had entered ***Final Judgment*** on **July 30, 2002**, that Judge Chapman had actually signed and journal entered his ***Order on Motion for Sanctions*** for **\$125,770, and such action**, if any, as you thereupon took to keep Birnbaum **from being harmed** by what Judge Chapman had done.

Udo Birnbaum
UDO BIRNBAUM, Pro Se
540 VZ 2916
Eustace, Texas 75124
(903) 479-3929

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this document, together with the cover letter as to the US Attorneys Office in New Orleans, including copies of all attachments as therein and below indicated, was this day provided as follows:

John M. Bales, US Attorney
350 Magnolia Ave, Suite 150, Beaumont, TX, 77701-2237
CERTIFIED MAIL
RESTRICTED DELIVERY
7008 1300 0001 4353 5112

Judge Paul Banner, 24599 CR 3107, Gladewater, TX 75647-9620
CERTIFIED MAIL
7008 1300 0001 4353 5129

Judge Ron Chapman, 108 Ellen Lane, Trinidad, TX 75163
CERTIFIED MAIL
7008 1300 0001 4353 5136

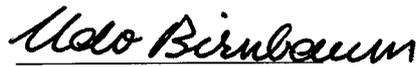
Gregg Abbott, Texas A/G
Office of the Attorney General, 300 W. 15th Street, Austin, TX 78701
CERTIFIED MAIL
RESTRICTED DELIVERY
7008 1300 0001 435 5143

Judge John Ovard, Presiding Judge, First Administrative Judicial Region
133 N. Industrial / LB50, Dallas, TX 75207
CERTIFIED MAIL
RESTRICTED DELIVERY
7008 1300 0001 4353 5150

Attachments:

- First Interrogatories to Judge Ron Chapman
- First Interrogatories to Judge Paul Banner
- Original Petition – has Chapman \$125,770 sanction
- Findings of Fact and Conclusions of Law – re Banner \$62,770 sanction
- Happy April Fools Day
- CD – video “deposition” re trip to Tyler FBI, Tyler US Attorney
- Yet another sanction – Judge Andrew Kupper

This the 20th day of May, 2009


UDO BIRNBAUM

CAUSE NO. 06-00857

UDO BIRNBAUM
Plaintiff

v.

PAUL BANNER
Defendant

RON CHAPMAN
Defendant

§
§
§
§
§
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§
§

IN THE DISTRICT COURT

294th JUDICIAL DISTRICT

VAN ZANDT COUNTY, TEXAS

FIRST INTERROGATORIES TO JUDGE RON CHAPMAN

PLEASE NOTE: Standard rules apply: responses to be verified, answers to be preceded by the question, 30 days, etc.

FILED FOR RECORD
2009 MAY 20 PM 2:56
ANDREW L. SONN
CLERK
VAN ZANDT COUNTY, TEXAS
DEP.

Background to Interrogatory No. 1 and No. 2

Regarding a **\$125,770.00 Sanction** titled **Order on Motion for Sanctions** (Original Petition, "A") in Cause No. 00-619, **The Law Offices of G. David Westfall, P.C. vs. Udo Birnbaum**, Texas 294th District Court of Van Zandt County, Texas, as you signed on Oct. 24, **2006**, your hearing and rendering thereon having been on April 1, **2004**,

Your assignment reading:

"Persuant (sic) to Rule 18a, Texas Rules of Civil Procedure, I hearby (sic) assign the: Honorable Ron Chapman, Senior Judge of the 5th Court of Appeals To the 294th District Court of Van Zandt County, Texas.

"This assignment is for the purpose of the assigned judge hearing a **Motion to Recuse** as stated in the Conditions of Assignment. This assignment is effective immediately and shall continue for such time as may be necessary for the assigned judge to hear and pass **on such motion**.

"CONDITION(S) OF ASSIGNMENT: Cause No. 00-619; Westfall vs. Birnbaum

"ORDERED this 8th day of Oct., 2003.

"JOHN OVARD, Presiding Judge, First Administrative Judicial Region."

Notice of Setting, dated Mar. 17, 2004, reading:

"The new hearing date is Thursday, April 1, 2004 at 9:00 a.m.

"Action as indicated: **Motion to Recuse Judge Banner**

"By copy of this letter I am notifying all parties listed below.

"PAM KELLY, Court Coordinator

Hon. Ron Chapman, via fax 903-778-2819

Hon. Judge Paul Banner, 24599 CR 3107, Gladewater, TX 75646

Hon. Frank Fleming, via fax 214-265-1979

Mr. Udo Birnbaum, 540 VZCR 2916, Eustace, TX 75124"

INTERROGATORY NO. 1

IDENTIFY, with specificity, such **jurisdiction**, if any, as you had **over the person of Udo Birnbaum, on April 1, 2004**, to hear *Motion for Sanctions* filed against Udo Birnbaum, and to render and enter on the docket sheet a **\$125,770 FINE**, your assignment having been solely to hear a **motion for recusal of Judge Banner**.

INTERROGATORY NO. 2

IDENTIFY, with specificity, the **circumstances and date** on which you **first learned** that you had imposed a **\$125,770 FINE** in the absence of jurisdiction **over the person of Udo Birnbaum, and such action**, if any, as you thereupon took to keep Birnbaum from being harmed by what you had rendered and entered.

Background to Interrogatory No. 3 and No. 4

Regarding Judge Paul Banner, as trial judge, having on **July 30, 2002** signed *Final Judgment* in Cause 00-619, The Law Offices of G. David Westfall, P.C. vs. Udo Birnbaum, 294th District Court of Van Zandt County, Texas, such *Final Judgment* reading:

“THIS JUDGMENT RENDERED ON APRIL 11, 20020 (sic), AND SIGNED THIS 30 day of July, 2002, PAUL BANNER, JUDGE PRESIDING”

INTERROGATORY NO. 3

IDENTIFY, with specificity, such **jurisdiction**, if any, as you had **on Oct. 24, 2006**, to sign and journal enter with the Clerk *Order on Motion for Sanctions* for **\$125,770**, Judge Banner, the trial judge, having signed *Final Judgment* on **July 30, 2002**.

INTERROGATORY NO. 4

IDENTIFY, with specificity, the **circumstances and date** on which you **first learned** that your **signing and journalizing** with the Clerk of *Order on Motion for Sanctions* for **\$125,770** on Oct. 24, 2006, had been more than FOUR (4) YEARS after the trial judge, Paul Banner, had signed and journalized with the Clerk *Final Judgment* on July 30, 2002, **and such action**, if any, as you thereupon took to keep Birnbaum from being harmed by what you had signed and journalized **without any jurisdiction whatsoever**.

Background to Interrogatory No. 5, 6, 7

Regarding said **\$125,770.00 Sanction** titled **Order on Motion for Sanctions** (Original Petition, "A") you signed on Oct. 24, 2006, you state:

"On April 1, 2004, came on to be heard, defendant, Udo Birnbaum ("Birnbaum") **Motion for Recusal** of Judge Paul Banner". page 1 par. 1.

"A. A monetary sanction in the amount of **\$1,000.00 as actual damages**, representing the reasonable value of the legal services rendered to the Sanction Movants by their attorney for the defense of **Birnbaum's Motion to Recuse** and the prosecution of the Sanctions Movants' Motion for Sanctions." page 1 par. 3.

"B. A monetary sanction in the amount of **\$124,770.00 as exemplary and/or punitive damages** to serve as a deterrent to prevent Birnbaum **from committing** further similar acts again in the future." page 1 par. 4.

"20. The amount of the exemplary and/or **punitive damage** award is an amount **narrowly tailored to the amount of harm** caused by the offensive conduct to be **punished**. page 5 par. 4.

INTERROGATORY NO. 5

IDENTIFY, with specificity, **exactly how** the "**\$124,770.00 as exemplary and/or punitive damages**" is indeed "narrowly tailored" to the "**\$1,000.00 as actual damages**".

INTERROGATORY NO. 6

IDENTIFY, with specificity, the "**keys to your own release**", if any, as you provided to Birnbaum **to purge** this contempt, so as to make this sanction indeed "**coercive**" and **civil** in nature, rather than **unconditional** and upon a **completed act** and **punitive** and "**criminal**" in nature, such contempt being **unlawful under civil process**, as requiring the due constitutional safeguards of full criminal process, including a finding of "**beyond a reasonable doubt**."

INTERROGATORY NO. 7

IDENTIFY, with specificity, the **circumstances and date** on which you first learned that the **\$125,770 FINE** you were imposing on Birnbaum was **outlawed** under civil process, **and such action**, if any, as you thereupon took to keep Birnbaum **from being harmed** by what you had rendered and entered.

Re Interrogatory No. 8, 9, 10

Regarding same **\$125,770.00 Sanction** titled **Order on Motion for Sanctions**
(*Original Petition*, exhibit "A") you signed on Oct. 24, 2006, you state:

"19. The type and dollar amount of the **sanctions award** is appropriate in order to gain the relief which the Court seeks, which is to **stop this litigant** and **others similarly situated** from filing frivolous **motions**, frivolous **lawsuits**, frivolous **defenses**, frivolous **counterclaims**, and **new lawsuits** which attempt to re-litigate matters already litigated to a conclusion." page 5 par. 3.

INTERROGATORY NO. 8

IDENTIFY, with specificity, **exactly how and why** this particular \$125,770.00 **sanction** for filing **motions, lawsuits, defenses, counterclaims, and new lawsuits**, does not run afoul of the **First Amendment Right** of free and unfettered access to the courts, without fear of adverse action thereon, of **this litigant, and others**.

INTERROGATORY NO. 9

IDENTIFY, with specificity, the **circumstances and date** on which you **first learned** that the **\$125,770 FINE** you were imposing on Birnbaum violated the First Amendment, **and such action**, if any, as you thereupon took to keep Birnbaum from being harmed by what you had rendered and entered.

INTERROGATORY NO. 10

EXPLAIN, with specificity, how you, a **public official**, taking a **\$124,770.00** **exemplary and/or punitive** action for filing **motions, lawsuits, defenses, counterclaims, and new lawsuits**, as your Order states, why such does not satisfy all of the elements of the offense of **Official Oppression**.

Udo Birnbaum
UDO BIRNBAUM, Pro Se
540 VZ 2916
Eustace, Texas 75124
(903) 479-3929

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this document, together with the cover letter as to the US Attorneys Office in New Orleans, including copies of all attachments as therein and below indicated, was this day provided as follows:

John M. Bales, US Attorney
350 Magnolia Ave, Suite 150, Beaumont, TX, 77701-2237
CERTIFIED MAIL
RESTRICTED DELIVERY
7008 1300 0001 4353 5112

Judge Paul Banner, 24599 CR 3107, Gladewater, TX 75647-9620
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Judge Ron Chapman, 108 Ellen Lane, Trinidad, TX 75163
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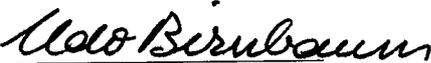
Gregg Abbott, Texas A/G
Office of the Attorney General, 300 W. 15th Street, Austin, TX 78701
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Judge John Ovard, Presiding Judge, First Administrative Judicial Region
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- Happy April Fools Day
- CD – video “deposition” – re trip to Tyler FBI, Tyler US Attorney
- Yet another sanction – Judge Andrew Kupper

This the 20th day of May, 2009


UDO BIRNBAUM

June 18, 2009

Jason T. Contreras
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548

CERTIFIED 7008 3230 0003 4126 7040

Re: Cause No. 06-00857
Birnbaum vs. Banner, et al, 294th of Van Zandt County

Regarding you calling me Tuesday June 16, 2009 at 10:30 a.m.:

Some of your phrases:

“My name is Jason Contreras. I am with the Attorney General.”

“You need to drop this lawsuit. Are you going to drop it?”

“Don’t you know that you can’t sue a judge?”

“Judges have absolute immunity from discovery. Did you know this?”

“I’m going to go right to the courthouse and file for protective order and get it dismissed.”

“Just answer this, are you going to oppose it?”

“You are going to loose. Save yourself a lot of time.”

This stuff you sent doesn’t make any sense at all. Have you even read it?”

“How many lawsuits have you filed – twenty?”

“When are you going to stop filing these frivolous suits?”

And then you abruptly just hung up.

The only words I somehow managed to get in:

“Tell me what you can’t understand.”

“Put it down on a piece of paper.”

“You are being abusive”.

So: Please respond, in writing, if I may not have understood what you are saying.
I take your affirmative defense to be that a judge is above any and all facts.

Copy:
Judge Paul Banner
Judge Ron Chapman
Judge John Ovard, First Adm. Jud. Region
File 06-00857


Udo Birnbaum, *Pro Se*
540 VZ CR 2916
Eustace, Texas 75124
(903) 479-3929

FILED FOR RECORD
2009 JUN 18 PM 2:59
KAREN WILSON
DISTRICT CLERK
VAN ZANDT COUNTY, TEXAS
BY _____

UDO BIRNBAUM	2009 JUN 18 PM 2:58	§	IN THE DISTRICT COURT
Plaintiff		§	
v.	KAREN WILSON	§	
	DISTRICT CLERK	§	294th JUDICIAL DISTRICT
	VAN ZANDT COUNTY, TEXAS	§	
PAUL BANNER	BY _____ DEP.	§	
Defendant		§	
		§	VAN ZANDT COUNTY, TEXAS
RON CHAPMAN		§	
Defendant		§	

REQUEST FOR DISCLOSURE TO JUDGE PAUL BANNER

Pursuant to Rule 194, you are requested to disclose, within 30 days of service of this request, the information or material described in Rule 194.2(c), "the legal theories and, in general, the factual bases of the responding party's claims or defenses".

Namely the factual bases of each of your enumerated asserted affirmative defenses to the factual bases as asserted by Plaintiff:

1. Your affirmative defense of sovereign immunity
2. Your affirmative defense of statute of limitations
3. Your affirmative defense of absolute judicial immunity
4. Your affirmative defense of failure to mitigate damages
5. Your affirmative defense of official immunity
6. Your affirmative defense of res judicata and collateral estoppel

UDO BIRNBAUM
 UDO BIRNBAUM, Pro Se
 540 VZ 2916
 Eustace, Texas 75124
 (903) 479-3929

CERTIFICATE OF SERVICE

A true and correct copy of this document was today provided by CERTIFIED MAIL 7008 3230 0003 4126 7040 to Jason T. Contreras, Office of the Attorney General of Texas, P.O. Box 12548, Capitol Station, Austin, Texas 78711-2548. This the 18th day of June, 2009.

UDO BIRNBAUM
 UDO BIRNBAUM

UDO BIRNBAUM
Plaintiff,

v.

PAUL BANNER,
RON CHAPMAN,
Defendants,

§
§
§
§
§
§
§

IN THE DISTRICT COURT

294th JUDICIAL DISTRICT

VAN ZANDT COUNTY, TEXAS

**DEFENDANT JUDGE RON CHAPMAN'S OBJECTIONS
TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

To: Udo Birnbaum, Pro Se, 540 VZ 2916, Eustace, Texas 75124

Pursuant to Rule 197 of the Texas Rules of Civil Procedure, Defendant Judge Ron Chapman ("Judge Chapman") objects as follows to Plaintiff's First Interrogatories:

INTERROGATORY NO. 1

IDENTIFY, with specificity, such **jurisdiction**, if any, as you had **over the person of Udo Birnbaum, on April 1, 2004**, to hear *Motion for Sanctions* filed against Udo Birnbaum, and to render and enter on the docket sheet a **\$125,770 FINE**, your assignment having been solely to hear a **motion for recusal of Judge Banner**.

RESPONSE:

Judge Chapman objects to this request as improper because it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence with respect to the claims asserted in this action. In this regard, the issue of jurisdiction has no relevance to the claims asserted by Plaintiff in this action and is therefore outside the scope of permissible discovery. Judge Chapman also objects because this request assumes facts not in evidence, namely Plaintiff's assertion that "your assignment having been solely to hear a motion for recusal of Judge Banner."

INTERROGATORY NO. 2

IDENTIFY, with specificity, the **circumstances and date** on which you **first learned** that you had imposed a **\$125,770 FINE** in the absence of jurisdiction **over the person of Udo Birnbaum, and such action**, if any, as you thereupon took to keep Birnbaum from **being harmed** by what you had rendered and entered.

RESPONSE:

Judge Chapman objects to this request as improper because it is unduly argumentative in nature. In this regard, it improperly asserts "the absence of jurisdiction over the person of Udo Birnbaum." Judge Chapman objects to the reference "to keep Birnbaum from being harmed" because it is vague and ambiguous. Judge Chapman also objects to this interrogatory because the issue of jurisdiction is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence with respect to the claims asserted in this action.

INTERROGATORY NO. 3

IDENTIFY, with specificity, such jurisdiction, if any, as you had on Oct. 24, 2006, to sign and journal enter with the Clerk *Order on Motion/or Sanctions* for \$125,770, Judge Banner, the trial judge, having signed *Final Judgment* on July 30, 2002.

RESPONSE:

Judge Chapman objects to this interrogatory because the issue of jurisdiction is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence with respect to the claims asserted in this action.

INTERROGATORY NO. 4

IDENTIFY, with specificity, the circumstances and date on which you first learned that your signing and journalizing with the Clerk of *Order on Motion for Sanctions* for \$125,770 on Oct. 24, 2006, had been more than FOUR (4) YEARS after the trial judge, Paul Banner, had signed and journalized with the Clerk *Final Judgment* on July 30, 2002, and such action, if any, as you thereupon took to keep Birnbaum from being harmed by what you had signed and journalized without any jurisdiction whatsoever.

RESPONSE:

Judge Chapman objects to the reference "to keep Birnbaum from being harmed" because it is vague and ambiguous. Judge Chapman also objects to this request because it is improperly argumentative and assumes legal conclusions that have not been determined, namely the lack of jurisdiction to issue the order in question. Judge Chapman also objects to this request as improper because it is harassing.

INTERROGATORY NO. 5

IDENTIFY, with specificity, exactly how the "\$124,770.00 as exemplary and/or punitive damages" is indeed "narrowly tailored" to the "\$1,000.00 as actual damages".

RESPONSE:

Judge Chapman objects to this request because it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In this regard, the amount of

the monetary sanction referenced in this request is not relevant to the claims asserted in this action and is therefore outside the scope of discovery. Judge Chapman also objects to this request because it is harassing.

INTERROGATORY NO. 6

IDENTIFY, with specificity, the "**keys to your own release**", if any, as you provided to Birnbaum to **purge** this contempt, so as to make this sanction indeed "**coercive**" and **civil** in nature, rather than **unconditional** and upon a **completed act** and **punitive** and "**criminal**" in nature, such contempt being **unlawful under civil process**, as requiring the due constitutional safeguards of full criminal process, including a finding of "**beyond a reasonable doubt.**"

RESPONSE:

Judge Chapman objects to the reference "keys to your own release" because it is vague and ambiguous. Judge Chapman objects to "as you provided to Birnbaum to purge this contempt" because it is vague and ambiguous. Judge Chapman also objects to this request as improper because it is argumentative in nature. In this regard, Plaintiff improperly makes reference to the sanction as being "unlawful under civil process" and "requiring the due constitutional safeguards of full criminal process." Judge Chapman also objects to this request as improper because it is harassing.

INTERROGATORY NO. 7

IDENTIFY, with specificity, the **circumstances and date** on which you first learned that the **\$125,770 FINE** you were imposing on Birnbaum was **outlawed** under civil process, **and such action**, if any, as you thereupon took to keep Birnbaum **from being harmed** by what you had rendered and entered.

RESPONSE:

Judge Chapman objects to the reference "outlawed under civil process" because it is vague and ambiguous. Judge Chapman objects to the reference "to keep Birnbaum from being harmed" because it is vague and ambiguous. Judge Chapman also objects to this request as improper because it is argumentative in nature. In this regard, this request is phrased in a manner that makes the erroneous and improper legal conclusion that the "fine" was "outlawed under civil process." Judge Chapman also objects to this request as improper because it is harassing.

INTERROGATORY NO. 8

IDENTIFY, with specificity, exactly how and why this particular \$125,770.00 sanction for filing motions, lawsuits, defenses, counterclaims, and new lawsuits, does not run afoul of the First Amendment Right of free and unfettered access to the courts, without fear of adverse action thereon, of this litigant, and others.

RESPONSE:

Judge Chapman objects to this request because it is improperly argumentative in nature. In this regard, for Plaintiff to ask whether the sanction in issue runs “afoul of the First Amendment Right of free and unfettered access to the courts ...” is purely argumentative, and is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence with respect to the claims asserted in this action. Judge Chapman also objects to the reference “and others” as improper because Udo Birnbaum is the only Plaintiff in this lawsuit. Judge Chapman also objects to “and others” because it is vague and ambiguous.

INTERROGATORY NO. 9

IDENTIFY, with specificity, the circumstances and date on which you first learned that the \$125,770 FINE you were imposing on Birnbaum violated the First Amendment, and such action, if any, as you thereupon took to keep Birnbaum from being harmed by what you had rendered and entered.

RESPONSE:

Judge Chapman objects to this request as improper because it seeks to establish conclusions of law neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In this regard, this request improperly seeks to conclude that the “fine” (i.e., sanction) imposed on Plaintiff violated the First Amendment. Plaintiff’s request is improperly argumentative in nature and is not within the scope of discovery. Judge Chapman also objects to the reference “to keep Birnbaum from being harmed” because it is vague and ambiguous. Judge Chapman also objects to this interrogatory request because it is harassing.

INTERROGATORY NO. 10

EXPLAIN, with specificity, how you, a public official, taking a \$124,770.00 exemplary and/or punitive action for filing motions, lawsuits, defenses, counterclaims, and new lawsuits, as your Order states, why such does not satisfy all of the elements of the offense of Official Oppression.

RESPONSE:

Judge Chapman objects to the term “public official” because it is vague and ambiguous. Judge Chapman further objects because this request is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence with respect to the claims asserted in this action. Judge Chapman also objects to Plaintiff’s request regarding “the elements of the offense of Official Oppression” because it is improperly argumentative. Judge Chapman also objects to this request because it is harassing.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil
Litigation

ROBERT B. O'KEEFE
Chief, General Litigation Division



JASON T. CONTRERAS
Texas Bar No. 24032093
Assistant Attorney General
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2120
(512) 320-0667 FAX
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served by certified mail return receipt requested on June 22, 2009, upon the following individuals at the listed address:

Udo Birnbaum
540 VZ 2916
Eustace, TX 75124



JASON T. CONTRERAS
Assistant Attorney General

UDO BIRNBAUM
Plaintiff,

v.

PAUL BANNER,
RON CHAPMAN,
Defendants,

§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

294th JUDICIAL DISTRICT

VAN ZANDT COUNTY, TEXAS

**DEFENDANT JUDGE PAUL BANNER'S OBJECTIONS
TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

To: Udo Birnbaum, Pro Se, 540 VZ 2916, Eustace, Texas 75124

Pursuant to Rule 197 of the Texas Rules of Civil Procedure, Defendant Judge Paul Banner ("Judge Banner") objects as follows to Plaintiff's First Interrogatories:

**JUDGE PAUL BANNER GENERAL OBJECTIONS TO PLAINTIFF'S FIRST
INTERROGATORIES**

Judge Banner objects to Plaintiff's purported citation to the transcript of the hearing held on July 30, 2002. In this regard, Plaintiff failed to provide Judge Banner with a certified copy of the hearing transcript and therefore it is improper for Plaintiff to request an interrogatory on Judge Banner without providing him with such a copy. Accordingly, Plaintiff's purported citation to the hearing transcript is unreliable and thus it is improper for Judge Banner to rely on Plaintiff's purported citations in responding to any interrogatory based on any statement/s by Judge Banner allegedly made at the hearing.

INTERROGATORY NO. 1

RECONCILE, with specificity, your **extemporaneous** pronouncement of "well intentioned", as documented by the court reporter at the hearing on *Motion for Sanctions* on July 30, 2002, with all the "willfully", "maliciously", "intent to harm", "for the purpose of harassment", and all those other negative words in your *Findings of Fact and Conclusions of Law* as you signed on **Sept. 30, 2003**.

RESPONSE:

Judge Banner objects to this interrogatory because it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence with respect to Plaintiff's claims

in this lawsuit. Judge Banner also objects to “other negative words” contained in this request because it is vague and ambiguous. Judge Banner also incorporates by reference his general objection to Plaintiff’s First Interrogatories in this response. Judge Banner also objects to this interrogatory request because it is harassing.

INTERROGATORY NO. 2

IDENTIFY, with specificity, **what necessity**, and **what jurisdiction**, if any, you had on **Sept. 30, 2003**, to sign and journalize with the Clerk *Findings of Fact and Conclusions of Law*, you have signed *Final Judgment* way back on **July 30, 2002**.

RESPONSE:

Judge Banner objects to this interrogatory because it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In this regard, the issue of jurisdiction has no relevance to the claims asserted by Plaintiff in this action and is therefore outside the scope of permissible discovery. Judge Banner also objects to Plaintiff’s reference to “what necessity ...” because it is vague and ambiguous. Judge Banner also objects to Plaintiff’s reference to “journalize” because it is vague and ambiguous.

INTERROGATORY NO. 3

IDENTIFY, with specificity, the **“keys to your own release”**, if any, as you provided to Birnbaum to **purge** this contempt, so as to make this sanction indeed **“coercive”** and **civil** in nature, rather than **unconditional** and upon a **completed act** and **punitive** and **“criminal”** in nature, such contempt being **unlawful under civil process**, as requiring the due constitutional safeguards of full criminal process, including a finding of **“beyond a reasonable doubt”**, instead of **“and I think”** as you expressed at the sanctions hearing.

RESPONSE:

Judge Banner objects to the reference “keys to your own release” because it is vague and ambiguous. Judge Banner objects to “as you provided to Birnbaum to purge this contempt” because it is vague and ambiguous. Judge Banner also objects to this request as improper because it is argumentative in nature. In this regard, Plaintiff improperly makes reference to the sanction as being “unlawful under civil process” and “requiring the due constitutional safeguards of full criminal process.” Judge Banner also incorporates by reference his general objection to Plaintiff’s First Interrogatories in this response. Judge Banner also objects to this interrogatory request because it is harassing.

INTERROGATORY NO. 4

IDENTIFY, with specificity, the **circumstances and date** on which you first learned that the **\$62,885 FINE** you were imposing on Birnbaum was **outlawed** under civil process, **and such action**, if any, as you thereupon took to keep Birnbaum **from being harmed** by what you

had rendered and entered.

RESPONSE:

Judge Banner objects to the reference “outlawed under civil process” because it is vague and ambiguous. Judge Banner objects to the reference “to keep Birnbaum from being harmed” because it is vague and ambiguous. Judge Banner also objects to this request as improper because it is argumentative in nature. In this regard, this request is phrased in a manner that makes the erroneous and improper legal conclusion that the “fine” was “outlawed under civil process.” Judge Banner also objects to this request because it is harassing.

INTERROGATORY NO. 5

IDENTIFY, with specificity, **exactly how and why** this particular **\$62,885 sanction for filing a lawsuit**, does not run afoul of the **First Amendment Right** of free and unfettered access to the courts, without fear of adverse action thereon, of **this litigant**, and **others**.

RESPONSE:

Judge Banner objects to this request because it is improperly argumentative in nature. In this regard, for Plaintiff to ask whether the sanction in issue runs afoul of the “First Amendment Right of free and unfettered access to the courts ...” is purely argumentative, and is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence with respect to Plaintiff’s claims asserted in this action. Judge Banner also objects to the reference “and others” as improper because Udo Birnbaum is the only Plaintiff in this lawsuit. Judge Banner also objects to “and others” because it is vague and ambiguous.

INTERROGATORY NO. 6

IDENTIFY, with specificity, the **circumstances and date** on which you **first learned** that the **\$62,885 FINE** you were imposing on Birbaum violated the First Amendment, **and such action**, if any, as you thereupon took to keep Birnbaum **from being harmed** by what you had rendered and entered.

RESPONSE:

Judge Banner objects to this request as improper because it seeks to establish conclusions of law neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In this regard, this request improperly seeks to conclude that the “fine” (i.e., sanction) imposed on Plaintiff violated the First Amendment. Plaintiff’s request is improperly argumentative in nature and is not within the scope of discovery. Judge Banner also objects to the reference “to keep Birnbaum from being harmed” because it is vague and ambiguous. Judge Banner also objects to this interrogatory request because it is harassing.

INTERROGATORY NO. 7

EXPLAIN, with specificity, how you, a **public official**, taking a **\$62,885 exemplary and/or punitive** action for filing a lawsuit, as your Order states, why such does not satisfy all the elements of the offense of **Official Oppression**.

RESPONSE:

Judge Banner objects to the term "public official" because it is vague and ambiguous. Judge Banner further objects because this request is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence with respect to Plaintiff's claims in this action. Judge Banner also objects to Plaintiff's request regarding "the elements of the offense of Official Oppression" because it is improperly argumentative. Judge Banner also objects to this interrogatory request because it is harassing.

INTERROGATORY NO. 8

EXPLAIN, with specificity, **why it would not strike you as sort of strange**, to see Judge Chapman, on **April 1, 2004**, conduct a hearing on **Motion to Recuse Judge Banner**, much less impose **\$125,770 FINE** on Birnbaum, when you knew that neither he nor you could have jurisdiction, you yourself having signed and journalized with the Clerk **Final Judgment** on **July 30, 2002**, **and such action**, if any, as you thereupon took to keep Birnbaum from being harmed by what you had just seen and learned.

RESPONSE:

Judge Banner objects to this request to the reference "why it would not strike you as sort of strange" as vague and ambiguous and therefore lacking in specificity. Judge Banner also objects to this request as improper because it is argumentative in nature, in particular Plaintiff's purported claim "when you knew that neither he nor you could have jurisdiction.." Judge Banner also objects to "keep Birnbaum from being harmed" because it is vague and ambiguous.

INTERROGATORY NO. 9

IDENTIFY, with specificity, the **circumstances and date** on which you **first learned** that Judge Ron Chapman had on **Oct. 24, 2006**, over **FOUR (4) YEARS** after you, as trial judge in 00-619 had entered **Final Judgment** on **July 30, 2002**, that Judge Chapman had actually signed and journal entered his **Order on Motion for Sanctions** for **\$125,770**, **and such action**, if any, as you thereupon took to keep Birnbaum from being harmed by what Judge Chapman had done.

RESPONSE:

Judge Banner objects to this request as improper because it assumes facts not in evidence. Judge Banner also objects to this request because it is neither relevant nor reasonably

calculated to lead to the discovery of admissible evidence with respect to the claims asserted in this action. Judge Banner objects to "keep Birnbaum from being harmed by what Judge Chapman had done" because it is vague and ambiguous.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

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Deputy Attorney General for Civil
Litigation

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Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served by certified mail return receipt requested on June 22, 2009, upon the following individuals at the listed addresses:

Udo Birnbaum
540 VZ 2916
Eustace, TX 75124



JASON T. CONTRERAS
Assistant Attorney General

OpenJustice.US

Udo Birnbaum
Maxwell Birnbaum

At it since 1994
"keeps on ticking"

903 479-3929
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July 8, 2009

Jason T. Contreras
Attorney for Defendants
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548

Re: Failure to provide affirmation
First Interrogatories to Judge Paul Banner
First Interrogatories to Judge Ron Chapman
Birnbaum vs. Banner, et al, Cause No. 06-00857
294th District Court of Van Zandt County

Regarding your Response to ***First Interrogatories to Judge Paul Banner*** and ***First Interrogatories to Judge Ron Chapman***, please note that the Rules **require affirmation:**

"197.2 Response to Interrogatories.

(b) Content of response. A **response must include** the party's **answers** to the interrogatories and **may include objections** and assertions of privilege as required under these rules.

(d) **Verification required; exceptions. A responding party - not an agent or attorney** as otherwise permitted by Rule 14 - **must sign the answers under oath** except that:

- (1) when answers are based on information obtained from other persons, the party may so state, and
- (2) a party need not sign answers to interrogatories about persons with knowledge of relevant facts, trial witnesses, and legal contentions."

Attached for completeness are copies of the interrogatories and answers at issue, as well as my June 18, 2009 letter upon the phone call I received.

Sincerely,



UDO BIRNBAUM, *Pro Se*
540 VZ CR 2916
Eustace, TX 75124
(903) 479-3929

Att:

- First Interrogatories to Judge Paul Banner
- First Interrogatories to Judge Ron Chapman
- Defendant Judge Paul Banner's Objections etc..
- Defendant Judge Ron Chapman's Objections etc.
- Letter June 18, 2009 to Jason T. Contreras re phone call

Copy:

Judge Paul Banner
24599 CR 3107
Gladewater, TX 75647-9620

Judge Ron Chapman
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Trinidad, TX 75163

Judge Andrew J. Kupper
P.O. Box 666
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Judge John Ovard
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