APPENDIX 3.1

NO. 10-004687-CV

DUSTY STOCKARD, Individually and as Administrator of the Estate of CHANNING STOCKARD,	§	IN THE 479TH DISTRICT COURT
Plaintiff,	§	IN AND FOR TRAVIS COUNTY
v.	§	
MITCH MURPHY,	§	
Defendant.	§	STATE OF LOAN STAR

MOTION RE VOIR DIRE REHABILITATION

TO THE HONORABLE COURT:

COMES NOW, Plaintiff Dusty Stockard, individually and as Administrator of the Estate of Channing Stockard, Deceased, and files this Motion re Voir Dire Rehabilitation.

I – RELIEF REQUESTED

Pursuant to Fed. R. Civ. P. 16, plaintiff moves the Court to refrain from rehabilitating prospective jurors who have expressed reservations about serving or who have expressed an inability to serve fairly and impartially as a juror in this case.

II – GROUNDS

This motion is made on the grounds that questioning from the Court, as opposed to questioning from counsel, carries an inherently persuasive weight, which could tend to influence prospective jurors to answer in the way the juror being questioned believes the Court wants the question answered. Plaintiff respectfully submits that the goal of seating a truly impartial jury is best achieved by allowing counsel for all parties to question the prospective jurors without

intervention by the Court.

More specifically, this motion asks the Court to refrain from actively *rehabilitating* prospective jurors who have expressed reservations about serving or have expressed an inability to serve fairly and impartially as a juror.

III – LEGAL ARGUMENT

Jurors are often loath to admit that they cannot act fairly and impartially. It is basic human nature to believe that one is a fair person. Nevertheless, each prospective juror comes to the courtroom with biases, preconceptions and experiences that may prejudice him or her in a particular case. Still, it is difficult to admit to oneself; much less a room full of peers, that one cannot be "fair and impartial." If counsel's questions cause a prospective juror to realize, and to admit, that he or she is not well suited as a juror to a particular case, it is much more likely that realization and admission will be undone by a question from the ultimate authority figure in the room — the judge — than by a follow-up question from counsel. A prospective juror might reasonably assume from the court's questioning that it is not a good thing to be biased one way or another in a courtroom. Thus, a question from the ultimate authority figure is more likely to bring an answer that the prospective juror believes is the "correct" answer rather than the truthful answer.

> A challenge for actual bias may be taken for the cause mentioned in RCW 4.44.170(2). But on the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion upon what he or she may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, **but the court must be satisfied, from all the circumstances, that the juror cannot disregard such opinion and try the issue impartially.**

RCW 4.44.190 (Emphasis added).

This statute does not require that the judge question a biased juror. Rather, it simply

requires that the Court be satisfied, from all the circumstances, that the juror cannot put aside a strongly held belief or preconception.

This wrongful death case involves the death of a young woman.

Some jurors struggle with awarding any damages for pain and suffering. Such a potential juror is likely incapable of impartially deciding this case. Yet such a juror likely believes he or she is fair and impartial on all issues merely because he is fair on some issues. If this hypothetical juror admits, in questioning by counsel, that they just don't think this is the proper type of trial for them to serve, and that, were they the plaintiff, they wouldn't want a person like him or her on the jury, they would have expressed a bias that the Court should accept and honor. But, if the Court then interjects the formulaic question "But you can bre fair, can't you?", then the prospective will likely feel coerced into giving the "correct", but untruthful, "Yes" response.

A good example of this phenomenon is found in *City of Cheney v. Gruneweld*, 55 Wn.App. 807, 810, 780 P.2d 1332 (1989). The case involved a DUI prosecution. The juror in question belonged to Mothers Against Drunk Driving (MADD) and said, among other things, that he would not want a jury of people in his "frame of mind" and that he did not think he would get a fair trial in that circumstance. *Id.* at 809. Nevertheless, the court denied a challenge for cause having "rehabilitated" the juror as follows:

> THE COURT: ... do you think you can put all that aside and give both parties here a fair trial?
> MR. BAUMAN: I do.
> THE COURT: ... Do you understand that it's not illegal to drink and drive.
> MR. BAUMAN: I do.
> THE COURT: Do you think that you can keep a fair and open mind throughout that entire trial?
> MR. BAUMAN: Yes.

Id. at 808-809.

On appeal, the Court of Appeals reversed, holding that despite the juror saying that he could be fair, the evidence of his bias was clear from the record.

DATED this 2nd day of June, 2017.

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