

1 LAW OFFICE OF DANIEL MARKS  
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Electronically Filed  
Oct 09 2017 08:20 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

6 **IN THE SUPREME COURT OF THE STATE OF NEVADA**  
7

8 DENNIS KOGOD,  
9

Case No. 71147

10 Appellant,  
11

12 vs.

13 GABRIELLE CIOFFI-KOGOD,  
14

15 Respondent.  
16

17 **MOTION FOR ALTERNATIVE SECURITY TO ENABLE APPELLANT**  
18 **TO SELL HOUSE AND REPLACE SECURITY**  
19

20 COMES NOW the Appellant DENNIS KOGOD, by and through his  
21 counsel, Daniel Marks, Esq., and Nicole M. Young, Esq., of the Law Office of  
22 Daniel Marks, and submits his Motion for Alternative Security to Enable  
23 Appellant to Sell House and Replace Security. The grounds for Appellant's  
24 motion are set forth in the following memorandum of points and authorities.  
25

26 DATED this 6 day of October, 2017.  
27

28 LAW OFFICE OF DANIEL MARKS

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Attorneys for Appellant

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1                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2   **I.     FACTUAL BACKGROUND**

3           On January 26, 2017, this Court granted Appellant Dennis Kogod's  
4 (hereinafter "Dennis") Motion for Stay with Alternative Security. In that order,  
5 this Court allowed Dennis "to place a lien on his property, located at 9716 Oak  
6 Pass Road, Beverly Hills, California, in favor of respondent/cross-appellant in the  
7 amount of \$1,649,792."

8           Since that lien was placed on that residence, Dennis has decided to list that  
9 residence for sale. Based on the fact that he needs a clean title to sell that home, he  
10 entered into a Stipulation and Order with Respondent Gabrielle Cioffi-Kogod  
11 (hereinafter "Gabrielle") to secure her interest in a court-blocked account. (*See*  
12 Exhibit 1.) That stipulation and order was filed on September 14, 2017. The  
13 parties agreed to have \$1,955,292.00 placed in a blocked account, which includes  
14 the original \$1,649,792, the \$75,500 that the district court ordered against Dennis  
15 for expert witness fees and interest.

16           However, after that stipulation and order was entered with the district court,  
17 Gabrielle refused to release the lien on the Oak Pass house even though Dennis  
18 provided proof that \$1,955,292.00 was in a court-blocked account. That proof was  
19 provided on September 14, 2017. (*See* Exhibit 2.) Additionally, on September 15,  
20 2017, Dennis provided proof from UBS stating that it would not allow transfers or  
21 withdrawals from that account without a court order directing otherwise. (*See*  
22 Exhibit 3.)

23           Dennis filed a motion with the district court to compel Gabrielle to sign a  
24 release of lien, and on October 4, 2017, that court denied Dennis's motion and  
25 ordered that he pay Gabrielle attorney's fees and costs. The district court made this  
26 order in spite of the fact that Dennis is securing the \$1,955,292.00 with an account  
27 that is valued at \$4,660,903.31. Even though the district court recognized that  
28 \$4,660,903.31 is substantially more than \$1,955,292.00, and Gabrielle would have

adequate security, it made its ruling by narrowly construing the language of the stipulation and order. It then awarded attorney's fees and costs against Dennis based on this narrow interpretation.

This matter must be resolved immediately. Dennis is attempting to sell the Oak Pass residence. He needs a clean title on Oak Pass in order to sell this property. The account that contains the \$4,660,903.31 consists of private equities that cannot be easily divided into a separate account. He has no issue with placing \$1,955,292.00 in a court-blocked account once he receives the proceeds from the sale of the Oak Pass residence, but he is not able to put that money in a court-blocked account until that residence is sold. In the divorce, Gabrielle received the majority of the parties' liquid assets. Dennis received mainly non-liquid assets.

## II. LEGAL ANALYSIS

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

The Nevada Rules of Civil Procedure state:

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

NRCP 62(d). Nevada previously followed the federal approach in interpreting this rule, which states that "[a] district court, in its discretion, may provide for a bond in a lesser amount, or may permit security other than a bond, when unusual circumstances exist and so warrant." *McCulloch v. Jeakins*, 99 Nev. 122, 123, 659 P.2d 302 (1983) (emphasis omitted). However, the Nevada Supreme Court later ruled that the interpretation adopted in *McCulloch* was too rigid and found that "a more flexible and modern approach [] better serve[s] Nevada litigants and courts." *Nelson v. Heer*, 121 Nev. 832, 835, 122 P.3d 1252 (2006). The focus

1 should be on “what security will maintain the status quo and protect the judgment  
2 creditor pending an appeal, not how ‘unusual’ the circumstances of a given case  
3 may be.” *Id.* at 835-836. To effectuate that policy, this Court adopted the five  
4 factors set forth by the Seventh Circuit Court of Appeals in *Dillon v. City of*  
5 *Chicago*, 886 F.2d 902 (7th Cir. 1988). As such, when determining whether an  
6 alternative form of security is appropriate, the district court should consider:

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

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

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

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

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

The factors enumerated under the Nevada Rules of Appellate Procedure  
Rule 8, weigh in favor of this Court allowing alternative security.

In this case, Dennis attempted to resolve this issue with Gabrielle. However,  
she refused to comply with the last part of their agreement, signing the release of  
lien. Dennis then sought relief from the district court, but once again, the district  
court denied the relief requested by Dennis and ordered attorney’s fees and costs

1 against him. (*See* Exhibit 4.) This is the same court that originally denied Dennis'  
2 motion for stay with alternative security that was ultimately overruled by this  
3 Court. As such, Dennis has standing to bring the instant motion before this Court.

4 This Court previously allowed Dennis to post alternative security by placing  
5 a lien on the Oak Pass residence. Now, Dennis is merely requesting that the  
6 security be moved to a court-blocked account. Gabrielle has agreed to that change  
7 in security, but is refusing to sign the release of lien because the account Dennis  
8 would like to use has \$4,660,903.3 in it. The district court denied Dennis' motion  
9 to compel Gabrielle to sign the release of lien because the account has  
10 \$2,705,611.31 more in it than the amount the parties agreed. This is an absurd  
11 result. This Court has already gone through the *Nelson* factors and the NRAP 8(c)  
12 factors when it originally granted alternative security on January 26, 2017.

13 This Court should also reverse the district court's award of attorney's fees  
14 and costs relating to this issue because the district court did not cite any applicable  
15 law to allow such an award. Dennis had to file a motion with the district court  
16 because Gabrielle refused to release the lien even though there was adequate  
17 security. The district court awarded fees based on EDCR 5.501 and EDCR 7.60.  
18 Those rules do not apply to the instant case because Dennis attempted to resolve  
19 this matter numerous times before he sought Court intervention. Based on  
20 Gabrielle's refusal to sign a release, a motion was necessary. EDCR 5.501 does  
21 not apply. Further, sanctions under EDCR 7.60 are not appropriate because that  
22 motion was not frivolous.

23 As such, this Court should order that the lien on Oak Pass be released based  
24 on the security that Dennis has provided in a blocked account. Additionally, the  
25 attorney's fees and costs awarded to Gabrielle should be reversed.

26 ////

27 ////

28 ////

1 **III. CONCLUSION**

2 For the foregoing reasons, this Court should release the lien on the Oak Pass  
3 residence based on the fact that Gabrielle is adequately secured by the  
4 \$1,955,292.00 being blocked in an account with a value in excess of \$4.5 million  
5 until such time that Oak Pass is sold and a separate blocked account with  
6 \$1,955,292.00 can be established. This Court should also reverse the district  
7 court's award of attorney's fees and costs on this issue.

8 DATED this 6 day of October, 2017.

9 LAW OFFICE OF DANIEL MARKS

10  
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12 DANIEL MARKS, ESQ.  
13 Nevada State Bar No. 002003  
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15 Nevada State Bar No. 12659  
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18 Attorneys for Appellant  
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1                                    **CERTIFICATE OF COMPLIANCE**

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

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

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

13           DATED this 6 day of October, 2017.

14                                    LAW OFFICE OF DANIEL MARKS

15                                      
16                                    \_\_\_\_\_  
17                                    DANIEL MARKS, ESQ.  
18                                    Nevada State Bar No. 002003  
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23                                    Attorneys for Appellant  
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Radford J. Smith, Esq.  
Garima Varshney, Esq.  
Radford J. Smith, Chartered  
2470 St. Rose Parkway, Suite 206  
Henderson, Nevada 89074  
Counsel for Respondent

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## **EXHIBIT 1**

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1 **NEOJ**  
2 **RADFORD J. SMITH, CHARTERED**  
3 **GARIMA VARSHNEY, ESQ.**  
4 Nevada Bar No. 011878  
5 2470 St. Rose Parkway, Suite 206  
6 Henderson, Nevada 89074  
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8 Facsimile: (702) 990-6456  
9 gvarshney@radfordsmith.com  
10 *Attorney for Plaintiff*

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 **GABARIELLE CIOFFI-KOGOD,**

14 Plaintiff,

15 vs.

16 **DENNIS KOGOD,**

17 Defendant.

CASE NO.: D-13-489442-D

DEPT NO.: Q

FAMILY DIVISION

18 **NOTICE OF ENTRY OF ORDER**

19 PLEASE TAKE NOTICE that on the 14<sup>th</sup> day of September 2017, the Honorable

20 ///

21 ///

22 ///

23 ///

24 ///

1 Judge Bryce Duckworth entered a Qualified Domestic Relations Order, a copy of which is  
2 attached hereto.

3 Dated this 15<sup>th</sup> day of September, 2017.

4  
5 RADFORD J. SMITH, CHARTERED

6  
7  #14085

8 GARIMA VARSHNEY, ESQ. FOR

9 Nevada Bar No. 011878

10 2470 St. Rose Parkway, Suite 206

11 Henderson, Nevada 89074

12 *Attorney for Plaintiff*

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I am over the age of 18 and not a party to the within action.

I served the foregoing document described as "NOTICE OF ENTRY OF ORDER" on September 15 2017, to all interested parties by way of the Eighth Judicial District Court's electronic filing system.

Dan Marks, Esq.  
Law Office of Daniel Marks  
610 South Ninth Street  
Las Vegas NV 89101

  
An employee of Radford J. Smith, Chartered



1 SAO  
2 RADFORD J. SMITH, CHARTERED  
3 RADFORD J. SMITH, ESQ.  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

GABRIELLE CIOFFI - KOGOD,

Plaintiff,

v.

DENNIS KOGOD,

Defendant.

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

FAMILY DIVISION

**STIPULATION AND ORDER RESOLVING DEFENDANT'S EX PARTE**  
**MOTION FILED ON SEPTEMBER 8, 2017**

COME NOW, Plaintiff, GABRIELLE CIOFFI - KOGOD ("Gabrielle"), by and through her attorneys, Radford J. Smith, Esq. and Garima Varshney, Esq., of Radford J. Smith, Chartered and Defendant, DENNIS KOGOD ("Dennis") by and through his attorneys, Daniel Marks, Esq. and Nicole M. Young, Esq. of Law Office of Daniel Marks, and stipulate and agree, and request that the Court FINDS AND ORDERS AS FOLLOWS:

1           1.     On September 8, 2017, Dennis filed an Ex Parte Motion to Place Cash Bond  
2           Security for Spousal Support and Sanctions and on September 11, 2017, Gabrielle filed an  
3           Opposition to Dennis' Ex Parte Motion. By this Stipulation and Order the parties resolve  
4           that Motion.  
5

6           2.     In its Findings of Fact, Conclusions of Law and Decree of Divorce filed  
7           August 22, 2016, the Court ordered Dennis to pay Gabrielle \$1,630,292 in lump sum  
8           alimony. By Order dated January 26, 2017 the Court granted Dennis's request for stay of  
9           execution on those judgments based upon his providing security for payment of the  
10          judgments in the form of a lien in the amount of \$1,649,792.00 on the lot and residence  
11          located at 9716 Oak Pass Road, Beverly Hills, California 90201 (APN 4348-007-050)  
12          ("Oak Pass residence"). By his current Ex Parte Motion, Dennis seeks to substitute  
13          alternate security for those judgments.  
14  
15  
16  
17

18          3.     The parties agree that Gabrielle will agree to execute documents necessary to  
19          remove the lien (Lien Number 20170559132) on the Oak Pass residence upon the  
20          completion of the following:  
21

22                A. Dennis shall deposit \$1,955,292.00 into a blocked account at UBS  
23                calculated as follows:  
24

25                   a. \$1,649,792 as security for the payment of the judgments identified  
26                   in paragraph 2 above;  
27  
28

1 b. \$75,500 as security for the judgment entered by this Court by Order  
2 dated December 5, 2017 against Dennis and in favor of Gabrielle  
3  
4 for reimbursement for expert fees and costs;

5 c. \$230,000 as security for legal interest that has accrued to date on  
6 the aforementioned judgments, and one additional year of legal  
7 interest on those judgments.  
8

9  
10 B. Dennis shall provide written confirmation from UBS that the it will not  
11 allow any transfer of funds from the account established above without  
12 further direction from this Court, the Nevada Supreme Court or the Nevada  
13 Court of Appeals.  
14

15 4. Dennis shall not transfer, withdraw, pledge or encumber the funds contained  
16 in the blocked interest-bearing UBS account required by this Stipulation and Order until  
17 further order of this court, the Nevada Supreme Court or the Nevada Court of Appeals  
18 directing or permitting withdrawal or transfer of the funds in the account.  
19  
20

21 ...

22 ...

23 ...

24 ...

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1           5. Each party acknowledges and agrees that they have contributed to the  
2 preparation and form of this Stipulation and Order, and neither party or his or her counsel  
3 shall be deemed drafter of the Stipulation and Order, or the language therein, for any  
4 purpose under law.  
5

6  
7           IT IS SO STIPULATED.

8           Dated this 14<sup>th</sup> day of September 2017

          Dated this 14 day of September 2017

10          RADFORD J. SMITH, CHARTERED

          LAW OFFICE OF DANIEL MARKS

11   
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Las Vegas, Nevada 89101  
(702) 386-0536  
Attorneys for Defendant

17  
18                                   ORDER

19 Pursuant to the Stipulation of the parties, and good cause appearing therefor,  
20

21 IT IS SO HEREBY ORDERED.

22 DATED this 14<sup>th</sup> day of September 2017.  
23

24  
25   
26 DISTRICT JUDGE

27 LINDA MARQUIS

28 for BRYCE C. DUCKWORTH

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## **EXHIBIT 2**

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# Performance by account

as of September 13, 2017

## Summary of performance by account

Prepared for Dennis Kogod  
^ performance and account start dates differ (see disclosures)  
KX XX745 ^ • Blocked Account • Portfolio Management Program  
Risk profile: Moderate  
Return Objective: Current Income and Capital Appreciation

|                                                      |                          | Performance returns (annualized > 1 year) |                          |                          |                          |                          |
|------------------------------------------------------|--------------------------|-------------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Performance start date                               | Value on 09/13/2017 (\$) | % of portfolio                            | Net time-weighted        | MTD Prev. Month YTD      |                          |                          |
|                                                      |                          |                                           |                          | 08/31/2017 to 09/13/2017 | 07/31/2017 to 08/31/2017 | 06/30/2017 to 09/13/2017 |
| May 11, 2011                                         | 4,660,903.31             | 100.00%                                   |                          | 0.16%                    | 0.68%                    | 0.67%                    |
|                                                      |                          |                                           |                          |                          |                          | 4.43%                    |
| <b>Total Portfolio</b>                               | <b>\$4,660,903.31</b>    | <b>100%</b>                               | <b>Net time-weighted</b> | <b>0.16%</b>             | <b>0.68%</b>             | <b>0.67%</b>             |
|                                                      |                          |                                           |                          |                          |                          | <b>4.43%</b>             |
| <b>Benchmarks - Annualized time-weighted returns</b> |                          |                                           |                          |                          |                          |                          |
| US Treasury Bill - 3 Mos                             |                          |                                           |                          |                          |                          |                          |
| Barclays Agg Bond                                    |                          |                                           |                          |                          |                          |                          |
| S&P 500                                              |                          |                                           |                          |                          |                          |                          |
|                                                      |                          |                                           |                          | MTD                      | Prev. Month              | YTD                      |
|                                                      |                          |                                           |                          | 08/31/2017 to 09/13/2017 | 07/31/2017 to 08/31/2017 | 06/30/2017 to 09/13/2017 |
|                                                      |                          |                                           |                          | 0.04%                    | 0.09%                    | 0.20%                    |
|                                                      |                          |                                           |                          | -0.26%                   | 0.90%                    | 1.07%                    |
|                                                      |                          |                                           |                          | 1.12%                    | 0.31%                    | 3.52%                    |
|                                                      |                          |                                           |                          |                          |                          | 0.51%                    |
|                                                      |                          |                                           |                          |                          |                          | 3.36%                    |
|                                                      |                          |                                           |                          |                          |                          | 13.19%                   |

Past performance does not guarantee future results and current performance may be lower/higher than past data presented.

Report created on: September 14, 2017



Prepared for Dennis Kogod  
^ performance and account start dates differ (see disclosures)  
KX XX745 ^ • Blocked Account • Portfolio Management Program  
Risk profile: Moderate  
Return Objective: Current Income and Capital Appreciation

Performance by account - as of September 13, 2017 (continued)

## Details of performance by account

Month to Date - 08/31/2017 to 09/13/2017

|                        | Opening portfolio value (\$) | Net deposits and withdrawals (\$) | Dividend and interest income (\$) | Change in accrued interest (\$) | Change in value (\$) | Closing portfolio value (\$) | % of portfolio | Performance returns (annualized > 1 year) | Net time-weighted returns |
|------------------------|------------------------------|-----------------------------------|-----------------------------------|---------------------------------|----------------------|------------------------------|----------------|-------------------------------------------|---------------------------|
| KX XX745 Blocked       | 4,614,139.16                 | 39,403.00                         | 78.50                             | 0.00                            | 7,282.65             | 4,660,903.31                 | 100.00%        |                                           | 0.16%                     |
| <b>Total Portfolio</b> | <b>\$4,614,139.16</b>        | <b>\$39,403.00</b>                | <b>\$78.50</b>                    | <b>\$0.00</b>                   | <b>\$7,282.65</b>    | <b>\$4,660,903.31</b>        | <b>100%</b>    |                                           | <b>0.16%</b>              |

PREVIOUS\_MONTH - 07/31/2017 to 08/31/2017

|                        | Opening portfolio value (\$) | Net deposits and withdrawals (\$) | Dividend and interest income (\$) | Change in accrued interest (\$) | Change in value (\$) | Closing portfolio value (\$) | % of portfolio | Performance returns (annualized > 1 year) | Net time-weighted returns |
|------------------------|------------------------------|-----------------------------------|-----------------------------------|---------------------------------|----------------------|------------------------------|----------------|-------------------------------------------|---------------------------|
| KX XX745 Blocked       | 4,582,851.23                 | 0.00                              | 19,048.83                         | 0.00                            | 12,239.11            | 4,614,139.16                 | 100.00%        |                                           | 0.68%                     |
| <b>Total Portfolio</b> | <b>\$4,582,851.23</b>        | <b>\$0.00</b>                     | <b>\$19,048.83</b>                | <b>\$0.00</b>                   | <b>\$12,239.11</b>   | <b>\$4,614,139.16</b>        | <b>100%</b>    |                                           | <b>0.68%</b>              |

Quarter to Date - 06/30/2017 to 09/13/2017

|                        | Opening portfolio value (\$) | Net deposits and withdrawals (\$) | Dividend and interest income (\$) | Change in accrued interest (\$) | Change in value (\$) | Closing portfolio value (\$) | % of portfolio | Performance returns (annualized > 1 year) | Net time-weighted returns |
|------------------------|------------------------------|-----------------------------------|-----------------------------------|---------------------------------|----------------------|------------------------------|----------------|-------------------------------------------|---------------------------|
| KX XX745 Blocked       | 4,590,797.45                 | 39,403.00                         | 39,597.07                         | 0.00                            | -8,894.21            | 4,660,903.31                 | 100.00%        |                                           | 0.67%                     |
| <b>Total Portfolio</b> | <b>\$4,590,797.45</b>        | <b>\$39,403.00</b>                | <b>\$39,597.07</b>                | <b>\$0.00</b>                   | <b>\$-8,894.21</b>   | <b>\$4,660,903.31</b>        | <b>100%</b>    |                                           | <b>0.67%</b>              |

Past performance does not guarantee future results and current performance may be lower/higher than past data presented.

Report created on: September 14, 2017



Prepared for Dennis Kogod  
^ performance and account start dates differ (see disclosures)  
KX XX745 ^ • Blocked Account • Portfolio Management Program  
Risk profile: Moderate  
Return Objective: Current Income and Capital Appreciation

Performance by account - as of September 13, 2017 (continued)

Year to Date - 12/31/2016 to 09/13/2017

|                        |                                    |                                         |                                         |                                       |                         | Performance returns<br>(annualized > 1 year) |                                  |
|------------------------|------------------------------------|-----------------------------------------|-----------------------------------------|---------------------------------------|-------------------------|----------------------------------------------|----------------------------------|
|                        | Opening<br>portfolio<br>value (\$) | Net<br>deposits and<br>withdrawals (\$) | Dividend<br>and interest<br>income (\$) | Change<br>in accrued<br>interest (\$) | Change<br>in value (\$) | Closing<br>portfolio<br>value (\$)           | Net time-<br>weighted<br>returns |
| KX XX745 Blocked       | 4,425,307.60                       | 39,403.00                               | 265,777.21                              | 0.00                                  | -69,584.50              | 4,660,903.31                                 | 4.43%                            |
| <b>Total Portfolio</b> | <b>\$4,425,307.60</b>              | <b>\$39,403.00</b>                      | <b>\$265,777.21</b>                     | <b>\$0.00</b>                         | <b>\$-69,584.50</b>     | <b>\$4,660,903.31</b>                        | <b>100%</b>                      |
|                        |                                    |                                         |                                         |                                       |                         |                                              | <b>4.43%</b>                     |

Past performance does not guarantee future results and current performance may be lower/higher than past data presented.

Report created on: September 14, 2017



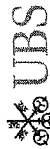
# Additional information about your performance

as of September 13, 2017

Prepared for Dennis Kogod  
KX XX745 • Blocked Account • Portfolio Management Program  
Risk profile: Moderate  
Return Objective: Current Income and Capital Appreciation

## Inception to date returns (annualized > 1 year)

| Consolidated | ITD                       |                             |
|--------------|---------------------------|-----------------------------|
|              | Performance<br>Start date | Start date to<br>09/13/2017 |
|              | 05/11/2011                | 4.10%                       |



## Disclosures applicable to accounts at UBS Financial Services Inc.

This section contains important disclosures regarding the information and valuations presented here. This report presents information since December 31, 2002. This report does not include complete account activity or performance of your accounts before this date. All information presented is subject to change at any time and is provided only as of the date indicated. The information in this report is for informational purposes only and should not be relied upon as the basis of an investment or liquidation decision. UBS FS accounts statements and official tax documents are not replaced, amended or superseded by any of the information presented in these reports.

UBS FS offers a number of investment advisory programs to clients, acting in our capacity as an investment adviser, including fee-based financial planning, discretionary account management, non-discretionary investment advisory programs, and advice on the selection of investment managers and mutual funds offered through our investment advisory programs. When we act as your investment adviser, we will have a written agreement with you expressly acknowledging our investment advisory relationship with you and describing our obligations to you. At the beginning of our advisory relationship, we will give you our Form ADV brochure(s) for the program(s) you selected that provides detailed information about, among other things, the advisory services we provide, our fees, our personnel, our other business activities and financial industry affiliations and conflicts between our interests and your interests.

Please review the report content carefully and contact your Financial Advisor with any questions.

The account listing may or may not include all of your accounts with UBS FS. The accounts included in this report are listed under the "Accounts included in this review" shown on the first page or listed at the top of each page.

**Client Accounts:** This report includes all assets in the accounts listed and may include eligible and ineligible assets in a fee-based program. Since ineligible assets are not considered fee-based program assets, the inclusion of such securities will distort the actual performance of your accounts and does not reflect the performance of your accounts in the fee-based program. **As a result, the performance reflected in this report can vary substantially from the individual account performance reflected in the performance reports provided to you as part of those programs.** For fee-based programs, fees are charged on the market value of eligible assets in the accounts and assessed quarterly in advance, prorated according to the number of calendar days in the billing period. When shown on a report, the risk profile and return objectives describe your overall goals for these accounts. For each account you maintain, you choose one return objective and a primary risk profile. If you have questions regarding

these objectives or wish to change them, please contact your Financial Advisor to update your accounts records.

**Performance:** This report presents accounts activity and performance starting 1/23/02. For accounts opened prior to 1/23/02, this report does not include the complete account activity or performance of your accounts prior to that date. For consolidated reports, the Performance Start Date will be the earliest performance start date of any of the individual accounts selected for the consolidation time period. If an individual account's performance information is not available for a full reporting time period (month to date, quarter to date, year to date or performance to date), the individual's net year to date weighted return will not be displayed. For consolidated accounts that include different account Performance Start Dates, the consolidated Additions/Withdrawals, Income Earned and Investment Appreciation/Depreciation will include all activity that occurred during the consolidated reporting time period. Accounts that hold or held insurance products will be reported on from the month end date of when insurance and annuity activity could be obtained from the carrier. Past performance does not guarantee future results and current performance may be lower/higher than past data presented.

**Time-weighted Returns (prior to 10/31/2010):** The report displays a time weighted rate of return (TWR) that is calculated using the Modified Dietz Method. This calculation uses the beginning and ending portfolio values for the month and weights each contribution/withdrawal based upon the day the cashflow occurred. Periods greater than one month are calculated by linking the monthly returns. The TWR gives equal weighting to every return regardless of amount of money invested, so it is an effective measure for returns on a fee based account. All periods shown which are greater than 12 months are annualized.

**Time-weighted Returns (after 10/31/2010):** The report displays a time weighted rate of return (TWR) that is calculated by dividing the portfolio's daily gain/loss by the previous day's closing market value. All cash flows are posted at end of day. The TWR gives equal weighting to every return regardless of amount of money invested, so it is an effective measure for returns on a fee based account. Periods greater than one day are calculated by linking the daily returns. All periods shown which are greater than 12 months are annualized.

**Money-weighted returns:** Money-weighted return (MWR) is a measure of the rate of return for an asset or portfolio of assets. It is calculated by finding the daily Internal Rate of Return (IRR) for the period and then compounding this return by the number of days in the period being measured. The MWR incorporates the size and timing of cash flows, so it is an effective measure returns on a portfolio.

**Annualized Performance:** All performance periods greater than one year are calculated (unless otherwise stated) on an annualized basis, which represents the return on an investment multiplied or divided to give a comparable one year return.

**Cumulative Performance:** A cumulative return is the aggregate amount that an investment has gained or lost over time, independent of the period of time involved.

**Net of Fees and Gross of Fees Performance:** Performance is presented on a "net of fees" and "gross of fees" basis, where indicated. Net returns do not reflect Program and wrap fees prior to 10/31/10 for accounts that are billed separately via invoice through a separate account billing arrangement. Gross returns do not reflect the deduction of fees, commissions or other charges. The payment of actual fees and expenses will reduce a client's return. The compound effect of such fees and expenses should be considered when reviewing returns. For example, the net effect of the deduction of fees on annualized performance, including the compounded effect over time, is determined by the relative size of the fee and the account's investment performance.

**Benchmark/Major Indices:** The past performance of an index is not a guarantee of future results. Any benchmark is shown for informational purposes only and relates to historical performance of market indices and not the performance of actual investments. The benchmark is not managed and does not reflect the deduction of any fees and expenses, which will lower results. Indices are not actively managed and investors cannot directly invest in indices. The portfolio's investment strategy is not restricted to securities in the benchmark. Further, there is no guarantee that an investor's account will meet or exceed the stated benchmark. Index performance information has been obtained from third parties deemed to be reliable. We have not independently verified this information, nor do we make any representations or warranties as to the accuracy or completeness of this information.

**Custom Time Periods:** If represented on this report, the performance start date and the performance end date have been selected by your Financial Advisor in order to provide performance and account activity information for your account for the specified period of time only. As a result only a portion of your account's activity and performance information is presented in the performance report and, therefore, presents a distorted representation of your account's activity and performance.

**Net Deposits/Withdrawals:** When shown on a report, this information represents the net value of all cash and securities contributions and withdrawals, program fees (including wrap fees) and other fees added to or subtracted from your accounts from the first day to the last day of the period. When fees are shown separately, net deposits / withdrawals does not include program

fees (including wrap fees). When investment return is displayed net deposits / withdrawals does not include program fees (including wrap fees). For security contributions and withdrawals, securities are calculated using the end of day UBS FS price on the day securities are delivered in or out of the accounts. Wrap fees will be included in this calculation except when paid via an invoice or through a separate accounts billing arrangement. When shown on Client summary and/or Portfolio review report, program fees (including wrap fees) may not be included in net deposits/withdrawals.

**Dividends/Interest:** Dividend and interest earned, when shown on a report, does not reflect your account's tax status or reporting requirements. Use only official tax reporting documents (i.e. 1099) for tax reporting purposes. The classification of private investment distributions can only be determined by referring to the official year-end tax-reporting document provided by the issuer.

**Change in Accrued Interest:** When shown on a report, this information represents the difference between the accrued interest at the beginning of the period from the accrued interest at the end of the period.

**Change in Value:** Represents the change in value of the portfolio during the reporting period, excluding additions/withdrawals, dividend and interest income earned and accrued interest. Change in Value may include programs fees (including wrap fees) and other fees.

**Fees:** Fees represented in this report include program and wrap fees. Program and wrap fees prior to October 1, 2010 for accounts that are billed separately via invoice through a separate account billing arrangement are not included in this report. Commissions are not included in the fees calculation.

**Net of fees:** When indicated, the information is shown net of fees and commission charges to your accounts for the time period shown. For example, if your accounts are charged an asset based fee during the month the report is produced, net of fees performance information would reflect the deduction of those fees. Please see your program documents regarding fee schedules.

**Performance Start Date Changes:** The Performance Start Date for accounts marked with a '\*' have changed. Performance figures of an account with a changed Performance Start Date may not include the entire history of the account. The new Performance Start Date will generate performance returns and activity information for a shorter period than is available at UBS FS. As a result, the overall performance of these accounts may generate better performance than the period of time that would be included if the report used the inception date of the account. UBS FS recommends reviewing performance reports that use the inception date of the account because reports with longer time frames are usually more helpful when evaluating



## Disclosures applicable to accounts at UBS Financial Services Inc. (continued)

Investment programs and strategies. Performance reports may include accounts with inception dates that precede the new Performance Start Date and will show performance and activity information from the earliest available inception date.

The change in Performance Start Date may be the result of a performance gap due to a zero-balance that prevents the calculation of continuous returns from the inception of the account. The Performance Start Date may also change if an account has failed one of our performance data integrity tests. In such instances, the account will be labeled as "Review Required" and performance prior to that failure will be restricted. Finally, the Performance Start Date will change if you have explicitly requested a performance restart. Please contact your Financial Advisor for additional details regarding your new Performance Start Date.

**Closed Account Performance:** Accounts that have been closed may be included in the consolidated performance report. When closed accounts are included in the consolidated report, the performance report will only include information for the time period the account was active during the consolidated performance reporting time period.

**Portfolio:** For purposes of this report, "portfolio" is defined as all of the accounts presented on the cover page or the header of this report and does not necessarily include all of the client's accounts held at UBS FS or elsewhere.

**Pricing:** All securities are priced using the closing price reported on the last business day preceding the date of this report. Every reasonable attempt has been made to accurately price securities; however, we make no warranty with respect to any security's price. Please refer to the back of the first page of your UBS FS accounts statement for important information regarding the pricing used for certain types of securities, the sources of pricing data and other qualifications concerning the pricing of securities. To determine the value of securities in your account, we generally rely on third party quotation services. If a price is unavailable or believed to be unreliable, we may determine the price in good faith and may use other sources such as the last recorded transaction. When securities are held at another custodian or if you hold illiquid or restricted securities for which there is no published price, we will generally rely on the value provided by the custodian or issuer of that security.

**Account changes:** At UBS, we are committed to helping you work toward your financial goals. So that we may continue providing you with financial advice that is consistent with your investment objectives, please consider the following two questions:

- 1) Have there been any changes to your financial situation or investment objectives?
- 2) Would you like to implement or modify any restrictions regarding the management of your account?

Report created on: September 14, 2017

If the answer to either question is "yes," it is important that you contact your Financial Advisor as soon as possible to discuss these changes. For MAC advisory accounts, please contact your investment manager directly if you would like to impose or change any investment restrictions on your account.

**ADV disclosure:** A complimentary copy of our current Form ADV Disclosure Brochure that describes the advisory program and related fees is available through your Financial Advisor. Please contact your Financial Advisor if you have any questions.

**Important information for former Piper Jaffray and McDonald Investments clients:** As an accommodation to former Piper Jaffray and McDonald Investments clients, these reports include performance history for their Piper Jaffray accounts prior to August 12, 2006 and McDonald Investments accounts prior to February 9, 2007, the date the respective accounts were converted to UBS FS. UBS FS has not independently verified this information nor do we make any representations or warranties as to the accuracy or completeness of that information and will not be liable to you if any such information is unavailable, delayed or inaccurate.

For insurance, annuities, and 529 Plans, UBS FS relies on information obtained from third party services it believes to be reliable. UBS FS does not independently verify or guarantee the accuracy or validity of any information provided by third parties. Information for insurance, annuities, and 529 Plans that has been provided by a third party service may not reflect the quantity and market value as of the previous business day. When available, an "as of" date is included in the description.

Investors outside the U.S. are subject to securities and tax regulations within their applicable jurisdiction that are not addressed in this report. Nothing in this report shall be construed to be a solicitation to buy or offer to sell any security, product or service to any non-U.S. investor, nor shall any such security, product or service be solicited, offered or sold in any jurisdiction where such activity would be contrary to the securities laws or other local laws and regulations or would subject UBS to any registration requirement within such jurisdiction.

UBS FS All Rights Reserved. Member SIPC.

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## **EXHIBIT 3**

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## Nicole Young

---

**From:** Nicole Young  
**Sent:** Friday, September 15, 2017 2:39 PM  
**To:** 'Garima Varshney'  
**Subject:** FW: Dennis Kogod Blocked Account  
**Attachments:** Legal Disclaimer.txt

Nicole M. Young, Esq.  
Associate Attorney  
Law Office of Daniel Marks  
610 South Ninth Street  
Las Vegas, Nevada 89101  
Telephone: (702) 386-0536  
Facsimile: (702) 386-6812

---

**From:** peter.waldron@ubs.com [mailto:peter.waldron@ubs.com]  
**Sent:** Friday, September 15, 2017 2:08 PM  
**To:** Nicole Young <NYoung@danielmarks.net>  
**Subject:** Dennis Kogod Blocked Account

Hi Nicole,

Per the Stipulation and Order we received dated September 14<sup>th</sup>, Dennis currently has set aside the account ending in 45, which is funded at \$4,662,070.32, for security as payment of the prior August 22, 2016 order.

This account is intended to be restricted from transfers and withdrawals without first receiving directions and instructions from the appropriate legal sources.

Per our conversation, you may receive a letter from our office attesting to the same. Please let me know how to best help.

Regards,

**Peter L. Waldron, CFP**  
Sr. Portfolio Manager  
Executive Director  
Branch Manager

UBS Financial Services, Inc  
One Pointe Drive-Suite 140-Brea, CA 92821  
P. 714.256.5440 F.855-581-0873 [Team Homepage](#)

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## **EXHIBIT 4**

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*Steven D. Grierson*

NEOJ

DISTRICT COURT

CLARK COUNTY, NEVADA

GABRIELLE ROSE CIOFFI-KOGOD, )

Plaintiff, )

v. )

CASE NO. D-13-489442-D

DEPT NO. Q

DENNIS L. KOGOD, )

Defendant. )

NOTICE OF ENTRY OF ORDER

TO: ALL PARTIES AND/OR THEIR ATTORNEYS

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

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

Radford Smith, Esq.

Daniel Marks, Esq.

/s/ Kimberly Weiss

Kimberly Weiss  
Judicial Executive Assistant  
Department Q



1  
2 ORDR

3  
4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6  
7 GABRIELLE ROSE CIOFFI-KOGOD, )

8 Plaintiff, )

9 v. )

CASE NO. D-13-489442-D

DEPT NO. Q

10 DENNIS L. KOGOD, )

11 Defendant. )

12  
13  
14 ORDER

15  
16 Defendant filed an Emergency Motion to Release Lien on Oak Pass Residence  
17 (Sep. 18, 2017) (hereinafter referred to as Defendant's "Motion"). Following entry of  
18 an Order Shortening Time (Sep. 25, 2017), Defendant's Motion was set on this  
19 Court's September 28, 2017 Chamber Calendar. Plaintiff filed an Opposition to  
20 Defendant's Emergency Motion to Release Lien on Oak Pass (Sep. 19, 2017)  
21 (hereinafter referred to as Plaintiff's "Opposition"). This Court has reviewed and  
22 considered the papers on file and finds as follows:  
23

24 Preliminarily, the matter before this Court is ancillary to the issue currently on  
25 appeal before the Nevada Supreme Court. In this regard, the matter before this Court  
26 relates to the enforcement of the Stipulation and Order Resolving Defendant's Ex Parte  
27  
28

RYCE C. DUCKWORTH  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. Q  
195 VEGAS, NEVADA 89101

1  
2 Motion Filed on September 8, 2017 (Sep. 14, 2017) (hereinafter referred to as  
3 "Stipulation"). The parties' Stipulation provides, in relevant part, as follows:

4  
5 3. The parties agree that Gabrielle will agree to execute  
6 documents necessary to remove the lien (Lien Number 20170559132) on  
the Oak Pass residence upon the completion of the following:

7 A. Dennis shall deposit \$1,955,292.00 into a blocked  
8 account at UBS calculated as follows:

9 a. \$1,649,792 as security for the payment of the  
10 judgments identified in paragraph 2 above;

11 b. \$75,500 as security for the judgment entered  
12 by the Court by Order dated December 5, 2017 against  
Dennis and in favor of Gabrielle for reimbursement for  
expert fees and costs;

13 c. \$230,000 as security for legal interest that has  
14 accrued to date on the aforementioned judgments, and one  
additional year of legal interest on those judgments.

15 B. Dennis shall provide written confirmation from UBS that  
16 the [sic] it will not allow any transfer of funds from the account  
17 established above without further direction from this Court, the Nevada  
Supreme Court or the Nevada Court of Appeals.

18 Stipulation, 2-3.

19  
20 The terms of the Stipulation are neither vague nor ambiguous. A condition  
21 precedent to Plaintiff releasing the existing security requires that Defendant "deposit  
22 \$1,955,292.00 into a blocked account at UBS." *Id.* Although sufficient security would  
23 seemingly be established by "blocking" an existing account (UBS Account No. 745)  
24 that holds well in excess of the stated amount of security, it is not this Court's  
25 prerogative to question or modify the express terms of the Stipulation. The Stipulation  
26 requires Defendant to "deposit \$1,955,292.00 into a blocked account at UBS." Based  
27  
28

1  
2 on this Court's review of the record, Defendant has not established an account into  
3 which the specified sum has been deposited.

4       The Stipulation also expressly requires that Defendant "provide written  
5 confirmation from UBS that the [sic] it will not allow any transfer of funds from the  
6 account established above without further direction from this Court, the Nevada  
7 Supreme Court or the Nevada Court of Appeals." *Id.* Although the email  
8 correspondence to Defendant's Motion suggests that a letter may be sent "attesting to  
9 the same," no such written confirmation has been provided to the Court. Based on the  
10 express terms of the Stipulation, this Court finds that a second condition precedent to  
11 Plaintiff's release of security should be written confirmation from UBS (i.e., the letter  
12 referenced in the attached email correspondence) that mirrors their stipulated language.  
13

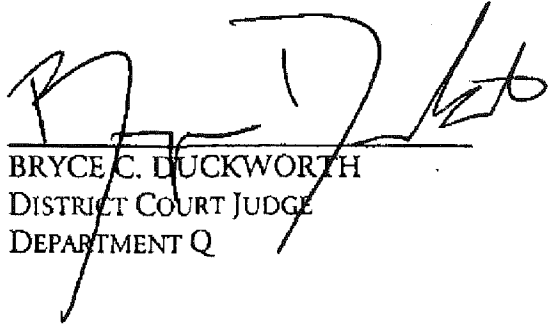
14       Plaintiff is entitled to an award of attorney's fees pursuant to EDCR 5.501 and  
15 EDCR 7.60. This Court has considered the factors set forth in *Brunzell v. Golden Gate*  
16 *National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). Plaintiff should file and serve the  
17 billing statements that reflect the actual time spent in opposing Defendant's Motion.  
18 Thereafter, Plaintiff should submit a separate Order for fees with a blank left for the  
19 amount to be determined by the Court.  
20

21       Based on the foregoing findings, and good cause appearing therefor,  
22

23       It is hereby ORDERED that Defendant's Motion is DENIED. It is further  
24 ORDERED that, upon satisfaction of the conditions set forth in the Stipulation (and  
25 discussed herein), Plaintiff shall sign the documents necessary to release the existing  
26 security. It is further ORDERED that Plaintiff's request for an award of fees is  
27  
28

1  
2 GRANTED. It is further ORDERED that the issue of fees shall be addressed by way  
3 of separate Order submitted by Plaintiff upon Plaintiff's filing of her billing statements  
4 associated with this matter.  
5

6 DATED this 2nd day of October, 2017.  
7

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9   
10 BRYCE C. DUCKWORTH  
11 DISTRICT COURT JUDGE  
12 DEPARTMENT Q  
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BRYCE C. DUCKWORTH  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. Q  
LAS VEGAS, NEVADA 89101