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Feb 10 2021 03:49 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALEX GHIBAUDO,

Appellant,

vs.

TARA KELLOGG,

Respondent.

Supreme Court Case: 82248

DOCKETING STATEMENT

COMES NOW, Appellant Alex Ghibaud, (hereinafter referred to as “Appellant”), through his attorney of record, MICHANCY CRAMER, ESQ., of the law firm of ALEX B. GHIBAUDO, P.C., and hereby submits the following docketing statement pursuant to NRAP 14 et seq.

- 1) This is an appeal from a judgment rendered in the Eight Judicial District Court, Family Division, County of Clark, Department H, Judge Arthur Ritchie, Case No. D-15-522043-D.
- 2) **ATTORNEY FILING THIS DOCKETING STATEMENT:**
Michancy Cramer, Esq., of the law firm Alex B. Ghibaud, P.C., located at 197 E. California Ave., Suite 250, Las Vegas, Nevada 89104, telephone number 702-978-7090, client ALEX GHIBAUDO.
- 3) **ATTORNEY REPRESENTING RESPONDENT:**
R. Christopher Reade, Esq. of Cory Reade Dows and Shafer, located at 1333 North Buffalo Drive, Suite 210, Las Vegas, Nevada 89128, telephone number 702-794-4411, client TARA KELLOGG.
- 4) **NATURE OF DISPOSITION BELOW:**
This is a post-judgment matter. Appellant filed his motion to modify spousal support, and related relief, on May 30, 2019. Respondent filed her countermotion for an order to show cause and for enforcement. After a full day trial conducted on September 17, 2020, the district court issued an Order GRANTING IN PART Appellant's Motion to Modify Spousal Support. Appellant now challenges that order.
- 5) **DOES THIS APPEAL RAISE ISSUES RE: CHILD CUSTODY, VENUE, OR TERMINATION OF PARENTAL RIGHTS:**
No.

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

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

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

None.

8) **NATURE OF ACTION:**

- On or about May 18, 2016 the parties entered into a negotiated settlement for a legal separation through the district court, family division's settlement program. A decree of legal separation was drafted and provided to Appellant for approval and signature. However, before that could happen, Respondent hired another lawyer that promptly attempted to modify the terms of the agreement. Appellant indicated, at that time, that a divorce was appropriate (as the parties agreed that either can ask for a divorce at any time).
- Respondent, through then Counsel, filed a motion for "clarification" of the district court's order after the settlement conference. What Respondent actually tried to do, however, was modify the terms of the settlement agreement.
- At the conclusion of that round of litigation, Respondent's motion was denied, but on February 1, 2017, the district court entered a decree of divorce over Appellant's written objection.

That order was made without the benefit of a trial, though the terms reached on May 18, 2016 were for a legal separation.

- On May 30, 2019 Appellant filed his motion to modify spousal support requesting the following specific relief:
 - Vacating as void that portion of the district court's February 1, 2017 Decree of Divorce directing Plaintiff to pay alimony to Defendant;
 - For a hearing on the issue of alimony, and a determination of a reasonable amount of alimony pending evidentiary hearing;
 - In the alternative, for a modification of the current alimony order based upon Plaintiff's breach of the alimony terms contained in the Decree, and based upon the change of circumstances arising from that breach; and
 - For an order directing Plaintiff to pay the attorney's fees and costs incurred in the prosecution of this motion.
- The motion made the following arguments:
 - The district court was without jurisdiction to enter a summary decree of divorce containing support terms that were not agreed to by the parties;
 - The provisions of the decree regarding spousal support are void;

- The change of circumstances since the parties' settlement conference justifies a review of Alex's obligation of alimony;
- Tara should be estopped from enforcing the decree regarding alimony, and her failure to comply with the terms of the decree require the modification of the alimony provisions.
- After trial, the district court granted Appellant's motion in part, reducing the alimony amount, but not the term. The district court found that it had cause to modify the amount but did not perceive that that cause was enough to modify the term as well. In addition, the district court rejected Appellant's request for equitable relief as a result of Respondent's bad faith.
- This appeal follows.

9) ISSUES ON APPEAL:

- a. Did the district court commit legal error when it determined that there were not sufficient changed circumstances to justify modifying the term of the alimony payments Appellant is obligated to make?
- b. Did the district court commit clear legal error or abuse its discretion when it rejected Appellant's argument that the provisions of the decree of divorce concerning spousal support are void?

- c. Did the district court commit clear legal error or abuse its discretion when it determined that it had jurisdiction to enter a summary decree of divorce containing support terms that were not agreed to by the parties?
- d. Did the district court commit legal error or abuse its discretion when it denied Appellant's request that Respondent be equitably estopped from enforcing the decree of divorce regarding alimony payments?

10) **PENDING PROCEEDINGS IN THIS COURT RAISING THE SAME OR SIMILAR ISSUES:**

N/A.

11) **CONSTITUTIONAL ISSUES:**

There is an issue regarding due process in that the district court entered a decree of divorce after a hearing on Respondents motion to clarify/enforce a decree of legal separation. However, the district court found that Appellant had no remedy to challenge entry of that order because of the various time bars. So, Appellant is stuck with a decree of divorce entered over his objection, without findings of fact, and without trial.

12) **OTHER ISSUES:**

None.

13) **ASSIGNMENT TO THE COURT OF APPEALS OR
RETENTION IN THE SUPREME COURT:**

This matter should be assigned to the Appellate Court under NRAP 17(a)(11) and NRAP 17(12). There is an issue of first impression that may have statewide importance: whether a district court judge may enter a decree of divorce without trial when the parties agreed to a legal separation.

14) **TRIAL:**

This matter was adjudicated after a full day trial conducted on September 17, 2020.

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:**

November 10, 2020.

17) **DATE WRITTEN NOTICE OF ENTRY OF JUDGMENT OR
ORDER WAS SERVED:**

November 20, 2020.

18) **TOLLING OF NOTICE OF APPEAL:**

The time for filing the *Notice of Appeal* was not tolled by a post-judgment Motion.

19) **DATE NOTICE OF APPEAL WAS FILED:**

December 17, 2020.

- 20) **SPECIFY STATUTE OR RULE GOVERNING THE TIME
LIMIT FOR FILING THE NOTICE OF APPEAL:**

NRAP 4(a)(1).

- 21) **SPECIFY THE STATUTE OR OTHER AUTHORITY
GRANTING THIS COURT JURISDICTION TO REVIEW THE
JUDGMENT OR ORDER APPEALED FROM:**

NRAP 3A(b)(1).

- 22) **LIST ALL PARTIES INVOLVED IN THE ACTION OR
CONSOLIDATED ACTIONS IN THE DISTRICT COURT:**

Alex Ghibaudo and Tara Kellogg.

- 23) **DESCRIPTION OF CLAIMS:**

This is a post-judgment domestic relations matter.

- 24) **DID THE JUDGMENT OR ORDER APPEALED FROM
ADJUDICATE ALL THE CLAIMS ALLEGED BELOW AND
THE RIGHTS AND LIABILITIES OF ALL THE PARTIES TO
THE ACTION OR CONSOLIDATED ACTIONS BELOW?**

No.

- 25) **SPECIFY THE CLAIMS REMAINING BELOW:**

Attorney's fees and costs.

- 26) **SPECIFY THE PARTIES REMAINING BELOW:**

None.

27) **CERTIFICATION OF JUDGMENT:**

The District Court did not certify the judgment as final.

28) **BASIS FOR SEEKING APPELLATE REVIEW:**

The challenged order is appealable pursuant to NRAP 3A(b)(1).

29) **ATTACHMENTS:**

- 1) Complaint
- 2) Decree of Divorce
- 3) Appellant's Motion;
- 4) Respondent's Opposition;
- 5) Final Order.

DATED this 10th day of February, 2020.

Respectfully submitted,

/s/ Michancy Cramer

Michancy Cramer, Esq.
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.

Alex Ghibaudo

Name of Appellant

Michancy Cramer, Esq.

Name of Counsel of Record

January 10, 2021

Dated

/s/ Michancy Cramer

Signed

Clark County, Nevada

State and County Where Signed

CERTIFICATE OF SERVICE

I certify that in the 10th day of February, 2021, I served a true and correct copy of Appellant's *Docketing Statement* upon Respondent through the Nevada Supreme Court's electronic filing system to:

R. Christopher Reade, Esq.
1333 North Buffalo Drive, Suite 210
Las Vegas, Nevada 89128

DATED this 10th day of February, 2021.

Respectfully submitted,

/s/ Michancy Cramer

Michancy Cramer, Esq.
Nevada Bar No. 11545
ALEX B. GHIBAUDO, PC.
197 E. California Ave., Suite 250
Las Vegas, Nevada 89104
Attorney for Appellant

EXHIBIT 1

- 1 -

1 3. That there is one (1) minor child who is issues of this marriage by the parties to
2 wit: NICOLE GHIBAUDO born on May 17, 2001 and Plaintiff is not currently pregnant.

3 4. That the State of Nevada is the habitual residence of the minor child.

4 5. That there is community property which needs to be adjudicated by the Court.
5 Plaintiff asks permission of this Court to amend this Complaint to insert this information when it
6 becomes known to Plaintiff or at the time of trial.

7 6. That there are community debts which need to be adjudicated by the Court.
8 Plaintiff asks permission of this Court to amend this Complaint to insert this information when it
9 becomes known to Plaintiff or at the time of trial.

10 7. That the Parties are requesting that this Court award the Joint Legal Custody with
11 Plaintiff awarded primary physical custody.

12 8. That Defendant pay child support of \$1,091.00 per child, per month, or 18% of
13 his gross monthly income, whichever is greater. That Defendant provide health insurance for the
14 minor child and that the parties equally divide any unpaid or unreimbursed medical expenses.

15 9. That Plaintiff shall be awarded spousal support.

16 10. That Defendant has engaged in individual act or course of individual actions
17 which individually, or together have constituted marital waste, and therefore Plaintiff shall be
18 compensated for the loss and enjoyment of said wasted community assets.

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

1
2 WHEREFORE, Plaintiff prays for a Judgment as follows:

3 1. That the marriage existing between Plaintiff and Defendant be dissolved and that
4 the Parties be granted an absolute Decree of Divorce and that each of the parties be restored to
5 the status of a single, unmarried person;

6 2. That the Plaintiff be awarded primary physical custody of the minor child with the
7 Parties awarded joint legal custody.

8 3. That Defendant shall pay child support of \$1091.00 per month, or, 18% of his
9 gross monthly income, whichever is greater.

10 4. That Defendant provide health insurance for the minor child and that the parties
11 equally divide and pay any unpaid medical expenses of the minor child.

12 5. That the Community property and community debts be equitably divided between
13 the Parties.

14 6. That Plaintiff be awarded spousal support;

15 7. That the Court grant the relief requested in this Complaint

16 8. For Plaintiff's costs, disbursements and attorney's fees.

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

18 DATED this 1st day of October, 2015.

19
20 CHATTAH LAW GROUP

21
22 

23 SIGAL CHATTAH, ESQ.
24 Nevada Bar No.: 8264
25 CHATTAH LAW GROUP
5875 S. Rainbow Blvd #203
Las Vegas, Nevada 89118
Tel:(702) 360-6200
Fax:(702) 643-6292
Attorney for Plaintiff

EXHIBIT 2

1 **NEOJ**
2 WILICK LAW GROUP
3 MARSHAL S. WILICK, ESQ.
4 Nevada Bar No. 2515
5 3591 E. Bonanza Road, Suite 200
6 Las Vegas, NV 89110-2101
7 Phone (702) 438-4100; Fax (702) 438-5311
8 email@willicklawgroup.com
9 Attorney for Plaintiff


CLERK OF THE COURT

6 **DISTRICT COURT**
7 **FAMILY DIVISION**
8 **CLARK COUNTY, NEVADA**

10 TARA KELLOGG-GHIBAUDO,
11 Plaintiff,

12 vs.

13 ALEX GHIBAUDO,
14 Defendant.

CASE NO: D-15-522043-D
DEPT. NO: T

DATE OF HEARING: N/A
TIME OF HEARING: N/A

15 **NOTICE OF ENTRY OF DECREE OF DIVORCE**

16
17 TO: ALEX GHIBAUDO, Plaintiff in Proper Person

18 PLEASE TAKE NOTICE that the *Decree of Divorce* was duly entered in the
19 above action on the 1st day of February, 2017, by filing with the clerk of the court; a
20 true and correct copy is attached.

21 DATED this 2nd day of February, 2017.

22 WILICK LAW GROUP

23
24 
MARSHAL S. WILICK, ESQ.

25 Nevada Bar No. 2515
26 TREVOR M. CREEL, ESQ.
27 Nevada Bar No. 11943
28 3591 E. Bonanza Road, Suite 200
Las Vegas, NV 89110-2101
(702) 438-4100
Attorneys for Plaintiff

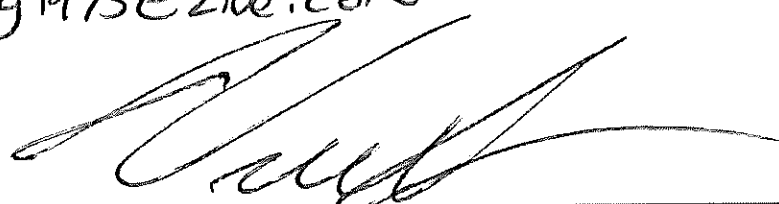
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the WILICK LAW GROUP and that on this 3 day of February, 2017, I caused the above and foregoing document, entitled *Notice of Entry of Decree of Divorce*, to be served as follows:

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

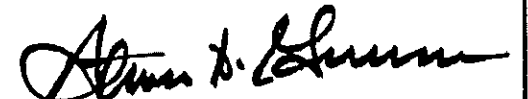
To the attorney and/or litigant listed below at the address, email address, and/or facsimile number indicated below:

Alex Ghibaud, Esq.
G LAW
320 East Charleston Boulevard, Suite 105
Las Vegas, Nevada 89104
Defendant in Proper Person
abg1975@live.com



An Employee of the WILICK LAW GROUP

\\wlgserver\company\wp16\KELLOGG,TIDRAFTS\00166304.WPD/VJ


CLERK OF THE COURT

DECD
WILICK LAW GROUP
MARSHAL S. WILICK, ESQ.
Nevada Bar No. 002515
3591 E. Bonanza Road, Suite 200
Las Vegas, NV 89110-2101
Phone (702) 438-4100; Fax (702) 438-5311
email@willicklawgroup.com
Attorney for Plaintiff

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

TARA KELLOGG GHIBAUDO,

Plaintiff,

vs.

ALEX GHIBAUDO,

Defendant.

CASE NO: D-15-522043-D
DEPT. NO: T

DATE OF HEARING: 1/10/2017
TIME OF HEARING: 9:00 A.M.

DECREE OF DIVORCE

This matter came on for hearing at the above date and time before the Honorable Lisa M. Brown, District Court Judge, Family Division. Plaintiff, Tara Kellogg Ghibaud, was present and represented by Marshal S. Willick, Esq., and Trevor M. Creel, Esq., of the WILICK LAW GROUP, and Defendant, Alex Ghibaud, was present and represented himself in proper person.

Alex was duly and regularly served with a copy of the *Summons and Complaint for Divorce*, filed on October 1, 2015, and he filed his *Answer to Complaint for Divorce* on November 11, 2015. The Court was fully advised as to the law and the facts of the case, and therefore finds and orders as follows:

1. This matter was submitted to the Court for entry of a *Decree of Divorce* and this Court has complete jurisdiction in the premises, both as to the subject matter and the parties under Chapter 125 of the Nevada Revised Statutes.

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

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JAN 13 2017
FAMILY COURT
DEPARTMENT T

1 2. The parties were married on December 30, 2001, in Las Vegas, Nevada,
2 and have been continuously married since that time.

3 3. Tara and Alex are actual bona fide residents of the County of Clark,
4 State of Nevada, and Tara was actually domiciled herein for more than six weeks
5 prior to the filing of her *Complaint for Divorce*.

6 4. There is one minor child born the issue of this marriage, specifically,
7 Nicole Ghibaud, born on May 17, 2001, and Tara is not currently pregnant.

8 5. The State of Nevada is the home state of the minor child.

9 6. All of the jurisdictional allegations contained in Tara's *Complaint* are
10 true as therein alleged and Tara is entitled to a *Decree of Divorce* from Alex on the
11 grounds set forth in her *Complaint*.

12 7. Alex, having filed his *Answer*, has waived the formal rendition of
13 findings of fact and conclusions of law beyond those contained herein.

14 8. There are community assets and debts which have been determined and
15 divided by the parties as more fully set forth herein.

16 9. The parties tastes, natures, views, likes, and dislikes have become so
17 widely separate and divergent that they are incompatible in marriage with no
18 possibility of reconciliation.

19 10. The following *Decree of Divorce* contains terms and provisions that are
20 fair and equitable. It is acknowledged and agreed that Plaintiff's attorneys, of the
21 WILICK LAW GROUP, have not undertaken any independent investigation as to the
22 nature, extent, or valuation of the subject assets and obligations. Accordingly, all
23 counsel of the WILICK LAW GROUP, and all employees of the WILICK LAW GROUP
24 are held harmless from liability relating to the valuation and division of community
25 assets and debts.

26 11. The parties reached a global settlement on all issues pending before the
27 Court as a result of a settlement conference held with Senior Judge Kathy Hardcastle
28

1 on May 18, 2016, and the following *Decree* correctly recites their agreement as
2 follows:

3
4 **NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND**
5 **DECREED:**

6 **TERMINATION OF MARRIAGE**

7 The bonds of matrimony existing between Tara and Alex are hereby dissolved;
8 Tara is granted an absolute *Decree of Divorce*; and each of the parties is restored to
9 the status of a single, unmarried person.

10
11 **CHILD CUSTODY PROVISIONS**

12 1. ***Legal Custody.*** The parties shall enjoy joint legal custody of the minor
13 child born the issue of this marriage, namely, Nicole Ghibaudo, born May 17, 2001.
14 The parties agree that joint legal custody entails the following provisions:

15 Neither parent shall do anything which shall estrange the child from the other
16 parent or impair the natural development of the child's love and respect for
17 each of the parents, or disparage the other parent or undermine the parental
18 authority or discipline of the other's household. Additionally, each parent
19 shall instruct their respective family and friends that no disparaging remarks
20 are to be made regarding the other parent in the presence of the child.

21 Neither parent shall use contact with the child as a means of obtaining
22 information about the other parent. The parents shall consult and cooperate
23 with each other in substantial questions relating to religious upbringing,
24 educational programs, significant changes in social environment, and health
25 care of the child. In the event that either parent remarries or cohabits, all
26 matters and communications concerning legal custody and/or physical custody
27 of the child shall be between the parents only.

28 Neither parent shall be permitted to use illicit drugs, including marijuana and
prescription drugs that have been obtained illegally, in the presence of the
minor child and/or during such periods when they are responsible for the minor
child. Further, neither parent shall be permitted to be in the presence of the
minor child while under the influence of any and all illicit drugs.

The parents shall each have independent access to medical and school records
pertaining to the child and shall jointly consult, when possible, with any and
all professionals involved with the child.

All schools, day care providers, and counselors shall be, when possible,
selected by the parties jointly. In the event that the parties cannot agree to the

1 selection of a school, the child shall be maintained in the present school
2 pending mediation and/or further Order of the Court.

3 Each parent shall be empowered to obtain emergency health care for the child
4 without the consent of the other parent. Each parent shall notify the other
parent as soon as reasonably possible of any illness requiring medical
attention, or any emergency involving the child.

5 Each parent shall have independent access to information concerning the well-
6 being of the child, including, but not limited to, copies of report cards; school
meeting notices; vacation schedules; class programs; requests for conferences;
7 results of standardized or diagnostic tests; notice of activities involving the
child; samples of school work; order forms for school pictures; and all
communications from health care providers.

8 Each parent shall have independent access to all information concerning
9 school, athletic, church, and social events in which the child participates. Both
parents may participate in activities for the child, such as open house,
10 attendance at an athletic event, etc.

11 Each parent shall provide the other parent with the address and telephone
12 number at which the minor child resides, and shall notify the other parent
within five days prior to any change of address and provide the telephone
number as soon as it is assigned.

13 Each parent shall provide the other parent with a travel itinerary and, whenever
14 reasonably possible, telephone numbers at which the child can be reached
whenever the child will be away from the parent's home for any period in
15 excess of three days.

16 Each parent shall be entitled to reasonable telephone communication with the
17 child. Each parent is restrained from unreasonably interfering with the child's
right to privacy during such telephone conversations.

18 2. ***Physical Custody.*** The parties recognize that physical custody addresses
19 the residential arrangements and specific periods of parental responsibilities for the
20 child. Tara shall be awarded primary physical custody of the minor child with the
21 agreement that Nicole shall be afforded teenage discretion to determine the extent of
22 visitation she would like to have with Alex.

23 CHILD SUPPORT

24 1. ***Child Support.*** Child support shall be established pursuant to NRS
25 125B.070 and NRS 125B.080. Based on Alex's representation that his
26 gross monthly income is \$6,666, his child support shall be set at
27 the presumptive maximum amount of \$819 per month and shall
28

1 continue until such time as the child reaches the age of eighteen years, or nineteen if
2 still in high school, marries, dies or otherwise becomes emancipated.

3 Child support shall be paid directly to Tara, and must be paid on the 1st day of
4 every month, commencing on November 19, 2015.

5 2. ***Medical Insurance for Minor Child***. Alex shall continue to provide
6 medical insurance for the minor child so long as it is reasonable in cost.

7 3. ***Medical Insurance Arrears for the Minor Child***. Pursuant to the *Order*
8 *From Hearing of November 19, 2015*, filed February 3, 2016, Alex was ordered to
9 provide medical insurance for the minor child as of November 1, 2015; however, Tara
10 agrees that his obligation shall commence as of December 1, 2015. Alex did not
11 make any payments towards the child's medical insurance premiums which has
12 resulted in a principal arrearage of \$1,963.50, with interest and penalties, he owes
13 \$2,136.27 as of January 10, 2017.¹

14 4. ***Unreimbursed Medical Expenses for Minor Child***. With regard to the
15 payment of future unreimbursed medical expenses incurred on behalf of the minor
16 child, not including medical insurance premiums, the parties shall adhere to the
17 court's standard Medical and Health Sharing Policy ("30/30 Rule"), the terms of
18 which are as follows:

19 **1. Documentation of Out-Of-Pocket Expenses Required**

20 A parent who incurs an out of pocket expense for the child's medical, dental
21 and health expenses (hereinafter referred to as "health expenses") is required
22 to document that expense and provide proof of payment of that expense. A
receipt from the health care provider is sufficient to prove the expense so long
as it has the name of the child on it and shows an actual payment by the parent.

23 **2. Proof of Payment Required**

24 A parent who has paid a health expense for the child must provide a copy of
25 the proof of payment to the other parent and the insurance company within 30
26 days of the payment being made and in no event later than the expense could
have been submitted to the insurance company for reimbursement. The failure
of a parent to comply with this provision in a timely manner, which causes the
claim for insurance reimbursement to be denied by the insurance company as
untimely, may result in that parent being required to pay the entire amount

27
28 ¹ See Exhibit 1 MLAW Arrearage Calculation Summary detailing medical insurance arrears,
dated January 10, 2017.

1 which would have been paid by the insurance company, as well as one-half of
2 the expense which would not have been paid by insurance if the claim had
been timely filed.

3 **3. Mitigation of Health Expenses Required; Use of Covered Insurance**
4 **Providers**

5 Parents have a duty to mitigate medical expenses for the child. Absent
6 compelling circumstances, a parent should take the child to a health care
7 provider covered by the insurance in effect and use preferred providers if
8 available in order to minimize the cost of the child's health care as much as
9 possible. The burden is on the parent using a non-covered health care provider
10 to demonstrate that the choice not to use a covered provider, or the lowest cost
11 option, was reasonably necessary in the particular circumstances of that case.
12 If the Court finds the choice of a non-covered or more expensive covered
13 provider was not reasonably necessary then the Court may impose a greater
14 portion of financial responsibility for the cost of the health care to the parent
15 who incurred that expense, up to the full amount, which would have been
expended in excess of the lowest cost insurance choice.

16 **4. Sharing of Insurance Information Required**

17 The parent providing insurance coverage for the children has a continuing
18 obligation to provide insurance information that is not publically available
19 including, but not limited to, copies of policies and changes thereto as they are
20 received, claim forms, preferred provider lists initially, and as they change
21 from time to time, and identification cards. The failure of the insuring parent
22 to timely supply any of the above items that are not publically available to the
23 other parent which results in the claim for treatment being denied by the
24 insurance company in whole or in part may result in the amount which would
25 have been paid by the insurance policy being paid by the insuring parent.

26 **5. Reimbursement for Out -Of-Pocket Expenses**

27 A parent who receives a written request for contribution for an out-of-pocket
28 health care expense incurred by the other parent must pay his or her share of
that out-of-pocket expense to the paying parent within 30 days of receipt of the
written request for contribution. As much informal documentation as possible
shall be provided, such as handwritten notes with copies of the bills and proof
of payment attached. The requesting parent should make a copy of all papers
submitted to the other parent in order to prove communication of this
information to the other parent and substantiation for the request. The parent
receiving the request for contribution must raise any questions about the
correctness of the request for contribution within the 30 day period after the
request for contribution is received. Any objection to the request for
contribution must be made in writing, by way of letter or e-mail, with a copy
made for later reference by the court. If the parent receiving a request for
contribution does not respond to the request within the 30 day period that
parent may be assessed attorney's fees if a contempt proceeding or court action
is required as a result of the parent doing nothing. If the parent who owes
contribution for a health care expense of the child does not pay the amount due
within the 30 day period and fails to respond to the request within the 30 days
and if that parent is the recipient of periodic payments for child support, the
requesting parent is authorized to deduct the amount due from the other parent
from any periodic payments due and payable 30 days after the request for
contribution was made in writing subject to the limitation that the maximum
recovery by deduction from monthly periodic payments will be no more than
\$50.00 per month.

1 **6. Sharing Insurance Reimbursement**

2 If either parent receives a payment from an insurance company or medical
3 provider which reimburses payments made out-of-pocket previously by both
4 parents or the other parent only, the party receiving the payment must give the
5 other parent's portion of the payment to the other parent within 14 days of
6 receipt of the payment.

7 **7. Timely Submission of Claims to Insurance Company**

8 If a claim for reimbursement by the insurance company may be made by either
9 party, the claim must be made in a timely manner. If the claim may only be
10 submitted by one party, that party must submit the claim in a timely manner.
11 Failure of a party to comply with this requirement may result in that party
12 being required to pay the entire amount of the claim which would have been
13 paid by insurance if timely submitted and one-half of that amount which would
14 not have been paid by insurance.

15 **MISCELLANEOUS CHILD PROVISIONS**

16 1. ***Extracurricular Activities.*** The parties shall equally share all agreed
17 upon expenses associated with any extracurricular activities for Nicole.

18 2. ***Removing the Child From the State of Residence of the Parent.***
19 Neither parent shall remove the child from the State of Nevada, for the purpose of
20 changing her residence, without the written consent of both parents or until further
21 Order of the Court. However, this does not preclude the child from visitation out of
22 the state or country with either parent if it is desired, or from participating in out-of-
23 state day or weekend trips, or out-of-state family activities during visitation or
24 vacation.

25 3. ***Child Dependency Exemption.*** For purposes of filing annual income
26 tax returns, and in recognition of the fact that Tara has primary physical custody of
27 Nicole, Tara shall claim Nicole every tax year during her minority so long as such
28 exemptions/deductions are allowed by the Internal Revenue Service.

29 4. ***Communications Between Parents.*** The parents shall communicate
30 with each other by any means, including telephone, text message, letter, or e-mail;
31 however, all communications shall be done in a respectful manner.

32 5. ***Grandparents and Extended Family.*** Each parent agrees that they shall
33 provide the child with access to the grandparents and extended family on his/her own

1 side of the family as the parent decides is in the child's best interest during his/her
2 parenting time. The parents will cooperate to help the child attend special events with
3 grandparents and extended family by making reasonable requests of each other,
4 considering the school situation, and their best interest and needs.

5 6. ***Changes to Decree of Divorce.*** The terms and conditions relating to
6 custody set forth in this *Decree* may be supplemented or revised as the needs of the
7 child and/or circumstances of the parents change. Such revisions shall be in writing,
8 signed and dated by both parents; however the parties understand that any concurred
9 changes do not modify this *Order*. Absent a subsequent Stipulation and Order, or a
10 modifying Court Order, this *Decree* shall remain in full force and effect, and the
11 parents are encouraged to resolve the controversy themselves or seek mediation prior
12 to any future hearings.

13 **DIVISION OF COMMUNITY ASSETS AND DEBTS**

14 1. There is no community property to be divided between the parties with
15 the exception of Alex's interest in his law practice. His share of the law practice shall
16 remain community property. Should Alex be paid for any portion of his share of his
17 law practice, one-half of the amount he receives will be payable to Tara, representing
18 her one-half interest of his law practice which was started during the marriage.

19 2. All other property acquired after May 18, 2016, shall be the sole and
20 separate property of the party so acquiring the same unless the parties mutually agree
21 otherwise in writing.

22 3. All debt incurred prior to the entry of the *Decree of Divorce* shall be
23 solely borne by Alex, including any personal loans obtained by Tara, and all of her
24 medical bills. He shall hold Tara harmless therefrom. In addition, he shall indemnify
25 Tara against any and all actions by any creditors of such debts.

26 4. Any debts incurred by the parties after the filing of this *Decree of*
27 *Divorce* shall be the sole responsibility of the party incurring the debt.
28

POST-DIVORCE FAMILY SUPPORT

1
2 1. In exchange for waiving any claim that she might have otherwise made
3 concerning Alex's dissipation of marital assets, Alex shall provide Tara with family
4 support in the minimum amount of \$2,500 per month for a period of 15 years, or 50%
5 of Alex's gross monthly income, whichever amount is greater. This amount includes
6 the \$819 in child support outlined above. Tara shall also receive 50% of any bonuses
7 Alex may receive at his place of employment. As examples only, if Alex's gross
8 monthly income is \$10,000, he shall provide Tara with a family support payment of
9 \$5,000; in the event Alex's gross monthly income is \$4,000, he shall provide Tara
10 with the minimum family support payment of \$2,500, as that amount is greater than
11 50% of Alex's gross monthly income.

12 2. Alex's support obligation shall commence on May 1, 2016, and shall
13 continue until such time as either one of the parties dies, or upon Tara's remarriage.

14 3. Upon Tara obtaining full-time employment (more than 32 hours per
15 week), the monthly support payment that Alex is required to pay may be re-calculated
16 to an amount of no less than 50% of the difference between the parties' gross monthly
17 income. Regardless of the difference, Tara shall receive the minimum sum of \$2,500
18 per month. As examples only, if Tara's gross monthly income is \$2,000, and Alex's
19 is \$10,000, Alex shall provide Tara with a family support payment of \$4,000; in the
20 event Tara's gross monthly income is \$4,000, and Alex's is \$8,000, Alex shall
21 provide Tara with the minimum family support payment of \$2,500, as that amount is
22 greater than 50% of the difference between the parties' incomes.

23 4. Gross monthly income means the total amount of income received each
24 month from any source of a person who is not self-employed, or the gross income of
25 a self-employed person, after deduction of all legitimate business expenses, but
26 without deduction for personal income taxes, contributions for retirement benefits,
27 contributions to a pension, contributions to a deferred compensation account, or for
28 any other personal expense.

1 5. When the minor child turns 18 years of age, Alex's family support
2 obligation shall continue in the minimum amount of \$2,500, or the greater amount of
3 one-half of the difference between the parties' incomes and shall not be reduced to
4 account for the termination of child support.

5 6. For purposes of determining Alex's gross monthly income, he shall
6 provide Tara, at minimum, his personal and business tax returns every year. If it is
7 determined that Alex provided Tara with less than what he was otherwise required
8 to pay after reviewing his tax returns, he shall immediately make up any such
9 difference and provide Tara with adequate payment.

10 7. Should a dispute arise concerning the calculation of Alex's gross
11 monthly income, this Court specifically reserves jurisdiction to address such a dispute
12 in the future and issue any and all orders necessary to enforce the terms of the parties'
13 agreement.

14 15 **MISCELLANEOUS PROVISIONS**

16 1. ***Taxes.*** The parties shall file separate tax returns for the 2016 tax year
17 and every year thereafter. Any tax liability incurred prior to the 2016 tax year, shall
18 be solely borne by Alex.

19 2. ***Family Support Arrears.*** Pursuant to the *Order From Hearing of*
20 *November 19, 2015*, filed February 3, 2016, Alex was ordered to provide Tara with
21 the sum of \$2,200 per month as and for family support commencing on November 1,
22 2015; however, Tara agrees that his obligation shall commence as of December 1,
23 2015. Alex has made sporadic payments towards that obligation which has resulted
24 in an arrearage, as of January 10, 2017, Alex owed the principal sum of \$2,870, with
25 interest and penalties, he owes \$3,425.18.² This amount shall be reduced to judgment
26 and made collectible by any and all lawful means.

27
28 ² See Exhibit 2, MLAW Arrearage Calculation Summary detailing family support arrears,
dated January 10, 2017.

1 3. *Medical Insurance Arrears.* Pursuant to the *Order From Hearing of*
2 *November 19, 2015*, filed February 3, 2016, Alex was ordered to provide medical
3 insurance for Tara as of November 1, 2015; however, Tara agrees that his obligation
4 shall commence as of December 1, 2015. Alex did not make any payments towards
5 her medical insurance premiums which has resulted in a principal arrearage of
6 \$4,097.10; with interest, he owes \$4,225.15 as of January 10, 2017.³

7 4. Tara shall return to her former name of Tara Kellogg.

8 5. If either party is required to go to court to enforce the terms of this
9 *Decree*, or if there is a dispute between the parties relating to the terms of this *Decree*,
10 the prevailing party shall be entitled to an award of reasonable attorney's fees and
11 costs.

12 6. Both parties shall execute any and all escrow, document transfers of title,
13 and other instruments that may be required in order to effectuate transfer of any and
14 all interests which either may have in and to the property of the other as specified
15 herein, and to do any other act or sign any other documents reasonably necessary and
16 proper for the consummation, effectuation, or implementation of this *Decree* and its
17 intent and purposes. Should either party fail to execute any documents to transfer
18 interest to the other, either party may request that this Court have the Clerk of the
19 Court sign in place of the other in accordance with NRCP 70.

20 7. All community property which is not listed herein shall be owned by the
21 parties as equal co-tenants, subject to future partition upon discovery. Specifically,
22 the parties certify that they have made a full disclosure of all property, or interest in
23 property, owned by them. The parties further certify that the assets listed in this
24 *Decree* are all of the assets acquired during the marriage, and they have not secreted
25 or hidden any assets; in the event that any property has been omitted from this *Decree*
26 that would have been community property or otherwise jointly-held property under

27
28 ³ See Exhibit 3 MLAW Arrearage Calculation Summary detailing medical insurance arrears,
dated January 10, 2017.

1 the law applicable as of the date of this *Decree*, the concealing or possessory party
2 will transfer or convey to the other party, at the other party's election:

- 3 a. The full market value of the other party's interest on the date of this
4 agreement, plus statutory interest through and including the date of
5 transfer or conveyance; or
6 b. The full market value of the other party's interest at the time that party
7 discovers that he or she has an interest in such property, plus statutory
8 interest in such property, plus statutory interest through and including
9 the date of transfer or conveyance; or
10 c. An amount of the omitted property equal to the other party's interest
11 therein, if it is reasonably susceptible to division.

12 With respect to the above paragraph, each party specifically waives any and all
13 limitation periods for the bringing of an action to partition such undisclosed asset(s).
14 Nothing contained herein shall alter the sole and absolute ownership of pre-marital
15 property to which there has been no community contribution.

16 8. Except as herein specified, each party hereto is hereby released and
17 absolved from any and all obligations and liabilities for the future acts and duties of
18 the other.

19 9. Each party shall assume, pay, be responsible for, and hold the other
20 harmless from, any and all encumbrances, loans, mortgages, liens or obligations
21 secured by or made against the property awarded to that party under this *Decree*, and
22 each party shall assume, pay, be responsible for, and hold the other harmless from,
23 any and all loans, debts, and obligations in his or her sole name as of the date this
24 *Decree* is filed.

25 10. If any claim, action, or proceeding is brought seeking to hold one party
26 liable on account of any debt, obligation, liability, act, or omission assumed by the
27 other party, the assuming party will, at his or her sole expense, defend the other
28

1 against any such claim or demand and will indemnify, defend, and hold harmless the
2 non-assuming party.

3 11. Except as may be provided for herein, and except as may be provided by
4 Will or Codicil voluntarily executed after this date, each of the parties releases and
5 waives any and all right to the estate of the other left at his or her death, and forever
6 quitclaims any and all right to share in the estate of the other, by the laws of
7 succession or community, and said parties hereby release one to the other all right to
8 be administrator or administratrix, or executor or executrix, of the estate of the other,
9 and each party hereby waives any and all right to the estate or any interest in the
10 estate of the other for family allowance or property exempt from execution, or by way
11 of inheritance, and said waiver shall be effective from the date of this *Decree*.

12 12. Other than expressly set forth in this *Decree of Divorce*, the parties agree
13 that they forever waive, release, and discharge the other from any rights, claims,
14 demands, causes of action, and damages of any kind, known or unknown, now
15 existing or arising in the future, resulting from or relating to any personal injuries,
16 properties, damages, events, conduct, happenings or actions arising at the time of or
17 prior to the date of this *Decree of Divorce*, including actions arising under contract
18 or tort theories, whether arising from or during the marriage or divorce of the parties,
19 or prior to the marriage of the parties.

20 This waiver, release and discharge is an integral part of this *Decree of Divorce*
21 and may not be modified.

22 13. This stipulated *Decree of Divorce* is the full and final agreement between
23 the parties. Accordingly, all prior negotiations and agreements between the parties
24 are incorporated in this *Decree of Divorce*. The terms of this *Decree of Divorce* are
25 intended by the parties as a final, complete, and exclusive expression of their
26 agreement, and may not be contradicted by evidence of any prior agreement or
27 alleged contemporaneous oral agreement. The terms of this *Decree of Divorce* may
28

1 not be amended, modified, or altered except through written agreement signed by
2 both parties, or by an appropriate order of the Court.

3 14. In the event that any provision of this *Decree of Divorce* shall be held
4 to be invalid or unenforceable, such ruling shall not affect the validity or
5 enforceability of the remainder of the *Decree of Divorce* in any respect whatsoever.

6 15. This Court shall reserve jurisdiction over this matter as necessary to
7 enforce any and all of its orders. All terms recited above dealing with property, debts,
8 and alimony are parts of an integrated domestic support obligations order, such that
9 frustration or non-performance of any terms (by bankruptcy or otherwise) that
10 materially affects the others, which would not have been set forth as they were but for
11 the expectation of performance of all stated terms. This Court reserves jurisdiction
12 to enter such further or other orders as necessary to enforce or effectuate any and all
13 provisions set out herein, including by way of compensatory alimony, or
14 recharacterization or reallocation of property or debts so as to effectuate the terms of
15 this *Decree*.

16 16. The parties each acknowledge that he or she has had the opportunity to
17 independently obtain the information necessary to determine the nature, extent, and
18 valuation of the community and jointly owned property set forth herein, and the
19 community and joint debts and obligations set forth herein. The parties each further
20 acknowledge that he or she has independently valued such community and jointly
21 owned property, debt and obligations, and he or she has not relied upon any
22 representations made by his or her counsel, or the other party's counsel. Specifically,
23 neither party has relied upon any representations made by Marshal S. Willick, Esq.
24 and Trevor M. Creel, Esq., of the WILICK LAW GROUP as to the extent, nature or
25 valuation of such property, debt and obligation, or with respect to the division of the
26 same.

27 17. The parties shall submit the information required in NRS 125B.055,
28 NRS 125.130 and NRS 125.230, on a separate form to the Court and the Welfare

1 Division of the Department of Human Resources within ten days from the date of this
2 *Decree* is filed. Such information shall be maintained by the Clerk in a confidential
3 manner and not part of the public record. The parties shall update the information
4 filed with the Court and the Welfare Division of the Department of Human Resources
5 within ten days should any of that information become inaccurate.

6 7 **CHILD CUSTODY NOTICES**

8 1. **NOTICE IS HEREBY GIVEN** that the parties are subject to the
9 provisions of NRS 125C.0065, which provides:

10 1. If joint physical custody has been established pursuant to an order,
11 judgment or decree of a court and one parent intends to relocate his or
12 her residence to a place outside of this State or to a place within this
13 State that is at such a distance that would substantially impair the ability
of the other parent to maintain a meaningful relationship with the child,
and the relocating parent desires to take the child with him or her, the
relocating parent shall, before relocating:

- 14 (a) Attempt to obtain the written consent of the non-relocating
parent to relocate with the child; and
15 (b) If the non-relocating parent refuses to give that consent, petition
16 the court for primary physical custody for the purpose of
relocating.

17 2. The court may award reasonable attorney's fees and costs to the
18 relocating parent if the court finds that the non-relocating parent
refused to consent to the relocating parent's relocation with the child:

- 19 (a) Without having reasonable grounds for such refusal; or
20 (b) For the purpose of harassing the relocating parent.

21 3. A parent who relocates with a child pursuant to this section before the
22 court enters an order granting the parent primary physical custody of
the child and permission to relocate with the child is subject to the
provisions of NRS 200.359.

23 2. **NOTICE IS FURTHER GIVEN** that a parent who relocates with the
24 minor child after entry of an order, judgment, or decree without obtaining permission
25 is subject to NRS 125C.0045(6), which provides:

26 **PENALTY FOR VIOLATION OF ORDER:** THE ABDUCTION,
27 CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF
THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS
28 PROVIDED IN NRS 193.130. NRS 200.359 provides that every person

1 having a limited right of custody to a child or any parent having no right of
2 custody to the child who willfully detains, conceals or removes the child from
3 a parent, guardian or other person having lawful custody or a right of visitation
4 of the child in violation of an order of this court, or removes the child from the
jurisdiction of the court without the consent of either the court or all persons
who have the right to custody or visitation is subject to being punished for a
category D felony as provided in NRS 193.130.

5 3. **NOTICE IS FURTHER GIVEN** that pursuant to NRS 125C.0045(7)
6 and (8), the terms of the Hague Convention of October 25, 1980, adopted by the 14th
7 Session of the Hague Conference on Private International Law are applicable to the
8 parties. Nevada is hereby declared the State, and the United States of America is
9 hereby declared the country, of habitual residence of the child(ren) for the purposes
10 of applying the terms of the Hague Convention as set forth above.

11 4. **NOTICE IS FURTHER GIVEN** that under the terms of the Parental
12 Kidnaping Prevention Act, 28 U.S.C. Sec. 1738A, and the Uniform Child Custody
13 Jurisdiction Act, NRS 125A.010, *et seq.*, the courts of Nevada have exclusive
14 modification jurisdiction of the custody and visitation terms relating to the child(ren)
15 at issue in this case so long as either of the parties or the child(ren) continue to reside
16 in this jurisdiction.

17 **CHILD SUPPORT NOTICES**

18 **FURTHER NOTICE IS HEREBY GIVEN:**

19 1. The parent having the child support obligation is subject to NRS 125.450
20 and NRS 31A.020 through 31A.230, inclusive, regarding the immediate withholding
21 or assignment of wages, commissions or bonuses for payment of child support,
22 whether current or delinquent.


23 2. Pursuant to NRS 125B.145, either party may request that the Court
24 review the child support obligation every three years or upon changed circumstances.
25

26 *****


27 *****

28 *****

IT IS SO ORDERED this 30 day of January, 2017.


DISTRICT COURT JUDGE

Respectfully Submitted By:
WILLICK LAW GROUP


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EXHIBIT “1”

EXHIBIT “1”

EXHIBIT “1”

Arrearage Calculation Summary

Kellogg v. Ghibaud

Page: 1

Report Date: 01/06/2017

Summary of Amounts Due

Total Principal Due 01/10/2017:	\$1,963.50
Total Interest Due 01/10/2017:	\$61.36
Total Penalty Due 01/10/2017:	\$111.41
Amount Due if paid on 01/10/2017:	\$2,136.27
Amount Due if paid on 01/11/2017:	\$2,137.12
Daily Amount accruing as of 01/11/2017:	\$0.84

Date Due	Amount Due	Date Received	Amount Received	Accum. Arrearage	Accum. Interest
12/01/2015	*140.25	12/01/2015	0.00	140.25	0.00
01/01/2016	*140.25	01/01/2016	0.00	280.50	0.62
02/01/2016	*140.25	02/01/2016	0.00	420.75	1.93
03/01/2016	*140.25	03/01/2016	0.00	561.00	3.76
04/01/2016	*140.25	04/01/2016	0.00	701.25	6.37
05/01/2016	*140.25	05/01/2016	0.00	841.50	9.54
06/01/2016	*140.25	06/01/2016	0.00	981.75	13.46
07/01/2016	*140.25	07/01/2016	0.00	1,122.00	17.88
08/01/2016	*140.25	08/01/2016	0.00	1,262.25	23.11
09/01/2016	*140.25	09/01/2016	0.00	1,402.50	28.99
10/01/2016	*140.25	10/01/2016	0.00	1,542.75	35.31
11/01/2016	*140.25	11/01/2016	0.00	1,683.00	42.50
12/01/2016	*140.25	12/01/2016	0.00	1,823.25	50.09
01/01/2017	*140.25	01/01/2017	0.00	1,963.50	58.58
01/10/2017	0.00	01/10/2017	0.00	1,963.50	61.36
Totals	1,963.50		0.00	1,963.50	61.36

* Indicates a payment due is designated as child support.

Child Support Penalty Table

Date Due	Amount Due	Accum. Child Sup. Arrearage	Accum. Penalty
12/01/2015	*140.25	0.00	0.00
01/01/2016	*140.25	140.25	1.19
02/01/2016	*140.25	280.50	3.57
03/01/2016	*140.25	420.75	6.90
04/01/2016	*140.25	561.00	11.65
05/01/2016	*140.25	701.25	17.40
06/01/2016	*140.25	841.50	24.53
07/01/2016	*140.25	981.75	32.57
08/01/2016	*140.25	1,122.00	42.08
09/01/2016	*140.25	1,262.25	52.77
10/01/2016	*140.25	1,402.50	64.27
11/01/2016	*140.25	1,542.75	77.33
12/01/2016	*140.25	1,683.00	91.13
01/01/2017	*140.25	1,823.25	106.57
01/10/2017	0.00	1,963.50	111.41
Totals	1,963.50	1,963.50	111.41

* Indicates a payment due is designated as child support.

Notes:

Payments are applied to oldest unpaid balance.
Interest and penalties are calculated using number of days past due.
Payments apply to principal amounts only.
Interest is not compounded, but accrued only.
Penalties calculated on past due child support amounts per NRS 125B.095.

Interest Rates Used by Program:

7.00%	from Jan 1960 to Jun 1979		8.00%	from Jul 1979 to Jun 1981
12.00%	from Jul 1981 to Jun 1987		10.25%	from Jul 1987 to Dec 1987
10.75%	from Jan 1988 to Jun 1988		11.00%	from Jul 1988 to Dec 1988
12.50%	from Jan 1989 to Jun 1989		13.00%	from Jul 1989 to Dec 1989
12.50%	from Jan 1990 to Jun 1990		12.00%	from Jul 1990 to Jun 1991
10.50%	from Jul 1991 to Dec 1991		8.50%	from Jan 1992 to Dec 1992
8.00%	from Jan 1993 to Jun 1994		9.25%	from Jul 1994 to Dec 1994
10.50%	from Jan 1995 to Jun 1995		11.00%	from Jul 1995 to Dec 1995
10.50%	from Jan 1996 to Jun 1996		10.25%	from Jul 1996 to Jun 1997
10.50%	from Jul 1997 to Dec 1998		9.75%	from Jan 1999 to Dec 1999
10.25%	from Jan 2000 to Jun 2000		11.50%	from Jul 2000 to Jun 2001
8.75%	from Jul 2001 to Dec 2001		6.75%	from Jan 2002 to Dec 2002
6.25%	from Jan 2003 to Jun 2003		6.00%	from Jul 2003 to Dec 2003
6.00%	from Jan 2004 to Jun 2004		6.25%	from Jul 2004 to Dec 2004
7.25%	from Jan 2005 to Jun 2005		8.25%	from Jul 2005 to Dec 2005
9.25%	from Jan 2006 to Jun 2006		10.25%	from Jul 2006 to Dec 2007
9.25%	from Jan 2008 to Jun 2008		7.00%	from Jul 2008 to Dec 2008
5.25%	from Jan 2009 to Dec 2012		5.25%	from Jan 2013 to Jun 2013
5.25%	from Jul 2013 to Dec 2013		5.25%	from Jan 2014 to Jun 2014
5.25%	from Jul 2014 to Dec 2014		5.25%	from Jan 2015 to Jun 2015
5.25%	from Jul 2015 to Dec 2015		5.50%	from Jan 2016 to Jun 2016
5.50%	from Jul 2016 to Dec 2016		5.75%	from Jan 2017 to Jul 2017

Report created by:

Marshal Law version 4.0

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End of Report

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EXHIBIT “2”

EXHIBIT “2”

EXHIBIT “2”

Arrearage Calculation Summary

Kellogg v. Ghibaud

Page: 1

Report Date: 01/06/2017

Summary of Amounts Due

Total Principal Due 01/10/2017:	\$2,870.00
Total Interest Due 01/10/2017:	\$196.81
Total Penalty Due 01/10/2017:	\$358.36
Amount Due If paid on 01/10/2017:	\$3,425.18
Amount Due If paid on 01/11/2017:	\$3,426.41
Daily Amount accruing as of 01/11/2017:	\$1.23

Date Due	Amount Due	Date Received	Amount Received	Accum. Arrearage	Accum. Interest
12/01/2015	*2,200.00	12/01/2015	0.00	2,200.00	0.00
01/01/2016	*2,200.00	01/01/2016	0.00	4,400.00	9.80
02/01/2016	*2,200.00	02/01/2016	260.00	6,340.00	30.30
02/12/2016	0.00	02/12/2016	700.00	5,640.00	40.78
02/17/2016	0.00	02/17/2016	300.00	5,340.00	45.02
02/26/2016	0.00	02/26/2016	1,800.00	3,540.00	52.24
02/27/2016	0.00	02/27/2016	650.00	2,890.00	52.77
03/01/2016	*2,200.00	03/04/2016	650.00	4,440.00	56.37
03/11/2016	0.00	03/11/2016	650.00	3,790.00	61.04
03/18/2016	0.00	03/18/2016	650.00	3,140.00	65.03
03/25/2016	0.00	03/25/2016	660.00	2,480.00	68.33
04/01/2016	*2,200.00	04/02/2016	560.00	4,120.00	71.64
04/13/2016	0.00	04/13/2016	550.00	3,570.00	78.45
04/16/2016	0.00	04/16/2016	100.00	3,470.00	80.06
04/22/2016	0.00	04/22/2016	600.00	2,870.00	83.19
07/01/2016	0.00	07/01/2016	0.00	2,870.00	113.38
01/01/2017	0.00	01/01/2017	0.00	2,870.00	192.74
01/10/2017	0.00	01/10/2017	0.00	2,870.00	196.81
Totals	11,000.00		8,130.00	2,870.00	196.81

* Indicates a payment due is designated as child support.

Child Support Penalty Table

Date Due	Amount Due	Accum. Child Sup. Arrearage	Accum. Penalty
12/01/2015	*2,200.00	0.00	0.00
01/01/2016	*2,200.00	2,200.00	18.68
02/01/2016	*2,200.00	6,340.00	55.95
02/12/2016	0.00	5,640.00	75.01
02/17/2016	0.00	5,340.00	82.71
02/26/2016	0.00	3,540.00	95.84
02/27/2016	0.00	2,890.00	96.81
03/04/2016	*2,200.00	4,440.00	103.35
03/11/2016	0.00	3,790.00	111.84
03/18/2016	0.00	3,140.00	119.09
03/25/2016	0.00	2,480.00	125.10
04/02/2016	*2,200.00	4,120.00	131.12
04/13/2016	0.00	3,570.00	143.50
04/16/2016	0.00	3,470.00	146.43
04/22/2016	0.00	2,870.00	152.12
07/01/2016	0.00	2,870.00	207.01
01/01/2017	0.00	2,870.00	351.29
01/10/2017	0.00	2,870.00	358.37
Totals	11,000.00	2,870.00	358.37

* Indicates a payment due is designated as child support.

Notes:

Payments are applied to oldest unpaid balance.
Interest and penalties are calculated using number of days past due.
Payments apply to principal amounts only.
Interest is not compounded, but accrued only.
Penalties calculated on past due child support amounts per NRS 125B.095.

Interest Rates Used by Program:

7.00%	from Jan 1960 to Jun 1979		8.00%	from Jul 1979 to Jun 1981
12.00%	from Jul 1981 to Jun 1987		10.25%	from Jul 1987 to Dec 1987
10.75%	from Jan 1988 to Jun 1988		11.00%	from Jul 1988 to Dec 1988
12.50%	from Jan 1989 to Jun 1989		13.00%	from Jul 1989 to Dec 1989
12.50%	from Jan 1990 to Jun 1990		12.00%	from Jul 1990 to Jun 1991
10.50%	from Jul 1991 to Dec 1991		8.50%	from Jan 1992 to Dec 1992
8.00%	from Jan 1993 to Jun 1994		9.25%	from Jul 1994 to Dec 1994
10.50%	from Jan 1995 to Jun 1995		11.00%	from Jul 1995 to Dec 1995
10.50%	from Jan 1996 to Jun 1996		10.25%	from Jul 1996 to Jun 1997
10.50%	from Jul 1997 to Dec 1998		9.75%	from Jan 1999 to Dec 1999
10.25%	from Jan 2000 to Jun 2000		11.50%	from Jul 2000 to Jun 2001
8.75%	from Jul 2001 to Dec 2001		6.75%	from Jan 2002 to Dec 2002
6.25%	from Jan 2003 to Jun 2003		6.00%	from Jul 2003 to Dec 2003
6.00%	from Jan 2004 to Jun 2004		6.25%	from Jul 2004 to Dec 2004
7.25%	from Jan 2005 to Jun 2005		8.25%	from Jul 2005 to Dec 2005
9.25%	from Jan 2006 to Jun 2006		10.25%	from Jul 2006 to Dec 2007
9.25%	from Jan 2008 to Jun 2008		7.00%	from Jul 2008 to Dec 2008
5.25%	from Jan 2009 to Dec 2012		5.25%	from Jan 2013 to Jun 2013
5.25%	from Jul 2013 to Dec 2013		5.25%	from Jan 2014 to Jun 2014
5.25%	from Jul 2014 to Dec 2014		5.25%	from Jan 2015 to Jun 2015
5.25%	from Jul 2015 to Dec 2015		5.50%	from Jan 2016 to Jun 2016
5.50%	from Jul 2016 to Dec 2016		5.75%	from Jan 2017 to Jul 2017

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End of Report

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EXHIBIT “3”

EXHIBIT “3”

EXHIBIT “3”

Arrearage Calculation Summary

Kellogg v. Ghibaudo

Page: 1

Report Date: 01/06/2017

Summary of Amounts Due

Total Principal Due 01/10/2017:	\$4,097.10
Total Interest Due 01/10/2017:	\$128.05
Total Penalty Due 01/10/2017:	\$0.00
Amount Due If paid on 01/10/2017:	\$4,225.15
Amount Due If paid on 01/11/2017:	\$4,225.79
Daily Amount accruing as of 01/11/2017:	\$0.64

Date Due	Amount Due	Date Received	Amount Received	Accum. Arrearage	Accum. Interest
12/01/2015	292.65	12/01/2015	0.00	292.65	0.00
01/01/2016	292.65	01/01/2016	0.00	585.30	1.30
02/01/2016	292.65	02/01/2016	0.00	877.95	4.03
03/01/2016	292.65	03/01/2016	0.00	1,170.60	7.85
04/01/2016	292.65	04/01/2016	0.00	1,463.25	13.31
05/01/2016	292.65	05/01/2016	0.00	1,755.90	19.90
06/01/2016	292.65	06/01/2016	0.00	2,048.55	28.08
07/01/2016	292.65	07/01/2016	0.00	2,341.20	37.32
08/01/2016	292.65	08/01/2016	0.00	2,633.85	48.22
09/01/2016	292.65	09/01/2016	0.00	2,926.50	60.49
10/01/2016	292.65	10/01/2016	0.00	3,219.15	73.69
11/01/2016	292.65	11/01/2016	0.00	3,511.80	88.68
12/01/2016	292.65	12/01/2016	0.00	3,804.45	104.51
01/01/2017	292.65	01/01/2017	0.00	4,097.10	122.24
01/10/2017	0.00	01/10/2017	0.00	4,097.10	128.05
Totals	4,097.10		0.00	4,097.10	128.05

* Indicates a payment due is designated as child support.

Notes:

Payments are applied to oldest unpaid balance.
Interest and penalties are calculated using number of days past due.
Payments apply to principal amounts only.
Interest is not compounded, but accrued only.
Penalties calculated on past due child support amounts per NRS 125B.095.

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12.50%	from Jan 1990 to Jun 1990		12.00%	from Jul 1990 to Jun 1991
10.50%	from Jul 1991 to Dec 1991		8.50%	from Jan 1992 to Dec 1992
8.00%	from Jan 1993 to Jun 1994		9.25%	from Jul 1994 to Dec 1994
10.50%	from Jan 1995 to Jun 1995		11.00%	from Jul 1995 to Dec 1995
10.50%	from Jan 1996 to Jun 1996		10.25%	from Jul 1996 to Jun 1997
10.50%	from Jul 1997 to Dec 1998		9.75%	from Jan 1999 to Dec 1999
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6.25%	from Jan 2003 to Jun 2003		6.00%	from Jul 2003 to Dec 2003
6.00%	from Jan 2004 to Jun 2004		6.25%	from Jul 2004 to Dec 2004
7.25%	from Jan 2005 to Jun 2005		8.25%	from Jul 2005 to Dec 2005
9.25%	from Jan 2006 to Jun 2006		10.25%	from Jul 2006 to Dec 2007
9.25%	from Jan 2008 to Jun 2008		7.00%	from Jul 2008 to Dec 2008
5.25%	from Jan 2009 to Dec 2012		5.25%	from Jan 2013 to Jun 2013
5.25%	from Jul 2013 to Dec 2013		5.25%	from Jan 2014 to Jun 2014
5.25%	from Jul 2014 to Dec 2014		5.25%	from Jan 2015 to Jun 2015
5.25%	from Jul 2015 to Dec 2015		5.50%	from Jan 2016 to Jun 2016
5.50%	from Jul 2016 to Dec 2016		5.75%	from Jan 2017 to Jul 2017

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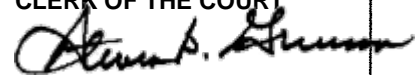
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End of Report

EXHIBIT 3



MOT

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rsmith@radfordsmith.com
Attorneys for Defendant

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

TARA KELLOGG-GHIBAUDO,

Plaintiff,

vs.

ALEX GHIBAUDO,

Defendant.

CASE NO.: D-15-522043-D

DEPT NO.: H

ORAL ARGUMENT: YES

NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN 14 CALENDAR DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN 14 CALENDAR DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT A HEARING PRIOR TO THE SCHEDULED HEARING DATE.

DEFENDANT'S MOTION TO MODIFY SPOUSAL SUPPORT

Defendant, ALEX GHIBAUDO ("Alex"), by and through his attorney, Radford J. Smith, Esq. of Radford J. Smith, Chartered and submits the following points and authorities in support of his Motion to Modify Spousal Support. Alex moves for the Court's Order as follows:

1 1. Vacating as void that portion of the Court's February 1, 2017 Decree of
2 Divorce directing Plaintiff to pay alimony to Defendant;
3

4 2. For a hearing on the issue of alimony, and a determination of a reasonable
5 amount of alimony pending evidentiary hearing;
6

7 3. In the alternative, for a modification of the current alimony order based upon
8 Plaintiff's breach of the alimony terms contained in the Decree, and based upon the change
9 of circumstances arising from that breach;
10

11 4. For an order directing Plaintiff to pay the attorney's fees and costs incurred in
12 the prosecution of this motion;
13

14 5. For such other and further relief as the court finds appropriate in the premises.
15 Defendant's Motions are made and based upon all pleadings and papers on file in this
16 matter, the points and authorities attached hereto, the evidence submitted with the Motion,
17 and any oral argument or evidence adduced at the time of the hearing of this matter.
18

19 DATED this 27 day of May 2019.
20

21 RADFORD J. SMITH, CHARTERED
22

23 _____
24 RADFORD J. SMITH, ESQ.
25 Nevada State Bar No. 002791
26 2470 St. Rose Parkway, Suite 206
27 Henderson, Nevada 89074
28 Attorney for Defendant

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EDCR 5.501 STATEMENT

Pursuant to EDCR 5.501, Defendant and his counsel have attempted to resolve this matter with Plaintiff on multiple occasions to no avail. Thus, Defendant was forced to file this motion.

I.

STATEMENT OF FACTS

Plaintiff Tara Kellogg-Ghibauda (“Tara”) and Defendant Alex Ghibauda (“Alex”) were married on December 30, 2001. The parties are the parents of one minor child, Nicole Ghibauda, born May 17, 2001. Tara filed her Complaint for Divorce on October 1, 2015 through her then counsel, Sigal Chattah, Esq. Alex filed his Answer and Counterclaim in proper person on November 11, 2015.

On May 18, 2016, the parties attended a settlement conference with Senior Judge Kathy Hardcastle. Tara was represented during that conference by Ms. Chattah, and Alex appeared in proper person. During that conference, the parties agreed that they would not be divorced because they were still contemplating reconciliation. At the time Alex had just reinstated his Nevada law license after a five-year suspension. He had little income at that time. Alex was led to believe that Tara was then attending CSN toward a degree in psychology, and he anticipated that she would be employed by 2017. His belief was informed in part by his knowledge that Tara had taken approximately 21 college units per year from Winter 2011 forward.

1 At the settlement conference, the parties reached an agreement for the terms of a
2 “legal separation” (deemed a “Decree of Separate Maintenance” under Nevada law). That
3 settlement was read into the minutes of the Court on that date. The minutes of that hearing
4 state:
5

6 A Decree of Legal Separation will be entered. At any time either party may
7 seek a termination of the Decree of Legal Separation and pursue a Decree of
8 Divorce.
9

10 As part of their agreement for a legal separation, the parties agreed that Alex would
11 pay child support and spousal support to Tara. That portion of the minutes reads:
12

13 Defendant will pay Plaintiff the sum of \$2500.00 per month in ALIMONY;
14 this amount includes \$819.00 that is attributable towards Child Support.
15

16 Minutes dated May 18, 2016. The minutes then reflect rather confusing terms that link
17 Alex’s alimony obligation to his “GMI” (gross monthly income). Those provisions may
18 make sense when the parties were contemplating reconciliation, which would presumably
19 had made both parties’ incomes community property, but they made little sense for a
20 divorce.
21

22 The parties did not reconcile. In or about June 2016, Tara’s counsel, Sigal Chattah,
23 Esq., provided a draft Decree of Separate Maintenance, a tacit acknowledgment that the
24 parties had never agreed to the terms of a Decree of Divorce. Shortly after doing so, Ms.
25 Chattah began making demands that were inconsistent with the terms agreed in the
26 settlement conference. Alex advised Ms. Chattah that if the parties were not going to agree
27
28

1 to the terms contained in the record at the settlement conference, they should set aside the
2 agreement and set the matter for trial, an obvious request to proceed forward on divorce.

3
4 Tara then changed counsel to Trevor Creel, Esq. who sent Alex a letter proposing a
5 draft Decree of Divorce, not a Decree of Separate Maintenance. (Exhibit "A"). Alex
6 responded by letter indicating that he did not agree with the terms of the proposed Decree,
7 and specifically did *not* agree with the terms of the support obligation. (Exhibit "B").
8 Without citing any evidence of an agreement for a divorce, or any agreement for support
9 terms upon divorce, Tara's counsel nevertheless sought the summary entry of a Decree of
10 Divorce containing the terms that had only been agreed as part of "Legal Separation." *See*,
11 Motion for Entry of a Decree of Divorce, filed November 15, 2016.
12
13
14

15 On November 29, 2016. Alex filed his Opposition and Countermotion in which he
16 objected to the summary filing of the Decree by the Court. The court, after hearing, entered
17 a Decree of Divorce without Alex's consent or signature, and over his objection. The
18 Decree was filed on February 1, 2017, with Notice of Entry served on February 3, 2017.
19
20

21 Alex filed motions to set aside the Decree that the Judge Brown denied. Regardless
22 of that legal status, the question now arises whether this court may modify the existing
23 order, and when doing so, is the court obligated to recognize the "agreement" of the parties
24 regarding support. As discussed below, there never was a meeting of the minds or any
25 cognizable agreement regarding *post-divorce* spousal support, either in term or amount.
26 The agreement that Judge Brown relied upon to enter a Decree without trial was *only* an
27 agreement regarding the terms of a legal separation. Thus, the district court is not bound
28

1 by that agreement either as a contract, and because whatever agreement the court used was
2 incorporated into the decree, and thus is modifiable. Further, as stated below, the basis for
3 the terms in the decree are contrary to clear statutory law, and are thus voidable.
4

5 Even if the court were to ignore the defects in both procedure, law and contract that
6 are the basis of the current order, Tara should be estopped from enforcing the terms of the
7 agreement because of her violation of those terms both expressly, and by her violation of
8 the implied covenant of good faith and fair dealing.
9
10

11 **1. THE DISTRICT COURT WAS WITHOUT JURISDICTION TO ENTER A**
12 **SUMMARY DECREE OF DIVORCE CONTAINING SUPPORT TERMS**
13 **THAT WERE NOT AGREED TO BY THE PARTIES**

14 The parties agreed to the terms of a “legal separation” that they acknowledged into
15 the minutes of the court. The terms of that agreement constitute enforceable stipulation
16 under EDCR 7.50. The question raised by the facts of this case is, however, “what did the
17 parties agree to?” In *Grisham v. Grisham*, 128 Nev. 679, 685, 289 P.3d 230, 234 (2012)
18 the court held:
19
20

21 When parties to pending litigation enter into a settlement, they enter into a
22 contract. Such a contract is subject to general principles of contract law. *Id.* [. . .]
23 a stipulated settlement agreement requires mutual assent, or a ‘meeting of
24 the minds,’ on ‘the contract's essential terms.’ ‘A valid contract cannot exist
25 when material terms are lacking or are insufficiently certain and definite’ for
26 a court ‘to ascertain what is required of the respective parties’ and to ‘compel
27 compliance’ if necessary.

28 Here, the minutes of the Court are clear; the parties only agreed to a “Legal Separation.”
Tara cannot dispute that fact because she affirmed it in her pleadings. In her Motion for
Entry of a Decree of Divorce, filed November 15, 2016, Tara recognized that the parties

1 had agreed that Tara's counsel, then Ms. Chattah, would prepare the *Decree of Legal*
2 *Separation.*” Motion, page 5, lines 11-12. (Emphasis in Original). The only explanation
3 for the submission of a Decree of Divorce by Tara's then counsel, Trevor Creel, Esq. was,
4 “After it became evident that Alex may not cooperate in effectuating the terms of the parties’
5 agreement, Tara retained us and we prepared a comprehensive *Decree of Divorce.*”
6 Plaintiff's Motion for Entry of Decree of Divorce, [Etc.] at page 5.
7

8
9 Tara's understanding of the parties' agreement was expressed in the draft “DECREE
10 OF LEGAL SEPARATION” that *was* prepared by Ms. Chattah and sent to Alex for his
11 review and signature. (See June 6, 2016 email from Ms. Chattah to Alex and the attached
12 Decree of Legal Separation, filed as Exhibit's “C” and “D” in support of this Motion). In
13 that proposed Decree of Legal Separation, Ms. Chattah expressly cites NRS 125.190,
14 125.210, 125.230 and 125.280, claiming that all the conditions of those statutes had been
15 met. Those statutes are the relevant statutes associated with the entry of a Decree of Separate
16 Maintenance, Nevada's version of a decree of legal separation, not a Decree of Divorce.
17
18
19
20

21 The procedure, limits on the Court, and limits on the content in those statutes are
22 different than what is contained in the grant of power to enter a Decree of Divorce in NRS
23 125.150. Unlike a Decree of Divorce, a district court may change, modify or revoke its
24 orders under those statutes “from time to time,” and there is no time limit set for that
25 modification other than the “joint lives of the parties.” NRS 125.210 (4). Divorce Decrees
26 regarding property rights may only be modified by stipulation of the parties (NRS
27 125.150(7); NRCP 60(b)), and alimony provisions may only be modified upon a showing
28

1 of “changed circumstances” or a reduction of a payor spouse. NRS 125.150 (8); NRS
2 125.150 (12). There are no such limitations in the language defining the court’s ability to
3 modify a Decree of Legal Separation. The distinction between a decree of “legal
4 separation” and a divorce decree was a material provision of the parties’ agreement, and
5 that distinction was ignored by Judge Brown when she summarily entered a Decree over
6 Alex’s objection.
7

8
9 Equally important, no Decree of Separate Maintenance was ever finalized or ordered
10 by the Court as contemplated by the parties’ stipulation. Judge Brown was left only with
11 the parties’ oral agreement read into the minutes at the settlement hearing. NRS 123.080
12 reads:
13
14

15 A husband and wife cannot by any contract with each other alter their legal
16 relations except as to property, and except that they may agree to an immediate
17 separation and may make provision for the support of either of them and of
18 their children during such separation.

19 Thus, when entering an agreement that was not for a divorce, but instead contemplated the
20 continuation of a marriage during separation, the express language of NRS 123.080 prevents
21 the parties from entering (they “cannot contract”) any binding agreement for support beyond
22 the period of the parties’ separation. Separation in this context must be given its plain
23 meaning – the period before reconciliation or divorce. That type of support was what the
24 parties contemplated when negotiating a “legal separation.” Had they been contemplating
25 that the support provisions would continue after entry of a divorce decree, they could have
26 stated that they were doing so as part of the stipulation read into the minutes of the court.
27
28

1 Because the parties did not agree to permanent alimony after divorce, the stipulation cannot
2 be read to grant the Court to grant permanent alimony. Alex made that clear to Mr. Creel,
3 who substituted into the case and asserted, contrary to the draft agreement prepared by Ms.
4 Chattah, that the parties had agreed to alimony after divorce. Alex made clear to Mr. Creel
5 that he never agreed that the provisions of support to facilitate a “legal separation” would
6 define support in a divorce. (See, Letter from Alex Ghibaudo to Trevor Creel dated October
7 5, 2016, submitted as Exhibit “E” in support of this Opposition).

11 Contrary to the implied finding of Judge Brown when she entered the Decree of
12 Divorce, there was no agreement regarding spousal support. Noticeably absent from the
13 Decree is an analysis of the factors or written findings required by NRS 125.150(9), nor any
14 stated basis for the district court’s award. Failure to include findings of fact regarding the
15 alimony prevents any reviewing court from understanding the basis of the alimony award.
16 Here, there was no basis for such an award except the reliance on an agreement that could
17 not legally resolve the issue of alimony.

21 Moreover, there were substantial questions of fact at the time of the Decree that
22 required an evidentiary hearing as a matter of due process. Those issues included whether
23 the divorce contemplated a change in circumstances from the agreement reached regarding
24 a “legal separation.” Here, the summary entry of the Decree deprived Alex of any ability
25 to challenge the amount of alimony. Even if the court found that an agreement regarding
26 spousal support had been made months earlier, the court should have held a hearing to
27
28

1 determine whether the alimony was equitable under the factors set forth in NRS 125.150.

2 In *Allen v. Allen*, 112 Nev. 1230, 1233, 925 P.2d 503, 504 (1996), the court stated:

3
4 All the wife is claiming in this case is that the property was not divided equally
5 or fairly and that she should have the right to present her claims to the court.
6 The April 23, 1993 decree was based entirely upon an oral agreement of a
7 year before, and the court was not entitled to enter such a decree without first
8 hearing the merits of the claims asserted by the wife relative to the unfair
9 property disposition inherent in the enforcement of the April 29, 1992, oral
10 agreement.

11 *See also,*

12 Moreover, Nevada statute strictly defines those instances in which a Court may enter
13 a summary disposition of the issues in a divorce case. NRS 125.181. Based upon the
14 Court's failure to recognize the limits of the parties' contract contemplating a legal
15 separation, its failure to hold an evidentiary hearing, its denial of due process to Alex, and
16 its failure to render findings on the issue of alimony, the Court should vacate the alimony
17 provisions of the summary Decree of Divorce and set the matter for evidentiary hearing on
18 the issue of alimony.
19
20

21 **2. THE PROVISIONS OF THE DECREE REGARDING SPOUSAL SUPPORT** 22 **ARE VOID**

23 As indicated above, the agreement of the parties was for a legal separation (Decree
24 of Separate Maintenance), a fact that was expressly recognized in the minutes of the Court
25 and by Tara in her pleadings. The statutory basis for a district court to enter an order for
26 support in a Decree of Legal Separation is defined in NRS 125.210(1)(c) that reads that a
27 court may, in an action for legal separation, may, "Order or decree the payment of a *fixed*
28

1 *sum of money* for the support of the other spouse and their children.” The court’s Decree
2 in this case does not contain a fixed sum of money, but instead is contingent upon various
3 factors. Alex submits that the Court should find that the current provisions are void, and
4 revise the Decree by rendering findings incorporating the factors under NRS 125.150(8)
5 directing the payment of a fixed sum of alimony for a reasonable period.
6
7

8 **3. THE CHANGE OF CIRCUMSTANCES SINCE THE PARTIES’**
9 **SETTLEMENT CONFERENCE JUSTIFIES A REVIEW OF ALEX’S**
10 **OBLIGATION OF ALIMONY**

11 Nevada law permits a modification of alimony upon a change in circumstances. NRS
12 125.150(8). The circumstances underlying the Court’s award of alimony changed before
13 the entry of the Decree. The Court based its Decree regarding alimony based upon the
14 erroneous presumption that the parties had agreed to the terms of a Divorce Decree prior
15 to its entry. The evidence demonstrates they did not.
16
17

18 The only logical explanation for the parties’ agreement that Alex would support Tara
19 by providing her a significant percentage of his income was the sharing of community
20 income during a time of attempted reconciliation. The motivations for doing so are
21 substantially different than the circumstances arising from a contemplated divorce that
22 would end any right to community income. Moreover, at the time of the negotiation of the
23 “legal separation,” Alex was unemployed, and did not have a fixed income so the parties
24 used a base amount with a percentage of income as a formula for addressing Alex’s
25 obligation. Tara was a college student that represented that she would complete her degree.
26
27
28

1 shortly after the mediation, and the parties' incorporated that representation into the terms
2 of the legal separation. Those terms read:

3
4 Upon Tara obtaining full-time employment (more than 32 hours per week),
5 the monthly support payment that Alex is required to pay may be-recalculated
6 to an amount of no less than 50% of the difference between the parties' gross
7 monthly income. Regardless of the difference, Tara shall receive the
minimum sum of \$2500 per month.

8 The clear intent and anticipation of the bargained for exchange was that Tara would seek
9 employment.
10

11 Since the time of the mediation, and the time of the Decree, Alex's income has
12 stabilized in his own firm. Tara's circumstances are different than what she represented
13 because she has, contrary to her representations, failed to finalize her degree or seek gainful
14 employment to allow the offset contemplated by the terms of the stipulated settlement. All
15 these factors are changes of circumstances that mandate a modification of are terms that
16 are no longer just nor equitable.
17
18

19
20 **4. TARA SHOULD BE ESTOPPED FROM ENFORCING THE DECREE**
21 **REGARDING ALIMONY, AND HER FAILURE TO COMPLY WITH THE**
22 **TERMS OF THE DECREE REQUIRE THE MODIFICATION OF THE**
ALIMONY PROVISIONS

23 Even if the Court were to find that the alimony terms contained in the Decree of
24 Divorce are enforceable, Tara has not complied with those terms. As quoted above, the
25 terms of the Decree contemplate that Tara would complete her degree and that her income
26 would act as an offset to Alex's obligation. Upon information and belief, she has failed to
27 complete her degree, and has yet to be employed. Her bad faith failure to pursue her degree
28

1 or seek employment is a violation of the covenant of good faith and fair dealing applicable
2 to the terms of the Decree.
3

4 A stipulated decree¹ is reviewed through the application of contract law. *Grisham*
5 *v. Grisham*, 128 Nev. 679, 685, 289 P.3d 230, 234 (2012). It is well established within
6 Nevada that every contract imposes upon the contracting parties the duty of good faith and
7 fair dealing. Moreover, it is recognized that a wrongful act which is committed during the
8 course of a contractual relationship may give rise to both tort and contractual remedies.
9
10 *Hilton Hotels Corp. v. Butch Lewis Productions*, 109 Nev. 1043, 1046-47, 862 P.2d 1207,
11 1209 (1993)(citations omitted). Where the terms of a contract are literally complied with
12 but one party to the contract deliberately countervenes the intention and spirit of the
13 contract, that party can incur liability for breach of the implied covenant of good faith and
14 fair dealing. *Hilton Hotels Corp. v. Butch Lewis Productions*, 107 Nev. 226, 232, 808 P.2d
15 919, 922-23 (1991), *citing*, *A.C. Shaw Construction v. Washoe County*, 105 Nev. 913, 784
16 P.2d 9 (1989).
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21 Here, Tara should be estopped from enforcing the parties' stipulated decree based
22 upon her breach of its terms. Her breach was made even though she was knowledgeable
23 of its terms (her attorney prepared the Decree), and the intentional breach had the effect of
24 undermining and disrupting the Decree's terms resulting in damage to Alex. The court
25
26
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¹ Alex does not assert, admit or agree that the Decree properly states any stipulated terms for a Decree of Divorce, but instead only argues this position for the purpose of an analysis of the issues of estoppel and the Tara's breach of the implied covenant of good faith and fair dealing.

1 should find that Tara is estopped from enforcing the Decree as a result of her violation of
2 the covenant of good faith and fair dealing.
3

4 Moreover, because Tara has failed to complete her decree or seek employment, the
5 court should modify the Decree because the affect of her breach are difficult to quantify.
6

7 5. CONCLUSION

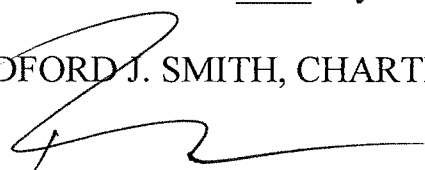
8 For the above-mentioned reasons, Alex requests that the court enter its orders as follows:
9

10 1. For an Order vacating and striking any obligation of Alex to Tara to pay
11 spousal support or alimony under the Decree as lacking jurisdiction, entered without
12 granting due process to Alex, void, unconscionable, and failing to meet the statutory
13 requirements of such an order; and,
14

15 2. Reviewing the issue of alimony in the parties divorce *de novo* through
16 evidentiary hearing on the issue of alimony.
17

18 DATED this 29 day of May, 2019.

19 RADFORD J. SMITH, CHARTERED
20

21 
22 RADFORD J. SMITH, ESQ.
23 Nevada State Bar No. 002791
24 2470 St. Rose Parkway, Suite 206
25 Henderson, Nevada 89074
26 Telephone: (702) 990-6448
27 Facsimile: (702) 990-6456
28 *Attorney for Defendant*

1
2
3
4 **DECLARATION OF ALEX GHIBAUDO**

5 COUNTY OF CLARK)
6) ss:
7 STATE OF NEVADA)

8 I, ALEX GHIBAUDO, declare and say:

9
10 1. I am the Defendant in the above-entitled matter.

11 2. I make this Declaration based upon facts within my own knowledge, save and
12 except as to matters alleged upon information and belief and, as to those matters, I believe
13 them to be true.
14

15 3. I have personal knowledge of the facts contained herein, and I am competent
16 to testify thereto. I have reviewed the foregoing Motion and can testify that the facts
17 contained therein are true and correct to the best of my knowledge. I hereby reaffirm and
18 restate said facts as if set forth fully herein.
19
20

21 4. I declare under the penalty of perjury of the laws of the State of Nevada that
22 the foregoing is true and correct.
23
24

25 
26 ALEX GHIBAUDO

27 Date: 4/2/19
28

1 MOFI

2 DISTRICT COURT
3 FAMILY DIVISION
4 CLARK COUNTY, NEVADA

5 TARA KELLOGG-GHIBAUDO,
6 Plaintiff/Petitioner,

7 vs.

8 ALEX GHIBAUDO,
9 Defendant/Respondent.

CASE NO.: D-15-522043-D
DEPT. NO.: H

MOTION/OPPOSITION
FEE INFORMATION SHEET

10 Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B r 125C are subject to the reopen fee of
11 \$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.

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

- 13 ☒ \$25 The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
14 -OR-
15 ☐ \$0 The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
16 ☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
17 ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
18 ☐ 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 _____.
19 ☐ Other Excluded Motion (must specify)_____.

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

- 21 ☒ \$0 The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
22 ☒ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
23 ☐ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
24 -OR-
25 ☐ \$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.
26 -OR-
27 ☐ \$57 The Motion/Opposition being filed with this form is subject to the \$57 fee because it is an opposition to a motion to
modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

28 Step 3. Select the \$0, \$129 or \$57 filing fee in the box below.

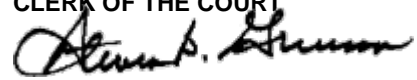
The total filing fee for the motion/opposition I am filing with this form is:

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

Party filing Motion/Opposition: Alex Ghibaudo Date: 05-29-19

Signature of Party or Preparer: /s/ Deana DePry

EXHIBIT 4



MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

TARA KELLER GATHBAUD
Plaintiff/Petitioner

v.
ALEX GATHBAUD
Defendant/Respondent

Case No. D-15-522043

Dept. I

**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: SIGAL CHATMAN Date 6/20/19

Signature of Party or Preparer



OPPS

SIGAL CHATTAH ESQ.
Nevada Bar No.: 8264
CHATTAH LAW GROUP
5875 S. Rainbow Blvd #204
Las Vegas, Nevada 89118
Tel:(702) 360-6200
Fax:(702) 643-6292
Chattahlaw@gmail.com
Attorney for Plaintiff/Counterdefendant
Tara Kellogg Ghibaud

DISTRICT COURT

CLARK COUNTY, NEVADA

TARA KELLOGG GHIBAUDO,)	
)	CASE NO.: D-15-522043-D
)	DEPT.: T
Plaintiff,)	
)	PLAINTIFF'S OPPOSITION TO MOTION
vs.)	FOR MODIFICATION OF SPOUSAL
)	SUPPORT
ALEX GHIBAUDO,)	
)	
Defendant.)	
)	
)	

**PLAINTIFF TARA KELLOGG GHIBAUDO'S OPPOSITION TO MOTION FOR
MODIFICATION SPOUSAL SUPPORT**

COMES NOW, Plaintiff TARA KELLOGG GHIBAUDO, by and through her attorney,
SIGAL CHATTAH, ESQ. of CHATTAH LAW GROUP, and pursuant to the Nevada Revised
Statutes and Eight Judicial District Court Rules cited hereinbelow, hereby respectfully opposes
Defendant's MOTION FOR MODIFICATION OF SPOUSAL SUPPORT.

This Opposition is made and based upon the papers and pleadings on file herein, Points and Authorities cited below, the Affidavit of Plaintiff TARA KELLOGG GHIBAUDO, attached hereto and other supporting documentation set forth hereinbelow.

DATED this 20th day of June, 2019.

CHATTAH LAW GROUP

SIGAL CHATTAH ESQ.
Nevada Bar No.: 8264
CHATTAH LAW GROUP
5875 S. Rainbow Blvd #204
Las Vegas, Nevada 89118
Attorney for Plaintiff
Tara Kellogg Ghibaudo

I.

PROCEDURAL POSTURE

On February 1, 2017, a Notice of Decree of Divorce and Decree of Divorce was filed in the matter *sub judice*. As the record on file indicates, Defendant failed to file any post-decree Motions to set aside the contested Decree and presumably now, 26 months later seeks to modify and set it aside despite procedural hurdles in doing so. This Court is precluded from setting as the subject Decree as stated *infra*.

II.

STATEMENT OF FACTS

Defendant seeks to bypass procedural law in support of his Motion to Modify Spousal Support by offering the following factors in support thereof:

1. In or about June 2016, undersigned Counsel provided a Draft of Separate Maintenance which Defendant refused to sign;
2. On November 29, 2016, Defendant filed an Opposition and Countermotion to Tara's Motion to enter Decree of Divorce.
3. On January 10, 2017, the Honorable Judge Brown granted Tara's request for an entry of Decree of Divorce and denied Defendant's request to set aside the parties' settlement entered on May 18, 2016.
4. A Decree of Divorce was entered on February 1, 2017.

Even assuming *arguendo* that the Parties did not have a "meeting of the minds" as Defendant asserts, Defendant's failure to obtain the proper relief in a timely manner precludes this Court from entering any Post Decree Orders, **notwithstanding** a finding of change of circumstance as specified herein.

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III.

LEGAL ARGUMENT

Defendant brings the Motion to Modify based on the following arguments:

1. Defendant seeks to void the February 1, 2017 decree
2. Defendant seeks a hearing on alimony pending an evidentiary hearing
3. Defendant seeks a modification based on an alleged breach of terms of alimony

As delineated *infra*, Defendant's Motion is both meritless and time barred and must be denied accordingly.

A. DEFENDANT IS PROCEDURALLY PRECLUDED FROM OBTAINING RELIEF OF THE DECREE OF DIVORCE AT THIS JUNCTURE BOTH UNDER NEV R. CIV. PRO RULES 59 AND 60

Nev. R. Civ. P. Rule 59. entitled *New Trials; Amendment of Judgments* provides in pertinent part the following:

(a) In General.

(1) Grounds for New Trial. The court may, on motion, grant a new trial on all or some of the issues — and to any party — for any of the following causes or grounds materially affecting the substantial rights of the moving party:

(A) irregularity in the proceedings of the court, jury, master, or adverse party or in any order of the court or master, or any abuse of discretion by which either party was prevented from having a fair trial;

(B) misconduct of the jury or prevailing party;

(C) accident or surprise that ordinary prudence could not have guarded against;

(D) newly discovered evidence material for the party making the motion that the party could not, with reasonable diligence, have discovered and produced at the trial;

(E) manifest disregard by the jury of the instructions of the court;

(F) excessive damages appearing to have been given under the influence of passion or prejudice; or

(G) error in law occurring at the trial and objected to by the party making the motion.

1 (b) Time to File a Motion for a New Trial. A motion for a new trial must
2 be filed no later than 28 days after service of written notice of entry of
3 judgment.

4 (d) New Trial on the Court's Initiative or for Reasons Not in the Motion.
5 No later than 28 days after service of written notice of entry of judgment, the
6 court, on its own, may issue an order to show cause why a new trial should not
7 be granted for any reason that would justify granting one on a party's motion.

8 After giving the parties notice and the opportunity to be heard, the court may grant
9 a party's timely motion for a new trial for a reason not stated in the motion. In either
10 event, the court must specify the reasons in its order.

11 (e) Motion to Alter or Amend a Judgment. A motion to alter or amend a
12 judgment must be filed no later than 28 days after service of written notice of
13 entry of judgment.

14 (f) No Extensions of Time. The 28-day time periods specified in this rule
15 cannot be extended under Rule 6(b).

16 A review of the record on file herein demonstrates that at no time did Defendant file any
17 Motion for New Trial under NRCP 59. Furthermore, it is also clear from the record that at no time
18 did the Court make any *sua sponte* findings to either alter or amend the Decree or modify the
19 Decree.

20 The timing for any relief under NRCP 59 would have been no later than March 5, 2017.
21 Since there had been no relief requested or granted, Defendants are time barred under NRCP 59
22 from seeking same.

23 **NRCP Rule 60. Relief From a Judgment or Order**

24 **(a) Corrections Based on Clerical Mistakes; Oversights and Omissions.**

25 The court may correct a clerical mistake or a mistake arising from oversight or
omission whenever one is found in a judgment, order, or other part of the record.
The court may do so on motion or on its own, with or without notice. But after an
appeal has been docketed in the appellate court and while it is pending, such a
mistake may be corrected only with the appellate court's leave.

26 **(b) Grounds for Relief From a Final Judgment, Order, or Proceeding.**

On motion and just terms, the court may relieve a party or its legal representative
from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not
have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic),
misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

1 (5) the judgment has been satisfied, released, or discharged; it is based on
2 an earlier judgment that has been reversed or vacated; or applying it prospectively
3 is no longer equitable; or

4 (6) any other reason that justifies relief.

5 (c) **Timing and Effect of the Motion.**

6 (1) **Timing.** A motion under Rule 60(b) must be made within a
7 reasonable time — and for reasons (1), (2), **and (3) no more than 6 months after**
8 **the date of the proceeding or the date of service of written notice of entry of**
9 **the judgment or order, whichever date is later.** The time for filing the motion
10 cannot be extended under Rule 6(b).

11 (2) **Effect on Finality.** The motion does not affect the judgment's
12 finality or suspend its operation.

13 (d) **Other Powers to Grant Relief.** This rule does not limit a court's power
14 to:

15 (1) entertain an independent action to relieve a party from a judgment,
16 order, or proceeding;

17 (2) upon motion filed within 6 months after written notice of entry of a
18 default judgment is served, set aside the default judgment against a defendant who
19 was not personally served with a summons and complaint and who has not appeared
20 in the action, admitted service, signed a waiver of service, or otherwise waived
21 service; or

22 (3) set aside a judgment for fraud upon the court.

23 (e) **Bills and Writs Abolished.** The following are abolished: bills of review,
24 bills in the nature of bills of review, and writs of coram nobis, coram vobis, and
25 audita querela.

Under NRCP 60(b), a motion for relief from judgment for mistake, newly discovered
evidence, or fraud must be filed not more than six months after entry of final judgment. Where,
as here, a motion for relief or modification premised on mistake, newly discovered evidence, or
fraud is filed more than six months after final judgment, **the motion is untimely and must be**
denied. [*Emphasis added*] *Doan v. Wilkerson*, 327 P.3d 498, 501 (2014) citing to *Kramer*, 96
Nev. at 761, 616 P.2d at 397.

This Court entered the Notice of Entry of Decree on February 3, 2017 and same was filed
on said day. The statute's language specifies that the motion shall be made within a reasonable
time and not more than ***6 months after the proceeding was taken*** **OR** the date that written notice
of entry of the judgment or order was served. *Id.*

1 Despite and regardless of Defendants concerns regarding whether there was a meeting of
2 the minds, whether a legal separation or decree of divorce was contemplated, and the reliance or
3 representations made between them, Defendant's failure to seek any relief from judgment under
4 NRCp 59 within the proscribed period of six months as delineated in the statute, precludes him
5 from bringing the subject Motion now.

6 **B. DEFENDANT FURTHER FAILED TO PETITION FOR EXTRAORDINARY**
7 **WRIT TO RECTIFY ANY ALLEGED ABUSE OF DISCRETION FROM**
8 **ENGAGED IN BY THE HONORABLE JUDGE BROWN**

9 While Defendant, albeit an attorney representing himself, refused to sign off on the
10 Orders and the Decrees in this matter; continuously failed to Petition the Supreme Court for
11 Extraordinary Relief, despite a belief that the Honorable Judge Brown engaged in abuse of
12 discretion in entering the Decree.

13 NRS 34.160 provides that "[t]he writ [of mandamus] may be issued by the Supreme
14 Court ... to compel the performance of an act which the law especially enjoins as a duty
15 resulting from an office, trust or station ..."

16 A writ of mandamus is available to compel the performance of an act which the law
17 requires as a duty resulting from an office, trust or station, or to control a manifest abuse of
18 discretion. *See Beazer Homes, Nev., Inc. v. Dist. Ct.*, 120 Nev. 575, 97 P.3d 1132, 1135 (2004);
19 NRS 34.160.) An abuse of discretion occurs if the district court's decision is arbitrary and
20 capricious or if it exceeds the bounds of law or reason. *Crawford v. State*, 121 P.3d 582, 585
21 (Nev. 2005) (citation omitted). "Abuse of discretion" is defined as the failure to exercise a sound,
22 reasonable, and legal discretion. *State v. Draper*, 27 P.2d 39, 50 (Utah 1933) (citations
23 omitted). "Abuse of discretion" is a strict legal term indicating that the appellate court is of the
24 opinion that there was a commission of an error of law by the trial court. *Id.* It does not imply
25

1 intentional wrongdoing or bad faith, or misconduct, nor any reflection on the judge but refers to
2 the clearly erroneous conclusion and judgment – one that is clearly against logic. *Id.*

3 A writ of prohibition may issue to arrest the proceedings of a district court exercising its
4 judicial functions, when such proceedings are in excess of the jurisdiction of the district
5 court. *See* NRS 34.320; *Smith v. Dist. Ct.*, 107 Nev. 674, 818 P.2d 849 (1991). “Jurisdictional
6 rules go to the very power” of a court’s ability to fact. *See Pengilly v. Rancho Santa Fe*
7 *HOA*, 116 Nev. 646, 5 P.3d 569 (2000). A court must know the limits of its own jurisdiction and
8 stay within those limits. *See Pengilly v. Rancho Santa Fe HOA*, 116 Nev. 646, 5 P.3d 569
9 (2000).

10 A writ of prohibition will lie to prevent a district court from exceeding its jurisdiction.”
11 (*See Cunningham v. Dist. Ct.*, 102 Nev. 551, 560, 729 P.2d 1328, 1334 (1986).) Although an
12 individual can appeal a final judgment, where there is no legal remedy, extraordinary relief is
13 justified. (*See Zhang v. Dist. Ct.*, 103 P.3d 20 (Nev. 2004), abrogated on other grounds by, *Buzz*
14 *Stew, LLC v. City of N. Las Vegas*, 181 P.3d. 670 (Nev. 2008).)

15
16 Defendant’s failure to seek either Mandamus or Prohibition on Judge Brown’s entry of
17 Decree in 2017 precludes him from seeking redress on the issue presently.

18 **C. DEFENDANT’S RECOURSE OF THE COURTS FAILURE TO HOLD AN**
19 **EVIDENTIARY HEARING, DENIAL OF DUE PROCESS AND FAILURE TO**
20 **RENDER FINDINGS IN 2017 WAS TO APPEAL THE ORDER.**

21 A party has the right to appeal when the party is aggrieved by a final, appealable judgment or
22 order. NRAP 3A(a), (b); *Valley Bank v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994).

23 It is clear that Defendant currently feels that he had been wronged in the course and scope
24 of the February, 2017, proceedings. Whether Defendant had viable claims of violation of due
25

1 process *vis a vis*, holding an evidentiary hearing and a failure to render findings, were all matters
2 that should have been appealed within 30 days of entry of the Decree of Divorce.¹

3 It is clear that Defendant believes that the Court acted in an abuse of discretion in denial of
4 his rights. "A decision that lacks support in the form of substantial evidence is arbitrary or
5 capricious and, therefore, an abuse of discretion." *Stratosphere Gaming Corp. v. Las Vegas*, 120
6 Nev. 523, 528, 96 P.3d 756, 760 (2004) (quotation omitted). "Substantial evidence has been
7 defined as that which a reasonable mind might accept as adequate to support a
8 conclusion." *McClanahan v. Raley's, Inc.*, 117 Nev. 921, 924, 34 P.3d 573, 576
9 (2001) (quotations omitted).

10 Again, while Defendant, albeit questionably, may have had viable claims on appeal on
11 abuse of discretion in February, 2017, the failure to raise them in a timely manner bars him from
12 raising these matters in this forum, and at this time. Defendant's forum to have raised this alleged
13 abuse of discretion was on appeal to the Appellate Court. Second, the timing to raise this alleged
14 abuse of discretion was within 30 days of the Notice of Entry of Order.
15

16 These procedural mandates categorically preclude Defendant from now seeking to
17 modify the Decree unless the Court finds that there is a significant change in circumstances.
18
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22 ¹ NRAP 4 (a) Appeals in Civil Cases.

23 (1) **Time and Location for Filing a Notice of Appeal.** In a civil case in which an appeal is permitted by law
24 from a district court, the notice of appeal required by Rule 3 shall be filed with the district court clerk. Except as
25 provided in Rule 4(a)(4), a notice of appeal must be filed after entry of a written judgment or order, and no later than
30 days after the date that written notice of entry of the judgment or order appealed from is served. If an applicable
statute provides that a notice of appeal must be filed within a different time period, the notice of appeal required by
these Rules must be filed within the time period established by the statute.

1 **D. DEFENDANT FAILS TO SUBSTANTIATE SUPPORT FOR MODIFICATION**
2 **OF THE DECREE**

3 Defendant's Motion cites to NRS 125.150(8) in support of modification of alimony based
4 on the change of circumstance. In support of Defendant's contentions, Defendant asserts the
5 following:

- 6 1. The only logical explanation that Alex would provide her a significant percentage of
7 his income was the sharing of income during a time of attempted reconciliation.
- 8 2. Tara, a college student, represented that she would complete her degree, after the
9 mediation, and the parties incorporated that representation into the terms of the legal
10 separation.
- 11 3. Some sort of bargained for exchange

12 The reality of Defendant's position is a far cry of what is presented in his Motion. While
13 Defendant claims that certain matters were contemplated and were done in the spirit of a
14 "reconciliation period", there is absolutely no mention of any type of college degree or
15 anticipated graduation date in the Decree or in the Settlement Agreement, which Defendant
16 purports to set aside for a failure to comply with.

17 Defendant further cites to *Grisham v Grisham*, 128 Nev. 649, 289 P.3d 230 (2012) and
18 *Hilton Hotels Corp. v Butch Lewis Productions*, 109 Nev. 1043, 862 P.2d 1207 (1993), in
19 support of enforcement of the Decree of Divorce and the terms therein. Again, it is significant to
20 note that nowhere in any of the stipulations, does it make mention of any type of educational
21 requirements, graduation requirements or job security in the Decree.

22 While Tara concedes that the Decree, as provided should be viewed as a Contract
23 between the Parties, despite over ten pages by Defendant in his Motion *sub judice* to the
24

contrary; any attempt by Defendant to interject any outside contemplations that were not reduced to writing by the Parties is prohibited under the parole evidence rule.

Parol evidence is inadmissible “[w]hen parties reduce a contract to writing, all prior oral negotiations and agreements are merged in the writing, and the instrument must be treated as containing the whole contract, and parol [evidence] is not admissible to alter its terms.” *Cage v. Phillips*, 21 Nev. 150, 26 P. 60 (1891). The parol evidence rule is based on the principle that a written contract is more reliable than oral testimony when determining the terms of an agreement. *Michael B. Metzger, The Parol Evidence Rule: Promissory Estoppel’s Next Conquest?*, 36 Vand. L. R. 1383, 1386-87 (1983).

When a written contract is clear and unambiguous on its face, the terms of the agreement must be construed from the language within the contract. *Southern Trust Mortg. Co. v. K&B Door Co., Inc.*, 104 Nev. 564, 568, 763 P.2d 353 (1988). Courts are not at liberty to insert or disregard words in a contract. *Royal Indem. Co. v. Special Serv. Supply Co.*, 82 Nev. 148, 150, 413 P.2d 500 (1966). “Parol evidence is not admissible to vary or contradict the terms of a written agreement.” *Lowden Inv. Co. v. General Elec. Credit Co.*, 103 Nev. 374, 379, 741 P.2d 806 (1987). It may be used to defeat the object and effect of a written instrument only when the evidence is clear, strong, convincing, and attended with no uncertainty. *Jacobsen v. Best Brands, Inc.*, 960 Nev. 643, 615 P.2d 939 (1981).

The most significant part of the Decree which Defendant now seeks to set aside on one hand, and yet enforce on the other provides as follows:

13. This stipulated Decree of Divorce is the full and final agreement between the parties. Accordingly, all prior negotiations and agreements between the parties are incorporated in this Decree of Divorce. The terms of this Decree of Divorce are intended by the parties as a **final, complete, and exclusive expression of their agreement, and may not be contradicted by evidence of any prior agreement or alleged contemporaneous oral agreement.** The terms of this Decree of

1 Divorce may not be amended, modified, or altered except through written
2 agreement signed by both parties or by an appropriate order of the Court.

3 [Emphasis added]

4 See Decree PG 13, lns. 3-10

5 Again, while Defendant seeks to avoid the Decree in the first ten pages of his Motion,
6 Defendant for the remainder portion of same, seeks to enforce some imaginary agreement that is
7 nowhere to be found in the terms of the Decree. Furthermore, by virtue of the terms of the
8 Decree, the court is prohibited from consideration of any alleged extraneous conversations *ipso*
9 *facto*.

10 **E. DEFENDANT HAS PRESENTED NO EVIDENCE IN SUPPORT OF**
11 **MODIFICATION OF THE DECREE OF DIVORCE**

12 In Nevada, both the basis of an award of alimony and the grounds upon
13 which an alimony order can be modified are found in NRS 125.150. The relevant
14 provisions regarding modification are as follows:

15 (8) If a decree of divorce, or an agreement between the parties which was
16 ratified, adopted or approved in a decree of divorce, provides for specified periodic
17 payments of alimony, the decree or agreement is not subject to modification by the
18 court as to accrued payments. Payments pursuant to a decree entered on or after
19 July 1, 1975, **which have not accrued at the time a motion for modification is**
20 **filed may be modified upon a showing of changed circumstances,** whether or not
21 the court has expressly retained jurisdiction for the modification. In addition to any
22 other factors the court considers relevant in determining whether to modify the
23 order, the court shall consider whether the income of the spouse who is ordered to
24 pay alimony, as indicated on the spouse's federal income tax return for the
25

1 preceding calendar year, has been reduced to such a level that the spouse is
2 financially unable to pay the amount of alimony the spouse has been ordered to pay.

3 For the purposes of this section, a change of 20 percent or more in the gross
4 monthly income of a spouse who is ordered to pay alimony shall be deemed to
5 constitute changed circumstances requiring a review for modification of the
6 payments of alimony. As used in this subsection, "gross monthly income" has the
7 meaning ascribed to it in NRS 125B.070.

8 The basic concept underlying modification is that if there has been a change
9 of financial circumstances, the court can modify any alimony award. In addition, a
10 reduction in the income of the payor of alimony of 20% or more is sufficient
11 evidence of changed circumstances to warrant a modification. If a Court determines
12 that a change of circumstances has occurred, it then considers all of the factors
13 relevant to an original alimony determination.
14

15 Here Defendant makes no representations that there is any reduction in his
16 income from the date of the Decree warranting a reduction in Alimony. On the
17 contrary, Defendant's contention is that the increase in his income as a result of the
18 stability in his practice, should somehow preclude Tara from collecting any income
19 therefrom. Therefore, Defendant's Motion for Modification is unwarranted and
20 frivolous, lacks no merit and is a complete waste of judicial economy.

21 **F. TARA IS ENTITLED TO ATTORNEYS FEES AND COSTS UNDER THE**
22 **DECREE**

23 While Defendant is seeking enforcement of the Decree in favor of Modification, Tara
24 seeks enforcement of the Decree for the purposes of obtaining attorney's fees and costs in
25 support of this Motion and Counter-motion.

1 Paragraph 5 of the Decree states “[I]f either party is required to go to court to enforce the
2 terms of this Decree, or if there is a dispute between the parties relating to the terms of this
3 Decree, the prevailing party shall be entitled to an award of reasonable attorneys fees and costs.”

4 *Id.*

5 **IV.**

6 **CONCLUSION**

7 For the reasons set forth above, Tara hereby respectfully requests this Court deny
8 Defendant’s Motion, and grant Tara’s request for Attorney’s fees at the time of the hearing.
9

10 Dated this 20th day of June, 2019.

11 CHATTAH LAW GROUP

12
13 SIGAL CHATTAH ESQ.
14 Nevada Bar No.: 8264
15 CHATTAH LAW GROUP
16 5875 S. Rainbow Blvd #204
17 Las Vegas, Nevada 89118
18 Attorney for Plaintiff
19 *Tara Kellogg Ghibaudo*
20
21
22
23
24
25

1 **COUNTERMOTION FOR AN ORDER TO SHOW CAUSE, ENFORCEMENT OF**
2 **CURRENT ORDERS AND RELATED RELIEF**

3 COMES NOW, Plaintiff, TARA GHIBAUDO KELLOGG, by and through her attorney
4 of record, SIGAL CHATTAH, ESQ., of CHATTAH LAW GROUP, who hereby submits this
5 MOTION FOR AN ORDER TO SHOW CAUSE AS TO WHY DEFENDANT SHOULD NOT
6 BE HELD IN CONTEMPT FOR FAILURE TO COMPLY WITH THE DECREE AND
7 SANCTIONS AGAINST DEFENDANT, ENFORCEMENT OF CURRENT ORDERS.

8 Dated this 20th day of June, 2019.

9
10 **EDCR 5.501 Declaration**

11 Plaintiff and Counsel have attempted to resolve this matter with Defendant and
12 Defendant' Counsel. The Parties by and through their Counsel have reached an impasse and this
13 Court's involvement is necessary to resolve the issues on the merit.

14
15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **PROCEDURAL POSTURE**

17 On February 1, 2017, the Court entered into a Decree of Divorce based on stipulations and
18 concessions reached through a settlement conference. The Decree had the following provisions as
19 to custody, spousal support and child support:

20 Child Custody Provisions:

21 The parties "enjoy joint legal custody of their child Nicole born May 17, 2001".
22 Neither parent was to "estrangle the child from the other" or "disparage the other parent...in
23 the presence of the child." "The parents shall consult and cooperate...relating to health care
24 of the child". "Neither parent shall be permitted to use illicit drugs...obtained illegally [or]
25 in the presence of the minor child".

26 b. Child Support Provisions:

1. "Based on Alex's representation that his gross monthly income is \$6,666.00 his
child support shall be set at the presumptive maximum amount of \$819 per

month...paid directly to Tara...on the 1st day of every month, commencing on November 19, 2015". [The current maximum is \$1138.00]

2. "*Alex shall continue* (italics added) to provide **medical insurance** for the minor child so long as it is reasonable in cost."

c. Miscellaneous Child Provisions

Communications "shall be done in a respectful manner."

d. **Division of Community Assets and Debts**

1. Alex's "share of the law practice shall remain community property...one-half interest [to Tara]".

2. All debts before the decree "shall be solely borne by Alex, including personal loans obtained by Tara, and all of her medical bills."

e. **Post-Divorce Family Support**

1. "In exchange for waiving any claim that she might have otherwise made concerning Alex's dissipation of marital assets, Alex shall provide Tara with family support in the minimum amount of \$2,500 per month for a period of 15 years, or 50% of Alex's gross monthly income, whichever amount is greater. This amount includes the \$819 in child support...As examples only, if Alex's gross monthly income is \$10,000, he shall pay Tara with a family support payment of \$5000.; in the event Alex's gross monthly income is \$4000, he shall provide Tara with the minimum family support payment \$2500, as that amount is greater than 50% of Alex's gross monthly income.

2. When Nicole reaches age 18 "Alex's family support obligation shall continue in the minimum amount of \$2,500, or the greater amount of one-half of the difference between the party's incomes and shall not be reduced to account for the termination of child support.

3. "For purposes of determining Alex's gross monthly income, he shall provide Tara, at minimum, his personal and business tax returns *every year* (italics added).

4. This Court specifically reserves jurisdiction to address disputes with respect to gross monthly income.

e. Miscellaneous Provisions

1. The parties shall file separate tax returns for 2016 and each year thereafter.

2. The prevailing party in any dispute relating to the decree shall be entitled to an award of attorney fees.

3. This Court shall reserve jurisdiction as necessary to enforce all its orders.

f. Child Support Notices

1. Alex is subject to NRS 125.450 requiring provision of medical and other care and support for minor child. He is also subject to this Court's 30/30 rule.

2. Alex and his corporate employer is subject to order of Assignment under NRS 31A.020 et seq.

3. Alex is responsible for attorney fees, interest, and penalties for delinquent child support pursuant to NRS 125B.140.

A. **ALEX HAS VIOLATED EVERY POST- DECREE COURT ORDER WITH MINIMAL RECOURSE OR REMEDY TAKEN AGAINST HIM**

1 On **May 16, 2017** the Honorable Judge Brown entered an Order awarding Tara **\$2,000.00** and
2 reducing same to judgment.

3 On **October 6, 2017** this Court updated the arrears, interest, and penalties on all sums due prior
4 to the decree (now reduced to judgment as of October 6, 2017) as follows:

- 5 1. Temporary Family Support Arrears (relating to payments from 12/1/15-
6 4/30/16) totaling **\$3,762.13** with interest and penalties;
- 7 2. Temporary Medical Insurance Arrears (relating to insurance premiums for
8 the minor child from 12/1/15-1/10/17) totaling **\$2,366.80** with interest and
9 penalties.
- 10 3. Temporary Medical Insurance Arrears (relating to insurance premiums for
11 Tara from December 1, 2015-1/10/17); totaling **\$4,404.21** with interest.
- 12 4. Child Support Arrears (relating to payments from 5/1/16-9/30/17): the
13 principal sum of **\$4,653**; that sum is **\$5,309.75** with interest and penalties.
- 14 5. Alimony/Spousal Support Arrears (relating to payments from 5/1/16-
15 9/30/17): the principal sum of **\$10,265.00**; that sum is **\$10,854.27** with
16 interest.
- 17 6. Medical Insurance Arrears (relating to insurance premiums for the minor
18 child from 2/1/17-9/30/17); the principal sum of **\$2,210.87**; that sum is
19 **\$2339.61** with interest and penalties.
- 20 7. Unreimbursed Medical Expense Arrears: totaling **\$715.50**.
- 21 8. Alex to file a Detailed Financial Disclosure Form prior to October 16, 2017,
22 and to supply Tara with his 2016 tax returns after October 16, 2017, as per
23 the terms of the decree.
24
25

1 9. Alex shall provide his most recent Schedule C Profit or Loss from Business.

2 **10. Attorney Fees deferred.**

3 **On October 16, 2017** this Court issued the following Order

4 1. Alex to pay Tara **\$3500.00** on or before November 12, 2017, with a status
5 check scheduled for November 13th “with the goal of establishing a
6 reasonable payment plan both prospectively and to satisfy outstanding
7 arrearages.”

8 2. Alex shall file a *Detailed Financial Disclosure Form* and shall provide Tara
9 and her counsel with his personal and business tax returns for 2016 prior to
10 November 13, 2017.

11 3. Alex shall provide his most recent Schedule C Profit or Loss from Business.

12 **4. Attorney Fees deferred.**

13 **On December 20, 2017** this Court held a hearing with the following findings:

14 1. Attorney Leavitt “may conduct a little DISCOVERY into the Defendant’s
15 TAX RETURNS and BANK ACCOUNTS” with such records to remain
16 CONFIDENTIAL.

17 2. Defendant to pay Plaintiff \$2500.00 by 1/12/18.

18 3. As soon as Defendant FILES his 2016 TAX RETURN, he is to provide
19 Attorney Levitt with a copy.
20

21 **4. Attorney Fees deferred**

22
23 Every time Tara has taken measures to simply enforce the Decree that has been previously
24 enforced by this Court, Tara is simply given the runaround. Also, disturbingly, Tara’s attorney’s
25 fees she is entitled to under the Decree, have been deferred to a point where Tara now bears the

1 burden of a \$61,000.00 Judgment against her by her own Counsel because of the Court's refusal
2 to award attorneys fees mandated under the Decree.

3 The stipulated terms includes the following:

4 **The prevailing party in any dispute relating to the**
5 **decree shall be entitled to an award of attorney fees.**

6 This Court has deferred the issue of attorney's fees at every hearing. Such deferment of
7 attorney's fees, despite a specific clause in the Decree instructing the Court to award attorneys fees
8 has accumulated to astronomical proportions and include:

9 \$56,000.00 USD paid to Willick Law Group

10 \$83,443.54 outstanding to Willick Law Group

11 \$10,500.00 Dennis Leavitt

12 Accruing Fees to Chattah Law Group pending this matter.

13
14 **The amount that Tara has been forced to pay for the enforcement of the Decree is**
15 **\$149,943.54.** This amount is an amount that Tara is absolutely entitled to recover under the Decree
16 of Divorce. The Court's failure to award such relief and continuously defer the issue of attorney's
17 fees is both arbitrary and capricious. The words "**The prevailing party in any dispute relating**
18 **to the decree shall be entitled to an award of attorney fees**" do not provide for judicial discretion
19 on the award of attorneys fees. The words "SHALL" can not be any clearer in a Decree of Divorce.

20 There is no substantiation in any record over the course of two years as to why the Court
21 has refused to follow the terms of the Decree as it concerns an award of attorney's fees. Tara's
22 victimization in this matter is two-fold, first by Defendant and his refusal to comply with the terms
23 of the Decree, and second by this Court's refusal to grant her the relief she is entitled to under the
24
25

1 Decree. It is an *absolute miscarriage of justice* when a litigant enforcing her rights under the
2 Decree, is burdened with a Judgment for protecting her rights and the rights of her child.

3 Defendant's failure to comply with his fundamental support obligations has resulted in
4 constant complaints that managing his business is difficult and in fact that it is hard for him,
5 despite, as the Court indicated, he is averaging \$23,500.00 per month in gross receipts by his own
6 admission. He has admitted to his personal incompetence when it comes to the management of his
7 law office, and he admits that he has wasted a great deal of money on advertising and incompetent
8 employees.

9 He has made the self-serving statement that this disarray that he claims in the keeping of
10 financial records makes it impossible to know what one half his income is, a determination that is
11 required to fulfill the requirements of the decree. Defendant's claimed business expenses fail to
12 even plausibly explain his operations as a sole practitioner.

13 He effectively lied to the Court when he indicated a "hold" on his account when that "hold"
14 was released that very day. He cannot pay, and yet he has a car payment of \$538.00 per month,
15 offers paid cell phones to all his employees to whom he pays over \$7,000.00 per month, despite
16 his belief that they are incompetent, and then he claims he does not support his girlfriend, but
17 taunts counsel and his ex-spouse in emails and online that he has hired her as an office manager
18 paying her \$48,000.00 per year.

19 This Court commented that Alex's choices to hire employees and provide perks competes
20 with his family obligations, and cannot stand in the way of his primary obligation to provide child
21 and family support.

22 So, he has not paid his taxes, he maintains poor if any records, he hires incompetent staff,
23 he drives an expensive vehicle, and all of those circumstances that he controls have been offered
24
25

up to this Court as defenses to civil contempt that has served to keep him out of jail up to this point. He has at other times promised to provide information and pay more money inside the courtroom in decorous prose and then leaves the Courtroom and indicates with repeated expletives his intent to do no such thing. His dealings with Plaintiff's counsel have been so unprofessional that they have generated multiple complaints to the State Bar and they assert conduct similar to the very complaints with the bar that resulted in 13 convictions and a five-year suspension. He even defied this Court's discovery Order when he refused to comply with Plaintiff's minimal discovery requests.

What is clear is that Alex has by his own admission wasted money in mismanaging his firm, pays all his personal and business expenses first and then, when it suits him in order to avoid jail, he reluctantly, and sporadically pays what this court has recognized is his primary obligation, albeit minimally.

Alex's recalcitrance has proved to be a profitable enterprise for him. This war of attrition is no doubt coolly preconceived to wear down the capacity of his ex-spouse to litigate her claims. It works to a point. Through the indulgence of her parents, whom themselves have limited resources, the Plaintiff has now spent over \$100,000.00 in attorney fees, including the \$63,000.00 in fees rendered to a judgment against her. Despite these fees, the Plaintiff has been obliged to spend, Alex's responsibilities to pay attorney fees have been repeatedly deferred.

II.

LEGAL ARGUMENT

A. TARA HAS PROVIDED SUFFICIENT EVIDENCE TO SATISFY THE STANDARD FOR A FINDING OF CONTEMPT BY THIS COURT

The contempt power involves a court's inherent power to protect dignity and decency in its proceedings, and to enforce its decrees. A district court generally has particular knowledge of

whether a person has committed contempt. *S. Fork Band of the Te-Moak Tribe v. State Eng'r (in Re Determination of Relative Rights of Claimants & Appropriators of Waters of the Humboldt River Stream Sys.)*, 118 Nev. 901, 906 (Nev. 2002).

NRS 22.010 entitled *Acts or omissions constituting contempts*. Provides in pertinent part: [T]he following acts or omissions shall be deemed contempts:

3. Disobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers.
7. **Abusing the process or proceedings of the court** or falsely pretending to act under the authority of an order or process of the court.
[Emphasis added]

Upon the answer and evidence taken, the court or judge or jury, as the case may be, shall determine whether the person proceeding against is guilty of the contempt charged; and if it be found that he is guilty of the contempt, a fine, may be imprisoned not exceeding 25 days, or both, but no imprisonment shall exceed 25 days except as provided in NRS 22.110.

NRS 22.110 sets forth in pertinent part:

1. ... when the contempt consists in the omission to perform an act which is in the power of the person to perform, he may be imprisoned until he performs it. The required act must be specified in the warrant of commitment.

In civil, the contempt must be proven by clear and convincing evidence; in criminal, the proof of contempt must be beyond a reasonable doubt. *Falstaff Brewing Corp. v. Miller Brewing Co.*, 702 F.2d 770 (1983).

Civil contempt is characterized by the court's desire to **compel obedience to a court order**, or to compensate the contemnor's adversary for the injuries which result from the noncompliance. *Shillitani v. United States*, 384 U.S. 364, 369, 16 L. Ed. 2d 622, 86 S. Ct. 1531 (1966). Thus, there are two forms of civil contempt: compensatory and coercive. *United States v. Asay*, 614 F.2d 655, 659 (9th Cir. 1980). A contempt adjudication is plainly civil in nature when the sanction imposed is wholly remedial, serves only the purposes of the complainant, and is not

1 intended as a deterrent to offenses against the public. *McCrone v. United States*, 307 U.S. 61, 64,
2 83 L. Ed. 1108, 59 S. Ct. 685 (1939).

3 A court's power to impose coercive civil contempt depends upon the ability of the
4 contemnor to comply with the court's coercive order. *See Shillitani v. United States*, 384 U.S. at
5 371 (citing *Maggio v. Zeitz*, 333 U.S. 56, 76, 92 L. Ed. 476, 68 S. Ct. 401 (1948)).

6 While civil contempt may have an incidental effect of vindicating the court's authority
7 and criminal contempt may permit an adversary to derive incidental benefit from the fact that the
8 sanction tends to prevent a repetition of the disobedience, such incidental effects do not change
9 the primary purpose of either type of contempt. Where, however, a judgment of contempt
10 contains an admixture of criminal and civil elements, "the criminal aspect of the order fixes its
11 character for purposes of procedure on review." *Falstaff Brewing Corp. v. Miller Brewing*
12 *Co.*, 702 F.2d at 778 citing to *Penfield Co. of California v. Securities & Exchange Commission*,
13 330 U.S. 585, 591, 91 L. Ed. 1117, 67 S. Ct. 918 (1947).
14

15 Prior to issuing a coercive civil contempt order, a court should weigh all the evidence
16 properly before it determines whether or not there is actually a present ability to obey and whether
17 failure to do so constitutes deliberate defiance or willful disobedience which a coercive sanction
18 will break. *Falstaff at 781 fn8*.

19 In this matter, Alex has repeatedly refused to follow any Orders this Court has issued.
20 Defendant's insolence over the past five years has been emboldened by the fact that this Court will
21 simply not do anything to this litigant, aside from minimal admonishments. This Court has
22 continuously allowed a litigant to violate Order after Order, burying Tara in judgments and fees
23 by simply refusing to comply with the terms of the Decree.
24
25

1 **B. THE DECREE REQUIRES THE PRODUCTION OF TAX RETURNS AND**
2 **FINANCIAL DISCLOSURE IN ORDER TO DETERMINE DEFENDANT'S**
3 **FINANCIAL OBLIGATIONS**

4 The Decree clearly delineates the method to calculate the Defendant's obligation to pay
5 "Post-Divorce Family Support" from his "gross monthly income." Fundamental to this
6 determination is Alex's obligation to provide tax returns each year. As stated in Paragraph 6 on
7 Page 9 of the Decree:

8 "For purposes of determining Alex's gross monthly income,
9 He shall provide Tara, at minimum, his personal and business tax
10 Returns every year..."

11 Despite promises to do so and Orders of this Court in the context of civil contempt
12 proceedings, Alex has not provided either tax returns or updated Financial Disclosure Forms. In a
13 hearing on 11/17/17, Alex offered a spreadsheet that was incorporated into the record as Exhibit
14 A. This *document* was in direct non-compliance with Ghibaud's previous promises to the court
15 and the Judge's express orders.

16 Nevertheless, Alex represented to the Court that it was an accurate accounting of his
17 income and expenses. Otherwise, the numbers are not supported with any exhibits or other
18 supporting documents. Furthermore, he went to the trouble of having an accountant vouch to the
19 court almost 18 months ago that returns were being prepared, and yet they still have not been
20 produced.

21 Nevertheless, the spreadsheet contradicts other testimony of Alex in these proceedings. For
22 example, he indicates on the spreadsheet that his income in February 2017 was \$22,100.31. Yet
23 that contradicts Tara's recollection that when they were getting along, he showed her a bank
24 statement wherein he made more than \$40,000.00 that same month.

25 At one point in the March 9, 2018 hearing Alex responded to the Court's question about
his earnings in the previous month, and he stated income was down, and he earned \$15,900.00 that

1 month. Perhaps thinking better of the misrepresentation made in open Court, Alex later
2 remembered that he actually earned an additional \$15,000.00 in that previous month but that
3 money was held in a different account, he explained, in what must be concluded was a feeble effort
4 to correct his previous answer that was likely calculated to mislead the Court.

5 A close look at the spreadsheet Alex provided to the Court for 2017 is full of unexplained
6 ledger items which beg for scrutiny. For example, there is a line item for “productivity”; there are
7 “filing fees” which the Court already observed were not appropriate expenses; there are
8 expenditures of \$500.00 to \$1000.00 for “meals and entertainment” and very substantial “Misc”
9 payments including DMV/legal fees; a ledger item for home office; and substantial “Owner
10 withdrawals. Family support, when paid is less than the minimum, except in those months where
11 there are Court appearances.

12 The Court is respectfully requested to order Alex to comply with the decree and provide
13 his Tax returns, business and personal, for tax years 2016 and 2017 and that he be required to file
14 a Detailed Financial Disclosure Form. Plaintiff has an absolute right to this information, and
15 Defendant should be required to disclose same.
16

17 **C. THE PLAINTIFF IS ALLOWED TO CONDUCT DISCOVERY IN AID OF**
18 **ENFORCEMENT OF THE DECREE AND JUDGMENTS THAT HAVE ISSUED**
19 **IN PRIOR PROCEEDINGS**

20 Nevada Rule of Civil Procedure 69 permits a judgment creditor to obtain post-judgment
21 discovery. The scope of post-judgment discovery is broad; the judgment-creditor is permitted to
22 make a broad inquiry to discover any hidden or concealed assets of a judgment-debtor. *See Ist*
23 *Technology, LLC v. Rational Enterprises, LTDA, et al.*, 2007 U.S. Dist. LEXIS 98051, 2007 WL
24 5596692 *4 (D. Nev. Nov. 13, 2007) (allowing post-judgment discovery to gain information
25 relating to the existence or transfer of the judgment debtor's assets). Further, in aid obtaining

1 information about a judgment debtor's assets "[w]itnesses may be required to appear and testify
2 before the judge or master conducting any proceeding under this chapter in the same manner as
3 upon the trial of an issue." See NRS 21.270; NRS 21.310.

4 This Court is requested to issue an order requiring Alex to appear in his capacity as
5 judgment debtor to answer under oath questions related to his income and assets in accord with
6 NRS 21.270.

7 **D. GIVEN ALEX'S ADMITTED INCOMPETENCE WHEN ADMINISTRING HIS**
8 **LAW OFFICE, A RECEIVER SHOULD BE APPOINTED PURSUANT TO NRS**
9 **32.010. AND ALEX'S LAW OFF P.C. MUST BE JOINED TO THIS ACTION TO**
10 **ADVANCE ENFORCEMENT.**

11 NRS 32.101 provides in part that "A receiver may be appointed by the Court in which an
12 action is pending, or by the Judge thereof: (3) After judgment, to carry the judgment into effect.
13 (6) In all other cases where receivers have heretofore been appointed by the usages of the Courts
14 of equity. NRCP 19 provides for the joinder of necessary parties when complete relief cannot be
15 accorded among those already parties. This procedural tool is even more important here because
16 Tara has an interest in the business as "community property".

17 In the context of post-judgment divorce proceedings, the case of *Gladys Baker Olsen*
18 *Family Trust v. District Court*, 110 Nev. 548 (1994) is instructive. There the Court found that it is
19 the responsibility of the party seeking relief against a third party to join them in the action-that all
20 "persons materially interested in the subject matter of the suit be made parties so that there is a
21 complete decree to bind them all. If the interest of absent parties may be affected or bound by the
22 decree, they must be brought before the court or it will not proceed to decree."

23 Here, Alex has spoken of his own incompetence at the management of his law office,
24 candidly admitting he has hired incompetent employees; wasted thousands of dollars on unneeded
25 advertising; failed to file tax returns because his books are in "disarray"; and failed to properly

1 utilize his office accounting. He has also suggested he is need of a mentor to help in this regard,
2 but despite his misrepresentations to the Court that he has such a person in line, he has not done
3 that. It is also relevant that when suspended it was largely due to mismanagement or worse of
4 client funds, and that when he was reinstated, it was expressly required that he be mentored by
5 another member of the bar for two years. Alex has hidden behind the P.C. corporate form and run
6 his life from the corporation, admitting as much. Alex and his corporate doppelganger must be
7 before the Court for adequate and appropriate relief to result from this enforcement action.

8 **E. ATTORNEY FEE ASSESSMENTS, INTEREST, AND PENALTIES THAT HAVE**
9 **BEEN DEFERRED MUST NOW BE ASSESSED.**

10 NRS 125B.140 provides in part that:

11 (c) The court shall determine and include in its order:

12 (1) Interest upon the arrearages at a rate established pursuant to NRS 99.040, from the time
13 each amount became due; and

14 (2) A reasonable attorney's fee for the proceeding, unless the court finds that the
15 responsible parent would experience an undue hardship if required to pay such amounts.
16 Interest continues to accrue on the amount ordered until it is paid, and additional attorney's
17 fees must be allowed if required for collection.
18

19 Here this Court has made multiple orders for minimum monthly payments that include
20 child support and has *deferred* any assessment for fees, penalties, and interest resulting from those
21 orders. The statute requires such assessments *unless the responsible parent would experience*
22 *undue hardship*.

23 It is respectfully asserted that the only parent who has witnessed undue hardship is the
24 Plaintiff and that although the Defendant is entitled to the privilege of making an undue hardship
25 case, he cannot do so without the disclosure of his finances as required by the law and the Decree.

1 **F. ALEX MUST BE REQUIRED TO MEET HIS OBLIGATION UNDER THE**
2 **DECREE FOR PAYMENT OF THE MARITAL DEBT**

3 The Decree indicates:

4 “All debt incurred prior to the entry of the Decree of Divorce shall be solely borne by Alex,
5 including any personal loans obtained by Tara, and all of her medical bills. He shall hold
6 Tara harmless therefrom. In addition, he shall indemnify Tara against any and all actions
7 by any creditors of such debts”.

8 Alex has failed to pay any portion of the Marital debt. The debt should be assessed, the
9 prior judgment for marital debt updated and paid under the auspices of the Court’s reasonable and
10 lawful schedule when considered with other obligations, past and ongoing.

11 **G. AN AWARD OF ATTORNEY FEES IS REQUIRED ON PAST PROCEEDINGS**
12 **WHERE RULINGS WERE DEFERRED.**

13 The Decree could not be clearer. “The prevailing party in any dispute relating to the decree
14 *shall be entitled* to an award of attorney fees. *Sargeant v. Sargeant*, 88 Nev. 223 (1972) provides
15 some guidance that the Court should consider. It clearly states that:

16 “the wife must be afforded her day in court without destroying her financial
17 position. This would imply that she should be able to meet her adversary
18 in the courtroom on an equal basis. Here, without the court's assistance, the
19 wife would have had to liquidate her savings and jeopardize the child's and
20 her future subsistence still without gaining parity with her husband. *Id.* at 226-27

21 EDCR 7.60(b) provides for fees when a party, without just cause “multiplies the
22 proceedings in a case as to increase costs unreasonably and vexatiously.”

23 The decree of divorce reinforces this in Clause 5 under “Miscellaneous Conditions”
24 wherein it is written that:

25 “If either party is required to go to court to enforce the terms of this decree, or if there is a dispute
between the parties relating to the terms of this Decree, the prevailing party shall be entitled to an
award of reasonable attorney fees and costs.”


1 As stated supra, it is incumbent on this Court to follow the Decree and award Tara
2 attorney's fees and costs in this matter. The whole amount of almost \$150,000.00 USD Tara has
3 been forced to spend to enforce this Decree is an absolutely unconscionable amount of money that
4 Tara is entitled to a receive by virtue of the Decree. The Decree does not allow for judicial
5 discretion in doing so, the words SHALL delineate that there is a compulsory action incumbent on
6 the Court mandated. Accordingly, this Court shall award attorney's fees and costs that were
7 previously deferred and reduce same judgment.

8 Tara also requests an Order granting the following relief:

- 9 1. A Receiver be appointed under NRS 32.101
10 2. All Arrearages be paid
11 3. The Parties engage in extensive discovery including a business valuation on
12 Defendant's Law Practice.
13 4. An award of all deferred attorneys fees and costs in addition to present attorneys
14 fees and costs in accordance with *Brunzell v Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455
15 *P.2d 31 (1969)*.
16 5. Any further relief this Court deems proper.

17 Dated this ____ day of June 2019

18 CHATTAH LAW GROUP

19
20
21 
22 SIGAL CHATTAH ESQ.
23 Nevada Bar No. : 8264
24 CHATTAH LAW GROUP
25 5875 S. Rainbow Blvd #204
Las Vegas, Nevada 89118
Attorney for Plaintiff
Tara Kellogg Ghibaudo

1
2
3 **VERIFICATION**

4 STATE OF NEVADA)
5) ss:
6 COUNTY OF CLARK)

7 I, TARA KELLOGG GHIBAUDO, under penalty of perjury, being first duly sworn,
8 deposes and says

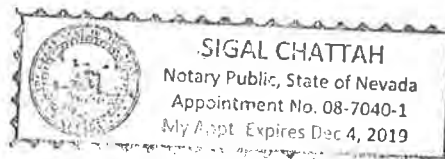
9 That I am the Plaintiff in the above-entitled action, that I have read the foregoing
10 Opposition and Countermotion and know the contents thereof; that the same is true of my own
11 knowledge, except those matters therein contained stated upon information and belief, and as to
12 those matters, I believe them to be true.

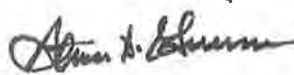
13 Dated this 20 day of June, 2019

14
15 
TARA KELLOGG GHIBAUDO

16 SUBSCRIBED and SWORN to before me
17 On this 20 day of June, 2019

18
19 
20 NOTARY PUBLIC in and For Said
21 County and State




CLERK OF THE COURT

ORDER

WILICK LAW GROUP
MARSHAL S. WILICK, ESQ.
Nevada Bar No. 2515
3591 E. Bonanza Road, Suite 200
Las Vegas, NV 89110-2101
Phone (702) 438-4100; Fax (702) 438-5311
email@willicklawgroup.com
Attorney for Plaintiff

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

TARA KELLOGG-GHIBAUDO,
Plaintiff,

vs.

ALEX GHIBAUDO,
Defendant.

CASE NO: D-15-522043-D
DEPT. NO: T

DATE OF HEARING: 1/10/2017
TIME OF HEARING: 9:00 A.M.

ORDER FROM THE JANUARY 10, 2017, HEARING

This matter came on for hearing at the above date and time before the Hon. Lisa Brown, District Court Judge, Family Division. Plaintiff, Tara Kellogg-Ghibaudo, was present and represented by her attorneys, Marshal S. Willick Esq., and Trevor M. Creel, Esq., of the WILICK LAW GROUP; and Defendant, Alex Ghibaudo, Esq., was present and represented himself in proper person.

The Court, having read the papers and pleadings on file herein, and entertained oral argument, hereby orders as follows:

THE COURT HEREBY ORDERS:

1. Tara's request for entry of a *Decree of Divorce* is granted; and she shall submit a proposed *Decree of Divorce* to the Court for its review and signature, consistent with the orders made today.

RECEIVED

JAN 30 2017

FAMILY COURT
DEPARTMENT T

1 2. Tara's request to utilize an accountant to review Alex's books and
2 records relating to his law firm is denied at this time. Accordingly, any reference
3 permitting such an inspection in Tara's proposed *Decree of Divorce* shall be deleted
4 prior to resubmitting the same to the Court.

5 3. Tara's request for an *Order to Show Cause* against Alex is denied,
6 however, the following arrears owed by Alex shall be reduced to judgment and made
7 collectible by any and all lawful means:

8 a. Medical insurance arrears for the minor child totaling \$2,136.27,
9 with interest and penalties, as of January 10, 2017;

10 b. Family support arrears totaling \$3,425.18, with interest and
11 penalties, as of January 10, 2017; and

12 c. Medical insurance arrears for Tara totaling \$4,225.15, with
13 interest, as of January 10, 2017.

14 4. Alex's request for sanctions against Tara and/or her Counsel is denied.

15 5. Alex's request to set aside the parties' settlement entered into on May
16 18, 2016, is denied.

17 6. Tara's request for attorney's fees shall be taken under advisement.

18 7. Tara's Counsel shall prepare a *Memorandum of Attorney's Fees and*
19 *Costs*, as well as a separate *Order for Attorney's Fees* for the Court's consideration.

20 8. Alex shall have 10 days to file an opposition to Tara's *Memorandum of*
21 *Fees and Costs*.

22 *****

23 *****

24 *****

25 *****

26 *****

27 *****

28 *****

1 9. The WILICKLAWGROUP shall prepare the *Order* from today's hearing,
2 and they shall provide the same to Alex for his review as to the form and content.

3 **IT IS SO ORDERED** this 13 day of February, 2017.

4
5 
6 **DISTRICT COURT JUDGE** KW
7 LISA M. BROWN

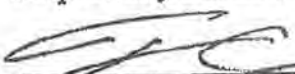
8 Dated this 30th day of January, 2017.

Dated this ___ day of _____, 2017.

9 Respectfully Submitted By:

Approved as to Form and Content By:

SIGNATURE
REFUSED

10 
11 **MARSHAL S. WILICK, ESQ.**
12 Nevada Bar No. 2515
13 **TREVOR M. CREEL, ESQ.**
14 Nevada Bar No. 11943
15 3591 E. Bonanza Road, Suite #200
16 (702) 437-4100; Fax (702) 438-5311
17 Attorney for Plaintiff

ALEX GHIBAUDO, ESQ.
Nevada Bar No. 10592
320 E. Charleston Blvd., Ste. 105
Las Vegas, Nevada 89104
(702) 217-7442; Fax (702) 924-6553
Defendant in proper person

\\wlgserver\com\pary\wp16\CELLOGO.TXDRAFTS\00164022.WPD\J

Steven D. Grierson

ORDER

WILICK LAW GROUP
MARSHAL S. WILICK, ESQ.
Nevada Bar No. 2515
3591 E. Bonanza Road, Suite 200
Las Vegas, NV 89110-2101
Phone (702) 438-4100; Fax (702) 438-5311
email@willicklawgroup.com
Attorney for Plaintiff

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

TARA KELLOGG-GHIBAUDO,

Plaintiff,

vs.

ALEX GHIBAUDO,

Defendant.

CASE NO: D-15-522043-D
DEPT. NO: H

DATE OF HEARING: 10/6/17
TIME OF HEARING: 9:00 A.M.

ORDER FROM THE OCTOBER 6, 2017, HEARING

This matter came on for an *Order to Show Cause* hearing at the above date and time before the Hon. T. Arthur Ritchie, Jr., District Court Judge, Family Division. Plaintiff, Tara Kellogg-Ghibaudo, was present and represented by her attorneys, Marshal S. Willick Esq., and Trevor M. Creel, Esq., of the WILICK LAW GROUP; and Defendant, Alex Ghibaudo, Esq., was present and represented himself in proper person.

The Court, having reviewed the papers and pleadings on file, considered the offers of proof submitted by the parties, and after hearing limited argument, hereby finds and orders as follows:

THE COURT HEREBY FINDS:

1. The parties were married on December 30, 2001; they have one minor child together, Nicole Ghibaudo, who is currently 16 years old.

NOV 06 2017

1 2. Tara filed a *Complaint for Divorce* on October 1, 2015.

2 3. Tara subsequently filed a *Motion* for temporary orders on October 20,
3 2015.

4 4. Tara's *Motion* for temporary orders was heard by the Hon. Lisa M.
5 Brown on November 19, 2015, at which time Judge Brown issued several orders (the
6 "temporary financial orders").

7 5. Judge Brown ordered Alex to pay \$2,200 per month in family support
8 during the pendency of the case, and that Alex would be responsible for maintaining
9 and paying for Nicole and Tara's health insurance during the pendency of the case.

10 6. A *Decree of Divorce* was entered on February 1, 2017, relating back to
11 a settlement reached in May, 2016, terminating some of the temporary financial
12 orders and replacing them with obligations under the *Decree* (the "*Decree orders*").

13 7. Pursuant to the terms of the *Decree of Divorce*, Alex was required to
14 provide Tara with child support in the amount of \$819 commencing on May 1, 2016.

15 8. The *Decree of Divorce* also provided that Alex was to provide and pay
16 for the minor child's medical insurance and that the parties would equally share in the
17 minor child's unreimbursed medical expenses pursuant to the 30/30 Rule.

18 9. Finally, the *Decree of Divorce* indicated that, starting on May 1, 2016,
19 Alex was to pay Tara post-divorce family support each month in the minimum
20 amount of \$2,500, or 50% of Alex's gross monthly income, whichever amount is
21 greater, for a period of 15 years. That amount included the \$819 in child support
22 detailed elsewhere in the *Decree of Divorce*.¹

23 10. While this action was still in Department T, Judge Brown entered orders,
24 detailed in both the *Order From the January 10, 2017, Hearing*, and the *Decree of*
25

26
27 ¹ This necessarily meant that Alex was required to pay the minimum sum of \$1,681 in post-
28 divorce alimony/spousal support, in addition to \$819 in child support; sums payable for spousal
support over \$1,681 depended on Alex's gross monthly income.

1 *Divorce*, finding that Alex failed to abide by the temporary orders, which resulted in
2 judgments being issued against him.

3 11. The following amounts relating to the temporary financial orders were
4 reduced to judgment and made collectible by any and all lawful means, with legal
5 interest accruing on the judgments as of January 10, 2017:

- 6 a. Temporary Family Support Arrears (relating to payments
7 from December 1, 2015, through April 30, 2016): totaling
8 \$3,425.18 with interest and penalties;²
9 b. Temporary Medical Insurance Arrears (relating to
10 insurance premiums for the minor child from December 1,
11 2015, through January 10, 2017): totaling \$2,136.27 with
12 interest and penalties; and
13 c. Temporary Medical Insurance Arrears (relating to
14 insurance premiums for Tara from December 1, 2015,
15 through January 10, 2017): totaling \$4,225.15 with interest.

16 12. This case was administratively reassigned from Department T to
17 Department H on July 7, 2017.

18 13. Tara filed an *Updated Cover Sheet for Schedules of Arrears* on
19 September 15, 2017, wherein she detailed all of the payments Alex had made towards
20 his minimum family support obligation of \$2,500 per month, and for Nicole's
21 insurance premiums under the *Decree* through September 12, 2017.

22 14. At this point and prospectively, to ensure that penalties and interest are
23 applied properly to the amounts owed, the Court will require a breakdown of Alex's
24 child support arrears and alimony/spousal support arrears, which Mr. Creel shall
25 provide to Alex. Penalties and interest should apply to Alex's child support arrears
26 and medical insurance arrears, and only interest should apply to Alex's
27 alimony/spousal support arrears or other non-child support sums.

28 ² Interest and penalties were applied to this arrearage by Department T as there was no
specification in the *Order* from the November 19, 2015, hearing as to what portion was child support
and what portion was spousal support.

1 15. Alex's child support arrears from May 1, 2016, through September 12,
2 2017, provide that he owes the principal sum of \$4,633; that sum is \$5,260.25 with
3 interest and penalties as of September 12, 2017.

4 16. Alex's alimony/spousal support arrears from May 1, 2016, through
5 September 12, 2017, provide that he owes the minimum principal sum of \$10,265;
6 that sum is \$10,812.09 with interest as of September 12, 2017.

7 17. Alex's medical insurance arrears relating to his obligation to provide
8 medical insurance for the minor child from February 1, 2017, through September 12,
9 2017, indicate that he owes the principal sum of \$2,210.87; that sum is \$2,315.99
10 with interest and penalties as of September 12, 2017.

11 18. Alex also owes the principal sum of \$715.50 in unreimbursed medical
12 expense arrears.

13
14 **THE COURT HEREBY ORDERS:**

15 1. Tara's request to reduce to judgment Alex's support, medical insurance,
16 and unreimbursed medical expense arrears under the *Decree* orders is granted.

17 2. To prevent future confusion, all outstanding sums are recapitulated in
18 this *Order* and brought current to the date of the hearing of this matter on October 6,
19 2017:

20 Under the temporary financial orders:

21 a. Temporary Family Support Arrears (relating to payments
22 from December 1, 2015, through April 30, 2016): the
23 principal sum of \$2,870; that sum is \$3,762.13 with interest and
24 penalties.³

25 b. Temporary Medical Insurance Arrears (relating to
26 insurance premiums for the minor child from December 1,

27
28 ³ See Exhibit 1, MLAW Arrearage Calculation Summary detailing Alex's temporary family
support arrears.

2015, through January 10, 2017): the principal sum of \$1,963.50; that sum is \$2,366.80 with interest and penalties.⁴

- c. Temporary Medical Insurance Arrears (relating to insurance premiums for Tara from December 1, 2015, through January 10, 2017): the principal sum of \$4,097.10; that sum is \$4,404.21 with interest.⁵

Under the Decree orders:

- a. Child Support Arrears (relating to payments from May 1, 2016, through September 30, 2017): the principal sum of \$4,633; that sum is \$5,309.75 with interest and penalties.⁶
- b. Alimony/Spousal Support Arrears (relating to payments from May 1, 2016, through September 30, 2017): the principal sum of \$10,265; that sum is \$10,854.27 with interest.⁷
- c. Medical Insurance Arrears (relating to insurance premiums for the minor child from February 1, 2017, through September 30, 2017): the principal sum of \$2,210.87; that sum is \$2,339.61 with interest and penalties.⁸
- d. Unreimbursed Medical Expense Arrears: totaling \$715.50.

All of these sums are hereby reduced to judgment as of October 6, 2017, and made collectible by any and all lawful means.

3. Based on the statements made by Alex in Open Court as to what he can pay in the next week, he shall pay to Tara, through the WILICK LAW GROUP, the sum of \$3,500 on or before the close of business on October 13, 2017.

⁴ See Exhibit 2, MLAW Arrearage Calculation Summary detailing Alex's temporary medical insurance arrears relating to insurance premiums for the minor child.

⁵ See Exhibit 3, MLAW Arrearage Calculation Summary detailing Alex's temporary medical insurance arrears relating to insurance premiums for Tara.

⁶ See Exhibit 4, MLAW Arrearage Calculation Summary detailing Alex's current child support arrears.

⁷ See Exhibit 5, MLAW Arrearage Calculation Summary detailing Alex's current alimony/spousal support arrears.

⁸ See Exhibit 6, MLAW Arrearage Calculation Summary detailing Alex's current medical insurance arrears relating to insurance premiums for the minor child.

1 4. A Status Check regarding Alex's payment of \$3,500 is set for October
2 16, 2017, at 11:00 a.m.

3 5. If Alex has paid the sum of \$3,500 on or before the close of business on
4 October 13, 2017, the Court shall waive his personal appearance at the October 16,
5 2017, Status Check and he may appear telephonically.

6 6. At the time of the Status Check, the Court will confirm when the next
7 payment will be made by Alex to Tara with the goal of establishing a reasonable
8 payment plan both prospectively and to satisfy outstanding arrearages.

9 7. To determine the reasonableness of any payment plan, Alex shall file a
10 *Detailed Financial Disclosure Form* prior to October 16, 2017. It is understood that
11 the last day for Alex to file his 2016 taxes is October 16, 2017, and per the terms of
12 the *Decree*, his 2016 income information is to be supplied to Tara's counsel.

13 8. In accordance with filing a *Detailed Financial Disclosure Form*, Alex
14 shall provide his most recent Schedule C Profit or Loss From Business, Form 1065
15 US Return of Partnership Income with applicable Form K-1, Form 1120 US Income
16 Tax Return for an S-Corporation with applicable Form K-1, and/or Form 1120 US
17 Corporation Income Tax Return and a year-to-date Income Statement (P&L), as well
18 as all documents supporting the numbers contained within his Schedules/Income
19 Statements.

20 9. The issue of attorney's fees shall be deferred, with the understanding that
21 Mr. Creel may prepare and submit a *Memorandum of Fees and Costs*.

22 *****

23 *****

24 *****

25 *****

26 *****

27 *****

28 *****

10. Mr. Creel shall prepare the Order from today's hearing and provide it to Alex for his review as to form and content.

IT IS SO ORDERED this 7 day of November, 2017.

[Signature]

DISTRICT COURT JUDGE

T. ART RITCHIE, JR.
Approved as to Form and Content By:
ALEX B. GHIBAUDO, PC

SIGNATURE
REFUSED

Respectfully Submitted By:
WILICK LAW GROUP

[Signature]

MARSHAL S. WILICK, ESQ.
Nevada Bar No. 2515
TREVOR M. CREEL, ESQ.
Nevada Bar No. 11943
3591 E. Bonanza Road, Suite 200
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Attorneys for Plaintiff

ALEX B. GHIBAUDO, ESQ.
Nevada Bar No. 10592
CHRISTOPHER A. AARON, ESQ.
Nevada Bar No. 9489
703 S. 8th Street
Las Vegas, Nevada 89101
Attorneys for Defendant

\\wlgserver\company\wp16\KBL\LOGO, TUDR\APTS\06202769.WPD

Steven D. Grier

1 **ORDER**
2 WILICK LAW GROUP
3 MARSHAL S. WILICK, ESQ.
4 Nevada Bar No. 2515
5 3591 E. Bonanza Road, Suite 200
6 Las Vegas, NV 89110-2101
7 Phone (702) 438-4100; Fax (702) 438-5311
8 email@willicklawgroup.com
9 Former Attorneys for Plaintiff

6 **DISTRICT COURT**
7 **FAMILY DIVISION**
8 **CLARK COUNTY, NEVADA**

9 **TARA KELLOGG,**
10 **Plaintiff,**

11 **vs.**

12 **ALEX GHIBAUDO,**
13 **Defendant.**

CASE NO: D-15-522043-D
DEPT. NO: H

DATE OF HEARING: 2/26/2018
TIME OF HEARING: 10:00 A.M.

14 **ORDER FROM THE FEBRUARY 26, 2018, HEARING**

15 This matter came on for hearing at the above date and time before the Hon. T.
16 Arthur Ritchie, Jr., District Court Judge, Family Division. Movant, WILICK LAW
17 GROUP, was present and represented by Trevor M. Creel, Esq.; Plaintiff, Tara
18 Kellogg, was not present; and Defendant, Alex Ghibaud, was present and
19 represented himself in proper person.

20 The Court, having reviewed the papers and pleadings on file herein, and
21 entertained oral argument of counsel, makes the following findings and orders:
22

23 **THE COURT HEREBY FINDS:**

- 24
- 25 1. WILICK LAW GROUP's Motion to adjudicate its attorney's lien was
26 properly served, with no opposition timely filed by Plaintiff or Defendant.
27
- 28

1 2. WILLOCK LAW GROUP has complied with the requirements of NRS
2 18.015(3) by serving Plaintiff and Defendant with written notice of the *Lien* by
3 certified mail, return receipt requested (see *Certificate of Service* filed on January 25,
4 2018).

5 3. NRS 18.015(6) provides, "[T]he court SHALL, after 5 days' notice to
6 all interested parties, adjudicate the rights of the attorney, client or other parties and
7 enforce the lien."

8 4. The fees charged by the WILLOCK LAW GROUP are reasonable under the
9 standards set forth by the Nevada Supreme Court in *Brunzell*¹ and *Wilfong*² and were
10 necessarily incurred. As to the *Brunzell* factors:

11 a. *The Qualities of the Advocate:* the principal of the firm and supervising
12 counsel, Marshal S. Willock, Esq., is A/V rated, a peer-reviewed and certified
13 (and re-certified) Fellow of the American Academy of Matrimonial Lawyers,
14 and a Certified Specialist in Family Law, with substantial ability, training,
15 education, experience, professional standing and skill. Trevor M. Creel, Esq.,
16 the associate attorney assigned to Plaintiff's case, works exclusively in the
17 field of family law, and has done so for over seven years.

18 b. *The Character of the Work to Be Done:* the work requested by the
19 client was of such difficulty, intricacy, and importance, and required such time
20 and skill of counsel and his staff as to merit the fees charged for those tasks.

21 c. *The Work Actually Performed by the Lawyer:* counsel's skill, time, and
22 attention given to the work denoted proper investigation into the relevant facts,
23 proper review of the applicable law, and appropriate application of one to the
24 other.

25 d. *The Result:* the result in the action through this date was appropriate
26 given the factual circumstances and applicable law, and the client derived the
27 benefits reasonably available under the circumstances.

28 **THE COURT HEREBY ORDERS:**

1 1. WILLOCK LAW GROUP's *Motion to Adjudicate Attorney's Rights, to*
2 *Enforce Attorney's Lien, and for an Award of Attorney's Fees*, filed January 24, 2018,
3 is granted in the amount of the *Lien for Attorney's Fees*, filed on January 24, 2018.

4 ¹ *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

5 ² *Miller v. Wilfong*, 121 Nev. 119, P.3d 727 (2005).

1 Accordingly, the sum of \$61,758.97, plus interest, as of January 23, 2018, is hereby
2 reduced to judgment against Tara Kellogg and made collectible by any and all lawful
3 means.

4 2. WILICK LAW GROUP's request for additional fees and costs incurred in
5 adjudicating its *Lien* is denied.

6 3. Mr. Creel shall prepare the *Order* from today's hearing and directly
7 submit the same for the Court's signature.


8 IT IS SO ORDERED this 12 day of March, 2018.

9
10
11 
DISTRICT COURT JUDGE

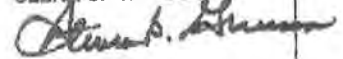
12 T. ART RITCHIE, JR. *kp*

13 Respectfully Submitted By:

14 WILICK LAW GROUP

15
16 
MARSHAL S. WILICK, ESQ.
17 Nevada Bar No. 2515
TREVOR M. CREEL, ESQ.
18 Nevada Bar No. 11943
3591 East Bonanza Road, Suite 200
19 Las Vegas, Nevada 89110
(702) 438-4100
20 Former Attorneys for Plaintiff

21 \ judgeserver\company\wp\10\KPL\11001\10\MAF75-00124762 WPD



1 **ORD**
2 **LEAVITT LAW FIRM**
3 **DENNIS M. LEAVITT, ESQ.**
4 Nevada Bar No. 3757
5 **Dennis@LeavittLawFirm.com**
6 **FRANK A. LEAVITT, ESQ.**
7 Nevada Bar No. 13907
8 **Frank@LeavittLawFirm.com**
9 229 Las Vegas Blvd. So.
10 Las Vegas, Nevada 89101
11 (702) 384-3983
12 (702) 384-6105 (Fax)
13 *Attorney for Plaintiff,*
14 **TARA KELLOGG-GHIBAUDO**

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 **TARA KELLOGG-GHIBAUDO,**

CASE NO.: D-15-522043-D

12 **Plaintiff,**

DEPT. NO.: H

13 **vs.**

14 **ALEX GHIBAUDO,**

15 **Defendant.**

16 **ORDER**

17 **THIS MATTER HAVING COME ON** before the above-entitled Court for a hearing;
18 **and Plaintiff, Tara Kellogg-Ghibaudo** appearing in person and with her attorney, Dennis
19 **M. Leavitt, Esq. of Leavitt Law Firm; and Defendant, Alex Ghibaudo, Esq. appearing in**
20 **person and representing himself; and the Court stated the agreement was Defendant was**
21 **required to pay Plaintiff the minimum of \$2,500 per month. Further, there has to be clear**
22 **and convincing evidence for there to be direct civil contempt and this Court has jurisdiction**
23 **to enforce. The Court stated for purposes of contempt, Defendant was to pay no less than**
24 **\$2,500 per month. Court stated the Defendant's admission that payment was not made**
25 **is what prompted this Evidentiary Hearing being set. Attorney Ghibaudo stated the Orders**
26 **are crystal clear and he is not contesting that he has not paid what was ordered. Court**
27 **stated this is a indirect civil contempt hearing and this is the last resort. Attorney Ghibaudo**
28

LEAVITT LAW FIRM
229 Las Vegas Blvd. So., Las Vegas, NV 89101
(702) 384-3963 - fax (702) 384-6105

1 admitted he has not paid for January through March 2018. The parties were sworn and
2 testified from their tables; good cause appearing therefore;

3 **COURT FINDS**, there is a clear Order of Defendant's obligation to pay and there
4 is a finding of contempt.

5 **THEREFORE, IT IS HEREBY ORDERED** that Defendant shall be SENTENCED
6 to TWO (2) DAYS in the Clark County Detention Center, which SENTENCE shall be
7 STAYED upon Defendant's PAYMENT of \$7,500.00 (three months of \$2,500.00 each) by
8 March 30, 2018. If Defendant pays the \$7,500.00, he can bring a request to PURGE the
9 CONTEMPT. To PURGE the CONTEMPT, Defendant shall pay the Plaintiff DIRECTLY.

10 **IT IS FURTHER ORDERED** that if Defendant is required to serve the SENTENCE
11 of 2 DAYS for CONTEMPT, the SENTENCE shall take place on the WEEKEND,
12 Defendant shall APPEAR at the Clark County Detention Center, and Defendant shall be
13 REMANDED on a Friday and RELEASED on a Sunday. All REMAINING ISSUES shall
14 be DEFERRED.

15 DATED this 27 day of March 2018.

16
17 
18 **DISTRICT COURT JUDGE**

19 *Art Ritchie, Jr.*
20 **ART RITCHIE, JR.**

21 Respectfully Submitted By:

22 LEAVITT LAW FIRM

23 
24 **DENNIS M. LEAVITT, ESQ.**

25 Nevada Bar No. 3757

26 229 Las Vegas Blvd. So.

27 Las Vegas, Nevada 89101

28 (702) 384-3963

(702) 384-6105 (Fax)

Attorney for Plaintiff,

TARA KELLOGG-GHIBAUDO

Willick Law Group
3591 E. Bonanza Rd., Suite 200
Las Vegas, Nevada 89110-2101
Web page: www.willicklawgroup.com
Billing Q&A faith@willicklawgroup.com

June 10, 2019

Ms. Tara Kellogg-Ghibaudo
2050 W. Warm Springs
Henderson, NV 89014
cwb
email: tarakellogg1@gmail.com

File Number: 16-058.DIV
Invoice # 88482

RE: Kellogg-Ghibaudo v. Ghibaudo, Alex
D-15-522043-D
CWB

Statement of Account for Services Rendered Through June 10, 2019

Previous Balance Due	<u>\$ 82,902.54</u>
Interest Charge	
Interest Charge on past due balance of \$64,530.64	\$ 541.00
Percentage Rate: 18.00 percent	
Days in Billing Cycle: 17	
TOTAL NEW CHARGES	<u>\$ 541.00</u>
PAYMENTS AND CREDITS	
	<u> </u>
Total Payments and Credits	<u>\$ 0.00</u>
SUMMARY OF ACCOUNT	
Balance Forward	\$ 82,902.54
Total New Charges	541.00
Payments, credits, and/or retainer used	<u>0.00</u>
TOTAL AMOUNT DUE	<u>\$ 83,443.54</u>

INTEREST WILL BE CHARGED ON PAST DUE AMOUNTS
AT THE RATE OF 18.00 PERCENT

Please note, the Willick Law Group has adjusted the billing rates of some members of the legal staff as follows: Richard Crane, Esq. \$400 per hour; Ms. Mallory Yeargan \$175 per hour; and Mr. Justin Johnson \$150 per hour. These rates will be in effect as of June 26, 2019.

EXHIBIT 5

1 **FFCL**

2 R. CHRISTOPHER READE, ESQ.
3 Nevada Bar No.: 006791
4 CORY READE DOWS AND SHAFER
5 1333 North Buffalo Drive, Suite 210
6 Las Vegas, Nevada 89128
7 Tel: (702) 794-4411
8 Fax: (702) 794-4421
9 creade@crdslaw.com
10 *Attorneys for Plaintiff Tara Kellogg*

7 **DISTRICT COURT**
8 **FAMILY DIVISION**
9 **CLARK COUNTY, NEVADA**

10 TARA KELLOGG-GHIBAUDO,
11
12 Plaintiff,

13 vs.

14 ALEX GHIBAUDO
15 Defendant.

CASE NO.: D-15-522043-D
DEPT NO.: H

16 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**

17 Date of Hearing: September 17, 2020
18 Time of Hearing: 9:00 a.m.

19 This matter having come on for an evidentiary hearing on the date and time indicated above
20 regarding Defendant's Motion to Modify Spousal Support filed May 30, 2019. Plaintiff TARA
21 KELLOGG-GHIBAUDO ("Tara"), being present and represented by her attorney of record, R.
22 Christopher Reade, Esq., of Cory Reade Dows Shafer; Defendant ALEX GHIBAUDO ("Alex"),
23 being present and represented by his attorney of record, Radford J. Smith, Esq., of the law firm of
24 Radford J. Smith, Chartered; the Honorable T. Arthur Ritchie presiding.

25 The Court having heard the sworn testimony presented at the time of the hearing of this
26 matter, read the papers and pleadings on file and presented as Exhibits at the time of trial, having
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1 heard argument of counsel, and being otherwise fully advised in the premises, makes the following
2 Findings of Fact, Conclusions of Law, and Orders.

3 **FINDINGS OF FACT**

4 **THE COURT FINDS** that the parties were divorced by Decree of Divorce filed February
5 1, 2017.

6 **THE COURT FURTHER FINDS** that the Decree is a final, enforceable judgment in this
7 case.
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9 **THE COURT FURTHER FINDS** that Defendant Alex Ghibauda (hereinafter “Alex”)
10 reopened this matter on May 30, 2019, through his motion to modify the spousal support provisions
11 of the Decree.

12 **THE COURT FURTHER FINDS** that Plaintiff Tara Kellogg (hereinafter “Tara”) seeks
13 enforcement of the provisions of the Decree of Divorce and alleges that Alex is delinquent in his
14 payments for family support due under the Decree.
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16 **THE COURT FURTHER FINDS** that the Court retains jurisdiction to enforce the
17 alimony provisions in the Decree and has jurisdiction to modify those provisions.

18 **THE COURT FURTHER FINDS** that there was an aggregate of judgments that were
19 entered addressing Alex’s support obligations to October 2017, and those judgments are not the
20 subject matter of this hearing since they have already been adjudicated and reduced to judgment.

21 **THE COURT FINDS** that a settlement conference was conducted on May 18th, 2016 by
22 former Judge Kathy Hardcastle.
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24 **THE COURT FURTHER FINDS** that the settlement conference was conducted so that
25 parties could obtain a legal separation, which explains the curious orders in that there was a general
26 theme that the parties would share income because they were still married.
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1 **THE COURT FURTHER FINDS** that both parties had a right, which they
2 acknowledged, to get a divorced and turn the terms of legal separation into a divorce.

3 **THE COURT FURTHER FINDS** that the parties agreed that a Decree of Divorce could
4 be entered and that the Decree of Divorce entered in this matter adopted the agreements that were
5 part of the settlement agreement which was reduced to judgment in the Decree.

6 **THE COURT FURTHER FINDS** that the Decree of Divorce is final judgment and is the
7 law of the case.

8 **THE COURT FURTHER FINDS** that the Decree is under the continuing jurisdiction of
9 this Court.

10 **THE COURT FURTHER FINDS** that there was an agreement and a binding order for
11 the parties to share the income. The actual obligation pursuant to the decree was not \$2,500.00
12 but was to be the difference between the Tara's earning potential and the Alex's actual earnings
13 divided by two.

14 **THE COURT FURTHER FINDS** that the Court finds that the Tara is not employed, that
15 Tara obtained an Associates' Degree in 2017 and that Tara does not have income.

16 **THE COURT FURTHER FINDS** Tara did not present sufficient proof to support any
17 kind of finding that she is disabled and unable to earn income.

18 **THE COURT FURTHER FINDS** that Tara testified that she hopes to get a job earning
19 \$30,000.00 to \$40,000.00 per year but does not yet have her bachelor's degree at this time.

20 **THE COURT FURTHER FINDS** that Tara is willfully underemployed to maximize her
21 spousal support claim, that the income should be imputed to her for the period of time between
22 October 2017 to present. The Court can appropriately calculate the net support that is due during
23 this time and that e amount based on the evidence that was presented is \$2,000.00 a month.

1 **THE COURT FURTHER FINDS** that Alex is employed as an attorney who incorporated
2 his law firm with the Nevada Secretary of State about six months after the settlement conference
3 on December 19th, 2016.

4 **THE COURT FURTHER FINDS** that Alex filed tax returns that showed income for
5 2017, 2018 and 2019. The evidence admitted and the Court's findings are that Alex's gross income
6 for the purpose of calculating support (1) for 2017 was \$148,256.00, or \$12,355.00 a month; (2)
7 for 2018, is \$180,285.00, or \$15,024.00 a month; (3) for 2019 was \$133,490.00, or \$11,124.00 a
8 month from January through May of that year.
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10 **THE COURT FURTHER FINDS** that Alex's income, for purposes of calculating his
11 support obligation is at least \$140,000.00 per month, or at least \$12,000.00 a month in gross
12 income. Tara's expert's testimony supports that conclusion.

13 **THE COURT FURTHER FINDS** that from October 2017 to December 2017, Alex's
14 income was \$12,355.00 per month for those three months. Applying Tara's imputed income of
15 \$2,000.00, the net income to be divided pursuant to the Decree of Divorce is \$10,355.00. This sum
16 divided by two equals \$5,177.00 per month due to Tara for the three (3) months in 2017 at issue,
17 totaling \$15,532.00.
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19 **THE COURT FURTHER FINDS** that in 2018, Alex earned \$15,024.00 per month on
20 average. Imputing an income of \$2,000.00 to Tara, the net income to be divided pursuant to the
21 Decree of Divorce is \$13,024.00. This sum divided by two equals \$6,515.00 per month due to
22 Tara, multiplied by 12 months, equals \$78,144.00 due to Tara for that year.
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24 **THE COURT FURTHER FINDS** that in 2019, the period to be considered is from
25 January to April, when Alex's motion was filed. For that four (4) month period, Alex's gross
26 monthly income was \$11,124.00 per month on average, minus the \$2,000.00 imputed to Tara. The
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1 net income to be divided pursuant to the Decree of Divorce is \$9,124.00. This sum divided by two
2 equals \$4,562.00 per month due to Tara, multiplied by the four months at issue totals \$18,248.00.

3 **THE COURT FURTHER FINDS** that by adding those three years together, Alex should
4 have paid family support pursuant to the Decree of Divorce in the amount of \$111,924.00.

5 **THE COURT FURTHER FINDS** that the evidence supports a finding that between
6 October 2017 to April 2019 that Alex paid to Tara approximately \$42,000.00.

7 **THE COURT FURTHER FINDS** that the \$42,000.00 actually paid will be credited
8 against the \$111,924.00 owed, for a total arrears amount of \$69,924.00, which represents the
9 family support owed pursuant to the decree between October 2017 and April 2019 and which sums
10 shall be and hereby are reduced to Judgment.
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12 **THE COURT FURTHER FINDS** that the family support provisions in the Decree of
13 Divorce are modifiable.

14 **THE COURT FURTHER FINDS** that the Decree and NRS 125.150 allow the Court to
15 terminate alimony based on operative events such as the death of either party or the remarriage of
16 the Tara, neither of which occurred here, or modify or terminate alimony based upon a change in
17 financial circumstances.
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19 **THE COURT FURTHER FINDS** that the agreement concerning legal separation was
20 incorporated in the decree of divorce without a trial on the issue of divorce. Certainly, spousal
21 support is what somebody pays from their separate property to their former spouse. So, in
22 evaluating whether to modify the spousal support award from May 2019 forward, the Court is
23 going to consider the required factors relevant in determining the award of alimony and the amount
24 of such award. The Court considers the financial conditions of each spouse. Other than the reported
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1 income, the Tara states that she is supported by the charity of her family; and the Alex is an attorney
2 who earns at least \$140,000.00 a year.

3 **Findings regarding Alimony Factors Codified in NRS 125.150**

4 **THE COURT FURTHER FINDS** that the Court considers the nature and value of the
5 assets of each spouse. Here, neither party has significant assets, aside from Alex, who has a law
6 practice developed over the last four (4) years.

7 **THE COURT FURTHER FINDS** that the Court considers the contribution of each
8 spouse to any property held by the spouses. Here, that is not a material factor.

9 **THE COURT FURTHER FINDS** that the Court considers the duration of the marriage,
10 which was 13 years.

11 **THE COURT FURTHER FINDS** that the Court considers the earning capacity, age, and
12 health of each spouse. Alex has an earning capacity of \$140,000.00 per year; Tara's earning
13 capacity is \$24,000.00 per year.

14 **THE COURT FURTHER FINDS** that the Court considers the standard of living during
15 the marriage and finds that during the marriage, both parties had financial and personal issues, and
16 so this is not a compelling consideration in this case.

17 **THE COURT FURTHER FINDS** that the Court considers the career before the marriage
18 of the spouse who would receive alimony. Here, Tara has been taking college courses for years
19 and has received an Associate's Degree. She is currently seeking Bachelor's degree, and she has
20 made efforts in that regard.

21 **THE COURT FURTHER FINDS** that the Court considers the award of property granted
22 in the decree of divorce. There really was not much property granted in the Decree of Divorce to
23 either party.

1 **THE COURT FURTHER FINDS** that the Court must consider the physical and mental
2 condition of each party as it relates to financial condition, health, and ability to work. The Court
3 finds that both parties have the ability to work and that the Court should consider the need to grant
4 alimony for any kind of training or education, which has been addressed herein.

5 **THE COURT FURTHER FINDS** that in terms of those factors, now that the parties are
6 divorced, and now that this matter has been raised with the Court, the Court has been asked to
7 modify the amount. Tara asked the Court to order \$6,500.00 a month in alimony without much
8 context. If Alex makes \$12,000 a month and he pays normal withholding, he probably nets about
9 \$9,000.00. In that case, \$6,500.00 would be about 70 percent of his net income which is not
10 equitable or appropriate. Considering the settlement conference and the imputed income, Tara's
11 need is about \$4,500.00. Tara lists other expenses, but Tara has done nothing to support herself as
12 it relates to the last three years after divorce.
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14 **THE COURT FURTHER FINDS** that the Court is going to conclude that based on
15 weighing all these factors that the appropriate amount of support is \$2,500.00 a month and that is
16 an appropriate and equitable support amount that would reflect a spouse who makes \$140,000 a
17 year and a spouse who can make between \$24,000 to \$30,000.00 a year.
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19 **THE COURT FURTHER FINDS** Alex has requests that the term of spousal support be
20 terminated or modified.

21 **THE COURT FURTHER FINDS** that, as indicated above, the Court has reviewed, and
22 played for the parties in open court, the relevant sections of the videotape transcript of the
23 settlement conference held in front of Judge Hardcastle on May 18, 2016. The Court relied on that
24 transcript to better understand the terms of the agreement of the parties that formed the basis of
25 the terms of the Decree of Divorce regarding alimony.
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1 **THE COURT FURTHER FINDS** that the video transcript of the May 18, 2016,
2 settlement conference reveals that Alex proposed the 15-year term of alimony that was then
3 incorporated into the Decree of Divorce.

4 **THE COURT FURTHER FINDS** that though the Court has discretion to reduce the term
5 as Alex has requested, the Court finds that it is not just and equitable to terminate the alimony or
6 reduce the term at this time. The Court does not find sufficient change in circumstances since
7 May of 2019 to support Alex's modification of the agreed upon term of alimony because the Alex
8 was the party that insisted upon the 15 year term when the agreement was read into the record at
9 the settlement conference and only three years have passed since the entry of the Decree of
10 Divorce.

11 **THE COURT FURTHER FINDS** that the Court is going to confirm that the term of
12 Alex's obligation of alimony to Tara shall continue through April 1, 2031.

13 **THE COURT FURTHER FINDS** that from May 2019 through September 2020 Alex
14 owes Tara another \$47,500.00 at the rate of \$2,500 per month, which shall be reduced to judgment
15 in favor of the Tara against the Alex.

16 **THE COURT FURTHER FINDS** that judgments will accrue interest at the legal rate and
17 may be collected by any lawful means.

18 **THE COURT FURTHER FINDS** that the law firm Alex operates was established after
19 the settlement conference at issue and so that practice is Alex's sole and separate property, to
20 which Tara has no claim or right.

21 The court incorporates its findings and conclusions made on the record at the
22 hearing on September 17, 2020, by reference. TAR

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CONCLUSIONS OF LAW

The court has continuing jurisdiction to modify unaccrued periodic alimony payments set forth in a Decree of Divorce upon a showing of change circumstances. NRS 125.150(8).

The court may consider, among other factors, a parties' earning capacity, not just income, when determining a fair and equitable award of alimony. NRS 125.150.

JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Tara's Motion for Enforcement of the Decree of Divorce and entry of Judgment is GRANTED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Alex's Motion to Modify Spousal Support is hereby GRANTED IN PART.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Alex owes Tara \$69,924.00 in spousal support arrears for period of October 2017 through April 2019.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Alex owes Tara \$47,500.00 for spousal support from May 2019 through September 2020.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that these sums so reduced to Judgment have accrued interest at the legal rate and may be collected by any lawful means.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Alex's spousal support obligation has been modified and that Alex is ordered to pay Tara \$2,500.00 per month in spousal support. Payments are due on the first of each month starting on October 1, 2020.

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this order takes into consideration a look-back to October 2017 in terms of any child support arrears.

DATED AND DONE this ____ day of November, 2020.

Dated this 10th day of November, 2020


DISTRICT COURT JUDGE

66A 958 EDC0 129B
T. Arthur Ritchie
District Court Judge

Prepared by:

CORY READE DOWS AND SHAFER
/s/ R. Christopher Reade

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1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 Tara Kellogg Ghibaudo, Plaintiff | CASE NO: D-15-522043-D
7 vs. | DEPT. NO. Department H
8 Alex Ghibaudo, Defendant.
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10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

14 Service Date: 11/10/2020

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