IN THE SUPREME COURT OF THE STATE OF NEVADA

KIMBERLY JONES,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, and THE HONORABLE GAYLE NATHAN, DISTRICT JUDGE,

Respondents;

FLETCHER JONES, JR.,

Real Party in Interest

Electronically Filed
Feb 24 2014 11:11 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Case No.

District Court Case No. D-12-470239-U

Appendix to

VERIFIED EMERGENCY PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION

BLACK & LOBELLO

Michele Touby LoBello
Nevada Bar No. 005527
John D. Jones, Esq.
Nevada Bar No. 006699
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
(702) 869-8801
Attorneys for Petitioner,
KIMBERLY JONES

CHRONOLOGICAL INDEX OF PETITIONER'S APPENDIX

DESCRIPTION	DATE FILED	PAGE NO.
Petition for Dissolution of Marriage	January 4, 2012	PA00001-00002
Response to Petition for Dissolution of Marriage	January 31, 2012	PA00003-00005
Motion to Bifurcate the Trial and Grant a Judgment of Dissolution as to Status of Marriage Only	June 21, 2012	PA00006-00025
Judgment of Dissolution – Status Only	Nov. 29, 2012	PA00026-00033
Complaint for Declaratory Judgment and for Specific Performance to Enforce the Parties' Prenuptial Agreement dated July 1, 1998, the Parties' Marital Settlement Agreement dated December 13, 2006, and the Parties' Post Marital Agreement Dated December 12, 2007 (including only Exhibit "1", the parties' Prenuptial Agreement)	October 4, 2012	PA00034-00085
Order [March 12, 2013 hearing]	April 5, 2013	PA00086-00087
Court Minutes of October 10, 2013 Hearing	October 10, 2013	PA00088-00092
Transcript Re: All Pending Motions, Thursday, October 10, 2013	October 10, 2013	PA00093-00097
Order from Hearing [issued by Court following October 10, 2013 hearing]	October 14, 2013	PA00098-00100
Transcript Re: All Pending Motions, Thursday, October 17, 2013	October 17, 2013	PA00101-00105
Superior Court of California for the County of Orange Minute Order	January 30, 2014	PA00106-00111
Defendant, Kimberly Jones', Trial Brief	February 4, 2014	PA00112-00158
Court Minutes of February 5, 2014 Hearing (Day One of trial)	February 5, 2014	PA00159-00162
Court Minutes of February 6, 2014 Hearing (Day Two of trial)	February 6, 2014	PA00163-00166
Reporter's (ROUGH) Transcript of Trial Day Three (relevant pages)	February 7, 2014	PA00167-00182

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DESCRIPTION	DATE FILED	PAGE NO.
Notice and Memorandum of Pending Housekeeping Matters	February 12, 2014	PA00183-00190
Defendant's Response to Plaintiff's Notice and Memorandum of Pending Housekeeping Matters	February 13, 2014	PA00191-00203
Reporter's (ROUGH) Transcript of Trial Day Five (relevant pages)	February 13, 2014	PA00204-00217
Reporter's Transcript of Trial Day Six (relevant pages)	February 14, 2014	PA00218-00249
Minute Order	February 20, 2014	PA00250-00253

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ALPHABETICAL INDEX OF PETITIONER'S APPENDIX

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Defendant's Response to Plaintiff's Notice and Memorandum of Pending Housekeeping Matters	February 13, 2014	PA00191-00203
Judgment of Dissolution – Status Only	Nov. 29, 2012	PA00026-00033
Minute Order	February 20, 2014	PA00250-00253
Motion to Bifurcate the Trial and Grant a Judgment of Dissolution as to Status of Marriage Only	June 21, 2012	PA00006-00025
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Reporter's (ROUGH) Transcript of Trial Day Five (relevant pages)	February 13, 2014	PA00204-00217
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DESCRIPTION	DATE FILED	PAGE NO.
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Transcript Re: All Pending Motions, Thursday, October 10, 2013	October 10, 2013	PA00093-00097
Transcript Re: All Pending Motions, Thursday, October 17, 2013	October 17, 2013	PA00101-00105

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Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

FL-100

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	FOR COURT USE ONLY
NEIL PAPIANO, ESQ., SBN 031811 IVERSON, YOAKUM, PAPIANO & HATCH 633 W. FIFTH ST., 64TH FLOOR LOS ANGELES, CA 90071 TELEPHONE NO.: (213) 624-7444 FAX NO. (Optional): (213) 629-4563 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): KIMBERLY M. JONES	FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE LAMOREAUX JUSTICE CENTER JAN 04 2012 ALAN CARLSON, Clerk of the Court BY: V. DO DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 341 THE CITY DRIVE SOUTH MAILING ADDRESS: SAME AS ABOVE CITY AND ZIP CODE: ORANGE, CA 92868-3205 BRANCH NAME: LAMOREAUX JUSTICE CENTER	
MARRIAGE OF PETITIONER: KIMBERLY M. JONES RESPONDENT: FLETCHER JONES, JR.	
PETITION FOR [X] Dissolution of Marriage [ ] Legal Separation [ ] Nullity of Marriage [ ] AMENDED	CASE NUMBER: 12D000041

395

1. RESIDENCE (Dissolution only) [X] Petitioner [ ] Respondent has been a resident of this state for at least six months and of this county for at least three months immediately preceding the filing of this *Petition for Dissolution of Marriage*.

2. STATISTICAL FACTS
   a. Date of marriage: JULY 4, 1998
   b. Date of separation: NOVEMBER 10, 2011
   c. Time from date of marriage to date of separation *(specify)*: Years: 13 Months: 4

3. DECLARATION REGARDING MINOR CHILDREN *(Include children of this relationship born prior to or during the marriage or adopted during the marriage)*:
   a. [ ] There are no minor children.
   b. [X] The minor children are:

Child's name	Birthdate	Age	Sex
HAYDEN WALKER JONES	01/22/02	9	MALE
HARRISON TROY JONES	06/30/03	8	MALE
AVERY AUSTIN JONES	10/10/08	3	FEMALE

   [ ] Continued on Attachment 3b.
   c. If there are minor children of the Petitioner and Respondent, a completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105) must be attached.
   d. [ ] A completed voluntary declaration of paternity regarding minor children born to the Petitioner and Respondent prior to the marriage is attached.

4. SEPARATE PROPERTY
   Petitioner requests that the assets and debts listed [ ] in *Property Declaration* (form FL-160) [ ] in Attachment 4
   [X] below be confirmed as separate property.

Item	Confirm to
ANY AND ALL ASSETS AND DEBTS WHICH WERE ACQUIRED BY PETITIONER PRIOR TO DATE OF MARRIAGE, AFTER DATE OF SEPARATION, DURING MARRIAGE AS SEPARATE PROPERTY, OR BY GIFT OR INHERITANCE ACCORDING TO PROOF AT TRIAL.	

NOTICE: You may redact (black out) social security numbers from any written material filed with the court in this case other than a form used to collect child or spousal support.

MARRIAGE OF (last name, first name of parties):
MARRIAGE OF JONES, KIMBERLY AND FLETCHER

CASE NUMBER: 12D000041

6. DECLARATION REGARDING COMMUNITY AND QUASI-COMMUNITY ASSETS AND DEBTS AS CURRENTLY KNOWN
   a. [ ] There are no such assets or debts subject to disposition by the court in this proceeding.
   b. [X] All such assets and debts are listed [ ] in *Property Declaration* (form FL-160) [ ] in Attachment 6b.
      [X] below (*specify*):
      ANY AND ALL COMMUNITY AND QUASI-COMMUNITY ASSETS AND DEBTS ACQUIRED BY PETITIONER AND/OR RESPONDENT DURING THE MARRIAGE WHICH ARE CURRENTLY UNKNOWN TO PETITIONER ACCORDING TO PROOF AT TIME OF TRIAL.

8. Petitioner requests
   a. [X] dissolution of the marriage based on
      (1) [X] irreconcilable differences. (Fam. Code, § 2310(a).)
      (2) [ ] incurable insanity. (Fam. Code, § 2310(b).)
   b. [ ] legal separation of the parties based on
      (1) [ ] irreconcilable differences. (Fam. Code, § 2310(a).)
      (2) [ ] incurable insanity. (Fam. Code, § 2310(b).)
   c. [ ] nullity of void marriage based on
      (1) [ ] incestuous marriage. (Fam. Code, § 2200.)
      (2) [ ] bigamous marriage. (Fam. Code, § 2201.)
   d. [ ] nullity of voidable marriage based on
      (1) [ ] petitioner's age at time of marriage. (Fam. Code, § 2210(a).)
      (2) [ ] prior existing marriage. (Fam. Code, § 2210(b).)
      (3) [ ] unsound mind. (Fam. Code, § 2210(c).)
      (4) [ ] fraud. (Fam. Code, § 2210(d).)
      (5) [ ] force. (Fam. Code, § 2210(e).)
      (6) [ ] physical incapacity. (Fam. Code, § 2210(f).)

7. Petitioner requests that the court grant the above relief and make injunctive (including restraining) and other orders as follows:

	Petitioner	Respondent	Joint	Other
a. Legal custody of children to	[X]	[ ]	[ ]	[ ]
b. Physical custody of children to	[X]	[ ]	[ ]	[ ]
c. Child visitation be granted to	[ ]	[X]	[ ]	[ ]

   As requested in form: [ ] FL-311 [ ] FL-312 [ ] FL-341(C) [ ] FL-341(D) [ ] FL-341(E) [ ] Attachment 7c.

d. [ ] Determination of parentage of any children born to the Petitioner and Respondent prior to the marriage.		
e. Attorney fees and costs payable by	[ ]	[X]
f. Spousal support payable to (earnings assignment will be issued)	[X]	[ ]

   g. [ ] Terminate the court's jurisdiction (ability) to award spousal support to Respondent.
   h. [X] Property rights be determined.
   i. [ ] Petitioner's former name be restored to (*specify*):
   j. [ ] Other (*specify*):

   [ ] Continued on Attachment 7j.

8. Child support—If there are minor children born to or adopted by the Petitioner and Respondent before or during this marriage, the court will make orders for the support of the children upon request and submission of financial forms by the requesting party. An earnings assignment may be issued without further notice. Any party required to pay support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent.

9. I HAVE READ THE RESTRAINING ORDERS ON THE BACK OF THE SUMMONS, AND I UNDERSTAND THAT THEY APPLY TO ME WHEN THIS PETITION IS FILED.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Date: JANUARY 4, 2012

KIMBERLY M. JONES
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PETITIONER)

Date: JANUARY 4, 2012

NEIL PAPIANO, ESQ., SBN 031811
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF ATTORNEY FOR PETITIONER)

NOTICE: Dissolution or legal separation may automatically cancel the rights of a spouse under the other spouse's will, trust, retirement plan, power of attorney, pay on death bank account, survivorship rights to any property owned in joint tenancy, and any other similar thing. It does not automatically cancel the right of a spouse as beneficiary of the other spouse's life insurance policy. You should review these matters, as well as any credit cards, other credit accounts, insurance policies, retirement plans, and credit reports to determine whether they should be changed or whether you should take any other actions. However, some changes may require the agreement of your spouse or a court order (see Family Code sections 231–235).

FL-120

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address)	FOR COURT USE ONLY
SEASTROM & SEASTROM A Professional Corporation PHILIP G. SEASTROM, SBN 72583 4695 MacArthur Court, Suite 1450, Newport Beach, CA 92660 TELEPHONE NO (949) 474-0800 FAX NO (Optional) (949) 474-0808 E-MAIL ADDRESS (Optional) ATTORNEY FOR (Name) Fletcher Jones, Jr.	FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE LAMOREAUX JUSTICE CENTER JAN 31 2012 ALAN CARLSON, Clerk of the Court BY: D. HANZICH, DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS 341 The City Drive MAILING ADDRESS P.O. Box 14170 CITY AND ZIP CODE Orange, California 92868 BRANCH NAME Lamoreaux Justice Center	
MARRIAGE OF PETITIONER Kimberly M. Jones RESPONDENT Fletcher Jones, Jr.	
RESPONSE ☑ and REQUEST FOR ☑ Dissolution of Marriage ☐ Legal Separation ☐ Nullity of Marriage ☐ AMENDED	CASE NUMBER 12D000041

1. RESIDENCE (Dissolution only) ☐ Petitioner ☑ Respondent has been a resident of this state for at least six months and of this county for at least three months immediately preceding the filing of the *Petition for Dissolution of Marriage*

2. STATISTICAL FACTS

a. Date of marriage: July 4, 1998
b. Date of separation: November 9, 2011
c. Time from date of marriage to date of separation *(specify)*: Years: 13 Months 4

3. DECLARATION REGARDING MINOR CHILDREN *(include children of this relationship born prior to or during the marriage or adopted during the marriage)*:

a ☐ There are no minor children.
b. ☑ The minor children are:

Child's name	Birthdate	Age	Sex
Hayden Walker Jones	1/22/02	9	M
Harrison Troy Jones	6/30/03	8	M
Avery Austin Jones	10/10/08	3	F

☐ Continued on Attachment 3b.

c. If there are minor children of the Petitioner and Respondent, a completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105) must be attached.

d ☐ A completed voluntary declaration of paternity regarding minor children born to the Petitioner and Respondent prior to the marriage is attached

4. SEPARATE PROPERTY

Respondent requests that the assets and debts listed ☐ in *Property Declaration* (form FL-160) ☐ in Attachment 4 ☑ below be confirmed as separate property.

Item	Confirm to
The total nature and extent of the separate property assets and debts are unknown at this time.	Respondent

NOTICE: You may redact (black out) social security numbers from any written material filed with the court in this case other than a form used to collect child or spousal support.

Form Adopted for Mandatory Use
Judicial Council of California
FL-120 [Rev. January 1, 2005]
Matthew Bender ESSENTIAL FORMS™

RESPONSE - MARRIAGE
(Family Law)

Family Code, § 2020
www.courtinfo.ca.gov

MARRIAGE OF *(last name, first name of ea)*.	E NUMBER
Jones, Kimberly and Fletcher	12D000041

5. DECLARATION REGARDING COMMUNITY AND QUASI-COMMUNITY ASSETS AND DEBTS AS CURRENTLY KNOWN
   a ☐ There are no such assets or debts subject to disposition by the court in this proceeding
   b. ☑ All such assets and debts are listed ☐ in *Property Declaration* (form FL-160) ☐ in Attachment 5b.
   ☑ below *(specify)*:
   The total nature and extent of community and quasi-community assets and debts are unknown at this time.

6 ☐ Respondent contends that the parties were never legally married.

7. ☐ Respondent denies the grounds set forth in item 6 of the petition.

8 Respondent requests
   a. ☑ dissolution of the marriage based on
      (1) ☑ irreconcilable differences (Fam Code, § 2310(a).)
      (2) ☐ incurable insanity. (Fam Code, § 2310(b))
   b. ☐ legal separation of the parties based on
      (1) ☐ irreconcilable differences (Fam. Code, § 2310(a))
      (2) ☐ incurable insanity. (Fam Code, § 2310(b).)
   c ☐ nullity of void marriage based on
      (1) ☐ incestuous marriage (Fam Code, § 2200)
      (2) ☐ bigamous marriage. (Fam Code, § 2201.)
   d ☐ nullity of voidable marriage based on
      (1) ☐ respondent's age at time of marriage (Fam. Code, § 2210(a))
      (2) ☐ prior existing marriage. (Fam Code, § 2210(b))
      (3) ☐ unsound mind (Fam Code, § 2210(c).)
      (4) ☐ fraud. (Fam Code, § 2210(d))
      (5) ☐ force. (Fam. Code, § 2210(e).)
      (6) ☐ physical incapacity (Fam. Code, § 2210(f).)

9 Respondent requests that the court grant the above relief and make injunctive (including restraining) and other orders as follows:

	Petitioner	Respondent	Joint	Other
a Legal custody of children to	☐	☐	☑	☐
b Physical custody of children to	☐	☐	☑	☐
c. Child visitation be granted to	☐	☐		☐

As requested in form: ☐ FL-311 ☐ FL-312 ☐ FL-341(C) ☐ FL-341(D) ☐ FL-341(E) ☐ Attachment 9c.

   d. ☐ Determination of parentage of any children born to the Petitioner and Respondent prior to the marriage
   e. Attorney fees and costs payable by ☐ ☐
   f. Spousal support payable to (wage assignment will be issued) ☐ ☐
   g. ☑ Terminate the court's jurisdiction (ability) to award spousal support to Petitioner.
   h ☑ Property rights be determined
   i ☐ Respondent's former name be restored to *(specify)*:
   j ☐ Other *(specify)*.

☐ Continued on Attachment 9j.

10. Child support- If there are minor children born to or adopted by the Petitioner and Respondent before or during this marriage, the court will make orders for the support of the children upon request and submission of financial forms by the requesting party An earnings assignment may be issued without further notice. Any party required to pay support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date 1-30-12

FLETCHER JONES, JR. ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF RESPONDENT)

Date

PHILIP G. SEASTROM ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF ATTORNEY FOR RESPONDENT)

The original response must be filed in the court with proof of service of a copy on Petitioner.

SUPERIOR COURT-COUNTY OF ORANGE
Lamoreaux Justice Center (LJC)
Returned Check Subject to $25 Fee

08120003672 JONES V JONES JR
12D000041 @1622289
DR 395.00

01/31/2012 TOTAL: 395.00
15:52 PAID: 395.00 CHK/
DH 34A08 .00

DR MARRIAGE DISSOLUTION; R 395 00
DH 34A08 01/31/2012 15:52 PAID CHK/

FL-301

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	FOR COURT USE ONLY
SEASTROM & SEASTROM, APC PHILIP G. SEASTROM, SBN 72583 4695 MacArthur Court, #1450 Newport Beach, CA 92660 TELEPHONE NO.: (949) 474-0800 FAX NO. (Optional): (949) 474-0808 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Fletcher Jones, Jr.	WASSER, COOPERMAN, & CARTER, APC BRUCE COOPERMAN, SBN 76119 2029 Century Park East, #1200 Los Angeles, CA 90067

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
LAMOREAUX JUSTICE CENTER
JUN 21 2012
ALAN CARLSON, Clerk of the Court
BY: A. YU, DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange
STREET ADDRESS: 341 The City Drive
MAILING ADDRESS: P.O. Box 14170
CITY AND ZIP CODE: Orange, California 92868
BRANCH NAME: Lamoreaux Justice Center

PETITIONER/PLAINTIFF: Kimberly M. Jones

RESPONDENT/DEFENDANT: Fletcher Jones, Jr.

CASE NUMBER: 12D000041

NOTICE OF MOTION

☐ MODIFICATION
☐ Child Custody ☐ Visitation ☐ Injunctive Order
☐ Child Support ☐ Spousal Support ☒ Other *(specify)*:
☐ Attorney Fees and Costs

To Bifurcate the Trial & Grant a Judgment of Dissolution as to Status of Marriage Only

1. TO *(name)*: Petitioner, Kimberly M. Jones.
2. A hearing on this motion for the relief requested in the attached application will be held as follows:
   a. Date: 07-27-12 Time: 8:30 am ☒ Dept.: F-64 ☐ Rm.:
   b. Address of court ☒ same as noted above ☐ other *(specify)*:
3. Supporting attachments:
   a. Completed *Application for Order and Supporting Declaration* (form FL-310) and a blank *Responsive Declaration* (form FL-320)
   b. ☐ Completed *Income and Expense Declaration* (form FL-150) and a blank *Income and Expense Declaration*
   c. ☐ Completed *Financial Statement (Simplified)* (form FL-155) and a blank *Financial Statement (Simplified)*
   d. ☐ Completed *Property Declaration* (form FL-160) and a blank *Property Declaration*
   e. ☒ Points and authorities
   f. ☒ Other *(specify)*: Declaration of Respondent Fletcher Jones, Jr.

Date: 6/21/12
PHILIP G. SEASTROM ▶ [signature]
(TYPE OR PRINT NAME) (SIGNATURE)

ORDER

4. ☐ Time for ☐ service ☐ hearing is shortened. Service must be on or before *(date)*:
5. Any responsive declaration must be served on or before *(date)*:
6. *If child custody or visitation is an issue in this proceeding, Family Code section 3170 requires mediation before or concurrently with the hearing listed above.* The parties are ordered to attend orientation and mandatory custody services as follows:

Date:

JUDICIAL OFFICER

NOTICE: If you have children from this relationship, the court is required to order payment of child support based on the incomes of both parents. The amount of child support can be large. It normally continues until the child is 18. You should supply the court with information about your finances. Otherwise, the child support order will be based on the information supplied by the other parent.
You do not have to pay any fee to file declarations in response to this *Notice of Motion* (including a completed Income and Expense Declaration (form FL-150) or Financial Statement *(Simplified)* (form FL-155) that will show your finances). In the absence of an order shortening time, the original of the responsive declaration must be filed with the court and a copy served on the other party at least nine court days before the hearing date. Add five calendar days if you serve by mail within California. (See Code of Civil Procedure 1005 for other situations.) To determine court and calendar days, go to *www.courtinfo.ca.gov/selfhelp/courtcalendars/*.

PETITIONER/PLAINTIFF: Kimberly M. Jones RESPONDENT/DEFENDANT: Fletcher Jones, Jr.	CASE NUMBER: 12D000041

7. PROOF OF SERVICE BY MAIL
   a. I am at least age 18, **not a party to this action**, and am a resident or employed in the county where the mailing took place. My residence or business address is:

   b. I served copies of the following documents by enclosing them in a sealed envelope with postage fully prepaid, depositing them in the United States mail as follows:
      (1) Papers served:
         (a) *Notice of Motion* and a completed *Application for Order and Supporting Declaration* (form FL-310) and a blank *Responsive Declaration* (form FL-320)
         (b) ☐ Completed *Income and Expense Declaration* (form FL-150) and a blank *Income and Expense Declaration*
         (c) ☐ Completed *Financial Statement (Simplified)* (form FL-155) and a blank *Financial Statement (Simplified)*
         (d) ☐ Completed *Property Declaration* (form FL-160) and a blank *Property Declaration*
         (e) ☐ Points and authorities
         (f) Other *(specify)*:

      (2) Manner of service:
         (a) Date of deposit:
         (b) Place of deposit *(city and state)*:
         (c) Addressed as follows:

   c. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF DECLARANT)



Requests for Accommodations
Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five court days before the proceeding. Contact the clerk's office or go to *www.courtinfo.ca.gov/forms* for *Request for Accommodations by Persons With Disabilities and Response* (Form MC-410). (Civil Code, § 54.8)

Matthew Bender ESSENTIAL FORMS™

PETITIONER: Kimberly M. Jones RESPONDENT: Fletcher Jones, Jr.	CASE NUMBER: 12D000041

☒ **APPLICATION FOR SEPARATE TRIAL** **OR** ☐ **RESPONSE TO APPLICATION FOR SEPARATE TRIAL**

Attachment to ☒ ***Notice of Motion*** **(form FL-301)** ☐ ***Responsive Declaration to Order to Show Cause or Notice of Motion*** **(form FL-320)**

1. I am the ☐ petitioner ☒ respondent, and ☒ request ☐ oppose the request that the court sever (bifurcate) and grant an early and separate trial on the following issue or issues:
   a. ☐ Permanent custody and visitation of the children of the marriage
   b. ☐ Date of separation of the parties
   c. ☐ Alternate valuation date for property
   d. ☐ Validity of agreement entered into before or during the marriage or domestic partnership
   e. ☒ Dissolution of the status of the marriage or domestic partnership
      (1) I will serve with this application or response my preliminary *Declaration of Disclosure* (form FL-140) and completed *Schedule of Assets and Debts* (form FL-142) *and Income and Expense Declaration* (FL-150) unless they have been previously served or the parties have stipulated in writing to defer service.
      (2) All pension or retirement plans in which the community has an interest are listed below or on attachment 1e(2):

      (3) All pension or retirement plans listed in 1e(2) have been joined as a party to this proceeding, unless joinder is precluded or made unnecessary as a matter of law. *(See Retirement Plan Joinder-Information Sheet* (form FL-318-INFO) *to determine if a joinder is required.)*
      (4) I understand that the court may make the orders specified or requested on pages 2 and 3 if the motion is granted to bifurcate the status of the marriage and the marriage is ended.
      (5) ☐ I request that the court make the orders indicated on pages 2 and 3 and any attachments.

      NOTE: A request for an early termination of your marital or partnership status may have a significant impact on your rights or responsibilities in your case. If you do not understand this form, you should speak with an attorney.
   f. ☐ Other *(specify):*

2. a. ☒ I request that the court conduct this separate trial on the hearing date.
   b. ☐ I will, at the hearing, ask the court to set a date for this separate trial.

3. The reasons in support of this request are *(specify):*
   ☒ Memorandum attached. ☒ Supporting declarations attached.

PETITIONER: Kimberly M. Jones	CASE NUMBER: 12D000041
RESPONDENT: Fletcher Jones, Jr.	

4. Conditions relating to bifurcation of the status of the marriage of partnership:

   a. I understand that the court must enter an order to preserve the claims of each spouse or domestic partner in all retirement plan benefits upon entry of judgment granting a dissolution of the status of the marriage or domestic partnership.

   b. I request that the court order the following as a condition of granting the bifurcation and ending the marriage upon an early and separate trial:

Division of property

(1) ☒ The ☐ petitioner ☒ respondent and his or her estate must indemnify and hold me harmless from any taxes, reassessments, interest, and penalties that I have to pay in connection with the division of the community estate that I would not have had to pay if we were still married or in a domestic partnership at the time the division was made.

Health insurance

(2) ☒ Until a judgment has been entered and filed on the remaining issues, the ☐ petitioner ☒ respondent must maintain all existing health and medical insurance coverage for me and any minor children as named dependents as long as he or she is eligible to do so. If at any time during this period, he or she is not eligible to maintain that coverage, he or she must, at his or her sole expense, provide and maintain health and medical insurance coverage that is comparable to the existing health and medical insurance coverage to the extent it is available.

To the extent that coverage is not available, the ☐ petitioner ☒ respondent must be responsible to pay, and demonstrate to the court's satisfaction the ability to pay, for health and medical care for me and the minor children to the extent that care would have been covered by the existing insurance coverage but for the dissolution of marital status or domestic partnership, and must otherwise indemnify and hold me harmless from any adverse consequences resulting from the loss or reduction of the existing coverage.

Probate homestead

(3) ☒ Until a judgment has been entered and filed on all remaining issues, the ☐ petitioner ☒ respondent must indemnify and hold me harmless from any adverse consequences if the bifurcation results in a termination of my rights to a probate homestead in the residence in which I am residing at the time the severance is granted.

Probate family allowance

(4) ☒ Until a judgment has been entered and filed on all remaining issues, the ☐ petitioner ☒ respondent must indemnify and hold me harmless from any adverse consequences if the bifurcation results in the loss of my right to a probate family allowance as the surviving spouse or surviving domestic partner.

Retirement benefits

(5) ☒ Until a judgment has been entered and filed on all remaining issues, the ☐ petitioner ☒ respondent must indemnify and hold me harmless from any adverse consequences if the bifurcation results in the loss of my rights with respect to any retirement, survivor, or deferred compensation benefits under any plan, fund, or arrangement, or to any elections or options associated those benefits, to the extent that I would have been entitled to those benefits or elections as the spouse or surviving spouse or the domestic partner or surviving domestic partner.

Social security benefits

(6) ☒ The ☐ petitioner ☒ respondent must indemnify and hold me harmless from any adverse consequences if the bifurcation results in the loss of rights to social security benefits or elections to the extent that I would have been entitled to those benefits or elections as the surviving spouse or surviving domestic partner.

PETITIONER: Kimberly M. Jones RESPONDENT: Fletcher Jones, Jr.	CASE NUMBER: 12D000041

Beneficiary designation-nonprobate transfer

(7) ☐ The ☐ petitioner ☐ respondent must maintain the beneficiary designation specified for each Nonprobate Transfer Asset (Probate Code section 5000) identified on the attached list in the percentage indicated. *(See attachment 7 (not a form) which lists each asset and proposed percentage.)* This designation must stay in effect until judgment has been entered with respect to the community ownership of that asset and until my interest in it has been distributed to me.

Individual Retirement Accounts

(8) ☐ To preserve the ability of the nonowner to defer the distribution of an Individual Retirement Account or (IRA) Annuity upon the death of the owner, the court should make the attached orders assigning and transferring the community interest of ☐ petitioner ☐ respondent in each listed IRA to that party. *(See attachment 8 (not a form) which lists names of IRAs, account numbers and amount to be awarded.)*

Enforcement of community property rights

(9) ☐ Because it will be difficult to enforce either of our community property rights if one of us dies before the division and distribution or compliance with any court-ordered payment of any community property interest, the court should make the attached order to provide enforcement security for ☐ petitioner ☐ respondent. *(See attachment 9 (not a form) which specifies the security interest to be ordered as provided by Family Code section 2337(c)(9).)*

Other conditions that are just and equitable

(10) ☐ The court makes the following additional orders:

5. Number of pages attached after this page: 15

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 6-21-12

FLETCHER JONES, JR. ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

Petitioner: KIMBERLY M. JONES Respondent: FLETCHER JONES, JR.	Case No. 12D000041

DECLARATION OF RESPONDENT FLETCHER JONES, JR.

I, FLETCHER JONES JR., declare:

1. I am the Respondent in the above-entitled matter. I have personal knowledge of all facts stated in this Declaration, except such facts explicitly designated as made based on information and belief. If called upon to testify in any Court, I could and would so testify to all of the facts stated in this Declaration.

2. Petitioner, KIMBERLY M. JONES, and I married on July 4, 1998.

3. A Summons and Petition for Legal Separation was filed by Petitioner on January 4, 2012. On January 31, 2012, I filed and served upon Petitioner a Response and Request for Dissolution.

4. The information in both the Petition for Legal Separation and the Response and Request for Dissolution is correct as it pertains to residence. Petitioner has been a continuous resident of the State of California for six months and the County of Orange for three months immediately preceding the filing of the Petition.

5. There is no desire on my part to reconcile with Petitioner, and I wish the status of our marriage dissolved. There are irreconcilable differences that have led to the irremediable breakdown of the marriage, and there is absolutely no possibility of saving the marriage through counseling or other means.

6. No further period of waiting, referral to the Conciliation Court, or counselor of any type, will restore the marital relationship.

7. The continued maintenance of the technical marital status between Petitioner and I serves no useful purpose. There is no reason that I know of to remain in this legal relationship.

8. I should not be constrained in my financial or social endeavors by the mere fact that Petitioner and I have a technical marriage which now exists in name only.

9. I do not want the status of my marriage to affect any investment I wish to make. As an example, I should not be required to seek a quitclaim deed from Petitioner if I decide to invest in real property or other business ventures, nor should I be required to obtain Petitioner's consent to make application for and sign any loan documents regarding my finances.

10. I should not have to run the risk that any business deals I decide to make will be construed as community property because potentially community credit, rather than my own separate credit, was utilized.

11. A marriage which has failed and continues in name only should not prevent me from remarrying. I am engaged to my fiancée and plan to marry her in the near future. My prospective marriage to my fiancée should not be forced to await the complete resolution of all support, custody, property, and other issues in this case—which, at the present rate, could take years to resolve.

12. The granting of my Motion will not prejudice Petitioner's rights in connection with this action in any way whatsoever.

13. I firmly believe that an immediate dissolution of our marriage will help create a new, full life for me. One chapter will thus be officially over, and a new one can begin.

14. Granting this motion would allow me greater freedom from Petitioner's behavior, which has had a profoundly negative effect on my well-being, as well as the well-being of our three children: Hayden, Harrison, and Avery.

15. Granting this motion would unequivocally signal to Petitioner the end of our marriage. Although I have no desire to reconcile, Petitioner may still harbor some hope of reconciliation, which could negatively impact our ability to negotiate and settle this dissolution matter. I do not want any prospect of a reconciliation to impede negotiating settlement of this dissolution.

16. My attorneys and, to my knowledge, Petitioner's attorneys shall attempt to resolve all other issues, including but not limited to the validity and enforceability of our

several agreements, the nature, extent and value of properties, the division of the community property (if any), child and spousal support and attorneys' fees and costs, if any.

17. The immediate termination of our marital status and the granting of this Motion will not interfere with the settlement of the remaining issues herein nor adversely affect Petitioner with respect to any of said remaining issues if the court tries the issue of the dissolution of the marriage (status only) and reserves jurisdiction to determine all other issues at later dates. In fact, termination of the marital status could instead facilitate resolution of these issues.

18. I agree that the court may enter the standard conditional orders when terminating status, which Orders are set forth in the Judgment for Bifurcation of Status of Marriage submitted concurrently herewith and attached hereto as Exhibit "A".

19. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: June 21, 2012

FLETCHER JONES, JR.,
Respondent

EXHIBIT "A"

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	FOR COURT USE ONLY
SEASTROM & SEASTROM, APC PHILIP G. SEASTROM, SBN 72583 4695 MacArthur Court, #1450 Newport Beach, CA 92660 TELEPHONE NO.: (949) 474-0800 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Fletcher Jones, Jr.	WASSER, COOPERMAN, & CARTER, APC BRUCE COOPERMAN, SBN 76119 2029 Century Park East, #1200 Los Angeles, CA 90067 FAX NO. (Optional): (949) 474-0808
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS: 341 The City Drive MAILING ADDRESS: P.O. Box 14170 CITY AND ZIP CODE: Orange, California 92868 BRANCH NAME: Lamoreaux Justice Center	
MARRIAGE OF PETITIONER: Kimberly M. Jones RESPONDENT: Fletcher Jones, Jr.	
JUDGMENT ☒ DISSOLUTION ☐ LEGAL SEPARATION ☐ NULLITY ☒ Status only ☐ Reserving jurisdiction over termination of marital or domestic partnership status ☐ Judgment on reserved issues Date marital or domestic partnership status ends:	CASE NUMBER: 12D000041

1. ☐ This judgment ☐ contains personal conduct restraining orders ☐ modifies existing restraining orders. The restraining orders are contained on page(s) of the attachment. They expire on *(date)*:

2. This proceeding was heard as follows: ☒ Default or uncontested ☐ By declaration under Family Code section 2336 ☐ Contested
   a. Date: Dept.: Room:
   b. Judicial officer *(name)*: ☐ Temporary judge
   c. ☐ Petitioner present in court ☐ Attorney present in court *(name)*:
   d. ☐ Respondent present in court ☐ Attorney present in court *(name)*:
   e. ☐ Claimant present in court *(name)*: ☐ Attorney present in court *(name)*:
   f. ☐ Other *(specify name)*:

3. The court acquired jurisdiction of the respondent on *(date)*: January 31, 2012
   a. ☐ The respondent was served with process.
   b. ☒ The respondent appeared.

THE COURT ORDERS, GOOD CAUSE APPEARING

4. a. ☒ Judgment of dissolution is entered. Marital or domestic partnership status is terminated and the parties are restored to the status of single persons
   (1) ☐ on *(specify date)*:
   (2) ☐ on a date to be determined on noticed motion of either party or on stipulation.
   b. ☐ Judgment of legal separation is entered.
   c. ☐ Judgment of nullity is entered. The parties are declared to be single persons on the ground of *(specify)*:

   d. ☐ This judgment will be entered nunc pro tunc as of *(date)*:
   e. ☐ Judgment on reserved issues.
   f. The ☐ petitioner's ☐ respondent's former name is restored *(specify)*:
   g. ☐ Jurisdiction is reserved over all other issues, and all present orders remain in effect except as provided below.
   h. ☐ This judgment contains provisions for child support or family support. Each party must complete and file with the court a *Child Support Case Registry Form* (form FL-191) within 10 days of the date of this judgment. The parents must notify the court of any change in the information submitted within 10 days of the change, by filing an updated form. The *Notice of Rights and Responsibilities-Health Care Costs and Reimbursement Procedures and Information Sheet on Changing a Child Support Order* (form FL-192) is attached.

Form Adopted for Mandatory Use
Judicial Council of California
FL-180 [Rev. January 1, 2007]
Martin Dean's ESSENTIAL FORMS™
JUDGMENT
(Family Law)
Family Code, §§ 2024, 2340, 2343, 2346
www.courtinfo.ca.gov

CASE NAME *(Last name, first name of each party)*:	CASE NUMBER:
Jones, Fletcher Jr. Jones, Kimberly	12D000041

4. *(Cont'd.)*

i. ☐ A settlement agreement between the parties is attached.

j. ☐ A written stipulation for judgment between the parties is attached.

k. ☐ The children of this marriage or domestic partnership.

(1) ☐ The children of this marriage or domestic partnership are:

Name | Birthdate

(2) ☐ Parentage is established for children of this relationship born prior to the marriage or domestic partnership.

l. ☐ Child custody and visitation are ordered as set forth in the attached

(1) ☐ settlement agreement, stipulation for judgment, or other written agreement.

(2) ☐ *Child Custody and Visitation Order Attachment* (form FL-341).

(3) ☐ *Stipulation and Order for Custody and/or Visitation of Children* (form FL-355).

(4) ☐ other *(specify)*:

m. ☐ Child support is ordered as set forth in the attached

(1) ☐ settlement agreement, stipulation for judgment, or other written agreement.

(2) ☐ *Child Support Information and Order Attachment* (form FL-342).

(3) ☐ *Stipulation to Establish or Modify Child Support and Order* (form FL-350).

(4) ☐ other *(specify)*:

n. ☐ Spousal or partner support is ordered as set forth in the attached

(1) ☐ settlement agreement, stipulation for judgment, or other written agreement.

(2) ☐ *Spousal, Partner, or Family Support Order Attachment* (form FL-343).

(3) ☐ other *(specify)*:

NOTICE: It is the goal of this state that each party will make reasonable good faith efforts to become self-supporting as provided for in Family Code section 4320. The failure to make reasonable good faith efforts may be one of the factors considered by the court as a basis for modifying or terminating spousal or partner support.

o. ☐ Property division is ordered as set forth in the attached

(1) ☐ settlement agreement, stipulation for judgment, or other written agreement.

(2) ☐ *Property Order Attachment to Judgment* (form FL-345).

(3) ☐ other *(specify)*:

p. ☒ Other *(specify)*: Dissolution as to Status of Marriage Only

Each attachment to this judgment is incorporated into this judgment, and the parties are ordered to comply with each attachment's provisions.

Jurisdiction is reserved to make other orders necessary to carry out this judgment.

Date:

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
JUDICIAL OFFICER

5. Number of pages attached: 2

☒ SIGNATURE FOLLOWS LAST ATTACHMENT

NOTICE

Dissolution or legal separation may automatically cancel the rights of a spouse or domestic partner under the other spouse's or domestic partner's will, trust, retirement plan, power of attorney, pay-on-death bank account, transfer-on-death vehicle registration, survivorship rights to any property owned in joint tenancy, and any other similar thing. It does not automatically cancel the rights of a spouse or domestic partner as beneficiary of the other spouse's or domestic partner's life insurance policy. You should review these matters, as well as any credit cards, other credit accounts, insurance policies, retirement plans, and credit reports, to determine whether they should be changed or whether you should take any other actions.

A debt or obligation may be assigned to one party as part of the dissolution of property and debts, but if that party does not pay the debt or obligation, the creditor may be able to collect from the other party.

An earnings assignment may be issued without additional proof if child, family, partner, or spousal support is ordered.

Any party required to pay support must pay interest on overdue amounts at the "legal rate," which is currently 10 percent.

Petitioner: KIMBERLY M. JONES	Case No. 12D000041
Respondent: FLETCHER JONES, JR.	

ADDENDUM TO [PROPOSED] JUDGMENT FOR DISSOLUTION OF MARRIAGE – STATUS ONLY

1. Until judgment has been entered on all remaining issues and has become final, Respondent shall indemnify and hold Petitioner harmless from any taxes, reassessments, interests, and penalties payable by Petitioner in connection with the division of the community estate that would not have been payable if the parties were still married at the time the division was made.

2. Until judgment has been entered on all remaining issues and has become final, Respondent shall maintain all existing health and medical insurance coverage for Petitioner and any minor children as named dependents, so long as Respondent is eligible to do so. If at any time during this period Respondent is not eligible to maintain that coverage, Respondent shall, at Respondent's sole expense, provide and maintain health and medical insurance coverage that is comparable to the existing health and medical insurance coverage to the extent it is available. To the extent that coverage is not available, Respondent shall be responsible to pay, and shall demonstrate to the court' s satisfaction the ability to pay, for the health and medical care for Petitioner and the minor children, to the extent that care would have been covered by the existing insurance coverage but for the dissolution of marital status, and shall otherwise indemnify and hold Petitioner harmless from any adverse consequences resulting from the loss or reduction of the existing coverage.

3. Until judgment has been entered on all remaining issues and has become final, Respondent shall indemnify and hold Petitioner harmless from any adverse consequences to Petitioner if the bifurcation results in a termination of Petitioner's right to a probate homestead in the residence in which Petitioner resides at the time the severance is granted.

4. Until judgment has been entered on all remaining issues and has become final, Respondent shall indemnify and hold Petitioner harmless from any adverse consequences to Petitioner if the bifurcation results in the loss of the rights of Petitioner to a probate family allowance as the surviving spouse of Respondent.

5. Until judgment has been entered on all remaining issues and has become final, Respondent shall indemnify and hold Petitioner harmless from any adverse consequences to Petitioner if the bifurcation results in the loss of Petitioner's rights with respect to any retirement, survivor, or deferred compensation benefits under any plan, fund, or arrangement, or to any elections or options associated therewith, to the extent that Petitioner would have been entitled to those benefits or elections as the spouse or surviving spouse of Respondent.

6. Respondent shall indemnify and hold Petitioner harmless from any adverse consequences if the bifurcation results in the loss of rights to social security benefits or elections to the extent Petitioner would have been entitled to those benefits or elections as the surviving spouse of Respondent.

IT IS SO ORDERED.

Date: _____, 2012

_____
JUDGE RONALD KREBER

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Respondent, FLETCHER JONES, JR., seeks an order bifurcating the issues involved herein so that a Judgment of Dissolution of Marriage (Status Only) from Respondent, KIMBLERY M. JONES, may be granted forthwith, reserving jurisdiction in the court to determine subsequently the issues of the validity of agreements, property division, child and spousal support, attorneys' fees and court costs, if any, and any other additional issues which may be properly presented to the Court for adjudication.

ARGUMENT

I. THE COURT HAS DISCRETION TO GRANT BIFURCATED DISSOLUTION OF MARITAL STATUS

The Court has discretion to bifurcate the trial issues and grant a judgment of dissolution as to the status of the marriage only, retaining jurisdiction to hear testimony and grant a later judgment on reserved issues such as property division, spousal support, and other matters.

Pursuant to California Family Code, Section 2337, "the court, upon noticed motion, may sever and **grant an early and separate trial on the issue of the dissolution of the status of the marriage apart from other issues.**" (emphasis added; *See also* Cal. Fam. Code, § 2550; *Marriage of Fink* (1976) 53 Cal.App.3d 357.)

II. ONLY SLIGHT EVIDENTIARY SHOWING IS REQUIRED TO BIFURCATE MARITAL STATUS.

A party seeking bifurcation of marital status need only show **slight evidence that irreconcilable differences have irremediably broken down the marriage**. (See Cal.

Fam. Code, § 2310, 2311.) "[O]nly **slight evidence** is necessary to obtain bifurcation and resolution of marital status." (*In re Marriage of Fink* (1976) 54 Cal.App.3d 357, emphasis added.)

In *Gionis v. Superior Court* (1988) 202 Cal.App.3d 786, Husband moved to bifurcate the marital status issue from custody, support, and property division issues so that he could make investments and obtain credit without having to get quitclaim deeds from his wife or having to worry that a lender might rely on community credit rather than his separate credit. He also claimed that bifurcation would free him to engage in business deals that would increase his cash flow and the ability to support his family. The trial court denied Husband's motion, stating there was no compelling reason to bifurcate because the petitioner had been on file less than a year. Acting on the husband's petition, the Fourth District issued a writ of mandate directing the trial court to order bifurcation and dissolve marital status. The *Gionis* court held, "Consistent with the legislative policy favoring no fault dissolution of marriage, **only slight evidence is necessary to obtain bifurcation** and resolution of marital status. On the other hand, a **spouse opposing bifurcation must present compelling reasons for denial**." (*Id.* at p. 790, emphasis added.)

III. THE POLICY OF THE FAMILY CODE IS TO PERMIT PROMPT AND SIMPLE DISSOLUTION OF A MARRIAGE WHICH HAS IRREVOCABLY FAILED.

The rationale for the "slight evidence" showing is firmly grounded in the strong public policy favoring the prompt and simple bifurcation of marital status, rather than delaying the dissolution until all other property and custody issues are resolved. The **California Supreme Court** stated in *Hull v. Superior Court* (1960) 54 Cal.2d 139:

> The divisible divorce is more than a jurisdictional concept. Severance of a personal relationship which the law has found to be unworkable and, as a result, injurious to the public welfare is not dependent upon final settlement of

> property disputes. Society will be little concerned if the parties engage in property litigation of however long duration; it will be much concerned **if two people are forced to remain legally bound to one another where status can do nothing but engender additional bitterness and unhappiness**. (*Id.* at pp. 147–48.)

In *Marriage of Fink* (1976) 54 Cal.App.3d 357, the Appellate Court explicitly held that unresolved property, support, and custody issues should not impede a status-only judgment of dissolution. In that case, the Court rejected wife's claim that bifurcation might adversely affect her future right to support. The Court stated the Family Code "embodie[s] a legislative intent that the dissolution of marriage **should not be postponed merely because issues relating to property, support, attorney fees or child custody were unready for decision**." (*Ibid.* at p. 363, emphasis added.) It is the "legislative policy to permit a court to dissolve **promptly and simply** a marriage which has irrevocably failed." (*In re Marriage of Fink*, supra, 54 Cal.App.3d at p. 366, emphasis added.)

The *Fink* Court echoed the sentiments expressed in *Hull, supra*—when the marital relationship has irrevocably soured, public policy militates in favor of the two parties moving on with their respective lives. The *Fink* Court stated:

> In establishing "irreconcilable differences" as the sole ground of dissolution except in cases of incurable insanity, the Legislature made possible a prompt and economical determination. At the same time the minimal waiting period for a final decree was changed from one year after the interlocutory (former Civ. Code Section 132) to six months after services of process (Civ. Code Section 4514). All of this reflects the **legislative policy of permitting the prompt severance of a marriage relationship which had proved**

> **unworkable**. This is the same philosophy which the California Supreme Court had expressed as a reason for recognizing the concept of divisible divorce long before the Legislature had modernized the statutory procedure. (*Id.* at pp. 363–64, emphasis added.)

The Court in *Marriage of Van Sickle* (1977) 68 Cal.App.3d 728 also emphasized that swift judicial resolution should occur to bifurcate the status of a marriage when a spouse is no longer a loving and wiling partner in the marital relationship:

> ...it seems clear to us that the **legislative policy** in permitting an interlocutory judgment of dissolution of marriage to be a judgment from which an appeal can be taken, is to **enable the court to resolve, promptly and simply, the dissolution issues in marriages which have irrevocably failed**. It also seems clear to us that controversies over such matters as the division of marital property, child custody and spousal support raise severable, collateral issues which can be decided independently of the dissolution of marriage issue. (*Id.* at p. 736, emphasis added.)

IV. IT IS AN ABUSE OF DISCRETION TO DENY A MOTION TO BIFURCATE ABSENT COMPELLING REASONS

Given the public and legislative policies greatly favoring prompt and simple dissolution of marital status, a spouse who opposes bifurcation bears the steep burden of persuading the Court of **compelling reasons** for denial. (*Gionis*, supra, 202 Cal.App.3d at p. 790.) **Absent a <u>compelling</u> reason, denial of the motion to bifurcate is an abuse of discretion and even subject to peremptory writ of mandate.** (*Ibid.*)

V. THIS COURT SHOULD GRANT THE WITHIN MOTION TO BIFURCATE THE TRIAL AND GRANT A JUDGMENT OF DISSOLUTION AS TO THE STATUS OF THE MARRIAGE ONLY

In the present case, there can be no question that the marriage of the parties is no longer viable. Respondent has no desire to reconcile with Petitioner and wishes the status of their marriage terminated. Irreconcilable differences have led to the irremediable breakdown of the marriage, and there is absolutely no possibility of saving the marriage through counseling or other means. The continued maintenance of the technical marital status between Petitioner and Respondent serves no useful purpose, and there is no reason to maintain the legal relationship.

Respondent should not be constrained in his financial or social endeavors by the mere fact that Petitioner and he have a technical marriage which now exists in name only. Respondent does not want the status of his marriage to affect any investment he wishes to make. For example, he should not be required to seek a quitclaim deed from Petitioner if he decides to invest in real property or other business ventures, nor should he be required to obtain Petitioner's consent to make application for and sign loan documents regarding his finances.

Respondent would also like to be free to remarry. He is engaged and plans on remarrying soon. His prospective marriage to his fiancée should not be forced to await the complete resolution of all support, custody, property, and other issues in this case—which, at the present rate, could take years to resolve.

Respondent would also like greater separation from a woman that engages in behavior which jeopardizes his well-being and the well-being of the parties' three children.

By granting the within Motion to bifurcate the trial and grant a judgment of dissolution as to the marital status only, it would allow an opportunity for Respondent to increase financial independence. Especially in light of Respondent's wealth,

Respondent needs to sever the marital status in order to attend to the orderly administration of his affairs and post-separation estate planning. Additionally, Respondent is concerned that Petitioner may still harbor some hope of reconciliation—even though Respondent has no desire to reconcile.

In light of the **overwhelming public policy favoring bifurcating the status of dissolution**, coupled with the **relatively slight evidentiary standard** that Respondent must meet, it would be an abuse of this Court's discretion to deny Respondent the right to bifurcate the status of the parties' marriage.

No prejudice to either party will be experienced if the marriage is dissolved and jurisdiction of the issues pending is retained by the Court until litigated or otherwise settled. Respondent agrees to all the terms and conditions as set forth in Family Code, Section 2337, so that the Court may enter the standard orders when terminating status. There is no reason for the court to continue the bonds of matrimony, which now exist between Petitioner and Respondent in name only. Respondent wishes to move forward mentally and emotionally with his life. There are irreconcilable differences between the parties that have led to the irremediable breakdown of the marriage. Bifurcating the trial and granting a judgment of dissolution as to the status of the marriage would merely reflect the parties' current disposition.

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CONCLUSION

Based upon the arguments and evidence presented above, Respondent respectfully requests that this Court bifurcate the trial and immediately grant a judgment of dissolution as to the status of the marriage only. It is respectfully requested that the Court enter the Judgment of dissolution of marriage terminating the parties' marital status on the same day the Court hears this Motion reserving for ultimate determination all remaining issues.

Respectfully submitted,

Date: June 21, 2012

PHILIP G. SEASTROM
Attorney for Respondent

FL-180

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	FOR COURT USE ONLY
BEASTROM & BEASTROM, APC PHILIP G. BEASTROM, SBN 72663 4668 MacArthur Court, #1450 Newport Beach, CA 92660 TELEPHONE NO.: (949) 474-0800 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Fletcher Jones, Jr. WASSER, COOPERMAN, & CARTER, APC BRUCE COOPERMAN, SBN 76119 2029 Century Park East, #1200 Los Angeles, CA 90067 FAX NO. (Optional): (949) 474-0809	FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE LAMOREAUX JUSTICE CENTER NOV 29 2012 ALAN CARLSON, Clerk of the Court BY: D. GRIEVEN, DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS: 341 The City Drive MAILING ADDRESS: P.O. Box 14170 CITY AND ZIP CODE: Orange, California 92868 BRANCH NAME: Lamoreaux Justice Center	
MARRIAGE OR PARTNERSHIP OF PETITIONER: Kimberly M. Jones RESPONDENT: Fletcher Jones, Jr.	
JUDGMENT ☑ DISSOLUTION ☐ LEGAL SEPARATION ☐ NULLITY ☑ Status only ☐ Reserving jurisdiction over termination of marital or domestic partnership status ☐ Judgment on reserved issues Date marital or domestic partnership status ends: NOV 29 2012	CASE NUMBER: 12D000041

1. ☐ This judgment ☐ contains personal conduct restraining orders ☐ modifies existing restraining orders. The restraining orders are contained on page(s) of the attachment. They expire on *(date)*:

2. This proceeding was heard as follows: ☐ Default or uncontested ☐ By declaration under Family Code section 2336
   ☑ Contested ☐ Agreement in court
   a. Date: 9/6/12, 11/21/12 Dept.: L-64 Room:
   b. Judicial officer *(name)*: Hon. Ron Kreber ☐ Temporary Judge
   c. ☑ Petitioner present in court ☑ Attorney present in court *(name)*: Stephen A. Kolodny
   d. ☑ Respondent present in court ☑ Attorney present in court *(name)*: Bruce E. Cooperman
   e. ☐ Claimant present in court *(name)*: ☐ Attorney present in court *(name)*:
   f. ☐ Other *(specify name)*:

3. The court acquired jurisdiction of the respondent on *(date)*: January 5, 2012
   a. ☑ The respondent was served with process.
   b. ☐ The respondent appeared.

THE COURT ORDERS, GOOD CAUSE APPEARING

4. a. ☑ Judgment of dissolution is entered. Marital or domestic partnership status is terminated and the parties are restored to the status of single persons
   (1) ☑ on *(specify date)*: NOV 29 2012
   (2) ☐ on a date to be determined on noticed motion of either party or on stipulation.
   b. ☐ Judgment of legal separation is entered.
   c. ☐ Judgment of nullity is entered. The parties are declared to be single persons on the ground of *(specify)*:

   d. ☐ This judgment will be entered nunc pro tunc as of *(date)*:
   e. ☐ Judgment on reserved issues.
   f. The ☐ petitioner's ☐ respondent's former name is restored to *(specify)*:
   g. ☑ Jurisdiction is reserved over all other issues, and all present orders remain in effect except as provided below.
   h. ☐ This judgment contains provisions for child support or family support. Each party must complete and file with the court a *Child Support Case Registry Form* (form FL-191) within 10 days of the date of this judgment. The parents must notify the court of any change in the information submitted within 10 days of the change, by filing an updated form. The *Notice of Rights and Responsibilities—Health-Care Costs and Reimbursement Procedures* and *Information Sheet on Changing a Child Support Order* (form FL-192) is attached.

Form Adopted for Mandatory Use
Judicial Council of California
FL-180 [Rev. July 1, 2010]

JUDGMENT
(Family Law)

Family Code, §§ 2336, 2340, 2341, 2346
www.courtinfo.ca.gov

Matthew Bender
EXECUTIVE FORMS

CASE NAME (Last name, first name of each party):	CASE NUMBER:
Jones, Fletcher Jr. – Jones, Kimberly M.	12D000041

4. L ☑ The children of this marriage or domestic partnership are:

(1) ☑

Name	Birthdate
Hayden Walker Jones	1-22-02
Harrison Troy Jones	6-30-03
Avery Austin Jones	10-10-08

(2) ☐ Parentage is established for children of this relationship born prior to the marriage or domestic partnership

j. ☐ Child custody and visitation (parenting time) are ordered as set forth in the attached
- (1) ☐ Settlement agreement, stipulation for judgment, or other written agreement which contains the information required by Family Code section 3048(a).
- (2) ☐ *Child Custody and Visitation Order Attachment* (form FL-341).
- (3) ☐ *Stipulation and Order for Custody and/or Visitation of Children* (form FL-355).
- (4) ☐ Previously established in another case. Case number: Court:

k. ☐ Child support is ordered as set forth in the attached
- (1) ☐ Settlement agreement, stipulation for judgment, or other written agreement which contains the declarations required by Family Code section 4065(a).
- (2) ☐ *Child Support Information and Order Attachment* (form FL-342).
- (3) ☐ *Stipulation to Establish or Modify Child Support and Order* (form FL-350).
- (4) ☐ Previously established in another case. Case number: Court:

l. ☐ Spousal, domestic partner, or family support is ordered:
- (1) ☐ Reserved for future determination as relates to ☐ petitioner ☐ respondent
- (2) ☐ Jurisdiction terminated to order spousal or partner support to ☐ petitioner ☐ respondent
- (3) ☐ As set forth in the attached *Spousal, Partner, or Family Support Order Attachment* (form FL-343).
- (4) ☐ As set forth in the attached settlement agreement, stipulation for judgment, or other written agreement.
- (5) ☐ Other *(specify)*:

m. ☐ Property division is ordered as set forth in the attached
- (1) ☐ Settlement agreement, stipulation for judgment, or other written agreement.
- (2) ☐ *Property Order Attachment to Judgment* (form FL-345).
- (3) ☐ Other *(specify)*:

n. ☐ Attorney fees and costs are ordered as set forth in the attached
- (1) ☐ Settlement agreement, stipulation for judgment, or other written agreement.
- (2) ☐ *Attorney Fees and Costs Order* (form FL-346).
- (3) ☐ Other *(specify)*:

o. ☑ Other *(specify)*: Please see attached FL-347 and corresponding Attachment 6(j).

Each attachment to this judgment is incorporated into this judgment, and the parties are ordered to comply with each attachment's provisions. Jurisdiction is reserved to make other orders necessary to carry out this judgment.

Date:

JUDICIAL OFFICER

5. Number of pages attached: 8

☑ SIGNATURE FOLLOWS LAST ATTACHMENT

NOTICE

Dissolution or legal separation may automatically cancel the rights of a spouse or domestic partner under the other spouse's or domestic partner's will, trust, retirement plan, power of attorney, pay-on-death bank account, transfer-on-death vehicle registration, survivorship rights to any property owned in joint tenancy, and any other similar property interest. It does not automatically cancel the rights of a spouse or domestic partner as beneficiary of the other spouse's or domestic partner's life insurance policy. You should review these matters, as well as any credit cards, other credit accounts, insurance policies, retirement plans, and credit reports, to determine whether they should be changed or whether you should take any other actions.

A debt or obligation may be assigned to one party as part of the dissolution of property and debts, but if that party does not pay the debt or obligation, the creditor may be able to collect from the other party.

An earnings assignment may be issued without additional proof if child, family, partner, or spousal support is ordered.

Any party required to pay support must pay interest on overdue amounts at the "legal rate," which is currently 10 percent.

PA 00027

FL-347

PETITIONER: Kimberly M. Jones RESPONDENT: Fletcher Jones, Jr.	CASE NUMBER: 12D000041

BIFURCATION OF STATUS OF MARRIAGE OR DOMESTIC PARTNERSHIP

ATTACHMENT TO ☑ JUDGMENT (FL-180) ☐ FINDINGS AND ORDER AFTER HEARING (FL-340)

The court grants the request of ☐ petitioner ☑ respondent to bifurcate and grant a separate trial on the issue of the dissolution of the status of the marriage or domestic partnership apart from other issues.

Date marital or domestic partnership status ends *(specify)*:

THE COURT FINDS

1. A preliminary declaration of disclosure with a completed schedule of assets and debts and income and expense declaration has been served on the nonmoving party, or the parties have stipulated in writing to defer service of the preliminary declaration of disclosure until a later time.
2. Each retirement or pension plan of the parties has been joined as a party to the proceeding for dissolution unless joinder is precluded or made unnecessary by applicable law.

THE COURT ORDERS

3. a. To preserve the claims of each party in all retirement plan benefits on entry of judgment granting a dissolution of the status of the marriage or domestic partnership, the court makes one of the following orders for each retirement plan in which either party is a participant:
   (1) A final domestic relations order or qualified domestic relations order under Family Code section 2610 disposing of each party's interest in retirement plan benefits, including survivor and death benefits.
   (2) An interim order preserving the nonemployee party's right to retirement plan benefits, including survivor and death benefits, pending entry of judgment on all remaining issues.
   (3) A provisional order on *Pension Benefits—Attachment to Judgment* (form FL-348) incorporated as an attachment to the judgment of dissolution of the status of marriage or domestic partnership (*Judgment (Family Law)* (form FL-180)). This order provisionally awards to each party a one-half interest in all retirement benefits attributable to employment during the marriage or domestic partnership.

   b. Name of plan:

Type of order attached		
3a(1)	3a(2)	3a(3)
☐	☐	☐
☐	☐	☐
☐	☐	☐

   ☐ See attachment 3b for additional plans.

   c. The moving party must promptly serve on the retirement or pension plan administrator a copy of any order entered under items a and b above and a copy of the judgment granting dissolution of the status of the marriage or domestic partnership (form FL-180).

4. Jurisdiction is reserved for later determination of all other pending issues in this case.
5. The court makes the following additional orders as conditions for granting the severance on the issue of dissolution of the status of marriage or domestic partnership. In the case of the moving party's death, the order continues to be binding on that moving party's estate and will be enforceable against any asset, including the proceeds thereof, to the same extent that these obligations would have been enforceable before the person's death.
   a. ☑ Division of property
   The ☐ petitioner ☑ respondent must indemnify and hold the other party harmless from any ☑ taxes, ☑ reassessments, ☑ interest, and ☑ penalties payable by the other party in connection with the division of the community estate that would not have been payable if the parties were still married or domestic partners at the time the division was made.

Form Adopted for Mandatory Use
Judicial Council of California
FL-347 [Rev. July 1, 2013]

BIFURCATION OF STATUS OF MARRIAGE OR DOMESTIC PARTNERSHIP - ATTACHMENT (Family Law)

Family Code, §§ 2330, 2610;
Probate Code, §§ 100 et seq., 6500 et seq.
www.courts.ca.gov

LexisNexis DOCUMENT PRO

PETITIONER: Kimberly M. Jones	CASE NUMBER: 12D000041
RESPONDENT: Fletcher Jones, Jr.	

5. b. ☑ **Health insurance**

Until a judgment has been entered and filed on all remaining issues, the ☐ petitioner ☑ respondent must maintain all existing health and medical insurance coverage for the other party, and that party must also maintain any minor children as named dependents, as long as that party is eligible to do so. If at any time during this period the ☐ petitioner ☑ respondent is not eligible to maintain that coverage, that party must, at his or her sole expense, provide and maintain health and medical insurance coverage that is comparable to the existing health and medical insurance coverage to the extent it is available.

If that coverage is not available, the ☐ petitioner ☑ respondent is responsible for paying the health and medical care for the other party and the minor children to the extent that care would have been covered by the existing insurance coverage but for the dissolution of marital status or domestic partnership, and will otherwise indemnify and hold the other party harmless from any adverse consequences resulting from the loss or reduction of the existing coverage. "Health and medical insurance coverage" includes any coverage under any group or individual health or other medical plan, fund, policy, or program.

c. ☑ **Probate homestead**

Until a judgment has been entered and filed on all remaining issues, the ☐ petitioner ☑ respondent must indemnify and hold the other party harmless from any adverse consequences to the other party if the bifurcation results in a termination of the other party's right to a probate homestead in the residence in which the other party resides at the time the severance is granted.

d. ☑ **Probate family allowance**

Until a judgment has been entered and filed on all remaining issues, the ☐ petitioner ☑ respondent must indemnify and hold the other party harmless from any adverse consequences to the other party if the bifurcation results in the loss of the rights of the other party to a probate family allowance as the surviving spouse or surviving domestic partner.

e. ☑ **Retirement benefits**

Except for any retirement plan, fund, or arrangement identified in any order issued and attached as set out in paragraph 3, until a judgment has been entered on all remaining issues, the ☐ petitioner ☑ respondent must indemnify and hold the other party harmless from any adverse consequences to the other party if the bifurcation results in the loss of the other party's rights with respect to any retirement, survivor, or deferred compensation benefits under any plan, fund, or arrangement, or to any elections or options associated with them, to the extent that the other party would have been entitled to those benefits or elections as the spouse or surviving spouse or the domestic partner or surviving domestic partner of the moving party.

f. ☑ **Social security benefits**

The moving party must indemnify and hold the other party harmless from any adverse consequences if the bifurcation results in the loss of rights to social security benefits or elections to the extent the other party would have been entitled to those benefits or elections as the surviving spouse or surviving domestic partner of the moving party.

g. ☐ **Beneficiary designation - Nonprobate transfer**

Attachment 5(g), Order Re: Beneficiary Designation for Nonprobate Transfer Assets, will remain in effect for each covered asset until the division of any community interest therein has been completed.

h. ☐ **Individual Retirement Account**

Attachment 5(h), Order Re: Division of IRA Under Internal Revenue Code Section 408(d)(6), has been issued to preserve the ability of ☐ petitioner ☐ respondent to defer distribution of his or her community interest on the death of the IRA owner.

PETITIONER: Kimberly M. Jones RESPONDENT: Fletcher Jones, Jr.	CASE NUMBER: 12D000041

6. i. ☐ Enforcement of community property rights

Good cause exists to make additional orders as set out in Family Code section 2337(c)(3). See attachment 6(i).

j. ☑ Other conditions that are just and equitable

Other See Attachment 6(j)

8. Number of attachments: 1

WARNING: *Judgment (Family Law)* (form FL-180) (status only) must be completed in addition to this form for the status of the marriage or domestic partnership to be ended.

PA 00030

ATTACHMENT 5(j) TO JUDGMENT (STATUS ONLY)

(1) In the event said bifurcation, and the termination of marital status resulting therefrom, results in Petitioner incurring any tax liabilities by reason of Petitioner's inability to claim a "stepped up" basis with respect to any real or personal property held by the parties at the time of the termination of their marital status, Respondent (or in the event of Respondent's death, Respondent's estate) shall indemnify and hold Petitioner harmless therefrom.

(2) For a period of three (3) years subsequent to Judgment being entered on all remaining issues and having become final, Respondent or his estate shall pay to Petitioner all health insurance (conversion or otherwise) premium payments made by Petitioner to the extent said premium payments exceed the amount Petitioner would otherwise have paid under the Omnibus Budget Reconciliation Act of 1985 (COBRA).

(3) Until Judgment has been entered on all remaining issues and has become final, Respondent, and in the event of Respondent's death, his estate, shall indemnify and hold Petitioner harmless from any and all adverse consequences resulting to Petitioner in the event that said bifurcation results in the loss of Petitioner's rights under Probate Code sections 100, 101, 102, 103, 104, and 120.

(4) If Respondent dies after the entry of judgment granting a dissolution of marriage, any obligation imposed by this judgment shall be enforceable against any asset, including the proceeds thereof, against which these obligations would have been enforceable prior to Respondent's death.

(5) Until Judgment has been entered on all remaining issues and has become final, the status quo that existed as of the filing of the Petition on January 4, 2012 shall be maintained with respect to all life insurance policies. Respondent shall maintain all life insurance beneficiary designations as they were as of the date the Petition was filed on January 4, 2012. Respondent, or his estate, shall maintain (paying all premiums as and when due) all existing life insurance policies insuring the life of Respondent as of the filing of the Petition on January 4, 2012.

(6) Until Judgment has been entered on all remaining issues and has become final, in the event of a breach by Respondent of any of the provisions of the Judgment on status, which would mean the breach of these conditions, Petitioner shall be entitled to recover from Respondent (and, in the event of Respondent's death, from Respondent's estate) reasonable attorney's fees and other litigation expenses incurred by Petitioner in enforcing the provisions of the within Judgment.

(7) Until Judgment has been entered on all remaining issues and has become final, this Court shall have and reserve jurisdiction to award to Petitioner (whether out of Respondent's share of the community property of the parties, out of Respondent's separate property, or otherwise, or, in the event of Respondent's death, from Respondent's estate) damages or other compensation for breach by Respondent of any of the provisions of the within Judgment. The provisions of the within Paragraph are in addition to, and not in lieu of, any other remedies available to Petitioner for enforcement of the provisions of the within Judgment.

(8) Until Judgment has been entered on all remaining issues and has become final, Respondent shall advise Petitioner, prior to entering into escrow, of all real property which Respondent intends to acquire and provide Petitioner with all details pertaining to the acquisition of said property and the financial arrangements pertinent thereto.

(9) Until Judgment has been entered on all remaining issues, the Standard Family Law Restraining Orders issued pursuant to the filing of the Petition and Summons in this action remain in full force and effect and each party is enjoined from encumbering, hypothecating, selling, transferring, disposing of or otherwise conveying any property, or interest therein, whether community, quasi-community or separate.

(10) Until Judgment has been entered on all remaining issues, Respondent may not seek to reduce the amount of support payable to Petitioner if the request is because Respondent has new expenses for his new wife and Respondent is paying support to Petitioner. This shall not preclude Respondent from seeking a reduction in

support to Petitioner because of reduced income, or some other reason.

(11) The court reserves jurisdiction over all other issues of the marriage, including but not necessarily limited to, the nature, value and extent of the community property and separate property, the division of property, spousal support, attorney's fees, costs of litigation, and all other matters which the Court may determine appropriate and within the scope of its jurisdiction.

IT IS SO ORDERED.

Date: NOV 29 2012

RONALD KREBER
RONALD P. KREBER
JUDGE OF THE SUPERIOR COURT

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CLERK OF THE COURT

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FLETCHER JONES, JR.

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

FLETCHER JONES, JR., Plaintiff, vs. KIMBERLY JONES, Defendant.	CASE NO.D- 12- 470239- U DEPT. NO. I

COMPLAINT FOR DECLARATORY JUDGMENT AND FOR SPECIFIC PERFORMANCE TO ENFORCE THE PARTIES' PRENUPTIAL AGREEMENT DATED JULY 1, 1998, THE PARTIES' MARITAL SETTLEMENT AGREEMENT DATED DECEMBER 13, 2006, AND THE PARTIES' POST MARITAL AGREEMENT DATED DECEMBER 12, 2007

COMES NOW Plaintiff FLETCHER JONES, JR., by and through his counsel James J. Jimmerson, Esq. and Shawn M. Goldstein, Esq., of the law firm of Jimmerson Hansen, P.C. and alleges as follows:

ALLEGATIONS COMMON TO ALL CLAIMS

I. The Prenuptial Agreement of July 1, 1998.

1. Plaintiff FLETCHER JONES, JR. (hereinafter "Ted") and Defendant KIMBERLY JONES f/k/a Kimberly Moffatt (hereinafter "Kimberly"), negotiated and executed a Prenuptial Agreement on July 1, 1998, which Prenuptial Agreement is attached

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hereto as Exhibit "1", and is incorporated by reference as if fully stated herein.

2. The parties thereafter married on July 4, 1998. At that time, the parties were residents of the State of Nevada. As the Prenuptial Agreement stated, Ted owned and operated various businesses in the States of Nevada, California and Idaho, and for those reasons the parties expected to spend a portion of their time in Nevada, California and Idaho. Nevertheless, it was the stated intent of the parties within the Prenuptial Agreement that their primary place of residence was to continue to be the State of Nevada.

3. Ted was a resident of Clark County, Nevada until after 2006, and continues to conduct business in Clark County through businesses in which he has an ownership interest. At all relevant times, continuing to the present date, and with no foreseeable alteration in the future, Ted continues to spend significant time, on a frequent basis, in Clark County, Nevada, for both personal and professional reasons. After 2006, the parties began spending the majority of their time in the State of California.

4. Within the Prenuptial Agreement, dated July 1, 1998, at Paragraph XVII., "Applicable Law, Forum and Venue", the parties agreed to the venue for all proceedings would be Clark County, Nevada, in the Eighth Judicial District Court, for any judicial resolution pertaining to the parties' Premarital Agreement. The parties further agreed that Nevada Law would be interpreted, enforced, and construed under and in accordance with the statutory and case laws of Nevada as they existed at the time of execution. Paragraph XVII. states as follows:

> "**XVII. APPLICABLE LAW, FORUM AND VENUE**
>
> This Agreement shall be governed by, interpreted, enforced and construed under and in accordance with the statutory and case laws of the State of Nevada, as those laws exist and are in effect at the time of execution of this Agreement. Provided, however, that the choice of law rules and provisions of Nevada shall not be considered in interpreting, construing or enforcing this Agreement. The parties acknowledge and agree that they will be bound by this Agreement, and the law in effect in the State of Nevada at the time of execution hereof, regardless of any amendments, revisions or repeal of existing case law and statutes which may occur in the future. The existing laws of the State of Nevada shall be binding in all respects, even if the parties shall hereafter be or become, residents of, or domiciled in or own property in another state, country or territory at any time in the future.

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The parties choose the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark as the forum and venue for all proceedings hereunder and herewith submit to the jurisdiction thereof. This is a binding choice of law, forum and venue."

5. The Prenuptial Agreement dated July 1, 1998, at Paragraph XV, recites that each party has been represented by his/her respective attorney as to the entire Agreement, including but not limited to, the legal significance fo the Prenuptial Agreement. See also Attorney Certification, Page 34 of the Prenuptial Agreement, Exhibit "1" hereto.

II. Marital Settlement Agreement of December 13, 2006

6. In 2005, the parties separated. On November 18, 2005, Ted filed a Complaint for Divorce in Nevada, and Kimberly filed a Complaint for Divorce (Dissolution) in California. Although the parties ultimately dismissed these divorce actions, it was in the context of these pending divorce actions that the parties negotiated and executed a Marital Settlement Agreement.

7. The parties, after approximately eight (8) years of marriage, and after having two (2) children of the marriage, then believing themselves to be incompatible in marriage, negotiated and executed the certain Marital Settlement Agreement dated December 13, 2006, a copy of which is attached hereto as Exhibit "2", and incorporated herein by reference as if fully set forth.

8. Within the Marital Settlement Agreement, Exhibit "2" hereto, the parties ratified, reaffirmed and accepted the terms of the Prenuptial Agreement, essentially deeming it to be valid and enforceable, thereby acknowledging the Prenuptial Agreement's validity and enforceability in all respects. To the extent that a provision of the Marital Settlement Agreement conflicted with, or was contrary to, any term or condition or provision within the Prenuptial Agreement, the terms of the Marital Settlement Agreement were to control and were to be binding. See Paragraph 1.5 of the Marital Settlement Agreement, Exhibit "2" hereto.

9. In Paragraph 7.1 of the Marital Settlement Agreement, the parties declared Las Vegas, Nevada, as their place of residence. Ted stated that he had grown up in

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Southern California but moved to Las Vegas in order to participate in the management of the family automobile businesses, which had relocated to Southern Nevada years earlier. Within the same provision of the Marital Settlement Agreement, Kimberly declared that, shortly after her marriage to Ted, she registered to vote in the Sate of Nevada. She further stated that she voted in Nevada elections until 2006, at which point she voted in the State of California. Ted declared that it was his good faith intention to maintain Nevada as his permanent place of residence and return to Nevada without delay to continue his residence. The same provision, as it related to Kimberly, stated it was her intention to live primarily in Southern California with the children.

10. As stated in the Marital Settlement Agreement as it relates to jurisdiction and venue, the parties again agreed that the Marital Settlement Agreement shall be submitted to the Eighth Judicial District Court in and for the County of Clark, State of Nevada, and that the Nevada Court shall be appointed to ratify and approve the same. Specifically, Paragraph 7.3 of the parties Marital Settlement Agreement states as follows:

> "7.3 **Merger and Incorporation.** This Agreement shall be submitted to the court in Case No. D-347048, in the Eighth Judicial District Court of the County of Clark, State of Nevada, and the Court shall be requested to ratify, confirm and approve the same and the terms of this Agreement shall be incorporated and merged into any final decree which may hereafter be granted and the parties ordered to abide by the terms of this Agreement. However, approval or lack of approval of this Agreement by the court shall not effect the validity or enforceability of this Agreement between Husband and Wife."

11. The parties also explicitly agreed that, even if the parties reconciled and they did not divorce, the Marital Settlement Agreement would continue in full force and effect. The parties further provided in the following Paragraph 7.4, the following:

> "7.4 **Reconciliation.** If there is a reconciliation of the parties after the date of the execution of this Agreement, this Agreement shall nevertheless continue in full force and effect until it is modified or abrogated by another written instrument ot that effect and signed and acknowledged by each of the parties. All duties of support hereunder end until reconciliation ends, then resume. No support is due for any period of reconciliation. Reconciliation may only be evidenced by a written declaration thereof signed and acknowledged by both parties. Sexual intercourse or cohabitation shall not constitute reconciliation."

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12. The parties further agreed, as stated at Paragraph 7.7 of the Marital Settlement Agreement, that the law of the State of Nevada should govern the interpretation of the terms of the Marital Settlement Agreement, and that the Eighth Judicial District Court of the State of Nevada shall continue to be the forum and venue for any divorce proceedings. Specifically, Paragraph 7.7 states:

> "7.7 **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada. The parties choose the Eighth Judicial District Court of the State of Nevada as the forum and venue for their divorce proceedings."

13. Following the parties' execution of the Marital Settlement Agreement on or about December 13, 2006, in accordance with Paragraph 7.4 and Paragraph 7.7.1, the parties reconciled. Kimberly dismissed her action for dissolution that she had filed in the Superior Court of California, County of Orange, Case No. 05D010713, and Ted dismissed the Nevada Court Action, Case No. D-347048.

14. As set forth in Paragraph 7.4 of the Marital Settlement Agreement, if there is a reconciliation of the parties after the date of execution of the Marital Settlement Agreement, which in fact occurred, then the Marital Settlement Agreement nevertheless continues in full force and effect until it is modified or amended by another written instrument to that effect and signed and acknowledged by each of the parties.

15. The Marital Settlement Agreement dated December 13, 2006, at Paragraph 1.7, recites that each party has been represented by their own respective counsel, and that their respective counsel had fully advised each of their clients of his and her rights under the Marital Settlement Agreement.

III. Post Marital Agreement dated December 12, 2007.

16. With the parties' decision to reconcile in late December, 2006, the parties did enter into a subsequent agreement entitled "Post Marital Agreement" dated December 12, 2007, which is attached hereto as Exhibit "3" and incorporated herein by reference.

17. This was the last of the three (3) relevant Agreements negotiated and executed by the parties, and it is these three (3) Agreements that Ted, through this action,

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in accordance with the terms of the respective Agreements, seeks to declare valid and enforceable according to the thrice-repeated terms that said declaration of validity and enforcement should be with the Eighth Judicial District Court in and for the County of Clark, State of Nevada.

18. Although signed by the parties on or about December 12, 2007, the Post Marital Agreement was made effective January 1, 2007. As set forth in Paragraph 1.3, the parties negotiated and executed the Post Marital Agreement to establish additional financial obligations and rights arising out of the marital relationship between Ted and Kimberly beyond those set forth in the executed Prenuptial Agreement of July 1, 1998 and the Marital Settlement Agreement of December 13, 2006. The parties to the Post Marital Agreement executed the same on or about December 12, 2007, approximately one year after the parties had executed their Marital Settlement Agreement on December 13, 2006.

19. The parties attached a true and correct copy of the Prenuptial Agreement dated July 1, 1998, as Exhibit "1" to the Post Marital Agreement. The parties also attached a true and correct copy of the Marital Settlement Agreement dated December 13, 2006, as Exhibit "2" to the Post Marital Agreement.

20. Within the Post Marital Agreement, the parties again ratified, affirmed, and accepted the Prenuptial Agreement executed on July 1, 1998, and also ratified, affirmed, and accepted the Marital Settlement Agreement executed December 13, 2006. See Paragraph 1.4 of Post Marital Agreement, Exhibit "3" attached hereto.

21. The parties further agreed within said Paragraph 1.4 that, to the extent that any provision of the present Post Marital Agreement conflicted with or is contrary to any condition or provision of the Prenuptial Agreement or Marital Settlement Agreement, the terms of the Post Marital Agreement shall control and shall be binding upon the parties.

22. Within Paragraph 1.5 of the Post Marital Agreement of December 12, 2007, Kimberly and Ted agreed that the terms of the negotiated and signed Marital Settlement Agreement of December 13, 2006, shall remain in full force and effect and shall be binding upon each of them, their heirs, trustees and assigns.

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23. The parties further agreed, at Paragraph 1.5, that it was their intention to supplement their Marital Settlement Agreement by the terms of the Post Marital Agreement of December 12, 2007. The parties further stated that to the extent any provision of the Post Marital Agreement conflicts with or is contrary to any term, condition or provision of the Marital Settlement Agreement, the terms of the Post Marital Agreement shall control and shall be binding on the parties.

24. To the extent that the Post Marital Agreement does not conflict with any term of the Prenuptial Agreement or Marital Settlement Agreement, the provisions of the proceeding two (2) Agreements remained in full force and effect.

25. To further evidence the parties' confirmation of the validity and enforceability of the Prenuptial Agreement and the Marital Settlement Agreement, within the Post Marital Agreement, at Paragraphs 2.1 and 2.2, Kimberly and Ted each acknowledged, ratified and confirmed the terms of their prior Prenuptial Agreement and Marital Settlement Agreement. Specifically, they confirmed that all property owned by either Kimberly or Ted, before their marriage to each other, and any property which either acquired after marriage, whether real, personal, or mixed, including but not limited to, any earnings, salaries, commissions, dividends, or income from separate property, or resulting from either of their personal services, skills, and efforts or arising out of their Marital Settlement Agreement, remain their sole and separate property to use and dispose of as either sees fit as if no marriage had ever been entered into. See Paragraph 2.1.

26. Further, under Paragraph 2.2, of the Post Marital Agreement, Kimberly and Ted acknowledge to each other that each has fully performed his or her obligations to the other with respect to the terms and conditions of the Prenuptial Agreement and with respect to the division and distribution of property and debts as set forth in Paragraph 2, "Property and Debts" of the Marital Settlement Agreement at Pages 2 through 9 thereof.

27. As to all three (3) Agreements, each party was represented by skilled independent counsel loyal to their respective clients, and each of the documents affirmatively declare, by each of the parties, to have been entered into by the parties

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voluntarily with full knowledge of the terms of each Agreement. In fact, Kimberly was represented by no less than two (2) attorneys in drafting, negotiating, and executing the Marital Settlement Agreement and the Post Marital Agreement.

28. Once again, as with the preceding two (2) Agreements, the parties agreed that the applicable law, forum and venue for all disputes pertaining to the Agreement was the Eighth Judicial District Court in and for the County of Clark for the State of Nevada. As set forth in the two (2) prior Agreements, and again in the Marital Settlement Agreement at Paragraph 10.9, the applicable law, forum and venue of the parties was agreed to be the Eighth Judicial District Court, in and for the County of Clark, of the State of Nevada, and that the existing laws of the State of Nevada would be binding in all respects on the parties. Specifically, paragraph 10.9 states as follows:

> "**10.9 Applicable Law, Forum and Venue**
>
> This Post Marital Agreement shall be governed by, interpreted, enforced and construed under and in accordance with statutory and case laws of the State of Nevada, as those laws exist and are in effect at the time of the execution of this Agreement. The parties acknowledge and agree that they will be bound by this Post Marital Agreement, and the law in effect in the State of Nevada at the time of execution thereof, regardless of any amendments, revisions or repeal of existing case law and statutes which may occur in the future. The existing laws in the State of Nevada shall be binding in all respects, even if the parties shall hereto be or become residents of, or domiciled in or own property in another state, county or territory at any time in the future.
>
> **The parties choose the Eighth Judicial District Court of The State of Nevada, In And For The County of Clark as the forum and venue for all proceedings hereunder and herewith submit to the jurisdiction thereof. This is a binding choice of law, forum and venue."** (Emphasis added)

29. The Post Marital Agreement dated December 12, 2007, at Paragraph 3.2, recites that each party has been represented by their own respective counsel, and that their respective counsel had advised each of their respective clients as to their rights and obligations, both under the Prenuptial Agreement, under the terms of the Marital Settlement Agreement, and under the terms of the Post Marital Agreement. The advice as to their respective rights and obligations under these three (3) Agreements included, amongst many other things, tax consequences that each would have or might expect.

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IV. Superior Court of California action filed January 4, 2012, by Kimberly.

30. Kimberly filed an action for the dissolution of her marriage to Ted in the Superior Court of California, in and for the County of Orange, Case No. 12D000041. Ted filed his response on or around January 31, 2012.

31. In her Petition for Dissolution of Marriage–a true and correct copy of which is attached hereto as Exhibit "4" and hereby incorporated by reference as though fully set forth–Petitioner did not set forth any allegation which would suggest any unwillingness to abide by or otherwise challenge, in any form, the terms of the three (3) Agreements.

32. On or about April 27, 2012, Ted, through his California counsel, served upon Kimberly and her counsel, "Respondent's Request for Admissions of Fact and Genuineness of Documents - Set One [C.C.P. §2033.010 et seq.]"

33. On or about April 27, 2012, Ted, through his California counsel, served upon Kimberly and her counsel, "Form Interrogatories - General." It was Ted's intent to ascertain, through these discovery vehicles, whether Kimberly would abide by or challenge the three (3) Agreements in any respect.

34. On May 29, 2012, Kimberly, through her counsel, responded to the "Request for Admissions of Fact and Genuineness of Documents - Set One [C.C.P. § 2033.010 et. seq.]" by indicating that she was still investigating what her position would be with regard to the validity and enforceability of the three (3) Agreements above-referenced.

35. On May 29, 2012, Kimberly, through her counsel, responded to the "Form Interrogatories - General" by refusing to indicate whether she would challenge any aspect of the three (3) Agreements, instead indicating that she was still investigating what her position would be with regard to the validity and enforceability of the three (3) Agreements above-referenced.

V. Need for Declaratory Judgment and/or Equitable Relief in Nevada

36. On or about August 13, 2012, Kimberly served "Petitioner's Amended Responses to Form Interrogatories - General Set One propounded by Respondent" and "Petitioner's Amended Responses to Request for Admissions and Genuineness of

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Documents, Set One, propounded by Respondent." Within these amended responses, Kimberly has now, for the first time to Ted's knowledge, taken a legal position inconsistent with the terms of the three (3) Agreements.

37. More specifically, Kimberly has, for the first time to Ted's knowledge, claimed that the Prenuptial Agreement is not a valid and enforceable agreement. She further claimed that she did not voluntarily execute or know the legal effect of executing the Marital Settlement Agreement, and that she did not know the legal effect of executing the Post Marital Agreement.

38. Further, Kimberly's challenge to the Prenuptial Agreement is effectively a challenge to the subsequent two (2) Agreements, as the subsequent Agreements ratified, affirmed, and accepted the terms of the valid and enforceable Prenuptial Agreement.

39. The amended responses of Kimberly, which are vigorously disputed by Ted, also contradict the plain meaning of words contained within the three (3) respective Agreements, the Prenuptial Agreement, the Marital Settlement Agreement, and the Post Marital Agreement. They also attempt to change or contradict: (1) the plain terms of the three (3) Agreements; (2) the representations and promises made by Kimberly to Ted; (3) the certifications submitted by the competent counsel of Kimberly and of Ted for each Agreement; and (4) otherwise provide from Ted's perspective, a fallacious, mendacious and perjurious fabrication and "spin" in a transparent effort to avoid the validity and enforceability of the three (3) Agreements above-referenced.

40. As a result, pursuant to NRS 30, the Nevada Uniform Declaratory Judgment Act, a case and controversy has arisen, as of August 13, 2012, between Ted and Kimberly relative to the validity and enforceability of the Prenuptial Agreement of July 1, 1998, the Marital Settlement Agreement of December 13, 2006, and the Post Marital Agreement of December 12, 2007. See NRS 30, *et. seq.*

41. Ted believes that the three (3) Agreements, and each of them, should be deemed valid and enforceable, according to their terms, and in accordance with the representations and promises made by Kimberly to Ted and Ted to Kimberly, and the

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certification of all counsel one side to the other.

42. The parties have knowingly and willingly agreed to venue all proceedings relating to their Prenuptial Agreement, Marital Settlement Agreement, and Post Marital Agreement in the Eighth Judicial District Court of the State of Nevada, in and for Clark County, and have agreed that the terms of their three (3) Agreements shall be governed, interpreted, enforced, and construed under and in accordance with the statutory case laws of the State of Nevada. This is a binding choice of law, forum, and venue. See Paragraph 10.9 of Post Marital Agreement, Exhibit "3" hereto.

43. Because the parties have conferred subject matter and personal jurisdiction upon this Court by virtue of the written Agreements that they have signed, and by virtue of their substantial contacts within Nevada, this Court is respectfully asked to enter a Declaratory Judgment declaring each of the three (3) Agreements valid and enforceable, and to declare that the parties shall perform the three (3) Agreements according to their signatures.

44. Ted has been forced to retain counsel to prosecute this action, and pursuant to provisions within the Prenuptial Agreement and Marital Settlement Agreement, and pursuant to the inherent authority of the Court, Ted is entitled to the award of reasonable attorney's fees and costs.

FIRST CLAIM FOR RELIEF

(DECLARATORY JUDGMENT)

45. Ted incorporates paragraphs 1 through 44 as if fully set forth herein.

46. A case and controversy exists between the parties regarding the validity and enforceability of the parties' Prenuptial Agreement dated July 1, 1998, the Marital Settlement Agreement dated December 13, 2006, and the Post Marital Agreement dated December 12, 2007.

47. Ted respectfully requests the court to issue a declaratory judgment pursuant to NRS 30 *et. seq.*, that each of the three (3) Agreements are valid and enforceable and that each party shall perform the three (3) Agreements according to their respective terms.

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48. Ted has been forced to retain counsel and is entitled to an award of reasonable attorney's fees and costs according to proof.

SECOND CLAIM FOR RELIEF

(SPECIFIC PERFORMANCE/ENFORCEMENT OF AGREEMENTS)

49. Ted incorporates Paragraphs 1 through 48 as if fully set forth herein.

50. The position taken by Kimberly, as referred to hereinabove, constitutes an attempt to circumvent the three (3) Agreements above-referenced, which actions have causad Ted irreparable harm. Further, Ted can establish a likelihood of success on the merits, and/or alternatively, he can establish that there is a substantial legal issue, and that the balance of hardships tips sharply in his favor.

51. Ted has no adequate remedy at law. Money damages will not suffice to make Ted whole.

52. Ted is entitled to specific performance of the three (3) Agreements, the Prenuptial Agreement, the Marital Settlement Agreement, and the Post Marital Agreement. Each were properly negotiated between the parties and voluntarily entered into, and each should be enforced pursuant to the parties' agreement.

53. Ted has been forced to retain counsel and is entitled to an award of reasonable attorney's fees and costs according to proof.

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WHEREFORE, Plaintiff requests the following relief:

1. For a declaratory judgment declaring the three (3) Agreements valid and enforceable, and ordering each party to perform according to the terms of the Agreements.

2. For specific performance of the three (3) Agreements as set forth herein above.

3. For an award of reasonable attorney's fees and costs according to proof.

4. For such other and further relief as the court deems proper in the premises.

DATED this 4th day of October, 2012.

Respectfully Submitted,

JIMMERSON HANSEN, P.C.

By: Shawn M. Goldstein
JAMES J. JIMMERSON, ESQ.
Nevada Bar No. 000264
SHAWN M. GOLDSTEIN, ESQ.
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EXHIBIT "1"

PRENUPTIAL AGREEMENT

THIS AGREEMENT is made this 1st day of July, 1998, between FLETCHER JONES, JR., (hereinafter referred to as TED), and KIMBERLY MOFFATT (hereinafter referred to as KIMBERLY).

RECITALS

This Agreement is made with reference to the following:

A. The parties enter into this Prenuptial Agreement in contemplation and in consideration of their anticipated marriage, for the purpose of defining their respective rights regarding their pre-marital and post-marital property, acquisitions and rights.

B. It is the specific purpose and intent of the parties, and their reason for entering into this Prenuptial Agreement, to specify the manner that they believe is fair and equitable for them to deal with assets and obligations acquired, owned or used before or during marriage and to establish the method for determining their respective rights in said assets, and the manner of allocating them, in the event of the unanticipated termination of this marriage or the distribution of the assets for any other reason including, but not limited to, the death of either party without there being a specific testamentary plan established by written Will, Trust, or other testamentary or inter vivos disposition.

C. Each party acknowledges and represents to the other, for the other to rely upon in entering into this Prenuptial Agreement, that she/he considers the execution of this Agreement a material inducement and consideration for her/his actual entry into the marital relationship so that she/he can avoid any potential future uncertainties and disagreements with regard to her/his rights and obligations with regard to the property matters covered by this Agreement.

D. To the extent that this Agreement provides for the handling, allocation, valuation or distribution of assets in a manner other than that which is presently or hereafter provided by the law

FJ, Jr. KM

in the state where the parties may then be living, it is the intent and specific desire of each party that the terms and provisions of this Agreement shall control and be absolutely binding upon him/her.

E. Ted and Kimberly are residents of the State of Nevada. Ted owns and operates various business interests in the States of Nevada and California and also owns a house and other real property in both states and in the State of Idaho. For those reasons, the parties will spend a portion of their time in Nevada, California and Idaho. Nevertheless, it is the intent of the parties that their primary place of residence is and shall continue to be the State of Nevada.

F. There are no children of this relationship. Ted was previously married and has children from his former marriages: Heather Marie Jones, born December 13, 1972; Fletcher Jones, III., born December 30, 1974; Kaitlyn Paige Jones, born September 12, 1983; and Patrick Steven Jones, born June 16, 1986.

G. Ted owns property and debts standing in his name and is the trustee or co-trustee and beneficiary of various trusts, the nature and extent of which has been disclosed to Kimberly. Kimberly acknowledges and warrants that she has not played a role in the accumulation of Ted's property as of the date of this Agreement.

H. Kimberly owns property and debts standing in her name, the nature and extent of which has been disclosed to Ted. Ted acknowledges and warrants that he has not played a role in the accumulation of Kimberly's property as of the date of this Agreement.

I. The parties believe that this Agreement will enhance and encourage a harmonious marital relationship between them and will enable them to avoid any financial conflict or controversy in the future with respect to the matters covered by this Agreement. The parties desire to define their financial rights and responsibilities, insofar as these can be foreseen. Except as to each parties' rights concerning alimony and spousal support, each party accepts the provisions of this Agreement in full

FJ, Jr. 2 KM

discharge and satisfaction of any and all property, rights, and rights to share in the estate of the other, which either may or would otherwise have as a result of their marriage.

J. The parties have discussed having children. No decision has been made as to whether they will. If they do, Ted will establish and fund a trust to ensure the payment of all reasonable school expenses, whether private or public school, from birth through graduate school. No other provision of this Agreement applies or refers to the support of children.

K. As a result of the parties' anticipated marriage, Kimberly has left the workforce and has abandoned her career. It is understood between the parties that Kimberly may or may not return to the workforce in the future, in her sole discretion.

NOW, THEREFORE, for and in consideration of the foregoing, the mutual promises and covenants contained herein, the forthcoming marriage of the parties to each other, and other good and valuable consideration, the parties covenant and agree as set forth below.

I. FINANCIAL DISCLOSURE

A. A simple balance sheet of Ted's assets and liabilities is attached to this Agreement and is incorporated herein by this reference as Exhibit "A." While Ted does not represent his balance sheet to be a precise delineation of his assets and liabilities, it constitutes substantially all of his material assets and liabilities as of the date thereof.

B. A simple balance sheet of Kimberly's assets and liabilities is attached to this Agreement and is incorporated herein by this reference as Exhibit "B." While Kimberly does not represent her balance sheet to be a precise delineation of her assets and liabilities, it constitutes substantially all of her material assets and liabilities as of the date thereof.

C. Ted hereby discloses that in 1996, his gross income from all sources was $18,883,714.00. Of that amount, $4,027,222.00 was W-2 income from wages, salary and tips and

the balance was passive income received by Ted as a result of his status as a beneficiary of the Fletcher Jones, Sr. Trust and the Fletcher Jones, Jr., Lifetime Trust, and by virtue of his ownership of separate interests in Subchapter S corporation(s), limited liabilities company(ies) and other income producing assets or entities. In connection with his 1996 income, Ted paid the sum of $9,137,606.00 to the Internal Revenue Service. Ted has filed an extension and has not yet completed his income tax return for 1997. However, he represents that his 1996 income from wages, salary and tips (W-2 income) and income from all other sources is representative of what he earned in 1997 and what he anticipates earning in 1998.

D. Each party represents to the other that he or she has, to the best of his/her knowledge, disclosed to the other his or her financial situation, including without limitation, his\her respective property and debts by the representations contained herein, subject only to the caveat that the values set forth on the balance sheets are not necessarily based on appraisals. Each party acknowledges that the other may own property which may have been inadvertently excluded from his or her balance sheet.

E. Each party warrants that each has made a fair and reasonable disclosure of his/her property and obligations and that neither is aware of any material omission of his/her assets or obligations. Each party represents and warrants that he/she has been provided with all requested information of the other concerning his or her assets, liabilities, income and other financial circumstances and that each has provided to the other requested information concerning his or her assets, liabilities, income and other financial circumstances. Each party has carefully considered the information requested and the information contained in the attached balance sheets and enters into this Agreement of his or her own volition and as a result of his or her own free judgment and decision. Each party has been afforded ample opportunity to inquire and to investigate further the

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financial circumstances of the other prior to the execution of this Agreement. After being afforded such opportunity, each party expressly waives his or her right to further inquiry, discovery and investigation, fully cognizant of his or her rights to the disclosure of the property and financial obligations of the other prior to the execution of this Agreement.

F. Each party acknowledges that each has the right to full disclosure by the other and each hereby voluntarily and expressly waives any right to disclosure of the property or financial obligations and condition of the other party beyond the disclosures requested or provided.

G. Each party acknowledges that the proximity of the date of execution hereof to the date of the wedding (July 4, 1998) has not caused either any undue pressure or incentive to execute this Agreement. Both parties are mature adults and realize that the negotiations have extended to a time near the wedding. Each recites and agrees that they may delay or cancel the ceremony if they desire more time to consult with counsel and reflect on the terms hereof, but each has determined no such further reflection or consultation is necessary.

II. SEPARATE PROPERTY

Each of the parties acknowledges and agrees that the property described hereafter shall be and shall forever remain the separate property of the owning/acquiring party:

A. General Provisions

1. All property, whether acquired before or after marriage, not specifically defined below as community or jointly owned property, shall be the separate property of the acquiring/owning party.

2. Each party shall be the sole and exclusive owner and manager of his or her separate property and shall have the sole and exclusive right to dispose of any and all of his or her separate property during his or her lifetime, by inter vivos or testamentary transfer, or by any and all

other dispositions, and shall have the sole and exclusive right to encumber, pledge or hypothecate the same, without any interference by or joinder of the other party, and in such manner as shall be deemed in the owning party's sole discretion as if the parties' forthcoming marriage had not taken place.

3. Neither party shall seek to become a legal or beneficial owner of all or any interest in the other's separate property. In the event of an action for divorce, annulment, legal separation or separate maintenance, each party shall look solely to the assets owned by the community, or the parties jointly, for payment of the value of any community or joint interest acquired, as set forth herein, and not to the separate property of either party.

4. Each party hereby relinquishes all right, claim or interest whether actual, inchoate, or contingent, in law or in equity, in the separate property now owned or hereafter acquired by the other party.

5. Ted and Kimberly each acknowledge and understand that, except for this Agreement, the salary, bonuses, benefits, income, earnings, increases, accumulations, appreciation and the like attributable to the services, skills and efforts of either party during the marriage may be or would be, in the absence of this Agreement, community property or apportionable between the community and separate interests of the parties, and that by this Agreement, such salary, bonuses, benefits, earnings, income, increases, accumulations, appreciation and the like shall be and shall remain the separate property of the acquiring party. The parties each acknowledge their understanding that, except for this Agreement, the laws of other countries or states could or would provide that each party could or would have marital or other property rights in the earnings and property of the other which the parties do not have under this Agreement.

6. Absent an agreement signed by both parties, neither party shall be entitled to any fees nor shall either party acquire any community or other property interest in the separate property of the

other party as a result of rendering management or other services with regard to the separate property of the other party, or upon any other basis or premise whatsoever. The parties acknowledge their understanding that, except for this Agreement, any community between them could or would have a claim on, or right to, some or all of the income, profits, appreciation or assets derived from the time, work or efforts of one party in the investment or management of the separate property of either party, and any such claim or right is hereby expressly waived by each party.

Each party may devote all or part of his or her time, work and efforts to the investment and management of his or her separate property or the property of another or to performing services, as an officer, director, partner, trustee, fiduciary or employee, for a corporation, partnership, trust or other entity in which said party or another owns as separate property, a beneficial or equity interest, with or without being compensated for said services, to the preclusion of the creation of any property other than separate property, such as marital, community or quasi-community property. Each party understands that, except for this Agreement, any community between them could or might have a claim on, or right to, some or all of the income, profits, appreciation or assets derived from the time, work or efforts of a party in the investment or management of or performance of services for his or her own separate property or that of another, including without limitation an entity in which the party or another owns as separate property a beneficial or equity interest, and any such claim or right is hereby expressly waived by each of them.

B. Separate Property of Kimberly

Kimberly shall have as her sole and separate property, without claim or interest of Ted:

1. All property of every kind, character and description, whether real, personal or mixed, tangible or intangible, of whatsoever nature and wheresoever situated, belonging to Kimberly at the commencement of the marriage, including but not limited to property she acquired

while the parties cohabited prior to marriage, as more particularly described in Exhibit "B," together with the rents, issues and profits thereof, and all property acquired by Kimberly after marriage by gift, devise, bequest, inheritance, or by an award of personal injury damages, together with the rents, issues and profits thereof;

2. All property acquired by Kimberly out of the proceeds, earnings, accumulations or income, whether earned or unearned, from her separate property or attributable to appreciation in the value of said property, whether the enhancement is due to market conditions, or to the services, skills or efforts of either party;

3. All income, interest, earnings, bonuses, salaries, stock, options, accumulations, reinvestments and dividends from Kimberly's separate property whether the enhancement is due to market conditions, or to the work, services, skills or efforts of either party;

4. All interests in any asset, property, business, sole proprietorship, partnership, corporation, joint venture, trust or other entity Kimberly now owns or hereafter acquires, including all issued and outstanding stock and options, including the value of all assets now owned or acquired by Kimberly or by any asset, property, business, partnership, corporation, joint venture, trust or other entity owned by Kimberly in the future, whether real, personal or mixed, tangible or intangible, including goodwill;

5. All proceeds, rents, issues and profits, and all increases and appreciation in the value of any real or personal property, assets, businesses, sole proprietorships, partnerships, corporations, joint ventures, trusts or other entities or interests, including stock, options, assets and goodwill, Kimberly now owns or may acquire, whether the enhancement is due to market conditions, or to the work, services, skills or efforts of either party;

6. All income, salary, bonuses, dividends, benefits, stock, options, accumulations,

earnings, and acquisitions that result from Kimberly's personal services, skill, effort and work, and from all businesses, sole proprietorships, partnerships, corporations, joint ventures, trusts, property, assets, or other entities and investments or investments Kimberly now owns or may own in the future, together with all property acquired or income, accumulations, interest, appreciation, earnings, good will and the like derived therefrom;

7. Any employee profit sharing plan, pension plan, retirement plan, Keogh Plan, 401k, Individual Retirement Account, Simplified Employee Pension, or other type of deferred income plan, defined benefit plan, or the like (collectively called the "Plan") owned by Kimberly as of the date of the parties' marriage or at any time thereafter, including all pre and post-marriage contributions, accumulations, earnings, income, appreciation, interest, rents, issues and profits and increases in value.

a. Ted hereby expressly waives all of his rights and interests which may now or hereafter exist in the Plan(s) of Kimberly, including but not limited to pre-retirement and joint survivor annuities or to be a participant or beneficiary in the Plans of Kimberly, or to require his consent with respect to any right, option, distribution or benefit which Kimberly may now or hereafter have or choose to exercise. It is the essence of this Agreement that after the marriage of the parties and upon the request of Kimberly, Ted without charge, shall reaffirm the foregoing and provide such papers and documents properly executed and acknowledged to carry out and implement the foregoing. Notwithstanding the foregoing, in the event that Kimberly shall hereafter expressly designate Ted as a participant or beneficiary in any of the Plans under the provisions of the Plans, said designation shall control;

8. All funds in bank accounts, savings accounts, credit union accounts, certificates of deposit, brokerage accounts, stocks, mutual funds, money market accounts or other deposits or

investments of any type or nature existing in Kimberly's separate name whether before or after marriage and all funds deposited after marriage into any account in Kimberly's separate name;

9. Upon the first anniversary of the parties' marriage, Ted shall pay to Kimberly the sum of TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000.00). Thereafter, upon each subsequent anniversary of the parties' marriage, Ted shall pay to Kimberly a like sum of TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000.00).

a. Ted's duty to pay the obligations set forth in this paragraph shall terminate upon the first to occur: Commencement of an action for divorce, annulment, dissolution, legal separation or separate maintenance by either party or the death of either party.

b. All sums paid to Kimberly by Ted pursuant to this paragraph, together with all income, interest, earnings, increases, accumulations, appreciation and the like attributable to these sums, including without limitation, all assets acquired with these sums, shall be the sole and separate property of Kimberly, regardless of whether the marriage ends by the death of either party or the entry of a decree of divorce, annulment, dissolution, legal separation or separate maintenance.

C. Separate Property of Ted

Ted shall have as his sole and separate property, without claim or interest of Kimberly:

1. All property of every kind, character and description, whether real, personal or mixed, tangible or intangible, of whatsoever nature and wheresoever situated, belonging to Ted at the commencement of the marriage, including but not limited to property he acquired while the parties cohabited prior to marriage, as more particularly described in Exhibit "A," together with the rents, issues and profits thereof, and all property acquired by Ted after marriage by gift, devise, bequest, inheritance, or by an award of personal injury damages, together with the rents, issues and profits thereof;

2. All property acquired by Ted out of the proceeds, earnings, accumulations or income, whether earned or unearned, from his separate property or attributable to appreciation in the value of said property, whether the enhancement is due to market conditions, or to the services, skills or efforts of either party;

3. All income, interest, earnings, bonuses, salaries, stock, options, accumulations, reinvestments and dividends from Ted's separate property whether the enhancement is due to market conditions, or to the work, services, skills or efforts of either party;

4. All interests in any asset, property, business, sole proprietorship, partnership, corporation, joint venture, trust or other entity Ted now owns or hereafter acquires, including all issued and outstanding stock and options, including the value of all assets now owned or acquired by Ted or by any asset, property, business, partnership, corporation, joint venture, trust or other entity owned by Ted in the future, whether real, personal or mixed, tangible or intangible, including goodwill;

5. All proceeds, rents, issues and profits, and all increases and appreciation in the value of any real or personal property, assets, businesses, sole proprietorships, partnerships, corporations, joint ventures, trusts or other entities or interests, including stock, options, assets and goodwill, Ted now owns or may acquire, whether the enhancement is due to market conditions, or to the work, services, skills or efforts of either party;

6. All income, salary, bonuses, dividends, benefits, stock, options, accumulations, earnings, and acquisitions that result from Ted's personal services, skill, effort and work, and from all businesses, sole proprietorships, partnerships, corporations, joint ventures, trusts, property, assets, or other entities and investments or investments Ted now owns or may own in the future, together with all property acquired or income, accumulations, interest, appreciation, earnings, good will and

the like derived therefrom;

7. Any employee profit sharing plan, pension plan, retirement plan, Keogh Plan, 401k, Individual Retirement Account, Simplified Employee Pension, or other type of deferred income plan, defined benefit plan, or the like (collectively called the "Plan") owned by Ted as of the date of the parties' marriage or at any time thereafter, including all pre and post-marriage contributions, accumulations, earnings, income, appreciation, interest, rents, issues and profits and increases in value.

a. Kimberly hereby expressly waives all of her rights and interests which may now or hereafter exist in the Plan(s) of Ted including but not limited to pre-retirement and joint survivor annuities or to be a participant or beneficiary in the Plans of Ted, or to require her consent with respect to any right, option, distribution or benefit which Ted may now or hereafter have or choose to exercise. It is the essence of this Agreement that after the marriage of the parties and upon the request of Ted, Kimberly, without charge, shall reaffirm the foregoing and provide such papers and documents properly executed and acknowledged to carry out and implement the foregoing. Kimberly's receipt of the sums as set forth above in Paragraph II(B)(9), is conditioned upon her having first signed, by the date the first installment is due, all of the waiver, release of consent documents that had then been submitted to her.

Notwithstanding the foregoing, in the event that Tod shall hereafter expressly designate Kimberly as a participant or beneficiary in any of the Plans under the provisions of the Plans, said designation shall control;

8. All funds in bank accounts, savings accounts, credit union accounts, certificates of deposit, brokerage accounts, stocks, mutual funds, money market accounts or other deposits or investments of any type or nature existing in Ted's separate name whether before or after marriage

and all funds deposited after marriage into any account in Ted's separate name;

9. Ted is the Trustee and income beneficiary during his lifetime of the Fletcher Jones, Jr., Lifetime Trust. Under the terms of the trust, Ted has the right to manage and control the trust assets during his lifetime and to receive all of the trust income. Ted does not have the right to receive distribution of any of the trust assets or principal, nor does he have the right to designate or control to whom the trust assets and income are distributed upon his death. All right, title and interest in and to said trust and all income and receipts therefrom to which he is entitled under the express terms of said trust, is, and shall remain Ted's sole and separate property and income. The parties acknowledge and agree that any increase or appreciation in the value of the trust principal, whether the enhancement is due to market conditions, or to Ted's work, services, skills or efforts, by the terms of the trust belong to the trust and shall not become the separate or community property of either party. The parties acknowledge and agree that any income Ted receives from the trust, whether due to market conditions, or to Ted's work, services, skills or efforts, by the terms of the trust, belongs to Ted and is and shall remain his sole and separate income and property.

The Fletcher Jones, Jr., Lifetime Trust was created by Ted's father, Fletcher Jones, Sr., and became effective upon the death of Fletcher Jones, Sr. There remains due and owing significant estate taxes on the estate of Fletcher Jones, Sr., a substantial portion of which must be paid from the income of the Fletcher Jones, Jr., Lifetime Trust, or from the assets of the Fletcher Jones, Jr. Lifetime Trust if the income is insufficient to meet the tax obligations and payments imposed by the Internal Revenue Service.

10. The parties acknowledge and agree that Ted and his sister, Stephanie Grody, are the co-beneficiaries and co-trustees of the Fletcher Jones, Sr. Trust. Under the terms of the trust, Ted and Stephanie have the right to manage and control the trust assets during their lifetimes and to

equally share the trust income. Ted does not have the right to receive distribution of any of the trust assets or principal, nor does he have the right to designate or control to whom the trust assets or income are distributed upon his death. All right, title and interest Ted has or will have in and to said trust and all income and receipts therefrom to which he is entitled under the express terms of said trust, is, and shall remain Ted's sole and separate property and income. The parties acknowledge and agree that any increase or appreciation in the value of the trust principal, whether the enhancement is due to market conditions, or to Ted's work, services, skills or efforts, by the terms of the trust belong to the trust and shall not become the separate or community property of either party. The parties acknowledge and agree that any income Ted receives from the trust, whether due to market conditions, or to Ted's work, services, skills or efforts, by the terms of the trust, belongs to Ted and is and shall remain his sole and separate income and property.

The Fletcher Jones, Sr. Trust was created by Ted's father, Fletcher Jones, Sr., and became effective upon the death of Fletcher Jones, Sr. There remains due and owing significant estate taxes on the estate of Fletcher Jones, Sr., a substantial portion of which must be paid from the income and/or assets of the Fletcher Jones, Sr., Trust.

11. The parties acknowledge and agree that Ted is a contingent beneficiary of the Stephanie Grody Lifetime Trust. If Ted survives Stephanie, Ted will receive one-half of the trust income during his lifetime. Ted does not have the right to receive distribution of any of the trust assets or principal, nor does he have the right to designate or control to whom the trust assets are distributed upon his death. All right, title and interest in and to said trust and all income and receipts therefrom to which Ted is entitled, is and shall remain, Ted's separate property. The parties acknowledge and agree that any increase or appreciation in the value of the trust principal, whether the enhancement is due to market conditions, or to Ted's work, services, skills or efforts, by the terms

of the trust belong to the trust and shall not become the separate or community property of either party. The parties acknowledge and agree that any income Ted receives from the trust, whether due to market conditions, or to Ted's work, services, skills or efforts, by the terms of the trust, belongs to Ted and is and shall remain his sole and separate income and property.

The Stephanie Grody Lifetime Trust was created by Ted's father, Fletcher Jones, Sr., and became effective upon the death of Fletcher Jones. There remains due and owing significant estate taxes on the estate of Fletcher Jones, Sr., a substantial portion of which must be paid from the income and/or assets of the Stephanie Grody Lifetime Trust.

12. Ted hereby represents that he has transferred or is in the process of transferring his assets and obligations listed on Exhibit "A," to the Fletcher Jones, Jr., Family Trust, a revocable living trust. Ted currently intends that any assets or obligations owned or acquired by him personally, now or in the future, will be acquired by or become assets or obligations of the Fletcher Jones, Jr., Family Trust.

13. Ted is the sole owner of the improvements on leased property known as the Linda Isle home located in Orange County, California. The improvements are encumbered. The real property is leased. Ted hopes to purchase the real property and pay off the encumbrances on the improvements. In the case of Ted's death after the tenth anniversary of the parties' marriage, and if neither has filed an action for divorce, dissolution, annulment, legal separation, or separate maintenance, and if Ted has not yet paid off the encumbrances and purchased the real property, Ted's Estate shall assume responsibility for the payment of all encumbrances on the improvements and the lease, and shall exercise the option to purchase the real property and Kimberly shall have a life estate in the real property and improvements for so long as she remains unmarried, provided that she does not cohabit with another person as defined herein; has not evinced a settled purpose to vacate the

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home; does not sell, rent, lease or otherwise convey the property; and does not encumber or hypothecate it. "Cohabit with another person" means living together with another adult in such a manner and for such duration as evinces in a reasonable mind the purpose to live together in a marriage-like relationship. A marriage-like relationship shall be broadly defined herein and shall not require the parties be of the opposite sex, but shall be defined as one wherein two adults are linked like couples who are married or who are "living together" or are "cohabiting" (as those terms are commonly understood). While at all times cohabitation as defined hereunder shall remain a question of fact, it shall be conclusively presumed that if Kimberly cohabits for a period of one-hundred eighty (180) days, cohabitation has occurred and the life estate shall end.

After the tenth anniversary of the parties' marriage, Ted may not sell the Linda Isle home or terminate the leasehold interest unless both parties agree in writing that he may do so. Should the parties agree to sell the Linda Isle home or terminate the leasehold interest and purchase or lease a successor residence, Kimberly shall be given a life estate in the successor residence pursuant to the same terms and conditions set forth above.

III. COMMUNITY, MARITAL AND MUTUALLY OWNED PROPERTY

A. Except as otherwise provided herein, the parties intend by this Agreement to acquire no community property (unless title to property acquired after marriage is specifically taken as community property or community property with right of survivorship) during their marriage and that all property acquired during marriage shall be owned by the acquiring party or the person contributing the acquisition funds, as more fully set forth in Paragraph II., above.

B. Neither the community property nor the quasi-community property laws of Nevada, California, or any laws of any other jurisdiction, shall apply to alter, amend, abridge, transmute or in any respect change property which is the separate property of either party, or the income or proceeds

thereof, under the terms of this Agreement so as to cause any such property, income or proceeds to be deemed to be other than separate property. No law of any other country or state relating to marital property rights (including without limitation any right to equitable division of marital assets) shall apply to give either party any property rights other than those provided in this Agreement.

C. If, during marriage, the parties establish one or more accounts in their joint or mutual names, any funds deposited into such account(s) shall be owned jointly or mutually by the parties, unless otherwise agreed in a writing signed by both parties.

D. Within thirty days of the date of marriage, provided that the parties are living together and are not separated, Ted shall convey unencumbered title to the residence located at 8905 Diamond Falls Drive, Las Vegas, Nevada to Ted and Kimberly as joint tenants with right of survivorship or as community property with right of survivorship, or in another form of mutual ownership advised by his counsel. Neither shall thereafter encumber said real property.

Any post-marriage payments made towards the purchase, trust deed, taxes, insurance premiums, improvements, maintenance or repair of 8905 Diamond Falls Drive, Las Vegas, Nevada from the separate property of Ted, who shall be required to make said payments, shall be deemed gifts to Ted and Kimberly and there shall be no right of reimbursement.

IV. PAYMENT OF EXPENSES, DEBTS AND LIABILITIES

A. All debts contracted by each party prior to marriage or during marriage shall be paid by the party who shall have contracted the same from his or her separate property. Each party shall indemnify, defend and hold the other harmless from the same.

B. Any past, present or future debt, obligation or liability of any separate property, asset, business, sole proprietorship, partnership, corporation, joint venture, trust or other entity or interest either party now or in the future owns, shall remain the sole and separate obligation of the separate

asset or of the owning party. Each party shall indemnify, defend and hold the other free and harmless from the same.

C. Any loan transaction or obligation entered by one or both parties after marriage pertaining to, for the benefit of or secured by a party's separate property shall be that party's separate loan or obligation and the funds derived from such loan or obligation and any assets purchased therewith shall be the separate property of the party whose separate property is benefitted or affected by the loan or obligation, regardless of whether the lender requires the other spouse to sign the loan or obligation, a personal guarantee or other documentation. Each party shall indemnify, defend and hold the other free and harmless from such obligations.

D. All debts, obligations, taxes, assessments and expenses at any time incurred, arising, existing or relating to the acquisition, holding, disposition, operation, maintenance, improvement, management or administration of separate property, shall be the sole responsibility of the owner of the separate property. Each party shall indemnify, defend and hold the other free and harmless from the same.

E. Notwithstanding the foregoing paragraph, either party may voluntarily contribute toward the payment of the separate liabilities of the other. However, such payment shall not constitute an assumption of such liabilities by the contributing party, nor shall such payment constitute an admission of liability therefor by the contributing party. The use of any separate property of a party to discharge any obligation of the other party, whether or not such obligation could have been discharged by the use of the other party's separate property, will not alter, amend, abridge, transmute or otherwise change the separate nature of the separate property from which the obligation is discharged. Any such payments shall be deemed a gift to the other and the paying party shall not be entitled to reimbursement for such expenditure(s) of his/her separate property.

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F. Nothing in this Agreement shall preclude a party from making loans to the other party, which loan would be a separate debt of the borrowing party and a separate asset of the lending party. Any such loan shall be evidenced by a note or other written acknowledgment signed by the party to be charged.

G. While the parties remain married and are residing together in the same residence, Ted will pay the reasonable expenses for the general health, maintenance, recreation, support and welfare of the parties. Ted will be responsible for payment of his personal expenses such as clothing, jewelry, shoes, gifts, incidentals, grooming, personal items and the like. Kimberly will be responsible for payment of her personal expenses such as clothing, jewelry, shoes, gifts, incidentals, grooming, personal items and the like. Each month the parties reside together after marriage, Ted will make available for Kimberly's exclusive use, cash and/or credit in the sum of $5,000.00 per month, for Kimberly to utilize for her personal expenses. There shall be cost of living adjustments to said amount every three years.

V. DISPOSITION OF PROPERTY

A. Each party may dispose of his or her separate property during his or her lifetime or by Will or otherwise, free from any claim of the other party, as if their marital relationship had never existed, unless the other is named as a beneficiary by way of Will, Codicil, Trust or other dispositive document executed after the date of marriage. Nothing contained herein shall constitute a waiver by either party of any gift, bequest, legacy or devise which the other party may choose to make to him or her by Will, Codicil, Trust, insurance policy or other dispositive document, executed after the date of execution hereof.

B. Each party hereby waives any and all right to the estate or any interest in the estate of the other for family allowances, probate homestead, rights of dower, curtsy or any statutory

substitutes therefor, the right to declare a homestead in the separate property of the other, or the right of election to take against the Will of the other.

C. Each party specifically and without limitation waives all rights he or she may have:

1. To be appointed as the personal representative of the other's estate;

2. To take the statutory share of an omitted spouse in the property of the other;

3. To have exempt property set aside from the property of the other;

4. To receive property that would pass from the other by intestate succession;

5. To have an estate set aside under the law of Nevada, California, Idaho, or any other jurisdiction.

D. Nothing in this Agreement shall preclude a party from making gifts to the other, provided that no such gift shall be deemed to constitute an alteration or amendment of this Agreement, to create any obligation on the part of any party hereto or to alter, amend, abridge, transmute or otherwise change the nature of any property other than that which is specifically and expressly transferred by way of such gift.

E. Nothing in this Agreement shall preclude the parties from entering into business, partnership or joint venture or other similar relationship with one another, provided that there is a written agreement covering any such business, partnership or joint venture signed by both parties.

F. The parties agree that no gift from one party to the other nor their entering into a business, partnership or joint venture or other similar relationship with each other shall be interpreted as a revocation or modification of this Agreement.

G. No amount of use, permissive or otherwise, of the separate property of one party by the other will in any way alter, amend, abridge, transmute or otherwise change the separate nature of said property.

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VI. RIGHTS UPON TERMINATION OF MARRIAGE

A. Upon the termination of the parties' marriage, whether by the death of one of them or by entry of a decree of divorce or annulment or upon entry of a decree of legal separation or a decree of separate maintenance, each party shall receive his or her separate property and debts as defined herein, and one-half of any community or jointly or mutually owned property and debts herein and shall indemnify, defend and hold the other harmless therefrom.

B. In the event of termination of the parties' marriage prior to the death of either party, by way of a decree of divorce, dissolution, annulment or separate maintenance, or the institution by either party of any action for divorce, separation or support, Kimberly shall receive as her sole and separate property, without claim or interest by Ted, the real property located at 8905 Diamond Falls Drive, Las Vegas, Nevada. Kimberly shall be entitled to exclusive possession of 8905 Diamond Falls Drive immediately upon filing of an action for divorce, dissolution, annulment, separation or separate maintenance.

If 8905 Diamond Falls Drive is sold during the marriage and the parties do not purchase a successor residence in the Las Vegas area, Kimberly shall receive the first $400,000 in net sale proceeds, and Ted shall receive the remaining sale proceeds. If the parties no longer own Diamond Falls and instead own a successor residence,, Kimberly and Ted shall each have an equal one-half interest in the successor residence. In the event of termination of the parties' marriage, whether as the result of the death of either party, or by way of a decree of divorce, dissolution, annulment or separate maintenance, the parties agree that the successor residence shall be sold within one year of the date of termination of marriage, and each shall receive one-half of the net sale proceeds. If the net sale proceeds to be divided are less than $800,000, Ted or Ted's Estate shall pay to Kimberly cash in an amount equal to the difference between her one-half of the net sale proceeds and $400,000.

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from any other source Ted or Ted's Estate chooses. Nothing herein shall prohibit Kimberly from purchasing Ted's one-half interest in the successor residence from Ted's Estate in the event of his death, provided that Kimberly and Ted's Estate are able to reach agreement regarding the terms of the purchase.

C. While the parties look forward to and hope and expect to enjoy a long, happy and lasting marriage, terminated only by the death of one of them, they also recognize the present day reality of the possibility that their marriage might be terminated by way of divorce, dissolution, annulment or other action, or that a decree of separate maintenance or legal separation may be entered during the lifetimes of both parties. The parties acknowledge and agree that resolution of as many financial aspects as possible in advance may well promote the happiness and harmony of their marriage.

In the event of termination of marriage during the lifetime of both parties, by way of divorce, dissolution, annulment or the institution by either party of any action for separation or support, regardless of which party may initiate such action and regardless of the jurisdiction, venue or location of such courts, the parties agree that the terms of this Agreement shall constitute full settlement, satisfaction and discharge of any and all property rights, marital rights, liabilities and obligations that may arise from the marital relationship and each party covenants and agrees with the other to accept the terms and provisions of this Agreement in full and final settlement, satisfaction and discharge of any property rights, marital rights, liabilities and obligations that may arise as a result of the marriage and in lieu of any other rights, claims or causes of action that they might have had against the other absent this Agreement, except those rights relating to alimony and spousal support.

D. Each party hereby acknowledges that he/she has been advised and is aware, that under the provisions of NRS Chapter 123A, the Uniform Premarital Agreement Act, as codified on the date

of this Agreement, that he/she is entitled to fix and determine rights to spousal support and alimony. Each party hereby acknowledges that it is her/his intent and desire not to pre-determine the rights of either to spousal support or alimony in the event their marriage is terminated by entry of a decree of divorce, dissolution, annulment, separate maintenance or legal separation, and each hereby knowingly waives and relinquishes his/her right to do so at this time, with the understanding that in the event that an action for divorce, dissolution, annulment, legal separation or separate maintenance is initiated by either party, either party may ask the Court to determine the parties' respective rights regarding alimony/spousal support both pending litigation and following entry of a decree of divorce, dissolution, annulment, legal separation or separate maintenance.

Nothing contained in this Agreement shall be construed as absolving either party of his/her legal obligation to support the other during their marriage.

VII. TAX RETURNS

A. The election, if any, of the parties to file a joint federal or state income tax return rather than separate returns shall not constitute a creation of any community property, quasi community property or of any other rights or interests in contravention of this Agreement.

B. If the parties file a joint federal or state income tax return for any year, each party will endeavor to pay all income tax, costs, charges, expenses, liabilities, deductions and obligations of any nature, attributable to his or separate income or to his or her separate property and each will be entitled to any refund for overpayment of such taxes, attributable to his or her income. The payment by one party of any separate income tax of the other party shall be deemed a gift to the benefitting party and the paying party will not be entitled to reimbursement. All such joint tax returns shall be prepared at Ted's expense.

C. In the event of an audit of any joint tax return filed by the parties during the marriage,

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Ted shall take responsibility for and defend and hold Kimberly harmless from, all costs and expenses related to the audit(s). Each party shall indemnify, defend and hold the other harmless from all tax liability, including penalties, interest, fees and assessments, attributable to his or her separate income or to the disallowance of deductions relating to any separate income, or the exclusion of separate income from any joint income tax return filed during the marriage.

D. Ted shall take responsibility for, and defend and hold Kimberly harmless from any increase in tax on income attributable to her separate property due to his income.

VIII. TRANSMUTATION

Except as otherwise provided herein, property or interests now owned or hereafter acquired by the parties, which by the terms of this Agreement is classified as the separate property of one of them, can become the separate property of the other or community, quasi-community, marital, joint or mutually owned property only by a written instrument executed by the party whose separate property is thereby reclassified.

The parties agree that occasionally they may use expressions such as "our property" or "our house" when referring to property that is, by the terms of this Agreement, separate property. Such expressions shall not in any way change the separate character of property, nor constitute a transmutation of separate property or income into the separate property of the other or into community, quasi-community, marital, joint or mutually owned property.

IX. GENERAL WAIVER OF RIGHTS AND PREMARITAL COHABITATION CLAIMS

Each party hereby waives any claim, cause of action or remedy, known or unknown, that such party may have arising out of their relationship or marriage, together with any rights he/she may have acquired during their period of premarital cohabitation, including, but not limited to any and all rights arising from *Western States Construction Inc. v. Michoff*, 108 Nev. 931, 840 P.2d 1220 (1992), its

forbearers and progeny, and from *Marvin v. Marvin*, 18 Cal.3d 660, 134 Cal. Rptr. 815 (1976), its forbearers and progeny, except such rights as are created by this Agreement. Each party acknowledges that he/she has been advised by his/her counsel that under California law:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

FLETCHER JONES, JR. KIMBERLY MOFFATT

Each party, being aware of such law, hereby waives any right he or she may have thereunder, as well as under any statutes or common law principles of similar affect in any Nevada or any other applicable jurisdiction.

X. CHILDREN

This Agreement does not purport to address or resolve any rights or obligations of the parties regarding the support or custody of any children the parties may have, the issue of their marriage.

XI. CONFIDENTIALITY

Except as is necessary between the parties and their respective attorneys or any court or arbitrator having jurisdiction over the parties and the subject matter hereof, or for the determination of any tax liability or issue pertaining to any tax return of the party making such disclosure, or as is required by any gaming or liquor licensing agency having jurisdiction over either party, neither party nor his or her representatives may disclose to a third party, the terms and conditions contained in this Agreement, nor any of the financial information disclosed herein.

XII. FORFEITURE

In the event Kimberly seeks in any way to set aside, impair or invalidate any of the provisions of this Agreement, directly or indirectly, as a condition precedent to the right to bring or maintain

such action(s), the amounts previously paid to her or for her benefit under the terms of Paragraph II(B)(9) of this Agreement shall be forfeited and repaid to Ted, together with all income or accumulations thereto or assets acquired therewith, and all future amounts otherwise payable under Paragraph II(B)(9) shall no longer be payable, and Ted's obligations under said Paragraph shall terminate. Any claim for alimony, spousal support or relating to the custody or support of children shall not be deemed an act which triggers the provisions of this paragraph.

For purposes of this provision, attacking or seeking to impair or invalidate any of the provisions of this Agreement shall include, without limitation: (1) any attempt to set aside or invalidate or impair the terms of this Agreement, in whole or in part; (2) any attempt to characterize separate property or separate obligations as anything other than separate property; (3) any attempt to characterize community or jointly or mutually owned property or obligations as anything other than jointly or mutually owned property or obligations; (4) any assertion of a claim (other than as a named beneficiary) against Ted, his estate or any trust of which Ted is a settlor, trustee or beneficiary under the laws of Nevada, California, Idaho or of any other jurisdiction; (5) any assertion of a claim arising from pre-marital cohabitation, whether on a contract (express or implied) theory, a "quantum meruit" theory, a partnership theory, a constructive trust theory, the reasoning of *Marvin v. Marvin (supra)*, its forbearers and progeny, the reasoning of *Western States Construction, Inc. v. Michoff (supra)*, its forbearers and progeny, or any other similar case, law or theory; (6) any assertion of an interest (other than as a named beneficiary) in any asset, title to or ownership of which is in Ted's name or in the name of any asset or trust (or its trustee) of which Ted is an owner, settlor, trustee or beneficiary; (7) any assertion that Ted entered into an oral agreement (or a written or oral agreement which is to be proved by parol evidence) to make provisions for Kimberly under his Will or in any other document with testamentary provisions, whether or not for services rendered and whether or not such

agreement is proved to exist; or (8) the seeking of a pendente-lite or final award of attorneys' fees, expert fees or litigation costs, except as provided under Paragraph XIII.

XIII. ATTORNEY'S FEES

A. Ted agrees to pay the reasonable attorney's fees and costs incurred by both parties in the negotiation and execution of this Agreement.

B. Except as provided in paragraphs C and D below, in the event either party seeks interim relief hereunder or pursuant to law or statute, no interim fees will be sought, except that when a party prevails in obtaining or defeating, interim relief, he or she may request and shall be entitled to an award of reasonable attorney's fees pertinent thereto. The parties hence waive the right to seek interim or pendente lite fees alone, and may only be awarded such fees if they prevail on a specific claim for relief.

1. Each party acknowledges that the waiver of the right to seek pendente lite attorneys' fees and litigation costs may be a material deviation from the existing law, but notwithstanding, it is his/her express intent, desire and agreement to waive such right.

C. In any action arising hereunder or any separate action pertaining to the validity of this Agreement, or any action for an award of spousal support, pendente lite support, separate maintenance or alimony, the prevailing party shall be awarded reasonable attorney's fees and costs.

D. The foregoing waiver of the right to seek pendente lite attorney's fees and litigation costs shall not be effective until the first anniversary of the parties' marriage. In the event that either party seeks interim relief hereunder or pursuant to law prior to the first anniversary of the parties' marriage, either party may seek an award of pendente lite fees and costs as allowed by law.

XIV. CONSIDERATION FOR AGREEMENT

The consideration for this Agreement is the contemplated marriage of the parties and the

mutual promises, covenants and agreements contained herein.

XV. EFFECTIVE DATE OF AGREEMENT

This Agreement shall become effective on the date the marriage contemplated by the parties is solemnized.

XVI. OTHERS BOUND

This Agreement, is binding on, and inures to the benefit of the respective legatees, devisees, heirs, executors, administrators, assigns, successors in interest of the parties, and their legal representatives.

XVII. APPLICABLE LAW, FORUM AND VENUE

This Agreement shall be governed by, interpreted, enforced and construed under and in accordance with the statutory and case laws of the State of Nevada, as those laws exist and are in effect at the time of the execution of this Agreement. Provided, however, that the choice of law rules and provisions of Nevada shall not be considered in interpreting, construing or enforcing this Agreement. The parties acknowledge and agree that they will be bound by this Agreement, and the law in effect in the State of Nevada at the time of execution hereof, regardless of any amendments, revisions or repeal of existing case law and statutes which may occur in the future. The existing laws of the State of Nevada shall be binding in all respects, even if the parties shall hereafter be or become, residents of, or domiciled in or own property in another state, country or territory at any time in the future.

The parties choose the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark as the forum and venue for all proceedings hereunder and herewith submit to the jurisdiction thereof. This is a binding choice of law, forum and venue.

FJ, Jr.

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XVIII. NO WAIVER OF FUTURE BREACHES

No waiver of the breach of any of the terms or provisions of this Agreement shall be a waiver of any preceding or succeeding breach.

XIX. INTEGRATION AND SEVERABILITY

This Agreement contains all of the covenants and agreements between the parties relating in any manner to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein. This Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. No representation, promise, inducement, understanding or anything of any nature whatsoever, made, stated, or represented, on behalf of either, whether orally or in writing, has induced either party to enter into this Agreement.

Should any paragraph or provision or a portion of this Agreement be held illegal, invalid or void, it shall be deleted from this Agreement and this Agreement shall be read as though such paragraph, provision or portion was not present and the remaining agreement shall subsist and continue in full force and effect.

XX. CONSTRUCTION AND INTERPRETATION

The rule requiring construction or interpretation against the drafter of a document is waived. This document shall be deemed as if it were drafted by both the parties in a mutual effort.

XXI. GENDER AND NUMBER

Whenever used in this Agreement and as required by context, the single number shall include the plural, the plural shall include the singular, and the masculine gender shall include the feminine and neuter genders, and vice versa.

FJ, JT.

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XXII. DUPLICATE ORIGINALS

This Agreement may be executed in duplicate originals.

XXIII. CAPTIONS

Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof.

XXIV. PROTOCOL AS TO EXECUTION OF DOCUMENTS

The parties shall promptly make, execute and deliver any instruments, papers, documents, deeds, agreements, contracts or things as the parties shall require for the purpose of giving full effect to this Agreement, and to the covenants and provisions made in this Agreement, including but not limited to the following:

A. Any and all deeds, quitclaims, or assignments, or other documents conveying all right, title and interest in and to vehicles, realty and other property described in the documents to be executed by the parties.

B. Such other and further documents as may be necessary for the intents, objectives, designs and requirements of this agreement, or other collateral, documents, agreements or contracts executed as part of this agreement.

XXV. ADVICE OF COUNSEL

Each party is represented by counsel of his or her own choice in the negotiation, preparation and execution of this Agreement. Each party recites and agrees that each has had the opportunity to confer with counsel as he or she saw fit and that counsel for each is independent, representing only his or her client.

XXVI. AMENDMENT IN WRITING

The parties may not alter, amend, modify or terminate this Agreement except by an instrument in writing signed by each of the parties. All equitable defenses, including but not limited to part performance or detrimental reliance are hereby waived.

XXVII. AFFIRMATION OF FAIRNESS

A. Each party acknowledges and agrees that this Agreement has been negotiated at arms length and that each has been absolutely free to accept or reject the provisions of this Agreement without coercion or fear of the response of the other party. The proximity of the parties' planned wedding date, July 4, 1998, has not caused either party any undo pressure or duress in the negotiation, preparation and execution of this Agreement. Each party warrants and represents to the other that if he/she were unsatisfied with any term or provision hereof, that he/she would not sign this Agreement notwithstanding the presently existing wedding plans as he/she believes that if any term or provision of this Agreement had been unsatisfactory to him/her that he/she would have resolved that term in a satisfactory manner with the other without in any way interfering with, or delaying, their presently planned wedding.

B. Neither party has made any promises or warranties nor sought to advise, guide, direct, control or pressure the other into accepting the terms of this Agreement. In entering into this Agreement, neither party has relied upon the trust or confidence which he or she may repose in the other.

C. Each party further acknowledges that the terms of this Agreement were devised, proposed, discussed and implemented prior to actual execution and that this Agreement was not hastily contrived as an afterthought, but reflects the desire of the parties to fully and clearly understand and limit their respective rights and obligations to the other which would otherwise

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accompany the institution of marriage. The parties further acknowledge that any marriage has always been conditioned on the successful and acceptable negotiation of the terms of this Agreement, and that either is free, to the moment of marriage, to withdraw.

D. Each party has carefully read this Agreement and is completely aware, not only of its contents, but also of its legal effect. Each party declares this Agreement is made voluntarily of his or her own volition, free from any duress or coercion, for his or her own motives and with the full knowledge of each and every term hereof and the consequences and legal effect thereof. By signing and execution hereof, each party agrees this Agreement is made at his or her individual mutual request and after full and thoughtful consideration.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the date and year first above written.

FLETCHER JONES, JR.

KIMBERLY MOFFATT

FJ, Jr.

KM

STATE OF NEVADA)
: ss
COUNTY OF CLARK)

On this 15th day of July, 1998, personally appeared before me, a Notary Public, Fletcher Jones, Jr., who acknowledged to me that he executed the within document and that he did so freely, voluntarily and for the uses and purposes therein described.

Notary Public

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
[illegible] Kaplan
My Appointment Expires Aug. 4, 1998

STATE OF NEVADA)
: ss
COUNTY OF CLARK)

On this 1st day of July, 1998, personally appeared before me, a Notary Public, Kimberly Moffatt, who acknowledged to me that she executed the within document and that she did so freely, voluntarily and for the uses and purposes therein described.

Notary Public

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
[illegible]
My Appointment [illegible], 1998

FJ,Jr.

KM

ATTORNEYS' CERTIFICATIONS

The undersigned hereby certifies that she is an attorney at law, duly licensed to practice in the State of Nevada; that she has been employed by Kimberly Moffatt, one of the parties to the foregoing Prenuptial Agreement; that she has advised and consulted with Kimberly Moffatt with respect to her and Fletcher Jones, Jr.'s rights and has fully explained to her the legal significance of the foregoing Agreement and the effect which it has upon her rights otherwise obtaining as a matter of law; that Kimberly Moffatt, after being fully advised by the undersigned, acknowledged to the undersigned that she understood fully the terms of the foregoing Agreement and the legal effect thereof, and that she executed the same freely and voluntarily; and that the undersigned has no reason to believe that Kimberly Moffatt did not understand fully such terms and effects or that she did not freely and voluntarily execute said agreement.

KATHRYN STRYKER WIRTH

The undersigned hereby certifies that he is an attorney at law, duly licensed to practice in the State of Nevada; that he has been employed by Fletcher Jones, Jr., one of the parties to the foregoing Prenuptial Agreement; that he has advised and consulted with Fletcher Jones, Jr. with respect to his and Kimberly Moffatt's rights and has fully explained to him the legal significance of the foregoing Agreement and the effect which it has upon his rights otherwise obtaining as a matter of law; that Fletcher Jones, Jr., after being fully advised by the undersigned, acknowledged to the undersigned that he understood fully the terms of the foregoing agreement and the legal effect thereof, and that he executed the same freely and voluntarily; and that the undersigned has no reason to believe that Fletcher Jones, Jr. did not understand fully such terms and effects or that he did not freely and voluntarily execute said agreement.

GARY R. SILVERMAN

FJ, JR.

KM

EXHIBIT "A" TO PRENUPTIAL AGREEMENT

INTENTIONALLY OMITTED
UNTIL FURTHER ORDER OF
THE COURT

EXHIBIT "B" TO PRENUPTIAL AGREEMENT

INTENTIONALLY OMITTED
UNTIL FURTHER ORDER OF
THE COURT

Electronically Filed
04/05/2013 10:08:00 AM

CLERK OF THE COURT

ORDR
BLACK & LOBELLO
John D. Jones, Esq.
Nevada Bar No. 6699
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
Telephone: (702) 869-8801
Facsimile: (702) 869-2669
Email: jjones@blacklobellolaw.com
Attorneys for Defendant,
KIMBERLY JONES

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

FLETCHER JONES, JR., Plaintiff, vs. KIMBERLY JONES, Defendants.	Case No: D-12-470239-U Dept. No.: T Date of Hearing: March 12, 2013 Time of Hearing: 10:00 a.m.

ORDER

This matter having coming on for hearing upon Defendant, Kimberly Jones', Motion to Stay Proceedings, filed February 22, 2013, on the 12th day of March, 2013, JOHN D. JONES and MICHELE TOUBY LOBELLO of the firm of BLACK & LOBELLO appearing on behalf of Defendant, Kimberly Jones, and JAMES J. JIMMERSON, ESQ. and SHAWN M. GOLDSTEIN, ESQ., of the law firm of JIMMERSON HANSEN, P.C., appearing on behalf of Plaintiff, Fletcher Jones, Jr., the Court having reviewed the pleadings and papers on file herein, and for good cause appearing, hereby ORDERS as follows:

IT IS HEREBY ORDERED that Defendant's Motion to Stay District Court Proceedings is **GRANTED**.

IT IS FURTHER ORDERED that the hearing on Defendant's Motion for Protective Order, to Quash Subpoenas, and for Attorneys' Fees with *Ex Parte* Motion for Order Shortening Time set for March 29, 2013 at 1:30 p.m. is hereby **VACATED**.

RECEIVED
MAR 27 2013
FAMILY COURT
DEPARTMENT T

BLACK & LOBELLO
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

IT IS FURTHER ORDERED, based upon the agreement of counsel for Defendant, that in the event the Nevada Supreme Court denies VERIFIED EMERGENCY PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION filed by Defendant, Defendant shall thereafter have ten (10) days from the date of the Order denying Verified Emergency Petition for Writ of Mandamus and/or Prohibition to the District Court to produce all non-privileged documents obtained via subpoena, along with a privilege log.

IT IS SO ORDERED this 20 day of March, 2013.

THE HONORABLE GAYLE NATHAN
DISTRICT COURT JUDGE

GAYLE NATHAN

Respectfully Submitted:

BLACK & LOBELLO

John D. Jones, Esq.
Nevada Bar No. 6699
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
Phone: (702) 869-8801
Attorneys for Defendant,
KIMBERLY JONES

Approved as to form and content:

JIMMERSON HANSEN, P.C.

3/21/13

James J. Jimmerson, Esq.
Nevada Bar No. 000264
Shawn M. Goldstein, Esq.
Nevada Bar No. 009814
415 S. Sixth Street, Suite 100
Las Vegas, Nevada 89101
Phone: (702) 388-7171
Attorneys for Plaintiff,
FLETCHER JONES, JR.

BLACK & LOBELLO
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

have video

D-12-470239-U

DISTRICT COURT
CLARK COUNTY, NEVADA

Miscellaneous Complaint COURT MINUTES October 10, 2013

D-12-470239-U Fletcher Jones, Jr., Plaintiff(s).
vs.
Kimberly Jones, Defendant(s).

October 10, 2013 8:30 AM **Motion to Compel**

HEARD BY: Nathan, Gayle COURTROOM: Courtroom 14

COURT CLERK: Kathleen Boyle

PARTIES:
Fletcher Jones, Jr., Plaintiff, present
Harrison Jones, Subject Minor, not present
Hayden Jones, Subject Minor, not present
Kimberly Jones, Defendant, present

James Jimmerson, Attorney, present

John Jones, Attorney, present

JOURNAL ENTRIES

- PLAINTIFF'S MOTION TO COMPEL THE PRODUCTION OF KATHRYN STRYKER WIRTH'S ENTIRE FILE; FOR USE OF THE CALIFORNIA DEPOSITION AND HEARING TRANSCRIPTS OF THE PARTIES FOR ALL PURPOSES UNDER THE RULES AND LAW

Mr. Jimmerson was accompanied by co-counsel, Shawn Goldstein, Philip Seastrom, and Ryan McIntire. Mr. Jones was accompanied by Michelle Lobello.

Mr. Jimmerson was provided with a copy of Defendant's Opposition before the hearing, and was given an opportunity to review the Opposition prior to the commencement of the hearing.

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL THE PRODUCTION OF KATHRYN STRYKER WIRTH'S ENTIRE FILE; FOR USE OF THE CALIFORNIA DEPOSITION AND HEARING TRANSCRIPTS OF THE PARTIES FOR ALL PURPOSES UNDER THE RULES AND LAW; FOR ATTORNEY FEES AND COSTS; AND OTHER RELATED RELIEF AND COUNTERMOTION FOR ATTORNEY FEES AND COSTS FILED IN OPEN COURT.

The Court noted this matter was on calendar on an Order Shortening Time.

Argument by counsel.

The Court FINDS, based on all the papers and pleadings it has reviewed, it appears to the Court the Defendant continues to raise the issue that she did not consider Ms. Wirth to be her attorney at the time in 1998, she entered into these agreement; therefore, this is a triable issue that the Court believes will be brought before it, and it goes to the validity of the agreements. Plaintiff is requesting a declaratory judgment from the Court that the three agreements are enforceable.

Mr. Goldstein will provide the Court and Mr. Jones, with the Discovery Commissioner's opinion with regard to which objections as to depositions are proper and which objections are not proper.

COURT made FURTHER FINDINGS and ORDERED, the following:

1. Plaintiff's Motion as to the Privilege Log is GRANTED. The twelve documents, which were not produced, and the log, shall be delivered to the Court's chambers for in camera review by noon on Friday, 10/11/13. The Court believes any strategy information should be redacted from the documents; therefore, it will redact any information it believes should be redacted, and it will release the redacted documents.

2. Mr. Jones shall have an opportunity to file pleadings addressing due process, by Friday, 10/11/13 at 4:00 p.m., in response to the Supplement filed by Plaintiff.

3. The Court will issue an Order by Monday, 10/14/13, as to whether or not the Court should issue an order that objections will be reserved for trial during the deposition of any witnesses in this case, other than objections that go to privilege.

4. The Court rules any deposition transcript or trial transcript may be used in this case-in-chief, in the fashion addressed on the record by Mr. Jimmerson, whereby instead of calling the party or a witness, the transcript may be used instead. Designated portions of the transcripts shall be exchanged by 1/7/14. Any cross-examined portions of the transcripts will be exchanged by 1/23/14.

5. Requests for attorney fees shall be DEFERRED to the time of trial.

6. Mr. Jimmerson shall prepare the Order. Mr. Jones shall sign off as to form and content.

INTERIM CONDITIONS:

FUTURE HEARINGS:

Canceled: October 10, 2013 8:30 AM Motion to Compel

October 17, 2013 9:00 AM Status Check

Nathan, Gayle
Courtroom 14
Tait, Lucinda

Canceled: October 17, 2013 9:00 AM Motion to Compel

Canceled: October 17, 2013 9:00 AM Motion to Compel
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated - per OST
Nathan, Gayle
Courtroom 14
Tait, Lucinda

Canceled: November 08, 2013 1:30 PM Motion to Compel
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated
Courtroom 24
Beecroft, Chris A, Jr.
Beecroft, Chris A, Jr.

Canceled: November 21, 2013 9:00 AM Status Check
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated
Courtroom 14
Nathan, Gayle
Tait, Lucinda

Canceled: November 21, 2013 9:00 AM Status Check
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated - per Judge
Courtroom 14
Nathan, Gayle
Tait, Lucinda

November 21, 2013 10:45 AM Status Check
Nathan, Gayle
Courtroom 14
Tait, Lucinda

December 19, 2013 9:00 AM Status Check
Courtroom 14
Nathan, Gayle
Tait, Lucinda

January 23, 2014 9:00 AM Status Check
Courtroom 14
Nathan, Gayle
Tait, Lucinda

February 05, 2014 1:30 PM Evidentiary Hearing
Nathan, Gayle
Courtroom 14
Tait, Lucinda

February 06, 2014 1:30 PM Evidentiary Hearing
Nathan, Gayle
Courtroom 14
Tait, Lucinda

February 07, 2014 2:00 PM Evidentiary Hearing
Nathan, Gayle
Courtroom 14
Tait, Lucinda

February 07, 2014 9:00 AM Evidentiary Hearing
Nathan, Gayle
Courtroom 14
Tait, Lucinda

February 12, 2014 1:30 PM Evidentiary Hearing
Nathan, Gayle
Courtroom 14
Tait, Lucinda

February 13, 2014 1:30 PM Evidentiary Hearing
Nathan, Gayle
Courtroom 14
Tait, Lucinda

February 14, 2014 2:00 PM Evidentiary Hearing
Nathan, Gayle
Courtroom 14
Tait, Lucinda

February 14, 2014 9:00 AM Evidentiary Hearing
Nathan, Gayle
Courtroom 14
Tait, Lucinda

February 19, 2014 1:30 PM Evidentiary Hearing
Nathan, Gayle
Courtroom 14
Tait, Lucinda

February 20, 2014 1:30 PM Evidentiary Hearing
Nathan, Gayle
Courtroom 14
Tait, Lucinda

February 21, 2014 2:00 PM Evidentiary Hearing
Nathan, Gayle
Courtroom 14
Tait, Lucinda

February 21, 2014 9:00 AM Evidentiary Hearing
Nathan, Gayle
Courtroom 14
Tait, Lucinda

February 26, 2014 1:30 PM Evidentiary Hearing
Nathan, Gayle
Courtroom 14
Tait, Lucinda

February 27, 2014 1:30 PM Evidentiary Hearing

Nathan, Gayle
Courtroom 14
Tait, Lucinda

February 28, 2014 2:00 PM Evidentiary Hearing
Nathan, Gayle
Courtroom 14
Tait, Lucinda

February 28, 2014 9:00 AM Evidentiary Hearing
Nathan, Gayle
Courtroom 14
Tait, Lucinda

March 11, 2014 1:30 PM Evidentiary Hearing
Nathan, Gayle
Courtroom 14
Tait, Lucinda

March 12, 2014 9:30 AM Evidentiary Hearing
Nathan, Gayle
Courtroom 14
Tait, Lucinda

March 13, 2014 1:30 PM Evidentiary Hearing
Nathan, Gayle
Courtroom 14
Tait, Lucinda

March 14, 2014 9:30 AM Evidentiary Hearing
Nathan, Gayle
Courtroom 14
Tait, Lucinda

TRANS

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CLERK OF COURT

ORIGINAL

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

FLETCHER JONES, JR.,

Plaintiff,

vs.

KIMBERLY JONES,

Defendant.

CASE NO. D-12-470239-U

DEPT. T

(SEALED)

BEFORE THE HONORABLE GAYLE NATHAN
DISTRICT COURT JUDGE

TRANSCRIPT RE: ALL PENDING MOTIONS

THURSDAY, OCTOBER 10, 2013

APPEARANCES:

The Plaintiff:	NOT PRESENT
For the Plaintiff:	JAMES JIMMERSON, ESQ. SHAWN M. GOLDSTEIN, ESQ. PHILIP SEASTROM, ESQ. RYAN McINTIRE, ESQ. 415 S. Sixth St., #100 Las Vegas, Nevada 89101 (702) 388-7171
The Defendant:	NOT PRESENT
For the Defendant:	JOHN JONES, ESQ. MICHELLE LOBELLO, ESQ. 10777 W. Twain Ave., #300 Las Vegas, Nevada 89135 (702) 869-8801

on it. And there were matters going on in two different states. And so it does require a lot of case management here.

And I have set aside status checks every months for the parties to keep the case on track. I have designated oh, I don't know, 15 days of trial, maybe not full days, but some have --

MR. JIMMERSON: 11 fulls days over 15 days.

THE COURT: All right. 15 days full and half for trial. In this case, the Court finds requires a great deal of case management on all issues, discovery issues as well as trial and pretrial issues. And the Court specifically finds that Plaintiff is not ambushing the Defendant in this motion asking for orders. These are pretrial matters, they're discovery matters. And it's appropriate to bring it to the Court for further orders.

And the Court extended every courtesy it could in taking the facts to opposition from the Defendant that wasn't filed and reading it and -- and absorbing it and providing copies to Plaintiff who had not been available to read it last night so that the matter was squarely before the Court. I even filed it in open court so that it was a filed document that I could read and rule on today. So I -- I believe that I'm giving courtesies to both sides and being as gracious as I can in moving this case along.

All right. And -- and you know what, I was reading the Defendant's opposition. I was actually kind of nodding my head thinking to myself as I read along at 7:00 o'clock last night well, you know, they're making a good argument here. I mean, they're making a good argument. And I -- and then I got to Page 7, Line 24 talking about Ms. -- Ms. Jones' declaration that she was told Ms. Wirth was her attorney. And I really think that that's the heart of -- that's part of the heart of what I'll be deciding when it comes to trial, because it goes to the validity of these agreements.

And, you know, when Defendant argues -- I -- I understand Defendant has -- you know, has -- Defendant has their perception of their case and their -- their trial strategy on their case and Plaintiff has their strategy of their case and sometimes there is -- each does not recognize the others. So -- the other strategy.

But I understand what Plaintiff is saying to me. Plaintiff is saying -- you know, in one document she says Ms. Wirth was her attorney and in another document she says she wasn't. And but it's really the Court. The Court has to have sufficient evidence before it when this massive case, massive only because the number of lawyers and the amount of time that's been put into it, comes before me in February. And -- and if I have this contrariness, well, she was -- you know, I

was told that this was my lawyer and -- and then in other documents I have, well, you know, yes, I went in and talked to her about this pretrial, I really do need more information on whether or not an attorney/client relationship formed way back in 1990 something.

And so for that reason, I'm granting the Plaintiff's motion as to the privilege log. I want the 12 documents that were not produced delivered to my chambers, not filed of course, for in camera review. And Mr. Jones, I -- I agree with you that sometimes, you know, as lawyers we put in our letters a strategy that might be down the road. I agree with you.

And I think that I would be inclined that if that strategy appears in the -- in the documents, I would be inclined to redact that strategy, because it's only the current time frame of when they're discussing the prenup what should go in the prenup, what shouldn't go in the prenup and their relationship as attorney/client that would be relevant at the time of the hearing.

And so I would be looking for -- for that and I would -- I would be inclined to redact that. So if I see information that I think is appropriate for redacting, I will copy the documents and redact them and release the redacted versions.

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CLERK OF THE COURT

ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA
***

Fletcher Jones, Jr., Plaintiff(s).
vs.
Kimberly Jones, Defendant(s).

CASE NO: D-12-470239-U
DEPT.: T

ORDER FROM HEARING

TO: LITIGANTS AND THEIR COUNSEL

YOU WILL PLEASE TAKE NOTICE that the Court having taken under advisement the issues of (1) the Plaintiff's request for an Order relative to Defendant's Deposition and (2) the Plaintiff's request for the release of 12 additional documents produced by attorney Kathryn Stryker Wirth and set forth on the Privilege Log of Kimberly Jones ;

The Court having reviewed Defendant's Opposition to Plaintiff's Supplement and said Privilege Log and produced documents, makes the following **FINDINGS** and **ORDER**:

1. The Court finds that the following documents are relevant to the issue of whether there existed an attorney-client relationship between Ms. Wirth and Defendant: Document 1; Document 2; Document 3 (Redacted); Document 8; Document 9; and Document 12 .

GAYLE NATHAN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. T
LAS VEGAS, NV 89101-2408

2. The Aforementioned doouments will be made available BY Chambers to Plaintiff after Noon on Monday, October 14, 2013; the Court will retain the Privilege Log as a Left Side Filing until the case is concluded; Plaintiff shall copy and provide to Defendant the Documents the Court has released no later than at the commencement of Defendant's Deposition.

3. As to Plaintiff's request that the Defendant's counsel not be permitted to instruct their client not to answer a question on relevancy grounds, NRCP 30 (d)(1) permits a party to instruct a deponent not to answer only when necessary to preserve a privilege, or enforce a limitation directed by the court, or to present a motion under paragraph (3).

4. This Court is ordering that there shall be **NO FILED MOTIONS** under NRCP 30(d)(3) during Defendant's Deposition; This Court will hear **ORAL MOTIONS** that may be necessary from time to time at Noon and 3 PM of each day of Defendant's Deposition or as may otherwise be arranged with the Court. Said Oral Motions will be on the record and arranged by the moving party with Chambers.

5. **IT IS FURTHER ORDERED THAT THE DEPOSITION SHALL NOT BE SUSPENDED OR TERMINATED PENDING THE DECISION ON THE ORAL MOTION.** Counsel are instructed to move to a new area of inquiry until the Court may hear the oral motion(s).

GAYLE NATHAN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. T
LAS VEGAS, NV 89101-2408

6. Counsel and or the Party will be sanctioned if the Court deems the motion to be frivolous or for the sole purpose to frustrate or delay the taking of Defendant's deposition in an intelligent, orderly, fashion or if the Court deems the question to be for the sole purpose of annoying, harassing or oppressing the Defendant.

7. **All OBJECTIONS are preserved for trial;** Defendant is not entitled to object on relevancy grounds for the purpose of delaying or interfering with the deposition because she believes a question is not relevant, that objection will be heard at time of trial and ruled on.

IT IS SO ORDERED

DATED this 14th day of October, 2013.

GAYLE NATHAN
DISTRICT JUDGE, DEPT T

Prepared by the Court

GAYLE NATHAN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. T
LAS VEGAS, NV 89101-2408

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CLERK OF COURT

TRANS

ORIGINAL

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

FLETCHER JONES, JR., Plaintiff, vs. KIMBERLY JONES, Defendant.	CASE NO. D-12-470239-U DEPT. T (SEALED)

BEFORE THE HONORABLE GAYLE NATHAN
DISTRICT COURT JUDGE

TRANSCRIPT RE: STATUS CHECK

THURSDAY, OCTOBER 17, 2013

APPEARANCES:

The Plaintiff:	NOT PRESENT
For the Plaintiff:	JAMES JIMMERSON, ESQ. PHILIP SEASTROM, ESQ. (Telephonically) BRUCE COOPERMAN, ESQ. (Telephonically) 415 S. Sixth St., #100 Las Vegas, Nevada 89101 (702) 388-7171
The Defendant:	NOT PRESENT
For the Defendant:	JOHN JONES, ESQ. MICHELE LOBELLO, ESQ. JEFFERY STURMAN, ESQ. (Telephonically) 10777 W. Twain Ave., #300 Las Vegas, Nevada 89135 (702) 869-8801

31st, 1998. There's no statement of services rendered during this period of time from the last statement to this statement. And it just carries forward the total due.

MR. JIMMERSON: Fine.

THE COURT: There's -- there's no act.

MR. JIMMERSON: Fine.

THE COURT: I'm representing -- I'm reading from it. There's no --

MR. JIMMERSON: No entries.

THE COURT: -- activity.

MR. JIMMERSON: Fine.

THE COURT: And so I --

MR. JIMMERSON: Fine.

THE COURT: -- I didn't --

MR. JIMMERSON: Thank you. We didn't know.

THE COURT: It was not helpful to release it. I didn't release it. On the issue of the letter, I'm -- I'm still not inclined to release it just -- I released the first page which was relevant to the issue as to whether or not there may or may not be an attorney/client privilege relationship between Ms. Jones and Ms. Worth. The first page I thought went to that issue. The part of the second page that I released I believed went to that -- that issue.

MR. JIMMERSON: And so you understand her testimony,

Your Honor, is I never gave her any of the information in those two pages. I never told her I grew up in Wyoming. I never told her that I moved to Arizona. That's her testimony.

THE COURT: And so when it comes before the Court, if it comes before the Court, then the issue will be who is credible, Ms. Worth testifying --

MR. JIMMERSON: Correct.

THE COURT: -- that Ms. Jones gave her this information or Ms. Jones testifying that I never spoke to Ms. Worth and gave her the --

MR. JIMMERSON: Exactly.

THE COURT: -- this -- this information which includes --

MR. JIMMERSON: A lot of detail.

THE COURT: -- you know, if she worked for a healthcare company --

MR. JIMMERSON: Correct.

THE COURT: -- she was a paralegal and -- and the other stuff. And the rest of the letter --

MR. JONES: Some of which is --

THE COURT: -- counsel --

MR. JONES: -- completely inaccurate.

THE COURT: The rest of the letter goes to strategy and analysis. It does not go to whether or not there was or

may have been or may not have been an attorney/client relationship between the parties. It's attorney strategy in my view and I'll not release it.

The last page that I released was the -- next to the last page and in this page I thought it was -- it may or may not be helpful in establishing whether or not there was an attorney/client relationship, because the last sentence of that paragraph states I will discuss these with you in detail during our next meeting. So --

MR. JIMMERSON: Right.

THE COURT: So I'm just not inclined to release any -- anymore of that letter, Mr. Jimmerson.

MR. JIMMERSON: Thank you, Your Honor.

THE COURT: And I -- I thought the pertinent parts were released to you and I'm maintaining the rest of the privilege.

MR. JIMMERSON: We appreciate it. And in light of the extraordinary testimony of her, then you'll -- you will have that -- that chance to review the credibility of parties if the matter is not resolved before you.

THE COURT: Okay. So I have addressed your request for one more day of a deposition. I'm ordering four hours. And that Mr. Jones' deposition will not be delayed for additional time with Mrs. Jones. And I --

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF ORANGE
MINUTE ORDER
January 30, 2014

Dept: L64

Judge:	Ronald Kreber	**Clerk:**	Diane Ruiz
Bailiff:	None	**Reporter:**	None

Case Category: DC Dissolution with Child

Case Number: 12D000041 **Case Name:** Jones v Jones Jr

Event Info: **Casusal Docket Info:**
Code - Description **File Date** **Seq** **Filing Party**

Docket Info: MN102

APPEARANCES: None

The court will refer to the partles by their first names. The court is not intending disrespect as this is being done for clarity.

Petitioner, Kimberly Jones (Kimberly), filed a Motion for Summary Adjudication September 27, 2013 in California. Kimberly argued that the this Court has jurisdiction over pending issues regarding the three-agreements, the post-marital agreement that directly related to issues that are before this court, including property, and the issues upon which this court reserved jurisdiction.

Kimberly proceeded to argue before the Court that Respondent, Ted Jones (Ted), has "snookered" Kimberly into another proceeding in Nevada. Ted filed a Motion for Summary Adjudication in Nevada, after Kimberly filed her motion in this Court, as a Nevada statute allows for an earlier hearing than was scheduled in the California courts. The court of Nevada allows a hearing as soon as 10 days after filing.

Kimberly argues that section 8.1 and 3.4 in the post-martial agreement states that jurisdiction is where the children live, which is California. Further, Kimberly states this Court should have jurisdiction over preliminary matters and that jurisdiction should rest where the first motion was filed that addressed the disputed issue.

Kimberly has three arguments before the Court regarding the issue of jurisdiction. First (A-1), the post-marital agreement, page 22 paragraph 10.9, deems Nevada the jurisdiction where issues are to be resolved. Second (A-2), on page 19, "the Court and parties' dissolution or divorce action has jurisdiction to order payment of alimony or spousal support." Third (A-3), page 17 section 3.4 of the martial settlement agreement,

states that "In the event a child support proceeding is transferred to the state where the wife and the parties' two minor children are then residing, under the terms of the foregoing stipulation set forth in this section 3.4, the law of the state where wife and the parties' two minor children shall apply and such state shall be the place and forum and venue for such proceedings."

Kimberly contends this Court's ruling, which states "over all other issues of the marriage," includes all other issues with the agreement and certainly support and attorney fee issues. Kimberly's counsel pointed out that the Nevada court had jurisdiction, as the exact wording of the California ruling did not include exclusive California jurisdiction over other issues.

Kimberly specifically cited the property section of the Petition for Dissolution, filed January 31, 2012, which states that "Respondent requests the assets and debts listed below confirmed as separate property and 'the total nature and extent of the property assets and debts are unknown are this time,'" which reserves jurisdiction on that issue to the California court. In addition, Kimberly argues that community and quasi-community property rights were also reserved to the California court. Kimberly pointed out that Ted had checked a box on June 17, 2013 signifying "there are no assets or debts subject to disposition by this proceeding" regarding the community property of the couple.

In conclusion, Kimberly requests the Court grant the Motion for Summary Adjudication regarding California's jurisdiction and the validity of the three agreements, effectuating exclusive jurisdiction in California for spousal support, child support, and any related issues of the marriage.

Kimberly's second issue within the Motion for Summary Adjudication, states that the Nevada ruling regarding Petitioner Ted's Adjudication Order is an interim order, subject to appeal, and is not subject to full faith and credit in this court.

Kimberly further argues that Ted breached the child support agreement for $50,000 per month, as he failed to make payment throughout the contracted term.

Ted responded to Kimberly's Motion for Summary Adjudication in three-parts requesting: (1) an Order denying Kimberly's Motion for Summary Adjudication, (2) an Order granting full faith and credit to the Summary Judgment entered on December 10 in Nevada, and (3) an Order staying any and all further proceedings in California for this dissolution of marriage action that have pending litigation in Nevada.

Ted has pending requests that the Nevada court interpret, verify, enforce and find for declaratory relief and specific performance of the three agreements, including interpretation of child support issues, and grant the Motion for Summary Adjudication.

October 4, 2012, Ted filed for declaratory relief, validity, enforceability and specific performance in Nevada. The Nevada Judge denied Kimberly's Motion to Dismiss. Subsequently, August of 2013, the parties had a status check in Nevada court where Ted told the Nevada Judge that he would file a Motion for Summary Adjudication in the Nevada court. Kimberly responded by filing a Motion for Summary Adjudication in California September 27, 2013.

Ted stipulates that the forum selection clauses in the three agreements should be litigated in Nevada and Kimberly's Motion for Summary Adjudication is a breach of the forum selection clauses.

According to Ted, Kimberly triggered the forum selection clauses in August of 2012 when she contested the validity of the agreements. Ted cited specific language from the prenuptial agreement noting: "this agreement shall be governed by, interpreted, enforced, and construed under an accordance of statutory and case laws of the state of Nevada as those laws exist and are in effect at the time of the execution of the agreement. The existing laws of the state of Nevada should be binding in all respects even if the parties shall hereafter be or become residents or domicile in or own property in another state, county, or territory.

The parties chose the Eighth Judicial District Court in Nevada in the County of Clarke as the forum and venue for all proceedings hereunder and herewith submit to the jurisdiction thereof. This is a binding choice of law, forum, and venue."

Ted further argued that Nevada has jurisdiction, as the parties were both residents of Nevada at the time of the prenuptial agreement; Kimberly held out she was a Nevada resident in the premarital agreement; and Kimberly testified August of 2012, under penalty and perjury, that the premarital agreement was a product of fraud, duress, and undue influence, therefore enacting the agreements' forum clauses.

Ted contends that there is no such language on page 2 line 27 though page 3 line 9 that Kimberly "reserve[d] jurisdiction [to California] over all issues other than the issue of 'status' of the parties' marriage including, but not limited to, the validity and enforceability of the premarital agreement, marital settlement agreement, and post marital agreement." Ted asserts that the parties' three children have not always lived in California; they have also lived in Idaho. Therefore, the proper jurisdiction is not automatically California. Further, witnesses are mostly located in Nevada, the Nevada case has been going on for 15 months, and Ted is only seeking specific performance and interpretation from that court regarding the three agreements. Ted reserves all other issues to this Court.

Ted contends that the trial court may grant a stay in a case where the issues in the two actions are substantially identical. *Thomas v. Continental Ins. Co.* (1967) 66 Cal.2d 738.

746-747. The court may consider certain factors: (1) the importance of discouraging litigation designed solely to harass the adverse party. However, Ted asserts he is not harassing Kimberly; (2) the importance of avoiding unseemly conflicts of the courts of other jurisdictions. Here, Kimberly is the party conflicting the Nevada ruling by filing in California; and (3) whether the parties' rights can best be determined by the other court because of nature of subject matter. Ted contends the agreements were negotiated, entered into, and executed in Nevada, under Nevada law that existed at that time.

According to Ted, if the agreements are found valid and enforceable, that includes the forum selection clauses that the matter is supposed to be litigated in Nevada. The parties have complied and filed the initial witness list in Nevada, provided document disclosures in accordance with Nevada rules of civil procedure, and heard multiple status checks in Nevada. If Kimberly's Motion is going to be granted, this will cause high cost and duplication.

Ted concludes by asking for denial of Kimberly's Motion for Summary Adjudication, that this Court grant full faith and credit to the Summary Judgment and that this Court stay any and all further proceedings in California, to the extent of the issues regarding discovery, validity, and enforceability of the agreements.

Kimberly responded that the Stay Order Ted requested is broader than asserted to the court. Paragraph 3 states, "an order staying any and all further proceedings in California in the California marital dissolution action... including any and all discovery which relates to the validity enforcement, interpretation..." which is clearly broader than Ted's counsel argued. In essence, the validity of the agreements are not contested, the Nevada court did not stay any proceedings in California or reserve exclusive jurisdiction. The Nevada court merely stated that Nevada may proceed. Kimberly argues California should not lose jurisdiction just because a party has taken a matter to another jurisdiction.

Kimberly's argues Ted's declaration June 21, 2012, that opposing counsel used to induce this court to exercise its discretion and give him an early termination to allow for remarriage, stated "my attorneys, and to my knowledge petitioner's attorneys, shall attempt to resolve all other issues including, but not limited to the validity and enforceability of...the division of community property... child and spousal support and attorney's fees and costs, if any." Again, Kimberly is not contesting the agreements, therefore filing in the Nevada court, when the California Court has been dealing with the dissolution of marriage all along, is improper. Kimberly submitted arguments A1-A3 proposing the proper jurisdiction as California.

Kimberly notes the relevant language for the agreements resides in the prenuptial agreement, page 25 numeral 12, and states, "in the event Kimberly seeks in any way to set aside, impair, or invalidate any of the provisions of this agreement directly or indirectly, as a condition precedent to the right to bring or maintain such action." The

provision continues to state what Kimberly has to forfeit. Kimberly argues, if Ted "believed [Kimberly] were seeking to impair, invalidate, or set aside any of the provisions of the agreement, [Ted] had the right to make a request to whatever court that request of [Kimberly] was pending in to stay her right to initiate this proceeding until she does what is required and that is the condition precedent, which is return or restore the money." This is a condition precedent and not a condition subsequent for damages. Kimberly states that the this Court need not concern itself with any issues alleged regarding forfeiture, damages in Nevada, or awarding attorney's fees as a prevailing party in Nevada, as these issues will be dealt with in Nevada.

Kimberly contends that although Ted mentioned he would file a Motion for Summary Adjudication in Nevada, it took him more than five weeks to do so. Thus, Kimberly filed a Motion for Summary Adjudication in California. Kimberly agrees with Ted, that Section 622 of the Evidence Code says that litigation between parties does not permit to contradict facts that are stated in an agreement in litigation between themselves. However, Kimberly argues there are exceptions to 622, such as fraud. Both parties knew they did not live in Nevada; Kimberly testified that she asked for that to be changed in the agreements and it was not.

Kimberly asserts California has exclusive jurisdiction over those issues, should not abandon those issues (support and attorney fees), nor allow Nevada to make some kind of orders that would appear to interfere with the Court's unfettered discretion with regard to these issues.

Ted responded that Kimberly contested the validity of the agreements in August of 2012. Ten months later, Kimberly said she was not going to contest the agreement, but Ted had already filed in Nevada October of 2012. Per Request for Admission she denied the premarital agreement as valid. Therefore, Ted purports that jurisdiction remains with Nevada.

This Court denies Petitioner Kimberly's Motion for Summary Adjudication. This Court finds that California has exclusive jurisdiction insofar as child support, spousal support, and attorney fees. This Court holds that it will not disturb another court's ruling, in this case, the Court in Nevada. It is essential that courts do not have differences of opinion nor is it in the best interest of the judicial system to create unseemly conflicts with the courts of other jurisdictions. This Court finds that *Thomas v. Continental Ins. Co.* is controlling in laying out the factors necessary to assessing whether stay is appropriate where the issues in two actions are substantially identical. *Thomas v. Continental Ins. Co.* (1967) 66 Cal.2d 738, 746-747. *Thomas* supports denying Kimberly's Request for Stay of all proceedings in the Nevada court, even though this Court might have pending questions. Pursuant to the above precedent and discretion of this Court we rule as discussed.

The Court denies sanctions against Kimberly. The Court denies the request for attorney fees.

This Court would not grant full FAITH AND CREDIT to the Summary Judgment that Ted is requesting.

This Court would not stay any and all proceedings in California. The Court does not intend to interfere with other Courts.

The Court believes the matter that set in this Court on March 2nd and 3rd should be continued.

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CLERK'S CERTIFICATE OF MAILING (CCP 1013a) - I certify that I am not a party to this cause, over 18, and that a copy of this document was mailed first class postage prepaid in a sealed envelope addressed as shown. Mailing and execution of this certificate occurred on 1/31/14 in Orange, California.

ALAN CARLSON, Clerk of the Court

By: _____ DEPUTY CLERK

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CLERK OF THE COURT

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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

FLETCHER JONES, JR., Plaintiff, vs. KIMBERLY JONES, Defendant.	CASE NO.: D-12-470239-U DEPT. NO.: T Date of Trial: February 5, 2014 Time of Trial: 1:30 p.m.

DEFENDANT, KIMBERLY JONES', TRIAL BRIEF

Defendant, KIMBERLY JONES ("Kimberly"), by and through her attorneys of record, John D. Jones and the law firm of Black & LoBello, hereby submits her Trial Brief in accordance with EDCR 7.27.

RESPECTFULLY SUBMITTED this 4th day of February, 2014.

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I.

INTRODUCTION

This Court was recently made aware of and Order issued by the Honorable Ronald Kreber, the presiding Judge in Ted and Kimberly's California dissolution case, on January 30, 2014. Judge Kreber has held:

1. "This Court finds that California has **exclusive** jurisdiction in so far as child support, spousal support, and attorney fees."

2. "This Court would **not** grant full FAITH IN CREDIT to the Summary Judgment that Ted is requesting."

This Court has already ruled on Count I of Ted's Complaint, which was unopposed and unchallenged by Kimberly, when it entered its Decision and Order on December 12, 2013, confirming that the three Agreements were valid and enforceable. In its most recent ruling on Kimberly's Motion for Summary Judgment, dated January 30, 2014, the Court stated that the only claim remaining to be tried was that regarding Specific Performance as set forth in count II of Ted's complaint. The order made clear that the Court would not be entertaining relief for any other cause of action. Although Ted has tried to convert his two count complaint for a determination of validity (Count I) and Specific Performance (Count II) into one which also includes a declaration of the parties' rights and breach of contract, claims which have never been pleaded, this Court has confirmed in its January 30, 2014 Decision and Order, that ONLY the issue of specific performance is proceeding to trial. Now, the Court's inquiry at trial is limited to whether Specific Performance of the three Agreements can or even should be granted to Ted. This Trial Brief will therefore focus on the facts and law which conclusively establish that Ted is not entitled to Specific Performance and that he certainly is not entitled to the relief he is seeking from this Court.

As the Court considers the wealth of legal authority set forth herein, some of which it has seen before, it must remember that in his briefing and pleadings, Ted has never been able to adequately respond to or distinguish the authorities cited by Kimberly. Even when the Court has made specific inquiries about specific issues, Ted has been unable to defend his positions. While

Ted has felt comfortable simply instructing the Court that it has the authority to grant the relief he seeks, he has never given the Court any citation to Nevada case law that would allow the Court to do so.

Specific Performance, as a remedy, is a rare and unique legal concept with narrowly drawn parameters and very specific requirements. Ted has asked this Court to ignore the principals of law upon which his sole remaining cause of action relies. Ted has tried misdirection and deception to persuade this Court that it can grant him the unpleaded relief he seeks. Fortunately for this Court, Kimberly presents herein, overwhelming Nevada authority, which if followed by this Court, will make its decision far less complicated than Ted argues it is.

In addition to the analysis regarding the failure of Ted's claim for Specific Performance, this Brief will also address and discuss Kimberly's other defenses so that a clear record of the improper nature of Ted's ever-changing positions before this Court and the California Court is established. So that the District Court Record is complete, Kimberly incorporates all prior motions and briefs submitted in support of her positions in this action by reference.

II.

PROCEDURAL HISTORY

Although a complete recitation of the procedural history of this case would result in this Brief being far from brief, there are a few crucial facts and events in both the California action and Nevada action which require this Court's specific attention. These essential and undisputed facts are as follows:

1. On November 18, 2005, Kimberly files for dissolution in California.
2. On December 30, 2005, Ted files for divorce in Nevada.
3. The 2005 cases are eventually dismissed.
4. The parties execute their Marital Settlement Agreement on December 13, 2006.
5. The parties execute their Post Marital Agreement on December 12, 2007 with an effective date of January 1, 2007.
6. January 4, 2012, Kimberly files for dissolution in California.
7. January 31, 2012, rather than filing a competing divorce action in Nevada, Ted

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files an answer in the California dissolution action.

8. The parties litigate divorce issues such as child custody, *pendente lite* support and discovery in California.

9. Ted files his Motion for Bifurcation in California.

10. In his Motion and the Reply to the Opposition filed by Kimberly, Ted testifies, via declarations, that the California Court would retain jurisdiction over all issues of the marriage including but not limited to Property, Spousal Support, Child Support, and Attorney Fees.

11. Under California law, Ted could have never been granted his status divorce absent his agreement that California would retain jurisdiction.

12. After 10 months of California litigation, and shortly after the contested hearing at which Ted is granted his bifurcated divorce, Ted files his Nevada Complaint on October 4, 2012.

13. The two causes of action contained in Ted's Nevada Complaint are for Declaratory Relief seeking confirmation that the Marital Agreements signed by the parties are valid and enforceable (Count I) and for Specific Performance of the Agreements (Count II).

14. Ted's Nevada complaint did not set forth a cause of action for the interpretation of the three Agreements or a Declaration of the parties' rights and obligations under the Agreements.

15. Ted's Nevada Complaint did not set forth a cause of action for breach of contract seeking money damages. In fact, Ted's Complaint unequivocally states that money damages are insufficient.

16. Ted has never filed a Motion to Amend his Complaint to include causes of action for interpretation/declaration of rights or breach of contract.

17. This Court's decision and order denying Kimberly's Motion for Summary judgment states that the only cause of action to be tried is Ted's claim for Specific Performance.

18. The California Order regarding Kimberly's California Motion for Partial Summary Judgment was issued January 30, 2014, confirming the California Court's exclusive jurisdiction over child support, spousal support and Attorney Fees. This Order also confirms that the California Court will not give full faith and credit to the Nevada Summary Judgment

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Decision and Order.

III.

LEGAL ANALYSIS

A. TED IS NOT ENTITLED TO ANY RELIEF FROM THIS COURT

1. The California Judgment of dissolution controls all issues of Property, Support and Attorney Fees.

On November 29, 2012, the Superior Court of California entered its judgment bifurcating the parties marital status from "all other issues" incident to the parties marriage, reserving, with Ted's consent, jurisdiction over all other issues in the case. Specifically, the Judgment, consistent with Ted's own prayer for relief in his Motion for Bifurcation discussed in Kimberly's Motion to Dismiss, contains the following provision which was a condition of Ted receiving the bifurcated divorce he sought from the California Court:

> (11) ***The Court reserves jurisdiction over all other issues of the marriage,*** including but not necessarily limited to, ***the nature, value and extent of the community property and separate property, the division of property, spousal support, attorneys fees, cost of litigation***, and ***all other matters*** which the court may determine appropriate and within the scope of its jurisdiction. (emphasis added)

The January 30, 2014 Order from the California Court further reinforces it.

There can be no legitimate dispute that "all other issues" and "all other matters" actually mean ALL. There is no other way to interpret this unambiguous court order than to conclude that the division of property, the provisions for support and attorney fees, which Ted claims are before this Court, are reserved to the jurisdiction of the California court. There is no way this Court can rule on Ted's claim for Specific Performance of property and support issues when the subject matter has already been judicially determined to belong to the California Superior Court. What is so offensive about Ted's position before the Nevada court, is that it was Ted's that own California petition that resulted in the foregoing order being entered which should now be controlling all issues related to Ted's improperly filed Nevada action.

NRS 17.350 states as follows:

> **17.350. Filing and status of foreign judgments**
>
> An exemplified copy of any foreign judgment may be filed with the clerk

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> of any district court of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the district court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a judgment of a district court of this state and may be enforced or satisfied in like manner.

The California judgment which was filed in this action is *res judicata* regarding jurisdiction over the remaining current claim that Ted seeks to litigate in Nevada.

The Court in Mason v. Cuisenaire, 122 Nev. 43, 128 P.3d 446(2006) held as follows:

> "The full faith and credit clause of the United States Constitution requires that a final judgment entered in a sister state must be respected by the courts of this state absent a showing of fraud, lack of due process or lack of jurisdiction in the rendering state. *Rosenstein v. Steele,* 103 Nev. 571, 573, 747 P.2d 230, 231 (1987); *see also* U.S. Const. art. IV, § 1.
>
> The district court order made no conclusions as to the validity of the North Carolina judgment and made no findings as to fraud, lack of due process or lack of jurisdiction by the North Carolina court. Accordingly, it appears that the district court implicitly determined that the North Carolina judgment was entitled to full faith and credit.
>
> It is important to note that Ted cannot challenge the judgment which resulted from his own affirmative request before the California Court. Similarly, the Court in Mizner v. Mizner 84 Nev. 268, 439 P2d 679 (1968) held as follows:
>
> Here, the parties were domiciled in California until their separation. Presumably, the wife's cause of action for cruelty arose out of the husband's conduct while they were living together. The interlocutory judgment was entered by a court of general jurisdiction and carries with it the presumption of validity. *Milliken v. Meyer*, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 278 (1940). We are not at liberty to ignore the construction placed upon s 417 by the California courts. Rather, we must honor their view. *Farnham v. Farnham*, 80 Nev. 180, 183,391 P.id 26 (1964); *Kraemer v. Kraemer*, 79 Nev. 287, 290, 382 P.2d 394 (1963); *Choate v. Ransom*, 74 Nev. 100, 323 P.2d 700 (1958); *Summers v. Summers*, 69 Nev. 83, 241 P.2d 1097 (1952). The California judgment is entitled to full faith and credit. *Biel v. Godwin*, 69 Nev. 189, 245 P.2d 997 (1952).

In the case currently before the Court, a Judgment of a sister state exists which reserves jurisdiction over the subject matter of each of Ted's "trial issues" to the Superior Court of California. This unequivocal finding and order must be given full faith and credit.

This Court should honor the California Decree of Dissolution. This Court is well aware that a valid judgment of a sister state must be honored by Nevada courts. In City of Oakland v. Desert Outdoor Advertising, 267 P3d 48, 127 Nev Adv. Op. 46 (2011) the Nevada Supreme Court held as follows:

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> Under the Full Faith and Credit Clause of the United States Constitution, a final judgment entered in a sister state must be respected by the courts of this state. *See* U.S. Const. art. IV, § 1; *Rosenstein,* 103 Nev. at 573, 747 P.2d at 231; *Donlan v. State,* 249 P.3d 1231, 1233 & n. 1 (2011). "For the States of the Union, the constitutional limitation imposed by the full faith and credit clause abolished, in large measure, the general principle of international law by which local policy is permitted to dominate rules of comity." *Broderick v. Rosner,* 294 U.S. 629, 643, 55 S.Ct. 589, 79 L.Ed. 1100 (1935).
>
> To further the principle of comity, Nevada adopted the UEFJA in NRS 17.330 through 17.400. Under this act, a properly filed foreign judgment has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a Nevada district court judgment, and may be enforced or satisfied in like manner. NRS 17.350. Nevada's UEFJA applies to all foreign judgments filed in Nevada district court for the purpose of enforcing the judgment in Nevada. NRS 17.340; NRS 17.350. The act defines a foreign judgment "as any judgment of a court of the United States or of any other court *which is entitled to full faith and credit in this state.*" NRS 17.340 (emphasis added).

Even if this Court enters orders as requested by Ted, the Nevada judgment would remain subject to attack in California prior to it ever having an opportunity to be enforced. The Court in City of Oakland went on to hold as follows:

> However, not all judgments are entitled to full faith and credit in Nevada. Notably, "defenses such as lack of personal or subject-matter jurisdiction of the rendering court, fraud in the procurement of the judgment, lack of due process, satisfaction, or other grounds that make the judgment invalid or unenforceable may be raised by a party seeking to reopen or vacate a foreign judgment." 30 Am.Jur.2d *Executions and Enforcement of Judgments* § 787 (2005); *see also Rosenstein,* 103 Nev. at 573, 747 P.2d at 232; *Marworth, Inc. v. McGuire,* 810 P.2d 653, 656 (Colo.1991); *Wooster v. Wooster,* 399 N.W.2d 330, 333 (S.D.1987) (quoting *Baldwin v. Heinold Commodities Inc.,* 363 N.W.2d 191, 194 (S.D.1985)).

None of these stated objections exist in this case – Plaintiff has never alleged that California lacked jurisdiction to issue its Decree of Dissolution. In fact, it was Ted who sought that Judgment and proposed the orders reserving jurisdiction that are relevant to the pending issues. He affirmatively and vigorously sought the issuance of those Orders. As such, this Court doing anything beyond entering an order that the Agreements are valid and enforceable and then allowing the California Court to apply the property, support and attorney fee provisions of the Agreements would be improper.

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2. **The Agreements Themselves Preclude the Relief Ted Seeks.**

In addition to the existence of a valid California order, the Agreements themselves require that California decide all of the provisions of the Agreements for which Ted now, without ever properly placing them at issue in Nevada, seeks construction and interpretation. According to his recent Nevada filings, Ted is asking this Court, despite the California order regarding jurisdiction over property, support and attorney fees, to make orders regarding the following provisions of the three Agreements:

1. For the Court to apply the forfeiture clause contained in Section XII of the Prenuptial Agreement such that Kimberly must, after the fact, pay Ted her separate property assets. **This is a property/spousal support issue**.
2. That the Post Marital Agreement did not ratify and confirm Ted's obligation to pay $250,000.00 annually to Kimberly as her sole and separate property. **These are spousal support and property issues relating to times in which Kimberly lived in California**.
3. For the Court to determine that the amount of Child Support that Ted agreed to pay in the Marital Settlement Agreement (as ratified and reaffirmed by the Post Marital Agreement) was not due prior to the subsequent filing of a divorce action. **This is a child support issue regarding children and parties who are all residents of California**. Jurisdiction over support issues is specifically reserved to California, the undisputed state of the current residence of Kimberly, Hayden, Harrison and Avery.
4. Ted's request for attorneys' fees. This issue is exclusively before the California Court.

While each of the above issues is the subject of the on-going California action pursuant to the Bifurcated Decree of Dissolution as stated above, all of the five issues are required to be adjudicated in California, the undisputed residence of Kimberly and the children. As to child support:

The California Orders, Nevada Law and California Law require ALL child support issues are to be decided in California. In addition, Section 3.4 of the parties' Marital Settlement

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Agreement, on pages 17 and 18, states as follows:

> Husband and Wife agree that in the event Husband, or his successors [trustee(s), executor(s), or other personal representative(s) should file a motion, petition, **or other action in which the reduction of the amounts of child support he is obligated to pay Wife, pursuant to the terms of the present agreement is sought, in such event, all proceedings regarding the same shall be commenced in the state and county where Wife and the parties two (2) minor children are then residing.** (Emphasis added)

Section 7.1 on page 17 of the parties' Post Marital Agreement reaffirms and ratifies section 3.4 of the Marital Settlement Agreement as follows:

> By the terms of the present Post Marital Agreement, Kimberly and Ted hereby adopt, confirm, ratify, restate and agree to be bound by their agreement for the payment of child support in the event of a divorce by adopting paragraphs 3.2 through 3.4 of their Marital Settlement Agreement dated December 13, 2008 at pages 9-18.

Section 7.1(e) of the parties' Marital Settlement Agreement, at page 21, includes the affirmative statement that "[i]t is Wife's intention after divorce to live primarily in Southern California with the children." It is undisputed that at the time Kimberly filed for divorce in California in 2011 that she and the children were residents of California.

Issues relating to the child support and spousal support are required to be raised in the state and county where Kimberly and the children reside. There is no dispute that California is where Kimberly and the children reside.

Pursuant to Section 8.1 of the Post Marital Agreement, "The court in the parties' dissolution or divorce action has jurisdiction to order the payment of alimony or spousal support to Kimberly, in such amount(s) as the court deems appropriate." California is the only court exercising jurisdiction over the parties' divorce and the division of property based upon the content of Ted's Answer (Response) to Kimberly's California Complaint (Petition) as well as his Motion for Bifurcation and related California Pleadings. As such, all issues regarding the amounts paid to Kimberly, or to be paid to Kimberly, whether as a support or property payment, are before the California court.

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3. Plaintiff Has Waived The Enforcement Of The Forum Selection Clauses Regarding Dispositive Provisions Regarding Property, Support, Alimony and Attorneys' Fees.

The issue of whether a party waives its right to enforce a forum selection clause after participating in litigation in a different forum has not been addressed in Nevada. However, Federal and State courts have addressed the issue. Further, several courts analogize enforcement of a forum selection clause to enforcement of an arbitration clause in their analysis. Thus, this section will address these courts' decisions as well as Nevada case law concerning enforcement of arbitration clauses.

Some courts hold that allowing a defendant to enforce a forum selection clause after litigating in a different forum is inefficient and a waste of judicial resources. In Sucampo Pharmaceuticals, Inc. v. Astellas Pharma, Inc. 471 F.3d 544, 549 (4th Cir. 2006), the court held that a defendant waives a forum selection clause if he does not raise the issue in his first responsive pleading. The court stated that this would allow courts to efficiently dispose of cases involving forum selection clauses and avoid wasting judicial resources, which would result if the court would ultimately have to dismiss the case for it to be re-litigated in a different forum. Id.

Similarly, in Ferrell v. Allstate Insurance Co., 144 N.M. 405, 423, 188 P.3d 1156, 1174 (2008), some members in a class action suit against the defendant were parties to contracts that contained forum selection clauses.. The court held that the defendant waived enforcement of the forum selection clause because the defendant did not raise the forum selection clause as a venue defense in its first responsive pleading. Id. at 1175. The court reasoned that allowing a defendant to wait to assert the forum selection clause is inefficient and likely to result in a waste of judicial resources. Id.

Also, a court should not enforce a forum selection clause if doing so would be unreasonable. In Trident Labs, Inc. v. Merrill Lynch Commercial Finance Corp., 200 Cal. App. 4th 147, 155 (Cal. Ct. App. 2011), the court held that enforcement of a forum selection clause would have been unreasonable even though the plaintiff filed the lawsuit in a different forum than that required under the forum selection clause.. The court reasoned that the defendant could have moved to enforce the forum selection clause by filing a motion to stay or dismiss rather

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than litigating for approximately nineteen months, during which the defendant filed an answer and cross-complaint, conducted discovery, and filed motions seeking relief from the court. Id. at 155, 157.

In this case, the following uncontroverted facts establish Plaintiff's waiver of the right to invoke the Nevada Court's jurisdiction.

1. Ted waited 10 months to invoke a forum selection clause.

2. Ted filed an Answer in California invoking California jurisdiction over the dispositive provisions of the Agreements he now asks this Court to rule upon.

3. Ted's Petition for Bifurcation confirmed his invocation of California jurisdiction.

4. The Decree of Dissolution resulting from Ted's Petition, confirms California's jurisdiction over property, support, and attorney fees.

Even more telling regarding the issue of waiver is Ted's legal analysis regarding his participation, for 10 months, in the California litigation, which supports his waiver of the forum selection clauses. Ted claims that Kimberly must show that Ted knew of his right to bring a Nevada action, and that he either actually intended to waive that right or engaged in conduct completely inconsistent with that right. (Reply, p. 21, l. 9) Ted claims that Kimberly can prove neither. This is a ridiculous and incorrect assertion. In fact, Ted's position on this issue clearly allows this Court once and for all dispose of Ted's Nevada claims.

As to Ted's awareness of his right to bring a Nevada action, Ted most certainly knew of his rights. In 2005, both parties filed for divorce. Kimberly filed in California **and Ted filed in Nevada**. Ted's Nevada divorce Complaint attached and specifically pled the validity and enforceability of the Prenuptial Agreement; he doesn't now get to say, *"Whoops, please forget I did that."* Obviously Ted knew of his rights before he filed his California Answer in 2012 and sought affirmative relief from the California Court via his petition for bifurcation.

As far as engaging in conduct completely inconsistent with his right to file in Nevada, Ted fully participated in the California action for ten months. Ted entered into stipulations for support, disposition of property and attorney fees, and he pleaded that property and support are specifically before the California Court. He obtained multiple forms of affirmative relief

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regarding all issues that are the subject of the three Agreements. Most importantly, there is a Dissolution Judgment which was rendered in California evidencing Ted's many actions contrary to his right to file in Nevada back in January of 2012 when Kimberly filed her Petition for Dissolution in California. Ted should have moved to abate or dismiss certain aspects of the California action—he did not do that.

4. **Ted Is Judicially Estopped From Asserting His Claims Before Any Court Other Than The Superior Court Of California, Orange County.**

All of Ted's alleged issues for trial, which are not legally supportable or valid (as set forth hereinafter) deal with issues of Property, Child Support, Spousal Support and Attorney Fees. In addition to Ted obtaining his judgment of divorce conditioned on California having jurisdiction over all of the foregoing issues, Ted has signed two (2) separate Declarations, under penalty of perjury, which confirm to the California Court, jurisdiction and authority to determine the parties' rights under the same agreements that he now tries to make subject of the Nevada action. In fact, as of January 31, 2014, the California Court stated its exclusive jurisdiction over child support, spousal support and attorney fees. As set forth above, in those declarations, as his reasoning why the California Court should grant him a bifurcated divorce, Ted acknowledged, under oath, that the "issues" that are now, according to Ted, the subject of his Nevada action, are currently pending for adjudication before the California Court. So not only has Ted affirmed under oath in the California Court that generally all other issues incident to the parties' marriage would be adjudicated by the California Courts, he has specifically testified in the California action, in order to obtain his desired relief (a bifurcated divorce) that property, spousal support, child support, and attorney fees which he claims are now the subject of the Nevada action, should remain within control and jurisdiction of the California Court.

The California judgment mirrors the relief Ted sought in his motion for bifurcation, for which Ted seeks declaratory relief from this Court. Ted now claims that this Court should make orders regarding property, support and attorney fees. Pursuant to well-established case law, this cannot be permitted.

While the prior adjudication of jurisdiction in California, based upon Ted's request, is unequivocal, Ted, via his sworn Declarations, is also estopped from taking the positions he does

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in his Nevada Complaint. The Nevada Supreme Court, in Southern California Edison v. First Judicial Dist. Court of State of Nevada, 255 P.3d 231, 127 Nev. Adv. Op. 22 (2011) addressed the issue of Judicial estoppel as follows:

> Judicial estoppel applies to protect the judiciary's integrity and prevents a party from taking inconsistent positions by " **'intentional wrongdoing or an attempt to obtain an unfair advantage.'** " *NOLM, LLC v. County of Clark*, 120 Nev. 736, 743, 100 P.3d 658, 663 (2004) (quoting *Kitty–Anne Music Co. v. Swan*, 112 Cal.App.4th 30, 4 Cal.Rptr.3d 796, 800 (2003)). This court may invoke the doctrine at its discretion. *Id.* Judicial estoppel, however, does not preclude a change in position that is not intended to sabotage the judicial process. *Id.* Judicial estoppel may apply when "(1) **the same party has taken two positions**; (2) **the positions were taken in judicial or quasi-judicial administrative proceedings**; (3) **the party was successful in asserting the first position ...**; (4) **the two positions are totally inconsistent**; and (5) **the first position was not taken as a result of ignorance, fraud, or mistake.**" *Id.* (quoting *Furia v. Helm*, 111 Cal.App.4th 945, 4 Cal.Rptr.3d 357, 368 (2003)). (emphasis added)

The Nevada Supreme Court has further held in Sterling Builders, Inc v. Fuhrman, 80 Nev. 543, 396 P2d 850 (1964) as follows:

> The general rule is stated in 31 C.J.S. Estoppel § 121, at 649, 650, as follows:
>
> > 'Under the doctrine of judicial estoppel a party may be estopped merely by the fact of having alleged or admitted in his pleadings in a former proceeding the contrary of the assertion sought to be made. The courts recognize that this doctrine applies with particular force to admissions or statements made in the pleadings under the sanction of an oath, and it has been held that the statement in the prior proceeding must have been made under oath * * *. In accordance with this requirement, it is stated that under the doctrine of judicial estoppel a party who has stated on oath in former litigation, as in a pleading, a given fact a true, will not be permitted to deny that fact in subsequent litigation.
> >
> > 'It has been said that the purpose of the doctrine of judicial stoppel is to suppress fraud, and to prohibit the deliberate shifting of position to suit exigencies of each particular case that may arise concerning the subject matter in controversy; **but at least in so far as this doctrine is applied to statements under oath, its distinctive feature has been said to be the expressed purpose of the court, on broad grounds of public policy, to uphold the sanctity of an oath, and to eliminate the prejudice that would result to the administration of justice if a litigant were to swear one way one time and a different way another time.**' (emphasis added)

Finally, in Vaile v. Eighth Judicial Dist. Court ex rel. County of Clark 118 Nev. 262, 44 P.3d 506 (2002) the Court held as follows:

> The rule of judicial estoppel is recognized in Nevada's case law. In Sterling Builders, Inc. v. Fuhrman we noted that according to the rule of judicial estoppel, a party who has stated an oath in a prior proceeding, "as

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> in a pleading," that a given fact is true, may not be allowed to deny the same fact in a subsequent action. In that case, the court indicated that one of the rule's purposes is to prevent parties from deliberately shifting their position to suit the requirements of another case concerning the same subject matter.

Ted's position that the Nevada Court should adjudicate the property and support rights of the parties is directly contrary to the sworn statements he made in the California action in order to convince the California Court to grant him a Status Divorce. Under the foregoing controlling Nevada case law, he cannot be permitted to proceed.

5. **Ted's Arguments Regarding NRCP 15 and NRCP 54 are inapplicable.**

Ted has repeatedly argued that he could proceed to trial on his Specific Performance claim and then move to amend his Complaint to conform to the evidence presented at trial pursuant to NRCP 15.

NRCP 15 state in pertinent part as follows:

> **(b) Amendments to Conform to the Evidence.** When issues not raised by the pleadings **are tried by express or implied consent of the parties**, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. **The court may grant a continuance to enable the objecting party to meet such evidence.**

The only way that Ted could amend his Complaint to conform to the evidence **is by express or implied consent of Kimberly.** Kimberly has objected and will continue to object to any testimony offered by Ted regarding a cause of action for breach of contract or a declaration of the parties' rights under the three Agreement. The prejudice to Kimberly, if Ted is allowed to present evidence regarding the interpretation of the Agreements, over Kimberly's objection, is that Kimberly cannot put on her own evidence regarding interpretation. If Kimberly does, then Ted could argue that she tried the issue by implied consent. If Ted seeks to present evidence regarding an un-pleaded cause of action, the Court would have no choice but to grant Kimberly a continuance and re-open discovery so that she could meet such evidence as permitted in NRCP

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15. The most offensive part of Ted's position in this regard is that he recognized his need to file a motion to amend his complaint in Court, months before trial but failed to file a motion for leave of court to amend. Had he done so, as required by NRCP 15(a), the Court would not be in this position.

Ted's position regarding NRCP 54 is an even more disingenuous. Ted continues to believe that this Court does not know the difference between a "cause of action" and a demand for judgment. NRCP 54 **DOES NOT** give a party the right to receive relief for an un-pleaded cause of action. NRCP 54 deals with the demand for judgment at the end of a party's complaint. In this case, Ted pleaded two causes of action, one of which has already been adjudicated. His only remaining cause of action is Specific Performance. This is a cause of action so unique and specialized that there is no possible relief that could be proven beyond an order requiring the parties to perform the contracts.

The portion of NRCP 54 Ted is improperly and wrongly relying upon would allow a plaintiff in a breach of contract case, who pleaded only compensatory damages to, at the conclusion of trial, receive punitive damages, or damages associated with the breach of the covenant of good faith and fair dealing. No part of NRCP 54 allows for the amendment of a complaint pursuant to NRCP 15 to include a new cause of action. The disturbing part about Ted's position in this regard is that his attorneys know the law but believe they can persuade this Court into believing their position by the volume of their argument despite the clear law. Even a cursory reading of the Rules reveals that Ted's position is an intentional misstatement of the law.

6. **Ted is Attempting to Undermine the Jurisdiction of the California Court.**

The Agreements Ted seeks to enforce here purport to effect the character and division of property, support, and attorney fees. These issues are directly within the jurisdiction of the California Court, as set for the in the Judgment of Dissolution to which this Court must give full faith and credit. How can Property and Debt Characterization and Division, Alimony, and all other issues of the marriage are within the jurisdiction of the California Court and the marital agreements which purport to impact those issues, not be?

///

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7. **This Court Cannot Ignore Comity.**

The principles of comity exist so that one party cannot litigate in multiple forums issues that can be resolved in one forum. While judicial estoppel, waiver, and full faith and credit give this Court a mountain of authority to dismiss Ted's remaining Nevada claims, the first year law school principle of comity is the more common sense approach. This Court is well aware that a declaratory relief action is discretionary. The Court can deny the relief for whatever reason it chooses without ever being overturned by the Nevada Supreme Court. This issue was well briefed in Kimberly's Motion to Dismiss. This prior pleading is incorporated by reference as if set forth in full herein. Kimberly has given many reasons, both legal and equitable, in her moving papers that, after a Court orders that the Agreements are valid, the rest of the case lies in California. Ted has yet to give a substantive reason that this Court should take over issues that relate to those issues reserved to the jurisdiction of the California Court as a result of his own affirmative requests for relief in the California Court.

The definition of comity is "The legal principle that political entities (such as states, nations, or courts from different jurisdictions) will mutually recognize each other's legislative, executive, and judicial acts. The underlying notion is that different jurisdictions will reciprocate each other's judgments out of deference, mutuality, and respect." Kimberly invoked the jurisdiction of the California Court. Ted not only acquiesced to the exercise of jurisdiction of the California Court over "all issues of the marriage," he fought to obtain a judgment which preserves and confirms the California Court's jurisdiction over property, support and attorney fees. Now, after he consented to that jurisdiction being in the California Court, Ted is asking this Court for relief regarding the same issues under the guise that his request is for interpretation. While all of the foregoing reasons and authority cited in virtually every pleading Kimberly has filed in Nevada preclude Ted's Nevada claims, the principle of comity also allows this Court to give respect to the actions of its sister Court in California and never run the risk of being overruled on this important, fairly clear, issue.

8. **Basic Principals Under The Nevada Rules Of Civil Procedure.**

Although often overlooked, the court can find guidance in addressing the legal issues

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discussed hereinafter in NRCP 1 which states as follows.

RULE 1. SCOPE OF RULES

> These rules govern the procedure in the district courts in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81. **They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.** (emphasis added)

While there is a massive amount of case law which precludes this court from considering Ted's Nevada Complaint, the basic principle contained in NRCP 1 is the exact opposite of Ted's motives in bringing this action based upon the facts set forth above.

B. TED IS PRECLUDED FROM SEEKING ANYTHING BUT SPECIFIC PERFORMANCE.

1. Basic Rules of Procedure.

It is well settled that the prayer for relief is no part of the cause of action and that the parties are entitled to seek such relief and to seek such judgment as the complaint or counterclaim sets forth. Daniels v. Thomas, 225 F.2d 795, 797 (10th Cir. 1955); Asphaltic Enterprises, Inc. v. Baldwin-Lima-Hamilton Corp., 39 F.R.D. 574, 576 (E.D. Pa. 1966) (it is well established that the prayer for relief does not determine whether the plaintiff has stated a cause of action). Moreover, courts generally require pleading of specific factual allegations with respect to breach of contract claim in order to grant relief based on such causes. See, e.g., Lillie v. Warner Bros. Pictures, 139 Cal. App. 724, 728-29, 34 P.2d 835, 837 (Cal. Ct. App. 1934) (complaint does not state a cause of action for breach of contract where it is not alleged that the plaintiff has performed the covenants on her part to be performed under the contract, and it is not alleged that the defendants violated their contract); Harris v. Rudin, Richman & Appel, 74 Cal. App. 4th 299, 307, 87 Cal. Rptr. 2d 822, 828 (1999) (To state a cause of action for breach of contract, a party ***must plead*** the existence of a contract, his or her performance of the contract or excuse for nonperformance, the defendant's breach and resulting damage); FPI Dev., Inc. v. Nakashima, 231 Cal. App. 3d 367, 383, 282 Cal. Rptr. 508, 517 (Ct. App. 1991) (in action upon written contracts the ***plaintiff must plead*** the existence of a contract, its terms which establish the obligation in issue, the occurrence of any conditions precedent to enforcement of the obligation, and the breach of that obligation). These decisions provide a better analogy to the present case

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than those cited by Ted, because there is in Nevada law a distinction between legal claims and remedies, which must be reasonably noticed on the face of the Complaint, versus relief being somehow bestowed out of the court's inherent equitable power. Ted's position that a request for breach of contract remedy is inherent in a claim for specific performance is unfounded.

Ted's Complaint does not contain the usual and/or specific allegations of a breach of contract claim in order to justify the damages sought by Ted in lieu of specific performance. Specifically, of the 53 paragraphs contained in Ted's Complaint, none can be interpreted as providing Kimberly with reasonable notice of the fact that Ted's performance of the agreements has either been satisfied or excused and that Kimberly is in such immediate and material breach of the agreements as to justify an award of damages. Ted's specific performance claim, in particular, is even more deficient in setting forth what he claims to be breaches on Kimberly's part, as it alleges that Kimberly's position [in challenging the validity and enforceability] of the Agreements constitutes an attempt to circumvent the Agreements. As for the remainder of that claim, Ted's Complaint merely provides a conclusory series of recitals respecting the elements of specific performance. While Ted may seek damages based on a legally sufficient pleading providing Kimberly with reasonable notice of his intent to seek recovery on a breach of contract theory, Ted's present attempt to assume away his pleading obligation is satisfied by resorting to NRCP 54(c) is misguided, to say the least. Moreover, this assumption on Ted's part ignores the fundamental difference between a Cause of Action and a Prayer for relief or Demand for Judgment. Consequently, this Court must reject Ted's argument that he is entitled to breach of contract damages, based on the deficient allegations in his Complaint for specific performance.

2. Determination of Validity Versus Interpretation/Declaration of Rights.

NRS 30.040. States in pertinent part as follows:

> Questions of construction or validity of instruments, contracts and statutes
>
> 1. Any person interested under a deed, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

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Because the statute separately references the rights of a person to have an issue of construction or validity decided, construction and validity are clearly two separate rights under the statute. Ted only pleaded validity, not construction or a declaration of rights. Ted's choice of validity not only did not give Kimberly notice of a claim for construction or declaration of rights, his choice specifically gave her notice that those issues were not part of Ted's Nevada lawsuit.

3. **Failure to Amend Complaint.**

Ted, like this Court, is well aware that the way in which new causes of action in an already pending lawsuit are pleaded is via an amendment of the Complaint under NRCP 15. If all causes of action could simply expand from those pleaded in the complaint to any claim the plaintiff wanted to add, as Ted argues, NRCP 15 would not exist. The existence of NRCP 15 precludes Ted's new theory of the case.

FACT: Ted's Complaint fails to even mention interpretation or a declaration of the parties' rights. At the moment he indirectly raised those issues, 10 months after serving Kimberly with his complaint, he was required to seek leave of Court to amend his Complaint to plead a new cause of action. Pursuant to NRCP 15, the recognition of new claims during the discovery process is why Rule 15 exists. The existence of Rule 15 means that if Ted wanted to expand the scope of his Complaint into two (2) new causes of action, he would need to comply with NRCP 15 and file a motion for leave of Court to amend his Complaint.

Similarly, when Ted realized that Specific Performance was not available to him and that, contrary to his Complaint, money damages were something he was seeking for breach of contract, he was **required** to file a motion to amend his Complaint to state a new cause of action. The fact that he is attempting to tell the Court that an amendment was not necessary is offensive and intellectually and legally dishonest.

The Nevada Supreme Court has addressed the issue of attempting to raise a new cause of action in an amended pleading. In Nelson v. City of Las Vegas, 1983, 665 P.2d 1141, 99 Nev. 548, the Nevada Supreme Court addressed the attempt of a Plaintiff to add a cause of action for battery to the complaint filed 4 years earlier seeking other tort based relief. When the defendant raised the statute of limitations, the district court determined that the amended complaint adding

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a new cause of action was time barred. The Court in Nelson held as follows:

> On the other hand, **where an amendment states a new cause of action that describes a new and entirely different source of damages, the amendment does not relate back, as the opposing party has not been put on notice concerning the facts in issue**. *Rosenberg v. Martin, supra* (where state prisoner's original complaint in civil rights action did not suggest claim of physical assault, amendment adding such claim does not relate back, and is barred by statute of limitations). *See Mauian Hotel, Inc. v. Maui Pineapple Co.,* 52 Hawaii 563, 481 P.2d 310 (Hawaii 1971). As the court noted in *Raven v. Marsh,* 94 N.M. 116, 607 P.2d 654, 656 (N.M.App.1980), (emphasis added)
>
> [t]he liberality with which Rule 15 is to be viewed applies mainly to the manner in which the court's discretion shall be exercised in permitting amended pleadings. [Citation omitted.] It does not permit us to so liberalize limitation statutes when new facts, conduct and injuries are pleaded, that the limitation statutes lose their meaning. [Citations omitted.]
>
> Appellants' original complaint and first amended complaint gave absolutely no indication that a claim for battery existed. They did not allege any physical contact whatsoever between the officers and Kathleen Nelson. The district court properly held the battery claim barred by the statute of limitations.

Obviously, Ted seeking money damages for an alleged breach of contract is a new cause of action which constitutes "a new and entirely different source of damages" under Nelson. Ted's Complaint does not state a single cause of action for damages or any other legal remedy. As such, it is a new cause of action to which Kimberly was entitled proper notice. Mentioning a claim in a status check brief is not sufficient notice under NRCP 15 and Nelson.

C. TED IS NOT ENTITLED TO SPECIFIC PERFORMANCE.

1. General Principals Regarding Specific Performance.

Specific performance is an equitable remedy, the result of which is an order from the Court which does nothing more than compel the parties to comply with the contract. A decree of specific performance does not interpret an agreement. Black's Law Dictionary defines Specific Performance as follows:

> **Specific Performance.** (18c) The rendering, as nearly as practicable, of a promised **performance** through a judgment or decree; specif., a court-ordered remedy that requires precise fulfillment of a legal or contractual obligation when monetary damages are inappropriate or inadequate, as when the sale of real estate or a rare article is involved. • **Specific**

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> **performance** is an equitable remedy that lies within the court's discretion to award whenever the common-law remedy is insufficient, either because damages would be inadequate or because the damages could not possibly be established. — Also termed **specific** relief. Black's Law Dictionary (9th ed. 2009) (Emphasis added.)

Kimberly has already provided the Court with the authority which conclusively establishes that there can be no issues of construction in a claim for specific performance. Pursuant to Mayfield v. Koroghili, 124 Nev. 343, 184 P.2d 362 (2008), and Serpa v. Darling, 107 Nev. 299, 810 P.2d 778 (1991), if there is any indefiniteness in the contract to be specifically enforced, the remedy of specific performance is not available to the plaintiff. Specifically, in Serpa, the Court held as follows:

> Specific performance is available **only** when: (1) the terms of the contract are **definite and certain**; (2) **the remedy at law is inadequate**; (3) the appellant has tendered performance; and (4) the court is willing to order it. *Carcione,* 96 Nev. at 811, 618 P.2d at 348. Even if we were to conclude that the agreements between the parties were enforceable and that appellant tendered performance, we do not find the terms of the parties' agreement to be sufficiently definite and certain to allow specific performance. (Emphasis added.)

Applying the well-settled principles of this remedy, the underlying Agreement(s) in this case must be so clear and unambiguous that they are not subject to interpretation in order for the court to even consider entering a judgment for specific performance. Despite the initial pleadings to the exact opposite, Ted has now affirmatively confirmed that an adequate remedy at law exists in the form of money damages. Similarly, it is clear that he is seeking to admit testimony about the Agreements because he believes that is necessary to explain the meaning of the terms of the Agreements. As such, as a matter of law, specific performance is not a remedy available to him.

Likewise, the parol evidence rule prohibits either party from offering the testimony of the parties or their lawyers regarding what the Agreements mean or were intended to mean. Every lawyer and judge learned the "four-corners doctrine" in year one of law school. "The parol evidence rule does not permit the admission of evidence that would change the contract terms when the terms of a written agreement are clear, definite, and unambiguous" Ringle v. Bruton, 120 Nev. 82, 91, 86 P.3d 1032, 1037 (2004). The parol evidence rule provides that prior negotiations and agreements merge in the written contract, and prohibits reference to

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negotiations and terms outside the contract that vary or contradict the written agreement's terms. Tallman v. First Nat'l Bank of Nev., 66 Nev. 248, 208 P.2d 302, 306 (1949). The parol evidence rule is not just an evidentiary rule, but a substantive rule that applies in equity as well as at law. State ex rel. List v. Courtesy Motors, 95 Nev. 103, 590 P.2d 163, 165 (1979).

Nevada courts prohibit the introduction of parol evidence to contradict a writing on a simple allegation, without proof, of fraud or mistake. Id. at 307 ("It is only when independent facts constituting fraud are first proven that parol evidence is admissible."). Tallman v. First Nat. Bank of Nev., 66 Nev. 248, 258, 208 P.2d 302, 307 (1949). Furthermore, the Ninth Circuit has refused to find a "genuine issue" where the only evidence presented is "uncorroborated and self-serving" testimony. Kennedy v. Applause, Inc., 90 F.3d 1477, 1481 (9th Cir.1996); *see generally* Johnson v. Washington Metro. Transit Auth., 883 F.2d 125, 128 (D.C.Cir.1989) (discussing cases in which self-serving testimony uncorroborated by other evidence did not create a genuine issue of material fact).

Ted's Witness List makes it clear that his substantive witnesses are expected to testify regarding the interpretation and construction of the Agreements, and thus specific performance cannot be granted. Ted's second cause of action, the only one remaining claim, must be dismissed to be in compliance with existing law.

Even if the Court were to ignore the fact that Ted has never pleaded a cause of action for interpretation and even if the Court were to ignore the controlling case law which prohibits specific performance if construction is needed, probably the most compelling evidence of the fact that Ted's Specific Performance claim must fail is his recitation of "issues" contained in his Brief Regarding Triable Issues. Each and every one of Ted's alleged issues are issues for which money would either be paid, or not paid by Ted or Kimberly. Each and every claim is compensable with money damages. As such, Specific Performance is not available to Ted. Specifically, Ted's six "issues" for trial can be summarized as follows:

Ted's demand for the return of $1,750,000.00.

Ted's claim/defense that he does not owe Kimberly continued payments of $250,000.00 per year from the date of the Post Nuptial Agreement through the date of the filing of the

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California Dissolution action, a $1,250,000.00 (One Million Two Hundred Fifty Dollar) issue, plus interest.

Ted's claim/defense that he does not owe child support of $100,000.00 per month for the period of time after the parties executed their Post Marital Agreement through the date of the filing of the California Dissolution action, a $6,000.00 (Six Million Dollar) issue, plus interest.

Ted's claim/defense that he has complied with his obligation to pay 100% of the parties joint expenses during the marriage, the amount of which has not yet been clearly stated, an unknown dollar amount, but clearly monetary.

Ted's claim/defense that he provided cash or credit to Kimberly during the marriage in the amount of $5,000.00 per month, an unknown amount, but clearly monetary.

Ted's claim for attorney fees, the amount of which remains uncertain in the current records, but clearly monetary.

It is important for the Court to note that if Kimberly sought to have these issues specifically performed, she would not be entitled to such equitable relief since money damages are an adequate remedy.

Even if the Court ignored the fact that the Agreements require child support and spousal support issues be resolved in California, and even if the Court were to ignore that "issues" 2 through 5 are defenses to claims that Kimberly has not made in Nevada, ***all of the claims/defenses are compensable with money.***

It is well established that specific performance is available only if the party seeking such relief has no adequate relief at law. Dynalectric Co. of Nevada, Inc. v. Clark & Sullivan Constructors, Inc., 127 Nev. Adv. Op. __, __, 255 P.3d 286, 289 (2011); see also Serpa, 107 Nev. at 305, 810 P.2d at 782. "...[I]f monetary damages afford adequate relief and are not extremely difficult to ascertain, an injunction cannot be granted. Serpa, 107 Nev. at 305, 810 P.2d at 782; see also Thayer Plymouth Ctr., Inc. v. Chrysler Motors Corp., 255 Cal. App. 2d 300, 306, 63 Cal. Rptr. 148, 152 (Cal. Ct. App. 1967). In Nevada, as in most other states, common law contract claims for recovery of debt can be adequately compensated by way of a monetary judgment. See Wilkison v. Wiederkehr, 101 Cal. App. 4th 822, 833, 124 Cal. Rptr. 2d 631, 639

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(2002) (plaintiff seeking a sum certain under contract has adequate remedy at law); Cnty. of La Paz v. Yakima Compost Co., Inc., 224 Ariz. 590, 610, 233 P.3d 1169, 1189 (Ct. App. 2010) (cross-appellant not entitled to specific performance where agreement explicitly provides for lost profits); Halloran-Judge Trust Co. v. Heath, 70 Utah 124, 258 P. 342, 348 (1927) (plaintiff is not entitled to specific performance of a contract where compensation is fixed and expense incident to performance can be proximately determined).

Here, Ted is essentially seeking to be compensated by reason of his claims that Kimberly breached the terms of the Agreements, and therefore, even if the terms are sufficiently definite to be specifically enforceable, this is not relief that Ted is entitled to under clear Nevada law against decreeing specific performance. Notably, Ted's Complaint is wholly silent with respect to any obligation on the part of Kimberly to which he is entitled to specific performance nor does it allege any breach of contract. Indeed, the only contractual provisions alleged to require performance are issues regarding the payment or non-payment of money. To grant specific performance absent any explicit allegation or notice as to the particular obligation is, as discussed, a fatal procedural defect for Ted to make, especially when the damages are foreseeable and, if a breach of contract had occurred or had been alleged to have occurred could be reasonably ascertained under the Agreements. See Dynalectric Co. of Nevada, Inc., 127 Nev. Adv. Op. at __, 255 P.3d at 289. By his Brief Regarding Triable Issues, Ted alleges that the Agreements provide the formulas for resolving his claims for compensation. There is, thus, no basis upon which for Ted to seek any equitable relief. As a result, Kimberly is entitled to Judgment, as a matter of law, on Count II of Ted's complaint.

D. TED'S TRIABLE ISSUES ARE NOT BEFORE THIS COURT BUT SHOULD BE DENIED EVEN IF THEY WERE.

As this Court is aware, Nevada does not always have a great deal of case law to support complex issues of the law. The wealth of caselaw presented in Kimberly's Brief re: Triable Issues and the absence of a single case citation from Ted's brief speaks volumes of which party has the legally tenable position. Ted knew the legal issues that were discussed at the last hearing and could not provide the Court any support for his recently created, but as of yet unpleaded cause of action for interpretation. Kimberly, wishing to provide the Court with even more legal

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authority, has continued to research the law which requires the dismissal of Ted's remaining cause of action.

While there are many civil cases which support Kimberly's position discussed hereinafter, Nevada actually has family law cases directly on point regarding the issue of due process and unpleaded claims. In Annastassatos v. Annastassatos, 112 Nev 317, 913 P2d. 652 (1996), the Supreme Court of Nevada unequivocally held that claims, such as Ted's newly created cause of action for interpretation, are not properly before this Court. Specifically, in Annastassatos, a countermotion was filed by a Father seeking affirmative relief in the form of a request for modifications to the custodial time share and a credit against his child support obligation for one-half the cost of health insurance. The Court took the matter under advisement and both parties submitted proposed orders. The Father's proposed order, which was signed by the District Court, granted relief in the form of an abatement of child support in the summer, the sharing of transportation costs, and a change to the due date for the payment of child support, which were not contained in the affirmative pleadings filed by the Father. The Supreme Court of Nevada, in reversing the District Court, specifically held as follows:

> We conclude that, with the exception of the specified visitation schedule and determining the date upon which the increase in child support would commence, **the district court did exceed its jurisdiction**.
>
> Christie contends that the only issues properly before the district court were the amount of child support and whether George was entitled to a credit against his child support obligation for one half of the health insurance premium. As a result, Christie maintains that the other areas of relief granted to George by the district court were not raised in the pleadings, and represented matters concerning which she neither received notice nor an opportunity to be heard, the twin hallmarks of due process.
>
> **Although Nevada is a notice pleading jurisdiction, a party must be given reasonable advance notice of an issue to be raised and an opportunity to respond**. *Schwartz v. Schwartz,* 95 Nev. 202, 206, 591 P.2d 1137, 1140 (1979). In the present case, the only matters before the district court were the visitation schedule and the issue of whether one half of George's health insurance payments could be credited against his support payments. By waiting until the submission of the proposed order to address child support abatement, the sharing of child visitation transportation costs, and changing the due date of support payments, George effectively denied Christie an opportunity to respond. **Therefore, those three issues were not properly before the district court**. (emphasis added)
>
> Even though the date of payment of support, transportation costs, and an abatement of

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child support in the summer are all clearly related to child support, the calculation of which was before the District Court in Annastassatos, the Supreme Court found that entering orders on such issues which were beyond the affirmative relief sought in the pleading was beyond the jurisdiction of the Court.

Similarly, in Schwartz v. Schwartz, 95 Nev. 202, 206, 591 P.2d 1137, 1140 (1979), which was cited by the Annastassatos Court, the Supreme Court of Nevada, citing multiple authorities held as follows:

> In certain circumstances, however, the Nevada Rules of Civil Procedure do permit an affirmative defense to be considered, even though it has not been raised by the pleadings. See N.R.C.P. 15. As has been noted of the Federal Rules of Civil Procedure, "Doubtless, when there is no prejudice and when fairness dictates, the strictures of this rule (8(c)) may be relaxed. Under Rule 15 the district court may and should liberally allow an amendment to the pleadings if prejudice does not result." *Jakobsen v. Massachusetts Port Authority*, 520 F.2d 810, 813 (1st Cir. 1975). *See, e.g., Marschall v. City of Carson,* 86 Nev. 107, 464 P.2d 494 (1970). **In the case at hand, respondent made no application to the court for permission to amend, and none was granted**.
>
> Rule 15(b) does provide that "(w)hen issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." Failure to amend does not, in such circumstances, affect the result of the trial of these issues. *United Tungsten v. Corp. Svc.*, 76 Nev. 329, 353 P.2d 452 (1960); *Gershenhorn v. Stutz*, 72 Nev. 293, 304 P.2d 395 (1956).

Kimberly has not given her approval or acted in a way to give implied consent, to Ted pursuing the money damages he is now seeking.

In Poe v. La Metropolitana Company, 76 Nev. 306, 353 P.2d 454 (1960), for instance, this court found that the defense of fraud in the application for an insurance policy had been tried by implied consent. The court noted that counsel for the defendant had raised the issue in his opening argument, that counsel for plaintiff had specifically referred to the matter as an issue in the case, that the factual issue had been explored in discovery, that no objection had been raised at trial to the admission of evidence relevant to the issue. See also Young Elec. v. Last Frontier, 78 Nev. 457, 375 P.2d 859 (1962) (issue virtually the "sole subject" of testimony); Whiteman v. Brandis, 78 Nev. 320, 372 P.2d 468 (1962) (evidence received without objection); United Tungsten v. Corp. Svc., supra (appellant's counsel agreed with court's characterization of the

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matter as the major issue in the case); Choate v. Ransom, 74 Nev. 100, 323 P.2d 700 (1958) (no objection raised to evidence or request for opportunity to refute).

Not so in the instant case. In contrast to Poe, there was no reference to res judicata as a defense, or to the factual issues involved, during pre-trial discovery, opening remarks of counsel, or at any time prior to the cross-examination of appellant. When the issue did arise, counsel for appellant was surprised, and understandably unprepared. He objected to the pursuit of the issue, once its import became clear; he specifically argued, in opposition to respondent's motion immediately following appellant's testimony, on the ground that the issue had not been raised in the pleadings. His requests to reopen for further testimony by his client, and for reservation of the court's ruling until records could be secured, merely underscored the difficulties occasioned by his lack of prior notice of the issue.

> As the court said in *Jakobsen v. Massachusetts Port Authority*, *supra*, 520 F.2d at 815, "**(w)hile the Federal Rules reflect a universal trend away from stereotyped pleading, they do not presage abandonment of the requirements that parties be given reasonable advance notice of the major issues to be raised.**" *See* F. James & G. Hazard, *Civil Procedure* s 5.5 (2d ed. 1977). The concomitant of such a requirement, and of the mandate of N.R.C.P. 1, that the rules be interpreted so as to provide for a just determination of every action, is the requirement that the party surprised by such a development be given a reasonable opportunity to respond. *See Parks v. Quintana*, 86 Nev. 847, 477 P.2d 869 (1970). *See also MBI Motor Company, Inc. v. Lotus/East, Inc.*, 506 F.2d 709 (6th Cir. 1974); *United States v. 47 Bottles, More or Less, Etc.*, 320 F.2d 564 (3d Cir. 1963). In this case, appellant was provided with neither reasonable notice of the issue nor an opportunity to respond. (emphasis added)

Schwartz involved the last minute assertion of a simple affirmative defense. This case involves the creation of a whole new unpleaded cause of action. A cause of action for which no Nevada discovery has been performed, and a cause of action which would trigger Kimberly's right to a jury trial and numerous other affirmative defenses. Clearly the holdings in Schwartz and Annastassatos precludes Ted's attempt to bootstrap a new cause of action to his specific performance claim.

While these two family law cases should tell the Court all it needs to know regarding whether or not to entertain or permit trial on Ted's new claims, there is even more Nevada authority which requires that the Court limit Ted's case to those issues which were pleaded. Although NRCP 54(c) permits a court to grant relief not specifically pleaded, in Nevada, that

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provision is narrowly construed and does not permit a court to grant relief that has not been pleaded or litigated by consent of the parties. See Idaho Resources, Inc. v. Freeport-McMoran Gold Co., 110 Nev. 459, 461-62, 874 P.2d 742, 743-44 (1994). The purpose for this rule is that it denies the party against whom the remedy is granted a fair opportunity to defend and, as a consequence, unfairly prejudices that party. See id.; see also Powell v. Nat'l Bd. of Med. Exam'rs, 364 F.3d 79, 86 opinion corrected, 511 F.3d 238 (2nd Cir. 2004) (providing that unasked for relief should not be granted if it prejudices the opposing party). Additionally, it is well-settled that while Nevada follows the general notice pleading rule, pleadings nonetheless must "give fair notice of the nature and basis of a legally sufficient claim and the relief requested." Breliant v. Preferred Equities Corp., 109 Nev. 842, 846, 858 P.2d 1258, 1260 (1993).

In Conkey v. Reno, 885 F. Supp. 1389, 1392-93 (D. Nev. 1995), the court held that "the complaint fails to indicate what in particular [plaintiff] wishes to have the Court declare," and as such, is subject to dismissal with respect to plaintiff's declaratory relief claim. In reaching this holding, the Conkey court highlighted various authorities supporting the proposition that

> **[t]he failure to indicate what in particular plaintiffs seek by way of a declaratory judgment is in itself a failure to state a claim**. Fed.R.Civ.P. 8(a)(3) (requiring a claim to include "a demand for judgment for the relief the pleader seeks." See also Dillard v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 961 F.2d 1148 (5th Cir.1992) cert. denied, Dillard v. Security Pacific Corp., 506 U.S. 1079, 113 S.Ct. 1046, 122 L.Ed.2d 355 (1993) ("In order to obtain a permanent injunction or a declaratory judgment, a party must make his request for such relief in his pleadings." Citing Fed.R.Civ.P. 8(a)); Willett v. Wells, 469 F. Supp. 748 (C.D.Tenn.1977), aff'd, 595 F.2d 1227 (6th Cir.1979) (plaintiff required to include a short and plain statement of the claim showing she is entitled to the relief for which she prays).
>
> Id. at 1392 (emphasis added).

Here, Ted's Complaint utterly fails to plead a justiciable controversy regarding the construction of the Agreement. Moreover, Ted's Complaint mentions nothing about relief in the form of judicial construction or interpretation of the three agreements referenced therein. Indeed, the Complaint is explicitly limited to seeking this Court's declaration with respect to validity and enforceability of the prenuptial agreements. Thus, the judicial construction that plaintiff now seeks must be rejected as that was neither pleaded nor placed into issue by consent

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of the parties.

Although Conkey is a federal authority, this Court has consistently looked to federal case law interpreting procedural rules as strong persuasive authority. See Executive Mgmt., Ltd. v. Ticor Title Ins. Co., 118 Nev. 46, 53, 38 P.3d 872, 876 (2002). Conkey rests on the long-standing principle that fair notice of the nature and basis of a claim and the relief requested is quintessential to providing a fair opportunity to defend and avoid unfair prejudice. Like the complaint in Conkey, plaintiff has failed to indicate that he intended this Court to declare anything beyond merely the validity and enforceability of the three Agreements. Certainly, the Complaint does not specifically request interpretation or construction. Having exhausted the time and opportunity to amend, and intentionally not doing so, the relief Ted now seeks must be denied.

For the foregoing reasons, plaintiff is not entitled to any unclaimed declaratory relief in the form of judicial interpretation of the Prenuptial, Marital Settlement, and Post Marital Agreements.

Ted has identified six remaining issues to be addressed at the trial of this matter. Every one of the issues referenced in Ted's brief were casually mentioned by him before this Court only after they had been raised as claims by Kimberly in the California divorce action. First and most significantly, he has asked the Court to grant his claim for reimbursement from Kimberly of $1,750,000. His next four issues request the Court to find that he has complied with various provisions of the parties' three Agreements regarding various obligations to Kimberly he claims he honored during the marriage, the effect of which would be to deny Kimberly the right to collect money she claims is due her pursuant to the unambiguous terms of the Agreements.. Ted's final issue is his prayer for attorneys' fees and costs. At the end of the day, every single "issue" identified but never pleaded is compensable via money damages. As such, there is yet another clear legal reason why specific performance is not available to Ted.

Kimberly has already outlined, in detail, in her Brief Regarding Triable Issues, that because Ted's Complaint never sought to have this Court construe the Agreements, and since this Court has already ruled on the issue of validity, there is no basis for testimony or an

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evidentiary hearing of any type on the issue of the only remaining claim, specific performance. **Specific performance** is an extraordinary technical and legal remedy requiring an unambiguous, clear agreement which is not subject to any dispute as to interpretation. It also requires that money damages be an insufficient remedy. Ted's Brief makes it clear that he is asking this Court to permit him to offer trial testimony regarding the construction and interpretation of the three Agreements. Based upon his only affirmatively pleaded cause of action, Ted is not permitted to present such evidence at trial. ***None*** of the offers of proof contained in his Statement of Triable Issues are admissible based upon the sole remaining cause of action. In the absence of Ted's having affirmatively pleaded the facts necessary to demonstrate he is entitled to the unique remedy of specific performance, his cause of action fails.

The following section will address the alleged issues Ted claims are appropriate for trial. Kimberly affirmatively objects to the Court entertaining any of the alleged claims Ted improperly is attempting to place before this Court. Kimberly does not consent in any way (any meaning ANY) to Ted attempting to try a cause of action that he has never pleaded in order to seek to amend his complaint at the conclusion of trial pursuant to NRCP 15 which would require Kimberly's consent. The many reasons for Kimberly's on-going objection are set forth in this Brief. Kimberly offers her response, not to litigate the issues on the merits, either expressly or impliedly, but to provide this Court with support for Kimberly's eventual award of attorney fees from this Court. Kimberly also sets forth the following response to provide this Court with proof that the issues Ted raises are not proper for a cause of action for Specific Performance and that the subject matter of Ted's trial issues are issues over which the California Court has "exclusive jurisdiction."

1. **Ted's First Purported Triable Issue — Interpretation of Paragraph XII of the Prenuptial Agreement:**

The language of the Agreement at issue is as follows:

> XII. FORFEITURE
>
> In the event Kimberly seeks in any way to set aside, impair or invalidate any of the provisions of this Agreement, directly or indirectly, **as a condition precedent to the right to bring or maintain such actions(s),** the amounts previously paid to her or for her benefit under the terms of

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> Paragraph II(B)(9) of this Agreement shall be forfeited and repaid to Ted, together with all income or accumulation thereto or assets acquired therewith, and all future amounts otherwise payable under Paragraph II(B)(9) shall no longer be payable, and Ted's obligations under said Paragraph shall terminate. Any claim for alimony, spousal support or relating to the custody or support of children shall not be deemed an act which triggers the provisions of this paragraph.

Ted's argument ignores the plain language of the Agreement itself. While Ted claims the paragraph in question is a forfeiture clause, in reality it is not. First, ¶XXIII of the Prenuptial Agreement says, without question, that the repayment of the benefits is a condition precedent, not a damage or penalty provision, if the condition precedent is not enforced as a condition of a filing, it is waived.

A forfeiture clause requires an absolute forfeiture of a legal right upon the occurrence of an act. An alleged forfeiture dependant on a condition precedent is an entirely different legal issue, claim and defense.

"Forfeiture" is defined as follows:

> **forfeiture** (**for**-fi-ch<<schwa>>r), *n.* (14c) **1.** The divestiture of property without compensation. **2.** The loss of a right, privilege, or property because of a crime, breach of obligation, or neglect of duty. • Title is instantaneously transferred to another, such as the government, a corporation, or a private person. [Cases: Controlled Substances 162; Forfeitures 1.] **3.** Something (esp. money or property) lost or confiscated by this process; a penalty. — **forfeit,** *vb.* — **forfeitable,** *adj.*
>
> FORFEITURE, Black's Law Dictionary (9th ed. 2009), forfeiture
> **forfeiture clause.** (1804) **1.** A contractual provision stating that, under certain circumstances, one party must forfeit something to the other. • Forfeiture clauses are often held to be void, although they are similar to conditions and other qualifications of estates in land. **2.** no-contest clause. FORFEITURE CLAUSE, Black's Law Dictionary (9th ed. 2009), forfeiture clause
>
> Forfeiture is a '**punishment** annexed by law to some illegal act or negligence in the owner of lands, tenements, or hereditaments, whereby he loses all his interests therein. '*In re Manse Spring & Its Tributaries, Nye Cnty.*, 60 Nev. 280, 108 P.2d 311, 315 (1940) The law does not favor forfeitures and statutes imposing them must be strictly construed. *Wilshire Ins. Co. v. State*, 94 Nev. 546, 550, 582 P.2d 372, 375 (1978)
>
> We shall not condone a forfeiture in the absence of any ascertainable public policy requiring us to do so. *Nevada Equities, Inc. v. Willard Pease Drilling Co.*, 84 Nev. 300, 303, 440 P.2d 122, 123 (1968)

A "condition precedent" is defined under Nevada law as follows:

> A promisor's purpose in attaching a condition precedent to his promise and the legal effect in doing so is to narrow the promisor's obligation so that he will not have to perform if the event fails and can never happen. *Simpson on Contracts*, s

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144 (2d ed. 1965). *McCorquodale v. Holiday, Inc.*, 90 Nev. 67, 69, 518 P.2d 1097, 1098 (1974)

> A condition precedent to an obligation to perform calls for the performance of some act after a contract is entered into, upon which the corresponding obligation to perform immediately is made to depend. *NGA #2 Ltd. Liab. Co. v. Rains*, 113 Nev. 1151, 1158-59, 946 P.2d 163, 168 (1997) (citing *New Orleans v. Texas & Pacific Railway*, 171 U.S. 312, 333, 18 S.Ct. 875, 883, 43 L.Ed. 178 (1897); see also 17A Am.Jur.2d Contracts § 469 (1997))

A "condition precedent" is clearly not a forfeiture. The existence of "condition precedent" language means that there, in fact, is no forfeiture under the facts and circumstances of this case.

If in fact, as Ted untenably claims, Kimberly's Motion to Dismiss could be construed as a challenge to the Agreement, it was Ted's obligation, in his Opposition to the Motion to Dismiss to Compel Compliance of the Condition Precedent or abate the motion until the Condition Precedent was complied with. Either way, Ted was required to affirmatively plead the condition precedent as an affirmative defense. Ted would have had to have immediately requested the Court to not consider Kimberly's Motion to Dismiss until she met the condition precedent to having the right to file such a motion. The plain language of the Agreement states that, in order to have the right to challenge the Agreement (which Kimberly has never done), she would have to return the money. Ted never raised this when responding to Kimberly's Motion to Dismiss or in response to her California Amended Answer to Requests for Admissions.

Under Nevada law, the failure of a moving or complaining party (Kimberly under Ted's theory that a challenge has occurred) to meet a condition precedent is, in fact, an affirmative defense. (See Clark County School District v. Richardson Const. Inc., 123 Nev. 382, 168 P.3d. 87 (2007)). If Kimberly's Motion to Dismiss was the alleged challenge to the Agreements, Ted was required to plead the condition precedent in his opposition thereto. Ted has never asserted or pleaded such an affirmative defense of Kimberly's failure to fulfill the condition precedent of returning the annual payments to Ted before she could allegedly challenge the Agreements. Under NRCP 8, Ted's failure to plead the affirmative defense of Kimberly's failure to meet her condition precedent means that Ted has now waived any claim that the forfeiture clause has been triggered. No matter how much Ted tries, he can never overcome the clear language of the clause entitled "forfeiture" which conclusively establishes it as a condition precedent.

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A condition precedent is "a fact (other than mere lapse of time) which must exist or occur before a duty of immediate performance of a promise arises." See United States v. Schaeffer, 319 F.2d 907, 911 (9th Cir. 1963) (citing Restatement of the Law, Contracts § 250); accord Di Gregorio v. Marcus, 86 Nev. 674, 677, 475 P.2d 97, 99 (1970); Craig v. Margrave, 84 Nev. 638, 640, 446 P.2d 653, 654 (1968); see also, 5 Williston on Contracts 3d ed., 126-127, § 663 (a condition precedent as "a fact or event which the parties intend must exist or take place before there is a right to performance)." Conditions precedent "are not favored by the law, and are to be strictly construed against one seeking to avail himself of them," Carvalho v. Equifax Info. Servs., LLC, 629 F.3d 876, 891 (9th Cir. 2010) (citing Antonelle v. Kennedy & Shaw Lumber Co., 140 Cal. 309, 73 P. 966, 968 (1903)); see also MDY Indus., LLC v. Blizzard Entm't, Inc., 629 F.3d 928, 939 (9th Cir. 2010) *opinion amended and superseded on denial of reh'g*, 09-15932, 2011 WL 538748 (9th Cir. Feb. 17, 2011) (Conditions precedent are disfavored because they tend to work forfeitures.) "[A]n individual who voluntarily prevents the occurrence of a condition established for his or her benefit is estopped from seeking relief from a contract on the grounds that the condition precedent to his obligation failed to occur." See NGA #2 Ltd. Liab. Co. v. Rains, 113 Nev. 1151, 1161, 946 P.2d 163, 169 (1997). Additionally, a party may waive a condition in a contract if the condition was included in the contract for his or her benefit. Mayfield v. Koroghli, 124 Nev. 343, 352, 184 P.3d 362, 368 (2008); see also, Wyler Summit P'ship v. Turner Broad. Sys., Inc., 235 F.3d 1184, 1190 (9th Cir. 2000). Unquestionably, the "condition precedent" provision was for Ted's benefit.

In Sosin v. Richardson, 210 Cal. App. 2d 258 (Cal. Ct. App. 1962), the court held that defendant waived a condition precedent requiring plaintiff to acquire all three parcels of property as security for certain debt obligations by excluding one of the parcels from allocation as part of the foreclosure and repurchase transaction. There, the court found that defendant's obligation was made subject to condition precedent that all three parcels of property securing the loan be acquired. However, that condition precedent was excused by expression and conduct that justified plaintiff's reliance on the fact that one of the parcels would not be required for acquisition as collateral. Therefore, despite its finding, based on express language that

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defendant's obligation was subject to a condition precedent, the Sosin court concluded that defendant waived the same. See also, Roseleaf Corp. v. Radis, 122 Cal. App. 2d 196, 204, 264 P.2d 964 (Cal. Ct. App. 1953) (where substantial performance has been rendered under contract, despite non-satisfaction of condition precedent, the party benefitting from the condition precedent may be precluded from relying upon the failure of condition as a defense to his liability to pay and be compelled to rely upon his claim for damages in respect of the defective performance).

In a subsequent case involving conditional lease covenants, the Nevada Supreme Court, in Summa Corp. v. Richardson, 93 Nev. 228, 235, 564 P.2d 181, 185 (1977), reached a contrary conclusion. There, the condition applied to the exercise of an option by the lessee to purchase the leased premises that required the lessee to perform all terms, conditions and covenants faithfully. Lessor argued that, based on lessee's technical breaches, lessee forfeited its right to exercise the option. Siding with the lessee this time around, the Summa Corp. court held that lessor waived any right to forfeiture, since forfeiture of purchase option is not favored in this state. Moreover, although the lease contained a non-waiver clause, it did not foreclose the lessor from waiving forfeiture based on past breaches. The lessor here did not insist upon the breaches until it accepted rent and after lessee exercised its option under the lease. Finally, lessor could not rely on post exercise breaches as bases for asserting its right to forfeiture. Consequently, the Summa Corp. Court concluded that lessor waived its right to forfeiture.

Here, Ted waived his right to insist upon the forfeiture of monies and benefits conferred under the Agreements because he did nothing to insist upon his Section XVIII rights in response to the Motion that Ted claims was the event triggering the application of the condition precedent. See, e.g., Green v. Hooper, 41 Nev. 12, 167 P. 23, 26 (1917) (conditions may be waived by silence, much more so may they be waived by stipulation or affirmative acquiescence); McElroy v. British Am. Assur. Co. of Toronto, Canada, 94 F. 990, 995 (9th Cir. 1899) (waiver may arise from the act or conduct of the insurer; and silence for an unreasonable time upon his part, after notice or knowledge of the breach of the condition). As in Sosin, Ted's prior conduct of not raising Section XVIII results in a bar against his present attempt to assert the

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oppressive forfeiture condition. Additionally, similar to Summa Corp., to the extent enforcing the condition here would work a substantial forfeiture of material benefits under the Agreements, this Court should find such conditions are equally disfavored. Unlike Hornstein, the present condition precedent relates directly to the promisee's obligations under the Agreements such that Ted's conduct of waiver and acquiescence directly speaks to his intent to release Kimberly of her forfeiture obligation under the Agreements. Ted cannot be permitted to belatedly assert the condition, depriving Kimberly of the right to make a choice: abandon a claim (if it was in fact a challenge) or comply with the condition precedent and pursue the claim. He is not permitted to wait until long after he claims that Kimberly challenged the jurisdiction of this Court and would have been subject to the "condition precedent" language of the Prenuptial Agreement. It is for this basic common sense that a condition precedent must be pleaded or it is waived.

Ted erroneously contends that he has presented a "Claim for Reimbursement" in his remaining cause of action, seeking $1,750,000 from Kimberly, pursuant to Paragraph XII of the parties' Prenuptial Agreement. Ted has never made an affirmative prayer for relief via complaint or motion that enunciates such a claim for reimbursement. Ted has never set out with specificity his offers of proof (or the basis for those claims) as to this "claim." He does not tell the Court or Kimberly which witnesses will testify to which facts. Instead, he provides his rendition of each party's conduct during the marriage related to this provision. He provides a portion of the text of this provision in the underlying contract, and then tells the Court:

Paragraph XII of the Prenuptial Agreement provides, however, that Kimberly must reimburse these payments "[I]n the event Kimberly seeks in any way to set aside, impair or invalidate any of the provisions of this Agreement.

See Ted's Brief at page 3, lines 12-14. He then demands the Court to order Kimberly to "specifically perform" *the provisions of Paragraph XII of the Prenuptial Agreement*, and for her to reimburse Ted in the amount of $1,750,000 she previously received from him. Id. at page 5, lines 4-6. Ted's summary of the provision and the law are, at best, disingenuous.

Ted does not spell out in his Brief the "specific provisions of Paragraph XII" he is asking the Court to order Kimberly to "specifically perform." Had he done so, the Court could readily

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see that it would necessarily be required to interpret and construe this Paragraph XII before any Orders could be issued related to either party's obligation to specifically perform. Moreover, the requested return of $1,750,000 is a money damage claim for which specific performance cannot be granted.

The entirety of Paragraph XII of the Prenuptial Agreement provides as follows:

> In the event Kimberly seeks in any way to set aside, impair or invalidate any of the provisions of this Agreement, directly or indirectly, **as a condition precedent to the right to bring or maintain such actions(s)**, the amounts previously paid to her or for her benefit under the terms of Paragraph II(B)(9) of this Agreement shall be forfeited and repaid to Ted, together with all income or accumulation thereto or assets acquired therewith, and all future amounts otherwise payable under Paragraph II(B)(9) shall no longer be payable, and Ted's obligations under said Paragraph shall terminate. Any claim for alimony, spousal support or relating to the custody or support of children shall not be deemed an act which triggers the provisions of this paragraph.
>
> For purposes of this provision, attaching or seeking to impair or invalidate any of the provisions of the Agreement shall include, without limitation: (1) any attempt to set aside or invalidate or impair the terms of this Agreement, in whole or in part; (2) any attempt to characterize separate property or separate obligation as anything other than separate property; (3) any attempt to characterize community or jointly or mutually owned property or obligations as anything other than jointly or mutually owned property or obligations; (4) any assertion of a claim (other than as a named beneficiary) against Ted, his estate or any trust of which Ted is a settlor, trustee or beneficiary under the laws of Nevada, California, Idaho or of any other jurisdiction; (5) any assertion of a claim arising from a pre-marital cohabitation, whether on a contract (express or implied) theory, a "quantum meruit" theory, a partnership theory, a constructive trust theory, the reasoning of *Marvin v. Marvin (supra)*, its forbearers and progeny, the reasoning of *Western States Construction Inc. v. Michoff (supra)*, its forbearers and progeny, or any other similar case, law or theory; (6) any assertion of an interest (other than as a named beneficiary) in any asset, title to or ownership of which is in Ted's name or the name of any asset or trust (or its trustee) of which Ted is an owner, settlor, trustee or beneficiary; (7) any assertion that Ted entered into an oral agreement (or a written or oral agreement which is to be proved by parole evidence) to make provisions for Kimberly under his Will or in any other document with testamentary provisions, whether or not for services rendered and whether or not such agreement is provided to exist; or (8) the seeking of a pendente-lite or final award of attorneys' fees, expert fees or litigation costs, except as provided under Paragraph XIII. (emphasis added)

Kimberly has never filed an action, nor did she **bring or maintain an action** to set aside any provision of the Agreement and this fact is undisputed. If she had, it would have been Ted's obligation to plead the Condition Precedent as an affirmative defense. Every single example in

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the forgoing language requires Kimberly to seek affirmative relief from a Court of law. The only affirmative relief that Kimberly ever sought, regardless of the terms of the Agreements, was that as a matter of law the Nevada Court lacked jurisdiction to proceed. Nothing in the forgoing forfeiture provision states that she could not seek a jurisdictional determination. Under Ted's reasoning, if the Court, Sua Sponte, determined that it lacked jurisdiction because of the pre-existing Divorce action in California, that somehow Kimberly filing for divorce in California would have triggered the forfeiture clause.

Ted admitted repeatedly that Kimberly has not asked any Court to make orders that would impair the parties' Prenuptial Agreement. When he was asked, "Do you agree that Kimberly has not filed a complaint in Nevada seeking to set aside, impair, or invalidate the prenuptial agreement that you and she signed in 1998?" Ted answered, "I do". Page 278, lines 2-13. He made the same concession with regard to the fact that Kimberly has not filed any such challenges in the California matter. Page 279-280, lines 24-7. She has never asked for affirmative relief from any Court or filed any motion or other request seeking to have any of the Agreements declared invalid—either in California or Nevada. Moreover, Ted has never moved this Court to require the forfeiture of Kimberly's assets before the Court would consider whether it had the jurisdiction to decide Plaintiff's Nevada action. If Ted felt the Motion to Dismiss was a challenge to the Agreements, he was required to plead the affirmative defense. In failing to so plead, Ted waived his right to make that assertion. All Plaintiff claims to have done regarding his obligation in this regard is to send a letter to Defendant's counsel on or about July 11, 2013, alleging that she had triggered the provisions of the forfeiture clause and "demanding" that she repay the $1,750,000 he paid to her under the terms of the Prenuptial Agreement. This "demand" is legally meaningless and has never been raised to this Court.

It is also important to note that although Ted claims Kimberly has challenged the Agreements, he cannot point to a motion or complaint for declaratory relief filed by Kimberly in which such a challenge was made. This position by Ted is also contrary to his positions before the California court. Even if Ted bases his contention in this regard on discovery responses or the title of a section of a pleading as previously argued, the failure of a moving or complaining

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party (Kimberly under Ted's theory that a challenge has occurred) to meet a condition precedent is, in fact, an affirmative defense. (See Clark Cnty. Sch. Dist. v. Richardson Const., Inc., 123 Nev. 382, 394, 168 P.3d. 87, 95 (2007)). Ted has never asserted or pleaded the affirmative defense of Kimberly's failure to fulfill the condition precedent of returning the annual payments to Ted before she could challenge the Agreements. Under NRCP 8, Ted's failure to plead the affirmative defense of Kimberly's failure to meet her condition precedent means that Ted has now waived any claim that the forfeiture clause has been triggered. No matter how much Ted tries, he can never overcome the clear language of the forfeiture clause which conclusively establishes it as a condition precedent.

Ted, without ever pleading the relief, requests the Court to summarily enter a declaratory judgment that Kimberly has failed to comply with the terms of Paragraph XII of the Prenuptial Agreement, and grant Ted's request that Kimberly be ordered to specifically perform the provisions of Paragraph XII of the Prenuptial Agreement, and reimburse him the $1,750,000 she previously received. See Ted's Brief at page 5, lines 1-6. No reasonable person could read this provision and conclude that Kimberly owes Ted any reimbursements of payments previously made to her which are in the nature of spousal support. Ted has made no offer of proof regarding the plain language which requires Kimberly to "bring or maintain such action(s)" as a condition precedent to any forfeiture.

2. **Ted's Second Purported Triable Issue — Interpretation of Characterization of Separate Property Pursuant To Paragraph II.B.9. of the Prenuptial Agreement:**

Ted requests the Court enter the following Order: The Court declare that the Post Marital Agreement did not reinstate the $250,000 payment obligation to Kimberly under Paragraph II.B.9 of the Prenuptial Agreement from 2007 forward, and that Kimberly's claim to the contrary is denied. See Ted's Brief at page 8, lines 8-11. Ted has never affirmatively pleaded this cause of action.

Kimberly has asserted no claims in this regard in the Nevada case. This is because Ted has never plead that this Court should interpret Paragraph II.B.9. of the Prenuptial Agreement.

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Moreover, this issues is a support issue which is exclusively before the California Court.

Ted alleges that the parties three Agreements mean that his obligation to pay Kimberly $250,000 per year terminated when divorce was filed in 2005. He admits that Kimberly does not agree with his allegations about the three Agreements. He admits that the parties do not agree on interpretation. The plain language of the three Agreements demonstrates, just by reading them, that if this Court considers this issue, which necessarily requires characterization of property to be adjudicated as either community or separate property, *the Court must interpret the three Agreements.* Ted has never pleaded such a cause of action.

Ted even admits that the Court likely will not be able to interpret the Agreements absent testimony of not only the parties, but also other witnesses, including Kimberly's former attorney, Richard Young, and Ted's former attorney, Mary Anne Decaria. He also proposes independent witnesses Robert Underwood and Robert Cox will provide testimony regarding interpretation of the three Agreements regarding this issue. See Ted's Brief at page 7, lines 4-27.

In the event the Court were to wrongfully deem parol evidence admissible to explain and interpret the provisions of these Agreements, there would be no question that this Court was doing much more than issuing an order for specific performance. This issue is not before the Court based upon Ted's pleadings. A trial on this issue may not go forward without violating Kimberly's right to notice and due process.

3. **Ted's Third Purported Triable Issue—Interpretation Of Ted's Child Support Obligation Pursuant To Paragraph 3.21 Of The Marital Settlement Agreement And Paragraph 7.1 of the Post Marital Agreement:**

Ted requests the Court to enter judgment declaring that Ted owes Kimberly no back child support. See Ted's Brief at page 11, lines 3-4. Obviously, since all issues related to support of the parties' three children are to be litigated in the California action, this Court has literally no familiarity with the arguments now being raised by Ted in his instant Brief. Nevada Law (See NRS 130.203 et. Seq.), California Law (See Cal. Fam. Code 4908-4911), and the Orders in the California dissolution action establish conclusively that California is the **only** court that can address this issue. The Court cannot grant Ted's relief in this regard because of the clear

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language of the Agreements themselves.

Section 7.1 on page 17 of the parties' Post Marital Agreement reaffirms and ratifies section 3.4 of the Marital Settlement Agreement as follows:

> By the terms of the present Post Marital Agreement, Kimberly and Ted hereby adopt, confirm, ratify, restate and agree to be bound by their agreement for the payment of child support in the event of a divorce by adopting paragraphs 3.2 through 3.4 of their Marital Settlement Agreement dated December 13, 2008 at pages 9-18.

What Ted now improperly seeks to do is have this Court declare that the terms of the Marital Settlement Agreement mean what he would like them to mean and not what the clear language of the Agreement says. Issues relating to the child support and spousal support are required to be raised in the state and county where Kimberly and the children reside. There is no dispute that California is where Kimberly and the children reside. Because the remaining claim that Ted has pleaded in Nevada, specific performance, requires that Ted has fully performed all his obligations under the Agreements, and the issue of whether he has performed as it pertains to child support and spousal support are squarely before the California court pursuant to the Agreements themselves, there is no way for this Court to adjudicate Ted's specific performance claim. Just like the Court enforced the forum selection clause, it must now honor the provisions relating to where spousal support and child support claims are to be adjudicated.

This is perhaps the most egregious "claim" Ted seeks to litigate in the Nevada action, notwithstanding his failure to plead the necessity of interpretation in this matter. Again, Ted admits in his Brief that interpretation will be necessary. His proposed offer of proof of statements from witnesses to explain the terms of the Agreements violates the parol evidence rule if these Agreements are, as Ted contends, clear and unambiguous.

4. <u>Ted's Fourth Purported Triable Issue—Interpretation of Paragraph IV.G. (Obligation to Maintain Parties' Expenses) of the Prenuptial Agreement</u>:

Ted requests the Court enter the following Order: The Court enter judgment declaring that Ted has fully complied with Paragraph IV.G. of the Prenuptial Agreement regarding his obligation to pay expenses for the parties. <u>See</u> Ted's Brief at page 12, lines 19-20. No discovery has been conducted on this issue anywhere (except California in connection with the support

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hearing) because it has never been pleaded as an issue by Ted in this Nevada action. Moreover, as set forth above, issues of support must be heard in California pursuant to the terms of the Agreements pursuant to Judge Kreber's Orders.

Pursuant to Section 8.1 of the Post Marital Agreement, "The court in the parties' dissolution or divorce action has jurisdiction to order the payment of alimony or spousal support to Kimberly, in such amount(s) as the court deems appropriate." California is the only court exercising jurisdiction over the parties' divorce and the issues pertaining to support and the division of property, based upon the content of Ted's Answer (Response) to Kimberly's California Petition for Dissolution, as well as his Motion for Bifurcation and related California Pleadings. As such, all issues regarding the amounts paid to Kimberly, or to be paid to Kimberly, whether as a support or property payment, are before the California court.

Notably, as Ted admits, interpretation of this provision, and the nature and extent of Ted's obligations to Kimberly pursuant thereto, rely on interpretation of the provisions in the parties' Agreements related to Ted's payment of child support to Kimberly. No possible reading of Ted's Complaint for specific performance could possibly be construed to give Kimberly notice of the Order he is requesting.

5. **Ted's Fifth Purported Triable Issue—Interpretation of Paragraph IV.G. (Obligation to Make Available Cash or Credit) of the Prenuptial Agreement:**

Ted requests the Court enter the following Order: The Court entered judgment declaring that Kimberly's claim that Ted has not complied with this provision is specious. See Ted's Brief at page 13, lines 11-13.

Once again, this is clearly an issue of spousal support or child support, jurisdiction over which is exclusively in California. As set forth above, all issues of child support are exclusively before the California Court. Pursuant to Section 8.1 of the Post Marital Agreement, "The court in the parties' dissolution or divorce action has jurisdiction to order the payment of alimony or spousal support to Kimberly, in such amount(s) as the court deems appropriate." California is the only court exercising jurisdiction over the parties' divorce, the support issues and the division of property based upon the content of Ted's Answer (Response) to Kimberly's California

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Complaint (Petition) as well as his Motion for Bifurcation and related California Pleadings. As such, all issues regarding the amounts paid to Kimberly, or to be paid to Kimberly, whether as a support or property payment, are before the California court. Therefore, even if the Court were to ignore the reservation of jurisdiction contained in the Decree of Dissolution, the Agreement itself requires that this issue be adjudicated in California.

6. **Ted's Sixth Purported Triable Issue—Attorneys' Fees and Costs:**

This issue does not require a trial. Moreover, the California Court has exclusive jurisdiction over this issue. Assuming the Court recognizes the overwhelming authority set forth above and in Kimberly's Brief, and dismisses the one remaining cause of action filed by Ted, or grants Summary Judgment hereafter, Kimberly will be the party entitled to attorney fees. Any such fees award, like every other case in Nevada, will be determined by the Court based upon a Brunzell Affidavit, not actual testimony of lawyers. Once again, the fact that Ted, with no cause of action to try, wants as many trial dates as possible on issues that are never the subject of a trial, is further evidence of his desire to financially bludgeon his wife and require her to be away from the parties three children.

Testimony of attorneys regarding the meaning of contracts is impermissible.

> It is black-letter law that "[i]t is not for witnesses to instruct the jury as to applicable principles of law, but for the judge." United States v. Newman, 49 F.3d 1, 7 (1st Cir.1995) (quoting Marx & Co. v. Diners' Club, Inc., 550 F.2d 505, 512 (2d Cir.1977)). At least seven circuit courts have held that the Federal Rules of Evidence prohibit such testimony, and we now join them as to the general rule. See Burkhart v. Washington Metro. Area Transit Auth., 112 F.3d 1207, 1212–14 (D.C.Cir.1997) (reversible error to allow an expert in police practices to opine on whether police officers' efforts in communicating with a deaf plaintiff were enough to satisfy federal disability statutes); *Snap–Drape, Inc. v. Commissioner,* 98 F.3d 194, 197–98 (5th Cir.1996) (trial court properly excluded taxpayer's expert reports as containing nothing more than legal arguments concerning the tax treatment of certain dividends); *Berry v. City of Detroit,* 25 F.3d 1342, 1353–54 (6th Cir.1994) (finding inadmissible the comments of an expert in police practices on the meaning of the legal term "deliberate indifference" in a civil rights case); *Aguilar v. International Longshoremen's Union, Local # 10,* 966 F.2d 443, 447 (9th Cir.1992) (testimony of purported expert that workers reasonably and foreseeably relied on defendants' promises addressed "matters of law for the court's determination" that were "inappropriate subjects for expert testimony"); *Specht v. Jensen,* 853 F.2d 805 (10th Cir.1988) (en banc) (reversible error to allow an expert witness who was an attorney to give his opinions on what was required to make consent to a search effective); *Adalman v. Baker, Watts & Co.,* 807 F.2d

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359, 366 (4th Cir.1986) (finding inadmissible proffered expert opinion concerning whether, under securities laws, disclosure of a particular fact was required in the course of negotiating a transaction); *Marx & Co. v. Diners' Club, Inc.*, 550 F.2d 505 (2d Cir.1977) (securities lawyer, called as an expert, could not testify to the legal obligations created under a contract). To state the general rule is not to decide the far more complicated and measured question of when there is a transgression of the rule. We outline some of the considerations and conclude that the rule has been transgressed here. We leave to future cases the defining of the contours of application of this rule.

The following Nevada Rules of Evidence preclude expert testimony on matters of law.

NRS 50.275 Testimony by experts.

If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by special knowledge, skill, experience, training or education may testify to matters within the scope of such knowledge.

NRS 50.285 Opinions: Experts.

1. The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing.

2. If of a type reasonably relied upon by experts in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

NRS 50.295 Opinions: Ultimate issues.

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

An expert opinion on a matter of law is not admissible under the Rules of Evidence. The Rules do not permit an expert opinion on matters of *law*. The Rules **focus exclusively on matters of fact,** and require that an expert witness he allowed to assist the trier of fact by providing his or her expert opinion based on facts or data. Since the Rules specifically allow an expert opinion regarding facts but not regarding law, using standard rules of interpretation, expert opinions on legal questions were purposefully excluded by the drafters and therefore not admissible.

There is good reason for this prohibition of expert opinion on matters of law. The ultimate decision-maker on all questions of the law is the Judge. To allow another to testify on matters of law would remove the authority of the Judge. An opinion of an expert on a matter of law is not admissible because: (1) it usurps the role of the Judge to decide all matters of law; (2)

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if there is a jury, it confuses the jury by presenting them with more than one authority on the law; (3) the opinion is not based on facts or data but instead is merely an interpretation of a contract, a legal document, under the law and therefore offers nothing to the Court in addition to what it can provide itself (an opinion on the law); and (4) as the Judge has the exclusive role of "law giver," the testimony of an expert on the law would have no legal purpose and is therefore irrelevant and must be excluded.

Case law consistently supports this position. Courts are in agreement that an expert witness may not offer an opinion into evidence on matters of law. The law prohibits "expert legal opinions" on questions of law because they "interfere[ ] with the judge's role as the "sole arbiter of the law"" in a courtroom. United States v. Scholl, 166 F.3d 964, 973 (9th Cir.1999) (determining that expert testimony on legal conclusions, such as the reasonableness of a party's belief, are inadmissible). See also Aguilar v. International Longshoremen's Union, 966 F.2d 443, 447 (9th Cir.1992) (noting that matters of law are for the court's determination, not that of an expert witness). See also McDevitt v. Guenther, Civ. No. 06-00216, 2007 WL 2121241, at 17 (D. Haw. 2007).

Expert opinions on a contract - its validity, its interpretation and the obligations of the parties – are matters of law for the Judge to decide. As the Ninth Circuit has noted, "[t]he construction of written agreements belongs to the court," and witnesses should not be able to testify to the legal effect of the agreement... [.]" Energy Oils, Inc. v. Montana Power Co., 626 F.2d 731, 737 n. 11 (9th Cir.1980). *See also* GPF Waikiki Galleria, LLC v. DFS Group, LP, 2007 WL 3195089 (D. Hawaii 2007) (the matter of interpretation of a contract is a matter of law); Shelton v. Shelton, 78 P.3d 507 (Nev. 2003)(the question of the interpretation of a contract when the facts are not in dispute is a question of law); Washoe County v. Transcontinental Ins. Co., 878 P.2d 306 (Nev. 1994) (when parties do not dispute the facts, interpretation of contract is question of law); Sheehan & Sheehan v. Nelson Malley and Co., 117 P.3d 219 (Nev. 2005) (the construction of a contractual term is a question of law, and the appellate court is obligated to make its own independent determination on such issue and should not defer to the district court's determination); Federal Ins. Co. v. American Hardware Mut. Ins. Co., 184 P.3d 390 (Nev. 2008)

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(when the facts are not in dispute, contract interpretation is a question of law).

Furthermore, allowing an expert to testify on a matter of law may be reversible error. In Marx & Co. v. Diners' Club, Inc., 550 F.2d 505, 508-10 (2d Cir.1977), the Second Circuit found that the district court erred in allowing an expert witness, who was a lawyer and an expert on securities law, to construe a contract as a matter of law and provide his legal opinions on the parties' obligations.

IV.

CONCLUSION

As this Court can see, Kimberly has presented controlling Nevada case law that is directly on point regarding each issue. Ted, however, has tried to tell the Court that a prayer for relief is the same as a cause of action. He has given the Court no authority upon which it can rely. Pursuant to this Court's Orders, Ted's case in chief is limited to the elements of Specific Performance. None of Ted's named witnesses, primarily attorneys, can offer testimony regarding the elements of specific performance. Ted will continue to tell the Court that it can, contrary to Nevada law, rule on any claim that Ted chooses to invent, but not plead, at any stage in the litigation. Fortunately for Kimberly, this Court has read the cases cited in this Brief and will preserve Kimberly's right to due process by ensuring that Ted's case is limited to Specific Performance. Although Kimberly has addressed Ted's unpleaded claims, out of an abundance of caution, she has not and will not consent that Ted's new claims be tried in his Specific

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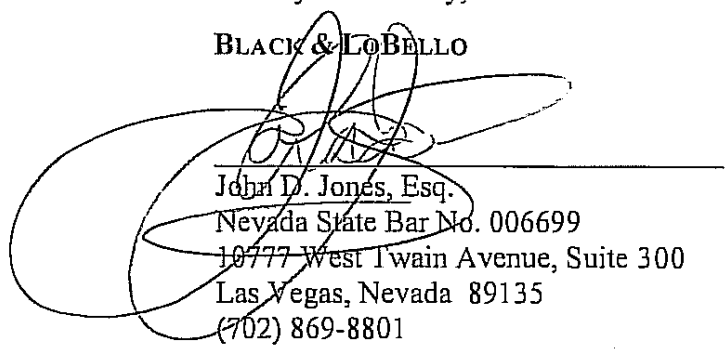
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Performance case. The analysis provided by Kimberly regarding Ted's claims was offered as evidence of Ted's continued unreasonableness and desire to increase costs with legally prohibited claims. It is now up to the Court to ensure that the laws of the State of Nevada are not twisted, trampled and ignored by Ted.

RESPECTFULLY SUBMITTED this 4th day of February, 2014.

BLACK & LOBELLO



John D. Jones, Esq.
Nevada State Bar No. 006699
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Attorney for Defendant
KIMBERLY JONES

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & LOBELLO and that on the 4th day of February, 2014, I caused the above and foregoing document entitled **DEFENDANT, KIMBERLY JONES', TRIAL BRIEF,** to be served as follows:

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

[ ] pursuant to EDCR 7.26, to be sent via facsimile;

[XX] by email to jjj@jimmersonhansen.com; smg@jimmersonhansen.com; sh@jimmersonhansen.com; and ks@jimmersonhansen.com

[XX] hand delivered

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

James J. Jimmerson, Esq.
Shawn M. Goldstein, Esq.
JIMMERSON HANSEN, P.C.
415 South Sixth Street, Suite 100
Las Vegas, Nevada 89101
Facsimile: (702) 387-1167
Attorneys for Plaintiff

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

An Employee of Black & LoBello

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DISTRICT COURT
CLARK COUNTY, NEVADA

Miscellaneous Complaint **COURT MINUTES** February 05, 2014

D-12-470239-U Fletcher Jones, Jr., Plaintiff(s).
vs.
Kimberly Jones, Defendant(s).

February 05, 2014 1:30 PM Evidentiary Hearing

HEARD BY: Nathan, Gayle **COURTROOM:** Courtroom 05

COURT CLERK: Kathleen Boyle

PARTIES:

Fletcher Jones, Jr., Plaintiff, present
Harrison Jones, Subject Minor, not present
Hayden Jones, Subject Minor, not present
Kimberly Jones, Defendant, not present

James Jimmerson, Attorney, present

John Jones, Attorney, present

JOURNAL ENTRIES

- Shawn Goldstein, Bar #9814, present as co-counsel on behalf of Plaintiff. Attorney Philip Seastrom and Ryan McIntire present PRO HAC VICE on behalf of Plaintiff. Stephen Kolodny, and Heidi L. Madzar present PRO HAC VICE on behalf of Defendant. Court Reporter, Amber Riggio, also present.

Mr. Jones asked for a ruling on two additional Motions he wished to present.

COURT ORDERED, the Motion to Dismiss and the Notice of Motion for Summary Judgment are DENIED. In addition, any Motion to remove this matter from this Court's jurisdiction is DENIED.

Mr. Jones said he needed a ruling on the issue of waiver on the part of the Defendant under Rule 15. The Court said it would not allow Mr. Jones to argue on a Motion for Waiver. Response by Mr. Jimmerson.

Mr. Jimmerson said he had received Defendant's Motion to Quash, and he would file an Opposition by 2/6/14 prior to the hearing. Mr. Jones requested the opportunity to argue this matter orally on Friday morning.

Opening statement by Mr. Jimmerson.

MATTER TRAILED for the Court to review Defendant's Memorandum of Law filed 2/5/14, and Rule 15. MATTER RECALLED with all parties present as prior to recess. Michelle LoBello, Bar #5527, was made an appearance after the recess.

The Court noted Defendant was requesting some type of ruling preserving a waiver of claims against the Plaintiff in this action. Mr. Jones responded Defendant wished to preserve that they are not impliedly consenting to evidence being presented, which had not been plead, which could result in Plaintiff moving the Court at the conclusion of trial to allow him to amend his pleading. The Court advised it could not make a ruling on this, stating counsel could make its objections as the hearing progressed. The Court reviewed Rule 15, and Rule 8(c), and said the ability to ask the Court to conform the pleadings to the evidence went both ways.

Argument by Mr. Kolodny.

COURT FURTHER ORDERED, Mr. Kolodny shall submit his Proposed Obection to Mr. Jimmerson by 10:00 a.m. on 2/6/14, in order for counsel to review it and make any objections to the Court. The 2/7/14 hearing will commence at 1:30 p.m., and the 2/14/14 hearing shall commence at 8:00 a.m., and conclude at 3:00 p.m.

CONTINUED TO: 2/6/14 AT 1:30 P.M.

INTERIM CONDITIONS:

FUTURE HEARINGS:

Canceled: February 07, 2014 10:30 AM Evidentiary Hearing
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated
Nathan, Gayle
Courtroom 05

Canceled: February 14, 2014 1:30 PM Evidentiary Hearing
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated
Nathan, Gayle
Courtroom 05

Canceled: February 19, 2014 1:30 PM Evidentiary Hearing
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated
Nathan, Gayle
Courtroom 05

Canceled: February 20, 2014 1:30 PM Evidentiary Hearing
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated
Nathan, Gayle
Courtroom 05

Canceled: February 21, 2014 2:00 PM Evidentiary Hearing

Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated
Nathan, Gayle
Courtroom 05

Canceled: February 21, 2014 9:00 AM Evidentiary Hearing
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated
Nathan, Gayle
Courtroom 05

Canceled: February 25, 2014 9:00 AM Motion for Summary Judgment
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated - Moot
Courtroom 05
Nathan, Gayle

Canceled: February 25, 2014 9:00 AM Opposition & Countermotion
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated - Moot
Courtroom 05
Nathan, Gayle

February 26, 2014 1:30 PM Evidentiary Hearing
Nathan, Gayle
Courtroom 05

February 26, 2014 10:00 AM Trial
Nathan, Gayle
Courtroom 05

February 27, 2014 1:30 PM Evidentiary Hearing
Nathan, Gayle
Courtroom 05

Canceled: February 28, 2014 2:00 PM Evidentiary Hearing
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated
Nathan, Gayle
Courtroom 05

Canceled: February 28, 2014 9:00 AM Evidentiary Hearing
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated
Nathan, Gayle
Courtroom 05

March 11, 2014 1:30 PM Evidentiary Hearing
Nathan, Gayle
Courtroom 05

March 12, 2014 9:30 AM Evidentiary Hearing
Nathan, Gayle
Courtroom 14

March 13, 2014 1:30 PM Evidentiary Hearing
Nathan, Gayle
Courtroom 05

March 14, 2014 9:30 AM Evidentiary Hearing
Nathan, Gayle
Courtroom 05

DISTRICT COURT
CLARK COUNTY, NEVADA

Miscellaneous Complaint **COURT MINUTES** February 06, 2014

D-12-470239-U Fletcher Jones, Jr., Plaintiff(s).
vs.
Kimberly Jones, Defendant(s).

February 06, 2014 1:30 PM **Evidentiary Hearing**

HEARD BY: Nathan, Gayle **COURTROOM:** Courtroom 05

COURT CLERK: Kathleen Boyle

PARTIES:

Fletcher Jones, Jr., Plaintiff, present
Harrison Jones, Subject Minor, not present
Hayden Jones, Subject Minor, not present
Kimberly Jones, Defendant, present

James Jimmerson, Attorney, present

John Jones, Attorney, present

JOURNAL ENTRIES

- EVIDENTIARY HEARING: DAY 2

Shawn Goldstein, Bar #9814, present as co-counsel on behalf of Plaintiff. Attorney Philip Seastrom and Ryan McIntire present PRO HAC VICE on behalf of Plaintiff. Michelle LoBello, Bar #5527, present, on behalf of Defendant. Stephen Kolodny, and Heidi L. Madzar also present PRO HAC VICE on behalf of Defendant. Court Reporter, Amber Riggio, also present.

The Court advised it would hear Defendant's Opening Statement, and then rule on the Motion to Quash, and if there was time, the Objection would be considered. Mr. Jones said he had just received the Opposition, and it was his understanding it would be argued on Friday, 2/7/14.

COURT ORDERED, Mr. Jones will have until 11:00 a.m. on 2/7/14 to file a Reply to the Opposition, which will be addressed at the 2/7/14 hearing.

Opening Statement by Mr. Jones.

MATTER TRAILED. MATTER RECALLED with all parties present as prior to recess.

Opening Statement of Mr. Jones continued.

COURT FURTHER ORDERED, Defendant's Motion to Quash is DENIED.

Mr. Jimmerson advised the Court his first witness on 2/7/14, would be Kathryn Stryker Wirth, followed by Defendant's testimony, which would commence on Wednesday, 12/12/14. The Court asked for an offer of proof as to why Ms. Wirth would be required to testify. Mr. Jimmerson presented his offer of proof. Argument by Mr. Kolodny. Response by Mr. Jimmerson.

COURT FURTHER ORDERED, Ms. Wirth will be heard on the question of credibility. The 2/14/14 hearing will commence at 8:00 a.m., and will end at 2:00 p.m.

Argument by Mr. Kolodny regarding Defendant's request to make an evidentiary objection. Response by Mr. Jimmerson.

Counsel STIPULATED to the authenticity of Exhibit 11.

CONTINUED TO: 2/7/14 AT 1:30 P.M.

INTERIM CONDITIONS:

FUTURE HEARINGS:

Canceled: February 07, 2014 10:30 AM Evidentiary Hearing
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated
Nathan, Gayle
Courtroom 05

Canceled: February 14, 2014 1:30 PM Evidentiary Hearing
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated
Nathan, Gayle
Caurtroom 05

Canceled: February 19, 2014 1:30 PM Evidentiary Hearing
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated
Nathan, Gayle
Courtroom 05

Canceled: February 20, 2014 1:30 PM Evidentiary Hearing
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated
Nathan, Gayle
Courtroom 05

Canceled: February 21, 2014 2:00 PM Evidentiary Hearing
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated
Nathan, Gayle
Courtroom 05

Canceled: February 21, 2014 9:00 AM Evidentiary Hearing
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated
Nathan, Gayle
Courtroom 05

Canceled: February 25, 2014 9:00 AM Motion for Summary Judgment
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated - Moot
Courtroom 05
Nathan, Gayle

Canceled: February 25, 2014 9:00 AM Opposition & Countermotion
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated - Moot
Courtroom 05
Nathan, Gayle

February 26, 2014 1:30 PM Evidentiary Hearing
Nathan, Gayle
Courtroom 05

February 26, 2014 10:00 AM Trial
Nathan, Gayle
Courtroom 05

February 27, 2014 1:30 PM Evidentiary Hearing
Nathan, Gayle
Courtroom 05

Canceled: February 28, 2014 2:00 PM Evidentiary Hearing
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated
Nathan, Gayle
Courtroom 05

Canceled: February 28, 2014 9:00 AM Evidentiary Hearing
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated
Nathan, Gayle
Courtroom 05

March 11, 2014 1:30 PM Evidentiary Hearing
Nathan, Gayle
Courtroom 05

March 12, 2014 9:30 AM Evidentiary Hearing
Nathan, Gayle
Courtroom 14

March 13, 2014 1:30 PM Evidentiary Hearing
Nathan, Gayle
Courtroom 05

March 14, 2014 9:30 AM Evidentiary Hearing
Nathan, Gayle
Courtroom 05

Jones, Kimberly

Transcript of Proceedings 2014-02-07 (ROUGH)

2/7/2014

Full-size Transcript

Prepared by:

Kevin Kenna
Kolodny & Anteau

Saturday, February 08, 2014

UNCERTIFIED TRANSCRIPT DISCLAIMER IN THE MATTER OF

DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

FLETCHER JONES, JR., Plaintiff, vs. KIMBERLY JONES, Defendant.	Case No. D-12-470239-U

* * * * *

TRIAL, DAY 3, ROUGH ASCII

* * * * *

The following transcript of proceedings, or any portion thereof, in the above-titled matter, taken on Friday, February 7, 2014, is being delivered unedited and uncertified by the official court reporter at the request of James Jimmerson, Esq., and Stephen Kolodny, Esq.

The purchaser agrees not to disclose this uncertified and unedited transcript in any form (written or electronic) to anyone who has no connection to this case. This is an unofficial transcript, which should not be relied upon for purposes of verbatim citation of testimony.

This transcript has not been checked, proofread, or corrected. It is a draft transcript, not a certified transcript. As such, it may contain computer-generated mistranslations of stenotype code or electronic transmission errors, resulting in inaccurate or nonsensical word combinations, or untranslated stenotype symbols which cannot be deciphered by nonstenotypists.

Corrections will be made in the preparation of the certified transcript, resulting in differentiations in content, page, and line numbers, punctuation, and formatting.

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REPORTED BY: AMBER M. RIGGIO, CCR NO. 914

LST JOB NO.: 202018

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KATHRYN STRYKER WIRTH

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* * * * *

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* * * * *

LAS VEGAS, NEVADA; FRIDAY, FEBRUARY 7, 2014
1:39 P.M.
* * * * *

P R O C E E D I N G S

* * * * *

THE BAILIFF: All rise, come to order. Court is now in session. The Honorable Gayle Nathan presiding.

THE COURT: Good afternoon, everyone.

THE BAILIFF: You may be seated.

THE COURT: All righty. This is the Jones matter, D-12-470239.

Counsel, your appearances.

MR. JIMMERSON: Thank you, Your Honor. Jim Jimmerson and Shawn Goldstein of Jimmerson Hansen, on behalf of Plaintiff. On my right is Ryan MacIntyre of Seastrom & Seastrom. To their right is Ted Jones.

THE COURT: Okay.

MR. JONES: John Jones, Bar No. 6699; Michele LoBello, Bar No. 5527; along with Stephen Kolodny and Heidi Madzar, appearing for the defendant.

THE COURT: All right. Welcome, everybody, again. Day 3.

MR. KOLODNY: Day 3.

THE COURT: We're chipping away at it. Okay. Everyone can have a seat. This is Plaintiff's case.

MR. JIMMERSON: Thank you, Your Honor. May it please the Court, we'd like to call Kathryn Stryker Wirth to the witness stand, please.

THE COURT: Yes.

MR. KOLODNY: If you will, Your Honor, before the witness enters the courtroom, I would like to request permission of the Court to voir dire the witness when she takes the stand before questioning is commenced by Mr. Jimmerson.

My voir dire would be based upon -- based upon Local Code 47.060. This will relate to questions -- whether the witness is qualified to answer questions and be a witness in this matter, based upon further lack of personal knowledge under 50.025. I believe the witness, based upon her testimony at depositions, does not have personal knowledge of virtually all of the subjects and should not be permitted to testify.

THE COURT: Well, my understanding is that her deposition was taken; is that correct?

MR. KOLODNY: That's correct.

THE COURT: Was Defendant represented during that deposition?

MR. JIMMERSON: Defendant was present and represented.

THE COURT: Okay.

MR. KOLODNY: I thought the Court was addressing me. Yes, the answer was --

THE COURT: I was, Mr. Kolodny.

MR. KOLODNY: To answer the Court's question, yes, she was.

THE COURT: Okay. How long was that deposition?

MR. KOLODNY: I wasn't personally present, but the deposition is just a touch under 300 pages.

THE COURT: Okay.

MR. JIMMERSON: Seven hours, Your Honor.

THE COURT: Would be a couple of hours, wouldn't it?

MR. KOLODNY: I was -- I was told a whole day. I don't know. I wasn't there.

THE COURT: Okay.

MR. JONES: Judge, it was most of the day. Mr. Jimmerson finished at about 4:00 or 4:30 or close to 5:00, and the time -- time available was very limited after the length of the day.

THE COURT: All right. Mr. Kolodny, based upon the fact that this -- this is a witness who was deposed, that your client had the opportunity to cross-examine. She's not a surprise. Your request to

voir dire is denied. You are free to cross-examine her, and if -- if her testimony is not relevant or she is not testifying based upon her personal knowledge, then, of course, I can't consider her testimony. But I'm not going allow that voir dire at this time.

MR. KOLODNY: Well, if I just may respond to the Court?

THE COURT: Well, I'm not allowing -- you can object to my ruling, but I -- to reserve the objection, but I'm not permitting it. I think that you've had ample opportunity to question her. If it's a matter of credibility, that's fine, but I'm allowing the witness to take the stand.

MR. KOLODNY: I'm not familiar with your procedure about objecting to the ruling other than by speaking to you now about it and asking for the opportunity to respond to the Court's statement. The witness --

THE COURT: Well, I'm not the attorney that you're engaging an argument with. I've actually made my ruling that I'm not allowing you to ask the witness questions before the plaintiff puts on his case.

MR. KOLODNY: Understood, Your Honor.

THE COURT: That's just my ruling. Thank you.

MR. KOLODNY: I'll respect your ruling.

THE COURT: Thank you.

Ms. Wirth, please.

Good afternoon, Ms. Wirth.

THE WITNESS: Good afternoon.

THE CLERK: Would you stand and raise your right hand, please. You do solemnly swear that the testimony you're about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. JIMMERSON:

Q. Good afternoon, Ms. Wirth. How are you?

A. Good afternoon. Fine, thank you.

Q. Please state your name and your -- if you have a business address or a home address, please.

A. My name is Kathryn Stryker Wirth. I do not have a business address. My home address is 523 Cherry Street, Boulder City, Nevada 89005.

Q. Ms. Wirth, did there come a time when you represented Kimberly Moffatt regarding the negotiation, preparation, and execution of a prenuptial agreement?

with the benefit of your billing records, can you tell us approximately when your attorney-client relationship was formed with Kimberly Moffatt? And when I say your, yours and your law firm.

MR. KOLODNY: Objection. The question was phrased as compound, has two component parts.

THE COURT: Overruled.

Can you answer it as asked?

THE WITNESS: I think so, Your Honor.

THE COURT: Overruled.

THE WITNESS: Part of the problem, I think, is that before my deposition was -- before I knew about this litigation, I found out about my deposition last fall. I did not have a very good independent recollection of the case. I had a general recollection, but not a very good one.

Before my deposition, I reviewed the file. So now that I've done that, I have a better recollection, but I've used the file to refresh my recollection. Does that help?

THE COURT: I understand.

MR. JIMMERSON: Okay.

Q. (By Mr. Jimmerson) So when was the attorney-client relationship formed?

A. In early June of 1998.

MR. JIMMERSON: -- that is a criminal act.

THE COURT: I'm ordering -- I'm going -- I'm about ready to apply sanctions on both sides for unnecessarily delaying this matter.

I've made a ruling. I'm looking forward to the cross-examination on this issue vis-a-vis Ms. Wirth's deposition as it contrasts to her testimony today. But Mr. Jimmerson, kindly ask the questions as to the witness' --

MR. JIMMERSON: Thank you.

THE COURT: -- personal notes.

Q. (By Mr. Jimmerson) What was the reason why you did not review your notes prior to your deposition which occurred on November 4th, 2013, a Monday?

A. Because I did not --

MR. KOLODNY: Objection -- objection, Your Honor, relevance to the issues before the Court.

MR. JIMMERSON: Respectfully, Your Honor, how can you have --

THE COURT: It's overruled --

MR. JIMMERSON: -- this objection my opposing counsel --

THE COURT: It's overruled, Mr. Jimmerson.

MR. JIMMERSON: That's inconsistent.

THE WITNESS: I did not review my notes prior

to my deposition because I did not want to inadvertently create a breach of the attorney-client privilege because it is my understanding that, had I reviewed the notes, I may have caused them to be subject to production to Mr. Jones' -- Mr. Fletcher Jones' -- counsel. And I did not want to breach the attorney-client privilege. That is why I did not review the notes prior to my deposition being taken, and I still testified in my deposition.

Q. (By Mr. Jimmerson) Thank you.

Let's return to June 16 of 1998. You have testified that, by virtue of looking at the file and/or in combination of looking at your notes, you know -- you have some basis for telling us what occurred by you -- or what occurred by Ms. Moffatt, not in terms of words but actions, on that date. Do I understand your testimony correctly to this point?

MR. KOLODNY: Objection, Your Honor. The question is compound, or convoluted, and it's irrelevant what Mr. Jimmerson understands.

MR. JIMMERSON: I'll withdraw the question.

THE COURT: Thank you.

Q. (By Mr. Jimmerson) What is the -- are you able to tell us what events occurred on June 16th, 1998?

thereof?

A. I don't believe I did."

MR. KOLODNY: Objection as to relevance to this whole line of questioning. Let's just do it one time now, Judge."

THE COURT: Overruled.

(Whereupon, a video was played.)

"Q. Did you -- did you tell Kathryn Stryker Wirth that you signed the prenuptial agreement freely and voluntarily?

A. I don't recall that.

Q. Did you or did you not?

A. I don't recall if I did or not.

Q. So you might have, and you might not have?

A. I don't recall having that conversation with her, no.

Q. So your belief is you didn't tell her that; is that correct?

A. I'm not comfortable saying 100 percent sure, no, that I did not, but I do not recall that conversation."

MR. KOLODNY: That's the end of the reading as identified.

MR. JIMMERSON: That's exactly right.

Your Honor, we would request to suspend the

examination now and resume at 1:30 on Wednesday, February 12th.

MR. JONES: Your Honor, before we release the witness for today, I would like to renew our motion to have the notes produced. It's my understanding that Ms. Wirth does not have a problem producing them to --

MR. KOLODNY: To us.

MR. JONES: -- to us, to the defendant, and she would just feel much better if there was a court order for her to do so.

THE WITNESS: Your Honor?

MR. JIMMERSON: How do we know that? Have there been communications?

THE WITNESS: I -- I communicated to Mr. Jones at the break.

MR. JONES: She came to me at the break and told me that.

MR. JIMMERSON: That's news to me. That's fine. I stayed away from this witness. I have not discussed -- that's fine.

THE COURT: Well, why didn't somebody come to me or Dr. --

MR. JIMMERSON: Four months ago.

THE COURT: -- or Judge Kreber and ask for an order rather than creating surprise? And it's the end

review them?

THE WITNESS: Yes.

MR. JONES: And I'm happy to come to your office.

THE COURT: Just in case there are any sentences that are highlighted.

MR. JIMMERSON: Let me just say this: I'd like to make clear on this record that we do not continue this matter at all. That if this is going to happen, they work the extra time to do it because it's their error in not getting in it before.

THE COURT: All right.

MR. JIMMERSON: And I do want to have some leeway on examination on Wednesday. Now, I -- my -- my belief, my speculation, my prediction, is that these notes are going to confirm the testimony of Ms. Wirth.

THE COURT: Okay. All right. Ms. Wirth -- you don't need Ms. Wirth anymore, do you?

MR. KOLODNY: No. I think we're done for the day.

THE COURT: You're excused, if you'd like.

THE WITNESS: Just so the record is clear, I asked for an order that I turn the notes over to --

THE COURT: That is so ordered.

THE WITNESS: Thank you.

MR. KOLODNY: To us.

THE WITNESS: Just to defense counsel.

THE COURT: To defendant to preserve the privilege.

MR. JIMMERSON: With regard -- and I know this area of law -- if they use those notes to cross-examine you or attempt to cross-examine you, then they're fair game for me to review.

MR. KOLODNY: Perhaps. You know, can we just get there when we get there?

MR. JIMMERSON: Oh, no, no, no, no.

THE COURT: I'm not making a pre-ruling. I'm trying not to do that. I'm --

MR. KOLODNY: Well, that's what Mr. Jimmerson sounds like he's trying --

THE COURT: -- inclined to sometimes.

Okay. So I need to make this -- it's after 5:00 and I need to make this order. Both sides are ordered, at this point, to identify any areas of deposition testimony that are going to be utilized from this point forward. So you'll have until Wednesday, exchange identified portions with each other so that we don't have what happened today and --

MR. JONES: One other housekeeping?

THE COURT: -- that will take care of that.

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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

FLETCHER JONES, JR., Plaintiff, vs. KIMBERLY JONES, Defendant.	CASE NO. D-12-470239-U DEPT. NO. T

NOTICE AND MEMORANDUM OF PENDING HOUSEKEEPING MATTERS

COMES NOW, Plaintiff Fletcher Jones, Jr., by and through his counsel of record, James J. Jimmerson, Esq., and Shawn M. Goldstein, Esq., of Jimmerson Hansen, P.C., along with Philip G. Seastrom, Esq., and Ryan B. McIntire, Esq., of Seastrom & Seastrom

(pro hac vice) and Bruce E. Cooperman, Esq., of Wasser, Cooperman & Carter, P.C. (pro hac vice), and hereby submits his Notice and Memorandum of Pending Housekeeping Matters that need to be addressed as follows:

1. In order to avoid the continuing disruption interposed by the Defendant, through her counsel, by their insistence to object to every question that is asked, the Court is requested to enforce what it had already advised the Defendant's counsel on Thursday, February 6, 2014, a copy of the excerpt of Court's remarks at page 55, which are as follows:

> "What I'm telling you is that the appropriate procedure in an objection is to state, in one or two words, what your objection is, I'll --I'll hear the other side on the -- on the response, and then I'll rule on it. You do not get to make a State of the Address with each and every objection. It's not permitted. It's not permitted in my courtroom, or any other courtroom, and you preserve your objection by making the objection. You don't get to make the preamble."

2. Request is further made to ask the Court to enforce the Court's direction prohibits "tag-teaming" rendered orally by the Court on Friday, February 7, 2014. The repeated objections by Defendant's California counsel Stephen Kolodny, Esq., when then added or supplemented repeatedly by Defendant's Nevada counsel, John Jones, Esq., further interposes delay and extended arguments regarding objections that can be resolved in a word or two. Plaintiff's concern arises because this has not been an isolated incident, but has repeated itself on multiple occasions simultaneously causing further delay of these proceedings. Assistance in this matter is requested.

3. Notwithstanding the outstanding efforts of the trial Court to manage this significant matter, it is apparent to Plaintiff, (and wish it were not so) that a few more trial days than the twelve (12) that have been allocated may be needed. It is highly likely that the parties will have not completed their testimony before the final week of hearing on March 11 - 13, 2014, which week has been set aside for hearings on the award of attorneys' fees and

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costs in favor of Plaintiff and against Defendant. In order to minimize any further delay, Plaintiff requests the Court to consult with both parties and designate at least an additional two (2) to three (3) trial days, and schedule the same with the parties' counsel in order to complete this matter. Plaintiff is open to receiving input from Defendant with regard to the number of additional days that Defendant may seek to have this Court set aside for the completion of this matter.

4. Request is made for a copy of the attorney notes of Kathryn Stryker Wirth, Esq. which were delivered by her to Defendant, through her counsel, on February 10, 2014.

In response to the Court's questions, at the end of the day of trial on Friday, February 7, 2014, all parties learned that the attorney notes of Kathryn Stryker Wirth, Esq. regarding representation of Kimberly Jones in the month of June 1998 and July of 1998 were somewhere between ten and twenty pages, and that the notes were dated by Kathryn Stryker Wirth, Esq. to reflect the month and day and when the notes were taken and when the legal services were performed.

As attested to by Kimberly Jones in her deposition of October 15, 2013, at page 106, lines 10 - 25, Kimberly Jones accused Kathryn Stryker Wirth, Esq. of fabricating the June 23, 1998 twelve page letter "in order to cover themselves from liability." . The exact transcript as follows:

> "Is it your testimony that this letter is a sham established by Howard Miller and Ms. Wirth?
>
> MR. STURMAN: Objection; argumentative, calls for speculation.
>
> BY MR. COOPERMAN:
>
> Q Is that your testimony:
>
> A I don't know who created it, but it is a false document.
>
> Q Do you have any explanation for why Exhibit 4 was found in the file of Kathryn Stryker Wirth?

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A Yes.

Q What is that?

A I believe it was created to cover herself from liability.

Q Do you think Miss Wirth has liability?

A I don't know if she does or not."

Defendant requested the notes in Court on Friday, February 7, 2014, from Ms. Wirth, Esq., and the Court, again, although discovery has been closed long ago and no effort was made by Defendant to move to compel the production of the documents against Kathryn Stryker Wirth, Esq. or her law firm Jolley, Urga, Wirth & Woodbury, the Court acceded to Defendant's request for the notes and, upon information and belief, the notes were delivered by the Jolly, Urga law firm to Defendant's counsel on or about February 10, 2014. **Plaintiff is entitled to a copy of those notes as well.** SCR 1.6(b)(5) states a follows:

> (b) "A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary;"
>
> (5) To establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against a lawyer based upon conduct in which the client was involved, or to **respond to allegations in any proceeding concerning the lawyer's representation of the client;"**

SCR 1.6 was former Supreme Court Rule 156 and is virtually the same identical image as ABA Model Rule 1.6 with only three minor exceptions that do not apply here.

Plaintiff requests Kathryn Stryker Wirth, Esq. to reveal the information contained within her notes because they will affirmatively confirm conversations and meetings held between Kathryn Stryker Wirth, Esq. and Kimberly Jones in the month of June, 1998 as disclosed on her billing statement, document 8 to Exhibit "1" for June, 1998, now in evidence and document 9 to Exhibit "1" for July, 1998, now in evidence. These notes will also confirm Ms. Stryker Wirth's answer to the Court's question that her notes total

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approximately 10 - 20 pages, and they are dated to reflect the date in which legal services were performed, communications were held, and/or other tasks were undertaken -- and thus additionally disproving Kimberly Jones' mendacious representations that she never had met Kathryn Stryker Wirth or ever talked with her prior to July 1, 1998, as repeatedly alleged by Ms. Jones in deposition testimony and in Declarations filed in Nevada and in California and in California Court proceedings. Here Kathryn Stryker Wirth, Esq. should be permitted to respond to these false allegations made by Kimberly Jones in this proceeding, as they "respond to allegations in any proceeding concerning the lawyer's representation of the client." SCR 1.6(b)(5). Indeed, the last prong of SCR 1.6(b)(5) is very broad and expressly permits the lawyer to"respond to allegations in **any proceeding** concerning the lawyer's representation of the client."

These notes will confirm the truthfulness of Kathryn Stryker Wirth's testimony and the absence of the same of Kimberly Jones. Defendant's wanton disregard for the truth directly caused the incurrence of reasonable and necessary and huge substantial attorneys' fees and costs to disprove sworn statements and representations, made under penalty of perjury, and to demonstrate her violation of Paragraph 12 of the Prenuptial Agreement.

Finally, separate and apart from the attorneys' notes being disclosed to Plaintiff, having been disclosed earlier this week to Defendant, is the fact that the dates themselves, who was present, the location of meetings and whether telephone conversations or meetings were held are all non-privileged as a matter of law, and this foundation of information should be provided by the Defendant to the Plaintiff forthwith. At the very least, redacted attorney notes should be provided by Defendant to Plaintiff or by Ms. Wirth to Plaintiff. For the same reasons that Kathryn Stryker Wirth's billing statements for June and July, 1998, were deemed by the Court not privileged, and disclosed to Plaintiff and Defendant, so too are the dates of meetings, dates of telephone calls with the Defendant,

///

///

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and information regarding who was present are all non-privileged and are pieces of information that are relevant to the issues of this case and which will confirm the truthfulness of Ms. Wirth's testimony and the mendaciousness of the Defendant, Kimberly Jones. At the very least, this information should be provided as well.

Dated this 12 day of February, 2014.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of JIMMERSON HANSEN, P.C., and that on the 12th day of February, 2014, I served a true and correct copy of the foregoing **NOTICE AND MEMORANDUM OF PENDING HOUSEKEEPING MATTERS** by the method indicated below, and addressed to the following:

Persons Served:

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Details of filing: *Notice and Memorandum of Pending Housekeeping Matters*
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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

FLETCHER JONES, JR., Plaintiff, vs. KIMBERLY JONES, Defendant.	CASE NO.: D-12-470239-U DEPT. NO.: T

DEFENDANT'S RESPONSE TO PLAINTIFF'S NOTICE AND MEMORANDUM OF PENDING HOUSEKEEPING MATTERS

Defendant, KIMBERLY JONES ("Kimberly"), by and through her attorneys of record, John D. Jones and the law firm of BLACK & LOBELLO, hereby submits her Response to Plaintiff's Notice and Memorandum of Pending Housekeeping Matters, regarding Plaintiff, FLETCHER JONES, JR.'s ("Ted"), fourth request contained in the Memorandum filed by Ted a mere two hours before the commencement of Day four of trial on February 12, 2014.

The record in this case is replete with references by this Court of its intent to protect privileged documents and information contained in Kimberly's file with Kathryn Stryker Wirth, and the Court's Orders, detecting Kimberly's privilege. Ms. Wirth herself has recognized the privilege in her testimony before this Court during Days Three and Four of trial.

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Based upon the foregoing, and the law cited herein, Ted's request for production of Kathryn Stryker Wirth's attorney notes to him should be denied.

MEMORANDUM OF POINTS AND AUTHORITIES

The Court will recall that during Day 3 of trial, Kathryn Stryker Wirth testified that **she *had reviewed notes* from the file of Kimberly Moffatt prior to testifying in Court on February 7, 2014.** Ms. Wirth advised the Court during the proceedings that she had been careful ***not to review her notes*** **prior to testifying at her deposition in November 2013,** as she did not want to take the chance of violating the attorney-client privilege.

Page 115-116 of the rough trial transcript from Day 3, February 7, 2014, contains the following testimony by Ms. Wirth:

> I did not review my notes prior to my deposition because I did not want to inadvertently create a breach of the attorney-client privilege because it is my understanding that, had I reviewed the notes, I may have caused them to be subject to production to Mr. Jones' -- Mr. Fletcher Jones' -- counsel. And I did not want to breach the attorney-client privilege. That is why I did not review the notes prior to my deposition being taken, and I still testified in my deposition.

See **Exhibit "A"** at page 114-115, lines 25-9.

Ted contends that he is entitled to a copy of Ms. Wirth's notes from Kimberly's file because they have now been provided to Kimberly's counsel, and he has asked the Court to order their production to him. In support of his attempt to obtain these clearly privileged notes, Ted cites SCR 1.6(b)(5). His cited authority is not applicable in this matter.

A. THE NEVADA RULES OF PROFESSIONAL CONDUCT DO NOT APPLY:

Initially, Ted's reliance on authority contained within the Nevada Rules of Professional Conduct is misplaced. The Rules of Professional Conduct are a basis to discipline attorneys, not an independent basis by which discovery can be conducted by third parties to the attorney client relationship.

NRPC 1.0A defines the purpose of the Rules and the guidelines for interpretation. NRPC 1.0A(d) states in pertinent part as follows:

> The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be

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> a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule.

Ted is clearly seeking to invent support for his legal position utilizing these Rules as a "procedural weapon " in violation of the plain language of the purpose of the Rule and contrary to the guidelines for its interpretation. Ted claims that the confidential information he seeks falls within the exception set forth in Rule 1.6(b)(5). He is incorrect, since pursuant to NRPC 1.6(b)(5), a lawyer may ***not*** reveal confidential client information absent **actual litigation or a complaint by the client against the lawyer,** which is required before this exception can be invoked.

Substantive Standard: NRCP 1.6(a) generally prohibits the disclosure or use of confidential client information "unless the client gives informed consent, the disclosure is inpliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraphs (b) and (c)." See NRPC 1.6(a); see also ABA Model Rules of Professional Responsibility ("Model Rules") 1.6(a), Cmt. [2] (a fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation.). Indeed, as one California court described it:

> The privilege from disclosure accorded the client's communications to his counsel is the oldest of the confidential communication privileges. It is thought to be justified by the interest of society in the procurement of adequate legal advice and in the prompt and just determination of disputes. This interest is best served by encouraging the client to disclose all relevant facts to his attorney and by removing any apprehension that the confidential communications of the client will later be disclosed by the attorney.'

Sullivan v. Superior Court, 29 Cal. App. 3d 64, 71, 105 Cal. Rptr. 241, 245 (Ct. App. 1972); see also Model Rules 1.6(a), Cmt. [2] (the rule of confidentiality contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter.)

Under subsection (b)(5), a lawyer may reveal information relating to the representation of

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a client to the extent the lawyer reasonably believes necessary... "[t]o establish a claim or defense on behalf of the lawyer ***in a controversy between the lawyer and the client***, to establish a defense ***to a ... civil claim against the lawyer*** based upon conduct in which the client was involved, or ***to respond to allegations in any proceeding*** concerning the lawyer's representation of the client. See NRPC 1.6(b)(5). Thus, the plain language of this exception makes clear that, at a minimum, a claim or actual controversy against the lawyer must exist in order for subsection (b)(5) to apply. See State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co., 116 Nev. 290, 293, 995 P.2d 482, 485 (2000) (citing State v. Jepsen, 46 Nev. 193, 209 P. 501 (1922)) (where the language of a statute is plain and unambiguous, and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself).

Even setting aside the plain language of the rule, commentary from the Model Rules pertaining to Rule 1.6, which is virtually identical to NRPC 1.6, further corroborates the need for a claim or actual controversy asserted by the client. To highlight, Comment [10] to Model Rule 1.6 expressly provides that:

> Where ***a legal claim or disciplinary charge*** alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. ***Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person***, ...
>
> ***The lawyer's right to respond arises when an assertion of such complicity has been made.*** Paragraph (b)(5) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

See Model Rule 1.6(b)(5) Cmt [10]. In other words, while an action or formal proceeding is not required for the lawyer to invoke her exception under 1.6(b)(5), there must be an actual controversy or claim asserted against the lawyer.

///

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Additionally, contrary to what Ted may claim, the mere fact that the client is permitted to review attorney's notes from a prior litigation does not render the notes germane to issues in the present action as to support a waiver of privilege. For example, in Mize, the California appellate court distinguished work-product from the privilege arising under a confidential attorney-client relationship in holding that communications reviewed by the client were not subject to waiver. Mize v. Atchison, T. & S. F. Ry. Co., 46 Cal. App. 3d 436, 449, 120 Cal. Rptr. 787, 796 (Ct. App. 1975). In particular, the court apparently based the distinction upon the holder of the privilege; whereas the attorney voluntarily reveals his work product in the former case of work-product privilege, the fact of allowing the client-witness to refresh her recollection cannot be imputed as conduct of waiver of attorney-client privilege. See Id. Likewise, in Sullivan, the waiver argument was also rejected where client merely used transcriptions containing notes from her attorney in preparing for her deposition. See Sullivan v. Superior Court, 29 Cal. App. 3d 64, 74, 105 Cal. Rptr. 241, 248 (Ct. App. 1972). There, the client made statements to her attorney during a private consultation, which was electronically recorded, and later transcribed along with notes made by her attorney. Id. at 242-43. The client later used the transcription in order to refresh her recollection prior to taking of her deposition. Id. In holding that the act of refreshing recollection alone did not waive attorney-client privilege with respect to the transcription, the Sullivan court emphasized,

> The privilege from disclosure accorded the client's communications to his counsel is the oldest of the confidential communication privileges... [as such] should be regarded as sacred. It is not to be whittled away by means of specious argument that it has been waived. Least of all should the courts seize upon slight and equivocal circumstances as a technical reason for destroying the privilege.

Id. at 245.

Finally, in Pappas, the Washington Supreme Court held that defendants' malpractice counterclaims constituted an implied waiver of the privilege, in part, because upholding the privilege would effectively deny the attorney of an adequate defense. See Pappas v. Holloway, 114 Wash. 2d 198, 208-09, 787 P.2d 30, 36-37 (1990). There, the court reasoned that in order for the defendants to prove that the attorney committed malpractice, they had to show, among

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other things, that the attorney had a duty to exercise the care and skill of a reasonably prudent attorney and he failed to meet this duty. Id. at 37. Contrary to defendants' claim that the only information relevant to this issue is what actually happened, this inquiry will involve examining decisions made at various stages of the underlying litigation by all attorneys. Id. Also important in Pappas was the fact that plaintiff would have no other access to such information. Id. Thus, the Pappas court held that defendants' malpractice counterclaims constituted an implied waiver of the confidentiality privilege. Id.

Here, Ted fallaciously, and without any legal authority, assumes that an isolated statement from Kimberly during deposition serves to waive the firm bond of trust established between attorney and client pursuant to NRPC 1.6(a). See Memo at 3-4. However, Ted has, unsurprisingly, *failed to proffer a single case* in which a court construed statements made in deposition that is unrelated to any dispute or controversy between attorney and client constituted waiver of the privilege. ["proceeding" under 1.6(b)(5) excludes depositions]. Indeed, to adopt the rule as Ted suggests inevitably leads to a slippery slope of situations in which client confidences could be broadcasted at the slightest of disagreement between attorney and client on any issue related to representation.

Even assuming that "proceeding" under 1.6(b)(5) encompasses depositions, Plaintiff's argument fails to account for the prerequisite of a claim or controversy encapsulated by the rule's requirement that response must be towards "allegations...concerning the lawyer's representation of the client." Critically, the plain language of that rule provides, at a minimum, the existence of an actual controversy asserted by the client against the lawyer before the exception can apply. In conformity with the overwhelming authority among sister jurisdictions that have applied the self-defense exception, this Court should also find NRPC 1.6(b)(5) to be inapplicable absent any claim or asserted breach by counsel. As Ted quoted, Kimberly merely stated her belief as to Ms. Wirth's motivation or intent. Such a statement can hardly qualify as even an adverse statement, let alone a claim of liability against Ms. Wirth. In fact, when questioned about Ms. Wirth's liability, Kimberly explicitly stated "I don't know if [Ms. Wirth] does or not [have liability]." (Kimberly Jones Deposition, October 15, 2013 at p. 106, l. 25)

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B. THIS COURT HAS ALREADY ORDERED THAT THE SACRED PRIVILIEGE AND ATTORNEY WORK PRODUCT DCOTRINE WILL BE PRESERVED:

Consistent with every Order previously issued by this Court regarding the privileged documents contained in Kimberly's file with Ms. Wirth, the Court should issue an Order denying Ted's request for Kimberly to produce the notes of Kathryn Stryker Wirth. The information sought is not discoverable pursuant to NRS 49.095, the attorney-client privilege, and pursuant to NRCP 26(b)(3), the attorney work product doctrine.

Nevada law governing the attorney-client privilege is set forth in NRS Chapter 49 as follows:

> LAWYER AND CLIENT
>
> NRS 49.035 Definitions. As used in NRS 49.035 to 49.115, inclusive, the words and phrases defined in NRS 49.045 to 49.085, inclusive, have the meanings ascribed to them in NRS 49.045 to 49.085, inclusive.
>
> NRS 49.045 "Client" defined. "Client" means a person, including a public officer, corporation, association or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from the lawyer.
>
> NRS 49.055 "Confidential" defined. A communication is "confidential" if it is not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.
>
> NRS 49.065 "Lawyer" defined. "Lawyer" means a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.
>
> NRS 49.075 "Representative of the client" defined. "Representative of the client" means a person having authority to obtain professional legal services, or to act on advice rendered pursuant thereto, on behalf of the client.
>
> NRS 49.085 "Representative of the lawyer" defined. "Representative of the lawyer" means a person employed by the lawyer to assist in the rendition of professional legal services.
>
> NRS 49.095 General rule of privilege. A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential

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communications:

1. Between the client or the client's representative and the client's lawyer or the representative of the client's lawyer.

2. Between the client's lawyer and the lawyer's representative.

3. Made for the purpose of facilitating the rendition of professional legal services to the client, by the client or the client's lawyer to a lawyer representing another in a matter of common interest.

NRS 49.105 Who may claim privilege.

1. The privilege may be claimed by the client, the client's guardian or conservator, the personal representative of a deceased client, or the successor, trustee or similar representative of a corporation, association or other organization, whether or not in existence.

2. The person who was the lawyer at the time of the communication may claim the privilege but only on behalf of the client. The person's authority to do so is presumed in the absence of evidence to the contrary.

NRS 49.115 Exceptions. There is no privilege under NRS 49.095 or 49.105:

1. If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud.

2. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction.

3. As to a communication relevant to an issue of breach of duty by the lawyer to his or her client or by the client to his or her lawyer.

4. As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness.

5. As to a communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients.

Kimberly was Ms. Wirth's client as defined in NRS 49.045. She specifically stated in her January 14, 2013 Declaration that she was told Ms. Wirth was her attorney. (See Exhibit "4" to Plaintiffs Motion to Compel Production of the file of Kathryn Stryker Wirth.) The issue of the attorney-client privilege was extensively briefed with regard to Ted's Motion to Compel. Kimberly is entitled to claim an attorney-client privilege pursuant to NRS 49.105, which

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provides that the privilege may be claimed by the client. None of the NRS 49.115 exceptions to the privilege apply to Kimberly's assertion of the privilege pursuant to NRS 49.095.

Ted argues that NRS 49.115(5) provides that there is no privilege when the lawyer is an attesting witness, since Ms. Wirth signed the Attorney Certification to the Prenuptial Agreement. This assertion makes no sense as there is no such statutory exception to the attorney-client privilege. Subsection 5 of NRS 49.115 provides that there is no privilege under the statute: "As to a communication relevant to a matter of common interest **between two or more clients** if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients." (Emphasis added). It is doubtful that Ted is now contending that Ms. Wirth represented both he and Kimberly. Moreover, that argument failed the first time he raised it before this Court in his Motion to Compel, and his attempt to raise this egregious argument again at trial must again be rejected by this Court.

Likewise, the information Ted seeks from Kimberly's attorney is protected from disclosure by the attorney work product doctrine. Again, as the issue of production of Ms. Wirth's file has already been adjudicated, Ted's arguments that the work product doctrine does not apply also must fail.

The work product doctrine originates in the Court's Rules governing the scope and limits of discovery. Specifically, NRCP 26(b)(3) provides:

> Trial Preparation: Materials. Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials **in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means.** In ordering discovery of such materials ***when the required showing has been made*, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.** A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof,

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which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

The burden of demonstrating "undue hardship" rests with the party seeking discovery." Wardleigh v. Second Judicial District Court, 111 Nev. 345, 358 (1995) (citing Admiral Ins. V. United States Dist. Court for Dist. Of Ariz., 881 F.2d 1486, 1494 (9th Cir. 1989)). Ted cannot demonstrate undue hardship where this Court has repeatedly found that the ultimate issue of whether specific performance should be ordered does not require disclosure of privileged communications between Ms. Wirth and Kimberly.

Again, the record in this matter is replete with this Court's Orders protecting the privileged portions of the Wirth file. This Court clearly recognizes, as does Ms. Wirth, that the attorney-client privilege must be preserved. This Court has gone to painstaking lengths to protect the privileged portions of Ms. Wirth's file, including documents protected by both the attorney-client privilege and the attorney work product doctrine. Early on in the case, Ted's attorneys requested the protocol that any privileged documents contained in the Wirth file would be designated in a privilege log. The parties stipulated that only non-privileged portions of Ms. Wirth's file would be produced to Ted and his counsel, and that a privilege log would be prepared reflecting all portions the file not produced based upon being protected by the attorney-client and attorney work product doctrine's.

Since that time, this Court has not entered any Orders finding that the contents of Ms. Wirth file which have not been produced to Ted already are not protected by the privilege. In fact, Ted's attorneys filed a Motion to Compel production of the entire Wirth file several months later. At the hearing of that Motion, on October 10, 2013. the Court specifically stated:

> I really do need more information on whether or not an attorney/client relationship formed way back in 1990 something.
>
> And so for that reason, I'm granting the Plaintiffs motion as to the privilege log. I want the 12 documents that were not produced delivered to my chambers, not filed of course, for in camera review. And Mr. Jones, I – I agree with you that sometimes, you know, as lawyers we put in our letters a strategy that might be down the road. I agree with you.
>
> And I think that I would be inclined that if that strategy appears in the -- in the documents, I would be inclined to redact that strategy, because it's only the

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current timeframe of when they're discussing the prenup of what should go in the prenup, what shouldn't go in the prenup and their relationship as attorney/client that would be relevant at the time of the hearing.

And so I would be looking for -- for that and I would -- I would be inclined to redact that. So if I see information that I think is appropriate for redacting, I will copy the documents and redact them and release the redacted versions.

See **Exhibit "B"** hereto, transcript of the October 10, 2013 hearing in this matter, at page 48, lines 3-24.

Again, when Ted's attorneys demanded production of privileged documents from the Wirth file at a hearing on October 17, 2013, this Court affirmed its previous Order and the privilege log protocol as follows:

On the issue of the letter [Wirth's June 23, 1998 ten-page correspondence to Kimberly], I'm – I'm still not inclined to release it just -- I released the first page which was relevant to the issue as to whether or not there may or may not be an attorney/client privilege relationship between Ms. Jones and Ms. Wirth. The first page I thought went to that issue. The part of the second page that I released I believe went to that -- that issue. . . .

The rest of the letter goes to strategy and analysis. It does not go to whether or not there was or may have been or may not have been an attorney/client relationship between the parties. It's attorney strategy in my view and how not release it. . . .

And I – I thought the pertinent parts were released to you and I maintaining the rest of the privilege.

See **Exhibit "C"** hereto, transcript of the October 17, 2013 hearing in this matter, at pages 34, lines 17-23; pages 35-36, lines 23-3; page 36, lines 14-16.

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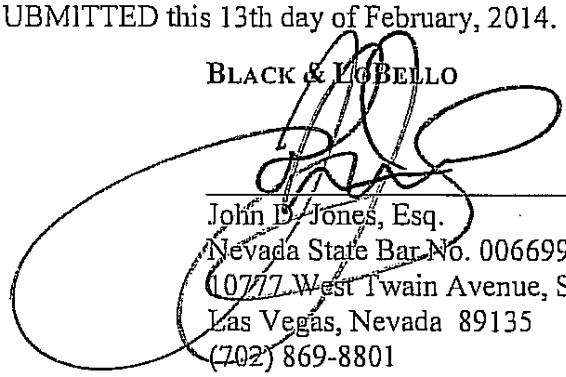
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Ted's request that this Court ignore all previous Orders and the law of the case, demanding documents which are clearly protected by the attorney work product doctrine, is intellectually dishonest and flies in the face of the sanctity of the attorney-client privilege. This court has been well briefed on the log related to attorney-client privilege and the attorney work product doctrine. Suggesting that the well-settled law of this State, and the law the case, now be ignored is vexatious and disingenuous.

RESPECTFULLY SUBMITTED this 13th day of February, 2014.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & LOBELLO and that on the 13th day of February, 2014, I caused the above and foregoing document entitled DEFENDANT'S RESPONSE TO PLAINTIFF'S NOTICE AND MEMORANDUM OF PENDING HOUSEKEEPING MATTERS, to be served as follows:

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

[ ] pursuant to EDCR 7.26, to be sent via facsimile;

[XX] by email to jjj@jimmersonhansen.com; smg@jimmersonhansen.com; bruce.cooperman@wccfamilylaw.com; sh@jimmersonhansen.com; and ks@jimmersonhansen.com

[XX] hand delivered

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

James J. Jimmerson, Esq.
Shawn M. Goldstein, Esq.
JIMMERSON HANSEN, P.C.
415 South Sixth Street, Suite 100
Las Vegas, Nevada 89101
Facsimile: (702) 387-1167
Attorneys for Plaintiff

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

An Employee of Black & LoBello

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Jones, Kimberly

Transcript of Proceedings 2014-02-13 (ROUGH)

2/13/2014

Full-size Transcript

Prepared by:

Kevin Kenna
Kolodny & Anteau

Thursday, February 13, 2014

UNCERTIFIED ROUGH DRAFT TRANSCRIPT ONLY

UNCERTIFIED TRANSCRIPT DISCLAIMER IN THE MATTER

OF

JONES VS JONES

-o0o-

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THE PURCHASER ACKNOWLEDGES THAT THEY WILL BE BILLED AN ADDITIONAL PRICE PER PAGE FOR THE ROUGH DRAFT TRANSCRIPT; AND, FURTHERMORE, THAT THIS CONSTITUTES THE PURCHASER'S ORDER FOR A CERTIFIED COPY OF THE FINAL TRANSCRIPT.

THE COURT: Good afternoon.
Okay. This is the Jones matter D12470239.
Counsel, your appearances?
MR. JIMMERSON: Jim Jimmerson, Shawn Goldstein, Ryan McIntire, Philip Seastrom on behalf of plaintiff Fletcher Jones and Mr. Jones.
MR. JONES: John Jones and Steve Kolodny, Heidi Madzar and Michelle LoBello on behalf of the defendant.
THE COURT: Welcome everyone. All right. I'm making rulings. Here we go.
MR. KOLODNY: Before the Court makes a ruling, may I address the Court?
THE COURT: Sure.
MR. KOLODNY: Thank you.
THE COURT: What is the issue?
MR. KOLODNY: With regard to the privilege.
THE COURT: I'm not hearing argument. I had a memorandum from both sides. Did you enter into a stipulation?
MR. KOLODNY: No.
THE COURT: Okay. I have memorandums from both sides.
MR. KOLODNY: Well, may I address the

THE COURT: Thank you. The record is corrected from Mr. Jimmerson's statement.

On the issue of attorney-client privilege. Again I have typed up my rulings, they are my findings, my order and I will not entertain any argument.

This Court has had 16 months -- this is on the issue for the record on attorney-client privilege and work product which came before this Court after I think it was two days of serial objections on the issue of privilege. The Court wanted to research it and make rulings and move on with this matter.

This Court has had 16 months of motion practice before it bringing eight lawyers and myself to what was scheduled as a 12-day trial. We are in I count day five.

This Court has previously maintained that there was an attorney-client privilege as between Kathryn Wirth and the defendant Kimberly Jones formerly known as Moffatt.

I have previously reviewed an attorney-client file between those two releasing what I deem to be records that are not privileged or work product to avoid another day or two of

objections on this issue of privilege, I asked for a memorandum and make the following ruling.

Without testimony in this trial the Court finds -- without testimony in this trial from the defendant on the issue of her relationship with Ms. Wirth my ruling is that there is an attorney-client privilege and that stands.

I base this on documents that have Ms. Wirth's signature on them as defendant's counsel. I also based it on Ms. Wirth's testimony that she believes that she has an attorney-client privilege and was reluctant to testify on certain issues.

Now, the interesting argument was posed by plaintiff that defendant has claimed to have had no relationship with Ms. Wirth prior to July 1st so there is no attorney-client relationship, therefore, there's no privilege to assert.

The Court understands that argument. However, I have no testimony in this trial yet consistent with that argument. So I can't make a finding in response to that argument.

Plaintiff has leave to make an oral

motion for a finding that there was no privilege prior to July 1st based on defendant's testimony if a record is made consistent with that argument.

Okay. That's on the issue of privilege and if it comes to that, Mr. Kolodny, and you feel the need to thus then respond to plaintiff's filings, you may do so at that time.

MR. KOLODNY: Thank you, Your Honor.

THE COURT: Okay. As to Ms. Swarts handwritten records, our presiding judge is Charles /HAUS kin and he has been briefed by me on the issue of the privilege and work product that has come before this Court. He has --

He will, Judge /HAUS kin will conduct an in-camera inspection of the handwritten notes that were turned over to defense counsel on Monday, February 10th.

He will redact those notes he does not believe to be privileged consistent with my order. My order is that I find that dates in which Ms. Swarts spoke to Kimberly Moffatt are not privileged. Dates she made appointments to meet with Kim Moffatt are not privileged. Dates she actually meet with her are not privileged.

Ms. Swarts notes as to conversations she had with Mr. Silverman or Mr. DeCaria are not privileged. As I have already released her billing records which reflect time on the case, notations as to time are not privileged and that is so ordered.

Mr. Jones, you will prepare a copy of those notes, put them in a sealed envelope to the attention of Judge /HAUS kin. I don't know if you want to just --

Do you have access to the court reporter in dailies or no?

MR. KOLODNY: Yes.

THE COURT: I would be okay if you just printing out what I put on the record for Judge /HAUS kin to review so he will have that and we can do that on an expedited form. He will make himself available immediately to take care of that.

All righty. I actually meant to have Ms. Wirth in the courtroom when I read that and I didn't do that because that might have been helpful to her.

All right. So, Mr. Jimmerson, your next witness.

MR. JIMMERSON: Thank you. Just for

points of honoring Your Honor's directive, I would like to call Kimberly Jones to the witness stand today and whether or not she's going to keep to her story that she never met with Ms. Wirth in June or if she's going to change her testimony. I note that she's not present. I simply want to call that to the Court's attention. I would prefer to call Kim Jones as my first, that being said I'll continue with Ms. Wirth.

MR. KOLODNY: I'm not going to say anything.

THE COURT: Good afternoon.

MR. JIMMERSON: At the break I would like to have a list of witnesses that the defendant promised at the beginning of trial today. I did want to say to help opposing counsel it may be possible that Robert Cox give one hour of further testimony but I don't know yet.

MR. KOLODNY: May I respond just briefly?

THE COURT: On the issue of witnesses, yes.

MR. KOLODNY: Two things. First, it

was stated in this courtroom before I think by Your Honor that the testimony of this witness was going to be finished before Kimberly Jones was called to testify, she's in Nevada as the Court requested. She is here in Las Vegas.

With regard to the list of witnesses that we will be providing, I would like although I don't remember what I told Mr. Jimmerson about this yesterday, I may have said before today I would like to have until Tuesday at five o'clock to provide him with that list. Monday at least in California is a legal holiday, people won't be working in my office, last night was devoted to things pertaining to these motions and this witness and I think tonight and tomorrow will be pretty time filled for me.

So I'd like until five o'clock Tuesday to notify Mr. Jimmerson with regard to that.

THE COURT: Well, Mr. Kolodny, -- well, I'll hear from Mr. Jimmerson first.

MR. KOLODNY: Maybe I could just augment, I'm sorry. Part of the reason for the delay on this is originally there was a very long list of witnesses by the plaintiff which has changed. Apparently many of them are not going

to be called, that changes how we view what we are go to do so my request is Tuesday at five o'clock Pacific time.

MR. JIMMERSON: I just have -- whatever you order we will comply with. You ordered Ms. Jones here today, she's not here. They suggested today being the time for witnesses, you know, it's fine. Tuesday at 5:00 -- at 5:00 but I want a firm order that we have it in writing before that time.

I also just advise the Court as the Court can see and observe it may be inescapable and unavoidable that Ms. Wirth has to come back after Ms. Jones's testimony. I don't know. We are in this together but I just want to reserve my right to not have to speak to Ms. Wirth or release her from subpoena or otherwise so as to protect her relative to the potential of her having to come back depending on what we listen to tomorrow or when we begin to complete Ms. Jones.

THE COURT: Unfortunately that's true, Ms. Wirth, based upon rulings I just made so if your testimony were even concluded today or tomorrow you would still be under subpoena and

Wirth and the firm, then the Court can proceed from there and we can better guide it.

She was supposed to be here today. I certainly would like to have her here tomorrow. I can do it in one hour's time, we can establish this one area June 10, 1998 to July 1, 1998 in an hour and know exactly what her position is.

THE COURT: Well, she was supposed to be here today.

MR. KOLODNY: She's here. The Court also said -- excuse me.

The Court also said without any question that the testimony of this witness was going to be finished first before she was called.

The testimony of this witness was clearly not going to finish today. She is here in Las Vegas. I made sure she was here because that's what you said but you also said that the testimony of this witness goes forward and is completed first.

Mr. Jimmerson had the right to proceed with this case in a different fashion. He chose not to do that.

You had a right to make a different order, you didn't make that order and so the

evidence goes as the evidence goes now but that -- this continued argument about the case as Mr. Jimmerson would like to see it and this continued like closing argument in these objections doesn't move this case forward.

MR. JIMMERSON: I subpoenaed Ms. Jones to be here as my first witness.

MR. KOLODNY: Mr. Jimmerson -- I'm sorry, Your Honor, again I can never finish anything when Mr. Jimmerson wants to speak.

I think the testimony of this witness should be completed and then we'll move on with the rest of the case.

THE COURT: Thank you. Mr. Kolodny. All right. Here's my ruling because I made rulings as to privilege that effect the -- at least the plaintiff's case, I don't know about the defendant's case, I think that it is fair to grant Mr. Jimmerson's request to take witnesses out of order at this point and I'm ordering that Ms. Jones be here at eight o'clock tomorrow morning to be examined by the plaintiff.

Are you going to --

MR. JIMMERSON: I'm going to narrow it to the issue here.

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MR. JIMMERSON: I'm going to narrow it to the issue here.

Honor.

THE COURT: Okay. That's fine with me. Okay. Ms. Wirth -- we can excuse Ms. Wirth for today?

MR. JIMMERSON: Yes, Your Honor.

MR. KOLODNY: As far as I'm concerned.

THE WITNESS: What time should I be here tomorrow?

THE COURT: Well, why don't you be here by nine.

THE WITNESS: All right. Thank you.

THE COURT: Bring a book.

THE WITNESS: Yes, I will.

THE COURT: All right. Just as a housekeeping matter, one side of the other offered daily transcripts of the trial to the Court or to the clerk, I would like to have them available but I want permission from both sides before I were to take advantage of that.

MR. JIMMERSON: In that regard, Judge, I offered Mr. Kolodny and Mr. Jones that Mr. Ted Jones would be 50-50 and we'll split the cost evenly as opposed to an original one to one side and the copy to the other.

THE COURT: I just need a rough

DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

FLETCHER JONES, JR.,	)	
Plaintiff,	)	
vs.	)	Case No. D-12-470239-U
KIMBERLY JONES,	)	
Defendant.	)	

REPORTER'S TRANSCRIPT OF TRIAL

DAY 6

BEFORE THE HONORABLE JUDGE GAYLE NATHAN

FAMILY COURT, DEPARTMENT T

DATED FRIDAY, FEBRUARY 14, 2014

REPORTED BY: AMBER M. RIGGIO, CCR NO. 914

JOB NO.: 202771

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LAS VEGAS, NEVADA; FRIDAY, FEBRUARY 14, 2014
8:18 A.M.
* * * * *

P R O C E E D I N G S

* * * * *

THE MARSHAL: All rise, come to order. The court is now in session. The Honorable Gayle Nathan presiding.

THE COURT: Good morning, everyone.

My heart-felt apologies for being late. I got in the car and it was on empty at a point that I didn't dare trust it, so...

THE MARSHAL: You may be seated.

THE COURT: That's my excuse.

Okay. We're back on, Jones v. Jones, D-12-470239.

Mr. Jimmerson, your appearances.

MR. JIMMERSON: Thank you.

Jim Jimmerson, Shawn Goldstein, Ryan McIntire, Phil Seastrom, on behalf of the plaintiff, Fletcher Jones, Jr., and the plaintiff is present, Mr. Jones, Jr.

MR. JONES: John Jones, Stephen Kolodny, Heidi Madzar, Michele LoBello, appearing on behalf of Kimberly Jones.

THE COURT: All right. Good morning and

consideration."

First, did I accurately read that paragraph --

MR. KOLODNY: Objection --

Q. (By Mr. Jimmerson) -- into the record?

MR. KOLODNY: Objection to the relevance, Your Honor, and this is beyond the scope of what this limited purpose for which the witness was stated to be called is about.

THE COURT: I don't know if it's beyond the scope yet, so that's overruled. Relevance is overruled.

Q. (By Mr. Jimmerson) The question is: Did I accurately read it into the record, Ms. Jones?

A. Yes, you did.

Q. All right. And your signature follows directly below it; is that right?

A. Yes.

Q. All right, thank you.

Now, if you would look at Exhibit 208 -- I'm sorry, 207. Do you have that before you? It's book 9 of 9. It's a really thin book.

A. No, I don't.

Q. It's 207, I'm sorry. It's your affidavit.

MR. KOLODNY: Where are we on 207, please?

MR. JIMMERSON: And I asked -- the question did ask within her deposition, Your Honor.

THE COURT: So the question is: Did you testify at your deposition that...

MR. JIMMERSON: That the June 23, 12-page letter was created by Kimberly -- by Kathryn Wirth for purposes of covering herself for liability.

THE COURT: And you have an objection to that?

MR. KOLODNY: Objection is it misstates, because it doesn't include all of her testimony on that subject.

THE COURT: Well, you'll have your turn if you want to bring it out on your examination. Overruled.

Answer the question.

THE WITNESS: No, that's -- that's not what my testimony was.

MR. JIMMERSON: All right. Would you play it, please?

Your Honor, we're going to play Page 301, deposition of Kimberly Jones, Volume II.

MR. KOLODNY: Excuse me, Your Honor?

THE COURT: Yes?

MR. JIMMERSON: I'm sorry, I misspoke.

MR. JONES: 106, 24, to 107, 5.

MR. KOLODNY: I was under the impression --

THE COURT: Okay. Hang on a second, Mr. Kolodny.

MR. KOLODNY: I'm sorry.

MR. JIMMERSON: They can certainly do this on their own cross-examination of their own witness this morning. I mean, I'm trying to be accommodating. I'm getting time blown away here.

THE COURT: All right, Mr. Kolodny. You'll have to pull that up on your examination.

MR. KOLODNY: May I -- Your Honor, isn't -- I was -- I was --

THE COURT: At some point, Mr. Jimmerson stipulated to some portions. This is his witness, and I'm -- my ruling is you can pull it up during your examination. I need to keep moving the case along.

MR. KOLODNY: Well, there's a -- I believe there's a rule of completeness with regard to the depositions.

THE COURT: I've ruled.

Mr. Jimmerson, proceed.

MR. JIMMERSON: Thank you. And I have no objection if Mr. Kolodny wants to read another section, that's his right, just like they designate depositions

THE WITNESS: I'm sorry, can you repeat the question?

Q. (By Mr. Jimmerson) Yes.

Was Kathryn Stryker Wirth your lawyer prior to July 1 of 1998?

A. I believe she was.

Q. Okay. What's the basis for that answer?

A. That she was acting on my behalf to negotiate a prenuptial agreement.

Q. And did you authorize her to do so?

A. No. Ted asked me --

Q. Just answer yes or no. Did you authorize her to do so?

A. Me, personally?

Q. Yes, ma'am. Yes, personally.

A. No.

Q. And you never spoke to her before July 1 of 1998?

MR. KOLODNY: Cumulative.

THE COURT: Overruled.

THE WITNESS: No, not that I remember.

Q. (By Mr. Jimmerson) And on July 1 of 1998, did you speak to her to ask whether or not she had been serving as your lawyer prior to July 1 of 1998?

A. No.

MR. KOLODNY: Objection. Objection, privilege.

Q. (By Mr. Jimmerson) Was she your lawyer on July 1 --

THE COURT: Wait a second. Was the question privileged? Did she ask her if she was serving as her lawyer before July 1st?

MR. KOLODNY: Yes.

THE COURT: Overruled.

MR. JIMMERSON: She answered no, she did not.

Q. (By Mr. Jimmerson) Correct, ma'am?

A. Yes.

MR. KOLODNY: The answer is in the record, Your Honor.

Q. (By Mr. Jimmerson) And are you -- did you establish an attorney-client privilege relationship on July 1 of 1998?

MR. KOLODNY: Objection, this calls for a legal opinion as phrased.

MR. JIMMERSON: I'll rephrase it.

Q. (By Mr. Jimmerson) Did you have an understanding that Kathryn Stryker Wirth was becoming your lawyer on July 1 of 1998?

A. Becoming?

MR. KOLODNY: Objection, it would also call

for privilege.

THE COURT: Overruled.

THE WITNESS: That she was becoming my lawyer?

Q. (By Mr. Jimmerson) Yes, on July 1.

A. No. I was told she was my lawyer.

Q. On that day?

MR. KOLODNY: Objection, misstates.

THE COURT: You know what? Jim, just -- Mr. Jimmerson, if you could ask a question that --

Q. (By Mr. Jimmerson) Had anyone --

THE COURT: -- that ties it together.

Q. (By Mr. Jimmerson) You testified in your affidavit, paragraph 11 I've just read, that I was told Ms. Wirth was my attorney on July 1 of 1998; is that correct?

MR. KOLODNY: Just a moment, please.

It misstates, Your Honor. Paragraph 11 does not say that.

MR. JIMMERSON: Okay. I'm asking a separate question.

MR. KOLODNY: Well, then --

Q. (By Mr. Jimmerson) Were you told on July 1, 1998, that Kathryn Stryker Wirth was your lawyer, yes or no, ma'am?

are --

THE COURT: Okay. It was argumentative. Sustained as to argumentative.

Q. (By Mr. Jimmerson) So the answer is no, you received nothing from her personally?

A. That is correct.

Q. Nothing came to you in the mail?

A. That I received?

Q. Yes, ma'am.

A. No.

Q. Where were you living on July 1 -- or in June of 1998?

MR. KOLODNY: I'm sorry?

Q. (By Mr. Jimmerson) Where were you living in June of 1998? What was your address?

A. What my residence was? It was 37 Linda Isle in Newport Beach, California.

THE COURT: Actually, the question was: Where were you living in June of 1998? Were you living at that residence?

THE WITNESS: Yes.

THE COURT: Okay.

Q. (By Mr. Jimmerson) And are you claiming today that there was an attorney-client privilege -- excuse me -- that there's an attorney-client relationship

between you and Kathryn Stryker Wirth in the month of June of 1998, yes or no, ma'am?

MR. KOLODNY: Objection, that calls for a legal opinion and conclusion.

MR. JIMMERSON: I'm asking her understanding.

THE COURT: Overruled.

THE WITNESS: Am I claiming that today that we had attorney-client privilege in June?

Q. (By Mr. Jimmerson) Yes, ma'am.

A. I would think so, yes.

Q. What is the basis for that claim that you had an attorney-client relationship with a woman you never spoke with?

A. Well, that she was acting on my behalf to negotiate this prenuptial agreement.

Q. And in -- following up with that last answer, you never authorized her to act on your behalf yourself, did you?

A. I authorized Howard Miller to find me an attorney.

Q. I see.

A. And according to him and Ted, that's what they did, and that person was Kathryn Stryker Wirth.

Q. When did you authorize Howard Miller to find you an attorney?

Q. And the next question asked of you, I would call your attention, is at Page 6, the same page, Lines 16 through 25.

"Question: Again, without telling me anything that you two have spoken about specifically, are you satisfied that you know everything you might want to know about this agreement?

Answer: Yes.

Question: Besides the agreement, have you read the attachments that are basically the financial disclosures?

Answer: Yes, I have."

In answering the questions in that manner, are you in any way referencing any activity prior to July 1 of 1998?

A. Well, yes, I am.

Q. What are you referring to?

A. Well, Ms. Wirth and I had had discussions of conversations that -- recommending changes to the prenuptial agreement that day that had to do with previous conversations and also what her concerns or her ideas were.

Q. What previous conversations did you have with her prior to July 1 of 1998?

A. Not that I had had with her, but that she had had with Gary Silverman and Mary Anne Decaria.

Q. Did she tell you, on July 1, 1998, that she had had prior conversations with Gary Silverman and Mary Anne Decaria?

MR. KOLODNY: Objection; privileged, hearsay.

THE COURT: Did she tell you...

MR. KOLODNY: She had conversations?

THE COURT: Yeah, overruled.

Q. (By Mr. Jimmerson) Yes or no, ma'am?

A. Did -- did Ms. Wirth tell me that she had had discussions with -- actually, it was Howard Miller, Mary Anne Decaria, and Gary heard -- actually, she referred to Silverman's office.

Q. Yes.

A. That day on July 1st, yes, she did.

Q. Okay. And did you understand that she had had those conversations prior to July 1 of 1998?

A. I don't think -- I don't -- I don't recall. I don't know.

Q. You don't recall?

A. I was with the impression that she had, the way she spoke.

Q. All right. Where were you physically located when you signed the prenuptial agreement, Exhibit 7?

THE WITNESS: Ted asked me --

MR. JIMMERSON: Excuse me, move to strike the answer.

Q. (By Mr. Jimmerson) Did you ever speak to Howard Miller?

THE COURT: Stricken.

THE WITNESS: No. I never personally spoke with Howard.

Q. (By Mr. Jimmerson) Did you look through -- withdraw.

Were there any changes or revisions made in the prenuptial agreement from its first draft in June of 1998 to the final one, signed on July 1 of 1998 --

MR. KOLODNY: Objection --

Q. (By Mr. Jimmerson) -- to your knowledge?

MR. KOLODNY: Objection; foundation and privilege.

THE COURT: Overruled.

THE WITNESS: Yes, there was.

Q. (By Mr. Jimmerson) Okay. And from whom did you learn that there were revisions made?

MR. KOLODNY: Objection, privilege.

THE COURT: Overruled.

THE WITNESS: From Ms. Wirth.

Q. (By Mr. Jimmerson) When did you learn of that

from Ms. Wirth?

A. When we met on July 1st.

Q. Not before?

A. Not that I remember.

Q. What does that mean, "not that I remember"? Is it possible that there were conversations, but today, in February of 2014, you just don't remember?

A. That's not what I'm saying.

Q. What are you saying, ma'am?

A. I'm saying that this happened 15 years ago, and I stand by each and every single one of my declarations. To the best of my recollection, to the best of my memory, this is what I recall, and I'm standing by it.

Q. Okay.

A. But is there a possibility that -- I guess there's always a possibility. I claimed in my deposition that I was not 100 percent certain, that I was 99.9 percent certain.

Q. All right, thank you.

Would you look, please, at paragraph 13 of Page 3 of your declaration of January 14, 2013, attached to the brief of January 18, 2013.

MR. KOLODNY: Which document is that by exhibit number?

MR. JIMMERSON: It's 207, Counsel.

Q. (By Mr. Jimmerson) Do you have that before you, ma'am?

A. Yes, I do.

Q. It reads, "I never participated in any 'negotiations'" -- with the word "negotiations" in quotes -- "with Ted or his attorneys regarding the prenuptial agreement, nor did Ms. Wirth ever explain any of the provisions of this agreement to me."

See that?

A. Yes.

Q. Okay.

THE COURT: Mr. Jimmerson, the Court has to ask a question.

MR. JIMMERSON: Yes, Your Honor.

THE COURT: Mrs. Jones, did -- I thought I heard you testify that you never spoke to Mr. Miller, Howard Miller, before July 1st --

THE WITNESS: No, that's not --

THE COURT: -- about the prenuptial agreement.

MR. KOLODNY: No.

THE WITNESS: No, that's not what I said.

THE COURT: That wasn't your testimony?

MR. KOLODNY: Never.

THE COURT: Excuse me, sir. I'm not asking for your input. I'm asking the witness a question.

Is it your testimony that Howard Miller was your attorney?

THE WITNESS: No, that's not my testimony.

THE COURT: Okay, thank you.

MR. JIMMERSON: Okay. Court's indulgence.

Q. (By Mr. Jimmerson) And comparing that statement in that affidavit -- in all these affidavits with your testimony in Exhibit 11, the transcript of proceedings, a question was asked of Mr. Silverman -- by Mr. Silverman of you, and your answer was, Lines 13 through 15, Page 6:

"Question: And in each draft -- and as each draft has evolved, you've discussed those with your lawyer?

Answer: Yes."

All right. So how do you square your testimony at paragraph 13 that you never participated in any negotiations with Ted or his attorneys regarding the prenuptial agreement with your testimony today that you participated with numerous changes on July 1 of 1998?

MR. KOLODNY: There's no such testimony.

MR. JIMMERSON: The Court has to call upon

its own recollection. I'm not going to argue that.

THE COURT: Overruled.

Q. (By Mr. Jimmerson) You can answer, ma'am.

A. On July 1st, Kathryn Wirth went over some of the negotiation exchanges that had taken place during the month of June, like just -- or I assumed they were in the month of June. I didn't think this document had just been drafted.

Q. Do you realize you testified about 30 minutes ago that the only revisions that you were aware of was July 1 of 1998?

A. She discussed concerns with me and the changes that she had made, had the other side -- or discussions that she had had.

Q. So contrary to your testimony in an affidavit that "I have never participated in negotiations with Ted or his attorneys regarding the prenuptial agreement," in fact, you did so at the very least on July 1 of 1998. Correct?

MR. KOLODNY: Objection, it's argumentative and misstates the testimony of the witness.

MR. JIMMERSON: It's cross-examination, Your Honor.

MR. KOLODNY: They can't state the testimony in cross-examination as a -- misstated evidence as a

MR. KOLODNY: If Mr. Jimmerson wouldn't misstate, then we wouldn't need to have these objections.

MR. JIMMERSON: All he has to say is, Mr. Jimmerson has misstated the question, not then suggest how he misstated it and how the witness might rescue herself.

MR. KOLODNY: Well, it's not a suggestion for rescue, Your Honor.

THE COURT: It is --

MR. KOLODNY: It's a suggestion to draw the Court's attention what the misstatement is so the Court can rule -- properly rule on the objection.

THE COURT: Okay. If I need help with direction, I'll ask for it. Misstating the evidence -- you know what? I need a break. I need a break. So do you want this to be a 10-minute break or 20 minutes so you can get refreshed, Mr. Jimmerson?

MR. JIMMERSON: I'd like to have -- I'm almost finished, so whatever the Court wishes. Ten minutes would be my desire, but I'm only one person and I don't want to impose my will upon anybody, Judge.

THE COURT: Well, let me ask this question. Here's my thought. Judge Hoskin, this morning, has been reviewing the notes, and so they might be ready

for me to hand out. And if they are, then I don't know if you're going to use them in this examination or not.

MR. JIMMERSON: Of course.

THE COURT: So that's part of I need a break, number one.

MR. KOLODNY: I understand that.

THE COURT: But if I can get something else accomplished during the break -- why don't we call it a 20-minute break. Okay?

MR. JIMMERSON: Thank you, Your Honor.

THE COURT: Ms. Jones, you are not to discuss your testimony with anyone when you leave the stand. You may leave the stand, but you may not discuss it with anyone.

THE WITNESS: Okay.

THE COURT: Okay?

(A brief recess was taken from 10:57 a.m. until 11:49 a.m.)

THE MARSHAL: Court is back in session.

THE COURT: All righty. We're back on in Jones v. Jones.

During the break, I gave counsel Ms. Wirth's handwritten notes that presiding Judge Charles Hoskin had reviewed and redacted with my instructions that were put on the record yesterday.

Right?

A. Yes.

Q. And you had not personally authorized her to act on your behalf. Correct?

A. I didn't know how to get ahold of her to do that. I didn't even know that she had been selected.

Q. So the answer is that's correct?

A. Correct.

Q. You hadn't personally authorized her to act on your behalf?

A. Personally, no.

Q. Okay. And you deny receiving any of the documents that Ms. Wirth, through her billing statements as evidenced, you received in June of 1998?

MR. KOLODNY: Objection; cumulative, it's been asked and answered.

THE COURT: Yeah, sustained.

MR. JIMMERSON: All right, thank you.

Q. (By Mr. Jimmerson) Was Kathryn Stryker Wirth your attorney in June of -- June of 1998?

MR. KOLODNY: Objection, ambiguous.

THE COURT: Ambiguous? Overruled.

THE WITNESS: Do I think she was my attorney in June of 1998?

Q. (By Mr. Jimmerson) That's the question,

ma'am.

A. Yes, I do.

Q. And what's the basis for believing that?

A. Well, she --

MR. KOLODNY: It's been asked and answered, cumulative. We've done this.

THE COURT: Overruled.

MR. KOLODNY: We've done this before the break.

MR. JIMMERSON: We've had no testimony with regard to how she understood that.

THE WITNESS: Is that the question?

THE COURT: Overruled.

Q. (By Mr. Jimmerson) The question is: What is the basis for your belief? Yes, ma'am, that is the question.

A. That she was acting on my behalf in discussions with Ted's attorneys, particularly Gary Silverman and Mary Anne Decaria, regarding the prenuptial agreement.

Q. You have no personal knowledge of that, do you, since you never talked to Mr. Silverman and you never talked to Ms. Wirth or Mr. Miller in June of 1998 about the prenuptial agreement?

MR. KOLODNY: Objection to the form of the

Q. Did Kathryn Stryker Wirth serve as a lawyer for Gary Silverman in June of 1998?

A. I would have no knowledge of that.

Q. Or Mary Anne Decaria?

A. Again, I would have no knowledge.

Q. Thank you.

How did you know, then, that Kathryn Stryker Wirth was your lawyer in June of 1998?

MR. KOLODNY: Objection, cumulative.

THE COURT: Overruled.

THE WITNESS: Because she told me.

Q. (By Mr. Jimmerson) When did she tell you?

A. July 1st of 1998.

Q. And what did she tell you?

MR. KOLODNY: Objection; privilege, hearsay, relevance.

MR. JIMMERSON: She's waived the privilege, Your Honor, through her affidavits that we've introduced seven of, as well as the answer given just now.

THE COURT: Overruled.

MR. JONES: Well --

THE WITNESS: She had reviewed a few of the items that had been changed in the prenuptial agreement due to the conversations she had had with Gary

Silverman.

Q. (By Mr. Jimmerson) Okay. And did she say that she was doing so without ever having spoken to you prior to July 1 of 1998 and having your authorization of the same?

MR. KOLODNY: Objection; compound and calls for privilege.

THE COURT: Overruled.

THE WITNESS: Did she tell me -- I'm sorry. Can you repeat the question?

MR. JIMMERSON: Could you read the question back, please, Amber? Please.

(Whereupon, the deposition record was read.)

THE WITNESS: Well, she didn't have to tell me that.

Q. (By Mr. Jimmerson) How could she negotiate on your behalf the prenuptial agreement through drafts of June -- multiple drafts in June of 1998 without you ever having communicated with her --

MR. KOLODNY: Objection --

Q. (By Mr. Jimmerson) -- in the month of June of 1998?

MR. KOLODNY: Objection, it calls for conclusion of speculation.

THE COURT: Overruled.

THE COURT: Well, I -- she's asserting that there is no -- she's testifying that there was no privilege, there was no relationship. I don't know how you can have a privilege in June.

MR. KOLODNY: It's not -- that's not -- well, I don't believe that's correct, Your Honor. She said she believed that Howard Miller and Mr. Jones had made arrangements to hire a lawyer for her. The fact that she doesn't have contact, direct contact, with a lawyer that somebody else hires for her doesn't mean that there's not an attorney-client relationship.

MR. JIMMERSON: The response, however, is that the witness, the other party to this, the lawyer says that all of this is fabrication, all of this is made up.

MR. KOLODNY: Which lawyer said that?

MR. JIMMERSON: You cannot -- you cannot create an attorney-client privilege which the burden upon the defendant to establish a relationship in that manner.

MR. KOLODNY: Wirth established -- excuse me. Ms. Wirth established the relationship, Ms. Wirth asserted the privilege, and Mr. Silverman acknowledged the privilege and the relationship at the time of this prove-up thing.

MR. JIMMERSON: And I -- Judge, I concur with that because I think if you start with the hearing and the ruling of the Court on October 31 of 2013, the willingness of the Court to withhold portions of the privilege log, Exhibit 49, the redaction of the greatest portion of the 12-page letter of June 23, which is Document 3 of Exhibit 1, evidences the Court's disbelief of the defendant's testimony that there was no meeting, conversation, or attorney-client privilege in June of 1998; otherwise, the Court would have just delivered everything over. And as part of the ultimate conclusion of this case will be a finding, we would request, perhaps opposed or not, as the case may be, by defendant that there was, in fact, an attorney-client privilege, that it was formed in June of 1998, that the withholding of the documents therefore was prudent -- or the testimony of the defendant is incorrect, should I say.

THE COURT: Okay, hang on just one second.

Ms. Jones, I'm going to ask you to step out and sit in the anteroom for a moment during this, whether it's two minutes or five minutes. This can go on for a little bit.

(Whereupon, Kimberly Jones exits the proceedings.)

rely upon your own counsel, but I -- I would need an hour to look at it, Judge.

THE COURT: All right. I don't know. I don't know how important it is today, but on the issue of privilege, I'll have to hear from the defendant to see if the defendant's going to put on any testimony and I'll make a ruling on privilege.

MR. JIMMERSON: All right.

And, Judge, we are done with our direct.

THE COURT: You're done with your direct?

MR. JIMMERSON: Yes.

THE COURT: Oh, okay. It's five to 1:00.

MR. KOLODNY: I think fairly clearly, Your Honor, the issue about being represented by counsel is an important issue in both of our states relative to the validity and enforceability of the agreements, so while it may not come into play in the context of this case specifically, having both sides represented by counsel provides that layer of protection. And so in the instance of someone like Mr. Jones -- excuse me -- who is the wealthier person seeking protection, it is in his interest to see that the other side is represented by counsel.

THE COURT: Mm-hmm.

MR. KOLODNY: And I think the evidence here

following Ms. Wirth's testimony?

MR. JIMMERSON: Not Wednesday. A week from Wednesday.

THE COURT: The 26th?

MR. JIMMERSON: I'm definitely not releasing her. I have --

THE COURT: I understand. She was just here for --

MR. JIMMERSON: Narrow issue.

THE COURT: -- for the narrow issue of my determination on privilege.

MR. JIMMERSON: That's right.

THE COURT: Okay. So now we have defendant on defendant's case on privilege. Go ahead Mr. Kolodny or Mr. Jones.

MR. KOLODNY: Am I limited to privilege or am I limited to --

THE COURT: Well, you're not putting your case on yet. Plaintiff hasn't rested, so we're just on privilege.

MR. KOLODNY: Well, but -- but the Court didn't hold Mr. Jimmerson to just privilege and expanded that scope quite a bit, and I should be, I think, at least allowed to inquire with regard to the things that Mr. Jimmerson asked about.

THE COURT: Of course you can. Anything that was laid on the record.

MR. KOLODNY: Okay. That's fine.

CROSS-EXAMINATION

BY MR. KOLODNY:

Q. Good afternoon.

A. Good afternoon.

THE COURT: Do you need water or anything?

THE WITNESS: No, I'm good. Thank you, Your Honor.

THE COURT: All right.

Q. (By Mr. Kolodny) Tell the Court, please, how you first came to hear about a prenuptial agreement.

A. Ted brought it up to me.

Q. When and where?

A. I am going back about six to eight weeks prior to the wedding, so I believe it was like in May, first part of May, end of April. We were driving down to the Ritz Carlton in Dana Point where our ceremony was supposed to take place. We were meeting with the catering manager to select the menu for the reception and we were driving along PCH and --

Q. Pacific Coast Highway?

A. Yes, Pacific Coast Highway going south. We

Correct?

A. Yes.

MR. KOLODNY: Your Honor, I would ask that we stop for now --

THE COURT: Okay.

MR. KOLODNY: -- and pick up with this witness when we come back.

MR. JIMMERSON: Could I -- could I inquire as to whether or not -- and this is no limitation on Mr. Kolodny's questions or Mr. Jones -- as to how much more time he would need on the issue of the privilege because I do fear, in light of Ms. Wirth's request, that we are going to need to get her on and off from the 26th and 27th, and as Mr. Jones rightfully reminds me, we don't have the 28th. I'm thinking we do, but we don't. So I'm only a little worried about that.

THE COURT: Mr. Kolodny, how much more time do you need for that?

MR. KOLODNY: I estimate probably another -- well, I've had about an hour, I think.

MR. JIMMERSON: No, a little longer than that.

THE COURT: An hour? All right.

MR. KOLODNY: I said I think I've had about an hour.

MS. LoBELLO: Okay.

MR. JONES: Yeah.

MR. JIMMERSON: Thank you, Your Honor.

THE COURT: Thank you.

MR. JIMMERSON: And have a wonderful Valentine's to everyone and the staff and the Judge.

MR. KOLODNY: Everybody have a nice long weekend and a nice Valentine's Day.

THE COURT: All right, thank you.

See you guys in two weeks, I guess.

(Whereupon, the proceedings concluded at 2:08 p.m.)

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ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF PROCEEDINGS.

Amber M. Riggio, CCR No. 914

D-12-470239-U

DISTRICT COURT
CLARK COUNTY, NEVADA

Miscellaneous Complaint **COURT MINUTES** February 20, 2014

D-12-470239-U Fletcher Jones, Jr., Plaintiff(s).
vs.
Kimberly Jones, Defendant(s).

February 20, 2014 3:30 PM **Minute Order**

HEARD BY: Nathan, Gayle **COURTROOM:** Courtroom 05

COURT CLERK: Kathleen Boyle

PARTIES:
Fletcher Jones, Jr., Plaintiff, not present
Harrison Jones, Subject Minor, not present
Hayden Jones, Subject Minor, not present
Kimberly Jones, Defendant, not present

James Jimmerson, Attorney, not present

John Jones, Attorney, not present

JOURNAL ENTRIES

- The Court makes the following FINDINGS and ORDER:

This matter was last on Department T' s Calendar on February 14, 2014. On February 13, 2014 the Court determined that it needed testimony on the issue of whether Defendant Kimberly Jones formed an attorney-client relationship with attorney Kathryn Stryker Wirth in June 1998 through July 1, 1998 during the formation of a Prenuptial Agreement with Fletcher Jones so that the issue of attorney client privilege could be resolved. The serial objections on privilege were interrupting the flow of the trial; and distracting to the Court.

The Court heard Ms. Wirth' s testimony wherein she described approximately 20 pages of handwritten notes that she had taken during the month of June 1998 that detailed the making of this Prenuptial Agreement; telephone calls and meetings with Ms. Jones as well as with Fletcher Jones attorneys Gary Silverman; Mary Ann Decaria and Howard Miller (now Deceased). It is undisputed that these three named attorneys were Fletcher Jones' attorneys.

The Court released Ms. Wirth's 20 or so pages of notes after Presiding Judge Charles Hoskin redacted them, thus preserving the privilege until this Court could make an ultimate ruling. Said redacted notes have been turned over to the Plaintiff.

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Kimberly Jones testified that she never met Ms. Wirth prior to July 1, 1998 when she and Fletcher Jones went to Ms. Wirth's office to sign the Prenuptial Agreement. She testified that she was with Ms. Wirth from approximately 9:30 AM until approximately 2:30-3 PM. on July 1, 2014 and concedes that she formed an Attorney-Client relationship with Ms. Wirth on that day. Ms. Jones testified that they spent some time in Ms. Wirth s office and then went into a conference room where Mr. Jones was seated . At some point Attorney Silverman participated by Telephone.

Ms. Jones is adamant in her testimony that she never met or spoke to Ms. Wirth prior to July 1, 1998; she has no explanation for why Ms. Wirth has indicated in her billing statements that she not only met Ms. Jones but spoke to her on the telephone and included biographical data about her in a 12 page letter.

Ms. Jones speculates that attorney Howard Miller who was Fletcher Jones' attorney was negotiating terms on her behalf with Ms. Wirth, but there is no testimony that she authorized him to do so. Ms. Wirth s testimony contradicts Ms. Jones' testimony on this issue.

The Court FINDS that as Mr. Miller is deceased, it is unfair and prejudicial to allow anyone to testify as to what Mr. Miller may or may not have said in 1998.

The Court notes that a Court Reporter recorded the signing of the Prenuptial Agreement on July 1, 1998 and there is a Transcript of that proceeding; the Court Reporter recorded that Mr. Silverman participated by phone but Mr. Miller does not appear on the Record . Ms. Wirth appears on the Record representing Ms. Jones.

This Court has heard enough testimony on this narrow issue of privilege . The Court will not hear any more testimony on privilege or take any further evidence or hear argument on privilege .

NRS 49.015 provides for Who May Claim the Privilege and states:

(1) The privilege may be claimed by the client;

(2) The person who was the lawyer at the time of the communication may claim the privilege but only on behalf of the client. The person authority to do so is presumed in the absence of evidence to the contrary.

The Court FINDS that Kimberly Jones' testimony is that she formed an Attorney-Client relationship with Kathryn Stryker Wirth on July 1, 1998 when she met her for the first time. Therefore, she did not have an Attorney-Client relationship with her for the month of June 1998. Ms. Wirth is not entitled to assert the privilege on behalf of a client (Kimberly Jones) who denies the Attorney-Client relationship during the month of June 1998.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Kathryn Stryker Wirth's

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handwritten notes for all of June 1998 shall be turned over to Plaintiff's counsel, James J. Jimmerson, Esq., no later than noon, Monday, February 24, 2014. The redacting for July 1, 2014 and any dates thereafter shall remain. If there is any question regarding dates, then an unredacted set of the notes shall be submitted to Presiding Judge Hoskin with this Minute Order for review and further redacting.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's case in chief shall continue at the designated time already set on Wednesday, February 26, 2014.

IT IS SO ORDERED.

INTERIM CONDITIONS:

FUTURE HEARINGS:

Canceled: February 20, 2014 1:30 PM Evidentiary Hearing
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated
Nathan, Gayle
Courtroom 05

Canceled: February 21, 2014 2:00 PM Evidentiary Hearing
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated
Nathan, Gayle
Courtroom 05

Canceled: February 21, 2014 9:00 AM Evidentiary Hearing
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated
Nathan, Gayle
Courtroom 05

Canceled: February 25, 2014 9:00 AM Motion for Summary Judgment
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated - Moot
Courtroom 05
Nathan, Gayle

Canceled: February 25, 2014 9:00 AM Opposition & Countermotion
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated - Moot
Courtroom 05
Nathan, Gayle

February 26, 2014 1:30 PM Evidentiary Hearing
Nathan, Gayle
Courtroom 05

February 26, 2014 10:00 AM Trial
Nathan, Gayle
Courtroom 05

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February 27, 2014 1:30 PM Evidentiary Hearing
Nathan, Gayle
Courtroom 05

Canceled: February 28, 2014 2:00 PM Evidentiary Hearing
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated
Nathan, Gayle
Courtroom 05

Canceled: February 28, 2014 9:00 AM Evidentiary Hearing
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated
Nathan, Gayle
Courtroom 05

March 11, 2014 1:30 PM Evidentiary Hearing
Nathan, Gayle
Courtroom 05

March 12, 2014 9:30 AM Evidentiary Hearing
Nathan, Gayle
Courtroom 14

March 13, 2014 1:30 PM Evidentiary Hearing
Nathan, Gayle
Courtroom 05

March 14, 2014 9:30 AM Evidentiary Hearing
Nathan, Gayle
Courtroom 05