# Official Order of the Texas Commissioner of Insurance

Date: <u>06/08/2022</u>

**Subject Considered:** 

Xavier Ruben Silva

San Antonio, Texas 78229-2060

Default Order SOAH Docket No. 454-22-2476 TDI Enforcement File No. 25454

#### General remarks and official action taken:

This is a default order taken against Xavier Ruben Silva (Respondent) because he engaged in fraudulent and dishonest conduct by writing seven fictitious insurance policies. Further, Respondent misappropriated, converted to his own use, or illegally withheld from an insurer unearned commissions and bonus payments, and failed to timely respond to multiple department inquiries. Respondent did not respond to a Notice of Hearing filed by the Texas Department of Insurance. This order revokes Respondent's license.

The following findings of fact and conclusions of law are adopted:

# **Findings of Fact**

#### Failure to Respond to Notice of Hearing

 On April 21, 2022, the department filed a Notice of Hearing, attached as Exhibit A, and an Original Petition, attached as Exhibit B, with the State Office of Administrative Hearings (SOAH). On April 25, 2022, the department filed a Certificate of Service, attached as Exhibit C, with SOAH, showing the department served the Notice of Hearing and Original Petition at additional addresses.

Commissioner's Order Xavier Ruben Silva Page 2 of 5

2. The department's factual allegations set out in the attached Notice of Hearing and Original Petition are incorporated in this order as findings of fact.

3.	The department sent the Notice of Hearing and Original Petition to Respondent's
J.	last known address provided in writing to the department,
	, San Antonio, Texas 78229-2060. The Notice of Hearing and Original Petition
	were also sent by electronic mail and to two additional addresses associated with
	Respondent: ., San Antonio, Texas 78212-1213 and
	San Antonio, Texas 78230-1073.

4. Respondent failed to file a written response to the Notice of Hearing within 20 days of the date the Notice of Hearing and Original Petition were mailed.

#### **Conclusions of Law**

- 1. The commissioner has jurisdiction under Texas law, including Tex. INS. CODE §§ 82.051-82.055, 4001.002, 4005.101, 4005.102, 4051.051, and 4054.051, and Tex. GOV'T CODE §§ 2001.051-2001.178.
- 2. The commissioner has authority to dispose of this case informally under Tex. Gov'T CODE § 2001.056; Tex. Ins. CODE § 82.055; and 28 Tex. ADMIN. CODE §§ 1.47, 1.88, and 1.89.
- 3. The department provided proper notice of the hearing under Tex. GOV'T CODE §§ 2001.051, 2001.052, and 2001.054, and 28 Tex. ADMIN. CODE §§ 1.28, 1.88, 1.89, and 19.906.
- 4. Based on Respondent's failure to file a written response to the Notice of Hearing, the department is entitled to disposition by default under 28 Tex. ADMIN. CODE §§ 1.88 and 1.89.
- 5. The department's factual and legal allegations set out in the attached Notice of Hearing and Original Petition are incorporated in this order and deemed admitted as true under 28 Tex. ADMIN. CODE § 1.89.

Commissioner's Order Xavier Ruben Silva Page 3 of 5

#### Order

It is ordered that any licenses held by Xavier Ruben Silva are revoked. A copy of this order will be provided to law enforcement or other appropriate administrative agencies for further investigation as may be warranted.

DocuSigned by:

\_\_\_\_\_FC5D7EDDFFBB4F8. Cassie Brown

Commissioner of Insurance

Prepared and reviewed by:

Sarah White, Staff Attorney

Enforcement

Commissioner's Order Xavier Ruben Silva Page 4 of 5

#### **Affidavit**

STATE OF TEXAS §

COUNTY OF TRAVIS §

Before me, the undersigned authority, personally appeared David Moreno, who, being by me duly sworn, deposed as follows:

"My name is David Moreno and I am employed by the Texas Department of Insurance. I am of sound mind, capable of making this affidavit, and have personal knowledge of these facts which are true and correct.

I have reviewed TDI's records concerning Xavier Ruben Silva. I have confirmed that:

- a. The last mailing address provided to the department in writing by Xavier Ruben Silva is San Antonio, Texas 78229-2060.
- b. The file maintained by Enforcement contains a Notice of Hearing dated April 21, 2022, and Original Petition dated April 20, 2022, which were both filed with the State Office of Administrative Hearings.
- c. On April 21, 2022, the Notice of Hearing and Original Petition addressed to Xavier Ruben Silva were mailed first-class and certified, return receipt requested, to his last known address.
- d. On April 25, 2022, the Notice of Hearing and Original Petition addressed to Xavier Ruben Silva were also mailed first class and certified, return receipt requested, to two additional addresses:

  San Antonio, Texas 78212-1213 and , San Antonio, Texas 78230-1073.

Copies of the first-class mail logs and certified mail logs maintained by Enforcement are attached as Exhibit D and Exhibit E, respectively."

DocuSigned by:	
David Moreno	
7DCBE219DD4C49F	

Commissioner's Order Xavier Ruben Silva Page 5 of 5

SWORN TO AND SUBSCRIBED before me by means of an interactive two-way audio and video communication on  $\frac{5/19/2022}{}$ . This notarial act was an online notarization.

# **Notary Seal**



# **Digital Certificate**

Mary Ruiy
795DC4D59167489...
Notary Public State of Texas

FILED 454-22-2476 4/21/2022 1:21 PM STATE OFFICE OF ADMINISTRATIVE HEARINGS Jessie Harbin, CLERK

# SOAH DOCKET NO. 454-22-2476 TDI ENFORCEMENT FILE NO. 25454

ACCEPTED 454-22-2476 4/21/2022 3:38 PM STATE OFFICE OF ADMINISTRATIVE HEARINGS Jessie Harbin, CLERK

TEXAS DEPARTMENT OF INSURANCE,	BEFORE THE STATE OFFICE
Petitioner	
v.	OF
XAVIER RUBEN SILVA,	ADMINISTRATIVE LIFABINGS
Respondent	ADMINISTRATIVE HEARINGS

#### NOTICE OF HEARING

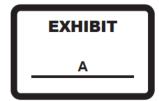
The Texas Department of Insurance seeks to take disciplinary action against you. This Notice of Hearing and the Original Petition, which is attached and incorporated for all purposes, states the allegations against you and the relief sought by the Department.

A public hearing will be held before an Administrative Law Judge on **Tuesday, September 27, 2022, at 9:00 a.m.** The hearing will take place via videoconference using a videoconference platform controlled by the State Office of Administrative Hearings, unless otherwise ordered to proceed in another manner by the Administrative Law Judge.

The hearing shall be conducted under Tex. GOV'T CODE, ch. 2001 and 1 Tex. ADMIN. CODE, ch. 155. Unless otherwise directed by the Administrative Law Judge, the hearing shall continue from day to day in the offices of the State Office of Administrative Hearings until concluded. You have the right to appear at this hearing and to be represented by an attorney.

Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH.

YOU MUST FILE A WRITTEN RESPONSE TO THE NOTICE OF HEARING WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS WITHIN 20 DAYS OF THE DATE THE NOTICE OF HEARING WAS MAILED. FAILURE TO FILE A WRITTEN RESPONSE BY THIS DEADLINE SHALL ENTITLE TDI TO SEEK DISPOSITION BY DEFAULT UNDER 1 Tex. Admin. Code § 155.501 AND 28 Tex. Admin. Code §§ 1.88 AND 1.89.



Notice of Hearing Xavier Ruben Silva SOAH Docket No. 454-22-2476 Page 2 of 5

IF YOU FAIL TO FILE A WRITTEN RESPONSE, THE SCHEDULED HEARING CAN BE CANCELED AND WITHOUT FURTHER NOTICE TO YOU THE COMMISSIONER OF INSURANCE CAN ISSUE AN ORDER IN WHICH THE ALLEGATIONS IN THE NOTICE OF HEARING ARE DEEMED ADMITTED AS TRUE AND THE RELIEF SOUGHT IN THE NOTICE OF HEARING, INCLUDING REVOCATION OF YOUR LICENSE, IS GRANTED BY DEFAULT.

IF YOU FILE A WRITTEN RESPONSE BUT THEN FAIL TO APPEAR ON THE DAY AND TIME SET FOR HEARING, WITHOUT FURTHER NOTICE TO YOU, THE COMMISSIONER OF INSURANCE CAN ISSUE AN ORDER IN WHICH THE ALLEGATIONS IN THE NOTICE OF HEARING ARE DEEMED ADMITTED AS TRUE AND THE RELIEF SOUGHT IN THE NOTICE OF HEARING, INCLUDING REVOCATION OF YOUR LICENSE, IS GRANTED BY DEFAULT.

In accord with 28 Tex. Admin. Code § 1.90(e) and 1 Tex. Admin. Code §§ 155.101 and 155.103, you should send copies of your written response to:

- (1) (by mail, fax, or electronically)
  Docketing Division
  State Office of Administrative Hearings
  300 West 15th Street, Room 504
  P.O. Box 13025
  Austin, Texas 78711-3025
  (512) 322-2061 (Fax);
  www.soah.texas.gov/e-filing-soah
- (2) (by mail, fax, or email)
  Chief Clerk
  Texas Department of Insurance
  P.O. Box 12030, MC GC-CCO
  Austin, Texas 78711-2030
  (512) 490-1064 (Fax)
  chiefclerk@tdi.texas.gov; and
- (3) (by mail, fax, or email)
  Sarah White, Staff Attorney
  Texas Department of Insurance
  Enforcement Division, MC ENF

Notice of Hearing Xavier Ruben Silva SOAH Docket No. 454-22-2476 Page 3 of 5

> P.O. Box 12030 Austin, Texas 78711-2030 (512) 490-1020 (Fax) Sarah.white@tdi.texas.gov

#### **Receiving Documents Electronically and Filing Documents with SOAH**

The State Office of Administrative Hearings (SOAH) offers you the ability to electronically receive orders and other documents issued by SOAH by email instead of by mail. If you want to receive SOAH-issued documents by email, follow the instructions on SOAH's website: www.soah.texas.gov.

A request to receive SOAH-issued documents by email does <u>not</u> change the procedures you must follow to file documents with SOAH. You may file documents with SOAH by mail, fax, or electronically. To file electronically, you must use eFileTexas. Instructions on using eFileTexas are on SOAH's website. SOAH's website also includes guidance for representing yourself.

**Important Security Notice** (for In-Person Hearings ONLY)

ALL VISITORS TO THE WILLIAM P. CLEMENTS BUILDING WITHOUT AN AGENCY OR DPS ISSUED ID CARD MUST PROVIDE THE BUILDING SECURITY OFFICER WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS DOCKET NUMBER AND RECEIVE A VISITOR'S PASS IN ORDER TO BE ALLOWED ACCESS TO THE HEARING ROOM. INDIVIDUALS SHOULD ALLOW ADDITIONAL TIME TO GO THROUGH THE SECURITY PROCESS.

If you have any questions, please contact me at the address or telephone number shown below.

Notice of Hearing Xavier Ruben Silva SOAH Docket No. 454-22-2476 Page 4 of 5

Respectfully Submitted,



Sarah White
State Bar No. 24064622
Texas Department of Insurance
Enforcement Division, MC ENF
P.O. Box 12030
Austin, Texas 78711-2030
(512) 676-6354 (Direct)
(512) 490-1020 (Fax)
Sarah.white@tdi.texas.gov

ATTORNEY FOR THE PETITIONER
TEXAS DEPARTMENT OF INSURANCE

**Enclosure: Original Petition** 

cc: Leah Gillum, Deputy Commissioner, Enforcement Division, MC ENF Rachel Cloyd, Litigation Director, Enforcement Division, MC ENF Administrative Review, MC CO-AAL

Notice of Hearing Xavier Ruben Silva SOAH Docket No. 454-22-2476 Page 5 of 5

#### **CERTIFICATE OF SERVICE**

I, Sarah White, certify that a true and correct copy of the *Notice of Hearing and the Original Petition* were sent by regular, first-class mail and by certified mail, return receipt requested, on this 21st day of April 2022 to:

Xavier Ruben Silva

San Antonio, Texas 78229-2060 Respondent Pro Se Via CM/RRR: 9214 8901 9403 8374 0134 00 Via First Class Mail

d With

Sarah White

# **SOAH DOCKET NO. 454-22**<sup>2476</sup> TDI ENFORCEMENT FILE NO. 25454

**FILED** 454-22-2476 4/20/2022 8:51 AM STATE OFFICE OF ADMINISTRATIVE HEARINGS Carol Hale, CLERK

TEXAS DEPARTMENT OF INSURANCE,

BEFORE THE STATE OFFICE

**ACCEPTED** 454-22-2476

4/20/2022 12:08:56 pm STATE OFFICE OF

ADMINISTRATIVE HEARINGS Carol Hale, CLERK

٧.

**XAVIER RUBEN SILVA,** 

**Petitioner** 

Respondent

ADMINISTRATIVE HEARINGS

#### ORIGINAL PETITION

The Texas Department of Insurance seeks to take disciplinary action against Xavier Ruben Silva (Silva). In support of this petition, the department makes the following allegations upon information and belief:

#### Jurisdiction

The Commissioner of Insurance has jurisdiction over this matter under Tex. INS. CODE §§ 82.051-82.055, 4001.002, 4005.101, 4005.102, 4051.051, and 4054.051, and Tex. Gov't Code §§ 2001.051-2001.178.

#### **Factual Allegations**

# <u>Licensure and Background</u>

- 1. Silva, individual identification number 858647, hold a general lines license with both a life, accident, health, and HMO qualification and a property and casualty qualification, issued by the department on June 20, 2011.
- Silva previously held two additional licenses, a life agent license and a personal lines 2. property and casualty agent license, which expired in 2015 and 2011, respectively, due to a failure to renew.
- Silva was the sole owner and designated responsible licensed person of XYV Insurance 3. LLC (XYV Insurance), firm identification number 154686. XYV Insurance held a general lines agency license with a life, accident, and health qualification, and a property and

**EXHIBIT** 

Original Petition Xavier Ruben Silva Page 2 of 5

casualty qualification from April 2019 until April 18, 2021, when that license expired due to a failure to renew.

#### **Fictious Farmers Policies**

- 4. In July 2020, Farmers Insurance (Farmers)<sup>1</sup> cancelled Silva's 11 appointments due to his fraudulent and dishonest acts.<sup>2</sup>
- 5. According to Farmers' investigation, Silva wrote three fictitious auto policies and four fictitious fire policies for people without their consent or authorization, allowing him to collect unearned commissions and bonus payments.
- 6. The seven fictitious policies were:
  - a. submitted using Silva's user ID with Farmers;
  - b. submitted without signed documents;
  - c. written without valid premium payments applied;
  - d. written in the week prior to the December 2019 folio close date; and
  - e. cancelled for non-payment.
- 7. Farmers cancelled three of the auto policies because it received no valid premium payments. The auto policies contained invalid EFT payments that reversed because the bank account did not exist.
- 8. Farmers cancelled four of the fire policies. Farmers did not receive any payments for two of the fire policies. One fire policy contained an invalid EFT payment processed at inception. A mortgage company made a payment for one fire policy, which

<sup>1</sup> The companies collectively referred to as "Farmers" in this petition include: Farmers Insurance Exchange, Fire Insurance Exchange, Mid-Century Insurance Company, Texas Farmers Insurance Company, Farmers Texas County Mutual Insurance Company, Mid-Century Insurance Company of Texas, Farmers New World Life Insurance Company, Truck Insurance Exchange, Foremost County Mutual Insurance Company, Foremost Lloyds of Texas, and Foremost Insurance Company.

<sup>&</sup>lt;sup>2</sup> In April 2021, Farmers acquired other companies from the Metropolitan group. Therefore, Silva's appointments with those companies were also cancelled by Farmers.

Original Petition Xavier Ruben Silva Page 3 of 5

- payment was later refunded because the insured never authorized the policy or payment.
- 9. Farmers contacted three of the insureds, who confirmed they did not consent to or authorize the policies to be written.

#### Misappropriation and Conversion of Unearned Commissions

- 10. In total, Silva misappropriated, converted to his own use, or otherwise illegally withheld from Farmers a total of \$4,432 in unearned commissions and retail bonus payments.
- 11. Farmers paid Silva \$1,108 in unearned commissions for the seven fictitious policies. Farmers recovered \$1,022 of the unearned commissions through folio charge backs and expensed the remaining \$86.
- 12. Farmers also paid Silva \$3,324 in retail bonus payments, which paid 300% of the normal commissions earned on the seven fictitious policies. Farmers cannot recover the bonus payments through the commission chargeback process because Silva's fidelity bond does not cover this type of loss.

#### Failure to Respond

- 13. Between December 2020 and October 2021, the department sent multiple requests for information to Silva regarding the above allegations. Some of these requests were sent to Silva electronically and others by mail.
- 14. Silva acknowledged receipt of the requests sent electronically and postal service records show he received the mailed requests.
- 15. Silva failed to respond to the department's requests for information.

# Prior Disciplinary History

- 16. On November 5, 2019, the department issued a warning letter to Silva related to Nationwide cancelling their appointment with him for cause.
- 17. The 2019 warning letter warned and advised Silva that the department expected him to:

Original Petition Xavier Ruben Silva Page 4 of 5

- a. not engage in fraudulent or dishonest acts or practices;
- b. maintain E&O coverage without a lapse;
- c. respond in a timely manner to all TDI information requests;
- d. update TDI in a timely manner all changes in address information; and
- e. conduct his business activities in a reasonable manner, including proper oversight of employees and responsiveness to clients.

#### **Legal Allegations**

- 1. Silva committed acts for which a license holder may be disciplined under TEX. INS. CODE § 4005.101, as contemplated in TEX. INS. CODE § 4005.102.
- 2. Silva violated Tex. INS. Code § 38.001 by failing to respond in writing to the department's inquiries not later than the 15th day after the date the inquiry was received.
- 3. Silva violated Tex. Ins. Code § 4005.101(b)(4) by misappropriating, converting to his own use, or illegally withholding money belonging to an insurer.
- 4. Silva violated Tex. Ins. Code § 4005.101(b)(5) by engaging in fraudulent or dishonest acts or practices.

#### **Relief Sought**

If one or more of the above allegations is found to be true, the department asks the Administrative Law Judge to enter a Proposal for Decision recommending that the Commissioner of Insurance issue an order:

- 1. revoking Silva's license; and
- 2. imposing any other just and appropriate relief to which the department may be entitled to by law, including any combination of the above actions.

Respectfully Submitted,

Sarah White

Original Petition Xavier Ruben Silva Page 5 of 5

State Bar No. 24064622
Texas Department of Insurance
Enforcement Division, MC ENF
P.O. Box 12030
Austin, Texas 78711-2030
(512) 676-6354 (Direct)
(512) 490-1020 (Fax)
Sarah.white@tdi.texas.gov

ATTORNEY FOR THE PETITIONER TEXAS DEPARTMENT OF INSURANCE

FILED 454-22-2476 4/25/2022 10:56 AM STATE OFFICE OF ADMINISTRATIVE HEARINGS Carol Hale, CLERK

# SOAH DOCKET NO. 454-22-2476 TDI ENFORCEMENT FILE NO. 25454

TEXAS DEPARTMENT OF INSURANCE,

**Petitioner** 

v.

XAVIER RUBEN SILVA,

Respondent

#### BEFORE THE STATE OFFICE

ACCEPTED 454-22-2476 4/25/2022 10:59:12 am STATE OFFICE OF ADMINISTRATIVE HEARINGS Carol Hale, CLERK

**OF** 

ADMINISTRATIVE HEARINGS

#### CERTIFICATE OF SERVICE

I, Sarah White, certify that a true and correct copy of the *Notice of Hearing dated April 21, 2022, and the Original Petition* were sent by regular, first-class mail, by certified mail, return receipt requested, and by email, on this 25th day of April, 2022 to:

Xavier Ruben Silva

San Antonio, Texas 78212-1213

San Antonio, Texas 78230-1073 Respondent Pro Se Via CM/RRR No.: 9214 8901 9403 8374 3582 42

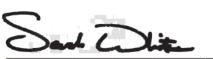
Via First Class Mail

Via Email:

Via Email:

Via CM/RRR No.: 9214 8901 9403 8374 3583 89

Via First Class Mail



Sarah White State Bar No. 24064622 Texas Department of Insurance Enforcement Division, MC ENF P.O. Box 12030 Austin, Texas 78711-2030 (512) 676-6354 (Direct)

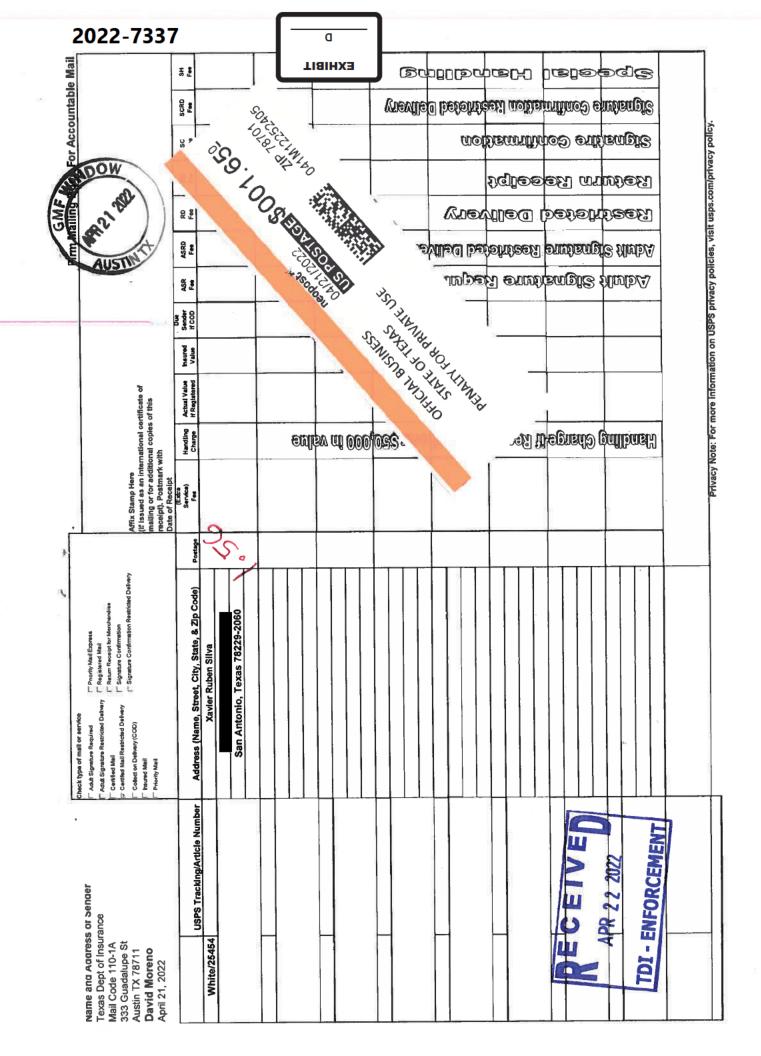
**EXHIBIT** 

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Notice of Hearing Xavier Ruben Silva SOAH Docket No. 454-22-2476 Page 2 of 2

> (512) 490-1020 (Fax) Sarah.white@tdi.texas.gov

ATTORNEY FOR THE PETITIONER TEXAS DEPARTMENT OF INSURANCE



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# **Shipment Confirmation Acceptance Notice**

Note to Mailer: The labels and volume associated to this form online, must match the labeled packages being presented to the USPS® employee with this form.

Shipment Date: 04/21/2022 Shipped From:

> Name: MC 110-1A D MORENO 333 GUADALUPE ST

Address: City:\_AUSTIN

State: TX ZIP+4® \_78701

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<sup>\*</sup>Start time for products with service guarantees will begin when mail arrives at the local Post Office™ and items receive individual processing and acceptance scans.

#### B. USPS Action

Note-to RSS Clerk:

1. Home screen > Mailing/Shipping > More

2. Select Shipment Confirm
3. Scan or enter the barcode/label number from PS Form 5630
4. Confirm the volume count message by selecting Yes or No
5. Select Pay and End Visit to complete transaction

USPS EMPLOYEE: Please scan upon pickup or receipt of mail. Leave form with customer or in customer's mail receptacle.

USPS SCAN AT ACCEPTANCE



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# **Shipment Confirmation Acceptance Notice**

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Note to Mailer: The labels and volume associated to this form online, must match the labeled packages being presented to the USPS® employee with this form.

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Shipped From:

Name: MC 110-1A M RUIZ

Address: 333 GUADALIPE ST

City: AUSTIN

State: TX ZIP+4® 78701

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<sup>\*</sup>Start time for products with service guarantees will begin when mail arrives at the local Post Office™ and items receive individual processing and acceptance scans.

#### B. USPS Action

Note to RSS Clerk:

Home screen > Mailing/Shipping > More
Select Shipment Confirm
Scan or enter the barcode/label number from PS Form 5630
Confirm the volume count message by selecting Yes or No
Select Pay and End Visit to complete transaction

USPS EMPLOYEE: Please scan upon pickup or receipt of mail. Leave form with customer or in customer's mail receptacle.

USPS SCAN AT ACCEPTANCE



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