

**IN THE PROBATE COURT NO. 1
OF HARRIS COUNTY, TEXAS**

**In the Estate of Michael Edward Schied,
*Deceased***

**David Schied,
*Interested Party Plaintiff /
Principal Co-Heir***

Case No. 434875

vs

**Michael Merritt (named “*executor*”) and Wynde Merritt (“*co-executor*” by
Janette Renee Smith proxy)
Robin Apostolakis
David Munson
*Co-Defendants***

**“*COUNTER-COMPLAINT AND/OR ‘CROSS-COMPLAINT’ AND BRIEF
IN SUPPORT OF OPPOSITION TO MICHAEL RAY MERRITT’S
‘APPLICATION TO PROBATE WILL AND FOR LETTERS TESTIMONY’*
and
FORMAL “*JOINDER*” OF JANETTE RENEE SMITH AS CO-DEFENDANT
IN CASE IN WHICH ARGUMENT HAS ALREADY BEEN PRESENTED
BY PLAINTIFF/CO-HEIR DAVID SCHIED
IN FAVOR OF PROBATING THE WILL AS ‘*MINIMENT OF TITLE*’
SO TO PRESERVE ASSETS OF THE ESTATE OF
MICHAEL EDWARD SCHIED”**

Plaintiff’s Reservation of Right to a Trial by Jury is Preserved

David Schied – *Pro Per*
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Jeannette Smith – co-beneficiary
and Robin L. Apostolakis, attorney
Gaunte, Earl, & Binney, LLP
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Michael (*named executor*) and
Wynde Merritt (*executor by proxy*)
and David A. Munson
2002 Timberloch Pl., Ste. 200
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Interested Party Plaintiff and principal co-heir to the Estate of Michael Edward Schied, older brother David Schied, does file this “*counter-complaint*” and/or “*cross-complaint*” against co-heir Jeannette Smith and first-named “*executor*” Michael Merritt for depriving Mr. Schied of his right to information, accounting, and assets owed to him as clearly and unambiguously stated in the *Last Will and Testament* (hereafter referred to as the “Will”) of Mr. Schied’s blood brother relative, Michael Edward Schied; and in support of this counter-complaint and/or cross-complaint states the reasons for this instant action are as follows:

- a) To challenge the qualifications of named “*executor*” Michael Merritt either competent or sincere in the carrying out of fiduciary duties to named “*interested parties;*” and thus, to challenge the application of Mr. Merritt’s to being named “*Independent Executor*” entitled by the Court to receive *Letters Testamentary*.
- b) To seek granting of “*Motion for Show Cause*” against Michael Merritt and principal co-heir Jeannette Smith for the compelling of records and documents reflecting the history and status of all financial accounts, and listing all fiduciary and/or other types of actions taken on behalf of or against the Estate since the death of the decedent Michael E. Schied (a.k.a. “Mickey Schied”).
- c) To seek injunctive, declaratory and other relief as the Court deems necessary to preserve the assets of the Estate, to diminish the costs for “*administration*” of

the assets to the two principal *distributees*, and to preserve the rightful interest of *Interested Party Plaintiff/Principal Heir* David Schied in the property to which he is specifically entitled by the “*Last Will and Testament*” of the decedent Mickey Schied.

- d) To move the court in accordance with information obtained from Judge Lloyd Wright at a first hearing on 12/19/14 in which complainant David Schied first learned that his initial filing of “*Complaint and Brief in Support of Opposition...and Motion for Show Cause Order to Compel Documents...and to Determine the Actual Necessity and Degree of Need for This Court’s Further Involvement in the ‘Probating of the Remaining Terms of Mickey Schied’s Last Will and the Last Aspects of ‘Administration’ of Mickey Schied’s Estate*” was being perceived by the Harris County Probate Court #1 as nothing more effective or significant than the filing of a single page “*objection*” to Michael Merritt’s filing of “*Application*” for the probating of the Will, leading to the altogether ignoring of the accompanying “*Motion for Show Cause Order to Compel Documents...and to Determine the Actual Necessity and Degree of Need for This Court’s Further Involvement in the ‘Probating of the Remaining Terms of Mickey Schied’s Last Will and the Last Aspects of ‘Administration’ of Mickey Schied’s Estate*”.

This “*counter-complaint*” and/or “*cross-complaint*” is being brought in accordance with Rule 97 of Tex. R. Civ. Proc.

“*Joinder*” is being brought now in accordance with Rules 38, 39, and 40 as Jannette Renee Smith and her attorney were initially “*served*” with the initial filing of “*Complaint...and Motion for Show Cause Order...and to Determine the Actual Necessity...of Mickey Schied’s Estate*” and Evidence; and, as the records show, Mrs. Smith was present at the first hearing on this case on 12/19/14, though not as a “*formally*” named party to the case.

Note that this instant filing includes a formalized “*Sworn and Notarized Affidavit of Interested Party Plaintiff/Co-Heir David Schied*” (**EXHIBIT A**) which supports Mr. Schied’s claim that he had already properly provided copies of all of his earlier filings – to include all documents of Evidence – to the representative counsel for both Michael Merritt and to Jannette Renee Smith, as well as provided additional copies of all documents by e-mail to the named parties, being Michael Merritt and Jannette Smith, and their attorneys as a measure of extra courtesy from the time of his earliest filing on 11/3/14 unto the present. Therefore, *Interested Party Plaintiff/Co-Heir David Schied* hereby reclaims and reasserts these statements below – verbatim – with the cited references herein to the initial Exhibits of Evidence already submitted to and received by each of the Co-

Defendants, but without inclusion of those original documents of Evidence with this instant filing.

PARTIES TO THIS ACTION

1. David Eugene Schied is the eldest of three siblings, who lives in the State of Michigan, and is heir and survivor, with right of survivorship and inheritance in accordance to a witnessed and notarized testamentary Will written by his blood brother, Michael Edward Schied.
2. Jeannette (“Jani”) Renee Smith (born as “Jeannette Renee Schied” and hereafter referred to as “Jani”) is the youngest of three siblings, who lives in the State of Arkansas, and is heir and survivor, with right of survivorship and inheritance in accordance to a witnessed and notarized testamentary Will written by his blood brother, Michael Edward Schied.
3. David Schied was born and has always been 18 months senior to the deceased. Jeannette Smith was born and has always been 5 years the junior to the deceased.
4. Michael Merritt, was a good friend of the decedent Michael (“Mickey”) Edward Schied, the third (middle) sibling of the Schied family; and is named by the Will to be the so-called *executor* of Michael Schied’s estate after “Mickey’s” death.

5. Wynde Merritt, is purportedly the wife of Michael Merritt, who has no relation to the Schied family and was not named in the Will of the decedent; who is acting in various ways as unauthorized “*agent*” for the executor, and is therefore acting as “*co-executor*” by proxy.
6. Robin A. Apostolakis is a Texas lawyer by profession who has no known relation to the Schied, Smith, or Merritt family, and who is acting along with her employer at the Gaunte, Earl, and Binny, LLP to “*legally advise*” and to “*represent*” Jeannette Smith in such way as to deem the “*Last Will and Testament*” as “*invalid*” and “*unenforceable,*” in a believed attempt to deprive David Schied of his “*right*” to his inheritance and to provide for her own self-enrichment by charge of legal fees while knowing that the facts do not support these assertions.
7. David A. Munson is a Texas lawyer by profession who has no known relation to the Schied or Smith family, and who is acting solely on the behalf of Michael Merritt – in name – and knowingly or unknowingly, on behalf of Wynde Merritt by proxy and active “*agent*” for Michael Merritt.

EXECUTIVE SUMMARY OF BACKGROUND FACTS

1. Michael Edward Schied (“Mickey Schied”) held residency and full ownership of a home in Houston, Texas located at 7618 Stamen in Houston, Texas 77041, where he lived for around three decades prior to his death.
2. Upon knowledge and belief, Mickey Schied paid cash for his home from his own hard-earned personal savings and/or from his share of a personal inheritance from his grandmother, Mary Fisher, which was equally divided between Mickey, David, Jeannette (“Jani”), and their mother, Sharron (Fisher-Schied) Hay around the years 1989-’90.
3. Michael Edward Schied died of cancer at the age of 56 on August 7, 2014.
4. **Since long prior to his death and reaffirmed by both David Schied and Jani Smith as well as his mother Sharron Hay just after his death – upon information and joint belief, the sole heirs to Mickey Schied’s estate, as well as all other parties named in the Will – desired NOT to bring this Estate matter to a “*probate*” court for administration.** (Bold emphasis added)
5. At the time of his death, Mickey Schied was known to have health insurance to cover his medical costs leading up to his death due to cancer.
6. At the time of his death, there was no known life insurance or homeowner’s insurance policy or annuity policy known to be in effect for Mickey Schied.

7. On January 10, 2014 in anticipating his impending death to cancer, Mickey Schied constructed a 5-page “Last Will and Testament,” (hereafter referred to as the “Will”) which was constructed in his own words, witnessed of his signature by two people, and formally notarized by a third person. (See “**EXHIBIT #1**)
8. The “*Will*” named Mickey’s friend MICHAEL RAY MERRITT as the “*executor*” of his estate, stating (on p.1 of the Will) that “***If Michael should fail or cease to serve as executor for any reason, I then appoint my friend, CLAY DRUMMOND, as independent executor of this will and of my estate.***” (bold emphasis)
9. Upon information and belief and direct statements to David Schied by Jani Smith, copies of the Will were provided by Mickey Schied for safekeeping to Michael Merritt, Jeannette Schied, and perhaps also to Clay Drummond, along with his strict instructions for them not to open and read the Will until after his death.
10. Evidence – as found in the home after he died – shows that Michael (“Mickey”) Schied could have been classified as mostly a recluse and a “*hoarder*,” allowing the interior of his home to become full of paper and other clutter, some being valuable items of former inheritance from his father (Dale Edward Schied) and grandparents (Maude and Sherman Barsness, and Richard and Mary Fisher), some being hobby items (i.e., related to his two-car “*Prowler*” collection and

club membership), and some being simply trash (such as old banking statements, newspapers, and trade magazines), childhood memorabilia, and bulk purchases of hygiene and other unopened store products.¹

11. Known items of value maintained inside of the Mickey Schied home included some guns and ammo, numerous coin and other gold and silver money collections (inherited from his father), a stamp collection, multiple stereo systems and speakers, and documentation pertaining to financial brokerage and bank checking accounts with an end balance of around \$72,000 and \$26,000 at the time of Mickey's death, among many other items of lesser value.

12. The Will, among numerous other things, provided for the division of certain named assets to most significantly include the equal division of proceeds from the stipulated minimum sale price for the sale of Mickey's home in northwest

¹ As children, the proclivity for Mickey Schied toward "*collecting*" and "*hoarding*" to unsanitary levels brought David at one point to demand having his own bedroom whereas he was allowed to turn the family living room into his bedroom where it remained that way until David left high school. More than a decade later and after David had married and began starting a family, Mickey offered to allow David's family to sleep in one of the bedrooms of his home and upon seeing such filth and broken plumbing that hindered even the flushing of toilets (i.e., see also photos from inside of Mickey's home taken taken by Jani Smith after Mickey's death as "Exhibit #4"), David declined Mickey's offer for overnight "*accommodations*" and took his wife and infant child elsewhere during his family's stay in Houston. As reflected in the next to last paragraph of page 4 of the Will ("Exhibit #1"), for the remaining years of his life, Mickey was resentful toward his older sibling for that event, never again inviting him into the house to evaluate or providing any future chance of hearing David comment again about his unsanitary living habits; and forever after agreeing only to meet David at locations away from his home each time David went to visit friends and his brother Mickey in Houston.

Houston, the ending value of Mickey's checking account (\$26,000), and the ending value of Mickey's brokerage (money market and stock) accounts (\$72,000 minus the estimated \$12,000 liquid cash value from the sale of one stock account which Mickey's Will stipulated was to be immediately sold and devised three-ways between his two nephews and niece and leaving \$60,000 to be divided between David Schied and Jani Smith) ².

13. In accordance with the Will and in the aftermath of Mickey Schied's death, Jani Smith used her "*signatory*" right on a "*jointly held*" checking account to purportedly make payments for a mortician, funeral, to repay a return of Mickey's final health insurance premium, to pay home utilities, and to pay other costs to include reimbursement for family members (Jani and David) to attend Mickey's funeral from out of state; **and for payment in full to Michael Merritt of \$1000 cash for his agreed service to become the "*executor*" of Mickey Schied's valued Estate.** (Bold emphasis added)

14. Also in accordance with the Will, Jani Smith nearly immediately "*cashd in*" a stock account believed to be valued at between \$11,500 and \$12,000 (at the time of Mickey's death) – which was being maintained by Scottrade brokerage

² The near \$12,000 ending value of the stock account was to be equally divided between Mickey's two nephews and one niece, of which one nephew and the niece are the offspring of Jani Smith – being named as Cory Smith and Kasey Smith respectively – and the other nephew being named as Nolan Schied as the offspring of David Schied.

company along with a separate money market account – and near the end of September 2014, being about six to seven (6-7) full weeks after Mickey’s death, Jani Smith distributed those funds equally 3-ways between Mickey’s surviving nephews and niece.

15. **“EXHIBIT #2”** shows the receipt that David Schied’s 17-year old son obtained from the Charter One bank in Michigan after opening his own account with the inheritance he received directly from Jani Smith through the mail.

16. That bank deposit amount in *“Exhibit #2”* is shown to be in the amount of the check issued by Jani Smith in the amount of \$3,800 as representing payment in full on Nolan Schied’s portion of the 3-way split of the *“stock”* holding portion of the Scottrade account allocated by the Will to Mickey Schied’s two nephews and one niece as believed to have been valued at between \$11,500 and \$12,000 at the time of Mickey’s death.

17. Additionally, in accordance with the Will, Jani Smith purportedly liquidated and closed out the remaining \$60,000 plus more from the money market portion of the Scottrade account, sending to her brother and co-heir (David Schied) the majority of what liquid was owed to David Schied from Mickey’s valued Estate, being five (5) bank cashier’s checks totaling \$30,000 as representing his divisive half of the \$60,000+ Scottrade money market account. (See **“EXHIBIT #3”** as copies of the five cashier’s checks, dated with the first two

on 10/09/14 and second three on 10/14/14 as reflected in the amounts of \$5,500; \$5,500; \$6,000; \$6,000; and \$7,000 respectively in accordance with David Schied's request for check amounts to be less than \$10,000 amounts for easier handling by the banks.)

18. Along with having already partially "*administered*" certain financial portions of Mickey Schied's valued Estate, Jani Smith has thus far made at least three (3) travel visits to Mickey's home in Houston and secured an unlisted and unaccounted for great number of valued personal items, named and unnamed by the Will, to be otherwise "*equally divided*" between Jani Smith and her brother David Schied; and for which in the past nearly three months since Mickey Schied's death, have remained in Jani Smith's sole possession outside of the state of Texas and at her home in Arkansas.

19. Specifically, on the very next day following Mickey Schied's death (i.e., on Friday, 8/8/14), Jani Smith traveled in Jani's personal SUV vehicle along with her mother, Sharron Hay, to secure Mickey Schied's most valuable in-home belongings and to seek out asset documents. In Houston, these women were joined by Mike Merritt and his wife Wynde Merritt in opening Mickey's home and assessing where to begin in the daunting task of cleaning up the household messes left by Mickey in virtually every room of his home. (See **"EXHIBIT #4"** as photos taken by Jani Smith on her own cell phone over the weekend of

August 9-10, 2014 reflecting a portion of the filth left in the home by Mickey Schied and the involvement of Wynde and Mike Merritt, as well as unknown friends or relatives of the Merritts, in searching through Mickey's home for personal valuables.)

20. As Mickey was an obvious "*hoarder*" who threw virtually nothing away to the outside nor cleaned or repaired items around the home, Mike Merritt, Wynde Merritt, and another Merritt family friend or relative volunteered to assist Mickey's sister (Jani) and mother (Sharron) with sifting through Mickey's belongings for whatever valuable items might be found, along with those specific items named in the Will, of which many of such items were to be allocated to others outside of the immediate (David) Schied and (Jani) Smith families.

21. At the conclusion of that first weekend trip to Houston, Mickey's sister Jani Smith and mother Sharron Hay reported that they had all together removed certain items from the home including but not limited to Mickey's guns and ammo, gold and silver coin collections, mens' rings, a stamp collection, other collectable cash items, safety/lock boxes, and a plethora of important-looking financial and other documents. These items were specified (as listed above) and described to David Schied over the phone by Mickey's sister and mother in discussions about the trip and what items were found. Except for the guns and

ammo, which were taken into the possession of Michael Merritt, these and many more items were taken out of the home, out of the state, and to the residence of Jani Smith, presumably for later sorting.

22. Subsequently, about ten (10) days later on or about Saturday, 8/16/14, Jani Smith returned to Houston again with her family SUV, this time accompanied by her husband Ken Smith. The stated purpose was to attend Mickey's funeral and to rent a U-Haul or other large truck to load with the remainder of Mickey Schied's belongings. At the conclusion of that second trip to Mickey's home, Jani and Ken Smith packed the SUV full of more unlisted and unaccounted items of value from Mickey's home and drove them out of state to Arkansas, adding those items to the previous load Jani had taken from the home.

23. Finally, on 10/17/14, Jani Smith drove the SUV a third time to Houston, again in the company of her husband Ken, staying for another three (3) days in the Houston area while holding a front-yard "garage sale" on furniture and other valued household items of the Estate of Mickey Schied.

24. On 10/18/14, Jani Smith telephoned and texted David Schied (i.e., see **"EXHIBIT #5"** for a copy of that text) stating that she had sold the upright piano that Mickey Schied had bequeathed to David's son, Nolan Schied for \$250. She also stated that she had paid \$25 from those proceeds to have the piano delivered to the buyers at the garage sale. Additionally, Jani stated that

she had sold the kitchen refrigerator to the next-door neighbor and had on her own accord given away, or committed the giving away of the washer and dryer and Mickey's lawnmower to Michael Merritt and/or Wynde Merritt.

25. As of the date of the initial court filing, no payment had been tendered by Jani Smith to either Nolan Schied or David Schied on the purchase of the piano or for half of the value of the refrigerator, as was otherwise owed.

26. It is unknown whether Michael ("Mike") Merritt or his wife Wynde have retrieved the washer, the dryer, or the lawnmower; however, David Schied believes that the unilateral "*giving away*" by Jani Smith and the purported acceptance of these items by Mike and/or Wynde Merritt constitutes an unethical "*conflict of interest*" resulting in a devaluing of interest otherwise owed to David Schied for at least half of the value of these items of his brother's Estate.

27. With regard to the actions of Michael Merritt and his wife Wynde Merritt acting as "*agent*" for Michael Merritt as "*executor*" of the Estate following the death of Mickey Schied, immediately following the funeral on 8/19/14, Michael Merritt relinquished one of the two Prowler automobiles to his own and/or Wynde's son, Roy Turner, as instructed by the Will.

28. Immediately following the funeral on 8/19/14, Michael Merritt also authorized Donald Hillard and Clay Drummond for each to schedule with him at the

earliest opportunity to retrieve the “*pool table*” and the second “*Prowler*” that Mickey had in his living room and garage respectively as their inheritances dictated by the Will. However, as of the date of this filing, it is believed that neither has been picked up or delivered.³

29. With regard to those household items from Mickey Schied that are bequeathed – in relevant part by allocation either by value in cash or in kind – to *Interested Party Plaintiff and principal co-heir* David Schied – nothing thus far has been provided by either Jani Smith or Mike Merritt in opportunity for David Schied to retrieve items of any significant value from the home and bring them out of state and back with him to Michigan.

30. The reasons for Mr. Schied being “*left in the cold*” in regard to the household items are primarily fourfold:

³ On 8/19/14, David Schied overheard Clay Drummond state his intent to pick up the Prowler around the middle of September 2014. At the time of this filing, neither the pool table nor that second Prowler car has been taken away from the home. In fact, during a phone conversation David Schied had with Clay Drummond on 10/29/14, Mr. Drummond revealed that he had flown to Houston the previous week with the intent to drive the vehicle back to Colorado where he resides, but that he did not believe the vehicle to be reliable enough for such a road trip because virtually none of the gas, oil, or other important gauges appeared to work on the vehicle. Moreover, after Jani Smith’s third return from Houston, she revealed by phone around 10/26/14 that not only the pool table remains in the living room but that both her and Mike had discussed the likelihood that Donald Hillard will *never* make the effort to collect upon that inheritance and that the pool table – which was originally purchased by and once belonged to David, Mickey, and Jani Smith’s maternal grandfather Richard Fisher, and therefore it might otherwise have to be sold independently like the piano and refrigerator.

- a) First, Jani Smith had already “*secured*” the most valuable items in her own SUV during her first vehicle trip to Houston the day after the proclamation of Mickey’s death, and with Michael Merritt taking into possession the guns and ammo referenced in Mickey’s last Will;
- b) Second, Jani and Ken Smith loaded their SUV a second time without prior discussion with David Schied the day following Mickey’s funeral, leaving for Arkansas at least two days prior to their intended date to stay in Houston, and while rejecting David Schied’s straightforward requests at that time for a detailed discussion with Jani about what remains of the Estate, as well as rejecting his request that she provide him with a list of all the items that filled the SUV. (See **“EXHIBIT #6”** as a letter written by David Schied to Jani Smith on 08/24/14 to memorialize and detail his account of the events that had occurred in regard to Mickey’s property and the cleanup of home in Houston and up to the date of David’s return by plane back to Michigan after Mickey’s funeral.)
- c) Third, David Schied had purchased a round-trip plane fare to Houston and back to Michigan (i.e., see **“EXHIBIT #7”**), with the intent only to attend the funeral and to remain until the end of the week along with Jani and Ken Smith to, as Ken Smith put it upon David Schied’s arrival to Mickey’s home, “*do whatever it takes*” in the time allotted, to get Mickey’s home

belongings packed into a U-Haul truck for delivery to the Smith home in Arkansas where David had tentatively agreed to make a later trip to more casually distribute or sell the items taken from the home.⁴

- d) Fourth, as a result of David Schied not wanting nor planning to pay for items to return with him by plane three days after the funeral – and being afforded by Michael Merritt with the keys to freely enter Mickey’s home to spend the

⁴ Note that because Mickey Schied’s hospitalization and death came earlier than expected and because Mickey has commanded that the contents of his Will not be opened or revealed to anyone until after his passing, neither David nor Jani had time to discuss the possibility that David Schied – having never before owned a home – be given the opportunity to become a potential buyer for the home. While at the home for the first time therefore, David Schied was not quite as eager as Jani Smith for emptying out the home to a U-Haul and taking it to Arkansas; thus, at the encouragement of Jani’s husband Ken, the U-Haul was scratched in favor of at least bringing everything from the second floor of the home to the first floor and to instead simply sort what minimally might be left in the home if David were to make a bid on the purchase, and what otherwise might be sold at garage sale in the front yard before the week end. Subsequently, the very next day Jani and Ken Smith, unknowingly to David Schied, loaded the SUV with additional things that Jani wanted to take back to Arkansas, and near the end of the day Jani surprisingly announced that she and her husband Ken would be leaving at least two days early for return back to Arkansas, and without even fulfilling the agreement to bring down the items from the upstairs to the downstairs in case David wanted to continue with the garage sale after they left. Jani’s announcement also came later in the day after she and David had gone to a restaurant – at David’s insistence for privacy and focus – and Jani broke off the discussion about the house in poignantly claiming that she refuses to “partner” with David about anything. At that meeting she also claimed that she had just recently contacted the bank for Mickey’s checking account (on which she was a “joint holder”) and that there was \$16,000 when at the end of that day David checked Mickey’s mailbox and found the most recent banking statement reflecting \$26,000. When confront later as to why she had lied at the restaurant about the actual amount in the account, she replied, “*All I could remember was that it had a ‘6’ in it.*”

nights before and after the funeral and to drive Mickey's personal Chevy Trailblazer to and from the funeral as well as elsewhere in the Houston vicinity – David Schied took the opportunity to load into that Trailblazer numerous items of insignificant value that he found left in Mickey's house – being mostly men's shirts, a large amount of toilet paper, light bulbs, soap, deodorant, a Schied-family wall painting inherited by Mickey from his father, a couple of small old bedroom lamps, a couple of partially-empty bottles of liquor, bottle of wine, and other small and insignificant items. This was however only AFTER David had discovered that Jani and Ken Smith had left Houston two days early with the second SUV full of Mickey's belongings. These listed items were subsequently taken to the home of David Schied's good friend, Gerald Bartosch (who picked David up at the airport upon his arrival to Houston for the funeral) for subsequent safekeeping.⁵

⁵ Note that the shirts placed into the Trailblazer included several that Jani Smith was offering to David the day after the funeral as she took apart Mickey's master bedroom, continuing to take items once belonging to Mickey and offering David the other items of clothing that she did not want, and without presenting the reminder that, according to the Will, the "*clothes*" were committed by the Will to the "Star of Hope men's homeless shelter." Significantly, a month later Michael Merritt sought to place into an email his prejudicial assertion that David Schied had "*stolen*" these (unlisted numerous items) from Mickey's home during his short stay at Mickey's home, and without ever mentioning the fact that by that time Jani Smith, her mother, and her husband had previously taken two full SUV-loads of

31. Essentially, and in short, the “*administration*” of the Estate has long been underway and exceeding halfway in its full execution, however recklessly such actions have thus far been – by both Michael Merritt and Jeannette Smith – in violating both the letter and the spirit of the Will for a simple, non-probated and timely “*administration*” of the Will, and by infringing upon the “*equal*” interest of *Party Plaintiff and principal co-heir* David Schied to get what was due to him in accordance with the written terms of his younger brother’s “*Last Will and Testament.*”

32. It is thus clear by the facts outlined, both above and below, that neither Michael Merritt nor the attorney that he privately hired for filing his “*Application to Probate Will and For Issuance of Letters Testamentary*” are (not) necessary for the proper completion of the so-called *administration* of Mickey Schied’s last Will, particular when such hiring was done with the assumed cost of that attorney’s involvement being deducted from the overall cash value of the Estate otherwise owed to David Schied and Jani Smith.

33. On the contrary, **this Court may instead only be needed for providing a brief period of “*service*” to the heirs similarly to that described in the Uniform Probate Code, Article III, Section. 3-912 (“*Private Agreements Among***

property items with them out of state to Arkansas. (*See* further explanation in this instant “*Brief in Opposition...*” and “*Motion...*”.)

Successors to Decedent Binding on Personal Representative”) concerning heirs, successors, and distributees having an...

“’in and out’” relationship to the Court so that any question or assumption relating to the estate, including the status of an estate as testate or intestate, matters relating to one or more claims, disputed titles, accounts of personal representatives, and distribution, may be resolved or established by adjudication after notice without necessarily subjecting the estate to the necessity of judicial orders in regard to other or further questions or assumptions.”
(Bold emphasis added)

34. In fact, it may now be that, as the principal successors to what remains of the Estate of Michael Edward Schied, David Schied and Jeannette Smith may need only implore the Court’s involvement in providing – as provided by RIGHT under Texas Estate Code 55.202(b)(2) or other such applicable section (“*the complainant has the right to demand specific performance*”) the following **WITHOUT probating the Will**:

a) Injunctive Relief against the further breeding of distrust and the further breaching of fiduciary duty by Michael Merritt in further obstruction and unwarranted costs on what few remaining steps are yet needed to *administer*, or preferably, to *negotiate* the sale of Mickey Schied’s home, car, and few leftover household belongings that are to be equally divided in value between Jeannette Smith and David Schied *without* Michael Merritt’s further negligence, *without* his evident conflict of interest, and without his

preferential treatment toward Jani Smith and biased treatment against David Schied; and by this Court further providing a ...

b) Declaratory Ruling for both Michael Merritt and Jani Smith to provide transparency in documentation about what they have already received, “given away” or otherwise “administered” from the whole of the Mickey Schied Estate WITHOUT the formal involvement of a competent “executor” or “administrator,” during this past three full months prior to Mike Merritt’s only very recently seeking to “probate the Will” through an attorney levied against – and at cost to – David Schied and Jeannette Smith.

(Bold emphasis added above)

STATEMENT OF DETAILED FACTS IN PRESENTING REASON FOR DAVID SCHIED’S ORIGINAL FILING (AND FUTURE FILING) OF “MOTION FOR ORDER TO SHOW CAUSE” AND TO COMPEL JEANNETTE SMITH FOR THE PRODUCTION OF DOCUMENTS

35. *Interested Party Plaintiff/Principal Co-Heir* David Schied repeats and incorporates paragraphs 1-34 along with all references to *Exhibits* as if also written herein verbatim.

36. It has been commonly known amongst immediate family members that for decades Mickey Schied, along with David Schied, Jani Smith, and their mother Sharron Hay, had inherited evenly divided amounts of money around 1989 from their grandmother Mary Fisher at the time of her death; and that while

Jeannette Smith (“Jani”) had quickly spent most or all of that inheritance, David and Mickey maintained brokerage accounts with their share after Mary Fisher’s death.

37. It was also commonly known by the immediate family members of Mickey, David, and Jani (Jeannette Smith) that both Mickey and David found trust and contentment in naming Jeannette Smith as either “*joint holder*” of brokerage accounts, and/or **being the named “beneficiary” of such accounts in the event of a sudden death, so to ensure that the money inherited from Mary Fisher conveniently remain with the family should the estate become the subject of questioned probate from outsiders to the family.** (Bold emphasis)

38. Like the checking account referenced in the Will, the accounts being maintained by Scottrade were solely “*owned*” by Mickey Schied but jointly “*held*” by Jeannette Smith with signatory rights; and with both Mickey’s mother Sharron Hay (i.e., see **“EXHIBIT #8”**) and Mickey’s sister Jani Smith (i.e., see **“EXHIBIT #9”**) acknowledging that the money referenced by the Will in the checking and Scottrade accounts are to be distributed equally and “*as soon as possible after death*” between Jani Smith and David Schied.⁶

⁶ See “Exhibit #1” page 1, paragraph 4 “THIRD”; as well as page 2 two-thirds down the page with regard to what “JEANNETTE RENEE SMITH” was to do with the money in the bank “checking” and the Scottrade brokerage accounts.

39. "Exhibits #8 and #9" both hint to the fact that all current and former "Schied" immediate family members have long been aware that Jani Smith's name was been on the brokerage and other accounts owned by Michael (Mickey) Schied, for the purpose of protecting family assets against outsiders; and that, in fact, **Jeannette Renee Schied had never made any financial contributions to these accounts, had never received financial distributions from stock holdings, had never "managed" the accounts or received monthly statements from the financial institutions, had never paid taxes on earnings from the accounts, and that ultimately, Jeannette Smith's name was listed on the account for the sole purpose stated immediately above, in "name only" and in "joint holding" and not "joint ownership."** (Bold emphasis added)

40. In fact, the *validity or enforceability* of the Will was never in dispute until Jani Smith sought legal advisement from Robin Apostolakis and Gaunte, Earl, and Binney, LLP in Texas at some point within the first month after Mickey Schied's death. (*See* again the bottom paragraph of p.1 in "Exhibit #8" for reference by Mickey's mother Sharron Hay, dated 9/12/14 revealing that though Jani Smith was ready to release at least some of the money owed to David Schied by early September that it was her own private attorney from the Gaunte, Earl, & Binney, LLP law firm, Robin L. Apostolakis who was otherwise ill-advising

Jani Smith to violate the terms of the Will by withholding payment to her brother David Schied “*as soon as possible after death.*”)

41. In fact, claiming to be acting on behalf of and “*representing*” Jani Smith, Gaunte, Earl, & Binney, LLP attorney Robin L. Apostolakis wrote a letter about the “*Estate of Michael E. Schied*” addressed to David Schied on 9/11/14 in claim that “*the bequest in the Will to [David Schied] of one-half of the accounts is not valid or enforceable.*” Without presenting any proof whatsoever to back her claims, but instead only citing Texas Estates Code Sec. 113.151, Apostolakis stated that “***[despite all surviving immediate family members knowing full well that Jani never contributed to, benefited from, paid taxes on, or received monthly statements about] the accounts automatically passed to Jani’s sole ownership upon Michael’s death and the estate has no claim or authority over the assets.***” (Bold emphasis added) (See **“EXHIBIT #10”** as a copy of attorney Apostolakis’ misleading and/or fraudulent misrepresentation of what her client Jani Smith otherwise knew to be quite oppositely true.)

42. Upon information and belief and based upon certain statements by Sharron Hay, Jani Smith has continued to admit to her mother – right up to the present and the time of this instant federal court case filing – that the balance of approximately \$60,000 in the money market of the brokerage account, and the approximately \$26,000 in the checking account, were meant – by both Mickey

Schied and subsequently by her after his death – to be, and therefore should be, equally divided in accordance with the “*Last Will and Testament*” of Mickey Schied.

43. The Will specifically instructed Michael Merritt as executor to ensure that Jeannette (“Jani”) Schied liquidate and divide the financial assets in the checking and brokerage accounts “*as soon as possible after [Mickey Schied’s] death.*” (See “Exhibit #1” page 1, paragraph #4)
44. Despite the explicit language of the Will, **Jani Smith intentionally withheld payment to David Schied on “his half” of either of the bank checking account or the brokerage account** – according to Sharron Hay as close confidant and mother to Jani Smith – **for the sole reason that “that damn Texas attorney [Apostolakis] told her not to pay [David Schied] but to instead use the [nonpayment of that] money as a ‘bargaining chip’” against David Schied** in the event that the administration of the Estate become disputable and probated. (Bold emphasis added)
45. Additionally, despite the explicit language of the Will, Jani Smith intentionally withheld payment to David Schied on “his half” of either of the bank checking account or the brokerage account – according to Jani Smith herself in a conversation with her brother David Schied around seven (7) weeks after Mickey’s death – because she “*did not like the way [David] talked to [her]*”

while together in Houston for Mickey's funeral, which was held on August 19th, 2014.⁷

46. Upon very recent information and certain belief, and as based upon certain statements by Jani Smith's mother Sharron Hay, Jani Smith was purportedly emotionally "*hurt*" by David Schied's email and text statements in the immediate aftermath of David returning home empty-handed after flying down for a four day stay in Houston to attend Mickey Schied's funeral, and after he failed at the attempt to properly speak with his sister about the terms of the Will and the many other items left by Mickey Schied inside his home to be "*equally divided...as soon as possible after [Mickey's] death*" between surviving siblings, David and Jani.⁸

47. In text messaging, Jani Smith even admitted on 10/8/14 that she knew that her attorney's instruction to her not to pay "*distributee*" David Schied the money otherwise owed to him by inheritance (but to pay her attorney instead from the

⁷ Jani stated over the phone several weeks after the funeral that she was intimidated by David's level of college education and that she felt like he was "*talking down*" to her as his sister when pressing her to talk with him in detail about what to do with their shared inheritance while they had a chance together when meeting together there in Houston for Mickey's funeral.

⁸ There has always been the assumption by David Schied that as "*equal heir*" to the property and accounts of Michael Edward Schied, there is also "*equal responsibility*" for the costs incurred by the so-called "*executor*" to include payment of \$1,000 for his acceptance of duty to serve as "*personal representative*" for our brother, and for taxes, utilities, insurance co-pays, or other "*claims*" against our brother's estate, which Jani Smith paid right away in cash in Mickey's living room on the day after the funeral and in David Schied's presence.

money otherwise owed to David Schied to be paid from half of the amount in the the bank “*checking*” account) and to go beyond that to instruct Jani Smith not have any contact with her brother David Schied was “*ethically wrong...because [Jani] always intended to give [David] the money*” according to the terms of the Will. (See “**EXHIBIT #13**” as a lengthy segment of text message written from Jani Smith to David Schied dated 10/8/14.)

48. In fact, on pp.3-4 of that text message (from “Exhibit #13”) Jani Smith wrote, “*If [David] had not told her to only communicate with [him] thru a third party [Jani] would never have called an attorney and [David] would have already received [his] money.*”²

⁹ What Jani Smith was referring to in her text was the fact that after Jani expressed her refusal to continue a leisurely discussion with David Schied at the Houston restaurant in private about Mickey’s estate, she instead abruptly halted that discussion and subsequently left the next day back to Arkansas. As a result of that action David telephoned and emailed Jani, after he returned to Michigan later that week, to let her know that since she had based her refusal (to talk further with David) upon the claim that she was “*intimidated*” and/or offended by David’s level of education and his persistence in trying to find some amicable resolves about the accounting for the house, Mickey’s banking and stock accounts, and Mickey’s former belongings, that Jani should otherwise secure a “*third party*” to act as a buffer or intermediary in continuing that badly needed discussion. Without regard to the number of other options outside of legal counsel such as getting with Mike Merritt as the already-PAID “*executor*” or his wife who had, after Mickey’s death, seemingly been acting in a number of ways as Mike Merritt’s “*agent*” or his own “*advisor*” for getting things done, or even getting with David and Jani’s mother Sharron Hay for mediation assistance, Jani instead hired an attorney, paying Robin Apostolakis and the Gaunte, Earl, & Binney, LLP law firm a purported \$2,500 from the money otherwise owned by the Estate of Michael Edward Schied by way of the bank “*checking*” account.

49. In response to attorney Apostolakis' letter of "*mis-representation*" of Jani Smith ("Exhibit #10"), *Interested Party Plaintiff/Co-Heir* David Schied wrote a return letter of 8-pages addressed to both his sister, Jeannette Renee Smith, and to her attorney Robin Apostolakis, dated 10/1/14. The letter provided 3 ½ pages of detailed FACTS about everything by which David Schied had understood or had evidence as having occurred since the death of Mickey Schied on 8/7/14. (See "**EXHIBIT #11**" as a copy of this letter of response dated 10/1/14.)
50. "Exhibit #11" shows that David's letter also demanded up to 17 items of Evidence from attorney Apostolakis to support her claim of the Will being either "*invalid*" or "*unenforceable*;" and while threatening a federal lawsuit under 42 U.S.C. §1983 for "*deprivation of rights*" against Apostolakis and her employing law firm if she persisted with the fraudulent "*color of law*" to misrepresent both the validity or the enforceability of the Will as well as Jani Smith's understanding about her ethical and lawful obligations to pay David Schied half the balances of EACH of the Scottrade brokerage account (with a known value of over \$60,000) and of the "checking" account (with a known value of at least \$26,000 at the time of Mickey Schied's death). ¹⁰

¹⁰ A closer look at Jani Smith's text message to David Schied also reveals that she refers to the Scottrade account(s) as the "stock trade" account, indicating that at that (as well as other) time(s) she was acting in such a whimsical manner in immediately spending from that account – combining both her expenses with the expenses of the Estate to complicate the accounting for everyone – that she did not

51. Neither Jani Smith nor her attorney Robin Apostolakis responded to the letter referenced as "Exhibit #11" in writing. Instead, Jani engaged David in text messaging with a promise for immediate payment, referencing first \$11,000 then referencing \$30,000 causing David to believe that he would be soon receiving \$42,000 by mail as HALF of the balance of what Jani had left in both the bank "*checking*" and the Scottrade brokerage accounts. (See p.6 of "Exhibit #13")

52. Instead, Jani sent five (5) checks totaling only \$30,000 as reflected in "Exhibit #3." Along with the three checks Jani Smith had issued on 10/14/14, she included a handwritten note indicating her intent to send another \$88.++ that she believed she still owed (of the balance in the Scottrade brokerage account that was over and above the balance of \$60,000+ left by Mickey Schied in that account after dividing the "*stock*" account at Scottrade between the two nephews and niece). (See "**EXHIBIT #12**" as Jani Smith's handwritten note.)

53. Whereas, based upon the Facts and the Evidence herein, it continues to appear that from the beginning (when at the restaurant Jani stated that she had just verified that there was around \$16,000 in the "*checking*" account when the bank statement from the mail that very day showed there to be \$26,000 instead at the

even rightly know (or care to know) the name of the brokerage firm until she began sending David Schied large amounts, purportedly from the Scottrade account, near the middle of October and just about the time of the text message sent as "Exhibit #13."

time of Mickey's death) and until just recently, **Jani Smith may have intended to be less than straightforward with the fluctuating amounts actually existing in Mickey's former checking account from which Jani had been not only writing checks for Mickey Schied's cremation, funeral, home utilities, and such, but also for her personal use such as for hiring Robin Apostolakis as her own personal attorney¹¹ – in violation of both the *spirit* and the *letter* of the Will.** (Bold emphasis)

54. Therefore, because Jani Smith has continually declined to answer her brother David Schied's persistent requests for monthly banking statements and a formal listing of all of the items she recovered and/or secured from Mickey Schied's home and left Texas with those items in her fully-packed SUV on each of three (3) occasions, *Interested Party Plaintiff/Principal Co-Heir David Schied* **implores this Court for an Order to Show Cause to compel Jeannette (Jani) Smith to provide within 10 days full accounting on what she took, sold, or gave away from the Estate of Michael Edward Schied, and to provide monthly statements for the bank "*checking*" and "*Scottrade*" brokerage**

¹¹ Within a week prior to this instant filing by *Interested Party Plaintiff/Co-Heir David Schied*, Jani admitted herself over the phone that she has been writing checks from Mickey Schied's former "*checking*" account when stating straightforwardly that she had paid for HER "*representative*" Robin Apostolakis from the Gauntt, Earl & Binney, LLP law firm with funds from Mickey's "*checking*" account referenced by the Will as otherwise needing to be "*divided equally*" between Jani Smith and David Schied.

accounts covering the months of July (i.e., the month just prior to Mickey Schied's death), **August, September, and October** (if yet available and/or a statement directly from the banking firm referencing October activity if the regular monthly statement for October has still not arrived in the mail).

(Bold emphasis added)

55. In addition, because Robin Apostolakis claims to be “*representing*” Jani Smith when stating that the Will is “*invalid*” and “*unenforceable*,” ***Interested Party Plaintiff/Principal Co-Heir David Schied implores this Court for an Order to Show Cause*** (again under Texas Estate Code 55.202(b)(2) or other such applicable section (“*the complainant has the right to demand specific performance*”)) **compelling Jeannette Smith and/or her attorney to surrender all documents showing that the Will is “invalid” or “unenforceable;” and that prove Jannette Renee Smith is to be considered by this Court, in the context of all other evidence to the contrary, as “joint owner” rather than “joint holder” of the Scottrade and bank “checking” accounts – and that the accounts were otherwise meant to have rights of “sole survivorship” as opposed to being set up as “convenience” accounts for ALL survivors in the event of Mickey’s death – as based upon the definitions and descriptions found in Texas Estate Codes 112.052(d); 113.001(1); 113.001(d); 113.003; 113.004(1-4); 113.052 (1-6); 113.103;**

113.105; 113.151 (as referenced by p.1 of “Exhibit #10” being the letter from Apostolakis dated 9/11/14); 113.152 and 113.154.

**STATEMENT OF DETAILED FACTS IN PRESENTING REASON FOR
DAVID SCHIED’S ORIGINAL FILING (AND FUTURE FILING) OF
“MOTION FOR ORDER TO SHOW CAUSE” AND TO COMPEL MICHAEL
RAY MERRITT FOR THE PRODUCTION OF DOCUMENTS**

56. *Interested Party Plaintiff/Principal Co-Heir* David Schied repeats and incorporates paragraphs 1-55 along with all references to *Exhibits* as if also written herein verbatim.
57. From the time of Mickey Schied’s death throughout the first two weeks after Mickey’s death, Michael Ray Merritt represented himself as being both willing and able to carry out the fiduciary duties as the named “executor” of the Estate of Michael Edward Schied...even to the point of accepting advanced payment in full for his services as executor within that two weeks when paid \$1000 in cash by Jani Schied according to the Will.
58. Concurrent with that “*personal representation*” – which from the beginning took on the appearance that Mike Merritt, who David Schied later found out has no teeth, is living on social security and with a lifetime “*disability*” due to a labor-related work injury – was being greatly assisted and/or instructed and managed in the affairs of the Michael Schied estate by his wife, Wynde Merritt

as seen in the pictures taken within two days after Mickey's death in Mickey's home by Jani Smith (as found in "Exhibit #4").

59. While initially David Schied had accepted Wynde Merritt's involvement in good faith as the efforts of a former good friend of Mickey Schied to assist David and Jani as Mickey's biological brother and sister, it became soon clear that Michael and Wynde Merritt's involvement with the Estate was taking a turn toward a "*conflict of interest*" – being toward self-interest, preferential treatment toward Jani Smith, and with bias against David Schied.

60. The first sign of such "*conflict of interest, preferential treatment toward Jani Smith, and with bias against David Schied*" by Mike Merritt came with the understanding that Michael Merritt had accepted Jani Smith's proposition that he and his wife freely take ownership of Mickey's lawnmower and washer and dryer without first consulting with David Schied and while aware that David Schied was, according to the terms of the Will, owed half of the value of these items "*in cash or in kind, or partly in cash and partly in kind*" (i.e., see p.1, paragraph 4 of "Exhibit #1"). ¹²

¹² Jani Smith reasoned with David over the phone, after she returned home with her first SUV full of an unknown list of Mickey's most valuable home belongings and paperwork, was that Mike had been so kind to have mowed Mickey's lawn in the weeks prior to Mickey's death when Mickey was too weak and frail to do so himself; and because, as Jani had put it, "*Mike and Wynde needed another washer and dryer*" (leaving the presumption that their washer and dryer was broken). However, when Jani made her second trip to Houston to meet David for the

61. The second sign of such “*conflict of interest, preferential treatment toward Jani Smith, and with bias against David Schied*” by Mike Merritt came just the day after the funeral when, after all parties at Mickey’s home had agreed to bring all of the belongings downstairs from the upstairs bedrooms and Mickey’s office and when David Schied had unplugged the computer from the upstairs (after Michael had otherwise stated his intent to keep the computer plugged in, and turned on until a friend of his returned at some undeterminable time in the

funeral, both were invited over to Mike and Wynde’s home and David found that the Merritt household had a nearly new set of industrial strength washer and dryer already. When David confronted Jani about that a short time later, Jani stated that they probably wanted Mickey’s washer and dryer to give to one of Wynde’s children and/or one of their children’s spouses. (Note that one of Mickey’s Prowler vehicles was picked up within two weeks of Mickey’s death by Wynde’s (and purportedly Mike’s) son, Roy Turner, in accordance with the Will.) Despite of being so unfairly treated and initially misled by his sister, David Schied found early agreement with that arrangement in good faith that Michael Merritt would actually follow through with his duties as “*executor*” WITHOUT attempting to subject the Estate to the terms and jurisdiction of probate. (NOTE: Michael Merritt has NEVER provided David Schied with a copy of the Will and at the time Jani Smith stated that she had given away the washer and dryer, David had believed that the execution of the Will would be handled without a court’s involvement in the probate administration of the Estate. Nevertheless, given the evidence that Michael Merritt has been otherwise derelict in his principal duty treat all “*beneficiaries*” and “*heirs*” with equal standing, and given that he has also been extremely negligent to take proper action to fulfill the terms of the Will (as soon as possible after death), and having not submitted “*the return of an inventory [of household belongings], an appraisal, and a list of claims*” (i.e., see “*Exhibit #1*” page 1, para 2 of Mickey’s stipulation in the Will), David Schied asserts now that Michael and Wynde Merritt have no right to the lawnmower, the washer, or the dryer, and that, in fact, Michael Merritt should withdraw his ambition to proceed as “*personal representative / executor*” of the Estate and be satisfied with the \$1000 he has already received in cash for his fiduciary “*services*” on behalf of the beneficiaries thus far.

future to get the computer back up and running “*online*” and when Michael Merritt otherwise had admitted that he has not even enough “*computer savvy*” to even send or receive simple email messages), Mike Merritt spoke disparagingly toward David by stating, “*I told you to leave that computer upstairs alone and turned on*” as if giving David a directive in a home that, by right, was half owed to David “*in cash or in kind, or partly in cash and partly in kind.*”

62. The third sign of such “*conflict of interest, preferential treatment toward Jani Smith, and with bias against David Schied*” by Mike Merritt came on the day that David Schied was scheduled to leave back to Houston when David telephoned Mike as the “*executor*” to state that he wished to take ownership of the Chevy Trailblazer “*in kind*” by proposal that as owner of half the value of what Jani and David had agreed was a fair Bluebook price (of \$3,900) for Mickey’s vehicle (as found on Wynde Merritt’s home computer by research of Jani’s husband Ken Smith the night before the funeral while all were together at Mike and Wynde’s home) David would surrender \$1,950 from the proceeds of the sale of the home or other of Mickey’s belongings. In response, Mike Merritt stated that he had at some point located a “used car dealership” that had offered \$4400 already on that vehicle, indicating that “in all fairness to Jani” David would need to meet the value of at least that amount to “*purchase*” the vehicle

from his sister. Then when David agreed to pay such an amount, Mike Merritt changed the subject and declined to provide David with a definitive answer the day before he was scheduled to take a plane back to Michigan.

63. The fourth sign of such “*conflict of interest, preferential treatment toward Jani Smith, and with bias against David Schied*” by Mike Merritt was demonstrated – in part – the very next day when, lacking a clear answer from the day before about the Chevy Trailblazer offer, David Schied sought to strike an agreement for his friend Gerald Bartosch (with whom he was spending his last two nights while in Houston after the funeral) take David to the airport, with the intent to have Gerald Bartosch take the vehicle back to his home in Houston for safekeeping and storage until the paperwork could be completed. Yet when David made his phone call to Mike Merritt to inform Mike about his intent to take possession of the vehicle for the price to match or “*over and above*” the \$4,400 offer of the “*used car salesman,*” Mike expressly forbid David from having his friend take him to the airport and subsequently take possession of the vehicle David wanted to purchase. Instead, he told David that, as executor, he simply still was responsible for the care and liability of the vehicle until the title to the vehicle was found and a change of title could be executed. As a result, David was compelled to abandon his trip to the airport with Gerald and had to return the vehicle to Mike, who then drove his own vehicle to take David to the

airport. Upon delivery of the Trailblazer back to Mike, the vehicle was still in excellent working order and exhibiting no problems whatsoever.

64. This “*fourth sign*” of conflict of interest and bias against David was reaffirmed a couple of weeks later when, on 9/3/14, Wynde Merritt sent out an email to Jani Smith and David Schied notifying that “*the Trailblazer ha[d] a starting problem*” and that Mike and Wynde had new “*offers*” of between \$2,500 and \$2,800 (“as is”) or, if David and Jani wished to authorize a payout of \$80 for a diagnostic evaluation and subsequently “*fixed*” (at additional cost) that it might otherwise be sold to someone else (besides David Schied) for between \$3,200-\$3,400, making it clear that, as “*executor*” of Mickey Schied’s estate, Mike and his “*assistant and agent*” Wynde Merritt were determined NOT to consider David’s earlier statement that clearly determined his desire to take ownership of the vehicle “*in kind*” for a portion of his inheritance. (See **“EXHIBIT #14”** for the letter sent by Wynde Merritt demonstrating proof of her otherwise carrying out DUTY of Mike Merritt to communicate this information to the principal heirs and *distributees* of the Estate.)

65. The fifth sign of such “*conflict of interest, preferential treatment toward Jani Smith, and with bias against David Schied*” by Mike Merritt began under the pretense that Mike and Wynde Merritt were attempting to cater toward David Schied’s stated interest in somehow buying out his sister’s portion of Mickey’s

home, which according to the Will was otherwise to be sold “*for no less an amount than to net \$75,000 (after all closing costs and related fees have been deducted) with the proceeds being divided equally between [Mickey’s] brother David and [his] sister Jani.*” In an overt show of effort to placate David Schied’s stated interest in accepting his portion of the home “*in kind*” and working paying his sister half the value of what Jani Smith was willing to accept as the “*as is*” value for the home, Mike and/or Wynde secured with very little notice the commitment of a remodeling contractor, Vance Dever, to tour Mickey’s home along with David Schied within a day after the funeral and to provide David with verbal and written quotes on the cost of repairing the home to such condition that it would pass inspection as a livable and/or a rental property. A similar commitment was obtained by the Merritts for a real estate agent. Both the contractor and the real estate agent came by at separate times and toured the home with David Schied prior to his plane trip back to Michigan on 8/22/14, each promising a written estimate of their findings by Friday 8/22/14 or the following Monday 8/25/14 at the latest.

66. This “*fifth sign*” of conflict of interest and bias against David was reaffirmed over the course of the following nearly three weeks of silence from the contractor and real estate agent, culminating in full clarity at the same time the “*fourth sign*” was reaffirmed, on 9/3/14, when Wynde Merritt sent out an email

on 9/3/14 to Jani Smith and David Schied notifying that “*Apparently it will take over \$30K dollars to fix the house properly according to the two general contractor that have come out.... I have two investors interested in looking at the house. We can wait until Jani comes back to town.*” (See again “**Exhibit #14**” as the letter sent by Wynde Merritt demonstrating proof of her otherwise carrying out DUTY of Mike Merritt to communicate this information to the principal heirs and *distributees* of the Estate.)

67. What occurred over the course of the preceding two weeks (prior to “*Exhibit #14*” being written by Wynde Merritt) was that David Schied futilely attempted to secure the promised written estimates from the remodeling contractor Vance Dever (as referenced in the above paragraph), which is documented in “**Exhibit #15**”. **These documents demonstrate that the referred reconstruction “agent” of Wynde Merritt** (who was principally responsible for locating and contacting Vance Dever in the first place) **and Mike Merritt continually and perpetually stalled** (under pretense that he had already sent it by email though he admitted that he could not ever find evidence of that in his “*Sent*” email box) **on providing David Schied with the promised estimate and instead provided his estimate for \$30,000 in home reconstruction repairs directly**

to Wynde and Mike Merritt rather than to David Schied as earlier promised.¹³ (Bold emphasis added)

68. What occurred over the course of the preceding two weeks (prior to “*Exhibit #14*” being written by Wynde Merritt) was that David Schied futilely attempted to secure the promised written estimates from the real estate agent of Yavon Cooper, which is documented in **“EXHIBIT #16”**. **These documents demonstrate that the referred real estate “agent” of Wynde Merritt** (who

¹³ NOTE that the reason why the letter by Wynde Merritt (“*Exhibit #14*”) makes mention of “*two general contractors*” is because when, after a full week of getting no response from either the contractor Vance Dever or the real estate agent Yavon Cooper, David Schied established contact with another real estate agent (Diane Smith) and remodeling contractor (Randy Carpenter) in Houston, asking for their independent estimates on the costs of repairing the home and the resale value of the home in that Houston neighborhood. **The home remodeling contractor reported back that when he contacted Michael Merritt to tour the home for drawing up an estimate, that Mike Merritt met him at the home with an infant child in tow, and that consequently he was rushed by Mr. Merritt in evaluating the home because Mr. Merritt stated he needed to get the child back home.** In any event, both Randy Carpenter and Vance Dever (at the time he toured the home with David Schied in mid-August) verbally determined that it would cost around \$30,000 to get the home up to city codes for rental eligibility. Nevertheless, while Vance Dever’s oral estimate included his cost to “*level the foundation*” of the home, Randy Carpenter stated that he saw no signs that the foundation needed leveling. Moreover, while Randy Carpenter’s estimate included (but not limited to) the cost of mold cleanup and sheetrock repair throughout the home to include areas of damage in the upstairs hallway caused by an air conditioner condensation overflow leak, Vance Dever’s estimate placed more emphasis on his costs covering the mold cleanup, sheetrock repair throughout the home (without reference specifically to the upstairs hallway and air conditioner overflow), and foundation repair. Written notes by David Schied taken on the tour with Vance Dever were accidentally left at the home when David returned back to Michigan.

was principally responsible for locating and contacting Yavon Cooper in the first place) **and Mike Merritt continually and perpetually stalled on providing David Schied with the promised real estate estimate, and instead provided her feedback and contacts with interested property “investors” directly to Wynde Merritt.**¹⁴

69. As explained further in the footnotes of this and preceding sections, David Schied responded to the stall tactics of Mike and Wyndy Merritt and their “agents” of (contractor) Vance Dever and (real estate agent) Yavon Cooper by securing his own verbal and written estimates by licensed professionals in

¹⁴ When, after a full week of getting no response from either the contractor Vance Dever or the real estate agent Yavon Cooper, David Schied established contact with another Houston real estate agent, Diane Smith, through his and Diane’s mutual friend of Gerald Bartosch. Within just a day or two, Ms. Smith provided a full “*Comparative Market Analysis*” dated 8/27/14. **It is apparent by the subsequent emails between David Schied and Yavon Cooper (i.e., see “*Exhibit #16*”) that when Ms. Cooper’s stalling reached such point on 9/3/14 that Mr. Schied became confrontational with the fact that Ms. Cooper had not sent her own “*Comparative Market Analysis*” in timely fashion to David Schied as promised, that Ms. Cooper notified Mr. Schied by email that she had already turned everything over to Wynde Merritt (NOT “*executor*” Michael Merritt) who, in turn, sent out letters to David Schied and Jani Smith that very day with Yavon Cooper’s reiterated assertion that, “[Yavon] suggested not getting a foundation estimate if [David and Jani] are selling as is...Since [David and Jani] did not live in the home [David and Jani] can sell it without a disclosure. [Yavon] has an investor interested.” (See “*Exhibit #16*” for this quotation by Yavon Cooper in comparison to Wynde Merritt’s reiteration of the same in “*Exhibit #14*” with BOTH letters dated 9/3/14.) (Bold and underlined emphasis added)**

Houston for home restoration by (contractor) Randy Carpenter and for a “*Comparative Home Analysis*” by (real estate agent) Diane Smith.

70. As shown by **“Exhibit #15”** Vance Dever continually stalled on his written estimate indefinitely (which he promised to supply to David Schied by the time he returned to Houston by plane on 8/22/14). Meanwhile, David telephoned his referral from real estate agent Diane Smith to contractor Randy Carpenter and got his oral estimate over the phone for home restoration valued at around \$30,000.

71. Diane Smith however, provided to David Schied her “*Comparative Home Analysis*” right away upon Mr. Schied’s request, on 8/27/14 as shown by **“EXHIBIT #17”** reflecting similar but slightly higher net worth (and with literally twice as much supporting information than Cooper’s a full week later) for Mickey Schied’s 4-bedroom (all upstairs) two-story home at 7618 Stamen in Houston than was provided by Yavon Cooper’s “*Comparative Home Analysis*” delivered to Wynde Merritt on 9/3/14, about three full weeks beyond the date she had otherwise promised to deliver it directly to David Schied. (See also **“Exhibit #17”** for Yavon Cooper’s written analysis behind Diane Smith’s analysis.)

72. As shown in the email letter dated 9/3/14 from Yavaon Cooper to David Schied found in “*Exhibit #16*,” though her “*Comparative Home Analysis*” (found in

“Exhibit #17”) is somewhat lower than Diane Smith’s analysis in the selection of homes to spotlight in her analysis, this real estate agent Cooper nevertheless wrote in her email message that the home of Mickey Schied could be listed for “72,000” in value. The amount is reasonably comparable to the \$75,000 demand that Mickey Schied stipulated in his Will (i.e., see bottom of page 3 of “Exhibit#1”), which shows that before his death Mickey Schied did his homework and that the amount of “\$75,000” should be strictly adhered to in the “*administration*” of the Will unless there is a separate agreement between the heirs David Schied and Jani Smith as the “*interested parties*” for less. ¹⁵

¹⁵ (Bold emphasis) Since the date of Mickey Schied’s death, Jani Smith and her mother Sharron Hay have been promoting a “*take the money and run*” disposition in regard to the settlement of the Estate, being willing to settle for any amount to get rid of the security concern and monthly operational costs of the vacant Houston home. Meanwhile, David Schied is of the view that because of his lifetime travels and youthful aspirations as an artist that he has never yet owned a home. From the beginning of talks between David and Jani about what to do with the house, Jani Smith has been of the view that she would relinquish the house altogether to David if David would allow her to keep all of the money in the bank “*checking*” and Scottrade accounts. She was adamant in person (about the time of the funeral) that she would not give David half of the money in the two accounts AND work with him on a financing of his eventual purchase of the home from her. Since over the summer David had no cash assets (without Jani paying him the money owed to him) and had no current income (because he currently works as a substitute K-12 schoolteacher with employment not starting until September), at the time of his inquiry to the banks (August) David did not qualify for an independent bank loan, so he indicated his need to relinquish (in August) his hope of financing full payment to his sister through a bank on her half of what remained of their shared cash assets (which Jani was thus asking for \$30,000 for half of the value of the Scottrade money market account and \$13,000 for

73. The sixth sign of such “*conflict of interest, preferential treatment toward Jani Smith, and with bias against David Schied*” by Mike Merritt occurred in response to an email that David Schied wrote back to Wynde Merritt in reply to Wynde’s email (“*Exhibit #14*”) written on 9/3/14 informing David and Jani that, under Michael Merritt’s fiduciary control the value of the Chevy

half of the value of the bank “*checking*” account – minus home expenses to that mid-August date – totaling about \$43,000, which was more than half of the \$75,000 that Mickey Schied had authorized his home to be sold for after his death). Nevertheless, after her return from her third trip to Houston where she held a garage sale on the items in the home, Jani Smith excitedly reported that she had contacted an independent investor who contacted her by postcard with interest in the home. She reported meeting with that investor while in Houston and that after touring the home he offered her a firm \$50,000 to purchase the home “as is.” Subsequently, when finally inquiring to Mike’s attorney David Munson in mid-October about what was taking so long for Mike to get anything done with the Estate and about what attorney Munson had filed with the Harris County Court, Jani Smith apparently indicated to Mr. Munson her willingness sell the home for the \$50,000 amount. David Schied therefore, is of the position that were he to also agree to selling the home for such a low amount, his “*half of the proceeds*” would amount to \$25,000. Therefore, should David Schied wish to reconsider purchasing the home now directly from Jani Smith, she should settle with him for full transfer of ownership of the home for that \$25,000 amount, and start by deducting whatever is left in Mickey’s bank “*checking*” account that Jani Smith continues to hold on to (without further discussion with David, and for with she continually refuses to provide David with accounting statements revealing how much she has been spending from that account – both on the expenses of the Estate and on her own personal expenses - otherwise bequeathed by Mickey to David by “*half*”). David had come to find out that Jani Smith had mentioned her interest in the \$50,000 sale amount of the home to the investor because, when David Schied had telephoned attorney Munson the date before his filing date of Michael Merritt’s instant “*Application to Probate Will...*” attorney Munson mentioned to David his conversation a few days earlier with Jani Smith about that topic.

Trailblazer had diminished from \$4,400 down to \$3,200-3,400 because of a new “*starter problem*.” As shown by the Evidence, the clear bias against David was not only “*punish*” David as the one to be blame for such bias, but so too the actions of Michael Merritt caused direct and unnecessary consequential damage to the Estate in costs to both time and money.

74. **“EXHIBIT #18”** is David Schied email letter sent to Wynde Merritt in legitimate question of the following as to what was going on with the Estate of Michael Edward Schied:

- a) David questioned why Wynde Merritt was seemingly acting as “*agent*” for Michael Merritt regarding the Estate – even in sporadic as the communication was from Wynde and while Michael Merritt, having received full payment for his role as “*executor*” remained out of direct touch with David since the funeral two weeks prior.
- b) David questioned why the Merritt’s would be knowing about Jani Smith’s intention to make a third (3rd) trip to Houston with the SUV – thus revealing that Michael Merritt has all along been acting in approval of the confiscating of Mickey Schied’s household belongings by Jani Smith without a full accounting of the items taken and without David Schied, as co-principal heir and beneficiary even knowing about these plans beforehand so that he might

be enabled to assist and decide upon what to do with these belongings himself.

- c) David questioned the prejudicial bias he received by Michael Merritt with regard to the Chevy Trailblazer after David had expressed his desire for ownership of that vehicle, memorializing in the email how Mike Merritt had denied David to take possession of the vehicle against his **right** to that inheritance “*in kind*,” and why Mike Merritt would be continuing to seek multiple buyers for the vehicle at a lower price after claim that the vehicle had all of a sudden developed a “starter problem” after being left under Mike’s fiduciary responsibility for preserving that valued asset of the Estate.
- d) David asserted that he was then seeking an attorney for consultation about the above, as well as the fact that both referrals by Mike and Wynde Merritt to the remodeling contractor (Vance Dever) and the real estate agent (Yavon Cooper) had reneged upon their promise to David to provide him with written estimates about Mickey’s home within just a few days and then failed altogether to provide anything by the time this email was written three weeks later.
- e) David asserted – while listing six (6) supporting reasons – that he believed Mike and Wynde Merritt were treating Jani Smith with prejudicial favor and

with bias against him (David) – by Mike, as “*executor*,” allowing the following actions to take place (as cited in quote from that email letter):

- 1) *Allowing my sister to make off with two van loads of belongs WITHOUT listing those items;*
- 2) *"Recovering" valuables throughout the house (in ransack fashion) WITHOUT taking pictures and documenting what was being kept, taken, or thrown away;*
- 3) *Allowing my sister to make off with multiple (2 or more) coin and stamp collections WITHOUT photographing or listing the items taken, and then REFUSING to allow me to so much as keep possession of my brother's Trailblazer vehicle when I was willing to "fairly" pay my sister for "equally" half of the reasonable Bluebook value for the vehicle. (NOTE: When I left Houston, the Trailblazer had NO mechanical failures against my driving it for two days across town and back twice before being compelled by Mike as the "executor" who demanded that I leave it with him for safekeeping....How then could the value HE had represented for purchase by me - or by the used car dealer he referenced - go from around \$4500 down to "a \$2800 and \$2500 offer?)*
- 4) *Accepting my sister's "gift" of my brother's washer and dryer WITHOUT first consulting with me, without documenting the transaction, and without "fair and equal" treatment to me for their values;*
- 5) *Conversing with my sister to such degree as to making arrangements for her to make yet ANOTHER trip to my brother's home, for some unknown reason that I am being deprived of knowledge about;*
- 6) *Disregarding my stated interest in purchasing my brother's home for the fair "as is" value, with my sister REFUSING to provide me with ANY of the money - or even a written accounting thereof - which she purportedly is withholding specifically because I stated such interest...Yet while also refusing to provide me with timely information about the condition, cost of repair, or real estate valuation of the home to make it even possible for me have "fair" possibility for such purchase WHILE ALSO failing to "equally" enforce the need for my sister to pay me half of what was in each of the "checking" and the "stock market" accounts (aside from the stock sales which she still also continues to WITHHOLD from my son)....ALL WITHOUT ANY VERBAL OR WRITTEN EXPLANATION WHATSOEVER.*

(End quotations)

(See “Exhibit #18”)

75. In spiteful response to David’s reply (email) letter to Wynde Merritt as outlined above, Michael Merritt used Wynde Merritt’s email account to print his name as the sender of an email that accused David Schied of “[*stealing*] items from the house” (during David’s trip to Houston by plane to attend the funeral),

blaming David for Merritt's own lack of communication as "*executor*" with David about the status of the Estate, and claiming that "*the Estate [was] hiring an attorney [the very following day on] Monday 9/7/14 to use as legal counsel for Execution of [Mickey's] Will.*" (See "**EXHIBIT #19**" as a copy of Mike Merritt's email message sent to both David Schied and Jani Smith.)

76. Michael Merritt's (purported) email letter, dated 9/6/14, was not only clearly *retaliatory*, it was clearly and unjustly misleading for the following reasons:

- a) Mike Merritt blamed the "*conduct*" of David Schied (i.e., of writing his questions and assertions as shown in "Exhibit #18" in response to Wynde Merritt's previous email dated that same day of 9/3/14 as shown by "Exhibit #17".
- b) Mike Merritt blamed David's failure to ask Mike Merritt for his contact information as the blaming basis for David not knowing already that – despite Mike Merritt inheriting all of Mickey's "computers" as shown on p. 2 of the Will ("Exhibit #1") stipulating that Mike was to receive all "*computers and software*" – Mike otherwise is "*not a computer person*" as stated in para 2 of "Exhibit #19".
- c) It presupposed that David Schied as co-principal heir and beneficiary should be initiating the question of how to reach Mike Merritt as "*executor*" with

the fiduciary DUTY to be communicating with the “*distributees*” of the Estate;

- d) It strongly suggests that Michael Merritt either has no actual clue of what his fiduciary responsibilities are as “*executive*” and “*administrator*” of the Estate, or that he is *misrepresenting* those fiduciary responsibilities by claim that, “*My [Mike’s] duties include the selling of the house and vehicle, not the negotiation of dividing this property between the two of you [David and Jani]... Please note that I [Mike] am stickily following Mickey's wishes not yours.*” Such a statement as immediately above by Mike Merritt ignores and/or violates BOTH the explicit terms of the Will (p.1 of “*Exhibit #1*”) and Texas Probate Code (i.e., see 305.052 “*Oath of Administrator*” and 351.204 “*Fiduciary Duties of Personal Representative Regarding Business*” to act in “*the best interest of the Estate*”) for the heirs and distributees accepting their inheritances “*in cash, in kind, or partly in cash and in kind*”.
- e) Michael Merritt represented that subsequent to his hiring an attorney on the following day of “9/7/14,”*[He] will have the attorney contact both of you [David and Jani].*” Nevertheless, in the following two weeks BOTH David Schied and Jani Smith received NOTHING but silence from both Michael Merritt and the attorney he purportedly hired – David Munson – making it incumbent upon both Jani Smith (on 10/20/14) and David Schied (on

10/23/14) to contact Mr. Munson instead to find out that Munson had done NOTHING on behalf of either Mike Merritt or the Estate until sometime during the week of 10/20 thru 10/24 of 2014.

77. Significantly, the failure of Michael Merritt to actually contact HIS attorney David Munson as otherwise represented in “Exhibit #19”, and/or attorney David Munson’s failure to file Merritt’s “*Application to Probate Will...*” until 10/24/14 (as shown on the date for that filing by Munson in the Probate Court) demonstrates GROSS NEGLIGENCE and DERELICTION OF DUTY of either Michael Merritt or David Munson or both. (Bold emphasis added)

78. Thus, both Mike Merritt and David Munson should be held accountable for their actions, or inactions, by explanation to this Court in writing about what actions each has taken since 9/6/14 when “Exhibit #19” was purportedly issued by Mike Merritt representing his hiring an attorney on 9/7/14, and up to the time that David Munson filed the instant “*Application to Probate Will...*” nearly seven (7) weeks later on 10/24/14. (Bold emphasis added)

79. As the Evidence implies, Michael Merritt (and his attorney David Munson) have been derelict in their (fiduciary and other) duties to the Estate, and neither are worthy of further association with this Estate.

80. Similarly, on the grounds cited above the “*Application to Probate Will and for Letters Testimony*” should be DENIED.

81. Moreover, on the grounds cited above, Michael Merritt should be Ordered by this Court to “*Show Cause*” why he has made such misrepresentations and acted in such prejudicial fashion as to favor Jani Smith and to hold bias and blame against David Schied; and to consequently be COMPELLED to produce all documentation he has available to demonstrate what actions he has taken thus far “*on behalf*” of Mickey Schied as his “*personal representative.*” Such a “*Show Cause Order*” should also hold Michael Merritt to proving – against the available evidence presented herein – how he otherwise can claim to “*qualify*” as executor, and how he has been otherwise “*equally treating*” both Jani Smith and David Schied as co-principal heirs and beneficiaries of this instant Estate.

ARGUMENTS IN OPPOSITION TO MICHAEL RAY MERRITT'S
"APPLICATION TO PROBATE WILL AND FOR LETTERS TESTIMONY"
AND IN FAVOR OF FUTURE RELIEF TO BE GRANTED BASED UPON
DAVID SCHIED'S ORIGINAL FILING (AND FUTURE FILING) OF
"MOTION FOR ORDER TO SHOW CAUSE AND TO COMPEL DOCUMENTS"
and for
RULING IN FAVOR OF THIS COURT PROBATING THE WILL AS
'MINIMENT OF TITLE'
Or by Otherwise
ESTABLISHING AN *"IN AND OUT"* RELATIONSHIP WITH PARTIES ON
AN *"AS NEEDED"* BASIS
FOR COMPLETING THE FINAL STEPS OF *"ADMINISTRATING"* THE
WILL BY BINDING AGREEMENTS BETWEEN PARTY PRINCIPALS

82. *Interested Party Plaintiff/Principal Co-Heir* David Schied repeats and incorporates paragraphs 1-81 along with all references to *Exhibits* as if also written herein verbatim.

83. The nature of David Schied's email and text statements, as sent both privately to Jani Smith and openly to Jani Smith, Sharron Hay, Michael Merritt – after finding that he was operating through Wynde Merritt's email and incorporating her personal actions and *"points of contact"* into his official actions as executor – and to Robin Apostolakis ¹⁶, was to state his view of the facts surrounding his understanding about why his sister was acting in intentional violation of the

¹⁶ One informal email was sent to include Apostolakis after Jani Smith had notified her brother David that *"Robin A"* was somehow involved in this estate matter, and one formal letter (*"Exhibit #12"*) was subsequently sent by first class mail and by email to Apostolakis and the Gaunte, Earl, and Binny, LLP co-defendants shortly after these defendants notified Mr. Schied of Jani's decision to withhold all payments from the checking and brokerage accounts in violation of the instructions of the Will, and using *"color of (Texas) law"* in fraudulently asserting that the Will was *"invalid"* and that the terms of the Will were *"unenforceable"*.

terms and instructions of the Will, to include background facts and emotions tied to family dynamics stemming from the negative childhood experiences of David and Mickey as “*the (troublesome) boys*” by their mother Sharron Hay (formally known as “*Sharron Schied*”), relative to Jani always having receiving preferential treatment as the “*youngest child*” and “*only daughter*”.

84. In reply to the first email sent to Michael and/or Wynde Merritt after receiving a “*first written communication*” dated 9/3/14 from Wynde Merritt on behalf of her husband and the so-called estate *executor* Michael Merritt in which Wynde indicated she was taking certain actions on behalf of Mickey’s estate as some sort of “*agent*” for Michael Merritt (i.e., See “**Exhibit #14**”), David Schied brought forth questions on that same date of 9/3/14 questioning Wynde Merritt’s involvement in the Estate matters, and citing specific examples where it appeared that the Merritts were actually interfering with the rights of heirs for properly obtaining information about Mickey’s home as a valued part of the “*equally divided*” estate. (See “**EXHIBIT #18**”)

85. In what appears to be emotional defensiveness and being personally offended by David Schied letter of inquiry to Wynde Merritt (“*Exhibit #3*”), Michael Merritt responded on 9/6/14 placing blame upon David Schied for the lack of fiduciary communication by the estate “*executor*,” also accusing David Schied of “*stealing*” from the Estate, and adding the following statements:

*“[T]he estate will be hiring an attorney Monday 9/7/14 to use as legal counsel for the Execution of this will. The cost and expenses of this attorney will be taken directly from his estate. I feel this step is necessary due to the accusations and conduct of David E. Schied. I will have the attorney contact both of you.” (See “**EXHIBIT #18**)*

86. Upon very recent information and certain belief, and as based upon certain statements by Jani Smith’s mother Sharron Hay, neither Jani Smith nor David Schied have been properly informed about what activities Michael and/or Wynde Merritt have “*executed*” on behalf of Mickey Schied, and as otherwise required under Michael Merritt’s fiduciary DUTY to exclusively act in the interest of the named heirs, devisees, and beneficiaries of Mickey Schied’s estate.

87. About all that is known is that Michael and Wendy Merritt’s son Roy Turner picked up one Prowler car from the garage of Mickey’s home about the time of Mickey’s funeral on 10/19/14 while obstructing Clay Drummond from picking up the other vehicle when planned in the middle of September. Additionally, Mike and Wendy Merritt have accepted Jani Smith’s offer of ownership of Mickey’s washer and dryer, as well as his lawn mower without first consulting with David Schied about it; and while also seeing no problem with allowing Jani Smith to leave the state of Texas with three undocumented SUV carloads of Estate belongings without documenting those contents...and while accusing

David Schied of “stealing” items from the Estate at a time when he only traveled to and from Houston by plane to attend his brother’s funeral.

88. Upon information and certain belief, and as based upon certain statements by Jani Smith’s mother Sharron Hay, neither Jani Smith nor David Schied had been contacted by Merritt’s attorney David Munson, after Mike Merritt had purportedly hired that attorney on his OWN behalf and at the cost to Mickey Schied’s estate, which appears to have occurred over 7 weeks after the date he had otherwise **misrepresented** that hiring to be as shown by “Exhibit #19”.
(Bold emphasis added)

89. As such, and given the other details of this case as presented above in both Statements and Evidence, this Court should order the DENIAL of Mike Merritt’s application and COMPEL Mike Merritt to “Show Cause” why he should not be liable to the Estate for wasted costs to the estate by payments of Jani Smith from the bank checking account for ongoing operations of Mickey’s home (to include having the air-conditioner running 24/7, having the electricity on, water, and other services to the home) by his stalling on time. Moreover, such a Show Cause Order should instruct Michael Merritt and HIS attorney to present their attorney/client contract over to the Estate for review of the date upon such “hire” was consummated, and to help determine other wasted costs were incurred by Michael Merritt through such delayed hiring and his

misrepresentation about that attorney initiating contacts with David Schied and Jani Smith on Mike Merritt's behalf.

90. Additionally, a separate "Show Cause" should be issued to COMPEL Jannette (Jani) Renee Smith to submit all her accounting documents to the Court to include bank "checking" and Scottrade monthly accounting statements covering from the month prior to Mickey Schied's death (i.e., July 2014) through the present (October/November 2014). Jani Smith and Michael Merritt should also be compelled, based upon the factual statements herein, to itemize all items taken from Mickey Schied's home thus far to include but not be limited to a listing of all firearms (guns) and ammunition, all items taken from the home out of state on three (3) occasions by Jani Smith, the current location of the Prowler taken by Roy Turner, the washer, dryer, lawnmower, the sale receipt for the refrigerator and piano, and an accounting for any other item taken (with or without permission from Jani Smith) from the home or bank accounts of Mickey Schied since his death.

91. Moreover, this Court should order Michael Merritt to post a "bond" against the value of the \$1,000 he already received in cash by hand-delivery from Jani Schied in the presence of David Schied just after Mickey's funeral, for advanced payment his future services to the Estate, and to cover likely other financially liability that he may have caused to depreciate the value of the

Chevy Trailblazer and other items of the Estate by his inappropriate retaliatory conduct, misrepresentation and/or fraud, his gross negligence of fiduciary duties, and by his dereliction of his duties to act in the best interest of ALL distributees, heirs, and benefactors of the Estate.

**CONCLUSION AND REQUEST FOR INJUNCTIVE, DECLARATORY,
AND OTHER RELIEF**

WHEREAS, the case presented in this instant is whereby the Evidence demonstrates that Michael Merritt is neither suitable nor qualified as “*executor*” for Mickey Schied’s estate, and that Jani Smith has repeatedly overstepped her bounds with regard to confiscating property and financial accounts otherwise owned, contributed to, controlled by and solely benefitting Mickey Schied up to the date of his death while refusing to provide David Schied as her co-principal heir and beneficiary of the Estate of Mickey Schied, David Schied requests the following of this instant Court:

1. An Order DENYING Michael Merritt’s “Application to Probate Will and for Letters Testimony;”
2. An “Order for Show Cause” – on the Court’s own initiative or by the Court’s own motion – to COMPEL Michael Merritt to provide a proper accounting for what he has done with – or charged against – the property of Mickey Schied’s estate since the time of his death, with such accounting to

reflect all actions taken by Michael Merritt which he wishes to claim done on behalf of the Estate according to the terms of the Will and in the best (equal) interests of both David Schied and Jani Smith, as well as reflect an itemized accounting of ALL property taken from the Estate home and the financial (i.e., “checking” and “Scottrade” accounts belonging to the Estate).

3. An “Order for Show Cause” – on the Court’s own initiative or by the Court’s own motion – to COMPEL Jannette (Jani) Smith to provide a proper accounting for what she has done with – or charged against – the property of Mickey Schied’s estate since the time of his death, with such accounting to reflect all actions taken by Jani Smith which she wishes to claim done on behalf of the Estate according to the terms of the Will and in the best (equal) interests of both David Schied and Jani Smith, as well as reflect an itemized accounting of ALL property taken from the Estate home and the financial (i.e., “checking” and “Scottrade” accounts belonging to the Estate).
4. An Order denying further “*services*” by attorneys Robin Apostolakis and David Munson who have apparently been – or promised to be paid – from assets of the Estate to “*represent*” Jannette Smith and Michael Merritt respectively against the interests of David Schied as an “*interested party*” in his brother’s, Mickey Schied’s, estate, and against both the spirit and the letter of Mickey Schied’s “*Last Will and Testament;*” and to further Order

the return of attorney fees or claims for attorney fees against the Estate to promptly returned or nullified by reason of dereliction and self-interest of these attorneys.

5. To treat this instant “Counter-complaint... and Brief in Support...” and accompanying “Formal Joinder....” also as a “*Motion to Probate the Will as Miniment of Title*” so to demonstrate the Court’s own interest in preserving the remaining assets of the Estate of Michael Edward Schied while litigation continues over the rights of David Schied to properly receive documentation pertaining to what has thus far been done with the Estate of his younger brother, in accordance with Mr. Schied’s right as principal co-heir to this Estate of Michael Edward Schied.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "David Schied Pro Per".

Dated: 1/13/15

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