STATE OF MICHIGAN
IN THE SUPREME COURT

JODY POHLMAN,
Plaintiff/Appellant

SC: 161262
COA: 344121
Oakland CC: 2017-853588-DO

v.

JAMES POHLMAN,
Defendant/Appellee.
_____/

APPELLANT'S INDEX

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STATE OF MICHIGAN
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SC: 161262
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JAMES POHLMAN,
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_____/

DOCKET SHEET FOR 2016-841561-DO

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Case Number
2016-841561-DO
Entitlement
POHLMAN JODY vs. POHLMAN JAMES G
Judge Name
JULIE A. MCDONALD
Case E-Filed
YES
Case Filed
04/26/2016
Case Disposed
05/24/2017

Date	Code	Desc
12/29/2018	OJR	CASE REASSIGNED FROM JUDGE GORCYCA TO JUDGE MCDONALD,J
12/29/2017	OJR	CASE REASSIGNED FROM JUDGE MATIS TO JUDGE GORCYCA
09/01/2017	MSR	MEDIATION STATUS REPORT FILED
05/25/2017	FCD	ORDER FILED TO DISMISS CASE
05/24/2017	FDD	FINAL DISP-DISMISS VIA STIPULATED ORDER
05/23/2017	STO	STIP/ORD FILED PLACE PROCDS IN IOLTA ACCT
05/22/2017	BRF	BRIEF FILED JOINT TRIAL
05/17/2017	MPR	MOTION PRAECIPE FILED FOR 05242017 JUDGE 21
05/17/2017	MTN	MOTION FILED FOR ESCROW ACCT/PLF
05/17/2017	NOH	NOTICE OF HEARING FILED
05/17/2017	NOH	NOTICE OF HEARING FILED
05/08/2017	ADJ	ORDER OF ADJOURNMENT FILED TRIAL/STP
05/03/2017	APP	APPEARANCE FILED /DFT
05/03/2017	DAU	DEFENDANT/ATTY UNAVAILABLE
05/03/2017	APC	ADJ-COUNSEL 05052017 TO 05252017 BY ORDER

Date	Code	Desc
05/03/2017	APR	DATE SET FOR TRIAL ON 05252017 08 30 AM Y 21
04/12/2017	POS	AFFIDAVIT/PROOF OF SERVICE FILED
04/12/2017	DM	DEFENSE MOTION WITHDRAW AS COUNSEL-GRANTED
04/12/2017	ORD	ORDER FILED WDRAW DFT ATTY
04/04/2017	MPR	MOTION PRAECIPE FILED FOR 04122017 JUDGE 21
04/03/2017	MTN	MOTION FILED W/DRAW COUNSEL/POS/DFT
03/24/2017	ORD	ORDER FILED MUTUAL DISCOVERY PROTECTIVE
03/24/2017	ADJ	ORDER OF ADJOURNMENT FILED DEP/STP
03/17/2017	POS	AFFIDAVIT/PROOF OF SERVICE FILED
03/10/2017	RES	RESPONSE FILED TO REQ FOR ADMISS/POS/DFT
03/02/2017	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/23/2017	ADJ	ORDER OF ADJOURNMENT FILED TRIAL/APPEAR FOR DEPO
02/22/2017	M	MOTION ADJOURN TRIAL DATE-GRANTED
02/22/2017	APR	DATE SET FOR TRIAL ON 05052017 01 30 PM Y 21
02/16/2017	BRF	BRIEF FILED DFT TRIAL/POS
02/16/2017	BRF	BRIEF FILED TRIAL/PLF
02/15/2017	NOH	NOTICE OF HEARING FILED
02/15/2017	MTN	MOTION FILED ADJ TRL DATE ALLOW DISC/PLF
02/15/2017	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/15/2017	MPR	MOTION PRAECIPE FILED FOR 02222017 JUDGE 21
02/15/2017	RES	RESPONSE FILED DFT MTN ADJ TRL DATE/AFM/POS
02/15/2017	MTN	MOTION FILED RESCH DEPO/PLF
02/15/2017	NOH	NOTICE OF HEARING FILED
02/15/2017	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/15/2017	MPR	MOTION PRAECIPE FILED FOR 02222017 JUDGE 21
02/15/2017	RES	RESPONSE FILED TO MTN RESCHEDULE DEP/POS/DFT
02/14/2017	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/07/2017	ADJ	ORDER OF ADJOURNMENT FILED DISC
02/07/2017	NTC	NOTICE FILED DEPO/POS
02/02/2017	STO	STIP/ORD FILED SELL MARITAL HOME

Date	Code	Desc
02/01/2017	RES	RESPONSE FILED DFT/TO MTN TO EXTEND DISC/POS
01/27/2017	MPR	MOTION PRAECIPE FILED FOR 02082017 JUDGE 21
01/27/2017	MTN	MOTION FILED PLF EXTEND DISC
01/27/2017	NOH	NOTICE OF HEARING FILED
01/26/2017	WLT	WITNESS LIST FILED /PLF
01/25/2017	WLT	WITNESS LIST FILED DFT/POS
01/25/2017	MPR	MOTION PRAECIPE FILED FOR 02012017 JUDGE 21
01/17/2017	MPR	MOTION PRAECIPE FILED FOR 02012017 JUDGE 21
01/17/2017	NOH	NOTICE OF HEARING FILED /POS
12/16/2016	NOH	NOTICE OF HEARING FILED /POS
12/14/2016	MPR	MOTION PRAECIPE FILED FOR 01182017 JUDGE 21
12/12/2016	MTN	MOTION FILED TO SELL HOME/COMPEL DISC/NOH/POS/DFT
12/12/2016	MPR	MOTION PRAECIPE FILED FOR 12212016 JUDGE 21
12/06/2016	ADJ	ORDER OF ADJOURNMENT FILED SO 2ND/STP
12/06/2016	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
12/06/2016	APC	ADJ-COUNSEL 12052016 TO 02232017 BY ORDER
12/06/2016	APR	DATE SET FOR TRIAL ON 02232017 08 30 AM Y 21
12/05/2016	OTH	STIP ORDER TO ADJ-GRANTED ON THE RECORD
10/31/2016	WLT	WITNESS LIST FILED /DFT
09/07/2016	APR	DATE SET FOR TRIAL ON 12052016 08 30 AM
09/07/2016	SO	SCHEDULING ORDER FILED
09/06/2016	SOI	SCHEDULING ORDER ISSUED
08/26/2016	POS	AFFIDAVIT/PROOF OF SERVICE FILED
08/16/2016	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
08/16/2016	APC	ADJ-COUNSEL 08162016 TO 09062016
08/16/2016	APR	DATE SET FOR TRIAL ON 09062016 08 30 AM Y 21
08/16/2016	ADJ	ORDER OF ADJOURNMENT FILED STP TRIAL
07/21/2016	SUM	P/S ON SUMMONS FILED 06/15/16
07/12/2016	AMC	AMENDED COMPLAINT FILED
07/12/2016	ANS	ANSWER FILED DFT/TO AMC/POS

Date	Code	Desc
07/08/2016	APR	DATE SET FOR TRIAL ON 08162016 08 30 AM Y 21
07/06/2016	APP	APPEARANCE FILED /POS DFT
07/06/2016	ATC	ANSWER TO COMPLAINT FILED DFT
04/28/2016	RO	RESTRAINING ORDER FILED DISSIPATION OF ASSETS
04/26/2016	FRF	CASE ASSIGNED TO REFEREE (61) REBECCA ELLIS
04/26/2016	C	COMPLAINT FILED
04/26/2016	SI	SUMMONS ISSUED

STATE OF MICHIGAN
IN THE SUPREME COURT

JODY POHLMAN,
Plaintiff/Appellant

SC: 161262
COA: 344121
Oakland CC: 2017-853588-DO

v.

JAMES POHLMAN,
Defendant/Appellee.
_____/

DOCKET SHEET FOR 2017-853588-DO

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Case Number
2017-853588-DO
Entitlement
POHLMAN JODY vs. POHLMAN JAMES G
Judge Name
LISA LANGTON
Case E-Filed
YES
Case Filed
05/25/2017
Case Disposed
05/14/2018

Date	Code	Desc
03/16/2020	ORD	ORDER FILED COA
01/30/2020	ORD	ORDER FILED COA
01/29/2020	ORD	ORDER FILED COA
03/06/2019	SEN	SENT TO COA/FTP/JM
03/01/2019	NTC	NOTICE FILED REQ FOR FILE COA
09/05/2018	TRN	TRANSCRIPT FILED MTN HRG 12/18/17
09/05/2018	TRN	TRANSCRIPT FILED MTN/JGM HRG 3/14/18
09/05/2018	TRN	TRANSCRIPT FILED MTN HRG 2/21/18
09/05/2018	NTC	NOTICE FILED FILING TRNS
09/05/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
06/12/2018	CCR	CERTIF CT REPORTER FILED
06/12/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
05/17/2018	RDA	RECORD OF DIVORCE/ANNULMENT SENT TO STATE
05/14/2018	ORD	ORDER FILED DENY PLF MTN RECON/POS
05/14/2018	FD	FINAL DISPOSITION

Date	Code	Desc
05/14/2018	FO	FINAL ORDER
05/14/2018	JGM	JUDGMENT FILED 11PGS
05/14/2018	ORD	ORDER FILED USO
04/11/2018	REP	REPLY FILED TO ANS MTN RECONSIDERATION/PLF
04/11/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
04/10/2018	ORD	ORDER FILED REMOVE HRG FROM MOTION CALL DOCKET
04/06/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
04/06/2018	NOH	NOTICE OF HEARING FILED
04/06/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
04/06/2018	MPR	MOTION PRAECIPE FILED FOR 04182018 JUDGE 25
04/06/2018	MPR	MOTION PRAECIPE FILED FOR 04182018 JUDGE 25
04/06/2018	NOH	NOTICE OF HEARING FILED /POS
04/06/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
04/05/2018	RES	RESPONSE FILED OBJ TO NTC SUB OF ORDERS/DFTS
04/05/2018	ANS	ANSWER FILED RECONSIDERATION OF RULING 3/14/18/DFT
04/05/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
03/28/2018	MPR	MOTION PRAECIPE FILED FOR 04112018 JUDGE 25
03/28/2018	MTN	MOTION FILED RECONSIDER/PLF
03/28/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
03/27/2018	BRF	BRIEF FILED SUPPT OBJ NTC 7DAY ORDERS/PLF
03/27/2018	NOH	NOTICE OF HEARING FILED
03/27/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
03/27/2018	APP	APPEARANCE FILED /PLF
03/27/2018	BRF	BRIEF FILED SUPPT MTN RECON/PLF
03/27/2018	NOH	NOTICE OF HEARING FILED
03/27/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
03/27/2018	OBJ	OBJECTION FILED NTC SUBMISSION OF ORD/PLF
03/27/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
03/20/2018	NTC	NOTICE FILED 7 DAY/POR/POS
03/20/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED

Date	Code	Desc
03/09/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
03/09/2018	ANS	ANSWER FILED TO MTN ENTRY JGM/PLF
03/09/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
03/05/2018	MPR	MOTION PRAECIPE FILED FOR 03142018 JUDGE 25
03/05/2018	NOH	NOTICE OF HEARING FILED /POS
03/05/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/26/2018	MPR	MOTION PRAECIPE FILED FOR 03072018 JUDGE 25
02/26/2018	MTN	MOTION FILED ENTRY JGM/NTC/POS/DFT
02/26/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/22/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/22/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/21/2018	M	MOTION WITHDRAW AS COUNSEL -GRANTED-
02/21/2018	ORD	ORDER FILED GRNT PLF MTN
02/14/2018	MPR	MOTION PRAECIPE FILED FOR 02212018 JUDGE 25
02/14/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/14/2018	NOH	NOTICE OF HEARING FILED
02/14/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/14/2018	MTN	MOTION FILED W/DRAW COUNSEL/PLF
02/12/2018	MPR	MOTION PRAECIPE FILED FOR 02212018 JUDGE 25
02/12/2018	MTN	MOTION FILED WITHDRAW COUNSEL/BRF/NOH/POS/PLF
02/12/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/02/2018	CMC	COUNTER FILED CLAIM/POS/DFT
02/02/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
01/30/2018	MPR	MOTION PRAECIPE FILED FOR 02072018 JUDGE 25
01/30/2018	NOH	NOTICE OF HEARING FILED /POS
01/30/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
01/24/2018	MPR	MOTION PRAECIPE FILED FOR 01312018 JUDGE 25
01/24/2018	NOH	NOTICE OF HEARING FILED
01/24/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
01/24/2018	MTN	MOTION FILED HOLD DFT COMTEMPT COURT/BRF/PLF

Date	Code	Desc
01/18/2018	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
01/18/2018	APC	ADJ-COUNSEL 02152018 TO 04032018 BY ORDER
01/18/2018	APR	DATE SET FOR TRIAL ON 04032018 08 30 AM Y 25
01/18/2018	ADJ	ORDER OF ADJOURNMENT FILED TRIAL
01/12/2018	TRN	TRANSCRIPT FILED MTN 12/18/17
01/05/2018	SO	SCHEDULING ORDER FILED
01/04/2018	APP	APPEARANCE FILED /POS/PLF
01/04/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
12/27/2017	ADJ	ORDER OF ADJOURNMENT FILED TRIAL 2/15/18 @ 9:00 AM
12/27/2017	ADJ	ORDER OF ADJOURNMENT FILED TRIAL/MEDIATE
12/18/2017	APR	DATE SET FOR TRIAL ON 02152018 09 00 AM Y 25
12/12/2017	APR	DATE SET FOR TRIAL ON 12182017 08 30 AM Y 25
12/01/2017	REA	ORDER FILED REASSIGNING MATIS
11/07/2017	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
11/07/2017	APC	ADJ-COUNSEL 11072017 TO 12182017 BY ORDER
11/07/2017	APR	DATE SET FOR TRIAL ON 12182017 08 30 AM Y 21
11/07/2017	STO	STIP/ORD FILED ADJ SO
10/31/2017	STO	STIP/ORD FILED DIST FROM IOLTA ACCNT
10/19/2017	ORD	ORDER FILED DISMISS MTN NONAPPEARNACE
10/11/2017	MPR	MOTION PRAECIPE FILED FOR 10182017 JUDGE 21
10/11/2017	MPR	MOTION PRAECIPE FILED FOR 10182017 JUDGE 21
10/11/2017	MTN	MOTION FILED RELEASE OF FUNDS/NOH/DFT
09/27/2017	MPR	MOTION PRAECIPE FILED FOR 10042017 JUDGE 21
09/06/2017	MPR	MOTION PRAECIPE FILED FOR 09132017 JUDGE 21
08/30/2017	MTN	MOTION FILED MODIFY STATUS QUO/PLF
08/30/2017	NOH	NOTICE OF HEARING FILED
08/30/2017	POS	AFFIDAVIT/PROOF OF SERVICE FILED
08/30/2017	MPR	MOTION PRAECIPE FILED FOR 09062017 JUDGE 21
08/17/2017	SO	SCHEDULING ORDER FILED
08/15/2017	OTH	SCHEDULING ORDER ISSUED

Date	Code	Desc
08/15/2017	APR	DATE SET FOR TRIAL ON 11072017 08 30 AM Y 21
07/25/2017	RES	RESPONSE FILED TO MTN RELEASE FUNDS/PLF
07/18/2017	MPR	MOTION PRAECIPE FILED FOR 07262017 JUDGE 21
07/11/2017	MPR	MOTION PRAECIPE FILED FOR 07192017 JUDGE 21
07/05/2017	MTN	MOTION FILED DFT/NTC RELEASE FUNDS
07/05/2017	MPR	MOTION PRAECIPE FILED FOR 07122017 JUDGE 21
06/14/2017	APR	DATE SET FOR TRIAL ON 08152017 08 30 AM Y 21
06/05/2017	ATC	ANSWER TO COMPLAINT FILED /POS/DFT
05/31/2017	STO	STIP/ORD FILED RE PROCDS FROM SALE HOME
05/31/2017	ORD	ORDER FILED TEMP/MAINTAIN STATUS QUO
05/31/2017	RO	RESTRAINING ORDER FILED RE ASSETS
05/25/2017	FRF	CASE ASSIGNED TO REFEREE (53) EVANNE L. DIETZ
05/25/2017	PA	PRIOR ACTION
05/25/2017	C	COMPLAINT FILED
05/25/2017	SI	SUMMONS ISSUED

STATE OF MICHIGAN
IN THE SUPREME COURT

JODY POHLMAN,
Plaintiff/Appellant

v.

SC: 161262

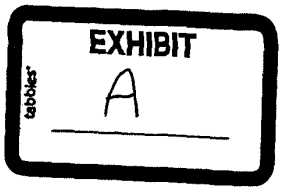
COA: 344121

Oakland CC: 2017-853588-DO

JAMES POHLMAN,
Defendant/Appellee.

_____/

EXHIBIT A



THE MILETIC CENTER
INTEGRATED HEALTH SYSTEMS

March 7, 2018

RE: Pohlman, Jody
DOB: 05/18/57

To Whom It May Concern:

Ms. Pohlman has been participating in bi weekly/weekly outpatient therapy since February 1, 2018 when Ms. Pohlman was referred to me for an emergency evaluation by her attorney's office. When Ms. Pohlman contacted me by phone to schedule her assessment she was crying, she reported that she was depressed and despondent over the events of January 31, 2018. Ms. Pohlman stated that on January 31, 2018 she had attended a mediation and stating several times that she "did not know what she signed" as she was "forced and not allowed to leave the mediation until she signed the agreement." Ms. Pohlman's speech was pressured and rapid. Ms. Pohlman presented for her assessment in the late afternoon.

After assessing Ms. Pohlman for safety and creating a crisis plan, Ms. Pohlman began to share the details of the events of the previous day. Ms. Pohlman was visibly upset, crying, shaking and having difficulty maintaining focus and train of thought. Ms. Pohlman went through the timeline of events of January 31, 2018 as she remembered them. Ms. Pohlman described feeling as though she was being "held against her will" and "physically intimidated into signing the agreement." Ms. Pohlman reported that she asked several times to leave and was told each time "you can't leave." Ms. Pohlman stated that she tried to crawl under the conference table to elope from the mediation but was prevented by her attorney and mediator blocking the door.

Ms. Pohlman reports a significant trauma history beginning in childhood with a physically, emotionally and verbally abusive father. Ms. Pohlman reports that her father abused her, her mother and her younger sister. Ms. Pohlman's mother passed away from cancer when she was 5 years old. Ms. Pohlman reports that her father was caught molesting a minor female family member and that she had to go live with her grandmother's and was subsequently sent to boarding school for a time. She reports that an older male cousin attempted to rape her when she was approximately 7 or 8. Ms. Pohlman reports that her father abused her until she moved away at the age of 18. She also reports that he continued to abuse her step-mother and that he was molesting her younger sister who passed away at the age of 30 of breast cancer. Ms. Pohlman states that she has participated in outpatient therapy 2 times during her adult life, the first time briefly and the second for a period of 4 to 6 months.

Ms. Pohlman reported that her father would frequently hit and slap her hard enough to leave marks as well as strike her with a belt for minor incidents. She stated

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36800 Woodward Ave Suite 112
Bloomfield Hills, MI 48303

that her father's abuse became "the norm" and that she did everything in her power to avoid behaviors that would trigger him. Ms. Pohlman states that at "6 am on her 18th birthday" she left her father's home.

Ms. Pohlman met James Pohlman approximately 30 years ago and has been married to him for 28 years. Ms. Pohlman reports that the first few years of the marriage were good but that over time he began to exert control over her. Ms. Pohlman reports that her husband did not allow her to continue to work and kept her from doing that by not giving her access to a vehicle. Ms. Pohlman reports that before their 10 year anniversary he came into the kitchen with a gun in his waist band and physically attacked her. During the trauma assessment Ms. Pohlman state that she feared James Polman was "going to kill her that night" Ms Pohlman states that her husband told her on several occasions that "without him she would work and McDonald's and have nothing." She stated that on multiple occasions her husband was sexually aggressive and forced her to have sexual relations against her will. Ms. Pohlman states that James Pohlman frequently accused her of infidelity. Ms. Pohlman reports that she dealt with her husbands' verbal, emotional and physical abuse by trying to avoid triggering him.

Due to the significant trauma Ms. Pohlman reported the Northshore Trauma History Checklist and PTSD Reaction Index were administered. Ms. Pohlman received an overall PTSD score of 57. Scoring range is 25-37 Likely PTSD diagnosis, 38+ Meets PTSD diagnosis. Ms. Pohlman met the criteria for all the sub categories of re-experiencing, avoidance and hyper-arousal, with avoidance being highest.

It is my opinion that Ms. Pohlman suffers from untreated developmental trauma and meets the criteria for a diagnosis of PTSD. As a result of this untreated trauma Ms. Pohlman's "radar system" otherwise known as the Anterior Cingulate Cortex which is responsible for studying the environment using sensory input, filtering sensory input from the body and calibrating response based on her life experiences and memory, perceived her inability to leave mediation as threatening and her "survival brain" took over. Ms. Pohlman stated that she believed "signing the agreement that she had not read was the only way to escape"

Should you have any further questions you may reach me by phone at 248-539-8540 or by email at kimwatzmanihs@gmail.com.

Kim Watzman

Kim Watzman M.Ed., LPC, NCC
Clinical Psychotherapist

STATE OF MICHIGAN
IN THE SUPREME COURT

JODY POHLMAN,
Plaintiff/Appellant,

SC: 161262

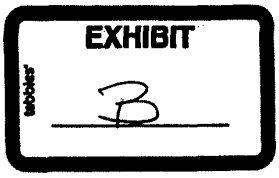
COA: 344121

v.

Oakland CC: 2017-853588-DO

JAMES POHLMAN,
Defendant/Appellee.
_____/

EXHIBIT B



STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JODY POHLMAN,

Plaintiff,

v.

CASE NO. 17-853588-DO
HON. Lisa Langton

JAMES G. POHLMAN,

Defendant.

/

JEFFREY A. QUAS (P42248)
Quas Legal Solutions, PLLC
Attorney for Plaintiff
337 South Main Street, Ste. 201
Rochester, MI 48307-6711
(248) 652-7799

MICHAEL J. BALIAN P39972)
Balian Legal, PLLC
Co-Counsel for Plaintiff
40950 Woodward Ave., Ste. 350
Bloomfield Hills, MI 48304-5729
(248) 581-0040

THE LAW FIRM OF VICTORIA, P.C.
DENNIS ZAMPLAS (P24637)
ASHLEIGH A. WAGNER (P77973)
Co-Counsel for Plaintiff
772 East Maple Road
Birmingham, MI 48009

BANK RIFKIN
MARK A. BANK (P48040)
Attorneys for Defendant
401 S. Old Woodward Avenue, Ste. 410
Birmingham, MI 48009-6003
(248) 480-8333(248) 723-1600

/

AFFIDAVIT OF JODY POHLMAN RE: DOMESTIC VIOLENCE

STATE OF MICHIGAN)
: SS
COUNTY OF OAKLAND)

I, Jody Pohlman, being duly sworn states:

1. I am of legal age, competent to testify to the facts stated herein, and if called as a witness in this matter could testify to the following facts based on my personal knowledge.

2. I am the Plaintiff in this matter, Wife of Defendant James G. Pohlman.

3. Mediation in this matter was scheduled for January 31, 2018 at 1:00 p.m. with Mr. Michael Robbins and lasted until 7:30 p.m.

4. Mr. Robbins never inquired into a potential history of domestic violence in our relationship nor did he complete a domestic violence screening during the mediation process.

5. My husband has a history of domestic violence towards me, including control and abuse – verbal, emotional and physical. Examples of this domestic violence in our marriage include:

   a. For the last few years (approximately 2), my husband has slept with three (3) hand guns next to his bed, every night that I was in the house.

   b. In summer 2016, I came home from a barbeque with friends to find my husband very angry. He confronted me and pulled at me, yelling "Where have you been? Who were you with?" He grabbed at my blouse and then my pants, looking down them.

   c. On one occasion my husband followed me in his truck because he was angry that I was going over to a friend's house. He chased me down the road until he realized I was video-taping him.

   d. On one occasion my husband started an argument in the living room. He grabbed my blouse and yanked me around by it. He threw me over the couch and I landed on the floor. I was physically injured in this altercation.

e. On one occasion my husband confronted me while he had a .38 pistol in the front of his pants stuck in the waistband. I was in the kitchen and he came in with the gun. I was shocked! I said: "WHAT ARE YOU DOING!!" Jim said: "you wanna fight! Come on let's fight!" I said: "No!! I don't want to fight!! YOU'VE GOT THE GUN!!!" I walked away through the dining room. He was right behind me. Scaring the hell out of me! He followed me down the hall and he kept hitting me with his shoulder saying: "COME ON! TURN AROUND! LET'S FIGHT!" I said: "WHAT THE HELL ARE YOU DOING! YOU HAVE THE GUN! I'M NOT GOING TO FIGHT! PUT THE GUN DOWN! Eventually he did.

6. Examples of the emotional abuse I have suffered include:

a. Persistent name-calling, insults and humiliation, in person, text messages, and voicemails;

b. When I had both of my hips replaced and could not move, I called to my husband so he could turn off the lights. He replied, "what do you want you f***ing c**t?"

c. When my husband was assisting to change my bandages he stated, "I'm so sick of wiping you're ass."

Further affiant sayeth not.

Witnesses:

R. Neighbors

Ashleigh Wagner

JODY POHLMAN

Subscribed and sworn to before me
on this 26th day of March, 2018

R. Neighbors, Notary Public
Oakland County, Michigan
My Commission Expires: 5-7-2024

R. NEIGHBORS
NOTARY PUBLIC, STATE OF MI
COUNTY OF OAKLAND
MY COMMISSION EXPIRES May 7, 2024
ACTING IN COUNTY OF OAKLAND

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STATE OF MICHIGAN
IN THE SUPREME COURT

JODY POHLMAN,
Plaintiff/Appellant,

v.

JAMES POHLMAN,
Defendant/Appellee.
_____/

SC: 161262
COA: 344121
Oakland CC: 2017-853588-DO

EXHIBIT C

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JODY POHLMAN,

Plaintiff,

v Case No. 17-853588-DO

JAMES G. POHLMAN,

Defendant./

MOTION HEARING

BEFORE THE HONORABLE LISA LANGTON, CIRCUIT JUDGE

Pontiac, Michigan - Monday, December 18, 2017

APPEARANCES:

For the Plaintiff: MARY ANNE NOONAN (P71241)
Law Office of Mary Anne Noonan
28806 Woodward Avenue
Royal Oak, Michigan 48067
(248) 594-1213

For the Defendant: MARK A. BANK (P48040)
Bank Rifkin
401 South Old Woodward Avenue
Suite 410
Birmingham, Michigan 48009
(248) 480-8333

Transcript Provided by: Accurate Transcription Services, LLC
Firm # 8493
(734)944-5818

Transcribed by: Lisa Beam, CER #8647

TABLE OF CONTENTS

Pontiac, Michigan

Monday, December 18, 2017 - 9:20 a.m.

* * * * * *

THE CLERK: Your Honor calling the matter of Pohlman v Pohlman, case number 2017-853588-DO.

THE COURT: Good morning.

MS. NOONAN: Good morning Judge, Mary Anne Noonan on behalf of the Plaintiff Jody Pohlman, standing to my right.

THE COURT: Okay. Good morning.

MR. BANK: Good morning your Honor, Mark Bank appearing on behalf of the Defendant James Pohlman.

THE COURT: Okay. Thank you.

MR. BANK: Your Honor this is -- sorry.

THE COURT: So this is a case that was transferred to me, correct?

MR. BANK: That's correct your Honor.

THE COURT: And um -- so I had -- it was a trial date which I have another trial starting shortly so I apologize that you can't use this trial date it's -- the courts switching of judges is a (sic) inconvenience to the parties, I understand that. So how can we try to get you an earlier date or how can we help you today?

MR. BANK: Ah -- three things your Honor, one --

THE COURT: Okay.

MR. BANK: -- we have agreed to a new mediator in this matter, Susan Cohen. We've contacted her office and subject to the Court's approval have mediation scheduled for January the 16th, commencing at 10:30 a.m. That would be item number one.

THE COURT: Okay.

MR. BANK: Number two um -- the Defendant would ask that this matter be reset for trial on the soonest date after that that the Court would have available for us and I know third the Plaintiff has a request to the Court that we object to.

THE COURT: Okay.

MS. NOONAN: Yes, your Honor. We -- oh -- are you ready for me?

THE COURT: Yeah.

MS. NOONAN: All right. Um -- your Honor we are requesting to extend the matter -- the matter on discovery -- technically exists today -- stops today and we are asking to extend the discovery request. There are several items that we feel that we need in order to be able to attend mediation fully -- there's information that we don't have. Um -- actually there's a --

THE COURT: So the scheduling order that Judge Matis did had discovery initially closing on October 10th, correct?

MR. BANK: There was a subsequent order --

THE COURT: Then there was --

MR. BANK: -- dated November 6th that extended it to today.

THE COURT: Okay and so I'm not inclined to extend discovery.

MS. NOONAN: Your Honor may I ask you -- may I --

THE COURT: Yeah --

MS. NOONAN: -- give you the reasons why?

THE COURT: -- 'cuz there's no motion in front of me. There's nothing saying that they -- you know there's not a motion to compel or something along those lines so --

MS. NOONAN: No your Honor --

THE COURT: -- you know --

MS. NOONAN: -- this -- but the reasons for extending discovery is new information has come available to us (sic).

THE COURT: What -- tell me what it is.

MS. NOONAN: The new information is, is that Mr. Pohlman has had a girlfriend for the past six months and up until yesterday when he told his wife I want you 50 percent and her 50 percent of the time that was -- that was the time when she said that she definitely wanted a

divorce.

Judge, there's a reason why this case was dismissed and refiled. The reason is because when this was initially filed Mr. Pohlman didn't even pick up the papers for the first 90 days.

THE COURT: I don't --

MS. NOONAN: These parties --

THE COURT: -- here's the thing -- here's the thing, I don't care if he has a girlfriend, how does that compel you to need more discovery, okay?

MS. NOONAN: Over 476 thousand dollars has gone missing Judge and --

THE COURT: Since this -- in six months?

MS. NOONAN: No since last --

THE COURT: No.

MS. NOONAN: -- Judge -- when we -- when they sold their house they put their money into an escrow account. We -- we paid off credit card charges and we specifically put in this order that just because we were payin' off the credit card charges that this does not foreclose either party from looking back into the credit card information. We have not had it -- we have not received all of --

THE COURT: You could have done that -- like -- since this case has been pending since May so I don't -- I

don't -- if you come to me with solid -- some sort of -- you know we looked into this -- joint credit cards right?

MS. NOONAN: Joint?

THE COURT: She can get whatever records she wants.

THE PLAINTIFF: No.

MS. NOONAN: Joint? No, they're not. The ones -- no, the ones that we are looking for are his credit cards that were used to take this girlfriend -- and I know you don't care about the girlfriend -- what we care about is the money that was dissipated on this woman. And she does have a right to know because these credit cards were paid off with marital funds. That's why -- that's why I specifically put this clause in this order.

THE PLAINTIFF: Plus the travel.

THE COURT: You don't need to speak okay? Speak through your attorneys, it makes it easier for the record, we know who's speaking.

MS. NOONAN: Judge, so we are asking to get his credit card statements only for the purpose -- for the -- for the specific purpose --

THE COURT: What -- what credit card statements are you looking for?

MS. NOONAN: He has -- there's an American Express --

THE COURT: I want the specifics.

MS. NOONAN: Okay.

THE COURT: Okay. Go ahead.

MS. NOONAN: May I have five minutes to get the specifics?

THE COURT: All right -- why don't you see if you two can work something out? I mean if it's something that is a new credit card or something that she didn't have access to which obviously you could've gotten any credit card you wanted in the beginning of this process. The whole reason for cutting off discovery is that you -- you get what you need at -- at the time -- you know we don't ah --

MS. NOONAN: Your Honor --

THE COURT: -- it -- it wasn't my deadline but I -- I'm -- I rarely extend discovery. I do extend mediation. I do give people more time to prepare for trial but I rarely disc --

MS. NOONAN: We requested the information Judge and the information --

THE COURT: All right so show me that you did --

MS. NOONAN: Okay.

THE COURT: -- and that he didn't give you that information --

MS. NOONAN: Okay.

THE COURT: -- is that correct?

MS. NOONAN: I can show you that.

MR. BANK: Your Honor --

THE COURT: Yeah.

MR. BANK: If I may?

THE COURT: Yeah.

MR. BANK: There are three credit cards in his name, American Express, Chase, and PNC. We have given them all the statements through the September statement. I checked my records this morning. They have them all through September. This case was first --

THE COURT: Okay, she says no. You didn't get them?

MS. NOONAN? Correct.

THE COURT: 'Cuz Mr. Bank does --

MR. BANK: I -- I will email --

THE COURT: -- I -- I don't know either of you two to represent things falsely to the Court so --

MS. NOONAN: No, there -- there are months that are missing that --

THE COURT: Like what? So you guys go out and figure out specifically what you have and what you -- you've given us --

MR. BANK: That's fine.

THE COURT: -- and come back and we'll figure

this out.

MR. BANK: Thank you, Judge.

MS. NOONAN: Thank you, your Honor.

THE COURT: Okay. All right.

(At 9:25 a.m., proceeding concluded)

* * * * * *

STATE OF MICHIGAN)
COUNTY OF OAKLAND)ss.

I certify that this transcript is a true and accurate transcription to the best of my ability of the proceeding in this case before the Honorable Lisa Langton, as recorded by the clerk.

Proceedings were recorded and provided to this transcriptionist by the Circuit Court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceeding or for the content of the recording provided.

Dated: January 12, 2018

/S/ Lisa Beam

Lisa Beam, CER #8647

STATE OF MICHIGAN
IN THE SUPREME COURT

JODY POHLMAN,
Plaintiff/Appellant,

SC: 161262
COA: 344121
Oakland CC: 2017-853588-DO

v.

JAMES POHLMAN,
Defendant/Appellee.

_____/

EXHIBIT D

STATE OF MICHIGAN OAKLAND COUNTY SIXTH JUDICIAL CIRCUIT	ORDER Re: Adjourning Trial	CASE NO. 17-853588 DO

Court address 1200 N TELEGRAPH RD DEPT 404
PONTIAC MI 48341-0404

PLAINTIFF(S)		DEFENDANT(S)
Jody Pahlman	V.	James Pahlman

It is hereby ordered that:

1) The trial of this matter is adjourned to Thursday 02/15/2018, ~~2018~~ at 9:00 a.m. - 12:00pm EST.

2) This case shall be mediated with Susan Cohen Esq on January 16, 2018, commencing at 10:30 a.m.

3) Except as otherwise provided herein, discovery is closed. Defendant shall provide the following ~~subsequently~~ to Plaintiff by January 5, 2018 April
   a) Amex 56004 - ~~Nov~~ 2017 to present, even if previously provided
   b) PNC Visa 4285 - Sept 2017 to present + Nov 2016 to May 2017, even if previously provided
   c) Chase Visa 0235 - Jan 2017 to May 2017, even if previously provided and Sept 2017 to present
   d) PNC checking - July 2017 to present, even if previously provided
   e) Alaska checking - Inception to present, even if previously provided

Mary Anne Noonan

Mark A Brault P13240

A TRUE COPY
LISA BROWN
Oakland County Clerk / Register of Deeds
By _____ Deputy

11/18/17
DATE

LISA LANGTON, Circuit Judge

P41171
BAR NO.

Rev. 11-99

STATE OF MICHIGAN
IN THE SUPREME COURT

JODY POHLMAN,
Plaintiff/Appellant,

SC: 161262

COA: 344121

v.

Oakland CC: 2017-853588-DO

JAMES POHLMAN,
Defendant/Appellee.

_____/

EXHIBIT E

STATE OF MICHIGAN

OAKLAND COUNTY CIRCUIT COURT

FAMILY DIVISION

JODY POHLMAN,

Plaintiff,

Case No. 2017-853588-do
Hon, Lisa Langton

v.

JAMES G. POHLMAN,

Defendant.
_____/

MARY ANNE NOONAN (P71241)
Attorney for Plaintiff
28806 Woodward Avenue
Royal Oak, Michigan 48067

SCHNELZ WELLS, P.C.
By: Kurt E. Schnelz (P37365)
Co-Counsel for Plaintiff
280 North Old Woodward, Suite 250
Birmingham, Michigan 48009
(248) 258-7074

BANK RIFKIN
By: Mark A. Bank (P48040)
Attorneys for Defendant
401 South Old Woodward, Suite 410
Birmingham, Michigan 48009
(248) 480-8333
_____/

PLAINTIFF'S MOTION TO HOLD DEFENDANT IN CONTEMPT OF COURT FOR HIS STATUS QUO VIOLATIONS,

FOR AN AMENDED SCHEDULING ORDER

and

FEE

1

BRIEF IN SUPPORT OF MOTION

NOW COMES Plaintiff, through counsel, who states the following for her Motion and related Brief:

MOTION

Plaintiff requests relief for Defendant's status quo violations, and an amended scheduling order.

The Status Quo Violations

1. That this is a divorce case.

2. That on October 30, 2017, this Honorable Court entered a "Stipulated Order for Distribution from IOLTA Trust Account". (See Exhibit "A").

3. That as a result of the referenced Order, Defendant is required to pay certain expenses, which are as follows –

   1) Commencing on September 1, 2017, and continuing on the 1st day of each month thereafter during the pendency of this case, or until the first to occur of Plaintiff's death or further order of the Court, Defendant shall pay to Plaintiff interim spousal support in the amount of $3,000 per month. Plaintiff acknowledges receipt of the September 2017 payment and the October 2017 payment.

   2) During the pendency of this case, Defendant shall continue to pay the following:

      a. Premiums for health insurance for the parties;

b. Auto insurance for both parties; and

c. Auto loan payments for both parties.

. . .

7) The parties will equally divide all mutually agreed upon costs associated with the horses until the parties can mutually agree on the long-term solution or further order of the Court.

8) The parties will equally divide all current storage locker fees until they are emptied and items can be divided or disposed of as mutually agreed but no later than April 1, 2018.

(See Exhibit "A", *supra*).

4. That despite these provisions, the following matters need to be addressed –

(a) Defendant paid his spousal support payment to Plaintiff late in November, 2017, and December, 2017. (As stated, the payments are due on the first day of the month, but Defendant did not make the referenced payments until the 15th of the month in November and December.)

(b) Defendant established a health insurance plan for Plaintiff with Priority health (as a bridge plan from October, 2017 through December, 2017) – but he never paid the premiums. As a result, Plaintiff's medical bills from October 20, 2017 through December 31, 2017 are going to collection. Supposedly, Defendant has obtained health insurance for Plaintiff, starting January 1, 2018, but proof of this coverage and related details, and proof of related payments is needed.

(c) Defendant failed to make the auto loan payments; specifically, applicable payments are set-up for auto-pay, but Defendant did not deposit the necessary funds. (The bank attempted to withdraw the funds on January 8, 2018 and again on January 10, 2018, but funds were not available.)

(d) Defendant did not pay the storage locker fees for November 2017, December 2017, and January, 2018. The fee Defendant was supposed to pay is $270.00 per month (currently creating an $810.00 arrearage). Plaintiff paid the $810.00 herself, so it is necessary for Defendant to reimburse Plaintiff for this amount. (The lockers are $405.00 and $135.00 per month.)

(e) Regarding the horses, Plaintiff has paid $9,381.50 between November 2017 and January 2018; accordingly, Defendant's one-half share of these expenses is $4,690.75.

5. That it is appropriate for this Honorable Court to hold Defendant in contempt of Court until he fully satisfies his status quo delinquencies.

6. That as the Court is aware, "[a] trial court is empowered with the inherent right to punish all contempts of court. MCL 600.1701 *et seq.*" See *Johnson v. White*, 261 Mich App 332; 682 NW2d 505, 513 (2004), citing *In re Contempt of United Stationers Supply Co.*, 239 Mich App 496; 608 NW2d 105 (2000).

7. That here, it is appropriate for the Court to require Defendant to comply with the terms of the Status Quo Order contained in Exhibit "A", *supra*, and it is appropriate for the Court

to punish Defendant for his contempt of this Honorable Court's Order – otherwise, Defendant's contempts will continue.

8. That in addition, Defendant should be required to pay the attorney fees and costs Plaintiff incurred with respect to Defendant's Order violations.

9. That in this regard, MCR 3.206(C) states as follows –

> **(C) Attorney Fees and Expenses.**
>
> (1) A party may, at any time, request that the court order the other party to pay all or part of the attorney fees and expenses related to the action or a specific proceeding, including a post-judgment proceeding.
>
> (2) A party who requests attorney fees and expenses must allege facts sufficient to show that
>
> (a) the party is unable to bear the expense of the action, and that the other party is able to pay, or
>
> **(b) the attorney fees and expenses were incurred because the other party refused to comply with a previous court order, despite having the ability to comply.**

(Emphasis added).

10. That here, Defendant has the ability to comply with the Status Quo Order referenced above – yet he has failed to do so in order to be obstructionist and make things difficult for Plaintiff. (Note: Defendant traditionally earned in excess of $400,000.00 per year,

and even though Defendant voluntarily reduced his income recently, he nonetheless has the means to make the status quo payments, which he, himself, agreed to make.)

11. That, therefore, it must be concluded that Defendant has engaged in unreasonable conduct and, as stated, he has been *deliberately* obstructionist.

12. That consequently, an award of attorney fees and costs to Plaintiff, from Defendant, is proper. See *Borowsky v. Borowsky*, 273 Mich App 666, 687; 733 NW2d 71 (2007)("[a]n award of legal fees is also authorized where the party requesting the fees has been forced to incur them as a result of the other party's unreasonable conduct"), and *Rogner v. Rogner*, 179 Mich App 326, 330; 445 NW2d 232 (1989)("[w]e can only comment that a large component of attorney fees were caused by defendant's obstructionist position [–] [a]ttorney fees are authorized under these conditions.")

13. That as such, appropriate relief is required.

The Need for an Amended Scheduling Order

14. That as the Court is aware, this case was reassigned to the Honorable Lisa Langton from the Honorable Jeffrey Matis.

15. That when Judge Matis presided over the case a "Stipulated Order for First Adjournment of Scheduling Order" was entered (See Exhibit "B").

16. That the Order contained in Exhibit "B", *supra*, states, in part, that witness lists and expert witness lists are due by "December 11, 2017", and that "discovery shall be completed by December 18, 2017."

17. That on December 18, 2017, counsel appeared before the Honorable Lisa Langton for a prearranged scheduling conference in order to have a new scheduling order issued (which would supersede the Order contained in Exhibit "B", *supra*)..

18. That Judge Langton signed a "Domestic Relations Scheduling Order Trial" dated January 5, 2018 (See Exhibit "C").

19. That among other things, the Order contained in Exhibit "C", *supra*, contains the following provisions –

> 1. **DISCOVERY** shall be completed by: Discovery is closed except as modified by 12/1817 order".*
>
> 2. Each party shall submit a **WITNESS LIST**, and name any **EXPERT WITNESSES** (if applicable) one week **PRIOR** to close of discovery.
>
> . . .
>
> 12. This case shall be **TRIED** on: 2/15/18 @ 9 AM []".

20. That on January 16, 2018, the Clerk for Judge Langton sent an e-mail to counsel indicating that the February 15, 2018 trial date is being adjourned to either April 2, 2018, April 3, 2018, or April 5, 2018 (See Exhibit "E"); on January 18, 2018, the Court signed an "Order of Adjournment" setting trial for "4/3/18 at 8:30 AM". (See Exhibit "F").

21. That accordingly, it is necessary to amend the Scheduling Order contained in Exhibit "C", *supra*, as follows –

(a) Discovery needs to be re-opened until the trial date,

(i) In addition to other matters, Defendant produced only the ledger printouts for certain American Express transactions (See Exhibit "D", *supra*, concerning the

* The "12/18/17" Order contains provisions concerning the trial date in this matter, as well as mediation, and discovery matters – specifically items that Defendant is still required to produce after the close of discovery. (See Exhibit "D").

related discovery obligation); hence, it is necessary for Plaintiff to obtain the actual statements so that pertinent information / account detail can be obtained.

ii) Indeed, one of the main reasons why the account statements are needed is that Defendant has engaged in extramarital affairs and he has correspondingly dissipated a significant amount of marital assets on his paramours.

(iii) Upon information and belief, Defendant has taken his current paramour to Paris, France, and Las Vegas in recent months; moreover, Defendant has been spending marital money far beyond the status quo.

(iv) Hence, it is necessary for Plaintiff to explore related facts so that accurate information can be presented to the Court during trial. (It appears that Defendant may have dissipated as much as $30,000.00 worth of marital assets; but, as stated, this issue needs to be further explored in order to derive up-to-date information).

(v) Furthermore, it is necessary for Defendant to be deposed concerning the dissipation issue, as well as the changing nature of an entity (Lightning Technologies) that the parties invested-in, and in which Defendant currently holds an executive position.

(vi) Also, it may be necessary to depose Defendant's paramour regarding the dissipation issue. (There is a suspicion, based on discovery already conducted, that Defendant may have given marital funds to his paramour for her to spend.) (Further, the paramour may have information concerning Defendant's current business dealings.)

(vii) In any case, reopening discovery is consistent with Michigan's policy of open and effective discovery practice; see for instance, *Reed Dairy Farm v. Consumers Power Co.*, 227 Mich App 614; 576 NW2d 709, 710 (1998), wherein the court stated that Michigan's –

> Supreme Court has repeatedly emphasized that the purpose of discovery is to simplify and clarify issues. Thus, the rules should be construed in an effort to facilitate trial preparation and to further the ends of justice. Moreover, (the discovery process) should promote the discovery of the facts and circumstances of a controversy, rather than aid in their concealment.

See also: *Daniels v. Allen Industries, Inc.*, 391 Mach 398, 403; 216 NW2d 762 (1974), which states that "this Court has repeatedly emphasized that discovery rules are to be liberally construed in order to further the ends of justice."

(viii) Hence, additional discovery is warranted and proper.

(ix) As such, it is appropriate for the Court to enter an Order extending discovery to the time of trial in this case

(b) The parties need to file a witness list and an expert witness list.

(i) As stated above, Judge Matis issued a scheduling order that required the submission of witness lists and expert witness lists by December 11, 2017 (See Exhibit "B", *supra*) – however, it was understood that the parties were going to appear before Judge Langton on December 18, 2017 in order to have a new scheduling order issued.

(ii) As also stated above, a new scheduling order was filed on January 5, 2018, (See Exhibit "C", *supra*), but the new Scheduling Order states that witness lists are to be submitted "one week **PRIOR** to close of discovery", and the same Order states that "Discovery is [already] closed." *Id.*

(iii) Based on the quoted provisions, it is not possible for either party to submit a witness list or an expert witness list at this time. (In fact, neither party has submitted a witness list or an expert witness list).

(iv) Given these circumstances it is necessary for the Court to issue an Order amending its January 5, 2018 scheduling order – otherwise it will not be possible to have a trial in this matter because under MCR 2.401(I)(2) the "court may order that any witness not listed in accordance with this

rule will be prohibited from testifying at trial except upon good cause shown."

22. That with these factors in mind, appropriate relief is required.

BRIEF IN SUPPORT OF MOTION

As stated above, Plaintiff relies upon the following legal authority in support of her Motion: MCL 600.1701, MCR 2.401, MCR 3.206, *Borowsky v. Borowsky*, 273 Mich App 666; 733 NW2d 71 (2007), *In re Contempt of United Stationers Supply Co.*, 239 Mich App 496; 608 NW2d 105 (2000), *Daniels v. Allen Industries, Inc.*, 391 Mich 398; 216 NW2d 762 (1974), *Johnson v. White*, 261 Mich App 332; 682 NW2d 505 (2004), *Reed Dairy Farm v. Consumers Power Co.*, 227 Mich App 614; 576 NW2d 709 (1998), and *Rogner v. Rogner*, 179 Mich App 326; 445 NW2d 232 (1989).

RELIEF REQUESTED

Plaintiff requests the following relief –

A. That this Honorable Court enter an Order –

(i) Granting the instant Motion.

(ii) Holding Defendant in contempt of court until he fully and completely complies with is his status quo obligations, including reimbursements to Plaintiff.

(iii) Requiring Defendant to provide proof of all payments that he has allegedly made with respect to his obligations, as discussed herein.

(iv) Extending discovery to the trial date in this case.

(v) Stating that the parties shall file and serve a witness list and an expert witness list by the close of business on February 16, 2018.

(vi) Awarding Plaintiff attorney fees and costs, consistent with MCR 3.206 and related legal authority.

B. That this Honorable Court grant Plaintiff any other relief that is appropriate.

Kurt E. Schnelz (P37365)
Co-Counsel for Plaintiff
280 North Old Woodward, Suite 250
Birmingham, Michigan 48009
(248) 258-7074

Dated:

I SWEAR AND AFFIRM THAT THE ABOVE FACTS ARE TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

/s/
Jody Pohlman

Dated:

Exhibit A

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
FAMILY COURT DIVISION

JODY POHLMAN,

Plaintiff,

-vs-

Case No. 17-853588-DO

JAMES G. POHLMAN,

HON. Jeffery S. Matis

Defendant.

MARY ANNE NOONAN (P71241)
Attorney for Plaintiff
28806 Woodward Ave
Royal Oak, Michigan 48067
248/594-1213; Fax. 248/856-2882

BANK RIFKIN
MARK A. BANK (P48040)
Attorney for Defendant
401 S Old Woodward Ave, Ste 410
Birmingham, Michigan 48009
(248) 480-8333

STIPULATED ORDER FOR DISTRIBUTION FROM IOLTA TRUST ACCOUNT

At a session of court held in the courthouse in
Pontiac, Michigan, on 10/30/2017, 2017
Present: Hon. ~~Jeffrey S. Matis~~ Jeffery S. Matis
Oakland County Circuit Court Judge

THIS MATTER having come on to be heard upon Plaintiff's Motion to Modify the Status Quo and Interim Support and Defendant's Motion for Release of Funds to Pay Outstanding Bills, and the parties having resolved the issues raised in both motions, as evidenced by the signatures below; and the Court having otherwise been fully advised in the premises;

IT IS HEREBY ORDERED that:

1) Commencing September 1, 2017, and continuing on the 1st day of each month thereafter during the pendency of this case, or until the first to occur of Plaintiff's death or further order of the Court, Defendant shall pay to Plaintiff interim spousal support in the amount of $3,000 per month. Plaintiff acknowledges receipt of the September 2017 payment and the October 2017 payment.

2) During the pendency of this case, Defendant shall continue to pay for the following:

   a. Premiums for health insurance for both parties;

   b. Auto insurance for both parties; and

   c. Auto loan payments for both parties.

3) The following bills shall be paid forthwith from the martial funds in Plaintiff's counsel's IOLTA client trust account:

   a. Defendant's PNC Credit Card - $10,904.00

   b. Plaintiff's PNC Visa - $5,546.00

   c. Joint Bank of America XXX6159 - $10,701.00

   d. Plaintiff Bank of America XXXX - $22,116.00

   e. Defendant's Chase Credit Card - $6,613.00

   f. Defendant's American Express Credit Card - $5,171.00

   g. Meijer Credit Card - $2,998.00

   h. Home Depot Credit Card - $1,900.00

   i. Beaumont Health (Defendant) - $5,232.00

   j. Plaintiff's Doctor Bills - $5,500 (itemization to follow)

   k. Plaintiff's legal fees - $10,000

l. Oxford Farm & Garden - $1,486.00

m. Randazzo CPA (2016 tax prep) - $720

n. Attorney Renee Gucciardo - $1,077.00

o. Dr. Evan Moore (vet) - $1,300

p. Dr. Wilson (vet) - $2,902.00

q. Levy Farm House (horses) - $1,400

r. Attorney Jaffee (tax lawyer) - $732.00

s. Kevin (closing on home) - $350

t. Moving Expenses $7000 – Steven and Josh Taylor

u. Rory Osborne - $1,000

v. Jody's Basement - $1,400

w. Tractor Tires - $1,000

x. Stor-N-Lock - $135

y. Stor-N-Lock - $405

For a total of $107,588.00

4) The parties agree to withdraw $107,588.00 from Plaintiff's IOLTA account to pay for the above-mentioned bills. All bills to be paid no later than November 1, 2017. Once the bills have been paid, the parties will equally divide the remaining funds in the Plaintiff's IOLTA account, no later than November 1st, 2017.

5) Any credit card debt that is incurred after the above-mentioned bills are paid will be solely responsibility of the card holder.

6) All joint credit cards will be cancelled or maintain a zero balance.

7) The parties will equally divide all mutually agreed upon costs associated with the horses until the parties can mutually agree on the long-term solution or further order of the Court.

8) The parties will equally divide all current storage locker fees until they are emptied and items can be divided or disposed of as mutually agreed but no later than April 1, 2018.

9) The agreement to pay all credit card debt to date does not foreclose either party from making a claim for reimbursement for charges incurred on any of the above named credit cards that may not be marital or that may qualify as an unreimbursed business expense.

10) This Order does not resolve the last pending claim in this action and does not close this case.

11) Any other orders not in conflict with this Order remains in full force and effect.

/s/Jeffery S. Matis

KL

Hon. Jeffery Matis
Oakland County Circuit Court Judge

Approved as to form and substance:

Jody Pohlman with permission
JODY POHLMAN
Plaintiff

JAMES G. POHLMAN
Defendant

MARY ANNE NOONAN (P71241)
Attorney for Plaintiff

MARK A. BANK (P48040)
Attorney for Defendant

7) The parties will equally divide all mutually agreed upon costs associated with the horses until the parties can mutually agree on the long-term solution or further order of the Court.

8) The parties will equally divide all current storage locker fees until they are emptied and items can be divided or disposed of as mutually agreed but no later than April 1, 2018.

9) The agreement to pay all credit card debt to date does not foreclose either party from making a claim for reimbursement for charges incurred on any of the above named credit cards that may not be marital or that may qualify as a unreimbursed business expense.

10) This Order does not resolve the last pending claim in this action and does not close this case.

11) Any other orders not in conflict with this Order remains in full force and effect.

SEE PAGE 4

Hon. Jeffery Matis
Oakland County Circuit Court Judge

Approved as to form and substance:

JODY POHLMAN
Plaintiff

JAMES G. POHLMAN
Defendant

MARY ANNE NOONAN (P71241)
Attorney for Plaintiff

MARK A. BANK (P48040)
Attorney for Defendant

Exhibit B

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
FAMILY COURT DIVISION

JODY POHLMAN,

Plaintiff,

-vs-

Case No. 17-853588-DO

JAMES G. POHLMAN,

HON. Jeffery S. Matis

Defendant.

MARY ANNE NOONAN (P71241)
Attorney for Plaintiff
28806 Woodward Ave
Royal Oak, Michigan 48067
248/594-1213; Fax. 248/856-2882

BANK RIFKIN
MARK A. BANK (P48040)
Attorney for Defendant
401 S Old Woodward Ave, Ste 410
Birmingham, Michigan 48009
(248) 480-8333

STIPULATED ORDER FOR FIRST
ADJOURNMENT OF SCHEDULING ORDER

At a session of court held in the courthouse in
Pontiac, Michigan, on _____, 2017
Present: Hon. Jeffrey Matis
Oakland County Circuit Court Judge

WHEREAS, the Scheduling Order issued by this Court has a trial date of November 7, 2017 at 8:30 AM in front of Honorable Jeffrey Matis; and

WHEREAS, the parties request for an additional 30 days due to the parties attending a mediation with Michael Robbins.

WHEREAS, the parties to this matter have stipulated to the entry of this Order adjourning the trial in this matter;

WHEREAS, this Court being otherwise fully advised in the premises;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Scheduling Order in this matter is hereby adjourned and amended as follows:

   a. Each party shall submit a Witness List to opposing counsel and the Court by December 11, 2017;

   b. All parties shall name their Experts by December 11, 2017;

   c. All necessary appraisals of assets shall be completed by December 11, 2017;

   d. All discovery shall be completed by December 18, 2017;

   e. This case shall be mediated no later than December 18, 2017;

   f. Each party shall submit a Trial Brief no later than December 11, 2017;

   g. This case shall be tried December 18, 2017 at 8:30 a.m.

2. This Order does not resolve the last pending claim in this action and does not close this case.

3. Any other orders not in conflict with this Order remains in full force and effect.

/s/
Hon. Jeffrey Matis
Oakland County Circuit Court Judge

MARY ANNE NOONAN (P71241)
Attorney for Plaintiff

MARK A. BANK (P48040)
Attorney for Defendant

Exhibit C

STATE OF MICHIGAN

OAKLAND COUNTY CIRCUIT COURT

Pohlman

Plaintiff,

-v-

Pohlman

Defendant

Case No. 17-853588-DO

Honorable Lisa Langton

DOMESTIC SCHEDULING ORDER [redacted] (TRIAL)

This matter having come before the Court and having been advised in the premises, the following is HEREBY ORDERED:

This case is set for a ☒ Trial [redacted]

Issue(s) in dispute: _____.

The attorney(s) of record/parties represent that a Trial / Hearing in this matter will take approximately: 1/2 D.

IT IS ORDERED THAT:

1. **DISCOVERY** shall be completed by: Discovery is closed. Except as modified by 12/18/17 order
2. Each Party shall submit a **WITNESS LIST**, and name any **EXPERT WITNESSES** (if applicable), one week **PRIOR** to close of discovery.
3. All necessary **APPRAISALS** of assets shall be completed, and provided to opposing counsel, one week **PRIOR** to close of discovery.
4. Unless the court entered an order following a proper objection and motion, parties must stipulate to all exhibits. The parties shall mark all exhibits **BEFORE** trial; Plaintiff shall use numbers and Defendant shall use letters.
5. Susan Cohen is hereby **APPOINTED AS MEDIATOR.**
6. The case shall be **MEDIATED** no later than two weeks **AFTER** the close of discovery.
   a. **MEDIATION CANNOT BE ADJOURNED.**
   b. **NON-APPEARANCE** for **MEDIATION** will waive the chance to mediate.
   c. If the **APPOINTED MEDIATOR CANNOT MEDIATE** by the date set above, then the parties **SHALL** select a new **MEDIATOR.**
7. Parties must refer to Friend of the Court **AT LEAST 90 DAYS** prior to Trial.
   a. A referral to Friend of the Court **DOES NOT** delay the Trial.
8. Each party must **EXCHANGE EXHIBITS** no later than **THREE WEEKS** prior to Trial.
   a. Parties must raise any **OBJECTIONS** to the proposed **EXHIBITS** by motion at least **ONE WEEK** prior to Trial.
   b. Parties must submit a copy of all **EXHIBITS** to the Judge's staff attorney at least **ONE WEEK** prior to Trial.
9. Each party shall compile, and submit no later than **ONE WEEK** before trial, a **list of all assets and debts with values.** The list shall include a proposed division of the assets and debts.
10. If any party requires the assistance of an **INTERPRETER,** then that party must notify the Court of that need no later than **TWO WEEKS** prior to Trial.
11. If any party wishes to use **AUDIO/VIDEO TECHNOLOGY** during the trial, then that party must notify the Court of that need no later than **TWO WEEKS** prior to Trial. Thursday
12. This case shall be **TRIED** on: 2/15/18 @ 9AM EST.
    a. The **TRIAL DATE** may only be adjourned by **MOTION** if good cause is shown.
13. The parties shall exchange amongst each other—and file with the Court—a **HEARING / TRIAL BRIEF,** limited to **TEN PAGES,** no later than **ONE WEEK** prior to Trial.
    a. Parties shall submit a "judge's copy" of the trial brief, including exhibits, to the Judge's staff attorney no later than **ONE WEEK** prior to Trial.

IT IS FURTHER ORDERED that pursuant to MCR 8.115, MRPC 3.5, MRPC 8.3, and MRPC 8.4, no document, motion, response, or brief filed in this matter shall contain derisive comments, insults, disparaging remarks, or otherwise criticize a lawyer, witness, or court employee. Violations may result in the document being stricken and the attorney or party signing the document being sanctioned.

IT IS FURTHER ORDERED that pursuant to MCR 2.313 and 2.504(b), a failure to strictly comply with any of the terms detailed above may result in the entry of a(n): Dismissal, Default Judgment, Refusal to Permit Witness Testimony, Refusal to Admit Exhibits or Other Actions (including the assessment of costs), and Award of Expenses such as Attorney Fees.

N/A

Plaintiff/ Attorney for Plaintiff

N/A

Defendant/ Attorney for Defendant

12/18/17

DATE

Lisa Langton

Hon. Lisa Langton

Exhibit D

STATE OF MICHIGAN OAKLAND COUNTY SIXTH JUDICIAL CIRCUIT	ORDER	CASE NO. 17-855582-DO

Court address: 1200 N TELEGRAPH RD DEPT 404, PONTIAC MI 48341-0404

PLAINTIFF(S)	V.	DEFENDANT(S)
Judy Pelmen		Glenn Pelmen

It is hereby ordered that ... adjourned to ... 12:00 ...

DATE 12/28/17

LISA LANGTON, Circuit Judge

P41171
BAR NO.

Rev. 11-99

Exhibit E

Mary Anne

LAW OFFICE OF MARY ANNE NOONAN
28806 Woodward Ave
Royal Oak, Michigan 48067
ma@noonanfamilylaw.com
248.594. 1213/t 248.856.2882/f

FasTrackDivorce®
PROVEN. FAST. AFFORDABLE

From: Blevins, Jason [mailto:blevinsj@oakgov.com]
Sent: Tuesday, January 16, 2018 9:14 AM
To: ma@noonanfamilylaw.com; Mark Bank <bank@bankrifkin.com>; Kurt Schnelz <kschnelz@swlawpc.com>
Subject: Pohlman

Counselors,

The court is adjourning trial in this case. Please select one of the following dates and, after conferring amongst yourselves, let me know which date works best for a trial otherwise consistent with the existing scheduling order.

4/2/18 8:30-12
4/3/18 8:30-12
4/5/18 1:30-4:15

Respectfully,

Jason Blevins

Exhibit F

STATE OF MICHIGAN OAKLAND COUNTY SIXTH JUDICIAL CIRCUIT	ORDER OF ADJOURNMENT	CASE NO. 17-853588-DO

Court address: 1200 N. Telegraph Rd., Dept 404, Pontiac, MI 48341 Telephone: (248) 858-1704

Plaintiff(s)		Defendant(s)
Pohlman	v.	Pohlman

IT IS ORDERED that the [redacted]

☒ Trial

[redacted]

scheduled for 2/15/18 (Date) has been adjourned to

Tuesday 4/3/18 at 8:30AM EST (Date and Time) due to Court unavailability.

All dates in the 12/18/17 scheduling order remain the same.

This order extends scheduling order dates as necessary to conform with the new date. If discovery is closed at the time of this order, it remains closed. Any additional orders in this case remain in effect.

Failure to appear at the scheduled time may result in sanctions under the Michigan Court Rules.

Date: 1-18-18

LISA LANGTON, CIRCUIT JUDGE P41171 BAR NO.

STATE OF MICHIGAN
IN THE SUPREME COURT

JODY POHLMAN,
Plaintiff/Appellant,

SC: 161262

COA: 344121

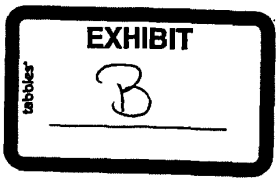
v.

Oakland CC: 2017-853588-DO

JAMES POHLMAN,
Defendant/Appellee.

_____/

EXHIBIT F



STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JODY POHLMAN,

Plaintiff,

v.

CASE NO. 17-853588-DO
HON. Lisa Langton

JAMES G. POHLMAN,

Defendant.
_____/

JEFFREY A. QUAS (P42248)
Quas Legal Solutions, PLLC
Attorney for Plaintiff
337 South Main Street, Ste. 201
Rochester, MI 48307-6711
(248) 652-7799

MICHAEL J. BALIAN P39972)
Balian Legal, PLLC
Co-Counsel for Plaintiff
40950 Woodward Ave., Ste. 350
Bloomfield Hills, MI 48304-5729
(248) 581-0040

BANK RIFKIN
MARK A. BANK (P48040)
Attorneys for Defendant
401 S. Old Woodward Avenue, Ste. 410
Birmingham, MI 48009-6003
(248) 480-8333
_____/

AFFIDAVIT OF JODY POHLMAN

STATE OF MICHIGAN)
: SS
COUNTY OF OAKLAND)

I, Jody Polhman, being duly sworn states:

1. I am of legal age, competent to testify to the facts stated herein, and if called as a witness in this matter could testify to the following facts based on my personal knowledge.

2. I am the Plaintiff in this matter, Wife of Defendant James G. Pohlman.

3. Mediation in this matter was scheduled for January 31, 2018 at 1:00 p.m. with Mr. Michael Robbins.

4. I arrived at Mr. Robbins' office at approximately 12:45 p.m.

5. Some time after 1:00 p.m., my attorney Mr. Schnelz entered the conference room and so did Mr. Robbins. Mr. Robbins made his introductory remarks at that time – the only time during the entire mediation process where he addressed me directly.

6. No progress was made for several hours. I was hungry and tired and wanted to leave as we had not reached an agreement on a number of important terms. I went to the restroom at approximately 4:00 p.m. When I came out of the restroom, Phil, a male associate of Mr. Schnelz, was standing between the ladies room and the elevator and told me something to the effect of, "you need to go back inside. You can't leave."

7. Mr. Schnelz entered the conference room with Mr. Robbins at approximately 7:00 p.m. Mr. Schnelz announced something to the effect of "we're done here," and as such I rose from my chair to leave. Mr. Schnelz then yelled, "you're not going anywhere, sit down! You need to sign this!"

8. For the next 35 minutes, (approximately), I refused to sign the document that was placed in front of me. I made statements to my attorney and the mediator such as:

   a. "Where is my co-counsel?" (Mary Anne Noonan, who was not present).

   b. "Why is she not here?"

   c. "I'm not signing anything until she reads it and reviews it with me."

d. I did not read it at that time.

e. At that time, I did not know what it said.

f. "I want to sleep on it."

g. "I want to think about it over the weekend."

h. A close friend advised me not to sign anything until he had a chance to review it with me.

i. Numerous times I advised Phil, Mr. Schnelz, and Mr. Robbins that I wanted to leave and I was not signing anything that day.

   i. I told them "I had to leave before it gets dark," because it is difficult for me to see and drive at night.

   ii. I had to leave because my animals were outside.

9. During this period of time my attorney refused to properly address my many questions nor did he read the document to me, per my request. When I pushed my chair away from the conference table, Mr. Schnelz forcibly pulled my chair back to the table and continued to instruct me to sign the document. Every time I attempted to stand up and leave, Mr. Schnelz stood up and physically blocked me from leaving. Mr. Robbins was sitting directly in front of the only exit and blocked the door so I was not able to leave. I felt entrapped and held against my will. Every time I stood up, Mr. Robbins slid his chair back, closer to the door.

10. I screamed, "let me out of here! I want to go home." I pounded the table with my fists and said "let me out of here, I want to go home!" No one came to my aid.

11. I eventually signed the document although I had not read it, it had not been read to me, and it had not been thoroughly explained to me. I felt that I was coerced into signing the agreement and felt fearful, intimidated and under duress during the last half hour of this mediation. I honestly believed that I would not be allowed to leave the room, unless I had signed the document.

Further affiant sayeth not.

Witnesses:

Mollie McSweeney
Mollie McSweeney

Regina L. Neighbors
REGINA L. NEIGHBORS

Jody A. Polhman
JODY POLHMAN

Subscribed and sworn to before me
on this 20th day of March, 2018

R Neighbors, Notary Public
Oakland County, Michigan
My Commission Expires: 5-7-2024

R. NEIGHBORS
NOTARY PUBLIC, STATE OF MI
COUNTY OF OAKLAND
MY COMMISSION EXPIRES May 7, 2024
ACTING IN COUNTY OF OAKLAND

STATE OF MICHIGAN
IN THE SUPREME COURT

JODY POHLMAN,
Plaintiff/Appellant,

SC: 161262

COA: 344121

v.

Oakland CC: 2017-853588-DO

JAMES POHLMAN,
Defendant/Appellee.

_____/

EXHIBIT G

Document: Pohlman v. Pohlman, 2020 Mich. App. LEXIS 798

Pohlman v. Pohlman, 2020 Mich. App. LEXIS 798

Copy Citation

Court of Appeals of Michigan

January 30, 2020, Decided

No. 344121

Reporter
2020 Mich. App. LEXIS 798 *

JODY POHLMAN, Plaintiff-Appellant, v JAMES G. POHLMAN, Defendant-Appellee.

Notice: THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

Prior History: **[*1]** Oakland Circuit Court. LC No. 2017-853588-DO.

Core Terms

mediation, domestic violence, parties, duress, screening, divorce, settlement terms, trial court, court rule, settlement, coercion, sheet, evidentiary hearing, mediation process, reconsideration motion, settlement agreement, reasonable inquiry, principles, coercive, coerced, signing, discovery, protocol, violent, terms, safe, domestic relations, experienced, harmless, violence

Judges: Before: MURRAY, C.J., and SAWYER and GLEICHER, JJ. Gleicher, J. (dissenting).

Opinion

PER CURIAM.

Plaintiff appeals as of right the judgment of divorce and the order denying her motion for reconsideration of the judgment of divorce, entered the same day. For the reasons that follow, we affirm.

I. FACTS AND PROCEDURAL HISTORY

The parties were married in 1989, and separated in March 2016. After plaintiff filed a complaint for divorce, [1] the parties agreed to participate in mediation. Mediation took place on January 31, 2018, and lasted from approximately 1:00 p.m. to 7:30 p.m. A "shuttle-type" of mediation was used, meaning the parties were separated for the entire duration of the mediation, and had no interaction. At the conclusion of mediation, both parties signed a settlement terms sheet, and initialed every handwritten change. It provided, "The terms set forth herein resolve all of the issues in this divorce case. There will not be a trial."

Defendant then filed a motion for entry of a judgment of divorce incorporating the terms of the signed settlement terms sheet. Plaintiff filed an answer[2] to the motion, arguing that the settlement terms sheet was not **[*2]** binding because she did not make a knowing and understanding acquiescence to it. Specifically, but without any evidentiary support, plaintiff alleged only that she suffered from a "mental vulnerability and affliction," and thus could not knowingly enter into the agreement. Because there was no transcribed record of the mediation, there was no evidence demonstrating the parties' ability to understand the agreement, and plaintiff requested an evidentiary hearing. Plaintiff made no mention of domestic violence, or the lack of screening for it, in her answer or at the hearing.[3]

The court held a hearing on defendant's motion, and determined that plaintiff willingly participated in mediation, and entered the settlement without duress. The court based its decisions on the following grounds: (1) the fact that mediation lasted from 1:00 p.m. to 7:30 p.m. was not unusual, (2) the parties were each represented by counsel, (3) the mediator was experienced, (4) the mediator conducted shuttle-type mediation where the parties were separated the entire time, and (5) plaintiff signed the settlement terms sheet and initialed the handwritten changes to the document, each of which favored plaintiff. There **[*3]** was no evidence that defendant coerced or pressured plaintiff in any way, or took any unlawful actions, and there was no evidence that plaintiff signed the settlement terms sheet under duress. As a result, the court held that the agreement was enforceable. Defendant then testified as to the statutory grounds needed for entry of judgment of divorce, and the court granted defendant's motion.

Plaintiff filed a motion for reconsideration of the court's ruling, asserting that she suffered from duress and coercion during mediation.[4] Plaintiff alleged that her attorney and the mediator would not let her leave until she signed the settlement terms sheet, despite her requests to leave, and to have her co-counsel review the document. She also filed an objection to the seven-day order for entry of the judgment of divorce filed by defendant, alleging that mediation, and therefore the settlement terms sheet, were invalid because the parties did not undergo proper domestic violence screening under MCR 3.216(H)(2).[5] In a written opinion and order, the court denied plaintiff's motion for reconsideration, and entered the judgment of divorce incorporating the settlement terms sheet.

II. ANALYSIS

A. FAILURE TO COMPLY WITH **[*4]** MCR 3.216(H)(2)

Plaintiff first argues that the mediation process was "fatally flawed" because the mediator failed to conduct any domestic violence screening.[6]

Though plaintiff has essentially ignored the context in which this issue was raised, we cannot. As noted earlier, plaintiff's affidavit regarding domestic violence and the lack of screening at mediation was first submitted to the court with her objection to the judgment served pursuant to the "seven-day rule" contained within MCR 2.602(B)(3). But those objections can only address whether the content of the proposed order is consistent with the court's ruling, i.e., the form of the order, and is not an independent means to challenge the underlying ruling. *Riley v 36th District Court*, 194 Mich App 649, 650-651; 487 NW2d 855 (1992). As a result, the affidavit regarding domestic violence was not properly presented to the trial court. The issue could have—but was not—raised with the motion for reconsideration, but that motion was focused on the alleged coercion by plaintiff's attorney and the mediator. Plaintiff's affidavit regarding domestic violence was not attached to that motion.

Even if this was a proper way to raise this issue, as a matter of law the violation of the court rule alone was not enough to set aside the judgment. **[*5]** Like the interpretation of statutes, the interpretation of court rules is reviewed de novo. *Ligons v Crittenton Hosp*, 490 Mich 61, 70; 803 NW2d 271 (2011). Court rules are interpreted using the same principles as with statutory interpretation. *Id.* "Our goal when interpreting and applying statutes or court rules is to give effect to the plain meaning of the text. If the text is unambiguous, we apply the language as written without construction or interpretation." *Id.* The trial court's factual findings underlying its application of a court rule are reviewed for clear error. *Vittiglio v Vittiglio*, 297 Mich App 391, 398; 824 NW2d 591 (2012). A trial court's decision regarding a motion for reconsideration is reviewed for an abuse of discretion. *Woods v SLB Prop Mgt, LLC*, 277 Mich. App. 622, 629; 750 N.W.2d 228 (2008). "An abuse of discretion occurs if the trial court's decision falls outside the range of principled outcomes." *Macomb Co Dep't of Human Servs v Anderson*, 304 Mich App 750, 754; 849 NW2d 408 (2014).

MCR 3.216 governs mediation in domestic relations matters. MCR 3.216(H)(2) provides:

> The mediator must make reasonable inquiry as to whether either party has a history of a coercive or violent relationship with the other party. Throughout the mediation process, the mediator must make reasonable efforts to screen for the presence of coercion or violence that would make mediation physically or emotionally unsafe for any participant or that would impede achieving a voluntary and safe resolution **[*6]** of issues. A reasonable inquiry includes the use of the domestic violence screening protocol for mediators provided by the state court administrative office as directed by the supreme court.

This subsection was added in September 2017, to "update the rule to be consistent with 2016 PA 93, which allows a court to order mediation if a protected party requests it and requires a mediator to screen for the presence of domestic violence throughout the process." MCR 3.216 (staff comment to 2017 amendment).[7] "Must" is defined as "an imperative need or duty: REQUIREMENT." *Merriam-Webster's Collegiate Dictionary* (11th ed). Under the plain and unambiguous language of MCR 3.216(H)(2), a mediator is required to make a reasonable inquiry regarding a coercive or violent relationship between the parties, and is required to make reasonable efforts to screen for coercion or violence between the parties throughout the mediation process.[8]

Plaintiff attested [9] that the mediator never inquired about any history of domestic violence between the parties, nor did he complete any domestic violence screening. Plaintiff only briefly spoke to the mediator directly at the beginning of mediation when he made introductory remarks, and he did not return to the conference room where plaintiff was located until around 7:00 p.m. Although plaintiff never came forward before or during mediation with any suggestion of the existence of domestic violence in the parties' relationship, it is clear that the mediator did not comply with the requirements of MCR 3.216(H)(2) when he failed to inquire or make reasonable efforts to screen the parties regarding any history of domestic violence or coercion during their relationship.

However, plaintiff fails to provide any authority for the proposition that **[*8]** the mediator's failure to comply with the requirements of the court rule renders the mediation and subsequent settlement terms agreement void. "A party may not simply announce its position and 'leave it to this Court to discover and rationalize the basis for the party's claim.'" *Badiee v Brighton Area Schs*, 265 Mich. App. 343, 357; 695 N.W.2d 521 (2005) (citation omitted). And this is important, because "absent a showing of prejudice resulting from noncompliance with the [court] rules, any error is harmless." *Baker v DEC Int'l*, 218 Mich App 248, 262; 553 NW2d 667 (1996), aff'd in part and rev'd in part on other grounds by 458 Mich 247; 580 N.W.2d 894 (1998) (rule set forth in context of affidavits violating court rules); MCR 2.613(A). Because plaintiff has not asserted or demonstrated that she was prejudiced by the mediator's failure to screen for domestic violence during mediation, any noncompliance with MCR 3.216(H)(2) was harmless. See *Castillo v Alexander*, 171 Mich App 679, 682; 430 NW2d 751 (1988) (where the mediation clerk violated the court rule by notifying the parties of their acceptance of the mediation award before the expiration of the response period, "this notification, if error, is harmless because it did not affect the parties' decision to either accept or reject the mediation award.").

B. THE SETTLEMENT TERMS SHEET WAS NOT VOID BECAUSE OF DURESS

Plaintiff next argues that the settlement terms sheet signed at mediation was void **[*9]** because it was made under duress, and plaintiff did not reasonably understand the settlement terms sheet.[10] Plaintiff raised this issue of duress, based primarily on her "mental vulnerability and affliction," in her opposition to defendant's motion for entry of judgment.

"The finding of the trial court concerning the validity of the parties' consent to a settlement agreement will not be overturned absent a finding of an abuse of discretion," which occurs when the court chooses an outcome that falls outside the range of principled outcomes. *Rettig v Rettig*, 322 Mich App 750, 754; 912 NW2d 877 (2018) (quotation marks and citations omitted).

For the most part, parties cannot disavow a written, signed agreement. *Gojcaj v Moser*, 140 Mich App 828, 835; 366 NW2d 54 (1985).[11] MCR 3.216(A)(2) provides that "[d]omestic relations mediation is a nonbinding process . . . ." To make a settlement binding, MCR 3.216(H)(8) provides that "[i]f a settlement is reached as a result of . . . mediation, to be binding, the terms of that settlement must be reduced to a signed writing by the parties or acknowledged by the parties on an audio or video recording. After a settlement has been reached, the parties shall take steps necessary to enter judgment as in the case of other settlements."

Once the parties reach a settlement agreement, it should not be set **[*10]** aside merely because one party had a "change of heart." *Vittiglio*, 297 Mich App at 399 (quotation marks and citation omitted). "'It is a well-settled principle of law that courts are bound by property settlements reached through negotiations and agreement by parties to a divorce action, in the absence of fraud, duress, mutual mistake, or severe stress which prevented a party from understanding in a reasonable manner the nature and effect of the act in which she was engaged.'" *Id.* at 400, quoting *Keyser v Keyser*, 182 Mich App 268, 269-270; 451 NW2d 587 (1990). "This rule applies whether the settlement is in writing and signed by the parties or their representatives or the settlement is orally placed on the record and consented to by the parties, even though not yet formally entered as part of the divorce judgment by the lower court." *Keyser*, 182 Mich App at 270. "However, the parties must have actually consented to the settlement agreement." *Vittiglio*, 297 Mich App at 400.

However, contracts may be voided on grounds of duress. *Rory v Continental Ins Co*, 473 Mich. 457, 489; 703 N.W.2d 23 (2005). To succeed with respect to a claim of duress, the plaintiff must establish that she was illegally compelled or coerced to act by fear of serious injury to her person, reputation, or fortune. *Farm Credit Servs of Mich Heartland, PCA v Weldon*, 232 Mich App 662, 681; 591 NW2d 438 (1999).

In *Vittiglio*, the plaintiff attested that the defendant threatened to kill her more than once in the past. *Id.* at 400-401. However, like this **[*11]** case, the settlement agreement in *Vittiglio* was reached through mediation using "'shuttle diplomacy,'" where the parties were not in the same room. *Id.* at 401. Similarly, the plaintiff in *Vittiglio* never claimed that the defendant threatened her into agreeing to the settlement. *Id.* *Vittiglio* was decided before MCR 3.216 was amended in September 2017, to add subsection (H)(2), and the Court noted as follows:

> The Supreme Court Administrative Office (SCAO)'s Standards of Conduct for Mediators do not specify any particular manner for handling mediation when domestic violence or control exists. However, the SCAO's Model Screening Protocol for domestic-relations mediation when domestic violence or control exists contains a number of suggestions for keeping parties safe, accommodated, and capable of negotiating and making decisions free from fear or coercion. It appears that the mediator took proper care to ensure that the mediation was free from coercion. [*Id.* at 401 n 3 (citation omitted).]

Therefore, the *Vittiglio* Court concluded that the defendant's previous threats to the plaintiff did not affect the validity of the plaintiff's consent to the settlement agreement, "particularly because of the method of mediation used in this case." *Id.* at 401.

[*12] Plaintiff's allegations that she was not allowed to leave, and was pressured to sign the settlement terms agreement by her attorney and the mediator, do not demonstrate the coercion necessary to set aside an agreement based upon duress. Before addressing plaintiff's argument, we point out two principles.

First, when a party asserts that her own attorney coerced or unduly influenced her, courts will not overturn a consent judgment absent a showing that the opposing party participated in the coercion or influence. *Id.* at 401-402. In *Vittiglio*, where shuttle-type mediation was also used, there was no indication that the defendant was involved in any communication with the plaintiff regarding any advantage of settling the case, so there was no basis to disturb the trial court's findings that the plaintiff, an

educated person, was represented by experienced counsel before an experienced mediator, and there was no duress. *Id.* at 402. Second,

> a certain amount of pressure to settle is fundamentally inherent in the mediation process, and is practically part of the definition. See MCR 3.216(A)(2) ("Domestic relations mediation is a nonbinding process in which a neutral third party facilitates communication between parties to promote **[*13]** settlement."). That pressure to settle is not, by itself, coercion. [*Id.*]

Based on undisputed facts, the trial court correctly found that (1) plaintiff voluntarily participated in mediation, (2) the 6.5 hour time period was not unusual for a divorce mediation, (3) the parties had an experienced mediator and counsel, (4) the mediator conducted shuttle-type mediation, and (5) plaintiff signed and initialed the settlement terms sheet. These findings are based on the undisputed facts that during the entire mediation the parties were in separate rooms, and had no interaction. At no time did plaintiff assert that defendant coerced her into signing the settlement terms sheet at mediation. Instead, plaintiff asserted that her attorney and the mediator made her feel as if she could not leave without signing. But as noted in *Vittiglio*, that is not sufficient. *Id.* at 401-402.

The dissent recognizes "that the behaviors of the mediator and counsel do not necessarily provide [plaintiff] with grounds to disavow the settlement agreement." But of course, the sole basis for plaintiff's argument in opposition to defendant's motion for entry of judgment, as well as in her motion for reconsideration, was precisely the **[*14]** alleged behavior of her counsel and the mediator. Likely recognizing this fact, and in defiance of two orders of this Court, the dissent relies upon an affidavit from defendant that was not submitted to the trial court, and that was specifically not made part of the record on appeal.[11] Although the dissent and plaintiff (*at least on appeal*) paint a compelling picture, their canvas starts off blank, ignoring the procedural posture in which these issues are presented to us. Our limited role as appellate judges requires us to recognize, and be guided by, the standards of review and appellate principles that apply in all cases. Those include limiting ourselves to reviewing evidence of record, and considering when the evidence was presented to the trial court. How and if issues are raised in the trial court often controls the outcome of an appeal, and when enforcing those rules here, the conclusion must be to affirm.[12]

Plaintiff's argument that defendant coerced plaintiff into signing the settlement terms sheet by being uncooperative throughout discovery is unpersuasive because what occurred during discovery has no impact on what pressure **[*15]** was placed on plaintiff at mediation. It would be one thing if plaintiff was alleging the failure to disclose assets during discovery, or that she mistakenly agreed to mediate, but neither is the case. While at mediation, both parties were aware of what transpired during discovery in this case and the prior divorce proceedings, and were free to consider that in deciding whether to resolve the matter. If failure to comply with discovery was a legal basis to establish duress and set aside a settlement reached at mediation, the mediation process would be rendered virtually useless. Therefore, because there is no evidence that plaintiff signed the agreement under duress contributed to by defendant, the court did not abuse its discretion by denying plaintiff's motion for reconsideration and entering the judgment of divorce.

In a related argument, plaintiff also argues that her ability to consent to the settlement terms sheet was impaired by severe stress. "[T]he test for whether consent was illusory because of severe stress is that of mental capacity to contract." *Vittiglio*, 297 Mich App at 403. "That is, whether the person in question possesses sufficient mind to understand, in a reasonable manner, the nature and effect **[*16]** of the act in which he [or she] is engaged." *Id.* (citation and quotation marks omitted). The plaintiff in *Vittiglio* would have to have "show[n] that she did not even comprehend the nature or terms of the agreement," *id.*, but failed to do so because the mediator asked the plaintiff if she understood the terms, the plaintiff said that she did, had no questions, and agreed to the settlement. *Id.* Similarly, here, plaintiff's consent to the settlement terms sheet cannot be invalidated on the basis of her "unreasonable stress." Plaintiff asserts that she did not read or understand the settlement terms sheet; however, she signed the document, and initialed each handwritten change, each of which, according to the trial court, resulted in her favor. "Michigan law presumes that one who signs a written agreement knows the nature of the instrument so executed and understands its content. Moreover, mere failure to read an agreement is not a defense in an action to enforce the terms of a written agreement." *Galea v FCA US LLC*, 323 Mich App 360, 369; 917 NW2d 694 (2018) (quotation marks and citations omitted). Plaintiff failed to overcome the presumption that she could comprehend the settlement terms sheet. *Vittiglio*, 297 Mich App at 403.

C. FAILURE TO HOLD AN EVIDENTIARY HEARING

Lastly, **[*17]** plaintiff argues that the trial court erred in failing to grant her an evidentiary hearing to determine if the settlement was void because of coercion and duress, and whether the requirements of MCR 3.216(H)(2) were met.

Plaintiff requested an evidentiary hearing to prove that she signed the settlement terms agreement under coercion and duress. A trial court may abuse its discretion when a party alleges fraud in a consent judgment, and the court fails to hold an evidentiary hearing. See *Kiefer v Kiefer*, 212 Mich App 176, 183; 536 NW2d 873 (1995). But the trial court does not have to hold an evidentiary hearing when it can sufficiently decide an issue on the basis of the evidence before it. *Vittiglio*, 297 Mich App at 406. "[W]here the party requesting relief fails to provide specific allegations of fraud relating to a material fact, the trial court need not proceed to an evidentiary hearing." *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 405; 651 NW2d 756 (2002).

As discussed above, plaintiff's allegations of duress and coercion related to signing the settlement terms sheet were based on pressure that she felt from the mediator and her attorney, rather than defendant. This was clear in her affidavit regarding the alleged coercion that occurred at mediation. Thus, the trial court was not required to hold an evidentiary hearing because it could sufficiently **[*18]** decide the issue of coercion and duress on the basis of the evidence before it. *Vittiglio*, 297 Mich App at 406. Plaintiff's affidavit, filed with her motion for reconsideration, was considered in light of what was acknowledged at the hearing held on March 14, 2018, i.e., that the evidence was undisputed that there was no evidence that defendant coerced or pressured plaintiff into signing the settlement terms sheet because shuttle-type mediation was used, the parties did not interact, they were each represented by counsel, and an experienced mediator was used. In light of these undisputed facts, the court properly considered plaintiff's affidavit against these facts to determine without an evidentiary hearing whether duress was shown. *Vittiglio*, 297 Mich App at 406. Therefore, the trial court did not abuse its discretion by failing to hold an evidentiary hearing. *Kiefer*, 212 Mich App at 183.

Affirmed.

/s/ Christopher M. Murray

/s/ David H. Sawyer

Dissent by: GLEICHER

Dissent

GLEICHER, J. (*dissenting*).

Our Legislature enacted MCL 600.1305 to protect victims of domestic violence during mediated divorce proceedings by mandating an evaluation of whether the dynamics of the parties' relationship may inhibit equitable, informed, and independent decision-making. The statute places on the mediator the primary obligation **[*19]** to determine whether any participant has been a victim of domestic violence. If the mediator learns that domestic violence may have infected a marriage, he or she must assess whether mediation nevertheless can be conducted safely, fairly, and effectively. In relevant part, the statute provides:

> (2) In a domestic relations mediation, the mediator shall make reasonable inquiry as to whether either party has a history of a coercive or violent relationship with the other party. A reasonable inquiry includes the use of the domestic violence screening protocol for mediation provided by the state court administrative office [SCAO] as directed by the supreme court.
>
> (3) A mediator shall make reasonable efforts throughout the domestic relations mediation process to screen for the presence of coercion or violence that would make mediation physically or emotionally unsafe for any participant, or that would impede the achievement of a voluntary and safe resolution of issues. [MCL 600.1305.]

This language comprehends that an equitably conducted mediation depends on a balance of power among the participants. The statute assigns to the mediator the task of maintaining that balance. In a marriage plagued by domestic **[*20]** violence, the victim may be unable to assert her or his needs, or may be particularly susceptible to controlling or coercive tactics. The mediator must be sensitive to that dynamic, because mediation tainted with the emotional residue of domestic violence is inherently imbalanced. And the only way a mediator can realize that a history of domestic violence may play a role in mediation is to ask about it.

Our Supreme Court promulgated a court rule emphasizing the same principles. The rule instructs that mediators conducting divorce mediations must be both sensitive and faithful to the sentiments underlying the statute. MCR 3.216(H)(2) provides:

> The mediator must make reasonable inquiry as to whether either party has a history of a coercive or violent relationship with the other party. Throughout the mediation process, the mediator must make reasonable efforts to screen for the presence of coercion or violence that would make mediation physically or emotionally unsafe for any participant or that would impede achieving a voluntary and safe resolution of issues. A reasonable inquiry includes the use of the domestic violence screening protocol for mediators provided by [SCAO] as directed by the supreme court. **[*21]**

Echoing the statute, the court rule mandates that a mediator "screen for the presence of coercion or violence . . . that would impede achieving a voluntary and safe resolution of issues" at the beginning, middle, and end of the process. This makes good sense. Although mediation may yield an agreement, the goal is a *voluntary* agreement. Intimidation, coercion, and duress must play no part.

The mediator who conducted the divorce mediation in this case failed to make any inquiry regarding whether the parties had a coercive or violent relationship. According to uncontested evidence presented to the trial court by Jody Pohlman, they did. Jody insists that she signed the agreement presented to her by the mediator because she felt coerced and overwhelmed due to the conduct of the mediator and her own counsel, and duress applied by her now exhusband before the mediation began.

In response to James Pohlman's motion to enter the divorce judgement, Jody sought an evidentiary hearing. Her answer to James's motion placed at issue the voluntariness of her agreement to the divorce settlement. Jody asserted that she was "mental[ly] vulnerab[le]" during the mediation and experienced an emotional and mental **[*22]** breakdown:

> Plaintiff's mental breakdown gave cause for her to be referred, by her counsel's office, for psychotherapy the day following mediation. On February 1, 2018, Ms. Pohlman made telephone contact with a clinical psychologist who, upon interacting with Plaintiff via phone, scheduled Ms. Pohlman for a psychotherapy session that same afternoon. Ms. Pohlman was crying and despondent; her speech was pressured and rapid. Dues to her mental health diagnosis she signed the agreement as an "escape" mechanism and did not enter into the agreement knowingly or understandingly but as a result of duress and/or severe stress. Her psychotherapist has opined that she was unable to reasonably understand the nature and effect of the act in which she was engaged.

Jody requested an evidentiary hearing.

The trial court rejected her request and the majority affirms, holding that the trial court "could sufficiently decide the issue of correction and duress on the basis of the evidence before it." I respectfully disagree with this conclusion. In my view, the trial court was obligated to hold a hearing to determine whether Jody was coerced into the settlement. Only by evaluating the proposed evidence in **[*23]** light of the statute and the court rule could the trial court make an informed decision regarding whether relief is warranted.

I rest my opinion on several different legal principles and begin with the language of the law.

The majority correctly notes that the court rule (like the statute) sets forth a mandatory proposition. A mediator "must" make a reasonable inquiry regarding whether within a marriage there is "a history of a coercive or violent relationship," and "must" continue to screen for "the presence of coercion or violence" throughout the procedure. Although the Legislature and the Supreme Court used language that brooks no exceptions, the majority brushes aside the mediator's rule violation, rationalizing that Jody "fails to provide any authority for the proposition that the mediator's failure to comply with the requirements of the court rule renders the mediation and subsequent settlement terms void." Jody provides no authority because her case presents a matter of first impression. The statute was passed in 2017 and the court rule came into being shortly thereafter. There are no cases addressing the operation of either mandate.

"It is a well-settled principle of law that **[*24]** courts are bound by property settlements reached through negotiations and agreement by parties to a divorce action, in the absence of fraud, duress, mutual mistake, or severe stress which prevented a party from understanding in a reasonable manner the nature and effect of the act in which she was engaged." *Keyser v Keyser*, 182 Mich App 268, 269-270; 451 NW2d 587 (1990). MCL 600.1035 and MCR 3.216(H)(2) represent legislative and judicial recognition that victims of domestic violence may be subject to pressures emanating from the marital relationship that cloud judgment or weaken resolve. Like *Miranda* [1] warnings, the current statute and court rule are prophylactic measures intended to level the playing field. Requiring a mediator to inquire about domestic violence before commencing mediation affords an opportunity for practical reinforcement of the principles underlying these remedial provisions.

In my view, the remedy for a mediator's failure to follow the court rule must depend on a careful, detailed assessment of the facts. Jody claims that she signed the agreement under duress. "The question as to what constitutes duress is a matter of law, but whether duress exists in a particular case is a question of fact." *Lafayette Dramatic Prods, Inc v Ferentz*, 305 Mich 193, 216; 9 NW2d 57 (1943). Absent an evidentiary hearing, a court has too little to go **[*25]** on to shape a remedy for the mediator's violation of the statute and court rule, or to determine whether a remedy is necessary. Jody has presented facts that warrant further inquiry and development. Jody and James Pohlman were married for almost 29 years. According to a psychologist who evaluated Jody after the mediation, James was controlling and emotionally abusive. The psychologist's report describes that after several years of marriage, James

> did not allow her to continue to work and kept her from doing that by not giving her access to a vehicle . . . . [B]efore their 10-year anniversary he came into the kitchen with a gun in his waist band and physically attacked her. During the trauma assessment Ms. Pohlman state[d] that she feared James [Pohlman] was "going to kill her that night." Ms. Pohlman states that her husband told her on several occasions that "without him she would work [for] McDonald's and have nothing." She stated that on multiple occasions her husband was sexually aggressive and forced her to have sexual relations against her will.

According to Jody, James's efforts to control her continued even after divorce proceedings began. Discovery was frustrated by James's refusal **[*26]** to sit for a deposition and to provide certain credit statements. His successful stalling of discovery required Jody to dismiss the first divorce action and to refile it. The gamesmanship continued. James also failed to pay status quo expenses including temporary spousal support, health insurance premiums, and Jody's car payment.

Jody's counsel filed a motion to hold James in contempt based on some of this conduct. The motion was scheduled to be heard on the morning of the mediation but according to Jody, her counsel never appeared to argue it. Counsel did appear at the mediation, which began at 1:00 p.m. and continued until 7:00 p.m. During that time, Jody avers, the mediator never inquired regarding domestic violence.

At the end of the process, Jody was presented with a settlement agreement. According to her affidavit, she was tired and hungry and wished to review the agreement with her co-counsel, who had not attended the mediation. During a 35-minute encounter with the mediator and her lawyer, Jody claims that she was told that she could not leave until she signed the agreement. She signed under duress, she contends. The next day, Jody sought to rescind the agreement.

After a final **[*27]** order was entered in the trial court denying Jody relief from the divorce judgment, James submitted an affidavit attesting that Jody's recitation of the mediation events was accurate. Although my colleagues voted against expanding the record to include James's affidavit, I believe it contains evidence that must be considered before a reasoned decision can be made regarding the appellate issues that Jody presents. In relevant part, James averred regarding the mediation:

> 7. Upon arrival, my attorney, Mark Bank, described what was to occur during the process. In addition to any procedural description, Mr. Bank stated the following:
>
> a. "it's all arranged with your wife's attorney and the mediator";
>
> b. "they are going to beat the shit out of your wife";
>
> c. "they're not going to let her leave without signing the agreement";
>
> e. "she won't find another attorney"
>
> 8. No meaningful mediation took place on this date, or any subsequent date, regarding any divorce action.

The majority strenuously resists the notion that these facts should be brought to light, asserting that Jody's failure to create a factual record in the trial court forecloses both our review of the evidence or the trial court's obligation **[*28]** to consider it. Jody asked for an evidentiary hearing and her motion was denied. She need have done nothing more to preserve her request to present facts supporting her claim of duress. And it should go without saying that appellate courts frequently grant motions to expand the record in cases similar to this one, arising from claims of structural irregularities during the trial court proceedings that may have rendered a participant's actions involuntary. See *People v McJunkin*, __ Mich __; 935 N.W.2d 725 (2019); *People v Smith*, 407 Mich 906; 289 NW2d 928 (1979). Jody has raised an issue of first impression and has coupled it with an affidavit raising a troubling description of a mediation process that not only violated the statute and the court rule, but offended basic notions of decency. James Pohlman has filed no objection to expanding the record. The Legislature and our Supreme Court have mandated effective screening for domestic violence, deeming it essential to an equitable mediation process. I can think of no better reasons for exercising our discretionary power to expand our record and to call upon the trial court to conduct a fuller investigation of a process that indisputably violated the rules.

The majority further insists that **[*29]** "[b]ecause [Jody] has not asserted or demonstrated that she was prejudiced by the mediator's failure to screen for domestic violence during mediation, any noncompliance with MCR 3.216(H)(2) was harmless."

Respectfully, I question whether this Court should declare the mediator's violation of the law "harmless" absent full consideration of the facts. Jody's preliminary showing, combined with James's affidavit and the State Court Administrator's guidelines for domestic violence screening, suggest that the mediator's error was not harmless.

In 2014, before the enactment of MCL 600.1035, the SCAO Office of Dispute Resolution published a "Domestic Violence Screening Protocol for Mediators of Domestic Relations Conflicts." The protocol describes its purpose, addresses "[w]hy mediating cases involving domestic violence is problematic," and sets forth a "[p]resumption against mediation if domestic violence exists", SCAO Office of Dispute Resolution, *Domestic Violence Screening Protocol for Mediators of Domestic Relations Conflicts* (June 2014), p 2:

> Cases in which domestic violence is present are presumed inappropriate for mediation. This presumption can be overcome, but only if the abused party desires to participate in **[*30]** mediation and the circumstances of the individual case indicate that mediation will be a safe, effective tool for all concerned.
>
> The decision whether to order, initiate or continue mediation despite a presumption against mediation should be made on a case-by-case basis. The most important factor to consider in deciding whether to proceed with mediation is whether the abused party wants to mediate. Mediation should not proceed if the abused party does not want to participate. Other factors to consider are:
>
> a. Ability to negotiate for oneself.
>
> b. Physical safety of the mediation process for all concerned.
>
> c. Ability to reach a voluntary, uncoerced agreement.
>
> d. Ability of the mediator to manage a case involving domestic violence.
>
> e. Likelihood that the abuser will use mediation to discover information that can later be used against the abused party, or to otherwise manipulate court processes.
>
> *Parties should be fully and regularly informed that continuing the mediation is a voluntary process and that they may withdraw for any reason.* [*Id.* at 6 (emphasis added).]

When there is a background of domestic violence, the reasons for a presumption against mediation do not magically evaporate because the parties **[*31]** use "shuttle diplomacy." That method may help diffuse immediate tensions, but it cannot undo years of manipulation and mistreatment.

The circumstances surrounding mediation as described by both Jody and James reflect that the process was coercive and violent. Forcing someone to stay in a room until she signs a document is a form of abuse. I recognize that the behaviors of the mediator and counsel do not necessarily provide Jody with grounds to disavow the settlement agreement. Here, however, James's averments suggest a coordinated effort in which he participated to overcome Jody's will. If proven, I cannot envision why this concert of action would be legally insufficient to invalidate the agreement. Further, I suggest that the evidence may show that had screening been done and Jody's status monitored throughout the process as required by the court rule, the mediation procedure may have terminated before she signed the agreement.

MCL 600.1035 and MCR 3.216(H)(2) promote a special, cautious approach to mediation when a history of domestic violence is acknowledged. Encouraging a trial court to rubber stamp a mediated agreement that may have been obtained in flagrant contravention of the law signals that the law is **[*32]** but a trifle. I would remand for an evidentiary hearing and a full assessment of whether the settlement was voluntary.

/s/ Elizabeth L. Gleicher

Footnotes

1 Plaintiff originally filed a complaint for divorce in a different lower court case, Docket No. 16-841561-DO, which was dismissed on May 24, 2017. Plaintiff refiled the complaint for divorce the next day.

2 Plaintiff attached no exhibits to her answer.

3 Plaintiff had previously filed a motion to hold defendant in contempt, but nothing in that motion mentioned domestic violence or any similar issue.

4 Attached as exhibits to plaintiff's motion for reconsideration were a report from her therapist, plaintiff's affidavit regarding coercion by her attorney and the mediator, results of a polygraph examination, and the curriculum vitae of the polygraph examiner.

[5] Attached as exhibits to plaintiff's objection were documents related to domestic violence screening, and her affidavit regarding the lack of screening at mediation.

[6] Defendant did not file a brief on appeal.

[7] 2016 PA 93 was codified at MCL 600.1035. Although defendant neither cites to or relies upon this statute, it provides in relevant part:

> (2) In a domestic relations mediation, the mediator shall make reasonable inquiry as to whether either party has a history of a coercive or violent relationship with the other party. A reasonable inquiry includes the use of the domestic violence screening protocol for mediation provided by the state court **[*7]** administrative office as directed by the supreme court.
>
> (3) A mediator shall make reasonable efforts throughout the domestic relations mediation process to screen for the presence of coercion or violence that would make mediation physically or emotionally unsafe for any participant, or that would impede the achievement of a voluntary and safe resolution of issues.

[8] The rule does not address pressure to settle that a party feels from her counsel or the mediator.

[9] As noted earlier, plaintiff's affidavit regarding domestic violence and the lack of screening at mediation was submitted with her objection to the judgment served pursuant to MCR 2.602(B)(3).

[10] In her motion for reconsideration, plaintiff also argued that she signed the settlement terms sheet under duress because she was tired and hungry during the 6.5 hour process, and she was pressured by the mediator and her attorney to sign the settlement. Nothing in the record suggests that plaintiff was placed under duress by defendant, or that she did not understand the terms when she agreed to them, a point we address later in this opinion.

[11] See ***Pohlman v Pohlman***, unpublished order of the Court of Appeals, issued November 20, 2019 (Docket No. 344121), 2019 Mich. App. LEXIS 7315 (GLEICHER, J., *dissenting*), and ***Pohlman v Pohlman***, unpublished order of the Court of Appeals, issued July 17, 2019 (Docket No. 344121), 2019 Mich. App. LEXIS 3905 (JANSEN, J., *dissenting*). Mr. Pohlman's affidavit was signed almost a year after the judgment of divorce was entered, and was obviously never presented to the trial court.

[12] The dissent's statement that appellate courts "frequently grant motions to expand the record in cases similar to this one" is not, in our view, accurate. For one, the overriding appellate rule is that we must confine ourselves to the record presented to the trial court, and "[e]nlargement of the record on appeal is generally not permitted." *Amorello v Monsanto Corp*, 186 Mich App 324, 330; 463 NW2d 487 (1990). That general rule is infrequently disregarded, and expansions of the record are granted in limited cases, for example, to address evidence that was referred to in the trial court, but was not made a part of the lower court record. Defendant's affidavit is nothing of the sort, and would simply inject new facts into the record that were unknown to the trial court and trial counsel. Additionally, the orders cited by the dissent say nothing about motions to expand the appellate record, and in any event contain no rulings (instead both simply remand for trial court hearings) that would be precedential. *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 369; 817 NW2d 504 (2012).

1 *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

Content Type: Cases

Terms: Pohlman v Pohlman

Narrow By: Sources: MI; Cases

Date and Time: Mar 04, 2020 11:27:49 a.m. EST

STATE OF MICHIGAN
IN THE SUPREME COURT

JODY POHLMAN,
Plaintiff/Appellant,

SC: 161262

COA: 344121

v.

Oakland CC: 2017-853588-DO

JAMES POHLMAN,
Defendant/Appellee.

_____/

EXHIBIT H

#1

Jody Pohlman <jodyfarm@icloud.com>
To: Scott Bassett <scott@divorceappeals.com>

Fri, Apr 26, 2019 at 3:15 PM

AFFIDAVIT OF JAMES G. POHLMAN

STATE OF MICHIGAN)
: SS
COUNTY OF ~~Oakland~~ Wayne)

BEFORE ME, the undersigned Notary, Alana Sheard, on this 12th day of April, 2019, personally appeared James G. Pohlman, known to me to be of lawful age, who being by me first duly sworn, on his oath, deposes and says:

1. I, James G. Pohlman, reside at 42160 Woodward Avenue, Unit #40, Bloomfield Hills, Michigan 48304.
2. I was the Defendant in the divorce action between myself and Jody Pohlman and am now the ex-husband of Plaintiff Jody Pohlman.
3. I was married to Jody Pohlman for approximately 28 years.
4. As part of our divorce proceedings, we were ordered to attend mediation.
5. Mediation was scheduled for January 31, 2018 at 1:00 pm at the Law Office of Michael Robbins, Esq., which is located at 3910 Telegraph Road, Ste. 200, Bloomfield Hills, Michigan 48302.
6. I arrived at Mr. Robbins' office for the mediation on the aforementioned date at approximately 3:00 pm.
7. Upon arrival, my attorney, Mark Bank, described what was to occur during the process. In addition to any procedural description, Mr. Bank stated the following:
    a. "it's all arranged with your wife's attorney and the mediator";
    b. "they are going to beat the shit out of your wife";
    c. "they're not going to let her leave without signing the agreement";
    d. "if she leaves without signing the agreement her attorney is going to quit";
    e. "she won't find another attorney"
8. No meaningful mediation took place on this date, or any subsequent date, regarding any divorce action.
9. No domestic violence screening protocol occurred at any point during the meeting.
10. Mr. Robbins, the mediator, did not inquire into a potential history of domestic violence in the relationship between us.
11. Mr. Robbins spoke to me briefly upon my arrival only to introduce himself and did not speak to me again until he entered the conference room I was in at the end of the day and asked me if I approved the agreement and I answered in the affirmative.

12. Moreover, my attorney at the mediation, Mark Bank, negotiated without me present.

13. I was in the conference room next to Jody and after a while I could hear some of what was being said because the people were speaking very loudly, and at times yelling at one another.

14. For several hours on January 31, 2018 I heard Jody and who I believe was her attorney at the time, Kurt Schnelz, arguing and yelling at each other.

15. Specifically, throughout the day I heard Jody say, "No! I want to leave now! You can't hold me in here. I want to leave now! Why won't you let me out of here? Get out of my way." As well as hearing her scream, "Help! Somebody help me! Help! Somebody get me out of here! You have to let me go!"

16. She also stated that it was getting late and she had animals at home that were outside, it was getting dark and it is dangerous to leave them in the dark. They would be hungry and needed to eat. She said she needed to get home right away, that she "needed to leave."

17. I heard her say that she was hungry and that she did not feel good because she had been there all afternoon and she was hungry. She felt sick.

18. I also heard Jody say that she needed to speak to her attorney Marianne Noonan, who was not at the mediation. Jody said, "I don't want to sign anything without speaking with Marianne. Where is she?"

19. Jody also said that she wanted to take the mediation agreement home and read it over before she signed it. She said she did not understand the agreement ("I don't want sign it.")

20. I heard Jody's attorney yelling at her to sit down and sign the agreement ("You're not leaving here until you sign. If you don't sign, I quit. You won't get anyone else to take your case.")

21. Jody was crying loudly, and I also began to tear up and cry. It was terribly difficult to hear your wife in so much stress and not go to her aid. I think it was a very weak moment for me to let her be subjected to such duress and obvious torment, but do nothing about it.

22. I signed the agreement and left Mr. Robbins' office close to 7:00 pm or so. That night, and for some time afterward, I felt horrible. I was pleased to have an agreement, but I felt miserable about the orchestrated, abusive process.

23. At our next court date after January 31, 2018, I observed Jody's attorneys, at that time, make no argument or even comment regarding the case. They essentially stood mute.

#3
Jody Pohlman <jodyfarm@icloud.com>
To: Scott Bassett <scott@divorceappeals.com>

Fri, Apr 26, 2019 at 3:14 PM

Further affiant sayeth not.

JAMES G. POHLMAN

Subscribed and sworn to before me, this 12th day of April, 2019.

4/12/19

Notary Public
[redacted] County, Michigan
Acting in [redacted] County, Michigan
My Commission Expires: 12/09/2023

ALANA SHEARD
NOTARY PUBLIC - MICHIGAN
WAYNE COUNTY
MY COMMISSION EXPIRES 12/09/2023
ACTING IN WAYNE COUNTY

Wayne

3

STATE OF MICHIGAN
IN THE SUPREME COURT

JODY POHLMAN,
Plaintiff/Appellant,

SC: 161262

COA: 344121

v.

Oakland CC: 2017-853588-DO

JAMES POHLMAN,
Defendant/Appellee.

_____/

EXHIBIT I

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JODY POHLMAN,

Plaintiff,

v Case No. 2017-853588-DO

JAMES POHLMAN,

Defendant./

MOTION HEARING

BEFORE THE HONORABLE LISA LANGTON, CIRCUIT JUDGE

Pontiac, Michigan - Wednesday, February 21, 2018

APPEARANCES:

For the Plaintiff:
KURT E. SCHNELZ (P37365)
Schnelz Wells, PC
280 N. Old Woodward Avenue, Suite 250
Birmingham, Michigan 48009-5392
(248) 258-7074

MARY ANNE NOONAN (P71241)
Law Office of Mary Anne Noonan
28806 Woodward Avenue
Royal Oak, Michigan 48067-0941
(248) 594-1213

For the Defendant:
MARK BANK (P48040)
Bank Rifkin
401 S. Old Woodward Avenue, Suite 410
Birmingham, Michigan 48009
(248) 480-8333

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Firm # 8493
(734)944-5818

Transcribed by:
Krista S. Michels, CER #8490

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Pontiac, Michigan

Wednesday, February 21, 2018 - 10:08 a.m.

* * * * * *

THE CLERK: The Court calls number 28 on the docket, the matter of Pohlman, case number 2017-853588-DO.

MR. SCHNELZ: Good morning, your Honor.

THE COURT: Good morning.

MR. SCHNELZ: Kurt Schnelz as the movant in this matter.

THE COURT: Thank you.

MS. NOONAN: Good morning, your Honor, Mary Anne Noonan.

THE COURT: Okay, thank you.

MR. BANK: Good morning, your Honor, my name is Mark Bank. I appear on behalf of the defendant, James Pohlman.

THE COURT: All right. This is your motion, Mr. Schnelz, correct?

MR. SCHNELZ: That is correct, your Honor.

THE COURT: Okay, but are you -- you on the case?

MR. SCHNELZ: No -- she's co-counsel. She's also got a motion up to withdraw today as well, Judge.

THE COURT: You're both -- you're both -- filed motions?

MR. SCHNELZ: That is correct, Judge.

THE COURT: All right. And -- and you're Ms. Pohlman?

MS. POHLMAN: Yes.

THE COURT: Okay. And so, your attorneys are requesting to be withdrawn from the case; do you understand that?

MS. POHLMAN: Yes.

THE COURT: Okay. And do you have any objections to that?

MS. POHLMAN: No.

THE COURT: All right.

MS. POHLMAN: As long as I have another opportunity to get another attorney.

THE COURT: Let me just check out and see what our -- of course, you'll always have that opportunity, but I will tell you -- let me see here.

MR. SCHNELZ: I think it's April 3rd is the trial date.

THE COURT: Let me just check this out. The trial is April 3rd, so you need to have an attorney well before then; okay, Mr. Bank?

MR. BANK: If I may, your Honor.

THE COURT: Yeah.

MR. BANK: That's the reason I'm here today.

THE COURT: Yeah.

MR. BANK: We were at mediation with Mr. Robbins approximately two weeks ago.

THE COURT: Okay.

MR. BANK: During the mediation session, the parties signed a settlement term sheet resolving the issues in this case.

THE COURT: Oh.

MR. BANK: It was my intention to file, for today, a motion for entry of judgment, but because of the withdrawal of counsel --

THE COURT: Okay.

MR. BANK: -- I didn't think that would be prudent, I was going to put that -- file a motion to be heard two weeks out.

THE COURT: Okay.

MR. BANK: And if I could just have, as part of the order granting counsel leave to withdraw a -- either an email address or a regular mail address where I can serve --

THE COURT: Whe -- where do you -- where do you want your -- the information sent to you? Do you want it sent to an email?

MS. POHLMAN: To my new attorney.

THE COURT: No, it's going to -- right now, you

don't have an attorney. So, Mr. Bank is going to be forwarding you documents. Do you want that sent to an address or an email address?

MS. POHLMAN: Both, please.

THE COURT: Okay. So, before you leave here today, in fact, right now, just -- can you please give him that information? All right. So, we'll --

MS. POHLMAN: That agreement was signed under duress, your Honor.

THE COURT: Well, it's an agreement, so we'll see what happens with that, but if you want to give that information to Mr. Bank right now. You don't have to put it on the record, but just -- just lean over next to him and just give him that information and I'll sign your orders.

MR. SCHNELZ: Thank you, Judge.

MS. NOONAN: Thank you.

MR. BANK: Can the order provide that I can serve her by email or by delivery to her address rather than any --

THE COURT: Sure.

MS. POHLMAN: My email is not consistent. I would please like it by -- it just doesn't always work. I would please like it by mail, but I'll give him both.

MR. BANK: We'll hand-deliver to her residence.

THE COURT: That's -- that's fine. Just make sure you have it. I'll sign your -- your two orders, okay?

MR. SCHNELZ: Thank you, Judge.

MR. BANK: And I'm going to put this on the docket for two Wednesdays from today.

THE COURT: Okay, I'll be here.

MR. BANK: Thank you very much. Your Honor, an on -- first on the record, on this --

THE COURT: Yeah.

MR. BANK: -- she provided me with a P.O. box and I can't --

THE COURT: She -- he can't serve you at a P.O. box, so you need an address, all right?

MS. POHLMAN: Okay.

THE COURT: If you want to be served, other than your email, then you need to -- it needs to be a home address and --

MS. POHLMAN: Well, that's my address where I get all my mail because there's no --

THE COURT: No, no, no.

MS. POHLMAN: Okay, I understand.

THE COURT: Personal service, okay?

MS. POHLMAN: Okay.

THE COURT: So, he wants to make sure you're

served, as do I.

MS. POHLMAN: Okay. This is Jim's address?

MR. BANK: I don't know.

MS. POHLMAN: I think it's 14260. It's in my phone, I can't get it. I think that's correct, but I'll verify it for you.

MR. BANK: Which address?

MS. POHLMAN: This one.

MR. BANK: Not that one? Cross the first one out.

MS. POHLMAN: No, that's okay, too.

MR. BANK: Well, I'm only serving you at one address.

MS. POHLMAN: I'm at both places. What do you want me to do? I have to stay there because I'm having surgery. When are you planning to do this?

THE COURT: Hold on, hold on.

MR. BANK: Are we still on the record?

THE COURT: Yes.

MR. BANK: She provided me with two addresses. The first one --

MS. POHLMAN: One is --

THE COURT: Here's the deal. Here's the deal. He needs an address that he can serve you at, otherwise I will order that his service will be only through email,

all right?

MS. POHLMAN: I am having eye --

THE COURT: Because we're not -- he's not going to be --

MS. POHLMAN: -- surgery and I'm going to be staying at my husband's house until the surgery is over. It's --

THE COURT: What -- when is that?

MS. POHLMAN: -- surgery is --

THE COURT: When is that?

MS. POHLMAN: -- scheduled next Monday.

THE COURT: When is that?

MS. POHLMAN: Next Monday.

THE COURT: For -- so, put the dates ex -- exact dates you're going --

MS. POHLMAN: I can do that.

MR. BANK: We're going to have her served tomorrow with the -- the motion.

THE COURT: All right. Where are you going to be tomorrow?

MS. POHLMAN: Here.

THE COURT: Okay, so --

MR. BANK: First address, we will deliver it to that residence tomorrow.

THE COURT: Okay. And what's -- what -- what --

just give me the street name on that.

MR. BANK: It's Epping Lane in Bloomfield Hills.

THE COURT: Okay. So, tomorrow, he will serve you at Epping Lane, correct?

MS. POHLMAN: Yes.

THE COURT: Okay, fair enough.

MR. BANK: If she's not there, we will tape it to the front door prominently.

THE COURT: That's fine, and also email it, please.

MR. BANK: Yes.

THE COURT: Okay.

MR. BANK: And I believe I have her email.

MS. POHLMAN: Do you need the email? Yeah, you do.

MR. BANK: I have her email from other emails.

THE COURT: You got the email?

MR. BANK: Yes.

THE COURT: Okay. All right, you're all good, then.

MR. BANK: Thank you very much, your Honor.

THE COURT: All right, thank you both. Yep. All right, so number 15? You're -- you're all set.

MS. POHLMAN: I have a -- I'd like to speak, please?

THE COURT: Oh, all right. Go ahead. Step up to the podium.

MS. POHLMAN: Where are my attorneys?

THE COURT: You're -- you have no attorneys now. Your attorneys are gone. They've asked to withdraw.

MS. POHLMAN: Okay, but don't I get to speak to them about that?

THE COURT: I asked if you had any objections --

MS. POHLMAN: Then why --

THE COURT: -- and you said no. When I said they've ask -- they've made a motion to withdraw and I said, "Do you have any objections?" And you said, "No, as long as I have the ability to get another attorney," and I said, "That's fine, but I'm not going to adjourn any other dates to do that." So, that was my only thing, so is there something else?

MS. POHLMAN: Yes.

THE COURT: Okay. You -- go ahead.

MS. POHLMAN: Please.

THE COURT: I'm -- I'm here.

MS. POHLMAN: The mediation never took place.

THE COURT: Okay, just so you know --

MS. POHLMAN: I never met with the mediator.

THE COURT: -- that is not up today. The only thing that's up today was your attorneys' request to

withdraw.

MS. POHLMAN: And what Mark Banks is presenting.

THE COURT: He has not filed that yet. So, he's going to be filing that and if that is scheduled for a hearing, you certainly would have the right to make whatever arguments you are with respect to the mediation.

MS. POHLMAN: But don't we need Kurt and Mary Anne to back up what I have to say at that point?

THE COURT: If they -- if you do, you feel free to call them as a witness, I guess. I don't know. I don't know what else to tell you, but --

MS. POHLMAN: Well, Kurt Schnelz forced me to sign papers in that mediation against my will.

THE COURT: Okay, so I guess that would be an argument that you would make, but if you're -- if you're intent on getting a lawyer, I might do that sooner rather than later, but otherwise --

MS. POHLMAN: Can I have 30 days to find a lawyer?

THE COURT: You can have as much time as you want to find a lawyer, but he has the right to file any motions he wants. The case doesn't stop because your attorneys asked to leave. It -- it doesn't stop, okay? So, you need to -- you -- if --

MS. POHLMAN: Well, my attorneys made some very

serious mistakes --

THE COURT: Okay.

MS. POHLMAN: -- and that's why they're asking to leave so neither one of them are being held accountable for the mistakes that they made.

THE COURT: All right. So, you're arguing to me in a vacuum because I don't have anything in front of me to know what that would be or not be.

MS. POHLMAN: What would you like? I have it with me.

THE COURT: But -- no, no, no.

MS. POHLMAN: I don't understand.

THE COURT: Here's the -- okay, and I'll -- I'm trying to make it clear but let me just repeat it. There is a motion to withdraw, your attorneys have asked to do that. They have the right to do that and so, I've allowed them to do that. You have a trial date set for April 3rd. I'm not going to adjourn that. You have the right, of course, to get other counsel at any time. You can hire one tomorrow, okay? You are free to do that. If there --

MS. POHLMAN: I've called 12 attorneys, your Honor. None of them want to talk to me because Mark Banks is involved and Kurt Schnelz is involved and four of them have flatly refused just because those two people are involved.

THE COURT: Okay. So --

MS. POHLMAN: Flatly refused.

THE COURT: All right. There's 100 million lawyers in the world, okay? You can call the Oakland County Bar Association, see if they can give you some names of -- of lawyers, all right?

MS. POHLMAN: Okay.

THE COURT: But -- and there's online referral services you can check out as well. So, you -- again, you have the right to have a lawyer. All I'm saying is that today, the issue of the mediation is not in front of me, so I don't have any information from either side.

MS. POHLMAN: Okay.

THE COURT: All right? Nothing's been filed. When something is, you have the right to come in and make whatever argument you want on that --

MS. POHLMAN: Okay.

THE COURT: -- whether you have a lawyer or not, okay?

MS. POHLMAN: Okay, mm-hmm.

THE COURT: So, he -- whenever he -- if he files a motion and he sets a date, it's going to be for a Wednesday. Again, you have the right to have a lawyer come or you can argue yourself, okay?

MS. POHLMAN: And do I have to present the

mediation documents to you the prior Wednesday?

THE COURT: You can bring in whatever you think is relevant to make your case.

MS. POHLMAN: Okay. Can I ask one more question?

THE COURT: Sure.

MS. POHLMAN: There was a motion filed for contempt of court for my husband not paying the interim spousal agreement and bringing that current. He's in arrears of about $30,000. I believe Mark Banks has addressed my husband to only pay --

THE COURT: His name is Bank, just so you know, Mark Bank.

MS. POHLMAN: Mark Bank, okay.

THE COURT: Yeah.

MS. POHLMAN: Yes, sorry.

THE COURT: Just so you know. That's fine.

MS. POHLMAN: To pay me the $3,000 interim spousal support and nothing else. He's not making the car payments. He's not making the car insurance payments. He's not making any of the other insurance payments and I'm not sure if I have health insurance. I have to have glaucoma surgery today, supposedly, but it's postponed now until Monday, the next available date because I have a central vein occlusion and -- and another problem with the

surgery, the implant that they did before.

I need the spousal support. I need health insurance and I don't -- I'm not getting the -- the support. He's in arrears by $30,000 since September.

THE COURT: Okay.

MS. POHLMAN: And that was a motion that Kurt had filed, which was a great motion, but he didn't hear it before the mediation. It was to be heard that morning of the mediation. I came to court and he was not here.

THE COURT: Okay. So, I don't know -- again, I can't really answer that --

MS. POHLMAN: Okay.

THE COURT: -- because it's not in front of me today, all right? So, the only issue I had in front of me today was -- was already been resolved. So, you are free to file any motions you choose --

MS. POHLMAN: Okay.

THE COURT: -- and you can do that by yourself or you can do that with the assistance of a lawyer.

MS. POHLMAN: And that one can be refiled?

THE COURT: Any motion can be filed in front of me.

MS. POHLMAN: Okay.

THE COURT: Okay?

MS. POHLMAN: Thank you.

THE COURT: All right.

MR. BANK: Thank you, your Honor.

THE COURT: All right, good luck.

(At 10:20 a.m., proceedings concluded.)

* * * * * *

STATE OF MICHIGAN)
COUNTY OF OAKLAND)ss.

I certify that this transcript is a true and accurate transcription to the best of my ability of the proceeding in this case before the Honorable Lisa Langton, as recorded by the clerk.

Proceedings were recorded and provided to this transcriptionist by the Circuit Court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceeding or for the content of the recording provided.

Dated: September 5, 2018

/S/ Krista S. Michels
Krista S. Michels, CER #8490

STATE OF MICHIGAN
IN THE SUPREME COURT

JODY POHLMAN,
Plaintiff/Appellant

SC: 161262
COA: 344121
Oakland CC: 2017-853588-DO

v.

JAMES POHLMAN,
Defendant/Appellee.

_____/

EXHIBIT J

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JODY POHLMAN,

Plaintiff,

-vs-

Case no. 2017-853588-DO
Hon. Lisa Langton

JAMES G. POHLMAN,

Defendant.

JODY POHLMAN
Plaintiff, In Pro Per
1445 Epping Lane
Bloomfield Hills, Michigan 48304

BANK RIFKIN
BY: MARK A. BANK (P48040)
JACOB N. SIMON (P81880)
Attorneys for Defendant
401 South Old Woodward Avenue, Suite 410
Birmingham, Michigan 48009
(248) 480-8333

DEFENDANT'S NOTICE AND MOTION FOR ENTRY OF JUDGMENT OF DIVORCE

PLEASE TAKE NOTICE that on Wednesday, March 7, 2018, at 8:30 a.m., Defendant, James G. Pohlman, will appear by his attorneys, Bank Rifkin, and for *Defendant's Notice and Motion for Entry of Judgment of Divorce* he respectfully submits as follows:

1. On January 31, 2018, the parties and their counsel participated in a mediation sessions with Michael A. Robbins, Esq.

2. As a result of the January 31, 2018, mediation session, the parties signed a binding "Settlement Terms Sheet." (Please see Tab 1.)

FEE

3. A proposed Judgment of Divorce is appended to this motion at Tab 2.

4. The proposed Judgment of Divorce is consistent with the terms of the January 31, 2018, Settlement Terms Sheet.[1]

5. It is a well-settled principle of Michigan law that courts are bound by the property settlements reached through the parties' negotiations.

> "It is a well-settled principle of law that courts are bound by property settlements reached through negotiations and agreement by parties to a divorce action, in the absence of fraud, duress, mutual mistake, or severe stress which prevented a party from understanding in a reasonable manner the nature and effect of the act in which she was engaged."

Keyser v Keyser, 182 Mich App 268, 269–70 (1990) (*citing Calo v Calo*, 143 Mich App 749, 753-754 (1985).

WHEREFORE Defendant respectfully requests that the Court enter the proposed Judgment of Divorce appended to this motion at Tab 2.

---

[1] The Settlement Terms Sheet provides for Michael Robbins to arbitrate the issue of security for Defendant's modifiable spousal support obligation. The attached proposed Judgment of Divorce contains a very generous provision relative to this issue in Section 13. This is "very generous" due to the Court of Appeals' opinion in *Kurz v Kurz*, 178 Mich App 284, 296-97 (1989), which provides as follows:

> "[P]laintiff claims the trial court abused its discretion in requiring him to maintain a life insurance policy naming defendant as sole beneficiary so as to secure her right to alimony. We agree. Under the terms of the divorce judgment, plaintiff's obligation to pay alimony ceased upon the occasion of his death. Defendant was not awarded a lump sum alimony award which plaintiff was absolutely obligated to pay, even posthumously. At the moment the insurance proceeds became payable, defendant was no longer entitled to the very award which the insurance policy was meant to secure. Moreover, if there was an arrearage in alimony at the time of plaintiff's death, defendant could collect merely by making a claim against the estate. Hence, the trial court's order to maintain the insurance policy served no real purpose. We therefore vacate that particular requirement of the divorce judgment."

Defendant is 62 years old, and he has significant health problems.

BANK RIFKIN

BY: _____

MARK A. BANK (P48040)
JACOB N. SIMON (P81880)
Attorneys for Defendant
401 South Old Woodward Avenue, Suite 410
Birmingham, Michigan 48009
(248) 480-8333

PROOF OF SERVICE

I hereby affirm that a copy of the foregoing document was served on all parties and counsel of record at the address(es) shown above via:

___✓___ Hand-delivery
_____ U.S. Mail (first class, postage prepaid)
_____ Email

on this 26th day of February, 2018.

_____

Tab 1

Pohlman v. Pohlman
Settlement Terms Sheet
January 31, 2018

1. The terms set forth herein resolve all of the issues in this divorce case. There will not be a trial.

2. The terms set forth herein will be set forth in a Judgment of Divorce.

3. Upon entry of the Judgment of Divorce each party shall be individually responsible for his/her own health insurance and the payment of the related premiums. COBRA expired in November, then there was an interim health care insurance policy, until then the current health care insurance policy went into effect, thus Jim represents that Jody has not been without health insurance during the pendency of this case.

4. All claims by Jim for spousal support from Jody are forever barred.

5. Commencing February 1, 2018, and continuing until Jody's death, Jody's remarriage, or further order of the Court, Jim shall pay to Jody spousal support as follows: (i) $3,000 per month (to be paid monthly), and (ii) the sum equal to 30% of his Annual Gross Income in excess of $120,000 as defined and provided herein below (to be paid annually).
   a. These spousal support payments shall be deductible to Jim for income tax purposes pursuant to IRC §215 and includible by Jody in her gross income for income tax purposes pursuant to IRC §71 in the year in which each payment is actually paid/received, and neither party will file any income tax return inconsistent therewith.
   b. Annual Gross Income: The term "Annual Gross Income" shall be defined as follows:
      i. Annual Gross Income shall include:
         (1) All W-2 income; all 1099 income for services rendered; all income received by Jim for services rendered by Jim; and K-1 income actually received by Jim in excess of the tax liability for such K-1 income. Jim will not cause any of his income to be deferred.
         (2) Jim's pre-tax income from stock options, employee stock, restricted stock, and other similar means of compensation, if any. Any support payment arising out of this subsection may be made "in kind" subject to the same terms and conditions that Jim is subject to.
         (3) The value of any perquisites from any employment, but only to the extent such perquisites are not included in his W-2 income or K-1 income, excluding health insurance as a perquisite.
      ii. Annual Gross Income shall not include:
         (1) Jim's passive income, e.g., interest income, dividend income, capital gains income, or retirement income.
         (2) Distributions to cover tax obligations.
         (3) Income from the entities referenced paragraph 12, below.

c. Timing: Jim shall pay to Jody her "30% of his Annual Gross Income in excess of $120,000" by April 15 of the following year, and he shall contemporaneously provide her with supporting documentation for such payment. All spousal support payments to Jody shall be directly deposited by Jim to Jody's designated checking account. All supporting documentation shall be delivered to Jody via email at her designated email account.

d. Supporting Documentation:

i. Annually, each party shall provide the other party with complete copies of his/her W-2 statements, K-1 statements (if any), and 1099 statements for services rendered (if any) within 10 days of his receipt of each such statement.

ii. Annually, each party shall provide the other party with complete copies of his/her federal and state tax returns within 10 days of the completion of each such document. Jim shall provide a transcript of his tax return, upon request.

iii. To the extent not referenced in either of the two preceding subparts, in order to effectuate the intent of this paragraph 5, annually Jim shall provide Jody with complete copies of any other documents which reflect all or part his Annual Gross Income within 10 days of his receipt of each such document.

6. Jim shall rollover to Jody 50% of the funds in his IRA account, and he shall retain the other 50% of the funds in this account.

7. Jody shall rollover to Jim 50% of the funds in her IRA account, and she shall retain the other 50% of the funds in this account. Jody awarded her whole IRA

8. Each party shall retain all of his/her own checking and savings accounts.

9. The parties shall equally divide the tax refund due to them for 2016. Jody receives all of 2016 Refund.

10. The parties shall file separate tax returns for 2017. He shall be entitled to all deductions related to the former marital home.

11. The return on investment expected from LT Lender/Lightning Technologies, which is approximately $78,000 plus interest, shall be equally divided between the parties when received.

12. Any equity in LT Lender/Lightning Technologies based on existing contributions and previous efforts shall be divided between the parties with 50% to Jim and 50% to Jody. Each party shall be individually responsible for any capital calls, litigation costs, taxes, and any other attributes/expenses/benefits of ownership associated with his/her 50% share. The Judgment of Divorce will contain standard constructive trust language/tag along language for such transactions. Specific language relative to her rights to business records shall be included in the Judgment of Divorce, along with corresponding confidentiality language.

Michael Robbins shall arbitrate all disputes arising out of this paragraph.

13. Jody is awarded all of the parties' horses, inclusive of all of the related equipment.

14. Jody is awarded the trailer, the carriage, the GMC Sierra pickup truck, and the BMW.

15. Jim shall retain the 2017 Audi and Range Rover.

16. Each party shall retain all of his/her own clothing, jewelry, and personal effects.

17. The parties' furniture and household furnishings have been equitably divided between them.

18. Each party shall be individually responsible for all of his/her own future liabilities, including all liabilities associated with his/her own assets.

19. Each party shall be individually responsible for any outstanding credit card charges which he/she incurred, and each party shall be individually responsible for all credit card accounts in his/her individual name. Any joint credit card accounts shall be closed; however, if Wife wishes to retain the joint BOA credit card she shall assume all responsibility for same and immediately remove Jim from all liability on the account (and provide with documents confirming that he was removed from the account).

20. Each party releases all claims that he/she may have against the other party, other than claims for fraud or enforcement.

21. The Judgment of Divorce will contain the statutorily required dower, pension, insurance, disclosure, and enforcement language. & seiver) for unpaid spousal support

22. Jody is awarded Hillwood Farm, LLC.

23. Jim will provide Jody with a thumb drive containing copies of the data files on the broken computer within 30 days.

24. Jim will cooperate with Jody making an insurance claim relative to her missing engagement ring, Hermes scarves, and Hermes bracelets. Jim will only tell the truth.

25. The parties shall be equally liable for any outstanding claims for any outstanding claims relating to the sale of the marital home.

26. Wife shall be entitled to all of the contents of the two storage facilities, and she shall be individually responsible for all of the related expenses. eberm Jim will contribute 20000 to Jody w/in 30 days so Jody that is his total liability on this issue.

27. Each party will be individually responsible for his/her outstanding attorneys' fees and expert fees.

28. Each party will be responsible for 50% of the mediator's fees.

29. Michael Robbins shall arbitrate any disputes as to the language to be included in the Judgment of Divorce.

I agreed to be bound by the foregoing terms and conditions:

Jim Pohlman

Jody Pohlman

Tab 2

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JODY POHLMAN,

Plaintiff,

-vs-

Case no. 2017-853588-DO
Hon. Lisa Langton

JAMES G. POHLMAN,

Defendant.

JODY POHLMAN
Plaintiff, In Pro Per
1445 Epping Lane
Bloomfield Hills, Michigan 48304

BANK RIFKIN
BY: MARK A. BANK (P48040)
JACOB N. SIMON (P81880)
Attorneys for Defendant
401 South Old Woodward Avenue, Suite 410
Birmingham, Michigan 48009
(248) 480-8333

JUDGMENT OF DIVORCE

At a session of said Court, held in the Courthouse, in the City of Pontiac, County of Oakland, State of Michigan, on March 7, 2018.

PRESENT: Honorable Lisa Langton
Circuit Court Judge

A Uniform Spousal Support Order is being submitted for entry with this Judgment of Divorce and is incorporated herein by reference pursuant to MCR 3.211.

THIS MATTER having come before the Court pursuant to Plaintiff's Complaint for Divorce and Defendant's Counterclaim for Divorce, and the parties having signed a binding Settlement Terms Sheet dated January 31, 2018, wherein they resolved all of the issues in this case with the

assistance of counsel; and it appearing to the Court that (i) Plaintiff is not pregnant, (ii) that there has been a breakdown of the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved, and (iii) the jurisdictional requirements have been met; and the Court being otherwise fully advised in the premises;

IT IS HEREBY ORDERED that:

DIVORCE

1. The marriage between Plaintiff, Jody Pohlman, and Defendant, James G. Pohlman, is dissolved and an absolute divorce from the bonds of matrimony is granted.

HEALTH CARE INSURANCE AND EXPENSES FOR THE PARTIES

2. Upon entry of this Judgment of Divorce each party shall be individually responsible for his/her own health insurance and the payment of the related premiums. [COBRA expired in November; then there was an interim health care insurance policy until then the current health care insurance policy went into effect; thus, Defendant represents that Plaintiff has not been without health insurance during the pendency of this case.]

SPOUSAL SUPPORT

3. Plaintiff shall not be obligated to pay spousal support to Defendant, and Defendant's claim for spousal support is forever waived and barred.

4. Modifiable Spousal Support: Commencing February 1, 2018, and continuing until Plaintiff's death, Plaintiff's remarriage, or further order of the Court, Defendant shall pay to Plaintiff spousal support as follows: (i) $3,000 per month (to be paid monthly), and (ii) the sum equal

to 30% of his Annual Gross Income in excess of $120,000 as defined and provided herein below (to be paid annually).

a. These spousal support payments shall be deductible to Defendant for income tax purposes pursuant to IRC §215 and includible by Plaintiff in her gross income for income tax purposes pursuant to IRC §71 in the year in which each payment is actually paid/ received, and neither party will file any income tax return inconsistent therewith.

b. Annual Gross Income: The term "Annual Gross Income" shall be defined as follows:

i. Annual Gross Income shall include:

(1) All W-2 income; all 1099 income for services rendered; all income received by Defendant for services rendered by Defendant; and K-l income actually received by Defendant in excess of the tax liability for such K-l income. Defendant will not cause any of his income to be deferred.

(2) Defendant's pre-tax income from stock options, employee stock, restricted stock, and other similar means of compensation, if any. Any support payment arising out of this subsection may be made "in kind" subject to the same terms and conditions that Defendant is subject to.

(3) The value of any perquisites from any employment, but only to the extent such perquisites are not included in his W-2 income or K-l income, excluding health insurance as a perquisite.

ii. Annual Gross Income shall not include:

(1) Defendant's passive income, e.g., interest income, dividend income, capital gains income, or retirement income.

(2) Distributions to cover tax obligations.

(3) Income from the entities referenced Section 7.b., below.

c. Timing: Defendant shall pay to Plaintiff her "30% of his Annual Gross Income in excess of $120,000" by April 15 of the following year, and he shall contemporaneously provide her with supporting documentation for such payment. All spousal support payments to Plaintiff shall be directly deposited by Defendant to Plaintiff's designated checking account. All supporting documentation shall be delivered to Plaintiff via email at her designated email account.

d. Supporting Documentation:

i. Annually, each party shall provide the other party with complete copies of his/her W-2 statements, K-l statements (if any), and 1099 statements for services rendered (if any) within 10 days of his receipt of each such statement.

ii. Annually, each party shall provide the other party with complete copies of his/her federal and state tax returns within 10 days of the completion of each such document. Defendant shall provide a transcript of his tax return, upon request.

iii. To the extent not referenced in either of the two preceding subparts, in order to effectuate the intent of this Section 4, annually Defendant shall provide Plaintiff with complete copies of any other documents which reflect all or part his Annual Gross Income within 10 days of his receipt of each such document.

PROPERTY DIVISION

5. Pension, Annuity or Retirement Benefits:

a. Defendant's IRA: Defendant shall rollover to Plaintiff 50% of the funds in his IRA account as of the date of distribution, and he shall retain the other 50% of the funds in this account.

b. Plaintiff's IRA: Plaintiff is awarded 100% of her IRA.

c. Statutory Pension Language: Except as otherwise provided herein, each party is individually awarded his/her own interest that he/she may have in and to all of the following: (a) any disclosed pension, annuity, or retirement benefits; (b) any disclosed accumulated contributions in any pension, annuity, or retirement system; (c) and any disclosed right or contingent right in and to any unvested pension, annuity, or retirement benefits.

6. Accounts: Each party shall retain all of his/her own checking and savings accounts.

7. Business Interests:

a. The return on investment expected from LT Lender/Lightning Technologies, which is approximately $78,000 plus interest, shall be equally divided between the parties when received.

b. Any equity in LT Lender/Lightning Technologies based on existing contributions and previous efforts shall be divided between the parties with 50% to Defendant and 50% to Plaintiff. Each party shall be individually responsible for any capital calls, litigation costs, taxes, and any other attributes/expenses/benefits of ownership associated with his/her 50% share.

i. Constructive Trust:

(1) In the event Plaintiff's interest cannot be transferred into her name, Defendant shall hold Plaintiff's interest in constructive trust for the benefit of Plaintiff.

(2) In the event that Defendant is holding Plaintiff's interest in constructive trust for the benefit of Plaintiff and he sells his interest, he shall also sell Plaintiff's corresponding interest.

(3) In the event that Defendant is holding Plaintiff's interest in constructive trust for the benefit of Plaintiff and Plaintiff's interest is

sold, Defendant shall pay to Plaintiff her after-tax share of the sales proceeds within 10 business days of his receipt of the proceeds (adjusted for fees and commissions) as follows: Defendant pay to Plaintiff an amount equal to sixty percent (60%) of her adjusted proceeds generated therefrom. Defendant shall retain the remaining 40% of his adjusted proceeds, and he shall be responsible for paying any income tax liability which may be associated with the sale of Plaintiff's interest. Any shortfall or over-withholding of taxes shall be reconciled at the time Defendant's actual tax returns are filed based on Defendant's highest marginal federal and state tax rates at that time, i.e., as the last taxable income on Defendant's tax return. Plaintiff shall pay to Defendant any shortfall within 10 days of receiving written notice and supporting documentation from Defendant. Defendant shall pay to Plaintiff any over-withholding within 10 days of its determination.

(4) Defendant shall not be liable to Plaintiff for providing any information or advice to Plaintiff regarding the value of her interest, or any advice regarding the timing of the sale her exercise of her interest, or for any gain or loss which she may incur in the potential value of her interest.

(5) Defendant is not obligated to remain employed by LT Lender/ Lightning Technologies, and if his employment is terminated for any reason whatsoever, voluntary or involuntary, and Defendant loses his rights to his interest, Plaintiff's rights to her interest shall terminate in the same manner as does Defendant's interest, and there shall be no liability of any kind by Defendant to Plaintiff as a result thereof.

ii. Defendant shall provide Plaintiff with financial records required to be produced to shareholders/members as required by Michigan law.

iii. Plaintiff shall maintain the confidentiality of all financial records of LT Lender and Lightning Technologies as required by LT Lender and Lightning Technologies.

c. Defendant is awarded Hillwood Farm, LLC.

8. Horse and Farm Equipment: Plaintiff is awarded all of the parties' horses, inclusive of all of the related equipment.

9. Vehicles and Equipment:

a. Plaintiff is awarded the trailer, the carriage, the GMC Sierra pickup truck, and the BMW.

b. Defendant shall retain the 2017 Audi and Range Rover.

c. Each party shall hold the other party harmless from all liability arising from the lease, ownership, operation, or use of the vehicles which he/she receives pursuant to the terms of this Judgment of Divorce. Each party shall hereinafter be solely responsible for all of his/her own lease/loan payments, registration fees, insurance, maintenance expenses, and all other fees and costs arising from the lease, ownership, operation, or use of each vehicle, and each party shall hold the other party harmless, defend, and indemnify the other party from all liability arising from same.

10. Personal Property:

a. Each party shall retain all of his/her own clothing, jewelry, and personal effects.

b. The parties' furniture and household furnishings have been equitably divided between them.

c. Plaintiff shall be entitled to all of the contents of the two storage facilities and barn, and she shall be individually responsible for all of the related expenses. Defendant shall pay to Plaintiff $2,000 within 30 days of the entry of this Judgment of Divorce as his total liability to Plaintiff relative to this issue.

11. Liabilities:

a. Each party shall be individually responsible for all of his/her own future liabilities, including all liabilities associated with his/her own assets.

b. Each party shall be individually responsible for any outstanding credit card charges which he/she incurred, and each party shall be individually responsible for all credit card accounts in his/her individual name. Any joint credit card accounts shall be closed; however, if Plaintiff wishes to retain the joint BOA credit card she shall assume all responsibility for same and immediately remove Defendant from all liability on the account (and provide with documents confirming that he was removed from the account).

c. The parties shall be equally liable for any outstanding claims for any outstanding claims relating to the sale of the former marital home.

d. Neither party shall incur any debts or other obligations in the name of the other party, apply for credit in the name of the other party, or pledge the credit of the other party, either directly or indirectly, for any goods, credit, loan, merchandise, or services whatsoever; and each party shall indemnify, defend, and hold the other party harmless with respect thereto.

12. Other:

a. Defendant will provide Plaintiff with a thumb drive containing copies of the data files on the broken computer within 30 days of the entry of this Judgment of Divorce.

b. Defendant will cooperate with Plaintiff making an insurance claim relative to her missing engagement ring, Hermes scarves, and Hermes bracelets. Defendant will only tell the truth.

SECURITY FOR SUPPORT

13. Until the first to occur of (i) the end of the existing term of Defendant's term life insurance policy (i.e., when the level premium is no longer level), (ii) Defendant's complete retirement, or (iii) the termination of Defendant's spousal support obligation, Defendant shall maintain Plaintiff as the primary beneficiary of his existing life insurance policy.

a. Defendant shall provide to Plaintiff within 60 days of the execution of this Judgment of Divorce, and annually thereafter on the anniversary date of this Judgment of Divorce, proof of his compliance with these security provisions.

b. In the event that Defendant shall fail to fully comply with the foregoing provisions, Plaintiff shall have a first priority claim against his estate.

STATUTORY INSURANCE PROVISION

14. Except as otherwise provided in Section 13, any right of either party in and to the proceeds of any policy or contract of life insurance, endowment, or annuity upon the life of the other, as beneficiary, are extinguished as provided by statute.

MUTUAL RELEASE

15. Each party releases all claims that he/she may have against the other party, other than claims for fraud or enforcement.

COUNSEL FEES, EXPERT FEES, AND COSTS

16. Each party shall be individually responsible for the payment of his/her respective outstanding attorneys' fees, expert fees, costs, and expenses incurred in connection with this divorce proceeding.

17. Each party shall be individually responsible for the payment of 50% of Michael Robbins' fees for mediation services.

TAX MATTERS

18. Each party shall assume all tax consequences of the assets which he/she receives pursuant to the foregoing provisions of this Judgment of Divorce.

19. In the event that any taxing authority shall notify either party of any deficiency in any joint return (heretofore or hereafter filed), the party receiving such notice shall promptly notify the other party in writing.

20. Plaintiff is awarded the parties' 2016 tax refund.

21. The parties shall file separate tax returns for 2017. Defendant shall be entitled to all deductions related to the former marital home.

EXECUTION AND RECORDATION OF DOCUMENTS

22. The parties shall do all acts, and they shall execute and deliver all documents, deeds, assignments, changes of beneficiaries, and transfers of titles as may be necessary for the implementation of the provisions of this Judgment of Divorce. In the event that either party shall fail or refuse to perform any such requirements, the opposite party may apply to the Court for such orders as may be necessary to effectuate the foregoing provisions.

_____

Hon. Lisa Langton

Approved for entry:

BANK RIFKIN

BY: _____
MARK A. BANK (P48040)
JACOB N. SIMON (P81880)
Attorneys for Defendant
401 South Old Woodward Avenue, Suite 410
Birmingham, Michigan 48009
(248) 480-8333

_____
JODY POHLMAN
Plaintiff

_____
JAMES POHLMAN
Defendant

STATE OF MICHIGAN
IN THE SUPREME COURT

JODY POHLMAN,
Plaintiff/Appellant,

SC: 161262

COA: 344121

v.

Oakland CC: 2017-853588-DO

JAMES POHLMAN,
Defendant/Appellee.

_____/

EXHIBIT K

STATE OF MICHIGAN

OAKLAND COUNTY CIRCUIT COURT

JODY POHLMAN,

Plaintiff,

v

Case No. 2017-853588-DO
Judge Langton

JAMES G. POHLMAN,

Defendant.

JEFFREY J. QUAS (P-42248)
Quas Legal Solutions, PLLC
MICHAEL J. BALIAN (P-39972)
Co-Counsel for Plaintiff
337 South Main Street, Suite 201
Rochester, Michigan 48307-6711
(248) 652-7799 / FAX (248) 651-5531
e-Mail: jeffreyquas@sbcglobal.net

Balian Legal PLC
40950 Woodward Ave Ste 350
Bloomfield Hills, MI 48304-5129
(248) 581-0040 / Fax: (248) 402-0011
e-Mail: mjb@balian.com

MARK A. BANK (P-48040)
Attorney for Defendant
Bank Rifkin
401 S Old Woodward Ave Ste 410
Birmingham, MI 48009-6603
(248) 480-8333 / Fax: (248) 480-8334
e-Mail: bank@bankrifkin.com

PLAINTIFF'S ANSWER TO DEFENDANT'S MOTION FOR ENTRY OF JUDGMENT

NOW COMES, Plaintiff, Jody Pohlman, by her attorney, JEFFREY J. QUAS, and for her Answer to Defendant's Motion, states as follows:

1. Admit Plaintiff participated in mediation session with counsel.

2. Deny the signed agreement is binding. Plaintiff did not make a knowing and understanding acquiescence to the terms and conditions set forth in Defendant's offered "Settlement Terms Sheet". Tab 1 of Defendant's Motion. Mediation commenced

QUAS LEGAL SOLUTIONS PLLC
Jeffrey J. Quas
Attorney at Law
337 South Main St, Ste 201
Rochester, MI 48307
(248) 652-7799
Fax (248) 651-5531

at 1:00 p.m. on January 31, 2018 and lasted until 7:30 p.m. Plaintiff asserts that due to her mental vulnerability and affliction she felt trapped at mediation and unable to leave until she signed the aforementioned "Settlement Term Sheet" though she had not actually read the document and did not understand or comprehend its contents. "Courts will uphold the validity of property settlements reached through negotiation and agreement by the parties in a divorce action in the absence of fraud, duress or mutual mistake" Howard v Howard, 134 Mich App 391, 394 (1984).

> It is a well settled principle of law that courts are bound by property settlements reached through negotiations and agreement by parties to a divorce action in the absence of fraud, duress, mutual mistake or severe stress which prevented a party from understanding in a reasonable manner the nature and effect in which she was engaged. Lentz v Lentz, 271 Mich App 465, 474 (2006) citing Calo v Calo, 143 Mich App 749, 753-754 (1985).

When the validity of a property settlement is challenged the question for the Court to address is "whether a party freely, voluntarily and understandingly entered into and signed the agreement". Lentz at 475.

The standard to be applied in determining a party's mental capacity to contract is set forth in Star Realty Inc. v Bower, 17 Mich App 248. 250 (1969):

> The well settled test of mental capacity to contract properly adopted by the trial court, is whether the person in question possesses sufficient mind to understand, in a reasonable manner, the nature and effect of the act in which (s)he is engaged... to avoid a contract it must appear not only that the person was of unsound mind ... but that the unsoundness ... was of such a character that (s)he had no reasonable perception of the nature or terms of the contract."

The Bower court determined the defendant had no reasonable perception of the terms of a contract where lay and expert testimony established his mental instability/unsoundness, e.g., irrationality, mental trauma, breaking down, crying,

QUAS LEGAL SOLUTIONS PLLC
Jeffrey J. Quas
Attorney at Law
337 South Main St, Ste 201
Rochester, MI 48307
(248) 652-7799
Fax (248) 651-5531

incoherent, etc. The court opined that "if a person is unable to understand in a reasonable manner the nature and consequences of his act, he lacks capacity and there ends our inquiry.... There is considerable testimony of emotional instability ...." Bower at 258. Such is the case with Ms. Pohlman. Unlike those cases upholding property settlements, here no transcription record is available to evaluate the parties' ability to reasonably understand the terms and conditions of the agreement. Cases where a challenge is made to a party's ability to enter into a binding contract due to unsoundness of mind require an evidentiary hearing for a determination of the validity of the challenge and the validity of the contract.

The Bower test was applied in divorce settlement settings in Howard v Howard, 134 Mich App 391 (1984) and Van Wagoner v Van Wagoner, 131 Mich App 204 (1983). The Howard case also addressed the lack of detail in determining the value of defendant's business interest and remanded the matter for a determination of same.

Plaintiff's mental breakdown gave cause for her to be referred, by her counsel's office, for psychotherapy the day following mediation. On February 1, 2018, Ms. Pohlman made telephone contact with a clinical psychologist who, upon interacting with Plaintiff via phone, scheduled Ms. Pohlman for a psychotherapy session that same afternoon. Ms. Pohlman was crying and despondent; her speech was pressured and rapid. Due to her mental health diagnosis she signed the agreement as an "escape" mechanism and did not enter into the agreement knowingly or understandingly but as a result of duress and/or severe stress. Her psychotherapist has opined that she was unable to reasonably understand the nature and effect of the act in which she was engaged.

QUAS LEGAL SOLUTIONS PLLC
Jeffrey J. Quas
Attorney at Law
337 South Main St, Ste 201
Rochester, MI 48307
(248) 652-7799
Fax (248) 651-5531

The mediation summary drafted on behalf of Plaintiff included the following assertions:

- Defendant spent a significant amount of money on credit cards during the divorce proceedings on non-marital expenses (that Plaintiff can determine at this time). (Along with what is currently known, Plaintiff is in the process of obtaining actual account statements from Defendant, relative to his American Express card, so that the account detail can be analyzed.)

- Defendant withdrew significant funds from a joint account at PNC Bank, and the related expenditures are not accounted-for as being marital in nature.

- Plaintiff suspects that Defendant may have given marital cash to his paramour so that she could pay for expenses related to herself and Defendant - in an effort to make it look like marital assets were not being dissipated.

- Defendant took the parties' $22,000.00 (approx.) income tax refund and used those funds for himself, instead of paying the parties' Home Equity Line of Credit (which is what he was supposed to do). (Plaintiff states that Defendant forged her name on the refund check so he could have all the money.)

Note: it is important for the Mediator to be mindful of the fact that Defendant has been significantly less than forthcoming with his discovery obligations, and evasiveness has been the hallmark of his litigation strategy. Furthermore, it is suspected that Defendant's plan is to defer compensation and returns-on-investment until after the divorce is over so that he can deprive Plaintiff of her rightful share of assets and income.

(No additional information is provided in either the Settlement or proposed Judgment that clarifies these concerns).

At issue was the value of the parties' investment in Lightning Technologies*,

*Along with Lightning Technologies, interests include LT Lenders, Global Structural Products, and Advanced Energy, as well as possibly other entities.

In the present matter, Defendant previously earned between $250,000.00 and $450,000.00 annually. (Defendant, who is very gifted in the field of sales and marketing, previously worked for a company called Setech, but Defendant either quit, or he orchestrated his own demise from the

QUAS LEGAL SOLUTIONS PLLC
Jeffrey J. Quas
Attorney at Law
337 South Main St, Ste 201
Rochester, MI 48307
(248) 652-7799
Fax (248) 651-5531

company - because, as he once told Plaintiff when divorce was being discussed, *I'm not giving you all my money.*)

The present situation of the parties shows that Plaintiff has a need for spousal support (because she is not in a position to enter the workforce at her age and with her lack of education) - and Defendant has the ability to pay such support

(Despite these figures, Plaintiff - who only has a high school education - was awarded $3,000.00 in month modifiable spousal support with conditions.)

Plaintiff has numerous health issues that preclude her from working outside the home. Currently, Plaintiff needs a complete shoulder replacement, which Plaintiff has put off until after this divorce case is over. In addition, Plaintiff has an arthritic back and hands, a thyroid condition, a serious eye disease, and she has had two hips replaced. Defendant does not have any health issues that preclude him from working outside the home.

(The proposed Judgment leaves Plaintiff on her own in acquiring medical coverage. Not an enviable task for someone with her serious health issues at the age of 60 years.)

While the proposed divorce judgment expands upon the "Settlement Terms Sheet" representation that "specific Language relative to her rights to business records shall be included in the Judgment of Divorce..., the additional "Specific Language" presented in the Judgment is without description of the valuation of any business interests and whether any methodology exists to acquire any such value in liquid cash form.

3. Admit.

4. Denied.

5. Admit only as a general principle where parties are able to reasonably able to perceive the terms and conditions of the contract, such is not the case herein.

WHEREFORE, Plaintiff, Jody Pohlman, prays this Court will deny Defendant's claim for relief and set this matter for hearing on whether she was able to reasonably

QUAS LEGAL SOLUTIONS PLLC
Jeffrey J. Quas
Attorney at Law
337 South Main St, Ste 201
Rochester, MI 48307
(248) 652-7799
Fax (248) 651-5531

perceive the terms and conditions of the "Settlement Terms Sheet" due to duress/stress and thereafter decline to allow for the entry of the proposed Judgment.

Dated: 03/09/2018

JEFFREY J. QUAS (P-42248)
Attorney for Plaintiff

QUAS LEGAL SOLUTIONS PLLC
Jeffrey J. Quas
Attorney at Law
337 South Main St, Ste 201
Rochester, MI 48307
(248) 652-7799
Fax (248) 651-5531

STATE OF MICHIGAN
IN THE SUPREME COURT

JODY POHLMAN,
Plaintiff/Appellant,

SC: 161262

COA: 344121

v.

Oakland CC: 2017-853588-DO

JAMES POHLMAN,
Defendant/Appellee.

_____/

EXHIBIT L

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JODY POHLMAN,

Plaintiff,

v Case No. 2017-853588-DO

JAMES POHLMAN,

Defendant./

MOTION/JUDGMENT OF DIVORCE HEARING

BEFORE THE HONORABLE LISA LANGTON, CIRCUIT JUDGE

Pontiac, Michigan - Wednesday, March 14, 2018

APPEARANCES:

For the Plaintiff:
MICHAEL BALIAN (P33972)
Balian Legal, PLC
40950 Woodward Avenue, Suite 350
Bloomfield Hills, Michigan 48304
(248) 581-0040

JEFFREY QUAS (P42248)
Quas Legal Solutions, PLLC
337 South Main Street, Suite 201
Rochester, Michigan 48307
(248) 652-7799

For the Defendant:
MARK BANK (P48040)
Bank Rifkin
401 S. Old Woodward Avenue, Suite 410
Birmingham, Michigan 48009
(248) 480-8333

Transcript Provided by:
Accurate Transcription Services, LLC
Firm # 8493
(734)944-5818

Transcribed by:
Krista S. Michels, CER #8490

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Pontiac, Michigan

Wednesday, March 14, 2018 - 8:41 a.m.

* * * * * *

THE CLERK: Your Honor, the Court next calls the matter of number 22, this is the matter of Pohlman v Pohlman, case number 2017-853588-DO.

MR. BALIAN: Good morning, your Honor, for the record, Michael Balian, pro counsel on behalf of Jody Pohlman.

MR. QUAS: Jeff Quas on behalf of Ms. Pohlman as well, your Honor.

THE COURT: Thank you.

MR. BANK: Good morning, your Honor, may it please the Court, Mark Bank appearing on behalf of the defendant, James Pohlman.

THE COURT: All right, thank you.

MR. BANK: Your Honor, this matter comes before the Court this morning upon the defendant's motion for entry of a judgment of divorce. The background for the motion is that on January 31st of this year, the parties engaged in a mediation session with mediator, Michael Robbins. During that mediation session, I represented the defendant.

THE COURT: Thank you, go ahead.

MR. BANK: The plaintiff, at the time, was

represented by Kurt Schnelz. She also had another attorney of record, Mary Anne Noonan, who was not present. This was the second filing of this case. This case was dismissed and refiled to allow for more time for discovery early on. The term sheet resolved all of the issues in this case. We were here a few weeks ago when Mr. Schnelz and Ms. Noonan withdrew as counsel of record.

We have prepared a proposed judgment of divorce consistent with the terms set forth in the term sheet and the term sheet and the proposed judgment were attached to our motion for today. The only change I have made to the proposed judgment of divorce is I've added new counsel to the caption. Otherwise, the document that I intend to present to the Court this morning would be the exact same proposed judgment of divorce.

In the answer to the motion this morning, they raised the issue -- two issues; one, that their client was under stress or duress and I'd like to respond first to that and then, to their second one. There's two cases directly on point, most importantly, Vittiglio versus Vittiglio, a divorce case arising out of this county. It was a case in front of Judge Matthews and in that case, the Court of Appeals in a published opinion ruled that an agreement will not be set aside on the basis of duress absent showing that the other party, meaning my client,

participated in the duress or coercion.

There was nothing in their answer to the motion that suggested that my client did anything, let alone anything wrong. Second, there's a case, and this goes back to the 1880s, Michigan Supreme Court case that says if you want to show duress, you need to show an unlawful act by the opposing party and nowhere did they allege that my client did anything, let alone, that he did an unlawful act.

So, their arguments regarding stress or duress fail based on their pleading alone. The other argument that they make is that this agreement was somehow unfair, which is not a basis to set it aside; however, they misstate in their answer some of the things that are -- would be important, I think, if the Court wanted to know, relative to spousal support, they say that their client is only getting $3,000 a month.

That's not true. She's getting 30 percent of my client's income and the term sheet is very clear. She gets $3,000 a month if 30 percent of the first $120,000 and then, 30 percent of anything he earns above and beyond that and there's very rigid requirements for what he has to provide in terms of documentation on an annual basis to verify to her his income.

The other thing is, she received in excess of 50

percent of the total estate. So, based on the agreement that the parties reached during the mediation, which was signed by both parties while they were represented by counsel, we're asking that the Court enter a judgment of divorce this morning consistent with the term sheet.

THE COURT: Okay. Thank you, Mr. Bank.

MR. BANK: Thank you.

MR. QUAS: Judge, the law cited in my brief incorporates duress in the overall review of this type of thing, but it goes beyond duress and it's not really duress that we're talking about. That's one of the things Courts look to when it comes to whether someone has a reasonable capacity to actually enter into an agreement at the time.

In this particular instance, she signed that agreement. What's important here, the real issue is whether she had the mental capacity and was of sound enough time -- of mind at the time to enter into the agreement. What's unique about this case is that she called her counsel's office the following day, after the mediation, and this mediation entered -- ended as I understand, about 7:30 p.m. at -- in the evening.

As a result of that call to counsel's office, they were so concerned about her mental state at the time that they referred her to psychotherapy -- a

psychotherapist who saw her that day. Obviously, I'm relatively new into this case, but the person who she met that day, Kim Watzman, a clinical psychotherapist, who I've had conversations with, has drafted up a preliminary analysis, and pursuant to my discussions with her, said that due to her mental capacity, she did not have the ability to reasonably understand and enter into the agreement when she did it.

Now, I think that's significant from the perspective of the timing of it as well as it's her own counsel who refers her to this psychoanalyst and the psychoanalyst's determination that based upon her sessions with Ms. Pohlman that she was not able to enter into that agreement knowingly and understandingly because of the lack of her mental capacity at that time.

Not simply duress, duress is just one of the things that you could look to, but it's not all encompassing. There's other aspects to it and in fact, the aspect in this case is specifically mental capacity and the case law we've shown or cited to the Court establishes that if there is some basis for that, there has to be a hearing to determine whether it is actually applicable and should be applied to set aside that agreement.

So, our perspective on this matter, Judge, is

that the matter should be set aside and to be perfectly frank, Judge, I don't know enough about this case when it comes to the specifics of assets, debts, that type of thing. I haven't been involved in it long enough. All I read was what was in mediation. I can cite to it. There are some issues whether someone might think it's fair or not. I might have some preliminary perceptions on it, but obviously, I can't make an -- an informed decision at -- on that at this point.

But I do think it's -- you can't ignore what Ms. -- the psychotherapist's name is Kim Watzman from the Miletic Center, it's with Integrated Health Systems. I don't think it's something that can be ignored.

THE COURT: Okay, so let me ask you this.

MR. QUAS: Sure.

THE COURT: Did she -- did she see that person prior to the --

MR. QUAS: No.

THE COURT: Okay. So, it was after she made the agreement that she went and saw --

MR. QUAS: Correct, the next day.

THE COURT: -- the counselor? All right. And during the mediation, was she in the same room as the defendant?

MR. QUAS: No.

THE COURT: They were in separate rooms?

MR. QUAS: Correct.

THE COURT: Okay. So, she had no direct contact with him. She was meeting either with the mediator or her lawyer?

MR. QUAS: I don't know that she actually spent much time at all --

MS. POHLMAN: None with the mediator.

MR. QUAS: -- with the mediator, it was pretty much her lawyer.

THE COURT: Okay. All right. All right, thank you.

MR. BANK: In response to the Court's question, Mr. Robbins was in the other room for quite some time along with Mr. Schnelz and Mr. Schnelz had somebody from his office, another attorney whose name I should know and I -- I always forget, but he's been with Mr. Schnelz for many years, and there were sessions where I met with Mr. Schnelz and Mr. Robbins and there were other times where I was alone with my client in our room because Mr. Robbins and Mr. Schnelz and the other lawyer from Mr. Schnelz's office were in the other room.

THE COURT: Okay.

MR. BANK: And not unusual for somebody to have buyer's remorse and be sad about the divorce the next day.

THE COURT: Yeah, okay. Anything further?

MR. QUAS: No, Judge, unless the Court has questions or would want to see the analysis of --

THE COURT: Well, I -- I mean, it -- to me, what I'm looking at here, you know, I'm looking at several factors and I read over the information, I read over the case law. To me, I -- I find, first of all, this mediation took place January 31st. Now, no one is forced to go into mediation. This is not something that people are forced to do.

They can always say no, I'm not doing mediation and the case comes before me when parties don't agree to mediate. So, clearly, she willingly participated in mediation. The fact that it ended at 7:30 might be relevant if it started at -- in the morning, this started in the -- in the afternoon. So, by all accounts, at least if I believe everything that plaintiff is indicating, it lasted somewhere around six, six-and-a-half hours.

Again, not unusual for a mediation in a divorce case. She clearly had a mediator who's an experienced mediator. She had legal counsel represent her during these proceedings. She signed the agreement and I -- I note that the agreement was typed, so obviously, it wasn't like, handwritten at the last moment, it was typed in.

I will note that it appears that there's some

handwritten changes on the term sheet, which in my opinion, I'll favor plaintiff. Every change in here favors plaintiff. It was a shuttle-type mediation. It was -- the parties were separated. Plaintiff and defendant did not meet or discuss. There was no opportunity for the defendant in this case to have any control or say over what plaintiff was hearing or getting.

It does sound like she is not satisfied with the terms of the agreement. Whether they're fair and reasonable, in my opinion when I read it, it appears that if this was a default judgment and I was reviewing it for fairness and equity -- equity, I would have approved it except for the plaintiff allegations that the mediation was six-and-a-half hours long and that after the mediation, not before or during, after the mediation, she sought counseling.

To me, there's no evidence that the defendant coerced or pressured her in any way. There was no unlawful actions by the defendant in this case. There's no evidence that she signed under duress. She was kept in a different room. She was represented by able counsel. She had a competent and long-time mediator in this case. There's no specific allegations in my opinion to substantiate either a claim of fraud or duress. So, I will -- I will respectfully deny your motion, sir, and

enter the judgment.

MR. QUAS: Judge, I just want to place on the record that -- and it's in there, but --

THE COURT: Yeah.

MR. QUAS: -- that she did state, I think it said that she wasn't -- she actually did not read the agreement but I -- I know that's in our response.

MS. POHLMAN: May I speak?

THE COURT: I -- I would have no way, you know --

MR. QUAS: I understand.

MS. POHLMAN: Can I speak?

THE COURT: -- I -- I guess you could say that, but clearly, there's handwritten changes on here that she initialed, each handwritten change, and she also signed the judgment. So, you know --

MR. QUAS: I understand.

MS. POHLMAN: I can't see.

THE COURT: All right.

MS. POHLMAN: I never read it.

MR. BANK: Your Honor, relative to placing the statutory proofs upon the record --

THE COURT: Yeah.

MR. BANK: -- either I can place them through my client or I can inquire of Ms. Pohlman --

MS. POHLMAN: Can I speak?

MR. BANK: -- I can do it either way.

THE COURT: Is your client a co --

MR. BANK: There -- there is a counter-claim that was filed --

THE COURT: Counter-complaint?

MR. BANK: -- but the 60 days on that has not run since the filing, but on hers, it has and I can certainly put -- even on her complaint, I can put the proofs on through my client because he can --

THE COURT: Fine, let's do that.

MR. BANK: Okay.

THE COURT: Okay, go ahead, sir.

MR. BANK: Just stand up, please.

THE COURT: You want to step up to the microphone. Do you want to raise your right hand? Do you solemnly swear the testimony you're about to give in this matter is the truth, the whole truth and nothing but the truth?

MR. POHLMAN: Yes.

THE COURT: All right, thank you. Mr. Bank?

MR. BANK: Please state your full name for the record.

MR. POHLMAN: James Glenn Pohlman.

MR. BANK: Mr. Pohlman, during the 180-day

period preceding the filing of this case, was both you and your wife a resident of the state of Michigan?

MR. POHLMAN: Yes.

MR. BANK: And during the 10-day period preceding the filing of this case, were both you and your wife residents of Oakland County?

MR. POHLMAN: Yes.

MR. BANK: If the Court did not see fit to grant you a judgment of divorce, would you ever -- or grant your wife a judgment of divorce, would you ever resume living with her ever again as husband and wife?

MR. POHLMAN: No.

MR. BANK: To the best of your knowledge, is she currently pregnant?

MR. POHLMAN: No.

MR. BANK: Are you asking the Court to enter a judgment of divorce consistent with the term sheet that was signed during the mediation session on January 31st, 2018?

MR. POHLMAN: Yes.

THE COURT: Any questions, sir?

MR. QUAS: Not on my part, your Honor.

THE COURT: All right, thank you. I am satisfied that there has been a breakdown in the marital relationship to the extent that the objects of matrimony

have been destroyed. There remains no reasonable likelihood that the --

MS. POHLMAN: What is she doing?

MR. QUAS: Stop.

THE COURT: -- marriage can be preserved. Are we -- do you have a judgment today?

MR. BANK: I have a judgment today. I have a uniform spousal support order with me today --

THE COURT: All right.

MR. BANK: -- and I have a record of divorce.

THE COURT: All right.

MR. BANK: I hope that at least counsel would approve it as to form, so that it can be submitted by e-file or directly to the Court and then --

THE COURT: Okay.

MR. BANK: -- we can e-file.

THE COURT: All right. What I'm going to do then, is I'm going to preserve the proofs on this matter until the documents are reviewed or -- and filed with this Court. At that time when they are filed, I will sign the judgment as presented and grant an absolute divorce and you have the uniform spousal support order as well, you indicated?

MR. BANK: Yes, I have everything required with me today and --

THE COURT: Okay.

MR. BANK: -- I note the judgment was appended to the motion, so counsel --

THE COURT: Okay.

MR. BANK: -- should have had time to approve --

THE COURT: All right.

MR. BANK: -- or at least review the substance, other than the caption --

THE COURT: Right.

MR. BANK: -- which I changed.

THE COURT: Okay. All right, thank you, (indiscernible).

MR. BANK: Thank you, your Honor.

MR. QUAS: Judge, I'll probably need to review what's in the judgment with prior counsel before I'm able to sign it.

THE COURT: That's fine. Mr. Bank will give you that opportunity.

MR. BANK: So --

MR. QUAS: I have a copy of it.

MR. BANK: -- there's -- can we --

THE COURT: All right. So, why don't -- why don't we set a -- why don't you just present it within one week?

MR. BANK: Within one week?

THE COURT: Okay?

MR. QUAS: Okay.

MR. BANK: And if it's not signed with him one week, then we --

THE COURT: Present it within one week.

THE CLERK: Do you want to do an order (indiscernible) judgment?

MR. BANK: I'll present it --

THE COURT: No, that's fine. I --

MR. BANK: So --

THE COURT: -- they'll bring it back, I'm sure.

MR. BANK: Okay.

MR. QUAS: Okay.

THE COURT: Okay?

MR. BANK: Very good. Thank you, your Honor.

THE COURT: Good luck, thank you.

(At 8:55 a.m., proceedings concluded.)

* * * * * *

STATE OF MICHIGAN)
COUNTY OF OAKLAND)ss.

I certify that this transcript is a true and accurate transcription to the best of my ability of the proceeding in this case before the Honorable Lisa Langton, as recorded by the clerk.

Proceedings were recorded and provided to this transcriptionist by the Circuit Court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceeding or for the content of the recording provided.

Dated: September 5, 2018

/S/ Krista S. Michels

Krista S. Michels, CER #8490

STATE OF MICHIGAN
IN THE SUPREME COURT

JODY POHLMAN,
Plaintiff/Appellant,

SC: 161262

COA: 344121

v.

Oakland CC: 2017-853588-DO

JAMES POHLMAN,
Defendant/Appellee.

_____/

EXHIBIT M

MS

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JODY POHLMAN,

Plaintiff,

v.

CASE NO. 17-853588-DO
HON. Lisa Langton

JAMES G. POHLMAN,

Defendant.

/

JEFFREY A. QUAS (P42248)
Quas Legal Solutions, PLLC
Attorney for Plaintiff
337 South Main Street, Ste. 201
Rochester, MI 48307-6711
(248) 652-7799

MICHAEL J. BALIAN P39972)
Balian Legal, PLLC
Co-Counsel for Plaintiff
40950 Woodward Ave., Ste. 350
Bloomfield Hills, MI 48304-5729
(248) 581-0040

THE LAW FIRM OF VICTORIA, P.C.
DENNIS ZAMPLAS (P24637)
ASHLEIGH A. WAGNER (P77973)
Co-Counsel for Plaintiff
772 East Maple Road
Birmingham, MI 48009

BANK RIFKIN
MARK A. BANK (P48040)
Attorneys for Defendant
401 S. Old Woodward Avenue, Ste. 410
Birmingham, MI 48009-6003
(248) 480-8333(248) 723-1600

/

PLAINTIFF'S OBJECTION TO NOTICE OF SUBMISSION OF ORDERS PURSUANT TO MCR 2.602(B)(3)

NOW COMES Plaintiff, JODY POHLMAN, by and through her attorneys at The Law Firm of Victoria, P.C., and for her Objection to Notice of Submission of Orders Pursuant to MCR 2.602(B)(3), states as follows:

1. Defendant's counsel filed a Notice of Submission of Orders Pursuant to MCR 2.602(B)(3) on March 20, 2018.
2. Plaintiff objects to the Entry of the Judgment of Divorce and Uniform Spousal Support Order on the basis that the parties did not undergo the proper

screening relative to past allegations of domestic violence, as per MCR 3.216(H)(2), effective September 1, 2017. As a result of this significant violation of mediation protocol, the mediation and the resultant agreement are invalid.

3. MCL 400.1501(d) defines domestic violence as follows:

400.1501 Definitions

(d) "Domestic violence" means the occurrence of any of the following acts by a person that is not an act of self-defense:

(i) Causing or attempting to cause physical or mental harm to a family or household member;

(ii) Placing a family or household member in fear of physical or mental harm;

(iii) Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress;

(iv) Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

4. MCR 3.216(H)(2) states in relevant part:

   a. "The mediator must make reasonable inquiry as to whether either party has a history of a coercive or violent relationship with the other party. Throughout the mediation process, the mediator must make reasonable efforts to screen for the presence of coercion or violence that would make mediation physically or emotionally unsafe for any participant or that would impede achieving a voluntary and safe resolution of the issues. A reasonable inquiry includes the use of the domestic violence screening protocol for mediators provided by the state court administrative office as directed by the supreme court." **(Exhibit A – Domestic Violence Screening Protocol for Mediators of Domestic Relations Conflicts)**

5. Plaintiff attests to the fact that she did not undergo any type of domestic violence screening prior to or during the mediation of January 31, 2018. Since the parties do have a history of domestic violence, the lack of proper screening rendered the entire mediation process invalid. **(Exhibit B –**

Plaintiff's Affidavit Re: Domestic Violence)

6. As more fully attested to in Plaintiff's attached Affidavit **(Exhibit B)**, the parties' marriage was wrought with abuse, both physical and emotional. On numerous occasions Plaintiff was physically assaulted by the Defendant. Plaintiff lived in fear of the Defendant as he often carried a weapon and even slept with three (3) guns next to his bed. Due to these continuous physical occurrences, as well as the prevalent emotional abuse that Plaintiff suffered, a domestic violence screening was absolutely necessary prior to mediation. Since the screening was not conducted as required by the recent amendment to MCR 3.216(H)(2), the subsequent settlement agreement is invalid.

WHEREFORE, Plaintiff requests that this honorable Court:

a. Order that the mediation settlement agreement be set aside due to the violation of MCR 3.216(H)(2);
b. Order the proposed Judgment of Divorce be denied due to the violation of MCR 2.16(H)(2);
c. Order an evidentiary hearing to prove the violation of MCR 3.216(H)(2); and
d. Grant Plaintiff any further relief deemed just and equitable.

Respectfully submitted,

THE LAW FIRM OF VICTORIA, P.C.

BY: _____

DENNIS ZAMPLAS (P24637)
ASHLEIGH A. WAGNER (P77973)
Attorneys for Plaintiff
772 East Maple Road
Birmingham, MI 48009
(248) 723-1600

Dated: March 27, 2018

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DOMESTIC VIOLENCE SCREENING PROTOCOL FOR MEDIATORS OF DOMESTIC RELATIONS CONFLICTS

ABBREVIATED DOMESTIC VIOLENCE SCREENING QUESTIONNAIRES

Provided by:
Office of Dispute Resolution
State Court Administrative Office
Michigan Supreme Court

June 2014

Purpose and Use of Abbreviated Domestic Violence Screening Questionnaires

To promote safety for litigants, their children, and mediators, the complete unabbreviated Domestic Violence Screening Questionnaire should be used in every possible instance of screening for domestic violence.* All mediators and Friend of the Court and Community Dispute Resolution Program center staff conducting case intake should be trained on and be familiar with the complete Domestic Violence Screening Protocol document, including the complete screening questionnaire.

Recognizing that special circumstances may exist at Friend of the Court and Community Dispute Resolution Program (CDRP) offices in which time constraints make the use of the complete screening questionnaire difficult, two abbreviated versions are provided for use only in the following limited situations.

Abbreviated Questionnaire 1: Parties are not yet together at the mediation site. This version should be used only when limited time is available in advance of meeting with the parties, but parties are not yet together at the mediation site. This Questionnaire contemplates the circumstance of CDRP centers or Friend of the Court offices having insufficient time to use the complete protocol in advance of parties appearing at the center or court office but where some limited time is available for screening.

Abbreviated Questionnaire 2: Parties are already together at the mediation site. This version is for use only when parties are present at court and have proceeded through a security check, prior intake was not conducted, and mediation is to take place immediately. This Questionnaire contemplates the circumstance where parties have been ordered by the judge to attempt mediation at a location within the court, and the only opportunity for screening is literally "in the hall."

SAFETY NOTE: Prior to bringing the parties together, it is absolutely essential that court records have been checked for:

1. Personal Protection Orders or similar civil protection orders issued in other states;
2. "No-contact" orders issued in criminal cases (e.g., pretrial release orders, probation or parole orders); and
3. Pending child abuse and neglect cases.

Neither abbreviated questionnaire is intended to replace the use of the complete Questionnaire when time and circumstances permit its use.

* Domestic violence is a pattern of coercive controlling behaviors, both criminal and non-criminal, that includes but is not limited to physical assaults, sexual assaults, emotional abuse, isolation, economic coercion, threats, stalking, and intimidation. These behaviors are used by the abuser in an effort to control the intimate partner. The behavior may be directed at others with the effect of controlling the intimate partner.

In the event that a party's response to a question does elicit concern over the presence of domestic violence, court and CDRP center staff and mediators must be ready to expand upon the party's response by referencing back to the complete screening questionnaire document.

Mediators using an abbreviated screening questionnaire should also be alert during the mediation process for signs of anger or that a party otherwise has a compromised ability to negotiate.

Be prepared to safely conclude the mediation if domestic violence concerns arise during the mediation session.

Abbreviated Domestic Violence Screening Questionnaire 1: Parties are Not Yet Together

This screening questionnaire is for use only by Friend of the Court and Community Dispute Resolution Program center staff and mediators when time and circumstances do not permit using the complete questionnaire before meeting with the parties, and where parties are not yet together at the mediation site.

☐ 1. Is there anyone else in the room with you? (Assumes a telephone contact.) Can you speak freely?

_____

_____

_____

☐ 2. Is there currently or has there ever been an order limiting contact between the two of you, for example, a Personal Protection Order, or a No-Contact Order?

_____

_____

_____

☐ 3. If so, has there ever been a violation of the order, whether or not the violation was ever reported?

_____

_____

_____

☐ 4. Is there an open abuse or neglect case involving your children? If so, please tell me about it.

_____

_____

_____

☐ 5. Do you have any concerns about the safety of the children? If so, please describe.

_____

_____

_____

☐ 6. When you and [insert name] disagree, fight, and/or are angry with each other, what happens?

_____

_____

_____

☐ 7. Do you ever feel afraid of [insert name]? What are you afraid of? Tell me more about the time you felt most afraid. Do you think [insert name] has ever felt afraid of you? What do you think he/she may be afraid of?

_____

_____

_____

☐ 8. Has [insert name] ever caused you to feel threatened or harassed by following you, interfering with your work or education, making repeated phone calls to you, using social media or sending unwanted letters, emails, text messages, faxes or gifts? Can you tell me more about it?

_____

_____

_____

☐ 9. Have there ever been any physical confrontations between you and [insert name]? (Follow up with questions as appropriate to determine whether mediation can safely occur: Can you tell me what happened? Have there been any other physical confrontations? Can you tell me what happened?)

_____

_____

_____

☐ 10. During mediation, you and [insert name] may meet in the same room to talk about all the issues and problems that need to be resolved. Do you have any concerns about sitting in the same room with [insert name] or mediating with [insert name]?

Yes _____ No _____

If yes, ask the following questions:

A. What are your concerns?

_____

_____

_____

B. Would you feel more comfortable if your attorney was present with you during the mediation session(s)?

Yes ____ No ____

C. Would you feel more comfortable if you and [insert name] were in separate rooms during the mediation session(s)?

Yes ____ No ____

D. Would you feel more comfortable if you and [insert name] arrived and departed at times or weren't in the building at the same time?

Yes ____ No ____

E. (If the mediator and parties are comfortable with available technology) Would you feel more comfortable if the mediation took place over the telephone, internet or by videoconference?

Yes ____ No ____

☐ 11. Do you think you will be able to speak up for yourself in mediation?

_____

_____

_____

Abbreviated Domestic Violence Screening Questionnaire 2: Parties Are Already Together

This screening questionnaire is for use by the Friend of the Court and Community Dispute Resolution Program center staff and mediators when mediation is conducted at the court, parties have proceeded through security, a check for Personal Protection Orders and child abuse and neglect cases has been completed, but time and circumstances do not permit using the complete questionnaire.

☐ 1. Is there currently or has there ever been an order limiting contact between the two of you, for example, a Personal Protection Order or a No-Contact Order?

_____

_____

_____

☐ 2. Do you ever feel afraid of [insert name]? What are you afraid of? Tell me more about the time you felt most afraid. Do you think that [insert name] has ever felt afraid of you? What do you think he/she may be afraid of?

_____

_____

_____

☐ 3. Have there ever been any physical confrontations between you and [insert name]? (Follow up with questions as appropriate to determine whether mediation can safely occur: Can you tell me what happened? Have there been any other physical confrontations? Can you tell me what happened?)

_____

_____

_____

☐ 4. Are you afraid that [insert name] will harm you during the mediation or after you leave because of what you said in mediation? If so, please describe.

_____

_____

_____

☐ 5. During mediation, you and [insert name] would typically meet in the same room to talk about the issues and problems that need to be resolved. Do you have any concerns about sitting in the same room with [insert name] or mediating with [insert name]?

Yes ____ No ____

If yes, ask the following questions:

A. What are your concerns?

_____

_____

_____

B. Would you feel more comfortable if your attorney was present with you during the mediation session(s)?

Yes ____ No ____

C. Would you feel more comfortable if you and [insert name] were in separate rooms during the mediation session(s)?

Yes ____ No ____

D. Would you feel more comfortable if you and [insert name] arrived and departed at times or weren't in the building at the same time?

Yes ____ No ____

E. (If the mediator and parties are comfortable with available technology) Would you feel more comfortable if the mediation took place over the telephone, internet or by videoconference?

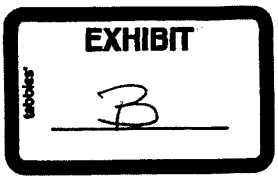
Yes ____ No ____

☐ 6. Do you think you will be able to speak up for yourself in mediation?

_____

_____

_____



STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JODY POHLMAN,

Plaintiff,

v.

CASE NO. 17-853588-DO
HON. Lisa Langton

JAMES G. POHLMAN,

Defendant.

_____/

JEFFREY A. QUAS (P42248)
Quas Legal Solutions, PLLC
Attorney for Plaintiff
337 South Main Street, Ste. 201
Rochester, MI 48307-6711
(248) 652-7799

MICHAEL J. BALIAN P39972)
Balian Legal, PLLC
Co-Counsel for Plaintiff
40950 Woodward Ave., Ste. 350
Bloomfield Hills, MI 48304-5729
(248) 581-0040

THE LAW FIRM OF VICTORIA, P.C.
DENNIS ZAMPLAS (P24637)
ASHLEIGH A. WAGNER (P77973)
Co-Counsel for Plaintiff
772 East Maple Road
Birmingham, MI 48009

BANK RIFKIN
MARK A. BANK (P48040)
Attorneys for Defendant
401 S. Old Woodward Avenue, Ste. 410
Birmingham, MI 48009-6003
(248) 480-8333(248) 723-1600

_____/

AFFIDAVIT OF JODY POHLMAN RE: DOMESTIC VIOLENCE

STATE OF MICHIGAN)
: SS
COUNTY OF OAKLAND)

I, Jody Pohlman, being duly sworn states:

1. I am of legal age, competent to testify to the facts stated herein, and if called as a witness in this matter could testify to the following facts based on my personal knowledge.

2. I am the Plaintiff in this matter, Wife of Defendant James G. Pohlman.

3. Mediation in this matter was scheduled for January 31, 2018 at 1:00 p.m. with Mr. Michael Robbins and lasted until 7:30 p.m.

4. Mr. Robbins never inquired into a potential history of domestic violence in our relationship nor did he complete a domestic violence screening during the mediation process.

5. My husband has a history of domestic violence towards me, including control and abuse – verbal, emotional and physical. Examples of this domestic violence in our marriage include:

   a. For the last few years (approximately 2), my husband has slept with three (3) hand guns next to his bed, every night that I was in the house.

   b. In summer 2016, I came home from a barbeque with friends to find my husband very angry. He confronted me and pulled at me, yelling "Where have you been? Who were you with?" He grabbed at my blouse and then my pants, looking down them.

   c. On one occasion my husband followed me in his truck because he was angry that I was going over to a friend's house. He chased me down the road until he realized I was video-taping him.

   d. On one occasion my husband started an argument in the living room. He grabbed my blouse and yanked me around by it. He threw me over the couch and I landed on the floor. I was physically injured in this altercation.

e. On one occasion my husband confronted me while he had a .38 pistol in the front of his pants stuck in the waistband. I was in the kitchen and he came in with the gun. I was shocked! I said: "WHAT ARE YOU DOING!!" Jim said: "you wanna fight! Come on let's fight!" I said: "No!! I don't want to fight!! YOU'VE GOT THE GUN!!!" I walked away through the dining room. He was right behind me. Scaring the hell out of me! He followed me down the hall and he kept hitting me with his shoulder saying: "COME ON! TURN AROUND! LET'S FIGHT!" I said: "WHAT THE HELL ARE YOU DOING! YOU HAVE THE GUN! I'M NOT GOING TO FIGHT! PUT THE GUN DOWN! Eventually he did.

6. Examples of the emotional abuse I have suffered include:

a. Persistent name-calling, insults and humiliation, in person, text messages, and voicemails;

b. When I had both of my hips replaced and could not move, I called to my husband so he could turn off the lights. He replied, "what do you want you f***ing c**t?"

c. When my husband was assisting to change my bandages he stated, "I'm so sick of wiping you're ass."

Further affiant sayeth not.

Witnesses:

R. Neighbors

Ashleigh Wagner

JODY POLHMAN

Subscribed and sworn to before me
on this 26th day of March, 2018

R. Neighbors Notary Public
Oakland County, Michigan
My Commission Expires: 5-7-2024

R. NEIGHBORS
NOTARY PUBLIC, STATE OF MI
COUNTY OF OAKLAND
MY COMMISSION EXPIRES May 7, 2024
ACTING IN COUNTY OF OAKLAND

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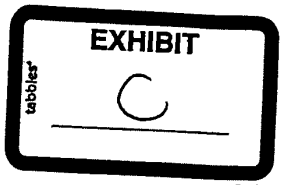


RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF HEALTH AND HUMAN SERVICES
LANSING

NICK LYON
DIRECTOR

Feb. 3, 2017

Michigan Supreme Court
Office of Administrative Counsel
P.O. Box 30052
Lansing MI 48909

Re: ADM File No. 2016-33

Dear Administrative Counsel:

I am writing as Chairperson of the Michigan Domestic and Sexual Violence Prevention and Treatment Board (MDSVPTB) to comment on behalf of the Board to proposed amendments to MCR 3.216. These proposed amendments update the court rule to be consistent with 2016 PA 93 (codified at MCL 600.1035). The MDSVPTB supports the proposed amendments, which incorporate the following protections from PA 93 into the current court rule:

- The current court rule requires courts to hold a hearing before ordering mediation in cases where the parties are subject to a personal protection order (PPO) or involved in a child abuse or neglect case. PA 93 and the proposed court rule amendments extend this hearing requirement to cases in which the parties are subject to *any* type of protective order, such as a civil protection order issued in another jurisdiction, or a probation or bond order entered in a criminal case.
- The proposed court rule amendments incorporate a provision from PA 93 that requires mediators in domestic relations cases to make reasonable inquiry as to whether either party has a history of a coercive or violent relationship with the other party at the outset of the process, and to screen for the presence of coercion or violence throughout. A reasonable inquiry includes the use of the domestic violence screening protocol for mediation provided by the State Court Administrative Office. The court rule currently contains no such requirement.
- In cases where a domestic violence survivor feels that s/he can safely and meaningfully participate in mediation, the proposed court rule amendments incorporate a provision from PA 93 that preserves court discretion to order mediation on request of a protected party.

The proposed amendments are consistent with MDSVPTB General Principles regarding mediation in family law and personal protection order cases the following respects:

- The proposed amendments encourage case-by-case determinations on whether mediation is appropriate in cases involving domestic violence and child abuse or neglect. The Board opposes blanket rules mandating referral of all cases to mediation because such rules: 1) create safety concerns for a significant number of survivors of domestic and sexual violence; and 2) the power imbalances that are present in cases involving domestic and sexual violence make it difficult to reach safe, equitable, and workable agreements in mediation settings. That said, the Board acknowledges that mediation can be beneficial for some survivors who want to participate, if facilitated by a well-trained provider who can address the safety concerns and power inequities that may be present. A case-by-case

MICHIGAN DOMESTIC AND SEXUAL VIOLENCE PREVENTION AND TREATMENT BOARD
Debi Cain, Executive Director

BOARD MEMBERS: Cris Sullivan, Ph.D., Chair • Sgt. Yvonne D. Brantley • Honorable Thomas Cameron • Jeffrie Cape, LMSW
James A. Fink, J.D. • Honorable Elizabeth Pollard Hines • Jacqueline A. Schafer, CPA

235 SOUTH GRAND AVENUE, SUITE 615 • PO BOX 30037 • LANSING, MICHIGAN 48909-7537
www.michigan.gov/domesticviolence • 517-335-6388

approach to ordering mediation addresses the diverse needs of survivors in individual cases, promoting survivor safety and autonomy.

- The proposed amendments preserve survivor autonomy by allowing survivors to request mediation in cases where it would be helpful. For some survivors, mediation may promote safety and stability by producing a faster, less expensive settlement that is negotiated outside the public scrutiny of the courtroom. Additionally, it may empower some survivors by giving them an active role in creating enforceable agreements. Such agreements may be better suited to a survivor's needs than a court ordered resolution would be, especially in cases where the court has failed to account for the presence of domestic violence, sexual assault, or stalking.
- The proposed amendments require screening for violence and coercion at the outset of mediation and throughout the process to determine whether coercion or violence makes mediation unsafe or unworkable.

The proposed amendments are also consistent with the SCAO's *Domestic Violence Screening Protocol for Mediators of Domestic Relations Conflicts* and *Mediator Standards of Conduct*.

- The SCAO *Domestic Violence Screening Protocol for Mediators of Domestic Relations Conflicts* states: "Cases in which domestic violence is present are presumed inappropriate for mediation. This presumption can be overcome, but only if the abused party desires to participate in mediation and the circumstances of the individual case indicate that mediation will be a safe, effective tool for all concerned."
- The SCAO *Mediator Standards of Conduct* (Standard VI.A - Safety of Mediation) states: "Consistent with applicable statutes, court rules, and protocols, reasonable efforts shall be made throughout the mediation process to screen for the presence of an impediment that would make mediation physically or emotionally unsafe for any participant, or that would impede the achievement of a voluntary and safe resolution of issues...
    1. In general, "reasonable efforts" may include meeting separately with the parties prior to a joint session or administering screening tools.
    2. In domestic relations cases, "reasonable efforts" should include meeting separately with the parties prior to a joint session and administering the "Mediator Screening Protocol" for domestic violence, published by the State Court Administrative Office.
    3. If an impediment to mediation exists and cannot be overcome by accommodations that specifically mitigate it, the mediation process should not be continued unless:
        a. After being provided with information about the mediation process, a party at risk freely requests mediation or gives informed consent to it;
        b. The mediator has training, knowledge, or experience to address the impediment;
        c. The mediator has discussed with the party at risk whether an attorney, advocate, or other support person should attend the mediation; and
        d. The mediator has assessed that a party can determine and safely convey and advocate for his or her needs and interests without coercion, fear of violence."

Thank you for your consideration of the Board's views supporting the proposed court rule amendments.

Yours truly,

Dr. Cris Sullivan, Chairperson, MDSVPTB

CC: Karla Ruest
Debi Cain
MDSVPTB members

STATE OF MICHIGAN
IN THE SUPREME COURT

JODY POHLMAN,
Plaintiff/Appellant,

SC: 161262

COA: 344121

v.

Oakland CC: 2017-853588-DO

JAMES POHLMAN,
Defendant/Appellee.

_____/

EXHIBIT N

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JODY POHLMAN,

Plaintiff,

v.

CASE NO. 17-853588-DO
HON. Lisa Langton

JAMES G. POHLMAN,

Defendant.

/

JEFFREY A. QUAS (P42248)
Quas Legal Solutions, PLLC
Attorney for Plaintiff
337 South Main Street, Ste. 201
Rochester, MI 48307-6711
(248) 652-7799

MICHAEL J. BALIAN P39972)
Balian Legal, PLLC
Co-Counsel for Plaintiff
40950 Woodward Ave., Ste. 350
Bloomfield Hills, MI 48304-5729
(248) 581-0040

THE LAW FIRM OF VICTORIA, P.C.
DENNIS ZAMPLAS (P24637)
ASHLEIGH A. WAGNER (P77973)
Co-Counsel for Plaintiff
772 East Maple Road
Birmingham, MI 48009

BANK RIFKIN
MARK A. BANK (P48040)
Attorneys for Defendant
401 S. Old Woodward Avenue, Ste. 410
Birmingham, MI 48009-6003
(248) 480-8333(248) 723-1600

/

PLAINTIFF'S MOTION FOR RECONSIDERATION OF COURT'S RULING AT MARCH 14, 2018 HEARING

NOW COMES Plaintiff, JODY POHLMAN, by and through her attorneys at The Law Firm of Victoria, P.C., and for her Motion for Reconsideration of Court's Ruling at March 14, 2018 Hearing, states as follows:

1. MCR 2.119(F) provides recourse for a party to file a motion for rehearing or reconsideration and requires that a party "demonstrate a palpable error by which the court and the parties have been misled and show that a different

FEE

disposition of the motion must result from correction of the error."

2. In the present matter, the settlement agreement reached by the parties was not made in the "absence of fraud [and] duress" and as such prevented the Plaintiff from "understanding in a reasonable manner the nature and effect in which she was engaged." *Lentz v Lentz*, 271 Mich App 465, 474 (2006) citing *Calo v Calo*, 143 Mich App 749, 753-54 (1985)
3. As argued by Plaintiff's prior counsel at the March 14, 2018 hearing, Plaintiff suffered from both duress and coercion during the mediation process and as such did not "freely, voluntarily and understandingly enter[ed] into and sign[ed] the agreement." *Lentz* at 475
4. Plaintiff was referred to and met with clinical psychotherapist Kim Watzman the day after the mediation of January 31, 2018. Based on information and belief, Ms. Watzman report dated March 7, 2018 was not previously presented as an exhibit and as such is now produced. **(Exhibit A – Letter from Kim Watzman dated March 7, 2018)**
    a. Ms. Watzman's report summarized in relevant part: "It is my opinion that Ms. Pohlman suffers from untreated developmental trauma and meets the criteria for a diagnosis of PTSD. As a result of this untreated trauma Ms. Pohlman's "radar system" otherwise known as the Anterior Cingulate Cortex which is responsible for studying the environment using sensory input, filtering sensory input from the body and calibrating response based on her life experiences and memory, perceived her inability to leave mediation as threatening and her

"survival brain" took over. Ms. Pohlman stated that she believed 'signing the agreement that she had not read was the only way to escape.'"

5. Plaintiff retained her current counsel and they immediately had an affidavit prepared of her recollection of the facts concerning this matter. **(Exhibit B – Affidavit of Jody Pohlman)**
6. Plaintiff underwent a polygraph examination with Christopher Lanfear on March 21, 2018. **(Exhibit C – Polygraph Examination Report and Exhibit D – Christopher Lanfear's Resume)** Mr. Lanfear's findings after three (3) hours of examination include in summary:
   a. Plaintiff "denied that she ever read the mediation agreement before signing it."
   b. Plaintiff "said she was intimidated and was coerced into signing it."
   c. Plaintiff said "she told her attorney she did not want to sign it and wanted to read it first."
   d. Plaintiff said "she finally did sign it under duress and fatigue, and then called her attorney the next morning to tell him she wanted to reject it."
   e. Plaintiff "denies lying about the intimidation and coercion she suffered."
   f. In answer to question: (Q) Did you deliberately lie in any party of your affidavit? Plaintiff answered "No."
   g. In answer to question: (Q) Are there any deliberate false facts contained in your affidavit? Plaintiff answered "No."
   h. **"It is the opinion of [Mr. Lanfear], based on the polygraph**

examination of [Plaintiff], that she is being truthful to the pertinent test questions."

7. As the above-referenced new evidence of duress and coercion have come to light, the Court should reconsider its prior holding as to same.
8. Further, the Court should additionally reconsider its prior upholding of the mediation settlement agreement as the entire mediation process was flawed due to the mediator's failure to properly conduct a domestic violence screening as has been required under MCR 3.216(H)(2) effective September 1, 2017, (as is set forth in the Plaintiff's Objection to Notice of Submission of Orders Pursuant to MCR 2.602(B)(3) dated March 27, 2018, concurrently filed with this Motion).
9. As the gatekeeper of justice, judges should consider that it is not always the best thing to enter a Judgment of Divorce when there is a major concern about the propriety of the process. Simply put, it makes a lot of sense to have everything done properly.

WHEREFORE, Plaintiff requests that this honorable Court:

a. Not enter the Judgment of Divorce since it is based on improper conduct at the mediation, i.e., coercion and duress;
b. Not enter the Judgment of Divorce as the mediation was invalid due to failure to conduct proper domestic violence screening as now required by 3.216(H)(2) and as such, the settlement agreement was also invalid;

c. Alternatively, grant the Plaintiff an evidentiary hearing on these issues; and

d. Grant Plaintiff any further relief deemed just and equitable.

Respectfully submitted,

THE LAW FIRM OF VICTORIA, P.C.

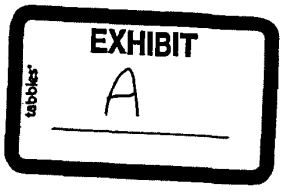
BY: _____

DENNIS ZAMPLAS (P24637)
ASHLEIGH A. WAGNER (P77973)
Attorneys for Plaintiff
772 East Maple Road
Birmingham, MI 48009
(248) 723-1600

Dated: March 27, 2018

F:\Server\VICTORIA FILES\2018 CASE FILES\18-030, Pohlman, Jody\PLEADINGS\mo for reconsideration 3-27-18.docx

THE MILETIC CENTER
INTEGRATED HEALTH SYSTEMS



March 7, 2018

RE: Pohlman, Jody
DOB: 05/18/57

To Whom It May Concern:

Ms. Pohlman has been participating in bi weekly/weekly outpatient therapy since February 1, 2018 when Ms. Pohlman was referred to me for an emergency evaluation by her attorney's office. When Ms. Pohlman contacted me by phone to schedule her assessment she was crying, she reported that she was depressed and despondent over the events of January 31, 2018. Ms. Pohlman stated that on January 31, 2018 she had attended a mediation and stating several times that she "did not know what she signed" as she was "forced and not allowed to leave the mediation until she signed the agreement." Ms. Pohlman's speech was pressured and rapid. Ms. Pohlman presented for her assessment in the late afternoon.

After assessing Ms. Pohlman for safety and creating a crisis plan, Ms. Pohlman began to share the details of the events of the previous day. Ms. Pohlman was visibly upset, crying, shaking and having difficulty maintaining focus and train of thought. Ms. Pohlman went through the timeline of events of January 31, 2018 as she remembered them. Ms. Pohlman described feeling as though she was being "held against her will" and "physically intimidated into signing the agreement." Ms. Pohlman reported that she asked several times to leave and was told each time "you can't leave." Ms. Pohlman stated that she tried to crawl under the conference table to elope from the mediation but was prevented by her attorney and mediator blocking the door.

Ms. Pohlman reports a significant trauma history beginning in childhood with a physically, emotionally and verbally abusive father. Ms. Pohlman reports that her father abused her, her mother and her younger sister. Ms. Pohlman's mother passed away from cancer when she was 5 years old. Ms. Pohlman reports that her father was caught molesting a minor female family member and that she had to go live with her grandmother's and was subsequently sent to boarding school for a time. She reports that an older male cousin attempted to rape her when she was approximately 7 or 8. Ms. Pohlman reports that her father abused her until she moved away at the age of 18. She also reports that he continued to abuse her step-mother and that he was molesting her younger sister who passed away at the age of 30 of breast cancer. Ms. Pohlman states that she has participated in outpatient therapy 2 times during her adult life, the first time briefly and the second for a period of 4 to 6 months.

Ms. Pohlman reported that her father would frequently hit and slap her hard enough to leave marks as well as strike her with a belt for minor incidents. She stated

248.593.8540 · themileticenter.com
36800 Woodward Ave Suite 112
Bloomfield Hills, MI 48303

that her father's abuse became "the norm" and that she did everything in her power to avoid behaviors that would trigger him. Ms. Pohlman states that at "6 am on her 18th birthday" she left her father's home.

Ms. Pohlman met James Pohlman approximately 30 years ago and has been married to him for 28 years. Ms. Pohlman reports that the first few years of the marriage were good but that over time he began to exert control over her. Ms. Pohlman reports that her husband did not allow her to continue to work and kept her from doing that by not giving her access to a vehicle. Ms. Pohlman reports that before their 10 year anniversary he came into the kitchen with a gun in his waist band and physically attacked her. During the trauma assessment Ms. Pohlman state that she feared James Polman was "going to kill her that night" Ms Pohlman states that her husband told her on several occasions that "without him she would work and McDonald's and have nothing." She stated that on multiple occasions her husband was sexually aggressive and forced her to have sexual relations against her will. Ms. Pohlman states that James Pohlman frequently accused her of infidelity. Ms. Pohlman reports that she dealt with her husbands' verbal, emotional and physical abuse by trying to avoid triggering him.

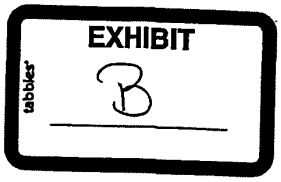
Due to the significant trauma Ms. Pohlman reported the Northshore Trauma History Checklist and PTSD Reaction Index were administered. Ms. Pohlman received an overall PTSD score of 57. Scoring range is 25-37 Likely PTSD diagnosis, 38+ Meets PTSD diagnosis. Ms. Pohlman met the criteria for all the sub categories of re-experiencing, avoidance and hyper-arousal, with avoidance being highest.

It is my opinion that Ms. Pohlman suffers from untreated developmental trauma and meets the criteria for a diagnosis of PTSD. As a result of this untreated trauma Ms. Pohlman's "radar system" otherwise known as the Anterior Cingulate Cortex which is responsible for studying the environment using sensory input, filtering sensory input from the body and calibrating response based on her life experiences and memory, perceived her inability to leave mediation as threatening and her "survival brain" took over. Ms. Pohlman stated that she believed "signing the agreement that she had not read was the only way to escape"

Should you have any further questions you may reach me by phone at 248-539-8540 or by email at kimwatzmanihs@gmail.com.

Kim Watzman

Kim Watzman M.Ed., LPC, NCC
Clinical Psychotherapist



STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JODY POHLMAN,

Plaintiff,

v.

CASE NO. 17-853588-DO
HON. Lisa Langton

JAMES G. POHLMAN,

Defendant.
_____/

JEFFREY A. QUAS (P42248)
Quas Legal Solutions, PLLC
Attorney for Plaintiff
337 South Main Street, Ste. 201
Rochester, MI 48307-6711
(248) 652-7799

MICHAEL J. BALIAN P39972)
Balian Legal, PLLC
Co-Counsel for Plaintiff
40950 Woodward Ave., Ste. 350
Bloomfield Hills, MI 48304-5729
(248) 581-0040

BANK RIFKIN
MARK A. BANK (P48040)
Attorneys for Defendant
401 S. Old Woodward Avenue, Ste. 410
Birmingham, MI 48009-6003
(248) 480-8333
_____/

AFFIDAVIT OF JODY POHLMAN

STATE OF MICHIGAN)
: SS
COUNTY OF OAKLAND)

I, Jody Polhman, being duly sworn states:

1. I am of legal age, competent to testify to the facts stated herein, and if called as a witness in this matter could testify to the following facts based on my personal knowledge.

2. I am the Plaintiff in this matter, Wife of Defendant James G. Pohlman.

3. Mediation in this matter was scheduled for January 31, 2018 at 1:00 p.m. with Mr. Michael Robbins.

4. I arrived at Mr. Robbins' office at approximately 12:45 p.m.

5. Some time after 1:00 p.m., my attorney Mr. Schnelz entered the conference room and so did Mr. Robbins. Mr. Robbins made his introductory remarks at that time – the only time during the entire mediation process where he addressed me directly.

6. No progress was made for several hours. I was hungry and tired and wanted to leave as we had not reached an agreement on a number of important terms. I went to the restroom at approximately 4:00 p.m. When I came out of the restroom, Phil, a male associate of Mr. Schnelz, was standing between the ladies room and the elevator and told me something to the effect of, "you need to go back inside. You can't leave."

7. Mr. Schnelz entered the conference room with Mr. Robbins at approximately 7:00 p.m. Mr. Schnelz announced something to the effect of "we're done here," and as such I rose from my chair to leave. Mr. Schnelz then yelled, "you're not going anywhere, sit down! You need to sign this!"

8. For the next 35 minutes, (approximately), I refused to sign the document that was placed in front of me. I made statements to my attorney and the mediator such as:

   a. "Where is my co-counsel?" (Mary Anne Noonan, who was not present).

   b. "Why is she not here?"

   c. "I'm not signing anything until she reads it and reviews it with me."

d. I did not read it at that time.

e. At that time, I did not know what it said.

f. "I want to sleep on it."

g. "I want to think about it over the weekend."

h. A close friend advised me not to sign anything until he had a chance to review it with me.

i. Numerous times I advised Phil, Mr. Schnelz, and Mr. Robbins that I wanted to leave and I was not signing anything that day.

    i. I told them "I had to leave before it gets dark," because it is difficult for me to see and drive at night.

    ii. I had to leave because my animals were outside.

9. During this period of time my attorney refused to properly address my many questions nor did he read the document to me, per my request. When I pushed my chair away from the conference table, Mr. Schnelz forcibly pulled my chair back to the table and continued to instruct me to sign the document. Every time I attempted to stand up and leave, Mr. Schnelz stood up and physically blocked me from leaving. Mr. Robbins was sitting directly in front of the only exit and blocked the door so I was not able to leave. I felt entrapped and held against my will. Every time I stood up, Mr. Robbins slid his chair back, closer to the door.

10. I screamed, "let me out of here! I want to go home." I pounded the table with my fists and said "let me out of here, I want to go home!" No one came to my aid.

11. I eventually signed the document although I had not read it, it had not been read to me, and it had not been thoroughly explained to me. I felt that I was coerced into signing the agreement and felt fearful, intimidated and under duress during the last half hour of this mediation. I honestly believed that I would not be allowed to leave the room, unless I had signed the document.

Further affiant sayeth not.

Witnesses:

Mollie McSweeney
Mollie McSweeney

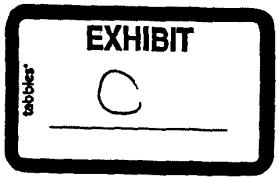
Regina L. Neighbors
Regina L. Neighbors

Jody A. Polhman
JODY POLHMAN

Subscribed and sworn to before me
on this 20th day of March, 2018

L Neighbors
L Neighbors, Notary Public
Oakland County, Michigan
My Commission Expires: 5-7-2024

R. NEIGHBORS
NOTARY PUBLIC, STATE OF MI
COUNTY OF OAKLAND
MY COMMISSION EXPIRES May 7, 2024
ACTING IN COUNTY OF OAKLAND



Lanfear Consulting & Investigations Ltd

P. O. Box 183356 Shelby Township, Michigan 48318

March 21, 2018

PRIVILEGED AND CONFIDENTIAL

Mr. Dennis Zamplas, Attorney at Law
The Law Firm of Victoria
772 East Maple Road
Birmingham, Michigan 48009

Re: JODY ANN POHLMAN
5866 Hosner Road
Oxford, Michigan 48371
Polygraph # LCI-0321A-18

POLYGRAPH EXAMINATION REPORT

HISTORY

Jody Pohlman is in the process of divorce with her husband James G. Pohlman. Part of the process was for them to go to mediation. She claims that the mediation was not done properly and alleges improper conduct by her counsel. Now at the request of new counsel, Mr. Dennis Zamplas, Jody Pohlman is going to submit to a polygraph examination in this matter. She and her counsel prepared an affidavit about what happened in the mediation. The purpose of this polygraph examination is to determine if she is being truthful in her affidavit.

EXAMINATION DATE

A polygraph examination was scheduled for JODY ANN POHLMAN in the polygraph suite of Lanfear Consulting & Investigations located at 2731 South Adams Road, Rochester Hills, Michigan at 1:00 PM, 03-21-18.

POLYGRAPH RIGHTS

JODY ANN POHLMAN was informed of her rights according to Act 295, P.A. 1972. The advice of rights and permission forms were reviewed and signed.

REVIEW MATERIAL

Mr. Zamplas' office provided the background information necessary to conduct this polygraph examination of Jody Ann Pohlman, including a copy of the affidavit of Jody Pohlman.

Lanfear Consulting & Investigations Ltd. P.O.Box 183356 Shelby Twp, Mi 48318

PRETEST INTERVIEW

Jody Pohlman denied that she ever read the mediation agreement before signing it. She said she was intimidated and was coerced into signing it. She said she told her attorney she did not want to sign it and wanted to read it first. She wanted to go over it with the co-counsel and wanted to talk with a friend about it. She said she finally did sign it under duress and fatigue, and then called her attorney the next morning to tell him she wanted to reject it. She denies lying about the intimidation and coercion she suffered. She denies any false information in her affidavit. All test questions were formulated and reviewed with JODY ANN POHLMAN. She acknowledged that she understood them.

INSTRUMENT

During the polygraph examination a Lafayette LX4000 Computerized Instrument, containing electrically enhanced components was used. The control question technique was utilized. A blind double verification test (DVT) was successfully conducted with Jody Ann Pohlman. The blind D.V.T. serves as an internal confirmation of the reliability of the chart recordings, the total co-operation of the subject, and the accuracy of the polygraph examiner's diagnostic ability in the examination conducted on Jody Ann Pohlman.

RELEVANT TEST QUESTIONS

1. (Q) Did you deliberately lie in any part of your affidavit?
   (A) No.

2. (Q) Are there any deliberate false facts contained in your affidavit?
   (A) No.

OPINION

It is the opinion of the undersigned examiner, based on the analysis of the polygraph examination of JODY ANN POHLMAN, that she is being truthful to the pertinent test questions.

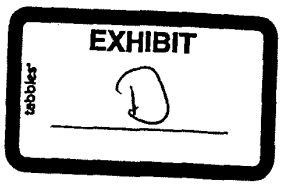
Respectfully submitted,

Christopher J. Lanfear
Certified Polygraph Examiner
Michigan License # PE-163

CJL/ml

- Act 295, P.A. of 1972 (MCL 338.1728)

Any recipient of information, reports or results from a polygraph examiner, except for the person tested, shall not provide, disclose or convey such information, report or results to a third party, except as may be required by law and the rules promulgated by the State Board of Forensic Polygraph Examiners.



Christopher John Lanfear
Michigan State Police Detective Lieutenant (Retired)

POLYGRAPH EXPERIENCE

Member: American Polygraph Assoc., American Assoc. of Police Polygraphists,
Michigan Assoc. of Polygraph Examiners, (Served on the Board of Directors)
State of Michigan licensed polygraph examiner license #PE-163
Licensed since 1979 Private Examiner and Public Examiner

Conducted over7500 examinations for more than two hundred agencies in the Midwest United States and Canada. Including the following agencies.

Wayne County Sheriff, Wayne County Prosecutor, Detroit Police Internal Affairs, Detroit Police-Fire Arson Unit, Detroit Fire Department (Arson), Highland Park P.D., Hamtramck P.D., Eastpointe P.D., Harper Woods P.D., Grosse Pointe P.D., Grosse Pointe Woods P.D., Grosse Pointe Park P.D.,

Macomb County Sheriff, Macomb County Prosecutors Office, and Police Departments from: Shelby Twp., Warren, Centerline, Sterling Heights, Romeo, New Baltimore, Chesterfield Twp., Mt. Clemens, Clinton Twp., Mt. Clemens Fire Department, Harper Woods and St. Clair Shores.

Oakland County Sheriff, Oakland County Prosecutors Office, and Police Departments from: Royal Oak, Ferndale, Hazel Park, Madison Heights, Pontiac, Bloomfield Twp., Birmingham, Beverly Hills, Berkley, Southfield, Royal Oak Twp., Holly and Troy.

St. Clair County Sheriff, St. Clair County Prosecutors Office, and Police Departments from: St. Clair, Port Huron and Marine City. Washtenaw County Sheriff (Corporation Counsel)

United States Attorney Office, Federal Bureau of Investigation, Drug Enforcement Administration, Bureau of Alcohol Tobacco and Firearms, United States Secret Service and the United States Marine Corps.

POLICE EXPERIENCE

25 Years Michigan State Police Retired Detective Lieutenant
Seven Years as a Patrol Officer at Flint and Detroit Posts
Dealing with diverse people from farm communities to urban multi ethnic populations.
One Professional Excellence Award
Seven Years Michigan State Police Regional Criminal Laboratory
Polygraph Technical Section and Crime Scene Search Teams
Two Professional Excellence Awards
Eleven years Experience as Detective
Three years experience Auto Theft, Detective Sergeant
Three years experience Conspiracy Crimes, Detective Lieutenant
Including Organized crime, gambling (Illegal casino, sports betting, numbers)
Vice and Prostitution, Murder for Hire, Police Corruption
Five years experience Detective Lieutenant, Supervisor in Narcotics
Undercover Officer selection, Undercover Operations, Surveillance Activities,
Criminal Source Informant Management Undercover Funds Accountability
Two years Experience as a Street Supervisor for FBI task force Narcotics Interdiction.

Lanfear Consulting & Investigations Ltd.
PO Box 183356 Shelby Township, Michigan 48316

Court Certified Expert
Polygraph
Narcotics Investigations
Criminal Investigations
Interviewing and Interrogation
Undercover Operations

Investigations Experience
Police Corruption Cases, Police Internal Investigations (Administrative and Criminal)
Murder for Hire, Conspiracy Gambling, Undercover Narcotics, Undercover Auto Theft,
Auto Theft Conspiracy, Food Stamp Trafficking, Welfare Fraud, Conspiracies
Personally written over 350 Search Warrants, Never Denied a Warrant.
Personally Testified in Circuit Court in over 350 Felony Cases.

Undercover Police Officer Selection and Supervision
Charter Member of Michigan State Police Undercover Officer Selection Committee
Participated in Oral Board interviews for Officer Selection
Supervised officers from Local, State, County and Federal Agencies
Case reviews, Evidence handling, financial accountability, Undercover operative activities,
Informant handling, Informant payments, Informant debriefing and accompanying reports

Hostage Negotiator
Professional Excellence Award, Inkster Police Murders, 1987

Departmental and Private Instructor
Instructed Police officers in the following subject areas:
Investigations, Narcotics Investigations, Informant handling,
Police supervision, Expert Courtroom Testimony,
Interview and Interrogation
Auto Theft Investigations
Polygraph Examiner Training M.A.P.E. National Workshop
Homicide Investigations
Guest Lecturer American Society of Law Enforcement Trainers
Scientific Content Analysis (SCAN), Laboratory for Scientific Interrogation

Instructed Officers from Agencies
All Police Agencies from Wayne, Oakland, Macomb and St. Clair counties
County, Municipal and State Officers.
Federal Bureau of Investigation, Bureau of Alcohol Tobacco and Firearms, United States Army
United States Air Force, United States Customs, United States Fish and Wildlife,
State of Michigan Departments of Corrections, Agriculture, Racing Commission and Social Services
Michigan State Police Probationary Trooper Training Schools
Macomb Police Academy, Oakland Police Academy, Washtenaw Police Academy
International Association of Arson Investigators
Taught Police Officers from the following States:
Washington, Oregon, Montana, California, Connecticut, New York, Pennsylvania, North Carolina,
South Carolina, Georgia, Alabama, Florida, Indiana, Ohio, Illinois, Nevada, Texas, Maryland,
and Massachusetts,
Students also from Canada, Columbia, England and Saudi Arabia.

Lanfear Consulting & Investigations Ltd.
PO Box 183356 Shelby Township, Michigan 48316

EDUCATION

Saint Rita High School, Detroit
Macomb Community College
Wayne State University

Schools Attended

Northwestern University School of Police Staff and Command
Michigan State Police Supervision Training
Narcotics Investigations
Advanced Narcotics Investigations
Michigan State Police Raid Entry School
DEA Narcotics Investigations School
ATF Arson for Profit Seminar
International Assoc. Auto Theft Investigator Training
Anacapa Sciences, Analytical Investigative Methods
Anacapa Sciences, Financial Investigative Methods
Michigan State Police Polygraph Examiner Training School
American Polygraph Institute
Delta College MAPE National Polygraph Workshops
Scientific Content Analysis
Advanced Scientific Content Analysis

PERSONAL INFORMATION

Married 41 Years to Margaret McGovern Lanfear

PERSONAL REFERENCES

Dr. Murlene McKinnon, CEO MACNLOW Associates
James Gage, Retired Captain/Michigan State Police & Retired Undersheriff/Genesee County Sheriff's Department
Michael McCabe, Under Sheriff, Oakland County Sheriff Department
Howie S. Hanft, Sheriff, Ogemaw County Sheriff's Office

CORPORATION

Lanfear Consulting & Investigations, Ltd.
38-3446634
PO Box 183356 Shelby Township, Michigan 48316

CURRENT STATUS

Retired Chief Examiner, Oakland County Sheriff Department (15 Years)
President, Lanfear Consulting & Investigations (A Polygraph Examination Firm)

STATE OF MICHIGAN
IN THE SUPREME COURT

JODY POHLMAN,
Plaintiff/Appellant

SC: 161262
COA: 344121
Oakland CC: 2017-853588-DO

v.

JAMES POHLMAN,
Defendant/Appellee.

_____/

EXHIBIT O

STATE OF MICHIGAN
OAKLAND COUNTY CIRCUIT COURT

JODY POHLMAN
Plaintiff

v

JAMES POHLMAN
Defendant

Case No. 17-853588-DO
HON. LISA LANGTON

_____/

Jeffrey Quas (P42248)
Attorney for Plaintiff
337 S. Main St. Ste 201
Rochester, MI 48307

Ashley Wagner (P77973)
Attorney for Plaintiff
772 E. Maple Rd.
Birmingham, MI 48009

Michael Balian (P33972)
Attorney for Plaintiff
40950 Woodward Ave. Ste 350
Bloomfield Hills, MI 48304

Mark Bank (P48040)
Attorney for Defendant
401 S. Old Woodward Ave, Ste 410
Birmingham, MI 48009

_____/

Proof of Service
I certify that I served a copy of this instrument upon the attorneys of record or the parties not represented by counsel in this case by mailing it to their addresses as disclosed by the pleadings of record with prepaid postage on the 10 day of April 2018.

Court clerk

ORDER REMOVING HEARING FROM APRIL 11, 2018 DOCKET

Introduction

On March 14, 2018, the parties appeared on, and the court ultimately granted, *Defendant's Motion for Entry of Judgment of Divorce*. At the conclusion of the hearing, the court directed the attorneys to prepare and submit the judgment "within one week." On March 27, 2018, Plaintiff filed an *Objection to Notice of Submission of Orders Pursuant to MCR 2.602(B)(3)* along with a brief in support, a *Notice of Hearing* setting the matter on the court's April 11, 2018 motion call docket, and a *Brief in Support of*

Plaintiff's Motion for Reconsideration of Court's Ruling at March 14, 2018 Hearing.[1] Contemporaneous with these filings, Plaintiff also filed *Notice of Hearing Pursuant to Court's Discretion Re: MCR 2.119(F)* asking the court to set a date.

On April 5, 2018, Defendant filed *Defendant's Answer to Plaintiff's Motion for Reconsideration of Court's Ruling at March 14, 2018 Hearing* and *Defendant's Response to Plaintiff's Objection to Notice of Submission of Orders Pursuant to MCR 2.602(B)(3)*. On April 6, 2018, Defendant filed a *Motion for Entry of Judgment of Divorce* and set the matter for hearing on the Court's April 18, 2018 docket.

Analysis

MCR 2.119(F) governs motions for reconsideration. (F)(2) precludes responsive briefing and oral argument unless the court otherwise directs. (F)(3) provides that a "motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by a reasonable implication, will be not be granted." Additionally, the moving party must demonstrate a "palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error."

Succinctly, both parties attempted *fait accomplis*.[2] Plaintiff filed a notice of hearing for its reconsideration motion and Defendant filed a brief in response.

Under MCR 2.119(E)(3), the court "may, in its discretion, dispense with or limit oral arguments on motions." If procedurally appropriate, the court will address the issues raised in both of Plaintiff's motions. However, given the importance of the issues presented, the court will consider *Defendant's Answer to Plaintiff's Motion for*

[1] Plaintiff filed the *Motion for Reconsideration* on March 28, 2018.

[2] Merriam-Webster, *Definition of Fait Accompli*, April 1, 2018, https://www.merriam-webster.com/dictionary/fait%20accompli, ("a thing accomplished and presumably irreversible.")

Reconsideration of Court's Ruling at March 14, 2018 Hearing, under MCR 2.119(F)(2), during its deliberations.

Conclusion

The court directs its clerk to remove Plaintiff's hearing from its April 11, 2018 motion call docket.

IT IS SO ORDERED

Dated: April 10 2018

HON. LISA LANGTON
Circuit Court Judge

STATE OF MICHIGAN
IN THE SUPREME COURT

JODY POHLMAN,
Plaintiff/Appellant,

SC: 161262

COA: 344121

v.

Oakland CC: 2017-853588-DO

JAMES POHLMAN,
Defendant/Appellee.

_____/

EXHIBIT P

STATE OF MICHIGAN
OAKLAND COUNTY CIRCUIT COURT

JODY POHLMAN
Plaintiff

v

JAMES POHLMAN
Defendant

Case No. 17-853588-DO
HON. LISA LANGTON

/

Jeffrey Quas (P42248)
Attorney for Plaintiff
337 S. Main St. Ste 201
Rochester, MI 48307

Michael Balian (P33972)
Attorney for Plaintiff
40950 Woodward Ave. Ste 350
Bloomfield Hills, MI 48304

Ashley Wagner (P77973)
Attorney for Plaintiff
772 E. Maple Rd.
Birmingham, MI 48009

Mark Bank (P48040)
Attorney for Defendant
401 S. Old Woodward Ave, Ste 410
Birmingham, MI 48009

Proof of Service
I certify that I served a copy of this instrument upon the attorneys of record or the parties not represented by counsel in this case by mailing it to their addresses as disclosed by the pleadings of record with prepaid postage on the 14 day of May 2018.

Court clerk

/

ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION

Introduction

The pre-judgment procedural history is complex. The court summarizes it, for ease of its deliberations, as follows, with all dates occurring in 2018:

- January 31: The parties engaged in mediation and reached an agreement.
- February 21: The court granted withdrawal's for both of Plaintiff's attorneys.
- February 26: Defendant filed a *Notice and Motion for Entry of Judgment of Divorce*.
- March 9: Plaintiff filed an *Answer to Defendant's Motion for Entry of Judgment*.[1]
- March 14: The court ultimately granted, *Defendant's Motion for Entry of Judgment of Divorce*. At the conclusion of the hearing, at which both parties appeared with counsel, the court directed the attorneys to prepare and submit the judgment "within one week." Defendant's attorney noted that Plaintiff attended the January 31 mediation with counsel.

[1] Plaintiff's current counsel, attorneys Quas and Balian, filed this document but it does not appear they filed an appearance on this matter.

- March 27: Plaintiff's second co-counsel, attorneys Zamplas and Wagner, filed an appearance. Plaintiff also filed an *Objection to Notice of Submission of Orders Pursuant to MCR 2.602(B)(3)* along with a brief in support, a *Notice of Hearing* setting the matter on the court's April 11, 2018 motion call docket, and a *Brief in Support of Plaintiff's Motion for Reconsideration of Court's Ruling at March 14, 2018 Hearing*.[2] Contemporaneous with these filings, Plaintiff also filed *Notice of Hearing Pursuant to Court's Discretion Re: MCR 2.119(F)* asking the court to set a date.

- April 5: Defendant filed *Defendant's Answer to Plaintiff's Motion for Reconsideration of Court's Ruling at March 14, 2018 Hearing* and *Defendant's Response to Plaintiff's Objection to Notice of Submission of Orders Pursuant to MCR 2.602(B)(3)*.

- April 6: Defendant filed a *Motion for Entry of Judgment of Divorce* and set the matter for hearing on the Court's April 18, 2018 docket.

- April 10: The court issued an *Order Removing Hearing from April 11, 2018 Docket* and noting that it would consider *Defendant's Answer to Plaintiff's Motion for Reconsideration of Court's Ruling at March 14, 2018 Hearing*. The order also removed the matter from the court's motion call docket.

- April 11: Plaintiff filed a *Reply to Defendant's Answer to Motion for Reconsideration*. The court again notes that this is procedurally improper. It did not give leave for Defendant to answer the motion for reconsideration, but did state it would consider the filing in its deliberations given the significance of the issue.

The court **denies** Plaintiff's *Motion for Reconsideration.*

ANALYSIS

MCR 2.119(F) governs motions for reconsideration. (F)(2) precludes responsive briefing and oral argument unless the court otherwise directs. (F)(3) provides that a "motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by a reasonable implication, will be not be granted." Additionally, the moving party must demonstrate a "palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error."

Plaintiff's March 9, 2018 *Answer to Defendant's Motion for Entry of Judgment*, at

[2] Plaintiff filed the *Motion for Reconsideration* on March 28, 2018.

2, asserts that "due to her mental vulnerability and affliction, she felt trapped at mediation and unable to leave until she signed the aforementioned 'Settlement Term Sheet' thought she had not actually read the document and did not understand or comprehend its contents." Plaintiff sought to deny entry of judgment and "set this matter for hearing on whether she was able to reasonably perceive the terms and conditions of the 'Settlement Terms Sheet' due to duress/stress and thereafter decline to allow for the entry of the proposed Judgment."[3]

Plaintiff first advocates that the court should reconsider its ruling because "new evidence of duress and coercion have come to light" in the form of a March 21, 2018 polygraph examination completed post-mediation and post-March 14, 2018 motion call hearing. (Motion at 4). However, "it is a bright-line rule in Michigan that the results of polygraph examinations are inadmissible as evidence, at either criminal or civil trials." *Baxter v Baxter*, unpublished opinion per curiam of the Court of Appeals, issued October 13, 2015 (Docket No.327195), at 7, *citing People v. Barbara*, 400 Mich 352, 364; 255 NW2d 171 (1977); *People v Jones*, 468 Mich 345, 355; 662 NW2d 376 (2003).

Even if the court were to consider the results of the March 21, 2018 polygraph, it would not find them persuasive. First, there is no reason why Plaintiff could not have obtained—or attempted to introduce at the March 14, 2018 hearing— this evidence. Plaintiff's March 9, 2018 *Answer to Defendant's Motion for Entry of Judgment*, at 3, notes that Plaintiff attended a psychotherapy session on February 1, 2018 after signing the settlement the previous evening. Thus, both items of "new evidence and coercion"

[3] Plaintiff's March 28, 2018 unpaginated *Motion for Reconsideration*, at paragraph 3, acknowledges this argument by referencing the March 14 hearing at which Plaintiff asserted she "suffered from both duress and coercion during the mediation process."

could have been produced—or at least obtained—before the March 14, 2018 hearing. To characterize them as "new," under these circumstances, is disingenuous at best.

Plaintiff's characterization of the polygraph findings is that the examiner found the statements in Plaintiff's affidavit, notarized on March 20, 2018, to be truthful. In her affidavit, Plaintiff asserts that she never read the mediation agreement before signing it. Yet, at the March 14, 2018 hearing, the court referenced Ex. A to Defendant's motion—the typed Settlement Term Sheet dated January 31, 2018—containing handwritten changes initialed, and ultimately signed, by both parties, beneficial to Plaintiff.[4] Plaintiff does not assert the signature on the document is not hers and it is simply not credible to assert that she 1) did not read the document before signing or 2) was so threatened by Defendant's conduct that duress prompted her to sign renegotiated agreement, with more favorable terms, to extricate herself from the situation.

At the March 14, 2018 hearing, Defendant relied upon *Vittiglio v Vittiglio*, 297 Mich App 391; 824 NW2d 591 (2012) for the proposition that because Defendant did not pressure Plaintiff into signing, and the parties were separated during the mediation process,[5] no coercion occurred in this case.[6] In *Vittiglio*, the court rejected plaintiff-wife's argument that the trial court erred by not setting aside a settlement agreement—before it entered the divorce judgment—based in part because she alleged "defendant had

[4] For example, item 7 states "Jody shall rollover to Jim 50% of the funds in her IRA account, and she shall retain the other 50% of the funds in this account" but is crossed out and states "Jody awarded her whole IRA."

[5] At the March 14, 2018 hearing, Plaintiff's counsel—upon questioning by the court—acknowledged that the parties were in separate rooms and no direct contact ever occurred.

[6] "When a party to a consent judgment argues that consent was achieved through duress or coercion practiced by her attorney, the judgment will not be set aside absent a showing that the other party participated in the duress or coercion." *Id.* at 401-02.

threatened her life in the past and she developed an extreme fear of him." (*Id.* at 399-400). Additionally, at 400-01, with paragraph breaks added for readability:

> Plaintiff averred in an affidavit that defendant had threatened to kill her on more than one occasion in the past. However, the settlement agreement was reached through mediation, during which plaintiff was represented by counsel and the mediator conducted "shuttle diplomacy," which entailed the parties not even being in the same room. Plaintiff never claimed that defendant had threatened her into agreeing to the settlement. The day after she filed an affidavit relating her extreme fear of defendant, she moved to dismiss on the ground that she wished to reconcile with defendant.
>
> While these two things are not necessarily mutually exclusive, and we recognize that extricating one's self from a domestic violence situation is often exceedingly difficult and sometimes fraught with actions that are seemingly baffling to outsiders, under the particular circumstances of this specific case we find no support in the record for plaintiff's claim that defendant's prior threats affected the validity of her consent to the settlement agreement, particularly because of the method of mediation used in this case.

Further, as in *Vittiglio* at 403, Plaintiff here "claims that her ability to consent to the settlement agreement was impaired by severe stress." *Vittiglio*, at 403 addressed the standard for addressing stress-based contract invalidation (internal quotations and citations omitted with alteration in original):

> the test for whether consent was illusory because of severe stress is that of mental capacity to contract. That is "whether the person in question possesses sufficient mind to understand, in a reasonable manner, the nature and effect of the act in which he [or she] is engaged. Plaintiff would therefore have to show that she did not even comprehend the nature or terms of the agreement.

During the hearing, Defendant represented (and the court later found) that the parties engaged in a "shuttle" type mediation similar to *Vittiglio* in which neither party had direct influence over the other's statements to the mediator, the other's statements to counsel, or the other's statements directly to the opposing party. Again, Plaintiff offers zero evidence supporting her assertion that she did not understand the terms of the

agreement—negotiated and mediated without the parties directly interacting and with the advice of counsel—because she signed the agreement and initialed handwritten changes beneficial to her.

Plaintiff also argues because the mediator did not follow the 2017 amendments to court rules governing mediation, this either invalidate the agreement in its entirety or it calls into question her mental capacity. Plaintiff accurately quotes MCR 3.216(H)(2), which now state that the mediator:

> Must make reasonable inquiry as to whether either party has a history of a coercive or violent relationship with the other party. Throughout the mediation process, the mediator must make reasonable efforts to screen for the presence of coercion or violence that would make mediation physically or emotionally unsafe for any participant or that would impede achieving a voluntary and safe resolution of issues. A reasonable inquiry includes the use of the domestic violence screening protocol for mediators provided by the state court administrative office as directed by the supreme court.

Plaintiff's argument is unpersuasive.

The current Mediator Standards of Conduct, effective February 1, 2013 and attached as Exhibit 1 to Defendant's April 5, 2018 response to the instant motion, states "if an impediment to mediation exists and cannot be overcome by accommodations that might specifically it, the mediation process should not be continued unless" the parties and mediator satisfy several conditions.[7] However, Plaintiff merely asserts that because the mediator did not satisfy the court rule, the court should declare the mediation agreement void.

In a footnote, in *Vittiglio* at 403 n3, the court noted

[7] State Court Administrative Office, *Standards for Mediator Conduct*, February 1, 2013, available at http://courts.mi.gov/Administration/SCAO/OfficesPrograms/ODR/Documents/SOC%20FINAL.pdf , at 5.

> The Supreme Court Administrative Office (SCAO)'s Standards of Conduct for Mediators do not specify any particular manner for handling mediation when domestic violence or control exists. However, the SCAO's Model Screening Protocol for domestic-relations mediation when domestic violence or control exists contains a number of suggestions for keeping parties safe, accommodated, and capable of negotiating and making decisions free from fear or coercion.

In this case, able counsel represented both parties during mediation, the mediator conducted a "shuttle" negotiation, and neither party interacted during the process. Ultimately, Plaintiff voluntarily attended mediation, was free to walk away at any time before and after arriving at mediation, negotiated provisions of the settlement in the presence of her attorney and the mediator, waited for the agreement to be typed, and both signed the agreement **and** initialed handwritten changes to the agreement resulting in a more favorable settlement to her.

CONCLUSION

The court **denies** the motion for reconsideration.

IT IS SO ORDERED

Dated: May 14 2018

HON. LISA LANGTON
Circuit Court Judge JB

STATE OF MICHIGAN
IN THE SUPREME COURT

JODY POHLMAN,
Plaintiff/Appellant

SC: 161262
COA: 344121
Oakland CC: 2017-853588-DO

v.

JAMES POHLMAN,
Defendant/Appellee.

_____/

EXHIBIT Q

State of Michigan
Court of Appeals

JODY POHLMAN,
Plaintiff-Appellant,
v

JAMES G. POHLMAN,
Defendant-Appellee.

Court of Appeals No. 344121
Trial Court No. 2017-853588-DO
Oakland Circuit Court – Fam. Div.
Hon. Lisa Langton

Scott Bassett (P33231)
Attorney for Plaintiff-Appellant
2407 89th Street NW
Bradenton, FL 34209-9443
(248) 232-3840

James G. Pohlman
Defendant-Appellee, Pro Per
42160 Woodward Ave., #40
Bloomfield Hills, Michigan 48304

Plaintiff-Appellant's Motion to Supplement the Record (Refiled)

Plaintiff-appellant, Jody Pohlman, moves to supplement the record as follows:

1. The central issue in this case is whether the domestic violence screening requirements of MCR 3.216(H)(2) were complied with at the January 31, 2018, divorce mediation that resulted in the alleged settlement agreement.

2. Plaintiff-appellant asked the trial court to grant her an evidentiary hearing at which she would prove that no domestic violence screening took place.

3. The trial court denied plaintiff-appellant's request for an evidentiary hearing despite plaintiff-appellant's prima facie showing that the screening requirements of the mediation court rule were not satisfied.

4. The trial court's refusal to take testimony is also an issue in this appeal.

5. Defendant-appellee, James G. Pohlman, recently signed an affidavit that he provided to plaintiff-appellee confirming plaintiff-appellee's allegation that no domestic violence screening took place along with other irregularities in the

medication process. A copy of Mr. Pohlman's affidavit is attached as Appendix 1 to this motion.

6. The information in the affidavit is dispositive of the key issue in this appeal.

7. Supplementing the record with this affidavit is not unfairly prejudicial to defendant-appellee because it is his own affidavit in his own words, apparently made voluntarily, and without the involvement of plaintiff-appellant or her counsel.

8. Plaintiff-appellant's counsel has never spoken with nor made any other contact with Mr. Pohlman and did not in any way influence or participate in the creation of the affidavit.

9. This motion was originally filed with the Court on July 3, 2019.

10. On a 2-to-1 vote, this Court denied the motion without prejudice in an order dated July 17, 2019. The order stated that plaintiff-appellant could refile the motion once the matter is placed on a session calendar. The case is now on the session calendar scheduled for oral argument on December 10, 2019.

WHEREFORE, under MCR 7.216(A)(4), plaintiff-appellant requests that the record be supplemented by addition of the attached affidavit of defendant-appellee, James G. Pohlman.

Respectfully submitted,

By:_____ Dated: November 5, 2019
Scott Bassett (33231)
Attorney for Plaintiff-Appellant

#1

Jody Pohlman <jodyfarm@icloud.com>
To: Scott Bassett <scott@divorceappeals.com>

Fri, Apr 26, 2019 at 3:15 PM

AFFIDAVIT OF JAMES G. POHLMAN

STATE OF MICHIGAN)
: SS
COUNTY OF ~~[redacted]~~ Wayne)

BEFORE ME, the undersigned Notary, Alana Sheard, on this 12th day of April, 2019, personally appeared James G. Pohlman, known to me to be of lawful age, who being by me first duly sworn, on his oath, deposes and says:

1. I, James G. Pohlman, reside at 42160 Woodward Avenue, Unit #40, Bloomfield Hills, Michigan 48304.
2. I was the Defendant in the divorce action between myself and Jody Pohlman and am now the ex-husband of Plaintiff Jody Pohlman.
3. I was married to Jody Pohlman for approximately 28 years.
4. As part of our divorce proceedings, we were ordered to attend mediation.
5. Mediation was scheduled for January 31, 2018 at 1:00 pm at the Law Office of Michael Robbins, Esq., which is located at 3910 Telegraph Road, Ste. 200, Bloomfield Hills, Michigan 48302.
6. I arrived at Mr. Robbins' office for the mediation on the aforementioned date at approximately 3:00 pm.
7. Upon arrival, my attorney, Mark Bank, described what was to occur during the process. In addition to any procedural description, Mr. Bank stated the following:
    a. "it's all arranged with your wife's attorney and the mediator";
    b. "they are going to beat the shit out of your wife";
    c. "they're not going to let her leave without signing the agreement";
    d. "if she leaves without signing the agreement her attorney is going to quit";
    e. "she won't find another attorney"
8. No meaningful mediation took place on this date, or any subsequent date, regarding any divorce action.
9. No domestic violence screening protocol occurred at any point during the meeting.
10. Mr. Robbins, the mediator, did not inquire into a potential history of domestic violence in the relationship between us.
11. Mr. Robbins spoke to me briefly upon my arrival only to introduce himself and did not speak to me again until he entered the conference room I was in at the end of the day and asked me if I approved the agreement and I answered in the affirmative.

1

#2

Jody Pohlman <jodyfarm@icloud.com>
To: Scott Bassett <scott@divorceappeals.com>

Fri, Apr 26, 2019 at 3:15 PM

12. Moreover, my attorney at the mediation, Mark Bank, negotiated without me present.
13. I was in the conference room next to Jody and after a while I could hear some of what was being said because the people were speaking very loudly, and at times yelling at one another.
14. For several hours on January 31, 2018 I heard Jody and who I believe was her attorney at the time, Kurt Schnelz, arguing and yelling at each other.
15. Specifically, throughout the day I heard Jody say, "No! I want to leave now! You can't hold me in here, I want to leave now! Why won't you let me out of here? Get out of my way." As well as hearing her scream, "Help! Somebody help me! Help! Somebody get me out of here! You have to let me go!"
16. She also stated that it was getting late and she had animals at home that were outside, it was getting dark and it is dangerous to leave them in the dark. They would be hungry and needed to eat. She said she needed to get home right away, that she "needed to leave."
17. I heard her say that she was hungry and that she did not feel good because she had been there all afternoon and she was hungry. She felt sick.
18. I also heard Jody say that she needed to speak to her attorney Marianne Noonan, who was not at the mediation. Jody said, "I don't want to sign anything without speaking with Marianne. Where is she?"
19. Jody also said that she wanted to take the mediation agreement home and read it over before she signed it. She said she did not understand the agreement ("I don't want sign it.")
20. I heard Jody's attorney yelling at her to sit down and sign the agreement ("You're not leaving here until you sign. If you don't sign, I quit. You won't get anyone else to take your case.")
21. Jody was crying loudly, and I also began to tear up and cry. It was terribly difficult to hear your wife in so much stress and not go to her aid. I think it was a very weak moment for me to let her be subjected to such duress and obvious torment, but do nothing about it.
22. I signed the agreement and left Mr. Robbins' office close to 7:00 pm or so. That night, and for some time afterward, I felt horrible. I was pleased to have an agreement, but I felt miserable about the orchestrated, abusive process.
23. At our next court date after January 31, 2018, I observed Jody's attorneys, at that time, make no argument or even comment regarding the case. They essentially stood mute.

#3

Jody Pohlman <jodyfarm@icloud.com>
To: Scott Bassett <scott@divorceappeals.com>

Fri, Apr 26, 2019 at 3:14 PM

Further affiant sayeth not.

JAMES G. POHLMAN

Subscribed and sworn to before me, this 12th day of April, 2019.

4/12/19

Notary Public
[redacted] County, Michigan
Acting in [redacted] County, Michigan
My Commission Expires: 12/09/2023

ALANA SHEARD
NOTARY PUBLIC - MICHIGAN
WAYNE COUNTY
MY COMMISSION EXPIRES 12/09/2023
ACTING IN WAYNE COUNTY

3

STATE OF MICHIGAN
IN THE SUPREME COURT

JODY POHLMAN,
Plaintiff/Appellant

SC: 161262
COA: 344121
Oakland CC: 2017-853588-DO

v.

JAMES POHLMAN,
Defendant/Appellee.

_____/

EXHIBIT R

Court of Appeals, State of Michigan

ORDER

Jody Pohlman v James G Pohlman

Docket No. 344121

LC No. 2017-853588

Christopher M. Murray
Presiding Judge

David H. Sawyer

Elizabeth L. Gleicher
Judges

The Court orders that the motion to supplement the record is DENIED.

Presiding Judge

Gleicher, J., would grant the motion to supplement the record.

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

NOV 20 2019
Date

Chief Clerk

STATE OF MICHIGAN
IN THE SUPREME COURT

JODY POHLMAN,
Plaintiff/Appellant

SC: 161262
COA: 344121
Oakland CC: 2017-853588-DO

v.

JAMES POHLMAN,
Defendant/Appellee.
_____/

EXHIBIT S

CRAIN'S DETROIT BUSINESS

February 24, 2019 12:05 AM

Oakland County company aims to build a better pallet, with help from athlete investors

BILL SHEA

Brandy Baker for Crain's Detroit Business

A worker moves wood pallets toward the coating operation where massive robotic arms use proprietary technology called "Exobond" to cover and seal them at Lightning Technologies' facility in Oxford.

Jeffrey Owen grew up on a Kentucky tobacco farm, and expected to take it over from his father as his lifelong work.

That was in the 1950s and '60s. The end of federal tobacco subsidies in the 1970s altered his career trajectory in wholly unexpected ways.

With tobacco no longer as the family's sole cash crop, Owen's father encouraged him to do something else. So, he ended up in industrial sales, eventually landing in metro Detroit's auto industry before branching out on his own in a variety of industries, including plastics.

Today, Owen is the millionaire owner of a new industrial pallet manufacturer in suburban Detroit that has designs on global expansion — and has attracted financial support from some of Detroit's most famous sports names.

What's got the likes of Kirk Gibson and Henrik Zetterberg opening their wallets is a blend of technologies that appear to fill a logistical need.

Owen's Lightning Technologies LLC, which has its headquarters and operations in Oxford and a second plant ramping up in Orion Township north of The Palace of Auburn Hills, makes a plywood pallet sprayed with a proprietary chemical that almost instantly hardens into a tough, lightweight protective coating that can be sterilized — making the hybrid pallet ideal for shipping food, pharmaceuticals and electronics sensitive to spoilage or vibration damage.

Brandy Baker for Crain's Detroit Business

(Left to right) Lightning Technologies CEO Jeffrey Owen, Detroit Tiger great Kirk Gibson and Grow Michigan LLC cofounder/ board member Henry Brennan chat during a gathering of potential investors at Lightning Technologies coating operations in Oxford earlier this month.

But that's only part of what Owens says is Lightning's business strategy to disrupt the century-old pallet industry. His better mousetrap is a small battery-operated Bluetooth-enabled sensor embedded in the pallet and actively transmits data that shippers crave for logistical quality control: Temperature, humidity and vibration, along with location, from a pallet that lasts much longer than traditional wood.

That means, Owen said, clients shipping fragile cargo such as eggs or televisions on his pallets can know in real time not only where their products are on the road but

can also monitor the conditions that can potentially ruin the shipment. Cargo can be re-routed to avoid bad roads, or truck drivers can be told to adjust the environmental conditions in their climate-controlled trailers, he said.

Lightning's company literature claims that $35 billion worth of food is lost annually from temperature issues or impact damage during shipping. That's why businesses seek safer, more fuel-efficient ways to move their products. They'll save money because they'll lose less product, and their shipping costs will be reduced with more efficient trips, according to Lightning.

Owen, 68, said he has $100 million in pallet orders but declined to name clients because he said they fear retribution from other pallet suppliers. He did say that his customers include big-box retailers, the fast-food industry, and suppliers of produce and meats.

Brandy Baker for Crain's Detroit Business

Hoses connected to the wood cutting machines suck sawdust into the ventilation system, carrying it away from workers, keeping the plant clean and transporting it to another area where it will be recycled. Every component of the Lightning Technologies pallet is recyclable.

"We know we can be profitable, bring higher return to our investment base, and a better solution to our customer base," Owen said. "You've got to be able to take that technology and put it on a product and bring it to market. That's the downfall of a lot of startups. They don't have a clear-cut solution to market."

In addition to leasing its smart pallets, Lightning's business strategy is to generate additional revenue by charging for the logistics data — a software-as-a-service play — and by selling carbon credits it believes it will qualify for via the hard data that documents fuel-efficient logistics made possible through its pallets.

Owen estimates that each of his factories will produce pallets that will generate about $300 million worth of annual revenue, and the goal is 10 factories operational in five years.

To finance his venture's launch, Owen said he used some of the $35 million in proceeds from the 2009 sale of his past company, Palm Plastics, based in Morenci, south of Jackson near the Ohio state line. That company made goods ranging from 11 million plastic pallets to laundry baskets for the Martha Stewart retail line.

So far, Lightning has raised $55 million from 50-plus investors, Owen said, and that includes money from notable Detroit sports stars such as former Detroit Tigers slugger and current TV broadcaster Gibson and several of the Swedish players on the Detroit Red Wings. Lightning will open a factory in Sweden in 2020, along with manufacturing plants in Nevada and South Carolina over the next couple of years, Owen said. South Africa and Asia are longer-term targets for factories.

Owen lured the athletes when he hired outside help to raise money to launch Lightning, which he established in 2015 after paying $1 million for the chemical compound formula that eventually became his pallet coating.

Brandy Baker

After lifting and rotating the wood pallets into position, robotic arms then use proprietary technology called "Exobond" to coat and seal them with a polyurea /polyurethane substance that drles in second. Cascading water surrounds the operation and captures the plastic's overspray, allowing it to be reused and recycled.

Owen said he hired Auburn Hills-based strategic financial advisory firm Solyco Advisors to raise startup capital, including equity and debt financing. Solyco executives said they initially weren't interested but became sold on the pallet concept after seeing what Lightning was creating.

"It was a heavy lift, because it's a startup," said Damian Kassab, co-founder and partner at Solyco. "When I came up here and saw what he'd done, and got to see these facilities, I thought, 'This is incredible.'" He termed what Lightning is doing as a "game changer, the next phase of logistics technology.

"In addition to the money raised so far, Solyco got Lighting credit facilities of $1 million from Troy-based Flagstar Bancorp Inc. and “hundreds of millions of dollars”

from Newport Beach, Calif-based PIMCO. That money is expected to fund the additional factories, which Owen said will cost $50 million each.

Showing investors what Lightning is doing, and showing the orders so far, along with the expected revenue streams, made it easier to convince them to put up money, Kassab said.

"The appeal to most investors to any startup is the upside,'" he said. "We think this is going to be a grand slam. The multiples are going to be enormous."

John Garcia, Solyco's managing director, also raved about Lightning's immediate earnings potential amid what he sees as a trend of a lot of tech investments that are sizzle without much steak.

"This is a Detroit unicorn. There are a lot of donkeys with party hats out there," he said.

Lightning also has attracted interest from the state.

Grow Michigan CEO Patrick O'Keefe said his organization may lend Lightning up to $5 million, the maximum it's permitted to invest in a company and the most it will have lent yet. Grow Michigan was launched in 2012 through the Michigan Economic Development Corp., Michigan Strategic Fund and 19 banks to offer subordinated debt to small businesses. Its average loan is about $2 million.

"It checks a lot of boxes for us. It's tech-based, it's manufacturing, it's based in Michigan, it's job growth," O'Keefe said. "The two operating plants that have manufacturing cells have proven the concept. We're pretty high on what Lightning is trying to do here."

Brandy Baker for Crain's Detroit Business

CNC Operator Chris Dupree removes pallet top decks from the precision cutter.

Lightning is an unusual investment for Grow Michigan because the organization is usually brought in by senior lenders later in the process for gap financing, said Henry Brennan, a Grow Michigan co-founder and board member. But because of what they see from the company, they opted to seek to put in their maximum possible investment now.

"This is a little off the fairway for us, but it's very impressive what they've done operationally and financially." Brennan said.

Gibson, hero of the Detroit Tigers' 1984 World Series and a noted outdoorsman, invested an undisclosed sum in Lightning because he finds the product fascinating and because he thinks it is better for the environment than the current pallets on the market. He cited the Lightning pallets as being hygienic, lighter, more fuel-efficient, and made to last.

"It's innovative and somewhat disruptive to a 100-year-old industry. This kind of stuff really interests me," he said. "It can make a difference. Beyond my investment, beyond the belief that it's good, there's a part of me that wants to help the way we ship our food, the ecology. We want to have impact here in a positive fashion. I think it's cool. I love that it's in Michigan. I think the product uses are endless."

The current Red Wings players who have put money into Lightning Technologies are Niklas Kronwall, Gustav Nyquist and Johan Franzen. Former Red Wings star Zetterberg also has put money into the company. Total Swedish investment, including the hockey players and others, accounts for $10 million, Owen said.

Additionally, Lomas Brown, the former Detroit Lions offensive lineman and now the team's radio color commentator, works for Lightning as a vice president and director of community relations.

To get to this point, Owen had to have a product to bring to market. He was familiar with pallets from his prior company, and in the course of doing advisory work after selling Palm Plastics, he came across the makers of the chemical compound. He said he foresaw its industrial and commercial potential, so he bought it knowing that pallets could be an ideal application.

Owen hired German chemical maker BASF and Lapeer-based commercial coatings firm Ultimate Linings to further refine the coating into what's now the hard, 1-millimeter pallet coating that cures in seconds. The help ironed out kinks in durability in weather and humidity and its adhesiveness. He's also relied heavily on Roland Heiberger, Lightning's chief technology officer, to create the manufacturing processes.

The result is a commercial shipping pallet that Owen says will last a decade, compared with standard wood pallets that he said have an average lifespan for 11 hauling trips, known as turns.

The Brazilian, Russian, Chinese and Canadian wood that forms the interior bones of the pallets comes from sustainable farms with rapid-growth trees, Owen said, and there are no metal fasteners such as nails. He said he couldn't find American hardwood sources that would allow him to keep his pallet costs down.

The wood arrives in sea containers at the Orion Township facility, a leased 120,000-square-feet space in a building on Silverbell Road north of the Palace of Auburn Hills.

Inside, there are six German-made computerized wood milling machines — 10 more are on the way at $120,000 each — that turn the boards into the pallet pieces. An $850,000 filtration system sucks up the sawdust and pumps it outside to a contraption that contains it for resale to companies that use it for animal bedding and other uses.

Leftover wood scraps are sold for use in cabinetry. More than 80 percent of Lightning's wood becomes pallets, Owen said.

Yet to arrive are the 10 South African-built "pods" (rather than a single line) that will form the assembly system to turn the milled wood into pallets. At least six Lightning-branded tractor trailer trucks will haul the pallets from Orion Township to the finishing facility in Oxford, Owen said.

Owen said the machinery will be in place at the Orion Township facility by June and full production underway by the end of summer.

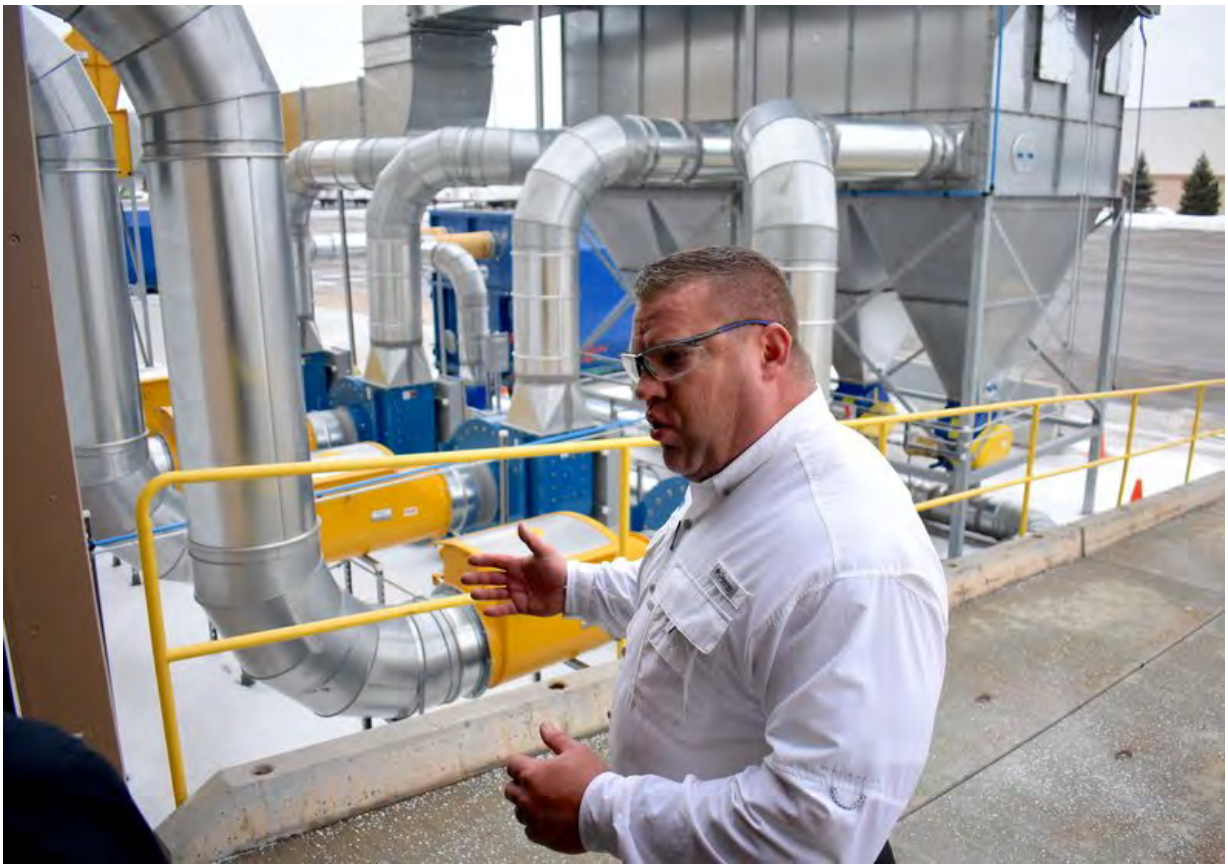
The 60,000-square-foot Oxford facility, which also houses the company offices, is where Lightning's wooden pallets are sprayed with a mixture of two chemicals — in technical terms, a polyurethane-polyurea hybrid material — to form what it calls "Exobond" that cures in seconds and makes the pallets nearly indestructible, flame retardant and impervious to liquids — unlike wood pallets that can absorb stuff and spoil cargo. Or simply break.

In the Lightning manufacturing process, excess Exobond spray, in the form of pellets, is captured for reuse. Both manufacturing facilities are remarkably clean.

Lightning also is seeking to use its Exobond for automotive use, such as for wiring harnesses, and recreational use like coolers. It said it already has such a licensing deal with a Polish furniture company.

About 20,000 Lightning pallets are in circulation now, and once the Oxford-Orion Township operations are at full capacity, it will produce 3.5 million per year. Owen's

planned facilities in Nevada and South Carolina will produce the same number of pallets, as will the Swedish plant. The two U.S. plants are scheduled to open in 2020 and 2021, and European production will begin in the first quarter of 2020, he said. Talks are underway in Asia and South Africa for potential pallet manufacturing operations, Owen said.



Brandy Baker for Crain's Detroit Business

Operations Manager Jon Jaroszewski talks about the ventilation system which draws sawdust away from the workers and plant into this storage site outside where it will be recycled into products like pet bedding.

Laszlo Horvath, a professor at Virginia Tech's Center For Packaging and Unit Load Design, has been doing third-party load capacity validation on the Lightning pallet to ensure it meets general industry criteria. He's among the pallet industry's top experts, and said he doesn't know of any company marrying specific technologies as Lightning is doing — but the hybrid smart pallet concept is on companies' radars.

"It's a race on who gets the first one and who gets the better sensor," he said.

Horvath estimated that there are about 36 million full plastic pallets in circulation, and each is about $60 to $80, and more than 540 million new wood pallets are produced annually that cost shippers about $25 each. Cost-wise, in a per-unit price and how that translates for leasing purposes, Lightning will fill a market price gap between wood and pure plastic, he said.

"That's a huge advantage," Horvath said.

There are an estimated 2 billion pallets of all kinds in domestic use at any given time, so Lightning at full production likely will remain a small piece of the overall pallet market. It doesn't need to be bigger to make good money, Owen said, because demand outpaces his production capacity.

"We're so limited in production and demand is so great that I'm not concerned with finding customers, but with capacity," Owen said. "I've got only so many to sell."

Lightning's $100 million in pallet orders so far represents six months of production at the first plant, Owen said.

Lightning has 60 staffers now and at full production will have about 1,000, Owen said. Each plant will have 120 to 150 employees, he said.

Owen doesn't intend to sell his pallets. The industry normally works like this: One company makes pallets, and sells them to a middle man called a pooler, which then leases or sells pallets to companies that need to ship products.

Lightning had been using Irving, Texas-based Gard as its pooler, but recently bought out of the pooling arrangement for an undisclosed sum and took its operations in-house under the Lightning name, Owen said.

The pallets are leased to customers on a per-turn basis (pallet industry lingo for an end-to-end shipping trip), Owen said, but he declined to reveal the lease cost, citing competitive reasons. He did say the lease price will be cheaper in some cases than wood pallets, and cheaper in the long run because of how long the pallets last. Clients don't need to constantly replace leased pallets.

Lightning said it has hired Carson, Calif.-based KW International Inc., which has 30 hubs across the country, for pallet collection, and Owen said the expectation is that KW will handle 50,000 pallet shipments a month once Lightning is fully in the marketplace, Owen said.

Bill Shea: (313) 446-1626 Twitter: @Bill_Shea19

Inline Play

STATE OF MICHIGAN
IN THE SUPREME COURT

JODY POHLMAN,
Plaintiff/Appellant

SC: 161262
COA: 344121
Oakland CC: 2017-853588-DO

v.

JAMES POHLMAN,
Defendant/Appellee.
_____/

EXHBIT T

STATE OF MICHIGAN

IN THE 6th JUDICIAL CIRCUIT COURT FOR THE COUNTY OF OAKLAND

FAMILY DIVISION

JODY POHLMAN,

Plaintiff,

v.

JAMES G. POHLMAN,

Defendant.

Case No. 16-841561-DO

Hon. Jeffrey S. Matis

Mary Anne Noonan (P71241)
Attorney for Plaintiff
28806 Woodward Ave.
Royal Oak, MI 48067
(248) 594-1213 / (248) 856-2882 fax

CORDELL & CORDELL, P.C.
By: Jill A. Duffy (P73064)
Attorney for Defendant
100 West Big Beaver Rd, Suite 200
Troy, MI 48084
(248) 740-0353 / (248) 209-6785 fax

DEFENDANT'S RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSION

NOW COMES Defendant James G. Pohlman, and for his Response to Plaintiff's Request for Admission, states:

1. Admit that effective January 1, 2016 you entered into a membership interest redemption agreement with Ideal Setech, LLC (the "Company") whereas the Company redeemed your 5% membership interest in the Company for a redemption price of $181,844.
   a. ADMIT
2. Admit that you have been paid in full regarding the redemption price of $181,844 for your 5% membership interest in Ideal Setech, LLC.
   a. ADMIT
3. Admit that you no longer own a direct or indirect economic interest in Ideal Setech, LLC.
   a. ADMIT
4. Admit that you have not received nor are expected to receive any further economic consideration from Ideal Setech, LLC other than the $181,844 redemption price previously received.
   a. ADMIT

5. Admit that effective January 1, 2016 you entered into a membership interest redemption agreement with Ideal Setech Share-the-Spare, LLC (the "Company") whereas the Company redeemed your 5% membership interest in the Company for a redemption price of $47,745.
   a. ADMIT
6. Admit that you have been paid in full regarding the redemption price of $47,745 for your 5% membership interest in Ideal Setech Share-the-Spare, LLC.
   a. ADMIT
7. Admit that you no longer own a direct or indirect economic interest in Ideal Setech Share-the-Spare, LLC.
   a. ADMIT
8. Admit that you have not received nor are expected to receive any further economic consideration from Ideal Setech Share-the-Spare, LLC other than the $47,745 redemption price previously received.
   a. ADMIT
9. Admit that you own an economic interest in LT Lender, LLC.
   a. ADMIT
10. Admit that your economic interest in LT Lender, LLC is 11.201 membership units which represents approximately 8.93% of LT Lender, LLC total membership units.
    a. ADMIT
11. Admit that you invested $50,000 for your economic interest in LT Lender, LLC.
    a. ADMIT
12. Admit that LT Lender, LLC is a holding company that has either a direct or indirect membership interest in Lighting Technologies, LLC.
    a. DENY
13. Admit that LT Lender, LLC's effective cumulative members' interest in Lightning Technologies, LLC and all related subsidiaries is 28%.
    a. DENY
14. Admit that you have a 3.510% liquidation preference in LT Lender, LLC.
    a. ADMIT

15. Admit that your liquidation preference is limited the initial investment in LT Lender, LLC of $1,425,000

    a. DENY

16. Admit that you are currently the Vice President, Director of International Strategy for Lightning Technologies, LLC.

    a. ADMIT

17. Admit that you receive no economic consideration from your position as Vice President, Director of International Strategy with Lightning Technologies, LLC.

    a. DENY

18. Admit that your position as Vice President, Director of International Strategy with Lightning Technologies, LLC has not required you to provide services of any type to this entity which required more than 5 hours per week of your time.

    a. ADMIT

19. Admit that you have not provided any services of any type, in any capacity, to Lighting Technologies, LLC, or any of its related *I* affiliated entities, whether as an employee, consultant, or other, that would require greater than 5 hours of your time per week.

    a. DENY

20. Admit that you have no current deferred and/or accrued economic considera tion or benefit of any type, owed to you for your ownership, involvement, and professional assistance, to Lighting Technologies, LLC or any of its related or affiliated entities.

    a. ADMIT

21. Admit that you are a party to a $100,000 convertible promissory note and warrant dated February 23, 2016.

    a. ADMIT

22. Admit that the convertible promissory note and warrant dated February 23, 2016 was for a $100,000 loan at a simple interest rate of 8% per year and that the principal portion and all accrued and unpaid interest was paid on or before June 30, 2016.

    a. DENY

23. Admit that your contribution of the $100,000 promissory note referenced in #21 above was for $20,000.

a. ADMIT

24. Admit that as part of the February 23, 2016 convertible promissory note and warrant that you along with Bruce Campbell, John J. Reinhart, Jerry Reinhart, and Rob Robinson were granted a 5% membership interest in Lightning Technologies and its related subsidiaries.

a. DENY

25. Admit that of the 5% member interest noted in #24 above, you have or will be allocated a 1.0% direct membership interest in Lightning Technologies, LLC and related subsidiaries.

a. DENY

26. Admit that you have no current and or future economic interest (whether direct or indirect) in Rayl Industrial Supply Company.

a. ADMIT

27. Admit that you have no current and or future economic interest (whether direct or indirect) in Wireless Systems Company, LLC.

a. ADMIT

28. Admit that you have no current and or future economic interest (whether direct or indirect) in Wireless Sensing and Control, LLC.

a. ADMIT

29. Admit that you have no current and or future economic interest (whether direct or indirect) in Advanced Energy International, LLC.

a. ADMIT

30. Admit that you have no current or future economic interest (whether direct or indirect) in Technology Commercialization Advisors, LLC.

a. ADMIT

31. Admit that you have no current or future economic interest (whether direct or indirect) in Smart Software, Inc.

a. ADMIT

32. Admit that you have no current or future economic interest (whether direct or indirect) in Exponential NonCore Solutions.

a. ADMIT

I HEREBY STATE THAT THE ABOVE ANSWERS ARE TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

Dated: 3/10/17

James Pohlman

Respectfully submitted,

Dated: 3/10/17

CORDELL & CORDELL
By: Jill A. Duffy (P73064)
100 W. Big Beaver Rd, Suite 100
Troy, Michigan 48084
(248) 740-0353

PROOF OF SERVICE

THE UNDERSIGNED CERTIFIES THAT THE FOREGOING INSTRUMENT WAS SERVED UPON ALL PARTIES TO THE ABOVE CAUSE TO EACH OF THE ATTORNEYS OF RECORD HEREIN AT THEIR RESPECTIVE ADDRESSES DISCLOSED ON THE PLEADINGS ON 3/10/17 BY:

X U.S. MAIL
__HAND DELIVERED
__FEDERAL EXPRESS
__FAX
__OVERNIGHT COURIER
X OTHER ECF/NEF

SIGNATURE:

STATE OF MICHIGAN
IN THE SUPREME COURT

JODY POHLMAN,
Plaintiff/Appellant

SC: 161262
COA: 344121
Oakland CC: 2017-853588-DO

v.

JAMES POHLMAN,
Defendant/Appellee.
_____/

EXHIBIT U

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
FAMILY COURT DIVISION

JODY POHLMAN,

Plaintiff,

-vs- Case No. 16-841561-DO

JAMES G. POHLMAN, HON. Jeffrey S. Matis

Defendant.

MARY ANNE NOONAN (P71241)
Attorney for Plaintiff
28806 Woodward Ave
Royal Oak, Michigan 48067
248/594-1213; Fax. 248/856-2882

CORDELL & CORDELL, P.C.
JILL A. DUFFY (P73064)
Attorney for Defendant
100 W Big Beaver Rd, Ste 200
Troy, Michigan 48084
(248) 740-0353

MOTION TO RESCHEDULE DEPOSITION

NOW COMES the above captioned Plaintiff, Jody Pohlman, by and through her attorney, Mary Anne Noonan, and for her Motion to Reschedule Deposition as follows:

1. A complaint for divorce was filed on April 26, 2016.
2. Very little activity has taken place on this case due to multiple health reasons, surgeries and a hospitalization (on the part of both clients) and other personal reasons.
3. The parties attended mediation with Dan Bates on November 18, 2016.
4. The case did not settle.

FEE

5. The parties signed an Order Dated December 5, 2016 which, inter alia, appointed Chuck Esser to conduct a business evaluation.
6. Defendant refused to comply with this order. Plaintiff was left with no option but to retain Mr. Esser individually.
7. As a result of the Defendant's purposeful delay, Plaintiff requested of Defendant's counsel a Stipulated Order to extend discovery (so that Mr. Esser could obtain the documents he need). Defendant refused to accommodate.
8. As a result, Plaintiff was forced to file a Motion to Extend Discovery, causing more waste of marital funds, but further demonstrating Defendant's refusal to cooperate in this divorce process.
9. This motion was granted.
10. Plaintiff received from Defendant a notice of deposition for Ms. Jodi Pohlman to be held Monday, February 20, 2017 at 9:30 AM on February 7, 2017.
11. Plaintiff's attorney sent notice to Defendant's attorney on February 15, 2017 notifying Defendant counsel that Plaintiff has a scheduled trip and will be out of town on the date of the deposition and asked to reschedule.
12. The Defendant's attorney, again, responded stating that she would not reschedule the deposition.
13. The lack of cooperation and deliberate frustration of the discovery efforts in this case, consistently, supports Plaintiff's allegations that Defendant is purposely

thwarting the discovery process because he is hiding assets and working "for free" and the less information the Plaintiff has regarding his businesses and his investments, the better for him.

14. Again, the fact that the Plaintiff needs judicial intervention to re-schedule a deposition is ridiculous and meets the very reason why MCR 600.2591 exists.

15. This is the second motion Plaintiff has been forced to file to address simple issues that should be settled by attorneys.

16. MCR 600.2591 sets forth the elements that this Court can consider when determining whether or not to award attorney fees. Specifically,

> Sec. 2591.(1) Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney.
>
> (2) The amount of costs and fees awarded under this section shall include all reasonable costs actually incurred by the prevailing party and any costs allowed by law or by court rule, including court costs and reasonable attorney fees.
>
> (3) As used in this section:
>
> (a) "Frivolous" means that at least 1 of the following conditions is met:
>
> ***(i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.***

17. There is no question that Defendant's consistent unwillingness to follow court orders (December 5, 2016) and to accommodate discovery is to injure the Plaintiff.

WHEREFORE, Plaintiff, Jody Pohlman, requests for the following relief:

A) Enter an Order Granting the Plaintiff's motion to re-schedule a deposition;

B) Order the Defendant pay $1,500 towards Plaintiff's attorney fees for having to file this instant motion;

C) Any other relief this court deemed fair and equitable by this Court.

Respectfully Submitted,

MARY ANNE NOONAN (P71241)
Attorney for Plaintiff

Dated: February 15, 2017

STATE OF MICHIGAN
IN THE SUPREME COURT

JODY POHLMAN,
Plaintiff/Appellant

SC: 161262
COA: 344121
Oakland CC: 2017-853588-DO

v.

JAMES POHLMAN,
Defendant/Appellee.
_____/

EXHIBIT V

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GROW MICHIGAN, LLC,

Plaintiff,

v.

LT LENDER, LLC, JERRY REINHARDT, JOHN REINHARDT, BRUCE CAMPBELL, PAUL SHAMO, ROBERT CAUSLEY, DAMIAN KASSAB, and ROBERT DRAKE,

Defendants.

Case No. 2:20-cv-11391-LVP-EAS
Honorable Linda V. Parker
Magistrate Judge Elizabeth A. Stafford

DAMIAN KASSAB,

Counter Claimant,

v.

Grow Michigan, LLC,

Third-Party Plaintiff.

DAMIAN KASSAB,

Counter Claimant,

v.

PATRICK O'KEEFE,

Third-Party Defendant.

_____/

FIRST AMENDED COMPLAINT

Plaintiff Grow Michigan, LLC ("GrowMI"), through counsel Howard & Howard Attorneys PLLC, alleges as follows for its First Amended Complaint against Defendants LT Lender, LLC ("LT Lender"), Jerry Reinhart, John Reinhart, Bruce Campbell, Paul Shamo, Richard Causley, Damian Kassab, Robert Drake, and Solyco, LLC ("Solyco") (collectively, "Defendants"):

Introduction

1. GrowMI is a sub-debt lender that was induced by Defendants' conspiracy to lend $3.325 million to a Delaware start-up corporation based in Michigan, Lightning Technologies, Inc. ("Lightning"). GrowMI was led to believe that Lightning would use the proceeds of GrowMI's loan to pay off its previous lender, Defendant LT Lender, and then use the balance of GrowMI's $5 million loan facility, in conjunction with a loan from Flagstar Bank and Lines of Credit from Defendant Shamo and Defendant Causley, to acquire the necessary production equipment in order to become fully operational.

2. The individual Defendants in this action, however, had different plans for Lightning. Defendant Kassab, a shareholder in Lightning, has been executing on an aggressive plan to take over Lightning by using his position as an exclusive financial consultant and, subsequently Executive Vice President, to disrupt the Company's operations and discredit Lightning's executive team. It appears that Kassab's plan was to induce GrowMI to lend millions of dollars to Lightning to pay

off certain Lightning shareholders who would support Kassab's position in a proxy battle for the control of Lightning.

3. In order to execute this plan, Kassab needed to induce other shareholders to support his scheme. For most of 2019, in addition to being a Lightning shareholder, Kassab was also the exclusive financial advisor to Lightning.

4. Indeed, Kassab was responsible for negotiating with LT Lender for the repayment of the roughly $2.2 million it had loaned to Lightning. Kassab was also responsible for inducing Lightning to agree to pay an additional "settlement payment" of $1,000,0000 to LT Lender and its principals, Jerry Reinhart, John Reinhart, and Bruce Campbell (each also shareholders in Lightning). GrowMI believes that these payments were in exchange for the LT Lender's principals' support in the forthcoming shareholder dispute.

5. In order to get the money necessary to pay off LT Lender's debt and pay the additional $1,000,000 to LT Lender and its principals, Kassab needed to induce lenders to provide capital to pay off that debt. GrowMI, a sub-debt lender with a mission of promoting job and business growth in Michigan, was a prime target. Although GrowMI does not usually lend money to start-up companies, GrowMI was induced to lend to Lightning because Defendants Shamo and Causley, both shareholders in Lightning, agreed to post $10,000,000 in lines of credit that would be subordinate to GrowMI's financing and would be used for Lightning's

operations and to purchase the necessary production equipment for Lightning. GrowMI would not have agreed to loan any money to Lightning without the Shamo and Causley lines of credit.

6. Upon information and belief, Shamo and Causley's lines of credit were nothing more than sham documents—never intended to be drawn or used for financing any aspect of Lightning's operations. Unbeknownst to GrowMI and upon information and belief, Kassab, Shamo, and Causley agreed that the lines of credit would be used only to induce GrowMI and Flagstar Bank to agree to lend money to Lightning, and that GrowMI's initial draw, $3.325 million, would go exclusively to LT Lender.

7. Upon information and belief, Kassab assured Shamo and Causley that he would obtain other financing—financing for which Kassab and/or his affiliate would receive a significant fee.

8. Although GrowMI was led to believe that its $5 million commitment would be a critical piece to round out Lightning's capitalization and ensure Lightning achieved full production capacity, Kassab and Defendants had different plans.

9. GrowMI's funded its initial draw in August 2019. One hundred percent of Grow's initial draw went to pay the debt of LT Lender, plus the additional $1,000,000 settlement payment. Kassab, who had become an executive Vice

President of Lightning and who GrowMI believes had exclusive control of its finances, refused to purchase the equipment Lightning needed. Kassab advised the Lightning Board of Directors that the Shamo and Causley lines of credit were only for emergencies, and that they could not be drawn upon for funding the equipment acquisition.

10. Without the additional equipment, Lightning soon fell behind on its payments to GrowMI, and was thrown into financial turmoil. GrowMI believes that Lightning's financial turmoil was the intended result of Defendants' actions in failing to draw upon and fund the credit available to Lightning. This financial turmoil discredited Lightning's leadership, and it has enabled Kassab and the other Defendants to engage in a proxy battle in an attempt to take over Lightning. The proxy battle continues through the date of this filing.

11. Should they fail to seize control of Lightning, Defendants appear to have a backup plan. Since December 2019, a Lightning employee, Defendant Drake, has been illegally downloading Lightning's confidential trade secrets to his own computers. Based on forensic analysis performed on his Lightning computers, Drake has connected hard drives to his Lightning computers, presumably to copy the Lightning trade secrets he downloaded. Although such an act in other circumstances may only be seen as the act of a rogue employee, in these circumstances GrowMI has reason to believe that Defendants have used Drake to

provide the necessary trade secrets to them to be able to recreate Lightning's proprietary products.

12. Defendants' conduct constitutes a racketeering enterprise that subjects them to liability for GrowMI's damages arising from this conduct. To date, Lightning does not have the ability to repay its debt to GrowMI, and GrowMI's principal is still outstanding. As set forth in this Amended Complaint, Defendants are liable to GrowMI under the Racketeer Influenced and Corrupt Organizations ("RICO") Act, 18 U.S.C. § 1961 *et seq*, in addition to common law claims for fraud, unjust enrichment, and conspiracy.

13. In addition to the specifically plead facts and claims set forth here, GrowMI is filing a Civil RICO Case Statement concurrently with the filing of this Amended Complaint, the facts and legal conclusions of which are incorporated here by reference.

The Parties

14. GrowMI is a Michigan limited liability company with its principal place of business located in Oakland County, Michigan.

15. LT Lender is a Michigan limited liability company with its principal place of business located in Oakland County, Michigan.

16. John Reinhart is a Michigan resident, and a principal of LT Lender.

17. Jerry Reinhart is a Michigan resident, and a principal of LT Lender.

18. Bruce Campbell is a Michigan resident, and a principal of LT Lender.

19. Paul Shamo is a Michigan resident.

20. Robert Causley is a Michigan resident.

21. Damian Kassab is a Michigan resident.

22. Robert Drake is a Michigan resident.

23. Solyco is a Michigan limited liability company with its principal place of business located in Oakland County, Michigan.

Jurisdiction and Venue

24. The events giving rise to this Complaint took place in Oakland county, Michigan.

25. GrowMI seeks relief under the Racketeer Influenced and Corrupt Organizations ("RICO") Act, 18 U.S.C. § 1961 *et seq.*, which establishes a basis for subject matter jurisdiction under 28 U.S.C. § 1331.

26. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over the remaining claims set forth in this Complaint because they are so related to the RICO claim that they form part of the same case or controversy under Article III of the United States Constitution. Indeed, GrowMI's state and federal claims arise from a common nucleus of operative facts.

27. Venue is appropriate in this district pursuant to 28 U.S.C. § 1391(b) because all defendants reside within this judicial district.

General Allegations

28. GrowMI is a sub-debt lender that focuses on community reinvestment by providing growth capital to Michigan-based small and mid-sized businesses. Its mission is to support and nurture Michigan's small businesses in an effort to create and retain jobs and increase tax revenue for the State. GrowMI is funded by a collaboration of a number of Federal and State chartered commercial banks doing business in Michigan, as well as the Michigan Strategic Fund as administered by its agent, and the State of Michigan through the Michigan Economic Development Corporation, an economic arm of the State of Michigan.

29. Any losses incurred by GrowMI as a result of non-payment by GrowMI's borrowers are nearly entirely borne by the State of Michigan and its taxpayers. Consequently, GrowMI is vigilant about ensuring that its borrowers do not take advantage of its loans that are intended to advance the Michigan economy.

30. Although GrowMI does not usually lend to early stage businesses, GrowMI made the decision to lend to Lightning because Lightning convinced GrowMI that Lighting had sufficient committed capital to fund its launch and create 100 new jobs in Michigan by manufacturing and deploying its proprietary technology in Michigan. Indeed, GrowMI not only agreed to the unprecedented pre-revenue loan, GrowMI reached out to several other lenders, advocating for Lightning and assisted it in securing loans with Flagstar.

31. Lightning's business plan was to manufacture a lightweight, hybrid pallet that provides higher durability and increased weight-to-strength performance in order to maximize load and reduce shipping costs. The Lightning pallet utilizes anti-microbial and anti-fungal additives, as well as a proprietary tracking technology, making it particularly useful in the shipment of cold food products, such as bananas, berries, and yogurts.

32. Lightning's product was viewed as unique, innovative, and transformative within the logistics industry.

33. Lightning has developed significant trade secrets and confidential information relating to RFID technology, related software, coatings, and related formulations and application processes, as well as numerous trademarks, licenses, patents, and pending patent applications (the "Trade Secrets").

34. Given that Lightning was a start-up, Lightning did not have significant assets other than its Trade Secrets to secure GrowMI's loan to Lightning.

35. Because GrowMI does not normally fund early stage businesses, it was essential for Lightning to have all committed capital before GrowMI would commit its funds.

36. During 2019 and prior to funding any loan to Lightning, GrowMI offered to assist Lighting by tapping into its relationship with Flagstar to provide a

senior financing commitment to fund its business and satisfy the conditions precedent for the advancement of the GrowMI funds.

37. The plan was based on the need to raise roughly $26 million from a combination of debt and equity, which was generally as follows: $7 million from Flagstar Bank, $5 million from GrowMI, $10 million from lines of credit from Defendants Shamo and Causley, and $4 million in additional equity.

38. Of the $26 million budgeted capital needed, approximately $14 million was for machinery and equipment purchases, and approximately $10 million was for working capital and operational expenses.

39. Thus, in addition to GrowMI's loan, Lightning also secured a $7,000,000 credit facility with Flagstar Bank, one of GrowMI's member banks; $6,000,000 of the credit facility was an equipment loan, and $1,000,000 was a revolving line of credit.

40. The Flagstar equipment loan expressly required that Flagstar would provide approximately 40% of the money for the equipment purchases, and 60% of the money would come from GrowMI and other debt subordinated to Flagstar's loan or equity.

41. Prior to closing on its credit facilities with GrowMI and Flagstar, Lightning represented that it could become fully operational by June or July 2020 if it had the cash to purchase the necessary machinery and equipment and pay the

associated build-out expenses so that Lightning could turn into a sustainable profit generating company by fall of 2020.

42. Prior to closing on the credit facilities with GrowMI and Flagstar, Lightning represented that it would order and pay for the equipment before the end of December 2019, the equipment would be delivered sometime in Spring 2020, and Lightning would be at full production by June or July 2020.

43. In order to ensure that Lightning would be able to meet its schedule and the monetary demands for the acquisition and implementation of the production equipment, GrowMI required as a condition to its funding that Lightning secure the additional equity or subordinated debt described above.

44. Lightning also produced two lines of credit to shore up the cash shortfall to buy the equipment represented to be $14 million and to fund operating deficits as the company ramped-up production.

45. Specifically, Lightning obtained lines of credit from Paul Shamo and Robert Causley, each in the amount of $5,000,000 (the "Lines of Credit"). (**Ex. A**); (**Ex. B**).

46. On July 18, 2019, Kassab delivered the Causley Line of Credit to GrowMI, noting that "Shamo to follow. With this $10M, I believe we should be ready to close." (**Ex. C**).

47. Shamo and Causley were both shareholders in Lightning when they agreed to provide the Lines of Credit.

48. Shamo and Causley both executed Subordination Agreements with GrowMI and Flagstar, confirming the validity of the Lines of Credit and that their debt would be subordinate to the GrowMI debt. (**Ex. A**); (**Ex. B**).

49. Among other things, the Subordination Agreements constituted a specific representation by Shamo and Causley to GrowMI and Flagstar that the Lines of Credit were available for Lightning to draw upon.

50. Lightning, through Damian Kassab, understood that the Lines of Credit were material to GrowMI's decision to fund its loan to Lightning. GrowMI regularly sent correspondence to Kassab, as well as Lightning's attorney, Aaron Fales, demanding that the Lines of Credit be definitive.

51. For example, on June 6, 2019, GrowMI's lawyers specifically wrote to Kassab requesting "definitive documentation with Causley actually committing the $5M LOC." (**Ex. D**). On June 19, 2019, GrowMI's lawyers reiterated their request, noting that "we appreciate that Lightning has a non-binding commitment in place, but we need that reduced to definitive documents that obligates Causley to advance if/when Lightning requests." (**Ex. E**).

52. The GrowMI and Flagstar loan documentation also made it clear that the Lines of Credit were a condition to closing with GrowMI.

53. Because Lightning appeared to have satisfied GrowMI's conditions precedent for funding its loans, on August 30, 2019, GrowMI committed up to $5,000,000 to Lightning pursuant to a Business Loan Agreement. (**Ex. F**).

54. On August 30, 2019, in addition to the GrowMI Business Loan Agreement, Lightning also executed a Security Agreement and an Intellectual Property Security Agreement. (**Ex. G**); (**Ex. H**).

55. Without the Lines of Credit, GrowMI would not have loaned any money to Lightning because, based on Lightning's own representations, Lightning would not have had sufficient funds to become operational and begin to generate revenue in 2020 so that it could repay its debt to GrowMI and the other lenders.

56. GrowMI made it clear to Kassab, Shamo, and Causley that the Lines of Credit were a prerequisite for GrowMI to enter into the Loan Agreement with Lightning.

57. On July 26, 2019, Kassab and Lightning's lawyers provided copies of the Shamo and Causley Lines of Credit to GrowMI. (**Ex. I**).

58. With the Lines of Credit, Lightning had enough money to be able to order the equipment necessary to get to full production capacity.

59. At the time GrowMI was induced to commit to the $5,000,000 loan facility, Lightning represented that it would draw on, among other things, the Flagstar equipment facility, the equity commitments raised in 2019, and the Lines

of Credit, in order to purchase the necessary equipment to enter production of its high-tech pallets.

60. Prior to the closing on the GrowMI and Flagstar loan facilities, on August 29, 2019, GrowMI received a "payoff" letter from LT Lender indicating that the total balance due on a "Promissory Note and Security Agreement dated June 20, 2019" was $3,323,606.68. (**Ex. J**). Neither LT Lender nor Lightning disclosed to GrowMI that there was any additional consideration for this settlement.

61. GrowMI consented to repayment of LT Lender in order to provide GrowMI a first secured position on the intellectual property in which LT Lender already had a secured interest, and because Lightning, Shamo, and Causley represented to GrowMI that Lightning would have sufficient funds to get to full production capacity.

62. If the LT Lender loan was not paid off, GrowMI would not have held a first secured position on Lightning's Trade Secrets.

63. The actual amount Lightning owed LT Lender as of August 30, 2019, was $2,228,386.11. [ECF No. 8, Sealed Exhibit B-3, at ¶ 2(i)] (hereinafter, "Settlement Agreement").

64. The extra $1,000,000 paid to LT Lender was a payment to reduce their non-dilutable interest to settle a bogus claim and convert respective equity interests

of LT Lender and its principals into common stock. (Settlement Agreement at ¶ 2(ii)).

65. The "payoff" letter from LT Lender did not reference the Settlement Agreement as the basis for any debt owed from Lightning.

66. The LT Lender "premium payment" was tainted by self-dealing. LT Lender held a non-dilutable ownership stake in Lightning, which was paid down. Dilution of shares does not injury a company—only its shareholders who hold a dilutable interest.

67. Indeed, Lightning shareholders John Reinhardt, Jerry Reinhardt, and Bruce Campbell benefitted from both sides of the transaction because the LT Lender payment fully repaid an initial investment in Lightning while simultaneously benefiting them as shareholders of Lightning.

68. Lightning, as a company, did not benefit from the extra $1,000,000 paid to LT Lender—especially given the fact that the company is pre-revenue and non-operational.

69. Not only did Lightning pay LT Lender an unnecessary "premium" in order to repay its debts, but Lightning also agreed to an undisclosed Technology Exploitation and License Agreement (the "SCP License Agreement") with a newly formed entity, Structural Coatings and Products, LLC ("SCP"). (Settlement Agreement at ¶ 2(iv)).

70. Although Lightning maintained a 35% interest in SCP, LT Lender controlled 65% of SCP.

71. In fact, Lightning was expressly restricted from "tak[ing] part in, vot[ing] on or interfer[ing] in any manner with the management, conduct or control of the company or its business, and shall have no right or authority whatsoever to act for or on behalf of, or to bind, [SCP]; except" in certain limited circumstances. (SCP Operating Agreement at § 5.1).

72. All decisions of SCP were assigned to a Board of Managers including Defendants Bruce Campbell, John Reinhart, and Jerry Reinhart, as well as a designee from Lightning that was approved by the other Managers. (SCP Operating Agreement at § 4.1).

73. The SCP managers were given broad authority to control the actions of SCP. (SCP Operating Agreement at § 4.2).

74. A simple majority of the managers of SCP is sufficient in order to control SCP; which means that Defendants Campbell, John Reinhart, and Jerry Reinhart were sufficient to control SCP. (SCP Operating Agreement at § 4.3).

75. The SCP License Agreement licensed Lightning's technology "relating to products and processes used or usable for spraying, encapsulating, coating and/or manufacturing products coated with or molded out of polyurea hybrid material which it has to date marketed under certain trade names, including, without

limitation, the trade name Exobond and all derivatives thereof which Lightning and/or its affiliates, have independently developed and refined, and or licensed, including, without limitation, technology and/or products licensed pursuant to Supply Agreements, including certain Supply Agreements with Ultimate Linings, LLC and BASF Chemical Company and/or one or more of its affiliated entities...." (SCP License Agreement at ¶ 1.1).

76. The SCP License Agreement grants SCP "an exclusive, perpetual worldwide fully-paid-up license under the Licensed Patents and Licensed Technical Information—in the Field of Use only—to make, have made, use, sell, offer to sell, and import and export Licensed Products, and to practice Licensed Processes, with the right to grant sublicenses with consent of Lightning, which consent shall not unreasonably be withheld, conditioned or delayed." (SCP License Agreement at ¶ 3.1).

77. The SCP License Agreement defines the Field of Use as the "field of building and construction materials, applications, components and/or finished products, including both basic and engineered products utilized in or for (by way of example and not limitation) structures, pipelines and towers used or usable in public and/or private structures and infrastructure (such as roads, bridges, tunnels, etc.) and anything an engineering, procurement or construction firm might coat for a plant, building, or construction material or product (including any materials, products or

processes used or usable in residential and/or commercial construction), but specifically excluding pallets or other pallet-like platforms and any application of the Technology used in the manufacture of any component part of any assembled automotive vehicle . . . .” (SCP License Agreement at ¶ 2.7).

78. No payment was made by SCP to Lightning for this broad license. (SCP License Agreement at ¶ 4.1).

79. LT Lender’s “payoff letter” did not reference the Settlement Agreement, the existence of SCP or Lightning’s membership therein, or the SCP License Agreement at the time it advanced its initial draw to Lightning.

80. The Settlement Agreement, SCP’s existence and Lightning’s membership therein, and the SCP License Agreement made untrue certain of Lightning’s representations and warranties in the Business Loan Agreement.

81. The Settlement Agreement, SCP’s existence and Lightning’s membership therein, and the SCP License Agreement made untrue certain of Lightning’s representations and warranties in the Security Agreement between GrowMI and Lightning.

82. GrowMI has declared that Lightning is in default under the Business Loan Agreement as a result of SCP’s existence and Lightning’s membership therein, the SCP License Agreement which purports to transfer trade secrets that were pledged as collateral to GrowMI, and the Settlement Agreement.

83. The omission of information about the Settlement Agreement, SCP's existence and Lightning's membership therein, and the SCP License Agreement could not have been the result of oversight. Rather, upon information and belief, Defendants, through Kassab who was principally negotiating the business terms of the Business Loan Agreement, intentionally omitted any information about these agreements because they were concerned that GrowMI would not have funded its loan without an exclusive first security position on Lightning's Trade Secrets.

84. Upon information and belief, the SCP License Agreement significantly diminishes the value of the collateral pledged by Lightning to secure GrowMI's loan, and compromises the value of Lightning's Trade Secrets (the principal collateral for GrowMI's loan).

85. SCP's manager and LT Lender member, Bruce Campbell, was on the Lightning Board of Directors at the time Lightning was negotiating and ultimately entering into the Business Loan Agreement with GrowMI.

86. Upon information and belief, at no point prior to Lightning entering into the Business Loan Agreement with GrowMI did Bruce Campbell seek to have Lightning disclose to GrowMI the Settlement Agreement or the SCP License Agreement.

87. Upon information and belief, Kassab, purportedly acting on behalf of Lightning as its exclusive financial advisor, negotiated the settlement of the debt to LT Lender.

88. Upon information and belief, Kassab, also a shareholder of Lightning, urged Lightning to accept the LT Lender settlement.

89. Upon information and belief, Kassab advocated for the LT Lender settlement by convincing Lightning that LT Lender's principals had a *bona fide* claim to a substantial equity stake in Lightning.

90. Upon information and belief, while Lightning disputed LT Lender's principals' claims, Kassab nevertheless convinced Lightning to accept the settlement so that his co-conspirators could reduce their financial investment risk in Lightning in exchange for supporting Kassab's proxy battle for the control of Lightning.

91. Upon information and belief, the members of LT Lender were Jerry Reinhart, John Reinhart, James Pohlman, Robert Robinson and Bruce Campbell.

92. Bruce Campbell sits on the Board of Directors of Lightning.

93. Bruce Campbell, Jerry Reinhart, and John Reinhart are shareholders in Lightning.

94. After GrowMI funded the initial draw to Lightning, Lightning advised GrowMI that it used the funds to repay the full debt owed to LT Lender.

95. In reality, Lightning's debt to LT Lender was less than what was represented in the LT Lender payoff letter, and the GrowMI draw was used to pay off the debt to LT Lender, to provide a substantial gratuity to LT Lender and its members, including Jerry Reinhart, John Reinhart, and Bruce Campbell, and to somehow justify a significant licensure of Lightning's technology—the collateral pledged to GrowMI—without disclosure to GrowMI.

96. The "settlement payment" to LT Lender did not have any benefit to Lightning, instead benefitting certain shareholders in Lightning exclusively.

97. Upon information and belief, the money LT Lender received from the GrowMI draw was distributed to its members, Jerry Reinhart, John Reinhart, James Pohlman, Robert Robinson, and Bruce Campbell.

98. At all times GrowMI was considering loaning money to Lightning, Shamo, Causley, and LT Lender's principals held themselves out as equity owners in Lightning.

99. Although Lightning represented to GrowMI that it would draw on the Flagstar loan, GrowMI loan, and the Lines of Credit to order and pay for its production equipment before December 31, 2019, Lightning did not draw on its credit facilities (other than to payoff LT Lender) and it did not order or pay for its production equipment.

100. GrowMI repeatedly demanded that Lightning use the available financing in order to order the equipment.

101. Based on the financial and operational information provided by Lightning, nothing prevented Lightning from drawing on the credit facilities from Flagstar or the Lines of Credit to order and pay for its production equipment.

102. For months, from December 2019 through February 2020, GrowMI's CEO, Patrick O'Keefe, would ask Lightning's President, Jeffrey Owen, to draw on and disburse the available credit facilities to order the equipment necessary to get Lightning to full production. In response, Jeff Owen advised Mr. O'Keefe that Kassab had control of the disbursement of funds, and although Mr. Owen relayed GrowMI's request to Kassab, GrowMI never received a response to the request to order product and draw on the funds available to the company.

103. Representatives of Flagstar also inquired of GrowMI as to why the draws were not made by Lightning.

104. Apparently, Lightning had delegated the responsibility for raising funds to Kassab and Kassab also was in control of all finance decisions—including whether and when to draw upon available capital.

105. Lightning never drew on the Flagstar equipment loan facility, the balance of the GrowMI loan facility, or the Lines of Credit in order to order and pay for the equipment.

106. Upon information and belief, Kassab, Shamo, and Causley all agreed, prior to Lightning obtaining the GrowMI loan, that Lightning would not actually draw on the Lines of Credit. Rather, Kassab, Shamo, and Causley, in agreement with LT Lender and its members, would induce GrowMI to make its loan in order to pay off the LT Lender loan and provide returns to the insiders, but that Lightning would not use the Flagstar financing or the Lines of Credit in order to obtain production equipment.

107. Upon information and belief, Kassab, Shamo and Causley never intended for Lightning to draw on the Lines of Credit, and that the Lines of Credit were merely executed in order to fraudulently induce GrowMI to fund its loan to Lightning so that its money could be transferred to LT Lender and its members.

108. In fact, Kassab represented to Lightning's Board of Directors that the Causley and Shamo Lines of Credit were only for "emergencies," contrary to the representations made to GrowMI and the express language of the Lines of Credit.

109. There is no ascertainable, legitimate business reason for why Kassab would refuse to draw on these available loans.

110. Although Kassab has asserted that the Causley and Shamo Lines of Credit are only for "emergencies," yet, to date, these Lines of Credit have not been drawn on despite Lightning being in default of its loans and behind of its payment

obligations. If the risk of bankruptcy does not constitute an "emergency" for drawing on these Lines of Credit, then nothing does.

111. Indeed, to date, Lightning is non-operational and losing approximately $500,000 per month in various expenses.

112. Yet, Kassab has not even drawn on the balance of the GrowMI loan. Upon information and belief, Kassab did not draw on the GrowMI and Flagstar loan facilities because he sought to secure loans from other companies through his business Solyco, LLC, so that he could receive a "finders fee" from securing the additional, unnecessary funds.

113. Because Kassab refused to draw upon the available financial facilities other than to take GrowMI's money to pay off his co-conspirators, Lightning's financial future was threatened. Kassab used the company's failure to his advantage to discredit Lightning's leadership in the proxy battle.

114. Indeed, Defendants' actions were designed to limit Defendants' actual cash investment in Lightning before they aggressively embarked on a plan to take control of the company through a heated proxy battle.

115. Specifically, Defendants have all joined forces in the recent proxy battle in order to seize control of Lightning.

116. The proxy battle for control of Lightning has not been resolved, and it has paralyzed the company.

117. Lightning is not paying its debts as they come due, including, for example, its rent.

118. Rather than drawing on the available, approved loan facilities, Lightning apparently took on an additional $1 million in debt from Shamo in February 2020 to purportedly fund its operations (the "Shamo Loan"). (**Ex. K**).

119. The Shamo Loan had a maturity date only eight days after it was signed, it carried an extortionate default interest rate of 24.99%, and it purports to accumulate a $25,000 per week late charge if the loan is not repaid in full by the maturity date. (**Ex. K**).

120. In fact, despite the available loan facilities from GrowMI and Flagstar, Lightning took over $1.8 million in short-term, high-interest loans from a either a number of Lightning shareholders aligned with Kassab, or Kassab's company, Solyco.

121. The Shamo Loan was separate from Shamo's obligations under the Lines of Credit.

122. The Shamo Loan was made in violation of Lightning's Business Loan Agreement because Lightning was not allowed to incur additional indebtedness other than what was already approved at the time Lightning entered into the GrowMI Loan Agreement.

123. Upon information and belief, despite the fact that he is a member of the Lightning Board of Directors, Shamo knew that inducing Lightning to incur additional debt was in violation of the Business Loan Agreement.

124. Also, the Shamo Loan was made, in part, so that Kassab, acting in his role as Executive Vice President, could pay his own company, Solyco, LLC, nearly $400,000 allegedly as a finder's fee for raising capital—capital that was ultimately fictitious and without any real benefit to Lightning.

125. Solyco LLC, acting through its principal Kassab, knew that the $400,000 payment was a sham payment; and that this payment was part of a fraudulent scheme to confer additional capital to Kassab and a wrongful attempt to subrogate Plaintiff's security interest.

126. Indeed, the Shamo Loan was also made, in part, so that Defendants could contend that the Shamo Loan has a superior security interest to GrowMI.

127. Contrary to the subordination agreement signed between Shamo and GrowMI, Shamo now claims that he has a secured interest ahead of GrowMI with regard to Lightning's collateral.

128. Upon information and belief, the Shamo Loan was more expensive than the available credit facilities from Flagstar, GrowMI, and the Lines of Credit, so that Shamo could receive a benefit for participating in the scheme to defraud GrowMI.

129. Rather than using the available Lines of Credit, the Flagstar equipment loan, and the balance of the GrowMI facility in order to order and purchase the production equipment, in 2020, Lightning instead attempted to obtain financing from a company called NFS to move to full production capabilities.

130. There would be no need to obtain financing from NFS if the Lines of Credit were legitimate, but because they were bogus, Lightning did not have the resources to order its equipment without significant additional funding.

131. Lightning was introduced to NFS by an outside broker, Kevin Parker.

132. Lightning agreed to pay a commission to Parker in the event the financing with NFS was successful.

133. While the contract with NFS was being negotiated, Kassab approached Parker and demanded that Parker pay him a portion of the commission Lightning was to pay Parker.

134. Although Kassab was a salaried employee with Lightning with significant fiduciary obligations to Lightning and its creditors, Kassab was still looking for ways to profit at Lightning's expense by attempting to obtain a kickback as Lightning's financial broker, even though he was not entitled to anything other than his salary.

135. NFS ultimately did not proceed with any financing package for Lightning, and Lightning has not been able to get to full production capacity for its innovative pallets.

136. Since the NFS financing has fallen through, Lightning has been beset by the proxy battle among its shareholders and the members of its Board of Directors that has effectively frozen the company's ability to function, conduct business, or attract capital.

137. Further, upon information and belief, Defendants' actions were so egregious as to constitute criminal bank fraud, further putting Lightning at great peril and compromising GrowMI's ability to recoup its loans.

138. With the benefit of hindsight, it is now apparent that Defendants' conspiratorial and devious scheme to seize control was hatched months ago with the intent of defrauding GrowMI.

139. The proxy battle was initiated by Kassab, Shamo, Causley, and LT Lender's principals acting in concert to seize control of the company.

140. Defendants' conspiracy to seize control of Lightning culminated on or about March 18, 2020, at a purported special meeting of its Board of Directors by teleconference.

141. Prior to the March 18, 2020 meeting, GrowMI was still attempting to work with Lightning to get the company operational so that it could pay its debts as

they came due. As part of its efforts to work with Lightning, and in an effort by GrowMI to dispel its mounting concerns about Lightning's financial management, Lightning granted GrowMI the right to have one individual attend and observe all meetings of Lightning's Board of Directors and receive copies of all notices, minutes, consents, or exhibits. (**Ex. L**).

142. The March 18, 2020 special meeting was noticed by Damian Kassab, in his role as Executive Vice President of Lightning and Vice Chair of the Board.

143. Defendants circulated a call-in number for the Board Meeting, which was a teleconference.

144. ***The call-in number provided by Kassab was misleading.*** Indeed, the dial-in information provided to GrowMI and select members of Lightning's leadership (such as its CEO Jeffery Owen and Lightning's general counsel) was faulty. Thus, GrowMI was deprived the information necessary to evaluate its collateral or the prospects of being repaid.

145. At the March 18, 2020 meeting, Kassab and his co-conspirators staged a coup. Finding that a quorum of the Lightning Board of Directors was present despite the excluded Board Members in opposition to Kassab, this partial Board removed Jeffery Owen as President, CEO and Chairman of the Board.

146. Kassab's actions relating to his clandestine coup and hostile takeover during the March 18, 2020, meeting have been halted by the Delaware Chancery

Court. Indeed, on April 3, 2020, the Delaware Chancery Court entered an order wherein it was stipulated that the March 18, 2020, Lightning meeting was "null, void and of no force and effect, and actions taken (or contended to have been taken at that meeting), including without limitation the election of Directors to serve in place of Directors Lars Wrebo and Annika Bergengren who had submitted resignations effective upon the election and qualification of their successors, the termination of Jeffrey Owen as Chief Executive Officer and Chairman, the appointment of Damian Kassab as President and Chairman, and the appointment of Martin DiFiore as Interim Chief Executive Officer, are **VOIDED *ab initio***." (**Ex. M**) (emphasis in original).

147. Despite Lightning's paralysis, Lightning has presented GrowMI with a budget for moving forward.

148. If Lightning were able to draw on the Lines of Credit, the budget appears to demonstrate that Lightning would have sufficient funds to become current on its loan with GrowMI and to begin order equipment necessary to get to partial production of its pallets.

149. Because Lightning is currently in default under the GrowMI Loan Agreement, GrowMI has the authority to act on behalf of Lightning through a power of attorney granted it by the Security Agreement between Lightning and GrowMI.

150. Acting on its authority under the power of attorney, GrowMI made demand on Shamo and Causley to partially disburse the money committed under the Lines of Credit to fund the next 30 days of Lightning operations consistent with the presented budget. *See* (**Ex. N**).

151. Shamo and Causley have refused to provide any funds under their Lines of Credit, further demonstrating that they were sham commitments. (**Ex. N**).

152. GrowMI reasonably relied on the Shamo and Causley Lines of Credit when making a decision to loan money to Lightning.

153. Because of Shamo and Causley's fraud, GrowMI has been damaged by Defendants' actions.

154. GrowMI seeks judgment as set forth below.

Counts 1 – 5: Violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.*

155. GrowMI restates the preceding paragraphs as though fully stated here.

156. Defendants engaged in at least five predicate acts, which together formed a pattern of racketeering activity that significantly damaged GrowMI.

157. The following five predicate acts show a pattern of racketeering activity that forms the basis of, and applies to, all Plaintiff's RICO claims (Counts 1 – 5):

Predicate Act No. 1 – Violation of 18 U.S.C. § 1344

158. Shamo, with the assistance of Kassab, presented Shamo's Line of Credit and associated Subordination Agreement to GrowMI and Flagstar prior to GrowMI and Flagstar agreeing to provide their loan facilities to Lightning.

159. Shamo and Kassab knew that the Line of Credit was a material condition precedent for GrowMI and Flagstar to fund their loan facilities to Lightning.

160. Without the Shamo Line of Credit, neither GrowMI nor Flagstar would have proceeded with the loan facility to Lightning.

161. At the time Shamo presented the Line of Credit and Subordination Agreement to GrowMI and Flagstar, Shamo had no intention of funding the Line of Credit, and Kassab had no intention of drawing on it.

162. The Line of Credit was a false representation at the time Shamo and Kassab presented it to GrowMI and Flagstar.

163. The Subordination Agreement was a false representation at the time Shamo and Kassab presented it to GrowMI and Flagstar.

164. Shamo and Kassab intended GrowMI and Flagstar to rely upon the Line of Credit and Subordination Agreement.

165. Shamo, Kassab (and the other Defendants) had agreed that the Line of Credit would not be drawn upon, and that it was only intended to induce GrowMI

and Flagstar to agree to provide the loan facilities to Lightning so that LT Lender and its principals could be repaid.

166. Defendants knew at the time the Line of Credit and Subordination Agreement were executed by Shamo that they were sham documents.

167. Indeed, despite the availability of these Lines of Credit, Lightning has fallen into default and insolvency. The fact that these Lines of Credit desperately needed to be drawn upon for Lightning to become operational, yet were not, shows that they were fraudulent.

168. Defendants' fraudulent scheme was intended to deceive Flagstar and GrowMI.

169. Defendants' fraudulent scheme was intended to deceive Flagstar and GrowMI out of something of value, namely, multimillion-dollar loans to Lightning.

170. Flagstar is a federally insured financial institution.

171. A large portion of GrowMI's capital has been provided by financial institutions with significant governing control over GrowMI, including control of its investment committee.

172. But for Defendants' defrauding Flagstar into entering into its loan agreement with Lightning, GrowMI would not have agreed to fund its draw to Lightning.

173. Thus, GrowMI was directly damaged by Defendants' defrauding of Flagstar.

174. Defendants also had the specific intent to deceive or cheat GrowMI.

175. Shamo's false Line of Credit and Subordination Agreement constituted false or fraudulent pretenses, representations, and promises.

176. Shamo's false Line of Credit and Subordination Agreement were executed voluntarily—and were not because of mistake or some other reason.

177. Shamo's false Line of Credit and Subordination Agreement were material to GrowMI's decision to distribute money to Lightning subject to its business loan agreement.

178. Shamo and Kassab's fraudulent scheme had a direct impact on interstate commerce.

179. GrowMI suffered a financial loss as a result of the Defendants' deception of Flagstar and GrowMI in violation of 18 U.S.C. § 1344.

Predicate Act No. 2 – Violation of 18 U.S.C. § 1344

180. Causley, with the assistance of Kassab, presented Causley's Line of Credit and associated Subordination Agreement to GrowMI and Flagstar prior to GrowMI and Flagstar agreeing to provide their loan facilities to Lightning.

181. Causley and Kassab knew that the Line of Credit was a material condition precedent for GrowMI and Flagstar to fund their loan facilities to Lightning.

182. Without the Causley Line of Credit, neither GrowMI nor Flagstar would have proceeded with the loan facility to Lightning.

183. At the time Causley presented the Line of Credit and Subordination Agreement to GrowMI and Flagstar, Causley had no intention of funding the Line of Credit, and Kassab had no intention of drawing on it.

184. The Line of Credit was a false representation at the time Causley and Kassab presented it to GrowMI and Flagstar.

185. The Subordination Agreement was a false representation at the time Causley and Kassab presented it to GrowMI and Flagstar.

186. Causley and Kassab intended GrowMI and Flagstar to rely upon the Line of Credit and Subordination Agreement.

187. Causley, Kassab (and the other Defendants) had agreed that the Line of Credit would not be drawn upon, and that it was only intended to induce GrowMI and Flagstar to agree to provide the loan facilities to Lightning so that LT Lender and its principals could be repaid.

188. Defendants knew at the time the Line of Credit and Subordination Agreement were executed by Causley that they were sham documents.

189. Indeed, despite the availability of these Lines of Credit, Lightning has fallen into default and insolvency. The fact that these Lines of Credit desperately needed to be drawn upon for Lightning to become operational, yet were not, shows that they were fraudulent.

190. Defendants' fraudulent scheme was intended to deceive Flagstar and GrowMI.

191. Defendants' fraudulent scheme was intended to deceive Flagstar and GrowMI out of something of value, namely, multimillion-dollar loans to Lightning.

192. Flagstar is a federally insured financial institution.

193. A large portion of GrowMI's capital has been provided by financial institutions with significant governing control over GrowMI, including control of its investment committee.

194. But for Defendants' defrauding Flagstar into entering into its loan agreement with Lightning, GrowMI would not have agreed to fund its draw to Lightning.

195. Thus, GrowMI was directly damaged by Defendants' defrauding of Flagstar.

196. Defendants also had the specific intent to deceive or cheat GrowMI.

197. Causley's false Line of Credit and Subordination Agreement constituted false or fraudulent pretenses, representations, and promises.

198. Causley's false Line of Credit and Subordination Agreement were executed voluntarily—and were not because of mistake or some other reason.

199. Causley's false Line of Credit and Subordination Agreement were material to GrowMI's decision to distribute money to Lightning subject to its business loan agreement.

200. Causley and Kassab's fraudulent scheme had a direct impact on interstate commerce.

201. GrowMI suffered a financial loss as a result of the Defendants' deception of Flagstar and GrowMI in violation of 18 U.S.C. § 1344.

Predicate Act No. 3 – Violation of 18 U.S.C. § 1957

202. Defendants knowingly engaged in monetary transactions with funds derived from specific unlawful activities prohibited by 18 U.S.C. § 1957. Defendants transacted in with $10,000 or more in which the money involved was derived from Defendants' racketeering activities and bank fraud.

203. Indeed, all Defendants derived income from their racketeering activities and then engaged in several financial transactions involving over $10,000.

204. For example, Defendants knowingly used funds derived from bank fraud committed by Shamo, Causley, and Kassab (Predicate Acts Nos. 1 & 2) to repay, and over-pay, a multimillion-dollar loan to LT Lender, which benefited all Defendants and helped fund their ongoing shareholder battle.

205. Specifically, Defendants conducted financial transactions with GrowMI's initial $3.25 million draw to Lightning.

206. GrowMI wired the funds directly to LT Lender.

207. LT Lender then used the funds to surreptitiously repay certain alleged equity holders in Lightning.

208. Upon information and belief, Defendants also used this money to pay or induce Defendant Drake into stealing Lightning's Trade Secrets.

209. Defendants knew that the money from GrowMI was the result of the unlawful activity of Shamo, Causley and Kassab defrauding GrowMI and Flagstar Bank in violation of 18 U.S.C. § 1344 and 18 U.S.C. §§ 1005, 1014.

210. At all times, Defendants had the intent to promote the carrying on of the defrauding of GrowMI and Flagstar Bank in violation of 18 U.S.C. § 1344.

211. Also, Defendants used money derived from bank fraud committed by Shamo, Causley and Kassab (Predicate Acts Nos. 1 & 2) to knowingly engaged in wire fraud (Predicate Act No. 5) to fraudulently convey $400,000 to Kassab by way of loan facility provided by Shamo. This also constitutes a violation of 18 U.S.C. § 1957.

212. Further, 18 U.S.C. § 1956(c)(7)(D) states offenses under 18 U.S.C. §§ 1005, 1014 (prohibiting defrauding a bank and filing fraudulent loan applications) are sufficient to form the basis of liability under 18 U.S.C. § 1957.

Accordingly, Defendants violated 18 U.S.C. § 1957 by knowingly engaging in the above-described monetary transactions with funds derived from violations of 18 U.S.C. § 1005 and 18 U.S.C. § 1014.

213. Thus, Defendants' use of the funds derived from their bank fraud under 18 U.S.C. § 1344, and under 18 U.S.C. §§ 1005, 1014, constitutes a separate offense, a predicate act, and further shows that Defendants' racketeering activities are part of continuing criminal activity extending indefinitely into the future.

214. Consequently, GrowMI has suffered a financial loss as a result Defendants' financial transaction of over $10,000 that involved funds derived from Defendants' bank and wire fraud.

215. GrowMI has suffered a financial loss as a result Defendants accepting GrowMI's money and using the ill-gotten gains in subsequent transactions that exceeded $10,000 to further advance Defendants' shareholder battle for control of Lightning.

Predicate Act No. 4 – Violation of 18 U.S.C. § 1832

216. After joining Defendants' ongoing conspiracy, and at the behest of other Defendants, Drake agreed to steal and misappropriate Lightning's Trade Secrets.

217. Drake has access to Lightning's Trade Secrets in Lightning's online storage service, ShareFile.

218. Lightning's Trade Secrets are not publicly available, and Lightning's Trade Secrets derive significant value as a result of them not being publicly available.

219. Lightning takes significant care to ensure that its Trade Secrets do not become publicly available.

220. Lightning's Trade Secrets are used in interstate and foreign commerce.

221. Lightning's Trade Secrets would be a significant economic benefit to anyone other than Lightning interested in the production of goods that are unique and transformative to the logistics industry.

222. The disclosure of Lightning's Trade Secrets outside Lightning will injure Lightning and compromise GrowMI's ability to collect on its loan agreement.

223. Since December 2019, shortly after LT Lender was paid off with GrowMI's money, Drake has, without authorization, taken Lightning Trade Secrets by downloading them to his laptop and hard drives.

224. The Lightning files downloaded by Drake consist of Lightning's Trade Secrets: highly confidential and commercially sensitive information, including customer lists, vendor lists, and information regarding proprietary technology.

225. Upon information and belief, Drake copied Lightning's confidential Trade Secrets to hard drives with the intent of distributing them to the Defendants.

226. Upon information and belief, Drake was acting on the direction of some or all of Defendants.

227. Indeed, Drake knowingly participated in the conduct of the affairs of Defendant's association-in-fact enterprise and conspiracy when he downloaded and transferred Lightning's confidential Trade Secrets to his laptop and hard drives.

228. Drake even attempted to cover his tracks by attempting to wipe clean a thumb drive he used in order to carry out his role in this enterprise and conspiracy. (**Ex. __**, S. Matthews Aff.)

229. It is no coincidence that Drake is represented by the same lawyer representing Causley and Shamo, demonstrating the unity of action amongst Defendants.

230. Drake intended to convert Lightning's Trade Secrets for the benefit of Defendants, in the event their proxy battle failed to give them control of Lightning.

231. The disclosure of Lightning's Trade Secrets significantly reduces the value of the collateral pledged to secure GrowMI's loan.

232. GrowMI has been damaged by Drake's actions in compromising Lightning's Trade Secrets, reducing GrowMI's ability to recover the debt that it is owed by Lightning.

Predicate Act No. 5 – Violations of 18 U.S.C. § 1343

233. Defendants devised a scheme to defraud GrowMI and Flagstar Bank for the purposes of obtaining money, which was carried out by use of interstate wires.

234. Indeed, as stated above in Predicate Acts 1–3, Defendants executed a scheme to defraud GrowMI and Flagstar Bank for the purposes of obtaining multimillion-dollar loans which were wrongfully distributed to Defendants to fuel and advance their shareholder battle

235. For example, Defendants' scheme included Shamo and Kassab executing a $1,000,000 loan with Lightning for the purpose of paying Kassab's company, Solyco LLC, a sham $400,000 "finder's fee" and attempting to wrongfully subrogate and de-prioritize GrowMI's loan.

236. Indeed, upon information and belief, rather than drawing on the available loan facilities, Kassab, acting in his capacity as an officer of Lightning, directed Lightning to take on an additional $1 million in debt from Shamo to purportedly fund its operations.

237. Rather than drawing on the available loan facilities, upon information and belief, Kassab, acting in his capacity as an officer of Lightning, directed Lightning to take on more than $800,000 in additional, unnecessary debt.

238. Despite the fact that he is a member of the Lightning Board of Directors, Shamo knew that inducing Lightning to incur additional debt was in violation of the Business Loan Agreement.

239. Further, the Shamo Loan was made so that Kassab, acting in his role as Executive Vice President, could pay his own company, Solyco, LLC, nearly $400,000 allegedly as a finder's fee for raising capital—capital that was ultimately fictitious and without any real benefit to Lightning.

240. Upon information and belief, Shamo now contends that he has a secured interest ahead of GrowMI with regard to Lightning's collateral.

241. The actions related to the $1,000,000 loan, which was used to perpetrate Defendant Shamo, Kassab, and Solyco's fraudulent scheme, took place in February 2020.

242. Defendants' fraudulent scheme was executed in loan application documents, which caused for Shamo, Kassab, and Solyco's fraudulent representations to be transmitted via interstate wire.

243. Significantly, Shamo made fraudulent representations to Lightning that there was an additional need for the sham loan—when, in fact, the real purpose for the loan was to confer equity to Kassab's company, Solyco, while simultaneously and fraudulently subrogating Plaintiff's claim to Lightning's collateral.

244. Moreover, Defendants' scheme included the bank fraud committed by Shamo and Causley in executing their sham Lines of Credit—which was executed by use of, or knowingly causing the use of, interstate wires.

245. Through concerted action and conspiracy, all Defendants knowingly and willingly participated in the scheme with the specific intent to defraud.

246. Defendants knowingly caused the use of interstate wire communications to execute and further their fraudulent scheme and achieve its ultimate purpose of obtaining money by defrauding GrowMI and FlagStar Bank.

247. As a result of Defendants' scheme, GrowMI was duped into providing Lightning with a loan that was used to repay and misappropriate the loan funds to Defendants.

248. As a result of Defendants fraudulent scheme, Lightning can no longer meet its loan obligations, which directly harms GrowMI.

Defendants' Pattern of Racketeering Activity

249. The above-described predicate acts, committed by Defendants, constitutes a pattern of racketeering activity.

250. The predicate acts, outlined above, were done in concert and with the specific intent of inducing GrowMI to fund its substantial draw to Lightning for the benefit of LT Lender and its investors, in exchange for LT Lender's principals' support in the proxy battle for the control of Lightning.

251. Defendants Kassab, Shamo, and Campbell acted in concert with the other Defendants to then drive Lightning to a heated proxy battle.

252. Rather than doing what was promised to GrowMI—namely, purchasing production equipment—Defendants intentionally did nothing so that Lightning would be placed in dire financial straits.

253. Once Lightning was in dire financial straits (but with the Defendants' risk significantly reduced), Defendants began the heated proxy battle for the control of Lightning.

254. Defendants' conduct has not been resolved, nor does it appear to be concluding any time soon, as Defendants see this as an opportunity to control Lightning's proprietary technology without providing adequate value for the same.

255. In the event that Defendants' proxy battle is unsuccessful, Defendants nevertheless secured Lightning's Trade Secrets for their own benefit by having Drake copy Lightning's Trade Secrets to hard drives.

256. GrowMI has been suffered damages directly as a result of this pattern of racketeering activity. The collateral pledged for the security of GrowMI's loan to Lightning has been compromised, GrowMI has incurred significant costs, and Lightning's ability to repay its substantial debt to GrowMI has been imperiled.

Count 1 Violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961(a) Against Defendants John and Jerry Reinhart, Campbell, Shamo, Causley, and Kassab,

257. GrowMI restates all the preceding paragraphs as though fully stated herein, which includes, specifically, the five Predicate Acts and the above-described racketeering activity.

258. Defendants invested income derived from their pattern of racketeering activity in the enterprise Lightning.

259. Indeed, Defendants used and invested their ill-gotten gains (acquired from their racketeering activities) to operate and purchase a controlling interest in Lightning.

260. The predicate acts, outlined above, were done in concert and with the specific intent of inducing GrowMI to fund its substantial draw to Lightning for the benefit of LT Lender and its investors, in exchange for LT Lender's principals' support in the proxy battle for the control of Lightning.

261. LT Lender and its principals, Jerry Reinhart, John Reinhart, and Bruce Campbell received income derived from the pattern of racketeering activities, primarily, when LT Lender was repaid its loan plus a sham $1,000,000 "settlement payment" and when it received a royalty-free license from Lightning.

262. Moreover, Defendant Kassab and Shamo received income derived through the pattern of racketeering when Kassab paid himself a fraudulent "finder's fee" of $400,000 and Shamo was afforded the benefit of a favorable interest rate for his Line of Credit.

263. Upon information and belief, the use or investment of such income took various forms, which included, among other things:

- Repayment of LT Lender Loan,
- Payment of LT Lender dividend,
- Payment of sham $1,000,000 settlement to LT Lender,
- Purchase of Lightning shares, stock or similar investment,
- Payment to Defendant Drake for stealing trade secrets,
- Payment of finder's fee to Defendant Kassab's company,
- Funding of various shareholder dispute activities.

264. Defendants' proxy battle is ongoing, and Defendants are still part of a conspiracy to obtain control over Lightning—through any means necessary, including the unlawful conduct taken thus far and further investing activities.

265. Defendants' violations of the law are ongoing, and, to date, Plaintiff has not been repaid the money that is due and owing under the loan.

266. Indeed, rather than doing what was promised to GrowMI—namely, purchasing production equipment—Defendants have done nothing, and continue to do nothing, so that Lightning will be placed in dire financial straits.

267. Defendants' conduct has not been resolved, nor does it appear to be concluding any time soon, as Defendants see this as an opportunity to control Lightning's proprietary technology without providing adequate value for the same.

268. GrowMI has been injured by Defendants' racketeering investment activities because Defendants' ill-gotten gains have assisted them in a shareholder

dispute and proxy battle for control of Lightning, which has paralyzed the company and impeded its ability to pay its debts as they come due.

WHEREFORE, Grow MI request that this Honorable Court enter a judgment against Defendants requiring repayment of the $3.25 million loan, which was unlawfully taken from Plaintiff, plus interest and penalty fees, attorney fees and costs, and statutory treble damages.

Count 2 Violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961(b) Against Defendants John and Jerry Reinhart, Campbell, Shamo, Causley, and Kassab,

269. GrowMI restates preceding paragraphs 1–256, as though fully stated herein, which includes, specifically, the five Predicate Acts and the above-described racketeering activity.

270. Defendants used a pattern of racketeering activity to acquire and maintain control over Lightning.

271. Indeed, through the pattern of racketeering activity, and predicate acts outlined above, Defendants acquired and seek to maintain control over the enterprise Lightning.

272. The predicate acts, outlined above, were done in concert and with the specific intent of inducing GrowMI to fund its substantial draw to Lightning for the benefit of LT Lender and its investors, in exchange for LT Lender's principals' support in the proxy battle for the control of Lightning.

273. This proxy battle is ongoing, and Defendants are still part of a conspiracy to obtain control over Lightning—through any means necessary, including the unlawful conduct taken thus far.

274. Defendants' violations of the law are ongoing, and, to date, Plaintiff has not been repaid the money that is due and owing under its loan.

275. Indeed, rather than doing what was promised to GrowMI—namely, purchasing production equipment—Defendants have done nothing, and continue to do nothing, so that Lightning will be placed in dire financial straits.

276. Defendants' conduct has not been resolved, nor does it appear to be concluding any time soon, as Defendants see this as an opportunity to control Lightning's proprietary technology without providing adequate value for the same.

277. Plaintiff continues to suffer damages directly as a result of this pattern of racketeering activity. The collateral pledged for the security of GrowMI's loan to Lightning has been compromised, GrowMI has incurred significant costs, and Lightning's ability to repay its substantial debt to GrowMI has been imperiled.

WHEREFORE, Grow MI request that this Honorable Court enter a judgment against Defendants requiring repayment of the $3.25 million loan, which was unlawfully taken from Plaintiff, plus interest and penalties, attorney fees and costs, and statutory treble damages.

Count 3 Violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961(c) Against All Defendants

278. GrowMI restates preceding paragraphs 1–256, as though fully stated herein, which includes, specifically, the five Predicate Acts and the above-described racketeering activity.

279. Defendants conducted the affairs of an association-in-fact enterprise through a pattern of racketeering activity.

280. All named Defendants are part of an "association-in-fact" enterprise.

281. Defendants are a group of persons associated together for a common purpose—to obtain control over Lightning and/or misappropriate its Trade Secrets.

282. Defendants have a direct association with each other. For example, Defendants Kassab, Shamo, Causley, Campbell, and Jerry and John Reinhart are all shareholders of Lightning, and have formed an alliance to take control of the company. Moreover, Defendant LT Lender joined this alliance through its principals, Defendants John and Jerry Reinhart and Campbell, and its participation as a creditor of Lightning. LT Lender directly benefitted from an unlawfully inflated loan repayment, which was paid by money secured through Defendant Shamo, Causley, and Kassab's bank fraud. Solyco LLC was part of Defendants' fraudulent scheme to wrongfully pay Kassab a sham $400,000 finder's fee and directly profited from this payment. Further, all Defendants conspired with and employed Defendant Drake, who became part of the association-in-fact through mutual agreement to steal Lightning's Trade Secrets in the event the hostile takeover failed.

283. Defendants Kassab, Shamo, and Campbell are all believed to be directors of Lightning who participated in the improper take-over at the March 18, 2020, purported Lightning board meeting.

284. The shareholder dispute and power struggle relating to Lightning is ongoing.

285. Further, the unlawful theft and possession of Lightning's trade secrets constitutes an imminent threat of future harm.

286. Defendants were associated and acting in concert during each predicate act—and their association-in-fact remains intact and poses a continuing threat of harm.

287. Indeed, Defendants are co-conspirators that formed an associate-in-fact enterprise with the ultimate aim of controlling Lightning and/or its Trade Secrets.

288. All the predicate acts are aimed at furthering this purpose.

289. For example, Predicate Act Nos. 1–3 were primarily the result of a concerted conspiracy and effort by Defendants Kassab, Shamo, Causley, and Campbell to agree to ensure Defendant LT Lender's debt was repaid and a significant payment was made on the alleged equity stake held by LT Lender's principals.

290. In exchange for this payment, Jerry Reinhart, John Reinhart, and Bruce Campbell agreed to support an attempt for Defendants to control Lightning through a heated proxy battle.

291. Further, Predicate Act No. 5, the Shamo Loan that was used to pay a sham $400,000 to Defendants Kassab and Solyco, was nothing more than a purposeful act aimed at further crippling Lightning and strengthen Defendant Kassab's position.

292. In the event the Defendants were unable to be successful at the proxy battle, Defendants perpetrated Predicate Act No. 4 by securing Lightning's Trade Secrets through Defendant Drake's unauthorized copying and downloading so that they could pursue development of their own proprietary, competitive pallet.

293. These Predicate Acts were part of a concerted effort to reduce Jerry Reinhart's, John Reinhart's, and Bruce Campbell's risk of investment in Lightning, at the expense of GrowMI, so that they would support Kassab's, Shamo's, and Causley's attempt to control the company.

294. The predicate acts, outlined above, were done in concert and with the specific intent of inducing GrowMI to fund its substantial draw to Lightning for the benefit of LT Lender and its investors, in exchange for LT Lender's principals' support in the proxy battle for the control of Lightning.

295. This proxy battle is ongoing, and Defendants are still part of a conspiracy to obtain control over Lightning—through any means necessary, including the unlawful acts taken thus far.

296. Defendants violations of the law are ongoing, and, to date, Plaintiff has not been repaid the money that is due and owing under the loan.

297. Indeed, rather than doing what was promised to GrowMI—namely, purchasing production equipment—Defendants have done nothing, and continue to do nothing, so that Lightning will be placed in dire financial straits. Defendants' conduct has not been resolved, nor does it appear to be concluding any time soon, as Defendants see this as an opportunity to control Lightning's proprietary technology without providing adequate value for the same.

298. As stated above, in the event that Defendants' proxy battle is unsuccessful, Defendants nevertheless secured Lightning's Trade Secrets for their own benefit by having Drake copy Lightning's Trade Secrets to hard drives.

299. GrowMI continues to suffer damages directly as a result of this pattern of racketeering activity. The collateral pledged for the security of GrowMI's loan to Lightning has been compromised, GrowMI has incurred significant costs, and Lightning's ability to repay its substantial debt to GrowMI has been imperiled.

WHEREFORE, Grow MI request that this Honorable Court enter a judgment against Defendants requiring repayment of the $3.25 million loan, which was

unlawfully taken from Plaintiff, plus interest, and penalties, attorney fees and costs, and statutory treble damages.

Count 4 Violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961(c) Against Defendant Kassab

300. GrowMI restates preceding paragraphs 1–256, as though fully stated herein, which includes, specifically, the five Predicate Acts and the above-described racketeering activity.

301. Kassab conducted the affairs of Lightning through a pattern of racketeering activity.

302. Defendants are co-conspirators that formed an agreement with the ultimate aim of controlling Lightning and/or its Trade Secrets. Kassab is the ringleader of the group and, through a pattern of racketeering activity, conducted the affairs of Lightning.

303. All the predicate acts are aimed at furthering this purpose.

304. For example, Predicate Act Nos. 1–3 were primarily the result of a concerted conspiracy and effort by Defendants Kassab, Shamo, Causley, and Campbell to agree to ensure Defendant LT Lender's debt was repaid and a significant payment was made on the alleged equity stake held by LT Lender's principals. In exchange for this payment, Jerry Reinhart, John Reinhart, and Bruce Campbell agreed to support an attempt for Defendants to control Lightning through a heated proxy battle. Further, Predicate Act No. 5, the Shamo Loan that was used

to pay a sham $400,000 to Defendants Kassab and Solyco, was nothing more than a purposeful act aimed at further crippling Lightning and strengthen Defendant Kassab's position.

305. In the event the Defendants were unable to be successful at the proxy battle, Defendants perpetrated Predicate Act No. 4 by securing Lightning's Trade Secrets through Defendant Drake's unauthorized copying and downloading so that they could pursue development of their own proprietary, competitive pallet.

306. The predicate acts, outlined above, were done in concert and with the specific intent of inducing GrowMI to fund its substantial draw to Lightning for the benefit of LT Lender and its investors, in exchange for LT Lender's principals' support in the proxy battle for the control of Lightning.

307. This proxy battle is ongoing, and Defendants are still part of a conspiracy to obtain control over Lightning—through any means necessary, including the unlawful acts taken thus far. Defendants' violations of the law are ongoing, and, to date, Plaintiff has not been repaid the money that is due and owing under the loan. Indeed, rather than doing what was promised to GrowMI—namely, purchasing production equipment—Defendants have done nothing, and continue to do nothing, so that Lightning will be placed in dire financial straits.

308. Defendants' conduct has not been resolved, nor does it appear to be concluding any time soon, as Defendants see this as an opportunity to control Lightning's proprietary technology without providing adequate value for the same.

309. As stated above, in the event that Defendants' proxy battle is unsuccessful, Defendants nevertheless secured Lightning's Trade Secrets for their own benefit by having Drake copy Lightning's Trade Secrets to hard drives.

310. GrowMI continues to suffer damages directly as a result of this pattern of racketeering activity. The collateral pledged for the security of GrowMI's loan to Lightning has been compromised, GrowMI has incurred significant costs, and Lightning's ability to repay its substantial debt to GrowMI has been imperiled.

WHEREFORE, Grow MI request that this Honorable Court enter a judgment against Defendants requiring repayment of the $3.25 million loan, which was unlawfully taken from Plaintiff, plus interest and penalties, attorney fees and costs, and statutory treble damages.

Count 5 Violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961(d) Against All Defendants

311. GrowMI restates all preceding paragraphs, as though fully stated herein, which includes, specifically, the five Predicate Acts, the above-described racketeering activity, and the underlying RICO violations.

312. Defendants conspired to violate the underlying RICO violations detailed above (Counts 1–4).

313. Defendants formed an agreement that included Shamo and Causley executing a scheme to defraud Lightning and FlagStar Bank.

314. Specifically, Defendants agreed that Shamo and Causley would present $5,000,000 Lines of Credit and associated Subordination Agreements, which were sham documents, to GrowMI and Flagstar for the purposes inducing them into providing loans to Lightning.

315. Defendants knew that the Lines of Credit were a material condition precedent for GrowMI and Flagstar to fund their loan facilities to Lightning.

316. Defendants knew that without these Lines of Credit, neither GrowMI nor Flagstar would have proceeded with the loan facility to Lightning.

317. At the time Shamo, Causley, and Kassab presented these Lines of Credit and Subordination Agreements to GrowMI and Flagstar, Defendants had conspired and agreed that neither Shamo nor Causley would have to fund the Lines of Credit.

318. Thus, Defendants knew, and caused, the Shamo and Causley Lines of Credit and Subordination Agreements to be false representations at the time they were presented to GrowMI and Flagstar.

319. Further, Defendants intended and anticipated GrowMI and Flagstar to rely upon the Lines of Credit and Subordination Agreements—and used the false

representations as a means to induce GrowMI and Flagstar in providing loans to Lightning.

320. Defendants had agreed that the Lines of Credit would not be drawn upon, and that they were only intended to induce GrowMI and Flagstar to agree to provide the loan facilities to Lightning so that LT Lender and its principals could be repaid.

321. Defendants' scheme was intended to deceive Flagstar and Plaintiff into providing Lightning with a loan that would subsequently be used to repay a loan made by Defendant LT Lender and a sham $1,000,000 "settlement payment."

322. Furthermore, Defendants conspired to and knowingly engaged in monetary transactions with funds derived from specific unlawful activities prohibited by 18 U.S.C. § 1957.

323. Indeed, Defendants' conspiracy involved knowingly engaging in transactions of $10,000 or more in which the money involved was derived from racketeering activity and bank fraud.

324. Defendants agreed to conducted financial transactions with loans that were fraudulently obtained from Plaintiff and Flagstar and used Plaintiff's initial $3.25 million draw to Lightning to pay Defendant LT Lender.

325. In turn, Defendant LT Lender used the funds to surreptitiously repay certain alleged equity holders in Lightning.

326. LT Lender and its principals, Jerry Reinhart, John Reinhart, and Bruce Campbell knew that the money from Plaintiff was the result of the unlawful activity of Shamo and Causley defrauding Plaintiff and Flagstar Bank in violation of 18 U.S.C. § 1344.

327. LT Lender and its principals, Jerry Reinhart, John Reinhart, and Bruce Campbell had the intent to promote the carrying on of the defrauding of Plaintiff and Flagstar Bank in violation of 18 U.S.C. § 1344.

328. Moreover, Defendants' conspiracy involved Drake stealing Lighting's Trade Secrets.

329. Indeed, Drake accessed and copied Lightning's Trade Secrets, which were in Lightning's online storage service, ShareFile.

330. Defendants knew that Lightning's Trade Secrets are not publicly available, and Lightning's Trade Secrets derive significant value as a result of them not being publicly available.

331. Defendants knew that Lightning's Trade Secrets would be a significant economic benefit to anyone other than Lightning interested in the production of goods that are unique and transformative to the logistics industry.

332. Defendants agreed that Drake would take Lightning Trade Secrets by downloading them to his laptop and hard drives.

333. Defendants agreed to, and furthered their conspiracy by, stealing Lightning's Trade Secrets as a back-up plan in the event their hostile takeover failed.

334. Further, Defendants agreed and conspired that Kassab, Solyco and Shamo would execute a fraudulent scheme to pay Solyco $400,000 while simultaneously attempting to subrogating GrowMI's loan.

335. Defendants agreed that Kassab, acting in his capacity as an officer of Lightning, would take on an additional $1 million in debt from Shamo in February 2020 to purportedly fund its operations.

336. Defendants knew that the Shamo Loan was made in violation of Lightning's Business Loan Agreement because Lightning was not allowed to incur additional indebtedness other than what was already approved at the time Lightning entered into the GrowMI Loan Agreement.

337. Defendants knew that inducing Lightning to incur additional debt was in violation of the Business Loan Agreement—but agreed to proceed anyways.

338. Further, Defendants agreed to use the Shamo Loan so that Kassab, acting in his role as Executive Vice President, could pay his own company, Solyco, LLC, nearly $400,000 allegedly as a finder's fee for raising capital—capital that was ultimately fictitious and without any real benefit to Lightning.

339. Defendants knew the Shamo Loan was more expensive than the available credit facilities from Flagstar, GrowMI, and the Lines of Credit, so that Shamo could receive a benefit for participating in the scheme to defraud GrowMI.

340. Defendants agreed that Shamo, Kassab and Solyco would execute the sham loan by making fraudulent representations to Lightning, and the applicable banking institution by means of wire transmission.

341. Shamo did, in fact, make fraudulent representations to Lightning that there was an additional need for the sham loan—when, in fact, the real purpose for the loan was to confer equity to Kassab while simultaneously and fraudulently subrogating GrowMI's security interest in Lightning's collateral.

342. As a result of Defendants' conspiracy to commit the underlying predicate acts, which constitute a pattern of racketeering activity, GrowMI has been harmed.

343. Indeed, GrowMI continues to suffer damages directly as a result of this pattern of racketeering activity. The collateral pledged for the security of GrowMI's loan to Lightning has been compromised, GrowMI has incurred significant costs, and Lightning's ability to repay its substantial debt to GrowMI has been imperiled.

WHEREFORE, Grow MI request that this Honorable Court enter a judgment against Defendants requiring repayment of the $3.25 million loan, which was

unlawfully taken from Plaintiff, plus interest and penalties, attorney fees and costs, and statutory treble damages.

Count 6 – Fraud Against Defendants Shamo, Causley, and Kassab

344. GrowMI restates the preceding paragraphs as though fully stated here.

345. GrowMI negotiated in good faith with Lightning regarding the amount of money required for Lightning to be able to move to full production capacity.

346. As a result of the amount of money required by Lightning to move to full production capacity, GrowMI required that Lightning obtain additional credit and equity.

347. Shamo, Causley, and Kassab knew GrowMI would not fund without the Lines of Credit, and they presented these bogus Lines of Credit with the intent of defrauding GrowMI.

348. Shamo and Causley directly represented to GrowMI that they had pledged $10,000,000 to Lightning via the Lines of Credit that would allow Lightning to move to full production capacity.

349. In fact, Shamo and Causley provided a copy of their Lines of Credit to GrowMI, and Shamo and Causley executed Subordination Agreements with GrowMI confirming their Lines of Credit.

350. Kassab directly represented to GrowMI that Lightning had secured the $10,000,000 Lines of Credit that would allow Lightning to move to full production capacity.

351. GrowMI reasonably relied on these representations from Shamo, Causley, and Kassab.

352. Upon information and belief, at the time Shamo and Causley presented their Lines of Credit to GrowMI, Shamo and Causley had no intention of actually funding them, and Kassab had no intention of causing Lightning to draw upon them.

353. GrowMI had no idea that Shamo and Causley had no intention of actually funding their Lines of Credit.

354. Because Shamo and Causley have not funded the Lines of Credit, Lightning could not order the production equipment so that it could generate the revenue to be able to repay the GrowMI loan to Lightning.

355. As a result of Shamo's, Causley's, and Kassab's misrepresentations to GrowMI, GrowMI funded a loan that was never going to be repaid.

356. GrowMI has suffered damages as a result of Shamo 's, Causley's, and Kassab's fraudulent representations.

357. GrowMI seeks judgment as set forth below.

Count 7 – Unjust Enrichment Against LT Lender, Jerry Reinhart, John Reinhart, and Bruce Campbell

358. GrowMI restates the preceding paragraphs as though fully stated here.

359. Upon closing of the Lightning loan, GrowMI directly wired funds to LT Lender to pay what GrowMI was lead to believe 100% of the debt owed by Lightning to LT Lender on a "Promissory Note," which, in reality, would only provide a substantial return to the Defendant investors of Lightning.

360. The payment of funds directly to LT Lender was a direct benefit to LT Lender from GrowMI.

361. Through all times relevant, GrowMI fulfilled its obligations to LT Lender.

362. GrowMI suffered a detriment when LT Lender, Jerry Reinhard, John Reinhart, and Bruce Campbell wrongfully conspired (a) with Kassab to convince Lightning that LT Lender had a beneficial claim to a sizeable equity stake and that LT Lender was entitled to the $1,000,000 "premium payment" and (b) with the other Defendants to induce GrowMI to fund Lightning knowing that Shamo and Causley would never fund the Lines of Credit, and Lightning's ability to repay GrowMI would be compromised.

363. As a result of Defendants' wrongful conduct, LT Lender, Jerry Reinhard, John Reinhart, and Bruce Campbell received the full benefit of their bargain with GrowMI without providing adequate value for the same.

364. The tremendous disparity between the enrichment realized by LT Lender, Jerry Reinhard, John Reinhart, and Bruce Campbell to the detriment of GrowMI constitutes unjust enrichment.

365. GrowMI has suffered damages as a result of Defendants' actions.

366. GrowMI seeks judgment as set forth below.

Count 8 – Conspiracy Against All Defendants

367. GrowMI restates the preceding paragraphs as though fully stated here.

368. Defendants Damian Kassab, LT Lender, Jerry Reinhard, John Reinhart, and Bruce Campbell conspired with Shamo, and Causley to induce GrowMI to fund its loan in order to be able to repay LT Lender for the benefit of all the Defendants.

369. Upon information and belief, Defendants also conspired with Drake to secure the Trade Secrets for their benefit in the event that their proxy battle with Lightning failed.

370. As a result of this concerted action by this combination of Defendants, GrowMI has been defrauded and Defendants were unjustly enriched.

371. As a result of Defendants' civil conspiracy, GrowMI was damaged.

372. As a result of Defendants' civil conspiracy, GrowMI is entitled to exemplary damages.

373. GrowMI seeks judgment as set forth below.

Count 9 – Breach of Contract

374. GrowMI restates the preceding paragraphs as though fully stated here.

375. The Lines of Credit constitute valid contractual relationships between Lightning and Shamo and Lightning and Causley.

376. GrowMI has a valid power of attorney allowing it to exercise Lightning's contractual rights under the Lines of Credit.

377. GrowMI made a demand that Shamo and Causley fund a portion of their obligations under the Lines of Credit.

378. Shamo and Causley refused to fund any portion of their obligations under the Lines of Credit.

379. Shamo's and Causley's refusal to fund their obligations under the Lines of Credit constitutes breaches of contract.

380. GrowMI has been damaged by Shamo's and Causley's refusal to fund their obligations under the Lines of Credit.

381. GrowMI seeks judgment as set forth below.

Prayer for Relief

WHEREFORE, GrowMI respectfully requests that this Court enter Judgment in its favor and against Defendants as follows:

A. Award money damages in favor of GrowMI and against Defendants, jointly or severally, sufficient to compensate GrowMI for all forms of economic loss

including, without limitation, actual damages, lost profits, exemplary damages, interest, attorney fees, and costs;

B. Treble damages as authorized by 18 U.S.C. § 1964;

C. Award such other relief as the Court may deem just, equitable, or appropriate under the circumstances.

RELIANCE ON JURY DEMAND

Plaintiff Grow Michigan, LLC relies upon the jury demand previously filed in this matter.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS PLLC

Dated: July 31, 2020

By: */s/ Kory M. Steen*

Jon R. Steiger (P35505)
H. William Burdett, Jr. (P63185)
Kory M. Steen (P83170)
450 West Fourth Street
Royal Oak, Michigan 48067-2557
Phone: (248) 645-1483 | Fax: (248) 645-1568
Email: JSteiger@HowardandHoward.com
BBurdett@HowardandHoward.com
KSteen@HowardandHoward.com

Attorneys for Plaintiff Grow Michigan, LLC and Patrick O'Keefe

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties in the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on July 31, 2020.

By:
- ☒ E-file
- ☐ Hand Delivered
- ☐ ECF
- ☐ FAX
- ☐ Overnight Courier
- ☐ E-mail

I declare that the statements above are true to the best of my information, knowledge, and belief.

/s/ Kory M. Steen

4846-5909-9843, v. 3

STATE OF MICHIGAN
IN THE SUPREME COURT

JODY POHLMAN,
Plaintiff/Appellant

SC: 161262
COA: 344121
Oakland CC: 2017-853588-DO

v.

JAMES POHLMAN,
Defendant/Appellee.
_____/

EXHIBIT W

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT

GROW MICHIGAN, LLC,

Plaintiff,

v. **Case No. 20-180564-CB**
Hon. James M. Alexander

LIGHTNING TECHNOLOGIES, INC.,

Defendant.

CONSOLIDATED WITH:

GROW MICHIGAN, LLC,

Plaintiff,

v. **Case No. 20-180674-CB**
Hon. James M. Alexander

SOLYCO, LLC,
And DAMIAN KASSAB,

Defendants.

CONSOLIDATED WITH:

GROW MICHIGAN, LLC,

Plaintiff,

v. **Case No. 20-180653-PD**
Hon. James M. Alexander

ROBERT DRAKE,

Defendant.
_____/

OPINION AND ORDER RE: (1) PLAINTIFF'S MOTION TO DISMISS DEFENDANT/COUNTER-PLAINTIFF SOLYCO, LLC'S COUNTERCOMPLAINT AND (2) PLAINTIFF'S MOTION TO DISMISS DEFENDANT/COUNTER-PLAINTIFF DAMIAN KASSAB'S COUNTERCOMPLAINT

This matter is before the Court on Plaintiff's Motion to Dismiss Defendant/Counter-Plaintiff Solyco, LLC's Counter Complaint and Plaintiff's Motion to Dismiss Defendant/Counter-Plaintiff Damian Kassab's Counter Complaint. The Court dispenses with oral argument in accordance with MCR 2.119(E)(3).

By way of background, Plaintiff Grow Michigan, LLC ("GrowMI") is a "sub-debt lender that focuses on community reinvestment by providing growth capital to Michigan-based small and mid-sized businesses." See Paragraph 7 of the Complaint. Defendant Lightning Technologies, Inc. ("Lightning") is a start-up company that developed a lightweight hybrid pallet with anti-microbial and anti-fungal additives for the shipment of cold food products. On August 30, 2019, GrowMI committed up to five million dollars to Lightning through the execution of a Business Loan Agreement so that Lightning could manufacture and commercialize its pallet product. That same day, Lightning executed a Promissory Note in favor of GrowMI as well as a Security Agreement and Intellectual Property Security Agreement. As a result, GrowMI is the senior secured lender to Lightning. On March 30, 2020, GrowMI initiated litigation against Lightning on allegations that Lightning defaulted on the parties' loan agreement.

On April 6, 2020, GrowMI commenced a subsequent lawsuit against Defendants Solyco, LLC ("Solyco") and Damian Kassab ("Kassab"), the owner of Solyco. Solyco specializes in advising and consulting for small and middle market businesses to help them implement sound management principles and internal control systems. See Paragraph 22 of Solyco's Counterclaim. Lightning retained Solyco to provide consulting services as well as additional capital. As part of their agreement, Kassab joined Lightning as an Executive Vice President and he was placed on Lightning's Board of Directors as Vice Chair. Kassab also received shares of Lightning in connection with Solyco's services.

GrowMI is suing Kassab and Solyco on allegations that they wrongfully transferred collateral from Lightning to Solyco while Lightning was insolvent and in contravention to GrowMI's senior rights to the collateral. In particular, GrowMI alleges that Solyco took an unauthorized payment of $398,000.00 from Lightning, however, Kassab and Solyco defend that payment as compensation for their consulting services. GrowMI's Complaint against Kassab and Solyco raise the following claims titled: (Count One) Violation of Section 4 of Michigan's Uniform Voidable Transactions Act; (Count Two) Violation of Section 5 of Michigan Uniform Voidable Transactions Act; (Count Three) Conversion; (Count Four) Intentional Interference with Contractual Relationship; and (Count Five) Breach of Fiduciary Duty Against Kassab.

In response, Solyco filed an Answer and Counterclaim against GrowMI on May 22, 2020 on allegations that Solyco uncovered financial improprieties committed by Lightning's CEO, Jeffrey Owen, wherein he utilized Lightning's bank account for his personal use. It is Solyco's contention that Jeffrey Owen enlisted GrowMI to launch a campaign against Solyco in an attempt to discredit Solyco by describing it as a "corporate raider" and accusing it of certain misconduct. Solyco's Counterclaim against GrowMI outlines the following grounds: (Count One)[1] Tortious Interference with Contract and Business Expectancy; and, (Count Two) Civil Conspiracy. Relying on similar allegations as Solyco, Kassab filed his Answer and Counterclaim against GrowMI on May 22, 2020 on one count entitled Abuse of Process.

The parties acknowledge the existence of a proxy contest between Jeffrey Owen as CEO of Lightning and Damian Kassab, in addition to other officers of Lightning, in Delaware state court concerning control of Lightning. In addition, a RICO complaint was filed by GrowMI in the United States District Court for the Eastern District of Michigan against Damian Kassab, Solyco, other shareholders of Lightning, etc.

[1] Count One is mislabeled as Count Two.

On July 1, 2020, GrowMI filed its two Motions to Dismiss in which it seeks the dismissal of Solyco and Kassab's respective Counterclaims pursuant to MCR 2.116(C)(8). A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). When analyzing such a motion, all well-pled factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade v Dept of Corrections*, 439 Mich 158, 162-163; 483 NW2d 26 (1992). A (C)(8) motion may be granted only where the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id.* And, when deciding such a motion, the Court considers only the pleadings. MCR 2.116(G)(5). "A party may not support a motion under subrule (C)(8) with documentary evidence such as affidavits, depositions, or admissions." *Dalley v Dykema Gossett*, 287 Mich App 296, 305; 788 NW2d 679 (2010). (Citations omitted).

Plaintiff's Motion to Dismiss Defendant/Counter-Plaintiff Solyco, LLC's Counter Complaint

Tortious Interference with Contract and Business Expectancy

With respect to Count One of Solyco's Counterclaim, namely "Tortious Interference with Contract and Business Expectancy," GrowMI argues the Solyco has failed to state a claim upon which relief can be granted. GrowMI argues that Solyco's allegations of wrongdoing are primarily directed at nonparties, Jeffrey Owen and Bhrat Bhise. The only allegations of wrongdoing that are alleged against GrowMI are as follows: (1) GrowMI is not pursuing any of Lightning's other vendors or Owen, individually; and, (2) GrowMI is demanding that Solyco repay hundreds of thousands of dollars, which Solyco claims is compensation for services rendered.

"The elements of tortious interference with a contract are (1) the existence of a contract, (2) a breach of the contract, and (3) an unjustified instigation of the breach by the defendant. By definition, tortious interference with a contract is an intentional tort. Indeed, it is well-settled that

one who alleges tortious interference with a contractual...relationship must allege the intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in law for the purpose of invading the contractual rights or business relationship of another…A wrongful act per se is an act that is inherently wrongful or an act that can never be justified under any circumstances. If the defendant's conduct was not wrongful per se, the plaintiff must demonstrate specific, affirmative acts that corroborate the unlawful purpose of the interference." *Knight Enterprises v RPF Oil Co.*, 299 Mich App 275, 280; 829 NW2d 345 (2013). (Citations omitted).

"The elements of tortious interference with a business relationship are the existence of a valid business relationship or expectancy, knowledge of the relationship or expectancy on the part of the defendant, an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and resultant damage to the plaintiff. To establish that a lawful act was done with malice and without justification, the plaintiff must demonstrate, with specificity, affirmative acts by the defendant that corroborate the improper motive of the interference. Where the defendant's actions were motivated by legitimate business reasons, its actions would not constitute improper motive or interference." *BPS Clinical Labs. v Blue Cross & Blue Shield of Michigan*, 217 Mich App 687, 698–99; 552 NW2d 919 (1996). (Citations omitted).

"One who alleges tortuous interference with a contractual or business relationship must allege the intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in law for the purpose of invading the contractual rights or business relationship of another." *Feldman v Green,* 138 Mich App 360, 378; 360 NW2d 881 (1984). Michigan Courts have long held that "defendants motivated by legitimate personal and business reasons are shielded from liability against this cause of action [tortious interference with a contractual or business relationship]." *Formall, Inc v Community Nat'l Bank*, 166 Mich App 772, 780; 421

NW2d 289 (1988). (Citations omitted).

With respect to the alleged tortious interference with a contract, GrowMI contends that Solyco has failed to produce or reference any such contract in its Counterclaim. Rather, Solyco makes an assertion that it has multiple contracts with Lightning for the payment of consulting services as well as for the repayment of loans. When a claim is based upon a written instrument, a copy of that instrument or its pertinent parts must be attached as an exhibit to the pleading. See MCR 2.113(C)(1). Thus, GrowMI maintains that Solyco's tortious interference with a contract claim fails since it has not proven the existence of an actual contract.

GrowMI next argues that Solyco has failed to allege that GrowMI instigated or induced Lightning to breach the alleged contracts between Lightning and Solyco. Moreover, the allegations in the Counterclaim indicate that Lightning was already in default of its obligations to Solyco before GrowMI pursued the collection of Lightning's debt under the loan agreements. As such, GrowMI maintains that it was not the cause of any interference in relation to Solyco's agreements with Lightning. Additionally, GrowMI asserts that Solyco has not made any factual allegations that GrowMI acted intentionally and maliciously or that it committed a per se wrongful act. Rather, GrowMI is simply attempting to collect on the debt pursuant to its loan agreements.

In opposition, Solyco represents that it has contracts for payment of professional fees as well as written promissory notes for the repayment of loans that it gave to Lightning. Solyco attaches interrogatory responses to its Response to support its representation, however, the Court can only consider the pleadings for purposes of a (C)(8) motion. Solyco states further that even if there were no written contracts, its claim is adequately pled based upon Solyco's business expectancies.

With respect to the claim of tortious interference with a business expectancy or relationship, GrowMI contends that Solyco must demonstrate that GrowMI acted both

intentionally and either improperly or without justification to induce a breach or termination of the relationship or expectancy. According to GrowMI, Solyco does not allege that GrowMI acted wrongfully per se or maliciously or unjustifiably under the law. Rather, Solyco's allegations demonstrate that GrowMI's actions were motivated by legitimate business reasons. What is more, Solyco's allegations focus more so on Jeffrey Owen and Bhrat Bhise, neither of whom are parties to this lawsuit or are alleged to have any control of GrowMI. In addition, GrowMI maintains that Solyco's damages were incurred in 2019 and 2020, which was prior to GrowMI's attempts to collect against Lightning. Therefore, Solyco cannot demonstrate that its relationship with Lightning was affected by any conduct of GrowMI.

Conversely, Solyco argues that GrowMI knew of its relationship with Lightning and has filed these lawsuits to publicly discredit Solyco and interfere with its relationship with Lightning. According to Solyco, GrowMI has acted maliciously and without legal justification in its attempt to sever Solyco's relationship with Lightning so that Jeffrey Owen can win a proxy contest for control of Lightning. Solyco also contends that GrowMI is using the existence of its RICO lawsuit in the Eastern District of Michigan in an attempt to damage Solyco's reputation. Solyco maintains that GrowMI is portraying Solyco as a corporate raider while it is covering up Jeffrey Owen's misdeeds with company money.

Solyco argues further that GrowMI could have provided a payoff letter for the satisfaction of Lightning's obligation, however, it chose not to. Additionally, GrowMI's refusal to collect from Jeffrey Owen under the personal guarantee is another example of its attempts to protect Owen and ensure that he remains CEO of Lightning. As a result of GrowMI's conduct, Solyco contends that it has been damaged.

In its Reply, GrowMI reiterates its argument that Solyco has failed to plead a valid business relationship or expectancy between Solyco and Lightning. Additionally, Lightning had already

breached its obligations with Solyco before GrowMI filed any action to pursue its legitimate business interests. GrowMI argues further that Solyco has failed to plead any malice on its part as GrowMI attempts to recoup monies from Lightning pursuant to the loan agreements.

In its Counterclaim, Solyco alleges that "[a]t the express request of Lightning CEO Jeffrey Owen, Solyco loaned Lightning hundreds of thousands of dollars pursuant to a series of promissory notes and other agreements, all of which are currently overdue." See Paragraph 2 of Solyco's Counterclaim. Under MCR 2.113(C)(1), however, a written instrument, upon which a claim or defense is based, must be attached to the pleading (with certain exceptions). Clearly, Solyco has not attached any promissory note or loan agreement to its Counterclaim. In fact, Solyco even implies in its Response that if there were no written contracts, it would still have a claim due to its business relationship or expectancy with Lightning. On account of its equivocal pleadings and noncompliance with MCR 2.113(C)(1), Solyco has not satisfied the elements of tortious interference with a contract due to its failure to demonstrate the existence of a contract.

In relation to Solyco's tortious interference with a business expectancy claim, it is not disputed that GrowMI had knowledge of the relationship between Solyco and Lightning. The issue appears to be whether there was an intentional interference by GrowMI inducing or causing a breach or termination of the relationship between Solyco and Lighting.

In Paragraph 24 of the Counterclaim, Solyco alleges that "[b]etween 2018 and 2019, Solyco provided thousands of hours of consulting services to Lightning for which it was not regularly paid." Solyco alleges further that "[t]hroughout the same period, Owen regularly pleaded with Solyco to inject capital into Lightning ostensibly to allow Lightning to grow its operations. Solyco ultimately facilitated more than $1 million in additional short term loans to Lightning." See Paragraphs 30-31 of the Counterclaim. Thereafter, Solyco alleges in Paragraph 49 of its Counterclaim that Grow called Lightning's loan and demanded immediate repayment on

March 17, 2020. Based upon the allegations, the Court agrees with GrowMI's argument that Lightning's breach of its obligations to Solyco occurred prior to March 17, 2020 when GrowMI demanded immediate repayment of Lightning's loan. Thus, Solyco's allegations do not support the claim that GrowMI intentionally interfered by inducing or causing a breach of the relationship between Solyco and Lighting. That breach had already occurred prior to GrowMI's demand for repayment of the Lightning loan obligations.

The Court notes further that many of the allegations in Solyco's Counterclaim are aimed directly at nonparty individuals Jeffrey Owen, Patrick O'Keefe, and Bhrat Bhise.[2] The following allegations, however, are related to the purported actions of GrowMI:

> 49. On March 17, 2020, Grow called Lightning's loan and demanded immediate repayment on the ostensible grounds of Lightning's insolvency.
>
> 51. To be clear, Solyco has no problem with Grow legitimately attempting to secure repayment of its loan to Lightning. The issue is that Grow's other actions after calling the Lightning note suggest that it is not genuinely seeking repayment, but rather seeks to aid Owen and interfere with Solyco's investments.
>
> 54. Grow has attempted to use its position as Lightning's senior lender (a position which is outside the scope of Grow's role as a subordinated lender charged with supporting small and medium businesses under grants from the State of Michigan) to disable Lightning from taking any action, including to pay Solyco the amounts it owed for both its consulting services and on the Lightning debt it holds.
>
> 56. As further evidence of Grow's true purpose in calling the Lighting loan and attempting to freeze Lightning's ability to pay other creditors, during the proxy contest Grow spent weeks refusing even to provide a standard payoff letter to Lightning that would allow Lightning to pay off Grow's loan. It only provided that letter recently, after the shareholder vote was concluded.
>
> 60. The fact that Grow is taking these actions with the specific purpose of impairing Solyco's investment in Lightning could not be clearer from the face of its Complaint. Grow demands that Solyco repay hundreds of thousands of dollars that Solyco earned for services it provided to Lightning and it wants to prevent Solyco from recouping the additional hundreds of thousands of dollars that it has loaned to Lightning. The damage Grow seeks to inflict on Solyco is explicit.

[2] See Paragraphs 45-48 and 52 of Solyco's Counterclaim.

70. Grow's actions against Solyco, in concert with Owen and Bhise, are designed to impair Solyco's investments in Lightning and force Solyco to walk away from Lightning at a loss so that Owen and those close to him can continue using the Company for their illicit and improper purposes.

78. Among other things, Grow has:

a. Demanded that Solyco repay amounts that it legitimately earned
b. Interfered with Lightning's ability to repay other amounts owed to Solyco that are past due
c. Prevented Lightning, Solyco, or a third party from paying off the Grow loan

80. To be clear, Solyco's claims are not based on an effort by Grow to collect on a legitimate debt. Solyco's claims are based on Grow's separate acts which demonstrate that Grow is not genuinely seeking repayment of a debt, but is maliciously and without legal justification attempting to interfere with Solyco's relationship with Lightning. These acts include:

a. Executing an "observer rights" agreement in secret with Owen
b. Refusing on multiple occasions to provide a payoff letter to facilitate payment of the loan Grow claimed was in default
c. Refusing on multiple occasions to permit a third party to buy out the Grow-Lightning loan
d. Failing to enforce the personal guarantee Owen executed in favor of Grow.

The Court is cognizant of Solyco's allegations that GrowMI has interfered maliciously with Solyco's relationship with Lightning on account of its execution of an "observer rights" agreement, refusal to provide a payoff letter to facilitate payment, refusal to permit a third party to buy out the loan, and failure to enforce Owen's personal guarantee. See Paragraph 80 of the Counterclaim. While Solyco objects to GrowMI's actions, these actions do not corroborate an improper motive or demonstrate that GrowMI acted with malice and without justification. In fact, the observer rights agreement was executed between GrowMI and Lightning on March 17, 2020 prior to the initiation of this lawsuit. See Exhibit I of the Complaint. Section 5.1(c)(iv) of the Security Agreement between GrowMI and Lightning also provides GrowMI, as lender, the right "to commence and prosecute any suit, action or proceeding at law or in equity in any court of competent jurisdiction to collect the Collateral or any part thereof and to enforce any other right in respect of any Collateral." The Security Agreement entitles GrowMI to pursue the Collateral

through litigation as well as provides GrowMI with the discretion to "settle, compromise, or adjust any suit, action or proceeding as described above." See Section 5.1(c)(vi) of the Agreement. Pursuant to the Agreement, GrowMI utilized its discretion to demand payment from Lightning for legitimate business reasons. Based on the foregoing, Solyco has not demonstrated that GrowMI engaged in tortious interference with its business relationship or expectancy for the purpose of invading Solyco's business relationship with Lightning.

In consideration of Solyco's allegations concerning its Tortious Interference with Contract and Business Expectancy claim, the Court finds that Solyco has not alleged sufficient facts to survive summary disposition of Count One of its Counterclaim.

Civil Conspiracy

With respect to Count Two of Solyco's Counterclaim, namely "Civil Conspiracy," GrowMI argues that Solyco has failed to establish the underlying tort of tortious interference with a contract or business expectancy and so this claim must fail as well.

"A civil conspiracy is a combination of two or more persons, by some concerted action, to accomplish a criminal or unlawful purpose, or to accomplish a lawful purpose by criminal or unlawful means." *Admiral Ins. Co. v Columbia Cas. Ins. Co.*, 194 Mich App 300, 313; 486 NW2d 351 (1992). Michigan law is well settled that "a claim for civil conspiracy may not exist in the air; rather, it is necessary to prove a separate, actionable tort." *Advocacy Org for Patients & Providers v Auto Club Ins Ass'n*, 257 Mich App 365, 384; 670 NW2d 569 (2003); quoting *Early Detection Center, PC v New York Life Ins Co*, 157 Mich App 618, 632; 403 NW2d 830 (1986).

The Court agrees with GrowMI's argument that since Solyco cannot identify a valid underlying tort, namely its tortious interference with contract and business expectancy claim, its civil conspiracy claim must fail as a matter of law. Accordingly, and for the reasons stated herein,

GrowMI's Motion to Dismiss Defendant/Counter-Plaintiff Solyco, LLC's Counter Complaint Pursuant to MCR 2.116(C)(8) is GRANTED.

Pursuant to MCR 2.116(I)(5), "[i]f the grounds asserted are based on subrule (C)(8), (9), or (10), the court shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence then before the court shows that amendment would not be justified." In accordance with MCR 2.116(I)(5), the Court shall provide Solyco the opportunity to amend its Counterclaim within two weeks of this Opinion and Order.

Plaintiff's Motion to Dismiss Defendant/Counter-Plaintiff Damian Kassab's Counter Complaint

In his Counterclaim, Damian Kassab ("Kassab") recites similar allegations as Solyco against GrowMI in relation to its purported campaign to assist Jeffrey Owen in his efforts to retain control of Lightning. It is Kassab's position that GrowMI is obstructing Lightning from paying off the loan. As such, GrowMI can utilize its creditor status to ensure Owen's control of the company. If Lightning satisfied the GrowMI loan, Kassab argues that GrowMI would no longer have a cause of action against him. Consequently, Kassab has raised one count of Abuse of Process against GrowMI in his Counterclaim.

"To recover upon a theory of abuse of process, a plaintiff must plead and prove (1) an ulterior purpose and (2) an act in the use of process which is improper in the regular prosecution of the proceeding." *Friedman v Dozorc*, 412 Mich 1, 30–31; 312 NW2d 585 (1981). "[U]lterior purpose alleged must be more than harassment, defamation, exposure to excessive litigation costs, or even coercion to discontinue business." *Early Detection Ctr., P.C., v New York Life Ins. Co.*, 157 Mich App 618, 629–30; 403 NW2d 830 (1986). Regarding the improper use of process, "there must be some allegations besides the mere issuance of a summons and complaint because the action for abuse of process lies for the improper use of process after it has been issued, not for maliciously causing it to issue. Further, the pleadings must allege a use of process for a purpose

outside of the intended purpose and must allege with specificity an act which itself corroborates the ulterior motive." *Friedman, supra*.

In its motion, GrowMI characterizes Kassab as a Lightning insider who authorized certain transfers of cash collateral from Lightning to Solyco without approval, while Lightning was insolvent, and in contravention to GrowMI's status as the senior secured lender. GrowMI argues further that Kassab's claim of Abuse of Process fails because the initiation of a lawsuit is not itself actionable as an abuse of process, nor has Kassab alleged any actionable ulterior motive in filing this lawsuit.

GrowMI highlights the *Friedman* Court's denial of the plaintiff's abuse of process claim for failing to satisfy the second element above, reasoning that "a summons and complaint are properly employed when used to institute a civil action." *Friedman, supra* at 31. In comparison, Kassab is arguing that GrowMI has committed abuse of process by filing the instant lawsuit as well as the related lawsuits. According to GrowMI, this argument does not satisfy the second element regarding the improper use of process.

GrowMI maintains further that Kassab has failed to establish any ulterior motive by GrowMI in filing the lawsuits. While Kassab alleges that GrowMI filed this lawsuit for the ulterior purpose of assisting Owen in retaining control of Lightning, Kassab does not point to any improper use of any judicial process within this lawsuit as a corroborating act. Moreover, GrowMI asserts that Section 5.1(c)(iv) of the Security Agreement with Lightning grants it the authority "to commence and prosecute any suit, action or proceeding at law or in equity in any court of competent jurisdiction to collect the Collateral or any part thereof and to enforce any other right in respect of any Collateral." As such, GrowMI was authorized to file this lawsuit as well as the related lawsuits as its right under the Security Agreement.

In opposition, Kassab contends that GrowMI's lawsuits were not filed with the purpose of collecting under the loan agreements, but rather to unlawfully assist Jeffrey Owen in retaining control of Lightning. Kassab specifically identifies GrowMI's purported abuse of process as: (1) cloaking Bharat Bhise, a director of Lightning in the Owen camp, with authority to represent to Kassab and others that the GrowMI litigation would disappear if the attempts to remove Owen were ceased; and, (2) refusing to provide a payout figure for the loan allowing it to be satisfied.

Kassab defers to the following allegations in his Counterclaim:

> 1. Kassab asserts counterclaims against GrowMI arising out of GrowMI's abuse of process in filing repetitive lawsuits against Lightning Technologies, Inc. ("Lightning" or the "Company"), Solyco, LLC ("Solyco"), Kassab and Robert Drake, with the ulterior motive of aiding and abetting Jeffrey Owen and others in fraudulently retaining control of Lightning and concealing Owen's ongoing mismanagement of the Company and his repeated breaches of fiduciary duties to the Company and its shareholders.
>
> 2. The purpose of the foregoing misconduct was to prevent the replacement of Owen as Chairman of the Board of directors and CEO of Lightning in order to conceal Owen's repeated self-dealing and violations of his fiduciary duties to Lightning. It should be noted that Owen was never actually an employee of Lightning, but rather an employee of a 1099 Contractor known as Palm International, LLC ("Palm") that provided services to Lightning. Both Owen and his personal assistant, Rosie Borowski, upon information and belief, are employees of Palm.
>
> 22. Indeed, until recently, GrowMI refused even to provide a payoff letter to Lightning that would let Lightning know the amount required to satisfy the debt to GrowMI. GrowMI has also engaged in a series of actions demonstrating that it is not guided by a desire to collect a debt owed by Lightning but rather to unjustifiably harm Kassab and elevate Owen.
>
> 23. On information and belief, GrowMI's strategy during the proxy contest, in concert with Bhise and Owen, was to paralyze the Lightning board from acting while attempting to create a scapegoat to take the blame for Owen's misconduct.
>
> 24. In fact, Bhise, one of the co-conspirators, and in collusion with Owen, O'Keefe, and GrowMI, has represented in writing that GrowMI will drop its effort to foreclose on the Lightning loan if the shareholders desist from their justified efforts to remove Owen from his leadership of the Company.
>
> 77. For his part, Bhise is involved and working in concert with GrowMI and Owen to secure Owen's position. In furtherance of GrowMI's plan and the resulting

> abuse of process, Bhise announced in an email that Grow's suit and improper efforts to secure repayment would go away so long as Owen remained CEO of Lightning. Bhise's email announcement confirms that the GrowMI litigation in Oakland County is a sham.
>
> 92. After this suit was initiated by GrowMI, Owen penned a letter to shareholders specifically using this suit as a basis to urge shareholders to continue supporting him. Indeed, he specifically offered to supply shareholders with "a list of the various court documents." The letter went on to claim that GrowMI "has expressly stated that they will foreclose on the Company if Jeffrey is no longer the CEO and Chairman."

According to Kassab, these allegations all illustrate ulterior motives by GrowMI. What is more, Kassab characterizes these allegations as illegitimate aims of this litigation wherein GrowMI acted outside of the scope of the regular prosecution of the proceeding to protect Jeffrey Owen as Chairman and CEO of Lightning. Kassab argues further that factual developments in the RICO case, which was filed nine days after Kassab filed his Answer and Counterclaim, indicate that Lightning's loan is current and so GrowMI should have dismissed its state court actions. In support of these assertions, Kassab submits exhibits that cannot be considered by the Court for purposes of a (C)(8) motion.

In support of his position, Kassab relies on the case of *Three Lakes Association v Whiting,* 75 Mich App 564, 255 NW2d 686 (1977), "in which a claim survived a motion for judgment on the pleadings where plaintiff alleged that defendants initiated an action for damages against him with the purpose of causing so much trouble and expense in defending that action that plaintiff would be forced to give up his opposition to the defendant's building project. The court of appeals concluded that it could reasonably be inferred from the plaintiff's well-pleaded complaint that defendants had used process as a 'threat or a club' to achieve their collateral and improper purpose." *Sage Int'l, Ltd. v Cadillac Gage Co.*, 556 F Supp 381, 388–89 (E. Mich 1982). In the *Three Lakes* case, Defendants were also alleged to have abused the discovery process by

burdening the plaintiff with requests, increasing costs, and delaying compliance with the plaintiff's discovery requests.

In reply, GrowMI contends that it initiated litigation against Lightning to recover the amounts to which it is entitled under the loan agreements. GrowMI asserts that it initiated litigation against Kassab and Solyco to recover the monies Lightning paid to Solyco while Lightning was insolvent. Notwithstanding, Kassab attempts to argue that GrowMI is liable for abuse of process since Kassab does not agree with the steps GrowMI has taken to preserve the collateral securing its loan. As argued previously, GrowMI states that it has the right to commence legal proceedings to collect the collateral under the Security Agreement. Furthermore, GrowMI maintains that it had the right to file its RICO claim and other related litigation following Lightning's default on the loan.

Contrary to Kassab's assertions in his response, GrowMI denies that Patrick O'Keefe and Jeffrey Owen are close personal friends. GrowMI also states that sending a notice of default to Owen as opposed to the entire board of directors was proper under the operative loan documents. It is GrowMI's position that it is pursuing legitimate business interests in prosecuting Kassab and the other defendants and as such, there is no abuse of process.

As noted previously, "[t]o recover upon a theory of abuse of process, a plaintiff must plead and prove (1) an ulterior purpose and (2) an act in the use of process which is improper in the regular prosecution of the proceeding." *Friedman, supra* at 30–31. "A meritorious claim of abuse of process contemplates a situation where the defendant has availed himself of a proper legal procedure for a purpose collateral to the intended use of that procedure…Furthermore, the improper ulterior purpose must be demonstrated by a corroborating act; the mere harboring of bad motives on the part of the actor without any manifestation of those motives will not suffice to establish an abuse of process." *Vallance v Brewbaker*, 161 Mich App 642, 646; 411 NW2d 808

(1987). "It is not enough that the actor have an ulterior motive in using the process of the court. It must further appear that he did something in the use of the process outside of the purpose for which it was intended…If he uses the process of the court for its proper purpose, though there is malice in his heart, there is no abuse of the process." *Young v Motor City Apartments Ltd. Dividend Hous. Ass'n No. 1 & No. 2*, 133 Mich App 671, 682; 350 NW2d 790 (1984). (Citations omitted).

The Court is cognizant of Kassab's allegations that GrowMI, as the senior lender, has an ulterior purpose aside from collecting the debt or preserving the collateral as a result of Lightning's default on the subject loans. That is, GrowMI is purportedly utilizing this litigation as a means to protect Jeffrey Owen and maintain his control over Lightning. In his Counterclaim, Kassab makes specific allegations against GrowMI in support of his claim that GrowMI has an ulterior purpose in this lawsuit.

With respect to Kassab's allegations concerning GrowMI's refusal to provide a payoff letter, the Court agrees with GrowMI that Section 5.1(c)(iv) of the Security Agreement grants GrowMI the discretion "to commence and prosecute any suit, action or proceeding at law or in equity in any court of competent jurisdiction to collect the Collateral or any part thereof and to enforce any other right in respect of any Collateral." Additionally, Section 5.1(c) provides GrowMI with the discretion to deal with the collateral as though it were the absolute owner, which would include decisions related to the collection of Lightning's collateral.

Kassab does raise serious allegations that a representation was made by Bhrat Bhise, a Lightning board member, and Jeffrey Owen to the shareholders that GrowMI would not foreclose on the Lightning loan if they ceased their efforts to remove Owen as CEO of Lightning. Kassab also alleges that Bhrat Bhise announced via email that GrowMI's lawsuit would go away if Owen remained CEO of Lightning. In addition, Kassab alleges that Owen penned a letter to Lightning's

shareholders, claiming that GrowMI "has expressly stated that they will foreclose on the Company if Jeffrey is no longer the CEO and Chairman." See Paragraphs 24, 77, and 92 of Kassab's Counterclaim.

Clearly, Kassab likens this case to the *Three Lakes Association* case in which the defendants abused the court process to burden the plaintiff and create such expense that the plaintiff would be forced to give up his opposition to the defendants' building project. Yet, Kassab's allegations are directed at nonparty individuals who are not alleged to have legal authority or control over GrowMI. Additionally, these alleged acts were not a part of this judicial process, but rather occurred outside of the arena of this court case.

Here, Kassab has not demonstrated that GrowMI engaged in certain acts to corroborate an ulterior purpose for the protection of Jeffrey Owen and his leadership role in Lightning. "A claim asserting nothing more than an improper motive in properly obtaining process does not successfully plead an abuse of process…Moreover, the ulterior purpose alleged must be more than harassment, defamation, exposure to excessive litigation costs, or even coercion to discontinue business." *Dalley v Dykema Gossett*, 287 Mich App 296, 322–23; 788 NW2d 679 (2010).

Regarding the second element of an abuse of process claim, the Court defers to the *Friedman* Court's reasoning that an action for abuse of process "lies for the improper use of process after it has been issued." *Friedman, supra*. It is not enough that GrowMI filed a Complaint in this matter. Kassab must demonstrate that GrowMI used the judicial process after the commencement of litigation for an improper purpose. If GrowMI "uses the process of the court for its proper purpose, though there is malice in [its] heart, there is no abuse of the process." *Young, supra.* Upon review of the allegations in the Counterclaim, the Court observes that Kassab has not been able to demonstrate that GrowMI abused the court process during the pendency of this action. While Kassab may or may not be correct in his theories regarding GrowMI's

intentions, the allegations are not sufficient to demonstrate that GrowMI's actions constitute an improper use of process.

In consideration of Kassab's allegations concerning its Abuse of Process claim, the Court finds that Kassab has not alleged sufficient facts to demonstrate both ulterior purpose and the improper use of process to survive summary disposition of Count One of his Counterclaim. Accordingly, and for the reasons stated herein, GrowMI's Motion to Dismiss Defendant/Counter-Plaintiff Damian Kassab's Counter Complaint Pursuant to MCR 2.116(C)(8) is GRANTED.

Pursuant to MCR 2.116(I)(5), "[i]f the grounds asserted are based on subrule (C)(8), (9), or (10), the court shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence then before the court shows that amendment would not be justified." In accordance with MCR 2.116(I)(5), the Court shall provide Damian Kassab the opportunity to amend his Counterclaim within two weeks of this Opinion and Order.

It is further ordered that all future filings in relation to these consolidated matters shall be effectuated in the earlier case, Case Number 2020-180564-CB.

It is further ordered that the case code for Case Number 2020-180653-PD shall be changed from "PD" to "CB."

IT IS SO ORDERED.

September 29, 2020
Date

James M. Alexander
Honorable James M. Alexander
Circuit Court Judge

STATE OF MICHIGAN
IN THE SUPREME COURT

JODY POHLMAN,
Plaintiff/Appellant

SC: 161262
COA: 344121
Oakland CC: 2017-853588-DO

v.

JAMES POHLMAN,
Defendant/Appellee.
_____/

EXHIBIT X

THE MILETIC CENTER
PERFORMANCE & HEALTH FOR THE MIND & BODY

January 30, 2021

To whom it may concern:

I have been the treating, and supervising psychiatrist of Jody Pohlman periodically since 2018, relative to her severe emotional distress arising out of her divorce, and particularly, the trauma occured during the time of the mediation.

My last meeting with her was on 1/25/2021. I must say that there is continuing progression of severe deterioration in her functioning. She notes that she is unable even to complete simple tasks during the day and get simple things done, including some of her activities of daily living.

Although she is still able to take care of her horses, they seem to be her only purpose in life as she cannot take care of her house or her self. There is constant obsessing still about the events that occurred several years ago around her divorce. As is well known, in mediation, her husband, Jim, Jim's attorney had approached the mediator saying "we've got this covered, don't worry". There was a collusion between the mediation attorney and Jim's attorney, as well as her own attorney to "get this done by the end of the day". They tried to force the settlement on her and then tried to force her to stay in the room until she was screaming and trying to escape. The door was blocked.

As a result of this severe and egregious use of verbal and physical force to control and to contain her in the room, she was forced to sign a settlement agreement that she did not participate in, did not agree with, and did not wish to sign.

Of particular note, her husband, Jim, had confessed to her that there was a collusion between three attorneys that were in the room. This included Jim's attorney, her attorney, and the mediator. Jim although apologizing, did not offer to make any restitution whatsoever.

Coincident with this, the mediator never screened for domestic abuse. Jody's father when she was young, had sexually abused her. During the marriage Jim had also physically and sexually abused Jody.

It is brutally apparent that all of the events in the room with the mediator triggered these past memories of sexual and physical abuse and she went into a traumatized stage.

I supervised the evaluation done by Kim Watzman, who was working in my practice at the time, who diagnosed her with severe traumatic reaction and PTSD, and recommended medication and psychotherapy.

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Bloomfield Hills, MI 48303

Current state:

The patient is in acute distress.

1. She has recurrent, involuntary, and intrusive memories of the traumatic event. She is obsessed by this and cannot talk about anything without returning to it.

2. She has distressing dreams that awaken her during the night regarding the event in the lawyers office.

3. She has intense, prolonged psychological distress at exposure to internal or external triggers associated with this event.

4. She has marked physiological reactions to the same cues consisting of rapid heart rate, shortness of breath, G.I. disturbances, and sweating.

5. She dissociates herself from a lot of emotions and makes attempts to avoid distressing memories, thoughts, and feelings associated with that.

6. She tries to avoid distressing memories or feelings associated with this situation. For example, she will drive around the office in which this occurred rather than drive past it.

7. She has persistent and exaggerated negative beliefs about herself, lacks trust in anyone, and feels like her whole nervous system has been permanently ruined.

8. She experiences negative emotional states, especially depression, fear, anger, distress, and panic.

9. She cannot concentrate.

10. She has sleep disturbance.

Despite ongoing psychotherapy, and medication therapy, she is in a worsened state now, rather than an improved one.

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The only way that this woman can possibly recover is to obtain some restitution from the original event, regrets and apologies from the parties involved with their acceptance of their responsibilities in this egregious and abusive activity that she had to endure, and financial restitution for the suffering that she has undergone.

I am happy to continue to see her as her psychiatrist.

Very truly yours,

Michael J. Miletic MD

Michael J Miletic MD
Board-Certified in Psychiatry and Neurology
Board-Certified in Functional an Integrative medicine.

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36800 Woodward Ave Suite 112
Bloomfield Hills, MI 48303