CAUSE NO. 2017-73032

WENDY MEIGS, Plaintiff,	§	IN THE DISTRICT COURT OF
v.	§	HARRIS COUNTY, TEXAS
TREY BERGMAN and BERGMAN ADR GROUP Defendants.	§	270TH JUDICIAL DISTRICT

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS BERGMAN AND BERGMAN ADR GROUP'S TRADITIONAL AND NO-EVIDENCE MOTION FOR SUMMARY JUDGMENT AND DEFENDANTS' SUMMARY JUDGMENT EVIDENCE

TO THE HONORABLE JUDGE OF THIS COURT:

` COMES NOW Wendy Meigs, ("Plaintiff") in the above-referenced matter and files this, her Objections to Defendants' Traditional and No-evidence Motion for Summary Judgment, and Defendant's Summary Judgment Evidence. Plaintiff invokes her right by the Texas and United States Constitution to a trial by jury. Plaintiff also states that she is still obtaining evidence to support all aspects of all claims and requires more time for those claims. In addition, Plaintiff will amend her petition to further expound upon these claims and new claims. In support thereof, Plaintiff would show the Court the following:

1.

Factual Background:

1. a. This is multi-tier case brought against Edward Trey Bergman and the Bergman ADR Group (collectively "Defendants") by Wendy Meigs (Plaintiff) arising out of a corporate suit against Michael Johnston (Johnston) and his actions that include but are not limited to breach of fiduciary duty, fraud, conspiracy, embezzlement, theft/conversion and the injunctive relief regarding Asyntria and its subsidiaries and the diversion of Asyntria assets into

Johnston companies to well over a million dollars in 2015 alone (Exhibits 5). Johnston carried out the above through the consultation and contract development of his attorney, Todd Frankfort (Frankfort), and his attorney and Asyntria's attorney, B. Allen Brady (Brady) in which Brady appears to have dual represented against Asyntria and for Johnston. Evidence shows that both lawyers realized that they "messed up" in creating documents that effectively allowed Johnston to steal shares of stock, assets, and all and usurp the corporation of which Plaintiff should own 50%. (Exhibit 1) Defendants omitted these facts from their summary judgment request and jumped into the mediation issues in what appears to be another attempt at hiding this omission as an element indicative of Fraud on the Court, a conspiracy where many states are now fighting against for the public welfare and justice and discussed in detail by David R. Hague, Assistant Professor of Law, South Texas College of Law, [Hague, David R. (2016) "Fraud on the Court and Abusive Discovery," *Nevada Law Journal*: Vol. 16 : Iss. 2 , Article 9.
Available at: https://scholars.law.unlv.edu/nlj/vol16/iss2/9.]

b. In Defendants' request for summary judgment, Defendants fail to mention that the "factual background" extends months before the October 30th, 2015 mediation in which Defendants presided over as mediator. By focusing only on the mediation, Defendants divert from the Omission that led to collusion, conspiracy, and conspiracy to Fraud on the Court that occurred before mediation, the day of mediation and prolonged after mediation in multiple attempts to force Plaintiff into an agreement that she requested voided due to the abusive and manipulative tactics used by all at mediation. At that time, Plaintiff did not realize the fraud being perpetrated upon her. She does now.

c. Defendants use Exhibit 1, "Trey Bergman CV" as if to show that Defendant's credentials somehow prevent him from participating in improper action. All in Houston

remember devastating losses associated with Enron and the actions of Jeffery Skilling. Skilling, considered an outstanding Enron executive, initially studied engineering before changing to business at SMU. After graduation, he went to work for a Houston bank, which sent him to Harvard Business School. He stated that during his admissions interview for Harvard Business School, he was asked if he was smart, to which he replied, "I'm f..king smart." (http://everything.explained.today/Jeffrey_Skilling/) Thus, a CV by no means indicates honest, decency, morality, and ethics nor should Exhibit 1 be considered that way either.

And joining the incredible CV category, only to be revealed as a fraud, includes Bernard Madoff, Bernard Ebbers, Diego Maradona, Benjamin Sinclair Johnson, and Lance Armstrong. Thus Plaintiff objects to the CV as a means to confuse the jury from the true issues at hand. An individual's CV demonstrates nothing in regards to what they are capable of doing.

d.. Plaintiff objects and moves to strike Exhibit 4: Mediation Sign-in Record as irrelevant to the case of conspiracy that occurred prior to the mediation and as another attempt to avoid the Omission. Had Plaintiff been aware of the preplanned conspiracy to "be handled" by the mediator (Exhibit 1.073) according to Zucker's email and to not have representation from Zucker, Plaintiff would have never signed any document much less continue within a mediation fraught with lies, deceptions, abuse, assault, drugging, and negligence. In another effort to distract from the fraud and conspiracy that began before mediation, Defendants focus on a signature created prior to the knowledge of conspiracy, fraud, and Fraud upon the Court which in and of itself negates all activity at mediation including signatures and decisions of any kind. Plaintiff (1) was not able to perceive the mediator's negligence at the time of mediation; (2) Plaintiff's ability to competently assess the mediator's actions were impaired through alcohol and drugging; and (3) Zucker, Plaintiff's lawyer, told Plaintiff that she could not leave mediation

or risk the judge taking her company and in the understanding of the conspiracy of Zucker with the Defendant, Plaintiff was forced to stay within an abusive and improper mediation. Hence, according to Moffit, *Suing Mediators*, Plaintiff meets the requirements to pursue negligence claims against Defendants whilst having stayed at mediation.

e. "As Professor Moffitt observes, 'the principal term implied into a mediation contract would be a covenant of good faith, binding a mediator to mediate with reasonable skill and care.' Where the mediator violates an accepted norm of 'reasonable' practice within mediation generally, [he] may be liable under a contract theory for resulting damages. **The Model Standards of Conduct for Mediators supply a relevant norm that specifically references the mediator's responsibility…' (Exhibit 10) Fraud in mediation falls outside of the norm in the Model Standards of Conduct for Mediators as well as failing in impartiality and all.**

f. Defendants claim that Zucker represented Plaintiff at mediation per Zucker's signature as if stating the use of such documents forms a justification under the understanding of fraud and conspiracy which it does not. Based on the email from Zucker to Bohreer (Exhibit 1.020), Zucker hid my claims from me and gave them to Bergman to handle as if Defendant would be my appointed attorney, another attorney in collusion with Zucker, at the 2015 mediation and Zucker would sit back and let him represent me. And that is exactly what Zucker did. He sat back, isolated himself in another room during discussions, and did nothing but allow Defendant to manipulate, threaten, and allow abuse. Thus Zucker's Sign-In signature was not to represent me but to create an avenue for the conspiracy to fall back upon to blame Plaintiff for being forced to sign a mediation built upon fraud, self-interest and the like as if Plaintiff would be bound to a person's signature who the Defendant knew full well in advance was not going to

represent Plaintiff as those claims were given to him. Hence, Defendant began the mediation perpetrating a fraud by inducing me to sign the "Sign-in Agreement" knowing the scheme to get a signature from me to later alter the agreement in the printed version and thus release liability to the opposing attorneys and mediator; thereby, resolving the Omission or so attempted.

g. Plaintiff objects and moves to strike Exhibit 2, "Agreement to Mediation" as it does not pertain to the claims of conspiracy and all, can confuse a jury to the true nature of the claim, and without merit as an agreement under fraud and conspiracy. As stated above, all evidence indicates that collusion, conspiracy and fraud began long before mediation itself. As such Plaintiff's documentation shows that Zucker intentionally hid my claims against Johnston and the Brady and Frankfort, and committed fraud. (Exhibit 1.020) The involvement of other attorneys including Defendants created a conspiracy prior to mediation day as can be seen in the email thread including Bergman (Exhibit 1.073). This conspiracy continued the fraud against Plaintiff thus creating Fraud on the Court at the 2015 mediation. As a result and due to the fraud and conspiracy, all documents become void per Fed. R. Civ. P. 60(d)(3) which can set aside judgment for Fraud on the Court. Hence, Plaintiff objects to these mediation documents supplied by Defendants as an attempt to divert away from the true claims and does nothing more than attempt to perpetrate the hiding of the omission as was before the 2015 mediation and continued through two more years of litigation. Plaintiff objects to the continuation of this distraction as the time has come for the court to address the true issue and not dance around a mediation agreement that failed multiple times to enforce.

h. In addition, Defendants failed to add the required family law format effective 9/1/1997, under 6.602 of the Family Coode, to have an enforceable settlement agreement reached at mediation in a case not involving the parent-child relationship, it is required that the agreement

have a separate paragraph that "the agreement is not subject to revocation" but this did not occur. As such, the agreement should have been automatically voided with my revocation but for some strange reason this did not occur. Not only did it not occur, Plaintiff's attorneys fought against Plaintiff's wishes to void the agreement and created a "confession email" memorandum (Exhibit 3: multiple versions) referencing hearsay statements with threats of abandoning Plaintiff and all, and included statements from Defendant, factually incorrect. Once Plaintiff's attorneys and Defendant became aware of the omission of the clause, they continued to fight against voiding the agreement as if something prevented them from this path. Based on the email evidence that continues being found, Plaintiff's attorneys recognized the claims early on against opposing attorneys (Exhibit 1), intentionally contacted Defendant as mediator when another mediator was already requested, continually avoided and denied Plaintiffs questions over any type of claims, and forwarded my claims to Defendant to be handled in a most threatening and abusive way in a mediation from hell which frightened Plaintiff to fear for her life, and to fear death with the advent of her fingers turning deep purple and the periodic memory loss. Plaintiff does not believe that a jury will find mediation from hell conducive to the Model Standards of Conduct for Mediators (Exhibit 10) as revealed at its most basic understanding as Plaintiff would understand.

i. In Exhibit 3, Rules of Mediation, Defendants fail to address the rules of a credentialed mediator, the expectations from a mediator advertising that they are credentialed and the failure of the mediator to conduct a proper mediation. How many mediators allow opposing attorneys to leave mediation to procure alcohol whilst a client is alone without representation and then allows the opposing attorney to pour and serve the alcohol twice to a still unrepresented client whilst allowing a man whom the mediator knew was taking anti-psychotic drugs to slide the drink to her with his hand over the glass thereby dropping a drug into her drink

strong enough to mask any drug? How can that be considered a proper mediation? It cannot. If the city of Houston citizens were surveyed on what they considered a proper mediation as anticipation to the response of a jury, would they consider that a proper, impartial mediation? No. They would consider this not only dangerous, but undeniably something for one woman amidst five men to fear. Defendant failed to follow his own rules that not only he presented but he advertised by stating his credentialing. Indicating in advertising that credentials exist for a mediator leads individuals to believe that the mediator followed all rules according to those credentials, and thus created an expectation of service that failed.

j. Plaintiff objects and moves to strike Exhibit 5 "Trey Bergman's Affidavit" and all affidavits of those involved in the conspiracy leading up to and beyond the 2015 mediation as self-serving in a conspiracy. In "*McKnight v. Riddle & Brown, P.C.*, 877 S.W.2d 59(Tex. App. — Tyler 1994, writ denied), the court of appeals held that the affidavits were inadequate as summary judgment evidence because '[t]he very essence of a conspiracy is a secret intent of the co-conspirators…. The affidavits are, in essence, self-serving statements of interested parties of what they knew and intended…. in the context of a conspiracy….' 877 S.W.2d at 61." If such affidavits fail as being self-serving in a conspiracy, they are self-serving in all aspects. As such Plaintiff objects and moves to strike all affidavits.

2. In paragraph two, Defendants refer to Exhibit 6, Mediation Statement to Bergman by Plaintiff's attorney Zucker. Although Defendants are correct that the document states that Johnston and Plaintiff **are** shareholders in Asyntria, Plaintiff objects that Defendants fail to acknowledge the significant claims against Johnston and the input of Johnston's attorneys in the various claims that Plaintiff has against Johnston. It is these claims that form the Omission of which the collusion and conspiracy are based, and of which Bohreer & Zucker decided early,

exactly the day they decided to contract with plaintiff for legal representation, to not represent Plaintiff (Exhibit 1). It is these claims that contributed to the opportunity for those at mediation to see an prospect to make additional money by conspiring to what appears to force Johnston to pay protection money to ensure the outcome of mediation and prevent Johnston from having charges brought against him for his excessive thefts and felony level embezzlement; thus those lawyers involved participated in subverting justice at a felony level. It is these claims that convict Frankfort and Brady in their involvement in the construction and execution by Johnston to usurp Asyntria, steal Plaintiff's shares of stock, take assets and all. And it is these claims that have been hidden from Plaintiff to prevent Plaintiff from pursuit and to keep litigation focused solely on a mediation agreement that initially failed on structure alone. An initial summary judgment that appears to have been written with the assistance of Plaintiff's then divorce attorney, Sherri Evans, to Zucker and with the forwarding of such knowledge by Zucker to Brady… and as such a rather in-depth fraud and conspiracy that began with the referral to Bergman via what appears to be a previous discussion before Frankfort requested the use of Bergman per email and as such to propagate such fraud and conspiracy at mediation. It is these claims that failed to be acknowledged through the multiple attempts at summary judgment, two years of litigation, and excessive expenses meant to deplete Plaintiff's savings per standard Fraud on the Court steps thus to prevent Plaintiff from later having the monetary capacity to obtain another lawyer to fight after the judge filed away my rights with the divorce decree to fight against the agreement and the thefts of Johnston and to rightfully restore Asyntria and its stolen and diverted assets back to Plaintiff. It is these claims that had they been acknowledged by any of Plaintiff's previous attorneys, the clear evidence of embezzlement, thefts, misappropriations and all by Johnston and Johnston's attorneys would have been revealed and pursued by Plaintiff leading Plaintiff to

immediately seek rectification for those thefts and assistance to stop those thefts rather than the intentional and subversive deviation from the Omission in this Fraud and Conspiracy by these attorneys. It is these claims that clearly led to this fraud and conspiracy at mediation perpetrated and enhanced by Defendants participation as supposedly a distinguished and credentialed mediator. As such, Defendant misled Plaintiff with his Exhibit 3, Rules for Mediation and advertised credentials. By Bohreer & Zucker binding the business dispute to the divorce proceedings, Bohreer & Zucker and Evans of Koonsfuller claimed to have further blocked any more attempts by Johnston to remove assets; yet, Johnston continued to remove assets in 2015 to $900,000 without any attempt by said lawyers to block such an event. Instead, such lawyers delayed discovery for twenty days past mediation. The move to bind the claims with the divorce enhanced the conspiracy and fraud by claims from Evans and Bohreer & Zucker that they could not divorce me without my agreeing to sign a purported mediation agreement created for the sole purpose to protect Johnston, his attorneys, and what appears as an avenue for remuneration, an agreement devised and conspired with the assistance of the Defendant. Of even greater woeful and despicable action in binding the divorce and business issue lies in the fact that Plaintiff and her former husband had agreed on the divorce issues as well as seeing Johnston pay for his crimes and thefts associated with Asyntria. Yet, Defendant failed to follow his own mediation guidelines by continuing mediation without my former husband and as such without a complete representation; hence, Defendant further controlled the mediation as presumably Defendant knew that the former husband and Plaintiff would fight against Johnston and thus subvert Defendants and other present attorneys their control to ensure Plaintiff would sign anything so that they could alter the final printed agreement to relieve Johnston's attorneys from their liability for supporting, constructing, and executing via Johnston, the thefts of Plaintiff's shares

of stock, assets and all. And they did this as is seen from the various agreements including the first handwritten mediation agreement that did not include Eagles Klaw but was forged afterwards by those at mediation to ensure the incapacity of Plaintiff went unnoticeable such that the document looked legitimate but was not (Exhibit 2). This incapacity and forgery arose from the extensive and disgusting manipulation of plaintiff by highly-skilled and seasoned attorneys trained in such where the Defendant allowed the opposing attorney to leave during mediation to procure alcohol at a liquor store whilst Plaintiff's representation had been in another room for hours leaving Plaintiff isolated from representation, and then Defendant allowed the opposing attorney to pour not only one but two glasses of scotch to Plaintiff whilst Plaintiff's attorney still remained in another room. And even more exasperating lies in both opposing attorney and Defendant allowing Johnston, a professed psychopath who claimed to have drugged others before and has wrapped his unknowing partner in saran wrap, to slide the drink to Plaintiff with his hand over the drink as if he had dropped a drug into the drink. Plaintiff did not consider this at that time but did when she no longer could remember how she went from one room to the next and large chunks of time were missing, and when Plaintiff's fingers turned dark purple from lack of oxygen, an action and visual that triggered Bergman to lean over to Johnston, a man who would benefit from my demise, to ask if I was going to be okay. This action makes no sense unless the Defendant was fully aware that Johnston would drug me before he did so, and the Defendant suddenly became concerned that he pushed the boundary too far of what he could get away with under the guise of confidentiality. Unbeknownst to those at mediation, Plaintiff had taken Xanax out of fear of seeing Johnston, a man who threatened her, fired her without authority, withheld knowledge of infidelity, deleted files from her computer, isolated and verbally abused her, and other manipulative, cruel and fearful tactics. No one asked if I had taken

anything but they asked Johnston and used his response as a tactic to induce fear in Plaintiff and such action worked. Plaintiff existed in a total state of fear such that Plaintiff experienced what could only be called post-traumatic stress disorder at the 2016 mediation as Plaintiff required assistance to get out of her car, into the building and continual reassurance that she would not be left alone.

a. Plaintiff invokes her right for a trial by jury as outlined in the Texas Constitution and the United States Constitution. Plaintiff believes that the trier of fact will clearly see all evidence that Plaintiff holds to be judged by the jury to be valid evidence. Most all of Plaintiff's evidence comes from Bergman's friends, Bohreer & Zucker, who left significant documentation in Plaintiff's case files. Plaintiff requests the trier of fact to assess the validity of this evidence as such is clear. Any attempt at subverting or disagreeing with evidence only perpetrates this fraud and extends it into this court. As such Plaintiff requests judicial notice for the underlying claim as well as evidence revealed in the case with Bohreer & Zucker mentioned in this summary judgment by Defendant.

3. Plaintiff objects to and moves to strike the use of Exhibit 6, Plaintiff's Original Petition as Plaintiff did not have all facts from her case files, has amended this petition twice since then (Exhibit 9), and is amending this petition to address the new claims including conspiracy to Fraud on the Court. Defendants refer to the Original Petition in an attempt to divert from the extensive claims in the last amended petition and to give the appearance of a fractured claim that has been healed in subsequent amended petitions.

a. In addition, Plaintiff objects to Exhibit 8, the Mediation Agreement, as it is deceptive and misleading as this is not the first handwritten mediation agreement, was forged, and was later significantly altered in the printed version, a version that fulfilled the conspiracy by

releasing liability to the opposing attorneys and Johnston (Exhibit 2). Of interest lies in how Defendants as well as Bohreer & Zucker attempt to avoid the printed version of the agreement that they construed as part of the conspiracy as they are fully aware that the printed version serves to demonstrate the resolution of the fraud and conspiracy as derived in skirting the omission and hence fulfills the conspiracy for Fraud on the Court. Plaintiff will use this exhibit as well as the earlier handwritten mediation agreement and the printed version which is significantly different than the rest as her exhibits to demonstrate the forgery and intentional manipulation of the documents. The validity of the mediation agreement is not part of this suit and the validity is once again being used to divert from the omission.

4. Plaintiff objects and moves to strike Exhibit 5, Bergman's Affidavit, as invalid and self-serving under the claims of fraud and conspiracy, and especially Fraud on the Court. . In "McKnight v. Riddle & Brown, P.C., 877 S.W.2d 59(Tex. App. — Tyler 1994, writ denied), the court of appeals held that the affidavits were inadequate as summary judgment evidence because '[t]he very essence of a conspiracy is a secret intent of the co-conspirators…. The affidavits are, in essence, self-serving statements of interested parties of what they knew and intended…. in the context of a conspiracy….' 877 S.W.2d at 61." If such affidavits fail as being self-serving in a conspiracy, they are self-serving in all aspects. As such all such affidavits should be struck.

a. In addition, Plaintiff objects and moves to strike Exhibit 9, Zucker Memorandum purported to be factual and is not, and objects for the same reason to be self-serving in a conspiracy claim. Plaintiff refers to Exhibit 9, Zucker Memorandum as the "confession email" as this is how Plaintiff learned that Zucker knew and approved of the intoxicating of his client before signature of a very important document. Also, Exhibit 9 is hearsay as Zucker mentions what he heard from the Defendant and not what Zucker he heard; thus Zucker recounts an event

that he was not party. Plaintiff's Exhibit 3 shows the various versions of the "confession email." Plaintiff finds the use of the memorandum in a state of conspiracy a fraudulent interpretation to benefit and protect the conspired mediation and an insult to the court for who referred the case. This insult solidifies itself in the email from Zucker to Bohreer stating that Plaintiff's claims would be hidden from her and that they would allow "Bergman" to handle my claims at mediation. This email occurred on the same day that Plaintiff signed a contract with Bohreer & Zucker and paid $5000. As such Bohreer and Zucker fraudulently induced Plaintiff into a contract knowing per the above email that they never intended on representing the Plaintiff; hence and with this knowledge, the conclusion lies in the fact that Bohreer & Zucker never intended on representing Plaintiff and thus can be seen as working against Plaintiff at all times and in all dealings which has proven true (Exhibit 1). As such, Exhibit 9, Zucker Memorandum is false, misleading, and self-serving for the fraud and conspiracy, and can be said to have been fraudulently written in the same manner that the Plaintiff was fraudulently induced to contract with the same people for representation. If anything, this memorandum was written to threaten Plaintiff for defending herself and to attempt to force Plaintiff to sign the agreement. Of greatest interest is why Bohreer& Zucker did not defend and represent Plaintiff as Plaintiff requested and as was done by Plaintiff's last corporate lawyers who through their example of representation obtained bank records in a business theft case before going to mediation. Upon consideration and in the shadow of conspiracy and having possibly received remuneration for this fraud and conspiracy, Bohreer & Zucker had no choice but to block any attempt of Plaintiff to void the agreement as such agreement was obtained by Fraud on the Court. If Bohreer & Zucker and Defendant received remuneration for this conspiracy, they would be forced to give such money back to Johnston if they voided the agreement as I requested. Since Johnston committed a felony

level theft of embezzlement and other thefts, Johnston, known to hate lawyers, would threaten those who participated in this conspiracy to reveal their acceptance of remuneration for having thrown representation and the mediation in order to protect himself from jail. Johnston knew I would want the bank records and would see the extensive embezzlement and thefts and pursue him; hence, Johnston would threaten all of them. Thus, my refusal to sign the purported agreement and my fight against the abuse at mediation presented a quandary for those lawyers and Defendant, a more or less Catch-22. Damned if they do. Damned if they don't… unless those mentioned could bully and threaten Plaintiff into submission. I was their only "get out of jail free" card, and as such Plaintiff experienced unheard of abuse from these people including the threats in the hearsay Exhibit 9 memorandum that Plaintiff has multiple copies showing the input of others in writing this document (Exhibit 3), others who were not present at the mediation; thus not only is this hearsay but fabricated evidence for future protection used and sworn to as the truth.

b. Based on the emails, the malware from Bohreer & Zucker and the attempt of several lawyers to delete emails sent to Plaintiff from Outlook and all, they tried and failed. Not all programs effectively delete or recall emails. This memorandum is not different than the affidavit in a conspiracy as it is self-serving and fabricated hearsay, and as such is objected to in its use as a truthful document and moved to be stricken except that Plaintiff will use this in her exhibits as an example of the conspiracy and threats and not purported content.

5. a. Plaintiff objects and moves to strike Exhibit 10, Plaintiff's Original Petition as that petition was written in October 2017, is not the most current, and Plaintiff did not receive her case files for evidence until early 2018 upon which she amended the petition to address her claims without fracturing and in a clearer format. **(add second petition).**

b. Plaintiff objects to Defendants' statement that she reneged on the MSA as the agreement was built upon fraud and conspiracy and Fraud on the Court; thus any and all documentation from this mediation fails. "Fraud prevents mutual agreement to a contract because one party intentionally deceives another as to the nature and the consequences of a contract. It is the willful misrepresentation or concealment of a material fact of a contract, and it is designed to persuade another to enter into that contract. If a special relationship exists, such as that of attorney and client, nondisclosure of a material fact is fraud." Defendants, given representation by Zucker per email, failed to notify Plaintiff of the Omission, the embezzlements, thefts, and participation of attorneys giving me cause against them. "A lawyer may be held liable for defrauding his own client." Although Plaintiff may not be a client of Defendant by signed contract, Zucker gave representation to Defendant "to handle" and as such can be judged to have liability to Plaintiff similar to co-counsel as Bohreer & Zucker were to Sherri Evans in the beginning of representation of Plaintiff. Thus, Defendants' relationship to Plaintiff exceeds the standard of care normally seen with a mediator (Exhibit 10) and imposes liability for the egregious actions taken against Plaintiff at mediation and afterwards as Defendants apparently intentionally created an improper mediation for the sole purpose in fulfill the conspiracy to Fraud on the Court. See *Porter v. Kruegel*, 155 S.W. 174(1913) (lawyer alleged to have fraudulently colluded with adverse parties to obtain dismissal of the client's suit)". Therefore, the case rests upon the fraud, collusion, conspiracy, and conspiracy to Fraud on the Court and all with most evidence initially occurring prior to mediation; thus, stating my claims solely upon the agreement is an attempt once again to divert from the omission of the Defendants and to distract from the growing claims requiring further discovery.

c. A contract is subject to avoidance on the ground that it was induced by fraud. *Italian*

Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am., 341 S.W.3d 323, 331 (Tex. 2011); see also *Formosa Plastics Corp. USA v. Presidio Eng'rs & Contractors, Inc*., 960 S.W.2d 41, 46 (Tex. 1998) ("As a rule, a party is not bound by a contract procured by fraud."). "Fraud in factum is a type of fraud that occurs when misrepresentation causes one to enter into a transaction without accurately realizing the risks, duties, or obligations incurred. Fraud in factum occurs when a legal instrument actually executed differs from the one intended for execution by the person who executes it as s/he is induced to sign the instrument without reasonable opportunity to learn of its fraudulent character or essential terms." Since the contract is not valid, Plaintiff has nothing to reneg on.

6. a. Of great interest is the use by Defendants of Exhibit 11, Third Party defendants' First Amended Motion for Summary Judgment. With sufficient time and discovery, Plaintiff believes that she can prove that the summary judgment mentioned was possibly partially constructed by her divorce lawyer, Sherri Evans of Koonsfuller, who stated that she had a close tie with the judge and sway, or at the least, Evans relayed to Zucker to relay to Brady the family court guidelines that should get approval for the summary judgment and such was done via email and performed per the summary judgment document by Brady or Evans pretending to be Brady... not sure anymore who wrote what with the passing around of digital signatures confusing authoring; hence, the conspiracy solidifies drawing in the involvement of Defendant as Defendant made several phone calls with Evans, Zucker, Brady and all prior to the first summary judgment which failed.

b. Of interest lies in the phone call conversation with Plaintiff's new counsel at that time, Rodney Castille (Castille), just after the judge refused the first summary judgment. Castille said that the process was unusual as it appeared that Brady was shocked that the judge did not

approve the summary judgment as if Brady knew fully that the judge would approve it. Based on structure alone, the mediation agreement failed. Appropriate terms required for mediation agreements in family court were lacking due to the failure of Defendant. Zucker states the failure in Defendant adding the statement and justifies the error as Defendant not used to mediating in a family court setting. Brady's response follows and solidifies the input from Evans to Zucker and the relaying to Brady on how to win the summary judgment. Castille, an outsider to this conspiracy, was not aware of the conspiracy at this time and thus the judge was required to follow protocol. Also, Castille remained quiet for some time on the phone only to tell me that both Brady and Zucker were standing in front of him as if they needed to talk to him so he disconnected the call to talk to them. This confrontation by Brady and Zucker with Castille occurred immediately after the summary judgment failed.

c. And the summary judgment that failed should have voided the MSA based on structure alone according to Castille but did not. Why did the judge not void the MSA based on the structure which lacked the Family Law clause which allowed me to revoke the agreement and at that in a family law court with a family court judge? Did Evans actually have sway with this judge as she said and was able to prevent justice? What did the lawyers and Defendant fear would happen with the voiding of the MSA and Plaintiff's ability to pursue Johnston and the opposing attorneys who aided and abetted Johnston in his thefts? How could that hurt them? And why did such extensive effort go to ensure that plaintiff could not void the MSA? Why? If my lawyers were working for me and there was an error due to the Defendant failing to include the clause that "the agreement is not subject to revocation" thus allowing me to revoke; then why didn't Bohreer & Zucker, and the Defendant just void the agreement and start again. Better yet, why didn't the Defendant void the agreement based on my wanting the MSA voided due to the

manipulation and drugging of Plaintiff under the Defendants guidance as the Defendant had it in his own power to void the MSA as overseer of the mediation process and according to the mediation guidelines? What is worse than someone complaining over the corruption of a mediation process and at that the Defendant could have voided the agreement himself and have mediation again with no drugging or alcohol? Just how deeply involved in the conspiracy is the Defendant that voiding the agreement would somehow trigger something far worse than heeding justice? Could it be aiding and abetting in hiding the felony level theft of Johnston and the participation of his attorneys? Could it be something far more sinister than attempting to protect fellow lawyers who made a mistake? Remuneration? Something frightened them away from the court they are sworn to uphold. Plaintiff requires more discovery and summary judgment would prevent Plaintiff's right to a trial by jury on these growing claims.

d. Defendants' statement that the judge never ruled upon the summary judgment is true and was discussed earlier in the document. Of fact is that the judge never ruled on any of the multiple summary judgments over the following two years that cost the Plaintiff a great deal of money in legal fees, time, lost opportunities, lost wages, rectification of stolen assets and money, and all. At that and per par for Fraud on the Court, not only did the judge never rule on any of the summary judgements blocking any possible action of Plaintiff to regain the company and lost profits, the judge filed away all claims, unaddressed, with the filing of the divorce, and refused to open such claims on request per letter request uploaded to Harris County. Thus, Plaintiff lost her right to those claims all due to the conspiracy, fraud, and Fraud on the Court that occurred at mediation, participated by the Defendants, and continued thereafter in multiple phone calls amongst those at mediation.

e. Plaintiff objects to Defendants stating that Plaintiff did not lose anything with the

non-performance of the contract as has been shown in other cases. Plaintiff argues that this case is so very extraordinary and outside the norm such that it was the non-performance of the contract that caused the greatest loss for Plaintiff. The performance of the contract would have possibly entitled Plaintiff to some income, but the non-performance created and continues to create significant losses requiring further discovery to assess. Plaintiff lost everything including her company as she could not access income, dividends, opportunities and more, and as such appears planned by Defendants.

f. A second mediation was attempted in May of 2016 where not only my new lawyer, Castille was to represent me, but for some strange reason emails indicate that both Evans and Bohreer & Zucker would be at that mediation and they had already withdrawn the month before. Why would these lawyers who withdrew before the summary judgment be at a mediation between Johnston and myself after their withdrawal, and who were they representing? And why would they be allowed in this mediation without a client? Or were they representing themselves as having been caught in a conspiracy and fraud that they could not seal up because their ex-client failed to succumb to their threats and pressure? It is true that I was at my worst in all of my life when I met these conspirators so I am sure that I looked like "the baby lamb with a broken leg" led by the big wolf to the pack, but that is not usually me. That year in 2015, I had lost my 33 year marriage, my mother, my family, my shares of stock, my company and thought that I had breast cancer plus other stressors all within 6 months. I needed someone to trust and not only did my lawyers fail me but also the Defendant who purported to follow mediation guidelines and instead allowed me to be abused by the opposing attorneys without my counsel present and isolated me with a man whom I greatly feared and who apparently drugged me at mediation. Indeed Plaintiff experienced great harm, both monetarily, physically, and mentally for having

being subjected to an outrageous mediation from hell at the hands of the Defendant, a man with the power to control the outcome and actions within this mediation and had a duty to the Plaintiff to monitor the mediation without partiality or self-interest. Hence Plaintiff can show harm regardless of the non-performance of the contract as it is the mediation itself that created the harm, spawned a devious agreement, and started a fight to suppress it.

g. Whether Johnston would have agreed to a settlement more favorable is irrelevant as Plaintiff would have never agreed to settle with a thief such that Johnston's decision on accepting any contract means nothing. Instead, Plaintiff would have ensured Johnston would be prosecuted for his thefts, assets recovered from his thefts, and more. "Plaintiff relied on the defendant's nondisclosure; and the plaintiff was injured as a result of acting without that knowledge. Bright v. Addison, 171 S.W.3d 588, 599 (Tex. App.—Dallas 2005, pet. denied). SOURCE: Waco Court of Appeals - 10-10-00354-CV - 5/4/11". Such nondisclosure is the Omission in this collusion, conspiracy and conspiracy to Fraud on the Court. Plaintiff would have never agreed to anything with Johnston had the Omission been disclosed. Regardless and not withholding, the agreement is invalid based on contract law and as having been derived and occurred under the terms of fraud, conspiracy, and Fraud on the Court. A contract is subject to avoidance on the ground that it was induced by fraud. *Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am.*, 341 S.W.3d 323, 331 (Tex. 2011); see also *Formosa Plastics Corp. USA v. Presidio Eng'rs & Contractors, Inc.*, 960 S.W.2d 41, 46 (Tex. 1998) ("As a rule, a party is not bound by a contract procured by fraud."). "Fraud prevents mutual agreement to a contract because one party intentionally deceives another as to the nature and the consequences of a contract. It is the willful misrepresentation or concealment of a material fact of a contract, and it is designed to persuade another to enter into that contract. If a special relationship exists, such as

that of attorney and client, nondisclosure of a material fact is fraud." Defendants failed to notify Plaintiff of the Omission, the embezzlements, thefts, and participation of attorneys giving me cause against them. "A lawyer may be held liable for defrauding his own client. See *Porter v. Kruegel*, 155 S.W. 174(1913) (lawyer alleged to have fraudulently colluded with adverse parties to obtain dismissal of the client's suit)". Any discussion regarding the agreement or MSA lacks merit as all contracts are void in fraud as mentioned and cited earlier in this paper. Courts have held that a party may rescind a contract for fraud, incapacity, duress, undue influence, material breach in performance of a promise, or mistake, among other grounds. In order to rescind a contract for fraud, the wrongful intent of the deceptive party must be proven. See Exhibits 1, 2, 3, 4, 5, and 6 exhibits indicating fraudulent inducement to contract by Plaintiff's lawyer and friends to Defendant, and reference to Bergman to "handle" Plaintiff at mediation. Plaintiff believes that the trier of fact, jury, should be given the decision to determine the total losses incurred to Plaintiff and owed by Defendants. **A number of Texas courts have deemed expert evidence inadmissible because it did not assist the jurors. *See, e.g., GTE Southwest Inc. v. Bruce*, 998 S.W. 2d 605, 619-20 (Tex. 1999).**

7. a. Plaintiff objects and moves to strike Defendants' Exhibit 12, Certified Copy of Affidavit of Michael Johnston with attached Exhibits A-1, A-2, and A-3 as being self-serving in a conspiracy case and fraud case, and mostly as the exhibit has nothing to do with the lawsuit and thus distracts from the omission. In "*McKnight v. Riddle & Brown*, P.C., 877 S.W.2d 59(Tex. App. — Tyler 1994, writ denied), the court of appeals held that the affidavits were inadequate as summary judgment evidence because '[t]he very essence of a conspiracy is a secret intent of the co-conspirators…. The affidavits are, in essence, self-serving statements of interested parties of what they knew and intended…. in the context of a conspiracy….' 877

S.W.2d at 61."

b. Plaintiff further objects and moves to strike Exhibit A-1 as she does not remember this and recently found out that spoofing of text messages is possible (Exhibit 8). Johnston could have sent this text to himself knowing how I speak and what I would say as he has known me for over a decade. In addition, anything revolving around mediation steeped in conspiracy and fraud lacks merit and is negligible. Plaintiff objects and moves to strike as confusing to the jury as it distracts from the Omission and cause of the suit, and once again, in an attempt to divert from the true issue of conspiracy and fraud on the court that began months before these exhibits, such is brought up as has been in the last two years of litigation.

c. Defendants refer to Johnston's affidavit. Even though I object and move to strike all affidavits, how Johnston or anyone else would know how incapacitated Plaintiff was at the time she left the building based on Defendant's reference can only be determined through a blood test or breathalyzer and is the sole reason the police must have such tools to determine toxicity for a charge to stand; otherwise, all is subjective and very self-serving. Plus Plaintiff must have looked very bad for Defendant to ask Johnston if I was okay, and with the drugging. My fingers were purple, the room was very dark, and I did not know how I was getting from location to location. Plaintiff must have looked horrible. To say anything different is self-serving and a further conspiracy.

d. As for the "very powerful proof" that Defendants state they have, I do not see and is an attempt to appear to have some claim in Johnston's texts. Texts can be spoofed and since Plaintiff does not remember the first text much less how she got in her car, if she was ever on Highway 45 which would have been required, or how she sat in the chair at her home that night due to the abuse and drugging during mediation, Plaintiff objects and moves to strike this text.

e. Once again, texts and actions mean nothing in conspiracy and Fraud as all contracts are void in this environment. Thus, the "very powerful proof" in the texts is nothing but another attempt to distract from the true case which is conspiracy and fraud, not the mediation agreement. Yet, Defendants keep trying to go back to the mediation agreement in an attempt to deflect from the Omission. Plaintiff will amend her petition to assist in clarifying this problem for Defendants.

f. Although the mediation agreement distracts from the Omission and Plaintiff emphasizes these texts only distract from the omission and case, I will address the last two texts although I object and move to strike them all.

> According to Malkin, Craig, PhD of Harvard Medical School in "The Narcissist in the Conference Room", *Psychology Today*, paragraph 4 of how to deal with a narcissist, Dr. Malkin states, "Don't cross him... **a narcissist can act like a cornered animal if he or she feels threatened. Research shows that narcissists become aggressive when they feel… [a] threat**…" (https://www.psychologytoday.com/intl/articles/200601/field-guide-narcissism)

> "Put another way, psychopathy appears to be the biggest driver of destructive behavior, so it's the blend of psychopathy and narcissism — or psychopathic NPD, often called malignant narcissism — **which likely accounts for most bullying and violence** in people with Dark Tetrad traits." "In the last few decades, researchers have been measuring a cluster of traits ready-made to predict abuse — the Dark Tetrad (formerly Triad), a frankly exploitative, aggressive type marked by four traits: **narcissism**, best thought of, again, as the drive to feel special; **psychopathy**, a pattern of remorseless lies and manipulation; **Machiavellianism**, a cold, chess-playing approach to life and love; and finally, **sadism**, a troubling tendency to delight in the suffering of others. A quick glance at this cluster is enough to give anyone chills. But some of these traits are patently more dangerous than others." stated Dr. Craig Malkin in "This is What Everyone Should Know About Covert Abusers", *Psychology Today*, Feb 16, 2018.

> Also in "Here's how to stop an argument with a narcissist from

> spinning out of control" *Business Insider*, accessed Oct 27, 2018, (https://www.businessinsider.com/how-to-stop-argument-with-narcissist-2018-2) **suggests not to argue about "right" and "wrong" and instead try to empathize with their feelings**… What is really at the core of narcissists is an **instability** in their ability to feel and sustain feeling bigger, larger, smarter and more successful than everyone else which they need to feel stable. And just as Hamlet's mother said, "the lady doth protest too much," "the narcissist doth brag, scorn, talk down, primp and belittle too much" in order to continually prove to the world and themselves that they are larger than life. This is not to increase their self-esteem as much as it is to continually spackle the holes in their core that lead to a feeling of instability—and that, if not spackled, will lead to brittleness followed by fragmentation." "**Narcissistic rage occurs when that core instability is threatened and furthermore threatened to destabilize them even further. Not unlike a wounded animal being the most vicious** (because they think the next wound would kill them), narcissistic rage occurs when narcissists believe the next insult/assault to their grandiose based stability would shatter them."

g. Based on the above articles, Plaintiff, already in a state of extreme fear from the egregious mediation, would have protected herself from Johnston, a man who knows where she lives, knows the layout of her home, professed to Plaintiff to have no empathy, narcissistic, associates with a psychopathic television serial killer, already demonstrated a lack of boundaries or fear to cause harm in drugging and wrapping his partner in saran-wrap, already abused and bullied Plaintiff in numerous ways, and may or may not have been angry with the outcome of the mediation as Plaintiff could not remember large sections of the mediation and was misled as to what took place so Plaintiff would have protected herself from Johnston's potential rage by being nice whether in texts or in person until Plaintiff could assure the safety of herself and her children.

h. For Defendants to say that they have "very powerful proof" in these texts is to deny the right for women in abusive situations to fight by any means to protect themselves and

their children. Defendants have overstepped in this statement and should be held liable in any other legal action associated with their denial for women or anyone in an abusive relationship to protect themselves from dangerous men, and Defendants' summary judgement statement should stand as proof in any future allegation against them. Objection and move to strike texts included.

8. a. In paragraph 8, Plaintiff objects as Defendants are once again distracting from the conspiracy and fraud and placing emphasis on the mediation agreement which the validity is not part of the suit as the agreement has failed multiple summary judgments as discussed above. The jury will not be asked for whether the agreement is valid as that is not part of the suit and as such the agreement interpretation should be struck. Only the forgery claim relies upon the agreements and is a visual comparison of the three agreement versions and does not require professional interpretation. Therefore any use of texts or interpretations of the mediation agreement are distractions from the fraud, conspiracy and Omission as they have been for the last several years. Plaintiff objects to use of the affidavits and text messages as they distract from the Omission and will confuse the jury.

9. a. Defendant makes reference again to texts that Plaintiff sent to protect herself and children from Johnston. See answer to question 8. In addition, due to the conspiracy and fraud upon the plaintiff and mostly upon the court and judicial machinery as has been discussed in length, Defendants' use these texts as a method to distract from the true claim of fraud, conspiracy and more and Plaintiff does not seek to verify the validity of the contract of which Defendants are using the texts to impose.

10. a. Defendant's claim that they have no attorney-client relationship; however, in an email from Zucker to Bohreer, Zucker clearly states that he is giving Plaintiff's claims to Bergman[Defendant] to handle at mediation as if Defendant has become a co-counsel for

Plaintiff as mentioned earlier. This relationship of Defendant to Plaintiff appeared to have occurred at mediation as Zucker remained hidden in another room whilst Defendant conducted mediation without him.(Exhibit 3) Plaintiff was not aware of the fraudulent inducement to contract with Zucker, the preplanned failure of Zucker to represent Plaintiff, or the relationship of Defendant and Zucker per Defendant with such closeness that Defendant would take lead counsel for me at mediation or Defendant would continue to perpetrate the fraud and conspiracy already begun by Zucker on that very day this email was sent that assigned Defendant to me for mediation (Exhibit 1)**)**. Indeed, for Zucker to have made this comment and reference to the position of Defendant to me at mediation, Zucker would have had to have an intense conversation over my claims and all with Defendant prior to July 31st, 2015, several months before mediation, to make the statement on that day. Of greatest interest is why Frankfort, opposing attorney of whom I have possible claims, would contact Defendant after July 31st, 2015 appearing to suddenly have thought of Defendant for mediation **(**Exhibit 1.073) unless using Defendant was premeditated in a conspiracy to protect Frankfort, Brady, and Johnston. Indeed, Defendant's response to Frankfort's request occurred within seven minutes and without requesting any information as to the case or characters involved or potential conflicts (Exhibit 1.073). Defendant as a seasoned mediator and sitting chair of such would be expected to immediately request possible conflicts prior to accepting the mediation but did not. At that Defendant seemed to be surprised in his response email to the request that Frankfort thought of him as if knowing that Zucker had already contacted Defendant regarding mediation was to be kept hidden so that Frankfort looked like the first contact. **(**Exhibit 1.073) Why would that be? Otherwise, Frankfort would not have appeared to have just contacted Defendant as it so appears in the email thread.

b. Regardless of Defendant's denial of representation in his summary judgment, Zucker's email to Bohreer discussed the participation and responsibility of Defendant for the future mediation of which Defendant was to oversee and preside. In his position and contrary to his claims in a self-serving manner as is evident through this fraud and conspiracy, Defendant gave advice on a matter that he was very familiar and said so, and that was my responsibility as a signer on a business loan. He unequivocally stated that I did have responsibility as loan continuations always include the initial signers. In stating this, Plaintiff was confused over whether this was part of the agreement or should be. Defendant's credentials of experience confused me with this statement. At that time, Plaintiff did not know that Zucker had given my claims to handle to Defendant, and considering the way things turned out, Defendant would have been negligent at mediation to Plaintiff as her co-counsel as I did not have responsibility nor was I a signer any longer on that business loan. Herein lays another example of intentional manipulation to confuse the Plaintiff.

c. Defendant also gave his professional opinion over the legal abilities of Michelle Bohreer. Defendant stated that Bohreer was energetic but not smart and she did not know what she was talking about. The "talking about" refers to the claims that I had against the opposing attorneys for aiding and abetting Johnston in his theft of my shares of stock, assets and all. The memorandum for the mediation (Exhibit 1) from Zucker given to Bergman included these claims referencing the errors of the opposing attorneys such that Defendant intentionally lied to me during mediation about my having claims. I was unaware of this mediation memorandum until this year. The only reason for the Defendant to lie to me about these claims would be to control and manipulate mediation to ensure the perpetration of the fraud and conspiracy to protect the opposing attorneys and Johnston. Thus, Defendant perpetrated the Omission in this Fraud on the

Court by making such a statement as Plaintiff does have claims. Of note and indicative of the conspiracy and collusion, Defendant should **not** have known that I had claims against the opposing attorneys or any other claims not a part of the mediation much less be able to discuss any lack of them by dissing a female attorney who seemed knowledgeable as if female attorneys are not smart and thus created a male superiority impression. Plaintiff remembers this clearly as she was shocked by such a statement.

d. In creating an expectation for an impartial mediation and other claims via Defendants' own rules and credentials (Defendants' CV), Defendant created a fiduciary responsibility**.**

11. Defendant discusses causation, recovery and the MSA.

a. Plaintiff objects to Defendants distracting from the claims in this suit and focusing on the agreement. Defendants fail on both claims in this paragraph especially since the suit is about forgery conspiracy, fraud, Fraud on the court and all and has nothing to do with the validity of the agreement, the execution of the agreement or damages only related to the agreement. I will try to emphasize this again for the **Defendants, Plaintiff is not suing over the validity of the mediation agreement but for fraud, conspiracy DTPA and all.** The agreement itself failed multiple summary judgements and ended filed away by the clerk unaddressed and permanently blocked.

i. Defendant claims that there is no evidence that the MSA was ever enforced or performed as if such prevented Plaintiff from incurring any losses. In normal circumstances, the failure to enforce the contract could show lack of claims. However, the losses incurred from the fraud and conspiracy that protected the voiding of the MSA led to two years of additional litigation, multiple losses in revenue from business income and dividends, business

loss in opportunities, business assets stolen and relocated, and more. Had non-performance blocked Johnston's embezzlements, thefts, relocation of assets and all, then maybe Defendants could be justified in that statement, but such did not occur. And mostly, the enforcement or performance of the MSA is not relevant to this case other than the omission hidden in this conspiracy that lead to a fraudulent mediation and Plaintiff's extensive losses. See above discussion

ii. Defendants give Johnston some sort of choice in whether he would have agreed to a settlement more favorable to Plaintiff than she got in the MSA or from te October 30,2015 mediation. The truth is that Plaintiff would have never agreed to anything with clear evidence of @$59,000 in embezzlement, appearing to be a felony level embezzlement, by Johnston plus even more in thefts in other forms. Defendant knew of the thefts and Johnston's attorneys involvement and intentionally lied to Plaintiff during mediation stating that Bohreer did not know what she was talking about in reference to Johnston's attorneys liability. Further, the events would have been different had conspiracy and fraud on the court not existed. Plaintiff's legal representation for the 2016 mediation properly acquired the bank records showing embezzlement and theft prior to that mediation allowing me to make a clear and informed decision not to negotiate with a thief such as Johnston. Plus they protected me from abuse and drugging from the opposing attorneys and Johnston. Had Defendant not failed so greatly at the 2015 mediation, Plaintiff could have further pursued Johnston and his attorneys after the 2016 mediation and rectified the issue rather than exist in a limbo of falsely chasing an agreement permanently attached to the divorce and filed forever with it as the judge ensured, and thus fulfilling the standard Fraud on the Court pattern leaving the Omission to not be discovered until much later with the acquisition of my case files. The validity of the agreement is not at issue or

accessible. The claims that Plaintiff has against Defendants are and requires further discovery for justice to prevail.

12. a. Defendant seeks summary judgment on all theories of recovery. Defendants fail to negate any of the claims pleaded against them. As stated by the Dallas Court of Appeals, "We do not believe the legislature intended section 154.071(b)[of the Texas Civil Practice and remedies Code] to be used to enter a judgment on the merits of a cause of action without a party having the right to be confronted by the appropriate pleadings, *an opportunity to conduct discovery and assert defenses, or a chance to have the dispute determined by a judge or jury."Id*. at 632. Plaintiff will amend her petition to address each claim and details, and requires extensive time for discovery to do so.

PLAINTIFF ADDRESSING BERGMAN'S TRADITIONAL MOTION FOR SUMMARY JUDGMENT ON ALL OF PLAINTIFF'S CAUSES OF ACTION

A. Defendant asserts doctrine of estoppel by contract.

13. Defendant claims the doctrine of estoppel quoting

> 16. **Exclusion of Liability.** The Mediator is not a necessary or proper party to judicial proceedings related to this mediation. Neither mediator nor any law firm employing mediator shall be liable to any part or their attorney for any actor omission in connection with any mediation conducted under these Rules.

A couple of issues bar Defendant from using the Exclusion of Liability in this case as it can be said that the mediation failed to be conducted under the Rules quoted by Defendants; hence, the exclusion of liability failed by Defendants' own statements in paragraph 16 mentioned above leaving Defendants and those at mediation vulnerable to their abusive and conspired actions.

a. The mediator was NOT impartial due to the apparent conspiracy found in the

Zucker email giving Plaintiff's claims to Bergman to handle. The handling of Plaintiff by Defendants created a severely impartial mediation barring claims for exclusion of liability on its own. (Exhibit 1)

b. In addition, the failure in the mediation Rules occurred also in not all parties being present. Mediation continued "without" all parties present when Jody Meigs and his lawyer left mediation due to Jody not having the money to pay for the mediation. Of interest and possibly connected to Defendants and definitely a part of the conspiracy: on the day that Jody left mediation for lack of funds, an **irrevocable agreement** giving Jody funds was sitting with the Harris County Clerk, filed, dated and signed by Jody's attorney first, and Evans before that day giving Jody money for mediation; yet, Jody was never informed of this. Without Jody's presence, Plaintiff lost her sole support as Jody and Plaintiff agreed to seek righteousness against Johnston for his thefts and ensure that no agreement with Johnston prevailed as we intended on Johnston being imprisoned for his thefts. Plaintiff's lawyers were fully aware of this through various emails. **(**Exhibit 5**)** The convenience of Jody not knowing that he had money to pay for mediation and was forced to leave helped Defendants and those at mediation to further the conspiracy by minimizing conflict against Johnston, and furthering the conspiracy by isolating and manipulating Plaintiff to her demise.

c. In 16, Exclusion of Liability, Defendant does not explicitly state that fraud, conspiracy and conspiracy to Fraud on the Court or any other form of fraudulent inducement to contract is included in the exclusion. Plaintiff objects to such as broad, and contrary to contract terms and good faith dealings. Plaintiff wonders if Johnston had been successfully in killing Plaintiff after drugging her at mediation, would that exclude all liability for Defendant knowing and allowing alcohol and drugging of Plaintiff at mediation? Normal contract law excludes

validity on a contract under fraudulent and other claims; thus, Plaintiff justifiably believed and relied upon Mediation would occur as specified in the Defendants" Rules, in good faith, fair dealings, and without conspiracy.

d. The intentional failure to follow the Rules of Mediator Conduct and the Defendants' own rules, indicates an intentional material misrepresentation of future conduct. In this case, Plaintiff's lawyer and designated co-counsel, Defendant, a partial participant, should have warned me that when a party materially misrepresents future conduct, and the circumstances suggest that one could reasonably be expected to rely upon the misrepresentation, a claim for fraud in the inducement of a contract may be possible and as such they intended to do that. "A claim of fraud in the inducement requires the plaintiff to prove that: (1) the defendant made a material representation; (2) it was false; (3) the defendant either knew it was false or made it recklessly without knowledge of its truth; (4) the representation was made with the intent that the plaintiff would act upon it; and (5) the plaintiff did act, which caused the plaintiff to suffer damages. *Hi-Way Motor Co v Intl Harvester Co*, 398 Mich 330, 336; 247 NW2d 813 (1976). Of course, the plaintiff's reliance on the false representation must have been reasonable. *Nieves v Bell Indus, Inc*, 204 Mich App 459, 464; 517 NW2d 235 (1994). Such happened. Plaintiff had no reason to believe that Plaintiff's lawyers and those present at mediation including Defendant had entered mediation with a predetermined plan and outcome of conspiracy. But for the actions taken by Defendants and Plaintiff's attorneys and all at mediation including the fraud, conspiracy and all, Plaintiff would never sign or allowed Plaintiff's lawyer to sign for this purported and disgusting mediation solely to obstruct justice and fuel a conspiracy to protect Johnston and the opposing attorneys.

e. Thus, exclusion of liability fails as the mediation was not conducted under the

Rules by Defendants own failures to follow their rules, apparent representations, and fraud. Additional failure in Defendants Rules to be addressed later.

14. Plaintiff objects to all references to estoppel.

a. Defendant refers to Zucker as Plaintiff's legal representative in attempting to state that Plaintiff is bound by the agreement by virtue of her attorney's signature on the Rules for Mediation. Even so, the Rules were not followed according to 16. Exclusion of Liability, and thus liability becomes reality and potential for claims against all at mediation including Defendants remains viable.

b. What Defendant fails to mention in citing case law is that the "agency relationship" with Zucker extends to Defendant (Exhibit 1) and forms a conspiracy involving Defendant and opening up fraudulent inducement to contract unbeknownst to Plaintiff and further defines the lack of impartiality demanded of Defendant.

15. Again, Plaintiff objects to Defendants' claims for estoppel.

a. Defendant attempts to claim estoppel by contract as if to state that such a position would prejudice Defendant. Plaintiff objects to all claims of estoppel. Claiming estoppel by contract is self-serving by Defendant as an affidavit in a conspiracy. Such was referenced earlier. Defendant cites multiple cases where a party is bound to a contract but fails to mention that this is a service contract unlike the contracts cited in the cases that he mentions. In those situations, a party would have an opportunity to investigate the land or lease, but such cannot occur in a service that does not exist until it is being performed. Hence, reference fails.

b. Defendants use a definition of estoppel sounding similar to a no-reliance clause preventing pursuit of any claims or actions. "In *Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of America*, 341 S.W.3d 323 (Tex.2011): Italian Cowboy makes clear that a standard merger

clause, unaccompanied by specific no reliance language is not sufficient to defeat a fraud claim as a matter of law. Disclaimers of reliance must be specific – it must be expressly discussed and not assumed. A 'no representation other than those contained herein' in conjunction with "this is the entire agreement" does not bar fraud claims. The Court said that merely saying there were no representations made was not the equivalent of disclaiming reliance on any representations made." *See id.* at 336." Prudential argued that the language of the lease clearly stated that no representations had been made and therefore Italian Cowboy had impliedly agreed not to rely on any external representations. *Id.* at 334. The Court found this argument unpersuasive and noted that parties must use "clear and unequivocal language" to disclaim reliance. Plaintiff relied upon Defendants for an impartial mediation as dictated by the Rules. Nothing was mentioned that Plaintiff could not pursue on standard contract claims for fraud and all or Plaintiff would not have allowed Zucker to sign.

16. Plaintiff objects to Defendant's claim that the doctrine of estoppel applies in a condition of premeditated fraudulent inducement to contract at mediation as discussed above. Plaintiff requests all recoveries as allowed by law and judgment by a trier of fact, jury, to assess all claims and validity of all emails and information obtained by Plaintiff.

PLAINTIFF RESPONSE TO DEFENDANTS' TRADITIONAL MOTION FOR SUMMARY JUDGMENT AS TO THE NEGLIGENCE AND BREACH OF FIDUCIARY DUTY CAUSES OF ACTION.

A. Defendant states that Defendant and Plaintiff did not have an attorney-client relations and believes he is entitled to summary judgment. Plaintiff overall objects as she is still obtaining discovery and requires time for justice.

17. a. Plaintiff objects to whether an attorney-client relationship existed per the email from Zucker giving Defendant my claims to handle as if Defendant became a co-counsel.

(EMAIL). The only other reason for Zucker to give Defendant my claims would be to further a fraud and conspiracy to Fraud on the Court for Defendant to manipulate and abuse the Plaintiff at mediation in order to obtain the goals of the conspiracy and Zucker agreed to set aside representing me for that to happen.

b. Plaintiff objects to denial of Defendant breaching a standard of care as a mediator, as a certain level of care is expected from the mediator in order to ensure an impartial mediation according to the Rules of mediation and Mediator's Code (Exhibit 10). Defendant failed on multiple counts to be further addressed with discovery and as mentioned earlier.

c. Plaintiff objects to Defendants'Exhibits 2, 3 4, and 5 as self-serving in a claim of fraud and conspiracy, and the use of such as a method to validate Defendants freedom from liability and a right to conduct a mediation under fraud, conspiracy and conspiracy to Fraud on the Court without ramifications for such action.

d. "Moreover, when a mediator's conduct lapses into the practice of law, specific legal threats arise even for attorney-mediators. For example, under the Rules of Professional Conduct for lawyers, a lawyer-mediator is prohibited from offering any of the parties "legal advice" on the theory that such a service "is a function of the lawyer who is representing the client." Defendant offered "legal advice" twice.

e. "Loyalty is central to both mediation and lawyering. Most visions of mediator ethics hold that a mediator owes a duty of loyalty either to all of the parties (even though their interests are likely to be in conflict) or to none of the parties individually (owing loyalty instead to a broad conception of "the mediation process"). An attorney holds a duty of loyalty to an individual client and is forbidden from owing this duty of loyalty simultaneously to others who hold interests in conflict with the first client. Under the conventional conception of loyal

representation within an adversarial framework, a lawyer cannot provide advice to one client to the detriment of another and, therefore, cannot provide legal advice to two parties on opposite sides of a dispute. In this regard, loyalty concerns, rather than competence concerns, may restrict attorneys from engaging in behaviors that would otherwise meet legal ethical standards. Therefore, while an attorney-mediator does not risk… [certain] sanctions, engaging in the practice of law may nonetheless run afoul of ethical constraints."

f. "Whether a mediator is licensed to practice law, the intersection of the practices of law and mediation may expose him or her to legal action."

g. "Fraud….. In narrow circumstances, a mediator's statements to one or more of the parties may expose the mediator to civil liability under a common law fraud claim. A mediator commits fraud if the mediator knowingly misrepresents a material fact and a mediation party reasonably relies on that misrepresentation to his or her detriment. Most mediators' communications with parties raise no concern of fraud. Most mediators would not knowingly misrepresent information to the disputants [except in this conspiracy case]. Furthermore, most of the topics mediators discuss, while potentially important to creating a productive negotiation dynamic, are not "material" in the sense demanded to constitute fraud. Still, certain mediator conduct may create the potential for liability under common law fraud."

h. "A mediator's misrepresentation creates a risk of fraud only if the subject of the misrepresentation is material to the topic of the mediation. A mediator who knowingly, falsely compliments a participant's new outfit, therefore, faces no risk of a subsequent fraud action, even if the outfit is later proven to have been objectively unworthy of the compliment. The statement is immaterial for purposes of fraud, both because a dispute is unlikely to turn on the quality of a disputant's attire and because the statement represents only the mediator's opinion.

In all but the most extraordinary cases, statements of opinion cannot constitute fraud. Facts alleged to underlie statements of opinion, however, can easily be material to a dispute. For example, a mediator who merely tells one party, "I think this is a fair settlement offer," runs little risk of a subsequent complaint in which the party later accuses the mediator of fraud for having shared the opinion."

i. "Certain exceptions exist to the general rule that misrepresentations of law are not actionable fraud. Thus, a party having superior knowledge, who takes advantage of another's ignorance of the law to deceive him by studied concealment or misrepresentation, can be held responsible per *New Process Steel Corp. v. Steel Corp*., 703 S.W.2d 209, 214 (Tex.App.~Houston (1st Dist.i 1985, writ refd n.Le.); *Spoljaric v. Percival Tours, Inc.*, 708 S.W.2d 432, 434 (Tex. 1986) ("A promise to do an act in the future is actionable fraud when made with the intention, design and purpose of deceiving, and with no intention of performing the act.).

ii. "In addition, if a party intends a representation of law to have the effect of fact and it is understood as a factual statement, it is actionable. Intent is a fact question which must usually be inferred from circumstantial evidence, and "slight circumstantial evidence of fraud, when considered with the breach of promise to perform, is sufficient to support a finding of fraudulent intent." Such is found here.

iii. "A party who is in a fiduciary or confidential relationship may also be liable for misrepresentations of law" as seen in *Process Steel*, 70S S.W.2d at 435. 5pJC 105.3B

iv. "Fraud based on a promise with intent not to perform analytically thus closely resembles fraudulent inducement. The Texas Pattern Jury Charge provides that a "misrepresentation" may be "a promise of future performance made with an ntent not to perform

as promised." Absent a fiduciary or confidential relationship, ordinarily there is no duty to disclose. However, when the law imposes a duty to speak, silence may be actionable as a positive misrepresentation of existing facts.

j. "Reliance is an element of fraud by silence or omission. The pertinent Texas Pattern Jury Charge provides that, with respect to concealment or failure to disclose, fraud occurs when:

i.(I)a party conceals or fails to disclose a material fact within the knowledge of that party,

ii.(2) the party knows that the other party is ignorant of the fact and does not have an equal opportunity to discover the truth,

iii.(3) the party intends to induce the other party to take some action by concealing or failing to disclose the fact, and

iv.(4) the other party suffers injury as a result of acting without knowledge of the undisclosed fact."

v.Schlumberger Tech. Corp. v. Swanson, 959 S.W.2d 171, 181 (Tex. 1997); Castilo v. Neely's TBA Dealer Supply, 776 S.W.2d 290, 295-96 (Tex.App.-Houston (lst Dist.) 19S9, writ denied); New Process Steel Corp., 703 S.W.2d at 214; RESTATEMENT (SECOND) OF TORTS § 551 (1977). Schlumberger Tech., 959 S.W.2d at IS1.

k. Proof of Plaintiffs reliance on the defendant's misrepresentation or non-disclosure when there is a duty to disclose is a necessary element of a fraud case and occurred.

18. Defendant stated elements necessary to recover on negligence. Defendant owed a duty to a fair and impartial mediation as established by the mediation rules; defendant breached those rules through fraud and conspiracy; the breach caused Plaintiff to incur additional expenses in

fighting against MSA, lost assets from Johnston's thefts and more. In addition, Defendant was negligent in not voiding the document upon knowledge of Plaintiff's condition at mediation, Plaintiff's request to revoke the agreement, and the lack of appropriate wording in the contract that allowed the Plaintiff to revoke the agreement per Family law standards of mediation as the mediation occurred out of a family court. Additional Plaintiff objects to any attempt to divert from Defendants negligence and Defendant failed to be a neutral mediator when he agreed to represent Plaintiff's claims at mediation per the Zucker email. (Exhibit 1)

19. Plaintiff objects to the exhibits as above and repeats all said prior. Contrary to Defendant's claims that "Bergman was, as mediator, a neutral intermediary and was not allowed to and would not act as an advocate for or provide legal advice to any part", he did. Defendant apparently did have a relationship per Zucker's email.

PLAINTIFF'S RESPONSE TO DEFENDANT

20. Breach the standard of care….. Like Drapkin, mediators operate without the explicit authority to impose outcomes on the participants. Nevertheless, mediators' actions can have significant impacts on the parties. Disputants can enter mediations in fragile emotional states as Plaintiff. Mediators' practices often encourage the parties to develop trust in the mediator, and some practices even encourage a degree of deference. In such a context, a mediator who recklessly disregards the psychological impacts of his or her mediation conduct risks creating actionable emotional distress. Due to the 2015 mediation and unknown to Plaintiff until the 2016 mediation, Plaintiff could not get out of her car or attend the 2016 mediation without the assistance of her attorney. Plaintiff just could not move and has never experienced such a feeling nor was she capable of understanding this at that time. **Standard of Care can be found in the Rules of Conduct of Mediators…**

21. To recover on a claim of negligence… not from an attorney….A mediator who negligently engages in the practice of law faces not only the kinds of complaints described in the section immediately above, but also the prospect of a professional negligence or legal malpractice suit. A legal malpractice action against a mediator has fundamental requirements no different from those of any other negligence case. A plaintiff in a legal malpractice case must demonstrate that the attorney owed a duty of care, that the attorney breached the duty of care, and that the plaintiff suffered injury proximately caused by the attorney's breach of duty. The threat of legal malpractice applies equally to attorney-mediators and non-attorney-mediators whose behavior constitutes the practice of law. Attorney-mediators and non-attorney-mediators will be judged against the same standards of behavior when assessing an allegation of legal malpractice"

22. Attorney-client agreement. Although not written as such, the email from Zucker to Bohreer addressing giving Plaintiff's claims to Bergman lends confusion as to Defendant acting as counsel in mediation. Of course, knowing that the mediation led to incredible abuse, assault, fraud, forgery and drugging at mediation, Plaintiff feels Defendant failed as legal representation and could have been considered to have been given Plaintiff's claims to subvert justice and mediation to uphold the conspiracy unfolding as evidence unfolds.

23. I am sure that a jury would disagree as I do with Defendants statement that "no special relationship" existed between Plaintiff and Defendant. Plaintiff may not have been aware, but based on growing evidence, Defendant's relationship and position in the conspiracy lends itself to a very unique relationship placing Plaintiff into a victim role as highly-skilled and powerful attorneys constructed an outcome against Plaintiff and for Johnston and opposing attorneys.

24. Attorney-client relationships.

a. "Regardless of the precise scope of a mediator's duties to clients, however, if a mediator undertakes to perform services (including legal services), the mediator at least owes a duty of ordinary care with respect to those services. Without answering, therefore, the question of whether a mediator owes a duty of loyalty to a particular client, the mediator owes at least a duty not to provide negligent legal services to the parties." Thus the failure in neutrality creates a failure in duty.

25. Plaintiff would argue that although Defendants quote **15. Representation by counsel**, in fact Plaintiff did not have counsel. In light of the new evidence that Bohreer & Zucker accepted money and signed a contract with Plaintiff as her representative, and on the same day decided not to represent me by deciding in that email to hide my claims against Johnston and the opposing attorneys and let the Defendant handle all at mediation was the day Bohreer & Zucker fraudulently induced me to contract and all with the reference to Defendant to handle all. Thus the elements of fraud and conspiracy preclude any determinations.

26. The mediation sign-in record fails to acknowledge the predetermined conspiracy and takes advantage of an individual at a lesser understanding of contract law. Thus, fraud and conspiracy to Fraud on the Court invalidates all.

27. "A mediator making false public statements about his or her credentials may also be subject to criminal charges. Some jurisdictions protect against false advertising through their general consumer protection statutes, while others have adopted specific false advertising statutes. Even if a mediator's false advertising produces no discernable economic injury, a risk of criminal sanction exists. In most circumstances, violations amount only to criminal misdemeanors, carrying a theoretical possibility of imprisonment, but more likely exposing the mediator to the possibility of a fine or an injunction against further use of the false advertising."

a. the Model Standards of Conduct for Mediators provide that a mediator may "make reference to meeting state, national, or private organization qualifications only if the entity referred to has a procedure for qualifying mediators and the mediator has been duly granted the requisite status." Some programs go even further, prohibiting mediators from identifying themselves as "certified." Whether a mediator's advertisement creates grounds for a civil or criminal complaint, a mediator may nonetheless face the prospect of sanctions for failing to uphold a program's advertising standards."

b. "All jurisdictions provide for common law, tort-based claims against people who inflict emotional distress on others under certain circumstances. The most common construction of the tort of intentional infliction of emotional distress requires a plaintiff to demonstrate that the mediator intentionally or recklessly engaged in extreme or outrageous conduct, causing emotional distress in the plaintiff." **(**Exhibit 3) Jurisdictions vary in the evidence required to demonstrate emotional distress. Some jurisdictions also recognize claims sounding in negligence rather than intentional tort. In most circumstances, however, a plaintiff must demonstrate that the mediator intentionally or recklessly inflicted the distress. Fortunately, few imaginable mediator behaviors are sufficiently outrageous to satisfy the elements of the tort of infliction of emotional distress.

c. False misleading deceptive act….Mitchell Mediator's website touts his mediation services as "expert." In part, it says, "Over 1,000 cases of experience. Certified and sanctioned by the State and by prominent national mediation organizations." Mitchell is a former judge who presided over more than a thousand civil cases during his years on the bench. He has formally mediated, however, only a few dozen cases. Furthermore, neither the state nor the national mediation organizations to which Mitchell belongs certifies or sanctions mediators. Mitchell is

simply a member of the mediation rosters each body maintains."

d. "As with any service provider, a mediator who holds him or herself out to the public in a false manner risks sanction from a number of sources. The mediator may be civilly liable to any party induced to mediate based on the mediator's false assertions. Furthermore, consumer protection statutes may create a risk of increased damage awards against mediators. False advertising carries criminal penalties in some jurisdictions, and many referral programs and voluntary associations restrict the information their members may include in advertisements. For decades, many professions discouraged or even prohibited professionals from advertising their services out of a fear of deception. While professionals are now generally permitted to engage in advertising, professional associations and state governments continue to impose restrictions on the content of professionals' public statements. Without engaging in the debate regarding mediation's status as a profession or as a practice, it suffices to note that while many mediators engage in robust advertising, a number of sources restrict or govern those advertising practices"

e. Breach of contract: "Beyond the prospect of programmatic or organizational sanctions, a mediator faces the possibility of civil liability if he or she fails to disclose a conflict of interest. In some circumstances, failure to disclose a potential conflict of interest could amount to a breach of an express contractual term. Using a variety of language, many mediation contracts contain provisions assuring the parties of the mediator's freedom from pre-existing bias with regard to the parties. Mediation contracts commonly contain references to the mediator as "neutral," "impartial," "unbiased," "fair," or "even-handed." Each of these terms is subject to considerable variation in interpretation. Nevertheless, **a mediator who stands to benefit financially from terms of the agreement that favor one side over the other would be hard-**

pressed to defend his or her status as unbiased or impartial.

f. Even in contracts lacking such express promises, impartiality may be implied as a term of the mediation contract. “

g. **A mediator faces significant liability for failure to disclose a conflict of interest** only if the mediator’s bias led him or her to take actions that resulted in injury to a mediation party.

h. Plaintiff would not have chosen this mediator had I known about the conflict of interest. Because of the conflict of interest, the mediator caused the case to settle on terms that were less favorable to me than the terms would have been under the facilitation of an unbiased mediator.” “Proving each of the elements in either of these circumstances poses very considerable challenges to the prospective plaintiff. In many regards, the analyses underlying any such claim would resemble the difficult-but-not-impossible demands of adjudicating the “case within a case” in instances of legal malpractice. Therefore, civil liability for failure to disclose conflicts of interest is likely to exist only in particularly egregious or unfortunate circumstances.”

i. ‘However, a mediator who describes a mediation process with specificity and then fails to implement that process risks civil liability for breach of contract.’

j. ‘Instead, most constructions of mediator ethics examine the mediator’s obligations to assure the propriety of the process leading to the mediation outcome. In simplistic terms, a mediator is responsible only to assure that the parties’ participation in the mediation is voluntary, and that any outcome is the product of an autonomous and informed decision.’

k. Plaintiff objects to the use of the mediation sign-in record as it implies entering a contract freely when in actuality Defendant and Zucker, who signed the agreement, conspired to control and manipulate the mediation to their own self-serving desires as evidenced in the email

giving my claims to the Defendant by Zucker and the various emails indicating Zucker contracted with Plaintiff with no intention of representing The Mediation Sign-In record is similar to the affidavits in a conspiracy as self-serving and improper to use.

28. Defendants plead that the doctrine of estoppel and its application to the Rules for Mediation precludes Plaintiff from bringing any action against Defendant. Defendant became involved in the conspiracy prior to the 2015 mediation and thus the doctrine of estoppel does not apply as such had not yet been signed and if it had been signed would be voided under fraud and conspiracy anyway. Defendant became involved at the beginning of this email thread, and based on the seven minute reply, Defendant became involved much sooner. **(email)** Plaintiff was not represented by counsel as is evident in fraudulent inducement to contract. See multiple discussions prior to number 27 over estoppel. Plaintiff objects to the citations to be bound per earlier discussion and case law.

a. Defendant fails to note that the mediation agreement could be revoked due to his own oversight by not including the statement that the agreement could not be revoked. Plaintiff revoked the agreement due to incapacitation, abuse, assault, forgery and manipulation for Defendant allowing the opposing attorney to leave to get alcohol, pour the alcohol in the glass provided by Defendant, and then allow Plaintiff's opponent to slide the glass to her with his hand over the glass of which Plaintiff, thus drugging Plaintiff, could no longer remember how she went from room to room. Plaintiff does have claims against Defendant for negligence and breach and will prove such to a trier of fact, jury. Plaintiff requests that the court deny summary judgment and allow the plaintiff to purse as growing evidence implies a much more sinister situation among Defendant and other lawyers at mediation and to do so in the name of justice.

DENIAL OF NO-EVIDENCE MOTION FOR SUMMARY JUDGMENT

29. The purpose of the summary judgment procedure is to eliminate patently unmeritorious claims and untenable defenses. *City of Houston v. Clear Creek Basin Autho.*, 589S/W/2d 671.678 n.5 (Tex. 1979) Summary judgment is proper when the movant establishes there is *no genuine issue of material fact* and movant is entitled to judgment as a matter of law. TEX. R. CIV.P. 166a(c) *Swilley v. Hughes,* 488 S.W.2d 64, 67 (Tex. 1972). More discovery required.

30. Evidence *favorable* to the nonmovant *is to be taken as true* in deciding whether a fact issue exists: reasonable *inferences* are indulged and *any doubts* are resolved *in favor of the nonmovant*. *Limestone Prods. Distrib., Inc v. McNamara*, 71 S.W.3d 308, 311 (Tex. 2002). The summary judgment *must* stand or fall on the grounds presented in the motion for summary judgment. *Science Spectrum, Inc. v. Martinez*, 941 S.W.2d 910, 912 (Tex. 1997). "A court cannot grant summary judgment on grounds that were not presented." See *Johnston v. Brewer & Pritchard, P.C.*, 73 S.W.3d 193, 204 (Tex. 2002).

31. *Moore v. K Mart Corp*., 981 S.W.2d 266 (Tex. App.-San Antonio 1998, pet. denied). The court seized the opportunity to lay out the meaning of the "no evidence" standard in some detail: "A no-evidence summary judgment is essentially a pre-trial directed verdict," and we apply the same legal sufficiency standard in reviewing a no-evidence summary judgment as we apply in reviewing a directed verdict. "Judge David Hittner and Lynne Liberato, No-Evidence Summary Judgments Under the New Rule, in STATE BAR OF TEXAS PROF. DEV. PROGRAM, 20 ADVANCED CIVIL TRIAL COURSE D, D-5 (1997): We review the evidence in the light most favorable to the respondent against whom the no-evidence summary judgment was rendered, disregarding all contrary evidence and inferences. . . . A no-evidence summary judgment is improperly granted if the respondent brings forth more than a scintilla of probative

evidence to raise a genuine issue of material fact. . . . Less than a scintilla exists when the evidence is "so weak as to do no more than create a mere surmise or suspicion" of a fact. . . . More than a scintilla of evidence exists when the evidence "rises to a level that would enable reasonable and fair-minded people to differ in their conclusions." In Plaintiff's attempt to estimate a jury's response of regular lay people without using an expert witness to explain, all lay people expressed shocked as to events and acknowledged negligence without even reading the guidelines for lawyers or mediators. The general population acknowledge lawyers lie and the Gallop ranks lawyers at the bottom while pharmacists such as Plaintiff rank #2 by Gallop as being the most honest and trusted profession. As such, Plaintiff believes that her truthful statements will be accepted by the trier of fact, jury, and Plaintiff's claims to the jury for decision are believable and offer more than a scintilla of evidence in all claims, duty, breach, cause and damages.

32. Claim for negligence…… A mediation party seeking to establish a legal malpractice claim against a mediator in either of the contexts faces the prospect of litigation regarding what is sometimes called the "case within a case." Litigation over what would have happened but for the conduct in question demands considerable speculation--more than some courts will tolerate. Nevertheless, a party who can demonstrate one of these two types of injuries has a solid foundation from which to mount a professional negligence claim against a mediator. Plaintiff has such and is in the process of requesting discovery and addressing any and all claims including evidence already included in this document. Plaintiff needs further time to prove all aspects of all elements for all causes.

33. Plaintiff has already discussed in this paper the duty that Defendant owes Plaintiff and the significant losses incurred due to the failure, fraud, and conspiracy of Defendant initially

portrayed as just a breach but has evolved to be far more sinister and requires more discovery time.

34. Plaintiff's claim for negligent misrepresentation indicates a severe failure in reasonable care and competence, and relied upon Defendant to Plaintiff's demise. Plaintiff has shown cause for those losses as is evident in excessive expenses, loss of company, legal fees and all. Plaintiff is still working on discovery as she learns how to request it. Plaintiff will rely upon the trier of fact, jury, to determine the evidence and valid claims for negligent misrepresentation as discussed in detail in this document. Plaintiff objects to the statement that no evidence has been offered as Plaintiff has just begun discovery and such a statement appears as an attempt to deny Plaintiff her right to a jury and discovery.

35. The entire document evidences Plaintiff's cause of action for common law fraud. In addition, Plaintiff believes that she has evidence of conspiracy to Fraud on the Court, and as such will require further time and discovery as justice requires. Further evidence will be made available in the amended petition. Damages have been discussed and are not limited but growing as further evidence demonstrates the failures of Defendant.

36. DTPA…. "In addition to facing private civil lawsuits for compensatory damages, a mediator who improperly advertises his or her credentials or services may also face the prospect of private actions under consumer protection laws. Some state consumer protection laws provide an injured party with treble damages, if he or she can show that a service provider willfully or knowingly engaged in deceptive practices." "Even if the consumer suffered no monetary injury, he or she may still obtain an injunction against the mediator from continuing to advertise falsely. Consumer protection laws, therefore, may expand a mediator's exposure to civil liability beyond that stemming from simple fraudulent inducement." (Moffitt, Michael.

"Ten Ways to Get Sued: A Guide for Mediators" (8 Harv. Negot. L. Rev. 81 (2003)). In a consumer transaction, a seller must be concerned with claims where no reliance at all is required. "For example, the Texas Deceptive Trade Practices Act only requires the consumer to prove that the false representation was the producing cause of the alleged injury and no reliance must be demonstrated." See *Prudential Ins. Co. of America v. Jefferson Assocs., Ltd*., 896 S.W.2d 156, 161 (Tex. 1995). In this situation and in addition, fraud and conspiracy form the basis for this mediation and events leading up to mediation. Plaintiff included evidence of false and misleading statements to support the violation of the DTPA in Defendants representation to a fair and neutral mediation. Plaintiff's expectations based on such advertising failed and Plaintiff incurred significant loss depending on the representation made by Defendant. Further discovery is required to address these claims.

37. Defendant not only participated in false, misleading or deceptive acts but appears to have spearheaded conspiracy to Fraud on the Court. By allowing the outrageous actions in mediation to allow the procurement of alcohol by opposing counsel whilst Plaintiff did not have representation, then allow the intoxicating of Plaintiff all prior to signatures is only the beginning of the Defendant's ability to commit an unconscionable act. Further discover and amending the petition required.

38. Plaintiff demonstrated breach of contract in the failure to adhere to the performance expected and promised by Defendant. Such evidence is noted and further discovery required. Circumstances surrounding the failure in defendant in regards to the structure of the MSA and other claims discussed earlier. Plaintiff has evidence and is working to fulfill discovery to acquire further evidence and amend the petition to address such.

39. Furthering the issue of Fraud (professional negligence):

a. Rule 3.3 "provides that 'a lawyer shall not knowingly… make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer"

b. Hague pg 732, "an examination of the offender and his duties is important because…even the rules of professional conduct may give rise to a fraud-on-the-court claim, even if those violations were not specifically directed to the court itself".

c. *H. K. Porter Co. v Goodyear Tire & Rubber Co*., 536 F.2d 1115, 1119 (6th Cir. 1976) **states that 'since attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court'**

d. *Rozier v. Ford Motor co*., 573 F.2d 1332, 1338 (5th Cir. 1978) (emphasis added) (quoting *England v. Doyle*, 281 F.2d 304, 309 (9th Cir 1960) states that an action for fraud on the court is available only when the movant can show an 'unconscionable plan or scheme' to improperly influence the court' decision"

e. *Alexander v. Robertson*, 882 F.2d 421, 424 (9th Cir. 1989) (citing *Kupferman v. Consol, Rsearch & Mfg. Corp*., 456 F.2d 1072, 1079 (2d Cir. 1972)) holds that "an attorney might commit fraud upon the court by instituting an action 'to which he knew [or should have known] there was a complete defense'

f. *Hazel-Atlas Glass Co. v. Hartford-Empire Co*., 322 U.S. 238, 246, 248 (1944), the **Supreme Court stated that 'the public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud'**. Also, "equitable relief against fraudulent judgments is not a statutory creation. It is a judicially devised remedy fashioned to relieve hardships which, from time to time arise from a hard and fast adherence to another court-made rule, the general rule that judgments should not be

disturbed after the term of their entry has expired. Created to avert the evils of archaic rigidity, this equitable procedure has always been characterized by flexibility which enables it to meet new situations which demand equitable intervention, and to accord all the relief necessary to correct the particular injustices involved in these situations

g. Hague p. 742, '**thus, cheaters are prospering under the judicial system, especially against vulnerable victims that lack both the skill and knowledge to adequately prepare a defense or thwart the abusive conduct before an unfavorable judgment is rendered" or left in limbo, unaddressed. Rule 60(d)(3)allows a court to set judgments secured by fraud on the court.**

40. Thus, Defendants summary judgment fails and Plaintiff requests all money paid from July 31st, 2015 onward to be reimbursed back with interest, all expenses associated with mediation reimbursed, all legal fees paid in association with the claims, all losses incurred with the result of Plaintiff's claims forever bound and filed away with the divorce decree. In addition with this evidence, any and all losses are the direct result of the failure to provide a fair and impartial mediation wrought with conspiracy and fraud. Plaintiff deserves judgment against Defendants for all claims and rewards for all damages including loss of company and associated losses, treble damages for gross negligence, reimbursement for all legal expenses and all. An expert witness will not be necessary as this evidence is clear to any lay person. Any focus solely on the mediation agreement that failed multiple summary judgments and several attempts to sever from the divorce or the lack of designation of expert witnesses is an attempt to divert from the true issues of negligence, fraud, and all claims in this document.

41. According to the docket, Plaintiff has time for discovery and due to the enormous amount of documentation in Plaintiff's files alone, pulling requests for discovery proves tedious

especially since this is the first year that Plaintiff has done this. To award summary judgment at this point would deprive the Plaintiff of justice. In addition, summary judgment would deprive the Plaintiff of her right to a trial with a jury as Plaintiff requests per the Texas and United States constitutions. Even so and in continuing of the request for a jury trial, Plaintiff pleads that she can meet all elements of the various claims and can do so “beyond a scintilla of evidence”.

INDEX OF EXHIBITS

Exhibit 1: Emails indicating Fraudulent Inducement to Contract with Bohreer & Zucker.

1.020: Email referencing Bergman handling Plaintiff claims at mediation. 1.073: First contact Frankfort to Bergman.

Exhibit 2: The three mediation agreements from the 2015 mediation: 2 original handwritten and 1 printed version.

Exhibit 3: Many versions: post-mediation memorandum aka "confession email"

Exhibit 4: Rule 11 agreement giving Jody Meigs access to funds for the 2015 mediation where he left due to no money for mediation.

Exhibit 5: 5.0 – 5.020: Emails from Jody Meigs indicating possible Johnston thefts later verified in 2016 with bank records and different lawyers.

5.100: Statement in Jody Meigs handwriting over knowledge of Johnston's possible thefts and improper conduct.

Exhibit 6: Emails: Evans and Zucker assist Brady in summary judgment against Plaintiff.

Exhibit 7: Bohreer & Zucker billing showing continuing work on MSA against Plaintiff's requests, November discussion of withdrawing as Plaintiff's lawyers.

7.020: Emails regarding withdrawal.

7.030: Questions over authoring of emails and all.

Exhibit 8: Spoofing texts info.

8.020 on: Evans obtains Bohreer digital signature and uses it to fake an email to me pretending to be Bohreer. (8.030).

8.033: Comparison of digital properties to emails showing similar in sends from Evans as Bohreer and possibly Evans as Brady.

8.300: Text spoofing.

Exhibit 9: Plaintiff's Second Amended Petition to Bohreer & Zucker detailing claims. (will be amended)

Exhibit 10: Model Standards of Conduct for Mediators

CONCLUSION

WHEREFORE, PRESMISES CONSIDERED, Plaintiff Wendy Meigs requests that her Objections to Defendants' summary judgment evidence be granted, that their evidence be stricken from the record and not considered for any purpose by the Court, that Defendants' Motion for Summary Judgment be denied in its totality, and allow Plaintiff to continue with all claims to fight for justice. Plaintiff requests her right to a trial by jury as guaranteed by the Texas State and United States Constitutions, and that she have all other and further relief, either at law or in equity, to which she may show herself justly entitled.

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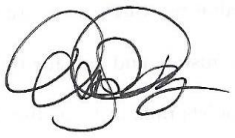
Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been delivered or forwarded to all counsel and unrepresented persons as listed below, **[ ] by personal delivery or receipted delivery service**, or **[ ] by certified or registered mail**, return receipt requested, by depositing the same, postpaid, in an official deposit under the care and custody of the United States Postal Service, or **[ ] by facsimile** to the recipient's facsimile number identified below, or **[X] by e-service** to the recipient's email address identified below and the electronic transmissions was reported as complete, on this _28th_ day of October **2018**, in accordance with the Rule 21a of the Texas rules of Civil Procedure:

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