

NO. 456,059

IN RE GUARDIANSHIP OF	§	IN PROBATE COURT
MURIEL LUBA MINTZ	§	NUMBER FOUR 2 OF
AN INCAPACITATED PERSON	§	HARRIS COUNTY, TEXAS

**PLEA TO THE JURISDICTION, MOTION TO VACATE  
WITH TEMPORARY RESTRAINING ORDER & REQUEST FOR  
INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW BARBARA LATHAM, hereafter Movant, and files this Plea to the Jurisdiction, Motion to Vacate the SHOW CAUSE ORDER and ORDER TO PRODUCE DOCUMENTS with respect to documents related to the Mintz Family Trust IN THIS GUARDIANSHIP CASE for improper venue, want of jurisdiction, lack of standing and fraud on the court by Michele Goldberg and Donald Mintz (with his attorneys) in knowingly misrepresenting the MINTZ FAMILY TRUST to be a revocable trust benefitting the proposed ward or subject to the control of MURIEL MINTZ, when both knew that the trust was not part of the guardianship estate, (such that it should never have been the subject of any court order in this case), when GOLDBERG had no standing to demand bank account documents related to the MINTZ FAMILY TRUST or LATHAM'S personal bank accounts.

MOVANT further seeks a TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION AGAINST DONALD MINTZ AND HIS ATTORNEYS

OR ANYONE ACTING IN CONCERT WITH HIM, AND MICHELE GOLDBERG or any person acting in concert with her (“enjoined persons”), to stop the unauthorized taking or freezing of LATHAM’S funds or funds belonging to the MINTZ FAMILY TRUST in this case in the absence of further COURT ORDERS authorizing such action expressly by this Judge; ordering by mandatory injunction that all enjoined persons return all fees taken from LATHAM OR THE MINTZ FAMILY TRUST within 72 hours, CEASE ANY AND ALL further attempts to freeze any of LATHAM’S personal accounts or the trust accounts; ORDERING that the enjoined persons and parties to this case refrain from disturbing the peace of LATHAM, NELSON OR MURIEL, blocking visitation, access to the proposed ward or access to medical information and staff communications concerning MURIEL’S medical condition and status, mandating that GOLDBERG execute HIPAA releases for all records and medical information to all three children of MURIEL MINTZ, engaging in any deception or making false statements to this court or anyone else in this case; or engaging in any of the list of prohibited acts listed below while mandating compliance with all mandatory provisions of the Court’s TRO and Order for injunctive relief.

**FACTUAL BACKGROUND AND HISTORY**

Without any evidentiary hearing having occurred to find that LATHAM engaged in malfeasance or self-dealing or violated the trust in any way, or took her mother’s assets in violation of any law, Michelle Goldberg removed \$6063.05 from LATHAM’S personal checking account with Bank of America ending in 7007, knowing that the trust assets did

not contain MURIEL'S estate assets by the express terms of the trust (and no knowledge to suggest MURIEL was impaired when she created the trust or intended to defraud the federal government by making such intervivos gift), and having no standing to demand trust documents or personal documents related to such trust given it was irrevocable, the beneficiaries are her children only and the trustees were LATHAM AND MINTZ, with MURIEL relinquishing all right title and interest to the same. Ostrom Morris' Stacy Kelly improperly obtained an order enjoining Bank of America from releasing (by freezing funds) in LATHAM'S personal IRA accounts ending in 4167 and 7907 given venue is mandatory in Brazoria County, Texas due to the fact that LATHAM resides and manages the trust from Brazoria County, pursuant to the mandatory venue provision of Texas Trust Code 115.002.

MICHELE GOLDBERG spent substantial billable time reviewing the terms of the IRREVOCABLE MINTZ FAMILY TRUST, researching relevant issues, and is a trust attorney involved in approximately 300 cases in Harris County probate court. *See Goldberg's billing and request for fees of over \$18,000 in which she admits reviewing the trust several times, researching and then spending substantial time drafting a show cause motion and order to compel BARBARA LATHAM to produce documents related to the IRREVOCABLE MINTZ FAMILY TRUST, which she knew MURIEL MINTZ created two years ago to benefit her three children exclusively and relinquished all control, right and title to any assets in that trust to co-trustees BARBARA LATHAM AND DONALD MINTZ,*

*with the only other beneficiary being ESTELLE NELSON. See Mintz Family Trust, produced by DONALD MINTZ in Cause No. 462505 11/27/17; for which this Judge signed GOLDBERG'S show cause order specifically forcing LATHAM to produce trust documents related to bank accounts to which she had no standing or right to demand in this case.*

DONALD MINTZ'S attorneys realized before November 27, 2017 that the guardianship court lacked jurisdiction over the MINTZ FAMILY TRUST in Cause No. 456059 as evidenced by them filing Cause No. 462505 (trust case), knowing that this court had no jurisdiction to attach the trust to this guardianship and that the alleged torts and breaches of LATHAM with respect to such trust were subject to mandatory arbitration and could not be filed in a court of law other than to compel arbitration.

Yet, they continue to seek relief to which they are not entitled in this court and which this court has no authority to grant—based on fraudulent statements—some of which were perjured, such as Donald Mintz's affidavit swearing the trust was revocable and belonged to the estate of MURIEL MINTZ. As stated herein, the trust was settled in 2015 for the exclusive benefit of MURIEL MINTZ'S CHILDREN by DONALD MINTZ'S efforts to have it drafted with him choosing the terms so he knew that MURIEL relinquished all right title and control to the assets and was not a beneficiary. He also knew the trust was irrevocable which was the opposite he swore to in order to get the court to seize it.

MINTZ chose the terms of the trust, rendering it akin to a contractual agreement, but he also accepted benefits of the trust in at least \$14,000 so he is estopped from denying the mandatory arbitration clause and it is an abuse of discretion for any court to refuse to compel arbitration. *See Original Petition, Application for Removal of Trustee, and for injunctive relief attached hereto and incorporated fully by reference with the Mintz Family Trust attached. See also Texas Trust Code 115.002, Texas Arbitration Act and Rachal vs. Retiz (Tex. 2013). Yet, MINTZ and his attorneys pursued a separate trust case once they realized that the trust was not properly invoked in this guardianship and deceived the Court once more by failing to disclose that this case is subject to mandatory arbitration with mandatory venue in Brazoria County under Texas Trust Code Section 115.002.*

**MANDATORY BRAZORIA COUNTY VENUE**  
**TEXAS TRUST CODE SECTION 115.002**

MINTZ admitted that he ceased to manage the trust as co-trustee, abdicating all responsibility as a fiduciary to me the only remaining co-trustee, which he disingenuously refers to me as a purported trustee and himself as a trustee, after admitting he relinquished control of the trust to me. *See Cause No. 462 505; Trust lawsuit filed November 27, 2017.* He knew that venue is MANDATORY IN BRAZORIA COUNTY because the sole acting trustee, LATHAM, lives in BRAZORIA COUNTY and that is the situs of the trust's management. MINTZ deceives the Court with mere semantics by stating that he ***relinquished control and then denying that he resigned.*** MINTZ cannot walk away from his duties as trustee and breach and then decide to return to his post. He also misrepresented

his access to the trust, insisting that LATHAM blocked him from serving as trustee and access to the trust when GOLDBERG told the Court and parties that MINTZ met her at the bank and provided full access to the accounts he claims to have been denied access to. On top of this outrageous claim, he accuses her of breaching duties when her actions were intended to protect the assets from improper seizure and malfeasance which MINTZ was consistently involved in to exploit MURIEL MINTZ. *See Affidavit of Barbara Latham*. He cannot identify any means by which LATHAM has exceeded authority granted in the trust, rendering his lawsuit frivolous, despite the fact that it doesn't belong in court and certainly not in Harris County regardless.. Tex. Prop. Code. 115.001 et seq. *See previously filed MOTION TO TRANSFER VENUE TO BRAZORIA COUNTY, VERIFIED AND GENERAL DENIAL & MOTION TO COMPEL ARBITRATION*; filed in Cause No. 462505 filed in this Court November 27, 2017.

### **MANDATORY ARBITRATION**

MINTZ and his attorneys know that the trust action they filed is **expressly prohibited** by the TRUST instrument itself because arbitration is mandatory under its express terms and Texas Supreme Court authority as announced in the 2013 case of RACHAL VS. RETIZ IN 2013 that any arbitration clause in an intervivos trust is strictly enforceable pursuant to the Texas Arbitration Act, Trust Instrument, estoppel by benefit, and the fact that he is the one who chose the terms, rendering it akin to an agreement to arbitrate. 403 S.W.3d at 842.

**REQUEST TO SET ASIDE ORDERS REGARDING TRUST AND PERSONAL  
BANKING DOCUMENTS PENDING MANDATORY ARBITRATION UPON  
TRANSFER TO MANDATORY VENUE**

LATHAM respectfully requests that the Court set aside the SHOW CAUSE ORDER issued November 10, 2017 and ORDER TO PRODUCE documents PERTAINING TO TRUST DOCUMENTS OR PERSONAL BANK DOCUMENTS OF BARBARA LATHAM RELATED TO TRUST TRANSFERS because: (1) mandatory venue of any motion to compel arbitration is in BRAZORIA COUNTY, TEXAS, not HARRIS COUNTY, TEXAS under Texas Trust Code 115.002, (2) Michele Goldberg lacked standing to file a show cause order or seek the order to produce documents RELATED TO THE MINTZ FAMILY TRUST, a trust which she knew was not part of the guardianship estate and (3) this case was initiated by the fraudulent perjured affidavit of DONALD MINTZ with GOLDBERG knowing that the trust should never have been part of this proceeding after billing thousands to read the trust, researching issues a trust lawyer should already know, drafting a 73 page show cause motion and order that she had no standing to demand, and obtaining an order that is likewise void because she had no standing to demand it;

**SET ASIDE OF TEMPORARY RESTRAINING ORDER & GRANTING  
MANDATORY AND PROHIBITIVE TRO IN LATHAM'S FAVOR**

LATHAM seeks a temporary restraining order and temporary injunction in Cause No. 462505; mandating that GOLDBERG, KELLY, OSTROM MORRIS, MINTZ and all

associates or persons acting in concert remove their restrictions on BARBARA LATHAM'S personal accounts and the trust accounts, as well as return any funds taken from the same and further comply with the ORDER submitted herewith, the items are listed in this MOTION.

### **RELEVANT FACTS AND HISTORY**

On March 8, 2017, Donald Mintz filed an Application for Guardianship of the Person and Estate of Muriel Mintz in Harris County Probate No. 2. In the application Donald Mintz swore under oath via affidavit to the following, when he knew that it was false;

*“The Proposed Ward's Estate consists of bank accounts containing approximately \$108,764 and a revocable living trust containing approximately \$116,000. Although the Proposed Ward is not the Trustee of this Trust, she does have the power to appoint its assets or demand distributions.”*

Donald Mintz was the person who sought out longtime friend, Jim Moulder, to prepare the MINTZ FAMILY TRUST with the intention of funding it with MURIAL MINTZ'S assets solely for the benefit of her three children, naming as co-trustees BARBARA LATHAM AND DONALD MINTZ, and expressly omitting MURIEL MINTZ as a beneficiary, trustee or interested person having any power to modify its provisions in any way by making it IRREVOCABLE. MINTZ knew in 2015 that this trust was irrevocable and NOT REMOTELY PART OF MURIEL MINTZ'S ESTATE. He also



knew that MURIEL MINTZ had no power to appoint or modify the irrevocable trust in any way and that she was not a beneficiary of the trust by his express design and request, yet he defrauded the court by the foregoing sworn, perjured statement. *See Application for Guardianship of Estate and Person of Muriel Mintz filed by Donald Mintz.* Proof that MINTZ'S attorneys have known that the MINTZ FAMILY TRUST is not part of the guardianship estate and should not have been part of any court order in the guardianship case lies in the fact that his attorneys filed an entirely new case, Cause No. 462505 for breach of trust, as they attached a copy of the MINTZ FAMILY TRUST with their pleading filed on the 27<sup>th</sup> day of November 2017, which unambiguously reveals the foregoing.

In Donald Mintz's "Application for Removal of Trustee", filed November 27, 2017, in No. 462505, he exhibits a copy of the Mintz Family Trust, the Trust at issue. One can clearly see at page 3, that Donald Mintz signed the Certificate of Trust on the day the Trust was created and has personal knowledge of its content. The only beneficiaries are Donald Mintz, Estelle Mintz Nelson, and Barbara Latham. The initial co-trustees are Donald Mintz and Barbara Latham. The trust was created irrevocable at inception, and Muriel Mintz disclaimed all right, title and interest in both the principal and the income retaining no powers of appointment what-so-ever. *Donald Mintz Affidavit is clearly false.* All of the effort to seize this inter vivos Trust under the presumption that it contained "estate "assets and all of the efforts to force disclosures from the Active Trustee are based upon Donald Mintz knowingly **perjured Affidavit. Based upon the contradictory evidence and**

**claims between the two separate filings, a presumption of validity can no longer be indulged in favor of Donald Mintz assertions.** Filing that false affidavit is a felony that resulted in the improper abduction of Muriel Mintz, the improper seizure of her assets and the improper efforts to seize the assets in a Trust Donald Knows full well does not contain assets belonging to the estate of Muriel Mintz.

The Guardianship pleadings clearly state that Donald relinquished control and dumped all the fiduciary obligations and administration responsibilities on Barbara Latham. One can only interpret that statement as an admission that Donald either refused or ceased to serve. Under the Property Code beneficiaries can request a full true complete accounting but Donald Mintz cannot bring an action to enforce a right that has not been proven to have been interfered with, nor can he ask the court to presume malfeasance where none has been shown.

Not only has Donald and his counsel been disingenuous with the Court, by his own admissions he is in breach of his fiduciary duties and any breach that Barbara committed, if any, would be a liability she would share with her co-trustee, co-beneficiary. A reading of the Trust however, indicates a great deal of latitude is given to the trustee and without a full true and complete accounting, allegations of impropriety would appear to be premature. The trust code itself mandates that a request for accounting be made first before a suit to compel a trust accounting can be filed. Donald skipped past both of these steps and the accounting he produced is false by stating that he never had control of assets and

laughable on its face. *See Affidavit of Barbara Latham, check to Donald Mintz and accounting of Mintz vs. Accounting of Goldberg.*

Goldberg's Show Cause Motion states at page 3 item 6, "*Although Donald has not resigned as Co-Trustee, he has relinquished management to Respondent, who is the other Co-Trustee*". *The Motion* does not explain exactly how this relinquishment of management to Respondent transpired but the claims in the Application for Removal of Trustee" allege that Barbara has refused to allow Donald to participate as a co-trustee. Goldberg proved this was false by disclosing that she met Donald at the bank and he provided her full access to all accounts at issue. Proof that she had access to accounts lies in the fact that she even seized over \$6000 from Barbara Latham's personal account without any notice to Barbara or proof of wrongdoing—or COURT ORDER authorizing GOLDBERG to seize LATHAM'S money.

An Inventory of the Estate" of Muriel Mintz was filed on November 3, 2017 and approved by the Court on November 6, 2017. According to the "Approved Inventory" the "Estate" of Muriel Mintz contains assets worth \$107,381.48. Given that Donald's Affidavit states the Estate worth at \$108,764 and that his estimate of Muriel's Estate was fairly accurate when compared to the approved inventory, it is difficult to believe that Donald has been kept in the dark, or anything else he claims for that matter.

MICHELE GOLDBERG billed for reviewing the trust and performing research to interpret the MINTZ FAMILY TRUST and determine its relevance in the guardianship

proceeding in October of 2017, but continued to pursue the SHOW CAUSE ORDER dated November 10, 2017 (approximately one month later) to force BARBARA LATHAM to produce documents concerning the trust when she had no standing to demand the same, no standing to demand an accounting, and knew without any shadow of a doubt that the trust was not part of the estate of MURIEL MINTZ. As an experienced attorney, it is nearly impossible to think this was an oversight.

Further, the Temporary Guardian states:

*“Since her date of qualification, Movant has tried to take possession of Ward's accounts in any known financial institutions, but is having difficulty gathering needed information to locate and secure such assets.”*

This would make sense given that she is inquiring about assets that are not property belonging to the estate. Moreover, the attorneys that filed the Trust exhibit one day and then argued in favor of the TRO in the Guardianship proceeding the next, perpetrated a fraud upon the court knowing that assets in the Mintz Family Trust are not property belonging to the estate of Muriel Mintz and do not come within the subject matter jurisdiction of the Guardianship Court. They demonstrated their awareness of this fact in filing *Cause No. 462505; In re Mintz Family Trust on November 27, 2017, albeit in the improper mandatory venue and in violation of the arbitration clause, which is mandatory and precludes litigation such as these two cases as it concerns trust assets.*

Donald Mintz’s Counsel knowingly filed that Trust as an exhibit in a separate action and withheld it from the eyes of this Court, while arguing in the TRO proceeding what they knew full well was untrue. In the action for removal of Barbara as Trustee, Donald argues

that he is a co-trustee with the right to participate in the administration of the Trust and that he should be the trustee to the exclusion of Barbara. In the Guardianship proceeding he is arguing the assets in the Trust belong to the estate and that the temporary guardian has the right to seize control of those assets. These arguments are mutually exclusive. If one is true, the other cannot be.

The only evidence relating to a trust in the guardianship case appears to be the Affidavit filed with the original guardianship application. Donald's own copy of the trust filed in No. 462505 makes it obvious that Donald Mintz does not understand **the duty to speak truthfully under oath and is not qualified to be a witness.** **The jurisdiction of the court was invoked by a perjurer's affidavit and yet all of the actions of the Court and the Temporary guardian look to that falsehood for their legitimacy.** This Temporary guardian and Donald Mintz Attorneys have apparently also seized and improperly converted private assets belonging to Barbara Latham and/or shared by her and Muriel without following lawful procedures and without using lawful process.

Donald Mintz signature on the certificate of trust also indicates his approval of the creation and transfer of assets at the time the trust was created. Muriel left herself more than sufficient resources for her end of years care when she intentionally protected those assets from the very people who now seek to seize them for purposes far removed from any consideration to Muriel's needs. Had the temporary guardian not spent the past months and \$18,000+ of MURIEL MINTZ'S annual income pursuing a trust which she had no

right to seize or demand information concerning by the very terms of the instrument, which she admits reading, researching and writing a Show Cause Motion to force Latham to turn over private trust information and personal banking documents. It is inconceivable that any of these parties and/or counsel simply made a mistake rather than intentionally devised this fraudulent scheme to seize Muriel Mintz, her estate, the Mintz family trust improperly and even Latham's personal funds—while using “tricks and traps” to deprive Latham of the opportunity to defend herself by improperly freezing her IRA funds of approximately \$92,000+. These actions were not legal and were in bad faith for the purpose of harassment, meriting sanctions under Rules 10 and 13. Tex. R. Civ. P. 10, 13.

**GOLDBERG HAD NO STANDING TO PURSUE THE SHOW CAUSE ON A TRUST**  
**WHICH WAS CLEARLY NOT AN ASSET OF MURIEL MINTZ**

Michelle Goldberg's bill indicates that she spent more than sufficient time in October reviewing the Mintz Family Trust. Goldberg is an experienced trust attorney and knows how to read a trust. She therefore knows that Mintz is not a beneficiary. Yet, she claims otherwise. She is not a beneficiary and is not acting on behalf of any beneficiary and thus, has no standing to ask this court for a show cause hearing on the matter. The trust does not include GOLDBERG or MURIEL as a party who has standing to pursue any legal remedies regarding the actions of trustees and The Texas Trust Code expressly limits parties with standing to interested parties defined as beneficiaries:

Sec. 115.011. PARTIES. (a) Any interested person may bring an action under Section 115.001 of this Act.

(b) Contingent beneficiaries designated as a class are not necessary parties to an action under Section 115.001. The only necessary parties to such an action are:

a beneficiary of the trust on whose act or obligation the action is predicated; a beneficiary of the trust designated by name, other than a beneficiary whose interest has been distributed, extinguished, terminated, or paid; a person who is actually receiving distributions from the trust estate at the time the action is filed; **and the trustee, if a trustee is serving at the time the action is filed.**

### **GOLDBERG HAS NO STANDING**

This section addresses two types of standing in trust matters: 1) standing to bring a trust action; and 2) standing to compel an accounting under Tex. Prop. Code § 113.151. The ability to bring an action related to a trust is limited – the Texas Trust Code explicitly limits standing in such actions to “interested persons” – in other words, persons with some threshold interest in the trust. TEX. PROP. CODE § 115.011(a) (“any interested person may bring an action under § 115.001 of this Act”). An “interested person” is defined in the Property Code as:

A trustee, beneficiary, or any other person having an interest in or claim against the trust or any person who is affected by the administration of the trust. **Whether a person, excluding a trustee or named beneficiary, is an interested person may vary from time to time and must be determined according to the particular purposes and matter involved in the proceeding.** Tex. Prop. Code § 111.004(7) (emphasis added).

A “beneficiary” is defined as “a person for whose benefit property is held in trust, regardless of the nature of the interest.” Tex. Prop. Code § 111.004(2).

In *Moon v. Lesikar* 230 S.W.3d 800 (Tex. App. -- Houston [14th Dist.] 2007, pet. denied) the trust was settled by Lesikar, and his daughter Carolyn, sued over transactions Lesikar made with the trust. The court determined Carolyn was not an “interested person” as long as Lesikar was alive because he could revoke the trust at any time, which would remove Carolyn as a beneficiary. Since Carolyn was not an “interested person,” the court found she did not have standing to sue regarding the trust. *Moon v. Lesikar* 230 S.W.3d 800, 804 (Tex. App. --Houston [14th Dist.] 2007, pet. denied). If a person has no right to sue to revoke a trust, as in the case of Muriel Mintz, the same reasoning would apply and aside from the lack of Muriel Mintz in the trust document as a beneficiary or trustee, the Code would agree that she is not an interested person entitled to enforce any rights with respect to the MINTZ FAMILY TRUST. If MURIEL MINTZ has no right or standing to sue, neither does MICHELE GOLDBERG on her behalf. For this reason, GOLDBERG’S Show Cause Order, Order granting show cause, and Order commanding LATHAM to produce documents demanded therein is void and must be set aside.

**STANDARD FOR LATHAM’S REQUEST FOR TEMPORARY**

**RESTRAINING ORDER AND TEMPORARY INJUNCTION**

Due to the fraud on the court mentioned herein, the guardianship action is tainted with perjured affidavits and knowing falsities in a clear full frontal assault on BARBARA LATHAM and the MINTZ FAMILY TRUST, which has damaged LATHAM by freezing upwards of \$92,000+ in IRA retirement accounts that are LATHAM’S personal retirement,



emptying LATHAM'S personal account of over \$6000, and inflicting severe mental anguish and emotional distress which caused her to emotionally and physically crater and become ill to the point she was incapable of fighting the onslaught further or caring for her mother as she has done this past 8 months+ with no complaints from the temporary guardian or accusations that LATHAM was not appropriately caring for MURIEL. These accusations appear to be made in retaliation for LATHAM'S criticism of GOLDBERG AND MINTZ, which was not lodged in malice but to notify the Court that the witch hunt and total inquisition of her every move by the police, adult protective services, and GOLDBERG as she combs through accounts she has no right to access in an outright fishing expedition seeking any bit of ammunition she can use against LATHAM.

Goldberg's vendetta and hostility has now extended to ESTELLE NELSON, who is likewise being blocked from accessing her mother, speaking to medical professionals in the middle of an emergency regarding her mother's potential cracked spine, which occurred within days of GOLDBERG assuming her care—because she was not given appropriate supervision and is nearly blind, causing her to fall at the nursing home which GOLDBERG placed her against her wishes – a fact known to DONALD MINTZ for the past 20 years or more. Given both sisters are registered nurses with advanced certifications detailed in the affidavit of Barbara Latham, this is dangerous and creates an imminent danger of harm or death to MURIEL MINTZ and must be immediately enjoined for her safety and well-being. It would be gross negligence or worse to continue to permit this to occur and one has to

wonder how blocking her daughters, medical professionals, access to medical professionals treating their mother, is in MURIEL'S best interests.

Likewise, how is spending half of her annual income fishing for ammunition, rather than conducting a legitimate investigation into assets over which GOLDBERG actually had authority—in the best interest of MURIEL MINTZ, especially if the court is concerned about her finances and ability to fund care for the rest of her life? It categorically is not and is further a violation of the ward's bill of rights. For the foregoing violations of BARBARA LATHAM AND MURIEL MINTZ'S RIGHTS as well as ESTELLE NELSON'S rights, LATHAM seeks injunctive relief to be issued immediately in this guardianship case and for GOLDBERG to be ordered to (1) cease interfering with LATHAM AND NELSON'S access to their mother or ability to communicate freely with any medical professionals treating her, (2) remove any and all freezes or holds on LATHAM'S or the MINTZ'S family trust accounts, (3) return any and all funds taken from LATHAM'S account within 72 hours and (4) cease engaging in any of the foregoing acts without a court order against NELSON, MURIEL, OR LATHAM from this point forward. LATHAM prays that the same relief be granted to LATHAM, NELSON AND MURIEL MINTZ against DONALD MINTZ, his attorneys and anyone acting in concert with MINTZ.

**TEMPORARY RESTRAINING ORDER & INJUNCTION**

Texas law provides for a restraining order to be issued where there is proof

of Imminent, irreparable injury that cannot be compensated for at law, or in damages. TEX. R. CIV. P. 681. RULE 681 provides, “No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon.”

BARBARA LATHAM SEEKS EMERGENCY ORDERS OF THIS COURT VIA TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION AND PERMANENT INJUNCTION AGAINST DONALD MINTZ, MICHELE GOLDBERG, attorneys for MINTZ, or anyone acting in concert with the foregoing individuals, hereinafter referred to as ENJOINED PERSONS OR ENJOINED PARTIES, enjoining them from the foregoing acts in this matter by an ORDER:

- a. Mandating that DONALD MINTZ, MICHELE GOLDBERG, attorneys or persons acting in concert with either MINTZ OR GOLDBERG immediately cease and desist from attempting in any manner to interfere with LATHAM OR NELSON’S access to their mother, MURIEL MINTZ or free communication with medical professionals or staff treating or caring for their mother;
- b. Ordering the ENJOINED PERSONS to immediately cease and desist from threatening or taking adverse action with law enforcement, government agencies, banks, or otherwise without prior order of this court with findings of fact and

- conclusions of law to justify such actions;
- c. Prohibiting the ENJOINED PERSONS from Falsifying information concerning MURIEL MINTZ'S PERSON OR ESTATE OR THE MINTZ FAMILY TRUST;
  - d. ORDERING the ENJOINED PERSONS to remove all encumbrances from the personal accounts or funds of BARBARA LATHAM, THE MINTZ FAMILY TRUST, pursuant to the SHOW CAUSE ORDER, SHOW CAUSE MOTION, OR ORDER TO PRODUCE issued in this case; and deposit any funds taken from LATHAM OR THE TRUST within 72 hours.
  - e. PROHIBITING THE ENJOINED PERSONS from placing any ORDERS to freeze BARBARA LATHAM OR THE MINTZ FAMILY TRUST'S funds wherever they may be without an ORDER of the arbitrator or Court;
  - f. Ordering the ENJOINED PARTIES to refrain from disturbing the peace of LATHAM, MURIEL MINTZ, ESTELLE NELSON during the pendency of any proceeding in this court involving the parties;
  - g. Ordering GOLDBERG to secure 24-hour supervision by a sitter for MURIEL MINTZ to protect her from future falls to the extent she does not return to LATHAM'S home at which time LATHAM will provide 24-hour care for her mother with MURIEL MINTZ'S funds used to pay for any sitter directly;
  - h. Ordering all parties to return to this Court for hearing on the Application for Temporary Injunction by LATHAM on the \_\_\_\_ day of \_\_\_\_\_, 2017

at \_\_\_\_\_.

- i. ORDERING the ENJOINED PERSONS, their employees, contractors, representatives, agents or assigns cease and desist from harassment of LATHAM, MURIEL OR ESTELLE;
- j. ORDERING MICHELE GOLDBERG to execute HIPAA medical releases to share all medical information concerning MURIEL MINTZ with her three children so that her care is not impaired and she is not subjected to medical battery by the inability of the temporary guardian to provide informed consent for lack of MURIEL'S medical history;
- k. ORDERING MICHELE GOLDBERG to permit all three children of MURIEL MINTZ to have input into all healthcare decisions and placement decisions made concerning MURIEL MINTZ and to further consult MURIEL REGARDING THESE DECISIONS;
- l. ORDERING MICHELE GOLDBERG to adhere to all advanced directives and related documents executed by MURIEL MINTZ related to her medical care, including DO NOT RESCUSITATE directives as indicated by MURIEL MINTZ'S estate planning documents;
- m. ORDERING the ENJOINED PARTIES to cease and desist from any and all interference with LATHAM AND NELSON'S right to access their mother and medical information or staff involved in her care without a court order stating

otherwise;

- n. ORDERING the ENJOINED PERSONS to cease and desist from violating any of MURIEL'S rights as listed in the Ward's bill of rights or placing any arbitrary restrictions upon her without a written order of this court;
- o. ORDERING MICHELE GOLDBERG to immediately notify all of MURIEL'S CHILDREN of any change in her health or concern affecting her health and well-being within 2 hours;
- p. LATHAM submits that she is entitled to the foregoing relief in this case as argued herein and in the MOTION TO TRANSFER VENUE filed beforehand with verification and supporting affidavits of Barbara Latham, as well as exhibits referenced in this Plea to the Jurisdiction and the Motion to Transfer Venue of the Mintz Family Trust. LATHAM respectfully requests all other and further relief to which she may be justly entitled and for a declaration that the SHOW CAUSE ORDER is vacated, as well as the ORDER TO PRODUCE DOCUMENTS in this case, such that no finding of contempt will issue in this guardianship.

Respectfully submitted,

*Candice Schwager*

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**SCHWAGER LAW FIRM  
FOR BARBARA LATHAM**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing Motion for Substitution of Counsel was served upon all counsel of record this 8<sup>th</sup> day of December 2017 by e-file and e-mail.

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