

ORIGINAL
FILED
JUL 20 2012
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

1 Robert Scotlund Vaile
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3 Kenwood, CA 95452
4 (707) 633-4550
5 *Petitioner in Proper Person*

6 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

8 ROBERT SCOTLUND VAILE,

9 Petitioner,

Supreme Court Case No: 61321
District Court Case No: 98D230385

11 vs.

13 THE EIGHTH JUDICIAL DISTRICT
14 COURT OF THE STATE OF
15 NEVADA, IN AND FOR THE
16 COUNTY OF CLARK, AND THE
17 HONORABLE CHERYL B. MOSS,
18 DISTRICT JUDGE, FAMILY COURT
19 DIVISION,

**EMERGENCY PETITION FOR
WRIT OF MANDAMUS
UNDER NRAP 27(e)**

19 Respondents,

**ACTION REQUIRED
prior to July 23, 2012.**

20 CISILIE A. PORSBOLL,

22 Real Party in Interest.

24 Petitioner, Robert Scotlund Vaile files this Petition for Writ of Mandamus
25 seeking an Order from this Honorable Court mandating that Honorable Cheryl B.
26 Moss, District Court Judge, Dept. I, Eighth Judicial District Court Judge, Family
27 Division follow the mandates of the decision issued by this Court on January 26,

28 **RECEIVED**
JUL 20 2012
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12-22968

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25 seeking an Order from this Honorable Court mandating that Honorable Cheryl B.
26 Moss, District Court Judge, Dept. I, Eighth Judicial District Court Judge, Family
27 Division follow the mandates of the decision issued by this Court on January 26,
28

1 2012. Specifically, Petitioner¹ requests that this Court mandate that the district
2 court recognize the controlling effect of the Norwegian child support orders with
3 effective date of April 1, 2002. Furthermore, Petitioner requests the Court to
4 prohibit the district court from enforcing orders which were reversed by this
5 Court's decision.

6 In further and continuing defiance of this Court's several decisions directing
7 the district court how to resolve the matters pending below, the district court has
8 continued to refuse to follow this Court's mandates and has again directly
9 contradicted this Court. In so doing, the district court has established a serious
10 conflict between Nevada and the various states (California & Michigan) and
11 country (Norway) involved in this dispute. In response to this Court's previous
12 reversal of the district court, the district court has refused to invalidate its
13 previous judgments clearly overturned by this Court, added hundreds of
14 thousands of dollars to its previous judgments, and ordered further retroactive
15 contempt and sanctions against Mr. Vaile.

16 This Court has had to intercede on a number of previous occasions to
17 prevent the district court from imprisoning Mr. Vaile based on unlawful grounds,
18 and to stay unlawful and excessive monetary judgments by the district court.
19 Petitioner respectfully requests that this Honorable Court or a single Justice of
20 this Honorable Court review and rule on this motion urgently in accordance with
21 NRAP 27(c) in order to prevent the district court from committing ongoing
22 injustice and harm in direct defiance of this Court's mandates.

23
24 Petitioner Vaile submits this petition on an Emergency Basis under NRAP
25 21(a)(6) because the family court in question has issued an order for the
26 unemployed Mr. Vaile to immediately pay over twice the amount previously
27 overturned by this Court, has held him in contempt of court and sanctioned him

28 ¹ In so far as necessary, Petitioner requests permission to file these papers in proper person in
accordance with NRAP 46(b).

1 almost \$40,000, and has ordered a further evidentiary hearing on incarceration
2 and contempt on October 22, 2012. See Exhibit 1. The district court has also
3 ordered Respondent's attorneys to collect 50% of Mr. Vaile's wages in support of
4 approximately \$200,000 in attorney fee awards previously issued by the district
5 court, despite the reversal of those judgments by this Court. Counsel for Porsboll
6 have demanded the first child support payment by July 23, 2012, which is the
7 date requested for initial response (stay) by this Court. See Exhibit 2.

8 Accordingly, Petitioner requests this Court to issue emergency stay² orders
9 immediately and to otherwise act on the Petition prior to October 22, 2012.

10
11 Respectfully submitted this 19th day of July, 2012.

12
13 

14 Robert Scotlund Vaile
15 PO Box 727
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18 *Petitioner in Proper Person*

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28 ² As noted in the attached affidavit, Mr. Vaile preemptively requested a stay in the district
court on April 9, 2012.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
2 **EMERGENCY PETITION FOR WRIT OF MANDAMUS OR**
3 **PROHIBITION UNDER NRAP 27(e)**

4 **I. STATEMENT OF FACTS**

- 5 1. In April, 2002, this Court issued a decision that held that the parties' divorce
6 decree issued by the Nevada district court in 1998 was voidable, but not void,
7 because "neither the children nor the parents have ever lived here or have a
8 significant relationship with Nevada, virtually no information is available in
9 this state to even arguably create jurisdiction" *Vaile v. Eighth Judicial*
10 *Dist. Court*, 118 Nev. 262, 268, 275 (Nev. 2002).
- 11 2. This same month, April 2002, the children of the parties below were
12 relocated to Norway where they have resided ever since.
- 13 3. The parties children are ages 21 and 17 ½ years old currently.
- 14 4. On March 17, 2003, after making a custody determination in accordance with
15 this Court's 2002 decision, the Norwegian authorities issued a corresponding
16 child support order with effective date of April 1, 2002. Mr. Vaile was
17 provided notice by Porsboll and the Norwegian child support agency that it
18 would be making this determination, but apparently due to his relocation, he
19 was not provided a copy of this order at that time.
- 20 5. On November 9, 2007, Defendant Porsboll's Nevada attorneys asked the
21 district court, for the first time, that the child support order in the 1998 decree
22 be modified, enforced, arrears reduced to judgment, and for penalties, interest
23 and attorneys fees. Defendant Porsboll and her counsel concealed the fact
24 that a controlling Norwegian order had been entered four years prior.
- 25 6. Mr. Vaile requested of Porsboll that they follow the tenets of the Nevada
26 divorce decree, and requested income information from Porsboll so that they
27 could calculate child support under the decree's formula. Porsboll refused
28 Mr. Vaile's requests.

- 1 7. In 2008, Porsboll requested the most recent modification to the Norwegian
2 child support order in Norway. Again, she did not provide this modification
3 to Mr. Vaile or the Nevada district court.
- 4 8. Between 2007 and 2009, Mr. Vaile requested, via motion and in hearing, that
5 the district court order Porsboll to produce any Norwegian child support
6 orders, which requests the district court refused each time.
- 7 9. Between 2007 and 2009, the district court entered orders instituting a
8 retroactive arrearage, penalties, interest and attorneys fees of nearly half a
9 million dollars - all contrary to Nevada law. The district court continued to
10 grant Porsboll's counsels' several requests to order Mr. Vaile to make
11 payments for attorney fee judgments on threat of contempt and
12 imprisonment, which led to several writs or other emergency motions before
13 this Court.
- 14 10. In response to Mr. Vaile's request, this Court entered an order on February
15 19, 2010 stating "we temporarily stay that portion of the district court's ruling
16 that requires petitioner to deposit funds with the district court, pending
17 further order from this court."
- 18 11. Despite this Court's ruling, on February 25, 2010, the family court entered a
19 written order requiring Mr. Vaile to deposit funds with the district court on
20 threat of contempt, and then entered additional orders on March 25, 2010,
21 and April 5, 2010 requiring payments not involving child support.
- 22 12. After notice through emergency motion, this Court stayed the case in its
23 entirety on July 20, 2010 while the Court determined the merits of the appeal
24 pending at that time.
- 25 13. On January 26, 2012, this Court determined that the retroactive modifications
26 made to the child support provisions of the decree by the district court were
27 entered without jurisdiction, directed the district court to determine whether a
28

1 Norwegian order exists and to assess its bearing on the district court's
2 enforcement of the Nevada support order in accordance with NRS 130.207.

3 14. Despite this Court's decision negating the previous judgments of the district
4 court, Porsboll filed a *Motion for Order to Show Cause Why Robert Scotlund*
5 *Vaile Should Not Be Held in Contempt for Failure to Pay Child Support and*
6 *for Changing Address Without Notifying the Court, to Reduce Arrearages to*
7 *Judgment, and for Attorney's Fees and Costs* on February 24, 2012, arguing
8 that despite the fact that they were the non-prevailing party, they are still
9 entitled to over \$130,000 in attorneys fees, and that these fees should be
10 collected, again, on threat of contempt and incarceration.

11 15. During the pendency of the appeal in this case, Mr. Vaile contacted the
12 Norwegian authorities and was provided copies of the Norwegian child
13 support orders which, it turns out, were issued in 2003 and modified at
14 Porsboll's request in 2005 and 2008.

15 16. Mr. Vaile filed a notice and copies of the 2003 child support order with the
16 district court on March 6, 2012, and attached the 2003, 2005 and 2008 order
17 to his opposition to Porsboll's motion to show cause on the same day.

18 17. Mr. Vaile filed an Emergency Petition for Writ of Mandamus with this Court
19 after the district court signed the Order to Show Cause as evidence that the
20 district court would continue to disregard this Court's decisions.

21 18. Mr. Vaile's petition was denied on April 6, 2012 as premature, noting that
22 this Court was "confident that the district court will fully comply with the
23 directives set forth in [the January 2012] opinion."

24 19. The district court held evidentiary hearings on April 9, 2012, and June 4,
25 2012. During the June evidentiary hearing, because counsel for Porsboll was
26 otherwise committed, the district court limited the hearing primarily to the
27 issues of the controlling effect of the Norwegian order. The district court
28 communicated that once it determined the controlling effect of the

1 Norwegian order, the Court would hold a follow-up hearing on the proper
2 calculations of child support under the formula contained in the divorce
3 decree.

4 20. Instead, the district court entered a *Court's Decision and Order* (hereinafter
5 "*Order*") on July 10, 2012, and noticed as to entry on July 11, 2012 without
6 allowing argument or explanation relative to the calculations.³

7 21. Because the district court's order directly conflicts with this Court's
8 directives, this petition is necessary.

9
10 **II. SUMMARY OF THE CONFLICT**

11 Because the true source of the conflict is not readily apparent from the cold
12 facts of this case, this summary provides a succinct overview.

13 After the parties' children were removed to Norway by this Court in April
14 2002, Respondent Porsboll provided Mr. Vaile clear verbal indication that she
15 would be seeking child support through the Norwegian system because of her
16 belief that the Nevada order had been invalidated by this Court's 2002 decision.

17 In mid 2007, Mr. Vaile brought suit and was eventually granted summary
18 judgment against Marshal Willick and the Willick Law Group (hereinafter
19 "*Willick*") for *defamation per se* in the US District Court for the Western District
20 of Virginia for untrue letters sent to Mr. Vaile's law school, the American Bar
21 Association and other entities in an attempt to smear Mr. Vaile. When Willick
22 attempted to intercept settlement payment in that action, Vaile's Virginia
23 attorneys successfully sued Willick again for abuse of process in Virginia state
24 court. It is no surprise that late in 2007, Willick reopened this action 5 years
25

26 ³ Although the calculations adopted by the district court are wholly inconsistent and
27 significantly in excess of those outlined in the divorce decree, the amount of child support
28 pales in comparison to the issues raised in this petition. In the event that child support
calculations remain after the Court addresses the matters raised herein, Mr. Vaile will address
them via normal appeal.

1 dormant in order to pursue a self-proclaimed vendetta against Mr. Vaile with the
2 help of a friendly family court.

3 Willick convinced the district court to disregard the law to institute an
4 enormous retroactive child support modification, arrearages, penalties and
5 massive attorneys fees against Petitioner in name of the Nevada decree – the
6 validity of which Porsboll previously rejected. Porsboll, uninvolved in the
7 Nevada matters, continued to pursue modification under Norway's system even
8 after her Nevada attorney began his pursuits in Nevada family court. In an effort
9 to conceal his client's efforts in Norway, Willick refused to disclose the
10 Norwegian orders to the district court in that action below. Clearly, Willick has
11 been pursuing his own agenda, not the needs or desires of his client or the parties'
12 children.

13 The orders of the district court, recently overturned by this Court, caused
14 Mrs. Vaile to cash in the entirety of her teacher retirement to pay the contempt
15 sanctions, and forced the Vailes into bankruptcy in order to be able to make
16 payments against the inordinate retroactive child support judgments.
17 Nevertheless, Willick has continued his efforts to persecute Mr. Vaile in other
18 jurisdictions. Since 2007, Mr. Vaile has been forced to procure a TRO and
19 preliminary injunction against Willick in California state court, and Mrs. Vaile⁴
20 has obtained three separate injunctions against Willick in the US Bankruptcy
21 Court for the Northern District of California for repeated unlawful collection
22 attempts.
23

24 ⁴ Willick has expanded the target of his persecution to include Mrs. Vaile since it was she who
25 informed the Nevada Bar Association that Willick Law Group attorney (now paralegal)
26 Richard Crane was arrested and eventually convicted for felony sexual conversion of a
27 minor, since neither Willick nor Crane reported the matter to the bar association as appears to
28 be required under Nevada's ethical rules. Despite a condition of his probation, Crane still
does not appear on the sexual predator registry in Nevada, meaning that families which
unsuspectingly approach the Willick Law Group for family services, provide the names and
addresses of their children to the firm, or live in the vicinity of Crane have no warning of his
history of perversion.

1 Every time the Vailes make an effort outside Nevada to stop or interfere
2 with the unlawful or immoral actions of Willick, the firm filed another serial
3 filing⁵ in this case and made another request for attorneys fees which were
4 granted each time by the complicit district court. In addition to being awarded
5 attorney's fees, filings by Willick in this case illustrate that he has been
6 intercepting 40% of all child support proceeds that have been intended for the
7 children over the years, even though contingency fee arrangements are prohibited
8 under Nevada ethical rules.

9 Under Norwegian law, once a child reaches 18, child support payments and
10 arrears are to be paid directly to them, not the previous residential parent. This is
11 particularly relevant given that the parties' children are over or nearly 18, and
12 have not for some time, lived with Porsboll or received the benefits of the child
13 support payments. If the Norwegian order is determined to be controlling in this
14 case, it will put to rest the conflict that Willick has manufactured between the
15 parties for Willick's financial gain. Willick will no longer be able to intercept
16 child support which will flow directly to the children, and Mr. Vaile will be able
17 to concentrate on the significant needs of his family rather than on defending the
18 continual onslaught of legal persecution by Willick.

19 If the Nevada order is deemed controlling, Willick will continue to be
20 enriched in the form of nearly \$200,000 in attorneys fees which will undoubtedly
21 grow each week, with payment demanded on continued threat of imprisonment.
22 Willick will also continue to intercept 40% of over \$300,000 in principal,
23 arrearages, penalties and sanctions due under the district court's current
24 calculations, and the children, now grown, will continue to receive nothing.
25

26
27 ⁵ Early on in the case, the district court instituted what it called a *Goad* order which required
28 Mr. Vaile to submit any proposed motions to Willick and the district court, and ask
permission to file because of his *pro se* status. However, the Willick firm has filed
continuously since the litigation began, each time being granted additional fees.

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III. ISSUES PRESENTED

- A. Must the District Court Resolve the Conflict in Child Support Orders in Accordance with NRS 130.207 as Mandated by this Court, and Thereby Recognize the Norwegian Child Support Order as Controlling?
- B. Must the District Court Overturn and Discontinue Enforcement of its Judgments Which Were Clearly in the Scope of the Matter Overturned by This Court?
- C. May the District Court Establish and Apply a New Judicial Standard for Waiver?

IV. ARGUMENT

A. MUST THE DISTRICT COURT RESOLVE THE CONFLICT IN CHILD SUPPORT ORDERS IN ACCORDANCE WITH NRS 130.207 AS MANDATED BY THIS COURT, AND THEREBY RECOGNIZE THE NORWEGIAN CHILD SUPPORT ORDER AS CONTROLLING?

ANSWER: YES.

1. NRS 130.207 IS THE CONTROLLING LAW ON POINT

This Court's recent decision provided clear instruction on this particular topic. This Court stated in simple language that:

To facilitate this single-order system, UIFSA provides a procedure for identifying the sole viable order, referred to as the controlling order, required for UIFSA to function. See NRS 130.207 (addressing the recognition and determination of the controlling child support order); Unif. Interstate Family Support Act § 207 cmt. (2001), 9/IB U.L.A. 198-99 (2005).

Vaile v. Porsboll, 128 Nev. ___, 268 P.3d 1272 (2012) (emphasis added)

1 Instead of following this Court's mandate to apply this procedure, the district
2 court instead blatantly rejected this instruction. Unbelievably, the district court
3 stated, “[t]he Court finds that NRS 130.207 is inapplicable” and struck the
4 Notice containing the Norwegian order from the record.⁶ Order, 3 (emphasis
5 added). The district court's reasoning is equally astonishing as its actions. The
6 district court held that NRS 130.207 did not apply because “at the time of the
7 1998 divorce, there was only one child support order issued in Nevada which is
8 the controlling order.” *Id.* Of course, the district court well knows that there are
9 *now* two conflicting orders for the same children, the Norwegian order, and the
10 Nevada order.⁷ Even with direct admonition from this Court, the district court
11 appears intent on making a results-oriented decision in favor of Porsboll's local
12 attorneys, and has shown itself willing to reject this Court's instructions as well as
13 the relevant statutory law in order to do so.

14 The only way that the district court could make a ruling in favor of
15 Porsboll's attorneys is to ignore this Court's directives and to fully reject the
16 dominant law on point. When actually applied, NRS 130.207(2) resolves the
17 matter simply by specifying that priority must be given to the order from the
18 tribunal with continuing and exclusive jurisdiction, which only Norway
19 possesses.⁸ Even if there had been two courts with continuing and exclusive
20 jurisdiction, priority then flows to the tribunal in the home state of the children
21 (Norway) or thirdly, to the tribunal which most recently issued a child support
22 order (Norway). The only result that can possibly flow from application of the
23 law is that the moment that the Norwegian authorities issued the 2003 child
24

25 ⁶ Because these orders were provided separately to this Court in Petitioner's March 2012
26 petition, they are still a part of *this* Court's record.

27 ⁷ The district court basically judicially modified the UIFSA statutory test to a “first in time”
28 test, a concept specifically rejected by the Uniform Law Commission in the production of
UIFSA.

⁸ This Court previous held that Nevada did not have continuing and exclusive (modification)
jurisdiction. Norway has had CEJ since April 2002.

1 support order, it superseded the child support agreement contained in the Nevada
2 decree of divorce, and the Norwegian order became the controlling order.
3 Petitioner requests that this Court direct (again) the district court to follow the
4 law, or alternatively, determine as a matter of law that the Norwegian order is
5 indeed controlling.

6
7 **2. FAILURE OF THE NORWEGIAN COURT TO FOLLOW NEVADA LAW**
8 **IS NOT A VALID DEFENSE**

9 In the court below, Mr. Vaile provided submissions by the Nevada Attorney
10 General's office and the Federal Department of State that each recognized
11 Norway as a Foreign Reciprocating Country ("FRC") under UIFSA and whose
12 orders are, therefore, entitled to the same recognition as those of a sister state.⁹
13 See 42 U.S.C. § 659A(a)(1), 73 Fed. Reg. 230, 72555 (November 28, 2008) and
14 NRS 130.10179(2)(b). In its order, the district court acknowledged this fact by
15 stating that "Nevada recognizes the country of Norway as a foreign reciprocating
16 country," but refused to afford its judgment the same recognition as a sister state.

17 Under NRS 130.607(1), the defenses that may be raised to contest a foreign
18 tribunal's child support orders are specifically limited to those enumerated. Under
19 NRS 130.607(3), when "the contesting party does not establish a defense under
20 subsection 1 to the validity or enforcement of the order, the registering tribunal
21 shall issue an order confirming the order."

22
23
24 ⁹ The Federal Office of Child Support Enforcement's *A Caseworker's Guide to Processing*
25 *Cases with Foreign Reciprocating Countries* explains, among other aspects of the
26 enforcement of foreign child support orders, the minimum requirements that a country must
27 follow in order to achieve FRC status. Notably, these countries are not required to follow
28 UIFSA in every respect, rather, they must meet the standards laid out in federal law under 42
U.S.C. § 659A(b). The Guide clarifies that "[i]t is important to note that an FRC does not
have to have identical procedures, tools or mechanisms as a U.S. State." Furthermore,
"Orders from an FRC are entitled to recognition and enforcement as if they were U.S.
Orders." See www.acf.hhs.gov/programs/cse/pol/IM/2011/im-11-01a.pdf (last visited July
17, 2012).

1 Respondent did not even raise a *prima facie* inkling in support of any of the
2 defenses under NRS 130.607(1). Instead, the district court entertained and
3 eventually ruled in favor of a non-statutory defense put forth by Porsboll's
4 attorneys, namely, the claim that Norway did not follow Nevada's implementation
5 of UIFSA, specifically NRS 130.611, when it allowed Porsboll to request and
6 obtain modification¹⁰ of the Nevada order. However, because Norway is an FRC,
7 the state Attorney General's office and the Department of State have already made
8 a determination that Norway's procedures are "substantially similar" to UIFSA to
9 support reciprocity. See NRS 130.10179(2)(a). Norway need not follow Nevada
10 law in the issuance of child support judgments in order to be entitled to
11 recognition.

12 Despite the fact that Porsboll's defense is wholly invalid under NRS
13 130.607, the district court adopted the theory that Porsboll's counsel asserted that
14 Norway did not enforce NRS 130.611 when it granted Porsboll's modification.
15 *Order*, 2. The district court also rejected the Federal Office of Child Support
16 Services advice that under section 615 of UIFSA (NRS 130.6115), even a US
17 UIFSA tribunal need not follow section 611 in order to modify a child support
18 order when, as here, the issuing tribunal lacks jurisdiction to modify. The district
19 court summarily rejected this statutory provision in its opinion by weakly offering
20 that "Nevada is not a foreign country." *Order*, 3.

21 Obviously, Nevada *is* a foreign tribunal to Norway. Furthermore, 130.611
22 applies to both foreign countries and **states** "until the date that the provisions of
23 The Hague Convention on the International Recovery of Child Support and Other
24 Forms of Family Maintenance is ratified by the President and the United States
25 deposits its instrument of ratification." That event has not yet taken place. See
26

27 ¹⁰ Yes, it is clearly absurd that Porsboll's Nevada attorneys' claim that their client's actions in
28 Norway were unlawful, should be the basis for her relief from those actions. See the
Estoppel argument relative to this point below.

1 http://www.hcch.net/index_en.php?act=conventions.status&cid=131 (last visited
2 July 17, 2012). Until then, the statute reads:

- 3 1. If a foreign country or political subdivision that is a state [Nevada]
4 will not or may not modify its order pursuant to its laws, a tribunal of
5 this State [Norway] may assume jurisdiction to modify the child-
6 support order and bind all natural persons subject to the personal
7 jurisdiction of the tribunal whether or not the consent to modification
8 of a child-support order otherwise required of the natural person
9 pursuant to NRS 130.611 has been given or whether the natural
10 person seeking modification is a resident of this State or of the foreign
11 country or political subdivision.
12 2. An order issued pursuant to this section is the controlling order.

13 Norway need not follow Nevada law any more than Texas must follow
14 Nevada law in order to have its orders recognized. However, in this case,
15 Norway did follow the tenets of UIFSA precisely when it allowed Porsboll to
16 modify the Nevada child support order which Nevada courts lacked jurisdiction to
17 modify under UIFSA.

18 **3. THE DISTRICT COURT ORDER CREATES CONFLICT BETWEEN JURISDICTIONS**

19 This Court previously noted the importance of the courts fulfilling the
20 UIFSA goal of providing consistency in child support judgments. Here, the
21 district court has departed not just from this Court's direction, but from the entire
22 interstate statutory scheme designed to provide uniformity. By rejecting the
23 controlling effect of a Norwegian child support order issued by a federally
24 declared FRC at the request of its own citizen, the district court's action frustrates
25 the work of the federal agencies negotiating agreements with foreign countries,
26 and threatens the continued recognition of US orders in Norway.

27 Since the oldest child (21) has long been the caretaker for the younger child
28 (17) in Norway, the oldest child registered the Norwegian orders in Michigan¹¹ in
an effort to bring an end to litigation on this topic in Nevada. Additionally, Mr.

¹¹ Mr. Vaile lived in Michigan for almost a year with his last employment.

1 Vaile recently registered the Norwegian orders in his home state of California in
2 an effort to effect consistent disclosure to all relevant courts.¹² Both of these
3 tribunals are required to make determinations consistent with UIFSA, which will
4 require enforcement of the Norwegian orders. This conflict will put Mr. Vaile in
5 a position where he must choose which conflicting order to obey, frustrating the
6 purpose of UIFSA. As such, Petitioner requests that this Court address this
7 matter urgently.

8 If this Court determines as a matter of law, that the Norwegian orders are
9 indeed controlling under UIFSA by applying NRS 130.207, then the child support
10 provisions contained in the 1998 decree of divorce were only valid until April 1,
11 2002.¹³ Since the children lived with Mr. Vaile past that date, there is no further
12 child support for the district court to enforce under the decree.¹⁴ Although one
13 would expect such a determination to resolve this matter, because the district
14 court is still enforcing judgments that this Court overturned, the remaining
15 argument require review. Furthermore, the remaining arguments will aid the
16 Court in appreciating the full bias, abuse and defiance of the lower court.
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23 ¹² The Court may remember that the California family court determined that the Nevada district
24 court exceeded its jurisdiction prior to, but consistent with, this Court's determination of the
25 same.

26 ¹³ There was no dispute in the district court below that Mr. Vaile had paid child support in
27 accordance with the divorce decree between the parties through April 2000, when he was
28 granted custody by the district court.

¹⁴ If the Norwegian tribunal credits child support payments ordered by the Nevada district court
to the Norwegian child support requirements, Mr. Vaile anticipates being current or close to
current in his child support obligations there because of the significant excesses collected in
Nevada.

1 B. MUST THE DISTRICT COURT DISCONTINUE ENFORCEMENT OF ITS JUDGMENTS
2 WHICH WERE CLEARLY IN THE SCOPE
3 OF THE MATTER OVERTURNED BY THIS COURT?

4 ANSWER: YES.

5 The district court has proceeded as if this Court's January decision has no
6 bearing whatsoever on the previous judgments of the district court other than the
7 reversal of the district court's arbitrary specification of \$1,300 support per month
8 in modification of the 1998 divorce decree. The district court has refused to
9 conduct "further proceedings consistent with" this Court's January decision, in
10 direct defiance of this Court.

11
12 *1. THE DISTRICT COURT HAS REFUSED TO OVERTURN ATTORNEYS FEES AWARDS*

13 NRS 130.313 allows a UIFSA court to assess fees only "[i]f an obligee
14 prevails . . ." in the relevant litigation. Porsboll's attorneys began this round of
15 litigation over five years ago, and convinced the district court to stray far from the
16 relevant law in granting Porsboll relief at a cost of nearly \$160,000 in attorneys
17 fees. On appeal, not a single point of law asserted by Porsboll's counsel below
18 was accepted by this Court. Nonetheless, the district court determined that all
19 prior judgments for attorney fees awarded to the Willick Law Group in support of
20 their invalid legal arguments shall stand, "because said judgments were already
21 reduced to judgment and collectible by any lawful means." *Order*, 12. The
22 district court ordered any employer of Mr. Vaile to withhold 50% of Mr. Vaile's
23 wages in support of the attorney fee awards with immediate effect.¹⁵

24 Porsboll did not prevail. In fact, Porsboll and her counsel continuously
25 concealed the fact that a Norwegian order had been entered many years before
26

27
28 ¹⁵ Mr. Vaile is currently unemployed and struggles to remain above water. Interception of 50%
of his income will prevent him from supporting his young family (two of which have special
medical needs) even after he secures employment.

1 they restarted the instant action in 2007. This fact would have been revealed had
2 the district court accepted Mr. Vaile's request for discovery, request to order
3 production of the Norwegian orders, or request for judicial notice of the
4 Norwegian orders based on testimony by Porsboll. This case would have ended
5 right after it started, saving the parties and the Nevada courts untold time and
6 money. The district court supported the concealment of the Norwegian order, and
7 now appears intent on awarding Porsboll's counsel for this deception.

8 In its January decision, this Court agreed that the district court was required
9 to determine whether there was a controlling order under NRS 130.207, precisely
10 as Mr. Vaile argued below. This Court agreed that the district court did not have
11 jurisdiction to modify a child support order, just as Mr. Vaile argued below. This
12 Court agreed that contract principles were inapplicable to the amount of child
13 support that should be due, as Mr. Vaile argued in the district court. Each of Mr.
14 Vaile's legally correct arguments were opposed by Porsboll's counsel, and
15 resolved in Mr. Vaile's favor on appeal. Each of Porsboll's arguments were
16 rejected by this Court. Porsboll cannot be awarded attorneys fees for attempting
17 to deceive the Nevada courts, and for having each argument rejected on appeal.

18 In further defiance of this Court, the district court has refused to give effect
19 to the reversal of its prior judgments and has continued to enforce overturned
20 judgments relative to attorneys fees. Because the district court has continually
21 expressed the intent to hold Mr. Vaile in contempt and imprison him when he has
22 not been able to make payments towards attorney fees awards, and because Mr.
23 Vaile is currently unemployed, this matter requires urgent attention. Mr. Vaile
24 requests that this Court directly overturn all awards of attorneys fees in favor of
25 Porsboll's counsel.
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**2. THE DISTRICT COURT HAS CONTINUED
TO MODIFY THE 1998 DIVORCE DECREE**

One of the modifications that the district court made to the parties' 1998 divorce decree at the urging of Porsboll's counsel prior to this Court's January 2012 holding that the district court lacked jurisdiction to modify is that the district court held that Mr. Vaile would be liable for child support from May 2000 to April 2002 **while the children lived with him** in accordance with a custody order issued by the previous district court judge. The parties' decree sets the amount of child support due to Porsboll at 0% when Mr. Vaile is the residential parent of both children. Counsel for Porsboll asserted that a modification of the decree wherein Mr. Vaile would be required to provide 100% of the support for the children, and at the same time pay child support to Porsboll, is justified as a punitive measure since this Court eventually reversed Mr. Vaile's custody of the children.

On remand and reversal of the unlawful modifications from this Court in January, the district court determined to **continue to enforce this modification** in ongoing disregard for this Court's instruction that modification is not permissible. In its order, the district court justifies the modification as a matter of *res judicata*, (*Order*, 4) even though modification was the very prohibition communicated to the district court by this Court's recent decision. Not only is the district court continuing to enforce the modification, its order also newly holds Mr. Vaile in contempt and sanctions him \$500 a month for not paying support during this same period! The district court apparently believes that the requirement that Mr. Vaile pay child support to Porsboll, contrary to the decree, while the children were living with and fully supported by him, is clear and unambiguous. The district court's bias and lack of regard for either justice, the law, or this Court is clearly evident here.

1 3. *THIS DISTRICT COURT HAS REFUSED TO OVERTURN CONTEMPT*

2 In the previous proceedings in the lower court, the district court found that
3 the retroactive modifications it made to the 1998 divorce decree could be
4 interpreted as sufficiently “clear and unambiguous” in order to support contempt.
5 Despite having his financial affidavit which showed that his expenses exceeded
6 his income, and dependents (now 5 separate from the parties' two children), the
7 district court held Mr. Vaile in contempt for failure to pay child support in
8 accordance with the modifications, and required payment of \$16,000 on threat of
9 imprisonment to purge the contempt. As noted previously, this judgment
10 required Mrs. Vaile to liquidate her teacher retirement in full, in the same manner
11 that the previous orders of the district court led to the bankruptcy filing.

12 Despite the fact that this Court invalidated the district court's modifications
13 of the divorce decree, the district court has *refused to overturn the contempt*
14 *finding* against Mr. Vaile relative to those modifications, or reverse the associated
15 monetary sanctions. Even though Mr. Vaile fully purged the contempt (with the
16 liquidated retirement fund of his wife), the district court now has actually
17 sanctioned him an additional \$500 per month (for a total of \$38,000) *on top of the*
18 *previous sanctions!* Order, 9-10. Although the district court does not explain
19 this sanction, it claims support from this Court's January decision. Order, 10.

20 Petitioner need not underscore that a sanction is appropriate only when an
21 order is clear and unambiguous. Ignore for a moment the fact that Porsboll
22 rejected the validity of the 1998 divorce decree previously, and prevented Mr.
23 Vaile from paying in accordance with the decree by refusing to provide tax
24 information (explored below). The district court's order states that “the Court did
25 not award sanctions because it believed the Decree provision on calculating child
26 support on a yearly basis was not clear and unambiguous.” Order, 10. However,
27 the recent sanction implies that Mr. Vaile, who was wholly untrained under the
28

1 law for most of the period in question, should have found the Decree to have been
2 clear and unambiguous in excess of the district court's own legal capabilities.

3 This result is unjust, and demonstrates the unreasonableness of the district
4 court's decision making. If the district court could not figure out the formula even
5 with Porsboll's income information, Mr. Vaile should not be sanctioned for not
6 being able to perform the calculation without the required income information. In
7 accordance with this Court's reversal of the previous judgments of the district
8 court, the contempt based on those judgments must also be overturned.
9 Additionally, new sanctions¹⁶ are not justified in any manner.

10
11 **4. THE DISTRICT COURT HAS HELD MR. VAILE IN CONTEMPT FOR HIS**
12 **REFUSAL TO VIOLATE THIS COURT'S STAY OF THE PROCEEDINGS BELOW**

13 On July 20, 2010, this Court issued an order stating "*we stay all proceedings*
14 *in District Court Case No. D230385, pending further order of this court.*" While
15 that stay was in effect, Mr. Vaile obtained a new job in the state of Michigan, and
16 relocated there with his family.¹⁷ At all times, Mr. Vaile maintained his previous
17 address in California. Because Mr. Vaile was concerned that Porsboll's counsel
18 would insist, and the district court¹⁸ would capitulate in sanctioning him if he
19 made filings during the stay, Mr. Vaile arranged for his legal counsel in Virginia
20 to provide the Willick's Virginia counsel with Mr. Vaile's new address in
21 Michigan. In order to be doubly sure that all legal correspondence reached Mr.
22 Vaile, he also enabled mail forwarding at his previous address in California.
23 Additionally, all previous email addresses and telephone numbers continued to
24 reach Mr. Vaile.

25
26 ¹⁶ Petitioner suspects that the sanctions are intended as punishment for challenging the district
27 court's judgments in this Court.

28 ¹⁷ Mr. Vaile's job in Michigan was eliminated in April 2012, and he is still searching diligently
for a new position.

¹⁸ No-one with knowledge or experience with this case could suggest that Mr. Vaile's caution
was unwarranted in this case.

1 Once the stay was lifted, Mr. Vaile provided formal notice of his new
2 address to the district court. Before that formal notice was filed, Porsboll's
3 counsel mailed a motion for order to show cause to the new Michigan address
4 that Mr. Vaile provided them, and used the same email address as before. There
5 was absolutely no gap in communications, and no damage to any party. Yet
6 Porsboll's counsel requested sanctions against Mr. Vaile for not filing his notice
7 of address change with the district court during the stay. Once again, the district
8 court accommodated Porsboll's counsel and sanctioned Mr. Vaile in the amount
9 of \$500 – for obeying this Court's mandate. See *Order*, 7.

10 The district court asserts that its October 9, 2008 order was clear and
11 unambiguous on this point, yet it refused to acknowledge that this Court stayed
12 the proceedings, and eventually overturned the October order. See *Order*, 7. Not
13 only has the district court refused to adhere to the orders and mandates provided
14 by this Court, it has actually sanctioned Mr. Vaile when he attempted to do so.
15 Every aspect of the district court's order is unreasonable and demonstrates a
16 intractable bias, and disrespect for this Court's direction. Petitioner requests this
17 Court to intercede.

18
19 ***5. THE DISTRICT COURT HAS SANCTIONED MR. VAILE FOR NON-PAYMENT OF***
20 ***CHILD SUPPORT DURING A PERIOD WHEN HE FULLY PAID CHILD SUPPORT***

21 During six months in 2010, the California family court enjoined mandatory
22 collection of child support through payroll deductions based on the determination
23 that the Nevada district court exceeded its jurisdiction by modifying the Nevada
24 decree. During this six months, Mr. Vaile made child support payments biweekly
25 directly to Porsboll. Again, during the first three months after Mr. Vaile started
26 his new job in Michigan, the district attorney's office took some time to institute
27 automatic salary withholding. During this period, Mr. Vaile again made
28 payments directly to Porsboll. After this Court's decision in January 2012, the

1 district attorney's office continued to collect from Mr. Vaile's employer, but did
2 not disburse these funds. The DA also intercepted Mr. and Mrs. Vaile tax return
3 during this period. When Mr. Vaile's job ended in April, 2012, the DA's office
4 was holding over \$9000 in unreleased child support, or enough to cover 7 months
5 of support based on the previous withholding amount.¹⁹

6 During the April 9, 2012 hearing, Porsboll's counsel argued that Mr. Vaile
7 should not receive any credits for child support payments made directly to
8 Porsboll and not through his office. In other words, Porsboll's counsel was
9 prevented from intercepting their 40% contingency by Mr. Vaile paying child
10 support directly. The district court responded that it was her policy to apply any
11 direct payments to child support when they were denominated as child support, as
12 was the case with each check provided to Porsboll in this situation.²⁰

13 However, in the order and decision issued from the district court, the court
14 held contrarily that "Mr. Vaile is not entitled to credits for any direct payments he
15 made to Ms. Porsboll." *Order*, 5. After creating the fiction that Mr. Vaile did not
16 pay support during this period, the district court went on to make false findings
17 including "All child support payments since July 3, 2006 have been collected
18 involuntarily," (*Order*, 9), and that "zero child support was paid for eleven (11)
19 specific months," (*Order*, 11). The district court adopted the schedule of payment
20 asserted by Porsboll's counsel which excluded Mr. Vaile's direct payments, and
21 then scheduled a contempt hearing against Mr. Vaile for failure to pay during this
22
23

24
25 ¹⁹ Mr. Vaile anticipated that if the district court held that child support was due, it would credit
26 him with child support during that period while the funds built up with the DA.

27 ²⁰ Mr. Vaile provided Porsboll's counsel with copies of the canceled checks and brought them
28 to the hearings, but because the district court cut short the June 4 hearing, and did not hear
evidence on the child support due at that time, they did not yet become a part of the record.
However, Mr. Vaile's testimony of the payments, and that the Memo field of each check
contained the "Child Support" and the relevant period for which the support was intended, is
part of the record.

1 period. The district court specifically noted that Mr. Vaile “is facing
2 incarceration and sanctions for contempt” at this hearing. *Order*, 11.

3 The fact that the district court is willing to simply erase Mr. Vaile's child
4 support payments made in good faith while the case was stayed by this Court, and
5 then to hold him in contempt of court because of the erasure, under an order
6 which has been overturned by this Court, shows just how far this particular
7 district court will stray from any sense of justice in order to abuse Mr. Vaile.
8 Petitioner requests that this Court intervene.

9
10 C. MAY THE DISTRICT COURT ESTABLISH AND APPLY
11 A NEW JUDICIAL STANDARD FOR WAIVER?

12 ANSWER: No.

13
14 I. *WAIVER CAN BE MADE BY IMPLICATION*

15 During evidentiary hearings on September 18, 2008, Porsboll admitted that
16 she informed Mr. Vaile (with her counsel present) that she was pursuing child
17 support through the Norwegian system because this Court had invalidated the
18 1998 divorce decree.²¹ Mr. Vaile testified and reiterated Porsboll's clear waiver
19 of child support under the Nevada system at the evidentiary hearing on April 9,
20 2012.

21 The relevant law on waiver in the child support context is contained in the
22 decision of Parkinson v. Parkinson, 106 Nev. 481, 796 P.2d 229 (1990). This
23 case stands for the proposition that a parent may waive child support through
24 implication alone. In this case, Porsboll went well beyond implication; she
25 verbally acknowledged that she would not seek child support under the Nevada
26 order, and then took no action (even a request) to seek child support under the
27 Nevada system. Mr. Vaile provided evidence, attached as Exhibit 3, that he was
28

²¹ Mr. Vaile shared Porsboll's interpretation of this Court's 2002 decision.

1 still willing to follow the Nevada decree if Porsboll would but provide the tax
2 information required. Porsboll testified on September 18, 2008 that she refused
3 to answer Mr. Vaile's requests, *preventing* him from calculating support under the
4 decree. Of course, he was unaware of the controlling Norwegian orders at the
5 time.

6 Instead of recognizing what was a clear and unequivocal waiver (as well as
7 prevention) of child support under the Nevada decree, the Court rejected the
8 waiver defense by holding that "Mrs. Porsboll signed no written agreements for
9 waiver of child support." *Order*, 9. Of course, this is an incorrect legal standard.
10 Signed written agreements are not required to support waiver. Again, the Court
11 has avoided the just application of the law by changing the legal standard to reach
12 a particular result. Petitioner requests that the Court remedy the district court's
13 refusal to adhere to this Court's binding precedent.

14
15 **2. ESTOPPEL PREVENTS RESPONDENT FROM DENYING THE VALIDITY**
16 **OF HER OWN JUDICIAL ACTIONS**

17 In the 2002 decision in this case, this Court recognized the rule of judicial
18 estoppel in Nevada case law and emphasized that "one of the rule's purposes is to
19 prevent parties from deliberately shifting their position to suit the requirements of
20 another case concerning the same subject matter." *Vaile v. Vaile*, 118 Nev. 262,
21 273 (2002). Mr. Vaile below argued that the doctrine of estoppel applied in this
22 case, but the district court's order does not reflect any ruling on this topic.

23 In this case, Porsboll's attorneys argued that because the Norwegian court
24 granted Porsboll's request to modify the Nevada order, in 2003, 2005, and 2008,
25 that modification should be rejected in Nevada. Counsel for Porsboll continually
26 argued to the district court that the modification in Norway would only be valid in
27 Nevada if Mr. Vaile had sought that modification. At the time that Porsboll's
28 counsel made that argument, he well knew that Porsboll had already twice sought

1 and been granted modification, demonstrating that counsel's argument was a
2 guise. Obviously, Mr. Vaile could not have requested a modification of the
3 Nevada order in Norway after Norway had already granted Porsboll's
4 modification and issued its own order. The most that Mr. Vaile could have done
5 was to request modification of the new Norwegian child support order, which
6 would not have affected the Nevada decree under Porsboll's counsel's theory. In
7 effect, counsel for Porsboll are arguing that Porsboll's action in Norway caused
8 the Norwegian orders to be invalid in Nevada, and prevented the Nevada order
9 from ever being modified.

10 Again, the district court has adopted an invalid legal theory put forth by
11 Porsboll's counsel. This theory ignores the fact that Porsboll's challenge to the
12 validity of her own judicial actions are prevented by the principle of estoppel as
13 explained by this Court in this very case.

14 **V. NECESSITY FOR AN EXTRAORDINARY WRIT**

15 Over the last years, Mr. Vaile has made this Court aware of repeated abuses
16 of this particular district court and its direct defiance of this Court's decisions.
17 Having spent years working in the judicial chambers of the federal judiciary
18 during law school, Petitioner recognizes that petitions made by proper person
19 litigants can pose particular difficulties for the Court, and may be viewed with
20 increased suspicion. Although Petitioner has not yet mastered Nevada procedure,
21 this Court has on several occasions found merit to the issues raised by Mr. Vaile
22 via either writ, appeal, or emergency motion. This Court has twice stayed this
23 case in order to prevent the district court from employing unlawful or abusive
24 tactics, or from disregarding the law. As soon as this Court issued a decision and
25 lifted the stay of this case, the same tactics of the district court have begun anew.
26 These tactics are clearly evidenced from the order of the district court.
27
28

1 attorneys fees in favor of Defendant Porsboll and to dismiss the case for
2 lack of jurisdiction under NRS 130.202; and

3 4. Directs the Clark County District Attorney to cease withholding of Mr.
4 Vaile's salary and to remove any related tax return or other federal
5 intercepts in place.

6 Respectfully submitted this 19th day of July, 2012.

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9
10 Robert Scotlund Vaile
11 PO Box 727
12 Kenwood, CA 95452
13 (707) 633-4550
14 *Petitioner in Proper Person*

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**AFFIDAVIT OF ROBERT SCOTLUND VAILE
IN SUPPORT OF
EMERGENCY PETITION FOR WRIT OF MANDAMUS
UNDER NRAP 27(e)**

Robert Scotlund Vaile, under penalty of perjury under the laws of the State of Nevada, declares as follows:

1. I am the Plaintiff in the District Court case.
2. I reside in Kenwood, California.
3. I am making this Declaration in support of this *EMERGENCY PETITION FOR WRIT OF MANDAMUS UNDER NRAP 27(e)*.
4. I attended the evidentiary hearings on April 9, 2012, and June 4, 2012 in the district court below.
5. I have authored this petition based on my first hand experience in this case.
6. I believe that there is evidentiary support for all facts asserted within this petition.
7. I have first-hand knowledge of most of the facts set forth in this petition, and as to those matters of which I do not have personal knowledge, I state based on reliable information and belief.
8. On August 21, 1998 the parties obtained a divorce in Nevada. The divorce decree entered contains a separation agreement which includes child support provisions for the parties' two children.
9. From May 2000 to April 2002, I exercised residential custody of the children in Texas in accordance with a pick-up and custody orders issued by the district court in April 2000, and October 2000.
10. Ms. Porsboll took the children to live with her in Norway in accordance with this Court's decision in April 2002. They have resided in Norway since that time.

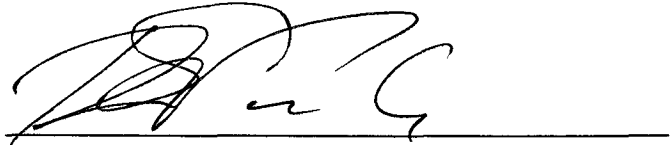
- 1 11. On March 17, 2003, Norway issued a Child Support order for the support of
2 the parties' two children who were minors at the time.
- 3 12. On November 7, 2003, Ms. Porsboll told me that she had contacted the
4 Norwegian authorities regarding child support because this Court had voided
5 the Nevada separation agreement containing the child support provisions.
- 6 13. At no point in time did Porsboll or her counsel provide Mr. Vaile a copy of
7 any child support order entered in Norway.
- 8 14. On April 7, 2005, Norway granted Porsboll's request for modification of the
9 2003 Norwegian child support order.
- 10 15. On November 9, 2007, Defendant Porsboll asked the district court for the
11 first time that the child support order in the decree be enforced, to reduce
12 arrears to judgment, and to enter a prospective and retroactive child support
13 modification and for penalties, interest and attorneys fees.
- 14 16. On February 13, 2008, Norway granted Porsboll's request for modification of
15 the 2005 child support order.
- 16 17. Through my financial affidavit and testimony, I have made the district court
17 aware that I currently have five dependents, two of which are special needs
18 children, and that I am currently involuntarily unemployed.
- 19 18. During the April 9, 2012 hearing in the district court, I requested a stay of the
20 of any ongoing proceedings in the case in the event that the district court
21 determined that it would not honor the Norwegian order. The district court
22 did not rule on this request in its recent order.
- 23 19. Because the district court has, many times previously, threatened to imprison
24 me if I could not pay attorneys fees awards or other judgments regardless of
25 my ability to pay, and has only been prevented from doing so by this Court's
26 intercession, I firmly believe that the court will in fact incarcerate me if I fail
27 to comply with the payment plan outlined by the district court.
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20. Because the district court has now and several times previously, directly contradicted the mandates of this Court, I am respectfully requesting that this Court make determinations as a matter of law, or otherwise mandate obedience by the district court to this Honorable Court's directives.

21. Further I say not.

Under penalty of perjury, State of Nevada.



Robert Scotlund Vaile

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CERTIFICATE OF MAILING

I hereby certify that on July 19, 2012, I deposited in the United States Mail, postage prepaid, at Duncanville, TX, a true and correct copy of *Emergency Petition for Writ of Mandamus under NRAP 27(e) and Appendix of Exhibits*, addressed as follows:

Honorable Cheryl B. Moss
Eighth Judicial District Court
Dept. I
601 North Pecos Road
Las Vegas, NV 89101-2408

Marshal S. Willick, Esq.
Willick Law Group
3591 E. Bonanza Road, Suite 200
Las Vegas, NV 89110-2101
Attorney for Real Party in Interest Porsboll

Respectfully submitted this 19th day of July, 2012.



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