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11 **IN THE COURT OF APPEALS OF THE STATE OF NEVADA**

12 ALEX B. GHIBAUDO,

13 Appellant/Cross-Respondent, Case No. 82248-COA

14 vs.

15 TARA KELLOGG-GHIBAUDO,

16 Respondent/Cross-Appellant.

17
18 **RESPONDENT/CROSS-APPELLANT'S PETITION FOR
REHEARING**

19 On Appeal from the Eight Judicial District Court, Clark County

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1 **PETITION FOR REHEARING**

2 Pursuant to the Nevada Rules of Appellate Procedure (“NRAP”) 40,
3 Respondent/Cross-Appellant Tara Ghibaud-Kellogg (“Respondent”)
4 respectfully petitions the Nevada Court of Appeals for rehearing.

5 **ARGUMENT**

6 The Nevada Court of Appeals (“Court of Appeals”) filed and served the
7 Order of Affirmance (“Order of Affirmance”) on April 21, 2022 in the instant
8 appeal. On May 6, 2022, the Court of Appeals entered an Order Granting
9 Telephonic Extension permitting up and until May 23, 2022 to file and serve
10 the Petition for Rehearing in this matter. On May 26, 2022, the Court of
11 Appeals filed the Order Granting Motion and Striking Petitions providing
12 Respondent/Cross-Appellant up and until June 2, 2022 in which to file the
13 Petition for Rehearing.

14 The Order of Affirmance rejected Respondent’s argument that the
15 District Court abused its discretion by modifying the spousal support
16 provision because it was based upon a settlement agreement/contract.
17 [Order of Affirmance, p. 6]. The Court of Appeals in fact endorsed the
18 modification of alimony by the District Court. The Parties agreed that
19 Appellant would pay a minimum support award of \$2,500 per month for a
20 term of 15 years or 50% of Appellant’s gross monthly income, whichever is
21 higher. [Appellant’s Appendix (“AA”) 86]. By affirming the District Court’s
22 slashing of Respondent’s alimony to \$2,500 per month, the Court of Appeals
23 ignored the fact that the agreement for this alimony structure was in
24 consideration for the fact that Appellant had engaged in approximately 1.6
25 million dollars of marital waste. [AA 318, Respondent’s Appendix 010]. The
26 Court of Appeals ignored the fact that a Settlement Agreement is a contract
27 recognized by Nevada Law. May v. Anderson, 121 Nev. 668, 672 (2005)

1 [Respondent's Reply Brief and Opening Brief ("RB"), filed on 11-3-2021, p.
2 18]. A contract is enforceable as written where there is an offer, acceptance,
3 meeting of minds and consideration. Id. [RB, p. 18]. The Court must take
4 the plain meaning of the contract and apply that as the Courts do not have
5 the power to make new contracts or impose new terms upon the Parties to
6 contracts without their consent. *Power Co. v. Henry*, 130 Nev. Adv. Op. 21,
7 321 P.3d 858, 861 (Nev. 2014) [RB, p. 19]. In fact, the powers of a Court are
8 exhausted in fixing the rights of parties to contracts already existing. *New*
9 *Orleans v. New Orleans Water Works Co.*, 142 U.S. 79, 91, 12 S. Ct. 142, 147
10 (1891) [RB, p. 19]. Like the District Court before it, the Court of Appeals
11 completely ignored the contract that was agreed upon and modified alimony.
12 [RB, p. 20]. There was a valid contract between the Parties and no
13 circumstances changed between the entry of the contract and the District
14 Court's unfortunate orders. [RB, p. 20]. Likewise, the reduction in alimony
15 was not supported by substantial evidence. [RB, p. 20].

16 The Court of Appeals should have repudiated the District Court's effort
17 for imputing income to Respondent/Cross-Appellant. [Order of Affirmance,
18 p. 6 through 7]. The District Court made a bold statement that Respondent
19 was underemployed but did not provide a sufficient explanation for such
20 finding. [AA 468]. The evidence at trial did show that Respondent sought
21 and received employment at a job, but Appellant's continued presence at the
22 job made continued employment there untenable. [RB 21, AA 288-289].
23 Additionally, Respondent was precluded from obtaining further education
24 when Appellant cut off Respondent-Cross Appellant's alimony. [RB 21, AA
25 287]. In order to work on Respondent/Cross-Appellant's field, she requires a
26 bachelor's degree and is being prevented from obtaining the same. [Id.]. The
27 District Court and the Court of Appeals alike failed to consider evidence of
28

Respondent's disability that also prevents her from working. As would be required under NAC 425.125(2). [RB, p. 22, AA 468]. Likewise, the Court of Appeals and District Court did not take into account that Respondent was a stay at home mother during the marriage. [RB, p. 33, AA 468]. Respondent's actual earning capacity is by no means \$30,000 to \$40,000 per year and is more accurately \$0 given that she has not yet obtained her Bachelor's Degree (a requirement for the field) and relies upon spousal support and occasional assistance from her parents. [RB, p. 23, AA 468, AA 312-313].

CONCLUSION

The District Court as well as the Court of Appeals certainly misapprehended/erred in allowing the settlement agreement ("contract") that the Parties themselves negotiated and modifying the amount of alimony to be paid monthly. This was both an error/misapprehension of law and error/misapprehension of fact. The Parties negotiated their agreement, forewent certain claims such as marital waste and other property claims, and the agreement entered should stand.

The District Court as well as the Court of Appeals certainly misapprehended/erred in law as well as finding of fact as it pertained to imputing income as to Respondent/Cross-Appellant. Not only was the income of Respondent/Cross-Appellant wholly irrelevant as Appellant was to be paying, but the District Court made insufficient findings as to willful underemployment and the findings flew in the face of objective facts.

[Remainder of Space Intentionally Left Blank]

1 For the reasons stated above, Respondent/Cross-Appellant respectfully
2 requests rehearing in this matter.

3 Schwab Law Firm PLLC

4 /s/ Evan Schwab

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- Dated this 2nd day of June 2022**

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1 /s/ Evan Schwab

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Hon. T. Arthur Ritchie, Jr. District Judge, Family Court Division
Israel Kunin, Settlement Judge
Alex B. Ghibaud, P.C.
JK Nelson Law LLC
Schwab Law Firm PLLC

An Employee of Schwab Law Firm PLLC