

**BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY
THE SUPREME COURT OF TEXAS**

**IN THE MATTER OF §
MARC G. ROSENTHAL §
STATE BAR CARD NO. 17281450 §**

CAUSE NO. 53873

PETITION FOR COMPULSORY DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Marc G. Rosenthal, (hereinafter called "Respondent"), showing as follows:

1. This action is commenced by Petitioner pursuant to Part VIII of the Texas Rules of Disciplinary Procedure. Petitioner is also providing Respondent a copy of this Board's procedures for handling a compulsory discipline matter by attaching a copy of such procedures to this petition.
2. Respondent, Marc G. Rosenthal, may be served with a true and correct copy of this Petition for Compulsory Discipline, its attachments, as well as a notice of hearing, by and through his attorney, Steven L. Lee, 3921 Steck Ave., Suite A119, Austin, Texas 78759.
3. On or about August 16, 2011, Respondent was charged by Indictment (Exhibit 1) with Count 1 – Conspiracy to Participate in Conduct and Affairs of a Criminal Enterprise, the Activities which Affected Interstate and Foreign Commerce, through a Pattern of Racketeering Activity, in violation of 18 U.S.C. §1962(d), Count 2 – Mail Fraud and Aiding and Abetting, in violation of 18 U.S.C. §§1341 and 2, Count 3 - Mail Fraud and Aiding and Abetting, in violation of 18 U.S.C. §§1341 and 2, Count 4 - Mail Fraud and Aiding and Abetting, in violation of 18 U.S.C. §§1341 and

2, Count 5 - Mail Fraud and Aiding and Abetting, in violation of 18 U.S.C. §§1341 and 2, Count 6 - Mail Fraud and Aiding and Abetting, in violation of 18 U.S.C. §§1341 and 2, Count 7 - Tampering with Witness and Aiding and Abetting, in violation of 18 U.S.C. §§ 1512(b)(1) and 2, Count 8 - Tampering with Official Proceeding by False Affidavit, in violation of 18 U.S.C. §§ 1512(c)(2) and 2, Count 9 - Tampering with Official Proceeding by Perjured Testimony, in violation of 18 U.S.C. §§ 1512(c)(2) and 2, Count 10 - Extortion (Under Color of Official Right) and Aiding and Abetting, in violation of 18 U.S.C. §§ 1951 and 2, Count 11 - Honest Services Mail Fraud and Aiding and Abetting, in violation of 18 U.S.C. §§1341, 1346, and 2, Count 12 - Honest Services Mail Fraud and Aiding and Abetting, in violation of 18 U.S.C. §§ 1341, 1346, and 2, and Count 13 - Honest Services Mail Fraud and Aiding and Abetting, in violation of 18 U.S.C. §§1341, 1346, and 2, in Cause No. B-11-743, styled *United States of America v. Marc Garrett Rosenthal*, in the United States District Court for the Southern District of Texas, Brownsville Division.

4. On or about February 13, 2014, a Judgment in a Criminal Case (Exhibit 2) was entered in Case No. 1:11CR00743-001, styled *United States of America v. Marc Garrett Rosenthal*, in the United States District Court for the Southern District of Texas, Holding Session in Brownsville, wherein Respondent was found guilty of Count 1 - Conspiracy to Participate in Conduct and Affairs of a Criminal Enterprise, the Activities which Affected Interstate and Foreign Commerce, through a Pattern of Racketeering Activity, Count 2 - Mail Fraud and Aiding and Abetting, Count 3 - Mail Fraud and Aiding and Abetting, Count 4 - Mail Fraud and Aiding and Abetting, Count 5 - Mail Fraud and Aiding and Abetting, Count 7 - Tampering with Witness and Aiding and Abetting, Count 8 - Tampering with Official Proceeding by False Affidavit, Count 9 - Tampering with Official Proceeding by Perjured Testimony, Count 10 - Extortion (Under Color of Official Right) and Aiding and Abetting, Count 11 - Honest Services Mail Fraud and Aiding and

Abetting, and Count 12 - Honest Services Mail Fraud and Aiding and Abetting, and was committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of two hundred forty (240) months on each count, to be served concurrently. Respondent was ordered upon release from imprisonment to be on supervised release for three (3) years on each count, to be served concurrently, ordered to perform 200 hours of community service, ordered to pay an assessment of \$1,100.00 and restitution of \$13,288,984.50. Attached hereto and made a part hereof for all intents and purposes as if the same were copied verbatim herein, are true and correct copies of the following documents in the Rosenthal criminal case: Indictment (Exhibit 1) and Judgment in a Criminal Case (Exhibit 2). Petitioner expects to introduce certified copies of Exhibits 1 and 2 at the time of hearing of this cause.

5. Respondent, Marc G. Rosenthal, whose bar card number is 17281450, is the same person as the Marc Garrett Rosenthal who is the subject of the Indictment and Judgment described above, true and correct copies of which are attached hereto as Exhibits 1 and 2.

6. Attached hereto as Exhibit 3 and made a part hereof for all intents and purposes as if the same were copied verbatim herein is a true and correct copy of an affidavit of Rebecca (Beth) Stevens, Attorney of Record for Petitioner herein, attesting to the fact that Respondent is the same person as the person who is the subject of the Indictment and Judgment entered in the Rosenthal criminal case. Petitioner expects to introduce the original of said affidavit at the time of hearing of this cause.

7. The offenses for which Respondent was convicted are intentional crimes as defined by Rule 1.06(T), Texas Rules of Disciplinary Procedure. They are as well serious crimes as defined by Rule 1.06(Z), Texas Rules of Disciplinary Procedure.

8. Having been found guilty and having been convicted of intentional crimes and such conviction currently being appealed, Respondent should be suspended as an attorney licensed to practice law in Texas during the appeal of his conviction. Further, upon a showing by Petitioner that the conviction has become final after determination of the appeal, Respondent should be disbarred as provided by Rule 8.05, Texas Rules of Disciplinary Procedure.

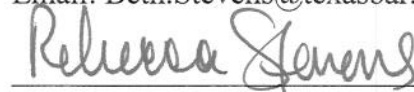
PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that Respondent be given notice of these proceedings as provided by law and, upon hearing of this matter, that the Board enter its order suspending Respondent during the appeal of his conviction, and for such other and further relief to which Petitioner may be entitled to receive including costs of court and attorney's fees.

Respectfully submitted,

Linda A. Acevedo
Chief Disciplinary Counsel

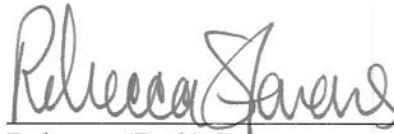
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Rebecca (Beth) Stevens
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ATTORNEYS FOR PETITIONER

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a trial on the merits of the Petition for Compulsory Discipline heretofore sent to be filed with the Board of Disciplinary Appeals on this day, will be held in the courtroom of the Supreme Court of Texas, Tom C. Clark Building, 14th and Colorado Streets, Austin, Texas, at **9:00 a.m. on the 2nd day of May 2014.**



Rebecca (Beth) Stevens_

**SUPREME COURT OF TEXAS
BOARD OF DISCIPLINARY APPEALS
INTERNAL PROCEDURAL RULES**

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**SUPREME COURT OF TEXAS
BOARD OF DISCIPLINARY APPEALS
INTERNAL PROCEDURAL RULES**

SECTION 1: GENERAL PROVISIONS

Rule 1.01 Definitions

- (a) “BODA” is the Board of Disciplinary Appeals.
- (b) “Chair” is the member elected by BODA to serve as chairperson.
- (c) “Classification” is the determination pursuant to TEXAS RULES OF DISCIPLINARY PROCEDURE (“TRDP”) 2.10 by the Chief Disciplinary Counsel (“CDC”) whether a grievance constitutes a “complaint” or an “inquiry.”
- (d) “Clerk” is the executive director or other person appointed by BODA to assume all duties normally performed by the clerk of a court.
- (e) “Executive Director” is the executive director of BODA.
- (f) “Panel” is any three-member grouping of BODA.
- (g) “Party” is a complainant, respondent, or the CDC.

Rule 1.02 General Powers

Pursuant to TRDP 7.08J, BODA shall have and exercise all the powers of either a trial court or appellate court, as the case may be, in hearing and determining disciplinary proceedings; except that BODA judgments and orders shall be enforced in accordance with TRDP 15.03.

Rule 1.03 Additional Rules in Disciplinary Matters

Except as varied by these rules and to the extent applicable, the TEXAS RULES OF CIVIL PROCEDURE (“TRCP”), TEXAS RULES OF APPELLATE PROCEDURE (“TRAP”), and TEXAS RULES OF EVIDENCE (“TRE”) apply to all disciplinary matters before BODA, except appeals from classification decisions, which are governed by Section 3 of these Internal Rules.

Rule 1.04 Appointment of Panels

- (a) BODA may consider any matter or motion through appointment of a panel, except as specified in subpart (b) of this Rule. The chair may delegate appointment of panels for any BODA action to the executive director. Decisions shall be by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting *en banc*. Nothing

contained in these rules shall be construed to give a party the right to be heard by BODA sitting *en banc*.

(b) Any disciplinary matter naming a BODA member as respondent shall be considered by BODA sitting *en banc*.

Rule 1.05 Record Retention

Records of appeals from classification decisions shall be retained by the BODA clerk for a period of at least three (3) years from the date of disposition. Records of other disciplinary matters shall be retained for a period of at least five (5) years from the date of final judgment, or for at least one (1) year after the date a suspension or disbarment ends, whichever is later.

Rule 1.06 Trial Briefs

In any disciplinary proceeding before BODA, all trial briefs and memoranda must be filed with the clerk no later than ten (10) days before the hearing, except upon leave of BODA.

Rule 1.07 Service

In any disciplinary proceeding before BODA initiated by service of a petition upon the respondent, service shall be by personal service, certified mail with return receipt requested and delivery restricted to respondent as addressee only, or in any other manner permitted by applicable rule(s) and authorized by BODA that is reasonably calculated under all the circumstances to apprise the respondent of the proceeding and to give him or her reasonable time to appear and answer. The CDC may serve a petition by certified mail itself without the appointment of a private process server. To establish service by certified or registered mail, the return receipt must contain the respondent's signature.

Rule 1.08 Publication

The office of the CDC shall publish these rules as part of the TDRPC and TRDP and notify each respondent in a compulsory discipline, reciprocal discipline, revocation of probation, or disability matter filed with BODA where these rules are available.

Rule 1.09 Photocopying Costs

The clerk of BODA may charge to the requestor a reasonable amount for the reproduction of non-confidential documents filed with BODA. BODA may set a fee for the reproduction of documents. The fee shall include compensation for staff and recovery of actual production costs.

Rule 1.10 Abstracts

BODA may, in its sole discretion, periodically prepare abstracts of inquiries, grievances, or disciplinary proceedings for publication pursuant to Texas Gov't Code § 81.072(b)(3) and Part VI of the TRDP.

Rule 1.11 Hearing Setting and Notice

(a) **Original Petitions.** For any compulsory case, reciprocal case, revocation of probation, or other matter initiated by the CDC filing a petition with BODA, the CDC may contact the BODA clerk for the next regular available hearing date before filing the original petition. The CDC may then include in the petition a hearing notice specifying the date, time, and place of the hearing. The hearing date must be at least thirty (30) days from the date that the petition is served on the respondent, except in the case of a petition to revoke probation.

(b) **Filing without notice.** The CDC may file any matter with BODA without first obtaining a hearing date so long as it thereafter serves notice on the respondent of the date, time, and place of the hearing in accordance with TRCP 21a (or other applicable TRCP) at least thirty (30) days before the hearing date, except in the case of a petition to revoke probation.

(c) **Expedited settings.** If a party desires a hearing on a matter on a date other than the next regular available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the request. The expedited hearing setting must be at least thirty (30) days from the date of service of the petition, motion or other pleading, except in the case of a petition to revoke probation. BODA may grant or deny a request for an expedited hearing date in its sole discretion.

(d) **Setting notices.** BODA shall notify the parties by first class mail of any hearing date, other than a hearing set on the next regularly available hearing date as noticed in an original petition or motion.

(e) **Announcement docket.** Attorneys and parties appearing before BODA shall check in with the BODA clerk in the courtroom immediately prior to the time docket call is scheduled to begin. The chair will call an announcement docket immediately following the call to order of BODA hearings. Attorneys for each party with a matter on the docket shall appear at that time to give their announcement of readiness, a time estimate for the hearing, and any preliminary motions or matters. The chair will set and announce the order of cases to be heard following the docket announcements.

Rule 1.12 Time to Answer

An answer to any matter pending before BODA may be filed at any time prior to the day of the hearing on the merits except where expressly provided otherwise by these rules or the TRDP, or when an answer date has been set by prior order of BODA. BODA may, but is not required to, consider an answer filed the day of the hearing.

Rule 1.13 Facsimile and Electronic Filing

(a) Any document required to be filed with BODA may be filed by facsimile transmission with a copy to the BODA clerk by first class mail. A document filed by facsimile will be considered filed the day it is received if received before 5:00 p.m. on a regular business day. Any document received by facsimile after 5:00 p.m. or received on a weekend or holiday officially observed by the State of Texas will be considered filed the next regular business day.

(b) Any document required to be filed with BODA may be filed by emailing a copy of the document file to the email address designated by BODA for that purpose with a copy sent to the BODA clerk by first class mail. A document filed by email will be considered filed the day it is received if received before 5:00 p.m. on a regular business day. Any document received by email after 5:00 p.m. or received on a weekend or holiday officially observed by the State of Texas will be considered filed the next regular business day. The date and time of receipt shall be determined by the date and time shown on the BODA clerk's email.

(c) It is the responsibility of the party filing a document by facsimile or email to obtain the correct telephone number or email address for BODA and confirm that the document was received by BODA in legible form. Any document which is illegible or which cannot be opened as part of an email attachment by BODA will not be considered received or filed. Parties using facsimile or email filing must still comply with TRCP requirements for signatures.

(d) Papers will not be deemed filed if sent to any individual BODA member or other office or address.

Rule 1.14 Hearing Exhibits

Counsel should provide an original and twelve copies of any document, pleading, exhibit, or other material which the attorney intends to offer or otherwise make available to the BODA members at a hearing and not already filed with BODA prior to the hearing.

Rule 1.15 BODA Work Product and Drafts

Without limiting any exceptions or exemptions from disclosure contained in any other rules or statutes, a document or record of any nature, regardless of electronic or physical form, characteristics, or means of transmission, created or produced in connection with or related to BODA's adjudicative decision-making process is not subject to disclosure or discovery. This includes documents prepared by any BODA member, by BODA staff or interns, or any other person acting on behalf of or at the direction of BODA.

Rule 1.16 BODA Opinions

(a) BODA may render judgment with or without written opinion in any disciplinary matter. In accordance with TRDP 6.06, all written opinions of BODA are open to the public and shall be made available to the public reporting services, print or electronic, for publishing. A majority of the members who participate in considering the disciplinary matter must determine if an opinion will be written. The names of the participating members must be noted on all written opinions of BODA.

(b) Only a member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this Rule, in hearings in which evidence is taken, no member may participate in the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.

(c) A BODA determination in an appeal from a grievance classification decision under TRDP 2.10 is not a judgment for purposes of this Rule and may be issued without a written opinion.

SECTION 2: ETHICAL CONSIDERATIONS

Rule 2.01 Representing or Counseling Parties in Disciplinary Matters And Legal Malpractice Cases

(a) No current member of BODA shall represent a party with respect to any disciplinary action or proceeding. No current member of BODA shall testify voluntarily or offer to testify voluntarily on behalf of a party in any disciplinary action or proceeding.

(b) No current BODA member may serve as an expert witness providing opinions regarding the TDRPC.

(c) A BODA member may represent a party in a legal malpractice case, provided that he or she is later recused in accordance with these rules from any proceeding before BODA arising out of the same facts.

Rule 2.02 Confidentiality

(a) All BODA deliberations are confidential and shall not be disclosed by BODA members or staff. Classification appeals files and disability suspension files are confidential pursuant to the TRDP.

(b) If subpoenaed or otherwise compelled by law to testify in any proceeding, members of BODA shall not disclose matters discussed in conference concerning any disciplinary case, unless required to do so by a court of competent jurisdiction. If subpoenaed or otherwise compelled to attend any disciplinary proceeding, including depositions, a member of BODA shall promptly notify the chair of BODA and the CDC.

Rule 2.03 Disqualification and Recusal of BODA Members

(a) BODA members are subject to disqualification and recusal respectively as provided in TRCP 18b.

(b) BODA members may, in addition to recusals pursuant to (a) above, voluntarily recuse themselves from any discussion and voting for any other reason.

(c) Nothing in these rules shall impute disqualification to lawyers who are members of or associated with BODA members' firms from serving on grievance committees or representing parties in disciplinary or legal malpractice cases; however, BODA members shall recuse themselves from any matter in which any lawyer who is a member of or associated with a BODA member's firm represents a party in any disciplinary proceeding or before BODA.

Rule 2.04 Communications with BODA

Correspondence or other communications relative to any matter pending before BODA must be conducted with the clerk and shall not be addressed directly to or conducted with any BODA member.

SECTION 3: CLASSIFICATION APPEALS

Rule 3.01 Notice of Appeal

(a) If the grievance filed by the complainant is not classified as a complaint, the CDC shall notify the complainant of his or her rights to appeal as set out in TRDP 2.10 or other applicable rule.

(b) To facilitate the potential filing of an appeal, the CDC shall send the complainant an Appeal Notice form with the classification disposition which shall include, but is not limited to, the docket number of the matter, the time deadline for appealing as set out in TRDP 2.10 or other applicable provision, and information for mailing or faxing the Appeal Notice to BODA.

Rule 3.02 Complaint on Appeal

BODA shall review only the original grievance on appeals from classification decisions. The CDC shall forward a copy of the complete grievance to BODA with supporting documentation as originally filed. BODA shall not consider any supplemental information which was not reviewed as part of the original screening and classification decision.

Rule 3.03 Notice of Disposition

BODA shall mail complainant, respondent, and the CDC written notice of the decision of the appeal by first class mail to the addresses provided BODA by the CDC in the appeal transmittal.

SECTION 4: APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01 Signing, Filing, and Service

(a) **Signing.** Each brief, motion or other paper filed shall be signed by at least one attorney for the party or by the party *pro se* and shall give the State Bar of Texas identification number, mailing address, telephone number, email address, and telecopier number, if any, of each attorney whose name is signed thereto, or of the party (if applicable).

(b) **Number of Copies.** Each party shall file an original and two (2) copies of all briefs and motions with the clerk. Only one copy of the clerk's record and reporter's record shall be filed.

(c) **Service.** Copies of all papers other than the record filed by any party shall, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

Rule 4.02 Computation of Time

(a) **Beginnings of Periods.** The date the chair of the evidentiary panel signs its decision shall constitute the date of notice under TRDP 2.21.

(b) **TRAP Followed.** Computation of time for purposes of this section shall follow TRAP 4.1 and 9.2(b).

Rule 4.03 Record on Appeal

(a) **Contents.** The record on appeal shall consist of a clerk's record and where necessary to the appeal, a reporter's record.

(b) **Stipulation as to Record.** The parties may designate parts of the clerk's record and reporter's record to be included in the record on appeal by written stipulation filed with the custodian of records of the evidentiary panel.

(c) **Responsibility for Filing Record.** The custodian of records of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record if a notice of appeal has been filed. The court reporter is responsible for timely filing the reporter's record if a notice of appeal has been filed, the appellant has requested that the reporter's record be prepared, and the party responsible for initiating the appeal has paid the reporter's fee or has made satisfactory arrangements with the reporter. The party initiating the appeal shall pay the cost of preparing the record.

(d) **Clerk's Record.**

- (1) Unless otherwise stipulated by the parties, the clerk's record on appeal shall include all papers on file with the evidentiary panel, including, but not limited to, the election letter, all pleadings upon which the hearing was held, the docket sheet, the evidentiary panel's charge, the final hearing order with attachments or exhibits, any findings of fact and conclusions of law, all other pleadings, the judgment or other order(s) appealed from, the notice of decision sent each party, any post-submission pleadings and briefs, and any notice of appeal.
- (2) Upon receipt of a copy of the notice of appeal, the custodian of records in the individual CDC office which conducted the evidentiary hearing shall prepare and transmit the clerk's record to BODA. If the CDC is unable for any reason to prepare and transmit the clerk's record by the due date, it shall promptly notify BODA and the parties, explain the reason(s) why it cannot be timely filed, and give the date by which it expects the clerk's record can be filed.
- (3) The clerk's record should be in the following form:
 - (i) contain a detailed index identifying each document included in the record, the date of filing, and the page where it first appears;

- (ii) arranged in ascending chronological order by document by date of filing or occurrence;
- (iii) tabbed with heavy index tabs to show the beginning of each document;
- (iv) consecutively numbered in the bottom right-hand corner of the pages;
- (v) bound together so that the record will lie flat when opened; and
- (vi) contain the custodian's certification that the documents contained in the clerk's record are true and correct copies and are all the documents required to be filed.

(e) **Reporter's Record.** The appellant, at or before the time prescribed for perfecting the appeal, shall make a written request to the official reporter for the reporter's record, designating the portion of the evidence and other proceedings to be included. A copy of such request shall be filed with the evidentiary panel and BODA and be served on the appellee. The reporter's record shall be certified by the official court reporter.

(f) **Non-Stenographic Recordings.** All testimony and evidence may be recorded at the evidentiary hearing by means other than stenographic recording, including videotape recordings; however, the non-stenographic recording shall not dispense with the requirement of a stenographic transcription of the hearing. In appeals to BODA, the non-stenographic recording must be transcribed and the transcription filed as the reporter's record.

(g) **Other Requests.** At any time before the clerk's record is prepared or within ten (10) days after service of a copy of appellant's request for the reporter's record, any party may request additional portions of the evidence and other proceedings to be included therein.

(h) **Inaccuracies or Defects.** Any inaccuracies in the record may be corrected by an agreement of the parties. Any dispute regarding the reporter's record shall be submitted by BODA to the evidentiary panel for resolution and to conform the reporter's record.

Rule 4.04 Time to File Record

(a) **Timetable.** The clerk's record and reporter's record (including a non-stenographic recording which has been transcribed) shall be filed with the BODA clerk within thirty (30) days after the date the notice of appeal is received by BODA. Failure to file either the clerk's record or the reporter's record within such time shall not affect BODA's jurisdiction, but shall be grounds for BODA exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or to apply presumptions against the appellant.

(b) **If No Record Filed.**

- (1) If the clerk's record or reporter's record has not been timely filed, the BODA clerk must send notice to the party responsible for filing it, stating that the record is late and requesting that the record be filed within thirty (30) days. The BODA clerk must send a copy of this notice to all the parties and the evidentiary panel.
- (2) If no reporter's record is filed due to appellant's fault, and if the clerk's record has been filed, BODA may, after first giving the appellant notice and reasonable opportunity to cure, consider and decide those issues or points that do not require a reporter's record for a decision. BODA may do this if no reporter's record has been filed because:
 - (i) the appellant failed to request a reporter's record; or
 - (ii)(a) appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record; and
 - (b) the appellant is not entitled to proceed without payment of costs.

(c) **Supplemental Record.** If anything material to either party is omitted from the clerk's record or reporter's record BODA may, upon written motion of a party or upon its own motion, direct a supplemental record to be certified and transmitted by the CDC or the official court reporter.

Rule 4.05 Copies of the Record

The record shall not be withdrawn from the custody of the BODA clerk. Any party may obtain a copy of the record or any designated part thereof by making written request to the clerk and paying copying charges.

Rule 4.06 Requisites of Briefs

(a) **Appellant's Filing Date.** Appellant's brief must be filed within thirty (30) days after the later of the date on which the clerk's record or the reporter's record was timely filed.

(b) **Appellee's Filing Date.** Appellee's brief must be filed within thirty (30) days after the filing of appellant's brief.

(c) **Contents.** Briefs shall contain:

- (1) a complete list of the names and addresses of all parties to the final decision and their counsel;
- (2) a table of contents with page references where the discussion of each point relied upon may be found and also an index of authorities alphabetically arranged, together with reference to the pages of the brief where the same are

cited. The subject matter of each point or group of points shall be indicated in the table of contents;

- (3) a brief general statement of the nature of the cause or offense and the result;
- (4) a statement of the points upon which an appeal is predicated or the issues presented for review;
- (5) a brief of the argument;
- (6) prayer for relief; and,
- (7) an appendix consisting of copies of pertinent parts of the record upon which the party relies.

(d) **Length of Briefs.** Briefs shall be typewritten or otherwise legibly printed on letter-size (8½" x 11") paper and shall not exceed fifty (50) pages in length, exclusive of pages containing names and addresses of parties, table of contents, index of authorities, points of error, and any addenda or appendix containing statutes, rules, regulations, etc., except upon leave of BODA.

(e) **Amendment or Supplementation.** Briefs may be amended or supplemented upon leave of BODA.

(f) **Failure to File a Brief.** If the appellant fails to timely file a brief, BODA may:

- (1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure and the appellee is not significantly injured by the appellant's failure to timely file a brief; or
- (2) decline to dismiss the appeal and give further direction to the case as it considers proper.

Rule 4.07 Oral Argument

(a) **Request.** A party desiring oral argument before BODA shall request same in writing and include the request in the notice of appeal or on the front cover of that party's first brief. BODA may grant or deny the request in its sole discretion. If oral argument is granted, the clerk shall notify the parties of the time and place for submission. BODA may also advance cases without oral argument or direct parties on its own initiative to appear and submit oral argument on a case. The parties may agree to submit the case without argument after requesting same.

(b) **Time Allowed.** Each party shall have twenty (20) minutes in which to argue. BODA may, upon request of a party or in its discretion, extend or shorten the time allowed for oral argument.

Rule 4.08 Motions Generally

An application for an order or other relief shall be made by filing a motion with the BODA clerk for same supported by sufficient cause with proof of service on all other parties. The motion shall state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other papers shall be served and filed with the motion. A party may file a response to a motion at any time before BODA rules on the motion or by any deadline set by BODA. BODA may determine a motion before a response is filed.

Rule 4.09 Motions for Extension of Time

(a) **When due.** Any request for extension of time other than to file a brief must be filed with the BODA clerk no later than fifteen (15) days after the last day allowed for filing the item in question.

(b) **Contents.** All motions for extension of time shall be in writing, comply with BODA Internal Procedural Rule 4.08, and specify the following:

- (1) the date of notice of decision of the evidentiary panel, together with the number and style of the case;
- (2) if the appeal has been perfected, the date when the appeal was perfected;
- (3) the original deadline for filing the item in question;
- (4) the length of time requested for the extension;
- (5) the number of extensions of time which have been granted previously regarding the item in question; and,
- (6) the facts relied upon to reasonably explain the need for an extension.

(c) **For Filing Reporter's Record.** When an extension of time is requested for filing the reporter's record, the facts relied upon to reasonably explain the need for an extension must be supported by an affidavit of the court reporter, which shall include the court reporter's estimate of the earliest date when the reporter's record will be available for filing.

Rule 4.10 Decision and Judgment

(a) **Decision.** BODA may affirm in whole or in part the decision of the evidentiary panel, modify the panel's finding(s) and affirm the finding(s) as modified, reverse in whole or in part the panel's finding(s) and render such decision as the panel should have rendered, or reverse the panel's finding(s) and remand the cause for further proceedings to be conducted by:

- (1) the panel that entered the finding(s); or,

- (2) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.

(b) **Notice of Orders and Judgment.** When BODA renders judgment or grants or overrules a motion, the clerk shall give notice to the parties or their attorneys of record of the disposition made of the cause or of the motion, as the case may be. The notice shall be given by first-class mail and be marked so as to be returnable to the clerk in case of nondelivery.

(c) **Mandate.** In every case where BODA reverses or otherwise modifies the judgment appealed from, BODA shall issue a mandate in accordance with its judgment and deliver it to the evidentiary panel.

Rule 4.11 Involuntary Dismissal

Under the following circumstances and on any party's motion or on its own initiative after giving at least ten days' notice to all parties, BODA may dismiss the appeal or affirm the appealed judgment or order. Dismissal or affirmance may occur if the appeal is subject to dismissal

- (a) for want of jurisdiction;
- (b) for want of prosecution; or
- (c) because the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring a response or other action within a specified time.

SECTION 5: PETITIONS TO REVOKE PROBATION

Rule 5.01 Initiation and Service

(a) Before filing a motion with BODA seeking to revoke the probation of an attorney who has been sanctioned, the CDC shall contact the BODA clerk to confirm whether the next regular available hearing date will comply with the thirty-day requirement of TRDP. The chair may designate a three-member panel to hear the motion, if necessary, to meet the thirty-day requirement of TRDP 2.23.

(b) Upon filing of the motion, the CDC shall serve the respondent in accordance with TRDP 2.23 with the motion and supporting documents, if any, in accordance with the TRCP and these rules. The CDC shall notify BODA of the date service is obtained on the respondent.

Rule 5.02 Hearing

Within thirty (30) days of service of the motion on the respondent, BODA shall docket and set the matter for a hearing and notify the parties of the time and place for the hearing; however, upon a showing of good cause by a party or upon its own motion, BODA may continue the case to a future hearing date as circumstances require.

SECTION 6: COMPULSORY DISCIPLINE MATTERS

Rule 6.01 Initiation of Proceeding

Pursuant to TRDP 8.03, the CDC shall file a petition for compulsory discipline with BODA and serve the respondent in accordance with the TRDP and Rule 1.07 above.

Rule 6.02 Notice of Decision

The BODA clerk shall mail a copy of the judgment to the parties within ten (10) days from the date the decision is signed by the chair. Transmittal of the judgment shall include all information required by the TRDP and the Supreme Court.

SECTION 7: RECIPROCAL DISCIPLINE MATTERS

Rule 7.01 Initiation of Proceeding

(a) Pursuant to TRDP 9.01 and 9.02, the CDC shall file a petition for reciprocal discipline with BODA when information is received indicating that an attorney licensed to practice law in Texas has been disciplined in another jurisdiction.

(b) The petition shall request that the respondent be disciplined in Texas and have attached to it any information concerning the disciplinary matter from the other jurisdiction including a copy of the order or judgment, if any, rendered against the respondent. The CDC shall serve the respondent in accordance with Rule 1.07 above.

Rule 7.02 Order to Show Cause

Upon the filing of the petition with BODA, the chair shall immediately issue a show cause order including a hearing setting notice and forward it to the CDC, who shall serve the order on the respondent. The CDC shall notify BODA of the date service is obtained.

Rule 7.03 Attorney's Response

If, on or before the thirtieth day after service of the show cause order and hearing notice by the CDC, the respondent does not file an answer but thereafter appears at the hearing, BODA may, at the discretion of the chair, receive testimony from the respondent relating to the merits of the petition for reciprocal discipline.

SECTION 8: DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01 Appointment of District Disability Committee

(a) If the evidentiary panel of the grievance committee finds pursuant to TRDP 2.17P(2) or the CDC believes pursuant to TRDP 2.14C that a respondent is suffering from a disability, the rules in this section shall apply to the District Disability Committee *de novo* proceeding held pursuant to TRDP Part XII.

(b) Upon receiving an evidentiary panel's finding or the CDC's report that an attorney is believed to be suffering from a disability, the BODA chair shall appoint a District Disability Committee in compliance with TRDP 12.02 and designate a chair. The BODA clerk shall notify the CDC and respondent that a committee has been appointed and notify the respondent where the procedural rules governing disability proceedings are available.

(c) A respondent notified to appear at a District Disability Committee hearing may, at any time, waive that hearing in writing and enter into an agreed judgment of indefinite disability suspension or probated suspension, provided that the respondent is competent to so waive the hearing. If the respondent is not represented, the waiver shall include a statement by the respondent that he has been advised of his right to have counsel appointed for him and that he waives that right.

(d) All pleadings, motions, briefs, or other matters to be filed with the District Disability Committee shall be filed with the BODA clerk.

(e) Should any member of the District Disability Committee become unable to serve, the BODA chair may appoint a substitute member.

Rule 8.02 Hearing Order

(a) Upon being notified that the District Disability Committee has been appointed by BODA, the CDC shall, within twenty (20) days, file with the BODA clerk and then serve upon the respondent either in person or by certified mail, return receipt requested with delivery restricted to the respondent as addressee with a copy by first class mail, a proposed hearing order containing a list of names and addresses of all witnesses expected to be called to testify before the District Disability Committee and all exhibits expected to be offered. If service is by certified mail, the return receipt with the respondent's signature must be filed with the BODA clerk.

(b) The respondent shall, within twenty (20) days after receiving the CDC's proposed hearing order, file with the BODA clerk and serve the CDC by certified mail a proposed hearing order including a list of names and addresses of all witnesses expected to be called to testify before the District Disability Committee and all exhibits expected to be offered. Respondent's failure to timely file the proposed hearing order will not affect the responsibility of the District Disability Committee to issue a final hearing order.

(c) The District Disability Committee chair may adopt either the CDC's proposed hearing order, the respondent's proposed hearing order, or an order of his or her own. The BODA clerk shall prepare the final hearing order at the instruction of the District Disability Committee chair and send to the parties by first class mail. The BODA clerk shall set the final hearing date at the instruction of the chair. The adopted order shall be the final hearing order and shall contain a date, time, and place for the hearing. That order may contain provisions requiring a physical or mental examination of the respondent.

(d) Requests for an extension of time to file the proposed hearing order by either party must be by written motion filed with the BODA clerk.

Rule 8.03 Provisions for Physical or Mental Examinations

(a) Upon motion by the CDC or upon its own motion, the District Disability Committee may order the respondent to submit to a physical and/or mental examination by a qualified health care or mental health care professional. The respondent shall be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination. Any objections(s) to the motion for an exam and request for a hearing shall be filed with the BODA clerk within fifteen (15) days of receipt of the motion.

(b) The examining professional shall file with the BODA clerk his detailed written report setting out findings, including results of all tests made, diagnoses and conclusions, and deliver a copy to the CDC and to the respondent.

(c) Nothing contained herein shall be construed to limit the respondent's right to an examination by a professional of his choice in addition to any exam ordered by BODA.

Rule 8.04 Ability to Compel Attendance

The respondent and the CDC may, if they so choose, confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses, enforceable by an order of a district court of proper jurisdiction, is available to the respondent and the CDC, by requesting a subpoena be issued as provided in TRCP 176.

Rule 8.05 Respondent's Right to Counsel

(a) The notice to the respondent that a District Disability Committee has been appointed and the notice transmitting the CDC's proposed hearing order shall state that the respondent may request appointment of counsel by BODA to represent him or her at the disability hearing.

(b) If the respondent wishes to have counsel appointed pursuant to TRDP Rule 12.02, a written request must be filed with the BODA clerk within sixty (60) days of the date respondent receives the CDC's proposed hearing order. Any request for appointment of counsel after sixty (60) days from the date of receipt of the proposed hearing order must show good cause for the failure to do so timely and that the request is not sought for delay only.

Rule 8.06 Limited Discovery

(a) In the sole discretion of the District Disability Committee, limited discovery is permissible upon a clear showing of good cause and substantial need. The parties seeking discovery must file with the BODA clerk a verified written request for discovery showing good cause and substantial need with the proposed hearing order.

(b) If good cause and substantial need are demonstrated, the District Disability Committee shall by written order permit the discovery, including in the final hearing order limitations or deadlines on the discovery. Such discovery, if any, as may be permitted, must be conducted by methods provided in the TRCP in effect at the time and may upon motion be enforced by a district court of proper jurisdiction.

(c) A decision of a District Disability Committee on a discovery matter may be reviewed only on appeal of the entire case. A reversal of the case may not be based upon the granting or denial of a discovery request without a showing of material unfairness or substantial harm.

Rule 8.07 Hearing

(a) The party seeking to establish the disability must prove by a preponderance of the evidence that the respondent is suffering from a disability as defined in the TRDP. The chair of the District Disability Committee shall admit all such probative and relevant evidence as he or she deems necessary for a fair and complete hearing, generally in accord with the TRE; provided, however, that the admission or exclusion of evidence shall be in the sole discretion of the chair. No ruling on evidence shall be a basis for reversal solely because it fails to strictly comply with the TRE.

(b) Such proceedings shall begin and conclude no earlier than thirty (30) days from the date the respondent receives the CDC's proposed hearing order nor later than ninety (90) days from that date; however, failure to do so does not affect the jurisdiction of the District Disability Committee to act. Nothing herein shall be construed to limit the parties' right to request a continuance of the hearing for good cause.

(c) If the Committee is unable for any reason to hold a hearing within ninety (90) days of the date the respondent receives the proposed hearing order, BODA may appoint a new committee to handle the case.

Rule 8.08 Notice of Decision

The District Disability Committee shall certify its finding and any recommendations to BODA which shall issue the final judgment in the matter.

Rule 8.09 Confidentiality

All proceedings before the District Disability Committee are closed to the public. All matters before the District Disability Committee are confidential and are not subject to disclosure, except as allowed by the TRDP or as may be required in the event of an appeal to the Supreme Court.

SECTION 9: DISABILITY REINSTATEMENTS

Rule 9.01 Petition for Reinstatement

(a) An attorney under an indefinite disability suspension may, at any time after he or she has been suspended, file a verified petition with BODA to have the suspension terminated and to be reinstated to the practice of law. All such petitions shall be filed with the BODA clerk. The petitioner shall also serve a copy of the petition on the CDC as set forth in TRDP 12.06. After the petition is filed, the TRCP shall apply except when in conflict with these rules. Service shall be in accordance with the TRDP and these rules.

(b) The petition shall set forth the information required by TRDP 12.06. If the judgment of disability suspension contained terms or conditions relating to misconduct by the petitioner prior to the suspension, the petition shall affirmatively demonstrate that those terms have been complied with or explain why they have not been satisfied. The petitioner has a duty to amend and keep current all information in the petition until the final hearing on the merits. Failure to do so may result in dismissal without notice.

(c) Disability reinstatement proceedings before BODA are not confidential; however, BODA may seal all or any part of the record of the proceeding.

Rule 9.02 Discovery

The parties shall have sixty (60) days from the date of the filing of the petition for reinstatement in which to conduct discovery. The matter shall be set for a hearing by the BODA clerk on the next available hearing date after the expiration of the sixty (60) days, and the clerk shall so notify the parties of the time and place of the hearing. Nothing contained herein shall preclude either party from requesting a continuance for good cause.

Rule 9.03 Physical or Mental Examinations

(a) BODA may order the petitioner seeking reinstatement to submit to a physical and/or mental examination by a qualified health care or mental health care professional upon written motion of the CDC or its own motion. The petitioner shall be served with a copy of the motion and given at least seven (7) days to respond. BODA may grant or deny the motion with or without a hearing.

(b) The petitioner shall be given reasonable notice of the examination by written order specifying the name, address and telephone number of the person conducting the examination.

(c) The examining professional shall deliver to BODA and the parties a copy of a detailed written report setting out findings, including results of all tests made, diagnoses and conclusions.

(d) If the petitioner fails to submit to an examination as ordered, BODA may dismiss the petition without notice.

(e) Nothing contained herein shall be construed to limit the petitioner's right to an examination by a professional of his choice in addition to any exam ordered by BODA.

Rule 9.04 Judgment

If, after hearing all the evidence, BODA determines that the petitioner is not eligible for reinstatement, BODA may, in its discretion, either enter an order denying the petition or direct that the petition be held in abeyance for a reasonable period of time until the petitioner provides additional proof as directed by BODA. The judgment may include such other orders as protecting the public and the petitioner's potential clients may require.

SECTION 10: APPEALS FROM BODA TO THE SUPREME COURT

Rule 10.01 Docketing by the Clerk

(a) All appeals to the Supreme Court from determinations by BODA on a decision of a District Grievance Committee's evidentiary panel concerning the imposition or failure to impose sanctions, appeals from determinations on compulsory discipline, reciprocal discipline, revocations of probation, and disability suspensions will be docketed by the clerk of the Supreme Court in the same manner as petitions for review.

(b) No fee shall be charged by the clerk for filing any appeal from BODA decisions.

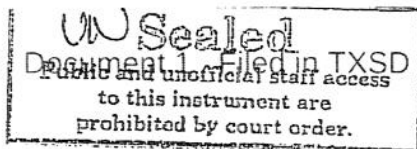
(c) The notice of appeal must be filed directly with the clerk of the Supreme Court within fourteen (14) days after receipt of notice of a final determination by BODA. The record must be filed within sixty (60) days after BODA's determination. The appealing party's brief is due thirty (30) days after the record, and the responding party's brief must be filed within thirty (30) days thereafter.

(d) The BODA clerk shall include the information contained in subpart (c) above with transmittal of each final determination to the parties.

Rule 10.02 Appellate Rules to Apply

(a) The TRAP will apply to these appeals to the extent they are relevant. Oral argument may be granted on motion. The case shall be reviewed under the substantial evidence rule. The Court's decisions on sanctions, compulsory discipline, reciprocal discipline, revocations of probation, and disability suspension cases will be announced on the Court's orders. Following review by the Court, these appeals will be available for public inspection in the office of the Clerk of the Supreme Court, unless the file or some portion thereof is confidential under the TRDP.

(b) The Court may affirm a decision of BODA by order without written opinion.



AUG 16 2011

Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

UNITED STATES OF AMERICA

§

vs.

§

CRIMINAL NO.

B - 11 - 743

MARC GARRETT ROSENTHAL

§

UNDER SEALINDICTMENT

THE GRAND JURY CHARGES:

INTRODUCTION

At all times material to this Indictment:

1. Rosenthal & Watson, P.C. ("Rosenthal & Watson") was a law firm with a principal place of business in Austin, Texas. It had a satellite office in Brownsville, Texas. The firm's practice included developing lawsuits and potential lawsuits and preparing and filing lawsuits, primarily plaintiffs' personal injury lawsuits, in Cameron County, Texas, and surrounding counties, and elsewhere, in both state and federal court. The firm's clients included clients from outside the state of Texas. The firm sued or positioned itself to sue defendants or potential defendants operating outside of Texas. The firm conducted business outside of Texas, including business in Mexico.
2. The 404th Judicial District Court for the state of Texas was located within the Cameron County Courthouse in Brownsville, Texas. The 404th Judicial District Court was a trial court of general jurisdiction under Texas law. The 404th Judicial District Court was created by statute to administer, apply, and interpret the laws of the state of Texas in a fair and unbiased manner without favoritism, extortion, improper influence, personal self-enrichment, self-dealing, concealment, and conflict of interest. As a state district court, the 404th Judicial District Court had

Exhibit
1

original jurisdiction in felony criminal cases, divorce cases, cases involving title to land, election contest cases, civil cases involving large monetary sums, and other matters in which jurisdiction was not placed in another trial court. As a state district court on the international border, it was involved in various aspects of interstate and foreign commerce including, but not limited to, the adjudication of the following: lawsuits involving parties that were from Mexico and other foreign nations; lawsuits involving parties residing or based outside the state of Texas; lawsuits involving corporations, insurance companies, and other large business entities that conduct national and international business and pay litigation costs, judgments, and settlements, out of funds derived from doing national and international business; and handling criminal and family law matters involving a party from Mexico or another foreign nation, or a party with interested children and other family members or heirs from Mexico or other foreign nations whose rights and interests were involved in all or part of the litigation.

3. **ABEL CORRAL LIMAS ("LIMAS")**, was the elected State District Judge for the 404th Judicial District Court. He was an officer and employee of state government, responsible for lawfully performing and discharging his duties without bias, favoritism, extortion, improper influence, personal self-enrichment, or self-dealing.

4. **MARC GARRETT ROSENTHAL ("ROSENTHAL")**, defendant herein, was an attorney practicing in the Southern District of Texas and a principal in the law firm of Rosenthal & Watson. ROSENTHAL paid witnesses or purported witnesses or had witnesses or purported witnesses paid in return for false testimony in potential and actual state and federal cases in Cameron County, Texas, and surrounding counties and in federal court in the Southern District of Texas. ROSENTHAL also made arrangements to have LIMAS paid and otherwise compensated LIMAS

for favorable rulings in cases pending in LIMAS's court that were being handled by Rosenthal & Watson.

5. **JOSE SANTIAGO "JIM" SOLIS ("SOLIS")** is a former state legislator and was an attorney practicing in the Southern District of Texas. He was "of counsel" to the law firm of Rosenthal & Watson, P.C. SOLIS assisted in the development of cases for Rosenthal & Watson. SOLIS also made and facilitated payment in the form of money and other consideration to LIMAS for favorable rulings in Rosenthal & Watson cases pending in LIMAS's court.

6. **Unindicted Co-Conspirator 1**, at ROSENTHAL's instruction and direction, paid witnesses or purported witnesses or had witnesses or purported witnesses paid in return for false testimony in potential and actual state and federal cases in Cameron County, Texas, and surrounding counties, and in the Southern District of Texas.

COUNT ONE

18 U.S.C. Section 1962(d)

The Enterprise

7. At various times relevant to this Indictment, Rosenthal & Watson constituted an "enterprise," as defined in Title 18, United States Code, Section 1961(4) (hereinafter, "the enterprise"), a legal entity, which was engaged in, and the activities of which affected interstate and foreign commerce.

Purposes of the Racketeering Activity

8. The purposes of the racketeering activity included the following:

a. Development of plaintiffs' personal injury cases predicated in significant part on false and misleading testimony, which the firm filed, or which the firm prepared to file, in state and federal courts in the Southern District of Texas.

b. Bribery of judicial officials, including LIMAS, and bribery of witnesses and potential or purported witnesses, in state and federal cases and potential cases, for the personal financial benefit and enrichment of Rosenthal & Watson, ROSENTHAL, LIMAS, SOLIS, and others.

c. Use of the 404th Judicial District Court and the office of judge to deprive the citizens of Cameron County, Texas, and surrounding counties, and other litigants, of their right to the honest services of an elected official.

d. Promoting, concealing, and otherwise protecting purposes (a), (b) and (c) from possible criminal investigation and prosecution.

The Racketeering Conspiracy

9. From an unknown date, believed to be in or about November of 2005, and continuing thereafter up to and including an unknown date, believed to be in or about December of 2009, in the Southern District of Texas and elsewhere within the jurisdiction of the Court, the defendant

MARC GARRETT ROSENTHAL,

together with others known and unknown to the Grand Jury, being persons employed by or associated with Rosenthal & Watson, an enterprise, which engaged in, and the activities of which affected interstate and foreign commerce, knowingly and intentionally conspired to violate 18 U.S.C. Section 1962(c), that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of that enterprise through a pattern of racketeering activity involving multiple acts indictable

under:

- a. 18 U.S.C. Section 1951 (Hobbs Act extortion);
- b. 18 U.S.C. Section 1341 (Property Mail Fraud);
- c. 18 U.S.C. Section 1341 & 1346 (Honest Services Mail Fraud);
- d. 18 U.S.C. Section 1343 (Property Wire Fraud);
- e. 18 U.S.C. Section 1343 & 1346 (Honest Services Wire Fraud);
- f. 18 U.S.C. Section 201(b)(3) (Witness Bribery);
- g. 18 U.S.C. Section 1512 (Witness Tampering);

and multiple acts involving bribery, chargeable under Texas Penal Code, Section 36.02(a) (Bribery).

It was further a part of the conspiracy that the defendant agreed that a conspirator would commit at least two acts of racketeering activity in the conduct of the affairs of the enterprise.

Means and Methods of the Racketeering Activity

10. It was a part of the conspiracy that defendant ROSENTHAL, and others known and unknown to the Grand Jury, engaged in a scheme to defraud the people of the state of Texas of money, property, and the intangible right to the honest services of LIMAS, in his capacity as a state official, by means of materially false and fraudulent pretenses, representations, promises, and material omissions, as more fully described below in the factual allegations in Counts 2-13, which are realleged and reincorporated herein.

11. It was also a part of the conspiracy that defendant ROSENTHAL would and did instruct and direct Unindicted Co-Conspirator 1 and SOLIS in the recruitment and development of

actual and potential, or threatened, plaintiffs' personal injury lawsuits in Cameron County, Texas, and surrounding counties.

12. It was also a part of the conspiracy that Unindicted Co-Conspirator 1, at the direction of ROSENTHAL and for the benefit of ROSENTHAL, would and did locate and pay witnesses and purported witnesses on behalf of ROSENTHAL, for false testimony and statements in potential lawsuits and actual lawsuits filed in Cameron County and surrounding counties, and in the Southern District of Texas.

13. It was also a part of the conspiracy that SOLIS and others, at the direction and for the benefit of ROSENTHAL and others, would and did pay certain persons, including funeral directors and public employees, for the referral of plaintiffs' personal injury cases to Rosenthal & Watson.

14. It was also a part of the conspiracy that SOLIS and others, at the direction and for the benefit of ROSENTHAL and others, would and did make arrangements to manipulate the random case assignment system at the Cameron County District Clerk's Office so that cases were filed in courts they preferred.

15. It was also a part of the conspiracy that defendant ROSENTHAL would and did directly and indirectly pay LIMAS or instruct SOLIS to pay LIMAS, and would and did otherwise compensate LIMAS in return for acts of judicial discretion vested in the powers granted the 404th Judicial District Court under Texas law, including favorable orders, rulings, and treatment.

16. It was also a part of the conspiracy that LIMAS would and did use his office and position as Judge of the 404th Judicial District Court to enrich himself by soliciting and accepting, under color of official right, bribes in the form of money and other things of present or prospective

value from litigants and their counsel and representatives, engaged in interstate and foreign commerce, in return for acts of judicial discretion vested in the powers granted the 404th Judicial District Court under Texas law, including favorable orders, rulings, and treatment.

17. It was also a part of the conspiracy that defendant ROSENTHAL and others known and unknown to the Grand Jury, would and did use communication facilities, including cellular telephone companies with interstate operations, and the United States mail and interstate carriers, to advance the purposes of the racketeering activity and would and did use the legitimate judicial and administrative authority, symbols and tools of such authority to further the purposes of the racketeering activity.

18. It was also a part of the conspiracy that defendant ROSENTHAL would and did use equipment and other goods made and purchased in interstate and foreign commerce, and would and did use the proceeds of interstate and foreign commerce, to further the purposes of the racketeering activity.

19. It was also a part of the conspiracy that the cases affected by the illegal payments to witnesses or purported witnesses and to LIMAS, and the cases affected by the acts of discretion vested in the powers granted the 404th Judicial District Court, including favorable orders, rulings and treatment, would and did affect interstate and foreign commerce.

In violation of Title 18, United States Code, Section 1962(d).

COUNTS TWO AND THREE – Mail Fraud and Aiding and Abetting

18 U.S.C. Section 1341 and 2

20. The Grand Jury adopts, realleges, and incorporates herein the factual allegations

described in paragraphs 1-6, and paragraphs 10 through 19 from Count One of this Indictment.

21. From in or about November of 2005, through in or about September of 2006, in the Southern District of Texas and elsewhere within the jurisdiction of the Court, defendant

MARC GARRETT ROSENTHAL,

aided and abetted by others known and unknown to the Grand Jury, and aiding and abetting others known and unknown to the Grand Jury, with the intent to defraud, devised a scheme and artifice to defraud and obtain money by materially false and fraudulent pretenses, representations, and promises, that is, to use false witness statements and testimony to obtain a monetary settlement from Union Pacific Railroad in an actual or potential personal injury lawsuit.

22. On or about the dates specified, in the Southern District of Texas and elsewhere within the jurisdiction of this Court, for the purpose of executing or attempting to execute the scheme and artifice to defraud and deprive, Defendant knowingly caused to be delivered by mail or by interstate commercial carrier, according to the direction thereon, or at the place at which they were directed to be delivered, the following matters:

COUNT TWO: On or about August 25, 2006, Union Pacific settlement check no. 316539, made payable to Pacific Life & Annuity Services, to cover an annuity payment made for the benefit of a Rosenthal & Watson client, and an accompanying transmittal letter from a Union Pacific Sr. Legal Assistant, to the company processing the annuity; and

COUNT THREE: On or about September 18, 2006, Union Pacific settlement check nos. 319252, 319253, and 319255, totaling \$750,000.00, made payable to Rosenthal & Watson and its clients, and an accompanying transmittal letter from a Union Pacific Sr. Legal Assistant, to defense

counsel for Union Pacific.

In violation of Title 18, United States Code, Sections 1341 and 2.

COUNTS FOUR – SIX – Mail Fraud and Aiding and Abetting

18 U.S.C. Section 1341 and 2

23. The Grand Jury adopts, realleges, and incorporates herein the factual allegations of paragraphs 1-6 and paragraphs 10 through 19 from Count One of this Indictment.

24. From in or about October of 2006, through the present, in the Southern District of Texas and elsewhere within the jurisdiction of the Court, defendant

MARC GARRETT ROSENTHAL,

aided and abetted by others known and unknown to the Grand Jury, and aiding and abetting others known and unknown to the Grand Jury, with the intent to defraud, devised a scheme and artifice to defraud and obtain money by materially false and fraudulent pretenses, representations, and promises, that is, to use perjured testimony to obtain or attempt to obtain monetary settlements from Union Pacific Railroad in certain personal injury lawsuits, including Civil Action No. 1:06-CV-90; *Deyanira Gallegos Tapia v. Union Pacific Railroad Co.*; in the United States District Court for the Southern District of Texas, Brownsville Division, and Cause No. 2009-CV-0010-A; *Viviana Sosa, Individually and as Representative of the Estate of Destiny Sosa, a Deceased Child, and Jesse Sosa vs. Union Pacific Railroad Company and Ernesto Ortegon*; in the 197th Judicial District Court of Willacy County, Texas.

25. On or about the dates specified, in the Southern District of Texas and elsewhere

within the jurisdiction of this Court, for the purpose of executing or attempting to execute the scheme and artifice to defraud and deprive, Defendant knowingly caused to be delivered by mail or by interstate commercial carrier, according to the direction thereon, or at the place at which they were directed to be delivered, the following matters:

COUNT FOUR: On or about November 29, 2006, a letter from ROSENTHAL to a Litigation Manager for Union Pacific Railroad, in which letter ROSENTHAL threatened to launch a negative publicity campaign against the railroad, based on manufactured and false testimony.

COUNT FIVE: On or about July 10, 2007, a Union Pacific settlement check in the amount of \$575,000.00, along with an accompanying transmittal letter from a Union Pacific Sr. Legal Assistant, to defense counsel for Union Pacific.

COUNT SIX: On or about January 20, 2009, by certified mail, a Petition in Intervention in Cause No. 2009-CV-0010-A; *Viviana Sosa, Individually and as Representative of the Estate of Destiny Sosa, a Deceased Child, and Jesse Sosa vs. Union Pacific Railroad Company and Ernesto Ortegon*; in the 197th Judicial District Court of Willacy County, Texas, from the District Clerk, in Raymondville, Texas, to Union Pacific Railroad Company c/o CT Corporation System in Dallas, Texas.

In violation Title 18, United States Code, Sections 1341 and 2.

COUNT SEVEN – Tampering with Witness and Aiding and Abetting

18 U.S.C. Section 1512(b)(1) and 2

26. The Grand Jury adopts, realleges, and incorporates herein the factual allegations of paragraphs 1-6 and paragraphs 10 through 19 from Count One of this Indictment.

27. From a date in or about October of 2006, through a date in or about October of 2007, in the Southern District of Texas and elsewhere within the jurisdiction of the Court, defendant

MARC GARRETT ROSENTHAL,

aided and abetted by others known and unknown to the Grand Jury, and aiding and abetting others known and unknown to the Grand Jury, did knowingly, corruptly persuade a witness, Unindicted Co-Conspirator 2, to give false statements and to provide perjured testimony, with the intent to influence the testimony of Unindicted Co-Conspirator 2 in an official proceeding, that is, a personal injury lawsuit, Civil Action No. 1:06-CV-90; *Deyanira Gallegos Tapia v. Union Pacific Railroad Co.*; in the United States District Court for the Southern District of Texas, Brownsville Division.

In violation of Title 18, United States Code, Sections 1512(b)(1) and 2.

COUNT EIGHT – Tampering with Proceeding (by False Affidavit)

18 U.S.C. Section 1512(c)(2) and 2

28. The Grand Jury adopts, realleges, and incorporates herein the factual allegations of paragraphs 1-6 and paragraphs 10 through 19 from Count One of this Indictment.

29. On or about October 19, 2006, in the Southern District of Texas and elsewhere within

the jurisdiction of the Court, defendant

MARC GARRETT ROSENTHAL,

aided and abetted by others known and unknown to the Grand Jury, and aiding and abetting others known and unknown to the Grand Jury, did corruptly obstruct, influence and impede an official proceeding, and did attempt to do so, that proceeding being Civil Action No. 1:06-CV-90; *Deyanira Gallegos Tapia v. Union Pacific Railroad Co.*; in the United States District Court for the Southern District of Texas, a personal injury lawsuit, by persuading Unindicted Co-Conspirator 2 to sign a false affidavit.

In violation of Title 18, United States Code, Sections 1512(c)(2) and 2.

COUNT NINE – Tampering with Proceeding (by Perjured Testimony)

18 U.S.C. Section 1512(c)(2) and 2

30. The Grand Jury adopts, realleges and incorporates herein the factual allegations in paragraphs 1-6 and paragraphs 10 through 19 from Count One of this Indictment.

31. On or about January 22, 2007, in the Southern District of Texas and elsewhere within the jurisdiction of the Court, defendant

MARC GARRETT ROSENTHAL,

aided and abetted by others known and unknown to the Grand Jury, and aiding and abetting others known and unknown to the Grand Jury, did corruptly obstruct, influence and impede an official proceeding, and did attempt to do so, that proceeding being Civil Action No. 1:06-CV-90; *Deyanira*

Gallegos Tapia v. Union Pacific Railroad Co.; in the United States District Court for the Southern District of Texas, a personal injury lawsuit, by persuading Unindicted Co-Conspirator 2 to provide perjured deposition testimony.

In violation of Title 18, United States Code, Sections 1512(c)(2) and 2.

COUNT TEN – Extortion and Aiding and Abetting [Payments to Limas]

18 U.S.C. Section 1951 and 2

32. The Grand Jury adopts, realleges and incorporates herein the factual allegations in paragraphs 1-6 and paragraphs 10 through 19 from Count One of this Indictment.

33. From on or about April 25, 2008, to a date in or about December of 2009, in the Southern District of Texas and elsewhere within the jurisdiction of the Court, defendant

MARC GARRETT ROSENTHAL,

aided and abetted by others known and unknown to the Grand Jury, and aiding and abetting others known and unknown to the Grand Jury, did knowingly and intentionally in any way and degree, attempt to obstruct, delay and affect interstate and foreign commerce, and did obstruct, delay and affect interstate and foreign commerce, by extortion under color of official right, by paying LIMAS money and other compensation that was not due LIMAS or his office, and to which neither LIMAS nor his office was entitled, in return for favorable judicial acts of discretion by LIMAS in his capacity as judge of the 404th Judicial District Court, including rulings and orders and other favorable treatment.

In violation of Title 18, United States Code, Sections 1951 and 2.

COUNTS ELEVEN – THIRTEEN – Honest Services Mail Fraud and Aiding and Abetting

18 U.S.C. Sections 1341 and 1346 and 2

34. The Grand Jury adopts, realleges, and incorporates herein incorporates herein the factual allegations in paragraphs 1-6, and paragraphs 10 through 19 from Count One of this Indictment.

35. From on or about April 25, 2008, through a date in or about December of 2009, in the Southern District of Texas and elsewhere within the jurisdiction of the Court, defendant

MARC GARRETT ROSENTHAL,

aided and abetted by others known and unknown to the Grand Jury, and aiding and abetting others known and unknown to the Grand Jury, devised and intended to devise a scheme and artifice to defraud and deprive the citizens of Cameron County, Texas and the state of Texas of their right to the honest and faithful services of LIMAS, then Judge of the 404th Judicial District Court, through bribery and the concealment of material information.

36. The purpose of the scheme and artifice was for LIMAS to use his official position to enrich himself by soliciting and accepting gifts, payments, and other things of value from or on behalf of ROSENTHAL in exchange for favorable judicial action, and for ROSENTHAL to enrich himself by obtaining favorable judicial action for himself, his firm, and his clients through corrupt means.

37. The scheme and artifice was carried out as follows:

- a. LIMAS accepted from or at the direction of ROSENTHAL, money and other present and future consideration.
- b. LIMAS entered orders and rulings and engaged in other discretionary acts of judicial conduct to benefit ROSENTHAL and others, as requested by ROSENTHAL and others, and as opportunities arose and presented themselves.

38. On or about the dates specified, in the Southern District of Texas and elsewhere within the jurisdiction of this Court, for the purpose of executing or attempting to execute the scheme and artifice to defraud and deprive, ROSENTHAL knowingly caused to be delivered by mail, according to the directions thereon, or at the place at which they were directed to be delivered by the person to whom they were addressed, the following matters:

COUNT ELEVEN: On or about April 14, 2008, in Cause No. 2008-02-1032-G, Plaintiff's Motion to Compel Discovery Responses from Defendant, Metro Aviation, Inc., and Request for Sanctions, sent by certified mail, return receipt requested, from Rosenthal & Watson, to certain attorneys for the Metro Aviation, Inc.; and

COUNT TWELVE: On or about November 14, 2008, in Cause No. 2008-03-1636-G, Plaintiff's Response to Amended Motion for Summary Judgment of Defendant Freedom Communications, Inc., sent by certified mail, return receipt requested, from Rosenthal & Watson, to certain attorneys for the defendant[s] in the case; and

COUNT THIRTEEN: On or about December 29, 2008, in Cause No. 2008-03-1636-G [E], Clerk's Record (Volumes 1-2), sent by certified mail, return receipt requested, from the Cameron

County District Clerk, to the Clerk for the 13th Court of Appeals for the state of Texas.

In violation of Title 18, United States Code, Sections 1341 and 1346 and 2.

**NOTICE OF CRIMINAL FORFEITURE
(Title 18, United States Code, Section 1963)**

39. The allegations in Count One of this Indictment are hereby repeated, realleged, and incorporated by reference as though fully set forth at length for the purpose of alleging forfeiture pursuant to the provisions of Title 18, United States Code, Section 1963. Pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure, notice is hereby given to the defendant that the United States will seek forfeiture as part of any sentence in accordance with Title 18, United States Code, Section 1963, in the event of defendant's conviction under Count One.

40. The defendant charged in Count One,

MARC GARRETT ROSENTHAL,

a. has acquired and maintained interests in violation of Title 18, United States Code, Section 1962, which interests are subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(1); and

b. has property constituting and derived from proceeds obtained, directly and indirectly, from racketeering activity, in violation of Title 18, United States Code, Section 1962, which property is subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(3).

41. The interests of the defendant subject to forfeiture include but are not limited to at least \$5.95 million dollars.

42. If any of the property described above, as a result of any act or omission of the defendant --

- a. can not be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which can not be divided without difficulty--

the court shall order the forfeiture of any other property of the defendant up to the value of any property set forth above.

All pursuant to Title 18, United States Code, Section 1963.

NOTICE OF CRIMINAL FORFEITURE
(Title 18, United States Code, Section 981 and
Title 28, United States Code, Section 2461)

43. Pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), notice is given that the defendant

MARC GARRETT ROSENTHAL

shall forfeit to the United States all property which constitutes or is derived from proceeds traceable to violations of Title 18, United States Code, Sections 1341, 1346, 1512, and 1951, and Title 18, United States Code, Section 2.

Substitute Assets

44. In the event that the property that is subject to forfeiture pursuant to Title 18, United States Code, Section 981; and Title 28, United States Code, Section 2461, as a result of any act or omission of the defendant –

- a. can not be located upon exercise of due diligence;
- b. has been placed beyond the jurisdiction of the court;
- c. has been transferred or sold to, or deposited with a third party;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which can not be divided without difficulty –

it is the intent of the United States to seek forfeiture of any other property of the defendant up to the value of the property, pursuant to Title 18, United States Code, Section 1963(m), and title 28, United States Code, Section 2461(c).

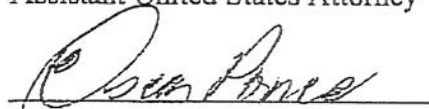
A TRUE BILL:

FOREPERSON OF THE GRAND JURY

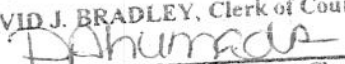
JOHN E. MURPHY
UNITED STATES ATTORNEY
WESTERN DISTRICT OF TEXAS
(Appearing by Special Appointment)



Michael J. Wynne
Assistant United States Attorney



Oscar Ponce
Assistant United States Attorney

TRUE COPY I CERTIFY
ATTEST:
DAVID J. BRADLEY, Clerk of Court
By 
Deputy Clerk

AO 245B

(Rev. 09/08) Judgment in a Criminal Case
Sheet 1United States District Court
Southern District of Texas
ENTEREDUNITED STATES DISTRICT COURT
Southern District of Texas
Holding Session in Brownsville

FEB 13 2014

David J. Bradley, Clerk of Court

UNITED STATES OF AMERICA
V.
MARC GARRETT ROSENTHAL

JUDGMENT IN A CRIMINAL CASE

CASE NUMBER: 1:11CR00743-001

USM NUMBER: 96847-279

☐ See Additional Aliases.

Paul G. Kratzig and Ernesto Gamez, Jr.

Defendant's Attorney

THE DEFENDANT:

- ☐ pleaded guilty to count(s) _____
- ☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.
- ☒ was found guilty on count(s) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 on February 28, 2013
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1962(d)	Conspiracy to Participate in Conduct and Affairs of a Criminal Enterprise, the Activities Which Affected Interstate and Foreign Commerce, through a Pattern of Racketeering Activity	08/22/2011	1
18 U.S.C. §§ 1341 and 2	Mail Fraud and Aiding and Abetting	08/22/2011	2

☒ See Additional Counts of Conviction.

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) _____
- ☒ Count(s) 6 and 13 _____ ☐ is ☒ are dismissed on the motion of the defendant.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

December 3, 2013

Date of Imposition of Judgment

Signature of Judge

ANDREW S. HANEN
UNITED STATES DISTRICT JUDGE
Name and Title of Judge

Date

2/13/14

TRUE COPY I CERTIFY
ATTEST:

DAVID J. BRADLEY, Clerk of Court

By D. Humada
Deputy Clerk

Exhibit

2

DEFENDANT: **MARC GARRETT ROSENTHAL**
CASE NUMBER: **1:11CR00743-001****ADDITIONAL COUNTS OF CONVICTION**

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 1341 and 2	Mail Fraud and Aiding and Abetting	08/22/2011	3
18 U.S.C. §§ 1341 and 2	Mail Fraud and Aiding and Abetting	08/22/2011	4
18 U.S.C. §§ 1341 and 2	Mail Fraud and Aiding and Abetting	08/22/2011	5
18 U.S.C. §§ 1512(b)(1) and 2	Tampering with Witness and Aiding and Abetting	08/22/2011	7
18 U.S.C. §§ 1512(c)(2) and 2	Tampering with Official Proceeding by False Affidavit	08/22/2011	8
18 U.S.C. §§ 1512(c)(2) and 2	Tampering with Official Proceeding by Perjured Testimony	08/22/2011	9
18 U.S.C. §§ 1951 and 2	Extortion (Under Color of Official Right) and Aiding and Abetting	08/22/2011	10
18 U.S.C. §§ 1341, 1346, and 2	Honest Services Mail Fraud and Aiding and Abetting	08/22/2011	11

AO 245B (Rev. 09/08) Judgment in a Criminal Case
Sheet 1A - Continued

Judgment -- Page 3 of 8

DEFENDANT: MARC GARRETT ROSENTHAL
CASE NUMBER: 1:11CR00743-001

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 1341, 1346, and 2	Honest Services Mail Fraud and Aiding and Abetting	08/22/2011	12

DEFENDANT: **MARC GARRETT ROSENTHAL**
CASE NUMBER: **1:11CR00743-001****IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 240 months.
This term consists of 240 months on each of Counts 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, and 12 to be served concurrently.

☐ See Additional Imprisonment Terms.

☒ The court makes the following recommendations to the Bureau of Prisons:
The defendant shall participate in a substance abuse evaluation and treatment program.

The defendant be placed in a FCI facility at/or near Bastrop or Texarkana, Texas, as long as the security needs of the Bureau of Prisons are met.

The defendant shall be placed in a federal medical facility to address the defendant's medical needs.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____

DEPUTY UNITED STATES MARSHAL

DEFENDANT: MARC GARRETT ROSENTHAL
CASE NUMBER: 1:11CR00743-001**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of: 3 years.
This term consists of 3 years on each of Counts 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, and 12 to be served concurrently.

☐ See Additional Supervised Release Terms.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court. (for offenses committed on or after September 13, 1994)

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state registration in which he or she resides, works, is a student, or was convicted of a qualifying offense. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

☒ See Special Conditions of Supervision.

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: **MARC GARRETT ROSENTHAL**
CASE NUMBER: **1:11CR00743-001**

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate in a program, inpatient or outpatient, for the treatment of drug and/or alcohol addiction, dependency or abuse which may include, but not be limited to urine, breath, saliva and skin testing to determine whether the defendant has reverted to the use of drugs and/or alcohol. Further, the defendant shall participate as instructed and as deemed necessary by the probation officer and shall comply with all rules and regulations of the treatment agency until discharged by the Program Director with the approval of the probation officer. The defendant shall further submit to drug-detection techniques, in addition to those performed by the treatment agency, as directed by the probation officer. The defendant will incur costs associated with such drug/alcohol detection and treatment, based on ability to pay as determined by the probation officer.

The defendant is required to participate in a mental health program as deemed necessary and approved by the probation officer. The defendant will incur costs associated with such program, based on ability to pay as determined by the probation officer.

The defendant shall provide the probation officer access to any requested financial information. If a fine or restitution amount has been imposed, the defendant is prohibited from incurring new credit charges or opening additional lines of credit without approval of the probation officer.

The defendant shall perform 200 hours of community service as approved by the probation officer to be completed within the first two (2) years of the supervised release term..

DEFENDANT: MARC GARRETT ROSENTHAL
CASE NUMBER: 1:11CR00743-001**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$1,100.00	\$0.00	\$13,288,984.50

☐ See Additional Terms for Criminal Monetary Penalties.☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal payees must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Metro Aviation		\$6,400,000.00	16.6%
Yolanda De Leon		39,207.50	16.6%
Peter Zavaleta		38,920.00	16.6%
Freedom Communications		40,000.00	16.6%
Quality Carriers, Inc		5,383,357.00	16.6%
Union Pacific		1,387,500.00	16.6%
☐ See Additional Restitution Payees.			
TOTALS		<u>\$13,288,984.50</u>	

☐ Restitution amount ordered pursuant to plea agreement \$ _____☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:☐ the interest requirement is waived for the ☐ fine ☐ restitution.☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:☐ Based on the Government's motion, the Court finds that reasonable efforts to collect the special assessment are not likely to be effective. Therefore, the assessment is hereby remitted.

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: **MARC GARRETT ROSENTHAL**
CASE NUMBER: **1:11CR00743-001****SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$201,100.00 due immediately, balance due
☐ not later than _____, or
☒ in accordance with ☐ C, ☒ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ installments of _____ over a period of _____, to commence _____ days after the date of this judgment; or
- D ☒ Payment in equal monthly installments of \$373,970.99 over a period of 35 months, to commence 30 days after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ days after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:

Payable to: Clerk, U.S. District Court
 Attn: Finance
 600 E. Harrison Street #101
 Brownsville, TX 78520-7114

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☒ Joint and Several

Case Number**Defendant and Co-Defendant Names
(including defendant number)****Total Amount****Joint and Several
Amount****Corresponding Payee,
if appropriate**

Abel C. Limas (1:11CR00296-001)	\$6,400,000.00	\$6,400,000.00	
Jose Santiago 'Jim' Solis (1:11CR00434-001)	\$118,127.50	\$118,127.50	
Abel C. Limas (1:11CR00296-001)	\$118,127.50	\$118,127.50	

- ☐ See Additional Defendants and Co-Defendants Held Joint and Several.
- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:
- ☐ See Additional Forfeited Property.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

AFFIDAVIT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Rebecca (Beth) Stevens, Petitioner's attorney of record, who, being by me duly sworn, deposed as follows:

"My name is Rebecca (Beth) Stevens. I am over the age of 18 years, of sound mind, capable of making this affidavit, and state the following:

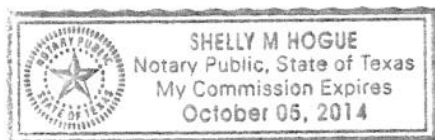
Based upon information and belief, Marc G. Rosenthal, whose Texas Bar Card Number is 17281450, is licensed as an attorney and counselor at law in the State of Texas. Based upon information and belief, Marc G. Rosenthal, named as Respondent in the Petition for Compulsory Discipline filed with the Board of Disciplinary Appeals is one and the same person as the Marc Garrett Rosenthal who is the subject of the Judgment in a Criminal Case entered in Case No. 1:11CR00743-001, styled *United States of America v. Marc Garrett Rosenthal*, in the United States District Court for the Southern District of Texas, Holding Session in Brownsville, wherein Respondent was found guilty of Count 1 - Conspiracy to Participate in Conduct and Affairs of a Criminal Enterprise, the Activities which Affected Interstate and Foreign Commerce, through a Pattern of Racketeering Activity, Count 2 - Mail Fraud and Aiding and Abetting, Count 3 - Mail Fraud and Aiding and Abetting, Count 4 - Mail Fraud and Aiding and Abetting, Count 5 - Mail Fraud and Aiding and Abetting, Count 7 - Tampering with Witness and Aiding and Abetting, Count 8 - Tampering with Official Proceeding by False Affidavit, Count 9 - Tampering with Official Proceeding by Perjured Testimony, Count 10 - Extortion (Under Color of Official Right) and Aiding and Abetting, Count 11 - Honest Services Mail Fraud and Aiding and Abetting, and Count 12 - Honest Services Mail Fraud and Aiding and Abetting, and was committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of two hundred forty months on each count, to be served concurrently, ordered upon release from imprisonment to be on supervised release for three years on each count, to be served concurrently, ordered to perform 200 hours of community service, ordered to pay an assessment of \$1,100.00 and restitution of \$13,288,984.50."

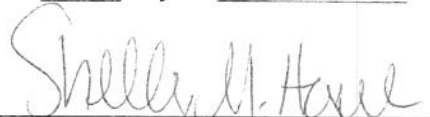
FURTHER Affiant saith not.



Rebecca (Beth) Stevens

SWORN AND SUBSCRIBED before me on the 11 day of March 2014.




NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Exhibit

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