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9 *Attorney for Appellant*

Electronically Filed
Sep 26 2018 09:08 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

9 YOAV EGOSI,

Nev. Sup. Ct. No.: 76144

10 Appellant,

11 vs.

DOCKETING STATEMENT

12 PATRICIA EGOSI,

13 Respondent.

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19 COMES NOW, Appellant Yoav Egosi (hereinafter referred to as
20 “Appellant”), through his attorney of record, ALEX B. GHIBAUDO, ESQ.,
21 of the law firm of ALEX B. GHIBAUDO, P.C., and hereby submits the
22 following docketing statement pursuant to NRAP 14 et seq.

- 23 1. This is an appeal from a judgment rendered in the Eighth Judicial
24 District Court, Family Division, County of Clark, Department Q,
25 Judge Bryce Duckworth, Case No. D-16-540174-D.
26 2. **ATTORNEY FILING THIS DOCKETING STATEMENT:** Alex
27 B. Ghibaud, Esq., of the law firm Alex B. Ghibaud, PC, located at
28



703 S. 8th Street, Las Vegas, Nevada 89101, phone no. 702-978-7090,
client YOAV EGOSI.

3. **ATTORNEY REPRESENTING RESPONDENT:** John Blackmon,
Esq., telephone no. 702-475-5606, 4145 W. Teco Ave., Las Vegas,
Nevada 89118, client is Patricia Egosi.

4. **NATURE OF DISPOSITION BELOW:** judgment after bench trial
conducted June 13 & 14, 2017.

5. **DOES THIS APPEAL RAISE ISSUES CONCERNING CHILD
CUSTODY, VENUE, OR TERMINATION OF PARENTAL
RIGHTS:** No. This appeal does not raise issues of child custody,
venue, or termination of parental rights.

6. **PENDING AND PRIOR PROCEEDINGS IN THIS COURT:**

There are no prior proceedings in this matter. A notice of appeal on
the district court's denial of Appellant's motion to relocate was filed
on September 10th, 2018. To Appellant's knowledge, that matter has
not been docketed with this court.

7. **PENDING AND PRIOR PROCEEDINGS IN OTHER COURTS:**

There are no other pending or prior proceedings in other courts related
to this matter.

8. **NATURE OF ACTION:** On January 5, 2017 Respondent filed her
motion to invalidate the parties' prenuptial agreement executed in the
State of Georgia and governed, by its own terms, by Georgia law.
Appellant opposed that motion. On June 13 & 14, 2017, an
evidentiary hearing was conducted to determine the issue. Applying
Georgia law, and exercising its equity jurisdiction, in accordance with
Georgia law, the district court upheld the prenuptial agreement in part,
and rejected it in part. On September 4th, 2018 the district court filed

its findings of fact, conclusions of law, and decision. Appellant now challenges that determination.

9. ISSUES ON APPEAL:

- a. Did the district court abuse its discretion or commit legal error in its understanding and application of Georgia law concerning prenuptial agreements and in its exercise of equity jurisdiction?
- b. Did the district court err or abuse its discretion by accepting the prenuptial agreement at issue in part and rejecting it in part instead of accepting it in whole?
- c. Did the district court err or abuse its discretion when it took the opportunity to clarify its oral decision in its written decision fourteen (14) months after rendition of its oral decision sua sponte?

10. PENDING PROCEEDINGS IN THIS COURT RAISING THE SAME OR SIMILAR ISSUES: None.

11. CONSTITUTIONAL ISSUES: This appeal does not challenge the constitutionality of any statute.

12. OTHER ISSUES: *This case concerns a substantial issue of first impression.* This Court is asked to define the district court's equity jurisdiction with specificity and enunciate when and under what circumstances the application of the district court's equitable powers is appropriate.

13. ASSIGNMENT TO THE COURT OF APPEALS OR RETENTION IN THE SUPREME COURT: The Nevada Supreme Court should retain this matter pursuant to NRAP 17(a)(10). The principal issue on appeal is a question of first impression involving the common law. There is much confusion in the district court, particularly in the Eighth Judicial District Court's Family Division,



concerning the application of the district court's equity jurisdiction and the extent of its equitable powers in disposing of family law matters.

14.**TRIAL:** This matter was adjudicated after a two (2) day bench trial.

15.**JUDICIAL DISQUALIFICATION:** Appellant does not intend to file a motion to disqualify any justice.

16.**DATE OF ENTRY OF WRITTEN JUDGMENT OR ORDER APPEALED FROM:** September 4th, 2018.

17.**DATE WRITTEN NOTICE OF ENTRY OF JUDGMENT OR ORDER WAS SERVED:** September 4th, 2018. Service was effectuated electronically.

18.**TOLLING OF NOTICE OF APPEAL:** Time for filing the notice of appeal was not tolled by a post-judgment motion.

19.**DATE NOTICE OF APPEAL WAS FILED:** Notice of Appeal was first filed prematurely on June 11th, 2018. An amended notice of appeal was filed on September 10th, 2018.

20.**SPECIFY STATUTE OR RULE GOVERNING THE TIME LIMIT FOR FILING THE NOTICE OF APPEAL:** NRAP 4(a) is the rule governing the time limit for filing any notice of appeal.

21.**SPECIFY THE STATUTE OR OTHER AUTHORITY GRANTING THIS COURT JURISDICTION TO REVIEW THE JUDGMENT OR ORDER APPEALED FROM:** NRAP 3A(b)(1) is the rule or authority granting this Court jurisdiction to review the judgment or order appealed from. This rule provides the basis for appeal because Appellant is challenging a final order adjudicating the validity of a prenuptial agreement.

1 **22.LIST ALL PARTIES INVOLVED IN THE ACTION OR**
2 **CONSOLIDATED ACTIONS IN THE DISTRICT COURT:**

3 Yoav Egosi and Patricia Egosi.

4 **23.DESCRPTION OF CLAIMS:** The nature of Appellant's claim is
5 divorce.

6 **24.DID THE JUDGMENT OR ORDER APPEALED FROM**
7 **ADJUDICATE ALL THE CLAIMS ALLEGED BELOW AND**
8 **THE RIGHTS AND LIABILITIES OF ALL THE PARTIES TO**
9 **THE ACTION OR CONSOLIDATED ACTIONS BELOW?** No.

10 **25.SPECIFY THE CLAIMS REMAINING BELOW:** The remaining
11 claims are for the distribution of community assets and debts upon
12 which the outcome of the prenuptial agreement issue depend. Child
13 custody and child support have been adjudicated. Proceedings in the
14 court below are stayed pending this appeal. There is a motion to
15 certify the September 4th, 2018 judgment as final is on file with the
16 district court which is set to be heard on October 18th, 2018.

17 **26.SPECIFY THE PARTIES REMAINING BELOW:** Yoav Egosi
18 and Patricia Egosi.

19 **27.CERTIFICATION OF JUDGMENT:** There is a motion pending
20 before the district court to certify the challenged judgment as final
21 pursuant to NRCP 54(b).

22 **28.BASIS FOR SEEKING APPELLATE REVIEW:** This order is a
23 final judgment pursuant to NRAP 3A(b)(1). There is a pending
24 motion in the district court to certify the judgment as final under
25 NRCP 54(b).

1 29.ATTACHMENTS: 1) Complaint for Divorce; 2) Answer and
2 counterclaim for divorce; 3) Reply to counterclaim for divorce; 4)
3 Motion to reconsider June 14, 2017 decision; 5) Order and notice of
4 entry of order re June 14th, 2017 decision filed September 4th, 2018; 6)
5 Motion to certify September 4th, 2018 judgment as final and to stay
6 proceedings.

7 DATED this 26th day of September, 2018.

8
9 /s/ Alex Ghibaud

10 ALEX B. GHIBAUDO, Nevada Bar No. 10592

11 **ALEX B. GHIBAUDO, PC**

12 703 S. 8th Street

13 Las Vegas, Nevada 89101

14 Telephone: (702) 978-7090

15 Facsimile: (702) 924-6553

16 Email: alex@abgpc.com

17 *Attorney for Appellant*



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.

YOAV EGOSI

Alex B. Ghibaudo, Esq.

Name of Appellants

Name of Counsel of Record

September 26th, 2018

/s/ Alex Ghibaudo

Dated

Signed

Clark County, Nevada

State and County where signed

CERTIFICATE OF ELECTRONIC SERVICE

I certify that on the 26th day of September, 2018, I served a copy of this completed docketing statement upon all counsel of record electronically through the Court's eflex filing service and by email to the following:

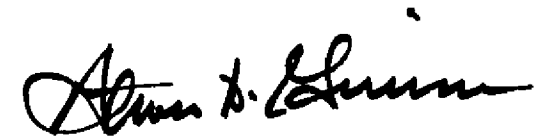
John Blackmon, Esq.
BLACKMON LAW GROUP
4145 W. Teco Ave.
Las Vegas, Nevada 89118
Attorneys for Respondent
jblackmon@blackmonlawgroup.com

Dated this 26th Day of September, 2018.

/s/ Alex Ghibaudo, Esq.

Alex B. Ghibaudo, PC

EXHIBIT 1



CLERK OF THE COURT

1 **COMD**

2 Emily McFarling, Esq.
3 Nevada Bar Number 8567
4 **McFARLING LAW GROUP**
5 6230 W. Desert Inn Rd.
6 Las Vegas, NV 89146
7 (702) 565-4335 phone
8 (702) 732-9385 fax
9 eservice@mcfarlinglaw.com
10 Attorney for Plaintiff
11 Patricia Egosi

12 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

13 **FAMILY DIVISION**

14 **CLARK COUNTY, NEVADA**

15 PATRICIA EGOSI,

16 Plaintiff

17 vs.

18 YOAV EGOSI,

19 Defendant

) Case Number: D- 16- 540174- D

) Dept. No: N

) **COMPLAINT FOR DIVORCE**

20 COMES NOW Plaintiff, Patricia Egosi, by and through her attorney, Emily

21 McFarling, Esq., and for cause of action, alleges as follows:

22 1. For more than six (6) weeks immediately preceding the commencement of
23 this action, Defendant has been, and now is, a bona fide and actual resident and domiciliary
24 of the State of Nevada and has been actually and corporeally present in the State of Nevada
25 for more than six (6) weeks immediately prior to the commencement of this action, and has
26 had and still has the intent to make said State of Nevada his home, residence and domicile
27 for an indefinite period of time.

28 2. Plaintiff is a resident of the State of Nevada, but was temporarily absent from
the State just prior to the commencement of this action.

McFARLING LAW GROUP
6230 W. Desert Inn Rd., Las Vegas, NV 89146
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eservice@mcfarlinglaw.com

1 3. Plaintiff and Defendant were duly and legally married on or about the 28th
2 day of September, 2008, and ever since said date have been and now are husband and wife.

3 4. There is one minor child born the issue of this marriage, to wit: Benjamin
4 Egosi, born January 14, 2014. To the best of Plaintiff's knowledge, she is not pregnant at
5 this time. No children were adopted during this marriage.
6

7 5. The State of Nevada is the home state of the child.

8 6. Plaintiff is fit and proper to be designated as primary physical custodian of
9 the minor child.

10 7. Plaintiff and Defendant are fit and proper persons to have joint legal custody
11 of minor child as follows:

12 A. Each parent will consult and cooperate with the other in substantial questions
13 relating to religious upbringing, educational programs, significant changes in social
14 environment, and healthcare of the minor child.
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16 B. Each parent will have access to medical and school records pertaining to their child
17 and be permitted to independently consult with any and all professionals involved with
18 them.

19 C. All schools, healthcare providers, day care providers, and counselors will be selected
20 by the parents jointly. In the event the parents cannot agree to the selection of a school, the
21 child will be maintained in the present school pending mediation and/or further order of the
22 court.
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24 D. Each parent will be able to obtain emergency healthcare for the children without the
25 consent of the other parent. Each parent will notify the other parent as soon as reasonably
26 possible as to any illness requiring medical attention or any emergency involving the child.
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1 E. Each parent will provide the other parent upon receipt, with any information
2 concerning the well-being of the child, including, but not limited to, copies of report cards;
3 school meeting notices; vacation schedules; class notices of activities involving the children
4 samples of school work; order forms for school pictures; all communications from
5 healthcare providers and the names, addresses, and telephone numbers of all schools,
6 healthcare providers, regular daycare providers, and counselors.

8 F. Each parent will advise the other parent of school, athletic, religious, and social
9 events in which the child participate, and each agrees to so notify the other parent within a
10 reasonable time after first learning of the future occurrence of any event so as to allow the
11 other parent to make arrangement to attend the event if he or she chooses to do so. Both
12 parents may participate in all such activities with the children, including, but not limited to,
13 such activities as open house, attendance at all school and religious activities and events,
14 athletic events, school plays, graduation ceremonies, school carnivals, and any other events
15 involving the child.

17 G. Each parent will provide the other parent with the address and telephone number at
18 which the minor child resides, and to notify the other parent within ten (10) days prior to
19 any change of address. Each parent will also provide the telephone number of such address
20 change as soon as it is assigned.

22 H. Each parent will provide the other parent with a travel itinerary and, whenever
23 reasonably possible, telephone number, at which the child can be reached whenever the
24 child will be away from that parent's home for a period of one (1) night or more.

25 I. The parents will encourage liberal communication between the child and the other
26 parent. Each parent will be entitled to reasonable telephone communication with the child;
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1 and each parent agrees he or she will not unreasonably interfere with the child's right to
2 privacy during such telephone conversations.

3 J. Neither parent will interfere with the right of the children to transport their clothing
4 and personal belongings freely between the parents' respective homes.

5 K. The parents agree to communicate directly with each other regarding the needs and
6 well-being of their child and each parent further agrees not to use the child to communicate
7 with the other parent regarding parental issues. The parents agree to not verbally or
8 physically abuse each other in the presence of the minor children.

9 L. Neither parent will disparage the other in the presence of the child, nor will either
10 parent make any comment of any kind that would demean the other parent in the eyes of the
11 child. Additionally, each parent agrees to instruct their respective family and friends to
12 make no disparaging remarks regarding the other parent in the presence of the child. The
13 parents will take all action necessary to prevent such disparaging remarks being made in the
14 presence of the child and will report to each other in the event such disparaging remarks are
15 made.

16 8. Defendant is able bodied and capable of paying child support for the minor
17 child born as issue of this marriage, in an amount commensurate with NRS. 125B.070 and
18 NRS. 125B.080, which sets forth that support for one minor child shall equal eighteen
19 percent (18%) of the non-custodial parent's gross monthly income. Child support shall
20 currently be set at Defendant paying Plaintiff 18% of his gross monthly income per month
21 until the child reaches the age of 18 if the child is no longer in high school, otherwise, when
22 the child reaches 19 years of age, marries or otherwise becomes emancipated.
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1 9. Plaintiff and Defendant shall provide medical, dental and vision insurance
2 for said child until said child reaches the age of majority, marries, or becomes sooner self-
3 supporting, with the premium split equally between the parties.

4 10. The parties shall share equally all uninsured medical expenses of the minor
5 child. Medical expenses shall include, but are not limited to, counseling, eye exams, eye
6 glasses and medical treatment. Reimbursement shall be made pursuant to the 30/30 rule for
7 expenses. The parent who paid for the expenses shall provide the other parent a copy of the
8 receipt of payment within 30 days of payment. The other parent should reimburse one half
9 of the expenses within 30 days.

11 11. Plaintiff is entitled to claim said minor child on her income tax each year.

12 12. Plaintiff is entitled to spousal support and alimony.

13 13. Community property and debts exists and should be divided pursuant to law.

14 14. Separate property and debts exist and should be confirmed pursuant to law.

15 15. During the course of the marriage, Defendant's personal conduct has resulted
16 in the waste, erosion, dissipation, depletion, loss, and/or destruction of marital assets.
17 Among other relief, Plaintiff, in accordance with equity and justice, should be awarded a
18 greater share of the marital estate based upon Defendant's conduct which has caused the
19 waste of marital property and the loss of financial opportunities.

20 16. Plaintiff and Defendant are fiduciaries in the management and control of
21 community assets, and are fiduciaries as to each other's interests in the community estate.
22 By Defendant's conduct and behavior, he has breached his community management and
23 fiduciary duties, causing economic waste to the community estate. In accordance with
24 equity and justice, Plaintiff should be awarded a greater share of the marital estate based
25 upon Defendant's breach of his fiduciary duty.

1 17. Both parties shall execute any and all escrow documents, transfers of title,
2 and other instruments that may be required in order to effectuate transfer of any and all
3 interests which either may have in and to the property of the other as specified herein, and
4 do any other act or sign any other documents reasonably necessary and proper for the
5 consummation, effectuation, or implementation of the Decree of Divorce and its intent and
6 purposes. Should either party fail to execute any documents to transfer interest to the other,
7 either party may request that this Court transfer such property directly, or have the Clerk of
8 the Court sign in place of the other, consistent with NRCP 70.

10 18. Should any claim, action, or proceeding is brought seeking to hold the other
11 party liable on account of any debt, obligation, liability, act, or omission assumed by that
12 party, he or she will, at his or her sole expense, defend the other against any such claim or
13 demand and that he or she will indemnify, defend, and hold harmless the other party.

15 19. Plaintiff will retain her married name as her legal name.

16 20. Plaintiff is entitled to an award of attorney's fees and costs from Defendant.

17 21. The parties hereto are incompatible in marriage.

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WHEREFORE, Plaintiff prays for Judgment as follows:

- A. That the bonds of matrimony now and heretofore existing between Plaintiff and Defendant be dissolved, set forever held for naught, and that the parties hereto, and each of them, be restored to their single, unmarried status.
- B. Plaintiff's claims for relief be granted as requested herein.
- C. The parties hereto are incompatible in marriage.

DATED this 26th day of September, 2016.

McFARLING LAW GROUP

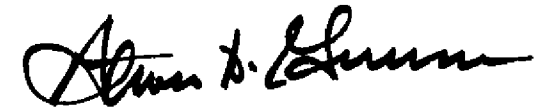
By: /s/Emily McFarling
Emily McFarling, Esq.
6230 W. Desert Inn Rd.
Las Vegas, NV 89146
(702) 565-4335
Attorney for Plaintiff
Patricia Egosi

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- I declare under penalty of perjury, under the laws of the State of Nevada and the United States (NRS 53.045 and 28 USC § 1746), that the foregoing is true and correct.


Patricia Egosi

EXHIBIT 2



CLERK OF THE COURT

1 **ACDAS**
2 Jason Naimi, Esq.
3 Nevada Bar No. 9441
4 jason@standishnaimi.com
5 Francesca M. Resch, Esq.
6 Nevada Bar No. 13011
7 francesca@standishnaimi.com
8 **STANDISH NAIMI LAW GROUP**
9 1635 Village Center Circle, Suite 180
10 Las Vegas, NV 89134
11 Telephone: (702) 998-9344
12 Facsimile: (702) 998-7460

13 *Attorneys for Defendant/Counterclaimant*

14 **DISTRICT COURT, FAMILY DIVISION**

15 **CLARK COUNTY, NEVADA**

16 **PATRICIA EGOSI,**

17 Plaintiff/Counterdefendant,

18 v.

19 **YOAV EGOSI,**

20 Defendant/Counterclaimant.

CASE NO.: D-16-540174-D

DEPT. NO.: Q/TPO

21 **ANSWER AND COUNTERCLAIM TO COMPLAINT FOR DIVORCE**

22 COMES NOW, Defendant/Counterclaimant, YOAV EGOSI, by and through his counsel of
23 record, JASON NAIMI, ESQ., of STANDISH NAIMI LAW GROUP, and hereby submits his Answer
24 and Counterclaim to Complaint For Divorce as follows:

25 1. Answering paragraphs 1, 2, 4, 5, 7, 9, 10, 14, and 21 of Plaintiff Complaint for Divorce,
26 this answering Defendant admits each and every allegation contained therein.

27 2. Answering paragraphs 3, 6, 8, 11, 12, 13, 15, 16, 17, 18 and 20 of Plaintiff's Complaint
28 for Divorce, this answering Defendant denies each and every allegation contained therein.

3. Answering paragraph 19 of Plaintiff's Complaint for Divorce, this answering
Defendant states that he is without sufficient knowledge or information to form a belief as to the truth
or falsity of the allegations contained therein and on that basis denies each and every allegation
contained therein.

///

COUNTERCLAIM

Defendant/Counterclaimant, YOAV EGOSI (hereinafter, "Defendant"), as and for his Counterclaim for Divorce, alleges as follows:

1. That Defendant, for a period of more than six (6) weeks immediately preceding the commencement of this action, has been and now is an actual, bona fide and actual resident and domiciliary of the State of Nevada, County of Clark, and has been actually physically and corporeally present and domiciled in Nevada for more than six (6) weeks immediately prior to the commencement of this action, and has had and still has the intent to make the State of Nevada his home, residence and domicile for an indefinite period of time.

2. That Defendant and Plaintiff were duly and legally married on or about September 26, 2008 in Atlanta, Georgia, and have been and still are husband and wife.

3. That there is one (1) minor child the issue of this marriage, to-wit: Benjamin Egosi, born January 14, 2014. To the best of Defendant's knowledge, Plaintiff is not pregnant at this time. No children were adopted during this marriage by Plaintiff and/or Defendant.

4. The State of Nevada is the home state of the subject minor child.

5. Defendant and Plaintiff are fit and proper persons to be awarded joint legal custody of the minor child, with Defendant being awarded sole physical custody of the minor child, subject to Plaintiff submitting for a psychological evaluation and obtaining treatment for her mental health condition.

6. Plaintiff should pay child support to Defendant pursuant to NRS 125B.070 and 080.

7. The parties should both be responsible for maintaining health insurance for the benefit of the minor child herein, and equally share the cost for the monthly premium for coverage to provide for the benefit of the minor child until such time that the minor child reaches the age of eighteen (18) years of age if he is no longer in high school, otherwise, when the child reaches nineteen (19) years of age, marries or otherwise emancipates.

8. The parties should equally share all of the minor child's unreimbursed medical, dental, psychological, and vision expenses until such time that that the minor child reaches the age of eighteen

1 (18) years of age if he is no longer in high school, otherwise, when the child reaches nineteen (19)
2 years of age, marries or otherwise emancipates.

3 9. Defendant and Plaintiff entered into a Prenuptial Agreement ("Agreement") prior to
4 their marriage on August 13, 2008; that said Agreement complies fully with the requirements of NRS
5 123A and is a valid and enforceable Agreement in all respects. A copy of said Agreement is attached
6 hereto as **Exhibit "A"**. The Court should confirm the terms of the parties' Agreement.

7
8 10. That, pursuant to the terms of the Agreement, there is no community property of the
9 parties to be adjudicated by the Court.

10 11. That, pursuant to the terms of the Agreement, there are no community debts of the
11 parties to be adjudicated by the Court.

12 12. That, pursuant to the terms of the Agreement, there is separate property of the
13 Defendant to be confirmed to Defendant by the Court, including, but not limited to, those assets listed
14 as *Schedule "A1"* to the Agreement.

15 13. That, pursuant to the terms of the Agreement, there is separate property of the Plaintiff
16 to be confirmed to Plaintiff by the Court, the exact amounts and descriptions of which are unknown
17 to Defendant at this time, and Defendant prays leave of Court to amend this Complaint to insert the
18 same when they become known to him or at the time of trial in this matter.

19
20 14. That there are separate debts of Defendant relating to his separate property which
21 should be allocated to him by the Court pursuant to the terms of the Agreement.

22 15. That there are separate debts of Plaintiff relating to her separate property which should
23 be allocated to her by the Court pursuant to the terms of the Agreement.

24
25 16. That neither party should pay alimony or spousal support to the other party herein.

26 17. That, should any claim, action, or proceeding be brought seeking to hold the other party
27 liable on account of any debt, obligation, liability, act, or omission assumed by that party, he or she
28

1 will, at his or her sole expense, defend the other against any such claim or demand and that he or she
2 will indemnify, defend, and hold harmless the other party.

3 18. That Defendant has been required to retain the services of Standish Naimi Law Group
4 to defend this action and should be awarded his reasonable costs, expenses and attorney's fees incurred
5 herein.

6 19. That, during the course of said marriage, the tastes, mental disposition, views, likes and
7 dislikes of Defendant and Plaintiff have become so widely divergent that the parties have become
8 incompatible in marriage to such an extent that it is impossible for them to live together as husband
9 and wife and the incompatibility between Defendant and Plaintiff is so great that there is no possibility
10 of reconciliation between them.

11 WHEREFORE, Defendant prays for a Judgment as follows:

12 1. That Plaintiff takes nothing by reason of her Complaint on file herein;


13 2. That the marriage existing between Defendant and Plaintiff be dissolved and that
14 Defendant be granted an absolute Decree of Divorce and that each of the parties be restored to the
15 status of a single, unmarried person;

16 3. That the Court grant the relief requested in Defendant's Counterclaim; and

17 4. For such other relief as the Court finds to be just and proper.

18 DATED this 19 day of October, 2016.

19 STANDISH NAIMI LAW GROUP

20
21 By: 
22 JASON NAIMI, ESQ.
23 Nevada Bar No. 9441
24 Francesca M. Resch, Esq.
25 Nevada Bar No. 13011
26 1635 Village Center Circle, Suite 180
27 Las Vegas, NV 89134
28 Attorneys for Defendant/Counterclaimant

STANDISH NAIMI LAW GROUP
1635 Village Center Circle, Suite 180 Las Vegas, NV 89134
Telephone: (702) 998-9344 Fax: (702) 998-7460

VERIFICATION

STATE OF NEVADA)
COUNTY OF CLARK) SS:

YOAV EGOSI, under penalties of perjury, being first duly sworn, deposes and says:

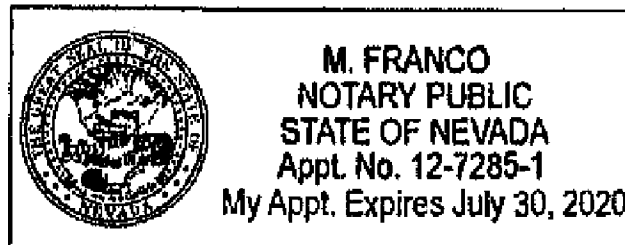
That he is the Defendant in the above-entitled action; that he has read the foregoing Answer and Counterclaim and knows the contents thereof; that the same is true of his own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters, he believes them to be true.

DATED this 17 day of October, 2016.


YOAV EGOSI

SUBSCRIBED and SWORN to before
me, YOAV EGOSI, this 17 day of
October, 2016.


NOTARY PUBLIC



CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of STANDISH NAIMI LAW GROUP, and that on October 19, 2016, I caused the document entitled *ANSWER AND COUNTERCLAIM FOR DIVORCE* to be served as follows:

☒ pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5b)(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;

☐ pursuant to EDCR 8.05(a) and NRCP 5b)(2)(D), because the individual listed is not registered with the Court's mandatory e-service system, by depositing a copy of the same in the United States Mail in Las Vegas, Nevada, postage prepaid; and/or

☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class mail postage was prepaid in Las Vegas, Nevada; and/or

☐ via electronic mail.

To the individual listed below at the address, email address, and/or facsimile number indicated below:

Emily McFarling, Esq.
McFarling Law Group
6230 W. Desert Inn Road
Las Vegas, Nevada 89146
eservice@mcfarlinglaw.com

Attorneys for Plaintiff

and placing the same in the mail bin at the firm's office services.

I am readily familiar with the firm's practice of collection and processing mail. Under that practice it is deposited with the U. S. Postal Service on the same day it is placed in the mail bin, with postage thereon fully prepaid at Las Vegas, Nevada, in the ordinary course of business.

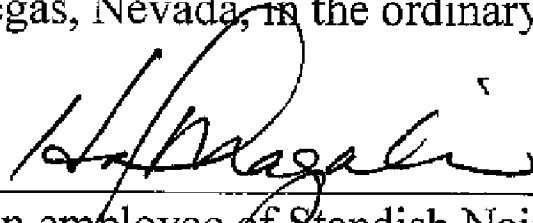

An employee of Standish Naimi Law Group

EXHIBIT “A”

THIS AGREEMENT MADE IN TRIPLICATE THIS 13th day of August, 2008

BETWEEN:

YOAV EGOSI

of the City of Atlanta
in the State of Georgia

- AND -

PATRICIA ELIS GOMES COSTA

of the City of Atlanta
in the State of Georgia

PRENUPTIAL AGREEMENT

BACKGROUND

1. This Prenuptial Agreement is made between **YOAV EGOSI** (hereinafter called "Joe") and **PATRICIA ELIS GOMES COSTA** (hereinafter called "Patricia") who are contemplating marriage each to the other;
2. The parties intend for this Agreement to become effective upon their marriage pursuant to the laws of the State of Georgia, including any Uniform Premarital Agreement Act, or other applicable laws, adopted by the State of Georgia;
3. The parties wish to enter into this agreement to provide for the status, ownership, and division of property between them, including future property owned or to be acquired by either or both of them;
4. The parties further wish to affix their respective rights and liabilities that may result from this relationship;
5. The parties recognize the possibility of unhappy differences that may arise between them. Accordingly, the parties desire that the distribution of any property that either or both of them may own will be governed by the terms of this Agreement and, insofar as the statutory or case law permits, intend that any statutes that may apply to them, either by virtue of Federal or State legislation, will not apply to them;
6. Each party acknowledges and agrees that they have had an opportunity before signing to consult with independent legal counsel in their jurisdiction and of their choice. Notwithstanding, they have chosen to expressly and voluntarily waive their right to legal counsel;
7. The parties have exchanged financial statements providing full and complete disclosure of substantially all of the assets and liabilities property now owned or owing by each of them and voluntarily and expressly waive any other rights to disclosure of the property or financial obligations of each other beyond the disclosure provided;

8. The parties acknowledge that they have been provided with a reasonable period of time to review this Agreement and obtain legal advice before signing;
9. Each party agrees and affirms the following:
 - a. THAT the parties did execute the Agreement voluntarily;
 - b. THAT this Agreement was not unconscionable when it was executed;
 - c. THAT both parties were provided prior to execution of the Agreement a fair and reasonable disclosure of the property or financial obligations of the other party; and
 - d. THAT he or she did have, or reasonably could have had, an adequate knowledge of the property or financial obligations of the other party.

NOW THEREFORE in consideration of the upcoming marriage, and in consideration of the mutual promises and covenants contained in this Agreement, the parties agree as follows:

PROPERTY

1. Except as otherwise provided in this Agreement, such property as is listed in **Schedule "A1"** attached hereto will be and remains the property of the owner described in the said schedule and the other party will have no right to or interest in such present property.
2. The parties hereby acknowledge that with respect to any determination of ownership of property that may occur in the event of the parties separating, or upon the death of a party, all property will be treated as separate property owned solely by one party unless there is proof of shared legal ownership.
3. Unless a particular piece of property is explicitly documented as being owned by both parties, the following types of property will not be deemed as shared property:
 - a. any property owned by a party at the date of execution of this Agreement;
 - b. any property owned by a party after the date of execution of this Agreement;
 - c. any property acquired in exchange for present property, or from the proceeds of a sale of present property, whether direct or indirect, of a disposition of present property;
 - d. any income or proceeds derived from property owned by a party before or after the execution of this Agreement;
 - e. any property acquired by either party with income received during their marriage from property owned by a party before or after the execution of this Agreement;
 - f. any increase in value during the period of marriage of any property owned by a party before or after the execution of this Agreement;
 - g. any property acquired by a party by gift from the other party;
 - h. any property acquired by a party by gift from a third party;
 - i. any property acquired by a party through an inheritance;

- j. any winnings from any sport, game or lottery;
 - k. any award or settlement acquired from a lawsuit;
 - l. any proceeds from an insurance policy;
 - m. any earnings, salary or wage, acquired before or after the execution of this Agreement; and
 - n. any savings acquired before or after the execution of this Agreement.
4. The shared property owned by both parties at the execution of this Agreement, however and whenever acquired, will be owned and managed by both parties at all times and will remain the property of both parties after the execution of this Agreement.
 5. In the event of the parties separating, or upon the death of a party, any jointly-acquired or jointly-held property will be deemed to be owned in accordance with the proportion of each party's investment, unless the parties otherwise agree in writing.
 6. Nothing in this agreement will prevent or invalidate any gift, or transfer for value, from one party to the other of present or future property provided such gift or transfer is evidenced in writing signed by both parties.
 7. Unless a party can reasonably show that he or she solely owns a piece of property, where either party commingles jointly owned property with separate property, any commingled property shall be presumed to be jointly-owned property of the parties.

DEBTS

8. Except as otherwise provided in this Agreement, such debts as are listed in **Schedule "A1"** and **"A2"** attached hereto will be and remain the debts of the party described in the said schedule and the other party will have no financial obligations with respect to paying back the debts.
9. The parties hereby acknowledge that with respect to any determination of responsibility of debts that may occur in the event of the parties separating, all debts will be treated as separate debts owed solely by one party unless there is proof of joint financial obligations.
10. Unless a particular debt is documented as being owed by both parties, the following types of debts will not be deemed as shared debts:
 - a. any debts already owing by one party at the date of execution of this Agreement; and
 - b. any debts incurred by one party during the marriage.
11. The shared debts owed by both parties at the execution of this Agreement, however and whenever acquired, will be owed by both parties at all times and will remain the debts of both parties after the execution of this Agreement.
12. In the event of a separation, the parties will be financially responsible for any jointly-acquired or jointly-held debts in accordance with the initial or ongoing proportion of each party's borrowed amount, unless the parties otherwise agree in writing.

SUPPORT

13. The parties agree that the investment of time or labor with respect to personal service in the property of the other, or otherwise, will be deemed to have been made gratuitously, and without expectation or right of compensation unless agreed to the contrary in writing.
14. It is the intention of the parties to forever release each other from any alimony or support obligations now and in the future no matter how their circumstances may change. They will not apply now or in the future under any Federal or State legislation for support. They each waive any rights they may have to proceed against the other under any law or statute for payments of alimony or support and rely upon the law of contract to govern in respect of this issue.
15. The parties realize that their respective financial circumstances may be altered in the future by changes in their health, the cost of living, their employment, their marital status, the breakdown of their relationship, or otherwise. No such changes will give either party the right to seek support under any legislation, Federal or State. It is understood by each party that this Agreement represents a final disposition of all maintenance and support issues between them.

ESTATES AND TESTAMENTARY DISPOSITION

16. Except as provided herein, the parties acknowledge that each has the absolute right to dispose of his or her estate by will without leaving any portion to the other, or to the heirs, executors, administrators, or assigns of the other.
17. Nothing in this agreement will invalidate or prevent either party from naming the other as a beneficiary by will or other testamentary disposition.
18. The parties waive and release the other from any and all rights of every kind, nature, and description that each may acquire as spouse or surviving spouse in the property, assets, or estate of the other.

SEVERABILITY

19. Should any portion of this Agreement be held by a court of law to be invalid, unenforceable, or void, such holding will not have the effect of invalidating or voiding the remainder of this Agreement, and the parties agree that the portion so held to be invalid, unenforceable, or void, will be deemed amended, reduced in scope, or otherwise stricken only to the extent required for purposes of validity and enforcement in the jurisdiction of such holding.

INTENTION OF THE PARTIES

20. Notwithstanding that the parties acknowledge and agree that their circumstances at the execution of this Agreement may change for many reasons, including but without limiting the generality of the foregoing, the passage of years, it is nonetheless their intention to be bound strictly by the terms of this Agreement at all times.

DUTY OF GOOD FAITH

21. This Agreement creates a fiduciary relationship between the parties in which each party agrees to

act with the utmost of good faith and fair dealing toward the other in all aspects of this Agreement.

FURTHER DOCUMENTATION

22. The parties agree to provide and execute such further documentation as may be reasonably required to give full force and effect to each term of this Agreement.

TITLE/HEADINGS

23. The headings of this Agreement form no part of it, and will be deemed to have been inserted for convenience only.

ENUREMENT

24. This Agreement will be binding upon and will enure to the benefit of the parties, their respective heirs, executors, administrators, and assigns.

GOVERNING LAW

25. The laws of the State of Georgia will govern the interpretation of this agreement, and the status, ownership, and division of property between the parties wherever either or both of them may from time to time reside.

TERMINATION OR AMENDMENT

26. This Agreement may only be terminated or amended by the parties in writing signed by both of them.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals as of the day and year first written above.

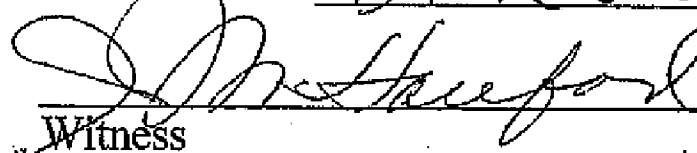
SIGNED, SEALED AND DELIVERED

In the presence of:



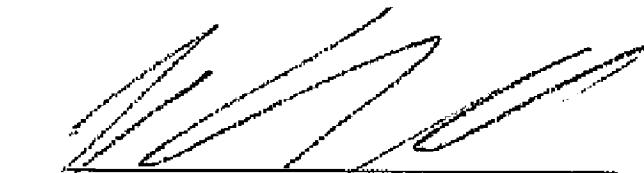
Witness

Printed Name: Diane Gordon




Witness

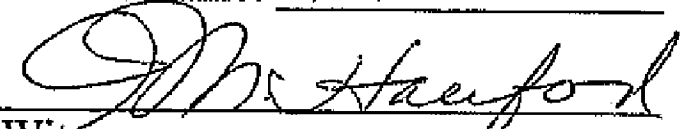
Printed Name: ANA M. HANFORD



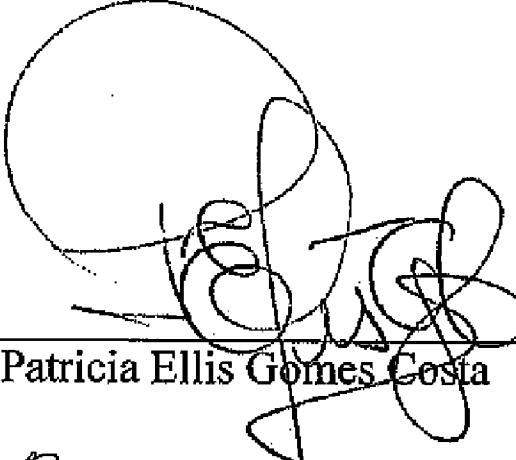
Yoav Egosi



Witness
Printed Name: Diane Gordon



Witness
Printed Name: ANA M. HANFORD



Patricia Ellis Gomes Costa

SCHEDULE "A1"

Separate Property of Yoav Egosi:

1. Condo at 2881 Peachtree Rd Unit 1101 Atlanta, GA 30305
2. 2005 Mercedes SL55 AMG
3. 100% shares of Hawk Communications LLC dba JoiPhone
4. 100% shares of Hawk VoIP LLC

Separate Debts of Yoav Egosi:

1. Mortgage \$500,000.00
2. Revolving credit \$130,000.00

AFFIDAVIT OF EXECUTION

USA
STATE OF FLORIDA
TO WIT:

I, ANA M. HANFORD,
of the City of FORT LAUDERDALE
in the State of Florida,

MAKE OATH AND SAY:

1. **THAT** I was personally present and did see Yoav Egosi, named in the within instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purpose named therein.
2. **THAT** the same was executed at the City of Ft. Lauderdale, in the State of Florida, and that I am the subscribing witness thereto.
3. **THAT** I know the said Yoav Egosi, and he is in my belief of the full age of eighteen (18) years.

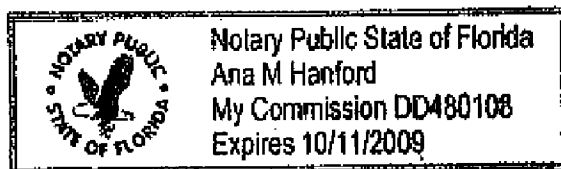
SWORN BEFORE ME at the City of
Ft. Lauderdale, in the State of Florida
this 13th day of August, 2008.

[Signature]
WITNESS
Print Name: Diane Guden

[Signature]
NOTARY PUBLIC
Print Name: ANA M. HANFORD

My Commission Expires:

10-11-2009



AFFIDAVIT OF EXECUTION

USA
STATE OF FLORIDA
TO WIT:

I, ANA M. HANFORD
of the City of FORT LAUDERDALE
in the State of Florida,

MAKE OATH AND SAY:

1. **THAT** I was personally present and did see Patricia Elis Gomes Costa, named in the within instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purpose named therein.
2. **THAT** the same was executed at the City of Fort Lauderdale, in the State of Florida, and that I am the subscribing witness thereto.
3. **THAT** I know the said Patricia Elis Gomes Costa, and she is in my belief of the full age of eighteen (18) years.

SWORN BEFORE ME at the City of
Fort Lauderdale, in the State of Florida
this 13th day of August, 2008.

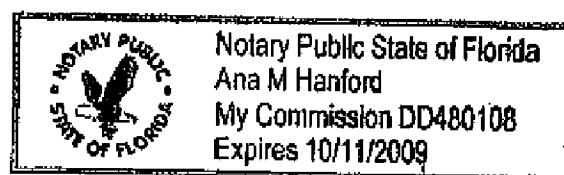
WITNESS

Print Name: Diane Gordon

ANA M. HANFORD
NOTARY PUBLIC

Print Name: ANA M. HANFORD

My Commission Expires:



AFFIDAVIT OF EXECUTION

USA
STATE OF FLORIDA
TO WIT:

I, ANA M. HANFORD
of the City of FORT LAUDERDALE
in the State of Florida,

MAKE OATH AND SAY:

1. **THAT** I was personally present and did see Yoav Egosi, named in the within instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purpose named therein.
2. **THAT** the same was executed at the City of Fort Lauderdale in the State of Florida, and that I am the subscribing witness thereto.
3. **THAT** I know the said Yoav Egosi, and he is in my belief of the full age of eighteen (18) years.

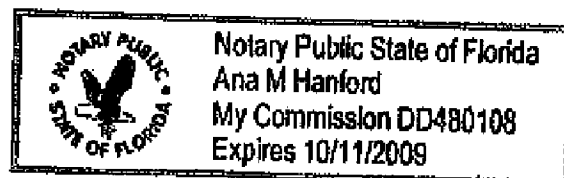
SWORN BEFORE ME at the City of
Fort Lauderdale, in the State of Florida
this 3rd day of August, 2008.

[Signature]
WITNESS
Print Name: Diane Garden

[Signature]
NOTARY PUBLIC
Print Name: ANA M. HANFORD

My Commission Expires:

10-11-2009



AFFIDAVIT OF EXECUTION

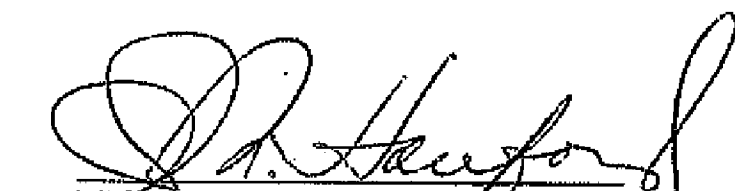
USA
STATE OF FLORIDA
TO WIT:

I, ANA M. HANFORD,
of the City of FORT LAUDERDALE
in the State of Florida,

MAKE OATH AND SAY:


1. **THAT** I was personally present and did see Patricia Elis Gomes Costa, named in the within instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purpose named therein.
2. **THAT** the same was executed at the City of FORT LAUDERDALE in the State of Florida, and that I am the subscribing witness thereto.
3. **THAT** I know the said Patricia Elis Gomes Costa, and she is in my belief of the full age of eighteen (18) years.

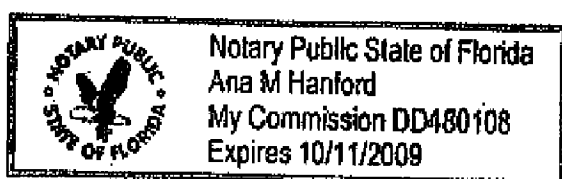
SWORN BEFORE ME at the City of
FORT LAUDERDALE, in the State of Florida
this 3rd day of August, 2008,


NOTARY PUBLIC
Print Name: ANA M. HANFORD

My Commission Expires:

10-11-2009


WITNESS
Print Name: Dinford




CERTIFICATE OF ACKNOWLEDGMENT

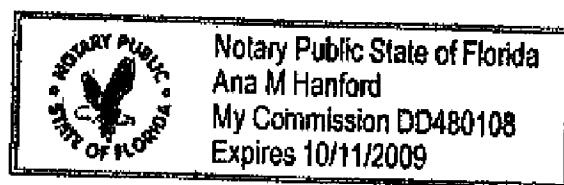
STATE OF FLORIDA
COUNTY OF Broward

1. This document was acknowledged under oath to my satisfaction by Yoav Egosi apart from Patricia Elis Gomes Costa.
2. Yoav Egosi acknowledged to me:
 - a. **THAT** he is aware of the agreement and understands the provisions of the same.
 - b. **THAT** he is aware of the possible claims to property that he may have under the existing State legislation and that he intends to give up these claims to the extent necessary to give effect to the agreement.
 - c. **THAT** he is executing this document freely and voluntarily without any compulsion on the part of Patricia Elis Gomes Costa.

DATED at the City of Ft Lauderdale, in the State of Florida, this 13th day of August, 2008.


NOTARY PUBLIC
Print Name: ANA M. HANFORD

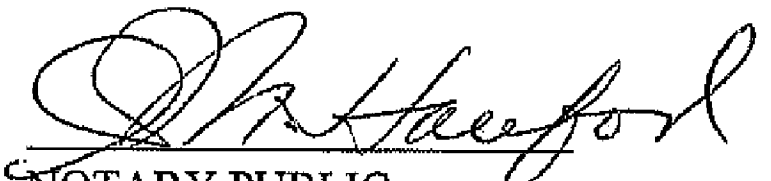
My Commission Expires:
10-11-2009



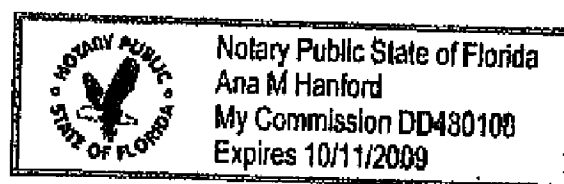
CERTIFICATE OF ACKNOWLEDGMENT**STATE OF FLORIDA****COUNTY OF BROWARD**

1. This document was acknowledged under oath to my satisfaction by Patricia Ellis Gomes Costa apart from Yoav Egosi.
2. Patricia Ellis Gomes Costa acknowledged to me:
 - a. **THAT** she is aware of the agreement and understands the provisions of the same.
 - b. **THAT** she is aware of the possible claims to property that she may have under the existing State legislation and that she intends to give up these claims to the extent necessary to give effect to the agreement.
 - c. **THAT** she is executing this document freely and voluntarily without any compulsion on the part of Yoav Egosi.

DATED at the City of Fort Lauderdale, in the State of Florida, this 13th day of August, 2008.


NOTARY PUBLIC
Print Name: ANA M. HANFORD

My Commission Expires:

10-11-2009

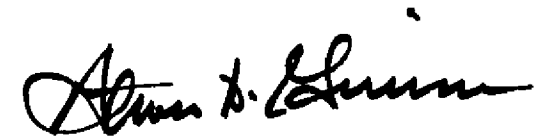
Special Notes on Prenuptial Agreements governed by the State of Georgia

At this time there are relatively few formal requirements for prenuptial agreements drafted in the State of Georgia, as compared to other jurisdictions.

However, legislation in the State of Georgia does require that the parties sign any prenuptial agreement in the presence of two subscribing witnesses. In addition, the agreement must be recorded in the office of the clerk of the superior court of the county of the parties' residence within three months after the execution.

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EXHIBIT 3



CLERK OF THE COURT

RPLY
Emily McFarling, Esq.
Nevada Bar Number 8567
McFARLING LAW GROUP
6230 W. Desert Inn Rd.
Las Vegas, NV 89146
(702) 565-4335 phone
(702) 732-9385 fax
eservice@mcfarlinglaw.com
Attorney for Plaintiff
Patricia Egosi

IN THE EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

PATRICIA EGOSI,)	Case Number: D-16-540174-D
)	Dept. No: Q
Plaintiff)	
vs.)	REPLY TO COUNTERCLAIM FOR
)	DIVORCE
YOAV EGOSI,)	
)	
Defendant)	

COMES NOW the Plaintiff, by and through her attorney of record, Emily McFarling, Esq., of McFarling Law Group, and in answer to Defendant's Counterclaim for Divorce, states as follows:

1. Plaintiff admits the allegations contained in paragraphs 1-4, 7-8 and 19 of Defendant's Counterclaim for Divorce.

2. Plaintiff denies the allegations contained in paragraphs 5-6, and 9-18 of Defendant's Counterclaim for Divorce.

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1 WHEREFORE, Plaintiff prays for an Order of this Court as follows:

- 2 1. Defendant's Counterclaim be dismissed and Defendant take nothing thereby;
- 3 2. Plaintiff's Complaint for Divorce be entered as prayed for therein; and
- 4 3. For such other and further relief as the Court deems just and equitable.

5 DATED this 28th day of October, 2016.

7 **McFARLING LAW GROUP**

8 By: /s/Emily McFarling
9 Emily McFarling, Esq.
10 6230 W. Desert Inn Rd.
11 Las Vegas, NV 89146
12 (702) 565-4335
13 Attorney for Plaintiff
14 Patricia Egosi
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- I declare under penalty of perjury, under the laws of the State of Nevada and the United States (NRS 53.045 and 28 USC § 1746), that the foregoing is true and correct.

October, 2016.

Patricia Eke Egosi

Patricia Egosi

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CERTIFICATE OF SERVICE

The undersigned, an employee of McFarling Law Group, hereby certifies that on the 28th day of October 2016, I served a true and correct copy of REPLY TO COUNTERCLAIM FOR DIVORCE, via mandatory electronic service by using the Eighth Judicial District Court’s E-file and E-service System to the following:

Standish Naimi Law Group			
Name	Email		Select
Angela Romero	angela@standishnaimi.com	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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By: /s/Maria Rios Landin
Maria Rios Landin

EXHIBIT 4

Alex B. Ghibaud
CLERK OF THE COURT

MOT

Alex Ghibaud, Esq.
Bar No. 10592
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Attorney for Defendant

DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

PATRICIA EGOSI,
(nka PATRICIA LEE WOODS),

Plaintiff,

vs.

YOAV EGOSI,

Defendant.

Dist. Ct. No.: D-16-540174-D

Dist. Ct. Dept. No.: Q

**MOTION TO RECONSIDER THIS
COURT'S JUNE 14th, 2017
DECISION, N.R.C.P. 12(b)(5)
MOTION TO DISMISS FOR
FAILURE TO STATE A CLAIM
UPON WHICH RELIEF MAY BE
GRANTED, AND MOTION FOR
PARTIAL SUMMARY JUDGMENT
UNDER N.R.C.P. 56 WITH
RESPECT TO JOIBIZ, LLC.**

HEARING REQUESTED

**NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS
MOTION/COUNTERMOTION WITH THE CLERK OF THE COURT AND TO
PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN
TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION/COUNTERMOTION.
FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE
COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS
MOTION/COUNTERMOTION MAY RESULT IN THE REQUESTED RELIEF
BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE
SCHEDULED HEARING DATE.**

Comes Now Defendant, Yoav Egosi ("Joe"), through his attorney Alex Ghibaud,
Esq. of the Law Office of Alex B. Ghibaud, PC, and moves this court as follows:

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WWW.GIBAUDO.COM



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RELIEF REQUESTED

1. *That this Court reconsider its June 14th, 2017 decision that the parties' prenuptial agreement will only be enforced in part and rule instead that the whole of the prenuptial agreement be enforced;*
2. *That this Court decide as a matter of law that JoiBiz, LLC. is protected under the prenuptial agreement because it is nothing more than Hawk Communication's "alter ego";*
3. *That Plaintiff's claim for "marital waste" and "equitable" distribution of community as alleged in paragraph 15 and 16 of Plaintiff's complaint be dismissed for failure to state a claim upon which relief may be granted; and*
4. *For such other relief as this Court deems just and equitable.*

This motion is based upon the following Memorandum of Points and Authorities, including the affidavits and documents filed separately as Appendix I, the papers and pleadings on file herein, and any oral argument permitted a the time of the hearing.

DATED this 26th day of March, 2018.

/s/ Alex Ghibaud

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Attorney for Defendant



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Memorandum of Points and Authorities

I. Statement of Facts

a. Introduction

Joe and Plaintiff are husband and wife pending a divorce before this Court. The parties married on the 28th of September, 2008 in Georgia. They have one minor child together, Benjamin Egosi, born January 14th, 2014. The matter of custody has previously been decided by this court: on September 8th, 2017, Joe was awarded sole physical and sole legal custody of the minor child. What remains is the division of any marital assets and debts.

For purposes of the instant motion, at issue is a prenuptial agreement¹ the parties executed in Georgia. On June 13th and June 14th, 2017, this Court held an evidentiary hearing to determine the enforceability of that agreement. At the conclusion of that hearing, this Court ruled that the prenuptial agreement between the parties is enforceable but chose to accept the agreement only in part. Joe now challenges that ruling and contends this court erred in its decision by failing to properly establish any equitable grounds for relief and fundamentally misapprehending equity jurisdiction. Joe now asks this court to reconsider its decision and accept the prenuptial agreement in whole, not just in part.

Also at issue for the purposes of the instant motion is partial summary judgment on assets acquired during the marriage, to the extent this Court refuses to reconsider its ruling and maintains that those assets are community property. Joe maintains that even if

¹ See Defendant's Appendix of Exhibits ("AE") at page 1.



1 this Court affirms its prior ruling, JoiBiz, LLC. is nothing more than a wholly owned
2 subsidiary of Hawk Communication, or nothing more than Hawk Communication's alter
3 ego, putting it beyond the reach of this Court's authority to divide it as a marital asset as
4 this court has previously ruled that Hawk Communication is protected under the parties'
5 prenuptial agreement. Joe therefore requests this court enter partial summary judgment in
6 favor of Joe regarding the character of the now marital asset known as JoiBiz, LLC. and
7 that this court enter an order declaring that property separate property outside of
8 Plaintiff's reach and firmly under the protection of the parties' prenuptial agreement.
9

10 Finally, Joe contends that Plaintiff fails to state a claim upon which relief may be
11 granted with respect to the allegations of community waste and Plaintiff's request that the
12 marital estate be divided equitably rather than equally. Under N.R.C.P. 12(b)(5), Plaintiff
13 must "set forth sufficient facts to demonstrate the necessary elements of a claim for relief
14 so that the defending party has adequate notice of the nature of the claim and relief
15 sought."² Furthermore, "conclusory allegations are not considered as expressly pleaded
16 facts or factual inferences."³ Plaintiff's complaint is bereft of facts and rife with
17 conclusory allegations, rendering it useless.
18
19

20 **b. Facts Specific to Joe's Motion to Reconsider**

21 On June 13th and 14th of 2017, this Court held an evidentiary hearing concerning
22 the prenuptial agreement the parties executed in Georgia. At the conclusion of that
23 hearing, this Court made its findings of fact and rendered its conclusions of law, ruling
24 that the prenuptial agreement was enforceable, but only electing to enforce it in part. In
25 coming to that conclusion, the court found no fraud, duress, or mistake of fact, stating:
26
27

28 ² *Western States Const. v. Michojf*, 108 Nev. 931, 936, 840 P. 2d 1220, 1223 (1992).

³ *In Re Amerco Derivative Litigation*, 127 Nev. 196, 232, 252 P.3d 681, 706 (2011).



1 So as I look at the [Shere] prongs, the -- the factors that I'm required to
2 consider, I -- I have to determine first whether the antenuptial agreement --
3 well, and -- and the -- the burden of proof is that the Plaintiff -- or the
4 Defendant needs to prove that the antenuptial agreement was not the result
5 of fraud, duress, mistake, misrepresentation, or non-disclosure or material
6 facts.⁴ *I don't find based on the testimony and my evaluation regarding the*
7 *credibility of the witnesses that there was any fraud or duress, mistake, or*
8 *misrepresentation.*⁵ (Emphasis Added).

9 On the last point made, Plaintiff testified that (a) she did not "speak, read, write
10 English", (b) that the first time she saw the prenuptial agreement was on the day she
11 signed it, (c) that she had no idea what a prenuptial agreement was at the time she was
12 presented it, and (d) that she had no time to review it with counsel was simply not true.
13 Indeed, Plaintiff speaks and understands English just fine, she saw the prenuptial
14 agreement some 6 months prior to signing it, she in fact knew exactly what the prenuptial
15 agreement was, and she did have an opportunity to discuss the terms of the prenuptial
16 agreement with a licensed attorney, all contrary to her testimony under oath.

17 This Court took note of Plaintiff's lack of credibility in rendering its decision,
18 making the following findings:

19 [The Court's] findings and conclusions are based on...[its] determinations
20 regarding issues of demeanor and credibility.⁶

21 With respect to specific findings regarding credibility, the Court found as follows:

22 [The prenuptial agreement] was reprinted with changes that did not
23 materially impact the underlying issues regarding the enforceability of the
24 prenuptial agreement, that the Plaintiff had that in her possession, had the
25 opportunity certainly to read it, to have it translated to the -- to the extent
26 she felt it was warranted, had the opportunity to review it with an attorney,
27 an attorney who advised against her signing the prenuptial agreement and
28 who explained at least in general terms the meanings of the prenuptial
agreement. I find that to be credible.⁷

⁴ AE 385, lines 18-24

⁵ Id. at 386, lines 1-3.

⁶ Id. at 396, lines 23-24.

⁷ Id. at Page 386-387, lines 15-24 (and line 1 on page 387).



1
2 The Court further found:

3
4 Now I also find credible based on the testimony that's been offered that the
5 Defendant was unaware that this advice was being sought.⁸ and so it's
6 consistent with the fact that she viewed this somewhat objectively and said
7 I would recommend against signing it.⁹

8 Thus, Plaintiff approached the signing of the prenuptial agreement independent of any
9 influence on Joe's part, objectively, and under no duress or time pressure.

10 As to Plaintiff's intentions, the Court found that at the time, they were honorable
11 and made out of love and affection for Joe, obviating the need to discover the true value
12 of any of Joe's assets. In that respect, the Court made the following findings:

13 The testimony suggests to me that dollar value or not, the Plaintiff made it
14 clear that that was irrelevant to her -- her intentions to both sign the
15 premarital agreement and -- and get married. She was in love, wanted to
16 prove her love to the Defendant, and that was inconsequential to her
17 whatever value the Defendant had put on those assets, that was her
18 testimony that she -- it was not material to her decision to sign or not sign.¹⁰

19 Though the Court found that Plaintiff did not care to know the true value of any
20 assets belonging to Joe, it also found she had enough information to come to a reasonable
21 conclusion concerning Joe's assets due to her close involvement with Joe and his
22 business(es):

23 [T]he Plaintiff had been in the business enough, was familiar with what was
24 being derived from the business because she was living the lifestyle that the
25 business was able to generate and that she had access and the ability to
26 obtain that information. It ultimately was disclosed on the date the
27 prenuptial agreement was signed and it was listed as a specific asset. I don't
28 find that the failure to include Plaintiff's assets, which I know that there's
been some debate and discussion even during these proceedings that it
wasn't listed in financial disclosure forms that have been filed with this

⁸ AE 387, lines 15-17.

⁹ Id. at lines 20-22.

¹⁰ Id. at 389, lines 9-16.



1 court, that's not a fatal flaw or -- or a defective point that would create a
2 basis for this Court to invalidate the prenuptial agreement and the -- the
3 Defendant has acknowledged that that would be her sole and separate
4 property and he's not trying to argue that -- that it wouldn't be because there
5 was no disclosure form.¹¹

6 Upon aforementioned findings, among others, this Court rendered the following
7 conclusions of law (though framed as findings):

8 So I do find based on the sheer factors that there was -- that -- that the
9 Defendant has satisfied his burden to demonstration that the antenuptial
10 agreement was not the result of fraud, duress, mistake, misrepresentation,
11 or non-disclosure of material facts...Similarly, I -- I find that he's
12 demonstrated that the agreement is not unconscionable.¹²

13 Despite this, however, the Court went on to conclude that:

14 What I do find and given the discretion that I do have is there should be a limiting
15 aspect to the enforceability of the terms of the prenuptial agreement. First, the
16 only assets I view as being protected by the prenuptial agreement are the four
17 assets listed in the -- in the exhibit attached to the prenuptial agreement. There
18 has been debate and discussion about bank accounts not being disclosed on both
19 sides. I -- I don't view -- and -- and so I don't view this prenuptial agreement and
20 I would not apply it given that discretion that I have to approve in whole or part.
21 I don't view the agreement as protecting bank accounts or bank account
22 information. A -- and as far as the Court's division of assets and debts or view of
23 what should be divided by the Court and the final -- final division of assets. It's
24 limit -- limited to the specific assets that -- that have been referenced and no other
25 assets are included as part of my -- the protection that's offered by the prenuptial
26 agreement.¹³

27 The operative effect of this ruling is that any after acquired asset is presumed to
28 be community property, essentially gutting the prenuptial agreement and neutering it. As
the discussion below demonstrates, this is clear legal error which this Court should
reverse -- in part because the Court failed to state any equitable grounds upon which to

¹¹ AE 391, lines 1-16.

¹² Id., lines 1-23.

¹³ Page 394-395.



1 base its exercise of discretion, aside from concluding that it can exercise discretion,
2 which is not legally sufficient.

3 **c. Facts Specific to Joe's Motion for Partial Summary Judgment**

4 Hawk Communications, LLC ("Hawk") is a single member limited liability
5 company registered in the State of Georgia on December 8th, 1999. Joe is the sole
6 managing member of Hawk. Hawk holds business accounts with Chase Bank. Hawk
7 Communications is a telecommunications services provider – it provides web hosting, it
8 is an internet service provider, and a VOIP provider. Hawk is registered with the Federal
9 Communications Commission.
10

11 Customers purchase services online through www.joiphone.com, where they
12 register for an account, add items to a shopping cart, and purchase online. Hawk accepts
13 online debit and credit card payments through a merchant account which is linked to
14 Hawk's Chase business accounts.
15

16 Hawk has multiple brands, domains, and registered trademarks for use in different
17 markets, and with different products and services, such as:
18

- 19
- 20 • Joi Internet brand to use for dialup Internet service.
 - 21 • JoiPhone brand telephony services for the residential market.
 - 22 • JoiBiz brand telephony services for the business and SMB market.
 - 23 • Hawk VoIP to use with wholesale VoIP.
 - 24 • JOI is a registered trademark of Hawk Communications LLC.
 - 25 • Hawk Communications has domain such as Joi Phone, Joi Internet, JoiBiz.
 - 26 • Hawk Communications has products such as Joi Fax, Joi SMS, and Joi
27 CRM.

28 JoiBiz ("JoiBiz"), LLC is also a single member limited liability company
established in 2009.¹⁴ JoiBiz is not registered with the FCC.¹⁵ Rather, it is a reseller

¹⁴ AE 596.

¹⁵ Id. at 602-603.



1 which provides Hawk products. When JoiBiz makes a sale, it goes to a merchant account,
2 then an internal transfer to Hawk's business accounts is made through the same bank
3 (Chase).

4 JoiBiz conducts no physical transactions: everything occurs online, through
5 Hawk's equipment/software. JoiBiz uses the domain www.joibiz.com which is owned by
6 Hawk. JoiBiz's website, email, and all other IP services utilize Hawk owned IP
7 addresses,¹⁶ and are run by Hawk employees and automated software on Hawk owned
8 equipment.
9

10 Nor does JoiBiz have any ability to bill customers independent of Hawk: JoiBiz
11 does not send bills or invoices, nor does it have a billing system. Without a telephony
12 billing engine, the company cannot rate, charge, or route calls. The billing engine, and
13 platform which bills, rates, routes, and invoice customers are all owned and operated by
14 Hawk.
15

16 JoiBiz does not own Telecom equipment.¹⁷ Such equipment provides telephone
17 services including dial tone, and inbound and outbound voice, fax, and sms. All these
18 services/products are owned by Hawk and Hawk VoIP LLC. Joe and others invested over
19 a million dollars in the telecom network and equipment owned by Hawk between 1999-
20 2006 – obligations that remain outstanding.
21

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23
24 ¹⁶ AE 605. See also AE at 610-612.

25 ¹⁷ JoiBiz cannot legally provide any telecom services such as telephony VoIP because it does not
26 have an FCC license. Without that, it cannot provide 911 emergency services as all telephony
27 providers are required to carry by the FCC. See <https://www.fcc.gov/consumers/guides/voip-and-911-service> (The FCC requires that providers of interconnected VoIP telephone services using the
28 Public Switched Telephone Network (PSTN) meet Enhanced 911 (E911) obligations. E911 systems automatically provide to emergency service personnel a 911 caller's call back number and, in most cases, location information). Hawk Communications license with the FCC required it to enter into a contract with Intrado (AE 613-655) for the provision of those services.



1 Finally, JoiBiz Terms of Service (its contract with customers) is on its website,
2 located at <http://www.joibiz.com/tos.html>.¹⁸ It provides clearly that the "Agreement is
3 between JoiBiz, a Hawk Communications LLC company ("We", "Us", "Our" or
4 "JoiBiz")." The about us on JoiBiz website <http://www.joibiz.com/aboutus.htm> states
5 that "Headquartered in Nevada, JoiBiz, a Hawk Communications LLC company" and,
6 furthermore, it says "Since 1999, Hawk Communications LLC has built an unparalleled
7 IP and Voice network, and has the technical experience not found with other IT
8 companies."¹⁹

10 In short, under no circumstances can JoiBiz operate independent of Hawk. As
11 such, it is a wholly owned subsidiary and alter ego of Hawk. Therefore, as the discussion
12 below elaborates on, JoiBiz is an extension of Hawk and not a separate entity which
13 should be protected under the prenuptial agreement.

15 **d. Facts Specific to Joe's Motion to Dismiss Under NRCP 12(b)(5)**

16 In Plaintiff's complaint, she makes the following conclusory statements:

17 During the course of the marriage, Defendant's personal conduct has
18 resulted in the waste, erosion, dissipation, depletion, loss, and/or destruction
19 of marital assets. Among other relief, Plaintiff, in accordance with equity
20 and justice, should be awarded a greater share of the marital estate based
21 upon Defendant's conduct which has caused the waste of marital property
and the loss of financial opportunities.²⁰

22 The complaint further alleges:

23 Plaintiff and Defendant are fiduciaries in the management and control of
24 community assets, and are fiduciaries as to each other's interests in the
25 community estate. By Defendant's conduct and behavior, he has breached
26 his community management and fiduciary duties, causing economic waste
to the community estate. In accordance with equity and justice, Plaintiff

27 ¹⁸ AE 656-661.

28 ¹⁹ AE 608.

²⁰ Plaintiff's Complaint, paragraph 15.



1 should be aware a greater share of the marital estate based upon Defendant's
2 breach of his fiduciary duty.²¹

3 In *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), the United States Supreme Court
4 explained that the complaint must contain more than just conclusory accusations: "[t]o
5 survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted
6 as true, to 'state a claim to relief that is plausible on its face ... [a] claim-only has facial
7 plausibility when the plaintiff pleads factual content that allows the court to draw the
8 reasonable inference that the defendant is liable for the misconduct alleged."²²
9

10 These are exactly the "labels and conclusions" and "[t]hreadbare recitals of the
11 elements of a cause of action, supported by mere conclusory statements"²³ the *Iqbal* court
12 held would not suffice. As such, and as more fully discussed below, Plaintiff fails to state
13 a claim upon which relief may be granted.

14 II. Legal Analysis

15 a. Reconsideration is Appropriate

16 Under E.D.C.R. 5.512:

17 (a) A party seeking reconsideration and/or rehearing of a ruling (other than
18 an order that may be addressed by motion pursuant to NRCP 50(b),
19 52(b), 59, or 60), must file a motion for such relief within 14 calendar
20 days after service of notice of entry of the order unless the time is
21 shortened or enlarged by order. A motion for reconsideration does not
22 toll the period for filing a notice of appeal.

23 (b) If a motion for reconsideration and/or rehearing is granted, the court
24 may make a final disposition without hearing, may set it for hearing or
25 resubmission, or may make such other orders as are deemed appropriate
26 under the circumstances.

27 ²¹ Id. paragraph 16.

28 ²² *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

²³ *Iqbal*, 556 U.S. at 678. (Internal citations omitted).



1 In this matter, no order has issued. As such, no notice of entry of order has been
2 filed. Thus, the time bar provided for in EDCR 5.512(a) has not run and the matter is ripe
3 for reconsideration under the standard is met under the rule. Under EDCR 5.512, "points
4 or contentions not raised, or passed over in silence on the original hearing, cannot be
5 maintained or considered on petition for rehearing."²⁴ Once a petition for rehearing has
6 been denied, further consideration of the underlying issue is precluded, even as to points
7 or contentions not raised.²⁵ "This rule is equivalent to holding that matters so waived
8 cannot be entertained later, and good reasons exist for its enforcement."²⁶ Here, Mr.
9 Egosi has not challenged the decision reached by this Court at the challenged evidentiary
10 hearing, though Plaintiff has, without any counter motion having been filed by Mr. Egosi
11 (though an opposition to that motion was filed). Therefore, Mr. Egosi is not precluded
12 from requesting that this court reconsider its decision.

13
14 A district court may reconsider a previously decided issue if substantially
15 different evidence is subsequently introduced or the decision is clearly erroneous.²⁷
16 Furthermore, this Court may reconsider a previously decided matter if new issues of fact
17 or law are raised supporting a ruling contrary to the ruling already reached.²⁸ Here, Mr.
18 Egosi contends that this Court clearly erred in the application of its equitable authority
19 and that new law presented in this motion will compel this court to reach a different
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25 ²⁴ *Chowdhry v. NLVH, Inc.*, 893 P.2d 385, 387, (Nev., 1995); citing *Belanger v. Leonard*, 68 Nev. 258,
262, 229 P.2d 153, 155 (1951) (quoting *Brandon v. West*, 29 Nev. 135, 85 P. 449, 88 P. 140 (1906)).

26 ²⁵ *Id.*

27 ²⁶ *Id.*; citing *Brandon*, 29 Nev. at 141, 88 P. at 140 (emphasis added).

28 ²⁷ *Masonry and Tile Contractors Ass'n of Southern Nevada v. Jolley, Urga & Wirth, Ltd.*, 941 P.2d 486,
489, 113 Nev. 737 (Nev., 1997); See *Little Earth of United Tribes v. Department of Housing*, 807 F.2d
1433, 1441 (8th Cir.1986).

²⁸ *Moore v. City of Las Vegas*, 551 P.2d 244, 245 92 Nev. 402 (Nev., 1976).



1 ruling in the matter at issue; i.e., that the Prenuptial Agreement should be enforceable in
2 whole.

3 **b. This Court Erred In the Application of Its Equitable Powers**

4 In this matter, what was asserted, though it was not stated, was an equitable
5 defense; i.e., this Court declined to enforce the prenuptial agreement in whole out of
6 fairness to the Plaintiff, though that is not explicitly, indeed not even implicitly, stated in
7 the decision – one must glean that conclusion from consideration of the whole transcript.
8 In other words, this court reformed the parties' agreement. As the following discussion
9 shows, application of equitable defenses, equitable maxims, and grounds of equitable
10 relief in contract enforcement is well understood. Thus, this Court could have, and should
11 have, based its decision on firmer ground – and if its equitable powers were better
12 understood, this Court should have reached a different result in the matter.

13 **i. In General**

14 Though it is unclear from the record, this Court's June 14th, 2017 decision
15 concerning the parties' prenuptial agreement can be construed as a "fairness defense"
16 against the application of an otherwise enforceable agreement, imposed by this Court
17 upon Joe. Though this Court should have based its decision on existing, well-settled, and
18 well understood equitable grounds (see the discussion below), to the extent the defense
19 was raised by this Court sua sponte in exercising its discretion, a discussion of the
20 fairness of allowing such a defense follows:
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25 The values that drive equitable defenses are values of fairness and justice between
26 parties.²⁹ Dean Robert Stevens found in equity "a more particularized justice" that
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28 ²⁹ Emily L. Sherwin, Law and Equity in Contract Enforcement, 50 Md. L. Rev. 253 (1991).



relieves against individual hardship.³⁰ Professor Ralph Newman, another advocate of equitable principles, called equity "the force by which law becomes humanized."³¹ Equity represents "ideal justice," "standards of decent and honorable conduct," "human brotherhood,"³² and "the duty to share the burdens of unanticipated misfortune."³³ *But they express the basic idea of the fairness defense, that one party should not be allowed to profit from a bargain that resulted from the other's error or lack of sophistication and imposes considerable hardship on the promisor.*³⁴ (Emphasis Added). Another way to look at equitable defenses is to fit them into Professor Duncan Kennedy's dialectic conception of contract law. In Kennedy's view, contract law is subject to polar forces of individualism and altruism.³⁵ The fairness defense is an expression of altruism, because it requires individuals to share wealth and sacrifice self-interest for others *who are less astute bargainers.*³⁶ (Emphasis Added).

Similarly, "the ideal of corrective justice may belong in the equity column."³⁷

Professor James Gordley has proposed that the principle of corrective justice supports

³⁰ Stevens, A Plea for the Extension of Equitable Principles and Remedies, 41 CORNELL L. REV. 351, 353 (1956).

³¹ Sherwin, *supra*.

³² Emily L. Sherwin, Law and Equity in Contract Enforcement, 50 Md. L. Rev. 253 (1991).

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ The fairness defense also fits Kennedy's description of the relation between substance and form. Throughout his article, Kennedy traces connections between individualism and the use of rules, and between altruism and the use of standards.

³⁷ Emily L. Sherwin, Law and Equity in Contract Enforcement, 50 Md. L. Rev. 253 (1991). For a sample of different conceptions of corrective justice, see Coleman, Corrective Justice and Wrongful Gain, 1 IJ. LEGAL STUD. 421, 423-28 (1982) (rectification based on fault or taking); Epstein, A Theory of Strict Liability, 2 J. LEGAL STUD. 151, 160-89 (1973) (liability based on causation); Fletcher, Fairness and Utility in Tort Theory, 85 HARV. L. REV. 537, 540-42 (1972) (reciprocity); Nickel, Justice in Compensation, 18 WM. & MARY L. REV. 379, 387-88 (1976) (protection of just holdings); Posner, The Concept of Corrective Justice in Recent Theories of Tort Law, 10 J. LEGAL STUD. 187, 201-06 (1981) (wealth maximization); Schroeder, Corrective Justice and Liability for Increasing Risks, 37 UCLA L. REV. 439, 451-69 (1990) (liability based on personal responsibility, *ex ante*; compensation based on harm



1 judicial relief against unequal exchange. In Gordley's view, any exchange for less than
2 market value is an unjust enrichment, which should be rectified.³⁸ Corrective justice is
3 purely a remedial principle that requires *correction of wrongful gain and loss*.³⁹

4 Finally, the fairness defense can be identified with paternalism. Stated favorably,
5 *a fairness defense allows the judge to identify cognitive defects or gaps in information*
6 *that distorted the promisor's decision to enter into the contract*, and to give relief against
7 subsequent regret. Stated less sympathetically, a fairness defense allows the judge to
8 question the competence of the promisor's expressed choice on an individual basis.

9 Here, this Court made detailed findings of fact that directly contradict the
10 application of any "fairness defense." In other words, the prenuptial agreement
11 procedurally and substantively fair, as this court made clear in its findings. (See Fact
12 Summary, supra). Stated more succinctly, a finding that the prenuptial agreement is not
13 unconscionable necessarily means that this Court implicitly found that any notions of
14 fairness necessitating the application of any fairness defense are nullified: i.e., a) this
15 Court found no error or lack of sophistication on the part of Plaintiff such that enforcing
16 the contract in whole would impose a considerable hardship on Plaintiff, b) Plaintiff was
17 not found to be a less astute bargain – rather, Plaintiff was very knowledgeable and
18 sophisticated when it came to her understanding of the operation of the business, the
19 existence of the prenuptial agreement and its meaning, and even had the assistance of
20 counsel in interpreting it, and c) there was no cognitive defect Plaintiff labored under nor

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26 caused, ex post); Simons, Corrective Justice and Liability for Risk-Creation: A Comment, 38 UCLA L.
REV. 113 (1990) (a reply to Schroeder)."

27 ³⁸ The fairness defense usually rests on a combination of circumstances, including defects in the bargaining
28 process as well as inequality in the values exchanged. Gordley's argument goes further, because it treats an
unequal result as unjust in itself without regard to the contract process.

³⁹ See ARISTOTLE, Nicomachean Ethics, bk. V, ch. 4, at *1132.

1 was there any significant gap in information between Plaintiff and Joe that distorted
2 Plaintiff's decision to enter into the agreement. Nor was there any wrongful gain or loss
3 as Plaintiff came into the marriage with substantial assets.⁴⁰ Thus, this Court's
4 application of any "fairness (i.e., equitable) defense" was unwarranted and made in error.

5
6 **c. Under Georgia Law, This Court May Invoke And Apply Its Equitable
Powers To Reform A Prenuptial Agreement**

7 In determining whether to enforce an antenuptial agreement, the trial court sits in
8 equity and has discretion to "approve the agreement in whole or in part, or refuse to
9 approve it as a whole."⁴¹ Under Georgia law, a "superior court judge presiding over a
10 divorce case exercises all of the traditional powers of chancellor in equity, except as
11 otherwise provided by law."⁴² The Georgia Supreme Court previously held that:
12

13 we have not only adopted the whole system of English jurisprudence,
14 Common Law, and Chancery, suited to our condition and circumstances,
15 but that we have framed the necessary judicial machinery to give to that
16 system a practical and beneficial effect, and that such is the office and duty
17 of a Court of Equity, and such was the object of the Legislature of 1799, in
18 conferring Equity powers upon the Superior Courts.

19 *Jones v. Dougherty*, 10 Ga. 273, 281 (1851).

20 In its decision, this Court exercised its discretion and made rulings based in
21 equity, resulting in the acceptance of the agreement only in part. However, this Court
22 failed to identify what equitable grounds it based its decision on, resulting in what
23 appears on its face to be an arbitrary decision and an abuse of this Court's discretion. A
24 careful analysis of the equitable grounds for relief available to this Court and the facts of
25 the case would necessarily have led this Court to a different result, as discussed below.

26
27 ⁴⁰ The home Plaintiff purchased prior to the marriage is, according to her own testimony, now
valued at approximately \$800,000.00. See AE 506, line 18.

28 ⁴¹ *Alexander v. Alexander*, 279 Ga. 116, 118 (Ga., 2005); quoting *Allen v. Allen*, 260 Ga. 777, 778(2)(b),
400 S.E.2d 15 (1991).

⁴² *Allen v. Allen*, 400 S.E.2d 15, 16, 260 Ga. 777 (Ga., 1991).



1 i. Grounds for Equitable Relief, In General – Reformation and
2 Cancellation

3 Equity will reform a written contract where, through mutual mistake, or the
4 mistake of one of the parties, induced or accompanied by the fraud of the other, it does
5 not, as written, truly express the agreement of the parties. This is commonly referred to
6 as the equitable jurisdiction of reformation.

7 Equity, which always regards the intention of the parties, rather than the form in
8 which they have expressed it, did not hesitate, from the earliest times, to rectify written
9 contracts and other instruments to make them correspond with the real meaning and
10 intention of the parties. That being said, the exercise of this jurisdiction must be
11 grounded in mistake or fraud – the purpose being to compel the parties to abide by the
12 terms of an instrument which, through mistake or fraud, does not express their real
13 intention such that enforcing an agreement in whole would carry into operation the
14 mistake or fraud.

15 Equity will not reform a written instrument, unless: a) The mistake is one made
16 by both parties to the agreement, so that the intentions of neither are expressed in it; or b)
17 There is a mistake of one party, by which his intentions have failed of correct expression,
18 and there is fraud the other party in taking advantage of that mistake, and obtaining a
19 contract with knowledge that the one dealing with him is in error in regard to what are its
20 terms.⁴³ To justify a reformation of a written instrument on the ground of mistake,
21 unmixed with fraud, the mistake must be mutual or common to both the parties and the
22 mistake must be in regard to a matter which is material to the contract. The phrase
23 “mutual mistake,” as used in equity, means a mistake common to all the parties to a
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⁴³ Bryce v. Insurance Co., 55 N.Y. 240, 243, 14 Am.Rep. 249, per Folger, J.

1 written contract or instrument, and it usually relates to a mistake concerning the contents
2 or the legal effect of the contract or instrument. A written instrument will not be reformed
3 for mistake or fraud unless clear, positive, and convincing evidence be produced showing
4 the existence of such mistake or fraud.

5
6 **ii. Grounds For Equitable Relief, Georgia and Nevada In Accord
– Reformation and Cancellation**

7 Under Georgia law, mutual mistake of fact is required to invoke the equitable
8 remedy of contract reformation. "A mutual mistake in an action for reformation means
9 one in which both parties agree to the terms of the contract, but by mistake of the
10 scrivener the true terms of the agreement are not set forth."⁴⁴ In that case Cox showed no
11 evidence of a mutual mistake or that the scrivener made a mistake. Under those
12 circumstances, the Georgia Appellate Court held that once the agreement was reduced to
13 writing, all negotiations antecedent thereto merge in the writing and the written
14 agreement is thereafter binding on the parties even if the writing did not express the
15 contract actually made. The Court further noted that a party cannot simply ignore the
16 language of the contract and instead rely on pre-contract representations to claim a
17 mutual mistake.
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20 Nevada is in accord. In *NOLM, LLC v. County of Clark*, 120 Nev. 736, 100 P.3d
21 658 (Nev., 2004), the Nevada Supreme Court held that reformation of a contract requires
22 mutual mistake. Where there is a unilateral mistake, the other party must be aware of it
23 and bring it to the innocent party's attention. The Nevada Supreme Court noted that
24 "[m]ost of the western states are in accord with these rules and allow for reformation of
25 an instrument where one party makes a unilateral mistake and the other party knew about
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⁴⁴ *Cox v. U.S. Markets, Inc.*, 628 S.E.2d 701, 278 Ga. App. 287 (Ga. App., 2006).





1 it but failed to bring it to the mistaken party's attention." The Nevada Supreme Court
2 relied on the Restatement (Second) of Contracts to base its decision.

3 Section 166 of the *Restatement* provides that:

4 If a party's manifestation of assent is induced by the other party's fraudulent
5 misrepresentation as to the contents or effect of a writing evidencing or
6 embodying in whole or in part an agreement, the court at the request of the
7 recipient may reform the writing to express the terms of the agreement as
8 asserted,

9 (a) if the recipient was justified in relying on the misrepresentation, and
10 (b) except to the extent that rights of third parties such as good faith
11 purchasers for value will be unfairly affected.

12 As the Nevada Supreme Court noted, "[t]he commentary to *Restatement* section 166
13 clarifies that the rule also applies when one party is mistaken and the other party, aware
14 of the mistake, remains silent, because his silence "is equivalent to an assertion that the
15 writing is as the other understands it to be."

16 Furthermore, section 161 of the *Restatement* provides that a party's silence
17 regarding a fact is tantamount to a declaration that the fact does not exist:

18 (b) where he knows that disclosure of the fact would correct a mistake of
19 the other party as to a basic assumption on which that party is making the
20 contract and if non-disclosure of the fact amounts to a failure to act in good
21 faith and in accordance with reasonable standards of fair dealing.

22 (c) where he knows that disclosure of the fact would correct a mistake of
23 the other party as to the contents or effect of a writing, evidencing or
24 embodying an agreement in whole or in part.

25 Here, this Court made a specific finding that there was no mistake of fact or fraud
26 in the formation of the premarital agreement, nor is the agreement itself unconscionable.
27 Despite that, this Court reformed the premarital agreement, striking any terms or
28 provisions that would render property or assets acquired after marriage outside the reach



1 of the community estate. This is clear legal error and an abuse of discretion. As such, this
2 Court should reconsider its decision considering the rules outlined above.

3 **iii. Equitable Maxims to Keep In Mind – 1) he who seeks equity**
4 **must do equity, 2) he who comes into equity must com with**
5 **clean hands, 3) and equity aids the vigilant**

6 He who seeks equity must do equity. A court of equity giving the Plaintiff the
7 relief to which he is entitled will do so only upon terms of his submitting to give the
8 Defendant such corresponding rights, if any, as he may also be entitled to in respect to the
9 same subject-matter. This maxim and the maxims, “he comes into equity must come with
10 clean hands,” and “equity aids the vigilant,” illustrate the distinctive and governing
11 principle of equity that nothing can call forth a court of equity into activity but
12 conscience, good faith, and personal diligence. The “clean hands” doctrine is most
13 applicable here. See *Smith v. Smith*, 68 Nev. 10, 226 P.2d 279 (Nev., 1951) (he who seeks
14 equity must do equity and must come into court with clean hands). The maxim must be
15 understood to refer to willful misconduct in regard to the matter in litigation, and not to
16 any misconduct, however gross, which is unconnected with the matter in litigation, and
17 with which the opposite party in the cause has no concern.
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19 This maxim refuses the Plaintiff the relief he seeks when it appears that he has
20 been guilty of conduct towards the Defendant in respect to the subject-matter of the
21 controversy, which, measured by the principles of equity, is unconscionable and
22 unrighteous. “It says that whenever a party, who, as actor, seeks to set the judicial
23 machinery in motion and obtain some remedy, has violated conscience, or good faith, or
24 other equitable principle, in his prior conduct, then the doors of the court will be shut
25 against him in limine. The court will refuse to interfere on his behalf, to acknowledge his
26 right, or to award him any remedy.” The maxim means that a court of equity will not lend
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1 its active aid to one who has been guilty of unconscious or oppressive conduct, or who
2 has been in equal wrong with the Defendant touching the transaction as to which the
3 relief is sought; but in such cases the court will leave the parties where it finds them,
4 without interfering in behalf of either.

5 Here, this Court specifically found that Plaintiff's credibility was lacking. Indeed,
6 Plaintiff testified that (a) she did not "speak, read, write English", (b) that the first time
7 she saw the prenuptial agreement was on the day she signed it, (c) that she had no idea
8 what a prenuptial agreement was at the time she was presented it, and (d) that she had no
9 time to review it with counsel was simply not true. Contrary to that testimony, the Court
10 found that Plaintiff speaks and understands English just fine, she saw the prenuptial
11 agreement some 6 months prior to signing it, she in fact knew exactly what the prenuptial
12 agreement was, and she did have an opportunity to discuss the terms of the prenuptial
13 agreement with a licensed attorney. Though this Court framed Plaintiff's testimony as
14 "lacking in credibility", the fact is she lied under oath in order to do an injustice to Joe.
15 Those lies led this Court to prejudge Mr. Egosi leading into the challenged evidentiary
16 hearing, costing him over \$15,000.00 in attorney's fees. This is the epitome, and text
17 book definition, of coming to Court with unclean hands. As such, this Court should have
18 denied her request to invalidate the prenuptial agreement, based on her
19 misrepresentations and bad faith alone.

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24 **d. Partial Summary Judgment Should Be Granted In Favor Of**
25 **Defendant On The Issue Of JoiBiz, LLC.**

26 Summary judgment requires the following: 1) There must be no genuine issue as
27 to any material fact; and 2) The moving party must be entitled to judgment as a matter of
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1 law. NRCP 56(c).⁴⁵ The first step in the process is the identification of “genuine” issues
2 of fact. A genuine issue of material fact is one where the evidence is such that a
3 reasonable jury could return a verdict for the non-moving party.⁴⁶ A “genuine” issue is
4 more than just “some” issue.⁴⁷ In fact, the mere existence of issues of fact does not
5 necessarily preclude summary judgment.⁴⁸ However, where issue of material fact exists,
6 summary judgment should not be entered.⁴⁹ A genuine issue of fact exists “where
7 reasonable minds could differ as to the import of the evidence”.⁵⁰

8 The “genuine issue of material fact” must preclude summary judgment *against*
9 *the party opposing the motion*.⁵¹ Further, if the party moving for summary judgment has
10 supported the motion to the point of showing to the satisfaction of the court that the issue
11 raised by the opposing party is a sham, the issue is not “genuine” and the motion should
12 be granted.⁵² The decision as to whether a genuine issue of material fact exists is itself a
13 question of law.⁵³ If a dispute over a fact might affect the outcome of the suit, it is a
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18 ⁴⁵ *Villescas v. CNA Ins. Cos.*, 109 Nev. 1075, 864 P.2d 288 (1993) (NRCP 56 authorizes
19 summary judgment where the pleadings, depositions, answers to interrogatories, and admissions
20 on file, together with the affidavits, if any, show there is no genuine issue as to any material fact
21 and that the moving party is entitled to a judgment as a matter of law); *Boland v. Nevada Rock &*
22 *Sand Co.*, 111 Nev. 608, 894 P.2d 988 (1995) (To prevail, the non-moving party must show
23 specific facts demonstrating the existence of a genuine issue for trial).

24 ⁴⁶ *Posadas v. City of Reno*, 109 Nev. 448, 851 P.2d 438 (1993); *Aldabe v. Adams*, 81 Nev. 280,
25 402 P.2d 34 (1965) (When this rule speaks of a “genuine” issue of material fact, it does so with
26 the adversary system in mind. The word “genuine” has moral overtones; it does not mean a
27 fabricated issue) overruled on other grounds, *Siragusa v. Brown*, 114 Nev. 1384, 971 P.2d 801
28 (1998).

⁴⁷ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).

⁴⁸ *Rebel Oil Co. v. Atl. Richfield Co.*, 51 F.3d 1421 (9th Cir. 1995).

⁴⁹ *Mitchell v. Bailey & Selover, Inc.*, 96 Nev. 147, 605 P.2d 1138 (1980); *Casarotto v. Mortensen*,
99 Nev. 392, 663 P.2d 352 (1983); *Shepard v. Harrison*, 100 Nev. 178, 678 P.2d 670 (1984).

⁵⁰ *Id.* at 250-51.

⁵¹ *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986 (9th Cir. 2001).

⁵² *Dzack v. Marshall*, 80 Nev. 345 (1964).

⁵³ *Midland Ins. Co. v. Yanke Plumbing & Heating, Inc.*, 99 Nev. 66, (1983).



1 “material” fact; if it would not, it is an immaterial, irrelevant, or unnecessary fact.⁵⁴ Thus,
2 only outcome determinative facts will preclude summary judgment.⁵⁵

3 The substantive law applicable to the case defines which facts are “material.”⁵⁶
4 Here, the “alter ego” doctrine is implicated. Under that doctrine, equitable principles are
5 used to disregard the separate and distinct legal existence possessed by a corporation
6 where it is established that the corporation served as a mere alter ego or business conduit
7 of another.⁵⁷ [I]ndependent corporate status may be disregarded when such factors as
8 gross undercapitalization, fraud, failure to observe corporate formalities, nonfunctioning
9 of officers and directors, or similar circumstances indicate that the subsidiary is merely
10 the shadow of the parent.⁵⁸

11 The law is well settled that when, as is the case here, it appears that the parent has
12 organized another corporation merely to facilitate the business of the former corporation,
13 the two will be seen as one, so as not to work an injustice, particularly on creditors.⁵⁹

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17 ⁵⁴ *Rivera v. Phillip Morris, Inc.*, 395 F.3d 1142 (9th Cir. 2005); *Doe v. Green*, 298 F. Supp.2d
1025 (D. Nev. 2004).

18 ⁵⁵ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Grutzmacher v. County of Clark*, 33 F.
Supp. 2D 896 (D. Nev. 1999).

19 ⁵⁶ *Id.*; *Flowers v. Carville*, 292 F.Supp.2d 1225 (D. Nev. 2003).

20 ⁵⁷ See, e.g., *Farmers Warehouse v. Collins*, 220 Ga. 141, 150, 137 S.E.2d 619 (1964); *Amason v.*
Whitehead, 186 Ga.App. 320, 367 S.E.2d 107 (1988).

21 ⁵⁸ *Kissun et al., v. Humana, Inc.*, 267 Ga. 419 (1997).

22 ⁵⁹ *In re Muncie. Pulp Co.*, 139 Fed. 546 (C.C.A. 2d, 1905); *Coxe, Cir. J.*, at p.548: "The Great
23 Western Co. (which the pulp company had organized and to which it had transferred its gas and
24 oil -wells and lands) was undoubtedly a mere creature of the pulp company, having no
25 independent business existence, and organized solely for the purpose of facilitating the business
26 of the latter. The Great Western Co. has no shadow of claim to the property in controversy, and to
27 permit it, or its president, or shareholders, to dispose of such property, is to sanction a fraud upon
28 the creditors of the pulp company." This case is followed by, *In re Marcella Cotton Mills*, 8 F. (2)
522 (M.D. Ala. N.D., 1925), where by means of corporate entity, stockholders attempted to come
in as creditors of an insolvent corporation. There it was said: "It is familiar that a court of equity
will not allow corporate fiction to destroy the rights of creditors, where fraud either in fact or in
law exists, and that the form or guise will be disregarded and the substance considered. * * * The
evidence shows that, as trustees of the Marcella Cotton Manufacturing Co., Thomas Raby and
Max Miller were mere subsidiaries or agents of Thomas Raby Inc., and as such can stand in no



1 is actually controlling the business of the subsidiary, "By whatever means the
2 conclusion of disregard corporate entity is arrived at, when it is reached it merely means
3 that under the facts of the case the person or corporation in control of the subservient
4 corporation is held liable for the acts or omissions of the subservient corporation."⁶⁰
5 "There is no question that under appropriate circumstances a parent corporation can set
6 up a subsidiary to promote the parent's purposes yet maintain a separate identity from the
7 subsidiary and avoid liability for the subsidiary's actions."⁶¹
8

9 Here, there is nothing that suggests that JoiBiz, LLC. is anything more than
10 Hawk's alter ego, as overwhelmingly suggested by the following facts:
11

- 12 1. JoiBiz conducts no physical transactions: everything occurs online, through
13 Hawk's equipment/software. JoiBiz uses the domain www.joibiz.com
14 which is owned by Hawk. JoiBiz's website, email, and all other IP services
15 utilize Hawk owned IP addresses, and are run by Hawk employees and
16 automated software on Hawk owned equipment.
- 17 2. JoiBiz has no ability to bill customers independent of Hawk: JoiBiz does
18 not send bills or invoices, nor does it have a billing system. Without a
19 telephony billing engine, the company cannot rate, charge, or route calls.
20 The billing engine, and platform which bills, rates, routes, and invoice
21 customers are all owned and operated by Hawk.
- 22 3. JoiBiz does not own Telecom equipment.⁶² Such equipment provides
23 telephone services including dial tone, and inbound and outbound voice,
24 fax, and sms. All these services/products are owned by Hawk and Hawk
25 VoIP LLC. Joe and others invested over a million dollars in the telecom
26 network and equipment owned by Hawk between 1999-2006 – obligations
27 that remain outstanding.

28 better position than Thomas Raby Inc.; for, if one corporation is wholly under the control of
another, the fact that it is a separate entity does not relieve the latter from liability for its acts, and
even when one corporation is the owner and proprietor of another, the latter will be regarded as a
mere trade name, and the real beneficiary cannot resort to the fiction of claiming in the name of
the latter to defeat bona fide creditors."

⁶⁰ *Jones v. Cranman's Sporting Goods et al.*, 142 Ga. App. 838 (1977).

⁶¹ *Kissun et al., v. Humana, Inc.*, 267 Ga. 419 (1997).

⁶² The importance of this point is discussed in note 17, supra.



1 4. JoiBiz Terms of Service (its contract with customers) is on its website,
2 located at <http://www.joibiz.com/tos.html>.⁶³ It provides clearly that the
3 "Agreement is between JoiBiz, a Hawk Communications LLC company
4 ("We", "Us", "Our" or "JoiBiz")." The about us on JoiBiz website
5 <http://www.joibiz.com/aboutus.htm> states that "Headquartered in Nevada,
6 JoiBiz, a Hawk Communications LLC company" furthermore it says "Since
7 1999, Hawk Communications LLC has built an unparallel IP and Voice
8 network, and has the technical experience not found with other IT
9 companies."⁶⁴

10 5. Hawk even owns the name "JoiBiz", in addition to the following brands and
11 trademarked names:

- 12 i. Joi Internet brand to use for dialup Internet service.
- 13 ii. JoiPhone brand telephony services for the residential
14 market.
- 15 iii. JoiBiz brand telephony services for the business and
16 SMB market.
- 17 iv. JOI is a registered trademark of Hawk Communications
18 LLC.
- 19 v. Hawk Communications has domain such as Joi Phone,
20 Joi Internet, JoiBiz.
- 21 vi. Hawk Communications has products such as Joi Fax, Joi
22 SMS, and Joi CRM.

23 In short, under no circumstances can JoiBiz operate independent of Hawk. As
24 such, it is nothing more than Hawk's alter ego – in other words, it is Hawk, which is
25 protected under the prenuptial agreement.

26 **e. Plaintiff Fails to State A Claim Upon Which Relief May Be Granted
27 With Respect to Paragraphs 15 and 16 Of Plaintiff's Complaint**

28 This court may dismiss Plaintiff's claims against Joe pursuant to NRCP
12(b)(5), which provides that a complaint may be dismissed if the pleading fails to state a

⁶³ See AE at 656-661.

⁶⁴ See AE 613-661.



1 claim on which relief may be granted. A motion based on NRCP 12(b)(5) must be
2 granted when the plaintiff would be entitled to no relief under the facts set forth in the
3 pleading.⁶⁵

4 In reviewing the pleadings, the court "is to determine whether...the challenged
5 pleading sets forth allegations sufficient to make out the elements of a right to relief."⁶⁶
6 "The test for determining whether the allegations of a complaint are sufficient to assert a
7 claim for relief is whether the allegations give fair notice of the nature and basis of a
8 legally sufficient claim and the relief requested."⁶⁷

9 In analyzing a motion to dismiss pursuant to NRCP 12(b)(5), the court "must
10 construe the pleading liberally and draw every fair intendment in favor of the [nonmoving
11 party]."⁶⁸ Although "[the nonmoving parties] are entitled to all reasonable factual
12 inferences that logically flow from the particularized facts alleged,...conclusory allegations
13 are no considered as expressly pleaded facts or factual inferences."⁶⁹ Plaintiffs are
14 required to comply with their duty to "set forth sufficient facts to demonstrate the
15 necessary elements of a claim for relief so that the defending party has adequate notice of
16 the nature of the claim and relief sought."⁷⁰

17 In *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), the Unites States Supreme Court
18 explained that the complaint must contain more than just conclusory accusations: "[t]o
19

20
21
22
23
24 ⁶⁵ See *Morris v. Bank of Am. Nev.*, 110 Nev. 1274, 1276 (1994) (citing *Edgar v. Wagner*, 101
25 Nev. 226, 228 (1985).

26 ⁶⁶ *Edgar*, 699 P.2d at 111.

27 ⁶⁷ *Vacation Village, Inc. v. Hitachi Am., Ltd.*, 110 Nev. 481, 484 (1994) (citing *Ravera v. City of*
28 *Reno*, 100 Nev. 68, 70 (1984).

⁶⁸ *Vacation Village*, 874 P.2d at 746 (quoting *Squires v. Sierra Nev. Educ. Found., Inc.*, 107 Nev.
902, 905, 823 P.2d 256,257 (Nev. 1991)) (internal quotations omitted).

⁶⁹ *In Re Amerco Derivative Litigation*, 127 Nev. 196,232, 252 P.3d 681, 706 (2011).

⁷⁰ *Western States Const. v. Michojf*, 108 Nev. 931,936, 840 P. 2d 1220, 1223 (1992).



1 survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted
2 as true, to 'state a claim to relief that is plausible on its face ... [a] claim only has facial
3 plausibility when the plaintiff pleads factual content that allows the court to draw the
4 reasonable inference that the defendant is liable for the misconduct alleged."13

5 Thus, pleadings that consist of "labels and conclusions," a "formulaic recitation of
6 the elements of a cause of action," "naked assertions devoid of further factual
7 enhancements," or "[t]hreadbare recitals of the elements of a cause of action, supported by
8 mere conclusory statements" will not suffice. *Id.* (internal citations and quotations
9 omitted). The United States Supreme Court has also explained that allegations consisting
10 merely of conclusory verbiage, such as naming the legal elements of a claim, is
11 insufficient to survive a motion to dismiss.14 Plaintiff's causes of action consistently fail
12 to meet the standards of pleading articulated in the *Twombly* and *Iqbal* line of cases.

13 As stated above, Joe challenges the following allegations contained in Plaintiff's
14 complaint:
15

16 During the course of the marriage, Defendant's personal conduct has
17 resulted in the waste, erosion, dissipation, depletion, loss, and/or destruction
18 of marital assets. Among other relief, Plaintiff, in accordance with equity
19 and justice, should be awarded a greater share of the marital estate based
20 upon Defendant's conduct which has caused the waste of marital property
21 and the loss of financial opportunities.⁷¹

22 ...

23 Plaintiff and Defendant are fiduciaries in the management and control of
24 community assets, and are fiduciaries as to each other's interests in the
25 community estate. By Defendant's conduct and behavior, he has breached
26 his community management and fiduciary duties, causing economic waste
27 to the community estate. In accordance with equity and justice, Plaintiff
should be aware a greater share of the marital estate based upon Defendant's
breach of his fiduciary duty.⁷²

28 ⁷¹ Plaintiff's Complaint, paragraph 15.

⁷² *Id.* paragraph 16.



1 These allegations consist of exactly the "labels and conclusions," "formulaic
2 recitation of the elements of a cause of action," "naked assertions devoid of further factual
3 enhancements," and "[t]hreadbare recitals of the elements of a cause of action, supported
4 by mere conclusory statements" that the Iqbal court held will not suffice. Indeed, the
5 entirety of the complaint, but particularly these allegations, are bereft of assertions of fact.
6
7 "To survive a motion to dismiss, a complaint must contain sufficient factual matter,
8 accepted as true, to 'state a claim to relief that is plausible on its face ... [a] claim only has
9 facial plausibility when the plaintiff pleads factual content that allows the court to draw
10 the reasonable inference that the defendant is liable for the misconduct alleged." Because
11 there are absolutely no factual assertions in the challenged allegations, or in the entirety of
12 the complaint, and because the allegations are conclusory statements and threadbare
13 recitations of a cause of action, Plaintiff has failed to state a claim upon which relief may
14 be granted. As such, this Court should dismiss those claims.
15

16 **III. Conclusion**

17 This Court misapprehended equity jurisdiction. In so doing, it deprived Joe of the
18 benefit of a bargain fairly obtained. Now, Joe is mired in litigation over assets he rightfully
19 thought were protected. As such, this Court must reconsider its decision on the issue of the
20 premarital agreement – after this Court closely considers what equity jurisdiction is and
21 what grounds this Court has for invoking its equitable authority. Upon close consideration
22 of the discussion concerning equity jurisdiction, supra, this Court must enforce the
23 agreement in whole.
24
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27
28

1 In the alternative, this Court should enter summary judgment against Plaintiff
2 concerning the marital asset JoiBiz, LLC and decide as a matter of law that JoiBiz, LLC is
3 nothing more than Hawk Communication's alter ego.
4 Finally, this Court should decide that the allegations contained in paragraphs 15 and 16 of
5 Plaintiff's complaint must be dismissed for failure to state a claim up which relief may be
6 granted because, in large part, the complaint, including the challenged provisions, are bereft
7 of factual content.
8

9 For the foregoing reasons, Joe request this Court grant his motion in its entirety.

10 DATED this 26th day of March, 2018.
11

12 /s/ Alex Ghibaud

13 ALEX B. GHIBAUDO, Nevada Bar No. 10592

14 **ALEX B. GHIBAUDO, PC**

15 703 S. 8th Street

16 *Attorney for Defendant*
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ALEX B. GHIBAUDO, PC

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MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

Patricia Egasi
Plaintiff/Petitioner
v.
Youn Egasi
Defendant/Respondent

Case No. D-16-540174-D
Dept. _____

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

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

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

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

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

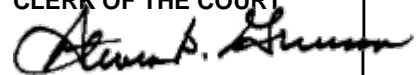
- ☒ **\$0** The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
- ☒ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
 - ☐ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
- OR-
☐ **\$129**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

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

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

Party filing Motion/Opposition: Youn Egasi Date 3/24/18
Signature of Party or Preparer [Signature]

EXHIBIT 5



1 NEOJ

2
3
4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6
7 PATRICIA EGOSI,

8 Plaintiff,

9 v.

CASE NO. D-16-540174-D

DEPT NO. Q

10
11 YOAV EGOSI,

12 Defendant.

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

16 TO: ALL PARTIES AND/OR THEIR ATTORNEYS

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

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

23
24 John Blackmon, Esq.

25 Alex Ghibauda, Esq.

26
27 /s/ Kimberly Weiss

28 Kimberly Weiss
Judicial Executive Assistant
Department Q

Steven D. Grierson

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ORDR

DISTRICT COURT

CLARK COUNTY, NEVADA

PATRICIA EGOSI,

Plaintiff,

v.

YOAV EGOSI,

Defendant.

CASE NO. D-16-540174-D

DEPT NO. Q

Dates of Hearing: June 13, 2017
June 14, 2017

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERS

This matter came before the above-entitled Court for evidentiary proceedings on June 13, 2017 and June 14, 2017 on Plaintiff's Notice of Motion and Motion to Invalidate the Prenuptial Agreement, for a Business Valuation, for Spousal Support Arrears, and for Attorney's Fees and Costs (Jan. 5, 2017) (hereinafter referred to as Plaintiff's "Motion to Invalidate"), and Defendant, Yoav Egosi's, Motion to Validate the Prenuptial Agreement (Jun. 9, 2017) (hereinafter referred to as Defendant's "Motion to Validate").¹ Plaintiff, Patricia Egosi (hereinafter "Plaintiff"), appeared with

¹The Court noted the unique circumstances surrounding the scheduling of these evidentiary proceedings in light of the posture of the case. Although custody should be the initial issue adjudicated by the Court, evidentiary hearing dates were moved to accommodate schedules. Moreover, this Court recognized that the issue of the validity of the Prenuptial Agreement was hindering and/or stalling discovery efforts. Both parties stipulated to the manner in which these proceedings were scheduled.

1 her attorney of record, Emily McFarling, Esq., and Defendant, Yoav Egosi, appeared
2 through his attorney of record James Jimmerson, Esq. This Court had the opportunity
3 to consider the evidence admitted at the time of the evidentiary hearing, including the
4 testimony of the witnesses and the documentary evidence offered and admitted into
5 the record.²

6
7
8 The witnesses included: Plaintiff, Defendant, Nicole Rawley, David Plotkin and
9 Shiel Edlin, Esq. This Court had the opportunity to evaluate issues of credibility and
10 demeanor of the witnesses. Based thereon, and good cause appearing, the Court
11 FINDS and CONCLUDES as follows:³

12 FINDINGS OF FACT

13
14 1. The Prenuptial Agreement at issue was executed in Atlanta, Georgia. The
15 validity of the Prenuptial Agreement should be adjudicated under Georgia law pursuant
16 to the terms thereof. Defendant has the burden of proof to validate the terms of the
17 Prenuptial agreement.
18
19

20 ²Certain witnesses were excluded from testifying as a result of "notice" deficiencies that
21 were noted during the hearing. Although the Court offered more latitude with respect to the
22 timeliness of disclosures regarding the admission of documentary proof, objections to the
admission of certain exhibits were sustained.

23 ³This Court has inherent authority to construe and issue its orders. The Court's
24 decision on this matter (including findings and conclusions) was issued orally at the conclusion
25 of the proceedings on June 14, 2017. At that time, Defendant's counsel was directed to
26 prepare the findings, conclusions and orders from the proceedings. Both parties have
27 undergone changes in representation throughout the pendency of this highly contested
28 litigation. Indeed, current counsel for both parties was not involved in these evidentiary
proceedings. Proposed Findings of Fact, Conclusions of Law and Final Order were submitted
to the Court on August 7, 2018. Upon submission, and considering the lengthy delay in
Defendant submitting the same, this Court reviewed the record, including a renewed review
of the evidentiary proceedings. Based upon this review, these Findings of Fact, Conclusions
of Law and Orders are issued.

1
2 2. At prior hearings, this Court offered observations regarding the Prenuptial
3 Agreement based on the offers of proof (on the premise that the offers of proof would
4 be proven at the time of the evidentiary hearing). Based on those offers of proof, this
5 Court issued preliminary orders regarding attorney's fees to be paid by Defendant to
6 Plaintiff in advance of the evidentiary proceedings. Ultimately, the evidence offered
7 by Plaintiff failed to credibly establish the facts set forth in the offers of proof that she
8 had provided the Court in her papers. The offers of proof made through the parties'
9 respective papers (motions, opposition, replies) are important as they relate to the
10 parties' credibility. Those offers of proof tie into some of the factors that this Court
11 is required to consider under Georgia law.
12
13

14 3. Plaintiff made the following offers of proof in her papers:
15

- 16 a. Defendant mentioned to Plaintiff that he wanted a prenuptial agreement;
- 17 b. Plaintiff did not know the meaning of a prenuptial agreement;
- 18 c. Plaintiff at first refused to sign a prenuptial agreement;
- 19 d. The prenuptial agreement was a document that was drafted in its entirety either by Defendant or a representative of Defendant;
- 20 e. Defendant directed Plaintiff to sign the prenuptial agreement knowing that Plaintiff was not fluent in English and did not have legal counsel;
- 21 f. Plaintiff was presented the prenuptial agreement on the same date that she signed the prenuptial agreement;
- 22 g. Plaintiff never spoke to counsel and was not informed that she should retain counsel;
- 23 h. Indeed, at the time of signing the prenuptial agreement, Plaintiff could neither read nor write English; and
- 24 i. Plaintiff worked as a stripper, had limited education and worked for the business as a basic receptionist.
25
26

27 4. As a result of those offers of proof, this Court provided some level of
28 direction to the parties (or prejudgment of the issues) at hearings held prior to the

1
2 evidentiary hearing. This direction was premised on the evidence supporting the offers
3 of proof. The evidence actually adduced during the evidentiary hearing did not support
4 those offers of proof. Rather, based on the testimony that was offered, and this Court's
5 credibility determinations, this Court finds that:

- 6
- 7 a. Plaintiff did understand *in general* the meaning of the prenuptial
8 agreement. Further, she understood the nature and purpose of
9 such documents in her homeland of Brazil. Plaintiff had a general
10 understanding of the prenuptial agreement prior to having been
11 presented the same.
- 12 b. There was some involvement and participation by both parties in
13 the drafting of the prenuptial agreement. The form was generated
14 from an internet site both in June and then in August. *See* Exhibits
15 ZZ and LLL. Because Defendant was more familiar with the
16 process, he was the driving force in the preparation of the
17 agreement. It was clear nevertheless that there was information
18 that Plaintiff necessarily provided for the preparation of the
19 prenuptial agreement.
- 20 c. The Court recognizes that English is not Plaintiff's native tongue.
21 She maintains a distinct accent even today. She has developed
22 some fluency in the English language. Plaintiff's fluency or
23 proficiency in English was not as great at the time of the
24 prenuptial agreement as it is today. The Court does not accept
25 Plaintiff's offer, however, that Plaintiff was completely incapable
26 of reading or writing in English. That she could read and write
27 the English language was demonstrated, in part, by emails written
28 and sent by Plaintiff to Defendant. It appeared to be "broken"
English in some respects, which is still the case today with respect
to Plaintiff's fluency. Although Plaintiff acknowledged that she
speaks three languages (Spanish, Portuguese and English)
Defendant is more proficient and fluent in the English language
than is Plaintiff.
- d. Plaintiff's offer of proof that the first time she saw the prenuptial
agreement was the day she signed the agreement is untrue.
Plaintiff actually did see an agreement that was not materially
different than the one she signed prior to August 2008. The only
changes from the June 2008 draft was the removal of the "child"

1
2 section and the addition of an asset and debt statement. The
3 Court had been led to believe that the first time that Plaintiff saw
4 any prenuptial agreement was in August 2008.

5 e. Prior to executing the agreement, Plaintiff spoke to an attorney
6 licensed to practice law in Florida. That attorney advised Plaintiff
7 not to sign the agreement, despite the fact that Plaintiff alleged
8 (without any corroboration or proof) that the attorney was aligned
9 with Defendant. Although the attorney was the girlfriend of a
10 friend of the Defendant, the credible testimony established that
11 this particular attorney did not think highly of Defendant and
12 advised against signing the agreement. Moreover, Defendant was
13 not aware that the Florida attorney's advice was sought.

14 f. The Florida attorney that advised the Plaintiff about the
15 prenuptial agreement was qualified to give advice in general about
16 prenuptial agreements, and that general advice is sufficient for
17 Plaintiff to understand her rights.

18 g. Plaintiff was educated, having graduated from the equivalent of
19 high school in Brazil and completing three (3) years of college.
20 Although this Court recognizes that the educational systems may
21 be different between countries, the notion that Plaintiff was largely
22 uneducated was not credible. In addition, Plaintiff had more work
23 experience than a mere receptionist.

24 h. Plaintiff worked at the business, Hawk Communication, that was
25 disclosed in the prenuptial agreement, she had access to
26 information concerning the business's finances, was aware of the
27 lifestyle the income generated by the business afforded the parties,
28 was familiar with the home that the Defendant was able to afford
due to the income generated by the business, and therefore had
adequate knowledge of the value of the assets disclosed by the
Defendant.

i. The disclosures made by Defendant were sufficient and timely
because, whether or not full disclosure of a specific dollar amount
attached to each asset was included, it was irrelevant to the
Plaintiff because she was in love, wanted to prove her love to the
Defendant, and it was inconsequential to the Plaintiff whatever
value the Defendant attached to the assets disclosed.

1
2 5. Overall, although this Court has reservations regarding both parties'
3 credibility based on the testimony offered during the evidentiary hearing, Plaintiff's
4 testimony was less credible as to the specific issues before the Court, taking into
5 consideration the offers of proof made by both parties prior thereto.
6

7 6. That the fact that the parties had a minor child during the marriage does
8 not qualify as changed circumstances for purposes of construing the prenuptial
9 agreement.
10

11 CONCLUSIONS OF LAW

12 Based upon the foregoing Findings of Fact, the Court makes its Conclusions of
13 Law as follows:

14 1. The choice of law provision of the prenuptial agreement provides that
15 Georgia law governs the enforcement of the prenuptial agreement. Based on the
16 application of Georgia law, Plaintiff failed to demonstrate that the prenuptial
17 agreement was the result of fraud, duress, mistake, misrepresentation, or non-disclosure
18 of material facts.
19
20

21 2. Under Georgia law, the review of antenuptial or prenuptial agreements is
22 a matter of case law. In this regard, it is not a matter of statutory interpretation. To
23 assist the Court, Defendant offered the testimony of Shiel Edlin, Esq., an attorney
24 licensed in the State of Georgia, regarding the application of Georgia law. Mr. Edlin's
25 testimony provided assistance to the Court in confirming this Court's understanding
26 of Georgia law (as previously briefed by the parties).
27
28

1
2 3. This Court reviewed *Mallen v. Mallen*, 280 Ga. 43, 622 S.E.2nd 812
3 (2005), *Alexander v. Alexander*, 279 Ga. 116, 610 S.E.2nd 48 (2005), *Kwon v. Kwon*,
4 333 Ga. App. 130, 775 S.E.2nd 611 (2015), and *Scherer v. Scherer*, 249 Ga. 635,
5 640(2), 292 S.E.2d 662 (1982). "As a matter of public policy, antenuptial agreements
6 made in contemplation of divorce are not absolutely void in Georgia." *Alexander v.*
7 *Alexander*, 279 Ga. 116, 117, 610 S.E.2nd 48, 49 (2005). Unlike Nevada (which has
8 adopted the Uniform Premarital Agreement Act), the review of prenuptial agreements
9 is a matter of case law in Georgia. The court in *Alexander* cited *Scherer v. Scherer*, 249
10 Ga. 635, 640(2), 292 S.E.2d 662 (1982), that identified the three factors or criteria the
11 Court should look at for purposes of determining enforceability. The three criteria
12 included: (1) Whether the agreement was procured by fraud, duress or mistake, or
13 through misrepresentation or nondisclosure of material facts; (2) whether the
14 agreement is unconscionable; and (3) whether facts and circumstances changed since
15 the agreement was executed, so as to make its enforcement unfair and unreasonable.
16 *Id.* at 641(3), 292 S.E.2d 662. Whether an agreement is enforceable in light of these
17 criteria is a decision made in the trial court's sound discretion. *See Adams v. Adams*, 278
18 Ga. 521, 522-523(1), 603 S.E.2d 273 (2004). Under Georgia law there is no specific
19 requirement that a specific list or inventory of assets and debts or an attached financial
20 statement accompany a prenuptial agreement.
21

22 4. Based on the evidence admitted at the time of trial, Defendant satisfied
23 his burden of demonstrating that the prenuptial agreement was not procured by fraud,
24 duress, mistake, or through misrepresentation. This Court's primary concern relates
25

1 to the potential non-disclosure of material facts. In this regard, the disclosure of assets
2 was limited and the timing thereof took place on the date of execution of the
3 agreement. Although Plaintiff had participated in the drafting of the agreement, the
4 disclosure of assets by Defendant was made after this participation. As a matter of
5 equity, this creates a basis under Georgia law to limit the application of the agreement
6 to only those assets specifically disclosed. On the date of execution, there was clearly
7 a disclosure of specific assets that included a condominium located at 2881 Peachtree
8 Road, Unit 1101, Atlanta, Georgia, the 2005 Mercedes SL55AMG, 100% shares of
9 Hawk Communications (dba Joy Phone), and 100% shares of stock in Hawk Voip LLC.
10 Separate debts included \$500,000 and revolving credit of \$130,000. Although there
11 does not appear to be a specific disclosure requirement under Georgia law (such a
12 disclosure is "preferable"), this is an equitable factor that should limit the application
13 of the prenuptial agreement to those specific assets that were disclosed.⁴ With the
14 foregoing limitations, Defendant satisfied his burden to demonstrate that there was
15 sufficient disclosure of material facts.

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21 5. Based on this Court's findings and conclusions, the prenuptial agreement
22 is not unconscionable – either procedurally unconscionable or substantively
23 unconscionable. From a substantive perspective, protecting and preserving assets
24 owned prior to a marriage and protecting future stream of income is not uncommon or
25

26
27 ⁴Defendant argued that the limited and late disclosure should be disregarded because
28 Plaintiff made it clear that she would have signed the agreement without any disclosure. She
was in love with Defendant and desired to marry him and "prove" her love for him. As a
matter of equity, this Court is not persuaded that Defendant's limited and late disclosure
should be completely disregarded.

1 unusual. Indeed, if the Court found or concluded that the terms set forth in the
2 prenuptial agreement were substantively unconscionable, virtually every prenuptial
3 agreement should be voided. Nevertheless, and again taking into consideration the late
4 disclosure of an inventory or listing of assets, such a finding and conclusion is limited
5 to the disclosures attached to the agreement. It is not procedurally unconscionable
6 because there was a separation of time between the first time Plaintiff saw the
7 prenuptial agreement and the time she executed it (a total of six (6) weeks).
8 Considering everything that transpired in between and the fact that the prenuptial
9 agreement did not become enforceable until the parties actually married, it was not
10 procedurally unconscionable.
11

12 6. The final prong of the analysis, *supra*, is the burden of proof to
13 demonstrate that taking into account all relevant facts and circumstances, including
14 changes beyond the parties' contemplation when the agreement was executed and
15 enforcement of the antenuptial agreement would be neither unfair nor unreasonable.
16 Pursuant to *Alexander*, *supra*, and the corroborating testimony of Mr. Edlin, this final
17 factor allows the court some discretion. In this regard, the Court has discretion to
18 approve the agreement in whole, in part, or refuse to approve it as a whole.⁵ Defendant
19 has satisfied this burden to the extent that the provisions of the agreement are limited
20 to the preservation as separate property those assets that were specifically disclosed.
21 Additional equitable factors include Defendant's superior financial position at the time
22
23
24
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28 ⁵This Court does not find that the fact that the parties had a child (as was the case in
Alexander) was beyond the contemplation of the parties.

1 of the marriage as well as the fact that, although Plaintiff sufficiently understood the
2 agreement, Defendant had a superior grasp of the terms and language of the prenuptial
3 agreement.
4

5 7. In summary, the only assets the Court views as being protected by the
6 prenuptial agreement are those assets listed in the exhibit attached to the prenuptial
7 agreement. Moreover, the parties have waived the right to pursue spousal support
8 pursuant to the terms of the prenuptial agreement. Nevertheless, the terms of the
9 prenuptial agreement do not preclude the Court from preliminary or temporary
10 support, particularly to the extent the Plaintiff could qualify for public benefits and be
11 a public charge.
12
13

14 Based on the foregoing Findings and Conclusions, and good cause appearing
15 therefore,
16

17 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the prenuptial
18 agreement is valid *in part*.
19

20 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the only
21 assets protected by the prenuptial agreement are those assets specifically listed in the
22 exhibit attached to the prenuptial agreement.
23
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...
...
...
...
...

1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that permanent
2 alimony is not available to the parties according to the terms of the prenuptial
3 agreement, but temporary maintenance pending trial is available.
4

5 DATED this 4th day of September, 2018.
6

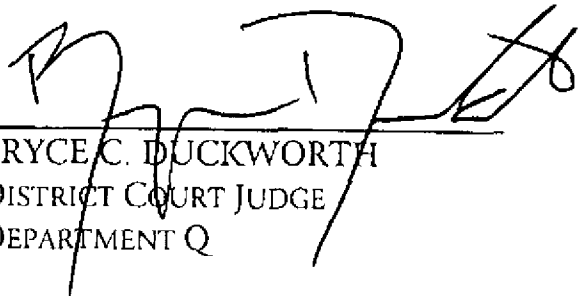
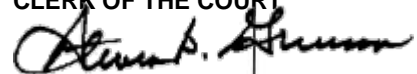
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9 BRYCE C. DUCKWORTH
10 DISTRICT COURT JUDGE
11 DEPARTMENT Q
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EXHIBIT 6



MOT

Alex Ghibaud, Esq.

Bar No. 10592

ALEX B. GHIBAUDO, PC.

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Attorney for Defendant

**DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA**

PATRICIA EGOSI,

Plaintiff,

vs.

YOAV EGOSI,

Defendant.

Dist. Ct. No.: D-16-540174-D

Dist. Ct. Dept.: Q

**MOTION TO CERTIFY THE
ORDER FILED SEPTEMBER
7, 2018 AS FINAL UNDER
NRCP 54(b) AND MOTION TO
STAY THESE
PROCEEDINGS PENDING
APPEAL**

HEARING REQUESTED

**NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS
MOTION/COUNTERMOTION WITH THE CLERK OF THE COURT AND TO
PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN
TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION/COUNTERMOTION.
FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE
COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS
MOTION/COUNTERMOTION MAY RESULT IN THE REQUESTED RELIEF
BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE
SCHEDULED HEARING DATE**

Comes Now Defendant, Yoav Egosi ("Joe"), through his attorney
Alex Ghibaud, Esq. of the Law Office of Alex B. Ghibaud, PC, and files





1 the above titled motion requesting the following relief:

2 **RELIEF REQUESTED**

- 3 1. That this court certify the judgment entered on September
4 7, 2018 as final;
5 2. That this court stay these proceedings pending
6 Defendant's appeal; and
7 3. For such other relief as this court deems just and equitable.

8 This motion is based upon the following Memorandum of Points and
9 Authorities, including the affidavits and documents previously filed, the
10 papers and pleadings on file herein, and any oral argument permitted at the
11 time of the hearing.

12 DATED this 17th day of September, 2018.

13 /s/ Alex Ghibaudo

14 ALEX B. GHIBAUDO, Nevada Bar No. 10592

15 **ALEX B. GHIBAUDO, PC**

16 703 S. 8th Street

17 Las Vegas, Nevada 89101

18 Telephone: (702) 978-7090

19 Facsimile: (702) 924-6553

20 Email: alex@abgpc.com

21 *Attorney for Defendant*
22
23
24
25
26
27
28

NOTICE OF MOTION

TO: ALL PARTIES & COUNSEL OF RECORD

NOTICE IS HEREBY GIVEN that the undersigned will bring the above and foregoing Motion on for hearing on the **18th** day of **October**, 2018, at the hour of ____m. in Department Number Q of the above-entitled Court, or as soon thereafter as counsel may be heard.

DATED this 17th day of September, 2018.

/s/ Alex Ghibaud

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Attorney for Defendant

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Memorandum of Points and Authorities

V. Introduction

On June 11, 2018 Joe filed his notice of appeal contesting this court's decision denying his motion to reconsider. However, an order denying a motion to reconsider is not substantively appealable. The challenged decision stemmed from an evidentiary hearing held on June 13 & 14, 2017 concerning the validity of the parties' prenuptial agreement. No order was ever reduced to writing or entered by this court memorializing this court's decision before Joe's motion was filed. On September 7, 2018, this court entered its order and notice of entry of the order from the June 13 & 14, 2017 evidentiary hearing.

On September 13, 2018, the Nevada Supreme Court entered an order to show cause why the pending appeal on the decision concerning the prenuptial agreement should not be dismissed. In its order, the Court stated that "our preliminary review of the docketing statement and the documents submitted to this court pursuant to NRAP 3(g) reveal...[that] it appears that the judgment or order designated in the notice of appeal is not substantively appealable." The Court refers to the initial notice of appeal referencing this court's denial of Joe's motion to reconsider.

That defect was cured when, on September 10, 2018 Joe filed an amended notice of appeal referencing this court's order and notice of entry of order filed September 7, 2018. However, an additional procedural defect may exist: the order entered September 7, 2018 may be considered an interlocutory order depriving the Court of jurisdiction to consider Joe's appeal. As such, Joe now requests that this court certify that judgment as final pursuant to NRCP 54(b).



1 **VI. Summary of facts and procedural history**

2 On September 26, 2016 Plaintiff filed her complaint for divorce. On
3 October 16, 2016, Joe filed his answer and counter-claim. In his counter-
4 claim, Joe alleged that the prenuptial agreement the parties entered into in
5 Georgia prior to their marriage should be enforced. Paragraph 9 of Joe's
6 counterclaim stated:

7 *Defendant and Plaintiff entered into a Prenuptial Agreement*
8 *("Agreement") prior to their marriage on August 13, 2008; that*
9 *said Agreement complies fully with the requirements of NRS*
10 *123A and is valid and enforceable Agreement in all respects. A*
11 *copy of said Agreement is attached hereto as Exhibit "A". The*
12 *Court shall confirm the terms of the parties' Agreement.*

13 On October 28, 2016, Plaintiff filed her reply to Joe's answer and
14 counterclaim. There, Plaintiff denied paragraph 9, referenced above. On
15 January 5, 2017, Plaintiff filed her motion entitled "Plaintiff's notice of
16 motion and motion to invalidate the prenuptial agreement, for a business
17 valuation, for spousal support arrears, and for attorney's fees and costs."

18 In that motion, Plaintiff alleged that "The Parties' Prenuptial
19 Agreement is Invalid Under Georgia Law and Does Not Satisfy the Scherer
20 Test." On February 9, 2017, Joe filed his opposition to Plaintiff's motion.
21 On June 13 & 14, 2017, an evidentiary hearing on the issue of the parties'
22 prenuptial agreement. At the conclusion of that evidentiary hearing, this
23 upheld the prenuptial agreement in part, but invalidated key portions of the
24 agreement, namely that certain assets acquired after the marriage were
25 community property, despite provisions of the agreement that dictate a
26 different result. To reach that decision, this court took evidence, primarily in
27 the form of live testimony from various witnesses, that revealed events
28 which occurred prior to the parties' marriage.



1 On April 24, 2018, Joe filed his motion requesting that this court
2 reconsider its decision regarding the prenuptial agreement. On May 29,
3 2018, that motion was denied. On July 10, 2018, this court vacated the trial
4 on financial matters then pending in light of Joe's notice of appeal, filed
5 June 11, 2018. On September 7, 2018, this court entered its order and notice
6 of entry of order from the June 13 & 14, 2017 evidentiary hearing on the
7 validity of the parties' prenuptial agreement. This motion follows.

8 **VII. Discussion**

9 **a. This court should certify its order entered September 4,**
10 **2017 as final pursuant to NRCP 54(b)**

11 **i. Governing law – NRCP 54(b)**

12 NRCP 54(b) provides that a judgment or order of the district court
13 which completely removes a party or a claim from a pending action may be
14 certified as final "only upon an express determination that there is no just
15 reason for delay...."¹ Thus, the rule clearly contemplates certification of a
16 judgment resolving a claim.²

17 **ii. The district court may certify a judgment as final**
18 **under NRCP 54(b) where claims for relief are not**
19 **closely related**

20 This court may certify a judgment as final where there is no just
21 reason for delaying such certification. If there is just reason for the delay,
22 then certification is inappropriate: there can be no finding that there is no
23 just reason for delay if the claims asserted in an action, albeit separate, are so
24 closely related that the Nevada Supreme Court must necessarily decide
25 important issues pending in the district court in order to decide the issues

26
27 ¹ *Hallicrafters Co. v. Moore*, 102 Nev. 526, 728 P.2d 441, 442 (Nev., 1986).

28 ² *Mallin v. Farmers Ins. Exchange*, 106 Nev. 606, 797 P.2d 978, 981 (Nev., 1990).



1 appealed. In such a case, certification of an order deciding some but not all
2 of those claims as final is an abuse of the district court's discretion.³

3 The analysis depends on defining when claims for relief are “closely
4 related.” Concisely stated, where claims require proof of facts and elements
5 not necessary to the proof of other claims, the claims for relief are not
6 closely related;⁴ claims for relief are closely related where it would
7 necessarily decide the law of the case on any claims still pending in the
8 district court.⁵ In either case, consideration of an appeal would result in
9 “piecmeal litigation” rendering certification of a judgment as final
10 inappropriate.⁶

11 **iii. Joe’s claim that the parties’ prenuptial agreement is**
12 **valid is not closely related to other claims for relief in**
13 **the parties’ divorce action**

14 Here, the parties made various claims for relief arising from a single
15 transaction: their marriage. The claims for relief included claims related to
16 custody of the minor child at issue, the division of assets and debts, and
17 related relief typical of any divorce proceeding. Not typical of most
18 divorces, one of Joe’s claims for relief was that this court validate the
19 parties’ prenuptial agreement. The claim related to the prenuptial agreement
20 is not closely related to claims for relief concerning custody, assets, and
21 debts.

22 First, the elements of Joe’s cause of action concerning the parties’
23 prenuptial agreement are distinct from a determination of custody, which, at

24 ³ *Hallicrafters Co. v. Moore*, 102 Nev. 526, 728 P.2d 441, 443 (Nev., 1986);
25 citing *Mid-Century Ins. Co. v. Cherubini*, 95 Nev. 293, 593 P.2d 1068
26 (1979); *Las Vegas Hacienda v. G.L.M.M. Corp.*, 93 Nev. 177, 561 P.2d
27 1334 (1977).

28 ⁴ *Id.* at 442.

⁵ *Id.*

⁶ *Id.*



1 its foundation, requires consideration of a child's best interests, and the
2 division of assets and debts, which are considered community property
3 absent compelling circumstances. Indeed, here, the elements of Joe's cause
4 of action related to the prenuptial agreement depend on a consideration of
5 Georgia law. Specifically, whether: 1) execution of the prenuptial agreement
6 was not the result of fraud, duress, mistake, misrepresentation, or
7 nondisclosure of material facts; 2) the agreement is not substantively
8 unconscionable; and 3) considering the totality of the circumstances existing
9 at the time of the execution of the prenuptial agreement, enforcement of that
10 agreement would not be unfair. Thus, the claims for relief are distinct.

11 Second, the facts necessary to determine whether the elements of the
12 cause of action concerning the validation of the prenuptial agreement are
13 satisfied are markedly different from all other causes of action. The elements
14 of the claim enunciated above require a consideration of facts and
15 circumstances existing prior to the parties' marriage while the other claims
16 for relief, including the division of assets and debts, and custody of the
17 minor children, indeed all other claims for relief, depend on facts and
18 circumstances existing or arising after the marriage. **Thus, the claims for**
19 **relief in this matter are not closely related.**

20 Furthermore, there are no pending claims for relief by other parties
21 still pending in the district court. Therefore, there is no danger that
22 consideration of Joe's appeal would trigger the law of the case doctrine,
23 rendering other claims still pending in the district court uncertain. In other
24 words, there is no way that certification of the challenged order as final
25 would result in parallel litigation at the district court and the appellate court
26 by multiple parties on closely related claims. As such, this court should
27 certify the judgment as final.
28



1 **b. A stay pending appeal is appropriate in this matter**

2 Under N.R.C.P. 62(d), proceedings to enforce a judgment may be
3 stayed in this court by giving a supersedeas bond. The test applied in
4 considering whether to grant a stay were set forth in *Fritz Hansen*, and is
5 reiterated in NRAP 8(c):

- 6 • *Whether the object of the appeal/writ petition will be defeated if*
7 *the stay is denied;*
8 • *Whether appellant/petitioner will suffer irreparable or serious*
9 *injury if the stay is denied;*
10 • *Whether respondent/real party in interest will suffer irreparable*
11 *or serious injury if the stay is granted; and*
12 • *Whether appellant/petitioner is likely to prevail on the merits.*

13 *Fritz Hansen A/S v. Dist. Ct.*, 116 Nev. 650, 6 P.3d 982 (2000); see also,
14 e.g., *Wiese v. Granata*, 110 Nev. 1410, 887 P.2d 744 (1994); *State ex rel.*
15 *Pub. Serv. Comm'n v. First Judicial Dist. Court ex rel. Carson City*, 94 Nev.
16 42, 574 P.2d 272 (1978). Additionally, when confronted with a motion to
17 reduce the bond amount or for alternate security, the district court should
18 apply the factors considered by the 7th Circuit Court of Appeals, as
19 delineated in *Dillon v. City of Chicago*, and adopted in *Nelson v. Heer*.⁷

20 The purpose of security for a stay pending appeal is to protect the
21 judgment creditor's ability to collect the judgment if it is affirmed by
22 preserving the status quo and preventing prejudice to the creditor arising
23 from the stay.⁸ However, a supersedeas bond should not be the judgment
24 debtor's sole remedy, particularly where other appropriate, reliable
25 alternatives exist. **Thus, the focus is properly on what security will**

26
27
28 ⁷ *Nelson v. Heer*, 121 Nev. 832 (2005).

⁸ *Id.*



maintain the status quo and protect the judgment creditor pending an appeal, to include waiving the bond entirely.

In reflecting on the purposes of security for a stay, the Seventh Circuit, in *Dillon v. City of Chicago*, set forth five factors to consider in determining when a full supersedeas bond may be waived and/or alternate security substituted:

- *the complexity of the collection process;*
- *the amount of time required to obtain a judgment after it is affirmed on appeal;*⁹
- *the degree of confidence that the district court has in the availability of funds to pay the judgment;*
- *whether the defendant's ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and*
- *whether the defendant is in such a precarious financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position.*

i. Discussion concerning the *Fritz Hansen* test

1. The Object of the Appeal

This factor addresses whether an appeal would be rendered moot if an order appealed from was allowed to go into effect. The question is whether enforcing the judgment appealed from would destroy the subject matter of the appeal. A stark example in a divorce matter would be the division and sale of a separate property home as community property – obviously failing to stay a judgment compelling that result would destroy and defeat the purpose of the appeal: i.e., keeping the separate property home. Put another

⁹ In considering the second factor, the district court should take into account the length of time that the case is likely to remain on appeal. See, *Nelson v. Heer*, 121 Nev. 832 (2005).



1 way, the question is whether a stay is necessary to preserve the issue on
2 appeal: specifically, whether the “object of the appeal” is imperiled by
3 enforcement of the underlying order, or the appeal would be rendered moot
4 by such enforcement.

5 Here, as stated above, the purpose of the claim was to validate a
6 prenuptial agreement that preserved assets acquired after marriage as Joe’s
7 sole and separate property, pursuant to the terms of the prenuptial
8 agreement. If the district court proceedings are not stayed and a judgment is
9 entered dividing that property, or any proceedings from its sale or
10 dissolution, then the object of the appeal would be destroyed.

11 **2. “Irreparable Harm” – Appellant**

12 In *Hansen*, the Court explicitly held that litigation expenses “are
13 neither irreparable nor serious.” The question, necessarily, is whether any
14 harm befalling Appellants is so irreparable that reversal on appeal would not
15 ameliorate it. Here, again, the harm is the loss of a business and/or the
16 proceeds from its operation or sale and all the good will attached to it. That
17 is irreparable harm.

18 **3. “Irreparable Harm” – Respondent**

19 Though, in a theoretical sense, the relative interests of the parties are
20 equal when the issue is strictly monetary, money may not always be a zero-
21 sum game. Where the parties’ situations are vastly different, even money
22 changing hands could have vastly different impacts on the parties’ relative
23 welfare during the pendency of an appeal – an inconvenience to one could
24 be a matter of life and death to the other. In this case, Joe is supporting
25 Plaintiff through periodic payments in temporary alimony. Therefore,
26 staying the proceedings pending appeal will not unduly prejudice Plaintiff.
27
28



4. Likelihood of Prevailing

The Nevada Supreme Court held in *Hansen* that when moving for a stay pending an appeal or writ proceeding, a movant must “present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay.” Here, there is a high likelihood of success on the merits. In previous hearings on Joe’s motion to reconsider the challenged decision, this court noted that it may have ruled otherwise if it had the briefing undersigned counsel provided concerning the issue. The court noted that there are issues ripe for appeal. Given this court’s misunderstanding of Georgia law, the likelihood that errors of law were made, as pointed out in great detail in Joe’s motion to reconsider, is great. Thus, the likelihood of prevailing on appealable is equally great.

VIII. Conclusion

For the foregoing reasons, Joe requests this court grant him the relief requested in its entirety.

DATED this September 17th, 2018.

/s/ Alex Ghibaudo

ALEX B. GHIBAUDO, Nevada Bar No. 10592

ALEX B. GHIBAUDO, PC

703 S. 8th Street

Attorney for Defendant



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of September, 2018, I served a true and correct copy of the foregoing **MOTION**, via the Court designated electronic service, addressed to the following:

John Blackmon

jblackmon@blackmonlawgroup.com

/s/ Joslyne Simmons

An Employee of ALEX B. GHIBAUDO, P.C.

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

Patricia Epsi
Plaintiff/Petitioner

v. Yoav Epsi
Defendant/Respondent

Case No. D-16-54074-D

Dept. Q

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

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

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

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

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

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

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

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

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

Party filing Motion/Opposition: Yoav Epsi Date 9/18/18

Signature of Party or Preparer

