

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

ROCHELLE MEZZANO,

Appellant,

vs.

JOHN TOWNLEY,

Respondent.

No. 87863

Electronically Filed
Feb 06 2024 02:49 PM

Elizabeth A. Brown
Clerk of Supreme Court
DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

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

WARNING

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

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

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

1. Judicial District Second Department 13
County Washoe Judge Bridget Robb
District Ct. Case No. DV19-01564

2. Attorney filing this docketing statement:

Attorney F. Peter James Telephone 702-256-0087
Firm Law Offices of F. Peter James, Esq.
Address 3821 West Charleston Blvd., Suite 250
Las Vegas, Nevada 89102

Client(s) Appellant, Rochelle Mezzano

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

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

Attorney Alexander Morey Telephone 775-322-3223
Firm Silverman Kattelman Springgate, Chtd
Address 500 Damonte Ranch Parkway, Suite 675
Reno, Nevada 89521

Client(s) Respondent, John Townley

Attorney _____ Telephone _____
Firm _____
Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

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

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input checked="" type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input checked="" type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>Appeal remand</u> |

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

- ☐ Child Custody
☐ Venue
☐ Termination of parental rights

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

Mezzano v. Townley, No. 81379

Mezzano v. District Court (Townley), No. 84235 / 84235-COA

Townley v. District Court (Mezzano), No. 84508

Mezzano v. District Court (Townley), No. 87521

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

Other than the district court matter at issue, none known.

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

Respondent filed for divorce. Respondent hired a process server to serve Appellant. Appellant was not served properly. Respondent obtained a default and default judgment / default decree of divorce. Appellant moved the district court to set aside the default and default judgment claiming improper services is no service, which is clear Nevada law. The district court denied the request to set aside.

The matter was appealed and reversed / remanded.

The district court erred again in dividing property and as to other issues. This appeal followed.

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

Whether the district court properly followed the directives of the prior remand.

Whether the district court properly adjudicated assets and debts.

Whether the district court properly interpreted the prenuptial agreement.

Whether the district court properly complied with the terms of the prenuptial agreement.

Whether the district court properly addressed discovery sanctions.

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

None known.

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

☐ N/A

☐ Yes

☒ No

If not, explain:

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

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

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

☐ A substantial issue of first impression

☐ An issue of public policy

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

☐ A ballot question

If so, explain:

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

Under NRAP matter is not presumptively retained by the Supreme Court as it is a family court case that was not a 432B proceeding.

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

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

N/A

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Nov. 28, 2023

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

17. Date written notice of entry of judgment or order was served Nov. 28, 2023

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

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

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed Dec. 28, 2023

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

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

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

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

(a)

- | | |
|--|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify) <u>NRS 2.090</u> | |
-

(b) Explain how each authority provides a basis for appeal from the judgment or order:
NRAP 3A(b)(1) as the matter on appeal is the decree of divorce, the original final judgment.
NRS 2.090 as the matter in dispute is a judgment from a district court decision involving the merits (and necessarily affecting the judgment).

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

(a) Parties:

Appellant, Rochelle Mezzano, who was the Defendant in the district court.

Respondent, John Townley, who was the Plaintiff in the district court.

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

N/A

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

Respondent: Divorce, prenuptial agreement, division of assets / debts, alimony.

Appellant: the same

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

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

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

VERIFICATION

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

Rochelle Mezzano
Name of appellant

F. Peter James
Name of counsel of record

Feb. 6, 2024
Date

/s/ F. Peter James
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

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

- ☐ By personally serving it upon him/her; or
- ☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Dated this _____ day of _____, _____

Signature

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Alexander Morey, Esq.
Counsel for Respondent

Code:

Gary R. Silverman (NSB# 409) Michael V. Kattelman (NSB#6703)
John P. Springgate (NSB# 1350) Alexander C. Morey (NSB#11216)
Kenton Karrasch (NSB#13515) Benjamin Albers (NSB#11895)
Silverman Kattelman Springgate, Chtd.
500 Damonte Ranch Parkway, Suite 675
Reno, Nevada 89521
Telephone: 775/322-3223
Facsimile: 775/322-3649
Attorney for John Townley

**IN THE FAMILY DIVISION
OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

JOHN TOWNLEY,

Plaintiff

Case No.

vs.

Dept.

ROCHELLE MEZZANO and
DOES I through XX,
to include Doe individuals,
corporations, limited liability companies,
partnerships, trusts, limited partnerships,
and such other individuals or entities
as may exist or be formed

Defendants.

**COMPLAINT FOR DIVORCE
(no children)**

John Townley, by and through counsel, avers as follows:

1. JURISDICTION OF THE COURT. Plaintiff is a resident of the State of Nevada. For a period of more than six weeks before commencement of this action Plaintiff has resided in the State of Nevada and now resides here. During the period of residency, Plaintiff had, and still has, the intent to make Nevada Plaintiff's home, residence, and domicile for an indefinite time.

2. DOE DEFENDANTS. The true names and capacities of the Doe Defendants are unknown to Plaintiff at this time. Plaintiff is informed and believes that each of the Doe Defendants is or has been the officer, director, partner, trustee, agent, servant, employee,

1 principal or alter ego of one or more of the other Defendants, or was a person, firm or
2 corporation which did, or participated in the acts or omissions hereinafter described; or
3 otherwise own, hold, or have possession of property and income of the community, and
4 at such time as their true names and capacities become known to Plaintiff, Plaintiff will
5 seek to amend the Complaint to insert the true names and capacities of the Doe
6 Defendants. The Doe Defendants are herewith served in all such capacities as well as
7 individually.

8 3. OTHER DEFENDANTS. All Defendants duly named are persons and entities
9 which continuously and systematically conduct business within the State of Nevada.
10 Plaintiff is informed and believes that those duly named entities and individuals hold,
11 maintain, or possess investment accounts, assets, and/or property belonging to or held in
12 the name of Plaintiff and/or Defendant, or their community estate, which property is at
13 issue in these dissolution of marriage proceedings. Said Defendants are joined to the
14 present lawsuit for the purposes of effecting a complete distribution of Plaintiff=s
15 separate and community property and interests, and for the enforcement of any financial
16 restraining orders obtained by either Plaintiff or Defendant during these proceedings. See
17 *Guerin v. Guerin*, 118 Nev. 127 (1998).

18 4. MARRIAGE. Plaintiff and Defendant married in the City of Reno, County
19 of Washoe, State of Nevada in the year 2000. Plaintiff recalls the ceremony being
20 conducted in the summer or fall of that year. Plaintiff recalls the parties obtained a
21 marriage license and participated in a ceremony with a person authorized to conduct
22 marriages and completed a marriage certificate which they intended to but never filed
23 after their honeymoon. Plaintiff and Defendant now are husband and wife.

24 5. CHILDREN. Plaintiff and Defendant have no minor children of their
25 relationship. To the best of Plaintiff's knowledge, Defendant is not pregnant.

26 6. COMMUNITY PROPERTY AND DEBTS. Community assets and liabilities
27 exist and should be awarded pursuant to law. If warranted by facts which show that
28 Defendant caused economic harm to the community estate or which show any other

1 compelling reason, (1) an unequal division of the community assets or liabilities and/or
2 reimbursement and restitution to the community, or (2) general, special, or punitive
3 damages should be made in Plaintiff's favor from Defendant's post-division property.

4 7. SEPARATE PROPERTY AND DEBTS. Separate assets and liabilities exist
5 and should be awarded pursuant to law. If warranted by facts which show that Defendant
6 caused economic harm to Plaintiff's separate estate or which show any other compelling
7 reason, (1) an unequal division of the community assets or liabilities and/or
8 reimbursement or restitution from Defendant's post-division property, or (2) general,
9 special, or punitive damages should be made in Plaintiff's favor from Defendant's post-
10 division property.

11 8. PENDING CASES. To the best of Plaintiff's knowledge, there are no
12 previous or pending cases in any court between the parties or the subject matter of this
13 dispute.

14 9. LITIGATION FEES AND COSTS. Plaintiff has retained the firm of
15 Silverman Kattelman Springgate, Chtd. to perform legal services in connection with this
16 divorce and has incurred and will incur attorney's fees and costs for those services,
17 including but not limited to this Complaint, interim motions for necessary immediate
18 relief, discovery, preparation for court appearances, and court appearances. Defendant
19 should be required to pay those fees and costs.

20 10. GROUNDS FOR DIVORCE. The parties are incompatible in marriage.

21 WHEREFORE, Plaintiff prays and demands judgment as follows:

22 1. That this marriage be dissolved and a decree of divorce granted to Plaintiff.

23 2. That community and separate property and debts be awarded pursuant to
24 law.

25 3. That Defendant be ordered to pay Plaintiff's litigation fees and costs.

26 4. For such other and further relief as this Court deems just and proper.

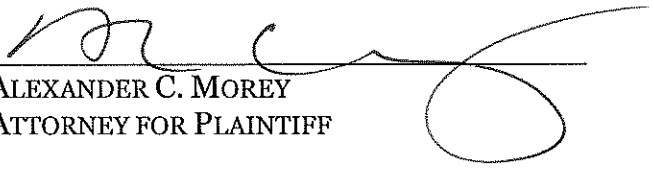
27 ///

1 **AFFIRMATION**

2 The undersigned affirms this Complaint for Divorce contains no social security
3 numbers.

4 Dated this 24th day of September 2019.

5 SILVERMAN KATTELMAN SPRINGGATE, CHTD.
6

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9 ALEXANDER C. MOREY
10 ATTORNEY FOR PLAINTIFF
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VERIFICATION

STATE OF NEVADA)

: ss

COUNTY OF WASHOE)

COMES NOW JOHN TOWNLEY, being first duly sworn under penalty of perjury and deposes and says:

1. I am the Plaintiff herein.

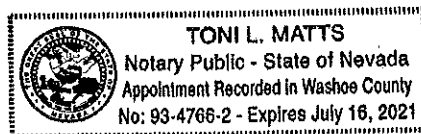
2. I make this verification of my own personal knowledge, information and belief.

3. I have read the foregoing Complaint for Divorce and know the contents thereof, and the same is true of my own knowledge, except those matters therein stated upon information and belief, and as to those matters I believe them to be true.

4. I do hereby swear under penalty of perjury that the assertions set forth in this Verification are true.

Subscribed and sworn to before me
By John Townley

this 24 day of Sept 2019,



Notary Public

Silverman, Kattelmann
Springgate, Chtd.
500 Damonte Ranch
Pkwy., #675
Reno, Nevada 89521
(775) 322-3223
Fax: (775) 322-3640

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IN THE FAMILY DIVISION
IN THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE

JOHN TOWNLEY,

Plaintiff/Petitioner,

vs.

ROCHELLE MEZZANO, et al,

Defendant/Respondent.

CASE NO. DV19-01564

DEPT. NO. 13

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT RE:
CHARACTER OF ACCOUNTS; MOTION FOR DISMISSAL OF CLAIMS;
MOTION FOR SUMMARY JUDGMENT

This matter came on for a regularly scheduled settlement conference on March 13, 2023. Mr. Townley ("Plaintiff") was present, represented by counsel, Alexander Morey, Esq. of Silverman Kattelman Springgate, Chtd. Ms. Mezzano ("Defendant") was present representing herself. Ms. Mezzano was served via electronic service on February 9, 2023 with the Order re: Settlement Conference entered that same day.

The Order re: Settlement Conference notes the Settlement Conference in this case is set for March 23, 2023 at 9:00 a.m. It further orders that each party must file a settlement conference statement with the Court. Order, 1:20 - 1:23.

Ms. Mezzano filed no settlement conference statement, as ordered. When asked why one was not filed she declined to answer stating she was denied ADA access to the Court.

1 The Court inquired regarding this claim. Ms. Mezzano would not elaborate. A review
2 of the docket of this case shows that no motion or other paper was filed seeking relief based
3 upon Ms. Mezzano's unspecified ADA claim.

4 Ms. Mezzano alluded to contact made with the Court on this issue. The Court
5 clarified that any such contact, if not filed in the case, was an improper ex parte
6 communication to which the Court could not respond or grant relief.

7 Ms. Mezzano then made an oral request for her ADA representative to be present.
8 This request was granted, however, the ADA representative was not present, despite Ms.
9 Mezzano having notice of the date and time of the Settlement Conference.

10 Although Ms. Mezzano was encouraged numerous times to go forward with the
11 Settlement Conference even outside the presence of the Court, she declined to do so.

12 Rather than waste the hearing time, the cost to the parties of appearing, and judicial
13 resources, the Court used the opportunity to rule on three outstanding motions: 1) Plaintiff's
14 Motion for Summary Judgment re: Character of Accounts ("MSJ #1") filed February 9, 2023;
15 2) Plaintiff's Motion for Dismissal of Claims ("Motion to Dismiss") filed February 10, 2023;
16 and 3) Motion for Summary Judgment ("MSJ #2") The Court specifically noted that oral
17 argument was not requested and would not be presented.

18 Each Motion is addressed in turn below.

19
20 **I. MOTION FOR SUMMARY JUDGMENT**

21 **RE: CHARACTER OF ACCOUNTS (MSJ #1)**

22
23 The Court, having reviewed Plaintiff's MSJ #1 submitted on February 24, 2023 and
24 no response or opposition have been filed by Defendant Rochelle Mezzano ("Defendant"),
25 now finds, concludes and orders as follows:

26 ///

27 ///

28 ///

1 **A. FINDINGS OF FACT:**

2 1. On September 10, 1999, the Parties executed a premarital agreement which
3 included, as Sections II(B)(8) the following rules concerning the character of accounts
4 owned by the Parties at the time of the marriage and accounts later acquired:

5 Rochelle shall have as her sole and separate property, without claim or interest of
6 John:

7 All funds in bank accounts, savings accounts, credit union accounts,
8 certificates of deposit, brokerage accounts, stocks, mutual funds, money
9 market accounts or other deposits or investments of any type or nature
10 existing in Rochelle's separate name whether before or after marriage and
11 all funds deposited after marriage into any account in Rochelle's separate
12 name.

13 John shall have as his sole and separate property, without claim or interest of
14 Rochelle:

15 All funds in bank accounts, savings accounts, credit union accounts,
16 certificates of deposit, brokerage accounts, stocks, mutual funds, money
17 market accounts or other deposits or investments of any type or nature
18 existing in John's separate name whether before or after marriage and all

19 Undisputed.

20 2. Each Party in his or her papers and pleadings in this action has asserted the
21 premarital agreement is valid. Both parties have relied on the premarital agreement in their
22 sworn financial declarations made pursuant to NRCP 16.2

23 **B. CONCLUSIONS OF LAW:**

24 1. Summary judgment is appropriate when the evidence demonstrates no
25 genuine issue of material fact exists and the moving party is entitled to judgment as a matter
26 of law. NRCP 56; *Wood v. Safeway Stores, Inc.*, 121 Nev. 724, 121 P.3d 1026 (2005). "A
27 factual dispute is genuine when the evidence is such that a rational trier of fact could return
28 a verdict for the nonmoving party." *Wood*, 121 Nev. At 731, 121 P.3d at 1031.

2. The Court may construe the absence of an opposing points and authorities as an admission the motion is meritorious. DCR 13(3).

3. Here, the undisputed facts establish the Parties entered into a valid premarital agreement which included specific provisions characterizing accounts in each Party's sole name as that Party's separate property. That characterization is a permissible subject of a premarital agreement under NRS 123A.050(1). The parties' characterization supersedes Nevada's usual characterization rules. NRS 123.220. Therefore, there is no genuine issue of material fact concerning the characterization of the accounts in Mr. Townley's sole name or the accounts in Ms. Mezzano's sole name. Mr. Townley is entitled to summary judgment declaring the same.

JUDGMENT

Based upon the foregoing, the Court GRANTS Mr. Townley's Motion for Summary Judgment re: Character of Accounts filed on February 9, 2023. The accounts now held by Ms. Mezzano in her sole name are her sole and separate property and confirmed to her, and the accounts now held by Mr. Townley in his sole name are his sole and separate property and are confirmed to him.

II. MOTION FOR DISMISSAL OF CLAIMS AND SANCTIONS

The Court, having reviewed Plaintiff's Motion for Dismissal of Claims and Sanctions submitted on February 27, 2023, and no response or opposition having been filed by Defendant and Counterclaimant, Ms. Mezzano, now finds, concludes, and orders as follows.

A. FINDINGS OF FACT:

1. On January 10, 2023, Mr. Townley, through counsel, issued a notice of taking Ms. Mezzano's deposition. Ms. Mezzano was served with that notice pursuant to NRCP 5 by filing the notice of deposition with the Court's electronic filing system. Undisputed.

1 2. Mr. Townley noticed the deposition to occur on February 8, 2023, at 9:00 a.m. at
2 the offices of Silverman Kattelman Springgate, Chtd. The address for counsel's office is
3 stated on the face of the notice. Ms. Mezzano had also previously been to counsel's
4 office. Undisputed.

5 3. On January 17, 2023, Ms. Mezzano filed, using the Court's electronic filing
6 system, a response to her counsel's request to withdraw as her attorney of record, thus
7 demonstrating that Ms. Mezzano had access to and the ability to use the Court's electronic
8 filing system. Undisputed.

9 4. Ms. Mezzano did not formally or informally object to her deposition. Undisputed.

10 5. On February 8, 2023, at 9:00 a.m., Mr. Townley, his counsel, the court reporter,
11 and counsel for Ms. Mezzano appeared for Ms. Mezzano's deposition. Without
12 explanation, Ms. Mezzano did not appear. Undisputed.

13 6. On January 9, 2023, Mr. Townley served Ms. Mezzano, by hand delivery, his
14 first set of interrogatories, his first set of requests for admissions, and his first set of
15 requests for production of documents and things. Responses to each were due on
16 February 8, 2023. Ms. Mezzano did not formally or informally object to any of the requests
17 or seek a protective order. Undisputed.

18 7. Ms. Mezzano did not serve responses to any of the discovery requests on or
19 before February 8, 2023. Undisputed.

20 8. Ms. Mezzano did not request to meet and confer regarding discovery.
21 Undisputed

22 9. By prior order in this action, all dispositive motions were required to be fully
23 briefed by March 18, 2023, meaning they were required to be filed before February 24,
24 2023. Undisputed.

25 10. The settlement conference in this matter was set for March 13, 2023.
26 Undisputed.

27 11. Ms. Mezzano, through prior counsel, demanded a jury trial in this matter
28 resulting in a three-day setting commencing on April 17-19, 2023. Undisputed.

1 **B. CONCLUSIONS OF LAW:**

2 1. The Court may construe the absence of opposing points and authorities as an
3 admission a motion is meritorious. DCR 13(3).

4 2. Discovery sanctions, including case concluding sanctions such as dismissal of
5 claims with prejudice, is an appropriate remedy for willful discovery violations. *Blanco v.*
6 *Blanco*, 129 Nev. 723, 731, 311 P.3d 1170, 1175 (2013). The Nevada Supreme Court has
7 upheld case concluding sanctions for a party's failure to appear for a properly noticed
8 deposition. *Schatz v. Devitte*, 75 Nev. 124, 335 P.2d 783 (1959).

9 3. "The factors a court may properly consider [when determining whether to impose
10 case concluding sanctions] include, but are not limited to, the degree of willfulness of the
11 offending party, the extent to which the non-offending party would be prejudiced by a
12 lesser sanction, the severity of the sanction of dismissal relative to the severity of the
13 discovery abuse, whether any evidence has been irreparably lost, the feasibility and
14 fairness of alternative, less severe sanctions, such as an order deeming facts relating to
15 improperly withheld or destroyed evidence to be admitted by the offending party, the policy
16 favoring adjudication on the merits, whether sanctions unfairly operate to penalize a party
17 for the misconduct of his or her attorney, and the need to deter both the parties and future
18 litigants from similar abuses." *Young v. Johnny Ribeiro Bldg.*, 106 Nev. 88, 93, 787 P.2d
19 777, 780 (1990).

20 4. Ms. Mezzano's failure to appear for her deposition and respond to written
21 discovery requests after years of litigation and without explanation are violations of NRCP
22 37(d) warranting sanctions. In addition, Ms. Mezzano has failed to comply with NRCP
23 16.1(a)(1)(A)(iv) (regarding her non-divorce claims), by failing to produce the mandatory
24 information regarding damages and she has failed to comply with NRCP 16.2. Based on
25 the following analysis of the factors in *Young*, the Court concludes that the appropriate
26 sanction is an order precluding Ms. Mezzano from presenting any document, evidence or
27 testimony regarding the allegations set forth in claims two through six of her counterclaim
28 and her cross claim.

1 **a. Degree of Willfulness and Ms. Mezzano's Willful and Calculated Discovery**
2 **Abuses.** The Court concludes Ms. Mezzano's discovery abuses were willful and
3 purposeful and had the effect of halting the regular litigation process. Ms. Mezzano did not
4 appear at her deposition without explanation, without seeking a protective order, or without
5 any prior warning. In fact, her counsel appeared with the anticipation her client would be
6 attending. Ms. Mezzano also failed to respond to written discovery, did not seek a
7 protective order, did not attempt to meet and confer, and took no other steps to comply
8 with the Nevada Rules of Civil Procedure including but not limited to NRCP 16.1,
9 disclosing the damages claimed by Defendant. Ms. Mezzano's failure to provide an
10 explanation for her refusal to participate in this litigation through a response or opposition
11 to the Motion to Dismiss further suggests she is willfully and purposefully avoiding her
12 obligations. With no other explanation, the Court must conclude that, Ms. Mezzano's
13 litigation behavior is abusive and intended to cause delay or is recklessly undertaken in
14 light of the risk of delay and frustration of the litigation process. Although dismissal can be
15 an appropriate sanction, it not a sanction to be used in this situation. (*See Bahena v.*
16 *Goodyear Tire & Rubber Co.*, 126 Nev. 243, 253, 235 P.3d 592, 599 (2010) ("We further
17 concluded that entries of complete default are proper where 'litigants are unresponsive and
18 engaged in abusive litigation practices that cause interminable delays.'") *See also Schatz*
19 *v. Devitte*, 75 Nev. 124, 335 P.2d 783 (1959) (upholding entry of a default judgment
20 against a defendant for failure to appear for a deposition). The degree of willfulness of Ms.
21 Mezzano's discovery violations supports significant sanctions.

22 **b. Prejudice to Mr. Townley of a Sanction Less than Dismissal.** The Court
23 concludes that less than a significant sanction will work a substantial prejudice to Mr.
24 Townley. Moreover, Ms. Mezzano cannot be permitted to ambush Mr. Townley with
25 evidence she did not provide in discovery. This result is not fair or reasonable.

26 **c. Irreparable Loss of Evidence.** The Court concludes that Ms. Mezzano's failure
27 to participate in discovery is so extensive that it is impossible to determine whether
28

evidence has been irreparably lost. Because Ms. Mezzano's actions have made the determination impossible, this factor supports significant sanctions.

d. Feasibility and Fairness of Less Severe Sanctions. The Court concludes that Ms. Mezzano's discovery violations are so pervasive that the Court cannot reasonably impose lesser sanctions in a meaningful way. Were the Court to impose a lesser sanction of attorney's fees, Ms. Mezzano will be rewarded for her delay in responding to Mr. Townley and preventing her deposition so near the discovery cutoff. Further, it is unlikely that Ms. Mezzano would pay the sanction voluntarily, causing Mr. Townley to expend even more time and fees attempting to obtain the sanction awarded.

e. Interplay of Adjudication on the Merits with Ms. Mezzano's Willful and Calculated Discovery Abuses. The Court concludes that Ms. Mezzano's willful and purposeful failure to respond to discovery and appear for her deposition makes it impossible for the Court to resolve her claims on the merits through the adversarial process. The Court concludes Ms. Mezzano is preventing the resolution of her own claims. Under the circumstances, when the proponent of the claim prevents its resolution, the Court cannot conclude that any public policy favoring adjudication on the merits should prevent significant sanctions.

f. Do Sanctions Unfairly Penalize Ms. Mezzano for the Conduct of her Attorney. The Court concludes that Ms. Mezzano's choices regarding discovery and her failure to appear at her deposition were her own and not those of her prior counsel or undertaken on their advice. This is demonstrated by her counsel's appearance for Ms. Mezzano's deposition even though her client chose not to appear.

g. The Need to Deter Ms. Mezzano and Future Litigants from Similar Willful and Calculated Discovery Abuses. The Court concludes that Ms. Mezzano's conduct demonstrates a lack of respect for this Court and the orderly resolution of legal disputes. The Court cannot permit litigants to frustrate and delay the resolution of actions, which exhaust this Court's time and resources and the time and resources of opposing parties. Ms. Mezzano's actions run contrary to the purpose of the Nevada Rules of Civil Procedure:

1 these rules “should be construed, administered, and employed by the court and the parties
2 to secure the just, speedy, and inexpensive determination of every action and proceeding.”

3 NRCP 1. Significant sanctions are warranted in this action to deter future similar conduct.

4 ^{But}
~~XX~~ The Court concludes that it is also appropriate for Ms. Mezzano to pay Mr.
5 Townley’s fees and expenses incurred by Mr. Townley, including legal fees, related to Ms.
6 Mezzano’s failure to attend her deposition and prosecution of his Motion for Dismissal of
7 Claims and Sanctions.

8 **ORDERS**

9 Therefore, in light of the foregoing, the Court ORDERS as follows.

10 1. Defendant, Counterclaimant, Ms. Mezzano is precluded from introducing any
11 document she failed to produce in discovery; or as required by NRCP 16.1 or 16.2; and
12 she is precluded from offering any testimony or evidence in support of her affirmative
13 claims and defenses, particularly any claim of damages against Mr. Townley

14 2. Judgment shall be entered against Ms. Mezzano and in favor of Mr. Townley in
15 the amount of Mr. Townley’s fees and expenses incurred by him, including legal fees,
16 related to Ms. Mezzano’s failure to attend her deposition and prosecution of his Motion for
17 Dismissal of Claims and Sanctions. The unpaid portion of the judgment amount shall bear
18 interest at the legal rate from its date of entry until paid in full.

19 3. To establish the amount of the judgment, Mr. Townley shall file and serve an
20 affidavit addressing the factors in *Brunzell v. Golden Gate National Bank* and *Miller v.*
21 *Wilfong* and appropriate evidence of expenses and costs incurred within 21 days of the
22 date of this Order. Ms. Mezzano shall file and serve any response thereto within 14 days of
23 service, and Mr. Townley shall have seven days from service to file any reply. Thereafter,
24 the matter shall be submitted to the Court for decision and entry of the judgment.

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1 5. Plaintiff filed his answer to Ms. Mezzano's counterclaim on September 13, 2022.
2 Undisputed.

3 6. Ms. Mezzano changed counsel on October 11, 2022. Undisputed.

4 7. Having received no NRCP 16.1 disclosures, including any disclosures regarding
5 damages, Plaintiff issued discovery requests to Ms. Mezzano on January 9, 2023, and
6 noticed her deposition for February 8, 2023. Ms. Mezzano did not respond to discovery
7 and did not appear for her deposition. Undisputed.

8 8. As of the date of the Settlement Conference, Ms. Mezzano had not produced
9 any evidence of damages, nor has she produced any calculation of damages.

10 **1. Facts Relating to the Premarital Agreement:**

11 9. Ms. Mezzano employed legal counsel to draft a premarital agreement. Plaintiff
12 employed legal counsel to represent him in negotiation of the agreement. The premarital
13 agreement which was eventually signed is unique. It purports to not only waive alimony
14 and the accumulation of community property except by title but also to allow each party to
15 accrete community assets to herself or himself. (See MSJ #2, Exhibit 3, Page 11, Section
16 III, A.)

17 10. Neither Party contests the validity of the agreement and both rely on its
18 provisions which (1) waive alimony and (2) call for the equal division of community
19 property between the parties. Undisputed.

20 **B. LEGAL CONCLUSION**

21 Summary judgment is appropriate when the evidence demonstrates no genuine
22 issue of material fact exists, and the moving party is entitled to judgment as a matter of
23 law. NRCP 56; *Wood v. Safeway Stores, Inc.*, 121 Nev. 724, 121 P.3d 1026 (2005).
24 Where the party against whom summary judgment is sought bears the burden of
25 persuasion, the moving party satisfies his burden by either "(1) submitting evidence that
26 negates an essential element of the nonmoving party's claim, or (2) 'pointing out...that
27 there is an absence of evidence to support the nonmoving party's case.' ". *Cuzze v.*
28 *University & Community College System*, 123 Nev. 598, 603, 172 P.3d 131, 134 (2007).

1 Once done, the nonmoving party “must transcend the pleadings and, by affidavit or other
2 admissible evidence, introduce specific facts that show a genuine issue of material fact.”
3 *Id.* “The nonmoving party” is not entitled to build a case on the gossamer threads of
4 whimsy, speculation, and conjecture.”. *Wood v Safeway, Inc.*, 121 Nev. 724, 732, 121
5 P.3d 1026, 1031 (2005).

6 “A factual dispute is genuine when the evidence is such that a rational trier of fact
7 could return a verdict for the unmoving party.” *Wood*, 121 Nev. At 731, 121 P.3d at 1031.

8 **a. Generally as to All of Ms. Mezzanno’s Claims:**

9 NRCP 56(e) provides that if the non-moving party fails to properly support a facts in
10 defense of a motion for summary judgment, the Court may consider that fact to be
11 undisputed. Ms. Mezzano has failed to present fact specific affidavits or other admissible
12 evidence in support of her opposition.

13 Ms. Mezzano failed to timely provide the required calculation of damages or,
14 indeed, any evidence of damages allegedly resulting from any of her claims. As Ms.
15 Mezzano has provided no evidence establishing damages, and damages are an essential
16 element of each of her claims, there is no genuine issue of material fact, and Plaintiff is
17 entitled to summary judgment on claims two through six in Ms. Mezzano’s Counterclaim.
18 See *Richardson v. Jones & Denton*, 1 Nev. 405, 409 (1865).

19 **b. Second Claim for Relief – Conversion:**

20 The elements of a claim for conversion are: 1) Mr. Townley wrongfully committed a
21 distinct act of dominion or control over Ms. Mezzano’s personal property; 2) the act was in
22 denial of or inconsistent with Ms. Mezzano’s title or rights or was in derogation, exclusion
23 or defiance of her title or rights; and 3) damages. *Evans v. Dean Witter Reynolds Inc.*, 116
24 Nev. 598, 5 P.3d 1043 (2000).

25 **i. There is no claim for relief for conversion of real property.**

26 As a matter of law, there is no claim for relief for “conversion” of real property. See
27 *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 328, 130 P.3d 1280, 1287 (2006)
28 (“Conversion is a distinct act of dominion wrongfully exerted over **personal property** in

1 denial of, or inconsistent with, title or rights therein or in derogation, exclusion or defiance
2 or such rights.”). (Emphasis added.) However, as Nevada is a Notice Pleading state, the
3 Court has considered any claim for relief regarding the improper taking of real property.
4 This claim cannot be sustained in any way as a matter of law. First, Ms. Mezzano has
5 failed to produce any proof of damages, which is an essential element of any such claim.
6 Secondly, the assets including a 1965 Pontiac Tempest GTO and various pieces of real
7 property were transferred to Mr. Townley pursuant to a judgment for which there was no
8 stay pending appeal entered. As Mr. Townley was acting pursuant to Court order, his
9 actions were not wrongful. See *Ferreira v. P.C.H. Inc.*, 105 Nev. 305, 774 P.2d 1041
10 (1989) (holding a conversion must be essentially tortious, entailing an unlawful act). Cf.
11 *Wantz v. Redfield*, 74 Nev. 196, 198, 326 P.2d 413, 414 (1956) (holding no conversion
12 when a party takes possession of property pursuant to law).

13 Ms. Mezzano’s Second Claim for Relief fails as a matter of law on all three bases.

14 **c. Ms. Mezzano’s Third Claim for Relief re: Breach of Fiduciary Duty.**

15 The elements of a claim for breach of fiduciary duty are that: 1) Mr. Townley owed
16 a fiduciary duty to Ms. Mezzano; 2) that he breached that duty; and 3) that Ms. Mezzano
17 incurred damages. *See Mosier v. S. Cal. Physicians Ins. Exch.*, 63 Cal App. 4th 1022, 74
18 Cal. Rptr. 2d 550 (1998). Ms. Mezzano bears the burden of proof. Ms. Mezzano failed to
19 meet the elements of her claim.

20 **i. Mr. Townley owed Ms. Mezzano no fiduciary duty after**
21 **announcement of divorce.**

22 First, Ms. Mezzano cannot establish that Mr. Townley stood in a fiduciary or
23 confidential relationship with her at the relevant times. Ms. Mezzano recounts events
24 occurring after Ms. Mezzano and Mr. Townley each announced an intent to end their
25 marriage. At that point, Mr. Townley no longer stood in a fiduciary or confidential
26 relationship with Ms. Mezzano. *See Applebaum v. Applebaum*, 93 Nev. 382, 384-85, 566
27 P.2d 85, 87 (1977) (noting no fiduciary duty survived the announced intent to end the
28 marriage). *See also, Williams v. Waldman*, 108 Nev. 466, 472 n.4, 836 P.2d 614, 618

1 (1992). In the present case, by early 2019, the Parties were each on notice that a divorce
2 was imminent such that Ms. Mezzano, an experienced real estate professional, a real
3 estate broker, a businesswoman, was not in a fiduciary or confidential relationship with Mr.
4 Mezzano. As Ms. Mezzano has presented no evidence on which the Court could find a
5 confidential relationship survived Mr. Townley's announcement that he intended to end the
6 marriage, she cannot prevail on her claim.

7 **ii. Mr. Townley did not owe Ms. Mezzano a fiduciary duty**
8 **after divorce decree.**

9 Secondly, Mr. Townley owed no fiduciary duties to Ms. Mezzano after the Court
10 entered a decree of divorce. At that time, they became legal strangers.

11 **iii. Mr. Townley did not breach a duty by protecting**
12 **his property.**

13 Third, Ms. Mezzano's claim Mr. Townley inappropriately denied her use of his
14 health savings account is contrary to the premarital agreement. The health savings
15 account, titled solely in Mr. Townley's name, was and is Mr. Townley's sole and separate
16 property under section II(C)(8) of the premarital agreement. Ms. Mezzano was not entitled
17 to access Mr. Townley's health savings account. Therefore, Mr. Townley was not required
18 to permit Ms. Mezzano to use his health savings account and owed her no duty to allow
19 her to misappropriate his property.

20 **iv. Mr. Townley could not breach his duty by spending**
21 **his money.**

22 Mr. Townley was spending money from accounts in his name. Those accounts by
23 the Parties' Prenuptial Agreement, were and are Mr. Townley's separate property. (See
24 MSJ #2, Exhibit 3, § II (C)(8).) Mr. Townley may spend his separate property and owed
25 Ms. Mezzano no fiduciary duty to preserve it.

26 **v. Ms. Mezzano has no evidence of damages.**
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1 Finally, Ms. Mezzano has produced no evidence of damages or a calculation of
2 damages allegedly incurred as a result of her claim. Without evidence Ms. Mezzano
3 cannot establish damages, and damages are an essential element of her claim.

4 Based upon the foregoing bases, Mr. Townley is entitled to summary judgment
5 regarding Ms. Mezzano's Third Claim for Relief as a matter of law.

6 **D. Fourth Claim for Relief: Abuse of Process.**

7 The elements of an abuse of process claim are: 1) that Mr. Townley had an ulterior
8 purpose other than resolving a legal dispute; 2) his willful act in using process was not
9 proper in the regular conduct of the proceedings; and 3) damages. *LaMantia a. Redisi*,
10 118 Nev. 27, 38 P.3d 877 (2002). Ms. Mezzano bears the burden of proof.

11 **i. Mr. Townley cannot abuse process by using it to**
12 **end his marriage.**

13 Mr. Townley has been attempting to dissolve his marriage and resolve his and Ms.
14 Mezzano's rights arising from their marriage and to their property. Ms. Mezzano has
15 produced no evidence otherwise. As Ms. Mezzano has produced no evidence, she cannot
16 carry her burden of proof to demonstrate Mr. Townley had any motive other than to resolve
17 a legal dispute, thus requiring summary judgment as a matter of law.

18 **ii. Ms. Mezzano has no evidence of damages.**

19 Secondly, Ms. Mezzano has produced no evidence of damages or calculation of
20 damages allegedly incurred as a result of her claim. Without evidence Ms. Mezzano
21 cannot establish damages, and damages are an essential element of her claim. Because
22 she cannot establish an essential element of her claim, Mr. Townley is entitled to summary
23 judgment regarding Ms. Mezzano's Fourth Claim for Relief – abuse of process.

24 **E. Fifth Claim re: Breach of Contract.**

25 The elements of a breach of contract claim are: 1) existence of a valid and
26 enforceable contract; 2) performance by Ms. Mezzano; 3) breach by Mr. Townley; and 4)
27 damages. *Calloway v. City of Reno*, 116 Nev. 250, 993 P.2d 1259 (2000). (Superseded
28

1 by statute on other grounds.) The party claiming breach of contract bears the burden of
2 proof. *Richardson v. Jones & Denton*, 1 Nev. 405, 409 (1865).

3 Both Parties agree there is an enforceable Prenuptial Agreement. There is no
4 evidence that Mr. Townley breached this agreement.

5 Finally, Ms. Mezzano has produced no evidence of damages or produced a
6 calculation of damages allegedly incurred as a result of her breach of contract claim.
7 Without evidence Ms. Mezzano cannot establish damages, and damages are an essential
8 element of her claim. Because she cannot establish an essential element of her claim, Mr.
9 Townley is entitled to summary judgment on this claim as a matter of law.

10 **F. Sixth Claim for Relief: Breach of Good Faith**
11 **And Fair Dealing.**

12 The elements of a claim for breach of the duty of good faith and fair dealing are: 1)
13 that Mr. Townley and Ms. Mezzano were parties to a contract; 2) Mr. Townley owed a duty
14 of good faith to Ms. Mezzano; 3) Mr. Townley breached the duty by performing in a
15 manner unfaithful to the purpose of the contract; and 4) that Ms. Mezzano's justified
16 expectations were thereby denied resulting in damages. *Perry v. Jordan*, 111 Nev. 943,
17 900 P.2d 335 (1995). Ms. Mezzano bears the burden of proof. *Id.*

18 **i. Seeking a divorce consistent with the terms of the**
19 **Prenuptial Agreement is not breach.**

20 Ms. Mezzano has not produced evidence Mr. Townley acted in a manner unfaithful
21 to the premarital agreement and, to the contrary, Mr. Townley's actions conformed to the
22 ultimate purpose of the premarital agreement – to divide the parties' community property,
23 allocate their separate property, and terminate any obligation for alimony.

24 **ii. Ms. Mezzano has no evidence of damages.**

25 Secondly, Ms. Mezzano has produced no evidence of damages or produced a
26 calculation of damages allegedly incurred as a result of her claim. Without evidence Ms.
27 Mezzano cannot establish damages, and damages are an essential element of her claim.
28

1 Because she cannot establish an essential element of her claim, Mr. Townley is entitled to
2 summary judgment as a matter of law.

3 **ORDER**

4 Based upon the forgoing, Mr. Townley is entitled to Summary Judgment regarding
5 Ms. Mezzano's Claims for Relief Two through Six, which are hereby denied in their entirety.
6 The Court also sua sponte denies the claims set forth in paragraphs 11-13 of Ms.
7 Mezzano's First Claim for Relief in their entirety. Ms. Mezzano shall take nothing by reason
8 of these claims, and judgment shall be entered to this effect.

9 The claims raised in Ms. Mezzano's crossclaim are dismissed without prejudice
10 pursuant to NRCP 4(e) as they have not been properly served on the named parties within
11 120 days.

12 Finally, as the non-divorce claims in this matter have been denied, the jury trial
13 regarding these claims is vacated. This matter shall proceed as a bench trial commencing
14 as more fully set forth in the Order regarding Trial Procedure previously entered herein.

15 Dated: April 16, 2023.

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18 **BRIDGET E. ROBB**
19 **DISTRICT JUDGE**
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Code:
1 Gary R. Silverman (NSB# 409) Michael V. Kattelman (NSB#6703)
2 John P. Springgate (NSB# 1350) Alexander C. Morey (NSB#11216)
3 Benjamin Albers (NSB#11895)
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5 500 Damonte Ranch Parkway, Suite 675
6 Reno, Nevada 89521
7 Telephone: 775/322-3223
8 Facsimile: 775/322-3649
9 Attorney for John Townley

10
11 **IN THE FAMILY DIVISION**
12 **OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
13 **IN AND FOR THE COUNTY OF WASHOE**

14 JOHN TOWNLEY,

15 Plaintiff

Case No. DV19-01564

16 vs.

Dept. 13

17 ROCHELLE MEZZANO and
18 DOES I through XX,
19 to include Doe individuals,
20 corporations, limited liability companies,
21 partnerships, trusts, limited partnerships,
22 and such other individuals or entities
23 as may exist or be formed
24 Defendants.

25
26 **NOTICE OF ENTRY OF ORDERS**

27 PLEASE TAKE NOTICE that the above-entitled Court entered an Order Granting
28 Plaintiff's Motion for Summary Judgment Re: Character of Accounts; Motion for
Dismissal of Claims; Motion for Summary Judgment in this matter on April 16, 2023.


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1 Under NRS 239B.030 the undersigned affirms the preceding contains no social
2 security number.

3 Dated this 17 day of April 2023.

4 SILVERMAN KATTELMAN SPRINGGATE, CHTD.

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7 ALEXANDER MOREY
8 Attorney for John Townley
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IN THE FAMILY DIVISION
IN THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE

JOHN TOWNLEY,

Plaintiff/Petitioner,

vs.

ROCHELLE MEZZANO, et al,

Defendant/Respondent.

CASE NO. DV19-01564

DEPT. NO. 13

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT RE:
CHARACTER OF ACCOUNTS; MOTION FOR DISMISSAL OF CLAIMS;
MOTION FOR SUMMARY JUDGMENT

This matter came on for a regularly scheduled settlement conference on March 13, 2023. Mr. Townley ("Plaintiff") was present, represented by counsel, Alexander Morey, Esq. of Silverman Kattelman Springgate, Chtd. Ms. Mezzano ("Defendant") was present representing herself. Ms. Mezzano was served via electronic service on February 9, 2023 with the Order re: Settlement Conference entered that same day.

The Order re: Settlement Conference notes the Settlement Conference in this case is set for March 23, 2023 at 9:00 a.m. It further orders that each party must file a settlement conference statement with the Court. Order, 1:20 - 1:23.

Ms. Mezzano filed no settlement conference statement, as ordered. When asked why one was not filed she declined to answer stating she was denied ADA access to the Court.

1 The Court inquired regarding this claim. Ms. Mezzano would not elaborate. A review
2 of the docket of this case shows that no motion or other paper was filed seeking relief based
3 upon Ms. Mezzano's unspecified ADA claim.

4 Ms. Mezzano alluded to contact made with the Court on this issue. The Court
5 clarified that any such contact, if not filed in the case, was an improper ex parte
6 communication to which the Court could not respond or grant relief.

7 Ms. Mezzano then made an oral request for her ADA representative to be present.
8 This request was granted, however, the ADA representative was not present, despite Ms.
9 Mezzano having notice of the date and time of the Settlement Conference.

10 Although Ms. Mezzano was encouraged numerous times to go forward with the
11 Settlement Conference even outside the presence of the Court, she declined to do so.

12 Rather than waste the hearing time, the cost to the parties of appearing, and judicial
13 resources, the Court used the opportunity to rule on three outstanding motions: 1) Plaintiff's
14 Motion for Summary Judgment re: Character of Accounts ("MSJ #1") filed February 9, 2023;
15 2) Plaintiff's Motion for Dismissal of Claims ("Motion to Dismiss") filed February 10, 2023;
16 and 3) Motion for Summary Judgment ("MSJ #2") The Court specifically noted that oral
17 argument was not requested and would not be presented.

18 Each Motion is addressed in turn below.

19
20 **I. MOTION FOR SUMMARY JUDGMENT**

21 **RE: CHARACTER OF ACCOUNTS (MSJ #1)**

22
23 The Court, having reviewed Plaintiff's MSJ #1 submitted on February 24, 2023 and
24 no response or opposition have been filed by Defendant Rochelle Mezzano ("Defendant"),
25 now finds, concludes and orders as follows:

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1 **A. FINDINGS OF FACT:**

2 1. On September 10, 1999, the Parties executed a premarital agreement which
3 included, as Sections II(B)(8) the following rules concerning the character of accounts
4 owned by the Parties at the time of the marriage and accounts later acquired:

5 Rochelle shall have as her sole and separate property, without claim or interest of
6 John:

7 All funds in bank accounts, savings accounts, credit union accounts,
8 certificates of deposit, brokerage accounts, stocks, mutual funds, money
9 market accounts or other deposits or investments of any type or nature
10 existing in Rochelle's separate name whether before or after marriage and
11 all funds deposited after marriage into any account in Rochelle's separate
12 name.

13 John shall have as his sole and separate property, without claim or interest of
14 Rochelle:

15 All funds in bank accounts, savings accounts, credit union accounts,
16 certificates of deposit, brokerage accounts, stocks, mutual funds, money
17 market accounts or other deposits or investments of any type or nature
18 existing in John's separate name whether before or after marriage and all

19 Undisputed.

20 2. Each Party in his or her papers and pleadings in this action has asserted the
21 premarital agreement is valid. Both parties have relied on the premarital agreement in their
22 sworn financial declarations made pursuant to NRCP 16.2

23 **B. CONCLUSIONS OF LAW:**

24 1. Summary judgment is appropriate when the evidence demonstrates no
25 genuine issue of material fact exists and the moving party is entitled to judgment as a matter
26 of law. NRCP 56; *Wood v. Safeway Stores, Inc.*, 121 Nev. 724, 121 P.3d 1026 (2005). "A
27 factual dispute is genuine when the evidence is such that a rational trier of fact could return
28 a verdict for the nonmoving party." *Wood*, 121 Nev. At 731, 121 P.3d at 1031.

2. The Court may construe the absence of an opposing points and authorities as an admission the motion is meritorious. DCR 13(3).

3. Here, the undisputed facts establish the Parties entered into a valid premarital agreement which included specific provisions characterizing accounts in each Party's sole name as that Party's separate property. That characterization is a permissible subject of a premarital agreement under NRS 123A.050(1). The parties' characterization supersedes Nevada's usual characterization rules. NRS 123.220. Therefore, there is no genuine issue of material fact concerning the characterization of the accounts in Mr. Townley's sole name or the accounts in Ms. Mezzano's sole name. Mr. Townley is entitled to summary judgment declaring the same.

JUDGMENT

Based upon the foregoing, the Court GRANTS Mr. Townley's Motion for Summary Judgment re: Character of Accounts filed on February 9, 2023. The accounts now held by Ms. Mezzano in her sole name are her sole and separate property and confirmed to her, and the accounts now held by Mr. Townley in his sole name are his sole and separate property and are confirmed to him.

II. MOTION FOR DISMISSAL OF CLAIMS AND SANCTIONS

The Court, having reviewed Plaintiff's Motion for Dismissal of Claims and Sanctions submitted on February 27, 2023, and no response or opposition having been filed by Defendant and Counterclaimant, Ms. Mezzano, now finds, concludes, and orders as follows.

A. FINDINGS OF FACT:

1. On January 10, 2023, Mr. Townley, through counsel, issued a notice of taking Ms. Mezzano's deposition. Ms. Mezzano was served with that notice pursuant to NRCPP 5 by filing the notice of deposition with the Court's electronic filing system. Undisputed.

1 2. Mr. Townley noticed the deposition to occur on February 8, 2023, at 9:00 a.m. at
2 the offices of Silverman Kattelman Springgate, Chtd. The address for counsel's office is
3 stated on the face of the notice. Ms. Mezzano had also previously been to counsel's
4 office. Undisputed.

5 3. On January 17, 2023, Ms. Mezzano filed, using the Court's electronic filing
6 system, a response to her counsel's request to withdraw as her attorney of record, thus
7 demonstrating that Ms. Mezzano had access to and the ability to use the Court's electronic
8 filing system. Undisputed.

9 4. Ms. Mezzano did not formally or informally object to her deposition. Undisputed.

10 5. On February 8, 2023, at 9:00 a.m., Mr. Townley, his counsel, the court reporter,
11 and counsel for Ms. Mezzano appeared for Ms. Mezzano's deposition. Without
12 explanation, Ms. Mezzano did not appear. Undisputed.

13 6. On January 9, 2023, Mr. Townley served Ms. Mezzano, by hand delivery, his
14 first set of interrogatories, his first set of requests for admissions, and his first set of
15 requests for production of documents and things. Responses to each were due on
16 February 8, 2023. Ms. Mezzano did not formally or informally object to any of the requests
17 or seek a protective order. Undisputed.

18 7. Ms. Mezzano did not serve responses to any of the discovery requests on or
19 before February 8, 2023. Undisputed.

20 8. Ms. Mezzano did not request to meet and confer regarding discovery.
21 Undisputed

22 9. By prior order in this action, all dispositive motions were required to be fully
23 briefed by March 18, 2023, meaning they were required to be filed before February 24,
24 2023. Undisputed.

25 10. The settlement conference in this matter was set for March 13, 2023.
26 Undisputed.

27 11. Ms. Mezzano, through prior counsel, demanded a jury trial in this matter
28 resulting in a three-day setting commencing on April 17-19, 2023. Undisputed.

1 **B. CONCLUSIONS OF LAW:**

2 1. The Court may construe the absence of opposing points and authorities as an
3 admission a motion is meritorious. DCR 13(3).

4 2. Discovery sanctions, including case concluding sanctions such as dismissal of
5 claims with prejudice, is an appropriate remedy for willful discovery violations. *Blanco v.*
6 *Blanco*, 129 Nev. 723, 731, 311 P.3d 1170, 1175 (2013). The Nevada Supreme Court has
7 upheld case concluding sanctions for a party's failure to appear for a properly noticed
8 deposition. *Schatz v. Devitte*, 75 Nev. 124, 335 P.2d 783 (1959).

9 3. "The factors a court may properly consider [when determining whether to impose
10 case concluding sanctions] include, but are not limited to, the degree of willfulness of the
11 offending party, the extent to which the non-offending party would be prejudiced by a
12 lesser sanction, the severity of the sanction of dismissal relative to the severity of the
13 discovery abuse, whether any evidence has been irreparably lost, the feasibility and
14 fairness of alternative, less severe sanctions, such as an order deeming facts relating to
15 improperly withheld or destroyed evidence to be admitted by the offending party, the policy
16 favoring adjudication on the merits, whether sanctions unfairly operate to penalize a party
17 for the misconduct of his or her attorney, and the need to deter both the parties and future
18 litigants from similar abuses." *Young v. Johnny Ribeiro Bldg.*, 106 Nev. 88, 93, 787 P.2d
19 777, 780 (1990).

20 4. Ms. Mezzano's failure to appear for her deposition and respond to written
21 discovery requests after years of litigation and without explanation are violations of NRCP
22 37(d) warranting sanctions. In addition, Ms. Mezzano has failed to comply with NRCP
23 16.1(a)(1)(A)(iv) (regarding her non-divorce claims), by failing to produce the mandatory
24 information regarding damages and she has failed to comply with NRCP 16.2. Based on
25 the following analysis of the factors in *Young*, the Court concludes that the appropriate
26 sanction is an order precluding Ms. Mezzano from presenting any document, evidence or
27 testimony regarding the allegations set forth in claims two through six of her counterclaim
28 and her cross claim.

1 **a. Degree of Willfulness and Ms. Mezzano's Willful and Calculated Discovery**

2 **Abuses.** The Court concludes Ms. Mezzano's discovery abuses were willful and
3 purposeful and had the effect of halting the regular litigation process. Ms. Mezzano did not
4 appear at her deposition without explanation, without seeking a protective order, or without
5 any prior warning. In fact, her counsel appeared with the anticipation her client would be
6 attending. Ms. Mezzano also failed to respond to written discovery, did not seek a
7 protective order, did not attempt to meet and confer, and took no other steps to comply
8 with the Nevada Rules of Civil Procedure including but not limited to NRCP 16.1,
9 disclosing the damages claimed by Defendant. Ms. Mezzano's failure to provide an
10 explanation for her refusal to participate in this litigation through a response or opposition
11 to the Motion to Dismiss further suggests she is willfully and purposefully avoiding her
12 obligations. With no other explanation, the Court must conclude that, Ms. Mezzano's
13 litigation behavior is abusive and intended to cause delay or is recklessly undertaken in
14 light of the risk of delay and frustration of the litigation process. Although dismissal can be
15 an appropriate sanction, it not a sanction to be used in this situation. (*See Bahena v.*
16 *Goodyear Tire & Rubber Co.*, 126 Nev. 243, 253, 235 P.3d 592, 599 (2010) ("We further
17 concluded that entries of complete default are proper where 'litigants are unresponsive and
18 engaged in abusive litigation practices that cause interminable delays.'") *See also Schatz*
19 *v. Devitte*, 75 Nev. 124, 335 P.2d 783 (1959) (upholding entry of a default judgment
20 against a defendant for failure to appear for a deposition). The degree of willfulness of Ms.
21 Mezzano's discovery violations supports significant sanctions.

22 **b. Prejudice to Mr. Townley of a Sanction Less than Dismissal.** The Court
23 concludes that less than a significant sanction will work a substantial prejudice to Mr.
24 Townley. Moreover, Ms. Mezzano cannot be permitted to ambush Mr. Townley with
25 evidence she did not provide in discovery. This result is not fair or reasonable.

26 **c. Irreparable Loss of Evidence.** The Court concludes that Ms. Mezzano's failure
27 to participate in discovery is so extensive that it is impossible to determine whether
28

1 evidence has been irreparably lost. Because Ms. Mezzano's actions have made the
2 determination impossible, this factor supports significant sanctions.

3 **d. Feasibility and Fairness of Less Severe Sanctions.** The Court concludes that
4 Ms. Mezzano's discovery violations are so pervasive that the Court cannot reasonably
5 impose lesser sanctions in a meaningful way. Were the Court to impose a lesser sanction
6 of attorney's fees, Ms. Mezzano will be rewarded for her delay in responding to Mr.
7 Townley and preventing her deposition so near the discovery cutoff. Further, it is unlikely
8 that Ms. Mezzano would pay the sanction voluntarily, causing Mr. Townley to expend even
9 more time and fees attempting to obtain the sanction awarded.

10 **e. Interplay of Adjudication on the Merits with Ms. Mezzano's Willful and**
11 **Calculated Discovery Abuses.** The Court concludes that Ms. Mezzano's willful and
12 purposeful failure to respond to discovery and appear for her deposition makes it
13 impossible for the Court to resolve her claims on the merits through the adversarial
14 process. The Court concludes Ms. Mezzano is preventing the resolution of her own claims.
15 Under the circumstances, when the proponent of the claim prevents its resolution, the
16 Court cannot conclude that any public policy favoring adjudication on the merits should
17 prevent significant sanctions.

18 **f. Do Sanctions Unfairly Penalize Ms. Mezzano for the Conduct of her**
19 **Attorney.** The Court concludes that Ms. Mezzano's choices regarding discovery and her
20 failure to appear at her deposition were her own and not those of her prior counsel or
21 undertaken on their advice. This is demonstrated by her counsel's appearance for Ms.
22 Mezzano's deposition even though her client chose not to appear.

23 **g. The Need to Deter Ms. Mezzano and Future Litigants from Similar Willful**
24 **and Calculated Discovery Abuses.** The Court concludes that Ms. Mezzano's conduct
25 demonstrates a lack of respect for this Court and the orderly resolution of legal disputes.
26 The Court cannot permit litigants to frustrate and delay the resolution of actions, which
27 exhaust this Court's time and resources and the time and resources of opposing parties.
28 Ms. Mezzano's actions run contrary to the purpose of the Nevada Rules of Civil Procedure:

1 these rules "should be construed, administered, and employed by the court and the parties
2 to secure the just, speedy, and inexpensive determination of every action and proceeding."

3 NRCP 1. Significant sanctions are warranted in this action to deter future similar conduct.

4 ^{But}
~~XX~~ The Court concludes that it is also appropriate for Ms. Mezzano to pay Mr.
5 Townley's fees and expenses incurred by Mr. Townley, including legal fees, related to Ms.
6 Mezzano's failure to attend her deposition and prosecution of his Motion for Dismissal of
7 Claims and Sanctions.

8 ORDERS

9 Therefore, in light of the foregoing, the Court ORDERS as follows.

10 1. Defendant, Counterclaimant, Ms. Mezzano is precluded from introducing any
11 document she failed to produce in discovery; or as required by NRCP 16.1 or 16.2; and
12 she is precluded from offering any testimony or evidence in support of her affirmative
13 claims and defenses, particularly any claim of damages against Mr. Townley

14 2. Judgment shall be entered against Ms. Mezzano and in favor of Mr. Townley in
15 the amount of Mr. Townley's fees and expenses incurred by him, including legal fees,
16 related to Ms. Mezzano's failure to attend her deposition and prosecution of his Motion for
17 Dismissal of Claims and Sanctions. The unpaid portion of the judgment amount shall bear
18 interest at the legal rate from its date of entry until paid in full.

19 3. To establish the amount of the judgment, Mr. Townley shall file and serve an
20 affidavit addressing the factors in *Brunzell v. Golden Gate National Bank* and *Miller v.*
21 *Wilfong* and appropriate evidence of expenses and costs incurred within 21 days of the
22 date of this Order. Ms. Mezzano shall file and serve any response thereto within 14 days of
23 service, and Mr. Townley shall have seven days from service to file any reply. Thereafter,
24 the matter shall be submitted to the Court for decision and entry of the judgment.

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1 5. Plaintiff filed his answer to Ms. Mezzano's counterclaim on September 13, 2022.
2 Undisputed.

3 6. Ms. Mezzano changed counsel on October 11, 2022. Undisputed.

4 7. Having received no NRCP 16.1 disclosures, including any disclosures regarding
5 damages, Plaintiff issued discovery requests to Ms. Mezzano on January 9, 2023, and
6 noticed her deposition for February 8, 2023. Ms. Mezzano did not respond to discovery
7 and did not appear for her deposition. Undisputed.

8 8. As of the date of the Settlement Conference, Ms. Mezzano had not produced
9 any evidence of damages, nor has she produced any calculation of damages.

10 **1. Facts Relating to the Premarital Agreement:**

11 9. Ms. Mezzano employed legal counsel to draft a premarital agreement. Plaintiff
12 employed legal counsel to represent him in negotiation of the agreement. The premarital
13 agreement which was eventually signed is unique. It purports to not only waive alimony
14 and the accumulation of community property except by title but also to allow each party to
15 accrete community assets to herself or himself. (See MSJ #2, Exhibit 3, Page 11, Section
16 III, A.)

17 10. Neither Party contests the validity of the agreement and both rely on its
18 provisions which (1) waive alimony and (2) call for the equal division of community
19 property between the parties. Undisputed.

20 **B. LEGAL CONCLUSION**

21 Summary judgment is appropriate when the evidence demonstrates no genuine
22 issue of material fact exists, and the moving party is entitled to judgment as a matter of
23 law. NRCP 56; *Wood v. Safeway Stores, Inc.*, 121 Nev. 724, 121 P.3d 1026 (2005).
24 Where the party against whom summary judgment is sought bears the burden of
25 persuasion, the moving party satisfies his burden by either "(1) submitting evidence that
26 negates an essential element of the nonmoving party's claim, or (2) 'pointing out...that
27 there is an absence of evidence to support the nonmoving party's case.' ". *Cuzze v.*
28 *University & Community College System*, 123 Nev. 598, 603, 172 P.3d 131, 134 (2007).

1 Once done, the nonmoving party “must transcend the pleadings and, by affidavit or other
2 admissible evidence, introduce specific facts that show a genuine issue of material fact.”
3 *Id.* “The nonmoving party” is not entitled to build a case on the gossamer threads of
4 whimsy, speculation, and conjecture.”. *Wood v Safeway, Inc.*, 121 Nev. 724, 732, 121
5 P.3d 1026, 1031 (2005).

6 “A factual dispute is genuine when the evidence is such that a rational trier of fact
7 could return a verdict for the unmoving party.” *Wood*, 121 Nev. At 731, 121 P.3d at 1031.

8 **a. Generally as to All of Ms. Mezzanno’s Claims:**

9 NRCP 56(e) provides that if the non-moving party fails to properly support a facts in
10 defense of a motion for summary judgment, the Court may consider that fact to be
11 undisputed. Ms. Mezzano has failed to present fact specific affidavits or other admissible
12 evidence in support of her opposition.

13 Ms. Mezzano failed to timely provide the required calculation of damages or,
14 indeed, any evidence of damages allegedly resulting from any of her claims. As Ms.
15 Mezzano has provided no evidence establishing damages, and damages are an essential
16 element of each of her claims, there is no genuine issue of material fact, and Plaintiff is
17 entitled to summary judgment on claims two through six in Ms. Mezzano’s Counterclaim.
18 See *Richardson v. Jones & Denton*, 1 Nev. 405, 409 (1865).

19 **b. Second Claim for Relief – Conversion:**

20 The elements of a claim for conversion are: 1) Mr. Townley wrongfully committed a
21 distinct act of dominion or control over Ms. Mezzano’s personal property; 2) the act was in
22 denial of or inconsistent with Ms. Mezzano’s title or rights or was in derogation, exclusion
23 or defiance of her title or rights; and 3) damages. *Evans v. Dean Witter Reynolds Inc.*, 116
24 Nev. 598, 5 P.3d 1043 (2000).

25 **i. There is no claim for relief for conversion of real property.**

26 As a matter of law, there is no claim for relief for “conversion” of real property. See
27 *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 328, 130 P.3d 1280, 1287 (2006)
28 (“Conversion is a distinct act of dominion wrongfully exerted over **personal property** in

1 denial of, or inconsistent with, title or rights therein or in derogation, exclusion or defiance
2 or such rights."). (Emphasis added.) However, as Nevada is a Notice Pleading state, the
3 Court has considered any claim for relief regarding the improper taking of real property.
4 This claim cannot be sustained in any way as a matter of law. First, Ms. Mezzano has
5 failed to produce any proof of damages, which is an essential element of any such claim.
6 Secondly, the assets including a 1965 Pontiac Tempest GTO and various pieces of real
7 property were transferred to Mr. Townley pursuant to a judgment for which there was no
8 stay pending appeal entered. As Mr. Townley was acting pursuant to Court order, his
9 actions were not wrongful. See *Ferreira v. P.C.H. Inc.*, 105 Nev. 305, 774 P.2d 1041
10 (1989) (holding a conversion must be essentially tortious, entailing an unlawful act). Cf.
11 *Wantz v. Redfield*, 74 Nev. 196, 198, 326 P.2d 413, 414 (1956) (holding no conversion
12 when a party takes possession of property pursuant to law).

13 Ms. Mezzano's Second Claim for Relief fails as a matter of law on all three bases.

14 **c. Ms. Mezzano's Third Claim for Relief re: Breach of Fiduciary Duty.**

15 The elements of a claim for breach of fiduciary duty are that: 1) Mr. Townley owed
16 a fiduciary duty to Ms. Mezzano; 2) that he breached that duty; and 3) that Ms. Mezzano
17 incurred damages. *See Mosier v. S. Cal. Physicians Ins. Exch.*, 63 Cal App. 4th 1022, 74
18 Cal. Rptr. 2d 550 (1998). Ms. Mezzano bears the burden of proof. Ms. Mezzano failed to
19 meet the elements of her claim.

20 **i. Mr. Townley owed Ms. Mezzano no fiduciary duty after**
21 **announcement of divorce.**

22 First, Ms. Mezzano cannot establish that Mr. Townley stood in a fiduciary or
23 confidential relationship with her at the relevant times. Ms. Mezzano recounts events
24 occurring after Ms. Mezzano and Mr. Townley each announced an intent to end their
25 marriage. At that point, Mr. Townley no longer stood in a fiduciary or confidential
26 relationship with Ms. Mezzano. *See Applebaum v. Applebaum*, 93 Nev. 382, 384-85, 566
27 P.2d 85, 87 (1977) (noting no fiduciary duty survived the announced intent to end the
28 marriage). *See also, Williams v. Waldman*, 108 Nev. 466, 472 n.4, 836 P.2d 614, 618

1 (1992). In the present case, by early 2019, the Parties were each on notice that a divorce
2 was imminent such that Ms. Mezzano, an experienced real estate professional, a real
3 estate broker, a businesswoman, was not in a fiduciary or confidential relationship with Mr.
4 Mezzano. As Ms. Mezzano has presented no evidence on which the Court could find a
5 confidential relationship survived Mr. Townley's announcement that he intended to end the
6 marriage, she cannot prevail on her claim.

7 **ii. Mr. Townley did not owe Ms. Mezzano a fiduciary duty**
8 **after divorce decree.**

9 Secondly, Mr. Townley owed no fiduciary duties to Ms. Mezzano after the Court
10 entered a decree of divorce. At that time, they became legal strangers.

11 **iii. Mr. Townley did not breach a duty by protecting**
12 **his property.**

13 Third, Ms. Mezzano's claim Mr. Townley inappropriately denied her use of his
14 health savings account is contrary to the premarital agreement. The health savings
15 account, titled solely in Mr. Townley's name, was and is Mr. Townley's sole and separate
16 property under section II(C)(8) of the premarital agreement. Ms. Mezzano was not entitled
17 to access Mr. Townley's health savings account. Therefore, Mr. Townley was not required
18 to permit Ms. Mezzano to use his health savings account and owed her no duty to allow
19 her to misappropriate his property.

20 **iv. Mr. Townley could not breach his duty by spending**
21 **his money.**

22 Mr. Townley was spending money from accounts in his name. Those accounts by
23 the Parties' Prenuptial Agreement, were and are Mr. Townley's separate property. (See
24 MSJ #2, Exhibit 3, § II (C)(8).) Mr. Townley may spend his separate property and owed
25 Ms. Mezzano no fiduciary duty to preserve it.

26 **v. Ms. Mezzano has no evidence of damages.**
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1 Finally, Ms. Mezzano has produced no evidence of damages or a calculation of
2 damages allegedly incurred as a result of her claim. Without evidence Ms. Mezzano
3 cannot establish damages, and damages are an essential element of her claim.

4 Based upon the foregoing bases, Mr. Townley is entitled to summary judgment
5 regarding Ms. Mezzano's Third Claim for Relief as a matter of law.

6 **D. Fourth Claim for Relief: Abuse of Process.**

7 The elements of an abuse of process claim are: 1) that Mr. Townley had an ulterior
8 purpose other than resolving a legal dispute; 2) his willful act in using process was not
9 proper in the regular conduct of the proceedings; and 3) damages. *LaMantia a. Redisi*,
10 118 Nev. 27, 38 P.3d 877 (2002). Ms. Mezzano bears the burden of proof.

11 **i. Mr. Townley cannot abuse process by using it to**
12 **end his marriage.**

13 Mr. Townley has been attempting to dissolve his marriage and resolve his and Ms.
14 Mezzano's rights arising from their marriage and to their property. Ms. Mezzano has
15 produced no evidence otherwise. As Ms. Mezzano has produced no evidence, she cannot
16 carry her burden of proof to demonstrate Mr. Townley had any motive other than to resolve
17 a legal dispute, thus requiring summary judgment as a matter of law.

18 **ii. Ms. Mezzano has no evidence of damages.**

19 Secondly, Ms. Mezzano has produced no evidence of damages or calculation of
20 damages allegedly incurred as a result of her claim. Without evidence Ms. Mezzano
21 cannot establish damages, and damages are an essential element of her claim. Because
22 she cannot establish an essential element of her claim, Mr. Townley is entitled to summary
23 judgment regarding Ms. Mezzano's Fourth Claim for Relief – abuse of process.

24 **E. Fifth Claim re: Breach of Contract.**

25 The elements of a breach of contract claim are: 1) existence of a valid and
26 enforceable contract; 2) performance by Ms. Mezzano; 3) breach by Mr. Townley; and 4)
27 damages. *Calloway v. City of Reno*, 116 Nev. 250, 993 P.2d 1259 (2000). (Superseded
28

1 by statute on other grounds.) The party claiming breach of contract bears the burden of
2 proof. *Richardson v. Jones & Denton*, 1 Nev. 405, 409 (1865).

3 Both Parties agree there is an enforceable Prenuptial Agreement. There is no
4 evidence that Mr. Townley breached this agreement.

5 Finally, Ms. Mezzano has produced no evidence of damages or produced a
6 calculation of damages allegedly incurred as a result of her breach of contract claim.
7 Without evidence Ms. Mezzano cannot establish damages, and damages are an essential
8 element of her claim. Because she cannot establish an essential element of her claim, Mr.
9 Townley is entitled to summary judgment on this claim as a matter of law.

10 **F. Sixth Claim for Relief: Breach of Good Faith**
11 **And Fair Dealing.**

12 The elements of a claim for breach of the duty of good faith and fair dealing are: 1)
13 that Mr. Townley and Ms. Mezzano were parties to a contract; 2) Mr. Townley owed a duty
14 of good faith to Ms. Mezzano; 3) Mr. Townley breached the duty by performing in a
15 manner unfaithful to the purpose of the contract; and 4) that Ms. Mezzano's justified
16 expectations were thereby denied resulting in damages. *Perry v. Jordan*, 111 Nev. 943,
17 900 P.2d 335 (1995). Ms. Mezzano bears the burden of proof. *Id.*

18 **i. Seeking a divorce consistent with the terms of the**
19 **Prenuptial Agreement is not breach.**

20 Ms. Mezzano has not produced evidence Mr. Townley acted in a manner unfaithful
21 to the premarital agreement and, to the contrary, Mr. Townley's actions conformed to the
22 ultimate purpose of the premarital agreement – to divide the parties' community property,
23 allocate their separate property, and terminate any obligation for alimony.

24 **ii. Ms. Mezzano has no evidence of damages.**

25 Secondly, Ms. Mezzano has produced no evidence of damages or produced a
26 calculation of damages allegedly incurred as a result of her claim. Without evidence Ms.
27 Mezzano cannot establish damages, and damages are an essential element of her claim.
28

1 Because she cannot establish an essential element of her claim, Mr. Townley is entitled to
2 summary judgment as a matter of law.

3 **ORDER**

4 Based upon the forgoing, Mr. Townley is entitled to Summary Judgment regarding
5 Ms. Mezzano's Claims for Relief Two through Six, which are hereby denied in their entirety.
6 The Court also sua sponte denies the claims set forth in paragraphs 11-13 of Ms.
7 Mezzano's First Claim for Relief in their entirety. Ms. Mezzano shall take nothing by reason
8 of these claims, and judgment shall be entered to this effect.

9 The claims raised in Ms. Mezzano's crossclaim are dismissed without prejudice
10 pursuant to NRCP 4(e) as they have not been properly served on the named parties within
11 120 days.

12 Finally, as the non-divorce claims in this matter have been denied, the jury trial
13 regarding these claims is vacated. This matter shall proceed as a bench trial commencing
14 as more fully set forth in the Order regarding Trial Procedure previously entered herein.

15 Dated: April 16, 2023.

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18 **BRIDGET E. ROBB**
19 **DISTRICT JUDGE**
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5 (b), I hereby certify that I am an employee of Silverman
3 Kattelman Springgate, Chtd, and on the date set forth below, I served a true copy of the
4 foregoing **Notice of Entry of Orders** to the party(ies) identified below by:

5 ☐ Placing an original or true copy thereof in a sealed envelope, postage
6 prepaid for collection and mailing in the United States Mail at Reno,
7 Nevada to

8 ☐ Hand Delivery

9 ☐ Facsimile to the following numbers:

10 ☐ Reno Carson Messenger Service

11 ☐ Certified Mail, Return receipt requested

12 ☒ Electronically, using Second Judicial District Court's ECF system.

13 ☐ Email: rochellemezzano@yahoo.com

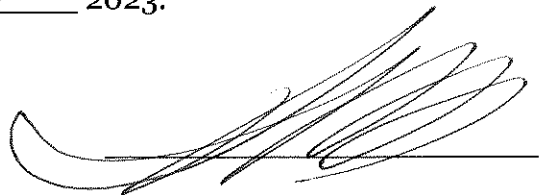
14 addressed to:

15 Rochelle Mezzano
16 105 Yellowstone Dr.
17 Reno, NV 89512

18 Rochelle Mezzano
19 735 Aesop Court
20 Reno, NV 89512

21 Dated this 17 day of April 2023.

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IN THE FAMILY DIVISION

**OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

JOHN TOWNLEY,

Plaintiff

Case No. DV19-01564

vs.

Dept. 13

ROCHELLE MEZZANO, et. al.,

Defendants.

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
DECREE OF DIVORCE, JUDGMENT, AND ORDER**

This matter came on for trial on November 2, 2023. Plaintiff appeared with counsel, Silverman Kattelman Springgate, Chtd. Defendant appeared and represented herself. The Court took testimony and evidence from the Plaintiff. The Defendant declined to testify and presented no evidence. The Court heard arguments from both parties. Now, having considered the testimony and evidence presented and the arguments made, and the declaration of Plaintiff's resident witness having been filed on April 24, 2023, the Court finds, concludes, and orders as follows.

JURISDICTION

The Court has jurisdiction over the parties and subject matter sufficient to resolve all claims and issues in this action and grant a divorce.

CHILDREN

The parties have no children of their relationship.

1 Ms. Mezzano is not pregnant.

2 **INCOMPATIBILITY**

3 The parties are incompatible in marriage and there is no hope of reconciliation.

4 **PRENUPTIAL AGREEMENT**

5 The parties entered into a prenuptial agreement on September 10, 1999, which
6 was admitted as Plaintiff's Exhibit "C". The prenuptial agreement is valid and
7 enforceable.

8 **ASSETS AND DEBTS**

9 The Court characterizes, values, and allocates the assets and debts before the
10 Court as set out below.

11 **Accounts and Cash.**

12 **Heritage Bank of Nevada Personal Checking account x5457.**

13 Heritage Bank of Nevada Personal Checking account x5457 is John Townley's
14 sole and separate property pursuant to the parties' premarital agreement.

15 **One Nevada Personal Savings account x0000.**

16 Once Nevada Personal Savings account x0000 is John Townley's sole and
17 separate property pursuant to the parties' premarital agreement.

18 **One Nevada Personal Checking account x0008.**

19 One Nevada Personal Checking account x0008 is John Townley's sole and
20 separate property pursuant to the parties' premarital agreement.

21 **Optum Bank x7669 HSA account.**

22 Optum Bank x7669 HSA account is John Townley's sole and separate property
23 pursuant to the parties' premarital agreement.

24 **John's Cash on hand.**

25 The cash accumulated by John Townley and now in his possession is his sole and
26 separate property.

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1 **Rochelle's Cash on hand.**

2 John Townley testified concerning the \$125,000 possessed by Rochelle Mezzano
3 when the parties separated. Mr. Townley's testimony was corroborated by Ms.
4 Mezzano's admission, in her financial disclosure filed early in this case, Plaintiff's
5 Exhibit "F", to having \$80,000 in cash. Ms. Mezzano provided no evidence to rebut Mr.
6 Townley's testimony. The Court allocates that \$125,000 to Ms. Mezzano as community
7 property.

8 **Chase checking account x7171.**

9 Chase checking account x7171 is Rochelle Mezzano's sole and separate property
10 pursuant to the parties' premarital agreement.

11 **Chase savings account x6258.**

12 Chase savings account x6258 is Rochelle Mezzano's sole and separate property
13 pursuant to the parties' premarital agreement.

14 **Chase savings account x6775.**

15 Chase savings account x6775 is Rochelle Mezzano's sole and separate property
16 pursuant to the parties' premarital agreement.

17 **Greater Nevada Credit Union Regular Shares Account x6408.**

18 Greater Nevada Credit Union Regular Shares account x6408 is Rochelle
19 Mezzano's sole and separate property pursuant to the parties' premarital agreement.

20 **Meadows Bank Account x1656.**

21 Meadows Bank account x1656 is John Townley's sole and separate property
22 pursuant to the parties' premarital agreement.

23 **Goldmoney Funds.**

24 This account is John Townley's sole and separate property pursuant to the
25 parties' premarital agreement.

26 **Gold (Held in Goldmoney account).**

27 This account is John Townley's sole and separate property pursuant to the
28 parties' premarital agreement.

1 **Bonds.**

2 These bonds are John Townley's sole and separate property pursuant to the
3 parties' premarital agreement.

4 **Business Interests and Receivables.**

5 **Seven Star Realty, Inc.**

6 The ownership interest in the business known as Seven Star Realty, Inc., is Ms.
7 Mezzano's sole and separate property pursuant to the parties' premarital agreement.

8 **Moon Note on 1708 London Circle, Sparks, Nevada APN: 027-470-37.**

9 The note payable, admitted into evidence as Plaintiff's Exhibit "G", is John
10 Townley's sole and separate property pursuant to the parties' premarital agreement.

11 **IRS Receivable.**

12 The funds on account with the IRS under John Townley's social security number
13 are John Townley's sole and separate property.

14 **Keller Williams Realty Inc. Profit sharing.**

15 The Keller Williams Realty Inc., profit sharing to which John Townley is entitled
16 is John Townley's sole and separate property pursuant to the parties' premarital
17 agreement.

18 **Real Property.**

19 **145 Redstone Dr., Reno, Nevada APN: 003-351-09.**

20 145 Redstone Drive, Reno, Nevada, APN: 003-351-09 was conclusively deemed
21 community property by Rochelle Mezzano's failure to respond to Plaintiff's Request for
22 Admission #1. Plaintiff's requests for admission were admitted into evidence as
23 Plaintiff's Exhibit "B". The only evidence of value presented to the Court was the
24 appraisal by Richard Lace, which was admitted into evidence as Plaintiff's Exhibit "K".
25 Ms. Mezzano's cross examination of Mr. Lace did not impact the Court's determination
26 of value. The Court values this property at \$650,000 and awards it to Mr. Townley.

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1 **735 Aesop Ct. Reno, Nevada APN: 003-431-10.**

2 735 Aesop Ct., Reno, Nevada APN: 003-431-10 was conclusively deemed
3 community property by Rochelle Mezzano's failure to respond to Plaintiff's Request for
4 Admission #2. The only evidence of value presented to the Court was the appraisal by
5 Richard Lace, which was admitted into evidence as Plaintiff's Exhibit "L". Ms. Mezzano's
6 cross examination of Mr. Lace did not impact the Court's determination of value. The
7 Court values this property at \$600,000 and awards it to Ms. Mezzano.

8 **3120 Achilles Dr., Reno, Nevada APN: 003-502-03.**

9 3120 Achilles Dr., Reno, Nevada APN: 003-502-03 was conclusively deemed
10 community property by Rochelle Mezzano's failure to respond to Plaintiff's Request for
11 Admission #3. The only evidence of value presented to the Court was the appraisal by
12 Richard Lace, which was admitted into evidence as Plaintiff's Exhibit "M". Ms.
13 Mezzano's cross examination of Mr. Lace did not impact the Court's determination of
14 value. The Court values this property at \$525,000 and awards it to Mr. Townley.

15 **670 Valley Rd., Reno, Nevada APN: 008-181-25.**

16 670 Valley Rd., Reno, Nevada APN: 008-181-25 was conclusively deemed
17 community property by Rochelle Mezzano's failure to respond to Plaintiff's Request for
18 Admission #4. The only evidence of value presented to the Court was the appraisal by
19 Lavonne Johnson, which was admitted into evidence as Plaintiff's Exhibit "N". Ms.
20 Mezzano's cross examination of Ms. Johnson did not impact the Court's determination
21 of value. The Court values this property at \$1,200,000 and awards it to Ms. Mezzano.

22 **1532 F St., Sparks, Nevada APN: 031-352-15.**

23 1532 F Street, Sparks, Nevada APN: 031-352-15 was conclusively deemed
24 community property by Rochelle Mezzano's failure to respond to Plaintiff's Request for
25 Admission #6. Plaintiff's requests for admission were admitted into evidence as
26 Plaintiff's Exhibit "B". The only evidence of value presented to the Court was the
27 appraisal by Lavonne Johnson, which was admitted into evidence as Plaintiff's Exhibit
28 "O". Ms. Mezzano's cross examination of Ms. Johnson did not impact the Court's

1 determination of value. The Court values this property at \$264,000 and awards it to Mr.
2 Townley.

3 **1708 London Circle, Sparks, Nevada 89431 APN: 027-470-37.**

4 1708 London Circle, Sparks, NV 89431 APN: 027-470-37 was conclusively
5 deemed John Townley's separate property by Rochelle Mezzano's failure to respond to
6 Plaintiff's Request for Admission #5.

7 **105 Yellowstone Dr., Reno, Nevada APN: 003-340-03 Half interest.**

8 Rochelle Mezzano acquired an interest in 105 Yellowstone Dr., Reno, Nevada
9 APN: 003-340-03 during marriage. (See Plaintiff's Exhibit "H".) Ms. Mezzano did not
10 provide the Court clear and convincing evidence to rebut the presumption her interest
11 acquired during marriage is community property. Therefore, the presumption controls.
12 Ms. Mezzano's interest in this property is community property. John Townley testified
13 to the value of the property. Ms. Mezzano did ^{not} offer any evidence of value. The Court
14 values Ms. Mezzano's half interest in the property at \$290,000. The Court awards Ms.
15 Mezzano the interest in the property.

16 **125 Yellowstone Dr., Reno, Nevada APN: 003-340-01 Half interest.**

17 Rochelle Mezzano acquired an interest in 125 Yellowstone Dr., Reno, Nevada
18 APN: 003-340-01 during marriage. (See Plaintiff's Exhibit "I".) Ms. Mezzano did not
19 provide the Court clear and convincing evidence to rebut the presumption her interest
20 acquired during marriage is community property. Therefore, the presumption controls.
21 Ms. Mezzano's interest in this property is community property. John Townley testified
22 to the value of the property. Ms. Mezzano did ^{not} offer any evidence of value. The Court
23 values Ms. Mezzano's half interest in the property at \$312,500. The Court awards Ms.
24 Mezzano the interest in the property.

25 **Claims vis-à-vis back rent owed by Eva Otero.**

26 Any claim Eva Otero owes back rent is denied based on Rochelle Mezzano's
27 failure to answer Request for Admission #20.

28 ///

1 **Vehicles.**

2 The following vehicles were conclusively established to be John Townley's
3 separate property by Rochelle Mezzano's failure to answer Plaintiff's Requests for
4 Admission #7 through #13:

- 5 • 2007 Dodge Ram, VIN 1D3KS28C87J536266.
- 6 • 1965 Pontiac Tempest GTO, VIN 237375P309242.
- 7 • 2014 Polaris Razor, VIN 4XAST1EA3EF365436.
- 8 • 2019 Roadclipper 16' ATV Car Trailer, VIN 46UFU1218K1211378.
- 9 • 2006 Attitude 19' toy hauler trailer, VIN 5LZBE19236S003527.
- 10 • 1986 Chevy K20, VIN 1GCGK24M9GF347349.
- 11 • 2006 Radco Trailer, VIN 1R9BM903361584114.

12 The following vehicles are Ms. Mezzano's sole and separate property:

- 13 • 2018 Mercedes Benz 300 4Matic
- 14 • 2016 Ram
- 15 • 2001 Chevy Corvette
- 16 • 2007 Lexus RX 350 (W)

17 John Townley testified concerning the acquisition of the 1982 Windrose 18 by
18 Laguna Yachts, VIN 1ZE1XLT14CC003778, and Trailer. The Court concludes the boat
19 and trailer are Mr. Townley's sole and separate property as the Court heard no alternate
20 position on allocation.

21 John Townley testified concerning his motorcycles, scooters, and parts. The
22 Court concludes those items are Mr. Townley's sole and separate property pursuant to
23 the parties' premarital agreement as they were acquired through his labor and the issue
24 and profits of his separate property.

25 **Tangible Personal Property.**

26 **Rochelle's safety deposit box**

27 The Court awards Rochelle Mezzano her safety deposit box as her sole and
28 separate property.

1 **Safe at 735 Aesop Court, Reno, Nevada.**

2 The Court finds the safe at 735 Aesop Court, Reno, Nevada to be a fixture and
3 included in the allocation of the property. The contents of the safe are distinct from the
4 safe.

5 **Guns**

6 John Townley's firearms are his sole and separate property.

7 **Silver**

8 The silver possessed by John Townley is his sole and separate property.

9 **Jewelry**

10 The testimony provided to the Court is that each party is in possession of their
11 jewelry. Ms. Mezzano is awarded the jewelry in her possession, and Mr. Townley is
12 awarded the jewelry in his possession.

13 **Furniture/furnishings**

14 The evidence provided to the Court is that each party is in possession of their
15 furniture and furnishings. Ms. Mezzano is awarded the furniture and furnishings in her
16 possession, and Mr. Townley is awarded the furniture and furnishings in his possession.

17 **Walt's Gold**

18 The Court determined the gold nuggets described to the Court as "Walt's Gold"
19 was acquired with cash once stored in the safe at 735 Aesop Court, Reno, Nevada. The
20 Court concludes "Walt's Gold" is community property. Each party is awarded half of the
21 gold.

22 **Gold/silver coins**

23 The Court determined the gold/silver coins collected during the marriage are
24 community property. Each party is awarded half of the coins.

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1 **Insurance Policies.**

2 **Life Insurance Policies**

3 Any life insurance policy owned by John Townley was conclusively established to
4 be Mr. Townley's sole and separate property by Rochelle Mezzano's failure to answer
5 Plaintiff's Request for Admission #14.

6 **Retirement Accounts.**

7 **IRA Fidelity account x6512**

8 IRA Fidelity account x6512 is John Townley's sole and separate property
9 pursuant to the parties' premarital agreement.

10 **Fidelity account x5335**

11 Fidelity account x5335 is Rochelle Mezzano's sole and separate property
12 pursuant to the parties' premarital agreement.

13 **Fidelity account x6628.**

14 Fidelity account x6628 is Rochelle Mezzano's sole and separate property
15 pursuant to the parties' premarital agreement.

16 **Preferred Trust IRA Account.**

17 Preferred Trust IRA account is Rochelle Mezzano's sole and separate property
18 pursuant to the parties' premarital agreement.

19 **Schwab IRA Account.**

20 Schwab IRA account is Rochelle Mezzano's sole and separate property pursuant
21 to the parties' premarital agreement.

22 **Liabilities.**

23 **Mortgages on John Townley's Properties**

24 The debts secured against the real property set over to John Townley are assigned
25 to Mr. Townley as community liabilities. Those debts are: (1) the Lakeview Mortgage
26 x9537 on 145 Redstone Drive, Reno, Nevada \$207,446 due, (2) the Chase Mortgage
27 x4846 on 3120 Achilles Dr., Reno, Nevada \$101,729 due, and (3) the Mr. Cooper
28 Mortgage x0201 1532 F St., Sparks, Nevada \$83,619 due.

1 If Ms. Mezzano is liable on a debt assigned to Mr. Townley, then Mr. Townley
2 shall remove Ms. Mezzano's liability within 180 days of entry of this decree of divorce. If
3 Mr. Townley does not remove Ms. Mezzano's liability by the deadline, the property on
4 which Ms. Mezzano remains liable shall be listed for sale the next day and sold. If Mr.
5 Townley fails to timely pay on a loan, the property securing that loan shall be listed for
6 sale the day following the missed payment and sold.

7 **Mortgages on Rochelle Mezzano's Properties.**

8 The debts secured against the real property set over to Rochelle Mezzano,
9 including any debts secured by 735 Aesop Court, 105 Yellowstone Dr., or 125
10 Yellowstone Dr., on which either party is liable are assigned to Ms. Mezzano as
11 community liabilities. If Mr. Townley is liable on a debt assigned to Ms. Mezzano, then
12 Ms. Mezzano shall remove Mr. Townley's liability within 180 days of entry of this decree
13 of divorce. If Ms. Mezzano does not remove Mr. Townley's liability by the deadline, the
14 property on which Mr. Townley remains liable shall be listed for sale the next day and
15 sold. If Ms. Mezzano fails to timely pay on a loan, the property securing that loan shall
16 be listed for sale the day following the missed payment and sold.

17 **Tax liability.**

18 The Court determined the parties have paid their current year income tax
19 liability. The parties shall each pay their own tax liability for past and future years.

20 **Citi Costco Visa account x7943.**

21 Citi Costco Visa account x7943 is John Townley's sole and separate liability
22 pursuant to the parties' premarital agreement.

23 **Capital One Cabela's credit card account x3252 (previously account**
24 **x1112).**

25 Capital One Cabela's credit card account x3252 (previously account x1112) is
26 John Townley's sole and separate liability pursuant to the parties' premarital agreement.

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1 **Wells Fargo Business Credit Card account x3206.**

2 Wells Fargo Business Credit Car account x3206 is John Townley's sole and
3 separate liability pursuant to the parties' premarital agreement.

4 **Rochelle Mezzano's Debts.**

5 Based on the parties' premarital agreement and Rochelle Mezzano's failure to
6 answer Plaintiff's Request for Admission #18, the debts in Rochelle Mezzano's name,
7 including any medical debt, are her sole and separate liabilities.

8 **John Townley's Medical Debts, if Any.**

9 John Townley's medical debt, if any, is set aside to him as his sole and separate
10 liability.

11 **EQUALIZING AMOUNT**

12 Based on the allocation of community property above, to create an equal division
13 of the community property, Ms. Mezzano owes Mr. Townley \$740,647. Ms. Mezzano
14 shall pay the equalizing amount in full within 180 days of entry of this decree. As
15 security for the equalizing amount, Ms. Mezzano shall execute a note for the amount
16 and deeds of trust securing that note against the real properties set over to her in this
17 decree. That note and the deeds of trust shall be signed by Ms. Mezzano within 45 days
18 of entry of this decree. If Ms. Mezzano does not timely sign, the Clerk of Court shall be
19 appointed by the Court to sign on her behalf. *See* NRCP 70(a).

20 **ALIMONY**

21 Based on the parties' premarital agreement and Rochelle Mezzano's failure to
22 respond to Plaintiff's Request for Admission #19, neither party is awarded alimony. The
23 Court terminates its jurisdiction over alimony.

24 **MS. MEZZANO'S CIVIL COUNTERCLAIMS**

25 The Court previously dismissed claims two through six of Ms. Mezzano's
26 Counterclaim.

27 **MS. MEZZANO'S CROSSCLAIM**

28 Ms. Mezzano failed to prosecute her crossclaim. The claims therein are denied.

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Code:

Michael V. Kattelman (NSB#6703)
John P. Springgate (NSB# 1350)
Alexander C. Morey (NSB#11216)
Benjamin Albers (NSB#11895)
Silverman Kattelman Springgate, Chtd.
500 Damonte Ranch Parkway, Suite 675
Reno, Nevada 89521
Telephone: 775/322-3223
Facsimile: 775/322-3649
Attorney for John Townley

**IN THE FAMILY DIVISION
OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

JOHN TOWNLEY,

Plaintiff

Case No. DV19-01564

vs.

Dept. 13

ROCHELLE MEZZANO and
DOES I through XX,
to include Doe individuals,
corporations, limited liability companies,
partnerships, trusts, limited partnerships,
and such other individuals or entities
as may exist or be formed

Defendants.

**NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW,
DECREE OF DIVORCE, JUDGMENT, AND ORDER**

PLEASE TAKE NOTICE that the above-entitled Court entered a Findings of Fact,
Conclusions of Law, Decree of Divorce, Judgment, And Order in this matter on
November 28, 2023.

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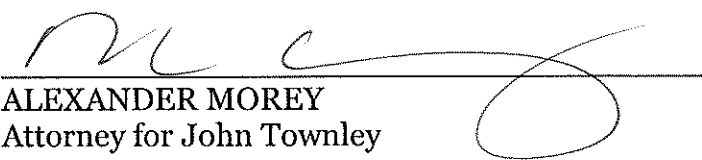
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1 Under NRS 239B.030 the undersigned affirms the preceding contains no social
2 security number.

3 Dated this 28th day of November 2023.

4 SILVERMAN KATTELMAN SPRINGGATE, CHTD.

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7 ALEXANDER MOREY
8 Attorney for John Townley
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IN THE FAMILY DIVISION

**OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

JOHN TOWNLEY,

Plaintiff

Case No. DV19-01564

vs.

Dept. 13

ROCHELLE MEZZANO, et. al.,

Defendants.

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
DECREE OF DIVORCE, JUDGMENT, AND ORDER**

This matter came on for trial on November 2, 2023. Plaintiff appeared with counsel, Silverman Kattelman Springgate, Chtd. Defendant appeared and represented herself. The Court took testimony and evidence from the Plaintiff. The Defendant declined to testify and presented no evidence. The Court heard arguments from both parties. Now, having considered the testimony and evidence presented and the arguments made, and the declaration of Plaintiff's resident witness having been filed on April 24, 2023, the Court finds, concludes, and orders as follows.

JURISDICTION

The Court has jurisdiction over the parties and subject matter sufficient to resolve all claims and issues in this action and grant a divorce.

CHILDREN

The parties have no children of their relationship.

1 Ms. Mezzano is not pregnant.

2 **INCOMPATIBILITY**

3 The parties are incompatible in marriage and there is no hope of reconciliation.

4 **PRENUPTIAL AGREEMENT**

5 The parties entered into a prenuptial agreement on September 10, 1999, which
6 was admitted as Plaintiff's Exhibit "C". The prenuptial agreement is valid and
7 enforceable.

8 **ASSETS AND DEBTS**

9 The Court characterizes, values, and allocates the assets and debts before the
10 Court as set out below.

11 **Accounts and Cash.**

12 **Heritage Bank of Nevada Personal Checking account x5457.**

13 Heritage Bank of Nevada Personal Checking account x5457 is John Townley's
14 sole and separate property pursuant to the parties' premarital agreement.

15 **One Nevada Personal Savings account x0000.**

16 Once Nevada Personal Savings account x0000 is John Townley's sole and
17 separate property pursuant to the parties' premarital agreement.

18 **One Nevada Personal Checking account x0008.**

19 One Nevada Personal Checking account x0008 is John Townley's sole and
20 separate property pursuant to the parties' premarital agreement.

21 **Optum Bank x7669 HSA account.**

22 Optum Bank x7669 HSA account is John Townley's sole and separate property
23 pursuant to the parties' premarital agreement.

24 **John's Cash on hand.**

25 The cash accumulated by John Townley and now in his possession is his sole and
26 separate property.

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1 **Rochelle's Cash on hand.**

2 John Townley testified concerning the \$125,000 possessed by Rochelle Mezzano
3 when the parties separated. Mr. Townley's testimony was corroborated by Ms.
4 Mezzano's admission, in her financial disclosure filed early in this case, Plaintiff's
5 Exhibit "F", to having \$80,000 in cash. Ms. Mezzano provided no evidence to rebut Mr.
6 Townley's testimony. The Court allocates that \$125,000 to Ms. Mezzano as community
7 property.

8 **Chase checking account x7171.**

9 Chase checking account x7171 is Rochelle Mezzano's sole and separate property
10 pursuant to the parties' premarital agreement.

11 **Chase savings account x6258.**

12 Chase savings account x6258 is Rochelle Mezzano's sole and separate property
13 pursuant to the parties' premarital agreement.

14 **Chase savings account x6775.**

15 Chase savings account x6775 is Rochelle Mezzano's sole and separate property
16 pursuant to the parties' premarital agreement.

17 **Greater Nevada Credit Union Regular Shares Account x6408.**

18 Greater Nevada Credit Union Regular Shares account x6408 is Rochelle
19 Mezzano's sole and separate property pursuant to the parties' premarital agreement.

20 **Meadows Bank Account x1656.**

21 Meadows Bank account x1656 is John Townley's sole and separate property
22 pursuant to the parties' premarital agreement.

23 **Goldmoney Funds.**

24 This account is John Townley's sole and separate property pursuant to the
25 parties' premarital agreement.

26 **Gold (Held in Goldmoney account).**

27 This account is John Townley's sole and separate property pursuant to the
28 parties' premarital agreement.

1 **Bonds.**

2 These bonds are John Townley's sole and separate property pursuant to the
3 parties' premarital agreement.

4 **Business Interests and Receivables.**

5 **Seven Star Realty, Inc.**

6 The ownership interest in the business known as Seven Star Realty, Inc., is Ms.
7 Mezzano's sole and separate property pursuant to the parties' premarital agreement.

8 **Moon Note on 1708 London Circle, Sparks, Nevada APN: 027-470-37.**

9 The note payable, admitted into evidence as Plaintiff's Exhibit "G", is John
10 Townley's sole and separate property pursuant to the parties' premarital agreement.

11 **IRS Receivable.**

12 The funds on account with the IRS under John Townley's social security number
13 are John Townley's sole and separate property.

14 **Keller Williams Realty Inc. Profit sharing.**

15 The Keller Williams Realty Inc., profit sharing to which John Townley is entitled
16 is John Townley's sole and separate property pursuant to the parties' premarital
17 agreement.

18 **Real Property.**

19 **145 Redstone Dr., Reno, Nevada APN: 003-351-09.**

20 145 Redstone Drive, Reno, Nevada, APN: 003-351-09 was conclusively deemed
21 community property by Rochelle Mezzano's failure to respond to Plaintiff's Request for
22 Admission #1. Plaintiff's requests for admission were admitted into evidence as
23 Plaintiff's Exhibit "B". The only evidence of value presented to the Court was the
24 appraisal by Richard Lace, which was admitted into evidence as Plaintiff's Exhibit "K".
25 Ms. Mezzano's cross examination of Mr. Lace did not impact the Court's determination
26 of value. The Court values this property at \$650,000 and awards it to Mr. Townley.

27 ///

28 ///

1 **735 Aesop Ct. Reno, Nevada APN: 003-431-10.**

2 735 Aesop Ct., Reno, Nevada APN: 003-431-10 was conclusively deemed
3 community property by Rochelle Mezzano's failure to respond to Plaintiff's Request for
4 Admission #2. The only evidence of value presented to the Court was the appraisal by
5 Richard Lace, which was admitted into evidence as Plaintiff's Exhibit "L". Ms. Mezzano's
6 cross examination of Mr. Lace did not impact the Court's determination of value. The
7 Court values this property at \$600,000 and awards it to Ms. Mezzano.

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9 3120 Achilles Dr., Reno, Nevada APN: 003-502-03 was conclusively deemed
10 community property by Rochelle Mezzano's failure to respond to Plaintiff's Request for
11 Admission #3. The only evidence of value presented to the Court was the appraisal by
12 Richard Lace, which was admitted into evidence as Plaintiff's Exhibit "M". Ms.
13 Mezzano's cross examination of Mr. Lace did not impact the Court's determination of
14 value. The Court values this property at \$525,000 and awards it to Mr. Townley.

15 **670 Valley Rd., Reno, Nevada APN: 008-181-25.**

16 670 Valley Rd., Reno, Nevada APN: 008-181-25 was conclusively deemed
17 community property by Rochelle Mezzano's failure to respond to Plaintiff's Request for
18 Admission #4. The only evidence of value presented to the Court was the appraisal by
19 Lavonne Johnson, which was admitted into evidence as Plaintiff's Exhibit "N". Ms.
20 Mezzano's cross examination of Ms. Johnson did not impact the Court's determination
21 of value. The Court values this property at \$1,200,000 and awards it to Ms. Mezzano.

22 **1532 F St., Sparks, Nevada APN: 031-352-15.**

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26 Plaintiff's Exhibit "B". The only evidence of value presented to the Court was the
27 appraisal by Lavonne Johnson, which was admitted into evidence as Plaintiff's Exhibit
28 "O". Ms. Mezzano's cross examination of Ms. Johnson did not impact the Court's

1 determination of value. The Court values this property at \$264,000 and awards it to Mr.
2 Townley.

3 **1708 London Circle, Sparks, Nevada 89431 APN: 027-470-37.**

4 1708 London Circle, Sparks, NV 89431 APN: 027-470-37 was conclusively
5 deemed John Townley's separate property by Rochelle Mezzano's failure to respond to
6 Plaintiff's Request for Admission #5.

7 **105 Yellowstone Dr., Reno, Nevada APN: 003-340-03 Half interest.**

8 Rochelle Mezzano acquired an interest in 105 Yellowstone Dr., Reno, Nevada
9 APN: 003-340-03 during marriage. (See Plaintiff's Exhibit "H".) Ms. Mezzano did not
10 provide the Court clear and convincing evidence to rebut the presumption her interest
11 acquired during marriage is community property. Therefore, the presumption controls.
12 Ms. Mezzano's interest in this property is community property. John Townley testified
13 to the value of the property. Ms. Mezzano did ^{not} offer any evidence of value. The Court
14 values Ms. Mezzano's half interest in the property at \$290,000. The Court awards Ms.
15 Mezzano the interest in the property.

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18 APN: 003-340-01 during marriage. (See Plaintiff's Exhibit "I".) Ms. Mezzano did not
19 provide the Court clear and convincing evidence to rebut the presumption her interest
20 acquired during marriage is community property. Therefore, the presumption controls.
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22 to the value of the property. Ms. Mezzano did ^{not} offer any evidence of value. The Court
23 values Ms. Mezzano's half interest in the property at \$312,500. The Court awards Ms.
24 Mezzano the interest in the property.

25 **Claims vis-à-vis back rent owed by Eva Otero.**

26 Any claim Eva Otero owes back rent is denied based on Rochelle Mezzano's
27 failure to answer Request for Admission #20.

28 ///

1 **Vehicles.**

2 The following vehicles were conclusively established to be John Townley's
3 separate property by Rochelle Mezzano's failure to answer Plaintiff's Requests for
4 Admission #7 through #13:

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- 6 • 1965 Pontiac Tempest GTO, VIN 237375P309242.
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- 8 • 2019 Roadclipper 16' ATV Car Trailer, VIN 46UFU1218K1211378.
- 9 • 2006 Attitude 19' toy hauler trailer, VIN 5LZBE19236S003527.
- 10 • 1986 Chevy K20, VIN 1GCGK24M9GF347349.
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- 15 • 2001 Chevy Corvette
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18 Laguna Yachts, VIN 1ZE1XLT14CC003778, and Trailer. The Court concludes the boat
19 and trailer are Mr. Townley's sole and separate property as the Court heard no alternate
20 position on allocation.

21 John Townley testified concerning his motorcycles, scooters, and parts. The
22 Court concludes those items are Mr. Townley's sole and separate property pursuant to
23 the parties' premarital agreement as they were acquired through his labor and the issue
24 and profits of his separate property.

25 **Tangible Personal Property.**

26 **Rochelle's safety deposit box**

27 The Court awards Rochelle Mezzano her safety deposit box as her sole and
28 separate property.

1 **Safe at 735 Aesop Court, Reno, Nevada.**

2 The Court finds the safe at 735 Aesop Court, Reno, Nevada to be a fixture and
3 included in the allocation of the property. The contents of the safe are distinct from the
4 safe.

5 **Guns**

6 John Townley's firearms are his sole and separate property.

7 **Silver**

8 The silver possessed by John Townley is his sole and separate property.

9 **Jewelry**

10 The testimony provided to the Court is that each party is in possession of their
11 jewelry. Ms. Mezzano is awarded the jewelry in her possession, and Mr. Townley is
12 awarded the jewelry in his possession.

13 **Furniture/furnishings**

14 The evidence provided to the Court is that each party is in possession of their
15 furniture and furnishings. Ms. Mezzano is awarded the furniture and furnishings in her
16 possession, and Mr. Townley is awarded the furniture and furnishings in his possession.

17 **Walt's Gold**

18 The Court determined the gold nuggets described to the Court as "Walt's Gold"
19 was acquired with cash once stored in the safe at 735 Aesop Court, Reno, Nevada. The
20 Court concludes "Walt's Gold" is community property. Each party is awarded half of the
21 gold.

22 **Gold/silver coins**

23 The Court determined the gold/silver coins collected during the marriage are
24 community property. Each party is awarded half of the coins.

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1 **Insurance Policies.**

2 **Life Insurance Policies**

3 Any life insurance policy owned by John Townley was conclusively established to
4 be Mr. Townley's sole and separate property by Rochelle Mezzano's failure to answer
5 Plaintiff's Request for Admission #14.

6 **Retirement Accounts.**

7 **IRA Fidelity account x6512**

8 IRA Fidelity account x6512 is John Townley's sole and separate property
9 pursuant to the parties' premarital agreement.

10 **Fidelity account x5335**

11 Fidelity account x5335 is Rochelle Mezzano's sole and separate property
12 pursuant to the parties' premarital agreement.

13 **Fidelity account x6628.**

14 Fidelity account x6628 is Rochelle Mezzano's sole and separate property
15 pursuant to the parties' premarital agreement.

16 **Preferred Trust IRA Account.**

17 Preferred Trust IRA account is Rochelle Mezzano's sole and separate property
18 pursuant to the parties' premarital agreement.

19 **Schwab IRA Account.**

20 Schwab IRA account is Rochelle Mezzano's sole and separate property pursuant
21 to the parties' premarital agreement.

22 **Liabilities.**

23 **Mortgages on John Townley's Properties**

24 The debts secured against the real property set over to John Townley are assigned
25 to Mr. Townley as community liabilities. Those debts are: (1) the Lakeview Mortgage
26 x9537 on 145 Redstone Drive, Reno, Nevada \$207,446 due, (2) the Chase Mortgage
27 x4846 on 3120 Achilles Dr., Reno, Nevada \$101,729 due, and (3) the Mr. Cooper
28 Mortgage x0201 1532 F St., Sparks, Nevada \$83,619 due.

1 If Ms. Mezzano is liable on a debt assigned to Mr. Townley, then Mr. Townley
2 shall remove Ms. Mezzano's liability within 180 days of entry of this decree of divorce. If
3 Mr. Townley does not remove Ms. Mezzano's liability by the deadline, the property on
4 which Ms. Mezzano remains liable shall be listed for sale the next day and sold. If Mr.
5 Townley fails to timely pay on a loan, the property securing that loan shall be listed for
6 sale the day following the missed payment and sold.

7 **Mortgages on Rochelle Mezzano's Properties.**

8 The debts secured against the real property set over to Rochelle Mezzano,
9 including any debts secured by 735 Aesop Court, 105 Yellowstone Dr., or 125
10 Yellowstone Dr., on which either party is liable are assigned to Ms. Mezzano as
11 community liabilities. If Mr. Townley is liable on a debt assigned to Ms. Mezzano, then
12 Ms. Mezzano shall remove Mr. Townley's liability within 180 days of entry of this decree
13 of divorce. If Ms. Mezzano does not remove Mr. Townley's liability by the deadline, the
14 property on which Mr. Townley remains liable shall be listed for sale the next day and
15 sold. If Ms. Mezzano fails to timely pay on a loan, the property securing that loan shall
16 be listed for sale the day following the missed payment and sold.

17 **Tax liability.**

18 The Court determined the parties have paid their current year income tax
19 liability. The parties shall each pay their own tax liability for past and future years.

20 **Citi Costco Visa account x7943.**

21 Citi Costco Visa account x7943 is John Townley's sole and separate liability
22 pursuant to the parties' premarital agreement.

23 **Capital One Cabela's credit card account x3252 (previously account**
24 **x1112).**

25 Capital One Cabela's credit card account x3252 (previously account x1112) is
26 John Townley's sole and separate liability pursuant to the parties' premarital agreement.

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1 **Wells Fargo Business Credit Card account x3206.**

2 Wells Fargo Business Credit Car account x3206 is John Townley's sole and
3 separate liability pursuant to the parties' premarital agreement.

4 **Rochelle Mezzano's Debts.**

5 Based on the parties' premarital agreement and Rochelle Mezzano's failure to
6 answer Plaintiff's Request for Admission #18, the debts in Rochelle Mezzano's name,
7 including any medical debt, are her sole and separate liabilities.

8 **John Townley's Medical Debts, if Any.**

9 John Townley's medical debt, if any, is set aside to him as his sole and separate
10 liability.

11 **EQUALIZING AMOUNT**

12 Based on the allocation of community property above, to create an equal division
13 of the community property, Ms. Mezzano owes Mr. Townley \$740,647. Ms. Mezzano
14 shall pay the equalizing amount in full within 180 days of entry of this decree. As
15 security for the equalizing amount, Ms. Mezzano shall execute a note for the amount
16 and deeds of trust securing that note against the real properties set over to her in this
17 decree. That note and the deeds of trust shall be signed by Ms. Mezzano within 45 days
18 of entry of this decree. If Ms. Mezzano does not timely sign, the Clerk of Court shall be
19 appointed by the Court to sign on her behalf. *See* NRCP 70(a).

20 **ALIMONY**

21 Based on the parties' premarital agreement and Rochelle Mezzano's failure to
22 respond to Plaintiff's Request for Admission #19, neither party is awarded alimony. The
23 Court terminates its jurisdiction over alimony.

24 **MS. MEZZANO'S CIVIL COUNTERCLAIMS**

25 The Court previously dismissed claims two through six of Ms. Mezzano's
26 Counterclaim.

27 **MS. MEZZANO'S CROSSCLAIM**

28 Ms. Mezzano failed to prosecute her crossclaim. The claims therein are denied.

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5 (b), I hereby certify that I am an employee of Silverman
3 Kattelman Springgate, Chtd, and on the date set forth below, I served a true copy of the
4 foregoing **Notice of Entry of Findings of Fact, Conclusions of Law, Judgment,**
5 **and Order** to the party(ies) identified below by:

6 ☐ Placing an original or true copy thereof in a sealed envelope, postage
7 prepaid for collection and mailing in the United States Mail at Reno,
8 Nevada to

9 ☐ Hand Delivery

10 ☐ Facsimile to the following numbers:

11 ☐ Reno Carson Messenger Service

12 ☐ Certified Mail, Return receipt requested

13 ☒ Electronically, using Second Judicial District Court's ECF system.

14 ☐ Email: rochellemezzano@yahoo.com

15 addressed to:

16 Rochelle Mezzano
17 105 Yellowstone Dr.
18 Reno, NV 89512

19 Rochelle Mezzano
20 735 Aesop Court
21 Reno, NV 89512

22 Dated this 28 day of November 2023.

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