

ROBERT JOHN WRIGHT,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
vs.	§	401 <sup>st</sup> JUDICIAL DISTRICT
	§	
EMC MORTGAGE CORPORATION,	§	
FULBRIGHT & JAWORSKI L.L.P.,	§	COLLIN COUNTY, TEXAS
MICHAEL SWARTZENDRUBER,	§	
CONSTABLE JOHNNY TODD,	§	
in his individual capacity,	§	
Defendants.	§	JURY DEMAND

**PLAINTIFF’S “VERIFIED” FOURTH AMENDED PETITION**

**This instant action arises from Defendants’ eviction of Plaintiff without a court order and without first filing a mandatory forcible detainer suit in a Collin County JP Court.**

Plaintiff ROBERT JOHN WRIGHT (“Wright”) files his fourth amended petition to clarify the issues previously presented and states the following:

**PARTIES**

1. Plaintiff Wright is an individual and resident of Dallas, Texas.
2. Defendant EMC Mortgage Corporation (“EMC”) is a Delaware corporation with its headquarters located in Lewisville, Texas. EMC is the former subsidiary of Bear Stearns Securities and is now a subsidiary of JP Morgan Chase.
3. Defendant Fulbright & Jaworski L.L.P. (“Fulbright”) is the law firm who represented EMC during the acts complained of herein.
4. Defendant Michael Swartzendruber (“Swartzendruber”) is the lawyer employed by Defendant Fulbright and who ordered Defendant Todd to execute an unlawful eviction.
5. Defendant Constable Johnny Todd (“Todd”) is a Collin County peace officer as is sued in his individual capacity.

## **JURISDICTION & VENUE**

6. This court has jurisdiction as the amount in controversy exceeds the minimal jurisdictional limits of this court. Venue is proper as a substantial part of the events giving rise to the causes of action asserted took place in Collin County, Texas.

## **PUBLIC INTEREST STATEMENT**

7. Plaintiff has reason to believe that Defendants engaged in the unlawful acts and practices set forth below, and that Defendants have, by means of these acts and practices, violated Plaintiff's rights and privileges, causing damage to, and theft of, Wright's property and personal belongings.

8. Due to the consequences unlawful evictions can pose on citizens of this County, and where the harm to lives and property can be devastating and final, it is critical to public policy that laws, codes, rules, regulations, guidelines, agreements, procedures and duty be followed and enforced to safeguard its residents.

9. Defendants adversely affect the lawful conduct of trade and commerce, thereby directly or indirectly affecting the people of this County. Therefore, Plaintiff believes that these proceedings are in the public interest.

## **BACKGROUND**

10. The issue before the court is whether a jury could conclude, based on the evidence submitted, that Defendants *et al*, knowingly acted upon and exceeded the power of a writ of possession for title and rent issued by a Dallas District Court, and used said writ instead, as a writ for eviction to circumvent the filing of a mandatory forcible detainer suit in a Collin County Justice Court: the only court with jurisdiction over property in Collin County.

## FACTS

11. On December 12, 2006, Defendants, under the supervision and control of EMC, conspired under color of law to deprive, and did deprive, Wright of his lawfully-owned personal property, and in the course thereof, his property was seized, damaged, destroyed and/or stolen.

12. Defendant Constables, led by Constable Johnny Todd (“Todd”), executed an unlawful eviction [without] court involvement and [without] a court order. in **Collin** County by using a writ of possession for title and rent *allegedly* issued by the Honorable Judge Mary Murphy of the 14<sup>th</sup> District Court in **Dallas** County.

13. A lawful writ of possession for eviction was never produced.

14. When Wright found a Notice to Vacate affixed to the front door of his Collin County residence, allegedly issued by Dallas County District Judge Murphy, he immediately brought it to judge Murphy’s attention in open court, where the judge stated: “*I know nothing about any writ or notice*”. The court later called Wright to inform him that the court did not have jurisdiction over the property anyway, as the property is located in **Collin** County – not **Dallas** County.

15. Moreover, when Wright contacted the Collin County Clerk while the unlawful ejection was taking place, the clerk’s search of their database found no record of an eviction or foreclosure listed under Wright’s name or a search of his address<sup>1</sup>. The clerk then asked Wright: “When was your eviction hearing?” When Wright stated that he did not get a hearing, the clerk yelled: “That is illegal!”

16. The validity of the eviction deteriorated further when Wright called one of the constables and told him that according to the county clerk, they had been duped. Constable

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<sup>1</sup> See Plaintiff’s EXHIBIT-C, a printout of all Collin County evictions. **Plaintiff’s name is not listed.**

Miller responded: “*Ya know, I knew something was wrong, but the lawyer<sup>2</sup> told us to get it done.*”

17. Armed with full knowledge that “*something was wrong*” and that exigent circumstances existed, the constables went ahead anyway and executed an unlawful eviction and unceremoniously dispossessed Wright from his residence and property without a legal right to do so and without: (1.) filing a forcible-detainer suit in the Collin County JP Court; the only court with jurisdiction; (2) without a mandated predeprivation hearing, and; (3.) without obtaining a valid Writ signed by a **Collin County** JP Court. Defendant Todd appears to have validated his unlawful actions based solely on the demands of some “attorney” Defendant Michael Swartzendruber – not a Collin County Justice of the Peace.

18. Wright avers that each Defendant acting in concert violated, *inter alia*, the Texas Property Code by executing an eviction they knew was unlawful and that none of the conditions precedent had been met. The result of their acts caused Wright to sustain severe<sup>3</sup> injuries which caused, and continue to cause Wright to suffer, among many other things: general, economic and future damages, lost wages, impaired earning capacity; past and future physical pain and suffering, mental anguish, personal safety, reasonable and necessary medical expenses; physical, mental and emotional impairment in an amount according to proof.

19. Wright has no adequate remedy at law.

20. There is a clear legal right to the requested relief.

### **CAUSES OF ACTION**

21. Plaintiff realleges the preceding paragraphs for each Count as if fully set forth herein.

### **COUNT I: Violation of the Texas Property Code 24.004**

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<sup>2</sup> The “lawyer” was positively identified as Defendant Michael Swartzendruber. (*See* Swartzendruber Affidavit)

<sup>3</sup> Government sponsored or funded medical personnel assessed Wright’s condition as severe and resultant to the acts complained of herein. Wright has been reduced to surviving on food stamps due to Defendants unlawful acts.

(Against all Defendants)

22. This court is noticed that Dallas County District Court Judge Mary Murphy did not have jurisdiction to issue a Writ for Eviction against property in Collin County; only the Collin County JP Court has jurisdiction. The non-existent evidence that Judge Murphy's 14<sup>th</sup> District Court issued a lawful eviction, support Judge Murphy's statement that she "*knew nothing about any writ or notice*"; plus her statement that she "*does not have jurisdiction*" is validated by the Texas Property Code.

The Texas Property Code Title 4 Chapter 24 § 24.004 states:

**A justice court in the precinct in which the real property is located has jurisdiction in eviction suits. Eviction suits include forcible entry and detainer and forcible detainer suits. *Id.* (underscore added)**

23. Jurisdiction over a forcible detainer suit is given to a justice court in the precinct where the property is located. TEX. PROP. CODE ANN. § 24.004 (Vernon 2000); *Aguilar v. Weber*, 72 S.W.3d 729, 731 (Tex. App.—Waco 2002, no pet.); *Goggins v. Leo*, 849 S.W.2d 373, 375 (Tex. App.—Houston [14th Dist.] 1993, no writ); *Home Sav. Ass'n v. Ramirez*, 600 S.W.2d 911, 913 (Tex. Civ. App.—Corpus Christi 1980, writ ref'd n.r.e.).

24. A forcible detainer action is initiated by filing a "written sworn complaint" with a justice of the peace. *TEX. R. CIV. P. 739*. "A sworn pleading is one verified by affidavit under the sanction of an oath." *58 TEX. JUR.* 3d Pleadings § 65 (2006).

25. The Collin County database, records and documents, or more importantly the lack thereof, support that a 'written sworn complaint' was not filed and that no Collin County JP Court (the only authorized court with jurisdiction), knew about, or played any role in the wrongful eviction that took place within their exclusive jurisdiction. (*See* Plaintiff EXHIBIT C)

26. The legislature has committed jurisdiction of a forcible detainer suit, however, exclusively to a justice court in the precinct where the property in question is located. *Tex. Prop. Code Ann.* § 24.004 (Vernon 2000); *Tex. Gov't Code Ann.* § 27.031(a)(2) (Vernon 2004) (justice court has original jurisdiction of cases of forcible entry and detainer); *McGlothlin v. Kliebert*, 672 S.W.2d 231, 232 (Tex. 1984) (referring to exclusive jurisdiction of justice court in forcible entry and detainer case); *Haginas v. Malbis Memorial Foundation*, 163 Tex. 274, 354 S.W.2d 368, 371 (Tex. 1962) (forcible entry and detainer action must be instituted in justice court); *Rice v. Pinney*, 51 S.W.3d 705, 712 (Tex.App.–Dallas 2001, no pet.) (jurisdiction “expressly” given to justice court); *Mitchell v. Armstrong Capital Corp.*, 911 S.W.2d 169, 171 (Tex.App.–Houston [1st Dist.] 1995, writ denied) (jurisdiction of forcible detainer suit is in justice court and on appeal, county court); *McCloud v. Knapp*, 507 S.W.2d 644, 647-648 (Tex.Civ.App.–Dallas 1974, no writ).

27. Defendants EMC and Fulbright simply failed to file the required eviction suit. As a result, Wright was denied his due process right to a hearing to defend the unlawful acts, or if necessary, his right to a plenary appeal. “In *Feuntes v. Shevin*, the Supreme Court held that due process requires notice and a hearing prior to eviction.” *Flatford v. City of Monroe*, 17 F.3d 162, 167 (6th Cir. 1994) (*underscore added*).

#### Fulbright and Swartzendruber Abused Their Power to Commit an Unlawful Act.

28. Plaintiff also asserts Defendants Fulbright and Swartzendruber acted willfully, wantonly and with total disregard for the law, by knowingly exceeding the power of the Dallas writ by using it to evict Plaintiff, when they knew, they had to *first* file a forcible detainer action in the Collin County JP Court. Fulbright and Swartzendruber knew or should have known their actions would violate the *Tex. Prop. Code Ann.* § 24.004 (Vernon 2000) and the *Tex. Gov't Code*

*Ann.* § 27.031(a)(2) (Vernon 2004), as they must have known a **Dallas County** judge would not have jurisdiction to issue a writ of eviction located outside her precinct.

**A landlord filed an eviction suit in the judge's court against a tenant, although the rental property that was the subject of the suit was not located in the judge's precinct. The judge conducted an "informal hearing" at which only the tenant appeared, and the judge found in favor of the landlord and ordered the tenant to vacate the property. The next month, the judge granted to the landlord a default judgment for back rent.** (Id. Violation of Canon 2A, Texas Code of Judicial Conduct.) Private Order of Additional Education of a Justice of the Peace (06/25/04)

29. Fulbright and Swartzendruber then solicited Defendant Constable Todd to evict Wright when they knew they failed to obtain the written authority from a Collin County JP court.

30. In turn, it was Constable Todd who continued to carry-out the unlawful eviction when the Writ, on its face, states it was issued out of Dallas County - not a Collin County JP Court. Counsel for Defendant Todd, Robert Davis, even admits in his letter to Wright: "the WRIGHT (*sic*) OF POSSESSION issued by the **Dallas** District Clerk's Office in accordance with the FINAL JUDGMENT entered by the 14th District Court of Dallas County." (Id. *See*: Davis letter to Plaintiff)

31. Plaintiff alleges Defendants *et al* acted with intent and malice.

**WHEREFORE**, Plaintiff requests judgment declaring the eviction null and void.

**COUNT II - Violation of the Texas Property Code § 24.0051**  
**(Against Defendants)**

32. A condition precedent to a forcible detainer and eviction action is that an eviction suit is to be filed in a court located in the county where the property is located. (*See: Texas Property Code Title 4 Chapter 24 § 24.004*)

33. A plaintiff initiates either type of eviction action by filing a written sworn complaint in justice court that describes the property at issue and the factual basis for the action under

Chapter 24 of the Property Code. (See *TEX. R. CIV. P.* 739, 741). Thereafter, the justice of the peace “shall immediately issue citation directed to the defendant or defendants commanding him to appear before such justice at a time and place named in such citation.” *TEX. R. CIV. P.* 739.

34. *Texas Property Code* § 24.0051 gives the occupant an opportunity to defend their rights or dispute the action.

35. Wright alleges Defendants failed to comply with the aforementioned procedures and that EMC, Fulbright and Swartzendruber acted in violation of the *Texas Property Code* § 24.0051, effectually denying Wright a good faith opportunity to defend his rights against their unlawful seizure.

36. In a suit to recover possession of the premises, whether or not unpaid rent is claimed, the citation required by Rule 739, Texas Rules of Civil Procedure, must include the following notice to the defendant:

“FAILURE TO APPEAR FOR TRIAL MAY RESULT IN A DEFAULT JUDGMENT BEING ENTERED AGAINST YOU.” (Id. *Texas Property Code* § 24.0051(c))

WHEREFORE, Plaintiff is entitled to punitive damages based on intentional interference with due process of law and respectfully requests the court enter judgment awarding damages be paid to Plaintiff in an amount this court considers equitable and just.

**COUNT III – Violation of the Texas Property Code § 24.0062 (c)**  
**(Against all Defendants)**

37. The Texas Property Code 24.0062 (c) states:

**On demand by the tenant during the time the warehouseman is removing the property from the tenant's premises and before the warehouseman permanently leaves the tenant's premises, the warehouseman shall return to the tenant all property requested by the tenant, without charge. (Id.)**

38. Defendant Constables were told by Wright's roommate Betty James ("James") during the unlawful eviction that she had a mover who would come right away to pick up and store their belongings in his storage facility.

39. Constable Johnny Todd told James she could not use her own phone to call her mover.

40. James also demanded their tools of their trade. Constable Todd DENIED her request.

41. Wright demanded his computers containing his legal files. Constable Todd DENIED his request. When retrieved a month later, both computers were found damaged and inoperable. Both Wright and James' tools needed for their employment were never recovered and presumed stolen. REO tried, but failed to get them to sign a release that they received all their belongings.

42. Wright explained to Constable Todd that his legal papers (civil and criminal evidence) were **not** to be moved. Constable Todd ignored Wright's request and assured him that his papers would be "safely secured and stored".

43. The next day, resident James returned to the property to find "legal" papers blowing all over the driveway and front lawn. It is unknown how many documents were lost. Constable Todd made these representations when he knew or should have known they were false when he made them. These representations were made recklessly as Defendant Todd knew they would not be in complete control of securing these legal evidentiary documents. Constable Todd made these representations with the intent that Wright and James rely upon them to their detriment.

44. Also missing was Wright's birth certificate, social security card, baptism certificate and his mortgage that were secured together in a metal box. Wright alleges that under the suspect circumstances surrounding Constables unlawful actions, these items were intentionally stolen to create additional hardship to Wright.

WHEREFORE, Plaintiff respectfully requests the court enter a judgment awarding punitive and exemplary damages pursuant to *Tex. Civ. & Practices Rem. Code Ann ' 41.004(b)* in an amount this court considers equitable and just.

**COUNT IV – EXCESSIVE FORCE**  
**(Defendant Todd)**

Constable Todd threatens to “take care of” a restrained and gated dog.

45. When the Constables arrived, James’ two dogs were gated in the kitchen. When one of the dogs began to bark, James told the Constables to step outside so she could leash her dogs. Seconds after the gated dogs were leashed, Constable Todd re-entered, causing the same dog to bark. Constable Todd put his hand on his firearm and told James: “*If you can’t take care of your dogs, I can*”.

46. Constable Todd’s actions were threatening, excessive, unwarranted and caused James, and later Wright, severe mental anguish and fear, as both were already aware of instances where Collin County officials had shot and killed barking dogs.

WHEREFORE, Plaintiff respectfully requests a judgment by jury awarding punitive and exemplary damages against Defendant Todd for his use of excessive force.

**COUNT V – UNCLEAN HANDS**  
**(All Defendants)**

50. This case presents prima facia evidence for this court to summarily conclude the Defendants acted with unclean hands and in concert with each other in order to carry out their unlawful activity through gross negligence.

51. The Defendants have responded to Plaintiff’s allegations and are apparently seeking relief from this Honorable Court for their inequities to defeat justice and accountability. The Texas law on the doctrine of unclean hands is well developed. An equitable defense cannot be used to reward inequities nor to defeat justice. *Westworth Village v. Mitchell*, 414 S.W.2d 59,

60 (Tex.Civ.App.--Fort Worth 1967, writ ref'd n.r.e.). Under the doctrine of unclean hands, he who commits inequity is not entitled to equitable relief. *Harris v. Sentry Title Co.*, 715 F.2d 941, 950 n. 6 (5th Cir.1983); *Omohundro v. Matthews*, 161 Tex. 367, 341 S.W.2d 401, 410 (1960); *Cross v. Chem-Air South, Inc.*, 648 S.W.2d 754, 756 (Tex.App.--San Antonio 1983) (quoting *Howard v. Richeson*, 13 Tex. 553 (1855)); *Grohn v. Marquardt*, 657 S.W.2d 851, 855 (Tex.App.--Beaumont 1983 writ ref. n.r.e.).

WHEREFORE, Plaintiff respectfully requests this court deny Defendants any relief sought or prayed for, and that a judgment by jury award Plaintiff equitable damages for the unclean hands of Defendants *et al.*

#### **COUNT VI - VIOLATION OF CONSTITUTIONALLY PROTECTED RIGHTS**

53. Wright alleges Defendants knowingly acted without the predicate essential authority from a Collin County JP Court, and without such essential authority, raided Wright's Collin County residence with force, restricted his movements and that of his roommate and unlawfully evicted them and seized their personal property, and in the course thereof, violated their *Fourth* and *Fourteenth* Amendment Rights when Constables knew - and even stated - "*something was wrong*". (See Plaintiff's First Amended Petition §14)

54. The *Fourth Amendment* to the *United States Constitution* states: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.

55. Under the *Texas Constitution*, every person has the right to be secure in their home and the right not to be deprived of their property without due process.

56. The United States Supreme Court has "emphasized" that "at the very core" of the Fourth Amendment "stands the right of a man to retreat into his own home." *Soldal v. Cook County*, 506 U.S. 56, 62 (1992).

57. This principle has been no better described than in *Payton v. New York*, 445 U.S. 573, 601 (1980), where the United States Supreme Court spoke of “the overriding respect for the sanctity of the home that has been embedded in our traditions since the origins of the Republic.” Every person also enjoys constitutional protections under the Fourteenth Amendment, which states, in part, “nor shall any State deprive any person of life, liberty, or property, without due process of law.” E.g., *Soldal v. Cook County*, 506 U.S. 56, 70-71 (1992). These rights are implemented by 42 U.S.C. § 1983, which states as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress... State and federal courts have concurrent jurisdiction over section 1983 suits. *Howlett v. Rose*, 496 U.S. 356 (1990).

### **CONCLUSION**

58. The Texas legislature created laws to protect its citizens, their property and their legal rights from being violated by the very acts and abuses complained of herein.

59. This contempt of the laws and rights of its citizens was perpetrated by the same public officials of Collin County whose duty is to protect and serve the public. Public policy demands trust and integrity from their public officials and also demands their strict compliance to the Honest Services Doctrine.

60. Plaintiff’s rights and privileges were adversely affected by Defendants’ conduct which was a direct and proximate cause of Plaintiff’s damages. Plaintiff seeks equitable redress and remedies afforded under the law and respectfully request the plenary power of this Honorable Court to empanel a jury to properly and fully adjudicate this action to its justiciable end by conforming to the governing law(s).

61. A ruling adverse to the Plaintiff would cause reversible error as it would be a striking departure from the legal status quo and challenge, among countless others, the holdings of... The Texas Legislature, Texas Constitution, United States Constitution, United States Supreme Court; Federal, District and Appellate Courts nationwide, and overrule: *Texas Property Code* Title 4 Chapter 24 § 24.004 et seq; *Texas Government Code Annotated* § 27.031(a)(2) (Vernon 2004) (justice court has original jurisdiction of cases of forcible entry and detainer); *Feuntes v. Shevin* where the Supreme Court held that due process requires notice and a hearing prior to eviction." *Flatford v. City of Monroe*, 17 F.3d 162, 167 (6th Cir. 1994); the Texas legislature's granting jurisdiction of a forcible detainer suit, exclusively to a justice court in the precinct where the property in question is located. *Tex. Prop. Code Ann.* § 24.004 (Vernon 2000); *McGlothlin v. Kliebert*, 672 S.W.2d 231, 232 (Tex. 1984) (referring to exclusive jurisdiction of justice court in forcible entry and detainer case); *Haginas v. Malbis Memorial Foundation*, 163 Tex. 274, 354 S.W.2d 368, 371 (Tex. 1962) (forcible entry and detainer action must be instituted in justice court); the mortgage industry favorite: *Rice v. Pinney*, 51 S.W.3d 705, 712 (Tex.App.—Dallas 2001, no pet.) (jurisdiction "expressly" given to justice court); *Mitchell v. Armstrong Capital Corp.*, 911 S.W.2d 169, 171 (Tex.App.—Houston [1st Dist.] 1995, writ denied) (jurisdiction of forcible detainer suit is in justice court and on appeal, county court); *McCloud v. Knapp*, 507 S.W.2d 644, 647-648 (Tex.Civ.App.—Dallas 1974, no writ); Jurisdiction over a forcible detainer suit is given to a justice court in the precinct where the property is located. *TEX. PROP. CODE ANN.* § 24.004 (Vernon 2000); *Aguilar v. Weber*, 72 S.W.3d 729, 731 (Tex. App.—Waco 2002, no pet.); *Goggins v. Leo*, 849 S.W.2d 373, 375 (Tex. App.—Houston [14th Dist.] 1993, no writ); *Home Sav. Ass'n v. Ramirez*, 600 S.W.2d 911, 913 (Tex. Civ. App.—Corpus Christi 1980, writ ref'd n.r.e.); Canon 2A, *Texas Code of Judicial Conduct*; *Berry's v.*

Edom Corner, L.L.C., \_ S.W.3d \_ (Tex. App.—Amarillo 2008) As to the forcible detainer action, the court severed the issue, vacated the prior judgment, and dismissed the case. (*Id.*)

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands money damages, along with the requested relief requested *supra*, and any such other and further relief as the court deems reasonable and just under the circumstances and demands a jury trial on all issues so triable and respectfully requests the Court enter final judgment in favor of Plaintiff as follows:

- 1) AWARD Plaintiff actual and compensatory damages in the minimum amount of \$2,500,000.00 to cover the costs and damages associated with the unlawful acts complained of;
- 2) AWARD Plaintiff punitive damages from each Defendant in an amount to be determined by a jury;
- 3) GRANT Plaintiff all expenses and costs, including court costs and any attorney fees, if applicable, associated with bringing this action, and;
- 4) AWARD Plaintiff exemplary and future damages in an amount to be determined by a jury, and any such other and further relief, whether at law or in equity, to which he may be justly entitled.

Respectfully submitted by:

/s/: Robert John Wright  
Robert John Wright  
POB 797762  
Dallas, Texas 75379  
972-955-6735

### **AFFIDAVIT**

Plaintiff ROBERT JOHN WRIGHT, under penalty of perjury, verifies the statements contained in this pleading are true, correct and based on personal knowledge as witnessed and experienced under the circumstances as they occurred.

FURTHER AFFIANT SAYETH NOT

*Original signed and notarized*

Robert John Wright - *Plaintiff*

Dated: \_\_July\_\_, 2009\_\_

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was delivered by first class mail to the counsel listed below on July \_\_\_\_, 2009.

/s/ Robert John Wright  
Robert John Wright – Plaintiff

POB 797762  
Dallas, Texas 75379  
972-955-6735

WM. LANCE LEWIS  
State Bar No. 12314560  
Quilling, Selander, Cumiskey & Lownds, P.C.  
2001 Bryan Street, Suite 1800  
Dallas, Texas 75201  
(214) 880-1827  
(214) 871-2111 (Fax)  
ATTORNEY FOR DEFENDANT EMC MORTGAGE CORPORATION

ROBERT J. DAVIS  
State Bar No. 05543500  
Matthews, Stein, Shiels, Pearce, Knott, Eden & Davis, L.L.P.  
8131 LBJ Freeway, Suite 700  
Dallas, Texas 75251  
972-234-3400  
972-234-1750  
ATTORNEY FOR DEFENDANT (CONSTABLE) JOHNNY TODD

DAVID N. KITNER  
State Bar No. 11541500  
STRASBURGER & PRICE, LLP  
901 Main Street, Suite 4400  
Dallas, Texas 76202  
214-651-4300  
214-651-4330 (Facsimile)  
ATTORNEY FOR DEFENDANTS FULBRIGHT & JAWORSKI AND MICHAEL  
SWARTZENDRUBER