

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSUE TERRONES VALDEZ,
Appellant,
vs.
PATRICIA SOTO AGUILAR,
Respondent.

Supreme Court No. 66854

APPELLANT'S APPENDIX

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Respondent in pro per

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Attorney's Office

APPENDIX TO APPELLANT'S OPENING BRIEF

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JAN 31 2011

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01-28-2011:10:37:54 AM

Howard W. Conyers

Clerk of the Court

Transaction # 1998370

1 CODE 1845

2 SUSAN HALLAHAN, C.D.D.A.

3 BAR # 4412

4 PO BOX 30083

5 RENO, NV 89520-3083

6 (775) 789-7100

7 ATTORNEY FOR: WASHOE COUNTY DISTRICT ATTORNEY'S OFFICE

8 IN THE FAMILY DIVISION

9 OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

10 IN AND FOR THE COUNTY OF WASHOE

11 JOSUE TERRONES VALDEZ

12 Oblige,)

13 vs.)

14 PATRICIA SOTO AGUILAR

15 Obligor.)

16 Case No. FV10-04478

17 Dept. No. UM

18 JUDGMENT AND ORDER

19 The Notice Of Intent To Enforce matter was heard on January 6, 2011
20 before the Court Master with the following persons present:

21 Oblige: ☒ Present () Not present PRESENTED by: Susan Hallahan
22 District Attorney's Office

23 Obligor: ☒ Present () Not present Represented by: pro per
24 with interpreter Marco Contreras

25 After considering all of the evidence, the Master hereby makes the
following Findings and Recommendations:

(XX) Obligor is the parent of the following child.

ANDREI TERRONES SOTO 03/06/2009

() Obligor was properly served and noticed of today's hearing at his / her
last known address and failed to appear.

1 () Oblige was properly noticed of today's hearing _____

2 _____

3 (XX) Nevada has continuing exclusive jurisdiction pursuant to the Full Faith
4 and Credit for Child Support Orders Act (FFCCSOA) (28 U.S.C. 1738B), and the
5 Uniform Interstate Family Support Act (UIFSA) (NRS Chapter 130); the basis
6 for this finding is: all orders were entered
7 in the State of Nevada

8 () Obligor's gross monthly income \$ _____ : formula amount: _____ % = \$ _____
9 Basis for deviation from State formula: _____

10 (X) A judgment is entered against Obligor for child support arrears in the
11 amount of \$ 1593.00 in principal plus \$ 13.94 in interest plus
12 \$ 106.20 in penalties for a total of \$ 1713.14 from 9/1/10
13 through 11/30/10. (See attached Custodian Financial Audit for Child
14 Support). Obligor shall be given thirty (30) days to provide proof of
15 additional payments to the District Attorney's Office.

16 (X) Obligor shall pay \$ 531.00 per month in ongoing child support due
17 no later than the last day of the calendar month beginning 12/2010.

18 (X) A wage withholding shall be issued immediately.

19 (XX) Obligor is responsible for all payments due under this Order. At any
20 time withholding does not occur, Obligor must make voluntary payments to the
21 State Collection and Disbursement Unit. All payments MUST be in the form of
22 a cashier's check or money order (personal checks will not be accepted) and
23 made payable to SCADU and mailed to: STATE COLLECTION AND DISBURSEMENT UNIT,
24 P.O. BOX 98950, LAS VEGAS, NV 89193-8950. Obligor must place his/her social
25 security number, name (first, middle, last) and the name of custodian (first
and last) on the face of each payment. Your child support payment does not
get credited to your case until the payment is received by SCADU. NOTICE:
NO CREDIT WILL BE GIVEN FOR PAYMENTS PAID DIRECTLY TO OBLIGEE. PAYMENT OF
SUPPORT IS TO BE AS PROVIDED HEREIN, AND THE GIVING OF GIFTS, OF MAKING
PURCHASES OF FOOD, CLOTHING, AND THE LIKE WILL NOT FULFILL THE OBLIGATION.

(XX) Interest will be assessed on all unpaid support balances for cases with
a Nevada controlling order pursuant to NRS 99.040. A 10% penalty may be
assessed on each unpaid installment, or portion thereof, of an obligation to
pay support for a child, pursuant to NRS 125B.095. If you pay your child
support through income withholding and your full obligation is not met by the
amount withheld by your employer, you are responsible to pay the difference
between your court ordered obligation and the amount withheld by your
employer directly to the state disbursement unit. If you fail to do so you

1 will be subject to the assessment of penalties and interest. You may avoid
2 these additional costs by making your current child support payments each
month.

3 () Obligor shall provide health coverage pursuant to:

4

5 (X) Obligee shall provide health coverage pursuant to:
the order filed 9/1/2010 in case FV10-01573.

6 () Obligor shall provide health coverage.

7 () Obligee shall provide health coverage and Obligor shall pay
8 \$_____ per month for cash medical support beginning _____.

9 () Obligor is to pay \$_____ per month for cash medical support
beginning _____ and Obligee shall provide health coverage when it
becomes accessible and available at a reasonable cost.

10 () Obligor () Obligee shall provide proof of insurance coverage including
11 an insurance identification card and insurance plan provider list to the
12 District Attorney's Office, Family Support Division within fifteen (15) days
of today's date.

13 (X) Expenses for health care which are not reimbursed, including expenses
14 for medical, surgical, dental, orthodontic and optical expenses, must be
borne equally by both parents in the absence of extraordinary circumstances.

15 () A hearing shall be held on _____ at _____ for
16 the purpose of _____.

17 () Obligor shall provide the following to the District Attorney's Office,
Family Support Division no later than ten (10) days before the hearing:

18 _____ A financial declaration in a form satisfactory for filing with
the Court;

19 _____ Written documentation regarding all efforts made toward
obtaining a job;

20 _____ Written documentation regarding any schooling, vocational
training and/or enrollment in classes as directed by the Court.

21 () The Court retains jurisdiction to retroactively modify the ongoing
22 child support to the month and year Obligor became employed.

23 (XX) Pursuant to NRS 125B.145 this Order may be reviewed every three (3)
years and is subject to future modifications upon the filing of a request for
24 review by either party.

25 (XX) Pursuant to NRS 125B.085, medical support includes, without limitation,
coverage for health care under a plan of insurance, that is reasonable in

1 cost and accessible, including, without limitation, the payment of any
2 premium, co-payment or deductible and the payment of medical expenses.
3 Reasonable in cost is defined as not more than 5% of the parent's gross
4 monthly income. Accessible is defined as not limited to a geographical area
5 or is limited to a geographical area and the child resides within that area.

6 (XX) Unless a stay of this Order is obtained from District Court, all
7 enforcement procedures including, but not limited to wage withholding,
8 garnishment, liens and the attachment of federal income tax returns will be
9 undertaken upon entry of this order, regardless of the payment schedule set
10 forth herein and regardless of Obligor's compliance with such payments. This
11 document may be recorded and may act as a lien against any real or personal
12 property in which Obligor has an interest.

13 (XX) Obligor shall notify the District Attorney's Office, Family Support
14 Division in WRITING of any change of address, change of employment, change of
15 custody, access to health insurance coverage or change in health insurance
16 policy information, or entry of any other Order relative to child support.

17 It is further ordered that:

18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____
25 _____

21 SUPPORT OBLIGATION BREAKDOWN AS FOLLOWS:

22 Child Support. \$ 531.00 Effective 12/2010
23 Child Support Arrearages . \$ 30.00 Effective 12/2010
24 Medical Cash. \$ _____ Effective _____
25 Other _____ \$ _____ Effective _____

TOTAL PAYMENT: \$ 581.00

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AFFIRMATION PURSUANT TO NRS 239B.030

The preceding document does not contain the social security number of any person.

IT IS SO RECOMMENDED.

Dated:

1/6, 2011
2010


COURT MASTER

NOTICE

Objections/Appeals are governed by NRS 425.3844 and Washoe District Court Rule 32. You have thirteen (13) days from the date it was mailed to you to file an objection. Failure to file and serve written objections will result in a final Judgment being entered by District Court.

ORDER/JUDGMENT

✓
The Clerk of the Court having reviewed the District Court's file and having determined that no objection has been filed within the ten day objection period, the Master's Recommendation is hereby deemed approved by the District Court pursuant to NRS 425.3844. The affixing of the Clerk of the Court's file stamp to this Master's Recommendation signifies that the ten-day objection period has expired without an objection having been filed and that the District Court deems the Master's Recommendation to be approved as a JUDGMENT and ORDER of the District Court, effective with the file stamp date, without need of a District Court Judge's signature affixed hereto. The parties are ordered to comply with this JUDGMENT AND ORDER.

PATRICIA SOTO AGUILAR
676801200A
FV10-04478

Custodian Financial Audit (part 1 of 2)

Run Date: 12/27/2010

Run Time: 11:14 AM

NCP Name: Soto Aguilar, Patricia

Case ID: 676801200A

Office: 16

CST Name: Terrones Valdez, Josue

Docket#: FV10-04478

Prepared By: CDEWEY

Prepared By Date: 12/27/2010

Last Updated By: CDEWEY

Last Updated By Date: 12/27/2010

Provision Type: Child Support

	Event Date	Event Type	Current Amount Due	NCP Paid	Unadjudicated Arrears		Adjudicated Arrears		
					Adjustment Amount	Running Balance	Adjustment Amount	Running Balance	
1	09/01/2010	J	0.00	0.00	0.00	0.00	0.00	0.00	1
2	09/01/2010	O	531.00	0.00	531.00	531.00	0.00	0.00	2
3	09/30/2010	M	0.00	0.00	0.00	531.00	0.00	0.00	3
4	10/01/2010	O	531.00	0.00	531.00	1062.00	0.00	0.00	4
5	10/31/2010	M	0.00	0.00	0.00	1062.00	0.00	0.00	5
6	11/01/2010	O	531.00	0.00	531.00	1593.00	0.00	0.00	6
7	11/30/2010	M	0.00	0.00	0.00	1593.00	0.00	0.00	7
Totals:			\$1593.00	\$0.00	\$0.00	\$1593.00	\$0.00	\$0.00	

Total Unadjudicated: \$1593.00

Total Adjudicated: \$0.00

Total Arrears: \$1593.00

Custodian Financial Audit (part 2 of 2)

Run Date: 12/27/2010

Run Time: 11:14 AM

NCP Name: Soto Aguilar, Patricia
CST Name: Terrones Valdez, Josue

Case ID: 676801200A
Docket#: FV10-04478

Office: 16

Prepared By: CDEWEY
Last Updated By: CDEWEY

Prepared By Date: 12/27/2010
Last Updated By Date: 12/27/2010

Provision Type: Child Support

	Event Date	Event Type	Current Amount Due	NCP Paid	Unadjudicated Interest (On UA)		Unadjudicated Interest (On AA)		Adjudicated Interest		Unadjudicated Penalty		Adjudicated Penalty		
					Adjust Amount	Running Balance	Adjust Amount	Running Balance	Adjust Amount	Running Balance	Adjust Amount	Running Balance	Adjust Amount	Running Balance	
1	09/01/2010	J	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1
2	09/01/2010	O	531.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2
3	09/30/2010	M	0.00	0.00	2.32	2.32	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3
4	10/01/2010	O	531.00	0.00	0.00	2.32	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4
5	10/31/2010	M	0.00	0.00	4.65	6.97	0.00	0.00	0.00	0.00	53.10	53.10	0.00	0.00	5
6	11/01/2010	O	531.00	0.00	0.00	6.97	0.00	0.00	0.00	0.00	0.00	53.10	0.00	0.00	6
7	11/30/2010	M	0.00	0.00	6.97	13.94	0.00	0.00	0.00	0.00	53.10	106.20	0.00	0.00	7
Totals:			\$1593.00	\$0.00	\$0.00	\$13.94	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$106.20	\$0.00	\$0.00	

Total Unadjudicated Interest on UA: \$13.94
Total Unadjudicated Interest on AA: \$0.00
Total Adjudicated Interest: \$0.00
Total Interest: \$13.94

Total Unadjudicated Penalty: \$106.20
Total Adjudicated Penalty: \$0.00
Total Penalty: \$106.20

Total Arrears: \$1593.00
Total Interest: \$13.94
Total Penalty: \$106.20
Grand Total: \$1713.14


Pursuant to NRCP 5(b), I certify that I am an employee of the Washoe County District Attorney's Office, and that on this date I deposited for mailing at Reno, Nevada, a true copy of the within document addressed to:

PATRICIA SOTO AGUILAR
310 MAINE ST #9
RENO, NV 89509

Dated this 11 day of January, 2011.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.


Family Support Division
676801200A

Electronically

Howard W. Conyers

Clerk of the Court

Transaction # 2031084

1 matter, a copy of which is attached hereto.

2 AFFIRMATION PURSUANT TO NRS 239B.030

3 The undersigned does hereby affirm that the preceding
4 document does not contain the social security number of any
5 person.

6 Dated this 10th day of February, 2011.

7
8 Susan Hallahan
9 Susan Hallahan
10 Chief Deputy District Attorney
Family Support Division

11 Pursuant to NRCPS(b), I certify
12 that on February 11th, 2011, I deposited
13 for mailing a true copy of the
within document addressed to:

14 PATRICIA SOTO AGUILAR

15 Pat Metz
16 Family Support Division
17 676801200A

18
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ejm

1 CODE: 2490
2 JONATHAN H. KING, ESQ.
3 Nevada State Bar No. 22
4 429 Marsh Avenue
5 Reno, Nevada 89509
6 Telephone: (775) 322-2211
7 Attorney for Oblige

FILED

2013 AUG 12 AM 11:00

JOEY D. B. HASTINGS
CLERK OF THE COURT
BY M. Chelloo
DEPUTY

8
9 IN THE FAMILY DIVISION
10
11 OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
12
13 IN AND FOR THE COUNTY OF WASHOE
14

15 JESUE TERRONES VALDEZ

16 Oblige,

17 vs.

Case No. FV10-04478

18 PATRICIA SOTO AGUILAR,

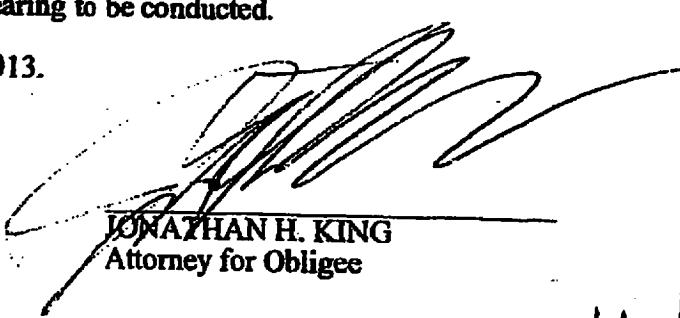
Dept. No. UM

19 Obligor.
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MOTIONS FOR ENFORCEMENT AND FOR
ORDER TO SHOW CAUSE

29 COMES NOW Oblige JESUE TERRONES-VALDEZ, by and through his attorney, the
30 Law Offices of Jonathan H. King, and moves this Court for enforcement of the Child Support
31 Order in the above-entitled matter, for affirmative relief associated in the enforcement thereof,
32 and for an Order to Show Cause requiring Obligor PATRICIA SOTO-AGUILAR to appear and
33 show why she should not be held in contempt, for imposition of sanctions, and for imposition of
34 a jail sentence based upon a finding of contempt. Said Motions are made and based upon the
35 pleadings on file herein, the attached Points and Authorities, and upon such testimony, evidence
36 and argument as may be presented at any hearing to be conducted.

37 DATED this 8th day of August, 2013.


JONATHAN H. KING
Attorney for Oblige

POINTS AND AUTHORITIES

Pursuant to hearing conducted January 6, 2011, resulting in a Judgment and Order filed thereafter, Obligea was granted Judgment against Obligor for child support arrearages totaling \$1,713.14 through November 30, 2010. In said Judgment and Order Obligor was required to make ongoing monthly payments of \$531.00, plus \$50.00 to be applied towards the already accrued child support arrearages. At the hearing in front of the Court Master, Obligor was specifically warned of the consequences of her not complying with the payment of ongoing child support plus payment towards the accrued arrearages.

Since the hearing was conducted, over thirty (30) months ago Obligor has paid virtually nothing towards her child support obligation and Obligea has tried unsuccessfully to obtain assistance from the Washoe County District Attorney's Office, Family Support Division. A few small payments were made during 2011 the receipts provided to Obligea total \$510.00, less than one month of the ongoing child support. In 2012, Obligor paid absolutely nothing towards her child support obligation. To date in 2013 Obligor has paid absolutely nothing towards her child support obligation.

Obligor has utterly failed to comply with said Judgment and Order. The Motion is brought because adequate support is not being received for the benefit of the minor child. The Motion is regarding the child, and not his parents. Andrei is a wonderful happy child who deserves the best which includes financial support from his mother.

It is estimated that accrued child support arrearages, not including interest and penalties, now exceeds \$19,000.00. Accordingly, Obligea requests a finding of contempt for each month in which Obligor has failed to make any payment towards child support and any month in which she has made a child support payment which is less than the amount required. Obligea requests that the driver's license privileges of Obligor be suspended. Obligea requests that sanctions include, but not be limited to, a term of incarceration for each separate act of contempt. Obligea requests an award of attorney's fees and costs associated with the bringing of this Motion. Attorney's fees and costs are mandatory pursuant to the provisions of NRS 125B.140.

Obligea also requests affirmative relief in aid of his pursuing collection of the unpaid

JONATHAN H. KING, ESQ.
Attorney for Obligor

social security number of any person.

The undersigned does hereby affirm that the preceding document does not contain the

AFFIRMATION Pursuant to NRS 239B.030

argument at any hearing to be conducted.

Obligee reserves the right to supplement this Motion by way of testimony, evidence and

regarding the income of her adult roommate.

Forthwith an updated Financial Disclosure Form, which would necessarily include information

determine the true income she now earns. Obligor should also be required to prepare and file

earning unreported income "under the table" and this will require necessary investigation to

to date for the period from January 1, 2013 through August 31, 2013. Obligor has a history of

Wage and Tax Statements for 2011 and 2012, and that she be required to produce her pay stubs

schedules, for the calendar years 2011 and 2012 and that she be required to produce her W-2

requests that Obligor be required to produce her Federal Income Tax Returns, including all

child support arrears. First, Obligor requests leave to conduct discovery. Second, Obligor

VERIFICATION

STATE OF NEVADA
COUNTY OF WASHOE } ss.

JOSUE TERRONES VALDEZ, being first duly sworn, deposes and says under penalty of perjury: I am the Obligee in the above-entitled action; I have read the foregoing Motions for Enforcement and for Order to Show Cause, and know the contents thereof. The same is true as of my own knowledge, except as to those matters therein stated upon information and belief, and as to those matters I believe them to be true.

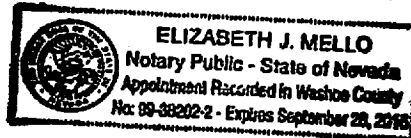


JOSUE TERRONES VALDEZ

SUBSCRIBED and SWORN to before me
on this 14th day of August, 2013.



Notary Public



CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP Rule 5(b), I certify that on the _____ day of August, 2013, I deposited for mailing, in the U.S. Mail in Reno, Nevada, with postage thereon fully prepaid, a true and correct copy of the within document, addressed as follows:

Patricia Sota-Aguilar
3811 Patricia Lane
Reno, NV 89512



Liz Mello

IN THE FAMILY DIVISION OF THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

JOSUE TERRONES VALDEZ

Obligee

vs.

PATRICIA SOTO AGUILAR

Obligor

FAMILY COURT
MOTION/OPPOSITION NOTICE
(REQUIRED)

CASE NO. FV10-04478

DEPT. NO. TM

NOTICE: THIS MOTION/OPPOSITION NOTICE MUST BE ATTACHED AS THE LAST PAGE to every motion or other paper filed pursuant to chapter 125, 125B or 125C of NRS and to any answer or response to such a motion or other paper.

A. Mark the CORRECT ANSWER with an X.		YES	NO
1. Has a final decree or custody order been entered in this case? If <u>yes</u> , then continue to Question 2. If <u>no</u> , you do not need to answer any other questions.		X	
2. Is this a motion or an opposition to a motion filed to change a final order? If <u>yes</u> , then continue to Question 3. If <u>no</u> , you do not need to answer any other questions.			X
3. Is this a motion or an opposition to a motion filed only to change the amount of child support?			
4. Is this a motion or an opposition to a motion for reconsideration or a new trial <u>and</u> the motion was filed within 10 days of the Judge's Order?			
IF the answer to Question 4 is YES, write in the <u>filing date</u> found on the front page of the Judge's Order.		Date	
B. If you answered NO to either Question 1 or 2 or YES to Question 3 or 4, you are <u>exempt</u> from the \$25.00 filing fee. However, if the Court later determines you should have paid the filing fee, your motion will <u>not</u> be decided until the \$25.00 fee is paid.			

I affirm that the answers provided on this Notice are true.

Date: 8/8/13

Signature:

Print Name:

Jonathan H. King

Print Address:

429 Marsh Ave., Reno, NV 89509

Telephone Number:

(775) 322-2211

cjm

1 CODE:
2 JONATHAN H. KING, ESQ.
3 Nevada State Bar No. 22
4 429 Marsh Avenue
5 Reno, Nevada 89509
6 Telephone: (775) 322-2211
7 Attorney for Oblige

FILED

2013 NOV 13 PM 2:17

JULY C. BONA HASTINGS
CLERK OF THE COURT

BY T. Arriola
DEPUTY

8
9 IN THE FAMILY DIVISION
10
11 OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
12
13 IN AND FOR THE COUNTY OF WASHOE
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15 JOSUE TERRONES VALDEZ

16 Oblige,

17 vs.

Case No. FV10-04478

18 PATRICIA SOTO AGUILAR,

Dept. No. UM

19 Obligor.
20

21 **EXHIBIT - SCHEDULE OF CHILD SUPPORT ARREARAGES**

22 COMES NOW Oblige JOSUE TERRONES VALDEZ, by and through his attorney,
23 The Law Offices of Jonathan H. King, and submits the following Schedule of Child Support
24 Arrearages:

25 September 1, 2010 through November 30, 2010 \$1,713.14
26 (See Judgment and Order filed January 28, 2011 at page 2, lines 9 - 11)

27 <u>Month</u>	28 <u>Amount Owning</u>	<u>Amount Received</u>	<u>Balance</u>
January 2010	0	0	0
February 2010	0	0	0
March 2010	0	0	0
April 2010	0	0	0
May 2010	0	0	0
June 2010	0	0	0
July 2010	0	0	0

<u>Month</u>	<u>Amount Owning</u>	<u>Amount Received</u>	<u>Balance</u>
August 2010	0	0	0
September 2010 (See Judgment and Order filed January 28, 2011)			
October 2010 (See Judgment and Order filed January 28, 2011)			
November 2010 (See Judgment and Order filed January 28, 2011)			
December 2010	<u>\$531.00</u>	<u>0</u>	<u>\$2,244.14</u>
Subtotal for 2010			<u>\$2,244.14</u>
January 2011	\$531.00	\$55.00	\$476.00
February 2011	\$531.00	\$100.00	\$907.00
March 2011	\$531.00	\$55.00	\$1,383.00
April 2011	\$531.00	0	\$1,914.00
May 2011	\$531.00	0	\$2,445.00
June 2011	\$531.00	0	\$2,976.00
July 2011	\$531.00	0	\$3,507.00
August 2011	\$531.00	0	\$4,038.00
September 2011	\$531.00	\$100.00	\$4,469.00
October 2011	\$531.00	\$200.00	\$4,800.00
November 2011	\$531.00	\$100.00	\$5,231.00
December 2011	<u>\$531.00</u>	<u>0</u>	<u>\$5,762.00</u>
Subtotal for 2011			<u>\$5,762.00</u>
January 2012	\$531.00	0	\$ 531.00
February 2012	\$531.00	0	\$1,062.00
March 2012	\$531.00	0	\$1,593.00
April 2012	\$531.00	0	\$2,124.00
May 2012	\$531.00	0	\$2,655.00
June 2012	\$531.00	0	\$3,186.00

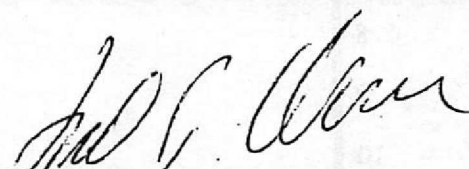
<u>1</u>	<u>Month</u>	<u>Amount Owing</u>	<u>Amount Received</u>	<u>Balance</u>
2	July 2012	\$531.00	0	\$3,717.00
3	August 2012	\$531.00	0	\$4,248.00
4	September 2012	\$531.00	0	\$4,779.00
5	October 2012	\$531.00	0	\$5,310.00
6	November 2012	\$531.00	0	\$5,841.00
7	December 2012	<u>\$531.00</u>	<u>0</u>	<u>\$6,372.00</u>
8	Subtotal for 2012			\$6,372.00
9				
10	January 2013	\$531.00	0	\$ 531.00
11	February 2013	\$531.00	0	\$1,062.00
12	March 2013	\$531.00	0	\$1,593.00
13	April 2013	\$531.00	0	\$2,124.00
14	May 2013	\$531.00	0	\$2,655.00
15	June 2013	\$531.00	0	\$3,186.00
16	July 2013	\$531.00	0	\$3,717.00
17	August 2013	\$531.00	0	\$4,248.00
18	September 2013	\$531.00	0	\$4,779.00
19	October 2013	\$531.00	0	\$5,310.00
20	November 2013	<u>\$531.00</u>	<u>0</u>	<u>\$5,841.00</u>
21	Subtotal through December for 2013			\$5,841.00
22				
23	TOTAL			<u>\$20,219.14</u>
24	****			
25	****			
26	****			
27	****			
28	****			

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VERIFICATION

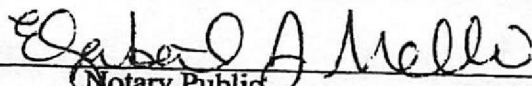
STATE OF NEVADA)
COUNTY OF WASHOE) ss.

JOSUE TERRONES VALDEZ, being first duly sworn, deposes and says under penalty of perjury: I am the Obligee in the above-entitled action; I have read the foregoing Exhibit - Schedule of Child Support Arrearages, and know the contents thereof. The same is true as of my own knowledge, except as to those matters therein stated upon information and belief, and as to those matters I believe them to be true.

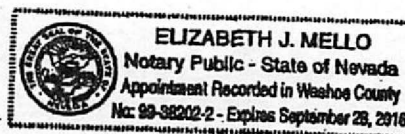


JOSUE TERRONES VALDEZ

SUBSCRIBED and SWORN to before me
on this 12th day of November, 2013.



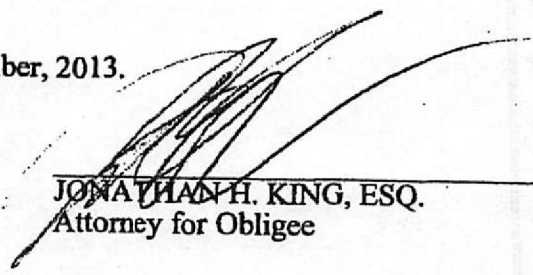
Notary Public



AFFIRMATION Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 12th day of November, 2013.




JONATHAN H. KING, ESQ.
Attorney for Obligee

CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP Rule 5(b), I certify that on the 13th day of November, 2013, I deposited for mailing, in the U.S. Mail in Reno, Nevada, with postage thereon fully prepaid, a true and correct copy of the within document, addressed as follows:

Patricia Soto-Aguilar
3811 Patricia Lane
Reno, NV 89512


Liz Mello

IN THE FAMILY DIVISION OF THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

JOSUE TERRONES VALDEZ

Obligor
vs.

PATRICIA SOTO-AGUILAR

Obligee

FAMILY COURT
MOTION/OPPOSITION NOTICE
(REQUIRED)

CASE NO. FV10-04478

DEPT. NO. UM

NOTICE: THIS MOTION/OPPOSITION NOTICE **MUST BE ATTACHED AS THE LAST PAGE** to every motion or other paper filed pursuant to chapter 125, 125B or 125C of NRS and to any answer or response to such a motion or other paper.

A. Mark the CORRECT ANSWER with an X.		YES	NO
1. Has a final decree or custody order been entered in this case? If <u>yes</u> , then continue to Question 2. If <u>no</u> , you do not need to answer any other questions.		<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Is this a motion or an opposition to a motion filed to change a final order? If <u>yes</u> , then continue to Question 3. If <u>no</u> , you do not need to answer any other questions.		<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Is this a motion or an opposition to a motion filed only to change the amount of child support?		<input type="checkbox"/>	<input type="checkbox"/>
4. Is this a motion or an opposition to a motion for reconsideration or a new trial <u>and</u> the motion was filed within 10 days of the Judge's Order?		<input type="checkbox"/>	<input type="checkbox"/>
IF the answer to Question 4 is YES, write in the <u>filing date</u> found on the front page of the Judge's Order.		Date	
B. If you answered NO to either Question 1 or 2 or YES to Question 3 or 4, you are <u>exempt</u> from the \$25.00 filing fee. However, if the Court later determines you should have paid the filing fee, your motion will <u>not</u> be decided until the \$25.00 fee is paid.			

I affirm that the answers provided on this Notice are true.

Date: 11/12/13

Signature:

Print Name:

JONATHAN H. KING, ESQ.

Print Address:

429 Marsh Ave.

Reno, NV 89509

Telephone Number:

(875)322-2211

Electronically

Joey Orduna Hastings

Transaction # 4231295

22

1 (XX) Nevada has continuing exclusive jurisdiction pursuant to the Full
2 Faith and Credit for Child Support Orders Act (FFCCSOA) (28 U.S.C.
3 1738B), and the Uniform Interstate Family Support Act (UIFSA) (NRS
Chapter 130); the basis for this finding is: all orders were entered
in the State of Nevada.

4 It is further ordered that: Obligee's counsel Jonathan King, Esq.
5 shall submit a legal brief no later than February 3, 2014 regarding
6 the constitutionality of NRS 425.360(4). Susan Hallahan, Chief Deputy
District Attorney, shall have until March 3, 2014 to file a responsive
7 brief. The matter shall then stand submitted to the Court for
decision.

8 IT IS SO RECOMMENDED.

9
10 Dated: JWZ, 2014


COURT MASTER

11
12 NOTICE

13 Objections/Appeals are governed by NRS 425.3844 and Washoe District
14 Court Rule 32. You have thirteen (13) days from the date it was
15 mailed to you to file an objection. Failure to file and serve written
objections will result in a final Judgment being entered by District
Court.

16
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18 PATRICIA SOTO AGUILAR
19 676801200A
FV10-04478
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court, and that on this date I deposited for mailing first class postage pre-paid, sent by interoffice mail, served by EFLEX Filing System or had picked up, at 1 S. Sierra Street, Reno, Nevada, a true copy of the attached, addressed to:

JONATHAN KING, ESQ.
ATTORNEY FOR OBLIGEE
**** VIA EFLEX FILING SYSTEM ****

PATRICIA AGUILAR
**** PERSONALLY SERVED ****

SUSAN HALLAHAN, CDDA
KARI CORDISCO, DDA
FAMILY SUPPORT DIVISION
**** VIA EFLEX FILING SYSTEM ****

DOCUMENT: MASTER'S FINDINGS AND RECOMMENDATIONS

Dated this 2nd day of January, 2014.

W. Hutchinson
Court Clerk

676801200A

IN THE FAMILY DIVISION
OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

JOSUE TERRONES VALDEZ,
Obligee

vs.

PATRICIA SOTO AGUILAR,
Obligor.

Case No. FV10-04478

Department No.: UM

JUDGMENT AND ORDER AFFIRMING MASTER'S FINDINGS AND RECOMMENDATIONS;

NOTICE OF ENTRY OF ORDER

The Court, having reviewed the Master's Findings and Recommendations, filed the 2nd day of
JANUARY, 2014 and no timely objection having been filed hereto, the Court hereby orders as follows:

The Master's Findings and Recommendations are affirmed and adopted, and a judgment is
entered against Obligor consistent with those findings and recommendations.

IT IS SO ORDERED.

Dated this 27 day of January 2014.

Bridget Robb Peck
District Judge

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2
3 **CERTIFICATE OF MAILING**

4 Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court, and
5 that on this date I deposited for mailing first class postage pre-paid, sent by interoffice mail, served by
6 EFLEX Filing System or had picked up, at 1 S. Sierra Street, Reno, Nevada, a true copy of the attached,
7 addressed to:

8 **PATRICIA AGUILAR**
9 **3811 PATRICIA LN**
10 **RENO, NV 89512**

11 **JONATHAN KING, ESQ.**
12 **ATTORNEY FOR OBLIGOR**
13 **** VIA EFLEX FILING SYSTEM ****

14 **SUSAN HALLAHAN, CDDA**
15 **KARI CORDISCO, DDA**
16 **FAMILY SUPPORT DIVISION**
17 **** VIA EFLEX FILING SYSTEM ****

18 **DOCUMENT: JUDGMENT AND ORDER AFFIRMING MASTER'S FINDINGS AND**
19 **RECOMMENDATIONS; NOTICE OF ENTRY OF ORDER**

20
21 Dated this 27th day of January, 2014.

22 W. Hutchinson
23 **Court Clerk**
24
25
26
27
28

cmk

1 CODE: 2490
2 JONATHAN H. KING, ESQ.
3 Nevada State Bar No. 22
4 429 Marsh Avenue
5 Reno, Nevada 89509
6 Telephone: (775) 322-2211
7 Attorney for

FILED

2014 JAN 24 PM 3:24

JOEY OROUNA HASTINGS
CLERK OF THE COURT

BY M. Torres
DEPUTY

IN THE FAMILY DIVISION

OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

9 JOSUE TERRONES VALDEZ,

10 Oblige,

11 vs.

Case No.: FV10-04478

12 PATRICIA SOTO AGUILAR,

Dept. No.: UM

13 Obligor.
14

15 MOTION FOR DECLARATORY AND INJUNCTIVE RELIEF

16 COMES NOW Oblige JOSUE TERRONES VALDEZ, by and through his attorney, the Law
17 Offices of Jonathan H. King, and moves this Court for declaratory and injunctive relief regarding
18 the child support obligation owing by Obligor PATRICIA SOTO AGUILAR to Oblige applicable
19 to the period from September 2010 through January 2014. Said Motion is made and based upon the
20 pleadings on file herein, and upon the attached Points and Authorities.

21
22 DATED this 24th day of January, 2014.

23
24
25 
26 JONATHAN H. KING, ESQ.
27 Attorney for Oblige
28

1 **POINTS AND AUTHORITIES**

2 A child support obligation payable by Obligor PATRICIA SOTO AGUILAR to Obligee
3 JOSUE TERRONES VALDEZ was established at hearing conducted January 6, 2011, resulting in
4 a Judgment and Order filed January 28, 2011. In said Judgment and Order, Obligor was required
5 to make ongoing monthly child support payments of \$531.00. As is shown in the Schedule of Child
6 Support Arrearages filed November 13, 2013, Obligor has paid virtually nothing towards her child
7 support obligation. Not including accrued interest and penalties, the total arrearages through
8 November 2013 are \$20,219.14.

9 Obligee has attempted to pursue the enforcement and collection of child support through his
10 Motions filed August 12, 2013 and November 13, 2013, and at hearing conducted January 2, 2014.
11 The issue has come up regarding the applicability of NRS 425.360(4). Obligee contends that said
12 statute is unconstitutional, both on its face and as applied to the facts of this case. Accordingly,
13 Obligee requests declaratory and injunctive relief.

14 Retroactive child support modification is disallowed in Nevada. The effect of Obligor
15 applying the provisions of NRS 425.360(4) results in an impermissible retroactive modification
16 lowering child support during the period in which the monthly amount was established at \$531.00.
17 Obligor is contending that the nine months of February 2011 through November 2011, plus the
18 eighteen months of August 2012 through January 2014 result in her having no child support
19 obligation whatsoever. Obligor is not even required to pay the statutory minimum of \$100.00 per
20 month which is set forth in NRS 125B.080(4) which states that the minimum amount that may be
21 awarded is \$100.00 per month unless the Court makes a written finding that the Obligor is unable
22 to pay the minimum amount. The statute further provides that unemployment is not a sufficient
23 cause to deviate from the awarding of at least the minimum amount. However, the Court lacks
24 jurisdiction to retroactively modify and lower child support, at least not until Obligor filed her
25 Motion on October 9, 2013 for review and modification.

26 Nevada law clearly prohibits retroactive modification of a child support order; see Khaldy
27 v. Khaldy, 111 Nev. 374, 892 P.2d 584 (1995). Nevada law provides that payments once accrued
28 for support of a child become vested rights and cannot thereafter be modified or voided; see Day v.

1 Day, 82 Nev. 317, 417 P.2d 914 (1966) and Ramacciotti v. Ramacciotti, 106 Nev. 529, 795 P. 2d
2 988 (1990).

3 NRS 425.360(4) provides that debts for support may not be incurred by a parent or any other
4 person who is the recipient of public assistance for the benefit of a dependent child for the period
5 when the parent or other person is a recipient. In preparing the Exhibit "1" introduced by the
6 Washoe County District Attorney, Family Support Division, no child support obligation is shown
7 for the months of February 2011 through November 2011, and for August 2012 through January
8 2014 when Obligor was allegedly the recipient of public assistance for the benefit of a dependent
9 child (not the child at issue in this case). Not only does this statute as applied run contrary to Nevada
10 law expressly prohibiting retroactive modification of child support, but it also violates fundamental
11 principles of due process of law guaranteed by the Nevada and United States Constitutions.
12 Nowhere can it be shown that Obligea was ever afforded notice of any intention by Obligor to seek
13 modification lowering her child support obligation.

14 In addition, the denial of already accrued child support payable by Obligor to Obligea
15 constitutes a taking of private property without just compensation, also in violation of the Nevada
16 and United States Constitutions. The Fifth Amendment to the United States Constitution provides
17 that no person shall be deprived of life, liberty or property, without due process of law, nor shall
18 private property be taken for public use without just compensation. The Fourteenth Amendment to
19 the United States Constitution, Section 1, provides that no state shall make or enforce any law which
20 shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive
21 any person of life, liberty or property, without due process of law, nor deny to any person within its
22 jurisdiction the equal protection of the laws. Similarly, the Nevada Constitution provides in Article
23 1, Section 8(5) that no person shall be deprived of life, liberty or property without due process of law
24 and that private property shall not be taken for public use without just compensation.

25 The United States Supreme Court has consistently held that some form of hearing is required
26 before an individual is finally deprived of a property interest; see Mathews v. Eldridge, 429 U.S. 319
27 (1976), 96 S.Ct. 893, 47 L.Ed. 2d 18. This case involved a determination that certain administrative
28 procedures were unconstitutional in regards to certain Social Security disability benefits which had

1 been terminated. There, the Court stated that the right to be heard before being condemned to suffer
2 grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal
3 conviction, is a principle basic to our society. The case of Mathews v. Eldridge is nearly 38 years
4 old and cites with approval voluminous other cases going back to 1960. Mathews v. Eldridge
5 summarizes these decisions as underscoring the truism that due process, unlike some legal rules, is
6 not a technical conception with a fixed content unrelated to time, place and circumstances. It also
7 said that due process is flexible and calls for such procedural protections as the particular situation
8 demands. The Court stated that more precisely, its prior decisions indicate that identification of the
9 specific dictates of due process generally requires consideration of three distinct factors: first, the
10 private interest that will be affected by the official action; second, the risk of an erroneous
11 deprivation of such interest through the procedures used, and the probable value, if any, of additional
12 or substitute procedural safeguards; and finally, the government's interest, including the function
13 involved and the fiscal and administrative burdens that the additional or substitute procedural
14 requirement would entail.

15 In the present cases, and in most all others being handled by the Washoe County District
16 Attorney's Office, Family Support Division, the provisions of NRS 425.360(4) have been applied
17 as suspending any child support obligation while a parent owing child support is the recipient of
18 public assistance for the benefit of a dependent child unrelated to the child in issue. As indicated
19 before, the Fifth Amendment to the United States Constitution prohibits the government from taking
20 property without due process. In this case, the government has taken away, without due process,
21 Obligee's entitlement to child support. While there may be no right in the abstract to child support,
22 however, once the government bestows those benefits, they cannot be taken away from an individual
23 without due process of law. In this case, the government is attempting to modify retroactively and
24 take away the child support entitlement of Obligee.

25 Two state law decisions outside Nevada have been located which may have some application
26 to the issues presented in this Motion. The first is In re Marriage of Guthrie, 191 Cal. App. 3d 654,
27 236 Cal. Rptr. 583 (1987) and Curtis v. Commissioner of Human Services, 507 A. 2d 566 (1986).
28 Those cases from California and Maine involve attempts to retroactively apply a statute in a way

1 which deprives a claimant of due process of law. In the California case, the Court there held the
2 statute to be unconstitutional.

3 Declaratory and injunctive relief is authorized under NRS Chapter 30. Oblige requests an
4 Order declaring that the statute be held as unconstitutional on its face and as applied to the facts and
5 circumstances of this case. Oblige further requests that the Court declare that the attempt to
6 retroactively modify child support be declared to be invalid.

7
8 AFFIRMATION Pursuant to NRS 239B.030

9 The undersigned does hereby affirm that the preceding document does not contain the Social
10 Security number of any person.

11
12 DATED this 24th day of January, 2014.

13
14 
15 JONATHAN H. KING, ESQ.
16 Attorney for Oblige

17 CERTIFICATE OF SERVICE BY MAIL

18 Pursuant to NRCP Rule 5(b), I certify that on this 24th day of January, 2014 I deposited
19 for mailing in the U.S. Mail in Reno, Nevada, with postage thereon fully prepaid, a true and correct
20 copy of the within document, addressed as follows:

21 Susan Hallahan, DDA
22 Washoe County District Attorney
23 P.O. Box 11130
24 Reno, NV 89520

25 Patricia Soto Aguilar
26 3811 Patricia Lane
27 Reno, NV 89512

28 
Eve M. King

IN THE FAMILY DIVISION OF THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

JOSUE TERRONES VALDEZ,

vs.

PATRICIA SOTO AGUILAR,

FAMILY COURT
MOTION/OPPOSITION NOTICE
(REQUIRED)

CASE NO. FV10-04478

DEPT. NO. UM

NOTICE: THIS MOTION/OPPOSITION NOTICE **MUST BE ATTACHED AS THE LAST PAGE** to every motion or other paper filed pursuant to chapter 125, 125B or 125C of NRS and to any answer or response to such a motion or other paper.

A.	Mark the CORRECT ANSWER with an X.	YES	NO
	1. Has a final decree or custody order been entered in this case? If <u>yes</u> , then continue to Question 2. If <u>no</u> , you do not need to answer any other questions.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	2. Is this a motion or an opposition to a motion filed to change a final order? If <u>yes</u> , then continue to Question 3. If <u>no</u> , you do not need to answer any other questions.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	3. Is this a motion or an opposition to a motion filed only to change the amount of child support?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	4. Is this a motion or an opposition to a motion for reconsideration or a new trial <u>and</u> the motion was filed within 10 days of the Judge's Order?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	IF the answer to Question 4 is YES, write in the <u>filing date</u> found on the front page of the Judge's Order.	Date	
B.	If you answered NO to either Question 1 or 2 or YES to Question 3 or 4, you are <u>exempt</u> from the \$25.00 filing fee. However, if the Court later determines you should have paid the filing fee, your motion will <u>not</u> be decided until the \$25.00 fee is paid.		

I affirm that the answers provided on this Notice are true.

Date: JANUARY 24th, 2014

Signature:

Print Name:

Print Address:

Telephone Number:

JONATHAN H. KING

429 MARSH AVENUE

RENO, NV 89509

775-322-2211

676801200A
Code #4205
SUSAN HALLAHAN, C.D.D.A.
Nevada Bar #4412
P.O. Box 10083
Reno, NV 89520-3083
(775) 789-7100
Attorney for: the State of Nevada
on behalf of Obligee

IN THE FAMILY DIVISION
OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

JOSUE TERRONES VALDEZ,
Obligee,

vs.

Case No. FV10-04478

PATRICIA SOTO AGUILAR,
Obligor.

Dept. No. UM

RESPONSE TO MOTION FOR DECLARATORY AND INJUNCTIVE RELIEF
FILED JANUARY 24, 2014

STATEMENT OF THE NATURE OF THE CASE

At the hearing of January 2, 2014, Obligee Josue Terrones Valdez (hereafter, Obligee) challenged the constitutionality of Nevada Revised Statute (NRS) 425.360(4), which states, "[d]ebts for support may not be incurred by a parent or any other person who is the recipient of public assistance for the benefit of a

1 dependent child for the period when the parent or other person
2 is a recipient."

3 Obligee asserts that NRS 425.360(4) acts as an illegal
4 retroactive modification of an ongoing child support obligation
5 in violation of Nevada law. Obligee alternatively asserts that
6 NRS 425.360(4) constitutes a taking of personal property without
7 just compensation in violation of the Fifth and Fourteenth
8 Amendment of the U.S. and Nevada Constitutions.

9 QUESTIONS PRESENTED

10 I. Does NRS 425.360(4) preclude the Nevada Division of
11 Welfare and Supportive Services from assessing and
12 collecting a child support debt from a noncustodial
13 parent who is receiving public assistance for the benefit
14 of a dependent child?

15 II. Does NRS 425.360(4) act as an illegal retroactive
16 modification of a noncustodial parent's child support
17 obligation?

18 III. Does NRS 425.360(4) violate substantive due process by
19 acting as an unconstitutional taking of private property
20 without just compensation in violation of the Fifth and
21 Fourteenth Amendments of the United States and the Nevada
22 Constitutions?

23 IV. Is a custodial parent entitled to a procedural due
24 process hearing prior to terminating his entitlement to
25 ongoing child support owed to him by a noncustodial
parent under NRS 425.360(4)?

/ / / /

/ / / /

STATEMENT OF FACTS

1 A child support obligation payable by Obligor Patricia Soto

2 Aguilar to Obligee Josue Terrones Valdez was entered at a

3 hearing conducted January 6, 2011, resulting in a judgment and

4 order filed January 28, 2011. In said Judgment and Order,

5 Obligor was required to make ongoing child support payments of

6 \$531.00 per month plus \$50.00 per month towards child support

7 arrears of \$1,713.14 beginning December 2010. Obligee has

8 attempted to pursue the enforcement and collection of child

9 support through his motions filed August 12, 2013 and November

10 13, 2013, and at a hearing conducted January 2, 2014.

11 For nine months, from February 2011 through November 2011

12 and for an additional eighteen months, from August 2012 through

13 January 2014, Obligor was the recipient of public assistance for

14 the benefit of a dependent child, not including the child of

15 these parties. Pursuant to NRS 425.360(4), during these months,

16 no child support arrearage debt accrued and ongoing child

17 support was suspended so long as Obligor remained on public

18 assistance.

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1 (TANF). Obligor in the instant action is the recipient of TANF
2 for the benefit of additional children not at issue in this
3 case.

4 "When presented with a question of statutory
5 interpretation, the intent of the legislature is the controlling
6 factor and, if the statute under consideration is clear on its
7 face, a court cannot go beyond the statute in determining
8 legislative intent." Robert E. v. Justice Court of Reno Tp.,
9 Washoe County, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983); White
10 v. Warden, 96 Nev. 634, 636, 614 P.2d 536, 537 (1980). If a
11 statute is ambiguous or lends itself to more than one reasonable
12 interpretation, the statute can be "construed in line with what
13 reason and public policy would indicate the legislature
14 intended." See Robert E. v. Justice Court of Reno Tp., Washoe
15 County, at 445; Cannon v. Taylor, 87 Nev. 285, 288, 486 P.2d
16 493, 495 (1971), *adhered to, withdrawn in part*, 88 Nev. 89, 493
17 P.2d 1313 (1972).

18 Interpreting NRS 425.360(4) on its face and in conjunction
19 with the definition of public assistance set forth in NRS
20 425.280, the legislature expressly prohibited the accrual of a
21 child support debt for the duration that an Obligor is on public
22 assistance for the benefit of a dependent child. "Where the
23 intention of the legislature is clear, it is the duty of the
24 court to give effect to such intention and to construe the
25 language of the statute to effectuate, rather than to nullify,

1 its manifest purpose." Sheriff, Clark County v. Lugman, 101
2 Nev. 149, 155, 697 P.2d 107, 111 (1985). See also, Sheriff v.
3 Martin, 99 Nev. 336, 662 P.2d 634; Woofter v. O'Donnell, 91 Nev.
4 756, 542 P.2d 1396 (1975).

5 Although NRS 425.360(4) is unambiguous and clear on its
6 face, it is important to analyze the legislative purpose for
7 enacting Title 38 of NRS for Public Welfare in order to address
8 Obligee's constitutional challenge to the statute. Reading
9 Senate Bill No. 454, Chapter 381 which enacted and amended
10 Chapter 425 of NRS Sections 2 to 21 in 1977, the legislature
11 states its purpose is "to conserve the expenditure of public
12 assistance funds whenever possible in order that such funds
13 shall not be expended if there are private funds available or
14 which can be made available by judicial process or otherwise to
15 partially or completely meet the financial needs of the children
16 of this state."

17 NRS 425.360(4) on its face and as clearly intended by
18 the legislature prevents a debt for child support to accrue
19 against a noncustodial parent who is the recipient of public
20 assistance for the benefit of a dependent child.

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1 II. NRS 425.360(4) DOES NOT ACT AS AN ILLEGAL RETROACTIVE
2 MODIFICATION OF A CHILD SUPPORT OBLIGATION BUT INSTEAD
3 ACTS AS A SUSPENSION OF THE OBLIGATION FOR THE DURATION A
4 NONCUSTODIAL PARENT IS A RECIPIENT OF PUBLIC ASSISTANCE
5 FOR THE BENEFIT OF A DEPENDENT CHILD.

6 Obligee contends that NRS 425.360(4) acts as an illegal
7 retroactive modification of Obligor's ongoing child support
8 obligation in violation of Federal and Nevada law, citing Khaldy
9 v. Khaldy, 111 Nev. 374, 892 P.2d 584 (1995). Obligee is
10 correct that both Federal and Nevada law prohibit retroactive
11 modification of a child support obligation. See 42 United
12 States Code Annotated (U.S.C.A.) §666(a)(9)(c), commonly
13 referred to as the "Bradley Amendment." Child support
14 "[p]ayments once accrued become vested rights and cannot
15 thereafter be modified or voided." (Emphasis added). Day v. Day,
16 82 Nev. 317, 320-321, 417 P.2d 914, 916 (1966); Ramacciotti v.
17 Ramacciotti, 106 Nev. 529, 795 P.2d 988 (1990).

18 However, NRS 425.360(4) does not modify the underlying
19 child support order. This statute merely prevents debts for
20 support from accruing against a noncustodial parent who is the
21 recipient of public assistance for the benefit of a dependent
22 child for the period when the parent is the recipient. As such,
23 Obligee has no property interest to the accrument of a debt
24 that has not yet vested. Obligee's argument that NRS 425.360(4)
25 improperly retroactively modifies the child support obligation
 under the prior order is mistaken. At the time Obligor

1 discontinues receiving assistance, the underlying child support
2 obligation is valid and enforceable.

3 This suspension of a child support obligation is not unique
4 to the State of Nevada and is practiced in other states. See
5 Hundt v. Iowa Dept. of Human Services, 545 N.W.2d 306, 309
6 (1996), "A statute, Iowa Code Section 252C.2(C) (1993), prevents
7 a support debt from accruing against a 'responsible person' for
8 the period which that person receives public assistance for the
9 benefit of a dependent child."; See also Colorado Revised
10 Statutes Annotated §14-14-104 (West), "No child support debt. . .
11 shall be created in the case of, or at any time collected from,
12 a parent who receives assistance under the Colorado works
13 program . . . for the period such parent is receiving such
14 assistance, unless by order of a court of competent
15 jurisdiction."

16 In contrast, the State of Oregon repealed a statute
17 permitting the suspension of a child support obligation and
18 enacted a statute that triggers an evidentiary shift in the
19 burden of proof when a noncustodial Obligor receives public
20 assistance. "Notwithstanding any other provision of Oregon law,
21 a parent who is eligible for and receiving cash payments under
22 Oregon Revised Statute 412.100 to 412.069, Title IV-A of the
23 Social Security Act . . . or a general assistance program of
24 another state . . . shall be rebuttably presumed unable to pay
25 child support." Or. Rev. Stat. Ann. §25.245 (West).

As set forth above, NRS 425.360(4) does not retroactively

modify a court ordered child support obligation. Instead, it

merely suspends the accrual of said obligation during periods of

receipt of public assistance by a noncustodial parent for valid

public policy reasons as set forth in more detail below.

III. NRS 425.360(4) IS NOT AN UNCONSTITUTIONAL TAKING AS

PROHIBITED BY THE SUBSTANTIVE DUE PROCESS CLAUSES OF THE
FIFTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES

CONSTITUTION AND THE NEVADA CONSTITUTIONS.

The Fifth Amendment to the United States Constitution

provides that no person shall be deprived of life, liberty or

property without due process of the law, nor shall private

property be taken for public use without just compensation. The

Fourteenth Amendment to the United States Constitution, Section

1, provides that no state shall make or enforce any law which

shall abridge the privileges or immunities of citizens of the

United States; nor shall any state deprive any person within its

jurisdiction the equal protection of the laws. Similarly, the

Nevada Constitution provides in Article 1, Section 8(5) that no

person shall be deprived of life, liberty or property without

due process of law and that private property shall not be taken

for public use without just compensation.

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1 The protection of private property in the Fifth Amendment
2 assumes that it is wanted for public use, but provides that it
3 shall not be taken for such use without just compensation. A
4 similar assumption is made under the Fourteenth Amendment.
5 Hairston v. Danville & Western Ry. Co., 208 U.S. 598, 605, 28
6 Sup.Ct. 331 (1908). See Pennsylvania Coal v. Mahon, 260 U.S.
7 393, 394, 43 S.Ct. 158, 160 (1922). "The general rule is that
8 while property may be regulated to a certain extent, if
9 regulation goes too far it will be recognized as a taking."

10 It is established that a custodial parent's legal right to
11 child support under a court order is a property right interest
12 as protected by the U.S. and Nevada Constitutions. The right to
13 the receipt of child support is an intangible property interest.
14 Ruckelshaus v. Monsanto Co., 467 U.S. 986, 987, 104 S.Ct. 1062
15 (1984). ". . . [this] Court has found other kinds of intangible
16 interests to be property for purposes of the Fifth Amendment's
17 Taking Clause". "Property interests . . . are not created by
18 the Constitution. Rather, they are created and their dimensions
19 are defined by existing rules or understandings that stem from
20 an independent source such as state law." Webb's Fabulous
21 Pharmacies, Inc. v. Beckwith, 449 U.S. 155, 161, 101 S.Ct. 446,
22 451 (1980), quoting Board of Regents v. Roth, 408 U.S. 564, 577,
23 92 S.Ct. 2701, 2709 (1972).

24 There are two categorical types of governmental takings:
25 the physical taking or occupying of tangible property versus the

1 regulation of property interests. The U.S. Supreme Court has
2 repeatedly recognized that "whether a particular restriction
3 [amounts to a taking] depends upon the particular circumstances
4 [of each] case—that is, on essentially ad hoc, factual
5 inquires." Penn Central Transportation Co v. City of New York,
6 438 U.S. 104, 124, 98 S.Ct. 2646 (1957). In this regard, a
7 court traditionally analyzes three factors: (1) the economic
8 impact of the regulation on the claimant; (2) the extent to
9 which the regulation has interfered with distinct investment-
10 backed expectations; and (3) the character of the government
11 action. In this instant action, NRS 425.360(4) is a regulatory
12 taking of a property interest, e.g., child support.

13 The government is permitted to take private property for
14 public use without just compensation if it is used for a public
15 purpose. The Supreme Court has expansively defined "public use"
16 so that virtually any taking will meet the requirement. See
17 Berman v. Parker, 348 U.S. 26, 75 S.Ct. 98 (1954); Hawaii
18 Housing Authority v. Midkiff, 467 U.S. 229, 104 S.Ct. 2321
19 (1984); Ruckelshaus v. Monsanto Co., See supra, "[I]n considering
20 the application of the Fourteenth Amendment to cases of
21 expropriation of private property, the question what is a public
22 use is a judicial one." City of Cincinnati v. Vester, 281 U.S.
23 439, 446, 50 S.Ct. 360, 362 (1930).

24 The Supreme Court has deferred to Congress to determine the
25 scope of "public use" in Fourteenth Amendment challenges. As

1 such, the judiciary has stated that when Congress has spoken,
2 "[i]ts decision is entitled to deference until it is shown to
3 involve an impossibility." Old Dominion Land Co. v. United
4 States, 269 U.S. 55, 66, 46 S.Ct. 39, 40 (1925). Any departure
5 from this judicial restraint would result in courts deciding on
6 what is and is not a governmental function and in the judiciary
7 invalidating legislation on the basis of their view on that
8 question at the moment of decision, a practice which has proved
9 impracticable in other fields. See generally, State of New York
10 v. United States, 326 U.S. 572, 66 S.Ct. 310 (1946); U. S. ex
11 rel. Tenn. Valley Auth. v. Welch, 327 U.S. 546 (U.S.N.C. 1946).
12 When Congress has spoken on an issue of a taking for a public
13 purpose, consideration is also weighed in favor of the "welfare
14 of the republic itself." United States v. Gettysburg Electric
15 Ry., 160 U.S. 668, 682, 16 S.Ct. 427, 430 (1896); ("Such use
16 seems necessarily not only a public use, but one so closely
17 connected with the welfare of the republic itself as to be
18 within the powers granted congress by the constitution for the
19 purpose of protecting and preserving the whole country.")

20 The burden upon the States as to what justifies a
21 Constitutional taking for public purpose is substantially low
22 and easily satisfied. "[W]here the exercise of the eminent
23 domain power is rationally related to a conceivable public
24 purpose, the Court has never held a compensated taking to be
25 proscribed by the Public Use Clause". See Berman v. Parker, See

1 supra; Rindge Co. v. Los Angeles, 262 U.S. 700, 43 S.Ct. 689
2 (1923); Block v. Hirsh, 256 U.S. 135, 41 S.Ct. 458 (1921); cf.
3 Thompson v. Consolidated Gas Corp., See supra, (invalidating an
4 uncompensated taking). Pursuant to the Takings Clause, when the
5 government authorizes a taking of private property for public
6 use, the owner is typically entitled to just compensation for
7 the deprivation of the private property. See Loretto v.
8 Teleprompter Manhattan CATV Corp., 458 U.S. 419, 102 S.Ct. 3164
9 (1982).

10 However, "where the government merely regulates the use of
11 property, compensation is required only if considerations such
12 as the purpose of the regulation or the extent to which it
13 deprives the owner of the economic use of the property suggest
14 that the regulation has unfairly singled out the property owner
15 to bear a burden that should be borne by the public as a whole."
16 Yee v. City of Escondido, Cal. U.S. Cal. 1992, 112 S.Ct. 152.

17 In this action, the suspension of Obligee's unvested
18 interest in ongoing child support payments during periods of
19 public assistance pursuant to NRS 425.360(4) is done so in a
20 regulatory fashion for a legitimate, valid public use, namely
21 not taking money from families in poverty while on public
22 welfare rolls. Obligee contends that he is entitled to just
23 compensation for the deprivation of these child support
24 payments. Although this demand is proper pursuant to the
25 guarantees of the Fifth and Fourteenth Amendments of the

1 Constitution, due process and public policy refute Obligee's
2 request for compensation.

3 A statute that is not unconstitutional on its face or as
4 applied will only violate substantive due process if it is not
5 "rationally related to a legitimate governmental purpose."

6 Munoz v. Sullivan, 930 F.2d 1400, 1404 (9th Cir. 1991);

7 Richardson v. City and County of Honolulu, 124 F.3d 1150 (1997).

8 To challenge a statute as a violation of substantive due
9 process, the burden is on the Obligee to prove that the statute
10 is "arbitrary and irrational" and is not rationally related to a
11 legitimate public purpose. Del Monte Dunes v. City of Monterey,

12 920 F.2d 1496, 1508 (9th Cir. 1991). In this case, NRS

13 425.360(4) is rationally related to the legitimate governmental
14 purpose of reducing the State of Nevada's and the Nation's
15 deficit while maximizing the resources available to assist
16 family units with dependent children living in poverty.

17 The Personal Responsibility and Work Opportunity
18 Reconciliation Act of 1996 (PRWORA) was an affirmative step by
19 the Legislature to remedy the growing national concern of
20 individuals on welfare and the increasing poverty rate of
21 custodial parents, largely attributed to the failure of
22 noncustodial parents not financially contributing to the
23 maintenance and support of their dependent children.

24 The Federal Legislature was unequivocally clear in stating
25 the purpose of this Act, "[i]n general, the purpose . . . is to

1 increase the flexibility of States in operating a program
2 designed to: (1) provide assistance to needy families so that
3 children may be cared for in their own homes . . . and (2) end
4 the dependency of needy parents on government benefits by
5 promoting job preparation, work and marriage. . .". PRWORA of
6 1996, PL 104-196, August 22, 1996, 110 Stat 2105 §401(a)(1-2).
7 In addition, public assistance will only be granted to families
8 with a minor child residing in the household. ("A State to
9 which a grant is made under Section 403 [Section 403. Grants to
10 States] shall not use any part of the grant to provide
11 assistance to a family: (A) unless the family includes: (i) a
12 minor child who resides with a custodial parent or other adult
13 caretaker of the child. . . ". Id. at §408(a)(1)(A)(i).
14 Pursuant to Federal guidelines established in PRWORA, the State
15 of Nevada enacted Title 38 of NRS that encompasses Public
16 Welfare, NRS Chapters 422 to 432B, including but not limited to
17 422A, Welfare and Supportive Services and NRS 425, Support of
18 Dependent Children.

19 As recognized in Hawaii Housing Authority v. Midkiff, "the
20 definition [of a public purpose] is essentially the product of
21 legislative determination addressed to the purposes of
22 government, purposes neither abstractly nor historically capable
23 of complete definition. Subject to specific constitutional
24 limitations, when the Legislature has spoken, the public
25 interest has been declared in terms well-nigh conclusive. In

1 such cases the Legislature, not the Judiciary, is the main
2 guardian of the public needs to be served by social
3 legislation". See supra at 239. In this action, the Federal
4 Legislature and the State of Nevada Legislature have stated the
5 governmental purpose.

6 Next, the deprivation of Obligee's child support must be
7 related to the legitimate governmental purpose. As the purpose
8 of the Act is to reduce the Nation's deficit while providing
9 services to indigent families struggling to support dependent
10 children, it would be inefficient and wasteful to enforce a
11 child support obligation upon an Obligor receiving public
12 assistance. To permit a custodial parent to receive child
13 support payments being supplied through public assistance would
14 defeat the express purpose of the revised federal welfare
15 program.

16 Similarly, the State of Nevada, pursuant to and in
17 compliance with these Federal regulations, has provided for a
18 public welfare program that efficiently restricts wasteful
19 spending while taking positive actions to collect monies owed
20 for child support obligations by noncustodial parents. To
21 effectuate this directive, the State of Nevada enacted NRS
22 425.360(4) to suspend the accrual of a child support debt while
23 an Obligor receives public assistance.

24 The Legislature intended to avoid the meaningless and
25 inefficient exercise of giving money to those in need with one

1 hand while requiring it to be paid back with the other hand.
2 Interpreting NRS 425.360(4) in any other manner would fail to
3 serve this legislative purpose. If the Legislature intended to
4 still hold a noncustodial parent responsible for the ordered
5 child support obligation, the Legislature would have enacted a
6 statutory scheme similar to other states wherein an Obligor's
7 child support debt would accrue although not be collectible
8 during the duration of public assistance. However, the
9 Legislature did not do this.

10 Title 38 was enacted with the intent and purpose of
11 benefiting minor, dependent children while reducing the cost to
12 the State of Nevada. With NRS Chapter 425, the legislature
13 sought to protect minor dependent children belonging to a family
14 unit in poverty which seeks and obtains public assistance. To
15 create a child support debt that accrues during the duration of
16 public assistance would only serve to injure the family unit,
17 further adding another obstacle into the struggle to get out of
18 poverty and off public assistance. Because the Division's plan
19 unquestionably serves a public purpose, the takings challenge
20 here satisfies the Fifth Amendment and compensation is not
21 required. Kelo v. City of New London, Conn., 545 U.S 469, 470,
22 125 S.Ct. 2655, 2657 (2005).

23 As set forth above, interest in child support obligations
24 are recognized property that have been legally taken by the
25 State in NRS 425.360(4) in furtherance of valid public policy

1 considerations and are therefore, not subject to just
2 compensation.

3 IV. A CUSTODIAL PARENT IS NOT ENTITLED TO A HEARING PRIOR TO
4 THE SUSPENSION OF CHILD SUPPORT PAYMENTSJ PURSUANT TO NRS
5 425.360(4).

6 As set forth above, the United States and Nevada
7 Constitutions provide that no States shall deprive a person of
8 property without due process of the law. The Due Process Clause
9 requires notice and an opportunity to be heard before the
10 government deprives a person of his or her property. Levingston
11 v. Washoe Co., 112 Nev. 479, 484, 916 P.2d 163, 166 (1996)
12 modified on rehearing, 114 Nev. 306, 956 P.2d 84 (1998). The
13 Fourteenth Amendment has been read broadly to extend protection
14 to "any significant property interest". Boddie v. Connecticut,
15 401 U.S. 371, 379, 91 S.Ct. 780, 786 (1971), including statutory
16 entitlements. See also, Bell v. Burson, 402 U.S. 523, 539, 91
17 S.Ct. 1586, 1589 (1971); Goldberg v. Kelly, 397 U.S. 254, 262,
18 90 S.Ct. 1011, 1017 (1970).

19 The U.S. Supreme Court recognized there is not a bright-
20 line rule to determine what type of due process is needed for
21 each situation, "due process . . . is not a technical conception
22 with a fixed content unrelated to time, place, and
23 circumstances, . . . [but rather] is flexible and calls for such
24 procedural protections as the particular situation demands."
25 Mathews v. Eldridge, 424 U.S. 319, 334, 96 S.Ct. 893, 902
(1976).

1 In Mathews v. Eldridge, the Supreme Court carved out three
2 factors to balance to make a determination "that [identify] . .
3 . specific dictates of due process. First, the private interest
4 that will be affected by the official action; Second, the risk
5 of erroneous deprivation of such interest through the procedures
6 used, and the probable value, if any, of additional or
7 substitute procedural safeguards; and finally, the Government's
8 interest, including the function involved and the fiscal and
9 administrative burdens that the additional substitute procedural
10 requirement would entail." Id. at 335.

11 Applying the balancing test, the Supreme Court has held
12 that a pre-termination hearing is required before depriving an
13 individual of their welfare benefits; conversely, the Supreme
14 Court has found that only a post-termination hearing is required
15 upon the termination of social security benefits.

16 The Court in Goldberg v. Kelly emphasized the importance of
17 welfare as it provides basic subsistence to the recipients and
18 public policy needs to protect recipients from arbitrary
19 termination of benefits without a pre-termination hearing.
20 Whereas the Court in Mathews v. Eldridge declared that only a
21 post-termination hearing is required for social security
22 benefits. The Court distinguished between these two findings by
23 contrasting that welfare benefits are based upon financial need,
24 but "[e]ligibility for disability benefits . . . is not based on
25 financial need." Id. at 322.

This case is more similar to Mathews v. Eldridge, as child support obligations are not determined from the financial need of a custodial parent, but rather, are determined by a statutory formula based upon a noncustodial parent's income.

Balancing the fiscal and administrative burdens to the government as well as to poor families presents the most persuasive argument against a pre-termination hearing and in favor of a post-termination hearing before the suspension of ongoing child support. To entitle each Obligee to a pre-termination hearing would result in significant and substantial costs to the courts, as well as a delay for Obligors seeking public assistance. Individuals seeking public assistance are within immediate financial need and do not have the luxury of waiting weeks or months for a hearing to support their application for public assistance.

Obligee is entitled to a post-termination hearing in regards to the suspension of child support payments and in fact has been provided one.

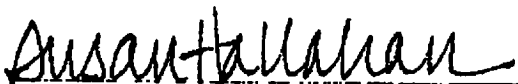
CONCLUSION

For all the foregoing reasons: (1) the State of Nevada is not in violation of federal guidelines that suspend the ongoing child support obligation for the duration an Obligor receives public assistance; (2) NRS 425.360(4) does not retroactively modify the Obligor's prior child support order of \$531.00 per month, rather it is temporarily suspended; (3) the State of

1 Nevada has a legitimate reason in suspending the obligation that
2 is rationally related to the health, maintenance, support and
3 social policy of the Division as it impacts the people of the
4 State of Nevada; and (4) Obligee is entitled to a post-
5 termination hearing and has been afforded one.

6 Submitted this 18th day of February, 2014.

7 RICHARD A. GAMMICK
8 DISTRICT ATTORNEY

9 
10 By Susan Hallahan
11 Chief Deputy District Attorney
12 Family Support Division
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1 Pursuant to NRCP 5(b), I certify that I am an employee of
2 the Washoe County District Attorney's Office, and that on this
3 date I deposited for mailing at Reno, Nevada, a true copy of the
4 within document addressed to:

5
6 PATRICIA SOTO AGUILAR
7 3811 PATRICIA LN
8 RENO, NV 89512

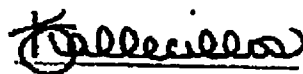
9 AND

10 AND

11 JONATHAN KING, Esq Attorney for Oblige
12 429 MARSH AVE
13 RENO, NV 89509

14 Dated this 18th day of February, 2014.

15 Pursuant to NRS 239B.030, this document does not contain social
16 security numbers.

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IN THE FAMILY DIVISION
IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

JOSUE TERRONES VALDEZ,

Obligee,

vs.

PATRICIA SOTO AGUILAR,

Obligor.

Case No. FV10-04478

Dept. No. UM

MASTER'S FINDINGS AND RECOMMENDATIONS

REGARDING MOTION FOR DECLARATORY AND INJUNCTIVE RELIEF

The Court has reviewed: Obligee Josue Valdez's *Motions for Declaratory and Injunctive Relief*, filed on January 24, 2013; Obligor Patricia Aguilar's *Response to Motion for Declaratory and Injunctive Relief*¹, filed on February 18, 2014; and all supporting documents.

The issues raised in both documents originated from a hearing held on January 2, 2014 in Department UM. At the time of hearing, Mr. Valdez was present and represented by Jonathan H. King, Esq. Ms. Aguilar was present at the time of hearing and utilized the services of an interpreter. Susan Hallahan, Chief Deputy District Attorney, Washoe County District Attorney's Office, Family Support Division, was present as well.

¹ Susan Hallahan, Chief Deputy District Attorney, of the Washoe County District Attorney's Office, Family Support Division, is the author of Ms. Aguilar's Response. For purposes of clarity, Ms. Aguilar will be alluded to as originator of the document.

FINDINGS OF FACT

1. The parties were never married but are the parents to one minor child: Andre Terrones Soto, born on March 6, 2009.
2. The parties first appeared before the UIFSA Court on January 6, 2011. At that time, Ms. Aguilar was ordered to pay \$531.00 per month as child support to Mr. Valdez.
3. The UIFSA Court also determined that Ms. Aguilar was in child support arrears and determined a judgment amount of \$1713.14. Ms. Aguilar was required to pay an additional \$50.00 per month in order to retire this judgment.
4. At the time of the January 6, 2011 hearing, Mr. Valdez was the child's primary physical custodian. This determination was made in the parties' custody case.²
5. The parties were last before this Court on January 2, 2014 in regards to a *Motion to Modify* filed by Ms. Aguilar on October 9, 2013.
6. At the time of January 2, 2014 hearing, Ms. Hallahan, the Chief Deputy District Attorney for Family Support Division, requested that *inter alia*, the Court enter a child support arrears judgment against Ms. Aguilar.
7. Ms. Hallahan's exhibit, filed with the Court on December 12, 2013, articulated arrears owed by Ms. Aguilar to Mr. Valdez in the total of \$7,481.88.
8. The arrears owed were calculated from December 2010 through November 2013.
9. Ms. Hallahan explained that for those periods of time that Ms. Aguilar was the recipient of public assistance, no child support was charged to her. Ms. Hallahan referred opposing counsel to NRS 425.360(4), which relieves an obligor of incurring debts for support while on public assistance for the support of a minor child.
10. The proposed child support arrears audit reflected that child support was not charged to Ms. Aguilar for February 2011 through November 2011 and for August 2012 through November 2013.

² Case No. FV10-01673.

1 11. Neither party disagreed that Ms. Aguilar was the recipient of public assistance
2 during the periods of time for which the proposed child support audit relieved her of
3 her monthly child support obligation.

4 12. However, Mr. Valdez argued that relieving Ms. Aguilar from her obligation of child
5 support for any month was improper and that he is owed child support for each and
6 every month since the December 2010.

7 13. Both parties filed legal memoranda in support of their respective positions.

8 DISCUSSION

- 9 1. Ms. Aguilar contends that pursuant to NRS 425.360(4), any debts for child support
10 she was previously ordered to pay will not accrue while she was the recipient of
11 public assistance for the support of a minor child.
- 12 2. Mr. Valdez contends that any abatement in Ms. Aguilar's child support obligation,
13 temporary or otherwise, is a retroactive modification of child support. As such, this
14 abatement is in violation of both Nevada and Federal law. Mr. Valdez cites *Khaldy*
15 *v. Khaldy* as the legal basis for his argument. 111 Nev. 374, 892 P.2d 584 (1995).
- 16 3. Mr. Valdez argues that any suspension of Ms. Aguilar's child support obligation,
17 under Nevada Law or otherwise, constitutes an impermissible taking under the Fifth
18 Amendment of the United States Constitution. Further, Mr. Valdez states that any
19 such taking requires a hearing so as to satisfy the requirement of due process.
- 20 4. Ms. Aguilar counters that NRS 425.360(4) does not retroactively modify child
21 support in violation law. Instead, the statute prevents child support from accruing
22 while an obligor parent is on public assistance for the support of a child.
- 23 5. Ms. Aguilar also argues that any issues regarding due process are remedied by the
24 hearing previously provided to Ms. Valdez so that he could state such concerns.

25 CONCLUSIONS OF LAW

- 26 1. NRS 425.360(4) is clear and unambiguous on its face. Any reasonable reading of
27 the section leads to the same conclusion: support is stayed where an obligor parent
28 is the recipient of public assistance of a child.

- 1 2. Mr. Valdez is correct in stating that Nevada disallows the retroactive modification of
2 child support once those rights become vested rights. *Ramacciotti v. Ramacciotti*,
3 106 Nev. 529, 795 P.2d 988 (1990). However, NRS 425.360(4) stays the obligation
4 of support for any month that an obligor parent is the recipient of assistance for the
5 support of a minor child, it does not forgive or modify such an obligation.
- 6 3. As NRS 425.360(4) prevents the accrual of a child support obligation while an
7 obligor parent is receiving public assistance, there are no amounts of support owed
8 for such months which can ripen into vested rights for the obligee parent.
- 9 4. Accordingly, Mr. Valdez has no vested rights for those months that Ms. Aguilar was
10 on assistance as such payments of support are not allowed to accrue under NRS
11 425.360(4).
- 12 5. Therefore, there can be no "taking", constitutionally permissible or otherwise, where
13 there is no right or property interest that has accrued. Once Ms. Aguilar is no longer
14 on public assistance for the support of a child, her obligation of child support will
15 resume and Mr. Valdez will accrue enforceable rights for such amount(s).
- 16 6. As the Court finds that NRS 425.360(4) does not constitute a "taking", as Mr. Valdez
17 never received rights to support for the months Ms. Aguilar was on public
18 assistance, no analysis of what constitutes a constitutionally allowable taking or
19 whether adequate due process was afforded to Mr. Valdez prior to such a taking, is
20 appropriate.
- 21 7. Therefore, Mr. Valdez's Motion of Declaratory and Injunctive Relief is denied.
- 22 8. All other Orders of the Court shall remain in full force and effect.

23 **IT IS SO RECOMMENDED.**

24 Dated: May 9, 2014.

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Family Court Master

NOTICE

Objections to these Recommendations are governed by WDFCR 24 and 32. You have ten (10) days from the date of receipt of this order or thirteen (13) days from the date of mailing to file an objection with the District Court. The objection shall briefly state the primary issues for review. The objection shall contain a notice requiring any opposing party to appear before the appropriate court department on a particular date, which must be designated between 9:00 a.m. and 12:00p.m. on a Tuesday, Wednesday or Thursday, to set the objection for hearing. The number of days does not include Saturday, Sunday or court holidays. Pursuant to WDFCR 32(f), this order will be enforceable pending further order of the Court.

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4 **CERTIFICATE OF MAILING**
5

6 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial
7 District Court, in and for the County of Washoe, and on this day I deposited for mailing in the
8 first class postage pre-paid, sent by inter-office mail, electronically filed, or had picked up, a
9 true copy of the attached document addressed as follows:
10

11
12 PATRICIA SOTO AGUILAR
13 3811 PATRICIA LANE
14 RENO, NV 89512

15 JONATHAN KING, ESQ. -- ATTORNEY FOR OBLIGEE
16 429 MARSH AVE.
17 RENO, NV 89509
• Also served via E-Flex.

18 KARI CORDISCO, ESQ. DDA
19 SUSAN HALLAHAN, ESQ. CDDA
20 -- FAMILY SUPPORT DIVISION.
21 * Served via E-Flex Electronic Filing System and a certified copy
sent inter-office.

22 *Document:* MASTER'S FINDINGS AND RECOMMENDATIONS REGARDING MOTION
23 FOR DECLARATORY AND INJUNCTIVE RELIEF.

24 DATED this 9th day of May, 2014.
25

26 R. Wilding
27 Court Clerk
28

cc, 01:05 9/17/14

ejm

1 CODE: 2620
2 JONATHAN H. KING, ESQ.
3 Nevada State Bar No. 22
4 429 Marsh Avenue
5 Reno, Nevada 89509
6 Telephone: (775) 322-2211
7 Attorney for Oblige

FILED
2014 MAY 19 PM 3:54
JOEY ORDUNA HASTINGS
CLERK OF THE COURT
BY T. Arnold
DEPUTY

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9 IN THE FAMILY DIVISION
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11 OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
12
13 IN AND FOR THE COUNTY OF WASHOE
14

15 JOSUE TERRONES VALDEZ
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17 Oblige,
18
19 vs.
20
21 PATRICIA SOTO AGUILAR,
22
23 Obligor.
24

Case No. FV10-04478
Dept. No. UM

25 OBJECTION TO MASTER'S RECOMMENDATIONS and NOTICE TO SET

26 TO: Obligor PATRICIA SOTO AGUILAR, and to the Washoe County District
27 Attorney's Office Family Support Division:

28 Notice is hereby given that Oblige JOSUE TERRONES VALDEZ who is the Oblige in
this action, does hereby request a review of the Master's Recommendation entered on May 9,
2014 by Master Lance White.

Review of the Master's Recommendations is requested for the following reasons:

The retroactive modification eliminating twenty -seven (27) months of child support
accrued from February 2011 through November 2011 and August 2012 through January 2014
constitutes a denial of due process and equal protection of law, and an improper taking of private
property without just compensation, in violation of the Nevada and United States Constitutions.
No prior hearing was conducted before the retroactive modification action taken. Oblige is a
single father having sole legal and physical custody of a minor child, now age 5 who is not the
recipient of any public assistance. The public assistance received by Obligor for the benefit of a

1 dependent child is her dependent child, not the child of Obligee and not a child of for whom this
2 child support litigation applies. The decision of the Master is arbitrary, capricious and in
3 violation of state and federal law. The position of Obligee is succinctly stated in his Motion filed
4 January 24, 2014, only five (5) pages in length, vigorously opposed by the Washoe County
5 District Attorney in a Brief which is twenty-one (21) pages in length and does not even begin to
6 directly address the issue until page 18 of its Brief. When the briefing schedule was established,
7 the Master disallowed the moving party having a chance to reply to the Response. Obligee
8 requests a lengthier hearing on his Objection to present oral argument.

9 **NOTICE TO SET HEARING ON OBJECTION TO MASTER'S RECOMMENDATIONS**

10 Notice is hereby given that Obligee JOSUE TERRONES VALDEZ, by and through his
11 attorney will appear before the Calendar Secretary of the above-entitled matter on the
12 10th of June, 2014 at the hour of 9:00 A.M. to set this
13 matter for hearing.

14 **AFFIRMATION Pursuant to NRS 239B.030**

15 The undersigned does hereby affirm that the preceding document does not contain the
16 social security number of any person.

17
18 DATED this 19th day of May, 2014.

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21 
22 JONATHAN H. KING, ESQ.
23 Attorney for Obligee
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CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP Rule 5(b), I certify that on the 19th day of May, 2014, I deposited for mailing, in the U.S. Mail in Reno, Nevada, with postage thereon fully prepaid, a true and correct copy of the within document, addressed as follows:

Patricia Soto Aguilar
3811 Patricia Lane
Reno, NV 89512


Liz Mello

cc: Clerk = 1/24

FILED
Electronically
2014-08-20 10:32:33 AM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4569504

IN THE FAMILY DIVISION
OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

JOSUE TERRONES VALDEZ,

Case No. FV10-04478

Obligee,

vs.

Dept. No. 13

PATRICIA SOTO AGUILAR,

Obligor.

**ORDER AFFIRMING IN PART AND DENYING IN PART
MASTER'S FINDINGS AND RECOMMENDATIONS REGARDING
MOTION FOR DECLARATORY AND INJUNCTIVE RELIEF**

This matter was heard on July 18, 2014 based upon Obligee, Josue Terrones Valdez ("Obligee") Objection to Master's Recommendations and Notice to Set filed on May 18, 2014. Obligor was present at the hearing by and through Jonathon King, Esq. Obligor, Patricia Soto Aguilar ("Obligor") was present representing herself. Washoe County Chief Deputy District Attorney, Susan Hallahan, Esq. was also present.

The Court, having reviewed the Motion for Declaratory and Injunctive Relief filed by Obligor on January 24, 2014; the Response to Motion for Declaratory and Injunctive Relief filed February 18, 2014 by the Washoe County District Attorney's Office; the Master's Findings and Recommendations Regarding Motion for Declaratory and Injunctive Relief ("Master's Recommendations"); the Objection to Master's

1 Recommendations and Notice to Set filed by Obligor; and having heard the arguments
2 of counsel,

3 Based upon these documents, the papers and pleadings on file herein and
4 for good cause shown, the Court makes the following determination.
5

6 **I. STANDARD OF REVIEW**

7 Because the issues presented by the Obligor's Motion and Objection are
8 legal in character, the Court reviews the Master's Recommendation de novo. See
9 WDCR 32(1)(a) & (b); see also, Nassiri v. Chiropractic Physicians' Bd., 130 Nev. ____;
10 327 P.3d 487, 489 (2014).

11 **II. FACTUAL FINDINGS & DISCUSSION**

12 The Court adopts the "Findings of Fact" and "Discussion" portion of the
13 Master's Recommendations as if fully set forth herein.

14 **III. CONCLUSIONS OF LAW**

15 **A. The Statute is Clear and Unambiguous**

16 NRS 425.360(4) provides:

17 Debts for support may not be incurred by a parent or any other
18 person who is the recipient of public assistance for the benefit
19 of a dependant child for the period when the parent or other
20 person is a recipient.

21 This language is clear and unambiguous on its face. It makes no
22 allowance for children who are not the beneficiaries of the public assistance at issue. It
23 also does not permit, as requested by Obligor, the accrual of support during the time
24
25

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///

1 the Obligor is the recipient of public assistance, as that would be a "debt" which,
2 pursuant to the plain language of the statute, "may not be incurred..."¹ See, MGM
3 Mirage v. Nevada Ins. Guar. Ass'n., 125 Nev. 223, 228-29, 209 P.3d 766, 769-70
4 (2009) (when a statute is plain and unambiguous and has only one meaning, it must be
5 construed as written unless such a construction is at odds with statutory intent.)
6

7 The Court is mindful of the burden this statute places on a parent who
8 should receive child support but does not due to the plain dictates of NRS 425.360(4).
9 However, this issue of policy is one with which the Legislature must grapple. As set
10 forth below, the Court is bound to follow the statute as written.

11 **B. The Application of NRS 425.360(4) is Not a Retroactive**
12 **Modification of Child Support**

13 Obligor's argument that the application of NRS 425.360(4) is a retroactive
14 modification of child support misapprehends the effect of the statute.

15 The statute causes a child support obligation to cease, by operation of
16 law, during any period the obligor parent is a recipient of public assistance.² Because
17 the child support obligation must cease, no amount of support can ripen into a vested
18 right which cannot be modified.³

19
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21 ¹ "Debt" is defined as "something owed; obligation." See Webster's Ninth Collegiate Dictionary, p. 328
(1983). This broad definition must also include an obligation which accrues and then matures after the
22 obligor ceases receiving public assistance.

23 ² The Master's Recommendations state that the effect of NRS 425.360(4) is to slay a child support
24 obligation. See Master's Recommendation 3:27 and 4:3. To the extent this language implies that the
25 child support obligation accrues and is payable once the obligor is not receiving public assistance, it
violates NRS 425.360(4) and is expressly overruled. The accrual of a child support obligation is the same
as incurring a debt for child support which is prohibited by the statute.

³ The cessation, by operation of law, of child support is not unique to this statute. Child support, by its
terms, extends until a child is 18 or 19 if still in high school. When a child turns 19, or graduates from

1 C. No Property Interest has Vested and So No "Taking"
2 Has Occurred.

3 Because child support must cease during the operative time defined by
4 NRS 425.360(4), no child support payments accrue nor do any of these payments vest.
5 Although there may be a property interest in vested child support payments, no such
6 interest exists in future, unmade payments, which can be modified by the Court if
7 certain circumstances exist. See, e.g., NRS 125B.145. Because no child support
8 payments have vested, there is no "taking" of property under the Constitution.

9 D. Is a Hearing Necessary Before Child Support
10 Can Cease Under NRS 425.360(4)

11 It is first noted that because no vested property right is being impacted, a
12 hearing is not necessary, as due process is afforded to protect rights rather than
13 expectations. However, the Obligor may have an interest in the continued receipt of
14 child support payments, so analysis of the right to a hearing is appropriate.

15 Obligor has urged Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893,
16 (1976) as requiring a hearing before NRS 425.360(4) can operate. As in Mathews this
17 Court concludes that the administrative procedures in place provide all the process that
18 is due under the Constitution (of both Nevada and the United States) prior to ceasing
19 the stream of child support payments to an obligor.

20 In Mathews, the Supreme Court reminds us that Due Process is flexible
21 and calls for the procedural protections demanded by a particular situation before an
22 individual is finally deprived of a property interest, Mathews 424 U.S. at 902, citing
23 Morrissey v. Brewer, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484 (1972).
24 The Court then analyzes three factors to determine the appropriate due process to be

25 high school the child support obligation ceases by operation of law, without the obligor parent having to
take any action to cause the obligation to stop. See NRS 125B.200, 125B.020 et seq.

1 afforded: 1) the private interest that will be affected by the official action; 2) the risk of
2 erroneous deprivation of such interest by the procedures used and the value of
3 additional safeguards; and 3) the governmental interest including any fiscal or
4 administrative burden that any additional procedures would entail.

5 1. Factor One

6 Because child support is not a needs based interest such as welfare,
7 something less than an evidentiary hearing is necessary. Compare Mathews, which
8 involved the termination of social security disability payments. Child support is not
9 based upon the need of the child or the custodial parent, but rather the statutory formula
10 is based upon the non-custodial parent's gross monthly income. The amount of child
11 support is subject to variation based upon many circumstances including: 1) the
12 percentage of custodial time a parent spends with a child, resulting in a joint or primary
13 custody determination; 2) the variation of the non-custodial parent's income; and 3) the
14 adjustment of applicable statutory caps on the maximum child support amount. See
15 Wright v. Osburn 114 Nev. 1367, 970 P.2d 1071 (1998); NRS 125B.080(93); and NRS
16 125B.145(4).

17
18 2. Factor Two

19 Because the child support assessment at issue is sharply focused and
20 based upon "routine, standard and unbiased" information" namely – is the obligor the
21 recipient of public assistance or not – it is highly unlikely that a hearing would be
22 necessary to protect an obligee from an inappropriate deprivation of a right.

23 Moreover, under NRS 425.360(4), once it is determined that the obligor is
24 receiving public assistance, no further information from the obligee would make a
25 difference as this determination is black and white, not a nuanced and subjective

1 assessment of conflicting evidence. In addition, if there is an error in the public
2 assistance determination, the obligee would be entitled to receive unpaid arrears from
3 the obligor. Nothing in the pertinent statute prevents child support from being adjusted
4 for example, if the dates public assistance was afforded the obligor parent are wrong.
5 This can be corrected easily at a later hearing. Further, the child support issue is self-
6 correcting, also by operation of law, as there is no hearing necessary to restart a child
7 support obligation again once the obligor parent is no longer receiving public
8 assistance.

9
10 3. Factor Three

11 The requirement of having an evidentiary hearing prior to the cessation of
12 child support because the obligor is receiving public assistance would create a burden
13 on the government, both fiscal and administrative, completely out of proportion to any
14 benefit which could be derived.

15 To require an evidentiary hearing prior to ceasing a debt for child support
16 when the obligor parent receives public assistance would dramatically add to the
17 number of child support hearings a court would hold, resulting in significant costs to the
18 Courts. In addition, the need for governmental lawyers from the District Attorney's office
19 or the Nevada Attorney General's office to participate; a diversion of resources from
20 other business of the courts including other necessary hearings; and the potential delay
21 of necessary public assistance to obligor parents are all significant impacts which would
22 cause greatly enhanced fiscal and administrative burdens to the government. This
23 would put the obligee parent, a recipient of a benefit which is not needs based, in a
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1 position of priority over the needs of an obligor parent receiving public assistance, which
2 is a needs based benefit.


3
4 When the extremely limited value of any hearing held prior to following
5 NRS 425.360(4) (which would be limited to proof of an obligor receiving public
6 assistance) is balanced against the delay of necessary public assistance and the cost
7 and judicial and other governmental resources necessary to hold a pre-cessation
8 hearing, due process does not require that a hearing be held prior to the cessation of
9 child support.

10 In addition, the lack of an evidentiary hearing to cease child support is
11 offset by the lack of evidentiary hearing for child support payment to recommence when
12 the obligor stops receiving public assistance. Further, because an obligee can request
13 a hearing and contest any erroneous determination that the obligor was receiving public
14 assistance, the obligee has been given the necessary opportunity to present his case
15 and to protect his interest in obtaining appropriate child support. The requirement that
16 obligee parents have an opportunity to be heard "at a meaningful time and in a
17 meaningful manner" as mandated by procedural due process is satisfied by NRS
18 425.360(4) and the administrative procedures which implement it.

19
20 Obligees's Objection is denied.

21 IT IS SO ORDERED.

22 Dated: August 20, 2014.

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24 
25 BRIDGET E. ROBB
District Judge

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3 **CERTIFICATE OF SERVICE**

4 Pursuant to NRCP 5(b), I certify that I am an employee of the Second
5 Judicial District Court in and for the County of Washoe, and I deposited for mailing in
6 the county mailing system for postage and mailing with the United States Postal Service
7 in Reno, Nevada, a true copy of the attached document addressed as follows:

8 Patricia Soto Aguilar
9 3811 Patricia Lane
10 Reno, NV 89512

11 I hereby certify that I electronically filed the foregoing with the Clerk of the
12 Court by using the ECF system which will send a notice of electronic filing to the
13 following:

14 JONATHAN KING, ESQ.

15 SUSAN HALLAHAN, ESQ.

16 DATED this 30 day of aug, 2014.

17
18
19
20 

JUDICIAL ASSISTANT

5/11

1 CODE: 2540
2 JONATHAN H. KING, ESQ.
3 Nevada State Bar No. 22
4 429 Marsh Avenue
5 Reno, Nevada 89509
6 Telephone: (775) 322-2211
7 Attorney for Obligor.

FILED

2014 NOV -6 PM 3:51

CATHY HILL
ACTING CLERK OF THE COURT
BY C. Koehler
DEPUTY

IN THE FAMILY DIVISION

OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

9 JOSUE TERRONES VALDEZ

10 Obligor,

11 vs.

12 PATRICIA SOTO AGUILAR,

13 Obligor.

Case No. FV10-04478

Dept. No. 13

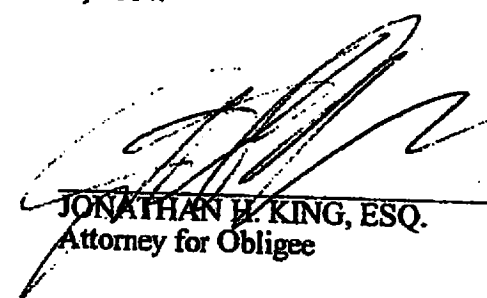
14
15 **NOTICE OF ENTRY**

16 PLEASE TAKE NOTICE that an ORDER AFFIRMING IN PART AND DENYING IN
17 PART MASTER'S FINDINGS AND RECOMMENDATIONS REGARDING MOTION FOR
18 DECLARATORY AND INJUNCTIVE RELIEF was entered on the 20th day of August, 2014; a
19 copy is attached hereto.

20 **AFFIRMATION Pursuant to NRS 239B.030**

21 The undersigned does hereby affirm that the preceding document does not contain the
22 social security number of any person.

23 DATED this 8th day of September, 2014.

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JONATHAN H. KING, ESQ.
Attorney for Obligor

CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP Rule 5(b), I certify that on this 6th day of ~~September~~ ^{November}, 2014, I deposited for mailing in the U.S. Mail in Reno, Nevada, with postage thereon fully prepaid, a true and correct copy of the within document, addressed as follows:

Susan Hallahan
Washoe County District Attorney's Office
P.O. Box 11130
Reno, NV 89520

Patricia Soto-Aguilar
3811 Patricia Lane
Reno, NV 89512


Liz Mello

CERTIFICATE OF DELIVERY

I certify that on the 11th day of March, 2015, I caused to be delivered
VIA BOOTLEG COURIER CO. , a true and correct copy of the within document
as follows:

Susan Hallahan, C.D.D.A
Washoe County District Attorney's Office
One South Sierra Street
Reno, NV 89501


Liz Mello