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Docket 61415 Document 2012-28608

1 opportunity to fully brief his position at the trial court, and that briefing is part of the
2 existing record.

3 As this Court is well aware, the right to appeal is *not* the right to re-argue a
4 case, but to point out error in the judgment from the District Court. Since the issues
5 presented by Scotlund are already fully briefed in the record, full briefing in this
6 Court is a waste of resources – both judicial and those of the Respondent.

7 Additionally, Scotlund is unhappy that he now is being ordered to actually pay
8 his long-overdue child support.¹ If he had complied with the child support agreement
9 that *he* drafted and was entered as an order of the Nevada Courts at the time of his
10 1998 divorce, he would not have a massive arrearage or have been subjected to
11 attorney's fee awards and sanctions for the past decade.

12 Now that this Court and the court below have found that Scotlund has a
13 massive arrearage and have entered the orders necessary to actually collect – and to
14 hold him in contempt if he continues to refuse to pay – he has run back to this Court
15 seeking a stay to the collection. His request is without merit and is just another
16 attempt to avoid paying his required support.

17 As such, we ask the Court to deny Scotlund's *Emergency Motion* in its entirety
18 and with prejudice. Collection of the support, contempt proceedings in the court
19 below, and payment of all required bonds and fees should proceed as calendared.

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25 ¹ Scotlund still refuses to pay the ordered support. He sent a check for \$150 for
26 July and a check for \$150 for August. He has not paid any support for September,
27 though it was due not later than the fifth of the month.

II. POINTS AND AUTHORITIES

A. FACTS

The *actual* facts of this case – which are supported by the record – are provided below and (of course) bear little resemblance to the strained version provided in all of Scotlund’s filings.

On January 26, 2012, the Court issued its *Order of Reversal and Remand*, stating:

Because we conclude that the district court’s establishment of a \$1,300 per month sum certain for Vaile’s child support obligation constitutes an impermissible modification of the original support obligation, we reverse the district court’s order setting Vaile’s support payment at \$1,300, and we further reverse the arrearages calculated using the \$1,300 support obligation and the penalties imposed on those arrearages. We remand the matter to the district court for further proceedings consistent with this opinion.

The Court added a footnote stating that the parties’ appellate filings and the record alluded to a possible child support order entered in Norway, and so directed the family court, on remand, to determine whether any such order existed and, if so, assess its bearing, *if any*, on enforcement of the Nevada support order (emphasis added).

On April 9, 2012, Department I of the Eighth Judicial District Court held a hearing specifically on the issues on remand and on our *Motion For An Order To Show Cause* based on Scotlund’s failure to pay child support in accordance with the 1998 *Decree of Divorce*, for his failure to inform the court of his change of address, and for failure to begin payments on the attorney’s fee judgments awarded against him.

The Court heard extensive oral argument on April 9, 2012, on all issues and ruled that the parties were to further brief their respective positions. A briefing schedule was ordered and it was stipulated that the minutes of the hearing would act as an order of the court in accordance with EDCR. 7.50.

1 Contrary to Scotlund's assertion, he did not ask the lower court to stay any
2 proceedings pending any appeal at the April 9, 2012, hearing. Even if he had, any
3 such request would have been premature, as no order had yet been issued from which
4 an appeal could be taken.

5 In accordance with the lower court's *Order*, Scotlund did file an FDF on April
6 23, 2012, however, it was neither complete nor in accordance with the NRCP 16.2
7 rules. Cisilie filed her FDF on the same day.

8 Scotlund filed his briefing on the effect of the Norwegian child support orders
9 and their applicability under UIFSA on May 9, 2012. His brief was to include a
10 calculation of child support under both the Nevada child support orders and under the
11 Norwegian child support orders. He failed to provide that information.

12 Cisilie filed her responsive briefing on the issues required by the family court
13 on May 21, 2012.

14 Supplemental filings were provided to the Court by us with calculations of
15 child support arrearages based on collection efforts by the District Attorney's office,
16 once Scotlund finally provided some financial information – though not in
17 accordance with the 1998 *Decree of Divorce* – that allowed us to do a comprehensive
18 child support arrearage calculation based on Scotlund's annual income since 2000.

19 The Court held another hearing on June 4, 2012, to allow oral argument on the
20 briefings that had been filed. The court posed many legal and technical questions to
21 both parties about the effects of UIFSA and as to the nature of the Norwegian orders.
22 The Court then took the matter under advisement.

23 On July 10, 2012, the lower court entered a *Decision and Order* that
24 affirmatively dealt with all remanded issues. Scotlund was unhappy – as always –
25 that his position was identified as meritless and his legal argument faulty.

1 Seeking delay, on July 19, 2012, Scotlund filed a so-called *Emergency Petition*
2 *for Writ of Mandamus Under NRAP 27(e)*. On July 23, this Court denied it.

3 The present *Appeal* followed on July 30.

4 On August 29, Scotlund filed a document entitled *Amended Notice of Appeal*,
5 which the Court noted as a new appeal (SC 61626), making this the 14th original
6 proceeding in this case filed in this Court.

7 8 **III. OPPOSITION**

9 **A. The Request for a Stay of Proceedings and Enforcement Should be** 10 **Denied**

11 Scotlund's only claim against enforcement is that he is unemployed. This is
12 not a reason for a stay. If Scotlund truly is unemployed, it would appear that he only
13 is so intentionally and wilfully, but in any event, the point is largely irrelevant. If
14 Scotlund has no job then the next adjustment of current support will reflect that
15 employment, per the child support order Scotlund himself concocted.

16 Of course, his current work status does not excuse him for the many months of
17 non-payment when he was making in excess of \$130,000 per year. He also has made
18 over \$80,000 this year with no explanation of what he did with the money, or all the
19 money he has made previously and apparently transferred to his current spouse or
20 others in attempted evasion of child support collection.

21 There is no emergency or reason for a stay, as litigation expenses, particularly
22 those created and initiated by Scotlund, do not create irreparable or serious harm.

23 Scotlund offers no reason for a stay, let alone any "emergency." He is just
24 fearful that the pigeons are *finally* coming home to roost after a decade, and that he
25 may find himself in jail for contempt after ten years of laughing at the courts' pursuit
26 of child support payments.

1 As been his habit throughout this case, Scotlund has peppered his pleadings
2 with half-truths and misrepresentations of prior facts and orders. As an example:
3 Scotlund cites to his current attempts to get the California court to domesticate the
4 Nevada order and to honor the Norwegian orders as controlling.

5 What Scotlund does *not* say (to this Court or the current California court) is
6 that the California courts have previously acknowledged that they do not have
7 jurisdiction in the matter.² His claims are *res judicata* in that court, and are actually
8 a slap in the face to the Nevada District Court and this Court, as he is forum shopping
9 in an attempt to get an order that he likes, hoping to muddy the waters and further
10 delay and evade.

11 The Court will note that Scotlund brings new (and entirely made up) “facts”
12 before the Court in his *Motion* by arguing that his child support should be set at \$780
13 per month. There is *nothing* in the lower court record that could support any
14 assertion of that amount.

15 Scotlund’s attempts to use only portions of rulings made in other States as
16 justification for his meritless claims and to misquote the lower court is (at best)
17 disingenuous. This Court can see the lengths the lower court went to allow Scotlund
18 every conceivable opportunity to argue his position by reviewing the record of the
19 most recent motion proceedings, which is one of the most complete and fully briefed
20 on any subject that we have ever seen.

21 Simply put, a stay is not necessary, as no collection is being done, nor has
22 Scotlund made any attempts to voluntarily make any payments. Scotlund offers no
23 explanation as to just what dire effects would occur if a stay was not put into place,
24 because in the real world there are none. He just does not want to pay.

25
26 ² See attached Order of the Superior Court of California, County of Sonoma
27 dated September 27, 2010.

1 Scotlund pretends that there are “conflicting orders.” He is again seeing things
2 that are not there. The remand was for the court below to set child support in
3 accordance with the 1998 *Decree of Divorce*. That was done. The remand also asked
4 the court to determine whether the Norwegian child support orders had any effect on
5 the setting of a child support amount in accordance with the 1998 *Decree*. The lower
6 court made that decision as well. There are no conflicting orders.

7 Lastly, Scotlund argues that the “status quo” should be maintained. By this he
8 means that he should be permitted to continue paying nothing toward the many tens
9 of thousands of dollars in arrears, interest, penalties, and fees assessed against him,
10 while avoiding answering to what should be a felony failure to pay support. The
11 “status quo” would only aide Scotlund and do nothing to make Cisilie whole or to get
12 child support flowing into the hands of the long-suffering primary custodian of the
13 children, who raised and supported them with no significant assistance from
14 Scotlund.³

15
16 **B. Likelihood Of Success Does Not Weigh In Appellant’s Favor**

17 Scotlund has failed to produce one shred of evidence, or any opinion from any
18 expert or other authority, anywhere, that would hold that his position has any merit.
19 He has misread and mis-cited to scholarly papers, the authors of which have explicitly
20 repudiated his “interpretation” of their writings.

21 He cites to provisions of NRS 130 (the Nevada codification of UIFSA) that
22 explicitly apply to *initial* child support determinations instead of to the very distinct
23 provisions for child support *modification*, in concocting an argument that the

24
25 ³ Scotlund always argues that Norway law should apply as to child support
26 payments being the property of an emancipated child. Norway law does not apply as
27 this Court has already ruled that Nevada retains personal jurisdiction over Scotlund
28 and – with the exception of NRS 125B.070 – all Nevada rules and statutes apply.

1 Norwegian child support orders are “controlling.” He refuses to accept that
2 modification jurisdiction and initial child support jurisdiction are completely different
3 analyses.

4 In a nutshell, Scotlund *can’t* prevail in this *Appeal* as the black letter law is
5 clear and unambiguous.⁴

6
7 **C. The Only Order Reversed By This Court Was The Modification Of**
8 **Child Support**

9 Scotlund wrongly reads this Court’s last remand, pretending that it says
10 anything other than that the order modifying the child support was reversed. No
11 orders for attorney’s fees were modified. There is no question that Scotlund did not
12 pay his child support for years and has massive arrearages, and imposition of fees in
13 that circumstance are essentially mandatory per the directions of this Court.⁵

14 As it turns out, the \$1,300 a month in child support was set very low. Once the
15 calculations – crafted and imposed by Scotlund – were done, it turns out his
16 arrearages and monthly payments are actually over \$2,800. As this Court noted in the
17 last opinion, Nevada lacks subject matter jurisdiction to lower that amount. Scotlund
18 has been repeatedly advised for the past decade to go to Norway, properly register the
19 Nevada order there, and modify the support order if he wished; he failed to do so, and
20

21
22 ⁴ It is worth noting, in passing, that even if there *was* some remote possibility
23 that Scotlund could prevail on appeal, no stay should be granted. Even under the
24 irrelevant internal Norway welfare orders, Scotlund would owe many tens of
25 thousands of dollars in back child support, interest, and attorney’s fees, and the
26 proceedings he wants to suspend would be going forward exactly as they are now
27 doing.

28 ⁵ See, e.g., *Edgington v. Edgington*, 119 Nev. 577, 80 P.3d 1282 (2003).

1 thus is stuck with the Nevada order he concocted, which has continued to accrue over
2 all those years.⁶

3 The modest attorney's fees awarded by the lower court are far from adequate
4 to compensate Cisilie for the massive damage Scotlund has caused her and the
5 massive attorney's fees that have resulted from his continuous vexatious and
6 frivolous litigation all over the country for the past decade.⁷

7
8 **D. The Effects of a Stay Would Be Dire Only to Cisilie – and Justice**

9 Scotlund argues that he paid Cisilie directly when the District Attorney was not
10 collecting against his pay. He was warned multiple times that this was not in
11 accordance with the Court's order and the District Attorney's office warned him in
12 a letter that any direct payment to Cisilie would be considered a gift.⁸

13 His current filing also provides some weird statement that he would have to
14 make \$1,485,410 per year in order to meet the monetary awards in the district court's
15 judgment. Where he gets that number is a mystery.

16 Scotlund's total principal obligations in this case are just over \$2,000,000 –
17 which includes the tort judgments that are collectable only from Scotlund's separate
18

19
20 ⁶ Scotlund feared going to Norway as they would have likely arrested him for
the kidnaping of his children in 2000.

21
22 ⁷ It is irrelevant to the issues actually presented, but dealing with the vexatious
23 Scotlund over the past ten years has run up over \$1.3 Million in unpaid attorney's
fees and costs.

24
25 ⁸ This makes perfect sense, as the DA's Office would have no way of tracking
26 arrearages if payments were not made through their office. Scotlund essentially
27 admitted that he made direct payments to Cisilie hoping to foment a conflict between
her and this law office by finding some way to keep us from being paid for working
on her case.

1 property. Paying the minimum of 50% of his income against his debts is all that is
2 required. He needs to find work and begin paying. Scotlund has been given much
3 more than enough latitude⁹ and it is time that he accept his responsibilities.

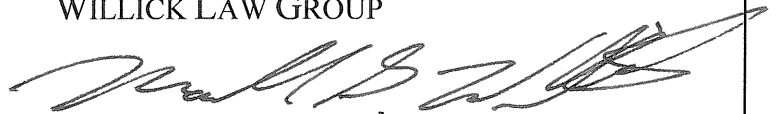
4 5 IV. CONCLUSION

6 The only “bias” evident in this case is that of Scotlund against all who do not
7 hold his opinion. He holds this Court and every court that has found against him in
8 utter contempt. The California Bar has determined that his behavior (the kidnaping,
9 massive child support arrears, and otherwise) is so despicable that it has refused to
10 grant him a license to practice law. And within the past several months, a bankruptcy
11 judge in California (he was there in another effort to evade paying support)
12 encouraged the courts of this State to lock Scotlund up and throw away the key.

13 It is time for this Court to issue an order that allows the lower court to proceed
14 with contempt proceedings and to dismiss this present *Appeal* with prejudice as
15 expeditiously as possible.

16 Respectfully submitted,

17 WILICK LAW GROUP

18 

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25 Attorneys for Respondent

26 ⁹ During the time this case has been in litigation, Scotlund has made well over
27 a million dollars in regular income; if he had simply paid his child support when due
28 during that time, arrearages would be non-existent, and most of the attorney’s fee and
sanction awards would never have been entered.

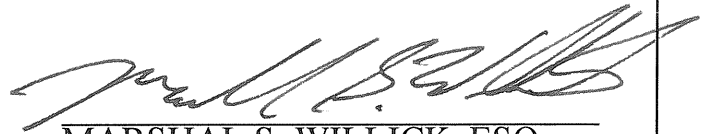
CERTIFICATION OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:
[☒] This brief has been prepared in a proportionally spaced typeface using Corel WordPerfect Office X3, Standard Edition in font size 14, and the type style of Times New Roman; or
[] This brief has been prepared in a monospaced typeface using [*state name and version of word processing program*] with [*state number of characters per inch and name of type style*].
2. I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:
[] Proportionately spaced, has a typeface of 14 points or more and contains _____ words; or
[] Monospaced, has 10.5 or fewer characters per inch, and contains _____ words or _____ lines of text; or
[☒] Does not exceed 10 pages.
3. Finally, I hereby certify that I have read this Motion, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the

1 transcript or appendix where the matter relied on is to be found. I understand
2 that I may be subject to sanctions in the event that the accompanying brief is
3 not in conformity with the requirements of the Nevada Rules of Appellate
4 Procedure.

5 **DATED** this 10th day of September, 2012 .

6 WILLYCK LAW GROUP

7 

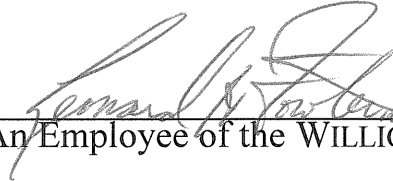
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CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing was made on the 11th day of September, 2012, pursuant to EDCR 7.26(a), by U.S. Mail addressed as follows:

Mr. Robert Scotlund Vaile
P.O. Box 727
Kenwood, California 95452
Respondent In Proper Person

That there is regular communication between the place of mailing and the place so addressed.


An Employee of the WILICK LAW GROUP

P:\wp13\VAILE\00009263.WPD/r/c

1 COMMISSIONER LOUISE BAYLES-FIGHTMASTER
2 COMMISSIONER OF THE SUPERIOR COURT
3 Civil and Family Law Courthouse
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FILED

SEP 27 2010

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA
By M. Canley Deputy Clerk

7 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

10 Petitioner: **ROBERT SCOTLUND VAILE**

Case No. SFL-49802

11 vs.

Order on Notice of Registration of Out-
of-State Support Order and Request
for Hearing Regarding Earnings
Assignment

12 Respondent: **CISILIE A. PORSBOLL**
13 _____ /

14 This matter was initially heard by this Court on March 1, 2010 in Department 23,
15 before the Honorable Judge Cerena Wong on ROBERT SCOTLUND VAILE's (hereafter
16 Husband) Notice of Registration of Out-of-State Support Order and Request for Hearing
17 Regarding Earnings Assignment filed on February 9, 2010. Present at the hearing were
18 Petitioner, and JEANNE MISKEL, Chief Child Support Attorney on behalf of the Sonoma
19 County Department of Child Support Services (hereafter DCSS). CISILIE A. PORSBOLL
20 (hereafter Wife) was not present.

21 The matter was discussed with the court and continued to Department 20 on
22 March 16, 2010 at 8:30 before Commissioner Louise Bayles-Fightmaster, the assigned
23 Title IV-D Commissioner for Sonoma County as this matter was currently being handled
24 by the Clark County Nevada IV-D child support agency.

25 **I. Procedural History:**

26 The parties were divorced in Clark County Nevada on August 21, 1998. Their
27 Decree of Divorce included an agreement that provided a precise formula for calculating
28 child support.

1 In November 2007 Wife asked the Nevada District Court to establish the child
2 support arrears that had accrued pursuant to the parties' agreement and to establish a
3 sum certain for child support, i.e. modify the agreement that was set forth in the parties'
4 Decree of Divorce. Neither party nor the children resided in Nevada at the time of this
5 proceeding. The Nevada Court issued its ruling on October 9, 2008, enforcing the parties'
6 informal agreement for \$1,300 per month. This sum was previously paid by Husband
7 pursuant to this informal agreement until April 2000. Payments resumed later when a
8 wage assignment was issued.

9 The Nevada Court set the arrears pursuant to this informal agreement and Nevada
10 State Law.

11 Petitioner has appealed this order and that action is still pending in Nevada with the
12 Nevada Supreme Court.

13 Petitioner then, in February of this year, sought to register the 2008 Nevada order in
14 Sonoma County, and to modify it based on the fact that one of the parties' children had
15 emancipated. He also requested a stay of the wage assignment.

16 Petitioner contends that the Nevada Court was without jurisdiction to enter the
17 orders it made on October 9, 2008, outlined above.

18 After reviewing the voluminous pleadings, declarations, and other documents,
19 listening to oral argument and reviewing the law regarding interstate child support
20 jurisdiction and enforcement, the Court makes the following findings and orders:

21 **II. Relevant Law:**

22 The overarching applicable law in the case is found in the Uniform Interstate Family
23 Support Act (UIFSA) (Family Code § 4900, et seq.) and the Federal Full Faith and Credit
24 for Child Support Orders Act (FFCCSOA). When there are interstate ties, or a pre-existing
25 out-of-state order, California can exercise jurisdiction to establish, enforce, or modify
26 support orders **only if** consistent with UIFSA and FFCCSOA. Stone v. Davis (2007) 148
27 Cal.App. 4th 596, 600; Marriage of Crosby and Grooms (2004) 116 Cal.App. 4th 201, 206;
28 de Leon v. Jenkins (2006) 143 Cal.App.4th 118, 124; Hogoboom & King, California

1 Practice Guide:Family Law (TRG 2010) §17.3.

2 The FFCCSOA, as set forth in 28 USC §1738B, states, in part:

3 "... (c) Requirements of child support orders. – A child support order made by
4 a court of a State is made consistently with this section if –

5 (1) a court that makes the order, pursuant to the laws of the State in
6 which the court is located and subsections (e), (f), and (g) –¹

7 (A) has subject matter jurisdiction to hear the matter and enter
8 such an order; and

9 (B) has personal jurisdiction over the contestants; and

10 (2) reasonable notice and opportunity to be heard is given to the
11 contestants.

12 (d) Continuing jurisdiction. –A court of a State that has made a child
13 support order consistently with this section has continuing, exclusive
14 jurisdiction over the order if the State is the child's State or the residence
15 of any individual contestant unless the court of another State, acting in
16 accordance with subsections (e) and (f), has made a modification of the
17 order."

18 **III. Analysis and Conclusion:**

19 When the Nevada District Court assumed jurisdiction over the issues of child
20 support in 2008 it, perhaps, did so because it had issued the original divorce decree in
21 1998. Nevada's assumption of jurisdiction over the child support issues must comply with
22 the UIFSA and FFCCSOA law, but it does not.

23 Nevada did not have continuing exclusive jurisdiction under the FFCCSOA because
24 neither the children nor the parents resided in Nevada at the time of the proceeding.
25 FFCCSOA provides that a State that made a child support order may exercise continuing
26 jurisdiction over the child support order "if the State is the child's State or the residence
27

28 ¹ Subsections (e), (f) and (g) are not relevant to the issues presented in this case.

1 of any individual contestant." 28 USC §1738B(d). Since Nevada was no one's residence
2 at the time of the October 2008 order this order does not comply with the FFCCSOA and
3 cannot be enforced by the California courts.

4 In addition, Nevada does not have continuing exclusive jurisdiction under UIFSA
5 either. Under UIFSA (see NRS 130.205(1)²; see also California Family Code § 4909(a)³),
6 a State has continuing and exclusive jurisdiction to modify its child support order if the
7 order is the controlling order and (1) either of the parents or children reside in Nevada at
8 the time of the request for modification or (2) the parties consent in a record or in open
9 court that the tribunal of this State may continue to exercise jurisdiction to modify its order.
10 Because none of the parents or the children resided in Nevada, and Husband did not
11 consent to continuing exclusive jurisdiction in Nevada, Nevada does not have continuing
12 exclusive jurisdiction over child support under UIFSA, and, therefore, its 2008 child
13 support order is unenforceable by a California court.
14
15
16

17 ² NRS 130.205(1) states:

18 "1. A tribunal of this State that has issued a child-support order consistent with the law of this
19 State has and shall exercise continuing and exclusive jurisdiction to modify its child-support
20 order if the order is the controlling order and:

- 21 (a) At the time of the filing of a request for modification, the State is the residence of the obligor, the
22 obligee who is a natural person of the child for whose benefit the support order is issued; or
23 (b) Even if this State is not the residence of the obligor, the obligee who is a natural person or the child
24 for whose benefit the support order is issued, the parties consent in a record or in open court that
25 the tribunal of this State may continue to exercise jurisdiction to modify its order."


26 ³ California Family Code § 4909(a) states:

27 "A tribunal of this state issuing a support order consistent with the law of this state has continuing,
28 exclusive jurisdiction over a child support order:

- (1) As long as this state remains the residence of the obligor, the individual obligee, or the child for
whose benefit the support order was issued; or
(2) Until all of the parties who are individuals have filed written consents with the tribunal of this state
for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction."

1 In conclusion, this Court will not grant either request made by Husband as it does
2 not have jurisdiction in this matter, as set forth above. Husband's remedies are
3 elsewhere. Husband's Notice of Registration of Out-of-State Support Order is vacated
4 and his Request for a stay of the Earnings Assignment order is denied.
5

6
7 Dated: September 27, 2010

8 
9 LOUISE BAYLES-FIGHTMASTER
10 Commissioner of the Superior Court
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PROOF OF SERVICE BY MAIL

I certify that I am an employee of the Superior Court of California, County of Sonoma, and that my business address is 3055 Cleveland Avenue, Santa Rosa, CA 95403; that I am not a party to this cause; that I am over the age of 18 years; that I am readily familiar with this office's practice for collection and processing of correspondence for mailing with the United States Postal Service; and that on the date shown below I placed a true copy of the foregoing attached papers in an envelope, sealed and addressed as shown below, for collection and mailing at Santa Rosa, California, first class, postage fully prepaid, following ordinary business practices.

Date: September 27, 2010

JOSÉ OCTAVIO GUILLÉN
COURT EXECUTIVE OFFICER

by 

Deputy Clerk

--ADDRESSEES--

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