

NO. 322-744263-23

IN THE MATTER OF §
THE MARRIAGE OF §
MORGAN MICHELLE MYERS §
AND §
CHARLES DUSTIN MYERS §
AND IN THE INTEREST OF §
M.E.M. AND C.R.M., §
CHILDREN §
IN THE DISTRICT COURT
322ND JUDICIAL DISTRICT
TARRANT COUNTY, TEXAS

**Respondent Charles Dustin Myers's Reply in Support of No-Evidence Summary Judgment
And Request for Ruling Upon Submission**

COMES NOW, Respondent, Charles Dustin Myers, who files this Reply in Support of No-Evidence Summary Judgment And Request for Ruling Upon Submission, and in support thereof, would show this Court the following:

I. Record References

A. Incorporation by Reference

1. To minimize unnecessary paper, facilitate the Court's review, and enhance the clarity of this brief, the undersigned respectfully incorporates by reference the Second Amended Consolidated Mandamus Record, which is publicly available on the Supreme Court of Texas website.

B. Request for Judicial Notice

2. The undersigned respectfully requests that the Court take judicial notice of the unopposed facts cited herein and contained in the referenced record, as they are capable of accurate and

ready determination from sources whose accuracy cannot reasonably be questioned, pursuant to Tex. R. Evid. 201(b)(2) .

3. The referenced document is available at:

<https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=61b83e31-36d1-4fbe-a837-5a3228b4cbc4&coa=cossp&DT=RECORD&MediaID=3f4d5220-d7e8-4cc6-a22e-db4ee7e4e9e0>.

4. For the Court’s convenience, each citation in this brief will refer to the record as “CMR,” followed by the page number (or range) and, if applicable, the paragraph number. For example, a reference to the sworn affidavit on page 3, paragraph 5, will appear as: [CMR p.3 ¶ 5](#). These references are hyperlinked to the specific page within the document for ease of access when viewed on a desktop computer.

5. The referenced “Second Amended Consolidated Mandamus Record” covers DKT entries 1-252 as found in this case’s docket, which has been attached hereto, and has been annotated with color labels to identify the filer of each DKT item.

II. Unopposed Statement of Facts

6. On December 12, 2023, Respondent, Charles Dustin Myers, discovered a significant volume of text messages between Petitioner Morgan Michelle Myers and Damen Gault Kazlauskas, Petitioner’s current boyfriend. *See CMR. p.254-714.*

7. In response to this discovery, the Respondent reached out to the Petitioner’s Grandparents with a request to talk, who admit to being “blindsided” by Petitioner’s sudden desire for a divorce. *See CMR. p.716-720.*

8. The following day, on December 13, 2023, the requested family meeting was turned into a private meeting between the Petitioner and her family members, as evidenced by the Petitioner’s text message sent on December 13, 2023, send at 9:55 P.M. CST. *See CMR. p.1715.*

9. Returning home around 1:30 A.M. CST, the text records show that Petitioner began communicating via text message with her Stepfather, Daniel Kenneth Branthoover of Yukon, Oklahoma at approximately 3:29 A.M. CST. *See CMR. p.278.*

10. These communications escalated the following day on December 14, 2023, totaling to over 90 text messages exchanged, which is the same day that the Petitioner sought her first ex parte order of protection from this Court. *See CMR. p.274-278. See also CMR. p.78 ¶ 9B.*

11. Over the weekend of December 15, 2023, Petitioner traveled to Yukon, Oklahoma, where she received assistance in drafting the initial documents submitted to this Court on December 18, 2023, acquired a secondary phone registered under 817-940-0852 which was used in these proceedings, and transferred \$1,576 of marital funds to herself using Daniel Branthoover's PayPal as a medium. *See CMR. p.1706.* (bank statement showing monetary transfer). *See also CMR. p.2866.* (unanswered request for admissions). *See also CMR. p.1715.* (text message from Petitioner admitting to monetary transfer on December 17, 2023).

12. The initial documents submitted to this Court on December 18, 2023, are the Original Petition for Divorce (*CMR. p.71-81*), a Request for Uncontested Cases form (*CMR. p.101-102*) and an Affidavit of Inability to Afford Court Costs (*CMR. p.84-96*).

13. In the Original Petition for Divorce, the following misrepresentations were made with direct reference to the record that contradicts them:

i. Petitioner claimed she could not afford Court costs yet admits to transferring \$1,576 to the day before filing for divorce. *See Unopposed Statement of Facts ¶ 11.*

ii. Petitioner claimed that the couple stopped living together as spouses on December 1, 2023, yet evidence shows the Petitioner at home with respondent on December

22 and December 29. *See CMR. p.74 ¶ 4. See also CMR. p.1734.* (screenshot from a video showing Petitioner at home with the Respondent having fun with the Children.)

- iii. Petitioner claimed to have an active order of protection in place against the Respondent with a finding of family violence during the marriage, which is a blatant lie that cannot be proven. *See CMR. p.78 ¶ 10. See also CMR. p.*
- iii. Petitioner claimed to own both family vehicles prior to the marriage despite knowing that both vehicles, one of them being a lease, were financed by the Respondent. *See CMR. p.135-136.* (Respondent's TXDPS records showing no prior history of family violence or criminal activity.
- iv. Petitioner claimed that she would be harassed, abused, seriously harmed or injured or otherwise subjected to family violence if she must give the Respondent her new phone number acquired in Oklahoma. *See CMR. p.81 ¶ 15.*

14. In the Petitioner's Statement of Inability to afford Court Costs, the following misrepresentations were made with a direct reference to the record that contradicts them:

- i. The Petitioner claimed she could not afford court costs despite admitting to a monetary transfer of \$1,576 the day prior to filing this document. *See Unopposed Statement of Facts ¶ 11.*
- ii. The Petitioner claimed to be financially responsible for \$1,610 in monthly expenses despite only alleging to make only \$744 per month. *See CMR. p.89 ¶ 5;* *see also CMR. p.92 ¶ 6.*

iii. The Petitioner claimed to be financially responsible for the 2023 Mazda CX-5 and a 2021 Mazda CX3 which the couple never owned despite this amount exceeding her alleged monthly income. *See CMR. p.93 ¶ 8.*

15. Finally, Petitioner submitted a Request for Uncontested Cases Form which misrepresented that this matter is uncontested. *See CMR. p.102.*

16. Four days later on December 22, 2023, Petitioner filed for another protective order despite claiming to already have an existing order of protection. *See CMR. p.103-109.*

17. In the application for protective order, Petitioner made the following misrepresentations:

i. The Petitioner claimed family violence occurred on December 18, 2023, yet waited four days to inform the Court despite filing for divorce on that same day.

See CMR. p.108-109.

ii. The Petitioner has failed to produce any evidence for these allegations in nearly two years of litigation.

iii. The Petitioner can be seen at home with the Respondent and the Children on the same day she filed for protection in no state of emergency. *See CMR. p.1716.*

(image of petitioner at home with Respondent getting the Children ready for bed;
See also Unopposed Statement of Fact ¶ 13(ii).

18. The totality of these false allegations and misrepresentations lead to the improper removal of the Respondent from his home on January 16, 2024. *See CMR. p.183.* (first order removing Respondent from the home without findings or an evidentiary hearing); *see also CMR. p.118.* (show cause summons for Petitioner's application for protective order)

19. After this initial decision was made, Petitioner began to leverage her advantage against the Respondent as he was thrust into a situation where he had to acquire legal representation on very short notice, only having until January 22, 2024, to do so.

20. On this day, which was the reset hearing before Associate Judge Kaitcer regarding Petitioner's Application for Protective Order, no appearances can be found in the docket, no hearing took place, and the Respondent's deprivation was extended until February 1, 2024, because the Petitioner waited until right before the hearing to allegedly retain the services of Cooper L. Carter ("Carter") in the lobby of the courtroom. *See CMR. p.186.* (associate judge's report resetting the case to February 1, 2024, where Carter's signature first appears in this matter)

21. Despite communicating with his attorney regarding his goals, the children's needs, and his reliance on the home for generating income for the family, Dan Bacalis proved to be ineffective in his representation. *See CMR. p. 818, ¶¶ 9–11, 13.* (communications with Dan Bacalis)

22. After little communication from Dan Bacalis, Respondent reached out and informed him that he would be terminating his services and shared his feelings regarding the quality of service that was being provided. *See CMR. p.819 ¶ 14.*

23. Despite these concerns, and with no recorded appearances within the case docket, the parties appeared on February 1, 2024, where the Respondent was presented with the sole option of a settlement agreement and was given a month back in the home. *See CMR. p.229-234.* ('agreed' associate judge's report signed February 1, 2024)

24. Respondent "...disagreed with the conditions in the document and advised Mr. Bacalis that he wanted to take it to trial because the petitioner did not have any evidence of family violence. Mr. Bacalis advised Mr. Myers that he "knows this Judge and this is the best we can

get". Mr. Bacalis stated in whining manner "We'll be here all day; we can come back and change it later". Mr. Bacalis stated "no one will put a gun to your head if you are not out by March 1st."

See CMR. p.1368. (affidavit of Steve Myers, witness)

25. This is when Respondent paid special attention to the following provisions of the agreement found on [CMR. p.233](#):

A typed written Order conforming to this Report will follow within 20 days from the date this Report is signed. The Temporary Order ***shall*** be prepared by **Dan Bacalis**. Each attorney should approve the Order. The parties do not need to approve the Order. The attorney reviewing the proposed order ***shall have five (5) days to do so***. There are no ten (10) day letters. If an agreement is not reached, a Motion to Sign ***shall be filed and set within thirty (30) days from the signing of this Report***. (emphasis added)

26. Therefore, we can gather based on the language that this agreement:

- i. Required Dan Bacalis to prepare the typed written order;
- ii. The attorney reviewing the proposed order would therefore be Cooper L. Carter, attorney for Petitioner.
- iii. If an agreement was not reached, a motion to sign was required to be filed and set within 30 days of February 1, 2024.

27. Given these provisions, the Respondent signed the agreement, and immediately terminated his attorney thereafter and provided notice to the Court and opposing parties on February 5, 2024. *See CMR. p.221-222.* (notice of termination of legal counsel)

28. Following his termination, Respondent prepared an EMERGENCY MOTION TO RECONSIDER EVIDENCE AND VACATE TEMPORARY ORDERS. *See CMR. p.240-243.*

This was filed alongside a brief and several exhibits that highlighted the Petitioner's dishonesty. *See CMR. p.244-252.* (brief in support of emergency motion); *See also CMR. p.254-714* (text records highlighting mothers extensive communications with Damen Kazlauskas); [CMR. p.716-](#)

[720](#). (text message from Petitioner's grandfather showing he was blindsided by the divorce); [CMR. p.722-723](#). (financial transaction showing that Petitioner transferred \$1,576 to a third party prior to filing for divorce); [CMR. p.725-731](#). (overdraft notice from Petitioner's transfer and text communications asking for the funds to be returned); [CMR. p.733-735](#). (eviction suit instigated by the Petitioner over the weekend of December 15, 2023); [CMR. p.737](#). (dismissal of the eviction suit.)

29. The opposing counsel, Cooper L. Carter, sent correspondence informing the Respondent that she would be filing a counter motion on February 14, 2024. *See CMR. p.2794.*

30. By March 4, 2024, Respondent filed a notice with the Court informing the opposing side and the Court that he would not be leaving the matrimonial residence as it would not be in the best interests of the children.

31. Two days later, while walking the Children to school, Petitioner took it upon herself to lock the Respondent out of the marital residence and left a sign on the door. *See CMR. p.829 at 2024-03-06.* (video of Respondent taking the children to school that morning and the sign on the door left by Petitioner)

32. It's noteworthy that this action came without any response being filed to the emergency motion served on her nearly a month prior.

33. Respondent stayed in Flower Mound, Texas, with his father until the March 14, 2024, hearing on his emergency motion.

34. On March 14, 2024, the parties both appeared before Associate Judge Jeffrey Kaitcer, despite only the Respondent making an appearance on the case docket. *See Exhibit 1, p.3 at DKT. No. 78.*

35. Without responding to the motion, and in violation of the provisions outlined above, Cooper L. Carter handed the Respondent the typed written “Temporary Orders” with actual knowledge that:

- i. Dan Bacalis did not prepare the order;
- ii. An agreement was not reached and no motion to sign was ever filed or set within the agreed upon timeframe.

36. Upon inspection of this document, which was signed by both the Petitioner and her Counsel, the following misrepresentations were made to the Court:

- i. That on February 1, 2024, a hearing occurred regarding a motion for temporary orders when this setting was a reset hearing from the initial protective order setting on January 16, 2024, later extended to January 22, 2024, and then February 1, 2024.
- ii. That the Court heard arguments and evidence from both sides when in reality the parties had a hallway settlement conference and no evidence was presented. *See CMR. p.888.*
- iii. That the orders were in the best interests of the children and the prerequisites of the law have been met.
- iv. That the parties agree to the terms of the order ‘as evidenced by the signatures below’. *See CMR. p.888.*

37. Furthermore, Cooper L. Carter, despite not filing any response to the emergency motion, handed Associate Judge Jeff Kaitcer a proposed order in the form of an ‘associate judge’s report’ requesting that his motion be denied. *See CMR. p.795.*

38. Despite no opposition to his motion, the Associate Judge, who was never vested with any order of referral to hear the motion, denied him without explanation, and signed the temporary orders prepared by Cooper L. Carter which were handed to the Respondent just moments earlier.

39. Finally, the temporary orders drafted by Carter contained unilaterally altered terms, specifically:

- i. In the February 1, 2024, associate judge's report referenced in the orders prepared by Carter, the agreed terms gave the Respondent until March 1, 2024, to reside in the home. See CMR. p.231 ¶ 7.
- ii. In the March 14, 2024, temporary orders prepared by Carter, the Respondent was given until March 20, 2024, to reside in the home, and the Petitioner was given access after March 30, 2024, leaving a ten day period where no party would occupy the home. See CMR. p.1815.

40. Finally, despite the Respondent and his prior counsel's signature missing from the document, it was entered anyway, successfully enabling the Petitioner to escape accountability for her undefended actions, defile the matrimonial home by moving additional people in, exposing the children to her extramarital affair on a frequent basis, all while failing to prosecute her claims, leading to a two-year long appeal effort with zero sum participation by the other side and significant damages to the Respondent's business operations, which the Petitioner herself benefitted from prior to her affair.

III. Introduction

41. Respondent **Charles Dustin Myers** ("Father") files this Reply to **Petitioner Morgan Michelle Myers's** ("Mother") response to the no-evidence motion for summary judgment. After nearly two years of litigation, Mother's last-minute attempt to avoid summary judgment fails.

She was required under **Texas Rule of Civil Procedure 166a(i)** to produce *competent evidence* raising a genuine fact issue on each challenged element of her claims. Instead, she offers only conclusory, self-serving assertions (in an affidavit and scattered exhibits) and promises of what she “plans to give at trial,” which do not satisfy her burden. It remains undisputed that Mother has **no evidence** for the essential elements identified in the motion. Indeed, she ignored written discovery entirely, causing Requests for Admission to be **deemed admitted by operation of law**. Texas law does not permit a claimant to continue a lawsuit in the absence of evidence.

42. Because Mother’s response points to nothing more than a *scintilla* of proof (at best), summary judgment **must** be granted as a matter of law.

43. Mother’s eleventh-hour allegations of *family violence, harassment, and even drug use* – raised for the first time in this response – are wholly unsubstantiated and suspect. For nearly **22 months**, she produced **no** police reports, medical records, witness affidavits, or other evidence to corroborate her sensational claims. She even withdrew her own protective order application rather than pursuing a finding of family violence in court. Only now, faced with dismissal of her case, does she submit a self-serving affidavit that was drafted on March 27, 2025, and a handful of text messages in an effort to create a fact issue. The Court should view these belated accusations with extreme skepticism. Unsupported assertions and post hoc allegations cannot defeat a properly supported no-evidence motion. As shown below, Mother’s response contains *no competent evidence* on each element specifically challenged in the motion, and her failure to answer discovery leaves her with **no factual basis** to avoid summary judgment.

44. Finally, Mother’s current live pleadings (her Second Amended Petition for Divorce) **undermine her own positions**. She now pleads for relief that **contradicts the very temporary orders** she asks this Court to keep in place. This inconsistency underscores the lack of merit in

her claims. In short, Petitioner's response falls far short of the requirements of Rule 166a(i). The Court should **grant summary judgment** in Respondent's favor, dismissing all of Mother's unsupported claims so that Respondent may return to his home and family life, and his constitutional rights as a father and homeowner may be restored.

IV. No-Evidence Summary Judgment Standards

45. Under **Rule 166a(i)**, once a no-evidence motion identifies the essential elements where no proof exists, the burden shifts to the non-movant to produce "*more than a scintilla of evidence*" raising a genuine issue of material fact on each challenged element. If the non-movant fails, the Court **must** grant summary judgment. "More than a scintilla" means evidence sufficient to *enable reasonable and fair-minded jurors to differ in their conclusions*; by contrast, evidence so weak that it creates only a surmise or suspicion of fact is legally **insufficient**. Crucially, allegations in pleadings or mere promises of future testimony do not constitute evidence. The non-movant must present **actual, admissible proof** now – such as documents, affidavits, or deposition testimony – to demonstrate a fact issue. **Texas courts** have emphasized that a party cannot avoid summary judgment with conclusory self-serving statements or by *simply arguing that evidence "may be produced" later*.

46. Here, Respondent's motion was timely filed after an adequate time for discovery and specifically identified the elements lacking evidence. Mother was therefore required to **point out competent summary judgment evidence** for each of those elements. She has not done so. As detailed below, her response relies on speculation and unverified accusations rather than admissible proof. Because Mother failed to meet her burden, Rule 166a(i) mandates that summary judgment be entered in favor of Respondent.

V. Mother’s Complete Failure to Present Evidence on Challenged Elements

47. Respondent’s motion challenged six essential elements of Mother’s claims on which she bears the burden of proof. Mother’s response does not present more than a scintilla of **competent, admissible evidence** on *any* of these elements:

i. **No Evidence of Alleged Family Violence:** Mother has produced no credible evidence that any “*family violence*” (as defined by Texas Family Code § 71.004) ever occurred during the marriage. She alleges an incident on December 18, 2023, but offers nothing to substantiate it beyond her own belated accusations. There are **no police reports, medical records, or third-party affidavits** to corroborate any injury or assault. In fact, Mother’s own conduct **undercuts** her claims – after the alleged December 18 incident, she *continued living with Father* and took no immediate action consistent with being an abuse victim. When given the opportunity to prove family violence in court, she **withdrew her application** for a protective order prior to any hearing. This withdrawal speaks louder than her late-breaking statements. Mother’s new accusations of harassment and drug use are likewise unsupported by any evidence (no witness statements, no requested drug tests, nothing) and were never properly raised until now. Unverified allegations in an affidavit drafted several months ago – especially after a long silence – are *not enough* to raise a fact issue. At most, Mother’s affidavit creates only a “**surmise or suspicion**” of violence, which is legally insufficient. Because she has **no competent evidence** of any family violence, this essential element of her fault-based claims fails as a matter of law.

ii. **No Evidence of an Active Protective Order or Judicial Family-Violence Finding:**

Mother cannot point to any *active protective order* in effect, nor any court finding of

family violence against Respondent that was in effect at the time of filing this suit. It is undisputed that **no court ever issued a protective order** in this case. Mother did file an Application for Protective Order on December 22, 2023, but she never followed through – the application was **withdrawn before any hearing** could be held. Thus, there is *no signed Protective Order* in the record, and no judicial finding that family violence occurred. Texas law requires a formal hearing and a separate, written order to grant a family-violence protective order (Tex. Fam. Code §§ 85.001, 85.004). Mother has neither. In her response, Mother vaguely refers to a protective order as if one exists, but this is misleading. There was only a *temporary ex parte* order at most (by application) which expired when the February 1, 2024 agreed temporary orders were entered. Since then, **no protective order exists**. Mother’s inability to produce an actual order or judgment renders any claim or relief predicated on a protective order completely unsupported. In sum, the **non-existence** of a protective order is an incontrovertible fact that negates Mother’s allegations to the contrary.

iii. No Evidence of Financial Indigency (False Affidavit of Inability to Pay): Mother also failed to produce evidence that she was genuinely *indigent* on the date she filed this suit. In her Original Petition (filed December 18, 2023), Mother submitted a sworn **Affidavit of Inability to Pay Costs** claiming extreme financial hardship. However, this claim is **conclusively refuted by objective facts** in the record. Just days before filing, on December 15, 2023, Mother **withdrew \$1,576 in marital funds** – funds which she did *not* disclose in her indigency affidavit. She claimed to have only \$21 to her name, yet evidence shows she had access to substantial community money. Mother has offered **no bank statements, income records, or any financial documents** to support her

indigency assertion. To the contrary, the available evidence (including her own transactions) shows she had resources and even managed to allegedly hire private counsel shortly after filing. Without any evidence substantiating “true indigence,” Mother’s affidavit of inability to pay is **proven false**. Texas law provides that a suit filed on a false indigency affidavit may be dismissed or sanctions imposed, because the **Practice & Remedies Code** does not tolerate proceeding in forma pauperis under false pretenses. At the very least, the lack of evidence for indigency means Mother cannot carry any burden tied to her financial status or claims for relief premised on indigency. This element, too, fails as a matter of law.

iv. No Evidence that Temporary Orders Were Properly Entered or Valid: Mother’s response leans heavily on the **Temporary Orders** signed in early 2024, claiming they should remain in effect and are in the children’s best interest. But Mother produces no evidence that those February 1, 2024 temporary orders were obtained with the required *due process* or formalities. In fact, the record shows serious irregularities with how those orders came about. Mother cannot point to any **notice or hearing** on her December 27, 2023, motion for temporary relief that resulted in the February 1 orders, and the case docket shows that the Petitioner’s only appearance in this matter was on January 16, 2024. There is **no transcript or reporter’s record** of any evidence presented on February 1, 2024. There is not even a file-marked copy of the temporary orders motion showing it was properly served on Respondent in advance. Absent proof that Respondent received due notice and an actual evidentiary hearing was held on February 1, the resulting Temporary Orders “**lack a lawful foundation.**” In short, Mother has no evidence that the procedural prerequisites (notice, an opportunity to be heard, and a

hearing on the merits) were satisfied before the court signed those sweeping temporary orders. This calls into question the validity and enforceability of the orders she seeks to uphold. Moreover, Mother repeatedly refers to the February 1 proceeding as an “Agreed” temporary orders hearing, yet it is undisputed that Respondent **never actually agreed to the terms** that were later signed. Mother has **no evidence** – no signed consent, no email acceptance, nothing – showing that Respondent approved the specific terms of the “Agreed” Temporary Orders that were entered on March 14, 2024. To the contrary, all evidence indicates Respondent *objected* to those terms at every opportunity: the orders were drafted **unilaterally by Petitioner’s counsel** and presented to the court without Respondent’s signature or consent. The signature line for Respondent on the face of the order is conspicuously **blank**, confirming he did not sign it. Respondent has provided sworn testimony (in the mandamus record and elsewhere) that he **never agreed** and voiced his objections, which stands unchallenged by any evidence from Mother. Thus, Petitioner cannot demonstrate that the temporary orders were the product of a valid agreement or hearing – an essential underpinning of their legitimacy. In fact, Petitioner’s counsel, **Cooper L. Carter**, materially altered and submitted the proposed order after the February 1 hearing, **without following proper process or obtaining Respondent’s approval**, which amounts to a fraud on the court. Respondent promptly filed an *emergency motion* on February 9, 2024, to alert the Court to these improprieties and to vacate the temporary orders, but that motion was effectively brushed aside without any cure for the underlying due process violations despite receiving no response from the opposing side. Mother’s response offers no rebuttal to these facts; she does not deny the lack of notice or the ex parte submission of the order. Because Mother has no evidence

that the temporary orders were entered with due process or valid agreement, she cannot rely on those orders as a shield to avoid summary judgment. Any claims premised on the validity of the February 1, 2024 proceedings are **unsupported and cannot stand**, and are contradicted by the face of the record.

v. No Evidence that Temporary Orders Are in the Children’s Best Interest: Even setting aside the procedural flaws, Mother has no evidence that the content of the current Temporary Orders (which give her exclusive occupancy of the marital home and severely limit Father’s possession of the children) is in the **best interest of the children**. Under Texas law, the “*best interest of the child shall always be the primary consideration*” in determining conservatorship and access. Tex. Fam. Code § 153.002. If Mother wishes to justify the highly restrictive temporary orders, she bears the burden to prove those orders benefit the children. Yet she offers **nothing** of the sort. There is **no expert testimony** or evaluation from a mental health professional supporting Mother’s position. There are **no statements from the children’s teachers or doctors**, no school or medical records indicating the children are better off under the current temporary arrangement. In fact, Mother disobeyed a court-ordered parenting course (which was meant to help the children cope with the family situation), demonstrating a disregard for the children’s best interests. By contrast, Respondent has continually asserted that removing the children from their father and home has been harmful to them, and Mother’s own evidence inadvertently supports Respondent’s concerns. For example, in one of the text/email exhibits attached to her response, Father poignantly points out that one daughter was coming to his house in distress (asking for a diaper at nearly 7 years old) and that the girls have been prevented from even speaking with their father’s side of the family. He laments

that the one-sided temporary orders – “procured by deceit and fraud” – have **damaged the girls’ status quo**, and he implores Mother to consider the harm being caused. Rather than contradict Respondent, these communications corroborate that the current situation is unhealthy for the children and was imposed without proper basis. Mother has simply **no evidence** to affirmatively show that keeping Father out of the home and on a supervised or restricted schedule is in the children’s best interest. All she offers is the refrain that “best interest” is paramount (which is true) and her own speculation that her custody demands should be litigated. Speculation is not evidence. Because Mother has not met her burden to produce evidence that the temporary orders’ onerous terms benefit the children, this element likewise yields to summary judgment. The Court should not allow baseless temporary orders to continue when they lack evidentiary support and, in fact, appear to be hurting the children more than helping.

vi. No Evidence that Respondent Violated Court Orders in Any Material Way: In an effort to smear Respondent, Mother’s response accuses him of various *violations* of court orders and bad acts (harassment via messages, etc.), but again she roffers no concrete evidence of any **meaningful violation**. The record reflects that Respondent, though understandably frustrated by being ousted from his home and limited in access to his children, largely **complied** with the temporary orders to avoid further conflict. Mother’s exhibits include a series of text messages and emails from Respondent – yet these actually serve to **validate Respondent’s position** rather than prove willful misconduct. For instance, in the December 19, 2024, email chain that Mother herself submitted, Respondent addresses Mother’s failure to follow the temporary orders (not informing him directly of a child’s medical needs, not facilitating communication, etc.). He expresses

anguish at how the orders are being used as a sword against him and how he will seek to rectify the situation through the legal process. While the tone of these communications is urgent and upset, they do not evidence any *threats or violence* by Respondent; rather, they show a father reacting to **Mother’s bad-faith litigation tactics** and the distress they caused. Mother has presented no evidence that Respondent ever harmed the children or violated any court order in a manner that endangered anyone. There is no contempt order, no enforcement proceeding with findings against Respondent, nothing beyond Mother’s complaints. Minor technical violations (if any) or angry words in communications do not rise to the level of creating a genuine fact issue on any claim in this case. To defeat summary judgment, Mother needed to present **admissible proof** that Respondent breached a legal duty or order in a way that supports a cause of action or her requested relief. She has not done so. In the absence of **any evidence of significant misconduct** by Respondent, Mother cannot avoid summary dismissal of her allegations of harassment or other wrongdoing.

48. In sum, Mother failed to carry her burden on *each and every one* of the challenged elements. Each of the above issues is something for which **Mother would bear the burden of proof at trial**, yet after ample time for discovery she has “**adduced nothing – no documents, no affidavits, no testimony**” to support them. Her response is built on accusations, not evidence. Under Rule 166a(i), “*the court must grant*” the motion if the non-movant fails to bring forth more than a scintilla of evidence on the challenged elements. That is precisely the situation here.

VI. Deemed Admissions and Discovery Defaults Confirm No Evidence

49. Mother’s lack of evidence is **further confirmed** by her failure to answer written discovery in this case. *See CMR. 1409.* Respondent served Requests for Admission,

Interrogatories, and Requests for Production aimed at uncovering any factual support for Mother's claims. Mother **did not respond** within the time required by the Texas Rules of Civil Procedure. By rule, each Request for Admission she left unanswered is **automatically deemed admitted**. See **Tex. R. Civ. P. 198.2(c)**; *Marshall v. Vise*, 767 S.W.2d 699, 700 (Tex. 1989) (unanswered requests are deemed admitted by operation of law). These deemed admissions are binding **judicial admissions** – Mother cannot introduce evidence to contradict them. *Marshall*, 767 S.W.2d at 700; *Sherman Acquisition II LP v. Garcia*, 229 S.W.3d 802, 812 (Tex. App.—Waco 2007, no pet.) Moreover, deemed admissions are fully **competent summary judgment evidence** that can support a judgment as a matter of law. *Acevedo v. Comm'n for Lawyer Discipline*, 131 S.W.3d 99, 105 (Tex. App.—San Antonio 2004, pet. denied)

50. In this case, the deemed admissions effectively negate Mother's causes of action. Although the admissions themselves are in the record, a few examples are illustrative (paraphrasing due to their admitted status): Mother has admitted **she has no evidence** of physical abuse by Respondent; admitted that **no protective order** was ever issued; admitted that **Respondent did not breach** any court order in a manner harming the children; and admitted that **she withdrew funds** around the time of filing while claiming indigence. These admissions align with the no-evidence points discussed above, and Mother never sought to withdraw or amend them. Thus, even if Mother's late affidavit could be considered, it **cannot create a fact issue** in the face of her own conclusive admissions to the contrary *Beasley v. Burns*, 7 S.W.3d 768, 769-70 (Tex. App.—Texarkana 1999, pet. denied). The Court is entitled to rely on the deemed admissions as **undisputed facts** establishing that Mother lacks evidence for her claims. In short, Mother's discovery defaults have sealed the fate of her case: she has judicially conceded the very points that entitle Respondent to summary judgment.

VII. Mother’s Second Amended Petition filed November 24, 2025, Contradicts the March 14, Temporary Orders, that claim to be in the Children’s Best Interests

51. It is also noteworthy that Mother’s **live pleadings** in this case do not square with her position in this summary judgment proceeding. In her Second Amended Petition for Divorce, filed yesterday, Mother asserts claims and requests relief that *cannot be reconciled* with the premise that the February 1, 2024 Temporary Orders are valid and in the children’s best interest. For example, upon information and belief, Mother’s Second Amended Petition **omits** the family-violence allegations that originally underpinned the ex parte temporary restraining order and protective order application. She instead pleads primarily **“no-fault” divorce grounds**, suggesting that the marriage is insupportable – a stance at odds with her current portrayal of Respondent as an abuser. Likewise, while the Temporary Orders reflect an agreement (on paper) to joint managing conservatorship with standard possession, Mother’s amended petition now seeks to modify or overturn those terms (e.g. by requesting sole managing conservatorship or supervised access by Father) due to alleged misconduct. Mother cannot have it both ways. If the temporary orders were truly agreed and in the children’s best interest (as she claims when it suits her), one would expect her live petition to mirror that status quo going forward. Instead, her Second Amended Petition attempts to **dramatically change** the custodial arrangement and revisit issues supposedly settled by the temporary orders. This inconsistency **undermines Mother’s credibility** and the integrity of her claims. It appears Mother values the temporary orders only as a tactical weapon to keep Respondent out of the home during the case, even as she signals an intention to seek different relief at final trial. The Court should not credit arguments that the temporary orders must stand, when Mother’s own pleadings cast doubt on their propriety and continued viability. This conflict in positions further confirms that the temporary orders were a product of strategic maneuvering rather than a fair, evidence-based resolution. As documented

in the **Second Amended Consolidated Mandamus Record** filed in the Texas Supreme Court, the chronology of events and Mother’s shifting litigation posture remain undisputed by her. In light of the record as a whole, Mother’s claims have no firm footing in fact or law.

VIII. Respondent’s Communications Highlight Petitioner’s Bad Faith

52. Mother’s response includes various text messages and emails – presumably to paint Respondent in a poor light – but these actually **support Respondent’s case** and expose Petitioner’s bad faith. The communications show a Father desperate to maintain contact with his children and frustrated by Mother’s selective adherence to court orders. In one December 2024 email, for instance, Respondent admonishes Mother for “hid[ing] behind” the one-sided orders while failing to follow them herself. He notes that Mother was preventing the children from even speaking to their family (violating the spirit of co-parenting) and points out that if Mother insists on using the orders as a shield, she should at least *honor all provisions* of those orders. Tellingly, Respondent accuses Mother of **fabricating her indigency** (referring to the false affidavit she filed) and of procuring the temporary orders “**by deceit and fraud,**” with the assistance of her counsel. Far from being off-topic rants, these statements directly align with Respondent’s legal position: that Mother misled the court to gain unfair advantage and has not acted in the children’s best interests. Respondent’s passionate tone is the understandable result of a parent who has been **unjustly deprived of his home and children** for an extended period. Importantly, nowhere in these communications does Respondent threaten harm or violate the law – he expressly says he will “pursue litigation” and hold those responsible accountable “*in accordance with the law.*” These messages, therefore, do not create any genuine dispute of material fact; if anything, they **corroborate** Respondent’s claims of procedural wrongdoing by Petitioner and the deleterious effect of Petitioner’s actions on the family. The Court should see Mother’s exhibit evidence for

what it is: an attempt to distract from her lack of admissible evidence by showcasing Respondent's understandable anger. Such distractions do not defeat a summary judgment motion. As one Texas court has noted, *context matters* – communications made in the midst of contentious litigation can reflect distress rather than culpability. Here, the context of Respondent's messages is a **father's distress caused by Mother's bad-faith tactics**, and that context reinforces the justness of granting relief to Respondent.\

IX. Conclusion and Prayer

53. Mother has had **ample time** and opportunity to develop her case, but chose not to participate in the discovery process. She has come up with *nothing* of substance. The law is clear: when a claimant produces **no evidence** to support essential elements of her claims, “*the court must grant the motion*” for no-evidence summary judgment. Mother’s response falls far short of the mark – it is a compilation of excuses, contradictions, and unproven allegations dumped on the Court at the last minute. She asks the Court to ignore the rules of evidence and procedure and allow her claims to proceed on mere sympathy or speculation. But **Rule 166a(i)** was designed precisely to prevent that scenario and to dispose of baseless claims **before** they consume more time and resources. Courts in Texas (including in family law matters) do not hesitate to summarily dismiss claims when no proof supports them. This case is a textbook example of one that *should* be disposed of now: Mother’s extreme allegations (family violence, etc.) remain **unsubstantiated**, and every objective indicator in the record shows there is no genuine fact issue for trial.

54. Accordingly, Respondent **Charles Dustin Myers** respectfully prays that the Court **GRANT** the no-evidence motion for summary judgment in its entirety. All of Mother’s claims and requests for relief that lack supporting evidence should be **dismissed with prejudice** under

Rule 166a(i). Such a judgment will finally dissolve the improperly obtained temporary orders, allowing Respondent to regain access to his home and children. Justice and equity demand this outcome. After enduring substantial hardship and damage to his family life due to Petitioner's meritless accusations, Respondent is entitled to judgment as a matter of law and the restoration of his constitutional rights as a parent and homeowner.

55. The Petitioner's last-ditch effort wholly fails to raise a fact issue, and the motion should be **GRANTED** as a matter of law in Respondent's favor, and the final trial setting **ABATED**.

56. Respondent further requests all other relief to which he is justly entitled.

57. Respondent further prays that this Court, its' staff members, and the opposing side have a good Thanksgiving holiday, and appreciates the Court's time in reviewing this document.

Respectfully submitted,

/s/ Charles Dustin Myers

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CERTIFICATE OF SERVICE

Respondent certifies that this response in support of no-evidence summary judgment was served on all parties of record pursuant to Rule 21a of the Texas Rules of Civil Procedure.

Respectfully submitted,

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