

IN THE SUPREME COURT OF THE STATE OF NEVADA

CRAIG MUELLER,	)	No. 83412	Electronically Filed
Appellant,	)		Nov 29 2021 05:50 p.m.
Vs.	)		Elizabeth A. Brown
	)	Related Dist. Court Case,	Clerk of Supreme Court
	)	8th Jud. Dist. Ct.	
CHRISTINA HINDS.	)	Case No. D-18-571065-D	
	)	Dept. C	
Respondent,)		
	)	CHILD CUSTODY FAST	
	)	TRACK STATEMENT	
)		
)		

APPENDIX VOLUME III

/s/ Michael J. Mcavaoyamaya

MICHAEL J. MCAVOYAMAYA, ESQ.
Nevada Bar No.: 014082
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INDEX

Plaintiff's Pre-trial Memorandum.....	497
Plaintiff's Motion for OSC 11/8/2019.....	501
Defendant's Opp./Ctr Motion to Plaintiff's Motion for OSC.....	514
Plaintiff's Reply RE: Mot. OSC 11/27/2019.....	526
Defendant's Post-Trial Memorandum.....	536

used to pay the “equalization payment of \$450,000...that will be paid in cash within sixty days.”
See Ex. 1, at 6:1-12. Plaintiff’s initial breach is what caused Defendant to be unable to perform
under the MSA. *Id.* Because it is undisputed that Defendant is entitled to at least some offset of the
amounts owed, and cannot now obtain the loan agreed to between the parties on June 20, 2019, it is
Defendant that is the prevailing party, and Defendant who should be awarded attorney’s fees and
costs.

WITNESSES

Pursuant to FRCP 16.1, Plaintiff hereby discloses “[t]he name and, if known, the address
and telephone number of each individual likely to have discoverable information—along with
the subjects of that information—that the disclosing party may use to support its claims or
defenses, unless the use would be solely for impeachment.”

1. Craig Mueller
c/o Michael J. Mcavoyamaya, Esq.
4539 Paseo Del Ray
Las Vegas, NV 89121

This individual is expected to testify regarding the facts and circumstances surrounding
all issues pending before the court.

2. Cristina Hinds
c/o Lorien K. Cole, Esq.
WILLICK LAW GROUP
3591 E. Bonanza Rd., Suite 200
Las Vegas, NV 89110
(702) 438-4100

This individual is expected to testify regarding the facts and circumstances surrounding
all issues pending before the court.

3. Dawn R. Throne, Esq.
THRONE & HAUSER
1070 W. Horizon Ridge Pkwy., Ste. 100
Henderson, NV 89012
(702) 800-3580

Throne & Hauser are the former attorney’s for Cristina. She is expected to testify as to
the facts and circumstances surrounding settlement between the parties.

4. Radford J. Smith, Esq.
RADFORD J. SMITH, CHARTERED
2470 St. Rose Parkway, Suite 206

Henderson, NV 89074
(702) 990-6448

Mr. Smith is the former attorney for Craig. He is expected to testify as to the facts and circumstances surrounding settlement between the parties.

5. Carol Bray
c/o Craig Mueller, Esq.
723 S. 7th Street
(702) 935-5954

Ms. Bray was the bookkeeper for Mr. Mueller and Ms. Hinds' law practice. She is expected to testify as to the facts and circumstances surrounding her bookkeeping services for the law practice and any other issues pending before the Court.

II.

LIST OF DOCUMENTS

Pursuant to NRCP 16.1, Plaintiffs hereby disclose "a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment."

1. Settlement Transcript June 20, 2019	MUELLER001
2. Bank of Nevada #3258 Statements	MUELLER016
3. Bank of Nevada #2754 Statements	MUELLER090
4. Savings Account Balances 6/20/2019	MUELLER093
5. Mueller Amex Statements	MUELLER101
6. Bank of Nevada #3258 Statements	MUELLER128
7. Bank of Nevada #2754 Statements	MUELLER133
8. Meadows Account Statements	MUELLER138
9. USAA Ins. Settlement Emails	MUELLER149
10. Emails Between Divorce Counsel and Attachments	MUELLER151
11. Lopresto Ledger	MUELLER182
12. Payments Ledgers	MUELLER183
13. Mueller Financial Disclosures	MUELLER187
14. Hinds Financial Disclosures	MUELLER328

1	15. Hinds Affidavit 4/16/19	MUELLER348
2	16. Hinds Declaration 7/28/19	MUELLER362
3	17. Hinds Email RE Lopresto	MUELLER365
4	18. Eviction Notices	MUELLER367
5	19. Anthem Forensics Report	MUELLER374
6	20. Final Divorce Docs	MUELLER478
7	21. Pltf's Disclosures	MUELLER536

LIST OF EXHIBITS

Defendant has included his Exhibits 1-7 in this Pre-Trial Memorandum that will be relied on during his case in chief. Additionally, Defendant intends to introduce the following documents as exhibits during the April 1, 2021 evidentiary hearing:

1. The MSA;
2. The Stipulated Decree of Divorce;
3. The Parenting Agreement;

Defendant reserves the right use any of the above listed and disclosed documents as additional exhibits or for the purposes of impeachment.

DATED this 29th day of March.

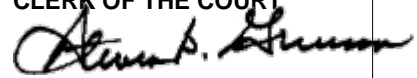
/s/ Michael J. McAvoyamaya
Michael J. McAvoyamaya
Nevada Bar No. 014082
4539 Paseo Del Ray
Las Vegas, NV 89121
Attorney for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this 29th day of March, 2021, I caused the documents entitled document to be served as follows: Pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) an Administrative Order 14-2 captioned “In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court,” by mandatory electronic service through the Eighth Judicial District Court’s electronic filing system. To the address, email address, and/or facsimile number indicated below:

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

/s/ Michael J. Mcavoyamaya
MICHAEL J. MCAVOYAMAYA



Marquis Aurbach Coffing
Terry A. Coffing, Esq.
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Rachel S. Tygret, Esq.
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Facsimile: (702) 382-5816
tcoffing@maclaw.com
rtygret@maclaw.com
Attorneys for Cristina Hinds

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

CRISTINA HINDS,

Plaintiff,

Case No.: D-18-571065-D

Dept. No.: C

vs.

ORAL HEARING REQUESTED

CRAIG A. MUELLER,

Defendant.

NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT PRIOR TO THE SCHEDULED HEARING DATE.

**PLAINTIFF'S MOTION FOR ORDER TO SHOW CAUSE WHY
DEFENDANT SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATION OF
THIS COURT'S ORDERS AND FOR ATTORNEY FEES AND COSTS**

COME NOW, Plaintiff, CRISTINA HINDS (hereinafter referred to as "Cristina"), by and through her attorneys of record, Terry A. Coffing, Esq. and Rachel S. Tygret, Esq. of Marquis Aurbach Coffing and hereby files this instant Motion, requesting that the Court enter the following Orders:

///

///

///

MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1. An Order to Show Cause why CRAIG A. MUELLER should not be held in contempt for violation of this court's orders enumerated herein;
2. An award of attorneys fees and costs; and
3. Such other and further relief that the Court deems just and proper on the premises.

This Motion is based upon the pleadings and papers on file herein, the following Points and Authorities, the Affidavit of CRISTINA HINDS attached hereto, the Affidavit of Counsel attached hereto, and any oral argument that may be entertained at the hearing set for this matter

Dated this 8th day of November, 2019.

MARQUIS AURBACH COFFING

By /s/ Terry A. Coffing
Terry A. Coffing, Esq.
Nevada Bar No. 4949
Terry A. Coffing, Esq.
Nevada Bar No. 4949
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorney(s) for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

The parties to this case, CRISTINA HINDS (hereinafter “Cristina”) and CRAIG A. MUELLER (hereinafter “Craig”), were divorced by Decree of Divorce (the “Decree”) filed with this Court on July 29, 2019.¹ Per the Decree, the parties were obligated to abide by the provisions set forth in the Marital Settlement Agreement (the “MSA”) entered into on July 29, 2019.²

A. PROPERTY EQUALIZATION

Pursuant to Section 9 of the MSA, Cristina was awarded a property equalization payment in the amount of \$450,000. The balance of this amount, \$427,500 was due, in cash, on or before September 20, 2019. Should Craig fail to pay the property equalization by the September 20, 2019 due date, the balance would begin to accrue interest on the unpaid principal balance at the Nevada Legal Interest rate beginning on September 21, 2019 and continuing until the obligation has been paid in full.³ As of the filing of this Motion, Craig has refused to abide by the MSA by not paying the \$427,500 balance, as such, the outstanding balance has accrued approximately \$2,671.88 in interest and the outstanding balance is now \$430,171.88.

B. DEBT AND OBLIGATION FOR THE INFINITI QX80

Pursuant to Section 8.2 of the MSA, Craig was required to take the debt and obligation associated with the 2014 Infinity QX80, which was awarded to Cristina in Section 5(f) of the MSA. As of the date of this filing, upon information and belief, the payments for the aforementioned vehicle are in default as Craig has failed to honor his obligation to pay the car payment in the amount of \$750.59/month.

¹ A copy of the Decree is attached hereto as “**Exhibit 1**” and is hereby fully incorporated herein by reference.

² The Property Settlement Agreement was deemed confidential by the parties during the divorce proceedings; should this Court wish to review the Agreement, it will be provided for an *in camera* review.

³ Pursuant to NRS 880040(1), as of July 1, 2019, the Nevada Legal Interest rate is the prime rate (5.50%) plus 2%, for a total of 7.5%.

C. OUTSTANDING MEDICAL BILLS FOR MINOR CHILDREN

On page 15, line 8 of the Stipulation and Order Re: Parenting Agreement and Child Support (“Parenting Agreement”), Craig was to be held solely responsible for all medical expenses incurred between May 1, 2019 and August 1, 2019 when the new insurance policy went into effect. As set forth on page 16 of the Parenting Agreement, the parties also agreed to abide by the 30/30 Rule.

On July 25, 2019, August 20, 2019, and September 11, 2019, Cristina sent Craig proof of invoices for said medical expenses for the children.⁴ Over ninety (90) days have elapsed since receiving the first notice of unreimbursed medical expenses, but Craig has refused to pay these invoices, which remain outstanding and at risk of going to collections.

D. LAPSE IN INSURANCE COVERAGE

On page 15, line 21 of the Parenting Agreement, Craig is obligated to maintain health insurance for the minor children “with the same kind of PPO coverage”. While Craig has provided the children with medical coverage, he has refused to provide the children with *any* dental and/or vision coverage, both of which were provided for the children prior to Craig allowing the insurance policies to lapse on April 30, 2019. Despite several requests from Cristina to reinstate dental and vision coverage for the children, Craig has refused. As such, Cristina has had to purchase this coverage via her own policy at the rate of \$51.54/month.⁵ Craig should either be required to reimburse Cristina each month for this coverage or be ordered to reinstate coverage for the minor children.

E. EDCR 5.501 STATEMENT

In compliance with EDCR 5.501, a letter was sent to Craig, via his then acting counsel of record, Radford Smith.⁶ This letter requested that Craig abide by the Decree of Divorce and

⁴ See Invoices attached hereto as “**Exhibit 2**”.

⁵ See policy attached hereto as “**Exhibit 3**”.

⁶ A copy of this letter is attached hereto as “**Exhibit 4**”.

MSA by paying the outstanding balances owed. Shortly thereafter, Craig's counsel withdrew from the matter and no response was ever received.

As a result of Craig's refusal to abide by the MSA and Parenting agreement, Cristina has had to retain legal representation and file this Motion. Unfortunately, it appears that the only way to ensure Craig's compliance with the MSA and Parenting Agreement is by forcing him to appear before the Court. As such, it is believed that Craig has violated the Decree and MSA and should therefore be held in contempt.

II. ARGUMENT

A. **THIS COURT SHOULD ENTER AN ORDER TO SHOW CAUSE WHY CRAIG A. MUELLER SHOULD NOT BE HELD IN CONTEMPT**

Cristina requests that this Court take action to require Craig to comply with the Decree and MSA by issuing an Order to Show Cause as to why Craig should not be held in contempt for his violation of this Court's Orders.

NRS 22.010 states:

22.010 Acts or omissions constituting contempt. The following acts or omissions shall be deemed contempt:

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

2. A breach of the peace, boisterous conduct or violent disturbance in the presence of the court, or in its immediate vicinity, tending to interrupt the due course of the court or judge at chambers.

3. **Disobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers ...** (emphasis added.)

The penalties for Contempt as set forth above are found, in part, under NRS 22.100 which states:

22.100 Penalty for contempt.

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

2. Except as otherwise provided in NRS 22.110, if a person is found guilty of contempt, a fine may be imposed on the person not exceeding \$500 or the person may be imprisoned

not exceeding 25 days, or both.

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

Nevada law requires that an order for civil contempt must be grounded upon one's disobedience of an order that spells out "the details of compliance in clear, specific and unambiguous terms so that such person will readily know exactly what duties or obligations are imposed on him." Southwest Gas Corp. V. Flintkote Company-U.S. Lime Division, 99 Nev. 127, 131, 659 P.2d 861 (1983) quoting Ex Patte Slavin, 412 S.W.2d 43, 44 (Tex.1 967). The Decree of Divorce that was filed on July 22, 2005 clearly meets the standard outlined in Southwest Gas.

The Decree explicitly states that the parties are bound by the terms set forth in the MSA and Parenting Agreement. Despite making a reasonable request for his compliance, Craig has refused to honor his legal obligation under the Decree, MSA, and Parenting Agreement. Craig's actions clearly prove that he has shirked his obligation to follow this Honorable Court's order. Craig should be held in contempt for his violation of this Court's Orders, should be ordered to pay his outstanding obligations, provide health insurance for the children, and should be ordered to pay all attorney's fees and costs incurred by Cristina as a result of his contempt.

B. CRISTINA SHOULD BE AWARDED HER ATTORNEY'S FEES AND COSTS IN THE AMOUNT OF \$5,000 FOR BEING FORCED TO BRING THE PRESENT MOTION

NRS 18.010(2) provides as follows:

In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:

(a) When he/she has not recovered more than \$20,000; or

(b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of opposing party was brought without reasonable ground or to harass the prevailing party.

Furthermore, EDCR 7.60(b) states as follows:

The Court may, after notice and an opportunity to be heard, impose upon an attorney or a party and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:

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

With specific reference to family law matters, the Court has adopted "well-known basic elements," which in addition to hourly time schedules kept by the attorney, are to be considered in determining the reasonable value of an attorney's services qualities, commonly referred to as the Brunzell factors. Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

These factors are:

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

Each of these factors should be given consideration, and no one element should predominate or be given undue weight. Miller v. Wilfong, 121 Nev. 619, 119 P.3d 727, 730 (2005). Additional guidance is provided by reviewing the "attorney's fees" cases most often cited

1 in Family Law. Fletcher v. Fletcher, 89 Nev. 540, 516 P.2d 103 (1973); Levy v. Levy, 96 Nev.
2 902, 620 P.2d 860 (1980), Hybarger v. Hybarger, 103 Nev. 255, 737 P.2d 889 (1987). The
3 Brunzell factors require counsel to rather immodestly make a representation as to the "qualities
4 of the advocate," the character and difficulty of the work performed, and the work actually
5 performed by the attorney.

6 First, undersigned counsel is an experienced attorney practicing law for twenty-six (26)
7 years and is well known and revered in the community. As to the "character and quality of the
8 work performed," we ask the Court to find the work in this matter to have been adequate, both
9 factually and legally; we have diligently reviewed the applicable law, explored the relevant facts,
10 and believe that we have properly applied one to the other. Finally, as to the result reached, this
11 remains to be determined when the Court rules on the present Motion.

12 Clearly, Cristina is entitled to an award of fees and costs pursuant to NRS 18.010(2) and
13 EDCR 7.60(b). Cristina has attempted to resolve the issue of Craig's failure to follow the
14 Court's orders to no avail. Craig's failure to follow this Court's orders have forced Cristina to
15 file this Motion to address the same. The instructions regarding the property equalization
16 payment, obligation on the vehicle, and medical coverage for the children are laid out in the
17 MSA and Parenting Agreement and are clear and unambiguous; Craig cannot be permitted to
18 ignore the Court's orders. Cristina should not have to file a Motion to enforce this Court's
19 Orders and force Craig to meet his obligations under the Orders. Based upon Craig's complete
20 disregard for and clear violations of this Court's orders, Cristina should be awarded her
21 attorney's fees.

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MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

III. CONCLUSION

WHEREFORE, based on the foregoing, the Court should grant the following relief:

1. An Order to Show Cause Why Defendant Should Not be Held in Contempt for Violation of this Court's Orders enumerated herein;
2. Attorney's fees and costs; and
3. Such other and further relief that the Court deems just and proper on the premises.

Dated this 8th day of October, 2019.

MARQUIS AURBACH COFFING

By /s/ Terry A. Coffing

Terry A. Coffing, Esq.
Nevada Bar No. 4949
Rachel S. Tygret, Esq.
Nevada Bar No. 14120
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorney(s) for Cristina Hinds

AFFIDAVIT OF CRISTINA HINDS

STATE OF NEVADA)
)ss:
COUNTY OF CLARK)

CRISTINA HINDS, being first duly sworn deposes and says:

1. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

2. I am the Plaintiff in the above referenced matter and have read and understand the Motion For Order To Show Cause Why Defendant Should Not Be Held In Contempt For Violation Of This Court's Orders And For Attorney Fees And Costs and attest to the above referenced facts as being true and correct to the best of my knowledge, except those stated upon information and belief, which statements I believe to be true and correct.

3. Defendant, Craig Mueller, and I were divorced by Decree of Divorce (the "Decree") filed with this Court on July 29, 2019.

4. Per the Decree, Craig and I are obligated to abide by the provisions set forth in the Marital Settlement Agreement (the "MSA") and the Stipulation and Order Re: Parenting Agreement and Child Support ("Parenting Agreement") entered into on July 29, 2019.

5. Pursuant to Section 9 of the MSA, I was awarded a property equalization payment in the amount of \$450,000. The balance of this amount, \$427,500 was due, in cash, on or before September 20, 2019.

6. In the event Craig failed to pay the property equalization payment by the September 20, 2019 due date, the balance would begin to accrue interest on the unpaid principal balance at the Nevada Legal Interest rate beginning on September 21, 2019 and continuing until the obligation has been paid in full.

1 7. As of the filing of this Motion, Craig has not made any payment on the \$427,500
2 balance. As such, the outstanding balance has accrued approximately \$2,671.88 in interest and,
3 upon information and belief, the outstanding balance is now \$430,171.88.

4 8. Pursuant to Section 8.2 of the MSA, Craig was required to take over the debt and
5 obligation associated with the 2014 Infinity QX80, which was awarded to me in Section 5(f) of
6 the MSA.

7 9. Upon information and belief, the payments for the aforementioned vehicle are in
8 default as Craig has failed to honor his obligation to pay the car payment in the amount of
9 \$521.18/month.

10 10. Pursuant to page 15, line 8 of the Parenting Agreement, Craig was to be held
11 solely responsible for all medical expenses incurred between May 1, 2019 and August 1, 2019
12 when the new insurance policy went into effect.

13 11. We also agreed to abide by the 30/30 Rule.

14 12. July 25, 2019, August 20, 2019, and September 11, 2019, I sent Craig proof of
15 invoices for all medical expenses for the children incurred during the lapsed insurance period.

16 13. It has been over ninety (90) days since Craig first received notice of these
17 unreimbursed medical expenses, but he has refused to pay these invoices, which remain
18 outstanding and at risk of going to collections.

19 14. Pursuant to page 15, line 21 of the Parenting Agreement, Craig is obligated to
20 maintain health insurance for both of our minor children “with the same kind of PPO coverage”.

21 15. While Craig has provided the children with medical coverage, he has refused to
22 provide the children with any dental and/or vision coverage, both of which were provided for the
23 children prior to Craig allowing the insurance policies to lapse on April 30, 2019.

24 16. Despite making several requests to reinstate dental and vision coverage for our
25 children, Craig has refused.

26 17. I have had to purchase dental and vision coverage for the children at the rate of
27 \$51.54/month.
28

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

18. On October 8, 2019, a letter was served to Craig, via his attorneys, wherein I made several requests for him to come into compliance with the Decree, MSA, and Parenting Agreement.

19. As of the date of this filing, Craig has not yet responded or complied with the requests set forth in my letter.

20. As a result of Craig's actions, I have had to retain legal representation and file this Motion.

21. I respectfully request that this Court grant me all of my requests for relief as stated herein.

22. I respectfully request that this Court grant any additional relief deemed just and proper under the circumstances.

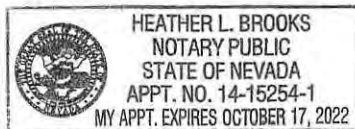
Further Affiant sayeth naught.

Dated this 7th day of November, 2019.


CRISTINA HINDS

SUBSCRIBED and SWORN to before me this 7 day of November, 2019.


NOTARY PUBLIC in and for said
County of State



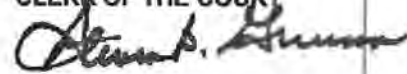
CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PLAINTIFF'S MOTION FOR ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATION OF THIS COURT'S ORDERS AND FOR ATTORNEY FEES AND COSTS** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 8th day of November, 2019. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:⁷

John Schaller, Esq.
johns@craigmuellerlaw.com

/s/ Cally Hatfield
Cally Hatfield, an employee of
Marquis Aurbach Coffing

⁷ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).



1 OPP
2 Craig A. Mueller, Esq.
3 Nevada Bar No. 4703
4 **MUELLER & ASSOCIATES, INC.**
5 723 South Seventh Street
6 Las Vegas, Nevada 89101
7 Electronicservice@craigmuellerlaw.com
8 702 382-1200
9 Defendant in Proper Person

DISTRICT COURT
CLARK COUNTY, NEVADA

11 CRISTINA HINDS,
12
13 Plaintiff,
14 v.
15 CRAIG A. MUELLER,
16 Defendant.

CASE NO: D-18-571065-D
DEPT. NO.: C

Date of Hearing: 12/31/2019
Time of Hearing: 10:00 a.m.

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATION OF THE COURT'S ORDERS AND FOR ATTORNEYS FEES; COUNTERMOTION TO MODIFY DECREE OF DIVORCE AND MARITAL SETTLEMENT AGREEMENT WITH REGARD TO EQUALIZATION PAYMENT TO CHRISTINA HINDS DUE TO CRISTINA HINDS' MISAPPROPRIATION OF COMMUNITY FUNDS; COUNTERMOTION FOR SANCTIONS DUE TO CRISTINA HINDS' VIOLATION OF JOINT PRELIMINARY INJUNCTION; COUNTERMOTION FOR ATTORNEYS FEES AND FOR OTHER RELATED RELIEF

26 COMES NOW, Defendant in Proper Person, Craig A. Mueller, Esq., of MUELLER &
27 ASSOCIATES, INC., and files this Opposition To Plaintiff's Motion For Order To Show Cause Why
28 Defendant Should Not Be Held In Contempt For Violation Of The Court's Orders And For Attorney's

1 Fees; Countermotion To Modify Decree Of Divorce And Marital Settlement Agreement With Regard To
2 Equalization Payment To Christina Hinds Due To Cristina Hinds' Misappropriation Of Community
3 Funds; Countermotion For Sanctions Due To Cristina Hinds' Violation Of Joint Preliminary Injunction;
4 Countermotion For Attorneys Fees And For Other Related Relief
5

6 This Opposition and these Countermotions are made and based upon NRCP 60(b) all of the papers
7 and pleadings on file herein, and such argument as may be allowed at the hearing of this matter.
8

9 DATED this 20th day of November , 2019.

10 /s/Craig A. Mueller, Esq.
11 Nevada Bar No. 4703
12 **MUELLER & ASSOCIATES, INC.**
13 723 South Seventh Street
14 Las Vegas, Nevada 89101
15 Electronicservice@craigmuellerlaw.com
16 Defendant in Proper Person
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MEMORANDUM OF POINTS AND AUTHORITIES

1. INTRODUCTION:

Plaintiff, Cristina Hinds, ("Cristina") has repeatedly violated the May 16, 2018 Joint Preliminary Injunction ("JPI") (Exhibit "A"). Since May 16, 2018, she has withdrawn \$216,053.45 from the Joint Meadows Bank Money Market Account, (See Exhibit "B") and \$15,000.00 from the Joint Bank of Nevada Money Market Account (Exhibit "C") for a total of \$231,053.45, in violation of the JPI.

Cristina had also withdrawn \$85,100.00 from the Bank of Nevada Money Market Account in 2017 and 2018. (Exhibit "C").

Cristina therefore misappropriated \$158,076.73 from the two money market accounts and that sum should be credited against from the \$450,000.00 equalization payment Defendant Craig A. Mueller ("Craig") owes her.

Craig therefore owes Cristina the sum of \$291,923.27, not \$450,000.00 as and for an equalization payment.

2. STATEMENT OF FACTS

The following is a chronology of the important filings in this divorce case:

05/16/2018 Plaintiff's Complaint for Divorce was filed.
 05/16/2018 Plaintiff's Request for Issuance of Joint Preliminary Injunction issued
 05/16/2018 Joint Preliminary Injunction was signed by The Honorable Bryce Duckworth
 07/25/2018 Defendant's Answer and Counterclaim was filed
 12/12/2018 Order to Show Cause was filed.
 7/29/2019 Stipulation and Order
 Stipulation and Order Re Parenting Agreement
 07/29/2019 Decree of Divorce
 07/29/2019 Stipulated Decree of Divorce
 07/29/2019 Notice of Entry of Order
 07/29/2019 Notice of Entry of Stipulation and Order Re: Parenting Agreement and Child Support
 07/29/2019 Confidential Marital Settlement Agreement entered

07/29/2019 Notice of Entry of Decree

The May 16, 2018 Cristina made a Request for Issuance of Joint Preliminary Injunction had provided in pertinent part as follows:

“... REQUEST FOR ISSUANCE OF JOINT PRELIMINARY INJUNCTION I respectfully request that the Court issue a Joint Preliminary Injunction in the above-entitled action pursuant to EDCR 5.517....”

The Joint Preliminary Injunction (Exhibit “A” attached hereto) provided in pertinent part as follows:

Rule 5.85. Joint preliminary injunction.

(a) At any time prior to the entry of a decree of divorce or final judgment and upon the request of either party in a family relations proceeding, a preliminary injunction will be issued by the clerk against both parties to the action enjoining them and their officers, agents, servants, employees or a person in active concert or participation with them from:

(1) Transferring, encumbering, concealing, selling or otherwise disposing of any of the joint common or community property of the parties or any property which is the subject of a claim of community interest, except in the usual course of business or for the necessities of life, without the written consent of the parties or the permission of the court.

(2) Molesting, harassing, stalking, disturbing the peace of or committing an assault or battery on the person of the other party or any child, step-child or any other relative of the parties.

(3) Removing any child of the parties then residing in the State of Nevada with an intent or effect to deprive the court of jurisdiction as to the child without the prior written consent of all the parties or the permission of the court.

(b) The joint preliminary injunction will be automatically effective against the party requesting it at the time it is issued and effective upon all other parties upon service. The injunction is enforceable by all remedies provided by law including contempt.

(c) Once issued, the joint preliminary injunction will remain in effect until a decree of divorce or final judgment is entered or until modified or dissolved by the court.(Emphasis added).

Cristina has repeatedly violated the Joint Preliminary Injunction, which her counsel had requested be issued. Since May 16, 2018, she has withdrawn \$216,053.45 from the Joint Meadows Bank Money Market Account, (See Exhibit "B") and \$15,000.00 from the Joint Bank of Nevada Money Market Account (Exhibit "C") for a total of \$231,053.45.

Cristina had also withdrawn \$85,100.00 from the Bank of Nevada Money Market Account in 2017 and 2018 as outlined below. (Exhibit "C").

The Confidential Marital Settlement Agreement had awarded Cristina 50% of the Meadows Bank Money Market account. In direct violation of the Joint Preliminary Injunction Cristina withdrew \$216,053.45 from the Meadows bank Money Market account in 2019, (See Exhibit "B"). Therefore, instead of receiving 50% of the account, she took 100%. The Confidential Marital Settlement Agreement did not award her any money from the Bank of Nevada Money Market Account.

MEADOWS BANK

Joint Money Market

Withdrawals by Cristina Hinds

Statement Date June 30, 2019

January 9, 2019	Withdrawal	107,891.00
May 17, 2019	Withdrawal	15,000.00
June 4, 2019	Withdrawal	7,000.00
June 27, 2019	Withdrawal	1,500.00
July 15, 2019	Withdrawal	1,000.00
July 16, 2019	Withdrawal Closing Account	83,662.45
<u>TOTAL: \$216,053.45</u>		

(See Exhibit "B" attached hereto).

NEVADA STATE BANK

Joint Money Market

Withdrawals by Cristina Hinds

APRIL 19, 2017	10,000.00
APRIL 28, 2019	10,000.00
MAY 15, 2017	3,5000.00
MAY 19, 2017	10,000.00
JUNE 23, 2017	10,000.00
July 5, 2017	10,000.00
September 8, 2017	100.00
November 1, 2017	16,000.00
November 22, 2017	6,000.00
January 26, 2017 telephone transfer	1,000.00
January 26, 2018 telephone transfer	3,500.00
April 30, 2018	5,000.00

May 24, 2018 telephone transfer	6,500.00
June 7, 2018	3,000.00
June 11, 2018	2,500.00
October 24, 2018 telephone transfer	3,000.00

Total withdrawn by Cristina since the issuance of the Joint Preliminary Injunction: \$15,000.00**TOTAL Withdrawn by Cristina: \$100,100.00**

(See Exhibit "C" attached hereto).

GRAND TOTAL WITHDRAWN FROM BOTH MONEY MARKET ACCOUNTS \$316,153.45**50% of \$316,153.45= \$158,076.73**

1 Cristina therefore misappropriated \$158,076.73 from the two money market accounts and that sum
2 should be credited against from the \$450,000.00 equalization payment Defendant Craig A. Mueller
3 ("Craig") owes her.
4

5 Craig therefore owes Cristina the sum of \$291,923.27, not \$450,000.00 as and for an equalization
6 payment.

7 **A. \$450,000.00 EQUALIZATION PAYMENT**
8

9 After the entry of the Decree of Divorce, Craig learned that in direct violation of the Joint
10 Preliminary Injunction Cristina withdrew \$216,053.45 from the Meadows Bank Money Market account
11 in 2019, (See Exhibit "B"). and \$15,000.00 from the Bank of Nevada Money Market Account (Exhibit
12 "C"). He also learned tht in 2017 and 2018 she had withdrawn an additional \$85,100.00 from the Bank
13 of Nevada Money Market Account without his knowledge or consent.
14

15 Craig had intended to use the funds in the two money market accounts as collateral when he applied
16 for a loan for the \$450,000.00, only to learn tht Cristina had withdraw most of the funds. Counsel for
17 Cristina was informed of the withdrawals, but claimed that the money Cristina had withdrawn from the
18 two money market accounts had been deposited into the MUELLER HINDS & ASSOCIATES or the
19 MUELLER & ASSOCIATES, INC. operating accounts, which proven to be was a false allegation.
20 Cristina misappropriated \$158,076.73 from the Meadows Bank and Bank of Nevada money market
21 accounts and that sum should be credited against from the \$450,000.00 equalization payment Defendant
22 Craig A. Mueller ("Craig") owes her.
23

24 Craig therefore owes Cristina the sum of \$291,923.27, not \$450,000.00 as and for an equalization
25 payment.
26
27
28

B. INFINITI PAYMENT

Craig had no idea tht he was required to pay Cristina's car payment. Cristina has substantial assets and hundreds of thousands of dollars in cash. She is employed full time as an attorney. The Marital Settlement Agreement should be modified to required Cristina to pay her own car payment. The Marital Settlement Agreement was merged into the Decree of divorce and is therefore subject to NRCP 60(b). It can therefore be modified within six months after the entry of the Decree of Divorce, or until January 2020. Craig would ask that the provision in the Marital Settlement Agreement which required him to pay Cristina's car payment be eliminated.

C. MEDICAL BILLS OF CHILDREN

Cristina has been sending the bills for unreimbursed medical expenses to the bookkeeping department of MUELLER & ASSOCIATES, INC. The said medical expenses have been paid in full. Attached hereto and marked Exhibit "D" is an email from bookkeeper Carol Bray regarding payment of the medical bills.

D. DENTAL AND VISION INSURANCE FOR CHILDREN

Craig was unaware that he did not have vision or dental insurance coverage for Elizabeth and William, the two minor children of the parties. Craig would be willing to pay Cristina the sum of \$51.54 per month as and for dental and vision coverage for the children.

1
2 **3. LEGAL ARGUMENT**

3
4 **A. Cristina Violated the Joint Preliminary Injunction**

5 Christina clearly violated the terms of the May 16, 2018 Joint Preliminary Injunction. Since May 16,
6 2018, she has withdrawn \$216,053.45 from the Joint Meadows Bank Money Market Account, (See
7 Exhibit "B") and \$15,000.00 from the Joint Bank of Nevada Money Market Account (Exhibit "C") for a
8 total of \$231,053.4.,

9
10 The joint preliminary injunction is automatically effective against the party requesting it at the
11 time it is issued, and effective upon all other parties upon service. EDCR 5.85(b). By the terms of the rule
12 itself, the injunction is enforceable by all remedies provided by law, including contempt. It remains in
13 effect until a decree of divorce or final judgment is entered or until modified or dissolved by the court.
14 EDCR 5.85(c).

15
16 Cristina should be sanctioned for her behavior and should be required to pay Craig the sum of
17 \$10,000.00 as and for attorneys fees.

18 **B. The Marital Settlement Agreement Should Be Modified Pursuant To NRCP 60(b)**

19 Cristina misappropriated \$158,076.73 from the two money market accounts and that sum should
20 be credited against from the \$450,000.00 equalization payment Defendant Craig A. Mueller ("Craig")
21 owes her.
22

23 Craig therefore owes Cristina the sum of \$291,923.27, not \$450,000.00 as and for an equalization
24 payment. The Marital Settlement Agreement should be so modified.
25

26 NRCP 60(b) provides in pertinent part as follows:

27 (b) **Grounds for Relief From a Final Judgment, Order, or Proceeding.** On motion and just
28 terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding
for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

(c) Timing and Effect of the Motion.

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

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

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

- (1) entertain an independent action to relieve a party from a judgment, order, or proceeding;
- (2) upon motion filed within 6 months after written notice of entry of a default judgment is served, set aside the default judgment against a defendant who was not personally served with a summons and complaint and who has not appeared in the action, admitted service, signed a waiver of service, or otherwise waived service; or
- (3) set aside a judgment for fraud upon the court.

Here, Craig was unaware at the time he signed the Marital Settlement Agreement that Cristina had misappropriated substantial community funds, in direct violation of the May 16, 2018 Joint Preliminary Injunction, and even before the Joint Preliminary Injunction had been issued. After May 16, 2018, she withdrew \$216,053.45 from the Joint Meadows Bank Money Market Account, (See Exhibit "B") and \$15,000.00 from the Joint Bank of Nevada Money Market Account (Exhibit "C") for a total of \$231,053.45.

Prior to the issuance of the Joint preliminary Injunction, Cristina had withdrawn \$85,100.00 from the Bank of Nevada Money Market Account in 2017 and 2018, without the knowledge or consent of Cristina. (Exhibit "C").

By engaging in such deceitful acts, Cristina engaged in fraud.

In Nevada, the elements for a claim of fraud or intentional misrepresentation are:

- 1 1. A party makes a false representation or misrepresentation as to a past or existing fact;
- 2 2. With knowledge or belief by defendant that representation is false or that defendant lacks sufficient
- 3 basis of information to make the representation;
- 4 3. A party intended to induce the other party to act in reliance on the representation;
- 5 4. Justifiable reliance upon the representation by the other party;
- 6 5. Causation and damages to as a result of relying on misrepresentation; and

7 See, *J.A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 89 P.3d 1009
 8 (2004); *Barmettler v. Reno Air, Inc.*, 14 Nev. 441, 956 P.2d 1382 (1998); *Blanchard v. Blanchard*, 108
 9 Nev. 908 (1992); *Bulbman, Inc. v. Nev. Bell*, 108 Nev. 105, 111, 825 P.2d 588, 592 (1992); *Albert H.*
 10 *Wohlers & Co. v. Bartgis*, 114 Nev. 1249, 1260, 969 P.2d 949, 957 (1998); *Sanguinetti v. Strecker*, 94
 11 Nev. 200, 206, 577 P.2d 404, 408 (1978); *Lubbe v. Barba*, 91 Nev. 596, 541 P.2d 115 (1975).

13 Here, Cristina had a Joint Preliminary Injunction issued, prohibiting either of the parties from
 14 removing assets from bank accounts. Cristina enforced the JPI against Craig at every opportunity.
 15 Meanwhile, Cristina was draining community accounts, in direct violation of the JPI. She failed to inform
 16 Craig of these facts, and induced him into signing a Marital Settlement Agreement, with Craig believing
 17 tht he had over \$200,000.00 in the Meadows Money Market Account, and substantial funds in the Bank
 18 of Nevada Money Market Account. When he went to the bank to try to obtain an equalization payment
 19 for Cristina, he learned that in fact Cristina had already drained the accounts. Cristina engaged in fraud
 20 and should be sanctioned by this court.

23 **C. Craig Should Not Be Required To Pay Cristina's Car Payment.**

24 Pursuant to the terms of the Marital Settlement Agreement, Cristina, a licensed Nevada attorney, was
 25 awarded a home with at least \$600,000.00 in equity and bank accounts containing hundreds of thousands
 26 of dollars in cash. She is clearly able to pay her own car payment. At the time he signed the Marital
 27 Settlement Agreement Craig was unaware tht it contained a provision requiring him to pay Christina's
 28

1 Infiniti payment. He would never have agreed to such a requirement. This oversight constituted a mistake
2 on his part which should be cured, under NRCP 60(b).

3
4 **4. CONCLUSION**

5 For the foregoing reasons the court should enter the following orders:

- 6 1. Craig owes Cristina the sum of \$291,923.27, not \$450,000.00 as and for an equalization payment.
7 2. Cristina should be sanctioned for her behavior and should be required to pay Craig the sum of
8 \$15,000.00 as and for attorneys fees.
9 3. Craig Should Not Be Required To Pay Cristina's Car Payment.
10 4. For such other and further relief as this court deems just and proper in the premises.
11

12 DATED this 20th day of November, 2019.

13 /s/ Craig A. Mueller, Esq.

14 Nevada Bar No. 4703

15 **MUELLER & ASSOCIATES, INC.**

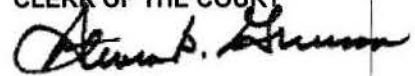
16 723 South Seventh Street

17 Las Vegas, Nevada 89101

18 Electronicservice@craigmuellerlaw.com

19 702 382-1200

20 Defendant in Proper Person
21
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27
28



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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

CRISTINA HINDS,

Plaintiff,

Case No.: D-18-571065-D

Dept. No.: C

vs.

CRAIG A. MUELLER,

Defendant.

REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR ORDER TO SHOW CAUSE
WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATION OF
THIS COURT'S ORDERS AND FOR ATTORNEY FEES AND COSTS; OPPOSITION
TO DEFENDANT'S COUNTERMOTION TO MODIFY DECREE OF DIVORCE AND
MARITAL SETTLEMENT AGREEMENT WITH REGARD TO EQUALIZATION
PAYMENT TO CRISTINA HINDS DUE TO CRISTINA HINDS' MISAPPROPRIATION
OF COMMUNITY FUNDS; FOR SANCTIONS; AND FOR ATTORNEY FEES AND
OTHER RELATED RELIEF

Plaintiff, Cristina Hinds ("Cristina") by and through her attorneys of record, Terry A. Coffing, Esq. and Rachel S. Tygret, Esq. of Marquis Aurbach Coffing, hereby submits her Reply in Support of her Motion for Order to Show Cause and Opposition to Plaintiff's Countermotion.

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This Reply is based upon the Points and Authorities below, the attached exhibits, any and all pleadings and papers on file in this matter, and any oral argument to take place at the hearing.

Dated this 27th day of November, 2019.

MARQUIS AURBACH COFFING

By /s/ Terry A. Coffing
 Terry A. Coffing, Esq.
 Nevada Bar No. 4949
 Rachel S. Tygret, Esq.
 Nevada Bar No. 14120
 10001 Park Run Drive
 Las Vegas, Nevada 89145
 Attorney(s) for Cristina Hinds

I. M E M O R A N D U M O F P O I N T S A N D A U T H O R I T I E S

A . I N T R O D U C T I O N

As this Court is aware, the parties to this case, CRISTINA HINDS (hereinafter “Cristina”) and CRAIG A. MUELLER (hereinafter “Craig”), were divorced by Decree of Divorce (the “Decree”) filed with this Court on July 29, 2019. The Decree of Divorce was predicated on the terms and conditions that were *mutually agreed upon* between both Cristina and Craig and was drafted after *months* of discovery, depositions, and negotiations between the parties and their respective counsel.

Craig is now attempting to claim that the MSA and Decree need to be modified because: (1) despite being represented by competent counsel (and being an attorney himself) and having an opportunity to review both documents, Craig “had no idea” about some of the terms in the agreement (such as taking on the obligation for Cristina’s vehicle); (2) that despite being an owner with unfettered access to the accounts in dispute (as well as this particular subject being discussed *ad nauseam* during Cristina’s deposition and during the final negotiations), he was completely unaware of the funds that Cristina allegedly misappropriated at the time the Decree

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was signed¹; and (3) that he should not be obligated to pay Cristina the agreed upon equalization payment.

The truth is that Craig was more than aware of the terms of the divorce and had ample time to review the MSA and Decree of Divorce prior to signing the same. Based on the countless number of outright lies embedded in Craig's Opposition and Countermotion, it is clear that Craig *never* intended on honoring his obligations under the MSA and intends on embroiling the Parties in unending litigation in an effort to shirk his obligations to Cristina and their minor children.

B. L E G A L A R G U M E N T

1. A n O r d e r T o S h o w C a u s e i s A p p r o p r i a t e i n t h i s M a t t e r a g a i n s t C r a i g A . M u e l l e r

It's extremely difficult to respond to Craig's Opposition and Countermotion when its solely predicated on unsupported "facts" and fails to actually oppose the underlying Motion. In fact, Craig does not even dispute that he has not paid his financial obligation to Cristina. Instead, Craig attempts to obfuscate the issues by arguing that he was "unaware" of his obligations (despite signing the MSA and Decree of Divorce) therefore he is entitled to a modification.

a. C r i s t i n a D i d N o t M i s a p p r o p r i a t e F u n d s E n t i t l i n g C r a i g t o a n O f f s e t

Craig claims that it was not until *after* the Decree of Divorce was entered that he "learned" of Cristina's alleged violation of the JPI. The joint accounts were constantly discussed and at issue in this matter.² In fact, Craig was a joint-owner of the accounts, had access to the accounts, and was even provided with statements during discovery. The fact that, after months of discovery and the disclosure of thousands of bank statements, Craig is only *now* claiming that Cristina somehow managed to "misappropriate" hundreds of thousands of dollars without his knowledge, is completely disingenuous and an outright lie.

¹ Cristina denies and will prove that she never misappropriated these funds.

² In fact, as this Court will recall, Cristina's Motion for an Order to Show Cause was granted on February 22, 2019 for *Craig's* misappropriation of funds.

Throughout the entirety of this divorce litigation, Cristina complied with her ongoing obligation to provide updated discovery, which included bank statements for the parties' accounts. Based on Craig's own exhibits, Cristina's alleged "misappropriation" of community funds dated back to 2017.³ At no point in time prior to settlement did Craig raise this alleged violation of the JPI. In fact, on July 15, 2019, approximately *two weeks* before the Decree of Divorce was entered, Cristina provided Craig with updated bank statements in accordance with her ongoing discovery obligations.⁴ Again, Craig failed to raise this issue of a violation of the JPI. This is because Craig's allegations are simply not true.

Prior to the divorce being finalized, the parties engaged a CPA to conduct a thorough forensic accounting of the parties' accounts. Again, if Cristina had been taking money from the accounts that she was not entitled to, it would have been documented and taken into account during the settlement discussions. What the accounting *did* find is that funds had to be regularly transferred from their savings account to their business account to cover administrative expenses and payroll. After these transfers were made, *Craig* would then go and withdraw cash from the business account for his personal use.

Finally, the Meadows and Bank of Nevada accounts were discussed extensively during Cristina's deposition.⁵ Part of this discussion was the fact that Craig had spent tens of thousands of dollars in excess of what this Court ordered on February 22, 2019.^{6 7} Again, despite having full access to the bank accounts and being provided with every single statement via discovery,

³ It should be noted that the "evidence" provided by Craig fails to identify *who* withdrew money from the bank accounts and simply shows a "withdrawal".

⁴ The Twenty-Fourth Supplemental Disclosure is attached hereto as "**Exh b i 1**".

⁵ It should also be noted that during Craig's deposition, he specifically stated that he believed neither party had violated the JPI.

⁶ This "spending" included Craig writing checks payable to his girlfriend, a check to an unknown woman, purchasing a boat, etc.

⁷ Obviously, should this particular issue move forward to an evidentiary hearing, discovery will be required to obtain the deposition transcripts and/or additional depositions will be needed to determine what exactly was discussed.

1 there was absolutely no discussion or allegation that Cristina had “misappropriated” funds. The
2 reason for this is clear; it simply did not happen.

3 **b. Craig is obligated to Pay the Infiniti Payment**

4 Craig argues that he had “no idea that he was required to pay Cristina’s car payment” and
5 that Cristina has more than enough funds to pay for the vehicle. Again, this is completely belied
6 by the fact that Craig signed the MSA, which clearly states that he reviewed the document prior
7 to initialing every single page and signing the document. Now, four months later, Craig is
8 “playing dumb” and trying to evade yet another obligation.

9 Craig also states that because Cristina has substantial assets, hundreds of thousands of
10 dollars in cash, and is employed as a full time attorney, this somehow absolves him of his
11 obligations under the MSA *that he agreed to*. Furthermore, Craig’s assertions regarding
12 Cristina’s assets is simply untrue – the fact that Cristina had to file the underlying motion in
13 order to get Craig to pay the equalization payment is proof of this. Even if this were true, it does
14 not change the fact that the car payment was specifically negotiated into the MSA, which was
15 agreed to by both parties.

16 The bottom line is that Craig was obligated to pay for Infiniti and he refused to do so.
17 Cristina could not afford to make the payments on the vehicle and as a result, had to return the
18 leased vehicle to Infiniti. As such, Craig should be sanctioned in the amount that would have
19 been due and owing on the remainder of the lease period.

20 **c. Medical Bills for the Children**

21 Cristina has been sending the bills to Craig at the only fax number he has provided. That
22 said, Craig claims that the medical expenses have been “paid in full” as evidenced by an email
23 attached to his motion. This “evidence” is an email simply stating that the bills have been paid.
24 No proof of payment was provided and Cristina has not received any sort of reimbursement for
25 the bills she had to personally cover. Unless and until Craig can provide *actual proof* that these
26 bills have been paid and/or Cristina has been reimbursed for the out of pocket expenses, Craig
27 should be held in contempt for failure to abide by Court orders to do so.

d . Dental and Vision Insurance for the Children

Cristina appreciates the fact that Craig is willing to pay for the dental and vision coverage and requests that he be ordered to pay for the coverage as of the date coverage began and for coverage moving forward, regardless of the coverage costs.⁸

C . O P P O S I T I O N T O C R A I G ' S C O U N T E R M O T I O N

1 . Cristina did not violate the Joint Preliminary Injunction

As mentioned above, Craig's allegation that Cristina misappropriated hundreds of thousands of dollars is not supported by the evidence and is, in fact, completely untrue. Again, the parties submitted to a thorough forensic accounting of *all* accounts prior to settling this matter. The final accounting showed that withdrawals from the joint accounts went directly into the business operating accounts. Additionally, the forensic accountant noted that there was no way to determine *who* made these withdrawals. During the pendency of their divorce, both parties continued to transfer funds between accounts in order to ensure the business account did not go negative and had enough funds in order to make payroll. The accounting, as well as proof provided by Cristina, showed that Craig routinely took more than the \$10,000 he was allotted by the Court and was responsible for the cash withdrawals from the business operating account.

Finally, the idea that both Craig and his counsel failed to notice hundreds of thousands of dollars missing from the bank accounts despite having a forensic accounting and business valuation completed, is completely preposterous. The movement of money from the parties' accounts was well documented given that both parties had access to the accounts and were provided with the final accounting and valuations.

Craig has provided absolutely no proof that Cristina withdrew these funds let alone that these withdrawals were violations of the JPI. Furthermore, had Cristina violated the JPI, Craig should have brought it to the Court's attention at the time the alleged violations occurred, not *four* months after the Decree is entered and in response to Cristina's request for an Order to

⁸ As of right now, the monthly cost for dental and vision coverage through Cristina's is \$51.54/month, however the premium is subject to change each year, so Cristina would ask that Craig be responsible for the coverage regardless of the monthly premium cost, so long as the coverage remains the same.

1 Show Cause. Craig's motion reeks of vengeance, spite, and was filed for one purpose: to further
2 harm Cristina financially and emotionally.

3 **2. There is No Basis to Modify the Marital Settlement Agreement**

4 Craig argues that, based on Cristina's misappropriation of funds (which is an absolute
5 lie), the Marital Settlement Agreement should be modified to reduce the property equalization
6 payment.

7 **a. NRCP 60(b)(3) Does Not Apply in This Situation**

8 There is no evidence or basis to apply NRCP 60(b)(3) in this particular situation. Craig
9 specifically claims that Cristina engaged in fraudulent activity, therefore, he is entitled to relief in
10 the form of a revised MSA. As set forth below, this is simply not the case and Craig's requested
11 relief should be denied.

12 Craig argues, without any evidence, that Cristina engaged in fraudulent acts by
13 withdrawing funds from the bank and that, at the time the parties signed the MSA, Craig
14 "believed he had over \$200,000 in the Meadows Money Market Account and "substantial funds
15 in the Bank of Nevada Money Market Account". This is completely belied by the MSA wherein
16 the following was specifically stated on page 4:

17 "As of June, 20, 2019, the parties had the following funds in personal savings
18 accounts that are community property:

- 19 • Two savings accounts at Citibank in the name of Cristina Hinds, account
20 #2435 and \$6145, with a total balance of \$75,190.08;
- 21 • Joint Savings account at Meadows Bank, account #0032 with a balance of
22 \$86,039.61; and
- 23 • Joint Savings account at Bank of Nevada, account #7006, with a balance
24 of \$29,087.70

25 The *parties have agreed* to equally divide the balances in these accounts as of
26 June 20, 2019, which together total \$190,317.39, one half equals \$95,158.69. To
27 accomplish this division, Cristina shall be awarded the following: \$75,190.08
28 balance in the Citibank accounts and \$19,968.61 from the Meadows Bank
account. Craig will receive \$66,071 from the Meadows Bank and \$29,087.70 in
Bank of Nevada account #7006." (Emphasis added).⁹

⁹ See relevant parts of pages 3-9 of the MSA attached hereto as **Exhibit 2**.

The MSA further stated on page 6 that \$66,071 of the above award to Craig was to be used to satisfy certain obligations of Craig to Cristina set forth in Section 9 of the MSA leaving him with \$36,871 in the Meadows Bank account. Further down on page 8 of the MSA states, again, that the *parties agree* to a property equalization payment with the terms and schedule of payments set forth in detail.

Again, for Craig to claim that he believed he was receiving “200,000 in the Meadows Money Market Account and “substantial funds in the Bank of Nevada Money Market Account” is a blatant lie and completely belied by the MSA that was initialed and signed by Craig.

3. In the Event This Matter is Set for an Evidentiary Hearing, Craig Should Be Obligated to Immediately Pay the \$291,923.27

In the event the Court is inclined to explore Craig’s allegations further by opening discovery and/or setting an evidentiary hearing on the matter, Cristina would ask that Craig be obligated to *immediately* pay the \$291,923.27 that he does not dispute is owed. As of the filing of this Reply and Opposition, Craig has failed to pay *any* of his outstanding obligations and is even currently delinquent in his child support payments. Cristina elected to forego monthly alimony payments and allowed Craig to keep a substantial amount of the material assets in exchange for this property equalization payment; the fact that she has yet to be paid is causing her irreparable harm and should be remedied as soon as possible.

II. CONCLUSION

It is clear that Craig entered into this divorce in bad faith and never intended on abiding by the MSA and Decree of Divorce. As such, the Court’s intervention is needed to enforce the agreed upon terms and ensure that Craig follows through on his obligations. Based on the foregoing, Cristina respectfully requests that the Court grant the following relief:

1. Issue an Order to Show Cause Why Craig Should Not be Held in Contempt for Violation of this Court’s Orders as enumerated in the original motion;
2. That Craig be Ordered to Pay Cristina’s Attorney’s Fees and Costs
3. That Craig take nothing by way of his Countermotion;

1 4. That Craig be ordered to immediately pay, at the very least, \$291,923.27 to
2 Cristina; and

3 5. For such other relief as the Court deems just and proper on the premises.
4

5 Dated this 27th day of November, 2019.
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MARQUIS AURBACH COFFING

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing REPLY IN SUPPORT OF PLAINTIFFS
MOTION FOR ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE
HELD IN CONTEMPT FOR VIOLATION OF THIS COURT'S ORDERS AND FOR
ATTORNEY FEES AND COSTS; OPPOSITION TO DEFENDANT'S
COUNTERMOTION TO MODIFY DECREE OF DIVORCE AND MARITAL
SETTLEMENT AGREEMENT WITH REGARD TO EQUALIZATION PAYMENT TO
CRISTINA HINDS DUE TO CRISTINA HINDS' MISAPPROPRIATION OF
COMMUNITY FUNDS; FOR SANCTIONS; AND FOR ATTORNEYS FEES AND
OTHER RELATED RELIEF was submitted electronically for filing and/or service with the
 Eighth Judicial District Court on the 27th day of November, 2019. Electronic service of the
 foregoing document shall be made in accordance with the E-Service List as follows:¹⁰

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¹⁰ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CHRISTINA HINDS,
Plaintiffs,
vs.
CRAIG A. MUELLER,
Defendants.

CASE NO.: D-18-571065-D
DEPT. NO.: C

DATE OF HEARING: April 1, 2021
TIME OF HEARING: 1:00 p.m.

DEFENDANT'S POST-TRIAL MEMORANDUM

I.

STATEMENT OF UNDISPUTED FACTS

The facts relevant to this matter are clear, and mostly undisputed, demonstrating that Craig is entitled to judgment as a matter of law because: (1) community property was omitted from the decree due to fraud or mistake; (2) the MSA was procured through fraud in the inducement negating the existence of a contract; and (3) Ms. Hinds' initial breach of the MSA excused, or otherwise prevented Craig's performance under the MSA.

A. Community Property Was Omitted From The Divorce Decree Due To Fraud Or Mistake.

The parties initiated divorce proceedings in 2018. In late 2018, while the parties divorce was proceeding in this Court, Ms. Hinds put in an insurance claim for a ring Craig bought her as a gift during the marriage. The policy was paid for with community property personal checking account as reflected in her February 13, 2019 financial disclosure submitted to this Court. *See* Hinds Financial Discl., 2/13/2019, Def. Trial

1 Exhibit B, at MUELLER337. All witnesses testified and acknowledged at the evidentiary
2 hearing that the \$49,000.00 settlement was deposited into Ms. Hinds' CitiBank account
3 in January 2019.

4 On January 1, 2019, the parties joint Meadows Bank Account had a balance of
5 \$215,782.71. **See** Meadows Bank Account Documents, Def. Trial Exhibit C, at
6 MUELLER138. On January 9, 2019, Plaintiff removed \$107,891.00 from the Meadows
7 **Bank account in violation of this Court's Joint Preliminary Injunction ("JPI"), which is**
8 almost exactly fifty percent of the balance in the account on January 1, 2019. **Id.** at
9 MUELLER143.

11 On January 9, 2019, Ms. Hinds opened three separate bank accounts with Citi
12 **Bank, account numbers ending in: (1) 2427 ("Citi Checking"); (2) 2435 ("Citi Savings**
13 **1"); and (3) 6154 ("Citi Savings 2") (collectively the "Citi Bank Accounts"). That day, Ms.**
14 **Hinds deposited \$49,000.00 at the bank via the "Teller" in the Citi Checking account,**
15 **\$107,891.00 at the bank via the "Teller" in the Citi Savings 1 account, and \$2,002.11 at**
16 **the bank via the "Teller" in the Citi Savings 2 account. See** Citi Bank Accounts
17 Statements, Def. Trial Exhibit D, at CH000200-202. It appears from the record that the
18 \$49,000.00 deposited into Ms. Hinds Bank of Nevada Account #2159 were removed
19 and deposited into the CitiBank Account #2427. **Id.**

21 The total amount of money in the CitiBank Accounts on January 31, 2019 was
22 \$159,033.94 in community property money subject to the JPI. **Id.** Between January 31,
23 2019 and May 31, 2019, Ms. Hinds expended \$83,842.96 in community property funds
24 **for her own use in violation of this Court's orders. Id.** at CH000204-218. Ms. Hinds took
25 an additional \$15,000.00 and \$7,000.00 from the Meadows Bank Account on May 17,
26 2019, and June 3, 2019 respectively, which does not appear to have been deposited in
27 any of the previously disclosed accounts. **See** Ex. C, at MUELLER144-145. As such, the
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1 total amount of missing funds from the community property from the Meadows Bank
2 Account on June 20, 2019 was \$105,842.96.

3 On June 20, 2019, the parties appeared for what was originally intended to be a
4 deposition of Ms. Hinds, but transcript is clear that the discussion on the record was
5 intended to be the binding settlement of the parties. Judge **Throne, who was Ms. Hinds'**
6 **attorney at the time, asserted on the record that "Under EDCR 7.50, we're going to make**
7 **this a binding global settlement agreement for both of you."** See Settlement Transc., Def.
8 Trial Exhibit A, at 29:17-19. The terms of the MSA were entered into the record on June
9 20, 2019. *Id.* The effective date of the settlement, especially with regards to the disclosure
10 of property, was enshrined in the MSA itself:

12 Each party acknowledges that he or she has made full and fair disclosure of
13 the property and interests in property owned or believed to be owned by the
14 other either directly or indirectly prior to the date of their resolution on June
15 20, 2019. The parties acknowledge that they are aware that each party would
16 have been able to continue to utilize methods of discovery to investigate each
17 other's property interests as part of the prosecution of their divorce action.
18 Both parties further acknowledge that they have performed all discovery
19 they deem necessary, and that they have instructed their counsel to forego
20 additional discovery. The parties waive any further disclosure of property,
21 assets or income from the other.

22 See MSA, Def. Trial Exhibit K, at ¶4 (emphasis added).

23 At the outset of the settlement discussion on June 20, 2019, the resolution date,
24 Craig objected on the record to the settlement because Ms. Hinds had taken over \$140,000
25 in community property funds from the parties' accounts:

26 MR. MUELLER: I do want to make the deal. *She's already taken a hundred*
27 *and forty thousand –*

28 MR. SMITH: No. She put that money back. That's -- that money is already in
the account.

MR. MUELLER: Okay. All right. Then, well, I withdraw my objection.

MS. THRONE: Okay. So, they're going to -- we believe it's about a hundred
and sixty thousand in the three savings accounts. -- equally divide that.

See **Ex. A**, at 4:1-13 (emphasis added).

1 While assurances were made by Ms. Hinds and her prior counsel at the
2 settlement meeting that the \$140,000 Ms. Hinds took from the community property
3 accounts was returned, or was otherwise being included in the settlement, the missing
4 funds were never actually returned and only a fraction of the funds were ultimately
5 included in the MSA. **Ms. Hinds' misrepresentations of fact to Defendant regarding the**
6 **returning of the funds induced Craig into agreeing to the MSA by fraud or mistake, as**
7 **Craig was under the belief that all funds had been returned to the account.**

8
9 While it is disputed that the nearly \$140,000 that Ms. Hinds took from the
10 Meadows bank account in 2019 was the same \$140,000 that Craig complained of at the
11 settlement meeting, it was undisputed that at the time of the meeting, almost \$140,000
12 was missing from the Meadows bank account, and Ms. Hinds made assurances that all
13 money had been returned. A significant portion of those funds were not included in the
14 final settlement amounts. Ms. Hinds also failed to disclose the CitiBank statements
15 between January 2019 and May 2019 in advance of the June 20, 2019 settlement
16 discussions or after. Thus, the statements only Ms. Hinds had access to, which showed
17 the expenditure of the \$83,842.96 in community property funds, were not disclosed in
18 **advance of settlement and Craig was relying on Ms. Hinds' misrepresentation that the**
19 **money had been returned to the accounts.**

20
21 The undisputable facts are, therefore, as follows: (1) between January 9, 2019, and
22 June 3, 2019 Ms. Hinds removed \$129,841.00 from the Meadows Bank account; (2) Ms.
23 Hinds deposited \$107,841.00 of the money taken from the Meadows Bank account into
24 her CitiBank Account #2435; (3) Ms. Hinds deposited \$49,000.00 in community property
25 insurance settlement proceeds into her CitiBank Account #2427; (4) Ms. Hinds deposited
26 \$2002.05 of community funds into her CitiBank Account #6154; (5) Ms. Hinds expended
27 \$83,842.96 in community property funds from the CitiBank Accounts between January
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1 2019 and May 2019; (6) it is unknown what Ms. Hinds did with the remaining \$22,000.00
2 of the funds taken from the Meadows account; (7) the parties held a binding settlement
3 meeting on **June 20, 2019, where Craig objected to Ms. Hinds' taking approximately**
4 **\$140,000.00** in community property funds; (8) Ms. Hinds and her attorneys represented
5 that the \$140,000.00 in missing community property funds had been returned using 2015
6 bank statements; (9) Ms. Hinds failed to apprise Craig that she had taken an additional
7 \$129,891.00 from the Meadows Bank account between January and June 20, 2019; (10)
8 the 2015 statement caused Craig and his attorney to mistakenly believe all funds had been
9 returned when they had not; (11) between June 20, 2019 and July 15, 2019, Ms. Hinds took
10 the remaining 107,891 from the Meadows Bank account and closed the account; (12) Ms.
11 Hinds then signed the MSA promising that Craig would receive \$36,871.00 from the
12 Meadows Bank account that did not exist at the time the MSA was signed. Craig never
13 received that money.
14

15 At the evidentiary hearing in this matter on April 1, 2021, both Ms. Hinds and her
16 prior attorney, now family court Judge Dawn Thrown, confirmed the facts alleged above.
17 First, Defense counsel reviewed the settlement transcript and Judge Thrown testified that
18 Craig complained at the settlement of \$140,000.00 of missing money from the Meadows
19 bank account. **See** Hearing Video, 4/1/2021, 3:27:16-3:29:05. Judge Thrown was clear to
20 insist that Craig only complained about that specific \$140,000 of missing money, not the
21 \$129,891.00 that Ms. Hinds had taken from the Meadows Bank account between January
22 and June 20, 2019. **See Ex. 3**, at Meadows-000032-49. To assure Craig that all money had
23 been returned to the Meadows Bank account, Ms. Hinds presented statements
24 demonstrating that she had taken and subsequently returned \$140,000.00 to the
25 Meadows Bank account in 2015, while failing to disclose that she had taken the additional
26 \$129,891.00 from the account in 2019. **See** Hearing Video, 4/1/2021, at 3:28:01-3:29:38.
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1 Judge Throne acknowledged the undisputed evidence that Ms. Hinds withdrew all
2 the funds from the Meadows Bank account between January and July 15, 2019, and closed
3 the account before the MSA was signed by either party. **See** Hearing Video, 4/1/2021, at
4 3:39:00-3:40:57. Judge Throne clearly testified that Ms. Hinds removing all the funds
5 from the Meadows Bank account before Ms. Hinds or Craig had signed the MSA was a
6 material breach of the MSA. **Id.** at 3:40:55-3:42:35. As Ms. Hinds has already conceded at
7 the hearing on May 28, 2020, and in her Pre-Trial Memorandum in this matter, “Cristina
8 conceded that Craig was owed an offset of \$36,871” because she took the money from the
9 Meadows Bank account before the parties signed the MSA. **See** Pltf Pre-Trial Memo, at
10 10:13-15.

12 Judge Throne also acknowledged during the evidentiary hearing that Ms. Hinds
13 had expended \$83,842.96 in community property funds from the CitiBank accounts
14 between January and July 15, 2021, and that \$22,000.00 had been taken from the
15 Meadows Bank account and was never accounted for in the MSA or the decree. In total,
16 Ms. Hinds expended or otherwise took \$105,842.96 of community property that was
17 omitted from the decree. Ms. Hinds took an additional \$36,871.00 of Craig’s sole property
18 in the Meadows Bank Account before the MSA was signed.

20 **Ms. Hinds’ only argument in this case** for why Craig should not be able to seek
21 adjudication of that missing community property was that after the MSA was incorporated
22 into the divorce decree, somehow that makes disputes over missing community property
23 **not actionable. However, NRS 125.150(3) is remarkably clear that** “A party may file a
24 postjudgment motion in any action for divorce, annulment or separate maintenance to
25 obtain adjudication of any community property or liability omitted from the decree or
26 judgment as the result of fraud or mistake. A motion pursuant to this subsection must be
27 filed within 3 years after the discovery by the aggrieved party of the facts constituting the
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1 fraud or mistake.” Nev. Rev. Stat. § 125.150. Craig filed such a motion, and the Court must
2 address the evidence presented regarding the missing funds and issue a decision on the
3 merits.

4 **B. Craig Was Fraudulently Induced Into Signing The MSA That Included**
5 **Funds That Were Supposed To Be Craig’s Sole Property From An**
6 **Account That Did Not Exist At The Time The Parties Signed The MSA.**

7 After the June 20, 2019 settlement conference, Ms. Hinds continued to liquidate
8 funds from the Meadows Bank account. On June 27, 2019, Ms. Hinds removed \$1,500.00
9 from the Meadows account. **See Ex. 3**, at Mueller146. On July 15, 2019, Ms. Hinds took
10 \$1,000.00 from the Meadows account. **Id.** at Mueller147. On July 16, 2019, Ms. Hinds took
11 the remaining \$83,662.45 from the Meadows account, and closed the account. **Id.** at
12 Mueller148.

13 On July 28, 2019, Ms. Hinds executed the MSA between the parties by signing the
14 agreement before a notary public. **See Ex. 6**, at MUELLER597. On July 29, 2019, Craig
15 executed the MSA between the parties by signing the agreement before a notary public. **Id.**
16 at MUELLER597. The MSA expressly stated that as of the June 20, 2019 settlement
17 conference the “Joint savings account at Meadows Bank, account #0032, with a balance of
18 **\$86,039.61.” Id.** at MUELLER582. The MSA expressly stated that Craig was to receive, as
19 his sole property, after **certain obligations to Christina were paid, the “\$36,871 from**
20 **Meadows Bank.” Id.** at MUELLER587.

21 On July 28, 2019, when Ms. Hinds signed the MSA, and July 29, 2019 when Craig
22 signed the MSA, the Meadows Bank account that was supposed to contain \$36,871.00 of
23 **Craig’s sole property did not exist because Ms. Hinds liquidated and closed the account on**
24 **July 16, 2019. See Ex. C**, at Mueller148. This matter was undisputed before the evidentiary
25 hearing was even held, and was not disputed by Ms. Hinds at the evidentiary hearing.
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C. All Parties Understood That Craig Was Going To Pay The Outstanding Balance On The \$450,000.00 Equalization Payment To Ms. Hinds By Obtaining A Loan The Proceeds Of Which Would Be Used To Pay Off The Judgment.

The parties discussed the MSA on the record at the settlement meeting on June 20, 2019 for the purpose of making the hearing a binding settlement under EDCR 7.50, and Ms. Hinds' prior attorney expressly noted that:

MS. THRONE: The Pennsylvania house that's in Glen Rock, Pennsylvania as his -- is free and clear. That's his sole and separate property, also. We agreed that there will be an equalization payment of \$450,000 and that will be paid in cash within sixty days.

MR. SMITH: Well, let's -- *let's say within sixty or -- or ninety days prior -- or prior, depending on when the loan closes.*

MS. THRONE: Okay. Ninety days. But Craig will have a commitment letter on or before the date the pretrial memorandums are due in this case. Otherwise, we're going to proceed to trial on --

MR. SMITH: We'll proceed to trial on the financial issues.

Id. at 6 (emphasis added).

Both parties understood and agreed that the balance of the \$450,000.00 equalization payment due to Ms. Hinds was going to be paid within 90 days of the entry of the MSA from loan proceeds that Craig would obtain after its entry. Indeed, Judge Throne testified that the parties intended the \$400,000.00 equalization payment to be paid for by the loan. *See* Hearing Video, 4/1/2021, at 3:29:38-3:30:11. Radford Smith also testified that the parties understood that the equalization payment would be paid for by a loan. It is, therefore, undisputed that the parties agreed that Craig's equalization payment was to be paid out of a loan obtained after the MSA was entered by the Court.

II.

ARGUMENT

A. Standard Of Review.

"An agreement to settle pending divorce litigation constitutes a contract and is governed by the general principles of contract law." *Holyoak v. Holyoak*, 132 Nev. 980

(2016) *citing Grisham, v. Grisham*, 128 Nev. 679, 289 P.3d 230, 234 (2012). When parties divorce, during the pendency of the divorce proceeding “parties are permitted to contract in any lawful manner.” *Id. citing Rivero v. Rivero*, 125 Nev. 410, 429, 216 P.3d 213, 226 (2009). Indeed, it has long been the law of Nevada that “[w]hen parties to pending litigation enter into a settlement, *they enter into a contract.*” *Mack v. Estate of Mack*, 125 Nev. 80, 95, 206 P.3d 98, 108 (2009). Settlement contracts are subject to general principles of contract law. *Id.* “Parties are free to contract, and the courts will enforce their contracts if they are not unconscionable, illegal, or in violation of public policy.” *Rivero*, 125 Nev. at 429. To be considered an enforceable contract there must be “an offer and acceptance, meeting of the minds, and consideration.” *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005).

The Nevada Supreme Court has consistently held that, in addition to complying with procedural requirements for entering into settlement agreements with the court, “a stipulated settlement agreement requires mutual assent, see *Lehrer McGovern Bovis v. Bullock Insulation*, 124 Nev. 1102, 1118, 197 P.3d 1032, 1042 (2008), or a ‘meeting of the minds,’ *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005), on ‘the contract’s essential terms.’” *Grisham v. Grisham*, 128 Nev. 679, 685, 289 P.3d 230, 234-35 (2012) quoting *Certified Fire Prot. v. Precision Constr.*, 128 Nev. 371, 378, 283 P.3d 250, 255 (2012). “A valid contract cannot exist when material terms are lacking or are insufficiently certain and definite’ for a court ‘to ascertain what is required of the respective parties’ and to ‘compel compliance’ if necessary.” *Id.* That is, the contract terms must be clear and definite, and be free of mistake or fraud, so that the parties can be said to have had a meeting of the minds, and an understanding of the benefit of their bargain. *Waltz v. Waltz*, 110 Nev. 605, 609, 877 P.2d 501, 503 (1994).

“Fraud in the inducement renders the contract voidable.” *Havas v. Alger*, 85 Nev.

627, 631, 461 P.2d 857, 859-60 (1969) *citing Bishop v. Stewart*, 13 Nev. 25, 42 (1878);
Friendly Irishman v. Ronnow, 74 Nev. 316, 330 P.2d 497 (1958); *Lovato v. Catron*, 148 P.
 490 (N.M. 1915); *C.I.T. Corp. v. Panac*, 154 P.2d 710 (Cal. 1944). “The person defrauded
 may rescind,...or he may, if the contract is still executory...refuse to perform and raise the
 defense of fraud when sued.” *Id.* The Court has the discretion to determine whether
 rescission shall be granted. *Id. citing.* Canepa v. Durham, 62 Nev. 417, 153 P.2d 899 (1944).
 “Fraud is never presumed; it must be clearly and satisfactorily proved.” *Id. citing Warren*
v. De Long, 57 Nev. 131, 146, 59 P.2d 1165 (1936); *Ward v. Scheeline Banking and Trust*
Co., supra, 54 Nev. at 451; *Nevada Mining and Exploration Co. v. Rae*, 47 Nev. 173, 182,
 218 P. 89 (1923). Credible evidence of fraud in the inducement can invalidate a MSA.
Doucettperry v. Doucettperry, 2020 Nev. App. Unpub. LEXIS 849, *10, 475 P.3d 63, 2020
 WL 6445845. Nevada Rule of Civil Procedure 60 also provides grounds for relief from
 judgment, and expressly includes “fraud (whether previously called intrinsic or extrinsic),
 misrepresentation, or misconduct by an opposing party.” *See* Nev. R. Civ. P. 60. Indeed,
 fraud of an adverse party is grounds to invalidate a judgment. *NC-DSH, Inc. v. Garner*, 125
 Nev. 647, 652, 218 P.3d 853, 857 (2009).

The Nevada Supreme Court “views a contract as ‘ambiguous if it is reasonably
 susceptible to more than one interpretation.” *Shelton v. Shelton*, 119 Nev. 492, 497, 78
 P.3d 507, 510 (2003) (internal quotation and footnote omitted). “When interpreting an
 ambiguous contract, this court looks beyond the express terms and analyzes the
 circumstances surrounding the contract to determine the true mutual intentions of both
 parties....Finally, this court has recognized that an interpretation that ‘results in a fair and
 reasonable contract is preferable to one that results in a harsh and unreasonable contract.”
Holyoak, 132 Nev. at 980.

In the context of marriage and divorce, much of what is permissible in regards to

1 contracts between married parties is prescribed by statute. NRS 123.080(1) permits
2 agreements between a husband and wife regarding property and the support of either of
3 them or their children during a separation, or divorce. *See* Nev. Rev. Stat. § 123.080(1); *see*
4 *also* Nev. Rev. Stat. § 125.150. NRS 123.080(2) provides that "[t]he mutual consent of the
5 parties is a sufficient consideration for such an agreement as is mentioned in subsection 1."
6 *See* Nev. Rev. Stat. § 123.080(2).

7
8 In *Rosenthal v. Rosenthal*, the Nevada Supreme Court found that a college payment
9 provision found in a Marriage Settlement Agreement ("MSA"), which was later approved
10 and incorporated into a divorce decree, was valid and enforceable. 2016 Nev. App. Unpub.
11 LEXIS 298, *5-9, 132 Nev. 1024, 2016 WL 4497225. According to the *Rosenthal* Court,
12 "[t]he record contains substantial evidence of the parties' mutual consent to satisfy the
13 requirement of consideration under NRS 123.080." *Id.* The Court considered several
14 factors including that: (1) "Both parties signed the MSA and abided by its terms without
15 issue for approximately ten years;" (2) "both parties requested the district court to ratify,
16 approve, and confirm the MSA in their complaint and answer for divorce;" and (3) "*in the*
17 *absence of a claim of fraud or mistake which would undermine the meeting of the minds*
18 *element of contract formation*, there is sufficient evidence of mutual consent to support a
19 finding of consideration under NRS 123.080(2)." *Id.* (emphasis added). For those reasons,
20 the Court found the provision enforceable. *Id. citing Rush v. Rush*, 85 Nev. 623, 460 P.2d
21 844 (1969) (affirming district court's decision that wife's promise to pay her husband
22 alimony in their property settlement agreement was supported by adequate consideration
23 under NRS 123.080).

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25
26 **B. Craig Is Not Barred From Seeking Adjudication Of Property Omitted**
27 **From The Decree Or Judgment By Reason Of Fraud Or Mistake.**

28 Ms. Hinds' primary argument in this matter is that even if she omitted significant

1 amounts of community property funds from the final accounting in the MSA, after the
2 agreement was signed and entered by the Court, Craig waived any right to challenge the
3 **community property award. Indeed, in Plaintiff's pre-trial memorandum they argued that**
4 **"Multiple provisions in the *Stipulated Decree* protected the terms of the parties'**
5 **bargained-for agreement," and that those terms result in a waiver of any ability to**
6 **challenge missing community property. See Plf's Pre-Trial Memo, at 15-17. Plaintiff argued**
7 **that these alleged waiver clauses are binding because "An agreement to settle pending**
8 **divorce litigation constitutes a contract and is governed by the general principles of**
9 **contract law. In the context of family law, parties are permitted to contract in any lawful**
10 **manner." *Id.* at 16:11-13.**

12 Defendant agrees that a MSA in a divorce proceeding is governed by general
13 contract principles, and that parties are permitted to contract in any lawful manner.
14 **However, as Plaintiff has clearly acknowledged, "A stipulation may be set aside upon a**
15 **showing that it was entered into through mistake, fraud, collusion, accident or some**
16 **ground of like nature." *Id. citing Citicorp Servs., Inc. v. Lee*, 99 Nev. 511, 513, 665 P.2d**
17 **265, 266-67 (1983). Additionally, when a MSA is merged into a divorce decree, certain**
18 **contract principles, like rescission, modification, or partial performance are not governed**
19 **by general contract principles, but rather, governed by Nevada's divorce and child custody**
20 **statutes.**

22 Indeed, a common feature of divorce in Nevada is that parties will typically request
23 that the Court adjudicate matters of property distribution and custody arraignments by
24 merging settlement contracts between the parties into the divorce decree. The Nevada
25 **Supreme Court has consistently held that "the terms of the parties' custody agreement will**
26 **control *except* when the parties move the court to modify the custody arrangement. In**
27 **custody modification cases, the court must use the terms and definitions provided under**
28

1 Nevada law.” *Rivero*, 125 Nev. at 429. “Parties are free to contract, and the courts will
2 enforce their contracts if they are not unconscionable, illegal, or in violation of public
3 policy.” *Id. citing D.R. Horton. Inc. v. Green*, 120 Nev. 549, 558, 96 P.3d 1159, 1165
4 (2004); *NAD, Inc. v. Dist. Ct.*, 115 Nev. 71, 77, 976 P.2d 994, 997 (1999) (stating “parties
5 are free to contract in any lawful matter”); *Miller v. A & R Joint Venture*, 97 Nev. 580, 582,
6 636 P.2d 277, 278 (1981) (discussing public policy as a limitation on enforceability of a
7 contract).

8
9 Divorcing parties are free to agree to property settlement agreements and child
10 custody arrangements “and those agreements are enforceable if they are not
11 unconscionable, illegal, or in violation of public policy.” *Id.* However, the issue of
12 modification of such agreements are governed by Nevada divorce statutes. *See* Nev. Rev.
13 Stat. § 125.510(2) (discussing modification of a joint physical custody order); *see also* Nev.
14 Rev. Stat. § 125.150; *Ellis*, 123 Nev. at 150, 161 P.3d at 242. Indeed, the Nevada Supreme
15 Court has consistently held that when the parties' agreement is “merged into the divorce
16 decree, to the extent that the district court purported to apply contract principles,
17 specifically, rescission, reformation, and partial performance” such application of
18 contract principles is clear error. *Vaile v. Porsboll*, 128 Nev. 27, 33 n.7, 268 P.3d 1272, 1276
19 (2012) *citing Day v. Day*, 80 Nev. 386, 389-90, 395 P.2d 321, 322-23 (1964) (concluding
20 that when a support agreement is merged into a divorce decree, the agreement loses its
21 character as an independent agreement, unless both the agreement and the decree direct
22 the agreement's survival).

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25 In *Dalaimo v. Dalaimo*, the Court noted that “our caselaw has long recognized the
26 enforceability of *nonmodifiable alimony agreements*, so long as the agreement is not
27 merged in the divorce decree, and the agreement and the decree declare that the
28 agreement is not merged in the decree.” 133 Nev. 999, 390 P.3d 166 (2017) *citing Renshaw*

1 *v. Renshaw*, 96 Nev. 541, 543, 611 P.2d 1070, 1071 (1980); *Rush v. Rush*, 82 Nev. 59, 60,
 2 410 P.2d 757, 757-58 (1966); *Day v. Day*, 80 Nev. 386, 389-90, 395 P.2d 321, 322-23
 3 (1964); *Ballin v. Ballin*, 78 Nev. 224, 231, 371 P.2d 32, 36 (1962). If there is a “clear and
 4 direct expression of merger in the **decree of divorce**,” the Court cannot analyze the issues of
 5 rescission, modification and partial performance under general contract principles, and
 6 must enforce Nevada statutory divorce law regarding those issues. *Id.* When interpreting
 7 the terms of the divorce decree, however, all other general contract principles apply,
 8 including whether there was a contract actually formed based on a meeting of the minds,
 9 **whether there was a material breach, etc.** When terms are “clear and unambiguous,”
 10 Nevada courts must enforce the terms. *See Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 570,
 11 170 P.3d 989, 992 (2007) (when reviewing a district court's judgment, this court applies
 12 the same rules of construction as for other written instruments).

14 The reason matters of modification and rescission in merged MSA and custody
 15 **agreements are not governed by general contract principles** is because “Our statutory
 16 scheme provides for orderly modification of child custody provisions in divorce decrees,
 17 NRS 125.140(2), and for the modification of child support provisions, *id.*, and alimony,
 18 NRS 125.150(5),” **and precludes** modification of property agreements except in cases of
 19 fraud and mistake. *Hildahl*, 95 Nev. at 662-63; *see also* Nev. Rev. Stat. § 125.150(3);
 20 *Peterson v. Peterson*, 463 P.3d 467 (Nev. 2020).

22 Further, “**in contract interpretation cases...**to discern and give effect to the parties'
 23 intended meaning...a court that is called upon to clarify the meaning of a disputed term in
 24 an agreement-based decree must consider the intent of the parties in entering into the
 25 **agreement.**” *Mizrachi v. Mizrachi*, 2016 Nev. App. LEXIS 306, *18-19, 132 Nev. 666, 677,
 26 385 P.3d 982, 989 *citing* *Murphy*, 64 Nev. at 453, 183 P.2d at 638; *Aseltine*, 57 Nev. at
 27 274, 62 P.2d at 702; *see also* *Harrison*, 132 Nev. at , 376 P.3d at 177 (refusing to construe
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1 a provision in a stipulated parenting agreement in a manner that would restrict the
2 meaning of the provision because to do so would "risk[] trampling the parties' intent" as
3 demonstrated by the language of the written agreement). When analyzing intent, "the
4 court may look to the record as a whole and the surrounding circumstances to interpret the
5 parties' intent." *Id.*

6 Here, it is important to note that the MSA does not include any express waiver
7 clause stating that Craig cannot file a post-judgment motion pursuant to NRS 125.150(3)
8 "to obtain adjudication of any community property or liability omitted from the decree or
9 judgment as **the result of fraud or mistake.**" *See* Nev. Rev. Stat. § 125.150(3). The closest
10 thing to such a clause is the "Warranty of Full Disclosure" provision that states that "The
11 parties waive any further disclosure of property, assets or income from the other." *See Ex.*
12 **6**, at MUELLER581. Absent an express waiver provision, this Court would need to
13 interpret ambiguities and intent of the contracting parties, which is precluded in this
14 matter because Craig's right to seek adjudication of community property omitted from the
15 decree is protected by statute. *See* Nev. Rev. Stat. § 125.150(3). As such, to the extent the
16 Court finds that the MSA is binding contract on Craig because there was an offer and
17 acceptance, meeting of the minds, and consideration, Nevada statutory law controls the
18 issue of community property excluded from the decree by fraud or mistake because the
19 decree itself expressly states that "the parties' MSA shall be merged and incorporated into
20 and become a part of the Decree of Divorce to the same extent as if the MSA, in its entirety,
21 were set forth in this Decree." *See* Divorce Decree, attached as **Exhibit 7**, at
22 MUELLER507.

23 Upon merger of MSA into the decree, the terms of the MSA become a judgment,
24 and this Court is bound by Nevada law when interpreting and applying the terms of that
25 judgment. *Hildahl*, 95 Nev. at 662-63; *see also* Nev. Rev. Stat. § 125.150(3); *Peterson*, 463

1 P.3d at 467. Because Nevada law gives a party to a divorce a statutory right to seek
2 adjudication of property omitted from the decree by fraud or mistake, any provision in the
3 MSA stating otherwise does not control. Here, there is no such provision.

4 **C. The MSA And Divorce Decree Are Unenforceable Because The MSA**
5 **Was Entered Into And Merged Into The Divorce Decree Through**
6 **Plaintiff's Fraud, Which Occurred Prior To Merger Into The Divorce**
7 **Decree.**

8 As Ms. Hinds has already acknowledged, where a court treats a MSA as contract
9 and applies general contract principles, such agreement “may be set aside upon a showing
10 that it was entered into through mistake, fraud, collusion, accident or some ground of like
11 nature.” *See Plf's Pre-Trial Memo*, at 16:11-13 *citing Lee*, 99 Nev. at 513. Here, the MSA
12 states that Craig was to receive \$29,087.70 from the Bank of Nevada account, and
13 \$36,871.00 from the Meadows Bank account. *See Ex. 6*, at MUELLER584-587. It is
14 undisputed that Ms. Hinds had already taken, and never returned the \$36,871.00 from the
15 Meadows Bank account prior to the parties signing the agreement, and closed the account.
16 That is, Ms. Hinds promised that Craig would receive \$36,871.00 from the Meadows Bank
17 account when she signed the MSA, despite knowing at the time she signed the agreement
18 that the account did not exist, and she had taken all the money. Ms. Hinds own attorney
19 testified at the evidentiary hearing that this was a material breach of the MSA. *See Hearing*
20 *Video*, 4/1/2021, at 3:39:00-3:42:35.

21 Further complicating this matter is the fact that this Court is barred from excusing
22 Ms. Hinds' performance by both statute and precedent. *See Lee*, 99 Nev. at 513; Nev. Rev.
23 Stat. § 125.150(7). Indeed, “If the court adjudicates the property rights of the parties, or an
24 agreement by the parties settling their property rights has been approved by the court,
25 whether or not the court has retained jurisdiction to modify them, the adjudication of
26 property rights, and the agreements settling property rights, *may nevertheless at any time*
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1 *thereafter be modified by the court upon written stipulation signed and acknowledged by*
2 *the parties to the action, and in accordance with the terms thereof.” See Nev. Rev. Stat. §*
3 *125.150(7) (emphasis added). This Court has no authority to enter an order modifying the*
4 *MSA and Divorce Decree to grant Craig’s sole property from the Meadows Bank Account*
5 *to Ms. Hinds in order to excuse Ms. Hinds’ theft, and fraud in taking the money from the*
6 *account before the MSA was entered into. Doing so requires a stipulation of the parties,*
7 *and Craig is not inclined to enter into any such stipulation unless modification of his*
8 *equalization payment is also stipulated to, considering the precipitating breach has*
9 *rendered unable to perform under the agreement.*

11 **D. Plaintiff’s Precipitating Material Breach Of The MSA Excused**
12 **Defendant’s Performance.**

13 “When parties exchange promises to perform, one party’s material breach of its
14 promise discharges the non-breaching party’s duty to perform.” *Cain v. Price*, 415 P.3d 25,
15 29 (Nev. 2018) *citing* Restatement (Second) of Contracts § 237 (Am. Law Inst. 1981). That
16 is, the breaching party’s “failure of performance” discharges the beneficiary’s right to
17 enforce the contract.” *Id.* “Moreover, a material breach of contract also ‘gives rise to a claim
18 for damages.’” *Id.*

19 In *Cain*, there was a “Settlement Agreement,” which “was an exchange of one
20 promise to perform for another promise to perform.” *Id.* The defendant promised to pay
21 the plaintiff “\$20,000,000 in exchange for the Cains’ promise to release C4’s officers from
22 liability for C4’s conduct.” *Id.* The plaintiff was were bound by that promise until the
23 defendant “materially breached the contract 90 days after February 25, 2010, the date on
24 which C4’s \$20,000,000 was due. At that point, the Cains were released from their
25 promise not to sue C4’s officers.” *Id.*

26 In determining whether a failure to render or to offer performance is material, the
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Restatement Second of Contracts states that following circumstances are significant:

- (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected;
- (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived;
- (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture;
- (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances;
- (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.

See Restat 2d of Contracts, § 241.

“The Restatement (Second) of Contracts is also a helpful resource because Nevada courts have frequently turned to the Restatement for guidance.” *Irish v. Ghadyan (In re Abulyan)*, No. NV-18-1219-KuLB, 2019 Bankr. LEXIS 3046, at *12-13 (B.A.P. 9th Cir. Sep. 27, 2019) *citing Cain*, 415 P.3d at 29; *Dynalectric Co. of Nev., Inc. v. Clark & Sullivan Constructors, Inc.*, 127 Nev. 480, 255 P.3d 286, 288 (Nev. 2011) (following the Restatement (Second) of Contracts in holding that a court may award expectation, reliance, or restitutionary damages for promissory estoppel claims). The “standard for deciding materiality *always starts with the language of the contract* under a de novo standard of review.” *Id.* (emphasis added). Only when “there is no definite language, the court then determines as a factual matter whether the breach is material by applying the circumstances set forth in the Restatement and applicable case law.” *Id.*

Here, the express and definite language of the MSA states that Craig was to receive \$36,841.00 from the Meadows Bank account as his sole property. The MSA is a contract for the distribution of community property, and the clause prescribing the cash assets that Craig was to receive was a material term of the contract, and Ms. Hinds taking the money denied Craig the benefit of his bargain. Indeed, Ms. Hinds own attorney testified at the evidentiary hearing that if Ms. Hinds took the money from the Meadows Bank account that

1 was supposed to go to Craig, that would be a material breach of the MSA. *See* Hearing
 2 Video, 4/1/2021, at 3:39:00-3:42:35. Ms. Hinds materially breached the contract when
 3 she took all the money from the Meadows Bank account excusing Craig's performance
 4 under the MSA, and rendering Craig unable to obtain the agreed upon loan.

5 **E. Plaintiff Should Not Be Awarded Attorneys' Fees.**

6 Plaintiff should not be awarded **attorney's fees and costs** for these proceedings for
 7 several reasons. First, Craig had a statutory right to seek adjudication of community
 8 property omitted from the decree by fraud or mistake. *See* Nev. Rev. Stat. § 125.150(3).
 9 Second, it is undisputed that Ms. Hinds breached the MSA first, before Craig even signed
 10 it. As such, Craig should be awarded his attorney's fees as the prevailing party.

12 When awarding attorneys fees the Court must determine if the award is reasonable.
 13 *See Phung v. Doan*, 420 P.3d 1029 (Nev. 2018) *citing Miller v. Wilfong*, 121 Nev. 619, 622,
 14 119 P.3d 727, 729 (2005). "[D]istrict courts must consider the factors established in
 15 *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), before
 16 awarding attorney fees." *Id.* The *Brunzell* factors are "(1) *the qualities of the advocate*: his
 17 ability, his training, education, experience, professional standing and skill; (2) *the*
 18 *character of the work to be done*: its difficulty, its intricacy, its importance, time and skill
 19 required, the responsibility imposed and the prominence and character of the parties
 20 where they affect the importance of the litigation; (3) *the work actually performed by the*
 21 *lawyer*: the skill, time and attention given to the work; (4) *the result*: whether the attorney
 22 was successful and what benefits were derived." *Brunzell v. Golden Gate Nat'l Bank*, 85
 23 Nev. 345, 349, 455 P.2d 31, 33 (1969).
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26 Awarding attorney's fees to Plaintiff would not be reasonable under the
 27 circumstances. The MSA includes an attorney's fees provision that provides that:

28 Should either party bring an action to enforce or interpret this Marital

1 Settlement Agreement, the non-prevailing party in the action shall pay the
2 reasonable attorney's fees and costs incurred by the prevailing party in that
action.

3 *See* MSA, at ¶10.

4 Here, it is impossible for Plaintiff to be considered the prevailing party in this
5 matter because **Plaintiff and her counsel have already conceded Plaintiff's initial breach of**
6 **the MSA in prior discussions with Defendant's counsel**, their Reply to their Motion to
7 Enforce, and before the Court at the May 28, 2020 hearing by taking the \$36,871.00 of
8 Defendant's sole property, which indisputably left Craig with no money in any personal
9 bank account to use in obtaining the agreed upon loan. Indeed, in Plaintiff's Reply filed on
10 May 19, 2020, Plaintiff asserts that she had "already acknowledged and agreed through
11 counsel that Craig will receive an offset of \$36,871 against the amounts he owes Cristina
12 pursuant to the *Stipulated Decree*, but that amount is a small fraction of what he owes
13 her." *See* Plaintiff's Reply, 5/19/2020, at 22:1-6. **Plaintiff's initial breach** rendered
14 Defendant unable to secure the loan, the proceeds of which were agreed by both parties
15 would be used to pay the "equalization payment of \$450,000...that will be paid in cash
16 within sixty days." *See* **Ex. 1**, at 6:1-12. **Plaintiff's initial breach** is what caused Defendant
17 to be unable to perform under the MSA. *Id.* Because it is undisputed that Defendant is
18 entitled to at least some offset of the amounts owed, and cannot now obtain the loan
19 agreed to between the parties on June 20, 2019, it is Defendant that is the prevailing party,
20 and Defendant who should be awarded attorney's fees and costs.
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CONCLUSION

For the foregoing reasons, this Court should find that Plaintiff breached the MSA first excusing Defendant's failure to perform. The Court should deny Plaintiff's motions in their entirety. Grant Defendant's motion to vacate the MSA, and order the parties to have further negotiations relating to the property settlement.

DATED this 11th day of June.

/s/ Michael J. McAvoyamaya
Michael J. McAvoyamaya
Nevada Bar No. 014082
Attorney for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this 29th day of March, 2021, I caused the documents entitled document to be served as follows: Pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) an Administrative Order 14-2 captioned **“In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court,” by mandatory electronic** service through the Eighth Judicial District Court’s electronic filing system. To the address, email address, and/or facsimile number indicated below:

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