



No. D-1-GV-11-001818

**STATE OF TEXAS**  
**Plaintiff**

v.

**U.S. MONEY RESERVE INC.,**  
**DOING BUSINESS AS UNITED STATES**  
**RARE COIN AND BULLION RESERVE,**  
**Respondent**

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**IN THE DISTRICT COURT OF**

**TRAVIS COUNTY, TEXAS**

419<sup>th</sup> **JUDICIAL DISTRICT**

**ASSURANCE OF VOLUNTARY COMPLIANCE**

TO THE HONORABLE DISTRICT JUDGE:

COME NOW, the STATE OF TEXAS, (hereinafter "State") acting by and through Attorney General GREG ABBOTT, and U.S. MONEY RESERVE, INC., doing business as United States Rare Coin and Bullion Reserve (hereafter US Rare Coin), and respectfully submit the following Assurance of Voluntary Compliance (hereafter "AVC") for the Court's approval and filing in accordance with the Deceptive Trade Practices - Consumer Protection Act ("DTPA"), Texas Business and Commerce Code, Section 17.58.

**I. STIPULATIONS**

- A. The parties to this AVC expressly understand and agree that this AVC will not be construed as an admission on the part of US Rare Coin of any violation of the DTPA or other law or duty.
- B. The parties to this AVC expressly understand and agree that this AVC will not be used as evidence that the Office of the Attorney General approves of any business practice in which US Rare Coin engages.
- C. U.S. Rare Coin denies that it violated the Texas Deceptive Trade Practices Act, made misrepresentations to consumers, or engaged in any wrongdoing.
- D. The parties to this AVC expressly understand and agree that this AVC may be used as



evidence in any action brought by the Office of the Attorney General to enforce this AVC.

E. Pursuant to section 17.58(c) of the Texas Business and Commerce Code, failure to comply with the terms of this AVC is prima facie evidence of a violation of Subchapter E of the Texas Business and Commerce Code, unless the AVC has been rescinded by agreement or voided by a court for good cause.

F. The Travis County District Court has jurisdiction over the subject matter of this action.

G. The activities of US Rare Coin constitute trade and/or commerce as defined in the DTPA.

H. As provided by the DTPA, nothing in this AVC shall be construed as a waiver of any private rights, causes of action, or remedies of any person against US Rare Coin.

I. This AVC states the entire agreement between the parties respecting the subject matter stated herein.

## **II. DEFINITIONS**

The parties agree that, for purposes of this AVC, the following definitions shall apply:

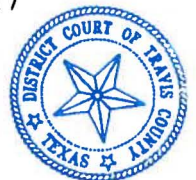
A. **“Bullion Coin”** means a coin that is valued by its weight in a specific precious metal.

B. **“Consumer”** means the potential end user or purchaser of US Rare Coin’s goods and services.

C. **“DTPA”** means the Texas Deceptive Trade Practices-Consumer Protection Act, Texas Business and Commerce Code Annotated, 17.41 - 17.63, inclusively.

D. **“Effective Date”** of the AVC means the date that the Order approving the AVC is signed by the Court.

E. **“Like Performance”** in this AVC means the known change in the retail market value of a coin with same or similar characteristics such as limited mintage, rarity, condition, design, age, issue price from the U.S. Mint, weight of precious metal, or other alike attributes to another coin



for comparison purposes.

F. **“Numismatic value”** means the value of a legal tender coin based on its rarity, quantity originally produced and condition; it is the added value above the melt value of the coin or the spot price of the metal.

G. **“Qualifying Coins”** means modern commemorative coins, proof American Gold Eagles and mint state American Gold Eagles purchased from US Rare Coin on or after May 1, 2005 through December 31, 2010.

H. **“Qualifying Consumer”** means the consumer that purchased the Qualifying Coins, his/her guardian, heirs or assigns and/or the administrator of the estate if the consumer is deceased. The consumer has the burden of providing sufficient documentation to show s/he is a Qualifying Consumer under this AVC.

I. **“Restitution”** means a refund to Qualifying Consumers of 100% of the purchase price of the Qualifying Coins, plus reimbursement to the Qualifying Consumers for 100% of the costs to insure and ship the Qualifying Coins back to US Rare Coin.

J. **“Value or worth of a coin”** means the most probable price which a coin should bring in a competitive and open market under all conditions requisite to a fair sale, with the buyer and seller, each acting prudently, and knowledgeably, and assuming the price is not affected by undue stimulus.<sup>1</sup>

K. **“US Rare Coin”** means U.S. Money Reserve Inc., doing business as United States Rare Coin and Bullion Reserve, its successors and assigns.

<sup>1</sup> Assumed in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are reasonably well informed or reasonably well advised, and each acting in what he considers his own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.



### **III. ALLEGATIONS OF THE STATE OF TEXAS**

The State of Texas makes the following allegations concerning US Rare Coin's business practices:

A. US Rare Coin sells precious metal (gold, silver and platinum) coins which were minted at the United States Mint ("U.S. Mint") and bought by US Rare Coin from wholesalers or other dealers. These coins fall into four categories:

- 1) Modern commemorative coins,
- 2) Proof American Gold Eagles,
- 3) Bullion coins, and
- 4) Mint-state American Gold Eagles.

B. Modern commemorative coins are typically minted with a quarter or half ounce of a precious metal to commemorate a special event or a notable person. The U.S. Mint issues these coins in a limited mintage. These coins can be purchased directly by any consumer from the U.S. Mint in the year that the coins are minted.

C. Proof American Gold Eagles also have a limited mintage per year and can be purchased directly by any consumer from the U.S. Mint in the year that the coins are minted. These coins are minted in the following denominations:

- (a) \$5 coin, which contains one-tenth ( $1/10$ th) of an ounce of gold,
- (b) \$10 coin, which contains one quarter ( $1/4$  th) of an ounce of gold,
- (c) \$25 coin, which contains a half ( $1/2$ ) an ounce of gold, and
- (d) \$50 coin, which contains an ounce of gold.



D. Bullion coins are, inter alia, American Gold Eagles,<sup>2</sup> which are minted in the same denominations as the Proof American Gold Eagles and contain the same amount of gold per denomination as the Proof coins. The U.S. Mint does not sell these coins directly to ordinary consumers; sales are limited to certain dealers and banks. The U.S. Mint defines a bullion coin as:

[A] coin that is valued by its weight in a specific precious metal. Unlike commemorative or numismatic coins valued by limited mintage, rarity, condition and age, bullion coins are purchased by investors seeking a simple and tangible means to own and invest in the gold, silver, and platinum markets.

See: [http://www.usmint.gov/mint\\_programs/american\\_eagles/](http://www.usmint.gov/mint_programs/american_eagles/).

E. Mint-state American Gold Eagles are simply uncirculated American Gold Eagles with the same denominations as the Proof American Gold Eagles and containing the same amount of gold per denomination as the Proof coins. Whether such coins have numismatic value is in dispute.

F. US Rare Coin specializes in modern commemorative coins. However, it heavily advertises the \$5 bullion American Gold Eagles in its print and television ads, offering the coins at no dealer mark-up to entice consumers to call. However once consumers called, US Rare Coin tried to sell them the more expensive proof or commemorative coins.

G. US Rare Coin uses truisms from the bullion gold market, such as the value of gold will go up when the value of the dollar goes down, to sell the gold modern commemorative coins and proof coins. However, what is true for the bullion gold market is not necessarily true for the commemorative gold coin or proof gold coin markets. The value of commemorative and proof coins is based upon subjective factors such as age, rarity and condition. The value of a bullion

<sup>2</sup> For simplicity, the discussion in this section will be limited to American Gold Eagle bullion coins. However, the AVC is intended to apply to all coin sales by US Rare Coin, except where the AVC expressly limits a provision to a certain type of coin – e.g. which coins constitute “Qualifying Coins”.



coin is objectively based upon the amount of precious metal in each coin, and can be determined by looking at the spot price of that metal. The amount of the precious metal in a commemorative and/or proof coin is one factor among others in determining its value; for bullion coins, it is the only factor.

H. Numerous consumers believed US Rare Coin's representations that the value of their gold commemorative coins, and proof or mint-state American Gold Eagles would increase and that the gold coins it was selling them would hold value better than stocks, bonds and dollars. These consumers converted their assets into the modern commemorative coins, proof coins and mint-state American Gold Eagles sold by US Rare Coin. Some consumers complained to the State that when they tried to sell the coins back to US Rare Coin, the company offered them substantially less than what the consumer had paid for the coin. These consumers were confused because they had bought the coins when the spot price of gold was, for example, \$400 an ounce and they were trying to sell the coin when the spot price of gold had increased to \$800 to \$900 an ounce. Based upon US Rare Coin's representations, the consumers had expected the value of their initial purchase to double or triple.

I. The State alleges that US Rare Coin prices its proof and commemorative coins higher than the retail market value for those coins. The State further alleges that US Rare Coin also prices these coins significantly higher than bullion coins containing the same amount of gold.

J. The State has found that a higher percentage of the complaints have come from older consumers.

K. The State alleges that US Rare Coin, in the course of trade and commerce, has engaged in false, misleading and deceptive acts and practices declared unlawful in sections 17.46(a) and (b) of the DTPA.



#### **IV. RESPONDENT'S ASSURANCE**

In response to the allegations of the State stated above, US Rare Coin adamantly denies these allegations. However, US Rare Coin agrees and voluntarily assures the State that from the date of the signing of this AVC, US Rare Coin and its employees and representatives, will comply fully with the following terms:

- A. US Rare Coin will not make any representation that contradicts the following:
  - 1. The markets for precious metal coins and bullion are unregulated.
  - 2. Prices for these items can rise or fall, thus, buying these items carries risks.
  - 3. The value of a rare coin depends in part on the price the consumer pays. If the consumer is acquiring a coin to make money, the consumer should evaluate the coin's current market value, potential for appreciation and liquidity.
  - 4. Past performance of the coin or the market cannot predict future performance, unless Like Performance has actually occurred.
  - 5. The company is not affiliated with the U.S. Government and the U.S. Mint.
- B. US Rare Coin will not misrepresent the expected growth in the value or worth of a coin.
- C. US Rare Coin will not misrepresent the rarity of a coin.
- D. US Rare Coin will not denigrate the coin advertised or attempt to sell other coins by discouraging consumers from purchasing the advertised coins.
- F. US Rare Coin will not represent that a consumer's previously purchased modern gold commemorative coins, proof coins and mint state American Gold Eagles have increased in value with the increase in the spot price of gold unless the increase realized by the consumer is above the retail price paid by that consumer to US Rare Coin for the particular coin. The increase must be reflected in the value of the coin (as defined in this AVC) at the time of the representation.



- G. US Rare Coin will not represent that its salespersons are qualified to advise consumers on investments, other than advice relating to numismatic purchases<sup>3</sup>, unless the salesperson is a certified financial planner and is functioning as such on the call.
- H. US Rare Coin will not represent that the sales person is qualified to advise consumers on how to avoid taxes, unless the sales person is a certified financial advisor or accountant.
- I. US Rare Coin will not represent that the salesperson or manager has purchased a particular coin him/herself unless the statement is true.
- J. US Rare Coin will not represent that sets of coins will produce a greater return than individual coins unless the value for sets of coins confirms the greater return with “value” to be determined as set out in this AVC.
- K. US Rare Coin will not charge a credit card account unless it has explicit authority from the consumer to do so for the particular transaction.
- L. US Rare Coin will not contact consumers that are over 65 years of age if the family members and/or care-givers have informed US Rare Coin of the consumer’s age and requested that the company not contact the consumer unless US Rare Coin obtains written authorization from the consumer for further calls. However, if the family member or care-giver provides a Power of Attorney or Order showing that the family member or care-giver has been appointed as a guardian for that consumer, then US Rare Coin must honor the request to not contact the consumer regardless of any written authority provided by the consumer.
- M. US Rare Coin will provide consumers an estimated time for shipment of all coins purchased by consumers and will ship the coins during the estimated shipping period.

<sup>3</sup> Numismatic purchases may also include IRAs if the IRA is connected to a numismatic purchase. For example, if a consumer requests information on placing precious metal coins in an IRA.



N. US Rare Coin will not initiate calls so that the calls are received by consumers outside the hours of 9:00 a.m. to 9:00 p.m. in the time zone in which the call is answered. A call will not be deemed "initiated" if the consumer has requested that US Rare Coin call back during hours other than between 9:00 a.m. to 9:00 p.m. in the time zone in which the call is answered.

O. US Rare Coin will disclose the following information in all advertisements in such a manner as to be clearly understandable and readable to the normal consumer:

1. The markets for coins are unregulated.
2. Prices can rise or fall. Buying coins carries some risks.
3. The company is not affiliated with the U.S. Government and the U.S. Mint.
4. Past performance of the coin or the market cannot predict future performance.

P. During the verification portion of each call in which US Rare Coin makes a sale, US Rare Coin must disclose the following in an audible voice and at such a rate that a normal consumer can comprehend and understand:

1. The markets for coins are unregulated.
2. Prices can rise or fall. Buying coins carries some risks.
3. The company is not affiliated with the U.S. Government and the U.S. Mint.
4. Past performance of the coin or the market cannot predict future performance.

## **V. COMPLIANCE**

The parties agree that U.S. Rare Coin will have thirty days from the Effective Date of the the AVC to implement all requirements of Section IV., supra.

The parties further agree that the State of Texas is authorized to monitor compliance with this AVC by any lawful method, including, but not limited to:



- A. Requesting recordings of the portions of the sales calls which are recorded, stored and available at the time of the request.
- B. The recordings must be produced within five days of the request and must not be altered except to put them in a usable medium. To be able to provide this data, US Rare Coin agrees that it will keep all recordings for a minimum of seven days. US Rare Coin will provide such recordings unless a technical malfunction such as a server glitch, or Act of God such as a power outage, prevents US Rare Coin from doing so.
- C. Without further notification and without identifying any agent as acting on its behalf, the State of Texas may use an agent to pose as a consumer in communications with US Rare Coin or any of its agents, and make calls and/or purchase of coins under an assumed name.
- D. The State of Texas may make civil investigative demands pursuant to section 17.61 of the DTPA and requests to examine under Texas Business Organizations Code, sections 12.151 and 12.152, to monitor compliance with this AVC.

## **VI. RESTITUTION**

In an effort to resolve the present matter and without admitting the truth of any of the allegations contained herein, US Rare Coin agrees to comply with following:

- A. US Rare Coin will pay restitution as defined in this AVC to Qualifying Consumers who request such restitution for their Qualifying Coins, as defined in this AVC. Total restitution payable by US Rare Coin is Five Million dollars which shall be distributed as follows:
  - 1. U.S. Rare Coin will pay a maximum of \$450,000.00 for Qualifying Coins purchased between May 1, 2005 and December 31, 2005.



2. U.S. Rare Coin will pay a maximum of \$910,000.00 for Qualifying Coins purchased between January 1, 2006 and December 31, 2006
3. U.S. Rare Coin will pay a maximum of \$910,000.00 for Qualifying Coins purchased between January 1, 2007 and December 31, 2007.
4. U.S. Rare Coin will pay a maximum of \$910,000.00 in restitution for Qualifying Coins purchased between January 1, 2008 and December 31, 2008.
5. U.S. Rare Coin will pay a maximum of \$910,000.00 in restitution for Qualifying Coins purchased between January 1, 2009 and December 31, 2009.
6. U.S. Rare Coin will pay a maximum of \$910,000.00 for Qualifying Coins purchased between January 1, 2010 and December 31, 2010.

B. Qualifying Consumers who purchased Qualifying Coins over a number of years may collect restitution for the Qualifying Coins purchased in the different years and if the limit is reached as to one year, the Qualifying Consumer may still recover restitution for Qualifying Coins purchased in the other years on which the limit has not been reached.<sup>4</sup>

C. Claims for restitution for Qualifying Coins purchased in one year will be paid in the order in which the Qualifying Coins are received by US Rare Coin. Thus, if Qualifying Coins are returned to US Rare Coin after the limit for that year is exceeded, the Qualifying Coins will be returned to the consumer and no restitution will be made under this AVC, except to the extent the procedure in paragraph E, *infra*, apply.

D. Once US Rare Coin reaches the maximum restitution limit for each year, it shall inform

<sup>4</sup> For example, a customer purchases Qualifying Coins in 2005 and 2007 and mails both sets of coins back to US Rare Coin for restitution. In the meantime, the 2005 maximum has been reached. The customer will have the 2005 coins returned to him and he will not be entitled to restitution on those coins. However, he will receive full restitution on the Qualifying Coins he purchased in 2007, provided that US Rare Coin's maximum restitution limit for 2007 has not been reached.



the designated representative of the Consumer Protection and Public Health Division of the Texas Attorney General's Office. Further information relating to restitution paid may be requested by the Office of the Texas Attorney General pursuant to Section V, *supra*.

E. Once US Rare Coin reaches the maximum restitution limit for each year, US Rare Coin may make refunds for coins purchased in that year for which the limit has been reached pursuant to its standard policy or guarantee in effect at the time of the purchase of the coin for which a refund is sought.

F. To qualify for restitution under this AVC, Qualifying Consumers must first contact U.S. Rare Coin by telephone at 1-800-867-6101 to make arrangements for the return of their Qualifying Coins to US Rare Coin. At that time the Qualifying Consumer will receive authorization and instructions on how to return their Qualifying Coins.

G. After the consumer receives authorization, the consumer must mail the Qualifying Coins to US Rare Coin with copies of the original invoices for the Qualifying Coins or other documents such as credit card bills or canceled checks which show the Qualifying Coins were purchased from US Rare Coin. In the same mailing, if possible, the consumer should also send the invoices/receipts the shipping and insurance costs incurred by the consumer to mail the Qualifying Coins back to US Rare Coin.

H. US Rare Coin will pay the restitution amount within thirty days after the date on which it receives the Qualifying Coins. If it cannot do so, it must notify the consumer and the designated representative for the Consumer Protection and Public Health Division of the Office of the Attorney General of Texas if there will be a delay in making the refund and the reason for the delay. Delays which are unreasonable could result in further action to enforce the AVC.



I. US Rare Coin will make a quarterly report to the Office of the Texas Attorney General Consumer Protection and Public Health Division, which sets out the total amount of restitution requested by year of Qualifying Coins purchase-e.g. "\$100,000.00 restitution requested for Qualifying Coins purchased in 2005," total amount of restitution paid per year of Qualifying Coin purchase and, if the amounts requested does not equal the amount paid, an explanation of why there is a discrepancy. More detailed reported may be requested by the Consumer Protection and Public Health Division pursuant to Section V, supra. Once US Rare Coin pays all the restitution due under this AVC, it need no longer make quarterly report.

J. US Rare Coin asserts that it has already made refunds totaling Three Million Dollars (\$3,000,000.00) since 2008 when it was informed by the Office of the Texas Attorney General that its Consumer Protection Division was reviewing its sales practices. Restitution ordered in this AVC is in addition to this amount which US Rare Coin claims that it has paid.

I. Failure to comply with any provision of this section is a violation of the AVC and will trigger the penalties noted below.

## **VII. NOTICE OF VIOLATION**

In the event that the Office of the Texas Attorney General's Consumer Protection and Public Health Division ("OAGCPD") determines that US Rare Coin is violating a term of this AVC, the parties agree that US Rare Coin will have a reasonable opportunity to correct this violation, the "Cure Period," under the terms of this section, unless US Rare Coin's violation threatens imminent harm to consumers and/or creates an emergency requiring immediate action or, if the violations are so repeated or numerous as to constitute an attempt by US Rare Coin to avoid the application of this AVC.



A. If OAGCPD determines that US Rare Coin is violating a term of this AVC, it will send written notice of this violation to US Rare Coin at the physical address provided in this AVC.

B. The notice will specify which term of the AVC is being or has been violated and how US Rare Coin has violated or is violating the AVC.

C. Within ten business days of the receipt of the notice, the "Cure Period", US Rare Coin will either correct the violation and provide proof thereof to OAGCPD, or provide a written explanation as to why it believes that a violation has not occurred.

D. OAGCPD may, at its sole discretion, agree to allow additional time to correct the violation. However, an agreement to allow additional time to correct one violation does not bind OAGCPD to agree to additional time to correct if a subsequent violation of the AVC occurs.

E. OAGCPD will not take any action against US Rare Coin during the ten day Cure Period and during any additional time it has agreed to give US Rare Coin to correct the violation.

Notwithstanding the foregoing, the State may take immediate emergency action if there is a threat of imminent harm to consumers.

### **VIII. ABATEMENT OF PENALTIES**

The civil penalties assessed in this matter are One Million Dollars (\$1,000,000.00), which are the maximum penalties that can be assessed under this AVC. However, in recognition of US Rare Coin's agreement to pay restitution to consumers as set forth above, the Office of the Texas Attorney General agrees that the payment of civil penalties will be abated for so long as US Rare



Coin remains in compliance with this AVC or does not file for bankruptcy. Thus, US Rare Coin will pay the civil penalties of One Million Dollars (\$1,000,000.00) **only if:** (1) US Rare Coin files for bankruptcy, in which case, the One Million Dollars (\$1,000,000.00) in civil penalties become immediately due and payable; **OR** (2) a court finds that US Rare Coin has violated any provision of the AVC, in which case upon that finding, the One Million Dollars (\$1,000,000.00) in civil penalties becomes immediately due and payable. If US Rare Coin violates the AVC and files for bankruptcy, the applicable civil penalties for those two actions combined will be the One Million Dollars (\$1,000, 000.00) stated in this section. However, if in addition to filing for bankruptcy, and/or violating a term of the AVC, a Court finds that US Rare Coin has also committed deceptive trade practices after the entry of this AVC, then the Court may assess penalties for those additional deceptive trade practices. The penalties for any additional deceptive trade practices are not included in the One Million Dollar maximum amount stated above.

#### **IX. ATTORNEY'S FEES AND COURT COSTS**

US Rare Coin further agrees that it will pay the State of Texas' attorney's fees and costs within 14 days of the Effective Date of this AVC. This payment will be made by cashier's check or certified money order, bearing the Attorney General case number 062389069 on its face and delivered to the attention of Paul Carmona, Chief, Consumer Protection and Public Health Division, Office of the Texas Attorney General, P.O. Box 12548 or at its physical address, 300 West 15<sup>th</sup> Street, 9<sup>th</sup> Floor, Austin, Texas 78701. The State of Texas will provide the amount of fees and costs once all the parties have signed the AVC.



## **X. TRANSFER OF ASSETS**

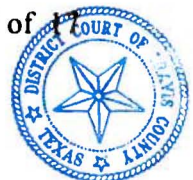
US Rare Coin agrees, warrants and acknowledges that, if at any time after the effective date of this AVC, it transfers its assets, including but not limited to its customer lists and inventory, said transferees shall be bound by all terms of this AVC. Further, the transferee(s) will be notified by US Rare Coin of this AVC and the fact that the transferee is bound by the AVC.

## **XI. MISCELLANEOUS**

The Parties acknowledge that either party may move to enforce, amend or rescind the agreement on good cause shown. However, until an order is entered enforcing, amending or rescinding the agreement, the parties will continue to be bound by the AVC unless in the future any definition or provision in this Assurance of Voluntary Compliance is determined to be inconsistent with the laws of the State of Texas or any rules or regulations promulgated thereunder, then such laws, rules or regulations will prevail over the terms of this AVC, and the AVC will be deemed modified to conform with those laws, rules or regulations. In that event, the remaining terms of the AVC shall remain in full force and effect as written.

Penalties assessed in this matter constitute a fine, penalty or forfeiture payable to and for the benefit of a government unit and is not compensation for actual pecuniary loss. Thus, penalties assessed in this matter are not dischargeable in bankruptcy pursuant to Section 523(a) (7) of Title 11 of the United States Code.

AGREED this 11<sup>th</sup> day of October, 2011.




GREG ABBOTT  
Attorney General for the State of Texas

DANIEL T. HODGE  
First Assistant Attorney General


BILL COBB  
Deputy Attorney General for Civil Litigation

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ATTORNEY FOR RESPONDENT

  
Signature of Representative  
For U.S. MONEY RESERVE

I, AMALIA RODRIGUEZ-MENDOZA, District Clerk,  
Travis County, Texas, do hereby certify that this is  
a true and correct copy as same appears of  
record in my office. Witness my hand and seal of  
office on 11-15-2011



AMALIA RODRIGUEZ-MENDOZA

DISTRICT CLERK

By Deputy: 

