

2016

**Kylee J. Sandusky, Petitioner/ Appellee v. George A. Sandusky
Respondent/ Appellant**

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca3



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah.

Recommended Citation

Brief of Appellant, *Sandusky v Sandusky*, No. 110705198 (Utah Court of Appeals, 2016).
https://digitalcommons.law.byu.edu/byu_ca3/3633

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs (2007–) by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE COURT OF APPEALS

STATE OF UTAH

KYLEE J. SANDUSKY,

Petitioner/Appellee

v.

GEORGE A. SANDUSKY

Respondent/Appellant

APPEAL FROM A JUDGMENT OF THE THIRD JUDICIAL DISTRICT COURT OF
SUMMIT COUNTY, UTAH, HON. KARA L. PETTIT

APPENDIX B FOR APPELLANT

Elizabeth A. Shaffer
Attorney for the Appellant
4580 N. Silver Springs Drive
Suite 100
Park City, Utah 84060
Telephone: 435-655-3033

Paul J. Morken
Attorney for Appellee
P.O. Box 980691
Park City, Utah 84098

FILED
UTAH APPELLATE COURTS

JUL 19 2016

SUMMARY OF APPENDIX B DOCUMENTS

DATE	DESCRIPTION OF DOCUMENT
3/26/13	Deposition of George A. Sandusky Volume II
2/18/14	Temporary Restraining Order
3/7/14	Respondent's Motion for Summary Judgement
3/7/14	Respondent's Statement of Undisputed Facts in Support of Motion for Summary Judgement
3/7/14	Respondent's Memorandum in Support of Motion for Summary Judgement
7/18/14	Order on Respondent's Motion for Summary Judgement
12/16/14	Respondent's Motion to Bifurcate Issues of Divorce
1/16/15	Respondent's Reply to Petitioner's Opposition to Motion to Bifurcate Issues of Divorce
4/17/15	Order on Respondent's Motion to Bifurcate Issues of Divorce and Petitioner's Motion for Judge Harris to Retain Case for Final Trial
4/17/15	Respondent's Pretrial Memorandum
5/26/15	Respondent's Proposed Findings of Fact and Conclusions of Law
5/26/2016	Respondent's Post-trial Memorandum

Alpine **COURT REPORTING**

Kylee J. Sandusky

vs.

George A. Sandusky

Case No. 110705198

Deposition of:

George Sandusky

Date: April 11, 2013

Alpine Court Reporting

Locations in Provo and Salt Lake City

IN THE THIRD JUDICIAL DISTRICT COURT
FOR SUMMIT COUNTY, STATE OF UTAH

KYLEE J. SANDUSKY,

Petitioner,

V.

GEORGE A. SANDUSKY,

Respondent.

Civil No. 114500103 DA

DEPOSITION OF GEORGE SANDUSKY

TAKEN: April 11, 2013

12:23 p.m. to 3:02 p.m.

LOCATION: ALPINE COURT REPORTING
3507 North University Avenue
Suite 175
Provo, Utah 84604

Reported by: DONNA M. WARD, RPR

1 APPEARANCES

2
3 FOR THE PETITIONER: PAUL J. MORKEN, PLLC
4 BY: PAUL J. MORKEN, ESQ.
5 P.O. Box 980691
6 Park City, Utah 84098
7 Tele: 435-659-1685
8 Email: paulmorken@gmail.com

9 FOR THE RESPONDENT: ELIZABETH A. SHAFFER, PLLC
10 BY: ELIZABETH A. SHAFFER, ESQ.
11 2041 Sidewinder Driver
12 Suite 2
13 Park City, Utah 84060
14 Tele: 435-658-5427
15 Email: eshaffer@lawparkcity.com
16 (Appearing via video
17 conference.)

18 ALSO PRESENT: KYLEE SANDUSKY
19
20
21
22
23
24
25

INDEX

WITNESS: George Sandusky (Appearing via video conference.)

EXAMINATION BY PAGE

Mr. Morken..... 5

Ms. Schaffer..... 99

EXHIBITS:

Exhibit No. 25 Fireman's Credit Union
Statement..... 39

Exhibit No. 26 Hawaii Community Federal
Credit Union Statement..... 41

Exhibit No. 27 Hawaii Community Federal
Credit Union Statement..... 43

Exhibit No. 28 Hawaii Community Federal
Credit Union Statement..... 48

Exhibit No. 29 Financial Declaration..... 50

Exhibit No. 30 Hawaii Community Federal
Credit Union Statement..... 76

Exhibit No. 31 Affidavit of Stella Chaidez;
Beverly Chaidez and Kevin
Chaidez..... 84

Exhibit No. 32 Check/Affidavit of Craig
Reece/Firemen's Credit
Union Statement..... 96

1 Provo, Utah, April 11, 2013, 12:23 p.m.

2 GEORGE SANDUSKY

3 was duly sworn, was examined and
4 testified as follows:

5 EXAMINATION

6 BY MR. MORKEN:

7 Q. George, have you got -- have you got the
8 report from the expert for the evaluation on the 10 lots
9 as well as the Foo house?

10 A. I have the report from the 10 lots. I do not
11 have the report from the house or the lot that's in front
12 of the church.

13 Q. Do you have a sense as to when that might be
14 completed?

15 A. Do I know when?

16 Q. Yeah.

17 A. I'd say within the next couple of weeks I
18 would say.

19 Q. Okay. I'm going to refer you to Exhibit 24,
20 which is on yours -- as far as you're concerned, it's Tab
21 63 and it is titled the separation agreement.

22 A. Okay. Hang on just a second. I don't want
23 to disturb this. Okay, I have 24 out.

24 Q. You have 24 and that's one that is titled
25 separation agreement?

1 A. No.

2 Q. Okay. Look at -- I think look at the tab
3 number that I sent you, Tab No. 63, because that's the
4 separation agreement.

5 A. Sixty-three. It's 63.

6 Q. Did you find it?

7 A. I have a Tab 61 and I have a Tab 64.

8 Q. No. I know you have a 63 because we talked
9 about that in detail at the first part of the deposition.

10 A. Okay, so that's in the other stack that we
11 went through?

12 Q. Yes.

13 A. Okay.

14 MS. SHAFFER: What are we looking for?

15 MR. MORKEN: It's the separation agreement.

16 Liz, can you hear me?

17 MS. SHAFFER: Pretty good.

18 MR. MORKEN: Okay. It's Exhibit 24, it's the
19 separation agreement, but as far as --

20 THE WITNESS: The numbers on the bottom are 00703
21 and 1343?

22 BY MR. MORKEN:

23 Q. Yes.

24 A. I have it.

25 Q. Okay.

1 Liz, do you have it?

2 MS. SHAFFER: Yeah.

3 BY MR. MORKEN:

4 Q. Okay. I'm going to refer you to --

5 A. Which one are we going on, sir?

6 Q. I'm going to refer you to exhibit -- Bates
7 stamp No. 708. No, I'm sorry, 709, and it's Article 8
8 and it's titled "Warranty as to Financial Statements."

9 A. Okay.

10 Q. Okay. Now --

11 A. 709, right, it says Article 8?

12 Q. Yes. The title of that is "Warranty as to
13 Financial Statements." Are you looking at that page?

14 A. Yes.

15 Q. Okay. You see the first sentence there? It
16 reads: "Each party has furnished to the other various
17 financial statements and information reflecting the
18 party's financial condition as of March 1st, 2010." You
19 see that first sentence?

20 A. Yes.

21 Q. Okay. Did I read that accurately?

22 A. It says: "Each party has furnished to the
23 other various financial statements and information
24 reflecting the party's financial condition as of March
25 1st, 2010."

1 Q. Okay. Now, is that a true statement?

2 A. As far as I'm concerned it is.

3 Q. Okay. Do you have --

4 A. I don't know. I didn't ask for her financial
5 statements.

6 Q. Did you give to her various financial
7 statements?

8 A. I didn't need to give to her, sir. They were
9 all in the desk. There were available for her to look at
10 anytime she wanted to and they were easy to pull up.

11 Q. Did you prepare --

12 A. They're easy to find.

13 Q. Did you prepare for her any financial
14 statements?

15 A. I sat down with her; I don't know when it
16 was, but she made three or four pages of notes of
17 everything that was owned and where everything was.

18 Q. Okay. What you're saying is that she made
19 notes?

20 A. Yes, I sat down with her and she made a bunch
21 of notes.

22 Q. So is it accurate to say that you never gave
23 to her any financial statements that you prepared?

24 A. No. No, sir, it's not accurate to say that.

25 All those things were available to her. They were in the

1 desk. They were common things around the house she could
2 look at anytime, and I'm sure she did glance at them.

3 Q. Okay, so it's clear though you never made a
4 financial statement; is that correct?

5 A. That's not correct.

6 Q. Where is the financial statement?

7 A. It's in the separation agreement. We went
8 through it.

9 Q. Is it in the separation agreement?

10 A. We went through it, when we went through the
11 financials, we went through the separation agreement. I
12 explained to her where the money was and where it had
13 gone.

14 Q. I'm going to refer you to Bates stamp No.
15 717.

16 A. 717. Okay.

17 Q. Okay. Do you see where it says "Financial
18 Information Worksheet?

19 A. No, 717 to me is a notary signature.

20 Q. Yes. Do you see that notary signature and it
21 says -- and it's blank as far as any signatures, but it
22 says: "The party named above as the party preparing the
23 financial information worksheet." Do you see that?

24 A. It says: "The party named above as the party
25 preparing the financial information worksheet, who

1 acknowledged that he or she did sign the foregoing
2 instrument and that the same is of his or her free act
3 and deed." Yes.

4 Q. Yeah. Did you prepare a financial
5 information worksheet?

6 A. No, she did.

7 Q. No, the question is: Did you? The question
8 is: Did you?

9 MS. SHAFFER: I'm going to object as to the form of
10 the question as to what you mean by the financial
11 information worksheet. I think he's testified as to what
12 his understanding of it was and what they did
13 sufficiently.

14 BY MR. MORKEN:

15 Q. Fine. Can you answer the question? Did you
16 prepare a financial information worksheet?

17 A. All of the financials were there and
18 available. I filled out the original sheet that came in
19 pencil. You showed that to me last time.

20 Q. Okay, so neither you or Kylee signed this,
21 this statement, that refers to a financial information
22 worksheet; is that correct?

23 A. I don't know.

24 MS. SHAFFER: Objection to the form of the
25 question. What financial worksheet are you talking

1 about?

2 MR. MORKEN: I'm talking about the notary clause
3 that refers to a financial information worksheet.

4 MS. SHAFFER: Which financial information
5 worksheet?

6 MR. MORKEN: It's Bates stamp No. 717.

7 Q. Did a notary or did you sign anything
8 pertaining to a financial information worksheet?

9 MS. SHAFFER: I don't understand the question,
10 Paul.

11 MR. MORKEN: Well, I'd like him to answer the
12 question. If he doesn't understand it, I'll restate it.

13 THE WITNESS: Would you ask the question again?
14 Hang on just a second. I got a trash truck coming by.

15 Okay, you're asking me if I signed a financial
16 worksheet.

17 BY MR. MORKEN:

18 Q. A financial information worksheet.

19 A. I signed -- I don't understand your question.
20 I signed the documents after we prepared them. I did
21 them in pencil. I was -- I couldn't finish them. I went
22 to the bathroom. I was sick. She typed them all out,
23 filled them in.

24 Q. So is it accurate to say that no notary
25 signed what is -- what you prepared and sent to me as

1 Bates stamp 717, is it accurate that no notary signed
2 that page; is that accurate?

3 A. I don't know.

4 MS. SHAFFER: Are you asking about -- you're asking
5 that particular page that's blank, are you asking if ever
6 it was signed by a notary?

7 MR. MORKEN: Well, this is the only thing that you
8 produced, so you're the ones who -- Mr. Sandusky produced
9 it, so I'm assuming he's in a position to testify as to
10 whether or not any notary signed the document he
11 produced.

12 THE WITNESS: Okay. Notary -- this notary was
13 signed -- this was all signed. I have it right here,
14 Document 13.

15 MR. MORKEN: I'm talking about the Bates stamp 717.

16 MS. SHAFFER: Well --

17 THE WITNESS: I don't know.

18 MS. SHAFFER: Yeah, I don't understand what you're
19 asking him. The document is not signed, 717.

20 BY MR. MORKEN:

21 Q. That's correct. Are you aware, George, that
22 any document, 717, having to do with financial
23 information worksheet was signed by a notary?

24 A. No, I'm not aware of anything.

25 Q. Okay. In your response --

1 MS. SHAFFER: The noise I'm getting, is there
2 something going on outside?

3 THE WITNESS: It's just a big dumpster guy that's
4 getting trash across the street.

5 MS. SHAFFER: Oh.

6 THE WITNESS: I'm hoping he'll be done in just a
7 second.

8 MS. SHAFFER: Okay.

9 THE WITNESS: I shut some windows. It doesn't do
10 any good.

11 MR. MORKEN: George and Liz, can you hear me? Can
12 you both hear me now?

13 MS. SHAFFER: Yes.

14 BY MR. MORKEN:

15 Q. Okay. George, in your response to
16 Interrogatory No. 3, the Interrogatory No. 3 says: "If
17 you claim any premarital or separate property interest in
18 any asset that you currently own or in which you have an
19 ownership interest or that you have a severable or a
20 traceable premarital or separate property interest in any
21 marital asset, list and fully describe each such asset."

22 MS. SHAFFER: Can you tell us what exhibit that is?

23 MR. MORKEN: That's not an exhibit. That's his
24 interrogatory responses.

25 MS. SHAFFER: Does he have a copy of it?

1 MR. MORKEN: I don't know.

2 Q. Do you have a copy of your responses?

3 MS. SHAFFER: What?

4 MR. MORKEN: I'm asking George if he has a copy of
5 his responses. I don't know if he has a copy or not.

6 MS. SHAFFER: I don't know if he does. I don't
7 think he does.

8 BY MR. MORKEN:

9 Q. Well, all right. What I'm going to do is
10 read your response and then I'm not going to ask you as
11 to whether or not -- whether or not the -- I'm going to
12 ask as to whether or not it's an accurate statement as
13 you hear me read it. Okay?

14 MS. SHAFFER: Hang on one second. I want to get my
15 copy so I can follow along with you.

16 MR. MORKEN: All right.

17 MS. SHAFFER: What number? Three?

18 MR. MORKEN: Three.

19 MS. SHAFFER: Okay.

20 MR. MORKEN: Okay. Look at Page 5 there, Liz.

21 Q. There is the last couple of paragraphs that
22 you write in your response, this is what you say: "2007
23 received balance of funds on sale of Lyman house" --

24 A. Excuse me. Excuse me, sir, you're completely
25 garbled. I'm not able to understand.

1 Are you, Elizabeth?

2 MS. SHAFFER: No, I can't either.

3 BY MR. MORKEN:

4 Q. Can you hear me now?

5 A. Much better. Much better.

6 Q. "2007 received balance of funds on sale of
7 Lyman house of one and-a-half million dollars and moved
8 to Park City, Utah. March 1st, 2010, assets of
9 approximately \$1,200,000. I took original \$400,000 from
10 the duplex in Ventura, split the \$800,000 with Kylee,
11 paying her \$24,000 per year for her life or until
12 remarried." Okay. Now, is that, as far as you're
13 concerned, an accurate statement?

14 A. In general, yes.

15 Q. All right, so was it your intent to take
16 \$400,000 and treat that as your separate property, take
17 the balance of the \$800,000 and you keep \$400,000 and she
18 gets \$400,000?

19 A. That was the intent of the settlement offer,
20 yes.

21 Q. That was the intent. Okay. Was that the
22 intent -- is that how --

23 A. Yes, it was.

24 Q. Is that how we're to interpret the separation
25 agreement?

1 A. Yes.

2 Q. Okay, so she was to get \$400,000 as property;
3 is that correct?

4 A. If you read the separation agreement, it says
5 she had 400,000 or six percent interest, which is 24,000,
6 \$2,000 a month. She asked me. She didn't know what to
7 do and I said: "You better take the payments because
8 you'll just spend the cash." And I said: "You won't be
9 able to find a place to make six percent." And she asked
10 about the Maui loan. She said: "Well, why don't I just
11 do the Maui loan?" And I said: "Great. What are you
12 going to do if the Maui doesn't pay?" She said: "Oh,
13 yeah, you're right. I can't do that." So that's where
14 that all came from.

15 Q. Okay. I just want to make sure I'm clear as
16 to what your intent was. So the intent was for you to
17 keep \$400,000 from the Ventura property and then to
18 equally divide the balance of the \$800,000 where she
19 would get \$400,000 and you would get the \$400,000, that's
20 the intent of the separation agreement; correct?

21 A. That's exactly what it was.

22 Q. Okay. Now, all right, going to Exhibit 24.

23 A. I'm sorry, I didn't hear you, sir.

24 Q. Going to Exhibit 24 or your Tab No. 63, the
25 separation agreement.

1 A. Okay. 703.

2 Q. Yeah, now look at Bates No. 706.

3 A. 706.

4 Q. Okay.

5 A. Okay.

6 Q. Now, under Paragraph F, okay, do you see that
7 Paragraph F?

8 A. Right.

9 Q. It says: "All home furnishings, computers,
10 TVs, jewelry, Honda 2007 Civic, checking and savings
11 accounts and 401K." Do you see that?

12 A. Yes.

13 Q. Did that constitute a value of \$400,000?

14 A. Absolutely not.

15 Q. Absolutely not?

16 A. No.

17 Q. How much approximately do you think that
18 constituted?

19 A. Probably somewhere around 70 or \$80,000.

20 Q. 70 to 80,000, okay, and so assume for a
21 minute it's \$80,000, that would leave a balance of
22 \$320,000; correct?

23 A. Yeah, but that's not how I figured it. I
24 gave her that and I was going to give her an additional
25 \$400,000.

1 Q. So you were going to give her an additional
2 \$400,000?

3 A. Plus those things, yes, sir.

4 Q. Okay, and that's for property; right?

5 A. Pardon me?

6 Q. You're talking about this is different than
7 the \$400,000 property that you're referring to?

8 A. Yes.

9 Q. Okay.

10 A. Yes, those are all her personal things that I
11 would say are her personal stuff.

12 Q. Okay.

13 A. And the checking and savings was the accounts
14 that were in her name as the primary, even though I was
15 on her accounts at the credit union, that's always been
16 her account, the money that was in there, whatever else
17 she has, the Honda Civic, the jewelry, the computer, the
18 TVs, other than the big screen TV, which I bought, she
19 said I could have that, and I took and gave it to my
20 sister and my nieces and nephews, and I walked -- I left
21 that house with my clothes, a few tools out of the garage
22 and the Honda Ridge Line.

23 Q. Okay, so the \$400,000 was supposed to be in
24 addition to that; correct?

25 A. That's correct.

1 Q. Okay. Now, I want you to look at Bates stamp
2 No. 711, same exhibit, Paragraph G. You see it,
3 Paragraph G?

4 A. Yes.

5 Q. All right. I want you to -- the title of
6 that paragraph is "Transfers of Property Incident to
7 Divorce." Are you looking at the same paragraph that I
8 am?

9 A. Okay. I'm on Paragraph G, it says "Transfers
10 of Property Incident to Divorce."

11 Q. Okay. Now, I want you to read that and tell
12 me if you had read that at the time you signed the
13 separation agreement.

14 A. Well, I glanced at it. I still don't
15 understand what it says.

16 Q. You still don't understand what it says, is
17 that what you're saying?

18 A. No, not entirely. It's confusing to me.

19 Q. It's confusing. Did you read Section 1041 of
20 the Internal Revenue Code that is referred in that
21 paragraph?

22 A. I sure didn't. 1041 of the Internal Revenue
23 Code, no, I didn't.

24 Q. So you still don't know what that means; is
25 that right?

1 A. Well, let's back up a minute, sir. At the
2 time, the only property that was owned was the lots in my
3 own name in Hawaii. That's the only property that was
4 owned by us.

5 Q. George, that's not the question. I'm asking
6 you just a very simple question, and I don't want to
7 repeat what you've already said, but is it accurate to
8 say that at the time you signed that, and even now as you
9 read it, you do not understand that paragraph?

10 A. No, and I've never read Section 1041 of the
11 Internal Revenue Code either.

12 Q. Okay. Now, the same paragraph but Roman
13 numeral three, you see where it says that the purpose of
14 this agreement is for the transfer of property hereunder
15 to be tax free, do you see that?

16 A. Yes.

17 Q. Okay. Do you understand what that means?

18 A. I believe -- I can guess. Would you like me
19 to guess and tell you what I think it means?

20 Q. Sure.

21 A. It means if the property is held in the
22 marriage and it goes to one or the other, there isn't a
23 tax consequence of a capital gain. That's what I
24 believe.

25 Q. Okay. All right.

1 A. Such as there is no gain if the properties
2 are held jointly and one person gets it and it's
3 appreciated in value, there is no tax consequence.

4 Q. Okay. Where in this agreement does it say
5 she gets, in addition to the property in Paragraph 2F,
6 that you're going to give her \$400,000?

7 A. That's the last page of the agreement and
8 it's not in this one.

9 Q. It's not in this one?

10 A. No, wait a minute. There it is there,
11 Article 4.

12 Q. Article 4. Oh, that's spousal support.
13 That's not property.

14 A. Right, and at any time in the last -- it's in
15 the back of the addendum signed by both of us, and at any
16 time either person can terminate the \$2,000 a month
17 spousal support with me paying her \$400,000.

18 Q. Yeah.

19 A. You got that, Elizabeth?

20 MS. SHAFFER: Yeah, you're referring to 714, the
21 addendum 714; right?

22 MR. MORKEN: No, he's referring to Bates Stamp No.
23 798, that's Article 4.

24 THE WITNESS: 714, that's it.

25 MR. MORKEN: It's Article 4, titled "Spousal

1 Support."

2 THE WITNESS: Right.

3 MS. SHAFFER: He's talking about 714 too.

4 THE WITNESS: 714, that's what I was talking about.

5 BY MR. MORKEN:

6 Q. Yes, I'll get that -- George, I'll get to
7 that in a minute. I'm looking at Bates stamp 798 right
8 now, Article 4, spousal support. Now, your prior
9 testimony is that you said that the \$400,000 that she got
10 was intended to be a property division?

11 A. No.

12 Q. Are you changing your --

13 A. It's a division of the marriage.

14 Q. Are you changing your --

15 A. There is a settlement offer between her and I
16 of the termination of our marriage.

17 Q. Yah, you said those were assets and property
18 and you got \$400,000 from separate property and then you
19 got the remaining \$800,000 --

20 A. No. No. No. No. Just a second, I'll
21 explain it to you. Okay? The amount of money that was
22 in play after all the -- we went through the properties
23 and everything else, was 1.2 million and change. Okay?
24 I told her I would give her -- I would keep the \$400,000
25 that I kept in the marriage, which I'm going back from

1 signing off on the Ventura properties, and that we'd
2 split the 800 400/400. I would keep the land that was in
3 my own name. She said she wanted nothing to do with it.
4 And, by the way, Mike Anderson, he remembers several
5 times she told him that she wanted nothing to do with it.
6 I would pay for his college and she could have the
7 400,000 or \$2,000 a month in the form of alimony. The
8 reason for the form of alimony was so I could write it
9 off my taxes, because to make that money, I had to pay
10 taxes on that money, and she -- and that was what was
11 agreed upon, and we talked about this, and she's the one
12 that filled it out. I filled it out in pencil and she
13 filled it out.

14 Q. You see the last sentence of Article 4, the
15 second paragraph?

16 A. The last sentence on Article 4.

17 Q. Do you understand what that means?

18 A. Do I understand what that means?

19 Q. Yes.

20 A. I think I do.

21 Q. It says: "The provisions for the support
22 maintenance and alimony of Kylee are independent of any
23 division or agreement for division of property between
24 the parties and shall not for any purpose be deemed to be
25 part of or merged in or integrated with the property

1 settlement of the parties." Now, you signed that and you
2 understand what that means?

3 A. Well, it sounds like I don't understand it.

4 Q. Now, I'm going to refer to Bates stamp 714,
5 same exhibit, same tab number, 63, and that's titled
6 "Addendum."

7 A. Right.

8 MS. SHAFFER: Are you on 714?

9 MR. MORKEN: Yes.

10 MS. SHAFFER: Okay.

11 BY MR. MORKEN:

12 Q. It says at any time either one of the parties
13 may terminate the monthly alimony payments. Okay? Now,
14 that's referring to alimony payments of \$2,000 with a
15 lump sum cash payment of \$400,000 and this will be
16 effective March 1st, 2010. Now, so what your
17 understanding is that for that matter she could go ahead
18 and ask for \$400,000 in alimony lump sum today; is that
19 correct?

20 A. According to the separation agreement, yeah,
21 she was always offered that.

22 Q. Okay, and so you would come up then in terms
23 of alimony a lump sum amount of alimony of \$400,000;
24 correct?

25 A. Correct.

1 Q. Okay, and that would be in addition to any
2 property settlement?

3 MS. SHAFFER: Objection to the form of the
4 question.

5 BY MR. MORKEN:

6 Q. Just answer the question. It simply says
7 this is having to do with alimony.

8 MS. SHAFFER: No, it says he can terminate alimony
9 payments.

10 MR. MORKEN: Yes, but it says the \$2,000 with a
11 lump sum cash payment of \$400,000.

12 MS. SHAFFER: Right.

13 BY MR. MORKEN:

14 Q. So you can terminate the alimony payments
15 with a lump sum of \$400,000, that is your understanding;
16 correct?

17 MS. SHAFFER: Well, he testified before --

18 MR. MORKEN: No, I want just his testimony, Liz. I
19 don't want it from you.

20 MS. SHAFFER: Well, it's fine, but I don't want you
21 to confuse his testimony and misstate his testimony in
22 your questioning, you know, his explanation --

23 MR. MORKEN: Well, then I'll --

24 MS. SHAFFER: Let me explain it.

25 MR. MORKEN: Liz -- Liz, I don't want you to answer

1 the question, so I'll rephrase the statement.

2 MS. SHAFFER: No, I'm not. I'm just objecting to
3 the form of your question to the extent that it misstates
4 his prior testimony.

5 BY MR. MORKEN:

6 Q. Okay. I'm referring to Bates 706, same
7 Exhibit 24. George, I'm going to refer you to Paragraph
8 D and Paragraph E.

9 A. D and E?

10 Q. I'm sorry, Bates stamp 706. Do you have
11 that?

12 A. Yes, I do.

13 Q. And Paragraph D, as in dog. Okay. It says
14 "Transfer of Marital Property from Husband to Wife," and
15 its says: "Husband transfers to wife as her sole and
16 separate property all interest in the following marital
17 property." Is that the way it reads?

18 A. Okay. Are we under F, sir?

19 Q. D.

20 A. You're broken up. I'm not trying to be rude.
21 I'm trying to understand the question.

22 Q. That's all right, George. I'm referring to
23 Paragraph D, as in dog.

24 A. Okay. D, okay. Transfer of marital property
25 from husband to wife.

1 Q. "Husband transfers to wife as her sole and
2 separate property all interest in the following marital
3 property." Do you see that?

4 A. Yes.

5 Q. Now, in that paragraph, it's blank. There's
6 no property listed; correct?

7 A. That's correct.

8 Q. Okay, so, and then Paragraph E, as in
9 elephant, transfer --

10 A. Right.

11 Q. How does that read?

12 A. It says: "Transfer of marital property from
13 wife to husband." There was no property transferred.

14 Q. So -- okay, so there is nothing -- neither
15 paragraph identifies any marital property; is that
16 correct?

17 A. That's correct.

18 Q. So no property, no marital property was
19 transferred; is that correct?

20 A. I'm not sure what you mean by marital
21 property. Are you talking about real estate property?
22 Are you talking about blankets? Are talking about tools?
23 Are you talking about cars? What are you talking about?

24 Q. So you don't know what it means? Is it fair
25 to say you don't know what marital property means?

1 MS. SHAFFER: What do you mean in your question? I
2 think it's only fair.

3 BY MR. MORKEN:

4 Q. Is it fair, George, that you do not know what
5 marital property means?

6 MS. SHAFFER: What was the question?

7 BY MR. MORKEN:

8 Q. Is it fair to say you do not know what
9 marital property means?

10 MS. SHAFFER: Objection to the form of the
11 question. That isn't what he said.

12 BY MR. MORKEN:

13 Q. Just answer the question.

14 MS. SHAFFER: He was asking you to explain your
15 question.

16 BY MR. MORKEN:

17 Q. George, answer the question. Is it fair to
18 say --

19 A. Repeat the question, please.

20 Q. Is it fair to say you do not know the
21 definition of marital property?

22 MS. SHAFFER: Objection to the form of the
23 question.

24 THE WITNESS: I wouldn't say yes or no to that,
25 sir.

1 BY MR. MORKEN:

2 Q. You don't know?

3 A. Pardon me?

4 Q. You don't know? What is the definition of
5 marital property?

6 A. Anything that's acquired during the marriage
7 could be marital property; anything acquired during the
8 marriage could be separate property.

9 Q. What would define marital property?

10 A. I'm not sure what that means. Does that mean
11 her underwear, her socks?

12 MS. SHAFFER: Objection to the form of the
13 question.

14 THE WITNESS: I'm asking you.

15 MS. SHAFFER: Are you talking about between them or
16 what defines marital property in general or between them
17 or what are you talking about, Paul? Objection to the
18 form of the question.

19 BY MR. MORKEN:

20 Q. All right. George, your testimony was that
21 no marital property was transferred; right? According to
22 Paragraph D and E, no marital property was transferred or
23 called the separate property of another party; correct?

24 MS. SHAFFER: Objection to the form of the
25 question. His answer to your question was there was a

1 blank after D and E that you asked him about and he
2 confirmed that was the case on the property settlement
3 agreement. That is the question. You know, Paul, so be
4 fair. You ask him a question and then you recharacterize
5 it kind of in a cross-examination type way. It isn't
6 really fair. So all I'm saying is just be fair in your
7 questions here. And I'm objecting to the form of that
8 question. It's not cross-examination. It's discovery.

9 BY MR. MORKEN:

10 Q. Okay. Can you answer the question?

11 A. I don't think I can.

12 MS. SHAFFER: What is the question?

13 THE WITNESS: I'm totally confused, sir.

14 MS. SHAFFER: What is the question?

15 BY MR. MORKEN:

16 Q. Is there anything in the document that shows
17 that -- is there anything that states that any asset here
18 is marital property in this separation agreement?

19 MS. SHAFFER: Objection to the form of the
20 question.

21 BY MR. MORKEN:

22 Q. Just answer the question.

23 A. Anything that is marital property?

24 Q. Is there anything in this agreement,
25 separation agreement, that identifies an asset as a

1 marital property?

2 A. I don't know.

3 Q. Well, do you want to look?

4 A. I don't think we -- we just separated the
5 properties and the assets, the cars, the furniture,
6 everything else. I don't think we ever identified
7 marital property as far as I can remember.

8 Q. Okay. I'm going to refer you to Paragraph F,
9 F as in Frank, same page.

10 A. Okay.

11 Q. You see this is separate property of wife.
12 It says checking and savings accounts?

13 A. Right.

14 Q. Now, does that mean all checking and savings
15 accounts held by either, by both of you?

16 A. Okay. All -- I'm going to explain that to
17 you, sir.

18 Q. No, I don't want an explanation. Is there
19 anything --

20 A. I'm going to answer the question if you'll
21 let me answer the question.

22 MS. SHAFFER: What is the question, Paul?

23 BY MR. MORKEN:

24 Q. Here is the question: Is there anything in
25 that paragraph that identifies an account?

1 MS. SHAFFER: I'm going to -- let me just object to
2 the form of the question. Also, that the question is --
3 the record should reflect that the question is part of
4 Article 3, talking about property and property division,
5 and there are also some additional information prior to
6 each one of those subparagraphs that might explain what
7 you're trying to get at in this, Paul.

8 BY MR. MORKEN:

9 Q. Can you answer the question?

10 A. Repeat the question, please.

11 Q. Does this identify or differentiate at all
12 between checking and savings accounts? I'm talking about
13 Paragraph F.

14 A. Does it specifically identify?

15 Q. Yes.

16 A. No, because the whole time during our
17 marriage, sir, we had separate accounts. She did not go
18 into my accounts. I did not go into her accounts.

19 Q. So it does not --

20 A. It was separate accounts.

21 Q. It's accurate to say -- so it's accurate to
22 say that nothing in this agreement identifies what
23 accounts; is that correct?

24 A. Well --

25 MS. SHAFFER: What accounts are you talking about?

1 MR. MORKEN: Liz, we're talking about Paragraph F.

2 MS. SHAFFER: F?

3 MR. MORKEN: Yes.

4 THE WITNESS: It says right in here, it says Honda
5 Ridge Line truck, checking and savings accounts. It
6 should have me as the primary on the checking and savings
7 accounts. She knew exactly what checking and savings
8 accounts those were and the retirement/pension account,
9 that's what it says there. The reason it wasn't -- the
10 reason it wasn't listed in there is because they were
11 separate accounts. Just like your wallet is separate
12 than your wife's purse.

13 BY MR. MORKEN:

14 Q. It doesn't identify it though, does it?

15 A. No. I know whose they were. She knows whose
16 they were. It was common knowledge whose they were.

17 Q. Going to Paragraph G, as in girl or George,
18 this has to do with your checking account, this has to do
19 with some additional checking and savings accounts. Is
20 there anything that identifies or separates out the
21 checking and savings accounts in Paragraph G?

22 A. No, that's all it says is checking and
23 savings accounts.

24 Q. Okay. In terms of Paragraph G, the
25 retirement/pension, is there anything that identifies the

1 difference between separate property and marital property
2 having to do with your pension?

3 A. Well, this is what it says, sir: "Honda,
4 Ridge Line 2007 truck, checking and savings accounts and
5 retirement/pension." That's all it said.

6 Q. You earned -- part of your pension was earned
7 before the marriage; is that correct?

8 A. That's correct.

9 Q. Part of the pension that was earned was
10 earned after the marriage; is that correct?

11 A. That's correct.

12 Q. Okay, so is there anything in here that
13 differentiates in terms of your pension between the
14 pension that was earned before the marriage and the
15 pension that was earned after the marriage?

16 MS. SHAFFER: I'm going to object to the form of
17 the question. Subparagraph G starts out separate
18 property of husband.

19 MR. MORKEN: Yes, it does say that.

20 Q. Okay. Answer the question.

21 A. Okay. I'll answer the question. The reason
22 that's not addressed, sir, is because when Kylee asked me
23 to marry her, she said: "I will never touch your
24 pension. I'll sign any prenuptial agreement you want me
25 to sign." And I said: "I trust you. I'll always take

1 care of you. Don't worry, things will be fine." And
2 that's the way it started and that's the way the marriage
3 started.

4 Q. Off the record.

5 (Whereupon a recess was taken.)

6 BY MR. MORKEN:

7 Q. Back on the record. George, I'm going to
8 keep referring back to Tab 63, that's the separation
9 agreement, which is Exhibit 24.

10 A. Okay.

11 Q. Okay. Do you see anything that -- do you see
12 anything in the separation agreement that identifies the
13 joint bank account at the Home Savings?

14 A. Do I see anything that identifies the Home
15 Savings bank account?

16 Q. Yeah, the joint bank account.

17 A. No, I don't.

18 Q. You admit that was a joint bank account;
19 correct?

20 A. No.

21 Q. That wasn't held in both of your names?

22 A. Both of our names could have been on it. We
23 had different types of CDs in that account. One was in
24 her name only; one was in my name only; one was joint;
25 one was my son's, Micah. Those were all ways to take the

1 money and make sure we had \$100,000 insurance on it.

2 Q. Okay. Were any of those accounts identified
3 in the separation agreement?

4 A. None of those accounts are identified.

5 Q. You had a joint -- you have a joint or had a
6 joint account at Vanguard; correct?

7 A. She was on the account at Vanguard, that's
8 correct, with joint rights of survivorship.

9 Q. Right. Do you see that identified anywhere
10 in the separation agreement?

11 A. No.

12 Q. And Account No. 551555, the joint account at
13 the Hawaii Community Federal Credit Union, do you see
14 that identified anywhere in the separation agreement?

15 A. I don't see any bank accounts in the
16 separation agreement.

17 Q. Can you all still hear me?

18 A. I'm getting nothing.

19 Q. Yeah, can you hear me now?

20 MS. SHAFFER: I don't hear you either.

21 MR. MORKEN: Can you hear me now?

22 THE WITNESS: Yes.

23 BY MR. MORKEN:

24 Q. Do you see the -- the Smart Car was bought in
25 2008; correct?

1 A. Smart Car, yes, sometime around that time,
2 yes.

3 Q. Do you see that identified in the separation
4 agreement?

5 A. No.

6 Q. The tractor was bought in June of 2010; is
7 that correct?

8 A. I don't remember.

9 Q. Do you remember --

10 A. I mean, that sounds right, June. I don't
11 know.

12 MS. SHAFFER: What year? 2010?

13 MR. MORKEN: June 2010.

14 Q. That was bought with proceeds from the joint
15 account; is that correct?

16 A. No. You're calling it a joint account. Just
17 because her name is on it, you're calling it a joint
18 account. Those accounts have already been separated.
19 She had her chance to take the \$400,000 or the \$2,000 a
20 month, so the accounts have been separated. They were my
21 accounts, and her accounts were her accounts. So when
22 you're saying joint account, I'm not going to agree with
23 that, no.

24 Q. I'm not asking you whether --

25 A. 551555 account, yes, probably taken from the

1 account.

2 Q. That was taken from that account; correct?

3 A. You have the records. You're asking me, I
4 don't know. I don't have the record.

5 Q. Is the tractor identified in the separation
6 agreement?

7 A. No. We bought it in June 2010.

8 Q. The scooter was bought in June 2010; right?

9 A. What scooter?

10 Q. Did you own a scooter?

11 A. Do I own a scooter?

12 Q. No, did you in June of 2010 acquire a
13 scooter?

14 A. I don't know. I probably did. You have the
15 record. I'm not sure I did.

16 Q. Was that acquired through funds that were in
17 the joint account?

18 A. That was acquired probably from Account
19 551555. That's not a joint account. That's my separate
20 account according to the separation agreement.

21 Q. At that time, is it your understanding that
22 if you had died, that the monies in that account would
23 have gone to Kylee?

24 A. Yes, that is.

25 Q. And vice-versa, if she had died, the monies

1 in that account would have gone to you; is that correct?

2 A. If she had died, the money was already in the
3 account and I was in charge of that account, so if she
4 died, nothing would have changed. I would have still had
5 my money in that account.

6 Q. Okay, and that's because it was a joint
7 account with the rights of survivorship; is that correct?

8 A. Her name is on the account.

9 Q. Okay. Did you receive a tax return in 2009?
10 I'm sorry, a refund in 2009 on your federal and state
11 taxes?

12 A. I'm sure I received a tax return. I have no
13 idea what it was. I'd have to look it up on my tax
14 return.

15 Q. Do you know what happened to the proceeds of
16 that refund?

17 A. Pardon me?

18 Q. Do you know what happened to the proceeds, or
19 in terms of the refund, do you know what happened to the
20 refund?

21 MS. SHAFFER: I'm going to object to the form of
22 the question. I don't think we've established that there
23 was, in fact, a refund at this point. Do you have some
24 documentation?

25 BY MR. MORKEN:

1 Q. I'm going to refer you to Tab No. 81.

2 A. 81?

3 Q. Yes, 81.

4 A. Okay.

5 MS. SHAFFER: Is this regarding the 2009 taxes?

6 MR. MORKEN: Yes.

7 (Whereupon Exhibit No. 25 was marked for identification.)

8 BY MR. MORKEN:

9 Q. All right. I'm going to refer you to Bates
10 stamp 309, so that would be the third page in that tab.
11 Do you have Bates stamp 309?

12 A. Uh-huh.

13 Q. Do you see there on February 24th, 2010,
14 there was a Utah tax refund of \$2,297? Do you see that?

15 A. Utah tax is \$2,297, correct.

16 Q. You see the federal tax refund?

17 A. Yes, \$8,855.

18 Q. That was received -- the transfer date was
19 February 26, 2010; correct?

20 A. Okay. All right.

21 Q. Okay, so now, so that was -- it's accurate to
22 say those were your tax refunds for 2009; correct?

23 A. Yeah, but I don't remember if we filed
24 jointly or separately. Did we file jointly?

25 Q. That's not my question. All right, so once

1 received, what did you do with the money?

2 MS. SHAFFER: I'm going to object to the form of
3 the question.

4 THE WITNESS: Okay. The money that went in there?
5 BY MR. MORKEN:

6 Q. Yes.

7 A. Well, it's either still in there or it's
8 spent.

9 Q. All right, and you put into -- it was in your
10 account -- is that your account that you shared with your
11 sister, Liz Chambers?

12 A. I put it in my separate account, that's been
13 a separate account forever, and my sister is on that
14 account with me. Now, if you call my sister, she's on
15 that account, but she won't call it her account. She'll
16 call it my account, and she's on there in case something
17 happens to me.

18 Q. All right, so you -- now, those were tax
19 refunds for the year 2009; correct?

20 A. That's what it looks like to me.

21 Q. Do you see any mention of the 2009 tax refund
22 in the separation agreement?

23 A. No, the separation agreement was made
24 February 10th I believe or 8th or something and this
25 happened the 24th or 26th.

1 Q. Yes, and the separation agreement says it was
2 effective March 1st, 2010; is that correct?

3 A. Okay. Yes, that's what it says.

4 Q. So it's effective March 1st, 2010. It does
5 not mention either of these refunds; is that correct?

6 A. It was never addressed. I don't think it's
7 ever been addressed, no.

8 Q. Okay.

9 A. Are we done with 83, so I don't mess them up?

10 Q. Yes.

11 A. I'm trying to keep them organized.

12 MR. MORKEN: Liz, right now I'm identifying Bates
13 stamp No. 309 as Exhibit 25.

14 (Whereupon Exhibit No. 26 was marked for identification.)

15 BY MR. MORKEN:

16 Q. Okay. I'm going to refer you to Tab 89.

17 A. Wait a minute. I was in Tab 25 and now you
18 want me to go to 89? Put Tab 25 away.

19 Q. You were in Tab 81. Now I'm putting you into
20 Tab 89.

21 A. Tab 89?

22 Q. Yes.

23 A. I have just lost my videotape. There, it's
24 back. Okay, 89. Okay.

25 Q. I'm referring to Bates stamp No. 233.

1 A. I can't hear you.

2 Q. Bates stamp No. 233.

3 A. 233, correct.

4 Q. Is it accurate that -- okay. Right down
5 there where it says April 14th, 2011, it says withdraw of
6 tax return, \$34,715. Do you see that?

7 A. Yeah. This is in 2011; right?

8 Q. Yes.

9 A. Correct.

10 Q. April 14th, 2011. Do you see that?

11 A. Yes, I do.

12 Q. Is that your 2010 tax return refund?

13 A. I think it is.

14 Q. And did you put that into the account that
15 you have with your sister, Liz?

16 A. Well, it says here, if you add those two
17 things, it says ACH deposit State of Hawaii tax refund,
18 so that's on 03/30 and 03/25, so on 03/30 and 03/25, I
19 got those returns from the state and from the federal
20 government, and then I don't know exactly what that's
21 for, but it looks like it has something to do with taxes,
22 yes.

23 Q. So the one from the State of Hawaii tax
24 refund is \$10,035; correct?

25 A. Correct.

1 Q. And the one from the Federal Treasury is
2 \$24,680?

3 A. Correct.

4 Q. Okay. Now, that was for 2010; correct?
5 That's your refund for 2010?

6 A. Yeah, 2010. I got the refund in March for
7 2010.

8 Q. Is there anything in your separation
9 agreement that identifies a tax refund for 2010?

10 A. No, I have already testified there is no
11 agreement in there about the tax refunds.

12 Q. For 2010; correct?

13 A. There is no agreement in there about tax
14 refunds or anything.

15 Q. Right. Okay. All right.

16 Liz, that's Exhibit No. 26, Bates stamp 233.

17 MS. SHAFFER: Just the one page?

18 MR. MORKEN: I'm sorry, no, 212 and 233.

19 MS. SHAFFER: 212?

20 THE WITNESS: Yeah, that's the front page of the
21 Hawaii Community Federal Credit Union.

22 MR. MORKEN: Exactly. So it's 212 and 233. That's
23 Exhibit No. 26.

24 (Whereupon Exhibit No. 27 was marked for identification.)

25 BY MR. MORKEN:

1 Q. Okay. I'll refer you to Tab No. 99.

2 A. I'm putting 81 back; right?

3 Q. Yes.

4 A. 99.

5 Q. 99. Okay? Are you ready?

6 A. Yeah.

7 Q. Okay. I'm going to refer you to Bates stamp
8 1326. Do you see that?

9 A. Okay.

10 Q. You see the \$40,000 there right in the
11 middle, it's February 17th, 2011? Do you see that
12 \$40,000?

13 A. Okay. You're still broken up. Sorry, I have
14 that sheet in front of me. It's 1326 at the bottom.

15 Q. Yes, and you see where the date February
16 17th, and that's 2011, there is an amount there that
17 says -- well, I guess it's February 23rd, \$40,000. Do
18 you see that?

19 A. Right, and the next page you gave me a copy
20 of the check made out to Liz Chambers.

21 Q. Now, what was that \$40,000 to Liz Chambers
22 for?

23 A. I don't know.

24 Q. Okay. That's taken out of that account
25 number that has your name and Kylee's name on it;

1 correct? The account number is 551555; is that correct?

2 A. I don't see the account number on this sheet.
3 Yes, it is. It says 551555.

4 MS. SHAFFER: Object to the form of the question
5 too because the document does not have Kylee's name on
6 it.

7 MR. MORKEN: Well, yes, it does. We're talking
8 about Check No. 640 and it has George Sandusky and Kylee
9 Sandusky.

10 Q. Do you see that, George?

11 MS. SHAFFER: Oh, I'm sorry. I was talking about
12 No. 1326.

13 MR. MORKEN: Okay. You're correct, it doesn't say
14 it on that number.

15 Q. But the check -- okay, so the \$40,000 is
16 taken out of that particular account and given to Liz
17 Chambers; correct?

18 A. Yes, Liz Chambers.

19 Q. You don't know what the \$40,000 -- why you
20 gave her \$40,000?

21 A. I have an idea why I sent that down there.

22 Q. But you don't know for sure?

23 A. No.

24 MR. MORKEN: Liz, what I'm marking as Exhibit 27
25 would be a Bates stamp 1326, as well as that check, 640,

1 No. 640. Okay?

2 MS. SHAFFER: Okay.

3 BY MR. MORKEN:

4 Q. Tab No. 104.

5 A. 1-0 what?

6 Q. You can put away Tab 89. You're looking at
7 Tab 104.

8 A. All right.

9 Q. I'm going to ask you a question on Bates
10 stamp 197. You see where --

11 A. Okay. Hold on a second. I opened up this
12 tab and the first number on the bottom is 1327, 1328 is
13 the next one. Which one did you want me to look at?

14 Q. Bates stamp 197.

15 MS. SHAFFER: 197 is my first document, so they
16 might be mixed up, the pages.

17 THE WITNESS: I got a 202, 203, 204, 205, 206, 207,
18 208, 209. I have no 197. I have 326, 327, 325, 321,
19 324. I don't have that. I have a 202, 203, 204, 205,
20 206, 207, 208.

21 BY MR. MORKEN:

22 Q. Now, your attorney has 197, so I'm not quite
23 sure why you don't.

24 A. Well, maybe it's forward to that. I'll look.

25 MS. SHAFFER: What was the last tab we were on?

1 THE WITNESS: 1197?

2 BY MR. MORKEN:

3 Q. No, 197.

4 A. Okay. I have a 1197 in the tab in front of
5 me.

6 Q. No, this is 197. It's for a statement period
7 of January 1st, 2011, to January 31st, 2011.

8 MS. SHAFFER: How -- oh, I see 1197.

9 THE WITNESS: And the next tab has -- oh, here's
10 0095, 96, 97. 987?

11 BY MR. MORKEN:

12 Q. No, it's 197. All right. I'm not going to
13 waste time on that. Let me ask you just a question
14 because it references on your statement January 14th,
15 2011, this is what it says: NSF, slash, Sandusky, slash,
16 Cowen. Who is Cowen?

17 A. I have no idea. Cowen -- the only Cowen -- I
18 don't -- I don't know. The only Cowen is a kid that
19 played basketball. I haven't seen him since we were a
20 freshman. I haven't seen him forever. I don't know a
21 Cowen. Not that I know of.

22 Q. All right. I'm going to look at 209, Bates
23 stamp No. 209, same --

24 A. Hang on a second, I'm getting it. Okay, 209.
25 Okay. I have 209 now.

1 Q. Okay. Now, were those transfers, the share
2 withdrawals, are those transfers to Liz?

3 A. I don't know. It says 4,781.22. It could
4 have been into another account I opened with my son,
5 Micah, or it could be to Liz. I don't know.

6 Q. Look at Tab No. 93. Don't put away -- don't
7 put away the tab for 104. Just keep that there.

8 A. I just want to keep it organized.

9 Q. Just hold on to 104.

10 MS. SHAFFER: Where are we going?

11 MR. MORKEN: Tab No. 93.

12 THE WITNESS: Okay.

13 (Whereupon Exhibit No. 28 was marked for identification.)

14 BY MR. MORKEN:

15 Q. Okay. Now, that Tab No. 93, Bates stamp 217,
16 that's the account that you have with Liz, correct, your
17 sister?

18 A. I opened an account with -- yeah, and that
19 was in March of 2000, yeah, okay.

20 Q. Okay.

21 MS. SHAFFER: What Bates stamp, I'm sorry?

22 MR. MORKEN: 217. 217.

23 Q. Okay. Now, you see there, George, where it
24 says July 5th, 2011, a share deposit of \$4,937?

25 A. What number are you on?

1 Q. 217, Bates No. 217.

2 A. Okay. It's in the back here. Two nine --

3 Q. You see the share deposit of \$4,937?

4 A. Well, I haven't found 217, yet. It's the
5 last page. Yeah, it says account deposit \$4,937.70.

6 Q. And 70 cents; correct?

7 A. Correct.

8 Q. Okay. Now, look at Bates stamp 209.

9 A. 209.

10 Q. 209 is your Tab No. 104.

11 A. Well, it's in the other tab, okay. Okay, I
12 have 209.

13 Q. Okay. Now, if you add those amounts -- if
14 you add those three amounts, \$4,781.22, \$141.62 and the
15 \$14.86, that comes to \$4,937.70; correct?

16 A. Looks like I closed that account and put it
17 into the other account, doesn't it?

18 Q. Right.

19 A. Okay.

20 Q. So that's your testimony is that you're
21 taking that amount out of Account No. 551555 and putting
22 it into an account with Liz; correct?

23 A. No, I'm putting it into Account No. 593643 as
24 my sister is on that account with me. My sister would
25 never claim any ownership to that money.

1 Q. Okay. I just want to make sure I'm clear.
2 You put -- you took it out of that first account --

3 A. I closed the account that she took \$90,000
4 out and put it in a joint account with my sister. That
5 looks exactly what I did. I told you that before.

6 Q. Okay. Thank you.

7 Liz, Bates stamp 217 and Bates stamp 209, those --
8 that's combined Exhibit 28.

9 MS. SHAFFER: I'm sorry, what was it again?

10 THE WITNESS: 217. I think he said 209.

11 MR. MORKEN: Bates stamp 217 and 209, that's
12 combined into Exhibit 28.

13 MS. SHAFFER: Okay.

14 (Whereupon Exhibit No. 29 was marked for identification.)

15 BY MR. MORKEN:

16 Q. Now, George, if you can refer to Tab No. 111.

17 A. Okay. I'm sorry, you've broken up. What tab
18 was that out of? I forgot already. What did this 207
19 and 209 come out of?

20 Q. One of them is out of Tab 89; the other one
21 is out of Tab 104.

22 A. 104. We'll put this back in 104.

23 Q. 104 and 89.

24 A. All right.

25 Q. Now, I'm going to refer you to Tab 111.

1 A. 111.

2 Q. That is your financial declaration.

3 A. Hang on a second. All right. 107, all
4 right.

5 MR. MORKEN: Liz, I'm making that, his whole
6 financial declaration, Exhibit 29. Liz, that goes from
7 Bates stamp No. 988 to 998.

8 Q. All right. George, I'm going to refer you to
9 Bates stamp No. 994.

10 A. 994?

11 Q. Yeah. By the way, before I do that, is
12 Exhibit 29 your financial declaration? Is this your
13 financial declaration?

14 A. Yes, it is.

15 Q. All right. Is that -- okay. All the way
16 through, it's all in handwriting. Is that your
17 handwriting?

18 A. Yes, it is.

19 Q. All right. Referring to Bates stamp No. 994.

20 A. That's the page I'm on.

21 Q. All right. Where it says other and it says
22 Liz Chambers \$90,000, do you see that?

23 A. Liz Chambers, yes.

24 Q. What is that?

25 A. I see that.

1 MS. SHAFFER: What page? I'm sorry, I'm not
2 following.

3 THE WITNESS: 994.

4 MR. MORKEN: 994.

5 Q. All right. Down below it also says \$100,000
6 given to Liz. Do you see that?

7 A. It also says down below that, it says --
8 yeah, I see that.

9 Q. It says A and B; is that correct?

10 A. A and B.

11 Q. Well, all right --

12 A. I can't. I don't -- looks like somebody
13 else's -- somebody wrote an account number in. That
14 doesn't look like my handwriting.

15 Q. Where it says Liz Chambers LAFCU, is that
16 your handwriting? Is that your handwriting where it says
17 90,000?

18 A. Yes.

19 Q. Down below that is that your handwriting
20 where it says given to Liz 100,000?

21 A. Yeah.

22 Q. All right, so that's a total of 190,000;
23 correct?

24 A. Yes.

25 Q. When did you give her \$190,000?

1 A. I'm not getting any sound.

2 Q. When did you give her \$190,000?

3 A. I don't know. You saw a \$40,000 check. That
4 would probably be part of it.

5 Q. Are any of those amounts that we've listed
6 that goes to Liz or Liz's account, are any of them in the
7 separation agreement?

8 A. That money -- those were given after the
9 separation agreement.

10 Q. You said just a little while ago you don't
11 remember when you gave it to her.

12 A. Well, I gave it to her after the separation
13 agreement. You just showed me a check for \$40,000. What
14 was the date on that? That was March 2011, wasn't it?

15 Q. I don't know. Is that included in the
16 \$90,000?

17 A. It says from pension and accident. I got
18 \$42,000 from getting hit on the motorcycle and I also put
19 all my pension money into her accounts.

20 Q. So we don't know if 90,000 includes that
21 40,000 or if those are two separate ones or do we?

22 A. I don't know. They're intermixed. I'm not
23 sure where they went.

24 Q. How do you know -- so you don't know whether
25 or not the \$40,000 is included in the \$90,000 or not, do

1 you?

2 A. No, I think it is included. I'm not sure.

3 Q. But you don't know. Okay, and the
4 \$100,000 --

5 MS. SHAFFER: Let him finish. I'm sorry, George.

6 THE WITNESS: She has \$100,000 of my money in her
7 account right now.

8 BY MR. MORKEN:

9 Q. Well, according to this, it's 190,000.

10 A. I'm not sure if I did that or I moved it
11 back, but it's not there now.

12 Q. Okay, but at the time that you did the
13 financial declaration, it was 190,000; correct?

14 A. If I did it, I'm not sure if it was or not,
15 correct.

16 Q. You signed this financial declaration
17 November 4th, 2011; correct? That's on Bates stamp No.
18 997. Let me refer to Bates stamp No. 997. Did you sign
19 this financial declaration November 4th, 2011?

20 A. November 4, 2011, correct.

21 Q. Is that accurate, you signed it?

22 A. November 4th, 2011.

23 Q. Why did you put -- why did you have those
24 sums of \$190,000 in an account with Liz?

25 A. Well, she was my sister. It was an account

1 with my sister. It was separate property. Keep it away
2 from Kylee.

3 Q. You wanted to keep it away from Kylee?

4 A. Yes, that's why I closed the account, yes,
5 551555.

6 Q. All right. I'm going to ask you a separate
7 question: Why did you put the \$190,000 into the account
8 with Liz?

9 A. I told you to keep it away from Kylee. In
10 case something happens to me, she'll make sure it goes to
11 Micah.

12 Q. Okay. When you reported your assets in the
13 financial application for financial aid for Micah, did
14 you include a report of the \$190,000?

15 MS. SHAFFER: Objection to the form of the
16 question. I don't know that it's been established first
17 of all that there was ever any financial applications
18 filed.

19 BY MR. MORKEN:

20 Q. Answer the question, please.

21 A. I'd have to see the financial application
22 before I could answer that, sir. I filled out two of
23 those and I can't remember exactly what's on them.

24 Q. Okay. Is it possible you did not list the
25 \$190,000 on those applications?

1 A. You're broken up. You're completely broken
2 up. I can't hear a word.

3 MR. MORKEN: Can you hear me now?

4 MS. SHAFFER: Yeah.

5 THE WITNESS: Yes.

6 BY MR. MORKEN:

7 Q. Is it possible that you did not list the
8 \$190,000 on those applications?

9 A. It's very possible that the \$190,000 was not
10 in that account. The \$90,000 came out and she had the
11 \$100,000. I don't know when I took the \$90,000 out and
12 transferred it over to my account. I don't know when I
13 did that. It's very possible there wasn't \$190,000 when
14 I filled out the application.

15 Q. Is it possible that it's not listed in the
16 application?

17 A. It's possible.

18 Q. So, but would you have had \$190,000
19 somewhere. Is it possible then that that \$190,000 was
20 not listed in the applications?

21 MS. SHAFFER: I'm going to object to the form of
22 the question too. I think you're -- are you including --
23 well, I am going to object to the form of the question.

24 THE WITNESS: Unless I have the statements in front
25 of me, it's possible.

1 MR. MORKEN: Off the record.

2 (Whereupon a discussion was held off record.)

3 MR. MORKEN: Liz, back on the record. His
4 financial declaration from 988 to 998 is Exhibit 29.
5 Okay?

6 MS. SHAFFER: 990?

7 MR. MORKEN: 988 to 998.

8 MS. SHAFFER: Okay. Exhibit 29?

9 MR. MORKEN: Exhibit 29.

10 MS. SHAFFER: Okay.

11 BY MR. MORKEN:

12 Q. Okay. George, did you make -- are you
13 familiar with the Wittgrove Kanaloa or Kanaloa?

14 A. I'm familiar with a -- you're broken up.

15 Q. I'm going to start, I'm going to ask you some
16 questions about what I understand are called hard money
17 loans, so when I say hard money loan, you know exactly
18 what I mean; correct?

19 A. Well, I don't know if we have the same exact
20 knowledge of hard money loan. Hard money loan is a real
21 estate loan that I made to somebody who has property,
22 that's what I called a hard money loan. Hard money loan
23 is a hard money loan.

24 Q. Okay. Now, I'm going to refer to the
25 Wittgrove Kanaloa, and that's spelled K-a-n-a-l-o-a. You

1 remember that hard money loan?

2 A. Yes, some aspects of it.

3 Q. Do you remember how much that was?

4 A. I think it was 300 or three and a quarter or
5 350. Am I right? You have the information right in
6 front of you.

7 Q. Okay. Do you recall if that was recorded
8 some time around April 29th, 2009?

9 A. I don't recall the dates.

10 Q. It was before the separation agreement;
11 correct?

12 A. I don't remember when the dates are. If you
13 can show me material, I can make sure on the date.

14 Q. Do you recall having hard money loans before
15 the separation agreement?

16 A. Yes.

17 Q. Which ones do you recall having before the
18 separation agreement?

19 A. There was a loan made to I believe Wittgrove
20 and there was another loan, Kanaloa, that overlapped and
21 there was also a loan on vacant land, Alii Drive, Jack
22 Rose I think was his name.

23 Q. Do you recall how much the vacant land, the
24 loan was, how much that was?

25 A. Those were structured by a loan officer that

1 approached me, that's how I got in the hard loan money
2 business, and she explained to me that the loans were for
3 I believe \$450,000, but they were discounted if paid in a
4 year, so that note was 450 but I discounted it, I gave
5 them less money than 450 and he gave back 450 in a year.

6 Q. So he paid you back 450?

7 A. I don't know if he paid the full amount or
8 when he paid it off, but that was the way it was
9 constructed. In a year, the interest rate would come out
10 to 450, so you'd take four percent off of 450 and I
11 believe I gave him \$394,000. I mean, all things can be
12 had.

13 Q. Did you produce those documents?

14 A. Those -- all those documents are gone. I
15 don't have any of those documents.

16 Q. We lost you there. What did you say?

17 A. I don't have those documents. Those
18 documents have been thrown away.

19 Q. They've been throw away. When did you throw
20 them away?

21 A. A long time ago.

22 Q. So they weren't available at the time of the
23 separation agreement?

24 A. No, I'm not sure. No.

25 Q. You don't know?

1 A. No.

2 MS. SHAFFER: I want just to clarify too for the
3 record that it is my understanding that they weren't
4 available during this request for discovery. They have
5 not been -- my understanding is they haven't been thrown
6 away since discovery request.

7 THE WITNESS: I've sent every paperwork I have in
8 this house.

9 MS. SHAFFER: I want to clear up that we -- you
10 know, we somehow destroyed documents.

11 THE WITNESS: I have a list of those things. I
12 think that's part of the things, when we were going
13 through the separation agreement, when she made notes
14 about where it went and how much money is available, I
15 have that list somewhere. She showed it to me.

16 BY MR. MORKEN:

17 Q. Okay. When did -- what was the name of the
18 person that was involved with the vacant land? Who
19 borrowed the money on the vacant land?

20 A. I think his name is Jack Rose.

21 Q. Jack Rose?

22 A. Yeah.

23 Q. Do you recall when you were paid back that
24 money, the \$450,000?

25 A. No. No.

1 Q. You have no recollection?

2 A. Well, I mean, he paid it back when we were --
3 when I was here. It was probably after 2007 and it was
4 prior to 2010.

5 Q. Okay, so it was prior to when the separation
6 agreement was signed, is that what you're saying?

7 A. Yes, I am, but I can explain that if you'd
8 listen for a minute, sir. The money went out and came
9 back. Okay? It was a loan. It came in one lump sum.
10 It went out of the account and it came back into the
11 account. That was never addressed. I mean, it went out
12 and it came back in.

13 Q. Okay. Is that also what happened with the
14 Wittgrove and the Kanaloa hard money loan?

15 A. I believe Wittgrove, because of the shakiness
16 of those loans, I was nervous and the Wittgrove loan they
17 made payments every month.

18 Q. All right, and did they -- were they making
19 payments after the separation agreement?

20 A. I'm not sure when. I'm not sure. I'm
21 guessing if I say they paid right at the same time as the
22 separation agreement.

23 Q. That's a guess?

24 A. I'm pretty sure -- that is a guess.

25 Q. Okay. When you say there's some overlap on

1 the Kanaloa, what is the relationship between the
2 Wittgrove and Kanaloa hard money?

3 A. I didn't hear the last part.

4 Q. What is the relationship between the
5 Wittgrove and Kanaloa hard money loan?

6 A. The Wittgrove and the Kanaloa hard money
7 loan?

8 Q. Yes, the Wittgrove and Kanaloa.

9 A. Okay. Kanaloa is the name of the condo
10 association.

11 Q. Okay, so that's the same thing, so Wittgrove
12 and Kanaloa is the same thing; is that right?

13 A. Two loans at Kanaloa before Wittgrove. The
14 guy, I can't remember his name. The loan was structured
15 the same way. Loaned him money, he paid me back in a
16 year. When he called just before the year was up, it was
17 discounted. I think I loaned him 350 or three
18 and-a-quarter, somewhere in there, and he would pay me
19 back, and I thought he was a real estate guy in town and
20 I checked his references and credit and he said he'd pay
21 me back in a year, and after it was about nine or ten
22 months, he said: "Yeah, I don't have the money. I'm
23 going to sell the unit." And I said: "Great, sell the
24 unit." And then just before he came up to me -- and I
25 believe Wittgrove said we need a loan too, and I said:

1 "It's 12 percent, I'll do the loan." They said: "We
2 won't pay 12. We'll pay 10." And I said: "Well, you
3 know, it's supply and demand and I don't need to do a
4 loan at 10, I'm getting 12." And then so the other guy
5 came back to me and said: "If you don't help me sell
6 this thing, I can't pay you back." And I said: "That's
7 fine, call them back and I'll do less money." I think it
8 was 300 or three-and-a-quarter. I think it was 300 for
9 Wittgrove. I forget the guy's name. You must have it
10 there.

11 Q. Were you fully paid? Were you fully paid
12 then?

13 A. Yeah, that money went out and it all came
14 back.

15 Q. And it all came back before the separation
16 agreement?

17 A. I don't know.

18 Q. Okay. You don't see it mentioned in the
19 separation agreement; correct?

20 A. No, none of that is mentioned in the
21 separation agreement. I'm not sure where they were at
22 that time.

23 Q. Okay.

24 A. Wait, no. It says right here, it says money
25 owed to parties, hard money loan from Mednick 325, right

1 there. It says right in the separation agreement Page
2 994.

3 Q. Yeah, the money loaned from Mednick, that's a
4 separate hard money loan; correct?

5 A. Yes, Mednick. That's not my -- no, that's a
6 different one. That's not Wittgrove. That's the one in
7 Maui.

8 Q. Let me go to the next step. Is there hard
9 money loan with Bishop and Kanaloa?

10 A. Bishop. Yeah, that's one. Bishop was the
11 first one and the other people were next.

12 Q. Okay. Now, does this refresh your memory
13 that it was bought out by Wittgrove on May 16, 2010?

14 A. Yeah, probably they sent -- I don't know
15 about the date, but what happened is the only way for me
16 to get my money was to redo a loan with the next people
17 and I got some of the cash I believe.

18 Q. Do you see any of that, any hard money loan
19 in terms of Bishop and Kanaloa, do you see any of that in
20 the separation agreement?

21 A. No.

22 Q. All right. The Maui/Mednick, when was that
23 hard money loan entered into?

24 A. Oh, I believe there was -- there was
25 negotiation going on right at the same time of the

1 separation agreement. I'd have to look it up and have to
2 see the numbers to see that. Right around that time.

3 Q. Okay. Now, does the money that you made the
4 loan with, does that come out of that account, that
5 551555?

6 A. I don't know. It came out of one of the
7 accounts somewhere.

8 Q. All right. Do you see that listed on the
9 separation agreement?

10 A. No.

11 MS. SHAFFER: Excuse me. What listed? What
12 listed?

13 MR. MORKEN: The hard money loan that's referenced
14 as Maui/Mednick.

15 MS. SHAFFER: He has mentioned one of them.

16 THE WITNESS: Mednick is on -- on my
17 interrogatories or whatever, my declaration.

18 BY MR. MORKEN:

19 Q. That's on your financial declaration. That's
20 not in the separation agreement; is that correct?

21 A. No.

22 Q. It's not?

23 A. No.

24 Q. Is that correct?

25 A. Yes.

1 Q. What is the status of that loan now
2 currently?

3 A. The Mednick loan?

4 Q. Yes.

5 A. The Mednick loan went into default in
6 September 2012 and it took until November of -- no, 2011
7 it went into default. It took until November 2012 to get
8 it through the courts and foreclosed upon it, and then
9 December 10th, I went over there and the unit was
10 stripped. I have redone the unit, fixed it all up. It's
11 been on the market for about 90 days and I have it in
12 escrow at this time.

13 Q. It's in escrow at this time?

14 A. Yes.

15 Q. What are the terms of the sale?

16 A. \$400,000 cash.

17 Q. \$400,000 cash?

18 A. Right.

19 Q. Was there any payment or a deposit on that
20 contract?

21 A. Well, I mean, there is an open escrow with
22 \$10,000. I don't have the money. It's in escrow.

23 Q. They made a \$10,000 deposit and then the
24 balance is due when? Well, let me ask you, I don't want
25 to assume something: Did they make a deposit of \$10,000?

1 A. Okay. They made an earnest money check. It
2 goes into the escrow account. Okay? When it closes,
3 they owe another \$390,000 in the escrow account. It's
4 due to close May 16th.

5 Q. Okay. Now, when you receive that \$390,000,
6 will that be clear money or is there any kind of
7 mortgage, anything that you owe on that?

8 A. There is no mortgage on the property. There
9 is a commissions from the real estate agents of six
10 percent and there will be closing costs.

11 Q. So approximately how much do you estimate
12 receiving net at closing?

13 A. Why is my phone ringing here? Okay. 370 to
14 375. 370 is probably accurate. 370 to 375.

15 Q. Okay. Are you pretty certain that it's going
16 to close May 16th?

17 A. Okay. Am I certain it's going to close? I'm
18 hopeful it's going to close, yes.

19 Q. Why is that?

20 A. I mean, am I certain? It's a good offer,
21 it's a cash offer. The man already has another unit in
22 the building. This is an ocean front. He looked at it a
23 couple months ago. He has been in the unit. He's from
24 Florida. He has cash. The unit he has there, he's
25 selling and he's going to have an ocean front instead of

1 one in the back. The realtor has been very nice and
2 everything seems to be going very smooth. There's no
3 contingency. He's accepted it as is and there are
4 multiple problems with the unit because it was stripped
5 and there was work done in the unit that wasn't
6 authorized through the HOA. I'm pretty confident it will
7 close, but this is a tricky situation. It could fall
8 out. I wouldn't be surprised if it fell out.

9 Q. All right. Did you have somebody, either you
10 or the mortgage company, appraise the property? Has it
11 been appraised recently?

12 A. No, that property has not been appraised.

13 Q. How did you determine the price for the sale?

14 A. Oh, okay, well, we looked at -- we did a -- I
15 have it listed with a real estate agent. We did a CMA.
16 First we listed it at 499 and then we had offers in the
17 low three, I believe 315 or 310 or 325, and then after a
18 month, I dropped the price to 449 and then the only offer
19 I've had since the 90 days it's been listed was this
20 offer of 400. The other offers were three and-a-quarter
21 and I think the one before that was 300 or 315, which I
22 didn't counter, so that seems to me that's like a fair
23 market price, and because it's winter -- it's now April,
24 and I was just at the unit and it's a ghost town compared
25 to being just completely full in the wintertime. Yeah, I

1 think I got the best price I could get for it.

2 Q. I'm going to ask you about the Gonzales hard
3 money loan.

4 A. Okay.

5 Q. Are you familiar with that hard money loan?

6 A. Yes.

7 Q. Okay. How much was that for? How much did
8 you loan?

9 A. \$120,000.

10 Q. And did you receive the money back for that?

11 A. He paid that off in about five months, five
12 months and a couple days.

13 Q. Was that done somewhere around the end of
14 April of 2011?

15 A. Probably, yeah. Kylee got a notification in
16 the mail from the escrow people stating that the fire
17 insurance was in place and she called and was irate that
18 I bought a place in the area that it was in. It's a very
19 low income area.

20 Q. Okay, so the -- when do you expect \$120,000
21 for it?

22 A. It came back five months later.

23 Q. Oh, so, I'm sorry. I must have
24 misunderstood. So you've received that sometime in
25 September or October of 2011?

1 A. Yeah, it was on my tax return. I made I
2 think \$5,200 on it or whatever else.

3 Q. Okay, and, all right, do you know -- do you
4 know whether or not that loan was made out of funds from
5 that account No. 551555?

6 A. I have no idea what loan -- what came out of
7 that account.

8 Q. Okay. Are you aware of any other hard money
9 loans that you have made besides the ones we've just
10 discussed?

11 A. Okay, there was the ocean front with Rose.
12 There was two in Kanaloa. There was -- that's one, two,
13 three. There was the Gonzales loan. There is the
14 Mednick loan.

15 Q. The Bishop loan?

16 A. That's two in Kanaloa or Winthrop or whatever
17 their name was.

18 Q. Okay.

19 A. That's kind of the same loan to me, you know,
20 because the money came in and I had to redo it with
21 somebody else, and then there was one on the ocean there
22 and the Maui place.

23 Q. Which one is the ocean? Is that the one
24 that's vacant land?

25 A. Yeah, that was the one with Jeff Rose. That

1 was during -- before the separation.

2 Q. Okay. Is there any other hard money loan
3 that's been made, that you have made?

4 A. Not that -- not right off the top of my head
5 I don't have one.

6 Q. Do you have any hard money loans outstanding
7 at this time?

8 A. Let me think. I guess I don't have a loan
9 with Medick. I have a court judgment that he owes me
10 \$180,000, Medick, for a deficiency judgment on the
11 foreclosure of their property.

12 Q. So in addition to -- you're referring to one
13 that is currently in escrow, so that's your expecting net
14 of \$370,000 and you're saying you have a deficiency
15 judgment in addition to that against Mednick; is that
16 correct?

17 A. Yes.

18 Q. And that's how much? How much is the
19 deficiency?

20 A. When we went -- when it went to the auction,
21 I was the only one that bid at the auction for the
22 property when it was foreclosed upon. It goes to auction
23 just like in Utah.

24 Q. Yeah.

25 A. I bid \$200,000, and so I was owed around --

1 right around 380 with the attorney's fees and back
2 interest and everything else, and so I got a deficiency
3 judgment for \$180,000.

4 Q. Okay. What is the current status of your
5 collection efforts for the \$180,000?

6 A. I'm way down the line. The deficiency --
7 everything is bad. They've lost their other houses and
8 everything else. I haven't pursued it because I have it
9 in escrow and I don't exactly know how much my deficiency
10 judgment is worth when I can sell it for -- basically
11 almost cover the deficiency. I don't know. I'm not an
12 expert on that.

13 Q. Are you trying to sell the -- are you trying
14 to sell the deficiency judgment?

15 A. No. No, I'm talking about the deficiency
16 judgment -- now that I've sold the unit for three or
17 \$400,000 and now my deficiency judgment was that they
18 owed me 380, so I don't know exactly how much my
19 deficiency judgment is still worth. I don't know if --
20 I'm not a legal expert, so I don't know if I still get
21 the \$180,000 and I get to the sell the unit and I have
22 capital gains or whatever, I haven't figured that out
23 because I haven't closed it. The reason I haven't
24 pursued the people is because I don't know exactly what
25 the bottom line dollar amount profit or loss.

1 Q. Before the Mednick hard money loan went into
2 default, did they periodically make payments or monthly
3 make payments?

4 A. Yeah, they paid for almost a year I believe
5 or maybe a little longer.

6 Q. Do you know how much they were paying per
7 month?

8 A. They were paying 3,250 a month.

9 Q. You're talking about \$3,250 a month?

10 A. Wait a minute. I think it's 3,250. Yeah,
11 it's 3,250.

12 Q. So that's \$3,250; right?

13 A. Correct.

14 Q. Do you know what happened to the proceeds?

15 A. What happened to the proceeds?

16 Q. Yeah. What account did you put it in?

17 A. I put it in cash.

18 Q. You put it into cash?

19 A. That's the \$40,000 in cash.

20 Q. When you say \$40,000 in cash, you're talking
21 about the \$40,000 that's in your safe deposit box?

22 A. Yes.

23 Q. Okay. Is that -- all right. That \$40,000,
24 is that entirely for Mednick?

25 A. I'm not sure. I think it is. There might be

1 some from Gonzales but I'm not sure.

2 Q. Okay. Do you still have that \$40,000 in the
3 deposit box?

4 A. The \$40,000 is still in the safe deposit box.

5 Q. Is there more now or is there more than
6 \$40,000 cash now?

7 A. No, \$40,000.

8 Q. Okay. Do you have any -- do you have any
9 gold?

10 A. I listed the gold. The two ounces that I
11 bought, I had gold from my grandfather, so there are
12 three one-ounce gold pieces that was in the -- I
13 mentioned that before, so.

14 Q. All right. Have you acquired -- I'm sorry,
15 we couldn't hear you on that last statement.

16 A. Okay. There is three onces of gold, one gold
17 came in 1960 or '62 when my grandfather died, the other
18 two gold pieces were bought when gold was I think about
19 \$1,040 or something and I listed them on my sheet
20 somewhere.

21 Q. You listed them -- when you say sheet, did
22 you list it on your financial declaration?

23 A. I'm not sure where I listed, but probably --
24 I may not got -- but, anyway, there are two one-ounce
25 gold pieces.

1 Q. Did you list that in the separation
2 agreement?

3 A. No, I bought those after the separation
4 agreement I think.

5 Q. Do you know?

6 A. I don't remember. I had a friend that does
7 my electrical work. He was hurting for money and he
8 asked me if I wanted to buy some gold and I said I'm only
9 going to pay for gold for what it is per ounce and he
10 brought a bunch of gold and he had some other coins and I
11 said I'll buy these for what the -- and I think it was
12 \$1,040 and I gave him \$2,080.

13 Q. How much cash did you have at the time of the
14 separation agreement?

15 A. I don't know.

16 Q. Did you have cash at the time of the
17 separation agreement?

18 A. I have some cash, yes. I always have some
19 cash around the house.

20 Q. But you don't know?

21 A. No.

22 Q. Is the cash listed in the separation
23 agreement?

24 A. No, I don't think so.

25 Q. I'm going to refer to you Tab No. 92.

1 A. Okay.

2 Q. Did you find it?

3 A. 199?

4 Q. Yes.

5 A. Okay.

6 (Whereupon Exhibit No. 30 was marked for identification.)

7 BY MR. MORKEN:

8 Q. Do you know what that \$50,000 -- you see
9 February 4th, 2011, it says transfer from shares and then
10 it gives a No. 591353-90, \$50,000. Do you know what that
11 is?

12 A. Yeah, I'm pretty sure I know what that is,
13 but I'm not positive. Would you like me to speculate on
14 that?

15 Q. Sure.

16 A. Okay. I was cashing my pension checks and
17 keeping the cash in the house after the separation
18 because feeling that's separation property that I could
19 keep that money separate from her, and then I had to fill
20 out this loan financial declaration, okay, and I had to
21 list everything, so I needed to get the money down to my
22 sister's account. So we're building the house with my
23 friend Mike Anderson and he used the cash through his
24 builder to purchase stuff at a different rate and I gave
25 him \$50,000 cash and he gave me the account and I believe

1 I transferred that money.

2 Q. Okay. Now, dropping down to where it says
3 No. 639. No, I'm sorry, 640, February 23rd, you see
4 where it says \$40,000?

5 A. February 23rd.

6 MS. SHAFFER: What document is that?

7 MR. MORKEN: Same one. Same Bates stamp number
8 199.

9 THE WITNESS: I don't see a February 23rd anywhere.

10 MS. SHAFFER: I don't either.

11 BY MR. MORKEN:

12 Q. It's in the bottom third towards the right,
13 it's under where it says share drafts posted.

14 A. Share draft posted. It says 217? Oh, then
15 it says No. 640, \$40,000, okay.

16 Q. Do you know what that \$40,000 was?

17 A. I have no idea.

18 Q. Who is Waterhouse and Michael?

19 A. I don't know.

20 Q. Is that the name of a builder?

21 A. That's not the builder. The builder's name
22 would be Carl Rosen, but I believe that was the account
23 that it went into or it came out of, I'm not sure.

24 Q. You don't know what -- you don't know what
25 the \$40,000 was even for?

1 A. I went to the bank with him. He transferred
2 the money and then I gave him the cash. The money was
3 transferred and I gave him the cash.

4 Q. What do you mean the money was transferred?

5 A. I gave him the cash and he transferred the
6 money. I believe this is a check number. Well, I'm
7 totally confused then.

8 Q. Well, what was that for? Do you recall what
9 it was for?

10 A. I really don't know. I think I'm totally
11 confused.

12 Q. Okay. I'm going to make that Exhibit 30, so
13 Bates stamp No. 199 is Exhibit 30.

14 A. That was 92?

15 Q. Yes, it was. I'm going to refer you back to
16 Exhibit 24, the separation agreement, that addendum.

17 MS. SHAFFER: I want to ask one question on Exhibit
18 30. Is that an exhibit we provided to you?

19 MR. MORKEN: Yeah, because it has your Bates stamp
20 No. 199.

21 MS. SHAFFER: Okay, and was it provided to you with
22 the notations on it, the circle on 639 and the circle on
23 640?

24 MR. MORKEN: No, that's -- that's Kylee's
25 handwriting.

1 MS. SHAFFER: Okay, and is that the case because
2 we've talked about a lot of these documents that I guess
3 we gave to you, I just want the record to reflect that
4 we -- so it's not an actual document that I produced to
5 you?

6 MR. MORKEN: No, it is the document you produced
7 and then she handwrote those particular items on that
8 document.

9 MS. SHAFFER: Okay, and that's the same with the
10 other exhibits that we've already talked about today?

11 MR. MORKEN: No.

12 MS. SHAFFER: 28.

13 MR. MORKEN: All right. Well, we'll have to go
14 back over it because I asked him very specifically about
15 that and he said it was his handwriting.

16 MS. SHAFFER: No, I think that was -- that was his
17 financial declaration.

18 THE WITNESS: That was the financial declaration or
19 separation agreement.

20 MS. SHAFFER: Exhibit 28.

21 MR. MORKEN: Exhibit 28.

22 MS. SHAFFER: Page 217 has some circles around
23 numbers.

24 MR. MORKEN: Those were by -- those circles are by
25 Kylee and --

1 MS. SHAFFER: And at the top it has an account
2 circled and it says Liz, I mean, that isn't information
3 that was provided on the document that we gave to you;
4 correct?

5 MR. MORKEN: Yeah, correct. Same with Bates stamp
6 No. 209, that is -- that handwriting is Kylee's
7 handwriting.

8 MS. SHAFFER: And 212?

9 MR. MORKEN: I didn't do the 212.

10 MS. SHAFFER: 212 is Page 1 of Exhibit 26?

11 MS. SANDUSKY: Exhibit 26 is 212.

12 MR. MORKEN: Let's go off the record a minute.
13 I've got to check something.

14 (Whereupon a discussion was held off record.)

15 MR. MORKEN: Back on the record. 212 or Exhibit
16 26, Bates 212, that's Kylee's -- those are Kylee's
17 circles and handwriting.

18 MS. SHAFFER: And arrow?

19 MR. MORKEN: Yes.

20 MS. SHAFFER: Okay.

21 MR. MORKEN: And same with Bates No. 233, the arrow
22 and the handwriting, that also is Kylee's.

23 MS. SHAFFER: Okay. I just want to -- there is a
24 lot of documents you talked about, 209, that may be you
25 didn't -- you didn't do as an exhibit, but I just want on

1 the record again, that has handwriting, circles, numbers,
2 that is not the document that we produced to you with
3 that information?

4 MR. MORKEN: That's true. That would be what
5 Kylee -- any extra stuff would have been from Kylee. The
6 handwriting would have been Kylee's, but, yeah, I want to
7 clarify in Exhibit 29, Bates stamp No. 994, that's --
8 that is all George's handwriting. He testified where --
9 for instance, it says Liz Chambers LAFCU, \$90,000, that's
10 his handwriting. Where under that, what account, that is
11 Kylee's handwriting.

12 MS. SHAFFER: 994, yeah.

13 MR. MORKEN: And then where it says given to Liz
14 the \$100,000, he said that's his handwriting. Where it
15 says in circles what account, that's Kylee's handwriting.

16 MS. SHAFFER: And the A and B and the line?

17 MR. MORKEN: Right, that's Kylee's handwriting.

18 MS. SHAFFER: Okay. Yeah, I think it's
19 distinguishable. I wanted the record to reflect that.

20 MR. MORKEN: Okay.

21 Q. I'm referring you back to Exhibit 24, the
22 separation agreement, Bates stamp No. 714.

23 MS. SHAFFER: 24?

24 MR. MORKEN: 714.

25 MS. SHAFFER: What tab is that?

1 MR. MORKEN: All right.

2 THE WITNESS: I have it. It's 714, it's the
3 separation agreement.

4 MS. SHAFFER: I have it. Okay.

5 THE WITNESS: That's the sheet, that's the extra
6 sheet with the 400,00 in lieu of alimony.

7 MS. SHAFFER: The addendum, yeah.

8 BY MR. MORKEN:

9 Q. So, George, how did you arrive at the
10 \$400,000?

11 A. Oh, we talked about this. We can go over
12 this again. Are you there?

13 Q. I'm here.

14 A. Okay. There is 1.2 million in change in
15 play. I took \$400,000 that I came into the marriage
16 with, which is the proceeds from the Ventura house.
17 There was \$800,000, I gave her half and I took the land
18 that she wanted nothing to do with in Hawaii. I told her
19 I would pay for Micah's college.

20 Q. Okay. I'm going to ask you a question about
21 that land you're saying she wanted nothing to do with.
22 How much do you think it's worth?

23 A. It's worth \$336,000 according to the
24 appraisal.

25 Q. And you're saying that she wanted nothing to

1 do with that sum of money?

2 A. Yeah, you can talk to Mike Anderson. He'll
3 verify that. I talked to him already.

4 Q. So what you're saying is that Kylee wanted
5 nothing to do with having half of that amount of money,
6 that's what you're saying? Is that your testimony?

7 A. No, that's not what I said. I said she
8 wanted nothing to do with the land. When I purchased the
9 land, she didn't want to work the land. She didn't care
10 about the land. I said you have your job. 2000 to 2007,
11 she made more money than I did. She kept her money and I
12 kept the land. I said the land is mine. You keep your
13 money, you do what you want, that's fine, and that's the
14 way it was worked.

15 Q. How were the family expenses paid during that
16 time that she was working?

17 A. Well, there was basically no mortgage on
18 either of the properties. She paid for her own stuff and
19 she bought groceries and I paid the utilities and the
20 taxes on the properties.

21 Q. So what you're saying is that you -- well,
22 what did you do with her money?

23 A. What money?

24 Q. That she earned from her employment? What
25 happened to that money?

1 A. What money are you talking about? Sorry,
2 you're broken up.

3 Q. You said she was employed?

4 A. She had jobs.

5 Q. She had jobs?

6 A. She spent her money.

7 Q. She spent her money?

8 A. Yeah.

9 Q. And you kept your money, is that what you're
10 testifying?

11 A. No, I spent all of my income off of my fire
12 department. I used that to live on. The money, the
13 investment money always went on. That's how I got to
14 retire at 42 years of age.

15 Q. I'm going to refer you to Tab 68.

16 A. Okay.

17 Q. Tab -- well, let's see, I'm labeling Tab 68
18 as Exhibit 31.

19 (Whereupon Exhibit No. 31 was marked for identification.)

20 MS. SHAFFER: Can you identify it because there is
21 not a Bates stamp?

22 MR. MORKEN: Okay. The first three pages is an
23 affidavit by Stella Chaidez. Then there is --

24 MS. SHAFFER: 68?

25 MR. MORKEN: No, the first three pages.

1 MS. SHAFFER: Okay, 68, I got it. I was on 69.

2 MR. MORKEN: Then the second affidavit by Beverly
3 Chaidez and that is two pages. No, three pages. And
4 then there is an affidavit by Kevin Chaidez and that is
5 three pages. All three are going to be an Exhibit 31.

6 MS. SHAFFER: Okay.

7 BY MR. MORKEN:

8 Q. George, have you read Stella's affidavit?

9 A. Not recently, yeah, but I did read it.

10 Q. Is it accurate that she's your Godmother?

11 A. There is no paperwork on that. That would
12 just be that my parents have died and, yeah, she's the
13 one that came to the hospital when my son was born and
14 brought something. I would say that there was no
15 paperwork work on it, there is no registration form, but
16 I would call her my Godmother.

17 Q. She says that she and George's parents were
18 very close for decades; is that accurate?

19 A. Well, let me read what it says. They were
20 friends for decades, that's true.

21 Q. It says on Page 2 up at the top there, it
22 say: "It is accurate and fair to say that I know George
23 and Kylee extremely well." Is that an accurate
24 statement?

25 A. No.

1 Q. Okay. How is it inaccurate?

2 A. She would know George and Kylee through
3 Kylee's interpretation of what Kylee told her, not what I
4 told her.

5 Q. She's your Godmother, not Kylee's Godmother;
6 correct?

7 A. That's correct. But I don't spend time with
8 her. I don't go to lunch with her. I don't go to dinner
9 with her. The only time we go to dinner is at Christmas
10 or something like that. I have very little personal
11 conversation with her. When she said she knew me
12 extremely well, I wouldn't agree to that.

13 Q. Okay.

14 A. She knows Kylee much better.

15 Q. Okay. What do you think in that affidavit is
16 not accurate? I'm going to rephrase that. Is there
17 anything in that affidavit that you have not yet said at
18 this point, is there anything that you consider
19 inaccurate?

20 A. Okay. No. 6: "In early 2010 Kylee came to
21 me and asked if I was willing to witness her signature to
22 a document. She explained to me that George had proposed
23 to her this document titled separation agreement as a way
24 to solve Micah's financial aid issues when he went to
25 college and so that they would not have to pay as much

1 for his college costs. At no time did George or Kylee
2 say to me that the document was for separation or divorce
3 purposes or that that was even being considered by Kylee
4 or George. If the document had also been for a
5 separation or divorce, Kylee would have told me that too.
6 She is straightforward and she would not hesitate to tell
7 me that."

8 Q. Is that inaccurate?

9 A. Where is her signature on the document?

10 Q. Well, you know, you can ask that later. But
11 I'll just tell you --

12 A. No, I'm asking what's wrong with this --
13 where is her signature on the document? I never talked
14 to her about this. I never asked for her signature. I
15 never discussed any of this with her.

16 Q. Okay. Just for our purposes of this
17 deposition, I'll tell you it has been signed and it's
18 already been produced and your attorney has a copy. So
19 back to Paragraph 6, is there anything in Paragraph 6
20 that's inaccurate?

21 MS. SHAFFER: I'll just show him. This is the
22 exhibit to the petition for divorce that attached a
23 signed separation agreement and right next to Kylee's
24 signature is Chaidez's signature.

25 MR. MORKEN: No, Liz, you're not looking at the

1 right document. This is an affidavit.

2 MS. SHAFFER: It's Bev Chaidez.

3 THE WITNESS: Bev Chaidez.

4 MS. SHAFFER: And it says -- there is no dates or
5 anything.

6 MR. MORKEN: You're not looking at the right
7 document. This is the affidavit. Anyhow is there --

8 MS. SHAFFER: I'm looking at the separation
9 agreement that she's saying she signed.

10 MR. MORKEN: No, Liz, you're referring to -- you're
11 referring to Beverly Chaidez, not Stella. I'm asking the
12 question about the affidavit from Stella. Now, is there
13 anything --

14 MS. SHAFFER: So, okay, just so we're clear.

15 THE WITNESS: Okay. Remember, it says in here
16 Kylee came to me. I didn't go to her. I wasn't even
17 aware of it until such thing came. So I don't know what
18 Kylee said to her. I don't know what Kylee brought up.
19 I don't know what Kylee's motivation was for all of this.
20 She says Kylee is straightforward and she would not have
21 hesitated to tell me that.

22 BY MR. MORKEN:

23 Q. Is that inaccurate?

24 A. Well, I don't know. I didn't do it. Kylee
25 did it. She said Kylee came to me and explained to me

1 George had proposed a document called separation
2 agreement. Okay, that part is true. As a way to solve
3 Micah's financial issues when he went to college, that's
4 only partly true. There's a whole lot to the separation
5 agreement. She didn't want to move back to Hawaii. She
6 would not get a job like she promised she was going to
7 work if we needed more money. She had me retire at 20
8 years. She has a master's degree and she refused to
9 work. There's all kinds of things in that.

10 Q. In paragraph --

11 A. So this isn't an accurate thing. This is
12 something between her and -- whatever Kylee fed her is
13 what she got out of her, so you're asking me to comment
14 on what Kylee told her. I don't know what Kylee told
15 her.

16 Q. Okay. Paragraph 8, it says: "Kylee said
17 that George had explained to her his plan was legal and
18 that it would help them solve paying for Micah's
19 education when he went to college." Is that an accurate
20 statement?

21 MS. SHAFFER: I believe he just answered your
22 question.

23 BY MR. MORKEN:

24 Q. I'm asking a question. Well, just answer the
25 question. Is that an accurate sentence?

1 A. I don't know. Kylee said that George
2 explained to her that the plan was legal and that would
3 help them solve paying for college education. That
4 statement is partially true.

5 Q. Okay.

6 A. Wait, let's go on. It's says: "Based on
7 that, because I love George, Kylee and Micah, I was
8 willing to sign as a witness." She never signed.

9 Q. I know what you're saying. All right, going
10 to the next affidavit for Beverly Chaidez, in Paragraph 1
11 it says: "I have been friends with and have known Kylee
12 Sandusky for over 20 years and George Sandusky for over
13 30 years." Is that an accurate statement?

14 A. No, not really.

15 Q. Well, how is that not accurate?

16 A. I've known Bev for over 30 years and for 12
17 to 15 years of that she refused to speak to me because
18 she was mad at me, so when you say friends for 30 years,
19 that's not friends for 30 years.

20 Q. Okay. What period of time did you say that
21 she wouldn't speak to you?

22 A. Before we move to Park City 2007, so probably
23 from about the time that Kylee (inaudible) since then.

24 Q. We missed that. I didn't hear that.

25 A. From about 1986 to 2007. That's the time we

1 got married.

2 Q. During that period you were friends or not
3 friends?

4 A. For most of that time, she didn't -- there is
5 a lot of that time she didn't speak to me.

6 Q. So from 2007 on, you were friends?

7 A. Yeah, we seemed to have worked it out. It's
8 fine. I replaced her hot water heater in her house on
9 Thanksgiving when it went out. I picked up her kid from
10 elementary school when she wasn't around and the kid was
11 sick. Yeah, I would say we're friends. I also worked on
12 their rental house in Heber for them when they were on
13 vacation.

14 Q. Paragraph 6, in the middle or the last
15 sentence of Paragraph 6, it says: "However, George and
16 Kylee told me that the purpose of the document was to
17 separate their funds solely for the purpose of filling
18 out their son's college financial aid applications and
19 that it was legal." Is that an accurate statement?

20 A. No.

21 Q. What do you claim that you told her?

22 A. I don't remember what I told her, but that's
23 not an accurate statement.

24 Q. Okay. Shifting to the affidavit of Kevin
25 Chaidez.

1 A. Okay. I'm sorry. I didn't hear you. You
2 broke up.

3 Q. Going to the affidavit by Kevin.

4 A. Okay.

5 Q. Chaidez. How do you pronounce Chaidez? Is
6 that accurate?

7 A. It's Chaidez.

8 Q. Chaidez. Okay. Going to Kevin Chaidez's
9 affidavit.

10 A. Okay.

11 Q. In Paragraph 7, it says: "At no time did
12 George or Kylee mention to me that he or she intended
13 that this document was to be used for separation or
14 divorce purposes or that he or she intended to separate
15 or to divorce." Is that an accurate statement?

16 A. I don't know.

17 Q. Do you recall telling him anything
18 differently?

19 A. No. We had very little contact outside of
20 family. I didn't do things with him. I didn't ride
21 bikes with him. I didn't go for walks with him. I
22 didn't ski with him. I didn't go to lunch with him. I
23 didn't do things with him.

24 Q. Okay. Paragraph 8 says: "On or about
25 Thanksgiving 2010, George and I were at a family

1 get-together and he was upset. He told me that his son
2 was applying to get into expensive universities and that
3 his son was also applying for financial aid. He then
4 said that his plan to use the document to enable him to
5 pay less for his son's education was not going to work.
6 He complained about how much money he would now have to
7 pay because his plan would not work." Is that an
8 accurate statement?

9 A. Yeah, I will say that's not, no.

10 Q. I'm sorry, we couldn't hear that.

11 A. No.

12 Q. It's not an accurate statement?

13 A. No, not entirely, no.

14 Q. All right. What part is accurate?

15 A. The part that I complete.

16 Q. Are you denying that you told him that your
17 son was applying to get into expensive universities and
18 that his son was also applying for financial aid? Are
19 you denying that you said that?

20 A. No.

21 Q. So you agree that you said that to him; is
22 that correct?

23 A. I'm not sure if I said that to him, but that
24 would be something I would say. That's possible I would
25 say that.

1 Q. And then the next sentence: "He then said
2 that his plan to use the document to enable him to pay
3 less for his son's college education was not going to
4 work."

5 A. I never said that.

6 Q. What is that?

7 A. I never said that. I said the separation
8 agreement was for not as far as financial aid --

9 Q. You said that --

10 A. Just a minute. Let me finish. Okay? All of
11 the financial aid that we filled out, separate parents
12 didn't matter because they were all considered as one.
13 Wherever the money went, whether the money was with me or
14 whatever, it was taken as one. Some other colleges
15 around the country, it's the person that he resides with
16 fills out the application and the noncustodial parent
17 does not. So with that thinking and part of the
18 separation agreement was for not. It didn't save us
19 anything at all.

20 Q. And that's what you told him?

21 A. That's what I told him because we were in a
22 large discussion about -- he said I should go to work and
23 pay for my son's college. Little does he know that my
24 wife, when I retired, she said she got her master's
25 degree, went back to school and she wanted to teach

1 school, and I said: "What happens when you decide you
2 don't want to teach?" She said: "I'm going to teach.
3 How long do I have to teach?" I said: "Probably 18
4 years until he graduates from college." She did the math
5 and she said: "That's what I want to do." We moved to
6 Hawaii. She went looking for a teaching position, which
7 she got. She got a nice one working at the Christian
8 school. Then she went to --

9 Q. Okay. I'm going to stop there because you've
10 gone beyond what I've asked. Paragraph 9, Paragraph 9
11 the last sentence, the last partial sentence on Page 2,
12 it says: "At no time did George or Kylee say that either
13 of them was planning to separate or divorce." Is that an
14 accurate statement?

15 A. At no time -- how would I -- I didn't discuss
16 personal matters with him.

17 Q. So it's an accurate statement? Is that
18 accurate?

19 A. What at no time? I don't know what she told
20 him. I can only say that at no time did I. (Inaudible.)

21 COURT REPORTER: I can't understand him.

22 BY MR. MORKEN:

23 Q. We missed that. Did you just say that at no
24 time did you? At no time did you say that either of you
25 say you were planning to separate or divorce?

1 A. Okay. I will go back and I will explain it
2 to you. I did not have personal conversations with him
3 other than at Thanksgiving time. We did not go to lunch.
4 We did not hang out. He said at no time did George or
5 Kylee, how could I know what Kylee said to him.

6 Q. I understand. I understand. So limit it to
7 as to what you said, is it an accurate statement?

8 A. I don't know.

9 Q. Okay.

10 A. I don't remember. They were very aware of
11 our trouble in our marriage. I mean, Bev was Kylee's
12 best friend. I'm sure they talked.

13 Q. Okay. I'm done with Tab 68. I'm going to
14 Tab 69. This is seven pages and it is going to be
15 labeled Exhibit 32.

16 (Whereupon Exhibit No. 32 was marked for identification.)

17 BY MR. MORKEN:

18 Q. Okay.

19 A. I don't have any numbers on those. Okay.

20 Q. George, on the first page there is a check
21 that is drawn on an account that has your name on it as
22 well as Kylee's name on it and it's Check No. 4117;
23 correct?

24 A. Okay. This is important, sir. Kylee's name
25 is in the top and my name is on the bottom, so this would

1 be out of her separate account, correct.

2 Q. Well, evidently you're both on this account
3 and it's an account that is held at Los Angeles Firemen's
4 Credit Union; correct?

5 A. Correct.

6 Q. All right. Now, that is written -- the check
7 is written out of a joint account; correct?

8 A. It's written out of her separate account with
9 my name on it. I wouldn't call that a joint account.

10 Q. It's written August 27, 2010; correct?

11 A. Correct.

12 Q. And that's -- do you know what that was for?

13 A. Absolutely, I know what that was for.

14 Q. What was that for?

15 A. Kylee had discussions on how come I wasn't
16 paying child support. I said: "I'm paying for all of
17 the rent here out of my accounts. I'm paying \$1,800 a
18 month rent." I said: "I'll call them and pay all the
19 rent upfront." I talked to him. (Inaudible.)

20 COURT REPORTER: I'm sorry, he's breaking up.

21 (Lost connection with witness.)

22 MR. MORKEN: Okay. Off the record.

23 (Whereupon a recess was taken.)

24 BY MR. MORKEN:

25 Q. This \$17,100 payment was for the rent;

1 correct? It was August 27th, 2010.

2 A. Right.

3 Q. Wasn't one of the reasons why that \$17,000
4 lump sum payment was made was so that you didn't have
5 that money in your account when you applied for financial
6 aid?

7 A. Well, that could have been one of the
8 reasons, but one of the reasons was she was asking how do
9 I know you're going to the keep paying the payment when
10 we separate, and I said in lieu of child support, I was
11 paying \$1,800 a month for Micah to have a place to live
12 and for her a place to live. That \$1,800 transferred out
13 of my account into her account and the \$17,100 in August
14 30th, 2010, and that was used for the rent payment, so
15 she had \$2,000 a month plus the \$1,800 a month, plus I
16 gave her \$8,000 for her to put into her checking account
17 so she could have a savings account. I asked her to try
18 to save that for the next 16 months but she went through
19 it. She went through all that money in 16 months.

20 Q. Okay. That's at a time when in the
21 separation agreement you said that there was no child
22 support and there was no -- there was no minor child; is
23 that correct?

24 A. We did not address the minor child in the
25 separation agreement.

1 Q. You said there wasn't a minor child; correct?

2 A. I didn't list him.

3 Q. You what?

4 A. I don't believe I listed him.

5 Q. Okay.

6 Liz, that is marked as Exhibit 32.

7 A. We're done with this exhibit? Put it away?

8 Q. Yeah. That was seven pages.

9 A. Yes. That was 24; right.

10 Q. No, that was Tab 69.

11 MS. SHAFFER: Paul, what does your timing look
12 like?

13 MR. MORKEN: Probably done in about 15 minutes.

14 MS. SHAFFER: Okay.

15 MR. MORKEN: I need to take a short break to talk
16 to my client and so we'll be back in five minutes. Okay?

17 MS. SHAFFER: Okay.

18 (Whereupon a recess was taken.)

19 MR. MORKEN: That's it, Liz. We're stopping.

20 MS. SHAFFER: Okay. Let me just see if I have any
21 questions.

22 EXAMINATION

23 BY MS. SHAFFER:

24 Q. George, I have one question on the separation
25 agreement. Can you hear me?

1 A. Yes.

2 MS. SCHAFFER: Can you hear me, Paul?

3 MR. MORKEN: Yes.

4 BY MS. SCHAFFER:

5 Q. The addendum, what was -- was the intention
6 of the addendum to be -- well, let me back up. Was the
7 intention of the separation agreement to be a monthly
8 payment for life or the present value of that account as
9 identified in the addendum?

10 A. If you go to the last page, it says -- she
11 asked me how long will my \$2,000 go on and I said forever
12 or you can take the \$400,000, that's what it says. The
13 intent was she could have either one and I haven't been
14 able to get very good investments. Six percent return
15 for her, so that's -- you understand either party has got
16 the right to ask for the \$400,000. I'm just trying to
17 help her out more than anything else.

18 Q. Okay.

19 MR. MORKEN: Is that it?

20 BY MS. SCHAFFER:

21 Q. I believe you said -- I wasn't sure, but is
22 Bev Chaidez Kylee's best friend?

23 MR. MORKEN: Well, I object to the form of the
24 question. I don't know how he would know who's best.

25 But go ahead.

1 BY MS. SHAFFER:

2 Q. Do you know? Is Bev Chaidez Kylee's best
3 friend?

4 A. Are you asking me?

5 Q. Yes.

6 A. Oh, when we were there, she spent more time
7 with Bev Chaidez than any other woman. Yes, I would
8 assume that would be her best friend. Bev has since
9 moved to California.

10 Q. Okay. I just want to clarify for the record,
11 when you talked about the hard money loans, I believe --
12 well, did Kylee know about all of those hard money loans
13 at the time that they were happening?

14 A. Did she know about all of them? She didn't
15 know about Gonzales. That's what made her really upset.

16 Q. When was that one?

17 A. That was after the separation. She was very
18 upset. I told her calm down. I didn't buy anything in
19 Royal Poinciana. It's a very depressed area. I loaned
20 the guy 120 on a house that he had already finished. It
21 was worth probably 250, and he has since resold it, and
22 he paid me all back in five months. I told her not to
23 worry. I still had her money and she wanted \$400,000.

24 Q. Was it after she found out about that hard
25 money loan that she took the \$90,000 out of the bank?

1 A. No. Two weeks before we had an agreement
2 that she needed some cash, because she was out of cash,
3 and she was going to move out and get her own place and
4 she stayed in Park City. I told her I would be back for
5 Micah's graduation in two weeks and I would bring her
6 plenty of money. How much did she want, she said she
7 didn't know, so I brought her \$170,000. I was going to
8 give her check out of that account and also was going to
9 help her go down and buy her a brand-new Honda CRV
10 four-wheel drive so she wouldn't have to have two cars,
11 like she has now.

12 I sent her information from the dealer about that
13 Honda CRV. She got mad that I gave her E-mail out about
14 the Honda CRV. That was my intent to give 170 and pay
15 about \$30,000 for a Honda CRV. She would have half of
16 her money, \$200,000.

17 Q. And you discuss that with her?

18 A. I told her she could have all -- yes, I did.
19 She could have 100, she could have 200. She thought
20 about maybe buying a cheap condo. I told her that was a
21 good idea. She wouldn't have rent payments. She could
22 do whatever she wanted. It was up to her.

23 Q. And she declined that offer and then --

24 A. No, she said that -- she said, as I was
25 leaving, that she would accept the separation agreement

1 and then I said I will be back in two weeks and I would
2 bring it, and then when I came back, she didn't talk to
3 me. She picked me up at the airport. She dropped me off
4 at the house. She had moved out of the house, and the
5 house was basically two-thirds empty. Micah was there
6 and a place for me to sleep, and then right after I was
7 at the house, five minutes later I got served for my
8 divorce.

9 Q. Did she tell you she was taking \$90,000 out
10 of the bank account?

11 A. I found out after I got the divorce papers.

12 Q. And when did she take the money out of the
13 bank account?

14 A. The same day, June 6th or June 7th.

15 Q. Okay. I don't have any other questions.

16 MR. MORKEN: Okay. Do you want to reserve the
17 right -- do you want to reserve, George, a right to make
18 corrections or do you want to sign off now? Can you hear
19 me? Can anybody hear me?

20 (Lost connection with witness and counsel.)

21 COURT REPORTER: I need on record whether George
22 will read and sign or if he is going to waive that right.

23 MS. SHAFFER: He's going to read and sign.

24 COURT REPORTER: Where would you like it sent? To
25 his home in Hawaii or to you, Liz?

1 MS. SHAFFER: You can send to him directly in
2 Hawaii.

3 (Whereupon the deposition concluded at 3:02 p.m.)
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Case: Sandusky v Sandusky
Case No.: 114500103 DA
Deposition Date: April 11, 2013
Reporter: Donna Ward, RPR, CSR, NP

WITNESS CERTIFICATE

State of Utah)
ss.
County of Salt Lake)

I, GEORGE SANDUSKY, HEREBY DECLARE: That I am the
witness referred to in the foregoing testimony; that I
have read the transcript and know the contents thereof;
that with these corrections I have noted this transcript
truly and accurately reflects my testimony.

PAGE-LINE	CHANGE/CORRECTION	REASON
-----------	-------------------	--------

No corrections were made.

GEORGE SANDUSKY

SUBSCRIBED and SWORN to before me on this _____ day of
_____, 2013.

Notary Public

1 STATE OF UTAH)
2)
3 COUNTY OF UTAH)
4


5 I, DONNA M. WARD, a Certified Shorthand Reporter,
6 Registered Professional Reporter, and Notary Public for
7 the State of Utah, residing in Utah, certify:

8 That the deposition of GEORGE SANDUSKY was taken
9 before me pursuant to Notice at the time and place
10 therein set forth, at which time the witness was by me
11 duly sworn to testify the truth.

12 That the testimony of the witness and all
13 objections made and all proceedings had at the time of
14 the examination were recorded stenographically by me and
15 were thereafter transcribed. And I hereby certify that
16 the foregoing deposition transcript is a full, true, and
17 correct record of my stenographic notes so taken.

18 I further certify that I am neither counsel for or
19 related to any party to said action nor in anywise
20 interested in the outcome thereof.

21 IN WITNESS WHEREOF, I have hereunto subscribed my
22 hand and affixed my official seal this 11th day of April,
23 2013.

24 
25

DONNA M. WARD, RPR
Certified Shorthand Reporter
Registered Professional Reporter
and Notary Public in and for the
County of Utah, State of Utah.



My Commission Expires:
June 30, 2014

A	\$4,937.70 49:5,15	40:12,13,14,15,15	action 106:13	75:2,4,14,17,23
\$1,040 74:19 75:12	\$40,000 44:10,12	40:16 42:14 44:24	actual 79:4	78:16 79:19 81:22
\$1,200,000 14:9	44:17,21 45:15,19	45:1,2,16 48:4,16	add 42:16 49:13,14	82:3 86:23 87:23
\$1,800 97:17 98:11	45:20 53:3,13,25	48:18 49:5,16,17	addendum 20:15	88:9 89:2,5 94:8
98:12,15	73:19,20,21,23	49:21,22,23,24	20:21 23:6 78:16	94:18 98:21,25
\$10,000 66:22,23	74:2,4,6,7 77:4,15	50:2,3,4 52:13	82:7 100:5,6,9	99:25 100:7 102:1
66:25	77:16,25	53:6 54:7,24,25	addition 17:24 20:5	102:25
\$10,035 42:24	\$400,000 14:9,16	55:4,7 56:10,12	24:1 71:12,15	ahead 23:17 100:25
\$100,000 35:1 52:5	14:17,18 15:2,17	61:10,11 65:4	additional 16:24	aid 55:13 86:24
54:4,6 56:11	15:19,19 16:13,25	67:2,3 70:5,7	17:1 31:5 32:19	91:18 93:3,18
81:14	17:2,7,23 20:6,17	73:16 76:22,25	address 98:24	94:8,11 98:6
\$120,000 69:9,20	21:9,18,24 23:15	77:22 80:1 81:10	addressed 33:22	airport 103:3
\$14.86 49:15	23:18,23 24:11,15	81:15 96:21 97:1	41:6,7 61:11	Alii 58:21
\$141.62 49:14	36:19 66:16,17	97:2,3,7,8,9 98:5	admit 34:18	alimony 22:7,8,22
\$17,000 98:3	72:17 82:10,15	98:13,13,16,17	affidavit 3:17	23:13,14,18,23,23
\$17,100 97:25	100:12,16 101:23	100:8 102:8	84:23 85:2,4,8	24:7,8,14 82:6
98:13	\$42,000 53:18	103:10,13	86:15,17 88:1,7	ALPINE 1:15
\$170,000 102:7	\$450,000 59:3	accounts 16:11	88:12 90:10 91:24	amount 21:21
\$180,000 71:10	60:24	17:13,15 30:12,15	92:3,9	23:23 44:16 49:21
72:3,5,21	\$5,200 70:2	31:12,17,18,18,20	affixed 106:15	59:7 72:25 83:5
\$190,000 52:25	\$50,000 76:8,10,25	31:23,25 32:5,7,8	age 84:14	amounts 49:13,14
53:2 54:24 55:7	\$8,000 98:16	32:11,19,21,23	agent 68:15	53:5
55:14,25 56:8,9	\$8,855 39:17	33:4 35:2,4,15	agents 67:9	and-a-half 14:7
56:13,18,19	\$80,000 16:19,21	36:18,20,21,21,21	ago 53:10 59:21	and-a-quarter
\$2,000 15:6 20:16	\$800,000 14:10,17	53:19 65:7 97:17	67:23	62:18 68:20
22:7 23:14 24:10	15:18 21:19 82:17	accurate 7:22,24	agree 36:22 86:12	Anderson 22:4
36:19 98:15	\$90,000 50:3 51:22	10:24 11:1,2	93:21	76:23 83:2
100:11	53:16,25 56:10,11	13:12 14:13 19:7	agreed 22:11	Angeles 97:3
\$2,080 75:12	81:9 101:25 103:9	31:21,21 39:21	agreement 4:21,25	answer 9:15 10:11
\$2,297 39:14,15	able 13:25 15:9	42:4 54:21 67:14	5:4,15,19 8:7,9,11	24:6,25 27:13,17
\$200,000 71:25	100:14	85:10,18,22,23	14:25 15:4,20,25	28:25 29:10,22
102:16	Absolutely 16:14	86:16 89:11,19,25	18:13 19:14 20:4	30:20,21 31:9
\$24,000 14:11	16:15 97:13	90:13,15 91:19,23	20:7 22:23 23:20	33:20,21 55:20,22
\$24,680 43:2	accept 102:25	92:6,15 93:8,12	29:3,18,24,25	89:24
\$3,250 73:9,12	accepted 68:3	93:14 95:14,17,18	31:22 33:24 34:9	answered 89:21
\$30,000 102:15	accident 53:17	96:7	34:12 35:3,10,14	anybody 103:19
\$320,000 16:22	account 17:16	accurately 6:21	35:16 36:4 37:6	anytime 7:10 8:2
\$336,000 82:23	30:25 32:8,18	105:8	37:20 40:22,23	anyway 74:24
\$34,715 42:6	34:13,15,16,18,23	ACH 42:17	41:1 43:9,11,13	anywise 106:13
\$370,000 71:14	35:6,7,12,12	acknowledged 9:1	53:7,9,13 58:10	APPEARANCES
\$390,000 67:3,5	36:15,16,18,22,25	acquire 37:12	58:15,18 59:23	2:1
\$394,000 59:11	37:1,2,17,18,19	acquired 28:6,7	60:13 61:6,19,22	Appearing 2:10 3:3
\$4,781.22 49:14	37:20,22 38:1,3,3	37:16,18 74:14	63:16,19,21 64:1	application 55:13
\$4,937 48:24 49:3	38:5,7,8 40:10,10	act 9:2	64:20 65:1,9,20	55:21 56:14,16

<p>94:16 applications 55:17 55:25 56:8,20 91:18 applied 98:5 applying 93:2,3,17 93:18 appraisal 82:24 appraise 68:10 appraised 68:11,12 appreciated 20:3 approached 59:1 approximately 14:9 16:17 67:11 April 1:13 4:1 42:5 42:10 58:8 68:23 69:14 105:2 106:15 area 69:18,19 101:19 arrive 82:9 arrow 80:18,21 Article 6:7,11 20:11,12,23,25 21:8 22:14,16 31:4 asked 15:6,9 29:1 33:22 75:8 79:14 86:21 87:14 95:10 98:17 100:11 asking 10:15 11:4,4 11:5,19 13:4 19:5 27:14 28:14 36:24 37:3 87:12 88:11 89:13,24 98:8 101:4 aspects 58:2 asset 12:18,21,21 29:17,25 assets 14:8 21:17 30:5 55:12 association 62:10 assume 16:20 66:25 101:8</p>	<p>assuming 11:9 attached 87:22 attorney 46:22 87:18 attorney's 72:1 auction 71:20,21 71:22 August 97:10 98:1 98:13 authorized 68:6 available 7:9,25 9:18 59:22 60:4 60:14 Avenue 1:16 aware 11:21,24 70:8 88:17 96:10</p> <p style="text-align: center;">B</p> <p>B 52:9,10 81:16 back 19:1 20:15 21:25 34:7,8 41:24 44:2 49:2 50:22 54:11 57:3 59:5,6 60:23 61:2 61:9,10,12 62:15 62:19,21 63:5,6,7 63:14,15 68:1 69:10,22 72:1 78:15 79:14 80:15 81:21 87:19 89:5 94:25 96:1 99:16 100:6 101:22 102:4 103:1,2 bad 72:7 balance 13:23 14:6 14:17 15:18 16:21 66:24 bank 34:13,15,16 34:18 35:15 78:1 101:25 103:10,13 Based 90:6 basically 72:10 83:17 103:5 basketball 47:19</p>	<p>Bates 6:6 8:14 10:6 11:1,15 16:2 18:1 20:22 21:7 23:4 25:6,10 39:9,11 41:12,25 42:2 43:16 44:7 45:25 46:9,14 47:22 48:15,21 49:1,8 50:7,7,11 51:7,9 51:19 54:17,18 77:7 78:13,19 80:5,16,21 81:7 81:22 84:21 bathroom 10:22 believe 19:18,24 40:24 58:19 59:3 59:11 61:15 62:25 64:17,24 68:17 73:4 76:25 77:22 78:6 89:21 99:4 100:21 101:11 best 69:1 96:12 100:22,24 101:2,8 better 14:5,5 15:7 86:14 Bev 88:2,3 90:16 96:11 100:22 101:2,7,8 Beverly 3:18 85:2 88:11 90:10 beyond 95:10 bid 71:21,25 big 12:3 17:18 bikes 92:21 Bishop 64:9,10,10 64:19 70:15 blank 8:21 11:5 26:5 29:1 blankets 26:22 born 85:13 borrowed 60:19 bottom 5:20 44:14 46:12 72:25 77:12 96:25</p>	<p>bought 17:18 35:24 36:6,14 37:7,8 64:13 69:18 74:11 74:18 75:3 83:19 box 2:4 73:21 74:3 74:4 brand-new 102:9 break 99:15 breaking 97:20 bring 102:5 103:2 broke 92:2 broken 25:20 44:13 50:17 56:1,1 57:14 84:2 brought 75:10 85:14 88:18 102:7 builder 76:24 77:20 77:21 builder's 77:21 building 67:22 76:22 bunch 7:20 75:10 business 59:2 buy 75:8,11 101:18 102:9 buying 102:20</p> <p style="text-align: center;">C</p> <p>California 101:9 call 40:14,15,16 63:7 85:16 97:9 97:18 called 28:23 57:16 57:22 62:16 69:17 89:1 calling 36:16,17 calm 101:18 capital 19:23 72:22 Car 35:24 36:1 care 34:1 83:9 Carl 77:22 cars 26:23 30:5 102:10 case 29:2 40:16</p>	<p>55:10 79:1 105:1 105:1 cash 15:8 23:15 24:11 64:17 66:16 66:17 67:21,24 73:17,18,19,20 74:6 75:13,16,18 75:19,22 76:17,23 76:25 78:2,3,5 102:2,2 cashing 76:16 CDs 34:23 cents 49:6 certain 67:15,17,20 CERTIFICATE 105:3 Certified 106:5,20 certify 106:6,11,13 Chaidez 3:17,18,18 84:23 85:3,4 88:2 88:3,11 90:10 91:25 92:5,5,7,8 100:22 101:2,7 Chaidez's 87:24 92:8 Chambers 40:11 44:20,21 45:17,18 51:22,23 52:15 81:9 chance 36:19 change 21:23 82:14 CHANGE/COR... 105:9 changed 38:4 changing 21:12,14 charge 38:3 cheap 102:20 check 44:20 45:8 45:15,25 53:3,13 67:1 78:6 80:13 96:20,22 97:6 102:8 Check/Affidavit 3:19</p>
---	--	---	--	--

checked 62:20	94:3,23 95:4	constituted 16:18	court 1:1,15 71:9	deed 9:3
checking 16:10	colleges 94:14	constructed 59:9	95:21 97:20	deemed 22:24
17:13 30:12,14	combined 50:8,12	contact 92:19	103:21,24	default 66:5,7 73:2
31:12 32:5,6,7,18	come 23:22 50:19	contents 105:7	courts 66:8	deficiency 71:10,14
32:19,21,22 33:4	59:9 65:4 97:15	contingency 68:3	cover 72:11	71:19 72:2,6,9,11
98:16	comes 49:15	contract 66:20	Cowen 47:16,16,17	72:14,15,17,19
checks 76:16	coming 10:14	conversation 86:11	47:17,18,21	define 28:9
child 97:16 98:10	comment 89:13	conversations 96:2	Craig 3:19	defines 28:16
98:21,22,24 99:1	Commission	copy 12:25 13:2,4,5	credit 3:9,11,12,14	definition 27:21
Christian 95:7	106:23	13:15 44:19 87:18	3:16,20 17:15	28:4
Christmas 86:9	commissions 67:9	correct 8:4,5 9:22	35:13 43:21 62:20	degree 89:8 94:25
church 4:12	common 8:1 32:16	11:21 15:3,20	97:4	demand 63:3
circle 78:22,22	Community 3:10	16:22 17:24,25	cross-examination	denying 93:16,19
circled 80:2	3:12,13,16 35:13	23:19,24,25 24:16	29:5,8	department 84:12
circles 79:22,24	43:21	26:6,7,16,17,19	CRV 102:9,13,14	deposit 42:17 48:24
80:17 81:1,15	company 68:10	28:23 31:23 33:7	102:15	49:3,5 66:19,23
City 2:4,9 14:8	compared 68:24	33:8,10,11 34:19	CSR 105:2	66:25 73:21 74:3
90:22 102:4	complained 93:6	35:6,8,25 36:7,15	current 72:4	74:4
Civic 16:10 17:17	complete 93:15	37:2 38:1,7 39:15	currently 12:18	deposition 1:12 5:9
Civil 1:7	completed 4:14	39:19,22 40:19	66:2 71:13	87:17 104:3 105:2
claim 12:17 49:25	completely 13:24	41:2,5 42:3,9,24		106:7,11
91:21	56:1 68:25	42:25 43:3,4,12	D	depressed 101:19
clarify 60:2 81:7	computer 17:17	45:1,1,13,17	D 25:8,9,13,19,23	describe 12:21
101:10	computers 16:9	48:16 49:6,7,15	25:24 28:22 29:1	desk 7:9 8:1
clause 10:2	concerned 4:20 7:2	49:22 52:9,23	DA 1:7 105:1	destroyed 60:10
clear 8:3 15:15	14:13	54:13,15,17,20	date 39:18 44:15	detail 5:9
50:1 60:9 67:6	concluded 104:3	57:18 58:11 63:19	53:14 58:13 64:15	determine 68:13
88:14	condition 6:18,24	64:4 65:20,24	105:2	died 37:22,25 38:2
client 99:16	condo 62:9 102:20	71:16 73:13 80:4	dates 58:9,12 88:4	38:4 74:17 85:12
close 67:4,16,17,18	conference 2:11 3:3	80:5 86:6,7 93:22	day 103:14 105:22	difference 33:1
68:7 85:18	confident 68:6	96:23 97:1,4,5,7	106:15	different 17:6
closed 49:16 50:3	confirmed 29:2	97:10,11 98:1,23	days 66:11 68:19	34:23 64:6 76:24
55:4 72:23	confuse 24:21	99:1 106:12	69:12	differentiate 31:11
closes 67:2	confused 29:13	corrections 103:18	dealer 102:12	differentiates
closing 67:10,12	78:7,11	105:8,19	decades 85:18,20	33:13
clothes 17:21	confusing 18:18,19	costs 67:10 87:1	December 66:9	differently 92:18
CMA 68:15	connection 97:21	counsel 103:20	decide 95:1	dinner 86:8,9
Code 18:20,23	103:20	106:13	declaration 3:15	directly 104:1
19:11	consequence 19:23	counter 68:22	51:2,6,12,13	discounted 59:3,4
coins 75:10	20:3	country 94:15	54:13,16,19 57:4	62:17
collection 72:5	consider 86:18	County 1:2 105:5	65:17,19 74:22	discovery 29:8 60:4
college 22:6 82:19	considered 87:3	106:3,21	76:20 79:17,18	60:6
86:25 87:1 89:3	94:12	couple 4:17 13:21	DECLARE 105:6	discuss 95:15
89:19 90:3 91:18	constitute 16:13	67:23 69:12	declined 102:23	102:17

discussed 70:10 87:15	dumpster 12:3 duplex 14:10	established 38:22 55:16	86:22 88:25 89:17 90:2	financial 3:15 6:8 6:13,17,18,23,24
discussion 57:2 80:14 94:22	E	estate 26:21 57:21 62:19 67:9 68:15	explanation 24:22 30:18	7:4,6,13,23 8:4,6 8:17,23,25 9:4,10
discussions 97:15	E 25:8,9 26:8 28:22 29:1	estimate 67:11	extent 25:3	9:16,21,25 10:3,4 10:8,15,18 11:22
distinguishable 81:19	E-mail 102:13	evaluation 4:8	extra 81:5 82:5	51:2,6,12,13 54:13,16,19 55:13
DISTRICT 1:1	early 86:20	evidently 97:2	extremely 85:23 86:12	55:13,17,21 57:4 65:19 74:22 76:20
disturb 4:23	earned 33:6,6,9,10 33:14,15 83:24	exact 57:19	F	79:17,18 86:24 89:3 91:18 93:3
divide 15:18	earnest 67:1	exactly 15:21 32:7 42:20 43:22 50:5 55:23 57:17 72:9 72:18,24	F 16:6,7 25:18 30:8 30:9 31:13 32:1,2	93:18 94:8,11 98:5
division 21:10,13 22:23,23 31:4	easy 7:10,12	examination 3:5 4:5 99:22 106:10	fact 38:23	financials 8:11 9:17
divorce 18:7,10 87:2,5,22 92:14 92:15 95:13,25 103:8,11	education 89:19 90:3 93:5 94:3	examined 4:3	fair 26:24 27:2,4,8 27:17,20 29:4,6,6 68:22 85:22	find 5:6 7:12 15:9 76:2
document 11:10,14 11:19,22 29:16 45:5 46:15 77:6 79:4,6,8 80:3 81:2 86:22,23 87:2,4,9 87:13 88:1,7 89:1 91:16 92:13 93:4 94:2	effective 23:16 41:2 41:4	Excuse 13:24,24 65:11	fall 68:7	fine 9:15 24:20 34:1 63:7 83:13 91:8
documentation 38:24	efforts 72:5	exhibit 3:9,10,12 3:13,15,16,17,19 4:19 5:18 6:6 12:22,23 15:22,24 18:2 23:5 25:7 34:9 39:7 41:13 41:14 43:16,23,24 45:24 48:13 50:8 50:12,14 51:6,12 57:4,8,9 76:6 78:12,13,16,17,18 79:20,21 80:10,11 80:15,25 81:7,21 84:18,19 85:5 87:22 96:15,16 99:6,7	familiar 57:13,14 69:5	finish 10:21 54:5 94:10
documents 10:20 59:13,14,15,17,18 60:10 79:2 80:24	either 14:2 19:11 20:16 23:12 30:15 35:20 40:7 41:5 68:9 77:10 83:18 95:12,24 100:13 100:15	exhibits 3:8 79:10	family 83:15 92:20 92:25	finished 101:20
dog 25:13,23	electrical 75:7	expect 69:20	far 4:20 5:19 7:2 8:21 14:12 30:7 94:8	fire 69:16 84:11
dollar 72:25	elementary 91:10	expecting 71:13	February 39:13,19 40:24 44:11,15,17 76:9 77:3,5,9	Fireman's 3:9
dollars 14:7	elephant 26:9	expenses 83:15	fed 89:12	Firemen's 97:3
Donna 1:18 105:2 106:5,19	Elizabeth 2:7,7 14:1 20:19	expensive 93:2,17	federal 3:10,12,13 3:16 35:13 38:10 39:16 42:19 43:1 43:21	first 5:9 6:15,19 46:12,15 50:2 55:16 64:11 68:16 84:22,25 96:20
draft 77:14	else's 52:13	expert 4:8 72:12,20	feeling 76:18	five 69:11,11,22 99:16 101:22 103:7
drafts 77:13	Email 2:5,10	Expires 106:23	fees 72:1	fixed 66:10
drawn 96:21	employed 84:3	explain 21:21 24:24 27:14 30:16 31:6 61:7 96:1	fell 68:8	Florida 67:24
drive 58:21 102:10	employment 83:24	explained 8:12 59:2	figured 16:23 72:22	follow 13:15
Driver 2:8	empty 103:5		file 39:24	following 25:16 26:2 52:2
dropped 68:18 103:3	enable 93:4 94:2		filed 39:23 55:18	follows 4:4
dropping 77:2	entered 64:23		fill 76:19	Foo 4:9
due 66:24 67:4	entirely 18:18 73:24 93:13		filled 9:18 10:23 22:12,12,13 55:22 56:14 94:11	foreclosed 66:8 71:22
duly 4:3 106:8	equally 15:18		filling 91:17	foreclosure 71:11
	escrow 66:12,13,21 66:22 67:2,3 69:16 71:13 72:9		fills 94:16	
	eshaffer@lawpa... 2:10			
	ESQ 2:3,7			

foregoing 9:1 105:7
106:11
forever 40:13 47:20
100:11
forget 63:9
forgot 50:18
form 9:9,24 22:7,8
24:3 25:3 27:10
27:22 28:12,18,24
29:7,19 31:2
33:16 38:21 40:2
45:4 55:15 56:21
56:23 85:15
100:23
forth 106:8
forward 46:24
found 49:4 101:24
103:11
four 7:16 59:10
four-wheel 102:10
Frank 30:9
free 9:2 19:15
freshman 47:20
friend 75:6 76:23
96:12 100:22
101:3,8
friends 85:20 90:11
90:18,19 91:2,3,6
91:11
front 4:11 43:20
44:14 47:4 56:24
58:6 67:22,25
70:11
full 59:7 68:25
106:11
fully 12:21 63:11
63:11
funds 13:23 14:6
37:16 70:4 91:17
furnished 6:16,22
furnishings 16:9
furniture 30:5
further 106:13

G
G 18:2,3,9 32:17,21
32:24 33:17
gain 19:23 20:1
gains 72:22
garage 17:21
garbled 13:25
general 14:14
28:16
George 1:8,12 3:3
4:2,7 11:21 12:11
12:15 13:4 19:5
21:6 25:7,22 27:4
27:17 28:20 32:17
34:7 45:8,10
48:23 50:16 51:8
54:5 57:12 82:9
85:8,22 86:2,22
87:1,4 89:1,17
90:1,7,12 91:15
92:12,25 95:12
96:4,20 99:24
103:17,21 105:6
105:21 106:7
George's 81:8
85:17
get-together 93:1
getting 12:1,4
35:18 47:24 53:1
53:18 63:4
ghost 68:24
girl 32:17
give 7:6,8 16:24
17:1 20:6 21:24
52:25 53:2 102:8
102:14
given 45:16 52:6,20
53:8 81:13
gives 76:10
glance 8:2
glanced 18:14
go 23:17 31:17,18
41:18 64:8 79:13
80:12 82:11 86:8

86:8,9 88:16 90:6
92:21,22 94:22
96:1,3 100:10,11
100:25 102:9
Godmother 85:10
85:16 86:5,5
goes 19:22 51:6
53:6 55:10 67:2
71:22
going 4:19 6:4,5,6
8:14 9:9 12:2
13:9,10,11 15:12
15:22,24 16:24
17:1 20:6 21:25
23:4 25:7 30:8,16
30:20 31:1 32:17
33:16 34:7 36:22
38:21 39:1,9 40:2
41:16 44:7 46:9
47:12,22 48:10
50:25 51:8 55:6
56:21,23 57:15,15
57:24 60:12 62:23
64:25 67:15,17,18
67:25 68:2 69:2
75:9,25 78:12,15
82:20 84:15 85:5
86:16 89:6 90:9
92:3,8 93:5 94:3
95:2,9 96:13,14
98:9 102:3,7,8
103:22,23
gold 74:9,10,11,12
74:16,16,18,18,25
75:8,9,10
Gonzales 69:2
70:13 74:1 101:15
good 5:17 12:10
67:20 100:14
102:21
government 42:20
graduates 95:4
graduation 102:5
grandfather 74:11

74:17
Great 15:11 62:23
groceries 83:19
guess 19:18,19
44:17 61:23,24
71:8 79:2
guessing 61:21
guy 12:3 62:14,19
63:4 101:20
guy's 63:9
H
half 82:17 83:5
102:15
hand 106:15
handwriting 51:16
51:17 52:14,16,16
52:19 78:25 79:15
80:6,7,17,22 81:1
81:6,8,10,11,14
81:15,17
handwrote 79:7
hang 4:22 10:14
13:14 47:24 51:3
96:4
happened 38:15,18
38:19 40:25 61:13
64:15 73:14,15
83:25
happening 101:13
happens 40:17
55:10 95:1
hard 57:16,17,20
57:20,22,22,23
58:1,14 59:1
61:14 62:2,5,6
63:25 64:4,8,18
64:23 65:13 69:2
69:5 70:8 71:2,6
73:1 101:11,12,24
Hawaii 3:10,12,13
3:16 19:3 35:13
42:17,23 43:21
82:18 89:5 95:6

103:25 104:2
he'll 12:6 83:2
head 71:4
hear 5:16 12:11,12
13:13 14:4 15:23
35:17,19,20,21
42:1 56:2,3 62:3
74:15 90:24 92:1
93:10 99:25 100:2
103:18,19
heater 91:8
Heber 91:12
held 19:21 20:2
30:15 34:21 57:2
80:14 97:3
help 63:5 89:18
90:3 100:17 102:9
hereunder 19:14
hereunto 106:15
hesitate 87:6
hesitated 88:21
hit 53:18
HOA 68:6
hold 46:11 48:9
home 16:9 34:13,14
103:25
Honda 16:10 17:17
17:22 32:4 33:3
102:9,13,14,15
hopeful 67:18
hoping 12:6
hospital 85:13
hot 91:8
house 4:9,11 8:1
13:23 14:7 17:21
60:8 75:19 76:17
76:22 82:16 91:8
91:12 101:20
103:4,4,5,7
houses 72:7
hurting 75:7
husband 25:14,15
25:25 26:1,13
33:18

I idea 38:13 45:21 47:17 70:6 77:17 102:21 identification 39:7 41:14 43:24 48:13 50:14 76:6 84:19 96:16 identified 30:6 35:2 35:4,9,14 36:3 37:5 100:9 identifies 26:15 29:25 30:25 31:22 32:20,25 34:12,14 43:9 identify 31:11,14 32:14 84:20 identifying 41:12 important 96:24 inaccurate 86:1,19 87:8,20 88:23 inaudible 90:23 95:20 97:19 Incident 18:6,10 include 55:14 included 53:15,25 54:2 includes 53:20 including 56:22 income 69:19 84:11 independent 22:22 INDEX 3:1 information 6:17 6:23 8:18,23,25 9:5,11,16,21 10:3 10:4,8,18 11:23 31:5 58:5 80:2 81:3 102:12 instance 81:9 instrument 9:2 insurance 35:1 69:17 integrated 22:25 intended 21:10	92:12,14 intent 14:15,19,21 14:22 15:16,16,20 100:13 102:14 intention 100:5,7 interest 12:17,19 12:20 15:5 25:16 26:2 59:9 72:2 interested 106:14 intermixed 53:22 Internal 18:20,22 19:11 interpret 14:24 interpretation 86:3 interrogatories 65:17 interrogatory 12:16,16,24 investment 84:13 investments 100:14 involved 60:18 irate 69:17 issues 86:24 89:3 items 79:7 J J 1:5 2:3,3 Jack 58:21 60:20 60:21 January 47:7,7,14 Jeff 70:25 jewelry 16:10 17:17 job 83:10 89:6 jobs 84:4,5 joint 34:13,16,18 34:24 35:5,5,6,8 35:12 36:14,16,17 36:22 37:17,19 38:6 50:4 97:7,9 jointly 20:2 39:24 39:24 judgment 71:9,10 71:15 72:3,10,14	72:16,17,19 JUDICIAL 1:1 July 48:24 June 36:6,10,13 37:7,8,12 103:14 103:14 106:23 K K-a-n-a-l-o-a 57:25 Kanaloa 57:13,13 57:25 58:20 61:14 62:1,2,5,6,8,9,12 62:13 64:9,19 70:12,16 keep 14:17 15:17 21:24 22:2 34:8 41:11 48:7,8 55:1 55:3,9 76:19 83:12 98:9 keeping 76:17 kept 21:25 83:11 83:12 84:9 Kevin 3:18 85:4 91:24 92:3,8 kid 47:18 91:9,10 kind 29:5 67:6 70:19 kinds 89:9 knew 32:7 86:11 know 4:15 5:8 7:4 7:15 9:23 11:3,17 13:1,5,6 15:6 18:24 24:22 26:24 26:25 27:4,8,20 28:2,4 29:3 30:2 32:15 36:11 37:4 37:14 38:15,18,19 42:20 44:23 45:19 45:22 47:18,20,21 48:3,5 53:3,15,20 53:22,24,24 54:3 55:16 56:11,12 57:17,19 59:7,25 60:10 63:3,17	64:14 65:6 70:3,4 70:19 72:9,11,18 72:19,20,24 73:6 73:14 75:5,15,20 76:8,10,12 77:16 77:19,24,24 78:10 85:22 86:2 87:10 88:17,18,19,24 89:14 90:1,9 92:16 94:23 95:19 96:5,8 97:12,13 98:9 100:24,24 101:2,12,14,15 102:7 105:7 knowledge 32:16 57:20 known 90:11,16 knows 32:15 86:14 Kylee 1:5 2:12 9:20 14:10 22:22 33:22 37:23 45:8 55:2,3 55:9 69:15 79:25 81:5,5 83:4 85:23 86:2,3,14,20 87:1 87:3,5 88:16,18 88:18,20,24,25 89:12,14,14,16 90:1,7,11,23 91:16 92:12 95:12 96:5,5 97:15 101:12 Kylee's 44:25 45:5 78:24 80:6,16,16 80:22 81:6,11,15 81:17 86:3,5 87:23 88:19 96:11 96:22,24 100:22 101:2 L labeled 96:15 labeling 84:17 LAFCU 52:15 81:9 Lake 105:5	land 22:2 58:21,23 60:18,19 70:24 82:17,21 83:8,9,9 83:10,12,12 large 94:22 leave 16:21 leaving 102:25 left 17:20 legal 72:20 89:17 90:2 91:19 let's 19:1 80:12 84:17 90:6 lieu 82:6 98:10 life 14:11 100:8 limit 96:6 line 17:22 32:5 33:4 72:6,25 81:16 list 12:21 55:24 56:7 60:11,15 74:22 75:1 76:21 99:2 listed 26:6 32:10 53:5 56:15,20 65:8,11,12 68:15 68:16,19 74:10,19 74:21,23 75:22 99:4 listen 61:8 little 53:10 73:5 86:10 92:19 94:23 live 84:12 98:11,12 Liz 5:16 6:1 12:11 13:20 24:18,25,25 32:1 40:11 41:12 42:15 43:16 44:20 44:21 45:16,18,24 48:2,5,16 49:22 50:7 51:5,6,22,23 52:6,15,20 53:6 54:24 55:8 57:3 80:2 81:9,13 87:25 88:10 99:6 99:19 103:25 Liz's 53:6
--	--	--	--	--

loan 15:10,11 57:17 57:20,20,21,22,22 57:23 58:1,19,20 58:21,24,25 59:1 61:9,14,16 62:5,7 62:14,25 63:1,4 63:25 64:4,9,16 64:18,23 65:4,13 66:1,3,5 69:3,5,8 70:4,6,13,14,15 70:19 71:2,8 73:1 76:20 101:25	24:11,15 61:9 98:4 lunch 86:8 92:22 96:3 Lyman 13:23 14:7	mean 9:10 26:20 27:1 28:10 30:14 36:10 57:18 59:11 61:2,11 66:21 67:20 78:4 80:2 96:11	misstate 24:21 misstates 25:3 misunderstood 69:24 mixed 46:16 money 8:12 17:16 21:21 22:9,10 35:1 38:2,5 40:1,4 49:25 53:8,19 54:6 57:16,17,20 57:20,22,22,23 58:1,14 59:1,5 60:14,19,24 61:8 61:14 62:2,5,6,15 62:22 63:7,13,24 63:25 64:3,4,9,16 64:18,23 65:3,13 66:22 67:1,6 69:3 69:5,10 70:8,20 71:2,6 73:1 75:7 76:19,21 77:1 78:2,2,4,6 83:1,5 83:11,11,13,22,23 83:25 84:1,6,7,9 84:12,13 89:7 93:6 94:13,13 98:5,19 101:11,12 101:23,25 102:6 102:16 103:12	13:16,18,20 14:3 20:22,25 21:5 23:9,11 24:5,10 24:13,18,23,25 25:5 27:3,7,12,16 28:1,19 29:9,15 29:21 30:23 31:8 32:1,3,13 33:19 34:6 35:21,23 36:13 38:25 39:6 39:8 40:5 41:12 41:15 43:18,22,25 45:7,13,24 46:3 46:21 47:2,11 48:11,14,22 50:11 50:15 51:5 52:4 54:8 55:19 56:3,6 57:1,3,7,9,11 60:16 65:13,18 76:7 77:7,11 78:19,24 79:6,11 79:13,21,24 80:5 80:9,12,15,19,21 81:4,13,17,20,24 82:1,8 84:22,25 85:2,7 87:25 88:6 88:10,22 89:23 95:22 96:17 97:22 97:24 99:13,15,19 100:3,19,23 103:16
loaned 62:15,17 64:3 101:19 loans 57:17 58:14 59:2 61:16 62:13 70:9 71:6 101:11 101:12 LOCATION 1:15 long 59:21 95:3 100:11 longer 73:5 look 5:2,2 7:9 8:2 13:20 16:2 18:1 30:3 38:13 46:13 46:24 47:22 48:6 49:8 52:14 65:1 99:11 looked 67:22 68:14 looking 5:14 6:13 18:7 21:7 46:6 87:25 88:6,8 95:6 looks 40:20 42:21 49:16 50:5 52:12 Los 97:3 loss 72:25 lost 41:23 59:16 72:7 97:21 103:20 lot 4:11 79:2 80:24 89:4 91:5 lots 4:8,10 19:2 love 90:7 low 68:17 69:19 lump 23:15,18,23	M M 1:18 106:5,19 mad 90:18 102:13 mail 69:16 maintenance 22:22 making 51:5 61:18 man 67:21 March 6:18,24 14:8 23:16 41:2,4 43:6 48:19 53:14 marital 12:21 25:14,16,24 26:2 26:12,15,18,20,25 27:5,9,21 28:5,7,9 28:16,21,22 29:18 29:23 30:1,7 33:1 marked 39:7 41:14 43:24 48:13 50:14 76:6 84:19 96:16 99:6 market 66:11 68:23 marking 45:24 marriage 19:22 21:13,16,25 28:6 28:8 31:17 33:7 33:10,14,15 34:2 82:15 96:11 married 91:1 marry 33:23 master's 89:8 94:24 material 58:13 math 95:4 matter 23:17 94:12 matters 95:16 Maui 15:10,11,12 64:7 70:22 Maui/Mednick 64:22 65:14	means 18:24 19:17 19:19,21 22:17,18 23:2 26:24,25 27:5,9 28:10 Medick 71:9,10 Mednick 63:25 64:3,5 65:16 66:3 66:5 70:14 71:15 73:1,24 memory 64:12 mention 40:21 41:5 92:12 mentioned 63:18 63:20 65:15 74:13 merged 22:25 mess 41:9 Micah 34:25 48:5 55:11,13 90:7 98:11 103:5 Micah's 82:19 86:24 89:3,18 102:5 Michael 77:18 middle 44:11 91:14 Mike 22:4 76:23 83:2 million 14:7 21:23 82:14 mine 83:12 minor 98:22,24 99:1 minute 16:21 19:1 20:10 21:7 41:17 61:8 73:10 80:12 94:10 minutes 99:13,16 103:7 missed 90:24 95:23	monies 37:22,25 month 15:6 20:16 22:7 36:20 61:17 68:18 73:7,8,9 97:18 98:11,15,15 monthly 23:13 73:2 100:7 months 62:22 67:23 69:11,12,22 98:18,19 101:22 Morken 2:3,3 3:6 4:6 5:15,18,22 6:3 9:14 10:2,6,11,17 11:7,15,20 12:11 12:14,23 13:1,4,8	mortgage 67:7,8 68:10 83:17 motivation 88:19 motorcycle 53:18 move 89:5 90:22 102:3 moved 14:7 54:10 95:5 101:9 103:4 multiple 68:4 N name 17:14 19:3 22:3 34:24,24

36:17 38:8 44:25 44:25 45:5 58:22 60:17,20 62:9,14 63:9 70:17 77:20 77:21 96:21,22,24 96:25 97:9 named 8:22,24 names 34:21,22 need 7:8 62:25 63:3 99:15 103:21 needed 76:21 89:7 102:2 negotiation 64:25 neither 9:20 26:14 106:13 nephews 17:20 nervous 61:16 net 67:12 71:13 never 7:22 8:3 19:10 33:23 41:6 49:25 61:11 87:13 87:14,15 90:8 94:5,7 nice 68:1 95:7 nieces 17:20 nine 49:2 62:21 noise 12:1 noncustodial 94:16 North 1:16 notary 8:19,20 10:2 10:7,24 11:1,6,10 11:12,12,23 105:24 106:5,21 notations 78:22 note 59:4 noted 105:8 notes 7:16,19,21 60:13 106:12 Notice 106:7 notification 69:15 November 54:17 54:19,20,22 66:6 66:7 NP 105:2	NSF 47:15 number 5:3 13:17 23:5 44:25 45:1,2 45:14 46:12 48:25 52:13 77:7 78:6 numbers 5:20 65:2 79:23 81:1 96:19 numeral 19:13 O object 9:9 31:1 33:16 38:21 40:2 45:4 56:21,23 100:23 objecting 25:2 29:7 Objection 9:24 24:3 27:10,22 28:12,17,24 29:19 55:15 objections 106:10 ocean 67:22,25 70:11,21,23 October 69:25 offer 14:19 21:15 67:20,21 68:18,20 102:23 offered 23:21 offers 68:16,20 officer 58:25 official 106:15 oh 12:5 15:12 20:12 45:11 47:8,9 64:24 68:14 69:23 77:14 82:11 101:6 okay 4:19,22,23 5:2 5:10,13,18,25 6:4 6:9,10,15,21 7:1,3 7:18 8:3,16,17 9:20 10:15 11:12 11:25 12:8,15 13:13,19,20 14:12 14:21 15:2,15,22 16:1,4,5,6,20 17:4 17:9,12,23 18:1,9	18:11 19:12,17,25 20:4 21:21,23 23:10,13,22 24:1 25:6,13,18,24,24 26:8,14 29:10 30:8,10,16 32:24 33:12,20,21 34:10 34:11 35:2 38:6,9 39:4,20,21 40:4 41:3,8,16,24,24 42:4 43:4,15 44:1 44:5,7,9,13,24 45:13,15 46:1,2 46:11 47:4,24,25 48:1,12,15,19,20 48:23 49:2,8,11 49:11,13,19 50:1 50:6,13,17 51:15 54:3,12 55:12,24 57:5,8,10,12,24 58:7 60:17 61:5,9 61:13,25 62:9,11 63:18,23 64:12 65:3 67:1,2,5,13 67:15,17 68:14 69:4,7,20 70:3,8 70:11,18 71:2 72:4 73:23 74:2,8 74:16 76:1,5,16 76:20 77:2,15 78:12,21 79:1,9 80:20,23 81:18,20 82:4,14,20 84:16 84:22 85:1,6 86:1 86:13,15,20 87:16 88:14,15 89:2,16 90:5,20 91:24 92:1,4,8,10,24 94:10 95:9 96:1,9 96:13,18,19,24 97:22 98:20 99:5 99:14,16,17,20 100:18 101:10 103:15,16	once 39:25 onces 74:16 one-ounce 74:12,24 ones 11:8 53:21 58:17 70:9 open 66:21 opened 46:11 48:4 48:18 organized 41:11 48:8 original 9:18 14:9 ounce 75:9 ounces 74:10 outcome 106:14 outside 12:2 92:19 outstanding 71:6 overlap 61:25 overlapped 58:20 owe 67:3,7 owed 63:25 71:25 72:18 owes 71:9 owned 7:17 19:2,4 ownership 12:19 49:25 P p.m 1:14,14 4:1 104:3 P.O 2:4 page 3:5 6:13 11:2 11:5 13:20 20:7 30:9 39:10 43:17 43:20 44:19 49:5 51:20 52:1 64:1 79:22 80:10 85:21 95:11 96:20 100:10 PAGE-LINE 105:9 pages 7:16 46:16 84:22,25 85:3,3,5 96:14 99:8 paid 59:3,6,7,8 60:23 61:2,21	62:15 63:11,11 69:11 73:4 83:15 83:18,19 101:22 papers 103:11 paperwork 60:7 85:11,15 paragraph 16:6,7 18:2,3,6,7,9,21 19:9,12 20:5 22:15 25:7,8,13 25:23 26:5,8,15 28:22 30:8,25 31:13 32:1,17,21 32:24 87:19,19 89:10,16 90:10 91:14,15 92:11,24 95:10,10 paragraphs 13:21 Pardon 17:5 28:3 38:17 parent 94:16 parents 85:12,17 94:11 Park 2:4,9 14:8 90:22 102:4 part 5:9 22:25 31:3 33:6,9 53:4 60:12 62:3 89:2 93:14 93:15 94:17 partial 95:11 partially 90:4 particular 11:5 45:16 79:7 parties 22:24 23:1 23:12 63:25 partly 89:4 party 6:16,22 8:22 8:22,24,24 28:23 100:15 106:13 party's 6:18,24 Paul 2:3,3 10:10 28:17 29:3 30:22 31:7 99:11 100:2 paulmorken@g...
--	--	--	--	--

2:5 pay 15:12 22:6,9 62:18,20 63:2,2,6 75:9 82:19 86:25 93:5,7 94:2,23 97:18 102:14 paying 14:11 20:17 73:6,8 89:18 90:3 97:16,16,17 98:9 98:11 payment 23:15 24:11 66:19 97:25 98:4,9,14 100:8 payments 15:7 23:13,14 24:9,14 61:17,19 73:2,3 102:21 pencil 9:19 10:21 22:12 pension 33:2,6,9,13 33:14,15,24 53:17 53:19 76:16 people 64:11,16 69:16 72:24 percent 15:5,9 59:10 63:1 67:10 100:14 period 47:6 90:20 91:2 periodically 73:2 person 20:2,16 60:18 94:15 personal 17:10,11 86:10 95:16 96:2 pertaining 10:8 petition 87:22 Petitioner 1:6 2:3 phone 67:13 picked 91:9 103:3 pieces 74:12,18,25 place 15:9 69:17,18 70:22 98:11,12 102:3 103:6 106:7 plan 89:17 90:2	93:4,7 94:2 planning 95:13,25 play 21:22 82:15 played 47:19 please 27:19 31:10 55:20 plenty 102:6 PLLC 2:3,7 plus 17:3 98:15,15 Poinciana 101:19 point 38:23 86:18 position 11:9 95:6 positive 76:13 possible 55:24 56:7 56:9,13,15,17,19 56:25 93:24 posted 77:13,14 premarital 12:17 12:20 prenuptial 33:24 prepare 7:11,13 9:4,16 prepared 7:23 10:20,25 preparing 8:22,25 present 2:12 100:8 pretty 5:17 61:24 67:15 68:6 76:12 price 68:13,18,23 69:1 primary 17:14 32:6 prior 21:8 25:4 31:5 61:4,5 probably 16:19 36:25 37:14,18 53:4 61:3 64:14 67:14 69:15 74:23 90:22 95:3 99:13 101:21 problems 68:4 proceedings 106:10 proceeds 36:14 38:15,18 73:14,15 82:16	produce 59:13 produced 11:8,8,11 79:4,6 81:2 87:18 Professional 106:5 106:20 profit 72:25 promised 89:6 pronounce 92:5 properties 20:1 21:22 22:1 30:5 83:18,20 property 12:17,20 14:16 15:2,17 17:4,7 18:6,10 19:2,3,14,21 20:5 20:13 21:10,17,18 22:23,25 24:2 25:14,16,17,24 26:2,3,6,12,13,15 26:18,18,21,21,25 27:5,9,21 28:5,7,8 28:9,16,21,22,23 29:2,18,23 30:1,7 30:11 31:4,4 33:1 33:1,18 55:1 57:21 67:8 68:10 68:12 71:11,22 76:18 proposed 86:22 89:1 provided 78:18,21 80:3 provisions 22:21 Provo 1:17 4:1 Public 105:24 106:5,21 pull 7:10 purchase 76:24 purchased 83:8 purpose 19:13 22:24 91:16,17 purposes 87:3,16 92:14 purse 32:12	pursuant 106:7 pursued 72:8,24 put 40:9,12 41:18 42:14 46:6 48:6,7 49:16 50:2,4,22 53:18 54:23 55:7 73:16,17,18 98:16 99:7 putting 41:19 44:2 49:21,23 <hr/> Q quarter 58:4 question 9:7,7,10 9:15,25 10:9,12 10:13,19 19:5,6 24:4,6 25:1,3,21 27:1,6,11,13,15 27:17,19,23 28:13 28:18,25,25 29:3 29:4,8,10,12,14 29:20,22 30:20,21 30:22,24 31:2,2,3 31:9,10 33:17,20 33:21 38:22 39:25 40:3 45:4 46:9 47:13 55:7,16,20 56:22,23 78:17 82:20 88:12 89:22 89:24,25 99:24 100:24 questioning 24:22 questions 29:7 57:16 99:21 103:15 quite 46:22 <hr/> R rate 59:9 76:24 read 6:21 13:10,13 15:4 18:11,12,19 19:9,10 26:11 85:8,9,19 103:22 103:23 105:7	reads 6:16 25:17 ready 44:5 real 26:21 57:20 62:19 67:9 68:15 really 29:6 78:10 90:14 101:15 realtor 68:1 reason 22:8 32:9,10 33:21 72:23 105:9 reasons 98:3,8,8 recall 58:7,9,14,17 58:23 60:23 78:8 92:17 receive 38:9 67:5 69:10 received 13:23 14:6 38:12 39:18 40:1 69:24 receiving 67:12 recess 34:5 97:23 99:18 recharacterize 29:4 recollection 61:1 record 31:3 34:4,7 37:4,15 57:1,2,3 60:3 79:3 80:12 80:14,15 81:1,19 97:22 101:10 103:21 106:12 recorded 58:7 106:10 records 37:3 redo 64:16 70:20 redone 66:10 Reece/Firemen's 3:20 refer 4:19 6:4,6 8:14 23:4 25:7 30:8 39:1,9 41:16 44:1,7 50:16,25 51:8 54:18 57:24 75:25 78:15 84:15 referenced 65:13 references 47:14
--	---	--	---	--

62:20 referred 18:20 105:7 referring 17:7 20:20,22 23:14 25:6,22 34:8 41:25 51:19 71:12 81:21 88:10,11 refers 9:21 10:3 reflect 31:3 79:3 81:19 reflecting 6:17,24 reflects 105:8 refresh 64:12 refund 38:10,16,19 38:20,23 39:14,16 40:21 42:12,17,24 43:5,6,9 refunds 39:22 40:19 41:5 43:11 43:14 refused 89:8 90:17 regarding 39:5 Registered 106:5 106:20 registration 85:15 related 106:13 relationship 62:1,4 remaining 21:19 remarried 14:12 remember 30:7 36:8,9 39:23 53:11 55:23 58:1 58:3,12 62:14 75:6 88:15 91:22 96:10 remembers 22:4 rent 97:17,18,19,25 98:14 102:21 rental 91:12 repeat 19:7 27:19 31:10 rephrase 25:1 86:16	replaced 91:8 report 4:8,10,11 55:14 reported 1:18 55:12 Reporter 95:21 97:20 103:21,24 105:2 106:5,5,20 106:20 REPORTING 1:15 request 60:4,6 reserve 103:16,17 resides 94:15 residing 106:6 resold 101:21 Respondent 1:9 2:7 response 11:25 12:15 13:10,22 responses 12:24 13:2,5 restate 10:12 retire 84:14 89:7 retired 94:24 retirement/pension 32:8,25 33:5 return 38:9,12,14 42:6,12 70:1 100:14 returns 42:19 Revenue 18:20,22 19:11 ride 92:20 Ridge 17:22 32:5 33:4 right 6:11 11:13 13:9,16 14:15 15:13,22 16:8 17:4 18:5,25 19:25 20:14,21 21:2,7 23:7 24:12 25:22 26:10 28:20 28:21 30:13 32:4 35:9 36:10 37:8 39:9,20,25 40:9	40:18 41:12 42:4 42:7 43:15,15 44:2,10,19 46:8 47:12,22 49:18 50:24 51:3,4,8,15 51:19,21 52:5,11 52:22 54:7 55:6 58:5,5 61:18,21 62:12 63:24,25 64:1,22,25 65:2,8 66:18 68:9 70:3 71:4 72:1 73:12 73:23 74:14 77:12 79:13 81:17 82:1 87:23 88:1,6 90:9 93:14 97:6 98:2 99:9 100:16 103:6 103:17,17,22 rights 35:8 38:7 ringing 67:13 Roman 19:12 Rose 58:22 60:20 60:21 70:11,25 Rosen 77:22 Royal 101:19 RPR 1:18 105:2 106:19 rude 25:20 S safe 73:21 74:4 sale 13:23 14:6 66:15 68:13 Salt 105:5 Sandusky 1:5,8,12 2:12 3:3 4:2 11:8 45:8,9 47:15 80:11 90:12,12 105:1,1,6,21 106:7 sat 7:15,20 save 94:18 98:18 savings 16:10 17:13 30:12,14 31:12	32:5,6,7,19,21,23 33:4 34:13,15 98:17 saw 53:3 saying 7:18 18:17 29:6 36:22 61:6 71:14 82:21,25 83:4,6,21 88:9 90:9 says 6:11,22 8:17 8:21,22,24 12:16 15:4 16:9 18:9,15 18:16 19:13 22:21 23:12 24:6,8,10 25:13,15 26:12 30:12 32:4,4,9,22 33:3 41:1,3 42:5,5 42:16,17 44:17 45:3 47:15 48:3 48:24 49:5 51:21 51:21 52:5,7,7,9 52:15,16,20 53:17 63:24,24 64:1 76:9 77:2,4,13,14 77:15 80:2 81:9 81:13,15 85:17,19 85:21 88:4,15,20 89:16 90:6,11 91:15 92:11,24 95:12 100:10,12 Schaffer 3:7 100:2 school 91:10 94:25 95:1,8 scooter 37:8,9,10 37:11,13 screen 17:18 seal 106:15 second 4:22 10:14 12:7 13:14 21:20 22:15 46:11 47:24 51:3 85:2 Section 18:19 19:10 see 6:15,19 8:17,20 8:23 16:6,11 18:2	19:13,15 22:14 26:3 30:11 34:11 34:11,14 35:9,13 35:15,24 36:3 39:13,14,16 40:21 42:6,10 44:8,10 44:11,15,18 45:2 45:10 46:10 47:8 48:23 49:3 51:22 51:25 52:6,8 55:21 63:18 64:18 64:19 65:2,2,8 76:8 77:3,9 84:17 99:20 seen 47:19,20 sell 62:23,23 63:5 72:10,13,14,21 selling 67:25 send 104:1 sense 4:13 sent 5:3 10:25 45:21 60:7 64:14 102:12 103:24 sentence 6:15,19 22:14,16 89:25 91:15 94:1 95:11 95:11 separate 12:17,20 14:16 21:18 25:16 26:2 28:8,23 30:11 31:17,20 32:11,11 33:1,17 37:19 40:12,13 53:21 55:1,6 64:4 76:19 91:17 92:14 94:11 95:13,25 97:1,8 98:10 separated 30:4 36:18,20 separately 39:24 separates 32:20 separation 4:21,25 5:4,15,19 8:7,9,11 14:24 15:4,20,25
--	--	--	---	---

18:13 23:20 29:18 29:25 34:8,12 35:3,10,14,16 36:3 37:5,20 40:22,23 41:1 43:8 53:7,9,12 58:10,15,18 59:23 60:13 61:5,19,22 63:15,19,21 64:1 64:20 65:1,9,20 71:1 75:1,3,14,17 75:22 76:17,18 78:16 79:19 81:22 82:3 86:23 87:2,5 87:23 88:8 89:1,4 92:13 94:7,18 98:21,25 99:24 100:7 101:17 102:25 September 66:6 69:25 served 103:7 set 106:8 settlement 14:19 21:15 23:1 24:2 29:2 seven 96:14 99:8 severable 12:19 SHAFFER 2:7,7 5:14,17 6:2 9:9,24 10:4,9 11:4,16,18 12:1,5,8,13,22,25 13:3,6,14,17,19 14:2 20:20 21:3 23:8,10 24:3,8,12 24:17,20,24 25:2 27:1,6,10,14,22 28:12,15,24 29:12 29:14,19 30:22 31:1,25 32:2 33:16 35:20 36:12 38:21 39:5 40:2 43:17,19 45:4,11 46:2,15,25 47:8	48:10,21 50:9,13 52:1 54:5 55:15 56:4,21 57:6,8,10 60:2,9 65:11,15 77:6,10 78:17,21 79:1,9,12,16,20 79:22 80:1,8,10 80:18,20,23 81:12 81:16,18,23,25 82:4,7 84:20,24 85:1,6 87:21 88:2 88:4,8,14 89:21 99:11,14,17,20,23 100:4,20 101:1 103:23 104:1 shakiness 61:15 share 48:1,24 49:3 77:13,14 shared 40:10 shares 76:9 she'll 40:15 55:10 sheet 9:18 44:14 45:2 74:19,21 82:5,6 Shifting 91:24 short 99:15 Shorthand 106:5 106:20 show 58:13 87:21 showed 9:19 53:13 60:15 shows 29:16 shut 12:9 sick 10:22 91:11 Sidewinder 2:8 sign 9:1 10:7 33:24 33:25 54:18 90:8 103:18,22,23 signature 8:19,20 86:21 87:9,13,14 87:24,24 signatures 8:21 signed 9:20 10:15 10:19,20,25 11:1	11:6,10,13,13,19 11:23 18:12 19:8 20:15 23:1 54:16 54:21 61:6 87:17 87:23 88:9 90:8 signing 22:1 simple 19:6 simply 24:6 sir 6:5 7:8,24 13:24 15:23 17:3 19:1 25:18 27:25 29:13 30:17 31:17 33:3 33:22 55:22 61:8 96:24 sister 17:20 40:11 40:13,14 42:15 48:17 49:24,24 50:4 54:25 55:1 sister's 76:22 situation 68:7 six 15:5,9 67:9 100:14 Sixty-three 5:5 ski 92:22 slash 47:15,15 sleep 103:6 Smart 35:24 36:1 smooth 68:2 socks 28:11 sold 72:16 sole 25:15 26:1 solely 91:17 solve 86:24 89:2,18 90:3 somebody 52:12,13 57:21 68:9 70:21 son 48:4 85:13 93:1 93:3,17,18 son's 34:25 91:18 93:5 94:3,23 sorry 6:7 15:23 25:10 38:10 43:18 44:13 45:11 48:21 50:9,17 52:1 54:5	69:23 74:14 77:3 84:1 92:1 93:10 97:20 sound 53:1 sounds 23:3 36:10 speak 90:17,21 91:5 specifically 31:14 79:14 speculate 76:13 spelled 57:25 spend 15:8 86:7 spent 40:8 84:6,7 84:11 101:6 split 14:10 22:2 spousal 20:12,17 20:25 21:8 ss 105:5 stack 5:10 stamp 6:7 8:14 10:6 11:1,15 18:1 20:22 21:7 23:4 25:10 39:10,11 41:13,25 42:2 43:16 44:7 45:25 46:10,14 47:23 48:15,21 49:8 50:7,7,11 51:7,9 51:19 54:17,18 77:7 78:13,19 80:5 81:7,22 84:21 start 57:15 started 34:2,3 starts 33:17 state 1:2 38:10 42:17,19,23 105:4 106:1,6,21 statement 3:9,11,12 3:14,16,20 7:1 8:4 8:6 9:21 13:12 14:13 25:1 47:6 47:14 74:15 85:24 89:20 90:4,13	91:19,23 92:15 93:8,12 95:14,17 96:7 statements 6:8,13 6:17,23 7:5,7,14 7:23 56:24 states 29:17 stating 69:16 status 66:1 72:4 stayed 102:4 Stella 3:17 84:23 88:11,12 Stella's 85:8 stenographic 106:12 stenographically 106:10 step 64:8 stop 95:9 stopping 99:19 straightforward 87:6 88:20 street 12:4 stripped 66:10 68:4 structured 58:25 62:14 stuff 17:11 76:24 81:5 83:18 Subparagraph 33:17 subparagraphs 31:6 subscribed 105:22 106:15 sufficiently 9:13 Suite 1:16 2:8 sum 23:15,18,23 24:11,15 61:9 83:1 98:4 SUMMIT 1:2 sums 54:24 supply 63:3 support 20:12,17 21:1,8 22:21
---	--	---	--	--

97:16 98:10,22
supposed 17:23
sure 8:2 15:15
18:22 19:20 26:20
28:10 35:1 37:15
38:12 45:22 46:23
50:1 53:23 54:2
54:10,14 55:10
58:13 59:24 61:20
61:20,24 63:21
73:25 74:1,23
76:12,15 77:23
93:23 96:12
100:21
surprised 68:8
survivorship 35:8
38:7
sworn 4:3 105:22
106:8

T

tab 4:20 5:2,3,7,7
15:24 23:5 34:8
39:1,10 41:16,17
41:18,19,20,21
44:1 46:4,6,7,12
46:25 47:4,9 48:6
48:7,11,15 49:10
49:11 50:16,17,20
50:21,25 75:25
81:25 84:15,17,17
96:13,14 99:10
take 14:15,16 15:7
33:25 34:25 36:19
59:10 99:15
100:12 103:12
taken 1:13 34:5
36:25 37:2 44:24
45:16 94:14 97:23
99:18 106:7,12
talk 83:2 99:15
103:2
talked 5:8 22:11
79:2,10 80:24

82:11 83:3 87:13
96:12 97:19
101:11
talking 9:25 10:2
11:15 17:6 21:3,4
26:21,22,22,23,23
28:15,17 31:4,12
31:25 32:1 45:7
45:11 72:15 73:9
73:20 84:1
tax 19:15,23 20:3
38:9,12,13 39:14
39:15,16,22 40:18
40:21 42:6,12,17
42:23 43:9,11,13
70:1
taxes 22:9,10 38:11
39:5 42:21 83:20
teach 94:25 95:2,2
95:3
teaching 95:6
Tele 2:5,9
tell 12:22 18:11
19:19 87:6,11,17
88:21 103:9
telling 92:17
ten 62:21
terminate 20:16
23:13 24:8,14
termination 21:16
terms 23:22 32:24
33:13 38:19 64:19
66:15
testified 4:4 9:11
24:17 43:10 81:8
testify 11:9 106:8
testifying 84:10
testimony 21:9
24:18,21,21 25:4
28:20 49:20 83:6
105:7,8 106:9
Thank 50:6
Thanksgiving 91:9
92:25 96:3

thereof 105:7
106:14
thing 11:7 62:11,12
63:6 88:17 89:11
things 7:25 8:1
17:3,10 34:1
42:17 59:11 60:11
60:12 89:9 92:20
92:23
think 5:2 9:11 13:7
16:17 19:19 22:20
27:2 29:11 30:4,6
38:22 41:6 42:13
50:10 54:2 56:22
58:4,22 60:12,20
62:17 63:7,8
68:21 69:1 70:2
71:8 73:10,25
74:18 75:4,11,24
78:10 79:16 81:18
82:22 86:15
thinking 94:17
third 1:1 39:10
77:12
thought 62:19
102:19
three 7:16 13:17,18
19:13 49:14 58:4
62:17 68:17,20
70:13 72:16 74:12
74:16 84:22,25
85:3,5,5
three-and-a-qu...
63:8
throw 59:19,19
thrown 59:18 60:5
time 9:19 18:12
19:2,8 20:14,16
23:12 31:16 36:1
37:21 47:13 54:12
58:8 59:21,22
61:21 63:22 64:25
65:2 66:12,13
71:7 75:13,16

83:16 86:7,9 87:1
90:20,23,25 91:4
91:5 92:11 95:12
95:15,19,20,24,24
96:3,4 98:20
101:6,13 106:7,8
106:10
times 22:5
timing 99:11
title 6:12 18:5
titled 4:21,24 6:8
20:25 23:5 86:23
today 23:18 79:10
told 21:24 22:5
50:5 55:9 82:18
86:3,4 87:5 89:14
89:14 91:16,21,22
93:1,16 94:20,21
95:19 101:18,22
102:4,18,20
tools 17:21 26:22
top 71:4 80:1 85:21
96:25
total 52:22
totally 29:13 78:7
78:10
touch 33:23
town 62:19 68:24
traceable 12:20
tractor 36:6 37:5
transcribed 106:11
transcript 105:7,8
106:11
transfer 19:14
25:14,24 26:9,12
39:18 76:9
transferred 26:13
26:19 28:21,22
56:12 77:1 78:1,3
78:4,5 98:12
transfers 18:6,9
25:15 26:1 48:1,2
trash 10:14 12:4
Treasury 43:1

treat 14:16
tricky 68:7
trouble 96:11
truck 10:14 32:5
33:4
true 7:1 81:4 85:20
89:2,4 90:4
106:11
truly 105:8
trust 33:25
truth 106:8
try 98:17
trying 25:20,21
31:7 41:11 72:13
72:13 100:16
TV 17:18
TVs 16:10 17:18
two 42:16 49:2
53:21 55:22 62:13
70:12,12,16 74:10
74:18,24 85:3
102:1,5,10 103:1
two-thirds 103:5
type 29:5
typed 10:22
types 34:23

U

Uh-huh 39:12
understand 10:9,12
10:19 11:18 13:25
18:15,16 19:9,17
22:17,18 23:2,3
25:21 57:16 95:21
96:6,6 100:15
understanding
9:12 23:17 24:15
37:21 60:3,5
underwear 28:11
union 3:9,11,12,14
3:16,20 17:15
35:13 43:21 97:4
unit 62:23,24 66:9
66:10 67:21,23,24

68:4,5,24 72:16 72:21 universities 93:2,17 University 1:16 upfront 97:19 upset 93:1 101:15 101:18 use 93:4 94:2 Utah 1:2,17 2:4,9 4:1 14:8 39:14,15 71:23 105:4 106:1 106:3,6,6,21,21 utilities 83:19	80:23,25 81:6 83:9,13 89:5 95:2 95:5 101:10 102:6 103:16,17,18 wanted 7:10 22:3,5 55:3 75:8 81:19 82:18,21,25 83:4 83:8 94:25 101:23 102:22 Ward 1:18 105:2 106:5,19 Warranty 6:8,12 wasn't 32:9,10 34:21 53:14 56:13 68:5 88:16 91:10 97:15 98:3 99:1 100:21 waste 47:13 water 91:8 Waterhouse 77:18 way 22:4 25:17 29:5 34:2,2 51:11 51:15 59:8 62:15 64:15 72:6 83:14 86:23 89:2 ways 34:25 we'll 50:22 63:2 79:13 99:16 we're 14:24 32:1 45:7 76:22 88:14 91:11 99:7,19 we've 38:22 53:5 70:9 79:2,10 weeks 4:17 102:1,5 103:1 went 5:11 8:7,10,10 8:11 10:21 21:22 40:4 53:23 60:14 61:8,10,11 63:13 66:5,7,9 71:20,20 73:1 77:23 78:1 84:13 86:24 89:3 89:19 91:9 94:13 94:25 95:6,8	98:18,19 weren't 59:22 60:3 WHEREOF 106:15 wife 25:14,15,25 26:1,13 30:11 94:24 wife's 32:12 willing 86:21 90:8 windows 12:9 winter 68:23 wintertime 68:25 Winthrop 70:16 Witgrove 57:13 withdraw 42:5 withdrawals 48:2 witness 3:3 5:20 10:13 11:12,17 12:3,6,9 20:24 21:2,4 27:24 28:14 29:13 32:4 35:22 40:4 43:20 46:17 47:1,9 48:12 50:10 52:3 54:6 56:5,24 60:7 60:11 65:16 77:9 79:18 82:2,5 86:21 88:3,15 90:8 97:21 103:20 105:3,7 106:8,9 106:15 Wittgrove 57:25 58:19 61:14,15,16 62:2,5,6,8,11,13 62:25 63:9 64:6 64:13 woman 101:7 word 56:2 work 68:5 75:7 83:9 85:15 89:7,9 93:5,7 94:4,22 worked 83:14 91:7 91:11 working 83:16 95:7	worksheet 8:18,23 8:25 9:5,11,16,22 9:25 10:3,5,8,16 10:18 11:23 worry 34:1 101:23 worth 72:10,19 82:22,23 101:21 wouldn't 27:24 68:8 86:12 90:21 97:9 102:10,21 write 13:22 22:8 written 97:6,7,8,10 wrong 87:12 wrote 52:13	00703 5:20 0095 47:10 03/25 42:18,18 03/30 42:18,18	
V	v 1:7 105:1 vacant 58:21,23 60:18,19 70:24 vacation 91:13 value 16:13 20:3 100:8 Vanguard 35:6,7 various 6:16,23 7:6 Ventura 14:10 15:17 22:1 82:16 verify 83:3 vice-versa 37:25 video 2:10 3:3 videotape 41:23	X	Y	1	
W	wait 20:10 41:17 63:24 73:10 90:6 waive 103:22 walked 17:20 walks 92:21 wallet 32:11 want 4:22 13:14 15:15 18:1,5,11 19:6 24:18,19,20 24:25 30:3,18 33:24 41:18 46:13 48:8 50:1 60:2,9 66:24 78:17 79:3	Yah 21:17 yeah 4:16 6:2 9:4 11:18 15:13 16:2 16:23 20:18,20 23:20 34:16 35:19 39:23 42:7 43:6 43:20 44:6 48:18 48:19 49:5 51:11 52:8,21 56:4 60:22 62:22 63:13 64:3,10,14 68:25 69:15 70:1,25 71:24 73:4,10,16 76:12 78:19 80:5 81:6,12,18 82:7 83:2 84:8 85:9,12 91:7,11 93:9 99:8 year 14:11 36:12 40:19 59:4,5,9 62:16,16,21 73:4 years 84:14 89:8 90:12,13,16,17,18 90:19 95:4	Z	0	180:10 90:10 1-0 46:5 1.2 21:23 82:14 10 4:8,10 63:2,4 100 102:19 100,000 52:20 104 46:4,7 48:7,9 49:10 50:21,22,22 50:23 1041 18:19,22 19:10 107 51:3 10th 40:24 66:9 11 1:13 4:1 105:2 111 50:16,25 51:1 114500103 1:7 105:1 1197 47:1,4,8 11th 106:15 12 63:1,2,4 90:16 12:23 1:14 4:1 120 101:20 13 11:14 1326 44:8,14 45:12 45:25 1327 46:12 1328 46:12 1343 5:21 14th 42:5,10 47:14 15 90:17 99:13 16 64:13 98:18,19 16th 67:4,16 170 102:14 175 1:16 17th 44:11,16 18 95:3 190,000 52:22 54:9 54:13

1960 74:17 197 46:10,14,15,18 46:22 47:3,6,12 1986 90:25 199 76:3 77:8 78:13 78:20 1st 6:18,25 14:8 23:16 41:2,4 47:7	205 46:17,19 206 46:17,20 207 46:17,20 50:18 208 46:18,20 209 46:18 47:22,23 47:24,25 49:8,9 49:10,12 50:7,10 50:11,19 80:6,24 212 43:18,19,22 80:8,9,10,11,15 80:16 217 48:15,22,22 49:1,1,4 50:7,10 50:11 77:14 79:22 233 41:25 42:2,3 43:16,18,22 80:21 23rd 44:17 77:3,5,9 24 4:19,23,24 5:18 15:22,24 25:7 34:9 78:16 81:21 81:23 99:9 24,000 15:5 24th 39:13 40:25 25 3:9 39:7 41:13 41:17,18 250 101:21 26 3:10 39:19 41:14 43:16,23 80:10,11 80:16 26th 40:25 27 3:12 43:24 45:24 97:10 27th 98:1 28 3:13 48:13 50:8 50:12 79:12,20,21 29 3:15 50:14 51:6 51:12 57:4,8,9 81:7 29th 58:8 2F 20:5	3:02 1:14 104:3 30 3:16 76:6 78:12 78:13,18 90:13,16 90:18,19 106:23 300 58:4 63:8,8 68:21 309 39:10,11 41:13 30th 98:14 31 3:17 84:18,19 85:5 310 68:17 315 68:17,21 31st 47:7 32 3:19 96:15,16 99:6 321 46:18 324 46:19 325 46:18 63:25 68:17 326 46:18 327 46:18 350 58:5 62:17 3507 1:16 370 67:13,14,14 375 67:14,14 380 72:1,18 39 3:9	435-659-1685 2:5 449 68:18 450 59:4,5,5,6,10 59:10 48 3:14 499 68:16 4th 54:17,19,22 76:9	21:3,4 23:4,8 81:22,24 82:2 717 8:15,16,19 10:6 11:1,15,19,22 76 3:16 798 20:23 21:7 7th 103:14
2			5	8
2 2:8 85:21 95:11 20 89:7 90:12 200 102:19 2000 48:19 83:10 2007 13:22 14:6 16:10 33:4 61:3 83:10 90:22,25 91:6 2008 35:25 2009 38:9,10 39:5 39:22 40:19,21 58:8 2010 6:18,25 14:8 23:16 36:6,12,13 37:7,8,12 39:13 39:19 41:2,4 42:12 43:4,5,6,7,9 43:12 61:4 64:13 86:20 92:25 97:10 98:1,14 2011 42:5,7,10 44:11,16 47:7,7 47:15 48:24 53:14 54:17,19,20,22 66:6 69:14,25 76:9 2012 66:6,7 2013 1:13 4:1 105:2 105:23 106:16 2014 106:23 202 46:17,19 203 46:17,19 204 46:17,19 2041 2:8				8 6:7,11 89:16 92:24 80,000 16:20 800 22:2 81 39:1,2,3 41:19 44:2 83 41:9 84 3:18 84060 2:9 84098 2:4 84604 1:17 89 41:16,18,20,21 41:24 46:6 50:20 50:23 8th 40:24
		4		9
		4 20:11,12,23,25 21:8 22:14,16 54:20 4,781.22 48:3 40,000 53:21 400 68:20 400,00 82:6 400,000 15:5 22:7 400/400 22:2 401K 16:11 41 3:11 4117 96:22 42 84:14 43 3:12 435-658-5427 2:9	6	7
			6 86:20 87:19,19 91:14,15 61 5:7 62 74:17 63 4:21 5:3,5,8 15:24 23:5 34:8 639 77:3 78:22 64 5:7 640 45:8,25 46:1 77:3,15 78:23 68 84:15,17,24 85:1 96:13 69 85:1 96:14 99:10 6th 103:14	9 95:10,10 90 66:11 68:19 90,000 52:17 53:20 92 75:25 78:14 93 48:6,11,15 96 3:20 47:10 97 47:10 980691 2:4 987 47:10 988 51:7 57:4,7 99 3:7 44:1,4,5 990 57:6 994 51:9,10,19 52:3 52:4 64:2 81:7,12 997 54:18,18 998 51:7 57:4,7

Paul J. Morken (10483)
PAUL J. MORKEN, PLLC
P.O. Box 980691
Park City, UT 84098
Telephone: 435.659.1685
paulmorken@gmail.com

Attorney for Petitioner

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SUMMIT COUNTY, STATE OF UTAH
(6300 Justice Center Road, Park City, Utah 44098)

KYLEE J. SANDUSKY,
Petitioner,

v.

GEORGE A. SANDUSKY,
Respondent.

**PETITIONER'S VERIFIED MOTION
FOR TEMPORARY RESTRAINING
ORDER & PRELIMINARY
INJUNCTION.**

Case No.:114500103 DA
Judge: Ryan M. Harris
Commissioner: T. Patrick Casey

Petitioner, Kylee J. Sandusky, through her attorney, Paul J. Morken of Paul J. Morken, PLLC, respectfully moves this court for a Temporary Restraining Order ("TRO") and Preliminary Injunction, pursuant to Rule 65A of the Utah Rules of Civil Procedure, and enjoining and mandating that Respondent, George A. Sandusky, refrain from and act as follows and based on the following:

1. Order, restrain and mandate that Respondent cease and desist from listing with a realtor or other selling agent or from attempting to sell, transfer or encumber in any way the "Foo

House,” 76-6230 Ali’i Dr. Kailua-Kona, HI, which is marital property that has an appraised value of \$775,000 (no debt), pending mutual agreement or final orders in this cause of action.

2. Order, restrain and mandate that Respondent not list with a realtor or other selling agent or attempt to sell, transfer or encumber in any way Lot # (3)-7-6-016-12 (the Oceanfront lot in front of church at Kailua-Kona, HI), which is marital property that has an appraised value of \$153,000 (no debt), pending mutual agreement or final orders in this cause of action.

3. Order, restrain and mandate that Respondent not list with a realtor or other selling agent or attempt to sell, transfer or encumber in any way lots #(3)-7-6-015-033 (roadway) and #(3)-7-6-014-028 (roadway) on He’eNalu Drive, Kailua-Kona, HI, which is marital property, pending mutual agreement or final orders in this cause of action.

4. Order, restrain and mandate that Respondent place in Petitioner Attorney’s Trust Account pending mutual agreement or final orders in this cause of action all of the proceeds that he received or shall receive from his sale of the following property: (i) Lots on He’eNalu Drive, Kailua-Kona, HI – #(3)-7-6-014-018; #(3)-7-6-014-019; #(3)-7-6-014-028; #(3)-7-6-0-14-020; #(3)-7-6-015-002; and #(3)-7-6-015-003. Such sale proceeds from the “Mueller Family Trust” are approximately \$285,000; and, (ii) Lots on He’eNalu Drive, Kailua-Kona, HI – #(3)-7-6-015-001; #(3)-7-6-015-005; #(3)-7-6-015-006. Such sale proceeds from Matthew J.D. Cunningham are approximately \$100,000.

[Respondent now claims that the proceeds he received from the sale of the lots are currently tied up in property that is in foreclosure. He claims that the sale proceeds were used to

pay off a loan on property that he guaranteed. He claims that the loan was in default and that the property is currently in foreclosure. Petitioner has repeatedly asked for the closing documents for the sale of the lots, and for the alleged guarantee and for the pay off of the loan and for the foreclosure documents. To date, Respondent has refused to produce any of these documents; and he either refuses or he has failed to support any of his statements.]

If Respondent has already tied up all of such proceeds (all done secretly without any notice to Petitioner, if done at all) by paying off a loan on property that he guaranteed and that property is now in foreclosure, he has secretly put all of such proceeds at grave risk of loss, while refusing to provide to Petitioner any documentation. Thus, Petitioner requests a TRO in the event that the proceeds are tied up in a property in foreclosure. Respondent should be ordered to protect and secure such property interest and proceeds. Respondent should timely inform Petitioner through counsel of any future foreclosure proceedings involving such property, and neither such property nor any proceeds there from should be transferred or encumbered in any way by Respondent absent the mutual consent of the parties or by subsequent court order. Also, Respondent should forthwith supply to Petitioner copies of the documents pertaining to his sale of the original lots as well as the loan guarantee and foreclosure documents of such property.

5. Order Respondent to appear before the assigned judge within 10 days of the issuance of the TRO at the time and date set forth in the TRO, and show cause why the TRO should not be continued as a preliminary injunction.

This Motion is based upon the factual grounds and arguments stated in Petitioner's Memorandum and Declaration in Support of Petitioner's Motion for a Temporary Restraining Order & Preliminary Injunction, and a Rule 65A (b)(1) Certification of Notice.

WHEREFORE: based upon this Motion, the factual grounds and arguments stated in Petitioner's Memorandum and Declaration in Support of Petitioner's Motion for a Temporary Restraining Order & Preliminary Injunction, and a Rule 65A (b)(1) Certification of Notice, Petitioner respectfully moves this Court to enter a Temporary Restraining Order as stated herein.

DATED this 14th day of February, 2014.

PAUL J. MORKEN, PLLC

/S/ Paul J. Morken

Paul J. Morken

Attorney for Petitioner

DECLARATION

Pursuant to Utah Code 70B-5-705, I declare, certify, verify and state under criminal penalty of the State of Utah the facts set forth herein are true and accurate to the best of my personal knowledge.

DATED this 14th day of February, 2014.

/S/ Kylee J. Sandusky
Kylee J. Sandusky
Signed by Paul J. Morken,
Attorney for Petitioner, with the
permission of Kylee J. Sandusky

Certificate of Service

I hereby certify that on this 14th day February, 2014, I e-filed and served, via e-filing, a true and correct copy of the foregoing document on Respondent's counsel of record, Elizabeth A. Shaffer of Elizabeth A. Shaffer, PLLC.

/By: /S/ Paul J. Morken
Paul J. Morken
Attorney for Petitioner

Paul J. Morken (10483)
PAUL J. MORKEN, PLLC
P.O. Box 980691
Park City, UT 84098
Telephone: 435.659.1685
paulmorken@gmail.com

Attorney for Petitioner

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SUMMIT COUNTY, STATE OF UTAH
(6300 Justice Center Road, Park City, Utah 44098)

KYLEE J. SANDUSKY,
Petitioner,

v.

GEORGE A. SANDUSKY,
Respondent.

**MEMORANDUM & VERIFIED
DECLARATION IN SUPPORT OF
RESPONDENT'S MOTION FOR
TEMPORARY RESTRAINING
ORDER & PRELIMINARY
INJUNCTION.**

Case No.:114500103 DA
Judge: Ryan M. Harris
Commissioner: T. Patrick Casey

PETITIONER, Kylee J. Sandusky, by and through her counsel, hereby respectfully submits this Memorandum and Verified Declaration in Support of her Motion for an immediate temporary restraining order ("TRO"), and, preliminary injunction after hearing, against Respondent pursuant to Rule 65A "Injunctions" of the Utah Rules of Civil Procedure. This memorandum is supported by the Verified Declaration of Petitioner, a Rule 65A (b)(1) Certification of Notice, and by the following arguments:

DECLARATION, MATERIAL FACTS & ARGUMENT

1. The parties were married November 1, 1986. Petitioner's Petition for Divorce is currently pending before this Court.

2. The residence, lots, roadway and all proceeds of sales were all acquired during the parties' marriage and they are all marital property and constitute a majority of the parties' assets acquired during the parties' marriage.

3. Petitioner just learned that Respondent recently has secretly (a secret kept from Petitioner) being trying to sell the residence in Hawaii, which the parties commonly refer to as the "Foo House." (See Exhibit 1) Based on information and belief Respondent has been trying to unilaterally sell the residence for \$550,000, although Petitioner's appraiser recently appraised the house for \$775,000. This marital asset was purchased with marital funds and should be preserved pending final orders and for determination and distribution by the court. By attempting to secretly and unilaterally sell this residence Respondent is attempting to bypass the court.

4. Regarding the lot that is the subject of ¶2 of this Motion for Temporary Restraining Order. It too is marital property acquired by marital funds during the parties' marriage. Given Respondent's attempt to secretly sell the Foo House and his recent secret sale of the Lots that are identified in ¶4 of the Motion for Temporary Restraining Order it is vital to preserving this asset for the court's determination and distribution at final orders.

5. Regarding the Lots identified in ¶4 of the Motion for Temporary Restraining Order, Petitioner has just learned that Respondent has secretly sold these Lots (Exhibit 2). He has also sold these lots for considerably less than the lots were appraised for by Petitioner's expert appraiser. All of these lots were marital property acquired with marital funds. Based on information and belief Respondent was paid \$385,000 for these Lots. All of the proceeds from the sale of these Lots should be preserved and frozen pending final orders. The proceeds should be placed in Petitioner Attorney's Trust Account pending final orders.

Respondent now claims that the proceeds he received from the sale of the lots is currently tied up in property that is in foreclosure; He claims that the sale proceeds were used to pay off a loan on property that he guaranteed. He claims that the loan was in default and that the property is currently in foreclosure. Petitioner has repeatedly asked for the closing documents for the sale of the lots, and for the alleged guarantee and for the pay off of the loan and for the foreclosure documents. To date, Respondent has refused to produce any of these documents; and he either refuses or he has failed to support any of his statements.

If Respondent has already tied up all of such proceeds (all done secretly without any notice to Petitioner, if done at all) by paying off a loan on property that he guaranteed and that property is now in foreclosure, he has secretly put all of such proceeds at grave risk of loss, while refusing to give Petitioner notice or to provide to Petitioner any documentation. Thus, Petitioner requests a TRO in the event that the proceeds are tied up in a property in foreclosure. Respondent should be ordered to protect and secure such property interest and proceeds.

Respondent should timely inform Petitioner through counsel of any future foreclosure proceedings involving such property, and neither such property nor any proceeds there from should be transferred or encumbered in any way by Respondent absent the mutual consent of the parties or by subsequent court order. Also, Respondent should forthwith supply to Petitioner copies of the documents pertaining to his sale of the original lots as well as the loan guarantee and foreclosure documents of such property.

6. Regarding the Lots (roadways) identified in ¶3 of the Motion for Temporary Restraining Order. These Lots are also marital property acquired by marital funds during the parties' marriage. Based on Petitioner's information and belief, Respondent retained these assets and did not sell them with the Lots identified in ¶4. Given Respondent's current attempt to secretly sell the Foo House and his recent secret sale of the Lots that are identified in ¶4 of the Motion for Temporary Restraining Order it is vital to preserving these assets for the court's determination and distribution at final orders.

7. This Motion for a TRO is submitted to this Court pursuant to Rule 65A "Injunctions" of the Utah Rules of Civil Procedure and is supported by Petitioner's Verified Declaration herein, and by a Rule 65A (b)(1) Certification of Notice.

8. The court may issue a Temporary Restraining Order or Preliminary Injunction under Rule 65A(e) if the following grounds exist:

1. The applicant will suffer irreparable harm unless the order issues.

2. The threatened injury to applicant outweighs whatever damage the proposed order may cause.

3. The order will not be adverse to the public interest.

4. There is substantial likelihood that the applicant will prevail on the merits of the underlying claim.

9. Also, in Domestic Relations cases such rule provides in Rule 65A(f): that **“Nothing in this rule shall be construed to limit the equitable powers of the courts in domestic relations cases.”**

10. In this domestic relations case, Petitioner can satisfy all of these elements; additionally, this rule should not limit the equitable powers of this Court. Regarding the four elements, Petitioner avers the facts stated above and the following:

First, each of the identified assets and the proceeds from the sale of the Lots identified in ¶4 are assets subject to the jurisdiction of this court for equitable distribution as part of Petitioner's Petition for Decree of Divorce. They constitute the bulk of the parties' marital properties. The residence and roadway lots are not fungible per se. The parties significantly disagree as to the value of the assets, Respondent has secretly sold Lots and he has been attempting to secretly sell the Foo House without notifying Petitioner. Petitioner now has no control at all over the disposition of the sale proceeds or over these non fungible assets. Now Respondent claims (without any proof) that the proceeds from the sale of the lots are tied up in a property gone into foreclosure. Given Respondent's secret actions Petitioner is completely

vulnerable and at risk of irreparable loss and harm due to Respondent's misappropriation of the sale proceeds and his arbitrary sale or any attempt to encumber such property. This would be unconscionable and cause Respondent irreparable damages unless the order issues preserving the assets as requested.

Second, the threatened injury to Petitioner outweighs whatever damage the proposed order may cause. Respondent will suffer no legally significant harm if the order is granted. All assets would be preserved pending the final orders.

Third, the order would not be adverse to the public interest in any way; in fact it would serve the public interest by protecting and preserving assets, protecting Petitioner from irreparable harm, protecting the jurisdiction of this Court to make an equitable distribution of such assets, and it would protect Petitioner from having Respondent's actions circumvent and bypass Petitioner's marital and equitable interests in such assets without court protection and preservation, review, determination, and distribution.

Fourth, Petitioner's current legal and equitable rights are valid and enforceable.

Last, in Domestic Relations cases such rule provides in Rule 65A(f): that **"Nothing in this rule shall be construed to limit the equitable powers of the courts in domestic relations cases."** It is vital that Petitioner be protected from irreparable harm and that the bulk of the parties' marital assets be protected and preserved by the Court for its review, determination and distribution. It is also vital that Petitioner be protected by the Court from

Respondent's unilateral and secret actions that place Petitioner's marital property interests completely at risk of loss.

WHEREFORE: This Court should issue a TRO, and order Respondent to take immediate action as requested and listed in Petitioner's Motion;

AND, Respondent should be ordered to appear before the assigned judge within 10 days of the issuance of the TRO at the time and date set forth in the TRO (the ____ day of _____, 2014, at __: __.m.), and show cause why the TRO should not be continued as a preliminary injunction during the pendency of this action;

DATED this 14th day of February, 2014.

PAUL J. MORKEN, PLLC

/S/ Paul J. Morken

Paul J. Morken

Attorney for Petitioner

DECLARATION

Pursuant to Utah Code 70B-5-705, I declare, certify, verify and state under criminal penalty of the State of Utah the facts set forth herein are true and accurate to the best of my personal knowledge.

DATED this 14th day of February, 2014.

/S/ Kylee J. Sandusky

Kylee J. Sandusky

Signed by Paul J. Morken,

Attorney for Petitioner, with the
permission of Kylee J. Sandusky

EXHIBITS 1 & 2

Submitted in a separate e-filing concurrently with Petitioner's Motion for Temporary Restraining Order.

Paul J. Morken (10483)
PAUL J. MORKEN, PLLC
P.O. Box 980691
Park City, UT 84098
Telephone: 435.659.1685
paulmorken@gmail.com

Attorney for Petitioner

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SUMMIT COUNTY, STATE OF UTAH
(6300 Justice Center Road, Park City, Utah 44098)

KYLEE J. SANDUSKY,
Petitioner,

v.

GEORGE A. SANDUSKY,
Respondent.

RULE 65A
CERTIFICATION OF NOTICE.

Case No.: 114500103 DA
Judge: Ryan M. Harris
Commissioner: T. Patrick Casey

Paul J. Morken, Attorney for Petitioner, certifies to the Court as follows:

1. Based on the facts set forth in Petitioner's Verified Motion for Temporary Restraining Order & Preliminary Injunction and supporting Memorandum and Verified Declaration (which are incorporated herein by reference) immediate and irreparable injury, loss or damage will result to Petitioner if such TRO is not immediately ordered.

2. Petitioner has notified Respondent's counsel by telephone and by email on several occasions, the most recently being in a telephone conversation yesterday, February 13, 2014, of

this Motion for TRO and Petitioner's request for an expedited and immediate hearing. Given the irreparable injury that will result to Petitioner, it is imperative that the TRO be granted.

DATED this 14th day of February, 2014.

PAUL J. MORKEN, PLLC

/S/ Paul J. Morken

Paul J. Morken

Attorney for Petitioner

2014 FEB 18 PM 3:48

FILED BY mh

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SUMMIT COUNTY, STATE OF UTAH
(6300 Justice Center Road, Park City, Utah 44098)

KYLEE J. SANDUSKY,
Petitioner,

v.

GEORGE A. SANDUSKY,
Respondent.

**TEMPORARY RESTRAINING
ORDER**

Case No.: 114500103 DA
Judge: Ryan M. Harris
Commissioner: T. Patrick Casey

This matter comes before the Court by telephone on the 18th day of February, 2014, on Petitioner's Verified Motion for a Temporary Restraining Order & Preliminary Injunction. Petitioner was represented by her attorney, Paul J. Morken. Respondent was represented by his attorney, Elizabeth Shaffer.

The Court, having reviewed Petitioner's Verified Motion for a Temporary Restraining Order & Preliminary Injunction, Petitioner's Memorandum and Verified Declaration in Support of her Verified Motion for a Temporary Restraining Order & Preliminary Injunction, as well as the arguments of the parties at the telephonic hearing, and for good cause showing, finds and orders the following:

1. Petitioner's Motion for a TRO is submitted to this Court pursuant to Rule 65A "Injunctions" of the Utah Rules of Civil Procedure and is supported by Petitioner's Verified Declaration herein.

2. The court may issue a Temporary Restraining Order or Preliminary Injunction under Rule 65A(e) if the following grounds exist:

A The applicant will suffer irreparable harm unless the order issues.

B The threatened injury to applicant outweighs whatever damage the proposed order may cause.

C The order will not be adverse to the public interest.

D There is substantial likelihood that the applicant will prevail on the merits of the underlying claim or, at a minimum, the case presents serious issues on the merits which should be the subject of further litigation.

3. In this case, Petitioner has satisfied all of these elements, at least with regard to that parcel of property, located at 76-6230 Ali'i Dr. Kailua-Kona, HI, known as "the Foo House." Regarding the four elements, Petitioner has shown the following:

First, with regard to the Foo House, at least a threat of irreparable harm has been shown, since Respondent has listed the Foo House for sale and made at least preliminary attempts to sell it. If the Foo House were to be sold prior to trial without proper safeguards in place to protect the proceeds, Petitioner would be at risk of suffering irreparable harm.

Second, the threatened injury to Petitioner outweighs whatever damage the proposed order may cause. Respondent will suffer no legally significant harm if the order is granted. All assets would be preserved pending the final orders.

Third, the order would not be adverse to the public interest in any way.

Fourth, Petitioner maintains that the Foo House is marital property. Respondent disputes this, but the parties apparently have a good faith dispute with regard to whether and to what extent the Foo House is marital property. This issue is a serious one and should be the subject of further litigation in this case.

4. With regard to all other issues presented (other than with regard to the Foo House), Petitioner has failed to present sufficient competent evidence of a threat of irreparable harm, and on that basis the Court, at this time, respectfully declines Petitioner's request for temporary injunctive relief on those other issues.

ORDER

1. Accordingly, this Court orders and restrains Respondent from selling the Foo House prior to trial in this case, unless the following conditions are all met: (1) the property is listed with a third-party realtor unaffiliated with either party; (2) the listing price chosen by that realtor is approved by both Petitioner and Respondent; (3) both Petitioner and Respondent agree in writing to the terms and conditions, including price, of any sale of the Foo House; and (4) that any proceeds realized from any sale of the Foo House are escrowed pending trial in this case.

2. This Temporary Restraining Order shall remain in effect up to and including March 14, 2014. This Court has scheduled a Preliminary Injunction hearing (combined with a pretrial scheduling conference) for Friday, March 14, 2014, at 10.30 a.m. in the Silver Summit Courthouse, 6300 Justice Center Road, Park City, Utah 84098.

Randee
District Court Judge

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 114500103 by the method and on the date specified.

EMAIL: PAUL J MORKEN

Paulmorken@gmail.com

EMAIL: ELIZABETH A SHAFFER

eshaffer@lawparkcity.com

Date: 02/18/2014

/s/ BRIDGETTE BLONQUIST

Deputy Court Clerk

Elizabeth A. Shaffer #06796
Elizabeth A. Shaffer PLLC
2041 Sidewinder Drive, Suite 2
Park City, Utah 84060
Telephone (435) 655-3033
Fax (435) 655-3233
eshaffer@lawparkcity.com

Attorney for Respondent

IN THE THIRD JUDICIAL DISTRICT COURT

FOR SALT LAKE COUNTY, STATE OF UTAH

450 South State Street, Salt Lake City, Utah 84111

KYLEE J. SANDUSKY,

Petitioner

vs.

GEORGE A. SANDUSKY,

Respondent.

MOTION FOR SUMMARY JUDGMENT

Civil No. 114500103 DA

Judge Ryan Harris

COMES NOW, Respondent/Counter-Petitioner, George A. Sandusky, ("George") by and through his counsel of record hereby moves this court for Summary Judgment against Petitioner/Counter Respondent, Kylie J. Sandusky ("Kylee"). The grounds for this motion are more fully explained in Plaintiff's Memorandum in Support of Motion for Summary Judgment filed on March 7th, 2014..

DATED this 11th day of March, 2014.

ELIZABETH A. SHAFFER, PLLC

/s/ Elizabeth A. Shaffer

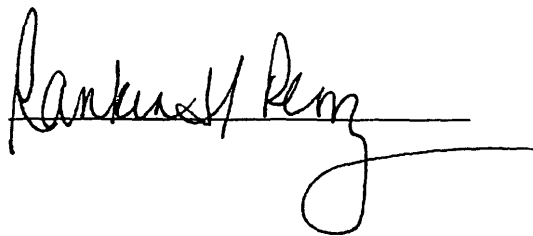
Elizabeth A. Shaffer

Attorney for Respondent/Counter Petitioner

CERTIFICATE OF SERVICE

I certify that on this the 11th day of March, 2014, a true and correct copy of the foregoing MOTION FOR SUMMARY JUDGMENT was delivered via electronically and/or first class mail, postage prepaid, to the following:

Paul J. Morken
P.O. Box 980691
Park City, UT 84098

A handwritten signature in black ink, appearing to read "Paul J. Morken", written over a horizontal line.

Elizabeth A. Shaffer #06796
Elizabeth A. Shaffer PLLC
2041 Sidewinder Drive, Suite 2
Park City, Utah 84060
Telephone (435) 655-3033
Fax (435) 655-3233
eshaffer@lawparkcity.com

Attorney for Respondent

IN THE THIRD JUDICIAL DISTRICT COURT

FOR SALT LAKE COUNTY, STATE OF UTAH

450 South State Street, Salt Lake City, Utah 84111

KYLEE J. SANDUSKY,

Petitioner

vs.

GEORGE A. SANDUSKY,

Respondent.

**STATEMENT OF UNDISPUTED
FACTS IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Civil No. 114500103 DA

Judge Ryan Harris

COMES NOW, Respondent/Counter-Petitioner, George A. Sandusky, by and through his counsel of record, hereby submits the Undisputed Statement of Facts in Support of Motion to For Summary Judgment against Petitioner/Counter Respondent, Kylie J. Sandusky as follows:

STATEMENT OF UNDISPUTED FACTS

1. The parties, George Sandusky ("George") and Kylee Sandusky ("Kylee") entered into the Separation Agreement and Property Settlement (the "Agreement") dated February 10, 2010. (attached as Exhibit "A").

2. George and Kylee were living separate and apart at the time of entering into the Separation Agreement. George lived in Hawaii and Kylee lived in Park City, Utah. Agreement ¶ 1.

3. The Agreement confirmed the parties' separation and settlement and adjustment of their property rights and other rights, responsibilities and obligations growing out of their marital relationship.

4. The parties acted in conformity with the Agreement and performed under the terms of the Agreement from the date of the Agreement forward.

5. Thereafter, on June 3, 2011, Kylee Sandusky filed a Verified Petition for Decree of Divorce, in the Third Judicial District Court, Summit County, Case No. 114500103 alleging that the marriage was irretrievably broken and that it was impossible for the parties to continue in the marriage.

6. George Sandusky filed his responsive pleading on June 27, 2011 and Counter Petition for Divorce and Breach of Contract.

7. George and Kylee were married in Ventura County, California on November 1, 1986 (Kylee Sandusky Petition for Divorce ¶ 2).

8. The parties are parents to one child who is over 18 years of age and attending college. (Kylee Sandusky Answer to Respondent's Counter-Petition ¶ 6).

9. Kylee did not work from the time she arrived in Park City from Hawaii in 2007 until late in the year 2011. (See K. Sandusky Dep. 8:12, attached hereto as Exhibit "B").

10. Kylee admitted that the marriage was already broken when the parties moved to Park City, Utah from Hawaii in 2007. (K. Sandusky Dep. 72:8.)

11. Kylee represented that she and George were separated in October, 2010 when she filled out the Financial Aid requests for the parties' son to obtain aid for college. (K. Sandusky Dep. 118:9-18)

12. The parties signed the Agreement and both signatures were notarized attesting to the validity that the document being notarized was exactly what it was titled – a Separation Agreement. Kylee's signature was witnessed as well. Kylee admits that she signed and had the Agreement notarized. (K. Sandusky Dep. 80:11-12).

13. Kylee admits that the parties owned no joint real property at the time of entering into the Separation Agreement as indicated in Article 3 (A) of the Agreement. (K. Sandusky Dep. 82:23-25, 83:1).

14. Kylee admits that George bought a home solely in his name before they were married and that she signed a quitclaim deed as to same. (K. Sandusky Dep. 25:14, 28:16).

15. Kylee admits that she knew that George bought ten lots in Hawaii in 2000 valued at approximately \$300,000. (K. Sandusky Dep. 10:24, 11:21-24). She further admits that she typed in said lots as George's sole property in the Agreement. (K. Sandusky Dep. 83).

16. Kylee admits that George received the property identified in Article 3(G) or the Agreement as his separate property. (K. Sandusky Dep. 83:2-5).

17. Kylee admits that she did not own any real property at the time the parties entered into the Agreement as indicated in Article 3(C) of the Agreement. (K. Sandusky Dep. 85:4-6).

18. Kylee admits that she received the property identified in Article 3(F) of the Agreement as her separate property. (K. Sandusky Dep. 85:12-21).

19. Kylee admits that the parties had no debt as indicated I Article 3 (H) and (I) of the Agreement. (K. Sandusky Dep. 84:11-12, 103:10-13).

20. Pursuant to Article 5 of the Agreement, the parties agreed to file separate tax returns each year and had filed separately since 2009. (K. Sandusky Dep. 17:22).

21. In her deposition, Kylie admitted that at the time of signing the Agreement she was well informed of all bank accounts and had access to same if she so desired . (K. Sandusky Dep. 56:21-23, 88, 113, 102:18.)

22. Kylee identifies and admits that the parties had the following bank accounts at the time they entered into the Agreement:

Kylee Fireman's Fund Bank Account # 7833401 (K. Sandusky Dep. 87:20-25, 88:18-22);

George Fireman's Fund Bank Account #7833400 (K. Sandusky Dep. 87:20-25, 88:18-22);

Hawaii Credit Union Bank Account # 551555; (K. Sandusky Dep. 87:20-25, 88:18-22);

Vanguard Account (K. Sandusky Dep. 87:20-25, 89:18-19);

Chase CD's in the amount of \$400,000 that had rolled into the Home Savings Bank Account (K. Sandusky Dep. 102:18-21, 95:16-25,); and

Home Savings Bank Account having \$400,000 from the chase CD's. (K. Sandusky Dep. 96:1-3).

23. Kylee admits that she was aware of all existing hard money loans that George entered into in his name at the time she signed the Agreement. (K. Sandusky Dep. 63)

24. Kylee admits she knew of the hard money loan to Gonzalez. (K. Sandusky Dep. 109:10)

25. Kylee admits that she knew George was negotiating to buy the house at 76-6230 Ali'i Drive, Kailua Kona, HI 96740-2324 before she signed the Agreement. (K. Sandusky Dep. 108).

26. After filing her petition for divorce in this case, Kylee Sandusky admits that she did withdraw \$90,000 in June, 2011 from George Sandusky's HIFCU account. (Answer to Counter Petition and K. Sandusky Dep. 59:14). This account was Georg's separate account in

which Kyle had had no previous dealings in or with that account until she asked George for its balance before withdrawing said funds. (K. Sandusky Dep. 59:17-23).

27. Kylee admits that she received \$2,000 per month for more than a year from George as indicated in Article 4 of the Separation Agreement. (K. Sandusky Dep. 67:4). She also acknowledged that the rent for the amount of \$1,800.00 per month on the home she and the parties' son were living in at the time of the Separation Agreement through June 15, 2011 was paid for by George. (K. Sandusky Dep. 67:4-9)

28. Kylee admits that she claimed these monies as alimony on her 2010 tax returns. She also admits that subsequently in September, 2001 she amended the tax returns to eliminate the alimony claim after speaking with her attorney and prior to filing the petition for divorce to void the Agreement. (K. Sandusky Dep. 116:9).

29. Since the separation agreement, Kylee opened up 3 bank accounts herself, MACU where she deposited \$90,000.00 that she took from the Hawaii Credit Union account; Wells Fargo account and a Chase bank account and a safety deposit box. She also purchased a 2004 Ford Explorer. (K. Sandusky Dep. 110:16-25; 111:1-3)

30. Both parties acknowledged that each was free to carry on as if unmarried and for each's own benefit to "engage in any employment, business or profession ". Agreement ¶ 2.

31. There was full disclosure between the parties of all of the assets held by the parties at the time of the Separation Agreement. Agreement at ¶ 8.

32. No undisclosed assets of the parties existed at the time of the Agreement.

33. The parties acknowledged and agreed to such full disclosure. Agreement at ¶ 8.

34. The Agreement provided no financial benefit to George and Kylee with regard to any financial aid for their son's college tuition. (G. Sandusky Dep. 94: 7-8, attached as Exhibit "C").

DATED this 7th day of March, 2014.

ELIZABETH A. SHAFFER, PLLC

/s/ Elizabeth A. Shaffer

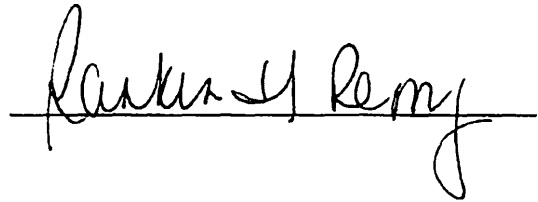
Elizabeth A. Shaffer

Attorney for Respondent/Counter Petitioner

CERTIFICATE OF SERVICE

I certify that on this the 7th day of March, 2014, a true and correct copy of the foregoing STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT was delivered via electronically and first class mail, postage prepaid, to the following:

Paul J. Morken
P.O. Box 980691
Park City, UT 84098

A handwritten signature in black ink, appearing to read "Paul J. Morken", is written over a horizontal line.

Elizabeth A. Shaffer #06796
Elizabeth A. Shaffer PLLC
2041 Sidewinder Drive, Suite 2
Park City, Utah 84060
Telephone (435) 655-3033
Fax (435) 655-3233
eshaffer@lawparkcity.com

Attorney for Respondent

IN THE THIRD JUDICIAL DISTRICT COURT

FOR SALT LAKE COUNTY, STATE OF UTAH

450 South State Street, Salt Lake City, Utah 84111

KYLEE J. SANDUSKY,

Petitioner

vs.

GEORGE A. SANDUSKY,

Respondent.

**MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Civil No. 114500103 DA

Judge Ryan Harris

COMES NOW, Respondent/Counter-Petitioner, George A. Sandusky, ("George") by and through his counsel of record, and submits this Memorandum in Support of Motion to For Summary Judgment (the "Motion") against Petitioner/Counter Respondent, Kylie J. Sandusky ("Kylie") as follows:

INTRODUCTION.

The parties, George and Kylee, entered into a Separation Agreement on February 10, 2010 (the "Agreement", Exhibit "A"). The parties were living separate and apart at the time of entering into the Agreement. They thereafter separated their property per the Agreement, continued to live independently and abided by the Agreement. Subsequently, Kylee filed a formal Petition for the dissolution of their marriage. The Agreement between the parties is a valid and binding contract.

An examination of the Agreement, clearly and unambiguously outlines the terms of the Agreement, to wit: for separation and division of the parties' property. The Agreement also clearly reflects formalities in signing. The parties prepared the Agreement together, acknowledged the contract was binding, that the document encompassed the parties entire agreement, that the settlement was entered into voluntarily and recognized that the Agreement shall be incorporated into any Petition for Divorce and thereafter be incorporated in whole in any order or judgment of divorce. The Agreement was both witnessed and notarized. The Agreement settles terms for alimony, distribution of real and physical property, and was contemplated in the context of the parties' financial situations. Kylee's deposition clearly demonstrates her intimate knowledge with George's real property holdings and financial dealings at the time of the Agreement. The parties do not quarrel regarding the irretrievable breakdown of their marriage.

Kylee is now, for the first time, seeking to void the signed Agreement. Kylee, after abiding by the terms of the Agreement for over one year requests the court to void the Agreement. The Agreement is unambiguous in its purpose, scope, and consideration, and was

signed- with witness- by each party. Kylee does not present any evidence of material non-disclosure of property or assets at the time of the Agreement. In fact, the evidence is to the contrary, Kylee admits knowledge and access to all of the financial accounts and transactions of George, at the time of entering into the Agreement. She admits having knowledge of the real property owned by George prior to their marriage, during the marriage and at the time she entered into the Agreement. Kylee admits to voluntarily preparing the Agreement, freely entering into the Agreement, knowledge of all the assets and financial conditions between the parties. The Agreement is clear and speaks for itself and is a valid and enforceable contract. Any other use of the Agreement is not relevant. There exists no dispute as to material fact and George should be granted summary judgment as a matter of law.

ARGUMENT

Summary judgment is proper if the pleadings and all other submissions show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Utah R. Civ. P. 56(e) (2005); *Heglar Ranch, Inc. v. Stillman*, 619 P.2d 1390, 1391 (Utah 1980). Summary judgment is not precluded simply because some facts remain in dispute, “but only when a material fact is genuinely controverted”. *Heglar*, 619 P.2d at 1391; *Wheeler v. Mann*, 763 P.2d 758, 759 (Utah 1988).

Generally, “the construction and interpretation of a contract is a question of law to be decided by the judge.” *O’Hara v. Hall*, 628 P.2d 1289, 1290 (Utah 1983); see also *Harris v. Albrecht*, 2004 U 13, ¶9, 86 P.3d 728, 729; *Morris v. Mountain State Tel. and Tel. Co.*, 658 P.2d 1199, 1201 (Utah 1983) (holding that the “meaning of a contract remains a question of law [and]

can appropriately be resolved by the court on summary judgment.”). In this case, there is no dispute of material fact. The parties were living separate and apart when they entered into the Agreement and continue to do so. It was their intent to do so. The parties lived by the terms of the Agreement in separating their property and in paying and receiving monthly alimony payments. It was their intent to do so. The Agreement is clear unambiguous in its scope. One particular use of an Agreement, if true as Kylee alleges, to obtain financial aid for their son’s college does not create a dispute of material fact. The contractual nature of the actions between the parties is unmistakable. As a result, George Sandusky is entitled to summary judgment as a matter of law.

I. THE SEPARATION AGREEMENT AND PROPERTY SETTLEMENT IS A VALID AND ENFORCEABLE CONTRACT

Both Kylee and George admit they voluntarily executed the Separation Agreement and Property Settlement together. Their signatures were notarized as to the validity of the Agreement. Pursuant to Article 9 A. of the Separation Agreement the parties acknowledge and agree that the “division and distribution of the marital property set forth herein is just, fair and reasonable, is deemed by the parties to be equitable and satisfactory, and that this Agreement shall be binding on the parties.” Further, Article 9 B. of the Agreement states in part that both parties accept the provisions of the Agreement as “full and final settlement and satisfaction”. In addition, in Article 9 L. of the Agreement, the parties aver that “this Agreement, together with any exhibits and schedules attached hereto, contains the entire understanding of the parties with respect to the subject matter; and there are no representations, warranties, covenants or

undertakings other than those expressly set forth herein. This Agreement supersedes and replaces all prior agreements and understandings of the parties”.

In Utah, both premarital and post marital agreements, as well as stipulations entered into in contemplation of separation and divorce are valid, binding and enforceable. The Supreme Court of Utah has affirmed the “general authority of spouses to arrange property rights by a contract that is recognized and enforced by a court in the event of divorce.” *Reese v. Reese*, 1999 UT 75, 984 P.2d 987, ¶24. The court affirmed “the general principle that spouses... may make binding contracts with each other and arrange their affairs as they see fit, insofar as the negotiations are conducted in good faith. *Id.*, at ¶ 25. In *Sweet v. Sweet*, 2006 UT App. 216, 138 P.3d 63, the court held that agreements between spouses concerning the disposition of property owned by them at the time of marriage are valid, so long as there is no fraud, coercion or material non-disclosure. ¶3.

The Agreement is a valid contract entered into by the parties in contemplation of their separation. The parties were living separately when they entered into the Agreement and continued to live separate and apart. After executing the Agreement, the parties performed the terms of the Agreement: specifically, they separated the property identified, continued in their separate financial affairs, George paid Alimony to Kylee and she filed her taxes acknowledging the alimony payments.

There is no evidence of fraud, coercion, or material non-disclosure in the formation of the Agreement. Both George and Kylee prepared the document together, they signed the Agreement and had it notarized as to the validity of being a Separation Agreement and the terms and

provisions set forth. There is no reasonable mistake in the execution and acceptance of the Agreement; the Agreement clearly and repeatedly articulates its purpose, separation and its scope, property settlement. The parties acted in compliance with the Agreement.

Additionally, there are no instances of material non-disclosure, both parties were well aware of each other's financial situations, as represented in both the Agreement itself and through Kylee's own admission. (K. Sandusky Dep. 56:21-23, 88, 113, 102:18). Both parties were aware of all the marital and non-marital assets at the time the Agreement was executed. Therefore, there was no material non-disclosure. There are no articulated instances of coercion; allegations related to one particular use of the Agreement, related to their son's financial aid plan are irrelevant. Such a purpose is contrary to a plain and ordinary reading of the formally witnessed and signed Agreement.

The Separation and Property Settlement Agreement is clear and unambiguous on its face. Postnuptial and Antenuptial Agreements are construed and treated as contracts in general. They "are in no way different from any other ordinary contract." *Beerman v. Beerman*, 749 P.2d 1271, 1278 (Utah Ct. App.1988).

In interpreting contracts, the principal concern is to determine what the parties intended by what they said. "We do not add, ignore, or discard words in this process; but attempt to render certain the meaning of the provision, [sic] in dispute, [sic] by an objective and reasonable construction of the whole contract." *Mark Steel Corp. v. Eimco Corp.*, 548 P.2d 892, 894 (Utah 1976). The ordinary and usual meaning of the words used is given effect, *Pugh v. Stockdale and Co.*, 570 P.2d 1027, 1029 (Utah 1977), and "[e]ffect is to be given the entire agreement without

ignoring any part thereof.” *Minshew v. Chevron Oil Co.*, 575 P.2d 192, 194 (Utah 1978). See also *Larrabee v. Royal Dairy Prod. Co.*, 614 P.2d 160, 163 (Utah 1980). *Beerman v. Beerman* 749 P.2d 1271, Utah App (1988), at ¶2.

As with any other contract, when interpreting an agreement between spouses we “look[] first to the four corners of the agreement to determine the intentions of the parties.” *Neilson v. Neilson*, 780 P.2d 1264, 1267 (Utah Ct.App.1989). Where the agreement is unambiguous on its face, we interpret it as a matter of law. See *id.* “In so doing, a court must attempt to construe the contract so as to ‘harmonize and give effect to all of [its] provisions.’ ” *Dixon v. Pro Image, Inc.*, 1999 UT 89, ¶14, 987 P.2d 48 (alteration in original) (quoting *Nielsen v. O'Reilly*, 848 P.2d 664, 665 (Utah 1993)).

A reason for which an agreement may have been used is not material as it relates to the validity of the contract. The contractual elements have been established making the Agreement valid and binding. Notwithstanding this, the parties continued to act under the Agreement after their son began college and applied for any financial aid that was available to him. Such actions constitute a ratification of the Agreement.

The parties in this case, acted in conformity with the Agreement and lived separate and independent lives since entering into the Agreement. There are no material disputed facts related to the validity of the contract entered into by George and Kylee. As a result, George is entitled to judgment that the Agreement is a valid contract as a matter of law.

II. THE SEPARATION AGREEMENT SHOULD BE INCORPORATED IN THE DIVORCE DECREE

Utah courts have held that when the parties intend to incorporate a separation agreement or property settlement agreement into a divorce decree, the courts should give it "full faith and credit". *Scott v. Scott*, 19 Utah 2d 267 (1967). When the parties use the appropriate provisions in the agreement contemplating a proceeding of divorce, the agreement should be in force. *Id.*

The Agreement in the case before the court provides the following:

THE PARTIES AGREE AND ACKNOWLEDGE THAT SHOULD A PROCEEDING OF LEGAL SEPARATION , DISOLUTION OR DIVORCE BE FILED IN ANY COURT OF COMPETENT JURISDICITON, THIS AGREEMENT SHALL BE INCORPARTED INTO ANY SUCH COMPLAINT OR PETITION FOR DIVORCE, DISSOLUTION OR LEGAL SEPARATION, AND THEREAFTER BE INCORPORATED IN WHOLE IN ANY ORDER OR JUDGEMENT OF LEGAL SEPARATION, DISSOLUTION OR DIVORCE.

It is clear from the language, as emphasized in the Agreement, the parties intended for the Agreement to be incorporated into any decree of divorce. The parties have been separated and living apart since 2009. The marital assets should be divided as set forth in the language of the Agreement and finalized in a decree of divorce.

The Agreement, as the manifest intent and terms of separation, should be adopted and enforced. Final agreements of parties, are not lightly modified. In order to modify an agreement the moving party must show a substantial change not contemplated by the parties. *Bowers v. Bowers*, 658 P.2d 1213 (Utah 1983). Likewise, this court, when considering entering the decree should consider the voluntary and comprehensive nature of the Separation Agreement created by

the parties. Further, nothing has substantially changed in the parties' circumstances since the Agreement was entered into as would effect the substantial fairness of the Agreement. Any circumstances that may have changed were contemplated by the parties in the Agreement by providing in Article 2 that from the date of the Agreement, both shall live and conduct themselves as if never married and could choose to act for each party's "separate benefit to engage in any employment, business or profession." There is no compelling reason to modify the fair and reasonable Agreement and the Agreement should be incorporated into the decree.

While, a stipulation and agreement is advisory and does not constrain the court's equitable powers, they are usually adopted unless found to be unfair or unreasonable. *Coleman v. Coleman*, 743 P.2d 782, 789 (Utah App. 1987).

WHEREFORE, George moves the above-entitled Court for an order that the Separation Agreement entered into between the parties is valid and binding and that it be incorporated into a Decree of Divorce without modification.

DATED this 7th day of March, 2014

ELIZABETH A. SHAFFER, PLLC

/s/ Elizabeth A. Shaffer

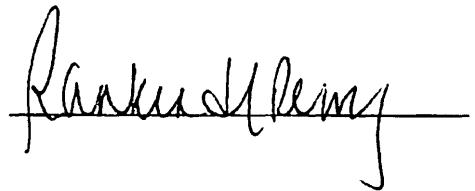
Elizabeth A. Shaffer

Attorney for Respondent/Counter Petitioner

CERTIFICATE OF SERVICE

I certify that on this the 7th day of March, 2014, a true and correct copy of the foregoing MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT was delivered via electronically and first class mail, postage prepaid, to the following:

Paul J. Morken
P.O. Box 980691
Park City, UT 84098

A handwritten signature in black ink, appearing to read "Paul J. Morken", written over a horizontal line.

Dated: July 18, 2014
01:36:22 PM

/s/ RYAN HARRIS
District Court Judge



Paul J. Morken (10483)
PAUL J. MORKEN, PLLC
P.O. Box 980691
Park City, UT 84098
Telephone: 435.659.1685
paulmorken@gmail.com

Attorney for Petitioner

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SUMMIT COUNTY, STATE OF UTAH

KYLEE J. SANDUSKY,
Petitioner

vs.

GEORGE A. SANDUSKY,
Respondent

ORDER ON:

- 1) **MOTION FOR SUMMARY JUDGMENT;**
- 2) **MOTION TO STRIKE; AND**
- 3) **MOTION TO PERMIT PETITIONER TO FILE AN AMENDED DECLARATION AND RESPONSE.**

Case No.: 114500103
Judge: Ryan M. Harris
Commissioner: T. Patrick Casey

This matter came on regularly before the Court, the Honorable Judge Ryan M. Harris presiding, on June 27, 2014. Petitioner appeared in person and through her attorney, Paul J. Morken of Paul J. Morken, PLLC. Respondent appeared through his attorney, Elizabeth A. Shaffer, Esquire. The court having reviewed (1) Respondent's Motion for Summary Judgment and his Motion to Strike; and Petitioner's Motion to Permit Petitioner to File an Amended Declaration and Response, and having heard the arguments and representations of counsel on these issues, and being fully advised in the premises and for good cause appearing, the Court

now makes and enters its findings and Order as follows:

1. There are genuine issues of material facts on many issues that would preclude summary judgment for either party, therefore Respondent's motion for summary judgment is denied.
2. Respondent's motion to strike is denied. The Court may rule on evidentiary issues pertaining to an exhibit or the particular contents of an exhibit at trial.
3. Petitioner's motion for permission to file an amended declaration and response is granted.
4. By agreement of the parties, discovery will be completed by August 29, 2014.

DATED this ____ day of _____, 2014.

BY THE COURT:

RYAN M. HARRIS
District Court Judge

SEEN AND APPROVED BY:

/S/ Elizabeth A. Shaffer
Signed by Paul J. Morken with the
permission of Elizabeth A. Shaffer
Attorney for Respondent

Elizabeth A. Shaffer #06796
Elizabeth A. Shaffer PLLC
2041 Sidewinder Drive, Suite 2
Park City, Utah 84060
Telephone (435) 655-3033
Fax (435) 655-3233
eshaffer@lawparkcity.com

Attorney for Respondent

IN THE THIRD JUDICIAL DISTRICT COURT

FOR SALT LAKE COUNTY, STATE OF UTAH
450 South State Street, Salt Lake City, Utah 84111

KYLEE J. SANDUSKY,

Petitioner

vs.

GEORGE A. SANDUSKY,

Respondent.

)
)
) **MOTION TO BIFURCATE**
) **ISSUES OF DIVORCE**
)
)
)

) Civil No. 114500103 DA
)
)

) Judge Ryan Harris
)
)

COMES NOW, George A, Sandusky ("George" or "Respondent", by and through his attorney and pursuant to Rule 42 of the Utah Rules of Civil Procedure and hereby moves the Court for an order to bifurcate the issues of the parties divorce; granting the Respondent a decree of divorce based on the parties irreconcilable differences and determine the validity of the parties separation agreement. All other issues, including alimony and property distribution to be

reserved for trial. This motion is made to promote judicial efficiency and for the purpose of promoting the clear and effective presentation of the essential elements of the case. This motion is based on the following memorandum.

INTRODUCTION

The parties, Kylee J. Sandusky (“Petitioner”) and George A. Sandusky (“Respondent”) entered into a Separation Agreement on February 10, 2010 (the “Agreement”). The parties were living separate and apart at the time of entering the Agreement. George was residing in Hawaii and Kylee in Park City, Utah. Thereafter, they separated their property per the Agreement and continued to live independently and abided by the Agreement with Kylee receiving and accepting the sum of \$2,000.00 a month in alimony. The Agreement clearly and unambiguously outlines the terms of the Agreement for separation and division of the parties’ property. The Agreement also clearly reflects formalities in signing as both parties admit signing the document voluntarily and had it witnessed and notarized. The Agreement between the parties is a valid and binding contract.

Subsequently, Petitioner, Kylee Sandusky filed a petition for divorce on June 3, 2011 and for the first time sought to void the signed Agreement. George filed his Response to Petition for Divorce and Counter-Petition on June 27, 2011 seeking to enforce the Agreement. Petitioner filed a Certificate of Readiness for Trial on January 8, 2014 stating that discovery was complete and she was ready for the matter to be scheduled for trial. The parties attempted mediation on March 13, 2014, but were unsuccessful due to the issue of the validity of the Agreement.

George filed a Motion for Summary Judgment on March 7, 2014, wherein he moved the Court for an order that the Agreement entered into between the parties is valid and binding, that it be enforce and incorporated into a decree of divorce without modification. At the hearing on the Motion for Summary Judgment on June 27, 2014, Petitioner's position was the Agreement was not valid or enforceable as she was "fraudulently induced" into signing the Agreement for the sole purpose of obtaining financial aid assistance for their son's college education and not for the purpose for which it was titled. The Court denied George's Motion for Summary Judgment on the grounds that there was a material fact dispute as to Petitioner's claim of fraudulent inducement. The Court further recommended the parties make another attempt at mediation.

George now hereby requests an order from the Court to bifurcate the divorce proceedings, grant him a decree of divorce based on the parties' irreconcilable differences and bifurcate proceedings related to the validity and enforceability of the parties' Separation Agreement and set the issue of the separation agreement for an evidentiary hearing.

UNDISPUTED FACTS

1. The parties, George and Kylee J. Sandusky ("Kylee" or "Petitioner") entered into the Separation Agreement and Property Settlement (the "Agreement") dated February 10, 2010.
2. George and Kylee were living separate and apart at the time of entering the Agreement. George lived in Hawaii and Kylee lived in Park City, Utah. (K. Sandusky Dep. 72:8, G. Sandusky Dep. 108:18-20).

3. The Agreement expresses the parties' separation and settlement and adjustment of their property rights and other rights, responsibilities and obligations growing out of their marital relationship. (The Agreement).

4. The parties separated their property per the Agreement, continued to live independently and abided by the Agreement. (K. Sandusky Dep. 67:4).

5. Subsequently, Kylee filed a Verified Petition for Decree of Divorce on June 3, 2011 alleging that the marriage was irretrievably broken and that it was impossible for the parties to continue in the marriage. (Verified Petition for Divorce).

6. George filed his responsive pleading on June 27, 2011 and Counter Petition for Divorce and Breach of Contract. (Respondent's Response to Divorce Petition and Counter-Petition).

7. George and Kylee were married in Ventura County, California on November 1, 1986. (Petitioner's Verified Petition for Divorce ¶ 2).

8. The parties have no minor children. (Petitioner's Answer to Respondent's Counter-Petition ¶ 6).

ARGUMENT

Rule 42 of the Utah Rules of Civil Procedure permits the trial court discretion to bifurcate proceedings in appropriate situations. *See Olympus Hills Ctr., Ltd. V. Smith's Food & Drugs*

Ctrs., Inc., 889 P.2d 445, 462 (Utah Ct. App. 1994), cert. denied, 889 P.2d 1231 (Utah 1995).

The Rule states that “The court, in furtherance of convenience or to avoid prejudice may order a separate trial of any claim,” or “of any separate issue.” Utah R. Civ. P. 42 (b). Such bifurcation will be reviewed only for abuse of discretion. See *King v. Barron*, 770 P.2d 975, 976 (Utah 1988)

Bifurcation is both permissible and advisable where it promotes efficiency for the Court and imposes no prejudice on the parties. *United States v. Amante* 418 F.3d 220, 222-223 (2nd Cir. 2005), A court may order a separate trial of any issue if it will be conducive to expedition and economy. *Mandeville v. Quinstar, Corp.* 109 Fed. App’x 191 (10th Cir. 2004). As mentioned herein above, this Court recommended the parties attempt mediation, however, until the issue of the validity of the Agreement has been determine, further mediation would be futile. Mediation was attempted on March 13, 2014 and the case not resolved because of the issue of the validity of the Separation Agreement lies at the core of the parties’ impass. The validity of the Agreement is the central issue in this case and an evidentiary hearing on the issue would take a half a day of the Court’s time to decide. The validity and enforceability of the Agreement is a legal issue for determination by the Court outside of the legal proceedings related to the determination of marital and separate property and the distribution of same.

Once the issue of the validity of the Agreement is decided, there is a greater likelihood the other issues of determining marital or separate property and the division of same would be able to be mediated without the need for litigation. It is believed that litigation of these issues

would take a lengthy trial, from three (3) to five (5) day of the Court's time. Bifurcation of the issue of the validity of the Agreement would serve both the interests of convenience and judicial economy and impose no prejudice to either party.

For these reasons the Respondent requests an order from the Court to bifurcate the divorce proceedings grant the Respondent, George Sandusky a decree of divorce based on the parties' irreconcilable differences and bifurcate proceedings related to the validity and enforceability of the parties Separation Agreement. Respondent requests that the Court schedule an evidentiary hearing as to the validity of the Separation Agreement, and reserve all other issues for trial.

DATED this 16th day of December, 2014

/s/ Elizabeth A. Shaffer(digitally signed)

Elizabeth A. Shaffer
Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that on this 16th day of December 2014, a true and correct copy of the foregoing
MOTION TO BIFURCATE ISSUES OF DIVORCE was filed via the Court's electronic filing
system which automatically delivered service to the following:

Paul J. Morken
P.O. Box 980691
Park City, UT 84098

/s/ Rankin Perry

Elizabeth A. Shaffer #06796
Elizabeth A. Shaffer PLLC
2041 Sidewinder Drive, Suite 2
Park City, Utah 84060
Telephone (435) 655-3033
Fax (435) 655-3233
eshaffer@lawparkcity.com

Attorney for Respondent

**IN THE THIRD JUDICIAL DISTRICT COURT
FOR SUMMIT COUNTY, STATE OF UTAH**
(6300 Justice Center Road, Park City, Utah 84098)

KYLEE J. SANDUSKY,)	
)	
)	REPLY TO PETITIONER'S
Petitioner)	OPPOSITION TO MOTION TO
)	BIFURCATE ISSUES OF DIVORCE
)	
vs.)	
)	
GEORGE A. SANDUSKY,)	Civil No. 114500103 DA
)	
)	Judge Ryan Harris
Respondent.)	
)	

COMES NOW, George A. Sandusky ("George" or "Respondent"), by and through his attorney and hereby submits this REPLY TO PETITIONER'S OPPOSITION TO MOTION TO BIFURCATE ISSUES OF DIVORCE as follows:

MEMORANDUM

Respondent's motion to bifurcate the divorce proceedings asks this Court clearly to separate the pending issues: 1) determination of the validity of the parties separation agreement; 2) determination of nature of the parties property as to individual/separate property and marital property; 3) equitable distribution of the parties' marital assets; 4) alimony and 5) dissolution of the marital union. Only those issues, #2, #3 and #4, dealing with the assets of the parties and alimony are intertwined. The property of the parties involves real estate, investments, bank accounts and pension benefits. The property is nothing complex or unusual involving a value of approximately \$1.5 million. The parties were married for more than 20 years. George Sandusky was 32 years old and he had significant investments and half of his career with the Los Angeles Fire Department at the time of the parties' marriage. As a result, issue No. 2 is required.

The validity of the parties' agreement entitled "Separation Agreement" is a separate and distinct issue. A determination of the validity of the Agreement is a question of law that is proper to separate from the property and alimony issues. The Petitioner raises the defense to the validation and enforceability of the Separation Agreement on the grounds that she was "fraudulently induced" into signing the Agreement for the sole purpose of obtaining financial aid assistance for their son's college education.¹ Petitioner attempts to also argue nondisclosure in an attempt to invalidate the agreement. However, there exists no evidence that there were any assets not disclosed. In fact, the evidence is to the contrary; Petitioner admits in her deposition that she knew of all the assets she describes in her amended declaration and opposition before

¹ . See Memo in Opposition to Respondent's Motion to Bifurcate Issues of Divorce p. 6 ¶ 9; Petitioner's Response and Memorandum in Opposition to Respondent's Motion for summary Judgment p. 4 ¶ 6.

she signed the Separation Agreement.² Petitioner argues that the joint accounts and the house to be purchased in Hawaii and the Bishop loan were not mentioned in the Separation Agreement and thus there was “non-disclosure”. Failure to include these items in the Agreement does not equal material “non-disclosure”. Failure to identify these assets specifically in the Agreement is not evidence of fraudulent conduct. Also, failure to mention these items is not “material” because the “FOO house” purchased in Hawaii and the Bishop loan and the joint accounts were all funds that were included in the \$1.3 million in assets that Petitioner mentions they came to Park City with for retirement in 2007 (Petitioner’s Amended Declaration p.4 ¶ 1.4). The proceeds used to purchase the Foo House and the proceeds used for the Bishop loan were all proceeds from the lump sum cash amount that Petitioner was aware of prior to entering into the agreement. Petitioner’s lack of knowledge of the value of each asset also does not equate to “material nondisclosure” supporting Petitioner’s allegation of intentional misconduct on the part of George in “hiding marital assets”.

The validity of the parties’ agreement is a narrow issue. A question of law that is proper to separate from the distribution of property and other issues. A determination of this separate issue can be made without getting into a determination of the characterization of the property involved, valuation of property, equitable distribution of that property and those issues surrounding whether or not alimony is warranted. Many of these issues involving the property

² See K. Sandusky Dep. 11: 21-24 (Separate lots purchased by George), 22: 5-8 (Amount of George’s monthly pension), 56: 15-16, 21-23, 87: 20-25 (Joint and Separate Bank Accounts), 62: 23-25, 63: 20-25 (Hard Money Loans), 107: 3-7, 21-23, 108: 9-14 (George’s purchase of house in Hawaii), 104:12-17 (there were no other bank accounts that Kylee didn’t know about when she signed the Separation Agreement), Petitioner’s Amended Declaration p. 4 ¶ 1.4 (“When we moved to par City in August 2007, we were bringing with us \$1.3 million dollars in cash and no debt”).

and alimony are dealt with in the parties' agreement and therefore will likely be resolved based on a final determination of the validity and enforceability of the agreement.

Petitioner's argument that there are too many witnesses and exhibits to present at a hearing and therefore a half day evidentiary hearing is not sufficient and would be prejudicial to Petitioner is not convincing. The determination of a narrow legal issue by the court prior to trial will clearly promote judicial economy and efficiency. A determination of the validity of the parties' agreement, as a result of fraudulent inducement, centers round the intent and understanding of the parties. They themselves are the only evidence that is required. This testimony does not require or involve a detailed determination and valuation of the assets of the marital estate. Petitioner indicates that she will have 5 witnesses; presumably the parties themselves as 2 witnesses, which are also the same 2 witnesses that George would call to testify; and the 3 persons who executed affidavits attached to Petitioner's Declaration; Kevin, Beverly and Stella Chaidez. The potential testimony of these witnesses is outlined in their affidavits, and to the extent that such testimony is competent and admissible testimony, it is short.

Bifurcation of the issue of the validity and enforceability of the parties' agreement would serve both the interests of convenience and judicial economy and impose no prejudice to either party. A determination of the validity of the parties agreement would resolve many of the issues surrounding the determination and equitable division of marital assets and alimony and thus substantially reduce the time for trial of the remaining issues and/or promote the facilitation of a final resolution of all the issues in this case, negating the need for a trial at all. The alternative decision would move the case forward as planned and the parties are in no different position.

CONCLUSION

Bifurcation of the validity of the parties' agreement promotes the most efficient resolution of the case at minimal time and expense. Bifurcation of this issue provides the opportunity to promote a potential settlement and final resolution of this case, for the benefit of the parties and the Court alike. In a half day hearing, the court could potentially avoid altogether or substantially shorten a 3-4 day trial without any inconvenience or prejudice to either party. Last, the parties are in agreement that the marriage is irretrievably broken and both ask the Court to enter a decree of divorce. As such, there is no just reason for delay on this issue.

Based on the foregoing, George Sandusky asks the Court to separate the issue of the validity of the parties' separation agreement and set the matter for evidentiary hearing as soon as practical. And, to grant George Sandusky a decree of divorce on the grounds of irreconcilable differences and, to reserve all other issues, #2, #3 and #4 for trial beginning April 28, 2015.

DATED this 16th day of January 2015.

/s/ Elizabeth A. Shaffer (digitally signed)
Elizabeth A. Shaffer
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing REPLY TO PETITIONER'S
OPPOSITION TO MOTION TO BIFURCATE ISSUES OF DIVORCE was filed via the Court's
electronic e-filing service this 16th day of January, 2015 which electronically delivered a copy of
the foregoing to the following:

Paul J. Morken
P.O. Box 980691
Park City, UT 84098

/s/ Rankin Perry

Dated: April 17, 2015
01:31:45 PM

/s/ Ryan Harris
District Court Judge



Paul J. Morken (10483)
PAUL J. MORKEN, PLLC
P.O. Box 980691
Park City, UT 84098
Telephone: 435.659.1685
paulmorken@gmail.com

Attorney for Petitioner

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SUMMIT COUNTY, STATE OF UTAH

KYLEE J. SANDUSKY,
Petitioner

vs.

GEORGE A. SANDUSKY,
Respondent

**ORDERS ON: RESPONDENT'S MOTION
TO BIFURCATE ISSUES IN CASE; AND,
PETITIONER'S MOTION FOR JUDGE
HARRIS TO RETAIN CASE FOR FINAL
TRIAL**

Case No.: 114500103
Judge: Ryan M. Harris
Commissioner: T. Patrick Casey

This matter came on regularly before the Court, the Honorable Judge Ryan M. Harris presiding, on January 26, 2015. Petitioner entered her appearance by and through her attorney, Paul J. Morken of Paul J. Morken, PLLC. Respondent entered his appearance by and through his attorney, Elizabeth A. Shaffer, Esquire. The court having reviewed (1) Respondent's Motion to Bifurcate Issues of Divorce, and (2) Petitioner's Motion for Judge Harris to Retain Case for Final Trial, and having reviewed the responsive pleadings and having heard the arguments and representations of counsel on both of these motions, and being fully advised in the premises and for good cause appearing, the Court now makes and enters its Orders as follows:

1. Respondent's motion to bifurcate issues in this case is hereby denied. The pretrial

scheduling order shall remain in place.

2. While the parties are not required to file a trial brief with the Court, the parties may file a trial brief with the Court on or before April 17, 2015, at 5:00 pm.

3. Petitioner's motion for Judge Ryan M. Harris to retain this case for the final trial is hereby denied.

DATED this ____ day of _____, 2015.

BY THE COURT:

RYAN M. HARRIS
District Court Judge

SEEN AND APPROVED BY:

/S/Elizabeth A. Shaffer
Signed by Paul J. Morken with the
permission of Elizabeth A. Shaffer
Attorney for Respondent

Attorney for Respondent

FOR SUMMIT COUNTY, STATE OF UTAH

KYLEE J. SANDUSKY,

VS.

GEORGE A. SANDUSKY,

Respondent.

PRETRIAL MEMORANDUM

Civil No. 114500103 DA

Judge Kara L. Pettit

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

STATEMENT OF THE CASE

George and Kylee were married in Ventura County, California on November 10, 1986. The parties moved to Park City, Utah in August, 2007. The parties are parents of one child, Micah Sandusky born on October 27, 1992. Micah is now over the age of 18 and is currently attending University of Pennsylvania for his senior year of college.

The parties, George and Kylee, entered into a Separation Agreement on February 10, 2010 (the "Agreement", Exhibit "A"). The parties were living separate and apart at the time of entering into the Agreement. They thereafter separated their property per the Agreement, continued to live independently and abided by the Agreement. Subsequently, Kylee filed a formal Petition for the dissolution of their marriage on June 3, 2011, serving George with a copy of said Petition upon his arrival back to Utah from Hawaii on the day of the parties' son's graduation from Park City High School. In the Petition, Kylee stated that the Agreement should be void and unenforceable.

ISSUES FOR TRIAL

The issues for this Court at trial are the following:

1. The validity of the Separation Agreement;
2. The Determination of Separate Property;
3. The Determination of Marital Property;
4. The Distribution of Separate Property; and
5. The Equitable Distribution of Marital Property.

I. THE SEPARATION AGREEMENT AND PROPERTY SETTLEMENT IS A VALID AND ENFORCEABLE CONTRACT

The Agreement between the parties is a valid and binding contract. An examination of the Agreement, clearly and unambiguously outlines the terms of the Agreement, to wit: for separation and division of the parties' property. The Agreement also clearly reflects formalities in signing. The parties prepared the Agreement together, acknowledged, by their signatures and notarization, that the contract was binding, that the document encompassed the parties entire agreement, that the settlement was entered into voluntarily and recognized that the Agreement shall be incorporated into any Petition for Divorce and thereafter be incorporated in whole in any order or judgment of divorce. The Agreement was both witnessed and notarized. The Agreement settles terms for alimony, distribution of real and physical property, and was contemplated in the context of the parties' financial situations. Kylee's deposition clearly demonstrates her intimate knowledge with George's real property holdings and financial dealings at the time of the Agreement. The parties do not quarrel regarding the irretrievable breakdown of their marriage.

Kylee is seeking to void the signed Agreement. Kylee, after abiding by the terms of the Agreement for over one year and by holding out the Agreement as a valid document in obtaining financial aid for the parties' son's college tuition for four (4) years. Kylee is now asking this Court to void the Agreement. The Agreement is unambiguous in its purpose, scope, and consideration, and was signed- with witness- by each party. Kylee does not present any evidence of material non-disclosure of property or assets at the time of the Agreement. In fact, the evidence is to the contrary, Kylee admits knowledge and access to all of the financial accounts

and transactions of George, at the time of entering into the Agreement. She admits having knowledge of the real property owned by George prior to their marriage, during the marriage and at the time she entered into the Agreement. Kylee admits to voluntarily preparing the Agreement, freely entering into the Agreement, knowledge of all the assets and financial conditions between the parties. The Agreement is clear and speaks for itself and is a valid and enforceable contract.

Both Kylee and George admit they voluntarily executed the Separation Agreement and Property Settlement together. Their signatures were notarized as to the validity of the Agreement. Pursuant to Article 9 A. of the Separation Agreement the parties acknowledge and agree that the "division and distribution of the marital property set for the herein is just, fair and reasonable, is deemed by the parties to be equitable and satisfactory, and that this Agreement shall be binding on the parties." Further, Article 9 B. of the Agreement states in part that both parties accept the provisions of the Agreement as "full and final settlement and satisfaction". In addition, in Article 9 L. of the Agreement, the parties aver that "this Agreement, together with any exhibits and schedules attached hereto, contains the entire understanding of the parties with respect to the subject matter; and there are not representations, warranties, covenants or undertakings other than those expressly set forth herein. This Agreement supersedes and replaces all prior agreements and understandings of the parties".

In Utah, both premarital and post marital agreements, as well as stipulations entered into in contemplation of separation and divorce are valid, binding and enforceable. The Supreme

Court of Utah has affirmed the “general authority of spouses to arrange property rights by a contract that is recognized and enforced by a court in the event of divorce.” *Reese v. Reese*, 1999 UT 75, 984 P.2d 987, ¶24. The court affirmed “the general principle that spouses... may make binding contracts with each other and arrange their affairs as they see fit, insofar as the negotiations are conducted in good faith. *Id.*, at ¶ 25. In *Sweet v. Sweet*, 2006 UT App. 216, 138 P.3d 63, the court held that agreements between spouses concerning the disposition of property owned by them at the time of marriage are valid, so long as there is no fraud, coercion or material non-disclosure. ¶3.

The Agreement is a valid contract entered into by the parties in contemplation of their separation and divorce. The parties were living separately when they entered into the Agreement and continued to live separate and apart. After executing the Agreement, the parties performed the terms of the Agreement: specifically, they separated the property identified, continued in their separate financial affairs, George paid Alimony to Kylee and she filed her taxes in 2010, acknowledging the alimony payments. Subsequently, Kylee amended her 2010 Taxes to omit the word alimony after consulting with an attorney.¹

There is no evidence of fraud, coercion, or material non-disclosure in the formation of the Agreement. Both George and Kylee prepared the document together, they signed the Agreement and had it notarized as to the validity of being a Separation Agreement and the terms and provisions set forth. There is no reasonable mistake in the execution and acceptance of the

¹ K. Sandusky Dep. 116:3-9.

Agreement; the Agreement clearly and repeatedly articulates its purpose, separation and its scope, property settlement. The parties acted in compliance with the Agreement.

Additionally, there are no instances of material non-disclosure, both parties were well aware of each other's financial situations, as represented in both the Agreement itself and through Kylee's own admission. (K. Sandusky Dep. 56:21-23, 88, 113, 102:18). Both parties were aware of all the marital and non-marital assets at the time the Agreement was executed. Therefore, there was no material non-disclosure. There are no articulated instances of coercion; allegations related to one particular use of the Agreement, related to their son's financial aid plan are irrelevant. Such a purpose is contrary to a plain and ordinary reading of the formally witnessed and signed Agreement and the facts in this case.

The Separation and Property Settlement Agreement is clear and unambiguous on its face. Postnuptial and Ante nuptial Agreements are construed and treated as contracts in general. They "are in no way different from any other ordinary contract." *Beerman v. Beerman*, 749 P.2d 1271, 1278 (Utah Ct. App.1988).

In interpreting contracts, the principal concern is to determine what the parties intended by what they said. "We do not add, ignore, or discard words in this process; but attempt to render certain the meaning of the provision, [sic] in dispute, [sic] by an objective and reasonable construction of the whole contract." *Mark Steel Corp. v. Eimco Corp.*, 548 P.2d 892, 894 (Utah 1976). The ordinary and usual meaning of the words used is given effect, *Pugh v. Stockdale and Co.*, 570 P.2d 1027, 1029 (Utah 1977), and "[e]ffect is to be given the entire agreement without ignoring any part thereof." *Minshew v. Chevron Oil Co.*, 575 P.2d 192, 194 (Utah 1978). See

also *Larrabee v. Royal Dairy Prod. Co.*, 614 P.2d 160, 163 (Utah 1980). *Beerman v. Beerman* 749 P.2d 1271, Utah App (1988), at ¶2.

As with any other contract, when interpreting an agreement between spouses we “look first to the four corners of the agreement to determine the intentions of the parties.” *Neilson v. Neilson*, 780 P.2d 1264, 1267 (Utah Ct.App.1989). Where the agreement is unambiguous on its face, we interpret it as a matter of law. *See id.* “In so doing, a court must attempt to construe the contract so as to ‘harmonize and give effect to all of [its] provisions.’ ” *Dixon v. Pro Image, Inc.*, 1999 UT 89, ¶14, 987 P.2d 48 (alteration in original) (quoting *Nielsen v. O'Reilly*, 848 P.2d 664, 665 (Utah 1993)).

A reason for which an agreement may have been used is not material as it relates to the validity of the contract. The contractual elements have been established making the Agreement valid and binding. Notwithstanding this, the parties continued to act under the Agreement after their son began college and applied for any financial aid that was available to him. Kylee held out the Agreement as a valid and true contract when attempting and obtaining from the United States government, financial aid towards the parties’ son’s college tuition. Such actions constitute a ratification of the Agreement.

The parties in this case, acted in conformity with the Agreement and lived separate and independent lives since entering into the Agreement. There are no material disputed facts related to the validity of the contract entered into by George and Kylee. As a result, George is entitled to judgment that the Agreement is a valid contract as a matter of law.

II. PETITIONER IS COLLATERALLY ESTOPPED BY HER CONDUCT FROM ARGUING THE AGREEMENT IS INVALID

Kylee abided by the terms of the Agreement for over a year, even posting the funds George gave her monthly as “alimony” on her 2010 tax returns until she consulted with her attorney. (K. Sandusky Dep. 116: 3-9). Further, Kylee admits using the information contained in the Agreement as true and accurate for four (4) years when filling out the financial aid documents in attempting to receive aid for the parties’ sons. Kylee admits “Kylee fills out FAFSA and CSS Profile, her income was \$16,696, her 401K had \$35,000, and her bank accounts held \$28,332. Further, Kylee admits to using the Agreement to successfully obtain financial aid monies from the United States government. “The legal Sep. Document worked partially. Micah received Pell grants because Kylee showed little money and assets on the FAFSA, which is the only doc the government uses.”²

Kylee used the Agreement as a valid and enforceable contract to her benefit when she obtained funds from the U.S. government for her son’s financial aid for college tuition. Now, Kylee wishes to have the Agreement invalidated because she feels it works to her disadvantage and to George’s advantage in the division of assets. “The doctrine of quasi-estoppel precludes a part from asserting, to another’s disadvantage, a right inconsistent with a position it has previously taken”. *Wohnoutka v. Kelley*, 330 P.3d 762 (Utah Ct. App. 2014). The right to challenge the validity and enforceability of the Agreement was waived by Kylee’s conduct. A party “may waive such right either expressly or by his conduct, and the right....may be lost by

² (Petitioner’s Amended Verified Declaration and Statement of Disputed Issues of Fact; and Amended Response to Respondent’s Statement of Undisputed facts in Support of Motion for Summary Judgment, Exhibit 14).

estoppel.” *ASC Utah, Inc. v. Wolf Mountain Resorts, L.C.* 2010 WL 2425986 ¶ 6 (D. Utah 2010), citing *Brazeal v. Bokelman*, 270 F.2d 943, 947 (8th Cir. 1959).

III. THE SEPARATION AGREEMENT SHOULD BE INCORPORATED IN THE DIVORCE DECREE

Utah courts have held that when the parties intend to incorporate a separation agreement or property settlement agreement into a divorce decree, the courts should give it “full faith and credit”. *Scott v. Scott*, 19 Utah 2d 267 (1967). When the parties use the appropriate provisions in the agreement contemplating a proceeding of divorce, the agreement should be in force. *Id.*

The Agreement in the case before the court provides the following:

THE PARTIES AGREE AND ACKNOWLEDGE THAT SHOULD A PROCEEDING OF LEGAL SEPARATION , DISSOLUTION OR DIVORCE BE FILED IN ANY COURT OF COMPETENT JURISDICTON, THIS AGREEMENT SHALL BE INCORPARTED INTO ANY SUCH COMPLAINT OR PETITION FOR DIVORCE, DISSOLUTION OR LEGAL SEPARATION, AND THEREAFTER BE INCORPORATED IN WHOLE IN ANY ORDER OR JUDGEMENT OF LEGAL SEPARATION, DISSOLUTION OR DIVORCE.

It is clear from the language, as emphasized in the Agreement, the parties intended for the Agreement to be incorporated into any decree of divorce. The parties have been separated and living apart since 2009. The marital assets should be divided as set forth in the language of the Agreement and finalized in a decree of divorce.

The Agreement, as the manifest intent and terms of separation, should be adopted and enforced. Final agreements of parties, are not lightly modified. In order to modify an agreement the moving party must show a substantial change not contemplated by the parties. *Bowers v.*

Bowers, 658 P.2d 1213 (Utah 1983). Likewise, this court, when considering entering the decree should consider the voluntary and comprehensive nature of the Separation Agreement created by the parties. Further, nothing has substantially changed in the parties' circumstances since the Agreement was entered into as would affect the substantial fairness of the Agreement. Any circumstances that may have changed were contemplated by the parties in the Agreement by providing in Article 2 that from the date of the Agreement, both shall live and conduct themselves as if never married and could choose to act for each party's "separate benefit to engage in any employment, business or profession." There is no compelling reason to modify the fair and reasonable Agreement and the Agreement should be incorporated into the decree.

While, a stipulation and agreement is advisory and does not constrain the court's equitable powers, they are usually adopted unless found to be unfair or unreasonable. *Coleman v. Coleman*, 743 P.2d 782, 789 (Utah App. 1987). The Agreement was fair and equitable. "In Utah, marital property is ordinarily divided equally between the divorcing spouses and separate property, which may include premarital assets, inheritances, or similar assets, will be awarded to the acquiring spouse." *Stonehocker v. Stonehocker*, 2008 UT App 11 ¶ 13, 176 P.3d 476 (Utah Ct App. 2008), citing *Olsen v. Olsen*, 2007 UT App. 296 ¶ 23, 169 P.3d 765. The breakdown of the assets is as follows:

- The parties came to Park City, Utah in August 2007 with \$1.3 million dollars and no debt.³ This amount was amassed from a real estate deal where George invested

³ See Petitioner's Amended Verified declaration ¶ 1.4

approximately \$400,000 of his separate property that he had been investing prior to the marriage and continuing into the marriage.

- After costs of living, the amount at the time of the Agreement was approximately \$1.2 million dollars. In the Agreement, George was to keep the lots he invested in as his separate property as well as his pension.
- After removing George's \$400,000 separate property from the 1.2 million dollars that left \$800,000 to be divided. The Agreement provides for George to provide Kylee with \$2,000 for life or a lump sum \$400,000 which is half of the \$800,000 remaining. Kylee chose the \$2,000 for life which could potentially exceed her equal amount in the \$800,000.⁴
- Per the Agreement, George has continued investing his separate property in the ordinary course of business.⁵

Further, by her actions and conduct, Kylee is collaterally estopped from now challenging the validation and enforceability of the Agreement. For the past years she has held out the Agreement as a true and valid document which correctly outlines the division of assets. She cannot now allege the Agreement is invalid, to George's disadvantage, by asserting a position completely inconsistent with her prior position taken for the past years.

⁴ Since the parties separated, George has paid four (4) years of Micah's tuition at University of Pennsylvania which was approximately \$167,000.

⁵ See, Separation Agreement, Article 2

DATED this 17th day of April, 2015

ELIZABETH A. SHAFFER, PLLC

/s/ Elizabeth A. Shaffer (digitally)

Elizabeth A. Shaffer

Attorney for Respondent/Counter Petitioner

CERTIFICATE OF SERVICE

I certify that on this the 17th day of April, 2015, a true and correct copy of the foregoing
PRETRIAL MEMORANDUM was filed via the Court's electronic filing system which
automatically delivered service to the following:

Paul J. Morken
P.O. Box 980691
Park City, UT 84098

/s/ Rankin H. Perry

Elizabeth A. Shaffer #06796
ELIZABETH A. SHAFFER, PLLC
2041 Sidewinder Drive, Suite 2
Park City, Utah 84060
Telephone: (435) 655-3033
Fax: (435) 655-3233
Email: eshaffer@lawparkcity.com

Attorney for Respondent, George Sandusky

IN THE THIRD JUDICIAL DISTRICT COURT

FOR SUMMIT COUNTY, STATE OF UTAH

(6300 Justice court Road, Park City, Utah 84098)

KYLEE J. SANDUSKY,

Petitioner

v.

GEORGE A. SANDUSKY,

Respondent.

**FINDINGS OF FACT
CONCLUSIONS OF LAW**

Case No. 114500103

Judge Kara L. Pettit

The Court has pending before it the final disposition of the issues in the case following trial on the merits on April 28-30, 2015. Based on the evidence and the arguments presented and the record as a whole, the Court now enters the following:

I. BACKGROUND AND PROCEDURE

1. The parties, George A. Sandusky and Kylee J. Sandusky were married in

Ventura County, California on November 10, 1986.

2. On June 3, 2011, Petitioner, Kylee J. Sandusky filed a verified petition for a Decree of Divorce pursuant to Utah Code Ann. §30-3-1 on the grounds of irreconcilable differences.

3. Petitioner is a resident of Park City, Summit County, Utah and she has been a resident there for more than three months immediately prior to filing this action.

4. Respondent is a resident of Hawaii.

5. Respondent filed a counter petition for Decree of Divorce and Breach of Contract based on a Separation Agreement entered into by the parties.

6. The Court has subject matter jurisdiction of this action and personal jurisdiction over each of the parties. Venue is proper.

7. At the conclusion of the trial, Respondent made a motion for bifurcated Decree of Divorce. Petitioner did not oppose the motion and said motion was granted. The Decree of Divorce was final and effective on April 30, 2015.

8. All other issues related to this cause of action were reserved for determination by this Court at a later date.

9. The parties are the parents of one child, over the age of 18.

II. FINDINGS OF FACT

The Court finds the following facts have been established in regard to the issues

presented in the trial of this matter:

a) Separation Agreement

10. On or about February 10, 2010, George and Kylee signed a Separation Agreement (the "Agreement") effective March 1, 2010.

11. Each of the parties were over the age of 18 when they entered into the Agreement.

12.. The parties were living separate and apart at the time the Separation Agreement was entered into, with Kylee living in Park City and George living in Hawaii.

13. The Separation agreement sets forth in the preamble "WHEREAS, each of the parties is more than 18 years of age, and they desire to confirm their separation and to make arrangements in connection therewith, including the settlement and adjustment of their property rights and other rights, responsibilities, and obligations growing out of their marital relationship".

14. The Agreement further sets forth "WHEREAS after careful consideration, each party believes it is in his or her own respective best interest to enter into this Separation Agreement and Property Settlement and each party considers this Agreement to be fair, reasonable and equitable".

15. The Separation Agreement states "WHEREAS, each party has read this Agreement, fully understands the terms, conditions and provisions hereof and deems such to be fair, just, and equitable".

16. The Separation Agreement was a standard form obtained from the internet that was discussed by the parties and filled out together. Petitioner typed in the Agreement for the parties.

17. Both, Kylee and George Sandusky dated and signed the Separation Agreement. The signatures of both parties were notarized. The signature of Petitioner was witnessed by friend Beverly Chaidez.

18. The parties entered into an Addendum to the Agreement, dated February 8, 2010, stating: "At any time either one of the parties may terminate the monthly alimony payments of \$2000 with a lump sum cash payment of \$400,000".

19. The Addendum to the Separation Agreement became effective March 1, 2010. Both Petitioner and Respondent signed the Addendum.

20. The parties entered into the Separation Agreement knowingly and voluntarily. Paragraph M of the Agreement states: "Each of the parties acknowledge that he or she has read this Agreement and understands its contents and provisions; that it is a fair and reasonable agreement to each of them, having due regard to the conditional and circumstances of the parties hereto on the date hereof; that each has signed and executed the Agreement freely and voluntarily and without fear, compulsion, duress, coercion, persuasion or undue influence exercised by either party upon the other or by any other person or persons upon either."

21. The Separation Agreement further states above the parties signatures:

THE PARTIES AGREE AND ACKNOWLEDGE THAT SHOULD A PROCEEDING OF LEGAL SEPARATION, DISSOLUTION OR DIVORCE BE FILED IN ANY COURT OF COMOPETENT JURISDICATION, THIS AGREEEMNT SHALL BE INCORPORATED INTO ANY SUCH COMPLAINT OR PETITION FOR DIVORCE, DISSOLUTION OR LEGAL SEPARATION, AND THEREAFTER BE INCORPORATED IN WHOLD IN ANY ORDER OR JUDGEMENT OF LEGAL SEPARATION, DISSOLUTION OR DIVORCE.

22. The Agreement is clear on its face describing the document as a Separation Agreement having as its purpose a desire to confirm separation of the parties and settlement of their property rights and other rights, responsibilities and obligations growing out of their marital relationship.

23. The parties entered into the Addendum to the Separation Agreement knowingly and willingly.

24. The parties complied with the terms of the Separation Agreement for approximately 16 months after entering into the Agreement.

25. Beginning March, 2010, Respondent began monthly payments of \$2000 to Petitioner per the terms of the Agreement. Petitioner accepted these payments and reported the amount of \$20,000 in alimony on her 2010 tax forms. Petitioner later amended her 2010 tax forms to omit the word "alimony" after filing her petition for divorce.

26. On or about February of 2011, Petitioner used the property division under the terms of the Separation Agreement when reporting her assets on FAFSA forms to obtain financial aid for college for the parties' son.

27. On June 3, 2011, Petitioner filed her Verified Petition for Decree of

Divorce, citing irreconcilable differences. Petitioner asked that the Separation Agreement be declared null and void and claims all property of the parties is marital property.

28. The assets of the parties when they moved to Park City, Utah in the fall of 2007, consisted of \$1.3 million dollars in cash and 10 undeveloped lots in Hawaii. The assets consisted of Separate property of George Sandusky and marital property of the parties. The parties owned no joint real property. The cash money was invested in certificates of deposits, interest bearing bank accounts and at one point private money loans or "hard money" loans carrying a higher than normal interest rate.

29. Petitioner presented no evidence of material non-disclosure regarding the assets of the parties during the marriage or at the time the parties entered into the Separation Agreement.

30. Petitioner continued to report her assets on the Federal (FAFSA) and college financial aid (CSS) forms as reflected in the terms of the Separation Agreement each of the 4 years the parties' son attended college, beginning 2011 through 2014. Respondent filed only the college financial aid (CSS) forms.

31. The parties' son received financial aid in the form of Pell grants from the federal government based on the information Petitioner reported in her Federal financial aid forms (FAFSA).

32. Petitioner reported her assets as reflected in the terms of the Separation Agreement on government forms in order to obtain subsidized housing. Petitioner currently resides in government subsidized housing.

b. Separate Property

33. On February 28, 1977, Respondent began working for the Los Angeles, California Fire Department. He retired from the Los Angeles Fire Department after 20 years and has received a pension since 1997.

34. In 1977 Respondent purchased his first house when single and sold it in 1979 for a profit of \$17,000. Respondent used these proceeds to purchase other property that returned a profit to Respondent. In 1986 he sold property he purchased with partners for a profit of approximately \$70,000.

35. In October, 1986, before marrying Petitioner, Respondent bought a $\frac{1}{2}$ interest in a property on Dover Lane (the "Dover House"). To purchase the $\frac{1}{2}$ interest in the property, Respondent paid \$50,000 cash from his separate account and assumed $\frac{1}{2}$ of a \$300,000 mortgage.

36. On November 1, 1986, Petitioner and Respondent were married in Ventura County, California. The parties lived in the Dover property part time, moving out for the summer months for approximately 2 years.

37. In July 1987, Respondent bought the other $\frac{1}{2}$ interest in the Dover house adding equity in the amount of \$55,000, through transfer to Seller (name??) of his interest in a lot owned by Respondent in Hollywood Beach, CA. and assumed the entire \$300,000 mortgage on the Dover house. Concurrently, on July 24, 1987, Petitioner signed a Quitclaim Deed divesting her of any interest in the Dover house.

38. In 1990, Respondent sold the Dover house for a profit of \$391,000.

39. In 1991, Respondent purchased a 4-plex in San Clemente, California for \$535,000 putting down the profit of \$400,000 from the Dover house, \$391,000 plus a commissions credit as his sister was the realtor and a loan of \$135,000.

40. In 1992, Respondent bought a 5-plex in San Clemente for approximately \$585,000 with \$200,000 credit line from the 4-plex property.

41. In 1996, Respondent sold both the 4-plex and the 5-plex and then moved to Hawaii with Petitioner, and their 3 year old son. He sold the 5-plex for \$700,880 and the 4-plex for \$350,000. The purchase and sale of these properties did not result in a profit to Respondent but he did retain his original investment of \$400,000. Respondent's separate property when they left California for Hawaii was \$400,000 cash.

42. In 1997 after, moving to Hawaii, Respondent purchase a lot with cash in the amount of \$160,000. He built a home for approximately \$90,000 in material and sold the house in 1998 before it was completely finished for \$425,000 and a profit of \$175,000.

43. Respondent purchased a condominium referred to as the White Sands condo for \$170,000 and later sold it for \$220,000, and a profit of \$50,000. The total amount of return on Respondent's separate property was \$625,000.

44. In 2000, Respondent then purchased 10 undeveloped lots in Hawaii for 205,000 cash as his sole and separate property. Respondent had left \$400,000 of his separate property after purchasing the undeveloped lots.

45. In 2002, Respondent purchased the Lyman property, a large estate having

several houses on it, with his sister and her husband each putting \$400,000 cash as a down payment. Respondent used his separate property of \$400,000 as his portion of the cash down payment. A loan for 1 million dollars was also obtained. The loan was paid down within a year from the sale of one of the houses on the property. The property was in disrepair when purchased and some work was done to make the property more habitable. Another house on the property was rented to help cover the reduced mortgage. Kylee and George lived in the property until it sold in 2002. The property was sold for 3.4 million dollars. George and his sister split 3 million dollars after paying off the mortgage and real estate fees.

46. The money from the sale of the Lyman property is the cash money that the parties brought with them when they moved to Park City, Utah.

47. The Respondent has met his burden and adequately shown his separate property of \$391,000 and increasing in value up to and including the appreciation from the return on the Lyman property in the amount of \$1,500,000.00.

48. The Respondent has met his burden and adequately shown his separate property having a value of \$625,000. (\$400,000 brought to Hawaii; \$175,000 profit from the first house built in Hawaii and \$50,000 in profit from the White Sands condominium).

49. Petitioner has not shown that she contributed significantly to the appreciation and/or increase in the value of the properties purchased and sold by Respondent with his separate property to change Respondent's separate property to marital property.

50. The Separation Agreement was a fair distribution of the assets of the parties when entered.

II. CONCLUSIONS OF LAW AND ANALYSIS

A. The Separation Agreement is a Valid and Binding Contract.

In Utah, both premarital and post marital agreements, as well as stipulations entered into in contemplation of separation and divorce are valid, binding and enforceable. The Supreme Court of Utah has affirmed the “general authority of spouses to arrange property rights by a contract that is recognized and enforced by a court in the event of divorce.” *Reese v. Reese*, 1999 UT 75, 984 P.2d 987, ¶24. The court affirmed “the general principle that spouses... may make binding contracts with each other and arrange their affairs as they see fit, insofar as the negotiations are conducted in good faith. *Id.*, at ¶ 25. In *Sweet v. Sweet*, 2006 UT App. 216, 138 P.3d 63, the court held that agreements between spouses concerning the disposition of property owned by them at the time of marriage are valid, so long as there is no fraud, coercion or material non-disclosure. ¶3.

Kylee is highly educated, having a masters degree in Education and George is a highly sophisticated business man, so to attribute lack of knowledge is not consistent with who they are. “In the context of contract formation, the Utah appellate courts have held that ‘each party has the burden to read and understand the terms of a contract before he or

she affixes his or her signature to it” *Burningham v. Westgate Resorts, Ltd.* at ¶ 24, citing *McCleve Props., LLC v. D.Ray Hult Family Ltd. P’shi*, 2013 UT App 185, at ¶ 12, 307 P.3d 650 (affirming summary judgment because affidavit of party’s intent was insufficient to create fact question in light of unambiguous writings to the contrary). “Furthermore, sophisticated business parties are charged with knowledge of the terms of the contracts they enter into.” *ASC Utah, Inc. V. Wolf Mountain Resorts, LC* 2010 UT 65, ¶28, 245 P.3d 184. Given these principals and the clear language contained in the Agreement, there is no question that the parties reached a meeting of the minds when they executed the Agreement. “If the language within the four corners of the contract is unambiguous, the parties’ intentions are determined from the plain meaning of the contractual language, and the contract may be interpreted as a matter of law.” *Burningham v. Westgate Resorts, Ltd.* at ¶ 25 citing generally *Nolin v. S & S Constr., Inc.* 2013 UT App 94, ¶ 12, 301 P. 3d 1026.

In light of the plain language of the agreement, Petitioner’s alternative interpretation contrary is not reasonable. There is no ambiguity in the agreement. Any contended for interpretation must be “reasonably supported by the language of the contract” *Ward v. Intermountain Farmers Ass’s*, 907 P.2d 264, 268 (Utah 1995).

B. Petitioner has not established fraud in the inducement of her signing the Agreement by clear and convincing evidence.

The defense of fraudulent indecent requires proof by clear and convincing evidence. *Anderson v. Kriser*, 266P.3d 819 (Utah 2011). Petitioner has not established by clear and convincing evidence that the she was fraudulently induced into signing the

Agreement. There is no evidence of fraud, coercion, or material non-disclosure in the formation of the Agreement. Both Petitioner and Respondent prepared the document together, with Petitioner typing the terms herself. The parties signed the Agreement and had it notarized as to the validity of the document being a Separation Agreement and the terms and provisions set forth therein. There is no reasonable mistake in the execution and acceptance of the Agreement; the Agreement clearly and repeatedly articulates its purpose, separation and its scope, property settlement. The parties acted in compliance with the Agreement for more than 16 months after entering into the Agreement. As this is Petitioner's defense to the validity of the Agreement, the burden of proof was on her to show the fraud by clear and convincing evidence. See *Anderson v. Kriser*. Petitioner did not present evidence to support her claim of fraudulent inducement in entering into the Separation Agreement that would rise to the level of clear and convincing proof to support voiding the Agreement.

C. Petitioner has not Proven that there was material non-disclosure when signing the Agreement.

Additionally, there are no instances of material non-disclosure, both parties were well aware of the financial situations throughout the marriage. Both parties were aware of all the marital and non-marital assets at the time the Agreement was executed. Kylee testified as to having knowledge of all bank accounts and all estate assets at trial. Therefore, there was no material non-disclosure. There are no articulated instances of coercion; allegations related to one particular use of the Agreement, related to their son's financial aid plan are irrelevant. Such a purpose is contrary to a plain and ordinary

reading of the formally witnessed and signed Agreement and the facts in this case.

Petitioner produced no clear and convincing evidence of coercion. Again, Petitioner typed the Agreement and abided by its terms for over a year until she decided to file for divorce. Further, she admits to using the terms of the Agreement for four years to obtain financial aid for her son. At trial, Petitioner admitted using the terms of the Agreement to obtain government subsidized housing for herself. Kylee is still living under the terms of the Agreement as she currently resides in that government housing that the terms of the Agreement supported.

D. By her conduct, Petitioner has ratified the agreement and is now collaterally estopped from claiming the Agreement is null and void.

Kylee abided by the terms of the Agreement for over a year, even reporting the funds George gave her monthly as “alimony” on her 2010 tax returns. Further, Kylee admits using the information contained in the Agreement as true and accurate for four (4) years when filling out the financial aid documents in attempting to receive aid for the parties’ sons. Petitioner testified at trial that she also used the terms of the Agreement when she needed to obtain government subsidized housing for herself. Kylee used the Agreement as a valid and enforceable contract when it was beneficial to her for her son’s financial aid for college tuition and when she obtained government subsidized housing for herself. Petitioner continues to use the terms of the Agreement for her benefit.

“The doctrine of quasi-estoppel precludes a party from asserting, to another’s disadvantage, a right inconsistent with a position it has previously taken”. *Wohnoutka v. Kelley*, 330 P.3d 762 (Utah Ct. App. 2014). Petitioner is stopped from the right to

challenge the validity and enforceability of the Agreement. By her conduct she has waived her ability to assert such a challenge. A party “may waive such right either expressly or by his conduct, and the right....may be lost by estoppel.” *ASC Utah, Inc. v. Wolf Mountain Resorts, L.C.* 2010 WL 2425986 ¶ 6 (D. Utah 2010), citing *Brazeal v. Bokelman*, 270 F.2d 943, 947 (8th Cir. 1959).

E. Respondent Has Proven His Separate Property.

1. Respondent has proven that the Dover House and the proceeds therefrom were his separate property.

Separate property is exempt from the marital estate and equitable distribution. The Court must first categorize the parties’ assets into marital and separate property. Each party is entitled to all of that parties’ separate property including its appreciation during the marriage. *Thompson v. Thompson*, 208 P.3d 539 (Ct. of App. 2009). Premarital property is viewed as separate property and “when appropriate, equity will require that each party retain the separate property brought to the marriage”. *Burke v. Burke*, 733 P.3d 133 (Utah 1987). Any appreciation of the separate property brought into the marriage should not become part of the marital estate, especially when the receiving spouse has made the contributions which led to the increase in value to the separate assets. *Id.* at ¶¶ 4, 5. Even if the separate property has substantially changed in form, it still maintains its separate character.

Both parties testified that George owned ½ of an interest in a home (the “Dover” house) as well as interest in other properties before they got married. Both parties agree that shortly after the marriage George acquired the second half of the interest in the same

property. Both parties agree that at the time of the acquisition of the entire interest in the Dover home, Kylee signed a Quitclaim deed to George absolving any interest or potential interest in the whole Dover property. When George sold the Dover house, he made a profit of \$391,000.00.

2. Respondent has shown that his separate property remained his separate property.

The Findings of Facts show it was this separate profit that was continuously rolled over to buy and sell real estate assets throughout the parties' marriage and beyond. All the properties were purchased and paid for by George's separate account. The separate character was maintained throughout the marriage. When the separate property character is maintained in segregated accounts, any conversion of the separate property [into other properties] does not "destroy the integrity of segregation." *Burt v. Burt*, 799 P.2d 1166 ¶3 (Utah 1990).

The Separation Agreement takes this into account when giving George \$400,000 and the lots he purchased with the proceeds from the sale of the properties and dividing the remaining assets equally between the parties. Even, if the Separation Agreement is held invalid, George would still be entitled to his separate property, even though it has changed its form throughout the years, plus all appreciation.

Although Petitioner provided testimony of efforts put into the property, these efforts mostly consisted of housekeeping, sweeping, cleaning, painting, etc. During the Dover house years and subsequently, Kylee was working full time and George was doing the work enhancing the properties values. Increase in valuation of the property was due more to the fact that property values appeared to be rising rapidly at the time. In addition,

there was no evidence that Petitioner contributed any any monies towards the properties from her separately. Where one spouse contribution to the separate property does not materially affect its value, then appreciation is not included in the marital estate. *Burke v. Burke*, 733 P.2d 133, ¶ 5 (Utah 1987).

F. The Separation Agreement is an equitable distribution of the separate and marital property.

While, a stipulation and agreement is advisory and does not constrain the court's equitable powers, they are usually adopted unless found to be unfair or unreasonable. *Coleman v. Coleman*, 743 P.2d 782, 789 (Utah App. 1987). The Agreement was fair and equitable. "In Utah, marital property is ordinarily divided equally between the divorcing spouses and separate property, which may include premarital assets, inheritances, or similar assets, will be awarded to the acquiring spouse." *Stonehocker v. Stonehocker*, 2008 UT App 11 ¶ 13, 176 P.3d 476 (Utah Ct App. 2008), citing *Olsen v. Olsen*, 2007 UT App. 296 ¶ 23, 169 P.3d 765.

The breakdown of the assets of the parties is as follows:

- The parties came to Park City, Utah in August 2007 with \$1.3 million dollars and no debt. This amount was amassed from a real estate deal where George invested approximately \$400,000 of his separate property that he had been investing prior to the marriage and continuing into the marriage.
- After costs of living, the amount at the time of the Agreement was approximately \$1.2 million dollars. In the Agreement, George was to keep the lots he invested in as his separate property as well as his pension.

- After removing George's \$400,000 separate property from the 1.2 million dollars that left \$800,000 to be divided. The Agreement provides for George to provide Kylee with \$2,000 for life or a lump sum \$400,000 which is half of the \$800,000 remaining. Kylee chose the \$2,000 for life which could potentially exceed her equal amount in the \$800,000.
- Per the Agreement, George has continued investing his separate property in the ordinary course of business.

G. The Court divides the separate property and the marital property as follows.

The marital assets are valued as of the time of the divorce decree. *Morgan v. Morgan*, 795 P.2d 684, 687 (Utah Ct. App. 1990). The decree of divorce was entered on the last day of trial on April 30, 2015. At that time the assets were as follows:

Cash in bank accounts:	\$523, 914.22
Cash in escrow account:	\$310,000.00
Foo house:	\$400,000.00
Church lot:	\$128,500.00
Roadway lot:	\$0- \$100,000
Judgment lien	\$187,000.00

Based on the assets of the parties, the Court awards the following:

1) Valid and Enforceable Separation Agreement:

George's Separate Property: Foo House (purchased with his \$400,000 separate property
100% of his Pension
Cash proceeds from lots \$335,000

Kylee's Separate property: 100% of her 401(k)

Kylee's Separate property: \$310,000 (\$400,000 lump sum payment per the addendum less \$90,000 previously taken

* Any cash over these amounts to be split equally between the parties.

2) Separation Agreement is Not Valid Separate property and minimum appreciation.

George's separate property: \$625,000 credit plus appreciation (\$400,000 +175,000 Hawaii house build + 50,000 White Sands condo) which has been converted to the following property:
Foo House and church Lot
Cash from lot sale \$335,000
Roadway lot

75% (approx.) of George pension

George's marital property: 50% of Kylee's 401(k)
50% of Bank accounts in George's name
50% of bank account in Kylee name

Kylee's marital property: 25% (approx.) of George's pension
50% of Bank Accounts in Kylee name
50% of bank accounts in George's name
50% of Kylee 401(k)

3) Separation Agreement Not Valid and full appreciation.

George's separate property: \$1.5 Million proceeds from Lyman's converted to the following:

\$335,000.00 from lots
Foo house (& Church lot) and Roadway lot
Cash in George's bank accounts
Cash in Attorney trust account
75% George pension

George's marital property: 50% Kylee's pension
50% Kylee Bank Accounts

Kylee's marital property: 25% of George's pension
 50% of her pension

Personal property in the possession of the parties to remain with the parties.

Attorney fees awarded to Respondent upon finding the Separation Agreement is valid. Each party to pay their own attorney fees upon finding the Separation Agreement is not enforceable.

DATE this 26th day of May, 2015

ELIZABETH A. SHAFFER, PLLC

/s/ Elizabeth A. Shaffer (digitally)

Elizabeth A. Shaffer

Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that on this the 26th day of May, 2015, a true and correct copy of the foregoing FINDINGS OF FACT CONCLUSIONS OF LAW was filed via the Court's electronic filing system which automatically delivered service to the following:

Paul J. Morken
P.O. Box 980691
Park City, UT 84098

/s/ Rankin H. Perry

Attorney for Respondent

FOR SUMMIT COUNTY, STATE OF UTAH

KYLEE J. SANDUSKY,

POSTTRIAL MEMORANDUM

VS.

GEORGE A. SANDUSKY,

Civil No. 114500103 DA

Respondent.

Judge Kara L. Pettit

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

STATEMENT OF THE CASE

George and Kylee were married in Ventura County, California on November 10, 1986. The parties moved to Park City, Utah in August, 2007. The parties are parents of one child, Micah Sandusky born on October 27, 1992. Micah is now over the age of 18 and graduated from the University of Pennsylvania on May 18, 2015.

The parties, George and Kylee, entered into a Separation Agreement on February 10, 2010 (the "Agreement", Exhibit "A"). The parties were living separate and apart at the time of entering into the Agreement. They thereafter separated their property per the Agreement, continued to live independently and abided by the Agreement. Subsequently, Kylee filed a formal Petition for the dissolution of their marriage on June 3, 2011. In the Petition, Kylee stated that the Agreement should be void and unenforceable. The parties have argued their positions in oral arguments before this Court on May 28th, 29th and 30th, 2015.

ISSUES BEFORE THE COURT

The issues to be determined by this Court are the following:

1. The Validity of the Separation Agreement;
2. The Determination of Separate Property and Remove said Separate Property from the Marital Estate;
3. The Determination of Marital Estate; and
4. The Equitable Distribution of Marital Property.

I. THE SEPARATION AGREEMENT AND PROPERTY SETTLEMENT IS A VALID AND ENFORCEABLE CONTRACT

A. THE PARTIES ENTERED INTO THE AGREEMENT VOLUNTARILY.

The Agreement between the parties is a valid and binding contract. An examination of the Agreement, clearly and unambiguously outlines the terms of the Agreement, to wit: for separation and division of the parties' property. The Agreement also clearly reflects formalities in signing. The parties prepared the Agreement together with Petitioner testifying that she was the party who actually typed up the agreement. The parties acknowledged, by their signatures and notarization, that the contract was binding, that the document encompassed the parties entire agreement, that the settlement was entered into voluntarily and recognized that the Agreement shall be incorporated into any Petition for Divorce and thereafter be incorporated in whole in any order or judgment of divorce. The Agreement was both witnessed and notarized. The Agreement settles terms for alimony, distribution of real and physical property, and was contemplated in the context of the parties' financial situations. Kylee's testimony at trial clearly demonstrates her intimate knowledge with George's real property holdings and financial dealings at the time of the Agreement.¹

Kylee is seeking to void the signed Agreement after abiding by the terms of the Agreement for over one year and by holding out the Agreement as a valid document in obtaining financial aid for the parties' son's college tuition for four (4) years.² Kylee testified that she also

¹ K. Sandusky Tr. 9:33:05 – 13:37:13, April 28, 2015; 13:16:00 – 10, April 29, 2015.

² K. Sandusky Tr. 12:54:48 – 13:04:01, April 29, 2015

used the terms of the Agreement in order to qualify for government subsidized housing.³ Therefore, she is still living under the terms of the Agreement as she remains in the subsidized housing procured by the terms of the Agreement. Kylee is now asking this Court to void the Agreement. The Agreement is unambiguous in its purpose, scope, and consideration, and was signed and notarized by each party. Kylee did not present any evidence of material non-disclosure of property or assets at the time of the Agreement. In fact, the evidence is to the contrary, Kylee testified as to having knowledge and access to all of the financial accounts and transactions of George, at the time of entering into the Agreement. She admits having knowledge of the real property owned by George prior to their marriage, during the marriage and at the time she entered into the Agreement. Kylee admits to voluntarily preparing the Agreement, freely entering into the Agreement, with knowledge of all the assets and financial conditions between the parties. The Agreement is clear and speaks for itself and is a valid and enforceable contract.

Both Kylee and George admit they voluntarily executed the Separation Agreement and Property Settlement together.⁴ Their signatures were notarized as to the validity of the Agreement. Pursuant to Article 9 A. of the Separation Agreement the parties acknowledge and agree that the “division and distribution of the marital property set for the herein is just, fair and reasonable, is deemed by the parties to be equitable and satisfactory, and that this Agreement shall be binding on the parties.”

³ K. Sandusky Tr. 13:56:32-50

⁴ K. Sandusky Tr. 14:26:10, April 28, 2015.

In Utah, both premarital and post marital agreements, as well as stipulations entered into in contemplation of separation and divorce are valid, binding and enforceable. The Supreme Court of Utah has affirmed the “general authority of spouses to arrange property rights by a contract that is recognized and enforced by a court in the event of divorce.” *Reese v. Reese*, 1999 UT 75, 984 P.2d 987, ¶24. The court affirmed “the general principle that spouses... may make binding contracts with each other and arrange their affairs as they see fit, insofar as the negotiations are conducted in good faith. *Id.*, at ¶ 25. In *Sweet v. Sweet*, 2006 UT App. 216, 138 P.3d 63, the court held that agreements between spouses concerning the disposition of property owned by them at the time of marriage are valid, so long as there is no fraud, coercion or material non-disclosure. ¶3.

The Agreement is a valid contract entered into by the parties in contemplation of their separation and divorce. The parties were living separately when they entered into the Agreement and continued to live separate and apart.⁵ After executing the Agreement, the parties performed the terms of the Agreement: specifically, they separated the property identified, continued in their separate financial affairs, George paid Alimony to Kylee and she filed her taxes in 2010, acknowledging the alimony payments. Subsequently, Kylee amended her 2010 Taxes to omit the word alimony after consulting with an attorney.⁶ At trial, Kylee testified that she did not know why she called the monies that George put into her account “alimony”, but

⁵ M. Sandusky Tr. 10:28:57 – 10:31:06, April 30, 2015.

⁶ K. Sandusky Dep. 116:3-9.

after speaking to her counsel, she was told she had been “deceived” and it needed to be amended to “get it off the record”.⁷ However, Kylee presented no evidence at trial of such deception.

A. PETITIONER PRESENTED NO CLEAR AND CONVINCING EVIDENCE OF FRAUD, COERCION, OR MATERIAL NON-DISCLOSURE.

There is no evidence of fraud, coercion, or material non-disclosure in the formation of the Agreement. Both George and Kylee prepared the document together, with Kylee typing the terms herself.⁸ They signed the Agreement and had it notarized as to the validity of being a Separation Agreement and the terms and provisions set forth. There is no reasonable mistake in the execution and acceptance of the Agreement; the Agreement clearly and repeatedly articulates its purpose, separation and its scope, property settlement. The parties acted in compliance with the Agreement and Kylee. As this is Petitioner’s defense to the validity of the Agreement, the burden of proof was on her to show the fraud by clear and convincing evidence. *Anderson v. Kriser*, 266P.3d 819 (Utah 2011). Petitioner did not present evidence to support this defense that would rise to the level of clear and convincing evidence. Petitioner testified that George never mentioned the word “divorce” when the parties were executing the Agreement.⁹ George testified that the Agreement spoke for itself and was executed in contemplation of separation.

Additionally, there are no instances of material non-disclosure, both parties were well aware of each other’s financial situations. Both parties were aware of all the marital and non-marital assets at the time the Agreement was executed. Kylee testified as to having knowledge

⁷ K. Sandusky Tr. 14:15:20 – 57, April 29, 2015.

⁸ K. Sandusky Tr. 14:33:59, April 28, 2015; 13:11:08, April 29, 2015.

⁹ K. Sandusky Tr. 14:21:34, April 28, 2015

of all bank accounts and all estate assets at trial. Therefore, there was no material non-disclosure. There are no articulated instances of coercion; allegations related to one particular use of the Agreement, related to their son's financial aid plan are irrelevant. Such a purpose is contrary to a plain and ordinary reading of the formally witnessed and signed Agreement and the facts in this case. Petitioner produced no clear and convincing evidence of coercion. Again, Petitioner typed the Agreement and abided by its terms for over a year until speaking with an attorney once she decided to file for divorce. Further, she admits to using the terms of the Agreement for four years to obtain financial aid for her son. At trial, Petitioner admitted using the terms of the Agreement to obtain government subsidized housing for herself. Kylee is still living under the terms of the Agreement as she currently resides in that government housing that the terms of the Agreement supported.

The Separation and Property Settlement Agreement is clear and unambiguous on its face. Postnuptial and Ante nuptial Agreements are construed and treated as contracts in general. They "are in no way different from any other ordinary contract." *Beerman v. Beerman*, 749 P.2d 1271, 1278 (Utah Ct. App.1988).

In interpreting contracts, the principal concern is to determine what the parties intended by what they said. "We do not add, ignore, or discard words in this process; but attempt to render certain the meaning of the provision, [sic] in dispute, [sic] by an objective and reasonable construction of the whole contract." *Mark Steel Corp. v. Eimco Corp.*, 548 P.2d 892, 894 (Utah 1976). The ordinary and usual meaning of the words used is given effect, *Pugh v. Stockdale and Co.*, 570 P.2d 1027, 1029 (Utah 1977), and "[e]ffect is to be given the entire agreement without

ignoring any part thereof.” *Minshew v. Chevron Oil Co.*, 575 P.2d 192, 194 (Utah 1978). *See also Larrabee v. Royal Dairy Prod. Co.*, 614 P.2d 160, 163 (Utah 1980). *Beerman v. Beerman* 749 P.2d 1271, Utah App (1988), at ¶2.

As with any other contract, when interpreting an agreement between spouses we “look first to the four corners of the agreement to determine the intentions of the parties.” *Neilson v. Neilson*, 780 P.2d 1264, 1267 (Utah Ct.App.1989). Where the agreement is unambiguous on its face, we interpret it as a matter of law. *See id.* “In so doing, a court must attempt to construe the contract so as to ‘harmonize and give effect to all of [its] provisions.’ ” *Dixon v. Pro Image, Inc.*, 1999 UT 89, ¶14, 987 P.2d 48 (alteration in original) (quoting *Nielsen v. O'Reilly*, 848 P.2d 664, 665 (Utah 1993)).

A reason for which an agreement may have been used is not material as it relates to the validity of the contract. The contractual elements have been established making the Agreement valid and binding. Notwithstanding this, the parties continued to act under the Agreement after their son began college and applied for any financial aid that was available to him. Kylee held out the Agreement as a valid and true contract when attempting and obtaining from the United States government, financial aid towards the parties’ son’s college tuition.¹⁰ Such actions constitute a ratification of the Agreement. Further, Petitioner also held out the Agreement as true and valid when she needed it when obtaining federally subsidized housing for herself.

The parties in this case, acted in conformity with the Agreement and lived separate and independent lives since entering into the Agreement. Kylee is still acting under the terms of the

¹⁰ K. Sandusky Tr. 13:12:36-39, April 29, 2015.

Agreement as she is still living in the government subsidized housing that the terms of the Agreement helped obtain. There are no material disputed facts related to the validity of the contract entered into by George and Kylee. As a result, George is entitled to judgment that the Agreement is a valid contract as a matter of law.

B. PETITIONER IS COLLATERALLY ESTOPPED BY HER CONDUCT FROM ARGUING THE AGREEMENT IS INVALID.

Kylee abided by the terms of the Agreement for over a year, even reporting the funds George gave her monthly as “alimony” on her 2010 tax returns until she consulted with her attorney. Kylee admitted at trial that she only amended her taxes because her attorney told her that she had been “deceived” when she was in the process of filing for divorce from George. Further, Kylee admits using the information contained in the Agreement as true and accurate for four (4) years when filling out the financial aid documents in attempting to receive aid for the parties’ sons. Kylee testified at trial that not only did she use the terms of the Agreement to obtain funds from the Federal government for her son, she also used the terms of the Agreement when she needed to obtain government subsidized housing for herself. Once again holding out the terms of the Agreement to be true when attempting to get a form of compensation from the Government.

Kylee used the Agreement as a valid and enforceable contract to her benefit when she obtained funds from the U.S. government for her son’s financial aid for college tuition and when she obtained government subsidized housing for herself. Kylee is still living under the terms of

the Agreement. To date, Kylee is living in government subsidized housing that was obtained by the terms of the Agreement. Now, Kylee wishes to have the Agreement invalidated because she feels it works to her disadvantage and to George's advantage in the division of assets. "The doctrine of quasi-estoppel precludes a party from asserting, to another's disadvantage, a right inconsistent with a position it has previously taken". *Wohnoutka v. Kelley*, 330 P.3d 762 (Utah Ct. App. 2014). The right to challenge the validity and enforceability of the Agreement was waived by Kylee's conduct. A party "may waive such right either expressly or by his conduct, and the right....may be lost by estoppel." *ASC Utah, Inc. v. Wolf Mountain Resorts, L.C.* 2010 WL 2425986 ¶ 6 (D. Utah 2010), citing *Brazeal v. Bokelman*, 270 F.2d 943, 947 (8th Cir. 1959).

II. RESPONDENT SHOULD BE AWARDED HIS SEPARATE PROPERTY.

Premarital property is viewed as separate property and "when appropriate, equity will require that each party retain the separate property brought to the marriage".¹¹ Any appreciation of the separate property brought into the marriage should not become part of the marital estate, especially when the receiving spouse has made the contributions which led to the increase in value to the separate assets. *Id.* at ¶¶ 4, 5. Even if the separate property has substantially changed in form, it still maintains its separate character.¹²

Both parties testified that George owned ½ of an interest in a home (the "Dover" house) as well as interest in other properties before they got married.¹³ Both parties agree that shortly

¹¹ *Burke v. Burke*, 733 P.3d 133 (Utah 1987).

¹² *Burt v. Burt*, 700 P.2d 1166 (Utah Ct. App. 1990)

¹³ K. Sandusky Tr. 9:40:30, April 28, 2015; G. Sandusky Tr. 14:21:35 – 59, April 29, 2015.

after the marriage George acquired the second half of the interest in the same property.¹⁴ Both parties agree that at the time of the acquisition of the entire interest in the Dover home, Kylee signed a Quitclaim deed to George absolving any interest or potential interest in the whole Dover property.¹⁵ When George sold the Dover house, he made a profit of \$391,000.00.¹⁶ The Findings of Facts show it was this separate profit that was continuously rolled over to buy and sell real estate assets throughout the parties' marriage and beyond. All the properties were purchased and paid for by George's separate account. The separate character was maintained throughout the marriage. When the separate property character is maintained in segregated accounts, any conversion of the separate property [into other properties] does not "destroy the integrity of segregation." *Burt v. Burt*, 799 P.2d 1166 ¶3 (Utah 1990). The Separation Agreement takes this into account when giving George \$400,000 and the lots he purchased with proceeds and dividing the remaining assets equally between the parties. If the Agreement is held invalid, George would still be entitled to the separate profit, even though it has changed its form throughout the years, plus all appreciation.

Kylee did minimal work at the various properties throughout the marriage. Most of what she testified to doing was housekeeping, sweeping, cleaning, painting, etc. During the Dover house years and subsequently, Kylee was working full time¹⁷ and George was doing the work of enhancing the properties. That coupled with inflation on land values caused the appreciation in the properties and allowed George to make a profit. Kylee never contributed any monies

¹⁴ K. Sandusky Tr. 9:48:15, April 28, 2015; G. Sandusky Tr. 14:29:53, April 29, 2015.

¹⁵ K. Sandusky Tr. 9:51:32 – 9:53:15. G. Sandusky Tr. 14:38:30, April 29, 2015.

¹⁶ G. Sandusky Tr. 14:42:08, April 29, 2015

¹⁷ K. Sandusky Tr. 13:23:09 0 34, April 29, 2015.

towards the properties from her separate account. Where one spouse contribution to the separate property does not materially affect its value, then appreciation is not included in the marital estate. *Burke v. Burke*, 733 P.2d 133, ¶ 5 (Utah 1987)

III. PETITIONER'S CREDIBILITY IS QUESTIONABLE.

Petitioner's testimony lacked credibility. "Clearly the fact finder is in the best position to judge the credibility of witnesses and is free to disbelieve their testimony. Even where testimony is uncontroverted, a trial court is free to disregard such testimony if it finds the evidence self-serving and not credible". *Ouk v. Ouk*, 2015 UT App. 57, citing *Glauser Storage, LLC v. Smedley*, 2001 UT App. 141 ¶ 24, 27 P.3d 565 (citations and internal quotation marks omitted).

Petitioner testified that she has a Masters degree in education that she obtained in 1995 or 1996,¹⁸ and yet she testified that she does not understand the documents she obtained including deeds, mortgages and quitclaim deeds. Further, when questioned why on her 2010 taxes, she originally classified the \$20,000 from George as alimony before she spoke with an attorney, she testified that she doesn't even know what alimony means.¹⁹ During that same line of questioning she said she didn't know why she classified the monies as alimony²⁰ and she was just following the Agreement at that time.²¹ Now Petitioner is attempting to declare the Agreement she followed as void.

Regarding the form Kylee filled out for her son's financial aid, she testified that she could

¹⁸ K. Sandusky Tr. 13:25:30, April 29, 2015.

¹⁹ K. Sandusky Tr. 14:13:31, April 29, 2015.

²⁰ K. Sandusky Tr. 14:12:14, April 29, 2015.

²¹ K. Sandusky Tr. 14:12:29, April 29, 2015

only fill out what she knew which was what was in her bank accounts.²² She testified that when she filled out the first FAFSA form in February 2011 that she was not contemplating divorce at all;²³ she was just using the terms of the Agreement for financial benefit and yet she filed for divorce four (4) months later. Petitioner would like for the Court to believe that when she filled out the subsequent FAFSA forms and CSS Profiles, she could only report what she had in her bank accounts as George was not communicating. However, Petitioner had sufficient knowledge of the other bank accounts to know she could withdraw \$90,000 in June of 2011. Further, as of December, 2011, Petitioner had knowledge of all bank accounts and real estate assets when she received Respondent's responses to her first set of interrogatories and requests for production of documents. Yet, Kylee continued to report only her bank accounts for three more years of student financial aid forms and to the U.S. government when obtaining her government subsidized housing.

Petitioner testified that she remembers distinctly that she did not have a conversation almost thirty years ago in 1986 about not touching George's pension, but can't remember or doesn't know if she was audited by the IRS in 2011. Petitioner's testimony is self-serving, inconsistent, and not credible. This Court should disregard much of her testimony.

²² K. Sandusky Tr. 14:04:00, April 29, 2015

²³ K. Sandusky Tr. 13:59:50, April 29, 2015

IV. **THE SEPARATION AGREEMENT IS EQUITABLE AND SHOULD BE INCORPORATED IN THE DIVORCE DECREE**

Utah courts have held that when the parties intend to incorporate a separation agreement or property settlement agreement into a divorce decree, the courts should give it “full faith and credit”. *Scott v. Scott*, 19 Utah 2d 267 (1967). When the parties use the appropriate provisions in the agreement contemplating a proceeding of divorce, the agreement should be in force. *Id.*

The Agreement in the case before the court provides the following:

THE PARTIES AGREE AND ACKNOWLEDGE THAT SHOULD A PROCEEDING OF LEGAL SEPARATION , DISOLUTION OR DIVORCE BE FILED IN ANY COURT OF COMPETENT JURISDICITON, THIS AGREEMENT SHALL BE INCORPARTED INTO ANY SUCH COMPLAINT OR PETITION FOR DIVORCE, DISSOLUTION OR LEGAL SEPARATION, AND THEREAFTER BE INCORPORATED IN WHOLE IN ANY ORDER OR JUDGEMENT OF LEGAL SEPARATION, DISSOLUTION OR DIVORCE.

It is clear from the language, as emphasized in the Agreement, the parties intended for the Agreement to be incorporated into any decree of divorce. The parties have been separated and living apart since 2009. The marital assets should be divided as set forth in the language of the Agreement and finalized in a decree of divorce.

The Agreement, as the manifest intent and terms of separation, should be adopted and enforced. Final agreements of parties, are not lightly modified. In order to modify an agreement the moving party must show a substantial change not contemplated by the parties. *Bowers v. Bowers*, 658 P.2d 1213 (Utah 1983). Likewise, this court, when considering entering the decree should consider the voluntary and comprehensive nature of the Separation Agreement created by

the parties. Further, nothing has substantially changed in the parties' circumstances since the Agreement was entered into as would affect the substantial fairness of the Agreement. Any circumstances that may have changed were contemplated by the parties in the Agreement by providing in Article 2 that from the date of the Agreement, both shall live and conduct themselves as if never married and could choose to act for each party's "separate benefit to engage in any employment, business or profession." There is no compelling reason to modify the fair and reasonable Agreement and the Agreement should be incorporated into the decree.

While, a stipulation and agreement is advisory and does not constrain the court's equitable powers, they are usually adopted unless found to be unfair or unreasonable. *Coleman v. Coleman*, 743 P.2d 782, 789 (Utah App. 1987). The Agreement was fair and equitable. "In Utah, marital property is ordinarily divided equally between the divorcing spouses and separate property, which may include premarital assets, inheritances, or similar assets, will be awarded to the acquiring spouse." *Stonehocker v. Stonehocker*, 2008 UT App 11 ¶ 13, 176 P.3d 476 (Utah Ct App. 2008), citing *Olsen v. Olsen*, 2007 UT App. 296 ¶ 23, 169 P.3d 765. The breakdown of the assets is as follows:

- The parties came to Park City, Utah in August 2007 with \$1.3 million dollars and no debt.²⁴ This amount was amassed from a real estate deal where George invested approximately \$400,000 of his separate property that he had been investing prior to the marriage and continuing into the marriage.

²⁴ See Petitioner's Amended Verified declaration ¶ 1.4

- After costs of living, the amount at the time of the Agreement was approximately \$1.2 million dollars. In the Agreement, George was to keep the lots he invested in as his separate property as well as his pension.
- After removing George's \$400,000 separate property from the 1.2 million dollars that left \$800,000 to be divided. The Agreement provides for George to provide Kylee with \$2,000 for life or a lump sum \$400,000 which is half of the \$800,000 remaining. Kylee chose the \$2,000 for life which could potentially exceed her equal amount in the \$800,000.²⁵
- Per the Agreement, George has continued investing his separate property in the ordinary course of business.²⁶

Further, by her actions and conduct, Kylee is collaterally estopped from now challenging the validation and enforceability of the Agreement. For the past years she has held out the Agreement as a true and valid document which correctly outlines the division of assets. She cannot now allege the Agreement is invalid, to George's disadvantage, by asserting a position completely inconsistent with her prior position taken for the past years.

²⁵ Since the parties separated, George has paid four (4) years of Micah's tuition at University of Pennsylvania which was approximately \$167,000.

²⁶ See, Separation Agreement, Article 2

DATED this 26th day of May, 2015

ELIZABETH A. SHAFFER, PLLC

/s/ Elizabeth A. Shaffer (digitally)
Elizabeth A. Shaffer
Attorney for Respondent/Counter Petitioner

CERTIFICATE OF SERVICE

I certify that on this the 26th day of May, 2015, a true and correct copy of the foregoing
POSTTRIAL MEMORANDUM was filed via the Court's electronic filing system which
automatically delivered service to the following:

Paul J. Morken
P.O. Box 980691
Park City, UT 84098

/s/ Rankin H. Perry

CERTIFICATE OF SERVICE

I certify that on this the 18th day of July, 2016, a true and correct copy of the foregoing
APPELLANT'S APPENDIX B was filed via the Court's electronic filing system
which automatically delivered service to the following:

Paul J. Morken
P.O. Box 980691
Park City, UT 84098

/s/ C.Kramer