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*Appellant in Proper Person*

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Sep 20 2021 08:41 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

\* \* \* \* \*

ALEX GHIBAUDO,

Appellant,

vs.

TARA KELLOGG, et al.,

Respondent.

Docket No.: 82248

**APPELLANT'S AMENDED APPENDIX, VOLUME I**

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20<sup>th</sup> day of September, 2021, I served a true and correct copy of the foregoing *Appellant's Amended Appendix, Volume I*, via the Court designated electronic service and/or U.S. Mail, first class postage prepaid, addressed to the following:

Jonathan Nelson, ESQ.  
*Attorney for Respondent*

[jonathan@jknelsonlaw.com](mailto:jonathan@jknelsonlaw.com)

By: *//s//Alex B. Ghibaud.*

---

Appellant in Proper Person

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DOCKET NO. 82248

District Court Case No. D-15-522043-D

ALEX GHIBAUDO (Appellant) adv. TARA KELLOGG (RESPONDENT)

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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.

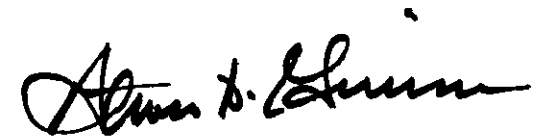
17 9. For such other relief as the Court finds to be just and proper.

18 DATED this 1<sup>st</sup> day of October, 2015.

19  
20 CHATTAH LAW GROUP

21  
22 

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

  
CLERK OF THE COURT

ACC

ALEX GHIBAUDO, ESQ.

Nevada Bar No. 10592

SCHWAB LAW GROUP

2800 W. Sahara Ave., Suite 1H

Las Vegas, Nevada 89102

Tel. (702) 489-4442

Fax. (702) 489-4812

*Defendant in proper person*

DISTRICT COURT, FAMILY DIVISION  
CLARK COUNTY, NEVADA

\*\*\*\*\*

TARA KELLOGG-GHIBAUDO,

Plaintiff,

vs.

ALEX GHIBAUDO,

Defendant.

Case No.: D-15-522043-D  
Dept. No.: T

Answer to Plaintiff's Complaint for Divorce

Defendant Alex Ghibaud, Esq., in proper person, submits this Answer to Plaintiff's Complaint for Divorce, and admits, denies and alleges as follows:

1. Answering Paragraphs 1, 2, 3, 4, 5, 6, 7, 9, and 11 admits the allegations contained therein.

2. Answering Paragraphs 8 and 10 Defendant denies the allegations contained therein.

Dated this 9th day of November, 2015.

Schwab Law Group

/s/ Alex Ghibaud

Alex Ghibaud, Esq.

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Tara Kellogg-Ghibaudo  
c/o Sigal Chattah, Esq.  
5875 S Rainbow Blvd # 204  
Las Vegas, NV 89118  
chattahlaw@gmail.com

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**R. GISTER OF ACTIONS****CASE NO. D-15-522043-D****Tara Kellogg Ghibauda, Plaintiff vs. Alex Ghibauda, Defendant.**§  
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§  
§Case Type: **Divorce - Complaint**  
Subtype: **Complaint Subject Minor(s)**  
Date Filed: **10/02/2015**  
Location: **Department H**  
Cross-Reference Case Number: **D522043**  
Supreme Court No.: **82248****PARTY INFORMATION****Defendant**     **Ghibauda, Alex**  
7308 Lost Shadow CT  
Las Vegas, NV 89131**Lead Attorneys**  
**Michancy Moonblossom**  
**Cramer**  
*Retained*  
702-978-7090(W)**Plaintiff**     **Kellogg Ghibauda, Tara *Now Known***  
**As Kellogg, Tara**  
\*\* Confidential Address \*\***Jonathan K Nelson**  
*Retained*  
702-727-9900(W)**Subject Minor Ghibauda, Nicole Beatrice**

Female

**EVENTS ☐ ORDERS OF THE COURT**05/18/2016 | [Settlement Conference](#) (1:30 PM) (Judicial Officer Hardcastle, Kathy)**Minutes**

05/18/2016 1:30 PM

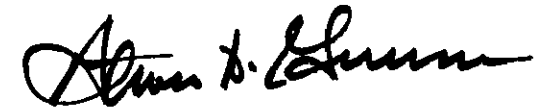
- SETTLEMENT CONFERENCE Court NOTED Parties reached an agreement. Parties STIPULATED to the following: 1. The STATUS QUO will CONTINUE with Parties sharing JOINT LEGAL CUSTODY and Plaintiff having PRIMARY PHYSICAL CUSTODY. 2. Pursuant to Parties' previous agreement as set forth in the November 19, 2015, Order and based on Defendant's gross monthly income (GMI) level, Defendant's CHILD SUPPORT obligation is SET at the PRESUMPTIVE MAXIMUM of \$819.00 per month. 3. A Decree of Legal Separation will be entered. At any time either Party may seek a termination of the Decree of Legal Separation and pursue a Decree of Divorce. 4. Defendant will pay Plaintiff the sum of \$2,500.00 per month in ALIMONY; this amount includes \$819.00 that is attributable towards Child Support. a. Plaintiff's ALIMONY of \$2,500.00 will CONTINUE until such time she becomes employed and the alimony amount may be re-calculated at 50% of the proportional shares of Defendant's GMI. If Defendant's GMI increases, then the alimony shall increase at 50% of the proportional shares of Defendant's GMI. b. Upon Plaintiff gaining employment, the ALIMONY may be re-calculated which is to be no less than 50% of Defendant's GMI, but determined between the differences of Parties' GMI. Furthermore, Plaintiff will be entitled to received half of that sum, but in any case, no less than \$2,500.0 per month. c. When the minor child turns eighteen (18) years old, the ALIMONY will remain at the amount agreed to between the Parties at \$2,500.00 per month or the greater amount of one-half of the difference between the Parties' incomes and will not be reduced by the reduction or termination of Child Support. d. The final period of time for the alimony to be paid is FIFTEEN (15) YEARS. 5. Defendant will be responsible for all DEBTS incurred by the community estate up until May 18, 2016, and the signing of the Decree of Legal Separation. Defendant will indemnify Plaintiff against any and all actions by any and all creditors of any of those debts. 6. Furthermore, any DEBTS incurred after the signing of the Decree of Legal Separation will be the sole responsibility of the Party incurring that debt. 7. There is NO other COMMUNITY PROPERTY to be divided between the Parties, with the exception of Defendant's interest in his Law Practice which his SHARE of the LAW PRACTICE will remain COMMUNITY PROPERTY. Should Defendant be paid for any portion of said practice, one-half of the amount he receives will be payable to Plaintiff as her one-half share of the community property. 8. All PROPERTY acquired after May 18, 2016, will remain COMMUNITY PROPERTY unless Parties mutually agree otherwise in writing. Upon Court's inquiry, both Parties acknowledged concurrence with the settlement terms as recited. COURT SO ORDERED. COURT FINDS it has

**Appellant's Appendix 006**

Jurisdiction over this matter. COURT FURTHER FINDS a Decree of Legal Separation shall be entered in this matter. COURT FURTHER ORDERED, all future hearing dates shall be VACATED. Attorney Chattah shall prepare the Stipulation and Decree of Legal Separation and Defendant shall sign as to form and content.

[Parties Present](#)

[Return to Register of Actions](#)



CLERK OF THE COURT

**MOT**  
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MARSHAL S. WILICK, ESQ.  
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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: 12/22/16  
TIME OF HEARING: 9:00 AM

ORAL ARGUMENT Yes X No     

**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 TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE.

**MOTION FOR ENTRY OF DECREE OF DIVORCE, FOR A  
MUTUAL BEHAVIORAL ORDER, FOR AN ORDER TO SHOW  
CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN  
CONTEMPT, FOR UTILIZATION OF OUR FAMILY WIZARD, AND  
FOR ATTORNEY'S FEES AND COSTS**

On May 18, 2016, the parties participated in a settlement conference with Senior Judge Kathy Hardcastle and came to an agreement on all issues pending before the Court. At the time, Tara was represented by Sigal Chattah, Esq., who

1 subsequently prepared a *Decree of Legal Separation*.<sup>1</sup> When it became clear that  
2 Alex had no real desire to negotiate the terms of the proposed *Decree* with Ms.  
3 Chattah, Tara retained us in an effort to the finalize the terms of the *Decree*, and we  
4 substituted in for Ms. Chattah on September 27, 2016. Since that time, we have had  
5 multiple discussions with Alex in an effort to implement reasonable and enforceable  
6 terms relating to the parties' agreement. Despite several indications that "we're  
7 close," Alex has made no real effort to have a *Decree* entered.

8 In light of his refusal to abide by the terms of the parties' agreement, and this  
9 Court's prior orders, it is painfully obvious why he has no desire to see a *Decree*  
10 entered; he seems to believe that so long as a written order is not entered with the  
11 Court, he cannot be held in contempt, he is effectively immune from recourse, and  
12 that he is not required to abide by the terms of *his* agreement. He has not even abided  
13 by the last *Order* that was entered by this Court.

14 His behavior is made worse by the fact that he appears incapable of  
15 communicating with Tara in an appropriate manner. He consistently curses, insults,  
16 and threatens Tara at all hours of the day. Unfortunately, he often exposes the  
17 parties' child to his abuse, which obviously causes her significant distress.  
18 Regardless of his improvident motivations, and apparent lack of mental stability, his  
19 behavior can no longer be ignored. Accordingly, we believe it essential for the Court  
20 to issue a *Mutual Behavioral Order* on pain of contempt to at least attempt to curb  
21 Alex's inexcusable behavior.<sup>2</sup>

22 Additionally, and in the hopes of allowing Tara to move on with her life, she  
23 is requesting that Court enter the attached *Decree of Divorce* (Exhibit 2), which  
24

---

25  
26 <sup>1</sup> Although no one seemed to know it at the time, there is no such thing as a *Decree of Legal Separation* in Nevada, instead, we maintain "separate maintenance" actions.

27 <sup>2</sup> For what it's worth, Alex agreed to sign the attached *Mutual Behavioral Order* (Exhibit 1) on  
28 October 25, 2016. Since that time however, and despite several requests that he do so, Alex is now refusing to sign the same, and is instead content to continue emotionally and mentally abusing Tara.



1 provides clear and detailed provisions to ensure that both parties are fully aware of  
2 the extent of their rights and obligations.

### 4 NOTICE OF MOTION

5 TO: ALEX GHIBAUDO, Defendant in Proper Person

6 YOU AND EACH OF YOU will please take notice that the foregoing *Motion*  
7 will be heard at the Clark County, Family Courthouse, 601 North Pecos Road, Las  
8 Vegas, Nevada 89101, on the 22<sup>nd</sup> day of December, 2016/~~2017~~, at the hour of  
9 9 o'clock A.M. or as soon thereafter as counsel can be heard in Department T  
10 of said Court.

### 12 POINTS AND AUTHORITIES

#### 13 I. FACTS

14 The parties were married in Las Vegas, Nevada, on December 30, 2001, and  
15 have one minor child, Nicole Ghibaud, born May 17, 2001.

16 The parties' relationship was tumultuous, due to Alex's drug use, addictive  
17 behaviors, and physical and emotional abuse of Tara. Much of that was detailed by  
18 Alex himself in an interview he gave with the Las Vegas Review Journal last year,  
19 where he essentially admitted to dissipating community assets, attempting suicide on  
20 multiple occasions, being diagnosed with mental health problems, spending  
21 exorbitant amounts of money on prostitutes, drugs, and alcohol, and physically  
22 abusing Tara.

23 Despite Alex's outrageous behavior, and his abandonment of Tara and the  
24 minor child in September, 2015, which was effectively Tara's breaking point after  
25 years of abuse, she was still hopeful that the parties could come to an amicable  
26 resolution in dissolving their marriage. Initially, Alex had different plans, as he  
27 rebuffed any attempts to provide Tara with necessary financial support, forcing her  
28 to file a *Motion* for temporary orders back in October, 2015.

1 Tara's *Motion* was heard on November 19, 2015, and the Court issued orders  
2 requiring Alex to pay Tara monthly family support in the amount of \$2,200, to assign  
3 his Christmas bonus to Tara upon receipt, and for Alex to file a Financial Disclosure  
4 Form within 30 days of the hearing. The Court also determined that Tara should  
5 receive primary physical custody, that Alex's visitation with the child would be at her  
6 discretion, and that he was required to provide Tara *and* the minor child with health  
7 insurance "until the Dissolution of Marriage is final and filed."<sup>3</sup>

8 Alex failed to satisfy his financial obligations to Tara pursuant to the Court's  
9 prior *Order*. He has not paid a penny towards the child's health insurance premiums  
10 resulting in a principal arrearage of \$1,683; with interest and penalties, he owes  
11 \$1,812.10 as of November 14, 2016.<sup>4</sup> He also failed to pay anything towards Tara's  
12 health insurance premiums, which resulted in a principal arrearage of \$3,511.80; with  
13 interest, he owes \$3,607.34 as of November 14, 2016.<sup>5</sup>

14 Finally, Alex did not fully comply with his family support obligation under the  
15 Court's *Order*, which resulted in a principal arrearage of \$5,600; with interest and  
16 penalties, he owes the sum of \$6,343.10 as of November 14, 2016.<sup>6</sup>

17 On February 23, 2016, a Case Management Conference was held. Despite the  
18 Court ordering that Alex supply it with a Financial Disclosure Form on or before  
19 December 19, 2015, Alex had still not done so by that time. Tara also indicated that  
20 Alex had failed to comply with the support requirements ordered by the Court.

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23 <sup>3</sup> Alex consistently uses the parties' minor child as a pawn in attempting to get Tara to do what he  
24 wants. He vacillates from threatening to "hold Tara in contempt" when the child expresses no desire to visit  
25 with him, to voluntarily relinquishing his rights so that he doesn't have to pay child support. To say that his  
behavior is wildly unpredictable is a gross understatement.

26 <sup>4</sup> See Exhibit 3, MLAW Arrearage Calculation Summary, along with a copy of Aetna policy rates.

27 <sup>5</sup> See Exhibit 4, MLAW Arrearage Calculation Summary, along with a copy of Aetna policy rates.

28 <sup>6</sup> See Exhibit 5, MLAW Arrearage Calculation Summary.

1 Ultimately, the matter was referred to the Senior Judge Settlement program and set  
2 for a settlement conference on May 18, 2016.

3 The parties reached an agreement at the settlement conference and the terms  
4 of that agreement were placed on the record. As part of their agreement, Alex was  
5 ordered to provide Tara with the *minimum sum* of \$2,500 in support for 15 years.  
6 He has failed in that regard and an arrearage has been incurred, however, given the  
7 nature of the parties' agreement, wherein Alex's gross monthly income impacts the  
8 level of support provided, we do not yet know the extent of his arrears. The parties  
9 also agreed that Tara's prior counsel, Ms. Chattah, would prepare the *Decree of Legal*  
10 *Separation*.

11 After it became evident that Alex may not cooperate in effectuating the terms  
12 of the parties' agreement, Tara retained us and we prepared a comprehensive *Decree*  
13 *of Divorce*.<sup>7</sup> The original *Decree* was provided to Alex on October 5, 2016. In his  
14 initial response, Alex claimed, without any supporting argument, let alone evidence,  
15 that the *Decree* did not comport with the agreement entered into at the settlement  
16 conference, while simultaneously threatening that he would seek to "set aside" the  
17 agreement that he made four months earlier. He was "upset" by the possibility that  
18 he might need to be transparent so as to determine the extent of his gross monthly  
19 income.<sup>8</sup>

20 After providing further clarification, we slightly modified the *Decree* and  
21 resent it to Alex for his review and signature. He, again, refused to sign it.  
22  
23

---

24 <sup>7</sup> Upon information and belief, Alex is siphoning off business funds to third parties and spending  
25 exorbitant amounts on himself in pursuit of his many vices.

26 <sup>8</sup> The parties agreement calls for Alex to provide Tara with 50% of his gross monthly income. Since  
27 Alex is self-employed, we requested that a neutral third party (like a forensic accountant) be appointed to  
28 review his books and make a determination of his gross monthly income. Of course, and in accordance with  
NRS 125B.070, his gross monthly income would include all of his income less his legitimate business  
expenses, as defined in the attached *Decree*.

1 Additional drafts of the *Decree* have been provided to Alex for his signature to no  
2 avail.

3 His refusal to cooperate is made worse by the fact that he continues to harass  
4 Tara by sending wholly inappropriate text messages and e-mails, verbally abuses her  
5 whenever he gets the chance, and continually exposes their daughter to their adult  
6 disputes – his behavior is deplorable and despite our repeated demands that he cease  
7 and desist, he refuses to do so.<sup>9</sup>

8 This *Motion* follows.

## 9 10 **II. LEGAL ANALYSIS**

### 11 **A. The Court Should Enter Our Proposed *Decree***

12 Despite our *Decree* faithfully reflecting the terms of the parties' agreement that  
13 was placed on the record back in May of this year, Alex refuses to sign.

14 The *Decree* has been pending since *May*. We have done our very best to get  
15 this matter concluded, however, it now appears that the *Decree* cannot be completed  
16 without the Court's assistance. This Court obviously retains the authority to construe  
17 and enforce its orders, and we specifically request that it do so.<sup>10</sup> It is time for this  
18 case to be completed, the parties to be divorced, and for Tara to be able to get on with  
19 her life, with some reasonable degree of certainty that Alex will actually comply with  
20 the terms of the parties' agreement. Accordingly, Tara requests that attached *Decree*  
21 be entered.<sup>11</sup>

---

22  
23 <sup>9</sup> As noted above, he appears totally incapable of appropriately communicating with Tara in pretty  
24 much any capacity. We have attached as Exhibit 6, some examples of the communications that Tara  
incessantly receives.

25 <sup>10</sup> See NRS 125.040. See also *Grenz v. Grenz*, 78 Nev. 394, 274 P.2d 891 (1962) (a trial court has the inherent  
26 power to construe its judgments and decrees); *Murphy v. Murphy*, 64 Nev. 440, 183 P.2d 632 (1947); *Lindsay v.*  
27 *Lindsay*, 52 Nev. 26, 280 P. 95 (1929); *Reed v. Reed*, 88 Nev. 329, 497 P.2d 896 (1972) (court has inherent power to  
enforce its orders and judgments); *In re Chartz*, 29 Nev. 110, 85 P. 352 (1907) ("The power of courts to punish for  
contempt and to maintain decency and dignity in their proceedings is inherent, and is as old as courts are old").

28 <sup>11</sup> See our proposed *Decree*, attached as Exhibit 2 .

1                   **B.     The Court Should Enter a Mutual Behavioral Order**

2                   Given Alex's deplorable behavior, we respectfully request the Court enter the  
3                   attached *Mutual Behavioral Order* (Exhibit 1).

4  
5                   **C.     Alex Should be Held in Contempt and Sanctioned Accordingly**

6                   NRS 22.010 provides in pertinent part:

7                   The following acts or omissions shall be deemed contempts:

8                   1. Disorderly, contemptuous or insolent behavior toward the judge  
9                   while the judge is holding court, or engaged in judicial duties at  
10                  chambers, or toward masters or arbitrators while sitting on a reference  
11                  or arbitration, or other judicial proceeding.

12                  2. A breach of the peace, boisterous conduct or violent disturbance in  
13                  the presence of the court, or in its immediate vicinity, tending to  
14                  interrupt the due course of the trial or other judicial proceeding.

15                  3. Disobedience or resistance to any lawful writ, order, rule or process  
16                  issued by the court or judge at chambers.

17                  Further, NRS 22.100 dictates the penalties for contempt, as follows:

18                  1. Upon the answer and evidence taken, the court or judge or jury, as  
19                  the case may be, shall determine whether the person proceeded against  
20                  is guilty of the contempt charged.

21                  2. Except as otherwise provided in NRS 22.110, if a person is found  
22                  guilty of contempt, a fine may be imposed on him not exceeding \$500  
23                  or he may be imprisoned not exceeding 25 days, or both.

24                  3. In addition to the penalties provided in subsection 2, if a person is  
25                  found guilty of contempt pursuant to subsection 3 of NRS 22.010, the  
26                  court may require the person pay to the party seeking to enforce the  
27                  writ, order, rule or process the reasonable expenses, including, without  
28                  limitation, attorneys fees, incurred by the party as a result of the  
                    contempt.

                    The *Order* from the November 19, 2015, hearing was incredibly clear with  
                    respect to Alex's obligations. He has failed to supply Tara with the support that was  
                    previously ordered, nor has he paid the minor child's health insurance costs, which  
                    total \$148.25 every month.

                    As noted above, Alex has not paid a penny towards the child's health insurance  
                    premiums resulting in a principal arrearage of \$1,779; with interest and penalties, he

1 owes \$1,916.21 as of November 15, 2016.<sup>12</sup> He also failed to satisfy his family  
2 support obligation under the Court's *Order*, which resulted in a principal arrearage  
3 of \$5,600; with interest and penalties, he owes the sum of \$6,345.47 as of November  
4 15, 2016.<sup>13</sup>

5 Further, Alex has failed to comply with the terms of the agreement that was  
6 placed on the record at the time of the settlement conference on May 18, 2016.  
7 Unfortunately, given his refusal to afford us or our client independent access to his  
8 financial records, we do not yet know the extent of his arrears in this regard, however,  
9 we do expect that amount to be substantial given what limited information we have  
10 at this time.

11 In addition to reducing these substantial arrears to judgment, we request the  
12 Court monetarily sanction Alex in an amount equivalent to Tara's actual attorney's  
13 fees and costs based on his willful disobedience.

14  
15 **D. The Court Should Order the Parties to Utilize Our Family Wizard  
for All Communications**

16 Given the caustic and outrageous messages that Alex consistently sends to  
17 Tara, we believe it essential for the Court to order the parties to utilize Our Family  
18 Wizard for all communications, absent an emergency.

19  
20 **E. Tara Should Be Awarded Her Attorney's Fees and Costs**

21 Attorney's fees may be awarded in a pre-or post-divorce motion under NRS  
22 18.010(2) and NRS 125.150(3).<sup>14</sup> Further, EDCR 7.60(b) provides:  
23

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24 <sup>12</sup> See Exhibit 3, MLAW Arrearage Calculation Summary.

25 <sup>13</sup> See Exhibit 4, MLAW Arrearage Calculation Summary.

26  
27 <sup>14</sup> See *Love v. Love*, 114 Nev. 572, 959 P.2d 523 (1998); *Wright v. Osburn*, 114 Nev. 1367, 970 P.2d  
28 1071 (1998); *Halbrook v. Halbrook*, 114 Nev. 1455, 971 P.2d 1262 (1998); *Korbel v. Korbel*, 101 Nev. 140,  
696 P.2d 993 (1985); *Fletcher v. Fletcher*, 89 Nev. 540, 516 P.2d 103 (1973); *Leeming v. Leeming*, 87 Nev.  
530, 490 P.2d 342 (1971).

1 (b) The court may, after notice and an opportunity to be heard, impose upon  
2 an attorney or a party any and all sanctions which may, under the facts of the  
3 case, be reasonable, including the imposition of fines, costs or attorney's fees  
4 when an attorney or a party without just cause:

- 5 . . .
- 6 (3) ***So multiplies the proceedings in a case as to increase***  
7 ***costs unreasonably and vexatiously.*** [Emphasis added].  
8 (4) Fails or refuses to comply with these rules.

9 The Nevada Legislature amended NRS 18.010, dealing with awards of  
10 attorney's fees. The revised rule states that fees may be awarded:

11 (b) Without regard to the recovery sought, ***when the court finds that***  
12 ***the claim, counterclaim, cross-claim or third-party complaint or defense of***  
13 ***the opposing party was brought or maintained without reasonable ground***  
14 ***or to harass the prevailing party.*** The court shall liberally construe the  
15 provisions of this paragraph in favor of awarding attorney's fees in all  
16 appropriate situations. It is the intent of the Legislature that the court award  
17 attorney's fees pursuant to this paragraph and impose sanctions pursuant to  
18 Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations  
19 to punish for and deter frivolous or vexatious claims and defenses because  
20 such claims and defenses overburden limited judicial resources, hinder the  
21 timely resolution of meritorious claims and increase the costs of engaging in  
22 business and providing professional services to the public.

23 [Emphasis added].<sup>15</sup>

24 Alex has consistently refused to abide by the orders of this Court, and it is  
25 abundantly clear that he will continue to thumb his nose at this Court unless  
26 something is done. His impermissible actions, despicable behavior, and refusal to  
27 finalize the terms of the *Decree*, necessitated this *Motion*, forcing Tara to incur  
28 substantial attorney's fees and costs. As such, he should be responsible for the  
entirety of her attorney's fees and costs.

With specific reference to Family Law matters, the Court has adopted  
"well-known basic elements," which in addition to hourly time schedules kept by the  
attorney, are to be considered in determining the reasonable value of an attorney's  
services qualities, commonly referred to as the *Brunzell*<sup>16</sup> factors:

---

<sup>15</sup> See also *Trustees v. Developers Surety*, 120 Nev. 56, 84 P.3d 59 (2004) (discussing the legislative intent of the quoted language).

<sup>16</sup> *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

1. *The Qualities of the Advocate*: his ability, his training, education, experience, professional standing and skill.
2. *The Character of the Work to Be Done*: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation.
3. *The Work Actually Performed by the Lawyer*: the skill, time and attention given to the work.
4. *The Result*: whether the attorney was successful and what benefits were derived.

Each of these factors should be given consideration, and no one element should predominate or be given undue weight.<sup>17</sup> Additional guidance is provided by reviewing the “attorney’s fees” cases most often cited in Family Law.<sup>18</sup>

The *Brunzell* factors require counsel to rather immodestly make a representation as to the “qualities of the advocate,” the character and difficulty of the work performed, and the work actually performed by the attorney.

First, respectfully, we suggest that the supervising counsel is A/V rated, a peer-reviewed and certified (and re-certified) Fellow of the American Academy of Matrimonial Lawyers, and a Certified Specialist in Family Law.

As to the “character and quality of the work performed,” we ask the Court to find our work in this matter to have been adequate, both factually and legally; we have diligently reviewed the applicable law, explored the relevant facts, and believe that we have properly applied one to the other.

The fees charged by paralegal staff are reasonable, and compensable, as well. The tasks performed by staff in this case were precisely those that were “some of the work that the attorney would have to do anyway [performed] at substantially less cost

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<sup>17</sup> *Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727 (2005).

<sup>18</sup> Discretionary Awards: Awards of fees are neither automatic nor compulsory, but within the sound discretion of the Court, and evidence must support the request. *Fletcher v. Fletcher*, 89 Nev. 540, 516 P.2d 103 (1973); *Levy v. Levy*, 96 Nev. 902, 620 P.2d 860 (1980); *Hybarger v. Hybarger*, 103 Nev. 255, 737 P.2d 889 (1987).



1 per hour.”<sup>19</sup> As the Nevada Supreme Court reasoned, “the use of paralegals and other  
2 nonattorney staff reduces litigation costs, so long as they are billed at a lower rate,”  
3 so “reasonable attorney’s fees . . . includes charges for persons such as paralegals  
4 and law clerks.”

5 The work actually performed will be provided to the Court upon request by  
6 way of a *Memorandum of Fees and Costs* (redacted as to confidential information),  
7 consistent with the requirements under *Love*.<sup>20</sup>


### 9 III. CONCLUSION

10 Based on the above, Tara respectfully requests the Court issue the following  
11 orders:

- 12 1. Entering Tara’s proposed *Decree of Divorce*.
- 13 2. Executing the attached Mutual Behavioral Order.
- 14 3. Reducing the arrears owed by Alex to judgment, making them  
15 collectible by any and all lawful means.
- 16 4. Awarding Tara the entirety of her attorney’s fees and costs.
- 17 5. For such other and further relief as the Court deems proper and just.

18 **DATED** this 14<sup>th</sup> day of November, 2016.

19 Respectfully Submitted by:  
20 WILICK LAW GROUP

21   
22 ~~MARSHAL S. WILICK, ESQ.~~  
23 Nevada Bar No. 2515  
24 TREVOR M. CREEL, ESQ.  
25 Nevada Bar No. 11943  
26 3591 East Bonanza Road, Suite 200  
27 Las Vegas, Nevada 89110-2101  
28 Attorneys for Plaintiff

25 \\wlgserver\company\wp16\KELLOGG,T\DRAFTS\00155410.WPD/vj

26 \_\_\_\_\_  
27 <sup>19</sup> *LVMPD v. Yeghiazarian*, 129 Nev. \_\_\_, \_\_\_ P.3d \_\_\_ (Adv. Opn. No. 81, Nov. 7, 2013) citing to  
28 *Missouri v. Jenkins*, 491 U.S. 274 (1989).

<sup>20</sup> *Love v. Love*, 114 Nev. 572, 959 P.2d 523 (1998).

## DECLARATION OF TARA KELLOGG-GHIBAUDO

1. I, Tara Kellogg-Ghibaudo, declare that I am competent to testify to the facts contained in the proceeding filing.

2. I have read the preceding filing, and I have personal knowledge of the facts contained therein. Further, the factual averments contained therein are true and correct to the best of my knowledge, except those matters based on information and belief, and as to those matters, I believe them to be true.

3. On November 19, 2015, the Court issued orders requiring Alex to pay me monthly family support in the amount of \$2,200, to assign his Christmas bonus to me upon receipt, and for Alex to file a Financial Disclosure Form within 30 days of the hearing. The Court also determined that Alex was required to provide me and the minor child with health insurance “until the Dissolution of Marriage is final and filed.”<sup>21</sup>

4. Alex failed to satisfy his financial obligations pursuant to the Court’s prior *Order*. He has not paid a penny towards Nicole’s health insurance premiums, resulting in a principal arrearage of \$1,683; with interest and penalties, he owes \$1,812.10 as of November 14, 2016.<sup>22</sup> He also failed to pay anything towards my health insurance premiums, resulting in a principal arrearage of \$3,511.80; with interest, he owes \$3,607.34 as of November 14, 2016.<sup>23</sup> Finally, Alex did not fully comply with his family support obligation under the Court’s *Order*, resulting in a principal arrearage of \$5,600; with interest and penalties, he owes the sum of \$6,343.10 as of November 14, 2016.<sup>24</sup>

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<sup>21</sup> Alex consistently uses Nicole as a pawn. He vacillates from threatening to “hold me in contempt” when the child expresses no desire to visit with him, to voluntarily relinquishing his rights so that he doesn’t have to pay child support. To say that his behavior is wildly unpredictable is a gross understatement.

<sup>22</sup> See Exhibit 3, MLAW Arrearage Calculation Summary, along with a copy of Aetna policy rates.

<sup>23</sup> See Exhibit 4, MLAW Arrearage Calculation Summary, along with a copy of Aetna policy rates.

<sup>24</sup> See Exhibit 5, MLAW Arrearage Calculation Summary.

5. The other factual averments contained in the preceding filing are incorporated herein as if set forth in full.

6. Prior to filing this *Motion*, I attempted to resolve the issues in dispute without the necessity of court intervention.

**I declare under penalty of perjury under the laws of the State of Nevada (NRS 53.045 and 28 U.S.C. § 1746), that the foregoing is true and correct.**

**EXECUTED** this 14 day of November, 2016.

TARA KELLOGG-GHIBAUDO

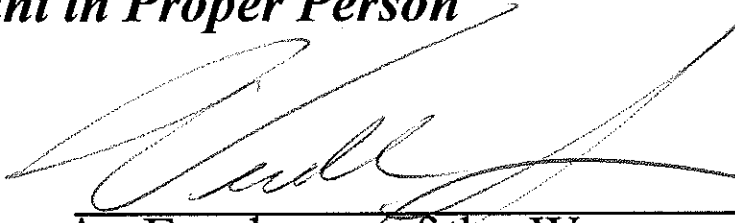
## CERTIFICATE OF SERVICE

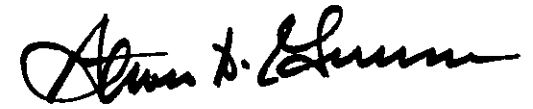
Pursuant to NRCP 5(b), I certify that I am an employee of the WILICK LAW GROUP and that on this 15 day of November, 2016, I caused the foregoing document to be served as follows:

- ☒ 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;
- ☐ pursuant to NRCP 5(b)(2)(D), by email by duly executed consent for service by electronic means;
- ☐ by hand delivery with signed Receipt of Copy.
- ☐ by First Class, Certified U.S. Mail.
- ☐ by placing same to be deposited for mailing in the United States Mail, Certified, Return Receipt Requested, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

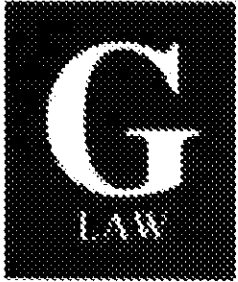
To the address, email address, and/or facsimile number indicated below:

Alex Ghibaud, Esq.  
2228 Gabriel Street  
Las Vegas, Nevada 89119  
***Defendant in Proper Person***

  
An Employee of the WILICK LAW GROUP



CLERK OF THE COURT



1 **OPPCM**

2 Alex Ghibaud, Esq.  
3 Nevada Bar No. 10592

4 **G LAW**

5 320 East Charleston Boulevard, Suite 105  
6 Las Vegas, Nevada 89104  
7 Telephone: (702) 217-7442  
8 Facsimile: (702) 924-6553  
9 alex@alexglaw.com  
10 *Defendant in Proper Person*

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

13 TARA KELLOGG-GHIBAUDO,

14 Plaintiff,

15 vs.

16 ALEX GHIBAUDO,

17 Defendant,

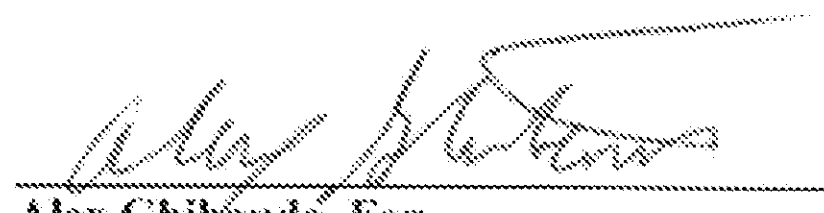
Case No.: D-15-522043-D

Dept. No.: T

18 **Defendant's Opposition to Plaintiff's Motion and Defendant's Counter-Motion**

19 COMES NOW Defendant, Alex Ghibaud, ("Defendant"), in proper person, and files  
20 this Opposition and Counter-Motion.

21 DATED this 21 day of NOV, 2016.



Alex Ghibaud, Esq.

Nevada Bar No. 10592

320 East Charleston Boulevard, Suite 105

Las Vegas, NV 89104

Tel: (702) 217-7442

Fax: (702) 925-6553

E-mail: alex@alexglaw.com

*Attorney for Defendant*



## Summary of Facts

From the inception, Plaintiff's argument is a travesty. In the first paragraph, Plaintiff gets to the crux of the matter: that is, that at the May 18<sup>th</sup>, 2016 settlement conference, Plaintiff and Defendant reached a global settlement agreement. As stated succinctly by Plaintiff:

On May 18<sup>th</sup>, 2016, the parties participated in a settlement conference with Senior Judge Kathy Hardcastle *and came to an agreement on all issues pending before the court.* (Emphasis added).

Plaintiff even notes that she was represented by Counsel at the time of the settlement conference (Defendant was not). As with the rest of Plaintiff's motion, she then makes a statement that is nonsensical:

When it became clear that Alex had no real desire to negotiate the terms of the proposed Decree with Ms. Chattah, Tara retained [The Willick Law Group] *to finalize the terms of the Decree...* (Emphasis added).

This statement is absurd because the terms of the agreement were already reached at the settlement conference and placed on the record, with the parties under oath, and after Judge Hardcastle canvassed Plaintiff and Defendant as to their understanding and willingness to enter into the agreement. As such, there was nothing left to negotiate or finalize. All that was left to be done was prepare a final Decree.

Plaintiff's claim that "Alex had no real desire to negotiate the terms of the proposed Decree" stems from the fact that Plaintiff immediately began demanding a minimum \$4,000.00 payment instead of the \$2,500.00 that was agreed to at the settlement conference. In fact, in late August 2016, Plaintiff increased her demand to \$5,000.00 a month. Naturally, being under no obligation to do so, Defendant abjectly refused. Thereafter, the Willick Law Group was retained.

In an effort to muddy the waters and cast Defendant in a poor light and inappropriately influence this court to rule based on animosity or distaste for the Defendant rather than as a matter of law, Plaintiff engages in a lengthy diatribe concerning Defendant's non-existent "vices". Since the Plaintiff opened the door, it shall be kicked in by Defendant.



1 First, Plaintiff alleges that “it is painfully obvious why [Defendant] has no desire to  
2 see a decree entered; he seems to believe that so long as a written order is not entered with  
3 this Court, he cannot be held in contempt...” and so is immune from recourse and need not  
4 abide by the agreement. What is painfully, sorely obvious is that, as Plaintiff does ever so  
5 often, her Counsel is lying.

6 Defendant has all along maintained that he will sign the Decree as long as it conforms  
7 to the minutes.<sup>1</sup> This is demonstrated in an email to Trevor Creel, Esq., sent October 6,  
8 2016.<sup>2</sup> However, as more fully detailed in Plaintiff’s motion, the Decree that was provided to  
9 Defendant was nothing close to what was agreed in the settlement conference.

10 First and foremost, Plaintiff is now claiming arrears in excess of \$8,000.00, including  
11 interest and penalties. However, Defendant has always maintained that he is not in arrears,  
12 was never in arrears, and continues to maintain that he owes Plaintiff nothing. Throughout  
13 the case Plaintiff and her previous counsel repeatedly demanded arrears, for loans purportedly  
14 due to Plaintiff’s parents, for payments that were already made, for medical arrears though no  
15 breakdown of Nicole’s portion of medical expenses was ever provided, whether through  
16 mandatory disclosures or by explicit demand, which Defendant made to Attorney Chattah.<sup>3</sup>  
17 Most telling is the fact that Plaintiff wrote an affidavit date February 28, 2016 in which she  
18 swears under oath that Defendant is not in arrears, contrary to her schedule of arrears, which  
19 show no payment for the month of January 2016, *at all*.<sup>4</sup> In short, arrears were not ordered at  
20 the Settlement Conference. Nevertheless, since the settlement conference Defendant has paid  
21 Plaintiff \$9,620 when according to the November 2015  
22  
23  
24

25  
26 <sup>1</sup> See Exhibit 1, Minutes from May 18<sup>th</sup>, 2016 settlement conference.

27 <sup>2</sup> See Exhibit 2, email to Opposing Counsel dated October 6, 2016.

28 <sup>3</sup> See Exhibit 3, email to attorney Chattah demanding a schedule of arrears.

<sup>4</sup> See Exhibit 4, affidavit made on Defendant’s behalf to Bar Counsel swearing under oath that  
as of February 28, 2016, Defendant was not in arrears.



1 Further, and also in the style of Defendant, Plaintiff and her counsel lie to this court  
2 about who refuses to abide by what. The fact is that Plaintiff was unhappy with the minimum  
3 amount due to her, \$2,500.00, after Defendant started his own business in June of 2016. In an  
4 effort to be transparent, Defendant provided bank statements to Plaintiff and her attorney at  
5 the time, Sigal Chattah, Esq., so that she may see the income and expenses.

6 In Month three (3) of operations, G Law brought in gross revenue of just over  
7 \$18,000.00. When Plaintiff saw that, she was under the firm and unbreakable conviction that  
8 she was due exactly one half that amount. When it was explained to her that gross business  
9 income does not constitute personal income, which is what the agreement called for when  
10 calculating setting alimony, *personal income*, she refused to allow her attorney to sign the  
11 order, let alone listen to reason and logic: she preferred to choke the golden goose as it were  
12 than let the business grow. Instead, Plaintiff attempted to persuade Defendant to draft an  
13 order to her liking. Defendant, again naturally, refused. Plaintiff then hired current Counsel,  
14 at enormous expense for a person claiming to be destitute.<sup>5</sup>

15 Indeed, a cursory review of Plaintiff's social media accounts find her often partying  
16 and taking vacations, particularly to Cabo San Lucas, Mexico, and out to Strip nightclubs and  
17 Hotels, not the normal lifestyle of the poor and suffering.

18 Next, Plaintiff, through Counsel, has the gall to admonish Defendant because,  
19 according to them, "[Defendant] appears incapable of communicating with Tara in an  
20 appropriate manner. He consistently curses, insults, and threatens [Plaintiff] at all hours of  
21 the day." Plaintiff and Counsel add that "Regardless of his improvident motivation and  
22 mental stability" Defendant's alleged conduct cannot be ignored and a mutual behavioral  
23 order is warranted.

---

24  
25  
26  
27 <sup>5</sup> Defendant paid \$17,500.00 to current Counsel. It should be noted that Plaintiff lives in a  
28 guard gated community one Warm Springs East of Pecos and drives a Mercedes Benz CLK  
350.





What Plaintiff and her attorney fail to inform the Court, in fact misrepresent facts to the Court, is that Plaintiff is as bad if not worse than Defendant is *alleged* to be. For example:

- Plaintiff consistently calls Defendant a loser,
- an alcoholic,
- a drug addict,
- has molested his peace by breaking into his home after midnight, indeed close to dawn, to take his phone and go through it,
- again broke into Defendant's home after her permission to enter was revoked and her key taken back (unbeknownst to Defendant, Plaintiff had a spare made) planted what she claims was cocaine (but never took what she purportedly found as proof), took pictures of the planted "evidence",
- took Defendant's dog which she gave up when she could no longer care for him when she broke into the home,
- calls at all hours of the night to berate Defendant about anything that she is bothered by on that day,
- has attempted to file a false police report against Defendant's girlfriend (and was turned away),
- has sent 1845 text messages from July 21<sup>st</sup>, 2016 to present, of which 350 messages occurred from midnight until 5:00 a.m.
- has sent 179 phone calls from June 20<sup>th</sup>, 2016 to present, of which 24 were from midnight until 7:00 a.m.,
- Repeatedly and obnoxiously sends juvenile emails to Defendant,
- Constantly threatens to have Defendant disbarred upon bogus claims,
- Stalks Defendant and accosts him, taking photographs of Defendant leaving local establishments,
- And the list goes on.

See Exhibit 5. These facts cannot be separated from the parties more than tumultuous relationship, as was characterized by Plaintiff. The relationship was a catastrophe due entirely to Plaintiff's epic drug and alcohol addiction.

It is laughable, given the Plaintiff's history, for Plaintiff to allege Defendant has addictive behaviors, uses drugs, and physically and emotionally abuses Plaintiff. The fact is that Plaintiff is a known drug addict and alcoholic who has spent several stints in mental health clinics, hospitals, and rehabilitation centers due to her massive and uncontrollable need to get high, which she continues to do to this day.



1 For example, from 2007 to 2011, Plaintiff was involuntarily held for three (3) days at  
2 Saint Rose de Lima Hospital for a suicide attempt, spent three (3) days at Montevista  
3 Psychiatric Hospital on an involuntary hold, was arrested for domestic violence in 2003, in  
4 2009 she was arrested for possession of drug paraphernalia (she had an empty pill bottle with  
5 cocaine residue in it), and in 2011 she entered We Care, an in-patient drug and alcohol  
6 rehabilitation center for women.  
7

8 Currently, Plaintiff is diagnosed with severe anxiety (NOS) and ADHD. For that, she  
9 takes the stimulant Amphetamine and a Benzodiazepine, Clonazepam. Plaintiff's desire for  
10 drugs to make her feel better is so powerful she stopped working the twelve-step program  
11 because it is not recommended that an addict take any narcotic, whether under a doctor's care  
12 or not. On the other hand, Defendant has never been admitted to a drug rehabilitation center  
13 and has no "vices", which Plaintiff swore to in her affidavit.<sup>6</sup>  
14

15 As for violence and emotional abuse, here both Counsel and Plaintiff misrepresent facts that  
16 are readily available and should have been disclosed. First, in 2012, Plaintiff testified at  
17 Defendant's reinstatement hearing. When she was asked directly whether Defendant  
18 committed acts of domestic violence, her response, verbatim, was "*I don't remember, I was*  
19 *so drunk. I was just so angry*".  
20

21 In the *Las Vegas Review Journal* Article referenced by Plaintiff and her Counsel, they  
22 again leave out a pertinent fact: that is, that in her interview, Plaintiff admitted that, "*I wanted*  
23 *to numb myself,*" and that "*Tara Ghibauda fell apart. She became an out-of-control*  
24 *alcoholic.*" Furthermore, the article reported that Plaintiff "*still takes some of the blame for*  
25  
26

27  
28 <sup>6</sup> Plaintiff's affidavit dated February 28, 2016.



1 *her husband's arrests. Usually, she was the one who called police. She said she wanted him*  
2 *to feel the pain she was feeling.*" (Emphasis added; in other words, Plaintiff dropped a  
3 nuclear device on her family to satisfy her lust for vengeance and quench her pride).

4 Further Plaintiff is quoted as saying, "There was a lot of screaming... There was a lot  
5 of shouting, *but a lot of times it was instigated by me.*"<sup>7</sup> In fact, Plaintiff always instigated  
6 and provoked the fights and chaos that eventually resulted in a voluntary suspension, loss of  
7 the family home, both vehicles, and all the furniture. This disaster was a direct result of  
8 Plaintiff's daily use of cocaine and two (2) liter a day bottle of Smirnoff vodka habit.

9 Plaintiff would leave piles of cocaine and baggies of cocaine laying around the house  
10 that Defendant had to police up before the children woke. Defendant would often leave in the  
11 middle of the night to get high with her drug dealer, Eric John Cruz, who was later arrested  
12 and plead guilty to possession with intent to sell, guess what, cocaine, a felony, who she was  
13 also "dating", mostly for the cocaine when Defendant could not make enough to satisfy her  
14 craving.

15 This is fact. In late 2009, during the parties first divorce proceedings, Lynn Connant,  
16 Esq., Plaintiff's first of now three (3) Attorneys, had her tested at ATI due to her erratic  
17 behavior. It was discovered that Plaintiff had over 3,300 ng/ml of cocaine metabolites in her  
18 system, which amounts to daily, almost hourly use. Defendant discovered the ATI report  
19 carelessly laying around Plaintiff's apartment when he was invited over for sex, as Plaintiff  
20 often did. In fact, until August 2016, Plaintiff continued to have sex with Defendant.  
21  
22  
23  
24  
25  
26

27  
28 <sup>7</sup> See Exhibit 6, Las Vegas Review Article dated April 19<sup>th</sup>, 2015.



1 The reason for Plaintiff's behavior was simply that Defendant was unfaithful to her, whether  
2 with prostitutes or otherwise. Infidelity is not an uncommon occurrence. And, there is a  
3 readily available recourse: divorce.

4 However, rather than initiate a divorce, Plaintiff engaged in a decade long rampage of  
5 epic proportions, devastating the family's finances, causing the suspension of Defendant's law  
6 license and his reputation, and the loss of *all* the community property. Given this fact, and the  
7 simple and readily available alternative (divorce) Plaintiff's behavior is outrageous to say the  
8 least and is a massive waste of community assets.

9 So, it is laughable, absurd, comical, ridiculous, ludicrous, and downright silly in the  
10 extreme to make Plaintiff out to be a victim when she is *anything* but. She a drug addict and  
11 alcoholic who is not working the 12-Step Program, she lies repeatedly and brazenly, and is  
12 vindictive beyond measure, indeed in epic proportions.

13 Plaintiff and her Counsel continue their brazen misrepresentations and lies in  
14 Plaintiff's "facts" portion of her motion, she claims that a Decree of Divorce was provided to  
15 Defendant and, "In his initial response, Alex claimed, without any supporting argument, let  
16 alone evidence, that the Decree did not comport with agreement entered into at the settlement  
17 conference..." This is a complete misrepresentation made to this Court, at best, a brazen lie at  
18 worst. In fact, Defendant laid out his points of contention with the proposed decree. The text  
19 of the email, written October 5<sup>th</sup>, 2016 states:  
20  
21  
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24  
25  
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27  
28



1 Hi Trevor,

2 Five points of contention. 1) to give Tara half my income and half my bonuses  
3 is to double dip. The original agreement Did not contemplate such an  
4 arrangement in lieu of waiver of a claim for waste. 2) If I pay all the taxes,  
5 retirement, etc., and still pay her 50% of my income, she is going to be  
6 effectively making more than 50% of my income. If I have such instruments  
7 and you wish to split that upon retirement by way of a QDRO, that's fine. My  
8 taxes must be taken into consideration in determining what I pay her otherwise,  
9 again, I hear all the burden and she ends up with an excess of 50% of my  
10 income. 3) it is burdensome and expensive to do a monthly review of my  
11 books. I proposed to you a quarterly review. That's what I'm willing to do. 4),  
12 if we are divorced, what I acquire going forward is mine, not community  
13 property. Finally, I have to have a set schedule with Nicole and engage in  
14 counseling with her. Otherwise, she will never exercise her discretion.

15 Please discuss this with your client and give me a Call to discuss.

16 Regards,

17 Alex Ghibaudi, Esq.

18 Mr. Creel rejected Defendant's suggestions and demanded he accept the Decree as  
19 written by October 13<sup>th</sup>, 2016 or a motion would be filed. Defendant's answer was clear:

20 Hi Trevor,

21 Here's the bottom line. No deal. We can go to trial or your client can sign off  
22 on the original decree. I will file a motion to enforce the negotiated settlement  
23 by Friday under DCR 16 if I don't have an answer either way. Consider this  
24 my EDCR 5.11 communication. I will be in the office All day today if you  
25 wish to discuss further.

26 Regards,

27 Alex Ghibaud, Esq.

28 Mr. Creel's email of October 6<sup>th</sup>, 2016 stated:



1 Alex,

2 Placing artificial deadlines is hardly beneficial, especially when you are not  
3 complying with the terms of your agreement. You just told me that over the  
4 course of the past two months your firm brought in approximately \$18,000  
5 claiming expenses, with no supporting documentation, of approximately  
6 \$10,000. At minimum, you should be providing my client with \$4,000,  
7 although I suspect your expenses are nowhere near that amount, as it is my  
understanding that your rent is \$500 per month, you just retained an employee,  
and your marketing is probably not more than \$2,000 per month. Hell, we  
don't even spend more than that.

8 If you seek enforcement of the settlement agreement, we both know the Court  
9 is going to require transparency to determine your gross monthly income, or  
10 are you actually suggesting that Tara simply believe you? To be clear, I will  
11 be in trial these next two days and will not be supplying a response. However,  
I will be able to get you an answer early next week.

12 My response was the following:

13 Trevor,

14 I'm asking for a trial. The negotiation is no good, unworkable, and  
15 unconscionable. I'm not going to pay her what my FIRM brings in. You are  
16 conflated the firm's income with my own and that will never end. Don't bother  
getting back to me unless it's a stip to set aside. Otherwise I'll move forward  
with my motion.

17 Regards,

18 Alex Ghibaud, Esq.

19 Finally, Mr. Creel responded with the following:

20 Alex,

21 I am seeking to enforce the settlement that YOU agreed to on the record  
22 pursuant to EDCR 7.50. For the moment, I will presume that you have no  
23 intentions of abiding by that agreement and will proceed accordingly unless I  
24 hear otherwise within the next 48 hours.

25 To be clear, I am not attempting to "conflate" your income, instead, a neutral  
26 third party (accountant) would have access to your books to determine your  
27 monthly income. That you don't want to grant that access and effectively  
invite litigation is very telling.



1 Defendant would not sign the Decree proposed by Plaintiff because it sought to modify  
2 material terms of the agreement as placed on the record at the settlement conference.  
3 Specifically, though the Decree of Separate Maintenance was straightforward, the Decree of  
4 Divorce added terms never discussed and that would never have been agreed to by Defendant.

5 For example:

- 6  
7 • The proposed Decree of Divorce added a provision that the Defendant's firm,  
8 G Law, be audited by a forensic accountant of Plaintiff's choosing and  
9 unfettered access to his account statements, profit and loss statements,  
10 accounting software, tax returns, expense receipts, and any other financial  
11 information relating to a calculation of Defendant's gross monthly income.  
12 This accountant would also have access to all financial records related to  
13 Defendant's law practice from its inception. Upon certification of Defendant's  
14 gross monthly income, minus legitimate business expenses, Defendant would  
15 provide Plaintiff with her family support. Such forensic accountant would  
16 have access once a month, later changed to a quarterly basis and splitting fees  
17 for the accountant of Plaintiff's choosing, later changed so that Plaintiff would  
18 bear the costs of her accountant. Should there be a dispute, there was a  
19 mechanism for the appointment of a receiver.
- 20 • All community property acquired after the Decree of Divorce would remain  
21 community property, *even after Divorce*. Upon Defendant's insistence, this  
22 provision was later dropped.
- 23 • That all debts incurred prior to entry of the Divorce Decree by Plaintiff shall be  
24 solely born by Defendant, *including any personal loans obtained by Plaintiff*.
- 25 • That Defendant maintain a life insurance policy, and pay for it, in an amount of  
26 at least \$500,000.00 naming Plaintiff the beneficiary.
- 27 • The tax burden for Defendant's personal income would be borne by  
28 Defendant, essentially providing Plaintiff with more than 50% of any income  
earned.
- Finally, a provision was added for medical and family support arrears in excess  
of \$8,000.00, a term that was not part of the settlement agreement and one that  
had been discussed previous to the settlement conference and implicitly  
waived given the generous alimony terms provided.

Because Defendant refused to sign what he never agreed to in the settlement conference, on  
October 24<sup>th</sup>, 2016, Mr. Willick sent a rather threatening email in an effort to force Defendant  
to sign. The text of that email is as follows:



1 Alex:

2 Trevor is out of town for the week; your note has been passed to me. While  
3 you are free to have an opinion as to whether an agreement is  
4 "unconscionable," I note that it was and is your agreement, stipulated to in  
5 open court, and remains in effect until and unless set aside. And we notice that  
6 you only came to that conclusion when we suggested that you actually would  
7 be required to be honest in reporting income so as to honor the terms agreed  
8 to. So any check-cancelling or stop-payments will result in (1) violation of the  
9 agreement; (2) arrears and bank charges, at your expense; and (3) most  
10 probably a report to the D.A (which could result in notice to the Bar). I advise  
11 against doing so.

12 We will be moving, as we told you we would, to have the court formally put  
13 the agreement into place as a court order in written form; if you want to try to  
14 talk the court into cancelling the stipulated resolution and going to trial, that is  
15 your right, but in my experience, that will be a hard sell with this judge.

16 Finally, I have been copied with your barrage of text messages to Tara and  
17 others, which are (at minimum) repugnant, potentially actionable, and again  
18 could result in a report to the Bar. Please stop it – directly or indirectly; a  
19 single additional insult, taunt, or threat will result in adding a request for a  
20 behavioral order, or protective order, on top of the economic matters already  
21 headed for court, and this is a further complication and expense that neither  
22 you nor Tara need.

23 We really would like to minimize expense and hassle to the degree possible,  
24 but that will require growing up, being and acting responsible, living up to  
25 agreements, and generally behaving.

26 Marshal

27 It is outrageous that Mr. Willick would see to it that he personally threaten both  
28 criminal and bar proceedings in order to force a settlement.<sup>8</sup> That, regrettably, is exactly what  
he did. And, coincidentally, Ms. Chattah did the same Previously.

Incredibly, Ms. Chattah threatened to report Defendant to the State Bar of Nevada for  
failing to pay child support arrears though she never filed or provided a schedule of arrears.

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<sup>8</sup> See Exhibit 7.





1 Nor did she provide a schedule of medical arrears or any proof of premiums. Purportedly,  
2 Nicole was covered under her Maternal Grandfather's Health Insurance. However, though  
3 repeatedly asking for a breakdown of Nicole's portion of those amounts, both Ms. Chattah  
4 and Mr. Willick's office refused. It was not until the instant motion that anything concerning  
5 what is actually paid on Nicole's behalf was provided to Defendant.  
6

7 The fact is that Defendant is in no arrears whatever. On February 28<sup>th</sup>, 2016, Plaintiff  
8 wrote an affidavit wherein she swore under penalty of perjury that as of that date, Plaintiff  
9 was not in child support arrears.<sup>9</sup> In the month of May 2016 Plaintiff was unemployed. And  
10 in June 2016, when Plaintiff began his own business, he earned \$5,280.00, much of which  
11 was reinvested in the firm. So, for those two months, Plaintiff essentially made no money.  
12 The only order currently in effect, which Plaintiff concedes is the November 19, 2015 order  
13 which compels Plaintiff to pay \$2,200.00 a month in family support (temporary maintenance  
14 and child support together).  
15

16 Since Defendant admits that Plaintiff was current as of March 1, 2016, the only  
17 consideration are the months of March 2016 to November 14, 2016, when Plaintiff's motion  
18 was filed. In that time, 36 weeks have passed and Plaintiff paid \$12,170.00 in checks and an  
19 additional amount, which is not certain, in cash (Plaintiff would often give Defendant his  
20 debit card to get the cash she needed for the week since by the time he came home from work  
21 the bank was closed).<sup>10</sup> In that time, Plaintiff claims \$11,000.00 was due in family support. It  
22 is clear, then, that Defendant owes nothing in arrears and in fact has a credit of \$1,170.00 as  
23  
24  
25

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26  
27 <sup>9</sup> See Plaintiff's affidavit.

28 <sup>10</sup> See Exhibit 8.



1 of this writing. As for medical arrears, despite repeated requests for proof of what the  
2 premiums were, none were ever provided by any of Plaintiff's attorneys. Thus, there was no  
3 basis to make any such payments.

4 Finally, again in an effort to gain sympathy from this court so that it issues an order  
5 that should not legally be issued for the reasons that will soon be set forth, Plaintiff claims  
6 "abandonment" as Plaintiff's "breaking point". This is preposterous. In fact, Defendant  
7 caught Plaintiff in an illicit affair with not one, but two men she is still seeing by investigating  
8 her Social Media accounts after suspicions which arose concerning Plaintiff's comings and  
9 goings.<sup>11</sup> Those suspicions have since been borne out.<sup>12</sup> Plaintiff began an affair with Clifford  
10 Diamond, a wealthy, elderly man who once owned the "Wireless Toyz" franchise, and a High  
11 School friend, Tony Atwal, an attorney and Judge.

12 This is a critical portion of Defendant's counter-claim. The basis for the generous  
13 terms offered to Plaintiff were that the parties would work on their relationship while  
14 simultaneously remaining married and providing Plaintiff with an enforceable order.  
15 However, Plaintiff was in a relationship with both of the aforementioned men at the time,  
16 unbeknownst to Plaintiff. Indeed, Plaintiff repeatedly stated that she was seeing no one  
17 romantically and had not had sex with anyone since separating. She kept up that ruse by  
18 continuing to have sex with Defendant and visiting him often, until she made her play for  
19 more money, a flat \$5,000.00 in addition to half of all income exceeding twice that amount.  
20 This was a blatant and unconscionable fraud perpetrated upon Defendant in a cynical effort to  
21

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22  
23  
24  
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26  
27 <sup>11</sup> Which she continues, as a complaint from her neighbor demonstrates. See Exhibit 9.

28 <sup>12</sup> See Exhibit 10, Photos from Defendant's Social Media.



1 have her cake and eat it too. Indeed, it shows bad faith in the extreme and the depths of  
2 Plaintiffs depravity.

3 It should be noted, finally, that though she claims poverty, she paid the Willick Law  
4 Group \$17,500.00 in legal fees. Furthermore, the agreement was entered into with Defendant  
5 under the impression that Plaintiff was giving her school loans to her mother as repayment for  
6 some debt she never specified. However, a discussion with Donna Kellogg, Plaintiff's  
7 mother, revealed she was never given any money by Plaintiff. In addition, though she claims  
8 Defendant caused her to lose her job, her LinkedIn account shows that she is still employed at  
9 the very place she claims Defendant caused her to be fired from. In short, Plaintiff's veracity  
10 is lacking, at best, she is a blatant liar at worse. And, regrettably, Defendant relied on  
11 Plaintiff's fraudulent representations in entering into the agreement he now seeks to set aside.  
12  
13

#### 14 Legal Analysis

##### 15 **1. Eighth Judicial District Court Rule 7.50 does not automatically convert** 16 **minutes into enforceable orders.**

17 Plaintiff and her attorneys are under the unbreakable impression that EDCR 7.50 renders  
18 the minutes an enforceable order. This is not so and is an egregious misunderstanding of the  
19 plain wording of the rule.  
20

21 No agreement or stipulation between the parties or their attorneys will be  
22 effective unless the same shall, *by consent*, be entered in the minutes *in the*  
23 *form of an order*, or unless the same is in writing subscribed by the party  
24 against whom the same shall be alleged, or by the party's attorney.<sup>13</sup>

25 There was no discussion or agreement between the parties at the settlement conference  
26 that the minutes would serve as an enforceable order. Though initially pushing that avenue of  
27

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28 <sup>13</sup> Eighth Judicial District Court Rule 7.50.



1 approach hard, as the above emails indicate, Plaintiff and her attorneys seem to have  
2 abandoned it as demonstrated by the fact that the schedule of arrears shows only the amount  
3 ordered in the November 19, 2016 hearing. Therefore, any income earned since the  
4 settlement conference should not be calculated in any arrears the court may order since it is  
5 Plaintiff that seeks to materially change the terms of the agreement.  
6

7 **2. Nor can the agreement be changed under DCR 16 and *Grisham v. Grisham*.**

8 District Court Rule 16 defines the conditions under which a court may, on motion, enforce  
9 an agreement to settle pending litigation. That rule states:

10 No agreement or stipulation between the parties in a cause or their attorneys, in  
11 respect to proceedings therein, will be regarded unless the same shall, by  
12 consent, be entered in the minutes in the form of an order, or unless the same  
13 shall be in writing subscribed by the party against whom the same shall be  
14 alleged, or by his attorney.

15 Note that this rule is similar to EDCR 7.50. For the minutes to be an order, they must  
16 be entered in the form of an order by consent of the parties and their attorneys, or the court, or  
17 the minutes are reduced to writing and executed. As stated above, in emails between Defendant  
18 and Mr. Creel, Defendant was prepared to execute the original Decree but objected to the  
19 material additions that were not, and never would have been, agreed to.<sup>14</sup>

20 In justifying the existence of DCR 16, the Nevada Supreme Court stated:

21 The rule gives "the court . . . an efficient method for determining genuine  
22 settlements and enforcing them." It "does not thwart the policy in favor of  
23 settling disputes; instead, it enhances the reliability of actual settlements."<sup>15</sup>  
24

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25  
26  
27 <sup>14</sup> See *Grisham v. Grisham*, 289 P.3d 230, 233, 2012 Nev. LEXIS 105, \*4-5, 128 Nev. Adv. Rep. 60,  
2012 WL 6058152 (Nev. 2012).

28 <sup>15</sup> *Grisham v. Grisham*, 289 P.3d 230, 233, 2012 Nev. LEXIS 105, \*5-6, 128 Nev. Adv. Rep. 60, 2012 WL  
6058152 (Nev. 2012).



1 The Court went on to reason that "While recorded testimony has no signature, a  
2 signature's only purpose is authentication, and this is amply supplied in the case of an  
3 admission in court."<sup>16</sup> Therefore, based upon DCR 16 and *Grisham v. Grisham*, the terms of  
4 the settlement, as recorded at the settlement conference applies, not the Decree Plaintiff  
5 wishes she had entered into at the settlement conference with terms vastly different than those  
6 agreed upon, with Plaintiff represented by counsel.

7 In contrast, Plaintiff cites *Grenz v. Grenz*, *Murphy v. Murphy*, *Lindsay v. Lindsay*,  
8 *Reed v. Reed*, and *In re Chartz* for the proposition that a "retains the authority to construe and  
9 enforce its order, and [they] specifically request that it do so." However, in Plaintiff's  
10 footnote 10, it is clear that those cases are not on point. Instead, each case stands for the  
11 proposition that the Court has inherent power to construe and enforce *existing* orders. Here,  
12 there is no order. Plaintiff fashioned one out of thin air, one having nothing to do with what  
13 was agreed at the settlement conference, and wishes to use case law not on point to justify  
14 entering an order that was never mutually agreed upon. Plaintiff's motion puts the cart before  
15 the horse.  
16

17  
18 **3. A settlement pending litigation is a contract and may be set aside under NRCP  
60(b).**

19 When parties to pending litigation enter into a settlement, they enter into a  
20 contract.<sup>17</sup> Such a contract is subject to general principles of contract law. In addition to  
21 complying with DCR 16's procedural requirements, a stipulated settlement agreement requires  
22  
23  
24

25  
26 <sup>16</sup> *Grisham v. Grisham*, 289 P.3d 230, 235, 2012 Nev. LEXIS 105, \*11-14, 128 Nev. Adv. Rep. 60, 2012  
WL 6058152 (Nev. 2012).

27 <sup>17</sup> *Grisham v. Grisham*, 289 P.3d 230, 234-235, 2012 Nev. LEXIS 105, \*9-11, 128 Nev. Adv. Rep. 60,  
28 2012 WL 6058152 (Nev. 2012); citing, *Mack v. Estate of Mack*, 125 Nev. 80, 95, 206 P.3d 98, 108  
(2009).



1 mutual assent, see *Lehrer McGovern Bovis v. Bullock Insulation*, 124 Nev. 1102, 1118, 197  
2 P.3d 1032, 1042 (2008), or a "meeting of the minds," *May v. Anderson*, 121 Nev. 668, 672,  
3 119 P.3d 1254, 1257 (2005), on "the contract's essential terms." *Certified Fire Prot. v.*  
4 *Precision Constr.*, 128 Nev. \_\_, \_\_, 283 P.3d 250, 255 (2012).

5  
6 Here, there was no mutual assent or meeting of the minds. Instead, Plaintiff intended  
7 to defraud Defendant into entering into an agreement she never intended to perform upon.  
8 Plaintiff promised Defendant that they would reconcile after "post-marriage" counseling and  
9 that she was not currently dating anyone. She further advanced her ruse by continuing to have  
10 sexual relations with Defendant, cooking for him, cleaning his laundry, and having him  
11 perform tasks around her house as if a marriage still existed.

12  
13 Plaintiff further claimed she was destitute, had given all her school loans to her  
14 mother, and that Defendant's alleged conduct caused her to lose her employment. These  
15 claims all turned out to be blatant lies. First, she was dating two different men, she still had  
16 her job as her LinkedIn account demonstrates, she never gave her school loans to her mother,  
17 as her mother admitted, and she was dating two men, one or both of which are financing the  
18 current litigation against Defendant. Plaintiff's conduct is a blatant fraud and satisfies NRCP  
19 60(b)(3). As such, the terms of the settlement agreement should be set aside and a trial set  
20 with discovery deadlines set accordingly.

21  
22 **4. An order to show cause should not be entertained.**

23 As described more fully above, Defendant actually has a credit of \$1,170.00. With  
24 respect to medical arrears, he was never provided the amount due despite demanding it. Thus,  
25 he should not be held accountable for it.  
26  
27  
28



1       **5. A behavior order should be issued against Plaintiff solely, not Defendant.**

2       Plaintiff has demonstrated an incredible animosity against Defendant spanning a  
3 decade. As she has proven in the past, and recently admitted under oath and to a reporter, she  
4 is capable of extreme malice and vengeance. The emails attached as exhibits demonstrate that  
5 animus has not dissipated. To grant her a behavior order is to put a weapon in her hand that  
6 she will find a way to wield against Defendant. Indeed, Plaintiff already made a false police  
7 report against Defendant's girlfriend and continues to relentlessly harass him. To give her the  
8 means to drag Defendant back into court upon further false charges would be improvident.  
9

10       **6. Plaintiff and her attorney should be sanctioned as this Court deems fit.**

11       Under EDCR 7.60(b), the court may, after notice and an opportunity to be heard, impose  
12 upon an attorney or a party any and all sanctions which may, under the facts of the case, be  
13 reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a  
14 party without just cause:  
15

- 16       (1) Presents to the court a motion or an opposition to a motion which is obviously  
17 frivolous, unnecessary or unwarranted.  
18       (2) Fails to prepare for a presentation.  
19       (3) So multiplies the proceedings in a case as to increase costs unreasonably and  
20 vexatiously.  
21       (4) Fails or refuses to comply with these rules.  
22       (5) Fails or refuses to comply with any order of a judge of the court.

23       Plaintiff and her lawyers have violated almost all of Rule 7.60(b)'s provisions except  
24 (b)(2) and (b)(5). First, they have put forth a frivolous motion that was unnecessary and  
25 unwarranted. The rules concerning settlement conferences are clear and unambiguous and yet  
26 Plaintiff and her attorneys completely disregard them. Instead, they utilize rules that are not on  
27 point and have no bearing on the issue at hand.

28       Furthermore, Plaintiff and her Counsel have dragged this case on endlessly in a futile  
effort to change an agreement that is set in stone under DCR 16 and *Grisham v. Grisham*.



1 Indeed, they have cost Plaintiff at least \$17,500.00 and Defendant precious time. Plaintiff's  
2 attorneys should be sanctioned for charging the fee they did, dragging this case out to the extent  
3 they did, and then putting forth such an incredibly poorly written and argued motion.  
4

5 Finally, Plaintiff and her attorneys have violated EDCR 5.04 which states: "All lawyers  
6 and pro se litigants involved in matters before the family division should aspire to compliance  
7 with the American Academy of Matrimonial Lawyer's standards of conduct, the Bounds of  
8 Advocacy (1991 Edition." Here, both Plaintiff and her attorneys were exceedingly provocative  
9 and hostile throughout the proceedings. Plaintiff, committed various acts described above while  
10 the lawyers played hard ball, going so far as to threaten bar proceedings and criminal charges.  
11 As such, they should be sanctioned for each such action.  
12

### 13 **Conclusion.**

14 For the foregoing reasons, Defendant requests this court grant his counter-motion in its  
15 entirety and deny Plaintiff's motion.

16 In light of foregoing, Defendant respectfully requests the following relief:

- 17 1. That the Court Deny Plaintiff's motion in its entirety;
  - 18 2. That the Court set aside the agreement reached at the settlement conference  
19 and set the matter for trial as well as reopen discovery;
  - 20 3. That a behavioral order issue against Plaintiff only or not at all;
  - 21 4. That sanctions in an amount the court deems fit be awarded to Defendant; and  
22
- 23  
24  
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26  
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28

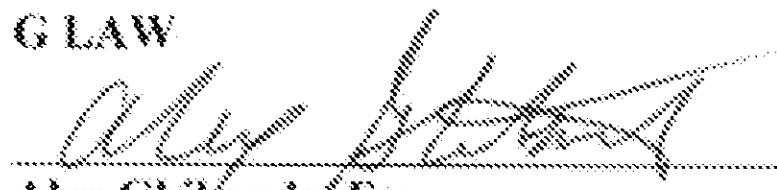


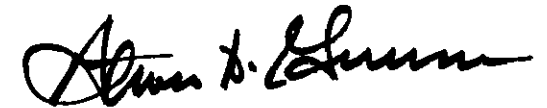


1                   5. For any other order the court deems just and necessary.  
2 DATED this 24 day of November, 2016.

3  
4                   Respectfully Submitted,

5                   G LAW

6  
7                     
8                   Alex Ghilpaudo, Esq.  
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CLERK OF THE COURT

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**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.

**REPLY TO  
“DEFENDANT’S OPPOSITION TO PLAINTIFF’S MOTION”  
AND  
OPPOSITION TO  
DEFENDANT’S “COUNTERMOTION”**

**I. INTRODUCTION**

Most of Alex’s “facts”, as outlined in his *Opposition*, are half-truths, misrepresentations, fabrications, or totally irrelevant. In desperation, Alex substitutes hyperbole for legitimate argument, labeling our *Motion* a “travesty,” “absurd,” “full of lies,” and that we are “lying.” What he intentionally ignores is the purpose of our *Motion* – to get a *Decree* entered and allow the parties, especially Tara, to move on with their lives. In the meantime, Alex has refused to comply with the terms of the

1 this Court's *Order* from the November 19, 2015, hearing, and has certainly failed to  
2 provide Tara with the level of support to which he agreed per the agreement reached  
3 by the parties on May 18, 2016.

4 In an effort to justify his behavior, Alex's *Opposition and Countermotion* is  
5 full of invective, absolutes, and contradictions. What follows is a brief sampling of  
6 the most egregious:

- 7 • Page 2: Alex admits that "Plaintiff and Defendant reached a global  
8 settlement agreement . . . the terms of the agreement were already  
9 reached at the settlement conference and placed on the record, with the  
10 parties under oath, and after Judge Hardcastle canvassed Plaintiff and  
11 Defendant as to their understanding and willingness to enter into the  
12 agreement."
- 13 • Page 2: Alex claims that "Plaintiff engages in a lengthy diatribe  
14 concerning Defendant's non-existent vices." Tara's "lengthy" diatribe  
15 consisted of one paragraph that was taken directly from Alex's  
16 admission to all of the items mentioned in a Review Journal article in  
17 order to "clear the air." Apparently, Alex took offense to us labeling his  
18 admissions of drinking heavily, using drugs, and spending time with  
19 prostitutes as "vices."
- 20 • Page 4: Alex suggests that "In Month three (3) of operations, G Law  
21 brought in gross revenue of just over \$18,000.00. When Plaintiff saw  
22 that, she was under the firm and unbreakable conviction that she was  
23 due exactly one half that amount. When it was explained to her gross  
24 business income does not constitute personal, which is what the  
25 agreement called for when calculating setting alimony, personal income,  
26 she refused to allow her attorney to sign the order, let alone listen to  
27 reason and logic." These statements intentionally misconstrue the terms  
28 of the parties' settlement, which provides that "gross monthly income"

1 *is* to be utilized for determining the appropriate level of alimony. In  
2 support of that arrangement, we prepared a *Decree of Divorce* that  
3 provides a definition of gross monthly income that is *identical* to the one  
4 provided in NRS 125B.070(1)(a). In other words, we specifically  
5 acknowledged from the outset that Alex's gross monthly income  
6 necessarily included deductions for legitimate business expenses. When  
7 we proposed a mechanism to arrive at this number, Alex abjectly refused  
8 under the purported premise that Tara should just take him at his word  
9 and be happy that she's receiving anything.

- 10 • Page 5: Alex argues that "The [parties'] relationship was a catastrophe  
11 due entirely to Plaintiff's epic drug and alcohol addiction." Although  
12 this statement is not necessarily relevant to Alex's legal claims, it invites  
13 a response. Specifically, it establishes his overt arrogance and utter  
14 refusal to accept responsibility for anything in his life, which is  
15 incredibly common for addicts, who consistently blame others for their  
16 substance abuse and everything that's gone wrong in their lives.
- 17 • Page 5: Although not relevant to the issues before the Court, Alex  
18 claims, with no supporting documentation of any kind, "The fact is that  
19 Plaintiff is a known drug addict and alcoholic who has spent several  
20 stints in mental health clinics, hospitals, and rehabilitation centers due  
21 to her massive and uncontrollable need to get high, which she continues  
22 to this day."
- 23 • Page 6: Alex suggests, "Plaintiff admitted, that 'I wanted to numb  
24 myself," and that "Tara Ghibauda fell apart. She became an out-of-  
25 control alcoholic." Of course, Alex completely ignores any potential  
26 causality for this statement – his admissions to consistently cheating on  
27 his wife, drinking heavily, using community funds to pay for prostitutes,  
28 and blowing through an inheritance.

- Page 7: Alex claims, “Plaintiff always instigated and provoked the fights and chaos that eventually resulted in a voluntary suspension, loss of the family home, both vehicles, and all of the furniture.” Instead of acknowledging *his* destructive behavior, Alex has concocted a narrative that Tara was responsible for him being suspended from the practice of law in 2009. What Alex fails to mention is that he was suspended for repeatedly abandoning clients; failing to provide an accounting of funds from clients; failing to respond to the Office of Bar counsel after repeated requests regarding multiple grievance files; making several unprofessional and demeaning telephone calls to two other attorneys; apparently threatening another attorney’s life; and because he committed 35 violations of the Rules of Professional Conduct.
- Page 11: Alex claims that he would not sign our proposed *Decree of Divorce* “because it sought to modify material terms of the parties’ agreement as placed on the record at the settlement conference.” To be fair, the only terms that were included within the *Decree* that were arguably not part of the parties’ settlement, is the life insurance provision, and Alex’s medical and support arrears. Alex ignores the reality that just two pages earlier he acknowledges his agreement to allowing Tara the ability to conduct a quarterly review of his books to determine his income; he specifically stated (at 9), “it is burdensome and expensive to do a monthly review of my books. I proposed to a you a quarterly review. *That’s what I’m willing to do.*”<sup>1</sup> He then indicated that *he* would seek enforcement of the parties’ settlement pursuant to DCR 16. Hours later, Alex claimed that the agreement he was

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<sup>1</sup> [Emphasis added].

1 previously seeking to enforce was “no good, unworkable, and  
2 unconscionable.”

- 3 • Page 18: Alex stated that “Plaintiff further claimed she was destitute,  
4 had given all her school loans to her mother, and that Defendant’s  
5 alleged conduct caused her to lose her employment. These claims all  
6 turned out to be blatant lies.” Alex then goes on to claim that Tara was  
7 dating two different men, which is both irrelevant and untrue, that her  
8 “boyfriends” are financing this litigation, and that her years-old  
9 LinkedIn profile “proves” that she might have been working at the time  
10 of their settlement. Alex conveniently ignores his previously dismissive  
11 nature of infidelity (see Page 8, lines 2-3), and the fact that the parties  
12 specifically dealt with Tara’s potential future employment as part of  
13 their overall settlement – she has an affirmative obligation to notify Alex  
14 upon obtaining employment since that has a direct impact on the level  
15 of support that Alex is required to pay her. In pursuing entry of the  
16 *Decree* we prepared, we are seeking exceedingly clear parameters for  
17 the parties future rights and obligations so as to minimize conflict  
18 between them, to which Alex admits is substantial. Moreover, Alex  
19 acknowledges that someone else is financing Tara’s litigation despite his  
20 previous insinuation that Tara had somehow socked away money to  
21 retain us, or that she somehow wasn’t destitute. To be clear, Tara’s  
22 parents are paying her attorney’s fees.

- 23 • Page 19: Alex claims that “Plaintiff and her Counsel have dragged this  
24 case on endlessly in a futile effort to change an agreement that is set in  
25 stone under DCR 16 and *Grisham v. Grisham*.” Despite the agreement  
26 being “set in stone” based on the mutual assent of the parties, Alex  
27 claims that the agreement should now be set aside for fraud. In support  
28 of his fraud claim, he claims that Tara promised him the parties would

reconcile after “post-marriage” counseling. Of course, none of this is mentioned as part of the parties’ settlement and there was a specific provision that either party could convert the separate maintenance action into a divorce at any time. Indeed, Alex did just that shortly after our retention by specifically demanding that the *Decree of Separate Maintenance* be amended to one of divorce. He never even referenced any purported fraud until he submitted his *Countermotion* hours before the last hearing.

Accordingly, Tara reiterates her requests that the Court enter her proposed *Decree of Divorce*, that Alex’s substantial support arrears be reduced to judgment and made collectible by any and all lawful means, and that Tara receive an award of her attorney’s fees and costs, for having to prepare the underlying *Motion* in this action, and this substantive *Reply*.

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POINTS AND AUTHORITIES

II. STATEMENT OF FACTS

As a detailed rendition of the facts is contained within Tara’s *Motion*, only a brief recitation will be provided here.<sup>2</sup>

The parties were married in Las Vegas, Nevada, on December 30, 2001, and have one minor child, Nicole Ghibaud, born May 17, 2001.

The parties participated in a settlement conference on May 18, 2016. They reached an agreement at that time and the terms of that agreement were placed on the record.

After being retained in September, 2016, we immediately contacted Alex and attempted to negotiate the terms of the impending *Decree of Separate Maintenance* or *Decree of Divorce*. Ultimately, Alex refused to execute the proposed *Decree of Divorce*, with necessitated the filing of a *Motion* for its entry.

That *Motion* was initially heard on an *Order Shortening Time* on November 30, 2016, wherein the Court requested that we submit a *Reply* and *Opposition* to Alex’s purported *Countermotion*.

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<sup>2</sup> Although we could provide a blow-by-blow response to all of Alex’s purported “facts”, we have sought to only provide a response to those relevant facts and arguments contained in Alex’s *Opposition and Countermotion*.



1 This *Reply* follows.

2  
3 **III. LEGAL ARGUMENT**

4 **A. Alex Has Already Admitted That the Parties' Settlement on May 18,**  
5 **2016, is Fully Enforceable Under DCR 16, EDCR 7.50, and *Grisham***  
6 ***v. Grisham*<sup>3</sup>**

7 The heading of this section pretty much sums it. Alex has admitted that their  
8 agreement is "set in stone," "[n]or can the agreement be changed," that the parties  
9 entered "into a contract," and that "the terms of the agreement w[h]ere already  
10 reached at the settlement conference and placed on the record, with the parties under  
11 oath, and after Judge Hardcastle canvassed Plaintiff and Defendant as to their  
12 understanding and willingness to enter into the agreement." We are unsure how  
13 much clearer his admissions could be.

14 **B. The Proposed *Decree of Divorce* Contains a Provision Concerning**  
15 **Quarterly Accountings Per Agreement of the Parties**

16 Although Alex initially agreed that it would be extremely beneficial for both  
17 parties to have a neutral third party review his books for purposes of determining his  
18 income through the implementation of quarterly reviews, he subsequently reneged.  
19 Despite his claims that Tara would continue to "conflate" his income, for which we  
20 offered a reasonable solution, he is apparently of the belief now that Tara should  
21 simply trust in his calculation of his gross monthly income. In other words, Alex has  
22 no real desire to put an end to this case, and is effectively inviting future litigation,  
23 wherein one or both of the parties would need to request a specific mechanism for  
24 purposes of determining his income.

25 \*\*\*\*\*

26 \*\*\*\*\*

27 \*\*\*\*\*

28  

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<sup>3</sup> 128 Nev. Adv. Op. 60, 289 P.3d 230, 237 (2012).

1           **C.     Alex’s References to Prior Decrees is Completely Irrelevant**

2           At page 11 of his *Opposition*, Alex makes reference to an initial draft of the  
3     *Decree* that we provided indicating that all community property acquired after the  
4     *Decree of Divorce* would remain community property. What Alex fails to mention  
5     is that the agreement “set in stone” at the settlement conference specifically  
6     established that “All property acquired *after* May 18, 2016, will remain community  
7     property unless Parties mutually agree otherwise in writing.”<sup>4</sup> While this provision  
8     is arguably tied to the continuation of a separate maintenance action, or the entry of  
9     a *Decree of Divorce*, it is worth noting Alex’s willingness to “amend” or “clarify”  
10    provisions of the parties’ settlement if they are beneficial to him.

11  
12           **D.     Alex’s Medical and Support Arrears Survived the Parties’ Settlement**

13           Alex makes the unsupported claim that Tara somehow waived her right to the  
14    collection of medical and support arrears because they were not specifically  
15    referenced as part of the parties’ settlement. Of course, Alex fails to supply any  
16    authority to support his position, which effectively amounts to a request for this Court  
17    to retroactively modify his support obligations in direct violation of NRS  
18    125B.140(1)(a).

19           Moreover, his argument is illogical and inequitable, in that he cannot cite to a  
20    specific order, let alone a settlement, indicating that Tara ever waived her right to  
21    these arrears, or that they were subsumed by a subsequent order. Tara acknowledges  
22    that Alex was obligated to provide her with family support in the amount of \$2,200  
23    per month, up until May 18, 2016, and that he was also required to provide her *and*  
24    the minor child with health insurance “until the Dissolution of Marriage is final and  
25    filed.” The very wording of this Court’s *Order*, and the terms of the parties’  
26    settlement, dictate the result on this subject. His obligation to provide for Tara and  
27

28           

---

          <sup>4</sup> [Emphasis added].

1 the minor child's medical insurance at least existed until entry of the *Decree*,  
2 although he agreed to subsequently continue it.

3 Even if that were not the case, in order for Alex to establish a valid waiver he  
4 must show that there has been an intentional relinquishment of a known right.<sup>5</sup> While  
5 a waiver may be the subject of express agreement, it may also be implied from  
6 conduct which evidences an intention to waive a right, or by conduct which is  
7 inconsistent with any other intention than to waive a right.<sup>6</sup>

8 No such conduct is present here, as Tara has consistently requested Alex's  
9 compliance with this Court's orders for the better part of a year. Further, there is  
10 absolutely no evidence in the record to suggest that Tara intended to waive her right  
11 to support arrears.<sup>7</sup> If such was the intent of the parties, one would think that it would  
12 certainly be part of the parties's underlying settlement agreement – it wasn't, and  
13 Alex knows this, which is why he has concocted an half-hearted claim that it was  
14 supposedly part of their settlement agreement despite their being no reference in the  
15 record.

16  
17 **E. Alex Provides No Competing Definition of Gross Monthly Income**

18 Since Alex's "alimony" and child support obligation were effectively merged,  
19 we utilized the definition of gross monthly income as provided in NRS  
20 125B.070(1)(a), which provides,

21 (a) "Gross monthly income" means the total amount of income received each  
22 month from any source of a person who is not self-employed or the gross  
23 income from any source of a self-employed person, after deduction of all  
legitimate business expenses, but without deduction for personal income taxes,

---

24 <sup>5</sup> *Parkinson v. Parkinson*, 106 Nev. 481, 796 P.2d 229 (1990).

25 <sup>6</sup> *Id.*

26  
27 <sup>7</sup> The Nevada Supreme Court has gone to great lengths to preserve an obligee's right to  
28 collect support payments. In *McKellar v. McKellar*, it determined that an obligee did not waive her  
right to support despite waiting **14 years** after entry of an underlying judgment, which is not even  
present here, before initiating an action to collect those arrears.

1 contributions for retirement benefits, contributions to a pension or for any  
2 other personal expenses.

3 For some reason, Alex continues to claim that we are attempting to “conflate”  
4 his income by not giving him credit for all of his legitimate business expenses. In  
5 order to determine those expenses, and Alex’s gross monthly income, which is what  
6 the parties agreed to – not Alex’s amorphous reference to personal income, a  
7 statement that appears *nowhere* in the parties’ settlement, we proposed that a neutral  
8 third party look at his books every quarter to determine his regular monthly income.

9 The reason gross monthly income was selected, is because it presents a far  
10 easier analysis for determining Alex’s monthly income, and for purposes of  
11 comparison upon Tara obtaining employment. If Alex had his way, the parties  
12 financial circumstances would be further enmeshed by reviewing their respective tax  
13 returns, determining their tax rate, or potential tax rate, which would likely result in  
14 some future offset. In sum, Alex’s claim, while simultaneously refusing to provide  
15 Tara independent access to his books, presents a potential accounting nightmare.

16 On the contrary, we would prefer the Court’s orders be clear, concise, and fully  
17 enforceable, which is exactly what we proposed by way of our *Decree*. If there is a  
18 provision or statement within the *Decree* for which the Court desires clarification, we  
19 stand ready to provide it.

20 **F. An Order to Show Cause Should Issue and Alex Should be Held in**  
21 **Contempt**

22 The *Order* from the November 19, 2015, hearing was incredibly clear with  
23 respect to Alex’s obligations. He has failed to supply Tara with the support that was  
24 previously ordered, nor has he paid the minor child’s health insurance costs, which  
25 total \$148.25 every month.

26 As noted in our *Motion*, Alex has not paid a penny towards the child’s health  
27 insurance premiums resulting in a principal arrearage of \$1,683; with interest and  
28

1 penalties, he owes \$1,812.10 as of November 14, 2016.<sup>8</sup> He also failed to pay  
2 anything towards Tara's health insurance premiums, which resulted in a principal  
3 arrearage of \$3,511.80; with interest, he owes \$3,607.34 as of November 14, 2016.<sup>9</sup>

4 Finally, Alex did not fully comply with his family support obligation under the  
5 Court's *Order*, which resulted in a principal arrearage of \$5,600; with interest and  
6 penalties, he owes the sum of \$6,343.10 as of November 14, 2016.<sup>10</sup>

7 Although he "claims" that he's consistently made payments, he did not provide  
8 a single document establishing any purported payments he claims to have made.  
9 There's a reason for this – it just hasn't happened and he knows that he owes Tara a  
10 significant amount of money.

#### 11 12 **G. Alex's Request to Have Us Sanctioned Must be Denied**

13 Even assuming Alex's claim to have us sanctioned for actually attempting to  
14 finalize the parties' divorce had any merit, which it does not, it is substantially  
15 defective. Every litigant has the responsibility to use due diligence to ensure that any  
16 claim made is not frivolous nor intended to harass the opposing party. Specifically,  
17 NRCP 11 states, in relevant part,

18 *Representations to the court.* By presenting to the court (whether by signing,  
19 filing, submitting, or later advocating) a pleading, written motion, or other  
20 paper, an attorney or unrepresented party is certifying that to the best of the  
person's knowledge, information, and belief, formed after an inquiry  
reasonable under the circumstances, –

21 (1) it is not being presented for any improper purpose, such as to harass or to  
22 cause unnecessary delay or needless increase in the cost of litigation;

---

23  
24  
25 <sup>8</sup> See Exhibit 3 to *Motion*, MLAW Arrearage Calculation Summary, along with a copy of  
26 Aetna policy rates.

27 <sup>9</sup> See Exhibit 4 to *Motion*, MLAW Arrearage Calculation Summary, along with a copy of  
28 Aetna policy rates.

<sup>10</sup> See Exhibit 5 to *Motion*, MLAW Arrearage Calculation Summary.

1 (2) the claims, defenses, and other legal contentions therein are warranted by  
2 existing law or by a nonfrivolous argument for the extension, modification, or  
reversal of existing law or the establishment of new law;

3 (3) the allegations and other factual contentions have evidentiary support or,  
4 if specifically so identified, are likely to have evidentiary support after a  
reasonable opportunity for further investigation or discovery; and

5 (4) the denials of factual contentions are warranted on the evidence or, if  
6 specifically so identified, are reasonably based on a lack of information or  
belief.<sup>11</sup>

7 Further, NRCP 11(c) provides,

8 (c) *Sanctions*. If, after notice and a reasonable opportunity to respond,  
9 the court determines that subdivision (b) has been violated, the court may,  
subject to the conditions stated below, impose an appropriate sanction upon the  
10 attorneys, law firms, or parties that have violated subdivision (b) or are  
responsible for the violation.

11 (1) *How initiated*.

12 (A) *By Motion*. A motion for sanctions under this rule shall be made  
separately from other motions or requests and shall describe the specific  
13 conduct alleged to violate subdivision (b). It shall be served as provided in  
Rule 5, but shall not be filed with or presented to the court unless, within 21  
14 days after service of the motion (or such other period as the court may  
prescribe), the challenged paper, claim, defense, contention, allegation, or  
15 denial is not withdrawn or appropriately corrected. If warranted, the court may  
award to the party prevailing on the motion the reasonable expenses and  
attorney's fees incurred in presenting or opposing the motion. Absent  
16 exceptional circumstances, a law firm shall be held jointly responsible for  
violations committed by its partners, associates, and employees.

17 (B) *On Court's Initiative*. On its own initiative, the court may enter an  
18 order describing the specific conduct that appears to violate subdivision (b)  
and directing an attorney, law firm, or party to show cause why it has not  
19 violated subdivision (b) with respect thereto.

20 Alex failed to comply with NRCP 11(c)(1)(A), as he did not submit his request  
21 by way of a separate motion and certainly did not comply with the 21 day  
22 requirement. Even if his request is only construed under EDCR 7.60, he has provided  
23 no evidence of any kind to indicate that our *Motion* was "frivolous, unnecessary or  
24 unwarranted." In fact, his frivolous *Opposition and Countermotion* actually  
25 establishes the underlying necessity of our *Motion*.

---

26  
27  
28 <sup>11</sup> NRCP 11(b).

1 Finally, Alex's reference to EDCR 5.04 is absurd and we were tempted to not  
2 even dignify it with a response. However, and for sake of the Court record, Alex  
3 provides absolutely no evidence that any portion of the AAML Bounds of Advocacy,  
4 which are aspirational, was ever violated. Threatening Court action in the face of  
5 Alex's incessant and abhorrent communications with our client, and our office to a  
6 certain extent, comes nowhere near a violation of aspirational rules – his lack of  
7 candor and professionalism is astounding.

8 After receiving our *Motion*, Alex threatened our client and threatened us with  
9 a bogus Rule 11 demand that we “withdraw our Motion.” As is his wont, his initial  
10 e-mails to us were filled with invective, while insulting our competency and  
11 veracity.<sup>12</sup> What follows is a sampling of his communications to Tara and us, after  
12 receiving a copy of our *Motion*.

13 On November 19, 2016, Alex sent us an e-mail claiming that Tara was  
14 “defaming” him when she requested that Alex provide her with her support payments.  
15 He also threatened that he would file an independent complaint against our client for  
16 her “oppressive and fraudulent conduct” unless our client agreed to pay him \$50,000  
17 in punitive damages. His behavior only became more bizarre as time passed.

18 Ten minutes later, Alex claimed that our client was “on [a] rampage today,  
19 likely up all night from heavy amphetamine use.”

20 Five minutes after that, Alex sent an e-mail to Tara stating,

21 You fucking high or drunk or both this fine morning? You feel froggy because  
22 you got your fat fuck of a boyfriend backing you financially? Jump then bitch.  
23 You know where I'm at. How many hours did you put in on your back for all  
24 that money. Whore. Once a stripper always a stripper. How about this? Get  
a fucking job loser. It's not like your some fucking intellectually that's going  
to make anything of yourself with a degree. You like dog shit so either find  
a job or find an old fart to marry you.

---

25  
26 <sup>12</sup> See Exhibit 7, e-mails between Alex and Mr. Creel, dated November 17 and 18, 2016. To  
27 be clear, although we hoped Alex would respond like an adult and professional, we were not  
28 surprised given his documented record of making totally unprofessional and demeaning telephone  
calls and communications with other attorneys. These facts were detailed in the Nevada Supreme  
Court's *Order of Temporary Suspension* of Alex back in August, 2009.

1 Approximately half an hour later, Alex sent another screed to Tara, claiming,  
2 Tara,

3 You have destroyed my life. You started this rampage 9 years ago in our early  
4 30's. You continue to try to ruin me well into our 40's. How long can you  
5 sustain your hatred? How many people need to support you in your endless  
6 struggle to ruin me?

7 I'm telling you now, I won't stop. I won't roll over for you. I don't how much  
8 you think I'm making you and Nicole suffer, I'm not going to bend to you and  
9 I don't give a fuck what you do.

10 You need to accept the fact that this state of affairs is your fault, not mine.  
11 You're a drug addict, you always have been and you always will be. You  
12 never finished your 12 steps because you wanted benzodiazepines and  
13 amphetamines.

14 You're drinking again. I can tell in your conduct and the things you say, even  
15 when you say them. But I don't give a fuck. *I don't care if you live or die.*<sup>13</sup>  
16 I honestly prefer the latter because your cancer that only seems to go into  
17 remission but cannot be cured.

18 Leave me alone. What you say and do doesn't affect me. Just makes despise  
19 you more than I do. You're a repugnant whore and leech to me so fuck off.

20 Alex

21 Finally, and approximately ten minutes after that, he stated,

22 Get over yourself. I don't give a fuck how many times you forward what I say  
23 to your attorney. I know the games you play, they don't. I know you think I'm  
24 concerned about what I say because somehow the bar will punish me for it,  
25 they won't. You're a known quantity to them. You're a fucking legend in  
26 your 10 year campaign against me, what I've tolerated for how long, and that  
27 I'm still alive. Really, get over yourself. You're just running up a huge bill  
28 that I'm not paying for.<sup>14</sup>

29 This is just a sampling of what Tara has consistently dealt from the inception  
30 of this litigation. Alex even claimed after the last hearing that the Court did not enter  
31 a mutual *Behavior Order*, instead, suggesting that it only entered a *No Contact Order*  
32 and that he could effectively say whatever he wanted to Tara if they were required to  
33 communicate.

---

34 <sup>13</sup> [Emphasis added].

35 <sup>14</sup> See Exhibit 8, e-mails from Alex to us and to Tara.



1                   **H. Alex Provides No Basis for the Court to Set Aside the Parties'**  
2                   **Settlement Agreement**

3                   Alex knows that there is absolutely no legal support for his position that the  
4                   settlement agreement should be set aside under any circumstances. Moreover, his  
5                   claim that Tara perpetrated a fraud on the Court is simply absurd.

6                   Suffice it to say that Tara did not commit a fraud upon the court, and his  
7                   suggestion otherwise is sanctionable.<sup>15</sup> Alex failed to provide a detailed factual  
8                   rendition of what was done that would have prevented him from presenting his case  
9                   at the time the *parties' stipulated agreement* was entered on the Court record. That  
10                  fact alone renders his claim definitionally frivolous and we leave it to the Court's  
11                  discretion as to whether monetary sanctions should issue against Alex for this  
12                  argument. In any event, and to make a clear record, we set out the history, the correct  
13                  standard, and show how Alex comes nowhere close to establishing "fraud upon the  
14                  court" pursuant to NRCP 60(b).

15                The Rules of Civil Procedure were adopted in Nevada on January 1, 1953. The  
16                parenthetical in prior NRCP 60 eliminating the distinction between intrinsic and  
17                extrinsic fraud was inserted in 1981; prior to that time, the characterization of the  
18                kind of alleged fraud often controlled the results of cases.<sup>16</sup>

19                Fraud upon the court consists of "such conduct as prevents a real trial upon the  
20                issues involved."<sup>17</sup> What those terms mean, and what actions constitute satisfaction  
21                of them, has changed over the years.

---

22  
23  
24                <sup>15</sup> As noted above, all attorneys are tasked with conducting NRCP Rule 11 investigations  
25                before presenting issues to the court.

26                <sup>16</sup> For example, in *Occhiuto v. Occhiuto*, 97 Nev. 143, 625 P.2d 568 (1981), cited by Robin  
27                at page 4, but not standing for the proposition she asserts (intrinsic versus extrinsic fraud), as  
28                discussed below.

<sup>17</sup> *Kramer v. Kramer*, 96 Nev. 759, 762, 616 P.2d 395, 397 (1980) (quoting *Savage v.*  
                  *Salzmann*, 88 Nev. 193, 195, 495 P.2d 367, 368 (1972)).

1 Originally, the Nevada Supreme Court seemed to express the rule that if a party  
2 had an attorney, *no* sort of fraudulent conduct by the other party would permit post-  
3 divorce relief.<sup>18</sup>

4 In 1942, however, the Court decided a case in which it expressed the rule that  
5 a judgment can be vacated, amended, modified, or corrected in the event it was  
6 procured by “extrinsic fraud,” which it defined as existing “when the unsuccessful  
7 party is kept away from the court by a false promise of compromise, or such conduct  
8 as prevents a real trial upon the issues involved, or any other act or omission which  
9 procures the absence of the unsuccessful party at the trial. Further, it consists of fraud  
10 by the other party to the suit which prevents the losing party either from knowing  
11 about his rights or defenses, or from having a fair opportunity to present them upon  
12 the trial.”<sup>19</sup>

13 The examples were pretty severe – basically beating someone up to prevent  
14 them from getting to court, or convincing them by outright lies that there was no court  
15 date when one was scheduled.<sup>20</sup>

16 In *Occhiuto v. Occhiuto*,<sup>21</sup> the Nevada Supreme Court expounded at length on  
17 the meaning of “fraud on the court,” as opposed to “fraud” as used in the remainder  
18 of NRCP 60(b):

19 This court’s interpretation of “fraud”, as that term is used in NRCP  
20 60(b)(2), and the term “fraud upon the court”, also used in NRCP 60(b), is  
21 completely out of step with the treatment afforded those same terms by the  
22 federal courts in their interpretation of the Federal Rules of Civil Procedure  
23 60(b). This difference can hardly be justified by the fact that the word “fraud”  
24 in FRCP 60(b)(3) is followed by the words “(whether heretofore denominated  
25 intrinsic or extrinsic)”.

---

24 <sup>18</sup> See *Calvert v. Calvert*, 61 Nev. 168, 122 P.2d 426 (1942); *Mazour v. Mazour*, 64 Nev. 245,  
25 180 P.2d 103 (1947).

26 <sup>19</sup> *Murphy v. Murphy*, 65 Nev. 264, 271, 193 P.2d 850, 854 (1948).

27 <sup>20</sup> See, e.g., *Smith v. Smith*, 102 Nev. 110, 716 P.2d 229 (1986).

28 <sup>21</sup> *Occhiuto v. Occhiuto*, 97 Nev. 143, 625 P.2d 568 (1981).

1 Federal cases construing FRCP 60(b) make it clear that “fraud upon the  
2 court” under the savings clause is distinguishable from “fraud . . .  
misrepresentation, or other misconduct” under FRCP 60(b)(3).

3 In *United States v. International Telephone & Tel. Corp.*, 349 F. Supp.  
4 22, 29 (D. Conn. 1972), *aff’d* without opinion, 410 U.S. 919, (1973), the trial  
court explained:

5 Generally speaking, **only the most egregious**  
6 **misconduct, such as bribery of a judge or members of a jury,**  
7 **or the fabrication of evidence by a party in which an**  
8 **attorney is implicated, will constitute a fraud on the court.**  
9 See *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S.  
10 238, 64 S. Ct. 997, 88 L. Ed. 1250 (1944); *Root Refin. Co. v.*  
11 *Universal Oil Products*, 169 F.2d 514 (3d Cir. 1948); 7 J. W.  
Moore, *Federal Practice*, para. 60.33 at 510-11. Less egregious  
misconduct, such as nondisclosure to the court of facts allegedly  
pertinent to the matter before it will not ordinarily rise to the  
level of fraud on the court. See *Kupferman v. Consolidated*  
*Research & Mfg. Co.*, 459 F.2d 1072 (2d Cir. 1972); see also  
*England v. Doyle*, 281 F.2d 304, 310 (9th Cir. 1960).

12 “[I]n order to set aside a judgment or order because of fraud upon  
13 the court under Rule 60(b) . . . it is necessary to show an unconscionable  
14 plan or scheme which is designed to improperly influence the court in its  
decision.” *England v. Doyle*, *supra*, 281 F.2d at 309. See also *United States*  
*v. Standard Oil Co. of California*, 73 F.R.D. 612, 615 (N.D. Cal. 1977).

15 The motion to set aside on this ground is addressed to the sound  
16 discretion of the trial court. *Title v. United States*, 263 F.2d 28 (9th Cir. 1959);  
17 *Siberell v. United States*, 268 F.2d 61 (9th Cir. 1959). And the burden is on the  
moving party to establish fraud by clear and convincing evidence. *Atchison,*  
*Topeka & Santa Fe Railway Co. v. Barrett*, 246 F.2d 846 (9th Cir. 1957).  
*England v. Doyle*, 281 F.2d 304, 309-310 (9th Cir. 1960).

18 [Emphasis added].

19 In short, even though no case law is cited in Alex’s *Countermotion*, the  
20 standard is some showing that the other party bribed a judge, fabricated evidence, or  
21 executed “an unconscionable plan or scheme to improperly influence the court.”

22 Alex has alleged no such thing, and it is submitted that it is next to impossible  
23 to establish such fraud when a clear settlement has been entered on the Court record.  
24 Additionally, in reviewing even a sample of communications between the parties,  
25 Alex has no problem expressing his opinion or making demands.  
26  
27  
28

1 And, of course, if Alex had wanted to litigate any issue incident to the parties'  
2 separation/divorce, he was free to do so. But he made no such claims, and the case  
3 was resolved by agreement between the parties.

4 Accordingly, Tara respectfully requests the Court deny Alex's *Countermotion*  
5 on this point, and award Tara the entirety of her attorney's fees for having to prepare  
6 a response.

7  
8 **I. Tara Should be Awarded Additional Attorney's Fees and Costs**

9 Attorney's fees may be awarded in a pre-or post-divorce motion under NRS  
10 18.010(2) and NRS 125.150(3).<sup>22</sup>

11 Alex has consistently refused to abide by the orders of this Court, and it is  
12 abundantly clear that he will continue to thumb his nose at this Court unless  
13 something is done. His impermissible actions, despicable behavior, and refusal to  
14 finalize the terms of the *Decree*, necessitated the underlying *Motion*, and now this  
15 Reply to an otherwise frivolous *Opposition and Countermotion*, forcing Tara to incur  
16 substantial attorney's fees and costs. As such, he should be responsible for the  
17 entirety of her attorney's fees and costs.

18 The work actually performed will be provided to the Court upon request by  
19 way of a Memorandum of Fees and Costs (redacted as to confidential information),  
20 consistent with the requirements under *Love*.<sup>23</sup>

21 \*\*\*\*\*

22 \*\*\*\*\*

23 \*\*\*\*\*

---

24  
25 <sup>22</sup> See *Love v. Love*, 114 Nev. 572, 959 P.2d 523 (1998); *Wright v. Osburn*, 114 Nev. 1367,  
26 970 P.2d 1071 (1998); *Halbrook v. Halbrook*, 114 Nev. 1455, 971 P.2d 1262 (1998); *Korbel v.*  
27 *Korbel*, 101 Nev. 140, 696 P.2d 993 (1985); *Fletcher v. Fletcher*, 89 Nev. 540, 516 P.2d 103 (1973);  
28 *Leeming v. Leeming*, 87 Nev. 530, 490 P.2d 342 (1971).

<sup>23</sup> *Love v. Love*, 114 Nev. 572, 959 P.2d 523 (1998).

1 **III. CONCLUSION**

2 Based on the above, Tara respectfully requests the Court issue the following  
3 orders:

- 4 1. Entering Tara's proposed *Decree of Divorce*.  
5 2. Reducing the arrears owed by Alex to judgment, making them  
6 collectible by any and all lawful means.  
7 3. Denying Alex's *Countermotion* in its entirety.  
8 4. Awarding Tara the entirety of her attorney's fees and costs.  
9 5. For such other and further relief as the Court deems proper and just.

10 **DATED** this 12<sup>th</sup> day of December, 2016.

11 Respectfully Submitted by:  
12 WILICK LAW GROUP

13 

14 MARSHAL S. WILICK, ESQ.

15 Nevada Bar No. 2515

16 TREVOR M. CREEL, ESQ.

17 Nevada Bar No. 11943

18 3591 East Bonanza Road, Suite 200

19 Las Vegas, Nevada 89110-2101

20 Attorneys for Plaintiff

21 \\wlgserver\company\wp16\KELLOGG,T\DRAFTS\00160169.WPD/vj

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- I declare under penalty of perjury under the laws of the State of Nevada (NRS 53.045 and 28 U.S.C. § 1746), that the foregoing is true and correct.**

  
**TREVOR M. CREEL, ESQ.**

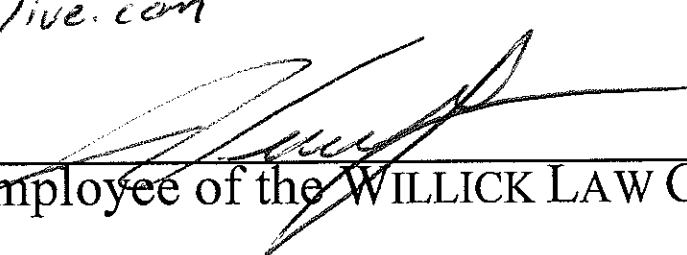
## CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the WILICK LAW GROUP and that on this 12 day of December, 2016, I caused the foregoing document 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;
- ☐ pursuant to NRCP 5(b)(2)(D), by email by duly executed consent for service by electronic means;
- ☐ by hand delivery with signed Receipt of Copy.
- ☐ by First Class, Certified U.S. Mail.
- ☐ by placing same to be deposited for mailing in the United States Mail, Certified, Return Receipt Requested, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

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

Alex Ghibaud, Esq.  
2228 Gabriel Street  
Las Vegas, Nevada 89119  
**Defendant in Proper Person**  
*abg1475@live.com*

  
An Employee of the WILICK LAW GROUP

DISTRICT COURT  
FAMILY DIVISION  
CLARK COUNTY, NEVADA

TARA KELLOGG GHIBAUDO, )

Plaintiff )

-v.- )

ALEX GHIBAUDO, )

Defendant )

Case No. D-15-522043-D

Department T

**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-

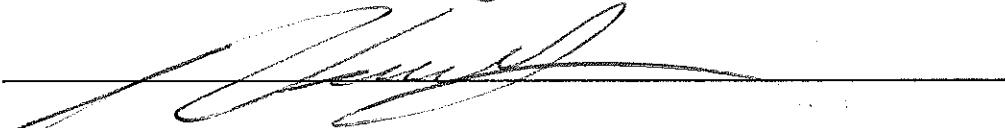
☐ **\$57** The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

**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: Tara Kellogg-Ghibardo Date: 12-12-16

Signature of Party or Preparer: 

\\wlgserver\company\wp16\KELLOGG,T\DRAFTS\00157108.WPD/



CLERK OF THE COURT



**RPLY**

Alex Ghibaud, Esq.  
Nevada Bar No. 10592

**G LAW**

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alex@alexglaw.com  
*Defendant in Proper Person*

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

TARA KELLOGG-GHIBAUDO,

Plaintiff,

vs.

ALEX GHIBAUDO,

Defendant,

Case No.: D-15-522043-D

Dept. No.: T

**Defendant's Reply to Plaintiff's Opposition to His Countermotion**

COMES NOW Defendant, Alex Ghibaud ("Alex"), in Proper Person, and submits the following Reply to Plaintiff's Opposition to his Countermotion.

**Points and Authorities**

**Summary of Facts**

As an officer of the court, an attorney's duty is to assist the Court in making a just and lawful determination that resolves a controversy before it, while faithfully advocating for his client. In this case, at the November 30, 2016 hearing, this Court made clear that it was interested in the issue of alimony and child support arrears. Alex's "gross monthly income", Alex's counter-motion to set aside the May 18, 2016 settlement agreement, and sanctions against Plaintiff and her attorneys, Marshall Willick and Trevor Creel.



1 Despite that clear directive, and opposing counsel Willick and Creel's duty to this  
2 Court, in Plaintiff's "Reply to 'Defendant's Opposition to Plaintiff's Motion' and Opposition  
3 to Defendant's Counter-Motion", Creel launches into yet another hysterical tirade about  
4 Alex's many "vices", "destructive behavior", suspension from the practice of law, amongst  
5 other purported acts of lunacy and irrational behavior. None of this is relevant to these  
6 proceedings and none will assist this Court in resolving the controversy before it.

7  
8 As such, Alex will refrain from engaging in any further unprofessional, childish, and  
9 unproductive tit-for-tat about whether Plaintiff or Alex is or is not a person of low moral  
10 character. Instead, Alex will focus on Plaintiff and Creel's vexatious, frivolous, and legally  
11 unsound argument, in addition to the clear incompetence<sup>1</sup> and lack of credibility indicated by  
12 the blatant falsehoods<sup>2</sup> contained in Creel's pleading. It is unsure if Plaintiff even understands  
13 what is going on given the brazen falsehoods and mischaracterizations of fact and law made  
14 by Creel. Indeed, laughably, Creel signs the affidavit upon the reply and opposition, asserting  
15 he read his own motion. Not so funny, he claims to sign the motion on behalf of his client, in  
16 contravention of EDCR 2.21 et al.

17  
18 The following is Alex's reply to Plaintiff's opposition to Alex's counter-motion and  
19 reply to Alex's opposition to her motion. Creel is liberally referenced in the following  
20  
21

---

22  
23  
24 <sup>1</sup> For example, Creel seeks to have Alex sanctioned under Nevada Rule of Civil Procedure 11  
25 even though that rule requires a separate motion be filed and Creel addresses Nevada Rule of  
26 Civil Procedure 60(b)'s "fraud upon the court" provision in defending against Alex's counter-  
27 motion when Alex alleged fraud under NRCR 60(b)(3)'s fraud provision, a completely  
28 different rule with completely different parties and standards.

<sup>2</sup> For example, Creel claims that Alex provides no evidence of support payments despite the  
fact that copies of 14 checks were provided, made out to Tara, cashed by her, indicating in the  
memo that the checks are for support payments, totaling in excess of \$12,170.00.



1 analysis because he signed the affidavit though he asserts that there are some factual  
2 contentions and because the reply and opposition is so grossly incompetent and factually  
3 inaccurate that it supports Alex's motion for sanctions against Plaintiff and her attorneys.

## 4 **Legal Analysis**

### 5 **1. Introduction**

6  
7 In arguing his position on behalf of his client, Creel stands reason on its head, flies in  
8 the face of it, champions the irrational, and seems to possess a complete inability to  
9 comprehend logic. Worse, truly, Creel is either incompetent or is demonstrating bad faith in  
10 the extreme in the positions he takes and the arguments he makes.

### 11 **2. Analysis**

#### 12 **a. Rebuttal to Creel and Plaintiff's legal and factual contentions.**

13  
14 First, the falsehoods. In arguing that Alex should be held in contempt, Creel asserts  
15 quite confidently that:

16 Although he "claims"<sup>3</sup> that he's consistently made payments, *he did not provide*  
17 *a single document establishing any purported payments he claims to have*  
18 *made.* There's a reason for this – it just hasn't happened and he knows that he  
owes Tara a significant amount of money. (Emphasis added).

19 This statement is astonishingly ignorant and demonstrates gross incompetence in light  
20 of the fact that Exhibit 8 of Alex's Opposition and Counter-Motion provides copies of no less  
21 than 14 checks made out to Plaintiff which she cashed, totally \$12,170.00 from February 26,  
22 2016 to November 7, 2016. Plaintiff, through Creel, contends in her schedule of arrears that  
23 the total due in payments was \$11,000.00, of which only \$5,600.00 was actually paid.  
24

---

25  
26  
27 <sup>3</sup> Why the quotation marks? The venom in Creel's "pleadings" is evident and quite  
28 unprofessional.



1           Clearly, this is a blatant lie made by Plaintiff and carried through to the bitter end by  
2 Creel in the face of overwhelming and incontrovertible evidence. Furthermore, in her  
3 affidavit signed before a notary public, Plaintiff swears under oath that as of January 28,  
4 2016, Alex was current on child support payments. This is no mere oversight. It is either bad  
5 faith on Creel's part, gross incompetence, or even worse, professional misconduct.  
6

7           As for medical arrears, in the November 30, 2016 hearing, Willick admitted that the  
8 first time any dollar amount or proof of payments for medical insurance was presented to  
9 Alex was by way of their initial motion. This, after months of requesting the same from  
10 Plaintiff and her previous counsel. It should be noted, that though it seems that Creel was in  
11 possession of the medical premiums, he never saw fit to turn them over.  
12

13           Now, Plaintiff wants to assess penalties and interest though she withheld information  
14 needed to comply with the court's orders. To allow this would be inequitable in the extreme  
15 to Alex. Nor has Plaintiff asserted or proven that she is paying the medical insurance  
16 premiums. In fact, she is not, and never has: her father does. To pay her for premiums *she*  
17 does not pay for would be to provide her with a windfall at Alex's expense.  
18

19           Second, the gross incompetence. In arguing that Alex's Counter-Motion for sanctions  
20 against Creel and Willick should be denied, Creel cites the wrong rule, NRCP 11, and then  
21 goes on at length about how Alex's use of that rule was improper. What Alex actually argued  
22 was that both Creel and Willick should be sanctioned under EDCR 7.60(b)(1)(3) and (4).<sup>4</sup>  
23 Use of EDCR 7.60(b) is entirely proper in seeking sanctions against an attorney or a party  
24 where either present a frivolous or vexatious motion, unnecessarily multiply the proceedings,  
25

---

26  
27  
28 <sup>4</sup> See Defendant's Opposition and Counter-Motion, page 19, lines 10-28.



1 and fail to comply with the Eighth Judicial District Court Rules. The very fact that Creel  
2 failed to address Alex's actual argument, not the one he was hoping, or fantasizing, that Alex  
3 made, is an admission that Alex's argument has merit under EDCR 2.20(c).

4 Third, even more evidence of gross incompetence. In defending against Alex's  
5 assertion that he was defrauded by Tara into accepting the terms of the agreement at the  
6 settlement conference, Creel, on Plaintiff's behalf, argues that no fraud upon the court was  
7 committed, and again goes on at great length about why there is no evidence of fraud upon the  
8 court, even taking the reader through a tour of the history of the concept in Nevada  
9 jurisprudence.  
10

11 Truly, an exercise in futility, because once again, as is his wont, Creel loses his grip on  
12 the wheel and argues against a point never made: that is, Alex argued that Tara's fraudulent  
13 conduct satisfied NRCP 60(b)(3),<sup>5</sup> not NRCP 60(b)'s "fraud upon the court" provision. This  
14 is an important distinction since a fraud upon the court did not occur. The fraud was  
15 committed against Alex by an adverse party, Tara, which falls under NRCP 60(b)(3). One  
16 wonders if Creel even so much as glanced at Alex's Counter-Motion.<sup>6</sup> Again, Creel and  
17 Plaintiff's failure to address the allegations contained in Alex's Counter-Motion is evidence  
18 of its merit under EDCR 2.20(c).  
19  
20  
21  
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26

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27 <sup>5</sup> See Alex's Opposition to Plaintiff's Motion and Counter-Motion, page 18, lines 18-20.

28 <sup>6</sup> After dismissively stating he would need no more than 10 days to respond at the last hearing.



1           **b. Rebuttal of legal and factual contentions made at the November 30, 2016**  
2           **hearing.**

3           At the last hearing in this matter, both Creel and Willick made legal arguments  
4 without merit and factual contentions that were untrue. Much was made of Eighth Judicial  
5 District Court Rule 7.50 and whether Judge Hardcastle stated the minutes would suffice as an  
6 order at the May 18, 2016 settlement conference. Concerning that issue, the following  
7 exchange took place between Creel and Judge Lisa Brown:  
8

9           **All Pending Motions Video Starting at 11:16pm –**

10          Willick: You have an Order. Because under 7.50 and the DCR...

11          Judge Brown: Did they put that on the record?

12          Willick: YES. (Emphasis added).

13          Alex: No...it was not said (that EDCR 7.50 applied).

14          Judge Brown: Well the minutes are not going to be my final... Does the record  
15 itself say it?

16          Alex: No it doesn't.

17          Willick: The parties were canvassed specially, and both testified it that it was  
18 the terms of an enforceable order. It became an order of the Court on that day.  
19 You have plenty of authority under 100 year old cases, that's the footnote that  
20 he's saying does not apply, it does, to clarify that order at anytime. So yes, you  
21 can make whatever additional terms you feel are necessary to bring this  
22 settlement agreement, which is a court order, that have been put on the minutes  
23 in the form of an order, with the assent of both parties, into effect. You have  
24 that authority at all times. It would be nuts to say that a court can't construe,  
25 enforce and clarify its own order. Of course you can. You have that ability at  
26 any time. Just tell us the right you want to do it. If you want a bad court order  
27 first, and then clarity, we can do that, or if we want a hearing and clear orders  
28 made and then put it all on one decree. We will do it any way you want it done.  
When I started, I said we want a route to get this thing finished.

Alex: Your Honor, 7.50 does not apply.

Judge: Why? Is it on the record?



1 Alex: You want me to read it? I have it verbatim. No agreement or stipulation,  
2 between the parties or their attorneys will be effective unless the same shall, by  
3 consent, be entered in the minutes in the form of an order. That didn't happen.  
4 The parties didn't consent to make it an order. There is no order. They are saying  
5 enforce an order that doesn't exist.

6 Judge: Guess my Law Clerk will have to watch the video.

7 Alex: It didn't happen. I was there.

8 ...

9 Judge: You're saying that you watched the video?

10 *Creel: Yes. (Emphasis added).*

11 Judge: And at the end they are canvassed about EDCR 7.50?

12 *Creel: Absolutely.* (Emphasis added). They are canvassed about the specific  
13 terms, that they agreed to the specific terms of their settlement, they understood  
14 what they were agreeing to and they wanted the court to enter it into an  
15 enforceable order and to do so by way of decree of a legal separation.

16 Creel's assertions can, at best, be characterized as misrepresentations made to this court.

17 At worse, Creel blatantly and willfully lied in an effort to commit a fraud upon the court. The  
18 following is a verbatim transcription of the video record of the settlement conference:

19 **SETTLEMENT AGREEMENT TRANSCRIPT: 2:39pm – 2:41pm**

20 Judge Hardcastle: Mrs. Ghibaud, you heard the terms of the agreement  
21 between the parties, do you think this is a fair and equitable distribution of the  
22 property and debts between the parties?

23 Plaintiff: Yes.

24 Judge Hardcastle: And the award of child support and alimony is fair and  
25 equitable?

26 Plaintiff: Yes.

27 Judge Hardcastle: And this is your intent that this agreement between the parties  
28 be enforceable and binding between the parties?



1 Plaintiff: Yes.

2 Judge Hardcastle: Mr. Ghibaudo, you also heard also heard the agreement?

3 Alex: Yes.

4 Judge Hardcastle: And is that your understanding of what the agreement is?

5 Alex: Yes, your Honor.

6 Judge Hardcastle: And you think this is a fair and equitable distribution of  
7 property and debt between the parties?

8 Alex: It is.

9 Judge Hardcastle: The amount alimony that was awarded, the terms of the  
10 alimony and the duration of the alimony is fair and equitable under the  
11 circumstances?

12 Alex: Yes, your Honor.

13 Judge Hardcastle: Child Support is in the best interest of the child.

14 Alex: It is.

15 Judge Hardcastle: You decide to have this agreement between the parties be fully  
16 enforceable and binding between the parties?

17 Alex: Yes.

18 Judge Hardcastle: Alright.

19 Judge Hardcastle: Court finds that it has jurisdiction over the matter. There  
20 should be a legal decree of separation entered in this matter. Plaintiff's Attorney  
21 shall prepare the decree and agreement, and will provide a copy of it to the  
22 Defendant before presenting it to the Court for signature.

23 Alex: And all future hearings to be vacated.

24 Judge Hardcastle: All future hearings to be vacated.

25 Judge Hardcastle: We will be off the record





1           What is clear here is that Judge Hardcastle canvassed the parties about the agreement  
2 they reached and then directed Plaintiff's counsel to prepare an actual order. What is also  
3 evident is that Judge Hardcastle said nothing concerning EDCR 7.50. Judge Hardcastle did  
4 not canvass the parties about the rule and did not ask the parties if they wished for the minutes  
5 to suffice as an order, which EDCR 7.50 requires as a plain reading of the text of the Rule  
6 demonstrates. Yet, Creel stated emphatically, indeed most confidently, when Judge Brown  
7 asked him directly whether the parties were *canvassed* about the rule, that they were.  
8 Creel's conduct speaks for itself.

9  
10           Nor would it be prudent to let the minutes stand as an order, as Willick argued earlier  
11 in the last hearing, before arguing that it should:

12  
13           **10:31pm**

14           Willick: Obviously you can't order a minute order as a decree, it just doesn't  
15 suffice. Summarizing the allegations of the opposition, which I understand the  
16 court hasn't read, says you can't understand enter the decree if it contains terms  
17 that weren't stated in the minutes. Well as Judge Hoskins said in the CLE last  
18 the minutes aren't a formal record of anything, they are notes for the court,  
19 entered by a non-lawyer and they are there just to memorialize what happened  
20 in the courtroom for the convenience of the court. Obviously every decree  
21 contains clauses, the lawyers go out and draft the order and make it happen." So  
22 every decree has provisions that are not explicitly stated during a settlement  
23 conference...They have to, that's the only way that you can create a legitimate  
24 enforcement order.

25           **10:37pm**

26           Willick: The payment terms are decipherable but "inadequate" to make it an  
27 enforceable order. EDCR 7.50.

28           Willick's swift change of course, from arguing that EDCR 7.50 should apply to  
arguing it should not within a very short span of time, is disingenuous at best. Creel and  
Willick's statements to this court are blatantly misrepresentations concerning the record and



1 mental gymnastics concerning the applicability of the rules to the facts of this case. For this,  
2 they must be sanctioned.

3 **c. Gross Monthly Income and it's calculation.**

4 Concerning Alex's gross monthly income ("GMI"), NRS 125.150(12) provides that  
5 GMI for the purposes of alimony will be defined as child support is under NRS  
6 125B.070(1)(a). That rule states:

7 "Gross monthly income" means the total amount of income received each month  
8 from any source of a person who is not self-employed or the gross income from  
9 any source of a self-employed person, after deduction *of all legitimate business*  
10 *expenses*, but without deduction for personal income taxes, contributions for  
11 retirement benefits, contributions to a pension or for any other personal  
12 expenses. (Emphasis added).

13 The trick is in defining what a legitimate business expense is. Luckily, the Internal  
14 Revenue Service provides several publications that will assist the court in making that  
15 determination.<sup>7</sup> In Publication 334, Tax Guide for Small Businesses, the IRS states that, in  
16 general, to be deductible, legitimate business expenses:

17 must be both ordinary and necessary. An ordinary expense is one that is common  
18 and accepted in your field of business. A necessary expense is one that is helpful  
19 and appropriate for your business. An expense does not have to be indispensable  
20 to be considered necessary.<sup>8</sup>

21 That same publication states, at the end, that expenses that cannot be deducted include:  
22 Personal, living, and family expenses. The list of items that can be considered a legitimate  
23 business expense is extensive and contained in the materials provided to this court. However,  
24 the introduction to Publication 334, supra, coupled with the fact that personal, living, and family

25  
26 <sup>7</sup> See Exhibit 1, IRS publications.

27 <sup>8</sup> [https://www.irs.gov/publications/p334/ch08.html#en\\_US\\_2015\\_publink1000313590](https://www.irs.gov/publications/p334/ch08.html#en_US_2015_publink1000313590).



1 expenses cannot be deducted (except when you utilize a home office for after hours work, as  
2 Alex does) leads to the following simple formula: almost anything can be deducted except 75%  
3 of your living expenses, if you utilize your home for work.

4  
5 **d. Attorney's fees, costs, and sanctions.**

6 As for attorney's fees, after having their initial motion denied by this court in part, and  
7 this egregious travesty of a reply, it is a complete joke to request attorney's fees. Indeed, it  
8 hardly merits a response. However, the following will suffice. To date, Plaintiff, the mother  
9 of Alex's 15 year old daughter, was robbed of \$17,500.00 for an initial motion that was on its  
10 face without merit and in fact denied: Plaintiff was not successful in her attempt to modify the  
11 terms of the settlement agreement.

12  
13 Incredibly, after such a poor showing, Plaintiff retained Willick and Creel to continue  
14 down the same path that led them nowhere before, for God only knows how many tens of  
15 thousands of dollars more. That money could have more appropriately been utilized for the  
16 benefit of the minor child or to further Plaintiff's own education.

17 Instead, Plaintiff was convinced that the same path that led to defeat before would be  
18 utilized going forward and even more money wasted in the endeavor. That is the real travesty  
19 of the matter. Given the stakes, the money wasted, the gross incompetence demonstrated by  
20 Creel, Creel's brazen lies, and the time and effort wasted to date, Creel and Willick should be  
21 sanctioned heavily.

22  
23 In fact, in light of the gross incompetence demonstrated in his pleadings, through  
24 Willick's law firm, and under his supervision, neither Willick nor Creel should profit from  
25 these proceedings in the least. As such, any fees paid by Tara to the Willick Law Group  
26 should be regurgitated and awarded either to Alex or Tara, or both severally and jointly.



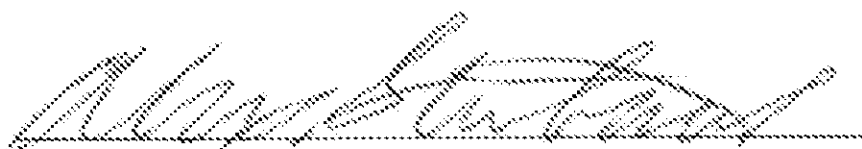
1 **Conclusion.**

2 For the foregoing reasons, Alex requests this court grant his counter-motion in its  
3 entirety.

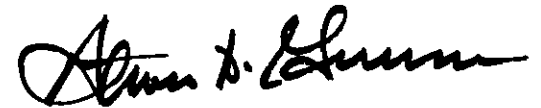
4 DATED this 2<sup>nd</sup> day of January, 2017.

5 Respectfully Submitted,

6 **G LAW**

7  
8 

9 **Alex Ghibaudo, Esq.**  
10 Nevada Bar No. 10592  
11 320 East Charleston Boulevard, Suite 105  
12 Las Vegas, NV 89104  
13 Tel: (702) 217-7442  
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15 E-mail: alex@alexglaw.com  
16 *Defendant in Proper Person*  
17  
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28



CLERK OF THE COURT

**DECD**  
WILICK LAW GROUP  
MARSHAL S. WILICK, ESQ.  
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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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Appellant's Appendix 078

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  
8 communications from health care providers.

9 Each parent shall have independent access to all information concerning  
10 school, athletic, church, and social events in which the child participates. Both  
parents may participate in activities for the child, such as open house,  
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  
13 number as soon as it is assigned.

14 Each parent shall provide the other parent with a travel itinerary and, whenever  
15 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  
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 1<sup>st</sup> 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.<sup>1</sup>

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 <sup>1</sup> 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 14 **DIVISION OF COMMUNITY ASSETS AND DEBTS**

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

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

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

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

## **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 outlined above. Tara shall also receive 50% of any bonuses Alex may receive at his place of employment. As examples only, if Alex's gross monthly income is \$10,000, he shall provide Tara with a family support payment of \$5,000; in the event Alex's gross monthly income is \$4,000, he shall provide Tara with the minimum family support payment of \$2,500, as that amount is greater than 50% of Alex's gross monthly income.

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

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

4. Gross monthly income means the total amount of income received each month from any source of a person who is not self-employed, or the gross income of a self-employed person, after deduction of all legitimate business expenses, but without deduction for personal income taxes, contributions for retirement benefits, contributions to a pension, contributions to a deferred compensation account, or for 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.<sup>2</sup> This amount shall be reduced to judgment  
26 and made collectible by any and all lawful means.

27  
28                               

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                              <sup>2</sup> 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.<sup>3</sup>

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

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27  
28           <sup>3</sup> 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  
the court for primary physical custody for the purpose of  
16 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 \*\*\*\*\*


3. Pursuant to NRS 125B.140, if an installment of an obligation to pay support for a child becomes delinquent, the Court shall determine interest and penalties upon the arrearages at rates established pursuant to NRS 99.040 (interest) and NRS 125B.095 (penalties), from the time each amount became due. Interest and penalties shall continue to accrue on the amount ordered until it is paid, and additional attorney's fees must be allowed if required for collection.

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

  
DISTRICT COURT JUDGE

Dated this 12<sup>th</sup> day of January, 2017.

Respectfully Submitted By:  
WILLICK LAW GROUP

  
MARSHAL S. WILLICK, ESQ.  
Nevada Bar No. 2515  
TREVOR M. CREEL, ESQ.  
Nevada Bar No. 11943  
3591 East Bonanza Road, Suite 200  
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(702) 438-4100; Fax (702) 438-5311  
Attorneys for Plaintiff

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**EXHIBIT “1”**

**EXHIBIT “1”**

**EXHIBIT “1”**

# Arrearage Calculation Summary

## Kellogg v. Ghibaudo

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

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**EXHIBIT “2”**

**EXHIBIT “2”**

**EXHIBIT “2”**

# Arrearage Calculation Summary

## Kellogg v. Ghibaudo

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

<b>Date Due</b>	<b>Amount Due</b>	<b>Accum. Child Sup. Arrearage</b>	<b>Accum. Penalty</b>
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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**EXHIBIT “3”**

**EXHIBIT “3”**

**EXHIBIT “3”**

# Arrearage Calculation Summary

## Kellogg v. Ghibaud

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.

## 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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CLERK OF THE COURT



**MISC**

Alex Ghibaud, Esq.  
Nevada Bar No. 10592

**G LAW**

320 East Charleston Boulevard, Suite 105  
Las Vegas, Nevada 89104  
Telephone: (702) 217-7442  
Facsimile: (702) 924-6553  
alex@alexglaw.com  
*Plaintiff in Proper Person*

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

TARA KELLOGG-GHIBAUDO,

Plaintiff,

vs.

ALEX GHIBAUDO,

Defendant,

Case No.: D-15-522043-D

dept. No.: T

**LETTER TO THE HONORABLE JUDGE LISA BROWN WITH A COURTESY  
COPY TO THE WILICK LAW GROUP AND NOTICE OF ELECTRONIC  
SERVICE**

Take notice that Alex Ghibaud, appearing in proper person, files the attached letter addressed to the Honorable Judge Lisa Brown, served by way of electronic service on the Willick Law Group through the Eighth Judicial District Court's electronic filing system (wiznet).

Dated this 2<sup>nd</sup> day of January, 2017.

**G LAW**

/s/Alex Ghibaud

**Alex Ghibaud, Esq.**

Nevada Bar No. 10592

*Plaintiff in Proper Person*



February 2, 2017

Eighth Judicial District Court  
Family Division, Department T  
Honorable Judge Lisa Brown  
601 North Pecos Road  
Las Vegas, Nevada 89117

Willick Law Group  
Attn: Marshal Willick, Esq. and Trevor Creel, Esq.  
3591 East Bonanza Road  
Las Vegas, Nevada 89110

**Re: Tara Kellogg-Ghibaudo v. Alex Ghibaudo (Case No. D-15-522043-D)**

Your Honor,

I write this letter in an effort to secure a telephone conference between this office, counsel, and the court. Though I understand it is not your practice to hold such conferences, I hope you will reconsider in this case for the following reasons. First, the Decree of Divorce filed on February 1<sup>st</sup>, 2017, is ambiguous in a very important respect. Though it has been determined that my gross monthly income is my total income minus any legitimate business expenses, it is unclear how to treat cash that is saved in Alex B. Ghibaudo, PC's bank accounts.

That is, as an example, if at the end of the year, there is \$50,000.00 in the firm's accounts, but no bonuses are issued or moved into my personal accounts, does that mean that Ms. Kellogg is entitled to ½ of that amount even if all corporate formalities are followed and the corporate veil cannot be pierced? If so, it would cripple my ability to run the firm profitably and grow, which would ultimately benefit Ms. Kellogg and Nicole, our daughter.

To resolve this, I made several proposals to resolve the issue without further litigation to Mr. Trevor Creel, one of Ms. Kellogg's attorneys. Mr. Creel has informed me that he will discuss the matter with his client. However, it is my belief that without some guidance from the court as to how it would rule on this issue, no resolution will be had and further litigation to clarify the court's orders will be required.

A thorough review of case law and statutory law has shed no light on the issue. So, it is my fear that without a resolution by stipulation and order, a motion to clarify the court's orders and/or an appeal, which will further take the parties time and money, and clog the court and hamper its ability to handle more pressing issues, will be necessary. For the sake of efficiency and judicial economy, it is my hope this court will either entertain a telephone conference or set the matter for a settlement conference with a senior Judge to resolve that limited issue.

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Furthermore, I am troubled by the fact that, despite this court's clear directive that a proposed decree be submitted for my review and signature prior to forwarding the same to chambers, Mr. Willick and Mr. Creel drafted a decree to their liking, Mr. Willick signed it, and it was forwarded to chambers before I ever saw a draft of it. A review of the decree revealed further efforts to add terms that materially alter the settlement agreement and substantially affect my rights adversely.

As an example, a provision was added stating that Ms. Kellogg's income will not offset any support I am required to pay unless and until she works at least 32 hours a week. This serves to undermine the purpose of the offset agreement reached at the settlement conference. That is, the idea was that I support Ms. Kellogg until she graduates from college and secures employment, at which time her income will be deducted from any amount I may owe her in alimony. By making it so that no offset occurs unless she works more than 32 hours means that Ms. Kellogg can benefit from half my income and any income she receives from employment up to 32 hours a week, resulting in her earning more money than I, an unconscionable result I would never have agreed to and which was not contemplated at the settlement conference.

In lieu of a motion to reconsider or for clarification, I have been attempting to work out the issue with counsel for Ms. Kellogg. However, I fear that now that the Decree has issued, Ms. Kellogg will have little to no reason to negotiate in good faith. Again, the court's limited intervention by way of a telephone conference or by a settlement conference with a senior Judge may well resolved the matter satisfactorily and without further delay or litigation.

Another issue that was raised to counsel for Ms. Kellogg is my daughter, Nicole. To date, I have not been allowed to see her and have had limited text communication with her. I have proposed to counsel that a parenting coordinator be appointed and counseling be allowed to repair the damage inflicted, for whatever reason by whoever, to my relationship with my daughter. To date, all requests for visitation have been ignored and will not be broached without a demand for money. My position is not unreasonable.

Regrettably, I have thus far gotten nowhere in resolving this issue as my daughter has teenager discretion and Ms. Kellogg, and her attorneys, maintain that she wants to have nothing to do with me. This was not the case prior to the involvement of the Willick Law Group and the instant litigation. Obviously, in agreeing to teenage discretion, and it was by agreement, not by way of a contested hearing or trial, I did not intend to terminate my parental rights. However, the effect is the same as I have no contact with my daughter, the effect of which essentially has become the civil death penalty for me. I have informed Ms. Kellogg, through counsel, that a motion for modification of custody will be filed if this cannot be resolved as indicated above. Again, I believe that without the court's intervention, Ms. Kellogg will not be persuaded to foster a close and continuing relationship between my daughter and I.

On a minor note, there is an omitted asset in the underlying divorce action. The family dog, Blue, was not addressed in the settlement conference or in the divorce decree, though I've raised the issue several times

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with Mr. Willick and Mr. Creel, together and separately. Blue is an omitted asset as that is defined in *Aimee v. Aimee* and must be distributed in the decree of divorce. Again, this court's intervention is necessary as Ms. Kellogg and her counsel refuse to address the issue.

On a final note, I have attempted to resolve the issue of attorney's fees and costs as well as arrears with counsel. To that end, I held off on filing my objection to Plaintiff's memorandum of fees and costs though I believe the demand made to be outrageous for what turned out to be what I can only describe as a Quixotic misadventure. I filed the memorandum of fees and costs just after midnight, today. The filing occurred on the 11<sup>th</sup> day from electronic service of the memorandum of fees and costs. According to my calculation, under NR CP 6, weekends are excluded and 3 days are added for electronic service. As such, in my view the objection is timely as this court gave 10 days without providing a date certain, triggering the timing rules provided in NR CP 6. I hope that the court will accept my objection as timely and accept it, in light of the fact that I held off on filing in an effort not to inflame passions while attempting to negotiate the issues presented here and to counsel after the last hearing.

I hope it is clear to this court that the intent of this letter is to head off further time consuming and costly litigation through minimal court intervention. I remain amenable to any recommendation this court has to resolve these issues. However, without some intervention, there will be further litigation.

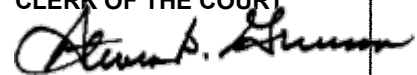
Thank you in advance for considering this letter closely.

Regards,

***/s/ Alex Ghibaud***

Alex Ghibaud, Esq.

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**MOT**

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*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-Ghibaudo (“Tara”) and Defendant Alex Ghibaudo (“Alex”) were married on December 30, 2001. The parties are the parents of one minor child, Nicole Ghibaudo, 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  
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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  
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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  
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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  
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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  
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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  
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## 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.  
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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  
8       minimum sum of \$2500 per month.

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

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       **4. TARA SHOULD BE ESTOPPED FROM ENFORCING THE DECREE**  
20       **REGARDING ALIMONY, AND HER FAILURE TO COMPLY WITH THE**  
21       **TERMS OF THE DECREE REQUIRE THE MODIFICATION OF THE**  
22       **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 decree<sup>1</sup> 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).  
17  
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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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<sup>1</sup> 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  
20 RADFORD J. SMITH, CHARTERED

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.

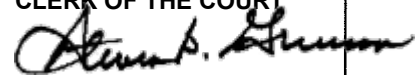
11 2. I make this Declaration based upon facts within my own knowledge, save and  
12 except as to matters alleged upon information and belief and, as to those matters, I believe  
13 them to be true.  
14

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



**EXHS**

RADFORD J. SMITH, CHARTERED  
RADFORD J. SMITH, ESQ.  
Nevada Bar No. 002791  
2470 St. Rose Parkway, Ste. 206  
Henderson, Nevada 89074  
(702) 990-6448  
rsmith@radfordsmith.com  
*Attorneys for Defendant*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

TARA KELLOGG-GHIBAUDO,

Plaintiff,

v.

ALEX GHIBAUDO,

Defendant.

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

**FAMILY DIVISION**

**DEFENDANT'S APPENDIX OF EXHIBITS TO HIS MOTION TO MODIFY  
SPOUSAL SUPPORT**

COMES NOW, Defendant, ALEX GHIBAUDO, by and through his attorney,  
Radford J. Smith, Esq., of the Law Offices of Radford J. Smith, Chartered, pursuant to

...

...

...

...

1 Rule 5.205 of the Rules of Practice for the Eighth Judicial District Court of the State of  
2 Nevada and hereby does submit his separate Appendix of Exhibits.

3 DATED this 21 day of May 2019.

4  
5 RADFORD J. SMITH, CHARTERED

6  
7 RADFORD J. SMITH, ESQ.

8 Nevada Bar No. 002791

9 2470 St. Rose Parkway, Suite 206

10 Henderson, Nevada 89074

11 (702) 990-6448

*Attorneys for Defendant*

12 **TABLE OF CONTENTS**

No.	Exhibit Title	Bates
A.	Letter and Proposed Decree of Divorce from Trevor October 2016	D-EX001- D-EX016
B.	October 6, 2016 Email string between Defendant and Trevor Creel, Esq.	D-EX017- D-EX019
C.	June 6, 2016 Email from Chattah Law Group	D-EX020- D-EX021
D.	Decree of Legal Separation attached to June 6, 2016 Email from Chattah Law Group	D-EX022- D-EX025
E.	October 5 and 6, 2016 Email string between Defendant and Trevor Creel, Esq.	D-EX026- D-EX030

# EXHIBIT “A”

**Re: Proposed Decree of Divorce**

Alex Ghibaudo

Wed 10/5/2016 11:39 PM

To: Trevor Creel &lt;trevorcreel@willicklawgroup.com&gt;

Hi Trevor,

Five points of contention. 1) to give Tara half my income and half my bonuses is to double dip. The original agreement Did not contemplate such an arrangement in lieu of waiver of a claim for waste. 2) If I pay all the taxes, retirement, etc., and still pay her 50% of my income, she is going to be effectively making more than 50% of my income. If I have such instruments and you wish to split that upon retirement by way of a QDRO, that's fine. My taxes must be taken into consideration in determining what I pay her otherwise, again, I hear all the burden and she ends up with an excess of 50% of my income. 3) it is burdensome and expensive to do a monthly review of my books. I proposed to you a quarterly review. That's what I'm willing to do. 4), if we are divorced, what I acquire going forward is mine, not community property. Finally, I have to have a set schedule with Nicole and engage in counseling with her. Otherwise, she will never exercise her discretion.

Please discuss this with your client and give me a Call to discuss.

Regards,

Alex Ghibaudo, Esq.

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On Wed, Oct 5, 2016 at 4:08 PM -0700, "Trevor Creel" <[TrevorCreel@willicklawgroup.com](mailto:TrevorCreel@willicklawgroup.com)> wrote:

Alex,

Please find attached the proposed Decree of Divorce for your review and consideration. Please provide a response on or before the close of business on October 13<sup>th</sup>.

Additionally, it has come to my attention that you have not provided Tara with her necessary support payments despite your promises to do so. Please provide Tara with the \$2,000 that you promised within the next 72 hours.

Sincerely,

**Trevor M. Creel, Esq.**

Willick Law Group

3591 E. Bonanza Rd., Ste. 200

5/1/2019

Mail - Alex Ghibaudo - Outlook

Las Vegas, NV 89110-2101

Ph. (702) 438-4100

Fax (702) 438-5311

e-mail: [trevor@willicklawgroup.com](mailto:trevor@willicklawgroup.com)

Main Website: [www.willicklawgroup.com](http://www.willicklawgroup.com)

QDRO Website: [www.qdromasters.com](http://www.qdromasters.com)

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# **EXHIBIT “B”**

RE: [Junk released by Policy action] RE: [Junk released by Policy action] Re: Proposed Decree of Divorce

Trevor Creel <TrevorCreel@willicklawgroup.com>

Thu 10/6/2016 8:34 PM

To: alex ghibaudo <alex@alexglaw.com>

Cc: Victoria Javiel <victoria@willicklawgroup.com>

Alex,

I am seeking to enforce the settlement that YOU agreed to on the record pursuant to EDCR 7.50. For the moment, I will presume that you have no intentions of abiding by that agreement and will proceed accordingly unless I hear otherwise within the next 48 hours.

To be clear, I am not attempting to "conflate" your income, instead, a neutral third party (accountant) would have access to your books to determine your monthly income. That you don't want to grant that access and effectively invite litigation is very telling.

Sincerely,



**Trevor M. Creel, Esq.**

Willick Law Group

3591 E. Bonanza Rd., Ste. 200

Las Vegas, NV 89110-2101

Ph. (702) 438-4100

Fax (702) 438-5311

e-mail: [trevor@willicklawgroup.com](mailto:trevor@willicklawgroup.com)

Main Website: [www.willicklawgroup.com](http://www.willicklawgroup.com)

QDRO Website: [www.qdromasters.com](http://www.qdromasters.com)

[View Our Newsletters](#)

**From:** alex ghibaudo [mailto:alex@alexglaw.com]

**Sent:** Thursday, October 06, 2016 7:48 AM

**To:** Trevor Creel

**Subject:** [Junk released by Policy action] RE: [Junk released by Policy action] Re: Proposed Decree of Divorce

Trevor,

I'm asking for a trial. The negotiation is no good, unworkable, and unconscionable. I'm not going to pay her what my FIRM brings in. You are conflated the firm's income with my own and that will never end. Don't bother getting back to me unless it's a stop to set aside. Otherwise I'll move forward with my motion.

Regards,

Alex Ghibaudo, Esq.

On Oct 6, 2016 6:14 AM, "Trevor Creel" <[TrevorCreel@willicklawgroup.com](mailto:TrevorCreel@willicklawgroup.com)> wrote:  
Alex,

Placing artificial deadlines is hardly beneficial, especially when you are not complying with the terms of your agreement. You just told me that over the course of the past two months your firm brought in approximately \$18,000 claiming expenses, with no supporting documentation, of approximately \$10,000. At minimum, you should be providing my client with \$4,000, although I suspect your expenses are nowhere near that amount, as it is my understanding that your rent is \$500 per month, you just retained an employee, and your marketing is probably not more than \$2,000 per month. Hell, we don't even spend more than that.

If you seek enforcement of the settlement agreement, we both know the Court is going to require transparency to determine your gross monthly income, or are you actually suggesting that Tara simply believe you? To be clear, I will be in trial these next two days and will not be supplying a response. However, I will be able to get you an answer early next week.

Sincerely,



**Trevor M. Creel, Esq.**

Willick Law Group  
3591 E. Bonanza Rd., Ste. 200  
Las Vegas, NV 89110-2101  
Ph. (702) 438-4100  
Fax (702) 438-5311  
e-mail: [trevor@willicklawgroup.com](mailto:trevor@willicklawgroup.com)  
Main Website: [www.willicklawgroup.com](http://www.willicklawgroup.com)  
QDRO Website: [www.qdromasters.com](http://www.qdromasters.com)  
[View Our Newsletters](#)

**From:** alex ghibaudo [mailto:[alex@alexglaw.com](mailto:alex@alexglaw.com)]  
**Sent:** Thursday, October 06, 2016 2:40 AM  
**To:** Trevor Creel  
**Subject:** [Junk released by Policy action] Re: Proposed Decree of Divorce

Hi Trevor,

Here's the bottom line. No deal. We can go to trial or your client can sign off on the original decree. I will file a motion to enforce the negotiated settlement by Friday under DCR 16 if I don't have an answer either way. Consider this my EDCR 5.11 communication. I will be in the office All day today if you wish to discuss further.

Regards,

Alex Ghibaudo, Esq.

On Oct 5, 2016 4:08 PM, "Trevor Creel" <[TrevorCreel@willicklawgroup.com](mailto:TrevorCreel@willicklawgroup.com)> wrote:

>

5/1/2019

Mail - Alex Ghibaudo - Outlook

> Alex,

>

>

>

> Please find attached the proposed Decree of Divorce for your review and consideration. Please provide a response on or before the close of business on October 13th.

>

>

>

> Additionally, it has come to my attention that you have not provided Tara with her necessary support payments despite your promises to do so. Please provide Tara with the \$2,000 that you promised within the next 72 hours.

>

>

>

> Sincerely,

>

>

>

>

>

> Trevor M. Creel, Esq.

>

> Willick Law Group

>

> 3591 E. Bonanza Rd., Ste. 200

>

> Las Vegas, NV 89110-2101

>

> Ph. (702) 438-4100

>

> Fax (702) 438-5311

>

> e-mail: trevor@willicklawgroup.com

>

> Main Website: www.willicklawgroup.com

>

> QDRO Website: www.qdromasters.com

>

> View Our Newsletters

>

>

>

>

# EXHIBIT “C”

**Deana DePry**

---

**From:** Alex Ghibaudo <abg1975@live.com>  
**Sent:** Friday, November 02, 2018 10:29 AM  
**To:** Radford Smith  
**Subject:** Fwd:  
**Attachments:** SEPARATION DECREE.docx; ATT00001.htm

**TimeMattersID:** M8540A9A72B81649  
**TM Contact:** Alex Ghibaudo  
**TM Matter No:** D-15-522043-D  
**TM Matter Reference:** Ghibaudo v. Ghibaudo

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---

**From:** Tara Kellogg <tarakellogg1@gmail.com>  
**Sent:** Thursday, August 11, 2016 3:38:44 AM  
**To:** Alex Ghibaudo  
**Subject:** Fwd:

Sent from my iPhone

Begin forwarded message:

**From:** Sigal Chattah <[sigal@thegoodlawyerlv.com](mailto:sigal@thegoodlawyerlv.com)>  
**Date:** June 6, 2016 at 10:20:14 AM PDT  
**To:** Alex Ghibaudo <[abg1975@live.com](mailto:abg1975@live.com)>, Tara K <[tarakellogg1@gmail.com](mailto:tarakellogg1@gmail.com)>

Good Morning Alex and Tara,

Here is the proposed Decree for your review. Please advise me if there are any modifications or changes.

Thank You,

Sigal

--

Chattah Law Group  
5875 S. Rainbow Blvd #203  
Las Vegas, NV 89118  
Tel: (702) 360-6200  
[Thegoodlawyerlv.com](http://Thegoodlawyerlv.com)

This e-mail communication is a confidential attorney-client communication intended only for the person named above. If you are not the person named above, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please e-mail the sender that you have received the communication in error. Thank you.

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# EXHIBIT “D”



**DECR**

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 Ghibaudo

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

TARA KELLOGG GHIBAUDO,	)	
	)	CASE NO.: D-15-522043-D
	)	DEPT.: T
Plaintiff,	)	
	)	
vs.	)	
	)	
ALEX GHIBAUDO,	)	
	)	
Defendant.	)	
	)	
	)	

**DECREE OF LEGAL SEPARATION**

The above entitled matter came on for a Settlement Conference on May 18, 2016 at 1:30 p.m. in Conference Room #326 and the parties reached an agreement as follows:

1. All requirements contained in NRS, 125.190, 125.210, 125.230 AND 125.280 have been met.
2. Plaintiff, TARA KELLOGG GHIBAUDO and Defendant, ALEX GHIBAUDO shall continue in sharing joint legal custody of the minor child, NICOLE GHIBAUDO.
3. Plaintiff, TARA KELLOGG GHIBAUDO is to continue having primary physical custody of the minor child, NICOLE GHIBAUDO.

1           4.       Plaintiff, TARA KELLOGG GHIBAUDO shall continue to receive the sum of  
2 \$819.00 per month in child support pursuant to the agreement set forth in the order of November  
3 19, 2015. Said amount is based on Defendant's gross monthly income.

4           5,       The parties, at any time, may see termination of Decree of Legal Separation and  
5 pursue a Decree of Divorce.

6           6.       Defendant, ALEX GHIBAUDO, shall pay Plaintiff, TARA KELLOGG  
7 GHIBAUDO, the sum of \$2,500.00 per month in alimony. This amount includes the \$819.00  
8 per month payment for child support.

9           7.       Plaintiff, TARA KELLOGG GHIBAUDO'S alimony shall continue until such  
10 time as she becomes employed and the alimony amount may be re-calculated at 50% of the  
11 proportional shares of the Defendant, ALEX GHIBAUDO'S gross monthly income.

12           8.       When Plaintiff, TARA KELLOGG GHIBAUDO has gained employment, the  
13 monthly alimony payment may be re-calculated to an amount of no less than 50% of Defendant,  
14 ALEX GHIBAUDO's gross monthly income, but determined between the differences of the  
15 parties' gross monthly income. Plaintiff, TARA KELLOGG GHIBAUDO, will be entitled to  
16 receive half of that sum, but no less than \$2,500.00 per month.

17           9.       When the minor child, NICOLE GHIBAUDO, turns 18 years of age, the alimony  
18 shall remain at the agreed to amounts between the Parties of \$2,500.00 per month or the greater  
19 amount of one-half of the difference between the Parties' incomes and will not be reduced by the  
20 reduction or termination of child support.

21           10.       The final period of time for the alimony to be paid is fifteen (15) years.

22           11.       Defendant, ALEX GHIBAUDO, shall be responsible for all debts incurred by the  
23 community estate up until May18, 2016 and the signing of this Decree of Legal Separation.  
24  
25

1 Defendant, ALEX GHIBAUDO, will indemnify Plaintiff, TARA KELLOGG GHIBAUDO,  
2 against any and all actions by and all creditors of any of said debts.

3 12. Any debts incurred after the signing of this Decree of Legal Separation shall be  
4 the sole responsibility of the Party incurring said debt.

5 13. There is no community property to be divided between the Parties with the  
6 exception of Defendant, ALEX GHIBAUDO's interest in his law practice. His share of the law  
7 practice will remain community property. Should Defendant, ALEX GHIBAUDO, be paid for  
8 any portion of said practice, one half (1/2) of the amount he receives will be payable to Plaintiff,  
9 TARA KELLOGG GHIBAUDO, as one-half (1/2) of the community property.

10 14. All property acquired after May 18, 2016, shall remain as community property  
11 unless the Parties mutually agree otherwise in writing.

12 15. The Parties shall submit the information required by NRS 125.190, NRS 125.210,  
13 NRS 125.230, and NRS125.280 on a separate form to the Court and the Welfare Division of the  
14 Department of Human Resources within ten (10) days from the date of filing of this Decree of  
15 Legal Separation. Such information shall be maintained by the Clerk in a confidential manner  
16 and not part of the public record. The parties shall update the information filed with the Court  
17

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

1  
2  
3 and the Welfare Division of Human Resources within (10) days should any information become  
4 in accurate.

5 Dated this \_\_\_\_ day of June, 2016

6  
7 JUDGE OF THE DISTRICT COURT

8 Submitted by:

9 CHATTAH LAW GROUP

10  
11 SIGAL CHATTAH, ESQ.

Nevada Bar No. 8264

12 5875 S. Rainbow Blvd., #204

13 Las Vegas, NV 89118

Attorney for Plaintiff,

14 TARA KELLOGG GHIBAUDO

15 Approved as to Form and Content:

16  
17 ALEX GHIBAUDO

Nevada Bar No. 10592

18 376 Warm Springs Rd., #140

19 Las Vegas, NV 89119

Attorney for Defendant In

20 Proper Person

# EXHIBIT “E”

RE: [Junk released by Policy action] RE: [Junk released by Policy action] Re: Proposed Decree of Divorce

Alex Ghibaudo

Thu 10/6/2016 8:45 PM

To: Trevor Creel <trevorcreel@willicklawgroup.com>

Ok

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On Thu, Oct 6, 2016 at 1:41 PM -0700, "Trevor Creel" <[TrevorCreel@willicklawgroup.com](mailto:TrevorCreel@willicklawgroup.com)> wrote:

I have a client conference at 2:00 but should be available after 3:00 today.

Sincerely,



**Trevor M. Creel, Esq.**

Willick Law Group

3591 E. Bonanza Rd., Ste. 200

Las Vegas, NV 89110-2101

Ph. (702) 438-4100

Fax (702) 438-5311

e-mail: [trevor@willicklawgroup.com](mailto:trevor@willicklawgroup.com)

Main Website: [www.willicklawgroup.com](http://www.willicklawgroup.com)

QDRO Website: [www.qdromasters.com](http://www.qdromasters.com)

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**From:** Alex Ghibaudo [mailto:[abg1975@live.com](mailto:abg1975@live.com)]

**Sent:** Thursday, October 06, 2016 1:41 PM

**To:** Trevor Creel

**Subject:** [Junk released by Policy action] RE: [Junk released by Policy action] RE: [Junk released by Policy action]

Re: Proposed Decree of Divorce

I'm with a client if you have time in 30 min I will call you.

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On Thu, Oct 6, 2016 at 1:39 PM -0700, "Trevor Creel" <[TrevorCreel@willicklawgroup.com](mailto:TrevorCreel@willicklawgroup.com)> wrote:

In what way does it not conform to the principal terms?

Sincerely,



**Trevor M. Creel, Esq.**

Willick Law Group  
3591 E. Bonanza Rd., Ste. 200  
Las Vegas, NV 89110-2101  
Ph. (702) 438-4100  
Fax (702) 438-5311  
e-mail: [trevor@willicklawgroup.com](mailto:trevor@willicklawgroup.com)  
Main Website: [www.willicklawgroup.com](http://www.willicklawgroup.com)  
QDRO Website: [www.qdromasters.com](http://www.qdromasters.com)  
[View Our Newsletters](#)

**From:** Alex Ghibaudo [<mailto:abg1975@live.com>]

**Sent:** Thursday, October 06, 2016 1:37 PM

**To:** Trevor Creel

**Subject:** [Junk released by Policy action] RE: [Junk released by Policy action] RE: [Junk released by Policy action]  
Re: Proposed Decree of Divorce

Do What you want. I'm setting it aside one way or another because your decree does not confirm to any agreement we entered into. I'm not bending to her stubborn will anymore.

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On Thu, Oct 6, 2016 at 1:34 PM -0700, "Trevor Creel" <[TrevorCreel@willicklawgroup.com](mailto:TrevorCreel@willicklawgroup.com)> wrote:

Alex,

I am seeking to enforce the settlement that YOU agreed to on the record pursuant to EDCR 7.50. For the moment, I will presume that you have no intentions of abiding by that agreement and will proceed accordingly unless I hear otherwise within the next 48 hours.

To be clear, I am not attempting to "conflate" your income, instead, a neutral third party (accountant) would have access to your books to determine your monthly income. That you don't want to grant that access and effectively invite litigation is very telling.

Sincerely,

**Trevor M. Creel, Esq.**

Willick Law Group

3591 E. Bonanza Rd., Ste. 200

Las Vegas, NV 89110-2101

Ph. (702) 438-4100

Fax (702) 438-5311

e-mail: [trevor@willicklawgroup.com](mailto:trevor@willicklawgroup.com)Main Website: [www.willicklawgroup.com](http://www.willicklawgroup.com)QDRO Website: [www.qdromasters.com](http://www.qdromasters.com)[View Our Newsletters](#)**From:** alex ghibaudo [<mailto:alex@alexglaw.com>]**Sent:** Thursday, October 06, 2016 7:48 AM**To:** Trevor Creel**Subject:** [Junk released by Policy action] RE: [Junk released by Policy action] Re: Proposed Decree of Divorce

Trevor,

I'm asking for a trial. The negotiation is no good, unworkable, and unconscionable. I'm not going to pay her what my FIRM brings in. You are conflated the firm's income with my own and that will never end. Don't bother getting back to me unless it's a stop to set aside. Otherwise I'll move forward with my motion.

Regards,

Alex Ghibaudo, Esq.

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Alex,

Placing artificial deadlines is hardly beneficial, especially when you are not complying with the terms of your agreement. You just told me that over the course of the past two months your firm brought in approximately \$18,000 claiming expenses, with no supporting documentation, of approximately \$10,000. At minimum, you should be providing my client with \$4,000, although I suspect your expenses are nowhere near that amount, as it is my understanding that your rent is \$500 per month, you just retained an employee, and your marketing is probably not more than \$2,000 per month. Hell, we don't even spend more than that.

If you seek enforcement of the settlement agreement, we both know the Court is going to require transparency to determine your gross monthly income, or are you actually suggesting that Tara simply believe you? To be clear, I will be in trial these next two days and will not be supplying a response. However, I will be able to get you an answer early next week.

Sincerely,



**Trevor M. Creel, Esq.**

Willick Law Group

3591 E. Bonanza Rd., Ste. 200

Las Vegas, NV 89110-2101

Ph. (702) 438-4100

Fax (702) 438-5311

e-mail: [trevor@willicklawgroup.com](mailto:trevor@willicklawgroup.com)Main Website: [www.willicklawgroup.com](http://www.willicklawgroup.com)QDRO Website: [www.qdromasters.com](http://www.qdromasters.com)[View Our Newsletters](#)**From:** alex ghibaudo [mailto:[alex@alexglaw.com](mailto:alex@alexglaw.com)]**Sent:** Thursday, October 06, 2016 2:40 AM**To:** Trevor Creel**Subject:** [Junk released by Policy action] Re: Proposed Decree of Divorce

Hi Trevor,

Here's the bottom line. No deal. We can go to trial or your client can sign off on the original decree. I will file a motion to enforce the negotiated settlement by Friday under DCR 16 if I don't have an answer either way. Consider this my EDCR 5.11 communication. I will be in the office All day today if you wish to discuss further.

Regards,

Alex Ghibaudo, Esq.

On Oct 5, 2016 4:08 PM, "Trevor Creel" <[TrevorCreel@willicklawgroup.com](mailto:TrevorCreel@willicklawgroup.com)> wrote:

&gt;

&gt; Alex,

&gt;

&gt;

&gt;

> Please find attached the proposed Decree of Divorce for your review and consideration. Please provide a response on or before the close of business on October 13th.

&gt;

&gt;

&gt;

> Additionally, it has come to my attention that you have not provided Tara with her necessary support payments despite your promises to do so. Please provide Tara with the \$2,000 that you promised within the next 72 hours.

&gt;

&gt;

&gt;

&gt; Sincerely,

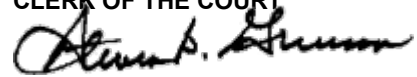
&gt;

&gt;

5/1/2019

Mail - Alex Ghibaudo - Outlook

>  
>  
>  
> Trevor M. Creel, Esq.  
>  
> Willick Law Group  
>  
> 3591 E. Bonanza Rd., Ste. 200  
>  
> Las Vegas, NV 89110-2101  
>  
> Ph. (702) 438-4100  
>  
> Fax (702) 438-5311  
>  
> e-mail: trevor@willicklawgroup.com  
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> Main Website: www.willicklawgroup.com  
>  
> QDRO Website: www.qdromasters.com  
>  
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>



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.

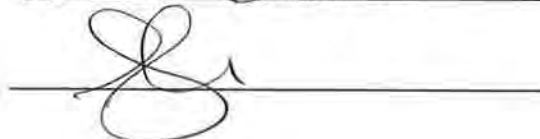
**Step 3.** Add the filing fees from Step 1 and Step 2.

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



**Appellant's Appendix 148**

**OPPS**

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*Tara Kellogg Ghibaud*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

TARA KELLOGG GHIBAUDO,	)	
	)	CASE NO.: D-15-522043-D
	)	DEPT.: T
Plaintiff,	)	
	)	<b>PLAINTIFF'S OPPOSITION TO MOTION</b>
vs.	)	<b>FOR MODIFICATION OF SPOUSAL</b>
	)	<b>SUPPORT</b>
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.<sup>1</sup>

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.  
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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.  
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22 <sup>1</sup> 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

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

[*Emphasis added*]

*See Decree PG 13, lns. 3-10*

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

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

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

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

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 20<sup>th</sup> 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*  
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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 20<sup>th</sup> 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 1<sup>st</sup> 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 13<sup>th</sup> “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

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

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

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

## 20 II.

### 21 LEGAL ARGUMENT

#### 22 A. TARA HAS PROVIDED SUFFICIENT EVIDENCE TO SATISFY THE 23 STANDARD FOR A FINDING OF CONTEMPT BY THIS COURT

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



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

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

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

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

14 NRS 22.110 sets forth in pertinent part:

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

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

21 Civil contempt is characterized by the court's desire to **compel obedience to a court**  
22 **order**, or to compensate the contemnor's adversary for the injuries which result from the  
23 noncompliance. *Shillitani v. United States*, 384 U.S. 364, 369, 16 L. Ed. 2d 622, 86 S. Ct. 1531  
24 (1966). Thus, there are two forms of civil contempt: compensatory and coercive. *United States v.*  
25 *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 ADMINSTRING 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 SIGAL CHATTAH ESQ.  
22 Nevada Bar No.: 8264  
23 CHATTAH LAW GROUP  
24 5875 S. Rainbow Blvd #204  
25 Las Vegas, Nevada 89118  
Attorney for Plaintiff  
*Tara Kellogg Ghibardo*



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

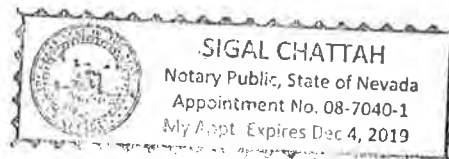
9 That I am the Plaintiff in the above-entitled action, that I have read the foregoing  
10 Opposition and Countermotion and know the contents thereof; that the same is true of my own  
11 knowledge, except those matters therein contained stated upon information and belief, and as to  
12 those matters,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



FILED

AUG 24 2021

*Heaven A. Griffin*  
CLERK OF COURT

ORIGINAL

EIGHTH JUDICIAL DISTRICT COURT  
FAMILY DIVISION  
CLARK COUNTY, NEVADA

TARA KELLOGG-GHIBAUDO, )  
)  
Plaintiff, )  
)  
vs. )  
)  
ALEX GHIBAUDO, )  
)  
Defendant. )

CASE NO. D-15-522043-D  
DEPT. H  
APPEAL NO. 82248  
(SEALED)

BEFORE THE HONORABLE T. ARTHUR RITCHIE, JR.  
DISTRICT COURT JUDGE

TRANSCRIPT RE: EVIDENTIARY HEARING (VOL.1)

THURSDAY, SEPTEMBER 17, 2020

APPEARANCES:

The Plaintiff:  
For the Plaintiff:

TARA KELLOGG GHIBAUDO  
R. CHRISTOPHER READE, ESQ.  
1333 North Buffalo Dr. #210  
Las Vegas, Nevada 89128

The Defendant:  
For the Defendant:

ALEX GHIBAUDO  
RADFORD J. SMITH, ESQ.  
2470 St. Rose Parkway #206  
Henderson, Nevada 89074

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I N D E X O F W I T N E S S E S

<u>PLAINTIFF'S WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
LARRY BIRCH	187	195	202	--
<u>DEFENDANT'S WITNESSES:</u>				
ALEX GHIBAUDO	22	90	102,181	--
TARA KELLOGG GHIBAUDO	106	134	170	--

\* \* \* \* \*

I N D E X O F E X H I B I T S

<u>PLAINTIFF'S EXHIBITS:</u>	<u>ADMITTED</u>
(None presented)	
<u>DEFENDANT'S EXHIBITS:</u>	
A through Y      No description given	9

1 LAS VEGAS, NEVADA

FRIDAY, OCTOBER 23, 2020

2 P R O C E E D I N G S

3 (THE PROCEEDINGS BEGAN AT 09:05:13)

4  
5 THE COURT: On the Kellogg and Ghibaudo matter, we  
6 have Counsel present. We have arranged for this evidentiary  
7 proceeding to be heard through the use of a Bluejeans  
8 appearance pursuant to administrative order. Counsel, I guess  
9 Mr. Smith first, please state your appearance.

10 MR. SMITH: Radford Smith on behalf of Alex  
11 Ghibaudo. Bar number 2791, Your Honor.

12 THE COURT: Okay.

13 MR. SMITH: And Mr. Ghibaudo is -- should be here  
14 shortly. He was on his way.

15 THE COURT: That's fine. Counsel? Mr. Reade?

16 MR. READE: All right. Yeah. I'm sorry, Your  
17 Honor. I wanted to make sure I wasn't muted. Christopher  
18 Reade, 6791 on behalf of Plaintiff, Tara Kellogg. I have  
19 Ms. Kellogg with me here this morning.

20 THE COURT: Okay. Now, other than the parties and  
21 maybe an expert, are there going to be any other witnesses for  
22 today?

23 MR. READE: We do not anticipate any other witnesses  
24 other than the parties, and our expert witness, Larry Birch,

1 who is also on this Bluejeans call.

2 THE COURT: Right. I bring that up because we did  
3 make invitations for connections at the court date last week,  
4 and we want to make sure that if we have any witnesses, lay  
5 witnesses other than the parties, that they're not part of the  
6 broadcast until they're needed. And it doesn't appear that we  
7 have any. Mr. Smith, any witnesses besides the parties for  
8 you?

9 MR. SMITH: No, Your Honor.

10 THE COURT: All right. Excellent. In preparation  
11 for today, we reviewed how we got here, which is a review of  
12 the stipulated judgment that was entered following the  
13 settlement conference with the senior judge. That, you know,  
14 has been reviewed many times concerning the parties' rights  
15 and obligations.

16 And this matter was reopened with defendants filing  
17 on May 30th, 2019, asking to -- for relief from some of those  
18 provisions of the stipulated judgment, either to modify or to  
19 address some of them. There are -- and I'm not going to  
20 comment on the problematic nature of the agreement that they  
21 made.

22 But there is a significant financial obligation that  
23 he has each and every month. Mr. Reade, you filed, or she  
24 filed a response and a request with support by schedules to

1 adjudicate sums that she says have not been paid pursuant to  
2 the agreement. And this matter, for a myriad of reasons, has  
3 been pending for more than a year, while discovery has been  
4 completed and while we dealt with scheduling issues.

5           So I hope that we receive sufficient proof today in  
6 the form of the testimony and documentary proof so that the  
7 Court can resolve the pending matters. The Court's read all  
8 the papers in the case, including the settlement, stipulated  
9 decree. They -- it looks like what we're -- what you're going  
10 to be establishing, Mr. Smith, is trying to provide sufficient  
11 proof of some sort of income from him, right?

12           And at the time of settlement, you represented his  
13 income gross was 6,666. And based on his filings, I think he  
14 wants -- he's going to be walking me through his income over  
15 the last three years, right?

16           MR. SMITH: Yes, Your Honor. We have the tax  
17 returns that were recently --

18           THE COURT: Again --

19           MR. SMITH: -- finished.

20           THE COURT: -- we're going -- to we're going to have  
21 -- it's going to be a nice tedious exercise between the three  
22 of us as we walk through the various objections that will come  
23 up as documentary --

24           MR. READE: All right.

1           THE COURT:  -- proof is presented.  But you're going  
2 to be presenting a case, I'm trying to look at the big picture  
3 here, that would support some sort of finding of difference in  
4 -- different income than when he had the settlement conference  
5 with Judge Hardcastle in May of 2016, right?

6           MR. SMITH:  Correct.

7           THE COURT:  All right.  And he's going to be asking  
8 for some sort of relief from the provisions of the agreement  
9 that said that under any circumstances, he would pay minimum  
10 \$2,500 to her, and without regard for any kind of income that  
11 might be imputed to her.  That's at page 9, paragraph 3 of the  
12 -- of the decree, because he wanted the opportunity to do  
13 discovery to make some sort of case that she had an earning  
14 potential, and that the Court should make some findings  
15 concerning earnings.  So you're going to be asking the court  
16 to make some findings there, right?

17          MR. SMITH:  Yes.

18          THE COURT:  All right.  And the, you know, since  
19 this agreement was in consideration for a waiver of divorce-  
20 related claims, it is a support obligation.  And none of the  
21 operative events have occurred.  In other words, she's not  
22 remarried.  So this is an ongoing obligation for him, right?

23          MR. SMITH:  Yes, Your Honor.

24          THE COURT:  And you're going to be asking, or at

1 least asking for relief from this obligation, either a  
2 reduction, or elimination, or modification.

3 MR. SMITH: Correct, Your Honor.

4 THE COURT: All right. Now, for both of you, one of  
5 the things that occurs to the Court, no matter what the  
6 decision is for this, is that if the agreement isn't addressed  
7 in some manner, this is a dispute that will continue for  
8 another 10 years, okay, which creates a huge problem that we  
9 have.

10 The Plaintiff is entitled to significant support.  
11 She's entitled to adjudicate what she hasn't been paid. And  
12 she's entitled to, you know, not have to litigate this matter  
13 every year for the next 10 years. So one of the things that  
14 the Court is considering, and it's a challenge for me, is what  
15 to do with, you know, this financial obligation that he agreed  
16 to under these circumstances.

17 So I want you to be thinking in terms of remedies as  
18 to how you see this case at the end. Now, Mr. Reade, I  
19 understand that the Court has been focusing on the, sort of  
20 like the the minimum obligations. She is, or may be making a  
21 case to find that not only did he not pay what he should have  
22 paid, but he should have paid more than what the minimum  
23 obligation is. Is that something I should be looking for?

24 MR. READE: That is correct, Your Honor.



1           THE COURT: All right. So that would be on a theory  
2 that he was making more than \$80,000 a year in any of the last  
3 few years, right?

4           MR. READE: Correct, Your Honor.

5           THE COURT: Okay. So I -- so I have a -- I have a  
6 good framework of what my job is for this today. Are there  
7 any stipulations concerning the 1,000s of pages of document  
8 offers? You know, I have my electronic files here. And I  
9 have proposed exhibits for both of you. And I wonder if  
10 there's any stipulations concerning any of these?

11          MR. READE: Your Honor, on behalf of the Plaintiff,  
12 we would stipulate to Defendant's exhibits A through Y. We  
13 would object to Exhibit Z, which has not been provided or  
14 produced prior to yesterday.

15          THE COURT: Okay. So A through Y stip. And this  
16 would have been disclosures that were made pursuant to either  
17 voluntary or pursuant to discovery since this matter was  
18 reopened?

19          MR. READE: Correct, Your Honor.

20          THE COURT: All right. Any of your exhibits, do we  
21 have any stipulations, Mr. Smith, concerning Plaintiff's  
22 exhibits?

23          MR. SMITH: Your Honor, I think much of the -- many  
24 of the same exhibits are contained in the books for

1 Ms. Kellogg. So I haven't compared those, to be honest. And  
2 I don't know if Mr. Reade and Ms. Stutzman, who is handling  
3 the preliminary matters, has had a chance to talk about that.  
4 But unfortunately, she could not be present this morning, Your  
5 Honor. So I have no way of knowing what --

6 THE COURT: Okay. So, Mr. Reade, you might know  
7 that whether or not the important exhibits that you have  
8 marked for identification fall within A through Y, right? So  
9 I'll leave that up to you. I'll make the assumption that we  
10 have in the stipulation only as to Defendant's A through Y at  
11 this time.

12 (Defendant's Exhibits A through Y admitted)

13 THE COURT: And my clerk can get to the business of  
14 confirming that for her record. We are scheduled for  
15 resolving this matter today. If you need a break, let me  
16 know, but I want to try to get as much of the evidence in this  
17 morning as we can. Maybe we can finish. If not, there will  
18 be a recess for a lunch break, and then we'll resume. If we  
19 need time this afternoon, we'll take it.

20 MR. READE: Your Honor, there is one preliminary  
21 matter that I guess I would ask the Court to take up.  
22 Plaintiff had a motion on order shortening time in front of  
23 you due to a lack of production of financial records from the  
24 Defendant.

1           THE COURT: Yeah. They -- well first of all, I --  
2 it would have been -- there is a hearing on October 14th, and  
3 that's an objection to recommendations. That's a moot issue.  
4 I know that you filed a motion in opposition. You filed a  
5 reply yesterday. I was a little busy yesterday afternoon.  
6 But I did get a chance to look at it since then.

7           The way we're going to handle it is that when  
8 Mr. Ghibauda offers testimony or evidence that would be  
9 something that would come under this objection, and the  
10 sanction you're seeking is to exclude that evidence, you would  
11 object. And --

12           MR. READE: That's correct, Your Honor.

13           THE COURT: -- the Court -- if it -- the Court will  
14 deal with it that way.

15           MR. READE: Right.

16           THE COURT: The big picture approach to this is that  
17 he provided discovery in response to your requests for  
18 production. They're probably part of what you stipulated to  
19 admit, and that nothing material has been delivered to you  
20 that should be admissible since the end of last year. Is that  
21 pretty much the summary of it?

22           MR. READE: Correct, Your Honor, since August 2019.

23           THE COURT: All right. So if there's been no  
24 production to you, and you have ongoing obligations to

1 supplement or to respond based on promises supplement, and he  
2 offers something that hasn't been produced or wasn't produced,  
3 then you object and the Court should consider excluding that  
4 evidence. Okay?

5           So I'm not going to issue a blanket statement that  
6 claims are precluded, or the defenses are precluded.  
7 Obviously, that certainly could happen. But I'm going to  
8 start with this notion that he's going to put on his case.  
9 And if it's appropriate for you to object because it falls  
10 under one of those problems, then you just let me know. Okay?

11           And so, Mr. Smith, do you want to make a statement?

12           MR. SMITH: Yes, Your Honor. I do. Just a basic  
13 statement to walk you through the evidence that I think is  
14 going to be submitted. Let me first note that Mr. Reade has  
15 indicated that there was no productions after August of '19.  
16 That's clearly not correct.

17           In the opposition, we see that the production under  
18 the rules was timely, and in fact that it was set, the  
19 production of the some of the most recent productions were set  
20 in response to requests for production of documents that  
21 Mr. Reade had submitted only almost precisely 30 days prior to  
22 the end of discovery, I believe.

23           But the the notion that he didn't provide the  
24 underlying evidence, he has over time provided the same

1 documents he provided to his -- his accountant. Those  
2 documents were -- are now, we believe, contained in our  
3 exhibit books.

4           We are not going to walk you through the various  
5 documents now that they have been admitted. The documents  
6 themselves are the underlying documents for the tax returns,  
7 which is what we are going to base the calculation of any  
8 obligation that Mr. Ghibauda owes -- owed under the decree of  
9 divorce.

10           As the Court has indicated, we're going to be  
11 dealing with that document and its terms, some of which are  
12 not entirely clear in our view. And we'll -- we'll have to  
13 get some read -- we would -- would have done a an overall  
14 calculation, but we're not even sure how the -- the Court will  
15 approach issues like the comparison of incomes in light of the  
16 fact that Ms. Reade has -- has, we believe, voluntarily  
17 chosen, and the evidence will show, not to work within the 32  
18 hour parameters that are contained in the the doc -- the  
19 decree.

20           I think I would be remiss, Your Honor, not to note  
21 that all this arose from a document that was never intended to  
22 be used to prepare a summary decree, which is what happened in  
23 this case. The evidence is clear. There is no really any  
24 evidence of factual dispute that can be logically presented

1 today that the agreement that was entered before Judge  
2 Hardcastle was for purposes only of a stipulated separation  
3 agreement that was designed to, the evidence will show, to  
4 allow the parties to attempt reconciliation.

5           When they weren't able to reconcile, instead of  
6 negotiating a new agreement in regard to support including a  
7 new term, Mr. Willick saw fit to present to the Court motions  
8 that were designed to incorporate, again, the agreement that  
9 was for separation into the final decree which was entered  
10 summarily, without evidence, and without findings even  
11 supporting the award of support.

12           Now, the Court has weighed in on this issue  
13 previously. So today's evidence will be focused on whether or  
14 not it is reasonable under the circumstances, because as the  
15 Court has noted, Alex did not appeal that order. And you  
16 know, regretfully, he did not.

17           He tried to have it set aside. He tried to have the  
18 findings and facts and conclusions of law changed. He wanted  
19 to have a hearing on the issue. All of that was denied by  
20 Judge Brown. But he didn't appeal it. And again, I think he  
21 regrets that to this day.

22           And that leads us to be here because there's -- we  
23 will submit, the evidence will show there's no possible basis  
24 for the order that was currently entered other than this

1 stipulated separation agreement. And, Your Honor, worse than  
2 that, the evidence will show that Mr. Willick added terms that  
3 were nowhere to be found in the summary determination  
4 referenced by the minutes of the Court, which the Court can  
5 take judicial notice of, it has indicated that it has  
6 reviewed.

7           There's no reference anywhere there to the line that  
8 Mr. Willick said that the family report was somehow related to  
9 some claim of dissipation of assets. Mr. Ghibauda had not  
10 worked for five years due to his suspension. There was no way  
11 there were any assets, and you can see from the division of  
12 assets to -- to possibly waste or to otherwise transfer.

13           And the evidence will show that he didn't do that.  
14 The evidence to show that he lived on an inheritance to  
15 provide for the parties' existence. And those couldn't have  
16 been wasted because they were his. So this idea, Your Honor,  
17 that this was possibly within the the orbit of fair to  
18 Mr. Ghibauda is -- it's not -- the evidence will not show  
19 that.

20           The evidence will show that the way this came down,  
21 the -- it was unfair, continues to be unfair. It is  
22 extraordinarily unusual and untenable in terms of how we  
23 determine his obligation. Our position, as the Court  
24 previewed, is that his income at the time that he imagined

1 this deal for the term of separation only was, the evidence  
2 will show it was about \$60,000 a year. His tax return for  
3 that year, 2016, will show that.

4 The evidence will also show that his -- what his  
5 income is, is 2017, and that portion of 2019, before the  
6 filing of this motion. Your Honor, he -- he hired my firm. I  
7 don't know why he chose to represent himself. I think that he  
8 was trying to build a practice. And he did. And he became  
9 busy with that. And he was more focused on that.

10 I know that the Court had some preliminary hearings  
11 where he'd raised these claims, as well. But he finally  
12 decided to hire our firm and we filed the motion that's now  
13 before the Court. And that evidence will show that -- that  
14 there is adequate basis for the Court to find that under  
15 Ramsey (ph) (indiscernible) that this order, whatever order  
16 the Court may make in regard to the continuing support of  
17 Mr. Ghibaudo, that that order should be retroactive to the  
18 time of the filing motion of April 19.

19 So, Your Honor, we believe the evidence will show  
20 that the proper calculation should be done through his  
21 financial terms of 2016. We think that that is the amount of  
22 income that should be imputed to him through all of the years.  
23 But if the Court uses the '17 and '18 income, and the  
24 proportional share of '19, then the Court should apply the



1 terms of the the decree of divorce.

2 Those terms, as the Court has indicated, extremely  
3 unusual. They also involve, and here's where I think it gets  
4 somewhat unclear to me. They involve the -- the recitation of  
5 income of, and the comparison of income of -- of the  
6 Plaintiff.

7 And In that regard, Your Honor, the evidence will  
8 show that she's willfully under employed, and that she has  
9 been willfully underemployed for several years. She has --  
10 she's a -- was at some point in time a perpetual student.

11 And as the Court can see, another of the provisions  
12 that Mr. Willick did not transfer into this summary decree  
13 that he convinced Judge Brown to enter was the very essence of  
14 the agreement, and that was the modification of the language  
15 of the, or the metric of the alimony that would include a  
16 determination of when she would work full time after she  
17 completed college, because she was attending college at the  
18 time. So and, Your Honor, I think the other thing the  
19 evidence will show is that there was no possible basis for the  
20 terms of that order, based upon Mr. Ghibaud's earnings during  
21 that period of time.

22 The other thing that would come at Your Honor is  
23 this, the notion that I think Mr. Reade is going to argue, and  
24 his witness will argue that the documents were not provided,

1 and those documents should not be reviewed. The underlying --  
2 again, I think the evidence will show that the underlying  
3 documents associated with his tax returns were provided as  
4 part of discovery and are in the books that are here today.

5           The -- in regard to the calculation then, our view  
6 is that the evidence will show that the calculation should  
7 begin on the date of the decree, which is January 2017, should  
8 include a view of his gross income on his tax return, not  
9 gross from all revenues, but his gross (indiscernible) stated  
10 on his tax returns, and that the -- the amount that he did  
11 pay, which is also reflected on the tax returns, should be  
12 deducted from that amount.

13           We also believe that a reasonable wage should be  
14 imputed, and the evidence hold show that a reasonable wage  
15 should be imputed to the Plaintiff, and that that wage should  
16 be deducted as part of the comparison of the incomes that's  
17 required under the formula. The formula also contemplates,  
18 Your Honor, that there would be a deduction. In other words,  
19 it includes and therefore should be a deduction of the \$819  
20 that was identified as child support.

21           That's in the terms, we believe, of the family  
22 support. And it specifically says that we shall include the  
23 \$819, and then later indicates that that amount should not be  
24 excluded when the child reaches the age of majority. So we

1 believe that the \$819 should be included in the -- the amounts  
2 that were -- were calculated, and therefore deducted from the  
3 amounts calculated for the period prior to the time of the  
4 child's child support obligation ended. I don't know if that  
5 was at 18 or -- we'll clarify that through Mr. Ghibaud's  
6 testimony.

7 THE COURT: Well, I don't --

8 MR. SMITH: The --

9 THE COURT: Look, he filed in May of 2019. The  
10 child emancipated in May 2019. This -- the variable or the  
11 discussion about how that \$819 is characterized is addressed  
12 in the contract, and he has no basis to modify it prior to May  
13 2019. So I don't understand --

14 MR. SMITH: Well, it's not a matter of --

15 THE COURT: -- what you're saying.

16 MR. SMITH: Modification, Your Honor, is the  
17 argument is that the \$819 was included in the calculation of  
18 the minimum amount that was to be paid.

19 THE COURT: Yeah. Page 9, paragraph 3 says that no  
20 less than X amount of dollars, okay, and specifically talks  
21 about when the child support goes away. There -- that's -- I  
22 just, I don't, you know, I don't mind. I mean, this is more  
23 of an argument than it is an opening statement. The -- you  
24 know, I don't want an argument now, and then an argument in a

1 few hours, okay?

2 But that the obligation -- the decision for the  
3 Court is whether he owes \$2,500 from the time that obligation  
4 began through April 2019, or he owes more than \$2,500 between  
5 that time to August 2019. There is no going to -- there's not  
6 going to be any reopening of his financial obligations in any  
7 other way prior to the filing of this motion in May of 2019.

8 MR. SMITH: We're not suggesting that, Your Honor.  
9 We're just suggesting that one way to read that language is to  
10 include the \$819 obligation that is contained in the  
11 calculation of the minimum amount, and -- or of any amount  
12 that he may owe, because it's called -- and there's -- the  
13 reason for that is it's called specifically family support.

14 And they did that on purpose, because they wanted to  
15 include the idea of child support within that calculation.  
16 And my point was going to be that the evidence will show that  
17 presently, that matter has been addressed through -- the  
18 obligation of any additional support has been addressed  
19 through the R Court, and therefore that calculation can simply  
20 be \$819 less than the amount that's contained in the --  
21 whatever the Court determines to be the obligation.

22 So that was the only point that I was going to make,  
23 Your Honor. So with that, it's only Mr. Ghibaudo that is  
24 prepared to testify. And I think that's all that's going to

1 be necessary. So we would end with that, Your Honor.

2 THE COURT: Okay. Mr. Reade, do you want to make an  
3 opening statement?

4 MR. READE: I'd love to argue it right now, Your  
5 Honor. But since the Court has said it doesn't want to argue,  
6 let me just clarify a few points. The issue on the financial  
7 documents is not that there hasn't been productions since  
8 August '19. It's that the bank statements that have been  
9 produced are not post-August 2019.

10 We have nothing since August 2019 to be able to  
11 calculate income and expenses. And in fact, Mr. Ghibaudo  
12 states in his discovery responses, if you want to know what my  
13 legitimate business expenses were and how much money I made,  
14 look at my bank statements. I can't look at his bank  
15 statements after August 2019 because he hasn't produced them.  
16 That's the issue.

17 And in fact, that's the argument in the motion  
18 related to the most recent document production is that  
19 Mr. Birch said I can look at his tax returns, and I can just  
20 have to assume it on faith that they're correct, because  
21 without the backup documents, we're just assuming and taking  
22 Mr. Ghibaudo's word for it.

23 That's the argument. That's the problem with the  
24 records he has not produced. So what Ms. Kellogg is going to

1 show you is that the assertion just made about child support  
2 backs out, that's expressly belied by the decree page 10,  
3 paragraph 5 that says under no circumstances will the support  
4 ever go below \$2,500. Ever.

5 So what was just represented to you is expressly  
6 contrary to the agreement and the decree. That's plain wrong.  
7 With that being said, Mr. Birch is going to tell you, I don't  
8 have the documents because Mr. Ghibaudo hasn't produced them.  
9 With that being said, we'll take his word for it for today for  
10 purpose of this hearing because I'm going to give you a  
11 calculation. I'm going to do the math for the Court and tell  
12 this Court exactly how much Ghibaudo -- Mr. Ghibaudo owes  
13 under the decree of divorce.

14 And with that, Your Honor, I'd like to just get to  
15 the evidence.

16 THE COURT: Okay. Great. Thank you. So I assume  
17 Mr. Ghibaudo is here now, right? Mr. Smith?

18 MR. SMITH: Yes. Yes, he's here.

19 THE COURT: Okay, great. So the -- I know that  
20 you're in a conference room setting it looks like. Just make  
21 sure that we're able to have good audio from the witness. If  
22 we -- we'll have him take an oath to tell the truth and then  
23 begin answering your questions.

24 Mr. Ghibaudo, good morning.

1 THE DEFENDANT: Good morning, Your Honor.

2 THE COURT: Will you raise your right hand and take  
3 an oath to tell the truth?

4 (Oath administered)

5 THE WITNESS: I do.

6 THE CLERK: Thank you.

7 ALEX GHIBAUDO,  
8 called as a witness on his own behalf, having first been duly  
9 sworn, did testify upon his oath as follows on:

10 DIRECT EXAMINATION

11 BY MR. SMITH:

12 Q Please state your name for the record.

13 A Alex Ghibaudo.

14 Q And, Mr. Ghibaudo, you're the Defendant in this  
15 action, correct?

16 A Yes.

17 Q And you understand that you have filed a motion that  
18 leads us to be here today?

19 A I have.

20 Q Was everything contained in that motion true and  
21 correct to the best of your knowledge?

22 A Yes.

23 Q The -- you have submitted a financial disclosure  
24 form that is Exhibit A to the -- this proceeding. Let me show

1 you that. And that was submitted on 5/30/2019.

2 A Yeah.

3 Q Is all the information in that -- that document  
4 accurate?

5 A It is.

6 Q And has anything materially changed other than some  
7 variations in your calculation of your 2019 income now? Has  
8 anything material -- material changed since the time that you  
9 filed this document? Please review it if you need to.

10 A It -- my income is a lot less because of the COVID.  
11 COVID has really affected business.

12 Q Tell me about that. How has it affected your  
13 business?

14 A Well I made, you know, as comparison between August  
15 of this year and August of last year was about half of what I  
16 made. I made about half this year what I made last year.

17 Q And what's the --

18 A In August -- I mean, I'm sorry, in April, I only  
19 made \$6,000. The only -- the only way I didn't shut my doors  
20 was because I got the PPP from the government.

21 Q And you took a loan for the PPP from the government,  
22 the the SBA loan?

23 A Yeah.

24 Q How much did you receive?



1           A     \$24,000 is all.

2           Q     Okay.

3           A     \$20,000 for the PPP, and then \$4,000 from the EIDL.

4           Q     Okay. And have you gone through that money at this  
5 time?

6           A     It's gone, yeah.

7           Q     Okay. And do you, at the present time, do you see  
8 any change in your business since the time that COVID first  
9 began?

10          A     No. It's really dependent on -- you know, I don't  
11 cater to higher income people. So we're really dependent on  
12 people that have been hit the hardest by the pandemic, people  
13 who work at the hotels and stuff like that.

14          Q     The -- you -- your -- obviously you're a law firm.  
15 Tell me how you handle your cases. How do you -- how do you  
16 bill them, for example?

17          A     I do flat fees. I don't handle trust funds. I just  
18 do strict flat fees. So I'll -- I'll just -- the first  
19 contract -- usually most of my cases are family cases. So I  
20 can charge them one fee from the preparation of complaint and  
21 the initial motion that we always do through FMC. And then if  
22 a trial is necessary, then I'll bill them again.

23          Q     The -- why did you go to a flat fee structure? Has  
24 that been the case since the time that you opened your own

1 firm, or is that change over time?

2 A It's just been because I just felt like until I got  
3 the books straight, I didn't want, you know, jeopardize making  
4 a mistake with the trust. So it's a lot easier to administer.

5 Q Okay.

6 A It is a lot easier.

7 Q You talked about getting your books straight. At  
8 the time that you filed this action, had you filed your tax  
9 returns for 2016 through '19?

10 A No, I did not.

11 Q How did you go about -- or first of all, why didn't  
12 you file tax returns during that period of time?

13 A Looking back now, it may seem like I made a lot of  
14 money. But as I was going through it, I just didn't -- I felt  
15 like it was paycheck to paycheck. I was just trying to  
16 survive. So, last on my list of things that I needed to pay  
17 or do was taxes.

18 Q Have you current -- have you subsequently had your  
19 tax returns prepared?

20 A Yes.

21 Q And who prepared those tax returns?

22 A David Deiterman.

23 Q Prior to having Mr. Deiterman prepare those tax  
24 returns, were there any steps that you needed to take in order

1 to provide the information underlying the preparation of those  
2 returns?

3 A Just -- I don't understand the question.

4 Q Did you -- was there anyone else involved, prior to  
5 Mr. Deiterman's involvement, associated with getting your  
6 books in order?

7 A Yeah. My -- so I hired a bookkeeper, Dawn (ph).

8 Q Okay. And what --

9 A Dawn Kilmer (ph).

10 Q Dawn Kilmer. And Ms. Kilmer, What was her function  
11 in this process of getting your books back in order?

12 A She compiled all the relevant documents, analyzed  
13 them, and then sent it all over to the CPA for them to crunch  
14 the numbers.

15 Q Okay. And those documents are contained, and I want  
16 you to look at those documents that you've provided to first  
17 the bookkeeper and then the -- the accountant. Those are  
18 contained in your -- in the books that you've -- we've  
19 provided to the Court, correct?

20 A Yes. That's all of it.

21 Q All right. And Mr. Reade pointed out that the  
22 documents even in these books are to August '19. Do you know  
23 why there's not an August '19? Or had there been any  
24 production of documents subsequent to August '19?

1           A     As far as I know, we produced everything. In fact,  
2 continue to produce, or at least the bookkeeper sent to your  
3 office documents through August, I think.

4           Q     Okay. They're -- if looking at the exhibits that  
5 had been admitted, there's a Chase account through August  
6 2019. But there aren't records other than the payroll  
7 journals, the quarterly reports, and the July 2018 to  
8 September 2019 records associated with the paychecks in  
9 regards to 2020. Do you know if the other, for example, the  
10 bank account statements through 2020 have been provided?

11          A     Yeah.

12          Q     Okay. So you --

13          A     As far as I know, yeah.

14          Q     You believe that they were. All right. So in  
15 Exhibit Q is a balance sheet for 2020. Let's turn to that.

16               MR. SMITH: And that's in volume four, Your Honor, I  
17 believe.

18               THE COURT: I'm not using books. The control number  
19 on the bottom starts at 2228?

20               MR. SMITH: Let me take a look, Your Honor. Yes,  
21 Your Honor.

22               THE COURT: All right.

23 BY MR. SMITH:

24          Q     Can you tell me what this document is and how it was

1 generated?

2 A It's a balance sheet for my business. It was -- it  
3 was generated by my bookkeeper Dawn Kilmer. And she asked me  
4 for my bank statements and other relevant records that she  
5 needed. And that's what she did with it.

6 Q Okay. And this was the -- the balance sheet that  
7 she came up with as of January 31st, 2020?

8 A Right.

9 Q Okay. And then it goes on, I think, through yeah, I  
10 think February of 2020, correct?

11 A Right.

12 Q And the COVID shutdown occurred in or about March of  
13 2020?

14 A Yeah, March 12th.

15 Q Okay. And was it -- and is that -- on your previous  
16 testimony in regard to the problems with your business, or the  
17 -- the downturn of your business, is that the period where  
18 that began, or did it begin afterwards because you had  
19 existing clients? What happened?

20 A I think what -- March was fairly normal. But then  
21 April, when they -- when everything was shut -- when things  
22 really slowed down, I brought in exactly \$6,000 that month.  
23 And that's a departure. I mean, I think the income from  
24 January of this year reflected something like 70,000.

1           And from that to \$6,000, that's a huge hit. And  
2 it's been kind of a little bit bouncing back. But like I  
3 said, well, my client -- my clients are unemployed. It's  
4 difficult for them to pay me. And new clients aren't coming  
5 in because, you know, everybody's terrified of not being able  
6 to pay their rent, or pay other necessities. So in other  
7 words, a lot of -- like, for example, in March, I had a couple  
8 of people that asked for a refund because they prefer to stay  
9 together and save money than get a divorce in the middle of  
10 the pandemic.

11         Q     The -- the tax returns that were ultimately  
12 determined, or prepared, excuse me, by your accountant, those  
13 are contained in Exhibits S through V. Could you look through  
14 those and tell me if those are the tax returns that you  
15 actually, ultimately submitted to the Internal Revenue  
16 Service?

17         A     Yeah. This is what David Deiterman -- yes.

18         Q     Okay. Do you know when those were submitted?

19         A     We filed them I think at the beginning of August.  
20 But for some reason, the IRS rejected them. So then Deiterman  
21 told me to wait 30 days and just mail them in. So we mailed  
22 them in I think September 1st.

23         Q     Do you know why the IRS rejected them?

24         A     I don't know. He said -- he said --

1 Q If you don't know, and it's only based on --

2 A Well --

3 Q -- Mr. Deiterman's --

4 A It's just based on what Mr. Deiterman said just  
5 because of the 2016 one. So --

6 MR. READE: I'm going to object as to hearsay, Your  
7 Honor.

8 THE COURT: Sustained.

9 MR. SMITH: I tried to get him not to do that. So,  
10 thank you, Counsel.

11 THE COURT: I know. He can't help himself. But  
12 that -- look, the Court will disregard the statement that  
13 obviously is a statement of --

14 MR. SMITH: And it --

15 THE COURT: -- someone else.

16 MR. SMITH: Thank you, Your Honor.

17 BY MR. SMITH:

18 Q The 2016 to 2020 statements, to your knowledge, do  
19 they accurately report what your income was during those  
20 years?

21 A Yeah.

22 Q So the claim that's being made is under the decree  
23 that you've obviously read, and you've argued even to Judge  
24 Ritchie about it previously. So I'm going to not go over

1 that. But you understand that the -- that the calculation of  
2 support that you ostensibly owe to Ms. Kellogg is based on  
3 your gross income. Do you recall that?

4 A Well, no. I think it was gross minus legitimate  
5 business expenses. And then that would be what was what we'd  
6 use to calculate whatever I owe her I think is what the deal  
7 was at the time.

8 Q I think that gross income is defined in a way in the  
9 decree itself, and I'll let the Court review that. But the  
10 gross income for purposes of determining the support would be  
11 the income after business expenses that is contained on your  
12 tax returns prior to any deduction for alimony; is that fair?

13 A Yes.

14 Q So in 2016, it would be \$60,823, although the decree  
15 was not entered until January of '17, correct?

16 A Right. February. February of 2017.

17 Q February '17. I thought it was January. All right.  
18 So the next document would be the return for 2017, which would  
19 be the first operative return. And that return was -- shows  
20 an income prior to deductions of alimony. That's on the first  
21 page of the return of \$148,258, although there are itemized  
22 deductions that are added on to that in regard to other  
23 things. But the gross income would have been \$148,258. Do  
24 you agree?



1           A     Yes.

2           Q     And then 2018, your income would be contained in  
3 that return, which is contained in Exhibit U. And on the  
4 first page of that document, it appears to be the income of  
5 \$180,000 before deductions for -- your standardized deductions  
6 which would be allowed, and the -- the amount of the alimony  
7 paid. You see that?

8           A     Yes.

9           Q     The 2019 return of which part of that year is the  
10 time preceding the filing of this motion, and then part of it  
11 subsequent, the amount is \$133,490. Do you see that?

12          A     Yes.

13          Q     And to your knowledge, do these accurately reflect  
14 the income that you earned during those years? Do you have  
15 any reason to believe that it's not accurate?

16          A     It's accurate.

17          Q     Okay. And again, the process was you had a  
18 bookkeeper look through all of your records and make what --  
19 what did she do in order to, to your knowledge, to get those  
20 records ready for Mr. Deiterman?

21          A     I know that I do everything through my bank account.  
22 So I just provided her access to all my accounts, and in  
23 addition to all the -- the places that I would use to, like,  
24 for credit card processing, for example, like PayPal. So she

1 just analyzed all that, compiled it into the balance sheets.  
2 And (indiscernible) the balance sheets plus the underlying  
3 documents to Mr. Deiterman who generated the tax returns from  
4 that.

5 Q Okay. Did you have any role in determining the  
6 compilation that was prepared by either the bookkeeper or the  
7 -- Mr. Deiterman?

8 A My only role was to sign off on having -- them  
9 having access to all my records.

10 Q Okay. And those records are the records that are  
11 contained and the volumes that we've presented, and are -- are  
12 now admitted to the Court?

13 A Yes.

14 Q All right. Let me walk you through the process of  
15 getting to the decree, and your understanding of what the  
16 decree was intended to provide. How did the -- the decree  
17 arise?

18 A Well, I will tell you at some point in 2016, she  
19 wasn't getting along with her lawyer. We just agreed that I  
20 would -- the idea was that I would help support her until she  
21 got her college degree, kind of like how I -- I didn't have to  
22 work while we -- while I was going to school because I had a  
23 lot of money that I had inherited.

24 So the idea was I'll support you, you know, go to

1 school. But when you're done and you get a job, I'm done  
2 paying too. That was the idea. Also it was, we were still  
3 trying to work our relationship, too. So that was the purpose  
4 of the separate maintenance agreement. It was never my intent  
5 to pay for 15 years. I'm not insane. I'm a lawyer.

6 And I had sent her at one point an email directly  
7 saying that. No, I directly told her it was never my intent  
8 to pay you for 15 years straight.

9 Q Was that an email sent to Ms. Kellogg?

10 A Yes, to her directly. Yeah.

11 Q All right. In regard to the -- the -- what happened  
12 procedurally after that time, after you two had talked and  
13 agreed on those terms?

14 A We had a settlement conference in front of Judge  
15 Hardcastle.

16 Q And that's Kathy Hardcastle?

17 A Yes.

18 Q Who was present at the settlement conference?

19 A Me, Tara, her lawyer, and Judge Hardcastle.

20 Q Without belaboring the point, because that's been a  
21 point of contention throughout this matter, there were minutes  
22 that were produced from that settlement conference. Do you  
23 recall that?

24 A Yes.

1 Q And those minutes, do they accurately reflect what  
2 you had agreed with the Plaintiff in the settlement  
3 conference?

4 A I don't --

5 Q Yeah. I don't know if I have those in my books or  
6 not.

7 A Because I mean, I -- I think I objected to the first  
8 round of decrees of divorce sent by Sigal Chattah. So I don't  
9 know that the minutes were necessarily accurate.

10 Q Okay. You've referenced something along the lines  
11 of a decree of divorce. Did Ms. Chattah send you a decree of  
12 divorce?

13 A No, no. She sent a decree of separate maintenance.  
14 And --

15 Q And why was that?

16 A That was what we'd agreed to.

17 Q Okay.

18 A It wasn't a divorce.

19 Q All right. So --

20 A Then she hired Willick, and then they started  
21 dropping all these insane decrees of divorce, adding terms and  
22 demanding that I sign off or I would be faced with a  
23 tremendous amount of attorneys fees.

24 Q Okay. The decree of divorce is contained in the

1 record, or the exhibits of the Plaintiff. So I'll have you  
2 look at that in a moment. But what was the process that --  
3 you said Ms. Chattah sent you a separation agreement.

4 A So she sent me a separation agreement after the  
5 settlement conference, which I think was on May 18th I want to  
6 say. So I think around June or July. She had delayed  
7 forever. I don't know if she was really getting along with  
8 her client. But she ended up sending me a decree of separate  
9 maintenance.

10 And I don't remember if -- I think at that point I  
11 may have told her I don't agree with this and, you know, we  
12 should probably have a trial at this point because I'm not --  
13 not agreeing to any of this. I sent her an -- an email  
14 directly.

15 Q What was your understanding at the time of the -- of  
16 how the separation agreement would apply? In other words,  
17 when would it end, when would it -- would it be permanent?  
18 What was your understanding at the time that you entered into  
19 that agreement?

20 A Well, my understanding was that we would -- we would  
21 maintain the agreement we had entered into until one of us  
22 wanted a divorce. If that was to occur, then we'd have to  
23 have a trial to determine what a final order would be. That's  
24 what --

1 Q And your --

2 A I told her in the email.

3 Q In your communications with Mr. Creel, did you  
4 indicate that you had objected to the entry of a decree of  
5 divorce?

6 A Yeah.

7 Q Okay.

8 A Oh yeah, absolutely.

9 Q And --

10 A Especially the one they drew up.

11 Q Okay. Do you believe that the decree of divorce  
12 that was drafted, that's Exhibit 1, so I'm going to provide  
13 that to you, was entirely consistent with even the -- the  
14 agreement that you had reached to a -- for a separation  
15 agreement?

16 A No. And that was the whole point of that round of  
17 litigation early on in 2016 is that they wanted to add  
18 material terms, and I was telling them no. For example, they  
19 wanted to add a provision that I never agreed to that I would  
20 owe -- that I would maintain life insurance on my life for the  
21 benefit of Tara. We never even talked about that. And they  
22 tried to cram that down my throat, for example. I don't know  
23 if -- another thing, like, I don't know where this waste claim  
24 came from. We never even talked about any of that.

1           Q     I was going to ask you about that. I'm glad you  
2 referenced it. So in the discussions that formed the basis  
3 for the, or the minutes of the settlement conference, at any  
4 time did you and -- and the Plaintiff discuss the term of  
5 waste or any allegation of waste?

6           A     Never. Never. I mean, she was upset always because  
7 when I was in law school, I spent a lot of money. I was out  
8 there by myself. I was young. So I spent a lot. But she  
9 knew exactly what was going on at the time.

10          Q     What was happening --

11          A     I wasn't hiding anything.

12          Q     Where did you get the money that you were spending?

13          A     I sold my inheritance to my brother. So we  
14 inherited a family business. And I sold my portion of it to  
15 my brother. He paid me.

16          Q     How much -- how much -- how much did you receive, to  
17 your recollection, in that?

18          A     I think the business itself was sold for \$890,000.  
19 And then I had a house that belonged to me that was sold for  
20 120. So all together something just over a million.

21          Q     At some point in time you were -- you were suspended  
22 from the practice of law. Is that correct?

23          A     Yeah, I was.

24          Q     Was when did that occur?

1           A       That was in June of 2009.

2           Q       Okay. And -- and you were -- how long were you  
3 suspended and unable to practice law?

4           A       Well, the suspension officially is for three years.  
5 But it ended up being five because I -- I voluntarily chose  
6 not to go back to it (indiscernible) in a position -- a good  
7 position.

8           Q       Okay. So you -- you came back to the practice of  
9 law using those numbers in approximately 2014?

10          A       Yeah. I was reinstated in 2014.

11          Q       Okay. When did you start actually practicing law  
12 for compensation after 2014, after you were reinstated?

13          A       I was working for Eric Roy at the time, so as soon  
14 as I got -- I got reinstated, I just started practicing as a  
15 lawyer for him.

16          Q       Now, I -- I should have asked you. What did you do  
17 in the meantime for -- for -- to earn money, you know, between  
18 2009 to 2014?

19          A       I was essentially a paralegal at law firm. So I  
20 worked just -- initially I worked for Joseph Scalia. I wrote  
21 for him, helped him with intakes because I speak Spanish.  
22 After that, I went from Joe Scalia to Tom Stafford. Oh, he's  
23 my friend of mine. I worked for him for a minute. And then  
24 Eric, Eric Roy, I worked for him. And then --



1 Q Eric -- Mr. Roy has a PI practice.

2 A Now he does. But when he started, it was family.

3 Q It was family. Okay. So at that time, you were  
4 helping him with family law matters?

5 A Yeah.

6 Q So in 2014, you just continued to work with Mr. Roy,  
7 but now as an attorney after you were reinstated.

8 A Right.

9 Q At the time that you entered this stipulation  
10 through the settlement in the 2016, had you built a practice  
11 of your own, or were you still working for Mr. Roy?

12 A I wasn't employed at that time, actually.

13 Q Okay.

14 A So from -- I think it was from May to June, I  
15 established my business now. I was just sitting at home  
16 watching TV.

17 Q Okay.

18 A I was taking a break, really.

19 Q And at the time that you entered this agreement with  
20 -- with Ms. Kellogg, how much were you earning?

21 A I think I was getting money from unemployment  
22 because I had previously worked for a real estate firm, Noggle  
23 Law. And he laid me off. So I was just collecting  
24 unemployment.

1 Q Okay. So I take it it was at or about the time that  
2 you entered this agreement that you started your firm. Is  
3 that correct?

4 A It was after.

5 Q After. And --

6 A It was --

7 Q And how long after, if you recall?

8 A So the settlement conference was May 18th, and I  
9 filed the sole proprietorship I think it was June 30th of  
10 2006.

11 Q Okay. So your business is in the form of a sole  
12 proprietorship, or --

13 A Started that way --

14 Q -- an LLC. Okay.

15 A Started that way. And then it -- it shifted over to  
16 a professional corporation, January 1st of 2017.

17 Q Okay.

18 A I didn't know what I was doing. So I just, you  
19 know.

20 Q Did the -- the PC, or is there any other holders of  
21 stock in that PC other than you?

22 A No, it's just me.

23 Q And do you run your business presently through that  
24 corporation?

1           A     Yes.

2           Q     Is it fair to say because of the status of you using  
3 one account that there were some issues associated with  
4 whether or not you had been appropriately identifying a  
5 separation between your PC and your individual earnings?

6           A     Well, yeah. I mean, I had a lot of trial and error,  
7 you know? I am not even a good accountant. So --

8           Q     Had you ever run a practice of your own prior to  
9 that date?

10          A     I did, but just briefly. I started when I -- when I  
11 graduated from -- when I got licensed, I started my own  
12 practice in 2008. But then when the economy crashed, the  
13 practice crashed, and I started working for Joe Scalia.

14          Q     Okay. And -- and you operated your firm, as you  
15 indicated, out of one account. Where was that account?

16          A     Always with Chase.

17          Q     Okay. And are those Chase records contained in the  
18 documents that you both --

19          A     All of them.

20          Q     That you both produced and are contained in the  
21 records --

22          A     And there were multiple accounts through the years.  
23 So we produced from every single account. I mean, we went out  
24 of our way to collect from Chase records that I had they had

1 to mail to me, for example.

2 Q Okay.

3 A Stuff that's like, it's been out of dates for four  
4 years now, you know, accounts, multiple accounts.

5 Q When were you first married to miss Kellogg?

6 A 2001.

7 Q What was the date of that marriage?

8 A December 30th, 31st, something like that.

9 Q Okay. So if we're talking about May of 2016, you've  
10 been married for approximately 14 years?

11 A Yeah.

12 Q Fourteen and a half years --

13 A Right.

14 Q Does that sound right?

15 A Yeah. We had been separated for a long time in  
16 between. We never had a good relationship.

17 Q Yet you agreed to a term in the separation portion  
18 of 15 year.

19 A Right, I --

20 Q Based upon your experience as family lawyer, would  
21 that be a reasonable term for a divorce that had occurred at  
22 that time?

23 A No. No Judge --

24 MR. READE: Your Honor, I'm going to object. Your

1 Honor, if I may interpose an objection. That calls for an  
2 expert opinion.

3 THE COURT: Yeah.

4 MR. READE: He's not --

5 THE COURT: It -- it would ordinarily be --

6 MR. SMITH: It's an opinion.

7 THE COURT: Look, it would ordinarily be  
8 objectionable if it was asked by anybody but a party. But  
9 it's really neither here nor there, Mr. Smith. It's  
10 irrelevant. The objection's sustained.

11 MR. SMITH: It -- okay.

12 BY MR. SMITH:

13 Q Well, in regard to the -- the term, were you  
14 expecting at the time you entered into that stipulated  
15 settlement in the -- for the separation on May 18th, were you  
16 expecting that that would be the term of any divorce alimony?

17 A No. No.

18 Q So the -- the decree was --

19 A It was a reflection of the fact that we were trying  
20 to -- I was trying to keep the marriage together for the sake  
21 of my -- my daughter. But I wanted to reserve the right to  
22 not have to pay that with a divorce. That's what the divorce  
23 -- that's what the agreement reflects.

24 Q What was Ms. Kellogg's financial status at the time

1 that you entered into the agreement in 2016?

2 A She was -- she wasn't working. She was going to  
3 school. She never worked. She doesn't want to work. To this  
4 day she doesn't want to work.

5 Q Did she ever indicate that to you, that she didn't  
6 desire to work?

7 A Yeah. She -- I mean, her role models were always  
8 the, you know, housewives. So her -- her desire always was to  
9 just sit at home and nothing. I want -- I didn't want her to  
10 sit at home. We had a lot of money. And I would tell her all  
11 the time and, you know, invest in something, do something with  
12 it. You have all the time in the world. She had some bead  
13 business, for example, that she was talking to her sister  
14 about at one point. But she would never do nothing. She  
15 liked to watch TV. That's what she did.

16 Q When you said you had a lot of money, what do you --  
17 what were you referring to?

18 A Well, I had the sale of the business. So initially,  
19 the sale --

20 Q But just to clarify, the sale of the business, you  
21 referenced earlier to selling your business to your brother.  
22 Is that --

23 A Yeah.

24 Q -- what you're referring to?

1           A     That's right.

2           Q     Okay.

3           A     Yeah.

4           Q     And that was a business that you inherited?

5           A     That's the business that we inherited from my dad  
6 when he passed --

7           Q     Okay.

8           A     -- when he passed away.

9           Q     So when you're talking about you had a lot of money,  
10 you're referring to that, or are you referring to some other  
11 --

12          A     Right. No, no. It was all -- all the money I ever  
13 had through the entire marriage was just from the sale of that  
14 business. We lived off that because it was a lot of money.

15          Q     And how much did you receive? I'm sorry. Maybe I  
16 asked you this previously.

17          A     The initial was something like \$300,000. And then I  
18 was getting a monthly \$5,000.

19          Q     Okay.

20          A     Then I think when I was in law school in 2004, my  
21 brother decided just pay me off entirely.

22          Q     Do you recall what the amount of the money that he  
23 provided you?

24          A     It was like 600,000 almost.

1           Q     Okay. So that was the money that you were talking  
2 about --

3           A     Oh, yeah.

4           Q     -- when you were talking about living? All right.  
5 So in regard to the financial status of Ms. Kellogg at the  
6 time she entered the agreement in 2016, what was your  
7 understanding?

8           A     She wanted to be a drug and alcohol counselor. She  
9 had a bad addiction, addiction to cocaine and alcohol. And  
10 she went through recovery. Her desire, she wanted to go to  
11 school to become a social worker, essentially. I thought if  
12 there's anything she could do, it's that. I mean, she had an  
13 epic drug problem. So, you know, that was the idea.

14          Q     Okay. So at the time, was she studying toward that  
15 goal of being a alcohol and --

16          A     She was --

17          Q     -- drug counselor?

18          A     She was -- she was she was focusing on psychology,  
19 and on the side she had a little business. She had a little  
20 job at her rehab clinic where she -- she was like a house mom  
21 once a day. Or once, yeah, once a day.

22          Q     Okay. So --

23          A     Once a week.

24          Q     -- she was -- she was working in the rehabilitation



1 clinic that she had -- had attended?

2 A Yes.

3 Q Okay. And in addition, she was a student, and were  
4 at?

5 A CSM.

6 Q Okay. So she was studying to -- what degree toward  
7 -- what degree --

8 A Psychology, I thought, my understanding was at the  
9 time.

10 Q And at the time --

11 A A lot of homework was all psychology.

12 Q At the time that you entered into the agreement, how  
13 long to your knowledge had she been attending CSM toward that  
14 goal?

15 A So by then, it had been about three years.

16 Q Okay.

17 A So she's already taken a minute. But you know, she  
18 was trying to take it slow I think, taking no more than three  
19 classes a week. And she had her excuses or whatnot. But it  
20 seemed like she would do less and less.

21 Q Okay. And at that time, that was your understanding  
22 is that she was a student who had been in college for three  
23 years, working on a degree toward allowing her to become a  
24 social worker. Do I have that right?

1           A     Yeah. And so, and my thought was that because she  
2 had been there already for three years, that she would jump  
3 over to UNLV and graduate within two or so. It wasn't my --  
4 my thought wasn't -- because it took me three years to  
5 graduate from an UNLV, and I didn't work. I thought she could  
6 do the same thing. Why couldn't she.

7           Q     Okay. And so, at the end of the day, though, the --  
8 you said Ms. Chattah had sent you a separation agreement. The  
9 separation agreement was never executed and entered in the  
10 Court, was it?

11          A     It was not, because right after she sent that I got  
12 a letter from Willick. And then the nonsense really started.

13          Q     Okay. When you're referring to the nonsense, are  
14 you referring to negotiations in regard to the entry of a  
15 decree?

16          A     There were -- there's no negotiating with them. It  
17 was here's the -- here's what we want. Sign it or you're --  
18 or we're going to go to court and you're going to pay us all  
19 of our attorneys fees.

20          Q     So --

21          A     I said go to court.

22          Q     -- at some point in time, they did go to court. And  
23 Judge Brown --

24          A     Denied their motion.

1 Q -- denied their motion?

2 A Their motion was denied, because what they were  
3 trying to do is modify what we agreed to under the guise of a  
4 motion to enforce an order. It was just -- just legal  
5 nonsense.

6 Q But subsequently, Judge Brown entered a decree?

7 A She entered a decree, but -- but even that decree  
8 was nonsense.

9 Q Okay. But something had to prompt her after the  
10 denial of the motion to enter a decree. What did? Was it an  
11 additional motion?

12 A Well, no. Their motion was for to enforce and/or to  
13 answer the decree.

14 Q Okay. And ultimately, as a result of that motion,  
15 she did enter a decree?

16 A She entered a decree. So initially -- so in other  
17 words, I guess she denied what they wanted, the provisions  
18 they wanted to add, like, for example, the \$500,000 life  
19 insurance.

20 Q Okay. So I don't -- I don't want to spend too much  
21 time on that. I just want to get through the history of it.

22 A Okay.

23 Q So you entered into negotiations. Those broke down.  
24 Mr. Willick requested that the decree be entered consistent

1 with the terms of what he alleged were the May 16, 2018  
2 agreement. Is that your understanding?

3 A Yes.

4 Q So when the decree was entered, did you take any  
5 steps to address the decree? And first of all, was there any  
6 trial at any time of any of the facts associated with the  
7 findings contained in the decree?

8 A No. And I requested one.

9 Q Did -- at any time, did the judge make any specific  
10 findings in regard to the factors that are stated in NRS --

11 A None, because we didn't -- the arguments before  
12 Judge Brown were never about any facts dispute, ever. It was  
13 all legal, whether she can -- whether this, what they're  
14 asking for is a modification or not.

15 Q Okay. So, Mr. Ghibaudo, you are a lawyer. You had  
16 the opportunity, I think you did. The record will show that  
17 -- the court record will show that you tried to set aside and  
18 change the findings of facts and conclusions of law, and those  
19 motions were denied. Why didn't you appeal the judgment?

20 A I mean, looking back now, at the time I was just,  
21 it's like you said initially, I was so caught up in working  
22 that -- and dealing with them because even after the decree  
23 was entered, I'd hear from Creel or Willick every other day  
24 about that I owe her this and I owe her that, and do this and

1 do that. And so I just, you know, I just -- it was just a lot  
2 going on in my life personally at the time. And an appeal of  
3 that was -- it just slipped my mind. I did object. I sent --  
4 I think I filed a letter around that time, and objected to  
5 Judge Brown to the entry of the decree.

6 Q But that's -- you understand that's not an appeal,  
7 right?

8 A That's not. Right.

9 Q All right. So --

10 A But that's where my mind was at.

11 Q We're left with the decree of divorce that's been  
12 entered. You understand that?

13 A Yeah.

14 Q All right. Let's look at Exhibit 1, which is the  
15 decree. And I'm going to move over to -- I apologize.  
16 Exhibit 1 is the decree of divorce. And we'll turn to the  
17 terms of the decree addressing the alimony. It's called post  
18 divorce family support. Do you know why it was called family  
19 support as opposed to alimony?

20 A I have no idea.

21 Q Okay. In the document, it said --

22 A It wasn't negotiated. That's why -- I have no idea  
23 why it says that.

24 Q The document reflects that the -- the minimum amount

1 of support is \$2,500 per month for a period of 15 years.

2 MR. SMITH: Oh. And, Your Honor, I want to reflect  
3 for the record that my assistant, Courtney Janssen (ph) is now  
4 in the room. She's a paralegal.

5 THE COURT: Thank you.

6 BY MR. SMITH:

7 Q In regard to the -- the terms of the calculation,  
8 it's \$2,500. And then it also talks about an amount in  
9 addition to 50 percent of any bonuses Alex may receive from  
10 his place of employment. Do you know what is meant by bonuses  
11 in that paragraph?

12 A I have no idea because at the time, I had no -- I  
13 didn't have any inkling. In fact, I could not actually start  
14 a business at the time that we entered into this agreement  
15 because I was on probation with the state bar. So anytime you  
16 get reinstated, they put you on probation for a period of  
17 years until they have confidence that you can be on your own.  
18 So, and just through -- the agreement was basically half of my  
19 net income, you know, after taxes is what my understanding was  
20 given that I was going to work as an employee. And the last  
21 job that I was at I made \$72,500.

22 Q So in this action, the characterization contained in  
23 Ms. Kellogg's analysis of your obligations has also included,  
24 over and above your salary, any amount that you've taken as

1 draws in your --

2 A Yeah. It's impossible that we negotiated that or  
3 that was ever contemplated because like I said, at the time I  
4 was on -- I was still on probation with the bar and I couldn't  
5 get a -- have my own business if I wanted to.

6 Q Okay.

7 A I always just anticipated -- all of this was the  
8 anticipation was that I was just going to get a job as an  
9 associate. And then everything's going to go off of that  
10 salary.

11 Q And your salary that you were earning at Mr. Roy's  
12 firm at the time you opened your -- your return, is that  
13 reflected in your 2016 return?

14 A No, because I wasn't working for Eric by then. I  
15 was -- at that time I was working for Noggle Law for the --  
16 from January to about May when I -- when he laid me off.

17 Q Okay. And what was your rate of pay at Noggle at  
18 the time?

19 A \$72,500. And I think that's in the decree.

20 Q \$72,500, correct?

21 A I think so.

22 Q All right. So did you anticipate that bonuses would  
23 include any draws from a separate firm that you would form at  
24 that time?

1           A     No. And I think maybe the reason they included that  
2 was that I had previously had my own firm while we were  
3 married. But that lasted barely like eight months.

4           Q     Okay.

5           A     And then it dissolved. I've been -- the Schwabb  
6 (ph) Law Group -- he couldn't -- I left, and then he couldn't  
7 make it happen and it dissolved.

8           Q     So in the language of the decree, it indicates that  
9 Alex should provide family support in a minimum amount of  
10 \$2,500 for a period of 15 years, or which -- Alex gross  
11 (indiscernible), whichever is greater. We've already talked  
12 about the term and why you didn't believe that that was for  
13 the period of time.

14                   So I'm going to -- get to the next line. It says  
15 this amount includes -- includes the \$819 in child support  
16 outlined above. So what was your understanding of what the  
17 \$2,500 of family support minimum would be composed of?

18           Q     I mean, it would -- alimony and child support is  
19 what I thought.

20           Q     Okay. The -- in regard to the 50 percent bonuses,  
21 did you believe that in 2017 through the time you filed your  
22 motion in 2019, that you were receiving bonuses?

23           A     No. I never gave myself a bonus.

24           Q     Okay. Is the amount of money you earn over and



1 above what you believe that in the marketplace you could earn  
2 as a lawyer?

3 A Now it is.

4 Q Okay. So --

5 A It wasn't in the beginning.

6 Q So what do you -- what do you believe that you could  
7 earn as a lawyer in the -- in the marketplace presently?

8 A Well, let's --

9 Q Outside of COVID-19. Before COVID-19 --

10 A Right.

11 Q -- what do you believe that you could have earned  
12 and demanded as a lawyer, and as an associate at a firm?

13 A I mean, I think before that I would have -- I  
14 wouldn't have worked for anybody unless they were willing to  
15 pay me \$120,000.

16 Q Okay. So -- so from your perspective, your income,  
17 it was \$72,500 at the time of this agreement that formed the  
18 basis, but that your earnings would have been approximately  
19 \$120,000 per year if you went to work for someone else?

20 A At most. You just, within this market, you don't  
21 make a lot of money.

22 Q Okay. In regard to the the -- the remainder of it  
23 talks about gross income as opposed to bonuses. Do you see  
24 that?

1           A     Right.

2           Q     So it apparently -- and why is there a difference,  
3 to your knowledge of, in other words, 50 percent plus bonuses,  
4 and then just a flat statement of gross monthly income?

5           A     I think it's because it reflects the fact that I was  
6 -- the idea was to work for another firm, to be somebody's  
7 associate. And that, in that sense that, you know, most firms  
8 provide for bonuses at the end of the year. But it wasn't  
9 ever contemplated that it would be huge bonuses. Like, the  
10 biggest bonus I ever got working for anybody was when Eric  
11 gave me like \$1,000 for Christmas.

12                     So the expectation for neither of us was some  
13 ungodly amount, like what it would be if I ran my own  
14 business. This agreement would never have been entered into  
15 this way had I known that I would have started a business and  
16 then been actually successful doing it.

17          Q     The provisions later indicate that upon Tara  
18 attaining full time employment, more than 32 hour per week,  
19 the monthly support payment for Alex that is required to be  
20 paid may be recalculated to amount less than 50 percent of the  
21 difference -- not less than 50 percent of difference between  
22 the parties' gross monthly income. Has that ever happened, to  
23 your knowledge? Has Tara worked beyond 32 hours per week?

24          A     No. She refuses to. But, see, this is another

1 instance also of them just adding terms. We never discussed a  
2 minimum or maximum amount of hours. The idea was that, you  
3 know, she wanted to go slow because she's slow. So she would  
4 take three classes at most.

5 And then she -- the idea was that she would work in  
6 the field that she's interested in, like she initially started  
7 to with the -- with the, you know, working for the  
8 rehabilitation center. But she never decided -- she never  
9 went back to work, and would still take the three classes. So  
10 here we are 11 years into it. I still don't know she's  
11 graduated or not. I don't think she has. Her intent was not  
12 to, she's told others.

13 Q In regard to the -- the work, or the -- your  
14 experience of Tara, have you had an interaction with her,  
15 personal interaction with her since the time of the entry of  
16 this decree in 2017?

17 A I -- very, very, very little. I -- you know, very  
18 little. As little as I possibly could.

19 Q Okay.

20 A Since 2018 I haven't talked to her at all.

21 Q All right. In regard to the -- so right now, the  
22 calculation that you're requesting the Court make, does it  
23 include an income imputed to Tara?

24 A Yeah, absolutely.

1 Q Why?

2 A That was the idea when -- when we entered into this  
3 agreement. If we're going to go by this agreement, then the  
4 agreement was that she was going to get a job, and that that  
5 would defray when I pay her. And -- but she never got a job,  
6 and she doesn't seem to intend to. I don't know. You know,  
7 11 years in school, that kind of speaks for itself.

8 Q The --

9 A Or nine years, which -- and it's been nine years.  
10 It speaks for itself.

11 Q Okay. The -- in paragraph 6, it indicates that  
12 you're to provide personal and business tax returns every  
13 year.

14 A Right.

15 Q You didn't do that.

16 A I didn't, no, because I didn't -- I never got around  
17 to doing my taxes. Like I said, I was so focused on just  
18 surviving that that kind of stuff, I didn't. And she never  
19 bothered -- she never demanded it either, so long as she was  
20 getting paid.

21 Q It also --

22 A And she was getting paid.

23 Q It also indicates that -- when you say she was  
24 getting paid, what are you referring to?

1           A     That amount. The \$2,500 to 2017 and 2018, I paid  
2 her in full. And she was getting paid. So there was very  
3 little -- like after the initial litigation in front of Judge  
4 Ritchie in 2017, she was getting paid regularly. So she  
5 didn't -- she didn't bug me because she was getting paid. It  
6 wasn't until we filed this motion that all -- now it's all a  
7 big problem.

8           Q     So I want to be clear on this. So in '17 and '18,  
9 you paid her a total of, by my calculation --

10          A     \$30,000 a year.

11          Q     \$30,000 per year. And that was for child support  
12 and for --

13          A     Family support, yeah.

14          Q     -- for family support. So that included the child  
15 support, correct?

16          A     Right.

17          Q     What happened after January of 2019? Did you  
18 continue to pay her through the time that you filed your  
19 motion?

20          A     I paid her sporadically. And then I stopped paying  
21 her because I hired -- I tried to expand. I got to the -- to  
22 a point where I felt like I was spinning my wheels and I was  
23 just working to pay Tara. So the time had to come where I can  
24 hire somebody and try to -- so this is a problem with the

1 decree the way that it is, is that it makes it impossible to  
2 run a business.

3           So I hired employees. And then by -- by the time I  
4 was done hiring everybody that I needed to hire, there was no  
5 room to pay her unless I was, you know, it's either that or go  
6 out of business.

7           Q     Well, who did -- what kind of employees did you  
8 hire?

9           A     I hired an experienced attorney, and -- and a  
10 paralegal, and a support staff.

11          Q     Who did you hire?

12          A     McKenzie Kramer (ph), and Mark Dichuro (ph).

13          Q     What do you pay Ms. Kramer?

14          A     Ms. Kramer gets \$72,500. So does Mark. Well,  
15 Mark's no longer with me, but.

16          Q     But he was another attorney that worked with you?

17          A     No, he was a paralegal.

18          Q     Paralegal. Okay.

19          A     Right, because he's a really good writer. So he was  
20 worth -- worth what I was paying him.

21          Q     Okay. So each of those individuals were earning  
22 \$72,500?

23          A     Right.

24          Q     But Mr. Dichuro is no longer with you?

1           A     He's no longer -- I couldn't support -- I couldn't  
2 afford him anymore after COVID.

3           Q     After COVID.

4           A     Right.

5           Q     Okay. And did you hire any other support staff to  
6 aid the business?

7           A     Office manager, Ernesto Solberg (ph). So I have an  
8 office manager --

9           Q     How do you spell the last name Solberg?

10          A     S-o-l-b-e-r-g.

11          Q     All right. And --

12          A     A bookkeeper. So you know, I had to pay her.

13          Q     What did you pay her?

14          A     So far it's been something like \$7,000.

15          Q     But what is the rate of pay for her services, to  
16 your knowledge?

17          A     Well, the -- initially it was, I don't know. I  
18 don't remember, honestly. We were -- we did, like, a trade  
19 off because her daughter needed legal services.

20          Q     Was -- is there an amount of time that she's set to  
21 work per month, or is it fluid?

22          A     It's fluid. She just does the -- she does the  
23 balance sheet once a month.

24          Q     Okay.

1           A     I don't have any agreement with her beyond what  
2 she's already done, although I want to keep her on as a  
3 regular bookkeeper.

4           Q     Were -- at the time that you formed your firm, were  
5 you using any kind of accounting software to manage the firm?

6           A     No. Not when I started, no.

7           Q     From -- since that time, have you now started to use  
8 accounting software?

9           A     We -- we use QuickBooks online now.

10          Q     When did you begin using QuickBooks online?

11          A     When I hired Dawn.

12          Q     And when did you hire Dawn?

13          A     Was it, like, August of last year, I think.

14          Q     All right. So the -- your expenses went up. Did  
15 your revenues go up accordingly?

16          A     They went up, but not --

17                THE COURT: We lost -- we lost audio there,  
18 Mr. Smith. Mr. Smith? Can you hear me? We lost audio  
19 connection in the middle of Mr. Ghibaudo's answer. Mr. Reade  
20 --

21                MR. READE: We can hear --

22                THE COURT: Did you get the same problem?

23                MR. READE: We can hear you. Yeah. We can -- yeah,  
24 we can hear you, Your Honor.



1           THE COURT: Okay. So what we do is we just, if we  
2 get a glitch like this, we just stay on the record. All you  
3 got to do is type in the code to reconnect. And when he  
4 reconnects, we'll see what -- where we lost them. Okay?

5           MR. READE: Thank you, Your Honor.

6           MR. SMITH: Hello?

7           THE COURT: Yes. Mr. Smith, are you back? Can you  
8 hear us? Mr. Smith? Uh-oh. All right. Well, he's  
9 efforting, so we'll see when he gets back.

10          MR. SMITH: I'm back, Your Honor. Sorry. We're  
11 still having the same issues that we had yesterday.

12          THE COURT: Okay. So we have Mr. Smith and  
13 Mr. Ghibaudo back. Mr. Ghibaudo, you were in the middle of an  
14 answer to the last question where we lost you. So, Mr.  
15 Smith, could you ask the question again and resume your exam?

16          MR. SMITH: Yeah. I don't remember what that  
17 question was, Your Honor. But --

18          THE COURT: You were asking him --

19          MR. SMITH: -- I'll just ask him --

20          THE COURT: -- whether or not -- it was his business  
21 was profitable by adding on these folks.

22 BY MR. SMITH:

23          Q     Oh. Did you -- did your business profit from adding  
24 the folks? Did you --

1           A     No, not the -- not the first time. Not the first  
2 year, not initially because I paying a lot more than -- than  
3 was really coming in. But it was -- it was the idea was to  
4 try to grow the business.

5           Q     Does -- does Ms. Kramer have any bonus structure in  
6 your firm's above the \$72,500?

7           A     Yeah. So she brings in cases, she'll get a  
8 percentage of that.

9           Q     Do you know what that percentage is?

10          A     Twenty-five percent.

11          Q     Twenty-five percent.

12          A     Standard amount.

13          Q     Okay. So she can -- \$72,500 plus 25 percent of what  
14 she brings in?

15          A     Right.

16               MR. SMITH: Okay. Okay. So going back over -- I  
17 don't know, Your Honor. I asked a question in regard to the  
18 schedule of arrearages Did you hear that?

19               THE COURT: No. No, we didn't.

20               MR. READE: No.

21 BY MR. SMITH:

22          Q     There was a schedule of arrearages that's been  
23 presented by Ms. Kellogg in this action, indicating that you  
24 did not pay after a certain period of time. And I think

1 you've acknowledged that there were -- there was periods of  
2 time where you didn't pay the full \$2,500 amount.

3 A Correct.

4 Q Do you know what the amount you paid between January  
5 and April of 2019 was?

6 A I don't remember.

7 Q Okay.

8 A I really don't.

9 Q Let me -- I gather that --

10 A I know, like, in June of that year, I paid her  
11 \$2,000.

12 MR. SMITH: Okay. I thought I has saw the -- saw  
13 the schedule of arrearages in the Defendant's -- excuse me,  
14 the Plaintiff's documents. But apparently I was wrong, Your  
15 Honor. So I believe that's been filed with the Court. So my  
16 paralegal is grabbing that right now.

17 THE COURT: I --

18 MR. SMITH: (Indiscernible) -- I'm sorry?

19 THE COURT: That's fine. Do you need it for this  
20 next question?

21 MR. SMITH: Well, I -- I can go on to a different  
22 area, and then I'll -- I'll go back to it if I can. I don't  
23 have much left.

24 BY MR. SMITH:

1           Q     So in regard to the the determination of the Court  
2 in regard to alimony, what are you requesting that the Court  
3 do with alimony after the filing of your motion in I thought  
4 it was April, but perhaps it was May of 2017? I think the  
5 Court indicated it was May.

6           A     Well, to make it a flat -- a flat rate first and  
7 foremost, because the way that it's written now it's -- it  
8 ties -- it ties her alimony to my profits, to what I make in  
9 my business, which was never agreed. So we never discussed  
10 that. So that, and also to lower it to what it would have  
11 been had I actually had a fair trial at the time, not what I'm  
12 making now where she has had absolutely nothing to do with the  
13 -- worse, she's had the opposite effect. She's done  
14 everything to try to undermine my ability to make a living,  
15 which includes filing multiple bar complaints and posting  
16 nonsense online about me.

17          Q     Okay. Let's break that down. How many bar  
18 complaints has, to your knowledge, has Ms. Kellogg directly  
19 filed with the state bar?

20          A     Four.

21               MR. READE: Objection, Your Honor. Objection. Hold  
22 on. Objection as to relevance to this proceeding.

23               THE COURT: Well --

24               THE WITNESS: (Indiscernible) --

1           THE COURT: All right. Well, let me -- let me  
2 break it down. First of all, there's a problem with  
3 foundation for asking that question and that you need to fix,  
4 Mr. Smith. But --

5           MR. SMITH: Yes.

6           THE COURT: -- the motion asks to modify the alimony  
7 award. And so the ability to earn, and different issues  
8 related to things that the parties have done regarding the  
9 parties' ability to earn may be relevant in that aspect. This  
10 is really a question for her.

11           But if he had some foundation, I mean, he may get  
12 letters from the bar that give him an indication that -- that  
13 these complaints are made by her. But there's no foundation.  
14 So the objection is sustained. Lay the foundation, and we'll  
15 allow it.

16           MR. SMITH: Yes, Your Honor.

17 BY MR. SMITH:

18           Q     Mr. Ghibaudo, you had referenced four bar complaints  
19 that you attributed to Ms. Kellogg. What was the basis for  
20 your statement that Ms. Kellogg had filed four bar complaints?

21           A     The letters that -- the grievances that I received  
22 from the bar came from her lawyers. And they were referenced  
23 information that she provided to her lawyers.

24           Q     Who were the lawyers that filed the bar complaints

1 as referenced in the letters that you've received?

2 A Willick, of course. And Sigal Chattah.

3 Q Okay. And when was the most recent of those  
4 filings?

5 A That would be Sigal Chattah.

6 Q And when was that, to the best of your recollection.

7 A End of 2018, beginning of -- whenever she jumped  
8 onto this case.

9 Q This case in -- in terms of the --

10 A This post-judgment stuff that we're doing now.

11 Q The post-judgment stuff.

12 A Right.

13 Q So you filed your motion in, again, approximately  
14 May, or April or May. Can you find that date for me?

15 A Yeah. So it was just before that, because she made  
16 one unbundled appearance. And then I had a conversation with  
17 her outside of court that she ended up trying to use to  
18 suggest that I was -- that I lost my mind and that the bar  
19 should suspend me.

20 Q And did either of -- any of those four complaints  
21 resulted in bar -- result in bar sanctions?

22 A Well, yeah. Well, the -- the one by Willick  
23 resulted in deferred action. So I had to keep out of trouble  
24 to not -- to avoid problems with the bar.

1 Q But you did that?

2 A Yeah.

3 Q And in regard to the -- the time that you had to  
4 spend in terms of responding, did those -- did that time take  
5 away from your practice of law?

6 A It absolutely does. It's stressful anytime you get  
7 a letter from the bar, if you know that you got stuff -- got  
8 some -- some lawyer that's out there that's watching. I mean,  
9 it would literally be the case that any email between me and  
10 Marshal Willick would result in Willick threatening bar  
11 action. So I have to consider my obligations under RPC 8.3  
12 every single time I talked to the guy.

13 Q In regard to the --

14 MR. SMITH: I've got now, Your Honor, the schedule  
15 of arrearages that is --

16 BY MR. SMITH:

17 Q Before I go there, you also, you were involved in an  
18 action associated with -- in the R case in regard to --

19 A Oh, yeah. This is the --

20 Q -- payment -- hold on. In regard to the payment of  
21 your support and an allegation that you were in arrearage. Do  
22 you recall that?

23 A Yeah.

24 Q And when was the last hearing in regards to that

1 matter?

2 A That was in August. So that was --

3 Q August of what year?

4 A Of this year, of 2020. And that was --

5 Q And what was the nature of that hearing?

6 A So the DA's office filed a motion asking the child  
7 support commissioner to suspend me.

8 Q Did you have a child support arrearage upon which  
9 that motion was based?

10 A Yeah.

11 Q How much is the arrearage totally calculated?

12 A I believe it's about \$9,200.

13 Q Okay. And that \$9,200 was entered in the form of a  
14 recommendation, or is it an order now that we've been -- it  
15 has been issued by the --

16 A Well, we objected to it, and the objection's pending  
17 May, I think, next month, October 14th. But the --

18 Q Other than the --

19 A -- (indiscernible) --

20 Q Other than the -- the \$9,200 judgment, is there any  
21 other relief that was needed or recommended by the --

22 A That I be suspended from the practice of law, which  
23 Mr. Reade concurred in. He actually joined in the DA's  
24 motion.



1 Q Okay.

2 A That's another thing. I'm sorry. I forgot it makes  
3 three lawyers. Mr. Reade was another one.

4 MR. READE: Your Honor --

5 THE COURT: Can I --

6 THE WITNESS: So I --

7 MR. READE: -- that misstates the record.

8 THE COURT: Can I just interject here for a second,  
9 because I don't know how this ties in. But the -- are we  
10 talking about R-2011-161999?

11 MR. SMITH: I don't have the number --

12 THE WITNESS: That's right, Your Honor. I think  
13 that's the right one.

14 THE COURT: All right. So --

15 THE WITNESS: She opened it up --

16 THE COURT: The -- huh. Interesting. I don't see  
17 an objection to the recommendation from August 12th.

18 THE WITNESS: It's not -- we filed it with your --  
19 with the district court, Your Honor, and it's -- it's pending  
20 a hearing. There's already been response by Mr. Reade. The  
21 hearing's pending October 14th, I believe.

22 THE COURT: Really?

23 MR. READE: Your Honor, if I -- if I may clarify for  
24 the record, because -- because this will help straighten it