

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**THE GIL RAMIREZ GROUP, L.L.C.  
AND GIL RAMIREZ, JR.**

vs.

**HOUSTON INDEPENDENT SCHOOL  
DISTRICT, LAWRENCE MARSHALL,  
EVA JACKSON AND RHJ-JOC, INC.**

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**CIVIL ACTION NO. 4:10-CV-04872**

**NON-PARTY HOUSTON COMMUNITY COLLEGE'S  
MOTION TO QUASH AND MOTION FOR PROTECTION**

Pursuant to Rules 26 and 45 of the Federal Rules of Civil Procedure, Houston Community College ("HCC") respectfully moves for a protective order and to quash The Gil Ramirez Group, L.L.C. and Gil Ramirez, Jr.'s ("Plaintiffs") Notice of Intention to Take Deposition by Written Questions and Subpoena Duces Tecum of HCC as follows:

**I. INTRODUCTION**

1. On September 15, 2011, Plaintiffs served HCC, a non-party, with a Notice of Intention to Take Deposition by Written Questions and Subpoena Duces Tecum ("Subpoena") (A true and correct copy of the Subpoena is attached hereto as Exhibit 1.) In their Subpoena, Plaintiffs make extremely broad document requests that are not limited to an identifiable category of documents, a relevant time or a relevant scope. As such, they are overly broad and would subject HCC to an undue burden. Moreover, many of the documents Plaintiffs seek from HCC are privileged and relate to the United States Department of Education's *ongoing* investigation of Eva Jackson and RHJ-JOC, Inc. If HCC produced responsive documents, HCC would jeopardize the Department of Education's investigation, waive its right to assert various privileges and violate several individuals' right to privacy. *Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1033 (9th Cir. 1990). Because Plaintiffs' subpoena subjects HCC to an undue burden

and requires the disclosure of protected matters, the Court should quash Plaintiffs' Subpoena and issue a protective order preventing Plaintiff from seeking discovery related to the Department of Education's investigation.<sup>1</sup>

## II. ARGUMENT

2. Because a subpoena can be issued upon the request of a party or by an attorney without notice or action by the court, there is enormous potential for misuse. For this very reason, the Federal Rules of Civil Procedure have strong, expressed protections for non-parties served with subpoenas. Under the circumstances, the Court should issue a protective order preventing the requested discovery from HCC, and the Subpoena should be quashed. HCC has objected to the Subpoena and has timely filed this motion to quash and for protection before the date of requested compliance.

### A. **Plaintiffs' Subpoena Should be Quashed Because it Subjects HCC to Undue Burden**

3. Pursuant to Federal Rule of Civil Procedure 45(c)(3)(A)(iv), a subpoena served on a non-party must be quashed if, among other reasons, it subjects the responding party to undue burden. FED. R. CIV. P. 45(c)(3)(A)(iv). In their Subpoena, Plaintiffs request that HCC produce "any and all documents" concerning Eva Jackson, ABM Industries, Inc., RHJ-JOC, Inc., Larry Marshall, Marshall and Associates, Joyce Moss-Clay, JM Clay and Associates, as well as "any and all investigations, inquiries, or other records pertaining to allegations of impropriety concerning the award of contracts by Houston Community College" and "any and all communications of a law enforcement agency, officer or Attorney concerning any matter relative to the award of contract or payment for services or products in the last five years." (*See* Exhibit 'A' to Exhibit 1.)

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<sup>1</sup> HCC has also objected to the Subpoena. A copy of HCC's objections, which were served on counsel, are attached hereto as Exhibit 2.

4. If HCC were required to produce documents responsive to these requests, HCC would be subjected to an undue burden. Plaintiffs fail to specify any particular category of document and do not limit their requests by time or scope. Arguably, there are potentially thousands of documents that might concern the broad topics presented by Plaintiffs that have nothing to do with any of the issues in this action. To comply with Plaintiffs' Subpoena, HCC would likely be required to search the records of five (5) different departments within HCC and review and produce hard copies of documents from on-site and off-site storage facilities.

5. As such, Plaintiffs' Subpoena can only be explained by Plaintiffs' desire to conduct a fishing expedition into HCC's files and to harass and create unnecessary burdens and expenses for HCC. Because Plaintiffs' requests for documents are overly broad and would subject HCC to an undue burden, the Court must quash Plaintiffs' Subpoena.

**B. Plaintiffs' Subpoena Should be Quashed and a Protective Order Should be Entered Because the Subpoena Requires Disclosure of Protected Privileged Matters**

6. Pursuant to Federal Rule of Civil Procedure 45(c)(3)(A)(iii), a subpoena served on a non-party must be quashed if, among other reasons, it requires disclosure of protected matters. FED. R. CIV. P. 45(c)(3)(A)(iii). Plaintiff's Subpoena should be quashed and a protective order should be entered because the Subpoena requires disclosure of protected matters and privileged information.

7. In particular, the United States Department of Education is currently conducting an investigation of former and current contractors of HCC, including without limitation Eva Jackson and RHJ-JOC, Inc. The investigation is ongoing. Plaintiffs' Subpoena seeks documents concerning Eva Jackson and RHJ-JOC, Inc. and it seeks communications of law enforcement agencies, officers or attorneys concerning the award of contracts or payments for services or products in the last five years. (*See* Exhibit 'A' to Exhibit 1). If HCC produced the documents

requested in the Subpoena, HCC would produce documents related to the Department of Education's investigation and would jeopardize that investigation. Moreover, the requests arguably seek wide swaths of documents that contain information protected by the attorney-client, work product, investigative, and official information privileges. Further, the requests seek information that is subject to several third parties' right to privacy and could not be produced without the permission of those parties. Consequently, the Court should quash Plaintiffs' Subpoena and issue a protective order preventing Plaintiffs' from seeking discovery from HCC related to the United States Department of Education's investigation.

### III. CONCLUSION

For the foregoing reasons, non-party Houston Community College respectfully requests that the Court grant its motion to quash Plaintiffs' Notice of Intention to Take Deposition by Written Questions and Subpoena Duces Tecum of Houston Community College and the accompanying document requests and issue a protective order preventing Plaintiffs from seeking discovery related to the United States Department of Education's investigation of former and current contractors of HCC, including without limitation Eva Jackson and RHJ-JOC, Inc. Houston Community College also requests such other and further relief to which it may show itself justly entitled.

Respectfully submitted,

BRACEWELL & GIULIANI LLP

By:           /s/ Richard F. Whiteley            
Jarvis V. Hollingsworth  
Attorney-in-Charge  
State Bar No. 00787708  
Richard F. Whiteley

State Bar No. 24013744  
David W. Morris  
State Bar No. 24046481

711 Louisiana Street, Suite 2300  
Houston, Texas 77002-2770  
(713) 223-2300 (Telephone)  
(713) 221-1212 (Facsimile)

**ATTORNEYS FOR NON-PARTY,  
HOUSTON COMMUNITY COLLEGE**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record via the Court's electronic filing system pursuant to the Federal Rules of Civil Procedure on the 29th day of September, 2011.

*/s/ David W. Morris*  
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David W. Morris