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

YOAV EGOSI	)	
Appellant,	)	<b>No.: 83454</b>
vs.	)	
PATRICIA EGOSI, N/K/A	)	District Court Case No.: D-16-540174-
PATRICIA LEE WOODS,	)	D
Respondent.	)	

**JOINT APPENDIX**

**VOLUME 10 OF 19**

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1 its active aid to one who has been guilty of unconscious or oppressive conduct, or who  
2 has been in equal wrong with the Defendant touching the transaction as to which the  
3 relief is sought; but in such cases the court will leave the parties where it finds them,  
4 without interfering in behalf of either.

5 Here, this Court specifically found that Plaintiff's credibility was lacking. Indeed,  
6 Plaintiff testified that (a) she did not "speak, read, write English", (b) that the first time  
7 she saw the prenuptial agreement was on the day she signed it, (c) that she had no idea  
8 what a prenuptial agreement was at the time she was presented it, and (d) that she had no  
9 time to review it with counsel was simply not true. Contrary to that testimony, the Court  
10 found that Plaintiff speaks and understands English just fine, she saw the prenuptial  
11 agreement some 6 months prior to signing it, she in fact knew exactly what the prenuptial  
12 agreement was, and she did have an opportunity to discuss the terms of the prenuptial  
13 agreement with a licensed attorney. Though this Court framed Plaintiff's testimony as  
14 "lacking in credibility", the fact is she lied under oath in order to do an injustice to Joe.  
15 Those lies led this Court to prejudge Mr. Egosi leading into the challenged evidentiary  
16 hearing, costing him over \$15,000.00 in attorney's fees. This is the epitome, and text  
17 book definition, of coming to Court with unclean hands. As such, this Court should have  
18 denied her request to invalidate the prenuptial agreement, based on her  
19 misrepresentations and bad faith alone.

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21  
22  
23  
24 **d. Partial Summary Judgment Should Be Granted In Favor Of**  
25 **Defendant On The Issue Of JoiBiz, LLC.**

26 Summary judgment requires the following: 1) There must be no genuine issue as  
27 to any material fact; and 2) The moving party must be entitled to judgment as a matter of  
28





1 law. NRCP 56(c).<sup>45</sup> The first step in the process is the identification of “genuine” issues  
2 of fact. A genuine issue of material fact is one where the evidence is such that a  
3 reasonable jury could return a verdict for the non-moving party.<sup>46</sup> A “genuine” issue is  
4 more than just “some” issue.<sup>47</sup> In fact, the mere existence of issues of fact does not  
5 necessarily preclude summary judgment.<sup>48</sup> However, where issue of material fact exists,  
6 summary judgment should not be entered.<sup>49</sup> A genuine issue of fact exists “where  
7 reasonable minds could differ as to the import of the evidence”.<sup>50</sup>

9 The “genuine issue of material fact” must preclude summary judgment *against*  
10 *the party opposing the motion*.<sup>51</sup> Further, if the party moving for summary judgment has  
11 supported the motion to the point of showing to the satisfaction of the court that the issue  
12 raised by the opposing party is a sham, the issue is not “genuine” and the motion should  
13 be granted.<sup>52</sup> The decision as to whether a genuine issue of material fact exists is itself a  
14 question of law.<sup>53</sup> If a dispute over a fact might affect the outcome of the suit, it is a

18 <sup>45</sup> *Villescas v. CNA Ins. Cos.*, 109 Nev. 1075, 864 P.2d 288 (1993) (NRCP 56 authorizes  
19 summary judgment where the pleadings, depositions, answers to interrogatories, and admissions  
20 on file, together with the affidavits, if any, show there is no genuine issue as to any material fact  
21 and that the moving party is entitled to a judgment as a matter of law); *Boland v. Nevada Rock &*  
22 *Sand Co.*, 111 Nev. 608, 894 P.2d 988 (1995) (To prevail, the non-moving party must show  
23 specific facts demonstrating the existence of a genuine issue for trial).

24 <sup>46</sup> *Posadas v. City of Reno*, 109 Nev. 448, 851 P.2d 438 (1993); *Aldabe v. Adams*, 81 Nev. 280,  
25 402 P.2d 34 (1965) (When this rule speaks of a “genuine” issue of material fact, it does so with  
26 the adversary system in mind. The word “genuine” has moral overtones; it does not mean a  
27 fabricated issue) overruled on other grounds, *Siragusa v. Brown*, 114 Nev. 1384, 971 P.2d 801  
28 (1998).

<sup>47</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).

<sup>48</sup> *Rebel Oil Co. v. Atl. Richfield Co.*, 51 F.3d 1421 (9<sup>th</sup> Cir. 1995).

<sup>49</sup> *Mitchell v. Bailey & Selover, Inc.*, 96 Nev. 147, 605 P.2d 1138 (1980); *Casarotto v. Mortensen*,  
99 Nev. 392, 663 P.2d 352 (1983); *Shepard v. Harrison*, 100 Nev. 178, 678 P.2d 670 (1984).

<sup>50</sup> *Id.* at 250-51.

<sup>51</sup> *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986 (9<sup>th</sup> Cir. 2001).

<sup>52</sup> *Dzack v. Marshall*, 80 Nev. 345 (1964).

<sup>53</sup> *Midland Ins. Co. v. Yanke Plumbing & Heating, Inc.*, 99 Nev. 66, (1983).



1 “material” fact; if it would not, it is an immaterial, irrelevant, or unnecessary fact.<sup>54</sup> Thus,  
2 only outcome determinative facts will preclude summary judgment.<sup>55</sup>

3 The substantive law applicable to the case defines which facts are “material.”<sup>56</sup>  
4 Here, the “alter ego” doctrine is implicated. Under that doctrine, equitable principles are  
5 used to disregard the separate and distinct legal existence possessed by a corporation  
6 where it is established that the corporation served as a mere alter ego or business conduit  
7 of another.<sup>57</sup> [I]ndependent corporate status may be disregarded when such factors as  
8 gross undercapitalization, fraud, failure to observe corporate formalities, nonfunctioning  
9 of officers and directors, or similar circumstances indicate that the subsidiary is merely  
10 the shadow of the parent.<sup>58</sup>

11 The law is well settled that when, as is the case here, it appears that the parent has  
12 organized another corporation merely to facilitate the business of the former corporation,  
13 the two will be seen as one, so as not to work an injustice, particularly on creditors.<sup>59</sup>

14 <sup>54</sup> *Rivera v. Phillip Morris, Inc.*, 395 F.3d 1142 (9<sup>th</sup> Cir. 2005); *Doe v. Green*, 298 F. Supp.2d  
15 1025 (D. Nev. 2004).

16 <sup>55</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Grutzmacher v. County of Clark*, 33 F.  
17 Supp. 2D 896 (D. Nev. 1999).

18 <sup>56</sup> *Id.*; *Flowers v. Carville*, 292 F.Supp.2d 1225 (D. Nev. 2003).

19 <sup>57</sup> See, e.g., *Farmers Warehouse v. Collins*, 220 Ga. 141, 150, 137 S.E.2d 619 (1964); *Amason v.*  
20 *Whitehead*, 186 Ga.App. 320, 367 S.E.2d 107 (1988).

21 <sup>58</sup> *Kissun et al., v. Humana, Inc.*, 267 Ga. 419 (1997).

22 <sup>59</sup> *In re Muncie. Pulp Co.*, 139 Fed. 546 (C.C.A. 2d, 1905); Coxe, Cir. J., at p.548: “The Great  
23 Western Co. (which the pulp company had organized and to which it had transferred its gas and  
24 oil -wells and lands) was undoubtedly a mere creature of the pulp company, having no  
25 independent business existence, and organized solely for the purpose of facilitating the business  
26 of the latter. The Great Western Co. has no shadow of claim to the property in controversy, and to  
27 permit it, or its president, or shareholders, to dispose of such property, is to sanction a fraud upon  
28 the creditors of the pulp company.” This case is followed by, *In re Marcella Cotton Mills*, 8 F. (2)  
522 (M.D. Ala. N.D., 1925), where by means of corporate entity, stockholders attempted to come  
in as creditors of an insolvent corporation. There it was said: “It is familiar that a court of equity  
will not allow corporate fiction to destroy the rights of creditors, where fraud either in fact or in  
law exists, and that the form or guise will be disregarded and the substance considered. \* \* \* The  
evidence shows that, as trustees of the Marcella Cotton Manufacturing Co., Thomas Raby and  
Max Miller were mere subsidiaries or agents of Thomas Raby Inc., and as such can stand in no





1 is actually controlling the business of the subsidiary, "By whatever means the  
2 conclusion of disregard corporate entity is arrived at, when it is reached it merely means  
3 that under the facts of the case the person or corporation in control of the subservient  
4 corporation is held liable for the acts or omissions of the subservient corporation."<sup>60</sup>

5 "There is no question that under appropriate circumstances a parent corporation can set  
6 up a subsidiary to promote the parent's purposes yet maintain a separate identity from the  
7 subsidiary and avoid liability for the subsidiary's actions."<sup>61</sup>

8 Here, there is nothing that suggests that JoiBiz, LLC. is anything more than  
9 Hawk's alter ego, as overwhelmingly suggested by the following facts:  
10

- 11 1. JoiBiz conducts no physical transactions: everything occurs online, through  
12 Hawk's equipment/software. JoiBiz uses the domain www.joibiz.com  
13 which is owned by Hawk. JoiBiz's website, email, and all other IP services  
14 utilize Hawk owned IP addresses, and are run by Hawk employees and  
15 automated software on Hawk owned equipment.
- 16 2. JoiBiz has no ability to bill customers independent of Hawk: JoiBiz does  
17 not send bills or invoices, nor does it have a billing system. Without a  
18 telephony billing engine, the company cannot rate, charge, or route calls.  
19 The billing engine, and platform which bills, rates, routes, and invoice  
20 customers are all owned and operated by Hawk.
- 21 3. JoiBiz does not own Telecom equipment.<sup>62</sup> Such equipment provides  
22 telephone services including dial tone, and inbound and outbound voice,  
23 fax, and sms. All these services/products are owned by Hawk and Hawk  
24 VoIP LLC. Joe and others invested over a million dollars in the telecom  
25 network and equipment owned by Hawk between 1999-2006 – obligations  
26 that remain outstanding.

27 better position than Thomas Raby Inc.; for, if one corporation is wholly under the control of  
28 another, the fact that it is a separate entity does not relieve the latter from liability for its acts, and  
even when one corporation is the owner and proprietor of another, the latter will be regarded as a  
mere trade name, and the real beneficiary cannot resort to the fiction of claiming in the name of  
the latter to defeat bona fide creditors."

<sup>60</sup> *Jones v. Cranman's Sporting Goods et al.*, 142 Ga. App. 838 (1977).

<sup>61</sup> *Kissun et al., v. Humana, Inc.*, 267 Ga. 419 (1997).

<sup>62</sup> The importance of this point is discussed in note 17, supra.



1 4. JoiBiz Terms of Service (its contract with customers) is on its website,  
2 located at <http://www.joibiz.com/tos.html>.<sup>63</sup> It provides clearly that the  
3 "Agreement is between JoiBiz, a Hawk Communications LLC company  
4 ("We", "Us", "Our" or "JoiBiz")." The about us on JoiBiz website  
5 <http://www.joibiz.com/aboutus.htm> states that "Headquartered in Nevada,  
6 JoiBiz, a Hawk Communications LLC company" furthermore it says "Since  
7 1999, Hawk Communications LLC has built an unparallel IP and Voice  
8 network, and has the technical experience not found with other IT  
9 companies."<sup>64</sup>

10 5. Hawk even owns the name "JoiBiz", in addition to the following brands and  
11 trademarked names:

- 12 i. Joi Internet brand to use for dialup Internet service.
- 13 ii. JoiPhone brand telephony services for the residential  
14 market.
- 15 iii. JoiBiz brand telephony services for the business and  
16 SMB market.
- 17 iv. JOI is a registered trademark of Hawk Communications  
18 LLC.
- 19 v. Hawk Communications has domain such as Joi Phone,  
20 Joi Internet, JoiBiz.
- 21 vi. Hawk Communications has products such as Joi Fax, Joi  
22 SMS, and Joi CRM.

23 In short, under no circumstances can JoiBiz operate independent of Hawk. As  
24 such, it is nothing more than Hawk's alter ego – in other words, it is Hawk, which is  
25 protected under the prenuptial agreement.

26 **e. Plaintiff Fails to State A Claim Upon Which Relief May Be Granted  
27 With Respect to Paragraphs 15 and 16 Of Plaintiff's Complaint**

28 This court may dismiss Plaintiff's claims against Joe pursuant to NRCP  
12(b)(5), which provides that a complaint may be dismissed if the pleading fails to state a

<sup>63</sup> See AE at 656-661.

<sup>64</sup> See AE 613-661.





1 claim on which relief may be granted. A motion based on NRCP 12(b)(5) must be  
2 granted when the plaintiff would be entitled to no relief under the facts set forth in the  
3 pleading.<sup>65</sup>

4 In reviewing the pleadings, the court "is to determine whether...the challenged  
5 pleading sets forth allegations sufficient to make out the elements of a right to relief."<sup>66</sup>  
6 "The test for determining whether the allegations of a complaint are sufficient to assert a  
7 claim for relief is whether the allegations give fair notice of the nature and basis of a  
8 legally sufficient claim and the relief requested."<sup>67</sup>

9 In analyzing a motion to dismiss pursuant to NRCP 12(b)(5), the court "must  
10 construe the pleading liberally and draw every fair intendment in favor of the [nonmoving  
11 party]."<sup>68</sup> Although "[the nonmoving parties] are entitled to all reasonable factual  
12 inferences that logically flow from the particularized facts alleged,...conclusory allegations  
13 are no considered as expressly pleaded facts or factual inferences."<sup>69</sup> Plaintiffs are  
14 required to comply with their duty to "set forth sufficient facts to demonstrate the  
15 necessary elements of a claim for relief so that the defending party has adequate notice of  
16 the nature of the claim and relief sought."<sup>70</sup>

17 In *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), the Unites States Supreme Court  
18 explained that the complaint must contain more than just conclusory accusations: "[t]o  
19

20 <sup>65</sup> See *Morris v. Bank of Am. Nev.*, 110 Nev. 1274, 1276 (1994) (citing *Edgar v. Wagner*, 101  
21 Nev. 226, 228 (1985).

22 <sup>66</sup> *Edgar*, 699 P.2d at 111.

23 <sup>67</sup> *Vacation Village, Inc. v. Hitachi Am., Ltd.*, 110 Nev. 481, 484 (1994) (citing *Ravera v. City of*  
24 *Reno*, 100 Nev. 68, 70 (1984).

25 <sup>68</sup> *Vacation Village*, 874 P.2d at 746 (quoting *Squires v. Sierra Nev. Educ. Found., Inc.*, 107 Nev.  
26 902, 905, 823 P.2d 256,257 (Nev. 1991)) (internal quotations omitted).

27 <sup>69</sup> *In Re Amerco Derivative Litigation*, 127 Nev. 196,232, 252 P.3d 681, 706 (2011).

28 <sup>70</sup> *Western States Const. v. Michojf*, 108 Nev. 931,936, 840 P. 2d 1220, 1223 (1992).



1 survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted  
2 as true, to 'state a claim to relief that is plausible on its face ... [a] claim only has facial  
3 plausibility when the plaintiff pleads factual content that allows the court to draw the  
4 reasonable inference that the defendant is liable for the misconduct alleged."13

5  
6 Thus, pleadings that consist of "labels and conclusions," a "formulaic recitation of  
7 the elements of a cause of action," "naked assertions devoid of further factual  
8 enhancements," or "[t]hreadbare recitals of the elements of a cause of action, supported by  
9 mere conclusory statements" will not suffice. Id. (internal citations and quotations  
10 omitted). The United States Supreme Court has also explained that allegations consisting  
11 merely of conclusory verbiage, such as naming the legal elements of a claim, is  
12 insufficient to survive a motion to dismiss.14 Plaintiff's causes of action consistently fail  
13 to meet the standards of pleading articulated in the Twombly and Iqbal line of cases.  
14

15 As stated above, Joe challenges the following allegations contained in Plaintiff's  
16 complaint:

17  
18 During the course of the marriage, Defendant's personal conduct has  
19 resulted in the waste, erosion, dissipation, depletion, loss, and/or destruction  
20 of marital assets. Among other relief, Plaintiff, in accordance with equity  
21 and justice, should be awarded a greater share of the marital estate based  
22 upon Defendant's conduct which has caused the waste of marital property  
23 and the loss of financial opportunities.<sup>71</sup>

24 ...

25 Plaintiff and Defendant are fiduciaries in the management and control of  
26 community assets, and are fiduciaries as to each other's interests in the  
27 community estate. By Defendant's conduct and behavior, he has breached  
28 his community management and fiduciary duties, causing economic waste  
to the community estate. In accordance with equity and justice, Plaintiff  
should be aware a greater share of the marital estate based upon Defendant's  
breach of his fiduciary duty.<sup>72</sup>

<sup>71</sup> Plaintiff's Complaint, paragraph 15.

<sup>72</sup> Id. paragraph 16.



1           These allegations consist of exactly the "labels and conclusions," "formulaic  
2 recitation of the elements of a cause of action," "naked assertions devoid of further factual  
3 enhancements," and "[t]hreadbare recitals of the elements of a cause of action, supported  
4 by mere conclusory statements" that the Iqbal court held will not suffice. Indeed, the  
5 entirety of the complaint, but particularly these allegations, are bereft of assertions of fact.  
6  
7 "To survive a motion to dismiss, a complaint must contain sufficient factual matter,  
8 accepted as true, to 'state a claim to relief that is plausible on its face ... [a] claim only has  
9 facial plausibility when the plaintiff pleads factual content that allows the court to draw  
10 the reasonable inference that the defendant is liable for the misconduct alleged." Because  
11 there are absolutely no factual assertions in the challenged allegations, or in the entirety of  
12 the complaint, and because the allegations are conclusory statements and threadbare  
13 recitations of a cause of action, Plaintiff has failed to state a claim upon which relief may  
14 be granted. As such, this Court should dismiss those claims.  
15

### 16           III. Conclusion

17           This Court misapprehended equity jurisdiction. In so doing, it deprived Joe of the  
18 benefit of a bargain fairly obtained. Now, Joe is mired in litigation over assets he rightfully  
19 thought were protected. As such, this Court must reconsider its decision on the issue of the  
20 premarital agreement – after this Court closely considers what equity jurisdiction is and  
21 what grounds this Court has for invoking its equitable authority. Upon close consideration  
22 of the discussion concerning equity jurisdiction, supra, this Court must enforce the  
23 agreement in whole.  
24  
25  
26  
27  
28



1 In the alternative, this Court should enter summary judgment against Plaintiff  
2 concerning the marital asset JoiBiz, LLC and decide as a matter of law that JoiBiz, LLC is  
3 nothing more than Hawk Communication's alter ego.  
4 Finally, this Court should decide that the allegations contained in paragraphs 15 and 16 of  
5 Plaintiff's complaint must be dismissed for failure to state a claim up which relief may be  
6 granted because, in large part, the complaint, including the challenged provisions, are bereft  
7 of factual content.  
8

9 For the foregoing reasons, Joe request this Court grant his motion in its entirety.  
10

11 DATED this 26<sup>th</sup> day of March, 2018.

12 /s/ Alex Ghibaud  
13

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