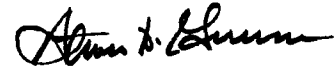

EXHIBIT 5



CLERK OF THE COURT

DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
NICOLE M. YOUNG, ESQ.
Nevada State Bar No. 12659
610 South Ninth Street
Las Vegas, Nevada 89101
(702) 386-0536; FAX: (702) 386-6812
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

GABRIELLE CIOFFI-KOGOD

Case No.
Dept. No.

D-13-489442-D
Q

Plaintiff,

vs.

DENNIS KOGOD,

Defendant.

NOTICE OF ENTRY OF ORDER

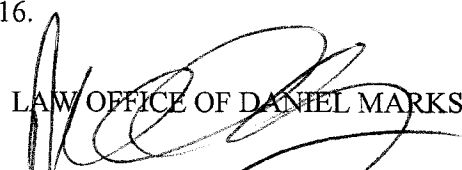
TO: GABRIELLE CIOFFI-KOGOD, Plaintiff;

TO: RADFORD J. SMITH, ESQ., Counsel for Plaintiff.

PLEASE TAKE NOTICE that an Order was entered in the above-entitled action on the 24th day of October, 2016, a copy of which is attached hereto.

DATED this 24 day of October, 2016.

LAW OFFICE OF DANIEL MARKS

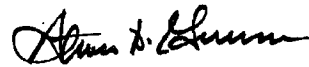


DANIEL MARKS, ESQ.
Nevada Bar No. 002003
NICOLE M. YOUNG, ESQ.
Nevada Bar No. 12659
610 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Defendant

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- 8

Radford J. Smith, Esq.
Radford J. Smith, Chartered
2470 St. Rose Pkwy, Suite #206
Henderson, NV 89074

An employee of the
LAW OFFICE OF DANIEL MARKS



CLERK OF THE COURT

1 DANIEL MARKS, ESQ.
2 Nevada State Bar No. 002003
3 NICOLE M. YOUNG, ESQ.
4 Nevada State Bar No. 12659
5 610 South Ninth Street
6 Las Vegas, Nevada 89101
7 (702) 386-0536; FAX: (702) 386-6812
8 Attorneys for Defendant

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 GABRIELLE CIOFFI-KOGOD
9 Plaintiff,

Case No. D-13-489442-D
Dept. No. Q

10 vs.

Date of Hearing: October 18, 2016
Time of Hearing: 8:30 a.m.

11 DENNIS KOGOD,

12 Defendant.
13 _____

14 **ORDER**

15 This matter having come on for hearing on the 18th day of October, 2016, at the hour of 8:30
16 a.m. on Defendant's Motion to Stay Enforcement of Decree of Divorce and for Other Related Relief;
17 and Plaintiff's Countermotion for Attorney's Fees; Plaintiff appearing in person and by and through her
18 counsel Radford J. Smith, Esq., of Radford J. Smith, Chartered; Defendant appearing by and through his
19 counsel, Daniel Marks, Esq., and Nicole M. Young, Esq., of the Law Office of Daniel Marks; the Court
20 having reviewed the papers and pleadings on file, having heard the arguments of counsel and good cause
21 appearing:

22 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant's Motion to Stay
23 Enforcement of Decree of Divorce and for Other Related Relief is DENIED.

24 ////

25 ////

26 ////

27 ////

28 ////

RECEIVED

OCT 24 2016

FAMILY COURT
DEPARTMENT Q

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's Countermotion for
2 Attorney's Fees is DENIED.


3 DATED this _____ day of October, 2016.

4 OCT 24 2016

5 
DISTRICT COURT JUDGE

6 Respectfully submitted:

7 LAW OFFICE OF DANIEL MARKS

8 
9 DANIEL MARKS, ESQ.
Nevada Bar No. 002003
10 NICOLE M. YOUNG, ESQ.
Nevada State Bar No. 12659
11 610 South Ninth Street
Las Vegas, Nevada 89101
12 Attorneys for Defendant

13 Approved as to form and content:

14 RADFORD SMITH, CHARTERED

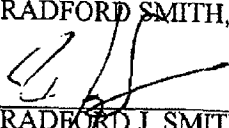
15 
16 RADFORD J. SMITH, ESQ.
Nevada State Bar No. 002791
17 GARIMA VARSHNEY, ESQ.
Nevada State Bar No. 11878
18 2470 St. Rose Parkway, Ste. 206
Henderson, Nevada 89074
19 Attorneys for Plaintiff
20
21
22
23
24
25
26
27
28

EXHIBIT 4


CLERK OF THE COURT

DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
NICOLE M. YOUNG, ESQ.
Nevada State Bar No. 12659
610 South Ninth Street
Las Vegas, Nevada 89101
(702) 386-0536; FAX: (702) 386-6812
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

GABRIELLE CIOFFI-KOGOD
Plaintiff,

Case No. D-13-489442-D
Dept. No. Q

vs.

DENNIS KOGOD,
Defendant.


Date of Hearing: October 18, 2016
Time of Hearing: 8:30 a.m.

**REPLY IN SUPPORT OF MOTION TO STAY ENFORCEMENT OF
DECREE OF DIVORCE AND FOR OTHER RELATED RELIEF;
AND OPPOSITION TO COUNTERMOTION FOR ATTORNEY'S FEES**

COMES NOW the Defendant Dennis Kogod, by and through his counsel, Daniel Marks, Esq., and Nicole M. Young, Esq., of the Law Office of Daniel Marks, and submits his Reply in Support of Motion to Stay Enforcement of Decree of Divorce and for Other Related Relief; And Opposition to Countermotion for Attorney's Fees. The grounds for Defendant's Reply and Opposition are set forth in the following Memorandum of Points and Authorities.

DATED this 14 day of October, 2016.

LAW OFFICE OF DANIEL MARKS


DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
NICOLE M. YOUNG
Nevada Bar No. 12659
610 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Defendant

////

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTUAL BACKGROUND**

3 On August 24, 2016, Defendant Dennis Kogod (hereinafter "Dennis") filed the instant motion.
4 At that time, the hearing on that motion was set for September 21, 2016, at 9:00 a.m. Plaintiff Gabrielle
5 Cioffi-Kogod (hereinafter "Gabrielle") was served with the instant motion on August 24, 2016, via
6 electric service through the court's e-filing system. However, at the time of the hearing on September 21,
7 2016, Gabrielle's counsel claimed that due to office issues the motion was not calendared and that an
8 opposition was never filed. This Court allowed Gabrielle additional time to file an opposition and
9 continued the hearing to October 18, 2016.

10 On October 12, 2016, Gabrielle filed her opposition and counter-motion for attorney's fees. This
11 filing was twenty-one (21) days after the September 21, 2016 hearing and thirty (30) days after the
12 opposition was originally due.

13 In addition, at the hearing that took place on September 21, 2016, Gabrielle's counsel stated that
14 he was speaking with their expert and were going to talk to Dennis' counsel regarding potentially
15 resolving this issue and dividing the accounts. That did not happen either.

16 Based on this Court's division of property in this case, Gabrielle is walking away with almost
17 \$27 million worth of assets. Dennis is walking away with almost \$20 million.

18 **II. LEGAL ARGUMENT**

19 Nevada Rule of Civil Procedure Rule 62 governs a stay a proceedings to enforce a judgment. In
20 this case, Dennis is requesting this Court to allow alternate security instead of a supersedeas bond.
21 NRCP 62 indicates that an appellant may obtain a stay of the district court's determination pending
22 appeal when the appellant posts a supersedeas bond that would permit full satisfaction of the judgment.
23 Dennis is seeking a stay of the Decree of Divorce regarding the unequal division, award of alimony and
24 award of sanctions, but asks this Court to forego the requirement of a supersedeas bond since there are
25 sufficient assets to cover the amounts required to be paid pursuant to the Decree of Divorce. Dennis
26 would have to pay 10% of the bond to post a supersedeas bond. Based on the amount in dispute, that fee
27 could easily be \$350,000.00.

28 ////

1 In *Nelson v. Heer*, the Nevada Supreme Court set forth the factors to be considered when a full
2 supersedeas bond may be waived and/or alternate security substituted. 121 Nev. 832, 122 P.3d 1253
3 (2005). These factors include:

4 (1) the complexity of the collection process; (2) the amount of time
5 required to obtain a judgment after it is affirmed on appeal; (3) the degree
6 of confidence that the district court has in the availability of funds to pay
7 the judgment; (4) whether the defendant's ability to pay the judgment is so
8 plain that the cost of a bond would be a waste of money; and (5) whether
the defendant is in such a precarious financial situation that the
requirement to post a bond would place other creditors of the defendant in
an insecure position.

9 *Id.* at 836.

10 In this case, a stay is warranted based on the amount of money at issue. Further the posting of a
11 supersedeas bond is not necessary or warranted because there are sufficient assets to pay the amounts
12 due to Gabrielle if this Court is affirmed on appeal. Forcing Dennis to undergo the additional cost for a
13 supersedeas bond would be a waste of money. There will also be no complexity in the collection
14 process.

15 Dennis is not even requesting that this Court waive the supersedeas bond. He is simply asking for
16 alternate security. The money in dispute that was awarded to Gabrielle, including the unequal division
17 and sanctions could be placed in a blocked, interest-bearing UBS account. Based on the amount of
18 money that was awarded to Gabrielle that is not in dispute, this would not cause Gabrielle any hardship.
19 With regard to the lump-sum alimony that this Court ordered Dennis to pay to Gabrielle, a lien could be
20 placed on the California real estate.

21 In her untimely opposition, Gabrielle uses the wrong standard. The Nevada Rules of Appellate
22 Procedure are not applicable in this Court. This Court must analyze this issue under NRCP 62 and under
23 *Nelson v. Heer*. However, even under NRAP 8, a stay is still warranted. The issue on appeal are issues
24 that the Nevada Supreme Court has never provided substantial guidance. The case law in Nevada
25 regarding waste and alimony does not analyze those issues under the unique facts of this case. This
26 appeal will contain issues of first impression. This is conceded by both Gabrielle and this Court.

27 ////

28 ////

1 Finally, Gabrielle's request for attorney's fees for having to respond to the instant motion is
2 unfounded given the fact that her opposition is over thirty (30) days late and does not even apply the
3 correct legal standard.

4 **III. CONCLUSION**

5 Based on the factors in Nelson, Dennis is entitled to a stay. This Court should grant Dennis'
6 motion to stay and order that the money at issue for the unequal division and sanctions be placed in a
7 blocked, interest-bearing UBS account and that a lien be placed on the California real estate as alternate
8 security for the lump-sum alimony.

9 DATED this 14 day of October, 2016.

10 LAW OFFICE OF DANIEL MARKS

11 

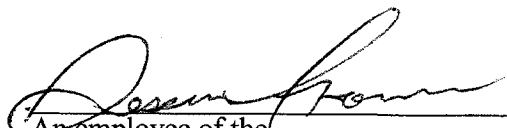
12 DANIEL MARKS, ESQ.
13 Nevada State Bar No. 002003
14 NICOLE M. YOUNG
15 Nevada Bar No. 12659
16 610 South Ninth Street
17 Las Vegas, Nevada 89101
18 Attorneys for Defendant
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4 **CERTIFICATE OF SERVICE**

5 I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 14th
6 day of October, 2016, pursuant to NRCP 5(b) and Administrative Order 14-2, I electronically
7 transmitted a true and correct copy of the above and foregoing **OPPOSITION TO MOTION FOR**
8 **ATTORNEY'S FEES AND COSTS** by way of Notice of Electronic Filing provided by the court
9 mandated E-file & Serve system to the following:

10 Radford J. Smith, Esq.
11 Radford J. Smith, Chartered
12 2470 St. Rose Pkwy, Suite #206
13 Henderson, NV 89074

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An employee of the
LAW OFFICE OF DANIEL MARKS

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

GABRIELLE CIOFFI-KOGOD,
Plaintiff

-vs-

DENNIS KOGOD,
Defendant

CASE NO. D-13-489442-D

DEPT. Q

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below

- ☒ **\$25** The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-
☐ **\$0** The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
☐ Other Excluded Motion (must specify) _____.

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

- ☒ **\$0** The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
☒ The Motion/Opposition is being filed in a case that was not initiated by a joint petition.
☐ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
-OR-
☐ **\$129** The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
-OR-
☐ **\$57** The Motion/Opposition being filed with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

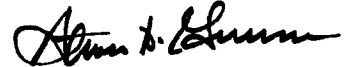
Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:
☐ \$0 ☒ \$25 ☐ \$57 ☐ \$82 ☐ \$129 ☐ \$154

Party filing Motion/Opposition: Defendant Dennis Kogod Date: October 19, 2016

Signature of Party or Preparer: _____

EXHIBIT 3



CLERK OF THE COURT

1 **OPP**
2 RADFORD J. SMITH, CHARTERED
3 RADFORD J. SMITH, ESQ.
4 Nevada Bar No. 002791
5 GARIMA VARSHNEY, ESQ.
6 Nevada Bar No. 011878
7 2470 St. Rose Parkway, Suite 206
8 Henderson, Nevada 89074
9 Telephone: (702) 990-6448
10 Facsimile: (702) 990-6456
11 rsmith@radfordsmith.com
12 *Attorneys for Plaintiff*

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 GABRIELLE CIOFFI - KOGOD,

12 Plaintiff,

13 v.

14 DENNIS KOGOD,

15 Defendant.

CASE NO.: D-13-489442-D

DEPT NO.: Q

FAMILY DIVISION

16 **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO STAY ENFORCEMENT OF**
17 **DECREE OF DIVORCE AND FOR OTHER RELATED RELIEF AND COUNTERMOTION**
18 **FOR ATTORNEY'S FEES**

19 DATE OF HEARING: October 18, 2016

20 TIME OF HEARING: 8:30 a.m.

21 COMES NOW Plaintiff, GABRIELLE CIOFFI – KOGOD (“Gabrielle”), by and through her
22 attorneys Radford J. Smith, Esq. and Garima Varshney, Esq. of the firm of Radford J. Smith, Chartered,
23 and submits the following points and authorities in Opposition to Defendant, DENNIS KOGOD’s
24 (“Dennis”) Motion to Stay Enforcement of Decree of Divorce and Other Related Relief and
25 countermove for attorney’s fees pursuant to EDCR 7.60.
26
27
28

1 This Opposition and Countermotion is made and based upon the points and authorities attached
2 hereto, and any evidence or oral argument adduced at the time of the hearing of this matter.

3 DATED this 12 day of October, 2016.

4 RADFORD J. SMITH, CHARTERED

5 By: 
6

7 RADFORD J. SMITH, ESQ.
8 Nevada State Bar No. 002791
9 2470 St. Rose Parkway, Suite 206
Henderson, Nevada 89074
Attorney for Plaintiff

10 I.

11 INTRODUCTION

12 On August 23, 2016, Dennis filed a Notice of Appeal of the Court's Findings of Fact,
13 Conclusions of Law and Decree of Divorce ("Decree of Divorce") entered on August 22, 2016. The
14 Court's decision is composed of 114 pages, and provides clear citation to the evidence upon which it
15 made its findings, and the law upon which it based its conclusions. The law in many instances is clear
16 and applicable Nevada precedent.

17
18 Dennis's docketing statement filed as part of his appeal suggests that he is challenging the
19 Court's award of alimony to Gabrielle, the Court's order awarding Gabrielle an unequal division of
20 community property, and the award of sanctions to Gabrielle based on alleged violations of the Joint
21 Preliminary Injunction (JPI) by Dennis. His docketing statement further indicates, without explanation,
22 that he is challenging the Court's decision to admit the Anthem Forensic expert reports, and an order
23 directing Dennis to pay Gabrielle's expert fees that has not been entered. See Appellant's Docketing
24 Statement filed September 12, 2016. Dennis has now moved to enter a stay of the Decree of Divorce
25 pursuant to NRAP 8(a)(1)(A).
26
27
28

1 Dennis seeks a stay of distribution of the funds granted to Gabrielle for alimony, unequal
2 distribution, and sanction. As addressed below, the factors upon which the Rules of Appellate
3 Procedure state that the Court should consider in addressing Dennis's request for stay do not support his
4 request.
5

6 II.

7 **DENNIS' CANNOT DEMONSTRATE A NEED FOR THE STAY UNDER THE DESIGNATED**
8 **FACTORS**

9 NRAP (8) reads in relevant part:

10 (a) Motion for Stay

11 (1) Initial Motion in the District Court. A party must ordinarily move first in the
12 district court for the following relief:

13 (A) a stay of the judgment or order of, or proceedings in, a district court pending
14 appeal or resolution of a petition to the Supreme Court or Court of Appeals for an
extraordinary writ;

15 (B) approval of a supersedeas bond; or

16 (C) an order suspending, modifying, restoring or granting an injunction while an
17 appeal or original writ petition is pending.

18 (b) Stays in Civil Cases Not Involving Child Custody

19 (1) Whether the object of the appeal or writ petition will be defeated if the stay is
20 denied;

21 (2) Whether appellant/petitioner will suffer irreparable or serious injury if the stay is
22 denied;

23 (3) Whether respondent/real party in interest will suffer irreparable or serious injury
24 if the stay is granted; and

25 (4) Whether appellant/petitioner is likely to prevail on the merits in the appeal or writ
26 petition.

27 The stated factors do no support Dennis's motion.
28

1 (1) *Whether the object of the appeal or writ petition will be defeated if the stay is denied;*

2 Dennis seeks to avoid the distribution of monies granted to Gabrielle under the Court's order.
3 As Dennis has pointed out, Gabrielle will receive sufficient additional funds so there is little or no
4 chance that she will spend sufficient monies to preclude her from transferring money back to Dennis in
5 the unlikely event of a reversal.
6

7 (2) *Whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied;*

8 Dennis argues that "if the stay is not granted he could suffer irreparable or serious injury
9 because Gabrielle could spend the money and/or make it difficult to collect the money if Dennis
10 prevails on appeal." See Dennis' Motion, page 4, lines 9-10. Nothing in the Court's findings or
11 Gabrielle's history suggests she will spend money frivolously, or hid money from Dennis or the Court.
12

13 The Court found:

14 Dennis also pointed out that Gabrielle was free to spend money on any hobby or pursuit
15 and that he never imposed any limitations on her spending or criticized her spending.
16 Neither did Dennis monitor Gabrielle's spending. In short, Gabrielle was never restricted
17 in her spending or her access to money. The record reflects, however, that Gabrielle did
18 not spend extravagantly. To the contrary, she would inform Dennis of transactions as
 small as gifting a washer and dryer. (citing Exhibit "20" (October 21, 2011 message from
 Gabrielle inquiring: "Jennifer needs a washer. Okay for her to have ours?"))

19 See Findings of Fact, Conclusions of Law and Decree of Divorce ("Decree of Divorce") entered on
20 August 22, 2016, page 67, lines 8 through 17. The Court's findings, and evidence submitted at trial,
21 show that throughout the parties' twenty-four (24) year marriage, Gabrielle was extremely frugal in her
22 spending while Dennis spent monies on girlfriends, lifestyle and dalliances which continued even after
23 being served with the Joint Preliminary Injunction. Gabrielle will have the sums available to pay
24 Dennis in the event of a reversal.
25

26 Further, Dennis has not identified an "irreparable injury." In *Dixon v. Thatcher*, 103 Nev. 414,
27 415, 742 P.2d 1029, 1029-30 (1987), the court noted that with respect to injunctive relief, irreparable
28

1 harm is harm for which compensatory damages would be inadequate, such as the sale of a home at
2 trustee's sale, because real property is unique. That notion is applicable here; Dennis will not suffer
3 irreparable harm because he challenges an award of funds.

4
5 Dennis argues that he will suffer irreparable injury or harm because Gabriele may owe Dennis a
6 large amount of interest that may not be feasible for her pay. Again, the facts of this case evidence that
7 Gabrielle will handle the distribution funds that she receives in a prudent and reasonable manner, and
8 she will be able to pay any amounts she is ordered to pay after appeal, if any.

9
10 *(3) Whether respondent/real party in interest will suffer irreparable or serious injury if the stay*
11 *is granted; and*

12 The presumption underlying the motion is that Gabrielle has sufficient funds, and will not be
13 prejudiced if some of those funds are limited to a blocked account. Gabrielle is prejudiced by her
14 inability to access or use those funds. She has been granted a judgment, and if she is not going to
15 realize the use of the funds granted, then she should be afforded legal interest on funds held, if any.
16 The effect of a stay is no different that Dennis not paying the judgment granted.

17
18 *(4) Whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.*

19 In *Hansen v. Eighth Judicial Dist. Court*, 116 Nev. 650, 6 P.3d 982 (2000), the Nevada Supreme
20 Court held that although, when moving for a stay pending an appeal or writ proceedings, a movant does
21 not always have to show a probability of success on the merits, but the movant must "present a
22 substantial case on the merits when a serious legal question is involved and show that the balance of
23 equities weighs heavily in favor of granting the stay." (quoting *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th
24 Cir. 1981)). Here, the equities of the case strongly support the Court's findings granting alimony,
25 determining an amount of "community waste" and sanctioning Dennis.
26
27
28

1 **A. Community Waste**

2 During the last ten years of the parties' marriage, Dennis maintained a surreptitious physical
3 and emotional relationship with Nadya Khapsalis. He fathered two children with Khapsalis through in
4 vitro fertilization. He transferred millions of dollars of community funds for the benefit of Khapsalis
5 and the children. Gabrielle, through her experts, Anthem Forensics, provided a meticulous accounting
6 of Dennis's deceptive waste, dissipation, and improper gifting of community property in violation of
7 his fiduciary duty to Gabrielle, Nevada statute, and the JPI. The district court correctly found that
8 Dennis hid his conduct and spending from Gabrielle through deception, artifice and fraud, made false
9 promises to the district court to provide an accounting of his community waste, and submitted
10 knowingly false statements to the district court to protect his relationship with another one of his
11 mistresses, the "other other woman," Jennifer Steiner. Gabrielle submits that those findings (and
12 frankly, all of the Court's factual findings) were supported by substantial evidence, including Dennis's
13 admissions.
14

15
16 After careful review of the testimony of the parties, the parties' experts, and the expert report,
17 the Court found that Dennis had spent or transferred approximately \$4,000,000 in community waste¹,
18 and found "compelling reason" for an unequal distribution of property in Gabrielle's favor. On appeal,
19 Dennis seeks reversal of that finding.
20

21 Dennis's primary argument at trial on this issue was that Dennis's transfers, gifts and spending
22 identified as waste by the experts Gabrielle presented, Joseph Leauanae and Jennifer Allen of Anthem
23 Forensics was not "material" due to Dennis's wealth. His expert, Richard Teichner, posited (without
24 citation to any authority) that Dennis could have spent money on more than one girlfriend, which he
25 did, and that spending would not be waste if it was not "material" in relation to Dennis's income. The
26 district court did not agree with that position, and that position contradicts basic Nevada law. Dennis
27
28

1 ostensibly argues on appeal that Nevada law does not support the Court's position on waste. The
2 district court expressed the basis for its order by citation to Nevada statute and case law that supports its
3 finding that the "community waste" it found was a basis for an unequal division. Gabrielle and her
4 counsel believe that Dennis has little chance of demonstrating that the Court's order is not supported by
5 substantial evidence.
6

7 Gabrielle has, however, filed a cross-appeal for a portion of the district court's analysis limiting
8 the period for which Gabrielle could recover expenditures that the district court deemed waste. In her
9 cross-appeal, Gabrielle also seeks an interest on the funds spent by Dennis. That cross-appeal,
10 however, does not require a stay of the Court's order.
11

12 **B. Alimony**

13 The district court correctly found that including Dennis's average annual income for the five
14 years from 2011 through 2015 was \$13,975,268.90 (\$1,164,605.00 per month). It further correctly
15 found that Gabrielle's average gross monthly income was \$55,491.60 per year (\$4,624.30 per month).
16 The district court found that the training, skill and acumen Dennis acquired throughout the marriage
17 community afforded him an income (millions of dollars per year) that Gabrielle could never hope to
18 achieve. Despite the wide gap in the parties' income, the district court awarded Gabrielle only \$18,000
19 per month in alimony for 108 months (9 years). The district court ordered that the alimony be paid in
20 lump sum with a 4% discount rate.
21

22 Dennis alleges that Gabrielle has no "need" for alimony and therefore, the district court's order
23 regarding lump sum alimony should be reversed. "Need" as a driver of alimony has not been the
24 standard in Nevada for nearly 20 years, and is not one of the criteria for alimony in the defining Nevada
25 statute. *See, Nevada Alimony: An Important Policy in Need of a Coherent Policy Purposse*, Hon.
26 David A. Hardy, 9 Nev. L.J. 325 (2009).
27
28

¹ "Community" waste is a colloquial term for a much broader concept of transfers, spending and gifts that Judge Duckworth

1 There is no common law right of alimony. *Freeman v. Freeman*, 79 Nev. 33, 378 P.2d 264
2 (1963). A Nevada district court's right to grant alimony is confined to the statutory law set forth NRS
3 125.150. NRS 125.150(1) states that in granting a divorce, the court "[m]ay award such alimony to
4 the wife or to the husband, in a specified principal sum or as specified periodic payments, as appears
5 just and equitable."

7 Dennis will ask that the Supreme Court find that once a party has sufficient income from assets
8 to meet his or her "need," no court should award alimony. Nothing about Nevada law in the last
9 approximately 20 years, and modern divorce law, supports that position. The principles of property
10 division and alimony are different. In *Rodriguez v. Rodriguez*, 116 Nev. 993, 996-97, 13 P.3d 415, 417
11 (2000):

13 The legislature also chose to separately address alimony and community property division. This
14 is significant because for the first time the legislature clarified that different considerations exist
15 for each. Alimony is to be awarded according to principles of what is "just and equitable." Community
16 property is to be divided equally unless a specifically stated compelling reason exists for making an unequal division.

17 In *Shydler v. Shydler*, 114 Nev. 192, 954 P.2d 37 (1998) the court held:

18 Alimony is an equitable award serving to meet the post-divorce needs and rights of the former
19 spouse. It follows from our decisions in this area that two of the primary purposes of alimony, at
20 least in marriages of significant length, are ***to narrow any large gaps between the post-divorce
earning capacities of the parties, and*** to allow the recipient spouse to live as nearly as fairly
21 possible to the station in life enjoyed before the divorce.

22 Id. at 198, 954 P.2d at 40 [citations omitted; emphasis supplied].

23 Courts and commentators have recognized this view of alimony as arising out of the long-term
24 commitment of a spouse to the career of the other. In *Gardner v. Gardner*, 110 Nev. 1053, 881 P.2d
25 645 (1994) the parties had been married for 27 years at the time of divorce. The wife had worked
26 while the husband received his education during which he obtained two degrees. The husband
27 received military training as a pilot during the marriage, and then went to work for an airline as a
28

addressed in great detail in his findings.

1 commercial airline pilot. The wife worked as a teacher during the marriage, and at the time of divorce
2 she was earning \$43,000.00 per year. During the marriage, the wife followed the husband when he
3 moved to advance his career. At the time of divorce, he was earning \$75,000.00 per year. *Id.* at 1055,
4 881 P.2d at 646. The district court awarded the wife alimony for two years, \$1300.00 per month in the
5 first year, and \$1,000.00 per month in the second year to achieve “parity” in the two incomes by
6 permitting the wife to pursue additional education. Both parties appealed the findings.
7

8 Upon appeal, the husband argued that the court had abused its discretion in equalizing the
9 incomes of the parties by the support, and that the wife was “tenured and comfortable” in her career,
10 and did not “need” his support. The wife sought a longer period of support due to the parties’ disparate
11 earning capacities, her support of her husband’s career, and the sacrifices to her career. The *Gardner*
12 court rejected the findings of the trial court, and in a somewhat unusual move, set the alimony at
13 \$1000.00 per month for 12 years instead of remanding the issue to the trial court.
14

15 At the center of the *Gardner* court’s decision was its distinction between the concept of
16 rehabilitative alimony and equitable alimony. The *Gardner* court observed that the alimony awarded
17 by the district court was designed to provide additional education to the wife to bring her closer to
18 economic parity. *Id.* at 1057-1058, 881 P.2d at 647-648. The *Gardner* court observed, however, that
19 such support was “in addition” to equitable support, and thus did not address the economic disparity
20 brought about by the wife’s subordination of her career to that of her husband. Tellingly, the court
21 stated,
22

23
24 Ruth and Brian were married for twenty-seven years. Ruth continually sacrificed in
25 order to promote Brian's career desires and opportunities. Although she was able to
26 further her own education in the process, the benefits she derived therefrom within the
27 context of marriage were substantially diluted when the marriage bond was severed. The
28 magnitude of Ruth's contribution to the community over many years is not fairly
recognized by the two-year alimony award she received when the marriage was
terminated.

1 *Id.* The focus of the equitable alimony in *Gardner* can be fairly characterized as a return on the wife's
2 investment to the career of the husband. The Nevada Supreme Court's recognition of these principles
3 placed it firmly in the camp of the contract theorists of alimony. As eloquently summarized by Judge
4 Posner:

6 [Alimony] is a method of repaying the wife (in the traditional marriage) her share of the
7 marital partnership's assets. Often the principal asset to which the wife will have
8 contributed by her labor in the household or in the market ... [such as when a wife
9 supports her husband while he is in graduate school] is the husband's earning capacity.
10 This is an asset against which it is difficult to borrow... . So it might be infeasible for the
11 husband to raise the money necessary to buy back from the wife, in a lump sum, as
12 much of the asset as she can fairly claim is hers by virtue of her contributions; instead he
13 must pay her over time out of the stream of earnings that the asset generates.

11 Richard A. Posner, *Economic Analysis of the Law*, 151 (7th Ed. 2007).

12 The contract theory ostensibly espoused in the *Shydler* and *Gardner* decisions is in direct
13 contrast to the "needs" based alimony decisions that preceded them. In his analysis of those decisions,
14 which he numbers at 28 spanning 114 years, Judge Hardy posits that the decisions are of "little
15 contemporary value because none explain why one spouse must support a former spouse after the
16 marriage has ended." Hardy, 9 Nev. L. J. at 339-340. Judge Hardy concludes his analysis by finding
17 that "need" based alimony determinations are "pervasive but trending downward" and that "economic
18 loss" alimony is trending upward. He concludes by arguing:

21 Under Nevada law, economic loss resulting from career subordination may be cured by
22 a disproportionate property division, rehabilitative alimony, or permanent alimony.
23 Economic loss resulting from the indivisibility of the payor spouse's career asset may be
24 cured by rehabilitative or permanent alimony, but the published decisions suggest the
25 return on career investment is influenced by the recipient spouse's economic needs.
26 Economic loss resulting from reliance upon the continuation of marriage may be cured
27 by permanent alimony, but virtually every Nevada decision in this regard contains a
28 component of economic need. The tools for better alimony awards nominally exist, but
they come without an all-encompassing instruction manual. The concept of alimony as
an entitlement based upon economic loss should dominate in future legislation and
decisional authorities.

28 *Id.* at 345.

1 Judge Hardy's prediction of the trend of modern alimony follows the continued citation by the
2 Nevada Supreme Court to its holding in *Shydler* that one of the two purposes of alimony in a lengthy
3 marriage is to "narrow any large gaps between the post-divorce earning capacities of the parties." See,
4 e.g., *Devries v. Gallio*, 128 Nev. Adv. Rep. 63, 290 P.3d 260, 264 (2012)

6 Here, Gabrielle's community share of the property exceeds \$20M in value. Dennis, therefore,
7 argues that she has no conceivable need for support. The Nevada Supreme Court's now universal
8 recognition of the two component goals of alimony in divorce after long term marriages is a
9 recognition that alimony is not based on only need, and inherent in its finding in *Shydler* that
10 "[a]limony is an equitable award serving to meet the post-divorce needs **and rights** of the former
11 spouse." *Shydler*, 114 Nev. at 198, 954 P.2d at 40.

13 The argument that Gabrielle's acquisition of her portion of community property will meet her
14 "lifestyle" needs presents a myopic view of lifestyle. Here, when judging the parties pre-divorce
15 lifestyle, the district court recognized that not only has Dennis's lifestyle been wildly expensive and
16 rich, the parties have saved **millions** of dollars in investments and cash due to Dennis's large earnings.
17 That savings and investment was part of the established lifestyle of the parties over a period of many
18 years. Without alimony, Gabrielle's approximately \$55,000 per year income will allow nothing close
19 to the substantial savings and investment that arises from Dennis' average income of \$12,629,873 over
20 the last five years.

22 The second component of the *Shydler* elements compensate Gabrielle for the "career asset"
23 Dennis acquired in the marriage. The district court correctly found that Gabrielle followed Dennis to
24 support his career and to support him even through the embarrassment, bizarre behavior, and shame he
25 put her through. The district court found that during the term of the parties' marriage, Dennis's career
26 went from a regional sales director for Pilling, a company that sells surgical products, to the dual role
27
28

1 of Chief Operating Officer of DaVita, Inc., a Fortune 500 company with 55,000 employees, and Chief
2 Executive Officer International and President of Healthcare Partners. His rise in DaVita occurred over
3 the last approximately 16 years of the parties' marriage.

4 Gabrielle has filed a cross-appeal asserting that even though the district court correctly awarded
5 Gabrielle alimony, the award of alimony was not based upon Dennis' current income. Dennis placed
6 himself in the position of earning an average of approximately \$12.6M per year by acquiring and
7 honing marketable skills during the parties' community. Gabrielle did not advance her career, and her
8 income is flat at around \$55,000 per year as a nurse consultant. The gap in their average incomes is
9 approximately \$12,500,000 on average. Gabrielle's cross-appeal, however, does not necessitate a stay
10 of the Court's order.

13 **C. The District Court's Award of Sanctions**

14 Gabrielle served Dennis with a Joint Preliminary Injunction (JPI) on May 15, 2014. The JPI
15 prohibits either party from:

16 Transferring, encumbering, concealing, selling or otherwise disposing of any of the
17 joint, common or community property of the parties or any property which is the
18 subject of a claim of community interest, except in the usual course of business or for
19 the necessities of life, without the written consent of the parties or the permission of the
court.

20 Both *Lofgren* and *Putterman* hold that violation of the JPI can constitute community waste, and can
21 justify a finding of "compelling reason" for an unequal division of community assets. Under the
22 definition of the JPI in EDCR 5.85, the injunction is "enforceable by all remedies provided by law
23 including contempt."

24 Dennis ignored the prohibitions of the JPI, apparently believing they do not apply to wealthy
25 individuals who can pay the other spouse money to make up for spending and transfers in violation of
26 the JPI. The district court correctly found that Dennis's expenditures (that the Court specifically
27 detailed) were not expenditures that met the JPI criteria of "necessities of life" or "usual course of
28

1 business.” The district court found that after the issuance of the JPI, Dennis spent more than \$10,000
2 on thirty-nine (39) individual transactions that totaled \$1,486,452 of community funds on his
3 girlfriends, lifestyle, and dalliances even after being served with the JPI. The court sanctioned Dennis
4 \$500 for each of the 39 violations, for a total of \$19,500. Gabrielle submits that Dennis’s income, his
5 duplicity with the Court, and his complete disregard of the JPI should have led to a substantially greater
6 award of sanctions under EDCR 7.60, (that does not limit the amount of sanction). Dennis’s challenge
7 to the Court’s order granting sanctions is highly unlikely to succeed.
8

9
10 **III.**

11 **GABRIELLE SHOULD BE AWARDED ATTORNEY’S FEES FOR HAVING TO RESPOND**
12 **TO DENNIS’S MOTION**

13 Gabrielle should be awarded attorney’s fees for having to respond to Dennis’s frivolous Motion.
14 The Court has continuing jurisdiction in a post-trial matter to award attorney’s fees under NRS
15 125.150(3). *Love v. Love*, 114 Nev. 572, 581, 959 P.2d 523, 529 (1998).

16 The Court may further award sanctions under EDCR 7.60(b), as follows:

17 The court may, after notice and an opportunity to be heard, impose upon an attorney or a
18 party any and all sanctions which may, under the facts of the case, be reasonable,
19 including the imposition of fines, costs or attorney’s fees when an attorney or a party
without just cause:

20 *(1) Presents to the court a motion or an opposition to a motion which is obviously*
frivolous, unnecessary or unwarranted.

21 *(2) Fails to prepare for a presentation.*

22 *(3) So multiplies the proceedings in a case as to increase costs unreasonably and*
vexatiously.

23 *(4) Fails or refuses to comply with these rules.*

24 *(5) Fails or refuses to comply with any order of a judge of the court.*

(Emphasis added.)

25 NRS 18.010 permit the entry of fees and sanctions for a parties’ bad faith claims.

26 In *Miller v. Wilfong*, the Court held that

27
28 Second, while it is within the trial court's discretion to determine the reasonable amount
of attorney fees under a statute or rule, in exercising that discretion, the court must

1 evaluate the factors set forth in *Brunzell v. Golden Gate National Bank*. Under
2 *Brunzell*, when courts determine the appropriate fee to award in civil cases, they must
3 consider various factors, including the qualities of the advocate, the character and
4 difficulty of the work performed, the work actually performed by the attorney, and the
5 result obtained. We take this opportunity to clarify our jurisprudence in family law
6 cases to require trial courts to evaluate the *Brunzell* factors when deciding attorney fee
7 awards. Additionally, in *Wright v. Osburn*, this court stated that family law trial courts
8 must also consider the disparity in income of the parties when awarding fees.
9 Therefore, parties seeking attorney fees in family law cases must support their fee
10 request with affidavits or other evidence that meets the factors in *Brunzell* and *Wright*.

11 *Miller v. Wilfong*, 121 Nev. 619, 623-24, 119 P.3d 727, 730 (2005).

12 When granting fees the Court would need to consider the factors found in *Brunzell v. Golden*
13 *Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). In *Brunzell* the Court enumerated factors that
14 the District Court should consider in awarding attorney's fees as follows:

- 15 1) The qualities of the advocate;
- 16 2) The character and difficulty of the work performed;
- 17 3) The work actually performed by the attorney; and,
- 18 4) The result obtained.

19 EDCR 7.60 allows the Court to impose any and all sanctions upon a party for behaviors that
20 increase the proceedings without good cause. Gabrielle is specifically requesting that the Court sanction
21 Dennis for filing a baseless motion and award her attorney's fees incurred in having to respond to
22 Dennis's Motion.

23 With regard to fees, the Supreme Court has recently re-adopted "well known basic elements,"
24 which in addition to hourly time schedules kept by the attorney, are to be considered in determining the
25 reasonable value of an attorney's services qualities, commonly referred to as the *Brunzell* factors.²

- 26 1. *Quality of the Advocate*: his ability, his training, education, experience, professional standing
27 and skill. Radford J. Smith, Chartered, is A/V rated, a peer-reviewed and certified Fellow of the

28 ² *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31, 33 (1969).

1 American Academy of Matrimonial Lawyers firm. Mr. Smith is a Board Certified Nevada
2 Family Law Specialist. Mr. Smith's rates of \$450 per hour and Ms. Varshney's rates of \$300
3 per hour are also reasonable based on their qualifications, experience and quality of work
4 performed in this matter. The attorneys have litigated almost every aspect of Nevada family
5 law during the course of their respective careers.
6

- 7 2. *The Character of the Work to be done* – its difficulty, its intricacy, its importance, time and skill
8 required, the responsibility imposed and the prominence and character of the parties where they
9 affect the importance of the litigation. Gabrielle was forced to respond to Dennis's frivolous
10 Motion. The time spent performing the work related to these issues alone was more than
11 reasonable under the circumstances of this case. The attorneys and staff at Radford J. Smith,
12 Chartered diligently reviewed the applicable law, explored the relevant facts and applied the law
13 to the facts.
14
- 15 3. *The work actually performed by the lawyer* – the skill, time and attention given to the work. The
16 billing statements shall be produced upon request.
17
- 18 4. *The result* – whether the attorney was successful and what benefits were derived. This factor
19 will be determined at the hearing on this Opposition and Countermotion.
20

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IV.

CONCLUSION

For the foregoing reasons, Gabrielle requests that the Court deny Dennis's Motion To Stay Enforcement Of Decree Of Divorce And For Other Related Relief And Countermotion For Attorney's Fees and countermoves for the Court to award her attorney's fees and costs for having to respond to Dennis's Motion.

DATED this 12 day of October, 2016

RADFORD J. SMITH, CHARTERED

By: _____

RADFORD J. SMITH, ESQ.

Nevada State Bar No. 002791

GARIMA VARSHNEY, ESQ.

Nevada State Bar No. 011878

2470 St. Rose Parkway, Suite 206

Henderson, Nevada 89074

Attorneys for Plaintiff

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I served the foregoing document described as PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO STAY ENFORCEMENT OF DECREE OF DIVORCE AND FOR OTHER RELATED RELIEF AND COUNTERMOTION FOR ATTORNEY'S FEES on this 2 day of October, 2016, to all interested parties by way of the Eighth Judicial District Court's electronic filing system.

An employee of Radford J. Smith, Chartered

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

Gabrielle KOGAD
Plaintiff/Petitioner

v.
Dennis KOGAD
Defendant/Respondent

Case No. D134894420

Dept. Q

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

- ☒ **\$25** The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-
☐ **\$0** The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
- ☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
 - ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
 - ☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
 - ☐ Other Excluded Motion (must specify) _____.

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

- ☒ **\$0** The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
- ☒ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
 - ☐ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
- OR-
☐ **\$129** The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
-OR-
☐ **\$57** The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order; or it is a motion and the opposing party has already paid a fee of \$129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:

☐ \$0 ☒ \$25 ☐ \$57 ☐ \$82 ☐ \$129 ☐ \$154

Party filing Motion/Opposition: Plaintiff Date 10/12/16

Signature of Party or Preparer

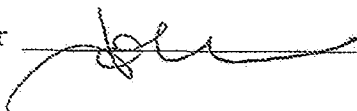
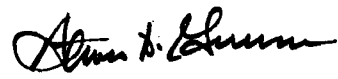


EXHIBIT 2



CLERK OF THE COURT

DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
NICOLE M. YOUNG, ESQ.
Nevada State Bar No. 12659
610 South Ninth Street
Las Vegas, Nevada 89101
(702) 386-0536; FAX: (702) 386-6812
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

GABRIELLE CIOFFI-KOGOD
Plaintiff,

Case No. D-13-489442-D
Dept. No. Q

vs.

DENNIS KOGOD,
Defendant.

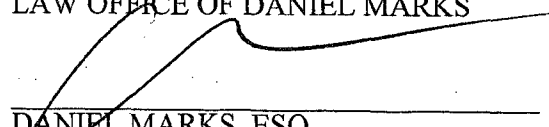
Date of Hearing: 09/21/16
Time of Hearing: 9:00 a.m.

**MOTION TO STAY ENFORCEMENT OF DECREE OF DIVORCE
AND FOR OTHER RELATED RELIEF**

COMES NOW the Defendant Dennis Kogod, by and through his counsel, Daniel Marks, Esq., and Nicole M. Young, Esq., of the Law Office of Daniel Marks, and hereby submits his Motion to Stay Enforcement of Decree of Divorce and for Other Related Relief. The grounds for Defendant's motion are set forth in the attached Memorandum of Points and Authorities.

DATED this 24 day of August, 2016.

LAW OFFICE OF DANIEL MARKS



DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
NICOLE M. YOUNG, ESQ.
Nevada State Bar No. 12659
610 South Ninth Street
Las Vegas, Nevada 89101
Attorney for Defendant

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1 **NOTICE OF MOTION**


2 TO: GABRIELLE CIOFFI-KOGOD, Plaintiff; and

3 TO: RADFORD J. SMITH, ESQ., Attorney for Plaintiff:

4 PLEASE TAKE NOTICE that the undersigned counsel will bring the above and foregoing Motion
5 on for hearing on the 21st day of September, 2016, at the hour of 9:00 o'clock
6 a.m.

7 DATED this 24 day of August, 2016.

8 LAW OFFICE OF DANIEL MARKS

9
10 
11 DANIEL MARKS, ESQ.
12 Nevada State Bar No. 002003
13 NICOLE M. YOUNG, ESQ.
14 Nevada State Bar No. 12659
15 610 South Ninth Street
16 Las Vegas, Nevada 89101
17 Attorneys for Defendant

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. FACTUAL BACKGROUND**

16 On August 22, 2016, this Court issued its Findings of Fact, Conclusions of Law and Decree of
17 Divorce (hereinafter "Decree"). In that Decree, this Court ordered an unequal division of community
18 property based on a finding of waste in the amount of \$4,087,863.00. This Court also awarded lump sum
19 spousal support in the amount \$1,630,292.00. Further, this Court ordered that Plaintiff Gabrielle Cioffi-
20 Kogod (hereinafter "Gabrielle") may elect, within fourteen (14) days of entry of the Decree, to receive
21 the two (2) 2015 Bentleys on her side of the division and that Defendant Dennis Kogod (hereinafter
22 "Dennis") must pay her \$19,500.00 in sanctions within thirty (30) of entry of the Decree.

23 On August 23, 2016, Dennis filed his Notice of Appeal of the Decree with this Court. Dennis is
24 now requesting that this Court issue a stay relating to the above described orders and allow alternate
25 security.

26 ////

27 ////

28 ////

II. LEGAL ARGUMENT

A party must first request from the district court “a stay of the judgment or order of, or proceedings in, a district court pending appeal.” NRAP 8(a)(1)(A). In determining whether to issue a stay in a case not involving child custody the following factors are considered:

- (1) whether the object of the appeal . . . will be defeated if the stay . . . is denied;
- (2) whether appellant . . . will suffer irreparable or serious injury if the stay . . . is denied;
- (3) whether respondent . . . will suffer irreparable or serious injury if the stay . . . is granted; and
- (4) whether appellant . . . is likely to prevail on the merits in the appeal.

NRAP 8(c) (cited in list format).

An appellant may also obtain a stay by posting a supersedeas bond, which “may be given at or after the time of the filing of the notice of appeal” and is effective once filed. NRCP 62(d). While Nevada used to follow the federal interpretation¹ of this rule, the Nevada Supreme Court later found that approach was too rigid. *Nelson v. Heer*, 121 Nev. 832, 835, 122 P.3d 1252 (2006). Nevada now uses a more flexible approach that focuses on “what security will maintain the status quo and protect the judgment creditor pending an appeal, not how ‘unusual’ the circumstances of a given case may be.” *Id.* at 835-836. As such, when determining whether an alternate security is appropriate, this Court should consider:

- (1) the complexity of the collection process;
- (2) the amount of time required to obtain a judgment after it is affirmed on appeal;
- (3) the degree of confidence that the district court has in the availability of funds to pay the judgment;
- (4) whether the defendant’s ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and
- (5) whether the defendant is in such a precarious financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position.

Id. at 836 (cited in list format). With regard to the second factor, the court should take the length of time

¹ The federal interpretation states, “[a] district court, in its discretion, may provide for a bond in a lesser amount, or may permit security other than a bond, when unusual circumstances exist and so warrant.” *McCulloch v. Jeakins*, 99 Nev. 122, 123, 659 P.2d 302 (1983) (emphasis omitted).

1 the case may be on appeal into consideration. *Id.*

2 In this case, this Court should issue a stay of execution of judgment relating to the unequal
3 division of property, the lump sum award of spousal support, Gabrielle's option to receive the Bentleys,
4 and the payment of sanctions. Together, these awards total approximately \$3,600,000.00, and this Court
5 has even acknowledged that the legal issues relating to these awards are without much guidance from the
6 Nevada Supreme Court. Because the amount of money at issue is so large, interest that may accumulate
7 on that money while this case is on appeal could be astronomical. If this Court denies Dennis' request
8 for a stay and he ultimately wins the appeal, Gabrielle may owe Dennis a large amount of interest that
9 may not be feasible for her to pay. A stay is necessary to protect Dennis' rights. If the stay is not granted
10 he could suffer irreparable or serious injury because Gabrielle could spend the money and/or make it
11 difficult to collect the money if Dennis prevails on appeal. It is likely that Dennis could prevail on appeal
12 because there is no case in Nevada that supports the unequal division that this Court awarded, and this
13 Court did not follow established Nevada law when it awarded Gabrielle lump sum spousal support. In
14 fact, this Court specifically found that Gabrielle had no need for such support.

15 Gabrielle will not suffer irreparable or serious injury if the stay is granted. She has more than
16 enough money, through the other assets she is receiving in the Decree, to live however she pleases.

17 Dennis is not requesting this Court to allow him to keep the money at issue. He is requesting a
18 stay based on posting alternate security, in lieu of a supersedeas bond. This type of stay is not
19 discretionary; it is permissible under the rules. NRCP 62(d). The money at issue already exists. Dennis
20 proposes that this Court allow that money to be placed in a court-blocked account with UBS. In that
21 account, the money will be able to accumulate interest, and once the appeal is completed, the money
22 could then be released to the prevailing party. Further, the cost of the bond, in this case, would simply be
23 a waste of money. This Court is well-aware of each parties financial condition and knows that each party
24 has more than enough money to care for themselves even if the money at issue is placed in a blocked
25 account. By placing the money in a blocked account, this Court will ensure that no matter who prevails
26 on this appeal, that party will be able to collect without issue. Neither party would have to chase the
27 other.

28 As such, this Court should grant the stay and have the money in dispute placed in a blocked

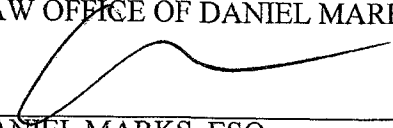
1 account at UBS.

2 **III. CONCLUSION**

3 Based on the foregoing, this Court should grant a stay of execution of the Decree relating to the
4 unequal division, lump sum spousal support, Gabrielle's option to take the Bentleys, and the sanctions
5 Dennis was ordered to pay. To ensure that both parties' interests are protected, this Court may then allow
6 alternate security, and order that the disputed money relating to the unequal division, lump sum spousal
7 support, and award of sanctions be placed in a court-blocked account with UBS. No money need be
8 placed in that account relating to the Bentleys because Gabrielle has already received her share of those
9 cars in this Court's division of assets.

10 DATED this 21 day of August, 2016.

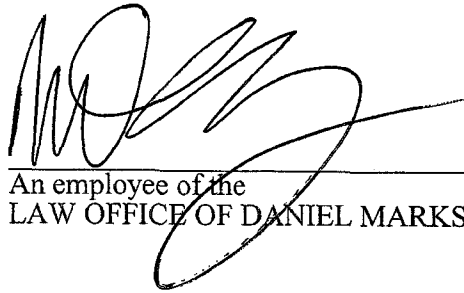
11
12 LAW OFFICE OF DANIEL MARKS

13
14 
15 DANIEL MARKS, ESQ.
16 Nevada State Bar No. 002003
17 NICOLE M. YOUNG, ESQ.
18 Nevada State Bar No. 12659
19 610 South Ninth Street
20 Las Vegas, Nevada 89101
21 Attorneys for Defendant
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 24
3 day of August, 2016, pursuant to NRCP 5(b) and Administrative Order 14-2, I electronically transmitted
4 a true and correct copy of the above and foregoing **MOTION TO STAY ENFORCEMENT OF**
5 **DECREE OF DIVORCE AND FOR OTHER RELATED RELIEF** by way of Notice of Electronic
6 Filing provided by the court mandated E-file & Serve system to the following:

7 Radford J. Smith, Esq.
8 Radford J. Smith, Chartered
9 2470 St. Rose Pkwy, Suite #206
Henderson, NV 89074


An employee of the
LAW OFFICE OF DANIEL MARKS

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

GABRIELLE CIOFFI-KOGOD,
Plaintiff

-vs-

DENNIS KOGOD,
Defendant

CASE NO. D-13-489442-D

DEPT. Q

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below

- ☒ **\$25** The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-
☐ **\$0** The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
☐ Other Excluded Motion (must specify) _____.

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

- ☒ **\$0** The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
☒ The Motion/Opposition is being filed in a case that was not initiated by a joint petition.
☐ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
-OR-
☐ **\$129** The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
-OR-
☐ **\$57** The Motion/Opposition being filed with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:
☐ \$0 ☒ \$25 ☐ \$57 ☐ \$82 ☐ \$129 ☐ \$154

Party filing Motion/Opposition: Defendant Dennis Kogod Date: August 24, 2016


Signature of Party or Preparer: 

EXHIBIT 1


CLERK OF THE COURT

NEOJ

DISTRICT COURT
CLARK COUNTY, NEVADA

GABRIELLE ROSE CIOFFI-KOGOD,)
)
Plaintiff,)
)
v.)
)
DENNIS L. KOGOD,)
)
Defendant.)
_____)

CASE NO. D-13-489442-D
DEPT NO. Q

NOTICE OF ENTRY OF
FINDINGS OF FACT, CONCLUSIONS
OF LAW AND DECREE OF DIVORCE

TO: ALL PARTIES AND/OR THEIR ATTORNEYS

Please take notice that a Findings of Fact, Conclusions of Law and Decree of Divorce has been entered in the above-entitled matter, a copy of which is attached hereto. I hereby certify that on the above file stamped date, I caused a copy of this Notice of Entry of Findings of Fact, Conclusions of Law and Decree of Divorce to be:

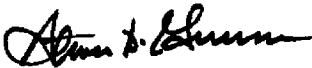
☒ E-Served pursuant to NEFCR 9 on, or placed in the folder(s) located in the Clerk's Office of, the following attorneys:

Radford Smith, Esq.

Daniel Marks, Esq.

/s/ Kimberly Weiss

Kimberly Weiss
Judicial Executive Assistant
Department Q


CLERK OF THE COURT

DECD

DISTRICT COURT

CLARK COUNTY, NEVADA

GABRIELLE ROSE CIOFFI-KOGOD,)

Plaintiff,)

v.)

CASE NO. D-13-489442-D

DEPT NO. Q

DENNIS L. KOGOD,)

Defendant.)

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND DECREE OF DIVORCE

This matter came before this Court for trial on February 23, 2016, on Plaintiff's Complaint for Divorce (Dec. 13, 2013), Defendant's Answer to Complaint for Divorce and Counterclaim (Nov. 24, 2014), and Plaintiff's Reply to Counterclaim for Divorce (Dec. 5, 2014). Plaintiff, GABRIELLE CIOFFI-KOGOD (hereinafter referred to as "Gabrielle"), appeared personally, and by and through her attorneys, RADFORD J. SMITH, ESQ., and GARIMA VARSHNEY, ESQ. Defendant, DENNIS KOGOD (hereinafter referred to as "Dennis"), appeared personally and by and through his attorneys, DANIEL MARKS, ESQ., and NICOLE M. YOUNG, ESQ. The trial continued on February 24, 2016, February 25, 2016, February 26, 2016,¹ and May 4,

¹Trial in this matter initially was scheduled to take place on February 23, 24, and 26, 2016. Both parties expressed that they needed additional time to present their respective cases. This Court added an additional full day of trial time (February 25, 2016) to accommodate their request. (Plaintiff's Closing Brief (Aug. 1, 2016) failed to reference the February 25,

☐ Other
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Default Judgment
☐ Transferred
☐ Disposed After Trial Start
☐ Trial Dispositions:
☐ Settled/Withdrawn
☐ Without Judicial Conf/Htg
☐ With Judicial Conf/Htg
☐ By ADR
☒ Assignment Reached by Trial

RYAN C. DUCKWORTH
DISTRICT JUDGE

FAMILY DIVISION, DEPT. 0
AS VEGAS, NEVADA 89101

1
2 2016.² An additional hearing was held on July 13, 2016, on Gabrielle's Motion to
3 Compel Discovery, for Sanctions, Attorney's Fees and Costs (Jun. 21, 2016). At the
4 Court's direction, closing arguments were submitted in writing. This Court has
5 reviewed and considered Defendant's Closing Brief (Aug. 1, 2016) (hereinafter referred
6 to as "Dennis' Brief") and Plaintiff's Closing Brief (Aug. 1, 2016) (hereinafter referred
7 to as "Gabrielle's Brief"). This Court's Findings of Fact, Conclusions of Law and
8 Decree of Divorce (hereinafter referred to as "Decree") follow.
9

10
11 In evaluating the issues raised in the parties' pleadings, this Court had the
12 opportunity to listen to and review the testimony of several witnesses and review
13 extensive documentary evidence admitted into the record.³ The witnesses included
14 Dennis, Gabrielle, Jennifer A. Allen, CPA, CFE, Richard M. Teichner, CPA, ABV, CVA,
15 MAFF, CFF, Cr.FA, FCPA, CGMA, CDFA, Joseph L. Leauanae, CPA, CITP, CFF, CFE,
16 ABV, ASA, Mark Herman, Jennifer Bosco, and Veronica Garcia. This Court also has
17
18

19
20 2016 trial date.) Although both parties requested additional time, this Court found that the
21 parties spent time during the trial in their respective examinations that was not helpful or that
22 was superfluous to the essential facts needed to resolve the issues before the Court.

23 ²The May 4, 2016 evidentiary proceedings focused on the testimony of each party's
24 respective real estate expert appraisers who offered testimony regarding the property located
25 at 9716 Oak Pass Road, Beverly Hills, California.

26 ³At the July 13, 2016 hearing, Dennis expressed concern that this Court had already
27 completed an initial draft of the Decree prior to the submission of closing briefs. As noted
28 herein, this Court has reviewed and considered each party's brief in finalizing this Decree.
Moreover, the trial record had already been established long before closing briefs were
submitted. There was little benefit for this Court to wait five months after trial ended in
February to begin preparation of the Decree. Further, contrary to the reference in Gabrielle's
Brief, this Court did not review video "transcripts" of the trial or prior hearings. Rather, after
outlining the entirety of the trial proceedings, this Court re-watched the entire video of the trial
and the video of each pre-trial hearing before this Court.

1
2 read and considered the deposition transcripts of Eugene Cioffi (Exhibit SSSS), and
3 Stephanie Cioffi (Exhibit TTTT), as well as excerpts of the deposition transcripts of
4 Nadyane Khapsalis Kogod (Exhibit 125),⁴ Patricia Murphy (Exhibit 126), Mitchell
5 Kogod (Exhibit 127), Marsha Kogod (Exhibit 128), Sheldon Kogod (Exhibit 129),
6 Dana Kogod (Exhibit 130), and Jennifer Crute Steiner (Exhibit 131).⁵ During trial,
7 this Court had the opportunity to observe issues pertaining to the credibility and
8 demeanor of each witness who testified in Court.
9

10
11 The issues before this Court include: (1) the division of assets and debts; (2)
12 alimony to be paid by Dennis to Gabrielle; and (3) attorney's fees.⁶ The division of
13

14 ⁴Given her native tongue is Russian, Ms. Khapsalis Kogod was offered a Russian
15 interpreter for her deposition, but she declined. The fact that English is not her native tongue
is noticeable in the excerpts of her deposition testimony.

16 ⁵The parties initially expressed their intention to read the deposition transcripts into the
17 record. As the trier of fact, this Court is capable of reading deposition transcripts. (The
18 reading of the deposition transcript by a third party would offer nothing to this Court with
19 respect to the demeanor of the witness. This Court is able to perform the same reading.) Thus,
20 this Court directed that those portions of the deposition transcripts upon which each party
21 intended to rely be marked and introduced as exhibits. To preserve each party's right to object
22 to specific deposition testimony, this Court established a protocol that allowed the parties to
23 lodge specific objections regarding any questions asked during the depositions. This Court
then ruled on those objections at the April 6, 2016 and May 4, 2016 hearings. Following these
evidentiary rulings, this Court reviewed the testimony admitted into the record. Gabrielle
stipulated to the admission of the entirety of Eugene Cioffi's deposition transcript and
Stephanie Cioffi's deposition transcript. Thus, objections were limited to the excerpts of the
deposition transcripts offered by Gabrielle and marked as Plaintiff's exhibits.

24 ⁶Although the Court has reviewed Radford J. Smith, Chartered's Billing Statements
25 (Exhibit 100), Marc Herman's Billing Statements (Exhibit 101), Anthem Forensic's Billing
26 Statements (Exhibit 102), Clark Barthol's Billing Statements (Exhibit 103), Detail Fee, Costs
27 and Payment Transaction File Lists from the Law Office of Daniel Marks (Exhibit QQQQ),
and Billing Statements from Jimmerson Hansen, P.C. (Exhibit RRRR), the issue of attorneys'
fees and costs is not addressed directly herein. The propriety of such an award may be
addressed by post-adjudicatory papers filed with the Court. This Court notes, however, that
neither party submitted an offer to allow entry of decree pursuant to NRS 125.141, despite
repeated encouragement from the Court. This Court references in this Decree relevant findings

1
2 assets and debts includes Gabrielle's request for an unequal division of assets based on
3 Dennis' alleged waste and/or dissipation of community assets.

4 I. BACKGROUND FACTS⁷
5

6 A. DENNIS AND GABRIELLE: PRE-NEVADA — *relative "marital bliss"*

7 Gabrielle and Dennis met in New York in 1990.⁸ Prior to the parties meeting,
8
9 Dennis had graduated from the University of Florida in 1981 with a baccalaureate
10 degree in business administration. In approximately 1987, Dennis began working for
11 Pilling selling surgical instruments. By 1989, he had been promoted to a regional sales
12 manager position. Meanwhile, Gabrielle had established a successful background in
13 sales and clinical nursing prior to the parties' marriage. Gabrielle obtained a Masters
14 of Public Health and is a registered nurse and legal nurse consultant. *See* Exhibit 1.
15 Gabrielle attained these credentials prior to meeting Dennis.
16

17 At the time they met, Dennis had no appreciable property. Gabrielle
18 interviewed with Dennis for a position with Pilling. She was hired as a salesperson at
19 Pilling shortly thereafter and the parties became romantically involved. Prior to their
20 marriage, Dennis was transferred by Pilling to Florida. Gabrielle agreed to move to
21
22

23 _____
24 pertaining to statutory claims for attorneys' fees. Nevertheless, although not ordered herein,
25 this Court is persuaded that Gabrielle *should be* reimbursed the forensic accounting costs
26 associated with her retention of Anthem Forensics for the work that Dennis had promised and
27 was legally obligated to perform (as discussed throughout this Decree). NRS 18.005(5). *See*
28 *Frazier v. Drake*, 131 Adv. Op. 64, 357 P.3d 365 (2015).

⁷The foregoing is a summary of the pertinent background facts based on the record before this Court.

⁸Although Dennis and Gabrielle both testified that they met in 1990, Gabrielle's Brief states that the parties met in 1989.

1
2 Florida to join Dennis. Gabrielle and Dennis ultimately married on July 20, 1991 at
3 the U.N. in New York City.

4 In November 1991, Gabrielle and Dennis moved from Florida to Pennsylvania
5 as a result of Dennis' promotion to National Sales Director for Pilling. The parties
6 purchased a home in Pennsylvania, with the down payment coming from Gabrielle's
7 401(k). While in Pennsylvania, Gabrielle obtained employment with Osteopathic as
8 a nurse recruiter and then worked as a clinical nurse manager. Dennis then became
9 Vice President of Sales (and later Vice President of Sales and Marketing) at Pilling. As
10 a result of this promotion, the parties moved to North Carolina. Dennis received no
11 specialized training as a result of this promotion. On "aggregate," Dennis continued
12 to travel between two to three days per week as a result of his employment
13 responsibilities.⁹ Gabrielle's job changed again when the parties moved to North
14 Carolina, where she started her career at Kaiser. She then interviewed and was
15 accepted at the North Carolina Board of Nursing.

16 In approximately 1992, Teleflex acquired the assets of Pilling and then Teleflex
17 acquired Weck from Bristol-Myers, Squibb. In late 1995 or early 1996, Dennis
18 became Vice President of Corporate Accounts and International for Teleflex. At that
19 time, he no longer focused on sales. In this position, Dennis' travel would take him to
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26 ⁹In general, Dennis testified that he traveled an average of two to three days per week
27 for the various companies he worked for during the marriage. As discussed below, however, his
28 international travel increased with his employment at DaVita. Although he testified that
certain positions required "more travel" than other positions, when asked the amount of weekly
travel, the routine response was "two to three days per week" for any given employment
position.

1
2 international locations which would require him to be gone a week to two weeks at a
3 time. Once again, Dennis did not receive any specialized type of training for this
4 position. The parties contemplated purchasing a home in New Hampshire and they
5 even paid a deposit on a home. However, Dennis received an opportunity to pursue
6 a more lucrative position with Gambro. Therefore, in July 2000, the parties jointly
7 chose to follow Dennis' career opportunity with Gambro.
8

9 Gambro was a Swedish company, with its U.S. presence on the medical "service"
10 side (unlike the medical "product" side with Teleflex) located in Lakewood, Colorado.
11 Gambro's regional office was located in Elisa Viejo, California. The parties moved to
12 California, where they purchased a home in Coto de Caza in Rancho Santa Margarita
13 (and later purchased a second home in Coto de Caza). Dennis was hired at Gambro
14 as President of the West Division, which was a newly created position. Dennis'
15 training consisted of a week-long training at the company offices.
16
17

18 The parties' marital relationship during this period of time (i.e., between the
19 time of marriage and their relocation to California) appeared to be relatively
20 harmonious. Notwithstanding the amount of travel Dennis' career pursuits required,
21 the parties routinely and regularly enjoyed holidays and special occasions together.
22 Indeed, throughout the marriage, it was not uncommon or unusual for Dennis to be
23 away from the marital home due to business travel. Such travel was commonplace and
24 routine. In addition to holidays and special occasions, the parties seemed to enjoy the
25 time they spent together. There is nothing in the record to suggest that their marital
26 relationship suffered in any significant respect until after their move to California.
27
28

1
2 B. DENNIS AND GABRIELLE: NEVADA — *the irretrievable breakdown*
3 *of their marriage*

4 The 2003-04 time-frame marked several significant events in Gabrielle and
5 Dennis' marriage, including: (1) advancements in Dennis' career (and a concomitant
6 dramatic ascent in earnings and marital wealth); (2) the purchase of the parties' Lake
7 Las Vegas home (and Gabrielle's permanent relocation thereto); and (3) the beginning
8 of Dennis' relationship with Nadyane Khapsalis Kogod (also known as Nadine Kievsky,
9 Nadya Khapsalis, Nadezhda Khapsalis and Nadya Khapsalis Kievsky) (hereinafter
10 referred to as "Nadya").¹⁰
11

12
13 (1) Dennis and DaVita

14 In 2004, Dennis' position at Gambro changed from Division President to the
15 Co-Chief Operating Officer. More travel was required in this position than the division
16 manager position. Dennis' travel typically entailed approximately three days per week
17 (between January 2004 and October 2005). In November 2004, DaVita announced
18 its acquisition of Gambro. Although Dennis entertained other employment
19 opportunities after the acquisition was announced, he remained with DaVita. In this
20 regard, DaVita was intent on having one of the senior team members (i.e., Dennis) stay
21 with the company. Thus, in October 2005, Dennis began working for DaVita,
22 overseeing the western operating group or region (as well as some additional
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26
27 ¹⁰Nadya's name on her birth certificate is Nadezhda Khapsalis, and her name on her
28 passport is Nadine Khapsalis Kogod. Deposition 27: 22-24; 30: 9-11. In explaining her name
change to Nadyane Khapsalis Kogod, Nadya testified that "I didn't want to be a Kievsky
anymore, since my husband is Dennis Kogod was at that time." Deposition 26: 18-20.

1 responsibilities). Although his duties were similar to his position with Gambro, it was
2 on a larger scale due to the size of the company. Nevertheless, his travel requirements
3 remained similar.
4

5 Effective January 1, 2009, Dennis was promoted to Chief Operating Officer at
6 DaVita, which he called a "job of a lifetime."¹¹ See Exhibits 92-98. His duties changed
7 from overseeing the western division of the company to overseeing management of all
8 divisions. Dennis' travel increased as a result of this promotion, including more
9 international travel. (Although international travel had also been a part of his prior
10 employment experience, in late 2010 Dennis began traveling more internationally.
11 Again, Dennis' business travel and the associated physical separation of the parties on
12 a temporary basis was customary throughout the marriage.) Dennis did not receive any
13 specific training as a result of this promotion. Effective January 1, 2015, Dennis
14 became President of Health Care Partners and the CEO of the international division
15 of DaVita (Exhibit 98), which required even greater international travel.
16

17 Although the parties' relocations throughout their marriage followed Dennis'
18 career pursuits, the record confirms that both parties were in agreement with each
19 relocation. Specifically, the parties mutually understood and agreed that it was
20 financially advantageous to follow Dennis' career trajectory. Further, the parties
21 believed that, with Gabrielle's background and training in the nursing field, she could
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27 ¹¹Relative to the leadership at DaVita today, Dennis opined that it is rare for someone
28 of his limited educational background to advance as he has. He noted that most of the
individuals serving in upper management positions at DaVita have advanced degrees, and
several of those individuals graduated from Ivy League schools.

1
2 obtain employment wherever Dennis' career took them. Moreover, notwithstanding
3 the differences in their formal educational backgrounds, Dennis' career path provided
4 the parties with greater financial prosperity to an extraordinary degree.

5
6 During the trial, Dennis testified in detail about his promotions and training at
7 the companies for which he worked. Most of the training appeared to be internal
8 training within each company or "on-the-job" training. Other than short training
9 (including week-long) seminars, Dennis did not receive any formal education or career
10 training during the parties' marriage. Nevertheless, throughout the marriage, Dennis
11 obtained relatively broad-based experience in medical sales and marketing. Further, he
12 acknowledged that his employment experience played a key role in "getting me to
13 DaVita." His ability to remain with DaVita was something he "earned" through hard
14 work and "getting results." The resulting increase in income and wealth associated
15 with Dennis' employment with DaVita was dramatic as reflected in the parties' income
16 tax returns and Dennis' compensation summaries discussed later in this Decree.

17
18
19 (2) The Move to Nevada - *the beginning and the end*¹²
20

21 In 2003, the parties purchased their home at 28 Via Mira Monte, Lake Las
22 Vegas, Nevada (hereinafter referred to as the "Lake Las Vegas" home or residence).
23 Dennis suggested to Gabrielle that they move to Las Vegas, and he originally
24
25

26
27 ¹²In a March 26, 2011 email, Dennis lamented to Gabrielle: "The house represents sad
28 thoughts for me, when we moved I think we were already at that point in our relationship
where we stopped sharing, stopped being intimate, so when I think about vegas [sic] it makes
me a little sad, even though I created the vegas [sic] dynamic by making that impulsive decision
to move there." Exhibit 23: BS 12171-72.

1 researched and found the home.¹³ Nevertheless, the move to Las Vegas appeared to be
2 a mutually agreed-upon decision. After arriving in Las Vegas in December 2003,
3 Gabrielle began working for Sunrise Medical before moving to Dignity Health
4 (formerly known as Catholic Healthcare West) shortly thereafter. She has remained
5 at Dignity Health working as a certified legal nurse consultant. Exhibit OOO.
6

7
8 According to Dennis, the parties' relationship already had started to deteriorate
9 in 2002, while they lived together in California. After Gabrielle relocated to Las Vegas,
10 Nevada, the parties shared no intimacy. Gabrielle acknowledged that the parties
11 shared no sexual intimacy after 2004. The lack of intimacy, however, did not change
12 how Gabrielle felt about Dennis. Dennis continued to travel to Las Vegas (even after
13 the start of his relationship with Nadya). Further, he continued to stay at the parties'
14 Lake Las Vegas residence until June 2010. Dennis initially would spend weekend time
15 in Las Vegas in what appeared to be varying degrees of frequency and regularity.¹⁴
16
17 Until 2010, it was customary for the parties to speak with each other daily (and
18
19

20
21 ¹³Whether Dennis intended to move to Nevada or actually did reside in Nevada is
22 debatable. The move to Las Vegas appears to coincide generally with the establishment of
23 Dennis' relationship with Nadya (although Dennis maintains that his relationship with Nadya
24 began in November 2004, nearly a year after the purchase of the Lake Las Vegas residence).
25 Gabrielle was at least led to believe that Nevada would be the place of the parties' marital
26 domicile. During the first year after the purchase of the Lake Las Vegas residence, Dennis
27 testified that he spent most weekends and a couple of days per week in Las Vegas. Further,
28 Dennis offered in his Brief that "*the parties* moved to Lake Las Vegas." Dennis' Brief 1. Thus,
this Court finds that Las Vegas was the place of the parties' marital domicile as of 2003.
Thereafter, and until June 2010, Dennis continued to spend weekend time in Las Vegas. After
July 2010, however, Dennis did not enter the Lake Las Vegas home again.

¹⁴Both parties offered testimony about "typical" weekends together in Nevada that
included details about their weekend traditions. These weekend traditions included routine
stops at Metro Pizza and their respective golf games (together and apart).

1
2 oftentimes multiple times each day). Nevertheless, Dennis maintained that the
3 relationship was emotionally and physically distant, devoid of any intimacy, and
4 broken. Between 2004 and 2010, the time spent together during holidays and special
5 occasions became less regular and more infrequent. Yet, Dennis continued to tell
6 Gabrielle that he loved her until approximately August 2013. Dennis explained that
7 he still did (and does) love Gabrielle, but that he did not want to be married to her.
8

9 In March 2010, Dennis initiated divorce proceedings with the filing of a
10 Complaint for Divorce (Mar. 10, 2010) in Case No. D-10-426578-D. Gabrielle
11 testified that Dennis told her that he found his attorney's name (James J. Jimmerson,
12 Esq.) in a telephone book. Dennis testified that he did not pursue a divorce at that
13 time because he was afraid Gabrielle would "go to DaVita" (suggesting that she would
14 compromise his employment).¹⁵ In July 2010, Gabrielle received a notice from the
15 Court about the pending divorce action initiated by Dennis.¹⁶ Dennis testified that,
16 when Gabrielle received this notice, she was incredibly emotional. Nevertheless,
17 Dennis admitted that Gabrielle never made a threat regarding his employment and that
18
19
20

21 ...

22
23 ¹⁵Notwithstanding the concerns expressed by Dennis about Gabrielle compromising his
24 employment, his messages to her during this time included sensitive information about DaVita,
25 including discussions about whether Dennis would stay with DaVita and information about
26 a "Qui Tam" lawsuit. Exhibit 18: BS 12436. When asked why he would share this type of
27 "inside information" with her if he truly was concerned about Gabrielle compromising his
employment, Dennis answered that he had no explanation and could only speculate that it was
because she was the only one he could talk to about it.

28 ¹⁶Because Gabrielle was never served with the Complaint for Divorce (Mar. 10, 2010),
it is unclear what notice she received from the Court. The record in Case No. D-10-426578
appears to suggest that a notice may have been generated by the court regarding the
reassignment of the case from Department O to Department D.

1
2 she never "used those words." Expressing feelings of remorse, Dennis declared to
3 Gabrielle by text message:

4 I don't know what to say. There are no words to undo what I did. I
5 think I need to take a few days and think long and hard about what I did
6 and what am I [sic] doing because I honestly don't know. . . . I wish I
7 could take this all back, I can't so rather th[a]n complicate things more
8 I need some thinking time. . . . I never meant for this to happen. Never.
9 I have been running from things so long and not dealing with them. I
10 should have come to you to see what you thought about our marriage.
11 Running to a lawyer was stupid. I have no idea what I was thinking
12 about. All I remember was a sick feeling in my stomach after the visit
13 knowing I had betrayed you. I asked for the process to just stop but it
14 fell through the cracks. . . I owe you some answers and I think a little
15 time away from home from work will force me to sit and think long
16 enough and figure out what the hell I'm doing. . . I'm sorry and I do
17 an[d] always will love you Gabrielle. As much as I am capable of loving
18 another person I love you that much and my heart broke over what I did
19 to you. . . I wish this day never happened. It has to be one of the wors[t]
20 days of your life and you do not deserve that at all. You deserve a better
21 life th[a]n I have given you the past 5 years. I won't ask for your
22 forgiveness.

23 Exhibit 25.

24 Dennis assured Gabrielle that the divorce action would be dismissed. Although
25 it does not appear that Dennis took any action himself to seek the dismissal of the
26 Complaint for Divorce (Mar. 10, 2010), the Court *sua sponte* dismissed the case by way
27 of Order of Dismissal Without Prejudice (Feb. 18, 2011). Dennis reflected on his lack
28 of "courage" to follow-through with the divorce at the time, stating that he took the
"chicken way out." He also admitted that he made a multitude of excuses or
rationalizations about the cause of the deterioration of their relationship. At one point,

1
2 Dennis told Gabrielle that he had questions about his sexual orientation.¹⁷ Dennis'
3 strategy was to persuade Gabrielle to recognize on her own that their relationship was
4 over, even to the point of engaging in marriage counseling under the false pretense of
5 working on their relationship. Specifically, Dennis testified that:
6

7 I actually used that [counseling] as a way of getting Gabrielle to come to
8 the conclusion on her own that we had a marriage that was broken. I was
9 having a hard time saying the words to her that I wanted a divorce. And
10 I was hoping that through counseling and not returning to the marital
11 house any time after that one day, and telling her I had questions of my
12 sexuality, that she would conclude this was a broken marriage and would
13 make the decision to divorce.

14 February 24, 2016 Video: 14:33.

15 Dennis summarized that he pursued counseling for three primary purposes: (1)
16 he believed that counseling would be beneficial for Gabrielle; (2) he desired to have a
17 trained professional help Gabrielle understand that the marriage was irreconcilable, and
18 thus to encourage Gabrielle to make the decision to pursue a divorce;¹⁸ and (3) he
19 wanted to avoid any "scandals" arising at work. Dennis admitted that he deceived
20 Gabrielle for years. Gabrielle at times expressed happiness to see progress in their
21 counseling, unaware that the counseling was a complete rouse. Dennis made promises
22

23 ¹⁷Dennis also fabricated a story about being admitted into a residential treatment center.
24 He sent Gabrielle text messages wherein he claimed that he was at an Oregon residential
25 treatment center where he was diagnosed with sleep apnea. None of this was true and Dennis
26 admitted as much. See Exhibit 20: BS 12244 - 12248.

27 ¹⁸Rather than working to repair their marriage, Dennis sought to have Dr. Michelle
28 Gravelly recognize that the marriage was broken and to have Dr. Gravelly convince Gabrielle to
pursue a divorce. In a March 9, 2011 email, Dennis discussed setting goals for their
relationship and getting back together. His goal was to stay in counseling long enough so that
Dr. Gravelly could help Gabrielle see the inevitability of divorce. Dennis truthfully had no
intention of following through on these goals. He saw the marriage as broken and it was not
going to be fixed. February 24, 2016 Video: 14:59.

1
2 in email communications to return home. Exhibit 19: BS 12529, 12534. At one point,
3 he told her: "I'm not stalling hoping I force you into asking for a divorce. I'm certain
4 of that." At trial, however, he admitted the contrary – that he indeed desired to
5 convince her to pursue a divorce all along.
6

7 There were occasions when Gabrielle also made statements in emails to Dennis
8 that suggest that she also perceived that the marriage was failing, such as: "you're
9 living a separate life," and "I don't know who you are." Exhibit 23: BS12151; 12174.
10 Indeed, there were several examples of terse email and text exchanges between the
11 parties dating back to 2010, many of which emanated from Gabrielle.¹⁹ See e.g.,
12 Exhibit 18.
13

14 In summary, it appears uncontroverted that, after 2010, the parties did not share
15 any holidays or special occasions together. Further, after filing the prior Complaint for
16 Divorce (Mar. 10, 2010), Dennis did not physically do anything to get back together
17
18

19
20 ¹⁹That Gabrielle felt and expressed frustration and hopelessness about their relationship
is exemplified by 2011 communications when she declared:

21 Are you trying to get me to the point where I throw my hands up and walk
22 away? Only you know that for sure – I can only tell you how it feels. But as
23 I've said before, I think we're worth more than that – I'm worth more than that.

24 * * * *

25 [I]t's hard for me to imagine you can be such a high power decision maker, and
26 deal with the interpersonal issues you've described over these last months, and
27 yet keep doing what you're doing with us and not seeing ahead to the outcomes.
28 Or are you continuing to set this up to fail, setting me up to get so disgusted
that I walk away from it so you don't have to do it first, like you tried to last
year but felt "sick to your stomach"?

Exhibit 23 (emails dated March 26, 2011 and March 13, 2011).

1
2 with Gabrielle and their relationship was devoid of any physical intimacy. Moreover,
3 communications were almost exclusively limited to email and text messages after that
4 time. The record demonstrates that Dennis perceived that the relationship was broken
5 much earlier than 2010. However, Gabrielle did not share that same perception. Up
6 until that time, the parties continued to share time together and affectionately
7 communicated with each other on a regular and routine basis. Nevertheless, the record
8 supports a finding that the irretrievable breakdown of the parties' marriage began with
9 Dennis' affair with Nadya in 2004 and continued through the initiation and pendency
10 of these proceedings. Indeed, the maintenance of a secret affair in this case is
11 fundamentally irreconcilable with a harmonious marital relationship.
12

13
14 Dennis offered that there was no financial benefit overall to him to remain
15 married. Following the purchase of the Lake Las Vegas residence in 2003, their
16 relationship became more geographically and emotionally distant. At that time, Dennis
17 estimated the parties' net worth to be \$750,000. In 2010, he estimated that their net
18 worth had increased to \$4,000,000.²⁰ At the time of the divorce in 2016, the parties'
19 net worth appears to exceed \$40,000,000. Dennis referred to this delay as the cost of
20 his inability to have a "tough conversation" with Gabrielle about divorce. Although the
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26 ²⁰Considering the stock options he had received at DaVita, the parties' net worth in
27 2010 appears to be more than \$4,000,000. In fact, in a November 23, 2010 email, Dennis
28 referenced his receipt of 1,000,000 stock options with an anticipated \$18,000,000 in profit
over the next few years. Exhibit 23. Even had Dennis pursued the prior divorce action, he had
not served the Complaint for Divorce (Mar. 10, 2010) as of July 2010. Thus, it is highly
unlikely that the divorce would have been finalized prior to 2011.

1
2 timing of their incompatibility may be in dispute, it is uncontroverted at this time that
3 the parties are incompatible in marriage and there is no possibility of reconciliation.

4 (3) Nadya — *Honest Deceit*

5
6 During trial, Dennis appeared to candidly discuss his relationship with Nadya,
7 which, in and of itself, is seemingly oxymoronic. Dennis testified that he met Nadya
8 in November 2004. Nadya did not own any assets of material value at the time that
9 they met.²¹ By way of a green card, she worked as a hostess at a restaurant. Since at
10 least June 2005, however, Nadya earned no income and did not contribute financially
11 to her personal expenses. Instead, Dennis paid for her food, clothing (shopping at
12 various stores), cars (the first car being a Porsche²² according to Nadya), a maid, spa
13 services, a nanny (who was paid approximately \$400 per week), all household and
14 maintenance expenses, and additional spending money (generally \$400 in cash each
15 week and an additional \$700 to \$800 by check each week). Dennis also paid for
16 Nadya to take college classes (paying approximately \$7,000), for an investment in Moe
17 LLC ("he would trying to help me to get in the business with those people, and it
18 didn't work"), payment of Nadya's dental and medical expenses (including cosmetic
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20
21
22
23

24 ²¹Nadya recalled in her deposition that she had money in savings of approximately
25 \$20,000. Deposition 71:5. However, she added that at least a portion of this money was sent
to her mother. Deposition 76:13.

26 ²²According to Nadya, her vehicles included a 2015 Bentley GTC, BMW X5, GL
27 Mercedes SUV, and a Cadillac SRX. Although Dennis testified that he routinely owned
28 multiple vehicles at any given time (and it does not appear that Nadya was the registered owner
of the aforementioned vehicles), the credible evidence supports a finding that certain vehicles
were intended primarily for Nadya's use and benefit. Whether Dennis drove any of these
vehicles does not change the finding that these expenditures were for Nadya's benefit.

1 surgery), money sent to Nadya's family in the Ukraine, and all travel expenses.²³
2
3 Initially, Nadya used a credit card in Dennis' name to pay her expenses. Dennis later
4 gave Nadya her own credit and debit cards to use for her expenses.²⁴ When Nadya and
5 Dennis were together, however, Dennis would pay all expenses on his cards. In short,
6 Nadya relied *entirely* on Dennis for her *entire* support.²⁵ According to Nadya, Dennis
7 promised to take care of her for the rest of her life.²⁶ Deposition: 145:15-22.
8

9 At the beginning of his relationship with Nadya, Dennis testified that he did not
10 disclose to Nadya that he was married. In fact, Dennis and Nadya traveled to Cancun,
11 Mexico, where they participated in a "civil ceremony" on June 3, 2005 on the beach
12
13

14
15 ²³Nadya enjoyed trips to Las Vegas, San Francisco, New York, Arizona, Paris,
16 Amsterdam, Spain, Portugal, Laguna Beach, Palm Springs, Newport Beach and San Diego. In
17 addition to paying all travel expenses, Dennis would give Nadya "like \$1,000 for shopping."
18 Deposition: 167:5.

19 ²⁴With the exception of one occasion when Nadya gave her credit card to the nanny to
20 purchase groceries, Nadya testified that all charges on her credit card were her charges.
21 Deposition: 130:3-15.

22 ²⁵Nadya testified that she stopped filing income tax returns "when Dennis start
23 completely take care of me, so I stopped because he was taking care of us." Deposition: 33:7-9.

24 ²⁶As Dennis' income began to skyrocket, he opened an investment account at UBS.
25 Until recently, Gabrielle was not named on his UBS financial accounts (where his bonus
26 income and stock option income were deposited). Dennis admitted that, at least in part, he
27 did not want Gabrielle to see these accounts because he did not want her to become aware of
28 the money he was spending on Nadya and his children. Thus, Dennis deposited his regular
paychecks into the parties' joint Bank of America account (no. 6446), but deposited his
bonuses into his UBS account. Although Dennis now argues that there "is no evidence that
Dennis tried to hide any asset from Gabrielle in an attempt to change the amount of money
that Gabrielle is entitled to" (Dennis' Brief 16), the record reflects that he actively concealed
the existence of the UBS account from Gabrielle. The record also reflects that he actively
concealed the existence of other assets (including real property and a yacht) to the point of
titling assets in the name of family members. Although these assets are indeed now known and
subject to division, Dennis actively concealed the existence of assets until after this litigation
was initiated.

1
2 that at least appeared to have marriage overtones.²⁷ Although he could not recall when,
3 Dennis maintained that at some point in time he told Nadya that he was married.
4 Nadya testified that Dennis "confessed" to her that he was married to Gabrielle
5 approximately "a month after we [Dennis and Nadya] get married." Deposition:
6 14:20-15:18.
7

8 In approximately June 2005, Dennis moved Nadya into the 1809 Overland
9 Avenue condominium that he owned. In so doing, he acknowledged that he
10 misrepresented to Gabrielle that a colleague at DaVita owned the property, and that
11 he was living with the son of the property owner. During his testimony, Dennis
12 apologized for his deceit.²⁸ He concealed his relationship out of concern that someone
13 at DaVita would find out about it. Notwithstanding these alleged concerns, Dennis
14 continued to have his assistant at DaVita (Pat Murphy), book travel for Nadya and
15 Dennis. In June 2013, Dennis purchased the residence and real property located at
16 9716 Oak Pass Road, Beverly Hills, California (hereinafter referred to as the "Oak Pass
17 property") for Nadya and his children.
18
19
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22
23 ²⁷Dennis was adamant that the ceremony was not a "legal" marriage because he and
24 Nadya had not procured an appropriate license or submitted to the procedures required for a
25 marriage in Mexico (*not to mention that he was already married*). As noted previously, however,
Nadya routinely uses the last name Kogod on government documents such as her passport and
she regularly refers to Dennis as her "husband."

26 ²⁸Dennis similarly started a narrative with Gabrielle about his subsequent purchase of
27 the Edinburgh property from someone involved in the "Russian Mafia." Thus, when Gabrielle
28 discovered bank statements containing references to "Nadya," the explanation fit perfectly with
the "Russian Mafia" narrative and did not create any immediate suspicions by Gabrielle. In
reality, the Edinburgh home was purchased in 2010 for Dennis, Nadya and his children.
Dennis had told Gabrielle that he was living in Denver, Colorado at the time.

1
2 Unbeknownst to Gabrielle at the time, Dennis fathered twin daughters (Denise
3 and Nika) with Nadya. His twin daughters were born on December 28, 2007.²⁹ The
4 conception and resulting birth of Dennis' children was no accident. Dennis and Nadya
5 were intent on having children even to the point of pursuing *in vitro* fertilization. The
6 cost of *in vitro* fertilization was \$13,000 per procedure. Dennis initially testified that
7 he could not recall how many procedures he and Nadya pursued, but he later testified
8 that he believed it was two occasions. Dennis was present for the birth of his and
9 Nadya's twin daughters, after which he traveled to Brooklyn, New York, to celebrate
10 the holidays with Gabrielle. Dennis concealed the birth of his children from both
11 Gabrielle and his co-workers at DaVita. In fact, because his co-workers knew that he
12 and Gabrielle did not have minor children together, Dennis told his co-workers that his
13 twin daughters were actually grandchildren that he had adopted.

14
15
16
17 Dennis also paid for himself and Nadya to participate in counseling to work on
18 issues in their relationship. They separated in approximately January or February
19 2015. Nadya and his children continue to reside in the Oak Pass property. Nadya
20 attributed their separation to Dennis' affair with another woman, Jennifer Crute
21

22
23 ²⁹The parties dispute when Gabrielle had actual knowledge of the existence of Dennis'
24 twin daughters. As discussed later in this Decree, Gabrielle claimed that she learned of Dennis'
25 children at the Case Management Conference on February 3, 2015. Dennis offered that
26 Gabrielle knew (or at least should have known) in 2014. In support of his claim, Dennis cited
27 a September 2014 email from Gabrielle's former counsel referencing a 2013 DaVita awards
28 dinner in which Dennis discussed the challenges of having small children. According to
Dennis, the email from Gabrielle's counsel stated: "I always suspected there was another
family. Now we have proof." Although it appears that Gabrielle should have known about
Dennis' children, it does not appear to be disputed that Dennis did not personally provide
Gabrielle with this information (or this admission) until the aforementioned Case Management
Conference on February 3, 2015.

1
2 Steiner ("Jennifer"). "I was trying to save family and try to accept that fact, but sorry
3 I didn't grab more money, and so I didn't to go through what Gabriella was going
4 through." Deposition: 57: 5-8. Ironically, Nadya personally met Jennifer when Nadya
5 showed up at a counselor's office where Dennis was engaged in counseling with Jennifer
6 to work on their (Dennis and Jennifer's) relationship.
7

8 (4) Jennifer – *the other "other" woman*
9

10 During his extra-marital relationship with Nadya, Dennis started an extra-
11 marital relationship with Jennifer. Dennis first met Jennifer when she interviewed with
12 him for a position at DaVita. Their intimate relationship did not begin, however, until
13 September 19, 2014, after Jennifer had left DaVita. As with his alleged concerns
14 regarding any revelation of his relationship with Nadya, Dennis alleged that he worried
15 about the exposure of his relationship with Jennifer in regards to how it might impact
16 his employment. Dennis also testified that Jennifer was concerned about her husband
17 and her children learning of her relationship with Dennis.
18

19 Dennis sought to prevent, or at least limit, Jennifer's exposure to a deposition
20 in this matter. He filed his Motion to Stay Service of Subpoena Duces Tecum and
21 Notice of Deposition and for a Protective Order Prohibiting or Limiting the Deposition
22 of Jennifer Crute Steiner (Jun. 11, 2015). Therein, Dennis represented to the Court
23 that Jennifer threatened to "report her relationship with Dennis to his superiors and
24 seek to have him terminated . . . if she is subpoenaed for deposition." Affidavit of
25 James J. Jimmerson, Esq., ¶ 15. Further, Dennis submitted that "the potential
26 deposition testimony of Jennifer could result in loss of her employment" and "Jennifer's
27
28

1
2 emotional response during her deposition could present a harm [to] Dennis." *Id.*, ¶ 16.

3 Finally, Dennis alleged that:

4 If Jennifer's family, including her husband, were to become aware of this
5 relationship, by way of the service of the Notice of Deposition and
6 Subpoena upon Jennifer, it would have a disastrous effect on her marriage
7 and her minor children. . . . That service of the same could have a
8 catastrophic effect on Dennis' gainful employment, which has provided
9 not only Dennis, but also Gabrielle, with the above-average lifestyle to
10 which they have become accustomed. . . . [S]ervice of the Notice of
11 Deposition and Subpoena Duces Tecum upon Jennifer could destroy her
marriage and devastate her minor children, as well as causing Dennis to
be terminated from his employment, which would prove to be an
unnecessary and undue burden for all parties.

12 *Id.* ¶¶ 18 – 20. Notwithstanding Dennis' representations³⁰ to the contrary (in an effort
13 to prevent the deposition from taking place), Jennifer denied ever telling Dennis that
14 a deposition would compromise her employment. Further, Jennifer denied that she
15 expressed any concerns about her husband learning of their relationship. Finally,
16 Jennifer denied that she threatened Dennis' employment with DaVita over the prospect
17 of her deposition being taken. Instead, Jennifer simply expressed to Dennis that she
18 was not interested in having her deposition taken. Thus, Dennis went to work to
19 create a narrative to prevent Jennifer's deposition.³¹ Ultimately, Dennis' request to
20 prevent or to limit the deposition was denied, but a protocol was arranged to minimize
21
22

23
24 ³⁰Dennis did not personally sign an Affidavit in support of his Motion to Stay Service
25 of Subpoena Duces Tecum and Notice of Deposition and for a Protective Order Prohibiting
26 or Limiting the Deposition of Jennifer Crute Steiner (Jun. 11, 2015). Instead, the Motion was
supported by an Affidavit signed by counsel on his behalf.

27 ³¹Although her testimony was in deposition form, Jennifer's testimony appeared to be
28 credible. To be clear, Jennifer did not testify as a "bitter ex-girlfriend." Rather, she
acknowledged in her deposition that she still saw a future in her relationship with Dennis. In
fact, they had spent time together during the week prior to her deposition and she and Dennis
have had ongoing discussions about a possible engagement.

1
2 Jennifer's exposure to any potential embarrassment (which did not appear to be a
3 concern to Jennifer at any level).

4 Jennifer and Dennis frequently traveled together and, although Dennis did not
5 gift her any money, he paid for the expenses associated with their trips. Their travel
6 included trips on the DaVita jet, a luxury Gabrielle never enjoyed. Jennifer also
7 testified about her understanding that Dennis had a ring made for her (intended as an
8 engagement ring), but that he had not given it to her. Finally, Dennis also paid for
9 Jennifer's legal fees associated with her deposition.
10
11

12 (5) Summary of the Irretrievable Breakdown

13 Overall, it appears that, beginning in 2003, with Gabrielle tucked away at a
14 relatively safe distance in Nevada, Dennis orchestrated a calculated plan to deceive and
15 emotionally manipulate Gabrielle. As previously noted, it appears that the parties'
16 marriage went through an irretrievable or irreconcilable breakdown beginning in 2004
17 with the initiation of his secret affair with Nadya. Although Gabrielle may have
18 sincerely believed that their relationship was not broken, Dennis' actions support a
19 finding that their marriage was undergoing an irretrievable breakdown with the
20 maintenance of his affair. As noted previously, Dennis' expenditure of community
21 funds on a girlfriend and children of his affair were irreconcilable with the maintenance
22 of the marital relationship.
23
24
25

26 II. PROCEDURAL HISTORY

27 On December 13, 2013, Gabrielle filed her Complaint for Divorce. Nearly one
28 year later, Dennis filed his Answer to Complaint for Divorce and Counterclaim (Nov.

1
2 24, 2014), which was followed by Plaintiff's Reply to Counterclaim for Divorce (Dec.
3 5, 2014). After receiving this case by way of Notice of Department Reassignment
4 (Dec. 19, 2014),³² this Court issued its Order Setting NRCP 16.2 Case Management
5 Conference (Jan. 2, 2015). The Case Management Conference was scheduled for
6 February 3, 2015, which was the first hearing held in this matter. Including the Case
7 Management Conference, nine hearings were held before this Court *prior* to the
8 commencement of trial.³³ Including the July 13, 2016 hearing, six additional hearings
9 (comprised primarily of evidentiary hearings) have been held.
10
11

12 The hearings leading up to trial are summarized as follows:

13 (1) Case Management Conference on February 3, 2015:

14 At the initial Case Management Conference, Dennis³⁴ offered the following with
15 respect to his approach to the case:
16

17 Dennis fathered two children, twins, during this marriage with another
18 woman and had maintained essentially a separate life that had not been
19 disclosed to Mrs. Kogod until approximately May of last year, give or
20 take. She may have known before, but I'm saying in terms of what we

21 ³²At the time this matter was filed in 2013, the case was originally assigned to
22 Department C of the Eighth Judicial District Court. The matter was reassigned to Department
23 G by way of a peremptory challenge. A second peremptory challenge led to the assignment of
24 this matter to this Department. As is not uncommon in cases in which a peremptory challenge
is filed, multiple hearings were held and significant time was spent adjudicating the issues.
Such cases tend to be more complex and time consuming.

25 ³³Hearings *before this Court* were held on the following dates: February 3, 2015, March
26 17, 2015, May 4, 2015, June 1, 2015, July 21, 2015, September 8, 2015, October 14, 2015,
27 November 18, 2015, and February 17, 2016. Additional hearings were held before the
Discovery Commissioner.

28 ³⁴This Court recognizes that Dennis was represented by different counsel at the initial
four hearings. Regardless, his counsel of record at the time is his mouthpiece to the Court (as
is Gabrielle's counsel).

1
2 understand she knew. There is, therefore, going to be a claim for waste as
3 an issue. . . . *We're going to take that issue away from her by providing an*
4 *accounting, an estimate and an offer that will be more than the dollars*
5 *spent, so that one-half of which will be awarded to Mrs. Kogod to at least*
6 *remove the financial sting or insult of Dennis having this relationship.*
Dennis is embarrassed by this certainly but he is not embarrassed about
having two wonderful children, age seven.³⁵

7 February 3, 2015 Video: 11:05 (emphasis added).

8 Although Gabrielle acknowledged that she suspected the existence of another
9 family, she responded:

10 Mrs. Kogod didn't know about the fathering of two children until about
11 30 seconds ago. . . . Though she suspected it because there were
12 statements about it and there were things online about it, but that's when
13 she found out or it was confirmed to her. Mr. Kogod never did that.

14 *Id.* at 11:09.

15 Both parties requested that this Court hold monthly status hearings on the case
16 to keep the matter on track. This Court noted that it did not need to "wade" into the
17 issue of when Gabrielle actually learned about Dennis' children. Although Dennis'
18 expenditures on his separate family are an issue from an economic standpoint, this
19 Court did not want the alleged shock of this information to interfere with the ability
20 of the parties to evaluate the "numbers" associated with the division of assets and the
21 issue of alimony.
22
23

24 . . .

25 . . .
26

27 ³⁵Dennis' proclamation that he was "going to take that issue away from her by providing
28 an accounting, an estimate, and an offer that will be more than the dollars spent" *may* have
been conveyed as a moral obligation he owed to Gabrielle. As discussed herein, Dennis'
responsibility to provide such an accounting was his legal obligation.

1
2 (2) Continued Case Management Conference on March 17, 2015

3 Dennis reiterated that, on the issue of any community waste, he was in the
4 "process of providing a detailed schedule of that and then we're going to make an offer
5 to resolve that and take that issue off the table." March 17, 2015 Video: 11:34.
6

7 Dennis Kogod is certainly, while errant in his behavior, also decent
8 enough to say that *I'm pleased to make the appropriate recompense to at*
9 *least financially assuage the insult that he has caused his wife for which*
he is apologetic and remorseful.

10 *Id.* at 11:47 (emphasis added).

11 (3) Continued Case Management Conference on May 4, 2015

12 This Court reviewed the parties' complex litigation plans. Once again, both
13 parties requested periodic hearings to monitor the progress of the case. Trial dates were
14 scheduled, but Gabrielle requested that the trial be continued. This Court invited the
15 involvement of experts at the periodic status hearings for the Court to gain an
16 appreciation of where the parties were at and what issues remained outstanding. This
17 Court noted:
18
19

20 A lot of this boils down to calculations and numbers. There may be
21 perhaps some disagreements and I have to make the call in terms of a
22 legal and factual determination as to whether or not something is
23 construed as waste . . . To touch on that issue a bit, I know there was
24 some discussion, you know, how you could construe money being spent
25 on children as waste. Sounds like a misnomer. The bottom line for me
26 is if there was money that was taken from the community, half of which
belonged to the Plaintiff and used for a purpose that effectively did not
benefit the marital community, that should be recaptured. But it is
inherently a matter of calculating what that number is.

27 May 4, 2015 Video: 9:25.
28

1
2 Gabrielle identified a forensic accounting expert. Despite Dennis' assurances
3 that he was going to take the lead on determining the amount of monies diverted from
4 the marital community, Dennis had not yet designated an accounting expert. Dennis
5 indicated that he was not certain that an expert would be necessary.
6

7 This Court again noted its desire to diffuse the emotion of the case and
8 reiterated that the case becomes essentially a "numbers game." It was clear to the
9 Court that a forensic accounting would be beneficial to the Court. Although the
10 existing law removed consideration of the "merits" of the parties, this Court did have
11 the statutory authority to analyze and consider the money that was diverted from the
12 marital community as part of the division of assets pursuant to NRS 125.150.
13

14 (4) Status Hearing on June 1, 2015
15

16 Dennis notified the Court that he was selling his yacht for \$1,050,000, less the
17 commission. He also stated that he was buying a condominium in California for
18 \$3,000,000. He also informed the Court that he was selling the Oak Pass property.
19 This Court again reiterated that money spent on children that were born of his secret
20 affair would be considered waste. At the same time, this Court noted that it did not
21 intend to scrutinize "lifestyle" issues (i.e., comparing the parties' spending practices)
22 and that the Court was not inclined to micro-manage the spending of the parties. This
23 Court offered:
24
25

26 I just want to be clear that . . . the time we spend at trial should really be
27 confined to any disputes regarding those specific items that the parties do
28 not [agree] constitutes [sic] dissipation or waste or spending money on
this other relationship and these other children.

1
2 * * * *

3 What I envision seeing is ultimately a . . . there are probably going to be
4 certain items that are stipulated to. Mr. Kogod through Mr. Jimmerson
5 has already represented that. That there's going to be an amount that is
6 essentially paid to the Plaintiff to reimburse for amounts spent on
7 children not of this marriage and on the girlfriend.

8 * * * *

9 The case law suggests that in doing so you look at when the marriage
10 became irretrievably broken. This is a unique situation where the
11 Plaintiff indicated some degree of surprise in learning about the
12 relationship and even the existence of two children.

13 June 1, 2015 Video: 11:29, 11:37, and 11:40.

14 Despite claiming that Gabrielle was on a "fishing expedition," Dennis still had
15 not retained a forensic accounting expert. Although Dennis had not retained an expert,
16 this Court noted that it anticipated he would do so. This Court also anticipated seeing
17 a "narrowed-down list" of expenditures in dispute. For the first time, this Court
18 referenced the ability of either party to make an offer to allow entry of decree of
19 divorce pursuant to NRS 125.141.

20 Dennis argued that there should be limits to the forensic accounting
21 investigative excursion. In response, *and with the understanding and expectation that Dennis*
22 *would pursue an accounting as he had promised*, this Court stated:

23
24 I would not put that burden on the Defendant to answer that type of an
25 interrogatory. That's not what I'm anticipating though. I expect, like I
26 said, a refined list of . . . and I don't even see it being, you know, "What
27 did you spend this \$150 or 500," that's not what we're getting into.

28 June 1, 2015 Video: 11:53.

1
2 Gabrielle offered:

3 There might be a category of expenses if there's anything like that, but I
4 even doubt that. Usually what we do in these cases, and again this is
5 something that we've done many times, is we set an amount that's
6 significant based on the financial resources of the parties. That's the type
of list you're going to get.

7 *Id.*

8 In an effort to avoid spending time on every "nickel and dime" of the parties, but
9 still under the impression that Dennis would do what he had originally promised (and
10 was legally obligated) to do, this Court discussed the establishment of a "baseline"
11 amount for forensic accounting purposes. In discussing such a "baseline" of
12 expenditures, Gabrielle suggested that it was \$5,000, but clarified that there might be
13 a "series of expenditures that are less than that" that Gabrielle was "developing." *Id.*
14 at 11:54. Contrary to Dennis' claim, this Court did not indicate "that it was only
15 concerned with expenditures in excess of \$5,000.00 per transaction." (Dennis' Brief 14)
16 Nevertheless, this Court did express concern about scrutinizing every "nickel and
17 dime." Further, these discussions were premised on the understanding that Dennis
18 would be providing a thorough accounting as he had promised to do. This Court also
19 drew a distinction between expenditures on Dennis' girlfriend(s) and children versus
20 Dennis' family members. To this end, this Court directed that the analysis of
21 expenditures should be separated by category between his girlfriend(s) and children and
22 other family members.
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2 (5) Status Hearing on July 21, 2015

3 Dennis argued that this Court should not lose sight of the overall size of the
4 marital estate. Dennis pointed out that he believed that the amount of money spent
5 on his girlfriend and children was a relatively small amount in comparison to the total
6 value of the marital estate. Dennis still had not designated a forensic accounting
7 expert. This Court again reiterated its philosophical distinction between expenditures
8 on Dennis' girlfriend(s) as opposed to expenditures on other family members. Again
9 encouraging the parties to utilize the ability to make an offer to allow entry of decree,
10 this Court stated:
11
12

13 I think something for both sides to consider at some point . . .
14 understanding the scope of the community estate that we're dealing with
15 . . . it may behoove both sides to start making offers to allow entry of
16 decree, offers of judgment if you will. . . . I would expect with the counsel
17 that are representing both clients that you're going to be making those
18 offers.

19 July 21, 2015 Video: 11:35.

20 (6) Status Hearing on September 9, 2015

21 The parties stated that they had reached a stipulated settlement on the sale of
22 the yacht. This Court also learned that Nadya might be pursuing support from Dennis
23 in a legal action initiated in California. This Court once again inquired about whether
24 there had been any offers to allow entry of decree. Neither party had made such an
25 offer. This Court noted that it looked forward to "getting numbers" and to the parties
26 exchanging the offers that this Court had now repeatedly encouraged.
27
28 . . .

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2 (7) Status Hearing on October 14, 2015, and hearing on Dennis' Motion for
3 an Order to Show Cause to Hold Gabrielle Cioffi-Kogod in Contempt for
4 Failure to Comply with the Discovery Commissioners Recommendation
5 Regarding Service of Jennifer Curte Steiner and for Attorney's Fees and
6 Costs (Sep. 14, 2015)

7 At the parties' request, this Court rescheduled the trial from December 2015 to
8 February 2016. Again, this Court inquired about whether any offers to allow entry of
9 decree had been exchanged. Dennis responded that he was not yet in a position to
10 make such an offer. This Court expressed that it behooved Dennis to make such an
11 offer, noting that Dennis was in the best possible position to know what that number
12 should be. The following exchange then took place:

13 The Court: In a case that is now two years old almost, I go back to
14 what I said earlier: Mr. Kogod's a businessman, very
15 successful and that's why I think at some point he's gotta
16 be the one to make an offer to the Plaintiff.

17 Mr. Marks: Okay, that's fine, it would be very unusual in civil normal
18 practice, but I'll tell him.

19 The Court: No, all I'm saying, no, the statutes are very clear. The
20 statutes allow either party, and I would expect at the time
21 of trial that *both parties* are going to come in with offers to
22 allow entry of decree based on all of the information you've
23 gathered because that's going to be your vehicle on both
24 sides to ask me to award attorney's fees on your side.

25 September 9, 2015 Video: 11:47 (emphasis added).

26 (8) Hearing on November 18, 2015 on Plaintiff's Motion for Leave to File
27 Amended Complaint (Oct. 13, 2015)

28 This Court denied Gabrielle's Motion for Leave to File Amended Complaint
(Oct. 13, 2015). Although this Court recognized that tort claims may be plead, this
Court did not find that such relief was appropriate at this juncture of the case (three

1 months prior to the commencement of trial). Gabrielle's Motion for Leave to File
2 Amended Complaint (Oct. 13, 2015) was filed well beyond the May 5, 2015 deadline
3 originally imposed by this Court's Case and Trial Management Order (Mar. 17, 2015).
4
5 See *Nutton v. Sunset Station, Inc.*, 131 Nev. Adv. Op. 34, 357 P.3d 966 (2015). If such
6 an amendment had been allowed, either party would have been entitled to impanel a
7 jury. Such relief would have increased the potential likelihood of yet another
8 continuance of the trial (in a case that was nearly two years old). Further, this Court
9 found that Gabrielle's claims for relief were adequately protected by existing statutes.
10
11

- 12 (9) Hearing on February 17, 2016 on Gabrielle's Motion for the Issuance of
13 an Order to Show Cause Why Defendant Should Not Be Held in
14 Contempt for His Multiple Violations of the Joint Preliminary
15 Injunction; Plaintiff's Motion for an Order Limiting the Access and
16 Payments from Community Accounts; Plaintiff's Motion for Sanctions,
Attorney's Fees and Costs (Jan. 19, 2016) (hereinafter referred to as
Gabrielle's "Contempt Motion")

17 Approximately one week prior to the commencement of trial, a hearing was held
18 on Gabrielle's Contempt Motion. Dennis argued that Gabrielle's Contempt Motion
19 failed to include a sufficient affidavit pursuant to *Awad v. Wright*, 106 Nev. 407, 794
20 P.2d 713 (1990), abrogated on different grounds by *Pengilly v. Rancho Sante Fe*
21 *Homeowners Ass'n*, 116 Nev. 646, 5 P.3d 569 (2000). Dennis also argued that,
22 notwithstanding Gabrielle's complaints about Dennis' spending, the marital estate
23 continued to grow. This Court found that the provisions of the Joint Preliminary
24 Injunction would be treated and enforced as a court order. EDCR 5.85(b). Gabrielle's
25 Contempt Motion does indeed fail to include a sufficient affidavit from Gabrielle
26 pursuant to *Awad*. Nevertheless, the remedy for this Court with regard to the issue of
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1
2 contempt is to allocate to Dennis those expenditures that Gabrielle has identified as
3 part of the division of assets and to impose sanctions pursuant to EDCR 7.60. The
4 analysis of such sanctions is discussed later in this Decree.

5
6 One final time, this Court asked whether either party had made an offer to allow
7 entry of decree pursuant to NRS 125.141. Each party again answered the Court's
8 inquiry in the negative. After nine hearings, this Court was: (1) left to wonder
9 whether the prior status hearings that the Court assented to setting had served any
10 materially valuable purpose; and (2) exasperated that, notwithstanding this Court's
11 repeated efforts to promote a resolution and to encourage the parties to rely on
12 statutory provisions for the purpose of recovering attorney's fees, this Court's efforts
13 were essentially ignored by both parties. Each party's failure to heed this Court's
14 directive to make an offer pursuant to NRS 125.141 makes it highly unlikely that this
15 Court will find or conclude in post-adjudicatory proceedings that either party is a
16 "prevailing party" under the terms of this Decree.
17
18

19
20 III. DIVISION OF ASSETS AND DEBTS

21 (A) NEVADA LAW RE: COMMUNITY PROPERTY

22 NRS 123.220 provides that:

23
24 All property, other than that stated in NRS 123.130,³⁶ acquired after
25 marriage by either husband or wife, or both, is community property
26 unless otherwise provided by:

27
28 ³⁶NRS 123.130 provides that all property of a spouse "owned by her [or him] before
marriage; and that acquired by her [or him] afterwards by gift, bequest, devise, descent or by
an award for personal injury damages, with the rents, issues and profits thereof, is her [or his]
separate property."

1. An agreement in writing between the spouses.
2. A decree of separate maintenance issued by a court of competent jurisdiction.
3. NRS 123.190.
4. A decree issued or agreement in writing entered pursuant to NRS 123.259.

NRS 123.225 adds, in pertinent part, that "[t]he respective interests of the husband and wife in community property during continuance of the marriage relation are present, existing and equal interests, subject to the provisions of NRS 123.230." Consistent with these statutory provisions, the Nevada Supreme Court has declared that "the statutes clearly mandate that all property acquired by the parties until the formal dissolution of the marriage is community property." *Forrest v. Forrest*, 99 Nev. 602, 607, 668 P.2d 275, 279 (1983). Thus, the physical separation of the parties does not terminate the marital community for purposes of property acquisition.

Further, NRS 123.230 provides, in pertinent part, as follows:

2. Neither spouse may make a gift of community property without the express or implied consent of the other.

3. Neither spouse may sell, convey or encumber the community real property unless both join in the execution of the deed or other instrument by which the real property is sold, conveyed or encumbered, and the deed or other instrument must be acknowledged by both.

4. Neither spouse may purchase or contract to purchase community real property unless both join in the transaction of purchase or in the execution of the contract to purchase.

5. Neither spouse may create a security interest, other than a purchase-money security interest as defined in NRS 104.9103, in, or sell, community household goods, furnishings or appliances unless both join in executing the security agreement or contract of sale, if any.

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2 Finally, with respect to the division of community property, NRS 125.150(1)(b),
3 provides that, in granting a divorce, the court:

4 Shall, to the extent practicable, make an equal disposition of the
5 community property of the parties, except that the court may make an
6 unequal disposition of the community property in such proportions as it
7 deems just if the court finds a compelling reason to do so and sets forth
in writing the reasons for making the unequal disposition.

8 (B) CIOFFI-KOGOD MARITAL BALANCE SHEET
9

10 Attached hereto as Exhibit 1 is this Court's Marital Balance Sheet setting forth
11 this Court's findings regarding the value of assets and debts listed therein. The Marital
12 Balance Sheet also sets forth this Court's division of assets and debts pursuant to NRS
13 125.150. For purposes of valuation and division, this Court used February 26, 2016
14 (the final regular trial date) to define the end of the marital community, which was the
15 date on which the Court orally pronounced the parties divorced.³⁷ With respect to the
16 value of assets and debts and the division thereof, this Court makes the following
17 additional findings and conclusions:
18

19
20 (1) The only assets to which the parties did not either stipulate to the value
21 or where there is a material difference in value in their Closing Briefs are the following:

22 (a) Radiology Partners investment (Gabrielle's value: \$655,000;
23 Dennis' value: \$150,000);

24 (b) The Oak Pass property (Gabrielle's value: \$6,400,000; Dennis'
25 value: \$5,780,000);
26 ...
27

28

³⁷Statements with updated account values were admitted into the record at the July 13,
2016 hearing.

- 1
2 (c) 2015 Ferrari automobile (Gabrielle's value of \$376,861.18;
3 Dennis' value: \$180,000);
4 (d) 2015 Bentley automobile (Gabrielle's value: \$255,000; Dennis'
5 value: \$180,000); and
6 (e) 2015 Bentley automobile (Gabrielle's value: \$205,000; Dennis'
7 value: \$135,000).

8 (2) Each party's respective marital balance sheet identifies account values for
9 various investment and retirement accounts. This Court notes that there are
10 differences in the values of several UBS investment accounts. These differences,
11 however, appear to be a function of updated values supplied by Dennis for the July 13,
12 2016 hearing. In this regard, this Court accepted the higher/updated values supplied
13 by Dennis as corroborated by the Supplemental Exhibits admitted into the record.
14 Also, additional distributions from these investment accounts were made to both
15 parties equally by stipulation. Such distributions necessarily altered the value of these
16 accounts. Accordingly, this Court relied on the updated statements supplied by
17 Dennis.
18
19

20 (3) With respect to Radiology Partners, this Court accepts the value of
21 \$150,000. This value is consistent with the value set forth in the Anthem Report (p.
22 17 and the attached marital balance sheet) and the value advocated by Dennis.³⁸
23

24
25 ³⁸The record does not instill a high degree of confidence for the Court with respect to
26 the value of Radiology Partners. As noted above, the Anthem Report references a value of
27 \$150,000 for the investment. This value appears to be the amount of the original investment.
28 The marital balance sheet attached to Gabrielle's Brief, however, values Radiology Partners at
\$655,500 (with iChill valued at \$150,000). The marital balance sheet attached to Dennis' Brief requests that the investment in Radiology Partners be divided equally between the parties (which would obviate the need to ascribe a value to the investment). In contrast, Gabrielle has requested in prior iterations of her marital balance sheet that Dennis be assigned the value of

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2 (4) With respect to the Oak Pass property, this Court had the opportunity
3 to review the testimony of the witnesses, including Mark Herman, Jennifer Bosco, and
4 Veronica Garcia. This Court also has reviewed and considered the Appraisal Report
5 of Marc Herman dated January 30, 2016 (Exhibit 5) and the SunWest Appraisal of
6 Real Property dated March 7, 2016 (Exhibits 6 and VVVV). Mr. Herman valued the
7 Oak Pass property at \$6,400,000, with a range of value (based on comparables after
8 adjustments) of \$6,074,000 to \$6,601,400. In contrast, SunWest Appraisals valued
9 the Oak Pass property at \$5,780,000, with a range of value (based on comparables after
10 adjustments) of \$5,025,000 to \$6,440,500. In his Financial Disclosure Form (Feb. 16,
11 2016), Dennis valued the Oak Pass property at \$6,250,000.
12
13

14 Based on the review of the evidence in the record, this Court finds that the fair
15 market value of the Oak Pass property for purposes of this Decree is \$6,300,000.
16

17 (5) With respect to Dennis' un-vested stock options/LTIPs/incentive benefit
18 programs (hereinafter referred to as "incentive benefits") with DaVita, this Court
19 adopts the "wait and see" approach. *Fondi v. Fondi*, 106 Nev. 856, 859, 802 P.2d 1264,
20 1266 (1990). Dennis argues that he will be required "to continue working hard in
21 order to receive any benefit from those grants" in support of his position that any
22 incentive benefits should be confirmed to him as his sole and separate property.
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27 Radiology Partners. (The marital balance sheet attached to Gabrielle's Brief does not contain
28 a proposed division.) Although this Court prefers to disentangle the parties by allocating the
asset to one party (with the value equalized through the division of other assets), this Court
is open to a timely request to reconsider this allocation (but not as to the value of the
investment) and to divide the investment equally between the parties.

1
2 Dennis' Brief 13. To do so, however, would discount entirely Dennis' "hard work"
3 during the existence of the marital community.

4 Application of the "time rule" formula spoken of in *Fondi* and *Gemma v. Gemma*,
5 104 Nev. 473, 760 P.2d 772 (1988), values both Dennis' community (pre-divorce) and
6 separate (post-divorce) efforts to the acquisition of the asset, with the Court retaining
7 jurisdiction to "wait and see" whether extraordinary post-divorce efforts or
8 "performance conditions" should be considered in the future division. Absent such a
9 showing, and to the extent that Dennis' interest in any incentive benefits have not
10 "vested" as of the date of divorce (i.e., February 26, 2016), the community interest
11 should be calculated as a fractional interest based on the "grant" date of the asset, the
12 date of divorce (meaning the date this Court pronounced the parties divorced), and the
13 vesting date (or the date on which Dennis' interest is fully matured). The calculation
14 should follow the "time rule" principles enunciated in *Gemma v. Gemma*, 105 Nev. 458,
15 778 P.2d 429 (1989) and *Fondi v. Fondi*, 106 Nev. 856, 802 P.2d 1264 (1990). This
16 Court should retain jurisdiction to "wait and see" the extent to which post-divorce
17 "performance conditions" impact the value of the incentive benefits.

18 (6) With respect to vehicles, Dennis' Brief referenced multiple leased vehicles
19 that are not referenced in Exhibit 1 as assets. Although this Court assigns no value to
20 any leased vehicles, each party should be responsible for any liability associated with
21 leased vehicles in their respective names. Each party's marital balance sheet references
22 three vehicles with value: a 2015 Ferrari, a 2015 Bentley (12 cyl.), and a 2015 Bentley
23 (8 cyl.). The 2015 Ferrari was sold and the proceeds have been divided equally
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2 between the parties. The discrepancies in the values of the 2015 Bentley (12 cyl.)
3 (\$255,000 v. \$180,000) and the 2015 Bentley (8 cyl.) (\$205,000 v. \$135,000) are
4 significant. This Court received limited evidence regarding the value of these vehicles.
5

6 Although Gabrielle mused during her testimony about the possibility of receiving
7 the vehicles as part of the division of assets, this Court was not persuaded that she
8 sincerely desired to be awarded the vehicles. This Court is inclined to confirm both
9 vehicles to Dennis as his sole and separate property at the values he has proposed.
10 Nevertheless, this Court provides Gabrielle the option of receiving the vehicles at the
11 corresponding values she placed on the vehicles. If Gabrielle so desires, her election
12 must be made within 14 days of the entry of this Decree. The Marital Balance Sheet
13 should be modified to insert the corresponding values, with the totals recalculated to
14 effectuate an equal division.
15
16

17 (7) Apart from the UBS line of credit in the amount of \$412,723, each party
18 should be responsible for the debt they each have incurred respectively. Such a result
19 is based in part on the significant duration of the parties' separation. This Court
20 presumes that the individual consumer debts incurred after the parties' separation
21 benefitted each party individually and not the marital community as a whole.
22 Accordingly, this Court finds that there is a compelling reason pursuant to NRS
23 125.150 to assign to each party the consumer debts they each have incurred
24 respectively without any offset in the division of assets.
25
26

27 (8) With respect to the division of furniture and personal property, neither
28 party testified or argued that the other party was in possession of any such personalty

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2 that he/she desired to acquire. Further, the record is devoid of any value for such
3 personalty except as noted below. The division of personalty excludes the confirmation
4 to Dennis of the sapphire ring he acquired for Jennifer (which is identified separately
5 in Exhibit 1) and the artwork he purchased after the issuance of the Joint Preliminary
6 Injunction (May 15, 2014) for his Wilshire residence. The amount spent by Dennis
7 on said artwork is captured as part of the Anthem Report and is thus included as part
8 of the division of assets.
9

10
11 (9) Dennis argues that his Chase Cigna Health Savings Account should not
12 be included as an asset to be divided. Although it may not be a financial benefit that
13 Gabrielle is able to access after the parties' divorce, the Health Savings Account
14 nevertheless has value and should be included as an asset confirmed to Dennis.
15

16 (10) Each party should receive one-half of any credit card/travel reward points.
17 This Court retains jurisdiction to oversee the division of these assets.

18 (C) WASTE & COMPELLING REASONS FOR AN UNEQUAL DIVISION
19

20 (1) Defining "Waste" Under Nevada Law

21 NRS 125.150 authorizes this Court to "make an unequal disposition of the
22 community property in such proportions as it deems just if the court finds a compelling
23 reason to do so and sets forth in writing the reasons for making the unequal
24 disposition." The "waste" or "dissipation" of community assets has been considered
25 as a "compelling reason" to "make an unequal disposition." One scholarly author has
26 opined that: "The range of human behavior in the waste aspects of family law is so vast
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2 that a specific description of what may constitute 'waste' or 'compelling reasons' is
3 impossible to set forth in either a statute or case rule." Gary R. Silverman, Esq., *I Spent*
4 *The Money on Whiskey, Women and Gambling; The Rest, I Wasted*, 19 May Nev. Law. 19,
5 29. (2011).³⁹ This is because a finding of waste depends on the "particular facts and
6 circumstances surrounding the conduct" in each case. Erika Driskell, *Dissipation of*
7 *Marital Assets and Preliminary Injunctions: A Preventive Approach to Safeguarding Marital*
8 *Assets*, 20 J. Am. Acad. Matrim. Law 135, 142 (2006). For example, courts have found
9 waste for excessive alcohol and drug related expenditures (*id.* at 143); destruction of
10 property (J. Thomas Oldham, *Romance Without Finance Ain't Got No Chance: Development*
11 *of the Doctrine of Dissipation in Equitable Distribution States*, 21 Am. Acad. Matrim. Law.
12 501, 505 (2008)); reduction in fair market value of property (*In re Marriage of Hokanson*,
13 68 Cal. App. 4th 987, 80 Cal. Rptr.2d. 699 (1998)); and even charitable donations (*In*
14 *re Marriage of Cerven*, 317 Ill. App. 3d 895, 742 N.E.2d 343 (Ill. 2d. Dist. 2000)).

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18 Although the case law precedent regarding waste or dissipation in Nevada is
19 limited, the Nevada Supreme Court has sanctioned waste or dissipation as "a
20 compelling reason for making an unequal disposition of community property." *Lofgren*
21 *v. Lofgren*, 112 Nev. 1282, 926 P.2d 296 (1996). In *Lofgren*, the Nevada Supreme
22 Court held that:
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³⁹Mr. Silverman offered a general definition of "dissipation" or "waste" as "community
property spent, conveyed, hidden or otherwise converted by a spouse that . . . compels the
court in justice and equity to reinstate the property to the community balance sheet and then
divide such property as the facts compel." Gary R. Silverman, *I Spent The Money on Whiskey,*
Women and Gambling; The Rest, I Wasted, 19 May Nev. Law. 19, 19 (2011).

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2 if community property is lost, expended or destroyed through the
3 intentional misconduct of one spouse, the court may consider such
4 misconduct as a compelling reason for making an unequal disposition of
5 community property and may appropriately augment the other spouse's
6 share of the remaining community property.

7 *Lofgren*, 112 Nev. at 1283, 926 P.2d at 297.

8 In *Lofgren*, the Nevada Supreme Court affirmed the district court's ruling that
9 Mr. Lofgren's financial misconduct provided a compelling reason for an unequal
10 division of community property. *Id.* at 1283, 926 P.2d at 297. Specifically, the district
11 court found that, during the pendency of the divorce action and in violation of the
12 joint preliminary injunction, Mr. Lofgren had: transferred community funds to his
13 father (about one third of which husband could not account for); used community
14 funds for his own purposes (including improving and furnishing his home); and made
15 unauthorized gifts of community funds to his children. *Id.* at 1283-1284, 297-298.

16 The Court reaffirmed the *Lofgren* holding in *Putterman v. Putterman*, 113 Nev.
17 606, 939 P.2d 1047 (1997), noting that financial misconduct "in the form of one
18 party's wasting or secreting assets during the divorce process . . . negligent loss or
19 destruction of community property, unauthorized gifts of community property" may
20 constitute compelling reasons for an unequal division. *Putterman*, 939 P.2d at 1048.
21 In *Putterman*, the Nevada Supreme Court again affirmed the district court's unequal
22 division of community property based on its "meticulous findings of fact which set
23 forth numerous compelling reasons." 113 Nev. 606, 608, 939 P.2d 1047, 1048
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2 (1997).⁴⁰ The district court found that Mr. Putterman had engaged in financial
3 misconduct that included: his failure to account for his earnings or any financial
4 matters "over which he had control;" his lies to the court about not having an income;
5 and, after the parties had separated, his charging of "several thousand dollars" on credit
6 cards that Mrs. Putterman repaid. *Id.* at 609, 939 P.2d at 1049.
7

8 The *Putterman* case contains insightful language about the extent to which a
9 court should scrutinize the parties' financial dealings. The Court made the following
10 instructive comments:
11

12 In *Lofgren*, we defined one species of "compelling reasons" for
13 unequal disposition of community property, namely, financial misconduct
14 in the form of one party's wasting or secreting assets during the divorce
15 process. There are, of course, other possible compelling reasons, such as
16 negligent loss or destruction of community property, unauthorized gifts
17 of community property and even, possibly, compensation for losses
18 occasioned by marriage and its breakup.

17 * * * *

18 It should be kept in mind that the secreting or wasting of
19 community assets while divorce proceedings are pending is to be
20 distinguished from *under contributing* or *over consuming* of community
21 assets during the marriage. Obviously, when one party to a marriage
22 contributes less to the community property than the other, this cannot,
23 especially in an equal division state, entitle the other party to a
24 retrospective accounting of expenditures made during the marriage or to
25 entitlement to more than an equal share of the community property.
26 Almost all marriages involve some disproportion in contribution or
27 consumption of community property. *Such retrospective considerations are*
28 *not and should not be relevant to community property allocation and do not present*
"compelling reasons" for an unequal disposition; whereas, hiding or wasting of

27 ⁴⁰The unequal division in Mrs. Putterman's favor was "not excessive" and consisted of
28 a country club membership and a portion of stock in a closely-held corporation which she was
able to purchase because she was an employee of the corporation. *Id.*, 113 Nev. at 609-610,
939 P.2d at 1049.

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2 *community assets or misappropriating community assets for personal gain may*
3 *indeed provide compelling reasons for unequal disposition of community property.*

4 *Putterman*, 113 Nev. at 609, 939 P.2d at 1048-49 (emphasis added).

5 The Nevada Supreme Court has considered and found other forms of
6 misconduct that may constitute a compelling reason for an unequal division of
7 community assets. For example, in *Wheeler v. Upton-Wheeler*, 113 Nev. 1185, 946
8 P.2d 200 (1997), the Nevada Supreme Court held that "if spousal abuse or marital
9 misconduct of one party has had an adverse economic impact on the other party, it
10 may be considered by the district court in determining whether an unequal division of
11 community property is warranted." 113 Nev. at 1190, 946 P.2d at 203 (1997).
12 "Evidence of spousal abuse or marital misconduct" alone, however, is not a "compelling
13 reason under NRS 125.150(1)(b) for making an unequal disposition of community
14 property." *Id.* at 1190, 946 P.2d at 203. The Nevada Supreme Court explained its
15 holding by reference to the 1993 amendment to NRS 125.150(1)(b):
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19 In 1993, the legislature amended NRS 125.150(1)(b) to provide for an
20 equal division of community property, rather than an equitable division.
21 It appears that in amending NRS 125.150(1)(b), the legislature wanted
22 to ensure that Nevada would remain a no-fault divorce state. Prior to the
23 amendment, the district court could consider the "respective merits of the
24 parties" in making a "just and equitable" disposition of the parties'
25 community property. In amending NRS 125.150(1)(b), the legislature
26 provided that the district court shall make an equal disposition of the
27 community property, unless the court finds a "compelling reason" to
28 make an unequal division. The legislature, however, did not define the
"compelling reasons" exception to equal division.

Id. at 1189-1190, 946 P.2d at 203.

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2 In *Wheeler*, the district court found, based on its admission of photographs
3 depicting numerous bruises on Ms. Upton-Wheeler allegedly inflicted by Mr. Wheeler,
4 that an abusive relationship existed between the parties in which she “suffered from
5 [Mr. Wheeler’s] conduct” and that therefore a compelling reason existed to make an
6 unequal division of community property in her favor. *Id.* at 1186-1187, 946 P.2d at
7 201. However, to the extent that the district court simply (and improperly) relied on
8 the spousal abuse alone instead of properly relying on the “adverse economic impact”
9 of the spousal abuse upon Ms. Upton-Wheeler “which would warrant an unequal
10 distribution of the community property,” the Nevada Supreme Court reversed and
11 remanded for further proceedings. *Id.* at 1190, 946 P.2d at 203.

14 In *Maldonado v. Robles*, 2015 WL 7356364 (Nov. 17, 2015), the district court
15 found that there was a compelling reason for an unequal division of community
16 property.⁴¹ Approximately four years after the parties married, and approximately nine
17 years prior to the parties’ divorce, Mr. Maldonado was convicted of sexually abusing
18 Ms. Robles’ daughters from another relationship. The district court found that Mr.
19 Maldonado’s:
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22 misconduct had a continuing economic impact on Robles due to the need
23 for past and future counseling to address trauma resulting from his sexual
24 crimes against her daughters. The record further reflects that she
25 incurred lost wages and expense when she was requested to appear at
26 Maldonado’s numerous criminal proceedings, that the trauma resulted in
27 medical bills for a hospitalization and medications, and that she was
28 required to move because the molestation had occurred in their residence.

28 ⁴¹Notably, the parties did not have any community property to divide but the district
court nonetheless found that a compelling reason for an unequal division (of nothing) existed.

1
2 *Id.* at 3. On Mr. Maldonado's appeal, the Nevada Supreme Court affirmed the district
3 court, stating: "Based on the record evidence and *Wheeler*, we conclude that the district
4 court did not abuse its discretion by finding a compelling reason to make an unequal
5 distribution of property." *Id.*
6

7 In summary, Nevada recognizes that community property may be divided
8 unequally between the parties if the court finds that one spouse has engaged in: (1)
9 community waste (i.e. intentional financial misconduct per *Lofgren v. Lofgren*, 112 Nev.
10 1282, 926 P.2d 296 (1996)); (2) negligent financial misconduct (i.e., unauthorized
11 gifts and losses occasioned by marriage and its breakup per *Putterman v. Putterman*, 113
12 Nev. 606, 939 P.2d 1047 (1997)); (3) marital misconduct that resulted in adverse
13 economic impact (i.e., spousal abuse or marital misconduct that resulted in adverse
14 economic impact per *Wheeler v. Upton-Wheeler*, 113 Nev. 1185, 946 P.2d 200 (1997));
15 or (4) criminal marital misconduct that resulted in adverse economic impact per
16 *Maldonado v. Robles*, 2015 WL 7356364 (Nov. 17, 2015).
17
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19 (a) Timing: When Does "Waste" Start?
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21 *Lofgren* and *Putterman* shed some indirect light on the timing of when a court
22 should consider expenditures as an incident of community waste. In *Lofgren*, Mr.
23 Lofgren's community waste occurred after the commencement of the divorce
24 proceeding and in violation of a joint preliminary injunction. 112 Nev. 1282, 1283,
25 926 P.2d 296, 297 (1996). In *Putterman*, Mr. Putterman's community waste occurred
26 after the commencement of the divorce proceeding and "after separation" from Ms.
27 Putterman. 113 Nev. 606, 609, 939 P.2d 1047, 1049 (1997). Taken together, the
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2 Nevada Supreme Court has implicitly held that waste can occur as early as the date of
3 the parties' separation. This Court concludes, however, that this direction from the
4 Nevada Supreme Court is not limiting language that was intended to preclude an
5 earlier date for a court to consider conduct that constitutes "waste." Guidance from
6 other jurisdictions regarding the timing of "waste" or "dissipation" is instructive.
7

8 Generally, case law from other jurisdictions suggests that a finding of waste
9 occurs only after an irretrievable or "irreconcilable breakdown" of the marriage. For
10 example, in *Barriger v. Barriger*, 514 S.W.2d 114 (Ky. Ct. App. 1974), the Court of
11 Appeals of Kentucky Court reimbursed the community unaccounted funds spent by
12 husband on gambling and "any good looking broad that comes by." In so doing, the
13 court noted that dissipation or waste exists when one spouse utilizes community
14 property for his or her own benefit for a purpose unrelated to the marriage at a time
15 when the marriage is undergoing an irreconcilable breakdown. *Id.* at 514 S.W.2d at
16 115. Further, in *In Re Marriage of Seversen*, 228 Ill. App.3d 820, 593 N.E.2d 747
17 (1992), an Illinois appellate court found that "dissipation refers to 'the use of marital
18 property for the sole benefit of one of the spouses for a purpose unrelated to the
19 marriage at a time that the marriage is undergoing an irreconcilable breakdown.'" 228 Ill.
20 App.3d at 824, 593 N.E.2d at 750, quoting *In re Marriage of O'Neill*, 138 Ill.2d 487,
21 563 N.E.2d 494 (1990).
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26 Scholarly authors have opined that, in a community property state, waste can
27 occur at any time during the marriage. "No community property state appears to have
28 developed a marital breakdown requirement, probably because of the fact that a

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2 dissipation of community property even prior to marital breakdown is still an
3 interference with a present ownership interest of the other spouse." Lewis Becker,
4 *Conduct of a Spouse That Dissipates Property Available for Equitable Property Distribution: A*
5 *Suggested Analysis*, 52 Ohio St. L. J. 95, 108, 123 (1991).
6

7 Notwithstanding this scholarly discussion that "waste" can occur during periods
8 of "marital bliss," this Court concludes that, if reasonably possible, the more sound
9 approach is to determine when the marriage is undergoing an "irretrievable" or
10 "irreconcilable" breakdown as a "line of demarcation" for the Court's analysis of waste.
11 In this regard, this Court should be less inclined to scrutinize, second-guess, or micro-
12 manage the financial affairs of spouses living in relative harmony. Rather, a court
13 should presume that financial decisions made by parties living in marital harmony are
14 not waste. To conclude otherwise would encourage "retrospective accountings" that
15 the *Puttermann* Court warned against and invite an audit in virtually every divorce case
16 of all financial decisions from the moment the couple declared "I do." Rather, the
17 Court should apply greater scrutiny to the parties' financial affairs after the irretrievable
18 or irreconcilable breakdown has started.
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22 Dennis acknowledges that "[o]nce the marriage begins to undergo an
23 irreconcilable breakdown, courts have recognized that parties might not be looking out
24 for their spouse's best interest and, in fact, may try to harm their spouse financially."
25 Defendant's Brief 19. Dennis argues that this "period ends as soon as the court is
26 involved because once the court is involved, the parties are able to seek judicial
27 intervention regarding these issues." *Id.* This Court concludes, however, that the
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2 heightened scrutiny of the parties' financial activity does not cease upon the filing for
3 divorce or once the "breakdown" has been recognized by both parties. (In other words,
4 there is not a "green light" to start spending community funds without consequence
5 once the relationship is deemed to have been "broken.") To the contrary, the financial
6 practices of the parties should be scrutinized from the time of the "irreconcilable
7 breakdown" until the divorce is finalized. Moreover, the very filing of the Complaint
8 for Divorce (Dec. 13, 2103) and the Joint Preliminary Injunction (May 15, 2014)
9 constitute taking judicial action.⁴²
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12 (b) Burden of Proof

13 Although the burden of proof has not been addressed directly in Nevada case law
14 precedent, both *Lofgren* and *Putterman* offer, at least indirectly, some guidance with
15 respect to who has the burden to account for allegedly wasted community assets. For
16 example, the Court in *Putterman* referenced the trial court's finding that the husband
17 "had refused to account to either [wife] or to the court for any finances over which he
18 had control, including separate property or earnings." 113 Nev. 606, 609, 939 P.2d
19 1047, 1049. The Court concluded that "[t]he husband's financial misconduct in the
20 form of his having refused to account to the court concerning 'earnings' and other
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24 ⁴²Dennis suggests that Gabrielle's inaction (including her failure to file more than two
25 motions prior to trial) confirms at least tacit approval of his spending practices. Thus, while
26 Dennis assured Gabrielle (and this Court) during the first two hearings in this case that he
27 would spearhead an accounting and that he would compensate Gabrielle for his spending (i.e.,
28 lulling her into an apparent false belief that he was pro-actively addressing the issue and that
there was no need for any filings with the Court), he now criticizes her for accepting his
promises and not running into court immediately. This appears to be a recurring pattern in
the parties' relationship. Further, the suggestion that more than *nine* pre-trial hearings should
have been held during the pendency of this case is not a welcome thought.

1 financial matters '*over which he had control*' and the husband's 'lying' to the court
2 about his income both provide compelling reasons for unequal disposition." *Id.*
3 (Emphasis added).
4

5 Similarly, in *Lofgren*, the Court found that Mr. Lofgren's community waste
6 totaled \$96,000, comprised of community funds that he either failed to account for or
7 that he used for a non-marital purpose. 112 Nev. at 1284, 926 P.2d at 297-98. In
8 summary, the Nevada Supreme Court has subtly held that the wasting spouse has the
9 burden of accounting for alleged wasted community funds and showing that the funds
10 in question were used for a marital purpose.
11

12 Placing the burden on the wasting spouse is also consistent with Nevada law in
13 the context of parties involved in a fiduciary relationship. "A fiduciary relationship . . .
14 arises from the existence of the marriage itself. Thus precipitating a duty to disclose
15 pertinent assets and factors relating to those assets." *Williams v. Waldman*, 108 Nev.
16 466, 472, 836 P.2d 614, 618 (1992). See also Gary R. Silverman, Esq., *I Spent The*
17 *Money on Whiskey, Women and Gambling; The Rest, I Wasted*, 19 May Nev. Law. 19, 20-
18 21 (2011). In Nevada, spouses are regarded as partners who owe each other fiduciary
19 duties. *Id.* The Nevada Supreme Court has held that the burden of proof is on the
20 party who violated the fiduciary duties owed to the other party. *Id.* at 21. "The most
21 elementary conceptions of justice and public policy require that the wrongdoer shall
22 bear the risk of the uncertainty which his own wrong has created." *Foley v. Morse &*
23 *Mowbray*, 109 Nev. 116, 121, 848 P.2d 519, 520 (1993), quoting *Bigelow v. RKO Radio*
24 *Pictures*, 327 U.S. 251, 265, 90 L.Ed. 652, 66 S.Ct. 574 (1946).
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2 In the majority of other states, the burden of proof is similarly established. Brett
3 R. Turner, *Equitable Distribution of Property* vol. 2 §6.105, 557 (3d. ed., Thomson West
4 2005).⁴³ First, the spouse alleging dissipation must establish a *prima facie* showing of
5 the value of marital or community property that was spent. *See Brosick v. Brosick*, 974
6 S.W.2d 498, 502 (Ct. App. Ky 1998). It is essential to establish the value of the
7 dissipated property because the court "cannot determine the amount of the remedy
8 without undue speculation." Turner, *Equitable Distribution of Property*, *supra*; *see Alsenz*
9 *v. Alsenz*, 101 S.W.3d 648 (Tex. App. Houston 1st Dist. 2003) (although husband
10 committed dissipation when he lost community funds while "day trading securities,"
11 it was error for the court to "arbitrarily" award wife \$35,000 where the amount of loss
12 had not been established by the evidence). Then, the burden of proof shifts to the
13 spouse charged with dissipation to rebut the showing through presentation of evidence
14 sufficient to account for the property at issue having been used for a marital purpose.
15 *Brosick* at 502; *Gutierrez v. Gutierrez*, 193 Ariz. 343, 972 P.2d 676 (1998) (husband
16 could not "explain with any specificity how he had spent" \$62,000 that he withdrew
17 from the community retirement account). In *Morrison v. Morrison*, 713 S.W.2d 377
18 (1986), a Texas appellate court similarly found that, "[b]ecause a trust relationship
19 exists between husband and wife as to that community property controlled by each
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26 ⁴³There are two minority rules. The first places the burden on the dissipating spouse
27 to produce *prima facie* evidence that the lost asset was either beyond his or her control or that
28 it was used for a marital purpose. Once produced, the non-dissipating spouse bears the burden
of overcoming the evidence produced. The second places the "complete" burden of proof on
the non-dissipating spouse. Brett R. Turner, *Equitable Distribution of Property* vol. 2 §6.105 at
559-560.

1 spouse, the burden of proof to show fairness in disposing of community assets is upon the disposing
2 spouse. . . . Thus, once evidence of the expenditures of community funds was admitted,
3 it was incumbent on David to justify the expenditures." 713 S.W.2d at 379 (emphasis
4 added).
5

6 (c) Evidentiary Standard

7 In many states, the spouse charged with dissipation must meet his/her burden
8 of proof by "clear and convincing evidence."
9

10 [A] mere summary denial of dissipation is clearly not sufficient to meet
11 the burden. Rather, the spouse accused of dissipation must show specific
12 evidence of the purpose for which the asset was spent. While there is no
13 absolute requirement that the evidence be written or documentary,
14 testimony alone is unlikely to meet the burden if there is any likelihood
15 that the claimed purpose would have produced documents. Testimony
16 is more likely to be accepted where the amount at issue is small, or where
17 documentary evidence accounts for most of the questioned expenditures.

18 Brett R. Turner, *Equitable Distribution of Property* Vol. 2 §6.105, 557-558 (3d. ed.,
19 Thomson West 2005). The rationale behind the majority approach "is access to
20 evidence: in most cases, only the dissipating spouse will know how the asset came to
21 be lost. If the complete burden of proof is on the innocent spouse, then the innocent
22 spouse must not only prove the disappearance of the marital property, but also the
23 precise way it disappeared or purpose for which it was spent – a burden which will
24 often be impossible to meet." *Id.* at 559-60.

25 Similarly, in *In re Marriage of Severson*, 228 Ill.App.3d 820, 593 N.E.2d 747
26 (1992), an Illinois Appellate Court held as follows:
27

28 [a] person charged with the dissipation is obligated to establish by *clear*
and *specific evidence how the funds were spent*. General and vague statements

1
2 that the funds were spent on marital expenses or to pay bills are
3 inadequate to avoid a finding of dissipation. (Citations omitted).
4 Moreover, an explanation given by a spouse charged with dissipation as
5 to how funds were spent requires a trial court to determine her
6 credibility. . . . A finding of dissipation is required where the charged
7 party fails to explain specifically how the disputed funds were spent.
8 (Citation omitted). An inadequate explanation has been found where the
9 charged party merely testified that the money was spent "to live on and
10 pay the bills" or for "his cost of living and his bills" and where the
11 charged party produced no evidence. . . . In contrast, Claudia, as the
12 charged party, provided a detailed accounting of how the funds were
13 spent and testified that the figures were based on canceled checks, credit
14 card statements, bills, receipts, and estimates for cash expenditures.

15 228 Ill. App.3d at 825-26 (emphasis added).

16 Guidance in Nevada is limited. However, there is authority for the proposition
17 that the party who violated fiduciary duties owed to the other party must satisfy their
18 burden of proof by "clear and convincing evidence." Gary R. Silverman, Esq., *I Spent*
19 *The Money on Whiskey, Women and Gambling; The Rest, I Wasted*, 19 May Nev. Law. 19,
20 20-21 (2011), citing *In re Tiffany Living Trust 2001*, 124 Nev. Adv. Op. 8 (2008).
21 Further, it is persuasive that the "clear and convincing" evidentiary standard is similarly
22 applicable to rebut presumptions relating to community property and gifts.
23 Accordingly, this Court concludes that the evidentiary standard to be applied in this
24 matter is that Dennis must meet his burden by clear and convincing evidence.

25 (2) Application to Dennis and Gabrielle's Divorce

26 This Court concludes that, once Gabrielle established a *prima facie* case that: (1)
27 community funds had been spent on non-community purposes; or (2) community
28 funds were otherwise unaccounted, it was Dennis' burden to provide this Court with
proof (by way of an accounting) that his expenditures did not constitute waste. In light

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2 of the fiduciary relationship of the parties, this Court concludes that such proof must
3 be clear and convincing. Much of the discussion and debate between the expert
4 witnesses and expert reports offered to the Court can be narrowed to the issue of the
5 evidentiary burden. Dennis critiqued Gabrielle's expert's reports based on her failure
6 to provide "proof" that community funds were "wasted" or spent on a non-community
7 purpose. However, it was Dennis, and not Gabrielle, who had the burden to
8 demonstrate that unaccounted community funds were not wasted or that funds spent
9 for specific purposes should not be found to constitute waste.
10
11

12 This Court's analysis of alleged waste in this matter is not about comparing,
13 scrutinizing or challenging the lifestyle expenditures claimed in the parties' respective
14 financial disclosure forms. Rather, after giving credit to Dennis for spending
15 community funds on those items (and corresponding amounts) that he claimed in his
16 financial disclosure forms, the issue for this Court is twofold: (1) whether expenditures
17 that have been clearly identified constitute waste; and (2) whether Dennis has provided
18 a sufficient accounting for "unaccounted" expenditures. Ultimately, it was Dennis'
19 legal burden to provide such an accounting and, at least early in the case, he
20 acknowledged as much when he boldly proclaimed at the February 3, 2015 Case
21 Management Conference that he was "going to take that issue away from her by
22 providing an accounting." Just as he had given Gabrielle false hope that, through
23 marital counseling, their marriage could be saved, he gave this Court false hope that he
24 would provide "an estimate and an offer that will be more than the dollars spent, so
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2 that one-half of which will be awarded to Mrs. Kogod to at least remove the financial
3 sting or insult of Dennis' having this relationship."

4 This Court further concludes that the existence and analysis of waste by Dennis
5 in regards to identifiable expenditures on Nadya and Dennis and Nadya's children
6 begins in November 2004. Such a conclusion is based on this Court's finding that the
7 irretrievable breakdown of the marriage began in 2004 with Dennis secretly spending
8 money on a purpose that was irreconcilable with a harmonious marital relationship.
9 In regards to unaccounted expenditures that have not been specifically identified as
10 having been spent on Nadya, Dennis and Nadya's children, or Jennifer, this Court
11 concludes that the analysis of waste by Dennis begins in March 2010. In this regard,
12 Dennis' filing of his Complaint for Divorce (Mar. 10, 2010) in early 2010, and the
13 parties "permanent" physical separation in 2010 reflect a permanency of the
14 irretrievable breakdown of the marriage. The year 2010 also marks the period of time
15 in which Gabrielle became aware of serious issues and problems in the parties' marriage
16 which would give rise to heightened scrutiny by this Court as to all expenditures (and
17 not just those expenditures traceable to a girlfriend and children of an affair).
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22 As previously discussed, it is undisputed that Dennis initiated his extra-marital
23 affair with Nadya no later than November 2004. This relationship, as well as at least
24 one additional extra-marital affair (with Jennifer), continued through the filing of these
25 divorce proceedings (with financial support extending through the date of the divorce
26 proceedings). Thus, any expenditures traced directly to these affairs should be
27 recaptured as part of the Court's consideration of NRS 125.150. This Court finds that
28

1
2 Dennis' maintenance of extra-marital affairs is inherently inimical to maintaining
3 marital harmony and invites this Court's scrutiny as to these traceable expenditures
4 that took place even during a time in which Gabrielle may not have perceived that the
5 relationship was undergoing an irretrievable or irreconcilable breakdown. As in
6 *Putterman*, Dennis failed in large part to account for his expenditures *despite repeated*
7 *assurances to this Court that he would do so.*⁴⁴
8

9
10 (3) Remedy for Waste/Dissipation

11 The majority of courts in equal division states and equitable division states
12 appear to approach the remedy for waste or dissipation in the same way: "the court will
13 deem the wrongfully dissipated assets to have been received by the offending party
14 prior to the distribution." *Brosick v. Brosick*, 974 S.W.2d 498, 501 (1998). This
15 essentially places the non-wasting spouse in the position he or she would have been in
16 had the other spouse not wasted community assets. Lori D. Hall, *Dissipation of Marital*
17 *Assets: How South Carolina and Other States Prevent and Remedy the Problem*, 10 S.C. Law
18 41, 43 (1999). Indeed, the remedy "must bear some relation to the evidence
19 presented" and must be based on the court's specific findings regarding the value or
20 amount of waste or dissipation. *Brosick*, 974 S.W.2d at 501.
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26 "Dennis' failure to provide this Court with his own accounting is distinct from his
27 participation in discovery. It is not disputed that Dennis produced thousands of pages of
28 records in discovery in response to discovery requests. Despite his evidentiary burden to
account for the monies reflected in these documents, he abdicated his responsibility to
affirmatively account for his expenditures. Instead, he sat back and waited for the opportunity
to critique and "poke holes" in Gabrielle's accounting.

1
2 Under Nevada law, the statutory remedy of NRS 125.150 provides the
3 mechanism by which a spouse is made whole through an unequal division of assets.
4 Further, pursuant to *Lofgren*, this Court "may appropriately augment the other spouse's
5 share of the remaining community property." 112 Nev. at 1283, 926 P.2d at 297.
6 Based on this Court's review of the expert reports and testimony offered by both
7 parties, this Court has included the equalizing amount in the Martial Balance Sheet
8 attached hereto as Exhibit 1. The amount of waste to be attributed to Dennis based
9 on the expert analysis discussed below totals \$4,087,863.
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12 (4) Expert Analysis: Findings re Waste: **\$4,087,863**

13 NRS 50.275 provides that, "[i]f scientific, technical or other specialized
14 knowledge will assist the trier of fact to understand the evidence or to determine a fact
15 in issue, a witness qualified as an expert by special knowledge, skill, experience, training
16 or education may testify to matters within the scope of such knowledge." Further,
17 NRS 50.295 provides that "[t]estimony in the form of an opinion or inference
18 otherwise admissible is not objectionable because it embraces an ultimate issue to be
19 decided by the trier of fact."
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22 Gabrielle and Dennis both offered expert accounting testimony that focused on
23 Dennis' spending. There were limitations, however, on the forensic accounting
24 endeavors, including the unavailability of records and information as a result of the
25 passage of time and faded memory. Jennifer A. Allen and Joseph L. Leauanae of
26 Anthem Forensics (Ms. Allen and Mr. Leauanae are sometimes referred to collectively
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2 as "Anthem Forensics") testified on Gabrielle's behalf, and Richard M. Teichner of
3 Teichner Accounting Forensics & Valuations, PLLC, testified on Dennis' behalf.

4 Ms. Allen described Anthem Forensics' function as threefold: First, Anthem
5 Forensics analyzed transaction activity of financial accounts in existence during the
6 marriage to determine who benefitted from the account activity. The analysis included
7 review of bank and credit card statements and additional supporting documentation
8 that was made available to Anthem Forensics. Second, Anthem Forensics identified
9 assets and values for purposes of developing a marital balance sheet. Finally, Anthem
10 Forensics analyzed Dennis' income for purposes of the issue of spousal support.
11

12 Despite Dennis' assurances to this Court that he would be spearheading the
13 forensic accounting of his spending, and despite his legal burden to demonstrate by
14 clear and convincing evidence that his spending was not wasteful, Dennis did not offer
15 to the Court an investigative forensic accounting report. Rather, Mr. Teichner
16 reviewed and critiqued the reports from Anthem Forensics, but did not conduct his
17 own independent accounting analysis. Mr. Teichner admitted that he accepted at face
18 value Dennis' representations without further investigation or independent
19 verification.⁴⁵
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22 The following Exhibits prepared by the experts involved in this matter were
23 admitted into the record and reviewed by this Court: Index of documents in support
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27 ⁴⁵Anthem Forensics opined: "Teichner has simply relied upon Dennis' representations
28 and has not obtained supporting documentation even though his client has more access to this
information than does Anthem. It is our opinion that the unsubstantiated regurgitation of
Dennis' opinions may not constitute, nor require, the provision of expert testimony." Exhibit
64, p. 8.

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2 of Spreadsheets in Anthem Forensic's Reports (Exhibit 55); Anthem Forensics' Expert
3 Witness Report dated November 17, 2015 (Exhibit 56); Anthem Forensics
4 Supplemental Expert Witness Report dated December 15, 2015 (hereinafter referred
5 to as the "Anthem Report") (Exhibit 57); Anthem Forensics' Supporting Documents
6 for facts set forth in Supplemental Expert Report dated December 15, 2015 (Exhibit
7 58); Email from Joe Leauanae to Daniel Marks, Esq., dated February 9, 2016 (Exhibit
8 59); Auto Related Exhibits listed on Exhibit 6 (Exhibit 60); Transactions that comprise
9 the "adjusted" column to Exhibit 6 (Exhibit 61); Withdrawals – Gabrielle Kogod
10 (Exhibit 62); Teichner Accounting Forensics & Valuations, PLLC Rebuttal Expert
11 Report dated January 25, 2016 (hereinafter referred to as the "Teichner Report")
12 (Exhibit D); Anthem Forensics' Response to Rebuttal Report dated February 5, 2016
13 (hereinafter referred to as the "Anthem Response Report") (Exhibit 64); Anthem
14 Forensics' Supporting Documentation for facts set forth in the February 5, 2016
15 Report (Exhibit 65); and Teichner Accounting Forensics & Valuations, PLLC
16 Surrebuttal Expert Report dated February 15, 2016 (Exhibit F). This Court also
17 reviewed additional summaries prepared such as Exhibit 72 (spreadsheet re expenses
18 for Khapsalis children from May 2014), Exhibit 73 (spreadsheet showing outflows
19 greater than \$10,000 since date of Anthem Report), Exhibit 75 (spreadsheet showing
20 payments to or on behalf of Dennis' family members since May 2014), and Exhibit 76
21 (spreadsheet showing payments to Jennifer since September 2014).

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27 With respect to their analysis of financial transactions and spending/account
28 activity, Anthem Forensics examined more than 27,200 transactions. Anthem Report

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2 8. Anthem Forensics defined the "relevant period" of time of their examination as
3 covering January 2004 through the present. *Id.* at 7. However, Anthem Forensics did
4 not receive account statements prior to March 2008. *Id.* Thus, some elements of waste
5 that pre-date March 2008 were not discoverable and excluded from the analysis.
6

7 The Anthem Report organized Dennis' spending and transaction activity into
8 various categories or "buckets" of expenses. Specifically, these "buckets" were
9 organized as follows: (1) expenses traceable to Nadya and her and Dennis' twin
10 daughters; (2) expenses traceable to Jennifer; (3) expenses traceable to Dennis' yacht
11 purchases; (4) expenses "not elsewhere classified;" (5) expenses traceable to Dennis'
12 family members; and (6) the opportunity cost of potential community waste.⁴⁶ The
13 categorization and calculation of expenditures was also based on information Dennis
14 offered by way of his deposition testimony and his sworn representations in his
15 financial disclosure forms filed with the Court. Notwithstanding these classifications,
16 Ms. Allen reiterated that whether particular expenditures constituted "waste" was to
17 be determined by the trier of fact. Similarly, the Anthem Report provides that "[w]hile
18 we have endeavored to analyze potential community waste, the ultimate
19 characterization of the transactions identified in this section will need to be resolved
20 by the trier of fact." *Id.* at 8.
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25 In stark contrast with his admissions at the initial Case Management
26 Conference, Dennis argued that, because there has been no diminution in value of the
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"Although items (5) and (6) were treated separately in the Anthem Report and not necessarily segregated into "buckets," the Court analyzes these categories in this section.

1 marital estate, the Court should not entertain any reimbursement to Gabrielle for
2 waste. Dennis argued that both *Putterman* and *Lofgren* involved factual scenarios where
3 the marital estate diminished in value as a result of the spending of one spouse. In the
4 instant matter, it is undisputed that, not only did the marital estate *not* diminish in
5 value from 2004 through the divorce action, but the marital community increased in
6 value exponentially. Dennis also challenged Anthem Forensics reliance on labels to
7 quantify alleged "waste." Although Mr. Teichner was critical of the labeling of
8 expenditures in the Anthem Report, he nevertheless opined that "Dennis should have
9 had the freedom to spend a relatively small percentage of his sizable annual
10 compensation on discretionary expenditures, as should anyone else." Teichner Report
11
12 3. In response to a query about "[w]hat is the amount of money somebody can spend
13 on a girlfriend without it being community waste?," Mr. Teichner testified:
14
15

16
17 Well, I don't think there's any threshold amount. . . You've got to take
18 in context as to whether those expenditures would have been made
19 otherwise. You got to take into account how much was expended, what
20 the person's earnings were, whether or not that person is living, is apart
21 from their normal spouse and for how long. . . You've gotta take the
22 expenditures in context and then say, what's reasonable? Are these living
23 expenses expenditures that Mr. Kogod would have spent anyway had he
24 not had a girlfriend. . . Or are they a little bit more? And, if they're a
25 little bit more, then still is he dissipating the marital estate by doing this
26 while his income is going up, while his net worth is going up. I think you
27 have to take this all into context.
28

* * * *

26 Again, . . . you've gotta take everything into context. If he's living apart
27 from his wife, he's got his own life, she's got . . . the wife has her own life.
28 Yes, *I think you're entitled to go out and have friends, have girlfriends, you
know, have some entertainment enjoyment in your life.*

February 26, 2016 Video: 14:04; 14:10 (emphasis added)

As a preliminary observation, the analysis of the Anthem Report does not appear to quantify the parties' expenditures in a comparative analysis. Indeed, the issue of waste is not necessarily a matter of equalizing or even comparing the amount of expenditures by each party. In fact, over the span of their analysis (and relying on each party's respective financial disclosure forms), Ms. Allen testified that Dennis would have spent \$2.4 million, compared to \$1.8 million spent by Gabrielle. February 26, 2016 Video: 9:20. This difference is of no consequence to the Court and equality of spending is not determinative of whether a compelling reason exists to unequally divide existing community assets. To engage in such an analysis would contravene the directives of *Putterman* by getting caught-up in the "over consumption" of one party or the "under contribution" of the other party. 113 Nev. at 606, 939 P.2d at 1048-49.

Apart from not focusing on a comparison of each party's relative expenditures, it also does not appear that the Anthem Report questioned or critiqued the amount spent on the categories identified in either party's financial disclosure forms. Ms. Allen testified that Anthem Forensics accepted as reasonable Dennis' expense claims on his financial disclosure forms (hereinafter generically referred to as "FDFs").⁴⁷ Indeed, it

⁴⁷The parties' Financial Disclosure Forms admitted into the record include: Gabrielle's Financial Disclosure Form (Feb. 25, 2015) (Exhibit XX) (hereinafter referred to as Gabrielle's "2015 FDF"); Gabrielle's Financial Disclosure Form (Feb. 19, 2016) (Exhibit 1) (hereinafter referred to as Gabrielle's "2016 FDF"); Dennis' Financial Disclosure Form (Feb. 27, 2015) (Exhibit 4) (hereinafter referred to as Dennis' "February 2015 FDF"); Dennis' Financial Disclosure Form (May 29, 2015) (Exhibit 3) (hereinafter referred to as Dennis' "May 2015 FDF"); and Dennis' Financial Disclosure Form (Feb. 16, 2016) (Exhibit 2) (hereinafter referred to as Dennis' "February 2016 FDF").

1
2 is reasonable for this Court to expect that the expense amounts represented by each
3 party in their FDFs are accurate (and that any amounts spent in excess thereof would
4 require an accounting and explanation). The experts similarly should be able to rely⁴⁸
5 on said sworn financial declarations to establish the amount each party spends monthly
6 on the expenditures listed therein.⁴⁹
7

8 Based on this Court's review of the evidence, including the reports submitted by
9 the parties' respective experts, this Court finds that the total amount of waste
10 committed by Dennis was \$4,087,863. Dennis failed to meet his burden by clear and
11 convincing evidence (or even a preponderance of the evidence) that this amount was
12 not wasted. In this regard, a compelling reason exists to divide the assets unequally by
13 attributing to Dennis as part of his distribution of assets the sum of \$4,087,863. Thus,
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16 ⁴⁸This Court recognizes that each party's FDF may not reflect actual expenditures
17 throughout the marriage or even dating back to 2010. There is nothing in the record, however,
18 that demonstrates that either party's legitimate and appropriate spending was higher prior to
19 the commencement of the divorce (or in any prior year during the marriage). Taking into
20 account the combined annual income of the parties prior to 2010, it appears unlikely that the
21 parties' spending was as high as they each reported in their respective FDFs. Thus, reliance on
22 current FDFs to calculate spending practices would tend to understate the level of wasteful
23 spending by giving each party credit for more than he/she actually spent.

24 ⁴⁹At a minimum, "living expenses include all payments for food, clothing, housing,
25 transportation, and medical costs incurred by the parties. Living expenses clearly do not
26 include expenditures for the benefit of a paramour, or transactions which are legally or morally
27 reprehensible." Brett R. Turner, *Equitable Distribution of Property* vol. 2 §6.105, 578, 581-582
28 (3d. ed., Thomson West 2005). Where the parties have physically separated and in their own
residences, they are each entitled to their "reasonable" living expenses. However, what is
"reasonable" depends on the particular facts and circumstances in each case, taking into
account the value of the marital estate, the marital standard of living, and the established
pattern of expenditure. Erika Driskell, *Dissipation of Marital Assets and Preliminary Injunctions:
A Preventive Approach to Safeguarding Marital Assets*, 20 J. Am. Acad. Matrim. Law 135, 144
(2006). Thus, even discretionary expenditures consistent with the marital standard of living
can be included as reasonable living expenses. "[T]he parties are not required to live Spartan
lifestyles during separation." Brett R. Turner, *Equitable Distribution of Property* vol. 2 §6.105,
580 (3d. ed., Thomson West 2005).

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2 for purposes of accounting and calculation, this amount should be included as an asset
3 on Dennis' side of the marital balance sheet ledger. This amount is based on the
4 discussion of the specific areas of waste/dissipation identified in the Anthem Report.
5 With respect to the different "buckets" of alleged waste, this Court additionally finds
6 as follows:
7

8 (a) Nadya and Dennis/Nadya's Children: Total Waste: \$1,808,112
9

10 Preliminarily, Dennis acknowledged that Gabrielle did not and would not have
11 approved of spending any community funds on Nadya or their children. Thus,
12 contrary to his argument, this Court *cannot* find that Gabrielle "tacitly agreed" to
13 Dennis' spending. The Anthem Report details that a total of more than \$1.6 million
14 of community funds were diverted from the marital community for the benefit and
15 support of Nadya and Nadya and Dennis' children.
16

17 The Anthem Report also provides that, based on Dennis' deposition testimony,
18 he provided Nadya with approximately \$3,000 in cash each month. Thus, "we have
19 estimated that Dennis provided Nadya with approximately \$279,000 from March 2008
20 through November 2015." Anthem Report 11. As discussed below, this Court is
21 attributing waste to Dennis from 2010 forward for monies not elsewhere classified
22 (which includes a category for withdrawals and cash advances (Reference 123 of
23 Exhibit 6 to Anthem Report)). Accordingly, and to avoid potential duplication with
24 "withdrawal" and "cash advance" categories, this Court is not inclined to include the
25 total amount as part of the waste calculation. Nevertheless, it is reasonable and
26 appropriate to find that an additional \$72,000 was given to Nadya in cash from March
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2 2008 through February 2010 (the month preceding Dennis' filing of the initial
3 Complaint for Divorce (Mar. 10, 2010). Such a consideration avoids potential
4 duplication (as pre-2010 expenditures have been excluded from the monies not
5 elsewhere classified) and is sufficiently certain based on the record so as to establish a
6 *prima facie* showing of waste that Dennis has acknowledged.
7

8 Pursuant to the Anthem Response Report, an additional \$54,934 in
9 expenditures was discovered from additional account statements produced after the
10 completion of the Anthem Report. This amount should be included as part of the total
11 amount of funds spent on Nadya.⁵⁰ Combined with the \$1,681,178 set forth in
12 Exhibit 2 to the Anthem Report, the expenditures total \$1,808,112.
13

14 The Anthem Report summarizes the types of expenditures included as part of
15 this total, with Exhibit 2 attached thereto setting forth the detail of these expenditures
16 dating back to 2008. The Anthem Report noted that additional information is needed
17 to "assess the amount of cash that was provided to Nadya." Anthem Report 10. The
18 Anthem Report also notes that "missing source documentation was requested during
19 the course of our engagement," but that additional documentation has not been
20 received. Anthem Report 6-7. Thus, it appears that the amount identified by the
21 Anthem Report may have understated the actual expenditures from the marital
22 community that benefitted Nadya and the children.
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28 ⁵⁰It appears that some of these additional expenditures were for Jennifer's benefit
(including Jennifer's legal fees of more than \$8,000). Whether it was for Nadya or Jennifer,
it is the same analytically for this Court.

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2 Dennis complained that the Anthem Report failed to recognize that a portion
3 of the grocery (or other) expenses listed under the Nadya/children category may have
4 benefitted him (and therefore should be either excluded or reduced). Contrary to his
5 claim, however, Ms. Allen testified that adjustments were in fact made based on the
6 amount Dennis claimed for the same expenditure (e.g., grocery expenses) on his May
7 2015 FDF. Further, it appears that this section of the report did not include
8 allocations "for living expenses paid directly by Dennis such as utilities, groceries,
9 property taxes, and costs related to the Overland apartment, the Edinburgh home, and
10 the Oak Pass home. These costs are discussed later in this report." *Id.* 11. Finally, it
11 is notable that Anthem Forensics had not received information regarding account
12 activity/expenditures for Nadya for the period of time dating back to January 2004.
13 Thus, it appears that the \$1,808,112 likely understates the amount spent on Nadya
14 and the children.
15

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18 Mr. Teichner testified, and Dennis argued, that the money he spent on Nadya
19 and the children would have been spent elsewhere and speculated that such other
20 "hobby" would have been more costly financially to the marital community. Thus,
21 independent of his challenge to the forensic tracing of these expenditures to Nadya and
22 the children, Dennis submits that this spending should not even be considered or
23 categorized as waste. In support of this argument, Dennis offered analysis of the
24 relatively low percentage of expenditures on his Nadya "hobby" in comparison to his
25 total income:
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2 [The Anthem Report] assumes potential community waste on the premise
3 that Dennis was not entitled to spend monies the way that he chose to
4 do so. If there had not been expenditures by Dennis for Nadya and their
5 children, for Jennifer, or for other items for which Anthem alleges
6 [p]otential community waste, he may have spent the money elsewhere
7 while living apart from Gabrielle. However Dennis chose to spend his
8 money from 2004 through the date of [the Anthem Report] cannot be
9 assumed to be potential community waste, especially in light of the
10 amount of his spending in relation to his dramatically increasing annual
11 income and due to the fact that the purpose of many of the expenditures
12 in [the Anthem Report] are either mischaracterized or unknown.

13
14 Teichner Report 3.

15
16 This argument somewhat presupposes that this Court should recognize a wealth
17 exception to the analysis of waste. In other words, Dennis could have and should have
18 been allowed to spend community funds on any "hobby" or pursuit (including a
19 girlfriend "hobby") based on the sheer size of the marital estate and amount of income
20 he has generated. Alternatively, such an argument suggests that all spouses should have
21 a similar percentage of their budget to spend on such things as girlfriends/boyfriends.
22 In the context of this case, this Court cannot ratify or condone such a theory or
23 argument. It is for a higher court to declare that community funds spent on a girlfriend
24 and children born of a secret affair is not waste of the other spouse's present and
25 existing share of those community funds.⁵¹ The nature of the expenditure (i.e., is the
26 expense item contrary to the maintenance of marital harmony?), is relevant to the

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28 ⁵¹A distinction should be drawn between expenditures on the support of children of
another relationship born prior to marriage versus during marriage. Indeed, expenditures on
children born prior to a marriage are inapposite to this analysis. Such a "pre-existing"
condition necessarily requires the financial support of a parent and is not inherently inimical
to a marriage. In contrast, carrying on a secret relationship that bore children is inherently
inimical to the continued existence of a harmonious marital relationship.

1
2 Court's determination of whether it is merely a "lifestyle" choice (i.e., a legitimate
3 hobby) or "waste" that justifies an unequal division of assets. The notion that
4 spending money on a girlfriend or boyfriend is somehow acceptable conduct and that
5 this Court would "open the floodgates for these type of claims" (Dennis' Brief 30) by
6 requiring reimbursement in some form is not a tenable argument.
7

8 Dennis also pointed out that Gabrielle was free to spend money on any hobby
9 or pursuit and that he never imposed any limitations on her spending or criticized her
10 spending. Neither did Dennis monitor Gabrielle's spending. In short, Gabrielle was
11 never restricted in her spending or her access to money. The record reflects, however,
12 that Gabrielle did not spend extravagantly. To the contrary, she would inform Dennis
13 of transactions as small as gifting a washer and dryer. *See* Exhibit 20 (October 21,
14 2011 message from Gabrielle inquiring: "Jennifer needs a washer. Okay for her to have
15 ours?"). This Court finds and concludes that Gabrielle's unrestrained access to and use
16 of community funds does not overcome the finding and conclusion that Dennis'
17 spending (both unaccounted and accounted) is a compelling reason to divide the
18 community assets unequally between the parties.
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22 Dennis failed to demonstrate with credible evidence that the expenditures set
23 forth on Exhibit 2 to the Anthem Report and Exhibit 2 to the Anthem Response
24 Report were not diverted from the marital community and that the total amount
25 reflected therein does not constitute marital waste. Therefore, this Court finds a
26 compelling reason exists to unequally divide the community assets by attributing the
27 sum of \$1,808,112 as part of Dennis' division of assets.
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2 (b) Jennifer: Total Waste: \$45,100

3 The Anthem Report details that \$45,100 of community funds were diverted
4 from the marital community for Jennifer's benefit. The Anthem Report summarizes
5 the types of expenditures included as part of this total, with Exhibit 4 attached thereto
6 setting forth the detail of these expenditures. The evidence also establishes that Dennis
7 purchased a sapphire ring intended for Jennifer worth \$14,000. The record reflects
8 that the sapphire ring remains in Dennis' possession.
9

10
11 Dennis failed to demonstrate with credible evidence that the \$45,100 amount
12 was not diverted from the marital community. Therefore, this Court finds a compelling
13 reason exists to unequally divide the community assets by attributing the sum of
14 \$45,100 as part of Dennis' division of assets. Moreover, the sapphire ring is confirmed
15 to Dennis as his sole and separate property, with a value of \$14,000.
16

17 (c) Yacht: Total Waste: \$0.00

18 During the marriage, Dennis sold and purchased two yachts. First, he purchased
19 a 2007 Cruiser yacht in 2012. He traded the Cruiser yacht for a Marquis yacht in June
20 2014 (while these divorce proceedings were pending). Although the Marquis yacht was
21 acquired in the name of Dennis' parents, it is undisputed that Dennis funded the entire
22 purchase and his parents had no interest in the yacht. In July 2015, Dennis sold the
23 Marquis yacht for \$990,000. Anthem Forensics determined that Dennis spent
24 \$626,658 in excess of the sales proceeds on yacht-related expenses.
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2 Dennis testified that his purchase of the yachts was his pursuit of a hobby that
3 replaced old hobbies that were no longer physically practical.⁵² Although this Court
4 recognizes that Dennis' newfound "hobby" was not disclosed to Gabrielle and it does
5 not appear that she ever expressly consented to these expenditures, this Court finds
6 that Dennis' yacht expenditures are the type of "over consumption" referenced in
7 *Putterman*, that does not necessarily constitute a compelling circumstance for an
8 unequal division of assets. *Putterman*, 939 P.2d at 1048-49. This finding takes into
9 consideration the size of the marital estate (i.e., lifestyle considerations) and Dennis'
10 argument that his spending on such a hobby did not cause a diminution in value of the
11 marital estate. Combined with a finding that this type of expenditure is not necessarily
12 inimical to the maintenance of a harmonious marital relationship, this Court finds that
13 these expenditures do not provide the Court with a compelling reason to unequally
14 divide the community property. Thus, this Court does not attribute any amount to
15 Dennis as part of the division of assets.

16
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19 (d) Family Expenditures: Total Waste: \$72,200
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21 During their marriage, the parties donated monies for the benefit of other family
22 members. Most of these contributions, however, benefitted Dennis' family members.
23 It appears that the donations or monies forwarded to Gabrielle's family members were
24 limited primarily to small birthday gifts and contributions to expenses associated with
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⁵²Ironically, the parties' Lake Las Vegas home was located on the lake with a large dock.
At no time, however, did the parties own a boat at Lake Las Vegas.

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2 property inherited by Gabrielle and her siblings. With respect to Dennis' family, the
3 contributions to his family members included the following:

- 4 ○ The March 2013 purchase of the property located at 321 South San
5 Vicente, Boulevard, Los Angeles, California (hereinafter referred to as the
6 "San Vicente" property) where Dennis' parents reside. This property is
7 listed as part of the division of community assets in this divorce. See
8 Exhibit 1. (Dennis' parents testified that they believed the property
9 would belong to Dennis upon their passing. Although his father signed
10 a note for the property, he did not believe Dennis would require any
11 payments and he has not, in fact, made any payments on the note.)
- 12 ○ Dennis has paid and continues to pay the property taxes and homeowners
13 association dues (approximately \$600 per month according to Dennis'
14 father) for the San Vicente property. Further, Dennis has paid and
15 continues to pay for his parents' car insurance.
- 16 ○ For a period of time, Dennis contributed \$1,000 per month for the
17 support of his parents.
- 18 ○ Dennis gave his father \$50,000 to contribute to a political campaign.
- 19 ○ Dennis purchased the property located at 434 South Canon Drive,
20 Beverly Hills, California (hereinafter referred to as the "Canon Condo")
21 for the benefit of his brother's family. The Canon Condo is also listed as
22 a community asset in the divorce. See Exhibit 1.
- 23 ○ Dennis advanced money to his brother, Mitchell Kogod, to assist with the
24 opening of Mitchell's restaurant. Dennis also paid attorney's fees on
25 Mitchell's behalf. It is unclear, however, whether this amount has been
26 repaid.

27 As noted above, it was not uncommon for Gabrielle to communicate with
28 Dennis about all expenditures or "gifting" of even relatively small items of personal
29 property. Further, although Gabrielle had the freedom to spend without limitation, she
30 did not spend community funds either recklessly or without Dennis' prior knowledge.
31 Dennis did not reciprocate. Such one-sided communication, however, was not

1
2 uncommon throughout the marriage. In fact, Gabrielle complained on November 23,
3 2010 that:

4 Our finances are what we've been contributing to and building together
5 over the course of our marriage. My thought was that any decisions
6 being made about what we – individually or jointly — would do with
7 them would have been, at least discussed. . . . I'm asking that, before any
8 more decisions be made, you do make me aware of them and that we
9 work them out together.

10 Exhibit 23. On December 12, 2013, however, Gabrielle lamented:

11 And one of the saddest things is that, *throughout our marriage*, you've
12 pretty much always done what you wanted to do, whether it was cars,
13 cats, travel, moving and buying homes – whatever. I always wanted you
14 to be happy and have what you wanted, way back to when we were just
15 starting out. I don't know why, at some point you felt the need to start
16 doing things without telling me, and it got to a point where that simply
17 became your way of doing things.

18 *Id.* (emphasis added).

19 Notwithstanding the lack of communication by Dennis to Gabrielle about the
20 assistance that he provided to his direct family members, this Court finds and
21 concludes that, with exception to the specific expenditures discussed below, said
22 expenditures should not receive the same level of scrutiny as those monies spent on
23 non or new family members concealed from Gabrielle. Although it is undisputed that
24 Gabrielle did not share a close or friendly relationship with Dennis' family, such family-
25 related expenditures, even when not disclosed or agreed to, are not necessarily inimical
26 to a harmonious marital relationship when viewed in the context of this marital estate.
27 When questioned about Dennis' spending on his parents, Gabrielle acknowledged that
28 such spending was not inappropriate, exclaiming, "they are his parents." Gabrielle

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2 qualified her testimony by emphasizing that these expenditures should be discussed
3 and that "you come to a decision together." Nevertheless, Dennis' expenditures on
4 family members was relatively long-standing and regular.

5
6 Although a married couple may disagree about money spent on family members
7 (and such disagreements may result in discord), such gifts standing alone should not
8 be deemed dissipation or waste without examining the context of the expenditures,
9 including consideration of the overall marital estate and implied consent under the
10 facts and circumstances of this case. Ultimately, this Court does not find that, again
11 with the exception of those items discussed below, such expenditures constitute a
12 compelling reason to divide the community property unequally. Moreover, the assets
13 acquired for the benefit of Dennis' family members are captured in the Marital Balance
14 Sheet as community assets confirmed to Dennis with Gabrielle receiving her one-half
15 interest as a result.

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18 The foregoing findings are limited to those expenditures that benefitted direct
19 family members, which this Court defines as Dennis' parents, Dennis' siblings and
20 Dennis' children from his *prior* marriage. It appears that Dennis gifted community
21 funds to an aunt totaling \$15,000 in August and September 2014. Exhibit 75. These
22 gifts took place after the issuance of the Joint Preliminary Injunction (May 15, 2014).
23 Dennis failed to demonstrate by clear and convincing evidence that said \$15,000 is not
24 waste of community assets or that this particular family member was the beneficiary
25 of regular and routine gifts. Further, since May 2014, Dennis made what appear to be
26 two non-routine large payments of \$3,600 each (in January and May 2015) to his
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2 father, Sheldon Kogod. These payments occurred after the initiation of these divorce
3 proceedings and do not appear to be related to his parents' routine and regular support.
4 Finally, the \$50,000 Dennis advanced to his father for a campaign contribution cannot
5 be classified as an appropriate expenditure of community funds.
6

7 Dennis failed to demonstrate with credible evidence that the \$72,200 detailed
8 above was not improperly diverted from the marital community. Therefore, this Court
9 finds a compelling reason exists to unequally divide the community assets by
10 attributing the sum of \$72,200 as part of Dennis' division of assets.
11

12 (e) Amounts Not Elsewhere Classified: Total Waste: \$2,162,451

13 Anthem Forensics included as part of its analysis a category or "bucket" of
14 expenditures not elsewhere classified in the Anthem Report. Anthem Forensics
15 explained:
16

17 While we have sought to identify potential community waste related to
18 specific cost centers, the documentation that we have thus far received
19 has prevented us from being able to precisely allocate other outflows
20 between Dennis and non-community uses. As such, we have prepared a
summary of outflows between Dennis and non-community uses.

21 Anthem Report 13.

22 Anthem Forensics aggregated the outflows by category and year in Exhibit 6 to
23 the Anthem Report. For ease of reference, Exhibit 6 to the Anthem Report is attached
24 hereto as this Court's Exhibit 2. Anthem Forensics then made adjustments to the
25 amounts that included: (1) removing amounts that were already included in the marital
26 balance sheet as part of the property division; (2) removing amounts already allocated
27 elsewhere in the Anthem Report; (3) adjusting the amounts that Anthem Forensics
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1
2 assumed "may have reasonably benefitted the community" (even though Dennis did
3 not provide proof that such a community benefit existed);⁵³ and (4) adjusting amounts
4 based on Dennis' representations in his May 2015 FDF and his deposition testimony
5 of his monthly spending on a particular expense item.
6

7 As previously noted, it appears Anthem Forensics accepted and relied on Dennis'
8 representations regarding his monthly expenditures as he defined them in his May
9 2015 FDF. Although Dennis and Mr. Teichner complained that Anthem Forensics
10 somehow placed Dennis on an "allowance" or set limits on his expenditures, the record
11 establishes that Anthem Forensics relied on Dennis' claimed expenses (or, in other
12 words, Dennis himself defined his monthly "allowance" for each expenditure based on
13 his sworn May 2015 FDF). After allocating or crediting certain categories with the
14 amount of expenses claimed by Dennis in his May 2015 FDF, Anthem Forensics
15 allocated the excess amount by category into "amounts not elsewhere classified."
16 Anthem Forensics also offered that some of the entries could not be determined
17 without additional information. Thus, having already given credit to Dennis of the
18 amount he claimed as his monthly expense in his May 2015 FDF, the amounts
19 reflected in Exhibit 6 to the Anthem Report (and attached hereto as this Court's
20 Exhibit 2) appear to be the excess amounts for which information is lacking or Dennis
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26 ⁵³Under Note 5 to Exhibit 6, Anthem Forensics gave Dennis the benefit of the doubt.
27 In this regard, although Anthem Forensics lacked information to determine whether these
28 expenditures benefitted the martial community, Anthem Forensics ultimately concluded that
the expenditures *may have* benefitted the community. Therefore, these amounts were not
included as excess expenditures not elsewhere classified despite the fact that Dennis failed to
provide an accounting.

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2 has failed to otherwise justify. It was Dennis' burden to demonstrate that such
3 unaccounted expenditures did not constitute waste.⁵⁴

4 After making adjustments to the category totals, the Anthem Report identifies
5 a total of \$3,611,035.84 in "non-community outflows not elsewhere classified." As
6 noted above, this total is broken down into specific references in Exhibit 6 to the
7 Anthem Report. In response thereto, the Teichner Report included the same exhibit
8 with deletions (represented by a "D" in his Schedule 1) for those "expenditures for
9 assets, investments, loan repayments and other items that should not be assumed by
10 [Anthem Forensics] to be potential community waste." For ease of reference, Schedule
11 1 to the Teichner Report is also included as part of this Court's Exhibit 2. This Court
12 finds that sufficient evidence exists to make the following additional downward
13 adjustments (organized by the corresponding "Reference number" in Exhibit 2):
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Reference number	Description/ Category	Adjustment amount	Explanation
7	Auto Related – GMAC (Cadillac)	\$273,000.00	Associated with real property that is subject to division and is unrelated to an automobile (notwithstanding the confusion created at Dennis' deposition); some entries pre-date 2010.
17	Bank Fees: Cash Advantage	\$3,182.97	No <i>prima facie</i> showing that category of expenditures constitutes waste; some entries pre-date 2010.

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26 ⁵⁴Dennis also complained that Gabrielle scrutinized "nickel" and "dime" expenditures
27 that would be impractical to account for. He cited to the discussion before this Court at a prior
28 hearing (and noted above) about establishing a \$5,000 "baseline" amount for review of Dennis' spending. Considering the fact that Dennis abdicated his responsibility to account for his waste of community assets, this Court is not inclined to entertain argument about ignoring all expenditures below \$5,000 for purposes of determining waste.

Reference number	Description/ Category	Adjustment amount	Explanation
18	Bank Fees: Finance	\$7,337.72	No <i>prima facie</i> showing that category of expenditures constitutes waste; some entries pre-date 2010.
20	Bank Fees: Interest	\$17,669.60	No <i>prima facie</i> showing that category of expenditures constitutes waste; small entry pre-dates 2010.
21	Bank Fees: Loan interest	\$26,989.96	No <i>prima facie</i> showing that category of expenditures constitutes waste.
23	Capital Call – Mutual fund	\$25,000.00	Loss from investment; is not sufficient alone to constitute a compelling reason for an unequal division of assets.
68-74	Loan Payments: Bank of America: \$249,821.56; Chase: \$4,598.06; UBS: \$87,749.66; US Bank: \$22,146.96; Washington Mutual: \$91,961.20; Wells Fargo: \$13,245.25; LOC: \$124,121.04.	\$593,743.73	These loan payments appear to be associated with property that is part of the Marital Balance Sheet. Line of credit was used for investment purposes. These expenditures do not constitute a compelling reason for an unequal division of assets. Also, some entries pre-date 2010.
76	Markdale Corp.	\$7,300.00	Pre-dates 2010.
80	Need Cancelled Check	\$172,435.94	Pre-dates 2010.
95	Property Management	\$8,953.00	These payments are associated with property that is included in the Marital Balance Sheet. Accordingly, these expenditures do not constitute a compelling reason for an unequal division of assets.
TOTAL:		\$1,135,612.92	

This Court finds that the foregoing expenditures do not constitute a sufficiently compelling basis to divided the parties' assets unequally. In addition to these specific references set forth above, various categories of expenditures included expenditures that pre-date 2010. As discussed previously, *for purposes of evaluating amounts not elsewhere*

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2 *classified*, this Court is not persuaded to include expenditures that pre-date 2010.⁵⁵

3 Thus, the following additional adjustments (by reference number) should be included
4 as part of the amounts not elsewhere classified:

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6 (26) "CC Payment – Black Card": \$615.25;
7 (27) "CC Payment – BofA": \$56,133.39;
8 (29) "CC Payment – CitiCards": \$40,781.95;
9 (31) "Cellular – AT&T": \$4,771.82 (½ of pre-2010 expenditures consistent with
10 adjustment reflected in Exhibit 2);
11 (33) "Checks written to Cash": \$4,850.00;
12 (43) "Dues & Subscriptions – Fitness (CA)": \$4,334.00;*⁵⁶
13 (51) "Gas/Fuel": \$916.85;*
14 (54) "Groceries": \$2,757.21;*
15 (56) "Home related": \$1,547.00;
16 (59) "Home related (CA)": \$12,427.66;
17 (75) "Lodging": \$28,382.06;
18 (76) "Meals and entertainment": \$25,213.41;
19 (79) "Moving expenses": \$3,513.63;
20 (82) "Payments to individuals": \$4,039.03;*
21 (104) "Shopping": \$23,948.66;*
22 (114) "Uncategorized": \$8,140.69;*
23 (123) "Withdrawals and cash advances": \$90,598.28.*⁵⁷

24
25 The foregoing additional adjustments total \$312,971, for a combined
26 adjustment amount of \$1,448,584. Deducting \$1,448,584 from the total of amounts
27 not elsewhere classified leaves a remaining total of \$2,162,451 in such expenditures not
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30 ⁵⁵*In part*, some of these *unaccounted* pre-2010 expenditures fall into the "nickel and dime"
31 category that this Court is not inclined to entertain as part of the waste analysis. Heightened
32 scrutiny is more appropriate for such *unaccounted* expenditures beginning in 2010 when the
33 marriage was indisputably broken and the parties were permanently separated.

34
35 ⁵⁶Those entries denoted above by an asterisk ("*") were calculated by determining the
36 percentage amount attributed to pre-2010 expenditures in relation to the total amount and
37 then multiplied by the "Adjusted" amount. Thus, where an adjustment was already included
38 as part of the "Adjusted" amount, the full amount was not credited to avoid duplicating the
39 reduction. Instead, the applicable percentage amount was used.

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41 ⁵⁷Part of this amount was recaptured by this Court by including \$72,000 as part of the
42 cash given to Nadya from March 2008 through February 2010.

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2 justified by Dennis. This Court finds sufficient justification in the record to conclude
3 that the foregoing adjustments are appropriate in the context of the spending from the
4 marital estate. However, with respect to the remaining \$2,162,451, this Court is
5 unable to make a similar finding. Specifically, Dennis failed to meet his burden to
6 show that \$2,162,451 was not "wasted" or that said amount was used for community
7 purposes. Accordingly, this Court finds that a compelling reason exists to unequally
8 divide the community assets by attributing the sum of \$2,162,451 as part of Dennis'
9 division of assets.
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12 Notably, as part of the Teichner Report, Dennis argued for the elimination of
13 the following itemized "References" (with the parenthetical description of those items
14 not discussed above by this Court): 7, 9 (auto-related not elsewhere classified), 23, 57
15 (home related – art (Wilshire apt.)), 64 (legal fees), 68, 69, 70, 71, 72, 73, 74, 79, 80,
16 95, 114, and 122 (wire transfer – unknown) for total "eliminations" of \$1,768,251.69
17 "Before Accounting for Elimination of Business Related and Normal Living Expenses."
18 Many of the References to which Dennis objected have resulted in further adjustments
19 from the total as set forth above. For those References that Dennis argued for removal,
20 but have not been deducted or adjusted by this Court, Dennis failed to satisfy by clear
21 and convincing evidence his burden to demonstrate that those unaccounted monies did
22 not constitute waste. Moreover, some of the auto-related expenditures took place after
23 the issuance of the Joint Preliminary Injunction and Dennis failed to meet his burden
24 to justify said expenditures. Accordingly, there is a compelling reason to divide the
25 assets unequally by the resulting amount of \$2,162,451.
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2 (f) Opportunity Cost of Potential Community Waste

3 Gabrielle argued that she should be compensated for the opportunity cost "of
4 foregone returns" associated with Dennis' use of community assets and income for
5 purposes that did not benefit the marital community. Anthem Report 16. Further,
6 Gabrielle also argued that she should be compensated for lost rental income for real
7 property in which a family member or Nadya and the children resided. Although the
8 Anthem Report did not identify a specific dollar amount of reimbursement, the
9 Anthem Report cited Dennis' deposition testimony that the "targeted rate of return on
10 his UBS accounts approximated 3.5 to 4.5 percent after taxes." *Id.*

13 This Court is not inclined to either find or conclude that, under the
14 circumstances of this case, there is a compelling reason to divide the assets unequally
15 on the basis of "foregone returns" associated with the diversion of community funds
16 by Dennis. Independent of the speculative nature of evaluating such an opportunity
17 cost, this Court takes into consideration the precipitous increase in the value of the
18 marital estate during a period of time in which the marital relationship was irretrievably
19 broken. Although this finding does not excuse the waste that this Court previously
20 found Dennis to have committed, the fact that there was no diminution in the value
21 of the marital estate is relevant to the Court's consideration of this issue raised by
22 Gabrielle. Moreover, this Court similarly finds that potential lost rental income from
23 real property in which either Dennis or a family member resided is not a sufficiently
24 compelling reason for an unequal division of assets in this matter.
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2 In summary, this Court finds that a compelling reason exists to unequally divide
3 the assets of the marital community pursuant to NRS 125.150 by attributing to Dennis
4 the following amounts as part of the division of assets:

5
6 ☐ Nadya and Dennis/Nadya's Children: \$1,808,112
7 ☐ Jennifer: \$45,100
8 ☐ Family Expenditures: \$72,200
9 ☐ Amounts Not Elsewhere Classified: \$2,162,451

10 TOTAL: \$4,087,863

11 IV. SANCTIONS

12 Gabrielle also seeks sanctions against Dennis for his violation of this Court's
13 Joint Preliminary Injunction (May 15, 2014) and the terms of the parties' Stipulation
14 and Order (Aug. 10, 2015). As noted previously, Gabrielle's request for contempt
15 failed to include a sufficient affidavit from Gabrielle consistent with *Awad v. Wright*,
16 106 Nev. 407, 794 P.2d 713 (1990), abrogated on different grounds by *Pengilly v.*
17 *Rancho Sante Fe Homeowners Ass'n*, 116 Nev. 646, 5 P.3d 569 (2000). Nevertheless,
18 pursuant to EDCR 7.60,⁵⁸ this Court may consider sanctions against Dennis for his
19 conduct.
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23 ⁵⁸EDCR 7.60 provides, in relevant part, as follows:

24 (b) The court may, after notice and an opportunity to be heard,
25 impose upon an attorney or a party any and all sanctions which may, under the
26 facts of the case, be reasonable, including the imposition of fines, costs or
attorney's fees when an attorney or a party without just cause:

27 (1) So multiplies the proceedings in a case as to increase costs
unreasonably and vexatiously.

28 (5) Fails or refuses to comply with any order of a judge of the
court.

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2 With respect to Dennis' alleged violation of the Stipulation and Order (Aug. 10,
3 2015), the terms thereof fail to provide this Court with an adequate basis to make
4 findings of contempt (apart from the failure to include an appropriate *Awad* affidavit).
5 The Stipulation and Order (Aug. 10, 2015) is devoid of any specific deadlines for the
6 conduct required therein. Further, it appears from the record that the proceeds from
7 the sale of the yacht have been preserved in the accounts being divided by this Court.
8

9 This Court's Joint Preliminary Injunction (May 15, 2014) (hereinafter
10 referenced as the "JPI") provides, in relevant part, as follows:
11

12 YOU ARE HEREBY PROHIBITED AND RESTRAINED FROM:

13 1. Transferring, encumbering, concealing, selling or otherwise
14 disposing of any of your joint, common or community property of the
15 parties, or any property which is the subject of a claim of community
16 interest, except in the usual course of business or for the necessities of
17 life, without the written consent of the parties or the permission of the
18 court.

19 The record reflects that, after the issuance of the JPI, Dennis spent more than
20 \$10,000 on thirty-seven (37) individual transactions that totaled \$1,486,452. Exhibit
21 73 (Examples of Outflows Greater than \$10,000 Since May 2014). These expenditures
22 do not include his purchase of a yacht and his Wilshire residence (which have been
23 captured in the Marital Balance Sheet attached hereto). These expenditures do not
24 appear to qualify as the "necessities of life" or to have been made in "the *ordinary*
25 course of business." Nevertheless, it appears that the amounts listed in Exhibit 73 are
26 included in either the Anthem Report for purposes of accounting, or are part of the
27 Marital Balance Sheet. This includes references in Exhibit 73 to categories contained
28 in Exhibit 6 to the Anthem Report. Although these expenditures have been captured

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2 in the Anthem Report and included as part of this Court's analysis of community
3 waste, each transaction violated the terms of the JPI. There is no wealth exception to
4 the express terms of the JPI. This Court sanctions Dennis the sum of \$500.00 for each
5 of the 39 violations itemized in Exhibit 73, for a total of \$19,500. Dennis should pay
6 to Gabrielle the \$19,500 sanction within thirty (30) days of the entry of this Decree.
7

8 This Court is not inclined to find that sanctions should be imposed for the
9 expenditures detailed in Exhibit 72 (Nadya/Children-Related Outflows Since May
10 2014), or Exhibit 75 (Spreadsheet showing payments to or on behalf of Dennis' Family
11 Members since May 2014). Again, these expenditures are included in other sections
12 of the Anthem Report and have been considered by the Court with respect to the issue
13 of waste. Further, many of the expenditures listed in Exhibit 72 and Exhibit 75 were
14 for relatively small amounts and were for ongoing living expenses that this Court would
15 not expect would cease upon the initiation of the divorce. Although these expenditures
16 are appropriate for consideration in evaluating Gabrielle's claim of waste, this Court
17 does not find a sufficient basis to impose additional monetary sanctions against
18 Dennis.
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21

22 V. ALIMONY

23 A. CONCLUSIONS OF LAW

24
25 NRS 125.150 provides that, in granting a divorce, this Court "[m]ay award such
26 alimony to the wife or to the husband, in a specified principal sum or as specified
27 periodic payments, as appears just and equitable." NRS 125.150 further adds, in
28 pertinent part, as follows:

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2 5. In granting a divorce, the court may also set apart such
3 portion of the husband's separate property for the wife's support, the
4 wife's separate property for the husband's support or the separate
5 property of either spouse for the support of their children as is deemed
6 just and equitable.

7 * * * *

8 9. In addition to any other factors the court considers relevant
9 in determining whether to award alimony and the amount of such an
10 award, the court shall consider:

- 11 (a) The financial condition of each spouse;
12 (b) The nature and value of the respective
13 property of each spouse;
14 (c) The contribution of each spouse to any
15 property held by the spouses pursuant to NRS 123.030;
16 (d) The duration of the marriage;
17 (e) The income, earning capacity, age and health
18 of each spouse;
19 (f) The standard of living during the marriage;
20 (g) The career before the marriage of the spouse
21 who would receive the alimony;
22 (h) The existence of specialized education or
23 training or the level of marketable skills attained by each
24 spouse during the marriage;
25 (i) The contribution of either spouse as
26 homemaker;
27 (j) The award of property granted by the court in
28 the divorce, other than child support and alimony, to the
spouse who would receive the alimony; and
(k) The physical and mental condition of each
party as it relates to the financial condition, health and
ability to work of that spouse.

10. In granting a divorce, the court shall consider the need to
grant alimony to a spouse for the purpose of obtaining training or
education relating to a job, career or profession. In addition to any other
factors the court considers relevant in determining whether such alimony
should be granted, the court shall consider:

- (a) Whether the spouse who would pay such
alimony has obtained greater job skills or education during
the marriage; and

1
2 (b) Whether the spouse who would receive such
3 alimony provided financial support while the other spouse
4 obtained job skills or education.

5 (Emphasis added).

6 There have been a number of cases from the Nevada Supreme Court over the
7 years that have discussed various factors to consider when determining the propriety
8 of an award of spousal support. For the most part, these factors have been codified in
9 NRS 125.150(9). However, these eleven statutory guidelines provide no guidance as
10 to the relative weight to be applied to each factor or the measure of balancing these
11 factors. Further, there is no formula to be applied by this Court in calculating or
12 determining the propriety of awarding spousal support or the amount thereof. Rather,
13 this Court weighs and balances the foregoing factors to adjudicate this issue.
14

15
16 Scholarly discussion of these statutory guidelines is instructive, specifically
17 including the Honorable David A. Hardy's *Nevada Alimony: An Important Policy in Need*
18 *of a Coherent Policy Purpose*, 9 NEV. L. J. 325 (2009). To this end, the statutory factors
19 support a conclusion that spousal support is not limited to a "need" based
20 determination. Rather, there are three general categories or theories of support. First,
21 need based support (looking at need and ability to pay). Second, support that is in the
22 nature of compensation for economic losses as a result of the marriage and divorce
23 (which includes support that is based on the subordination of a career by one spouse,
24 support that is adjunct to property division where the payor spouse has developed a
25 "career asset," and support that is based on a spouse's reliance on the existence of
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1 marriage). Finally, support that is intended for welfare avoidance, or to prevent a
2 spouse from becoming a public charge.
3

4 The purpose of spousal support is not to equalize post-divorce incomes, but "to
5 allow the recipient spouse to live as nearly as fairly possible to the station in life
6 enjoyed before the divorce." *Shydler v. Shydler*, 114 Nev. 192, 198, 954 P.2d 37, 40
7 (1998). Further, "[a]lthough the amount of community property to be divided
8 between the parties may be considered in determining alimony," a spouse should not
9 be required to deplete his/her share of community property for support. *Id.*, 114 Nev.
10 at 198, 954 P.2d at 40. Further, this Court should not consider the respective "merits"
11 of the parties in adjudicating the issue of spousal support. *Rodriguez v. Rodriguez*, 116
12 Nev. 993, 13 P.3d 415 (2000). It is not a "sword to level the wrongdoer," nor is it a
13 "prize to reward virtue." *Id.* 116 Nev. at 999, 13 P.3d 419. Rather, "Alimony is
14 financial support paid from one spouse to the other whenever justice and equity require
15 it." *Id.*
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19 Prior to addressing Gabrielle's request for periodic spousal support, this Court
20 disposes of the issue of rehabilitative support. Pursuant to NRS 125.150(10), this
21 Court is required to consider whether there is a basis to award rehabilitative alimony.
22 Based on the record before this Court, there is no basis for an award of rehabilitative
23 alimony. There are no facts in the record establishing the existence of a plan for
24 rehabilitation and no evidence establishing viable options for rehabilitation or training.
25 Indeed, it appears that Gabrielle is satisfied with her existing career and there was no
26 indication that she desired or needed further training or education. Moreover,
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2 Gabrielle leaves the marriage with an educational background that is superior to
3 Dennis. Gabrielle has neither sought nor presented facts that warrant consideration
4 of rehabilitative support.

5
6 B. FINDINGS OF FACT

7 Preliminarily, this Court finds that, taking into consideration Gabrielle's income
8 (both from her employment and the passive income she will earn on the assets she
9 receives as part of the division of community property), the spousal support considered
10 by this Court is not need based or for the purpose of welfare avoidance. Nevertheless,
11 there is a sufficient factual basis for the Court to consider an award of support that is
12 in the nature of compensation for economic losses as a result of the marriage and
13 divorce. With respect to the statutory factors to be considered, this Court finds as
14 follows:
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16

- 17 (1) The financial condition of each spouse; the income, earning
18 capacity, age and health of each spouse; and the physical and
19 mental condition of each party as it relates to the financial
20 condition, health and ability to work of that spouse. NRS
21 125.150(9)(a), (e) and (k)

22 Although the focus of these statutory factors is the recipient's need and payor's
23 ability to pay, subsection (e) includes an element of examining the development by the
24 payor of a career asset and reliance on the part of the recipient on the continuation of
25 marriage. It is undisputed that both parties are capable of continuing to work and
26 neither party suffers from any limiting mental or physical condition that inhibits their
27 respective ability to earn income. Although Dennis referenced an upcoming hip
28

1 surgery, there is no evidence indicating that he will be unable to continue his
2 employment in the future. Gabrielle is 58 years of age and Dennis is 57 years of age.
3

4 In evaluating the financial condition of each spouse, this Court considers and
5 defines the income of both Gabrielle and Dennis to evaluate their income and earning
6 capacity. With respect to income earned by the parties during the marriage, the
7 increase in Dennis' annual income has been dramatic. For example, in 2003, the
8 parties reported \$826,179 in combined total income/adjusted gross income (with
9 \$826,902 in "wages, salaries, tips").⁵⁹ Exhibit 16. From \$826,179 in income in 2003,
10 their combined income thereafter is summarized as follows:
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Year	Total/Adjusted Gross Income	Wages, salaries, tips	Exhibit
2004	\$821,971	\$819,175	15
2005	\$2,702,010	\$2,693,810	14
2006	\$825,618	\$793,804	13
2007	\$1,007,982	\$993,828	12
2008	\$1,062,424	\$1,066,662	11
2009	\$1,659,925	\$1,667,831	10
2010	\$2,484,867	\$2,485,526	9
2011	\$15,485,110	\$15,512,261	8
2012	\$21,535,200	\$21,401,381	7
2013	\$7,746,799	\$7,248,488	6

24

25

26 ⁵⁹It appears that Gabrielle's portion of the parties' combined income was a very small
27 percentage, *generally* less than five percent (5%). As a "Section 16" employee, Dennis'
28 compensation is reported on a 10(k) form, which includes any transactions associated with
stocks or stock options. Exhibits 91 through 98. Dennis' perquisites include private or
personal "plane" hours and some health care contributions. Also, costs associated with his
business travel generally are covered by the company up to a certain "good sense" point.

Year	Total/Adjusted Gross Income	Wages, salaries, tips	Exhibit
2014	\$14,976,489	\$14,459,056	5
2015 ⁶⁰		\$10,132,746.52	JJJJ

The record regarding the parties' 2015 income is incomplete and unclear. In this regard, Dennis' 2015 bonus was to be determined in March 2016 (after the trial in this matter). According to Dennis, his projected income for the calendar year 2016 will be a base salary of \$700,000 to \$800,000. He will learn of his 2016 bonus in March of 2017.

As seen above, the parties' average annual adjusted gross income for the years 2011 through 2014 is \$14,935,899.50. Including 2010 as part of the analysis, the parties' average annual adjusted gross income over the five years (2010 through 2014) is \$12,445,693. Including Dennis' 2015 W-2 income, the average annual income for the five years from 2011 through 2015 is \$13,975,268.90. Dennis testified that his average income from 2011 through 2015 was \$13,000,000.

It is undisputed that Dennis' income historically has dwarfed Gabrielle's income throughout their marriage. It also is undisputed that Gabrielle's career was secondary to Dennis' career pursuits as evidenced by the parties' multiple relocations throughout their marriage. The parties agreed that it was more beneficial to follow Dennis' career. Even so, it does not appear that Gabrielle's career necessarily suffered or that she was ever precluded from pursuing employment.

⁶⁰The 2015 income information is limited to Dennis' 2015 W-2 Wage and Tax Statement from Renal Healthcare, Inc. Exhibit JJJJ. Therein, Dennis' reported 2015 "Medicare" wages of \$10,132,746.52, with income taxes withheld of \$3,798,481.09.

1
2 Gabrielle has worked as a nurse manager, nurse recruiter and a clinical nurse.
3 Although her Certified Legal Nurse Consultant credential lapsed in approximately
4 2012, she has worked at Dignity Health for approximately ten years. She works 24
5 hours per week (or 48 hours over a two-week pay period). Throughout their marriage,
6 there was not an expectation that Gabrielle would work more than her present part-
7 time employment. Gabrielle enjoys her current employment and, during the marriage,
8 Dennis encouraged Gabrielle to remain with Dignity Health.⁶¹ Gabrielle has not
9 applied for any different employment since 2004. Gabrielle defined her income in her
10 2016 FDF, wherein she represented that her average gross monthly income was
11 \$4,624.30. Gabrielle's 2016 FDF. After deductions, her net monthly income was
12 \$3,800. *Id.*
13
14
15

16 In contrast with Gabrielle's income, defining Dennis' income for support
17 purposes is complicated. A comparison of his various FDFs filed with the Court
18 illustrates the wide range of income reported by Dennis. For example, Dennis
19 represented average gross monthly income of \$66,666.66 in his February 2015 FDF.
20 His reported average gross monthly income increased to \$600,310.40 in his May
21 2015 FDF. Finally, Dennis represented average gross monthly income of \$61,538.48
22 in his February 2016 FDF. Dennis' income and benefits of employment with DaVita
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⁶¹During the marriage, there was some consideration of Gabrielle attending law school (which went only so far as Gabrielle purchasing an LSAT study guide). Even had she done so, the "success" of her legal career would be speculative.

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2 is summarized in the annual Proxy Statements he received from the United States
3 Securities and Exchange Commission, which provide the following detailed summary:⁶²

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Year	Salary	Bonus	Stock Awards	Options Awards	Non-Equity Incentive Plan Compensation	All Other Compensation	Total
2008	472,414	150,000		2,353,580	750,000	11,109	3,737,103
2009	628,855	250,000		4,230,240	950,000	772	6,059,867
2010	727,075	118,000	2,377,500	2,364,780	1,500,000	17,095	7,104,450
2011	800,010	118,000		6,028,575	1,750,000	107,383	8,803,968
2012	800,004	118,000	4,036,057	1,358,364	1,400,000	45,877	7,758,302
2013	800,004			2,970,770	1,100,000	90,042	4,960,812
2014	800,000	200,000	667,422	1,860,796	6,142,500	104,792	9,775,510

13 Dennis' base salary has remained relatively constant from 2011 through 2014.
14 His additional income is attributable to bonus income, stock awards, option awards,
15 and other incentive awards. This additional income is determined by and at the
16 discretion of the DaVita Compensation Committee and is not awarded until March
17 of the following year. Also, there appear to be fluctuations in awards from year-to-
18 year. Dennis testified that the "days" of earning significant incentive based income
19 "are over."
20

21
22 Upon review of the record, this Court recognizes the fluctuating nature of
23 Dennis' incentive compensation awards in contrast with the *relatively* constant and
24 consistent base salary and bonus income he has received for more than five years.⁶³
25

26
27 ⁶²Not reflected in the compensation summary above is Dennis' flight benefits with
28 DaVita. Dennis' allocation of flight hours as one of his perquisites of employment ranged from zero in 2009 to a high of \$106,611 in 2011. Exhibits 93 and 95.

⁶³From 2008 through 2014, Dennis received bonus income totaling \$954,000, for an average annual bonus of \$136,000. However, excluding 2013 (which was the only year in

1
2 Moreover, from 2003 through 2009, this Court notes that the parties' combined
3 income from "wages, salaries, tips" totaled \$8,861,289, for an annual average
4 combined income of \$1,265,898.43. This Court also takes into consideration the fact
5 that the highest income earned by Dennis came at a time that the marital relationship
6 was broken and the parties had permanently separated. Without ascribing credit or
7 blame, the delay in the parties divorcing has resulted in significant growth in the size
8 of the overall marital estate. Although this Court does not accept Dennis' hypothetical
9 proposition that the marital estate to be divided in 2010 would have been \$4 million
10 had he prosecuted his Complaint for Divorce (Mar. 10, 2010), this Court does accept
11 the argument that the amount Gabrielle will receive as part of the property division has
12 increased significantly during the five plus years that the parties have been
13 permanently separated.
14
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17 Recognizing that this is not a need based spousal support case, this Court
18 similarly (as with Dennis' incentive compensation income) discounts the passive
19 income that Gabrielle will earn from the property that she will receive as part of the
20 property division.⁶⁴ Instead, this Court focuses on Dennis' base salary plus his average
21 bonus income received from 2008 through 2012, and 2014 and Gabrielle's income
22 from her employment. Thus, this Court finds that Dennis' average gross monthly
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24

25 which a "bonus" was not reported pursuant to SEC filings), the annual average bonus was
26 \$159,000.

27 ⁶⁴Unlike *Shydler, supra*, this is not a situation in which Gabrielle will need to deplete or
28 rely on the principle amounts of her property award in the divorce for her support. Rather,
Dennis testified that Gabrielle could earn at least four percent (4%) on the liquid amounts she
will receive as part of this divorce. Gabrielle did not challenge Dennis' testimony or suggest
any lower rate of return.

1
2 income for purposes of support is \$80,000, with average net monthly income of
3 \$58,000 (after deducting federal income taxes and social security deductions). The
4 resulting difference in the parties' average monthly net incomes is \$54,200.

5
6 (2) The nature and value of the respective property of each
7 spouse and the award of property in the divorce to the spouse
8 who would receive alimony. NRS 125.150(9)(b) and (j)

9
10 Dennis proposes that he receive the majority of the non-liquid assets as part of
11 the division of assets. This includes: (1) the residence in which Nadya and the
12 children reside (the Oak Pass property); (2) the residence in which Dennis' parents
13 reside (San Vicente property); and (3) the residence in which Dennis' brother's family
14 reside (Canon Condo). Based on such a division, Dennis argued that Gabrielle would
15 leave the marriage with approximately \$18,000,000 in cash and \$2,000,000 in real
16 estate. Dennis added that Gabrielle should be able to earn a reasonable rate of return
17 of at least 4%. As such, Dennis projected that Gabrielle could earn between \$500,000
18 and \$800,000 in passive income if Gabrielle invests the liquid assets with a
19 conventional investment house (or even with a bank).⁶⁵

20
21 According to Gabrielle's FDFs, she spends between \$180,000 and \$240,000 per
22 year. Her 2015 FDF (Exhibit XX) shows total monthly expenses of \$15,255 per
23 month, or \$183,060 annually. Gabrielle acknowledged, however, that her expenses
24 would likely be reduced slightly after the Lake Las Vegas residence was sold. Thus,
25

26
27
28 ⁶⁵In support of this argument, Dennis cites to the parties' 2014 U.S. Individual Income
Tax Return wherein the parties reported \$133,666 in interest income, \$60,099 in tax-exempt
interest income, \$284,303 in ordinary dividends, and \$96,223 in qualified dividends. Exhibit
5.

1
2 Gabrielle does not "need" support to meet her expenses. Nevertheless, comparing the
3 total income each party will earn based on the history of their earnings during the past
4 five years (combined with the passive income Gabrielle likely will earn), the record
5 supports a finding that Dennis will continue to earn more income annually than
6 Gabrielle.
7

8 (3) The contribution of each spouse to any property held by the
9 spouses pursuant to NRS 123.030. NRS 125.150(9)(c)

10 This factor is not applicable in this case.

11 (4) The duration of the parties' marriage. NRS 125.150(9)(d)

12
13 The parties married on July 20, 1991. Thus, they have been married for nearly
14 25 years, which qualifies as a long-term marriage. As a result, Gabrielle has relied on
15 the continued existence of their marriage for her support. However, it is not lost on
16 this Court that the parties have not shared a harmonious marital relationship since
17 approximately 2004. By no later than 2010, the parties were permanently separated.
18 Further, as discussed throughout this Decree, this Court has determined that their
19 marriage was irretrievably broken in 2004. Finally, this divorce action was initiated
20 in December 2013. At that time, the parties had been married for 22 years.
21
22

23 (5) Standard of living during the marriage. NRS 125.150(9)(f)

24 The parties' standard of living is defined by the historical earnings of the parties
25 previously discussed. Again, although not need based, Gabrielle relied on the existence
26 of the parties' marriage to maintain the standard of living achieved as a result of
27 Dennis' income capacity. Without objection, Gabrielle followed Dennis' career
28

1
2 pursuits, which will result in Gabrielle leaving this marriage with more than \$20
3 million in assets.

4 (6) The career before the marriage of the spouse receiving
5 alimony. NRS 125.150(9)(g)

6 Both Gabrielle and Dennis had established a degree of success in their respective
7 careers before their marriage. Although the parties followed Dennis' career throughout
8 their marriage, it does not appear that Gabrielle's career materially suffered as a result
9 of this mutual decision, or that she would be earning significantly more based on career
10 subordination during the marriage.
11

12 (7) The existence of specialized education or training or level of
13 marketable skills attained by each spouse during marriage.
14 NRS 125.150(9)(h)

15 Although Dennis did not receive specialized education during the marriage, his
16 career experiences laid the foundation for his role and position that he now enjoys at
17 DaVita. Indeed, he acknowledged that his employment experience played a key role
18 in "getting me to DaVita," and that his ability to remain with DaVita was something
19 he "earned" through hard work and "getting results." At the same time, though to a
20 lesser degree, Gabrielle remained employed throughout most of their marriage and
21 benefitted from the job training she experienced at various places of employment and
22 in various capacities.
23

24 (8) The contribution of either spouse as a homemaker . NRS
25 125.150(9)(i)

26 This factor includes elements of career subordination, but it is not of significant
27 import in this matter. Gabrielle testified that, as between the parties, she was
28

1 primarily responsible for care-taking duties of their various marital homes. Although
2 the parties routinely employed house-cleaners, Gabrielle would cook and care for their
3 home. However, this Court does not find that Gabrielle served as a homemaker in a
4 traditional sense. At no time did it appear that she avoided or terminated employment
5 for the purpose of taking care of the parties' home. Although Gabrielle's Brief cites
6 multiple cases discussing the significance of the career sacrifices of homemakers, many
7 of the citations involved full-time homemakers that remained at home to manage the
8 home and raise children. Such is not the case in this matter.
9

10
11
12 Weighing and balancing the foregoing factors, this Court finds that Dennis
13 should pay spousal support to Gabrielle in the sum of \$18,000 per month, for a period
14 of 108 months, for a total of \$1,944,000. Considering the length of the parties'
15 separation, and recognizing that the support is not need based, this Court further
16 concludes and finds that the support should be paid in a specified or lump sum
17 amount so as to disentangle the parties. NRS 125.150(1)(a) and (5). Accordingly,
18 applying a 4% discount rate (the rate of return commonly referenced in the record) to
19 the periodic monthly sum of \$18,000 per month for a period of 108 months, results
20 in a present value lump sum amount of \$1,630,292. This amount should be
21 effectuated by awarding Gabrielle the sum of \$1,630,292 from the UBS Resource
22 Management Account (account 12745) awarded to Dennis.
23
24
25

26 Based on the foregoing Findings of Fact, and Conclusions of Law, and good
27 cause appearing therefor,
28

1
2 It is hereby ORDERED, ADJUDGED, and DECREED that an absolute
3 DECREE OF DIVORCE is hereby GRANTED and the bonds of matrimony are hereby
4 DISSOLVED and the parties are returned to the status of single, unmarried
5 individuals, with Plaintiff henceforth known as GABRIELLE ROSE CIOFFI.
6

7 It is further ORDERED, ADJUDGED and DECREED that the assets and debts
8 are divided pursuant to the Marital Balance Sheet attached hereto as Exhibit 1. In
9 this regard, it is further ORDERED that the following assets are confirmed to Gabrielle
10 as her sole and separate property:
11

- 12 (1) the residence and real property located at 21 Augusta Canyon Way, Las
13 Vegas, Nevada;
14
15 (2) the sum of \$186,030 from the net sales proceeds realized from the sale
16 of the Lake Las Vegas residence (plus or minus one-half (½) of any
17 amount in excess of or below net sales proceeds of \$570,502);
18
19 (3) the following bank and financial accounts:
20 (a) the Merrill Lynch/Bank of America checking account (ending
21 0129); and
22 (b) one-half of the Merrill Lynch/Bank of America joint checking
23 account (ending 6446);
24
25 (4) the following investments:
26 (a) the UBS Strategic Advisor account (no. 12743);
27 (b) the UBS Private Wealth Solutions account (no. 13134);
28 (c) the UBS Resource Management Account (account 21076);

1
2 (d) the UBS Resource Management Account (account 20329);

3 (e) the Merrill Lynch CMA account (no. 10637); and

4 (f) the Merrill Lynch CMA account (10093);

5
6 (5) one-half (½) of the fractional community property interest in any
7 incentive awards granted or awarded to Dennis associated with his
8 employment prior to February 26, 2016, calculated based on the total
9 time between the award or grant of the asset/award and the date on
10 which said asset/award vests or matures, with the Court retaining
11 jurisdiction to "wait and see" whether post-divorce performance
12 conditions should be considered as part of the division;
13

14 (6) one-half of the net sales proceeds realized from the sale of the 2015
15 Ferrari;

16
17 (7) the golf cart;

18 (8) the following retirement accounts:

19 (a) the Fidelity Dignity Health retirement account;

20 (b) the sum of \$289,409 from the DaVita Executive retirement plan;

21 (c) the Merrill Lynch IRA (11040);

22 (d) one-half of the Teleflex defined benefit pension plan, with this
23 Court retaining jurisdiction to enter a qualified order to effectuate
24 the division thereof;
25

26
27 (9) one-half (½) of all credit card/travel reward points accumulated during
28 the parties' marriage; and

1
2 (10) all of Gabrielle's furnishings, jewelry, clothing, personal belongings and
3 effects.

4 It is further ORDERED that the following assets are confirmed to Dennis as his
5 sole and separate property:
6

7 (1) the following real properties:

8 (a) the sum of \$384,472 from the net sales proceeds realized from the
9 sale of the Lake Las Vegas residence (plus or minus one-half (1/2)
10 of any amount in excess of or below net sales proceeds of
11 \$570,502);
12

13 (b) the Oak Pass property;

14 (c) the San Vicente property;

15 (d) the Canon Condo;

16 (e) the residence and real property located at 10776 Wilshire
17 Boulevard; and
18

19 (f) the nanny quarters located at 10776 Wilshire Boulevard;
20

21 (2) the following bank and financial accounts:

22 (a) one-half of the Merrill Lynch/Bank of America joint checking
23 account (ending 6446);
24

25 (b) the Wells Fargo checking account (ending 5397);

26 (c) the Wells Fargo checking account (ending 8870); and

27 (d) the Wells Fargo savings account (ending 6253);
28

1
2 (3) the following investments:

3 (a) the UBS Resource Management Account (account 12745);

4 (b) the UBS Resource Management Account (account 18575);

5 (c) the NEA investment;

6 (d) the Radiology Partners investment;

7 (e) the iChill investment;

8 (f) any interest in the Pray for Ukraine/Winter movie; and

9 (g) any interest in the Thomasina movie;

10
11
12 (4) Dennis' interest in any incentive awards through his employment with
13 DaVita, less Gabrielle's one-half ($\frac{1}{2}$) interest in the fractional community
14 property percentage in any such incentive awards granted or awarded to
15 Dennis associated with his employment prior to February 26, 2016,
16 calculated based on the total time between the award or grant of the
17 asset/award and the date on which said asset/award vests or matures,
18 with the Court retaining jurisdiction to "wait and see" whether post-
19 divorce performance conditions should be considered as part of the
20 division;

21
22
23 (5) the following automobiles:

24 (a) the 2015 Bentley 12 cyl.;

25 (d) the 2015 Bentley 8 cyl.; and

26 (c) one-half of the net sales proceeds realized from the sale of the
27 2015 Ferrari;
28

- 1
2 (6) receivables due and owing from Kim Matthews, Bernie Kogod, Mitchell
3 Kogod, and Sheldon Kogod;
4 (7) the following retirement accounts:
5 (a) the UBS Rollover IRA (46);
6 (b) the sum of \$13,427 from the DaVita Executive retirement plan;
7 (c) the Chase Cigna Health Savings account;
8 (d) one-half of the Teleflex defined benefit pension plan, with this
9 Court retaining jurisdiction to enter a qualified order to effectuate
10 the division thereof; and
11 (e) the Voya DaVita retirement account;
12
13 (8) the Principal life insurance policy;
14 (9) the sapphire ring;
15 (10) one-half (1/2) of all credit card/travel reward points accumulated during
16 the parties' marriage; and
17 (11) all of Dennis' furnishings, jewelry, clothing, personal belongings and
18 effects.
19
20
21

22 It is further ORDERED that Gabrielle has the option of receiving as her assets
23 the 2015 Bentley (12 cyl.) and the 2015 Bentley (8 cyl.) at the corresponding values
24 she placed on the vehicles. It is further ORDERED that Gabrielle must make her
25 election to receive these vehicles within 14 days of the entry of this Decree. It is
26 further ORDERED that, if Gabrielle exercises this option, the Marital Balance Sheet
27
28

1 shall be modified to insert the corresponding values in Gabrielle's column of assets,
2
3 with the totals recalculated to effectuate an equal division

4 It is further ORDERED that Dennis shall assume, pay, and hold Gabrielle
5 harmless from the outstanding amount owed on the UBS line of credit (which is
6 treated as a community debt).
7

8 It is further ORDERED that Gabrielle shall assume, pay and hold Dennis
9 harmless from the following debts as her sole and separate responsibility:

- 10 (1) the amount owed to Banana Republic (account ending 4713);
- 11 (2) the amount owed to Discover (account ending 5161);
- 12 (3) the amount owed to Merrill Lynch AMEX (account ending 9677);
- 13 (4) the amount owed to Kohl's (account ending 557);
- 14 (5) the amount owed to Nordstrom (account ending 992);
- 15 (6) the amount owed to TJX Rewards (account ending 6951);
- 16 (7) the amount owed to LoveLoft Mastercard (account ending 5363) and
- 17 (8) the amount owed to Saks (account ending 688).

18 It is further ORDERED that Dennis shall assume, pay and hold Gabrielle
19 harmless from the following debts as his sole and separate responsibility:

- 20 (1) the amount owed to American Express Centurion (account ending 3005);
- 21 (2) the amount owed to American Express Optima (account ending 2003);
- 22 (3) the amount owed to American Express Platinum (account ending 9008);
- 23 (4) the amount owed to Mastercard Black Card (account ending 1588); and
- 24 (5) the amount owed to Wells Fargo Visa (account ending 1032).

1
2 It is further ORDERED that the parties shall equally share the costs associated
3 with the preparation of any Qualified Domestic Relations Order(s) necessary to
4 effectuate the division of retirement accounts set forth herein.
5

6 It is further ORDERED that, as part of the division of assets, the sum and
7 amount of \$4,087,863 is attributed as an asset to Dennis in the Court's Exhibit 1.

8 It is further ORDERED that Gabrielle is awarded the sum and amount of
9 \$1,630,292 as a specified principal sum as and for spousal support, with said
10 \$1,630,292 paid from the UBS Resource Management Account (account 12745).
11

12 It is further ORDERED that Dennis shall pay to Gabrielle the sum of \$19,500
13 within thirty (30) days of the entry of this Decree as and for sanctions associated with
14 his violation of the JPI.
15

16 DATED this 22nd day of August, 2016.

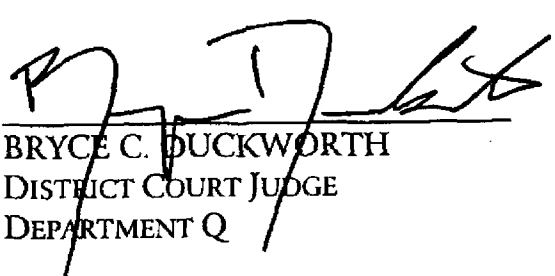
17
18 
19 BRYCE C. DUCKWORTH
20 DISTRICT COURT JUDGE
21 DEPARTMENT Q
22
23
24
25
26
27
28

Exhibit 1

Cioffi-Kogod v. Kogod
Marital Balance Sheet

				Property Value				
ASSETS	Value	Debt	Net Value	Community		Separate		NOTES
				Dennis	Gabrielle	Dennis	Gabrielle	
CASH/BANK ACCOUNTS								
1 Bank of America Checking (129)	\$65,200	\$0	\$65,200		\$65,200			Exhibit 141
2 Bank of America Checking (6446)	\$18,356	\$0	\$18,356	\$9,178	\$9,178			Exhibit 142
3 Wells Fargo Checking (5397)	\$10,192	\$0	\$10,192	\$10,192				Exhibit MMMMM
4 Wells Fargo Checking (8870)	\$429	\$0	\$429	\$429				Exhibit NNNNN
5 Wells Fargo Savings (6253)	\$496	\$0	\$496	\$496				Exhibit MMMMM
6 Blocked account (Yacht)								Placed in UBS 45 per Anthem Report
Subtotal	\$94,673	\$0	\$94,673	\$20,295	\$74,378	\$0	\$0	

INVESTMENTS								
7 UBS Strategic Advisor (12743)	\$6,033,694	\$0	\$6,033,694		\$6,033,694			Exhibit JJJJJ
8 UBS Resource Mgt. Account (12745)	\$4,180,085	\$0	\$4,180,085	\$4,180,085				Exhibit KKKKK
9 UBS Private Wealth Solutions(13134)	\$2,252,231	\$0	\$2,252,231		\$2,252,231			Exhibit LLLLL
10 UBS Resource Mgt. Account (21076)	\$9,203,992	\$0	\$9,203,992		\$9,203,992			Exhibit IIIII
11 UBS Resource Mgt. Account (18575)	\$95,056	\$0	\$95,056	\$95,056				Exhibit FFFFF
12 UBS Resource Mgt. Account (20329)	\$1,232,061	\$0	\$1,232,061				\$1,232,061	Exhibit 144; Stip. & Order (8/10/2016)
13 Merrill Lynch CMA (10637)	\$496,802	\$0	\$496,802		\$496,802			Exhibit 143
14 Merrill Lynch CMA (10093)	\$282,025	\$0	\$282,025		\$282,025			Exhibit 143
Subtotal	\$23,775,946	\$0	\$23,775,946	\$4,275,141	\$18,268,744	\$0	\$1,232,061	

BUSINESS INTERESTS								
15 NEA Investment	\$979,388	\$0	\$979,388	\$979,388				Dennis & Gabrielle's Briefs
16 Radiology Partners	\$150,000	\$0	\$150,000	\$150,000				Anthem Report 17
17 Ichill	\$150,000	\$0	\$150,000	\$150,000				Dennis & Gabrielle's Briefs
18 Pray for Ukraine/Winter Movie	\$81,000	\$0	\$81,000	\$81,000				Dennis & Gabrielle's Briefs
19 Thomasina Movie	\$100,000	\$0	\$100,000	\$100,000				Dennis & Gabrielle's Briefs
Subtotal	\$1,460,388	\$0	\$1,460,388	\$1,460,388	\$0	\$0	\$0	

RECEIVABLES								
20 Business Loan (Kim Matthews)	\$25,000	\$0	\$25,000	\$25,000				Dennis & Gabrielle's Briefs
21 Personal loan (Bernie Kogod)	\$25,000	\$0	\$25,000	\$25,000				Dennis & Gabrielle's Briefs
22 Business loan (Mitchell Kogod)	\$178,000	\$0	\$178,000	\$178,000				Dennis & Gabrielle's Briefs
23 Personal loan (Sheldon Kogod)	\$25,000	\$0	\$25,000	\$25,000				Dennis & Gabrielle's Briefs
Subtotal	\$253,000	\$0	\$253,000	\$253,000	\$0	\$0	\$0	

				Property Value				
				Community		Separate		
ASSETS	Value	Debt	Net Value	Dennis	Gabrielle	Dennis	Gabrielle	NOTES
REAL PROPERTY								
24	28 Via Mira Monte, Henderson	\$1,400,000	\$829,498	\$570,502	\$384,472	\$186,030		To be sold w/ proceeds divided
25	9716 Oak Pass Road, Beverly Hills	\$6,300,000	\$0	\$6,300,000	\$6,300,000			See Decree
26	321 So. San Vicente Condo	\$680,000	\$0	\$680,000	\$680,000			Stipulated value; net proceeds
27	434 So. Canon Condo	\$654,001	\$0	\$654,001	\$654,001			See 5/4/2016 hearing; Ex. WWWWW
28	10776 Wilshire Blvd.	\$3,615,061	\$0	\$3,615,061		\$3,615,061		See Stipulation and Order (8/10/2016)
29	10776 Wilshire Blvd. (nanny)	\$332,216	\$0	\$332,216	\$332,216			Closing Briefs; not ref. in Stip.
30	21 Augusta Canyon Way	\$2,375,000	\$0	\$2,375,000			\$2,375,000	See Stipulation and Order (8/10/2016)
Subtotal		\$15,356,278	\$829,498	\$14,526,780	\$8,350,689	\$186,030	\$3,615,061	\$2,375,000

AUTOS & RECREATIONAL VEHICLES								
31 2015 Bentley 12 cyl.	\$255,000	\$0	\$255,000	\$255,000				
32 2015 Bentley 8 cyl. (Nadya's)	\$205,000	\$0	\$205,000	\$205,000				
33 2015 Ferrari 458	\$276,675	\$0	\$276,675	\$138,337	\$138,337			Sold & proceeds divided; Ex. CCCCCC
			\$0					
Subtotal	\$736,675	\$0	\$736,675	\$598,337	\$138,337	\$0	\$0	

PERSONAL PROPERTY								
34 Furniture (Dennis)			\$0					
35 Furniture (Gabby)			\$0					
36 Storage Unit			\$0					
37 Sapphire Ring	\$14,000	\$0	\$14,000	\$14,000				
38 Frequent Flier Miles			\$0					Divide equally
39 Rewards Points			\$0					Divide equally
			\$0					
Subtotal	\$14,000	\$0	\$14,000	\$14,000	\$0	\$0	\$0	

LIFE INSURANCE (Cash Value)								
40 Principal	\$20,500	\$0	\$20,500	\$20,500				Exhibit XXXXX
Subtotal	\$20,500	\$0	\$20,500	\$20,500	\$0	\$0	\$0	

				Property Value				
				Community		Separate		
ASSETS	Value	Debt	Net Value	Dennis	Gabrielle	Dennis	Gabrielle	NOTES
RETIREMENT ACCOUNTS								
41 DaVita Mullen TBG	\$302,836	\$0	\$302,836	\$13,427	\$289,409			Exhibit ZZZZZ
42 Teleflex Pension (\$995/month)								Defined benefit plan: divide equally
43 Fidelity Dignity Health	\$69,693	\$0	\$69,693		\$69,693			See Closing Briefs
44 Chase Cigna Health Savings	\$1,882	\$0	\$1,882	\$1,882				Exhibit AAAAAA
45 Merrill Lynch IRA (11040)	\$156,476	\$0	\$156,476		\$156,476			Exhibit 143
46 UBS Rollover IRA (46)	\$113,296	\$0	\$113,296	\$113,296				Exhibit DDDDD
47 Voya DaVita Retirement Savings	\$386,973	\$0	\$386,973	\$386,973				Exhibit YYYYY
Subtotal	\$1,031,156	\$0	\$1,031,156	\$515,578	\$515,578	\$0	\$0	
DISSIPATION								
48 Dennis	\$4,087,863	\$0	\$4,087,863	\$4,087,863				See Decree
Subtotal	\$4,087,863	\$0	\$4,087,863	\$4,087,863	\$0	\$0	\$0	
TOTAL ASSETS								
	\$46,830,479	\$829,498	\$46,000,981	\$19,595,791	\$19,183,067	\$3,615,061	\$3,607,061	

ITEM LIABILITIES			Net Value	Debt Value				NOTES	
	Value	Debt		Community		Separate			
				Dennis	Gabrielle	Dennis	Gabrielle		
LONG TERM DEBT									
49	UBS Line of Credit (27)		\$412,723		\$412,723				Exhibit AAAAA
	Subtotal		\$412,723		\$412,723	\$0	\$0	\$0	

OTHER LIABILITIES								
50 Banana Republic Visa (4713)		\$308					\$308	Exhibit 133
51 Discover (5161)		\$2,435					\$2,435	Exhibit 134
52 Kohl's (557)		\$0					\$0	Exhibit 136
53 LoveLoft Mastercard (5363)		\$29					\$29	Exhibit 132
54 Merrill Lynch AMEX (9677)		\$392					\$392	Exhibit 138
55 Nordstrom (992)		\$319					\$319	Exhibit 139
56 Nieman Marcus		\$0					\$0	
57 AMEX Centurion (3005)		\$10,871				\$10,871		Exhibit SSSSS
58 AMEX Optima (2003)		\$18,425				\$18,425		Exhibit UUUUU
59 AMEX Platinum (9008)		\$555				\$555		Exhibit QQQQQ
60 Mastercard Black Card (1588)		\$20,194				\$20,194		Exhibit WWWWW
61 Wells Fargo VISA (1032)		\$15,361				\$15,361		Exhibit PTTTT
63 Saks (688)		\$289					\$289	Gabrielle's Brief
64 TJX Rewards (6951)		\$620					\$620	Gabrielle's Brief
Subtotal		\$69,798		\$0	\$0	\$65,406	\$4,392	

TOTAL LIABILITIES

\$482,521

\$412,723 \$0 \$65,406 \$4,392

NET EQUITY

\$19,183,068 \$19,183,067 \$3,549,655 \$3,602,669

EQUALIZING AMOUNT

\$1

Exhibit 2

ASSESSMENTS OF POTENTIAL COMMUNITY WASTE NOT ELSEWHERE CLASSIFIED
Please refer to Anthem's December 15, 2019 report.

EXHIBIT 6

Ref	Description	Year										Total	Adjustments		Adjusted
		2008	2009	2010	2011	2012	2013	2014	2015	2016	2017		Ref	Amount	
1	Accounting Services											2,300.00	1	2,300.00	
2	Apple (fruit)	(22.85)	(9.55)	(79.88)	(82.47)	(213.08)	(189.11)	(238.38)	(877.55)	(1,192.30)		1,192.30	2	1,192.30	
3	Auto Related	(142.45)	(164.24)	(299.25)	(137.60)	(1,134.75)	(609.45)	(2,068.16)	(2,068.16)	(11,481.69)		11,481.69	3	11,481.69	
4	Auto Related - Ally Bank (lease payment)					(5,828.85)	(7,881.62)	(3,486.74)		(15,264.14)		15,264.14	4	15,264.14	
5	Auto Related - Audi			(6,554.48)	(8,811.72)	(6,813.86)				(21,300.00)		21,300.00	5	21,300.00	
6	Auto Related - BMW	(1,056.04)	(93,547.21)	(46,442.51)	(4,843.48)					(146,410.18)		146,410.18	6	146,410.18	
7	Auto Related - BMW (Car Wash)	(52,000.00)	(85,000.00)	(115,000.00)	(15,000.00)					(278,000.00)		278,000.00	7	278,000.00	
8	Auto Related - Harley					(10,518.53)				(10,518.53)		10,518.53	8	10,518.53	
9	Auto Related - Luxury (not elsewhere classified)					(1,181,869.94)	(1,181,869.94)	(1,181,869.94)	(1,181,869.94)	(4,747,439.76)		4,747,439.76	9	4,747,439.76	
10	Auto Related - Mercedes			(1,081.89)				(5,824.34)	(5,824.34)	(12,488.09)		12,488.09	10	12,488.09	
11	Auto Related - Porsche			(28,308.00)	(18,228.96)	(17,228.45)	(7,228.79)			(71,113.20)		71,113.20	11	71,113.20	
12	Auto Related - Toyota						(104,838.70)			(104,838.70)		104,838.70	12	104,838.70	
13	Auto Related (CA)	(424.61)		(858.93)	(1,158.00)	(4,510.00)	(2,474.89)	(88,328.22)	(4,473.50)	(91,333.62)		91,333.62	13	91,333.62	
14	Auto Related (CO)					(388.79)	(655.64)			(1,044.43)		1,044.43	14	1,044.43	
15	Auto Related (NY)	(1,508.24)	(1,508.24)	(799.00)	(2,200.00)			(5,107.00)		(10,013.48)		10,013.48	15	10,013.48	
16	Bank Fees	(88.00)	(181.00)	(272.48)	(838.21)	(1,891.84)	(800.00)	(2,800.00)	(779.43)	(13,067.34)		13,067.34	16	13,067.34	
17	Bank Fees: Cash Advance	(100.27)	(109.31)	(137.12)	(1,100.00)	(1,100.00)	(554.17)	(1,148.69)	(448.08)	(5,153.57)		5,153.57	17	5,153.57	
18	Bank Fees: Foreign Charge	(1,898.91)	(4,048.11)	(1,290.40)						(7,237.42)		7,237.42	18	7,237.42	
19	Bank Fees: Foreign Transaction			(70.19)	(1,100.00)	(6,500.00)				(8,670.19)		8,670.19	19	8,670.19	
20	Bank Fees: Interest		(94.11)	(1,414.47)	(1,613.93)	(1,273.37)	(6,047.50)	(4,881.33)	(4,498.90)	(17,669.60)		17,669.60	20	17,669.60	
21	Bank Fees: Loan Interest					(71,308.72)	(2,743.68)	(1,209.27)	(1,209.27)	(78,470.94)		78,470.94	21	78,470.94	
22	Blue Note					(34,960.51)				(34,960.51)		34,960.51	22	34,960.51	
23	Capital Cost - Mutual fund			(164.24)						(164.24)		164.24	23	164.24	
24	CC Payment - Unlemon												24		
25	CC Payment - American Express		(815.29)					7,271.20	(31,932.40)	(24,661.20)		24,661.20	25	24,661.20	
26	CC Payment - Bank Card								(8,519.08)	(8,519.08)		8,519.08	26	8,519.08	
27	CC Payment - Bank	(13,836.92)	(2,106.47)	(7,450.60)	(3,707.81)					(27,101.80)		27,101.80	27	27,101.80	
28	CC Payment - Chase					100.00				(1,272.32)		1,272.32	28	1,272.32	
29	CC Payment - Citicards	(20,600.00)	(10,181.50)	(13,326.81)	(8,881.88)	(215.00)	(204.00)	(138.43)	(113.88)	(43,948.62)		43,948.62	29	43,948.62	
30	CC Payment - US Airways									(19,000.00)		19,000.00	30	19,000.00	
31	Cellular - AT&T	(3,032.20)	(6,511.44)	(6,608.67)	(5,871.74)	(7,882.30)	(1,218.15)	(8,889.68)	(5,779.50)	(46,798.12)		46,798.12	31	46,798.12	
32	Cellular - Verizon	(3,661.47)	(1,731.87)	(1,800.00)	(1,800.00)	(599.00)	(160.00)	(337.80)	(398.64)	(7,327.81)		7,327.81	32	7,327.81	
33	Child welfare to Cash		(4,850.00)	(700.00)	(6,900.00)					(12,450.00)		12,450.00	33	12,450.00	
34	City of CA			(193.40)	(144.00)	(174.00)				(511.40)		511.40	34	511.40	
35	Cleaning Services - Dry Cleaners				(246.38)	(417.04)	(201.60)		(314.70)	(1,179.02)		1,179.02	35	1,179.02	
36	Cleaning Services - Dry Cleaners (CA)	(324.34)	(322.10)	(179.70)	(1,271.75)	(1,478.85)	(2,024.80)	(2,889.20)	(2,652.88)	(10,374.20)		10,374.20	36	10,374.20	
37	Cleaning Services - Dry Cleaners (CO)			(268.39)	(1,021.83)	(28.81)				(467.03)		467.03	37	467.03	
38	Donations	(5,240.00)	(3,200.00)	(3,700.00)	(3,800.00)	(3,480.00)				(20,420.00)		20,420.00	38	20,420.00	
39	Dues & Subscriptions	(81.81)	(87.51)	(824.15)	(1,393.32)	(5,128.49)	(1,111.40)	(735.97)	(316.67)	(12,182.21)		12,182.21	39	12,182.21	
40	Dues & Subscriptions - 24 Hour				(1,132.96)	(1,132.96)				(2,265.92)		2,265.92	40	2,265.92	
41	Dues & Subscriptions - Alarm									(5,700.00)		5,700.00	41	5,700.00	
42	Dues & Subscriptions - Casa de Cast (CA)	(6,561.99)	(5,755.40)	(6,876.40)						(19,193.79)		19,193.79	42	19,193.79	
43	Dues & Subscriptions - Fitness (CA)	(5,498.93)	(5,594.83)	(11,843.48)	(15,754.98)	(6,018.88)	(6,124.38)	(6,319.85)	(4,482.18)	(62,317.60)		62,317.60	43	62,317.60	
44	Dues & Subscriptions - Fitness (CO)					(579.00)				(579.00)		579.00	44	579.00	
45	Dues & Subscriptions - Membership Dues	(45.00)	(456.00)	(495.00)	(495.00)	(5,445.00)	(5,445.00)	(5,445.00)	(2,950.00)	(14,815.00)		14,815.00	45	14,815.00	
46	Dues & Subscriptions (CA)			(1,110.00)	(810.00)	(288.78)				(2,208.78)		2,208.78	46	2,208.78	
47	Expenditure for Mr. Steiner								(10,517.33)	(10,517.33)		10,517.33	47	10,517.33	
48	Expenditure for Mr. Steiner - Possible exp.												48		
49	Furniture-related			(827.43)	(1,438.98)	(5,116.19)				(7,382.60)		7,382.60	49	7,382.60	
50	Furniture (CO)			(18,277.00)						(18,277.00)		18,277.00	50	18,277.00	
51	Gas/Fuel	(8,028.21)	(1,429.41)	(5,848.36)	(4,471.61)	(3,387.81)	(1,815.13)	(2,581.34)	(2,026.87)	(21,800.00)		21,800.00	51	21,800.00	
52	Gifts	(639.84)	(819.20)	(87.79)		(22.44)	(461.84)	(28.20)	(653.77)	(2,991.30)		2,991.30	52	2,991.30	
53	Golf			(287.23)						(287.23)		287.23	53	287.23	
54	Groceries	(8,814.90)	(4,904.82)	(2,958.17)	(7,090.18)	(5,877.79)	(3,418.33)	(4,807.78)	(4,405.34)	(45,374.59)		45,374.59	54	45,374.59	
55	HQA dues - Welfare									(6,594.11)		6,594.11	55	6,594.11	
56	HQA dues - Welfare									(6,594.11)		6,594.11	56	6,594.11	
57	HQA dues - Welfare									(6,594.11)		6,594.11	57	6,594.11	
58	HQA dues - Welfare									(6,594.11)		6,594.11	58	6,594.11	
59	HQA dues - Welfare									(6,594.11)		6,594.11	59	6,594.11	
60	HQA dues - Welfare									(6,594.11)		6,594.11	60	6,594.11	
61	HQA dues - Welfare									(6,594.11)		6,594.11	61	6,594.11	
62	HQA dues - Welfare									(6,594.11)		6,594.11	62	6,594.11	
63	HQA dues - Welfare									(6,594.11)		6,594.11	63	6,594.11	
64	HQA dues - Welfare									(6,594.11)		6,594.11	64	6,594.11	
65	HQA dues - Welfare									(6,594.11)		6,594.11	65	6,594.11	
66	HQA dues - Welfare									(6,594.11)		6,594.11	66	6,594.11	
67	HQA dues - Welfare									(6,594.11)		6,594.11	67	6,594.11	
68	HQA dues - Welfare									(6,594.11)		6,594.11	68	6,594.11	
69	HQA dues - Welfare									(6,594.11)		6,594.11	69	6,594.11	
70	HQA dues - Welfare									(6,594.11)		6,594.11	70	6,594.11	
71	HQA dues - Welfare									(6,594.11)		6,594.11	71	6,594.11	
72	HQA dues - Welfare									(6,594.11)		6,594.11	72	6,594.11	
73	HQA dues - Welfare									(6,594.11)		6,594.11	73	6,594.11	
74	HQA dues - Welfare									(6,594.11)		6,594.11	74	6,594.11	
75	HQA dues - Welfare									(6,594.11)		6,594.11	75	6,594.11	
76	HQA dues - Welfare									(6,594.11)		6,594.11	76	6,594.11	
77	HQA dues - Welfare									(6,594.11)		6,594.11	77	6,594.11	

ASSESSMENTS OF POTENTIAL COMMUNITY WASTE NOT ELSEWHERE CLASSIFIED

EXHIBIT 6

Refer to Appendix A December 12, 2013 report.

Ref		Description	2008	2009	2010	2011	2012	2013	2014	2015	Total	Note	Amount	Adjusted
76	Medical/Therapy		(6,456.34)	(9,172.00)	(7,881.94)	(10,099.48)	(4,428.84)	(7,097.00)	(6,511.28)	(26,446.55)	(74,630.05)	3	74,630.06	
77	Mending equipment		-	(9,311.48)	-	-	-	-	-	-	(9,311.48)	3	-	(9,311.48)
80	Hard Computer Check		(146,975.94)	(5,500.00)	-	-	-	-	-	-	(152,475.94)	3	-	(152,475.94)
81	Parking/Tolls/Fines (CA)		(176.85)	(30.00)	(808.10)	(133.00)	(757.25)	(437.70)	(551.48)	(364.18)	(3,008.06)	3	3,008.06	
82	Payments to Individuals		(410.11)	(7,711.00)	(1,189.80)	(6,940.00)	(15,121.70)	(1,897.94)	(18,115.50)	(19,413.00)	(53,613.98)	3	53,614.99	(63,891.00)
89	Payments to Individuals - Daniel Porillo		-	-	-	-	-	-	-	-	-	3	-	-
94	Payments to Individuals - Dennis Lopez		-	-	-	(1,000.00)	-	-	(10,000.00)	(10,000.00)	(11,000.00)	3	-	(11,000.00)
95	Payments to Individuals - Pat Murphy		(2,000.00)	-	(5,000.00)	(500.00)	(2,081.33)	(2,000.00)	-	(6,890.00)	(16,471.33)	3	20,841.53	-
96	Payments to Individuals - Steve Patrick		-	-	-	-	-	-	-	(3,350.00)	(3,350.00)	3	3,350.00	-
97	Personal Care		-	(75.00)	-	(1,98.88)	(321.87)	(238.00)	(886.86)	(481.28)	(1,645.30)	3	1,645.30	-
99	Pet Related (CA)		(250.10)	-	-	-	-	-	-	-	(250.10)	3	250.10	-
99	Pharmacy		(1,888.89)	(1,203.88)	(2,884.17)	(4,676.58)	(5,288.65)	(7,421.78)	(9,315.78)	(4,687.60)	(38,973.84)	3	38,973.84	-
99	Photography		-	(210.00)	-	(117.80)	-	-	-	-	(327.80)	3	-	(327.80)
91	Political Contributions		(1,300.00)	(41,700.00)	(50,790.00)	(15,888.48)	(34,600.00)	(16,744.11)	(6,900.00)	(3,000.00)	(214,932.66)	3	214,932.66	-
92	Pool Related (CA)		-	(200.00)	(1,415.00)	(1,380.00)	-	(2,072.14)	-	(2,467.00)	(13,434.14)	3	13,434.14	-
93	Pray for Uprising		-	-	-	-	-	-	-	-	-	3	-	-
94	Professional Services (CA)		(2,878.00)	(3,375.00)	-	-	(4,891.80)	-	-	(130.00)	(13,124.80)	3	13,124.80	-
95	Property Management		-	-	-	-	(993.00)	-	(6,000.00)	-	(6,993.00)	3	-	(6,993.00)
96	Property Management: Luxury Las Vegas		-	-	-	-	-	-	(23,412.73)	(23,432.00)	(46,844.73)	3	46,844.73	-
97	Property Purchase		(43,800.00)	(457,303.59)	-	-	(2,300,977.07)	(5,680,546.12)	(47,800.00)	(5,347,517.85)	(12,878,234.73)	1	12,878,234.73	-
98	Rent - Lincoln Park		-	-	-	-	(5,383.10)	(5,390.00)	-	-	(10,773.10)	3	9,783.19	-
99	Rent - Sugar Creek Building		-	-	(162.00)	(1,391.79)	(1,150.47)	-	-	-	(2,704.26)	3	2,724.21	-
100	Rent - Urban Elite		-	-	(34,551.30)	(58,531.47)	(27,805.88)	-	-	-	(120,888.65)	3	121,688.66	-
101	Security		-	-	-	(136.38)	(748.53)	(247.50)	(247.50)	(178.48)	(1,370.49)	3	1,370.49	-
102	Security - K-9 Enforcement		-	-	-	-	-	(25,886.50)	-	-	(25,886.50)	3	25,886.50	-
103	Shipping		(41.81)	(13.60)	(381.35)	(83.21)	(26.05)	(158.79)	(44.73)	(5.58)	(605.71)	4	605.71	-
104	Shopping		(6,404.10)	(20,133.46)	(51,449.08)	(22,875.51)	(10,456.81)	(44,355.08)	(24,776.69)	(24,184.66)	(236,131.61)	4	45,300.00	(199,732.62)
105	Spending (International)		-	(51.19)	(2,189.20)	(1,350.48)	(1,969.04)	(6,178.64)	(2,686.80)	(4,087.18)	(18,361.35)	3	18,361.35	-
106	Storage (CO)		-	-	(601.00)	-	-	(718.41)	-	-	(1,419.41)	3	-	(1,419.41)
107	Tax Payments - Property Taxes (CA)		-	(1,638.16)	(10,037.30)	-	(10,618.80)	(10,088.00)	(12,075.10)	(18,582.18)	(52,352.44)	3	52,352.44	-
108	Telephone		-	-	-	-	-	-	-	-	-	3	-	-
109	Transportation		(348.30)	(138.81)	(1,000.47)	(1,356.44)	(2,384.08)	(2,384.08)	(6,974.70)	(6,308.30)	(19,752.42)	3	19,752.42	-
110	Travel		(64.67)	(10.99)	(49.41)	-	(879.02)	(610.00)	(482.21)	(538.84)	(2,604.09)	3	2,603.89	-
111	Travel - Airfare		(8,918.52)	(2,629.52)	(4,894.42)	(4,588.39)	(6,495.57)	(4,034.09)	(2,177.68)	(7,211.78)	(35,986.67)	3	35,986.67	-
112	Travel - Airfare Insurance		74.39	(194.87)	(239.89)	(234.30)	(434.32)	(134.82)	(328.80)	(328.78)	(1,373.73)	3	1,373.73	-
113	Travel - Inflight service		-	(18.80)	(98.80)	(108.60)	(86.70)	(145.00)	(207.00)	(217.84)	(708.00)	3	709.00	-
114	Unemployment		(4,484.31)	(16,485.81)	(10,865.70)	(5,733.18)	(10,986.11)	(11,828.78)	(10,827.04)	(51,116.63)	(143,808.39)	3	88,894.20	(55,214.00)
115	Utilities - Cable		-	-	(2,738.24)	(4,416.14)	(5,154.80)	(4,101.54)	(1,111.56)	(2,381.79)	(22,348.07)	3	22,348.07	-
116	Utilities - Century Link		-	-	(812.28)	(1,340.17)	(1,619.67)	(1,628.50)	(1,266.84)	(1,618.15)	(8,035.61)	3	8,035.61	-
117	Utilities - Gas (CA)		(276.26)	(344.59)	(1,246.68)	(1,106.10)	(1,246.46)	(1,243.89)	(4,705.15)	(4,691.18)	(18,343.43)	3	18,343.43	-
118	Utilities - LA Department		(289.13)	(488.64)	(548.27)	(4,484.07)	(4,487.71)	(6,433.19)	(13,183.48)	(13,813.37)	(44,578.07)	3	44,578.07	-
119	Utilities - Time Warner Cable		-	(1,188.43)	-	(1,888.18)	(1,811.30)	(1,409.19)	-	(7,899.10)	(13,096.00)	3	13,096.00	-
120	Utilities (CA)		(443.29)	(2,758.76)	(4,442.73)	(2,233.14)	-	-	-	(718.93)	(10,896.95)	3	10,896.99	-
121	Utilities (CO)		-	-	-	-	-	(297.45)	-	-	(297.45)	3	297.45	-
122	Wire Transfer - Unknown		-	-	(5,120.00)	-	-	(17,778.48)	-	(7,863.41)	(30,761.89)	3	-	(30,761.89)
123	Withdrawals and cash advances		(75,889.46)	(85,715.26)	(105,213.53)	(118,431.41)	(77,728.90)	(55,480.34)	(64,495.17)	(45,517.59)	(628,900.51)	2 and 3	178,000.00	(350,800.51)
124	WT - Investment		-	-	-	-	-	(200,000.00)	-	-	(200,000.00)	3	-	(200,000.00)
125	Yacht Related		-	-	-	-	(6,438.71)	(8,671.26)	(47,028.27)	(18,776.71)	(71,914.95)	2	171,784.97	-
126	Yacht Related - purchase		-	-	-	-	(555,077.87)	-	(858,795.00)	-	(1,413,872.87)	2	1,444,872.87	-
TOTAL													(3,611,015.84)	

**"Not Classified Elsewhere" Expenditures With Eliminations Other Than for
Amounts for Undenotifiable Business Related and Personal Expenditures**

Ref	Description	Year										Schedule 3			
		2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total	Notes	Amount	Adjusted
1	Accounting Services														
2	Agents (Travel)														
3	Auto Related	(21,451)	(15,880)	(78,580)	(52,471)	(612,000)	(282,831)	(238,230)	(2,308,065)	(2,308,065)	(2,308,065)	(7,305,001)	S	2,305,000	
4	Auto Related - Auto Bank (Lease)	(142,548)	(184,241)	(280,562)	(312,460)	(1,145,731)	(1,408,428)	(1,608,621)	(1,777,455)	(1,777,455)	(1,777,455)	(7,193,800)	S	1,189,000	
5	Auto Related - BMW														
6	Auto Related - BMW														
7	Auto Related - BMW (Capital)	(9,084,041)	(85,949,822)	(46,442,881)	(8,291,721)	(1,223,600)	(1,223,600)	(1,223,600)	(1,223,600)	(1,223,600)	(1,223,600)	(12,000,000)	S	12,000,000	
8	Auto Related - Harley														
9	Auto Related - Harley (Lease)														
10	Auto Related - Harley (Lease)														
11	Auto Related - Harley														
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DLK016649

"Not Classified Elsewhere" Expenditures With Eliminations Other Than for Amounts for Unidentifiable Business Related and Personal Expenditures

[illegible]

DLK016650

**"Not Classified Elsewhere" Expenditures With Eliminations Other Than for
Amounts for Unidentifiable Business Related and Personal Expenditures**

Ref	Description	Year					2006	2007	Total	Adjustments		Adjusted
		2008	2009	2010	2011	2012				State	Federal	
114	Travel - Inflight services	-	(18,903)	(43,601)	(109,600)	(88,704)	(43,601)	(207,005)	(258,000)	-	-	-
115	Utilities - Cable	(6,095.12)	(18,685.32)	(10,888.70)	(5,733.22)	(10,888.81)	(52,600.70)	(70,027.04)	(61,324.88)	-	-	-
116	Utilities - Century Link	-	-	(2,788.24)	(4,415.14)	(6,190.00)	(2,350.82)	(2,895.84)	(2,895.78)	-	-	-
117	Utilities - Gas (CA)	-	-	(813.24)	(1,544.17)	(1,618.67)	(1,898.80)	(2,868.84)	(1,618.24)	-	-	-
118	Utilities - LA Department	(131.34)	(344.39)	(1,246.88)	(1,106.10)	(1,240.02)	(1,867.90)	(2,795.25)	(4,681.16)	-	-	-
119	Utilities - Time Warner Cable	(129.13)	(389.45)	(616.37)	(8,480.07)	(4,867.73)	(8,889.32)	(11,143.43)	(11,083.87)	-	-	-
120	Utilities (CA)	-	(338.45)	(1,888.34)	(1,888.34)	(1,611.38)	(1,498.18)	(1,051.81)	(1,498.18)	-	-	-
121	Utilities (CA)	(862.30)	(2,718.77)	(4,443.72)	(2,739.14)	-	-	-	(10,803.93)	-	-	-
122	Utility Transfer - Unknown	-	-	-	-	-	(297.43)	-	(714.88)	-	-	-
123	Utilities and cash advance	-	-	(5,120.00)	-	(37,728.42)	-	(7,882.61)	(7,880.00)	-	-	-
124	WWT - Investments	(79,898.85)	(28,713.26)	(205,332.50)	(118,451.41)	(77,728.59)	(45,880.34)	(64,885.17)	(45,817.88)	-	-	-
125	Yacht Related	-	-	-	-	(6,438.71)	(200,000.00)	-	(206,438.71)	-	-	-
126	Yacht Related - purchase	-	-	-	-	(886,077.97)	(886,077.97)	-	(886,795.00)	-	-	-
										(1,444,872.87)	-	-
										-	(5,611,495.84)	-
										-	(5,788,251.88)	-
										-	-	(1,243,784.15)

Total Per ALL's Report
Total Eliminations (C)
Net, Before Accounting for Elimination of
Business Related and Normal Living Expenses

(5,611,495.84)
(5,788,251.88)
(1,243,784.15)

DLK016651

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9 Attorneys for Appellant

Electronically Filed
Oct 25 2016 04:12 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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IN THE SUPREME COURT OF THE STATE OF NEVADA

DENNIS KOGOD,

Case No. 71147

Appellant,

vs.

GABRIELLE CIOFFI-KOGOD,


Respondent.

MOTION FOR A STAY PENDING APPEAL

COMES NOW the Appellant DENNIS KOGOD, by and through his
counsel, Daniel Marks, Esq., and Nicole M. Young, Esq., of the Law Office of
Daniel Marks, and submits his Motion for a Stay Pending Appeal. The grounds for
Appellant's motion are set forth in the following memorandum of points and
authorities.

DATED this 25 day of October, 2016.

LAW OFFICE OF DANIEL MARKS



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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTUAL BACKGROUND**

3 On August 23, 2016, Appellant Dennis Kogod (hereinafter “Dennis”) filed
4 his Notice of Appeal with this Court appealing the district court’s Findings of
5 Fact, Conclusions of Law and Decree of Divorce (hereinafter “the Decree”), which
6 is attached hereto as Exhibit 1. On August 24, 2016, Dennis filed his Motion to
7 Stay Enforcement of Decree of Divorce and for Other Related Relief. (*See* Exhibit
8 2.) At that time, the hearing on that motion was set for September 21, 2016, at
9 9:00 a.m. Respondent Gabrielle Cioffi-Kogod (hereinafter “Gabrielle”) was served
10 with the that motion on August 24, 2016, via electric service through the court’s e-
11 filing system. However, at the time of the hearing on September 21, 2016,
12 Gabrielle’s counsel claimed that due to office issues the motion was not
13 calendared and that an opposition was never filed. The district court allowed
14 Gabrielle additional time to file an opposition and continued the hearing to
15 October 18, 2016.

16 On October 12, 2016, Gabrielle filed her opposition and countermotion for
17 attorney’s fees. (*See* Plaintiff’s Opposition to Defendant’s Motion to Stay
18 Enforcement of Decree of Divorce and for Other Related Relief and
19 Countermotion For Attorney’s Fees, attached hereto as Exhibit 3.) This filing was
20 twenty-one (21) days after the September 21, 2016 hearing and thirty (30) days
21 after the opposition was originally due. Dennis filed a reply and countermotion in
22 response. (*See* Reply in Support of Motion to Stay Enforcement of Decree of
23 Divorce and for Other Related Relief; and Opposition to Countermotion for
24 Attorney’s Fees, filed on October 14, 2016, attached hereto as Exhibit 4.)

25 On October 18, 2016, the district court denied Dennis’ motion for a stay and
26 denied Gabrielle’s countermotion for attorney’s fees. (*See* Order, filed on October
27 24, 2016, attached hereto as Exhibit 5.) When the court denied Dennis’ motion, it
28 stated that it did not believe Gabrielle would dissipate the assets at issue based on

1 her spending history. Dennis is now seeking a stay from this Court.

2 Specifically, Dennis is seeking a stay from the following issues:

- 3 1. The unequal division of community property in Gabrielle's favor (*See*
4 Exhibit 1, at 102:6-7);
- 5 2. The award of lump-sum alimony to Gabrielle (*See* Exhibit 1, at 102:8-
6 11); and
- 7 3. The award of sanctions against Dennis (*See* Exhibit 1, at 102:12-15).

8 **II. LEGAL ANALYSIS**

9 Pursuant to the Nevada Rules of Appellate Procedure, Rule 8, a party
10 seeking a stay from execution of a judgment must first request such relief from the
11 district court. NRAP 8(a)(1)(A). If the district court denies the motion for a stay,
12 then that party may move for a stay in the Nevada Supreme Court. NRAP 8(a)(2).

13 In this case, the district court denied Dennis' motion for a stay. (*See* Exhibit
14 5.) The district court denied the motion for say with and/or without bond or
15 alternate security proposed by Dennis. As such, Dennis has standing to bring the
16 instant motion before this Court. The district court erred when it did not properly
17 consider the factors set forth under NRCP 62 and the factors enumerated in *Nelson*
18 *v. Heer*, 121 Nev. 832, 835, 122 P.3d 1252 (2006), for an alternative form of
19 security to fulfill the supersedeas bond requirement for the issuance of a stay and
20 made no findings. The *Nelson* factors and this Court's authority to issue a stay are
21 discussed below.

22 **A. The district court did not properly consider NRCP 62 and the** 23 ***Nelson* factors for an alternative form of security when it denied** 24 **Dennis' motion to stay.**

25 The Nevada Rules of Civil Procedure state:

26 [w]hen an appeal is taken the appellant by giving a supersedeas bond
27 may obtain a stay subject to the exceptions contained in subdivision
28 (a) of this rule. The bond may be given at or after the time of the
filing of the notice of appeal. The stay is effective when the
supersedeas bond is filed.

NRCP 62(d). Nevada previously followed the federal approach in interpreting this

1 rule, which states that “[a] district court, in its discretion, may provide for a bond
2 in a lesser amount, or may permit security other than a bond, when unusual
3 circumstances exist and so warrant.” *McCulloch v. Jeakins*, 99 Nev. 122, 123, 659
4 P.2d 302 (1983) (emphasis omitted). However, the Nevada Supreme Court later
5 ruled that the interpretation adopted in *McCulloch* was too rigid and found that “a
6 more flexible and modern approach [] better serve[s] Nevada litigants and
7 courts.” *Nelson v. Heer*, 121 Nev. 832, 835, 122 P.3d 1252 (2006). The focus
8 should be on “what security will maintain the status quo and protect the judgment
9 creditor pending an appeal, not how ‘unusual’ the circumstances of a given case
10 may be.” *Id.* at 835-836. To effectuate that policy, this Court adopted the five
11 factors set forth by the Seventh Circuit Court of Appeals in *Dillon v. City of*
12 *Chicago*, 886 F.2d 902 (7th Cir. 1988). As such, when determining whether an
13 alternative form of security is appropriate, the district court should consider:

- 14 (1) the complexity of the collection process;
- 15 (2) the amount of time required to obtain a judgment after it is
16 affirmed on appeal;
- 17 (3) the degree of confidence that the district court has in the
18 availability of funds to pay the judgment;
- 19 (4) whether the defendant’s ability to pay the judgment is so plain
20 that the cost of a bond would be a waste of money; and
- 21 (5) whether the defendant is in such a precarious financial situation
22 that the requirement to post a bond would place other creditors
23 of the defendant in an insecure position.

24 *Id.* at 836 (cited in list format). With regard to the second factor, the court should
25 take the length of time the case may be on appeal into consideration. *Id.*

26 In this case, the district court did not properly consider any of the factors, as
27 enumerated in *Nelson*, when it denied Dennis’ motion for a stay. When it denied
28 Dennis’ motion, it only stated that it did not think Gabrielle would dissipate the
assets at issue pending the appeal. While that consideration was made in regard to
the third factor, the district court failed to take into account the other factors.

An analysis of those factors as applied to this case weigh in favor of
granting a stay with an alternative form of security.

1 First, the collection process in this case is not complex. There is more than
2 enough money to cover the judgment. Dennis is simply requesting a stay with an
3 alternate form of security to preserve the assets on appeal. Dennis' request will
4 simplify the collection process. He is asking that a lien be placed on the Oak Pass
5 home, which the district court valued at \$6.3 million, for the lump-sum spousal
6 support and award of sanctions. That lien would be for \$1,649,792.00. The value
7 of that home, which is owned free and clear of any encumbrances, is more than
8 enough security. With regard to the unequal division of property, Dennis is
9 requesting that the additional \$2,043,931.50 that Gabrielle was awarded be placed
10 in a blocked, interest-bearing account at UBS. Gabrielle was awarded
11 \$18,268,744.00 in investment accounts, so there will be more than enough money
12 for Gabrielle to live on during the pendency of this appeal if \$2 million of that
13 amount is placed in a blocked account.

14 Second, the stay proposed by Dennis will not increase the amount of time
15 required to obtain a judgment and enforce that judgment after this appeal. In fact,
16 Dennis' proposal will decrease the amount of time because it will ensure that the
17 assets are available once remanded to the district court. Neither party would have
18 to attempt to locate the assets. Both parties would benefit from Dennis' proposed
19 alternate security under this factor.

20 Third, there is no question that these parties have more than enough assets
21 to cover the judgment at issue. While the court did find that Gabrielle would not
22 dissipate the assets, that is not the inquiry under this factor. Dennis has a right to
23 obtain a stay by posting a supersedeas bond, so he does not have to undertake
24 collection efforts against Gabrielle should he prevail on appeal. However, since
25 Gabrielle was already awarded property at issue under this appeal, an alternate
26 form of security is appropriate. A lien on the Oak Pass property and a blocked,
27 interest-bearing UBS account holding the unequally divided money at issue gives
28 the court more confidence that money will be available to pay the judgment at the

1 conclusion of this appeal. Gabrielle already has accounts with UBS valued at
2 \$17,489,917.00. (See Exhibit 1, at Marital Balance Sheet, attached thereto as
3 Exhibit 1.) Dennis is merely asking that the disputed amount relating to the
4 unequally divided assets, which is \$2,043,931.50, be frozen so it will be there after
5 appeal. That money could be placed in a court-blocked, interest-bearing account
6 that can still be managed by the financial advisor who manages the parties other
7 UBS accounts.

8 Fourth, because the parties have more than enough assets to secure the
9 judgment, the cost of the bond would be a waste of money especially considering
10 the amount of the judgment at issue.

11 Finally, the fifth factor is inapplicable to the present case because neither
12 party has any creditors. In addition, both parties were awarded multi-millions
13 worth of assets.

14 The bond requirement is satisfied in this case by the fact that there is
15 alternate security that exceeds the amount of money that either party would be
16 entitled to depending on the outcome of this case.

17 The district court abused its discretion when it failed to consider NRC 62
18 and the *Nelson* factors. If the district court actually considered those factors, it
19 would have granted the stay with alternate security.

20 **B. A stay of the enforcement of the Decree and district court**
21 **proceedings may be issued by this Court until a decision is**
22 **made regarding the pending appeal.**

23 In determining whether to issue a stay, in a case not involving child custody,
24 this Court considers the following factors:

- 25 (1) whether the object of the appeal or writ petition will be
26 defeated if the stay or injunction is denied;
- 27 (2) whether appellant/petitioner will suffer irreparable or serious
28 injury if the stay or injunction is denied;
- (3) whether respondent/real party in interest will suffer irreparable
or serious injury if the stay or injunction is granted; and
- (4) whether appellant/petitioner is likely to prevail on the merits in
the appeal or writ petition.

////

1 NRAP 8(c) (cited in list format).

2 The factors enumerated under the Nevada Rules of Appellate Procedure
3 Rule 8, weigh in favor of this Court issuing a stay of the judgment that is currently
4 on appeal and the district court proceedings until this Court issues its decision
5 regarding the judgment on appeal.

6 First, the object of the appeal will be defeated in this case if a stay is not
7 issued because Gabrielle will receive the lump-sum spousal support, sanctions,
8 and unequally divided community property before this Court has a chance to rule
9 on the appeal. With the amount of money at issue, \$3,693,723.50, and the multi-
10 millions that were already awarded to Gabrielle that is undisputed, there is no
11 reason to elongate the collection process once this appeal is over. Alternate
12 security will streamline that process.

13 Second, Dennis will suffer irreparable and serious injury if a stay is not
14 granted because the district court ordered he pay the lump-sum spousal support
15 from the only UBS account he was awarded, which was valued at \$4,180,085.00.
16 That account is not liquid and could take four to six months to liquidate. If a stay
17 is not granted, then Dennis would have to sell property to comply with that part of
18 the judgment. That is not a just result since there is no Nevada law supporting an
19 award of lump-sum spousal support to Gabrielle. Forcing Dennis to liquidate this
20 property, and pay unnecessary fees, on such a dubious award would cause serious
21 injury and irreparable harm to Dennis.

22 Third, Gabrielle will not suffer irreparable or serious injury if the stay is
23 granted. Including the money in dispute, **Gabrielle is walking away with over**
24 **\$26 million from this divorce. Dennis is walking away with less than \$20**
25 **million.** Gabrielle has more than enough money to live her life in any way to
26 deems necessary during the pendency of this appeal. She has no children, family
27 members, or other dependents to care for. A stay on approximately \$3.6 million
28 will not affect her quality of life or ability to litigate this case.

1 Finally, there are legitimate legal issues on appeal in this case, including
2 issues of first impression. Because of the unique facts of this case, this Court will
3 be deciding issues of first impression regarding lump-sum spousal support when
4 no "need" is present and the award of an unequal division of community property
5 when the bulk of the property at issue was earned after the parties separated.

6 Because an analysis of the above-discussed factors weighs in favor of the
7 issuance of stay with alternate security.

8 **III. CONCLUSION**

9 For the foregoing reasons, this Court should issue a stay of the enforcement
10 of the judgment, with alternate security, until the issues on appeal are resolved by
11 this Court. Such security should be granted through a blocked, interest-bearing
12 account at UBS of the disputed \$2,043,931.50 in Gabrielle's favor for the unequal
13 division of community property. Security for the \$1,649,792.00 in lump-sum
14 spousal support and sanctions should be in the form of a lien on the Oak Pass
15 property. Gabrielle does not need security in the form of a bond.

16 DATED this 25 day of October, 2016.

17 LAW OFFICE OF DANIEL MARKS

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1 **CERTIFICATE OF COMPLIANCE**

2 I hereby certify that this motion complies with the typeface requirements of
3 NRAP 32(a)(5) and the type style requirements of 32(a)(6) because this motion
4 has been prepared in a proportionally spaced typeface using WordPerfect 11 in
5 Times New Roman style in size 14-point font.

6 I further certify that this motion complies with the page limitations of
7 NRAP 27(d)(2) because it does not exceed ten (10) pages.

8 Finally, I hereby certify that I have read this motion, and to the best of my
9 knowledge, information, and belief, it is not frivolous or interposed for any
10 improper purpose. I understand that I may be subject to sanctions in the event that
11 the accompanying motion is not in conformity with the requirements of the
12 Nevada Rules of Appellate Procedure.

13 DATED this 25 day of October, 2016.

14 LAW OFFICE OF DANIEL MARKS

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