

In the Supreme Court of the State of Nevada

DENNIS KOGOD,

Appellant,

v.

GABRIELLE CIOFFI-KOGOD,

Respondent.

Supreme Court Case No. 71994

District Court Case No. 148942

Electronically Filed
Jan 23 2017 01:33 p.m.

Elizabeth A. Brown

DOCKETING STATEMENT
CIVIL APPEALS
Clerk of Supreme Court

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 810 P.2d 1217 (1991). Please use tab dividers to separate any attached documents.

1. **Judicial District:** Eighth Judicial District Court **Department:** Q **County:** Clark
Judge: Bryce C. Duckworth **District Ct. Case No.:** D-13-489442-D

2. **Attorney filing this docket statement:**

Attorney: Daniel Marks, Esq.

Telephone: (702) 386-0536

Firm: Law Office of Daniel Marks

Address: 610 South Ninth Street, Las Vegas, Nevada 89101

Client: Dennis Kogod

If this is a joint statement completed on behalf of multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney representing Respondent:

Attorney: Radford J. Smith, Esq. Telephone: (702) 990-6448
Firm: Radford J. Smith, Chartered
Address: 2470 St. Rose Parkway, Suite 206, Henderson, Nevada 89074
Client: Gabrielle Cioffie-Kogod

4. Nature of disposition below (check all that apply):

- | | |
|---|--|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCPC 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/denial of injunction | <input type="checkbox"/> Divorce decree: |
| <input type="checkbox"/> Grant/denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>Order granting fees post-trial</u> |

5. Does this appeal raise issues concerning any of the following? No

- Child custody
- Venue
- Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Dennis Kogod v. Gabrielle Cioffi-Kogod; Supreme Court Case No. 71147

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

8. Nature of the action. Briefly describe the nature of the action and the result below:

This is a divorce action involving the division of community property and spousal support. There are no minor children at issue.

9. **Issues on appeal.** State specifically all issues in this appeal:

The award of expert witness fees in the amount of \$75,650.00.

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised:

Dennis Kogod v. Gabrielle Cioffi-Kogod; Supreme Court Case No. 71147

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A

Yes

No

If not, explain:

12. **Other issues.** Does this appeal involve any of the following issues?

Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))

An issue arising under the United States and/or Nevada Constitutions

A substantial issue of first-impression

An issue of public policy

An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

A ballot question

13. **Trial.** If this action proceeded to trial, how many days did the trial last?

Five (5) days (bench trial)

14. **Judicial disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal. If so, which Justice? No.

TIMELINESS OF NOTICE OF APPEAL

15. **Date of entry of written judgment or order appealed:** December 5, 2016

16. **Date written notice entry of judgment or order was served:** December 5, 2016

Was service by:

Delivery

Mail/electronic/fax

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17. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

N/A

(a) Specify the type of motion, and the date and method of service of the motion, and date of filing.

- NRCP 50(b) Date of filing _____
- NRCP 52(b) Date of filing _____
- NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See *AA Primo Builders v. Washington*, 126 Nev. Adv. Rep. 53, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving motion served _____

Was service by:

- Delivery
- Mail/electronic/fax

18. **Date notice of appeal was filed:** December 13, 2016

19. **Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a):**
NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

20. **Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- NRAP 3A(b)(1) NRS 38.205
- NRAP 3A(b)(2) NRS 233B.150
- NRAP 3A(b)(3) NRS 703.376
- Other (specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(1) provides a basis for this appeal because the district court entered a final judgment in the Order from October 18, 2016 Hearing.

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21. List all parties involved in the action or consolidated actions in the district court:

- (a) Plaintiff: Gabrielle Cioffi-Kogod
Defendant: Dennis Kogod
- (b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims and the date of disposition of each claim.

Appellant's Claims

- 1. Dissolution of marriage;
- 2. Equal division of community property;
- 3. Fair and Equitable division of community debts;
- 4. No spousal support; and
- 5. Each party bear their own attorney's fees and costs.

All of these claims were resolved in the Findings of Fact, Conclusions of Law and Decree of Divorce that was entered on August 22, 2016.

Respondent's Claim

- 1. Dissolution of Marriage;
- 2. Spousal Support (pendente lite, permanent alimony, rehabilitative alimony, and other support and maintenance);
- 3. Unequal division of community property;
- 4. Confirmation of separate property;
- 5. Attorney's Fees and Costs; and
- 6. Order to Show Cause/Sanctions for violation of JPI.

All of these claims were resolved in the Findings of Fact, Conclusions of Law and Decree of Divorce that was entered on August 22, 2016.

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23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action below:

- Yes
- No

24. If you answered "No" to question 23, complete the following: N/A

- (a) Specify the claims remaining pending below:
- (b) Specify the parties remaining below:
- (c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b):
 - Yes
 - No
- (d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment:
 - Yes
 - No

25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)): N/A

26. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- ~~Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third party claims asserted in the action or consolidated action below, even if not at issue on appeal~~
- Any other order challenged on appeal
- Notices of entry for each attached order

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VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Dennis Kogod
Name of appellant

Daniel Marks, Esq.
Name of counsel of record

1/13/17
Date


Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 13 day of January, 2017, I served a copy of this completed docketing statement upon all counsel of record and the Settlement Judge:

- By personally serving it upon him/her; or
 By mailing it by first class mail with sufficient postage prepaid to the following address(es):

Radford J. Smith, Esq.
Garima Varshney, Esq.
Radford J. Smith, Chartered
2470 St. Rose Parkway, Suite 206
Henderson, Nevada 89074
Counsel for Respondent

DATED this 13 day of January, 2017.

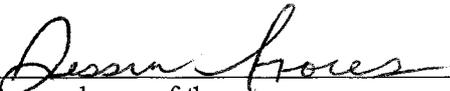

An employee of the
LAW OFFICE OF DANIEL MARKS

EXHIBIT 1



CLERK OF THE COURT

1 COMD
2 DENISE L. GENTILE, CHTD.
3 DENISE L. GENTILE, ESQ.
4 Nevada Bar No. 4271
5 10161 Park Run Drive, Suite 150
6 Las Vegas, Nevada 89145
7 general@denisegentilelaw.com
8 Telephone: (702) 608-6868
9 Facsimile: (702) 608-6878
10 Attorney for Plaintiff

7 DISTRICT COURT, FAMILY DIVISION
8 CLARK COUNTY, NEVADA

9 * * * *

10 GABRIELLE CIOFFI-KOGOD,
11 Plaintiff,

CASE NO.: D-13-489442-D
DEPT. NO.: C

12 v.

13 DENNIS KOGOD,
14 Defendant.
15
16

17 COMPLAINT FOR DIVORCE

18 COMES NOW Plaintiff, GABRIELLE CIOFFI-KOGOD and as and for her
19 Complaint for Divorce against Defendant, DENNIS KOGOD, alleges as follows:
20

21 I.

22 Plaintiff is, and for more than six weeks immediately preceding the
23 commencement of this action and the verification and filing of this Complaint has
24 been, an actual bona fide resident and domiciliary of the County of Clark, State of
25 Nevada, and during all of said period of time Plaintiff had and still has the intent to
26 make the State of Nevada her home, residence and domicile for an indefinite period
27 of time.
28

DENISE L. GENTILE, CHARTERED
10161 Park Run Drive, Suite 150, Las Vegas, Nevada 89145
Telephone: (702) 608-6868 Fax: (702) 608-6878

1 II.

2 Plaintiff and Defendant were duly and legally married in New York, New York
3 on July 20, 1991, and ever since said date have been and are now husband and wife.

4 III.

5 There are no minor children born the issue of the parties' marriage, no adopted
6 children, and Plaintiff is not pregnant.

7 IV.

8 Plaintiff is financially dependent upon Defendant for her support. Plaintiff,
9 thus, is entitled to an award of alimony pendente lite, permanent alimony,
10 rehabilitative alimony, and other support and maintenance from Defendant in such
11 amounts that Plaintiff is able to live as nearly as possible to the station in life she has
12 enjoyed during the parties' marriage. Moreover, Defendant is financially able, and
13 should be ordered to pay, a sufficient sum necessary to maintain Plaintiff in the
14 standard to which she has become accustomed. The Court should make a permanent
15 alimony award in such amount as to equalize the income of the parties, as recognized
16 by the Nevada Supreme Court in *Gardner v. Gardner*, 110 Nev. 1053, 881 P.2d 645
17 (1994). Such alimony payments should continue until the death of Plaintiff.
18 Defendant additionally is well-able to provide major medical and health insurance
19 coverage for Plaintiff and to pay all medical, surgical, dental, orthodontic, optical, and
20 psychological expenses not otherwise covered by such insurance. Defendant further
21 is able to maintain one or more life insurance policies insuring his life in an amount
22 sufficient to secure and provide for the payment of such support, with Plaintiff being
23 the irrevocable beneficiary thereof.

24 V.

25 The parties have community and jointly owned property that should be
26 adjudicated by the Court. Plaintiff currently is not fully aware of the full character,
27 nature, and extent of such community and jointly owned property, but anticipates the
28 same will be determined during the course of discovery and the litigation of this case.

1 VI.

2 Pursuant to NRS 125.150(1), *Putterman v. Putterman*, 113 Nev. 606, 939 P.2d
3 1047 (1997), and *Lofgren v. Lofgren*, 112 Nev. 1282, 926 P.2d 296 (1996), compelling
4 circumstances exist which support an award to Plaintiff of greater than one-half (½)
5 of the community and jointly owned property of the parties. Such compelling
6 circumstances include, but are not limited to, Defendant's waste/dissipation of
7 community and jointly held property, and Plaintiff's inability to obtain access to
8 information regarding community and jointly held property.

9 VII.

10 Plaintiff has certain separate property that should be confirmed to Plaintiff as
11 her sole and separate property.

12 VIII.

13 The parties have community and joint debts and financial obligations that
14 should be adjudicated by the Court. Plaintiff currently is not fully aware of the full
15 character, nature, and extent of such community and joint debts, but anticipates the
16 same will be determined during the course of discovery and the litigation of this case.

17 IX.

18 It has been necessary for Plaintiff to retain the services of attorneys to represent
19 her in this divorce action. The Court should award Plaintiff the reasonable attorneys'
20 fees, expert fees, and costs of suit she has incurred and will continue to incur as a result
21 of this divorce action. Such fees and costs are necessary and essential to afford Plaintiff
22 her day in court without destroying her financial position and to allow her to meet
23 Defendant in the courtroom on the equal basis to which she is entitled pursuant to
24 *Sargeant v. Sargeant*, 88 Nev. 223, 227, 495 P.2d 618 (1972).

25 X.

26 Plaintiff and Defendant are incompatible in their tastes, natures, views, likes,
27 and dislikes, which have become so widely separate and divergent that the parties have
28 been and currently are incompatible to such an extent that it now appears that there

1 is no possibility of reconciliation between Plaintiff and Defendant. There currently
2 remains such an incompatible temperament between Plaintiff and Defendant that a
3 happy marital relationship can no longer exist.

4 WHEREFORE, Plaintiff respectfully prays that the Court enter judgment as
5 follows:

6 1. That the bonds of matrimony now and heretofore existing between
7 Plaintiff and Defendant be dissolved, set aside, and forever held for naught, and that
8 Plaintiff be awarded a Decree of Divorce, and the parties hereto and each of them be
9 restored to their status of being a single, unmarried person.

10 2. That Defendant be ordered to pay alimony and spousal support to
11 Plaintiff as requested in this Complaint, specifically including, but not limited to
12 each Plaintiff's requests set forth in Paragraph IV of this Complaint, and in such
13 amounts sufficient to maintain Plaintiff in the standard to which Plaintiff has become
14 accustomed, and to support Plaintiff as alleged herein above.

15 3. That the Court equitably divide the parties' community and jointly
16 owned property by awarding Plaintiff with greater than one-half (1/2) of all such
17 community and jointly owned property, taking into consideration the condition in
18 which the parties will be left after their divorce and all other compelling circumstances
19 supporting such an unequal division.

20 4. That the Court confirm to Plaintiff her separate property.

21 5. That the Court equitably divide the community and joint debts of the
22 parties.

23 6. That Plaintiff be the awarded the reasonable attorneys' fees, expert fees,
24 and costs incurred by Plaintiff in this action.

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7. For such other and further relief as the Court may determine to be just and proper in the premises.

DATED this 11th day of December 2013.

DENISE L. GENTILE, CHTD.



DENISE L. GENTILE, ESQ.
Nevada Bar No. 4271
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Attorney for Plaintiff

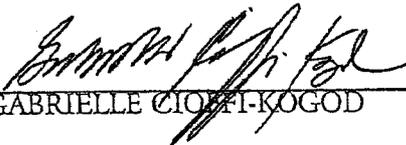
DENISE L. GENTILE, CHARTERED
10161 Park Run Drive, Suite 150, Las Vegas, Nevada 89145
Telephone: (702) 608-6868 Fax: (702) 608-6878

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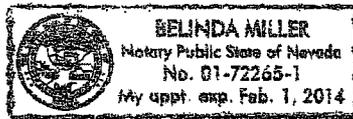
VERIFICATION

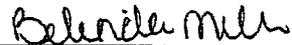
STATE OF NEVADA }
COUNTY OF CLARK } SS:

GABRIELLE CIOFFI-KOGOD, being first duly sworn upon oath, deposes and says: That she is the Plaintiff in the above-entitled action; that she read the foregoing Complaint for Divorce and knows the contents thereof, and that the same is true of her own knowledge except for those matters therein stated on information and belief, and as for those matters, she believes the same to be true.


GABRIELLE CIOFFI-KOGOD

Subscribed and sworn to before me
this 10th day of December, 2013.




Notary Public in and for said
County and State.

DENISE L. GENTILE, CHARTERED
10161 Park Run Drive, Suite 150, Las Vegas, Nevada 89145
Telephone: (702) 608-6868 Fax: (702) 608-6878

EXHIBIT 2

Alison D. Quinn
CLERK OF THE COURT

1 ACDAS
JIMMERSON HANSEN, P.C.
2 JAMES J. JIMMERSON, ESQ.
Nevada Bar No. 000264
3 jjj@jimmersonhansen.com
SHAWN M. GOLDSTEIN, ESQ.
4 Nevada Bar No. 009814
smg@jimmersonhansen.com
5 415 South Sixth Street, Suite 100
Las Vegas, Nevada 89101
6 (702) 388-7171
Attorneys for Defendant,
7 DENNIS KOGOD

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

10 GABRIELLE CIOFFI-KOGOD,
11 Plaintiff,

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

12 v.

13 DENNIS KOGOD,
14 Defendant.

ANSWER TO COMPLAINT FOR DIVORCE AND COUNTERCLAIM

16 COMES NOW, Defendant, DENNIS KOGOD, by and through his counsel of record,
17 James J. Jimmerson, Esq. and Shawn M. Goldstein, Esq., of the law firm of Jimmerson
18 Hansen, P.C., and hereby files his Answer to Complaint for Divorce and Counterclaim and
19 states as follows:

20 1. Defendant, DENNIS KOGOD, admits each and every allegation contained in
21 Paragraphs I, II, and X of Plaintiff's Complaint for Divorce on file herein.

22 2. Answering Paragraph III of Plaintiff's Complaint on file herein, Defendant admits
23 that there are no minor children born the issue of this marriage, or adopted in this marriage.
24 Defendant is without information, but believes and accepts Plaintiff's representation that she
25 is not pregnant.

26 3. Defendant denies each and every allegation contained in Paragraphs IV, VI, and
27 IX of Plaintiff's Complaint on file herein.
28

JIMMERSON HANSEN, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
Telephone (702) 388-7171 - Facsimile (702) 387-1167

JIMMERSON HANSEN, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
Telephone (702) 388-7171 Facsimile (702) 387-1187

1 4. Answering Paragraph V of Plaintiff's Complaint on file herein, Defendant admits
2 that the parties have community and jointly owned property that should be adjudicated by the
3 Court, and is without sufficient knowledge or information to form a belief as to the remainder
4 of the allegations contained therein and therefore denies the same.

5 5. Answering Paragraph VII of Plaintiff's Complaint on file herein, Defendant is
6 without sufficient knowledge or information to confirm the existence of Plaintiff's separate
7 property, although it is possible she may have some, and therefore denies the same.

8 6. Answering Paragraph VIII of Plaintiff's Complaint on file herein, Defendant
9 admits that the parties have community and joint debts and financial obligations that should
10 be adjudicated by the Court, and is without sufficient knowledge or information to form a belief
11 as to the remainder of the allegations contained therein and therefore denies the same.

12 WHEREFORE, Defendant, DENNIS KOGOD prays that Plaintiff GABRIELLE CIOFFI-
13 KOGOD take nothing by way of her Complaint.

14 **COUNTERCLAIM FOR DIVORCE**

15 COMES NOW, Defendant/Counterclaimant, DENNIS KOGOD (hereinafter referred to
16 as "DENNIS"), by and through his attorneys, JAMES J. JIMMERSON, ESQ., and SHAWN M.
17 GOLDSTEIN, ESQ., of the law firm of Jimmerson Hansen, P.C., and for his cause of action
18 against Plaintiff/Counterdefendant, GABRIELLE CIOFFI-KOGOD (hereinafter referred to as
19 "GABRIELLE"), complains and alleges as follows:

20 I.

21 That DENNIS and GABRIELLE are now and for more than six (6) weeks prior to the
22 commencement of this action has been, actual, bona fide residents and domiciliaries of the
23 County of Clark, State of Nevada, actually and physically residing and being domiciled therein
24 during all of said period of time.

25 II.

26 That the parties intermarried on or about the 20th day of July 1993 in Manhattan, New
27 York, and ever since said date have been and now are husband and wife.

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III.

That there are no minor children born the issue of this marriage, no children adopted into this marriage, and to the best of DENNIS' knowledge, GABRIELLE is not now pregnant.

IV.

That there is community property belonging to the parties, the exact amounts and descriptions of which are unknown to DENNIS at this time, and DENNIS prays leave of Court to amend this Complaint to insert the same when they have become known to him at the time of trial in this matter; that this Court should equally divide all community property of the parties.

V.

That there are community debts of the parties, the exact amounts and descriptions of which are unknown to DENNIS at this time, and DENNIS prays leave of Court to amend this Complaint to insert the same when they have become known to him at the time of trial in this matter; that this Court should make a fair and equitable division of all community debts of the parties.

VI.

That to the extent that there is separate property of a party, the same should be confirmed to him/her, as the case may be, as his/her sole and separate property.

VII.

That since said marriage, DENNIS and GABRIELLE have become and are incompatible, such that their likes and dislikes have become so divergent that they can no longer live together as husband and wife.

VIII.

That both parties are able-bodied and capable of supporting themselves without the support of the other and that with the size of community assets to be awarded to each party, neither party should be awarded any alimony or support.

IX.

That each party should bear his and her own respective attorneys' fees, expert fees and costs in this matter.

JIMMERSON HANSEN, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
Telephone (702) 388-7171 • Facsimile (702) 387-1167

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WHEREFORE, DENNIS prays for judgment as follows:

1. That the bonds of matrimony now and heretofore existing between DENNIS and GABRIELLE be dissolved, and that DENNIS be granted an absolute Decree of Divorce, and that the parties hereto be released from all the obligations thereof and restored to the status of single, unmarried persons;

2. That the Court make an equal division of the community property of the parties;

3. That the Court make an equitable distribution of the community debts and obligations of the parties;

4. That the Court confirm to each party his or her respective separate property;

5. That neither party be awarded alimony;

6. That each party be required to pay his and her attorneys' and expert witnesses reasonable sums as and for their fees for services rendered to DENNIS and GABRIELLE, respectively, herein, plus costs of suit; and

7. For such other and further relief as the Court may deem just and proper in the premises.

DATED this 24th day of November, 2014.

JIMMERSON HANSEN, P.C.

By: 
JAMES J. JIMMERSON, ESQ.
Nevada Bar No. 000264
SHAWN M. GOLDSTEIN, ESQ.
Nevada Bar No. 009814
415 S. Sixth St., Suite 100
Las Vegas, Nevada 89101
(702) 388-7171
Attorneys for Defendant/Counterclaimant
DENNIS KOGOD

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VERIFICATION/DECLARATION

DENNIS KOGOD, declares, states and says:

That he is the Defendant in the above-entitled action; that he has read the above and foregoing **ANSWER TO PLAINTIFF'S COMPLAINT FOR DIVORCE AND COUNTERCLAIM**, and knows the contents thereof, and that the same is true of his own knowledge, except for those matters therein stated on information and belief, and as to those matters he believes them to be true.

I swear under the penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.


DENNIS KOGOD

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of JIMMERSON HANSEN, P.C., and that on this 24th day of November, 2014, I caused the foregoing document entitled ANSWER TO PLAINTIFF'S COMPLAINT FOR DIVORCE AND COUNTERCLAIM to be served as follows:

- pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;
- by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- pursuant to EDCR 7.26, to be sent via facsimile, by duly executed consent for service by electronic means;
- by hand-delivery with signed Receipt of Copy.

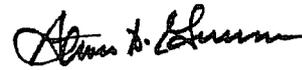
To the attorney(s) listed below at the address, email address, and/or facsimile number indicated below:

Denise L. Gentile, Esq.
DENISE L. GENTILE, CHTD.
10161 Park Run Drive, Ste. 150
Las Vegas, Nevada 89145


An employee of JIMMERSON HANSEN, P.C.

JIMMERSON HANSEN, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
Telephone: (702) 386-7171 - Facsimile (702) 387-1167

EXHIBIT 3


CLERK OF THE COURT

1 **RPLY**
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 RADFORD J. SMITH, CHARTERED
8 2470 St. Rose Parkway, Suite 206
9 Henderson, Nevada 89074
10 Telephone: (702) 990-6448
11 Facsimile: (702) 990-6456
12 rsmith@radfordsmith.com
13 *Attorneys for Plaintiff/Counterdefendant*

DISTRICT COURT
CLARK COUNTY, NEVADA

10 GABRIELLE CIOFFI-KOGOD,
11 Plaintiff/Counterdefendant,
12 v.

CASE NO.: D-13-489442-D
DEPT NO.: G

13 DENNIS KOGOD,
14
15 Defendant/Counterclaimant.

FAMILY DIVISION

17 **REPLY TO COUNTERCLAIM FOR DIVORCE**

18 COMES NOW, Plaintiff/Counterdefendant, GABRIELLE CIOFFI-KOGOD, through her
19 attorneys, Radford J. Smith, Esq. and Garima Varshney, Esq., of the law firm of Radford J. Smith,
20 Chartered, and sets forth her Reply to the Counterclaim of Defendant/Counterclaimant, DENNIS
21 KOGOD, as follows:
22

- 23 1. Plaintiff/Counterdefendant denies all material allegations not specifically admitted
24 herein.
25 2. Plaintiff/Counterdefendant admits all material allegations contained in Paragraphs I, III,
26 VII, of the Counterclaim.
27
28

1 3. Plaintiff/Counterdefendant denies all material allegations contained in Paragraphs IV, V,
2 VI, VIII, and IX of the Counterclaim.

3 4. In response to Paragraph II, Plaintiff/Counterdefendant states that the parties were
4 married on July 20, 1991 and not July 20, 1993 as indicated by Defendant/Counterclaimant in his
5 Answer to Complaint for Divorce and Counterclaim.
6

7 WHEREFORE, based on the foregoing, Plaintiff/Counterdefendant respectfully requests
8 Defendant/Counterclaimant take nothing by way of his Counterclaim, and that the relief set forth in her
9 Complaint for Divorce be granted in its entirety.
10

11 Dated this ^{5th} day of December, 2014.

12 RADFORD J. SMITH, CHARTERED

13
14 *Garima Varshney*
15 ~~RADFORD J. SMITH, ESQ.~~
16 Nevada Bar No. 002791
17 GARIMA VARSHNEY, ESQ.
18 Nevada Bar No. 0011878
19 2470 St. Rose Parkway, Suite 206
20 Henderson, Nevada 89074
21 *Attorney for Plaintiff/Counterdefendant*
22
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1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an employee of Radford J. Smith, Chartered ("the Firm"). I am over
3 the age of 18 and not a party to the within action. I am readily familiar with the Firm's practice of
4 collection and processing correspondence for mailing. Under the Firm's practice, mail is to be deposited
5 with the U.S. Postal Service on the same day as stated below, with postage thereon fully prepaid.
6

7 I served the foregoing document described as "REPLY TO COUNTERCLAIM" on this 5
8 day of December, 2014, to all interested parties as follows:

9 BY MAIL: Pursuant To NRCP 5(b), I placed a true copy thereof enclosed in a sealed envelope
10 addressed as follows;

11 BY FACSIMILE: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document this
12 date via telecopier to the facsimile number shown below;

13 BY ELECTRONIC MAIL: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing
14 document this date via electronic mail to the electronic mail address shown below;

15 BY CERTIFIED MAIL: I placed a true copy thereof enclosed in a sealed envelope, return
16 receipt requested, addressed as follows:

17 James J. Jimmerson, Esq.
18 415 S. 6th Street
19 Las Vegas, Nevada 89101
20 *Attorney for Defendant/Counterclaimant*

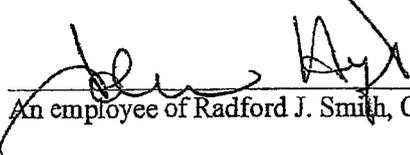
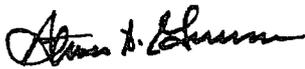
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23 An employee of Radford J. Smith, Chartered
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EXHIBIT 4


CLERK OF THE COURT

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3

4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6 GABRIELLE ROSE CIOFFI-KOGOD,)
7)

8 Plaintiff,)
9)

10 v.)

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

11 DENNIS L. KOGOD,)
12)

Defendant.)

13 NOTICE OF ENTRY OF
14 FINDINGS OF FACT, CONCLUSIONS
15 OF LAW AND DECREE OF DIVORCE

16 TO: ALL PARTIES AND/OR THEIR ATTORNEYS

17 Please take notice that a Findings of Fact, Conclusions of Law and Decree of
18 Divorce has been entered in the above-entitled matter, a copy of which is attached
19

20 hereto. I hereby certify that on the above file stamped date, I caused a copy of this

21 Notice of Entry of Findings of Fact, Conclusions of Law and Decree of Divorce

22 to be:

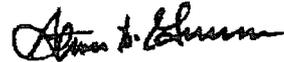
23 E-Served pursuant to NEFCR 9 on, or placed in the folder(s) located in the
24 Clerk's Office of, the following attorneys:

25 Radford Smith, Esq.

26 Daniel Marks, Esq.

27
28 /s/ Kimberly Weiss

Kimberly Weiss
Judicial Executive Assistant
Department Q


CLERK OF THE COURT

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DECD

DISTRICT COURT
CLARK COUNTY, NEVADA

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

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

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 (Seizure)/Dismissal
 - Default Judgment
 - Trial Disposition
 - Disposed After Trial Start
 - Judgment Reversed by Trial
- Non-Trial Dispositions:
- Settled/Withdrawn
 - Without Judicial Conf/Hrg
 - With Judicial Conf/Hrg
 - By ADR

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

27
28 ³At the July 13, 2016 hearing, Dennis expressed concern that this Court had already
completed an initial draft of the Decree prior to the submission of closing briefs. As noted
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.

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

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

⁴Given her native tongue is Russian, Ms. Khapsalis Kogod was offered a Russian 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.

⁵The parties initially expressed their intention to read the deposition transcripts into the record. As the trier of fact, this Court is capable of reading deposition transcripts. (The reading of the deposition transcript by a third party would offer nothing to this Court with respect to the demeanor of the witness. This Court is able to perform the same reading.) Thus, this Court directed that those portions of the deposition transcripts upon which each party intended to rely be marked and introduced as exhibits. To preserve each party's right to object to specific deposition testimony, this Court established a protocol that allowed the parties to 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.

⁶Although the Court has reviewed Radford J. Smith, Chartered's Billing Statements (Exhibit 100), Marc Herman's Billing Statements (Exhibit 101), Anthem Forensic's Billing Statements (Exhibit 102), Clark Barthol's Billing Statements (Exhibit 103), Detail Fee, Costs 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

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

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.

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

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

In approximately 1992, Teleflex acquired the assets of Pilling and then Teleflex acquired Weck from Bristol-Myers, Squibb. In late 1995 or early 1996, Dennis became Vice President of Corporate Accounts and International for Teleflex. At that time, he no longer focused on sales. In this position, Dennis' travel would take him to

⁹In general, Dennis testified that he traveled an average of two to three days per week for the various companies he worked for during the marriage. As discussed below, however, his 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.

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

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

(1) Dennis and DaVita

In 2004, Dennis' position at Gambro changed from Division President to the Co-Chief Operating Officer. More travel was required in this position than the division manager position. Dennis' travel typically entailed approximately three days per week (between January 2004 and October 2005). In November 2004, DaVita announced its acquisition of Gambro. Although Dennis entertained other employment opportunities after the acquisition was announced, he remained with DaVita. In this regard, DaVita was intent on having one of the senior team members (i.e., Dennis) stay with the company. Thus, in October 2005, Dennis began working for DaVita, overseeing the western operating group or region (as well as some additional

¹⁰Nadya's name on her birth certificate is Nadezhda Khapsalis, and her name on her 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.

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

5
6 Effective January 1, 2009, Dennis was promoted to Chief Operating Officer at
7 DaVita, which he called a "job of a lifetime."¹¹ See Exhibits 92-98. His duties changed
8 from overseeing the western division of the company to overseeing management of all
9 divisions. Dennis' travel increased as a result of this promotion, including more
10 international travel. (Although international travel had also been a part of his prior
11 employment experience, in late 2010 Dennis began traveling more internationally.
12 Again, Dennis' business travel and the associated physical separation of the parties on
13 a temporary basis was customary throughout the marriage.) Dennis did not receive any
14 specific training as a result of this promotion. Effective January 1, 2015, Dennis
15 became President of Health Care Partners and the CEO of the international division
16 of DaVita (Exhibit 98), which required even greater international travel.
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20 Although the parties' relocations throughout their marriage followed Dennis'
21 career pursuits, the record confirms that both parties were in agreement with each
22 relocation. Specifically, the parties mutually understood and agreed that it was
23 financially advantageous to follow Dennis' career trajectory. Further, the parties
24 believed that, with Gabrielle's background and training in the nursing field, she could
25

26
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.

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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

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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.

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2 researched and found the home.¹³ Nevertheless, the move to Las Vegas appeared to be
3 a mutually agreed-upon decision. After arriving in Las Vegas in December 2003,
4 Gabrielle began working for Sunrise Medical before moving to Dignity Health
5 (formerly known as Catholic Healthcare West) shortly thereafter. She has remained
6 at Dignity Health working as a certified legal nurse consultant. Exhibit OOO.
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
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18 Until 2010, it was customary for the parties to speak with each other daily (and
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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 I. 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.

"Both 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).

E. C. DUCKWORTH
DISTRICT JUDGE

FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

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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
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21 ...

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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
28 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.

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.

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

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

Exhibit 25.

Dennis assured Gabrielle that the divorce action would be dismissed. Although it does not appear that Dennis took any action himself to seek the dismissal of the Complaint for Divorce (Mar. 10, 2010), the Court *sua sponte* dismissed the case by way of Order of Dismissal Without Prejudice (Feb. 18, 2011). Dennis reflected on his lack 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,

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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 Gravely recognize that the marriage was broken and to have Dr. Gravely 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. Gravely 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.

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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
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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
I've said before, I think we're worth more than that – I'm worth more than that.
23

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
yet keep doing what you're doing with us and not seeing ahead to the outcomes.
27 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
28 year but felt "sick to your stomach"?

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

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

Dennis offered that there was no financial benefit overall to him to remain married. Following the purchase of the Lake Las Vegas residence in 2003, their relationship became more geographically and emotionally distant. At that time, Dennis estimated the parties' net worth to be \$750,000. In 2010, he estimated that their net worth had increased to \$4,000,000.²⁰ At the time of the divorce in 2016, the parties' net worth appears to exceed \$40,000,000. Dennis referred to this delay as the cost of his inability to have a "tough conversation" with Gabrielle about divorce. Although the

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²⁰Considering the stock options he had received at DaVita, the parties' net worth in 2010 appears to be more than \$4,000,000. In fact, in a November 23, 2010 email, Dennis 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.

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

(3) Nadya — *Honest Deceit*

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

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

²²According to Nadya, her vehicles included a 2015 Bentley GTC, BMW X5, GL Mercedes SUV, and a Cadillac SRX. Although Dennis testified that he routinely owned 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
6 Dennis were together, however, Dennis would pay all expenses on his cards. In short,
7 Nadya relied *entirely* on Dennis for her *entire* support.²⁵ According to Nadya, Dennis
8 promised to take care of her for the rest of her life.²⁶ Deposition: 145:15-22.

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
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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.

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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
7 14:20-15:18.

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.
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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.

CE C. DUCKWORTH
DISTRICT JUDGE

FAMILY DIVISION, DEPT. OF
JUDICIAL SERVICES, LAS VEGAS, NEVADA 89101

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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.
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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
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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.

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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
20 Dennis sought to prevent, or at least limit, Jennifer's exposure to a deposition
21 in this matter. He filed his Motion to Stay Service of Subpoena Duces Tecum and
22 Notice of Deposition and for a Protective Order Prohibiting or Limiting the Deposition
23 of Jennifer Crute Steiner (Jun. 11, 2015). Therein, Dennis represented to the Court
24 that Jennifer threatened to "report her relationship with Dennis to his superiors and
25 seek to have him terminated . . . if she is subpoenaed for deposition." Affidavit of
26 James J. Jimmerson, Esq., ¶ 15. Further, Dennis submitted that "the potential
27 deposition testimony of Jennifer could result in loss of her employment" and "Jennifer's
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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
12 marriage and devastate her minor children, as well as causing Dennis to
13 be terminated from his employment, which would prove to be an
14 unnecessary and undue burden for all parties.

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

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
27 supported by an Affidavit signed by counsel on his behalf.

28 ³¹Although her testimony was in deposition form, Jennifer's testimony appeared to be
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.

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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.
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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.
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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.

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

The hearings leading up to trial are summarized as follows:

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

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

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

³²At the time this matter was filed in 2013, the case was originally assigned to Department C of the Eighth Judicial District Court. The matter was reassigned to Department G by way of a peremptory challenge. A second peremptory challenge led to the assignment of 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.

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

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).

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understand she knew. There is, therefore, going to be a claim for waste as an issue. . . . *We're going to take that issue away from her by providing an accounting, an estimate and an offer that will be more than the dollars spent, so that one-half of which will be awarded to Mrs. Kogod to at least 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

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

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

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

Id. at 11:09.

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

...
...

³⁵Dennis' proclamation that he was "going to take that issue away from her by providing 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.

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

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

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

Id. at 11:47 (emphasis added).

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

This Court reviewed the parties’ complex litigation plans. Once again, both parties requested periodic hearings to monitor the progress of the case. Trial dates were scheduled, but Gabrielle requested that the trial be continued. This Court invited the involvement of experts at the periodic status hearings for the Court to gain an appreciation of where the parties were at and what issues remained outstanding. This

Court noted:

A lot of this boils down to calculations and numbers. There may be perhaps some disagreements and I have to make the call in terms of a legal and factual determination as to whether or not something is construed as waste . . . To touch on that issue a bit, I know there was some discussion, you know, how you could construe money being spent on children as waste. Sounds like a misnomer. The bottom line for me 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.

May 4, 2015 Video: 9:25.

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

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

(4) Status Hearing on June 1, 2015

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

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

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

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

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

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

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

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

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June 1, 2015 Video: 11:53.

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Gabrielle offered:

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

Id.

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

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(5) Status Hearing on July 21, 2015

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

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

July 21, 2015 Video: 11:35.

(6) Status Hearing on September 9, 2015

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

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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

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2 months prior to the commencement of trial). Gabrielle's Motion for Leave to File
3 Amended Complaint (Oct. 13, 2015) was filed well beyond the May 5, 2015 deadline
4 originally imposed by this Court's Case and Trial Management Order (Mar. 17, 2015).
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.
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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,
17 Attorney's Fees and Costs (Jan. 19, 2016) (hereinafter referred to as
18 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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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.

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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.
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20 III. DIVISION OF ASSETS AND DEBTS

21 (A) NEVADA LAW RE: COMMUNITY PROPERTY

22 NRS 123.220 provides that:

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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."

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

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

(B) CIOFFI-KOGOD MARITAL BALANCE SHEET

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

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

- (a) Radiology Partners investment (Gabrielle's value: \$655,000; Dennis' value: \$150,000);
- (b) The Oak Pass property (Gabrielle's value: \$6,400,000; Dennis' value: \$5,780,000);

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

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

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

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

³⁸The record does not instill a high degree of confidence for the Court with respect to the value of Radiology Partners. As noted above, the Anthem Report references a value of \$150,000 for the investment. This value appears to be the amount of the original investment. 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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(4) With respect to the Oak Pass property, this Court had the opportunity to review the testimony of the witnesses, including Mark Herman, Jennifer Bosco, and Veronica Garcia. This Court also has reviewed and considered the Appraisal Report of Marc Herman dated January 30, 2016 (Exhibit 5) and the SunWest Appraisal of Real Property dated March 7, 2016 (Exhibits 6 and VVVV). Mr. Herman valued the Oak Pass property at \$6,400,000, with a range of value (based on comparables after adjustments) of \$6,074,000 to \$6,601,400. In contrast, SunWest Appraisals valued the Oak Pass property at \$5,780,000, with a range of value (based on comparables after adjustments) of \$5,025,000 to \$6,440,500. In his Financial Disclosure Form (Feb. 16, 2016), Dennis valued the Oak Pass property at \$6,250,000.

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

(5) With respect to Dennis' un-vested stock options/LTIPs/incentive benefit programs (hereinafter referred to as "incentive benefits") with DaVita, this Court adopts the "wait and see" approach. *Fondi v. Fondi*, 106 Nev. 856, 859, 802 P.2d 1264, 1266 (1990). Dennis argues that he will be required "to continue working hard in order to receive any benefit from those grants" in support of his position that any incentive benefits should be confirmed to him as his sole and separate property.

Radiology Partners. (The marital balance sheet attached to Gabrielle's Brief does not contain 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.

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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.
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22 (6) With respect to vehicles, Dennis' Brief referenced multiple leased vehicles
23 that are not referenced in Exhibit 1 as assets. Although this Court assigns no value to
24 any leased vehicles, each party should be responsible for any liability associated with
25 leased vehicles in their respective names. Each party's marital balance sheet references
26 three vehicles with value: a 2015 Ferrari, a 2015 Bentley (12 cyl.), and a 2015 Bentley
27 (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.

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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.
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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.
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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 I) 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.
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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.
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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

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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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27 ³⁹Mr. Silverman offered a general definition of "dissipation" or "waste" as "community
28 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).

JOE G. DUCKWORTH
DISTRICT JUDGE

FAMILY DIVISION, DEPT. C
LAS VEGAS, NEVADA 89101

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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.

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

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

The Court reaffirmed the *Lofgren* holding in *Putterman v. Putterman*, 113 Nev. 606, 939 P.2d 1047 (1997), noting that financial misconduct "in the form of one party's wasting or secreting assets during the divorce process . . . negligent loss or destruction of community property, unauthorized gifts of community property" may constitute compelling reasons for an unequal division. *Putterman*, 939 P.2d at 1048. In *Putterman*, the Nevada Supreme Court again affirmed the district court's unequal division of community property based on its "meticulous findings of fact which set forth numerous compelling reasons." 113 Nev. 606, 608, 939 P.2d 1047, 1048

E. C. DUCKWORTH
DISTRICT JUDGE

FAMILY DIVISION, DEPT. OF
SOCIETY SERVICES, LAS VEGAS, NEVADA 89101

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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.
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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:
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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.

19 * * * *

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

⁴⁰The unequal division in Mrs. Putterman's favor was "not excessive" and consisted of 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.

CE C. DICKWORTH
DISTRICT JUDGE

FAMILY DIVISION, DEPT. OF
SOCIETY SERVICES, LAS VEGAS, NEVADA 89101

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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.
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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.
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21 Maldonado’s:

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.

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.

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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).
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20 (a) Timing: When Does "Waste" Start?

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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Nevada Supreme Court has implicitly held that waste can occur as early as the date of the parties' separation. This Court concludes, however, that this direction from the Nevada Supreme Court is not limiting language that was intended to preclude an earlier date for a court to consider conduct that constitutes "waste." Guidance from other jurisdictions regarding the timing of "waste" or "dissipation" is instructive.

Generally, case law from other jurisdictions suggests that a finding of waste occurs only after an irretrievable or "irreconcilable breakdown" of the marriage. For example, in *Barriger v. Barriger*, 514 S.W.2d 114 (Ky. Ct. App. 1974), the Court of Appeals of Kentucky Court reimbursed the community unaccounted funds spent by husband on gambling and "any good looking broad that comes by." In so doing, the court noted that dissipation or waste exists when one spouse utilizes community property for his or her own benefit for a purpose unrelated to the marriage at a time when the marriage is undergoing an irreconcilable breakdown. *Id.* at 514 S.W.2d at 115. Further, in *In Re Marriage of Severson*, 228 Ill. App.3d 820, 593 N.E.2d 747 (1992), an Illinois appellate court found that "dissipation refers to 'the use of marital property for the sole benefit of one of the spouses for a purpose unrelated to the marriage at a time that the marriage is undergoing an irreconcilable breakdown.'" 228 Ill. App.3d at 824, 593 N.E.2d at 750, quoting *In re Marriage of O'Neill*, 138 Ill.2d 487, 563 N.E.2d 494 (1990).

Scholarly authors have opined that, in a community property state, waste can occur at any time during the marriage. "No community property state appears to have 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 *Putterman* 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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heightened scrutiny of the parties' financial activity does not cease upon the filing for divorce or once the "breakdown" has been recognized by both parties. (In other words, there is not a "green light" to start spending community funds without consequence once the relationship is deemed to have been "broken.") To the contrary, the financial practices of the parties should be scrutinized from the time of the "irreconcilable breakdown" until the divorce is finalized. Moreover, the very filing of the Complaint for Divorce (Dec. 13, 2103) and the Joint Preliminary Injunction (May 15, 2014) constitute taking judicial action.⁴²

(b) Burden of Proof

Although the burden of proof has not been addressed directly in Nevada case law precedent, both *Lofgren* and *Putterman* offer, at least indirectly, some guidance with respect to who has the burden to account for allegedly wasted community assets. For example, the Court in *Putterman* referenced the trial court's finding that the husband "had refused to account to either [wife] or to the court for any finances over which he had control, including separate property or earnings." 113 Nev. 606, 609, 939 P.2d 1047, 1049. The Court concluded that "[t]he husband's financial misconduct in the form of his having refused to account to the court concerning 'earnings' and other

⁴²Dennis suggests that Gabrielle's inaction (including her failure to file more than two motions prior to trial) confirms at least tacit approval of his spending practices. Thus, while Dennis assured Gabrielle (and this Court) during the first two hearings in this case that he would spearhead an accounting and that he would compensate Gabrielle for his spending (i.e., 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.

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

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

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13 Placing the burden on the wasting spouse is also consistent with Nevada law in
14 the context of parties involved in a fiduciary relationship. "A fiduciary relationship . . .
15 arises from the existence of the marriage itself. Thus precipitating a duty to disclose
16 pertinent assets and factors relating to those assets." *Williams v. Waldman*, 108 Nev.
17 466, 472, 836 P.2d 614, 618 (1992). *See also* Gary R. Silverman, Esq., *I Spent The*
18 *Money on Whiskey, Women and Gambling; The Rest, I Wasted*, 19 May Nev. Law. 19, 20-
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20 21 (2011). In Nevada, spouses are regarded as partners who owe each other fiduciary
21 duties. *Id.* The Nevada Supreme Court has held that the burden of proof is on the
22 party who violated the fiduciary duties owed to the other party. *Id.* at 21. "The most
23 elementary conceptions of justice and public policy require that the wrongdoer shall
24 bear the risk of the uncertainty which his own wrong has created." *Foley v. Morse &*
25 *Mowbray*, 109 Nev. 116, 121, 848 P.2d 519, 520 (1993), quoting *Bigelow v. RKO Radio*
26 *Pictures*, 327 U.S. 251, 265, 90 L.Ed. 652, 66 S.Ct. 574 (1946).
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DISTRICT JUDGE

FAMILY DIVISION, DEPT. O
45 VEGAS, NEVADA 89101

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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.

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DISTRICT JUDGE

FAMILY DIVISION, DEPT. Q
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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).
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7 (c) Evidentiary Standard

8 In many states, the spouse charged with dissipation must meet his/her burden
9 of proof by "clear and convincing evidence."
10

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

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

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

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.
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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'
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20 legal burden to provide such an accounting and, at least early in the case, he
21 acknowledged as much when he boldly proclaimed at the February 3, 2015 Case
22 Management Conference that he was "going to take that issue away from her by
23 providing an accounting." Just as he had given Gabrielle false hope that, through
24 marital counseling, their marriage could be saved, he gave this Court false hope that he
25 would provide "an estimate and an offer that will be more than the dollars spent, so
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that one-half of which will be awarded to Mrs. Kogod to at least remove the financial sting or insult of Dennis' having this relationship."

This Court further concludes that the existence and analysis of waste by Dennis in regards to identifiable expenditures on Nadya and Dennis and Nadya's children begins in November 2004. Such a conclusion is based on this Court's finding that the irretrievable breakdown of the marriage began in 2004 with Dennis secretly spending money on a purpose that was irreconcilable with a harmonious marital relationship. In regards to unaccounted expenditures that have not been specifically identified as having been spent on Nadya, Dennis and Nadya's children, or Jennifer, this Court concludes that the analysis of waste by Dennis begins in March 2010. In this regard, Dennis' filing of his Complaint for Divorce (Mar. 10, 2010) in early 2010, and the parties "permanent" physical separation in 2010 reflect a permanency of the irretrievable breakdown of the marriage. The year 2010 also marks the period of time in which Gabrielle became aware of serious issues and problems in the parties' marriage which would give rise to heightened scrutiny by this Court as to all expenditures (and not just those expenditures traceable to a girlfriend and children of an affair).

As previously discussed, it is undisputed that Dennis initiated his extra-marital affair with Nadya no later than November 2004. This relationship, as well as at least one additional extra-marital affair (with Jennifer), continued through the filing of these divorce proceedings (with financial support extending through the date of the divorce proceedings). Thus, any expenditures traced directly to these affairs should be recaptured as part of the Court's consideration of NRS 125.150. This Court finds that

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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
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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.

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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 Marital 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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as "Anthem Forensics") testified on Gabrielle's behalf, and Richard M. Teichner of Teichner Accounting Forensics & Valuations, PLLC, testified on Dennis' behalf.

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

Despite Dennis' assurances to this Court that he would be spearheading the forensic accounting of his spending, and despite his legal burden to demonstrate by clear and convincing evidence that his spending was not wasteful, Dennis did not offer to the Court an investigative forensic accounting report. Rather, Mr. Teichner reviewed and critiqued the reports from Anthem Forensics, but did not conduct his own independent accounting analysis. Mr. Teichner admitted that he accepted at face value Dennis' representations without further investigation or independent verification.⁴⁵

The following Exhibits prepared by the experts involved in this matter were admitted into the record and reviewed by this Court: Index of documents in support

⁴⁵Anthem Forensics opined: "Teichner has simply relied upon Dennis' representations 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.¹⁶ 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
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20 we have endeavored to analyze potential community waste, the ultimate
21 characterization of the transactions identified in this section will need to be resolved
22 by the trier of fact." *Id.* at 8.
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24 In stark contrast with his admissions at the initial Case Management
25 Conference, Dennis argued that, because there has been no diminution in value of the
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¹⁶Although 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.

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marital estate, the Court should not entertain any reimbursement to Gabrielle for waste. Dennis argued that both *Putterman* and *Lofgren* involved factual scenarios where the marital estate diminished in value as a result of the spending of one spouse. In the instant matter, it is undisputed that, not only did the marital estate *not* diminish in value from 2004 through the divorce action, but the marital community increased in value exponentially. Dennis also challenged Anthem Forensics reliance on labels to quantify alleged "waste." Although Mr. Teichner was critical of the labeling of expenditures in the Anthem Report, he nevertheless opined that "Dennis should have had the freedom to spend a relatively small percentage of his sizable annual compensation on discretionary expenditures, as should anyone else." Teichner Report

3. In response to a query about "[w]hat is the amount of money somebody can spend on a girlfriend without it being community waste?," Mr. Teichner testified:

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

* * * *

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

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

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

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17 Apart from not focusing on a comparison of each party's relative expenditures,
18 it also does not appear that the Anthem Report questioned or critiqued the amount
19 spent on the categories identified in either party's financial disclosure forms. Ms. Allen
20 testified that Anthem Forensics accepted as reasonable Dennis' expense claims on his
21 financial disclosure forms (hereinafter generically referred to as "FDFs").⁴⁷ Indeed, it
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25 ⁴⁷The parties' Financial Disclosure Forms admitted into the record include: Gabrielle's
26 Financial Disclosure Form (Feb. 25, 2015) (Exhibit XX) (hereinafter referred to as Gabrielle's
27 "2015 FDF"); Gabrielle's Financial Disclosure Form (Feb. 19, 2016) (Exhibit 1) (hereinafter
28 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").

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

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

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

The Anthem Report also provides that, based on Dennis' deposition testimony, he provided Nadya with approximately \$3,000 in cash each month. Thus, "we have estimated that Dennis provided Nadya with approximately \$279,000 from March 2008 through November 2015." Anthem Report 11. As discussed below, this Court is attributing waste to Dennis from 2010 forward for monies not elsewhere classified (which includes a category for withdrawals and cash advances (Reference 123 of Exhibit 6 to Anthem Report)). Accordingly, and to avoid potential duplication with "withdrawal" and "cash advance" categories, this Court is not inclined to include the total amount as part of the waste calculation. Nevertheless, it is reasonable and 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.
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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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JOSE C. DUCIGNORTH
DISTRICT JUDGE

FAMILY DIVISION, DEPT. OF
LAS VEGAS, NEVADA 89101

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[The Anthem Report] assumes potential community waste on the premise that Dennis was not entitled to spend monies the way that he chose to do so. If there had not been expenditures by Dennis for Nadya and their children, for Jennifer, or for other items for which Anthem alleges [p]otential community waste, he may have spent the money elsewhere while living apart from Gabrielle. However Dennis chose to spend his money from 2004 through the date of [the Anthem Report] cannot be assumed to be potential community waste, especially in light of the amount of his spending in relation to his dramatically increasing annual income and due to the fact that the purpose of many of the expenditures in [the Anthem Report] are either mischaracterized or unknown.

Teichner Report 3.

This argument somewhat presupposes that this Court should recognize a wealth exception to the analysis of waste. In other words, Dennis could have and should have been allowed to spend community funds on any "hobby" or pursuit (including a girlfriend "hobby") based on the sheer size of the marital estate and amount of income he has generated. Alternatively, such an argument suggests that all spouses should have a similar percentage of their budget to spend on such things as girlfriends/boyfriends. In the context of this case, this Court cannot ratify or condone such a theory or argument. It is for a higher court to declare that community funds spent on a girlfriend

and children born of a secret affair is not waste of the other spouse's present and existing share of those community funds.⁵¹ The nature of the expenditure (i.e., is the expense item contrary to the maintenance of marital harmony?), is relevant to the

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.

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

Dennis also pointed out that Gabrielle was free to spend money on any hobby or pursuit and that he never imposed any limitations on her spending or criticized her spending. Neither did Dennis monitor Gabrielle's spending. In short, Gabrielle was never restricted in her spending or her access to money. The record reflects, however, that Gabrielle did not spend extravagantly. To the contrary, she would inform Dennis of transactions as small as gifting a washer and dryer. *See* Exhibit 20 (October 21, 2011 message from Gabrielle inquiring: "Jennifer needs a washer. Okay for her to have ours?"). This Court finds and concludes that Gabrielle's unrestrained access to and use of community funds does not overcome the finding and conclusion that Dennis' spending (both unaccounted and accounted) is a compelling reason to divide the community assets unequally between the parties.

Dennis failed to demonstrate with credible evidence that the expenditures set forth on Exhibit 2 to the Anthem Report and Exhibit 2 to the Anthem Response Report were not diverted from the marital community and that the total amount reflected therein does not constitute marital waste. Therefore, this Court finds a compelling reason exists to unequally divide the community assets by attributing the sum of \$1,808,112 as part of Dennis' division of assets.

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(b) Jennifer: Total Waste: \$45,100

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

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

(c) Yacht: Total Waste: \$0.00

During the marriage, Dennis sold and purchased two yachts. First, he purchased a 2007 Cruiser yacht in 2012. He traded the Cruiser yacht for a Marquis yacht in June 2014 (while these divorce proceedings were pending). Although the Marquis yacht was acquired in the name of Dennis' parents, it is undisputed that Dennis funded the entire purchase and his parents had no interest in the yacht. In July 2015, Dennis sold the Marquis yacht for \$990,000. Anthem Forensics determined that Dennis spent \$626,658 in excess of the sales proceeds on yacht-related expenses.

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Dennis testified that his purchase of the yachts was his pursuit of a hobby that replaced old hobbies that were no longer physically practical.⁵² Although this Court recognizes that Dennis' newfound "hobby" was not disclosed to Gabrielle and it does not appear that she ever expressly consented to these expenditures, this Court finds that Dennis' yacht expenditures are the type of "over consumption" referenced in *Putterman*, that does not necessarily constitute a compelling circumstance for an unequal division of assets. *Putterman*, 939 P.2d at 1048-49. This finding takes into consideration the size of the marital estate (i.e., lifestyle considerations) and Dennis' argument that his spending on such a hobby did not cause a diminution in value of the marital estate. Combined with a finding that this type of expenditure is not necessarily inimical to the maintenance of a harmonious marital relationship, this Court finds that these expenditures do not provide the Court with a compelling reason to unequally divide the community property. Thus, this Court does not attribute any amount to Dennis as part of the division of assets.

(d) Family Expenditures: Total Waste: \$72,200

During their marriage, the parties donated monies for the benefit of other family members. Most of these contributions, however, benefitted Dennis' family members. It appears that the donations or monies forwarded to Gabrielle's family members were limited primarily to small birthday gifts and contributions to expenses associated with ...

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
property. Further, although Gabrielle had the freedom to spend without limitation, she
did not spend community funds either recklessly or without Dennis' prior knowledge.
Dennis did not reciprocate. Such one-sided communication, however, was not

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

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

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

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

Id. (emphasis added).

Notwithstanding the lack of communication by Dennis to Gabrielle about the assistance that he provided to his direct family members, this Court finds and concludes that, with exception to the specific expenditures discussed below, said expenditures should not receive the same level of scrutiny as those monies spent on non or new family members concealed from Gabrielle. Although it is undisputed that Gabrielle did not share a close or friendly relationship with Dennis' family, such family-related expenditures, even when not disclosed or agreed to, are not necessarily inimical to a harmonious marital relationship when viewed in the context of this marital estate. When questioned about Dennis' spending on his parents, Gabrielle acknowledged that 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
24 Dennis failed to demonstrate by clear and convincing evidence that said \$15,000 is not
25 waste of community assets or that this particular family member was the beneficiary
26 of regular and routine gifts. Further, since May 2014, Dennis made what appear to be
27 two non-routine large payments of \$3,600 each (in January and May 2015) to his
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father, Sheldon Kogod. These payments occurred after the initiation of these divorce proceedings and do not appear to be related to his parents' routine and regular support. Finally, the \$50,000 Dennis advanced to his father for a campaign contribution cannot be classified as an appropriate expenditure of community funds.

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

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

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

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

Anthem Report 13.

Anthem Forensics aggregated the outflows by category and year in Exhibit 6 to the Anthem Report. For ease of reference, Exhibit 6 to the Anthem Report is attached hereto as this Court's Exhibit 2. Anthem Forensics then made adjustments to the amounts that included: (1) removing amounts that were already included in the marital balance sheet as part of the property division; (2) removing amounts already allocated elsewhere in the Anthem Report; (3) adjusting the amounts that Anthem Forensics

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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.
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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.

1
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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⁵⁴Dennis also complained that Gabrielle scrutinized "nickel" and "dime" expenditures that would be impractical to account for. He cited to the discussion before this Court at a prior 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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classified, this Court is not persuaded to include expenditures that pre-date 2010.⁵⁵

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

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

The foregoing additional adjustments total \$312,971, for a combined adjustment amount of \$1,448,584. Deducting \$1,448,584 from the total of amounts

not elsewhere classified leaves a remaining total of \$2,162,451 in such expenditures not

⁵⁵In part, some of these unaccounted pre-2010 expenditures fall into the "nickel and dime" category that this Court is not inclined to entertain as part of the waste analysis. Heightened scrutiny is more appropriate for such unaccounted expenditures beginning in 2010 when the marriage was indisputably broken and the parties were permanently separated.

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

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

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justified by Dennis. This Court finds sufficient justification in the record to conclude that the foregoing adjustments are appropriate in the context of the spending from the marital estate. However, with respect to the remaining \$2,162,451, this Court is unable to make a similar finding. Specifically, Dennis failed to meet his burden to show that \$2,162,451 was not "wasted" or that said amount was used for community purposes. Accordingly, this Court finds that a compelling reason exists to unequally divide the community assets by attributing the sum of \$2,162,451 as part of Dennis' division of assets.

Notably, as part of the Teichner Report, Dennis argued for the elimination of the following itemized "References" (with the parenthetical description of those items not discussed above by this Court): 7, 9 (auto-related not elsewhere classified), 23, 57 (home related - art (Wilshire apt.)), 64 (legal fees), 68, 69, 70, 71, 72, 73, 74, 79, 80, 95, 114, and 122 (wire transfer - unknown) for total "eliminations" of \$1,768,251.69 "Before Accounting for Elimination of Business Related and Normal Living Expenses."

Many of the References to which Dennis objected have resulted in further adjustments from the total as set forth above. For those References that Dennis argued for removal, but have not been deducted or adjusted by this Court, Dennis failed to satisfy by clear and convincing evidence his burden to demonstrate that those unaccounted monies did not constitute waste. Moreover, some of the auto-related expenditures took place after the issuance of the Joint Preliminary Injunction and Dennis failed to meet his burden to justify said expenditures. Accordingly, there is a compelling reason to divide the assets unequally by the resulting amount of \$2,162,451.

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In summary, this Court finds that a compelling reason exists to unequally divide the assets of the marital community pursuant to NRS 125.150 by attributing to Dennis the following amounts as part of the division of assets:

<input type="checkbox"/>	Nadya and Dennis/Nadya's Children:	\$1,808,112
<input type="checkbox"/>	Jennifer:	\$45,100
<input type="checkbox"/>	Family Expenditures:	\$72,200
<input type="checkbox"/>	Amounts Not Elsewhere Classified:	<u>\$2,162,451</u>
TOTAL:		\$4,087,863

IV. SANCTIONS

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

⁵⁸EDCR 7.60 provides, in relevant part, as follows:

(b) The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the 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:

- (1) So multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.
- (5) Fails or refuses to comply with any order of a judge of the court.

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

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

YOU ARE HEREBY PROHIBITED AND RESTRAINED FROM:

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

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

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

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

V. ALIMONY

A. CONCLUSIONS OF LAW

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

RYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

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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
29 spouse who would receive the alimony; and
30 (k) The physical and mental condition of each
31 party as it relates to the financial condition, health and
32 ability to work of that spouse.

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

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

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

The purpose of spousal support is not to equalize post-divorce incomes, but "to allow the recipient spouse to live as nearly as fairly possible to the station in life enjoyed before the divorce." *Shydler v. Shydler*, 114 Nev. 192, 198, 954 P.2d 37, 40 (1998). Further, "[a]lthough the amount of community property to be divided between the parties may be considered in determining alimony," a spouse should not be required to deplete his/her share of community property for support. *Id.*, 114 Nev. at 198, 954 P.2d at 40. Further, this Court should not consider the respective "merits" of the parties in adjudicating the issue of spousal support. *Rodriguez v. Rodriguez*, 116 Nev. 993, 13 P.3d 415 (2000). It is not a "sword to level the wrongdoer," nor is it a "prize to reward virtue." *Id.* 116 Nev. at 999, 13 P.3d 419. Rather, "Alimony is financial support paid from one spouse to the other whenever justice and equity require it." *Id.*

Prior to addressing Gabrielle's request for periodic spousal support, this Court disposes of the issue of rehabilitative support. Pursuant to NRS 125.150(10), this Court is required to consider whether there is a basis to award rehabilitative alimony. Based on the record before this Court, there is no basis for an award of rehabilitative alimony. There are no facts in the record establishing the existence of a plan for rehabilitation and no evidence establishing viable options for rehabilitation or training. Indeed, it appears that Gabrielle is satisfied with her existing career and there was no 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.

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

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

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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	IIII

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 IIII. Therein, Dennis' reported 2015 "Medicare" wages of \$10,132,746.52, with income taxes withheld of \$3,798,481.09.

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

In contrast with Gabrielle's income, defining Dennis' income for support purposes is complicated. A comparison of his various FDFs filed with the Court illustrates the wide range of income reported by Dennis. For example, Dennis represented average gross monthly income of \$66,666.66 in his February 2015 FDF. His reported average gross monthly income increased to \$600,310.40 in his May 2015 FDF. Finally, Dennis represented average gross monthly income of \$61,538.48 in his February 2016 FDF. Dennis' income and benefits of employment with DaVita

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

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

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

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

⁶²Not reflected in the compensation summary above is Dennis' flight benefits with 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

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Moreover, from 2003 through 2009, this Court notes that the parties' combined income from "wages, salaries, tips" totaled \$8,861,289, for an annual average combined income of \$1,265,898.43. This Court also takes into consideration the fact that the highest income earned by Dennis came at a time that the marital relationship was broken and the parties had permanently separated. Without ascribing credit or blame, the delay in the parties divorcing has resulted in significant growth in the size of the overall marital estate. Although this Court does not accept Dennis' hypothetical proposition that the marital estate to be divided in 2010 would have been \$4 million had he prosecuted his Complaint for Divorce (Mar. 10, 2010), this Court does accept the argument that the amount Gabrielle will receive as part of the property division has increased significantly during the five plus years that the parties have been permanently separated.

Recognizing that this is not a need based spousal support case, this Court similarly (as with Dennis' incentive compensation income) discounts the passive income that Gabrielle will earn from the property that she will receive as part of the property division.⁶⁴ Instead, this Court focuses on Dennis' base salary plus his average bonus income received from 2008 through 2012, and 2014 and Gabrielle's income from her employment. Thus, this Court finds that Dennis' average gross monthly

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

⁶⁴Unlike *Shydler, supra*, this is not a situation in which Gabrielle will need to deplete or 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.

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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.

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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 Dennis proposes that he receive the majority of the non-liquid assets as part of
10 the division of assets. This includes: (1) the residence in which Nadya and the
11 children reside (the Oak Pass property); (2) the residence in which Dennis' parents
12 reside (San Vicente property); and (3) the residence in which Dennis' brother's family
13 reside (Canon Condo). Based on such a division, Dennis argued that Gabrielle would
14 leave the marriage with approximately \$18,000,000 in cash and \$2,000,000 in real
15 estate. Dennis added that Gabrielle should be able to earn a reasonable rate of return
16 of at least 4%. As such, Dennis projected that Gabrielle could earn between \$500,000
17 and \$800,000 in passive income if Gabrielle invests the liquid assets with a
18 conventional investment house (or even with a bank).⁶⁵
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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,
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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
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Gabrielle does not "need" support to meet her expenses. Nevertheless, comparing the total income each party will earn based on the history of their earnings during the past five years (combined with the passive income Gabrielle likely will earn), the record supports a finding that Dennis will continue to earn more income annually than Gabrielle.

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

This factor is not applicable in this case.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

...

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 (2) the sum of \$186,030 from the net sales proceeds realized from the sale
15 of the Lake Las Vegas residence (plus or minus one-half (1/2) of any
16 amount in excess of or below net sales proceeds of \$570,502);
17

18 (3) the following bank and financial accounts:

19 (a) the Merrill Lynch/Bank of America checking account (ending
20 0129); and
21

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);

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- (d) the UBS Resource Management Account (account 20329);
 - (e) the Merrill Lynch CMA account (no. 10637); and
 - (f) the Merrill Lynch CMA account (10093);
- (5) one-half (½) of the fractional community property interest in any incentive awards granted or awarded to Dennis associated with his employment prior to February 26, 2016, calculated based on the total time between the award or grant of the asset/award and the date on which said asset/award vests or matures, with the Court retaining jurisdiction to “wait and see” whether post-divorce performance conditions should be considered as part of the division;
- (6) one-half of the net sales proceeds realized from the sale of the 2015 Ferrari;
- (7) the golf cart;
- (8) the following retirement accounts:
- (a) the Fidelity Dignity Health retirement account;
 - (b) the sum of \$289,409 from the DaVita Executive retirement plan;
 - (c) the Merrill Lynch IRA (11040);
 - (d) one-half of the Teleflex defined benefit pension plan, with this Court retaining jurisdiction to enter a qualified order to effectuate the division thereof;
- (9) one-half (½) of all credit card/travel reward points accumulated during the parties’ marriage; and

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

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

(1) the following real properties:

- (a) the sum of \$384,472 from the net sales proceeds realized from the sale of the Lake Las Vegas residence (plus or minus one-half (1/2) of any amount in excess of or below net sales proceeds of \$570,502);
- (b) the Oak Pass property;
- (c) the San Vicente property;
- (d) the Canon Condo;
- (e) the residence and real property located at 10776 Wilshire Boulevard; and
- (f) the nanny quarters located at 10776 Wilshire Boulevard;

(2) the following bank and financial accounts:

- (a) one-half of the Merrill Lynch/Bank of America joint checking account (ending 6446);
- (b) the Wells Fargo checking account (ending 5397);
- (c) the Wells Fargo checking account (ending 8870); and
- (d) the Wells Fargo savings account (ending 6253);

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(3) the following investments:

- (a) the UBS Resource Management Account (account 12745);
- (b) the UBS Resource Management Account (account 18575);
- (c) the NEA investment;
- (d) the Radiology Partners investment;
- (e) the iChill investment;
- (f) any interest in the Pray for Ukraine/Winter movie; and
- (g) any interest in the Thomasina movie;

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

(5) the following automobiles:

- (a) the 2015 Bentley 12 cyl.;
- (d) the 2015 Bentley 8 cyl.; and
- (c) one-half of the net sales proceeds realized from the sale of the 2015 Ferrari;

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

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

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

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).

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

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

FAMILY DIVISION, DEPT. O
AS VEGAS, NEVADA 89101

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

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

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

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

DATED this 22nd day of August, 2016.


BRYCE C. DUCKWORTH
DISTRICT COURT JUDGE
DEPARTMENT Q

Exhibit 1

Cioffi-Kogod v. Kogod
Marital Balance Sheet

ASSETS	Value	Debt	Net Value		Property Value		NOTES
			Dennis	Gabrielle	Dennis	Gabrielle	
CASH/BANK ACCOUNTS							
1 Bank of America Checking (129)	\$65,200	\$0	\$9,178	\$65,200			Exhibit 141
2 Bank of America Checking (6446)	\$18,366	\$0	\$10,192	\$9,178			Exhibit 142
3 Wells Fargo Checking (6397)	\$10,192	\$0	\$429	\$10,192			Exhibit MMMMM
4 Wells Fargo Checking (8870)	\$429	\$0	\$496	\$429			Exhibit NNNNN
5 Wells Fargo Savings (6263)	\$496	\$0		\$496			Exhibit MMMMM
6 Blocked account (Yacht)		\$0	\$20,296	\$74,378			Placed in UBS 45 per Anthem Report
Subtotal	\$94,673	\$0	\$20,296	\$74,378	\$0	\$0	
INVESTMENTS							
7 UBS Strategic Advisor (12743)	\$6,033,694	\$0	\$4,180,085	\$6,033,694			Exhibit JJJJJ
8 UBS Resource Mgt. Account (12745)	\$4,180,085	\$0	\$2,252,231	\$2,252,231			Exhibit KKKKK
9 UBS Private Wealth Solutions(13134)	\$2,252,231	\$0	\$9,203,992	\$9,203,992			Exhibit LLLLL
10 UBS Resource Mgt. Account (21076)	\$9,203,992	\$0	\$95,056	\$95,056			Exhibit IIIII
11 UBS Resource Mgt. Account (18575)	\$95,056	\$0	\$1,232,061	\$1,232,061			Exhibit FFFFF
12 UBS Resource Mgt. Account (20329)	\$1,232,061	\$0	\$496,802	\$496,802			Exhibit 144; Slip. & Order (8/10/2016)
13 Merrill Lynch CMA (106837)	\$496,802	\$0	\$282,025	\$282,025			Exhibit 143
14 Merrill Lynch CMA (100993)	\$282,025	\$0	\$4,275,141	\$18,268,744			
Subtotal	\$23,775,946	\$0	\$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 Tchill	\$150,000	\$0	\$81,000	\$150,000			Dennis & Gabrielle's Briefs
18 Play for Ukraine/Winter Movie	\$81,000	\$0	\$100,000	\$81,000			Dennis & Gabrielle's Briefs
19 Thomasina Movie	\$100,000	\$0	\$1,460,388	\$100,000			Dennis & Gabrielle's Briefs
Subtotal	\$1,460,388	\$0	\$1,460,388	\$1,460,388	\$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	\$178,000	\$25,000			Dennis & Gabrielle's Briefs
22 Business loan (Mitchell Kogod)	\$178,000	\$0	\$25,000	\$178,000			Dennis & Gabrielle's Briefs
23 Personal loan (Sheldon Kogod)	\$25,000	\$0	\$253,000	\$25,000			Dennis & Gabrielle's Briefs
Subtotal	\$253,000	\$0	\$253,000	\$253,000	\$0	\$0	

ASSETS	Value	Debt	Net Value	Property Value			NOTES
				Community		Separate	
				Dennis	Gabrielle	Dennis Gabrielle	
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. WWWW
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				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	

ASSETS	Value	Debt	Net Value	Notes
PERSONAL PROPERTY				
31 2015 Bentley 12 cyl.	\$255,000	\$0	\$255,000	
32 2015 Bentley 8 cyl. (Nadya's)	\$205,000	\$0	\$205,000	
33 2015 Ferrari 458	\$276,675	\$0	\$276,675	Sold & proceeds divided; Ex. CCCCC
Subtotal	\$736,675	\$0	\$736,675	

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

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

	Value	Debt	Net Value		Property Value				NOTES
			Value	Debt	Community		Separate		
					Dennis	Gabrielle	Dennis	Gabrielle	
ASSETS									
RETIREMENT ACCOUNTS									
41	DaVita Mullen TBG	\$302,836	\$0	\$302,836	\$13,427	\$289,409			Exhibit ZZZZ
42	Teleflex Pension (\$995/month)	\$69,693	\$0	\$69,693		\$69,693			Defined benefit plan: divide equally
43	Fidelity Dignity Health	\$1,882	\$0	\$1,882	\$1,882				See Closing Briefs
44	Chase Cigna Health Savings	\$156,476	\$0	\$156,476		\$156,476			Exhibit AAAAAA
45	Merrill Lynch IRA (11040)	\$113,296	\$0	\$113,296	\$113,296				Exhibit 143
46	UBS Rollover IRA (46)	\$386,973	\$0	\$386,973	\$386,973				Exhibit DDDDD
47	Voya DaVita Retirement Savings	\$1,031,156	\$0	\$1,031,156	\$515,578	\$515,578			Exhibit YYYYY
	Subtotal						\$0	\$0	
DISSIPATION									
48	Dennis	\$4,087,863	\$0	\$4,087,863	\$4,087,863				See Decree
	Subtotal					\$0	\$0	\$0	
TOTAL ASSETS		\$46,830,479	\$829,498	\$46,000,981	\$19,595,791	\$19,183,087	\$3,815,061	\$3,507,061	

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

OTHER LIABILITIES

50 Banana Republic Visa (4713)		\$308								Exhibit 133
51 Discover (5161)		\$2,435								Exhibit 134
52 Kohl's (557)		\$0								Exhibit 136
53 LoveLoft Mastercard (5363)		\$29								Exhibit 132
54 Merrill Lynch AMEX (9677)		\$392								Exhibit 138
55 Nordstrom (992)		\$319								Exhibit 139
56 Nieman Marcus		\$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 WWWWWWW
61 Wells Fargo VISA (1032)		\$15,361						\$15,361		Exhibit PPPPP
63 Saks (588)		\$289								Gabrielle's Brief
64 TJX Rewards (6951)		\$620								Gabrielle's Brief
Subtotal		\$68,798				\$0	\$0	\$65,406	\$4,392	

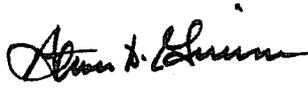
TOTAL LIABILITIES \$412,723 \$0 \$65,406 \$4,392

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

EQUATING AMOUNT \$1

Exhibit 2

EXHIBIT 5


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

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 GABRIELLE CIOFFI-KOGOD
12 Plaintiff,

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

13 vs.

14 DENNIS KOGOD,
15 Defendant.

Date of Hearing:
Time of Hearing:

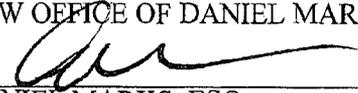
16 **NOTICE OF ENTRY OF ORDER FROM OCTOBER 18, 2016 HEARING**

17 TO: GABRIELLE CIOFFI-KOGOD, Plaintiff;
18 TO: RADFORD J. SMITH, ESQ., Counsel for Defendant.

19 PLEASE TAKE NOTICE that an Order from October 18, 2016 was entered in the above-entitled
20 action on the 5th day of December, 2016, a copy of which is attached hereto.

DATED this 5 day of December, 2015.

21 LAW OFFICE OF DANIEL MARKS

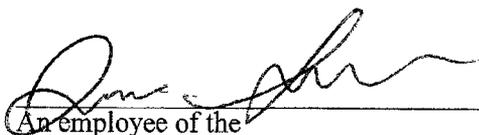
22 
23 DANIEL MARKS, ESQ.
24 Nevada Bar No. 002003
25 NICOLE M. YOUNG, ESQ.
26 Nevada Bar No. 12659
27 610 South Ninth Street
28 Las Vegas, Nevada 89101
Attorneys for Plaintiff

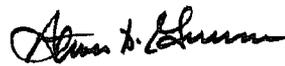
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 5th day of December, 2015, pursuant to NRCP 5(b) and Administrative Order 14-2, I electronically transmitted a true and correct copy of the above and foregoing **NOTICE OF ENTRY OF ORDER FROM OCTOBER 18, 2016 HEARING** by way of Notice of Electronic Filing provided by the court mandated E-file & Serve system to the following:

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.

11 DENNIS KOGOD,
12 Defendant.

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

RECEIVED

13
14 **ORDER FROM OCTOBER 18, 2016 HEARING**

FAMILY COURT
DEPARTMENT Q

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

21 THIS COURT HEREBY FINDS that the one day delay in Plaintiff filing the instant motion beyond
22 the deadline is excusable neglect based on Plaintiff's counsel's representation that the delay was due to an
23 e-filing issue.

24 THIS COURT FURTHER FINDS that both parties used community funds to pay for their respective
25 attorney's fees and costs.

26 THIS COURT FURTHER FINDS that the request for fees is ancillary to the issues on appeal.

27 THIS COURT FURTHER FINDS that in regard to the five (5) day deadline to file a Memorandum
28 of Costs, Plaintiff's duty to comply with that deadline is waived because the court views notice as being

1 imparted by the exhibit that was introduced at trial as to the costs requested in the instant motion.

2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that there is not an adequate legal or
3 factual basis to entertain an award of attorney's fees as the Court does not view either party as the prevailing
4 party.

5 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there is a basis to award Plaintiff
6 one-half of the amount paid to Anthem Forensics. The total costs paid to Anthem Forensics was
7 \$151,300.00. As such, judgment is entered in Plaintiff's favor in the amount of \$75,650.00, which is hereby
8 reduced to judgment. That amount shall be stayed to allow Defendant an opportunity to request a stay from
9 the Supreme Court.

DEC 05 2016

10 DATED this _____ day of December, 2016.


DISTRICT COURT JUDGE *mf*

13 Respectfully submitted:
14 LAW OFFICE OF DANIEL MARKS

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