

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

ERICH M. MARTIN,

Appellant,

vs.

RAINA L. MARTIN,

Respondent.

Electronically Filed
SC NO: Jul 18 2021 04:15 p.m.
DC NO: Elizabeth A. Brown
Clerk of Supreme Court

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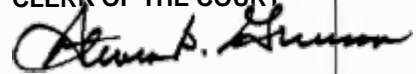
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NEO

DISTRICT COURT
CLARK COUNTY, NEVADA

Erich M Martin, Plaintiff
vs.
Raina L Martin, Defendant.

Case No: D-15-509045-D
Department C

NOTICE OF ENTRY OF ORDER

Please take notice that an ORDER REGARDING ENFORCEMENT
OF MILITARY RETIREMENT BENEFITS was entered in the
foregoing action and the following is a true and correct copy thereof.

Dated: August 11, 2020

/s/ Lourdes Child
Lourdes Child
Judicial Executive Assistant
Department C

NEO

CERTIFICATE OF SERVICE

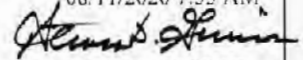
I hereby certify that on the above file stamp date:

☒ I provided the foregoing NOTICE OF ENTRY OF ORDER to:

John T. Kelleher , Esq.
kelleherjt@aol.com

Marshal Shawn Willick, Esq.
email@willicklawgroup.com

/s/ Lourdes Child
Lourdes Child
Judicial Executive Assistant
Department C


CLERK OF THE COURT

1 ORDR

2 DISTRICT COURT, FAMILY DIVISION

3 CLARK COUNTY, NEVADA

4 ERICH M. MARTIN,)

5 Plaintiff,)

6 vs.)

CASE NO. D-15-509045-D

) DEPT NO. C

7 RAINA L. MARTIN,)

8 Defendant.)

) Under Submission

9 _____
10 ORDER REGARDING ENFORCEMENT OF
11 MILITARY RETIREMENT BENEFITS

12 THIS MATTER having come before the Court on Defendant, Raina L.
13 Martin ("Raina")'s *Motion to Enforce* filed and served electronically on
14 May 1, 2020, and on Plaintiff, Erich M. Martin ("Erich")'s *Defendant's*
15 *Opposition* filed and served by e-mail and mail on June 5, 2020; Erich is
16 represented by Attorney John T. Kelleher of Kelleher and Kelleher, LLC,
17 and Raina is represented by Attorneys Marshal S. Willick and Richard L.
18 Crane of Willick Law Group, the Court having reviewed the pleadings and
19 papers on file herein, and good cause appearing therefor

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1 Facts

2 On November 5, 2015, a *Decree of Divorce* reached by agreement
3 between the parties was entered by the Court containing the following
4 provision:

5 IT IS FURTHER ORDERED, ADJUDGED, AND
6 DECREED that Raina shall be awarded the following as her sole
and separate property:

7 4. One-half (1/2) of the marital interest in the Erich's
military retirement, pursuant to the time rule established in
8 Nevada Supreme Court cases *Gemma v. Gemma*, 105 Nev. 458,
778 P.2d 429 (1989) and *Fondi v. Fondi*, 106 Nev. 856, 802 P.2d
1264 (1990). The parties shall use Marshal S. Willick, Esq. to
9 prepare a Qualified Domestic Relations Order (hereinafter
"QDRO"), or similar instrument to divide the pension. The
10 parties shall equally divide the costs of preparing such an
instrument. ***Should Erich select to accept military***
11 ***disability payments, Erich shall reimburse Raina for***
any amount that her share of the pension is reduced
12 ***due to the disability status.***

13 [Emphasis added.]

14 On November 10, 2015, *Notice of Entry of Decree of Divorce* was filed
15 and served.

16 On November 14, 2016, an *Order Incident to Decree of Divorce* was
17 entered and submitted to the military to effectuate the parties' *Decree of*
18 *Divorce*. The *Order Incident to Decree of Divorce* provides in particular
19 that Raina's share of Erich's military retired pay "also includes all amount
20 of retired pay Erich actually or constructively waives or forfeits in any

1 manner and for any reason or purpose, including but not limited to any
2 post-divorce waiver made in order to qualify for Veterans Administration
3 benefits;" that it is "intended to qualify under the Uniformed Services
4 Former Spouses Protection Act, 10 U.S.C. Sec. 1408 et seq.;" that if Erich
5 obtained a disability waiver, "he shall make payments to Raina directly in
6 an amount sufficient to neutralize, as to Raina, the effects of the action
7 taken by Erich;" and that the Court shall retain jurisdiction to enforce the
8 award to Raina of military retirement benefits by making an award of
9 alimony.

10 Erich argues that he did not sign the *Order Incident to Decree of*
11 *Divorce* voluntarily but was forced to do so by the Court. The Court
12 reviewed a hearing held September 22, 2016 during which Raina orally
13 raised the issue that Erich had not yet signed and returned the prepared
14 document. When the Court asked Erich for status, he did not protest the
15 language, but had not signed due to other unrelated unresolved matters
16 between the parties. Accordingly, the Court ordered Erich to return the
17 signed document and he did. The *Order Incident to Decree of Divorce* was
18 entered by the Court, but there is no *Notice of Entry of Order*.

19 Nevertheless, Raina received payments from DFAS in November and
20 December 2019 (\$844.08 per month) and January 2020 (\$845.43). In late

1 January 2020, DFAS notified Raina that they would no longer be sending
2 payments to Raina. Upon further inquiry in February 2020, Raina learned
3 that Erich opted for full disability as Combat Related Special Compensation
4 (“CRSC”) and would be receiving a tax free payment from the Veterans
5 Administration. Raina would no longer receive any payments from DFAS.

6 Raina asked Erich to continue to pay her directly as they agreed in
7 their *Decree of Divorce*. Citing the U.S. Supreme Court’s recent decision in
8 *Howell v. Howell*, 137 S.Ct. 1400, 1402, 197 L.Ed.2d 781 (2017), Erich
9 refused to do so. Accordingly, Raina brought this action to enforce the
10 provisions of the *Decree of Divorce* and the *Order Incident to Decree* for
11 reimbursement and spousal support (“indemnification provisions”). It is
12 Erich’s position that the indemnification provisions are unenforceable
13 under *Howell*.

14 History

15 To best understand the issue, it is important to provide a short history
16 of federal law.

17 In 1981, the U.S. Supreme Court decided *McCarty v. McCarty*, 453
18 U.S. 210, 101 S.Ct. 2728, 69 L.Ed.2d 589 (1981) which held that the federal
19 statutes governing military retired pay preempted the state courts from
20 treating military retired pay as community property on the basis that

1 Congress intended to protect veterans' benefits to ensure that they reach
2 veterans, with the goal of incentivizing participation in the military and
3 maintaining a strong national defense. Acknowledging the hardship the
4 decision may cause to military spouses, the U.S. Supreme Court pointed out
5 that Congress was free to change the statutory law.

6 In 1982, in direct response to *McCarty*, Congress enacted the
7 Uniformed Services Former Spouses' Protection Act ("USFSPA"), 10 U.S.C.
8 § 1408(c)(1), which allowed state courts to treat military retired pay as
9 community property, but expressly excluded military retired pay waived in
10 order to receive military disability benefits.

11 In 1989, USFSPA was interpreted by the U.S. Supreme Court in
12 *Mansell v. Mansell*, 490 U.S. 581, 109 S.Ct. 2023, 104 L.Ed.2d 675 (1989).
13 In their opinion, the U.S. Supreme Court explained federal law provides
14 that veterans who became disabled as a result of military service are eligible
15 for disability benefits. Those benefits are calculated according to the
16 seriousness of the disability and the degree to which the veteran's ability to
17 earn a living has been impaired. In order to prevent double dipping, a
18 military retiree may receive veteran's disability benefits in exchange for
19 waiving a corresponding amount of his military retirement pay. Because
20 disability benefits are exempt from taxation, the disabled veteran's income

1 is increased. *Id.* 490 U.S. 583-84, 109 S.Ct. 2026, 104 L.Ed.2d. The result
2 to the former spouse, however, is a loss of benefits which have been
3 converted from military retired pay, which may be considered by the state
4 as marital property, to veteran's disability benefits, which may not be
5 considered by the state as marital property.

6 The *Mansell* divorce occurred prior to *McCarty* and prior to
7 enactment of USFSPA. At that time, the veteran had already waived a
8 portion of his military retired pay for veteran's disability benefits and was
9 receiving both military retired pay and veteran's disability benefits. To
10 settle the divorce, the veteran agreed to pay to his former spouse 50% of
11 both his military retired pay and his veteran's disability benefits. Years
12 later, after enactment of USFSPA, the veteran asked a California court to
13 remove from the decree of divorce the provision requiring him to pay 50%
14 of his veteran's disability benefits to his former spouse. The veteran's
15 request was denied, and he appealed without success. Eventually, the
16 matter was heard by the U.S. Supreme Court which reversed the California
17 court by holding that USFSPA grants state courts the authority to divide
18 military retired pay as community property, but it did not grant state courts
19 the authority to divide the military retired pay waived in order to receive
20 veterans' disability benefits. The Court recognized that USFSPA was "one

1 of those rare instances where Congress has directly and specifically
2 legislated in the area of domestic relations.” *Id.* 490 U.S. at 587, 109 S.Ct. at
3 2028.

4 But, the *Mansell* story did not end at the U.S. Supreme Court. On
5 remand, the California court still refused to change the result based, not on
6 the principles of community property law and the federal preemption of
7 state law characterization of veteran’s disability benefits as decided by the
8 U.S. Supreme Court, but on the principles of *res judicata*. In a footnote,
9 the U.S. Supreme Court expressly acknowledged that the issue of *res*
10 *judicata* is a matter of state law “over which we have no jurisdiction.” 490
11 U.S. at 586 n.5. The California court reasoned that because the veteran
12 consented to the otherwise incorrect result when he signed the property
13 settlement agreement, “he is therefore barred from complaining.” *In re*
14 *Marriage of Mansell*, 217 Cal.App.3d 219, 230, 265 Cal.Rptr. 227, 233 (Ct.
15 App. 1989) on remand from 490 U.S. 581, 109 S.Ct. 2023 (1989). The U.S.
16 Supreme Court denied certiorari allowing the California court’s order to
17 stand. *Mansell v. Mansell*, 498 U.S. 806, 111 S.Ct. 237, 112 L.Ed.2d 197
18 (1990). Moreover, although *Mansell* concerned an agreement, the
19 agreement did not contain a contractual indemnification provision, leaving
20 enforceability of such a provision unresolved.

1 In 2016, after *McCarty*, USFSPA, and *Mansell*, Erich and Raina
2 contemplated the probability that Erich would eventually waive his military
3 retired pay for veteran's disability benefits. Therefore, through their
4 *Decree of Divorce*, Erich and Raina chose indemnification as a resolution
5 which had become a common and prudent means of addressing the issue
6 whereby Erich agreed to reimburse Raina if he chose to waive his military
7 retired pay in favor of veteran's disability benefits. Through their *Order*
8 *Incident to Decree*, the parties further agreed that the reimbursement
9 would be in the form of spousal support.

10 In 2017, 28 years after *Mansell*, the U.S. Supreme Court addressed
11 indemnification by state courts in the case of *Howell v. Howell*, 137 S.Ct.
12 1400, 197 L.Ed.2d 781 (2017). In *Howell*, an Arizona court awarded the
13 former spouse 50% of the military member's retired pay. About 13 years
14 later, the veteran waived a portion of his military retired pay in exchange
15 for veteran's disability benefits resulting in substantial reduction of the
16 former spouse's share. The Arizona court restored the full 50% to the
17 spouse, but was reversed by the U.S. Supreme Court which held that a state
18 court does not have jurisdiction to order the division of veteran's disability
19 benefits on the basis that "federal law ... [has] completely pre-empted the

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1 application of state community property law to military retirement pay.”
2 *Id.* 137 S.Ct. at 1403, 197 L.Ed.2d at 786. Finding that the purpose of a
3 reimbursement or indemnification order was to restore a community
4 property right in the original military retirement, the U.S. Supreme Court
5 reasoned that all such state orders are preempted. Moreover, it does not
6 matter whether the disability election was taken before the decree was
7 entered (*Mansell*) or after the decree was entered (*Howell*), because
8 “[s]tate courts cannot “vest” that which (under governing federal law) they
9 lack the authority to give.” *Id.* 1405. Recognizing that their interpretation
10 may impose hardship to the former spouse, the U.S. Supreme Court
11 offered:

12 [A] family court, when it first determines the value of a
13 family’s assets, remains free to take account of the contingency
14 that some military retirement pay might be waived, or, as the
15 petitioner himself recognizes, take account of reductions in
16 value when it calculates or recalculates the need for spousal
17 support.

18 *Id.* at 1406.

19 Notably, *Howell* did not concern an indemnification agreement
20 between the parties, but a court created indemnification remedy after the
21 waiver was taken. Although *Howell* was silent regarding the enforceability
of a contractual indemnification provision, such an agreement by the

1 parties is not inconsistent with the U.S. Supreme Court's suggestion to take
2 precautions.

3 Post-Howell Decisions

4 Citing their new decision in *Howell*, the U.S. Supreme Court quickly
5 vacated two state court orders forcing veterans to reimburse former
6 spouses in divorce proceedings if they had waived retirement pay in order
7 to receive veteran's disability benefits. *Merrill v. Merrill*, 137 S.Ct. 2156,
8 198 L.Ed.2d 228 (2017) (post-decree indemnification order reversed); and
9 *Cassinelli v. Cassinelli*, 138 S.Ct. 69, 199 L.Ed.2d 2 (2017), (compensation
10 in the form of a dollar-for-dollar alimony award reversed). Notably, both of
11 these cases concerned court remedies and neither involved contractual
12 indemnification.

13 Some state courts have broadly treated military retirement pay waived
14 in favor of veteran's disability benefits to be off limits and will not allow a
15 remedy in any form if the purpose of that remedy is to replace in full the
16 lost military retired pay. In *Hurt v. Jones-Hurt*, 233 Md. App. 610, 168
17 A.3d 992 (Court of Special Appeals of Maryland), Maryland reversed the
18 amendment of a property award as a remedy to a waiver. In *Mattson v.*
19 *Mattson*, 903 N.W.2d 233 (Court of Appeals of Minnesota), Minnesota
20 recognized that prior to *Howell*, "principles of contract and *res judicata*

1 could render a stipulated decree indemnifying an ex-spouse as enforceable,
2 even if it ran afoul of *Mansell*, because ‘parties are free to bind themselves
3 to obligations that a court could not impose,’” *Id.* at 240 then held after
4 *Howell* that contractual principals could not rescue the former spouse’s
5 ability to receive the military retired pay waived for veteran’s disability
6 benefits. In *Vlach v. Vlach*, 556 S.2.3d 219 (Court of Appeals of Tennessee
7 2017), Tennessee held that an agreement for partial indemnification of
8 veteran’s disability benefits was unenforceable. In *Tozer v. Tozer*, 410 P.3d
9 835 (Colorado Court of Appeals, Division IV 2017), Colorado held that
10 retention of jurisdiction in the event of a future waiver is preempted. In
11 *Brown v. Brown*, 260 So.3d 851 (Court of Civil Appeals of Alabama 2018),
12 Alabama held that a contractual indemnification provision was completely
13 preempted. These cases have been criticized by legal scholars.¹

14 More states, however, have taken the suggestion of the U.S. Supreme
15 Court by becoming creative in their remedies after *Howell* or finding
16 alternative theories to avoid an unfair result. In *Lesh v. Lesh*, 257 N.C.App.

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19 ¹ The Minnesota decision has been criticized as an unnecessarily overbroad reading of
20 *Howell*. *A Change in Military Pension Division: The End of Court-Adjudicated*
21 *Indemnification -- Howell v. Howell*, 44 Mitchell Hamline Law Review (2018); *Military*
Pension Division Cases Post-Howell: Missing the Mark, or Hitting the Target?, Journal
of the American Academy of Matrimonial Lawyers, Vol. 31, March 13, 2019, page 513
which also criticizes as going too far the decisions in *Hurt v. Jones-Hurt*, *Vlach v. Vlach*,
and *Brown, v. Brown*.

1 471, 809 S.E.2d 890 (Court of Appeals of North Carolina 2018), North
2 Carolina found that *Howell* reaffirms and clarifies *Mansell*, but it has no
3 effect on the *Rose*² line of cases therefore the court's order taking into
4 consideration veteran's disability benefits as income for the purposes of
5 making a property settlement payment was not preempted. *In re Marriage*
6 *of Cassinelli*, 20 Cal.App.5th 1267, 229 Cal.Rptr.3d 801 (2018), California,
7 after remand from the U.S. Supreme Court, reversed the spousal support
8 award finding it to be a dollar for dollar replacement for the lost military
9 retired pay. But the case did not end upon that ruling as inferred by Erich,
10 because California remanded the matter for a new trial on the former
11 spouse's request for modification of spousal support indicating that
12 modification of spousal support was not prohibited. In *Gross v. Wilson*,
13 424 P.3d 390 (Supreme Court of Alaska 2018), Alaska held that a
14 settlement agreement dividing veteran's disability benefits is enforceable
15 based on principles of *res judicata* and contract because "nothing in the
16 USFSPA or *Mansell* prevents a veteran from voluntarily contracting to pay
17 a former spouse a sum of money that may originate from disability
18 payments" *Id.* at 394. In the *Matter of Marriage of Babin*, 56 Kan.App.2d,
19 709, 437 P.3d 985 (Court of Appeals of Kansas 2019), Kansas held that the

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² *Rose v. Rose*, 481 U.S. 619, 107 S.Ct. 2029, 95 L.Ed.2d 599 (1987).

1 parties' agreement did not allow escape from federal preemption which
2 divested the court of jurisdiction to enforce division of the veteran's
3 disability benefits, but as again ignored by Erich, this case was also
4 remanded to allow spousal support to be reconsidered. In *Fattore v.*
5 *Fattore*, 458 N.J. Super. 75, 203 A.3d 151 (2019) New Jersey recognized
6 that other courts were employing res judicata, upholding contractual
7 indemnification provisions, vacating and reallocating assets, and awarding
8 alimony as remedies. In *Edwards v. Edwards*, 132 N.E.3d 391 (2019),
9 Indiana held that although a court's order requiring a veteran to reimburse
10 a former spouse for loss of military retired pay after waiver for CRSC would
11 be incorrect under *Howell*, the court had subject matter jurisdiction to
12 make the order which was enforceable retroactively (but not prospectively
13 under equitable principles) on the basis of *res judicata* because the veteran
14 did not appeal it. In *In re Marriage of Jensen*, Court of Appeals of Iowa,
15 939 N.W.2d 112 (2019), Iowa held that *Howell* did not prevent the Iowa
16 court from awarding to the former spouse all of her retirement accounts
17 because the military spouse was receiving veteran's disability benefits. In
18 *Russ v. Russ*, 456 P.3d 1100 (Court of Appeal of New Mexico 2019), New
19 Mexico held that *Howell*, decided in the middle of the appeal, does not
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1 apply retroactively to invalidate the parties' agreement to divide military
2 retired pay even after waiver for veteran's benefits).

3 Just three months ago on April 29, 2020, Michigan's highest court
4 decided *Foster v. Foster*, ____ Mich. ____, ____ N.W.2d ____ (Supreme
5 Court of Michigan 2020) which shared facts similar with the Martin case
6 concerning enforcement of a consent decree containing an indemnification
7 provision requiring the veteran to pay to his former spouse a sum
8 equivalent to 50% of his military retired pay even though he later elected
9 CRSC benefits. The case was in the process of appeals that originally were
10 favorable to the former spouse. Once the *Howell* case was decided,
11 Michigan reversed itself and, citing the Supremacy Clause of the United
12 States Constitution, ruled that federal preemption prohibited enforcement
13 of the parties' indemnification agreement. The Supremacy Clause of the
14 United States Constitution provides:

15 This Constitution, and the Laws of the United States which
16 shall be made in Pursuance thereof ... shall be the supreme Law
17 of the Land; and the Judges in every State shall be bound
thereby, any Thing in the Constitution or Laws of any State to
the Contrary notwithstanding.

18 Footnote 14, U.S. Constitution, Article VI, Clause 2. Notably, Raina admits
19 that "[s]ometimes, however, Congress wishes to 'occupy the field' in a
20 particular question of law, and generally, it has the power to do so, even

1 when it results in unintended consequences of unjust enrichment and
2 inequity.” Raina’s *Reply* filed June 10, 2020 on page 8. Yet, the *Foster*
3 saga is still not over, because Michigan remanded the case for the court to
4 consider whether the veteran’s action is an impermissible collateral attack
5 against a decree that is *res judicata* even if the decree contained a provision
6 based on a subsequently overruled legal principle. The concurring opinion
7 of this case includes an enlightening discussion of the difference between
8 lack of subject matter jurisdiction (the inability to rule at all resulting in a
9 void order) and the incorrect exercise of subject matter jurisdiction (the
10 ability to make a ruling that, even if incorrect, is subject to *res judicata* if
11 not timely challenged).

12 Finally, just one month ago, Louisiana decided *Boutte v. Boutte*, Court
13 of Appeal of Louisiana, Third Circuit, ____ So.3d ____ (July 8, 2020) WL
14 3818141 and upheld the parties’ indemnification agreement based on
15 principles of *res judicata*.

16 Contract

17 The *Decree of Divorce* reached by agreement between Erich and
18 Raina is a contract, *Grisham v. Grisham*, 128 Nev. 679, 289 P.2d 230
19 (2012); *Anderson v. Sanchez*, 132 Nev. 357, 373 P.3d 860 (2016), the terms
20 of which are not ambiguous. *Mizrachi v. Mizrachi*, 132 Nev. 666, 385 P.3d

1 982 (2016). “Parties are free to contract, and the courts will enforce their
2 contracts if they are not unconscionable, illegal, or in violation of public
3 policy.” *Harrison v. Harrison*, 132 Nev. 564, 567 (2016), 376 P.3d 173, 175
4 (2016) citing *Rivero v. Rivero*, 125 Nev. 410, 429, 216 P.3d 213, 226
5 (2009). After *McCarty*, *USFSPA*, and *Mansell*, Erich and Raina themselves
6 took precautions before *Howell* and created an indemnification provision
7 for the anticipated waiver by Erich.

8 Because *Howell* does not concern adjudication of contractual
9 indemnification created by the parties, this Court is not persuaded that
10 *Howell* intended to divest the parties of their right to contract. Indeed,
11 *Howell* is silent on the issue but urges courts to consider and address the
12 possibility of waiver which is exactly what Erich and Raina did prior to
13 *Howell*. Erich’s argument that the written settlement agreement between
14 the parties did not contain a term requiring indemnification is not correct,
15 because the *Decree of Divorce* expressly provides that “[s]hould Erich
16 select to accept military disability payments, Erich shall reimburse Raina
17 for any amount that her share of the pension is reduced due to the
18 disability status.” For all practical purposes, “reimbursement” is the same
19 as “indemnification,” and no case the Court reviewed drew a distinction.

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Erich argues that his indemnification agreement is unenforceable. In support of his argument, Erich cites *Boulter v. Boulter*, 113 Nev. 74, 930 P.2d 112 (1997) which held that the parties' voluntary agreement to equally divide with each other their federal Social Security benefits was unenforceable, and the district court "was without jurisdiction to enforce an award" regardless of the fact that the agreement was the product of the voluntary negotiations of the parties, because the agreement it was prohibited by the federal statute. *Id.* 80, 115. Erich concludes that the parties' contract is likewise not valid under federal law. This Court agrees that federal social security benefits are not community property divisible by this Court. *See also Wolff v. Wolff*, 112 Nev. 1355, 929 P.2d 916 (1996). *Boulter* and *Wolff*, however, both dealt with a different federal law than at issue before this Court. *Boulter* and *Wolff* concerned social security payments which are not community property - not military retired pay (community property) that was waived for veteran's disability benefits (not community property).

The case of *Shelton v. Shelton*, 119 Nev. 492, 78 P.3d 507, 511 (2003) is controlling, because it expressly embraced the contract theory in military disability indemnification cases. The parties in *Shelton* agreed through the summary joint petition process that the military member would pay to his

1 former spouse a specific sum representing one-half of both the military
2 retired pay and the veteran's disability benefit he was already receiving.
3 Several years later, the military member was reevaluated and elected to
4 waive 100% of his military retired pay for veteran's disability benefits and
5 then stopped paying his former spouse who brought the matter to court.
6 Citing *Mansell I*, the district court denied relief to the former spouse, but
7 was reversed by the Nevada Supreme Court which held that the military
8 member was contractually obligated by the divorce agreement to pay his
9 former spouse an agreed sum. The opinion stated:

10 We conclude that although courts are prohibited by federal
11 law from determining veterans' disability pay to be community
12 property, state law of contracts is not preempted by federal law.
13 Thus, respondent must satisfy his contractual obligations to his
14 former spouse, and the district court erred in denying former
15 spouse's motion solely on the basis that federal law does not
16 permit disability pay to be divided as community property. *Id.*
17 at 493, 508.

18 *See also Hisgen v. Hisgen*, 554 N.W.2d 494, 498 (S.D. 1996) (parties'
19 property settlement agreement dividing military retirement benefits
20 enforced); and *Resare v. Resare*, 908 A.2d 1006 (R.I. 2006) (parties'
21 property settlement agreement dividing military retirement benefits
enforced).

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1 Res Judicata

2 *Shelton* raises the additional issue of *res judicata*. *Res judicata* was
3 the very same reason the California court in *Mansell II* refused to change
4 the result after remand from the U.S. Supreme Court and for which the U.S.
5 Supreme Court denied certiorari. In its decision, the Nevada Supreme
6 Court stated that “[a]lthough states cannot divide disability payments as
7 community property, states are not preempted from enforcing orders that
8 are *res judicata* or from enforcing contracts or from reconsidering divorce
9 decrees, even when disability pay is involved.” *Id.* at 509. As in *Mansell II*,
10 the U.S. Supreme Court denied certiorari, *Shelton v. Shelton*, 541 U.S. 960,
11 124 S.Ct. 1716, 158 L.Ed.2d 401 (2004).

12 “Generally, the doctrine of *res judicata* precludes parties or those in
13 privity with them from relitigating a cause of action or an issue which has
14 been finally determined by a court of competent jurisdiction.” *Kuptz-*
15 *Blinkinsop v. Blinkinsop*, 136 Nev. Adv. Op. 40 (July 9, 2020) citing
16 *University of Nev. v. Tarkanian*, 110 Nev. 581, 598, 879 P.2d 1180, 1191
17 (1994). *Res judicata* or issue preclusion applies when “(1) the issue decided
18 in the prior litigation must be identical to the issue presented in the current
19 action; (2) the initial ruling must have been on the merits and have become
20 final; (3) the party against whom the judgment is asserted must have been

1 a party ... in the prior litigation; and (4) the issue was actually necessarily
2 litigated.” *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194, P.3d
3 709, 713.

4 In the Martin matter: (1) the issue decided in the prior litigation,
5 resolution of Erich’s military retired pay including waiver for veteran’s
6 disability benefits, is the same in the divorce matter as in the current
7 motion; (2) the initial ruling represented by the *Decree of Divorce* was on
8 the merits and final without appeal; (3) the party against whom the
9 judgment is asserted, Erich, must have been a party ... in the prior
10 litigation, and he was; and (4) the issue was actually necessarily litigated.
11 “Furthermore, a judgment entered by the court on consent of the parties
12 after settlement or by stipulation of the parties is as valid and binding a
13 judgment between the parties as if the matter had been fully tried.”

14 *Willerton v. Bassham*, 111 Nev. at 16, 889 P.2d at 826, cited by *Bradley S.*
15 *v. Sherry N.*, 121 Nev. 1348, Unpublished Disposition (2015).

16 Finally, the U.S. Supreme Court in *Mansell* expressly acknowledged
17 that the issue of *res judicata* is a matter of state law “over which we have no
18 jurisdiction.” 490 U.S. at 586 n.5. Accordingly, even if Raina’s contract
19 theory for enforcement of the reimbursement provision of the *Decree of*
20 *Divorce* is ultimately not correct under *Howell*, it is nevertheless binding

1 on Erich pursuant to the doctrine of *res judicata*. It is a “well settled rule
2 that a judgment, not set aside on appeal or otherwise, is equally effective as
3 an estoppel upon the points decided, whether the decision be right or
4 wrong.” *Reed v. Allen*, 286 U.S. 191, 201, 52 S.Ct. 532, 76 L.Ed. 1054 (1932)
5 *Id.*

6 Conclusion

7 The Court is aware of the feeling of great unfairness on both sides. On
8 the one hand, veteran’s disability benefits, especially combat related
9 benefits, undoubtedly are a form of compensation to our injured veterans.
10 It is undisputed that Erich suffers from injuries in combat over the years,
11 including traumatic brain injuries from concussions, ACL replacements,
12 foot injuries, tendon injuries, back injuries, tinnitus, migraines, and other
13 health related issues for which he is justly entitled to his veteran’s disability
14 benefits.³ On the other hand, it is unfair to Raina to take away the
15 precaution she negotiated and leave her without the ability to negotiate a
16 substitute when it much too late to do so.

17 *Howell* makes very clear that this Court is without jurisdiction to
18 order indemnification. But, it was not this Court which ordered the
19 indemnification provision. The reimbursement or indemnification

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21 ³ Despite his injuries, Erich (age 39) is gainfully employed earning \$11,504 per month --
not including his CRSC.

1 provision was created voluntarily by Erich and Raina. This Court is not
2 persuaded that *Howell* takes away the parties' right to freely contract,
3 including for indemnification. Indeed, *Howell* is silent as to enforcement
4 of such a contractual agreement and it cautions that parties should be
5 aware that a waiver of disability payments may occur and it is their
6 responsibility to "take account of the contingency." The parties negotiated
7 the contingency. Erich knowingly entered into the agreement ending his
8 marriage to Raina through which he expressly agreed to give up a portion
9 of his military retired pay waived for veteran's disability benefits to settle
10 the divorce case. Accordingly, it is fair and appropriate to enforce the
11 agreement the parties' entered with their eyes wide open.

12 Spousal Support

13 **Rule 58(c) Notice of Entry of Judgment.**

14 (1) Within 14 days after entry of a judgment or an order, a
15 party designated by the court under Rule 58(b)(2) must serve
16 written notice of such entry, together with a copy of the
17 judgment or order, upon each party who is not in default for
18 failure to appear and must file the notice of entry with the clerk
19 of the court. Any other party, or the court in family law cases,
20 may also serve and file a written notice of such entry. Service
21 must be made as provided in Rule 5(b).

(2) Failure to serve written notice of entry does not affect
the validity of the judgment, but the judgment may not be
executed upon until notice of its entry is served.

[Amended; effective March 1, 2019.]

20 ////

1 Erich has not been served with *Notice of Entry of the Order Incident*
2 *to Decree*. The *Decree of Divorce* contains the reimbursement provisions
3 upon which the Court may immediately enforce. Raina's request to obtain
4 spousal support, however, may not be acted upon due to the lack of *Notice*
5 *of Entry of the Order Incident to Decree*.

6 *Attorney Fees*

7 In light of the continuing development of case law around the United
8 States as well as the acknowledgment that, notwithstanding the assistance
9 of *Shelton*, this issue has not been resolved by the Nevada Supreme Court,
10 this Court cannot find that the position of either party is frivolous or
11 unreasonable.

12 NOW, THEREFORE, IT IS HEREBY ORDERED that Raina's *Motion*
13 *to Enforce* the reimbursement provision of the *Decree of Divorce* is
14 granted.

15 IT IS FURTHER ORDERED that the sum of \$5,918.01 representing
16 \$845.43 x seven months for the period from February through August
17 2020 shall be reduced to judgment in favor of Raina against Erich to be
18 satisfied by any and all legal means. Erich shall commence timely direct
19 payments to Raina in the amount of \$845.43 commencing September 1,
20 2020 to include any cost of living adjustments.

1 IT IS FURTHER ORDERED that Raina's request for spousal support
2 is denied without prejudice.

3 IT IS FURTHER ORDERED that each party shall assume their own
4 attorney fees and costs.

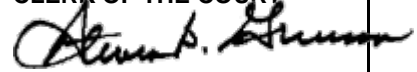
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6 Dated this 11th day of August, 2020

7 Rebecca L. Burton

8 B9A 592 344A 6E1B
9 Rebecca L. Burton
10 District Court Judge

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1 **NEOJ**
2 WILICK LAW GROUP
3 MARSHAL S. WILICK, ESQ.
4 Nevada Bar No. 2515
5 3591 E. Bonanza Road, Suite 200
6 Las Vegas, NV 89110-2101
7 Phone (702) 438-4100; Fax (702) 438-5311
8 email@willicklawgroup.com
9 Attorney for Defendant
10

11 **DISTRICT COURT**
12 **FAMILY DIVISION**
13 **CLARK COUNTY, NEVADA**
14

15 ERICH MARTIN,
16
17 Plaintiff,

18 vs.

19 RAINA MARTIN,
20
21 Defendant.

CASE NO: D-15-509045-D
DEPT. NO: C

22 **NOTICE OF ENTRY OF ORDER INCIDENT TO DECREE**
23

24 TO: ERICH MARTIN, Plaintiff.

25 TO: JOHN T. KELLEHER, ESQ., Attorney for Plaintiff.

26 **PLEASE TAKE NOTICE** that an *Order Incident to Decree* was duly entered
27 in the above action on the 14th day of November, 2016, a true and correct copy of

28 *****

1 which is attached herein.

2 **DATED** this 11th day of August, 2020.

3 WILICK LAW GROUP

4 // s // Richard L. Crane, Esq.

5 MARSHAL S. WILICK, ESQ.
6 Nevada Bar No. 2515
7 RICHARD L. CRANE, ESQ.
8 Nevada Bar No. 9536
9 3591 East Bonanza Road, Suite 200
10 Las Vegas, Nevada 89110-2101
11 Attorneys for Defendant
12
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the WILICK LAW GROUP and that on this 11th day of August, 2020, I caused the above and 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.
- ☐ by hand delivery with signed Receipt of Copy.
- ☐ by First Class, Certified U.S. Mail.

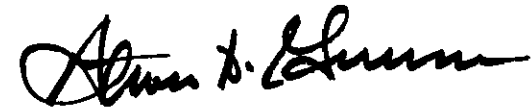
To the person(s) listed below at the address, email address, and/or facsimile number indicated:

John T. Kelleher, Esq.
40 South Stephanie Street, Suite #201
Henderson, Nevada 89012
Attorney for Plaintiff

/s/Justin K. Johnson

An Employee of the WILICK LAW GROUP

P:\wp19\MARTIN,R\DRAFTS\00452859.WPD\jj



CLERK OF THE COURT

ORDR
RAINA MARTIN
2812 Josephine Dr.
Henderson, Nevada 89044
Defendant in *Proper Person*

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

ERICH M. MARTIN,
Plaintiff,

vs.

RAINA L. MARTIN,
Defendant.

CASE NO: D-15-509045-D
DEPT. NO: C

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

ORDER INCIDENT TO DECREE OF DIVORCE

This *Order* is intended to set out terms dividing the military retirement benefits, in sufficient detail to allow the Defense Finance and Accounting Service (DFAS) and the parties to correctly allocate Raina's percentage in accordance with the parties' *Decree of Divorce*. This Court has continuing jurisdiction in accordance with the rules and regulations of the State of Nevada, and the State of Nevada has both personal and subject matter jurisdiction over the parties, and enters this *Order Incident to Decree of Divorce* for the purpose of completing and clarifying the division of benefits contemplated by the *Decree of Divorce*.

THE COURT FINDS AS FOLLOWS:

1. It has continuing jurisdiction over the parties and the subject matter of this action.
2. All applicable portions of the Servicemember's Civil Relief Act (SCRA), 50 U.S.C. 3901 et seq. (Dec. 1, 2015), have been complied with by waiver or otherwise.

- 1 3. This Court has determined that Raina is entitled to her time-rule
2 percentage of Erich's military retirement benefits.
- 3 4. The *Decree of Divorce* entered on November 5, 2015, does not make an
4 adequate distribution of Raina's interest in Erich's military retirement
5 benefits or Cost of Living Adjustments. This *Order* is intended to
6 clarify this Court's intention.
- 7 5. This *Order* is intended to be, and shall constitute an *Order Incident to*
8 *Decree of Divorce* in accordance with 10 U.S.C. § 1408(a)(2), and is
9 intended to clarify the *Decree of Divorce*.
- 10 6. The parties were married on April 1, 2002, and divorced as of November
11 5, 2015.
- 12 7. Erich entered military service on July 13, 1999, and remains on active
13 duty.
- 14 8. The share that each party is entitled should be determined pursuant to
15 the "time-rule" formula which designates the number of months of
16 marriage overlapping military service and dividing it by the total number
17 of months of active military service. This fraction and equivalent
18 percentage establishes the community share of the total benefit. The
19 resulting community share is then divided equally between the parties,
20 and multiplied by the benefit payable.

$$\frac{\text{Number of Months of Marriage Overlapping Creditable Military Service (163.154)}}{\text{Number of Total Months of Active Service (unknown at this time)}} = \text{_____ \% The Marital Percentage}$$

$$\text{Marital Percentage divided by 2} = \text{_____ \% The Spousal Percentage of Benefit}$$

1 9. Raina is entitled to receive any cost of living adjustments (COLAs) that
2 are awarded from time to time for military retired pay, based upon the
3 same percentage outlined above.

4 10. Raina has the right to obtain information relating to Erich's date of first
5 eligibility to retire, date of first eligibility to receive retirement benefits,
6 date of retirement, final rank, grade, and pay, present or past retired pay,
7 or other such information as may be required to enforce the award made
8 herein, or required to revise this order so as to make it enforceable, per
9 65 Fed. Reg. 43298 (July 13, 2000).

10
11 **THE COURT HEREBY ORDERS:**

12 1. This Court has complete jurisdiction in the premises, both as to subject
13 matter and the parties, under NRS 125 and 10 U.S.C. § 1408 et. seq.,
14 and the Court has jurisdiction over Erich by reason of his residence at
15 the time of the filing of the Petition for Divorce and by way of consent
16 to the jurisdiction of the Court, and all applicable portions of the Service
17 Members Civil Relief Act of 2003 have been complied with by waiver
18 or otherwise.

19 2. Raina is awarded her time-rule interest in the military retirement for
20 which Erich is eligible, plus a like percentage of all cost of living
21 adjustment increases that accrue to said military retirement hereafter,
22 computed from the gross sum thereof, as her sole and separate property
23 share thereof, and the obligation shall not be dischargeable in
24 bankruptcy or otherwise.

- 1 3. For the purpose of interpreting this Court's intention in making the
2 division set out in this Order, "military retirement" includes retired pay
3 paid or to which Erich would be entitled for longevity of active duty
4 and/or reserve component military service and all payments paid or
5 payable under the provisions of Title 38 or Chapter 61 of Title 10 of the
6 United States Code, before any statutory, regulatory, or elective
7 deductions are applied. It also includes all amounts of retired pay Erich
8 actually or constructively waives or forfeits in any manner and for any
9 reason or purpose, including but not limited to any post-divorce waiver
10 made in order to qualify for Veterans Administration benefits, or
11 reduction in pay or benefits because of other federal employment, and
12 any waiver arising from Erich electing not to retire despite being
13 qualified to retire. It also includes any sum taken by Erich in addition
14 to or in lieu of retirement benefits, including, but not limited to, REDUX
15 lump sum payments, exit bonuses, voluntary separation incentive pay,
16 special separation benefit, or any other form of compensation
17 attributable to separation from military service instead of or in addition
18 to payment of the military retirement benefits normally payable to a
19 retired member. All sums payable to Raina as a portion of military
20 retirement shall be payable from Erich's disposable retired or retainer pay
21 to the extent that it is so restricted by law.
- 22 4. The appropriate military pay center shall pay the sums called for above
23 directly to Raina, to the extent permitted by law, at the same times as
24 Erich receives his retired or retainer pay, and that this *Order* is intended
25 to qualify under the *Uniformed Services Former Spouses Protection Act*,
26 10 U.S.C. § 1408 et seq., with all provisions to be interpreted to make
27
28

1 the *Order* qualify.

2 5. The amount called for herein shall not be modifiable by the direct or
3 indirect action of either party hereto, either by way of increase or
4 decrease, except as expressly set forth herein. It is contemplated that
5 future cost of living adjustments will be granted by the United States
6 government, by means of which the gross military retirement benefits
7 specified above will increase, thus raising the amount being paid to
8 Raina.

9 6. If Erich takes any steps to merge his military retirement benefits with
10 another retirement program of any kind, that retirement system,
11 program, or plan is directed to honor this court Order to the extent of
12 Raina's interest as set out above, to the extent that the military
13 retirement is used as a basis of payments or benefits under such other
14 retirement system, program, or plan.

15 7. If Erich takes any action that prevents, decreases, or limits the collection
16 by Raina of the sums to be paid hereunder (by application for or award
17 of disability compensation, combination of benefits with any other
18 retired pay, waiver for any reason, including as a result of other federal
19 service, or in any other way), he shall make payments to Raina directly
20 in an amount sufficient to neutralize, as to Raina, the effects of the
21 action taken by Erich. Any sums paid to Erich that this court *Order*
22 provides are to be paid to Raina shall be held by Erich in constructive
23 trust until actual payment to Raina.

24 8. If the amount paid by the military pay center to Raina is less than the
25 amount specified above, Erich shall initiate an allotment to Raina in the
26 amount of any such difference, to be paid from any federal entitlement
27

1 due Erich, with said allotment to be initiated by Erich immediately upon
2 notice of such difference, and making up any arrearages in installments
3 not less in amount or longer in term than the arrearages accrued.

4 9. The appropriate military pay center shall pay the sums called for herein
5 directly to Raina, by voluntary allotment, involuntary allotment, wage
6 withholding, or garnishment of Erich's military retired pay.

7 10. The Court shall retain jurisdiction to enter such further orders as are
8 necessary to enforce the award to Raina of the military retirement
9 benefits awarded herein, including the recharacterization thereof as a
10 division of Civil Service or other retirement benefits, or to make an
11 award of alimony (in the sum of benefits payable plus future cost of
12 living adjustments) in the event that Erich fails to comply with the
13 provisions contained above requiring said payments to Raina, or if
14 military or government regulations or other restrictions interfere with
15 payments to Raina as set forth herein.

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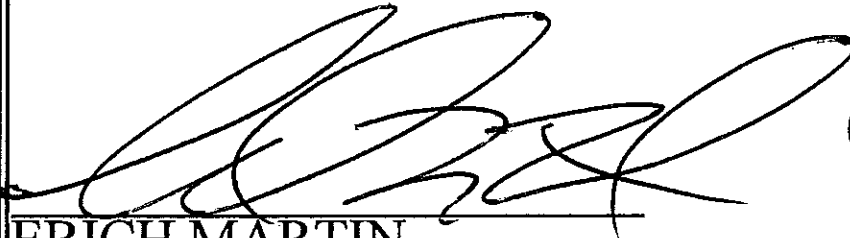
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1 11. Raina has the right to obtain information relating to Erich's date of first
2 eligibility to retire, date of first eligibility to receive retirement benefits,
3 date of retirement, final rank, grade, and pay, present or past retired pay,
4 or other such information as may be required to enforce the award made
5 herein, or required to revise this order so as to make it enforceable, per
6 65 Fed. Reg. 43298 (July 13, 2000).

7 **DATED** this 9 day of Nov, 2016.

8 
9 **DISTRICT COURT JUDGE**

10 Approved as to Form and Content: Respectfully Submitted by:

11 

12
13 ERICH MARTIN
14 1012 E. Lyons St.
15 Larami, WY 82072
Plaintiff in *Proper Person*

16 

17 RAINA MARTIN
18 2812 Josephine Dr.
19 Henderson, Nevada 89044
20 Defendant in *Proper Person*

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ACKNOWLEDGMENT

STATE OF NEVADA }
COUNTY OF CLARK }

On this 23 day of September, 2016, before me, the undersigned
Notary Public in and for said County and State, personally appeared ERICH
MARTIN, known to me to be the person described herein and who executed
the foregoing instrument, and who acknowledged to me that he did so freely
and voluntarily and for the uses and purposes therein mentioned.

Witness my hand and official seal.



NOTARY PUBLIC in and for said
County and State

LARIMER & CO

THEODORE ALLEN BULIK-HOCUM NOTARY PUBLIC STATE OF COLORADO NOTARY ID 20134021099 MY COMMISSION EXPIRES APRIL 4, 2017
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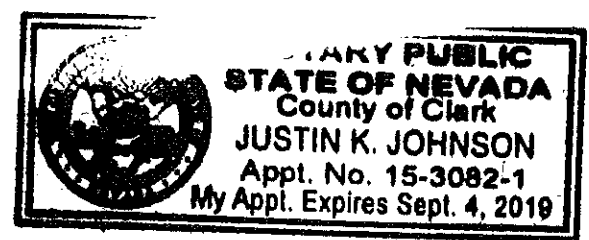
ACKNOWLEDGMENT

STATE OF NEVADA }
COUNTY OF CLARK }

On this 3 day of November, 2016, before me, the undersigned
Notary Public in and for said County and State, personally appeared RAINA
MARTIN, known to me to be the person described herein and who executed
the foregoing instrument, and who acknowledged to me that she did so freely
and voluntarily and for the uses and purposes therein mentioned.

Witness my hand and official seal.

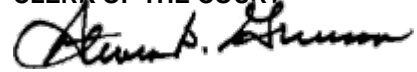

NOTARY PUBLIC in and for said
County and State



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DISTRICT COURT
CLARK COUNTY, NEVADA

Erich Martin, Plaintiff.
vs.
Raina Martin, Defendant.

D-15-509045-D
Department C

NOTICE OF AUDIO/VISUAL APPEARANCE

Please be advised that the **Status Check** to be heard by the Honorable Rebecca L. Burton at the Family Courts and Services Center, 601 N. Pecos Rd., Las Vegas, Nevada, on the **3rd day of September, 2020** at the hour of **11:00 AM** in **Department C, Courtroom 08** will be **conducted by video appearance**. YOUR PRESENCE IS NECESSARY. **Please note that some cases may take longer than others and there is a possibility that the website may drop your video/telephonic appearance before your case is called. In the event that this occurs, please be patient and log back in to Bluejeans and re-enter your meeting ID number. The Court will call your case when it is ready to go on the record.**

Go to: <https://www.bluejeans.com> Meeting No. 691 810 975

DISTRICT JUDGE REBECCA L. BURTON

By: /s/ Lourdes Child
Lourdes Child
Judicial Executive Assistant
Department C

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CERTIFICATE OF SERVICE

☒ I provided the foregoing NOTICE OF AUDIO/VISUAL APPEARANCE to:

John Kelleher, Esq.
kelleherjt@aol.com

Marshal Willick, Esq.
email@willicklawgroup.com

/s/ Lourdes Child
Lourdes Child
Judicial Executive Assistant
Department C

164

164

1 **SAO**
2 WILICK LAW GROUP
3 MARSHAL S. WILICK, ESQ.
4 Nevada Bar No. 2515
5 3591 E. Bonanza Road, Suite 200
6 Las Vegas, NV 89110-2101
7 Phone (702) 438-4100; Fax (702) 438-5311
8 email@willicklawgroup.com
9 Attorney for Plaintiff
10

11 **DISTRICT COURT**
12 **FAMILY DIVISION**
13 **CLARK COUNTY, NEVADA**
14

15 ERICH MARTIN,
16
17 Plaintiff,

18 vs.

19 RAINA MARTIN,
20
21 Defendant.

CASE NO: D-15-509045-D
DEPT. NO: C

DATE OF HEARING: 9/3/20
TIME OF HEARING: 11:00 a.m.

22 **STIPULATION AND ORDER TO VACATE HEARING**

23 Defendant, Raina Martin, by and through her attorney, Richard L. Crane, Esq.,
24 of the WILICK LAW GROUP, and Plaintiff, Erich Martin, by and through his attorney,
25 John T. Kelleher, Esq., of KELLEHER & KELLEHER., stipulate and agree as follows:

26 **IT IS HEREBY STIPULATED AND AGREED** that the hearing currently
27 set for September 3, 2020, at 11:00 a.m., shall be vacated.
28

1 **IT IS FURTHER STIPULATED AND AGREED** that any current claim for
2 medical arrears is waived by Raina. Erich shall comply with all financial *Orders*
3 currently in place in the future to include his requirement to pay for all of Nathan's
4 dental and vision premiums and to pay 50% of the cost of any new glasses with the
5 amount not to exceed \$50.00.

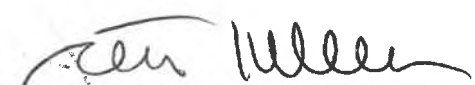
6
7 **IT IS FURTHER STIPULATED AND AGREED** this request is made in good faith
8 and not meant to delay adjudication of any matters pending before the Court.

9 Dated this 28th day of August, 2020
10 Respectfully Submitted By:

11 WILICK LAW GROUP

 Dated this 28th day of August, 2020
 Approved as to Form and Content
 By:
 KELLEHER AND KELLEHER

12
13 /s/Richard L. Crane, Esq.
14 MARSHAL S. WILICK, ESQ.
15 Nevada Bar No. 2515
16 RICHARD L. CRANE, ESQ.
17 Nevada Bar No. 9536
18 3591 E. Bonanza Rd., Suite 200
19 Las Vegas, Nevada 89110
20 (702) 438-4100; Fax (702) 438-5311
21 Attorneys for Plaintiff


22 JOHN T. KELLEHER, ESQ.
23 Nevada Bar No. 6012
24 807 South Seventh Street
25 Las Vegas, Nevada 89101
26 (702) 384-7494
27 Attorney for Defendant

28 *****

1 **ORDER**

2 Upon stipulation of the parties, and good cause appearing, the terms of the
3 above *Stipulation and Order* is hereby entered as an *Order* of this Court.
4

5 **IT IS FURTHER ORDERED** that the hearing currently set for September 3,
6 2020, at 11:00 a.m., shall be vacated.
7

8 **IT IS SO ORDERED** on this ____ day of August, 2020.

9 Dated this 28th day of August, 2020

10 

11 **DISTRICT COURT JUDGE**

12 Respectfully Submitted by:
13 WILICK LAW GROUP

4DB EE9 2393 9BCE
Rebecca L. Burton
District Court Judge

14 /s/Richard L. Crane, Esq.
15 MARSHAL S. WILICK, ESQ.
16 Nevada Bar No. 2515
17 RICHARD L. CRANE, ESQ
Nevada Bar No. 9536
3591 East Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101
(702) 438-4100
Attorneys for Plaintiff
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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Erich M Martin, Plaintiff

CASE NO: D-15-509045-D

7 vs.

DEPT. NO. Department C

8 Raina L Martin, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 8/28/2020

15 "Samira C. Knight, Esq. " .

Samira@tklawgroupnv.com

16 John Kelleher

hjuilfs@kelleherandkelleher.com

17 Reception Reception

email@willicklawgroup.com

18 Samira Knight

Samira@TKLawgroupnv.com

19 Tarkanian Knight

Info@Tklawgroupnv.com

20 Matthew Friedman, Esq.

mfriedman@fordfriedmanlaw.com

21 Justin Johnson

Justin@willicklawgroup.com

22 Tracy McAuliff

tracy@fordfriedmanlaw.com

23 Gary Segal, Esq.

gsegal@fordfriedmanlaw.com

24 Richard Crane

richard@willicklawgroup.com

25 Erich Martin

emartin2617@gmail.com

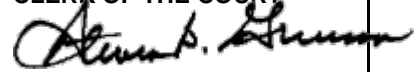
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Christopher Phillips, Esq.	cphillips@fordfriedmanlaw.com
John Kelleher	kelleherjt@aol.com

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1 **NTSO**
2 **WILICK LAW GROUP**
3 **MARSHAL S. WILICK, ESQ.**
4 Nevada Bar No. 2515
5 3591 E. Bonanza Road, Suite 200
6 Las Vegas, NV 89110-2101
7 Phone (702) 438-4100; Fax (702) 438-5311
8 email@willicklawgroup.com
9 Attorney for Defendant
10

11 **DISTRICT COURT**
12 **FAMILY DIVISION**
13 **CLARK COUNTY, NEVADA**
14

15 **ERICH MARTIN,**
16 **Plaintiff,**

17 **vs.**

18 **RAINA MARTIN,**
19 **Defendant.**

CASE NO: D-15-509045-D
DEPT. NO: C

20 **NOTICE OF ENTRY OF**
21 **STIPULATION AND ORDER TO VACATE HEARING**

22 **TO: ERICH MARTIN, Plaintiff.**

23 **TO: JOHN T. KELLEHER, ESQ., Attorney for Plaintiff.**

24 **PLEASE TAKE NOTICE** that an *Stipulation and Order to Vacate Hearing*

25 *****

26 *****

27 *****

28 *****

1 was duly entered in the above action on the 28th day of August, 2020, a true and
2 correct copy of which is attached herein.

3 **DATED** this 28th day of August, 2020.

4 WILICK LAW GROUP

5
6 // s // Richard L. Crane, Esq.

7 MARSHAL S. WILICK, ESQ.
8 Nevada Bar No. 2515
9 RICHARD L. CRANE, ESQ.
10 Nevada Bar No. 9536
11 3591 East Bonanza Road, Suite 200
12 Las Vegas, Nevada 89110-2101
13 Attorneys for Defendant
14
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the WILICK LAW GROUP and that on this 28th day of August, 2020, I caused the above and 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.
- ☐ by hand delivery with signed Receipt of Copy.
- ☐ by First Class, Certified U.S. Mail.

To the person(s) listed below at the address, email address, and/or facsimile number indicated:

John T. Kelleher, Esq.
40 South Stephanie Street, Suite #201
Henderson, Nevada 89012
Attorney for Plaintiff

/s/Justin K. Johnson

An Employee of the WILICK LAW GROUP

P:\wp19\MARTIN,R\DRAFTS\00455987.WPD\jj

1 **SAO**
2 WILICK LAW GROUP
3 MARSHAL S. WILICK, ESQ.
4 Nevada Bar No. 2515
5 3591 E. Bonanza Road, Suite 200
6 Las Vegas, NV 89110-2101
7 Phone (702) 438-4100; Fax (702) 438-5311
8 email@willicklawgroup.com
9 Attorney for Plaintiff
10

11 **DISTRICT COURT**
12 **FAMILY DIVISION**
13 **CLARK COUNTY, NEVADA**
14

15 ERICH MARTIN,
16
17 Plaintiff,

18 vs.

19 RAINA MARTIN,
20
21 Defendant.

CASE NO: D-15-509045-D
DEPT. NO: C

DATE OF HEARING: 9/3/20
TIME OF HEARING: 11:00 a.m.

22 **STIPULATION AND ORDER TO VACATE HEARING**

23 Defendant, Raina Martin, by and through her attorney, Richard L. Crane, Esq.,
24 of the WILICK LAW GROUP, and Plaintiff, Erich Martin, by and through his attorney,
25 John T. Kelleher, Esq., of KELLEHER & KELLEHER., stipulate and agree as follows:

26 **IT IS HEREBY STIPULATED AND AGREED** that the hearing currently
27 set for September 3, 2020, at 11:00 a.m., shall be vacated.
28

1 **IT IS FURTHER STIPULATED AND AGREED** that any current claim for
2 medical arrears is waived by Raina. Erich shall comply with all financial *Orders*
3 currently in place in the future to include his requirement to pay for all of Nathan's
4 dental and vision premiums and to pay 50% of the cost of any new glasses with the
5 amount not to exceed \$50.00.

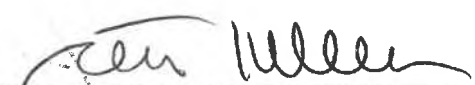
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7 **IT IS FURTHER STIPULATED AND AGREED** this request is made in good faith
8 and not meant to delay adjudication of any matters pending before the Court.

9 Dated this 28th day of August, 2020
10 Respectfully Submitted By:

11 WILICK LAW GROUP

 Dated this 28th day of August, 2020
 Approved as to Form and Content
 By:
 KELLEHER AND KELLEHER

12
13 /s/Richard L. Crane, Esq.
14 MARSHAL S. WILICK, ESQ.
15 Nevada Bar No. 2515
16 RICHARD L. CRANE, ESQ.
17 Nevada Bar No. 9536
18 3591 E. Bonanza Rd., Suite 200
19 Las Vegas, Nevada 89110
20 (702) 438-4100; Fax (702) 438-5311
21 Attorneys for Plaintiff


22 JOHN T. KELLEHER, ESQ.
23 Nevada Bar No. 6012
24 807 South Seventh Street
25 Las Vegas, Nevada 89101
26 (702) 384-7494
27 Attorney for Defendant

28 *****

1 **ORDER**

2 Upon stipulation of the parties, and good cause appearing, the terms of the
3 above *Stipulation and Order* is hereby entered as an *Order* of this Court.
4

5 **IT IS FURTHER ORDERED** that the hearing currently set for September 3,
6 2020, at 11:00 a.m., shall be vacated.
7

8 **IT IS SO ORDERED** on this ____ day of August, 2020.

9 Dated this 28th day of August, 2020

10 

11 **DISTRICT COURT JUDGE**

12 Respectfully Submitted by:
13 WILICK LAW GROUP

4DB EE9 2393 9BCE
Rebecca L. Burton
District Court Judge

14 /s/Richard L. Crane, Esq.
15 MARSHAL S. WILICK, ESQ.
16 Nevada Bar No. 2515
17 RICHARD L. CRANE, ESQ
Nevada Bar No. 9536
3591 East Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101
(702) 438-4100
Attorneys for Plaintiff
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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Erich M Martin, Plaintiff

CASE NO: D-15-509045-D

7 vs.

DEPT. NO. Department C

8 Raina L Martin, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 8/28/2020

15 "Samira C. Knight, Esq. " .

Samira@tklawgroupnv.com

16 John Kelleher

hjuilfs@kelleherandkelleher.com

17 Reception Reception

email@willicklawgroup.com

18 Samira Knight

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20 Matthew Friedman, Esq.

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21 Justin Johnson

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22 Tracy McAuliff

tracy@fordfriedmanlaw.com

23 Gary Segal, Esq.

gsegal@fordfriedmanlaw.com

24 Richard Crane

richard@willicklawgroup.com

25 Erich Martin

emartin2617@gmail.com

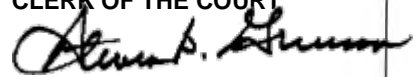
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Christopher Phillips, Esq.	cphillips@fordfriedmanlaw.com
John Kelleher	kelleherjt@aol.com

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1 **WOA**
2 JOHN T. KELLEHER, ESQ.
3 Nevada Bar No. 6012
4 KELLEHER & KELLEHER, LLC
5 40 S. Stephanie Street, Suite #201
6 Henderson, Nevada 89012
7 Phone: (702) 384-7494
8 Fax: (702) 384-7545
9 Email: kelleherjt@aol.com
10 Attorney for Plaintiff

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 * * * * *

9 ERICH M. MARTIN,
10 Plaintiff,

CASE NO.: D-15-509045-D
DEPT. NO.: C

11 v.

12 RAINA L. MARTIN,
13 Defendant.

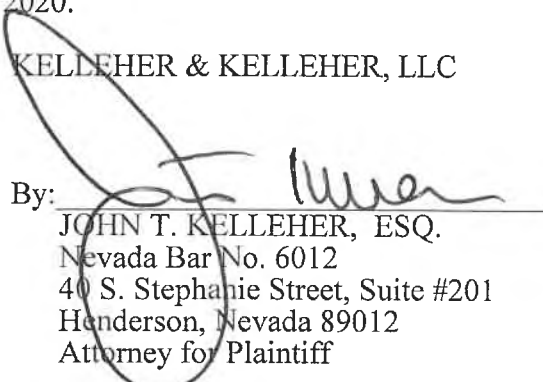
14 **NOTICE OF WITHDRAWAL OF ATTORNEY OF RECORD**

15 PLEASE TAKE NOTICE that this matter having reached final determination, the
16 undersigned does hereby withdraw as attorney of record for Plaintiff, Erich M. Martin, in the
17 above-entitled matter pursuant to Supreme Court Rule 46. Plaintiff's last known mailing address
18 is: 3815 Little Dipper Drive, Fort Collins, Colorado 80528.

19 DATED this 31 day of August, 2020.

20 KELLEHER & KELLEHER, LLC

21 By:

22 
23 JOHN T. KELLEHER, ESQ.
24 Nevada Bar No. 6012
25 40 S. Stephanie Street, Suite #201
26 Henderson, Nevada 89012
27 Attorney for Plaintiff
28

CERTIFICATE OF SERVICE

I hereby certify that on the 31 day of August, 2020, a true and correct copy of the foregoing NOTICE OF WITHDRAWAL OF ATTORNEY OF RECORD was served electronically via E-Service Master List of Odyssey and deposited in the United States Mail, postage prepaid and addressed as follows:

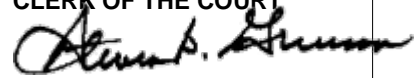
Erich Martin
3815 Little Dipper Drive
Fort Collins, Colorado 80528

Marshal S. Willick, Esq.
WILLICK LAW GROUP
marshal@willicklawgroup.com
email@willicklawgroup.com
Attorney for Defendant


An employee of Kelleher & Kelleher, LLC

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Marquis Aurbach Coffing
 Chad F. Clement, Esq.
 Nevada Bar No. 12192
 Kathleen A. Wilde, Esq.
 Nevada Bar No. 12522
 10001 Park Run Drive
 Las Vegas, Nevada 89145
 Telephone: (702) 382-0711
 Facsimile: (702) 382-5816
 kwilde@maclaw.com
Attorneys for Erich M. Martin

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

Erich M. Martin,

Plaintiff,

Case No.: D-15-509045-D

Dept. No.: C

vs.

Raina L. Martin,

Defendant.

NOTICE OF APPEARANCE

Please take notice that Chad F. Clement, Esq. and Kathleen A. Wilde, Esq. of the law firm Marquis Aurbach Coffing are hereby appearing in this matter for Plaintiff, Erich M. Martin.

Dated this 2nd day of September, 2020.

MARQUIS AURBACH COFFING

By /s/ Kathleen A. Wilde, Esq.

Chad F. Clement, Esq.
 Nevada Bar No. 12192
 Kathleen A. Wilde, Esq.
 Nevada Bar No. 12522
 10001 Park Run Drive
 Las Vegas, Nevada 89145
Attorneys for Erich M. Martin

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF APPEARANCE** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 2nd day of September, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

John Kelleher	hjuilfs@kelleherandkelleher.com
Erich Martin	emartin2617@gmail.com
Richard L Crane	richard@willicklawgroup.com
Matthew H. Friedman, Esq.	mfriedman@fordfriedmanlaw.com
Justin Johnson	Justin@willicklawgroup.com
Tracy McAuliff	tracy@fordfriedmanlaw.com
Christopher B. Phillips, Esq.	cphillips@fordfriedmanlaw.com
Reception	email@willicklawgroup.com
Gary Segal, Esq.	gsegal@fordfriedmanlaw.com
"Samira C. Knight, Esq. " .	Samira@tklawgroupnv.com
John Kelleher	kelleherjt@aol.com
Samira Knight	Samira@TKLawgroupnv.com
Tarkanian Knight	Info@Tklawgroupnv.com

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

Raina L. Martin
550 Emerald Youth Road
Las Vegas, NV 89178
Defendant

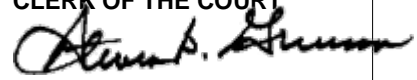
Erich M. Martin
3815 Little Dipper Dr.
Fort Collins, Colorado 80528
Plaintiff

/s/ Javie-Anne Bauer
An employee of Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

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Marquis Aurbach Coffing
 Chad F. Clement, Esq.
 Nevada Bar No. 12192
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 10001 Park Run Drive
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 Telephone: (702) 382-0711
 Facsimile: (702) 382-5816
 cclement@maclaw.com
 kwilde@maclaw.com
Attorneys for Erich M. Martin

DISTRICT COURT—FAMILY DIVISION
CLARK COUNTY, NEVADA

Erich M. Martin,

Plaintiff,

Case No.: D-15-509045-D
 Dept. No.: C

vs.

Raina L. Martin,

Defendant.

NOTICE OF APPEAL

Plaintiff, Erich M. Martin, by and through his attorneys of record, Marquis Aurbach Coffing, hereby appeals to the Supreme Court of Nevada from the Order Regarding Enforcement of Military Retirement Benefits, filed on August 11, 2020, and the Notice of Entry of Order, which was also was filed on August 11, 2020 and is attached hereto as **Exhibit 1**.

Dated this 9th day of September, 2020.

MARQUIS AURBACH COFFING

By /s/ Kathleen A. Wilde

Chad F. Clement, Esq.
 Nevada Bar No. 12192
 Kathleen A. Wilde, Esq.
 Nevada Bar No. 12522
 10001 Park Run Drive
 Las Vegas, Nevada 89145
Attorneys for Erich M. Martin

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF APPEAL** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 9th day of September, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

John Kelleher	hjuilfs@kelleherandkelleher.com
Erich Martin	emartin2617@gmail.com
Richard L Crane	richard@willicklawgroup.com
Matthew H. Friedman, Esq.	mfriedman@fordfriedmanlaw.com
Justin Johnson	Justin@willicklawgroup.com
Tracy McAuliff	tracy@fordfriedmanlaw.com
Christopher B. Phillips, Esq.	cphillips@fordfriedmanlaw.com
Reception	email@willicklawgroup.com
Gary Segal, Esq.	gsegal@fordfriedmanlaw.com
"Samira C. Knight, Esq. " .	Samira@tklawgroupnv.com
John Kelleher	kelleherjt@aol.com
Samira Knight	Samira@TKLawgroupnv.com
Tarkanian Knight	Info@Tklawgroupnv.com

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

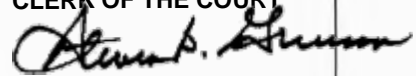
Raina L. Martin
550 Emerald Youth Road
Las Vegas, NV 89178
Defendant

Erich M. Martin
3815 Little Dipper Dr.
Fort Collins, Colorado 80528
Plaintiff

/s/ Javie-Anne Bauer
An employee of Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

Exhibit 1



NEO

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

Erich M Martin, Plaintiff
vs.
Raina L Martin, Defendant.

Case No: D-15-509045-D
Department C

NOTICE OF ENTRY OF ORDER

Please take notice that an ORDER REGARDING ENFORCEMENT
OF MILITARY RETIREMENT BENEFITS was entered in the
foregoing action and the following is a true and correct copy thereof.

Dated: August 11, 2020

/s/ Lourdes Child
Lourdes Child
Judicial Executive Assistant
Department C

NEO

CERTIFICATE OF SERVICE

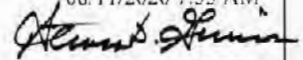
I hereby certify that on the above file stamp date:

☒ I provided the foregoing NOTICE OF ENTRY OF ORDER to:

John T. Kelleher , Esq.
kelleherjt@aol.com

Marshal Shawn Willick, Esq.
email@willicklawgroup.com

/s/ Lourdes Child
Lourdes Child
Judicial Executive Assistant
Department C


CLERK OF THE COURT

1 ORDR

2 DISTRICT COURT, FAMILY DIVISION

3 CLARK COUNTY, NEVADA

4 ERICH M. MARTIN,)

5 Plaintiff,)

6 vs.)

CASE NO. D-15-509045-D

) DEPT NO. C

7 RAINA L. MARTIN,)

8 Defendant.)

) Under Submission

9 _____
10 ORDER REGARDING ENFORCEMENT OF
11 MILITARY RETIREMENT BENEFITS

12 THIS MATTER having come before the Court on Defendant, Raina L.
13 Martin ("Raina")'s *Motion to Enforce* filed and served electronically on
14 May 1, 2020, and on Plaintiff, Erich M. Martin ("Erich")'s *Defendant's*
15 *Opposition* filed and served by e-mail and mail on June 5, 2020; Erich is
16 represented by Attorney John T. Kelleher of Kelleher and Kelleher, LLC,
17 and Raina is represented by Attorneys Marshal S. Willick and Richard L.
18 Crane of Willick Law Group, the Court having reviewed the pleadings and
19 papers on file herein, and good cause appearing therefor

20 ////

21 ////

1 Facts

2 On November 5, 2015, a *Decree of Divorce* reached by agreement
3 between the parties was entered by the Court containing the following
4 provision:

5 IT IS FURTHER ORDERED, ADJUDGED, AND
6 DECREED that Raina shall be awarded the following as her sole
and separate property:

7 4. One-half (1/2) of the marital interest in the Erich's
8 military retirement, pursuant to the time rule established in
9 Nevada Supreme Court cases *Gemma v. Gemma*, 105 Nev. 458,
10 778 P.2d 429 (1989) and *Fondi v. Fondi*, 106 Nev. 856, 802 P.2d
11 1264 (1990). The parties shall use Marshal S. Willick, Esq. to
12 prepare a Qualified Domestic Relations Order (hereinafter
"QDRO"), or similar instrument to divide the pension. The
parties shall equally divide the costs of preparing such an
instrument. ***Should Erich select to accept military
disability payments, Erich shall reimburse Raina for
any amount that her share of the pension is reduced
due to the disability status.***

13 [Emphasis added.]

14 On November 10, 2015, *Notice of Entry of Decree of Divorce* was filed
15 and served.

16 On November 14, 2016, an *Order Incident to Decree of Divorce* was
17 entered and submitted to the military to effectuate the parties' *Decree of*
18 *Divorce*. The *Order Incident to Decree of Divorce* provides in particular
19 that Raina's share of Erich's military retired pay "also includes all amount
20 of retired pay Erich actually or constructively waives or forfeits in any

1 manner and for any reason or purpose, including but not limited to any
2 post-divorce waiver made in order to qualify for Veterans Administration
3 benefits;" that it is "intended to qualify under the Uniformed Services
4 Former Spouses Protection Act, 10 U.S.C. Sec. 1408 et seq.;" that if Erich
5 obtained a disability waiver, "he shall make payments to Raina directly in
6 an amount sufficient to neutralize, as to Raina, the effects of the action
7 taken by Erich;" and that the Court shall retain jurisdiction to enforce the
8 award to Raina of military retirement benefits by making an award of
9 alimony.

10 Erich argues that he did not sign the *Order Incident to Decree of*
11 *Divorce* voluntarily but was forced to do so by the Court. The Court
12 reviewed a hearing held September 22, 2016 during which Raina orally
13 raised the issue that Erich had not yet signed and returned the prepared
14 document. When the Court asked Erich for status, he did not protest the
15 language, but had not signed due to other unrelated unresolved matters
16 between the parties. Accordingly, the Court ordered Erich to return the
17 signed document and he did. The *Order Incident to Decree of Divorce* was
18 entered by the Court, but there is no *Notice of Entry of Order*.

19 Nevertheless, Raina received payments from DFAS in November and
20 December 2019 (\$844.08 per month) and January 2020 (\$845.43). In late

1 January 2020, DFAS notified Raina that they would no longer be sending
2 payments to Raina. Upon further inquiry in February 2020, Raina learned
3 that Erich opted for full disability as Combat Related Special Compensation
4 (“CRSC”) and would be receiving a tax free payment from the Veterans
5 Administration. Raina would no longer receive any payments from DFAS.

6 Raina asked Erich to continue to pay her directly as they agreed in
7 their *Decree of Divorce*. Citing the U.S. Supreme Court’s recent decision in
8 *Howell v. Howell*, 137 S.Ct. 1400, 1402, 197 L.Ed.2d 781 (2017), Erich
9 refused to do so. Accordingly, Raina brought this action to enforce the
10 provisions of the *Decree of Divorce* and the *Order Incident to Decree* for
11 reimbursement and spousal support (“indemnification provisions”). It is
12 Erich’s position that the indemnification provisions are unenforceable
13 under *Howell*.

14 History

15 To best understand the issue, it is important to provide a short history
16 of federal law.

17 In 1981, the U.S. Supreme Court decided *McCarty v. McCarty*, 453
18 U.S. 210, 101 S.Ct. 2728, 69 L.Ed.2d 589 (1981) which held that the federal
19 statutes governing military retired pay preempted the state courts from
20 treating military retired pay as community property on the basis that

1 Congress intended to protect veterans' benefits to ensure that they reach
2 veterans, with the goal of incentivizing participation in the military and
3 maintaining a strong national defense. Acknowledging the hardship the
4 decision may cause to military spouses, the U.S. Supreme Court pointed out
5 that Congress was free to change the statutory law.

6 In 1982, in direct response to *McCarty*, Congress enacted the
7 Uniformed Services Former Spouses' Protection Act ("USFSPA"), 10 U.S.C.
8 § 1408(c)(1), which allowed state courts to treat military retired pay as
9 community property, but expressly excluded military retired pay waived in
10 order to receive military disability benefits.

11 In 1989, USFSPA was interpreted by the U.S. Supreme Court in
12 *Mansell v. Mansell*, 490 U.S. 581, 109 S.Ct. 2023, 104 L.Ed.2d 675 (1989).
13 In their opinion, the U.S. Supreme Court explained federal law provides
14 that veterans who became disabled as a result of military service are eligible
15 for disability benefits. Those benefits are calculated according to the
16 seriousness of the disability and the degree to which the veteran's ability to
17 earn a living has been impaired. In order to prevent double dipping, a
18 military retiree may receive veteran's disability benefits in exchange for
19 waiving a corresponding amount of his military retirement pay. Because
20 disability benefits are exempt from taxation, the disabled veteran's income

1 is increased. *Id.* 490 U.S. 583-84, 109 S.Ct. 2026, 104 L.Ed.2d. The result
2 to the former spouse, however, is a loss of benefits which have been
3 converted from military retired pay, which may be considered by the state
4 as marital property, to veteran's disability benefits, which may not be
5 considered by the state as marital property.

6 The *Mansell* divorce occurred prior to *McCarty* and prior to
7 enactment of USFSPA. At that time, the veteran had already waived a
8 portion of his military retired pay for veteran's disability benefits and was
9 receiving both military retired pay and veteran's disability benefits. To
10 settle the divorce, the veteran agreed to pay to his former spouse 50% of
11 both his military retired pay and his veteran's disability benefits. Years
12 later, after enactment of USFSPA, the veteran asked a California court to
13 remove from the decree of divorce the provision requiring him to pay 50%
14 of his veteran's disability benefits to his former spouse. The veteran's
15 request was denied, and he appealed without success. Eventually, the
16 matter was heard by the U.S. Supreme Court which reversed the California
17 court by holding that USFSPA grants state courts the authority to divide
18 military retired pay as community property, but it did not grant state courts
19 the authority to divide the military retired pay waived in order to receive
20 veterans' disability benefits. The Court recognized that USFSPA was "one

1 of those rare instances where Congress has directly and specifically
2 legislated in the area of domestic relations.” *Id.* 490 U.S. at 587, 109 S.Ct. at
3 2028.

4 But, the *Mansell* story did not end at the U.S. Supreme Court. On
5 remand, the California court still refused to change the result based, not on
6 the principles of community property law and the federal preemption of
7 state law characterization of veteran’s disability benefits as decided by the
8 U.S. Supreme Court, but on the principles of *res judicata*. In a footnote,
9 the U.S. Supreme Court expressly acknowledged that the issue of *res*
10 *judicata* is a matter of state law “over which we have no jurisdiction.” 490
11 U.S. at 586 n.5. The California court reasoned that because the veteran
12 consented to the otherwise incorrect result when he signed the property
13 settlement agreement, “he is therefore barred from complaining.” *In re*
14 *Marriage of Mansell*, 217 Cal.App.3d 219, 230, 265 Cal.Rptr. 227, 233 (Ct.
15 App. 1989) on remand from 490 U.S. 581, 109 S.Ct. 2023 (1989). The U.S.
16 Supreme Court denied certiorari allowing the California court’s order to
17 stand. *Mansell v. Mansell*, 498 U.S. 806, 111 S.Ct. 237, 112 L.Ed.2d 197
18 (1990). Moreover, although *Mansell* concerned an agreement, the
19 agreement did not contain a contractual indemnification provision, leaving
20 enforceability of such a provision unresolved.

1 In 2016, after *McCarty*, USFSPA, and *Mansell*, Erich and Raina
2 contemplated the probability that Erich would eventually waive his military
3 retired pay for veteran's disability benefits. Therefore, through their
4 *Decree of Divorce*, Erich and Raina chose indemnification as a resolution
5 which had become a common and prudent means of addressing the issue
6 whereby Erich agreed to reimburse Raina if he chose to waive his military
7 retired pay in favor of veteran's disability benefits. Through their *Order*
8 *Incident to Decree*, the parties further agreed that the reimbursement
9 would be in the form of spousal support.

10 In 2017, 28 years after *Mansell*, the U.S. Supreme Court addressed
11 indemnification by state courts in the case of *Howell v. Howell*, 137 S.Ct.
12 1400, 197 L.Ed.2d 781 (2017). In *Howell*, an Arizona court awarded the
13 former spouse 50% of the military member's retired pay. About 13 years
14 later, the veteran waived a portion of his military retired pay in exchange
15 for veteran's disability benefits resulting in substantial reduction of the
16 former spouse's share. The Arizona court restored the full 50% to the
17 spouse, but was reversed by the U.S. Supreme Court which held that a state
18 court does not have jurisdiction to order the division of veteran's disability
19 benefits on the basis that "federal law ... [has] completely pre-empted the

20 ////

1 application of state community property law to military retirement pay.”
2 *Id.* 137 S.Ct. at 1403, 197 L.Ed.2d at 786. Finding that the purpose of a
3 reimbursement or indemnification order was to restore a community
4 property right in the original military retirement, the U.S. Supreme Court
5 reasoned that all such state orders are preempted. Moreover, it does not
6 matter whether the disability election was taken before the decree was
7 entered (*Mansell*) or after the decree was entered (*Howell*), because
8 “[s]tate courts cannot “vest” that which (under governing federal law) they
9 lack the authority to give.” *Id.* 1405. Recognizing that their interpretation
10 may impose hardship to the former spouse, the U.S. Supreme Court
11 offered:

12 [A] family court, when it first determines the value of a
13 family’s assets, remains free to take account of the contingency
14 that some military retirement pay might be waived, or, as the
15 petitioner himself recognizes, take account of reductions in
16 value when it calculates or recalculates the need for spousal
17 support.

18 *Id.* at 1406.

19 Notably, *Howell* did not concern an indemnification agreement
20 between the parties, but a court created indemnification remedy after the
21 waiver was taken. Although *Howell* was silent regarding the enforceability
of a contractual indemnification provision, such an agreement by the

1 parties is not inconsistent with the U.S. Supreme Court's suggestion to take
2 precautions.

3 Post-Howell Decisions

4 Citing their new decision in *Howell*, the U.S. Supreme Court quickly
5 vacated two state court orders forcing veterans to reimburse former
6 spouses in divorce proceedings if they had waived retirement pay in order
7 to receive veteran's disability benefits. *Merrill v. Merrill*, 137 S.Ct. 2156,
8 198 L.Ed.2d 228 (2017) (post-decree indemnification order reversed); and
9 *Cassinelli v. Cassinelli*, 138 S.Ct. 69, 199 L.Ed.2d 2 (2017), (compensation
10 in the form of a dollar-for-dollar alimony award reversed). Notably, both of
11 these cases concerned court remedies and neither involved contractual
12 indemnification.

13 Some state courts have broadly treated military retirement pay waived
14 in favor of veteran's disability benefits to be off limits and will not allow a
15 remedy in any form if the purpose of that remedy is to replace in full the
16 lost military retired pay. In *Hurt v. Jones-Hurt*, 233 Md. App. 610, 168
17 A.3d 992 (Court of Special Appeals of Maryland), Maryland reversed the
18 amendment of a property award as a remedy to a waiver. In *Mattson v.*
19 *Mattson*, 903 N.W.2d 233 (Court of Appeals of Minnesota), Minnesota
20 recognized that prior to *Howell*, "principles of contract and *res judicata*

1 could render a stipulated decree indemnifying an ex-spouse as enforceable,
2 even if it ran afoul of *Mansell*, because ‘parties are free to bind themselves
3 to obligations that a court could not impose,’” *Id.* at 240 then held after
4 *Howell* that contractual principals could not rescue the former spouse’s
5 ability to receive the military retired pay waived for veteran’s disability
6 benefits. In *Vlach v. Vlach*, 556 S.2.3d 219 (Court of Appeals of Tennessee
7 2017), Tennessee held that an agreement for partial indemnification of
8 veteran’s disability benefits was unenforceable. In *Tozer v. Tozer*, 410 P.3d
9 835 (Colorado Court of Appeals, Division IV 2017), Colorado held that
10 retention of jurisdiction in the event of a future waiver is preempted. In
11 *Brown v. Brown*, 260 So.3d 851 (Court of Civil Appeals of Alabama 2018),
12 Alabama held that a contractual indemnification provision was completely
13 preempted. These cases have been criticized by legal scholars.¹

14 More states, however, have taken the suggestion of the U.S. Supreme
15 Court by becoming creative in their remedies after *Howell* or finding
16 alternative theories to avoid an unfair result. In *Lesh v. Lesh*, 257 N.C.App.

17 Page 11 of 24

18
19 ¹ The Minnesota decision has been criticized as an unnecessarily overbroad reading of
20 *Howell*. *A Change in Military Pension Division: The End of Court-Adjudicated*
21 *Indemnification -- Howell v. Howell*, 44 Mitchell Hamline Law Review (2018); *Military*
Pension Division Cases Post-Howell: Missing the Mark, or Hitting the Target?, Journal
of the American Academy of Matrimonial Lawyers, Vol. 31, March 13, 2019, page 513
which also criticizes as going too far the decisions in *Hurt v. Jones-Hurt*, *Vlach v. Vlach*,
and *Brown, v. Brown*.

1 471, 809 S.E.2d 890 (Court of Appeals of North Carolina 2018), North
2 Carolina found that *Howell* reaffirms and clarifies *Mansell*, but it has no
3 effect on the *Rose*² line of cases therefore the court's order taking into
4 consideration veteran's disability benefits as income for the purposes of
5 making a property settlement payment was not preempted. *In re Marriage*
6 *of Cassinelli*, 20 Cal.App.5th 1267, 229 Cal.Rptr.3d 801 (2018), California,
7 after remand from the U.S. Supreme Court, reversed the spousal support
8 award finding it to be a dollar for dollar replacement for the lost military
9 retired pay. But the case did not end upon that ruling as inferred by Erich,
10 because California remanded the matter for a new trial on the former
11 spouse's request for modification of spousal support indicating that
12 modification of spousal support was not prohibited. In *Gross v. Wilson*,
13 424 P.3d 390 (Supreme Court of Alaska 2018), Alaska held that a
14 settlement agreement dividing veteran's disability benefits is enforceable
15 based on principles of *res judicata* and contract because "nothing in the
16 USFSPA or *Mansell* prevents a veteran from voluntarily contracting to pay
17 a former spouse a sum of money that may originate from disability
18 payments" *Id.* at 394. In the *Matter of Marriage of Babin*, 56 Kan.App.2d,
19 709, 437 P.3d 985 (Court of Appeals of Kansas 2019), Kansas held that the

20 Page 12 of 24

21

² *Rose v. Rose*, 481 U.S. 619, 107 S.Ct. 2029, 95 L.Ed.2d 599 (1987).

1 parties' agreement did not allow escape from federal preemption which
2 divested the court of jurisdiction to enforce division of the veteran's
3 disability benefits, but as again ignored by Erich, this case was also
4 remanded to allow spousal support to be reconsidered. In *Fattore v.*
5 *Fattore*, 458 N.J. Super. 75, 203 A.3d 151 (2019) New Jersey recognized
6 that other courts were employing res judicata, upholding contractual
7 indemnification provisions, vacating and reallocating assets, and awarding
8 alimony as remedies. In *Edwards v. Edwards*, 132 N.E.3d 391 (2019),
9 Indiana held that although a court's order requiring a veteran to reimburse
10 a former spouse for loss of military retired pay after waiver for CRSC would
11 be incorrect under *Howell*, the court had subject matter jurisdiction to
12 make the order which was enforceable retroactively (but not prospectively
13 under equitable principles) on the basis of *res judicata* because the veteran
14 did not appeal it. In *In re Marriage of Jensen*, Court of Appeals of Iowa,
15 939 N.W.2d 112 (2019), Iowa held that *Howell* did not prevent the Iowa
16 court from awarding to the former spouse all of her retirement accounts
17 because the military spouse was receiving veteran's disability benefits. In
18 *Russ v. Russ*, 456 P.3d 1100 (Court of Appeal of New Mexico 2019), New
19 Mexico held that *Howell*, decided in the middle of the appeal, does not
20 ////

1 apply retroactively to invalidate the parties' agreement to divide military
2 retired pay even after waiver for veteran's benefits).

3 Just three months ago on April 29, 2020, Michigan's highest court
4 decided *Foster v. Foster*, ____ Mich. ____, ____ N.W.2d ____ (Supreme
5 Court of Michigan 2020) which shared facts similar with the Martin case
6 concerning enforcement of a consent decree containing an indemnification
7 provision requiring the veteran to pay to his former spouse a sum
8 equivalent to 50% of his military retired pay even though he later elected
9 CRSC benefits. The case was in the process of appeals that originally were
10 favorable to the former spouse. Once the *Howell* case was decided,
11 Michigan reversed itself and, citing the Supremacy Clause of the United
12 States Constitution, ruled that federal preemption prohibited enforcement
13 of the parties' indemnification agreement. The Supremacy Clause of the
14 United States Constitution provides:

15 This Constitution, and the Laws of the United States which
16 shall be made in Pursuance thereof ... shall be the supreme Law
17 of the Land; and the Judges in every State shall be bound
thereby, any Thing in the Constitution or Laws of any State to
the Contrary notwithstanding.

18 Footnote 14, U.S. Constitution, Article VI, Clause 2. Notably, Raina admits
19 that "[s]ometimes, however, Congress wishes to 'occupy the field' in a
20 particular question of law, and generally, it has the power to do so, even

1 when it results in unintended consequences of unjust enrichment and
2 inequity.” Raina’s *Reply* filed June 10, 2020 on page 8. Yet, the *Foster*
3 saga is still not over, because Michigan remanded the case for the court to
4 consider whether the veteran’s action is an impermissible collateral attack
5 against a decree that is *res judicata* even if the decree contained a provision
6 based on a subsequently overruled legal principle. The concurring opinion
7 of this case includes an enlightening discussion of the difference between
8 lack of subject matter jurisdiction (the inability to rule at all resulting in a
9 void order) and the incorrect exercise of subject matter jurisdiction (the
10 ability to make a ruling that, even if incorrect, is subject to *res judicata* if
11 not timely challenged).

12 Finally, just one month ago, Louisiana decided *Boutte v. Boutte*, Court
13 of Appeal of Louisiana, Third Circuit, ____ So.3d ____ (July 8, 2020) WL
14 3818141 and upheld the parties’ indemnification agreement based on
15 principles of *res judicata*.

16 Contract

17 The *Decree of Divorce* reached by agreement between Erich and
18 Raina is a contract, *Grisham v. Grisham*, 128 Nev. 679, 289 P.2d 230
19 (2012); *Anderson v. Sanchez*, 132 Nev. 357, 373 P.3d 860 (2016), the terms
20 of which are not ambiguous. *Mizrachi v. Mizrachi*, 132 Nev. 666, 385 P.3d

1 982 (2016). “Parties are free to contract, and the courts will enforce their
2 contracts if they are not unconscionable, illegal, or in violation of public
3 policy.” *Harrison v. Harrison*, 132 Nev. 564, 567 (2016), 376 P.3d 173, 175
4 (2016) citing *Rivero v. Rivero*, 125 Nev. 410, 429, 216 P.3d 213, 226
5 (2009). After *McCarty*, *USFSPA*, and *Mansell*, Erich and Raina themselves
6 took precautions before *Howell* and created an indemnification provision
7 for the anticipated waiver by Erich.

8 Because *Howell* does not concern adjudication of contractual
9 indemnification created by the parties, this Court is not persuaded that
10 *Howell* intended to divest the parties of their right to contract. Indeed,
11 *Howell* is silent on the issue but urges courts to consider and address the
12 possibility of waiver which is exactly what Erich and Raina did prior to
13 *Howell*. Erich’s argument that the written settlement agreement between
14 the parties did not contain a term requiring indemnification is not correct,
15 because the *Decree of Divorce* expressly provides that “[s]hould Erich
16 select to accept military disability payments, Erich shall reimburse Raina
17 for any amount that her share of the pension is reduced due to the
18 disability status.” For all practical purposes, “reimbursement” is the same
19 as “indemnification,” and no case the Court reviewed drew a distinction.

20 ////

1 Erich argues that his indemnification agreement is unenforceable. In
2 support of his argument, Erich cites *Boulter v. Boulter*, 113 Nev. 74, 930
3 P.2d 112 (1997) which held that the parties' voluntary agreement to equally
4 divide with each other their federal Social Security benefits was
5 unenforceable, and the district court "was without jurisdiction to enforce
6 an award" regardless of the fact that the agreement was the product of the
7 voluntary negotiations of the parties, because the agreement it was
8 prohibited by the federal statute. *Id.* 80, 115. Erich concludes that the
9 parties' contract is likewise not valid under federal law. This Court agrees
10 that federal social security benefits are not community property divisible by
11 this Court. *See also Wolff v. Wolff*, 112 Nev. 1355, 929 P.2d 916 (1996).
12 *Boulter* and *Wolff*, however, both dealt with a different federal law than at
13 issue before this Court. *Boulter* and *Wolff* concerned social security
14 payments which are not community property - not military retired pay
15 (community property) that was waived for veteran's disability benefits (not
16 community property).

17 The case of *Shelton v. Shelton*, 119 Nev. 492, 78 P.3d 507, 511 (2003)
18 is controlling, because it expressly embraced the contract theory in military
19 disability indemnification cases. The parties in *Shelton* agreed through the
20 summary joint petition process that the military member would pay to his

1 former spouse a specific sum representing one-half of both the military
2 retired pay and the veteran's disability benefit he was already receiving.
3 Several years later, the military member was reevaluated and elected to
4 waive 100% of his military retired pay for veteran's disability benefits and
5 then stopped paying his former spouse who brought the matter to court.
6 Citing *Mansell I*, the district court denied relief to the former spouse, but
7 was reversed by the Nevada Supreme Court which held that the military
8 member was contractually obligated by the divorce agreement to pay his
9 former spouse an agreed sum. The opinion stated:

10 We conclude that although courts are prohibited by federal
11 law from determining veterans' disability pay to be community
12 property, state law of contracts is not preempted by federal law.
13 Thus, respondent must satisfy his contractual obligations to his
14 former spouse, and the district court erred in denying former
15 spouse's motion solely on the basis that federal law does not
16 permit disability pay to be divided as community property. *Id.*
17 at 493, 508.

18 *See also Hisgen v. Hisgen*, 554 N.W.2d 494, 498 (S.D. 1996) (parties'
19 property settlement agreement dividing military retirement benefits
20 enforced); and *Resare v. Resare*, 908 A.2d 1006 (R.I. 2006) (parties'
21 property settlement agreement dividing military retirement benefits
enforced).

22 ////

1 Res Judicata

2 *Shelton* raises the additional issue of *res judicata*. *Res judicata* was
3 the very same reason the California court in *Mansell II* refused to change
4 the result after remand from the U.S. Supreme Court and for which the U.S.
5 Supreme Court denied certiorari. In its decision, the Nevada Supreme
6 Court stated that “[a]lthough states cannot divide disability payments as
7 community property, states are not preempted from enforcing orders that
8 are *res judicata* or from enforcing contracts or from reconsidering divorce
9 decrees, even when disability pay is involved.” *Id.* at 509. As in *Mansell II*,
10 the U.S. Supreme Court denied certiorari, *Shelton v. Shelton*, 541 U.S. 960,
11 124 S.Ct. 1716, 158 L.Ed.2d 401 (2004).

12 “Generally, the doctrine of *res judicata* precludes parties or those in
13 privity with them from relitigating a cause of action or an issue which has
14 been finally determined by a court of competent jurisdiction.” *Kuptz-*
15 *Blinkinsop v. Blinkinsop*, 136 Nev. Adv. Op. 40 (July 9, 2020) citing
16 *University of Nev. v. Tarkanian*, 110 Nev. 581, 598, 879 P.2d 1180, 1191
17 (1994). *Res judicata* or issue preclusion applies when “(1) the issue decided
18 in the prior litigation must be identical to the issue presented in the current
19 action; (2) the initial ruling must have been on the merits and have become
20 final; (3) the party against whom the judgment is asserted must have been

1 a party ... in the prior litigation; and (4) the issue was actually necessarily
2 litigated.” *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194, P.3d
3 709, 713.

4 In the Martin matter: (1) the issue decided in the prior litigation,
5 resolution of Erich’s military retired pay including waiver for veteran’s
6 disability benefits, is the same in the divorce matter as in the current
7 motion; (2) the initial ruling represented by the *Decree of Divorce* was on
8 the merits and final without appeal; (3) the party against whom the
9 judgment is asserted, Erich, must have been a party ... in the prior
10 litigation, and he was; and (4) the issue was actually necessarily litigated.
11 “Furthermore, a judgment entered by the court on consent of the parties
12 after settlement or by stipulation of the parties is as valid and binding a
13 judgment between the parties as if the matter had been fully tried.”

14 *Willerton v. Bassham*, 111 Nev. at 16, 889 P.2d at 826, cited by *Bradley S.*
15 *v. Sherry N.*, 121 Nev. 1348, Unpublished Disposition (2015).

16 Finally, the U.S. Supreme Court in *Mansell* expressly acknowledged
17 that the issue of *res judicata* is a matter of state law “over which we have no
18 jurisdiction.” 490 U.S. at 586 n.5. Accordingly, even if Raina’s contract
19 theory for enforcement of the reimbursement provision of the *Decree of*
20 *Divorce* is ultimately not correct under *Howell*, it is nevertheless binding

1 on Erich pursuant to the doctrine of *res judicata*. It is a “well settled rule
2 that a judgment, not set aside on appeal or otherwise, is equally effective as
3 an estoppel upon the points decided, whether the decision be right or
4 wrong.” *Reed v. Allen*, 286 U.S. 191, 201, 52 S.Ct. 532, 76 L.Ed. 1054 (1932)
5 *Id.*

6 Conclusion

7 The Court is aware of the feeling of great unfairness on both sides. On
8 the one hand, veteran’s disability benefits, especially combat related
9 benefits, undoubtedly are a form of compensation to our injured veterans.
10 It is undisputed that Erich suffers from injuries in combat over the years,
11 including traumatic brain injuries from concussions, ACL replacements,
12 foot injuries, tendon injuries, back injuries, tinnitus, migraines, and other
13 health related issues for which he is justly entitled to his veteran’s disability
14 benefits.³ On the other hand, it is unfair to Raina to take away the
15 precaution she negotiated and leave her without the ability to negotiate a
16 substitute when it much too late to do so.

17 *Howell* makes very clear that this Court is without jurisdiction to
18 order indemnification. But, it was not this Court which ordered the
19 indemnification provision. The reimbursement or indemnification

20 Page 21 of 24

21 ³ Despite his injuries, Erich (age 39) is gainfully employed earning \$11,504 per month --
not including his CRSC.

1 provision was created voluntarily by Erich and Raina. This Court is not
2 persuaded that *Howell* takes away the parties' right to freely contract,
3 including for indemnification. Indeed, *Howell* is silent as to enforcement
4 of such a contractual agreement and it cautions that parties should be
5 aware that a waiver of disability payments may occur and it is their
6 responsibility to "take account of the contingency." The parties negotiated
7 the contingency. Erich knowingly entered into the agreement ending his
8 marriage to Raina through which he expressly agreed to give up a portion
9 of his military retired pay waived for veteran's disability benefits to settle
10 the divorce case. Accordingly, it is fair and appropriate to enforce the
11 agreement the parties' entered with their eyes wide open.

12 Spousal Support

13 **Rule 58(c) Notice of Entry of Judgment.**

14 (1) Within 14 days after entry of a judgment or an order, a
15 party designated by the court under Rule 58(b)(2) must serve
16 written notice of such entry, together with a copy of the
17 judgment or order, upon each party who is not in default for
18 failure to appear and must file the notice of entry with the clerk
19 of the court. Any other party, or the court in family law cases,
20 may also serve and file a written notice of such entry. Service
21 must be made as provided in Rule 5(b).

(2) Failure to serve written notice of entry does not affect
the validity of the judgment, but the judgment may not be
executed upon until notice of its entry is served.

[Amended; effective March 1, 2019.]

20 ////

1 Erich has not been served with *Notice of Entry of the Order Incident*
2 *to Decree*. The *Decree of Divorce* contains the reimbursement provisions
3 upon which the Court may immediately enforce. Raina's request to obtain
4 spousal support, however, may not be acted upon due to the lack of *Notice*
5 *of Entry of the Order Incident to Decree*.

6 *Attorney Fees*

7 In light of the continuing development of case law around the United
8 States as well as the acknowledgment that, notwithstanding the assistance
9 of *Shelton*, this issue has not been resolved by the Nevada Supreme Court,
10 this Court cannot find that the position of either party is frivolous or
11 unreasonable.

12 NOW, THEREFORE, IT IS HEREBY ORDERED that Raina's *Motion*
13 *to Enforce* the reimbursement provision of the *Decree of Divorce* is
14 granted.

15 IT IS FURTHER ORDERED that the sum of \$5,918.01 representing
16 \$845.43 x seven months for the period from February through August
17 2020 shall be reduced to judgment in favor of Raina against Erich to be
18 satisfied by any and all legal means. Erich shall commence timely direct
19 payments to Raina in the amount of \$845.43 commencing September 1,
20 2020 to include any cost of living adjustments.

1 IT IS FURTHER ORDERED that Raina's request for spousal support
2 is denied without prejudice.

3 IT IS FURTHER ORDERED that each party shall assume their own
4 attorney fees and costs.

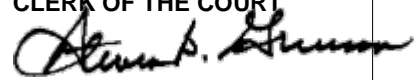
5
6 Dated this 11th day of August, 2020

7 Rebecca L. Burton

8 B9A 592 344A 6E1B
9 Rebecca L. Burton
10 District Court Judge

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Marquis Aurbach Coffing
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 Nevada Bar No. 12192
 Kathleen A. Wilde, Esq.
 Nevada Bar No. 12522
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Attorneys for Erich M. Martin

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

Erich M. Martin,

Plaintiff,

Case No.: D-15-509-045-D

Dept. No.: C

vs.

Raina L. Martin,

Defendant.

CASE APPEAL STATEMENT

Plaintiff, Erich M. Martin, by and through his attorneys of record, Marquis Aurbach Coffing, hereby files this Case Appeal Statement.

1. Name of appellant filing this Case Appeal Statement:
Erich M. Martin
2. Identify the Judge issuing the decision, judgment, or order appealed from:
The Honorable Rebecca L. Burton, Dept. C of the Eighth Judicial District Court.
3. Identify each appellant and the name and address of counsel for each appellant:

Appellant:

Erich M. Martin

Counsel for Appellant:

Chad F. Clement, Esq.
 Kathleen A. Wilde, Esq.
 Marquis Aurbach Coffing
 10001 Park Run Drive
 Las Vegas, NV 89145

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicated as much and provide the name and address of that respondent's trial counsel):

Respondent:

Raina L. Martin

Counsel for Respondent:

Marshal S. Willick, Esq.
Willick Law Group
3591 E. Bonanza Road, Suite 200
Las Vegas, NV 89110

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

N/A

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Retained in an unbundled capacity.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

N/A.

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint indictment, information, or petition was filed):

The Complaint for Divorce was filed on February 2, 2015.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

Erich and Raina Martin married on April 1, 2002. Erich filed for divorce in 2015, and on November 5, 2015, the District Court signed a Decree of Divorce (the “Decree”) on the basis of irreconcilable differences. Without the benefit of counsel, Erich was forced to sign the Decree.

The Decree provided, in relevant part, that Raina may retain the marital home, all separate bank accounts, and a Mercedes vehicle. The Decree also provided that Raina is entitled to “one-half (1/2) of the marital interest in the [sic] Erich’s military retirement pursuant to the time rule established in Nevada Supreme Court cases *Gemma v. Gemma*, 105 Nev. 458, 778 P.2d 429 (1989), and *Fondi v. Fondi*, 106 Nev. 856, 802 P.3d 1264 (1990).” “Should Erich select to accept military disability payments,” the Decree provides that “Erich shall reimburse Raina for any amount of that her share of the pension is reduced due to the disability status.” In addition, the Decree awarded Raina \$1,000 a month spousal support for twenty-four (24) months.

On November 14, 2016, the District Court issued an Order Incident to Decree of Divorce (the “November 2016 Order”) to “set out terms dividing the military retirement benefits, in sufficient detail to allow the Defense Finance and Accounting Service (“DFAS”) and the parties to correctly allocate Raina’s percentage in accordance with the parties’ Decree of Divorce.” Notice of entry of the November 2016 Order was never completed.

Erich retired from the military in 2019. DFAS made two payments to Raina before Erich waived his retirement pay and opted for full disability under Combat Related Special Compensation. In light of the Court’s opinion in *Howell v. Howell*, 581 U.S. ___, 137 S. Ct. 1400 (2017), and related authorities, Erich declined to make back-up payments to Raina.

On May 1, 2020, Raina filed a Motion to Enforce in which she argued, amongst other issues, that she is entitled to “permanent alimony in the amount she would be receiving as her share of the military retirement plus any future cost of living adjustments.” After briefing and a hearing, the District Court granted Raina’s motion.

In its August 11, 2020 Order Regarding Enforcement of Military Retirement Benefits, the Court acknowledged that the parties had good faith reasons for questioning the developing law regarding military disability benefits. Citing *Howell*, the Court recognized that state courts do not have jurisdiction to order the division of a veteran’s disability benefits. But, because the parties’ Decree of Divorce is purportedly a “contractual agreement” that includes indemnification provisions, the District Court determined that Erich must personally pay Raina \$845.43 every month – for all time – as well as arrears for the payments that were withheld in 2020. Erich Martin now appeals the District Court’s Order Regarding Enforcement of Military Retirement.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

N/A.

12. Indicate whether this appeal involves child custody or visitation:

N/A.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

This is a family law matter, rather than a traditional civil case. However, Erich and the undersigned counsel believe that alternative dispute resolution is possible, particularly through the Court's excellent NRAP 16 settlement program.

Dated this 9th day of September, 2020.

MARQUIS AURBACH COFFING

By /s/ Kathleen A. Wilde
Chad F. Clement, Esq.
Nevada Bar No. 12192
Kathleen A. Wilde, Esq.
Nevada Bar No. 12522
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Erich Martin

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **CASE APPEAL STATEMENT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 9th day of September, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

John Kelleher	hjuilfs@kelleherandkelleher.com
Erich Martin	emartin2617@gmail.com
Richard L Crane	richard@willicklawgroup.com
Matthew H. Friedman, Esq.	mfriedman@fordfriedmanlaw.com
Justin Johnson	Justin@willicklawgroup.com
Tracy McAuliff	tracy@fordfriedmanlaw.com
Christopher B. Phillips, Esq.	cphillips@fordfriedmanlaw.com
Reception	email@willicklawgroup.com
Gary Segal, Esq.	gsegal@fordfriedmanlaw.com
Samira C. Knight, Esq.	Samira@tklawgroupnv.com
John Kelleher	kelleherjt@aol.com
Samira Knight	Samira@TKLawgroupnv.com
Tarkanian Knight	Info@Tklawgroupnv.com

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

Raina L. Martin
550 Emerald Youth Road
Las Vegas, NV 89178
Defendant

Erich M. Martin
3815 Little Dipper Dr.
Fort Collins, Colorado 80528
Plaintiff

/s/ *Javie-Anne Bauer*
An employee of Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

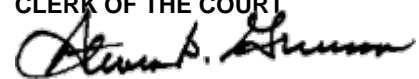
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GFDF

WILICK LAW GROUP
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Attorney for Defendant

Electronically Filed
9/30/2020 9:40 AM
Steven D. Grierson
CLERK OF THE COURT



District Court, Family Division
Clark County, Nevada

ERICH M. MARTIN Plaintiff, vs. RAINA L. MARTIN Defendant.	Case No.: <u>D-15-509045-D</u> Dept. No.: <u>C</u>
--	---

GENERAL FINANCIAL DISCLOSURE FORM**A. Personal Information:**

1. What is your full name? (*first, middle, last*) Raina Lynn Martin
2. How old are you? 39
3. What is your date of birth? 3/25/1981
4. What is your highest level of education? BS (Dental Hygienist)

B. Employment Information:

1. Are you currently employed/self-employed? (☒ mark one)

☐ No
☐ Yes

If yes, complete the table below. Attach an additional page if needed.

Date of Hire	Employer Name	Job Title	Work Schedule (days)	Work Schedule (shift times)
7/2017	Welch Dentistry	Dental Hygienist	Thurs/Fri/Sat	7:30 - 7, 7:30 - 3, 6:30 - 3:00

2. Are you disabled? (☒ mark one)

☒ No
☐ Yes

If yes, what is the level of your disability? _____
What agency certified you disabled? _____
What is the nature of your disability? _____

C. Prior Employment: If you are unemployed or have been working at your current job for less than two years, completed the following information.

Prior Employer: _____ Date of Hire: _____ Date of Termination: _____
Reason for leaving: _____

Monthly Personal Income Schedule

A. Year-to-date Income.

As of the pay period ending 9/12/2020 my gross year to date pay is 56,190.81

B. Determine your Gross Monthly Income.

Hourly Wage

\$49.00	X	28	=	\$1,372.00	X	52 weeks	=	\$71,344.00	÷	12 Months	=	\$5,945.33 ¹
Hourly wage		Number of hours worked per week		Weekly Income				Annual Income				Gross Monthly Income

Annual Salary

\$0.00	÷	12 Months	=	\$0.00
Annual Income				Gross Monthly Income

C. Other Sources of Income

Source of Income	Frequency	Amount	12 Month Average
Annuity or Trust Income:			
Bonuses:			
Car, Housing, or Other Allowance:			
Commissions or Tips:			
Net Rental Income:			
Overtime Pay:			
Pension/Retirement Pay:			
Social Security Income (SSI):			
Social Security Disability (SSD):			
Spousal Support:			
Child Support:	Monthly	\$806.00	\$806.00
Workman's Compensation:			

Other:		\$0.00	\$0.00
Total Average Other Income Received			\$806.00
Total Average Gross Monthly Income (add totals from B and C above)			\$6,751.33

D. Monthly Deductions

	Type of Deduction	Amount
1.	Court Ordered Child Support (Automatically deducted from paycheck):	
2.	Federal Health Savings Plan:	
3.	Federal Income Tax:	
4.	<div> <div>Health Insurance</div> <div> Amount for you: \$ _____ For Opposing Party: _____ For your Child(ren): _____ </div> </div>	
5.	Life, Disability, or Other Insurance Premiums:	\$1,000.00
6.	Medicare:	
7.	Retirement, Pension, IRA, or 401(k):	
8.	Savings:	
9.	Social Security:	
10.	Union Dues:	
11.	Other (Type of Deduction):	
Total Monthly Deductions:		\$1,000.00

Business/Self-Employment Income and Expense Schedule

A. Business Income:

What is your average gross (pre-tax) monthly income/revenue from self employment or businesses?

B. Business Expenses: Attach an additional page if needed.

Type of Business Expense	Frequency	Amount	12 Month Average
Advertising/Political Contributions			
Car and Truck used for business			
Commissions, wages or fees			
Business Entertainment/Travel			
Insurance			
Legal and Professional			
Mortgage or rent			
Pension and profit-sharing plans			
Repairs and maintenance			
Supplies			
Taxes and Licenses			
Utilities			
Other:			
Total Average Business Expenses:			\$0.00

Personal Expense Schedule (Monthly)

- A.** Fill in the table with the amount of money **you** spend each month on the following expenses and check whether you pay the expense for you, for the other party, or for both of you.

Expense	Monthly Amount I Pay	For Me <input type="checkbox"/>	Other Party <input type="checkbox"/>	For Both <input type="checkbox"/>
Alimony/Spousal Support				
Auto Insurance	\$100.00	X		
Car Loan/Lease Payment	\$650.00	X		
Cell Phone	\$150.00	X		
Child Support (if not deducted from pay)				
Clothing, Shoes, Etc. . .	\$75.00	X		
Credit Card Payments (minimum due)	\$200.00	X		
Dry Cleaning	\$45.00	X		
Electric	\$75.00	X		

Food (groceries & restaurants)	\$800.00	X		
Fuel	\$400.00	X		
Gas (for home)	\$50.00	X		
Health Insurance (if not deducted from pay)	\$50.00	X		
HOA	\$100.00	X		
Home Insurance (if not included in mortgage)				
Home Phone				
Internet/Cable & Phone	\$30.00	X		
Lawn Care				
Membership Fees				
Mortgage/Rent/Lease	\$1,250.00	X		
Pest Control				
Pets	\$50.00	X		
Pool Service				
Property Taxes (if not included in mortgage)				
Security				
Sewer	\$10.00	X		
Student Loans	\$150.00	X		
Unreimbursed Medical Expenses	\$75.00	X		
Water	\$20.00	X		
Other:				
Total Monthly Expenses	\$4,280.00			

Household Information

- A. Fill in the table below with the name and date of birth of each child, the person the child is living with, and whether the child is from this relationship. Attach a separate sheet if needed.

	Child's Name	Child's DOB	With whom is the child living?	Is this child from this relationship?	Has this child been certified as special needs/disabled?
1.	Dylan Bricker	1/20/01	us	No	No
2.	Wyatt Bricker	8/13/05	us	No	No
3.	Nathan Martin	8/24/10	us	Yes	No
4.					

- B. Fill in the table below with the amount of money you spend each month on the following expenses for each child.

Type of Expense	1 st Child	2 nd Child	3 rd Child	4 th Child
Cellular Phone			\$50.00	
Child Care				
Clothing			\$75.00	
Education			\$75.00	
Entertainment			\$100.00	
Extracurricular & Sports			\$100.00	
Health Insurance (if not deducted from pay)			\$20.00	
Summer Camp/Programs			\$100.00	
Transportation Cost			\$100.00	
Unreimbursed Medical Expenses			\$50.00	
Vehicle				
Other:				
Total Monthly Expenses	\$0.00	\$0.00	\$670.00	\$0.00

- C. Fill in the table below with the names, ages, and the amount of money contributed by all persons living in the home over the age of 18. If more than four adult household members, attach a separate sheet.

Name	Age	Person's Relationship to You (i.e., sister, friend, cousin, etc.)	Monthly Contribution
Anthony Bricker	46	Domestic Partner	\$0.00

Personal Asset and Debt Chart

- A. Complete this chart by listing all of your assets, the value of each, the amount owed on each, and whose name the asset or debt is under. If more than 15 assets, attach a separate sheet.

No.	Description of Asset and Debt Thereon	Gross Value	Total Amount Owed	Net Value	Whose Name is on the Account? You, Your Spouse/Domestic Partner or Both
1.				= \$0.00	
2.				= \$0.00	
3.			-	= \$0.00	

4.			-		=	\$0.00	
5.			-		=	\$0.00	
6.			-		=	\$0.00	
7.			-		=	\$0.00	
8.			-		=	\$0.00	
9.			-		=	\$0.00	
10.			-		=	\$0.00	
11.			-		=	\$0.00	
12.			-		=	\$0.00	
13.			-		=	\$0.00	
14.			-		=	\$0.00	
15.			-		=	\$0.00	
TOTAL VALUE OF ASSETS		\$0.00	-	\$0.00	=	\$0.00	

B. Complete this chart by listing all of your unsecured debt, the amount owed on each account, and whose name the debt is under. If more than five unsecured debts, attach a separate sheet.

No.	Description of Credit Card or Other Unsecured Debt	Total Amount Owed	Whose Name is on the Account? You, Your Spouse/Domestic Partner or Both
1.	Chase Credit Card	\$6,500.00	Self
2.	Student Loan	\$15,000.00	Self
3.	Capital One Credit Card	\$3,300.00	Self
4.			
5.			
6.			
TOTAL UNSECURED DEBT		\$24,800.00	

CERTIFICATION

Attorney Information: Complete the following sentences:

1. I (have/have not) have retained an attorney for this case.
2. As of today's date, the attorney has been paid a total of \$19,800 on my behalf.
3. I have a credit with my attorney has been paid in the amount of \$0.00
4. I currently owe my attorney a total of \$1,300.62
5. I owe my prior attorney a total of \$9,540.60

IMPORTANT: Read the following paragraphs carefully and initial each one.

RSW

I swear or affirm under penalty of perjury that I have read and followed all instructions in completing this Financial Disclosure Form. I understand that, by my signature, I guarantee the truthfulness of the information on this Form. I also understand that if I knowingly make false statements I may be subject to punishment, including contempt of court.

RSW

I have attached a copy of my three most recent pay stubs to this form.

I have attached a copy of my most recent YTD income statement/P&L statement to this form, if self-employed.

I have not attached a copy of my pay stubs to this form because I am currently unemployed.

Rana J. Mathi
Signature

9/22/20
Date

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Willick Law Group and that on this

30th day of September, 2020, I caused the above and 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;
- ☐ by hand delivery with signed Receipt of Copy.

To the litigant(s) listed below at the address, e-mail address, and/or facsimile number indicated below:

Erich M. Martin
3815 Little Dipper Dr
Fort Collins CO 80528
Plaintiff in Proper Person

Kathleen A. Wilde, Esq.
Chad F. Clement, Esq.
10001 Park Run Drive
Las Vegas, NV 89145
Appellate Attorneys for Plaintiff

//s//Justin K. Johnson

An Employee of the WILICK LAW GROUP

P:\wp19\MARTIN,R\DRAFTS\00460357.WPD\jj

Company Code RV755M 22059219 Loc/Dept 017 Number 3711056 Page 1 of 1
 Welch Dentistry
 10420 S Decatur Blvd Ste 110
 Las Vegas, NV 89141

Earnings Statement



Period Starting: 08/30/2020
 Period Ending: 09/12/2020
 Pay Date: 09/18/2020

Taxable Filing Status: Single

Exemptions/Allowances:

Federal: Higher W/H Table
 State: 0
 Local: 0

Tax Override:

Federal: 100.00 Addnl
 State:
 Local:

Social Security Number: XXX-XX-XXXX

Raina Martin
2812 Josephine Dr
Las Vegas, NV 89044

Earnings	rate	hours/units	this period	year to date
Regular	49.0000	58.25	2854.25	52525.55
Overtime			0.00	710.01
Vacation			0.00	784.00
Holiday			0.00	1568.00
Bonus			0.00	603.25

Gross Pay	\$2,854.25	\$56,190.81
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Statutory Deductions	this period	year to date
Federal Income	-613.93	11409.84
Social Security	-176.96	3483.83
Medicare	-41.39	814.77

Net Pay	\$2,021.97
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Other Benefits and Information	this period	year to date
Total Hours Worked	58.25	1081.61

Deposits account number	transit/ABA	amount
XXXXXXXX2969	XXXXXXXXXX	2021.97

Your federal taxable wages this period are \$2,854.25

Welch Dentistry
 10420 S Decatur Blvd Ste 110
 Las Vegas, NV 89141

Pay Date: 09/18/2020

Deposited to the account	account number	transit/ABA	amount
Checking DirectDeposit	XXXXXXXX2989	XXXXXXXXXX	2021.97

THIS IS NOT A CHECK

Raina Martin
2812 Josephine Dr
Las Vegas, NV 89044

RA001441

Company Code RV/55M 22059219 Loc/Dept 017 Number 3692814 Page 1 of 1
 Welch Dentistry
 10420 S Decatur Blvd Ste 110
 Las Vegas, NV 89141

Earnings Statement



Period Starting: 08/16/2020
 Period Ending: 08/29/2020
 Pay Date: 09/04/2020

Taxable Filing Status: Single
 Exemptions/Allowances:

Federal: Higher W/H Table
 State: 0
 Local: 0

Tax Override:
 Federal: 100.00 Addnl
 State:
 Local:

Social Security Number: XXX-XX-XXXX

Raina Martin
2812 Josephine Dr
Las Vegas, NV 89044

Earnings	rate	hours/units	this period	year to date
Regular	49.0000	80.00	3920.00	49671.30
Overtime	73.5000	9.66	710.01	710.01
Vacation			0.00	784.00
Holiday			0.00	1568.00
Bonus			0.00	603.25

Gross Pay	\$4,630.01	\$53,336.56
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Statutory Deductions	this period	year to date
Federal Income	-1152.33	10795.91
Social Security	-287.06	3306.87
Medicare	-67.14	773.38

Net Pay	\$3,173.48
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Other Benefits and Information	this period	year to date
Total Hours Worked	89.66	1023.36

Deposits	transit/ABA	amount
account number	XXXXXX2989	3123.48

Your federal taxable wages this period are \$4,630.01

Welch Dentistry
 10420 S Decatur Blvd Ste 110
 Las Vegas, NV 89141

Pay Date: 09/04/2020

Deposited to the account	account number	transit/ABA	amount
Checking DirectDeposit	XXXXXX2989	XXXXXXXXXX	3123.48

THIS IS NOT A CHECK

Raina Martin
2812 Josephine Dr
Las Vegas, NV 89044

RA001442

Company Code RV 7 55M 22059219 Loc/Dept 017 Number 3673650 Page 1 of 1
 Welch Dentistry
 10420 S Decatur Blvd Ste 110
 Las Vegas, NV 89141

Earnings Statement



Period Starting: 08/02/2020
 Period Ending: 08/15/2020
 Pay Date: 08/21/2020

Taxable Filing Status: Single

Exemptions/Allowances:

Federal: Higher W/H Table
 State: 0
 Local: 0

Tax Override:

Federal: 100.00 Addnl
 State:
 Local:

Social Security Number: XXX-XX-XXXX

Raina Martin
2812 Josephine Dr
Las Vegas, NV 89044

Earnings	rate	hours/units	this period	year to date
Regular	49.0000	85.00	4165.00	45751.30
Vacation			0.00	784.00
Holiday			0.00	1568.00
Bonus			0.00	603.25
Gross Pay			\$4,165.00	\$48,706.55
Statutory Deductions			this period	year to date
Federal Income			-991.41	9643.58
Social Security			-258.23	3019.81
Medicare			-60.39	706.24
Net Pay			\$2,854.97	

Other Benefits and Information	this period	year to date
Total Hours Worked	85.00	933.70

Deposits account number	transit/ABA	amount
XXXXXXXX2989	XXXXXXXXXX	2854.97

Your federal taxable wages this period are \$4,165.00

Welch Dentistry
 10420 S Decatur Blvd Ste 110
 Las Vegas, NV 89141

Pay Date: 08/21/2020

Deposited to the account	account number	transit/ABA	amount
Checking DirectDeposit	XXXXXXXX2989	XXXXXXXXXX	2854.97

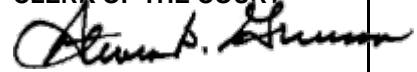
THIS IS NOT A CHECK

Raina Martin
2812 Josephine Dr
Las Vegas, NV 89044

RA001443

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

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

ERICH M. MARTIN,
Plaintiff,

vs.

RAINA L. MARTIN,
Defendant.

CASE NO: D-15-509045-D
DEPT. NO: C

DATE OF HEARING:
TIME OF HEARING:

ORAL ARGUMENT

Yes ____ No X

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
ATTORNEY'S FEES AND COSTS *PENDENTE LITE*
AND RELATED RELIEF**

I. INTRODUCTION

Under NRS 125.040, a district court has jurisdiction to award attorney fees *pendente lite* for the costs of an appeal.¹ Raina requests the Court do so in this matter. Erich's refusal to admit that he contractually agreed to pay Raina has done nothing

¹ See *Griffith v. Gonzales-Alpizar*, 132 Nev. ___, 373 P. 3d 86 (Adv. Opn. No. 38, May 26, 2016).

1 but cost her money, while he has continued to retain her share of the military benefits
2 he promised to pay her.

3 4 **POINTS AND AUTHORITIES**

5 **II. STATEMENT OF FACTS**

6 The Court is well aware of the facts in this case. We ask the Court to take
7 notice of the facts section of our initial *Motion to Enforce* filed on May 1, 2020, if
8 there are any questions.

9 Since the Court's decision in this matter was rendered, Erich – through a third
10 party's checking account – has paid one payment of \$845.43. He has not made any
11 effort to re-pay the arrearages that accrued during the litigation of this matter, and
12 apparently has no intention to do so.

13 Erich filed a *Notice of Appeal* on September 9, 2020. This appeal will cost
14 Raina tens of thousands of dollars to defend.

15 This *Motion* follows.

16 17 **III. LEGAL ARGUMENT**

18 **A. Raina Should Receive an Award of *Pendente Lite* Costs for** 19 **Defending This Appeal**

20 This Court determined that neither party argued a position that was frivolous
21 or unreasonable and denied attorney's fees to both parties. The ruling did not discuss
22 the fact that Raina prevailed, although at considerable cost, or that the parties'
23 resources are highly unequal, in Erich's favor.

24 Now Erich, emboldened by the fact that it cost Raina tens of thousands of
25 dollars to obtain the decision in this case, has filed an appeal to further financially
26 injure his ex-wife. He has essentially admitted his intention to harm her throughout
27 the litigation.

28

1 At the risk of appearing to appeal to the ego of the Court, the decision issued
2 on August 11, 2020, was so well reasoned and presented that it has been widely
3 shared. The distillation and resolution of the issues has received approving comments
4 from military family law specialists throughout the country, and this Court's
5 reasoning and references are being incorporated in legal papers and pleadings in other
6 jurisdictions where this novel issue is presenting itself.² The point is that the decision
7 is important to the evolution of jurisprudence in this area, certainly in Nevada, and
8 should be defended on appeal.

9 We point this out as Erich was on notice after receiving this decision that his
10 position, while not found to be frivolous, did not stand up to logic and argument as
11 understood by this Court. This implies that Erich's appeal *is* unreasonable.

12 In *Griffith v. Gonzales-Alpizar*,³ the Nevada Supreme Court determined that
13 district courts have jurisdiction to award attorney's fees *pendente lite* for the costs of
14 an appeal, especially when the financial situation of the parties justifies such an
15 award, and where, as here, the party with lesser resources is forced by the other party
16 to defend the Court's decision.

17 In analyzing the legislative history of NRS 125.040, the Supreme Court
18 focused on the phrase "suit for divorce," and concluded that appellate proceedings
19 growing out of a divorce case are included under that definition, basing its decision
20 on substantial precedent dating back nearly 80 years. Specifically, the Court
21 determined that a divorce action remains "pending" after entry of a divorce decree for
22 purposes of enforcement, child custody modifications, child support modifications,
23 etc.

24
25
26 ² Frankly, I like the Court's organization and analysis of the issues better than my own, and
27 am incorporating that structure into my CLE materials on this issue, including in "Divorcing the
28 Military," where it will be used as part of future CLE instructions to other attorneys.

³ *Griffith v. Gonzales-Alpizar*, 132 Nev. ___, 373 P. 3d 86 (Adv. Opn. No. 38, May 26, 2016).

1 Here, Raina sought to enforce the terms of the *Stipulated Decree* and thus is
2 entitled to fees *Pendente Lite* to defend the decision doing so. Based on the FDFs on
3 file, Raina's income is less than half that of Erich's and a good portion of his income
4 is tax free. Through the pendency of this litigation, Erich remained employed full
5 time while Raina lived on less than \$1,200 per month.

6 Erich is a manager making more than \$11,500 per month in regular
7 employment income, on top of which he receives *tax free* monthly disability income
8 of \$5,163. He apparently filled out the form incorrectly, but Erich has nearly \$17,000
9 of monthly income, about a third of which is tax free.⁴

10 On these facts, Erich is more than able to provide Raina with a preliminary fee
11 award on appeal. The award is necessary to permit Raina, the prevailing party, to be
12 able to afford the substantial fees that will be necessary to defend against what we
13 believe is a non-meritorious appeal.⁵ Given the issues involved on the appeal, and the
14 potential need for substantial briefing on the subjects, and the likelihood of oral
15 argument on this issue of first impression, we believe a preliminary award of \$20,000⁶
16 is appropriate under the circumstances.

17 The Court's evaluation of this motion should include not only the ability of the
18 Appellant to pay the fees, but should also consider the probabilities of prevailing on
19 the appeal. In this case, the entire appeal is from a motion for enforcement of a term
20 within the *Stipulated Decree of Divorce*.

22 ⁴ The actual *value* of such income is of course much higher than taxable income; \$5,000 non-
23 taxed is worth about \$6,250 of regular taxable income, making Erich's income nearly \$18,000 for
24 comparison purposes.

25 ⁵ Unfortunately, we see this quite often when one party is in a far superior economic position
26 than the other. They abuse the appellate process as a financial bludgeon in the hopes that the other
27 party will simply give up and "stay down." When it is observed, such behavior should not be
sanctioned by this Court, but instead responded to as we seek to do here.

28 ⁶ Our records indicate that this is the very least an appeal of this type *ever* costs to process;
typical sums incurred are much higher, and often exceed six figures.

1 At the risk of stating the obvious, this Court has already made extensive
2 findings in its decision that support Raina's position. While nothing is ever
3 guaranteed, our evaluation is that there was no error in this Court's analysis and that
4 Erich will not prevail on appeal.

5 The award of \$20,000 does not include the sums incurred for having to file and
6 litigate this *Motion*; \$20,000 is the bare minimum sum expected to be incurred in
7 prospective costs as required by NRS 125.040 and *Griffith v. Gonzales-Alpizar*.
8 Actual costs will almost certainly be higher.

9 Though there is no specific requirement to provide an analysis of the *Brunzell*
10 factors for a request for *Pendente Lite* fees, we provide the same in an abundance of
11 caution.

12 With specific reference to Family Law matters, the Supreme Court has re-
13 adopted "well-known basic elements," which in addition to hourly time schedules
14 kept by the attorney, are to be considered in determining the reasonable value of an
15 attorney's services qualities, commonly referred to as the *Brunzell* factors:⁷

16 1. *The Qualities of the Advocate:* his ability, his training, education,
17 experience, professional standing and skill.

18 2. *The Character of the Work to Be Done:* its difficulty, its intricacy, its
19 importance, time and skill required, the responsibility imposed and the
prominence and character of the parties where they affect the importance of
the litigation.

20 3. *The Work Actually Performed by the Lawyer:* the skill, time and
21 attention given to the work.

22 4. *The Result:* whether the attorney was successful and what benefits were
23 derived.

24
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28 ⁷ *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

1 Each of these factors should be given consideration, and no one element should
2 predominate or be given undue weight.⁸ Additional guidance is provided by
3 reviewing the “attorney’s fees” cases most often cited in Family Law.⁹

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

7 First, respectfully, we suggest that the supervising counsel is A/V rated, a peer-
8 reviewed and certified (and re-certified) Fellow of the American Academy of
9 Matrimonial Lawyers, and a Certified Specialist in Family Law.¹⁰ Richard L. Crane,
10 Esq., the attorney primarily responsible for drafting this *Motion*, is an associate
11 attorney for the WILICK LAW GROUP and has practiced exclusively in the field of
12 Family Law for over nine years under the direct tutelage of supervising counsel.

13 The fees charged by paralegal staff are reasonable, and compensable, as well.
14 The tasks performed by staff in this case were precisely those that were “some of the
15 work that the attorney would have to do anyway [performed] at substantially less cost
16 per hour.”¹¹ As the Court reasoned, “the use of paralegals and other nonattorney staff
17 reduces litigation costs, so long as they are billed at a lower rate,” so ““reasonable
18 attorney’s fees”” . . . includes charges for persons such as paralegals and law clerks.”
19
20

21 ⁸ *Miller v. Wilfong*, 121 Nev. 119, P.3d 727 (2005).

22 ⁹ Discretionary Awards: Awards of fees are neither automatic nor compulsory, but within
23 the sound discretion of the Court, and evidence must support the request. *Fletcher v. Fletcher*, 89
24 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).

25 ¹⁰ Per direct enactment of the Board of Governors of the Nevada State Bar, and independently
26 by the National Board of Trial Advocacy. Mr. Willick was privileged (and tasked) by the Bar to
27 write the examination that other would-be Nevada Family Law Specialists must pass to attain that
status.

28 ¹¹ *LVMPD v. Yeghiazarian*, 129 Nev. 760, 312 P.3d 503 (2013) *citing to Missouri v. Jenkins*,
491 U.S. 274, 295-98 (1989).

1 Justin K. Johnson, the paralegal assigned to Raina's case, earned a Certificate
2 of Achievement in Paralegal Studies and was awarded an Associates of Applied
3 Science Degree in 2014 from Everest College. He has been a paralegal for over five
4 years and provided substantial assistance to WILICK LAW GROUP staff in a variety
5 of family law cases.

6 As to the "character and quality of the work performed," we believe this filing
7 is adequate, both factually and legally; we have diligently reviewed the applicable
8 law, explored the relevant facts, and believe that we have properly applied one to the
9 other.

10 11 **IV. CONCLUSION**

12 Based on the above, Raina respectfully requests the Court issue the following
13 orders:

- 14 1. Awarding Raina *pendente lite* fees on appeal in the amount of
15 \$20,000.
- 16 2. For such other and further relief as the Court deems just and
17 proper.

18 **DATED** this 29th day of September, 2020.

19 Respectfully Submitted By:
20 WILICK LAW GROUP

21 // s // Richard L. Crane, Esq.

22 MARSHAL S. WILICK, ESQ.
23 Nevada Bar No. 2515
24 RICHARD L. CRANE, ESQ.
25 Nevada Bar No. 9536
26 3591 E. Bonanza Road, Suite 200
27 Las Vegas, Nevada 89110-2101
28 (702) 438-4100
Attorneys for Defendant

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2. I have personal knowledge of the facts of this case and have been informed by Appellate Counsel as to the average costs of an appeal in the State of Nevada.

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

EXECUTED this 29th day of September, 2020.

RAINA L. MARTIN

Justin Johnson

From: Raina Martin <rainardh7@gmail.com>
Sent: Tuesday, September 29, 2020 11:57 AM
To: Justin Johnson
Subject: Re: Scanned Document

Justin,

Would you please submit the motion on my behalf.

Thanks,
Raina

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the WILICK LAW GROUP and that on this 30th day of September, 2020, I caused the above and 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;
- ☐ by hand delivery with signed Receipt of Copy.

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

Erich M. Martin
3815 Little Dipper Dr
Fort Collins CO 80528
Plaintiff in Proper Person

Kathleen A. Wilde, Esq.
Chad F. Clement, Esq.
10001 Park Run Drive
Las Vegas, Nevada 89145
Appellate Attorneys for Plaintiff

//s//Justin K. Johnson

Employee of the WILICK LAW GROUP

P:\wp19\MARTIN,R\DRAFTS\00457653.WPD

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ERICH MARTIN,
Plaintiff/Petitioner

-v.-

RAINA MARTIN,
Defendant/

Case No. D-15-509045-D

Department C

**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: Willick Law Group Date: 9/30/2020

Signature of Party or Preparer: /s/Justin K. Johnson

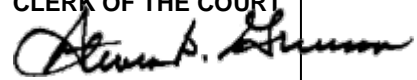
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Electronically Filed
9/30/2020 2:34 PM
Steven D. Grierson
CLERK OF THE COURT



Erich M Martin, Plaintiff
vs.
Raina L Martin, Defendant.

Case No.: D-15-509045-D
Department C

NOTICE OF HEARING

Please be advised that the Defendant's Motion for Attorney's Fees and Costs Pendente Lite and Related Relief in the above-entitled matter is set for hearing as follows:

Date: November 04, 2020
Time: No Appearance Required
Location: Courtroom 08
Family Courts and Services Center
601 N. Pecos Road
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Carmelo Coscolluela
Deputy Clerk of the Court

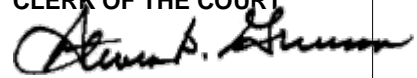
CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Carmelo Coscolluela
Deputy Clerk of the Court

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Marquis Aurbach Coffing
Chad F. Clement, Esq.
Nevada Bar No. 12192
Kathleen A. Wilde, Esq.
Nevada Bar No. 12522
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
cclement@maclaw.com
kwilde@maclaw.com
Attorneys for Erich M. Martin

DISTRICT COURT
CLARK COUNTY, NEVADA

Erich M. Martin,

Plaintiff,

Case No.: D-15-509045-D
Dept. No.: C

vs.

Raina L. Martin,

Defendant.

NOTICE OF ENTRY OF ORDER

Please take notice that an Order Incident to Decree was entered in the above-captioned matter on the 14th day of November, 2016, a copy of which is attached hereto.

Dated this 1st day of October, 2020.

MARQUIS AURBACH COFFING

By /s/ Kathleen A. Wilde

Chad F. Clement, Esq.
Nevada Bar No. 12192
Kathleen A. Wilde, Esq.
Nevada Bar No. 12522
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Erich M. Martin

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 1st day of October, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

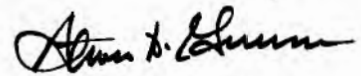
Erich Martin	emartin2617@gmail.com
Richard L Crane	richard@willicklawgroup.com
Matthew H. Friedman, Esq.	mfriedman@fordfriedmanlaw.com
Justin Johnson	Justin@willicklawgroup.com
Tracy McAuliff	tracy@fordfriedmanlaw.com
Christopher B. Phillips, Esq.	cphillips@fordfriedmanlaw.com
Reception	email@willicklawgroup.com
Gary Segal, Esq.	gsegal@fordfriedmanlaw.com
"Samira C. Knight, Esq." .	Samira@tklawgroupnv.com
Samira Knight	Samira@TKLawgroupnv.com
Tarkanian Knight	Info@Tklawgroupnv.com

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

Raina L. Martin
550 Emerald Youth Road
Las Vegas, NV 89178
Defendant

/s/ Javie-Anne Bauer
An employee of Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).



CLERK OF THE COURT

ORDR
RAINA MARTIN
2812 Josephine Dr.
Henderson, Nevada 89044
Defendant in *Proper Person*

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

ERICH M. MARTIN,
Plaintiff,

vs.

RAINA L. MARTIN,
Defendant.

CASE NO: D-15-509045-D
DEPT. NO: C

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

ORDER INCIDENT TO DECREE OF DIVORCE

This *Order* is intended to set out terms dividing the military retirement benefits, in sufficient detail to allow the Defense Finance and Accounting Service (DFAS) and the parties to correctly allocate Raina's percentage in accordance with the parties' *Decree of Divorce*. This Court has continuing jurisdiction in accordance with the rules and regulations of the State of Nevada, and the State of Nevada has both personal and subject matter jurisdiction over the parties, and enters this *Order Incident to Decree of Divorce* for the purpose of completing and clarifying the division of benefits contemplated by the *Decree of Divorce*.

THE COURT FINDS AS FOLLOWS:

1. It has continuing jurisdiction over the parties and the subject matter of this action.
2. All applicable portions of the Servicemember's Civil Relief Act (SCRA), 50 U.S.C. 3901 et seq. (Dec. 1, 2015), have been complied with by waiver or otherwise.

- 1 3. This Court has determined that Raina is entitled to her time-rule
2 percentage of Erich's military retirement benefits.
- 3 4. The *Decree of Divorce* entered on November 5, 2015, does not make an
4 adequate distribution of Raina's interest in Erich's military retirement
5 benefits or Cost of Living Adjustments. This *Order* is intended to
6 clarify this Court's intention.
- 7 5. This *Order* is intended to be, and shall constitute an *Order Incident to*
8 *Decree of Divorce* in accordance with 10 U.S.C. § 1408(a)(2), and is
9 intended to clarify the *Decree of Divorce*.
- 10 6. The parties were married on April 1, 2002, and divorced as of November
11 5, 2015.
- 12 7. Erich entered military service on July 13, 1999, and remains on active
13 duty.
- 14 8. The share that each party is entitled should be determined pursuant to
15 the "time-rule" formula which designates the number of months of
16 marriage overlapping military service and dividing it by the total number
17 of months of active military service. This fraction and equivalent
18 percentage establishes the community share of the total benefit. The
19 resulting community share is then divided equally between the parties,
20 and multiplied by the benefit payable.

21
22
$$\frac{\text{Number of Months of Marriage Overlapping}}{\text{Creditable Military Service (163.154)}} = \frac{\text{Number of Total Months of Active}}{\text{Service (unknown at this time)}} = \text{_____} \% \text{ The Marital Percentage}$$

23
24
25
$$\text{Marital Percentage divided by 2} = \text{_____} \% \text{ The Spousal Percentage of Benefit}$$

1 9. Raina is entitled to receive any cost of living adjustments (COLAs) that
2 are awarded from time to time for military retired pay, based upon the
3 same percentage outlined above.

4 10. Raina has the right to obtain information relating to Erich's date of first
5 eligibility to retire, date of first eligibility to receive retirement benefits,
6 date of retirement, final rank, grade, and pay, present or past retired pay,
7 or other such information as may be required to enforce the award made
8 herein, or required to revise this order so as to make it enforceable, per
9 65 Fed. Reg. 43298 (July 13, 2000).

10
11 **THE COURT HEREBY ORDERS:**

12 1. This Court has complete jurisdiction in the premises, both as to subject
13 matter and the parties, under NRS 125 and 10 U.S.C. § 1408 et. seq.,
14 and the Court has jurisdiction over Erich by reason of his residence at
15 the time of the filing of the Petition for Divorce and by way of consent
16 to the jurisdiction of the Court, and all applicable portions of the Service
17 Members Civil Relief Act of 2003 have been complied with by waiver
18 or otherwise.

19 2. Raina is awarded her time-rule interest in the military retirement for
20 which Erich is eligible, plus a like percentage of all cost of living
21 adjustment increases that accrue to said military retirement hereafter,
22 computed from the gross sum thereof, as her sole and separate property
23 share thereof, and the obligation shall not be dischargeable in
24 bankruptcy or otherwise.

1 3. For the purpose of interpreting this Court's intention in making the
2 division set out in this Order, "military retirement" includes retired pay
3 paid or to which Erich would be entitled for longevity of active duty
4 and/or reserve component military service and all payments paid or
5 payable under the provisions of Title 38 or Chapter 61 of Title 10 of the
6 United States Code, before any statutory, regulatory, or elective
7 deductions are applied. It also includes all amounts of retired pay Erich
8 actually or constructively waives or forfeits in any manner and for any
9 reason or purpose, including but not limited to any post-divorce waiver
10 made in order to qualify for Veterans Administration benefits, or
11 reduction in pay or benefits because of other federal employment, and
12 any waiver arising from Erich electing not to retire despite being
13 qualified to retire. It also includes any sum taken by Erich in addition
14 to or in lieu of retirement benefits, including, but not limited to, REDUX
15 lump sum payments, exit bonuses, voluntary separation incentive pay,
16 special separation benefit, or any other form of compensation
17 attributable to separation from military service instead of or in addition
18 to payment of the military retirement benefits normally payable to a
19 retired member. All sums payable to Raina as a portion of military
20 retirement shall be payable from Erich's disposable retired or retainer pay
21 to the extent that it is so restricted by law.

22 4. The appropriate military pay center shall pay the sums called for above
23 directly to Raina, to the extent permitted by law, at the same times as
24 Erich receives his retired or retainer pay, and that this *Order* is intended
25 to qualify under the *Uniformed Services Former Spouses Protection Act*,
26 10 U.S.C. § 1408 et seq., with all provisions to be interpreted to make
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1 the *Order* qualify.

2 5. The amount called for herein shall not be modifiable by the direct or
3 indirect action of either party hereto, either by way of increase or
4 decrease, except as expressly set forth herein. It is contemplated that
5 future cost of living adjustments will be granted by the United States
6 government, by means of which the gross military retirement benefits
7 specified above will increase, thus raising the amount being paid to
8 Raina.

9 6. If Erich takes any steps to merge his military retirement benefits with
10 another retirement program of any kind, that retirement system,
11 program, or plan is directed to honor this court Order to the extent of
12 Raina's interest as set out above, to the extent that the military
13 retirement is used as a basis of payments or benefits under such other
14 retirement system, program, or plan.

15 7. If Erich takes any action that prevents, decreases, or limits the collection
16 by Raina of the sums to be paid hereunder (by application for or award
17 of disability compensation, combination of benefits with any other
18 retired pay, waiver for any reason, including as a result of other federal
19 service, or in any other way), he shall make payments to Raina directly
20 in an amount sufficient to neutralize, as to Raina, the effects of the
21 action taken by Erich. Any sums paid to Erich that this court *Order*
22 provides are to be paid to Raina shall be held by Erich in constructive
23 trust until actual payment to Raina.

24 8. If the amount paid by the military pay center to Raina is less than the
25 amount specified above, Erich shall initiate an allotment to Raina in the
26 amount of any such difference, to be paid from any federal entitlement
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1 due Erich, with said allotment to be initiated by Erich immediately upon
2 notice of such difference, and making up any arrearages in installments
3 not less in amount or longer in term than the arrearages accrued.

4 9. The appropriate military pay center shall pay the sums called for herein
5 directly to Raina, by voluntary allotment, involuntary allotment, wage
6 withholding, or garnishment of Erich's military retired pay.

7 10. The Court shall retain jurisdiction to enter such further orders as are
8 necessary to enforce the award to Raina of the military retirement
9 benefits awarded herein, including the recharacterization thereof as a
10 division of Civil Service or other retirement benefits, or to make an
11 award of alimony (in the sum of benefits payable plus future cost of
12 living adjustments) in the event that Erich fails to comply with the
13 provisions contained above requiring said payments to Raina, or if
14 military or government regulations or other restrictions interfere with
15 payments to Raina as set forth herein.

16 ***

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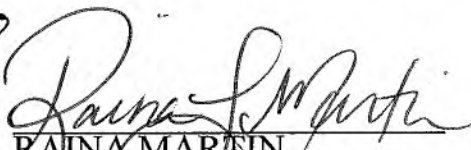
1 11. Raina has the right to obtain information relating to Erich's date of first
2 eligibility to retire, date of first eligibility to receive retirement benefits,
3 date of retirement, final rank, grade, and pay, present or past retired pay,
4 or other such information as may be required to enforce the award made
5 herein, or required to revise this order so as to make it enforceable, per
6 65 Fed. Reg. 43298 (July 13, 2000).

7 **DATED** this 9 day of Nov., 2016.

8 
9 **DISTRICT COURT JUDGE**

10 Approved as to Form and Content: Respectfully Submitted by:

11 
12
13 **ERICH MARTIN**
14 1012 E. Lyons St.
15 Larami, WY 82072
Plaintiff in *Proper Person*

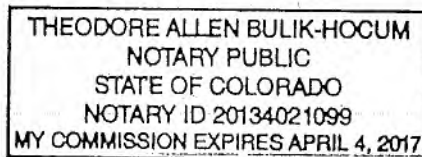
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18 **RAINA MARTIN**
19 2812 Josephine Dr.
20 Henderson, Nevada 89044
21 Defendant in *Proper Person*

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On this 23 day of September, 2016, before me, the undersigned Notary Public in and for said County and State, personally appeared ERICH MARTIN, known to me to be the person described herein and who executed the foregoing instrument, and who acknowledged to me that he did so freely and voluntarily and for the uses and purposes therein mentioned.

Witness my hand and official seal.

Wm Allen Pugh - Jr
NOTARY PUBLIC in and for said
 County and State
LARIMER & CO



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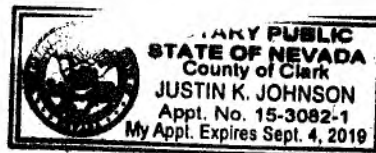
ACKNOWLEDGMENT

STATE OF NEVADA }
COUNTY OF CLARK }

On this 3 day of November, 2016, before me, the undersigned
Notary Public in and for said County and State, personally appeared RAINA
MARTIN, known to me to be the person described herein and who executed
the foregoing instrument, and who acknowledged to me that she did so freely
and voluntarily and for the uses and purposes therein mentioned.

Witness my hand and official seal.

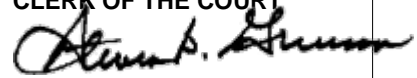

NOTARY PUBLIC in and for said
County and State



\\wlgserver\company\wp16\MARTIN,R\PLEADINGS\00122850.WPD\jj

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Marquis Aurbach Coffing
 Chad F. Clement, Esq.
 Nevada Bar No. 12192
 Kathleen A. Wilde, Esq.
 Nevada Bar No. 12522
 10001 Park Run Drive
 Las Vegas, Nevada 89145
 Telephone: (702) 382-0711
 Facsimile: (702) 382-5816
 kwilde@maclaw.com
Attorney for Erich M. Martin

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

Erich M. Martin,

Plaintiff,

Case No.: D-15-509045-D

Dept. No.: C

vs.

Raina L. Martin,

Defendant.

NOTICE OF WITHDRAWAL OF PLAINTIFF'S NOTICE OF ENTRY OF ORDER

Plaintiff Erich M. Martin ("Plaintiff"), by and through his attorneys of record, Chad F. Clement, Esq. and Kathleen A. Wilde, Esq., of the law firm Marquis Aurbach Coffing, hereby withdraw his Notice of Entry of Order in the above captioned matter that was filed on October 1, 2020.

Dated this 2nd day of October, 2020.

MARQUIS AURBACH COFFING

By /s/ Kathleen A. Wilde

Chad F. Clement, Esq.
 Nevada Bar No. 12192
 Kathleen A. Wilde, Esq.
 Nevada Bar No. 12522
 10001 Park Run Drive
 Las Vegas, Nevada 89145
Attorney for Erich M. Martin

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF WITHDRAWAL OF PLAINTIFF'S NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 2nd day of October, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Richard L Crane	richard@willicklawgroup.com
Matthew H. Friedman, Esq.	mfriedman@fordfriedmanlaw.com
Justin Johnson	Justin@willicklawgroup.com
Tracy McAuliff	tracy@fordfriedmanlaw.com
Christopher B. Phillips, Esq.	cphillips@fordfriedmanlaw.com
Reception Reception	email@willicklawgroup.com
Gary Segal, Esq.	gsegal@fordfriedmanlaw.com
"Samira C. Knight, Esq. " .	Samira@tklawgroupnv.com
Samira Knight	Samira@TKLawgroupnv.com
Tarkanian Knight	Info@Tklawgroupnv.com

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

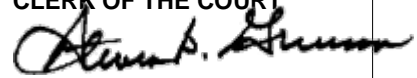
N/A

/s/ Javie-Anne Bauer
An employee of Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

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Marquis Aurbach Coffing
 Chad F. Clement, Esq.
 Nevada Bar No. 12192
 Kathleen A. Wilde, Esq.
 Nevada Bar No. 12522
 10001 Park Run Drive
 Las Vegas, Nevada 89145
 Telephone: (702) 382-0711
 Facsimile: (702) 382-5816
 cclement@maclaw.com
 kwilde@maclaw.com
Attorneys for Erich M. Martin

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

Erich M. Martin,

Plaintiff,

Case No.: D-15-509045-D

vs.

Dept. No.: C

Raina L. Martin,

Defendant.

**** Hearing Requested ****

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 PRIOR TO THE SCHEDULED HEARING DATE.

MOTION FOR STAY PURSUANT TO NRCP 62(d)

Plaintiff Erich M. Martin (“Erich”), by and through his attorneys of record, Chad F. Clement, Esq. and Kathleen A. Wilde, Esq., of the law firm Marquis Aurbach Coffing, hereby files the instant Motion for Stay Pursuant to NRCP 62(d) (“Motion”). This Motion is made and based upon the pleadings and papers on file herein, the following points and authorities, and any argument allowed by the Court at the time of hearing.

Dated this 8th day of October, 2020.

MARQUIS AURBACH COFFING

By: /s/ Kathleen A. Wilde

Chad F. Clement, Esq., Nevada Bar No. 12192
 Kathleen A. Wilde, Esq., Nevada Bar No. 12522
 10001 Park Run Drive
 Las Vegas, Nevada 89145
Attorneys for Erich M. Martin

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On September 9, 2020, Erich filed a notice of appeal challenging the post-decree Order Regarding Enforcement of Military Retirement. As this Court acknowledged in the Order, veterans' disability benefits implicate pre-emption and complex questions of law. So, with all due respect for the Court's ruling, Erich believes that appellate review is warranted to secure guidance for Erich and similarly situated veterans.

In the instant motion, Erich urges the Court to stay any and all judgments relating to his disability benefits pending appeal. In doing so, Erich submits that a stay is appropriate under NRCP 62(d) and the factors enumerated in NRAP 8(c). Further, a stay pending appeal should be allowed with little bond or alternate security in light of the Supreme Court's ruling in *Nelson v. Heer*, 121 Nev. 832, 835, 122 P.3d 1252, 1254 (2005).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

On November 5, 2015, the Court signed a Decree of Divorce (the "Decree") which granted a divorce on the basis of irreconcilable differences. The Decree provided, in relevant part, that Raina Martin ("Raina") may retain the marital home, all separate bank accounts, and a Mercedes vehicle. The Decree also provided that Raina is entitled to "one-half (1/2) of the marital interest in the [sic] Erich's military retirement pursuant to the time rule established in Nevada Supreme Court cases *Gemma v. Gemma*, 105 Nev. 458, 778 P.2d 429 (1989), and *Fondi v. Fondi*, 106 Nev. 856, 802 P.3d 1264 (1990)." "Should Erich select to accept military disability payments," the Decree provides that "Erich shall reimburse Raina for any amount of that her share of the pension is reduced due to the disability status." In addition, the Decree awarded Raina \$1,000 a month spousal support for twenty-four (24) months.¹

On November 14, 2016, the District Court issued an Order Incident to Decree of Divorce (the "November 2016 Order") to "set out terms dividing the military retirement benefits, in

¹ Following a hearing on January 12, 2017, the Court ruled that Raina was no longer entitled to spousal support as of February 29, 2016. The Court also entered judgment to reimburse Erich for \$6,000 in previously paid spousal support.

1 sufficient detail to allow the Defense Finance and Accounting Service (“DFAS”) and the parties
2 to correctly allocate Raina’s percentage in accordance with the parties’ Decree of Divorce.” In
3 the months prior to the order, Erich refused to sign a Qualified Domestic Relations Order
4 regarding the military benefits and other ongoing issues. But, after the Court **ordered** him to sign
5 and mail the QDRO, *see* Minutes dated September 22, 2016, Erich completed an
6 acknowledgment.

7 Erich retired from the military in 2019. DFAS then made two payments to Raina before
8 Erich waived his retirement pay and opted for full disability as Combat Related Special
9 Compensation. In light of the Court’s opinion in *Howell v. Howell*, 581 U.S. ____, 137 S. Ct.
10 1400 (2017), and related authorities, Erich declined to make back-up payments to Raina.

11 On May 1, 2020, Raina filed a Motion to Enforce in which she argued, amongst other
12 issues, that she is entitled to “permanent alimony in the amount she would be receiving as her
13 share of the military retirement plus any future cost of living adjustments.” After briefing and a
14 hearing, this Court granted Raina’s motion in part.

15 In its August 11, 2020 Order Regarding Enforcement of Military Retirement Benefits, the
16 Court acknowledged that the parties had good faith reasons for questioning the developing law
17 regarding military disability benefits. Citing *Howell*, the Court recognized that state courts do
18 not have jurisdiction to order the division of a veteran’s disability benefits. But, because the
19 Decree of Divorce is a “contractual agreement” that includes indemnification provisions, the
20 Court determined that Erich must pay Raina \$845.43 every month – for all time – as well as
21 arrears for the payments that were withheld in 2020. The Court denied, however, Raina’s
22 request for spousal support as procedurally improper.

23 Erich timely appealed the order and the appellate matter is currently before an NRAP 16
24 settlement judge. Although the Court did **not** enter judgment on arrears or the monthly
25 payments, Erich has made two payments under protest out of respect for the Court.

26 **III. LEGAL ARGUMENT**

27 The very purpose of an appellate court is to review decisions for errors. In this respect, a
28 case is not “over” until an appellate court confirms the propriety of a district court’s ruling (or

1 the time for appealing lapses). The role of the appellate court is particularly essential where, as
2 here, a case involves novel questions of law and an issue of statewide importance.

3 Stays are conducive to the appellate process because they preserve the status quo during
4 the pendency of appellate proceedings and ensure that neither party is prejudiced by the process.
5 Accordingly, stays should be granted in accordance with NRCP 62 “as a matter of right.”
6 *Nelson*, 121 Nev. at 834, 122 P.3d at 1253. In this case, this Court should grant the instant
7 motion for a stay of all judgments because: (A) a stay will preserve the status quo and (B) the
8 NRAP 8(c) favors weigh in favor of Erich. Moreover, (C) the Court should exercise its inherent
9 power to grant a stay with a minimal supersedeas bond or alternate security.

10 **A. A STAY PRESERVES THE STATUS QUO.**

11 As noted above, the purpose of a stay is to preserve the status quo. *See Nelson v. Heer*,
12 121 Nev. 832, 835, 122 P.3d 1252, 1254 (2005); *see also United States v. State of Mich.*, 505
13 F.Supp. 467, 471 (W.D. Mich. 1980) (stating that the purpose of a stay is to preserve, not
14 change, the status quo).

15 In this case, a stay is sensible because the Appellate Court² has yet to address the
16 complex legal issues involving veterans’ disability benefits and pre-emption. This case also
17 implicates interesting questions as to whether a decree of divorce and corresponding order
18 incident to divorce can – or should – function the same as a freely negotiated and executed
19 contract.

20 Given the uncertainty that comes with a rapidly-involving area of law, it makes sense to
21 maintain the status quo rather than forcing Erich to pay thousands of dollars in indemnification.
22 After all, the default rules are that a veteran’s disability pay is exempt from community property
23 and, regardless of semantics, state courts may not circumvent federal pre-emption. *See, e.g.*,
24 Uniformed Services Former Spouse Protection Act (USFSPA), 10 U.S.C. 1408; *Howell*, 581
25 U.S. ____, 137 S. Ct.; *Cassinelli v. Cassinelli*, 581 U.S. ____, 138 S. Ct. 69 (2017); *Foster v.*

26 ² Erich uses the term “Appellate Court” in reference to the Supreme Court of Nevada and Court of
27 Appeals. Although it is likely the Supreme Court of Nevada will retain the case, given the important legal
28 questions of statewide importance, the case assignment will not be made until the completion of briefing.
See NRAP 17.

1 *Foster*, 945 N.W.2d 842 (Mich. 2020); *Matter of Marriage of Babin*, 437 P.3d 985, 991 (Kan.
2 Ct. App. 2019). Further, while this Court found that a contractual agreement may be an
3 exception to the general rule, courts across the country are divided as to this issue. And,
4 objectively speaking, there significant public policy arguments to be made on both sides.

5 In turn, if the Appellate Court reverses or vacates this Court’s decision, it will be difficult
6 to return the parties back to their pre-appeal positions. Indeed, if history repeats itself – as it
7 often does – Raina and her counsel will vigorously fight the return of any funds that were
8 incorrectly paid.

9 Thus, a stay is appropriate because NRCP 62(d) recognizes the practical reasons for
10 maintaining the status quo during an appeal.

11 **B. THE NRAP 8(C) FACTORS WEIGH IN FAVOR OF A STAY.**

12 Courts are afforded discretion in determining whether a stay is appropriate because
13 decisions regarding a requested stay are fact-intensive. *See Aspen Fin. Servs., Inc. v. Eighth*
14 *Judicial Dist. Court*, 128 Nev., Adv. Op. 57, 289 P.3d 201, 205-06 (2012) (reviewing a district
15 court’s denial of a stay for an abuse of discretion and recognizing that “[d]etermining whether to
16 grant such a stay is a fact-intensive, case-by-case determination”).

17 That being said, in assessing a request for a stay, courts should consider the NRAP 8(c)
18 factors, including: (1) Whether the object of the appeal will be defeated if the stay or injunction
19 is denied; (2) Whether appellant will suffer irreparable or serious injury if the stay or injunction
20 is denied; (3) Whether the respondent/real party in interest will suffer irreparable or serious
21 injury if the stay or injunction is granted; and (4) Whether appellant/petitioner is likely to prevail
22 on the merits of the appeal. *See, e.g., Hansen v. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986
23 (2000); *see also Clark Cty. Office of Coroner/Med. Exam’r v. Las Vegas Review-Journal*, 134
24 Nev. Adv. Op. 24, 415 P.3d 16, 19 (2018) (Cherry, J., concurring in part and dissenting in part
25 (suggesting that courts may consider other factors because the Rule states that courts “will
26 generally consider” the enumerated factors).

27 A moving party need not satisfy all four NRAP 8(c) factors; instead, one or two
28 particularly strong factors may counterbalance other factors that are weak or inapplicable. *See*

1 *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004). Here, the NRAP
2 8(c) factors weigh in favor of allowing a stay pending appeal.

3 1. **The Object of Erich's Appeal Will be Undermined if the Requested**
4 **Stay is Denied.**

5 Parties should not be penalized for exercising their appellate rights, especially where the
6 issues on appeal are legitimate and pursued in good faith. Here, the issues on appeal are
7 important for Erich and other Nevada veterans who are similarly situated.

8 Appellate litigation necessarily comes with its own expenses. Yet, if Erich is forced to
9 pay arrears to Raina and continue making monthly payments, the value of seeking appellate
10 relief is significantly reduced. So, by analogy to the *Coroner* opinion, 134 Nev. Adv. Op. 24,
11 415 P.3d 16, and the authorities cited therein, Erich is entitled to a stay because Court ordered
12 purely monetary relief and the very purpose of the appeal is ultimately to end indemnity
13 payments. Thus, the first factor weighs in favor of a stay.

14 2. **Neither Party Will Suffer Serious or Irreparable Injury if a Stay is**
15 **Granted.**

16 Irreparable harm is rarely demonstrated where monetary damages can make a party
17 whole. *See Gladstone v. Gregory*, 95 Nev. 474, 480, 596 P.2d 491, 495 (1979); *see also, e.g.,*
18 *Sampson v. Murray*, 415 U.S. 61, 90, 94 S. Ct. 937, 952-53 (1974) (“[I]t seems clear that the
19 temporary loss of income, ultimately to be recovered, does not usually constitute irreparable
20 injury”); *Am. Passage Media Corp. v. Cass Commc’ns, Inc.*, 750 F.2d 1470, 1473 (9th Cir.
21 1985).

22 Erich thus acknowledges that he will not suffer irreparable harm if he must make
23 payment to Raina. At the same time, however, a stay pending appeal also will not cause
24 irreparable harm to Raina. *See Hansen*, 116 Nev. at 658, 6 P.3d at 986-87. After all, any
25 judgment issued by this Court is binding upon the parties until and unless the Appellate Court
26 rules otherwise. So, regardless of whether Raina seeks to enforce the Court’s order before or
27 after the appeal, her rights remain the same. Further, any delay caused by the appellate
28 proceedings can be adequately addressed by legal interest, which the Supreme Court has held to

1 be an adequate remedy for the loss of use of funds. *See Waddell v. L.V.R.V., Inc.*, 122 Nev. 15,
2 26, 125 P.3d 1160, 1167 (2006). Finally, while Raina routinely – and falsely – claims to be
3 destitute, there is no evidence that Raina will be irreparably hurt without indemnity payments.
4 As this Court may recall, Raina’s spousal support ended in February 2016. Raina currently has
5 regular employment and the support of her well-paid domestic partner. Her expensive home,
6 new, high-end vehicle, and frivolous expenditures like electric bikes also confirm that Raina
7 does not *need* the payments from Erich to get by.

8 Therefore, the Court should conclude that the second and third factors are not relevant
9 because neither party will sustain irreparable harm as a result of the Court’s decision.

10 **3. Erich is Likely to Prevail on the Merits of his Appeal.**

11 In weighing this final factor, the Supreme Court has articulated that “a movant does not
12 always have to show a probability of success on the merits, [but] the movant must ‘present a
13 substantial case on the merits when a serious legal question is involved and show that the balance
14 of equities weighs heavily in favor of granting the stay.’” *Hansen*, 116 Nev. at 659, 6 P.3d at
15 987. Here, Erich presents serious legal questions which satisfy this final factor.

16 Indeed, and with all due respect for this Court, Erich maintains that the Court’s decision
17 in favor of Raina is erroneous and should be overturned. In particular, Erich will argue that state
18 courts lack jurisdiction to treat veteran’s disability benefits as divisible community property
19 under principles of pre-emption and the Supreme Court’s decision in *Howell*, 581 U.S. ____,
20 137. Relatedly, as other persuasive authorities have recognized, state courts also may not
21 attempt to circumvent the general rule by framing such a property division in different terms.
22 Further, Erich will challenge this Court’s determination that indemnification comparable to a
23 division of veteran’s disability benefits is proper due to the parties’ alleged contract. In doing so,
24 Erich will readily distinguish the instant case from *Grisham v. Grisham*, 128 Nev. 679, 685, 289
25 P.3d 230, 234-35 (2012), and *Anderson v. Sanchez*, 132 Nev. 357, 358–59, 373 P.3d 860, 861
26 (2016), because the divorce decree was not comparable to a settlement agreement and was
27 certainly no the product of mutual assent. Finally, because this case presents novel issues of first
28

1 impression (at least for Nevada), Erich will interweave public policy considerations throughout
2 his appellate filings.

3 Although this brief outline of appellate arguments is not intended to be comprehensive it
4 goes to show that the issues on appeal are significant and meritorious. Further, while this Court
5 did not agree with Erich, there is a solid chance the Appellate Court will because the importance
6 of pre-emption, the weight of legal authorities, the public policy rationale behind veteran's
7 military benefits, and the record on appeal which will confirm that the Court's orders were not
8 comparable to freely-negotiated contracts.

9 Thus, at the very least Erich has a substantial appellate case which has a strong chance of
10 success. As such, this Court should enter the requested stay because the two applicable NRAP
11 8(c) factors weigh in his favor.

12 **C. THE COURT SHOULD EXERCISE ITS INHERENT POWER TO GRANT**
13 **A STAY WITH A MINIMAL SUPERSEDEAS BOND OR ALTERNATIVE**
14 **SECURITY.**

15 "The purpose of a supersedeas bond is to protect the prevailing party from loss resulting
16 from a stay of execution of the judgment." *McCulloch v. Jeakins*, 99 Nev. 122, 123, 659 P.2d
17 302, 303 (1983). Accordingly, courts have significant discretion in setting a bond, excusing the
18 bond requirement, or permitting alternative forms of security that serve this purpose. *Id.*; see
19 also *Nelson*, 121 Nev. at 834, 122 P.3d at 1253 ("[C]ourts retain the inherent power to grant a
20 stay in the absence of a full bond.") (citations omitted).

21 In considering the appropriate security for a stay, courts should be mindful that "a
22 supersedeas bond should not be the judgment debtor's sole remedy, particularly where other
23 appropriate, reliable alternatives exist." *Nelson*, 121 Nev. at 835, 122 P.3d at 1254. Further, in
24 addressing whether a supersedeas bond may be waived or substituted courts should consider the
25 five *Dillon v. City of Chicago*³ factors that the Supreme Court of Nevada adopted in *Nelson*. See
26 121 Nev. at 836, 122 P.3d at 1254. These factors include:

27 (1) the complexity of the collection process; (2) the amount of time required to
28 obtain a judgment after it is affirmed on appeal; (3) the degree of confidence that

³ 866 F.2d 902, 904-05 (7th Cir. 1988).

1 the district court has in the availability of funds to pay the judgment; (4) whether
2 the defendant's ability to pay the judgment is so plain that the cost of a bond
3 would be a waste of money; and (5) whether the defendant is in such a precarious
4 financial situation that the requirement to post a bond would place other creditors
5 of the defendant in an insecure position.

6 *Nelson*, 121 Nev. at 835-36, 122 P.3d at 1254.

7 In this case, the *Dillon / Nelson* factors support Erich's request for a stay with a minimal
8 bond or alternate security. In particular, the collection process will be simple in the event the
9 Court's decision is affirmed on appeal because Erich and Raina are (unfortunately) before the
10 Court with some frequency. Presumably, Raina's counsel and this Court are capable of
11 completing a post-remittitur judgment – if need be – within a short period of time. As for
12 collection, Erich's accounts and place of employment are known to Raina. Alternatively, post-
13 judgment discovery could also be completed without significant delay or expense.

14 The third and fourth factors also support a minimal bond or alternative security. As
15 Raina argued in her recently-filed Motion for Attorney's Fees and Costs *Pendente Lite* and
16 Related Relief, Erich earns a comfortable living despite the serious injuries and disabilities he
17 sustained while serving our great nation. Although payment of the arrears and a *lifetime* of
18 monthly payments is an undue and extensive expense, there is colorable no argument that Erich
19 will be unable to satisfy a judgment if the Appellate Court affirms.

20 Thus, a supersedeas bond is not necessary to protect Raina from losing her ability to
21 collect on a judgment in the event Erich's appeal is unsuccessful. Further, there is no legitimate
22 concern that Raina will be in a precarious position because of the delay caused by the appellate
23 process. This Court thus should allow the requested stay with a minimal supersedeas bond.
24 Alternatively, the Court should consider bond alternatives such as deposit of a reasonable sum in
25 an attorney trust account, where the funds will be secure without the added expense that comes
26 with a bond.

27 ///

28 ///

///

1 **IV. CONCLUSION**

2 Under NRCP 62 and the NRAP 8(c) factors, this Court should grant a stay of execution
3 of any and all judgments relating to the August 11, 2020, Order Regarding Enforcement of
4 Military Retirement Benefits that is currently on appeal. In doing so, the Court should also
5 exercise its discretion to allow a stay with a limited supersedeas bond or reasonable security
6 alternative. The stay should then become effective, in accordance with NRCP 62(d), as soon as
7 the bond or alternative security set by the Court is posted.

8 Dated this 8th day of October, 2020.

9
10 MARQUIS AURBACH COFFING

11 By /s/ Kathleen A. Wilde
12 Chad F. Clement, Esq.
13 Nevada Bar No. 12192
14 Kathleen A. Wilde, Esq.
15 Nevada Bar No. 12522
16 10001 Park Run Drive
17 Las Vegas, Nevada 89145
18 Attorneys for Erich M. Martin
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **MOTION FOR STAY PURSUANT TO NRCP 62(D)** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 8th day of October, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:⁴

Richard L Crane	richard@willicklawgroup.com
Matthew H. Friedman, Esq.	mfriedman@fordfriedmanlaw.com
Justin Johnson	Justin@willicklawgroup.com
Tracy McAuliff	tracy@fordfriedmanlaw.com
Christopher B. Phillips, Esq.	cphillips@fordfriedmanlaw.com
Reception	email@willicklawgroup.com
Gary Segal, Esq.	gsegal@fordfriedmanlaw.com
"Samira C. Knight, Esq." .	Samira@tklawgroupnv.com
Samira Knight	Samira@TKLawgroupnv.com
Tarkanian Knight	Info@Tklawgroupnv.com

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A

/s/ Javie-Anne Bauer
An employee of Marquis Aurbach Coffing

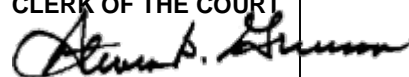
⁴ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

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DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
10/12/2020 7:51 AM
Steven D. Grierson
CLERK OF THE COURT



Erich M Martin, Plaintiff
vs.
Raina L Martin, Defendant.

Case No.: D-15-509045-D

Department C

NOTICE OF HEARING

Please be advised that the Motion For Stay Pursuant To NRCP 62(d) in the above-entitled matter is set for hearing as follows:

Date: November 24, 2020

Time: 10:00 AM

Location: Courtroom 08
Family Courts and Services Center
601 N. Pecos Road
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Jessica Castillo
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Jessica Castillo
Deputy Clerk of the Court

RA001480

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Erich M Martin, Plaintiff
vs.
Raina L Martin, Defendant.

Case No.: D-15-509045-D
Department C

NOTICE OF HEARING

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STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Jessica Castillo
Deputy Clerk of the Court

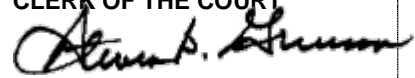
CERTIFICATE OF SERVICE

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By: /s/ Jessica Castillo
Deputy Clerk of the Court

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**Marquis Aurbach Coffing**

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Attorneys for Erich M. Martin

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

Erich M. Martin,

Plaintiff,

Case No.: D-15-509045-D

Dept. No.: C

vs.

Raina L. Martin,

Defendant.

EX PARTE APPLICATION FOR AN ORDER SHORTENING TIME

COMES NOW, Plaintiff Erich M. Martin (“Erich”), by and through his attorneys of record, Chad F. Clement, Esq. and Kathleen A. Wilde, Esq., of the law firm Marquis Aurbach Coffing, hereby submits his Ex Parte Application for Order Shortening Time which would expedite consideration of Erich’s Motion for Stay Pursuant to NRAP 62(d).

This Application is made in accordance with EDCR 2.26 and is based upon the attached declaration of counsel, the Motion for Stay Pursuant to NRAP 62(d), and the pleadings and papers on file herein

Dated this 12th day of October, 2020.

MARQUIS AURBACH COFFING

By: /s/ Kathleen A. Wilde

Chad F. Clement, Esq.
Nevada Bar No. 12192
Kathleen A. Wilde, Esq.
Nevada Bar No. 12522
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Erich M. Martin

DECLARATION OF KATHLEEN A. WILDE, ESQ.,
IN SUPPORT OF APPLICATION FOR ORDER SHORTENING TIME

KATHLEEN A. WILDE, ESQ., declares as follows:

1. I am an attorney at law duly licensed to practice before all courts of the State of Nevada and an associate with the law firm of Marquis Aurbach Coffing.

2. Along with Chad F. Clement, I am counsel of record for Erich M. Martin, the Plaintiff in the above-entitled matter.

3. I have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

4. On August 11, 2020, the Court entered an Order Regarding Enforcement of Military Retirement Benefits which concludes that Erich must pay Raina \$5,918.01, for seven months of arrears.

5. The Order specifies that the arrears shall be reduced to a judgment, though a judgment has not actually been entered at this time.

6. The August 11, 2020 Order Regarding Enforcement of Military Retirement Benefits also holds that Erich must pay Raina \$845.43 every month for an unlimited duration of time.

7. Erich filed a timely notice of appeal challenging the Order Regarding Enforcement of Military Retirement Benefits.

8. Without a formal judgment, it is unclear if the automatic stay provision in NRCP 62(a) applies.

9. Regardless, Raina and her counsel have conveyed their intent to collect the sums due under the order.

10. On October 8, 2020, Erich filed Motion for Stay Pursuant to NRAP 62(d) which requests a stay of all judgments relating to the Order Regarding Enforcement of Military Retirement Benefits.

11. Prompt consideration of Erich's motion and a hearing, if the Court is inclined to allow one, is necessary so that the purpose of a stay pending appeal is not thwarted.

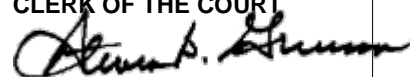
Pursuant to NRS 53.045, I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Dated this 12th day of October, 2020.


KATHLEEN A. WILDE, ESQ.

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

Erich M. Martin,

Plaintiff,

Case No.: D-15-509045-D

Dept. No.: C

vs.

Raina L. Martin,

Defendant.

**PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR ATTORNEY'S FEES
 AND COSTS *PENDENTE LITE* AND RELATED RELIEF**

Erich M. Martin ("Erich"), by and through his attorneys of record, Chad F. Clement, Esq. and Kathleen A. Wilde, Esq., of the law firm Marquis Aurbach Coffing, hereby files his Opposition to Raina L. Martin ("Raina")'s Motion for Attorney's Fees and Costs *Pendente Lite* and Related Relief ("Opposition"). This Opposition is made and based upon the pleadings and papers on file herein, the following points and authorities, and any argument allowed by the Court at the time of hearing.

Dated this 12th day of October, 2020.

MARQUIS AURBACH COFFING

By /s/ Kathleen A. Wilde

Chad F. Clement, Esq.

Nevada Bar No. 12192

Kathleen A. Wilde, Esq.

Nevada Bar No. 12522

Attorneys for Erich M. Martin

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

A divorce decree is, by definition, ends a marriage. Upon entry of a decree, the formerly-married parties are not subject to the moral, emotional, and legal obligations that come with marriage.¹ Though courts certainly have authority to award support and equitable relief that aids in the parties in their transition back to singlehood, divorces are supposed to be an end, not a beginning.

In this case, however, the parties' divorce marked the beginning of Raina's efforts to drain Erich for all he is worth. Indeed, while both Erich and Raina have started new life chapters with their respective partners and step-children, Raina still wants to punish Erich for the divorce that was finalized nearly five years' ago. At the very least, Raina seeks to use Erich's hard-earned benefits as a source of supplemental income.

Consistent with this troubling pattern, Raina's Motion for Attorney's Fees and Costs *Pendente Lite* and Related Relief seeks advanced payment for the attorney fees and costs that Raina may incur during appellate proceedings. As explained below, this Court should deny Raina's motion in its entirety because Raina did not – and cannot – demonstrate that a special support order is necessary to enable Raina's participation in the appellate proceedings. Raina also cannot demonstrate a significant financial hardship or disparate financial resources which justifies the relief she requests. Further an award attorney's fees and costs pendente lite would be improper because the issues on appeal on novel and meritorious. Finally, while counsel attempted an advanced assessment of the *Brunzell* factors, the requested fees and costs are wholly speculative.

¹ Naturally, the obligations to care and provide for children are a wholly separate issue.

II. FACTUAL BACKGROUND

On November 5, 2015, the Court signed a Decree of Divorce (the “Decree”) which granted a divorce on the basis of irreconcilable differences. The Decree provided, in relevant part, that Raina Martin (“Raina”) may retain the marital home, all separate bank accounts, and a Mercedes vehicle. The Decree also provided that Raina is entitled to “one-half (1/2) of the marital interest in the [sic] Erich’s military retirement pursuant to the time rule established in Nevada Supreme Court cases *Gemma v. Gemma*, 105 Nev. 458, 778 P.2d 429 (1989), and *Fondi v. Fondi*, 106 Nev. 856, 802 P.3d 1264 (1990).” In addition, the Decree awarded Raina \$1,000 a month spousal support for twenty-four (24) months.

On February 29, 2016, Raina entered into a registered domestic partnership with Anthony Bricker (“Anthony”). Raina did not disclose the domestic partnership. Instead, Erich’s counsel learned of the domestic partnership after the Secretary of State’s Office confirmed the registration number (7541).² Later, during the September 22, 2016, hearing before this Court, Raina admitted that she had, in fact, entered into a registered partnership with Anthony.³

In accordance with NRS 125.150(6)⁴ and NRS 122A.200(1)(a)⁵ Erich moved the Court to terminate spousal support and for reimbursement of the payments that had been made since Raina’s change in relationship status. Following a hearing on January 12, 2017, the Court ruled that Raina was no longer entitled to spousal support as of February 29, 2016. The Court also entered judgment to reimburse Erich for \$6,000 in previously paid spousal support. In doing so, the Court recognized that it was unfair of Raina to collect support payments from Erich when she

² See Motion to Terminate Alimony, on file herein, at page 3, footnote 1.

³ See Hearing Tape at 31:41.

⁴ This statute provides: “In the event of the death of either party or the subsequent remarriage of the spouse to whom specified periodic payments were to be made, all the payments required by the decree must cease, unless it was otherwise ordered by the court.”

⁵ NRS 122A.200(1)(a) states: “Domestic partners have the same rights, protections and benefits, and are subject to the same responsibilities, obligations and duties under law, whether derived from statutes, administrative regulations, court rules, government policies, common law or any other provisions or sources of law, as are granted to and imposed upon spouses.”

1 is, for all legal and practical purposes, married to someone else. *See* Order from the January 12,
2 2017 Hearing, on file herein.

3 Despite her registered domestic partnership with Anthony, Raina continued to submit
4 financial disclosure forms that list solely her income while claiming full responsibility for all
5 household expenses.⁶ In her 2019 disclosure, for example, Raina claimed that her mother
6 contributed \$0, while her domestic partner is not even listed as a person who contributes to the
7 household. Yet, even without others financial support, Raina listed an annual income in excess
8 of \$100,000. In her 2020 disclosure, Raina identified Anthony as an adult member of her
9 household. But, while Anthony is employed as a Lieutenant with the Las Vegas Metropolitan
10 Police Department, he allegedly contributed \$0 to the household despite an annual salary and
11 overtime pay of nearly \$150,000.⁷ His minor children, however, are listed as the source of
12 \$670.00 in monthly household expenses.

13 Despite her respectable salary and the presumptive support of her domestic partner, Raina
14 recently filed a Motion to Enforce in which she argued, amongst other issues, that she is entitled
15 to “permanent alimony in the amount she would be receiving as her share of [Erich’s] military
16 retirement plus any future cost of living adjustments.” Although veterans’ disability benefits are
17 never divisible community assets under the Uniformed Services Former Spouse Protection Act
18 (USFSPA) and *Howell v. Howell*, 581 U.S. ____, 137 S. Ct. 1400 (2017), the Court granted
19 Raina’s motion in part because the Decree of Divorce is a “contractual agreement” that includes
20 indemnification provisions. So, under the Court’s August 11, 2020, Erich is expected to pay
21 Raina \$845.43 every month for all time regardless of the support Raina receives from her
22 domestic partner or Erich’s need for the hard-earned disability payments.

23 Erich timely appealed the order so the Supreme Court of Nevada (or Court of Appeals)
24 can address the complex legal issues involving veterans’ disability benefits and pre-emption. In
25

26 ⁶ Raina’s three most recent disclosure forms are attached hereto as **Exhibits 1, 2, and 3.**

27 ⁷ *See* Transparent Nevada search results available at <https://transparentnevada.com/salaries/search/?a=las-vegas-metro-police-department&q=anthony+bricker&y=2019> and attached hereto as
28 **Exhibit 4.**

1 doing so, Erich sought relief for himself as well as guidance for other veterans who may be
2 similarly situated. The appeal is thus a good faith effort to address an issue of importance.

3 **III. LEGAL ARGUMENT**

4 Nevada has long followed the “American Rule” which provides that parties generally
5 bear their own attorneys’ fees. *See, e.g., Thomas v. City of N. Las Vegas*, 122 Nev. 82, 85, 127
6 P.3d 1057, 1060 (2006); *Consumers League of Nevada v. Sw. Gas Corp.*, 94 Nev. 153, 156, 576
7 P.2d 737, 739 (1978).

8 In NRS 125.040, however, Nevada’s Legislature enacted a specific exception to the
9 American Rule which allows for orders of support “[t]o enable the [non-paying] party to carry on
10 or defend such suit.” Such orders are charged to the District Courts’ sound discretion. *See* NRS
11 125.040(1); *Griffith v. Gonzales-Alpizar*, 132 Nev. 392, 393, 373 P.3d 86, 87 (2016). The
12 primary inquiry, however, should center on whether the parties may be afforded their day in
13 court without destroying their financial position. *Sargeant v. Sargeant*, 88 Nev. 223, 227, 495
14 P.2d 618, 621 (1972).

15 Here, the Court should deny Raina’s Motion for Attorney’s Fees and Costs *Pendente Lite*
16 and Related Relief because: (A) Raina has sufficient financial resources to meaningfully
17 participate in the appellate proceedings; (B) Erich should not be punished for earning a living
18 and exercising his rights; and (C) the issues on appeal are meritorious and important. Further,
19 while no amount of fees or costs should be allowed in advance, Raina’s motion also fails because
20 (D) the request for \$20,000 is wholly speculative.

21 **A. RAINA DOES NOT NEED SPOUSAL SUPPORT TO PARTICIPATE IN** 22 **THE APPELLATE PROCEEDINGS.**

23 NRS 125.040 allows for orders of support during the pendency of an action “to *enable*
24 the other party to carry on or defend such suit.” (Emphasis added). The word “enable” is
25 important because it conveys that support orders are not issued as a matter or right or even as a
26 matter of convenience. Instead, such support orders are a method by which a party secures the
27 means to participate in litigation. *See* BLACK’S LAW DICTIONARY 567 (8th ed. 2004) (defining
28 “enable” as “[t]o give power to do something; to make able.”).

1 NRS 125.040 thus serves important public policy concerns by “ensuring that
2 underprivileged parties have access to justice in Nevada courts and may obtain appellate review
3 in divorce proceedings.” *Griffith v. Gonzales-Alpizar*, 132 Nev. 392, 394-95, 373 P.3d 86, 88
4 (2016). *See also Sargeant v. Sargeant*, 88 Nev. 223, 227, 495 P.2d 618, 621 (1972) (stating that
5 parties in a divorce action should “be afforded [their] day in court without destroying [their]
6 financial position” and that they “should be able to meet [their] adversary in the courtroom on an
7 equal basis”). Consistent with the rationale behind NRS 125.040, the Supreme Court of Nevada
8 has upheld support orders where there was a disparity in the parties’ wealth and a need for
9 additional support. *See, e.g., Griffith*, 132 Nev. at 395-96, 373 P.3d at 89 (upholding a support
10 order where “Gonzales-Alpizar presented evidence that she earns \$200 per month”); *Furer v.*
11 *Furer*, 126 Nev. 712, 367 P.3d 770 (2010) (“Given the disparity in the parties’ wealth, we
12 conclude that the district court did not abuse its discretion by awarding attorney fees to Eloisa”).

13 By contrast to *Griffith* case upon which Raina relies, both parties in this matter are
14 financially well-off.⁸ Further, the parties’ respective income-to-expense ratios are similar. And,
15 while no one enjoys litigation expenses, Raina has the means to pay her attorneys’ fees and costs.

16 **1. Raina can afford legal counsel.**

17 Raina would have this Court believe that she is destitute. In reality, Raina has steady
18 employment working as a dental hygienist. Although her earnings suffered a bit during the
19 Covid-related closures, she continues to earn \$5,945 a month while working part-time. These
20 earnings easily exceed Raina’s monthly household expenses of \$4,280.

21 Yet, as Raina conveniently omits from her general financial disclosure form, Raina’s
22 registered domestic partner – the legal equivalent of a spouse – also earns a significant living
23 well in excess of \$100,000 a year. Assuming Anthony contributes to his children’s expenses and
24 the overall household, as he must under Nevada law, Raina certainly has more assets than her
25 filings let on. After all, a common residence is a condition precedent for domestic partners. *See,*
26 *e.g., NRS 122A.100(2)(A).* So, in addition to the 11181 Mezzana Street house that Raina

27 ⁸ To be clear, neither Erich nor Raina is part of the proverbial 1%. But compared to the many
28 Nevadans who struggle to make ends meet, especially in the aftermath of the Covid-19 crisis, both Erich
and Raina are fortunate.

received in divorce, Raina presumptively has the use, enjoyment, and benefits of the \$700,000+ home that Tony brought into the partnership.⁹ Raina's Financial Disclosure Form also confirms that she lives a very comfortable life inconsistent with someone who is hurting financially. For example, a \$650 car payment is indicative of a car that costs more than \$45,000.¹⁰ Monthly expenditures of \$523 for "extra life insurance" and \$200 for "personal care" are also inconsistent with financial need. \$45 a month for dry cleaning while "unemployed" suggests that Raina remained in high-end clothes during the Covid shut down.¹¹ And, on information and belief, Raina and Tony have the resources for various frivolous expenditures, including \$5,000+ worth of electric motor bikes.

This is not to say it is improper for Raina and Tony to enjoy the significant income that they earn. It is, however, improper to make misrepresentations to the Court and to seek additional support when Raina and her domestic partner can afford the costs of litigation.

2. For years, Raina has paid legal counsel without the need for additional support.

It is unclear how much Raina has actually paid for legal representation. Although her motion alleges that it has cost "tens of thousands" to get to this point, Raina's 2019 General Financial Disclosure Form indicated her counsel had been paid \$7,500 "to date." In the May 2020 disclosure form, the "to date" number dropped to \$3,938. Then, in the most recent disclosure form, Raina indicated that fees to date were \$19,800. While it is unclear which number – if any – is correct, the disclosure forms rebut Raina's argument that litigation cost tens of thousands of dollars. More importantly, the Disclosure Forms are strong evidence that Raina can afford legal counsel without specially ordered spousal support.

⁹ See Clark County real property records for APN 190-30-511-014, attached hereto as **Exhibit 5**; see also https://www.zillow.com/homedetails/2812-Josephine-Dr-Henderson-NV-89044/141751788_zpid/, attached hereto as **Exhibit 6**.

¹⁰ Erich has personally observed high-end vehicles that well exceed this cost.

¹¹ Raina's May 2020 Disclosure, Exhibit 2, is telling because it shows what she spent at a time when purportedly making no income. While Nevadans were subject to a shelter-in-place order, Raina still expended \$400 for fuel. Raina also listed \$800 a month for groceries and restaurants – a \$300 per month increase compared to her previous Disclosure.

1 Thus, this Court should deny Raina's motion because the public policy rationale behind
2 NRS 125.040 is inapplicable in this case.

3 **B. ERICH SHOULD NOT BE PUNISHED FOR EARNING A LIVING AND**
4 **EXERCISING HIS RIGHTS.**

5 In the recent discussion regarding Erich's disability benefits, the parties and the Court
6 delved into the weeds of federal pre-emption, the Uniformed Services Former Spouse Protection
7 Act, and persuasive authorities which have addressed when, if at all, state courts can order
8 payment based on a veteran's hard-earned disability benefits. This analysis was appropriate
9 under the circumstances. However, the exhaustive legal arguments overshadowed an essential
10 point: Erich is entitled to Combat-Related Special Compensation (CRSC) and VA Disability
11 because of the serious, permanent injuries that he suffered in his service to our great nation.

12 Indeed, Erich endures a host of physical and mental injuries that undermine his quality of
13 life on a daily basis. Though Erich is grateful for the opportunity to serve and his current
14 employment, his significant injuries are not going away. Instead, Erich will need a lifetime of
15 medical treatment. As his conditions worsen, it is likely that Erich will not be able to maintain a
16 full-time job. And, when that time comes, Erich will need savings and his military benefits to
17 support himself and his family. In this respect, his disability benefits are comparable to damages
18 that are recovered as a result of a personal injury suit.¹²

19 So, while Raina emphasizes the amount of compensation that Erich receives for his
20 disabilities, her attempts to usurp his hard-earned payments for herself are inappropriate.
21 Further, while Erich is currently earning a comfortable wage, it is important for Erich to use the
22 money he earns for both his current expenses and future savings.

23
24 ¹² Such damages are the separate property of the injured spouse precisely so he or she has
25 resources for medical treatment and lost wages. *See, e.g., Forrest v. Forrest*, 99 Nev. 602, 607, 668 P.2d
26 275, 279 (1983) (citing NRS 123.130); *Choate v. Ransom*, 74 Nev. 100, 104, 323 P.2d 700, 702 (1958)
27 (“[R]ecovery for personal injuries “is the separate property of that person, being ‘compensation for an
28 injury to the person which arises from the violation of the right of personal security’”).

1 Speaking of current expenses, the parties' General Financial Disclosure Forms confirm
2 that Erich's monthly expenses are more than *double* the expenses that Raina claimed. So, while
3 Erich's gross monthly income is greater than Raina's (assuming her form is accurate), the
4 parties' income-to-expense ratios are similar.

5 Finally, it bears noting that in the same way that Raina argues legal representation is
6 essential to litigating this case, Erich, too, needs to fund the attorneys' fees and costs that come
7 with appellate litigation.¹³ Further, Erich must plan for a potential judgment and ongoing
8 monthly fees if the Court denies his recently filed motion for a stay pending appeal or if the
9 Court orders a sizeable supersedeas bond. So, adding Raina's speculative request for an
10 addition \$20,000 is little more than an improper attempt to punish Erich for earning a living and
11 exercising his right to appeal.

12 C. THE ISSUES ON APPEAL ARE MERITORIOUS AND IMPORTANT

13 In *Griffith*, the Supreme Court of Nevada clarified that "factual findings regarding the
14 financial condition of the parties" are necessary when addressing attorneys' fees pendente lite.
15 See 132 Nev. at 396 n. 2, 373 P.3d at 89 n. 2. The Court did not indicate that other factors are
16 necessary or even relevant under NRS 125.040.

17 Though dated,¹⁴ case law from other jurisdictions indicates that the merit of the parties'
18 arguments *may* be a relevant consideration in addressing a request for advanced attorney fees.
19 See, e.g., *Countz v. Countz*, 30 Ark. 73, 78 (1875) ("It is not at all a matter of course to allow an
20 advance to the wife on a bill for divorce, a mensa et thoro to enable her to prosecute her suit.
21 Injury and meritorious cause of action must be made to appear"); *Weishaupt v. Weishaupt*, 27

22
23
24
25 ¹³ This is a new approach for Erich, who typically used unbundled legal services or his own
26 efforts throughout litigation in this Court.

27 ¹⁴ While good cause historically was necessary for divorce, "a wife is no longer required to show
28 necessitous circumstances to support an award of attorney fees." *Fletcher v. Fletcher*, 89 Nev. 540, 542,
516 P.2d 103, 104 (1973).

1 Wis. 621, 624-25 (1871). Here, however, merit is less of an issue because both parties advanced
2 reasonable arguments that relate to a legitimate good-faith dispute.¹⁵

3 Indeed, as Raina acknowledges in her motion, this Court determined that neither party's
4 position regarding Erich's disability benefits / indemnification was frivolous or unreasonable.
5 On appeal, there is little reason to believe either party will suddenly take a position that is
6 radically different. In fact, well-established case law prevents parties from asserting new
7 arguments and issues on appeal. *See, e.g., Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623
8 P.2d 981, 983 (1981); *Gibbons v. Martin*, 91 Nev. 269, 270, 534 P.2d 915, 915 (1975)

9 Moreover, and with all due respect, Erich maintains that the Court's decision in favor of
10 Raina will be overturned. On appeal, Erich will argue, amongst other things, that state courts
11 lack jurisdiction to treat veteran's disability benefits as divisible community property under
12 principles of pre-emption and the Supreme Court's decision in *Howell*, 581 U.S. ____, 137.
13 Relatedly, as other persuasive authorities have recognized, state courts also may not attempt to
14 circumvent the general rule by framing such a property division in different terms. Given the
15 important purpose of disability benefits, namely, to help disabled veterans live productive lives
16 after service-related injuries, the Appellate Court is also likely to consider the greater public
17 policy implications of this case.

18 So, while Raina argues that she is entitled to attorney fees to defend against a senseless
19 appeal, neither the record nor the law supports her argument. Instead, both parties should pay for
20 their own fees and costs – as is the norm – because the issues on appeal are important and
21 meritorious.

22 **D. THE REQUEST FOR \$20,000 IS WHOLLY SPECULATIVE.**

23 Again, the parties' relative financial positions and ability to pay is the most crucial issue
24 before this Court. *See* NRS 125.040 (allowing support for orders of support “to **enable** the other
25 party to carry on or defend such suit.”) (emphasis added); *Wright v. Osburn*, 114 Nev. 1367,
26 1370, 970 P.2d 1071, 1073 (1998) (disparity of income is a necessary consideration where a

27 ¹⁵ Though Erich believes Raina's position is incorrect, he assumes that Mr. Willick would not
28 advance arguments that were patently unreasonable or made in bad faith.

1 family court addresses attorney fees); *see also, e.g., In re Marriage of Dusing*, 654 S.W.2d 938,
2 948 (Mo. Ct. App. 1983) (“Of importance is the relative ability of the parties to pay”). Because
3 Raina is capable of paying for her own legal defense, especially with the support of her domestic
4 partner, that should be the end of the inquiry.

5 Nevertheless, Raina’s arguments regarding the amount of fees she purportedly needs lack
6 merit because Raina relies wholly on speculation. After all, the familiar *Brunzell* factors are not
7 well suited to an advance of fees because the factors are based on past events.¹⁶

8 Here, it is undisputed that Mr. Willick is an established family law attorney with decades
9 of experience. Presumably, Mr. Crane is also a fine family law attorney. But, while the first
10 *Brunzell* factor is uncontroversial, the remaining *Brunzell* factors are not fully addressed in
11 Raina’s motion because, realistically, they cannot be addressed at this time.

12 The parties do not know if the appellate proceedings will be resolved through the
13 Supreme Court of Nevada’s excellent NRAP 16 settlement program. While this is certainly a
14 possibility, the character of the work for a settlement conference is markedly different than
15 briefing and arguing an issue of first impression before the Supreme Court of Nevada.

16 The work actually performed also remains to be seen. It bears mentioning, however, that
17 Erich and his counsel will have the laboring oar because appellants are responsible for compiling
18 the record and completing two separate merits briefs. The Appellate Courts do not presume
19 error. So, Raina’s counsel could simply recycle the motion from this Court if so inclined.
20 Alternatively, counsel may dedicate weeks or months to researching and drafting a 60-page brief.
21 Either way, no one knows what work will actually be performed by Raina’s lawyers or the
22 attention that will be given to the work.

23
24
25 ¹⁶ *Brunzell v. Golden Gate Nat’l Bank*, 85 Nev. 345, 455 P.2d 31 (1969) (listing the relevant
26 factors as “(1) the qualities of the advocate: his ability, his training, education, experience, professional
27 standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time
28 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.”).

1 Finally, no one truly knows what the result will be or the benefits that may come with
2 appellate litigation. Candidly, predicting Appellate Court decisions often feels like reading tea
3 leaves. Although counsel carefully study the Justices' (or Judges') past decisions, public
4 comments, and questioning during oral argument, it is not uncommon for the Appellate Courts to
5 render decisions that no one saw coming. This is not to criticize the Appellate Courts. The
6 seeming unpredictability is rooted in the careful thought and attention that the Courts give to
7 each decision. But, while most parties go into appeals believing that they will win, any attempt
8 to discuss results is premature until the remittitur issues.

9 Thus, the \$20,000 figure that Raina advances is not based on any tangible measure. As
10 such, this Court should deny Raina's motion for fees pendente lite as both unnecessary and
11 impermissibly speculative.

12 **IV. CONCLUSION**

13 Raina has not needed spousal support for years. Although appellate litigation will
14 involve some expense for both parties, Raina cannot demonstrate financial need or a disparity in
15 income that warrants an advance of her attorney's fees, let alone an advance of \$20,000.
16 Accordingly, Erich respectfully submits that this Court should deny Raina's Motion for
17 Attorney's Fees and Costs *Pendente Lite* and Related Relief motion in its entirety.

18 Dated this 12th day of October, 2020.

19
20 MARQUIS AURBACH COFFING

21
22 By /s/ Kathleen A. Wilde
23 Chad F. Clement, Esq.
24 Nevada Bar No. 12192
25 Kathleen A. Wilde, Esq.
26 Nevada Bar No. 12522
27 10001 Park Run Drive
28 Las Vegas, Nevada 89145
Attorneys for Erich M. Martin

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **OPPOSITION TO DEFENDANT'S MOTION FOR ATTORNEY'S FEES AND COSTS PENDENTE LITE AND RELATED RELIEF** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 12th day of October, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹⁷

Richard L Crane	richard@willicklawgroup.com
Matthew H. Friedman, Esq.	mfriedman@fordfriedmanlaw.com
Justin Johnson	Justin@willicklawgroup.com
Tracy McAuliff	tracy@fordfriedmanlaw.com
Christopher B. Phillips, Esq.	cphillips@fordfriedmanlaw.com
Reception Reception	email@willicklawgroup.com
Gary Segal, Esq.	gsegal@fordfriedmanlaw.com
"Samira C. Knight, Esq."	Samira@tklawgroupnv.com
Samira Knight	Samira@TKLawgroupnv.com
Tarkanian Knight	Info@Tklawgroupnv.com

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A

/s/ Javie-Anne Bauer
An employee of Marquis Aurbach Coffing

¹⁷ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

VERIFICATION

Under penalties of perjury, the undersigned declares: I am the Plaintiff named in the above-entitled action; that I read the foregoing Opposition to Defendant's Motion for Attorney's Fees and Costs *Pendente Lite* and Related Relief ("Opposition") and know the contents thereof; the same is true based upon my review of the documents and information relevant to the inquiries therein, except as to those matters therein stated on information and belief and, as to those matters, I believe them to be true based upon my review of the documents and information relevant to the inquiries therein.

/s/ Erich M. Martin
ERICH M. MARTIN

Javie-Anne Bauer

From: Erich Martin <emartin2617@gmail.com>
Sent: Monday, October 12, 2020 3:14 PM
To: Kathleen A. Wilde
Cc: Javie-Anne Bauer
Subject: Re: [External] Opposition to Raina's motion for fees [IWOV-iManage.FID1122036]
Attachments: image001.jpg

Kathleen,

I agree with this document and authorize my electronic signature.

Thanks,

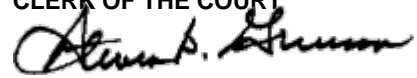
Erich Martin

Exhibit 1

GFDF

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 3591 E. Bonanza Rd., Ste. 200
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 (702) 438-4100; Fax (702) 438-5311
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 Attorney for Defendant

Electronically Filed
 9/30/2020 9:40 AM
 Steven D. Grierson
 CLERK OF THE COURT



District Court, Family Division
 Clark County, Nevada

ERICH M. MARTIN Plaintiff, vs. RAINA L. MARTIN Defendant.	Case No.: <u>D-15-509045-D</u> Dept. No.: <u>C</u>
--	---

GENERAL FINANCIAL DISCLOSURE FORM

A. Personal Information:

1. What is your full name? (*first, middle, last*) Raina Lynn Martin
2. How old are you? 39
3. What is your date of birth? 3/25/1981
4. What is your highest level of education? BS (Dental Hygienist)

B. Employment Information:

1. Are you currently employed/self-employed? (☒ mark one)

☐ No
☐ Yes

If yes, complete the table below. Attach an additional page if needed.

Date of Hire	Employer Name	Job Title	Work Schedule (days)	Work Schedule (shift times)
7/2017	Welch Dentistry	Dental Hygienist	Thurs/Fri/Sat	7:30 - 7, 7:30 - 3,
				6:30 - 3:00

2. Are you disabled? (☒ mark one)

☒ No
☐ Yes

If yes, what is the level of your disability? _____
 What agency certified you disabled? _____
 What is the nature of your disability? _____

C. Prior Employment: If you are unemployed or have been working at your current job for less than two years, completed the following information.

Prior Employer: _____ Date of Hire: _____ Date of Termination: _____
 Reason for leaving: _____

Monthly Personal Income Schedule

A. Year-to-date Income.

As of the pay period ending 9/12/2020 my gross year to date pay is 56,190.81

B. Determine your Gross Monthly Income.

Hourly Wage

\$49.00	X	28	=	\$1,372.00	X	52 weeks	=	\$71,344.00	÷	12 Months	=	\$5,945.33 ¹
Hourly wage		Number of hours worked per week		Weekly Income				Annual Income				Gross Monthly Income

Annual Salary

\$0.00	÷	12 Months	=	\$0.00
Annual Income				Gross Monthly Income

C. Other Sources of Income

Source of Income	Frequency	Amount	12 Month Average
Annuity or Trust Income:			
Bonuses:			
Car, Housing, or Other Allowance:			
Commissions or Tips:			
Net Rental Income:			
Overtime Pay:			
Pension/Retirement Pay:			
Social Security Income (SSI):			
Social Security Disability (SSD):			
Spousal Support:			
Child Support:	Monthly	\$806.00	\$806.00
Workman's Compensation:			

Other:		\$0.00	\$0.00
Total Average Other Income Received			\$806.00
Total Average Gross Monthly Income (add totals from B and C above)			\$6,751.33

D. Monthly Deductions

	Type of Deduction	Amount
1.	Court Ordered Child Support (Automatically deducted from paycheck):	
2.	Federal Health Savings Plan:	
3.	Federal Income Tax:	
4.	<div> <div>Health Insurance</div> <div> Amount for you: \$ _____ For Opposing Party: _____ For your Child(ren): _____ </div> </div>	
5.	Life, Disability, or Other Insurance Premiums:	\$1,000.00
6.	Medicare:	
7.	Retirement, Pension, IRA, or 401(k):	
8.	Savings:	
9.	Social Security:	
10.	Union Dues:	
11.	Other (Type of Deduction):	
Total Monthly Deductions:		\$1,000.00

Business/Self-Employment Income and Expense Schedule

A. Business Income:

What is your average gross (pre-tax) monthly income/revenue from self employment or businesses?

B. Business Expenses: Attach an additional page if needed.

Type of Business Expense	Frequency	Amount	12 Month Average
Advertising/Political Contributions			
Car and Truck used for business			
Commissions, wages or fees			
Business Entertainment/Travel			
Insurance			
Legal and Professional			
Mortgage or rent			
Pension and profit-sharing plans			
Repairs and maintenance			
Supplies			
Taxes and Licenses			
Utilities			
Other:			
Total Average Business Expenses:			\$0.00

Personal Expense Schedule (Monthly)

- A.** Fill in the table with the amount of money **you** spend each month on the following expenses and check whether you pay the expense for you, for the other party, or for both of you.

Expense	Monthly Amount I Pay	For Me <input type="checkbox"/>	Other Party <input type="checkbox"/>	For Both <input type="checkbox"/>
Alimony/Spousal Support				
Auto Insurance	\$100.00	X		
Car Loan/Lease Payment	\$650.00	X		
Cell Phone	\$150.00	X		
Child Support (if not deducted from pay)				
Clothing, Shoes, Etc. . .	\$75.00	X		
Credit Card Payments (minimum due)	\$200.00	X		
Dry Cleaning	\$45.00	X		
Electric	\$75.00	X		

Food (groceries & restaurants)	\$800.00	X		
Fuel	\$400.00	X		
Gas (for home)	\$50.00	X		
Health Insurance (if not deducted from pay)	\$50.00	X		
HOA	\$100.00	X		
Home Insurance (if not included in mortgage)				
Home Phone				
Internet/Cable & Phone	\$30.00	X		
Lawn Care				
Membership Fees				
Mortgage/Rent/Lease	\$1,250.00	X		
Pest Control				
Pets	\$50.00	X		
Pool Service				
Property Taxes (if not included in mortgage)				
Security				
Sewer	\$10.00	X		
Student Loans	\$150.00	X		
Unreimbursed Medical Expenses	\$75.00	X		
Water	\$20.00	X		
Other:				
Total Monthly Expenses	\$4,280.00			

Household Information

- A. Fill in the table below with the name and date of birth of each child, the person the child is living with, and whether the child is from this relationship. Attach a separate sheet if needed.

	Child's Name	Child's DOB	With whom is the child living?	Is this child from this relationship?	Has this child been certified as special needs/disabled?
1.	Dylan Bricker	1/20/01	us	No	No
2.	Wyatt Bricker	8/13/05	us	No	No
3.	Nathan Martin	8/24/10	us	Yes	No
4.					

- B. Fill in the table below with the amount of money you spend each month on the following expenses for each child.

Type of Expense	1 st Child	2 nd Child	3 rd Child	4 th Child
Cellular Phone			\$50.00	
Child Care				
Clothing			\$75.00	
Education			\$75.00	
Entertainment			\$100.00	
Extracurricular & Sports			\$100.00	
Health Insurance (if not deducted from pay)			\$20.00	
Summer Camp/Programs			\$100.00	
Transportation Cost			\$100.00	
Unreimbursed Medical Expenses			\$50.00	
Vehicle				
Other:				
Total Monthly Expenses	\$0.00	\$0.00	\$670.00	\$0.00

- C. Fill in the table below with the names, ages, and the amount of money contributed by all persons living in the home over the age of 18. If more than four adult household members, attach a separate sheet.

Name	Age	Person's Relationship to You (i.e., sister, friend, cousin, etc.)	Monthly Contribution
Anthony Bricker	46	Domestic Partner	\$0.00

Personal Asset and Debt Chart

- A. Complete this chart by listing all of your assets, the value of each, the amount owed on each, and whose name the asset or debt is under. If more than 15 assets, attach a separate sheet.

No.	Description of Asset and Debt Thereon	Gross Value	Total Amount Owed	Net Value	Whose Name is on the Account? You, Your Spouse/Domestic Partner or Both
1.				= \$0.00	
2.				= \$0.00	
3.			-	= \$0.00	

4.			-		=	\$0.00	
5.			-		=	\$0.00	
6.			-		=	\$0.00	
7.			-		=	\$0.00	
8.			-		=	\$0.00	
9.			-		=	\$0.00	
10.			-		=	\$0.00	
11.			-		=	\$0.00	
12.			-		=	\$0.00	
13.			-		=	\$0.00	
14.			-		=	\$0.00	
15.			-		=	\$0.00	
TOTAL VALUE OF ASSETS		\$0.00	-	\$0.00	=	\$0.00	

B. Complete this chart by listing all of your unsecured debt, the amount owed on each account, and whose name the debt is under. If more than five unsecured debts, attach a separate sheet.

No.	Description of Credit Card or Other Unsecured Debt	Total Amount Owed	Whose Name is on the Account? You, Your Spouse/Domestic Partner or Both
1.	Chase Credit Card	\$6,500.00	Self
2.	Student Loan	\$15,000.00	Self
3.	Capital One Credit Card	\$3,300.00	Self
4.			
5.			
6.			
TOTAL UNSECURED DEBT		\$24,800.00	

CERTIFICATION

Attorney Information: Complete the following sentences:

1. I (have/have not) have retained an attorney for this case.
2. As of today's date, the attorney has been paid a total of \$19,800 on my behalf.
3. I have a credit with my attorney has been paid in the amount of \$0.00
4. I currently owe my attorney a total of \$1,300.62
5. I owe my prior attorney a total of \$9,540.60

IMPORTANT: Read the following paragraphs carefully and initial each one.

RSW I swear or affirm under penalty of perjury that I have read and followed all instructions in completing this Financial Disclosure Form. I understand that, by my signature, I guarantee the truthfulness of the information on this Form. I also understand that if I knowingly make false statements I may be subject to punishment, including contempt of court.

RSW I have attached a copy of my three most recent pay stubs to this form.

 I have attached a copy of my most recent YTD income statement/P&L statement to this form, if self-employed.

 I have not attached a copy of my pay stubs to this form because I am currently unemployed.

Rana J. Mathi
Signature

9/22/20
Date

\\wlgserver\company\wp16\FORMS\00179559.W2D

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Willick Law Group and that on this

30th day of September, 2020, I caused the above and 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;
- ☐ by hand delivery with signed Receipt of Copy.

To the litigant(s) listed below at the address, e-mail address, and/or facsimile number indicated below:

Erich M. Martin
3815 Little Dipper Dr
Fort Collins CO 80528
Plaintiff in Proper Person

Kathleen A. Wilde, Esq.
Chad F. Clement, Esq.
10001 Park Run Drive
Las Vegas, NV 89145
Appellate Attorneys for Plaintiff

//s//Justin K. Johnson

An Employee of the WILICK LAW GROUP

P:\wp19\MARTIN,R\DRAFTS\00460357.WPD\jj

Company Code RV755M 22059219 Loc/Dept 017 Number 3711056 Page 1 of 1
 Welch Dentistry
 10420 S Decatur Blvd Ste 110
 Las Vegas, NV 89141

Earnings Statement



Period Starting: 08/30/2020
 Period Ending: 09/12/2020
 Pay Date: 09/18/2020

Taxable Filing Status: Single

Exemptions/Allowances:

Federal: Higher W/H Table
 State: 0
 Local: 0

Tax Override:

Federal: 100.00 Addnl
 State:
 Local:

Social Security Number: XXX-XX-XXXX

Raina Martin
2812 Josephine Dr
Las Vegas, NV 89044

Earnings	rate	hours/units	this period	year to date
Regular	49.0000	58.25	2854.25	52525.55
Overtime			0.00	710.01
Vacation			0.00	784.00
Holiday			0.00	1568.00
Bonus			0.00	603.25

Gross Pay	\$2,854.25	\$56,190.81
------------------	-------------------	--------------------

Statutory Deductions	this period	year to date
Federal Income	-613.93	11409.84
Social Security	-176.96	3483.83
Medicare	-41.39	814.77

Net Pay	\$2,021.97
----------------	-------------------

Other Benefits and Information	this period	year to date
Total Hours Worked	58.25	1081.61

Deposits account number	transit/ABA	amount
XXXXXXXX2969	XXXXXXXXXX	2021.97

Your federal taxable wages this period are \$2,854.25

Welch Dentistry
 10420 S Decatur Blvd Ste 110
 Las Vegas, NV 89141

Pay Date: 09/18/2020

Deposited to the account	account number	transit/ABA	amount
Checking DirectDeposit	XXXXXXXX2989	XXXXXXXXXX	2021.97

THIS IS NOT A CHECK

Raina Martin
2812 Josephine Dr
Las Vegas, NV 89044

RA001510

Company Code Loc/Dept Number Page
RV755M 22059219 017 3692814 1 of 1
Welch Dentistry
10420 S Decatur Blvd Ste 110
Las Vegas, NV 89141

Earnings Statement



Period Starting: 08/16/2020
Period Ending: 08/29/2020
Pay Date: 09/04/2020

Taxable Filing Status: Single

Exemptions/Allowances:

Federal: Higher W/H Table
State: 0
Local: 0

Tax Override:

Federal: 100.00 Addnl
State:
Local:

Social Security Number: XXX-XX-XXXX

Raina Martin
2812 Josephine Dr
Las Vegas, NV 89044

Earnings	rate	hours/units	this period	year to date
Regular	49.0000	80.00	3920.00	49671.30
Overtime	73.5000	9.66	710.01	710.01
Vacation			0.00	784.00
Holiday			0.00	1568.00
Bonus			0.00	603.25

Gross Pay			\$4,630.01	\$53,336.56
-----------	--	--	------------	-------------

Statutory Deductions	this period	year to date
Federal Income	-1152.33	10795.91
Social Security	-287.06	3306.87
Medicare	-67.14	773.38

Net Pay	\$3,173.48
---------	------------

Other Benefits and Information	this period	year to date
Total Hours Worked	89.66	1023.36

Deposits	transit/ABA	amount
account number		
XXXXXXXX2989	XXXXXXXXXX	3123.48

Your federal taxable wages this period are \$4,630.01

Welch Dentistry
10420 S Decatur Blvd Ste 110
Las Vegas, NV 89141

Pay Date: 09/04/2020

Deposited to the account	account number	transit/ABA	amount
Checking DirectDeposit	XXXXXXXX2989	XXXXXXXXXX	3123.48

THIS IS NOT A CHECK

Raina Martin
2812 Josephine Dr
Las Vegas, NV 89044

RA001511

Company Code RV755M 22059219 Loc/Dept 017 Number 3673650 Page 1 of 1
 Welch Dentistry
 10420 S Decatur Blvd Ste 110
 Las Vegas, NV 89141

Earnings Statement



Period Starting: 08/02/2020
 Period Ending: 08/15/2020
 Pay Date: 08/21/2020

Taxable Filing Status: Single

Exemptions/Allowances:

Federal: Higher W/H Table
 State: 0
 Local: 0

Social Security Number: XXX-XX-XXXX

Tax Override:

Federal: 100.00 Addnl
 State:
 Local:

Raina Martin
2812 Josephine Dr
Las Vegas, NV 89044

Earnings	rate	hours/units	this period	year to date
Regular	49.0000	85.00	4165.00	45751.30
Vacation			0.00	784.00
Holiday			0.00	1568.00
Bonus			0.00	603.25
Gross Pay			\$4,165.00	\$48,706.55
Statutory Deductions			this period	year to date
Federal Income			-991.41	9643.58
Social Security			-258.23	3019.81
Medicare			-60.39	706.24
Net Pay			\$2,854.97	

Other Benefits and Information	this period	year to date
Total Hours Worked	85.00	933.70

Deposits account number	transit/ABA	amount
XXXXXXXX2989	XXXXXXXXXX	2854.97

Your federal taxable wages this period are \$4,165.00

Welch Dentistry
 10420 S Decatur Blvd Ste 110
 Las Vegas, NV 89141

Pay Date: 08/21/2020

Deposited to the account	account number	transit/ABA	amount
Checking DirectDeposit	XXXXXXXX2989	XXXXXXXXXX	2854.97

THIS IS NOT A CHECK

Raina Martin
2812 Josephine Dr
Las Vegas, NV 89044

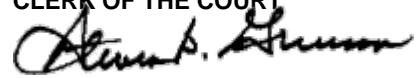
RA001512

Exhibit 2

GFDF

WILICK LAW GROUP
Marshal S. Willick, Esq.
Nevada Bar No. 2515
3591 E. Bonanza Rd., Ste. 200
Las Vegas, Nevada 89110
(702) 438-4100; Fax (702) 438-5311
email@willicklawgroup.com
Attorney for Defendant

Electronically Filed
5/1/2020 4:25 PM
Steven D. Grierson
CLERK OF THE COURT



District Court, Family Division
Clark County, Nevada

ERICH M. MARTIN Plaintiff, vs. RAINA L. MARTIN Defendant.	Case No.: <u>D-15-509045-D</u> Dept. No.: <u>C</u>
--	---

GENERAL FINANCIAL DISCLOSURE FORM**A. Personal Information:**

1. What is your full name? (*first, middle, last*) Raina Lynn Martin
2. How old are you? 38
3. What is your date of birth? 3/25/1981
4. What is your highest level of education? BS (Dental Hygienist)

B. Employment Information:

1. Are you currently employed/self-employed? (☒ mark one)

☐ No
☐ Yes

If yes, complete the table below. Attach an additional page if needed.

Date of Hire	Employer Name	Job Title	Work Schedule (days)	Work Schedule (shift times)
7/2017	Welch Dentistry	Dental Hygienist		

2. Are you disabled? (☒ mark one)

☒ No
☐ Yes

If yes, what is the level of your disability? _____
What agency certified you disabled? _____
What is the nature of your disability? _____

C. Prior Employment: If you are unemployed or have been working at your current job for less than two years, completed the following information.

Prior Employer: _____ Date of Hire: _____ Date of Termination: _____
Reason for leaving: _____

Monthly Personal Income Schedule

A. Year-to-date Income.

As of the pay period ending _____ my gross year to date pay is _____

B. Determine your Gross Monthly Income.

Hourly Wage

\$0.00	X	0	=	\$0.00	X	52 weeks	=	\$0.00	÷	12 Months	=	\$0.00 ¹
Hourly wage		Number of hours worked per week		Weekly Income				Annual Income				Gross Monthly Income

Annual Salary

\$0.00	÷	12 Months	=	\$0.00
Annual Income				Gross Monthly Income

C. Other Sources of Income

Source of Income	Frequency	Amount	12 Month Average
Annuity or Trust Income:			
Bonuses:			
Car, Housing, or Other Allowance:			
Commissions or Tips:			
Net Rental Income:			
Overtime Pay:			
Pension/Retirement Pay:			
Social Security Income (SSI):			
Social Security Disability (SSD):			
Spousal Support:			
Child Support:	Monthly	\$806.00	\$806.00

¹ Raina is currently considered unemployed due to Covid-19. She will be re-employed by Welch Dentistry after the quarantine has been lifted with a reduced amount of hours.

Workman's Compensation:			
Other: Unemployment	Weekly	\$423.00	\$423.00
Total Average Other Income Received			\$1,229.00

Total Average Gross Monthly Income (add totals from B and C above)	\$1,229.00
---	-------------------

D. Monthly Deductions

	Type of Deduction	Amount
1.	Court Ordered Child Support (Automatically deducted from paycheck):	
2.	Federal Health Savings Plan:	
3.	Federal Income Tax:	\$557.17
4.	<div style="text-align: right;">Amount for you: \$ _____</div> <div style="text-align: right;">For Opposing Party: _____</div> <div style="text-align: right;">For your Child(ren): _____</div>	\$0.00
5.	Life, Disability, or Other Insurance Premiums:	\$700.00
6.	Medicare:	\$48.30
7.	Retirement, Pension, IRA, or 401(k):	
8.	Savings:	
9.	Social Security:	\$206.54
10.	Union Dues:	
11.	Other (Type of Deduction):	
Total Monthly Deductions:		\$1,512.01

Business/Self-Employment Income and Expense Schedule

A. Business Income:

What is your average gross (pre-tax) monthly income/revenue from self employment or businesses?

B. Business Expenses: Attach an additional page if needed.

Type of Business Expense	Frequency	Amount	12 Month Average
Advertising/Political Contributions			
Car and Truck used for business			
Commissions, wages or fees			
Business Entertainment/Travel			
Insurance			
Legal and Professional			
Mortgage or rent			
Pension and profit-sharing plans			
Repairs and maintenance			
Supplies			
Taxes and Licenses			
Utilities			
Other:			
Total Average Business Expenses:			\$0.00

Personal Expense Schedule (Monthly)

- A.** Fill in the table with the amount of money **you** spend each month on the following expenses and check whether you pay the expense for you, for the other party, or for both of you.

Expense	Monthly Amount I Pay	For Me <input type="checkbox"/>	Other Party <input type="checkbox"/>	For Both <input type="checkbox"/>
Alimony/Spousal Support				
Auto Insurance	\$100.00	X		
Car Loan/Lease Payment	\$650.00	X		
Cell Phone	\$150.00	X		
Child Support (if not deducted from pay)				
Clothing, Shoes, Etc. . .	\$75.00	X		
Credit Card Payments (minimum due)	\$100.00	X		
Dry Cleaning	\$45.00	X		
Electric	\$74.00	X		

Food (groceries & restaurants)	\$800.00	X		
Fuel	\$400.00	X		
Gas (for home)	\$50.00	X		
Health Insurance (if not deducted from pay)	\$50.00	X		
HOA	\$100.00	X		
Home Insurance (if not included in mortgage)				
Home Phone				
Internet/Cable & Phone	\$30.00	X		
Lawn Care				
Membership Fees				
Mortgage/Rent/Lease	\$1,250.00	X		
Pest Control				
Pets	\$50.00	X		
Pool Service				
Property Taxes (if not included in mortgage)				
Security				
Sewer	\$10.00	X		
Student Loans	\$200.00	X		
Unreimbursed Medical Expenses				
Water	\$20.00	X		
Other:				
Total Monthly Expenses	\$4,154.00			

Household Information

- A. Fill in the table below with the name and date of birth of each child, the person the child is living with, and whether the child is from this relationship. Attach a separate sheet if needed.

	Child's Name	Child's DOB	With whom is the child living?	Is this child from this relationship?	Has this child been certified as special needs/disabled?
1.	Dylan Bricker	1/20/01	us/college	No	No
2.	Wyatt Bricker	8/13/05	us	No	No
3.	Nathan Martin	8/24/10	us	Yes	No
4.					

- B. Fill in the table below with the amount of money you spend each month on the following expenses for each child.

Type of Expense	1 st Child	2 nd Child	3 rd Child	4 th Child
Cellular Phone			\$50.00	
Child Care			\$40.00	
Clothing			\$75.00	
Education			\$50.00	
Entertainment			\$75.00	
Extracurricular & Sports			\$150.00	
Health Insurance (if not deducted from pay)			\$20.00	
Summer Camp/Programs			\$80.00	
Transportation Cost			\$100.00	
Unreimbursed Medical Expenses			\$50.00	
Vehicle				
Other:				
Total Monthly Expenses	\$0.00	\$0.00	\$690.00	\$0.00

- C. Fill in the table below with the names, ages, and the amount of money contributed by all persons living in the home over the age of 18. If more than four adult household members, attach a separate sheet.

Name	Age	Person's Relationship to You (i.e., sister, friend, cousin, etc.)	Monthly Contribution
Anthony Bricker	46	Domestic Partner	\$0.00

Personal Asset and Debt Chart

- A. Complete this chart by listing all of your assets, the value of each, the amount owed on each, and whose name the asset or debt is under. If more than 15 assets, attach a separate sheet.

No.	Description of Asset and Debt Thereon	Gross Value	Total Amount Owed	Net Value	Whose Name is on the Account? You, Your Spouse/Domestic Partner or Both
1.				= \$0.00	
2.				= \$0.00	
3.			-	= \$0.00	

4.			-		= \$0.00	
5.			-		= \$0.00	
6.			-		= \$0.00	
7.			-		= \$0.00	
8.			-		= \$0.00	
9.			-		= \$0.00	
10.			-		= \$0.00	
11.			-		= \$0.00	
12.			-		= \$0.00	
13.			-		= \$0.00	
14.			-		= \$0.00	
15.			-		= \$0.00	
TOTAL VALUE OF ASSETS		\$0.00	-	\$0.00	= \$0.00	

B. Complete this chart by listing all of your unsecured debt, the amount owed on each account, and whose name the debt is under. If more than five unsecured debts, attach a separate sheet.

No.	Description of Credit Card or Other Unsecured Debt	Total Amount Owed	Whose Name is on the Account? You, Your Spouse/Domestic Partner or Both
1.	Chase Credit Card	\$6,500.00	
2.	Student Loan	\$12,000.00	
3.	Capital One Credit Card	\$4,000.00	
4.			
5.			
6.			
TOTAL UNSECURED DEBT		\$22,500.00	

CERTIFICATION

Attorney Information: Complete the following sentences:

1. I (have/have not) have retained an attorney for this case.
2. As of today's date, the attorney has been paid a total of \$3,988.50 on my behalf.
3. I have a credit with my attorney paid in the amount of _____
4. I currently owe my attorney a total of _____
5. I owe my prior attorney a total of \$9,540.60²

IMPORTANT: Read the following paragraphs carefully and initial each one.

_____ I swear or affirm under penalty of perjury that I have read and followed all instructions in completing this Financial Disclosure Form. I understand that, by my signature, I guarantee the truthfulness of the information on this Form. I also understand that if I knowingly make false statements I may be subject to punishment, including contempt of court.

_____ I have attached a copy of my three most recent pay stubs to this form.

_____ I have attached a copy of my most recent YTD income statement/P&L statement to this form, if self-employed.

RM I have not attached a copy of my pay stubs to this form because I am currently unemployed.

/s/Raina Martin
Signature

5/1/2020
Date

P:\wp19\MARTIN,R\DRAFTS\00432764.WPD

²Ford and Friedman, Raina's previous counsel, has made a claim against her for 9,540.60. Raina does not admit to owing this amount at this time.

Justin Johnson

From: Raina Martin <rainardh7@gmail.com>
Sent: Friday, May 01, 2020 3:21 PM
To: Justin Johnson
Subject: Financial Disclosure Form

Justin,

Would you please sign on my behalf and process it.

Thanks,
Rains

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Willick Law Group and that on this

1st day of May, 2020, I caused the above and 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;
- ☐ by hand delivery with signed Receipt of Copy.

To the litigant(s) listed below at the address, e-mail address, and/or facsimile number indicated below:

Erich M. Martin
3815 Little Dipper Dr
Fort Collins CO 80528
Plaintiff in Proper Person

//s//Justin K. Johnson

An Employee of the WILICK LAW GROUP

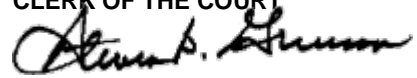
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Exhibit 3

FDF

Name: Matthew H. Friedman, Esq.
Address: FORD & FRIEDMAN, 2200 Paseo
Verde Parkway, Suite 350, Henderson 89052
Phone: (702) 476-2400; Fax: (702) 476-2333
Email: mfriedman@fordfriedmanlaw.com
Attorney for Defendant
Nevada State Bar No. 11571

Electronically Filed
8/28/2019 5:41 PM
Steven D. Grierson
CLERK OF THE COURT



Eighth Judicial District Court
Clark County, Nevada

<u>Erich Martin</u> Plaintiff, vs. <u>Raina Martin</u> Defendant.	Case No. <u>D-15-509045-D</u> Dept. <u>C</u>
--	---

GENERAL FINANCIAL DISCLOSURE FORM

A. Personal Information:

1. What is your full name? (*first, middle, last*) Raina Lynn Martin
2. How old are you? 38
3. What is your date of birth? 3/25/1981
4. What is your highest level of education? Bachelor (BS)

B. Employment Information:

1. Are you currently employed/ self-employed? (☒ *check one*)
☐ No
☒ Yes If yes, complete the table below. Attached an additional page if needed.

Date of Hire	Employer Name	Job Title	Work Schedule (days)	Work Schedule (shift times)
7/9/2019	Welch Dentistry	Hygienist	Mon - Fri	7:30-5:00

2. Are you disabled? (☒ *check one*)

☒ No
☐ Yes

If yes, what is your level of disability? _____
What agency certified you disabled? _____
What is the nature of your disability? _____

C. Prior Employment: If you are unemployed or have been working at your current job for less than 2 years, complete the following information.

Prior Employer: _____ Date of Hire: _____ Date of Termination: _____
Reason for Leaving: _____

Monthly Personal Income Schedule

A. Year-to-date Income.

As of the pay period ending June 8, 2019 my gross year to date pay is 49,685.

B. Determine your Gross Monthly Income.

Hourly Wage

\$49.00	×	40.00	=	\$1,960.00	×	52	=	\$101,920.00	÷	12	=	\$8,493.33
Hourly Wage		Number of hours worked per week		Weekly Income		Weeks		Annual Income		Months		Gross Monthly Income

Annual Salary

	÷	12	=	\$0.00
Annual Income		Months		Gross Monthly Income

C. Other Sources of Income.

Source of Income	Frequency	Amount	12 Month Average
Annuity or Trust Income			
Bonuses			
Car, Housing, or Other allowance:			
Commissions or Tips:			
Net Rental Income:			
Overtime Pay			
Pension/Retirement:			
Social Security Income (SSI):			
Social Security Disability (SSD):			
Spousal Support			
Child Support	Monthly	\$806.00	\$806.00
Workman's Compensation			
Other:			
Total Average Other Income Received			\$806.00

Total Average Gross Monthly Income (add totals from B and C above)	\$9,299.33
--	------------

D. Monthly Deductions

	Type of Deduction	Amount
1.	Court Ordered Child Support (automatically deducted from paycheck)	
2.	Federal Health Savings Plan	
3.	Federal Income Tax	1,384.66
4.	Health Insurance Amount for you: _____ For Opposing Party: _____ For your Child(ren): _____	0.00
5.	Life, Disability, or Other Insurance Premiums	513.00
6.	Medicare	124.34
7.	Retirement, Pension, IRA, or 401(k)	
8.	Savings	
9.	Social Security	531.64
10.	Union Dues	
11.	Other: (Type of Deduction)	
Total Monthly Deductions (Lines 1-11)		2,553.64

Business/Self-Employment Income & Expense Schedule

A. Business Income:

What is your average gross (pre-tax) monthly income/revenue from self-employment or businesses?
\$ _____

B. Business Expenses: Attach an additional page if needed.

Type of Business Expense	Frequency	Amount	12 Month Average
Advertising			
Car and truck used for business			
Commissions, wages or fees			
Business Entertainment/Travel			
Insurance			
Legal and professional			
Mortgage or Rent			
Pension and profit-sharing plans			
Repairs and maintenance			
Supplies			
Taxes and licenses (include est. tax payments)			
Utilities			
Other:			
Total Average Business Expenses			0.00

Personal Expense Schedule (Monthly)

A. Fill in the table with the amount of money **you** spend each month on the following expenses and check whether you pay the expense for you, for the other party, or for both of you.

Expense	Monthly Amount I Pay	For Me 	Other Party 	For Both 
Alimony/Spousal Support				
Auto Insurance				
Car Loan/Lease Payment	650.00	✓		
Cell Phone	192.00	✓		
Child Support (not deducted from pay)				
Clothing, Shoes, Etc...	100.00	✓		
Credit Card Payments (minimum due)	400.00	✓		
Dry Cleaning Personal Care	200.00	✓		
Electric	140.00	✓		
Food (groceries & restaurants)	500.00	✓		
Fuel	200.00	✓		
Gas (for home)	50.00	✓		
Health Insurance (not deducted from pay)				
HOA	45.00	✓		
Home Insurance (if not included in mortgage)				
Home Phone				
Internet/Cable	55.00	✓		
Lawn Care				
Membership Fees	35.00	✓		
Mortgage/Rent/Lease	1,800.00	✓		
Pest Control				
Pets	50.00	✓		
Pool Service				
Property Taxes (if not included in mortgage)				
Security				
Sewer	20.00	✓		
Student Loans	110.00	✓		
Unreimbursed Medical Expense				
Water	40.00	✓		
Other: Additional Life Insurance	523.00	✓		
Total Monthly Expenses	5,110.00			

Household Information

- A. Fill in the table below with the name and date of birth of each child, the person the child is living with, and whether the child is from this relationship. Attached a separate sheet if needed.

	Child's Name	Child's DOB	Whom is this child living with?	Is this child from this relationship?	Has this child been certified as special needs/disabled?
1 st	Nathan Martin	8/24/10	Mom	Yes	No
2 nd					
3 rd					
4 th					

- B. Fill in the table below with the amount of money you spend each month on the following expenses for each child.

Type of Expense	1 st Child	2 nd Child	3 rd Child	4 th Child
Cellular Phone				
Child Care				
Clothing	100.00			
Education				
Entertainment	200.00			
Extracurricular & Sports	294.00			
Health Insurance (if not deducted from pay)				
Summer Camp/Programs	100.00			
Transportation Costs for Visitation	150.00			
Unreimbursed Medical Expenses	75.00			
Vehicle				
Other:				
Total Monthly Expenses	919.00	0.00	0.00	0.00

- C. Fill in the table below with the names, ages, and the amount of money contributed by all persons living in the home over the age of eighteen. If more than 4 adult household members attached a separate sheet.

Name	Age	Person's Relationship to You (i.e. sister, friend, cousin, etc...)	Monthly Contribution
Carol Olsen	62	Mother	\$ 0.00

Personal Asset and Debt Chart

A. Complete this chart by listing all of your assets, the value of each, the amount owed on each, and whose name the asset or debt is under. If more than 15 assets, attach a separate sheet.

Line	Description of Asset and Debt Thereon	Gross Value		Total Amount Owed		Net Value	Whose Name is on the Account? You, Your Spouse/Domestic Partner or Both
1.		\$	-	\$	=	\$ 0.00	
2.		\$	-	\$	=	\$ 0.00	
3.		\$	-	\$	=	\$ 0.00	
4.		\$	-	\$	=	\$ 0.00	
5.		\$	-	\$	=	\$ 0.00	
6.		\$	-	\$	=	\$ 0.00	
7.		\$	-	\$	=	\$ 0.00	
8.		\$	-	\$	=	\$ 0.00	
9.		\$	-	\$	=	\$ 0.00	
10.		\$	-	\$	=	\$ 0.00	
11.		\$	-	\$	=	\$ 0.00	
12.		\$	-	\$	=	\$ 0.00	
13.		\$	-	\$	=	\$ 0.00	
14.		\$	-	\$	=	\$ 0.00	
15.		\$	-	\$	=	\$ 0.00	
Total Value of Assets (add lines 1-15)		\$ 0.00	-	\$ 0.00	=	\$ 0.00	

B. Complete this chart by listing all of your unsecured debt, the amount owed on each account, and whose name the debt is under. If more than 5 unsecured debts, attach a separate sheet.

Line #	Description of Credit Card or Other Unsecured Debt	Total Amount owed	Whose Name is on the Account? You, Your Spouse/Domestic Partner or Both
1.		\$	
2.		\$	
3.		\$	
4.		\$	
5.		\$	
6.		\$	
Total Unsecured Debt (add lines 1-6)		\$ 0.00	

CERTIFICATION

Attorney Information: Complete the following sentences:

1. I (have/have not) HAVE retained an attorney for this case.
2. As of the date of today, the attorney has been paid a total of \$ 7500 on my behalf.
3. I have a credit with my attorney in the amount of \$ 0.
4. I currently owe my attorney a total of \$ 901.00.
5. I owe my prior attorney a total of \$ _____.

IMPORTANT: Read the following paragraphs carefully and initial each one.

JS I swear or affirm under penalty of perjury that I have read and followed all instructions in completing this Financial Disclosure Form. I understand that, by my signature, I guarantee the truthfulness of the information on this Form. I also understand that if I knowingly make false statements I may be subject to punishment, including contempt of court.

JS I have attached a copy of my 3 most recent pay stubs to this form.

_____ I have attached a copy of my most recent YTD income statement/P&L statement to this form, if self-employed.

_____ I have not attached a copy of my pay stubs to this form because I am currently unemployed.

Signature

Date

8/26/19

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Ford & Friedman ("the Firm"). I am over the age of 18 and not a party to the within action. I am "readily familiar" with firm's practice of collection and processing documents for mailing. Under the Firm's practice, mail is to be deposited with the U.S. Postal Service on the same day as stated below, with postage thereon fully prepaid.

I served the foregoing document described as "Financial Disclosure Form" on this 6th, day of June, 2019, to all interested parties as follows:

- ☐ By mail: Pursuant To NRCP 5(b), I placed a true copy thereof enclosed in a sealed envelope addressed as follows;
- ☐ BY FACSIMILE: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document this date via telecopier to the facsimile number shown below;
- ☐ BY ELECTRONIC TRANSMISSION: Pursuant to EDCR 7.26, I caused to be transmitted a copy of the foregoing document this date via the Court's electronic filing system to the electronic mail address shown below;
- ☒ BY US MAIL: I placed a true copy thereof enclosed in a sealed envelope, addressed as follows:

Erich Martin
3815 Little Dipper Dr
Fort Collins, CO 80528
Attorney for Defendant

An employee of Ford & Friedman

Pay

6/10/19, 6:34 AM



May 3 2019

This Period

Year To Date

\$3,384.39

Net

Gross	\$4,459.00
-------	------------

Year To Date Gross	\$36,724.50
--------------------	-------------

Hours	91
-------	----

Earnings	(Apr 14 - Apr 27)
----------	---------------------

Regular (91 Hours)	\$4,459.00
-----------------------	------------

Holiday	\$0.00
---------	--------

Deductions

Federal Income Tax	-\$733.49
--------------------	-----------

Social Security	-\$276.46
-----------------	-----------

Medicare	-\$64.66
----------	----------

Direct Deposits

RA001533

Pay

6/10/19, 6:34 AM



May 17 2019

\$3,585.35

Net

Gross	\$4,753.00
-------	------------

Year To Date Gross	\$41,477.50
--------------------	-------------

Hours	97
-------	----

Earnings	(Apr 28 - May 11)
----------	---------------------

Regular (97 Hours)	\$4,753.00
-----------------------	------------

Holiday	\$0.00
---------	--------

Deductions

Federal Income Tax	-\$804.05
--------------------	-----------

Social Security	-\$294.69
-----------------	-----------

Medicare	-\$68.91
----------	----------

Direct Deposits

Direct Deposit - xxxxxxxxxx - xxxx2989

RA001534

Pay

6/10/19, 6:33 AM



May 31 2019

This Period

Year To Date

\$3,015.99

Net

Gross	\$3,920.00
-------	------------

Year To Date Gross	\$45,397.50
--------------------	-------------

Hours	80
-------	----

Earnings	(May 12 - May 25)
----------	---------------------

Regular (80 Hours)	\$3,920.00
-----------------------	------------

Holiday	\$0.00
---------	--------

Deductions

Federal Income Tax	-\$604.13
--------------------	-----------

Social Security	-\$243.04
-----------------	-----------

Medicare	-\$56.84
----------	----------

Direct Deposits

RA001535

Exhibit 4

YOUR RECORDS ARE HERE

Instant Checkmate

First Name

Last Name

State

SEARCH NOW



[\(/\)](#)

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[Home \(/\)](#) / [Special Districts \(/agencies/salaries/special-districts/\)](#) / [2019 \(/salaries/2019/\)](#) / [Las Vegas Metro Police Department \(/salaries/2019/las-vegas-metro-police-department/\)](#) / Anthony E Bricker

Anthony E Bricker (/salaries/search/?q=Anthony%20E%20Bricker)

POLICE LIEUTENANT (/salaries/search/?q=POLICE%20LIEUTENANT)

Regular pay:	\$138,902.66
Overtime pay:	\$3,955.40
Other pay:	\$6,348.27
Total pay:	\$149,206.33
Total benefits:	\$68,971.31
Total pay & benefits:	\$218,177.64

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YOUR RECORDS ARE HERE

TruthFinder

First Name

Last Name

State

SEARCH NOW

Exhibit 5



Assessor

Briana Johnson, Assessor

GENERAL INFORMATION	
PARCEL NO.	190-30-511-014
OWNER AND MAILING ADDRESS	BRICKER ANTHONY E 2812 JOSEPHINE DR HENDERSON NV 89044
LOCATION ADDRESS	2812 JOSEPHINE DR
CITY/UNINCORPORATED TOWN	HENDERSON
ASSESSOR DESCRIPTION	PROVENCE CNTRY CLUB PARCEL 2 PLAT BOOK 127 PAGE 64 LOT 109 BLOCK 5
RECORDED DOCUMENT NO.	* 20151231:01912
RECORDED DATE	DEC 31 2015
VESTING	NS
COMMENT	

*Note: Only documents from September 15, 1999 through present are available for viewing.

ASSESSMENT INFORMATION AND VALUE EXCLUDED FROM PARTIAL ABATEMENT	
TAX DISTRICT	514
APPRAISAL YEAR	2019
FISCAL YEAR	2020-21
SUPPLEMENTAL IMPROVEMENT VALUE	0
INCREMENTAL LAND	0
INCREMENTAL IMPROVEMENTS	0

REAL PROPERTY ASSESSED VALUE			
FISCAL YEAR	2019-20		2020-21
LAND		50,400	51,450
IMPROVEMENTS		174,962	196,540
EXEMPT			
GROSS ASSESSED (SUBTOTAL)		225,362	247,990
TAXABLE LAND + IMP (SUBTOTAL)		643,891	708,543
COMMON ELEMENT ALLOCATION ASSESSED		0	0
TOTAL ASSESSED VALUE		225,362	247,990
TOTAL TAXABLE VALUE		643,891	708,543

[Click here for Treasurer Information regarding real property taxes.](#)


[Click here for Flood Control Information.](#)

ESTIMATED LOT SIZE AND APPRAISAL INFORMATION	
ESTIMATED SIZE	0.19 ACRES
ORIGINAL CONST. YEAR	2015

RA001539

LAST SALE PRICE	502,270
MONTH/YEAR	12/2015
SALE TYPE	R - RECORDED VALUE
LAND USE	20.110 - SINGLE FAMILY RESIDENTIAL
DWELLING UNITS	1

PRIMARY RESIDENTIAL STRUCTURE					
1ST FLOOR SQ. FT.	2,179	CASITA SQ. FT.		ADDN/CONV	
2ND FLOOR SQ. FT.	1,449	CARPORT SQ. FT.		POOL	NO
3RD FLOOR SQ. FT.		STYLE	TWO STORY	SPA	NO
UNFINISHED BASEMENT SQ. FT.	0	BEDROOMS	4	TYPE OF CONSTRUCTION	FRAME-STUCCO
FINISHED BASEMENT SQ. FT.	0	BATHROOMS	3 FULL	ROOF TYPE	CONCRETE TILE
BASEMENT GARAGE SQ. FT.	0			FIREPLACE	0
TOTAL GARAGE SQ. FT.	818				

ASSESSORMAP VIEWING GUIDELINES	
MAP	190305
	<p>In order to view the Assessor map you must have Adobe Reader installed on your computer system.</p> <p>If you do not have the Reader it can be downloaded from the Adobe site by clicking the following button. Once you have downloaded and installed the Reader from the Adobe site, it is not necessary to perform the download a second time to access the maps.</p> 


Note: This record is for assessment use only. No liability is assumed as to the accuracy of the data delineated hereon.


Exhibit 6

Buy Rent Sell Home Loans Agent finder

2812 Josephine Dr Henderson, NV, 89044

For Sale Price





Map data ©2020 Imag

Manage Rentals Advertise Help

Edit Save Share

4 bd | 3 ba | 3,628 sqft


2812 Josephine Dr, Henderson, NV 89044

Off market | Zestimate®: \$732,406 | Rent Zestimate®: \$3,799

Est. refi payment: \$3,900/mo [Get current rates](#)


Home value Owner tools Home details Neighborh

Home value




Zestimate

\$732,406

ZESTIMATE RANGE

\$688,000 - \$776,000

LAST 30 DAY CHANGE

-\$4,754 (-0.6%)

[Zestimate history & details](#)


Comparable homes

Your private estimate

\$

[Choose homes](#)

Similar homes nearby



Coldwell Banker Premier Realty

4 bds | 4 ba | 3,369 sqft

https://www.zillow.com/homes/2812-Josephine-Dr-Henderson,-NV,-89044_rb/141751788_zpid/

RA001542 12/12/2020, 2:38 PM

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Hannah S. Martin

CLERK OF THE COURT

Marquis Aurbach Coffing

Chad F. Clement, Esq.

Nevada Bar No. 12192

Kathleen A. Wilde, Esq.

Nevada Bar No. 12522

10001 Park Run Drive

Las Vegas, Nevada 89145

Telephone: (702) 382-0711

Facsimile: (702) 382-5816

cclement@maclaw.com

kwilde@maclaw.com

Attorneys for Erich M. Martin

DISTRICT COURT—FAMILY DIVISION

CLARK COUNTY, NEVADA

Erich M. Martin,

Plaintiff,

Case No.: D-15-509045-D

Dept. No.: C

vs.

Raina L. Martin,

Defendant.

ORDER SHORTENING TIME

Upon the Plaintiff's Application, the declaration of counsel, and for good cause appearing: **IT IS HEREBY ORDERED** that the time for hearing Plaintiff Erich M. Martin's Motion for Stay Pursuant to NRAP 62(d) is hereby shortened and shall be heard on the 3rd day of November, 2020 at the hour of 9:00 a.m. in Department C of the Family Court located at the Family Court and Services Center, 601 N. Pecos, Las Vegas, NV 89101.

Dated this _____ day of October, 2020.

Dated this 12th day of October, 2020

Rebecca L. Burton

DISTRICT COURT JUDGE

Submitted by:
MARQUIS AURBACH COFFING

BFA C1F D831 D817
Rebecca L. Burton
District Court Judge

By /s/ Kathleen A. Wilde

Chad F. Clement, Esq.

Nevada Bar No. 12192

Kathleen A. Wilde, Esq.

Nevada Bar No. 12522

10001 Park Run Drive

Las Vegas, Nevada 89145

Attorneys for Erich M. Martin

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Erich M Martin, Plaintiff

CASE NO: D-15-509045-D

7 vs.

DEPT. NO. Department C

8 Raina L Martin, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 10/12/2020

15 "Samira C. Knight, Esq. " .

Samira@tklawgroupnv.com

16 Chad Clement

cclement@maclaw.com

17 Reception Reception

email@willicklawgroup.com

18 Samira Knight

Samira@TKLawgroupnv.com

19 Tarkanian Knight

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20 Matthew Friedman, Esq.

mfriedman@fordfriedmanlaw.com

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kwilde@maclaw.com

24 Gary Segal, Esq.

gsegal@fordfriedmanlaw.com

25
26 Javie-Anne Bauer

27 jbauer@maclaw.com
28

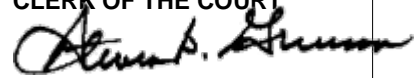
RA001544

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Richard Crane	richard@willicklawgroup.com
Erich Martin	emartin2617@gmail.com
Lennie Fraga	lfraga@maclaw.com
Christopher Phillips, Esq.	cphillips@fordfriedmanlaw.com

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Marquis Aurbach Coffing
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 Nevada Bar No. 12192
 Kathleen A. Wilde, Esq.
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 10001 Park Run Drive
 Las Vegas, Nevada 89145
 Telephone: (702) 382-0711
 Facsimile: (702) 382-5816
 kwilde@maclaw.com
Attorney for Erich M. Martin

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

Erich M. Martin,

Plaintiff,

Case No.: D-15-509045-D

Dept. No.: C

vs.

Raina L. Martin,

Defendant.

NOTICE OF ENTRY OF ORDER SHORTENING TIME

Please take notice that an Order Shortening Time was entered in the above-captioned matter on the 12th day of October, 2020 a copy of which is attached hereto.

Dated this 12th day of October, 2020.

MARQUIS AURBACH COFFING

By /s/ Kathleen A. Wilde

Chad F. Clement, Esq.
 Nevada Bar No. 12192
 Kathleen A. Wilde, Esq.
 Nevada Bar No. 12522
 10001 Park Run Drive
 Las Vegas, Nevada 89145
Attorney for Erich M. Martin

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER SHORTENING TIME** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 12th day of October, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

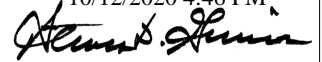
Richard L Crane	richard@willicklawgroup.com
Matthew H. Friedman, Esq.	mfriedman@fordfriedmanlaw.com
Justin Johnson	Justin@willicklawgroup.com
Tracy McAuliff	tracy@fordfriedmanlaw.com
Christopher B. Phillips, Esq.	cphillips@fordfriedmanlaw.com
Reception Reception	email@willicklawgroup.com
Gary Segal, Esq.	gsegal@fordfriedmanlaw.com
"Samira C. Knight, Esq. "	Samira@tklawgroupnv.com
Samira Knight	Samira@TKLawgroupnv.com
Tarkanian Knight	Info@Tklawgroupnv.com

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A

/s/ Javie-Anne Bauer
An employee of Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).


CLERK OF THE COURT

Marquis Aurbach Coffing
Chad F. Clement, Esq.
Nevada Bar No. 12192
Kathleen A. Wilde, Esq.
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Attorneys for Erich M. Martin

DISTRICT COURT—FAMILY DIVISION
CLARK COUNTY, NEVADA

Erich M. Martin,		Case No.: D-15-509045-D
	Plaintiff,	Dept. No.: C
vs.		
Raina L. Martin,		
	Defendant.	

ORDER SHORTENING TIME

Upon the Plaintiff's Application, the declaration of counsel, and for good cause appearing: **IT IS HEREBY ORDERED** that the time for hearing Plaintiff Erich M. Martin's Motion for Stay Pursuant to NRAP 62(d) is hereby shortened and shall be heard on the 3rd day of November, 2020 at the hour of 9:00 a.m. in Department C of the Family Court located at the Family Court and Services Center, 601 N. Pecos, Las Vegas, NV 89101.

Dated this _____ day of October, 2020.

Dated this 12th day of October, 2020


DISTRICT COURT JUDGE

Submitted by:
MARQUIS AURBACH COFFING

BFA C1F D831 D817
Rebecca L. Burton
District Court Judge

By /s/ Kathleen A. Wilde
Chad F. Clement, Esq.
Nevada Bar No. 12192
Kathleen A. Wilde, Esq.
Nevada Bar No. 12522
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Erich M. Martin

1 **CSERV**

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3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Erich M Martin, Plaintiff

CASE NO: D-15-509045-D

7 vs.

DEPT. NO. Department C

8 Raina L Martin, Defendant.
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RA001549

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