

1 **RSPN**
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11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 BRITISH COLUMBIA SECURITIES
14 COMMISSION,

15 Plaintiffs,

16 vs.

17 MICHAEL PATRICK LATHIGEE,

18 Defendant.

CASE NO: A-18-771407-C

DEPT. NO: XIV

Date of Hearing: Oct. 15, 2019

Time of Hearing: 9:30 a.m.

19 **RESPONSE TO CLAIMS OF EXEMPTION**

20 -AND-

21 **COUNTER-MOTIONS TO ALLOWED SLIGHTLY**
22 **LATE FILING AS TO CLAIMS OF EXEMPTION**

23 -AND-

24 **MOTION FOR APPOINTMENT OF SPECIAL MASTER**
25 **AND/OR EVIDENTIARY HEARING AS TO VALUATIONS**

26 COMES NOW, Judgment Debtor, MICHAEL PATRICK LATHIGEE (hereinafter
27 "Michael"), as well as his non-debtor spouse, CELISTE LATHIGEE (hereinafter "Celiste"), by
28 and through their counsel of record, JOHN W. MUIJE, ESQ., of the Law Offices of JOHN W.

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1 MUIJE & ASSOCIATES, and hereby responds to the two separate Objections to Claims filed on
2 behalf of Plaintiff BRITISH COLUMBIA SECURITIES COMMISSION (hereinafter "BCSC").

3
4 Additionally, pursuant to EDCR 2.20(f), the Lathigees respectfully move this Honorable
5 Court to either briefly extend the time period permissible for filing their claims of exemption, or
6 alternatively, to excuse the very minor delay in such filing pursuant to NRCP 60(b), based upon
7 counsel's excusable neglect. Finally, as will become readily apparent from a review of BCSC's
8 objection based as well as the response and the Sworn Declarations of the Lathigees' is attached
9 hereto, the primary practical issue herein in terms of considering lawful, constitutional and proper
10 exemptions, given the significant volume of items levied upon, the conflicting and incomplete
11 inventories, and different difficulties in valuation, the Lathigees would move for appointment of
12 a Special Master and/or in the alternative, this Court's Order in Aid of Execution pursuant to
13 NRS 21.310 authorizing further inspection of the subject property seized by an appropriately
14 qualified appraiser/inspector, incident to scheduling of an evidentiary hearing regarding values.

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16
17 This Opposition and Countermotions is made and based upon the points and authorities
18 that follow, the exhibits attached hereto, the pleadings and documents on file herein, and the
19 arguments to be adduced at the hearing hereon.

20 DATED this 7th day of October, 2019.

21
22 JOHN W. MUIJE & ASSOCIATES

23
24 By: 

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1
2 **INTRODUCTION**

3 **I.**

4 As the Court is aware on or about August 15, 2019, Plaintiff BCSC initiated a massive
5 intervention into the personal residence of the Lathigees' for purposes of essentially seizing
6 almost everything contained therein. See Exhibit "A". The Sworn Declaration of Michael Patrick
7 Lathigee and Exhibit "B" the Sworn Declaration of Celiste Lathigee, attached hereto and by this
8 reference incorporated herein.
9

10 The undersigned, having practiced in the field of collection law and post-judgment
11 remedies for almost 40 years (See Declaration of John W. Muije, attached as Exhibit "C" and by
12 this reference incorporated herein) was first contacted by Michael Lathigee on August 16, 2019,
13 telephonically, and was formally retained on or about August 19, 2019, to assist in dealing with
14 the post-judgment remedies.
15

16 Mr. Muije prudently checked both the Notice of Execution as well as the underlying
17 statute to ascertain that the statute still provided for filing of Sworn Affidavits and Claims of
18 Exemption, which it did. Neither the notice nor the statute defined whether the timing used
19 calendar days, business days, or otherwise. As will be addressed in Section II hereinafter, as well
20 as in Exhibit "C" at paragraph 8, after verifying the ten (10) day response deadline, Mr. Muije
21 commenced working with the Lathigees' to compile appropriate claims of exemption. During the
22 same time, Mr. Muije was dealing with the Sworn Debtor examination scheduled by the Court,
23 as well as with third-party claims of several individuals whose property were swept up in the
24 mass execution.
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1 The rest of these points and authorities will deal with the relevant issues in the following
2 order:

- 3 (2) Request for Brief Extension as to Exemption
- 4 Filing Deadlines;
- 5 (3) Substantive issues regarding the claimed exemptions;
- 6 (4) Countermotion for evidentiary hearing and/or the
- 7 Appointment of a Special Master.

8 As a preliminary observation, counsel for the Lathigees' notes that counsel for BCSC has
9 been courteous, professional, and cooperative in this process, although acting as a zealous
10 advocate.

11 As one example, defense counsel commends Mr. Pruitt and BCSC with regard to their
12 compassion and willingness to address these matters on the merits, while reserving their technical
13 and procedural rights, the prime example of which is their cooperation in obtaining the release
14 and return of the Lathigee's family vehicle, by stipulation and order, as ratified by the Court.

15 Nevertheless, it has become patently clear to the undersigned that BCSC has been
16 essentially pursuing a vendetta for years, regarding the collapse of a real estate investment
17 company of which defendant Michael Patrick Lathigee was a principal in and around 2007-2008.
18 As is noted in the Declaration of Michael Patrick Lathigee, even BCSC's expert witness
19 acknowledged that the monetary judgment being imposed in 2014 was a sanction and fine, and
20 was not based on any evidence or proof that Mr. Lathigee personally benefited from the monies
21 invested in the subject business. Indeed, as noted in Exhibit "A", not only does Michael disavow
22 receiving such personal aggrandisement and enrichment, but he in fact was the biggest loser in
23 that investment fiasco! Nevertheless, multiple years later we find ourselves at present litigating
24 about ordinary routine household goods which BCSC wants to liquidate, at pennies on
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1 the dollar, as what would appear to be a totally non-economic attempt to drive Mr. Lathigee into
2 the ground.

3
4 Unfortunately, in the process of the same, BCSC and its counsel have apparently take
5 quantum leaps and from limited circumstantial evidence to reach highly speculative and
6 erroneous conclusions as to alleged ongoing misconduct and nefarious activity on the part of
7 Michael Lathigee. It should be noted that most of the suggestions and innuendoes totally lack
8 foundation, are not corroborated by appropriate documents or facts, and candidly are not very
9 germane or relevant to a consideration of the Lathigee family's constitutional rights and statutory
10 claims of exemption. Let us turn now to the important considerations that the Court will need to
11 evaluate and ascertain in determining the proper application of the statutory embodiment of the
12 judgment debtor and his family's right to the reasonable necessities of life.

14 Finally, in order to use the Court's review and understanding of the issues, it should be
15 noted that the crux of BCSC's objections to the claims of exemptions come down to three distinct
16 and identifiable categories:

- 18 (1) Slightly untimely filing;
- 19 (2) Argument that a family limited to one set of
20 Exemptions only; and
- 21 (3) Discussion and argument over categories of
22 Exemptions and valuation of items

23 **II.**

24 **COUNTERMOTION FOR ORDER RATIFYING SLIGHTLY**
25 **LATE FILING OF CLAIMS OF EXEMPTION**

26
27 As noted by both BCSB and the Lathigees', and a fact not in dispute, is that the execution
28 and the notice of execution both occurred on August 15, 2019, and that both Michael and Celiste
separate exemptions (noting that Celiste also included multiple items claimed asserted to be third-

1 party claim items, due to their being her sole and separate property), were filed on August 29,
2 2019. At the time, it is not disputed, is exactly two calendar weeks, fourteen days, and ten
3 working days after the actual physical execution, and after the mailing of the notice of execution.
4

5 Very simply, as also noted and acknowledged by both parties, the long-standing rules
6 regarding calculation of the passage of time were amended effective March 1, 2019, and
7 materially changed the proper way to count days under the law. A true and correct copy of the
8 advance sheets regarding the amendment are attached hereto as Exhibit "C" and by this reference
9 incorporated herein. As noted further in Exhibit "D", paragraphs 8 and 9 after checking the
10 statutory deadline, counsel for the Lathigees proceeded as he had for four decades, i.e.
11 considering ten days to be ten working days and two weeks.
12

13 As a further consideration, it should be noted that while BCSC contends that the claims of
14 exemption should have been filed on Monday, August 26, 2019, the first court day subsequent to
15 the ten-day period, their doing so relies on a California statute with significantly different
16 wording. Specifically, referring to the California Civil Procedure Code Section 706.105 and the
17 legislative comments thereto, BCSC sets forth the applicable provision as follows:
18

The ten-day period provided for sub-division E for the
Judgment Creditor to file documents their specified
commencing to run from the date of "Mailing of the
Notice of Claim of Exemption. This specific provision
takes precedent over the general provisions".

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23 *Emphasis supplied.*

24 Ironically, that strict deadline corresponds almost exactly to the seven days provided for
25 under NRS 21.112(6) for the scheduling of a hearing, or the eight days provided for under NRS
26 21.112(4) for a response to claim of exemption. It should be noted that both of the NRS
27 provisions in question refer to judicial days. It should also be noted that the NRS provisions were
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1 adopted and enacted and in place many years prior to the 2019 change in timing rules. And
2 California's strictly limiting a Judgment Creditor to ten calendar days, and abrogating the three
3 additional days for service by mail (NRCP 6(d), was clearly intended to afford the Judgment
4 Debtor a prompt and swift determination of the claims of exemption.
5

6 Significantly, and first and foremost, even the current amended Rule 6 regarding timing
7 still provides for three additional days when service occurs by mail, and it must be noted that the
8 notice of execution is specifically required to be served by mail on the judgment debtor
9 (judgment debtors do not usually have access to e-service), pursuant to NRS 21.076.
10

11 Hence, respectfully, the operative deadline even under the new Rule 6 as amended would
12 be thirteen calendar days after service of the notice of execution, i.e., August 28, 2019.

13 Arguably, the claims of exemption were thus one-day late under the new timing rules. Let
14 us examine the new timing rules and comments thereto, however, which clarify the drafters'
15 intentions and purpose.
16

17 As just one example, Rule 6 notes that while the new rule limits the instances when three
18 days will be added, such limitation still exists in instances in which service is accomplished by
19 mail. See Exhibit "D", page 3, NRCP 6(d).
20

21 As to the timing and the court's treatment of the same, the Advisory Committee notes as
22 regards the 2019 amendment or instructive:

23 Subsection (a). Rule 6(a) represents a major change in
24 calculating time deadlines. It adopts the federal time-
25 computation provisions in FRCP 6(a). Under Rule 6(a)(1),
26 all deadlines stated in days are computed the same way,
27 regardless of how long or short the period is. This simplifies
28 time computation and facilitates "day-of-the-week" counting,
but it has required revisions to time deadlines stated elsewhere
in the NRCP. To compensate for the shortening of time periods
previously expressed as less than eleven days by the directive to
count intermediate Saturdays, Sundays and legal holidays, many of the
periods have been lengthened. In general, former periods of
five or fewer days are lengthened to seven days, while time

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periods between six and fifteen days are now set to 14 days. time periods of sixteen to twenty days were set to twenty-one days, and periods longer than thirty days were retained without change. The use of 7, 14, and 21 day periods enables “Day-of-the-week” counting: For example, if a motion was filed and served on Wednesday with 7 days to respond, the opposition would be due the following Wednesday. Statutory and rule-based time periods subject to this rule may not be changed concurrently with this rule. If a reduction in the times to respond under those statutes and rules results, an extension of time may be warranted to prevent prejudice.

Emphasis supplied.

As specifically noted, the general effect of the rule changing timing would be to briefly extend the operative time period for oppositions etc. to account for the elimination of weekends, holidays, etc. during the counting. The purpose is noted as being to go to the “day of the week” counting, and make things consistently as to seven, fourteen, twenty-one days etc. As noted by the Advisory Committee:

If a reduction in the time to respond under those statutes and rules results, an extension of time may be warranted to prevent prejudice!

Emphasis supplied.

Looking more closely at the rule, the drafters were prudent when drafting by providing NRCP 6(b)(2)(B), which provides as follows:

- b. Extending Time.
- B. The Court may for good cause extend the time. . . .
- ii. On Motion made after the time has expired if the party failed to act because of excusable neglect.

1 The excusable neglect standard is very similar to the standard found under NRC 60(b)
2 for setting aside a judgment. Notably, the NRC 60(b) standard is committed to the sound
3 discretion of the court. Without reciting a long progression of cases where the Nevada Supreme
4 Court has indicated that excusable neglect occurs, the court should be cognizant that evading law
5 favors a resolution of disputes on the merits, not on technicalities.
6
7 *Kahn vs. Orne*, 108 Nev. 510, 835 P.2d 790, 793 (1992).

8 As such, given that the Lathigees claims of exemption were technically one day late under
9 the Civil Procedure Rules as amended six months ago, and as encouraged by the drafters of the
10 amended rule, a one-day retroactive extension through and including August 29, 2019 would
11 appear appropriate. This is all the more true given that a litigant's rights, including a judgment
12 debtor's right to assert claim exemptions from execution, derive from the Nevada Constitution
13 and our Founding Fathers, and not just some legislative tinkering with the dollar amounts in
14 categories of the exemptions.
15

16 Respectfully, this Court can and should hold that the claims of exemption as filed,
17 technically one day after the amended deadline, should be deemed timely, or in the alternative
18 that the deadline be extended one day through and including August 29, 2019.
19

20 ARGUMENT

21 III.

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23 **A. As a General Point of Clarification Applicable to All Arguments Made in this Response,**
24 **both Michael and Celiste Lathigee are Entitled to Assert Their Own Separate**
25 **Exemption, Thereby Doubling any Applicable Dollar Amount.**

26 Plaintiff contends that the exemptions set forth in NRS 21.090(1) may only be asserted by
27 the community once rather than by each spouse. Plaintiff's basis for this erroneous contention is
28 the citation to the case of *Weinstein v. Fox (in re Fox)*, 129 Nev. Adv. Op. 39, 302 P.2d 1137,
1138-40 (2013). *Fox* stands for the premises that where only one spouse files for protection

1 under the United States Bankruptcy Code, only that filing debtor spouse is entitled to claim
2 exemptions and that the filing spouse may not vicariously assert exemptions on behalf of the non-
3 filing spouse in the debtors spouse's bankruptcy. *See id.* The *Fox* case is clearly distinguishable
4 from the case at hand where Plaintiff is attempting to levy his Writs as to the property of both
5 Michael and Celistie Lathigee, individually, and therefore, each spouse has asserted their own
6 exemptions. In cases where both spouses are debtors in a bankruptcy, each spouse is entitled to
7 assert their own set of exemptions.
8

9
10 In the *Fox* case, the Nevada Supreme Court specifically adopted the plain
11 language rationale embraced by the United States Bankruptcy Court for the District of Idaho in *In*
12 *re DeHaan*, 275 B.R. 375 (Bankr. D. Idaho 2002). *See In re Fox*, 129 Nev. Adv. Op. 39, 302
13 P.2d at 1138-40. The *DeHaan* Court in reaching its conclusion, followed by the Nevada Supreme
14 Court in *Fox*, specifically stated that its opinion was not applicable to a situation wherein a couple
15 filed jointly, or in the event of a nonbankruptcy levy by a creditor, or herein the exemption at
16 issue was asserts by the "third party" (i.e., the non-debtor spouse). *See DeHaan*, 275 B.R. at 382.
17 Therefore, the *DeHaan* Court's opinion, which was the stated and adopted basis for the *Fox*
18 opinion, was limited to situations where a debtor spouse in a bankruptcy was attempting to assert
19 not only the debtor spouse's exemptions, but also was attempting to assert exemptions on behalf
20 of the non-filing spouse. The *DeHaan* Court acknowledges that in a situation where both spouses
21 filed bankruptcy, both spouses would then be entitled as a debtor to claim exemptions. *See*
22 *DeHaan*, 275 B.R. at fn. 11 (recognizing that where both spouses file a joint petition, both are
23 entitled to claim exemptions); *accord*, 4 L. King, *Collier on Bankruptcy*, Section 522.04[5], at p.
24 522-23 through 522-24 (15th ed. Rev.2001) (recognizing possibility for debtors selecting state
25 exemptions to double the monetary amount without violating Section 522(b) in joint bankruptcy
26
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28

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1 cases). Furthermore, it is common practice in the District of Nevada bankruptcy courts to assert
2 the exemptions set forth in NRS 21.090 on behalf of each of the filing spouses.

3
4 The individual right for each party to assert their own set of exemptions should,
5 likewise apply, wherein a creditor is attempting to levy against the assets to both spouses as in
6 case (as recognized as an exception to the *Fox* holding). See *DeHaan*, 275 B.R. at 382. Plaintiff's
7 argument would result in a complete violation of the rights of CELISTE LATHIGEE, robbing her
8 of the right to assert her own exemptions where a party, i.e. the Plaintiff, attempts to enforce a
9 judgment against her share of the community property. If MICHAEL and CELISTE were not
10 married, they would each be entitled to their own set of exemptions. Likewise, if the filed a joint
11 petition, they would be entitled to assert exemptions on behalf of each spouse.

12
13 This premise is set forth and sup[ports by the case of *in re Longmore*, 273 B.R. 633, 635-
14 36 (Bankr. D.Nev. 2001). In *Longmore*, the Honorable J. Linda Riegle held that, unlike the
15 Nevada homestead statute, the exemptions in NRS 21.090 do NOT provide that a married couple
16 must share a single exemption and that "nothing in the statute prevents a married couple from
17 stacking their exemptions" in the same property. See *Longmore*, 273 B.R. at 635-36 (analyzing
18 whether a couple filing jointly can assert the motor vehicle exemption twice, once for each filing
19 spouse and ruling, ultimately, that each spouse is entitled to assert the exemptions in NRS
20 21.090).

21
22
23 Plaintiff is attempting to enforce his Judgment against both MICHAEL and
24 CELISTE'S interests and, therefore, both MICHAEL and CELISTE should be entitled to assert
25 their own exemptions regarding his enforcement of the debt. To be clear, if MICHAEL and
26 CELISTE filed bankruptcy tomorrow in the District Court of Nevada, they would be entitled to
27 each assert the following: \$12,000.00 each in exempt household goods, for a total exemption of
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1 \$24,000.00 \$10,000.00 each in exempt private libraries, jewelry or art, for a total exemption of
2 \$24,000.00; \$10,000.00 each as a wild card exemption, for a total exemption of \$20,000.00.

3 Also, Plaintiff attempts to limit the keepsakes exemption, I would like to note however as
4 regards the dispute and argument over keepsakes, my preliminary research from multiple
5 jurisdictions has disclosed that the law is all over the board. Nevertheless, BCSC's attempt to
6 limit the Lathigees exemption, based on two isolated cases, would run afoul and rough shed over
7 the defendant's exemption rights. Respectfully, although the undersigned has started research his
8 research as to the exemption keepsake, the research is voluminous and all over the board. Te
9 undersigned will supplement the same as soon as practical, hopefully in one or two working days.

12 IV.

13 **MOTION FOR SPECIAL MASTER PER EVIDENTIARY HEARING**

14 As is alluded to in Exhibit "3", the problem with this particular matter under consideration
15 by the Court was the significant volume, and quantity of items seized, the lack of a
16 comprehensive and complete inventory, and significant variations and issues as to valuation,
17 compounded by the fact that said valuation issues become even more complicated by the
18 inadequate inventory, and the sheer number of items in question.

19 The undersigned has in fact served as Special Master in multiple past cases where the
20 issues were complex, and where the Court and parties would benefit by the assistance of a
21 qualified expert. The undersigned has in mind one particular individual who has spent years in
22 the "used" property field, and on information and belief may be available to assist the court and
23 the parties herein to compile an accurate comprehensive inventory, with appropriate valuations
24 of the same.

25 NRCP 53 provides for the appointment of a Special Master, either upon the stipulation
26 and the parties or upon motion. Indeed, the rule and case law even provides for the sua sponte

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1 appointment of a Special Master by the Court, where the Court feels that the court and/or litigants
2 will all benefit for the intervention of an appointed party with specialized and appropriate skills.

3
4 Whether or not the Court appoints a Special Master, it is readily apparent, having
5 reviewed the claims of exemption, the objections to claims of exemption, the sworn declarations
6 of the various parties, the photographs (all of which have now been exchanged between the
7 parties) etc., that this is not a matter to be resolved or properly decided on a half an hour routine
8 law and motion calendar.

9
10 Respectfully, the Court should schedule an appropriate evidentiary hearing, likely at least
11 one half day, and possibly a full day, to occur in approximately 60 days. In the interim, the court
12 should enter an Order In Aid of Execution (which is specifically authorized under NRS 21.280),
13 specifically directing the Laughlin Constable, the Public Guardian's Office, and the duplication
14 and IT services specifically identified in the Writs to cooperate and make fully available for
15 inspection, examination, photographing and copying the various items seized at the time of the
16 execution. That Order should also provide that the parties be granted reasonable access, upon
17 advance notice, to allow a full inventory and to value all of the items seized.
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19 In that way, any truly lost or missing items can be identified, the items which are not
20 adequately identified on the inventories can be located, photographed and evaluated, and the
21 parties and court can ascertain more fully and appropriately, the precise items seized, the nature
22 thereof, their condition, etc. The parties then either with or without a special master, can more
23 accurately evaluate and determine the valuations of the relevant items.
24

25 The procedures outlined in this counter-motion, respectfully, are based on the
26 undersigned's experience in this field. They should substantially facilitate a fair, appropriate and
27 equitable resolution, in accordance with the Nevada Constitution, Nevada Statutory Exemption
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1 Law, and equitable and fair opportunities for both parties, protected by due process, to have the
2 matter appropriately evaluated and heard.

3
4 V.

5 CONCLUSION

6 First and foremost, it is respectfully requested that the Court exercise the discretion
7 afforded it under Rule 6 (and the Advisory Committee Notes), as well as under Rule 60, to ratify
8 the one-day late filing of the Claims of Exemption by Defendant and his wife.

9 Further, careful examination of the law establishes that both the husband and wife are
10 entitled to their individual exemptions, with the exception of the homestead, and that the court
11 should recognize and acknowledge that.

12 Finally, and perhaps most importantly, given the quantity, volume, and uncertainty over
13 exactly what was seized, the court should defer a decision on this matter and set an appropriate an
14 evidentiary hearing. In fact, respectfully, the Court and the parties would all benefit by the
15 appointment of a Special Master to conduct such inventory and determine appropriate appraisals.
16 Once the Special Master has done such, it would be much simpler for the Lathigees to categorize
17 the seized property into appropriate exemption categories, and total the same. The Lathigees do
18 not presently dispute (for the purposes of this exemption proceeding) that Plaintiff would be
19 entitled to the monetary value for amounts that exceed the Lathhigees exemptions. The very
20 significant and practical problem, however, is properly ascertaining more accurate valuations, and
21 a more complete and comprehensive inventory.
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1 Accordingly, the Lathigees request that their claims of exemption be allowed, and that the
2 Court and parties work together to find the most efficient mechanism possible to properly
3 inventory, catalog, and value the items that had been seized.

4
5 DATED this 7TH day of October, 2019.

6 JOHN W. MUIJE & ASSOCIATES

7
8 By: 

9 JOHN W. MUIJE, ESO

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CERTIFICATE OF SERVICE

I certify that I am an employee of JOHN W. MUIJE & ASSOCIATES, and that on the 7th day of October, 2019, I caused the foregoing document, entitled **RESPONSE TO CLAMS OF EXEMPTION AND COUNTER-MOTIONS TO ALLOWED SLIGHTLY LATE FILING AS TO CLAIMS OF EXEMPTION AND-MOTION FOR APPOINTMENT OF SPECIAL MASTER AND/OR EVIDENTIARY HEARING AS TO VALUATIONS**, to be served as follows:

- by placing a copy of the same for mailing in the United States mail, with first class postage prepaid addressed as follows; and/or
- by electronically filing with the Clerk of the Court via the Odyssey E-File and Serve System;
- by placing a copy of the same for mailing in the United States mail, with first class postage prepaid marked certified return receipt requested addressed as follows:

Matthew Pruitt, Esq.
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Attorney for Defendant



An Employee of JOHN W. MUIJE & ASSOCIATES

EXHIBIT “A”

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DISTRICT COURT

CLARK COUNTY, NEVADA

10 BRITISH COLUMBIA SECURITIES
11 COMMISSION,

12 Plaintiffs,

13 vs.

14 MICHAEL PATRICK LATHIGEE,

15 Defendant.

CASE NO: A-18-771407-C

DEPT. NO: XIV

Date of Hearing: October 15, 2019

Time of Hearing: 9:30 a.m.

16 **SWORN DECLARATION OF DEFENDANT, MICHAEL PATRICK LATHIGEE**
17 **(HEREINAFTER "LATHIGEE") IN RESPONSE TO OBJECTION**
18 **TO CLAIMS OF EXEMPTION**

19 STATE OF NEVADA)
20 COUNTY OF CLARK) ss.:
21

22 Your declarant being first being sworn under oath, and under penalty of perjury hereby
23 states and declares as follows:

24 1. My name is Patrick Michael Lathigee and I am the named Defendant and
25 Judgment Debtor in this case.

26 2. I make this Sworn Declaration Under Penalty of Perjury, and based upon personal
27 knowledge, except as to items stated on information and belief, which I reasonably believe to be
28 true.

1 3. Plaintiff, British Columbia Securities Commission, has undertaken in this matter
2 to register and attempt to enforce its Canadian judgment against me here in the State of Nevada.

3 4. Throughout these proceedings, Plaintiff continually implies and suggests that I
4 personally embezzled and pocketed investor funds totaling the approximate \$21,700,000.00
5 (Canadian), i.e. the nominal principal amount of the judgment.
6

7 5. That argument and suggestion is absolutely false, and the falsity thereof is the very
8 basis of my appeal to the Nevada Supreme Court which has issued an Order expediting
9 consideration of the appeal. See Exhibit "1" attached hereto and by this reference incorporated
10 herein.
11

12 6. As was noted in my Reply Brief, at page 30, a true and correct copy of which page
13 is attached hereto as Exhibit "2" and by this reference incorporated herein, Plaintiff's own
14 expert witness, Mr. Johnson stated:

15 "Certainly I agree the impact of the remedy is significant
16 in that the Order in question requires Mr. Lathigee to pay
17 \$21,700,000.00, Canadian, without proof that Mr. Lathigee
18 received any of that amount."

19 *Emphasis supplied.*

20 7. In point of fact, the Canadian judgment was a fine or sanction based on the actual
21 losses sustained by the investors, which monies were used in business and company operations,
22 and **NOT** for my personal aggrandizement and personal gain. In point of fact, as to the company
23 which was the subject of the underlying British Columbia Securities litigation collapsed, I
24 personally owned more shares than any other investor, owning the biggest stake in the company,
25 and I lost more money than any other investor.
26

27 8. I make the above statements so that the Court will understand that despite being
28 fined, punished, and sanctioned, the monetary amount of the judgment does **NOT** derive from

1 personal greed or my pocketing investor money, but from a large investment deal gone, resulting
2 from the multi-billion dollar arbitrage and derivative trading collapse of the large investment firm
3 of Lehman Brothers.

4
5 9. Turning to the specific issues as to my exemption, however, I want to address and
6 refute numerous misstatements, as well as explain factually what occurred, making precise
7 valuations extremely difficult at best.

8
9 10. On the early morning of August 15, 2019, my family and I were just starting our
10 day when we were interrupted by the Constable, multiple deputies, and numerous moving and
11 storage employees appearing at our house demanding that they be allowed to seize everything.

12 11. The actual inventory prepared at the time of the seizure, see Exhibit "3" attached
13 hereto and by this reference incorporated herein, is almost unreadable, and was generic and
14 conclusory at best.

15
16 12. For example, items which I would have expected to be listed are not, and other
17 items to which Plaintiff attributes great value, were listed in summary fashion with no
18 opportunity for me to evaluate exactly what was taken. For example, although I knew a box of
19 old baseball cards that I collected in my youth was taken, I had no inventory or precise
20 itemization as to the contents of that box, prior to the deadline told to me by Mr. Muije for filing
21 our claims of exemption.

22
23 13. I did not even realize that our DVD Player which we use for home entertainment
24 had been seized, and I apologize that the video recorder was not included in my original list,
25 which it should have been. The DVD Player was not listed on the inventory, and I only learned
26 that they had been seized when I personally went to the moving and storage facility to inspect the
27 dozens of boxes and hundreds of items that had been seized.
28

...

1 14. During the approximate day-long inspection of the moving and storage facility and
2 the items stored at that location, I took dozens of pictures, which we have in the interim supplied
3 to Plaintiff.

4
5 15. Unfortunately, only larger and bulkier items were contained at the moving and
6 storage facility. Various jewelry, coins, the baseball cards, and other items were (on information
7 and belief, I was advised such by the Constable's office) placed in the vault at the Public
8 Guardian's office at the Clark County Government Center, and are maintained there for
9 safekeeping.

10
11 16. The Constable has provided us group photographs of many of these items, but not
12 a sufficiently specific inventory.

13 17. One of the problems, for example, is that there is no separate record of 68 gold
14 coins which I had maintained in my safe at the home, several of which belong to myself, but
15 many of which belong to third-parties and investors.

16
17 18. While Plaintiff complains about the accuracy of the valuations, the Court needs to
18 be aware that we are not talking about one or two or even ten discreet items, but literally
19 hundreds of separate items, most of which were not adequately described in any inventory taken
20 by the Constable, including many items which I was not even consciously aware had been in my
21 household and were included among the items seized.

22
23 19. After Mr. Muije advised us we had fourteen (14) days to file our Claims of
24 Exemption, I worked feverishly with my wife and my corporate attorney to attempt to inventory
25 and identify much of the seized property as possible, and to estimate fair valuations based upon
26 decades buying, selling, and trading in such items for example, art and other collectibles. Indeed,
27 as to the artwork, items of which I am certainly no expert, I specifically and personally
28

1 contacted a long-time friend who has run art auctions for decades by the name of John
2 Whitworth, who sent me his professional art trading evaluation of the value of the artwork in
3 question, and which valuations I listed precisely as he indicated in the list of approximately
4 ninety (90) identified items of art listed in our claims of exemption. A copy of Mr. Whitworth's
5 professional credentials is attached hereto as Exhibit "4" and by this reference incorporated
6 herein.

8 20. As to items I was aware had been taken and which we were able to consciously
9 account for, I have done my best to provide appropriate fair market value estimates based upon a
10 lifetime of acquiring such items, and often selling such items.

12 21. As to the baseball cards, I recognize that the Constable had listed a box of baseball
13 cards on the inventory, but there was no sub-inventory or listing as to which cards or what
14 valuations there might be in that box of cards, and no individual pictures of the cards until after
15 we had filed our claim of exemption.

17 22. To this date, I have not been able to gain access to the actual box of baseball cards
18 and determine what cards and in what condition, are contained in that box.

19 23. As to Mr. Pruitt's scurrilous claims, not truly relevant to a determination of the
20 claims of exemption, that have fraudulently transferred two vehicles and am hiding at least two
21 other vehicles, the same is absolutely untrue.

23 24. One of the vehicles he claims I am hiding is the 2001 Mercedes which had little
24 value, and which I believe I sold or donated to charity over five years ago.

25 25. Mr. Pruitt further grossly over calculates the valuation of used computers,
26 claiming that I somehow utilized these computers to mine cryptocurrency. As I had noted
27 previously, the computers in question do not even have an appropriate video card which would be
28 Step One in the process of mining cryptocurrency.

1 26. I hereby unequivocally state that I have never mined cryptocurrency, and that the
2 computer seized during the execution at my house are not even capable of mining cryptocurrency,
3 on information and belief, according to an IT Specialist that I have consulted.

4
5 27. I believe Mr. Pruitt's accusations in this regard are meant to make me look like a
6 nefarious bad person. I can only surmise that in improperly invading my personal and
7 confidential papers, he noted that at one point I had a brief affiliation with a company that had
8 hoped to enter the "Bit Coin" cryptocurrency field from an investment standpoint.

9
10 28. Unbeknownst to Mr. Pruitt, that company never proceeded in that venture,
11 ultimately changed its name, and never pursued further trading, handling or investment in the
12 cryptocurrency field.

13 29. Indeed, that was my last tangesterial association of any kind with the
14 cryptocurrency business.

15
16 30. Turning back to the art question, Plaintiff claims that some of these paintings are
17 Chagall, Raphael, etc. In fact, the limited number of paintings I did have from Verdult have been
18 valued at multiple thousand dollars each and were specifically noted in my claim of exemption as
19 being "forfeited". As for alleged original Chagalls or Raphaels, any painting would be worth
20 many millions of dollars, and I can assure the Court that should there be any piece of art that even
21 appears to be a Chagall or Raphael, it is merely a reproduction or print, and not an actual original
22 artwork created by the artist.

23
24 31. Having subsequently examined photographs of stamps seized by the Constable,
25 based on my inspection of said photographs I can see nothing of any substantial value in those
26 stamps.

27
28

.....

1 32. As regards jewelry, most of which was owned by my wife prior to our marriage,
2 we attempted to fairly value every single piece we were able to identify or see from the
3 photographs, and such values are listed in the claims of exemption filed by myself and my wife.

4
5 33. As to the artwork, I personally solicited and obtained valuations of approximately
6 90 pieces of the artwork as shown in our photographs from John Whitworth, a recognized long-
7 term expert in the field, and have no reason to believe that his valuations are inaccurate.

8 34. ‘By comparison, Plaintiff claims to have consulted with an expert, but does not
9 provide any details, substance or foundation for such speculative or hearsay statements, and as
10 such its claims of mis-valuation or under-valuation by my expert should be disregarded totally.

11
12 35. Given the great volume of items seized, and some uncertainty as to value (noting I
13 did the best job I could given available inventory, photographs, and evaluation compressed into a
14 relatively short time), I am ready, willing and able to hire and/or help pay for either my own
15 expert appraiser and/or a Special Master appointed by the Court for purposes of valuing the items
16 seized.

17
18 36. At such point in time as a more complete and accurate inventory, coupled with
19 expert valuation(s) is obtained, it may be necessary for me to voluntarily withdraw certain claims
20 of exemption as to items worth more than I had originally thought, or conversely, as we identify
21 items that were not specifically listed in the inventory or available for inspection, given accurate
22 valuations, my wife and I should be afforded the opportunity to amend our claims of exemption
23 to match more closely the true inventory of items taken and a more accurate assessment of
24 valuations therefor.

25
26 37. Finally, and perhaps most importantly, Plaintiff challenges my assertion that I am
27 entitled to have an exemption for tools of the trade, claiming that I am unemployed and therefore
28 should not need any tools of the trade.

1 38. In point of fact, I have spent decades developing investment concepts and
2 managing venture capital companies, creating financial documentation and information,
3 appropriate *prospecti*. etc., and have literally developed hundreds of leads, contacts, business
4 associates, and business affiliations, all of which form an essential foundation and basis for my
5 ability to continue working in business and investment management, so as to make a living for
6 myself and my family.
7

8 39. In the modern world, in addition to the hundreds of binders, files and records
9 seized by the Plaintiff, it is also essential that one have the ability to communicate, via cell phone,
10 as well as to process data utilizing computers.
11

12 40. By its very nature, the fields in which I have been employed my entire life require
13 the use of phones and office equipment such as that seized, as well as the historical files, data,
14 and papers which Plaintiff wrongfully took from my residence.
15

16 41. I make the above and foregoing Declaration Under Penalty of Perjury, and if
17 called as a witness I could and would competently testify thereto, except as to the items stated on
18 information and belief, which I reasonably believe to be true.
19

20 42. I respectfully request that the Court honor the intentions of the constitutional
21 framers and legislative enactments in the State of Nevada, and allow myself and my family our
22 reasonable exemptions afforded us under the Constitution and under the Law.
23

24 FURTHER YOUR DECLARANT SAYETH NAUGHT.
25

26 

MICHAEL PATRICK LATHIGEE
27
28

EXHIBIT “1”


IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL PATRICK LATHIGEE,
Appellant,
vs.
BRITISH COLUMBIA SECURITIES
COMMISSION,
Respondent.

No. 78833

FILED

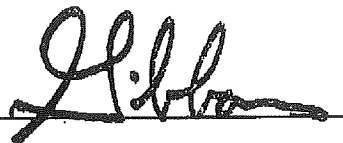
SEP 26 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER GRANTING MOTION

Appellant has filed a motion to expedite the resolution of this appeal. As cause for that motion, appellant notes the daily interest accruing on a judgment of \$21,700,000.00 CAD, which is the subject of this appeal. Cause appearing, the unopposed motion is granted as follows. *Cf. Bd. of Cty. Comm'rs of Clark Cty. v. Las Vegas Disc. Golf & Tennis, Inc.*, 110 Nev. 567, 568, 875 P.2d 1045, 1046 (1994). This court will expedite resolution of this matter to the extent possible given this court's docket.

It is so ORDERED.

 C.J.

cc: Adkisson PLLC
Marquis Aurbach Coffing
Naylor & Braster
Alverson Taylor & Sanders

EXHIBIT “2”

amount obtained through the contravention was obtained by that respondent.

¶ 38 We agree with the principles articulated and approaches taken in the illegal distribution and fraud cases canvassed above. They are even more compelling in cases of fraud. We should not read section 161(1)(g) narrowly to shelter individuals from that sanction where the amounts were obtained by the companies that they directed and controlled.

1 JAX13-14, ¶¶ 37-38. The BCSC misses the point of this exchange. Lathigee is not asking this Court to sit as a reviewing court and reverse the Disgorgement Order or its findings. Rather, Lathigee is pointing out that § 161(1)(g) can be entered in the fashion described by Justice Sotomayor in *Kokesh*, *i.e.*, without proof that the defendant personally received any moneys from the scheme. Likewise, the BCSC's own expert witness, Mr. Johnson, commented on this very point: "Certainly, I agree the impact of the remedy is significant in that the order in question requires Mr. Lathigee to pay \$21,700,000 Canadian without proof that Mr. Lathigee personally received that amount." 1 JAX132 (emphasis added). This case is very much like the insider trading hypothetical referenced in *Kokesh* insofar as the scheme may have variously hurt or benefitted

EXHIBIT “3”

CONTRACTOR OR CARRIER

HOUSEHOLD GOODS DESCRIPTIVE INVENTORY

PAGE NO.

NO. OF PAGES

CAPITOL NORTH AMERICAN

17806 HOLMIST RD. LAS VEGAS, NEV 89104 PHONE: (702) 457-5383

AGENT CNA

CARRIER'S REFERENCE NO.

OWNER'S GRADE OR RATING AND NAME

CONTRACT OR GBL. NO.

ORIGIN LOADING ADDRESS

CITY

STATE

GOVT. SERVICE ORDER NO.

STINATION

VAN NUMBER

DESCRIPTIVE SYMBOLS

EXCEPTION SYMBOLS

LOCATION SYMBOLS

B/W - BLACK & WHITE TV
C - COLOR TV
CP - CARRIER PACKED
PBO - PACKED BY OWNER
CD - CARRIER DISASSEMBLED
SW - STRETCH WRAPPED

DDO - DISASSEMBLED BY OWNER
PB - PROFESSIONAL BOOKS
PE - PROFESSIONAL EQUIPMENT
PP - PROFESSIONAL PAPERS
MCU - MECHANICAL CONDITION UNKNOWN

BE - BENT
BR - BROKEN
BU - BURSTED
CH - CHIPPED
CU - CONTENTS & CONDITION UNKNOWN

D - DENTED
F - FADED
G - GOUGED
L - LOOSE
M - MARRED
MI - MILDEW

MO - MOTHEATEN
P - PEELING
R - RUBBED
RU - RUSTED
SC - SCRATCHED
SH - SHORT

SO - SOILED
ST - STAINED
S - STRETCHED
T - TORN
W - BADLY WORN
Z - CRACKED

1. ARM
2. BOTTOM
3. CORNER
4. FRONT
5. LEFT
6. LEGS
7. REAR

8. RIGHT
9. SIDE
10. TOP
11. VENEER
12. EDGE
13. CENTER
14. INSIDE

15. SEAT
16. DRAWER
17. DOOR
18. SHELF
19. HARDWARE

NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR.

Table with columns: ITEM NO., CR. REF., ARTICLES, CONDITION AT ORIGIN, SHIPPER CHECK DEST. Y, EXCEPTIONS (IF ANY) AT DESTINATION, ITEM NO. Contains handwritten entries for items 1-10 and 100-110.

Table with columns: ITEM NO., REMARKS/EXCEPTIONS. Contains handwritten notes for items 100-110.

"WE HAVE CHECKED ALL THE ITEMS LISTED AND NUMBERED 1 TO INCLUSIVE AND ACKNOWLEDGE THAT THIS IS A TRUE AND COMPLETE LIST OF THE GOODS TENDERED AND OF THE STATE OF THE GOODS RECEIVED"

TAPE LOT NO.

TAPE COLOR

WARNING ->

BEFORE SIGNING CHECK SHIPMENT, COUNT ITEMS AND DESCRIBE LOSS OR DAMAGE IN SPACE ON THE RIGHT ABOVE.

NOS. FROM

THRU

Table with columns: AT ORIGIN (CONTRACTOR, CARRIER OR AUTHORIZED AGENT (DRIVER), OWNER OR AUTHORIZED AGENT), DATE, AT DESTINATION (CONTRACTOR, CARRIER OR AUTHORIZED AGENT (DRIVER), OWNER OR AUTHORIZED AGENT), DATE. Includes handwritten signatures and dates.

CONTRACTOR OR CARRIER

HOUSEHOLD GOODS DESCRIPTIVE INVENTORY

PAGE NO. NO. OF PAGES

CAPITOL NORTH AMERICAN

17808. NIOJAVE RD. LAS VEGAS, NEV 89104 PHONE: (702) 457-5353

AGENT CNA

CARRIER'S REFERENCE NO.

OWNER'S GRADE OR RATING AND NAME

CONTRACT OR GBL. NO.

ORIGIN LOADING ADDRESS

Laughlin Constable

CITY

Las Vegas NV Lot # 500925

STATE

GOVT. SERVICE ORDER NO.

STINATION

VAN NUMBER

DESCRIPTIVE SYMBOLS

B/W - BLACK & WHITE TV
C - COLOR TV
CP - CARRIER PACKED
PBO - PACKED BY OWNER
CD - CARRIER DISASSEMBLED
SW - STRETCH WRAPPED

DBO - DISASSEMBLED BY OWNER
PB - PROFESSIONAL BOOKS
PE - PROFESSIONAL EQUIPMENT
PP - PROFESSIONAL PAPERS
MCU - MECHANICAL CONDITION UNKNOWN

BE - BENT
BR - BROKEN
BU - BURNED
CH - CHIPPED
CU - CONTENTS & CONDITION UNKNOWN

EXCEPTION SYMBOLS

D - DENTED
F - FADED
G - GOUGED
L - LOOSE
M - MARRED
MI - MILDEW

MO - MOTHEATEN
P - PEELING
R - RUBBED
RU - RUSTED
SC - SCRATCHED
SH - SHORT

SO - SOILED
ST - STAINED
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TAPE COLOR

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HOUSEHOLD GOODS DESCRIPTIVE INVENTORY

PAGE NO. NO. OF PAGES

CAPITOL NORTH AMERICAN

17808. MOJAVE RD. LAS VEGAS, NEV 89104 PHONE: (702) 457-5383

AGENT CWA

CARRIER'S REFERENCE NO.

OWNER'S GRADE OR RATING AND NAME

CONTRACT OR GBL. NO.

ORIGIN LOADING ADDRESS

CITY

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"WE HAVE CHECKED ALL THE ITEMS LISTED AND NUMBERED 1 TO INCLUSIVE AND ACKNOWLEDGE THAT THIS IS A TRUE AND COMPLETE LIST OF THE GOODS TENDERED AND OF THE STATE OF THE GOODS RECEIVED"

TAPE LOT NO. TAPE COLOR

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NOS. FROM THRU

Table with columns: AT ORIGIN (SIGNATURE, DATE), AT DESTINATION (SIGNATURE, DATE), CONTRACTOR, CARRIER OR AUTHORIZED AGENT (DRIVER) (SIGNATURE, DATE)

CONTRACTOR OR CARRIER

HOUSEHOLD GOODS DESCRIPTIVE INVENTORY

PAGE NO. NO. OF PAGES

CAPITOL NORTH AMERICAN

17808. MOJAVE RD. LAS VEGAS, NEV 89104 PHONE: (702) 457-5383

AGENT *CNA*

CARRIER'S REFERENCE NO.

OWNER'S GRADE OR RATING AND NAME

Laughlin Constable

CONTRACT OR GBL NO.

ORIGIN LOADING ADDRESS

Las Vegas, NV

CITY

Lot # 500925

STATE

GOVT. SERVICE ORDER NO.

DESTINATION

VAN NUMBER

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ITEM NO.	CR. REF.	ARTICLES	CONDITION AT ORIGIN	SHIPPER CHECK DEST. Y	EXCEPTIONS (IF ANY) AT DESTINATION	ITEM NO.
6		Din chair	3.9 ch. R. 14.5 so			1
2		Din chair	5.5 2. 30 ch. 14.5 so		SL. CH	2
3		Din chair	14.5 so. 30 ch. 14.5 so			3
4		3.0 chair	lamp base 2 vms. 8. mex			4
5		Din chair	↓			5
6		China table base	10.5 so. ch. 12. 3. ch			6
7		China table	10.5 so. ch. 12. 3. ch			7
8		4.5 chair	boat			8
9		↓	↓			9
7		↓	↓			0
1		↓	↓			1
2		wid chair	Speaker			2
3		wid chair	Speaker, small TV			3
4		3.0 chair	Decorations			4
5		4.5 chair	↓			5
6		in pack chair	TV, mex			6
7		in pack chair	Picture			7
8		4.5 chair	Decorations			8
9		3.0 chair	↓			9
5		in pack chair	Picture			0
1		in pack chair	↓			1
2		in pack chair	↓			2
3		4.5 chair	boat			3
4		↓	↓			4
5		↓	↓			5
6		↓	↓			6
7		4.5 chair	boat			7
8		↓	↓			8
9		↓	↓			9
0		↓	↓			0

ITEM NO.	REMARKS/EXCEPTIONS

"WE HAVE CHECKED ALL THE ITEMS LISTED AND NUMBERED 1 TO INCLUSIVE AND ACKNOWLEDGE THAT THIS IS A TRUE AND COMPLETE LIST OF THE GOODS TENDERED AND OF THE STATE OF THE GOODS RECEIVED"

TAPE LOT NO.

TAPE COLOR

WARNING →

BEFORE SIGNING CHECK SHIPMENT, COUNT ITEMS AND DESCRIBE LOSS OR DAMAGE IN SPACE ON THE RIGHT ABOVE.

NOS. FROM

THRU

AT ORIGIN	CONTRACTOR, CARRIER OR AUTHORIZED AGENT (DRIVER) (SIGNATURE) <i>Harvey...</i>	DATE 8/19/19	AT DESTINATION	CONTRACTOR, CARRIER OR AUTHORIZED AGENT (DRIVER) (SIGNATURE)	DATE
	OWNER OR AUTHORIZED AGENT (SIGNATURE)	DATE		OWNER OR AUTHORIZED AGENT (SIGNATURE)	DATE

CONTRACTOR OR CARRIER

HOUSEHOLD GOODS DESCRIPTIVE INVENTORY

PAGE NO. NO. OF PAGES

CAPITOL NORTH AMERICAN

17805 MOJAVE RD. LAS VEGAS, NEV 89104 PHONE: (702) 467-5353

AGENT CNA

CARRIER'S REFERENCE NO.

OWNER'S GRADE OR RATING AND NAME Laughlin, Constable

CONTRACT OR GBL NO.

ORIGIN LOADING ADDRESS

CITY

STATE

GOVT. SERVICE ORDER NO.

DESTINATION Las Vegas, NV Lot # 500175

VAN NUMBER

DESCRIPTIVE SYMBOLS

EXCEPTION SYMBOLS

LOCATION SYMBOLS

B/W - BLACK & WHITE TV
C - COLOR TV
CP - CARRIER PACKED
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SW - STRETCH WRAPPED

DBO - DISASSEMBLED BY OWNER
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G - GOUGED
L - LOOSE
M - MARRED
MI - MILDEW

MO - MOTHEATEN
P - PEELING
R - RUBBED
RU - RUSTED
SG - SCRATCHED
SH - SHORT

SO - SOILED
ST - STAINED
S - STRETCHED
T - TORN
W - BADLY WORN
Z - CRACKED

1. ARM
2. BOTTOM
3. CORNER
4. FRONT
5. LEFT
6. LEGS
7. REAR
8. RIGHT
9. SIDE
10. TOP
11. VENEER
12. EDGE
13. CENTER
14. INSIDE
15. SEAT
16. DRAWER
17. DOOR
18. SHELF
19. HARDWARE

NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR.

Table with columns: ITEM NO., CR. REF., ARTICLES, CONDITION AT ORIGIN, SHIPPER CHECK DEST. Y, EXCEPTIONS (IF ANY) AT DESTINATION, ITEM NO. Rows 1-10 contain handwritten entries for books and papers.

Table with columns: ITEM NO., REMARKS/EXCEPTIONS. Row 10 contains a large handwritten 'END'.

"WE HAVE CHECKED ALL THE ITEMS LISTED AND NUMBERED 1 TO INCLUSIVE AND ACKNOWLEDGE THAT THIS IS A TRUE AND COMPLETE LIST OF THE GOODS TENDERED AND OF THE STATE OF THE GOODS RECEIVED"

TAPE LOT NO.

TAPE COLOR

WARNING ->

BEFORE SIGNING CHECK SHIPMENT, COUNT ITEMS AND DESCRIBE LOSS OR DAMAGE IN SPACE ON THE RIGHT ABOVE.

NOS. FROM

THRU

Table with columns: AT ORIGIN (CONTRACTOR, CARRIER OR AUTHORIZED AGENT (DRIVER), OWNER OR AUTHORIZED AGENT), DATE, AT DESTINATION, CONTRACTOR, CARRIER OR AUTHORIZED AGENT (DRIVER), OWNER OR AUTHORIZED AGENT, DATE. Includes handwritten signatures and dates.

EXHIBIT “4”

Affiliated Auctions a Tallahassee based Auction company headed by John Whitworth a certified USPAP appraiser, Licensed 2-20 general Lines insurance agent, Licensed Auctioneer since 1994 , as well as a Licensed Real Estate broker. Have made appearances on American Pickers , Local and national press, and having conducted over 2000 high end auctions is considered an expert in his field. Coins , Fine Art, Militaria, Real Estate, firearms, and more
Sincerely,

John Whitworth

See: www.affiliatedauctions.com

EXHIBIT “B”

JOHN W. MUIJE & ASSOCIATES
1840 E. Sahara Ave., #106
Las Vegas, Nevada 89104
Telephone: 702-386-7002
Email: jmuije@muijelawoffice.com

1 JOHN W. MUIJE & ASSOCIATES
JOHN W. MUIJE, ESQ.
2 Nevada Bar No: 2419
3 1840 E. Sahara Ave #106
Las Vegas, NV 89104
4 Phone No: (702) 386-7002
5 Fax No: (702) 386-9135
6 Email: [Jmuije@muijelawoffice.com](mailto:jmuije@muijelawoffice.com)
Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

10 BRITISH COLUMBIA SECURITIES
11 COMMISSION,
12
13 Plaintiffs,
14 vs.
15 MICHAEL PATRICK LATHIGEE,
16 Defendant.

CASE NO: A-18-771407-C
DEPT. NO: XIV

**SWORN DECLARATION OF CELISTE LATHIGEE (HEREINAFTER
"LATHIGEE") IN RESPONSE TO OBJECTION TO CLAIMS OF EXEMPTION**

18 STATE OF NEVADA)
19) ss.:
20 COUNTY OF CLARK)

21 Your declarant being first being sworn under oath, and under penalty of perjury hereby
22 states and declares as follows:

- 23 1. My name is Celistе Lathigee and I am married to the Defendant, Judgment Debtor,
24 Michael Patrick Lathigee.
25
26 2. I have reviewed and read his Sworn Declaration in regard to our claims of
27 exemption, and did not see anything which I note to be false, incorrect, or inaccurate.
28

1 3. His recitation of the events that morning is accurate, true and correct.

2 4. Additionally, I accompanied my husband to the premises of Capital North
3 American Moving and Storage located on South Mojave Road, and assisted, participated, and
4 observed a day long independent inspection of the dozens of boxes and hundreds of items seized
5 from our residence on August 15, 2019.

6
7 5. Unfortunately, we were advised and therefore believe that the Constable and/or
8 Public Guardian will not allow access to the vault and office premises, for purposes of inspecting
9 the various items of jewelry, coins, and smaller valuable items separately seized.

10
11 6. On that, all we could do is look at a limited number of “Group Pictures”, and
12 inventories prepared by the Constable’s Office, which grouped numerous items together, and on
13 information and belief was incomplete and did not disclose all the items seized.

14 7. Furthermore, I do want to emphasize to the Court that although I have asserted and
15 I hereby claim various statutory exemptions, which I am advised are available under the Nevada
16 Constitution and Nevada Law, I have also claimed and assert **THIRD-PARTY CLAIMS** as to
17 items I owned prior to marriage, which are not community property, and which are and always
18 have been my sole and separate property, thereby making them (I am informed and believe) not
19 subject to execution for my husband’s debts.

20
21 8. The most important are numerous items of jewelry as listed in my claim of
22 exemption and Third-Party, which I specifically estimate the value of, and value, all of which
23 were acquired by myself prior to marrying Michael Patrick Lathigee.

24
25 9. Indeed, during my prior marriage and prior to meeting Michael, I was employed as
26 a sales person in the jewelry business, and acquired numerous of the jewelry items personally,
27 while working in that business. Others were given to me by my ex-husband.
28

1 10. To corroborate the statements, I attach hereto as Exhibit "1" and by this reference
2 incorporated herein a copy of my divorce decree from my prior husband.

3 11. To further corroborate my statements, I attach as Exhibit "2" copies of
4 photographs taken while I was working in the jewelry business and prior to meeting Mike
5 Lathigee.
6

7 12. As Exhibit "3", I enclose herewith a receipt for one of the items of jewelry
8 showing a \$4,700.00 valuation at a time prior to my marriage to Michael Lathigee. I would note
9 that it is very difficult to locate receipts and pictures from more than a decade ago, especially
10 given that I left my ex-husband with essentially my jewelry and the clothes on my back.
11

12 13. As to the two necklaces as to which Plaintiff questions the valuation, I only recall
13 three necklaces, total, and two of them are cheap simulations and not true pearl necklaces. Their
14 values as such are accurately stated at \$400.00 and \$120.00 respectively.
15

16 14. The third necklace I believe still has a price tag on it, I believe for \$2,500, but I did
17 not see it anywhere listed in the inventories or photographs taken by Deputy Constable Smith.

18 15. Further, I have for many years collected handbags and jewelry, and utilize those
19 on a recurring basis as I leave my house and travel with my children, my husband, my family, etc.
20

21 16. Some of these were also acquired prior to marriage, although I would have to have
22 an opportunity to physically inspect what was seized in an effort to refresh my memory and
23 determine which pre-date the marriage, and which were acquired subsequent to my marrying
24 Michael Lathigee.

25 17. As to the various household goods seized, the bulk of these items were in fact
26 acquired after marriage, but are usual ordinary and proper in maintaining a functional modern
27 household, taking care of my husband and children, and living a reasonable life.
28

JOHN W. MUJTE & ASSOCIATES
1840 E. Sahara Ave., #106
Las Vegas, Nevada 89104
Telephone: 702-386-7002
Email: Jmujte@mujtelawoffice.com

1 18. Finally, as relates to the very limited items of jewelry and/or the purses which
2 were acquired subsequent to my marriage to Michael P. Lathigee, as advised by my counsel, I
3 listed such items in my claim of exemption, and would intend to exercise my wildcard exemption,
4 to protect those particular items, insofar as they have great sentimental value, to the extent that
5 they were not characterized as my sole and separate property, or fall under another exemption,
6 such as keepsake or household goods.

7
8 18. I make the above and foregoing statements under penalty of perjury, except as to
9 items stated on information and belief which are reasonably believe to be true, and if called as a
10 witness I could and would competently testify thereto.
11

12 FURTHER YOUR DECLARANT SAYETH NAUGHT.

13
14 
15 _____
16 CELISTE LATHIGEE
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EXHIBIT "1"

JOHN W. MUIJE & ASSOCIATES
1840 E. Sahara Ave., #106
Las Vegas, Nevada 89104
Telephone: 702-386-7002
Email: Jmuije@mujelawoffice.com

1 JOHN W. MUIJE & ASSOCIATES
2 JOHN W. MUIJE, ESQ.
3 Nevada Bar No: 2419
4 1840 E. Sahara Ave #106
5 Las Vegas, NV 89104
6 Phone No: (702) 386-7002
7 Fax No: (702) 386-9135
8 Email: Jmuije@mujelawoffice.com
9 Attorneys for Plaintiffs

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 BRITISH COLUMBIA SECURITIES
13 COMMISSION,

CASE NO: A-18-771407-C

DEPT. NO: XIV

Plaintiffs,

vs.

14 MICHAEL PATRICK LATHIGEE,

15 Defendant.

16 **SWORN DECLARATION OF CELISTE LATHIGEE (HEREINAFTER**
17 **"LATHIGEE") IN RESPONSE TO OBJECTION TO CLAIMS OF EXEMPTION**

18 STATE OF NEVADA)
19) ss.:
20 COUNTY OF CLARK)

21 Your declarant being first being sworn under oath, and under penalty of perjury hereby
22 states and declares as follows:

23 1. My name is Celiste Lathigee and I am married to the Defendant, Judgment Debtor,
24 Michael Patrick Lathigee.

25 2. I have reviewed and read his Sworn Declaration in regard to our claims of
26 exemption, and did not see anything which I note to be false, incorrect, or inaccurate.
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1 3. His recitation of the events that morning is accurate, true and correct.

2 4. Additionally, I accompanied my husband to the premises of Capital North
3 American Moving and Storage located on South Mojave Road, and assisted, participated, and
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5 from our residence on August 15, 2019.
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17 items I owned prior to marriage, which are not community property, and which are and always
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20

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23 acquired by myself prior to marrying Michael Patrick Lathigee.
24

25 9. Indeed, during my prior marriage and prior to meeting Michael, I was employed as
26 a sales person in the jewelry business, and acquired numerous of the jewelry items personally,
27 while working in that business. Others were given to me by my ex-husband and/or family
28 members over many years.

1 10. To corroborate the statements, I attach hereto as Exhibit "1" and by this reference
2 incorporated herein a copy of my divorce decree from my prior husband.

3 11. To further corroborate my statements, I attach as Exhibit "2" copies of
4 photographs taken while I was working in the jewelry business and prior to meeting Mike
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18 15. Further, I have for many years collected handbags and jewelry, and utilize those
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21 16. Some of these were also acquired prior to marriage, although I would have to have
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24 Michael Lathigee.

25 17. As to the various household goods seized, the bulk of these items were in fact
26 acquired after marriage, but are usual ordinary and proper in maintaining a functional modern
27 household, taking care of my husband and children, and living a reasonable life.
28

EXHIBIT “1”

ORIGINAL

FILED

APR 2 9 04 AM '07

Chaf...
CLERK OF THE COURT

1 **NEO**
2 **WEBSTER & ASSOCIATES**
3 ANITA A. WEBSTER, ESQ.
4 Nevada Bar No. 1221
5 8240 West Charleston Suite 1
6 Las Vegas, Nevada 89117
7 (702) 562-2300
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

7 PHILIP SMITH,
8 Plaintiff,
9 v.
10 CELISTE MARSADA SMITH,
11 Defendant

CASE NO.: D 371032
DEPT NO.: E

NOTICE OF ENTRY OF DECREE OF DIVORCE

13 NOTICE IS HEREBY GIVEN that the following DECREE OF DIVORCE was entered
14 in the above-entitled matter on this 29TH day of March, 2007, a copy of which is attached
15 hereto.

16 Dated: March 29, 2007

17 **WEBSTER & ASSOCIATES**

18
19 By: _____

20 ANITA A. WEBSTER, ESQ.
21 Nevada Bar No. 1221
22 8240 West Charleston Suite 1
23 Las Vegas, Nevada 89117
24 Attorney for Plaintiff

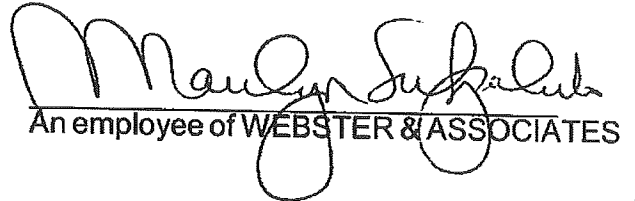
Law Offices of
WEBSTER & ASSOCIATES
8240 West Charleston Suite 1 • Las Vegas, Nevada 89117
Telephone (702) 562-2300 • Facsimile (702) 562-2303

CERTIFICATE OF MAILING

I hereby certify that I am employed in the law offices of WEBSTER & ASSOCIATES, and that on this 30 day of March, 2007, I served a copy of the foregoing NOTICE OF ENTRY OF DECREE OF DIVORCE, in accordance with Rule 5, by depositing the same in the U.S. Mails, postage prepaid, in Las Vegas, Nevada, addressed to:

Philip Smith
9559 Dawning Heat St.
Las Vegas, Nevada 89178

Celiste Marsada Smith
405 N. 5th Street
Opelika, AL 36801-4105


An employee of WEBSTER & ASSOCIATES

Law Offices of
WEBSTER & ASSOCIATES
8240 West Charleston Suite 1 • Las Vegas, Nevada 89117
Telephone (702) 562-2300 • Facsimile (702) 562-2303

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1 DECD
2 WEBSTER & ASSOCIATES
3 ANITA A. WEBSTER, ESQ.
4 Nevada Bar No. 1221
5 8240 West Charleston Suite 1
6 Las Vegas, Nevada 89117
7 (702) 562-2300
8 Attorney for Plaintiff

FILED
MAR 29 12 23 PM '07
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

7 PHILIP SMITH,
8 Plaintiff,
9 v.
10 CELISTE MARSADA SMITH,
11 Defendant

CASE NO.: D 371032
DEPT NO.: E

DECREE OF DIVORCE

This cause coming on for a hearing this 29th day of March, 2007 before the above entitled court, Plaintiff appearing by and through his attorney, ANITA A. WEBSTER, ESQ., of the Law Offices of WEBSTER & ASSOCIATES and Defendant appearing in proper person having filed an Answer; the Court having heard the evidence of witnesses sworn and examined in Open Court, and the cause having been submitted for decision and Judgment, and the Court being fully advised as to the law and facts of the case, finds that:

The Court has complete jurisdiction in the premises, both as to the subject matter thereof as well as the parties hereto; that Plaintiff now is and has been an actual and bona fide resident of the County of Clark, State of Nevada and has been actually domiciled therein for more than six weeks immediately preceding the commencement of this action; that Plaintiff is entitled to a Decree of Divorce from Defendant on the grounds as set forth in Plaintiff's Complaint and that Defendant has waived Findings of Fact and Conclusions of Law. The Defendant is not currently pregnant and there are no adopted minor children of this marriage. There is one minor child of this relationship outside the jurisdiction of this court in that said

Law Offices of
WEBSTER & ASSOCIATES

8240 West Charleston Suite 1 • Las Vegas, Nevada 89117
Telephone (702) 562-2300 • Facsimile (702) 562-2303

- Decision without Trial/Hearing
- Conversion from ...
- Restoration of Competency
- Involuntary Dismissal
- Age of Majority
- Voluntary Dismissal
- Order Terminating Guardianship/Final Acct.

1 minor child has never resided in Nevada and currently resides in Alabama.

2 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the
3 bonds of matrimony heretofore and now existing between Plaintiff and Defendant be and the
4 same hereby are, wholly dissolved and an absolute Decree of Divorce is hereby granted to
5 Defendant, and each of the parties hereto are hereby restored to the status of a single,
6 unmarried person.

7 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties' property and
8 debts shall be divided as set forth in the Property Settlement Agreement attached hereto and
9 incorporated herein by reference as Exhibit "1". The Property Settlement Agreement shall
10 merge into the Decree of Divorce.

11 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff shall pay
12 Defendant spousal support pursuant to the Property Settlement Agreement attached hereto
13 and incorporated herein by reference at Exhibit "1".

14 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff shall pay
15 Defendant child support in the amount of \$680.00 per month which is consistent with 18% of
16 Plaintiff's gross monthly income up to the statutory caps per NRS 125B.070 et. seq. In
17 addition, the Plaintiff will pay 50% of any additional expenses that the Defendant may incur for
18 the child's after school expenses, summer camp, sports, etc. The Defendant shall consult with
19 the Plaintiff prior to enrolling the minor child in said activities and prior to incurring said
20 expense. If the Plaintiff does not agree with the activity or expense, that the child is being
21 enrolled in, than the Defendant will be responsible for the entire cost of the same. Any
22 activities that the Defendant enrolls the child in shall not interfere with the Plaintiff's visitation.

23 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff will maintain
24 medical insurance coverage on the minor child as available through his employment with each
25 of the parties to pay one-half of the premium for medical insurance coverage, and each party
26 to pay one-half of all unreimbursed medical, dental, optical, pharmaceutical, psychological,
27 psychiatric and other health care costs or expenses incurred by or on behalf of the minor child

1 until said minor child reaches eighteen (18) years of age if the minor child is no longer enrolled
2 in high school; if said minor child is in high school at age eighteen (18) then coverage
3 continues until the first to occur of the following: said minor child reaches nineteen (19) years
4 of age or graduates high school. The party incurring the unreimbursed medical expense shall
5 be reimbursed by the other party no later than 30 days after a written request for
6 reimbursement.

7 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties shall submit
8 the information required in NRS 125B.055 and, NRS 125.130 and NRS 125.230 on a separate
9 form to the Court and the Welfare Division of the Department of Human Resources within ten
10 days from the date this Decree is filed. Such information shall be maintained by the Clerk in
11 a confidential manner and not part of the public record. The Petitioners shall update the
12 information filed with the Court and the Welfare Department of the Department of Human
13 Resources within ten days should any of that information become inaccurate.

14 IT IS HEREBY ORDERED and the parties acknowledge that they are bound by the
15 following statutes:

16 Pursuant to NRS 125.450, child support payments are subject to wage withholding.
17 Child support may be reviewed pursuant to NRS 125B.145 every three years by either parent.

18 NOTICE IS GIVEN TO the parties that they are subject to Nevada Revised Statutes
19 31A.020 to 31A.240, inclusive, and Sections 2 and 3 of this Act, regarding the withholding of
20 wages and commissions for delinquent payments of child support to the minor child.

21 NOTICE IS HEREBY GIVEN TO THE PARTIES that NRS 125.510(6) states:

22 A. PENALTY FOR VIOLATION OF ORDER: THE
23 ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN
24 VIOLATION OF THIS ORDER IS PUNISHABLE AS A
25 CATEGORY D FELONY AS PROVIDED IN NRS 193.130. NRS
26 200.359 provides that every person having a limited right of
27 custody to a child or any parent having no right of custody to the
28 child who willfully detains, conceals or removes the child from a
parent, guardian or other person having lawful custody or a right
of visitation of the child in violation of an order of this court, or
removes the child from the jurisdiction of the court without the
consent of either the court or all persons who have the right to

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custody or visitation is subject to being punished for a category D felony as provided in NRS 193.130.

NOTICE IS HEREBY GIVEN TO THE PARTIES that NRS 125C.200 states:

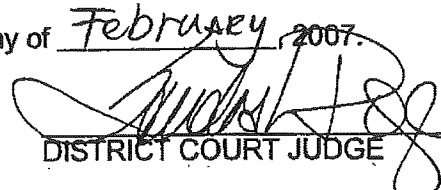
"If custody has been established and the custodial parent intends to move his residence to a place outside the state and to take the child with him, he must, as soon as possible and before the planned move, attempt to obtain the written consent of the other parent to move the child from the state. If the noncustodial parent refuses to give that consent, the parent planning the move shall, before he leaves the state with the child, petition the court for permission to move the child. The failure of a parent to comply with the provisions of this section may be considered as a factor if a change of custody is requested by the noncustodial parent.

NOTICE IS HEREBY GIVEN TO THE PARTIES that pursuant to NRS 125.510, the terms of the Hague Convention apply under certain circumstances.

NOTICE IS HEREBY GIVEN TO THE PARTIES that pursuant to NRS 125.510, the Court is authorized to require a parent who poses an imminent risk of wrongfully removing or concealing a child in a foreign country to post a bond.

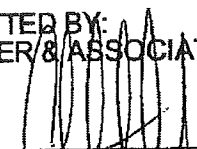
NOTICE IS HEREBY GIVEN TO THE PARTIES that the United States of America, Alabama is the minor child's habitual residence for the purpose of applying the terms of the Hague Convention.

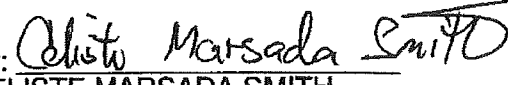
DATED and DONE this 26 day of February, 2007.



DISTRICT COURT JUDGE

SUBMITTED BY:
WEBSTER & ASSOCIATES

APPROVED AS TO FORM AND CONTENT:

By: 
ANITA A. WEBSTER, ESQ.
Nevada Bar No: 1221
8240 W. Charleston, Suite 1
Las Vegas, Nevada 89117
Attorney for Plaintiff

By: 
CELISTE MARSADA SMITH
405 N. 5th Street
Opelika, AL 36801-4105
In Proper Person
(503) 869-1842


Plaintiff

ACKNOWLEDGMENT

Law Offices of
WEBSTER & ASSOCIATES
8240 West Charleston Suite 1 • Las Vegas, Nevada 89117
Telephone (702) 562-2300 • Facsimile (702) 562-2303

1 STATE OF Alabama }
2 COUNTY OF Lee } ss.

3 On this 26th day of February, 2007 before me, a notary public, personally appeared
4 CELISTE MARSADA SMITH, who proved to me to be the person whose name is subscribed
5 to the above instrument who acknowledged that she executed the instrument.

6 
7 NOTARY PUBLIC

8 NOTARY PUBLIC STATE OF ALABAMA AT LARGE
9 MY COMMISSION EXPIRES: Aug 27, 2007
10 BONDED THRU NOTARY PUBLIC UNDERWRITERS

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PROPERTY SETTLEMENT AGREEMENT

THIS AGREEMENT, made and entered into between PHILIP SMITH, hereinafter referred to as the "HUSBAND" and CELISTE MARSADA SMITH hereinafter referred to as the "WIFE".

WITNESSETH:

WHEREAS, the parties hereto are HUSBAND and WIFE and were married on or about September 10, 1999 in the Philippines; and

WHEREAS, irreconcilable differences exist between the parties and as a result the parties are desirous that a full and final adjustment of all their property rights, interests and claims be had, settled and determined by this Agreement,

NOW, THEREFORE, in consideration of the mutual covenants, promises and provisions herein contained, the parties hereto agree as follows:

I.

FREEDOM FROM INTERFERENCE

Each of the parties hereto shall be free from interference, the authority and control, direct or indirect, by the other, as fully as if he or she were sole or unmarried.

II.

FULL, FINAL AND COMPLETE SETTLEMENT

Each of the parties hereto does hereby accept the provisions hereunder made for them in lieu of, and in full, final and complete settlement and satisfaction of any and all claims and rights against each other for support and maintenance and in full settlement and satisfaction of any and all claims and rights whatsoever (including, but not by way of limitation, community property or dower rights, and all rights under the law of testacy and intestacy), which they ever had, now have, or might hereafter have against each other by reason of their relationship as

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HUSBAND and WIFE or otherwise. Should any portion of this Agreement be held invalid, illegal or void, then the remainder shall nevertheless subsist and continue in effect.

III.

MUTUAL RELEASE OF OBLIGATIONS AND LIABILITIES

Except as otherwise provided herein, the parties shall and do hereby mutually remise, release and forever discharge each other from any and all actions, suits, debts, claims, demands and obligations whatsoever, both in law and in equity which either of them ever had, now has, or may hereafter have against the other upon or by reason of any matter, cause or thing up to the date of the execution of this Agreement, except as otherwise provided in this Agreement. Each of the parties hereto shall pay and be responsible for and shall indemnify and hold the other harmless from all debts, obligations and liabilities associated with, or in connection with any assets awarded to that party herein, and from any and all debts and other obligations contracted for or incurred by that party after execution of this Agreement.

IV.

EXECUTION OF DOCUMENTS

HUSBAND and WIFE agree to execute any and all instruments upon demand that may be required in order to confirm the interest or interests of the other and to effectuate the transfer of any and all interests which either may have in and to the property of the other as herein specified and to do any other act or sign any other documents reasonably necessary and proper for the consummation, effectuation and implementation of this Agreement and its intent and purposes.

Time is of the essence and the parties agree to act in an expedient manner in order to effectuate the terms of this Agreement. Should either party fail to execute any of the documents necessary to transfer or confirm an interest to the other, or to execute other

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documents necessary and proper for the implementation, consummation or effectuation of this Agreement, then it is agreed that this Agreement shall accomplish the same purpose as if the required acts and/or documents had been completed.

V.

WAIVER OF INHERITANCE RIGHTS

That except as may be provided by Will or Codicil voluntarily executed hereafter, each party hereby releases and waives all right to the estate of the other left at his or her death, and forever quitclaims to the other any and all right to share in the estate of the other, by the laws of succession or community. In addition, each of the parties releases all rights to any estate inherited by the other. Also, each of the parties releases all rights to be administrator or administratrix, or executor or executrix, of the estate of the other party, and each of the parties hereby waives any and all right to the estate or any interest in the estate of the other and all persons related to the other for family allowance or property exempt from execution, or by way of inheritance. The parties will execute all documents necessary to effectuate this paragraph.

VI.

SUIT FOR DIVORCE

The provisions of this Agreement shall not be construed to prevent either party now or at any time in the future, from suing for divorce in Nevada. The parties acknowledge that Nevada has jurisdiction for all purposes and issues related to this Agreement including subsequent enforcement of this Agreement, and the dissolution of the parties' marriage, including but not limited to all issues regarding the property and debt distribution, and all future issues arising from the subject matter of this Agreement. The parties further agree that a Decree of Divorce obtained by either party shall not in any way affect this Agreement or any of the terms, covenants or conditions hereof, this Agreement being absolute, unconditional

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and irrevocable; and both parties intending and hereby agreeing to be legally and irrevocably bound hereby.

VII.

THIS AGREEMENT MAY BE SUBMITTED TO THE COURT

The parties hereto agree that this Agreement shall be submitted to the Court for approval and introduced into evidence at the time the parties obtain a Divorce. This Property Settlement Agreement will be merged into the Decree of Divorce.

Each of the parties herein agree to do each and every act required by the Property Settlement Agreement to be performed by them. This Court shall have continuing jurisdiction to hold a breaching party in contempt; to enforce this Property Settlement Agreement; to enter monetary and equitable judgments against a breaching party; and to enforce all orders and judgments permitted by Nevada statutory law. HUSBAND and WIFE hereby waive all right hereinafter to challenge the jurisdiction of the Court to enforce this Agreement.

VIII.

MODIFICATION

The parties have incorporated in this Agreement their entire understanding. No oral statement or prior written matter extrinsic to this Agreement shall have any force or effect. The parties are not relying upon any representations other than those expressly set forth herein.

IX.

LEGAL ADVICE

ANITA A. WEBSTER, ESQ. of the Law Offices of WEBSTER & ASSOCIATES represents HUSBAND with regard to this Agreement. WIFE has the option of having legal counsel review this Agreement whether or not she has exercised this option. The parties

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acknowledge that this Agreement has not been the result of any fraud, duress, or undue influence.

X.

FUTURE ACQUISITIONS TO BE SEPARATE PROPERTY

Except as otherwise provided herein, any and all property acquired or income received by either of the parties hereto from and after the execution of this Agreement is the sole and separate property of the one so acquiring the same, and each of the parties hereto grants to the other all such future acquisitions of property as the sole and separate property of the one so acquiring the same.

Each of the parties shall have an immediate right upon execution of this Agreement to place in trust, dispose of or bequeath by Will, his or her respective interest in and to any and all property belonging to him or her from and after the date hereof, and such rights shall extend to all of the aforesaid future acquisitions of the property as well as to all property set over to either of the parties hereto by this Agreement subject to the terms and conditions of this Agreement.

XI.

ENFORCEMENT OF THIS AGREEMENT

If it becomes necessary to enforce any provision(s) of this Agreement, the party prevailing at the enforcement proceeding shall be entitled to their actual attorney's fees, costs, and related expenses required to prosecute or defend the proceeding, including attorney's fees, costs, and related expenses incurred by a party defending a claim or suit necessitated by the other party's failure to indemnify and hold harmless as required herein.

///

XII.

INCOME TAX ISSUES

The parties agree to treat the division of their community property assets as a nontaxable event pursuant to section 1041 of the Internal Revenue Code (hereinafter "Code").

HUSBAND shall be allowed to tax deduction for the minor child each year. WIFE will execute all documents necessary to effectuate HUSBAND being able to take the minor child as a deduction on his taxes each year.

XIII.

INDEMNIFICATION

A. WIFE agrees to indemnify and hold HUSBAND and his property harmless from any claim, loss, or encumbrance, including all expenses related to same, that is attributable to WIFE's failure to fulfill her obligations under this Agreement. WIFE agrees that if any claim, action or proceeding is hereafter initiated to hold the HUSBAND liable for any such debt, obligation, or other liability incurred by WIFE or assumed by WIFE in this Agreement, then the WIFE will, at her sole expense, defend HUSBAND against any such claim or demand, whether or not well founded, and will indemnify and hold HUSBAND harmless from all damages and costs resulting therefrom.

B. HUSBAND agrees to indemnify and hold WIFE and her property harmless from any claim, loss, or encumbrance, including all expenses related to same, that is attributable to HUSBAND's failure to fulfill his obligations under this Agreement. HUSBAND agrees that if any claim, action or proceeding is hereafter initiated to hold WIFE liable for any such debt, obligation, or other liability incurred by HUSBAND or assumed by HUSBAND in this Agreement, then HUSBAND will, at his sole expense, defend WIFE against any such claim or demand, whether or not well founded, and will indemnify and hold harmless WIFE from all

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damages and costs resulting therefrom.

C. Each party represents and warrants to the other that he or she has not incurred any debt, obligation, or other liability from whatever source, other than those described in this Agreement.

D. Both parties agree that the court retains jurisdiction to award alimony in the event that either party discharges debt in bankruptcy which then becomes the responsibility of the the non-discharging spouse.

XIV.

WAIVER OF BREACH

The waiver by one party of any breach of this Agreement by the other party will not be deemed a waiver of any other provisions of this Agreement.

XV.

CONSTRUCTION OF AGREEMENT

This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party who causes the Property Settlement Agreement to be drafted. The parties acknowledge that each party, or his or her representatives, had a role in the negotiation and preparation of this Property Settlement Agreement.

XVI.

AGREEMENT FULLY UNDERSTOOD BY EACH PARTY

This Agreement is made and entered into freely and voluntarily by each of the parties, free from any duress constraint or influence of any kind or nature on the part of the other, and acting absolutely upon the independent judgment of each.

HUSBAND and WIFE are each satisfied with the knowledge they have of each other's

assets. HUSBAND and WIFE mutually and unconditionally waive the right to make future claims against the other parties' assets awarded herein.

Both parties acknowledge that this Agreement has been achieved after good faith negotiations, and that its terms are fair and reasonable.

The parties further acknowledge that, at the parties' direction, counsel has not conducted an investigation or analysis of said assets or liabilities. The parties hereby waive any and all claims against said firm or attorney related to the value and/or existence of any asset or debt divided or not divided hereunder.

XVII.

TAX ADVICE

The parties hereto acknowledge that each of them has had the opportunity to discuss with independent tax counselors, other than the attorney of record herein, the income tax and estate tax implications with respect to the agreed upon division of properties, sale of assets, and indebtedness and that the attorney was not expected to provide and did not provide tax advice concerning this Agreement or any aspects of the division of properties.

XVIII.

OTHER AGREEMENTS AND REPRESENTATIONS

The parties hereto agree that all other agreements heretofore made between them, whether oral or written, shall be null and void upon the execution of this Agreement. The parties further represent and agree that no warranties representations, written or oral including, but not limited to, any and all representations as to the existence or value of any of the parties' community or separate property, except as may be expressly provided in this instrument, have been made by either party to the other to induce the execution of this Agreement, and the parties hereto agree that this Agreement contains their entire Agreement.

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The parties further represent and warrant that both have relied upon the other's representations as to the value of the assets contained herein, but that each have had a full and fair opportunity to independently investigate their value.

XIX.

COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an executed original, but all of which together shall be deemed one and the same document.

XX.

DIVISION OF PROPERTY

The parties hereto do hereby make the following division and settlement of their property:

(a) WIFE shall receive as her sole and separate property the property assets and items set forth in this Agreement and as listed on Exhibit "A" attached hereto and made a part hereof;

(b) HUSBAND shall receive as his sole and separate property the assets and items set forth in this Agreement and as listed on Exhibit "B" attached hereto and made a part hereof

(c) WIFE shall hold HUSBAND harmless from the debt listed on Exhibit "C"

(d) HUSBAND shall hold WIFE harmless from the debt listed on Exhibit "D".

As soon as possible after execution of this agreement, HUSBAND and WIFE shall cancel all credit card accounts held in their joint names, if any, and each party shall be solely responsible for obtaining credit cards in their own individual names and be solely responsible for paying any debt associated with credit cards in their respective names.

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XXI.

ATTORNEYS FEES AND COSTS

Each party will their own attorney's fees and costs.

XXII.

MISCELLANEOUS PROVISIONS REGARDING REAL PROPERTY

- A. 9218 Hanston Place, Montgomery, Alabama: This residence is awarded to HUSBAND as his sole and separate property. HUSBAND shall assume and pay and hold WIFE harmless from all property taxes, assessments and encumbrance(s) secured by and associated with this residence. HUSBAND sold a home in California that he owned before his marriage to WIFE. He used some or all of the proceeds from the sale of the home in California to purchase this home.
- B. 6106 S.E. Golden Street, Hillsboro, Oregon 97123: This residence is awarded to HUSBAND as his sole and separate property. HUSBAND shall assume and pay and hold WIFE harmless from all property taxes, assessments and encumbrance(s) secured by and associated with said residence. HUSBAND sold a home in California that he owned before his marriage to WIFE. He used some or all of the proceeds from the sale of the home in California to purchase this home
- C. Real property in Arizona: HUSBAND is awarded the property in Arizona he purchased over E-Bay for \$350.00. HUSBAND shall assume and pay and hold WIFE harmless from all property taxes, assessment or other expenses associated with this property.
- D. Time Share: HUSBAND purchased a timeshare at Lake Tahoe for \$250.00. The yearly maintenance fees associated with this time share is \$400 per year. HUSBAND shall assume and pay and hold WIFE harmless from all expenses associated with this time share.

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E. Real property at Corona del Mar in Talisay, Cebu, Philippines: This vacant lot is awarded to WIFE as her sole and separate property. WIFE shall assume and pay and hold HUSBAND harmless from all property taxes, assessments and encumbrance(s) secured by and associated with this property. HUSBAND sold a home in California that he owned before his marriage to WIFE. He used some or all of the proceeds from the sale of the home in California to purchase this property.

The parties will execute all documents necessary to effectuate the transfer of the above referenced properties into the name of the individual awarded the property. If either party fails to execute the necessary quit claim deed or other title document, the clerk of the court will have the power to execute the necessary documentation to effectuate the transfer of property pursuant to NRCP 70. The party failing to execute the necessary title documentation will be responsible for the other party's attorneys fees and costs.

XXIII.

SPOUSAL SUPPORT/ALIMONY

HUSBAND agrees to pay WIFE non-modifiable alimony of \$120.00 per month beginning one month after entry of the Decree of Divorce and payable on the first day of each month thereafter until the first of the following occurs: expiration of 42 months after entry of the Decree of Divorce, or WIFE remarries, or WIFE's death or HUSBAND's death.

XXIV.

CAR FOR WIFE

HUSBAND will aid WIFE in obtaining a car either by giving WIFE HUSBAND's Ford Explorer, or paying WIFE up to \$5,000 in periodic payments of \$200.00 per month for no more than 25 months (or until said \$5,000 is paid in full), whichever occurs first, to aid WIFE in the purchase of a car, whichever HUSBAND decides.

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XXV.

RECONCILIATION

In the event of reconciliation and resumption of the relationship between the parties, the provisions of this Agreement for settlement of the property rights shall, nevertheless, continue in full force and effect without abatement of any term or provision hereof, except as otherwise provided by written Agreement duly executed by each of the parties after the date of the reconciliation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated this 26 day of February, 2007.

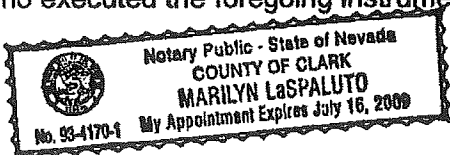
Philip Smith
PHILIP SMITH

Celiste Marsada Smith
CELISTE MARSADA SMITH

ACKNOWLEDGMENT

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this 1 day of March, 2007, personally appeared before me, a Notary Public, PHILIP SMITH, who acknowledged to me that he is the person described herein and who executed the foregoing instrument for the purpose therein mentioned



Marilyn LaSpaluto
NOTARY PUBLIC

ACKNOWLEDGMENT

STATE OF Alabama)
) ss.
COUNTY OF Lee)

On this 26th day of February, 2007, personally appeared before me, a Notary Public, CELISTE MARSADA SMITH, who acknowledged to me that she is the person

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described herein and who executed the foregoing instrument for the purpose therein mentioned.

Angelo S. McSmith
NOTARY PUBLIC

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Aug 27, 2007
BONDED THRU NOTARY PUBLIC UNDERWRITERS

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EXHIBIT "A"

In addition to the assets and funds provided to WIFE in the Agreement, WIFE shall receive the following assets and items of property as her sole and separate property:

1. WIFE's personal property, jewelry and effects in her possession.
2. The furniture and furnishings in WIFE's possession.
3. Any financial institution accounts in WIFE's name solely.

EXHIBIT "B"

In addition to the assets and funds provided to HUSBAND in the Agreement, HUSBAND shall receive the following assets and items of property as his sole and separate property:

1. HUSBAND's personal property, jewelry and effects in his possession
2. The furniture and furnishings in HUSBAND's possession.
3. HUSBAND's 401K in the approximate amount of \$10,000.
4. Any financial institution accounts in Husband's name solely.
5. HUSBAND's Ford Explorer subject to the terms stated herein above.

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EXHIBIT C

In addition to the debts awarded to WIFE herein, WIFE agrees to assume and pay prior to default and hold HUSBAND harmless from the following debts:

1. Any debt incurred by WIFE from the date of separation forward.

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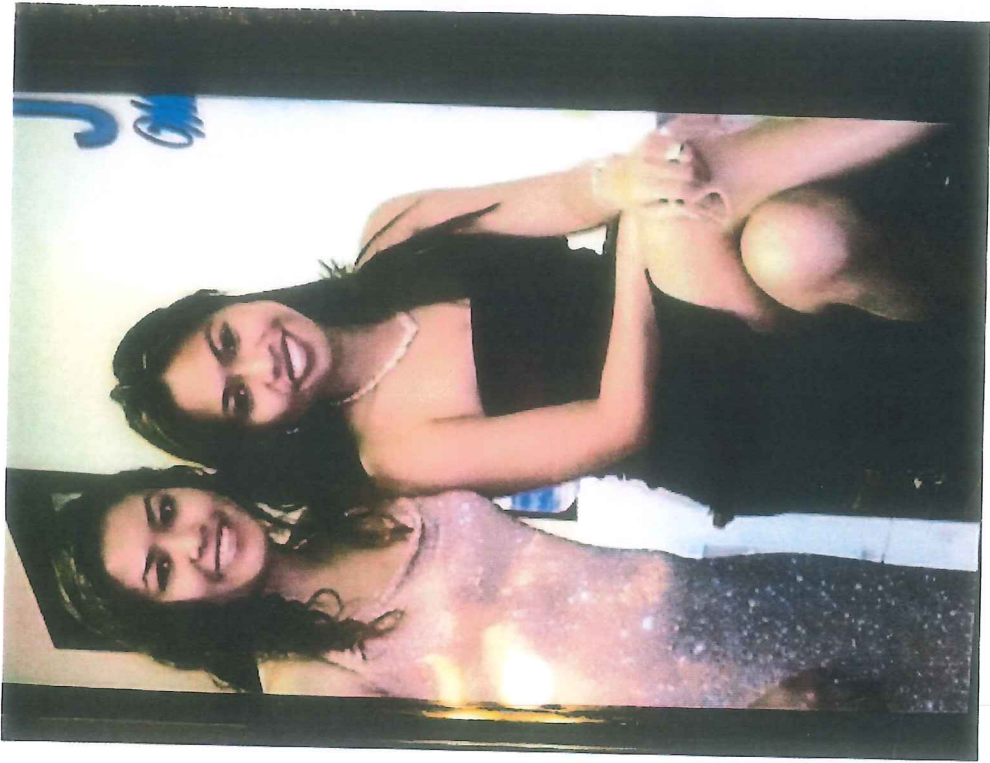
EXHIBIT "D"

In addition to debts awarded to HUSBAND herein, HUSBAND agrees to assume and pay prior to default and to hold WIFE harmless from the following debts:

1. Mortgages secured by the residences awarded to HUSBAND herein.
2. Credit Card debt in the total amount of approximately \$37,000.00.
3. Lease for residence where HUSBAND is currently living.

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EXHIBIT "2"



1



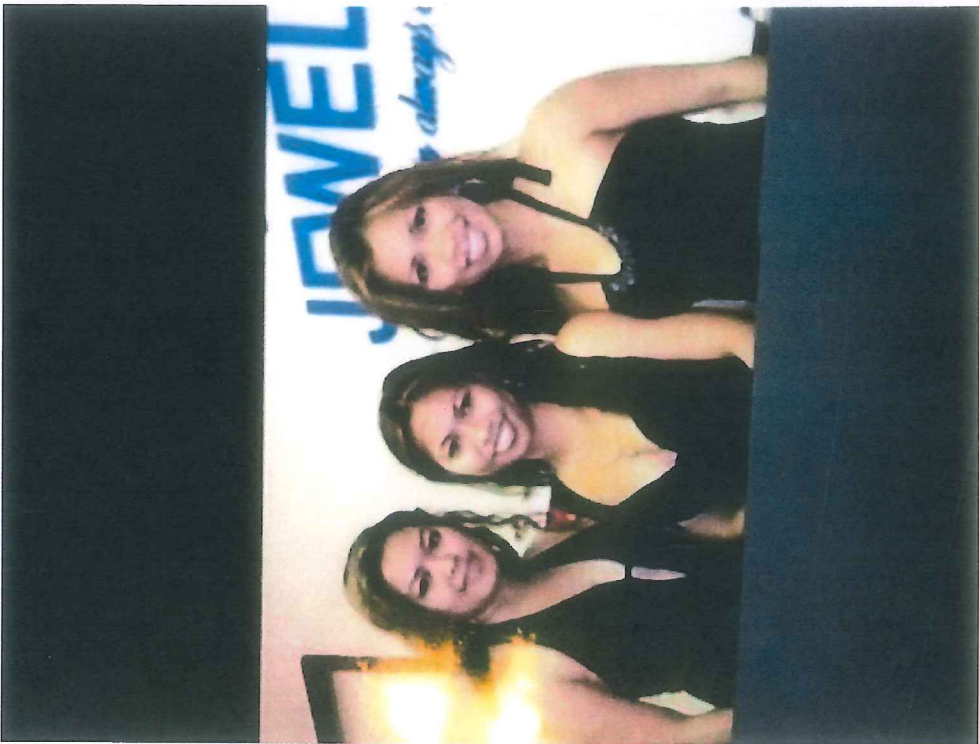


EXHIBIT “3”

14400 1st St. W. #100
Minneapolis, MN 55425
Tel: 612-338-1234
Fax: 612-338-1234

90905 Sep Number 1017

021512 194171

Customer #12

Number	Description	Price	Sales Tax	Tot
4050 00		324 00	324 00	648 00
	10100001 3.0 CT LADIES			
	NECKLACE			

Price	Sales Tax	Tot
3050 00	244 00	3294 00
	Discount 3050 00	

Form of payment
Cash 1080 00

Thank You -
All sales final. No refunds. Merchandise
can be exchanged within 7 days

EXHIBIT “C”

JOHN W. MUIJE & ASSOCIATES
1840 E. Sahara Ave., #106
Las Vegas, Nevada 89104
Telephone: 702-386-7002
Email: Jmuije@muijelawoffice.com

1 JOHN W. MUIJE & ASSOCIATES
2 JOHN W. MUIJE, ESQ.
3 Nevada Bar No: 2419
4 1840 E. Sahara Ave #106
5 Las Vegas, NV 89104
6 Phone No: (702) 386-7002
7 Fax No: (702) 386-9135
8 Email: Jmuije@muijelawoffice.com
9 *Attorneys for Plaintiffs*

DISTRICT COURT

CLARK COUNTY, NEVADA

10 BRITISH COLUMBIA SECURITIES
11 COMMISSION,

CASE NO: A-18-771407-C

DEPT. NO: XIV

12 Plaintiffs,

13 vs.

Date of Hearing: October 15, 2019

Time of Hearing: 9:30 a.m.

14 MICHAEL PATRICK LATHIGEE,

15 Defendant.

16 **SWORN DECLARATION OF COUNSEL IN SUPPORT OF RESPONSE TO**
17 **OBJECTIONS TO CLAIMS OF EXEMPTION**

18 STATE OF NEVADA)
19) ss.:
20 COUNTY OF CLARK)

21 JOHN W. MUIJE, ESQ., being first duly sworn upon oath, deposes and states under
22 penalty of perjury as follows:

23 1. My name is John W. Muije and I make this Sworn Declaration Under Penalties of
24 Perjury based on my own personal knowledge, except as to items on information and belief,
25 which I reasonably believe to be true.

26 2. I am now entering my 40th year of practice, having been admitted to the bar in
27 October, 1980, and the vast bulk of that time I have specialized in collection law and post-
28 judgment remedies.

1 3. NRCP 6 which provided for the calculation of time did not, up until March 1,
2 2019, calculate weekend days and holidays and non-judicial days in the computation of periods of
3 time stated at less than eleven days.

4
5 4. As long as I have practiced law, the rules have also provided that where a
6 document is served by mail, three additional days are added to the time period otherwise
7 specified by rule or statute, in computing deadlines.

8 5. In this particular matter, I was first contacted via a phone message on August 16,
9 2019.

10 6. I spoke briefly with Mr. Lathigee and scheduled an appointment for Monday, the
11 19th, and quoted him an appropriate retainer amount.

12 7. I met with Mr. Lathigee on the 19th to discuss primarily the mass seizure of the
13 bulk of the contents of his personal residence, which had occurred on August 15, 2019.

14 8. At the time of that meeting, or shortly prior thereto, I verified the statutory
15 procedures for claims of exemption and ascertained and verified for myself that the statute
16 provided for ten day deadline for filing a claim of exemption.

17 9. On making that verification, and without considering whether three days further
18 should be added for mailing since the statute regarding notice of execution specifically requires
19 that it be mailed to the judgment debtor, I made a hard calendar entry that the claims of
20 exemption were due for filing and service no later than August 29, 2019.

21 10. I conveyed that information to my client, and indicated to him that he, his family,
22 and whoever else might be knowledgeable or able to assist them, would have to do the lion's
23 share of the work in creating appropriate inventories, taking photographs, and assessing fair
24 market valuations as to the subject property they wanted exempted, which they in fact did.
25
26
27
28

1 11. I subsequently verified with the Constable's Office that they in fact mailed the
2 notice of exemption on August 15, 2019, which under the new rule (which no longer excludes
3 holidays and weekends from counting), would have resulted in the claims of exemption being
4 due on the 28th, not the 29th.

6 12. Although I was broadly aware of changes to the court rules, and in fact have
7 specifically consulted such changes in use of subpoenas, filing and service of motions, etc., my
8 general impression as to the rules was that they were changed to provide for week-long
9 increments, as opposed to five or ten day blocks, thereby generally adding one or two days to the
10 old deadlines.

12 13. Although I am embarrassed that I was not consciously aware that the rule as
13 written could result in the shortening of the time, when I received BCSC's Objection to Claims of
14 Exemption, I realized that I had not properly understood the new timing rules, and that in fact
15 they shortened what would have been a 17-day window for a debtor to file a claim of exemption
16 under the old rules (which have been utilized by me for 39 years of practice), down to a new
17 deadline 13 days after the notice of execution.

19 14. I honestly feel this was an honest mistake and excusable neglect on my part, and
20 that the Court should address this matter on the merits.

22 15. Furthermore, on the I have spoken extensively with the Constable's Office and
23 arranged to obtain access to Capital North American Moving and Storage where the bulk of the
24 larger household items were taken for storage pending further proceedings.

26 16. On information and belief, my client, his wife and his New York corporate
27 attorney accompanied the Constable to Capital North America Moving & Storage, and attempted
28 to examine all items maintained there and compiled indices of those items, to facilitate and assist
their claiming exemptions.

1 17. I also tried to obtain access to the various valuables seized at the time of the
2 execution, which the Constable has informed me and which I believe are being maintained in the
3 vault of the County Public Guardian at the Clark County Government Center.

4
5 18. I was advised by the Constable, and therefore believe, that the Public Guardian
6 and Constable normally do not allow access to the vault, and at best they could attempt to take
7 photographs and provide me a somewhat more specific inventory when they did.

8 19. Unfortunately, the original inventory from the day of execution is almost illegible
9 and was hardly helpful, even the somewhat more specific vault inventory was only marginably
10 helpful.

11
12 20. I am informed by my client that numerous valuable items are not identified in the
13 Constable's photographs or inventories, including 56 one ounce gold coins (some of which
14 belong to the judgment debtor) at least two valuable pieces of artwork, a taxidermy stuffed
15 animal, and other items, which make it almost impossible to even properly compile or assert an
16 exemption inventory, when there are so many items involved.

17
18 21. I feel that the only adequate way that the Court can properly evaluate the fair
19 market value of the items in question, coupled with the only fair and equitable way for my clients
20 to actually categorize and assert the full exemptions allowed them by the law, is for the court to
21 either appoint a Special Master, or in the alternative, schedule an appropriate evidentiary hearing,
22 on advance notice, so that the parties may independently seek appraisal and valuations of the
23 items.

24
25 22. Incident to the evidentiary hearing, the court should specifically direct the
26 Constable and the Public Administrator to provide monitored access to the property seized, so
27 that both the Plaintiff and Defendant can properly ascertain all items subject to this execution,
28

1 and hopefully obtain fair valuations from qualified appraisers, so as to provide the court a
2 reasonable basis to determine the monetary value of the items in question.

3
4 23. I commend counsel for BCSC in his approach of attempting to identify an
5 inventory all of the items, and obtain fair valuations, but I also note that they have no independent
6 corroborating sources or qualified experts providing such valuations, and that their valuations
7 seem to be speculative guesses based upon popular market auction sites, and not ones rendered by
8 an appropriate qualified expert dealing specifically and personally in the field.

9
10 24. The quantity, volume, and value variations virtually mandate that the court either
11 appoint a Special Master or in the alternative, provide for an evidentiary hearing with adequate
12 lead time so that the parties can properly inventory, categorize, and value the items in question.

13 25. Indeed, on information and belief, should the Court do that, I think there is a
14 reasonable probability that the parties may be able to negotiate a partial settlement and resolution
15 of the execution and exemption claims, based upon both parties having better access to the
16 relevant data and knowledge as to what items have been seized, and the fair market value of those
17 items.
18

19 FURTHER YOUR DECLARANT SAYETH NAUGHT.

20
21
22 = 
23 JOHN W. MUIJE, ESQ.
24
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26
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EXHIBIT “D”

Advisory Committee Note—2019 Amendment

Rule 5 generally conforms to FRCP 5. It retains former NRCP 5(a)'s reference to a "paper relating to discovery" to remind practitioners of the need to serve discovery documents on other parties, including deposition notices under Rule 30, requests for inspections under Rule 34, and subpoenas directed to a third party under Rule 45.

The amendments to Rule 5 relating to electronic filing and service reflect Nevada rules (such as the NEFCR) and practice. Rule 5(b)(4) retains the provisions requiring a proof of service to be attached to an electronic filing; the April 2018 amendments to the federal rule eliminating the proof of service for electronic filing are not adopted. NEFCR 9 bases the time to respond to a document served through an electronic filing system on the date stated in the proof of service.

Rule 5.1. Reserved

Rule 5.2. Reserved

Advisory Committee Note—2019 Amendment

The procedures for privacy protection in Nevada are located in the Rules Governing Sealing and Redacting Court Records.

Rule 6. Computing and Extending Time; Time for Motion Papers

(a) **Computing Time.** The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

(1) **Period Stated in Days or a Longer Unit.** When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) **Period Stated in Hours.** When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

otherwise, any opposing affidavit must be served at least 7 days before the hearing, unless the court permits service at another time.

(d) **Additional Time After Certain Kinds of Service.** When a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail), (D) (leaving with the clerk), or (F) (other means consented to), 3 days are added after the period would otherwise expire under Rule 6(a).

Advisory Committee Note — 2019 Amendment

Subsection (a). Rule 6(a) represents a major change in calculating time deadlines. It adopts the federal time-computation provisions in FRCP 6(a). Under Rule 6(a)(1), all deadlines stated in days are computed the same way, regardless of how long or short the period is. This simplifies time computation and facilitates “day-of-the-week” counting, but it has required revision to time deadlines stated elsewhere in the NRCP. To compensate for the shortening of time periods previously expressed as less than 11 days by the directive to count intermediate Saturdays, Sundays, and legal holidays, many of the periods have been lengthened. In general, former periods of 5 or fewer days are lengthened to 7 days, while time periods between 6 and 15 days are now set to 14 days. Time periods of 16 to 20 days were set to 21 days, and periods longer than 30 days were retained without change. The use of 7-, 14-, and 21-day periods enables “day-of-the-week” counting; for example, if a motion was filed and served on Wednesday with 7 days to respond, the opposition would be due the following Wednesday. Statutory- and rule-based time periods subject to this rule may not be changed concurrently with this rule. If a reduction in the times to respond under those statutes and rules results, an extension of time may be warranted to prevent prejudice.

Subsection (b). Rule 6(b) addresses extensions of time. While it borrows language from its federal rule counterpart, the rule retains Nevada-specific provisions governing stipulations for extension of time, subject to court approval. Rule 6(b) provides the court may extend the time to act “for good cause.” If another rule provides a method for extending time, such as Rule 29 for stipulations about discovery, the court or the parties may extend time as provided in that rule.

Subsection (c). Rule 6(c), previously NRCP 6(d), is conformed to FRCP 6(c), with reference to Nevada’s local rules. The local rules govern motion practice in general and may provide, for example, larger periods of time in which to file motions, specific procedures governing motion practice, or procedures to request a hearing or to submit a motion without a hearing.

Subsection (d). Rule 6(d) limits the instances in which three additional days will be added to a time calculation to instances in which service is accomplished by mail, by leaving it with the clerk, or in cases involving express consent.

In all other respects, the 2019 amendments to the NRCP and the companion amendments to the Nevada Electronic Filing and Conversion Rules (NEFCR) and the NRAP eliminate the former inconsistent provisions for adding three days for electronic service. These amendments also require the simultaneous filing and service of documents on submission to a court’s electronic filing system. The Committee recognizes this will require local rule amendments and changes to existing electronic filing systems. However, the Committee agrees with the following advisory committee notes to the 2016 amendments to FRCP 6, which explain that the FRCP were amended

in 2001 to provide for service by electronic means. Although electronic transmission seemed virtually instantaneous even then, electronic service was included in the modes of service that allow 3 added days to act after

...k's Office. Unless the court
... is inaccessible, then the
...ing under Rule 6(a)(1), then
... the first accessible day that is not a
... day; or
... the same time on the first accessible
... legal holiday.
... a different time is set by a
... ends: at 11:59 p.m.
... office is
... by

being served. There were concerns that the transmission might be delayed for some time, and particular concerns that incompatible systems might make it difficult or impossible to open attachments. These concerns have been substantially alleviated by advances in technology and in widespread skill in using electronic transmission.

* * *

Diminution of the concerns that prompted the decision to allow the 3 added days for electronic transmission is not the only reason for discarding this indulgence. Many rules have been changed to ease the task of computing time by adopting the 7-, 14-, 21-, and 28-day periods that allow 'day-of-the-week' counting. Adding 3 days at the end complicated the counting, and increased the occasions for further complication by invoking the provisions that apply when the last day is a Saturday, Sunday, or legal holiday.

Requiring simultaneous filing and service of documents submitted to an electronic filing system will take advantage of the speed of electronic communication and reduce litigation delays. If electronic service after business hours, or just before or during a weekend or holiday, results in a practical reduction of the time available to respond, an extension of time may be warranted to prevent prejudice. Consent to and use of electronic filing and service remain governed by local courts and the NEFCR.

III. PLEADINGS AND MOTIONS

Rule 7. Pleadings Allowed; Form of Motions and Other Papers

(a) **Pleadings.** Only these pleadings are allowed:

- (1) a complaint;
- (2) an answer to a complaint;
- (3) an answer to a counterclaim designated as a counterclaim;
- (4) an answer to a crossclaim;
- (5) a third-party complaint;
- (6) an answer to a third-party complaint; and
- (7) if the court orders one, a reply to an answer.

(b) **Motions and Other Papers.**

(1) **In General.** A request for a court order must be made by motion. The motion must:

- (A) be in writing unless made during a hearing or trial;
- (B) state with particularity the grounds for seeking the order; and
- (C) state the relief sought.

(2) **Form.** The rules governing captions, signing, and other matters of form in pleadings apply to motions and other papers.

Advisory Committee Note—2019 Amendment

As used in these rules, "complaint" includes a petition or other document that initiates a civil action.

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(3) **Inaccessibility of the Clerk's Office.** Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 6(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 6(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) **"Last Day" Defined.** Unless a different time is set by a statute, local rule, or court order, the last day ends:

(A) for electronic filing under the NEFCR, at 11:59 p.m. in the court's local time; and

(B) for filing by other means, when the clerk's office is scheduled to close.

(5) **"Next Day" Defined.** The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) **"Legal Holiday" Defined.** "Legal holiday" means any day set aside as a legal holiday by NRS 236.015.

(b) **Extending Time.**

(1) **In General.** When an act may or must be done within a specified time:

(A) the parties may obtain an extension of time by stipulation if approved by the court, provided that the stipulation is submitted to the court before the original time or its extension expires; or

(B) the court may, for good cause, extend the time:

(i) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(ii) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) **Exceptions.** A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(c)(1), and must not extend the time after it has expired under Rule 54(d)(2).

(c) **Motions, Notices of Hearing, and Affidavits.**

(1) **In General.** A written motion and notice of the hearing must be served at least 21 days before the time specified for the hearing, with the following exceptions:

(A) when the motion may be heard ex parte;

(B) when these rules or the local rules provide otherwise;

or

(C) when a court order—which a party may, for good cause, apply for ex parte—sets a different time.

(2) **Supporting Affidavit.** Any affidavit supporting a motion must be served with the motion. Except as Rule 59(c) provides