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No. 89193-1
IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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JZK, INC.,
Plaintiff-Respondent,

v.

VIRGINIA COVERDALE,
Defendant-Appellant.

APPELLANT'S REPLY BRIEF

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 ORIGINAL

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I. Introduction

The brief of Respondent JZK, Inc. begins by focusing on the oral preliminary injunction ruling¹, the relevancy of which is never explained.² The Response goes on to focus primarily on casting aspersions on Ms. Coverdale's character and motivations. This theme is also readily apparent in the multiple motions JZK, Inc. has filed in its resolve to restrict this Court's access to relevant information presented to the trial court, and to continue to benefit from its own withholding of discovery as well as failure to actually submit the video underlying its entire case.³

In regards to substantive content, JZK, Inc.'s brief does not address how *McKee v. AT&T*, 164 Wn. 2d. 372 (2008) is limited to arbitration given both this Court's expressed underlying public policy concerns, and its specific statement that "We emphasize that these provisions have nothing to do with arbitration." *McKee*, 164 Wn. 2d at 404. The Respondent's brief omits *any* explanation for its interpretation that the Conditions of Participation applied not only to "...future events in which you participate" (CP 1125) but that it also should be applied to future events in which Ms. Coverdale undisputedly *did not* participate. Also

¹ Ms. Coverdale had very little time to prepare a defense as the case had only been filed approximately two weeks before that hearing.

² That preliminary injunction became a permanent injunction pursuant to the ruling from the June 28, 2013 hearing, which occurred approximately seven months later.

³ See, *Motion to Strike*, May 9, 2014. "The contents of the videos are wholly irrelevant to this appeal..." This is an alarming position for JZK, Inc. to take, as it used that precise video as the basis of this case, and submitted a sworn declaration that the video had, in fact, been filed – the failure to do so was only discovered when the Clerk's Index was received. Coverdale's counsel gave JZK, Inc. another benefit of the doubt, and simply requested that JZK, Inc. supplement the record with what was already represented to have occurred. JZK, Inc. did not respond, but instead uses its own failure to unilaterally declare that the video is irrelevant.

absent from JZK, Inc.'s brief is even any mention of the anticipatory breach committed when it sent the November 2008 email prohibiting her from further participation.

Even if JZK, Inc.'s accusations of some ill-defined "vendetta" had a scintilla of supporting truth or evidence, neither Ms. Coverdale's motivation nor the remainder of the Respondent's brief undermine the basic facts of this case. First, that the Conditions of Participation is a *consumer* contract of adhesion requiring secrecy from customers. Second, that the express language of the Conditions of Participation limits its application to events in which Ms. Coverdale participated. Third, that the November 2008 email unequivocally communicating JZK, Inc.'s intent to no longer be bound by its obligation to allow participation constituted an anticipatory breach excusing any further performance by Ms. Coverdale.

II. Reply to JZK, Inc.'s Factual Assertions

A. Ms. Coverdale never stated that she wanted to "take JZ Knight down," and the use of quotation marks is deceptive.

JZK, Inc.'s response implies that it is quoting Ms. Coverdale saying she wanted to "take JZ Knight down." This is a falsehood. JZK, Inc.'s corresponding reference is to a declaration submitted by an estranged family member who received a significant financial benefit⁴ after submitting the subject declaration and coordinating with JZK, Inc. and its PR firm.

⁴ Mr. Champagne and his wife enjoyed complimentary attendance at an event that normally costs approximately \$5,000.00 per person to attend. CP 1311.

JZK, Inc. can point to no actual evidence that Ms. Coverdale has any motive other than those she posted with the video concerning consumer awareness and public safety. Perhaps Ms. Coverdale's own deposition testimony best illustrates her motivations:

I became very concerned about some of the conditions at RSE and also angry of being deceived, having my family deceived for so long. Of course there was some anger there. But I kind of went right to, "Okay. How do we warn others and how do we get the kids out of an unsafe arena?" And those types of things became - kind of took hold. And also on top of that, watching the damage it had caused so many people that had started to come out and talk about it and their lives and their families. So yeah, I was very unhappy. But that is - I think that is the - not the right word. That's what I'm struggling with. Unhappy... You can be unhappy with a bad movie. I was very concerned. I was very upset. And, you know, I felt like a major fraud had been perpetrated. And that's where I was mentally at the time. CP 1165.

Obviously I wanted to expose what I considered to be dangerous behavior from JZ Knight. But I was also trying to expose the connection between JZ Knight and Sandra Romero because our pleas for help were unanswered so many times by the commissioners' office. CP 1170.

I mean it's not my life's mission here... When the time this is over, I would - I think I've done my part for humanity and it'll be time to move on... that is where I am mentally right now. CP 1182.

The mistreatment, harassment, and blatant fabrications that Ms. Coverdale has had to endure throughout this litigation are impossible to ignore. JZK, Inc. has seized on a brief relationship that occurred four years prior to the release of the video to support a completely false narrative that Ms. Coverdale is "obsessed" with JZ Knight - even though Ms. Coverdale quietly left RSE in 2010, and was in a relationship at the time of the video's release. Ms. Coverdale is not on a vendetta - she is upholding the

very values that are essential to consumer protection, despite significant retaliation.

B. JZK, Inc.’s assertion that the anonymous source who sent the video to Ms. Coverdale “must have” signed the Conditions of Participation is misleading.

JZK, Inc. cannot meet its burden of proof with a conclusory statement unsupported by specific articulable evidence that the anonymous source “must have” signed the CoP. Aside from the legal deficiencies of the assertion, it is factually inaccurate. JZK, Inc. itself argued and submitted declaration testimony to the contrary:

A review of JZK session data records indicates that certain accounts in JZK’s system were accessed by someone other than the account holder, without authorization from JZK, during the live February 2012 RSE event from which the video...was taken.
CP 714, CP 763.

JZK, Inc. has presented no evidence of who obtained the video, let alone evidence that said unknown person was subject to the CoP – if the person was not, then Ms. Coverdale could not have been facilitating their breach of the CoP. The account holders referenced above could have been sharing their account information with any number of people not subject to the CoP. The video could even have come from a JZK, Inc. employee or manager concerned about the practices at the organization, and who also would have had the authority to release it. Ultimately, the assertion that the anonymous source “must have” been subject to the Conditions of Participation is simply inaccurate and fails to meet JZK, Inc.’s burden.

C. JZK, Inc.'s reliance on code compliance is misplaced, and omits that JZK, Inc. was simultaneously receiving special treatment from compliance officials.

Ms. Coverdale's opening brief provided a detailed explanation, substantiated with sworn declaration testimony from disinterested former customers, of the misconduct and serious threats to consumer safety occurring at JZK, Inc. The record also substantiates that the consumer nondisclosure clause is aiding in the concealment of those consumer harms. JZK, Inc. limited its response to code violations, citing the county's statement that all code issues had been resolved. It seems disingenuous for JZK, Inc. to rely on that statement while ardently attempting to prevent this Court from having the benefit of the emails evidencing the special treatment JZK, Inc. was receiving specifically in regards to Ms. Coverdale's complaints.

The content and relevance of the emails is explained fully in the opening brief, but it is worth reminding that the fire chief⁵ forwarded the actual correspondence from Ms. Coverdale directly to JZK, Inc. to give it a "heads up," reassured JZK, Inc. he had already confirmed that the fire inspector had no issues with JZK, Inc., and even attempted to contact a JZK, Inc. manager at his home regarding the complaints – prior to any

⁵ While this case was at the trial court, the same Fire Chief wrote letters to the editors showering praise on JZ Knight for the substantial contributions made to the fire authority each year.

official inspection and with complete disregard to established procedures for investigating and responding to citizen complaints.⁶

Compounding this rather misleading omission from JZK, Inc.'s response, and perhaps indicative of its strategy, is the fact that JZK, Inc. had the relevant emails since the outset of this case⁷ yet did not produce them until after the discovery cutoff, just days prior to the MSJ hearing, inside over 1400 pages of discovery that JZK, Inc. implied had already been produced.⁸ Diligence and good fortune led to identification of the emails just in time for Ms. Coverdale to incorporate them into oral argument and bring them to the trial court's attention. Nonetheless, just as JZK, Inc. relies on technicalities to assert that its failure to introduce the video should preclude this Court from having the benefit of that extremely relevant evidence, it also seeks to use the minor procedural irregularities directly resulting from its own discovery abuse as a justification for presenting a one-sided and inaccurate portrayal of its relationship with local officials.⁹

Although JZK, Inc. correctly notes that Ms. Coverdale did serve a *second* set of discovery requests 30 days prior to the cutoff, its response does not inform that the relevant emails should have been produced in

⁶ A copy is attached as Appendix B to Appellant's Brief.

⁷ Notably, JZK, Inc. has repeatedly relied on the finding of compliance to impugn Ms. Coverdale's character and discredit her concerns.

⁸ Upon request, counsel will supplement the record with the letter dated June 14, 2013 from JZK, Inc.'s counsel which confirms the late production and contains the false implication that it contained no new discovery. The Appellate Brief contained a minor misstatement: that the discovery was provided on the day of cutoff, when, in fact, it was not received until several days later in the mail.

⁹ The relevance of the relationship with officials is pretty clear; JZK, Inc. is avoiding both *government* oversight and *consumer* oversight with the secrecy clause.

response to Ms. Coverdale's *first* set of discovery requests which were made nearly seven months prior to discovery cutoff¹⁰ and included a request for "any and all records you have referring to the defendant, Virginia Coverdale."

D. Whether the video is JZK, Inc. material is not undisputed.

Perhaps to avoid the consequences of its sworn false statement that it put the video into the record, JZK, Inc.'s response asserts that it is undisputed that the video was, in fact, JZK, Inc. proprietary material. This is not true. For example, Ms. Coverdale testified in deposition that she didn't "know whose materials they were"¹¹, and did not know who created the video.¹²

E. The assertions that the video was altered or taken out of context are false, and further demonstrate the fabricated "vendetta" narrative that is the hallmark of JZK, Inc.'s litigation strategy.

After the video was released, JZK, Inc. contacted its public relations firm which first came up with the idea to assert that the video had been "taken out of context."¹³ JZK, Inc. then applied that narrative in both its public relations and litigation venues to accuse Ms. Coverdale at various times of taking the video out of context by altering, editing, or

¹⁰ The requests were submitted on November 15, 2012, and specifically defined the scope of the request to include emails.

¹¹ CP 1145-46

¹² CP 1171.

¹³ Copy attached as Appendix B to the Brief of Appellant.

otherwise creating a false portrayal of the content.¹⁴ Ms. Coverdale's testimony has also been consistent that the video was not altered, except that smaller excerpts of the 11 hour video were used to make it. "It was spliced with another video. It was drastically time reduced. But there was no dubbing of words or anything like that." CP 1173.

F. The remarks on the video were not taken out of context. JZK, Inc. did not keep the video, wants to keep it secret to avoid losing potential customers, and fails to refute nearly any facts besides code violations.

In particular, JZK, Inc. makes no response to the following:

- That the remarks on the video at issue included derogatory remarks about homosexuality, Catholicism, and Jewish people, and threats to tear St. Peter's Temple down. BA 7.
- ...emails between JZK, Inc. and its Public Relations firm confirm that the "context" assertion was a fabrication that followed the release of the video. BA 8.
- It is also uncontested that JZK, Inc. neither kept a copy of the footage or intended to release it as a product in any form. BA 6.
- JZK, Inc.'s motivation for keeping the video secret is their concerns of alienating potential new customers. BA 6.
- JZK, Inc. did not request or require Ms. Coverdale to sign a CoP when she was allowed to return. BA 9.
- During the February 17, 2012 livestream Ms. Knight made comments that were certainly directed toward Coverdale. BA 9.

¹⁴ Attached as Appendix C to this brief is a full explanation of how JZK, Inc. has falsely used this narrative to attack and discredit Ms. Coverdale both in the public relations and litigation sphere. This is done simply in the event that this Court is interested, but Ms. Coverdale would prefer not to detract from the legal argument and relevant facts. Presumably, this Court may already have suspected that JZK, Inc. asserts a false narrative in any event. The appendix pages will be counted towards the page limit such that this is not an overlength reply.

- JZK, Inc. keeps customers vulnerable and susceptible to influence via business practices such as sleep and food deprivation, psychological and verbal abuse, and targeted use of fear tactics to unfairly maintain its customer base. BA 12.
- JZK, Inc. profits in retail sales at JZ Rose by instructing customers to take supplements sold at JZK, Inc.'s retail establishment. BA 12
- Pursuant to the “teachings” it sells, customers are to manifest wealth via the lottery and scratch tickets – fortuitously, both of which are sold at JZK, Inc. BA 12
- JZK, Inc. encouraged investment in questionable schemes, and also instructs customers to build underground bunkers and stockpile weapons. BA 13.
- JZK, Inc. directed customers to drink a mixture containing industrial lye and also required to maintain secrecy regarding the recipe and use. BA 13-14
- Customers were instructed not to purchase the lye at the local stores because it was “bringing up unwanted attention to RSE from the police.” BA 14.
- At the events, customers are encouraged, and at times were required, to ingest potentially dangerous amounts of alcohol. BA 15.
- Customers were also encouraged to smoke inside during the events, even with children present. BA 15.
- JZK, Inc. initiated an unrequested private investigation of a former employee/rape victim after she reached out to an internet forum for support which was being monitored for “infringements” by JZK, Inc. BA 15-16.
- JZK, Inc. instructed customers to take Prozac, but discourage customers from otherwise seeking medical attention. BA 16.
- While purportedly channeling “Ramtha,” JZ Knight has stated that Ramtha would “bring certain people down who are against him.” BA 16.
- When former customers joined a support group, JZK, Inc. sent a message to members with an implied threat of legal liability. BA 17.

- The former customers submitting declarations did not have a friendship or otherwise know Ms. Coverdale prior to 2012. BA 17.
- The fire authority receives hundreds of thousands of dollars in donations from JZ Knight each year. BA 18.

III. Argument and Authority

A. The response fails to articulate a single basis to ignore this Court’s clear statement that substantive unconscionability of the clauses in *McKee v. AT&T*, *McKee v. AT&T Corporation*, 64 Wn.2d 372 (2008) was not dependent upon the existence of an arbitration clause.

The broad holding of *McKee* was clearly explained in the appellate brief. The specific statement from this Court in *McKee* that ““We emphasize that these provisions have nothing to do with arbitration.”” *McKee*, 164 Wn. 2d at 404 was seemingly ignored in JZK, Inc.’s response brief. Similarly, the response fails to make any analysis of the underlying public policies explained in *McKee*, such as the inherent potential for abuse – including the potential that such clauses, regardless of context, may even help conceal consumer fraud.

JZK, Inc. simply refuses to acknowledge or respond to the evidence of its misconduct, including unfair, deceptive, and fraudulent business practices, instead broadly asserting irrelevance. JZK, Inc. was provided declarations substantiating Ms. Coverdale’s concerns as far back as November 2012 – and has yet to introduce even a single refutation either at the trial court or on appeal that it did not, for example, direct its

customers to drink a concoction with industrial lye but keep it secret. This single unrefuted claim is more than enough to trigger serious public policy concerns, including a substantial concern that the CoP's nondisclosure provision may be concealing consumer fraud.

Importantly, Ms. Coverdale did not have to submit or prove any actual harm caused by the nondisclosure provision. *McKee*'s holding is broad, and this Court specifically articulated the problem with secrecy in a consumer contract of adhesion: Not just actual abuse, but even the inherent potential for abuse renders the clause unconscionable.

B. JZK, Inc. relies entirely on logical fallacies to support its secrecy clause by misstating Ms. Coverdale's argument and using case law that does not enforce any nondisclosure provision in consumer contracts of adhesion.

JZK, Inc.'s primary responses to Ms. Coverdale's application of substantively unconscionable *consumer* contracts of adhesion requiring secrecy require this Court to accept two premises.

The first is that Ms. Coverdale is asserting that nondisclosure clauses in employer/employee agreements, or other commercial contracts/independent contractor agreements, are substantively unconscionable. If that were the assertion, we would agree with JZK, Inc. that it is an absurd assertion; there is a long-developed line of case law for such agreements, with elements and tests to carefully weigh competing interests. One logical fallacy that is effective on the

unwary is the “straw man¹⁵.” Ms. Coverdale has been consistent that *McKee* applies to consumer contracts of adhesion, i.e., not commercial, not an employer/employee or independent contractor. Also, by failing to refute, JZK, Inc. has conceded that the CoP is a consumer contract of adhesion.¹⁶

The second premise is that the case law cited by JZK, Inc. is both factually and legally analogous to this case, at least in relevant part, to show that JZK, Inc.’s consumer contract of adhesion prohibiting the release of “any information or materials” (including tangible evidence of the same, such as the video herein) is neither one-sided or overly harsh (substantive unconscionability), or otherwise has a tendency to be against the public good¹⁷ (public policy).

In fact, none of the case law¹⁸ cited by JZK, Inc. is on point – for example, the single Washington case, *Moore v. Commercial*

¹⁵ “By exaggerating, misrepresenting, or just completely fabricating someone's argument, it's much easier to present your own position as being reasonable, but this kind of dishonesty serves to undermine honest rational debate.”

<https://yourlogicalfallacyis.com/strawman>

¹⁶ JZK, Inc. did make passing reference to occasional questions and changes for a few customers (out of thousands), but did not deny that the CoP is a contract of adhesion – nor could it reasonably so deny.

¹⁷ *Scott v. Cingular Wireless*, 160 Wn. 2d 843, 851 (2007).

¹⁸ *BBA Nonwovens Simpsonville, Inc. v. Sup. Nonwovens, LLC*, 303 F.3d 1332, 1342 (Fed. Cir. 2002)(BBA ... and Superior are commercial manufacturers ... " The cause of action was misappropriation of trade secrets in the course of trade.); *MAL Sys. Corp. v. Peak Computer, Inc.*, 991 F.2d 511, 521 (9th Cir. 1991)(Both commercial entities, sued for: "copyright infringement, misappropriation of trade secrets, trademark infringement, false advertising, and unfair competition."); *Technical Indus., Inc. v. Banks*, 419 F. Supp. 2d 903, 915 (W.O. La., 2006)("This dispute arises from Technical's employment of Defendant ... " "Technical, in pursuit of its pipe inspection system, employed Banks in August 2002.); *Newport-Mesa Unified Sch. Dist. v. State of Cal. Dept. of Educ.*, 371 F. Supp. 2d 1170, 1179 (C.D. Cal., 2005)(Calif. law required that "parents of special education students may have copies of their child's test protocols." Holder of the copyright intervened to assert copyright interest); *APAC Teleservices, Inc. v. McRae*, 985 F. Supp. 852, 868 (N.D. Iowa, 1997)(Employee nondisclosure agreement of specific

Aircraft Interiors, LLC, 168 Wn. App. 502, 512 (2012) is a commercial employee or independent contractor agreement. There is no case law that condones binding regular consumers with a nondisclosure clause – even the cases cited regarding “seminars” dealt only with commercial use. In asserting that “similar agreements are routinely enforced, JZK, Inc. has demonstrated a tactic of logical fallacy, effective only on the unwary: Implication of obviousness in order to distract from unfavorable details compelling the non-desired result. Upon inspection, JZK, Inc.’s response contains no case law on point, or otherwise relevant.¹⁹

None of the cited cases enforced a consumer contract of adhesion – each case involved either two commercial entities, or enforcement of an agreement with an independent contractor/employee who had access to trade secrets by the nature of an employment-type relationship.

In sum, JZK Inc.: 1. Concedes that the CoP is a consumer contract of adhesion with a nondisclosure clause; 2. Does not refute the consumer harms being caused, 3. Does not refute that it testified

information); *Revere Transducers, Inc. v. Deere & Co.*, 595 N.W.2d 751, 762 (Iowa 1999)(“The basis of Revere's claims is that Deere allegedly induced two former Revere employees...to violate an employment agreement with Revere, start a company; and develop and manufacture a draft sensor device to sell to Deere...”)

¹⁹ For example, JZK, Inc. relies heavily on *Art of Living Foundation v. Does 1-100*, 5:10 – CV- 05022-LHK, 2012 WL 1565281 (N.D. Cal. May 1, 2012). This reliance is misplaced. Not only is it a non-Washington case, it did not address whether a nondisclosure clause itself was valid – that issue was never even argued or brought up in the decision. The sole relevance of the nondisclosure clause was to demonstrate the efforts taken to keep the information confidential to satisfy an element of a trade secret claim.

under oath that its purpose was to keep potential consumers in the dark, and: 4. Cites no case law that enforced a nondisclosure clause in a *consumer* contract of adhesion. There should be no question that this violates the underlying public policies in this court's broad holding in *McKee*.

C. JZK, Inc.'s response fails to articulate a basis for ignoring the specific provision in the 2007 CoP that limits its application to events in which Ms. Coverdale participated.

JZK, Inc. completely omitted the line in the 2007 CoP that it applies to "all future events in which you participate." Putting that aside, the response almost completely glosses over the nature of the 2007 CoP as a substitute agreement. Contrary to the false assertion that the substitute agreement issue was raised to support an affirmative defense of undue influence, the importance is that the 2007 CoP adds the statement that the CoP applies to future events *in which you participate*.²⁰

The issue of the substitute agreement was properly raised with the trial court. "The purpose of RAP 2.5(a) is met where the issue is advanced below and the trial court has an opportunity to consider and rule on relevant authority." *Washburn v. Beatt Equip. Co.*, 120 Wn.2d 246, 291 (1992). Courts have considered for the first time on appeal issues not

²⁰ Regardless of whether this Court agrees that the 2007 CoP was a substitute agreement, both contracts limit themselves to material received at or from JZK, Inc., and implies (although does not overtly state until the 2007 version) that its intent is to apply only to the event in which the signer is participating.

addressed below when those issues are “pertinent to the substantive issues. . . raised below.” *Bennett v. Hardy*, 113 Wn. 2d 912, 918 (1990).

That this is a substitute agreement should be obvious. When the trial court failed to address the issue prior to ruling, Ms. Coverdale promptly brought a Motion for Reconsideration which fully and properly raised the issue, thus satisfying RAP 2.5(a) by both advancing the issue and giving the trial court an opportunity to consider and rule.

There is no inconsistency in Ms. Coverdale’s position – there would be no logical benefit by claiming she was subject to both agreements. Both versions were included in proposed orders because, regardless of whether the 2006 version applies, the clause in both is substantively unconscionable pursuant to McKee, and under the terms of either agreement, Ms. Coverdale did not breach.

D. JZK, Inc. cannot rely on “process of elimination” to meet its burden of proof.

JZK, Inc.’s argument seems to rely on two assumptions: First, that by releasing a video of unknown origin from an unknown source that depicted an event in which Ms. Coverdale did not participate, that she necessarily must have known that she would be facilitating someone else’s breach of the agreement; and, second, that she did, in fact, breach the agreement in 2012 – when in fact, she did not ever breach the agreement, regardless of whether the anonymous source was subject to a nondisclosure provision.

As the moving party, JZK, Inc. bears the initial burden of showing the absence of an issue of material fact. *Young v. Key Pharm., Inc.*, 112 Wash.2d 216, 225, 770 P.2d 182 (1989). Summary judgment in favor of Ms. Coverdale is appropriate if JZK, Inc. fails to establish a prima facie case concerning an essential element of its claim. *Seybold v. Neu*, 105 Wn.App. 666, 676, 19 P.3d 1068 (2001).

It appears that JZK, Inc. argues that the existence of a separate contract with an unknown individual who either directly or via an unknown number of intermediary individuals is sufficient to establish that Ms. Coverdale's actions constitute a breach of her agreement not to assist others in breaching the contract.²¹ This argument fails for a number of reasons, the most obvious of which is that the entire premise is based on pure speculation. There has been no such third-party contract introduced, nor can JZK, Inc. present any articulable evidence presented other than a broad statement that the source individual "must" have signed a Conditions of Participation. And, of course, JZK, Inc. itself introduced evidence that any number of unauthorized individuals who may never have signed the CoP accessed the very livestream at issue. *See discussion, infra, Section II.B.*

Ms. Coverdale did not breach the agreement in 2012, or at any time previous or thereafter - the agreements' terms limit their application to events in which she participated. There has been no evidence presented

²¹ On a side note, this very hypothetical underscores the argument in the appellate brief that this agreement impermissibly intrudes on other bodies of law such as copyright and trade secret.

that she facilitated anyone else's breach – if that would even be a cognizable claim. There simply was no breach.

E. JZK, Inc.'s response fails completely to address the issue of anticipatory breach or include even a mention of it in its briefing.

JZK, Inc.'s brief fails to even acknowledge the very compelling argument that the 2008 email terminating Ms. Coverdale's status as a customer by clearly communicating its intent to no longer be bound to allow participation discharged any further duties of Ms. Coverdale under the agreement.

F. Asserting that proper elements of affirmative defense should have been applied by the trial court is not "quibbling," and the truth or falsity of spiritual beliefs was never at issue.

Coverdale alleged, as an affirmative defense, *fraudulent inducement*, which has four elements: (1) an assertion or representation not in accord with the facts, (2) that is either fraudulent or material, (3) that was relied upon in manifesting assent, and (4) the reliance was justified. WA Practice Series, Vol. 25, § 9.12. Untrue statements can also include concealment or non-disclosure. *Rest. (Second) Contracts*, §160 (1981). Half-truths are misrepresentations because they are equally misleading. *Ikeda v. Curtis*, 43 Wash. 2d. 449 (1953).

Importantly, an affirmative defense does not require one to prove actual fraud - it is *either* fraudulent *or* material. The litany of untrue statements, concealments, and non-disclosures explained throughout the

appellate brief and unrefuted by JZK, Inc. in its response brief provide ample support for fraudulent inducement.

Contrary to JZK, Inc.'s response²², Ms. Coverdale's entire counterclaim is not premised on disbelief of channeling. The response, however, completely omitted any reference to the other bases for counterclaims.²³

Not only is there ample completely "non-spiritual" misrepresentations upon which the counterclaims and affirmative defenses are based, JZK, Inc. has already admitted that it did, in fact, misrepresent that JZ Knight channeled Jesus. Thus, there is no question regarding truth or falsity regarding spirituality for the Court to decide as discussed in detail in the opening brief.

G. The substance of JZK, Inc.'s argument is that the Order should be construed to prohibit the transfer, and it has cited no authority that a Court may require a contemnor to resort to measures outside of the law to purge contempt.

JZK, Inc. devotes significant effort to accusing Ms. Coverdale of flagrantly disregarding the Court's order. Misrepresentative as the

²² The response states that Coverdale's primary argument is that JZ Knight had to be deposed before trial court could rule – this is not accurate. There was significant discovery to be completed when the Court dismissed the counterclaim on February 8, 2013, not just Ms. Knight's deposition. And it is unclear what JZK, Inc. is asserting when it referenced constitutional arguments not raised at the trial court level.

²³ Such as its "faculty" credentials and misleading characterizations of scientific "proof," JZK, Inc. advertised and sold copies of a tape entitled "Jesus Speaks": "In this powerful audio cassette Yeshua Ben Joseph [Jesus] speaks through JZ's body..." CP 615. JZK, Inc. admitted it advertised and sold that material until it discovered "the error" in 2008. CP 1260. On Sep. 9, 2008, Knight also testified under oath that she never channeled Jesus. CP 539.

accusations are, they are also irrelevant to the legal deficiencies in the contempt order. “If the finding is based upon the violation of an order, the order must be strictly construed in favor of the contemnor.”²⁴,

JZK, Inc. asserts that it is “nonsense” that the Order failed to specifically prohibit the vehicle transfer – yet then argues that this Court should infer that the reference to a third appraisal is the specific prohibition on transfer. Notably, the response fails to address how this case is not analogous to *State Dept. of Ecology v. Tiger Oil Corp.*, 166 Wn. App. 720 (2012). JZK, Inc. itself understood it to allow transfer, when it offered to purchase the vehicle outside of the appraisal/court process. The Order must be *strictly construed* in favor of Ms. Coverdale, as such, she cannot be in contempt of an order that is completely silent as to the conduct forming the basis of the contempt.

Similarly, when analyzing the validity of a purge clause, the Court’s analysis should first and foremost be whether the contemnor has the legal authority to compel whatever action it is that will purge – not expect that the person resort to measures *outside* of the law in order to comply *with* the law.

H. The newly filed lawsuit does not effect this review, it cannot reasonably be disputed that first two elements of CR 23(a) have been met, request for piercing the veil is based entirely on the

²⁴ *In re Marriage of Humphreys*, 79 Wn.App. 596, 599 (1995), *See also*, *State Dept. of Ecology v. Tiger Oil Corp.*, 271 P. 3d 331, 166 Wn. App. 720 (2012)(“...although the...decree required [Defendant] to install the [system], “strictly construed” in favor of [Defendant], the...decree did not clearly [require its operation]).

conduct demonstrated by Ms. Knight and JZK, Inc. throughout this litigation.

The purpose and nature of the newly filed lawsuit in Thurston County has been briefed; in short, it was primarily to avoid any potential Statute of Limitations defenses on the defamation claims. There is no mootness because Ms. Coverdale has requested that the counterclaims be consolidated with that case. JZK, Inc.'s argument is not clear, perhaps based on its misunderstanding of the nature of the claims.

If this Court finds that the nondisclosure provision is a violation of the Consumer Protection Act as a matter of law, then it follows that each of the customers subject to a nondisclosure provision has identical causes of action and JZK, Inc. itself has asserted that customers subject to the clause number easily in the thousands. As such, common sense and judicial economy support Ms. Coverdale's request.

As a practical matter, appellate briefs are written by counsel, not generally the litigants themselves so JZK, Inc.'s statement that the request for corporate veil piercing is "telling of her motives" is rather confusing. The only motivation is that expressed in the appellate brief – that given Ms. Knight's complete willingness to unabashedly commit perjury²⁵, as well as the litany of other misconduct discussed in the brief, should cause concern that Ms. Coverdale will be further prejudiced should this Court reverse and enter judgment as a matter of law for Ms. Coverdale and award fees and costs.

²⁵ JZK, Inc.'s response does not refute the perjury – nor could it reasonably do so.

IV. Conclusion

Unfortunately, rather than respond with a clear and cogent response to the issues on appeal, JZK, Inc. continues to avoid the key issues, relying instead on the chance that this Court will heed its frequent (albeit unfounded) accusations that Ms. Coverdale is a woman with a vendetta. The substantial basis for this appeal has been well briefed. The continued baseless accusations, attacks, disparaging remarks, snide, and frankly rather unprofessional tone simply take away from a reasoned, respectful, and appropriate consideration of the underlying arguments - of both sides. The tenor tempts one to respond in kind - or, at the least, feel the need to go on the defensive. By not "taking the bait," so to speak, Ms. Coverdale is not implying that she is above replying to the frequent and increasingly determined repetitions of the words "meritless" and "frivolous." The briefing and record speaks for itself - as does, perhaps, the flurry of motions filed by JZK, Inc.

JZK, Inc. failed to file a single argument or piece of evidence which refutes any of the so-called "largely irrelevant" evidence of the harms to customers. Nor did it even attempt to explain how such evidence is "largely irrelevant" when the nondisclosure clause is aiding to conceal those harms.²⁶

First, the nondisclosure clause is an impermissible violation of the prohibition on secrecy in a consumer contract of adhesion; the response

²⁶ Evidence of the concealment is evident both throughout Ms. Coverdale's briefing, as well as her Petition for Direct Review.

provides no compelling argument otherwise. Second, even if this Court were to find that both CoPs apply²⁷, Ms. Coverdale did not breach either because the language in both restricts their application to events the signer would have participated. Third, JZK, Inc. inexplicably failed to even include a mention of the 2008 anticipatory breach.

For all of the aforementioned reasons, this Court should reverse the trial court's entry of judgment in favor of JZK, Inc., and Order judgment as a matter of law for Ms. Coverdale, awarding her costs and fees as explained in the appellate brief.

Respectfully submitted this 15th day of May, 2014.

BRECKAN C.L.SCOTT, ATTORNEY &
COUNSELOR OF LAW, PLLC



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/s/

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Associated Counsel for Coverdale

²⁷ The 2007 CoP was clearly a substitute agreement – JZK, Inc.'s motivation to assert otherwise is obvious; it wishes to avoid the ramifications of the specific clause in the 2007 version that the CoP is limited to events in which Ms. Coverdale participated.

CERTIFICATE OF SERVICE

I certify that I delivered, or caused to be delivered, a copy of the foregoing document on the 15th day of May, 2014 to the following counsel of record at the following addresses, pursuant to a reciprocal agreement for electronic service:

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Breckan Scott

APPENDIX C

Throughout this litigation, Ms. Coverdale has believed that the false narrative should be obvious to the judicial system, and how it is indicative of JZK, Inc.'s strategy. Perhaps it would be of benefit to explain, directly, to this Court "the rest of the story."

Although Ms. Coverdale had not attended RSE in approximately two years, JZ Knight (while purportedly channeling "Ramtha") made defamatory statements during the February 2012 livestream event.¹ Ms. Coverdale, who was at the time still processing the harmful effects of RSE², learned this from family and friends who were still customers.³ Having progressed in her recovery, she could now see with clarity the dangers at RSE and became appropriately alarmed at the unfair, deceptive, and dangerous activities. She was very concerned for unwitting new customers due to the stark lack of accurate information available.⁴

Ms. Coverdale was part of an online RSE recovery group, which grew as more people stopped being customers of JZK, Inc. (many of whom moved back to other states and countries where they had formerly resided). As more began to seek out support with each other, an increasing amount of information was available to them via both Enlighten Me Free (formerly named as a defendant in this lawsuit), and the private/secret online support group Enlightened Europa. This information empowered them, and helped many to process the frauds perpetrated upon them by

¹ Calling Ms. Coverdale a "whore," among other statements.

² Discussed in detail in the opening brief, and unrefuted in JZK, Inc.'s response.

³ Including her mother, who sat in the audience and did nothing because of her own unhealthy relationship with JZK, Inc.

⁴ The one-sidedness is not surprising since JZK, Inc. has an employee for whom a primary job duty is monitoring the internet for violations of copyright, and, apparently sending letters to former customers he deems to be in violation of the secrecy clause. CP 122, CP 125.

JZK, Inc. Having access to both tangible proof and support gave people courage. Courage to exercise their free will, and no longer live in fear of the “days to come,” abandoning their homes at JZK, Inc.’s urging to move to Yelm (the only place that is “safe”), and spending all of their money either on “events,” products peddled by JZK, Inc., or on preparing for the “days to come” by building underground bunkers and stockpiling guns and supplies.

Ms. Coverdale received the video in the election season of 2012 after both she and others had faced stonewalling after petitioning local officials.⁵ She found out that JZ Knight/JZK, Inc. was Sandra Romero’s largest private campaign contributor – without even considering contributions made at JZK, Inc.’s urging.⁶ This was not about political affiliation – it was about government nonresponse and lack of consumer information due to a consumer contract of adhesion which required secrecy. The sender’s motivation is unknown.⁷ When threatened by JZK, Inc., she responded by saying that she did not believe that she broke the terms of the contract and referred to the limiting contractual language.

The attack and retaliation came quickly with a public relations and media onslaught – there had to be a villain to make a compelling narrative,

⁵ At this time, she did not know that the fire authority was forwarding her emails directly to JZK, Inc. and providing them a “heads up” and pre-approved inspection process.

⁶ The video at issue showed Sandra Romero campaigning at JZK, Inc. on the stage, with many customers in attendance. Ms. Romero had seemingly ignored the many concerns brought to her attention, and Ms. Coverdale, who was not formerly politically involved, began assisting to unseat Ms. Romero.

⁷ It could have been so Ms. Coverdale had tangible proof of the defamation, but it seemed more important to Ms. Coverdale that she use the election season to help protect consumers and raise public awareness by shining a spotlight on what JZK, Inc. hides with its nondisclosure clause for the admitted reason that it might dissuade potential new customers.

and to detract from JZK Inc. simultaneously claiming the video was out of context and refusing to release the context. When it carried the narrative to the courtroom, it brought Ramtha.tv with it and livestreamed it to customers. Although not the only defendant at the time, she was the perfect actor to suit JZK, Inc.'s "scorned woman" character, the type of villain that would have the appropriate motivation, with just enough drama to detract from the obvious question: Why not just release the context? And, apparently if you repeat a false narrative long enough, some people who do not pay close attention to the actual facts will buy into it.

When Ms. Coverdale did not cave to that pressure, JZK, Inc. began subpoenaing those she cared about - many of whom were also in recovery - as well as Facebook to obtain information about the private online support group members.⁸ At that point, Ms. Coverdale had been *pro se* for approximately two months.⁹ Her current counsel initially assisted the recovery group in obtaining protections from portions of the subpoena, and then stepped in as Ms. Coverdale's counsel.

The litigation conduct speaks for itself, but represents a fraction of the pattern of unreasonable tactics. In retrospect, perhaps it was evidence of JZK, Inc. beginning to see the flaws in its case, and compensating with this increasingly vitriolic tenor and perplexing¹⁰ litigation behavior.

⁸ This was after it had secretly infiltrated and monitored the group, and was taking the very private recovery discussions of these people for its own uses.

⁹ Because she could not afford an attorney.

¹⁰ E.g. Mr. Grant conceded that whether or not the TRO required actual removal, or simply setting it to private, could have been a simple case of different interpretations. VRP 11/30/12, Pg. 8:7-9. Yet – that seemingly inconsequential disagreement (which resulted in no actual harm – no one else had access after it was private) has now somehow turned into evidence of a flagrant disregard of the Court's authority.

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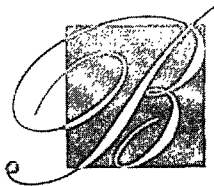
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Filing party: Virginia Coverdale
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