

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS A. PICKENS,
INDIVIDUALLY AND AS TRUSTEE
OF THE LV BLUE TRUST,

Appellant,

vs.

DR. DANKA K. MICHAELS,
INDIVIDUALLY AND AS TRUSTEE
OF THE MICH-MICH TRUST,

Respondent;

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Elizabeth A. Brown
Clerk of Supreme Court

S.C. DOCKET NO.: 83491
D.C. Case No. D-17-560737-D

APPENDIX

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ATTORNEYS FOR APPELLANT

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Plaintiff’s Trial Exhibit 49 - 2014 1065 Income Tax Return for Patience One LLC	02/14/2020	XXVII/AA06491- XXVIII/ AA06589
Plaintiff’s Trial Exhibit 50 - 2015 1065 Income Tax Return for Patience One LLC	02/14/2020	XXVIII/ AA06590-06672
Plaintiff’s Trial Exhibit 51 - 2016 1065 Income Tax Return for Patience One LLC	02/14/2020	XXVIII/ AA06673-06691
Plaintiff’s Trial Exhibit 52 - 2008 1120 Income Tax Return for Blue Point Development LLC	02/14/2020	XXVIII/ AA06692- XXIX/ AA06759
Plaintiff’s Trial Exhibit 53 - 2009 1120 Income Tax Return for Blue Point Development LLC	02/14/2020	XXIX/ AA06760-06832
Plaintiff’s Trial Exhibit 54 - 2010 1120 Income Tax Return for Blue Point Development LLC	02/14/2020	XXIX/ AA06833-06862
Plaintiff’s Trial Exhibit 55 - 2011 1120 Income Tax Return for Blue Point Development LLC	02/14/2020	XXIX/ AA06863-06912
Plaintiff’s Trial Exhibit 56 - 2012 1120 Income Tax Return for Blue Point Development LLC	02/14/2020	XXIX/ AA06913-06930
Plaintiff’s Trial Exhibit 57 - 2013 1120 Income Tax Return for Blue Point Development LLC	02/14/2020	XXIX/ AA06931-06962
Plaintiff’s Trial Exhibit 58 - 2014 1120 Income Tax Return for Blue Point Development LLC	02/14/2020	XXIX/ AA06963-06998

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Plaintiff's Trial Exhibit 60 - 2016 1120 Income Tax Return for Blue Point Development LLC	02/14/2020	XXX/AA07000
Plaintiff's Trial Exhibit 63 - Wells Fargo Business Checking #9112 titled in the name of Blue Point Development 05/29/2014 through 12/31/2014	02/14/2020	XXX/AA07001- 07002
Plaintiff's Trial Exhibit 65 - Wells Fargo Business Checking #9112 titled in the name of Blue Point Development 01/01/2015 through 12/31/2015	02/14/2020	XXX/AA07003- 07006
Plaintiff's Trial Exhibit 67 - Wells Fargo Business Checking #9112 titled in the name of Blue Point Development 01/01/2016 through 12/31/2016	02/14/2020	XXX/AA07007- 07008
Plaintiff's Trial Exhibit 69 - Wells Fargo Business Checking #9112 titled in the name of Blue Point Development 01/01/2017 through 12/31/2017	02/14/2020	XXX/AA07009- 07010
Plaintiff's Trial Exhibit 70 - Wells Fargo Business Checking #9112 titled in the name of Blue Point Development 01/01/2018 through 12/31/2018	02/14/2020	XXX/AA07011
Plaintiff's Trial Exhibit 71 - Wells Fargo Business Checking #9112 titled in the name of Blue Point Development 01/01/2019 through 04/30/19	02/14/2020	XXX/AA07012- 07013
Plaintiff's Trial Exhibit 74 - Wells Fargo Checking ending 3436 titled in the names of Thomas A. Pickens and Danka K. Michaels 07/01/2014 through 12/31/14	02/14/2020	XXX/AA07014

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Plaintiff's Trial Exhibit 78 - Wells Fargo Checking ending 3436 titled in the names of Thomas A. Pickens and Danka K. Michaels 01/01/2016 through 12/31/16	02/14/2020	XXX/AA07017- 07050
Plaintiff's Trial Exhibit 79 - Wells Fargo Checking ending 3436 titled in the names of Thomas A. Pickens and Danka K. Michaels 01/01/2017 through 12/31/17	02/14/2020	XXX/AA07051
Plaintiff's Trial Exhibit 80 - Wells Fargo Checking ending 3436 titled in the names of Thomas A. Pickens and Danka K. Michaels 01/01/2018 through 04/30/18	02/14/2020	XXX/AA07052
Plaintiff's Trial Exhibit 82 - American Express Statements #72004 Thomas Pickens card #72004 Danka Michaels card #72020 12/30/10 through 12/15/11	02/14/2020	XXX/AA07053
Plaintiff's Trial Exhibit 83 - American Express Statements #72004 Thomas Pickens card #72004 Danka Michaels card #72020 12/16/11 through 12/14/12	02/14/2020	XXX/AA07054- 07057
Plaintiff's Trial Exhibit 84 - American Express Statements #72004 Thomas Pickens card #72004 Danka Michaels card #72020 12/15/12 through 12/15/13	02/14/2020	XXX/AA07058
Plaintiff's Trial Exhibit 85 - American Express Statements #72004 Thomas Pickens card #72004 Danka Michaels card #72020 12/16/13 through 12/15/14	02/14/2020	XXX/AA07059

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Plaintiff's Trial Exhibit 87 - American Express Statements #72004 Thomas Pickens card #72004 #73002 Danka Michaels card #72020 12/16/15 through 12/15/16	02/14/2020	XXX/AA07061-07092
Plaintiff's Trial Exhibit 88 - American Express Statements #72004 Thomas Pickens card #73002 Danka Michaels card #72020 12/16/16 through 12/15/17	02/14/2020	XXX/AA07093-07095
Plaintiff's Trial Exhibit 89 - American Express Statements #72004 Thomas Pickens card #73002 Danka Michaels card #72020 12/16/17 through 12/15/18	02/14/2020	XXX/AA07096-07204
Plaintiff's Trial Exhibit 90 - American Express Statements #72004 Thomas Pickens card #73002 Danka Michaels card #72020 12/16/18 through 04/14/19	02/14/2020	XXX/AA07205-07228
Plaintiff's Trial Exhibit 93 - Lowes house summary with supporting Wells Fargo Home Mortgage #9607 (PMA #3436) titled in the names of Danka Katarina Michaels and Thomas A. Pickens 07/02/14 through 07/01/2016	02/14/2020	XXX/AA07229-07230
Plaintiff's Trial Exhibit 97 - American Express Statements #63006 titled in the name of Thomas Pickens 12/08/10 through 12/08/11	02/14/2020	XXX/AA07231
Plaintiff's Trial Exhibit 98 - American Express Statements #63006 titled in the name of Thomas Pickens 12/09/11 through 12/07/12	02/14/2020	XXX/AA07232-07236

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Plaintiff's Trial Exhibit 101 - American Express Statements #63006 titled in the name of Thomas Pickens 12/09/14 through 12/08/15	02/14/2020	XXX/AA07248-07250
Plaintiff's Trial Exhibit 102 - American Express Statements #63006 titled in the name of Thomas Pickens 12/09/15 through 12/08/16	02/14/2020	XXXI/AA07251-07255
Plaintiff's Trial Exhibit 103 - American Express Statements #63006 titled in the name of Thomas Pickens 12/09/16 through 12/08/17	02/14/2020	XXXI/AA07256-07258
Plaintiff's Trial Exhibit 104 - American Express Statements #63006 titled in the name of Thomas Pickens 01/08/18 through 12/07/18	02/14/2020	XXXI/AA07259
Plaintiff's Trial Exhibit 105 - American Express Statements #63006 titled in the name of Thomas Pickens 12/08/18 through 05/08/19	02/14/2020	XXXI/AA07260
Plaintiff's Trial Exhibit 106 - American Express #51001 titled in the name of Blue Point Development 12/05/12 through 12/20/13	02/14/2020	XXXI/AA07261-07262
Plaintiff's Trial Exhibit 107 - American Express #51001 titled in the name of Blue Point Development 12/21/13 through 12/19/14	02/14/2020	XXXI/AA07263
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Plaintiff’s Trial Exhibit 111 - American Express #51001 titled in the name of Blue Point Development 12/21/17 through 12/20/18	02/14/2020	XXXII/AA 07686-07687
Plaintiff’s Trial Exhibit 112 - American Express #51001 titled in the name of Blue Point Development 12/21/18 through 04/19/19	02/14/2020	XXXII/AA 07688-07689
Plaintiff’s Trial Exhibit 113 - Bank of America Bank Statements #2561 titled in the name of Blue Point Development 10/29/12 through 02/28/14	02/14/2020	XXXII/AA 07690-07691
Plaintiff’s Trial Exhibit 114 - Bank of America Bank Statements #0222 titled in the name of Patience One LLC 11/01/12 through 12/31/13	02/14/2020	XXXII/AA 07692-07693
Plaintiff’s Trial Exhibit 115 - Wells Fargo Visa #0648 titled in the name of Thomas Pickens 06/06/17 through 12/08/17	02/14/2020	XXXII/AA 07694-07695
Plaintiff’s Trial Exhibit 116 - Wells Fargo Visa #0648 titled in the name of Thomas Pickens 12/09/17 through 12/07/18	02/14/2020	XXXII/AA 07696-07698
Plaintiff’s Trial Exhibit 117 - Wells Fargo Visa #0648 titled in the name of Thomas Pickens 12/08/18 through 05/08/19	02/14/2020	XXXII/AA 07699-07700
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Plaintiff’s Trial Exhibit 119 - Wells Fargo Checking #8952 titled in the name of Thomas Pickens 01/01/19 through 04/30/19	02/14/2020	XXXII/AA 07703-07704
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Plaintiff’s Trial Exhibit 128 - Valic – Danka Michalecko statements 9/30/13, 12/31/13, and 9/30/15	02/14/2020	XXXIII/AA 07770-07772
Plaintiff’s Trial Exhibit 129 - Pinnacle Health Systems – Danka K. Michaels. Statements 9/30/13 and 12/31/13	02/14/2020	XXXIII/AA 07773-07778
Plaintiff’s Trial Exhibit 132 - Danka Michaels Pinnacle Health Systems Statement 7/1/15	02/14/2020	XXXIII/AA 07779-07780
Plaintiff’s Trial Exhibit 133 - Bank of the West – 2015 Porsche statement 12.2.14	02/14/2020	XXXIII/AA 07781-07841
Plaintiff’s Trial Exhibit 134 - Life Insurance Statement 11/25/15	02/14/2020	XXXIII/AA 07842-07849
Plaintiff’s Trial Exhibit 138 - Thomas Pickens UBS Retirement statements dated June 2017 and October-December 2017 (Supplemental Response to Request for Production No. 16.)	02/14/2020	XXXIII/AA 07850-07857
Plaintiff’s Trial Exhibit 144 - JP Morgan Statements, Danka K. Michaels IRA, August 31, 2019 through September 30, 2019	02/14/2020	XXXIII/AA 07858-07866
Plaintiff’s Trial Exhibit 146 - Plaintiff email dated April 3, 2014	02/14/2020	XXXIII/AA 07867-07919
Plaintiff’s Trial Exhibit 147 - Plaintiff email dated August 26, 2014	02/14/2020	XXXIII/AA 07920-07922
Plaintiff’s Trial Exhibit 148 - Plaintiff email dated May 22, 2013	02/14/2020	XXXIII/AA 07923-07930
Plaintiff’s Trial Exhibit 149 - Plaintiff email dated July 9, 2012	02/14/2020	XXXIII/AA 07931-07933

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Plaintiff’s Trial Exhibit 152 - Plaintiff email dated December 2, 2016	02/14/2020	XXXIII/AA 07999- XXXIV/AA 08018
Plaintiff’s Trial Exhibit 153 - Plaintiff email dated June 30, 2014	02/14/2020	XXXIV/AA 08019-08202
Plaintiff’s Trial Exhibit 154 - #002651 Emails between Dr. Michaels and R. Semonian	02/21/2020	XXXIV/AA 08203-08209
Plaintiff’s Trial Exhibit 155 – NV Prescription Monitoring Program	02/21/2020	XXXIV/AA 08210-08247
Plaintiff’s Trial Exhibit 156 – Request to appeal denial of unemployment benefits	02/21/2020	XXXIV/AA 08248
Defendant’s Trial Exhibit A – Plaintiff’s Response to Defendant’s First Request for Production of Documents and Tangible Things from Plaintiff (with certain attachments thereto)	02/14/2020	XXXIV/AA 08249
Defendant’s Trial Exhibit C – Documentation of \$450,000 loan taken by Danka K. Michaels, M.D., PC for tenant improvements	02/14/2020	XXXIV/AA 08250- XXXV/AA 08257
Defendant’s Trial Exhibit G – Records produced by Equity Title, LLC, in response to Subpoena Duces Tecum for Blue Mesa property (Affidavit and relevant documents)	02/14/2020	XXXV/AA 08258-08270
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Appendix of Exhibits in Support of Defendant’s Motion to Compel Discovery Responses	04/22/2019	II/AA00398-00440
Appendix of Exhibits in Support of Defendant’s Motion to Dismiss	11/29/2017	I/AA00025-00044

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Appendix of Exhibits to Plaintiff's Opposition to Defendant's Motion for Summary Judgement, to Dismiss, for Protective Order and for Attorney Fees and Countermotion 1) to Dismiss or, in the Alternative, for Summary Judgement as to Defendant's Causes of Action for Intentional Misrepresentation/Fraud; Negligent Misrepresentation; Breach of Implied Covenant of Good Faith and Fair Dealing; Promissory Estoppel; Express Agreement; Implied Agreement; and Malicious Abuse of Process; (2) for Summary Judgement Setting Aside Deeds of Real Property and Assignment of LLC Interest; and (3) for Permission to Submit Points and Authorities in Excess of 30 Pages Pursuant to EDCR 5.503(e)	08/19/2019	V/AA00763-00813
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Defendant’s Trial Exhibit G – Records produced by Equity Title, LLC, in response to Subpoena Duces Tecum for Blue Mesa property (Affidavit and relevant documents)	02/14/2020	XXXV/AA 08258-08270
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Defendant’s Trial Exhibit K – Blue Point Development account statement and record produced by Wells Fargo Bank, in response to Subpoena Duces Tecum	02/14/2020	XXXV/AA 08272
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Defendant’s Trial Exhibit N – Records evidencing attorney’s fees and expert fees paid by Defendant in this action	02/14/2020	XXXVII/AA 08868-08938
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Plaintiff’s Trial Exhibit 116 - Wells Fargo Visa #0648 titled in the name of Thomas Pickens 12/09/17 through 12/07/18	02/14/2020	XXXII/AA 07696-07698
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Plaintiff’s Trial Exhibit 127 - Southwest Pension Services – Danka Michaels. Statements 09/03/2013 and 12/31/13	02/14/2020	XXXII/AA 07708- XXXIII/AA 07769
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Plaintiff’s Trial Exhibit 138 - Thomas Pickens UBS Retirement statements dated June 2017 and October-December 2017 (Supplemental Response to Request for Production No. 16.)	02/14/2020	XXXIII/AA 07850-07857
Plaintiff’s Trial Exhibit 14 - 2010 1040 Income Tax Return for Thomas A. Pickens	02/14/2020	XV/AA03263- 03319
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Plaintiff’s Trial Exhibit 46 - 2017 1120S Income Tax Return for Danka K. Michaels MD, PC	02/14/2020	XXV/AA005935- XXVI/AA06106
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Plaintiff’s Trial Exhibit 78 - Wells Fargo Checking ending 3436 titled in the names of Thomas A. Pickens and Danka K. Michaels 01/01/2016 through 12/31/16	02/14/2020	XXX/AA07017-07050
Plaintiff’s Trial Exhibit 79 - Wells Fargo Checking ending 3436 titled in the names of Thomas A. Pickens and Danka K. Michaels 01/01/2017 through 12/31/17	02/14/2020	XXX/AA07051
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Plaintiff's Trial Exhibit 93 - Lowes house summary with supporting Wells Fargo Home Mortgage #9607 (PMA #3436) titled in the names of Danka Katarina Michaels and Thomas A. Pickens 07/02/14 through 07/01/2016	02/14/2020	XXX/AA07229-07230
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Transcript RE: Non-Jury Trial Day 3	10/28/2021	XIII/AA02957- XIV/AA03007
Transcript RE: Non-Jury Trial Day 4	10/28/2021	XIV/AA03008- 03040
Transcript RE: Non-Jury Trial Day 5	10/28/2021	XIV/AA03041- 03054
Trial Subpoena	01/29/2020	V/AA00906- 00909
Trial Subpoena Robert Semonian	01/28/2020	V/AA00892- 00898
Trial Subpoena Shannon L. Evans, Esq.	01/28/2020	V/AA00899- 00905

1 man. He took possession and control of the assets awarded to him
2 pursuant their agreement and he left for Danka the assets and
3 obligations awarded to her pursuant to their agreement.

4 Danka relied on their agreement in assuming all of the obligations
5 left to her by Tom and refinancing mortgages out of his name. Tom did
6 not have access to **any** prescriptions from Danka or her staff after
7 January 2017. Yet, he continued to pay rent to her and acknowledge her
8 as the owner of the building through November 2017. There can be no
9 doubt that even with the removal of the alleged “impediment,” Tom
10 ratified his agreement to transfer title to the Queen Charlotte, Lowe and
11 Buffalo properties to Danka.

12 On or about November of 2017, Tom’s construction management
13 company Bluepoint Development (“BPD”), became in arrears of its
14 obligation to pay rent to Patience One. BPD filed suit seeking a writ of
15 restitution asserting the existence of a rent credit in Las Vegas Justice
16 Court on October 28, 2018.⁵⁹ Patience One answered that suit and
17 counter-sued for damages.⁶⁰ The matter of the writ of restitution was
18 resolved by the Justice Court and on June 1, 2018 the Justice Court
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20 ⁵⁹ See Complaint from Las Vegas Justice Court Case No. 18C003465.

21 ⁶⁰ *Id.*

1 issued its Findings of Fact and Conclusions of Law and Judgment.⁶¹ In
2 that judgment it was found that BPD had not demonstrated the
3 existence of any rent credit and was found to be in arrears of its rent
4 obligations.⁶²

5 On May 10, 2019 Patience One amended its counterclaims.⁶³
6 Those counterclaims were subsequently transferred to the district court
7 due to the fact that the amount in controversy exceeded the jurisdiction
8 of the Justice Court. Those counterclaims have been answered and no
9 responsive claims from either BPD or Tom have been made.⁶⁴

10 **6. Dr. Michaels does not own Patience One and thus the
Court cannot divide the asset.**

11 Even if some division of assets were appropriate here (they are
12 not), the ownership of Patience One cannot be divided because presently
13 the ownership of Patience One is not an asset of either Danko or Tom.
14 NRS 163.417(2) specifically states that Trust property is not subject to
15 the personal obligations of the trustee, even if the trustee is insolvent or
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17 ⁶¹ See Findings of Fact and Conclusions of Law and Judgment for Case No.
18C003465.

18 ⁶² See *Id.* at “Findings of Fact” ¶¶ 8(l, u-y); See *Id.* at “Conclusions of Law” ¶¶
10-14.

19 ⁶³ See May 10, 2019 Amended Answer, Counterclaim and Third-Party
20 Complaint.

21 ⁶⁴ See BPD and Tom’s Answer filed on June 21, 2019 in Case No. A-19-795025-
C.

1 bankrupt, thus Patience One is not an asset of Danka. Patience One is
2 wholly an asset of the Mich-Mich Trust, and has been since 2016 when
3 the NV Blue Trust transferred its assets into the possession of the Mich-
4 Mich Trust. When assets are transferred into trusts, even assets
5 transferred during a legal marriage, the Court may not invade the trust
6 assets if those assets constitute separate property of the grantor of that
7 asset.⁶⁵ A valid agreement executed by the parties placing property into
8 separate trusts successfully protects the trust assets from division.⁶⁶

9 In the present circumstance Tom executed a contractual
10 Assignment which transferred his trust's interest in Patience One into
11 the Mich-Mich trust for which he was not a trustee, or grantor. This is
12 clear intent that Tom intended the transfer any ownership interest either
13 he or his trust may have had out of his possession and was intended to
14 make Patience One into the sole and separate property of the Mich-Mich
15 trust. After such transfer, as the ownership interest in Patience One
16 became separate property, the interest in Patience One was no longer
17 subject to asset division.

18 **7. Tom makes no claim for rescission.**

21 ⁶⁵ See *Klabacka v. Nelson*, 133 Nev. 164, 176, 394 P.3d 940, 950 (2017).

⁶⁶ See *id.* at 171, 946-947.

1 Since under *Klabacka* the Family Court has no ability to invade the
2 Mich-Mich Trust for purposes of asset division, there is only one other
3 vehicle by which Tom can try to overcome the effect of the Assignment,
4 that is to have the Court rescind the Assignment; however, there is no
5 legal basis for Tom to set aside the Assignment in this matter because
6 Tom has nowhere brought any claims against the Mich-Mich Trust that
7 would allow for the Assignment to be set aside.

8 Quite simply, undoing a contract is not a simple asset division, it is
9 the affirmative legal act of rescinding that contract. Rescission is only an
10 available remedy under very particular circumstances and in order to
11 rescind a contract under Nevada law the party must adequately plead
12 either a claim or make an affirmative defense for rescission.⁶⁷ Tom has
13 not brought any claim for equitable rescission, or even any claim for
14 breach of contract regarding the transfers in question.⁶⁸ The present
15 action in family court implicates an alleged divorce or alternatively, the
16 division of assets through the Putative Spouse Doctrine. No claim for
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19 ⁶⁷ *Great Am. Ins. Co. v. Gen. Builders, Inc.*, 113 Nev. 346, 353–54, 934 P.2d 257,
20 262–63 (1997).

21 ⁶⁸ See Tom's *Second Amended Complaint for Equitable Relief Under (1) The Putative Spouse Doctrine, and (2) Pursuant to Express and/or Implied Agreement to Hold Property as if the Parties were Married Under Michoff; and to Set Aside Deeds of Real Property and Assignment of L.L.C. Interest* filed October 15, 2018.

1 breach of contract or affirmative defense of rescission has been made
2 within this case.⁶⁹

3 In the civil action (to which Danka is not a party), the validity of
4 the Assignment is not at issue, and no claims have been made by Tom at
5 all, much less any claim for rescission of the Assignment, and likewise no
6 affirmative defense for rescission has been articulated. As Tom has not
7 sought rescission in any court, he is not eligible to have the Assignment
8 rescinded.

9 **8. Tom does not meet the legal requirements for rescission**
10 **of a contract.**

11 Even if Tom had somewhere made a claim for breach of contract
12 implicating rescission (he did not), he does not meet the legal
13 requirements to have the Assignment rescinded. Rescission is generally
14 available as an equitable remedy restoring the parties to their
15 precontractual positions in an action for breach of the contract in
16 question.⁷⁰ Under Nevada law, a party may seek rescission of a contract

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18 ⁶⁹ See *id.*

19 ⁷⁰ See RESCISSION, Black's Law Dictionary (11th ed. 2019); See 16 N.Y. Jur. 2d
20 Cancellation of Instruments § 5, While courts have jurisdiction to grant equitable
21 relief in the form of rescission, cancellation, or delivery up of agreements, deeds, and
other written instruments, rescission is, nevertheless, an extraordinary, equitable
remedy which rests upon the equitable principle that a person will not be allowed to
enrich himself or herself unjustly at the expense of another. Thus, a court should not
exercise this power of equity unless justified by elements like fraud, accident, or
mistake, and then only when such element is clearly evident.

1 based upon fraud in the inducement of that contract.⁷¹ Alternatively,
2 rescission may be sought when there is a partial performance and one
3 party to the agreement defaults under the agreement.⁷²

4 Using the criteria under *Awada*, nowhere has Tom asserted that
5 he was fraudulently induced into signing the Assignment. To establish
6 fraud in the inducement, Tom must prove by clear and convincing
7 evidence each of the following elements: (1) a false representation made
8 by Danka, (2) Danka's knowledge or belief that the representation was
9 false (or knowledge that it had an insufficient basis for making the
10 representation), (3) Danka's intention to therewith induce Tom to
11 consent to the contract's formation, (4) Tom's justifiable reliance upon
12 the misrepresentation, and (5) damage to Tom resulting from such
13 reliance.⁷³ Additionally, fraud must be plead with specificity under
14 NRC 9. Tom has never done so. Any attempt to claim that he was
15 fraudulently induced into signing the Assignment fails, because Tom has
16 not asserted that Danka ever made any false statements which would
17 have induced him to execute the Assignment. The lack of any assertion
18 of a fraudulent statement means that elements 1, 2, 3, and 4 of

20 ⁷¹ *Awada v. Shuffle Master, Inc.*, 123 Nev. 613, 622, 173 P.3d 707, 713 (2007).

21 ⁷² *Bergstrom v. Estate of DeVoe*, 109 Nev. 575, 577, 854 P.2d 860, 861 (1993).

⁷³ *J.A. Jones Const. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 290, 89 P.3d 1009, 1018 (2004).

1 fraudulent inducement fail, and without proof of such “inducement,” the
2 Assignment cannot be rescinded.

3 Likewise, in the criteria under *Bergstrom*, nowhere does Tom
4 claim that there was either part performance of the Assignment, or a
5 breach of any contract provision under the Assignment. The lack of the
6 assertion of any existing breach similarly precludes seeking rescission of
7 the Assignment. Performance under the agreement and Assignment was
8 complete, and no term of the Assignment was breached. As such Tom is
9 ineligible for equitable rescission.

10 **9. Laches Prevents Rescission Here**

11 Even if Tom had made any claims for breach of contract
12 implicating equitable rescission, and even if those claims had sufficient
13 legal basis, any action for rescission still fails because Danka meets the
14 criteria for equitable defenses to rescission.

15 Approximately two years prior to the transfer, Patience One
16 obtained a loan secured by the Property. The most recently recorded
17 deed of trust on the property prior to the Assignment was recorded on
18 June 30, 2014.⁷⁴ Tom and Danka executed the deed of trust on behalf of
19 Patience One as its managers. As he had signed the deed of trust and
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⁷⁴ See 6/30/2014 Deed of Trust.

1 his own trust owned 50% of Patience One, Tom, through his trust, had a
2 significant obligation to repay the loan.

3 Subsequent to the Assignment, the new managers of Patience One
4 refinanced the loan. Under the new ownership, Patience One refinanced
5 the property with Danka and her trust serving as personal guarantors.⁷⁵
6 Tom and his trust had no remaining ownership obligations. Because the
7 Deed of Trust is in the name of Patience One, it was not necessary for a
8 new Deed of Trust to be recorded in order to remove Tom and his
9 entities from the obligation.

10 As stated above, rescission is an equitable remedy.⁷⁶ When seeking
11 an equitable remedy, a party must act promptly, or else risk losing the
12 ability to seek that equitable remedy.⁷⁷ This is the doctrine of laches.
13 Defendants may invoke the equitable defense of laches when a delay by
14 one party works to the disadvantage of the other, causing a change of
15 circumstances which would make the grant of relief to the delaying party
16 inequitable.⁷⁸ A two-year delay or longer delay in seeking relief has been

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19 ⁷⁵ See Loan Documents between Patience One and Wells Fargo.

20 ⁷⁶ See *DM Residential Fund II v. First Tennessee Bank Nat. Ass'n*, 813 F.3d 876,
877 (9th Cir. 2015).

21 ⁷⁷ See *id.*

⁷⁸ *Carson City v. Price*, 113 Nev. 409, 412, 934 P.2d 1042, 1043 (1997).

1 found to implicate laches, depriving the claimant of access to that
2 equitable remedy.⁷⁹

3 In the present circumstance, it is undisputed that Tom waited
4 several years before seeking any rescission of the Assignment, or of the
5 other property transfers. The Assignment was executed September 13,
6 2016. More than four years have passed and Tom has never filed a claim
7 for rescission in any court. Even being generous to Tom and
8 establishing the date he filed action in the family court (which includes
9 no claim for rescission) as the relevant date to analyze whether laches
10 applies, over one year had passed between the Assignment and the
11 institution of action. This is more than enough time for laches to be
12 found.

13 Additionally, laches is appropriate when the delay causes harm to
14 the responding party.⁸⁰ Danka's position has most assuredly changed to
15 the extent that rescission would work to her disadvantage. As stated
16 above, prior to the assignment, Patience One was subject to a loan
17 secured by the Property. After Tom's trust assigned the ownership of
18 Patience One to Danka's trust, Danka refinanced the loan secured by the
19 Property. That loan was personally secured by Danka and the Mich-

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21 ⁷⁹ *DM Residential Fund*, 813 F.3d at 878.

⁸⁰ Price, 113 Nev. at 412, 934 P.2d at 1043.

1 Mich Trust.⁸¹ Additionally, Danka paid down loans and mortgages and
2 spent significant sums for repairs and improvements. Thus, Danka
3 materially changed her position regarding the property in reliance on the
4 Assignment, by becoming personally liable for the loan in question. Had
5 Tom sought this remedy sooner, Danka would never have personally
6 obligated herself so. As such, laches has been allowed to occur which
7 precludes rescission of the Assignment.

8 **10. The assignment was more than adequately supported by**
9 **consideration.**

10 Just like the unsupportable assertion of lack of capacity, Tom has
11 asserted that the Assignment and other property transfers should be set
12 aside due to “failure of consideration.” The unsupported assertion that
13 there was no consideration supporting the Assignment and the other
14 transfers fails on both legal and factual grounds.

15 As a preliminary matter, an asserted lack of consideration is a
16 defense to a claim of breach of contract.⁸² It is a presumption under
17 Nevada law that there is good and sufficient consideration for a written
18 contract,⁸² thus in order to set the transfers aside, the burden is on Tom
19 to refute the assumption that consideration is sufficient by affirmatively

20 ⁸¹ See *id.* at pp. 36, 42.

21 ⁸² See NRS 47.250(18)(d).

1 demonstrating a lack of consideration. Courts do not generally inquire
2 into the adequacy of consideration because the values exchanged are
3 often difficult to measure and the parties are thought to be better at
4 evaluating the circumstances of particular transactions.⁸³ Further,
5 inadequacy of consideration, standing alone, does not justify rescission;
6 without more, inadequacy of consideration alone will not merit the
7 rescission of a contract.⁸⁴

8 Nevada's legal presumption is appropriate because
9 consideration may be any benefit conferred or any detriment suffered;⁸⁵
10 thus a party may sign over their interest in a property for literally any
11 consideration that party sees fit, even if that consideration is potentially
12 meritless. For example, the Ninth Circuit recognized that surrender of a
13 possibly meritless claim which is disputed in good faith is valid
14 consideration to enter into an agreement.⁸⁶

15 In the present case an examination of the Assignment and
16 Assumption of Membership Interest From LV Blue Trust to Mich-Mich
17 Trust shows that the parties at the time of execution of the Assignment
18 agreed that there was sufficient consideration to support the agreement.

19 ⁸³ *Oh v. Wilson*, 112 Nev. 38, 42, 910 P.2d 276, 279 (1996).

20 ⁸⁴ *Id.*

21 ⁸⁵ *Gray v. Wells Fargo Home Mortg., Inc.*, 130 Nev. 1183 (2014).

⁸⁶ *Rutgard v. Haynes*, 11 F. App'x 818, 818 (9th Cir. 2001).

1 WHEREAS, Assignor owns a 50% interest in Patience One,
2 LLC, a Nevada Limited Liability Company (“LLC”), which
3 was formed pursuant to the Articles of Organization dated
4 My [sic] 9, 2012(the “Articles”); and

5 WHEREAS, Assignor desires to assign **for good and**
6 **valuable consideration**, all of its right title, duties,
7 obligations and interest in and to the 50% interest in the LLC
8 to Assignee;⁸⁷

9 Therefore, again, as a threshold matter, under Nevada law Danka is
10 entitled to the presumption that adequate consideration existed, and if
11 Tom cannot factually rebut that presumption then the agreement should
12 stand as a matter of law.⁸⁸

13 Additionally, Tom, as an undisputed matter of fact, received *more*
14 than adequate consideration for the Assignment. Tom is the trustee of
15 the NV Blue Trust, which had significant financial liabilities. Publicly
16 recorded documents prove that Patience One had a secured liability of
17 \$1,500,000 prior to the Assignment. After the assignment, as they had
18 shed their ownership responsibilities, Tom and his trust were free and
19 clear from responsibility for that significant indebtedness.

20 This consideration is even more substantial given the allegations
21 currently pending in the civil suit between Tom and Patience One. Tom
has been accused of treating the finances of entities he managed as his

⁸⁷ See Assignment and Assumption of Membership Interest From LV Blue Trust
to Mich-Mich Trust dated September 13, 2016 (Emphasis Added).

⁸⁸ See NRS 47.250(18)(d).

1 own personal funds that could be used in any way he saw fit. Such an
2 accusation bears the implication that Tom can be held personally
3 responsible for the debts of his companies.⁸⁹ Even if, under the original
4 loan agreement, he was not personally liable for the loan payment, he
5 could have been made liable through a claim for alter ego by his
6 creditors. By executing the Assignment divesting himself completely
7 from Patience One, which resulted in a refinance of the loan on the
8 Property to which neither Tom nor his trust were now parties, there is
9 no more legal basis under which Tom could be held personally liable for
10 responsibility for the Patience One's indebtedness. This release from
11 potential liability alone is more than adequate consideration to support
12 the Assignment.

13 Regardless of the release of debt obligations, there is good reason
14 why the courts as a general rule do not inquire into the sufficiency of
15 "consideration" which could be just about anything.⁹⁰ A party may sell a
16 home in exchange for a stick of gum if they see fit to do so. Further, even
17 if there was *no* consideration, the Assignment and the other property
18 transfers can also properly be characterized as an inter-vivos gift
19 presented to Danka by Tom and given to assuage the betrayal of sharing

20 _____
21 ⁸⁹ See *Polaris Indus. Corp. v. Kaplan*, 103 Nev. 598, 602–03, 747 P.2d 884,
887–88 (1987).

⁹⁰ *Gray v. Wells Fargo Home Mortg., Inc.*, 130 Nev. 1183 (2014).

1 Danka's private childhood trauma with his girlfriend and the guilt he felt
2 due to his infidelity. A gift requires no consideration,⁹¹ and requires only
3 an intent to voluntarily make a transfer to a donee with actual or
4 constructive delivery, and the donee's acceptance of the gift.⁹² Unless
5 expressly conditional, a gift is irrevocable once transferred to and
6 accepted by the donee.⁹³ Thus even without consideration, the
7 Assignment as well as the transfer of Tom's interest in the residential
8 properties has sufficient legal basis to stand.

9 Thus, the transfer of the ownership interest in Patience One and
10 the transfer of the ownership interest in the residential properties were
11 legally sufficient whether it is based on a contractual agreement
12 supported by the alleviation of significant debt obligations or as gifts.
13 Either way, Tom transferred assets to Danka to hold either in her trust,
14 or to hold as her separate property, exempt from division by the family
15 court, and Tom's year-later argument as to the "adequacy of
16 consideration" fails.

17 / / /

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19 ⁹¹ *In re Irrevocable Tr. Agreement of 1979*, 130 Nev. 597, 603, 331 P.3d 881,
20 885 (2014), ("a valid inter vivos gift or donative transfer requires a donor's intent to
voluntarily make a present transfer of property to a donee without consideration.")

21 ⁹² *Id.*

⁹³ *See id.* at 603-604; 885-886.

1 **11. Tom's Breach of fiduciary duty argument fails.**

2 The parties' intimate relationship ended in 2004 (12 years before
3 the signing of the deeds and transfer documents). By 2015 Tom was
4 living in Florida with his new girlfriend. Tom first officially "broke up"
5 with Danka in January 2016. When the parties discussed the transfer of
6 the Lowe, Queen Charlotte, and Patience One properties to Danka, Tom
7 wanted to continue to use Danka for her money as he had done for the
8 prior decade. He showed up without notice at Danka's home two weeks
9 later with "yellow diamond" earrings. Meanwhile, he secretly purchased
10 jewelry for his secret sweetheart on the same day.⁹⁴

11 The parties began closing their joint accounts in April 2016 and
12 only saw each other twice during the entire year of 2016. Under these
13 facts, there was no "fiduciary relationship" between the parties by
14 September 2016 – Danka was not treating Tom for anything, they did
15 not have an intimate relationship, they were not living together, Danka
16 took Tom off of her office payroll and deferred compensation program,
17 and they had already begun separating their joint accounts.

18 It is important to note that Tom has nowhere made any claim or
19 affirmative defense implicating any such breach and has put forth no law

20 ⁹⁴ It is believed that Tom inadvertently mixed up the gift boxes, giving Danka
21 the "yellow diamond" earrings that are for blonde's (Tom testified that his girlfriend
has blonde hair) which may also explain why Tom removed a bag of from Danka's
jewelry from her safe when he went to the Queen Charlotte property to retrieve the
last of his belongings.

1 demonstrating that any allegation of breach of “fiduciary duty” impacts
2 the putative spouse doctrine or division of marital property assets in any
3 way. Likewise, Tom fails to advance any legal principle demonstrating
4 that even the most severe breach of fiduciary duty in any way impacts
5 whether or not a contract may be rescinded. As argued above, rescission
6 can be based on a contractual breach, or on fraud in the inducement of a
7 contract.⁹⁵ There is no Nevada authority allowing for contractual
8 rescission based on an alleged “breach of fiduciary duty.”

9 Under Nevada law, “[a] fiduciary relationship is deemed to exist
10 when one party is bound to act for the benefit of the other party, a
11 fiduciary relation exists between two persons when one of them is under
12 a duty to act for or to give advice for the benefit of another upon matters
13 within the scope of the relation.⁹⁵ Thus, a breach of fiduciary duty claim
14 seeks damages for injuries that result from the tortious conduct of one
15 who owes a duty to another by virtue of the fiduciary relationship.⁹⁶ To
16 prevail on a breach of fiduciary duty claim, the plaintiff must establish:
17 “(1) the existence of a fiduciary duty; (2) breach of that duty; and (3) the
18 breach proximately caused the damages.”⁹⁷ Additionally, there are

19 ⁹⁵ *Stalk v. Mushkin*, 125 Nev. 21, 28, 199 P.3d 838, 843 (2009).

20 ⁹⁶ *Id.*

21 ⁹⁷ *Klein v. Freedom Strategic Partners, LLC*, 595 F.Supp.2d 1152, 1162 (D.Nev.2009).

1 affirmative defenses to claims of breach of fiduciary duty, including the
2 existence of a prior breach of fiduciary on the part of the claimant.⁹⁸

3 Assuming for the sake of argument that an allegation of breach of
4 fiduciary duty in some way could impact claims for contractual
5 rescission or a division of marital assets, Tom has no grounds to assert a
6 breach of fiduciary duty against Danka. First, there must be a
7 relationship between the parties which can support a fiduciary duty
8 between them.⁹⁹ Nevada law establishes fiduciary duties for
9 employees,¹⁰⁰ spouses,¹⁰¹ fiancés,¹⁰² attorneys,¹⁰³ personal confidants,¹⁰⁴
10 and doctors,¹⁰⁵ among other relationships. Once the relationship
11 between the parties has ended, the fiduciary duties between the parties
12 largely ceases, and the parties may behave going forward as if there are
13 no duties between them.¹⁰⁶

14 ⁹⁸ See e.g. *United States v. S. Sound Nat. Bank*, 869 F.2d 1499 (9th Cir. 1989).

15 ⁹⁹ *Giles v. Gen. Motors Acceptance Corp.*, 494 F.3d 865, 881 (9th Cir. 2007).

16 ¹⁰⁰ *W. Med. Consultants, Inc. v. Johnson*, 80 F.3d 1331, 1337 (9th Cir. 1996).

17 ¹⁰¹ *Cook v. Cook*, 112 Nev. 179, 183, 912 P.2d 264, 266 (1996).

18 ¹⁰² *Fick v. Fick*, 109 Nev. 458, 464, 851 P.2d 445, 449–50 (1993).

19 ¹⁰³ *Cook v. Cook*, 112 Nev. 179, 183, 912 P.2d 264, 266 (1996).

20 ¹⁰⁴ *Giles v. Gen. Motors Acceptance Corp.*, 494 F.3d 865, 881 (9th Cir. 2007).

21 ¹⁰⁵ *Hoopes v. Hammargren*, 102 Nev. 425, 431, 725 P.2d 238, 242 (1986).

¹⁰⁶ See *W. Med. Consultants, Inc. v. Johnson*, 80 F.3d 1331, 1337 (9th Cir. 1996),
Once the relationship between plaintiff and defendant ended, defendant was free to
compete against plaintiff.

1 It is undisputed that Tom and Danka's intimate relationship
2 completely ceased prior to the time when the Assignment and other
3 property transfers were completed, especially considering Tom's long-
4 running infidelity. Once discovered, it is undisputed that Danka was no
5 longer Tom's physician, wife, fiancée, friend, business partner or any
6 other label which might impute a fiduciary relationship between the two.
7 Even if one of those categories of relationship did last until the point of
8 the transfers of the various assets, it is also undisputed that Tom funded
9 secret lives with his mistresses and committed his infidelities **prior** to
10 the transfers. This was a breach of *Tom's* fiduciary duties to Danka, as
11 he had long before betrayed her trust and long before been squandering
12 their mutual assets in order to woo and support his mistresses. As Tom's
13 breaches were prior to any alleged breach by Danka, they act as an
14 affirmative defense to any claim for breach of fiduciary duty against her.

15 DATED: Friday, April 02, 2021.

16 Respectfully Submitted,

17 THE ABRAMS & MAYO LAW FIRM

18 /s/ Jennifer V. Abrams, Esq.

Jennifer V. Abrams, Esq.

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Thomas A. Pickens

CLERK OF THE COURT

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10 **DISTRICT COURT**
11 **FAMILY DIVISION**
12 **CLARK COUNTY, NEVADA**

13 THOMAS A. PICKENS,
14 Individually and as Trustee of the LV
15 Blue Trust,

16 Plaintiff

17 vs.

18 DANKA K. MICHAELS,
19 Individually and as Trustee of the Mich-
20 Mich Trust

21 Defendant

CASE NO.: D-17-560737-D
DEPT. J

22 **STIPULATION AND ORDER TO EXTEND BRIEFING DEADLINE**

23 **IT IS HEREBY STIPULATED AND ORDERED** that based upon the
24 agreement between Plaintiff, THOMAS A. PICKENS, by and through his attorneys,
25 Michele LoBello and the law firm of JONES & LOBELLO, and Defendant,
26 DANKA K. MICHAELS, by and through her attorneys, Shawn M. Goldstein and
27 the law firm of GOLDSTEIN LAW, LTD., Plaintiff shall file and serve his Closing
28

JONES & LOBELLO
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Argument Brief no later than Monday, April, 19, 2021. Defendant shall file her Closing Argument Brief no later than Thursday, May 6, 2021. Thereafter, Plaintiff shall file his rebuttal brief no later than Thursday, May 13, 2021.

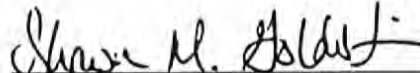
Dated this 13th day of April, 2021.

Dated this 12th day of April, 2021.

JONES & LOBELLO

GOLDSTEIN LAW, LTD.



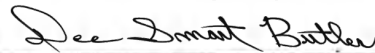


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Attorneys for Plaintiff

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Nevada Bar No. 9814
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
Attorney for Defendant

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

Dated this 14th day of April, 2021

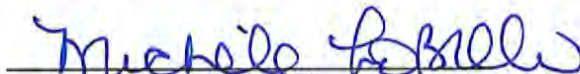


DISTRICT COURT JUDGE

FE8 067 BA33 BCCA
Dee Smart Butler
District Court Judge

Submitted by:

JONES & LOBELLO



Michele LoBello
Nevada Bar No. 5527
9900 Covington Cross, Suite 210A
Las Vegas, Nevada 89144
Attorney for Plaintiff,
THOMAS A. PICKENS

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Thomas A. Pickens, Plaintiff

CASE NO: D-17-560737-D

7 vs.

DEPT. NO. Department J

8 Danka K. Michaels, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 4/14/2021

15 Jennifer Abrams JVAGroup@TheAbramsLawFirm.com

16 Jeanette Lacker jeanette@goldsteinlawltd.com

17 Shawn Goldstein shawn@goldsteinlawltd.com

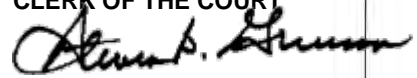
18 Michele LoBello lobello@joneslobello.com

19 Heather Ritchie heather@joneslobello.com

20 Mariella Dumbrique mariella@joneslobello.com

21 Shannon Wilson wilson@joneslobello.com
22
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24
25
26
27
28

AA07772



1 NTSO
2 JONES & LOBELLO
3 Michele LoBello, Esq.
4 Nevada Bar No. 5527
5 9900 Covington Cross, Suite 210A
6 Las Vegas, Nevada 89144
7 Telephone No.: 702-318-5060
8 Facsimile No.: 702-318-5070
9 Email: lobello@joneslobello.com
10 Attorneys for Plaintiff,
11 THOMAS A. PICKENS

12 DISTRICT COURT
13 FAMILY DIVISION
14 CLARK COUNTY, NEVADA

15 THOMAS A. PICKENS,
16
17 Plaintiff

CASE NO.: D-17-560737-D
DEPT. J

18 vs.

19 DANKA K. MICHAELS,
20
21 Defendant

22 **NOTICE OF ENTRY OF STIPULATION AND ORDER**

23 PLEASE TAKE NOTICE that a STIPULATION AND ORDER TO
24 EXTEND BRIEFING DEADLINE was duly entered in the above referenced case

25 ///

26 ///

27 ///

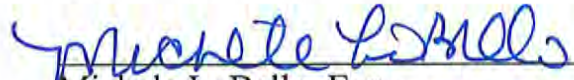
28 ///

JONES & LOBELLO
9900 Covington Cross, Suite 210A
Las Vegas, Nevada 89144
702-318-5060 FAX: 702-318-5070

1 on April 14, 2021, a copy of which is attached hereto.

2 DATED this 19TH day of April, 2021.

3 JONES & LOBELLO

4 

5 Michele LoBello, Esq.,
6 Nevada State Bar No. 5527
7 9900 Covington Cross, Suite 210A
8 Las Vegas, Nevada 89144
9 Attorneys for Plaintiff,
10 THOMAS A. PICKENS
11
12
13
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15
16
17
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22
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24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of JONES & LOBELLO and that on the 19 day of April, 2021, I caused the above and foregoing document entitled NOTICE OF ENTRY OF STIPULATION AND ORDER to be served as follows:

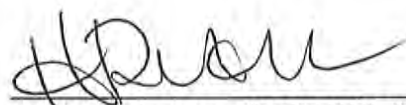
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and
- ☒ pursuant to N.E.F.C.R. 9, to be sent via electronic service;
- ☐ pursuant to EDCR 7.26, to be sent via facsimile;
- ☒ by email to
- ☐ hand delivered

to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

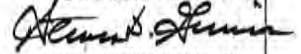
Jennifer V. Abrams, Esq.
The Abrams & Mayo Law Firm
6252 South Rainbow Blvd., #100
Las Vegas, NV 89118
Email: JVAGroup@TheAbramsLawFirm.com
Attorney for Defendant

Shawn M. Goldstein, Esq.
GOLDSTEIN LAW, LTD.
1980 Festival Plaza Drive, Suite 300
Las Vegas, NV 89135
Email: shawn@goldsteinlawltd.com
Attorney for Defendant

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.



An Employee of JONES & LOBELLO


CLERK OF THE COURT

1 **SAO**
2 **JONES & LOBELLO**
3 John D. Jones
4 Nevada Bar No. 6699
5 Michele LoBello
6 Nevada Bar No. 5527
7 9900 Covington Cross, Suite 210A
8 Las Vegas, Nevada 89144
9 Telephone No.: 702-318-5060
10 Facsimile No.: 702-318-5070
11 Email: lobello@joneslobello.com
12 Attorneys for Plaintiff,
13 **THOMAS A. PICKENS**

10 **DISTRICT COURT**
11 **FAMILY DIVISION**
12 **CLARK COUNTY, NEVADA**

13 **THOMAS A. PICKENS,**
14 Individually and as Trustee of the LV
15 Blue Trust,

16 Plaintiff

17 vs.

18 **DANKA K. MICHAELS,**
19 Individually and as Trustee of the Mich-
20 Mich Trust

21 Defendant

CASE NO.: D-17-560737-D
DEPT. J

22 **STIPULATION AND ORDER TO EXTEND BRIEFING DEADLINE**

23 **IT IS HEREBY STIPULATED AND ORDERED** that based upon the
24 agreement between Plaintiff, THOMAS A. PICKENS, by and through his attorneys,
25 Michele LoBello and the law firm of JONES & LOBELLO, and Defendant,
26 DANKA K. MICHAELS, by and through her attorneys, Shawn M. Goldstein and
27 the law firm of GOLDSTEIN LAW, LTD., Plaintiff shall file and serve his Closing
28

JONES & LOBELLO
9900 Covington Cross, Suite 210A
Las Vegas, Nevada 89144
702-318-5060 FAX: 702-318-5070

JONES & LOBELLO
9900 Covington Cross, Suite 210A
Las Vegas, Nevada 89144
702-318-5060 FAX: 702-318-5070


1 Argument Brief no later than Monday, April, 19, 2021. Defendant shall file her
2 Closing Argument Brief no later than Thursday, May 6, 2021. Thereafter, Plaintiff
3 shall file his rebuttal brief no later than Thursday, May 13, 2021.

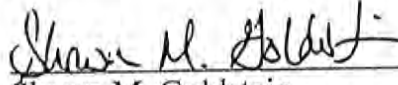
4 Dated this 13th day of April, 2021.

Dated this 12th day of April, 2021.

5 JONES & LOBELLO

GOLDSTEIN LAW, LTD.

7 



8 John D. Jones

Shawn M. Goldstein

9 Nevada Bar No. 6699

Nevada Bar No. 9814

10 Michele LoBello, Esq

10161 Park Run Drive, Suite 150

11 Nevada Bar No. 5527

Las Vegas, NV 89145

12 9900 Covington Cross, #300

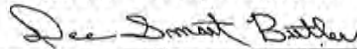
Attorney for Defendant

Las Vegas, Nevada 89144

Attorneys for Plaintiff

13
14 IT IS SO ORDERED this ____ day of April, 2021.

Dated this 14th day of April, 2021



DISTRICT COURT JUDGE

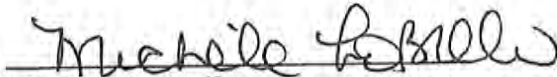
FE8 067 BA33 BCCA

Dee Smart Butler

District Court Judge

18 Submitted by:

19 JONES & LOBELLO

21 

22 Michele LoBello

23 Nevada Bar No. 5527

24 9900 Covington Cross, Suite 210A

Las Vegas, Nevada 89144

Attorney for Plaintiff,

25 THOMAS A. PICKENS

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 Thomas A. Pickens, Plaintiff

CASE NO: D-17-560737-D

7 vs.

DEPT. NO. Department J

8 Danka K. Michaels, Defendant.
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20 Mariella Dumbrique

mariella@joneslobello.com

21 Shannon Wilson

wilson@joneslobello.com
22
23
24
25
26
27
28

AA07778

1 **SAO**

2 **JONES & LOBELLO**

3 John D. Jones

4 Nevada Bar No. 6699

5 Michele LoBello

6 Nevada Bar No. 5527

7 9900 Covington Cross, Suite 210A

8 Las Vegas, Nevada 89144

9 Telephone No.: 702-318-5060

10 Facsimile No.: 702-318-5070

11 Email: lobello@joneslobello.com

12 Attorneys for Plaintiff,

13 **THOMAS A. PICKENS**

14 **DISTRICT COURT**
15 **FAMILY DIVISION**
16 **CLARK COUNTY, NEVADA**

17 **THOMAS A. PICKENS,**
18 Individually and as Trustee of the LV
19 Blue Trust,

20 Plaintiff

21 vs.

22 **DANKA K. MICHAELS,**
23 Individually and as Trustee of the Mich-
24 Mich Trust

25 Defendant

CASE NO.: D-17-560737-D
DEPT. J

26 **STIPULATION AND ORDER TO EXTEND BRIEFING DEADLINE**

27 **IT IS HEREBY STIPULATED AND ORDERED** that based upon the
28 agreement between Plaintiff, THOMAS A. PICKENS, by and through his attorneys,
Michele LoBello and the law firm of JONES & LOBELLO, and Defendant,
DANKA K. MICHAELS, by and through her attorneys, Shawn M. Goldstein and
the law firm of GOLDSTEIN LAW, LTD., Plaintiff shall file and serve his Closing

JONES & LOBELLO
9900 Covington Cross, Suite 210A
Las Vegas, Nevada 89144
702-318-5060 FAX: 702-318-5070

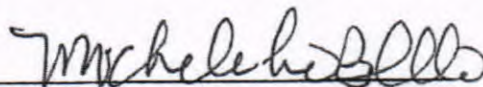
1 Argument Brief no later than Friday, April 23, 2021. Defendant shall file and serve
2 her Closing Argument Brief no later than Wednesday, May 12, 2021. Thereafter,
3 Plaintiff shall file and serve his rebuttal brief no later than Wednesday, May 19,
4 2021.

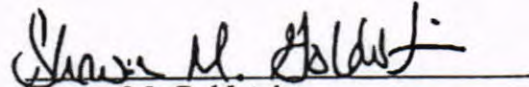
5 Dated this 20th day of April, 2021.

Dated this 20th day of April, 2021.

6 JONES & LOBELLO

... GOLDSTEIN LAW, LTD.

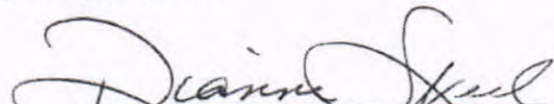
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8 



9 John D. Jones
10 Nevada Bar No. 6699
11 Michele LoBello, Esq
12 Nevada Bar No. 5527
13 9900 Covington Cross, #300
14 Las Vegas, Nevada 89144
15 *Attorneys for Plaintiff*

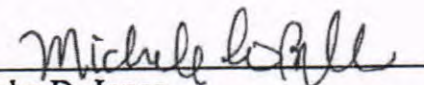
Shawn M. Goldstein
Nevada Bar No. 9814
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
Attorney for Defendant

16
17
18
19 IT IS SO ORDERED this 20th day of April, 2021.

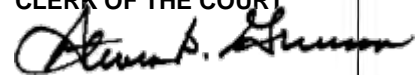

DISTRICT COURT JUDGE

20 Submitted by:

21 JONES & LOBELLO

22 

23 John D. Jones
24 Nevada Bar No. 6699
25 Michele LoBello, Esq
26 Nevada Bar No. 5527
27 9900 Covington Cross, #300
28 Las Vegas, Nevada 89144
Attorneys for Plaintiff



1 MISC
2 JONES & LOBELLO
3 John D. Jones (NV Bar No. 6699)
4 Michele LoBello (NV Bar No. 5527)
5 9900 Covington Cross, Suite 210A
6 Las Vegas, Nevada 89144
7 Telephone No.: 702-318-5060
8 Email: jones@joneslobello.com
9 Email: lobello@joneslobello.com
10 Attorneys for Plaintiff,
11 THOMAS A. PICKENS

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

15 THOMAS A. PICKENS,
16 Individually and as Trustee of the LV
17 Blue Trust,

18 Plaintiff/Counterdefendant.

19 vs.

20 DANKA K. MICHAELS,
21 Individually and as Trustee of the Mich-
22 Mich Trust,

23 Defendant/Counterclaimant;

24 and related Counterclaims.

CASE NO.: D-17-560737-D
DEPT. J

**Dates of Trial: February 14, 2020 &
February 21, 2020, March 5, 2021
and March 12, 2021 & April 2, 2021**

25 **PLAINTIFF'S CLOSING ARGUMENT**

26 Plaintiff, THOMAS ALLEN PICKENS ("Tom "), by and through his
27 attorneys, Jones D. Jones, Michele LoBello and JONES & LOBELLO hereby
28 submits his Closing Argument.

I

INTRODUCTION

One of the first things this Court will have to decide when considering the evidence presented over the five days of this trial is whether the first answer given by a witness carries more weight than when they try to testify differently a year later. The testimony of the Defendant on Day One of trial was unequivocal and certain. While Plaintiff is confident that this Court will recognize Defendant's testimony a year later as self-serving damage control, the uncontroverted evidence establishes that the relief sought by Tom must be granted in order to avoid a massive travesty of the legal system.

Fortunately for the Court, the evidence supporting Tom's claims is substantial and dictates an equitable result to the competing claims before the Court. It is also fortunate for the Court that multiple theories of Nevada law provide further support for the equitable result sought by Tom.

Finally, the uncontroverted testimony of third parties, as well as significant documentary evidence, also require that this Court make the orders necessary to ensure that these parties are treated fairly. It is important that as this Court considers the competing positions of the parties, remember that the Defendant wants a result *that is wholly unfair*, while Tom seeks only to be treated as the partner that he always has been with Defendant.

1 It cannot be lost upon this Court that as the parties arrived at Day One of trial,
2 Defendant had a net worth of over four million dollars, while Plaintiff had a net
3 worth of less than one- tenth of that. This disparity was created by a single purported
4 transaction which should be set aside based upon the facts and legal analysis set forth
5 herein.
6

7 While many closing arguments are opinions offered by lawyers about what
8 the evidence presented at trial means, this closing will allow the uncontroverted facts
9 to stand on their own without much in the way of actual argument. This Court knows
10 the legal ramifications of the evidence presented. As such the evidence presented,
11 more so than any opinions about the evidence, will be the focus of this brief.
12

13 II

14 RELEVANT DOCUMENTARY EVIDENCE

15 Admitted into evidence were the following documents, along with a brief
16 description of their significance, which establish all uncontroverted facts relevant to
17 this Court's determination of this matter:
18

19 On the issue of Putative Spouse

- 20
- 21 1. Wedding Announcement (Exhibit "1"). This establishes that it was the
22 parties' intent to marry, and that they announced their marriage to their
23 friends and family.
24
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2. Marriage Certificate (Exhibit "2"). This establishes that as a result of the wedding ceremony, a legal document was generated recognizing the union.
3. Wedding Photos (Exhibit "1"). These Photos of the parties and Defendant's parents establish this event to be a real union.
4. Email from Defendant to attorney Andy Glendon dated 7/9/12, in which Defendant refers to Tom as both her husband and partner in the Patience One building. (Exhibit "149")
5. Deed to 7608 Lowe Ave by which, in 2011, the parties took title to the property as "Wife and Husband". (Exhibit "6")
6. Deed to 9517 Queen Charlotte Dr, by which in 2004, the parties took title to the property as "Wife and Husband".(Exhibit "5")
7. Deed of Trust for loan on Queen Charlotte by which the parties were co-borrowers on the mortgage as a "married woman" and a "married man"(Exhibit "7")
8. Deed of Trust for loan on Lowe property by which the parties were co borrowers as "Wife and Husband". (Exhibit "8")

While all of these documents provide substantial evidence of a putative marriage, the Court must necessarily find it especially compelling that the title companies and lenders for both the Queen Charlotte and Lowe residences were convinced by the parties that they were, in fact, married.

On the issue of Actual or Implied partnership.

9. Email from Defendant to attorney Andy Glendon dated 7/9/12 in which Defendant refers to Plaintiff as both her husband and her partner in the Patience One Building. (Exhibit "149")
10. Deed to 7608 Lowe Ave by which, in 2011, the parties took title to the property as "Wife and Husband". (Exhibit "6")
11. Deed to 9517 Queen Charlotte Dr, by which in 2004, the parties took title to the property as "Wife and Husband". (Exhibit "5")
12. Deed of Trust for loan on Queen Charlotte by which the parties were co-borrowers on the mortgage as a "married woman" and a "married man". (Exhibit "7")
13. Deed of Trust for loan on Lowe property by which the parties were co borrowers as "Wife and Husband". (Exhibit "8")
14. The parties' equal membership of Patience One LLC. (Exhibits 47-50)
15. Wells Fargo Joint Bank Account statements. (Exhibits "74","76", and "78" – "80"). This was an account into which each party deposited income and from which the mortgages on the Lowe and Queen Charlotte residences, as well as all of the other joint bills, were paid, and in the case of the Lowe Ave mortgage, paid off.
16. Tom's American Express statements (Exhibits 82-90) reveal the extensive use by Defendant of Tom's credit for personal spending and

more importantly, to purchase supplies for her medical practice and spa. It is particularly telling that even after the September 13th “transaction”, Defendant continued to use Plaintiff’s American Express account to purchase supplies for her medical practice.

Breach of Fiduciary Duty/Undue Influence

17. Marriage Certificate (Exhibit “2”). This establishes that as a result of the wedding ceremony a legal document was generated recognizing the union of the parties. Spouses owe a fiduciary duty to one another.
18. The tax returns of Patience One, LLC establishing that the parties are equal members of the LLC. (Exhibits 47-50). Members of an LLC owe a fiduciary duty to one another.
19. Medical records confirming that Defendant was Plaintiff’s Primary Care Physician at the time of the September 13, 2016 transactions, and she continued to be his primary care physician through September of 2017. (Exhibit 3 at Bates 5432-5434). This record confirms Danka K Michaels to be the PCP (bates 5432) of Thomas Pickens and confirms that the week before the September 13th transfers, Defendant was actively referring Plaintiff to a new specialist. (bates 5434). Physicians owe a fiduciary duty to their patients.
20. Plaintiff’s Nevada Prescription Monitoring Report (Exhibit 4) established the types of medications that Defendant and her employee

1 prescribed Plaintiff over the course of several years including the month
2 prior to the September 13, 2016, purported transfer of assets. The Court
3 can draw its own conclusions on the impact of these drugs on the issue
4 of undue influence based upon the Physician's Desk Reference data
5 provided in Plaintiff's Request for Judicial Notice filed on February 2.
6 2020. Moreover, the Court should find it compelling that after Tom
7 was no longer being treated by Defendant, he no longer needed the
8 mind altering prescriptions he was prescribed by Defendant.
9
10
11

12 Want of Consideration

- 13 1. No documents were entered into evidence which establish that Plaintiff
14 received anything at all of value in exchange for his transfer of the Lowe
15 property, the Queen Charlotte property or his interest in Patience One LLC.
16 Danka tried to make the argument that Tom received his business, Bluepoint
17 Development. This is disingenuous. Pursuant to Tom's Request for the Court
18 to take Judicial Notice of Eighth Judicial District Court, Clark County, Case
19 No. A-19-795025-C, styled *Bluepoint Development, Plaintiff(s) vs. Patience*
20 *One, LLC, Defendant(s)*, which Tom filed in this matter on February 20, 2020,
21 Danka's position in the civil case is contrary to her position in this case.
22 Danka filed her Third Party Complaint against Tom in the civil case in May
23 2019, well after Tom filed his divorce suit. Then, after the trial in this matter
24 commenced, on November 30, 2020, Danka filed her Second Amended
25 Counterclaim and Third-Party Complaint, *and she alleged she and Tom*
26 *owned both Patience One, LLC and Bluepoint Development together.* Danka
27
28

1 admits in that pleading that she and Tom had a fiduciary duty to each other.
2 The Court should take the time to review the pleadings in the civil case.
3 Danka's willingness to make wholly contrary statements in that case as
4 opposed to her testimony in this case exemplifies her lack of credibility.
5

6 **Failure of transfer of Patience One.**

- 7
- 8 21. No documents were admitted into evidence which establish that Tom's
- 9 Trust was the owner of his interest in Patience One, LLC.
- 10 22. The tax returns of Patience One, LLC from 2012-2015 (**Exhibits 47-**
- 11 **50**), establish that each party's ownership interest in Patience One, LLC
- 12 was an individual interest and not an interest owned by a trust.
- 13 23. The 2016 tax return for Patience One, LLC, (**Exhibit 51**), prepared after
- 14 the September 13, 2016, "transaction" shows Tom's interest in the LLC
- 15 continuing to be an individual interest, but Danka's K-1 is an example
- 16 of what a K-1 looks like when the LLC interest is owned by a Trust.
- 17 This was the first time in the existence of Patience One, LLC that any
- 18 K-1 revealed that a Trust owned either of the parties' LLC interests.
- 19 No tax return or K-1 for Patience One, LLC has ever listed Tom's
- 20 interest in the LLC as owned by the LV Blue Trust.
- 21 24. The Purported Assignment and Assumption of Membership interest in
- 22 Patience Once LLC (Exhibit "B" at bates 599) is a transaction between
- 23
- 24
- 25
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- 28

1 two Trusts. At the time the document was executed, the LV Blue Trust
2 did not own Tom's LLC membership interest.

3
4 Whereas it is anticipated that Danka will try to "spin" these documents to
5 mean something other than their plain meaning, Plaintiff is confident that this Court
6 sees these documents for what they really are and not that which Defendant wishes
7 they were. The nice thing about documents is that they cannot lie and they cannot
8 try to change their story.
9

10 **III.**

11 **RELEVANT TESTIMONY**

12
13 The Court heard testimony from the parties, attorney Shannon Evans, Esq.,
14 Robert Simonian, CPA, Todd Kilde, Dara Lesmeister and Roberto Carillo. As set
15 forth above, Defendant tried to alter her testimony from Day One of trial to make
16 the egregiousness of her positions before the Court appear less offensive.
17 Fortunately for Tom, the testimony, even after Danka's attempts to shade the truth,
18 provides substantial evidence upon which this Court can rely in granting the relief
19 sought by Tom.
20
21

22 The testimony regarding each of the issues outlined above was as follows:

23 **On the issue of Putative Spouse.**

24 **Defendant, Danka Michaels, testified as follows:**

25 As it pertains to the efforts to have a wedding in Bratislava:

26 Q. In order to be allowed to have that ceremony in that
27 Catholic church in your hometown, you -- you need -- you and
28

1 Tom needed a letter from a Catholic priest here in Las Vegas,
2 right?

3 A. That's what we were told.

4 Q. And a letter from a Priest in Las Vegas was obtained
5 so that you could have the ceremony in Bratislava, right?

6 A. Yes.

7 Q. And your Mother made the arrangements for the
8 wedding and the -- and the celebration that followed, right?

9 A. Yes.

10 Q. And you and Tom exchanged rings at the ceremony,
11 right?

12 A. Yes.

Trial Transcript, DAY ONE, Page 41, ll. 19 - P. 42, ll. 8

11 As it pertains to the Marriage Certificate which resulted from the Bratislava
12 Ceremony:

13 Q. Okay. Now, can you tell me anywhere on that page
14 where it says commitment ceremony?

15 A. No.

16 Q. It doesn't say that?

17 A. No.

18 Q. Okay. Can you tell me where on that page -- how
19 far down from the top it says marriage certificate?

20 A. Oh, it's on the top.

21 Q. Approximately one and a half inches down from the
22 first line of text?

23 A. Yes.

24 Yes.

Trial Transcript, DAY ONE, P. 43, ll. 22 – P. 44, ll. 8

23 As it pertains to the Wedding Photos and Wedding Announcement:

24 Q. And if you can turn to Exhibit 1 which is already in
25 evidence? Are those true and correct copies of -- actually the first
26 three pages, are those true and correct copies of photos that were
27 taken the day of the ceremony?

28 A. Yes.

Q. On the first page marked Bates Number TP-0001,

who are the parties in the picture with you and Tom?

A. My parents.

Q. All right. Now, if you could turn to Bates Number TP-0004?

A. Is that an announcement that the photographer also created for you and Tom?

A Yes.

Q. And can you tell me anywhere on there -- on that announcement where it says commitment ceremony?

A. No.

Q. There is no reference to a commitment ceremony on that notice?

A. No.

Q. It does say marriage though, right?

A. Yes.

Trial Transcript, DAY ONE, P. 44, ll. 11 – P. 45, ll. 7

With regard to holding herself out as married to Plaintiff:

Q. Okay. Now, you referred to Tom as your husband, right?
To third parties?

A. Yes.

Trial Transcript, DAY ONE, P. 53, ll. 17-19

Q. But you also referred to Tom as your husband in emails to third parties, right?

A. Yes.

TT DAY ONE P. 53, ll. 23 – P. 54, l. 1

Q. Okay. Starting at that Bates Number, I'll have you look at the first three pages after 000090 until you get to 000093. Do you see that email exchange with Andy Glendon?

A. Yes.

Q. Okay. On page 000093, you write to Mr. Glendon, my husband and I are partners in this deal together, his name is Tom Pickens. That was a true statement, correct?

A. Yes.

Trial Transcript, DAY ONE, P. 62, ll. 14 - 21

1 Tom testified as follows:

2 With regard to intent of the parties regarding a European marriage for asset
3 protection:

4 Q. Prior to the marriage, did you and Danka discuss
5 asset protection?

6 A. Yes.

7 Q. And what was the specific concern there?

8 A. Well, the concern was because of the -- the pending
9 lawsuits that if we got married there could be a possibility of -- of
10 everything we had together would be attacked, I mean let's just
11 say. So then --

12 Q. So how did -- how did have the wedding in Slovakia
13 help with that concern?

14 A. The conversation was is that if we got married in
15 Slovakia that it would take creditors much more time to figure out
16 that we were married. And therefore, we just never brought it to
17 the United States.

18 **Trial Transcript, DAY ONE, P. 102, l. 24 – P. 103 – ll. 13**

19 With regard to the efforts made by the parties to be permitted to get married
20 in a catholic church:

21 Q. Anything else you had to do before you could get
22 married in the Catholic church in Slovakia?

23 A. We had to go to a church in Las Vegas, I don't
24 recollect the church. We had to be seen by a priest and he had to
25 give us our blessing. I'm not sure what that is, I'm not familiar
26 with the Catholic church.

27 Q. Did you have to have pre-marriage instruction?

28 A. Correct. And we got a letter from him. We took it to
Slovakia with us and gave to the priest there.

Q. Who arranged for the meeting with the priest in Las
Vegas?

A. Danka did.

///

///

1 **Trial Transcript, DAY ONE, E P. 104, l. 24 – P. 105, ll. 11**

2 With regard to the formality of the wedding ceremony:

3 Q. Was it a formal wedding?

4 A. It was a formal wed -- wedding. It was a religious
5 ceremony. The -- the priest was at the alter, her father walked her
6 down the -- the aisle. I didn't understand everything because it
7 was either in Latin or Slovakian. So, I wasn't -- didn't really know
8 what was going on. Danka would translate most of what was
9 going on to me.

10 Q. Were you pronounced husband and wife at the close
11 of the ceremony?

12 A. Yes.

13 **Trial Transcript, DAY ONE, P. 105, ll. 17 to P. 106, ll. 2**

14 With regard to Defendant being the one in charge of the legalities of the
15 wedding:

16 Q. Who handled the legalities of the wedding in
17 Slovakia?

18 A. Danka did.

19 Q. Did you and Danka ever in 2002, discuss the act of
20 registering the marriage certificate?

21 A. No.

22 Q. Did you ever hear about an issue of registering or not
23 registering that marriage certificate before this lawsuit was filed?

24 A. No.

25 **Trial Transcript, DAY ONE, P. 108, ll. 1 - 10**

26 With regard to the parties celebrating their wedding anniversary:

27 Q. Now, following the wedding April 2002, did you and
28 Danka celebrate your wedding anniversary, annually?

A. Yes.

Q. Every year on April 7, until you separated?

A. Yes.

///

1 **Trial Transcript, DAY ONE, P. 108, ll. 23 – P. 109, ll. 3**

2 With regard to the parties financial behavior after the wedding:

3
4 Q. What, if anything changed financially between the
two of you after the wedding ceremony?

5 A. We opened up checking accounts together. We paid
6 bills together. We lived our lives as husband and wife.

7 **Trial Transcript, DAY ONE, P. 113, ll. 18 – 21**

8 With regard to the filing of individual taxes:

9
10 Q. So why would you sign tax returns that say you're
an unmarried man?

11 A. When we went to Slovakia, we got married in
12 Slovakia. Everyone – Bob knew we were – got married in
Slovakia. When he filled out the tax returns, that's what he put
13 on it. And I am not an accountant. And whatever he said was
14 good. I signed, being stupid. But, I did.

15 **Trial Transcript, DAY ONE, P. 241, ll. 3 – 9**

16 Dara Lesmeiter testified as follows:

17 With regard to both parties holding themselves out as husband and wife to
18 third parties:

19 Q. The judge was just wondering if there -- if you had
20 -- had a time frame of when you met her.

21 A. It was probably 2007, when I became her patient.

22 Q. Did Danka ever make any statements when you
were in her -- were in her presence regarding her marital status?

23 A. We always talked about Tom as her husband, so.
24 She knew that I was Tom's friend, and that I had worked with
both Tom and her son, Jakub.

25 Q. Have you ever heard Danka say anything that would
make you believe that Tom was not her husband?

26 A. No, I have not.

27 Q. Did you ever hear Danka refer to herself as an
unmarried person?

28 A. No, I did not.

1 **Trial Transcript, DAY ONE, P. 131, ll. 12 – P. 132, l. 1**

2
3 Robert Simonian testified as follows:

4 With regard to the parties holding themselves out as husband and wife to third
5 parties:

6 Q. And regardless of the status of the filing of taxes,
7 they did hold themselves out as husband and wife, right?

8 A. I believe so socially.

9 **Trial Transcript, DAY ONE, P. 83, ll. 2 - 4**

10 On the issue of Actual or Implied Partnership.

11 Danka testified as follows:

12 With regard to her statement to Attorney Andy Glendon that Tom was her
13 husband and partner in the Patience One building:

14 Q. Okay. Starting at that Bates Number, I'll have you
15 look at the first three pages after 000090 until you get to 000093.
16 Do you see that email exchange with Andy Glendon?

17 A. Yes.

18 Q. Okay. On page 000093, you write to Mr. Glendon,
19 my husband and I are partners in this deal together, his name is
20 Tom Pickens. That was a true statement, correct?

21 A. Yes.

22 **Trial Transcript, DAY ONE, P. 62, ll. 14 - 21**

23 With regard to the parties sharing bank and credit accounts:

24 Q. Because originally you were at B of A and when it
25 was helpful to move over to Wells Fargo, I think when you
26 refinanced the building, you opened a joint account at Wells
27 Fargo, right?

28 A. Yes.

Q. And during your relationship with Tom, you were
added as a cardholder to Tom's American Express cards, right?

A. Yes.

1 **Trial Transcript, DAY ONE, P. 49, ll. 10 – 17.**

2 With regard to the parties being joint owners of Patience One, LLC and being
3 co-borrows of the mortgage for the building:

4 Q. And the two of you were equal members of that
5 LLC?

6 A. Yes.

7 Q. And that LLC was the entity that purchased the
8 commercial building in which your medical practice
operates, correct?

9 A. Yes.

10 Q. And both of you had to sign personal guarantees on
that mortgage as well, correct?

11 A. Yes

12 Q. And in 2014 you refinanced that mortgage, correct?

13 A. Yes.

14 Q. And you and Tom both remained as personal
guarantors

15 on the new loan, correct?

16 A. Yes.

17 **Trial Transcript, DAY ONE, P. 71, ll. 12 – P. 22, l. 1**

18 With regard to Defendant's legal claims in the pending civil suit
seeking an ownership interest in Plaintiff's business Blue Point Development:

19 John Jones: 00:39:36 You are now making a claim in the
20 civil case that you're an owner of
BluePoint Development, right?

21 Danka Michaels: 00:39:41 Yes.

22
23 3/12/21 Informal Transcript at Part 1 of the video record

24 Plaintiff testified on this issue as follows:

25 With regard to the parties sharing of incomes and expenses:

26
27 Q. When you began living together who paid for what?

28 A. At the beginning she was paying for things. During

1 that time, I know that I -- I started helping her with finances. But,
2 at the beginning she paid for the majority of things.

3 Q. When you say things do you mean --

4 A. Well, the house payment, the electric, because I
5 didn't really know anything about it at that time when I moved in.

6 Q. Do you recall at what point you may have begun
7 sharing expenses for that house?

8 A. I know when we got back from the -- the wedding in
9 Slovakia that I started paying my share or whatever I could pay.

10 **Trial Transcript, DAY ONE, P. 97, ll. 2 - 15**

11 With regard to Plaintiff's sharing of his million dollar bonus with Defendant:

12 Q. And what else did you do with the rest of that
13 money?

14 A. I bought -- bought Danka a birthday slash Christmas
15 -- Christmas present. I bought her a new Porsche, 2015, paid for
16 it out of that bonus.

17 Q. You paid in full for that car?

18 A. Yes. I paid in full.

19 **Trial Transcript, DAY ONE, P. 227, ll. 23 -- P. 228, ll. 5**

20 Robert Semonian testified as follows:

21 With regard to the parties sharing of income and deductions on their tax
22 returns:

23 Q. During the time that you filed returns for the parties,
24 part of your job was to apportion the deductions for their jointly
25 owned properties between them, right?

26 A. That's correct.

27 Q. And generally you would figure out what was the -
28 - what would be the most tax-avoidance-based allocation before
you then would put some on her returns, some on his return,
right?

A. That's correct.

///

1 **Trial Transcript, DAY ONE, P. 82, ll. 4 - 12**

2 Todd Kilde testified as follows:

3
4 With regard to Plaintiff contributing the income of his company to
5 Defendant's business:

6 Q. He spent hundreds of thousands of Bluepoint
7 Development's revenues on his wife's business, personal use, and
8 mistress, yet unwilling to give raises or yearly bonuses as
9 promised. Did you write that?

10 A. Yes.

11 Q. And did you believe that was a true statement at the
12 time?

13 A. Yes.

14 **Trial Transcript, DAY ONE, P. 159, ll. 16 - 23**

15 **On the Issue of Breach of Fiduciary Duty / Undue influence**

16 Defendant testified as follows:

17 Q. But you were his primary care physician from 2000
18 to 2017, right?

19 A. Yes.

20 Q. And you've dra -- began prescribing him medicine
21 in 2000; is that right?

22 A. Yes.

23 Q. And in the summer of 2001, you began a romantic
24 relationship with him, right?

25 A. Yes.

26 Q. And you continued being his physician after that
27 relationship began?

28 A. Yes.

Q. And you continued to prescribe him medicines
while you were dating, correct?

A Yes.

1 Trial Transcript, DAY ONE, P. 34, ll. 22 - P. 35, ll. 12

2 With regard to the medications Defendant was prescribing Plaintiff:

3
4 Q. Now, in prescribing the drugs that you were
5 prescribing, obviously you were aware of the side effects of each
6 drug before you --

7 A. Yes.

8 Q. -- prescribed them to -- to Tom?

9 A. Yes.

10 Q. And you were aware of the effects of those drugs as
11 they pertain to taking them in combination, right?

12 A. Yes.

13 Trial Transcript, DAY ONE, P. 40, ll. 2-10

14 With regard to the fact that either party bullying the other part into a
15 transaction being wrong:

16 John Jones: 00:29:21 Now, you testified that Tom had
17 bullied you to get the low house
18 into joint names. Do you recall that
19 testimony?

20 Dr. Michaels: 00:29:29 Yes.

21 John Jones 00:29:30 You believe that was the wrong
22 thing for him to do, right?

23 Dr. Michaels: 00:29:37 I don't understand why he was
24 against it. And then he wanted me
25 on it.

26 Shawn Goldstein: 00:29:41 Objection, with the strike non-
27 responsive.

28 Judge: 00:29:44 Answer the question he asks you.
Your attorney will ask you further
questions

Dr. Michaels: 00:29:47 Yes, it was wrong.

John Jones: 00:29:49 It was wrong for him to bully you
into that transaction, right?

1 Dr. Michaels: 00:29:52 Correct.

2 3/12/21 informal transcript part 1.

3 Plaintiff testified as follows:

4 With regard to Defendant's demands, in violation of her multiple levels of
5 fiduciary duty to Plaintiff, that Plaintiff transfer all of the parties joint assets to
6 Defendant:

7 Q. And when Danka found out that you were
8 unfaithful, what did she do?

9 A. She demanded that I come home.

10 Q. Where were you?

11 A. I was in Marco Island.

12 Q. So you were across the country in Florida.

13 A. Yes.

14 Q. And what's -- what else does she do besides demand
15 that you come home?

16 A. She wanted me to sign over all our properties.

17 Q. Sign over, what does that mean? What did she want
18 you --

19 **Trial Transcript, DAY ONE, P. 235, ll. 19 – P. 236, ll. 6**

20 Q. How was that supposed to happen? How were you
21 supposed to sign deeds to property to Danka?

22 A. I flew into Las Vegas. She made an appointment
23 with Shannon Evans. We both met at Shannon Evans' office.
24 They produced documents. They said sign these documents. I
25 signed them. I mean, I was –

26 **Trial Transcript, DAY ONE, P. 236, ll. 12-17**

27 Q. -- when Danka asked you to sign deeds transferring
28 all the property to her, what were the specific discussions about
the conditions either way for you signing those documents?

A. The only condition that was talked about is within a
year, it first came up I said if I sign these, after two years would
you sign them back to me. And she said well, we'll sign them
back to you after a year, if everything goes correctly.

1 Q. What does that mean, if everything goes correctly?

2 A. In other words, if we made amends and I did
everything she wanted, that she would sign them back to me.

3 Q. Was anything else promised to you if you signed
4 those deeds, other than that they will be transferred back in a year
if everything went correctly?

5 A. Nothing of value.

6 Q. Okay. And did Danka sign any documents
relinquishing her interest in any property that day?

7 A. No.

8 **Trial Transcript, DAY ONE, P. 237, ll. 7 – 24**

9
10 Q. So why did you sign two deeds relinquishing your
11 interest in the two homes that you bought together, and the LLC
12 that owned the building? Explain to the Court why you would
sign something like that.

13 A. Because I was trying to make amends. I mean, I
14 didn't -- I was really messed up at that time.

15 Q. How were you messed up?

16 A. Just between everything that happened. The girl that
17 I had an affair with was pregnant. She had an abortion the day I
signed the documents. That completely threw me over the, I
mean, that threw me for a loop. Just the fact that everything I
worked so hard for was gone.

18 Q. What does that mean, everything you worked so
19 hard for was gone?

20 A. I worked so hard to get where we were. And I did
everything I could to make our lives better, and it just was
21 completely destroyed. I mean, everything.

22 **Trial Transcript, DAY ONE, P. 239, ll. 4 – 20**

23 Shannon Wilson testified as follows:

24 With regard to Defendant, and Defendant alone, being the individual who set
25 up the September 13th appointment by which she was to attempt to have Plaintiff
26 sign over his interests in their jointly owned property:

27 Q. Okay. What I'm suggesting to you is prior to the
28 13th did you get a call from Mr. Pickens giving you instructions

1 about any of those documents?

2 A. No.

3 Q. All of your instructions regarding those documents
4 came from the Defendant, right?

5 MS. ABRAMS: Objection. That's not what she said.

6 THE WITNESS: Yeah, I would have (indiscernible) the
7 instructions. I understood there was going to be a splitting up of
8 the assets based on a breakup of the relationship, that we were
9 going to meet together in my conference room, that it would be
10 somewhat stressful, and we would see what the parties agreed to.
11 That was my understanding.

12 BY MR. JONES:

13 Q. Okay. But that understanding came only from a
14 phone call with the Defendant, right?

15 A. Yes. I did not talk to Mr. Pickens about the
16 breakup of the relationship.

17 **Trial Transcript, DAY TWO, P. 32, ll. 20 – P. 33, ll. 13**

18 With regard to the demeanor of Tom at the time of the purported transfers:

19 Q. And on September 13th, 2016, Tom seemed a little
20 bit out of sorts; is that right?

21 A. Both parties were very upset.

22 Q. He was nervous?

23 A. Both parties were nervous.

24 Q. Okay. If I asked you just about Tom, I'm going to
25 ask you to answer about Tom. Is that okay?

26 A. Sure.

27 Q. Okay. Did Tom seem nervous?

28 A. Yes.

Q. Did he seem upset?

A. Yes.

Q. And it was a very tense situation, right?

A. Exactly.

Trial Transcript, DAY TWO, P. 36, ll. 19 – P. 37, ll. 8

On the issue of Want of Consideration for the purported transfers.

Danka testified as follows:

1 With regard to the fact that Tom received absolutely no consideration for the
2 purported transfers of assets:

3
4 Q. Okay. Now, with regard to Queen Charlotte, did
5 you transfer anything to Tom on September 13 in exchange him
6 transferring that property?

7 A. No.

8 Q. Did you pay him any cash?

9 A. No.

10 Q. Did you write him a check?

11 A. No.

12 Q. With regard the Lowe Avenue property, did you
13 transfer him any property at that -- on that date in exchange for
14 the Lowe property?

15 A. No.

16 Q. Did you pay him any cash?

17 A. No.

18 Q. Did you write him a check?

19 A. No.

20 **Trial Transcript, DAY ONE, P. 75, ll. 10 – P. 76, l. 1**

21 Q. That would be is someone was transferring
22 something to you, you're trans something -- transferring
23 something to them in exchange. Okay. If we use that as the
24 definition, even if it's the wrong definition, did you give you
25 Tom any consideration for either of those transactions?

26 MS. ABRAMS: Same objection.

27 THE COURT: I'll -- I'll overrule that and let her answer
28 the question.

MS. ABRAMS: Okay.

THE WITNESS: No.

Trial Transcript, DAY ONE, P. 76, ll. 14-23

With regard to providing Tom with no form of consideration for his
purported transfer of Patience One, LLC.

Q. At the time he transferred you, and -- and just so
The Court is clear, Patience One owns the building that we just

1 talked about, the value -- the net value is about three million
2 dollars, right?

A. Yes.

3 Q. Okay. At the time of that transfer, did you transfer
4 anything to Tom?

A. .

5 Q. Did you pay him any cash?

6 A. No.

7 Q. Did you write him a check?

8 A. No.

9 Q. Did you sign any documents -- legal documents that
day that waived any claims or interest that you might have had?

A. No.

10 **Trial Transcript, DAY ONE, P. 82, ll. 18 – P. 83, ll. 8**

11
12 With regard to Defendant's prior testimony that she would not have
13 refinanced the mortgage on the Queen Charlotte property had she known Plaintiff
was making a claim against it:

14 John Jones: 00:25:27 Do you recall your attorney asking you
15 if you've changed your position
16 regarding Queen Charlotte at any time?

17 Dr. Michaels: 00:25:33 May I see-

18 John Jones: 00:25:34 And then he went into the discussion of
the refinance? Do you recall that?

19 Dr. Michaels: 00:25:38 Yes.

20 John Jones: 00:25:39 And in fact, you have refinanced Queen
21 Charlotte, right?

22 Dr. Michaels: 00:25:42 Yes.

23 John Jones: 00:25:43 But you didn't do it until February,
2018, right?

24 Dr. Michaels: 00:25:47 Yes.

25 John Jones: 00:25:48 You had already been served with
26 Tom's complaint asking for half of
27 Queen Charlotte in November of '17,
28 right?

1 Dr. Michaels: 00:25:55 Yes.

2
3 **3/12/21 Informal transcript part 1.**

4 Shannon Evans testified as follows:

5
6 With regard to the absence of any consideration flowing to Plaintiff from
7 Defendant for the purported transfers of property on September 13th.

8 Q. Okay. Now, did any part of what you did that day
9 indemnify the Plaintiff from the liability on the mortgage on one
10 of the properties?

11 A. (No verbal response)

12 Q. Or a mortgage on any of the properties rather?

13 A. No, I had no information about mortgages on any of
14 the properties.

15 **Trial Transcript, DAY TWO, P. 27, ll. 11 - 17**

16 Q. And there was no payment made from the
17 Defendant to the Plaintiff for the transfer of either of the parcels
18 of real property?

19 A. Not to my knowledge.

20 Q. And was there, in your presence on September 13,
21 any other consideration of any kind provided by the Defendant
22 to the Plaintiff for the transfer of the two residential pieces of
23 property?

24 A. Not at that meeting with me, no.

25 Q. Are you aware of any consideration any other time?

26 A. No.

27 Q. Now, as it pertains -- we'll go back to 700 again --
28 actually 000699, page 1 of the purported assignment. In the
second recital it says: Assignor desires to assign for good and
valuable consideration all its right, title, duties, obligations and
interest in and to the 50 percent interest of the LLC to assignee.
Do you see that?

A. Yes, I do.

Q. Was there any good and valuable consideration
conveyed that day in your presence?

A. To my knowledge it was a gift and not a purchase.

1 Q. If it was a gift -- do you understand the legal impact
2 of recitals in a contract?

3 A. Yes.

4 Q. In the State of Nevada?

5 A. Yes.

6 Q. It's a unique legal impact. This means that there is a
7 presumption that good and valuable consideration was required
8 for this transaction, by my reading of the law, right?

9 A. Yes. Yes.

10 Q. Okay. But to your knowledge there was no good and
11 valuable consideration, right?

12 A. Correct.

13 **Trial Transcript, DAY TWO, P. 27, ll. 23 – P. 29, ll. 8**

14 With regard to the failure of the purported transfer of Patience One.

15 Shannon Evans testified as follows:

16 With regard to the fact that no documents exist by which Plaintiff transferred
17 his individual LLC interest into the Blue Wave Trust:

18 Q. And you don't have a document -- I've scoured this
19 file now multiple times. You don't have a document wherein the
20 Plaintiff, Mr. Pickens, conveyed his interest in Patience One,
21 LLC into his trust, right?

22 A. I believe there were unsigned deeds that were sent
23 to them that they never notarized or recorded.

24 Q. Okay. But you don't have a document that evidences
25 a transfer --

26 A. That was [cross-talk] --

27 Q. -- of the interest in the LLC from Mr. Pickens into
28 his trust?

A. No. That was signed and recorded, no.

Trial Transcript, DAY TWO, P. 24, ll. 22 – P. 25, ll. 9

With regard to the fact that in order for Plaintiff to have transferred his
individual LLC interest, it would have had to have been his name, not the name of
his trust that was the transferor:

Q. Okay. But you agree with the concept that in order

1 for an individual to transfer his interest it wouldn't -- it would not
2 say LV Blue Trust, it would just say Tom Pickens, right?

3 A. Correct. The member should reflect a signed
4 operating agreement at the time.

5 **Trial Transcript, DAY TWO, P. 26, ll. 14 - 19**

6 Robert Simonian Testified as Follows:

7 With regard to the fact that the LLC, at the time of the September 13th
8 purported transfer was owned by Plaintiff and Defendant as individuals:

9
10 Q. ... And now turning to the K1 pages, the K1 -- the
11 first K1 for Danka Michaels, that says Danka Michaels, M.D.,
12 right?

13 A. That's correct.

14 Q. And that referred to the Defendant --

15 THE COURT: Refer to Bates stamp.

16 MR. JONES: Oh, I'm sorry. The Bates stamp, Your Honor,
17 is 1533.

18 THE COURT: Got it.

19 BY MR. JONES:

20 Q. And that would be the Defendant as an individual,
21 correct?

22 A. That's correct.

23 Q. And the second page, the K1 is for Tom Pickens,
24 right?

25 A. That's correct.

26 Q. And that would be Tom Pickens as an individual,
27 right?

28 A. That's correct.

Q. Now, the third page is after the transaction. You
have it listed as the Mich Trust as the member; is that right?

A. That's correct.

///

///

///

3 IV

4 CREDIBILITY

5 This Court will certainly recall the many ways that Defendant's new trial
6 counsel tried to help Danka walk back her unequivocal and honest testimony from
7 Day One of trial. Fortunately, the attempts were so obvious and Danka's initial
8 testimony is so clear that Danka's testimony alone provides this Court with
9 substantial evidence upon which to grant the relief sought by Tom.

10 Perhaps even more relevant to the Court's analysis of the credibility of the
11 parties, is the false narrative Defendant attempted to create of Tom not contributing
12 to the parties' relationship and partnership at the same level as Danka claims she did.
13 While Danka attempted to portray Tom as a freeloader, the truth is that this false
14 narrative actually proves the existence of a partnership between the parties. Indeed,
15 in the early years of the partnership, Tom did not contribute as much as Danka
16 monetarily due to his limited income, but Tom's efforts to renovate all property
17 purchased or leased for businesses, shows these parties were doing what spouses and
18 partners do. When one is having a down time, the other contributes more. The
19 documentary evidence, however, made clear that Tom's contributions of money,
20 labor and credit, were substantial and were as much responsible for the creation of
21 this multi-million-dollar estate as Danka's contributions.

22 Even after lengthy arguments regarding the admission of a summary of Tom's
23 payoff of the Lowe home mortgage, where Danka objected to a very simple
24 summary of mortgage payments, Danka herself testified that Tom paid off the
25 mortgage. Then, to further establish her lack of trustworthiness, Danka, in violation
26 of the JPI, sold the Lowe property during the pendency of the trial of this matter.
27 Danka even went so far as to try to claim that Tom purchased her Porsche for
28 himself, even though she continues to drive the car to this day.

1 It also cannot be ignored that Danka's actions, as Tom's Primary Care
2 Physician, are those for which discipline would issue from the State of Nevada.
3 Having a sexual relationship with a patient, and using your position as a patient's
4 physician for personal financial gain, are both conduct that constitutes "offenses"
5 under Nevada law (see NRS 630.301).

6 Finally, on the issue of credibility, Danka stands before this Court and asks
7 for orders which are patently unfair. Somehow, Danka believes that her receiving
8 100% of the assets which the parties accumulated together is an appropriate outcome
9 to the parties' lengthy partnership. Tom, on the other hand, believes that all assets,
10 including the ones which remain in his control after September 13, 2016, which the
11 parties created together over the course of their relationship, should be equally
12 divided. The vast disparity of the requests for relief is further indicia of Danka's
13 lack of credibility before this Court.

14 IV.

15 LEGAL ANALYSIS

16 **Putative Spouse.**

17 This Court is well aware of the fact that Nevada recognizes the putative
18 spouse doctrine. The Nevada Supreme Court has defined the requirements of
19 this doctrine as follows:
20

21 The doctrine has two elements: (1) a proper marriage ceremony
22 was performed, and (2) one or both of the parties had a good-faith belief
23 that there was no impediment to the marriage and the marriage was
24 valid and proper. "Good faith" has been defined as an "honest and
25 reasonable belief that the marriage was valid at the time of the
26 ceremony." Good faith is presumed. The party asserting lack of good
27 faith has the burden of proving bad faith. Whether the party acted in
28 good faith is a question of fact. Unconfirmed rumors or mere suspicions
of a legal impediment do not vitiate good faith " 'so long as no certain
or authoritative knowledge of some legal impediment comes to him or
her.' " However, when a person receives reliable information that an

1 impediment exists, the individual cannot ignore the information, but
2 instead has a duty to investigate further. Persons cannot act “ ‘blindly
3 or without reasonable precaution.’ ” Finally, once a spouse learns of the
4 impediment, the putative marriage ends.

5 *Williams v. Williams*, 120 Nev. 559, 565–66, 97 P.3d 1124, 1128 (2004)

6 In this case, there can be no dispute that there was a proper marriage
7 ceremony. The parties had to get a letter from a Las Vegas Catholic Church in order
8 to get married in the Catholic Church in Bratislava. They received a Marriage
9 Certificate and posed for wedding photos with Danka’s parents, and they sent out
10 announcements of their marriage. The parties held themselves out as husband and
11 wife to everyone but the IRS.

12 Tom’s testimony was uncontroverted that the discussion of the parties was
13 that a non-USA marriage would aid in asset protection. Tom’s testimony was also
14 uncontroverted that he did not learn of the legal impediment to a valid marriage until
15 after he filed the instant action in 2017. Probably one of the most compelling facts
16 is that even as the parties are buying the Patience One building, Danka was telling
17 the lawyer involved, Andy Glendon, that Tom Pickens was her husband and partner.
18 Clearly, Tom’s belief that he was married was in good faith.

19 The one final factor that is important for the Court to consider is that the power
20 to file the Marriage Certificate with the authorities in Bratislava rested with Danka.
21 This was her home town, and it was her connections which arranged for the
22 marriage. She and she alone could have recorded the document, and she did not.

1 These types of facts are a perfect example of why Nevada adopted the putative
2 spouse doctrine in the first place.

3
4 **Implied Partnership / Michoff marriage.**

5 In addition to adopting the putative spouse doctrine as a means of ensuring
6 equity when legally unmarried cohabitants sever the relationship, the Nevada
7 Supreme court has also recognized that the actions of legally unmarried cohabitants
8 can create an implied partnership which results in the division of assets upon the
9 dissolution of the partnership as if community property law applied. The Nevada
10 Supreme Court specifically held as follows:
11
12

13 In *Warren v. Warren*, 94 Nev. 309, 579 P.2d 772 (1978),
14 we addressed the issue of the property rights of unmarried
15 cohabitants. There, the lower court held that appellant Sybil
16 Warren had failed to prove the existence of an alleged agreement
17 to pool funds or form a partnership with her cohabitant. Although
18 we merely affirmed the lower court's findings, our opinion
19 implied that her allegations were sufficient to state a cause of
20 action. In *Warren*, we cited language from *Marvin v. Marvin*, 18
21 Cal.3d 660, 134 Cal.Rptr. 815, 557 P.2d 106 (1976), in which it
22 was held that:

23 The courts should enforce express contracts between
24 nonmarital partners except to the extent that the contract is
25 explicitly founded on the consideration of meretricious sexual
26 services ... In the absence of an express contract, the courts
27 should inquire into the conduct of the parties to determine
28 whether that conduct demonstrates an implied contract,
agreement of partnership or joint venture, or some other tacit
understanding between the parties. The courts may also employ
the doctrine of quantum meruit, or equitable remedies such as
constructive or resulting trusts, when warranted by the facts of
the case.

We agree that the remedies set forth in *Marvin* are available to unmarried cohabitants. Unmarried persons who are living together have the same rights to lawfully contract with each other regarding their property as do other unmarried individuals. Their agreement may be express or implied, as alleged in the instant case, from the conduct of the parties. Although they may not, of course, contract for meretricious sexual services, they may expect that courts will protect their reasonable expectations with respect to transactions concerning property rights. Each case should be assessed on its own merits with consideration given to the purpose, duration and stability of the relationship and the expectations of the parties. See *Omer v. Omer*, 11 Wash.App. 386, 523 P.2d 957, 960-961 (1974). Where it is alleged, as it was in the instant case, and proven that there was an agreement to acquire and hold property as if the couple was married, the community property laws of the state will apply by analogy.

Hay v. Hay, 100 Nev. 196, 198-99, 678 P.2d 672, 674 (1984)

In a later case which coined the phrase "Michoff marriage", the Nevada Supreme Court specifically cited the types of evidence which supports the conclusion that an implied partnership existed. The Court held as follows:

Nevertheless, we conclude that there is substantial evidence to support the district court's finding that Lois and Max impliedly agreed to hold their property as though they were married. In addition to living together and holding themselves out to be a married couple, this evidence included the parties filing federal tax returns as husband and wife, the parties designating that they held the Western States stock as community property in their Subchapter S election, and Max's insistence that Lois sign a consent of spouse to effectuate a partnership he wanted to enter. The district court's judgment against Max is therefore affirmed. *Pandelis Constr. Co. v. Jones-Viking Assoc.*, 103 Nev. 129, 130, 734 P.2d 1236, 1237 (1987).

W. States Const., Inc. v. Michoff, 108 Nev. 931, 938-39, 840 P.2d 1220, 1224-25

1 (1992).

2 In this case, the evidence of an implied, if not actual, partnership is not only
3 substantial, it is nearly overwhelming. Specifically, the uncontroverted evidence
4 presented at trial which establishes an implied partnership resulting in the
5 application of community property law, was as follows:
6

- 7 1. The parties held their two residences as "wife and husband", and
8 the related mortgages included a deed of trust naming Danka as
9 a married woman and Tom as a married man.
10
- 11 2. The parties shared a joint bank account.
12
- 13 3. The parties held themselves out as partners, as well as husband
14 and wife. Both Shannon Evans and Robert Semonian testified as
15 such.
16
- 17 4. Danka was an authorized user on Tom's American Express card
18 and used it to purchase supplies for her medical practice.
19
- 20 5. The parties held an interest in an LLC as equal partners.

21 The evidence present in this case is far greater than the evidence in *Michoff*.
22 While Danka seems to want to focus on the filing of separate tax returns as being a
23 distinguishing factor from *Michoff*, in reality, tax filings are not a compelling factor
24 because filing a joint return, when parties are not legally married, is illegal.
25 Moreover, tax returns are not a matter of public record: Deeds are.
26

27
28 ///

Moreover, as further evidence of the partnership, Danka and Tom each claimed one half of the rental income and deductions related their jointly titled property, and their CPA allocated income and deductions between the parties to ensure that they received the maximum tax benefits. What better evidence of a partnership could there be?

Danka's breach of fiduciary duty / Exertion of Undue influence.

The evidence is uncontroverted that the parties to this action were partners in every sense of the word. This is established not only by the testimony of the parties as set forth above but also the substantial documentary evidenced summarized herein. While the evidence is compelling, Nevada law gives this Court many ways to remedy the inequity which occurred on September 13th, 2016.

It is generally recognized that joint venturers owe to one another the duty of loyalty for the duration of their venture. A corporate officer or director stands as a fiduciary to the corporation. This fiduciary relationship requires a duty of good faith, honesty and full disclosure. *Western Indus., Inc. v. General Ins. Co.*, 91 Nev. 222, 228, 533 P.2d 473, 476 (1975). Any alleged breach of such a duty is a question for the trier of fact after examination of all the evidence. *Id.* We also note that a corporate officer or director may contract directly with the corporation. Such contracts are valid, if at the time of their making, they are fair to the corporation. *See* NRS 78.140; *Pederson v. Owen*, 92 Nev. 648, 650, 556 P.2d 542, 543 (1976).

Leavitt v. Leisure Sports Incorporation, 103 Nev. 81, 86, 734 P.2d 1221, 1224 (1987)

Clearly, Danka owed a fiduciary duty to Tom as it pertained to their joint venture in the residential real property and in the LLC interest. In addition to having a fiduciary relationship, the parties also held a confidential relationship.

We review first the basic principles of fiduciary and confidential relations. The two terms are often said to be synonymous, but there are “significant differences.” (*Richelle L. v. Roman Catholic Archbishop* (2003) 106 Cal.App.4th 257, 271, 130 Cal.Rptr.2d 601 (*Richelle L.*.) Both relationships give rise to a fiduciary duty, that is, a duty “to act with the utmost good faith for the benefit of the other party.” (*Bacon v. Soule* (1912) 19 Cal.App. 428, 434, 126 P. 384.) “ ‘Technically, a fiduciary relationship is a recognized legal relationship such as guardian and ward, trustee and beneficiary, principal and agent, or attorney and client ... whereas a “confidential relationship” may be founded on a moral, social, domestic, or merely personal relationship as well as on a legal relationship.’ ” (*Richelle L., supra*, 106 Cal.App.4th at p. 271, 130 Cal.Rptr.2d 601, quoting *Barbara A. v. John G.* (1983) 145 Cal.App.3d 369, 382, 193 Cal.Rptr. 422.) A confidential relation may exist where there is no fiduciary relation. (*Vai v. Bank of America* (1961) 56 Cal.2d 329, 337–338, 15 Cal.Rptr. 71, 364 P.2d 247.)⁸ “Because confidential relations do not fall into *1161 well-defined categories of law and depend heavily on the circumstances, they are more difficult to identify than fiduciary relations.” (*Richelle L., supra*, 106 Cal.App.4th at p. 272, 130 Cal.Rptr.2d 601.) The existence of a confidential relationship is a question of fact, and “ ‘the question is only whether the plaintiff actually reposed such trust and confidence in the other, and whether the other “accepted the relationship.” ’ ” (*Richelle L., supra*, at p. 272, fn. 6, 130 Cal.Rptr.2d 601, quoting Chodos, *The Law of Fiduciary Duties* (2000) pp. 49–50.) A “relationship” must exist over a period of time. (*Richelle L., supra*, at p. 272, fn. 6, 130 Cal.Rptr.2d 601, citing Chodos, *The Law of Fiduciary Duties, supra*, at p. 53.)

Persson v. Smart Inventions, Inc., 125 Cal. App. 4th 1141, 1160–61, 23 Cal. Rptr. 3d 335, 350 (2005)

1 As Tom's physician, Danka owed an additional fiduciary duty to Tom.

2 A fiduciary relationship is deemed to exist when one party is
3 bound to act for the benefit of the other party. Such a relationship
4 imposes a duty of utmost good faith. *Barbara A. v. John G.*, 145
5 Cal.App.3d 369, 193 Cal.Rptr. 422, 431 (1983). "The essence of
6 a fiduciary or confidential relationship is that the parties do not
7 deal on equal terms, since the person in whom trust and
8 confidence is reposed and who accepts that trust and confidence
9 is in a superior position to exert unique influence over the
10 dependent party." *Id.* 193 Cal.Rptr. at 432.

11 6 This court has recognized that the physician-patient
12 relationship is "fiduciary in nature." *Massey v. Litton*, 99 Nev.
13 723, 728, 669 P.2d 248, 252 (1983)(citation omitted). The
14 physician-patient relationship is based on trust and confidence.
15 Society has placed physicians in an elevated position of trust,
16 and, therefore, the physician is obligated to exercise utmost good
17 faith. While Dr. Hammargren urges this court to limit this type
18 of claim to physicians practicing psychiatry, we believe the
19 fiduciary relationship and the position of trust occupied
20 by *all* physicians demands that the standard apply to all
21 physicians. *See also Lockett v. Goodill*, 71 Wash.2d 654, 430
22 P.2d 589, 591 (1967).

23 A patient generally seeks the assistance of a physician in order to
24 resolve a medical problem. The patient expects that the physician
25 can achieve such resolution. Occasionally (due to illness), the
26 patient is emotionally unstable and often vulnerable. There is the
27 hope that the physician possesses unlimited powers. It is at this
28 point in the professional relationship that there is the potential
and opportunity for the physician to take advantage of the
patient's vulnerabilities. To do so, however, would violate a trust
and constitute an abuse of power. This court would condemn any
such type of exploitation. Such conduct would fall below the
acceptable standard for a fiduciary.

Historically, the physician's primary obligation has been, above
all, to do no harm. It is Ms. Hoopes' contention that Dr.
Hammargren abused the physician-patient relationship by
instigating a sexual relationship.

Hoopes v. Hammargren, 102 Nev. 425, 431, 725 P.2d 238, 242 (1986)

1 In the context of a marital or quasi marital relationship, a similar duty exists.

2
3 Where an antecedent fiduciary relation exists, a court of equity
4 will presume confidence placed and influence exerted; where
5 there is no such fiduciary relation, the confidence and influence
6 must be *proved* by satisfactory extrinsic evidence; the rules of
7 equity and the remedies which it bestows are exactly the same in
8 each of these two cases. The doctrine of equity concerning undue
9 influence is very broad, and is based upon principles of the
10 highest morality. It reaches every case, and grants relief 'where
11 influence is acquired and abused, or where confidence is reposed
12 and betrayed.' It is specially active and searching in dealing with
13 gifts, but is applied, when necessary, to conveyances, contracts
14 executory and executed, and wills.'

15 *Peardon v. Peardon*, 65 Nev. 717, 767, 201 P.2d 309, 333 (1948)

16 When such a relationship exists, a Court sitting in the position of this honorable
17 Court, has broad equitable powers to remedy the wrongs which were perpetrated
18 by Danka on September 13, 2016.

19 We have held that "[a] presumption of undue influence arises
20 when a fiduciary relationship exists and the fiduciary benefits
21 from the questioned transaction." *In re Jane Tiffany Living Trust*
22 *2001*, 124 Nev. 74, 78, 177 P.3d 1060, 1062 (2008) (addressing
undue influence in the context of an attorney receiving an inter
vivos transfer from a client). Once raised, a beneficiary may
rebut such a presumption by clear and convincing
evidence. *Id.* at 79, 177 P.3d at 1063.

23 *In re Est. of Bethurem*, 129 Nev. 869, 874, 313 P.3d 237, 241 (2013)

24 A fiduciary duty clearly existed between the parties at the time of the
25 transaction in question, and Danka clearly benefitted from the violation of her duties
26 to Tom.
27
28

Want of Consideration.

The evidence is uncontroverted that Tom received no consideration for the September 13th purported transaction. It is first year Contracts that for a contract to be valid, consideration must flow in both directions. There can be no disputing that the documents signed on September 13th 2016 purport to be contracts.

Ordinarily, therefore, courts do not inquire into the adequacy of consideration.... Gross inadequacy of consideration may be relevant to issues of capacity, fraud and the like, but the requirement of consideration is not a safeguard against imprudent and improvident contracts except in cases **279 where it appears that there is no bargain in fact. Restatement (Second) of Contracts § 79 cmt. c (1979) (emphasis added).

The Restatement further states:

Although the requirement of consideration may be met despite great difference in the values exchanged, gross inadequacy of consideration may be relevant in the application of other rules. Inadequacy "such as shocks the conscience" is often said to be a "badge of fraud," justifying a denial of specific performance. Inadequacy may also help to justify rescission or cancellation on the ground of lack of capacity, mistake, misrepresentation, duress or undue influence. Id. cmt. e (citations omitted) (emphasis added).

Oh v. Wilson, 112 Nev. 38, 41, 910 P.2d 276, 278-79 (1996)

Ordinarily, if a person voluntarily pays another money, he cannot maintain an action to recover it back. This rule, however, does not apply where money is paid under a contract, and the consideration fails. The money or property may be recovered back in such a case. Clark on Contracts (4th Ed.) p. 647. 13 C. J. 367.

...

The plaintiffs having received no consideration whatever for their deed, it would be against equity and good conscience to permit the Joint Holding Company to retain and keep land for which its grantor gave nothing in return. This conclusion renders it unnecessary to consider the other matters discussed by counsel for plaintiffs in respect to the insufficiency of the evidence to support the trial court's findings on the issue of fraud and fraudulent misrepresentations.

Russell v. Ruffcorn, 54 Nev. 162, 10 P.2d 632, 636 (1932)

"Basic contract principles require, for an enforceable contract, an offer and acceptance, meeting of the minds, and consideration." *Certified Fire Prot., Inc. v. Precision Constr., Inc.*, 128 Nev. —, —, 283 P.3d 250, 255 (2012) (internal quotations omitted). Consideration is " 'a performance or return promise' " given in exchange for the initial promise. *Pink v. Busch*, 100 Nev. 684, 688, 691 P.2d 456, 459 (1984) (quoting Restatement (Second) of Contracts § 71(1) (1981)). A promise which imposes a legal duty or liability on the promisor is sufficient. See *Mayer Hoffman McCann, P.C. v. Barton*, 614 F.3d 893, 903 (8th Cir.2010) (holding that "mutual promises imposing some legal duty or liability on each promisor ... [are] sufficient consideration to form a valid, enforceable contract" (internal quotations omitted)). "A meeting of the minds exists when the parties have agreed upon the contract's essential terms." *Certified Fire Prot.*, 128 Nev. at —, 283 P.3d at 255.

Manning v. Coryell, 130 Nev. 1213 (2014)

Clearly in addition to not meeting the basic requirements of a valid contract, there could not have been a valid contract due to the absolute absence of any consideration flowing to Tom for the purported transfers.

There is one other consideration for this Court: NRS 155.097 prohibits those in Danka's position from exerting undue influence in transactions like the ones

1 which transpired on September 13, 2016. The Court should review this authority.
2 Tom hereby incorporates by this reference the authorities outlined in his Opposition
3 to Defendant's Motion for Summary Judgment, to Dismiss, for Protective Order,
4 and his Countermotion to Dismiss and/or for Summary Judgment on Dank's
5 Counterclaims, which was filed in this matter on August 19, 2019. The authorities
6 contained in this filing should cause this Court great concern and provide ample
7 authority for the dismissal of all of Dank's Counterclaims, as well as for further
8 authority for granting the relief sought by Tom herein.
9
10
11

12 V

13 ARGUMENT

14 The Family Court is a Court of Equity. This is a line which Judges and
15 lawyers have invoked for longer than the Family Court has existed. Some issues
16 before this court can boil down to the simple recognition of rigid legal definitions.
17 This is true of the failure of a transfer of Patience One LLC based upon the purported
18 transferor not owning the interest in the LLC. This is also true regarding the absence
19 of any consideration being fatal to a contract.
20
21

22 The broader theme of the evidence presented at trial, however, must be equity.
23 The reason theories of law like putative spouse, or Implied partnership exist under
24 Nevada law is to ensure that a truly unfair result occurs under fact and circumstances
25

26 ///

27 ///

1 identical to those before the Court. What is fair under the circumstances established
2 by the substantial evidence presented at trial? Tom seeks only that which is fair and
3 nothing else.
4

5 The Court knows that Defendant owed Plaintiff multiple levels of fiduciary
6 duties. Despite this fact, she took advantage of her distraught partner and strip him
7 of all they had accumulated together. It is ironic that Defendant plead unjust
8 enrichment as an affirmative defense to Tom's claims, because that is exactly what
9 she herself is seeking from this Court. Tom however seeks only equity. Fortunately
10 for Tom and for this Court, the evidence and Nevada law preclude the relief sought
11 by Defendant and requires that the Court grant the relief sought by Tom.
12

13 To the extent that the relief sought herein by Tom is construed by this Court
14 as being beyond the claims that have been plead throughout this case, Tom, pursuant
15 to NRCP 15, moves this Court to allow the amendment of the pleadings to conform
16 to the evidence adduced at trial.
17
18
19

20 ///

21 ///

22 ///

23 ///

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25 ///

26 ///

27 ///

28 ///

VI.

CONCLUSION

Attached to this closing argument brief are Plaintiff's proposed "Findings of Fact, Conclusions of Law, and Orders". (See Exhibit "1"). The same sets forth with specificity the appropriate relief and the factual and legal bases for the relief. The result of these Findings are equity and fairness and nothing more.

Dated this 23 day of April, 2021.

JONES & LOBELLO



John D. Jones (NV Bar No. 6699)
Michele LoBello (NV Bar No. 5527)
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Attorneys for Plaintiff,
THOMAS A. PICKENS

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of JONES &
3 LOBELLO and that on the 23rd day of April, 2021, I caused the above and
4 foregoing document entitled foregoing PLAINTIFF'S CLOSING ARGUMENT
5 BRIEF, to be served as follows:

6 ☐ by placing same to be deposited for mailing in the United States Mail, in a
7 sealed envelope upon which first class postage was prepaid in Las Vegas,
8 Nevada; and

9 ☒ pursuant to N.E.F.C.R. 9, to be sent via electronic service;

10 ☐ pursuant to EDCR 7.26, to be sent via facsimile;

11 ☒ by email to

12 to the party or their attorney(s) listed below at the address and/or facsimile number
13 indicated below:

14 Jennifer V. Abrams, Esq.
15 The Abrams & Mayo Law Firm
16 6252 South Rainbow Blvd., #100
17 Las Vegas, NV 89118
18 Email: JVAGroup@TheAbramsLawFirm.com
19 Attorney for Defendant

20 Shawn M. Goldstein, Esq.
21 GOLDSTEIN LAW, LTD.
22 1980 Festival Plaza Drive, Suite 300
23 Las Vegas, NV 89135
24 Email: shawn@goldsteinlawltd.com
25 Attorney for Defendant,

26 and that there is regular communication by mail between the place of mailing and
27 the place(s) so addressed.

28 /s/ Elisabeth S. Flemming

An Employee of JONES & LOBELLO

EXHIBIT “1”

1 **FFCL**
2 **JONES & LOBELLO**
3 John D. Jones (NV Bar No. 6699)
4 Michele LoBello (NV Bar No. 5527)
5 9900 Covington Cross, Suite 210A
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8 Email: jones@joneslobello.com
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10 Attorneys for Plaintiff,
11 THOMAS A. PICKENS

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

15 THOMAS A. PICKENS,
16 Individually and as Trustee of the LV
17 Blue Trust,

18 Plaintiff/Counterdefendant.

19 vs.

20 DANKA K. MICHAELS,
21 Individually and as Trustee of the Mich-
22 Mich Trust,

23 Defendant/Counterclaimant;

24 and related Counterclaims.

CASE NO.: D-17-560737-D
DEPT. J

**Dates of Trial: February 14, 2020 &
February 21, 2020, March 5, 2021
and March 12, 2021 & April 2, 2021**

25 **FINDINGS OF FACT, CONCLUSIONS OF LAW,**
26 **DECREE OF DIVORCE AND JUDGMENT**

27 The above captioned matter having come before this Honorable Court for trial
28 on February 14, 2020; February 21, 2020; March 5, 2021; March 12, 2021 and April
2, 2021, upon the Second Amended Complaint of Plaintiff, THOMAS ALLEN
PICKENS ("Tom "), present and represented by his attorneys, Jones D. Jones,

1 Michele LoBello and JONES & LOBELLO; and upon the Counterclaim of
2 Defendant, DANKA K. MICHAELS ("Danka"), present and represented by her
3 attorneys, Jennifer Abrams and THE ABRAMS & MAYO LAW FIRM, and Shawn
4 M. Goldstein and the law firm of GOLDSTEIN LAW LTD., the Court, having
5 reviewed the papers and pleadings on file, having received and considered the
6 testimony of the parties and other witnesses, having weighed the credibility of the
7 witnesses, having reviewed the substantial documents and information received into
8 evidence, having heard the argument of counsel, and for good cause appearing,
9 hereby FINDS, CONCLUDES AND ORDERS as follows:

10 **I.**

11 **FINDINGS OF FACT**

12
13 **THE COURT FINDS** that it is appropriate to take judicial notice of the
14 following law and facts pursuant to NRS 47.130 pursuant to the Requests for Judicial
15 Notice filed by Tom in this action:

- 16 1. NAC 630.230 prohibits physicians from failing to adequately supervise
17 APRN's in their employ.¹
- 18 2. NRS 630.301 makes it grounds for discipline for a physician to engage in
19 sexual relations with a patient.
- 20 3. NRS 630.301 makes it a ground for discipline for a physician to exploit a
21 relationship with a patient for financial or other personal gain.
- 22 4. The fact that Defendant sold the 7608 Lowe Avenue, Las Vegas, Nevada
23 89131 (APN 125-16-511-008) residence during the pendency of this action
24 on August 26, 2020, Recorded Document No. 20200826:04179, according
25 to the Clark County Assessor.

26
27 ¹ Pursuant to NAC 630.230(1)(i), a person who is licensed as a physician or physician assistant shall not:
28 "If the person is a physician, fail to provide adequate supervision of a physician assistant or an advanced
practice registered nurse". See Nev. Admin. Code §630.230(1)(i).

1 5. The fact that the Clark County Recorder's Office shows no evidence of the
2 recording of a satisfaction of the mortgage on the Patience One LLC
3 building located at 3320 North Buffalo Drive, Las Vegas, Nevada 89129-
4 7443 (APN 128-10-401-001).

5 **THE COURT FURTHER FINDS** that this trial began on February 14, 2020
6 and was conducted over five (5) days. During the trial, the Court admitted 138
7 Exhibits and heard the testimony of the parties, and the testimony of witnesses
8 Shannon Evans, Esq., Robert Semonian CPA, Dara Lesmeister, Todd Kilde, and
9 Roberto Carillo, APRN.

10 **THE COURT FURTHER FINDS** from a credibility standpoint, over the
11 course of the five days of trial, Danka's testimony changed in an attempt to undo the
12 unequivocal testimony she offered on Day One of trial. The Court finds that the
13 testimony offered by Danka on Day One of trial was far more credible than any later
14 testimony. Moreover, much of Danka's later testimony was contradicted by the
15 documentary proof.

16 **THE COURT FURTHER FINDS** the parties met in 2001 when Danka
17 became the treating physician for Tom. Danka testified she was Tom's primary care
18 physician from 2000 to 2017. *See* Transcript Re: Non-Jury Trial dated February 14,
19 2020, page 34, lines 22-24.

20 **THE COURT FURTHER FINDS** that after the Doctor-Patient relationship
21 began, the parties began a romantic relationship. Danka testified this began in the
22 summer of 2001, and that she continued being Tom's physician after the romantic
23 relationship commenced. *See* Transcript Re: Non-Jury Trial dated February 14,
24 2020, page 35, lines 4-9.

25 **THE COURT FURTHER FINDS** that the parties traveled to Danka's
26 hometown of Bratislava, Slovakia, and celebrated a marriage ceremony in a
27 Catholic Church on April 7, 2002. *See Exhibits "1" and "2"*.
28

1 **THE COURT FURTHER FINDS** that following the ceremony, the parties
2 sent out wedding announcements. *See Exhibit "1"*.

3 **THE COURT FURTHER FINDS** that Danka's mother and father were in
4 attendance at the wedding, and that the parties hired a photographer to take wedding
5 photos. *See Exhibit "1"*; *see also* Transcript Re: Non-Jury Trial dated February 14,
6 2020, page 44, lines 9-23.

7 **THE COURT FURTHER FINDS** that as a result of this ceremony, a
8 marriage certificate was issued. *See Exhibit "2"*.

9 **THE COURT FURTHER FINDS** that the requisites in Slovakia to record
10 the marriage certificate were not completed by either party.

11 **THE COURT FURTHER FINDS** that notwithstanding the legal
12 impediment to the parties marriage, Tom justifiably believed that he was married to
13 Danka. Tom testified on February 14, 2020 he believed he and Danka were legally
14 married in a ceremony in the Bratislava Catholic Church on April 7, 2002. Tom
15 testified Danka had family and friends in Slovakia, she said she would like to get
16 married there, and he agreed. Tom further testified Danka and he never discussed a
17 commitment ceremony, only a wedding, prior to that ceremony taking place. In
18 participating in the wedding ceremony, Tom intended to be legally married to
19 Danka. In planning for the wedding ceremony, the parties selected rings, made
20 travel arrangements, made hotel arrangements, set up a photographer, purchased a
21 dress for Danka for the ceremony and invited guests. In order to participate in the
22 wedding ceremony in the Catholic Church in Bratislava, parties were first required
23 to meet with a Priest to receive a blessing and have pre-marriage instruction in Las
24 Vegas. Danka arranged for the meeting with the Priest in Las Vegas. Tom testified
25 the wedding was a formal marriage ceremony, and Danka translated the ceremony
26 for him as he did not speak the language the Priest was speaking during the marriage
27 ceremony. Following the marriage ceremony, Tom testified he and Danka signed a
28

1 book at the church. The parties sent out their wedding announcement to family and
2 friends (**Exhibit "1"**) following the wedding upon returning to the U.S. The parties
3 celebrated their wedding anniversary every April 7th thereafter until they separated
4 in September of 2016, and Tom typically gave Danka an anniversary gift annually,
5 usually jewelry. Finally, Tom testified that in April 2002, he never had possession
6 of the parties' Marriage Certificate (**Exhibit "2"**). Danka handled all of the legal
7 aspects of the wedding in Bratislava. *See* Transcript Re: Non-Jury Trial dated
8 February 14, 2020, pages 100-109.

9 **THE COURT FURTHER FINDS** that Tom's testimony that he was
10 unaware of a legal impediment to the marriage until such time as he filed this action
11 and his lawyer obtained an expert opinion, is credible. Tom believed the parties
12 were legally married when he signed the Complaint for Divorce filed on October 24,
13 2017 in this matter. Tom testified that it was not until after he filed the Complaint
14 for Divorce that he first obtained a copy of the Marriage Certificate from the church
15 in Bratislava. Tom testified he requested and obtained a copy of the Marriage
16 Certificate from Bratislava after he filed and learned Danka was claiming the parties
17 were not legally married. It was only after Tom learned from his lawyer that an
18 expert had researched the Marriage Certificate and laws of Bratislava, Slovakia, and
19 discovered that the Certificate had not been correctly processed and accordingly, the
20 marriage was not valid under Slovakian law. *See* Transcript Re: Non-Jury Trial
21 dated February 14, 2020, pages 107-113.

22 **THE COURT FURTHER FINDS** that an overwhelming amount of
23 evidence demonstrates that following the wedding in 2002, and until 2016, the
24 parties behaved as partners and spouses.

25 **THE COURT FURTHER FINDS** the parties had a joint bank account (*see*
26 **Exhibits "72", "76", "78", "79" and "80"**).

27 *///*

1 **THE COURT FURTHER FINDS** the parties shared at least one credit card
2 account (*see Exhibits “82” - “90”*).

3 **THE COURT FURTHER FINDS** the parties acquired real property
4 together. Specifically, the parties took title to two residential real properties, the
5 home where they lived together located at 9517 Queen Charlotte Drive, Las Vegas,
6 Nevada 89145, as Husband and Wife. The Deed indicates “Danka Michaels, a
7 married woman and Thomas Pickens, a married man...” (*see Exhibit “7”*). Danka
8 admitted the mortgage was in both parties’ names. They parties also purchased an
9 investment home located at 7608 Lowe Avenue, Las Vegas, Nevada 89131 (*see*
10 **Exhibit “6”**), as Husband and Wife, and again, Danka admitted the mortgage on the
11 home was in both parties’ names, although the mortgage was paid in full before the
12 parties separated. These facts, given the scrutiny of title companies and lenders, as
13 well as the fact that the Deeds are a matter of public record, is one that the Court
14 finds compelling.

15 **THE COURT FURTHER FINDS** the parties also acquired real property for
16 investment when they formed the company Patience One, LLC and purchased an
17 office building together where each party operated their respective businesses (*see*
18 **Exhibits “47” – “51”**) until following separation. Danka admitted during her
19 testimony on Day One of trial that both parties formed the LLC, both were
20 guarantors on the original mortgage and the 2014 refinance. **Exhibit “153”**, the
21 2014 Deed of Trust, also indicates both parties’ were guarantors on the refinanced
22 mortgage. Danka admitted that as of February of 2020, this property has a net value
23 of \$2,936,408, and her FDF filed February 13, 2020 represents this was the net value.

24 **THE COURT FURTHER FINDS** the parties shared an accountant, Robert
25 Semonian, CPA.

26 ///

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28

1 **THE COURT FURTHER FINDS** that while the parties filed individual,
2 rather than joint, tax returns for all years of their relationship, the testimony of Robert
3 Semonian, was that until 2016, each year, he would apportion the income of and
4 deductions of the parties to each party's individual returns such that both parties
5 would legally avoid as much tax as possible. *See* Transcript Re: Non-Jury Trial
6 dated February 21, 2020, page 82, lines 4-14.

7 **THE COURT FURTHER FINDS** that the parties referred to one another to
8 multiple individuals as spouses. *See* Transcript Re: Non-Jury Trial dated February
9 14, 2020, page 53-54, lines 17-1.

10 **THE COURT FURTHER FINDS** that the testimony of witnesses Dara
11 Lesmeister on February 14, 2020, as well as the testimony of Todd Kilde on
12 February 21, 2020, confirms that each of these witnesses who worked with Tom and
13 who also knew Danka, believed the parties were husband and wife. *See* Transcript
14 Re: Non-Jury Trial dated February 14, 2020, page 132, lines 7-12; *see also*
15 Transcript Re: Non-Jury Trial dated February 21, 2020, page 149, lines 4-5; *see also*
16 **Exhibit "156"** (Mr. Kilde's Request to Appeal the Denial of Unemployment
17 Benefits wherein he referred to Danka as Tom's wife).

18 **THE COURT FURTHER FINDS** that the testimony of Shannon Evans,
19 Esq., who represented both parties for estate planning during the relationship, but
20 who represented only Danka on September 13th, 2016 and thereafter, was that Danka
21 and Tom held themselves out as husband and wife. *See* Transcript Re: Non-Jury
22 Trial dated February 21, 2020, page 34-35, lines 6-24.

23 **THE COURT FURTHER FINDS** that the testimony of witnesses Robert
24 Semonian further corroborates Danka and Tom held themselves out as husband and
25 wife. *See* Transcript Re: Non-Jury Trial dated February 21, 2020, page 83, lines 2-
26 4.

27 ///

1 **THE COURT FURTHER FINDS** Tom's American Express statements,
2 admitted as **Exhibits "82" – "90"**, reveal the extensive use by Danka of Tom's credit
3 for personal spending and, more importantly, to purchase supplies for her medical
4 practice. It is particularly telling that even after the September 13, 2016
5 "transaction", discussed below, Danka continued to use Tom's American Express
6 account to purchase supplies for her medical practice.

7 **THE COURT FURTHER FINDS** that on or about September 13, 2016, at
8 Danka's request, Tom met Danka at Shannon Evans', office. Danka admitted on
9 Day One of trial she set up this meeting. At this meeting, Tom was asked to and did
10 in fact sign documents purporting to transfer his interest in the two residential
11 properties owned jointly by the parties, as well as his interest in Patience One, LLC.
12 *See Transcript Re: Non-Jury Trial dated February 14, 2020, page 236, lines 4-17.*

13 **THE COURT FURTHER FINDS** that Tom received no consideration of
14 any kind from Danka for the purported transfers, and Danka confirmed this in her
15 testimony during Day One of Trial. *See Transcript Re: Non-Jury Trial dated*
16 *February 14, 2020, page 76, lines 2-23.*

17 **THE COURT FURTHER FINDS** that the conduct of the parties regarding
18 their financial affairs provides clear and convincing evidence that the parties
19 intended to pool their assets and act as a partnership. Evidence of this fact is found
20 in the Deed to Lowe house, **Exhibit "6"**; Deed to Queen Charlotte house, **Exhibit**
21 **"5"**; Schedule K-1's issued by Patience One, LLC, **Exhibits "47" – "51"**; Deed of
22 Trust related to Lowe house mortgage, **Exhibit "8"**; Deed of Trust related to Queen
23 Charlotte mortgage, **Exhibit "7"**; Deed of Trust for Patience One, LLC's, 2014 loan,
24 **Exhibit "153"**; joint Wells Fargo Bank statements, **Exhibits "72", "76", "78",**
25 **"79"** and **"80"**; Danka's email in which she tells the parties' attorney, Andy
26 Glendon, Esq., that she and her husband (referring to Tom) were partners in the
27 Patience One, LLC deal, **Exhibit "149"**; and Tom's American Express statements,
28

1 **Exhibits “82” – “90”.**

2 **THE COURT FURTHER FINDS** that as partners, actual or implied, both
3 parties owed a fiduciary duty to one another at all times relevant to the September
4 13, 2016 transaction.

5 **THE COURT FURTHER FINDS** that based upon Danka’s own testimony
6 and the medical records of Danka’s treatment of Tom, which were admitted at trial
7 as **Exhibit “3”**, Bates No. 5432-5434, Danka was and remained the Primary Care
8 Physician of Tom from 2001 through 2017. Specifically, Danka herself confirmed
9 this fact. **Exhibit “3”** at Bates 5434 confirms that as late as September of 2017, one
10 month before the initiation of this lawsuit, Danka was still referring Tom to
11 specialists.

12 **THE COURT FURTHER FINDS** that as a result of the Doctor-Patient
13 relationship, Danka owed Tom a fiduciary duty.

14 **THE COURT FURTHER FINDS** that NRS 630.031 provides it is grounds
15 for discipline of physicians if they engage in a sexual relationship with a patient or
16 if they exploit a patient for their own financial gain.

17 **THE COURT FURTHER FINDS** that Danka began prescribing medication
18 to Tom beginning in 2001, including Xanax, Ambien, Oxycodone and Tramadol,
19 and **Exhibit “4”**, the Nevada Prescription Monitoring Program log for Tom Pickens
20 dated 2015- 2017 proves Danka or her employees continued to prescribe Tom
21 medication until 2017.

22 **THE COURT FURTHER FINDS** that according to Exhibit “4”, the
23 medications prescribed by either Danka or her Nurse Practitioner at the time of the
24 September 13, 2016 transaction included Xanax, Ambien, Oxycodone and
25 Tramadol.

26 ///

27 ///

1 **THE COURT FURTHER FINDS** that pursuant to Nevada law, Danka is
2 and was required to supervise her Nurse Practitioner. Danka's own testimony on
3 Day Five of Trial confirmed she did, in fact adequately supervise Roberto Carillo,
4 her Nurse Practitioner.

5 **THE COURT FURTHER FINDS** that Danka continued to act as Tom's
6 Primary Care Physician until September of 2017. Tom's medical records indicate
7 that Danka referred him to a specialist in September of 2017.

8 **THE COURT FURTHER FINDS** that at all times relevant to the September
9 13, 2016 transaction, the parties were equal members of the Nevada Limited-
10 Liability Company, Patience One, LLC.

11 **THE COURT FURTHER FINDS** that pursuant to the K-1's of Patience
12 One, LLC, the parties owned their respective membership interests in Patience One,
13 LLC as individuals (*see Exhibits "47" – "50"*). It was not until after the September
14 13, 2016 transaction that the K-1 of Patience One, LLC reflected the Mich-Mich
15 Trust was the owner of Danka's interest in Patience One, LLC (*see Exhibit "51"*).

16 **THE COURT FURTHER FINDS** that the purported transfer of Tom's
17 interest in Patience One, LLC by the assignment prepared by Shannon Evans at
18 Danka's request could not have been legally effective because the document
19 purporting to transfer Tom's interest out of Patience One, LLC, reflects Tom's
20 Trust, LV Blue Trust, as the transferor, *when Tom's Trust did not own his personal*
21 *fifty percent interest in Patience One, LLC*. No evidence was presented that Tom's
22 Trust ever owned his individual interest in Patience One, LLC.

23 **THE COURT FURTHER FINDS**, based upon the testimony of the Danka
24 on Day One of trial, Tom received no consideration for the transfers of the Lowe
25 and Queen Charlotte residences or the purported transfer of his interest in Patience
26 One, LLC.

27 ///

1 **THE COURT FURTHER FINDS** that Danka did not refinance the
2 outstanding loans on Queen Charlotte or the Patience One, LLC building until after
3 the filing of the instant lawsuit, if at all. The Clark County Recorder's website does
4 not reflect a satisfaction of the 2014 mortgage on which both parties are obligors.

5 **THE COURT FURTHER FINDS** that no interest in any other company or
6 joint asset was transferred by Danka to Tom in exchange for the September 13, 2016
7 transfer of assets received by Danka.

8 **THE COURT FURTHER FINDS** that at the time of the purported transfer
9 of the Lowe residence, the Queen Charlotte residence and the Patience One, LLC
10 interest, Danka owed to Tom a fiduciary duty as his physician, his spouse/putative
11 spouse, his partner (implied or actual), and as his equal member in the Patience One,
12 LLC.

13 **THE COURT FURTHER FINDS** that during the course of the parties
14 relationship, Tom paid off, from his earnings or from the funds in the parties' joint
15 account, the mortgage on the Lowe residence. The bank statements and Tom's
16 testimony support this finding.

17 **THE COURT FURTHER FINDS** that to date, there has been no recording
18 of a satisfaction of the original Patience One, LLC Mortgage on the Clark County
19 Recorder's website. (See request for judicial notice filed 4/23/21).

20 **THE COURT FURTHER FINDS** that Danka was served with a Joint
21 Preliminary Injunction on November 1, 2017, as evidenced in the Affidavit of
22 Process Server filed in this matter on November 2, 2017. Despite this fact, during
23 the pendency of the trial in this matter, Danka sold the Lowe residence for
24 \$270,000.00. (See request for judicial notice filed 4/23/21)

25 **THE COURT FURTHER FINDS** that during the Course of the parties'
26 relationship, specifically in 2014, when Tom's company received a \$1,000,000.00
27 bonus on a project, that the parties deposited over \$200,000.00 of said bonus into
28

1 their joint bank account, and those funds were used to pay for extensive renovations
2 and improvements on the Queen Charlotte home.

3 **THE COURT FURTHER FINDS** that from Tom's 2014 bonus, he
4 purchased the Porsche Cayenne vehicle, free of encumbrance, which Danka, to this
5 day, continues to drive.

6 **THE COURT FURTHER FINDS** that Tom deposited his income from his
7 business, and the income paid to him by Danka's business, into the parties' joint
8 account at Wells Fargo.

9 **THE COURT FURTHER FINDS** that Danka's actions in seeking the
10 transfer of the majority of the assets of the parties' partnership without any
11 consideration flowing to Tom was a breach of her many levels of fiduciary duty to
12 Tom.

13 **THE COURT FURTHER FINDS** that Danka admitted that she is asserting
14 an ownership claim to Tom's company, Blue Point Development, in the pending
15 civil lawsuit between the parties. (See Request for Judicial Notice filed 2/10/20)

16 **THE COURT FURTHER FINDS** that Blue Point Development was formed
17 during the relationship of the parties.

18 **THE COURT FURTHER FINDS** that both parties acquired retirement
19 accounts during their relationship.

20 **THE COURT FURTHER FINDS** both parties acquired an interest in, and
21 deposited earnings into, various bank accounts during their relationship.

22 **THE COURT FURTHER FINDS** that the foregoing evidence is substantial
23 and controlling of the conclusions of law and equitable Orders set forth hereinafter.

24 II

25 CONCLUSIONS OF LAW

26 Based upon the forgoing findings of fact, the Court makes the following
27 conclusions of law:
28

1. Pursuant to Nevada law, a physician is required to supervise any APRN in their employ. See NAC 630.230.
2. Pursuant to Nevada law, a physician is precluding from taking advantage of a patient for their own financial gain. See NRS 630.301.
3. Pursuant to Nevada law, spouses owe a fiduciary duty to one another. See Williams v. Waldman, 108 Nev. 466 (1992).
4. Pursuant to Nevada law, parties to a joint venture owe a fiduciary duty to one another. (See *Leavitt v. Leisure Sports Inc.*, 103 Nev. 81 (1987))
5. Nevada law recognizes the rights of putative spouses to a division of property consistent with community property law when one or both of the parties reasonably believed that the marriage was valid. (See *Williams v. Williams*, 120 Nev. 559 (2004))
6. Nevada law recognizes the rights of parties who voluntarily agree to pool their assets and become implied partners to an equal division of the property acquired during their quasi-marital relationship. (See *Western States Construction v. Michoff*, 108 Nev. 931 (1987))
7. Nevada law recognizes that consideration is a requirement of any valid contract. (See *Manning v. Coryell*, 130 Nev 1213 (2014))
8. Nevada law recognizes the equitable authority of this Court to correct unjust enrichment. (See *Certified Fire Protection v. Precision Construction*, 128 Nev 371(2012))
9. As a matter of law, the purported transfer of Plaintiff's interest in Patience One LLC was of no effect due to the fact that the purported transfer was from LV Blue trust and not the Plaintiff who was the actual owner of the LLC.

10. As a matter of law, the transfers of the Lowe Ave and Queen Charlotte residences was void due to Defendant's multiple breaches of her multiple fiduciary duties to Plaintiff.
11. As a matter of law, all purported transfers which occurred on September 13, 2016, which included the transfer of the Lowe Avenue residence, the Queen Charlotte residence, and Plaintiff's interest in Patience One, LLC were void for want of consideration for the transaction.
12. As matter of law, substantial evidence supports the conclusion that the parties were putative spouses from April 7, 2002 until December of 2017 when Plaintiff learned of the legal impediment to his marriage. As such, all property acquired by them during their relationship should be divided by this Court as if it were community property.
13. As a matter of law, substantial evidence supports the conclusion that the parties were both actual and implied partners who agreed to pool their assets, resources and credit for the benefit of both of them.
14. As a matter of law, Substantial evidence supports the conclusion that the following assets are the joint property of the parties which the Court will divide via this Decree:
 - a. The residence located at 9517 Queen Charlotte Dr.
 - b. The residence (or proceeds thereof) located at 7608 Lowe Ave.
 - c. Patience One LLC and all of its assets.
 - d. The portion of the parties respective retirement accounts which was accumulated by either party between April 7th, 2002 and December 1st, 2017.
 - e. The balance in each parties respective bank accounts as of December 1st, 2017.
 - f. Bluepoint Development based upon an October 2017 valuation.

g. Any appreciation in the value of Bluepoint Medical Group or its predecessor professional corporation representing Defendant's medical practice.

III.

ORDERS AND JUDGMENT:

Based upon the forgoing Findings of Fact and Conclusions of law, it is **HEREBY ORDERED, ADJUDGED AND DECREED** the Court is ordering the parties each be awarded one-half of the assets and debts identified in either party's Financial Disclosure Forms filed in February 2020 in this matter. The parties shall jointly retain a commercial real estate appraiser and business valuation expert for the purposes of establishing the current fair market value of every real property and business listed in either party's Financial Disclosure Forms filed in February 2020 in this matter. If the parties cannot agree on the appropriate experts, they will each submit three proposed experts to the Court, and the Court will select the experts.

IT IS FURTHER ORDERED ADJUDGED AND DECREED the parties will utilize National Automobile Dealers Association Guide to value their respective vehicles.

IT IS FURTHER ORDERED ADJUDGED AND DECREED each party will exchange copies of their bank statements, for all of their personal, business, investment and retirement account statements, for the time period September 1, 2016 to the present within 30 days of this Order. The final equalization of assets shall consider the balances in all such accounts to be joint assets to which the parties are entitled an equal division based upon the balances as of the date of the filing of this action.

IT IS FURTHER ORDERED ADJUDGED AND DECREED the Court intends to award Tom his primary residence, his construction business, bank accounts and vehicle; the Court intends to award Danka her primary residence,

1 medical practice, medical spa business, bank accounts, and her vehicle. With regard
2 to Patience One, LLC, the Court will endeavor to award this asset to Danka, with
3 appropriate offset on the balance sheet, since her two businesses continue to operate
4 in the building owned by the Company. The remaining assets will be equitably
5 divided to ensure that each party receives a net award of assets and debts that is equal
6 and equitable.

7 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that if the
8 proceeds of the sale of the Lowe home are not reasonably accounted for in the assets
9 in Danka's control, then she shall have 30 days to pay Tom one-half of the net
10 proceeds received from the sale of the Lowe home. The Court did not hear testimony
11 as to the disposition of the proceeds of the sale, and it is possible Danka used the
12 funds to purchase other assets not mentioned in this Order. The Court intends to the
13 proceeds of sale to be equally divided by the parties. Danka shall provide proof of
14 the disposition of the proceeds of sale to Tom, through counsel, within 10 days of
15 entry of this Decree.

16 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that Tom is
17 determined to be the prevailing party in this matter. He is thus awarded attorney
18 fees in the amount to be determined upon the filing of an Affidavit of Counsel:
19 Memorandum of Attorneys' Fees and Costs, outlining his specific request for fees
20 and costs, and his bases therefor, within 20 days following notice of entry of this
21 Decree.

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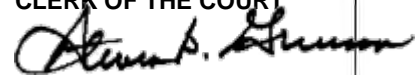
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DISTRICT COURT JUDGE

JONES & LOBELLO

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Michele LoBello
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Attorneys for Plaintiff,
THOMAS ALLEN PICKENS



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14 THOMAS A. PICKENS

10 **DISTRICT COURT**
11 **FAMILY DIVISION**
12 **CLARK COUNTY, NEVADA**

13 THOMAS A. PICKENS,
14 Individually and as Trustee of the LV
15 Blue Trust,

16 Plaintiff/Counterdefendant.

17 vs.

18 DANKA K. MICHAELS,
19 Individually and as Trustee of the Mich-
20 Mich Trust,

21 Defendant/Counterclaimant;

22 and related Counterclaims.
23

CASE NO.: D-17-560737-D
DEPT. J

**Dates of Trial: February 14, 2020,
February 21, 2020, March 5, 2021,
March 12, 2021 and April 2, 2021**

24 **PLAINTIFF'S REQUEST FOR THE COURT**
25 **TO TAKE JUDICIAL NOTICE PURSUANT TO NRS 47.130**

26 Plaintiff, Thomas A. Pickens ("Tom"), by and through his attorneys of record,
27 Michele LoBello, John D. Jones and the law firm of JONES & LOBELLO hereby
28

1 requests this Court take mandatory judicial notice of the following authorities:

2 1. NAC 630.230

3 2. NRS 630.301

4 Pursuant to NRS 47.130, this Court may take judicial notice of facts generally
5 known within the territorial jurisdiction of the trial court or capable of accurate and
6 ready determination by resort to sources whose accuracy cannot reasonably be
7 questioned, so that the fact is not subject to reasonable dispute. The existence of the
8 cases filed in the above Courts, and the pleadings and filings therein, are such matters
9 that subject to judicial notice. "Although the existence of a document be judicially
10 noticeable, the truth of the statements contained in the documents and its proper
11 interpretation are not subject to judicial notice if those matters are reasonably
12 disputable." *Fremont Indemnity Company v. Fremont General Corporation*, 148
13 Cal.App.4th 97, 113 (Ct. App. Cal. 2007) (citing *Taylor v. Charter Medical Corp.*,
14 162 F.3d 827, 829-30 (5th Circuit, 1998, "The Second, Eighth and Eleventh Circuits
15 have held that even though a Court May take judicial notice of a document filed in
16 another court. . .to establish the fact of such litigation and related findings, a court
17 cannot take judicial notice of the factual findings of another court.")).

18 Neither party here too can reasonably dispute the fact that a pleading or
19 document has been filed in any of the above reference cases, or the fact that the cases
20 themselves have been filed and exist.

21 This request in no way is asking the Court to take judicial notice as to the truth
22 of statements contained in any of the documents or pleadings on file in the above
23 cases, but rather to find as fact the existence of the cases and the existence of the
24 filings and pleadings in each case. *Joslin v. H.A.S. Ins. Brokerage*, 184 Cal.App.3d
25 369, 374, 228 Cal.Rptr. 878 (1986), which holds, "Taking judicial notice of a
26 document is not the same as accepting the truth of its contents or accepting a
27 particular interpretation of its meaning." *See also Middlebrook-Anderson Co. v.*
28 *Southwest Sav. & Loan Assn.*, 18 Cal.App.3d 1023, 1038, 96 Cal.Rptr. 338 (1971).

1 NRS 47.150 provides that a judge or court may take judicial notice, whether
2 requested or not, and a judge or court shall take judicial notice if requested by a party
3 and supplied with the necessary information. NRS 47.160 provides, "A party is
4 entitled upon timely request to an opportunity to be heard as to the propriety of taking
5 judicial notice and the tenor of the matter to be noticed." As to timing, NRS 47.170
6 provides: "Judicial notice may be taken at any stage of the proceeding prior to
7 submission to the court or jury."

8 RESPECTFULLY SUBMITTED this 23rd day of April, 2021.

9
10 JONES & LOBELLO

11 

12 Michele LoBello

13 Nevada Bar No. 5527

14 9900 Covington Cross, Suite 210A

15 Las Vegas, Nevada 89144

16 Attorneys for Plaintiff,

17 THOMAS PICKENS
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28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of JONES & LOBELLO and that on the 23 day of April, 2021, I caused the above and foregoing document entitled foregoing PLAINTIFF'S REQUEST FOR THE COURT TO TAKE JUDICIAL NOTICE PURSUANT TO NRS 47.130 to be served as follows:

☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and

☒ pursuant to N.E.F.C.R. 9, to be sent via electronic service;

☐ pursuant to EDCR 7.26, to be sent via facsimile;

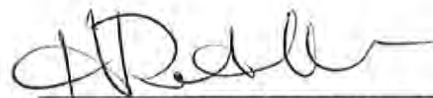
☒ by email to

to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

Jennifer V. Abrams, Esq.
The Abrams & Mayo Law Firm
6252 South Rainbow Blvd., #100
Las Vegas, NV 89118
Email: JVAGroup@TheAbramsLawFirm.com
Attorney for Defendant

Shawn M. Goldstein, Esq.
GOLDSTEIN LAW, LTD.
1980 Festival Plaza Drive, Suite 300
Las Vegas, NV 89135
Email: shawn@goldsteinlawltd.com
Attorney for Defendant,

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.



An Employee of JONES & LOBELLO

EXHIBIT 1

EXHIBIT 1

NAC 630.230 Prohibited professional conduct. (NRS 630.130, 630.275)

1. A person who is licensed as a physician or physician assistant shall not:

(a) Falsify records of health care;

(b) Falsify the medical records of a hospital so as to indicate his or her presence at a time when he or she was not in attendance or falsify those records to indicate that procedures were performed by him or her which were in fact not performed by him or her;

(c) Render professional services to a patient while the physician or physician assistant is under the influence of alcohol or any controlled substance or is in any impaired mental or physical condition;

(d) Acquire any controlled substances from any pharmacy or other source by misrepresentation, fraud, deception or subterfuge;

(e) Prescribe anabolic steroids for any person to increase muscle mass for competitive or athletic purposes;

(f) Make an unreasonable additional charge for tests in a laboratory, radiological services or other services for testing which are ordered by the physician or physician assistant and performed outside his or her own office;

(g) Allow any person to act as a medical assistant in the treatment of a patient of the physician or physician assistant, unless the medical assistant has sufficient training to provide the assistance;

(h) Fail to provide adequate supervision of a medical assistant who is employed or supervised by the physician or physician assistant, including, without limitation, supervision provided in the manner described in NAC 630.810 or 630.820;

(i) If the person is a physician, fail to provide adequate supervision of a physician assistant or an advanced practice registered nurse;

(j) Fail to honor the advance directive of a patient without informing the patient or the surrogate or guardian of the patient, and without documenting in the patient's records the reasons for failing to honor the advance directive of the patient contained therein;

(k) Engage in the practice of writing prescriptions for controlled substances to treat acute pain or chronic pain in a manner that deviates from the policies set forth in the *Guidelines for the Chronic Use of Opioid Analgesics* adopted by reference in NAC 630.187; or

(l) Administer or use, or allow any person under his or her supervision, direction or control to administer or use, a single-use medical device:

(1) For more than one procedure;

(2) For more than one patient; or

(3) In a manner inconsistent with the manufacturer's instructions or directions included on or with the single-use medical device.

2. As used in this section:

(a) “Chronic pain” has the meaning ascribed to it in section 3 of the *Guidelines for the Chronic Use of Opioid Analgesics* adopted by reference in NAC 630.187.

(b) “Single-dose vial” means a vial, including, without limitation, a sealed sterile vial, which may be accessed by insertion of a needle and which, according to the manufacturer’s instructions:

- (1) Contains only one dose of a medication; and
- (2) May be used for only one patient.

(c) “Single-use medical device” means a medical device that is intended for one use or on a single patient during a single procedure and includes, without limitation, a blade, clip, catheter, implant, insufflator, lancet, needle, sleeve, syringe and single-dose vial.

NRS 630.301 Criminal offenses; disciplinary action taken by other jurisdiction; surrender of previous license while under investigation; malpractice; engaging in sexual activity with patient; disruptive behavior; violating or exploiting trust of patient for financial or personal gain; failure to offer appropriate care with intent to positively influence financial well-being; engaging in disreputable conduct; engaging in sexual contact with surrogate of patient or relatives of patient. The following acts, among others, constitute grounds for initiating disciplinary action or denying licensure:

1. Conviction of a felony relating to the practice of medicine or the ability to practice medicine. A plea of nolo contendere is a conviction for the purposes of this subsection.

2. Conviction of violating any of the provisions of NRS 616D.200, 616D.220, 616D.240, 616D.300, 616D.310, or 616D.350 to 616D.440, inclusive.

3. Any disciplinary action, including, without limitation, the revocation, suspension, modification or limitation of a license to practice any type of medicine, taken by another state, the Federal Government, a foreign country or any other jurisdiction or the surrender of the license or discontinuing the practice of medicine while under investigation by any licensing authority, a medical facility, a branch of the Armed Services of the United States, an insurance company, an agency of the Federal Government or an employer.

4. Malpractice, which may be evidenced by claims settled against a practitioner, but only if the malpractice is established by a preponderance of the evidence.

5. The engaging by a practitioner in any sexual activity with a patient who is currently being treated by the practitioner.

6. Disruptive behavior with physicians, hospital personnel, patients, members of the families of patients or any other persons if the behavior interferes with patient care or has an adverse impact on the quality of care rendered to a patient.

7. The engaging in conduct that violates the trust of a patient and exploits the relationship between the physician and the patient for financial or other personal gain.

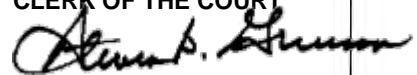
8. The failure to offer appropriate procedures or studies, to protest inappropriate denials by organizations for managed care, to provide necessary services or to refer a patient to an appropriate provider, when the failure occurs with the intent of positively influencing the financial well-being of the practitioner or an insurer.

9. The engaging in conduct that brings the medical profession into disrepute, including, without limitation, conduct that violates any provision of a code of ethics adopted by the Board by regulation based on a national code of ethics.

10. The engaging in sexual contact with the surrogate of a patient or other key persons related to a patient, including, without limitation, a spouse, parent or legal guardian, which exploits the relationship between the physician and the patient in a sexual manner.

11. Conviction of:

- (a) Murder, voluntary manslaughter or mayhem;
- (b) Any felony involving the use of a firearm or other deadly weapon;
- (c) Assault with intent to kill or to commit sexual assault or mayhem;
- (d) Sexual assault, statutory sexual seduction, incest, lewdness, indecent exposure or any other sexually related crime;
- (e) Abuse or neglect of a child or contributory delinquency;
- (f) A violation of any federal or state law regulating the possession, distribution or use of any controlled substance or any dangerous drug as defined in chapter 454 of NRS; or
- (g) Any offense involving moral turpitude.



1 **REQT**
2 JONES & LOBELLO
3 Michele LoBello, Esq.
4 Nevada Bar No. 5527
5 John D. Jones, Esq.
6 Nevada Bar No. 6699
7 9900 Covington Cross, Suite 210A
8 Las Vegas, Nevada 89144
9 Telephone No.: 702-318-5060
10 Facsimile No.: 702-318-5070
11 Email: jones@joneslobello.com
12 Email: lobello@joneslobello.com
13 Attorneys for Plaintiff,
14 THOMAS A. PICKENS

10 **DISTRICT COURT**
11 **FAMILY DIVISION**
12 **CLARK COUNTY, NEVADA**

13 THOMAS A. PICKENS,
14 Individually and as Trustee of the LV
15 Blue Trust,

16 Plaintiff/Counterdefendant.

17 vs.

18 DANKA K. MICHAELS,
19 Individually and as Trustee of the Mich-
20 Mich Trust,

21 Defendant/Counterclaimant;

22 and related Counterclaims.
23

CASE NO.: D-17-560737-D
DEPT. J

**Dates of Trial: February 14, 2020,
February 21, 2020, March 5, 2021,
March 12, 2021 and April 2, 2021**

24 **PLAINTIFF'S REQUEST FOR THE COURT**
25 **TO TAKE JUDICIAL NOTICE PURSUANT TO NRS 47.130**

26 Plaintiff, Thomas A. Pickens ("Tom"), by and through his attorneys of record,
27 Michele LoBello, John D. Jones and the law firm of JONES & LOBELLO hereby
28

1 requests this Court take mandatory judicial notice that no satisfaction of mortgage
2 has been filed for the Patience One, LLC building.

3 Pursuant to NRS 47.130, this Court may take judicial notice of facts generally
4 known within the territorial jurisdiction of the trial court or capable of accurate and
5 ready determination by resort to sources whose accuracy cannot reasonably be
6 questioned, so that the fact is not subject to reasonable dispute. The existence of the
7 cases filed in the above Courts, and the pleadings and filings therein, are such matters
8 that subject to judicial notice. "Although the existence of a document be judicially
9 noticeable, the truth of the statements contained in the documents and its proper
10 interpretation are not subject to judicial notice if those matters are reasonably
11 disputable." *Fremont Indemnity Company v. Fremont General Corporation*, 148
12 Cal.App.4th 97, 113 (Ct. App. Cal. 2007) (citing *Taylor v. Charter Medical Corp.*,
13 162 F.3d 827, 829-30 (5th Circuit, 1998, "The Second, Eighth and Eleventh Circuits
14 have held that even though a Court May take judicial notice of a document filed in
15 another court. . .to establish the fact of such litigation and related findings, a court
16 cannot take judicial notice of the factual findings of another court.")).

17 Neither party here too can reasonably dispute the fact that a pleading or
18 document has been filed in any of the above reference cases, or the fact that the cases
19 themselves have been filed and exist.

20 This request in no way is asking the Court to take judicial notice as to the truth
21 of statements contained in any of the documents or pleadings on file in the above
22 cases, but rather to find as fact the existence of the cases and the existence of the
23 filings and pleadings in each case. *Joslin v. H.A.S. Ins. Brokerage*, 184 Cal.App.3d
24 369, 374, 228 Cal.Rptr. 878 (1986), which holds, "Taking judicial notice of a
25 document is not the same as accepting the truth of its contents or accepting a
26 particular interpretation of its meaning." *See also Middlebrook-Anderson Co. v.*
27 *Southwest Sav. & Loan Assn.*, 18 Cal.App.3d 1023, 1038, 96 Cal.Rptr. 338 (1971).

28 NRS 47.150 provides that a judge or court may take judicial notice, whether

1 requested or not, and a judge or court shall take judicial notice if requested by a party
2 and supplied with the necessary information. NRS 47.160 provides, "A party is
3 entitled upon timely request to an opportunity to be heard as to the propriety of taking
4 judicial notice and the tenor of the matter to be noticed." As to timing, NRS 47.170
5 provides: "Judicial notice may be taken at any stage of the proceeding prior to
6 submission to the court or jury."

7 RESPECTFULLY SUBMITTED this 23rd day of April, 2021.

8 JONES & LOBELLO

9
10 

11 Michele LoBello

12 Nevada Bar No. 5527

13 9900 Covington Cross, Suite 210A

14 Las Vegas, Nevada 89144

15 Attorneys for Plaintiff,

16 THOMAS PICKENS
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of JONES & LOBELLO and that on the 23 day of April, 2021, I caused the above and foregoing document entitled foregoing PLAINTIFF'S REQUEST FOR THE COURT TO TAKE JUDICIAL NOTICE PURSUANT TO NRS 47.130 to be served as follows:

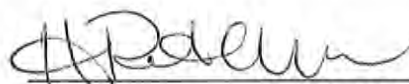
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and
- ☒ pursuant to N.E.F.C.R. 9, to be sent via electronic service;
- ☐ pursuant to EDCR 7.26, to be sent via facsimile;
- ☒ by email to

to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

Jennifer V. Abrams, Esq.
The Abrams & Mayo Law Firm
6252 South Rainbow Blvd., #100
Las Vegas, NV 89118
Email: JVAGroup@TheAbramsLawFirm.com
Attorney for Defendant

Shawn M. Goldstein, Esq.
GOLDSTEIN LAW, LTD.
1980 Festival Plaza Drive, Suite 300
Las Vegas, NV 89135
Email: shawn@goldsteinlawltd.com
Attorney for Defendant,

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.



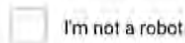
An Employee of JONES & LOBELLO

EXHIBIT 1

EXHIBIT 1

Parcel

Parcel #	<input type="text" value="138-10-401-001"/>		
Parcel #	Exact		▼
Date Range	Specific Date Range		▼
From Date	04/03/1905		📅
To Date	04/14/2021		📅
	Select DocTypes...		
Document Type	<input type="text" value="Document Type Groups"/>		



reCAPTCHA
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[Reset](#) [Search](#)

Help

Parcel Number

Parcel #: Enter the specific legal parcel, such as 176-15-301-024

Parcel #: Use this to either begin your Search with "Starts With", "Contains", or is an "Exact" match of your entry.

Date Range

You can choose a specific recording date range or choose from pre-selected date ranges to narrow your search.

Document Type

Limit your search by specific types of documents, or by groups of similar document types.

Search by Address

To search by address, please click here: Assessor Search (<https://maps.clarkcountynv.gov/assessor/AssessorParcelDetail/site.aspx>)

[Export to CSV](#)

1

1000 ▼ items per page

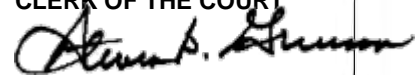
1 - 26 of 26 items

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Add To Cart	138-10-401-001	BANK OF AMERICA NA	PATIENCE ONE LLC	3	20140818...	SUBS...		08/18/2014	
Add To Cart	138-10-401-001	PATIENCE ONE LLC	WELLS FARGO BANK NATIONAL ASSOCIATION	27	20140630...	DEED OF TRUST		06/30/2014	
Add To Cart	138-10-401-001	MICHAELS, DANKA K	BANK OF AMERICA NA	7	20120926...	LEASE	SUBO...	09/26/2012	
Add To Cart	138-10-401-001	PATIENCE ONE LLC	BANK OF AMERICA NA	24	20120926...	DEED OF TRUST		09/26/2012	
Add To Cart	138-10-401-001	PATIENCE ONE LLC	BANK OF AMERICA NA	24	20120926...	DEED OF TRUST		09/26/2012	

AA07855 Privacy - Terms

Add To Cart	138-10-401-001	FROM PATIENCE ONE LLC	INCORPORAT...	6	20120926...	DEED		09/26/2012	
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Add To Cart	138-10-401-001	US HEXAGON	GENERAL BANK	8	20010820...	CERTI...	Agree	08/20/2001	APN 138-10-401-001
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Add To Cart	138-10-401-001	ROADRUNNER RESIDENTIAL APPRAISAL IN	COMMUNITY BANK OF NEVADA RAINBOW OF	2	20010307...	UCC		03/07/2001	APN 138-10-401-001
Add To Cart	138-10-401-001	STANPARK CONSTRUCTI... COMPANY INC	R 61 E T 20 S S 09 SE NE	4	20000707...	ANNE...		07/07/2000	APN 138-10-401-001
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Add To Cart	138-10-401-001	FRIARY, ANN EE	VERTIGO GROUP LLC	1	19960109...	DEED	01/09/1996	APN 138-10-401-001
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<div> <div>1</div> <div>1000 ▼ items per page</div> </div> <div>1 (/B6d66Vteby/Search/G</div>								



1 **REQT**
2 JONES & LOBELLO
3 Michele LoBello, Esq.
4 Nevada Bar No. 5527
5 John D. Jones, Esq.
6 Nevada Bar No. 6699
7 9900 Covington Cross, Suite 210A
8 Las Vegas, Nevada 89144
9 Telephone No.: 702-318-5060
10 Facsimile No.: 702-318-5070
11 Email: jones@joneslobello.com
12 Email: lobello@joneslobello.com
13 Attorneys for Plaintiff,
14 THOMAS A. PICKENS

15 **DISTRICT COURT**
16 **FAMILY DIVISION**
17 **CLARK COUNTY, NEVADA**

18 THOMAS A. PICKENS,
19 Individually and as Trustee of the LV
20 Blue Trust,

21 Plaintiff/Counterdefendant.

22 vs.

23 DANKA K. MICHAELS,
24 Individually and as Trustee of the Mich-
25 Mich Trust,

26 Defendant/Counterclaimant;

27 and related Counterclaims.
28

CASE NO.: D-17-560737-D
DEPT. J

**Dates of Trial: February 14, 2020,
February 21, 2020, March 5, 2021,
March 12, 2021 and April 2, 2021**

29 **PLAINTIFF'S REQUEST FOR THE COURT**
30 **TO TAKE JUDICIAL NOTICE PURSUANT TO NRS 47.130**

31 Plaintiff, Thomas A. Pickens ("Tom"), by and through his attorneys of record,
32 Michele LoBello, John D. Jones and the law firm of JONES & LOBELLO hereby
33 requests this Court take mandatory judicial notice of Defendant's sale of 7608 Lowe
34 Avenue, Las Vegas, Nevada 89131 for \$290,000 on August 25, 2020.

1 Pursuant to NRS 47.130, this Court may take judicial notice of facts generally
2 known within the territorial jurisdiction of the trial court or capable of accurate and
3 ready determination by resort to sources whose accuracy cannot reasonably be
4 questioned, so that the fact is not subject to reasonable dispute. The existence of the
5 cases filed in the above Courts, and the pleadings and filings therein, are such matters
6 that subject to judicial notice. "Although the existence of a document be judicially
7 noticeable, the truth of the statements contained in the documents and its proper
8 interpretation are not subject to judicial notice if those matters are reasonably
9 disputable." *Fremont Indemnity Company v. Fremont General Corporation*, 148
10 Cal.App.4th 97, 113 (Ct. App. Cal. 2007) (citing *Taylor v. Charter Medical Corp.*,
11 162 F.3d 827, 829-30 (5th Circuit, 1998, "The Second, Eighth and Eleventh Circuits
12 have held that even though a Court May take judicial notice of a document filed in
13 another court. . .to establish the fact of such litigation and related findings, a court
14 cannot take judicial notice of the factual findings of another court.")).

15 Neither party hereto can reasonably dispute the fact that a pleading or
16 document has been filed in any of the above reference cases, or the fact that the cases
17 themselves have been filed and exist.


18 This request in no way is asking the Court to take judicial notice as to the truth
19 of statements contained in any of the documents or pleadings on file in the above
20 cases, but rather to find as fact the existence of the cases and the existence of the
21 filings and pleadings in each case. *Joslin v. H.A.S. Ins. Brokerage*, 184 Cal.App.3d
22 369, 374, 228 Cal.Rptr. 878 (1986), which holds, "Taking judicial notice of a
23 document is not the same as accepting the truth of its contents or accepting a
24 particular interpretation of its meaning." *See also Middlebrook-Anderson Co. v.*
25 *Southwest Sav. & Loan Assn.*, 18 Cal.App.3d 1023, 1038, 96 Cal.Rptr. 338 (1971).

26 NRS 47.150 provides that a judge or court may take judicial notice, whether
27 requested or not, and a judge or court shall take judicial notice if requested by a party
28 and supplied with the necessary information. NRS 47.160 provides, "A party is

1 entitled upon timely request to an opportunity to be heard as to the propriety of taking
2 judicial notice and the tenor of the matter to be noticed.” As to timing, NRS 47.170
3 provides: “Judicial notice may be taken at any stage of the proceeding prior to
4 submission to the court or jury.”

5 RESPECTFULLY SUBMITTED this 23rd day of April, 2021.

6 JONES & LOBELLO

7
8 

9 Michele LoBello

10 Nevada Bar No. 5527

11 9900 Covington Cross, Suite 210A

12 Las Vegas, Nevada 89144

13 Attorneys for Plaintiff,

14 THOMAS PICKENS
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of JONES & LOBELLO and that on the 03 day of April, 2021, I caused the above and foregoing document entitled foregoing PLAINTIFF'S REQUEST FOR THE COURT TO TAKE JUDICIAL NOTICE PURSUANT TO NRS 47.130 to be served as follows:

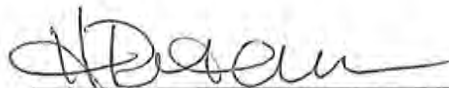
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and
- ☒ pursuant to N.E.F.C.R. 9, to be sent via electronic service;
- ☐ pursuant to EDCR 7.26, to be sent via facsimile;
- ☒ by email to

to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

Jennifer V. Abrams, Esq.
The Abrams & Mayo Law Firm
6252 South Rainbow Blvd., #100
Las Vegas, NV 89118
Email: JVAGroup@TheAbramsLawFirm.com
Attorney for Defendant

Shawn M. Goldstein, Esq.
GOLDSTEIN LAW, LTD.
1980 Festival Plaza Drive, Suite 300
Las Vegas, NV 89135
Email: shawn@goldsteinlawltd.com
Attorney for Defendant,

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.



An Employee of JONES & LOBELLO

EXHIBIT 1

EXHIBIT 1

Inst #: 20200826-0004179

Fees: \$42.00

RPTT: \$1479.00 Ex #:

08/26/2020 03:00:50 PM

Receipt #: 4187204

Requestor:

Stewart Title Company fo

Recorded By: MIDO Pgs: 4

Debbie Conway

CLARK COUNTY RECORDER

Src: ERECORD

Ofc: ERECORD

APN: 125-16-511-008
Escrow No: 20006644-201-AFS
R.P.T.T: \$1,479.00

Recording Requested By: Stewart Title Company

Mail Tax Statements To: *Same as below*

When Recorded Mail To:

BRANDON LAAKSONEN
7608 LOWE AVE
LAS VEGAS, NV 89131

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That for valuable consideration, the receipt of which is hereby acknowledged, Danka Michaels, Trustee Mich-Mich Trust, dated April 05, 2010 does hereby Grant, Bargain, Sell and Convey to Brandon Laaksonen and Rachael Sarah Laaksonen, husband and wife as joint tenants

all that real property situated in the County of Clark, State of Nevada, described as follows:

For Legal Description, See Attached Exhibit "A", attached hereto and made a part hereof.

SUBJECT TO:

1. Taxes for fiscal year; 2020-2021
2. Reservations, restrictions, conditions, rights, rights of way and easements, if any of record on said premises.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and any reversions, remainders, rents, issues or profits thereof.

See page 2 for signature of Grantor(s) and Notary Acknowledgment

Escrow No. 20006644-201-AFS
Grant, Bargain, Sale Deed...Continued

~~Mich-Mich~~ Trust, dated April 05, 2010


Danka Michaels, Trustee

Danka Michaels

State of Nevada

}
} ss
}


County of Clark

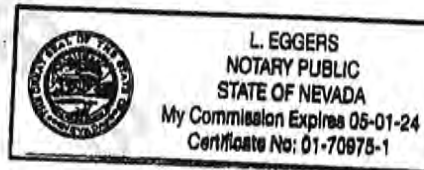
This instrument was acknowledged before me on

8/25/20

by: Danka Michaels, Trustee

Signature:


Notary Public



Escrow No. 20006644-201-AFS

EXHIBIT "A"
Legal Description

PARCEL ONE (1):

Lot Thirty-eight (38) in Block Seven (7) of FINAL MAP OF ORCHARD VALLEY AT ELKHORN SPRINGS CLUSTER HOMES - UNIT 6, as shown by map thereof on file in Book 83 of Plats, Page 90, in the Office of the County Recorder of Clark County, Nevada.

PARCEL TWO (2):

A non-exclusive easement for use and enjoyment in and to the Association Property as set forth in the Master Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Elkhorn recorded March 22, 1995 in Book 950322 as Document No. 00346 as the same may from time to time be amended and/or supplemented in the Office of the County Recorder of Clark County, Nevada, which easement is appurtenant to Parcel One (1).

1. Assessor Parcel Number(s)

b)

c).

d)

a) <input type="checkbox"/>	Vacant Land	b) <input checked="" type="checkbox"/>	Single Fam. Res.
c) <input type="checkbox"/>	Condo/Twnhse	d) <input type="checkbox"/>	2-4 Plex
e) <input type="checkbox"/>	Apt. Bldg	f) <input type="checkbox"/>	Comm'l/Ind'l
g) <input type="checkbox"/>	Agricultural	h) <input type="checkbox"/>	Mobile Home
i) <input type="checkbox"/>	Other		

Book _____ Page _____

Date of Recording:

Notes:

\$290,000.00

\$

\$290,000.00

\$1,479.00

a. Transfer Tax Exemption, per NRS 375.090, Section

b. Explain Reason for Exemption:

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature

Capacity: Grantor

Signature

Capacity: Grantee

**(GRANTEE) INFORMATION
(REQUIRED)**

Print Name: Brandon Laaksonen

Address:

Address:

9517 Queen Charlotte
Las Vegas, NV 89145

7608 Lowe Ave
Las Vegas, NV 8913

Print Name: Stewart Title Company/Angelica Flores

Escrow #: 20006644-AFS

Address: 7251 W. Lake Mead Blvd., Suite 350, Las Vegas, NV 89128

City, State, ZIP Code

SFRM0071 (DSI Rev. 05/14/14)

AA07866

Jennifer V. Abrams, Esq. (7575)
THE ABRAMS & MAYO LAW FIRM
6252 South Rainbow Blvd., Suite 100
Las Vegas, Nevada 89118
T: (702) 222-4021; F: (702) 248-9750
Email: JVAGroup@TAMLF.com
Attorney for Defendant

**Eighth Judicial District Court - Family Division
Clark County, Nevada**

Dates of Trial: February 14, 2020
February 21, 2020
March 5, 2021
March 12, 2021
April 2, 2021

Time of Trial: 9:00 a.m.

Case Number: D-17-560737-D

- 1 1. Tom failed to show that there was a valid marriage – the parties
2 were never legally married;
- 3 2. Tom failed to show that he is a putative spouse – Tom **knew** there
4 was no valid marriage as evidenced by the testimony of Todd
5 Kilde, Robert Semonian, Shannon Evans, and Danka Michaels and
6 by a significant number of documents that were admitted into
7 evidence including, but not limited to Exhibits B, G, H, I, 9, 10, 11,
8 12, 13, 14, 15, 16, 17, 18, 19, and 20.
- 9 3. Tom failed to show that there was any “express or implied
10 agreement to hold property as community” – The evidence shows
11 that Danka held herself out as “married” in social settings only, the
12 parties did not file joint tax returns, and the testimony of both
13 parties evidenced that they kept their assets separate, they kept
14 track of who paid for what, loans that were extended and repaid or
15 not repaid, and most notably, Tom testified (as to a business that
16 was started during the relationship and that had grown
17 substantially in value) that, “Bluepoint was my company 100%,
18 why would I pay her anything?”¹ Tom even testified that the
19 jointly titled Wells Fargo account ending in 3436 was “his”
20 account.

21 ¹ March 12, 2021, Video Index 11:38:35.

1 4. Tom failed to show any basis to set aside the deeds and transfer
2 documents that he signed knowingly and voluntarily “to make
3 amends” because it was the “fair” and “right” thing to do at the
4 time – Shannon Evans and Danka Michaels both testified that
5 Tom was coherent and lucid and Tom admitted on cross-
6 examination that there was no coercion, fraud, or duress. Further,
7 Tom followed through with and ratified the agreement for 13
8 months after signing.

9 In sum, this is a classic case of “buyer’s remorse” – Tom knew exactly
10 what he was doing when he signed the deeds and transfer documents to
11 Danka, he signed them because it was the “fair” and “right” thing to do,
12 and the parties had a deal that they both carried out and ratified over the
13 following 13 months. Tom just decided, more than a year after the deal,
14 that he wanted more.

15 **II. ARGUMENT**

16 The parties’ actual “relationship” was very short. By early 2004, all
17 intimacy between the parties had ended. For the next 12 years, their
18 interactions continued to diminish and deteriorate. Finally, the parties
19 ended their financial and other ties and went their separate ways in
20 2016.

21

1 It is a fundamental part of Nevada law that parties are free to
2 contract and the Court is required to enforce contracts so long as the
3 terms are not unconscionable, illegal, or against public policy.²
4 Unmarried parties and business partners are equally entitled to
5 contract.³ Nevada law treats such agreements as equally enforceable
6 whether they are in writing or not – even verbal agreements of the
7 parties, especially when acted upon, are generally held to be binding.⁴

8 If the Court chooses to look beyond the parties' actual agreement
9 to any considerations of general equity, there can be no doubt
10 whatsoever that Tom came to the relationship with very little and left in
11 a significantly better financial position. Specifically, Danka paid off his
12 debt and paid for a reliable vehicle for him. During the many years that
13 Tom earned no income, Danka paid all living expenses. She also paid
14 him a salary on her company payroll and contributed to a retirement
15 account for him. Whenever he needed money, Danka provided it. She
16 gave him the seed money to start a business and loaned him money
17 when he wasn't able to meet his payroll expense (including in 2015, just
18 after he received the \$1 Million bonus!).

19 ² See *Rivero v. Rivero*, 125 Nev. 410, 429, 216 P.3d 213, 226 (2009).

20 ³ *Western States Constr. v. Michoff*, 108 Nev. 931 (1992).

21 ⁴ See *Grisham v. Grisham*, 128 Nev. 679; 289 P.3d 230 (2012); *Phung v. Doan*, 420 P.3d 1029 (2018) unpublished.

1 During that time, Tom took control of the finances,⁵ had Danka
2 pay him thousands of dollars for credit card balances she purportedly
3 incurred without allowing her to see the statements, insisted his name be
4 added to her properties, and treated even their jointly titled bank
5 account as **his** account. He mismanaged and pilfered the security
6 deposits and rental proceeds from Patience One for years.

7 And by the end of it, Tom walked away with a business that was
8 earning millions of dollars, multiple expensive vehicles, a retirement
9 account worth hundreds of thousands of dollars, and bank accounts with
10 balances totaling hundreds of thousands of dollars, among other things.

11 In short, while Danka does not dispute that Tom did contribute
12 during the relationship, there can be no doubt that throughout the
13 relationship, Tom has mostly been an opportunistic taker. It was
14 apparent from the testimony that Tom did not stay in the relationship to
15 feed the soil, but rather to grab the fruit. Beginning in 2004 (**12 years**
16 before the signing of the deeds and transfer documents), Tom deprived
17 Danka of the intimacy and companionship she sought when he ended
18 their sexual relationship. Instead, Tom treated Danka like his personal
19 ATM.

20
21 ⁵ March 12, 2021, Video Index 2:42:47.

1 By January 2016, Tom was living in Florida with his blonde
2 girlfriend, Stacey Middlestadt. He called Danka at the end of January to
3 tell her “it” was over. When Danka asked Tom to sign over her properties
4 to her, he reversed course for a while so as to maintain access to her
5 money. Within two weeks, he purchased jewelry from Tiffanys for both
6 his love interest (Stacey) and his financial interest (Danka), and
7 managed to give each of them the gift intended for the other.

8 Nevertheless, Tom and Danka’s relationship still continued to
9 deteriorate after that. By the summer of 2016, they were closing joint
10 accounts. Finally, in September 2016, the parties completely severed
11 their financial ties.

12 Upon their parting, Tom finally signed over title to three
13 properties to Danka – Lowe, Queen Charlotte, and Patience One. Tom’s
14 testimony as to this transaction is crucial. What Tom **did** say during his
15 testimony about the signing of the deeds and transfer documents is as
16 important as what he did **not** say.

17 Tom testified on direct examination that in 2014 and 2015, he was
18 traveling and working jobs while he was taking medication that was
19 prescribed to him by Roberto Carillo, R.N., F.N.P.⁶ He testified that in
20 2015, his mother passed away.⁷

21 ⁶ February 14, 2020 Transcript page 228-229.

1 He testified that in **2016**, he was under a lot of stress due to the
2 loan with Wells Fargo, managing his employees, and working his
3 business projects.⁸ His father passed away that year,⁹ as did his dog.¹⁰
4 He testified that in 2016, he was “exhausted and stressed,” he had five
5 projects that he was working on, and he was traveling between St.
6 Thomas, Marco Island, the Bahamas, and Las Vegas.¹¹ He testified that
7 he was having an “affair” in 2015 and 2016.¹²

8 Tom conceded that **none** of those stressors were Danka’s fault.¹³
9 Tom **never** testified that he was impaired or incapable of consenting
10 due to medication nor did he present **any** evidence that he was impaired
11 by medication when he executed the deeds and transfer documents.

12 In fact, the timeline of events combined with Tom’s testimony
13 evidences that he knew **exactly** what he was doing and that he
14 voluntarily signed the documents. On September 8, 2016, Stacey
15 reached out to Danka to tell Danka that (a) Stacey is pregnant with
16

17 ⁷ February 14, 2020 Transcript page 231, lines 17-18.

18 ⁸ February 14, 2020 Transcript page 230, lines 1-6.

19 ⁹ February 14, 2020 Transcript page 231, lines 20-21.

20 ¹⁰ February 14, 2020 Transcript page 233, lines 21-22.

21 ¹¹ February 14, 2020 Transcript page 232, line 23 - page 233, line 2.

¹² February 14, 2020 Transcript page 234, lines 8-9.

¹³ March 12, 2021, Video Index 2:09:50 through 2:12:15.

1 Tom's child and (b) Stacey is aware of Danka's deepest, darkest secret
2 about her childhood trauma. Tom, testified that he was in Mississippi,¹⁴
3 contrary to his testimony from a year earlier that he was in Marco
4 Island), when he learned of this exchange and offered to sign over the
5 three properties to Danka.¹⁵

6 Tom acknowledged the text message he sent to Danka on
7 September 8, 2016: "Danka, there's nothing that I can say that will
8 change anything. It should have not happened, but it did. I will sign
9 everything that we have together over to you. I should have not put
10 myself into this position. I know you will never forgive me and you
11 shouldn't."¹⁶

12 The next morning, September 9, 2016 at 8:30 a.m., attorney
13 Shannon Evans wrote to her staff regarding preparation of the deeds and
14 transfer documents in question: "they do not need a divorce, and he will
15 agree to assets being Danka's since she pays for the properties and he is
16 guilty."¹⁷

17 Tom tried to alter the history of these events when he testified that
18

19 ¹⁴ March 12, 2021, Video Index 12:01:14.

20 ¹⁵ March 12, 2021, Video Index 12:22:53.

¹⁶ March 12, 2021, Video Index starting at 2:04:55.

21 ¹⁷ See Exhibit B, Bates Stamp Number DankaMichaels000615.

1 Danka “demanded I come home. I was in Marco Island.”¹⁸ He said that
2 Danka “wanted me to sign over all of our properties.”¹⁹

3 Of course, even if that revisionist history was accurate, Tom
4 conceded **knowing** that the purpose of his trip was to sign the deeds
5 and transfer documents: “I flew to Las Vegas. She made an appointment
6 with Shannon Evans. We both met at Shannon Evans’ office. They
7 produced documents. They said sign these documents. I signed them.”²⁰
8 There was no testimony by Tom that he even took any medication on any
9 day between September 8 and September 13. In other words, Tom knew
10 exactly what he was doing and he did exactly what he intended to do.

11 Tom testified on cross-examination that he was **not** coerced,
12 threatened, detained, or otherwise forced to sign the deeds and transfer
13 documents against his will.²¹ He acknowledged “I signed them.”²²

14 Tom admitted that Shannon Evans told him to get his own lawyer
15 before signing.²³ Tom chose not to do so and he even signed a Waiver of
16 Conflict which was admitted into evidence as Exhibit B, Bates Stamp

17 ¹⁸ February 14, 2020 Transcript page 235, lines 21-23.

18 ¹⁹ February 14, 2020 Transcript page 236, line 4.

19 ²⁰ February 14, 2020 Transcript page 236, lines 14-17.

20 ²¹ March 12, 2021, Video Index 12:10:43.

21 ²² February 14, 2020 Transcript page 236, lines 16-17.

²³ February 14, 2020 Transcript page 236, line 21 – page 237, line 2.

1 Number DankaMichaels000698. Had Tom not signed that Waiver of
2 Conflict, Attorney Evans would not have proceeded with the transaction.
3 Tom chose to sign the deeds and transfer documents without obtaining
4 independent counsel and both Danka and Attorney Evans relied on his
5 decision.

6 When Tom's counsel asked him on direct examination **why** he
7 signed the deeds and transfer documents that day, he testified "because I
8 was trying to make amends."²⁴ This is crucial testimony that tells this
9 Court everything it needs to know about the voluntariness of the
10 transaction – for his own reasons, Tom chose to sign the deeds and
11 transfer documents, he knew exactly what he was doing, and he was not
12 coerced, under duress, or impaired in any way.

13 During cross examination, Tom admitted that he chose to sign
14 over his interest in the Queen Charlotte, Lowe, and Patience One
15 properties to Danka in September 2016 because he believed it was the
16 "fair" and "right" thing to do at the time.²⁵ His testimony directly
17 controverts the legal theories later concocted by his legal counsel that
18 Danka purportedly breached some amorphous "fiduciary duty" to Tom
19 by allowing him to do what he independently decided to do. It also

20 ²⁴ February 14, 2020 Transcript page 239, line 8.

21 ²⁵ March 12, 2021, Video Index starting at 2:07:48.

1 directly controverts his own Closing Brief now alleging a very different
2 meaning to that four letter word beginning with “f” – “fair.” It would be
3 entirely **unfair** to allow Tom to back out of the deal, on top of and after
4 his massive financial gain at Danka’s expense.

5 As the communications recited above reflect, Tom always knew
6 that a complete break-up with Danka would entail his signing over of
7 these three properties to her. He confirmed that knowledge in January
8 2016.

9 Nine months later, he still knew it. On September 8, 2016 – when
10 he offered to sign them over in his text message to Danka – that he
11 would be traveling to Las Vegas from Florida to complete the transfers.
12 He had more than four full days to plan and think about his signing of
13 the transfer documents before he did so.

14 Tom can’t possibly claim with a straight face that Danka coerced
15 him to book his own flight from Florida to Nevada, coerced him to take a
16 taxi from the airport to the Red Rock Hotel & Casino, coerced him to
17 stay there for three nights, coerced him to drive himself to Attorney
18 Evans’ office, coerced him to waive the right to independent counsel,
19 coerced him to sign the deeds and transfer documents, coerced him to
20 pay Attorney Evans, and coerced him to start his life over and honor the
21 terms of their agreement for the next 13 months.

1 Tom's true motivations are even more apparent with his testimony
2 that "'Hey, if we get back together, then can you transfer these back to
3 me?'"²⁶. In other words, Tom ***didn't*** testify that he asked Danka if she
4 would forgive him so they could live as a couple and grow old together;
5 he didn't testify that he loved Danka and couldn't live without her; he
6 didn't testify that he wanted to "restore marital peace."

7 What Tom did testify to was that there wasn't any fraud, coercion
8 or duress when he signed the deeds and transfer documents, confirming
9 that Tom knew exactly what he was doing when he did it. Tom was only
10 interested in figuring how he could connive Danka into putting his name
11 back on her property.

12 Tom admittedly continued his relationship with Stacey through
13 the date of trial and they continue to live together. Tom didn't even
14 make an effort to reconcile his relationship with Danka. In fact, Tom
15 noted that he and Danka saw a counselor in 2015, but rather than
16 continue with counseling or anything else in any kind of good faith effort
17 to have something more than a funds-receiving relationship with Danka,
18 he established a relationship with another woman and then moved in
19 with and impregnated his secret girlfriend.

20
21 ²⁶ March 12, 2021, Video Index 2:49:10.

1 The last-minute allegation made only by Tom’s counsel, that
2 Danka purportedly breached any “doctor-patient fiduciary duty,” is
3 nothing more than frivolous legal posturing. Tom admitted that he never
4 filed a malpractice case against Danka, or a grievance, or any ethical
5 complaints against her.²⁷ The criminal and disciplinary rules cited by his
6 counsel are irrelevant and inapplicable here because this is not a
7 criminal matter or a disciplinary action. Moreover, the parties’ sexual
8 relationship, which is the basis for any purported criminal liability,
9 ended in 2004 – **twelve years** before the execution of the transfer
10 documents.

11 And Roberto Carillo’s testimony is undisputed – Carillo has
12 independent prescription writing authority and he was Tom’s primary
13 care provider in 2016. Danka only prescribed one medication in May
14 2016 during cross-coverage for Carillo. In fact, there was no evidence
15 presented **at all** to support the false assertion by Tom’s counsel that
16 Tom was “incompetent” or “incapable of consenting or executing deeds”
17 due to prescription medication – Tom certainly did not so testify, and
18 neither did anyone else.

19 Similar to the magic grits in “My Cousin Vinny,” are we to believe
20 that the medication Tom was purportedly taking **only** bound itself to the

21 ²⁷ March 12, 2021, Video Index 2:20:50.

1 receptors in Tom's brain that control signing deeds to real property and
2 **only** in September 2016? Perhaps the laws of pharmacology cease to
3 exist in Tom's brain! Were these "magic medications?"²⁸

4 Likewise, the argument that there was "exploitation of a
5 vulnerability" made by Tom's counsel was also never testified to by Tom.
6 In fact, Tom's testimony evidences that Danka treated him for routine
7 matters, none of which would make him "vulnerable" to anything:

8 LOBELLO: Do you recall for what Danka has treated you over the
9 years? What medical reasons she has treated your conditions?

10 PICKENS: She has treated me for gout, anxiety, cholesterol, high
11 blood pressure, that's pretty much the list.²⁹

12 Attorney Shannon Evans and Danka both testified that Tom
13 appeared lucid, coherent, competent, and unimpaired when he signed
14 the deeds and transfer documents. Tom absolutely knew what he was
15 signing when he signed those documents. And again, Tom admitted in
16 his testimony that he was **not** threatened, harmed, confined, detained,
17

18 ²⁸ From Twentieth Century Fox. (1992). *My Cousin Vinny*. Retrieved from
<https://www.imdb.com/title/tt0104952>.

19 Are we to believe that boiling water soaks into a grit faster in your
20 kitchen than on any place of the face of the Earth? . . . Well perhaps the
laws of physics cease to exist on your stove! Were these magic grits? I
mean, did you buy them from the same guy who sold Jack his
beanstalk beans?

21 ²⁹ February 14, 2020 Transcript page 93, lines 5-9.

1 or misled into signing. He even admitted that **he** paid Attorney Evans
2 for preparing and recording those deeds and transfer documents.

3 There can be no doubt that the parties intended the September 13,
4 2016 transaction to be final. Each kept the property and assets in their
5 respective names. Tom knowingly transferred the jointly titled Lowe,
6 Queen Charlotte, and Patience One properties to Danka because she
7 primarily paid for them as noted by attorney Evans, **and** Tom, **and**
8 Danka. Tom testified that after he signed the deeds and moved out, he
9 “completely re-established [his] life,”³⁰ indicating his intention to
10 permanently end his financial and other ties with Danka.

11 For the next 13 months, Tom and Danka each honored and ratified
12 the terms of that agreement – Tom moved out of the Queen Charlotte
13 property, relinquished control of the Patience One leases,³¹ and paid rent
14 for continuing to occupy space in Danka’s building.³² Tom cashed out
15 retirement funds and purchased a home in his name alone as a “single,
16 unmarried man.” Danka paid off debt, paid for repairs, and refinanced
17 the Queen Charlotte and Patience One properties to remove Tom from
18 the obligations.

19
20 ³⁰ February 14, 2020 Transcript page 242, lines 1-9.

21 ³¹ March 12, 2021, Video Index 2:44:14.

³² March 12, 2021, Video Index 2:50:00.

1 It is well established in Nevada law that even **if** a contract is
2 entered into during incapacity, insanity, or even fraud, it can be ratified
3 by subsequent conduct.³³ Thus, based on the conduct of **both** parties
4 for **13 months** after the signing of the deeds and transfer documents,
5 Tom ratified the terms of the September 13, 2016 agreement **even if**
6 **there had been** any coercion, duress, undue influence, confinement,
7 or breach of fiduciary duty (which there was not).

8 It wasn't until more than a year later that Tom decided to try to
9 reverse the fully executed agreement. Why? **His** answer to this question
10 changed drastically over time – first, Tom alleged in his various
11 Complaints that he signed the deeds and transfer documents “with the
12 sole intention of ameliorating Michaels’ rage and restoring marital
13 peace” suggesting the transfers were not intended to be final.

14 Then, 1 ½ years later during his deposition, Tom alleged for the
15 first time that he filed the Complaint because he was purportedly
16 obligated to pay millions of dollars in gift taxes as a result of the
17 transfers and therefore the transfers should be set aside due to this
18 obligation.

20 ³³ c.f. NRS 125.320-.340; *Shelton v. Shelton*, 119 Nev. 492, 78 P.3d 507 (2003);
21 *Whiston v. McDonald*, 85 Nev. 508, 510, 458 P.2d 107, 108 (1969).

1 When it was established through the parties' CPA, Robert
2 Semonian, that Tom would *not* owe gift taxes (although he would have
3 to file a gift tax return because the transfers were made between
4 unmarried persons), Tom then alleged for the first time (approximately
5 2 years after the filing of his Complaint) that the deeds should be set
6 aside due to medication that purportedly only interfered with his ability
7 to sign deeds and transfer documents to real property - but which did
8 not prevent him from running a multi-million dollar business,
9 contracting with third-parties, establishing an intimate relationship and
10 a new home in Florida, or impregnating his girlfriend.

11 In sum, Tom presented no legitimate reason to set aside the deeds
12 and transfer documents. Tom's own testimony establishes that they had
13 a final parting of ways and division of property. Their CPA's testimony
14 establishes that there will be no gift taxes owed. And, there was zero
15 evidence presented – not even from Tom himself – that Tom was
16 impaired in any way due to medication.

17 What appears to ***really*** have happened was established by the
18 testimony of Tom's own witness Dara Lessmeister - "personal
19 information about Tom was being relayed to the client" by Tom's
20 employees.³⁴ According to Ms. Lessmeister, Tom's business was

21 ³⁴ February 14, 2020 Transcript page 138, line 22 – page 139, line 19.

1 eventually reduced as a result of his employees giving the client “the idea
2 that Tom may not be running his business and his life appropriately.”³⁵
3 When he could no longer turn to Danka to bail him out financially, as
4 she had done so many times before during their relationship, Tom
5 persuaded himself that he was “entitled” to even more than he had
6 already taken from Danka over the years, and filed this frivolous suit for
7 “divorce,” even though he was well aware of the fact that he and Danka
8 were never legally married.

9 Danka readily admitted that she and Tom called each other
10 “husband” and “wife” in social settings because Tom didn’t like to be
11 called “boyfriend” at his age. As to the Lowe and Queen Charlotte deeds
12 that said “husband and wife,” both parties testified that Tom handled the
13 paperwork. **He** checked the box on the escrow paperwork as to how title
14 should be held. The testimony established that Tom drove Danka to the
15 title company during her lunch hour (in between seeing patients) where
16 she was presented with a large stack of documents, certain pages of
17 which were tabbed for her signature. She signed where indicated without
18 reviewing what she was signing. And those deeds were later corrected to
19 reflect that the parties were **not** married.

21 ³⁵ February 14, 2020 Transcript, page 139, lines 20-24.

1 As for Tom's allegation that the escrow company was "convinced"
2 that the parties were married, escrow companies do not require proof of
3 marriage. Tom testified that he didn't even have a copy of the "Marriage
4 Certificate" until **after** his initial Complaint for Divorce was filed. The
5 escrow company simply did what they do and followed Tom's
6 instructions as to how title should be held. Otherwise, how could Tom
7 have been successful in closing on a house as a "single, unmarried man"
8 eight months after signing the deeds and transfer documents at issue
9 and five months **before** filing his Complaint for Divorce?

10 In sum, the title of the Lowe and Queen Charlotte properties that
11 were held "as husband and wife" carry very *little* weight because the
12 instructions to title the properties that way came solely from Tom. The
13 title of Blue Mesa to Tom as a "single, unmarried man" carries
14 *significant* weight because the instructions to title the property that way
15 **also** came from Tom, evidencing that he requested title to suit his needs
16 and that he was well aware that there was no valid marriage.

17 **III. CREDIBILITY**

18 The magnitude of Tom's dishonesty about the "marriage" is
19 significant. It evidences just how dishonest Tom has been throughout
20 these proceedings in his efforts to unfairly take more from Danka.

1 **How** do we know Tom was lying about the marriage? Let us count
2 the ways:

3 1. Tom's long-time friend and co-worker, Todd Kilde, testified that
4 shortly after the commitment ceremony in Slovakia, Tom told
5 Todd that he and Danka were not legally married;

6 2. The parties' CPA, Robert Semonian, testified that Tom told Mr.
7 Semonian that Tom and Danka were not legally married. Mr.
8 Semonian further testified that the issue of marital status was
9 discussed **every year** during tax season. Mr. Semonian
10 attested to the fact that the parties had filed their Federal
11 Income Tax Returns as "single, unmarried" individuals every
12 year for more than a decade:

13 SEMONIAN: The first year that I began working with them, I had
14 discussions with Mr. Pickens in which he -- over their
15 tax structure. I actually had started to prepare the first
16 tax return as married filing joint, but after discussions
17 with Mr. Pickens I learned that they were -- they had a
18 marriage ceremony in a church, but they did not have a
19 marriage license and that they were not legally
20 married. And as such, we agreed that it would be best
21 to file each individual as single as opposed to being
22 married.

23 ABRAMS: And you heard that from Mr. Pickens himself directly,
24 correct?

25 SEMONIAN: Yes, ma'am.

26 ABRAMS: Was that the only conversation you ever had with Mr.
27 Pickens about his marital status?

28 SEMONIAN: No. We -- we had this discussion almost annually.

29 ABRAMS: Almost annually for how many years?

1 SEMONIAN: For as long as I was doing his tax returns.³⁶

2 3. Each and every year from 2002 through 2016, Tom executed
3 Form 8879 authorizing his sworn signature on his Federal
4 Income Tax Returns as a single, unmarried person;

5 4. Attorney Evans confirmed that Tom made it clear to her when
6 she prepared his estate planning documents that he and Danka
7 were not legally married and did not plan on being legally
8 married.

9 ABRAMS: Okay. And you have some notes with regards to – at
10 the very bottom you wrote some handwritten notes.

11 Can you tell us what you wrote and what it meant?

12 EVANS: I wrote, Note: Thomas Pickens is not -- they're not
13 married. They own the home together. He is not good
14 with money.³⁷

15 5. Just as was seen in Danka's estate planning documents,³⁸ Tom's
16 Last Will and Testament of 2012 stated, "I am not married..."³⁹

17 This was repeated in his "LV Blue Trust," which states in
18 reference to Tom "The settlor is not married."⁴⁰

19 ³⁶ Transcript of Proceedings, February 21, 2020, page 75:1-17.

20 ³⁷ Transcript of Proceedings, February 21, 2020, page 40:18-23.

21 ³⁸ Please see bates stamp 000546, 000561 and 000585 of Exhibit B admitted into
evidence.

³⁹ Please see bates stamp 001069 of Exhibit B admitted into evidence.

⁴⁰ Please see bates stamp 001094 of Exhibit B admitted into evidence.

1 6. When Shannon Evans prepared the deeds and transfer
2 documents, included in those documents were deeds to correct
3 the title of the Lowe and Queen Charlotte properties from
4 “husband and wife” to single, unmarried persons. Tom executed
5 these deeds because he knew that he and Danka were not
6 married. (Exhibit B, Bates Stamp Numbers 000653-000658
7 and 000665-000671).

8 7. A few months after the parties separated their finances and
9 went their separate ways, Tom purchased a home as a single,
10 unmarried man. He also obtained a mortgage for this home as a
11 single, unmarried man. An email from Jeffrey Zachow, the
12 Wells Fargo Mortgage Officer, to Tom on March 24, 2017,
13 (admitted into evidence as Exhibit P) states: “I understand that
14 you weren’t officially married to Danka, so obviously there isn’t
15 a Divorce Decree.” Tom testified that Mr. Zachow would have
16 obtained that information from Tom. Tom told the mortgage
17 officer 8 months before he filed the Complaint for Divorce that
18 he and Danka were not officially married. While he tried to
19 blame Semonian for the tax filings and blame Evans for the
20 estate planning documents, he did not point the finger at
21 anyone but himself on this one during his testimony.

1 8. Tom alleged (for the first time at his deposition) that he would
2 owe gift taxes as a result of the deeds and transfer documents.
3 Given that transfers between spouses are not taxable events,
4 Tom was referring to transfers between unmarried persons (i.e.,
5 he knew that he and Danka were not married).

6 9. Of the thousands of Complaints for Divorce that are filed in this
7 Court every year, it is extremely uncommon for a “Marriage
8 Certificate” to be attached. If he truly believed that he and
9 Danka were legally married, why would he solicit Danka’s
10 friend to contact the church in Slovakia for a copy of the
11 “Marriage Certificate”? And Tom lied even about that – Tom
12 testified that he didn’t have a copy of the marriage certificate
13 until 2017 or 2018, **after** he filed.⁴¹ His attorneys allege in their
14 Closing Brief that the Marriage Certificate was used to convince
15 title companies of a marriage when title was taken to the Lowe
16 and Queen Charlotte properties many years earlier, which
17 directly contradicts Tom’s testimony that he didn’t ever have a
18 copy of the Marriage Certificate until **after** he filed.

19 10. Tom’s later-concocted “explanation” of why the parties were
20 “married” in Slovakia makes no sense either:

21 ⁴¹ See testimony at page 106, line 16 – page 107, line 24.

1 LOBELLO: Prior to the marriage, did you and Danka discuss asset
protection?
2 PICKENS: Yes.
LOBELLO: And what was the specific concern there?
3 PICKENS: Well, the concern was because of the - - the pending
lawsuits that if we got married there could be a
4 possibility of - - of everything we had together would
be attacked, I mean let's just say. So then - -
5 LOBELLO: So how did - - how did have the wedding in Slovakia
help with that concern?
6 PICKENS: The conversation was that if we got married in Slovakia
that it would take creditors much more time to figure
7 out that we were married. And therefore, we just never
brought it to the United States.⁴²
8

9 The recording of deeds to the Lowe and Queen Charlotte
10 properties "as husband and wife" completely undermines this illogical
11 "explanation." Had there actually been a valid marriage and an intention
12 to conceal that "marriage" to protect against creditors, Tom would not
13 have checked the box on escrow documents to title readily searchable
14 recorded deeds as "husband and wife."

15 Tom lied. Repeatedly. Although a bit of truth did seep out in his
16 testimony of February 14, 2020 at page 113, lines 13-14 when he stated:
17 "I believed for the fifteen years we were together, we were **basically**
18 married." [Emphasis added].

19 And this is not a small or "white lie." Tom shamelessly lied
20 throughout these proceedings about his marital status in an effort to

21 ⁴² February 14, 2020 Transcript page 102, line 24.

1 defraud this Court and take even more from Danka. Tens of thousands
2 of dollars in attorney fees were expended for subpoenas, depositions,
3 discovery, and testimony relating to this blatant lie by Tom, all because
4 he wants to continue to use Danka as his personal ATM. This Court
5 should grant Danka's counterclaim for declaratory relief that the parties
6 were never married and grant her counterclaims for misrepresentation,
7 breach of the covenant of good faith and fair dealing, and malicious
8 prosecution. Tom should not be permitted to renege on his agreement,
9 lie repeatedly, and impose four years of stress and expense upon Danka
10 without consequence.

11 There are many more examples of Tom's lack of credibility. For
12 example, the clerical error by attorney Shannon Evans as to the transfer
13 of Patience One was never raised by Tom in any of his three Complaints
14 – the purported "failure of transfer" was raised for the first time by
15 Tom's counsel at trial. Meanwhile, Tom admitted in each of his three
16 Complaints that he executed documents with the intention to and with
17 the belief that he did properly transfer his interest in Patience One to
18 Danka. This clerical error is of no consequence and should be corrected.

19 This case was filed and litigated in a frivolous and vexatious
20 manner, as explained in excruciating detail above. Dr. Michaels has
21 expended significant fees over 3 ½ years of litigation. With the granting

1 of the relief requested by Dr. Michaels, this litigation will end.
2 Otherwise, if the court is to conclude that there was no enforceable
3 settlement agreement between the parties, discovery will be opened and
4 litigation will continue with the ultimate likely outcome establishing that
5 the deal was exactly fair and a proper division of property and debt.

6 It is submitted that an assessment of fees is appropriate here, since
7 Tom has knowingly and deliberately requested relief to which he is not
8 entitled. He filed a series of fraudulent complaints knowing that the
9 parties were never legally married and had already divided their assets
10 in 2016. An award of fees is called for under EDCR 7.60(b):

11 (b) The Court may, after notice and an opportunity to be
12 heard, impose upon an attorney or a party any and all sanctions
13 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:

14
(3) So multiplies the proceedings in a case as to
increase costs unreasonably and vexatiously.

15 (4) Fails or refuses to comply with these rules

16 / / /

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1 Accordingly, Dr. Michaels should be awarded fees and costs she
2 has been compelled to incur to defend against an action that should
3 never have been filed. Dr. Michaels requests an award of fees sufficient
4 to make her whole and to allow her to receive the benefit of the parties'
5 agreement without this unnecessary expenditure of funds to enforce it.

6 DATED: Friday, May 28, 2021.

7 Respectfully Submitted,

8 THE ABRAMS & MAYO LAW FIRM

9 /s/ Jennifer V. Abrams, Esq.

10 Jennifer V. Abrams, Esq.

11 Nevada State Bar Number: 7575

12 6252 South Rainbow Blvd., Suite 100

13 Las Vegas, Nevada 89118

14 Attorney for Defendant

15 Respectfully Submitted,

16 GOLDSTEIN LAW LTD.

17 /s/ Shawn M. Goldstein, Esq.

18 Shawn M. Goldstein, Esq.

19 Nevada State Bar Number: 9814

20 10161 Park Run Dr., Suite 150

21 Las Vegas, Nevada 89145

 Attorney for Defendant

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing DEFENDANT’S CLOSING ARGUMENT BRIEF was filed electronically with the Eighth Judicial District Court in the above-entitled matter on Friday, May 28, 2021. Electronic service of the foregoing document shall be made in accordance with the Master Service List, pursuant to NEFCR 9, as follows:

Michele T. LoBello, Esq.
Attorney for Plaintiff

/s/ Chantel Wade
An Employee of The Abrams & Mayo Law Firm

EXHIBIT A

EXHIBIT A

EXHIBIT A

1 **FFCL**

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11 co-counsel for Defendant

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

15 THOMAS A. PICKENS, individually, and as
16 trustee of the LV Blue Trust

Plaintiff,

17 vs.

18 DANKA K. MICHAELS, individually, and
19 as trustee of the Mich-Mich Trust,

20 Defendant.
21

CASE NO. D-17-560737-D

DEPT. NO. J

DEFENDANT'S PROPOSED
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
ORDERS, DECREE AND
JUDGMENT

1 **THIS MATTER** having come on for a non-jury trial as to all issues between
2 the parties on February 14, 2020, February 21, 2020, and thereafter continued due to
3 the COVID-19 Pandemic with trial resuming on March 5, 2021, March 12, 2021 and
4 concluding on April 2, 2021, and Defendant Danka K. Michaels (“Danka”) being
5 present and represented by her counsel Jennifer V. Abrams, Esq. of The Abrams &
6 Mayo Law Firm and her co-counsel Shawn M. Goldstein, Esq. of Goldstein Law Ltd.
7 and Plaintiff Thomas K. Pickens being present and represented by and through his
8 counsel of record John D. Jones, Esq. and Michele T. LoBello, Esq. of Jones &
9 LoBello and the Court, having reviewed the papers and pleadings on file, having
10 received and considered the testimony of the parties and other witnesses, having
11 weighed the credibility of the witnesses, having reviewed the substantial documents and
12 information received into evidence, and for good cause appearing, hereby finds, orders,
13 adjudges and decrees as follows:

14 **FINDINGS OF FACT**

15 The Court hereby makes the following findings of fact:

16 **A. PARTIES, JURISDICTION, PROCEDUARL HISTORY AND**
17 **PLEADINGS**

18 1. This Court has complete jurisdiction in the premises both as to the subject
19 matter hereof and the parties hereto; Defendant Danka K. Michaels (“Dr. Michaels”) has
20 long ago established residency in Clark County, Nevada, and she is and has been for
21 many years prior to and up to the present, an actual and bona fide resident of Clark

1 County, State of Nevada, and has maintained a residence in the State of Nevada, and has
2 the intent to indefinitely reside in the State of Nevada.

3 2. On October 24, 2017, Mr. Pickens filed a Complaint for Divorce and for Set
4 Aside of Deeds of Real Property and Assignment of LLC Interest. His claims for relief
5 were (1) Divorce; (2) Set Aside of Deeds of Real Property and Assignment of LLC
6 Interest.

7 3. On November 29, 2017, Dr. Michaels filed a Motion to Dismiss; Mr. Pickens
8 filed his Opposition and Countermotion for Attorney's Fees and Costs thereto on
9 December 20, 2017; Dr. Michaels filed her Reply and Opposition to Countermotion on
10 January 19, 2018. A hearing was held on January 25, 2018. The Court issued its Order
11 filed on March 9, 2018 denying the Motion to Dismiss and denying summary judgment.
12 The Court also found that it had jurisdiction over the instant matter in accordance with
13 NRS 3.223, *Landreth v. Malik*, 127 Nev. 175, 177, 251 P.3d 163, 164 (2011), and *Hay*
14 *v. Hay*, 100 Nev. 196, 199, 678 P.2d 672, 674 (1984).

15 4. On March 22, 2018, Mr. Pickens filed his First Amended Complaint for
16 Divorce; For Set Aside of Deeds of Real Property and Assignment of L.L.C. Interest;
17 and For Alternative Equitable Relief Under the Putative Spouse Doctrine.

18 5. On May 2, 2018, Dr. Michaels filed her Answer to First Amended Complaint
19 for Divorce; For Set Aside of Deeds of Real Property and Assignment of L.L.C. Interest;
20 and For Alternative Equitable Relief Under the Putative Spouse Doctrine; Affirmative
21 Defenses and Counterclaim.

1 6. On September 7, 2018, Mr. Pickens filed his Motion for Leave to File Second
2 Amended Complaint. Dr. Michaels did not file an opposition thereto.

3 7. Mr. Pickens filed his Second Amended Complaint For Equitable Relief
4 Under (1) The Putative Spouse Doctrine, And (2) Pursuant To Express And/Or Implied
5 Agreement To Hold Property As If The Parties Were Married Under *Michoff*; And To
6 Set Aside Deeds Of Real Property And Assignment Of L.L.C. Interest on October 15,
7 2018. Notably, Mr. Pickens removed his claim for divorce and acknowledged that the
8 parties were not legally or validly married.

9 8. Dr. Michaels filed her Answer to Mr. Pickens Second Amended Complaint
10 For Equitable Relief Under (1) The Putative Spouse Doctrine, And (2) Pursuant To
11 Express And/Or Implied Agreement To Hold Property As If The Parties Were Married
12 Under *Michoff*; And To Set Aside Deeds Of Real Property And Assignment Of L.L.C.
13 Interest; Affirmative Defenses and Counterclaim on November 19, 2018 and her
14 Declaration in support thereof on November 21, 2018.

15 9. On August 1, 2019, Dr. Michaels filed her Motion for Summary Judgment,
16 To Dismiss, For Protective Order and For Attorney Fees and her Exhibit Appendix
17 thereto.

18 10. On August 12, 2019, Mr. Pickens filed his Opposition to Defendant's Motion
19 for Summary Judgment, To Dismiss, For Protective Order and For Attorney Fees and
20 Countermotion for Leave of Court to File Supplemental Points and Authorities.

1 11. On August 19, 2019, Mr. Pickens filed his Opposition to Defendant's Motion
2 for Summary Judgment, To Dismiss, For Protective Order And For Attorney Fees And
3 Countermotion (1) To Dismiss Or, In The Alternative For Summary Judgment As To
4 Defendant's Causes Of Action For Intentional Misrepresentation/Fraud; Negligent
5 Misrepresentation; Breach Of Implied Covenant Of Good Faith And Fair Dealing;
6 Promissory Estoppel; Express Agreement; Implied Agreement; And Malicious Abuse
7 Of Process; (2) For Summary Judgment Setting Aside Deeds Of Real Property And
8 Assignment Of LLC Interest; And (3) For Permission To Submit Points And Authorities
9 In Excess Of 30 Pages Pursuant To EDCR 5.503(E).

10 12. On September 6, 2019, Dr. Michaels filed her Reply to Mr. Pickens
11 Opposition and Opposition to Countermotion.

12 13. On September 10, 2019, the Court issued a Minute Order wherein it advised
13 that it would not reconsider or reverse its previous order denying summary judgment and
14 it vacated the September 11, 2019 hearing on Defendant's Motion for Summary
15 Judgment, etc. and Plaintiff's Opposition thereto and Countermotion. Trial was set for
16 February 14 and 21, 2020.

17 14. Day 1 of trial was held on February 14, 2020 and Day 2 was held on February
18 21, 2020.

19 15. Due to the COVID-19 pandemic and pursuant to, and in accordance with, the
20 Administrative Orders issued In The Matter of The Eighth Judicial District Court's
21 Response to Coronavirus Disease (COVID-19) trial in this matter was continued. Trial

1 was further continued by stipulation and various requests of the parties. Trial resumed
2 with Day 3 on March 5, 2021, Day 4 on March 12, 2021 and concluded with Day 5 on
3 April 2, 2021.

4 16. The Court heard testimony from the parties, and multiple percipient
5 witnesses including Shannon Evans, Esq., Robert Simonian, CPA, Dara Lesmeister,
6 Todd Kilde, and Roberto Carillo, APRN. A total of 138 Exhibits were admitted during
7 the trial either via stipulation or through the Court's ruling.

8 **B. THERE WAS NO LEGAL MARRIAGE AND MR. PICKENS IS NOT A**
9 **PUTATIVE SPOUSE.**

10 17. Mr. Pickens' position on whether he was a in legal marriage to Dr. Michaels
11 has been inconsistent. In his initial Complaint, Mr. Pickens asserted that the parties were
12 married, attached a copy of the purported marriage certificate, and sought a divorce. Mr.
13 Pickens contradicted himself when he testified that he did not have a copy of the
purported marriage certificate until *after* this litigation began.

14 18. In his First Amended Complaint, Mr. Pickens maintained his position that
15 the parties were legally married, but also added a third claim for relief under the putative
16 spouse doctrine if the purported marriage was somehow invalid.

17 19. Mr. Pickens later filed a Second Amended Complaint wherein he removed
18 his claim for divorce as he acknowledged in his Motion for Leave to Amend that the
19 parties were not legally married.

20 20. At trial, on Day 4, when Mr. Pickens was asked if he was claiming that the
21 parties were married, he answered that he was. This sworn testimony was contradictory

1 to his sworn verification of his Second Amended Complaint which removed the claim
2 for divorce.

3 21. Mr. Pickens and Dr. Michaels had a ceremony in Bratislava, Slovakia on
4 April 7, 2002. Mr. Pickens testified that he, at all times, believed this to be a valid and
5 legally binding marriage ceremony; his testimony was not credible. Dr. Michaels
6 testified that she always knew that the ceremony was never a valid and legally binding
7 marriage ceremony and that she never would have participated in such a ceremony had
8 it been one which would have resulted in the parties being actually and legally married;
9 her testimony was credible.

10 22. The purported "marriage certificate" was a church document and not a
11 government document. There was no evidence that a marriage license was ever issued
12 to the parties or that any legal documents of the purported marriage were ever signed by
13 the parties or filed with any governmental agency in Bratislava, Slovakia.

14 23. After the ceremony, the parties did send out "wedding announcements", they
15 took photos and further held themselves out as husband and wife in various social
16 settings because Mr. Pickens wanted to be called "husband" in front of third parties, not
17 because he actually believed he was married, but rather because he did not like the idea
18 of being called "boyfriend." Although the parties held themselves out socially as being
19 married, both Dr. Michaels and Mr. Pickens did so with full personal knowledge that
20 they were not, and had never been, legally married.

1 24. Neither party completed the steps necessary to have the purported marriage
2 legally recognized in Slovakia. Mr. Pickens claimed that he was unaware of the
3 requirement to do so while Dr. Michaels claimed that there was never any intent to do
4 so because she never intended to be validly married. Dr. Michaels claim in this regard is
5 more credible than Mr. Pickens especially in light of the totality of the evidence.

6 25. Mr. Pickens' claim that the reason the parties had a "wedding" in Slovakia
7 was because, prior to doing so, the parties discussed asset protection. Specifically, Mr.
8 Pickens testified that there was an alleged concern that assets could be "attacked" and
9 that, "if we got married in Slovakia that it would take creditors much more time to figure
10 out that we were married." This testimony is directly contradicted by Mr. Pickens'
11 instructions to the title company to record two deeds to real property (one for 9517
12 Queen Charlotte Drive, Las Vegas, Nevada 89145 and the other for 7608 Lowe Ave,
13 Las Vegas, Nevada 89131) as "husband and wife" when such deeds are readily
14 searchable online in Clark County, Nevada.

15 26. Two deeds were recorded (for the Queen Charlotte and Lowe properties) as
16 "husband and wife." However, Dr. Michaels' testimony that Mr. Pickens dealt with the
17 title company and advised them on how title should be taken was credible and the title
18 documents showed that Mr. Pickens directed how title should be taken. Further, both Dr.
19 Michaels and Mr. Pickens testified that he picked her up during her lunch hour and took
20 her to the signing for both properties wherein Dr. Michaels was presented with a large
21 stack of paperwork and was advised to sign on certain pages which she did without

1 reading the any of the paperwork. Those deeds were later corrected by the parties to
2 reflect that they were individual, unmarried persons.

3 27. Mr. Pickens' testimony, even on the last day of trial *insisting* that he always
4 intended on being married to Dr. Michaels and always believed that he was married is
5 especially damaging to his credibility because it is contradicted and belied by a
6 substantial amount of evidence in the record including, but not necessarily limited to,
7 the following:

- 8 a. Mr. Pickens' long-time friend and co-worker, Todd Kilde, testified that
9 shortly after the ceremony in Slovakia, Mr. Pickens told Mr. Kilde that he
10 and Dr. Michaels were not legally married. Mr. Kilde's testimony was
11 credible.
- 12 b. The parties' CPA, Robert Semonian, testified that Mr. Pickens told him that
13 he and Dr. Michaels were not legally married. Mr. Semonian further
14 testified that the issue of marital status was discussed every year during tax
15 season. Mr. Semonian's testimony was credible.
- 16 c. Each year during the parties' relationship, Mr. Pickens and Dr. Michaels
17 filed federal income tax returns as single, unmarried persons. Mr. Pickens
18 signed tax documents each year from 2002 through 2016 confirming his
19 marital status as unmarried. These were sworn documents, signed under
20 oath pursuant to Federal law. Mr. Pickens executed his tax documents
21 without any fraud, duress, or coercion and did so freely, voluntarily and

1 with full knowledge and understanding of the contents of the documents
2 and their legal significance year after year. Mr. Pickens' explanation of why
3 he did so, if he purportedly believed that he was legally married, was not
4 credible. Mr. Pickens also argued in his Closing Brief that he would not lie
5 to the IRS, so his signing as a single, unmarried person is further evidence
6 of his knowledge that he was not married.

7 d. The parties' estate planning attorney, Shannon Evans, Esq., testified that
8 Mr. Pickens told her the parties were not legally married. Ms. Evans
9 testimony was credible.

10 e. Mr. Pickens hired Ms. Evans to prepare estate planning documents on his
11 behalf. Those estate planning documents, executed as far back as 2012, also
12 confirmed that Mr. Pickens was unmarried. Mr. Pickens executed his estate
13 planning documents without any fraud, duress, or coercion and did so
14 freely, voluntarily and with full knowledge and understanding of the
15 contents of the documents and their legal significance. Mr. Pickens'
16 explanation of why he did so, if he purportedly believed that he was not
17 married, was not credible.

18 f. Tom purchased his current residence as a single person and the deed to the
19 property recorded on May 30, 2017 is titled as such. The mortgage for said
20 property is also in Mr. Pickens' sole name and he applied for said mortgage
21 (his application being submitted under oath) as a single unmarried man. An

1 email from Jeffrey Zachow, the Wells Fargo Mortgage Officer, to Mr.
2 Pickens on March 24, 2017, (admitted into evidence as Exhibit P) states: “I
3 understand that you weren’t officially married to Danka, so obviously there
4 isn’t a Divorce Decree.” Mr. Pickens testified that Mr. Zachow would have
5 obtained that information from Mr. Pickens. (3-12-21 video 3 32:28). Mr.
6 Pickens did so approximately eight months after he executed the transfer
7 documents and five months before he filed his Complaint in this action
8 wherein, he swore, under the penalty of perjury, that the parties, “were
9 legally married on the 7th day of April 2002, in Bratislava, Slovakia, and
10 ever since have been and now are husband and wife,” (this claim was also
11 repeated by Pickens in his First Amended Complaint) and before his
12 Second Amended Complaint wherein Mr. Pickens swore under the penalty
13 of perjury that, “at all times prior to, during, and after the parties 2002
14 marriage ceremony in Slovakia, Pickens maintained an unwavering, honest,
15 and good faith belief that the parties marriage ceremony was legally valid,
16 enforceable, and binding at the of the ceremony, and that the parties were
17 legally married.”

18 g. Mr. Pickens claimed to be concerned about gift taxes on the transfers to Dr.
19 Michaels however, transfers between spouses are not taxable; if Mr.
20 Pickens truly believed that he was legally married, he would not have been
21 concerned about gift taxes.

1 h. Mr. Pickens testified that, “I believed for the fifteen years we were together,
2 we were *basically* married.” (emphasis added). Being “basically married”
3 is not the same as being “actually married” or “legally married” and this
4 testimony further shows that Mr. Pickens understood that he was not
5 actually or legally married.

6 28. The parties were not legally married in Slovakia and, accordingly, there is no
7 valid marriage to be legally recognized by this Court; the parties are not legally married.

8 29. Mr. Pickens knew from the outset that he was not legally married to Dr.
9 Michaels, and he confirmed that to multiple witnesses, and signed multiple documents
10 over the course of multiple years, and each year, during the relationship confirming that
11 he was not married. Mr. Pickens did not have an honest and reasonable belief that the
12 marriage was valid at the time of the ceremony. Accordingly, Mr. Pickens did not have
13 a good faith belief that he and Dr. Michaels were legally married.

14 30. There was no prior legal impediment to the parties’ marriage (they were
15 never married) as they never intended on being legally married and the choice by the
16 parties not to comply with the legal requirements necessary to be legally married in
17 Slovakia was a conscious and intentional one.

18 31. Mr. Pickens is not a putative spouse.

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1 **C. THERE IS NO BASIS TO SET ASIDE THE TRANSFERS FROM MR.**
2 **PICKENS TO DR. MICHAELS.**

3 32. While the parties held themselves out socially as married persons, unlike in
4 *Michoff*, they filed federal tax returns as single, unmarried persons.

5 33. Since the parties were not married, they do not owe each other fiduciary
6 duties as spouses.

7 34. The parties did not have an express or an implied agreement to pool all of
8 their assets and debts jointly. Indeed, the testimony of both parties evidenced that they
9 kept their assets separate, they kept track of who paid for what, loans that were extended
10 and repaid or not repaid, and most notably, Mr. Pickens testified (as to a business that
11 was started during the relationship and that had grown substantially in value) that,
12 “Bluepoint was my company 100%, why would I pay her anything?” Mr. Pickens even
13 referred to a jointly titled account as “Tom’s account” because he believed that title was
14 irrelevant and the account was “his.”

15 35. Beginning in 2015, Mr. Pickens became involved in a romantic relationship
16 with another woman, Stacey Middlestadt. Mr. Pickens testified that he was living in a
17 condominium with Stacey that was owned by her father.

18 36. The parties closed joint bank accounts in the summer of 2016.

19 37. On September 8, 2016, Ms. Middlestadt reached out to Dr. Michaels to tell
20 her that she was pregnant with Mr. Pickens child and that she also knew about a personal
21 tragedy that Dr. Michaels suffered during her childhood (this information could only

1 have come from Mr. Pickens). Mr. Pickens testified that he was in Mississippi (contrary
2 to his testimony from a year earlier that he was in Marco Island) when he learned of Ms.
3 Middlestadt and Dr. Michaels communications.

4 38. That same day, Mr. Pickens sent a text message to Danka volunteering to
5 sign everything over to her, to wit: "Danka, there's nothing that I can say that will change
6 anything. It should have not happened, but it did. I will sign everything that we have
7 together over to you. I should have not put myself into this position. I know you will
8 never forgive me and you shouldn't." Mr. Pickens confirmed this in his testimony.

9 39. On September 9, 2016, attorney Shannon Evans had already been contacted
10 to prepare the deeds and transfer documents, noting to her staff "they do not need a
11 divorce, and he will agree to assets being Danka's since she pays for the properties and
12 he is guilty."

13 40. Mr. Pickens booked his own flight to Las Vegas, Nevada on September 10,
14 2016 with the intention of signing the deeds and transfer documents for the Lowe, Queen
15 Charlotte, and Patience One properties to Danka. Once he arrived, he found his own
16 transportation from the airport and stayed at the Red Rock Resort.

17 41. On September 13, 2016, Mr. Pickens drove himself to attorney Shannon
18 Evans' office. Mr. Pickens was lucid, coherent, and not impaired. Mr. Pickens was
19 advised by Ms. Evans to seek the advice of his own independent legal counsel; he
20 executed a Waiver of Conflict wherein he was so advised in writing. Mr. Pickens had a
21

1 full and fair opportunity to get his own independent legal counsel and waived his right
2 to do so.

3 42. While at Ms. Evans' office, Mr. Pickens executed various transfer documents
4 including the deeds to the Queen Charlotte and Lowe properties and an Assignment and
5 Assumption of Membership Interest From LV Blue Trust to Mich-Mich Trust
6 ("Assignment").

7 43. Mr. Pickens voluntarily transferred the Queen Charlotte and Lowe properties
8 to Dr. Michaels and delivered the deeds to her. Dr. Michaels accepted Mr. Pickens
9 transfer of those properties to her.

10 44. The Assignment stated:

- 11 a. WHEREAS, Assignor owns a 50% interest in Patience One, LLC, a Nevada
12 Limited Liability Company ("LLC"), which was formed pursuant to the
13 Articles of Organization dated My [sic] 9, 2012(the "Articles"); and
14 b. WHEREAS, Assignor desires to assign for good and valuable
15 consideration, all of its right title, duties, obligations and interest in and to
16 the 50% interest in the LLC to Assignee.

17 45. Tom was relieved of substantial debt obligations associated with Patience
18 One LLC.

19 46. There was good and valuable consideration for the Assignment.

20 47. Dr. Michaels did not exert any undue influence or coerce Mr. Pickens in any
21 way into signing the transfer documents. In fact, Mr. Pickens testified that he was not

1 threatened, he was not harmed, and he was not confined by Dr. Michaels at any time
2 prior to or during his execution of the transfer documents. Mr. Pickens did so freely,
3 voluntarily, knowingly, and without any fraud, coercion or duress. In Mr. Pickens own
4 words, he did what was “right” and the “fair” thing to do at the time.

5 48. Mr. Pickens paid Ms. Evans for the preparation and recording of the transfer
6 documents.

7 49. Dr. Michaels was originally Mr. Pickens physician when they first met in
8 2001 and before they began a romantic relationship. Dr. Michaels advised Mr. Pickens
9 that she would no longer be his primary care physician when they began an intimate
10 relationship. Dr. Michaels and Mr. Pickens intimate relationship ended in early 2004.

11 50. Other than Dr. Michaels prescribing Mr. Pickens the occasional prescription,
12 and seeing him for cross-coverage, Roberto Carillo, R.N., F.N.P, became Mr. Pickens
13 primary care provider who was responsible for his care and prescriptions beginning in
14 2008. Mr. Carillo is able to independently see and treat patients, and prescribe for them,
15 under his own licensure.

16 51. In all of 2016, save and except for a single prescription in May 2016 by Dr.
17 Michaels which was filled by her after speaking with Mr. Carillo, all prescriptions and
18 visits by Mr. Pickens were handled by Mr. Carillo.

19 52. Dr. Michaels did not see or treat Mr. Pickens in 2016 other than a single
20 occasion in or about April 2016 and certainly did not do so in or around September 2016.

1 53. Dr. Michaels did not take advantage of a patient for her own financial gain
2 as alleged because Mr. Pickens was not her patient and Dr. Michaels never took
3 advantage of him.

4 54. To the extent that Dr. Michaels owed Mr. Pickens any fiduciary duties, there
5 has been no breach of those duties by Dr. Michaels.

6 55. As a result of the division of their assets, which included the transfer to Dr.
7 Michaels of the Queen Charlotte and Lowe properties as well as the membership interest
8 in Patience One, LLC, Mr. Pickens also received assets of substantial value including,
9 but not necessarily limited to:

- 10 a. Bluepoint Development which was earning millions of dollars in revenue;
- 11 b. A 401(k) from Dr. Michaels medical practice worth over \$200,000;
- 12 c. Multiple vehicles;
- 13 d. Bank accounts with hundreds of thousands of dollars; and
- 14 e. And various other assets.

15 56. After executing the transfer documents, the parties performed their
16 agreements; e.g. Mr. Pickens vacated the Queen Charlotte property, he transferred the
17 leases and control of Patience One to Dr. Michaels and paid rent each month for the
18 space he occupied in the Patience One building.

19 57. Tom Pickens filed each of his first two Complaints falsely representing to
20 this Court that the parties were legally married.

58. Tom Pickens filed each of his Complaints falsely representing to this Court that he maintained a good faith belief that the religious ceremony was intended and/or resulted in a valid marriage.

59. Tom Pickens filed each of his Complaints falsely representing to this Court that there are community assets of the parties.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Court hereby makes the following conclusions of law:

1. As a matter of comity, Nevada's recognition or non-recognition of a purported foreign marriage depends on its legality in the foreign country. *Gonzales-Alpizar v. Griffith*, 130 Nev. 10, 317 P. 3d 820 (2014), quoting *Mianecki v. Second Judicial Dist. Court*, 99 Nev. 93, 98, 658 P.2d 422, 424-25 (1983).

2. Since Slovakia did not recognize a valid marriage between the parties, Nevada will not either. *Gonzales-Alpizar v. Griffith*, 130 Nev. 10, 317 P. 3d 820 (2014); *see also* 1978 HAGUE CONVENTION ON CELEBRATION AND RECOGNITION OF THE VALIDITY OF MARRIAGES; Ann Estin, *Marriage and Divorce Conflicts in International Perspective*, 27 DUKE JOURNAL OF COMPARATIVE & INTERNATIONAL LAW 485 (2017), reprinted in 16 I.L.M. 18-21 (1977), 25 AM. J. COMP. L. 399 (1977).

3. Since there was no intent by either Dr. Michaels or Mr. Pickens to legally marry, there can be no marriage. See, e.g., *In re JKNA*, 454 P.3d 642, 650 (Mont. 2019)

1 *Callen v. Callen*, 620 S.E.2d 59 (SC 2005); *Renshaw v. Heckler*, 787 F.2d 50 (2nd Cir.
2 1986); *McNee v. McNee*, 49 Nev. 90, 237 P. 534 (1925); NRS 122.010.

3 4. Mr. Pickens did not have a good faith belief that he was legally married to
4 Dr. Michaels and there was no prior legal impediment; as such, Mr. Pickens is not a
5 putative spouse under *Williams v. Williams*, 120 Nev. 559, 97 P.3d 1124 (2004).

6 5. Mr. Pickens must prove the existence of a physician-patient relationship
7 before a fiduciary duty can be established. See *Jennings v. Badgett*, 2010 OK 7, 230 P.3d
8 861, 865-66 (Okla. 2010); *Mead v. Legacy Health System*, 352 Ore. 267, 283 P.3d 904,
9 909-10 (Ore. 2010); *Seeber v. Ebeling*, 36 Kan. App. 2d 501, 141 P.3d 1180 (Kan. Ct.
10 App. 2006); *St. John v. Pope*, 901 S.W.2d 420, 423 (Tex. 2005); *Gross v. Burt*, 149
11 S.W.3d 213 (Tex. Ct. App. 2004); *Millard v. Corrado*, 14 S.W.3d 42 (Mo. Ct. App.
12 1999); *Roberts v. Hunter*, 310 S.C. 364, 426 S.E.2d 797 (S.C. 1993). Mr. Pickens failed
13 to establish that he and Dr. Michaels were in a physician-patient relationship at the time
14 of the execution of the transfer documents. As such, Dr. Michaels did not owe Mr.
15 Pickens any fiduciary duties.

16 6. Even if Mr. Pickens was able to establish a physician-patient relationship and
17 the corresponding fiduciary duties applied, he must still prove that such duties were
18 breached. *Hoopes v. Hammargren*, 102 Nev. 425 (1986). Further, Mr. Pickens must have
19 also proved that he was vulnerable and unstable due to his medical problem and, at that
20 point, he was taken advantage of by Dr. Michaels. Vulnerability is absolutely essential
21 and a necessary predicate of a confidential relationship. *Richelle L. v. Roman Catholic*

1 *Archbishop*, 106 Cal. App. 4th 257, 270-72, 130 Cal. Rptr. 2d 601 (Cal. Ct. App. 2003).

2 Mr. Pickens failed to prove any such relationship, vulnerability, or breach.

3 7. In order to establish undue influence under Nevada law, ‘it must appear,
4 either directly or by justifiable inference from the facts proved, that the influence . . .
5 destroyed the free agency of the testator.’ *In re Estate of Bethurem*, 129 Nev. 869 (2013).
6 Mr. Pickens did not even allege, nor did the preponderance of the evidence show, that
7 his free agency was destroyed.

8 8. Duress is defined as the threat of confinement or detention, or other threat of
9 harm, used to compel a person to do something against his or her will or judgment.
10 Black’s Law Dictionary (7th ed. 1999) at 520. Mr. Pickens confirmed through his
11 testimony that he was not threatened, confined or detained when executing the transfer
12 documents and, as such, he was not under duress when he did so.

13 9. Coercion is defined as “compulsion by physical force or threat of physical
14 force.” Black’s Law Dictionary (7th ed. 1999) at 520. Mr. Pickens confirmed through
15 his testimony that he was not compelled by physical force or threat thereof when
16 executing the transfer documents and, as such, he was not coerced when he did so.

17 10. Parties are free to contract, and the courts will enforce their contracts if they
18 are not unconscionable, illegal, or in violation of public policy. *Rivero v. Rivero*, 125
19 Nev. 410, 216 P.3d 213 (2009).

20 11. Unmarried cohabiting couples who purchase property titled in both parties’
21 names, with or without the right of survivorship, own the property in proportion to the

1 amounts they each contributed to the purchase price. *Sack v. Tomlin*, 110 Nev. 2014, 871
2 P.2d 298 (1994); *Langevin v. Langevin*, 111 Nev. 1481, 907 P.2d 981 (1995). The
3 testimony of both Tom and Danka established that Danka paid the down payments for
4 the Lowe, Queen Charlotte, and Patience One properties. There was conflicting
5 testimony as to the mortgage payments. Tom testified that payments towards the
6 mortgage of the Lowe and Queen Charlotte properties were made by him from “his”
7 account but the account to which he referred was titled jointly. Tom did not present a
8 forensic analysis or tracing to establish the source of funds in that account.

9 12. In Nevada, a valid donative transfer requires a donor’s intent to voluntarily
10 make a present transfer of property to a donee without consideration, the donor’s actual
11 or constructive delivery of the gift to the donee, and the donee’s acceptance of the gift.
12 *Howard v. Hughes*, 427 P.3d 1045 (2018).

13 13. It is well established in Nevada law that a contract entered during incapacity,
14 insanity, or even as a result of fraud can be ratified by subsequent conduct. c.f. NRS
15 125.320-.340; *Shelton v. Shelton*, 119 Nev. 492, 78 P.3d 507 (2003); *Whiston v.*
16 *McDonald*, 85 Nev. 508, 510, 458 P.2d 107, 108 (1969).

17 14. Mr. Pickens has not made a legal claim for rescission.

18 15. It is a presumption under Nevada law that there is good and sufficient
19 consideration for a written contract. NRS 47.250(18)(d).

20 16. Courts do not generally inquire into the adequacy of consideration because
21 the values exchanged are often difficult to measure and the parties are thought to be

1 better at evaluating the circumstances of particular transactions. *Oh v. Wilson*, 112 Nev.
2 38, 42, 910 P.2d 276, 279 (1996). Further, inadequacy of consideration, standing alone,
3 does not justify rescission; without more, inadequacy of consideration alone will not
4 merit the rescission of a contract. Id.

5 17. Consideration may be any benefit conferred or any detriment suffered. *Gray*
6 *v. Wells Fargo Home Mortg., Inc.*, 130 Nev. 1183 (2014).

7 18. A gift requires no consideration and requires only an intent to voluntarily
8 make a transfer to a donee with actual or constructive delivery, and the donee's
9 acceptance of the gift. *In re Irrevocable Tr. Agreement of 1979*, 130 Nev. 597, 603, 331
10 P.3d 881, 885 (2014).

11 19. Under Nevada law, "[a] fiduciary relationship is deemed to exist when one
12 party is bound to act for the benefit of the other party, a fiduciary relation exists between
13 two persons when one of them is under a duty to act for or to give advice for the benefit
14 of another upon matters within the scope of the relation. *Stalk v. Mushkin*, 125 Nev. 21,
15 28, 199 P.3d 838, 843 (2009).

16 20. To prevail on a breach of fiduciary duty claim, the plaintiff must establish:
17 "(1) the existence of a fiduciary duty; (2) breach of that duty; and (3) the breach
18 proximately caused the damages." *Klein v. Freedom Strategic Partners, LLC*, 595
19 F.Supp.2d 1152, 1162 (D.Nev.2009). Mr. Pickens failed to do so.

20 21. Mr. Pickens misrepresented his marital status, his purported "belief"
21 regarding his marital status, and the existence of purported "community property" to this

1 Court to pursue this lengthy and expensive litigation, which is a breach of the covenant
2 of good faith and fair dealing as well as an abuse of the legal process.

3 Based upon the foregoing, and for good cause appearing:

4 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that based upon
5 the fact that the religious ceremony did not constitute a valid, legal marriage under the
6 laws of any State, declaratory relief is granted that the parties were never legally married.

7 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that based on Mr.
8 Pickens' knowledge that there was no valid marriage, he is not a putative spouse. As
9 such, he is not entitled to any relief as a result thereof.

10 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the transfers
11 of the Queen Charlotte and Lowe properties were valid transfers and shall not be set
12 aside.

13 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the
14 assignment of Mr. Pickens interest in Patience One, LLC was a valid transfer and shall
15 not be set aside. To the extent that the paperwork transferring Mr. Pickens interest to
16 Dr. Michaels erroneously listed his trust and not himself personally as the transferor,
17 said error was clerical in nature and shall be corrected. Mr. Pickens shall execute the
18 appropriate documentation to correct any such error upon presentment.

19 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that all other joint
20 assets and obligations of the parties have already been divided and each shall retain those
21 assets and obligations in his or her, respective, names, titles, possession and control.

1 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that based on Mr.
2 Pickens' misrepresentations, breach of the covenant of good faith and fair dealing, and
3 abuse of the legal process, and Dr. Michaels' being the prevailing party in this litigation,
4 Dr. Michaels is awarded her attorney's fees and costs. Counsel for Dr. Michaels shall
5 submit the appropriate memorandum of fees and costs setting forth their analysis under
6 *Brunzell* and shall also submit their redacted billing statements in accordance with *Love*
7 within twenty (20) days following the Notice of Entry of this FFCL.

8 **IT IS FURTHER ORDERED** that this matter is CLOSED.

9 **IT IS SO ORDERED** this _____ day of June, 2021.

10
11 _____
12 DISTRICT COURT JUDGE

13 Respectfully submitted:

14 Dated: May 28, 2021.

Dated: May 28, 2021

15 Goldstein Law Ltd.

THE ABRAMS & MAYO LAW FIRM

16 By: /s/ Shawn M. Goldstein, Esq.
17 Shawn M. Goldstein, Esq.
18 Nevada Bar No. 009814
10161 Park Run Dr., STE 150
Las Vegas, Nevada 89145
Attorney for Defendant,
19 Danka K. Michaels

By: /s/ Jennifer V. Abrams, Esq.
Jennifer V. Abrams, Esq.
Nevada Bar No. 007575
6252 South Rainbow Blvd., STE 100
Las Vegas, Nevada 89118
Attorney for Defendant,
Danka J. Michaels

Thomas A. Pickens
CLERK OF THE COURT

1 **SAO**
2 **JONES & LOBELLO**
3 John D. Jones
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5 Michele LoBello
6 Nevada Bar No. 5527
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12 Attorneys for Plaintiff,
13 **THOMAS A. PICKENS**

10 **DISTRICT COURT**
11 **FAMILY DIVISION**
12 **CLARK COUNTY, NEVADA**

13 **THOMAS A. PICKENS,**
14 Individually and as Trustee of the LV
15 Blue Trust,

16 Plaintiff

17 vs.

18 **DANKA K. MICHAELS,**
19 Individually and as Trustee of the Mich-
20 Mich Trust

21 Defendant

CASE NO.: D-17-560737-D
DEPT. J

22 **STIPULATION AND ORDER TO EXTEND DEADLINE FOR PLAINTIFF**
23 **TO FILE HIS REBUTTAL BRIEF**

24 **IT IS HEREBY STIPULATED AND ORDERED** that based upon the
25 agreement between Plaintiff, THOMAS A. PICKENS, by and through his attorneys,
26 Michele LoBello and the law firm of JONES & LOBELLO, and Defendant,
27 DANKA K. MICHAELS, by and through her attorneys, Shawn M. Goldstein and
28

JONES & LOBELLO
9900 Covington Cross, Suite 210A
Las Vegas, Nevada 89144
702-318-5060 FAX: 702-318-5070

JONES & LOBELLO
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1 the law firm of GOLDSTEIN LAW, LTD., Plaintiff shall file and serve his rebuttal
2 brief no later than Tuesday, June 15, 2021.

3 Dated this ____ day of June, 2021.

Dated this 11th day of June, 2021.

4 JONES & LOBELLO

GOLDSTEIN LAW, LTD.

5
6
7 John D. Jones
8 Nevada Bar No. 6699
9 Michele LoBello, Esq
10 Nevada Bar No. 5527
11 9900 Covington Cross, #300
12 Las Vegas, Nevada 89144
13 Attorneys for Plaintiff

Shawn M. Goldstein
Shawn M. Goldstein
Nevada Bar No. 9814
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
Attorney for Defendant

14 ~~IT IS SO ORDERED~~ this ____ day of June, 2021.

Dated this 14th day of June, 2021

Dee Smart Butler

DISTRICT COURT JUDGE
328 3B9 394A 7767
Dee Smart Butler
District Court Judge

17 Submitted by:

18 JONES & LOBELLO

19
20
21 John D. Jones
22 Nevada Bar No. 6699
23 Michele LoBello, Esq
24 Nevada Bar No. 5527
25 9900 Covington Cross, #300
26 Las Vegas, Nevada 89144
27 Attorneys for Plaintiff
28

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Thomas A. Pickens, Plaintiff

CASE NO: D-17-560737-D

7 vs.

DEPT. NO. Department J

8 Danka K. Michaels, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 6/14/2021

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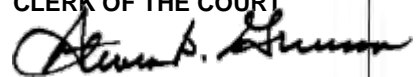
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10 Attorneys for Plaintiff,
11 THOMAS A. PICKENS

12 DISTRICT COURT
13 FAMILY DIVISION
14 CLARK COUNTY, NEVADA

15 THOMAS A. PICKENS,
16 Individually and as Trustee of the LV
17 Blue Trust,

18 Plaintiff/Counterdefendant.

19 vs.

20 DANKA K. MICHAELS,
21 Individually and as Trustee of the Mich-
22 Mich Trust,

23 Defendant/Counterclaimant;

24 and related Counterclaims.

CASE NO.: D-17-560737-D
DEPT. J

Dates of Trial: February 14, 2020 &
February 21, 2020, March 5, 2021
and March 12, 2021 & April 2, 2021

25 **PLAINTIFF'S REBUTTAL TO DEFENDANT'S CLOSING ARGUMENT**

26 Plaintiff, THOMAS ALLEN PICKENS ("Tom"), by and through his
27 attorneys, Jones D. Jones, Michele LoBello and JONES & LOBELLO hereby
28 submits his Rebuttal to Defendant's Closing Argument.

I

INTRODUCTION

It cannot go unnoted that despite multiple extensions of time being granted to Dr. Michaels in which to file her responsive closing argument, and despite knowing that the final extension was, in fact, a final extension, and despite a Court order confirming the extended deadline, Dr. Michaels chose to file her closing argument brief when she chose to, rather than complying with a Court order. This contempt and disregard for this Court's orders has been a recurring event in this case and is exactly in line with Dr. Michaels' 2020 sale of one of the properties owned by the parties in violation of the Joint Preliminary Injunction. Tom would request that the Court disregard Dr. Michaels' closing argument as untimely and filed contrary to the controlling Court order.

In the event that the Court reviewed or considered Dr. Michaels' closing argument, it was likely as surprised as Tom was at the positions taken therein which are clearly contrary to the evidence in this case. Because Tom is confident of this Court's recall of the evidence, and because Tom's Closing Argument contained all of the evidence upon which this Court should grant Tom's requested relief, this Rebuttal argument will be brief and will merely point out the inconsistencies in Dr. Michaels' Brief so that this Court can enter a final order based upon both law and equity.

II

ARGUMENT

One notable absence from Dr. Michaels' argument is the recognition of basic legal principles like consideration and fiduciary duties. While these are very simple concepts recognized by Nevada law, they are incredibly important to this Court's decision. Dr. Michaels argues that the parties were "free to contract", but ignores that every Nevada contract must be founded on consideration. (*See May v. Anderson*

1 121 Nev. 668, 2005.) In this case, the unequivocal testimony of Dr. Michaels and of
2 attorney Shannon Evans was that there was, in fact, no consideration for the alleged
3 contract by which Tom transferred nearly all of the assets accumulated by the parties
4 during their partnership valued at between Three and Five Million Dollars for a
5 payment of zero dollars.

6 Moreover, even the case authority cited by Dr. Michaels for the proposition
7 that the parties were free to contract, and that such contracts should be enforced by
8 Courts, contains an exception for unconscionable contracts. (*See* Dr. Michaels'
9 Closing Argument, page 4, line 3.) For Dr. Michaels to argue that the purported
10 contract was not unconscionable is to ignore the basic definition of
11 unconscionability.

12 Finally, Dr. Michaels' attempts to ignore the many levels of fiduciary duty
13 she owed to Tom when the alleged contract was presented. Again, there is no dispute
14 that the parties were co-members of Patience One LLC. There is no dispute,
15 regardless of Dr. Michaels' revisionist history, that Dr. Michaels, at the time of the
16 alleged contract, was Tom's primary care physician. As set forth in Plaintiff's
17 Closing Argument, Dr. Michaels' own testimony on Day One of Trial, and Exhibit 3,
18 established that as late as September 2016, Dr. Michaels was still referring Tom to
19 specialists.

20 From a factual standpoint, Dr. Michaels' recitation of the financial history of
21 the parties' financial relationship is nothing but revisionist history. The bank
22 statements for the parties' joint account establish conclusively that Tom deposited
23 significant income (including Tom's portion of his business' \$1 Million bonus).
24 Indeed, the early years of the parties' relationship were lean years for Tom, but that
25 is the very nature of partnerships. Moreover, Tom's company's \$1 Million bonus
26 went to purchase the car that Dr. Michaels is still, to this day, driving.

1 Moreover, for years, Dr. Michaels utilized Tom's American Express card to
2 purchase the supplies needed for her medical practice. Dr. Michaels has the audacity
3 to claim that Tom "walked away" with his business, even though she knows and
4 testified that she was seeking an interest in Blue Point Development in the pending
5 civil law suit. Moreover, Tom is more than happy for this Court to equally divide
6 all that the parties accumulated during their partnership, including Blue Point
7 Development.

8 It is worthy of note that Dr. Michaels does not really address the massive
9 evidence of an implied partnership and asset pooling agreement. This is likely
10 because even as incredible as Dr. Michaels' positions and testimony are, she cannot
11 avoid the following reality:

- 12 1. They held two residential properties as "Wife and Husband".
- 13 2. They signed the deeds of trust for the mortgages as wife and
- 14 husband.
- 15 3. They jointly formed Patience One, LLC and jointly purchased the
- 16 office building it owns.
- 17 4. They were joint obligors on the mortgage for the Patience One
- 18 Building.
- 19 5. They held a joint account into which they each contributed funds.
- 20 6. Dr. Michaels used Tom's credit card to finance her medical practice.
- 21 6. Dr. Michaels used Tom's credit card to finance her medical practice.

22 These are facts which absolutely establish a partnership. Moreover, Dr.
23 Michaels' own email established that she believed the parties were "partners".
24 While there is competing evidence on other issues in this case, there is no evidence
25 which supports the fact that the parties were not partners. The existence of this
26 partnership is yet another level of fiduciary duty that Dr. Michaels owed to Tom
27 which she violated.
28

1 Another factual misrepresentation made by Dr. Michaels is that she “primarily
2 paid” for the properties transferred on September 13th. The evidence reveals the
3 opposite. Their joint account, into which all of Tom’s income was deposited, but
4 only a portion of Dr. Michaels’ was deposited, was the account through which the
5 mortgage payments were made for the two residential properties. This is clear on
6 the thousands of pages of statements admitted at trial. After trying to prevent the
7 Court from receiving evidence of Tom’s payoff of the mortgage on the Lowe
8 property, Dr. Michaels admitted that Tom had paid it off.

9 The bank statements further show that when Tom deposited Blue Point
10 Development’s million dollar bonus into the joint account, this money was used for
11 over \$100,000.00 in improvements to the home in which Dr. Michaels currently
12 resides.

13 Finally, the evidence established that both parties were obligors on all three
14 mortgages in question. There is no credible way to assert that Dr. Michaels
15 “primarily paid” for the three properties. The argument that Tom believes he was
16 “entitled to even more than he had already taken from Dr. Michaels over the years”
17 (see Dr. Michaels’ Closing Argument, page 18, line 15) is so contrary to the actual
18 evidence presented at trial that it is insulting to the intelligence of the Court.

19 Yet another misrepresentation that cannot go uncorrected is the claim that
20 over the 13 months following the September 13, 2016 transfers, Dr. Michaels
21 “refinanced the Queen Charlotte and Patience One properties”. It was conclusively
22 established that neither refinance occurred prior to the filing of the lawsuit.
23 Moreover, as set forth in one of Tom’s Requests for Judicial Notice, as of the date
24 of trial, the Patience One mortgage had not been refinanced at all.

25 It is one thing to advocate from the contents of the trial record, it is another
26 thing altogether to create statements which were never uttered. The statement that
27 Tom “checked the box on the escrow paperwork” (page 18, line 13) on two home
28

1 purchases appears nowhere in this record. This fabrication, like the drastic changes
2 in Dr. Michaels' testimony over the course of trial, are very telling on the issue of
3 credibility. Moreover, the statement that the Deeds were later corrected is
4 disingenuous at best. The Deeds were only "corrected" when Dr. Michaels breached
5 her fiduciary duty to Tom on September 13, 2016.

6 VI.

7 CONCLUSION

8 This Court must have certainly noticed that, while plenty of attempted
9 mudslinging is contained in Dr. Michaels' Closing Argument, there are significant
10 legal and factual issues which Dr. Michaels has chosen to ignore entirely. It is very
11 telling that, while trying to distort the evidence regarding certain issues, not once did
12 Dr. Michaels argue that there was any legally valid consideration for the transfers
13 which Tom seeks to set aside. Nowhere does Dr. Michaels state that she did not owe
14 Tom a fiduciary duty on multiple levels. Nowhere does Dr. Michaels even bother
15 to respond to the fact that the purported transferor of Patience One, LLC as listed on
16 the alleged transfer documents was not, in fact, the recorded owner of the LLC. Her
17 only commentary is that such fact was not alleged in Tom's Complaints, but the
18 reality is that the evidence that this could never have been a valid transfer is
19 uncontroverted. Dr. Michaels' silence on this issue is conclusive of the outcome.
20 Moreover, these admissions are compelling.

21 What is so disheartening about Dr. Michaels' positions before this Court is
22 that she is seeking this Court's assistance in her taking advantage of her patient and
23 her partner. Although the legal bases as to why this cannot be allowed to occur are
24 fully briefed in Tom's Closing Argument Brief, the level of unjust enrichment Dr.
25 Michaels is seeking this Court's assistance in achieving is staggering. Fortunately
26 for Tom, both legal and equitable principles on multiple levels preclude such a result.

27 ///

1 Attached to Tom's Closing Argument Brief were Tom's proposed "Findings
2 of Fact, Conclusions of Law, and Orders". The same sets forth with specificity the
3 appropriate relief, and the factual and legal bases for the relief. The result of these
4 Findings are equity and fairness, and nothing more.

5 Dated this 15 day of June, 2021.

6 Respectfully submitted,

7 JONES & LOBELLO

8
9
10 
11 John D. Jones (NV Bar No. 6699)
12 Michele LoBello (NV Bar No. 5527)
13 9900 Covington Cross, Suite 210A
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18 Attorneys for Plaintiff,
19 THOMAS A. PICKENS
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of JONES & LOBELLO and that on the 15 day of June, 2021, I caused the above and foregoing document entitled foregoing PLAINTIFF'S REBUTTAL TO DEFENDANT'S CLOSING ARGUMENT, to be served as follows:


- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and
- ☒ pursuant to N.E.F.C.R. 9, to be sent via electronic service;
- ☐ pursuant to EDCR 7.26, to be sent via facsimile;
- ☒ by email to

to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

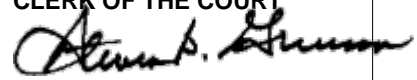
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and that there is regular communication by mail between the place of mailing and the place(s) so addressed.



An Employee of JONES & LOBELLO



NCOA
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Attorneys for Plaintiff,
THOMAS A. PICKENS

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

THOMAS A. PICKENS, individually,
and as trustee of the LV Blue Trust

CASE NO.: D-17-560737-D

DEPT. NO.: J

Plaintiff,

vs.

DANKA K. MICHAELS, individually,
and as trustee of the Mich-Mich Trust,

Defendant.

NOTICE OF CHANGE OF FIRM ADDRESS

PLEASE TAKE NOTICE that, effective August 2, 2021, JONES & LOBELLO,
attorneys for Plaintiff, has a new office address as follows:

JONES & LOBELLO
9950 W. Flamingo Road, Ste. 100
Las Vegas, Nevada 89147

Please note our new email addresses:

John D. Jones: jones@joneslobello.com

Michele LoBello: lobello@joneslobello.com

Delwyn Webber: webber@joneslobello.com

Mariella Dumbrique: mariella@joneslobello.com

Please direct all future pleadings, papers, correspondence, etc. to the above-referenced address. The firm's telephone number and facsimile number remain unchanged.

DATED this 30th day of July, 2021.

JONES & LOBELLO

THOMAS A. PICKENS

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of JONES & LOBELLO and that on the 30th day of July 2021, I caused the above and foregoing document entitled NOTICE OF CHANGE OF FIRM ADDRESS to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and
- ☒ pursuant to N.E.F.C.R. 9, to be sent via electronic service;
- ☐ pursuant to EDCR 7.26, to be sent via facsimile;
- ☐ by email to

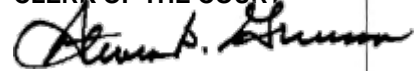
to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

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Co-Counsel for Defendant,
Danka K. Michaels

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.

/s/ Heather Ritchie
An Employee of Jones & LoBello



1 FFCL

2 DISTRICT COURT
3 FAMILY DIVISION
4 CLARK COUNTY, NEVADA

5 THOMAS A. PICKENS,
6 Individually and as Trustee of the LV
7 Blue Trust,

CASE NO.: D-17-560737-D
DEPT. J

8 Plaintiff/Counterdefendant;
9 vs.

**Dates of Trial: February 14, 2020 &
February 21, 2020, March 5, 2021
and March 12, 2021 & April 2, 2021**

10 DR. DANKA K. MICHAELS,
11 Individually and as Trustee of the
12 Mich-Mich Trust,

13 Defendant/Counterclaimant;
14 and related Counterclaims.
15

16 **FINDINGS OF FACT, CONCLUSIONS OF LAW,**
17 **AND JUDGMENT**

18 The above captioned matter having come before this Honorable Court for
19 trial on February 14, 2020; February 21, 2020; March 5, 2021; March 12, 2021 and
20 April 2, 2021, upon the Second Amended Complaint of Plaintiff, THOMAS
21 ALLEN PICKENS ("Mr. Pickens "), present and represented by his attorneys,
22 John D. Jones, Michele LoBello and JONES & LOBELLO; and upon the
23 Counterclaim of Defendant, DR. DANKA K. MICHAELS ("Dr. Michaels"),
24 present and represented by her attorneys, Jennifer Abrams and THE ABRAMS &
25 MAYO LAW FIRM, and Shawn M. Goldstein and the law firm of GOLDSTEIN
26 LAW LTD., the Court, having reviewed the papers and pleadings on file, having
27 received and considered the testimony of the parties and other witnesses, having
28

1 weighed the credibility of the witnesses, having reviewed the substantial
2 documents and information received into evidence, having heard the argument of
3 counsel, and for good cause appearing, hereby FINDS, CONCLUDES AND
4 ORDERS as follows:

5 **I.**

6 **FINDINGS OF FACT**

7
8 **THE COURT FINDS** this Court has complete jurisdiction in the premises
9 both as to the subject matter hereof and the parties hereto; Defendant Dr. Danka K.
10 Michaels (Dr. Michaels) has established residency in Clark County, Nevada and
11 she is and has been for at least six (6) weeks prior to filing her Answer and
12 Counterclaim and up to the present, an actual and bona fide resident of Clark
13 County, State of Nevada and has maintained a residence in the State of Nevada,
14 and has the intent to indefinitely reside in the State of Nevada.

15 **THE COURT FURTHER FINDS** that

- 16 • September 8, 2016, Mr. Pickens' new significant other called Dr.
17 Michaels to inform her that she was pregnant with Mr. Pickens child
18 and revealed that she knew of a great personal tragedy suffered by
19 Dr. Michaels as a child. Later that same day, Mr. Pickens
20 volunteered to sign everything over to Dr. Michaels, to wit: "Danka,
21 there's nothing that I can say that will change anything. It should
22 have not happened, but it did. I will sign everything that we have
23 together over to you. I should have not have put myself into this
24 position. I know you will never forgive me and you shouldn't."
- 25 • September 9, 2016, Attorney Shannon Evans, Esq., in a note to her
26 staff stated "they do not need a divorce, and he will agree assets
27 being Danka's since she pays for the properties and he is guilty."
- 28 • September 13, 2016, Mr. Pickens and Dr. Michaels met with
Attorney Shannon Evans, Esq., and, after signing a waiver of conflict,
Mr. Pickens signed over the deeds to two real properties, [Queen
Charlotte and Lowe Properties] and his interest in Patience One,

1 LLC. The Parties had already closed their joint checking account
2 during the summer.

- 3 • May 30, 2017, Mr. Pickens recorded the deed to his current residence
4 which he purchased as a single, unmarried person.
- 5 • October 24, 2017, Mr. Pickens filed a Complaint for Divorce and for
6 Set Aside of Deeds of Real Property and Assignment of LLC Interest.
7 His claims for relief were (1) Divorce; (2) Set Aside of Deeds of Real
8 Property and Assignment of LLC Interest;
- 9 • November 1, 2017, Dr. Michaels was served with a Joint Preliminary
10 Injunction, as evidenced in the Affidavit of Process Server filed in
11 this matter on November 2, 2017.
- 12 • November 29, 2017, Dr. Michaels filed a Motion to Dismiss;
- 13 • December 20, 2017 Mr. Pickens filed his Opposition and
14 Counterclaim for Attorney Fees;
- 15 • January 19, 2018, Dr. Michaels filed her Reply and Opposition to
16 Counterclaim;
- 17 • January 25, 2018, Judge Marquis denied the Motion to Dismiss after
18 hearing argument;
- 19 • March 9, 2018, Judge Marquis issued her Order denying the Motion
20 to Dismiss and denying Summary Judgment. Jurisdiction was
21 established in the Family Court pursuant to NRS 3.223; *Landreth v.*
22 *Malik*, 127 Nev. 175, 177, 251 P.3d 163, 164 (2011); and *Hay v. Hay*,
23 100 Nev. 196, 199, 678 P.2d. 672, 674 (1984).
- 24 • March 22, 2018, Mr. Pickens filed his First Amended Complaint for
25 Divorce; For Set Aside of Deeds of Real Property and Assignment of
26 L.L.C. Interest; and For Alternative Equitable Relief Under the
27 Putative Spouse Doctrine;
- 28 • May 2, 2018, Dr. Michaels filed her Answer to First Amended
 Complaint for Divorce; For Set Aside of Deeds of Real Property and
 Assignment of L.L.C. Interest; and For Alternative Equitable Relief

1 Under the Putative Spouse Doctrine; Affirmative Defenses and
2 Counterclaim;

- 3 • September 7, 2018. Mr. Pickens filed his Motion for Leave to File
4 Second Amended Complaint; (no opposition filed by Dr. Michaels)
- 5 • October 15, 2018, Mr. Pickens filed his Second Amended Complaint
6 for Equitable Relief Under (1) The Putative Spouse Doctrine, and (2)
7 Pursuant to Express and/or Implied Agreement to Hold Property as if
8 the Parties Were Married Under *Michoff*; and to Set Aside Deeds of
9 Real Property and Assignment of L.L.C. Interest; (Dropping his
10 request for Divorce, acknowledging that the Parties were not legally
11 or validly married).
- 12 • November 19, 2018, Dr. Michaels filed her Answer to Second
13 Amended Complaint for Equitable Relief Under (1) The Putative
14 Spouse Doctrine, and (2) Pursuant to Express and/or Implied
15 Agreement to Hold Property as if the Parties Were Married Under
16 *Michoff*; and to Set Aside Deeds of Real Property and Assignment of
17 L.L.C. Interest; Affirmative Defenses and Counterclaim;
- 18 • November 21, 2018, Dr. Michaels filed her Declaration in Support of
19 her Answer to Second Amended Complaint for Equitable Relief
20 Under (1) The Putative Spouse Doctrine, and (2) Pursuant to Express
21 and/or Implied Agreement to Hold Property as if the Parties Were
22 Married Under *Michoff*; and to Set Aside Deeds of Real Property and
23 Assignment of L.L.C. Interest; Affirmative Defenses and
24 Counterclaim;
- 25 • August 1, 2019, Dr. Michaels filed her Motion for Summary
26 Judgment, to Dismiss, for Protective Order and For Attorney Fees;
- 27 • August 12, 2019, Mr. Pickens filed his Opposition to Dr. Michaels'
28 Motion for Summary Judgment, To Dismiss, For Protective Order
and For Attorney Fees and Countermotion for Leave of Court to File
Supplemental Points and Authorities;
- August 19, 2019, Mr. Pickens filed his Opposition to Dr. Michaels'
Motion for Summary Judgment, To Dismiss, For Protective Order
and For Attorney Fees And Countermotion (1) To Dismiss, Or In The
Alternative, for Summary Judgment As to Dr. Michaels' Causes of

1 Action for Intentional Misrepresentation/Fraud; Negligent
2 Misrepresentation; Breach of Implied Covenant of Good Faith and
3 Fair Dealing; Promissory Estoppel; Express Agreement' Implied
4 Agreement; And Malicious Abuse of Process; (2) For Summary
5 Judgment Setting Aside Deeds of Real Property and Assignment of
6 LLC Interest; And (3) For Permission to Submit Points and
7 Authorities in Excess of 30 Pages Pursuant to EDCR 5.503(E);

- 8 • September 6, 2019, Dr. Michaels filed her Reply to Mr. Pickens
9 Opposition and Opposition to Countermotion;
- 10 • September 10, 2019, Judge Hughes issued a Minute Order Advising
11 that the court would not reconsider or reverse its previous order
12 denying summary judgement and it vacated the hearings for the
13 motions, setting the first day of Trial. No Order was prepared, signed
14 or filed;
- 15 • February 14, 2020 was the first day of trial. The next 4 days of trial
16 spanned various interruptions including Covid, various requests of
17 the parties and stipulations of the parties. The trial was resumed on
18 February 21, 2020, March 5, 2021, March 12, 2021 and concluded on
19 April 2, 2021.
- 20 • August 26, 2020, Dr. Michaels sold the 7608 Lowe Avenue, Las
21 Vegas, Nevada 89131 (APN 125-16-511-008) residence during the
22 pendency of this action. Recorded Document No. 20200826:04179,
23 according to the Clark County Assessor.

24 **THE COURT FURTHER FINDS** that the Court admitted 138 Exhibits
25 and heard testimony of the parties, and the testimony of percipient witnesses
26 including Shannon Evans, Esq., Robert Semonian CPA, Dara Lesmeister, Todd
27 Kilde, and Roberto Carrillo, APRN.

28 **MARITAL STATUS FINDINGS**

THE COURT FINDS the parties met in 2000 when Dr. Michaels became
the treating physician for Mr. Pickens as a result of a hospitalization..

THE COURT FURTHER FINDS that Mr. Pickens and his then wife both

1 used Dr. Michaels as their primary care physician.

2 **THE COURT FURTHER FINDS** that following his divorce from his
3 second wife, Mr. Pickens and Dr. Michaels began dating in late 2001, after which
4 they moved in together on or about September, 2001.

5 **THE COURT FURTHER FINDS** that seven (7) months later Mr. Pickens
6 and Dr. Michaels had a church ceremony in Bratislava, Slovakia on April 7, 2002.
7 The ceremony was held in a Catholic Church. The document memorializing the
8 event was not signed by either party. The church document was never registered
9 with the government of Slovakia pursuant to their laws and/or procedures
10 rendering it unenforceable in Slovakia and not enforceable in Nevada.

11 **THE COURT FURTHER FINDS** credible the initial reason for the trip
12 was to celebrate Dr. Michaels' brother's birthday per her testimony and to
13 introduce Mr. Pickens to her family and friends. In addition, Dr. Michaels testified
14 that her parents were concerned that she was living outside of marriage with Mr.
15 Pickens. This is also credible. She further testified that he did not want to be
16 referred to as her "boyfriend" so they agreed on a commitment ceremony to enable
17 them to refer to each other as husband and wife.

18 **THE COURT FURTHER FINDS** the parties did take pictures at the
19 ceremony and sent out announcements after the ceremony. (See Exhibit 1). Their
20 participation in the ceremony was with the full knowledge that they did not intend
21 to legally marry each other. Dr. Michaels testified that her divorce experience
22 regarding a prior marriage was bad and she did not want to go through that
23 situation again. She also testified that Mr. Pickens understood her position
24 completely. Her testimony regarding the couple's agreement not to marry is
25 credible.

26 **THE COURT FURTHER FINDS** that Mr. Pickens testified that he
27 believed he and Dr. Michaels were legally married in the Bratislava Catholic
28

1 Church ceremony on April 7, 2002. Mr. Pickens testified that he intended to be
2 legally married to Dr. Michaels. In planning for the ceremony, the parties selected
3 rings, made travel arrangements, made hotel arrangements, set up a photographer,
4 purchased a dress for Dr. Michaels for the ceremony and invited guests. In order
5 to participate in the ceremony in the Catholic Church in Bratislava, parties were
6 first required to meet with a Priest to receive a blessing and have pre-marriage
7 instruction in Las Vegas. According to Mr. Pickens, Dr. Michaels arranged for the
8 meeting with the Priest in Las Vegas. According to Dr. Michaels, Mr. Pickens
9 acquired the document. As neither person is catholic, the court is hard pressed to
10 believe the document was legitimate. The letter was never produced.

11 **THE COURT FURTHER FINDS** that Mr. Pickens testified the wedding
12 was a formal marriage ceremony, and Dr. Michaels translated the ceremony for
13 him as he did not speak the language the Priest used while officiating. Following
14 the ceremony, Mr. Pickens testified he and Dr. Michaels signed a book at the
15 church. The overwhelming information points to a ceremony to merely appear
16 married. Mr. Pickens' claim that he did not understand what was being said is not
17 a factor under the circumstances herein.

18 **THE COURT FURTHER FINDS** that the parties referred to each other as
19 spouses to multiple individuals. The parties celebrated their anniversary every
20 April 7th thereafter until they separated in September of 2016.

21 **THE COURT FURTHER FINDS** that Mr. Pickens' testimony that they
22 agreed to a wedding in Slovakia to slow down discovery of creditors is not
23 credible. The parties purchased real property, held title and recorded the property
24 as a married man and a married woman. Their marital status would have been
25 easily discoverable by anyone.

26 **THE COURT NOTES** that there was no clear testimony or evidence
27 presented that Mr. Pickens had any assets to protect from attacks by creditors at the
28

1 time of the ceremony. The only information gleaned by the court was that he came
2 into the relationship with Dr. Michaels in heavy debt while paying spousal support
3 to his ex-wife. He possessed an old car and some furniture. Additional testimony
4 revealed that she paid most of the expenses, the down payment on the real estate
5 properties and the Patience One building. She also financed entertainment and
6 vacations for the couple.

7 **THE COURT FURTHER FINDS** that Mr. Pickens' argument that Dr.
8 Michaels' testimony changed in an attempt to undo the unequivocal testimony she
9 offered on Day One of trial is not supported by the record as a whole. Her "yes"
10 and "no" answers to questions posed by Mr. Pickens' attorneys on direct
11 examination were expounded upon during her testimony on cross and her case-in-
12 chief.

13 **THE COURT FURTHER FINDS** Mr. Pickens' testimony that he was
14 unaware of a legal impediment to the marriage until such time as he filed this
15 action and his lawyer obtained an expert opinion, is not credible. If true, it does
16 not explain all the tax returns and estate planning documents he filed as a single,
17 unmarried man. In fact, five (5) months prior to filing his initial complaint for
18 divorce Mr. Pickens purchased real property as a single, unmarried man. His
19 conduct was expressly contrary to his belief that he was married until after he filed
20 for divorce.

21 **THE COURT FURTHER FINDS** that the parties' joint effort to appear
22 married in social settings was a fraud on their family and friends, but in this case it
23 does not rise to the level of proof of marriage.

24 25 **PUTATIVE SPOUSE STATUS FINDINGS**

26 **THE COURT FURTHER FINDS** the parties shared an accountant, Robert
27 Semonian, CPA.

1 **THE COURT FURTHER FINDS** that Witness Semonian, CPA, testified
2 that Mr. Pickens told him that he and Dr. Michaels were not legally married. He
3 further testified that the issue of marital status was discussed every year during tax
4 season. Witness Semonian's testimony was credible.

5 **THE COURT FURTHER FINDS** that each year, between 2002 and 2015,
6 Mr. Pickens and Dr. Michaels filed their federal income tax returns and
7 confirmations verifying their tax status as individual, unmarried persons. These
8 are sworn documents, signed under oath pursuant to federal law. They did not
9 testify that they executed the documents pursuant to fraud, duress or coercion,
10 leaving the Court to deduct that they signed freely, voluntarily and with full
11 knowledge and understanding of the contents of the documents and their legal
12 significance 13 years in a row.

13 **THE COURT FURTHER FINDS** that the parties filed tax returns as
14 single, unmarried persons, rather than married, filing jointly or married, filing
15 separate, for 13 years during their relationship. The testimony of Robert Semonian,
16 was that until 2016, each year, he would apportion the income of and deductions of
17 the parties to each party's individual returns such that both parties would legally
18 avoid as much tax as possible. *See* Transcript Re: Non-Jury Trial dated February
19 21, 2020, page 82, lines 4-14.

20 **THE COURT FURTHER FINDS** that the testimony of witness Robert
21 Semonian further corroborates that Mr. Pickens and Dr. Michaels held themselves
22 out as husband and wife for social purposes.

23 **THE COURT FURTHER FINDS** that testimony was given that witness
24 Dara Lesmeister, who worked with Mr. Pickens and who also knew Dr. Michaels,
25 believed the parties were husband and wife. The Court finds her testimony
26 plausible, as she was in the social setting wherein the parties were holding
27 themselves out to be a married couple.

28

1 **THE COURT FURTHER FINDS** that Mr. Pickens' long-time friend,
2 Todd Kilde, testified that shortly after the ceremony in Slovakia, Mr. Pickens told
3 Mr. Kilde that he and Dr. Michaels were not legally married. His testimony is
4 contradicted by his statement to the Division of Unemployment giving Dr.
5 Michaels the status of Mr. Pickens' wife. *See Exhibit "156"* (Mr. Kilde's Request
6 to Appeal the Denial of Unemployment Benefits wherein he referred to Dr.
7 Michaels as Mr. Pickens' wife).

8 **THE COURT FURTHER FINDS** that the testimony of Shannon Evans,
9 Esq., who represented both parties for estate planning during the relationship, was
10 credible when she testified that Mr. Pickens informed her that he and Dr. Michaels
11 were not legally married, even though they held themselves out to be a married
12 couple.

13 **THE COURT FURTHER FINDS** witness Evans, ESQ. was initially hired
14 by Mr. Pickens to prepare estate planning documents on his behalf. The estate
15 planning documents, executed in 2012, confirmed that Mr. Pickens was unmarried.
16 Mr. Pickens executed his estate planning documents without any fraud, duress, or
17 coercion and did so freely, voluntarily and with full knowledge and understanding
18 of the contents of the documents and their legal significance.

19 **THE COURT FURTHER FINDS** that witness Evans, ESQ., represented
20 only Dr. Michaels on September 13th, 2016 and thereafter. Additionally, Mr.
21 Pickens signed a waiver of conflict to that effect.

22 **THE COURT FURTHER FINDS** that Mr. Pickens' testimony that he
23 believed he was married to Dr. Michaels is not credible as his actions in 2016 do
24 not support his statements in court.

25 **THE COURT FURTHER FINDS** that Mr. Pickens had been married and
26 divorced prior to engaging in his relationship with Dr. Michaels. His current
27 conduct at the close of this relationship in dividing property without benefit of a
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1 divorce complaint or decree of divorce, together with signed documents under oath
2 the he was a single, unmarried man during the relationship, belies his belief that he
3 thought he was married. Filing the Second Amended Complaint, which excluded
4 the claim for divorce, along with testimony and evidence presented makes it moot
5 for this court to consider the requested relief and serves to solidify the court's
6 finding that Mr. Pickens did not believe he was actually married to Dr. Michaels
7 through intent or otherwise. Mr. Pickens even testified that he and Dr. Michaels
8 were "basically" married. Mr. Pickens initially filed for divorce and maintained
9 that position in his First Amended Complaint. He dropped the claim for Divorce in
10 his Second Amended Complaint.

11 **THE COURT FURTHER FINDS** that Mr. Pickens' contradictory
12 positions on whether or not he was married leads the Court to question his candor
13 with the court in light of his conduct, his pleadings and his testimony.
14

15 **DOCTOR/PATIENT FIDUCIARY DUTY FINDINGS**

16 **THE COURT FURTHER FINDS** that Dr. Michaels did testify she was
17 Mr. Pickens' primary care physician from 2000 to 2017. She also testified that he
18 refused to acquire another treating physician, so she was between a rock and a hard
19 place in her duty to do no harm.

20 **THE COURT FURTHER FINDS** that after the Doctor-Patient relationship
21 began, the parties engaged in a romantic relationship primarily initiated by Mr.
22 Pickens. Dr. Michaels testified this began in the summer of 2001, and that she
23 continued being Mr. Pickens' physician after the romantic relationship
24 commenced.

25 **THE COURT FURTHER FINDS** that it takes judicial notice of the
26 following law pursuant to NRS 47.130:

- 27 1. NAC 630.230 prohibits physicians from failing to adequately supervise
28

1 APRN's in their employ.

2 2. NRS 630.301 makes it grounds for discipline for a physician to engage in
3 sexual relations with a patient.

4 NRS 630.301 makes it a ground for discipline for a physician to exploit a
5 relationship with a patient for financial or other personal gain.

6 **THE COURT HEREBY NOTES** that is not a criminal or disciplinary
7 hearing.

8 **THE COURT FURTHER FINDS** that as a result of the Doctor-Patient
9 relationship, Dr. Michaels could have been held a fiduciary duty to Mr. Pickens as
10 long as the doctor/patient relationship existed under certain circumstances.
11 Testimony revealed that Dr. Michaels advised Mr. Pickens that she would no
12 longer be his primary care physician once an intimate relationship had developed.

13 **THE COURT FURTHER FINDS** that NRS 630.031 provides it is grounds
14 for discipline of physicians if they engage in a sexual relationship with a patient or
15 if they exploit a patient for their own financial gain. According to the parties, their
16 intimate (sexual) relationship ended in 2004, however, they remained a couple and
17 partners for an additional 14 years until 2016. The Court is not aware of any
18 potential disciplinary proceeding initiated by Mr. Pickens against Dr. Michaels for
19 violation of any statute or administrative code involving their doctor/patient
20 relationship.

21 **THE COURT FURTHER FINDS** that the crux of the relationship between
22 Mr. Pickens and Dr. Michaels was their partnership and business pursuits, and not
23 on the need of this patient for this doctor.

24 **THE COURT FURTHER FINDS** that Mr. Pickens transferred the
25 responsibility of his medical coverage to the nurse practitioner working in Dr.
26 Michaels' practice as his medical provider. Other than Dr. Michaels prescribing
27 Mr. Pickens the occasional prescription and seeing him for cross-coverage when
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1 the nurse was unavoidably unavailable, Roberto Carrillo, A.P.R.N., F.N.P., became
2 Mr. Pickens primary care provider who was responsible for his care and
3 prescriptions beginning in 2008. Mr. Carrillo is able to independently see and treat
4 patients, and prescribe for them, under his own license.

5 **THE COURT FURTHER FINDS** that Dr. Michaels began prescribing
6 medication to Mr. Pickens beginning in 2001, including Xanax, Ambien,
7 Oxycodone and Tramadol, and **Exhibit “4”**, the Nevada Prescription Monitoring
8 Program log for Mr. Pickens dated 2015-2017 proves Dr. Michaels or Mr. Carrillo,
9 APRN, (Mr. Carrillo’s primary care provider) continued to prescribe Mr. Pickens
10 medication until 2017. Dr. Michaels later clarified that after 2008 she was only
11 involved if cross coverage was necessary.

12 **THE COURT FURTHER FINDS** that Mr. Pickens was treated for gout,
13 anxiety, cholesterol, and high blood pressure at various points during the
14 relationship.

15 **THE COURT FURTHER FINDS** that pursuant to Nevada law, Dr.
16 Michaels is and was required to supervise her Nurse Practitioner, Mr. Carrillo,
17 APRN. Dr. Michaels’ testimony confirmed she did, in fact adequately supervise
18 Roberto Carrillo, a Registered Nurse Practitioner working within her medical
19 practice.

20 **THE COURT FURTHER FINDS** that Mr. Pickens was also seeing his
21 cardiologist care center, a rheumatologist, an orthopedic doctor, two GI doctors
22 and an Ear, Nose and Throat doctor during the course of their relationship.

23 **THE COURT FURTHER FINDS** that in 2016, the year of the separation,
24 save and except for a single refill in May 2016 by Dr. Michaels, (which was filled
25 after speaking with Mr. Carrillo), all prescriptions and visits by Mr. Pickens were
26 handled by Mr. Carrillo.

27 **THE COURT FURTHER FINDS** that it was Mr. Pickens who had to
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1 prove by a preponderance of the evidence that Dr. Michaels “violated her fiduciary
2 responsibilities” to him. He needed to show that the doctor held a superior
3 authoritative position in the relationship and that, as a result of his illness, Mr.
4 Pickens was vulnerable. He further was required to show that Dr. Michaels
5 exploited that vulnerability.

6 **THE COURT FURTHER FINDS** that Mr. Pickens never made a claim
7 that he was emotionally unstable due to his illness.

8 **THE COURT FURTHER FINDS** that the fact Dr. Michaels referred Mr.
9 Pickens to a specialist in September of 2017 is of no consequence as there was no
10 known romantic relationship, transactions, partnership or pending lawsuits filed to
11 alert Dr. Michaels of an existing duty after the 2016 transfers.

12 **THE COURT NOTES** that there was no professional expert witness
13 presented to show that Mr. Pickens suffered from an illness, treated by Dr.
14 Michaels that rendered him unable to tend to his own business without the aid or
15 assistance of Dr. Michaels.

16 **THE COURT FURTHER FINDS** that Mr. Pickens’ assertion that he
17 lacked capacity fails as he presented no evidence that his emotional state was
18 fragile because of Dr. Michaels’ actions, without whom he could not manage his
19 affairs. The facts show that Mr. Pickens was capable of spending extended periods
20 of time away from Dr. Michaels without incident. He also managed a construction
21 management business where he preformed oversight on large construction projects.

22 **THE COURT FURTHER FINDS** that Mr. Pickens offered to transfer the
23 real properties to Dr. Michaels and the “Assignment” to Dr. Michaels’ Trust while
24 he was in Florida. He then traveled to Nevada, and several days later, he signed
25 off on the transfers he initiated. Dr. Michaels did not have access or opportunity to
26 abuse her position as a doctor to influence his decision.

27 **THE COURT FURTHER FINDS** that Dr. Michaels had no duty owed to
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1 Mr. Pickens, neither doctor/patient nor spousal, when considering his request to set
2 aside the property transfers and the "Assignment" on September 13, 2016.

3
4 **PARTNERSHIP STATUS**

5 **THE COURT FURTHER FINDS** that credible evidence was presented
6 demonstrating that the parties did behave as partners with regard to some
7 properties and investments.

8 **THE COURT FURTHER FINDS** that the conduct of the parties regarding
9 their financial affairs provides evidence that the parties intended to pool their
10 assets, financial support and management skills when they saw fit to do so. (Living
11 expenses, residential needs, business with regard to Patience One, LLC and for a
12 limited time Blue Point Development and Consulting, Corp.)

13 **THE COURT FURTHER FINDS** the parties had one joint bank account
14 (*see Exhibits "72", "76", "78", "79" and "80"*), while maintaining separate
15 accounts in their own names. The joint account was held first at Bank of America
16 and was moved to Wells Fargo. The stated purpose of the account was to pay
17 household bills, mortgages and business expenses. Mr. Pickens testified he asked
18 for loans from Dr. Michaels. He did not testify that he had equal, community
19 property rights to all her assets.

20 **THE COURT FURTHER FINDS** that Mr. Pickens deposited his income
21 from his business, and the income paid to him by Dr. Michaels' business, into the
22 parties' joint account at Wells Fargo, and that Dr. Michaels deposited her income
23 from her medical practice into the same joint checking account. Dr. Michaels also
24 wrote additional checks to cover her half of the expenses pursuant to any
25 unsupported request from Mr. Pickens.

26 **THE COURT FURTHER FINDS** that during the course of the parties'
27 relationship, specifically in 2014, when Mr. Pickens' company received a
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1 \$1,000,000.00 bonus on a project, that Mr. Pickens deposited over \$200,000.00 of
2 said bonus into the parties' joint bank account, and further testified that those funds
3 were used to pay for extensive renovations and improvements on the Queen
4 Charlotte home.

5 **THE COURT FURTHER FINDS** that during the course of the parties'
6 relationship, Mr. Pickens paid off, from his earnings or from the funds in the
7 parties' joint account, the mortgage on the Lowe residence. The bank statements
8 and Mr. Pickens' testimony support this finding, unfortunately there was no
9 forensic accounting presented to the court to verify the effect of the mortgage
10 payoff or the various deposits made by the parties or on the respective parties'
11 interests.

12 **THE COURT FURTHER NOTES** that the parties did testify that while
13 they paid their joint household bills and mortgages from the joint account, and that
14 they both placed funds into the joint account from their earnings, there was no
15 accounting, forensic or otherwise to show that one party or another put more than
16 their fair share into the joint account to cover those expenses. As the parties did
17 not extrapolate on the terms under which they closed the joint account in the
18 summer of 2016, the court can only surmise that the closure terms were acceptable
19 to both. Without further information it can only be assumed that any funds placed
20 in the joint account was a gift, one to the other, and to cover their necessary living
21 expenses.

22 **THE COURT FURTHER FINDS** the parties shared at least one credit card
23 account (*see Exhibits "82" - "90"*), while the parties had other lines of credit in
24 their own names. Evidence at trial revealed the continued use by Dr. Michaels of
25 Mr. Pickens' credit card to purchase supplies for her medical practice even after
26 the September 13, 2016 "transactions", discussed below. Once again, there was no
27 accounting, forensic or otherwise, as to the charges and payments made on the
28

1 credit card.

2
3 **REAL PROPERTY**

4 **THE COURT FURTHER FINDS** the parties acquired two residential real
5 properties together. They acquired the residential property where they lived
6 together located at 9517 Queen Charlotte Drive, Las Vegas, Nevada 89145, in
7 2004. The title on the Deed indicates “Dr. Danka Michaels, a married woman and
8 Thomas Pickens, a married man...” (*See Exhibit “7”*). The mortgage was in both
9 parties’ names. Dr. Michaels sold her separate property residence and placed the
10 proceeds down on the purchase. The parties also purchased an investment property
11 located at 7608 Lowe Avenue, Las Vegas, Nevada 89131 (*see Exhibit “6”*), as
12 Husband and Wife, and again, the mortgage on the investment property was in
13 both parties’ names. Dr. Michaels placed \$29,000 down on the purchase. The
14 mortgage on the investment was paid in full before the parties separated.

15 **THE COURT FURTHER FINDS** that on or about September 13, 2016,
16 Mr. Pickens signed documents transferring his interest in the two residential real
17 properties owned jointly by the parties. The transfers involved two steps. First the
18 parties had to change the titles to the real properties from being held incorrectly as
19 husband and wife, to being held by two single unmarried persons, then a second
20 signing changing the properties from held as two single unmarried persons jointly,
21 to Dr. Michaels as a single unmarried woman.

22
23 **INVESTMENT AND BUSINESS HOLDINGS**

24 **THE COURT FURTHER FINDS** that Mr. Pickens and Dr. Michaels
25 founded Blue Point Development & Construction as an “S” Corp., in 2002.
26 Testimony showed that Dr. Michaels provided the seed money of \$30,000.00 to get
27 the business off the ground. Both parties held a 50% interest in the business.

1 **THE COURT FURTHER FINDS** that Mr. Pickens, as the resident agent
2 let the company fall into default with the Secretary of State and the entity was
3 revoked. Mr. Pickens then transferred all assets of the Blue Point Development &
4 Construction into a new business, Blue Point Development, Inc., and held the
5 business in his name alone.

6 **THE COURT FURTHER FINDS** the parties acquired the Patience One
7 real property and the “buffalo” building for investment purposes. They formed the
8 company Patience One, LLC and placed the investment property, the “buffalo”
9 building, as an asset of the LLC. Each party operated their respective businesses
10 out of this building. (Dr. Michaels’ medical practice and her health spa; Mr.
11 Pickens’ business Blue Point Development, Inc., both occupied their own
12 independent suites).

13 **THE COURT FURTHER FINDS** that the Patience One Building was
14 acquired in 2012. Dr. Michaels provided the 10% down payment for the property
15 and Mr. Pickens used his skill and professional contacts for the new building
16 tenant improvements. The parties each held a 50% membership in the LLC. The
17 parties acted as if this was a joint venture. Evidence of this fact is found in
18 Schedule K-1’s issued by Patience One, LLC, **Exhibits “47” – “51”**; Deed of
19 Trust for Patience One, LLC’s, 2014 loan, **Exhibit “153”**; and Dr. Michaels’ email
20 in which she tells the parties’ attorney, Andy Glendon, Esq., that she and her
21 husband (referring to Mr. Pickens) were partners in the Patience One, LLC deal
22 which held and managed the “buffalo” building.

23 **THE COURT FURTHER FINDS** that Dr. Michaels admitted during her
24 testimony that they both were guarantors on the original mortgage :buffalo”
25 building and on the subsequent 2014 refinance. (*see* **Exhibit “153”**).

26 **THE COURT FURTHER FINDS** that at all times relevant to the
27 September 13, 2016 transaction, the parties were equal members of the Nevada
28

1 Limited-Liability Company, Patience One, LLC.

2 **THE COURT FURTHER FINDS** that Mr. Pickens voluntarily executed an
3 Assignment and Assumption of Membership Interest in the LLC [the
4 “Assignment”], from his LV Blue Trust [Mr. Pickens’ estate planning trust] to the
5 Mich-Mich Trust [Dr. Michaels’ estate planning trust] regarding his 50% interest
6 in Patience One LLC. The “Assignment” read:

7 a. WHEREAS, Assignor owns a 50% interest in Patience One, LLC,
8 a Nevada Limited Liability Company (LLC), which was formed
9 pursuant to the Articles of Organization dated MY [sic] 9, 2012
10 (the “Articles”); and

11 b. WHEREAS, Assignor desires to assign for good and valuable
12 consideration, all if its right title, duties, obligations and interest in
13 and to the 50% interest in the LLC to Assignee.

14 **THE COURT FURTHER FINDS** that pursuant to the K-1’s of Patience
15 One, LLC, the parties owned their respective membership interests in Patience
16 One, LLC as individuals (*see Exhibits “47” – “50”*). It was not until after the
17 September 13, 2016 transaction that the K-1 of Patience One, LLC reflected the
18 Mich-Mich Trust was the owner of Dr. Michaels’ interest in Patience One, LLC
19 (*see Exhibit “51”*).

20 **THE COURT FURTHER FINDS** that the only going business wherein
21 both parties held interests at the time of the September 13, 2016 transfer was the
22 Patience One, LLC. There was no evidence presented that Mr. Pickens had an
23 interest established in Dr. Michaels medical practice or spa, save and except for his
24 salary and his IRA account paid out of her business. There was no evidence
25 presented that Dr. Michaels had any interest in Blue Point Development, Inc.

26 **THE COURT FURTHER FINDS** that the transfer of Mr. Pickens’ interest
27 in Patience One, LLC by the “Assignment” prepared by Shannon Evans
28

1 transferring Mr. Pickens' interest in Patience One, LLC, reflects Mr. Pickens'
2 Trust, LV Blue Trust, as the transferor. Testimony by Mr. Pickens indicated Mr.
3 Pickens Trust did not own his personal 50% interest in Patience One LLC when he
4 signed the transfer document. No evidence was presented that Mr. Pickens' Trust
5 ever owned his individual interest in Patience One, LLC, however, Dr. Michaels
6 relied on the representation by Mr. Pickens through his signature on the above
7 noted "Assignment," that he HAD placed his 50% interest in his trust. There was
8 no testimony or evidence provided that Mr. Pickens corrected the document to
9 reflect the actual owner, himself as an individual, at the time of the transfer or
10 since.

11 **THE COURT FURTHER FINDS** that to date, there has been no recording
12 of a satisfaction of the original Patience One, LLC Mortgage on the Clark County
13 Recorder's website. (See request for judicial notice filed 4/23/21). Testimony at
14 trial revealed that Dr. Michaels and the Mich-Mich Trust, in reliance on the
15 "Assignment," re-financed the "buffalo" building held by Patience One, LLC and
16 made improvements to the property after the interest was transferred to her. The
17 guarantors on the "buffalo" building are now Dr. Michaels, personally, and the
18 Mich-Mich trust, which holds the LLC.

19 **THE COURT FURTHER FINDS** that even if the parties were married or
20 that Mr. Pickens was a putative spouse, NRS 123.080 permits spouses to alter their
21 legal relations as to property.

22 **THE COURT FURTHER FINDS** that no interest in any other company or
23 joint asset was transferred by Dr. Michaels to Mr. Pickens in exchange for the
24 September 13, 2016 transfer of assets received by Dr. Michaels.

25 **THE COURT FURTHER FINDS** that Mr. Pickens received no tangible
26 consideration from Dr. Michaels for the above transfers of real property and his
27 interest in Patience One, LLC.

28

1 **THE COURT FURTHER FINDS** that subsequent to the Assignment, the
2 new managers of Patience One, LLC refinanced the loan. Under the new
3 ownership, Patience One, LLC refinanced the “buffalo” property with Danka and
4 the Mich-Mich Trust serving as personal guarantors. Because the Deed of Trust is
5 in the name of Patience One, LLC, it was not necessary for a new Deed of Trust to
6 be recorded in order to remove Mr. Pickens from the obligation.

7 **THE COURT FURTHER FINDS** that Mr. Pickens received valuable
8 consideration when he was indemnified from a great deal of debt as to the transfer
9 of his interest in Patience One, LLC to Dr. Michaels. By executing the
10 Assignment, divesting himself completely from Patience One, LLC, which resulted
11 in a refinance of the loan on the “buffalo” building to which neither Tom nor his
12 Trust were now parties, there is no more legal basis under which Mr. Pickens could
13 be held personally liable for the responsibility for the Patience One, LLC debts.

14 **THE COURT FURTHER FINDS** that Mr. Pickens was also able to
15 assuage his self-imposed guilt for engaging in an affair with a woman,
16 impregnating her, and revealing a significant secret about Dr. Michaels’ childhood
17 to his new significant other. Consideration is a legal term of art. Mr. Pickens had
18 inquired whether the transactions could be reversed in a couple years if they were
19 to reconcile. The record does not reflect that the parties shared a meeting of the
20 minds on this point. Additionally, there was no testimony that an attempt for
21 reconciliation had been initiated by either party.

22 **THE COURT FURTHER FINDS** that once the transfer documents were
23 executed, the parties performed their agreements; e.g., Mr. Pickens vacated the
24 Queen Charlotte property, he transferred the leases and control of rent collection
25 for Patience One, LLC to Dr. Michaels. Additionally, Mr. Pickens paid rent each
26 month for the space his company, Blue Point Development, occupied in the
27 “buffalo” building. When he ceased making his rental payment, Dr. Michaels had
28

1 him evicted. The Court does not know the legal procedure to evict an owner from
2 his own property.

3 **THE COURT FURTHER FINDS** that Mr. Pickens also exhausted his IRA
4 which he acquired as an employee for Dr. Michaels and purchased his current
5 residence as a single unmarried man five (5) months prior to filing the initial
6 underlying complaint.

7 **THE COURT FURTHER FINDS** that rescission to set aside the transfers
8 of real property and to set aside the "Assignment" is an equitable remedy. Laches
9 is a defense to a set aside. The delay between the transfers of real property and the
10 "Assignment" spanned from September 13, 2016 to October 24, 2017. It is
11 undisputed that more than 1 year passed before Mr. Pickens filed his complaint.
12 His first request for equitable relief was filed March 22, 2018. During that time
13 Dr. Michaels entered into transactions which she would not have entertained had
14 Mr. Pickens filed his complaint prior to entering into the transfers and the
15 Assignment on September 13, 2016.

16 **THE COURT FURTHER FINDS** that Dr. Michaels engaged in
17 transactions to re-finance, pay down loans and mortgages, improve property,
18 and/or sell property in reliance on the September 13, 2016 transfers from Mr.
19 Pickens to her and the Mich-Mich Trust.

20 21 MISCELLANEOUS ASSETS

22 **THE COURT FURTHER FINDS** that Blue Point Development, Inc. was
23 formed during the relationship of the parties, and that Dr. Michaels testified during
24 the course of trial that she is asserting an ownership claim to Mr. Pickens'
25 company, Blue Point Development, in a pending civil lawsuit between the parties.

26 **THE COURT FURTHER FINDS** that both parties acquired retirement
27 accounts during their relationship.
28

THE COURT FURTHER FINDS both parties acquired an interest in, and deposited earnings into, various bank accounts during their relationship.

THE COURT FURTHER FINDS that Mr. Pickens purchased the Porsche Cayenne vehicle from his 2014 bonus, which Dr. Michaels, to this day, continues to drive. Dr. Michaels testified that she was surprised by the car and told Mr. Pickens at the time that she did not need the car. Mr. Pickens testified the car was a Christmas/Birthday present for Dr. Michaels.

THE COURT FURTHER FINDS that Mr. Pickens received his company, Bluepoint Development, Inc., free from transfer of any value to Dr. Michaels. There was no evidence presented in this case that Dr. Michaels had any documented ownership interest in the newly formed company. The company was resurrected from Blue Point Development and Management Corporation (where Dr. Michaels and Mr. Pickens were documented as co-owners which had fallen into default and its Articles of Incorporation revoked by the Secretary of State of Nevada. The assets, previously acquired from the Blue Point Development and Management Corporation, were transferred into Blue Point Development, Inc., at its formation in 2008.

II

CONCLUSIONS OF LAW

Based upon the forgoing findings of fact, the Court makes the following conclusions of law:

1. As a matter of comity, Nevada's recognition or non-recognition of a purported foreign marriage depends on its legality in the foreign country. *Gonzales-Alpizar v. Griffith*, 130 Nev. 10, 317 P.3d 820 (2014) quoting *Mianecki v. Second Judicial Dist. Court*, 99 Nev. 93, 98, 658 P.2d 422, 424-25 (1983). Since the parties did not follow the

1 procedures in Slovakia, no legal marriage can be found in Nevada
2 courts.

- 3 2. The Court found no credible intent by either Mr. Pickens or Dr.
4 Michaels to legally marry, taking the evidence and testimony as a
5 whole, it therefore follows that there was no marriage. See e.g., *In re*
6 *JKNA*, 454 P.3d 642, 650 Mont. 2019), *Callen v. Callen* 620 S.E. 2nd
7 59 (SC 2005), *Renshaw v. Heckler*, 787 F.2nd 50 (2ns Cir. 1986);
8 *McNee v McNee*, 49 Nev. 90, 237 P. 534 (1925); NRS 010.
- 9 3. Mr. Pickens did not have a credible, good faith belief that he was
10 legally married to Dr. Michaels and there was no prior legal
11 impediment; as such, Mr. Pickens is not a putative spouse under
12 *Williams v. Williams*, 120 Nev. 559, 97 P.3d 1124 (2004).
- 13 4. Pursuant to Nevada law, spouses owe a fiduciary duty to one another.
14 See *Williams v. Waldman*, 108 Nev. 466 (1992). Since the parties
15 were not legally married, this duty does not apply.
- 16 5. Mr. Pickens must prove the existence of a physician-patient
17 relationship before a fiduciary duty can be established. See *Jennings*
18 *v. Badget*, 2010 OK 7, 230 P.3d 861, 865-866 (Okla. 2010); *Mead v.*
19 *Legacy Health System*, 352 Ore. 267, 283 P.3d 904, 909-910 (Ore.
20 2010); *Seeber v. Ebeling*, 36 Kan. App. 2d 501, 141 P.3d 1180 (Kan.
21 Ct App. 2006); *St. John v. Pope*, 901 S.W. 2d 420, 423 (Tex. 2005);
22 *Gross v. Burt*, 149 S.W. 3d 213 (Tex. Ct. App 2004); *Millard v.*
23 *Corrado*, 14 S.W.3D 42, (Mo. Ct. App. 1999); *Roberts v. Hunter*, 310
24 S.C. 364, 426 S.E.2D 797 (S.C. 1993). Mr. Pickens failed to establish
25 that he and Dr. Michaels were in a physician-patient relationship at
26 the time of the execution of the transfer of documents. As such, Dr.
27 Michaels did not owe Mr. Pickens any fiduciary duty.

- 1 6. Pursuant to Nevada law, a physician is required to supervise any
2 APRN in their employ. See NAC 630.230. There is no finding by the
3 court that Dr. Michaels violated her duty of supervision.
- 4 7. Pursuant to Nevada law, a physician is precluding from taking
5 advantage of a patient for their own financial gain. See NRS 630.301.
6 The Court did not find that Mr. Pickens was impaired to the extent
7 that he could not manage his financial circumstances on an equal
8 footing with Dr. Michaels. Additionally, the parties both prospered
9 during their partnership between 2002 and 2016 when their
10 relationship fell apart.
- 11 8. Even if Mr. Pickens was able to establish a physician-patient
12 relationship and the corresponding fiduciary duties applied, he must
13 still prove that such duties were breached. *Hoopes v. Hammargren*,
14 102 Nev. 425 (1986). Further, Mr. Pickens must have also proved
15 that he was vulnerable and unstable due to his medical problem and,
16 that due to his reliance on Dr. Michaels' medical skills being retracted
17 he was taken advantage of by Dr. Michaels. Vulnerability is an
18 essential and necessary element of a confidential relationship.
19 *Richelle L. v. Roman Catholic Archepishop*, 106 Cal. App. 4th 257,
20 270-72, 130 Cal. Rptr. 2d 601 (Cal. Ct. App. 2003). Mr. Pickens
21 failed to prove any such relationship, vulnerability, or breach.
- 22 9. Pursuant to Nevada law, parties to a joint venture owe a fiduciary duty
23 to one another. (*See Leavitt v. Leisure Sports Inc.*, 103 Nev. 81
24 (1987). There was no evidence presented that either party kept the
25 other party in the dark regarding any aspect of the transfer of property
26 and assets, to and including the value of same. [With the exception of
27 Mr. Pickens' lack of candor when signing the "Assignment"
28

document without correcting the document to reflect the actual holder of the 50% membership was himself as an individual and not his Trust]. Testimony showed that Mr. Pickens was in charge of the payments made from the joint account, including the payments on the American Express account. He was also informed as to the tax basis for the preparation of the tax documents.

10. Nevada law recognizes the rights of putative spouses to a division of property consistent with community property law when one or both of the parties reasonably believed that the marriage was valid. (See *Williams v. Williams*, 120 Nev. 559 (2004). This point is moot as the court does not find that either party reasonably believed they were married, a putative spouse relationship test cannot be met in this case.
11. Nevada law recognizes the rights of parties who voluntarily agree to pool their assets and become implied partners to an equal division of the property acquired during their relationship. (See *Western States Construction v. Michoff*, 108 Nev. 931 (1987). There was no quasi-marital relationship found by the court. Further, the transfers were for satisfactory value to both parties. Parties, married or not may engage in contracts with each other.
12. 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 v. Rivero*, 125 Nev. 410, 216 P.3d 213 (2009). The court finds, under the totality of the circumstances, that the parties engaged in lawful, valid and enforceable contracts on September 13, 2016.
13. A spouse-to-spouse conveyance of title to real property creates a presumption of gift that can only be overcome by clear and convincing evidence. *Kerly v. Kerly*, 112 Nev. 36 (1996); *Graham v.*

1 *Graham*, 104 Nev. 473 (1988); *Todkill v. Todkill*, 88 Nev. 231 (1972);
2 *Peardon v. Peardon*, 65 Nev. 717 (1948). As Mr. Pickens conveyed
3 title to the properties to Dr. Michaels for the purpose of making her
4 less unhappy about the discovery of his conduct in revealing her most
5 personal tragedy to a new significant other, the transfers could be
6 considered as gifts. How much more so when the parties were not
7 married.

8 14. Property acquired by gift during marriage is separate property
9 pursuant to NRS 123.130, and therefore not community property
10 pursuant to 123.220.

11 15. Nevada law recognizes that consideration is a requirement of any
12 valid contract. (*See Manning v. Coryell*, 130 Nev 1213 (2014))
13 Consideration can come in tangible and non-tangible forms. Mr.
14 Pickens testimony that he wanted to be able start fresh in his new life
15 was important to him, as well as his need to assuage his guilty feelings
16 due to his conduct.

17 16. Nevada law recognizes the equitable authority of this Court to correct
18 unjust enrichment. (*See Certified Fire Protection v. Precision*
19 *Construction*, 128 Nev 371(2012)). Testimony and evidence satisfied
20 the court that there was no unjust enrichment by Dr. Michaels. In
21 light of the fact that she supported the couple, without question, off
22 and on throughout the relationship, and that Mr. Pickens ended the
23 relationship on his own terms, the court finds the resolution of their
24 partnership equitable. This finding is not intended to reflect a division
25 based on “dollar-for-dollar,” as there was no forensic accountant hired
26 to provide such evidence to the court.

- 1 17. NRS 163.417(2) states that Trust property is not subject to the
2 personal obligations of the trustee, even if the trustee is insolvent or
3 bankrupt. Patience One, LLC, the entity which owned the “buffalo”
4 building, is held by the Mich-Mich Trust where Mr. Pickens directed
5 his 50% membership to be assigned.
- 6 18. Mr. Pickens has not requested rescission as a remedy to cancel the
7 written contracts of transfer of real property and business interest
8 “Assignment.”
- 9 19. Mr. Pickens did not name the Mich-Mich Trust as a party to this
10 lawsuit; there was no claim against the Mich-Mich Trust, therefore
11 there is no legal basis for Tom to set aside the Assignment in this
12 matter pursuant to rescission.
- 13 20. According to Mr. Pickens the transfer of his 50% interest in Patience
14 One LLC was not valid or enforceable due to the fact that the
15 purported transfer was from his LV Blue Trust and not Mr. Pickens,
16 the individual. The Court disagrees and finds that the document
17 misstated the actual owner, a fact which could not have been evident
18 to Dr. Michaels at the time of the transfer. Mr. Pickens did not correct
19 the over-sight and led Dr. Michaels to believe he had placed his 50%
20 ownership into his personal trust sometime prior to transferring it to
21 her Mich-Mich Trust. Dr. Michaels then re-financed the building
22 under her authority as the 100% Member of the LLC.
- 23 21. Unmarried cohabitating couples who purchase property titled in both
24 parties’ names, with or without the right of survivorship, own the
25 property in proportion to the amounts they each contributed to the
26 purchase price. *Sack v. Tomlin*, 110 Nev. 2014, 871 P.2d 298 (1994);
27 *Langevin v. Langevin*, 111 Nev. 1481, 907 P.2d 981 (1995). The
28

1 testimony of both Mr. Pickens and Dr. Michaels established that Dr.
2 Michaels paid the down payments for the Lowe, Queen Charlotte and
3 Patience One properties. There was conflicting testimony as to the
4 mortgage payments. Mr. Pickens testified that payments towards the
5 mortgage of the Lowe and Queen Charlotte properties were made by
6 him from the joint account (“his” account according to testimony at
7 trial). Dr. Michaels testified that Mr. Pickens would take care of
8 paying the bills from the joint account and had her write a check for
9 her half of the bills to the joint checking account. Mr. Pickens did not
10 present a forensic analysis or tracing to establish the source of funds
11 in that account.

12 22. Mr. Pickens failed to prove any credible theory of Dr. Michaels
13 having breached any fiduciary duty owed from her to him. As a
14 matter of law, the transfers of the Lowe Avenue and Queen Charlotte
15 properties are not void based on a breach of fiduciary duty.

16 23. As a matter of law, all transfers which occurred on September 13,
17 2016, which included the transfer of the Lowe Avenue residence, the
18 Queen Charlotte residence, and Mr. Pickens’ interest in Patience One,
19 LLC were not found by the court to be void for want of consideration
20 for the transaction.

21 24. As a matter of law, the Court found evidence of good and sufficient
22 consideration supporting the conclusion that the assets were legally
23 transferred for good cause and now rest with the individual wherein
24 the real property titles and the Assignment are currently being held.

25 26 **III. ORDERS AND JUDGMENT**

27 Based upon the forgoing Findings of Fact and Conclusions of law, it is
28

1 hereby:

2 **ORDERED, ADJUDGED, AND DECREED** that based on the fact that the
3 religious ceremony did not constitute a valid, legal marriage under the laws of any
4 State, declaratory relief is granted to Dr. Michaels that the parties were never
5 legally married.

6 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that based
7 on the Mr. Pickens knowledge that there was no valid marriage, he is not a putative
8 spouse. As such, he is not entitled to any relief as a putative spouse.

9 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** the two
10 real estate properties now held by Dr. Michaels were transferred to her pursuant to
11 valid transfers by Mr. Pickens for good and sufficient consideration and will not be
12 set aside.

13 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Dr.
14 Michaels will maintain 100% ownership of Patience One LLC pursuant to the
15 transfer from Mr. Pickens for good and sufficient consideration. The Assignment
16 of Patience One, LLC was a valid transfer and shall not be set aside. To the extent
17 that the paperwork transferring Mr. Pickens' interest to Dr. Michaels erroneously
18 listed his trust and not himself personally as the transferor, said error was clerical
19 in nature and shall be corrected. Mr. Pickens shall execute the appropriate
20 documentation to correct any such error upon presentment.

21 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** the parties
22 will keep any personal property now in their possession as a gift from one to the
23 other based on testimony gathered during trial, the time which elapsed between the
24 parties' closure of their joint accounts and partnership, and the filing of the action
25 herein.


26 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that all
27 other joint assets and obligations of the parties have already been divided and each
28

1 shall retain those assets and obligations in his or her respective names, titles,
2 possession and control.

3 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Dr.
4 Michaels is determined to be the prevailing party in this matter. Dr. Michaels is
5 awarded attorney fees and costs subject to application for the relief and
6 information provided therein. Counsel for Dr. Michaels shall submit the
7 appropriate memorandum of fees and costs setting forth their analysis under
8 *Brunzell* and shall also submit their redacted billing statements in accordance with
9 *Love* within twenty days following the Notice of Entry of Order of the Findings of
10 Fact, Conclusions of Law, and Judgment.

11 **IT IS FURTHER ORDERED** that Defendant shall file Notice of Entry of
12 this Order upon receipt.

13
14 **SO ORDERED** this 3rd day of August, 2021.

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16 
17 DISTRICT COURT JUDGE
18 SR. Judge
19 for Department J.
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**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

THOMAS A. PICKENS, individually, and as
trustee of the LV Blue Trust

Plaintiff,

vs.

DANKA K. MICHAELS, individually, and
as trustee of the Mich-Mich Trust,

Defendant.

CASE NO. D-17-560737-D

DEPT. NO. J

**NOTICE OF ENTRY OF FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND JUDGMENT**

1 TO: THOMAS A. PICKENS, Plaintiff; and

2 TO: JOHN D. JONES, ESQ., Counsel for Plaintiff.

3 PLEASE TAKE NOTICE that a Findings of Fact, Conclusions of Law, and
4 Judgment was entered in the above-entitled action on the 3rd day of August 2021.

5 A true and correct copy of the Findings of Fact, Conclusions of Law, and
6 Judgment is attached hereto.

7 Dated: August 5, 2021.

8 GOLDSTEIN LAW LTD.

9 By: /s/ Shawn M. Goldstein
10 Shawn M. Goldstein, Esq.
11 Nevada Bar No. 009814
12 10161 W. Park Run Dr., STE 150
13 Las Vegas, Nevada 89145
14 Attorney for Defendant,
15 Danka J. Michaels
16
17
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21

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Goldstein Law Ltd., and that on August 5, 2021 I served a true and correct copy of the documents described herein by the method indicated below, and addressed to the following:

Documents served:

Notice of Entry of Findings of Fact, Conclusions of Law, and Judgment.

Persons Served:

John D. Jones, Esq.

Manner of Service:

Via Electronic Service through the Court's electronic filing.

John D. Jones, Esq.
Jones & LoBello
9950 W. Flamingo Road, Ste. 100
Las Vegas, Nevada 89147

Dated: August 5, 2021

Goldstein Law Ltd.



Jeanette Lacker



1 **FFCL**

2 **DISTRICT COURT**
3 **FAMILY DIVISION**
4 **CLARK COUNTY, NEVADA**

5 THOMAS A. PICKENS,
6 Individually and as Trustee of the LV
7 Blue Trust,

CASE NO.: D-17-560737-D

DEPT. J

8 Plaintiff/Counterdefendant;
9 vs.

**Dates of Trial: February 14, 2020 &
February 21, 2020, March 5, 2021
and March 12, 2021 & April 2, 2021**

10 DR. DANKA K. MICHAELS,
11 Individually and as Trustee of the
12 Mich-Mich Trust,

13 Defendant/Counterclaimant;
14 and related Counterclaims.
15

16 **FINDINGS OF FACT, CONCLUSIONS OF LAW,**
17 **AND JUDGMENT**

18 The above captioned matter having come before this Honorable Court for
19 trial on February 14, 2020; February 21, 2020; March 5, 2021; March 12, 2021 and
20 April 2, 2021, upon the Second Amended Complaint of Plaintiff, THOMAS
21 ALLEN PICKENS ("Mr. Pickens "), present and represented by his attorneys,
22 John D. Jones, Michele LoBello and JONES & LOBELLO; and upon the
23 Counterclaim of Defendant, DR. DANKA K. MICHAELS ("Dr. Michaels"),
24 present and represented by her attorneys, Jennifer Abrams and THE ABRAMS &
25 MAYO LAW FIRM, and Shawn M. Goldstein and the law firm of GOLDSTEIN
26 LAW LTD., the Court, having reviewed the papers and pleadings on file, having
27 received and considered the testimony of the parties and other witnesses, having
28

1 weighed the credibility of the witnesses, having reviewed the substantial
2 documents and information received into evidence, having heard the argument of
3 counsel, and for good cause appearing, hereby FINDS, CONCLUDES AND
4 ORDERS as follows:

5 **I.**

6 **FINDINGS OF FACT**

7
8 **THE COURT FINDS** this Court has complete jurisdiction in the premises
9 both as to the subject matter hereof and the parties hereto; Defendant Dr. Danka K.
10 Michaels (Dr. Michaels) has established residency in Clark County, Nevada and
11 she is and has been for at least six (6) weeks prior to filing her Answer and
12 Counterclaim and up to the present, an actual and bona fide resident of Clark
13 County, State of Nevada and has maintained a residence in the State of Nevada,
14 and has the intent to indefinitely reside in the State of Nevada.

15 **THE COURT FURTHER FINDS** that

- 16 • September 8, 2016, Mr. Pickens' new significant other called Dr.
17 Michaels to inform her that she was pregnant with Mr. Pickens child
18 and revealed that she knew of a great personal tragedy suffered by
19 Dr. Michaels as a child. Later that same day, Mr. Pickens
20 volunteered to sign everything over to Dr. Michaels, to wit: "Danka,
21 there's nothing that I can say that will change anything. It should
22 have not happened, but it did. I will sign everything that we have
23 together over to you. I should have not have put myself into this
24 position. I know you will never forgive me and you shouldn't."
- 25 • September 9, 2016, Attorney Shannon Evans, Esq., in a note to her
26 staff stated "they do not need a divorce, and he will agree assets
27 being Danka's since she pays for the properties and he is guilty."
- 28 • September 13, 2016, Mr. Pickens and Dr. Michaels met with
Attorney Shannon Evans, Esq., and, after signing a waiver of conflict,
Mr. Pickens signed over the deeds to two real properties, [Queen
Charlotte and Lowe Properties] and his interest in Patience One,

1 LLC. The Parties had already closed their joint checking account
2 during the summer.

- 3 • May 30, 2017, Mr. Pickens recorded the deed to his current residence
4 which he purchased as a single, unmarried person.
- 5 • October 24, 2017, Mr. Pickens filed a Complaint for Divorce and for
6 Set Aside of Deeds of Real Property and Assignment of LLC Interest.
7 His claims for relief were (1) Divorce; (2) Set Aside of Deeds of Real
8 Property and Assignment of LLC Interest;
- 9 • November 1, 2017, Dr. Michaels was served with a Joint Preliminary
10 Injunction, as evidenced in the Affidavit of Process Server filed in
11 this matter on November 2, 2017.
- 12 • November 29, 2017, Dr. Michaels filed a Motion to Dismiss;
- 13 • December 20, 2017 Mr. Pickens filed his Opposition and
14 Counterclaim for Attorney Fees;
- 15 • January 19, 2018, Dr. Michaels filed her Reply and Opposition to
16 Counterclaim;
- 17 • January 25, 2018, Judge Marquis denied the Motion to Dismiss after
18 hearing argument;
- 19 • March 9, 2018, Judge Marquis issued her Order denying the Motion
20 to Dismiss and denying Summary Judgment. Jurisdiction was
21 established in the Family Court pursuant to NRS 3.223; *Landreth v.*
22 *Malik*, 127 Nev. 175, 177, 251 P.3d 163, 164 (2011); and *Hay v. Hay*,
23 100 Nev. 196, 199, 678 P.2d. 672, 674 (1984).
- 24 • March 22, 2018, Mr. Pickens filed his First Amended Complaint for
25 Divorce; For Set Aside of Deeds of Real Property and Assignment of
26 L.L.C. Interest; and For Alternative Equitable Relief Under the
27 Putative Spouse Doctrine;
- 28 • May 2, 2018, Dr. Michaels filed her Answer to First Amended
 Complaint for Divorce; For Set Aside of Deeds of Real Property and
 Assignment of L.L.C. Interest; and For Alternative Equitable Relief

1 Under the Putative Spouse Doctrine; Affirmative Defenses and
2 Counterclaim;

- 3 • September 7, 2018. Mr. Pickens filed his Motion for Leave to File
4 Second Amended Complaint; (no opposition filed by Dr. Michaels)
- 5 • October 15, 2018, Mr. Pickens filed his Second Amended Complaint
6 for Equitable Relief Under (1) The Putative Spouse Doctrine, and (2)
7 Pursuant to Express and/or Implied Agreement to Hold Property as if
8 the Parties Were Married Under *Michoff*; and to Set Aside Deeds of
9 Real Property and Assignment of L.L.C. Interest; (Dropping his
10 request for Divorce, acknowledging that the Parties were not legally
11 or validly married).
- 12 • November 19, 2018, Dr. Michaels filed her Answer to Second
13 Amended Complaint for Equitable Relief Under (1) The Putative
14 Spouse Doctrine, and (2) Pursuant to Express and/or Implied
15 Agreement to Hold Property as if the Parties Were Married Under
16 *Michoff*; and to Set Aside Deeds of Real Property and Assignment of
17 L.L.C. Interest; Affirmative Defenses and Counterclaim;
- 18 • November 21, 2018, Dr. Michaels filed her Declaration in Support of
19 her Answer to Second Amended Complaint for Equitable Relief
20 Under (1) The Putative Spouse Doctrine, and (2) Pursuant to Express
21 and/or Implied Agreement to Hold Property as if the Parties Were
22 Married Under *Michoff*; and to Set Aside Deeds of Real Property and
23 Assignment of L.L.C. Interest; Affirmative Defenses and
24 Counterclaim;
- 25 • August 1, 2019, Dr. Michaels filed her Motion for Summary
26 Judgment, to Dismiss, for Protective Order and For Attorney Fees;
- 27 • August 12, 2019, Mr. Pickens filed his Opposition to Dr. Michaels'
28 Motion for Summary Judgment, To Dismiss, For Protective Order
and For Attorney Fees and Countermotion for Leave of Court to File
Supplemental Points and Authorities;
- August 19, 2019, Mr. Pickens filed his Opposition to Dr. Michaels'
Motion for Summary Judgment, To Dismiss, For Protective Order
and For Attorney Fees And Countermotion (1) To Dismiss, Or In The
Alternative, for Summary Judgment As to Dr. Michaels' Causes of

1 Action for Intentional Misrepresentation/Fraud; Negligent
2 Misrepresentation; Breach of Implied Covenant of Good Faith and
3 Fair Dealing; Promissory Estoppel; Express Agreement' Implied
4 Agreement; And Malicious Abuse of Process; (2) For Summary
5 Judgment Setting Aside Deeds of Real Property and Assignment of
6 LLC Interest; And (3) For Permission to Submit Points and
7 Authorities in Excess of 30 Pages Pursuant to EDCR 5.503(E);

- 8 • September 6, 2019, Dr. Michaels filed her Reply to Mr. Pickens
9 Opposition and Opposition to Counter-motion;
10
- 11 • September 10, 2019, Judge Hughes issued a Minute Order Advising
12 that the court would not reconsider or reverse its previous order
13 denying summary judgement and it vacated the hearings for the
14 motions, setting the first day of Trial. No Order was prepared, signed
15 or filed;
- 16 • February 14, 2020 was the first day of trial. The next 4 days of trial
17 spanned various interruptions including Covid, various requests of
18 the parties and stipulations of the parties. The trial was resumed on
19 February 21, 2020, March 5, 2021, March 12, 2021 and concluded on
20 April 2, 2021.
- 21 • August 26, 2020, Dr. Michaels sold the 7608 Lowe Avenue, Las
22 Vegas, Nevada 89131 (APN 125-16-511-008) residence during the
23 pendency of this action. Recorded Document No. 20200826:04179,
24 according to the Clark County Assessor.

25 **THE COURT FURTHER FINDS** that the Court admitted 138 Exhibits
26 and heard testimony of the parties, and the testimony of percipient witnesses
27 including Shannon Evans, Esq., Robert Semonian CPA, Dara Lesmeister, Todd
28 Kilde, and Roberto Carrillo, APRN.

MARITAL STATUS FINDINGS

25 **THE COURT FINDS** the parties met in 2000 when Dr. Michaels became
26 the treating physician for Mr. Pickens as a result of a hospitalization..

27 **THE COURT FURTHER FINDS** that Mr. Pickens and his then wife both
28

1 used Dr. Michaels as their primary care physician.

2 **THE COURT FURTHER FINDS** that following his divorce from his
3 second wife, Mr. Pickens and Dr. Michaels began dating in late 2001, after which
4 they moved in together on or about September, 2001.

5 **THE COURT FURTHER FINDS** that seven (7) months later Mr. Pickens
6 and Dr. Michaels had a church ceremony in Bratislava, Slovakia on April 7, 2002.
7 The ceremony was held in a Catholic Church. The document memorializing the
8 event was not signed by either party. The church document was never registered
9 with the government of Slovakia pursuant to their laws and/or procedures
10 rendering it unenforceable in Slovakia and not enforceable in Nevada.

11 **THE COURT FURTHER FINDS** credible the initial reason for the trip
12 was to celebrate Dr. Michaels' brother's birthday per her testimony and to
13 introduce Mr. Pickens to her family and friends. In addition, Dr. Michaels testified
14 that her parents were concerned that she was living outside of marriage with Mr.
15 Pickens. This is also credible. She further testified that he did not want to be
16 referred to as her "boyfriend" so they agreed on a commitment ceremony to enable
17 them to refer to each other as husband and wife.

18 **THE COURT FURTHER FINDS** the parties did take pictures at the
19 ceremony and sent out announcements after the ceremony. (See Exhibit 1). Their
20 participation in the ceremony was with the full knowledge that they did not intend
21 to legally marry each other. Dr. Michaels testified that her divorce experience
22 regarding a prior marriage was bad and she did not want to go through that
23 situation again. She also testified that Mr. Pickens understood her position
24 completely. Her testimony regarding the couple's agreement not to marry is
25 credible.

26 **THE COURT FURTHER FINDS** that Mr. Pickens testified that he
27 believed he and Dr. Michaels were legally married in the Bratislava Catholic
28

1 Church ceremony on April 7, 2002. Mr. Pickens testified that he intended to be
2 legally married to Dr. Michaels. In planning for the ceremony, the parties selected
3 rings, made travel arrangements, made hotel arrangements, set up a photographer,
4 purchased a dress for Dr. Michaels for the ceremony and invited guests. In order
5 to participate in the ceremony in the Catholic Church in Bratislava, parties were
6 first required to meet with a Priest to receive a blessing and have pre-marriage
7 instruction in Las Vegas. According to Mr. Pickens, Dr. Michaels arranged for the
8 meeting with the Priest in Las Vegas. According to Dr. Michaels, Mr. Pickens
9 acquired the document. As neither person is catholic, the court is hard pressed to
10 believe the document was legitimate. The letter was never produced.

11 **THE COURT FURTHER FINDS** that Mr. Pickens testified the wedding
12 was a formal marriage ceremony, and Dr. Michaels translated the ceremony for
13 him as he did not speak the language the Priest used while officiating. Following
14 the ceremony, Mr. Pickens testified he and Dr. Michaels signed a book at the
15 church. The overwhelming information points to a ceremony to merely appear
16 married. Mr. Pickens' claim that he did not understand what was being said is not
17 a factor under the circumstances herein.

18 **THE COURT FURTHER FINDS** that the parties referred to each other as
19 spouses to multiple individuals. The parties celebrated their anniversary every
20 April 7th thereafter until they separated in September of 2016.

21 **THE COURT FURTHER FINDS** that Mr. Pickens' testimony that they
22 agreed to a wedding in Slovakia to slow down discovery of creditors is not
23 credible. The parties purchased real property, held title and recorded the property
24 as a married man and a married woman. Their marital status would have been
25 easily discoverable by anyone.

26 **THE COURT NOTES** that there was no clear testimony or evidence
27 presented that Mr. Pickens had any assets to protect from attacks by creditors at the
28

1 time of the ceremony. The only information gleaned by the court was that he came
2 into the relationship with Dr. Michaels in heavy debt while paying spousal support
3 to his ex-wife. He possessed an old car and some furniture. Additional testimony
4 revealed that she paid most of the expenses, the down payment on the real estate
5 properties and the Patience One building. She also financed entertainment and
6 vacations for the couple.

7 **THE COURT FURTHER FINDS** that Mr. Pickens' argument that Dr.
8 Michaels' testimony changed in an attempt to undo the unequivocal testimony she
9 offered on Day One of trial is not supported by the record as a whole. Her "yes"
10 and "no" answers to questions posed by Mr. Pickens' attorneys on direct
11 examination were expounded upon during her testimony on cross and her case-in-
12 chief.

13 **THE COURT FURTHER FINDS** Mr. Pickens' testimony that he was
14 unaware of a legal impediment to the marriage until such time as he filed this
15 action and his lawyer obtained an expert opinion, is not credible. If true, it does
16 not explain all the tax returns and estate planning documents he filed as a single,
17 unmarried man. In fact, five (5) months prior to filing his initial complaint for
18 divorce Mr. Pickens purchased real property as a single, unmarried man. His
19 conduct was expressly contrary to his belief that he was married until after he filed
20 for divorce.

21 **THE COURT FURTHER FINDS** that the parties' joint effort to appear
22 married in social settings was a fraud on their family and friends, but in this case it
23 does not rise to the level of proof of marriage.

24 25 **PUTATIVE SPOUSE STATUS FINDINGS**

26 **THE COURT FURTHER FINDS** the parties shared an accountant, Robert
27 Semonian, CPA.
28

1 **THE COURT FURTHER FINDS** that Witness Semonian, CPA, testified
2 that Mr. Pickens told him that he and Dr. Michaels were not legally married. He
3 further testified that the issue of marital status was discussed every year during tax
4 season. Witness Semonian's testimony was credible.

5 **THE COURT FURTHER FINDS** that each year, between 2002 and 2015,
6 Mr. Pickens and Dr. Michaels filed their federal income tax returns and
7 confirmations verifying their tax status as individual, unmarried persons. These
8 are sworn documents, signed under oath pursuant to federal law. They did not
9 testify that they executed the documents pursuant to fraud, duress or coercion,
10 leaving the Court to deduct that they signed freely, voluntarily and with full
11 knowledge and understanding of the contents of the documents and their legal
12 significance 13 years in a row.

13 **THE COURT FURTHER FINDS** that the parties filed tax returns as
14 single, unmarried persons, rather than married, filing jointly or married, filing
15 separate, for 13 years during their relationship. The testimony of Robert Semonian,
16 was that until 2016, each year, he would apportion the income of and deductions of
17 the parties to each party's individual returns such that both parties would legally
18 avoid as much tax as possible. *See* Transcript Re: Non-Jury Trial dated February
19 21, 2020, page 82, lines 4-14.

20 **THE COURT FURTHER FINDS** that the testimony of witness Robert
21 Semonian further corroborates that Mr. Pickens and Dr. Michaels held themselves
22 out as husband and wife for social purposes.

23 **THE COURT FURTHER FINDS** that testimony was given that witness
24 Dara Lesmeister, who worked with Mr. Pickens and who also knew Dr. Michaels,
25 believed the parties were husband and wife. The Court finds her testimony
26 plausible, as she was in the social setting wherein the parties were holding
27 themselves out to be a married couple.

28

1 **THE COURT FURTHER FINDS** that Mr. Pickens' long-time friend,
2 Todd Kilde, testified that shortly after the ceremony in Slovakia, Mr. Pickens told
3 Mr. Kilde that he and Dr. Michaels were not legally married. His testimony is
4 contradicted by his statement to the Division of Unemployment giving Dr.
5 Michaels the status of Mr. Pickens' wife. *See Exhibit "156"* (Mr. Kilde's Request
6 to Appeal the Denial of Unemployment Benefits wherein he referred to Dr.
7 Michaels as Mr. Pickens' wife).

8 **THE COURT FURTHER FINDS** that the testimony of Shannon Evans,
9 Esq., who represented both parties for estate planning during the relationship, was
10 credible when she testified that Mr. Pickens informed her that he and Dr. Michaels
11 were not legally married, even though they held themselves out to be a married
12 couple.

13 **THE COURT FURTHER FINDS** witness Evans, ESQ. was initially hired
14 by Mr. Pickens to prepare estate planning documents on his behalf. The estate
15 planning documents, executed in 2012, confirmed that Mr. Pickens was unmarried.
16 Mr. Pickens executed his estate planning documents without any fraud, duress, or
17 coercion and did so freely, voluntarily and with full knowledge and understanding
18 of the contents of the documents and their legal significance.

19 **THE COURT FURTHER FINDS** that witness Evans, ESQ., represented
20 only Dr. Michaels on September 13th, 2016 and thereafter. Additionally, Mr.
21 Pickens signed a waiver of conflict to that effect.

22 **THE COURT FURTHER FINDS** that Mr. Pickens' testimony that he
23 believed he was married to Dr. Michaels is not credible as his actions in 2016 do
24 not support his statements in court.

25 **THE COURT FURTHER FINDS** that Mr. Pickens had been married and
26 divorced prior to engaging in his relationship with Dr. Michaels. His current
27 conduct at the close of this relationship in dividing property without benefit of a
28

1 divorce complaint or decree of divorce, together with signed documents under oath
2 the he was a single, unmarried man during the relationship, belies his belief that he
3 thought he was married. Filing the Second Amended Complaint, which excluded
4 the claim for divorce, along with testimony and evidence presented makes it moot
5 for this court to consider the requested relief and serves to solidify the court's
6 finding that Mr. Pickens did not believe he was actually married to Dr. Michaels
7 through intent or otherwise. Mr. Pickens even testified that he and Dr. Michaels
8 were "basically" married. Mr. Pickens initially filed for divorce and maintained
9 that position in his First Amended Complaint. He dropped the claim for Divorce in
10 his Second Amended Complaint.

11 **THE COURT FURTHER FINDS** that Mr. Pickens' contradictory
12 positions on whether or not he was married leads the Court to question his candor
13 with the court in light of his conduct, his pleadings and his testimony.
14

15 **DOCTOR/PATIENT FIDUCIARY DUTY FINDINGS**

16 **THE COURT FURTHER FINDS** that Dr. Michaels did testify she was
17 Mr. Pickens' primary care physician from 2000 to 2017. She also testified that he
18 refused to acquire another treating physician, so she was between a rock and a hard
19 place in her duty to do no harm.

20 **THE COURT FURTHER FINDS** that after the Doctor-Patient relationship
21 began, the parties engaged in a romantic relationship primarily initiated by Mr.
22 Pickens. Dr. Michaels testified this began in the summer of 2001, and that she
23 continued being Mr. Pickens' physician after the romantic relationship
24 commenced.

25 **THE COURT FURTHER FINDS** that it takes judicial notice of the
26 following law pursuant to NRS 47.130:

- 27 1. NAC 630.230 prohibits physicians from failing to adequately supervise
28

1 APRN's in their employ.

2 2. NRS 630.301 makes it grounds for discipline for a physician to engage in
3 sexual relations with a patient.

4 NRS 630.301 makes it a ground for discipline for a physician to exploit a
5 relationship with a patient for financial or other personal gain.

6 **THE COURT HEREBY NOTES** that is not a criminal or disciplinary
7 hearing.

8 **THE COURT FURTHER FINDS** that as a result of the Doctor-Patient
9 relationship, Dr. Michaels could have been held a fiduciary duty to Mr. Pickens as
10 long as the doctor/patient relationship existed under certain circumstances.
11 Testimony revealed that Dr. Michaels advised Mr. Pickens that she would no
12 longer be his primary care physician once an intimate relationship had developed.

13 **THE COURT FURTHER FINDS** that NRS 630.031 provides it is grounds
14 for discipline of physicians if they engage in a sexual relationship with a patient or
15 if they exploit a patient for their own financial gain. According to the parties, their
16 intimate (sexual) relationship ended in 2004, however, they remained a couple and
17 partners for an additional 14 years until 2016. The Court is not aware of any
18 potential disciplinary proceeding initiated by Mr. Pickens against Dr. Michaels for
19 violation of any statute or administrative code involving their doctor/patient
20 relationship.

21 **THE COURT FURTHER FINDS** that the crux of the relationship between
22 Mr. Pickens and Dr. Michaels was their partnership and business pursuits, and not
23 on the need of this patient for this doctor.

24 **THE COURT FURTHER FINDS** that Mr. Pickens transferred the
25 responsibility of his medical coverage to the nurse practitioner working in Dr.
26 Michaels' practice as his medical provider. Other than Dr. Michaels prescribing
27 Mr. Pickens the occasional prescription and seeing him for cross-coverage when
28

1 the nurse was unavoidably unavailable, Roberto Carrillo, A.P.R.N., F.N.P., became
2 Mr. Pickens primary care provider who was responsible for his care and
3 prescriptions beginning in 2008. Mr. Carrillo is able to independently see and treat
4 patients, and prescribe for them, under his own license.

5 **THE COURT FURTHER FINDS** that Dr. Michaels began prescribing
6 medication to Mr. Pickens beginning in 2001, including Xanax, Ambien,
7 Oxycodone and Tramadol, and **Exhibit "4"**, the Nevada Prescription Monitoring
8 Program log for Mr. Pickens dated 2015-2017 proves Dr. Michaels or Mr. Carrillo,
9 APRN, (Mr. Carrillo's primary care provider) continued to prescribe Mr. Pickens
10 medication until 2017. Dr. Michaels later clarified that after 2008 she was only
11 involved if cross coverage was necessary.

12 **THE COURT FURTHER FINDS** that Mr. Pickens was treated for gout,
13 anxiety, cholesterol, and high blood pressure at various points during the
14 relationship.

15 **THE COURT FURTHER FINDS** that pursuant to Nevada law, Dr.
16 Michaels is and was required to supervise her Nurse Practitioner, Mr. Carrillo,
17 APRN. Dr. Michaels' testimony confirmed she did, in fact adequately supervise
18 Roberto Carrillo, a Registered Nurse Practitioner working within her medical
19 practice.

20 **THE COURT FURTHER FINDS** that Mr. Pickens was also seeing his
21 cardiologist care center, a rheumatologist, an orthopedic doctor, two GI doctors
22 and an Ear, Nose and Throat doctor during the course of their relationship.

23 **THE COURT FURTHER FINDS** that in 2016, the year of the separation,
24 save and except for a single refill in May 2016 by Dr. Michaels, (which was filled
25 after speaking with Mr. Carrillo), all prescriptions and visits by Mr. Pickens were
26 handled by Mr. Carrillo.

27 **THE COURT FURTHER FINDS** that it was Mr. Pickens who had to
28

1 prove by a preponderance of the evidence that Dr. Michaels “violated her fiduciary
2 responsibilities” to him. He needed to show that the doctor held a superior
3 authoritative position in the relationship and that, as a result of his illness, Mr.
4 Pickens was vulnerable. He further was required to show that Dr. Michaels
5 exploited that vulnerability.

6 **THE COURT FURTHER FINDS** that Mr. Pickens never made a claim
7 that he was emotionally unstable due to his illness.

8 **THE COURT FURTHER FINDS** that the fact Dr. Michaels referred Mr.
9 Pickens to a specialist in September of 2017 is of no consequence as there was no
10 known romantic relationship, transactions, partnership or pending lawsuits filed to
11 alert Dr. Michaels of an existing duty after the 2016 transfers.

12 **THE COURT NOTES** that there was no professional expert witness
13 presented to show that Mr. Pickens suffered from an illness, treated by Dr.
14 Michaels that rendered him unable to tend to his own business without the aid or
15 assistance of Dr. Michaels.

16 **THE COURT FURTHER FINDS** that Mr. Pickens’ assertion that he
17 lacked capacity fails as he presented no evidence that his emotional state was
18 fragile because of Dr. Michaels’ actions, without whom he could not manage his
19 affairs. The facts show that Mr. Pickens was capable of spending extended periods
20 of time away from Dr. Michaels without incident. He also managed a construction
21 management business where he preformed oversight on large construction projects.

22 **THE COURT FURTHER FINDS** that Mr. Pickens offered to transfer the
23 real properties to Dr. Michaels and the “Assignment” to Dr. Michaels’ Trust while
24 he was in Florida. He then traveled to Nevada, and several days later, he signed
25 off on the transfers he initiated. Dr. Michaels did not have access or opportunity to
26 abuse her position as a doctor to influence his decision.

27 **THE COURT FURTHER FINDS** that Dr. Michaels had no duty owed to
28

1 Mr. Pickens, neither doctor/patient nor spousal, when considering his request to set
2 aside the property transfers and the "Assignment" on September 13, 2016.

3
4 **PARTNERSHIP STATUS**

5 **THE COURT FURTHER FINDS** that credible evidence was presented
6 demonstrating that the parties did behave as partners with regard to some
7 properties and investments.

8 **THE COURT FURTHER FINDS** that the conduct of the parties regarding
9 their financial affairs provides evidence that the parties intended to pool their
10 assets, financial support and management skills when they saw fit to do so. (Living
11 expenses, residential needs, business with regard to Patience One, LLC and for a
12 limited time Blue Point Development and Consulting, Corp.)

13 **THE COURT FURTHER FINDS** the parties had one joint bank account
14 (*see Exhibits "72", "76", "78", "79" and "80"*), while maintaining separate
15 accounts in their own names. The joint account was held first at Bank of America
16 and was moved to Wells Fargo. The stated purpose of the account was to pay
17 household bills, mortgages and business expenses. Mr. Pickens testified he asked
18 for loans from Dr. Michaels. He did not testify that he had equal, community
19 property rights to all her assets.

20 **THE COURT FURTHER FINDS** that Mr. Pickens deposited his income
21 from his business, and the income paid to him by Dr. Michaels' business, into the
22 parties' joint account at Wells Fargo, and that Dr. Michaels deposited her income
23 from her medical practice into the same joint checking account. Dr. Michaels also
24 wrote additional checks to cover her half of the expenses pursuant to any
25 unsupported request from Mr. Pickens.

26 **THE COURT FURTHER FINDS** that during the course of the parties'
27 relationship, specifically in 2014, when Mr. Pickens' company received a
28

1 \$1,000,000.00 bonus on a project, that Mr. Pickens deposited over \$200,000.00 of
2 said bonus into the parties' joint bank account, and further testified that those funds
3 were used to pay for extensive renovations and improvements on the Queen
4 Charlotte home.

5 **THE COURT FURTHER FINDS** that during the course of the parties'
6 relationship, Mr. Pickens paid off, from his earnings or from the funds in the
7 parties' joint account, the mortgage on the Lowe residence. The bank statements
8 and Mr. Pickens' testimony support this finding, unfortunately there was no
9 forensic accounting presented to the court to verify the effect of the mortgage
10 payoff or the various deposits made by the parties or on the respective parties'
11 interests.

12 **THE COURT FURTHER NOTES** that the parties did testify that while
13 they paid their joint household bills and mortgages from the joint account, and that
14 they both placed funds into the joint account from their earnings, there was no
15 accounting, forensic or otherwise to show that one party or another put more than
16 their fair share into the joint account to cover those expenses. As the parties did
17 not extrapolate on the terms under which they closed the joint account in the
18 summer of 2016, the court can only surmise that the closure terms were acceptable
19 to both. Without further information it can only be assumed that any funds placed
20 in the joint account was a gift, one to the other, and to cover their necessary living
21 expenses.

22 **THE COURT FURTHER FINDS** the parties shared at least one credit card
23 account (*see Exhibits "82" - "90"*), while the parties had other lines of credit in
24 their own names. Evidence at trial revealed the continued use by Dr. Michaels of
25 Mr. Pickens' credit card to purchase supplies for her medical practice even after
26 the September 13, 2016 "transactions", discussed below. Once again, there was no
27 accounting, forensic or otherwise, as to the charges and payments made on the
28

1 credit card.

3 REAL PROPERTY

4 THE COURT FURTHER FINDS the parties acquired two residential real
5 properties together. They acquired the residential property where they lived
6 together located at 9517 Queen Charlotte Drive, Las Vegas, Nevada 89145, in
7 2004. The title on the Deed indicates “Dr. Danka Michaels, a married woman and
8 Thomas Pickens, a married man...” (See Exhibit “7”). The mortgage was in both
9 parties’ names. Dr. Michaels sold her separate property residence and placed the
10 proceeds down on the purchase. The parties also purchased an investment property
11 located at 7608 Lowe Avenue, Las Vegas, Nevada 89131 (see Exhibit “6”), as
12 Husband and Wife, and again, the mortgage on the investment property was in
13 both parties’ names. Dr. Michaels placed \$29,000 down on the purchase. The
14 mortgage on the investment was paid in full before the parties separated.

15 THE COURT FURTHER FINDS that on or about September 13, 2016,
16 Mr. Pickens signed documents transferring his interest in the two residential real
17 properties owned jointly by the parties. The transfers involved two steps. First the
18 parties had to change the titles to the real properties from being held incorrectly as
19 husband and wife, to being held by two single unmarried persons, then a second
20 signing changing the properties from held as two single unmarried persons jointly,
21 to Dr. Michaels as a single unmarried woman.

23 INVESTMENT AND BUSINESS HOLDINGS

24 THE COURT FURTHER FINDS that Mr. Pickens and Dr. Michaels
25 founded Blue Point Development & Construction as an “S” Corp., in 2002.
26 Testimony showed that Dr. Michaels provided the seed money of \$30,000.00 to get
27 the business off the ground. Both parties held a 50% interest in the business.

1 **THE COURT FURTHER FINDS** that Mr. Pickens, as the resident agent
2 let the company fall into default with the Secretary of State and the entity was
3 revoked. Mr. Pickens then transferred all assets of the Blue Point Development &
4 Construction into a new business, Blue Point Development, Inc., and held the
5 business in his name alone.

6 **THE COURT FURTHER FINDS** the parties acquired the Patience One
7 real property and the “buffalo” building for investment purposes. They formed the
8 company Patience One, LLC and placed the investment property, the “buffalo”
9 building, as an asset of the LLC. Each party operated their respective businesses
10 out of this building. (Dr. Michaels’ medical practice and her health spa; Mr.
11 Pickens’ business Blue Point Development, Inc., both occupied their own
12 independent suites).

13 **THE COURT FURTHER FINDS** that the Patience One Building was
14 acquired in 2012. Dr. Michaels provided the 10% down payment for the property
15 and Mr. Pickens used his skill and professional contacts for the new building
16 tenant improvements. The parties each held a 50% membership in the LLC. The
17 parties acted as if this was a joint venture. Evidence of this fact is found in
18 Schedule K-1’s issued by Patience One, LLC, **Exhibits “47” – “51”**; Deed of
19 Trust for Patience One, LLC’s, 2014 loan, **Exhibit “153”**; and Dr. Michaels’ email
20 in which she tells the parties’ attorney, Andy Glendon, Esq., that she and her
21 husband (referring to Mr. Pickens) were partners in the Patience One, LLC deal
22 which held and managed the “buffalo” building.

23 **THE COURT FURTHER FINDS** that Dr. Michaels admitted during her
24 testimony that they both were guarantors on the original mortgage :buffalo”
25 building and on the subsequent 2014 refinance. (*see* **Exhibit “153”**).

26 **THE COURT FURTHER FINDS** that at all times relevant to the
27 September 13, 2016 transaction, the parties were equal members of the Nevada
28

1 Limited-Liability Company, Patience One, LLC.

2 **THE COURT FURTHER FINDS** that Mr. Pickens voluntarily executed an
3 Assignment and Assumption of Membership Interest in the LLC [the
4 “Assignment”], from his LV Blue Trust [Mr. Pickens’ estate planning trust] to the
5 Mich-Mich Trust [Dr. Michaels’ estate planning trust] regarding his 50% interest
6 in Patience One LLC. The “Assignment” read:

7 a. WHEREAS, Assignor owns a 50% interest in Patience One, LLC,
8 a Nevada Limited Liability Company (LLC), which was formed
9 pursuant to the Articles of Organization dated MY [sic] 9, 2012
10 (the “Articles”); and

11 b. WHEREAS, Assignor desires to assign for good and valuable
12 consideration, all if its right title, duties, obligations and interest in
13 and to the 50% interest in the LLC to Assignee.

14 **THE COURT FURTHER FINDS** that pursuant to the K-1’s of Patience
15 One, LLC, the parties owned their respective membership interests in Patience
16 One, LLC as individuals (*see Exhibits “47” – “50”*). It was not until after the
17 September 13, 2016 transaction that the K-1 of Patience One, LLC reflected the
18 Mich-Mich Trust was the owner of Dr. Michaels’ interest in Patience One, LLC
19 (*see Exhibit “51”*).

20 **THE COURT FURTHER FINDS** that the only going business wherein
21 both parties held interests at the time of the September 13, 2016 transfer was the
22 Patience One, LLC. There was no evidence presented that Mr. Pickens had an
23 interest established in Dr. Michaels medical practice or spa, save and except for his
24 salary and his IRA account paid out of her business. There was no evidence
25 presented that Dr. Michaels had any interest in Blue Point Development, Inc.

26 **THE COURT FURTHER FINDS** that the transfer of Mr. Pickens’ interest
27 in Patience One, LLC by the “Assignment” prepared by Shannon Evans
28

1 transferring Mr. Pickens' interest in Patience One, LLC, reflects Mr. Pickens'
2 Trust, LV Blue Trust, as the transferor. Testimony by Mr. Pickens indicated Mr.
3 Pickens Trust did not own his personal 50% interest in Patience One LLC when he
4 signed the transfer document. No evidence was presented that Mr. Pickens' Trust
5 ever owned his individual interest in Patience One, LLC, however, Dr. Michaels
6 relied on the representation by Mr. Pickens through his signature on the above
7 noted "Assignment," that he HAD placed his 50% interest in his trust. There was
8 no testimony or evidence provided that Mr. Pickens corrected the document to
9 reflect the actual owner, himself as an individual, at the time of the transfer or
10 since.

11 **THE COURT FURTHER FINDS** that to date, there has been no recording
12 of a satisfaction of the original Patience One, LLC Mortgage on the Clark County
13 Recorder's website. (See request for judicial notice filed 4/23/21). Testimony at
14 trial revealed that Dr. Michaels and the Mich-Mich Trust, in reliance on the
15 "Assignment," re-financed the "buffalo" building held by Patience One, LLC and
16 made improvements to the property after the interest was transferred to her. The
17 guarantors on the "buffalo" building are now Dr. Michaels, personally, and the
18 Mich-Mich trust, which holds the LLC.

19 **THE COURT FURTHER FINDS** that even if the parties were married or
20 that Mr. Pickens was a putative spouse, NRS 123.080 permits spouses to alter their
21 legal relations as to property.

22 **THE COURT FURTHER FINDS** that no interest in any other company or
23 joint asset was transferred by Dr. Michaels to Mr. Pickens in exchange for the
24 September 13, 2016 transfer of assets received by Dr. Michaels.

25 **THE COURT FURTHER FINDS** that Mr. Pickens received no tangible
26 consideration from Dr. Michaels for the above transfers of real property and his
27 interest in Patience One, LLC.

28

1 **THE COURT FURTHER FINDS** that subsequent to the Assignment, the
2 new managers of Patience One, LLC refinanced the loan. Under the new
3 ownership, Patience One, LLC refinanced the “buffalo” property with Danka and
4 the Mich-Mich Trust serving as personal guarantors. Because the Deed of Trust is
5 in the name of Patience One, LLC, it was not necessary for a new Deed of Trust to
6 be recorded in order to remove Mr. Pickens from the obligation.

7 **THE COURT FURTHER FINDS** that Mr. Pickens received valuable
8 consideration when he was indemnified from a great deal of debt as to the transfer
9 of his interest in Patience One, LLC to Dr. Michaels. By executing the
10 Assignment, divesting himself completely from Patience One, LLC, which resulted
11 in a refinance of the loan on the “buffalo” building to which neither Tom nor his
12 Trust were now parties, there is no more legal basis under which Mr. Pickens could
13 be held personally liable for the responsibility for the Patience One, LLC debts.

14 **THE COURT FURTHER FINDS** that Mr. Pickens was also able to
15 assuage his self-imposed guilt for engaging in an affair with a woman,
16 impregnating her, and revealing a significant secret about Dr. Michaels’ childhood
17 to his new significant other. Consideration is a legal term of art. Mr. Pickens had
18 inquired whether the transactions could be reversed in a couple years if they were
19 to reconcile. The record does not reflect that the parties shared a meeting of the
20 minds on this point. Additionally, there was no testimony that an attempt for
21 reconciliation had been initiated by either party.

22 **THE COURT FURTHER FINDS** that once the transfer documents were
23 executed, the parties performed their agreements; e.g., Mr. Pickens vacated the
24 Queen Charlotte property, he transferred the leases and control of rent collection
25 for Patience One, LLC to Dr. Michaels. Additionally, Mr. Pickens paid rent each
26 month for the space his company, Blue Point Development, occupied in the
27 “buffalo” building. When he ceased making his rental payment, Dr. Michaels had
28

1 him evicted. The Court does not know the legal procedure to evict an owner from
2 his own property.

3 **THE COURT FURTHER FINDS** that Mr. Pickens also exhausted his IRA
4 which he acquired as an employee for Dr. Michaels and purchased his current
5 residence as a single unmarried man five (5) months prior to filing the initial
6 underlying complaint.

7 **THE COURT FURTHER FINDS** that rescission to set aside the transfers
8 of real property and to set aside the "Assignment" is an equitable remedy. Laches
9 is a defense to a set aside. The delay between the transfers of real property and the
10 "Assignment" spanned from September 13, 2016 to October 24, 2017. It is
11 undisputed that more than 1 year passed before Mr. Pickens filed his complaint.
12 His first request for equitable relief was filed March 22, 2018. During that time
13 Dr. Michaels entered into transactions which she would not have entertained had
14 Mr. Pickens filed his complaint prior to entering into the transfers and the
15 Assignment on September 13, 2016.

16 **THE COURT FURTHER FINDS** that Dr. Michaels engaged in
17 transactions to re-finance, pay down loans and mortgages, improve property,
18 and/or sell property in reliance on the September 13, 2016 transfers from Mr.
19 Pickens to her and the Mich-Mich Trust.

20 21 MISCELLANEOUS ASSETS

22 **THE COURT FURTHER FINDS** that Blue Point Development, Inc. was
23 formed during the relationship of the parties, and that Dr. Michaels testified during
24 the course of trial that she is asserting an ownership claim to Mr. Pickens'
25 company, Blue Point Development, in a pending civil lawsuit between the parties.

26 **THE COURT FURTHER FINDS** that both parties acquired retirement
27 accounts during their relationship.
28

THE COURT FURTHER FINDS both parties acquired an interest in, and deposited earnings into, various bank accounts during their relationship.

THE COURT FURTHER FINDS that Mr. Pickens purchased the Porsche Cayenne vehicle from his 2014 bonus, which Dr. Michaels, to this day, continues to drive. Dr. Michaels testified that she was surprised by the car and told Mr. Pickens at the time that she did not need the car. Mr. Pickens testified the car was a Christmas/Birthday present for Dr. Michaels.

THE COURT FURTHER FINDS that Mr. Pickens received his company, Bluepoint Development, Inc., free from transfer of any value to Dr. Michaels. There was no evidence presented in this case that Dr. Michaels had any documented ownership interest in the newly formed company. The company was resurrected from Blue Point Development and Management Corporation (where Dr. Michaels and Mr. Pickens were documented a co-owners which had fallen into default and its Articles of Incorporation revoked by the Secretary of State of Nevada. The assets, previously acquired from the Blue Point Development and Management Corporation, were transferred into Blue Point Development, Inc., at its formation in 2008.

II

CONCLUSIONS OF LAW

Based upon the forgoing findings of fact, the Court makes the following conclusions of law:

1. As a matter of comity, Nevada's recognition or non-recognition of a purported foreign marriage depends on its legality in the foreign country. *Gonzales-Alpizar v. Griffith*, 130 Nev. 10, 317 P.3d 820 (2014) quoting *Mianecki v. Second Judicial Dist. Court*, 99 Nev. 93, 98, 658 P.2d 422, 424-25 (1983). Since the parties did not follow the

1 procedures in Slovakia, no legal marriage can be found in Nevada
2 courts.

- 3 2. The Court found no credible intent by either Mr. Pickens or Dr.
4 Michaels to legally marry, taking the evidence and testimony as a
5 whole, it therefore follows that there was no marriage. See e.g., *In re*
6 *JKNA*, 454 P.3d 642, 650 Mont. 2019), *Callen v. Callen* 620 S.E. 2nd
7 59 (SC 2005), *Renshaw v. Heckler*, 787 F.2nd 50 (2ns Cir. 1986);
8 *McNee v McNee*, 49 Nev. 90, 237 P. 534 (1925); NRS 010.
- 9 3. Mr. Pickens did not have a credible, good faith belief that he was
10 legally married to Dr. Michaels and there was no prior legal
11 impediment; as such, Mr. Pickens is not a putative spouse under
12 *Williams v. Williams*, 120 Nev. 559, 97 P.3d 1124 (2004).
- 13 4. Pursuant to Nevada law, spouses owe a fiduciary duty to one another.
14 See *Williams v. Waldman*, 108 Nev. 466 (1992). Since the parties
15 were not legally married, this duty does not apply.
- 16 5. Mr. Pickens must prove the existence of a physician-patient
17 relationship before a fiduciary duty can be established. See *Jennings*
18 *v. Badget*, 2010 OK 7, 230 P.3d 861, 865-866 (Okla. 2010); *Mead v.*
19 *Legacy Health System*, 352 Ore. 267, 283 P.3d 904, 909-910 (Ore.
20 2010); *Seeber v. Ebeling*, 36 Kan. App. 2d 501, 141 P.3d 1180 (Kan.
21 Ct App. 2006); *St. John v. Pope*, 901 S.W. 2d 420, 423 (Tex. 2005);
22 *Gross v. Burt*, 149 S.W. 3d 213 (Tex. Ct. App 2004); *Millard v.*
23 *Corrado*, 14 S.W.3D 42, (Mo. Ct. App. 1999); *Roberts v. Hunter*, 310
24 S.C. 364, 426 S.E.2D 797 (S.C. 1993). Mr. Pickens failed to establish
25 that he and Dr. Michaels were in a physician-patient relationship at
26 the time of the execution of the transfer of documents. As such, Dr.
27 Michaels did not owe Mr. Pickens any fiduciary duty.

6. Pursuant to Nevada law, a physician is required to supervise any APRN in their employ. See NAC 630.230. There is no finding by the court that Dr. Michaels violated her duty of supervision.
7. Pursuant to Nevada law, a physician is precluding from taking advantage of a patient for their own financial gain. See NRS 630.301. The Court did not find that Mr. Pickens was impaired to the extent that he could not manage his financial circumstances on an equal footing with Dr. Michaels. Additionally, the parties both prospered during their partnership between 2002 and 2016 when their relationship fell apart.
8. Even if Mr. Pickens was able to establish a physician-patient relationship and the corresponding fiduciary duties applied, he must still prove that such duties were breached. *Hoopes v. Hammargren*, 102 Nev. 425 (1986). Further, Mr. Pickens must have also proved that he was vulnerable and unstable due to his medical problem and, that due to his reliance on Dr. Michaels' medical skills being retracted he was taken advantage of by Dr. Michaels. Vulnerability is an essential and necessary element of a confidential relationship. *Richelle L. v. Roman Catholic Archbishop*, 106 Cal. App. 4th 257, 270-72, 130 Cal. Rptr. 2d 601 (Cal. Ct. App. 2003). Mr. Pickens failed to prove any such relationship, vulnerability, or breach.
9. Pursuant to Nevada law, parties to a joint venture owe a fiduciary duty to one another. (See *Leavitt v. Leisure Sports Inc.*, 103 Nev. 81 (1987). There was no evidence presented that either party kept the other party in the dark regarding any aspect of the transfer of property and assets, to and including the value of same. [With the exception of Mr. Pickens' lack of candor when signing the "Assignment"

1 document without correcting the document to reflect the actual holder
2 of the 50% membership was himself as an individual and not his
3 Trust]. Testimony showed that Mr. Pickens was in charge of the
4 payments made from the joint account, including the payments on the
5 American Express account. He was also informed as to the tax basis
6 for the preparation of the tax documents.

- 7 10. Nevada law recognizes the rights of putative spouses to a division of
8 property consistent with community property law when one or both of
9 the parties reasonably believed that the marriage was valid. (See
10 *Williams v. Williams*, 120 Nev. 559 (2004). This point is moot as the
11 court does not find that either party reasonably believed they were
12 married, a putative spouse relationship test cannot be met in this case.
- 13 11. Nevada law recognizes the rights of parties who voluntarily agree to
14 pool their assets and become implied partners to an equal division of
15 the property acquired during their relationship. (See *Western States*
16 *Construction v. Michoff*, 108 Nev. 931 (1987). There was no quasi-
17 marital relationship found by the court. Further, the transfers were for
18 satisfactory value to both parties. Parties, married or not may engage
19 in contracts with each other.
- 20 12. Parties are free to contract, and the courts will enforce their contracts
21 if they are not unconscionable, illegal, or in violation of public policy.
22 *Rivero v. Rivero*, 125 Nev. 410, 216 P.3d 213 (2009). The court finds,
23 under the totality of the circumstances, that the parties engaged in
24 lawful, valid and enforceable contracts on September 13, 2016.
- 25 13. A spouse-to-spouse conveyance of title to real property creates a
26 presumption of gift that can only be overcome by clear and
27 convincing evidence. *Kerly v. Kerly*, 112 Nev. 36 (1996); *Graham v.*
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1 *Graham*, 104 Nev. 473 (1988); *Todkill v. Todkill*, 88 Nev. 231 (1972);
2 *Peardon v. Peardon*, 65 Nev. 717 (1948). As Mr. Pickens conveyed
3 title to the properties to Dr. Michaels for the purpose of making her
4 less unhappy about the discovery of his conduct in revealing her most
5 personal tragedy to a new significant other, the transfers could be
6 considered as gifts. How much more so when the parties were not
7 married.

8 14. Property acquired by gift during marriage is separate property
9 pursuant to NRS 123.130, and therefore not community property
10 pursuant to 123.220.

11 15. Nevada law recognizes that consideration is a requirement of any
12 valid contract. (*See Manning v. Coryell*, 130 Nev 1213 (2014))
13 Consideration can come in tangible and non-tangible forms. Mr.
14 Pickens testimony that he wanted to be able start fresh in his new life
15 was important to him, as well as his need to assuage his guilty feelings
16 due to his conduct.

17 16. Nevada law recognizes the equitable authority of this Court to correct
18 unjust enrichment. (*See Certified Fire Protection v. Precision*
19 *Construction*, 128 Nev 371(2012)). Testimony and evidence satisfied
20 the court that there was no unjust enrichment by Dr. Michaels. In
21 light of the fact that she supported the couple, without question, off
22 and on throughout the relationship, and that Mr. Pickens ended the
23 relationship on his own terms, the court finds the resolution of their
24 partnership equitable. This finding is not intended to reflect a division
25 based on “dollar-for-dollar,” as there was no forensic accountant hired
26 to provide such evidence to the court.

- 1 17. NRS 163.417(2) states that Trust property is not subject to the
2 personal obligations of the trustee, even if the trustee is insolvent or
3 bankrupt. Patience One, LLC, the entity which owned the “buffalo”
4 building, is held by the Mich-Mich Trust where Mr. Pickens directed
5 his 50% membership to be assigned.
- 6 18. Mr. Pickens has not requested rescission as a remedy to cancel the
7 written contracts of transfer of real property and business interest
8 “Assignment.”
- 9 19. Mr. Pickens did not name the Mich-Mich Trust as a party to this
10 lawsuit; there was no claim against the Mich-Mich Trust, therefore
11 there is no legal basis for Tom to set aside the Assignment in this
12 matter pursuant to rescission.
- 13 20. According to Mr. Pickens the transfer of his 50% interest in Patience
14 One LLC was not valid or enforceable due to the fact that the
15 purported transfer was from his LV Blue Trust and not Mr. Pickens,
16 the individual. The Court disagrees and finds that the document
17 misstated the actual owner, a fact which could not have been evident
18 to Dr. Michaels at the time of the transfer. Mr. Pickens did not correct
19 the over-sight and led Dr. Michaels to believe he had placed his 50%
20 ownership into his personal trust sometime prior to transferring it to
21 her Mich-Mich Trust. Dr. Michaels then re-financed the building
22 under her authority as the 100% Member of the LLC.
- 23 21. Unmarried cohabitating couples who purchase property titled in both
24 parties’ names, with or without the right of survivorship, own the
25 property in proportion to the amounts they each contributed to the
26 purchase price. *Sack v. Tomlin*, 110 Nev. 2014, 871 P.2d 298 (1994);
27 *Langevin v. Langevin*, 111 Nev. 1481, 907 P.2d 981 (1995). The
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1 testimony of both Mr. Pickens and Dr. Michaels established that Dr.
2 Michaels paid the down payments for the Lowe, Queen Charlotte and
3 Patience One properties. There was conflicting testimony as to the
4 mortgage payments. Mr. Pickens testified that payments towards the
5 mortgage of the Lowe and Queen Charlotte properties were made by
6 him from the joint account ("his" account according to testimony at
7 trial). Dr. Michaels testified that Mr. Pickens would take care of
8 paying the bills from the joint account and had her write a check for
9 her half of the bills to the joint checking account. Mr. Pickens did not
10 present a forensic analysis or tracing to establish the source of funds
11 in that account.

12 22. Mr. Pickens failed to prove any credible theory of Dr. Michaels
13 having breached any fiduciary duty owed from her to him. As a
14 matter of law, the transfers of the Lowe Avenue and Queen Charlotte
15 properties are not void based on a breach of fiduciary duty.

16 23. As a matter of law, all transfers which occurred on September 13,
17 2016, which included the transfer of the Lowe Avenue residence, the
18 Queen Charlotte residence, and Mr. Pickens' interest in Patience One,
19 LLC were not found by the court to be void for want of consideration
20 for the transaction.

21 24. As a matter of law, the Court found evidence of good and sufficient
22 consideration supporting the conclusion that the assets were legally
23 transferred for good cause and now rest with the individual wherein
24 the real property titles and the Assignment are currently being held.

25 26 **III. ORDERS AND JUDGMENT**

27 Based upon the forgoing Findings of Fact and Conclusions of law, it is
28

1 hereby:

2 **ORDERED, ADJUDGED, AND DECREED** that based on the fact that the
3 religious ceremony did not constitute a valid, legal marriage under the laws of any
4 State, declaratory relief is granted to Dr. Michaels that the parties were never
5 legally married.

6 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that based
7 on the Mr. Pickens knowledge that there was no valid marriage, he is not a putative
8 spouse. As such, he is not entitled to any relief as a putative spouse.

9 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** the two
10 real estate properties now held by Dr. Michaels were transferred to her pursuant to
11 valid transfers by Mr. Pickens for good and sufficient consideration and will not be
12 set aside.

13 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Dr.
14 Michaels will maintain 100% ownership of Patience One LLC pursuant to the
15 transfer from Mr. Pickens for good and sufficient consideration. The Assignment
16 of Patience One, LLC was a valid transfer and shall not be set aside. To the extent
17 that the paperwork transferring Mr. Pickens' interest to Dr. Michaels erroneously
18 listed his trust and not himself personally as the transferor, said error was clerical
19 in nature and shall be corrected. Mr. Pickens shall execute the appropriate
20 documentation to correct any such error upon presentment.

21 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** the parties
22 will keep any personal property now in their possession as a gift from one to the
23 other based on testimony gathered during trial, the time which elapsed between the
24 parties' closure of their joint accounts and partnership, and the filing of the action
25 herein.


26 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that all
27 other joint assets and obligations of the parties have already been divided and each
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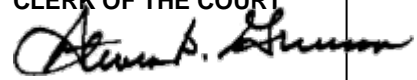
1 shall retain those assets and obligations in his or her respective names, titles,
2 possession and control.

3 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Dr.
4 Michaels is determined to be the prevailing party in this matter. Dr. Michaels is
5 awarded attorney fees and costs subject to application for the relief and
6 information provided therein. Counsel for Dr. Michaels shall submit the
7 appropriate memorandum of fees and costs setting forth their analysis under
8 *Brunzell* and shall also submit their redacted billing statements in accordance with
9 *Love* within twenty days following the Notice of Entry of Order of the Findings of
10 Fact, Conclusions of Law, and Judgment.

11 **IT IS FURTHER ORDERED** that Defendant shall file Notice of Entry of
12 this Order upon receipt.

13
14 **SO ORDERED** this 3rd day of August, 2021.

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18 DISTRICT COURT JUDGE
19 *SR. Judge*
20 *for Department J.*
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MEMO

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

THOMAS A. PICKENS, individually, and as
trustee of the LV Blue Trust

Plaintiff,

vs.

DANKA K. MICHAELS, individually, and
as trustee of the Mich-Mich Trust,

Defendant.

CASE NO. D-17-560737-D

DEPT. NO. J

**DEFENDANT DANKA K.
MICHAELS**
**MEMORANDUM OF FEES
AND COSTS**

COMES NOW, Defendant Danka K. Michaels by and through her counsel of record Shawn M. Goldstein, Esq. of GOLDSTEIN LAW LTD. and Jennifer V. Abrams, Esq. of The Abrams & Mayo Law Firm and hereby submits her Memorandum of Fees and Costs and specifically requests that the Court enter the following orders pursuant to the Findings of Fact, Conclusions of Law and Judgment filed on August 3, 2021:

1. Confirming the amount awarded to Defendant as and for her attorney's fees and costs in the amount of **\$268,908.19** plus interest.

2. Reducing said amount to judgment in favor of Defendant and against Plaintiff;

3. For such other and further relief as this Court deems just and necessary.

This Memorandum is based upon the papers and pleadings on file herein, the instant Memorandum of Points and Authorities, the Declaration of counsel for Defendant attached as Exhibits "A" and "B", and the other exhibits in support hereof.

Dated: August 25, 2021.

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