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| DISTRICT COURT, ADAMS COUNTY, COLORADO1100 Judicial Center Drive Brighton, CO 80601**Plaintiff :**American Family Mutual Insurance Company, As Subrogee of Kathryn Windt, | DATE FILED: January 30, 2017 1:12 P FILING ID: 4CB4CED7490B0CASE NUMBER: 2015CV31808* COURT USE ONLY 
 |
| v. |  |
| **Defendants/Third Party Plaintiffs:**Jvonne Becerril and Aurelio Meza-Cuevas, | Case Number: 2015CV31808 |
| v. | Div.: W Ctrm.: |
| **Third Party Defendant/Counterclaimant:** |  |
| Kathryn Windt |  |
| **Attorneys for Defendants Becerril and Meza-Cuevas:**Jeffrey Clay Ruebel, #13445 Casey A. Quillen, #35753 Ruebel & Quillen, LLC8501 Turnpike Drive, Ste 106Westminster, Colorado 80031Phone Number: (888) 989-1777FAX Number: (303) 362-5724E-mail: Jeffrey@rq-law.com |  |
| **MOTION TO COMPEL PARTICIPATION IN MEDIATION** |

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DEFENDANTS JVONNE BECERRIL and AURELIO MEZA-CUEVAS, by and

through counsel, RUEBEL & QUILLEN, LLC, move to compel Plaintiff’s participation in mediation consistent with the Case Management Order.

# CERTIFICATE OF RULE 121 CONFERRAL:

Counsel for Defendants has conferred with Counsel for Ms. Windt to schedule mediation consistent with the Case Management Order. Ms. Windt opposes mediation.

# BACKGROUND

This matter arises out of an October 3, 2014 motor vehicle accident (“the accident”). Liability for the accident is disputed; both Mrs. Becerril and Ms. Windt have testified that they entered the intersection immediately prior to the accident on a green light, and both allege that the other ran a red light thereby causing the accident. The investigating police officer was unable to determine fault. Ms. Windt brought this lawsuit to recover for personal injuries and other losses incurred as a result of the accident. She has alleged claims of negligence against Mrs. Becerril and negligent entrustment against Mr. Meza-Cuevas.

The Case Management Order provides:

***7. The lead counsel for each party met and conferred concerning possible settlement. The prospects for settlement are:***

***Unknown at this point. The parties are certainly willing to proceed to mediation and will actively participate once appropriate discovery has been completed. Plaintiff and Ms. Windt claim Defendant is responsible for running a red light and the owner of the vehicle she was driving is responsible under a negligent entrustment theory for even giving her the vehicle in the first place.***

All counsel acquiesced to mediation and the Court approved the Case Management Order. On or about November 21, 2016, all parties scheduled mediation for January 3, 2017. However, Plaintiff Windt withdrew from mediation on December 29, 2016, requesting Ms. Windt’s participation be “postponed” until the property damage claims could be resolved:

**From:** Steve Cook [mailto:scook@stephencookpc.com]

**Sent:** Wednesday, December 28, 2016 12:36 PM

**To:** 'Jeffrey@RQ-Law.com'; 'MFOUNTAI@amfam.com'; 'David Perry'

**Cc:** Ashley Neumann

**Subject:** American Family v. Becerill v. Windt Counsel:

I have been reviewing the file this week in preparation for next Tuesday’s

mediation. For various reasons, there is no point in Ms. Windt attending as to

her PI case, at least at this time. [It is a voluntary, not court-ordered, proceeding.]

Although the rest of you could proceed on the property damage disputes, I propose that everyone agree to a postponement. If amenable, we should postpone it right away. We are past the date for a cancellation fee, but I am confident that Justice Neighbors would work with us on that.

Please let me know. Thank you. Stephen H. Cook

Cook & Pagano, P.C.

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Neither Defendants Becerril nor American Family agreed to cancellation or postponement of mediation and both appeared with Judge Neighbors on January 3, 2017. Neither Ms. Windt nor her counsel participated in the mediation. The mediation prompted a dialogue between the participants which lead to settlement of the property damage claims.

Defendants have not received a demand from Plaintiff Windt. On January 24, 2017 Defendants requested to re-schedule mediation to address the remaining personal injury claims and offered all dates of Judge Neighbors’ availability prior to trial. Plaintiff Windt has declined to schedule mediation and has yet to respond to Defendants’ offer. Trial is scheduled for the week of **March 6, 2017.**

# ARGUMENT

The Colorado Rules of Civil Procedure were created to secure the just, speedy, and inexpensive determination of every action. C.R.C.P. 16 is intended to encourage professionalism and cooperation among counsel and parties to facilitate disclosure, discovery, pretrial and trial procedures. The Case Management Order shall control the course of the action from the time the case is at issue until otherwise required.

Discovery has been completed, the property damage claims have been resolved, and it is necessary and appropriate the remaining parties actively participate in good faith in mediation as agreed in the Case Management Order.

**WHEREFORE**, upon the foregoing arguments and authorities, Defendants respectfully requests that the Court compel Plaintiff Windt and her counsel to actively participate in mediation prior to the March 6, 2017 trial date.

**DATED** this 30th day of January, 2017.

RUEBEL & QUILLEN, LLC



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Westminster, Colorado 80031

Tel: 888-989-1777

Fax: 303-362-5724

# CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of the foregoing Motion to Compel was E- Served by the Court-authorized E-System provider, to the following on this 30th day of January, 2017:

COOK & PAGANO, P.C.

Stephen H. Cook: 6692 James L. Pagano: 39508

2590 Trailridge Drive East, Suite 202

Lafayette, Colorado 80026

*Counsel for Third Party Defendant Windt*

\_*s/Susan Pensiero*