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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JUL - 2 2013

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
JOHN EDWARD FODDRILL SR
BY [Signature] DEPUTY CLERK

Plaintiff

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v.

MICHAEL D. BERNARD, individually and
In his official capacity as San Antonio City
Attorney, WILLIAM P. McMANUS,
individually and in his official capacity as
San Antonio Police Chief and the
CITY OF SAN ANTONIO

Defendants

NO. 5:13-CV-00051

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S RESPONSE

TO THE HONORABLE UNITED STATES DISTRICT COURT:

COMES NOW the Plaintiff, John Edward Foddrill Sr., again asks that his cause be left intact, again asks that the Court not assist the defendants in their criminal endeavors and makes this reply to Defendants Motion to Strike:

1. The Plaintiff requests that the Court leave this Cause intact, and since the Plaintiff is appearing pro se, he asks that his complaint be liberally construed and "held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007), and as a consequence, he be allowed to amend his Complaint to correct any deficiencies in this Cause as filed.
2. Courts have repeatedly held "that a party who has been guilty of fraud or misconduct in the prosecution or defense of a civil proceeding should not be permitted to continue to employ the very institution it has subverted to achieve her ends." *Metropolitan Dade County v. Martinsen*, 736 So. 2d 794, 795 (Fla. 3d DCA

1999) (quoting *Hanono v. Murphy*, 723 So. 2d 892, 895 (Fla. 3d DCA 1998)); *see also Cox v. Burke*, 706 So. 2d 43, 47 (Fla. 5th DCA 1998); *O'Vahey v. Miller*, 644 So. 2d 550, 551 (Fla. 3d DCA 1994); *Kornblum v. Schneider*, 609 So. 2d 138, 139 (Fla. 4th DCA 1992), The Defendants and their attorneys should not be allowed to use the Law and the Courts in their efforts to continue their criminal conspiracy to hide their crimes. They should not be allowed to cite the Law and the Rules – laws and rules they trampled time and again. They cannot stand before the Court asking for relief while citing the same Law and Rules that they have made a mockery of in their efforts to hide their own criminal acts via an illegal, unconstitutional criminal trespass warning, use of the “color of the law” in a middle of the night raid by armed police officers, refusal to provide protection from terroristic threats by Councilman Diego M. Bernal’s supporters, untrue statements that the CTW and prohibitions would be lifted and other means.

3. The Defendants, their attorneys (Fitzpatrick and Kosanovich) and other persons (including many officers of the Court retained by the Plaintiff who put their personal agendas before the law and responsibilities to their client) cannot be rewarded for their part in concealing the long-term public/police corruption, a “fraud upon the Court” hidden by the CTW, a fraud perpetrated upon the US Government and Constitutional violations committed by the Defendants to hide their illegal acts. The Plaintiff has shown that the Defendants (including officers of the court Julian Castro and Michael Bernard) , their attorneys (Fitzpatrick and Kosanovich) , attorneys retained by the Plaintiff (Malinda Gaul, David Willborn, Kathleen Cassidy Goodman , Edward Pina) , Judge Antonia Arteaga , city attorney Deborah Klein, City Councilman / Attorney Diego M. Bernal and other officers of the Court have kept the existence of former City of San Antonio Chief Information Officer Richard Varn’s oral deposition, City Administrative Directive 6.12 and other material evidence hidden from the Court thus allowing the criminal conspiracy to conceal three decades of lawlessness, fraud, theft, accounting fraud, bond fraud, etc. and the February 2009 “fraud upon the Court” to continue. They continue to hide the fact that San Antonio IT Manager Jose Medina and long-time city vendor Isabel Gonzaba (IG Communications-Globalscope) stole upwards of \$200,000 over a four

year time frame via a “padded” invoice scheme using the Avaya telephone contract (upwards of 275 separate cases of mail/wire fraud), the fact that City IT manager Medina violated the law when he steered a secret no-bid contract to SanTel thus gouging taxpayers of \$ 10,800 in overcharges and other crimes. San Antonio CIO Richard Varn’s oral deposition and AD 6.12 , that have purposefully been kept hidden from the Court , prove that it was NOT legal to spend upwards of \$ 5 million a YEAR over the past three decades with no competitive bidding, no public review, no Council vote, no City Ordinance, etc. The hidden documents reveal that it was NOT legal to falsely write off the expenditure of tens of millions of public dollars as payment of monthly telephone bills via the internal billing account – the “variable” and that Varn and other City witnesses were illegally coached by City Attorney Deborah Klein, attorney Mark Kosanovich (Fitzpatrick & Kosanovich) and City IT Director Hugh Miller in an effort to defraud the Court and conceal the crimes. The theft and misuse of tens of millions of public dollars set aside by law to support E911 / other critical communications systems and the involvement of such great numbers of court officers in the ongoing efforts to circumvent the Law and the Rules demands swift action by the Court.

4. As a rule when the Courts discovered proof of fraud by litigants and their attorneys they would not stand for it as in U.S. Bank, N.A. v. Harpster (51-2007-CA-6684ES) . When the fraud was discovered the Court not only threw out the fraudulent documents, the Court dismissed the case “with prejudice”.

The Defendants and their attorneys (Fitzpatrick and Kosanovich) defrauded the Courts to hide decades of criminal activity and now come before the Court asking for assistance in hiding the “fraud upon the Court” and the illegal, unconstitutional actions the Defendants took to conceal this and other crimes. The Court must not allow the Defendants and their attorneys use of the Courts to continue their criminal conspiracy.

5. The Court has the power to dismiss a case showing of a commission of fraud on the Court by

a party. (See *Taylor v. Martell* (41 DCA, 2005). The Court also has the power to allow a case to move forward when officers of the Court and Defendants are less than candid in their efforts to manipulate the Courts into helping them hide their fraud, Constitutional violations and other criminal acts.

6. The Doctrine of "unclean hands" and many other rules prohibit the Defendants and their attorneys from soiling our Courts. The Plaintiff asks the Court to apply ALL rules known to the Court in an effort to stymie ongoing efforts to use the Court to conceal the ongoing criminal conspiracy. The maxim of unclean hands is applied broadly, giving substantial discretion to the officer of the court in its application. See *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 815, 65 USPQ 133, 138 (1945) ("This maxim necessarily gives wide range to the equity court's use of discretion in refusing to aid the unclean litigant."). It is "not bound by formula or restrained by any limitation that tends to trammel the free and just exercise of discretion." *Keystone Driller Co. v. Gen. Excavator Co.*, 290 U.S. 240, 245-46, 19 USPQ 228, 230 (1933) ("Keystone I"). The maxim itself is predicated upon the need to protect the integrity of the judicial system. "[The] doctrine is rooted in the historical concept of court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith. This presupposes a refusal on its part to be 'the abettor of iniquity.'" *Precision Instrument*, 324 U.S. at 814, 65 USPQ at 138 (citing *Bein v. Heath*, 47 U.S. (6 How.) 228, 247 (1848)).

7. The Plaintiff has presented evidence showing that the Defendants and the law firm of Fitzpatrick and Kosanovich defrauded the Court in an effort to conceal decades of fraud and theft including frauds against the US Government. See *Cleveland Demolition Co. v. Azcon Scrap Corp.*, 827 F.2d 984, 986 (4th Cir.1987) (fraud on court may exist where witness and attorney conspire to present perjured testimony); *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1338 (5th Cir.1978) (same, where party, with counsel's collusion, fabricates evidence).

8. The Plaintiff has shown that when proof of the criminal conspiracy including the “fraud upon the Court” was presented the Defendants using the “color of the law’ then issued the Criminal Trespass Warning, confiscated proof of the crimes, swore public servants/employees to secrecy, dispatched armed police officers to the Plaintiff’s residence in an effort to intimidate and silence him and ignored terroristic threats made against the Plaintiff and his family. The Defendants and their attorneys (Fitzpatrick and Kosanovich) now come before the court and ask for assistance in keeping the crimes hidden. The Supreme Court has ruled and has reaffirmed the principle that "justice must satisfy the appearance of justice", *Levine v. United States*, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing *Offutt v. United States*, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954) and the Plaintiff begs the Court to rule on the side of Justice.

9. Justice Black wrote in a case involving the abuse of the judicial process: “Tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society.... The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud.” - *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246, 64 S.Ct. 997, 1001, 88 L.Ed. 1250 (1944). The Plaintiff declares that the illegal, unconstitutional acts of the Defendants impacting public safety – especially the 911 system - must be exposed and addressed.

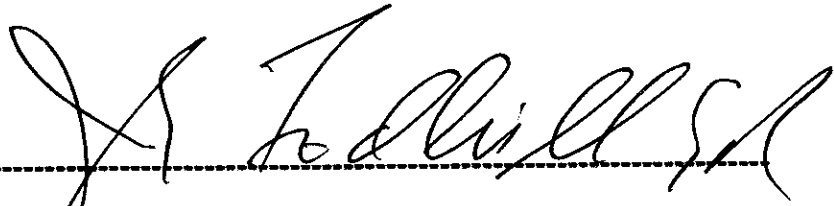
10. The Plaintiff asks that the Court do whatever is necessary to deter the abuses to the Court perpetrated by the Defendants and their attorneys Fitzpatrick and Kosanovich. In *Salim Aoude vs. Mobil Oil Corporation* (United States Court of Appeals, First Circuit. - 892 F.2d 1115- 1989) it is declared that: “It is apodictic that federal courts possess plenary authority "to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Link*, 370 U.S. at 630-31, 82 S.Ct. at 1388-89 (footnote omitted). The

Civil Rules neither completely describe, nor purport to delimit, the district courts' powers. See HMG Property, 847 F.2d at 915; Brockton Savings Bank v. Peat, Marwick, Mitchell & Co., 771 F.2d 5, 11 (1st Cir.1985), cert. denied, 475 U.S. 1018, 106 S.Ct. 1204, 89 L.Ed.2d 317 (1986). Rather, the district courts retain the inherent power to do what is necessary and proper to conduct judicial business in a satisfactory manner. As we have said, that inherent power is "rooted in the chancellor's equity powers, 'to process litigation to a just and equitable conclusion.' "HMG Property, 847 F.2d at 915 (quoting ITT Community Development Corp. v. Barton, 569 F.2d 1351, 1359 (5th Cir.1978)). The courts' inherent power includes "the ability to do whatever is reasonably necessary to deter abuse of the judicial process." Eash v. Riggins Trucking Inc., 757 F.2d 557, 567 (3d Cir.1985) (en banc); see also Brockton Savings Bank, 771 F.2d at 11."

Conclusion and Prayer

For the reasons stated herein, Plaintiff requests that the Court deny Defendants' Motion to Strike.

Respectfully submitted,

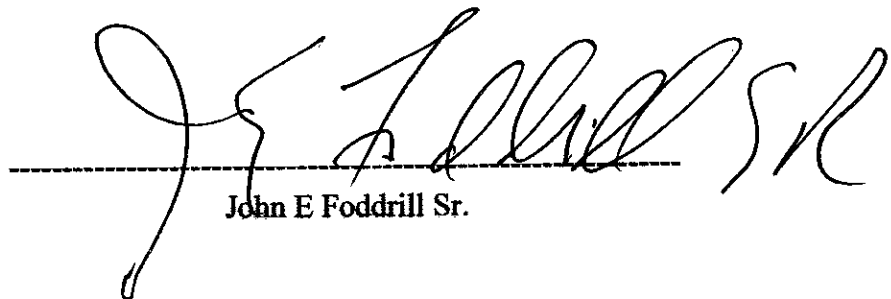


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CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing response were hand delivered to the U.S. District Clerk's Office at 655 E. Cesar E. Chavez Blvd., Room G65 San Antonio, Texas 78206 and a single copy was mailed by certified U S Mail # 7010 3090 0002 7075 1480 on July 1, 2013 to:

Shawn Fitzpatrick
Fitzpatrick & Kosanovich
P O Box 831121
San Antonio TX 78283-1121



John E Foddrill Sr.