

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION**

**DISH NETWORK L.L.C.,  
SLING TV L.L.C., and  
NAGRASTAR LLC,**

*Plaintiffs,*

**v.**

**ALEJANDRO GALINDO, ANNA  
GALINDO, MARTHA  
GALINDO, and OSVALDO  
GALINDO, individually and  
collectively d/b/a NITRO TV,**

*Defendants.*

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**Case No. 3:21-cv-218**

**DEFENDANTS’ MEMORANDUM IN SUPPORT OF  
MOTION TO ALTER OR AMEND THE JUDGMENT**

Defendants, ALEJANDRO GALINDO, ANNA GALINDO, MARTHA GALINDO, and OSVALDO GALINDO, INDIVIDUALLY AND COLLECTIVELY D/B/A NITRO TV (collectively, “Defendants”), ask the Court to alter or amend the judgment, as authorized by Federal Rule of Civil Procedure 59(e).

**A. INTRODUCTION**

1. On August 19, 2021, Plaintiffs Dish Network, LLC, Sling TV LLC, and Nagrastar LLC (collectively, “Plaintiffs”) filed suit against Defendants for

violations of the Federal Communications Act, 47 U.S.C. 605, and Digital Millennium Copyright Act.

2. The court entered a default judgment for the Plaintiffs on June 9, 2022.
3. The court subsequently issued an order (“Order”) authorizing the United States Marshal to levy and sell a residential property located at 311 Scenic View, Friendswood, Texas 77546 (“Friendswood Property”).
4. Defendants file this postjudgment motion to alter or amend the judgment authorizing the levy and sale of the Friendswood Property. This motion does not seek relief from the judgment under Federal Rule of Civil Procedure 60.
5. The clerk entered the Order on November 30, 2022. Defendants file this motion on December 28, 2022, which is within 28 days after the entry of judgment on the Order.

## **B. ARGUMENT**

6. The judgment should be altered or amended to prevent a clear error or manifest injustice. *Duran v. Town of Cicero*, 653 F.3d 632, 642–43 (7th Cir. 2011); *Coons v. Indus. Knife Co.*, 620 F.3d 38, 41 (1st Cir. 2010); *Dotson v. Pfizer, Inc.*, 558 F.3d 284, 301–02 (4th Cir. 2009); *Duarte v. Bardales*, 526 F.3d 563, 567 (9th Cir. 2008), *overruled on other grounds*, *Lozano v. Montoya Alvarez*, 572 U.S. 1 (2014).
7. On or about March 16, 2020, Defendant Alejandro Galindo purchased the

Friendswood Property. The Friendswood Property is Defendants' homestead.

8. Homestead rights historically have enjoyed strong protection in Texas. *Grant v. Clouser*, 287 S.W.3d 914, 919 (Tex. App.—Houston [14th Dist.] 2009, no pet.). The “fundamental idea connected with a homestead is ... that of a place of residence for the family, where the independence and security of a home may be enjoyed, without danger of its loss, or harassment and disturbance ... a secure asylum of which the family cannot be deprived....” *Id.* (quoting *Cocke v. Conquest*, 120 Tex. 43, 35 S.W.2d 673, 678 (1931)).
9. The Texas Constitution provides special protections for the homestead separate and distinct from protections afforded other types of property. *Id.*; see Tex. Const. art. XVI, § 50. Because constitutional homestead rights protect citizens from losing their homes, statutes relating to homestead rights are liberally construed to protect the homestead. *Id.*; *Kendall Builders, Inc. v. Chesson*, 149 S.W.3d 796, 807 (Tex. App.-Austin 2004, pet. denied).
10. Plaintiffs argued that homestead-exemption protection does not attach when a property is purchased with wrongfully acquired funds and specifically cited to *Deluxe Barber Sch., LLC v. Nwakor*, 609 S.W.3d 282, 298 (Tex. App.—Houston [14th Dist.] 2020, pet. denied) in support. See Order, at 3. While Defendants do not dispute this law, Defendants argue that this present matter is distinguishable from *Deluxe Barber* and that the homestead protections provided by the Texas

Constitution still apply to the Friendswood Property. Specifically, in *Deluxe Barber*, Appellee Nwakor and Appellant Mbaka shared an informal fiduciary relationship in which Mbaka had direct access to Nwakor's financial and bank accounts. *See Deluxe Barber*, 609 S.W.3d at 293–94. The evidence presented at trial indicated that Mbaka improperly transferred Nwakor's money out of her bank accounts without her authorization, and the stolen funds were traced to accounts that benefitted Appellants Mbaka and Deluxe Barber School. *Deluxe Barber*, 609 S.W.3d at 294–96. Ultimately, the court determined that Appellant Mbaka was not entitled to the constitutional protection against foreclosure upon his homestead because, per the jury's finding at trial, Mbaka wrongfully acquired funds from Nwakor and used those stolen funds to purchase his real property. *Deluxe Barber*, 609 S.W.3d at 298.

11. Here, Plaintiffs alleged that over ninety-nine percent of the funds used to buy the Friendswood Property are traceable to an account that collected payments from Nitro TV customers. *See Order*, at 3. Even if this were true, these funds were never possessed, or even earned, by the Plaintiffs. There is no evidence that such funds belonged to the Plaintiffs or that Defendants stole or wrongfully acquired funds directly from Plaintiffs.

12. Additionally, the funds used to buy the Friendswood Property were placed into an account which also held personal funds and money potentially earned from

legitimate business operations and transactions. Even if one percent of legitimate and properly earned funds were used to purchase the Friendswood Property, a foreclosure sale would deprive Defendants of the constitutional homestead rights provided under the Texas Constitution (*see* Tex. Const. art. XVI, § 50), especially when the Texas Constitution unequivocally protects citizens from losing their homes and Texas courts liberally construe statutes relating to homestead rights to protect the homestead (*see Grant*, 287 S.W.3d at 919; *see also Kendall Builders*, 149 S.W.3d at 807).

13. Therefore, to prevent a clear error or manifest injustice, the Defendants respectfully request that the Court alter or amend the judgment from its Order to halt the foreclosure sale on Defendants' homestead.

### **C. CONCLUSION**

For the reasons stated above, Defendants respectfully request the Court to alter or amend the judgment and render a modified judgment that halts the foreclosure sale on Defendants' homestead located at 311 Scenic View, Friendswood, Texas 77546.

Respectfully submitted,

***Silberman Law Firm, PLLC***

*/s/ Grace An*

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*Attorney for Defendants*

CERTIFICATE OF SERVICE

I certify that on December 28, 2022, a copy of Defendants' Memorandum in Support Of Motion To Alter Or Amend The Judgment was electronically served through the CM/ECF portal to the following counsel of record:

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/S/ Grace An  
Grace An

CERTIFICATE OF CONFERENCE

I certify that on December 28, 2022, I conferred with Timothy M. Frank and Maleeah M. Williams via email correspondence, and opposing counsel has not yet responded. Accordingly, I presume that the Defendants' Memorandum In Support Of Motion To Alter Or Amend The Judgment is opposed.

/S/ Grace An  
Grace An