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August 17, 2015

BY EMAIL

Mr. Trey Bergman
3605 Katy Freeway, Suite 221
Houston, Texas 77007

Re: Cause No. 2015-27321; in the Matter of the Marriage of Wendy Marie Meigs and Jody Neal Meigs; in the 257th Judicial District Court of Harris County, Texas

Dear Trey:

On behalf of Wendy Meigs, we provide the following statement summarizing the claims, facts and issues:

WENDY MEIGS CONFIDENTIAL MEDIATION STATEMENT

1. INTRODUCTION

This case involves an attempt at shareholder oppression by Mike Johnston ("Johnston") against Wendy Meigs ("Wendy"). Although the lawsuit is part of a pending divorce action between Wendy and her husband, Jody Meigs ("Jody"), the claims at issue in this mediation are corporate in nature. The claims are described generally in the amended petition, a copy of which is attached hereto as **Exhibit 1**, on pages 9-15. In this mediation, Wendy is not seeking to mediate or resolve any divorce issues, such as community property issues, between and among Jody, but desires to focus on the business dispute with Johnston and Asyntria.

While this lawsuit could theoretically resolve the shareholder oppression issues and return the parties back to their pre-oppression *status quo*, Wendy (and presumably Johnston) realizes that remaining in business together is most likely not going to be a viable alternative, as the parties will likely end up with more disputes or even require the appointment of a receiver for the corporation. Therefore, there appear to be three alternatives: (1) Wendy buys out Johnston; (2) Johnston buys out Wendy; or (3) the parties split up the business. There may be some variations on these three alternatives, such as an agreement whereby the parties remain in the business for the time being subject to a "push pull" buy/sell agreement entitling a shareholder, at any time, to state a price and requiring the other shareholder(s) to either buy or sell at that price.

2. BRIEF SUMMARY OF BACKGROUND FACTS

In a nutshell, Wendy (25%), Jody (25%) and Johnston (50%) owned all of the shares of Asyntria, of which 1 million were issued and outstanding. Although Asyntria was a successful pharmacy-related business, management disputes arose between the three, and marital problems also arose between Wendy and Jody. For a number of reasons, Johnston sided with Jody. Wendy did not want to be bought out, and there was no mandatory buy-sell. To screw Wendy—both in terms of the community estate in connection with the divorce and with respect to the company itself, Johnston initially purported to buy Jody's 250,000 shares (which was kept secret), increasing his shares to 750,000. Johnston later voted to eliminate preemptive rights and to increase the number of authorized shares, and he then issued himself an additional 200,000 shares and issued an additional 100,000 shares to Jody. The transactions purported to have diluted Wendy, leaving the ownership as follows:

Wendy	250,000	19.23%
Jody	100,000	7.7%
Johnston	950,000	73%
TOTAL:	1,300,000	

In June 2015, Johnston noticed a shareholders meeting and purported to approve, by voting his "supermajority" of shares, a Stock Purchase Agreement in which all of the shares of Asyntria were sold to another company, Straden-Schaden, Inc., which was owned 100% by Johnston, for $0.30 per share—a price set unilaterally by Johnston.

Some of the many, many problems associated with this kooky scheme are as follows:

1. This was not an asset sale, but instead was a stock purchase. The Stock Purchase Agreement (drafted by Johnston's lawyers) was between Asyntria and Straden-Schaden, and Wendy was not a party to it. Asyntria did not own the shares of Asyntria stock. Wendy owned her shares, Jody owned his shares, and Johnston owned his shares. As such, any stock sale would require Wendy, Jody and Johnston to be parties to the Stock Purchase Agreement. There also was no mandatory buy-sell agreement, so Johnston could not force Wendy to sell her shares. There is absolutely no legal authority in the Texas Business Organizations Code, or otherwise, that authorizes a corporation to sell its own shareholders' shares of stock in the corporation.

2. When Jody purported to sell his 250,000 shares to Johnston, giving Johnston his purported "supermajority" of 73%, the arrangement was that Jody could rescind the sale at any time by canceling the promissory note and demanding the shares back. In fact, Jody did realize that Johnston was up to no good and demanded rescission of the transaction well before the June 22, 2015 shareholders meeting. In his recent deposition, Johnston admitted that he did not even own the 950,000 shares as of the date of the June 22 shareholders meeting, and instead admitted that Jody had effectively rescinded the transaction by making demand, such that the stock ownership was as follows:

Wendy	250,000	19.23%
Jody	300,000	23.1%
Johnston	700,000	53.8%
TOTAL:	1,300,000	

Even assuming the transaction in which Johnston purported to issue himself an additional 200,000 shares was valid, Johnston did not have a "supermajority" at the time of the vote, and he could not have approved a transaction requiring a supermajority.

3. The notice of the shareholders meeting purported to comply with Chapter 10 of the Texas Business Organizations Code, which, as its subtitle suggests, applies to "Mergers, Interest Exchanges, Conversions and Sales of Assets." The purported Stock Purchase Agreement did not involve any of these types of transactions. It was a purported forced sale of Wendy's shares of Asyntria for $ 0.30 per share.

4. The Stock Purchase Agreement does contain a recital stating that Asyntria is selling, and Straden-Schaden is purchasing, all of the "assets, liabilities, and shares of capital stock" of Asyntria. There is no recognized corporate transaction in which a corporation sells its assets, liabilities and stock. There is either a stock sale or a sale of assets (with an assumption of specified liabilities), not both. They receive different tax treatment and have fundamental differences in terms of the overall effect. The Stock Purchase Agreement was drafted by a divorce lawyer who did not have a solid understanding of the difference between a stock purchase and an asset sale or their treatment under TBOC.

5. Johnston testified in his recent deposition that it was a stock sale. But, based on the foregoing language, even if it were viewed as a sale of assets, Johnston's attorneys apparently failed to look beyond Chapter 10 of the Business Organizations Code for guidance. There is a separate section entitled "Fundamental Business Transactions," found in Sections 21.451, et seq. of TBOC. Section 21.455 provides that a corporation "must approve the sale of all or substantially all of its assets by complying with this section." TBOC § 21.455(b). Among other things, it requires that the shareholders approve the sale as provided by that subchapter. Section 21.456 includes a requirement that notice of the shareholders meeting to approve a fundamental business transaction be given not later than the 21st day before the shareholder's meeting. *Id.* § 21.456(c). Johnston, apparently on the advice of his lawyers, provided 2 days notice of the meeting, which was sent on a Friday afternoon for a Monday morning meeting. At the time that Johnston had improperly diluted Wendy's shares and eliminated preemptive rights, he had also caused the notice provisions in the Bylaws and Charter to only require 2-days' notice of shareholders meetings, but there is nothing in TBOC that permits the mandatory 21-day notice period to be reduced to anything less than 21 days, even by amendment to the Charter or Bylaws. The reason for that is to protect minority shareholders from this kind of circumstance. As such, the transaction was not properly noticed and will not be upheld.

6. In addition, Section 21.457 requires approval of a fundamental business transaction by a 2/3rds majority vote, unless something less is provided for in the Charter. Although Johnston had purported to amend the Charter to eliminate preemptive rights, he did not amend the Charter to require something less than a 2/3rds vote for a fundamental business

transaction. Because he has now admitted in his deposition that he only had 53% of the shares, and Wendy and Jody both voted against the transaction, Johnston clearly did not have the requisite majority to approve it.

7. In addition to the foregoing, this was a purported sale of stock (or assets) from Asyntria, of which Johnston was a shareholder as well as a director and officer, to Straden-Schaden, which he owned. As such, it was an interested director transaction. In order for such a transaction to be valid, the transaction must have been fully disclosed to and approved by the disinterested directors (which it was not, as reflected by the meeting minutes), or fully disclosed to and approved in good faith by a vote of the shareholders and be fair to the corporation. See TBOC § 21.418. Here, the transaction was not fully disclosed, it was not properly noticed, it was not approved by a requisite majority of the shareholders, it was not approved in good faith, and it was not fair to the corporation. As such, it was not valid, and Johnston himself cannot escape liability for breaching his fiduciary duties owing to the corporation. *See* TBOC 21.418(e).

It should be apparent by now that Johnston basically attempted to run roughshod over the rights of Wendy Meigs (and Jody Meigs). He did so at a time when he was the president and a director of Asyntria, and his actions violated his fiduciary duties to Asyntria.

Johnston testified that he initially met with corporate lawyers (not his currently lawyers) in 2014, for the purposes of getting advice on avoiding shareholder oppression. That meeting apparently occurred within a month after the Texas Supreme Court eliminated the common law cause of action for shareholder oppression in *Ritchie v. Rupe*, 443 S.W.3d 856 (Tex 2014). That opinion was issued in June 2014, and Johnston embarked upon his oppressive conduct in August 2014. What should be stressed, however, is that the *Ritchie* decision did not eliminate any and all claims for shareholder oppression based on conduct that violates the provisions of TBOC, but instead eliminated a common law claim for minority oppression that involves rights and duties developed by courts outside of TBOC (and it also eliminated a forced buyout as a judicially developed remedy for oppression). For these reasons, Johnston may be held accountable for his numerous breaches of fiduciary duty that occurred over the past year and a half.

3. PROCEDURAL STATUS

The Court granted a TRO at Wendy's request and has restored the status quo ante by prohibiting Asyntria or persons in active concert with it from enforcing or implementing the transfer, sale or adjustment of the ownership of Asyntria, and by restoring the status quo ante with respect to any such attempted transfers or sales. Based on Johnston's admission that he did not even have the 2/3rds majority required to effectuate any such transaction, we anticipate that the Court will grant a temporary injunction enforcing such restrictions pending trial on the merits.

4. NATURE AND STATUS OF THE BUSINESS

Because a resolution will involve some kind of business divorce, we provide the following information with regard to Asyntria and Johnston's other company, Straden-Schaden.

Asyntria was originally formed for the purpose of acting as a for-profit trade association to support pharmacy technicians. Johnston's concept was that there would be an interactive Website that would provide information and resources for pharmacy technicians.

At some point, Johnston developed a written curriculum that would be used by schools to train pharmacy technicians. That curriculum (including the copyright for textbooks) was owned by Straden-Schaden. His company would sell the textbooks to students to be used in their pharmacy technician classes for a profit.

Asyntria then began a line of business in which it administered testing for pharmacy technicians. Asyntria has a pharmacy accreditation, giving it the ability to administer testing and provide the pharmacy technicians with an accreditation upon completion of the testing. Asyntria developed its tests from Johnston's curriculum that was sold through Straden-Schaden.

The disputes between Wendy and Johnston developed, in part, because Johnston was causing Asyntria to spend a considerable amount of money (as much as $60,000 per month for Google advertising), which was in large part generating sales of textbooks for Straden-Schaden, rather than benefiting Asyntria.

Asyntria also developed another line of products, which are called Mock Meds. They are, in essence, a line of fake pills, medicines and compounds that look like real pharmaceutical products. They are used to familiarize the pharmacy techs with how the medicines look and to allow them to practice counting, packing, dispensing and compounding in a safe environment. The products were sold nationwide, and Mock Meds became a leading US supplier.

Some of the disputes between Wendy and Johnston also arose because Johnston was focusing on the testing side of the business (to benefit Straden-Schaden) while ignoring the Mock Meds side of the business (which would have only benefited Asyntria.

Unfortunately, after being ousted from Asyntria in late 2013, Wendy did not remain involved with the day to day business and does not have a complete picture of the finances of Asyntria or of the operations or profitability of the various business lines. She was provided with some financial information in a Quickbooks format through March 2015. We also asked for updated financial information, and Asyntria's attorney has indicated it will be produced before mediation but it has not yet been received.

5. JODY MEIGS

We may have an issue with Jody Meigs. He is a party to the divorce action and is a defendant in Wendy's amended petition alleging a conspiracy between Jody and Johnston. However, his divorce counsel recently filed a motion to withdraw, which appears to be based on a default in paying her fees under the engagement letter. Wendy has indicated that Jody has retained new counsel, but that individual has not surfaced. We have asked Wendy to try and confirm whether Jody will be attending, but if he does not attend, we might have some issues in terms of reaching a final resolution. As stated above, it is not our intention to try and mediate the

"divorce issues," but to the extent Jody is an owner of at least some percentage of the shares of Asyntria, he would need to join in any agreed upon sale of the stock.

6. CONCLUSION

Based on the foregoing, we believe that if the case proceeds, the Court will enter a temporary injunction restoring the status quo ante and rescinding the Stock Purchase Agreement, and that Wendy will be entitled to pursue her tort claims, including breach of fiduciary duty, against Johnston and Jody and other named defendants. We are hopeful, however, that the parties will be able to reach an agreed upon resolution that will resolve these issues without further litigation. In connection with any resolution, we would expect that, in addition to any negotiated sales terms or other business resolution, Johnston would pay Wendy's legal fees incurred herein, given that the Stock Purchase Agreement transaction that prompted the filing of the litigation was improperly noticed under TBOC, was not properly approved by the shareholders, was improper in any event as it amounted to a forced sale of Wendy's shares without any buy-sell agreement in effect, and amounted to a breach of Johnston's duties owed to Asyntria and its other shareholders.

We look forward to seeing you tomorrow.

Sincerely,

/S/

Todd Zucker