IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

JOSE OSCAR SALAZAR
APPELLANT,

VS.

AGUSTINA CERVANTES LANDA
RESPONDENT,

No. 83111

Electronically Filed
Jul 14 2021 12:02 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See* KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

Docket 83111 Document 2021-20295

1. Judicial District Eighth Department U

County Clark Judge Dawn R. Throne

District Ct. Case No. D-19-595434-D

2. Attorney filing this docketing statement:

Attorney Emily McFarling, Esq. Telephone 702-565-4335

Firm McFarling Law Group

Address 6230 W. Desert Inn Rd. Las Vegas, NV 89146

Client(s) Jose Oscar Salazar

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Bret O. Whipple, Esq. Telephone 702-731-0000

Firm Justice Law Center

Address 1100 South 10th St., Las Vegas, NV 89104

Client(s) Agustina Cervantes Landa

Attorney _____ Telephone _____

Firm _____

Address

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- ☒ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☐ Summary judgment
- ☐ Default judgment
- ☐ Grant/Denial of NRCP 60(b) relief
- ☐ Grant/Denial of injunction
- ☐ Grant/Denial of declaratory relief
- ☐ Review of agency determination
- ☐ Dismissal:
  - ☐ Lack of jurisdiction
  - ☐ Failure to state a claim
  - ☐ Failure to prosecute
  - ☐ Other (specify): _____
- ☒ Divorce Decree:
  - ☒ Original ☐ Modification
- ☒ Other disposition (specify): Reconsider denial

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

8. Nature of the action. Briefly describe the nature of the action and the result below:

This is an appeal from the denial of reconsideration of alimony and property and debt division in the Divorce Decree, which was entered on February 11, 2021. On February 18, 2021 appellant filed a timely Motion to Reconsider and on May 25, 2021, the District Court entered an Order denying appellant's request to reconsider alimony. The District Court granted motion to reconsider as to assets and debt division to correct a mathematical error and reduced the initial equalization payment of $60,000.00 to $38,999.50 from Jose to Agustina.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1) Whether the District Court erred in its alimony award.
2) Whether the District Court erred in its property and debt division.
3) Whether the District Court erred in not including alimony income in its child support calculation.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☐ Yes

☒ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This case should be assigned to the Nevada Court of Appeals under NRAP 17(b)(10) because it is a case involving a family law matter other than the termination of parental rights.

14. Trial. If this action proceeded to trial, how many days did the trial last? 2

Was it a bench or jury trial? Bench

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from February 11, 2011

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served 02/11/2021

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. *See* AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion 05/25/2021

(c) Date written notice of entry of order resolving tolling motion was served 05/26/2021

Was service by:

☐ Delivery

☒ Mail

19. Date notice of appeal filed June 22, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal: N/A

20. Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- ☒ NRAP 3A(b)(1)
- ☐ NRAP 3A(b)(2)
- ☐ NRAP 3A(b)(3)
- ☐ Other (specify)
- ☐ NRS 38.205
- ☐ NRS 233B.150
- ☐ NRS 703.376

(b) Explain how each authority provides a basis for appeal from the judgment or order: NRAP 3A(b)(1) gives this court the authority to review the Divorce Decree as it was entered as a final judgment and the order denying the reconsideration of the final judgment.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Jose Oscar Salazar, Plaintiff/Appellant
Agustina Cervantes Landa, Defendant/Respondent

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Appellant's claims - divorce, division of property and debt, child custody, child support, attorney's fees.
Respondent's claims - divorce, division of property and debt, waste, alimony, child custody, child support, attorney's fees.
All claims were disposed of in the divorce decree entered on February 11, 2021. Formal disposition of the Appellant's Motion for Reconsideration occurred through the entry of the Order on May 25, 2021.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

Order is independently appealable under NRAP 3A(b).

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Jose Oscar Salazar
Name of appellant

Emily McFarling, Esq.
Name of counsel of record

July 12, 2021
Date

/s/Emily McFarling
Signature of counsel of record

State of Nevada, County of Clark
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 14th day of July, 2021, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Bret Whipple, Esq.
1100 S. Tenth Street
Las Vegas, NV 89104

Israel Kunin
10161 Park Run Dr. Ste. 150
Las Vegas, NV 89145

Dated this 14th day of July, 2021

//Alex Aguilar//
Signature

Electronically Filed
08/27/2019

CLERK OF THE COURT

COMD
Your Name: JOSE OSCAR SALAZAR
Address: 3127 PANOCHA ST
City, State, Zip: LAS VEGAS NEVADA 89121
Phone: (702) 755- 0087
Email:
Self-Represented Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

JOSE OSCAR SALAZAR Plaintiff, vs. AGUSTINA CERVANTES LANDA Defendant.	CASE NO. **D-19-595434-D** DEPT: **Dept. TBD**

COMPLAINT FOR DIVORCE AND UCCJEA DECLARATION (With Children)

Plaintiff (*your name*) JOSE OSCAR SALAZAR respectfully states:

1. **Residency.** The following spouse has been a resident of the State of Nevada for at least six weeks prior to filing this Complaint and intends to make Nevada his/her home for an indefinite period of time: (*name of Nevada resident*) JOSE OSCAR SALAZAR.

2. **Marriage.** The parties were married on (*date*) MARCH 12, 2001 in (*city*) LAS VEGAS, (*state*) NEVADA. The parties are incompatible.

3. **Pregnancy.** (☒ *check one*)

   ☒ Neither spouse is pregnant.

   ☐ The following spouse is pregnant: (*name of pregnant spouse*) _____.
   The other spouse ☐ is / ☐ is not the parent of the unborn child. The child is due to be born on (*date*): _____.

   ☐ It is unknown whether either spouse is currently pregnant.

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* You are responsible for knowing the law about your case. For more information on the law, this form, and free classes, visit www.familylawselfhelpcenter.org or the Family Law Self Help Center at 601 N. Pecos Road. To find an attorney, call the State Bar of Nevada at (702) 382-0504.

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4. **Children.** There are (*number*) 5 minor children in common born to or adopted by the parties. The name(s) and information is listed below:

Child's Name	Date of Birth	State of Residence	How long child lived in the state	Disability
THAINA M SALAZAR	02/14/2000	NEVADA	19 YEARS	NO
OSCAR IVAN SALAZAR	02/01/2001	NEVADA	18 YEARS	NO
MELLYARIVE SALAZAR	10/15/2004	NEVADA	15 YEARS	NO
MAYBEL A SALAZAR	06/05/2006	NEVADA	13 YEARS	NO
JORMY Y SALAZAR	03/15/2009	NEVADA	10 YEARS	NO

5. **UCCJEA Declaration.** (☒ *check one*)

☒ The child(ren) have lived in Nevada for the past six months, or since birth.

☐ The child(ren) have NOT lived in Nevada for the past six months or since birth.

a. **Living Arrangements Last 5 Years**. The children have lived with the following persons in the following places within the last five years:

Time Period (mo/yr – mo/yr)	Name of Person the Child(ren) Lived With	City and State	Child's Name (if not all children)
02/2010 - present	JOSE O.SALAZAR	LAS VEGAS NV	
01/2002 - 08/2010	AGUSTINA CERVANTES LANDA	REYNOSA/TAMAULIPAS/MEXICO	
_____ - _____			
_____ - _____			
_____ - _____			

The names and current addresses of each non-parent the children lived with during the last five years are:

b. **Participation in Other Cases:** (☒ *check one*)

I ☐ have / ☒ have not participated as a party or witness or in some other capacity in any other case involving the child(ren): (*if you have, provide all specifics including the state, the court, children involved, the case number and the date of the child custody order, if any*):

c. Knowledge of Other Cases: (☒ *check one*)

I ☐ do / ☒ do not know of a different case that could affect the current case: (*if you do, provide all specifics including the state, the court, parties involved, the case number and the nature of the proceeding*):

d. Person(s) Who Claim Custody / Visitation: (☒ *check one*)

I ☐ do / ☒ do not know of anyone other than the parents who has physical custody of the child(ren) or who claims custody/visitation rights to the child(ren). (*if so, list names and addresses of anyone who claims custody/visitation rights*)

6. **Legal Custody.** *Legal custody refers to the ability to make major decisions about the child, such as medical care, education, and religious upbringing.* (☒ *check one*)

☒ The parties should share joint legal custody of the child(ren).

☐ Plaintiff should have sole legal custody of the child(ren).

☐ Defendant should have sole legal custody of the child(ren).

☐ Nevada is not the "home state" of the child(ren) and cannot enter custody orders.

7. **Physical Custody.** *Physical custody refers to the amount of time the child spends with each parent.* (☒ *check one*)

☐ The parties should share joint physical custody of the child(ren) (each parent must have the child(ren) at least 40% of the time, or 146 days per year). A proposed parenting timeshare and holiday schedule is attached as Exhibit 1.

☒ The (☒ *check one*) ☒ Plaintiff / ☐ Defendant should have primary physical custody of the child(ren). A proposed parenting timeshare and holiday schedule is attached as Exhibit 1.

☐ The (☒ *check one*) ☐ Plaintiff / ☐ Defendant should have sole physical custody of the child(ren).

☐ Nevada is not the "home state" of the child(ren) and cannot enter custody orders.

8. **Other Considerations.** The Court should consider the following issues in determining custody: (☒ *check all that apply*)

☐ Domestic Violence

☐ CPS Involvement

☐ Military Deployment

☐ State of Residency

☐ Other: _____

9. **Public Assistance.** (☒ *check one*)

☐ None of the parties in this case have ever received state assistance or welfare.

☐ State assistance or welfare has been or is being provided to parties in this case.

10. **Child Support.** *Complete the attached Child Support Worksheet that applies to your custody arrangement before you complete this section.* (☒ *check one*)

☐ Child support should be paid by (*name of parent who should pay child support*) _____ in the amount of (*amount*) $_____ per month. This is based on: (☒ *check one*)

- ☐ The statutory minimum of $100/month per child.
- ☐ The calculation from the attached Child Support Worksheet.
- ☐ The amount already established by the District Attorney, Family Support Division, case (*insert case number*) R_____.

☒ No child support is requested. (*Explain why not*):
The amount of time the child spends with each parent.

☐ I'm not sure how much child support should be paid, and ask the court to set support.

11. **Child Support Arrears.** (☒ *check one*)

☒ No back child support or arrears are requested.

☐ Child support arrears are being handled by the District Attorney, Family Support Division, case (*insert case number*) R_____ and should continue as ordered in that case.

☐ Back child support should be paid by (*name of parent who should pay back child support*) _____ from (*date back child support should begin*) _____ to present.

12. **Wage Withholding.** (☒ *check one*)

☐ A wage withholding order should be entered to secure payment of any support owed.

☒ A wage withholding order should NOT be entered.

13. Health Insurance. (☒ *check all that apply*)

☒ Both parties should provide future health insurance for the minor child(ren) if available.

☐ Future health insurance for the minor child(ren) should be provided by (*name of parent*) _____ if available.

14. Unreimbursed Medical Expenses. (☒ *check one*)

☒ Any expenses not covered by insurance should be paid equally by both parties.

☐ Any expenses not covered by insurance should be paid by (*name of parent*) _____ due to the following extraordinary circumstances: (*explain*) _____

15. "30/30 Rule." (☒ *check one*)

☐ The Court should order the 30/30 Rule for payment of all unreimbursed medical / dental expenses.[1] (*see below for explanation*)

☒ The Court should NOT order the 30/30 Rule for payment of unreimbursed medical / dental expenses.

16. Tax Deduction. *IRS rules state that the custodial parent usually has the right to claim the child on their taxes. The custodial parent can waive this right by filling out IRS Form 8332. Talk to a tax professional if you are not sure what to do.* (☒ *check all that apply*)

☒ Plaintiff should claim the following children as dependents for tax purposes every year: (*insert child(ren)*'s names): MELLYARIVE SALAZAR/ MAYBEL A SALAZAR/ JORMY Y SALAZAR

☐ Defendant should claim the following children as dependents for tax purposes every year: (*insert child(ren)*'s names): _____

☐ The tax deduction should alternate, with Plaintiff claiming the child(ren) in (☒ *check one*) ☐ even / ☐ odd years, and Defendant claiming the child(ren) the other years.

☐ The tax deduction should be allocated per federal law.

[1] The "30/30 Rule:" If a parent pays a medical or dental expense for a child that is not paid by insurance, that parent must send proof of the expense to the other parent within 30 days of incurring the expense. The other parent then has 30 days to reimburse the paying parent ½ the cost.

Worksheet B - Joint Physical Custody Child Support Calculation Worksheet

If you are asking for joint physical custody, fill out this worksheet and attach it to the document you are filing. A joint physical custody arrangement exists when each parent has the child at least 40% (146 days) of the time calculated over a one year period.

Parent 1's Name: JOSE OSCAR SALAZAR **Parent 2's Name:** AGUSTINA CERVANTES LANDA

① Determine Each Parent's Gross Monthly Income (GMI) (estimate other parent's income if unknown).

Gross monthly income is the income received from all sources. If you do not know a parent's gross monthly income, you can calculate the number with the formula on the last page.

② Determine Each Parent's Child Support Obligation.

Parent 1 GMI
$ 41,300.00

Parent 2 GMI
$ _____

X

.18 (for 1 Child)
.25 (for 2 Children)
.29 (for 3 Children)
.31 (for 4 Children)
Add .02 for each additional child

=

Parent 1's Monthly Child Support:
$ _____ **OR** $100 per child $_____
(write the higher amount and use in step 3)
Higher Amount: $0

Parent 2's Monthly Child Support:
$ _____ **OR** $100 per child $_____
(write the higher amount and use in step 3)
Higher Amount: $0

③ Subtract the lower earning parent's amount of child support in ② from the higher earning parent's amount.

Higher $ 0.00 - **Lower** $ 0.00 = **Child Support Obligation** $ 0.00 paid by **Name of higher income parent:** _____

④ Apply the Presumptive Maximum (*rarely applicable*).

Usually, this is the maximum amount a parent may be required to pay per month per child (and can *reduce* – not increase – the amount that would be owed under step ③). This amount changes every year on July 1st and can be found by going to http://nvcourts.gov and searching the phrase "presumptive maximum." Make sure you are using the most current chart.

Presumptive Maximum Reduction to:
$_____
Or ☐ not applicable

⑤ Deviations.

You may request an amount of child support that is lower or higher than the amount in ③ or ④, but your reason(s) must be based upon one of the following factors. (☑ *check all that apply*)

- ☐ The cost of health insurance
- ☒ The cost of childcare
- ☐ Special educational needs
- ☒ Age of the child
- ☐ Parent's legal responsibility to support others
- ☐ The value of services contributed by either parent
- ☐ Public assistance paid to support the child
- ☐ Expenses reasonably related to the mother's pregnancy and confinement
- ☐ Cost of transportation for visitation if the custodial parent moved out of the jurisdiction
- ☒ The amount of time the child spends with each parent
- ☒ Any other necessary expenses for the benefit of the child
- ☒ The relative income of both parents

➧ Explain:

Total Child Support:
$ _____

17. Community Property. (☒ *check one*)

☒ There is no community property to divide.

☐ Any community property has already been divided.

☐ I do not know the full extent of the community property.

☐ The community property should be divided as follows:

Property to Plaintiff:

1. _____
2. _____
3. _____
4. _____

Property to Defendant:

1. _____
2. _____
3. _____
4. _____

18. Community Debt. (☒ *check one*)

☒ There is no community debt to divide.

☐ Any community debt has already been divided.

☐ I do not know the full extent of the community debt.

☐ The community debt should be divided as follows:

Debts to Plaintiff:

1. _____
2. _____
3. _____
4. _____

Debts to Defendant:

1. _____
2. _____
3. _____
4. _____

19. Alimony. (☒ *check one*)

☒ No spousal support is requested.

☐ Plaintiff should pay $_____ per month in spousal support for the next (*number*) _____ years.

☐ Defendant should pay $_____ per month in spousal support for the next (*number*) _____ years.

20. Name Change. (☒ *check one*)

☐ Plaintiff does not request a name change.

☐ Plaintiff would like to be restored to his/her former name of (*insert former name you would like to go back to*) _____.

21. If Plaintiff is able to hire counsel, attorney's fees and costs are requested.

Plaintiff requests:

1. That the marriage existing between Plaintiff and Defendant be dissolved and that Plaintiff be granted an absolute Decree of Divorce and that each of the parties be restored to the status of a single, unmarried person;
2. That the Court grant the relief requested in this Complaint; and
3. For such other relief as the Court finds to be just and proper.

DATED this (*day*) 14 day of (*month*) AUGUST, 20 19.

Submitted By: (*your signature*) ▸ _____

(*print your name*) JOSE OSCAR SALAZAR

VERIFICATION

Under penalty of perjury, I declare that I am the Plaintiff in the above-entitled action; that I have read the foregoing Complaint and know the contents thereof; that the pleading is true of my own knowledge, except for those matters therein contained stated upon information and belief, and that as to those matters, I believe them to be true.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

DATED this (*day*) 14 day of (*month*) AUGUST, 2019.

Submitted By: (*your signature*) ▸ _____

(*print your name*) JOSE OSCAR SALAZAR

EXHIBIT 1: Parenting Timeshare and Holiday Schedule

☐ No Visitation Requested Because: (*explain*) _____

Regular Schedule: ***Be very specific. Include the times and days of the week for each parent's timeshare.*** *(ex.: Mom: Saturday 7pm – Wednesday 3pm, Dad: Wednesday 3pm – Saturday 7pm)*	MON: SHE WILL VISIT THE CHILDREN STARTING MONDAY TO SUNDAY FROM 3:00PM TO 9:00PM
Summer Schedule:	☒ Same as the regular schedule. ☐ Other: _____
Mother's Day and Mother's Birthday:	☒ Mother every year from 9am – 7pm. ☐ Other: _____
Father's Day and Father's Birthday:	☒ Father every year from 9am – 7pm. ☐ Other: _____
Child's Birthday:	☐ *Even years* with (*parent*) JOSE O SALAZAR. *Odd years* with (*parent*) AGUSTINA CERVANTES LANDA. *Time shall be from 9am – 7pm.* ☐ Other: _____
3 Day Weekends:	☐ *Even Years*: MLK Jr. Day, Memorial Day, Labor Day with (*parent*) JOSE O SALAZAR, President's Day, Independence Day, Nevada Admissions Day with the other parent. *Odd Years*: MLK Jr. Day, Memorial Day, Labor Day with (*parent*) AGUSTINA CERVANTES LANDA, President's Day, Independence Day, Nevada Admissions Day with the other parent. *Time begins when school lets out the day before the holiday weekend (or 3pm if no school), and ends the day following the holiday weekend when school resumes (or 9am).* **If Independence Day falls on a Tuesday, Wednesday, or Thursday, the time shall be from July 3 at 9am until July 5 at 9am.** ☐ Other: _____

Easter / Spring Break:	☐ Even years with (*parent*) JOSE O SALAZAR _____. Odd years with the other parent. *Time shall begin the day school lets out until noon the day before school resumes.* ☐ Other: _____
Thanksgiving:	☐ Odd years with (*parent*) JOSE O SALAZAR _____. Even years with the other parent. *Time shall begin the day school lets out until noon the day before school resumes.* ☐ Other: _____
Winter Break / Christmas:	☒ Segment 1 (Christmas) consists of the day school lets out until December 26 at noon. Segment 2 (New Year's) consists of December 26 at noon until noon the day before school resumes. *Even years*: segment 1 with (*parent*) JOSE O SALAZAR _____, segment 2 with the other parent. *Odd years*: segment 1 with (*parent*) _____, segment 2 with the other parent. ☐ Other:
Other Holidays:	
Vacation:	☒ The parents will not establish a formal vacation plan, and will instead mutually agree on vacation days and times with the child(ren). ☐ Each parent may have up to (*number*) _____ vacation days per year with the child(ren). The parent shall notify the other parent of the vacation and provide a general vacation itinerary at least (*number*) _____ days before the planned vacation. **Vacation time is not allowed during a holiday allotted to the other parent.**

Worksheet A - Primary Physical Custody Child Support Calculation Worksheet

If you are asking for primary physical custody, fill out this worksheet and attach it to the document you are filing. Primary physical custody exists when one parent has the child more than 60% (219 days) of the time calculated over a one year period.

① Determine the Gross Monthly Income (GMI) of the non-custodial parent (estimate if unknown).

Gross monthly income is the income received from all sources. If you do not know the parent's gross monthly income, you can calculate the number with the formula on the last page.

② Determine Child Support Obligation.

GMI			
$ 41300	X	**.18** (for 1 Child) **.25** (for 2 Children) **.29** (for 3 Children) **.31** (for 4 Children) Add .02 for each additional child	=

Monthly Child Support:
$ _____ **OR** $100 per child $_____
(write the higher amount)
Higher Amount: $ 0.00

③ Apply the Presumptive Maximum (*rarely applicable*).

Usually, this is the maximum amount a parent may be required to pay per month per child (and can *reduce* – not increase – the amount that would be owed under step ②). This amount changes every year on July 1st and can be found by going to http://nvcourts.gov and searching the phrase "presumptive maximum." Make sure you are using the most current chart.

Presumptive Maximum Reduction to:
$_____
Or ☐ not applicable

④ Deviations.

You may request an amount of child support that is lower or higher than the amount in ② or ③, but your reason(s) must be based upon one of the following factors. (☑ *check all that apply*)

- ☐ The cost of health insurance
- ☒ The cost of childcare
- ☐ Special educational needs
- ☒ Age of the child
- ☐ Parent's legal responsibility to support others
- ☒ The value of services contributed by either parent
- ☐ Public assistance paid to support the child
- ☐ Expenses reasonably related to the mother's pregnancy and confinement
- ☐ Cost of transportation for visitation if the custodial parent moved out of the jurisdiction
- ☒ The amount of time the child spends with each parent
- ☒ Any other necessary expenses for the benefit of the child
- ☒ The relative income of both parents

➧ Explain:

Total Child Support:
$ _____

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To Determine a Parent's Gross Monthly Income:

Gross monthly income is a parent's income from all sources before taxes. To find this number, calculate the following:

	Parent 1	Parent 2
*Monthly Wages from Employment (before taxes)	$ 3400	$
Monthly Tip Income	$	$
Monthly Self-Employment Income (after business expenses)	$	$
Monthly Unemployment Benefits	$	$
Social Security	$	$
Social Security Disability	$	$
Retirement / Pension	$	$
Other: _____	$	$
TOTAL INCOME	$ 3,400.00	$ 0.00

*To Determine a Parent's Employment Income:

If you do not know a parent's gross monthly income from employment, you can calculate the number if you know the 1) hourly wage, 2) weekly income, or 3) annual income.

Gross Monthly Income Based on Annual Income:

Annual Income $ 41300 ÷ 12 = $ 3,441.67

Gross Monthly Income Based on Weekly Income:

Weekly Income $_____ x 52 = Annual Income $ 0.00
Annual Income $ 0.00 ÷ 12 = $ 0.00

Gross Monthly Income Based on Hourly Wage:

Hourly Wage $_____ x # of Hours Worked per week _____ = Weekly Income $ 0.00
Weekly Income $ 0.00 x 52 = Annual Income $ 0.00
Annual Income $ 0.00 ÷ 12 = $ 0.00

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Attorneys for Defendant

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

Jose Oscar Salazar,	) CASE NO.: D-19-595434-D
	) DEPT. NO.: T
Plaintiff/Counter Defendant,	)
vs.	)
	)
Agustina Cervantes Landa,	)
	)
Defendant/ Counter Claimant.	)
	)

ANSWER TO COMPLAINT FOR DIVORCE AND UCCJEA DECLARATION (WITH CHILDREN; COUNTERCLAIM FOR DIVORCE

COMES NOW, AGUSTINA CERVANTES LANDA, Defendant, by and through her attorneys, CHRISTY BRAD ESCOBAR, ESQ., and CHINA AMIE, ESQ., of the law firm of Escobar & Associates, Ltd., and answers Plaintiff's Complaint for Divorce and UCCJEA Declaration (With Children) as follows:

1. Answering Paragraphs 1,2,3,6,8,11,12,14, and 16 of the Complaint, Defendant admits the allegations contained therein.

2. Answering Paragraphs 7,9,10,13,and 15 Defendant denies the allegations contained therein.

3. Answering Paragraph 4 Defendant admits there are three minor children

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born to the parties. The three minor children are Mellyarive Salazar, D.O.B. October 15th, 2004; Maybel A. Salazar, D.O.B. June 6th, 2006; and Jormy Y. Salazar, D.O.B. March 15th, 2009. Defendant denies all other allegations contained therein.

4. Answering Paragraph 5 Defendant denies that during February 2010 thru present the children lived solely with Jose O. Salazar; Defendant admits all other allegations contained therein.

FIRST AFFIRMATIVE DEFENSE

Defendant alleges that the Plaintiff's Complaint fails to state a claim against Defendant upon which relieve can be granted.

SECOND AFFIRMATIVE DEFENSE

Defendant alleges that the Plaintiff is barred from pursing his claims against her by the doctrine of unclean hands.

COUNTERCLAIM FOR DIVORCE

Defendant/ Counter Claimant, AS AND FOR A Counterclaim against the Plaintiff, alleges as follows:

1. Defendant, JOSE OSCAR SALAZAR, has been a resident of the State of Nevada for at least six weeks prior to filing this petition. Upon information and belief it is Defendant's intent to make Nevada his home for an indefinite period of time.

2. Plaintiff and Defendant were married on March 12, 2001, in Las Vegas, Nevada, and have been and are now husband and wife.

3. There are three minor child the subject of this marriage, namely Mellyarive Salazar("Mellyarive"), DOB of February October 15th, 2004, a daughter born in Mission, Texas; Maybel Salazar ("Maybel"), DOB of June 5th, 2006, a daughter born in McAllan, Texas; and Jormy Salazar ("Jormy"), DOB of August 15th, 2009, a son born in Mission, Texas.

4. There are no other minor children born or adopted during the parties'

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marriage, and to the best of Counterclaimant's knowledge, she is not currently pregnant.

5. Mellyarive has lived in Las Vegas, Clark County, Nevada since 2010, Maybel and Jormy have lived in Las Vegas, Clark County, Nevada since 2012 giving this court jurisdiction to determine custody.

6. That the parties are fit and proper to be awarded joint legal custody of the minor children.

7. Plaintiff should be awarded primary physical custody of the minor children with Defendant having reasonable rights of visitation on weekends pursuant to NRS 125C.003(a). Defendant is unable to adequately care for the minor children for at least 146 days of the year due to his profession.

8. The Plaintiff should have primary physical custody of the minor children with Defendant having reasonable rights of visitation on his days off, which can vary. For purposes of this Counterclaim Plaintiff proposes that Jose shall have the children on Friday's after school with pick-up from school, until Sunday at 8:00 p.m. drop-off with Agustina. All of the rest of the custodial time is Agustina's time except for holidays and vacation time as set forth below.

I. HOLIDAY SCHEDULE. The court should order the following holiday schedule:

A. CHRISTMAS BREAK shall have two periods: The first period shall commence after school the day winter break from school begins and continue until 8:00 p.m. on December 24th. The second segment shall begin December 24th at 8:00 p.m. and continue until the day before the children go back to school in January at 8:00 p.m. During all odd years Jose will have the minor children for Christmas during the first period and Agustina will have the minor children during the second period. During all even years Agustina will have the minor children for Christmas during the first period and Jose will have the minor children during the second period.

B. THANKSGIVING shall have two periods: The first period

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shall commence after school on the day fall break from school begins and continue until Thanksgiving day at 9:00 a.m. The second segment shall begin Thanksgiving day at 9:00 a.m. and continue until the day before the children go back to school at 8:00 p.m. During all odd years Agustina will have the minor children for Thanksgiving during the first period and Jose will have the Minor children during the second period. During all even years Jose will have the minor children for Thanksgiving during the first period and Agustina will have the minor children during the second period.

C. Agustina shall have the minor children MOTHER'S DAY weekend commencing on Friday after school and concluding at 8:00 p.m. on Sunday.

D. Jose should have the minor children FATHER'S DAY weekend commencing Friday after school and concluding at 8:00 p.m. on Sunday.

E. The parties shall share the minors' birthdays together. If they are unable to agree the party whose normal time share falls on the children's birthday shall have the children for their birthday.

F. Agustina shall have the minor children on her birthday commencing at 9:00 a.m. and concluding at 8:00 p.m. on her birthday.

G. Jose shall have the minor children on his birthday commencing at 9:00 a.m. and concluding at 8:00 p.m. on his birthday.

H. Custody on all other holidays should be with the parent who would normally have the child based on the general physical custody schedule set forth above with weekends being extended to include the Monday on single day holidays.

I. The Holiday Schedule shall take precedent over the vacation schedule.

II. VACATION. The Court should order the following vacations schedule:

Each parent should be entitled to two weeks of vacation during the year with the children taken in at least one week increments. If there is a conflict in vacation scheduling,

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the party who notifies the other party in writing of their intent to take a vacation during a specified time shall have precedent in having the children for that vacation time.

9. That child support should be set pursuant to NRS 125B.070 et seq. and *Wright v. Osburn*, 114 Nev. 1367, 970 P.2d 1071 (1998), and should continue until such time as the minor children reach the age of eighteen (18) years, or if still in high school, nineteen (19) years, dies, marries, or is otherwise emancipated pursuant to the Nevada Revised Statues.

10. That the Counter Defendant should provide a policy of medical insurance for the minor children.

11. That Counter Claimant and Counter Defendant should be required to equally divide uncovered medical expenses not covered by insurance pursuant to the 30-30 rule.

12. There exists community property of the parties, the exact amounts and descriptions of which are unknown to Counter Claimant at this time, but which includes but is not limited to several pieces of real estate, bank accounts, jewelry, and vehicles; Counter Claimant prays leave of Court to amend this Counterclaim to insert the same when they have become known to her or at the time of trial in this matter; that this Court should make a fair and equitable division of all community property of the parties.

13. There are community debts of the parties' hereto which need to be adjudicated by the Court and should be divided equitably and Counter Claimant prays leave of Court to amend this Counterclaim to insert the same when they have become known to her or at the time of trial in this matter.

14. That if there is separate property or debts of each of the parties, upon appropriate proof, the same should be set over by the Court to the appropriate party.

15. There may be outstanding community income tax liabilities of assets, the exact amounts and descriptions of which are unknown to Agustina at this time, and the

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Court should make an equitable distribution of the same. Agustina prays leave of this Court to amend this Complaint to insert the same when they have become known to Agustina or at the time of trial.

16. That in light of the length of this marriage, coupled with the vast disparity of incomes, Counter Defendant must be obligated to pay spousal support to Counter Claimant in an amount and duration that will permit her to maintain her standard of living and that of the minor children.

17. That Counter-Defendant may have wasted community assets and pursuant to *Putterman v. Putterman,* 113 Nev. 606, 939 P.2d 1047 (1997), *Lofgren v. lofgren,* 112 Nev. 1282, 926 (1996) and NRS 125.150 as amended, Counter claimant is entitled to reimbursement for such waste, upon appropriate review.

18. That during the course of the parties' marriage, the parties have become incompatible to the degree that it is impossible for them to continue to live together as husband and wife;

19. That the Defendant does not wish to have her former or maiden name restored;

20. That the Defendant should be awarded attorney's fees and costs pursuant to *Sargeant* due to the disparity in income between the parties.

WHEREFORE, Defendant prays for judgment as follows:

1. That the parties be granted a Decree of Divorce and that the parties hereto, and each of them, be restored to their single status;
2. That the Court grant the relief requested in Defendant's Counterclaim in its entirety;
3. That the Court deny the relief requested in the Plaintiff's Complaint to the extent that it differs from the relief requested herein;

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4. That the terms set forth in this Counterclaim be included in the Decree of Divorce.

DATED this 9th day of October, 2019.

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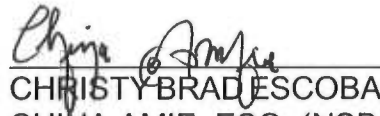

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CHINA AMIE, ESQ. (NSB #14820)
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Attorneys for Defendant

VERIFICATION

Under the penalty of perjury, I, Agustina Cervantes Landa, the undersigned declare that:

I am the Defendant in the above-entitled action; that I have read the foregoing **ANSWER TO COMPLAINT FOR DIVORCE AND UCCJEA DECLARATION (WITH CHILDREN; COUNTERCLAIM FOR DIVORCE** and knows the contents thereof; that the same is true of my own knowledge, except as to those matters stated to be made upon information and belief, and as to those matters I believe them to be true.

I declare under the penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

AGUSTINA CERVANTES LANDA

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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

JOSE OSCAR SALAZAR, Plaintiff, vs. AGUSTINA CERVANTES LANDA, Defendant.	CASE NO.: D-19-595434-D DEPT. NO: U

NOTICE OF ENTRY OF DECREE

PLEASE TAKE NOTICE that the on the 11th day of February 2021, this Court entered the Decree of Divorce regarding the above-referenced matter. A copy of the Decree of Divorce is attached hereto.

DATED this 11th day of February 2021.

Respectfully Submitted by:

RODOLFO GONZALEZ, ESQ.
Nevada Bar No. 012751
GONZALEZ & FLORES LAW FIRM
879 N. Eastern Avenue
Las Vegas, NV 89101
Attorney for Plaintiff *in an unbundled capacity*

CERTIFICATE OF MAILING

Pursuant to NRCP 5, I certify that on the 11th day of February, 2021, I caused a true and correct copy of the **NOTICE OF ENTRY OF DECREE** to be served on all parties to this action by e-service to all registered parties:

Bret O. Whipple, Esq
Justice Law Center
110 South Tenth
Las Vegas, NV 89104
(702)731-0000
admin@justice-law-center.com
Attorney for Defendant

/s/ Erendira Olivera
An Employee of Gonzales & Flores Law Firm

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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

JOSE OSCAR SALAZAR, Plaintiff, vs. AGUSTINA CERVANTES LANDA, Defendant.	CASE NO.: D-19-595434-D DEPT. NO.: ~~T~~- U

DECREE OF DIVORCE

This cause having come before the Court on a Non-Jury Trial on October 26, 2020 and November 16, 2020, and the Court being advised in the premises, the Court having reviewed the pleadings and files herein, the Court finding all of the allegations contained therein to be true, and that the requirements of Chapter 125.181 of the Nevada Revised Statutes have been met; the Court finds that it has complete jurisdiction as to the subject matter and personal jurisdiction, and all other relevant provisions of Chapter 125.181 of the Nevada Revised Statutes.

THE COURT FINDS that on August 27, 2019, Plaintiff filed his Complaint for Divorce. The Court FINDS, pursuant to NRS 125.020, both parties are residents of the State of Nevada and intend to make Nevada their home for an indefinite period of time. The Court

further FINDS there are currently three remaining minor children who have resided in Necada for a period of six months or more and that Nevada has the necessary UCCJEA jurisdiction to enter custody and visitation orders as required by NRS 125C.010(1)(b).

THE COURT FINDS That Plaintiff, JOSE OSCAR SALAZAR (hereinafter referred to as "Plaintiff") and the Defendant, AGUSTINA CERVANTES LANDA (hereinafter referred to as "Defendant") were duly and legally married on March 12, 2001, in Las Vegas, Nevada, and ever since said date have been, and now are husband and wife.

THE COURT FINDS that the Plaintiff and Defendant have become and now are incompatible so to render the marriage impossible for the parties to continue as husband and wife.

THE COURT FINDS that there is three (3) minor children born to the marriage, to wit:

1. MELLYARIVE SALAZAR, born on October 15, 2004.
2. MAYBEL SALAZAR, born on June 5, 2006.
3. JORMY SALAZAR, born on March 15, 2009.

THE COURT FINDS that there are no minor children adopted by the parties during the marriage and that Defendant is not now pregnant.

THE COURT FINDS that the Parties have two adult children, ages 19 and 20 years, both of whom testified at trial in this matter.

THE COURT FINDS that on January 13, 2020, a written stipulation and order following hearing was filed wherein Plaintiff agreed to maintain the mortgage and household expenses while the parties were cohabitating in the 3127 Panocha Street (Panocha Residence) residence.

THE COURT FINDS that in any action for determining physical custody of a minor child, the sole consideration of this Court is the best interest of the child. See NRS 125C.0035(1). In determining the best interest of the child, the Court shall consider and set forth specific findings

pursuant to NRS 125C.0035(4).

THE COURT FINDS that the wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her physical custody.

THE COURT FINDS that the three minor children, ages 11, 14 and 16, are of sufficient age and capacity to form an intelligent preference as to physical custody.

THE COURT FINDS The Court FINDS, on July 14, 2020, a FMC Child Interview was ordered for the two eldest children, ages 16 and 11 years.

THE COURT FINDS the eldest child, preferred no set visitation schedule with Defendant while the eleven-year-old child affirmatively stated she preferred to reside primarily with Plaintiff.

THE COURT FINDS that this factor weighs in Plaintiff's favor. Any nomination of a guardian for the child by a parent.

THE COURT FINDS that this factor is not applicable to this case. Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.

THE COURT FINDS that both parties have the ability to cooperate to allow the children to have frequent associations and a continuing relationship with the non-custodial parent. The level of conflict between the parents.

THE COURT FINDS that the level of conflict between the Parties is moderate and based primarily on the instant litigation. The ability of the Parents to cooperate to meet the needs of the child.

THE COURT FINDS the Parties have the ability to cooperate to meet the needs of the minor children. The mental and physical health of the parents.

THE COURT FINDS that both Parents are in apparent good mental health.

THE COURT FINDS that Plaintiff is in good physical health.

THE COURT FINDS that Defendant has physical issues related to an auto accident which may or may not cause continued issues in the future.

THE COURT FINDS that the physical, developmental and emotional needs of the child.

THE COURT FINDS that the three minor children have typical physical, development and emotional needs related to their respective ages. The nature of the relationship of the child with each parent.

THE COURT FINDS that in the FMC child interview, the two eldest children articulated disappointment with Defendant's choices and lack of consistency. The ability of the child to maintain a relationship with any sibling. This factor does not apply to the facts of this case.

THE COURT FINDS that whether either parent or any other person seeking physical custody has engaged in an act of domestic violence against the child, a parent of the child or any other person residing with the child. Defendant alleged domestic violence in her underlying pleadings. The Court FINDS Defendant failed to establish by clear and convincing evidence at trial that any domestic violence occurred.

THE COURT FINDS that whether either parent or any other person seeking physical custody has committed any act of abduction against the child or any other child. The Court FINDS this factor is not applicable to this case.

THE COURT FINDS that in considering custody orders, the Court may consider other factors in making its determination. As such, the Court FINDS, and Defendant concedes, she was deported in 2001. The Court FINDS, and the parties concede, the three youngest children were

conceived in Mexico during Plaintiff s visits. The Court FINDS, however, Defendant listed another man as the children s natural father. The Court FINDS Defendant told the three youngest children the other man listed on the birth certificates

was their biological father. The Court FINDS paternity is not disputed in this case but further FINDS Defendant was not credible as to the reasons she listed another party as the children s natural father nor was she, generally, credible during trial. Last, the Court FINDS, on May 5, 2020, the parties mediated a Partial Parenting Agreement wherein they agreed to share joint legal custody of the minor children and agreed to a limited holiday/vacation timeshare. However, it does not appear the Partial Parenting Agreement was ever executed or filed.

THE COURT FINDS Therefore, based on the foregoing, the Court FINDS the parties have agreed to share joint legal custody. Therefore, there being no dispute, the Court ORDERS the parties to share joint legal custody. However, taking into account NRS 125C.0035(4) factors, the child interview and additional factors set forth above, the Court FINDS it in the children s best interest for Plaintiff to have primary physical custody. Therefore, the Court ORDERS Plaintiff shall have primary physical custody. The Court ORDERS the two eldest children, Mellyarive and Maybel, shall have teenage discretion as to visitation with Defendant. The Court ORDERS Defendant shall have appropriate bedrooms and beds prior to any overnight visitation. Defendant shall have visitation with the youngest child, Jormy, every Friday at 6 p.m. to Sunday at 6 p.m. The parties shall follow the holiday schedule from this department, which will be provided to both counsel.

THE COURT FINDS that Defendant s GMI is $800 per month. Therefore, Defendant s child support obligation is $144.00 per month. Accordingly, Defendant shall pay $144.00 per month child support effective January 1, 2021.

THE COURT ORDERS that Defendant shall have a continuing duty to notify Plaintiff of any change to her earning status and provide Defendant will proof of income, e.g. three (3) paystubs in support of any change.

THE COURT ORDERS that Plaintiff shall provide healthcare coverage for the minor children and further ORDERS the parties shall equally split unreimbursed medical expenses, to include premium costs, pursuant to the 30/30 Rule.

THE COURT ORDERS that Plaintiff shall be entitled to the dependent tax credit for the children for all years.

THE COURT FINDS that Defendant requested an award for spousal support in the sum of $1,000 per month for a period of ten years or, 120 months. In support of her underlying request, Defendant argued she was a stay at home parent during the marriage and was permanently or partially disabled as a result of a car accident. In considering a request for spousal support, the Court is required to consider, among other relevant information, factors set forth in NRS 125.150(9).

THE COURT FINDS that the financial condition of each spouse; The Court FINDS Plaintiff is the owner/operator of JOS Trucking with an adjusted gross monthly income (GMI) OF $3,635.83 based on his net receipts after business-related expenses. Defendant was not employed following an auto accident but testified she currently earns $800 per month in housekeeping.

THE COURT FINDS that nature and value of the respective property of each spouse; this factor is not applicable to this matter save for Plaintiff s assertion he is entitled to the Ardmore Residence as his sole and separate property as discussed in more detail, below.

THE COURT FINDS that the contributions of each spouse to any property held by the spouses pursuant to NRS 123.030; this factor is applicable to the two residential properties subject of this litigation.

THE COURT FINDS that the duration of the marriage; the parties have been married for a period of nineteen years.

THE COURT FINDS that the income, earning capacity age and health of each spouse; Plaintiff is 42 years of age, with a high school diploma and the ability to work. Defendant is 49 years of age, with a bachelor of arts college degree but allegedly unable to work due to an auto injury which resulted in severe back injuries.

THE COURT FINDS that the standard of living during the marriage; no testimony was provided related to this factor.

THE COURT FINDS that the career before the marriage of the spouse who would receive the alimony; the Defendant did not have a specialized career during the course of the marriage.

THE COURT FINDS that the existence of specialized education or training or the level of marketable skills attained by each spouse during the marriage; Plaintiff has a high school diploma and is the owner/operator of a trucking company. The Court FINDS Plaintiff did not acquire any specialized education, training or additional marketable skills during the marriage. Defendant has a college degree. Defendant did not acquire any specialized education, training or additional marketable skills during the marriage.

THE COURT FINDS that the contribution of either spouse as homemaker; Defendant asserted she was primarily a homemaker during the course of the marriage. The award of property granted by the court in the divorce, other than child support and alimony, to the spouse who would

receive the alimony.

THE COURT FINDS that there are three minor children as well as several vehicles and two residential properties which are subject of this Court jurisdiction and orders. The physical and mental condition of each party as it relates to the financial conditions, health and ability to work of that spouse.

THE COURT FINDS that both parties are in their mid to late-forties and will likely be required to work for a period of at least twenty years or more. Defendant has asserted injuries which may impact her ability to continue work in a field requiring physical exertion.

THE COURT FINDS that Based on the foregoing, the Court FINDS this is a long-term marriage of nineteen (19) years with Defendant having a financial need. The Court further FINDS, in his January 20, 2020 Financial Disclosure Form (FDF), Plaintiff listed $125,805 in gross business receipts. The Court FINDS, while Plaintiff s business is doing well, his net profit after expenses as $43,630 or, $3,635.83 GMI.

THE COURT ORDERS that Plaintiff shall pay $600 per month spousal support for a period of ten years or, 120 months, effective January 1, 2021. Defendant's child support obligation shall be subtracted from ordered spousal support.

THE COURT FINDS that the Ardmore Residence was used as a rental home and is valued at approximately $142,951 with approximately $98,000 owed (net value of $44,951 or, approximately 68% paid off). The Court FINDS the Panocha Residence was the marital residence and is valued at approximately $277,950 with $155,000 owed (net value of $122,950 or, approximately 55% paid off). The Court FINDS, based on their respective FDFs, the parties were in agreement as to the value of both residences.

THE COURT ORDERS that Plaintiff shall be entitled to the Panocha Residence as his sole and separate property and Defendant shall be entitled to the Ardmore Residence as her sole and separate property. The Court FINDS the difference in value between the two residences is $134,999 (Panocha Residence Value $277,950 Ardmore Residence Value $142,951 = $134,999). Based on the differing equity in the residences, the Court ORDERS Defendant shall be entitled to $60,000 in equity from the Panocha Residence, i.e., Defendant is being awarded a residence the has greater equity and is, therefore, closer to being paid off.

THE COURT FINDS that testimony at trial established the parties have already split several vehicles and that each party has a vehicle in his/her possession. The Court FINDS, however, that Defendant claimed an interest in a Cadillac Escalade. The Court FINDS testimony at trial established that the parties adult children purchased the Escalade for Plaintiff.

THE COURT ORDERS that the Cadillac Escalade shall be awarded to Plaintiff as his sole and separate property.

THE COURT FINDS that the Court FINDS Plaintiff had possession of a tractor trailer valued at approximately $10,000 and with $10,000 owed. The Court FINDS testimony established the tractor trailer burned and Plaintiff did not have insurance coverage for the loss.

THE COURT ORDERS that Plaintiff shall be solely responsible for the loss of the tractor trailer which burned in his possession any debt related to it and that Defendant shall be held harmless.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the bonds of matrimony existing between Plaintiff and Defendant shall be wholly dissolved and an absolute Decree of Divorce is GRANTED and the parties are restored to the status of single, unmarried persons.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any unreimbursed medical, dental, optical, orthodontic, or other health related expense incurred for the benefit of the minor children is to be divided equally between the Parties. Either Party incurring an out of pocket medical expense for the children shall provide a copy of the paid invoice/receipt to the other party within thirty (30) days of incurring such expense. If not tendered within the thirty (30) day period, the Court may consider it a waiver of reimbursement. The other Party will then have thirty (30) days from receipt within which to dispute the expense in writing or reimburse the incurring Party for one-half of the out of pocket expense. If not disputed or paid within the thirty (30) day period, the Party may be subject to a finding of contempt and appropriate sanctions. If the party seeking reimbursement does not bring the claim to the Court's attention within two (2) years of the payment of the expense, reimbursement will be considered waived.

NOTICE IS HEREBY GIVEN of the following provision of NRS 125C.0045(6): PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, COCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN NRS 193.130. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having no right of custody to the child who willfully detains, conceals or removes the child from apparent guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this court, or removes the child from the jurisdiction of the court without the consent of either the court or all personal who have the right of custody or visitations is subject to being punished for a category D felony as provided in NRS 193.130.

NOTICE IS HEREBY GIVEN that the terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague Conference on Private International Law, apply

if a parent abducts or wrongfully retains a child in a foreign country. The parties are also put on notice of the following provision of NRS 125C.0045(8):

> If a parent of the child lives in a foreign country or has significant commitments in a foreign country:
>
> (a) The parties may agree, and the court shall include in the order for custody of the child, that the United States is the country of habitual residence of the child for the purposes of applying the terms of the Hague Convention as set forth in subsection 7.
> (b) Upon motion of one of the parties, the court may order the parent to post a bond if the court determines that the parent poses an imminent risk of wrongfully removing or concealing the child outside the country of habitual residence. The bond must be in an amount determined by the court and may be used only to pay for the cost of locating the child and returning him to his habitual residence if the child is wrongfully removed from or concealed outside the country of habitual residence. The fact that a parent has significant commitments in a foreign country does not create a presumption that the parent poses an imminent risk of wrongfully removing or concealing the child.

NOTICE IS HEREBY GIVEN that the parties are subject to the relocation requirements of NRS 125C.006 and NRS 125C.0065. If joint or primary physical custody has been established pursuant to an order, judgement or decree of a court and one parent intends to relocate his or her residence to a place outside of this State or to a place within this State that is at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child, and the relocating parent desires to take the child with him or her, the relocating parent shall, before relocating: (a) attempt to obtain the written consent of the non-relocating parent to relocate with the child; and (b) if the non-relocating parent refuses to give that consent, petition the court for permission to relocate with the child or obtain primary physical custody. A parent who desires to relocate with a child has the burden of proving that relocating with the child is in the best interest of the child. The court may award reasonable attorney fees and costs to the relocating parent's relocation with the child without having reasonable grounds for such refusal, or of the purpose of harassing the custodial or relocating parent. A parent who relocates with a child pursuant to this section without the

written consent of the other parent or the permission of the court is subject to the provisions of NRS 200.359.

NOTICE IS HEREBY GIVEN that the parties are subject to the provisions of NRS 31A and 125.007 regarding the collection of delinquent child support payment. That the parties be put on notice that, pursuant to NRS 125.007(2), a parent responsible for paying child support is subject to NRS 31A.025 to 31A.007(2), inclusive, and Sections 2 and 3 of Chapter31A of the Nevada Revised Statutes, regarding the withholding of wages and commissions for the for the delinquent payment of support. These statutes and provisions require that, if a parent responsible for paying child support is delinquent in paying the support of a child that such person has been ordered to pay, then that person's wages or commissions shall immediately be subject to wage assignment, pursuant to the provision of the above-cited statutes.

NOTICE IS HEREBY GIVEN that either party may request a review of child support every three years.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that unless otherwise ordered herein above, each of the parties hereto shall upon request execute any and all documents necessary to effectuate the terms of this stipulated Decree of Divorce. Should either party fail to execute any necessary documents, the Clerk of the Court in empowered to execute the same pursuant to Rule 70 and the party who failed to cooperate will be responsible for all the other party's reasonable attorney's fees and costs to effectuate the execution of the necessary documents.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if any claim, action or proceedings is brought seeking to hold one of the parties hereto liable on account of any debts, obligation, liability, act or omission assumed by the other party, the responsible

party will, at his or her expense, defend the innocent party against any such claim or demand and he or she will indemnify, defend and hold harmless the innocent party. Any debt not listed herein shall be assumed by the party who incurred the debt.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party shall submit the information required in NRS 125.130 on separate form to the Court. Such info shall be maintained by the Clerk in a confidential manner and not part of the public record.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties shall submit the information required by NRS 125B.055, NRS 125.130 and, NRS 125.230 on a separate form to the Court and the Welfare Division of the Department of Human Resources within ten days from the date this Decree is filed. Such information shall be maintained by the Clerk in a confidential manner and not part of the public record. The parties shall update the information filed with the Court and the Welfare Division of the Department of Human Resources within ten days should any of that information become inaccurate.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED each party acknowledged they have read the Decree and fully understand the contents and accept the same as equitable and just and that there has been no promise, agreement or understanding of either of the Parties to the other except as set forth herein, which have been relied upon by either as a matter of inducement to enter into this agreement, and each party hereto has had the opportunity to be independently advised by their attorney as to the legal effect of this stipulated Decree. The Parties further acknowledge they each either had their own independent counsel or had the opportunity to retain same and have entered into this stipulated Decree without undue influence or coercion, or misrepresentation, or for any other cause except as stated herein.

//

NAC 425.165 Notice required in order that pertains to more than one child and does not allocate specific amount to each child. (NRS 425.620) Any order that pertains to more than one child and does not allocate a specific amount of the total child support obligation to each child must include the following notice:

> NOTICE: If you want to adjust the amount of child support established in this order, you MUST file a motion to modify the order with or submit a stipulation to the court. If a motion to modify the order is not filed or a stipulation is not submitted, the child support obligation established in this order will continue until such time as all children who are the subject of this order reach 18 years of age or, if the youngest child who is subject to this order is still in high school when he or she reaches 18 years of age, when the child graduates from high school or reaches 19 years of age, whichever comes first. Unless the parties agree otherwise in a stipulation, any modification made pursuant to a motion to modify the order will be effective as of the date the motion was filed.

(Added to NAC by Div. of Welfare & Supp. Services by R183-18, 10-30-2019, eff. 2-1-2020)

THIS IS A FINAL DECREE OF DIVORCE

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IT IS SO ORDERED this 13 day of January 2021.

Dated this 11th day of February, 2021

DISTRICT COURT JUDGE EKS

9F8 C49 1874 32B3
Dawn R. Throne
District Court Judge

Respectfully Submitted By:

RODOLFO GONZALEZ, ESQ.
Nevada Bar No. 012751
Attorney for Plaintiff *in an unbundled capacity*

BRET O WHIPPLE, ESQ.
Nevada Bar No. 6168
Attorney for Defendant

JOSE OSCAR SALAZAR

AGUSTINA CERVANTES LANDA

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Jose Oscar Salazar, Plaintiff vs. Agustina Cervantes Landa, Defendant.	CASE NO: D-19-595434-D DEPT. NO. Department U

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 2/11/2021

Rodolfo Gonzalez	rodolfogonzalezlaw@gmail.com
Dora Peraza	Doraperazalaw@gmail.com
Christy Escobar	chris@escobarlaw.com
China Amie	china@cescobarlaw.com
Mya Alva	secretary@cescobarlaw.com
Rodolfo Gonzalez	Rodolfogonzalezlaw@gmail.com

Electronically Filed
2/18/2021 4:38 PM
Steven D. Grierson
CLERK OF THE COURT

MRCN
RODOLFO GONZALEZ, ESQ.
Nevada Bar No. 012751
GONZALEZ & FLORES LAW FIRM
879 N. EASTERN AVE.
Las Vegas, NV. 89101
Tel: 702-778-3030
Fax: 702-920-8657
RodolfoGonzalezLaw@gmail.com
Attorney for Plaintiff *in an unbundled capacity*

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

JOSE OSCAR SALAZAR, Plaintiff, vs. AGUSTINA CERVANTES LANDA, Defendant	Case No.: D-19-595434-D DEPT. NO.: U HEARING REQUESTED DATE: 3/31/21 TIME: 9:00am

PLAINTIFF'S MOTION TO RECONSIDER

COMES NOW Plaintiff, JOSE OSCAR SALAZAR, by and through his attorney, RODOLFO GONZALEZ, ESQ., from the GONZALEZ & FLORES LAW FIRM, files this Motion to Reconsider.

This motion is made and based upon the pleadings and papers on file herein, the points and authorities herein, and such argument as the Court may permit at the hearing thereon.

TO: AGUSTINA CERVANTES LANDA, DEFENDANT

*****YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK 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.**

NOTICE OF MOTION

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE, that the undersigned will bring the above and foregoing Motion on for a hearing in the above-entitled Court on the _____ day of _____, 2021, at the hour of _____o'clock_____.M. of said day, in Department _____, of the Clark County Family Court, located on 601 N. Pecos Rd., Las Vegas, NV 89101.

DATED this 18th day of February 2021.

/s/ Rodolfo Gonzalez
RODOLFO GONZALEZ, ESQ.
Nevada Bar No. 012751
GONZALEZ & FLORES LAW FIRM
879 N. Eastern Ave.
Las Vegas, NV 89101
Attorney for Plaintiff *in an unbundled capacity*

I.
FACTUAL HISTORY

The parties to this matter are Plaintiff, JOSE OSCAR SALAZAR (hereinafter "Plaintiff"), and Defendant, AGUSTINA CERVANTES LANDA, Defendant. The parties married on March 12, 2001 in the state of Nevada.

The Court entered the Decree of Divorce on February 11, 2021. The Court ordered Plaintiff pay Defendant $600 per month spousal support for a period of ten years, or 120 months, effective January 1, 2021. Defendant's child support obligation is to be subtracted from the ordered spousal support. In determining Plaintiff's Spousal Support obligation, the Court considered Plaintiff's financial condition. The Court looked at Plaintiff's net receipts after business-related expenses from Plaintiff's 2018 Taxes. The Court found Plaintiff is the owner/operator of JOS Trucking with an adjusted gross monthly income (GMI) of $3,635.83.

In considering Plaintiff's financial condition as a factor for spousal support, the Court did not look at Plaintiff's full financial picture. For one, the Court did not seem to consider Plaintiff's personal expenses. Plaintiff's filed FDF lists monthly expenses of $4,175.00. The Court did not consider that Defendant earns enough money to sustain her lifestyle and the fact that Defendant is employable because she a Bachelor's degree. Moreover, Plaintiff continues to cover all expenses for the

five children and cover the mortgage on both of the marital homes. Lastly, the Court relied on Plaintiff's 2018 income for his gross GMI. Through 2020, the trucking business took a toll. Plaintiff's trailer burned causing him to take on a $10,000.00 debt and rendered him unable to work.

The Court divided the marital property in the Divorce Decree. The Court ordered Plaintiff shall be entitled to the Panocha Residence as his sole and separate property; Defendant shall be entitled to the Ardmore Residence as her sole and separate property. The Court further ordered Defendant shall be entitled to $60,000 in equity from the Panocha Residence. In its findings of facts, this Court determined Defendant was entitled to the $60,000 equity by finding the difference in the value of the two home ($277,950 - $142,951 = $134,999). The Court did not consider the parties' respective debts in the residences nor Plaintiff's $10,000 debt in the burned tractor trailer in dividing the property – instead focused solely on the difference in equity.

The Court additionally did not consider that Defendant is unable to assume property. Since the initial minute order, Plaintiff remains on the Ardmore title as Defendant is not able to take the residence as her sole and separate property. Plaintiff has had to deal with the unequal division of property. Plaintiff has also had the responsibility of paying the rent on the Ardmore residence. Defendant has

not yet reimbursed Plaintiff and seems to have no intent to.

LEGAL AUTHORITY

A. THIS COURT SHOULD RECONSIDER ITS FEBURARY 11, 2021 DECREE BECAUSE THE ORDERS WERE ISSUED WITHOUT COMPLIANCE WITH THE STANDARDS SET UNDER NRS 125.150.

i. The Court's Authority to Reconsider Prior Rulings.

This Court has the authority to reconsider a prior ruling. EDCR 5.513 provides:

> *(a) A party seeking reconsideration and/or rehearing of a ruling (other than an order that may be addressed by motion pursuant to NRCP 50(b), 52(b), 59, or 60), must file a motion for such relief within 14 calendar days after service of notice of entry of the order unless the time is shortened or enlarged by order. A motion for reconsideration does not toll the period for filing a notice of appeal.*
> *(b) If a motion for reconsideration and/or rehearing is granted, the court may make a final disposition without hearing, may set it for hearing or resubmission, or may make such other orders as are deemed appropriate under the circumstances.*

ii. Standard for Alimony and Adjudication of Property Rights in the Dissolution of Marriage.

The Nevada Revised Statutes set forth the standard for Alimony and Adjudication of Property Rights. For alimony, NRS 125.150(1)(a) provides that the Court may award alimony as appears just and equitable. The court shall consider the NRS 125.150(9) factors in addition to any factors relevant in determining whether to award alimony. For adjudication of Property Rights, NRS 125.150(1)(b) provides the court shall make an equal disposition of the community property of the parties. It further provides the Court may make an unequal disposition of the property if the

Court finds a compelling reason to do so and sets forth in writing the reasons for the unequal disposition. NRS 125.150 states in pertinent part:

> *NRS 125.150* ***Alimony and adjudication of property rights; award of attorney's fee; postjudgment motion; subsequent modification by court.*** *Except as otherwise provided in NRS 125.155 and 125.165, and unless the action is contrary to a premarital agreement between the parties which is enforceable pursuant to chapter 123A of NRS:*
>
> *1. In granting a divorce, the court:*
>
> *(a) May award such alimony to either spouse, in a specified principal sum or as specified periodic payments, as appears just and equitable; and*
>
> *(b) Shall, to the extent practicable, make an equal disposition of the community property of the parties, including, without limitation, any community property transferred into an irrevocable trust pursuant to NRS 123.125 over which the court acquires jurisdiction pursuant to NRS 164.010, except that the court may make an unequal disposition of the community property in such proportions as it deems just if the court finds a compelling reason to do so and sets forth in writing the reasons for making the unequal disposition.*
>
> …
>
> *9. In addition to any other factors the court considers relevant in determining whether to award alimony and the amount of such an award, the court shall consider:*
>
> *(a) The financial condition of each spouse;*
>
> *(b) The nature and value of the respective property of each spouse;*
>
> *(c) The contribution of each spouse to any property held by the spouses pursuant to NRS 123.030;*
>
> *(d) The duration of the marriage;*
>
> *(e) The income, earning capacity, age and health of each spouse;*
>
> *(f) The standard of living during the marriage;*
>
> *(g) The career before the marriage of the spouse who would receive the alimony;*
>
> *(h) The existence of specialized education or training or the level of marketable skills attained by each spouse during the marriage;*
>
> *(i) The contribution of either spouse as homemaker;*

(j) The award of property granted by the court in the divorce, other than child support and alimony, to the spouse who would receive the alimony; and

(k) The physical and mental condition of each party as it relates to the financial condition, health and ability to work of that spouse.

Nev. Rev. Stat. Ann. § 125.150

LEGAL ARGUMENT

The District Court should reconsider its orders for the division of property and spousal support in its February 11, 2021 Decree of Divorce. Here, the Court erroneously issued its orders.

First, the Spousal Support calculation was ordered without consideration for Plaintiff's full financial standing as required by the Spousal Support factors set forth in NRS 125.150(9). The Court only considered Plaintiff's business expenses in calculating his income for his full financial standing. The Court disregarded Plaintiff's monthly expenses and failed to subtract the expenses from Plaintiff's GMI. Plaintiff continues to be solely responsible for providing for the three minor children and the two eldest children. Plaintiff continues to be solely responsible for maintaining the expenses on the two marital residences as Defendant cannot assume the Ardmore residence. Plaintiff's monthly expenses often exceed his gross monthly income. Plaintiff's FDF lists $4,175.00 worth of expenses – including $250 of voluntary spousal support and $837 of mortgage for the Ardmore

Residence. Plaintiff asks this Court to consider his personal and business expenses in addition to his GMI in issuing an order for spousal support. Based on the parties' respective incomes, monthly expenses, employment potential, and respective needs, spousal support should be set at $0.00. Plaintiff will waive any rights to child support if the spousal support is set at $0.00.

Second, the Court erroneously divided the property between the parties. The Court awarded Defendant the Ardmore residence as well as an entitlement to $60,000 in equity from the Panocha residence. The Court based this entitlement on its finding in difference in value between the two residences. The Court's calculation follows: Panocha Residence Value $277,950 Ardmore Residence Value $142,951 = $134,999. Based on this sole calculation the Court rationalized Defendant's $60,000 in equity from the Panocha Residence in addition to the Ardmore residence. "Defendant is being awarded a residence the has greater equity and is, therefore, closer to being paid off." This calculation disregarded the outstanding debts in the home and the debts awarded to Plaintiff. The Court did not balance the assets nor fairly distribute the equity in the community property in this simple calculation. If it was the Court's intention to make an unequal disposition, the Court did not set forth its compelling reason to do so in writing as required by NRS 125.150(1)(b).

The Court should have distributed the assets according to the difference in net value of the property. Based on the court's findings, the Ardmore residence awarded to Defendant has a net value of $44,951. The Panocha residence awarded to Plaintiff has a net value of $122,950. Plaintiff was required to solely take on the $10,000 debt of the tractor trailer debt. The net value of assets incurred by Plaintiff was $112,950 – Defendant's net value of assets being $44,957. The difference in the parties' assets is $112,950 - $44,957 = $67,993. Defendant's equal share in the assets should be $33,996.50 not $60,000.00. Plaintiff asks that the Court reconsider its findings in dividing the assets between the parties.

Plaintiff also requests the Court order that the Ardmore residence be sold. Defendant is unable to assume property. Without the sale, Plaintiff is required to be named on the property and pay the debt for Defendant. The sale will enable the parties to properly divide the assets and relieve Plaintiff of assuming the property in Defendant's place.

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CONCLUSION

Plaintiff requests that this Court reconsider its Decree of Divorce dated February 11, 2021 because it does not comply with the standards set forth under NRS 125.150 .

Dated this 18th day of February 2021.

_/s/ Rodolfo Gonzalez_____
RODOLFO GONZALEZ, ESQ.
Nevada Bar No. 012751
Attorney for Plaintiff *in an unbundled capacity*

CERTIFICATE OF MAILING

Pursuant to NRCP 5, I certify that on February 18, 2021, I caused a true and correct copy of the PLAINTIFF'S MOTION TO RECONSIDER to be served on all parties to this action by U.S. First Class Mail to the following locations:

Bret O. Whipple, Esq.
Justice Law Center
110 South Tenth
Las Vegas, NV 89104
(702) 731-0000
admin@justice-law-center.com
Attorney for Defendant

MOFI
RODOLFO GONZALEZ, ESQ.
Nevada Bar No. 12751
GONZALEZ & FLORES LAW FIRM
879 N. Eastern Ave.
Las Vegas, Nevada 89101
Phone: (702) 778-3030
Fax: (702) 920-8657
Attorney for Plaintiff

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

JOSE OSCAR SALAZAR, Plaintiff, vs. AGUSTINA CERVANTES LANDA, Defendant.	CASE NO.: D-19-595434-D DEPT. NO.: U **FAMILY COURT MOTION / OPPOSITION FEE INFORMATION SHEET (NRS 19.0312)**

Party Filing Motion/Opposition: [X] Plaintiff / Petitioner [ ] Defendant / Respondent

MOTION FOR / OPPOSITION TO

Motions and Oppositions to Motions filed after entry of a final order pursuant to NRS 125, 125B or 125C are subject to the Re-open filing fee of $25.00, unless specifically excluded. (NRS 19.0312) *NOTICE:* *If it is determined that a motion or opposition is filed without payment of the appropriate fee, the matter may be taken off the Court's calendar or may remain undecided until payment is made.*	**Mark correct answer with an "X."** 1. Motions filed before final Divorce/Custody Decree entered. (Divorce/Custody Decree NOT Final) YES X NO 2. Child Support Modification ONLY. ☐ YES X NO 3. Motion/Opposition For Reconsideration (Within 10 Days of Decree) Date of Last Order _____ X YES [ ] NO 4. Request for New Trial (Within 10 Days of Decree) Date of last order_____ ☐ YES X NO 5. Other Excluded Motion _____ (Must Be Prepared to Defend Exclusion to Judge) If you answered YES to any of the questions above, you are <u>not</u> subject to the $25 fee.

Motion / Opposition [ ] IS [X] IS NOT subject to $25 filing fee

DECLARATION

I, JOSE OSCAR SALAZAR, declare as follows:

1. I have personal knowledge of all the matters contained herein and am competent to testify thereto.
2. I am the Plaintiff in the present matter before the Court and I have read the Plaintiff's Motion to Reconsider.
3. The factual matters alleged therein are true and correct to the best of my knowledge, except as to those based on information and belief, and as to those matters, I believe them to be true.
4. Any factual averments contained in the preceding pleading are incorporated herein.
5. I, Plaintiff, submit this Declaration pursuant to NRS 53.045, such that it shall have the same force and effect as a sworn affidavit. I declare under the penalty of perjury under the laws of the state of Nevada that the contents of this declaration are true and correct.

Dated this 18th day of February 2021.

/s/ Jose Oscar Salazar
JOSE OSCAR SALAZAR

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Steven D. Grierson
CLERK OF THE COURT

OPPS
BRET O. WHIPPLE, ESQ.
Nevada Bar No. 6168
JUSTICE LAW CENTER
1100 South Tenth
Las Vegas, NV 89104
(702) 731-0000
Attorney for Defendant
AGUSTINA CERVANTES LANDA

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

JOSE OSCAR SALAZAR, Plaintiff, vs. AGUSTINA CERVANTES LANDA, Defendant.	CASE NO: D-19-595434-d DEPT: U Hearing Date: October 26, 2020 Hearing Time: 9:00 a.m.

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO RECONSIDER

COMES NOW Defendant, AGUSTINA CERVANTES LANDA ("AGUSTINA"), by and through her attorney of record, BRET O. WHIPPLE, ESQ., of JUSTICE LAW CENTER, and hereby submits her Opposition to Plaintiff's Motion to Reconsider.

This opposition is made and based upon the pleadings, papers and evidence on file herein, the points and authorities attached hereto, and such argument as the Court may permit at the hearing in this matter.

///

DATED this 5 day of March, 2021.

JUSTICE LAW CENTER

BRET O. WHIPPLE, ESQ.
Nevada Bar No. 6168
JUSTICE LAW CENTER
1100 South Tenth
Las Vegas, NV 89104
(702) 731-0000
Attorney for Defendant
AGUSTINA CERVANTES LANDA

POINTS AND AUTHORITIES

FACTUAL BASIS

It is imperative that a proper timeline be presented to understand the circumstances that present themselves today.

10/26/2020-9:00 am: Date and time set for trial/Evidentiary Hearing.

11/16/2020: Continuation of hearing/trial. Court requests both parties to brief the court on how they believe the matter should be resolved. (Both parties comply.)

12/21/2020: Minute Order issued by Court setting down findings and Orders. Plaintiff's counsel to prepare findings and Orders.

2/11/2020: Decree entered upon submission by Plaintiff's counsel.

2/18/2020: Plaintiff's Motion to Reconsider filed.

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Additional facts which should be noted regarding the parties and their obligations. First, whatever the educational level of either party might be, it is disingenuous to assert that such is a guarantee of employment. In fact, a more telling fact, conveniently ignored by Plaintiff's counsel, was that the Defendant, Agustina, was involved in a very bad car accident, which involved significant injuries to her back and which make most employment an impossibility. The simple employment her friend affords her is to *assist* with housecleaning, without the need for any significant lifting or bending. That is the best she can find for her condition. The Court, in at least two places in the Decree, noted her disability issues as a factor and that the degree she obtained was not for any specialty or certification that would assist in employment.

Second, while the Plaintiff notes that Orders were given for spousal support, to date the Plaintiff has not paid one penny of spousal support to the Defendant. He then goes on to pontificate that she has not been paying the costs of the Ardmore property. She cannot do so because he is leaving her without any funds.

Third, the Plaintiff alleges, without any evidence or support, that the Defendant is "unable to assume property". Not only is this an incorrect statement of the law (any person may hold title to property unless they have been precluded from so doing by Court Order), but it begs the question: "Why not let her take title in any manner she so chooses?" If, for some reason, she does not want her name on the property, that does not preclude the Plaintiff from quit claiming or deeding it over to whomever she designates.

Fourth, the Plaintiff operates a trucking firm, licensed and incorporated within the State of Nevada, and while operating a vehicle consequent to such operations, it caught fire and was destroyed. Plaintiff believes the Defendant should share in the loss thus incurred. What the Plaintiff's narrative forgets to mention is that he failed to have insurance coverage on his vehicle

and equipment, in violation of statute, and a clear case of negligence per se, thereby precluding his recovery for his damages. The Court, however, noted expressly that the Plaintiff had suffered the loss as well as the fact that he was uninsured, and felt compelled to leave that in his column and not punish the Defendant for his gross omission.

Fifth, the Plaintiff argues that he has had to "assume the responsibility for paying the rent on the Ardmore residence". There is no evidence that he has "had" to, but since he has not paid any spousal support to the Defendant it is understandable why he would think he ought to, especially since the property, and the note, currently in his name, would adversely affect his credit and possible earnings if he let it become delinquent. If he deeded the property to her, it would no longer be his responsibility.

Sixth, Plaintiff's counsel has provided mathematical calculations that try to put more than apples and oranges into the equations. For example, counsel tries to horn in the "capital loss" of the burned truck as a balancer in property distribution. This completely ignores the Court's specific findings, as follows:

> **THE COURT FINDS** that Plaintiff shall be solely responsible for the loss of the tractor trailer which burned in his possession (sic) any debt related to it and that Defendant shall be held harmless. (Decree of Divorce, Page 9, Lines 20-23)

Despite the <u>clear</u> and <u>unambiguous</u> language of the Court's finding and order, Plaintiff attempts to assert that this loss should somehow reduce the Defendant's interest in marital real properties.

It must be noted that the Plaintiff provided information, arguments and sworn statements to the Court that were, in many ways, not correct and were then contradicted by oral testimony given to the Court. Here are a few examples:

///

The Plaintiff's Financial Disclosure Form (FDF) filed on or about January 20, 2020 made the following claims regarding properties owned by the parties:

a. 4 passenger vehicles with a net value of $51,000 and no encumbrances;

b. A 2005 Cab (semi-tractor) with a value of $32,000 and debt of $15,000;

c. A cargo trailer with a value of $11,000 and no encumbrance.

The Plaintiff, in his Pre-Trial Memorandum, filed on October 19, 2020 (just one week before trial) did not submit a new FDF but referenced the one from January as being one to be used as possible evidence. Also, in the PMEM, Plaintiff's counsel stated that among the property that was "Unresolved" were the four passenger vehicles, and the 2005 Cab (semi) with no mention made of the trailer or the loss of either the tractor or trailer.

Then, at trial, the Plaintiff tells the Court the tractor burned, was uninsured and that it was valued at $10,000 and had $10,000 owed. So, Plaintiff's testimony, in contradiction to his *sworn* testimony on his FDF, was that the value of the semi had dropped $22,000 over the course of eight months before it allegedly burned.

The Plaintiff also claimed at trial that the parties had already split several vehicles and the only one in dispute was a Cadillac Escalade that the Court then awarded to the Plaintiff. This despite the fact that the Escalade was never included in the Plaintiff's FDF or on his PMEM filed just one week before trial. There was no disposition as to the other vehicles explicitly stated in the PMEM other than a reference by the Court "that each party has a vehicle in his/her possession." (Decree, Page9, Lines 9-10.)

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LEGAL STANDARD AND ARGUMENT

The Plaintiff's arguments center around the statutory construct for determining the applicability of alimony and the adjudication of property rights found in NRS 125.150. (Plaintiff's citation to same are incorporated herein by reference.) The statute grants great equitable latitude to the trier of fact to determine when an award of alimony is appropriate and for how much. The statute states, in part:

> NRS 125.150(1)(b) [The Court] Shall, to the extent practicable, make an equitable disposition of the community property of the parties,...<u>except that the Court may make an unequal disposition of the community property in such proportions as it deems just if the court finds a compelling reason to do so and set forth in writing the reasons for making the unequal disposition.</u>(Underline for emphasis.)

In the instant matter, the Court carefully reviewed all the factors listed in detail in NRS 125.150(9) (a-k, inclusive) and made a specific finding on each and every one of those factors. In their pleadings, the Plaintiff would "cherry pick" certain words to support his position such as "Defendant has a college degree." (Decree, Page 7, Line 23), but blithely ignores the prior Court finding that states, "Defendant is 49 years of age, with a bachelor of arts college degree but allegedly unable to work due to an auto injury which resulted in severe back injuries." (Decree, Page 7, Lines 8-11.)

While the Plaintiff would like to use his own mathematical formulas to somehow justify further kicking his former wife to the curb with little or no means of support or sustenance, the Court took this matter under advisement, sought further counsel from both attorneys and then presented a very well crafted and defined Order that covered every single legal standard required for establishing the rationale, reasonability and relevance of its holdings. Plaintiff gets a better house, and the Defendant does not get her money now, she simply gets to file a secured interest against the equity in that home. Defendant gets a smaller home, with a payment, a reduced

spousal support payment as a result of child support obligations and a lack of true capacity to become a full and vibrant wage earner as her ex-husband is still capable of doing. (And, we might add, that semi-truck drivers are one of the highest demand skilled/licensed occupations in the nation. Any claim that a trucker is meeting hard times is generally a comment on their ability or record, not on the demand for services. Research shows that such truck drivers, whether driving their own rigs as owner/operators, or as employees, in most cases will take home close to $100,000.00 per year.) The Court truly considered the EQUITY that is necessary in such complicated matters, and did a remarkable job with difficult and contradictory claims and statements to balance.

CONCLUSION

Clearly the Plaintiff has not shown with clear and convincing evidence that the Court, in its review and resolution of the competing claims of the parties, failed to meet the standards of the appropriate statutory guidelines upon which this claim was premised. The Court reviewed in detail the facts and claims made by the parties, their respective histories and personal conditions, and then calculated the most equitable and fair distribution of assets it could make, without requiring <u>significant</u> payments from one to the other. In fact, with the exception of what should be a payment of about $456.00 per month from the Plaintiff to the Defendant (after subtracting child support from spousal support), the Plaintiff may move on with his life with very little change or impact.

If the Plaintiff truly brought this matter in good faith, he would have at least made payments to the Defendant during the pendency of this matter rather than leave her without any ability to move forward on her own, absent his control of the purse strings.

It is thereby requested that the Court deny the relief requested herein, reaffirm the Decree of Divorce in its entirety, and direct the Plaintiff to make appropriate payments, including arrears, to the Defendant and that he proceed with all due speed to execute and/or deliver any documents related to property ownership, transfer or registration to the Defendant. To do differently would be grossly inequitable.

DATED this 5 day of March, 2021.

BRET O. WHIPPLE, ESQ.
Nevada Bar No. 6168
JUSTICE LAW CENTER
1100 South Tenth St.
Las Vegas, NV 89104
(702) 731-0000
Attorney for Plaintiff Agustina Cervantes Landa

CERTIFICATE OF SERVICE

I hereby certify that on the date and time of the electronic service, a copy of the foregoing **DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO RECONSIDER** was sent via electronic means to the following at their last known addresses, pursuant to EDCR 8.05(a):

Rodolfo Gonzalez
Rodolfogonzalezlaw@gmail.com

An employee of Justice Law Center

Electronically Filed
5/26/2021 2:06 PM
Steven D. Grierson
CLERK OF THE COURT

NEOJ
RODOLFO GONZALEZ, ESQ.
Nevada Bar No. 012751
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Tel: 702-778-3030
Fax: 702-920-8657
RodolfoGonzalezLaw@gmail.com
Attorney for Plaintiff *in an unbundled capacity*

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

JOSE OSCAR SALAZAR, Plaintiff, vs. AGUSTINA CERVANTES LANDA, Defendant.	CASE NO.: D-19-595434-D DEPT NO.: U

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on the 25th day of May 2021, this Court entered Order for the March 31, 2021 hearing regarding the above-referenced matter. A copy of Order for the March 31, 2021 hearing is attached hereto.

DATED this 26th day of May 2021.

/s/ Rodolfo Gonzalez
RODOLFO GONZALEZ, ESQ.
Nevada Bar No. 012751
GONZALEZ & FLORES LAW FIRM
879 N. Eastern Ave.
Las Vegas, NV. 89101
Tel: 702-778-3030
Fax: 702-920-8657

CERTIFICATE OF MAILING

Pursuant to NRCP 5, I certify that on May 26th, 2021, I caused a true and correct copy of the Order for the March 31, 2021 hearing to be served on all parties to this action by U.S. First Class Mail to the following locations:

Bret O. Whipple, Esq.
Justice Law Center
1100 S. Tenth St.
Las Vegas, NV 89104
Attorney for Defendant

DATED this 26th of May 2021.

/s/ Dora Peraza
An employee of Gonzalez & Flores Law Firm

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CLERK OF THE COURT

ORDR
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Attorney for Plaintiff *in an unbundled capacity*

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

JOSE OSCAR SALAZAR, Plaintiff, vs. AGUSTINA CERVANTES LANDA, Defendant.	CASE NO.: D-19-595434-D DEPT. NO.: U

ORDER

This matter having come on for a hearing on March 31, 2021, with Plaintiff, JOSE OSCAR SALAZAR, being present and represented by, RODOLFO GONZALEZ, ESQ., of the GONZALEZ & FLORES LAW FIRM and Defendant, AGUSTINA CERVANTES LANDA, being present and represented by, BRET WHIPPLE, ESQ., of the JUSTICE LAW CENTER. The Court having reviewed the papers and pleading on filed herein, having entertained arguments by the parties, and good cause appearing, therefore.

THE COURT NOTED that minutes prepared from the JAVS video record by court clerk Hilary Moffet, who was not present during the hearing.

THE COURT NOTED that matter heard via videoconference.

THE COURT NOTED that Court certified interpreters Alicia Herrera and Cristina Ranuschio provided services for Plaintiff and Defendant, respectively.

THE COURT NOTED that arguments were made regarding the order concerning spousal support and division of marital assets as set forth in the decree.

THE COURT NOTED that there is no basis to reconsider alimony. Court further noted that neither party filed an updated financial disclosure form. With regard to Plaintiff's ability to pay, Court noted that Plaintiff is choosing to support two adult children, who could either be contributing or living on their own.

THE COURT NOTED that Plaintiff is not entitled to an offset for the trailer as the Court found that there was a type of financial malfeasance on the part of Plaintiff regarding the trailer. Court further noted that it made a mathematical error in dividing and equalizing the assets, which will be corrected in today's order.

THE COURT NOTED that certain provisions regarding the two houses need to be clarified as they were not included in the decree. Court finds that it has continuing jurisdiction over the house issue.

THE COURT NOTED that Defendant should file a lis pendens to prevent Plaintiff from selling either property from under her.

THE COURT ORDERED:

1. The motion to reconsider with regard to alimony is DENIED.
2. The motion to reconsider with regard to assets and debts is GRANTED to correct the mathematical error. Plaintiff owes Defendant $38,999.50 to equalize the equity in both houses. This sum shall be REDUCED TO JUDGMENT against Plaintiff, and shall accrue legal interest retroactively from 2/11/21, when the decree was entered.
3. If Plaintiff has not paid Defendant the equalization amount in full by 8/2/21, the property located at 3127 Panocha St. shall be sold and Defendant shall be paid, from the proceeds, the remainder of the amount due to her. Any remaining proceeds shall be

Plaintiff's sole and separate property.

4. Defendant shall be solely responsible for the mortgage associated with the property located at 1600 Ardmore St., which was awarded to Defendant in the decree.

5. Defendant shall have 120 days to refinance the mortgage on the Ardmore property into her own name, or to sell the property. Plaintiff shall sign a quitclaim deed as needed in order for Defendant to refinance. If Defendant fails to refinance by 8/2/21, Plaintiff shall list the home for sale. Once sold, Defendant shall receive 100% of the proceeds. If Defendant elects to sell the property instead of refinancing the mortgage, Plaintiff shall cooperate and sign any documents necessary to facilitate the sale.

6. Plaintiff shall continue to make the mortgage payments on the Ardmore property until the house is either refinanced or sold. As Plaintiff represented in his motion that the current mortgage payment Is $837.00, Plaintiff shall be credited $456.00 per month toward his alimony obligation and $381.00 per month toward the equalizing note while he is making these mortgage payments.

7. Court clarified that Plaintiff does not owe alimony arrears as he has been making mortgage payments on the Ardmore property since January 1, when his alimony obligation commenced.

8. A status check is SET for 8/16/21 at 9:30am.

THE COURT ORDERED that Attorney Gonzalez shall prepare the Order from today's hearing.

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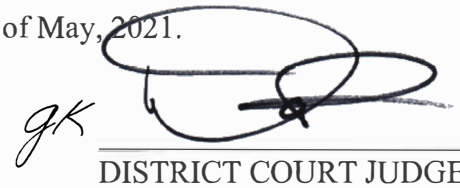
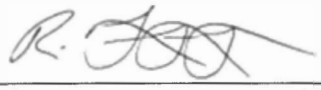
Dated this 25th day of May, 2021

IT IS SO ORDERED this ____ day of May, 2021.



DISTRICT COURT JUDGE
9CB 9F5 4AB2 6E07
Dawn R. Throne
District Court Judge

Respectfully Submitted By:



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Attorney for Defendant

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Jose Oscar Salazar, Plaintiff vs. Agustina Cervantes Landa, Defendant.	CASE NO: D-19-595434-D DEPT. NO. Department U

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 5/25/2021

Rodolfo Gonzalez	rodolfogonzalezlaw@gmail.com
Dora Peraza	Doraperazalaw@gmail.com
Christy Escobar	chris@escobarlaw.com
China Amie	china@cescobarlaw.com
Mya Alva	secretary@cescobarlaw.com
Rodolfo Gonzalez	Rodolfogonzalezlaw@gmail.com

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 5/26/2021

Rodolfo Gonzalez	Gonzalez & Flores Law Firm Attn: Rodolfo Gonzalez 879 N. Eastern Avenue Las Vegas, NV, 89101