

Twinwood Cattle Company, Inc.	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff/Counter-Defendant,</i>	§	
	§	
v.	§	
	§	FORT BEND COUNTY, TEXAS
	§	
American Akaushi Association, Inc.,	§	
HeartBrand Holdings, Inc., and Ronald	§	
Beeman,	§	
	§	
<i>Defendants/Counter-Plaintiffs</i>	§	
	§	
v.	§	
	§	
Jose Antonio Elias Calles	§	
	§	
<i>Additional Counter-Defendant.</i>	§	458TH JUDICIAL DISTRICT

CHARGE OF THE COURT

MEMBERS OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason. I will give you a number where others may contact you in case of an emergency.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are



kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.
2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.
3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.
4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.
5. All the questions and answers are important. No one should say that any question or answer is not important.
6. Answer “yes” or “no” to all questions unless you are told otherwise. A “yes” answer must be based on a preponderance of the evidence unless you are told otherwise. Whenever a question requires an answer other than “yes” or “no,” your answer must be based on a preponderance of the evidence unless you are told otherwise.

The term “preponderance of the evidence” means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a “yes” answer, then answer “no.” A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.
8. Do not answer questions by drawing straws or by any method of chance.
9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror’s amount and then figuring the average.
10. Do not trade your answers. For example, do not say, “I will answer this

question your way if you answer another question my way.”

11. Unless otherwise instructed, the answers to the questions must be based on the decision of at least ten of the twelve jurors. The same ten jurors must agree on every answer. Do not agree to be bound by a vote of anything less than ten jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

General Instructions

“Twinwood” means Twinwood Cattle Company, Inc.

“AAA” means the American Akaushi Association, Inc.

“HeartBrand” means HeartBrand Holdings, Inc.

“Membership Agreement” means the agreement between the parties defined by the membership application, the membership rules, and the services Twinwood reasonably could expect to receive as a result of its membership including all renewals.

“Proximate cause” means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party’s ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may fairly and reasonably be inferred from other facts proved.

QUESTION 1

Did AAA fail to comply with the Membership Agreement with respect to AAA's duty, if any, to procure and provide DNA parent verified pedigrees on Twinwood animals registered with the AAA?

In deciding whether the parties reached an agreement, you may consider what they said and did in light of the surrounding circumstances including any earlier course of dealing. You may not consider the parties' unexpressed thoughts or intentions.

You may also consider a trade custom and usage, if any, if you find that such trade custom or usage existed. However, a trade custom or usage, if any, cannot vary, control, impair, restrict or enlarge the express language of the contract. A trade custom or usage exists if it is a practice so generally or universally well-known and used in the industry that the parties to a contract are charged with knowledge of its existence to such an extent as to raise the presumption that the parties contracted with reference to it.

Answer "Yes" or "No."

Answer: Yes (12)

Initial	Y	N	U	PC
	10	2		PC

If you answered "Yes" to Question 1, then answer the following question. Otherwise, do not answer the following question.

QUESTION 2

Find the date by which the AAA failed to comply with the Membership Agreement with respect to AAA's duty to procure and provide DNA parent verified pedigrees on Twinwood animals registered with the AAA.

Compliance with an agreement must occur within a reasonable time under the circumstances unless the parties agree that compliance must occur within a specified time and the parties intended compliance with such time to be an essential part of the agreement. In determining whether the parties intended time of compliance to be an essential part of the agreement, you may consider the nature and purpose of the agreement and the facts and circumstances surrounding its making.

Answer with a date in the blank below.

Answer: AUGUST 22, 2017

If you answered "Yes" to Question 1, then answer the following question. Otherwise, do not answer the following question.

QUESTION 3

Did AAA conceal its failure to comply with the Membership Agreement with respect to AAA's duty to procure and provide DNA parent verified pedigrees on Twinwood animals registered with the AAA?

Concealment occurred if AAA actually knew of a failure to comply; had a fixed purpose to conceal the failure to comply; did conceal the failure to comply; and Twinwood reasonably relied on the facts on which the concealment is premised.

Answer "Yes" or "No."

Answer: yes

If you answered “Yes” to Question 3, then answer the following question. Otherwise, do not answer the following question.

QUESTION 4

Find the date by which Twinwood discovered AAA’s failure to comply with the Membership Agreement with respect to AAA’s duty to procure and provide DNA parent verified pedigrees on Twinwood animals registered with the AAA, or could have discovered the failure to comply with reasonable diligence.

Answer with a date in the blank below.

Answer: Nov. 8, 2019

If you answered "Yes" to Question 1, then answer the following question. Otherwise, do not answer the following question.

QUESTION 5

Was the AAA's failure to comply with the Membership Agreement excused?

Failure to comply by AAA is excused if compliance is waived by Twinwood. Waiver is an intentional surrender of a known right or intentional conduct inconsistent with claiming the right.

In answering this question you are instructed not to consider any language in Plaintiff's Exhibit 18 or Defendant's Exhibit 30.

Answer "Yes" or "No."

Answer: _____

~~Yes~~ No
pu pu

If you answered "Yes" to Question 1, then answer the following question. Otherwise, do not answer the following question.

QUESTION 6

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Twinwood for its damages, if any, that resulted from such failure to comply?

Consider the following elements of damages, if any, and none other. Do not include in your answer any amount that you find Twinwood could have avoided by the exercise of reasonable care.

A. Lost profits that are a natural, probable, and foreseeable consequence of AAA's failure to comply.

B. The difference, if any, between the value of the herd if AAA had procured and provided Twinwood with proof of complete DNA parent verified pedigrees on all Twinwood animals registered with AAA, and the value of the herd based on the information and documentation actually provided by AAA, that is a natural, probable, and foreseeable consequence of AAA's failure to comply.

Answer separately in dollars and cents for damages, if any.

1. Lost profits sustained in the past.

Answer: \$ 4,400,000.00

2. Lost profits that, in reasonable probability, will be sustained in the future.

Answer: \$ 7,000,000.00

3. The difference in value of the herd.

Answer: \$ 10,500,000.00

QUESTION 7

Did any of those named below intentionally interfere with the Membership Agreement between AAA and Twinwood with respect to AAA's duty, if any, to procure and provide DNA parent verified pedigrees on Twinwood animals registered with the AAA?

Interference is intentional if committed with the desire to interfere with the contract or with the belief that interference is substantially certain to result.

Answer "Yes" or "No" for each of those listed below.

HeartBrand

Answer: yes

Ronald Beeman

Answer: yes

If you answered "Yes" to Question 7, then answer the following question. Otherwise, do not answer the following question.

QUESTION 8

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Twinwood for its damages, if any, proximately caused by such interference?

Consider the following elements of damages, if any, and none other. Do not include in your answer any amount that you find Twinwood could have avoided by the exercise of reasonable care.

A. Lost profits that are a natural, probable, and foreseeable consequence of the interference.

B. The difference, if any, between the value of the herd if AAA had procured and provided Twinwood with proof of complete DNA parent verified pedigrees on all Twinwood animals registered with AAA, and the value of the herd based on the information and documentation actually provided by AAA, that is a natural, probable, and foreseeable consequence of the interference.

Answer separately in dollars and cents for damages, if any.

1. Lost profits sustained in the past.

Answer: 0

2. Lost profits that, in reasonable probability, will be sustained in the future.

Answer: 0

3. The difference in value of the herd.

Answer: 0

QUESTION 9

Did AAA commit fraud against Twinwood?

Fraud occurs when—

1. a party makes a material misrepresentation, and
2. the misrepresentation is made with knowledge of its falsity or made recklessly without any knowledge of the truth and as a positive assertion, and
3. the misrepresentation is made with the intention that it should be acted on by the other party, and
4. the other party justifiably relies on the misrepresentation and thereby suffers injury.

“Misrepresentation” means—

1. A false statement of fact; or
2. A promise of future performance made with an intent, at the time the promise was made, not to perform as promised.

Fraud also occurs when—

1. a party fails to disclose a material fact within the knowledge of that party, and
2. the party knows that the other party is ignorant of the fact and does not have an equal opportunity to discover the truth, and
3. the party intends to induce the other party to take some action by failing to disclose the fact, and
4. the other party suffers injury as a result of acting without knowledge of the undisclosed fact.

Answer “Yes” or “No.”

Answer: yes

If you answered "Yes" to Question 9, then answer the following question. Otherwise, do not answer the following question.

QUESTION 10

By what date should Twinwood, in the exercise of reasonable diligence, have discovered the fraud of the AAA?

Answer with a date in the blank below.

Answer: Nov. 8, 2019

If you answered “Yes” to Question 9, then answer the following question. Otherwise, do not answer the following question.

QUESTION 11

Did AAA conceal its fraud?

Concealment occurred if AAA actually knew of the fraud; had a fixed purpose to conceal the fraud; did conceal the fraud; and Twinwood reasonably relied on the facts on which the concealment is premised.

Answer “Yes” or “No.”

Answer: Yes

If you answered “Yes” to Question 11, then answer the following question. Otherwise, do not answer the following question.

QUESTION 12

Find the date by which Twinwood discovered AAA’s fraud or could have discovered the fraud with reasonable diligence.

Answer: Nov. 8, 2019

If you answered "Yes" to Question 9, then answer the following question. Otherwise, do not answer the following question.

QUESTION 13

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Twinwood for its damages, if any, that resulted from such fraud?

Consider the following element of damages, if any, and none other:

Twinwood's out-of-pocket operational losses incurred in reliance on AAA's fraud, less the income derived from these expenditures.

Answer in dollars and cents for damages, if any.

Answer: \$1,300,000.00

If you answered "Yes" to Question 9, then answer the following question. Otherwise, do not answer the following question.

QUESTION 14

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Twinwood for its damages, if any, that were proximately caused by such fraud?


Consider the following elements of damages, if any, and none other.

A. Lost profits that are a natural, probable, and foreseeable consequence of AAA's fraud.

B. The difference, if any, between the value of the herd if AAA had procured and provided Twinwood with proof of complete DNA parent verified pedigrees on all Twinwood animals registered with AAA, and the value of the herd based on the information and documentation actually provided by AAA, that is a natural, probable, and foreseeable consequence of AAA's fraud.

Answer separately in dollars and cents for damages, if any.


1. Lost profits sustained in the past.

Answer: _____ 

2. Lost profits that, in reasonable probability, will be sustained in the future.

Answer: _____ 

3. The difference in value of the herd.

Answer: _____ 

Answer the following question only if you unanimously answered “Yes” to Question 7. Otherwise, do not answer the following question.

To answer “Yes” to any part of the following question, your answer must be unanimous. You may answer “No” to any part of the following question only upon a vote of ten or more jurors. Otherwise, you must not answer that part of the following question.

QUESTION 15

Do you find by clear and convincing evidence that the harm to Twinwood resulted from malice as to HeartBrand or Ronald Beeman?

“Clear and convincing evidence” means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

“Malice” means a specific intent by HeartBrand or Ronald Beeman to cause substantial injury or harm to Twinwood.

Malice may be attributable HeartBrand only if HeartBrand authorized the doing and the manner of the act, or the harm was caused by a vice-principal or manager of the entity acting in the scope of employment.

A person is a “vice-principal” if—

1. that person is a corporate officer; or
2. that person has authority to employ, direct, and discharge an employee of HeartBrand; or
3. that person is engaged in the performance of nondelegable or absolute duties of HeartBrand; or
4. HeartBrand has confided to that person the management of the whole or a department or division of the business of HeartBrand.

A person is a manager or is employed in a managerial capacity if—

1. that person has authority to employ, direct, and discharge an employee of HeartBrand; or
2. HeartBrand has confided to that person the management of the whole or a department or division of the business of HeartBrand.

Answer "Yes" or "No" as to each of the following.

HeartBrand

Answer: _____

Ronald Beeman

Answer: _____

Answer the following question regarding a defendant only if you unanimously answered “Yes” to Question 15 as to that defendant. Otherwise, do not answer the following question regarding that defendant.

You must unanimously agree on the amount of any award of exemplary damages.

QUESTION 16

What sum of money, if any, if paid now in cash, should be assessed against those listed below and awarded to Twinwood as exemplary damages, if any, for the conduct found in response to Question 15?

“Exemplary damages” means an amount that you may in your discretion award as a penalty or by way of punishment.

Factors to consider in awarding exemplary damages, if any, are—

1. The nature of the wrong.
2. The character of the conduct involved.
3. The degree of culpability of those listed below.
4. The situation and sensibilities of the parties concerned.
5. The extent to which such conduct offends a public sense of justice and propriety.
6. The net worth of those listed below.

Answer in dollars and cents, if any.

HeartBrand

Answer: _____

Ronald Beeman

Answer: _____

Answer the following question only if you unanimously answered “Yes” to Question 9. Otherwise, do not answer the following question.

To answer “Yes” to any part of the following question, your answer must be unanimous. You may answer “No” to any part of the following question only upon a vote of ten or more jurors. Otherwise, you must not answer that part of the following question.

QUESTION 17

Do you find by clear and convincing evidence that the harm to Twinwood resulted from fraud found by you in Question 9 as to AAA?

“Clear and convincing evidence” means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

Answer “Yes” or “No.”

Answer: yes

Answer the following question regarding a defendant only if you unanimously answered “Yes” to Question 17 as to that defendant. Otherwise, do not answer the following question regarding that defendant.

You must unanimously agree on the amount of any award of exemplary damages.

QUESTION 18

What sum of money, if any, if paid now in cash, should be assessed against AAA and awarded to Twinwood as exemplary damages, if any, for the conduct found in response to Question 17?

“Exemplary damages” means an amount that you may in your discretion award as a penalty or by way of punishment.

Factors to consider in awarding exemplary damages, if any, are—

1. The nature of the wrong.
2. The character of the conduct involved.
3. The degree of culpability of those listed below.
4. The situation and sensibilities of the parties concerned.
5. The extent to which such conduct offends a public sense of justice and propriety.
6. The net worth of those listed below.

Answer in dollars and cents, if any.

Answer: \$ 3,300,000.00

If you answered "Yes" to Question 9, then answer the following question. Otherwise, do not answer the following question.

QUESTION 19

Were any of those listed below part of a conspiracy that damaged Twinwood?

To be part of a conspiracy, a conspirator and another person or persons must have had knowledge of, agreed to, and intended a common objective or course of action that resulted in the damages to Twinwood. One or more persons involved in the conspiracy must have performed some act or acts to further the conspiracy.

Answer "Yes" or "No" for each of the following:

AAA

Answer: yes

HeartBrand

Answer: yes

Ronald Beeman

Answer: yes

If you answered "Yes" to Question 7, then answer the following question. Otherwise, do not answer the following question.

QUESTION 20

Were any of those listed below part of a conspiracy that damaged Twinwood?

To be part of a conspiracy, a conspirator and another person or persons must have had knowledge of, agreed to, and intended a common objective or course of action that resulted in the damages to Twinwood. One or more persons involved in the conspiracy must have performed some act or acts to further the conspiracy.

Answer "Yes" or "No" for each of the following:

AAA

Answer: Yes

HeartBrand

Answer: Yes

Ronald Beeman

Answer: Yes

QUESTION 21

Is HeartBrand responsible for the conduct of AAA?

HeartBrand is “responsible” for the conduct of AAA if after the termination of the Full Blood Contract—

AAA was organized and operated as a mere tool or business conduit of HeartBrand; there was such unity between AAA and HeartBrand that the separateness of AAA had ceased; and HeartBrand caused AAA to be used for the purpose of perpetrating and did perpetrate an actual fraud on Twinwood primarily for the direct personal benefit of HeartBrand.

In deciding whether there was such unity between AAA and HeartBrand that the separateness of AAA had ceased, you are to consider the total dealings of AAA and HeartBrand including—

1. the degree to which AAA’s property had been kept separate from that of HeartBrand;
2. the amount of financial interest, ownership, and control HeartBrand maintained over AAA; and
3. whether AAA had been used for personal purposes of HeartBrand

or

HeartBrand used AAA for the purpose of perpetrating and did perpetrate an actual fraud on Twinwood primarily for the direct personal benefit of HeartBrand after termination of the Full Blood Contract.

Answer “Yes” or “No.”

Answer: Yes

If you answered "Yes" to Question 1, then answer the following question. Otherwise, do not answer the following question.

QUESTION 22

What is a reasonable fee for the necessary legal services of Twinwood's attorneys for the breach of contract claim?

A reasonable fee is the reasonable hours worked, and to be worked, multiplied by a reasonable hourly rate for that work.

Do not include fees that relate solely to any other claim.

Answer with an amount for each of the following:

1. For representation in the Trial Court.

Answer: \$6,714,363

2. For representation in the Court of Appeals.

Answer: \$400,000

3. For representation at the petition for review stage in the Supreme Court of Texas.

Answer: \$65,000

4. For representation at the merits briefing stage in the Supreme Court of Texas.

Answer: \$150,000

5. For representation through oral argument and the completion of proceedings in the Supreme Court of Texas.

Answer: \$125,000

QUESTION 23

What is a reasonable fee for the necessary legal services of AAA's attorneys?

A reasonable fee is the reasonable hours worked, and to be worked, multiplied by a reasonable hourly rate for that work.

Do not include fees that relate solely for the representation of any party defendant other than the AAA.

Answer with an amount for each of the following:

1. For representation in the Trial Court.

Answer: \$5,657,424

2. For representation in the Court of Appeals.

Answer: \$400,000

3. For representation at the petition for review stage in the Supreme Court of Texas.

Answer: \$100,000

4. For representation at the merits briefing stage in the Supreme Court of Texas.

Answer: \$150,000

5. For representation through oral argument and the completion of proceedings in the Supreme Court of Texas.

Answer: \$90,000

Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.
2. The presiding juror has these duties:
 - a. have the complete charge read aloud if it will be helpful to your deliberations;
 - b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
 - c. give written questions or comments to the bailiff who will give them to the judge;
 - d. write down the answers you agree on;
 - e. get the signatures for the verdict certificate; and
 - f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate:

1. Unless otherwise instructed you may answer the questions on a vote of ten jurors. The same ten jurors must agree on every answer in the charge. This means you may not have one group of ten jurors agree on one answer and a different group of ten jurors agree on another answer.

2. If ten jurors agree on every answer, those ten jurors sign the verdict.

If eleven jurors agree on every answer, those eleven jurors sign the verdict.

If all twelve of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

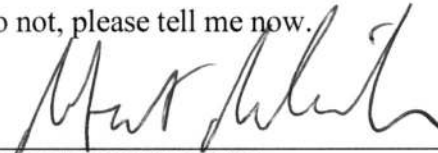
3. All jurors should deliberate on every question. You may end up with all twelve of you agreeing on some answers, while only ten or eleven of you agree on other answers. But when you sign the verdict, only those ten who agree on every answer will sign the verdict.

15, 16, 17 and 18

14

4. There are some special instructions before Questions ~~13 and 14~~ explaining how to answer those questions. Please follow the instructions. If all twelve of you answer those questions, you will need to complete a second verdict certificate for those questions.

Do you understand these instructions? If you do not, please tell me now.



JUDGE PRESIDING

Signed: July 16, 2021

FILED

JUL 16 2021
AT 3:44 P
Clerk District Court, Fort Bend Co., TX
AA

Verdict Certificate

Check one:

Our verdict is unanimous. All twelve of us have agreed to each and every answer. The presiding juror has signed the certificate for all twelve of us.

Signature of Presiding Juror

Printed Name of Presiding Juror

Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

Our verdict is not unanimous. Ten of us have agreed to each and every answer and have signed the certificate below.

Signature

Name Printed

1. Haydon Pustka
2. Kamoru Adeniran
3. Amanda Stafford
4. Thanh Nguyen
5. Terald Hayes
6. Ursula Bell
7. Sandra Mills
8. Tracy Figgins
9. Jason Sutter
10. PAUL LAZOR
11. _____

1. Haydon Pustka
2. Kamoru Adeniran
3. Amanda Stafford
4. Thanh Nguyen
5. Terald Hayes
6. Ursula Bell
7. Sandra Mills
8. Tracy FIGGINS
9. Jason Sutter
10. PAUL LAZOR
11. _____

FILED

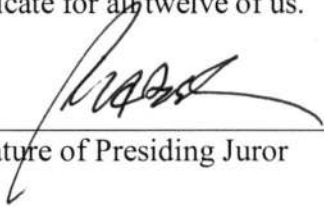
JUL 16 2021

AT 10:17 P M PA
Brenda M. Green Walk
 CLERK DISTRICT COURT, FORT BEND CO., TX

If you have answered Question 15 or Question 17, then you must sign this certificate also.

Additional Certificate

I certify that the jury was unanimous in answering the following questions. All twelve of us agreed to each of the answers for Questions 15, 16, 17, and 18. The presiding juror has signed the certificate for all twelve of us.



Signature of Presiding Juror

PAUL WACKER

Printed Name of Presiding Juror

FILED
JUL 16 2021
AT 10:17 PM
Brenda M. Green Wall PA
CLERK DISTRICT COURT, FORT BEND CO., TX