IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CHRISTOPHER MICHAEL WANKEN	§	
Plaintiff,	§	
	§	
vs.	§	
	§	**CASE NO. 3:10-CV-00556-K-BD**
JOHN DWIGHT WANKEN AND	§	
RAYMOND JAMES FINANCIAL	§	
SERVICES, INC.	§	
Defendants	§	

PLAINTIFF'S MOTION FOR RELIEF UNDER F.R.C.P. RULE 60(b)(6)

Plaintiff respectfully requests that this Court grant him relief under F.R.C.P. Rule 60(b)(6).

BACKGROUND

This case was previously before the Financial Industry Regulatory Authority ("FINRA") in a FINRA arbitration in December 2009. There were numerous inconsistencies in advance of and during the arbitration. While Plaintiff believed he and John Dwight Wanken ("Dwight") were partners, Dwight testified at the arbitration that Plaintiff was always his employee, that Plaintiff was terminated for refusing to work at the branch office, for being insubordinate, for failing to retain or secure **any** clients and for being a horrible employee. Defendant Raymond James Financial Services, Inc. ("RJFS") corroborated Dwight's testimony ***perfectly***. They completely matched each other – down to recollections of conversations, problems Dwight had with Plaintiff, etc. Defendants testified that Plaintiff had no clients – that all clients were Dwight's, that Plaintiff did not share in the profits or losses and shared no expenses in running the business, that Plaintiff did not pay any bills, that Dwight purchased all equipment and paid all bills, that Dwight supervised Plaintiff, that Dwight assigned tasks to Plaintiff, that Plaintiff was Defendant's administrative employee and that Plaintiff had **no** investment responsibilities.

The Defendants' testimony was exactly the same – and it corroborated perfectly. They both testified that Plaintiff was Dwight's employee, that he had no clients, that he was administrative only, that he was required to work at the branch office, that Plaintiff refused to work at the branch office, that Plaintiff was insubordinate, that Plaintiff was a horrible employee with whom

Dwight had problems for years and he finally had to terminate Plaintiff. This was the first time that Plaintiff had ever heard Defendants testify to these facts – and he was shocked at the lies that they told the FINRA panel.

Prior to the arbitration, Plaintiff accused Dwight and RJFS of intentionally suppressing discoverable documents that he needed to prepare for the FINRA arbitration. Dwight and RJFS – and their attorneys - testified on the first day of arbitration that they had produced all documents they were ordered to produce in **four separate discovery orders** the panel issued. On the third day, Plaintiff caught Defendants referring to the documents they said didn't exist. Dwight then testified that he had intentionally not produced the documents and that he had so many documents he had intentionally not produced, they would fill a U-Haul truck. Both defendants stated they had intentionally not produced the documents and that they had discussed not producing the documents, in violation of the panel's four separate orders.

Plaintiff argued that Dwight, RJFS and their attorneys, N. Henry Simpson ("Simpson") and Erin Linehan-Reyes ("Linehan-Reyes") were lying about the issues before the FINRA panel, including the existence and knowledge of the partnership, the nature of their professional relationship, Plaintiff's job performance, their shared client production number, the cause of Plaintiff's termination and their office space arrangements. Plaintiff argued that he couldn't rebut the Defendants' lies because they had intentionally spoliated all evidence that he requested – which the panel had ordered produced – that would ***prove*** that they were lying and perjuring themselves to the panel.

The Defendants' lies to the panel included the following:

- Plaintiff was an administrative employee and all his work was completely administrative in nature;
- Plaintiff had no investment responsibilities;
- Plaintiff was required to work at the branch office;
- Plaintiff refused to work at the branch office – which was why he was terminated;
- Plaintiff was uncooperative and insubordinate – which was also why he was terminated;
- Plaintiff was a horrible employee that wouldn't follow instructions;
- Dwight secured and retained ALL clients – Plaintiff did not secure or retain any clients. All clients were under Dwight's client production number;

- Plaintiff was paid a salary for his work;
- Dwight supervised Plaintiff on a day-to-day basis and assigned him tasks;
- Dwight paid all bills and was responsible for all business expenses, including leasing expenses, health insurance premiums, equipment, materials, etc.;
- Dwight was the firm's chief investment officer and handled all investments for all clients;
- Dwight had problems with Plaintiff for many years and finally had to terminate him for-cause.

The FINRA panel found – based on the lies that the Defendants and their attorneys told at the FINRA arbitration – in favor of the Defendants on virtually every issue before the panel. It was not, as the Defendants have argued – that the FINRA panel accepted one party's version over the other. The FINRA panel accepted the Defendants' perfectly matching, perfectly corroborating – but completely lacking in evidence – false testimony over Plaintiff's **truthful testimony**.

Plaintiff filed a motion for vacatur in March 2010 and alleged that the FINRA award was procured by fraud through lies told by the Defendants at the arbitration. Defendants Dwight and RJFS filed 12(b)(6) motions that this Court joined. Concurrently with filing his motion to vacate, Plaintiff filed complaints with the Texas Workforce Commission ("TWC") and Internal Revenue Service ("IRS") regarding Dwight's testimony at FINRA.

The TWC and IRS began investigations of Dwight's FINRA arbitration testimony in March 2010 to determine if Plaintiff was his employee, as Dwight and RJFS testified Plaintiff was at the FINRA arbitration. Plaintiff had never believed that he was Dwight's employee and had always believed that he and Dwight were partners. They had shared all business expenses, made all decisions together, represented, functioned and operated as a partnership and shared equally in all profits and losses. Additionally, Plaintiff had paid self-employment taxes because he believed that he and Dwight were partners but filed taxes as independent contractors, as they had agreed to do based on the advice of a tax professional. Finally, Plaintiff had not received benefits that would be due him – including unemployment compensation, retirement contributions, etc. – if he were in fact Dwight's employee.

During the TWC and IRS investigations, Dwight and Simpson **contradicted every single material testimony that they and RJFS entered at the FINRA arbitration on every single issue decided by the FINRA arbitration panel**. In fact, Dwight admitted that he and Plaintiff

functioned, represented and operated as a partnership. To the TWC and IRS, Dwight and Simpson testified that:

- Plaintiff and Dwight functioned, operated and represented themselves as a **partnership;**
- Plaintiff was the firm's Chief Investment Officer;
- Plaintiff was NOT Dwight's employee;
- Plaintiff had **never been** Dwight's employee;
- Dwight did not supervise Plaintiff. Neither party supervised the other as they were equals;
- Dwight and Plaintiff shared equally in all business expenses, including health insurance premiums, leasing expenses, materials, equipment, etc.
- Dwight and Plaintiff did not receive salaries. They shared in an approximately equal split of the profits and losses of the firm's business;
- **Dwight handled most of the administrative tasks and did not handle the investment responsibilities;**
- Dwight and Plaintiff split the partnership responsibilities based on skill, education, aptitude and interest;
- All clients were shared between Dwight and Plaintiff. Dwight and Plaintiff worked together to retain existing and secure new clients. Their joint efforts were reflected in the shared client production number, which RJFS knew about;
- Plaintiff and Dwight both worked out of their home offices, which RJFS knew about;
- Plaintiff was not required to work at the branch office;
- Plaintiff was not insubordinate, uncooperative or unproductive.

Plaintiff responded to the motions to dismiss and argued that there was unreviewed evidence from the TWC and IRS investigations that would prove the Defendants had colluded and conspired to procure a favorable arbitration award at FINRA by fraud in a complex strategy that included perjury, subornation of perjury, spoliation of evidence and fraud upon the court.

Plaintiff consistently argued to the district court that there **was no way** that the Defendants could have perfectly matching, perfectly corroborating testimony at the FINRA arbitration **without a single piece of evidence** that was **completely contradicted by Dwight and Simpson** during the TWC and IRS investigations after the conclusion of the FINRA arbitration ***UNLESS***

the FINRA arbitration award was procured by fraud. Plaintiff argued that the **only explanation was that the Defendants colluded and conspired to procure a favorable arbitration award by fraud.**

Magistrate Kaplan issued a Findings and Recommendation in which he sua sponte converted the 12(b)(6) motions to summary judgment motions to confirm the FINRA arbitration award. Plaintiff filed an Objection to the Findings and Recommendation and argued that there was an unresolved issue of genuine material fact – whether the Defendants procured the arbitration award by fraud – and TWC evidence that would prove Plaintiff's allegations that they **did** procure the arbitration award by fraud, including spoliation of evidence, perjury, subornation of perjury and fraud upon the court. Plaintiff argued that there was TWC and IRS evidence that the court needed to subpoena and review – evidence that he alleged would **prove** that the Defendants had procured the FINRA award by fraud and that they had colluded and conspired to commit that fraud and ***fraud upon the court***.

Judge Kinkeade denied Plaintiff's motion to vacate and confirmed the FINRA arbitration award ***in spite of unresolved issues of genuine material fact and unreviewed TWC and IRS evidence.***

Plaintiff filed an appeal with the Fifth Circuit Court of Appeals and argued that there were unresolved issues of genuine material fact and unreviewed TWC and IRS evidence that would prove that the Defendants had colluded and conspired to procure a favorable FINRA arbitration award by fraud. Plaintiff argued that Dwight's and Simpson's TWC and IRS testimony **would prove** that the Defendants had colluded and conspired to prevail at arbitration by fraud alone. ***There could be no other explanation that they had perfectly corroborating testimony at FINRA – and yet Dwight contradicted ALL OF THE TESTIMONY just months later during TWC and IRS investigations.***

Plaintiff argued to the Fifth Circuit that this Court erred in confirming the arbitration award in light of unresolved issues of genuine material fact and unreviewed evidence – evidence which Plaintiff had argued to this Court needed to be obtained through court order and reviewed by the district court.

Plaintiff alleged that during the TWC and IRS investigations, Dwight and Simpson ***contradicted every material testimony*** that they, RJFS and Linehan Reyes had given at FINRA arbitration. Plaintiff argued that there was **no way** for them to have had **perfectly matching,**

perfectly corroborating testimony on facts that Plaintiff had **never before heard** unless they had colluded and conspired as to what their testimonies would be. Further, Plaintiff argued that they had spoliated all evidence that would contradict their intended perjured testimony, which was clearly established when Dwight admitted that he had intentionally not produced thousands of documents, RJFS and Linehan Reyes admitted intentionally not producing the exact same documents and they both admitted to discussing and agreeing to not produce the documents.

Dwight, however, testified to the Fifth Circuit that the TWC evidence **only concerned unemployment compensation** and whether Plaintiff was an employee or independent contractor. This was ***completely perjured*** – which means that Dwight and his attorneys knowingly submitted false, perjured testimony to the Fifth Circuit.

In their brief to the Fifth Circuit, Dwight and his attorneys, Simpson and Brady Sparks ("Sparks") stated – under penalty of perjury – that the testimony that Dwight and Simpson provided at the TWC hearings **was only related to** the issue of whether Plaintiff was an employee or independent contractor for issues related to unemployment compensation.

Indeed, to the Fifth Circuit, Dwight **again** stated that Plaintiff was his employee – **despite the fact that he had just testified to the Texas Workforce Commission that Plaintiff WAS NOT AND NEVER HAD BEEN his employee.** Note the following from their brief to the Fifth Circuit, bold italics added.

> "Due to an untenable relationship, Dwight terminated Christopher's ***employment*** relationship on March 13, 2008. (Id.). Christopher alleges that an oral partnership agreement existed between himself and Dwight, and that his termination was based on personal issues rather than any lack of competence. (Id.). Prior to Christopher's termination, including the untimely passing of Christopher's mother and Dwight's wife, created sustained emotional turmoil within the family. (*Id.).* In Dwight's opinion as Christopher's ***employer***, these personal issues hindered and ultimately destroyed their working relationship, and he felt compelled to terminate the ***employment*** of Christopher from Beacon. (*Id.)*…Finally, his claims concerning testimony given by Dwight to the Texas Workforce Commission ("TWC") and the Internal Revenue Service ("IRS") on ***unrelated matters***, *after* the arbitration hearing, present no grounds for vacating the award….
>
> Christopher relies on testimony given to the TWC and IRS after the arbitration hearing for his claim of fraud. ***These proceedings involved claims that were separate and***

distinct from the claims in arbitration. The TWC matter dealt with liability for state unemployment taxes and the IRS issue dealt with possible employer tax liability. Neither related to his claims of partnership or subsequent breach."

Dwight, Simpson and Sparks perjured themselves in their brief to the Fifth Circuit. Dwight and Simpson both participated in **each** of the TWC hearings, including the final hearing in March 2011 at which Dwight testified that he and Petitioner functioned, represented and operated as partners, that Petitioner was **not** his employee and that Petitioner **was not terminated for cause**. This is just one more example of the relentless fraud, perjury and fraud upon the court that Dwight and his attorneys continue to commit.

The Fifth Circuit **exclusively relied** on Dwight's and his attorneys' testimony in determining whether to remand the case back to district court. The Fifth Circuit Opinion **essentially regurgitated** Dwight's brief in stating the following

"Wanken (Plaintiff) claims that John Wanken gave fraudulent testimony by taking a position in the arbitration proceeding that were inconsistent with those taken in proceedings before the Texas Workforce Commission – the inconsistent position being whether Wanken was an employee or independent contractor at Beacon financial. Even assuming, however, that John Wanken did take inconsistent positions – the evidence of which is nothing more than Wanken's assertions – this particular issue had no bearing on the arbitration proceedings. ***During arbitration, the issue was whether Wanken was a partner at Beacon Financial. John Wanken said he was not, and the arbitration panel agreed. Whether Wanken was an employee or independent contractor is not relevant to whether he was a partner – and John Wanken has consistently maintained that Wanken was not a partner at Beacon Financial.***"

However, to the TWC, Dwight admitted that he and Plaintiff functioned, operated and represented themselves as a partnership.

Indeed, Plaintiff pointed out in his **Petition for Rehearing** that the TWC evidence **did not just** concern employee/independent contractor issues. Plaintiff further pointed out that the evidence has never been reviewed by **any Court** – and the Fifth Circuit erred in determining the contents of unreviewed evidence **that no court** has ever subpoenaed or reviewed.

"**JDW'S TWC/IRS Testimony Wasn't Just About Employee Status.** In interviews and affidavits to TWC and IRS, JDW contradicted **all his and RJFS's material**

FINRA testimony. This issue must be resolved and is why this case demands remand. While JDW wants the Court to believe it was simply testimony regarding Petitioner's employee or independent contractor status, JDW's TWC and IRS testimony contradicted **each** material issue before FINRA. TWC and IRS documents and recordings **aren't available without subpoena.** As Petitioner testified in affidavits, JDW and Simpson contradicted **every material issue decided at arbitration**, which supports Petitioner's allegation the award was fraudulently procured…This Court is the first tribunal to which Defendants submitted **any** response regarding Petitioner's allegations that JDW's post-arbitration testimony completely contradicted **Defendants'** FINRA testimony. This Court acted as a trier of fact by issuing judgment on the merits of Petitioner's pleadings of unresolved issues of material fact and Defendants' statements they were immaterial. Opinion indicates ***this Court decided a matter of fact*** and determined post-arbitration testimony irrelevant –***despite never reviewing any evidence regarding post-arbitration testimony***. There has **never** been a review of post-arbitration testimony **by ANY COURT**. Documents remain unreviewed and the outstanding issues of material fact remain unresolved."

CURRENT DEVELOPMENT THAT BEGS FOR THIS COURT TO SET ASIDE ITS ORDER CONFIRMING THE ARBITRATION AWARD UNDER RULE 60(b)(6)

In a separate matter pending in state court, Dwight has submitted a TWC Final Report written after its investigations of Dwight between March 2010 and April 2011 regarding each of the issues referenced above. This report was submitted on March 16, 2012 by Dwight, Simpson and Sparks. This was the first time that Plaintiff has seen this report – the same report he argued needed to be obtained, along with other TWC and IRS evidence, via court order to resolve the unresolved issues of genuine material fact.

The Final Report issued by the TWC demonstrates that Dwight contradicted all of his and RJFS's FINRA testimony on every material issue before the panel. The Fifth Circuit affirmed this Court's flawed sua sponte summary judgment order – ***in spite of unresolved issues of genuine material fact and unreviewed evidence***.

The Fifth Circuit then acted as a **trier of fact** and determined the contents of the TWC evidence based **exclusively on the affidavits submitted by Dwight, Sparks and Simpson**.

The TWC Final Report that Dwight, Sparks and Simpson have submitted in the state case from the TWC hearing prove that they and RJFS perjured themselves to this Court and the Fifth

Circuit with regard to the nature of the TWC and IRS hearings, the issues discussed and decided at the hearings and Dwight's and Simpson's testimony to those agencies.

Additionally, the TWC Final Report demonstrates the existence of extensive affidavits, documents, investigation notes and audio recordings of the hearings and investigations that the TWC conducted of Dwight between March 2010 and April 2011.

Plaintiff has argued **since this case was before this Court in 2010** that Dwight and Simpson had offered testimony to the TWC and IRS that **completely contradicted** all of their and RJFS's FINRA arbitration testimony.

Given that contradiction, Plaintiff has argued that **at minimum**, the evidence must be subpoenaed so a court can review the contradictory testimony. Plaintiff has further argued that this evidence will prove his allegations that the Defendants colluded to procure a favorable arbitration award by fraud through a complex plan of perjury, spoliation of evidence, subornation of perjury and fraud upon the court.

Plaintiff has also argued that the evidence – showing Dwight's contradiction of all of his and RJFS' perfectly matching testimony from FINRA arbitration – will demonstrate that ***they colluded and conspired to commit fraud.*** Plaintiff has repeatedly stated that neither Defendant submitted **a single piece of evidence** to support their testimony – yet their testimonies matched each other perfectly. The **only explanation is that they colluded and conspired to commit fraud in order to win a favorable arbitration award at the FINRA arbitration**.

While Dwight, RJFS and their lawyers perjured themselves to this Court and the Fifth Circuit regarding the nature of the TWC evidence, the TWC Final Report demonstrates that Dwight's testimony **completely contradicted** his and RJFS's FINRA arbitration testimony. This simply compounds the fraud and fraud upon the court given the fact that Dwight, RJFS and their lawyers **once again lied to a court in order to prevail** through their perjured testimony to this Court and the Fifth Circuit.

This newly released TWC report supports Plaintiff's allegations to this Court, the Fifth Circuit and the Supreme Court of the United States of America regarding the need for remand to review the evidence and determine whether the Defendants colluded and conspired to procure the favorable FINRA arbitration award through fraud, including perjury, spoliation of evidence, subornation of perjury and fraud upon the court.

The actions of the Defendants are egregious and heinous. The TWC report – and the additional evidence and recordings – will prove that they colluded and conspired to procure a favorable arbitration award through fraud. Plaintiff alleges that the actions of Dwight, RJFS and their lawyers will amount to some of the worst conspiracy, collusion, fraud and fraud upon the court in an arbitration case in recent history. Their blatant and shameless fraud, conspiracy and fraud upon the court should give this Court pause.

Equally as egregious are the actions of the Fifth Circuit in which the panel acted as a trier of fact and determined the contents of unreviewed evidence. The panel relied on the Defendants' assessment of the unreviewed evidence directly related to the unresolved issues of material fact.

The TWC Final Report proves that RJFS, Dwight, Sparks and Simpson committed fraud upon the court in submitting perjured briefs regarding the TWC investigations – and did so in an attempt to mislead the judicial system and courts regarding the unreviewed evidence and its connection to the unresolved issue of material fact. Simpson and Dwight participated in **every single TWC hearing**. They couldn't **have NOT KNOWN** that their testimony to the Fifth Circuit was false and perjured. **They did know.** And they intentionally lied to the Fifth Circuit in their effort to abuse the judicial system, abuse the courts and deprive Plaintiff of justice.

Dwight, RJFS and the lawyers involved, including Simpson, Sparks, Linehan-Reyes, Linda Broocks ("Broocks") and Tom Gregor ("Gregor") have continued to perjure themselves as this case has moved through the judicial process. They are alleged to have colluded and conspired to procure a favorable FINRA arbitration award through a complex strategy of fraud. They had perfectly matching testimony at arbitration – testimony that Dwight and his lawyers completely contradicted in TWC and IRS investigations after arbitration had concluded. Yet that wasn't enough fraud and perjury for Dwight, RJFS and their lawyers. They went on to perjure themselves to this Court and the Fifth Circuit with regard to the nature of the TWC and IRS investigations, what Dwight testified regarding during those investigations and what issues were discussed and testified to during the investigations.

Plaintiff has continued to argue that there is evidence from these TWC and IRS investigations that must be obtained – and which can **only be obtained through court order.**

This TWC Final Report proves that RJFS, its lawyers, Dwight, Sparks and Simpson perjured themselves to this Court and the Fifth Circuit. The TWC evidence – recordings, affidavits, documents and other materials – **will prove** that Defendants colluded and conspired to procure a favorable arbitration award by fraud and that their attorneys were part of the collusion and fraud, constituting fraud upon the court.

Given this development, Plaintiff requests that this Court set aside the final judgment order issued by Judge Kinkeade in February 2011 in which he confirmed the arbitration award and denied Plaintiff's motion to vacate and reopen this case so that the evidence may be obtained and hearings may be held.

According to Fed. R. Civ. P. Rule 60(b)(6), this court may relieve the parties from a final judgment or order for "any other reason that justifies relief." Plaintiff hereby moves that this Court set aside the Order confirming the arbitration award to prevent grave injustice and offers the following for this Court's review, which clearly meets the statutory requirement of "any other reason that justifies relief."

ARGUMENT

Defendants committed fraud at FINRA arbitration to win a favorable arbitration award. They colluded and conspired to commit that fraud and, along with their attorneys Simpson and Linehan Reyes, devised a strategic plan that involved perjured testimony, subornation of perjury, spoliation of all evidence that would contradict their intended perjured testimony and fraud upon the court. They had perfectly matching, perfectly corroborating testimony at the FINRA arbitration – despite not having a single piece of evidence to substantiate or support that perfectly matching testimony. In advance of the arbitration, Linehan Reyes bragged to Plaintiff that she wasn't worried about the arbitration or her client's lack of evidence because she said that the FINRA arbitrators would assign more weight to oral testimony than all of Plaintiff's written evidence supporting his position.

Plaintiff believed they were lying at FINRA arbitration and told the arbitration panel that they were lying. It is **not** that the panel believed one side's version over the other's. **The panel expected all parties to provide truthful testimony as they were all sworn in to do just that.** Yet the Defendants and their lawyers offered **perjured testimony** and did so in **collusion** and **conspiracy** in order to prevail at arbitration and win a favorable arbitration award by **fraud**. All of Plaintiff's evidence and testimony was dismissed by the Defendants as "mere marketing." The Defendants and their attorneys corroborated each other perfectly.

Yet just months after the FINRA arbitration, the TWC conducted extensive investigations of Dwight's FINRA testimony. During those investigations – which took place over more than 13 months – Dwight contradicted **everything** that he and RJFS – and their lawyers – had testified at the FINRA arbitration. Indeed, Simpson also contradicted all of his testimony from FINRA as he also participated in the TWC investigations.

There is **NO** other explanation than that the Defendants conspired and colluded to commit fraud at the FINRA arbitration and that they did so through a calculated, well-orchestrated plan that included the full participation of all attorneys for the Defendants.

Yet when Plaintiff filed his motion to vacate, the Defendants denied that they colluded and conspired to procure the award by fraud and once again matched each other's testimony perfectly. Plaintiff argued to ***this Court*** that there was TWC evidence that would prove that the

Defendants had committed fraud at arbitration, that the lawyers were involved in the fraud – constituting fraud on the court – and that the Defendants were lying to the district court. Plaintiff argued that there was TWC evidence from the hearings that had to be obtained for review regarding Dwight's contradiction from his and RJFS's FINRA testimony. Plaintiff argued that there was **no other explanation** for the contradictions between Dwight's and RJFS's FINRA testimony and Dwight's TWC testimony than **that the two parties had colluded and conspired to commit fraud to prevail at arbitration and win a favorable arbitration award** – and that Dwight had now contradicted all of their perfectly matching, perfectly corroborating **perjured FINRA** testimony in investigations conducted by state and federal agencies. Plaintiff posited that Dwight ***told the truth*** to the TWC and IRS when he contradicted all of both his and RJFS's FINRA testimony because he feared state and federal prosecution for perjury and fraud.

Plaintiff has continually and consistently maintained and argued to this Court and every court to which this case has been appealed that Defendants procured the FINRA award by fraud and that they have continued to perjure themselves in their briefs to this Court and the Fifth Circuit. Plaintiff has also argued that the Defendants' attorneys have committed fraud upon the court in submitting perjured and false briefs to these courts.

As a result of the release of the TWC Final Report, Plaintiff finally has proof that the Defendants committed fraud upon the court to this Court and the Fifth Circuit – and that the Defendants did **indeed procure the FINRA arbitration award by fraud.**

While RJFS, its lawyers, Dwight, Sparks and Simpson lied regarding the nature of the TWC evidence, Plaintiff continued to maintain that Dwight, RJFS and their attorneys were perjuring themselves to federal courts in their signed, sworn affidavits regarding what the TWC investigations were regarding. While Dwight, RJFS and their attorneys tried to argue that the TWC investigations were only related to the issue of unemployment compensation and employee/independent contractor issues, Plaintiff argued that he was a part of the TWC and IRS hearings and knew that Dwight had **contradicted all of his and RJFS's arbitration testimony *on every material issue that was decided at arbitration***.

This constitutes grounds under Fed. R. Civ. P. Rule 60(b)(6) to set aside the final Order this Court issued confirming the FINRA arbitration award and denying Plaintiff's motion to vacate. Plaintiff continued to argue to this Court and the Fifth Circuit that the TWC evidence needed to be obtained ***via court order*** and hearings needed to be held to resolve the **unresolved**

issue of genuine material fact – whether the Defendants procured the FINRA arbitration award by fraud through perjury, fraud upon the court, spoliation of evidence and subornation of perjury.

Now that Plaintiff finally has the TWC Final Report, it proves his allegations that there is a treasure trove of evidence that needs to be reviewed by this Court regarding Dwight's contradictory testimony to the TWC and IRS. Evidence that ***will prove*** that the Defendants conspired and colluded to procure a favorable arbitration award by fraud, which is grounds for vacatur. Further, discovery must take place and hearings must be held to determine the extent of the fraud and collusion and conspiracy – and the extent to which the lawyers representing the Defendants were involved in and orchestrated this fraud upon the court.

RJFS, Dwight and their attorneys ***lied to this Court and the Fifth Circuit*** regarding the nature of the TWC investigations and this Court and the Fifth Circuit accepted RJFS's, Dwight's, Simpson's and Sparks' characterization of that TWC and IRS evidence. Plaintiff argued to the Court then that they were perjuring themselves – and that the evidence would show that Dwight and Simpson **contradicted every material testimony they and RJFS gave at arbitration on every material issue decided by the arbitration panel**.

The Defendants' perjured statements to this Court are grounds for this Court's Order to be set aside so that this case may move forward. For this Court to **take any other action** would be a grave miscarriage of justice. This Court countenanced the fraud of these Defendants and confirmed an arbitration award ***in spite of unresolved issues of material fact and unreviewed evidence that would resolve those issues of material fact***.

The Defendant's perjured briefs to this Court and the Fifth Circuit constitute the "extraordinary circumstances" to justify relief from judgment that are required for a Rule 60(b)(6) motion to be granted. *See e.g., Straw v. Bowen*, 866 F.2d 1167, 1171-72 (9th Circuit 1989) and *U.S. v. Sparks,* 685 F.2d 1128, 1130 (9th Circuit 1982).

Plaintiff has continued to argue that the Defendants and counsel were lying, perjuring themselves and committing fraud upon the Court before the federal courts, just as they had done at FINRA – but Plaintiff couldn't get the TWC evidence to prove that they were lying. Dwight and his attorneys released the TWC report in a separate pending case just a few weeks ago and Plaintiff is immediately informing this Court of the evidence that will prove the Defendants

colluded and conspired to commit fraud at arbitration to win a favorable arbitration award – and the lawyers for the Defendants committed fraud upon the court.

"Rule 60(b) provides that a district court may 'relieve a party or his legal representative from a final judgment, order or proceeding" for specified reasons…[A] motion made under the other subsections need be brought only within a reasonable time after entry of judgment." *Sparks,* Id. at 1130.

Plaintiff alleges that the Defendants' perjured statements to this Court and the Fifth Circuit constitute "extraordinary circumstances" because the perjured statements affected both this Court's ruling as well as the Fifth Circuit's Opinion affirming this Court's Order. Plaintiff alleged that there was an unresolved issue of genuine material fact that would be resolved by the subpoena and review of the TWC evidence. Yet RJFS, its lawyers, Dwight, Sparks and Simpson all argued that the TWC evidence was irrelevant and that that the testimony given to the TWC was completely irrelevant to the issues decided at the FINRA arbitration. **That is completely false – and Plaintiff now has tangible proof that Dwight, Simpson, Sparks, RJFS, Broocks and Gregor perjured themselves to this Court and the Fifth Circuit regarding the TWC evidence and what it would show.**

Rule 60(b)(6) allows for the setting aside of a final order when failing to do so would allow a grave miscarriage of justice. A party must show extraordinary circumstances to justify relief from the final judgment. Plaintiff has demonstrated that the Order must be set aside to prevent a grave miscarriage of justice committed by the Defendants and their lawyers. Plaintiff contends that the circumstances in this case – RJFS's, Dwight's, Sparks' and Simpson's perjured statements to this Court and the Fifth Circuit regarding the TWC investigations and what the evidence from the investigations would show – undeniably constitute extraordinary circumstances justifying relief from the final judgment.

For this Court to countenance the fraud of the Defendants and their attorneys would be a grave miscarriage of justice and is completely reprehensible and unacceptable for an institution of justice to allow.

The Supreme Court of the United States has held that "the inherent power also allows a federal court to vacate its own judgment upon proof that a fraud has been perpetrated upon the court…This 'historic power of equity to set aside fraudulently begotten judgments' is necessary to the integrity of the courts, for 'tampering with the administration of justice in [this]

manner…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." *Chambers v. NASCO, Inc.* 501 US 32 (1991) quoting *Hazel-Atlas Glass Co. v. Hartford-Empire Co.,* 322 U.S. 238 (1944). *See also Universal Oil Products Co. v. Root Refining Co.,* 328 U.S. 575, 580 (1946).

It is not merely that the evidence exists that supports Plaintiff's motion for the judgment and order to be set aside. It is that the Defendants perjured themselves to this Court and the Fifth Circuit Court of Appeals regarding the very nature of that evidence. The statements given by the Defendants were then relied on regarding what would be found in the TWC and IRS evidence. The Defendants **knew that they were perjuring themselves to this Court and the Fifth Circuit**. It is not merely the fraud upon the court or the unreviewed evidence. It is Defendants' determination to abuse the judicial process and deny Plaintiff the opportunity to present his case to this Court and Fifth Circuit Court of Appeals that beg for the granting of this present motion. If there is to be any semblance of justice in this nation, the courts must ensure that the process is fair and just – and that parties' efforts to stymy justice are dealt with swiftly and severely.

Plaintiff hereby moves that this Court set aside its Order confirming the arbitration award and denying Plaintiff's motion to vacate the arbitration award based on the extraordinary circumstances in this case, including the perjured testimony regarding the TWC investigations submitted to this Court and the Fifth Circuit by RJFS, Broocks, Gregor, Dwight, Sparks and Simpson and the fact that the evidence remains unreviewed – and Plaintiff is now in possession of a TWC Final Report that will prove that a) RJFS and its lawyers, Dwight, Sparks and Simpson perjured themselves to this Court and the Fifth Circuit regarding the nature of the TWC investigations and related evidence and b) the Defendants colluded and conspired to procure a favorable arbitration award at FINRA arbitration through fraud, executed in a strategy that included the Defendants and their attorneys and involved perjury, subornation of perjury, spoliation of evidence and fraud upon the court – which is grounds for vacatur of the arbitration award and c) the Defendants have interfered with the judicial process through their perjured statements to this Court and the Fifth Circuit and impeded Plaintiff's ability to present his case by once again offering perfectly corroborating testimony to the federal courts regarding the TWC evidence – testimony which has now been proven to be false, perjured and given with the intent to deprive Plaintiff of his constitutionally protected right to due process. Each of these reasons is

grounds for setting aside this Court's order under F.R.C.P. 60(b)(6). Collectively, they demand that the order be set aside so that this Court may fulfill its function, that of accomplishing justice.

The Supreme Court held that "[i]n simple English, the language of the 'other reason' clause, for all reasons except the five particularly specified, vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice." *Klapprott v. United States,* 335 U.S. 601, 614-15 (1949).

There was never a fair and full hearing on the issues in this case because this Court and the Fifth Circuit chose to knowingly disregard outstanding issues of genuine material fact – whether the defendants procured the FINRA arbitration award by fraud – and unreviewed evidence from the TWC and IRS hearings despite Plaintiff's pleas with this Court that it subpoena that evidence. Plaintiff argued that he had participated in the TWC investigation and knew that Dwight had contradicted all of his and RJFS's material FINRA testimony on the issues before the arbitration panel which supports Plaintiff's allegation that the defendants colluded and conspired to procure the arbitration award through fraud, perjury, spoliation of evidence and fraud upon the court.

This Court – and the Fifth Circuit – ignored Plaintiff's affidavits that there were unresolved issues of material fact and unreviewed TWC evidence and confirmed the arbitration award, which was flawed and violated statute and precedent with regard to summary judgment. This Court and the Fifth Circuit **both** took the defendants' "word" that the TWC and IRS evidence was unrelated to the issues decided at FINRA.

The "word" of Defendants accused of fraud, perjury, spoliation of evidence, collusion, conspiracy and fraud upon the court.

Yet Plaintiff continued to argue that the evidence was **directly related** to the issues decided at arbitration and that he had participated in the investigations and knew ***first-hand*** that Dwight and Simpson contradicted all of both their and RJFS's arbitration testimony.

Now that Plaintiff has seen the TWC Final Report, it proves his allegations that Dwight and Simpson ***completely contradicted all of their and RJFS's arbitration testimony on EVERY material issue decided at arbitration***. Plaintiff was correct – yet this Court and the Fifth Circuit accepted the defendants' **perjured** testimony of what would be found in the TWC evidence. The TWC Final Report **proves** that the Defendants perjured themselves to this Court and the Fifth Circuit regarding the nature of the TWC investigations and it also **proves** that the TWC

evidence, including audio recordings and affidavits from Dwight and Simpson, must be subpoenaed and reviewed to resolve the genuine issues of material fact in this case. This Court and the Fifth Circuit should never have accepted the defendants' characterization of unreviewed TWC and IRS evidence. Yet this Court and the Fifth Circuit did exactly that. This Court and the Fifth circuit aborted justice by failing to reconcile and resolve the unresolved issues of genuine material fact and failing to review the TWC and IRS evidence—evidence never reviewed by any court ever. All of this is grounds for granting a Rule 60(b)(6) motion – to ensure that justice is accomplished and prevent a miscarriage of justice given these most extraordinary circumstances, which are a direct result of this Court's and the Fifth Circuit's failure to fulfill its responsibilities to the judicial process and its procedures, including statute and precedent and Defendants' perjury, fraud upon the court, obstruction of justice and collusion.

For this Court to deny this Rule 60(b)(6) motion would be a grave miscarriage of justice and would contradict and violate both statute and Supreme Court precedent with regard to extraordinary circumstances demanding the setting aside of a final judgment or order to prevent a grave miscarriage of justice.

Plaintiff further requests that this Court take action to investigate the actions and perjured testimony of Defendants and their lawyers to this Court and the Fifth Circuit, constituting fraud upon the Court.

CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that this Court set aside its final order in this case, reopen this case and allow Plaintiff to obtain the TWC and IRS evidence through an order issued by this Court to answer the unresolved issues of genuine material fact – whether the Defendants colluded and conspired to obtain a favorable arbitration award at the FINRA arbitration through fraud, including a complex plan orchestrated by their attorneys involving perjured testimony, subornation of perjury, spoliation of evidence that would contradict their intended perjured testimony and fraud upon the court through the involvement of their attorneys.

Additionally, this court may on its own motion set aside its order to prevent a grave miscarriage of justice. If this Court fails to set aside the order in question, either in response to this motion or by failing to take action to set aside the order on its own volition, a grave miscarriage of justice will result, which is anathema to this Court's role as an arbiter of justice, as well as the integrity of the judiciary and the judicial process.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that on this 15th day of April 2012, a true and correct copy of the foregoing document has been forwarded to the following as indicated below:

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