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AUG 16 2011

Clerk of Court

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS BROWNSVILLE DIVISION

UNITED STATES OF AMERICA §

vs. §

MARC GARRETT ROSENTHAL §

CRIMINAL NO. B-11-743

UNDER SEAL

INDICTMENT

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

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 –

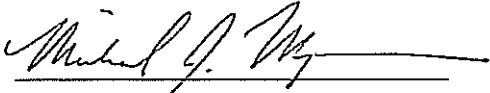
- a. can not be located upon exercise of due diligence;
- b. has been placed beyond the jurisdiction of the court;
- c. has been transferred or sold to, or deposited with a third party;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which can not be divided 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).

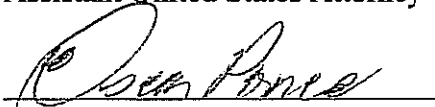
A TRUE BILL:

FOREPERSON OF THE GRAND JURY

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

A handwritten signature in cursive script, appearing to read "Michael J. Wynne", written over a horizontal line.

Michael J. Wynne
Assistant United States Attorney

A handwritten signature in cursive script, appearing to read "Oscar Ponce", written over a horizontal line.

Oscar Ponce
Assistant United States Attorney