

2003

# Gerald D. Lundahl v. Ruth M. Telford (Lundahl) : Opening Brief

Utah Court of Appeals

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Marlene Telford (Lundahl).

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## Recommended Citation

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**UTAH COURT OF APPEALS  
BRIEF**

**UTAH  
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KFU  
50**

**A10  
DOCKET NO. 20030800-CA**

MARLENE TELFORD (LUNDAHL)  
4139 NORTH DEVONSHIRE CIRCLE  
PROVO, UTAH 84604

In Pro se

**UTAH COURT OF APPEALS**

In re Marriage of:	)	<u>CASE NUMBER 20030800-CA</u>
	)	
<b>GERALD D. LUNDAHL, M.D</b>	)	
Plaintiff and Appellee,	)	<b>Opening Brief</b>
	)	
vs.	)	
	)	Fourth Judicial District Court
<b>RUTH M. TELFORD (LUNDAHL)</b>	)	
Respondent, Appellant	)	Case No 784449259
	)	
	)	Judge Claudia Laycock

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APPEAL FROM THE FOURTH DISTRICT COURT OF UTAH COUNTY  
HONORABLE JUDGE CLAUDIA LAYCOCK PRESIDING

---

**OPENING BRIEF**

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MARLENE TELFORD (LUNDAHL)  
4139 North Devonshire Circle  
Provo, Utah  
Tel: (801) 225 2051

**FILED**  
Utah Court of Appeals

**FEB 12 2004**

**Paulette Stagg  
Clerk of the Court**

MARLENE TELFORD (LUNDAHL)  
4139 NORTH DEVONSHIRE CIRCLE  
PROVO, UTAH 84604

In Pro se

UTAH COURT OF APPEALS

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MARLENE TELFORD (LUNDAHL)  
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In Pro se

UTAH COURT OF APPEALS

In re Marriage of:

**GERALD D. LUNDAHL, M.D**  
Plaintiff and Appellee,

vs.

**RUTH M. TELFORD (LUNDAHL)**  
Respondent, Appellant

**CASE NUMBER 20030800-CA**

**OPENING BRIEF**

Fourth Judicial District Court

Case No 784449259

Judge Claudia Laycock

**STATEMENT OF CASE**

In the past 26 years, the Utah court has taken jurisdiction over the Respondent, who has been a resident of this state since 1977, and personal jurisdiction over the Plaintiff, whose domicile is in California. This brief will outline how this came about. Never during this period of time did the Utah court stay any motion nor transfer jurisdiction to another state. Currently, the honorable Judge, Claudia Laycock of the Fourth District trial court, Utah County is attempting to nullify this history by ruling ( **Cite July 21, 2003**) that Utah does not have "subject matter jurisdiction". Yet, the previous judges ruled otherwise, and this, after extensive litigating.

**Summary of Argument**

1. The Respondent argues that the *Utah Courts* previously ruled that the Utah court has both personal and **SUBJECT MATTER JURISDICTION** (Cite 476) as stipulated by the Honorable Judge Guy Burningham. (Emphasis) This ruling in particular finds In pertinent part . . . .

**Findings**

"The Court finds that this Court has continuing

jurisdiction of the subject matter and of the Plaintiff.”

**Cite 2 )**

May the Court take judicial notice on pp 14 and 15 of this document where the Plaintiff filed an Order to Show Cause in California in 1986 alleging that California **does not have subject matter jurisdiction**, citing case law and codes of civil procedure in support of his argument. (emphasis) Moreover, the Plaintiff filed a motion in the UNITED STATES COURT OF APPEAL, FOR THE NINTH CIRCUIT, CENTRAL DISTRICT OF CALIFORNIA , San Bernardino County, California dated 26<sup>th</sup> of June, 2002, for want of “subject matter jurisdiction.” The court of Appeals summarily denied the Plaintiff’s request, making it clear that California does not have subject matter jurisdiction addressing the issue to both the California and Utah courts.(see attachment)

**CONCLUSION**

Citing the above information, and stipulating to conclusions of law and statute in the current brief, the Respondent categorically states that Utah has Subject matter jurisdiction and personal jurisdiction over the Plaintiff regarding the current matters before the court. Subsequently, the Respondent will refer to law and statute as it relates to current matters in her Memorandum of Points and Authority, submitting to the court that the Plaintiff has also filed an appeal in the state of California. Included in this brief is a quoted “duplication” of the brief filed by the California Attorney General’s Office before the California Court of Appeals as per the court’s instruction. The issue at hand: “*validating Utah jurisdiction.*”

**Argument**

2. The Respondent’s focus will be to provide evidence, fact and law that should convince the court that Utah jurisdiction is and *has been the proper venue for the last 27 years* since the dissolution of the marriage in 1977. The Respondent moved to Utah from California with eight of her 12 children within two weeks after the divorce was final. The Respondent will proceed to show that the

Plaintiff voluntarily and deliberately acquiesced to the Utah jurisdiction filing and responding to motions supplemented with affidavits, memorandum, petitions to modify, etc for the last 26 years. At no time during that period did the Utah court stay any motions thereby transferring jurisdiction of this case to another court. See schedule of Utah Orders. (See Minute Entry, jurisdiction discussed Cite 76)

3. (see Cite Utah Orders)

Cite:

- |         |                                                                                          |
|---------|------------------------------------------------------------------------------------------|
| 10      | 1. -----June, 1979, Calif order registered in Utah w/ complaint                          |
| --      | 2. Order April 28, 1980--Plaintiff summary Judgment denied                               |
| 66      | 3. Stipulation-June 30, 1980; Plaintiff agrees to support increase                       |
| 63      | 4. Order July 7, 1980--reduced to "family Support"                                       |
| 77      | 5. Ruling August 4, 1981: gifts not part of support orders                               |
| 86      | 6. Order Nov., 27, 1981, increase to \$2500 per mo; Plaintiff refusal to return children |
| 124,25  | 7. Minute entry                                                                          |
| 110-114 | 8. Stipulation--2200 per month. Utah laws valid; signed by both attorneys                |
| 188     | 9. Stipulation: June 1,1984: arrears: \$13,500                                           |
| 126,27  | 10. Order July 14, 1983; Increase of support to \$2500                                   |
| 179     | 11. Order April 4, 1984--Arrears \$23,600--\$500 bond                                    |
| 187,88  | 12. Stipulation November 30, 1984                                                        |
| "       | 13. Stipulation, December 7, 1984; plaintiff agrees to arrears                           |
| 206,07  | 14. Order on Order, Jan 22,1991                                                          |

1	221,23	15. Order on Order April 24, 1991, Utah jurisdiction,\$3000
2		monthly support
3	244,45	16 Order Aug., 25, 1991; arrears \$3500
4	295	17 Order March 10 1993–Utah continuing jurisdiction:
5		arrears \$29,200
6	550,49	18. Hearing July 28, 1994; Utah jurisdiction
7	427	19. Order. Court Sanctions Plaintiff's dishonesty and
8		lies
9	532,33	<u>20. Utah Order April 13, 1995 Personal &amp; Subject Matter</u>
10		<u>jurisdiction.</u> (emphasis)
11	553	21. April 28, 1999: support arrears: additional \$62.991
12		<u>OTHER</u>
13	116	1. June 29, 1983 Def Supp memorandum—Statue of
14		Limitations, Ut Court has Power.Cite Strong v Strong;
15		Callister v Callister
16	131	2. August 15, 1983: Ut Minute Entry: Denial of custody-
17		Plaintiff
18	154	3. December 20, 1983–Affidavit: History of Plaintiff
19		Pleadings: Custody hearing; Failure to pay family
20		support
21	159	4. Jan., 18, 1984; Plaintiff in contempt of court-
22		Respondent attempts to recover Children
23	186	5. 1984-Bench warrant for Plaintiff
24	185	6. May 21, 1984; Notice of arrearage;\$24,816
25	197	7. June, Respondent Affidavit: \$3000 per mo support
26	193-197	8. Jan., 3, 1991; Affidavit Resp; Plaintiff brought action in
27		Utah; submits to jurisdiction; Agrees to \$3000 per mo
28		support.

1	<b>168-169</b>	<b>9. Plaintiff motion to modify decree;</b>
2	<b>220</b>	<b>10. February 5, 1991: Reply to petition; Counter ; False</b>
3		<b>sale of Medical practice</b>
4	<b>237</b>	<b>11. July 19, 91: Respondent Affidavit OSC: Plaintiff bad</b>
5		<b>checks; &amp; arrearage</b>
6	<b>247</b>	<b>12. April 7, 92: Petition to Modify: Sale of Medical Practice</b>
7	<b>260</b>	<b>13. October 26, 92: Notice of Deposition Plaintiff</b>
8	<b>284</b>	<b>14. Plaintiff Motion to objection of Commissioner Maetani</b>
9	<b>286</b>	<b>15. Plaintiff Memorandum in support of objection</b>
10	<b>293</b>	<b>16 Memo in opposition to Plaintiffs objection to Maetani;</b>
11		<b>History of Plaintiff pleadings.</b>
12	<b>266</b>	<b>17. January 8, 1993; Affidavit of Defendant</b>
13	<b>310</b>	<b>18. Plaintiff Stipulation to Collect support from his</b>
14		<b>Corporation.</b>
15	<b>383</b>	<b>19. Plaintiff Affidavit admission of lying under oath.</b>
16	<b>384</b>	<b>20. Motion to strike Plaintiff's pleadings re: M.D. Diet</b>
17		<b>—failure to be truthful</b>
18	<b>388</b>	<b>21 May 10, 1994: Memorandum in support of Defendant's</b>
19		<b>motion to strike plaintiff's pleadings and produce</b>
20		<b>witnesses.</b>
21	<b>442</b>	<b>22. Memorandum of Law in Opposition to Pla's motion to</b>
22		<b>set aside order of July 27, 1994</b>
23	<b>460</b>	<b>23. Affidavit in support of motion to strike Pla's</b>
24		<b>pleadings—lies about M.D. Diet and current wife's</b>
25		<b>involvement</b>
26	<b>472</b>	<b>24. April 27, 1995 Minute Entry—Utah has continuing</b>
27		<b>jurisdiction</b>
28	<b>452</b>	<b>25. Plaintiff financial declaration (false)</b>

134-136 26. Plaintiff Designation of record to Utah Supreme Court;  
 No bond filed–dismissed  
 514 27. May 28, 2002; Affidavit: Additional arrears of  
 \$86,844.48

**OUTSIDE BRIEFS ON UTAH JURISDICTION**

- 1018 1. Application to File Amicus Brief
- 1032 2. Court of Appeal, California
- 1035 3. Respondent Intervenor: Declaration (California AG)
- 1045 4. Utah Order (being appealed)
- 1060 5. Plaintiff, Federal court of appeals (dismissed)
- 1063 6. Respondent’s Brief (California Attorney General)
- 1078 7. Amicus Brief
- \* 8. Letter brief, California AG-requested by court of  
 appeals<sup>1</sup>
- \*\* 9. Letter brief, Amicus Curiae “ ” “2

Also it might be well to indicate additional activity as *representative* of  
 actions in the Utah Court, with both the Plaintiff and Respondent appearing and  
 represented by Counsel.

197	1) Affidavit, Respondent	January 3,	1991
201	2) Petition to Modify, Respon	January, 4 <sup>th</sup>	1991
207	3) Order to Show Cause	January 23,	1991
220	4) Petition to Modify, Plaintiff	February 5th	1991
221,223	5) Order on Order to show cause	April 24 <sup>th</sup>	1991
227	6) Affidavit, Respondent	July, 19 <sup>th</sup>	1991
	7) Order to show Cause	August 20 <sup>th</sup>	1991

---

<sup>1</sup>Find attached

<sup>2</sup> Find attached



1	244,245	8) Order & Judgement	August 25,	1991
2	247	9) Petition to Modify, Plaintiff	April 7 <sup>th</sup>	1992
3	266	10) Affidavit, Respondent	January 8,	1993
4	272	11) Notice of settlement conference	January 26,	1993
5	295	12) Judgement	March 3,	1993
6		13) Pre-Trial Order	March 10,	1993
7	590,549	14) Order, Court Sanction of Pla.	July 28,	1994
8	(Doc.missing)	15) Memorandum of Law	September 2	1994
9	466	16) Ruling	November 14,	1994
10	469	16) Final Pre-trial	December 1,	1994
11	477	17) Plaintiff (withdrawal of Counsel)	January 3 <sup>rd</sup>	1995
12	472	18) Hearing	January 27,	1995
13	532,533	19) Order	April 3 <sup>rd</sup>	1995
14	533	20 Affidavit, Respondent		1998

15           4. The Discretion of the Trial Court in this type of matter is very broad, the  
16 Court sitting as a Court in Equity, to make re-distribution or other modifications of  
17 the original Decree as equity might dictate. In Despain v. Despain, 610 P2d  
18 1303, et. 1305, the Court stated as follows:

19                   Under Utah Law, a Divorce Court sits as a Court in  
20                   Equity so far as child custody, support payments and the  
21                   like are concerned. It likewise retains *continuing*  
22                   *jurisdiction* over the parties, and power to make  
23                   equitable re-distribution or other modifications of the  
24                   original Decree as equity might dictate. In both the  
25                   formulation of the original Decree and any modifications  
26                   thereof, the Trial Court is vested with broad  
27                   discretionary powers, which may be disturbed by an  
28                   Appellate Court only in the *presence of clear abuse*

1                   thereof.

2           5.. In early 1995, The Respondent wrote the California Attorney General  
3 asking for the assistance of the Attorney General's Office in collecting against  
4 Utah Orders. It wasn't more than a week later when the California AG office sent  
5 a memo to the Orange County District Attorney's Office, Department of child  
6 support requesting collection of the Utah Orders.

7                   California Attorney General's conclusion p.2, last line "*Therefore,*  
8 *it appears to be established that Utah has continuing, exclusive jurisdiction*".  
9 (Emphasis) Memo: Cite: 1085-1086

10          6. It was after a meeting with the Orange County child support officers that  
11 the Plaintiff made the decision to file a motion with the Orange County Superior  
12 Court requesting a hearing regarding the registration of the Utah Orders, citing  
13 jurisdiction and the Doctrine of Laches as his argument. He failed.

14          7. The Orange County Superior Court ruled in favor of the Respondent after  
15 hearing both arguments and **reading** the pleadings of both parties. After  
16 considerable deliberation the trial court ruled that both Utah and California have  
17 concurrent jurisdiction, allowing the Utah support Orders to be registered, lifting  
18 all stays against them. (Cite 678-680 ) It was at this point that the Plaintiff  
19 decided to file an appeal in the Appellate Court, Fourth District, Division Three,  
20 the State of California. (emphasis)

21          8. In the current litigation before the Appellate Court, Fourth District,  
22 Division Three, State of California the Plaintiff is attempting to go back to a past  
23 ruling of the 1997 appellate Court, where the Appellant,(Respondent) Marlene  
24 Telford (Lundahl) attempted to have a 1994 Order set aside from a previous  
25 California ruling on the basis she was denied the opportunity to appear before the  
26 California Court. The issue of jurisdiction was not before the Appellate Court.  
27 (Emphasis). Whereas, the Plaintiff asserts that the California Appellate Court in  
28 its Opinion of 1997 states that "California has exclusive Jurisdiction over Spousal

1 Support” which is not accurate. The Honorable Commissioner Julee Robinson, of  
2 the Superior Court of Orange County, California who heard the current case  
3 reprimanded Counsel for Plaintiff ‘s suggesting she read the California Opinion  
4 again. ( See Transcript of Court Proceedings ( Cite 953-974, Schedule of  
5 Exhibits 998,999 )

6 The Court: I just have one question, I believe it’s directed to you Ms.  
7 Garland in some of the argument that you put forward you cited in  
8 the original----and this may be wrong but I thought were you citing  
9 the original decision that had been made by our court, Fourth District  
10 Court of Appeal, which was Exhibit “G” which was filed on August  
11 26<sup>th</sup>, 1997 for the authority that the court found that there was  
12 *exclusive* jurisdiction.

13 I read that Opinion thoroughly and I didn’t find any such dicta  
14 regarding one court or the other *having exclusive jurisdiction*.

15 If anything, in footnote one on page four there was some discussion  
16 that Jurisdiction was not an issue before the Court of Appeals. On  
17 that appeal jurisdiction was not the issue. He stated, Quote, “so we  
18 have jurisdiction all over the Place”

19 I’m not sure that Jurisdiction is the issue as much as it is the fact that  
20 she was essentially deprived of her right to be present at that hearing  
21 because of some comments that were made to her about what she  
22 did and didn’t have to do.

23 So, the only reference I find in that Court, our own court of Appeals  
24 Decision, was basically saying it would be by virtue of dicta. It’s not  
25 essential to the holding that there was some representation at the  
26 Hearing.

27 Anyway, that jurisdiction was not an issue, that there was jurisdiction  
28 all over the place and that Mrs. Lundahl’s Counsel, at least, seems

1 to feel there was concurrent jurisdiction at that time. Do you note  
2 that as well?

3 The previous Utah Orders were valid under URESA. UIFSA was not ratified by  
4 the Utah legislature until April 6, 1996 and not until January 1, 1998 by the state  
5 of California. *Utah support orders were honored by the Riverside County ORS*  
6 *under URESA.* Therefore, the additional support Arrearage, of \$3500, \$29,200,  
7 \$61,100, \$62,991 all fall under the federal statutes of URESA, and are  
8 collectable.

9 9) California Dissolution order registered in Utah by Plaintiff as part  
10 of Utah Decree (emphasis)

11 The *California Dissolution Order* was submitted and filed in  
12 Utah by the Plaintiff when he and his Utah Counsel Mr. Wooton appeared  
13 before the Utah Court June 27, 1978 where the Plaintiff acquiesced to Utah  
14 Jurisdiction by submitting a complaint along with the registration in Utah of  
15 the California 1977 Dissolution Order requesting that the Utah Court act as  
16 the controlling venue. ( Cite 10-24 ) Along with a Complaint ( Cite 2-4 ) lines  
17 18-26. Note the upper right corner of page one, where the dissolution document  
18 has been stamped by the Utah Court. This document is certified by the Utah  
19 Court.

20 The Plaintiff is entitled to a Judgment and Decree of this Court  
21 incorporating the provisions of the Judgement and *Decree of the*  
22 *Superior Court of the State of California* and to have said Judgment  
23 and Decree *incorporated into* and made a part of a Decree of this  
24 [Utah]Court

25 WHEREFORE, Plaintiff prays for a judgement and Decree of this  
26 court incorporating the provisions of the Decree of the Superior Court  
27 of the State of California in and for the County of Los Angeles in  
28 Case No SE D336650 ( Cite 10-24 )

1 10. The Respondent's argument is that Utah has taken jurisdiction of both  
2 the Respondent and the Plaintiff in divorce matters since 1978, See Utah Court  
3 Docket ( Cite 882 )

4 11. The Plaintiff has appeared personally, hired Utah Counsel to represent  
5 him and many times has been the moving party. See SCHEDULE OF VARIOUS  
6 UTAH PLEADINGS-PLAINTIFF)

7 Noall T. Wooton, Attorney of Record.

8 **Page # Cite**

9 <b>2-4</b>	1) Register of California Dissolution Order/Utah	May 9, 1978
10 <b>2</b>	2) Complaint	June 9, 1978
11 <b>6</b>	3) Order to Show Cause	June 19, 1978
12 <b>7</b>	4) Summons	June 9, 1978
13 <b>5</b>	5) Answer of Claim, Counter Claim	June 10, 1978
14 <b>6</b>	6) Motion for Order to Show Cause	July 1, 1978
15 <b>6</b>	8) Answer to Deposition	July 10, 1978
16 <b>8</b>	9) Motion for writ of Assistance	July 10, 1978
17 <b>9</b>	10) Answer	July 10, 1978
18 <b>32-34</b>	11). Reply to Counter Claim	July 10, 1978
19 <b>33</b>	12). Affidavit in Support of Motion for writ	July 19, 1979
20 <b>37</b>	13). Order to Show Cause	July 19, 1979
21 <b>46</b>	14). Opposition to Motion for Production of Doc/s	Sept 6, 1979
22 <b>60-61, 57</b>	15). Motion for Summary Judgment (Denied )	Dec 7, 1979
23 <b>54,55</b>	16) Pla's Statement, Pts of authority, Summ, Judg	Dec .27, 1979
24 <b>60</b>	17). Ruling; Pla's Summary Judgment denied	April 14, 1980
25 <b>62</b>	18). Stipulation	July 2, 1980
26 <b>66,67</b>	19). Motion in Support of Order to show Cause	April 17, 1981
27 <b>64</b>	20) Plaintiff Affidavit	April 17, 1981
28 <b>66</b>	21). Findings of Fact, Conclusions of Law	May 1981

1	<b>92</b>	22). Acceptance of Service	Feb., 1982
2	<u>Donald R. Jensen Attorney of Record</u>		
3	<b>110</b>	23). Stipulation	April 29, 1983
4	<b>106</b>	24). Order to Show Cause	April 22, 1983
5	<b>129</b>	25) OSC/ Plaintiff Custody	July 6, 1983
6	<b>124</b>	26) Minute Entry, Pla's motion denied	July 6, 1983
7	<b>134</b>	27) Designation of Appeal	Aug., 30, 1983
8	<b>150</b>	28) Affidavit for writ of Assistance	Dec., 16, 1983
9	<b>156</b>	29) Plaintiff motion denied	De., 19, 1983
10	<u>Robert Moody, Attorney of Record</u>		
11	<b>163</b>	30) Motion to Continue hearing	Feb., 9, 1984
12	<b>169</b>	31 ) Petition to Modify and Traverse/ Respondent	March 15, 1984
13	<b>167</b>	32) Notice of taking Deposition	Mar 16, 1984
14	<b>176</b>	33) Plaintiff Affidavit	May, 16, 1984
15	<b>186</b>	34) Bench Warrant-Plaintiff	May, 1984
16	<b>188</b>	35). Stipulation	Nov.,30, 1984
17	<b>190</b>	36). Order on issues previous motion	Dec., 6, 1984
18	<b>192</b>	37) Plaintiff Surety Bond	Jan., 3, 1989
19	<b>234</b>	38) Notice of Deposition, Plaintiff	Jan., 27, 1991
20	<b>220</b>	39) Reply, Pet to Mod; Counter Petition	Feb., 5, 1991
21	<b>225</b>	40) Plaintiff request for pre-trial settlmt Hearing	April, 24 <sup>th</sup> 1991
22	<b>220</b>	41) Supplemental Memorandum	Feb., 5, 1991
23	<b>247</b>	42) Petition to Modify	April 7, 1992
24	<b>259</b>	43) Summons	Nov., 11, 1992
25	<b>284</b>	44) Plaintiff Memo/support of objection Maetani	Mar., 4, 1993
26	<b>286</b>	45) Plaintiff Reply Memo supp of objection	April 12, 1993
27	<b>374</b>	46) Notice of Deposition	Feb 3, 1994
28	<b>362</b>	47) Pla's objection to interrogatories, rec: for doc.	Feb;, 4. 1994

1	336	48) Plaintiff's Answers to Interrogatories	Feb., 14, 1994
2	423	49) Plaintiffs letter request for meeting w/Resp	March 7, 1994
3	418	50) Plaintiff's Memorandum in Opposition	June 6, 1994
4	446	51) Plaintiff Memorandum in Opposition	August 16, 1994
5	428	52) Plaintiff Motion to set aside Order	Aug., 17, 1994
6	463	53) Pla, Memo Oppose Def motion to strike	Oct., 17, 1994
7	355	54) Plaintiff Affidavit, lying to court	

8 See other pleadings from 1991 (on page 3 -this document) filed February 8,  
9 2002. There are 47 different motions and added to the above 54 — **this comes to a**  
10 **combined total of 101 Different Court Actions, Motions and Pleadings by the**  
11 **Plaintiff.**

12 12. The Plaintiff's first Utah Counsel was Noell Wooton, followed by Robert  
13 Moody, Donald Jensen, Richard Allred, Dana Burroughs, Sean Egan, Esq and  
14 David Drake. These parties represented the Plaintiff in his many Utah motions the  
15 Plaintiff filed and responded to, in the Utah jurisdiction.

#### 16 **Jurisdiction vs jurisdiction**

17 13) The primary issue is whether the California Order of 2002 along with  
18 the long list of Utah orders (26) Cite p.3. this document ( **Cite 976-978** ) are  
19 valid. See *a/so* the 1995 and 1998 Utah orders summarizing arrearage that the  
20 Plaintiff owes the Defendant). (**Cite 193-197** ) Note Respondent's Affidavit on  
21 Utah jurisdiction:

#### 22 **Plaintiff's insistence on Utah jurisdiction.**

23 14. There is a long history of motions that have been filed by the Plaintiff  
24 in the Utah courts. The Plaintiff's purpose in submitting to and *even requesting*  
25 *the jurisdiction of the Utah courts* was based on the courts' reputation for being  
26 conservative in its judgements and rulings, ( **Cite Plaintiff's declaration of his**  
27 **wanting Utah jurisdiction**). See Loose copy (enclosed)

28 The Plaintiff declares:

1 I have voluntarily traveled all of the way to Utah for the purpose of  
2 submitting *myself to the jurisdiction of the State of Utah . . . (Cite p 1)*  
3 I indicated in previous declarations and or pleadings that I would be  
4 willing to submit myself to the Utah Courts”

5 Equally important the Plaintiff asserts:

6 15. In a motion filed by the Plaintiff in the Superior Court of the State of  
7 California, for the County of Los Angeles, December 18, 1986, the Plaintiff  
8 adamantly proceeds to establish facts demonstrating that California does not  
9 have jurisdiction to hear matters regarding issues of divorce by the parties,  
10 through chronologically submitting numerous dates where the parties filed  
11 motions and appeared in the State of Utah.

12 1. THIS COURT [California] MUST DISMISS  
13 RESPONDENT’S ORDER TO SHOW CAUSE TO  
14 MODIFY A UTAH ORDER ON THE GROUNDS THAT  
15 THE RESPONDENT HAS FAILED TO ESTABLISH  
16 THE UTAH ORDER AS A FOREIGN JUDGMENT IN  
17 THE STATE OF CALIFORNIA.

18 In the case of Hamilton v. Superior Court, (1974) 37 Cal. App.3d 418, the  
19 court declared that, “a foreign decree can be enforced in this state only by action.”  
20 As such, the Court in Hamilton was merely applying well established statutory  
21 law. California Code of Civil Procedure Sec 1913 states:

22 “The effect of a judicial record of a sister state. . . can  
23 only be enforced here by an action or a special  
24 proceeding.”

25 In the case of Leverett v. Superior Court: (1963) 222 Cal.App.2d 126, the  
26 Court declared, in pertinent part,

27 “It is now the settled law and policy of California that  
28 foreign—created alimony and support obligations, as



1 well as child custody awards, unless established as a  
2 foreign judgment in this state not be both enforced and  
3 modified in the California forum” (emphasis)

4 The Leverett Court also cited with approval the decision in Worthly v.  
5 Worthley, (1955) 44 Cal.2d 465, explains that foreign domestic judgment or  
6 Decree once that foreign Decree has been *established* as a Judgment in this  
7 Sate.

8 Markey: California Family law, Sec 51.06 [1] relying on Hamilton and CCP  
9 Sec 1913, declares:

10 “The support and custody provisions in a foreign  
11 judgment or decree may not be modified by the courts of  
12 this state until the foreign judgment is first established  
13 as a California judgment. This may be done by filing a  
14 civil action or special proceeding to establish the foreign  
15 judgment as a California judgment. (Emphasis)

16 2. THIS COURT MUST DISMISS PLAINTIFF’S  
17 ASSERTION THAT ONLY CALIFORNIA HAS  
18 EXCLUSIVE CONTINUING JURISDICTION, ON THE  
19 GROUND THAT THE CALIFORNIA COURT LACKS  
20 SUBJECT MATTER JURISDICTION (emphasis)

21 In the case of Sharove v. Middleman, (1956) 146 Cal.App.2d 199, 201-202,  
22 the Court made it clear that a foreign court has the jurisdiction to determine  
23 matters of child support if “the Court obtains personal jurisdiction over the paying  
24 spouse and that THE STATE is the state of the Child’s domicile, residence or  
25 presence.”

26 As a matter of fact:

27 16. The Plaintiff has appeared before the Utah Court on numerous  
28 occasions as both the moving and responding party. As a result of one such

1 appearance, on **July 14, 1983**, (In response to Respondent's motion to modify  
2 support) the Fourth Judicial District Court, of Utah County, Provo, Utah made a  
3 support order which has continued in full force and effect until the present time.

4 17. In addition, in the recent case of Daves V. Daves, (1985) 173 CA 3d  
5 97, the parties obtained their divorce decree in the State of Oklahoma. Shortly  
6 thereafter, mother moved to the State of California and both parties entered into a  
7 written stipulation to establish the Oklahoma Decree in California. Husband later  
8 filed an action in Oklahoma which was subsequently dismissed on the grounds  
9 that husband had submitted himself to the jurisdiction of California when he  
10 executed the Stipulation to establish the Oklahoma Decree in California.

11 “. . . Benjamin entered into a stipulation in which he asked that the  
12 Oklahoma judgment of divorce be entered as a California judgment and  
13 that the judgment be modified as to its visitation provisions” id. 106.

14 The Plaintiff in the current matter falls under this directive when he  
15 registered the California Dissolution Order in the state of Utah, as a Utah Order  
16 requesting Utah be the venue of jurisdiction.

17 18. Historically, both the Plaintiff and the Respondent entered into a  
18 number of stipulations in the Utah court. The Plaintiff also appeared in Utah to  
19 have his deposition taken. The Utah Courts have repeatedly asserted personal  
20 jurisdiction over support and over the Plaintiff himself, who is domiciled in  
21 California but who has willingly submitted himself to the jurisdiction of the State of  
22 Utah. Since the three of the Support orders pertains to “family” support a reading  
23 of Utah Civil Code Section 5152 is necessary:

24 (1) A Court of this state which is competent to decide child custody  
25 matters has jurisdiction to make a child custody determination by  
26 initial or modification decree if the conditions as set forth in any of  
27 the following paragraphs are met:

28 (a) This state (i) is the *home state of the child* at the time

1 of commencement of the proceeding, or (ii) had been  
2 the child's home state within six months before  
3 commencement of the proceedings and the child is  
4 absent from this state because of his removal or  
5 retention by a person claiming his custody or for other  
6 reasons, and a parent or person acting as parent  
7 continues to live in this state.

8 (b) It is the best interest of the child that a court of this  
9 state assume jurisdiction because (i) the child and his  
10 parents, or the child and at least one contestant, have a  
11 significant connection with this state, and (ii) there is  
12 available in this state substantial evidence concerning  
13 the child's present or future care, protection, training,  
14 and personal relationships.

15 (c) The child is physically present in this state and (i) the  
16 child has been abandoned or (ii) it is necessary in an  
17 emergency to protect the child because he has been  
18 subjected to or threatened with mistreatment or abuse or  
19 is otherwise neglected or dependent.

20 (d) (i) it appears that no other state would have  
21 jurisdiction under prerequisites substantially in  
22 accordance with (a) (b) (c), or another state has  
23 declined to exercise jurisdiction on the ground that this  
24 state is the more appropriate forum to determine the  
25 custody of the child, and (ii) it is in the best interest of  
26 the child that this court assume jurisdiction.

27 19. Since the children of the marriage have resided continuously in the  
28

1 State of Utah since 1978 up to their year of majority when they left their home to  
2 attend school or work, being emancipated at the age of 18, and where there was  
3 substantial evidence concerning their welfare, protection, training, and personal  
4 relationships, and the fact that the Plaintiff supplied their financial needs while the  
5 children were living in Utah, by analogy, the California Court did not have the  
6 requisite jurisdiction of the matters which have been identified. And since the  
7 Respondent has lived in Utah for the past 27 years and at the same address, and  
8 since the Utah courts have taken jurisdiction over alimony, it stands to reason that  
9 jurisdiction of support should continue in the same manner today, as it has been  
10 in the past.

11 In the case of Jagger v. Superior Court, (1979) 96 CA 3d 579 the Court  
12 declared, in pertinent part,

13 Even if jurisdiction exists in California, it may be  
14 inappropriate to exercise it here when another state also  
15 has jurisdiction and is ready to exercise it, and when the  
16 Plaintiff is willing to litigate elsewhere; a stay is the more  
17 common remedy.”

18 Another case of equal importance is Hafer v. Superior Court, (1981) 126  
19 Cal.App.3d 856. The Original Dissolution was made in San Diego Superior Court  
20 . The Court awarded custody of the minor children to the father.

21 Thereafter, the father moved with the minor children to the state of Idaho, where  
22 they lived except for a brief period when the mother fled with the children and  
23 took them to Florida. Mother then filed a modification action in the San Diego  
24 Superior Court. At the time, the children were living with their mother in San  
25 Diego. The San Diego Court *assumed jurisdiction on the ground that since the*  
26 *Court had rendered the original custody Decree, it retained continuing jurisdiction*  
27 *to modify* provided that there was no pending proceeding in the State of Idaho.

1 Father, on the other hand, argued that the California Court lacked modification of  
2 jurisdiction under UCCJA precisely because **California was no longer the**  
3 **children's home state and they had no substantial contacts with California.**  
4 (emphasis) He also argued the fact that the San Diego Court who had made the  
5 original Decree was not a basis for jurisdiction in the modification action. In  
6 granting a writ of prohibition to prevent further proceedings in California, the  
7 Court of Appeals agreed that there was no basis for jurisdiction in California since  
8 Idaho was now the Children's home state. (emphasis) The court also stated that  
9 under UCCJA, the intent of the legislation was to prevent bringing modification  
10 procedures and unsuitable forums without making a bonafide attempt to invoke  
11 the jurisdiction of the correct court. Hafer, Id. at 662. The Court went on to  
12 declare.

13 The normal preferences for adjudicating custody  
14 disputes in the home state where the children live,  
15 where the most evidence of their daily living conditions  
16 will be found, where the continuity and stability of their  
17 parental relationships and their daily routines will be  
18 least disrupted by the legal procedure. This case shows  
19 a prime example of the kind of disruption the act was  
20 intended to prevent. Id at 865

21 20. The present case is a classical example of what the Plaintiff is  
22 attempting to do to the Respondent. Any one of the above scenarios could and  
23 should apply to the present case.

24 In the case of Schlumpf v Superior Court, (1978) 79  
25 Cal.App.3d 892 where similar circumstances occurred is another case of  
26 similarity. California was the original state of dissolution. The father and the  
27 children moved to Wyoming. 9 years later the mother sought a modification of  
28 custody in the California Court. The trial Court found that the California Courts

1 retained jurisdiction. Later the father filed a Writ of Mandate arguing that  
2 Wyoming was the most convenient forum. The Court of Appeals found California  
3 and Wyoming *had concurrent jurisdiction*. However, since the Children lived in  
4 Wyoming the court ruled that Wyoming had a closer connection with the Children  
5 and was the proper forum for litigating in the best interests of the children.

6 21. And finally *both* legal Counsels for Plaintiff and Respondent signed a  
7 *Stipulation* agreeing to Utah jurisdiction and obeying the Utah Court orders with  
8 the permission of both parties ( **Cite 187-88**) p.4, lines 3, 4, and 5. See also same  
9 Document p.4 (c) Where the Support payments are *frozen*!

10 . . . On each and every occasion described herein, Petitioner appeared in  
11 the State of Utah and *submitted himself to the jurisdiction in the State of*  
12 *Utah* for the purpose of allowing that State to modify support orders  
13 regarding both the Respondent and the minor children in her care and  
14 custody...( **Cite 911-915** ) lines 1-5.

15 **Utah agencies declare the validity of Utah Jurisdiction.**

16 22. In 1992 The Attorney General of Utah wrote a letter to the Riverside,  
17 California ORS stipulating that Utah does have jurisdiction. ( **Cite 1080,81** ) The  
18 Utah AG cited the circumstances and filings by the Plaintiff in the Utah courts.

19 In 1996, the Utah ORS sent the ORS in California a stipulation verifying  
20 that the Custodial parent, the Respondent was in need of arrears owed her.

21 **23. California Courts stays Plaintiff's California motions in favor of**  
22 **Utah jurisdiction**

23 *Superior Court of Orange County*

24 With respect to the scenario where Respondent Mrs. Lundahl, is  
25 going to return to the State of Utah, the Court finds that if she does in  
26 fact return to the State of Utah with the minor children that there is no  
27 change in circumstances and prior custody orders issued and filed  
28 on August 24, 1987 [Utah] shall remain in full force and effect.

1 *Los Angeles County, Norwalk Court: (Cite pp 996-97 ) Hosp decl.*

2 All of Dr. Lundahl's actions for modification of the child custody case  
3 have been *stayed*. Dr Lundahl has 60 days in which to file a motion  
4 for modification in the Utah District Court; during that 60 day period  
5 you are awarded custody of the minor child Christian . . . .

6 See also Respondent's Affidavit

7 **Note Respondent's Utah Activity summary of divorce matters**  
8 **in Utah as well as California (Addendum)\* <sup>3</sup> concurrently** (attached)

9 24. At the time of the Plaintiff's deposition his legal counsel was Sandra  
10 Rhodes. Note statements: **(Cite, Schedule of exhibits 998,999– #9 p.24)**  
11 **Miss Rhodes:** *In case you're interested, there's also an URESA action pending*  
12 *in Riverside all involving Marlene, as we say, a little forum shopping to see how*  
13 *we can do in which jurisdiction, I think. Im not involved in that, but I know it is*  
14 *pending.* If the Court will peruse the entire deposition the Court will discover the  
15 Plaintiff's strategy of eternally filing motions in his relentless efforts to frustrate  
16 and exploit the courts as well as the Respondent..

17 25. The Plaintiff is clearly "*guilty*" of "shopping" other forums. In **August**  
18 **of 1983** he filed a motion in the Superior Court of Los Angles, Norwalk Division.  
19 The Plaintiff was represented by Barry Wishart, in his petition for custody of the  
20 minor children. However as early as **July 6, 1983** the Plaintiff initiated custody  
21 modification proceedings **in Utah**. The matter was originally scheduled to be  
22 heard on **July 14, 1983**, and the court made certain orders with respect to an  
23 increase in child support payments and a modification of visitation rights.  
24 However, the court did not rule on the custody modification, but continued that  
25 aspect of the proceeding until **August 15, 1983**. **On July 16, 1983, but two**  
26 **days after** the hearing in the Utah matter, the Plaintiff filed an order to show

---

27  
28 <sup>3</sup> Find enclosed

1 cause for modification of child custody in the California jurisdiction. It was brought  
2 to the attention of the California Court and eventually the Court *permanently*  
3 *stayed the proceeding since the same action was pending in the state of Utah.*

4 a) Declaration of Hosp re the California Courts decision to stay the  
5 proceedings in California pending the outcome of the Utah Court's  
6 decisions. Petitioner ordered to return minor children to Respondent  
7 c Minute entry, Utah, Custody of children denied Dr. Lundahl; (Cite 131,32)  
8 (See Utah minute entry, and Affidavit, Respondent ( Cite 96-98)

9 26) In **1987** the Plaintiff filed a declaration with the California court  
10 stipulating to Utah as the venue of jurisdiction and the Plaintiff's willingness to  
11 have the Respondent collect from his Corporation as well as from him personally,  
12 on support orders . (Cite 310 ) California Stipulation of Plaintiff's liability both  
13 personally and corporately

14 27. While the support issues were being heard in Utah, (1993,  
15 1994,1995) The Plaintiff filed another OSC dated **January 15, 1993** before the  
16 *Riverside County Court* in an attempt to modify the Utah family support order.  
17 The Plaintiff failed in his effort as the court ruled the Plaintiff would have to return  
18 to Utah to modify the family support order **since Utah had jurisdiction over the**  
19 **matter.** Again on **February 22, 1993, one month after the hearing in**  
20 **Riverside, ( Cite. California Deposition extracts 999; p. 27<sup>5</sup> lines 1-3)\*<sup>4</sup>** The  
21 Plaintiff filed another OSC in the Orange County Superior Court with Counsel  
22 Sandra Rhodes representing him. The issue was custody of the minor child  
23 Kwinci. At the time that this motion was filed the Plaintiff was in contempt of a  
24 Utah Court order mandating he place a **\$500 bond in the event he initiated**  
25 **removing a minor child beyond the state lines** without notice to the  
26 Respondent. Essentially that is exactly what the Plaintiff did when he arranged for  
27

---

28 <sup>4</sup> Find enclosed



1 Kwinci to fly to California without the Respondent having any knowledge of where  
2 her daughter was. (Cite 179 ) Utah order \$500 p.2. item 3. See above where  
3 California court permanently stays Plaintiff's motion for custody of children stating  
4 that Utah had "continuing jurisdiction" regarding the custody of the minor children  
5 of the Plaintiff and the Respondent.

6 28) On July 8, 1994, the Plaintiff filed another motion in the Orange County  
7 Superior court with the purpose of terminating child support & asking for attorney  
8 fees. The matter was heard on **August 8, 1994**. The Plaintiff filed still another  
9 motion on December 27, 1994 in the *Civil Court* in the Superior Court of Orange  
10 County charging the Respondent with breach of contract, common counts  
11 (money received and owed back—\$100,000 ) and fraud. Kent Tibbetts, the  
12 Respondents California Counsel filed a motion for Judgment on the Pleadings;  
13 Points and Authorities with Request for Judicial Notice. Mr. Tibbetts also filed an  
14 answer & counter-claim. The motion was granted and the case dismissed.

15 29 .This is a total of **seven** different petitions initiated by the Plaintiff in a  
16 period of two years if the Utah petition is included. It is important the court  
17 remember that any motions filed in California was in direct conflict to the authority  
18 of the Utah courts and the statutes of URESA's position on jurisdiction. It is the  
19 Respondent's opinion that this is a clear indication of "harassment" by the Plaintiff  
20 in order to frustrate her –purposefully **using the California courts** to serve his  
21 own purpose's hoping to win by " attrition" alone.

---

22  
23 PLAINTIFF'S LACK OF RESPECT FOR THE JUDICIAL SYSTEMS OF  
24 BOTH UTAH AND CALIFORNIA JURISDICTIONS.  
25

---

26 30.It is indeed unfortunate that the Plaintiff feels such contempt for justice  
27 and the rule of Law that he "attempts" to manipulate the court system bending  
28 when he can the infrastructure of the very system that protects our society and

1 guarantees it's citizens individual freedoms, without any regard to the  
2 consequences of those he hurts.

3 31. Notice the dichotomy the plaintiff explores in his California deposition  
4 taken in California by his second wife, Ruth Carlson Lundahl. ( **Cite Deposition p**  
5 **25, lines 1-5**). It's in this moment of transparency that he claim's that Custody  
6 jurisdiction is in California and support issues are in the Utah jurisdiction. **Since**  
7 **there are no longer children at home, this leaves the investigator with the**  
8 **impression by the Plaintiff' own admission that support issues are to be**  
9 **litigated in Utah.** In the same deposition, the Plaintiff 's arrogance surfaces once  
10 again ( **Cite Deposition p .22-23** )

11 **Q: Are you under an order to pay Spousal Support to Marlene?**

12 **A Yes.**

13 **Q. How much are you ordered to pay her on a monthly basis?**

14 **A: I'm not sure. I have a Utah order, I have a California Order and I'm**  
15 **not following either . (Dep p.23 lines 4-5).**

16 **(Cite Deposition Extracts, Petitioner See p. 25, lines 1-5)**

17 **Q . . . "Do you have an action pending to modify the California**  
18 **order?**

19 **A. "No, I have an action in Utah. Riverside essentially looked at the**  
20 **thing all in all and said go back to Utah; that's where this thing belongs. So**  
21 **right now we have split jurisdiction; custody jurisdiction is in California and**  
22 **Alimony jurisdiction is in Utah."**

23 33.It was only a few months ago that the Respondent's Utah Counsel,  
24 Michael Esplin, called the Respondent requesting that she come into his office.  
25 He angrily slapped his desk with some documents. He had been served with a  
26 Summons by the Plaintiff. The PLAINTIFF had filed in the United State District  
27 Court, Central District of California, Santa Ana Division, ( Cite 1065-1066 )  
28

1 motions citing does 1-through 20 accusing certain parties of fraud, conspiracy,  
2 racketeering & corruption. Along with the Respondent, the Plaintiff listed *three*  
3 Utah attorneys, Esplin, Petty, and Fugal and their respective law offices which  
4 have successfully represented the Respondent. Also included in the Plaintiff's  
5 "black" list were *four* judges of the Fourth District Court of Utah County, Utah,  
6 who have ruled favorably in regards to the divorce issues regarding the  
7 Respondent. Included in the list is the Honorable Judges, Howard Maetani, Guy  
8 Burningham, Donald Eyre ,and Lynn Davis. . The plaintiff in this action cites Utah  
9 Constables Anthony Ferlund, and Ron Lyons as defendants also. In addition the  
10 Federal Judge Honorable Glen Clark, of Salt Lake City, Utah, Julia Montgomery  
11 Deputy District Attorney ,Orange County District Attorneys Office, Santa Ana  
12 California, Office of Child Support; Commissioner Julee Robinson of the Orange  
13 County Superior Court, and Mary Dahlberg deputy Attorney General all named as  
14 defendants. The Plaintiff is clearly out of control causing the Respondent undue  
15 stress and emotional trauma. It seems that the Plaintiff, Gerald D. Lundahl sues  
16 anyone that opposes him in litigation or any judge that rules against him in a court  
17 room. The Respondent's Utah attorney, Michael Esplin called the Plaintiff's Utah  
18 Counsel, Richard Drake, asking what the reason was for all the law-suits the  
19 Plaintiff was filing. Mr. Drake responded by telling Mr. Esplin that he couldn't get  
20 in touch with the Plaintiff because he was enjoying a long Holiday in Paris,  
21 France. To date the Respondent has yet to be served; however nearly everyone  
22 else in the state of Utah named in the Pleadings have been served. (See (a)  
23 Affidavit filed by Respondent's Counsel and (b) decision of the Federal Court in  
24 California; (c) letter from Utah Counsel Esplin to Plaintiff's Utah Counsel David  
25 Drake **(Cite court documents Appeals file )**

26 34. The Plaintiff has the propensity to go as far as he can in "bragging"  
27 about the things he –"gets away with–concerning the courts. A further review of  
28

1 the 1993 Deposition clarifies this statement

2  
3 THE PLAINTIFF WITH DELIBERATE CUNNING HAS MADE FALSE  
4 STATEMENTS, WITHHELD EVIDENCE, AND CONSTRUCTED FALSE  
5 DOCUMENTS IN ORDER TO PUT HIMSELF IN A FAVORABLE LIGHT  
6 BEFORE THE COURT  
7

8 35. In 1993-94 when the Plaintiff appeared before the Fourth District Court  
9 in Utah he made false statements in his Utah deposition regarding his M.D.Diet  
10 Centers. The various issues addressed were:

11 a) Plaintiff's Purchase of a diet Center in Moreno Valley California  
12 (1994) \$47,500 while claiming his only income was \$1570 per month.

13 b Diet Centers registered in the State of Nevada under Imperial  
14 Products with Plaintiff's 5<sup>th</sup> wife Mary Ann Hadley, Sec/treasurer. President:  
15 Robert Rohrbock, (who through affidavit claims he has met the Plaintiff only once,  
16 denying he was ever involved in a business venture with Plaintiff ).

17 c) Construction of a stipulation under the direction of the Plaintiff  
18 through his Utah Counsel Dana Burroughs claims Plaintiff's only income is  
19 \$1,570 per month. **(See attached)**

20 d) The Marketing of M.D. Diet. Ownership of M.D. Diet Centers by  
21 Plaintiff is a published fact;

22 e) Claim by Plaintiff that he had sold the diet centers to a "man"  
23 named L.G. Hinds, who turned out was Plaintiffs 3<sup>rd</sup> or 4<sup>th</sup> wife. Lucille Gerokas  
24 Hinds. Evidence of Marriage Licence: *"false" bulk sale to L.G. Hinds (Plaintiff's*  
25 *wife)*

26 g) Plaintiff's affidavit submitted to Utah Court for lying. ( **Cite 383**)

27 h) Respondent's Utah legal Counsel's affidavits and memorandum to  
28 strike Plaintiff's pleadings concerning above facts: ( **Cite 384, 388,397, 418** ).

1 successful.

2 i) Utah Court Sanctions Plaintiff for dishonesty and false claims Cite  
3 383 )

4 k) Plaintiff's non-registering of any diet entities in any agencies in the  
5 state of California

6 l) Deception by Plaintiff revealing he made hundreds of thousand of  
7 dollars in 1993-1994 in direct contradiction of financial declarations filed with the  
8 court and Plaintiff's testimony of financial status to Utah court and the information  
9 submitted in the Plaintiff's Stipulation which the Respondent refused to sign

10 URESSA not UIFSA controls the arrearage of support monies  
11 owed by Plaintiff

12 36. The California Court had ratified UIFSA (Uniform Interstate Family  
13 Support Act) on January 1, 1998, therefore the 1994 California Order was still  
14 under the auspices of **URESA**. . . . meaning that one order does not nullify another  
15 order from another state.

16 37. It is the understanding of the Respondent that the Plaintiff would have  
17 had to return to Utah to modify any Utah support order since the Utah Court was  
18 the last venue to rule, and a court order issued by this state is not nullified by an  
19 order from another state, nor can this state nullify an order from another state. A  
20 "void 1994 Order" has since been superceded by the current order of the  
21 California Court in 2002.

22 38) It should be noted that the Plaintiff successfully attempted to deceive  
23 and confuse the court by unilaterally stating

24 . . . a Judgment determining property and support issues was  
25 entered in California September 14, 1977. Thereafter, spousal  
26 support was modified by the California Court in 1987 at the  
27 [Respondent's] request. . .

28 This entire statement is flawed and incorrect. The Plaintiff took advantage of the

1 court in his pleadings giving the impression to the California court that 1987 was  
2 the *second* time that the parties were in court since the 1977 dissolution order.  
3 **The Plaintiff failed to disclose to the California Court that in the interim of**  
4 **the years 1978 through 1994 98% of all issues regarding divorce and support**  
5 **issues were litigated in the state of Utah. ( Cite Utah Docket 882)**

6 39. Later Information surfaced which proved that the Plaintiff had not told  
7 the truth in his deposition and had given false testimony before the Utah Court.  
8 After the Plaintiff admitted lying to the Utah court through affidavit, the Court  
9 sanctioned the Plaintiff for lying and dishonesty and ordered him to place in a  
10 trust fund \$3000 for the purpose of depositions on the parties involved with the  
11 M.D., Diet business located in the state of California, which the Plaintiff owns.  
12 (The Respondent's Utah Counsel, Mr. Michael Esplin, was expected to go to  
13 California for the purpose of taking depositions.) However the Plaintiff ignored the  
14 court's order and received a contempt citation.

15 40) The incorporated findings of the Utah court were that Utah had  
16 continuing jurisdiction of the parties; that the Plaintiff had failed to obey court  
17 orders, had given admittedly false testimony at his deposition and had failed to  
18 purge himself of the court's contempt order. ( Cite pp 384,388,397) The  
19 Respondent cites evidence of jurisdiction by the Utah Court activity attached to  
20 this pleading (See Utah Docket, Utah Court of Appeal).

21 The Plaintiff defied the subsequent rulings of the Utah Court and fled  
22 to California to file another OSC on July 8, 1994 in the Orange County venue  
23 addressing the same issues.

#### 24 DOCTRINE OF LACHES

25 41. Currently, in the California Courts the Plaintiff claimed the Doctrine of  
26 Laches in support of his attempt to avoid honoring the Utah Orders. However,  
27 not only has the Respondent in this matter attempted through litigating on  
28 numerous occasions but through correspondence *was denied assistance by the*

1 *Utah Office of Recovery in her attempt to get satisfaction regarding the*  
2 *registration and collection of orders .Under normal circumstances the Office of*  
3 *Recovery in Utah must process court orders through the Office of Recovery in*  
4 *the jurisdiction of the Obligor. However, the Department of Health and Human*  
5 *Services in Utah would not avail the Respondent of their office claiming that it*  
6 *was against the policy of the Utah agency. At the same time the Utah Human*  
7 *Services Office which is the tribunal for the collecting of support orders suggested*  
8 *that the Respondent appeal to the California Agencies.*

9 42. With this suggestion and with Extracts from the *Handbook on Child*  
10 *Support Enforcement* distributed by the Department of Health and Human  
11 Resources, Washington, D.C. the respondent appealed to the Attorney General  
12 of the state of California. The Attorney General of California sent instructions to  
13 the Orange County District Attorney's office to begin collection on the Utah  
14 orders. Any authorized agency mandated to collect on family support matters is  
15 supported by California Codes of Civil procedure.

16 **Respondent's List of written communication to local, regional and**  
17 **federal agencies**

- 18 1) Department of Recovery Services, 1996.
- 19 2) Letter from Judge David Gray to Orrin Hatch, 1996
- 20 3) Department of Social Services, Sacramento, Calif. June 1996
- 21 4) Administration for Children & Families, San Francisco, CA Sept  
22 27, 1996
- 23 5) Department of Health & Human Services (also Riverside ORS)  
24 Feb., 10, 1997
- 25 6) Department of Social Services; Sacramento, CA May 7, 1997
- 26 7) Director, Department of Human Services. 1997
- 27 8) Department of Health & Human Services, Washington D.C. April,  
28 27, 1998

1 9) Department of Health & Human Services, Washington D.C. Aug 8,  
2 1997

3 10) Department of Health & Human Services, Washington D.C.  
4 April, 27, 1998

5 11 ) Administration for Children & Families, Washington, D.C. April  
6 27, 1988

7 12) Regional Depart of Human Services, (Denver) Co, September 26,

8 13) Director, Department of Human Services, Utah, 2001

9 These letters are but a *reflection* of the efforts made by the Respondent to  
10 register and collect on arrearage owed by the Plaintiff (Appellee) As a result of  
11 this activity The Respondent alleged any attempt by the Plaintiff to vacate the  
12 Utah Orders should be dismissed. All attempts by the Respondent during the  
13 years of 1996 through 2001 was made in a timely manner. The Orange County  
14 District Attorney's Office became involved being the tribunal to collect on Utah  
15 orders. Fortunately they too filed motions against the Plaintiff. The Plaintiff 's  
16 attempts failed.

17 43.The battle continues. The Plaintiff filed additional motions. An Active  
18 motion was submitted by the *Orange County District Attorney's Office* acting as  
19 Intervenor.

#### **Jurisdiction vs. Jurisdiction**

20 Utah Attorney General on Utah jurisdiction. (Cite 1081-2)

21 Plaintiff Designation of Record on Appeal to Utah Supreme Court )Cite  
22 **134-136)**

23 Utah Stipulation (Counsels for Plaintiff and Respondent.)( Cite 10,114)

24 Lundahl Dissolution: Letter from California Counsel Hosp for Respondent

25 California action stayed (Cite 996,7 )

26 Utah Minute Entries, August 15, 1983: ( Cite 131 )

27 Affidavit of Respondent: Chronology of California and Utah Actions;; (Cite  
28 **p 2, this pleading)**



1 Plaintiff's verification to Riverside Family Support by deposition that Utah  
2 has Jurisdiction. ( Cite 911-915 Schedule of Exhibits Cite 998,999)  
3 Plaintiff's admission of "forum" shopping. (Cite #9, Schedule of Exhibits  
4 Cite 998-999 )  
5 Plaintiff's Constant filing of motions Cite p.8,9,10 this pleading)

6 -----  
7 44. Another document which verifies that the Plaintiff was fully aware of the  
8 \$29,200 order (which he alleges he knew nothing about) occurred when he and  
9 his attorney Dana Burroughs constructed a stipulation which the Plaintiff wanted  
10 the Respondent to sign, on the premise that **he only made \$1570.00 per month.**  
11 The Stipulation was faxed to the Respondent's counsel Mr. Esplin. ( attached)

12 The Respondent had found evidence that the Plaintiff was not telling the  
13 truth and refused to sign it. Obviously the Plaintiff was earning more than \$1570  
14 per month. The Plaintiff's American Express card account, which the Respondent  
15 has in her possession shows a **dramatic excess** of what he claimed he made,  
16 averaging in the neighborhood of \$8000 per month charged on his American  
17 Express Credit Card. Nevertheless, on page 3, item 12 the \$2900,200 is  
18 mentioned which again proves the Plaintiff was aware of this order: ( see  
19 attachment)

20 . . . presently has a judgment against the Plaintiff in the amount of  
21 \$29,200 as entered by the Court on March 10, 1993, . . . As  
22 satisfaction for that judgment, the Lundahl Trust shall pay to  
23 Defendant a lump sum of \$5,000 . . .

#### 24 SUMMARY OF FALSEHOODS BY PLAINTIFF

- 
- 25  
26 1) Proof of service to Plaintiff by California Marshall  
27 2) Plaintiff's Contempt of Utah Court  
28 3) Plaintiff's affidavit of lying to Utah Court

1 4) Defendants successful Utah motions against Plaintiff

2 5) Plaintiff's Falsely constructed bulk sale of M.D. Diet to L.G. Hinds, who  
3 the Plaintiff said was a man, but in actuality was Lucille Gerakos Hinds the  
4 Plaintiff's third or (?) fourth wife.

5 45. The Orange County District Attorney's Office registered the orders  
6 (April, 1999, April 1995, March 1993, August 1991, and April 1991) as mandated  
7 by the California Attorney Generals's Office after considerable deliberation and  
8 following Federal Statutes under the Enforcement of Child Support, along with the  
9 support of UIFSA, Uniform Interstate Family Support Act. California ratified this  
10 Act in January 1998 and Utah in 1996. Until that Act was ratified the support  
11 orders were submitted and collected under the authority of URESA.

12 46. The Respondent asserts that any California continuing jurisdiction  
13 arising from the dissolution terminated when both parties willingly litigated the  
14 issue of family and spousal support as well as custody matters in the State of  
15 Utah. Both parties have litigated in the Utah jurisdiction since 1978, with the  
16 exception of a temporary stay in California where the Respondent located while  
17 her daughter trained for tennis. Even then, she claimed Utah as her residence  
18 and paid taxes there.

19 **MEMORANDUM OF POINTS AND AUTHORITY.**

20 *(Quoted dialogue by the California Deputy Attorney General on Utah jurisdiction)*

21 Since the California Court in 2002 declined to establish the arrears,  
22 reserving the issue for later hearing, the order was interlocutory (*Cowan v.*  
23 *Moreno, supra* 903 S.W. 2d at p. 121) *Id* at p. 124 under UIFSA). The Court went  
24 on to hold that under UIFSA, the petition to register raises the issue of  
25 enforcement of arrearages. (*Id.* at p 123) Furthermore, since the order to be  
26 registered was valid on its face, it could only be attacked on specific grounds  
27 such as lack of personal jurisdiction or some procedural defect that would render  
28 the decree void. (*Ibid*). "There is no defense. . . to the registration of foreign

1 support orders. ‘ (UIFSA section 606, Comment 9, U.L.A. 126, 160 (supp.1994).”  
2 *Ibid.* However, there is no jurisdiction to appeal an interlocutory order (*ibid.*) The  
3 court held that Cowan’s pleading challenged the amount of the arrears, which  
4 relates to enforceability rather than to the existence of the support order. ( *Id. at pp*  
5 *123-124*) Since the trial court expressly declined to establish the arrears,  
6 reserving the issue for a later hearing the order was interlocutory. The Order on  
7 appeal denied the Plaintiff’s request to vacate the registration, but specifically  
8 continued the issue of the amount of arrears owed. The issue of arrears was later  
9 taken off calendar until the California Appeal is concluded. This is thus an  
10 interlocutory order and the appeal should be dismissed.

11 The Plaintiff argues that this case is appealable because the Utah orders,  
12 having been registered in California, are immediately enforceable. (Plaintiff’s  
13 California Letter Brief p.2.) He looks for support of his contention in the holding  
14 from *In re Marriage of Adams (1987) 188 Ca.App.3d 863* which stated that “Such  
15 postjudgment order, which relates to enforcement of the judgment, is appealable.  
16 [Citation] (*id. at p 688.*) However, “such postjudgment order” in that case related  
17 specifically to a postjudgment order granting or denying motions under former  
18 Civil Code section 5124, which related to community property settlements and  
19 military retirements within certain time limits (*id. at p. 686, fn 3*) Nevertheless, a  
20 judgment must fully dispose of the litigated matter, i.e., there must be a final  
21 determination of the partes ‘ rights, before an appellate court will entertain an  
22 appeal (*In re Marriage of Griffin (1993) 15 Cal.App. 4<sup>th</sup> 685,689*).

23 This order does not fully dispose of the issues before the court because the  
24 Plaintiff’s arrearage obligation was continued to a future date, since taken off  
25 calendar due to the California appeal.

26 The Utah Child and Spousal support orders became enforceable  
27 immediately upon registration. The Plaintiff’s petition for writ of supercedeas was  
28 denied. The appeal court has jurisdiction to deem the appeal to be a petition for

1 writ of prohibition (*Olsen v. Cory* (1983) 35 Cal.3d 390, 400.)

2 **EFFECT OF THE 1991 AND 1995 UTAH ORDERS ON THE 1977**  
3 **CALIFORNIA DISSOLUTION ORDER**

4 “The California Department of Child Support enforcement adopts the  
5 argument that the Utah orders did not modify the California Orders, they were  
6 independent orders running concurrently—and adds the following:”

7 Under URESA, child and spousal support were treated identically.  
8 (*Sampson, Uniform Interstate Family Support Act* (1996) fAM.I.q. Summer 1998,  
9 Prefactory Note, at 403). It is a well-settled law that the responding state in a  
10 URESA action could not modify a support order from another state without clearly  
11 stating that the new judgment modified the previous judgment and only then with  
12 proper notice and opportunity to be heard. (See former Fam.Code, Section 4840  
13 (repealed by stats. 1997, ch 194 Section 1). *In re Marraige of Ward* (1994) 299  
14 Cla.App.4th 1452, 1456-1457; *In re Marriage of Popenhager* (1979) 99  
15 Cal.App.3d 514, 521-522.) Instead the responding state entered a denovo order.  
16 (*Kathleen A. Burdette, Making Parents Pay: Interstate Child Enforcement after*  
17 *United States v. Lopez* (Apr 1996) 144 U. Pa. L Rev. 1469, 1484) The two  
18 **judgments ran concurrently and payments to one were credited against the**  
19 **other.** (Former Fam. Code Section 4840). If an obligor chose to pay on the lower  
20 order, arrears would accrue under the higher order to account for the difference.  
21 This is what is happening in the present case.

22 *Kammersell. Vs Kammersell* (Utah 1990) 792 P.2d 496 is in accord with  
23 this reasoning. In *Kammersell*, a Pennsylvania court, responding to a request  
24 from Utah to enforce a Utah order, entered a lower support amount. (*Kammersell,*  
25 Supra, 792 P.2d at p. 496-497). The Utah Court held that Pennsylvania had not  
26 modified the Utah order because it did not specifically provide that it was a  
27 modification as required by URESA. (*Id. at p. 498-499*). Since it was the Utah  
28 order that was higher, the court was not required to review the validity of the

1 Pennsylvania order—arrears had accrued under the higher order (*id. at 498*)

2 The Plaintiff's reliance on *Rimensburger v. Rinensburger* (Utah  
3 Ct.App. 1992) 841 P.2d 709 is *misplaced*. That opinion was interpreting Utah's  
4 *intrastate* transfer of jurisdiction and found that, internally, one district court did  
5 not have jurisdiction to modify the orders of another district court. (*Id. at p. 710*) It  
6 did not address the issue of establishing a *denovo* order. The Court in  
7 *Kammersall* made the correct analysis of the effect of multiple support orders.  
8 That analysis is applicable to this case. Until the enactment of the Full Faith and  
9 Credit for Child Support Order Act (FCCOA, 28 U.S.C.A. 1738B) or the Uniform  
10 Interstate Family Support Act (UIFSA), states were able to establish multiple child  
11 and spousal support orders. As *Kammersall* explains, a subsequent order did not  
12 "modify" a previous order. *Kammersall v. Kammersall* 792.P.2d 496, 498 (Utah)  
13 1990)

14 The assertion by the Plaintiff that a subsequent order is "void and of no  
15 force and effect" is incorrect. (Plaintiff's California Letter Brief, pg 5). As the Utah  
16 Court stated:

17 It is true that under these acts a responding state . . .  
18 may set a different amount that the 'obligor (Plaintiff)  
19 must pay, and in that sense there is a 'modification' of  
20 an amount, but we do not believe and do not hold that  
21 the decree of the 'initiating' state . . . was modified,  
22 vacated, reformed or eliminated *Oglesby v. Ogesby*,  
23 510 P.2d 1106, 1107 (1973)

24 This principle is applicable regardless of which order sets the highest  
25 amount of support. A subsequent order that sets a lower support amount has no  
26 mathematical effect on the aggregate arrears that may be owed. Conversely, a  
27 subsequent order that sets a higher support amount has the undeniable effect of  
28 being the order used to calculate the aggregate arrears. While the subsequent

1 lower order may have no effect on the calculations, it is still a valid order that is in  
2 force. If the support under the first order terminates earlier than the support under  
3 the second; obviously, the second order would have force and effect on the  
4 ongoing obligation and any arrears after the termination of the initial order.

5 Again Reliance on *Rmensburger v. Rimsburger*, 841, P.2d 709 (Utah  
6 Ct.App.1992) is completely misplaced since Utah has correctly held it is only  
7 applicable to **subject matter jurisdiction between two courts**. *Bankler v.*  
8 *Bankler*, 963 P.2d 797,800 (Utah Ct. App 1998). Citing *Oglesby*, the court in  
9 *Bankler* basically reaffirms the proposition that the ability to “modify” its initial  
10 order rests solely with the initial court. ( *Id* ). The *Bankler* court was not presented  
11 the issue whether a Utah court could enter a valid, independent, subsequent  
12 order in the context of there being another states’s order.

13 (Citing *Amicus letter brief*) One of the major differences between interstate  
14 and intrastate family law prior to UIFSA and FFCCSOA was the ability of one  
15 state to establish an order for prospective support when there was an existing  
16 order on the same issue in another state. Within many states, there was only one  
17 court with continuing, exclusive jurisdiction over its order. The court also had  
18 exclusive jurisdiction in the sense that no court in another state could modify or  
19 invalidate the order. However, there was no exclusivity over the support  
20 obligation. This multiplicity of valid obligations created the problem that UIFSA  
21 was designed to solve.

22 The ability and practice of a subsequent court entering a valid child  
23 support order in a different amount dwindled as states began to adopt UIFSA. A  
24 state adopting UIFSA no longer had the ability to issue new, subsequent orders.  
25 The practice came to a complete halt with the enactment of FFCCSOA on  
26 October 20, 1994. After that date, a state had to give full faith and credit to the  
27 child support order issued by another state. New orders are not permitted. Only  
28 “true modifications” can occur. As the practice of entering subsequent orders

1 ceases, there becomes only one tribunal with the exclusive jurisdiction to  
2 *prospectively* modify the support obligation.

3 Recognizing that multiple, valid orders entitled to full faith and credit had  
4 been created, both FFCCSOA and UIFSA set up the same mechanism to  
5 determine which of the multiple orders would control the issue of prospective  
6 support. 28 U.S.C.A. 1738B (f) & Fam. Code 4911. FFCCOA only applies to  
7 **child** support orders. However, UIFSA as a matter of state law does apply to  
8 spousal support orders. (Fam. Code Section 4901 (r) and (u)). It is premised on  
9 there being one tribunal with exclusive jurisdiction over all support (child or  
10 spouse) obligations. UIFSA provides for a very limited circumstance that will  
11 allow transfer of the exclusive jurisdiction to modify the child support obligation.  
12 The distinction between child support and spousal support is that once the first  
13 tribunal enters an order regarding the spousal support obligation, the obligation  
14 can only be modified by that tribunal. (Fam. Code Section 4909). This has  
15 already been discussed in *amicus curiea*; the fact that the determination of  
16 controlling order provisions of UIFSA do not apply to spousal support orders.

17 **Whether the Utah state court proceeding that resulted in support**  
18 **orders from that court were conducted pursuant to the Revised Uniform**  
19 **Reciprocal Enforcement of Support Act, the Utah Foreign Judgment Act, or**  
20 **another statute.**

21 The California Attorney General's Office would respond that the  
22 initial Utah spousal support order was an independent cause of action not  
23 conducted pursuant to either the Revised Uniform Reciprocal Enforcement of  
24 Support Act (RURESA) or the Utah Foreign Judgment Act.

25 The resolution of this issue is not dependent on the caption of the  
26 pleadings. Often, it is not dependent on the imprecise working of an order. As  
27 the court noted in *Oglesby*, and interstate "modification" is not really a  
28 modification. *Oglesby*, supra at 1107. Of greater significance is the Utah court's

1 recitation in the 1991 “Order on Order to Show Cause” that the court issued its  
2 order pursuant to Utah Code Annotated 30-3-5 (3). Although this section has  
3 been revised since 1991, the substance remains the same. In pertinent part, it  
4 provided in 1991: “The court has continuing jurisdiction to make . . .new orders for  
5 the support and maintenance of the parties . . .as is reasonable and necessary.”  
6 Utah Code Annotated 30-3-5(3) (revised.)

7 Any contention by the Plaintiff that Utah can only establish spousal support  
8 in the context of a divorce is unavailable. The Utah Supreme Court confirmed that  
9 the Uniform Reciprocal Enforcement of Support Act (URESA) permitted Utah to  
10 establish an independent spousal support order. *Lamberth v. Lamberth*, 550 P.2d  
11 200, 202 (1976) It is interesting to note that the court in *Lamberth* fell into the  
12 misnomer addressed by the same court in *Oglesby* and characterized the Utah  
13 action as a “reduction” of the support previously ordered. (*Id.*) The court  
14 obviously believed the subsequent Utah order was a valid order.

15 The California Department of Child support would disagree with the  
16 Plaintiff that this action for a new spousal support amount was pursued under the  
17 Utah Foreign Judgments Act. (Appellants Letter Brief, pg 8, California) *Bankler* is  
18 correct: The Utah Foreign Judgment act does not confer jurisdiction on a Utah  
19 court to **prospectively modify** an order issued by a foreign state court . . .  
20 *Bankler, supra* at 800 (emphasis added)

21 The Utah Foreign Judgments Act is similar to the Foreign Judgment Acts of  
22 most states. It is a legal construct for enforcing judgments. It is not to be used to  
23 establish prospective obligations. Its ability to even alter existing judgments is  
24 extremely limited. It is a method for collection of obligations that have been  
25 reduced to a judgment or have become judgments by operation of law.

26 It is precisely because of the temporal limitations on actions under a  
27 Foreign Judgment Act that URESA and RURESAs were utilized for family support.  
28 For cases with no orders, they provided a structure for a resident of one state to



1 obtain services in another state for the establishment of an order. URESA and  
2 RURESА also provided a legal construct for a tribunal in one state to issue a new  
3 support order for **prospective support**, when there was already an existing order  
4 in another state. The Plaintiff is correct that the orders in this case were not  
5 obtained using RURESА. One distinction is that private counsel was used  
6 instead of the Department of Human Services or the Title 1V-agency. However,  
7 the use of RURESА is not dispositive of the validity of the order.

8       The version of RURESА used by Utah acknowledged: “ The remedies  
9 herein provided are in addition to and not in substitution for any other remedies”.  
10 Utah Code 77-31-3 (repealed). It further provided” “Support order’ means any  
11 judgment, decree, or order of support, . . . regardless of the kind of action in  
12 which it is entered” and “Duty of Support’ includes any duty of support imposed or  
13 impossible by law or by any court order, decree or judgment . . . whether  
14 incidental to a proceeding for divorce, legal separation, separate maintenance of  
15 otherwise.” Utah Code Ann. 77-31-2 (10) and Utah Code Ann. 77-31-2(6) (both  
16 repealed). Clearly, at the time the Utah court entered its orders, RURESА was  
17 not the exclusive means to obtain spousal support in Utah. As the Utah court  
18 noted, the duty of support in this case was impossible under Utah Code Ann. 30-  
19 3-5(3) and was imposed by a court order in a proceeding for separate  
20 maintenance.

21       **Whether the September 22, 2003 Utah state court order has been**  
22 **appealed and if so, the effect of the pendency of that appeal on this**  
23 **proceeding.**

24       (Quoting from *amicus curiae -letter brief*;) *amicus curiae* can only  
25 hope that the 2003 Utah state rulings will ultimately be reviewed by a competent  
26 court. Not only is it incorrect in this case; but, it misconstrues the entire  
27 jurisprudence of Utah

28       As previously discussed, to the extent of the Utah court “purporting”

1 to modify” the existing California order, it was not a true “modification”. Thus, the  
2 first issue decided in the 2003 order is not factually correct. To be sustained, the  
3 decision would have to be re-characterized as a finding in 2003 that the same  
4 court did not have jurisdiction to enter its independent order in 1995. The fallacy  
5 of this has been discussed as well. The Utah court’s holding that it is invalidating  
6 the April 13 1995 Order has the effect of reinstating the original 1991 order. If  
7 this ruling is correct the Plaintiff actually owes support higher on the 1991 rate.  
8 The ruling does nothing to invalidate the Judgment obtained in 1999. It should be  
9 noted that the arguments being made now were available in 1999 but were not  
10 raised either at the hearing that lead to the judgment nor in any appeal.

11 (emphasis) The incorrectness of the ruling is also apparent since the 1995 order  
12 modified the 1991 Utah order, not any California Order. **(Cite 1078, amicus brief)**

13 The second issue ruled upon by the 2003 Utah order is essentially the  
14 same as the first and the associated problems are the same as discussed above.

15 Assuming the court’s third ruling is upheld, it will resolve the issue first  
16 propounded – the determination of a prospectively controlling order. If Utah is  
17 now deferring exclusive jurisdiction over spousal support to California, then the  
18 prospective support will be what California determines. However, this ruling can  
19 only be prospective.

20 Apparently, the Utah court was lead to believe that waiving the wand of  
21 UIFSA over the case would solve all the issues. Thus, the court decided to apply  
22 UIFSA retroactively unconditionally. The application is not that simple. The  
23 Plaintiff would have this court believe that the trend “is to use UIFSA to declare all  
24 subsequent orders entered using URESA, RURES, or some other remedy are  
25 superfluous and void *ab initio*. (Appellant’s California Letter Brief, pg 9) citing  
26 *State of Utah, Dept of Human Services v. Jacoby*, 975 P.2d 939 (Utah  
27 Ct.App.1999) No state had gone that far. This interpretation of retroactivity would  
28 mean the section on determining the controlling order in a multiple order situation

1 is truly superfluous. (See Fam. Code Section 4913). If all subsequent orders are  
2 now void in Utah, actions for refunds when those orders were higher would soon  
3 abound. The holding does not make it clear if it applies to all subsequent orders  
4 from all sates that are now being enforced in Utah or it applies to all subsequent  
5 Utah orders regardless of where they are being enforced. It is obviously this last  
6 application that the Plaintiff is wanting to foist upon this court. Being stated  
7 without any restrictions, the ruling would apply to both child and spousal support  
8 orders.

9       What *Jacoby* held is that the procedural aspects of UIFSA can be applied  
10 retroactively. (*Id. at 942*). This is the corollary to the “general rule followed in  
11 Utah” that the substantive law in effect at the time the action was initiated governs  
12 the action. *Wilde v Wilde*, 969 P.2d 438 (Utah Ct.App.1998). Surely the Plaintiff  
13 will not contend that retroactively invalidating all support orders that were valid at  
14 the time of entry is only “procedural”. It is also doubtful that Utah intends this  
15 wholesale invalidation to be its jurisprudence. Under Utah law, the issue of  
16 whether a law operates retroactively is a question of law and no deference to the  
17 decision of a district court must be given. *Jacoby, supra at 941*. In addition, the  
18 issue of retroactivity of UIFSA is a lynchpin that the Plaintiff’ uses in his argument  
19 in California that Utah lacked subject matter jurisdiction to enter its orders. If the  
20 premise that UIFSA applies retroactively to invalidate all subsequent orders is  
21 found to be incorrect, then at the time of entry of the orders in this case, Utah law  
22 allowed subsequent spousal support orders to be established using either  
23 general family law provision or RURESA, so the orders entered by Utah are valid.  
24 Valid sister state judgments are entitled to full faith and credit meaning that the  
25 Plaintiff owes all missed payments of spousal support calculated using the  
26 highest order in existence at the time. (**amicus curiae**)

27       It is the opinion of the California Attorney General’s Office (Intervenor) that  
28

1 Utah could only issue independent spousal support orders. To this day, Utah can  
2 not enter an order that modifies, supercedes, or nullifies the spousal support  
3 provisions of any California orders.

4 **WERE THE UTAH PROCEEDINGS CONDUCTED PURSUANT TO**  
5 **URESА, UFJA, OR OTHER STATUTE? (Taken from Letter Brief submitted to**  
6 **California Court of Appeals)**

7 The California Attorney General's Office adopts the argument that the Utah  
8 spousal support order was not issued pursuant to URESА or UFJA. In this case,  
9 the action in Utah began as a civil complaint by the Plaintiff to enforce his  
10 visitation rights. The Utah court had jurisdiction to entertain an order for support in  
11 such an action. (See e.g., Utah Codes Annotated 1953 Section 30-3-3) [in any  
12 action to establish an order for parent-time, the court may order a party to provide  
13 support for the other party during the pendency of the action.])

14 **THE SEPTEMBER 22, 2003, UTAH ORDER HAS BEEN APPEALED.**

15 Respondent, Ruth Telford (Lundahl) filed a notice of appeal with the  
16 Utah court Appeals on October 2, 2003. The California Department of Child  
17 Support Enforcement (Respondent Intervenor, California Deputy Attorney  
18 General) adopts and joins the argument regarding the errors of the 2003 Utah  
19 order.

20 "The order in Utah appears to be in response to a motion to strike  
21 respondent's order to show cause filed by the Plaintiff on March 4, 2003, while  
22 this (California) appeal was pending. (Motion for judicial Notice, Exhibit B p. 13.  
23 California Attorney Generals Office). The Order to show cause was issued on  
24 May 29, 2002, and the Plaintiff was served on June 22, 2002. (*Id.* at p. 11) These  
25 dates are significant when it is noted that the order on appeal in California was  
26 entered May 3, 2002, and notice of appeal in California was filed on July 2, 2002.  
27 Furthermore, at least part of the delay in hearing the order to show cause in Utah  
28 was because the Plaintiff filed a federal action, naming judges and attorneys in

1 Utah as defendants, which required recusal. “

2 ( a former argument citing another issue on Utah jurisdiction)

3 The doctrine of forum non conveniens is ancillary to the issue of  
4 jurisdiction It requires that jurisdiction exists in two different forums or states (Cf  
5 . In Re Marriage of Fox (1986) 180 Cal.App.3d 862, 873 [225 CR 823]) This rule  
6 of law is codified in Code of Civil Procedure Section 410.30 which provides, in  
7 pertinent part: “When a court upon motion of a party or its own motion finds that in  
8 the interest of substantial justice an action should be heard in a forum outside this  
9 state, *the court shall stay or dismiss the action in whole or in part on any*  
10 *conditions that may be just.*” “There must be jurisdiction over the defendant and  
11 the assurance that the action will not be barred by a statute of limitations.  
12 (Stangvik, supra, 54 Cal.3d at p. 752); (Shiley Inc. v Superior Court (1992) 4  
13 Cal.App.4th 126, 133 [6CR2 38]) Although the Defendant raised a question of  
14 jurisdiction in California, she pointed to the pendency of the same action in Utah  
15 (Cf. Atlantic Richfield Company v. Superior Court (1975) 51 Cal.App.3d 168, 176  
16 [124 CR 63]- motion to dismiss for forum non conveniens held to include motion  
17 to dismiss for lack of jurisdiction arising from failure to include an indispensable  
18 party.) Consider:

19 In a case in which the juvenile court’s jurisdiction was not  
20 raised the California Court of Appeal indicated that if an  
21 objection based on forum non conveniens was not made in the  
22 trial court the issue was waived. (In re Christopher B. (1996)  
23 43 Cal.App.4th 551, 558-559 [51 CR2 43]) The appellate court  
24 distinguished a decision from the California Supreme Court in  
25 re Stephanie M. (1994) 7 Cal.4th 295 [27 CR2 595]) The  
26 Supreme Court had considered a forum non conveniens  
27 argument in that case noting that “. . . the Court of Appeal  
28 erred in assuming that without notice of a pending Mexican

1 proceeding, the juvenile court was under no obligation to  
2 consider whether it was the appropriate forum.” ( In re  
3 Stephanie M., supra, 7 Cal.4th 295, 312 [27 CR2 595])

4 In The Defendant’s case *the court was aware of the pending Utah litigation.*

---

6 ARGUMENT AGAINST CALIFORNIA JURISDICTION

---

8 **Subject matter jurisdiction** can be attacked at any time, in addition to in  
9 personam jurisdiction and this does not constitute a general appearance.  
10 (Boisclair v. Superior Court, (1990)) 51 Cal.3d 1140, 1144, fn.1 [276 CR 62])

11 A party may also make a hybrid motion to quash/dismiss, thereby  
12 challenging both subject matter and personal jurisdiction without making a  
13 general appearance. (Witkin, California Procedure, Jurisdiction, section 387, p.  
14 991.

15 The Respondent asserts that any California’s continuing jurisdiction arising  
16 from the dissolution **terminated** when both parties willingly litigated the issue of  
17 family and spousal support as well as custody matters in the State of Utah. Both  
18 parties have litigated in the Utah jurisdiction since 1978.

19 See Solley v. Solley (1964) 227 Cal.App.2d 522, 529

20 [38 CR 802]) -both parties entered into a property  
21 settlement agreement in California, then invoked the  
22 jurisdiction of the State of Nevada for their divorce and  
23 incorporation of the property settlement agreement.

24 When wife later filed suit in California for an accounting,  
25 the Court of Appeal determined that the Nevada decree  
26 was binding on the parties and California had no  
27 jurisdiction.

28 See also (Cf. Leverett v. Superior Court (1963) Cal.App.2d 126 [34 CR

1 784] -continuing jurisdiction where wife registered Washington judgment in  
2 California then opposed California jurisdiction.

3 The fairness question necessitates balancing the burden of  
4 inconvenience to the Defendant against the states interest in resolving the  
5 dispute. (Id. At pp. 97-101 [56 L.Ed.2d at pp 144-147]). It was not fair to force the  
6 Defendant to litigate the *same* matter in California that was pending in the State  
7 Court of Utah. (In Re Marriage of Aaron, Supra, 224 Cal. App.3d 1086, 1095 [274  
8 CR 357]) **Subject matter jurisdiction** refers to a court's authority, i.e.,  
9 competency, to adjudicate the type of controversy involved. (Witkin, California  
10 Procedure, 4<sup>th</sup> ed., Jurisdiction, section 6(c), p. 552]). The actions of a court  
11 without subject matter jurisdiction are void and may be set aside at any time.  
12 (Estate of Buck, supra., 29 Cal.App.4th 1846, 1854 [35CR2 442]).

13 **If as contended California lacked subject matter jurisdiction there was no**  
14 **concurrent jurisdiction involved and Utah had exclusive jurisdiction.** ( see  
15 pp 14,15. this document. (Witkin, California Procedure, 4<sup>th</sup> ed., Jurisdiction,  
16 section 427(1),p. 1042)

17 Personal or in personam jurisdiction depends upon three factors: (A)  
18 Jurisdiction of the state. (B) Due process, i.e., notice and opportunity for hearing.  
19 (C) Compliance with statutory jurisdiction requirements of process ( Witkin,  
20 California Procedure, Jurisdiction, section 80, pp. 45-451.) Jurisdiction is based  
21 on an underlying principle of "relationship to the state" which makes the exercise  
22 of jurisdiction "reasonable." (Witkin, California Procedure, Jurisdiction, section 82,  
23 p. 452.) The Defendant and the children of the marriage have been residents of  
24 the state of Utah since 1977.

25 The state of California ratified the UIFSA Act in January of 1998. The Utah  
26 Court ratified the same Act in April of 1996.

27  
28 **"URESА" IS THE CONTROLLING AUTHORITY IN THE MATTER OF**

1 THE 1995 UTAH ORDER SINCE JURISDICTION OF ALL SUPPORT  
2 MATTERS REGARDING THE PLAINTIFF AND THE RESPONDENT WAS  
3 TAKEN BY THE UTAH COURTS.

4 The Plaintiff historically submitted to the statutes of URESA honoring  
5 the Utah orders, which were registered by the District Attorneys Office of  
6 Riverside County in the state of California. According to [UIFSA] under the  
7 Chapter of Jurisdiction ( 78-45f-201) . . . *"this state may exercise personal*  
8 *jurisdiction over a non-resident individual, if: 1) the individual is personally served*  
9 *with notice within this state; 2) the individual submits to the jurisdiction of this state*  
10 *by consent, by entering a general appearance, or by filing a responsive document*  
11 *having the effect of waiving any contest to personal jurisdiction; . . . 3) there is any*  
12 *other basis consistent with the constitutions of this state and the United States for*  
13 *the exercise of personal jurisdiction. 4) The custodial parent and the children*  
14 *resided in the state of Utah. The Plaintiff has consistently fulfilled all of the*  
15 *above. issues were pending in the State of Utah.*

16 THE UTAH SUPREME COURT RE: ISSUES OF URESA

17 The purpose of [URESAs] is to improve and extend by reciprocal legislation  
18 in separate jurisdictions the enforcement of existing duties of family support. See  
19 NRS 130.030; State ex rel. Welfare Div v. Vine, 99 Nev. 278, 283, 662 P.2d  
20 295, 298 (1983). Generally speaking, [URESAs] itself "creates no duties of family  
21 support, but is concerned solely with the enforcement of the already existing  
22 duties when the person to whom a duty is owed is in one state and the person  
23 owing the duty is in another." See Annotation, Construction and Effect of  
24 Provision of Uniform Reciprocal Enforcement of Support Act. NRS 130.280 (1)  
25 directs that: A support order made by a court of this state pursuant to this  
26 chapter **does not nullify and is not nullified** by a support order made by a court  
27 of this state pursuant to any other law or by a support order made by a court of  
28 any other state pursuant to a substantially similar law or any other law,



1 regardless of priority of issuance . . . (Emphasis) . 31 ALR 4<sup>th</sup> 347, 351 (1984)  
2 citing Uniform Reciprocal Enforcement of Support Act. Commissioner's  
3 Prefactory Note, 9B U.L.A. 382 (1968); see also NRS 130.280; Vix V. State of  
4 Wisconsin, 100 Nev. 495 686 P.2s 226 (1984) (in URESA proceedings, a court  
5 only has jurisdiction to order enforcement of pre-existing duties of support).  
6 Moreover, the remedies provided by the act are **"in addition to and not in**  
7 **substitution for any other remedies."** See NRS 130-050. The act further  
8 provides that it "shall be so interpreted and construed as to effectuate its general  
9 purpose to make uniform the law of those states which enact it." See NRS  
10 130.020. (Emphasis) **P11 [\*\*6]** URESA's choice of law provision provided that  
11 the "duties of support . . . are those imposed . . . under the laws of any state  
12 where the obligor was present during the period for which support is sought."  
13 Utah Code Ann. @ 77-31-7 (1995) (repealed 1997). Thus under URESA, Utah's  
14 statute of limitations would govern the duration for which support could be  
15 recovered. . . . However, UIFSA's choice of law provision states that **"in a**  
16 **proceeding for arrearages, the statute of limitation under the laws of this**  
17 **state or of the issuing state, whichever is the longer, applies."** Utah Code  
18 Ann. @ 78-45F-604 (Supp. 1998).

19 (P.12). The Utah Supreme Court has stated that "statutes of limitations  
20 are essentially procedural in nature and . . . do not abolish a substantive right to  
21 sue . . . "Lee v. Gaufin, 867 P.2d 572, 575 (Utah 1993); See also Financial  
22 Bancoorp, Inc. V. Pingree & Dahle, [\*\*7] Inc., 880 P2d 14m 16 (Utah ct. App.  
23 1994) (stating "Utah follows majority position that limitations periods are  
24 generally procedural in nature"). Similarly, UIFSA's choice of law provision does  
25 not establish a substantive right or create a duty of support, but simply changes  
26 the mechanism by which support orders are enforced by instructing the court as  
27 to which law to apply in calculating arrearages. UIFSA merely provides a  
28 framework for enforcing one states support order in another jurisdiction.

1 Undoubtedly, the outcome may differ depending on which statute of limitations is  
2 applied; however, the rights created and possessed by the parties are found in  
3 provisions separate and apart from the choice of law section. . **“Full faith and**  
4 **credit” provisions are outlined in the United [\*943] States Constitution.**  
5 **(Emphasis)**

6 **B. Spousal Support Obligation**

7 Utah Code Ann. @ 78-45f-206 (2) (Supp. 1998). ( **P26**) makes it clear in it's  
8 reference to Spousal Support. In Utah, a court may only modify a spousal support  
9 order issued by another state if the Utah court has “continuing, **exclusive**  
10 **jurisdiction**” over the spousal support order. The method of which a Utah court  
11 order obtains “continuing, exclusive jurisdiction” over a spousal support order is  
12 by [\*946] “Issuing [**\*\*19**] a support order consistent with the law of this state . .  
13 .” Utah id. @ 78-45f-205 (6). Thus, a Utah court cannot obtain “continuing,  
14 **exclusive jurisdiction unless it issues the spousal support order.** . 6). . **A**  
15 **tribunal of this state issuing a support order consistent with the law of this**  
16 **state has continuing, exclusive jurisdiction over a spousal support order**  
17 **THROUGHOUT THE EXISTENCE OF THE SUPPORT OBLIGATION!** Since  
18 1980 the “family Support” orders issued by the state of Utah and collected upon  
19 by the Riverside ORS included both Child support and alimony. All other orders  
20 which are now in dispute are family support orders, with the exception of the 1998  
21 Support Order. The 1995 Order stipulated the amount of spousal support but all  
22 arrearage was family support.

---

24 THE UTAH COURT MAY PROPERLY EXERCISE JURISDICTION BECAUSE A  
25 FOREIGN DIVORCE DECREE CAN BE MODIFIED BY A SHOWING OF  
26 CHANGE OF CIRCUMSTANCES.

---

28 The Plaintiff asserted the Utah court lacked jurisdiction because the

1 decree which the Defendant sought to modify was originally rendered in a  
2 California Court. This is clearly not the law. The Utah Supreme Court stated that  
3 Utah Courts have the jurisdiction to modify the provisions of a foreign divorce  
4 decree if such decree could be modified under the law of the rendering state and  
5 under Utah Law. McLane v. McLane 570 P.2d 692 (1977).

6 The giving of *full faith and credit to the judgement* of a sister state simply  
7 requires that it be given the same credit as it would be given in that state; and  
8 also the same credit that it would be given if rendered in the courts of our own  
9 state. With respect to divorce decrees the Utah statute provides that:

10 The Court shall have continuing jurisdiction to make such  
11 subsequent changes or new orders with respect to the support  
12 and maintenance of the parties, the custody of children and  
13 their support and maintenance. . . as shall be reasonable and  
14 necessary. Even though the decree is res judicata as the  
15 circumstances existing at the time of the decree if there are  
16 changed circumstances so requiring there can be further  
17 adjudication thereon. A Courts decision concerning the amount  
18 of support can, however, be modified at any time during the  
19 support payment period (Civil Code 4801 (a) in remarriage of  
20 Morrison 143 Cal Rptr. 139 573 P.2d 41. (1978).

21 A divorce decree can also be modified under Utah law by showing a  
22 change in circumstances. Thus the full faith and credit requirement is met  
23 because the modification sought is appropriate under both California and Utah  
24 law.

25 In the **McLane** case involving a custody dispute, the court set forth the  
26 requirements for jurisdiction in a case of this nature.

27 "The needs of children for sustenance and for protective  
28 care are continuous and it is essential that wherever

1 they may be the court have jurisdiction to safe guard  
2 their interest and welfare. Consequently for that purpose properly  
3 interested parties may invoke the jurisdiction of the court based on  
4 either (1) the domicile of the child or (2) the presence of the child  
5 within the state or (3) in personum jurisdiction over the parties  
6 seeking custody. Furthermore, anyone, or more of those basis is  
7 sufficient foundation for jurisdiction upon which a court may proceed  
8 to hear and determine such controversy.  
9

10 ALL OTHER JURISDICTIONAL REQUIREMENTS WERE MET BECAUSE THE  
11 DEFENDANT [RESPONDENT] AND THE CHILDREN OF THE PARTIES WERE  
12 RESIDENTS OF THE STATE OF UTAH AND THE PLAINTIFF HAD  
13 VOLUNTARILY SUBMITTED TO THE JURISDICTION OF THE STATE OF  
14 UTAH BY BRINGING ADDITIONAL ACTIONS.  
15

16 **A summary outline of jurisdictional issues.**

17	Pleading	Action	YR
18	Plaintiff Registers California Dissolution Order in Utah		1977
19	Calif Order: back to Utah		1983
20	Hosp letter; Utah custody		1983
21	List of Utah Orders		1978-----1998
22	Utah Jurisdiction,	Utah Attorney General	1992
23	Federal Handbook statutes		
24	Calif AG Office on registering of Utah 2001orders		2001
25	Declaration: Plaintiff submits to Utah jurisdiction		1987
26	Plaintiff's motion: California Does <u>not</u> have jurisdiction.		1983

1 Respectfully,

2  
3 Marlene Telford (Lundahl)

4 In pro Se

Date Feb 1 2004

5 *Marlene Telford*  
6 p.s. An ADDENDUM will follow with supporting motions and statements from the  
7 California Attorney Generals Office and an Amicus Curiae Brief from the Attorney  
8 Generals Office in Texas, filed in the California courts per California AG Office.,  
9 Also copies of three (3) letter briefs to be filed in the Appellate Court of California  
10 in deference to a request from the bench. The California Deputy AG; Barry  
11 Brooks Amicus Brief and myself are the participants.  
12  
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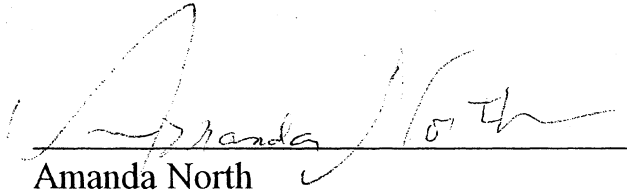
## PROOF OF SERIVCE

I am over the age of eighteen and not a party to the within action.

On February 6, 2004 I personally served the foregoing document **Opening Brief and related documents** at the Appellate Court 450 South, State Street, Salt Lake City, Utah as well as mailing same documents personally on the interested parties in this action.

Executed on February 6, 2004 at Provo, Utah.

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

A handwritten signature in cursive script, appearing to read "Amanda North", is written over a horizontal line.

Amanda North  
2233 North 800 West  
Linden Utah

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Amicus Brief, Letter Brief

Judge Claudia Laycock  
Fourth District Court, Utah County  
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Provo, Utah, 84601

David Drake  
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Attorneys for Respondent

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE

In Re the Marriage of: ) CASE NUMBER: 51 27 86  
Petitioner: RUTH M. LUNDAHL )  
and ) DECLARATION OF GERALD D.  
Respondent: GERALD D. LUNDAHL )  
LUNDAHL )

I, GERALD D. LUNDAHL, declare:

1. I am the Respondent in the above-captioned case and am personally familiar with all of the facts stated hereinbelow. If called upon to testify as to these facts I could and would do so competently of my own first-hand knowledge.

2. I have been absolutely hounded to death from this woman from the time that she divorced me back in 1977, almost ten (10) years ago. I have voluntarily travelled all of the way to Utah for the purpose of submitting myself to the jurisdiction of the State of Utah to modify all of the many Court Hearings set by my ex-wife in that state. Now that she has decided that the State of California will provide her with higher child support orders, she has returned to the State of California in order to obtain



Superior Court of the State of California  
For the County of Orange

In Re the Marriage of:

Petitioner: GERALD LUNDAHL

and

Respondent: RUTH C. LUNDAHL

No. D 31 55 62

DEPOSITION OF GERALD DALE LUNDAHL

June 30, 1993

Reported by:

Sherry L. Barnard,  
CSR #4222

*Amack*  
*Shorthand Reporting Corporation*  
CERTIFIED SHORTHAND REPORTERS

1519 East Chapman Avenue • Orange, California 92666 • Phone 714/538-2326 or 714/538 3806

1 DEPOSITION OF GERALD DALE LUNDAHL taken by the  
2 Respondent at 333 City Boulevard West, Suite 710; Orange,  
3 California, on Wednesday, June 30, 1993, commencing at  
4 9:30 a.m., before Sherry L. Barnard, CSR #4222, pursuant to  
5 Notice.

6  
7 APPEARANCE OF COUNSEL:

8 For the Petitioner:

9 SONJA H. RHODES  
10 Attorney at Law  
11 1820 East 17th Street  
Santa Ana, California 92701

12 For the Respondent:

13 LAW OFFICES OF SEASTROM & FISHER  
14 BY: Michael A. Fisher 714-246 1414  
Attorney at Law  
15 333 City Boulevard West, Suite 710  
Orange, California 92668

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1           A       Yes.

2           Q       How much are you ordered to pay her on a monthly  
3 basis?

4           A       I'm not sure. I have a Utah order. I have a  
5 California order and I'm not following either.

6           Q       What does the Utah order say?

7           A       3,000 a month family support.

8           Q       I'm sorry?

9           A       3,000 a month family support.

10          Q       And that would have been for both Marlene and --

11          A       Kwinci.

12          Q       -- Kwinci; right?

13          A       Correct.

14          Q       Have you instituted any action to modify that  
15 order?

16          A       Yes.

17          Q       Has a hearing been set?

18          A       The next hearing is the 29th of July, but I think  
19 that's a settlement conference. I don't think that there's  
20 been a court date set yet.

21          Q       Now you're telling me then in the same divorce to  
22 Marlene there's also a California order?

23          A       Yes.

24          Q       What does the California order say?

25          A       That I should be paying her \$1250 alimony.

1           A       No, I have an action in Utah.  Riverside  
2 essentially looked at the thing all in all and said go back to  
3 Utah; that's where this thing belongs.  So right now we have  
4 split jurisdiction; custody jurisdiction is in California and  
5 alimony jurisdiction is in Utah.

6           Q       Does California agree that it no longer has  
7 jurisdiction over the support issue?

8           A       Well that's Riverside's opinion.  So we have never  
9 been to court in Riverside.

10          MR. FISHER:  Let me ask your attorney, even though she  
11 hasn't been sworn in, we'll trust that she will answer  
12 honestly.  There's an Orange County order that says he's to  
13 pay \$1250 a month in spousal support to Marlene?

14          MS. RHODES:  I have reviewed the court order; I did not  
15 represent him at the time.  The only work I have done was the  
16 custody of Kwinci.  She came here and got an order in '87, so  
17 resubmitted herself to California jurisdiction.

18                 So yes, there is that \$1200 order but Utah again  
19 apparently, as I understand it, reasserted jurisdiction when  
20 she went there and had a default hearing and got a \$3,000  
21 order.  And that Orange County Superior Court found that it  
22 had jurisdiction to change custody of Kwinci though.  And the  
23 court has made no determination asking for modification of the  
24 spousal support order at that time.

25                 So he really has three different things going I

Barry J. Brooks

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---

October 31, 2003

Honorable Justices Aronson, Bedsworth & Fybel  
4<sup>th</sup> District Court of Appeal, Division 3  
925 N. Spurgeon Street  
Santa Ana, CA 92702

RE: G030846  
Lundahl v. Lundahl  
Amicus Letter Brief - due 11/3/03

Honorable Justices:

*Amicus curiae*, Barry J. Brooks, files this reply to the Court's order issued September 30, 2003.

**(1) whether an order denying a petition to vacate registration of an out-of-state support order is an appealable order**

Amicus will defer to the California attorneys for thorough briefing on this issue.

**(2) whether the Utah state court could issue independent spousal support orders on April 21, 1991 and April 13, 1995 without modifying, superceding, or nullifying the parties' 1977 California divorce decree or a 1994 California support order**

*Amicus curiae* would respond that in 1991 and 1995, Utah could only issue independent spousal support orders. To this day, Utah can not enter an order that modifies, supercedes, or nullifies the spousal support provisions of any California orders.

The Court in *Kammersall* made the correct analysis of the effect of multiple support orders. That analysis is applicable to this case. Until the enactment of the Full Faith and Credit for Child Support Orders Act (FCCSOA, 28 U.S.C.A. 1738B) or the Uniform Interstate Family Support Act (UIFSA), states were able to establish multiple child and spousal support orders. As *Kammersall* explains, a subsequent order did not "modify" a previous order. *Kammersall v. Kammersall* 792 P. 2d 496, 498 (Utah 1990).

The assertion by GERALD that a subsequent order is “void and of no force and effect” is incorrect. (Appellant’s Letter Brief, pg. 5) As the Utah Supreme Court stated:

It is true that under these acts a ‘responding state’ . . . may set a different amount that the ‘obligor’(defendant) must pay, and in that sense there is a ‘modification’ of an amount, but we do not believe and do not hold that the decree of the ‘initiating’ state . . . was modified, vacated, reformed or eliminated. *Oglesby v. Oglesby*, 510 P.2d 1106, 1107 (1973).

This principle is applicable regardless of which order sets the highest amount of support. A subsequent order that sets a lower support amount has no mathematical effect on the aggregate arrears that may be owed. Conversely, a subsequent order that sets a higher support amount has the undeniable effect of being the order used to calculate the aggregate arrears. While the subsequent lower order may have no effect on the calculations, it is still a valid order that is in force. If the support under the first order terminates earlier than the support under the second; obviously, the second order would have force and effect on the ongoing obligation and any arrears after the termination of the initial order.

Reliance on *Rimensburger v. Rimensburger*, 841, P.2d 709 (Utah Ct. App. 1992) is completely misplaced since Utah has correctly held it is only applicable to subject matter jurisdiction between two Utah courts. *Bankler v. Bankler*, 963 P.2d 797, 800 (Utah Ct. App. 1998). Citing *Oglesby*, the court in *Bankler* basically reaffirms the proposition that the ability to “modify” its initial order rests solely with the initial court. *Id.* The *Bankler* court was not presented the issue whether a Utah court could enter a valid, independent, subsequent order in the context of there being another state’s order.

One of the major differences between interstate and intrastate family law prior to UIFSA and FFCCSOA was the ability of one state to establish an order for prospective support when there was an existing order on the same issue in another state. Within many states, there was only one court with continuing, exclusive jurisdiction over a support issue. In the interstate context, there was no exclusivity principle. There could be several orders from courts in different states and each court had continuing jurisdiction over its order. The court also had exclusive jurisdiction in the sense that no court in another state could modify or invalidate the order. However, there was no exclusivity over the support obligation. This multiplicity of valid obligations created the problem that UIFSA was designed to solve.

The ability and practice of a subsequent court entering a valid child support order in a different amount dwindled as states began to adopt UIFSA. A state adopting UIFSA no longer

had the ability to issue new, subsequent orders. The practice came to a complete halt with the enactment of FFCCSOA on October 20, 1994. After that date, a state must give full faith and credit to the child support order issued by another state. New orders are not permitted. Only “true modifications” can occur. As the practice of entering subsequent orders ceases, there becomes only one tribunal with the exclusive jurisdiction to prospectively modify the support obligation.

Recognizing that multiple, valid orders entitled to full faith and credit had been created, both FFCCSOA and UIFSA set up the same mechanism to determine which of the multiple orders would control the issue of prospective support. 28 U.S.C.A 1738B(f) & Fam. Code 4911. FFCCSOA only applies to **child** support orders. However, UIFSA as a matter of state law does apply to spousal support orders. (Fam. Code § 4901(r) and (u)) It is premised on there being one tribunal with exclusive jurisdiction over all support (child or spouse) obligations. UIFSA provides for a very limited circumstance that will allow transfer of the exclusive jurisdiction to modify the child support obligation. The distinction between child support and spousal support is that once the first tribunal enters an order regarding the spousal support obligation, the obligation can only be modified by that tribunal. (Fam. Code § 4909) (Brief of *Amicus Curiae* has already discussed the fact that the determination of controlling order provisions of UIFSA do not apply to spousal support orders.)

**(3) whether the Utah state court proceeding that resulted in support orders from that court were conducted pursuant to the Revised Uniform Reciprocal Enforcement of Support Act, the Utah Foreign Judgment Act, or another statute**

*Amicus curiae* would respond that the initial Utah spousal support order was an independent cause of action not conducted pursuant to either the Revised Uniform Reciprocal Enforcement of Support Act (RURESA) or the Utah Foreign Judgment Act.

The resolution of this issue is not dependent on the caption of the pleadings. Often, it is not dependent on the imprecise wording of an order. As the court noted in *Oglesby*, an interstate “modification” is not really a modification. *Oglesby, supra* at 1107. Of greater significance is the Utah court’s recitation in the 1991 “Order on Order to Show Cause” that the court issued its order pursuant to Utah Code Annotated 30-3-5(3). Although this section has been revised since 1991, the substance remains the same. In pertinent part, it provided in 1991: “The court has

continuing jurisdiction to make . . . new orders for the support and maintenance of the parties, as is reasonable and necessary.” Utah Code Annotated 30-3-5(3) (revised)

Any contention by GERALD that Utah can only establish spousal support in the context of a divorce, is unavailable. The Utah Supreme Court confirmed that the Uniform Reciprocal Enforcement of Support Act (URESA) permitted Utah to establish an independent spousal support order. *Lamberth v. Lamberth*, 550 P.2d 200, 202 (1976) It is interesting to note that the court in *Lamberth* fell into the misnomer addressed by the same court in *Oglesby* and characterized the Utah action as a “reduction” of the support previously ordered. *Id* The court obviously believed the subsequent Utah order was a valid order.

Amicus would disagree with GERALD that this action for a new spousal support amount was pursued under the Utah Foreign Judgments Act. (Appellant’s Letter Brief, pg. 8) *Bankler* is correct:

The Utah Foreign Judgment Act does not confer jurisdiction on a Utah court to **prospectively modify** an order issued by a foreign state court . . . *Bankler, supra* at 800 (emphasis added)

The Utah Foreign Judgments Act is similar to the Foreign Judgment Acts of most states. It is a legal construct for enforcing judgments. It is not to be used to establish prospective obligations. Its ability to even alter existing judgments is extremely limited. It is a method for collection of obligations that have been reduced to a judgment or have become judgments by operation of law.

It is precisely because of the temporal limitations on actions under a Foreign Judgment Act that URESA and RURESAs were utilized for family support. For cases with no orders, they provided a structure for a resident of one state to obtain services in another state for the establishment of an order. URESA and RURESAs also provided a legal construct for a tribunal in one state to issue a new support order for **prospective support** when there was already an existing order in another state: GERALD is correct that the orders in this case were not obtained using RURESAs. One distinction is that private counsel was used instead of the Department of Human Services or the Title IV-D agency. However, the use of RURESAs is not dispositive of the validity of the order.

The version of RURESAs used by Utah acknowledged: “The remedies herein provided are in addition to and not in substitution for any other remedies”. Utah Code Ann. 77-31-3 (repealed). It further provided: “‘Support order’ means any judgment, decree or order of support, . . . regardless of the kind of action in which it is entered” and “‘Duty of support’ includes any



duty of support imposed or imposable by law or by any court order, decree or judgment whether incidental to a proceeding for divorce, legal separation, separate maintenance or otherwise ” Utah Code Ann 77-31-2(10) and Utah Code Ann 77-31-2(6) ( both repealed) Clearly, at the time the Utah court entered its orders, RURESA was not the exclusive means to obtain spousal support in Utah As the Utah court noted, the duty of support in this case was imposable under Utah Code Ann 30-3-5(3) and was imposed by a court order in a proceeding for separate maintenance

**(4) whether the September 22, 2003 Utah state court order has been appealed and if so, the effect of the pendency of that appeal on this proceeding**

*Amicus curiae* can only hope that the 2003 Utah state court rulings will ultimately be reviewed by a competent court Not only is it incorrect in this case, but, it misconstrues the entire jurisprudence of Utah.

As previously discussed, to the extent the Utah court was “purporting to modify” the existing California order, it was not a true “modification”. Thus, the first issue decided in the 2003 Utah order is not factually correct. To be sustained, the decision would have to be re-characterized as a finding in 2003 that the same court did not have jurisdiction to enter its independent order in 1995. The fallacy of this has been discussed as well. The Utah court’s holding that it is invalidating the April 13, 1995 Order has the effect of reinstating the original 1991 Order. If this ruling is correct, GERALD actually owes support at the higher 1991 rate. The ruling does nothing to invalidate the Judgment obtained in 1999. It should be noted that the arguments being made now were available in 1999 but were not raised either at the hearing that lead to the judgment nor in any appeal. The incorrectness of the ruling is also apparent since the 1995 order modified the 1991 Utah order, not any California order.

The second issue ruled upon by the court in the 2003 Utah order is essentially the same as the first and the associated problems are the same as discussed above.

Assuming the court’s third ruling is upheld, it will resolve the issue first propounded to *amicus curiae* - the determination of a prospectively controlling order. If Utah is now deferring exclusive jurisdiction over spousal support to California, then prospective support will be what California determines. However, this ruling can only be prospective.

Apparently, the Utah court was lead to believe that waiving the wand of UIFSA over the case would solve all issues. Thus, the court decided to apply UIFSA retroactively and

unconditionally. The application is not that simple. GERALD would have this court believe that “the trend” is to use UIFSA to declare all subsequent orders entered using URESA, RURES A, or some other remedy are superfluous and void *ab initio* (Appellant’s Letter Brief, pg. 9 citing *State of Utah, Dept. of Human Services v. Jacoby*, 975 P.2d 939 (Utah Ct. App. 1999)). No state had gone that far. This interpretation of retroactivity would mean the section on determining the controlling order in a multiple order situation is truly superfluous. (See Fam. Code § 4911). Likewise, the section on simultaneous credit for payments under multiple orders, a key provision of URESA and RURES A, is meaningless. (See Fam. Code § 4913). If all subsequent orders are now void in Utah, actions for refunds when those orders were higher should soon abound. The holding does not make it clear if it applies to all subsequent orders from all states that are now being enforced in Utah or it applies to all subsequent Utah orders regardless of where they are being enforced. It is obviously this last application that GERALD is wanting to foist upon this court. Being stated without any restrictions, the ruling would apply to both child and spousal support orders.


What *Jacoby* held is that the procedural aspects of UIFSA can be applied retroactively. *Id.* at 942. This is the corollary to the “general rule followed in Utah” that the substantive law in effect at the time the action was initiated governs the action. *Wilde v. Wilde*, 969 P.2d 438 (Utah Ct. App. 1998). Surely, GERALD will not contend that retroactively invalidating all support orders that were valid at the time of entry is only “procedural”. It is also doubtful that Utah intends this wholesale invalidation to be its jurisprudence.

Proper resolution of this and future cases depends upon the correct interpretation and application of interstate family law concepts. It is certainly understandable that this court must factor in the effect of an appeal of the 2003 Utah order into its decision. *Amicus curiae* would suggest there is an approach that would enable all issues to be resolved instead of continuing the multi-state litigation. In the 2003 order, the Utah court cedes continuing, exclusive jurisdiction over the spousal support issue to competent courts in California. Under Utah law, the issue of whether a law operates retroactively is a question of law and no deference to the decision of a district court must be given. *Jacoby*, *supra* at 941. In addition, the issue of retroactivity of UIFSA is a lynchpin of GERALD’s argument in California that Utah lacked subject matter jurisdiction to enter its orders. Thus, this court can accept the tender of continuing, exclusive jurisdiction, combine it with the issue having been raised in California, and apply Utah law to decide UIFSA does not apply retroactively to void all subsequent orders entered in cases with

existing orders. If the premise that UIFSA applies retroactively to invalidate all subsequent orders is found to be incorrect, then at the time of entry of the orders in this case, Utah law allowed subsequent spousal support orders to be established using either general family law provisions or RURESA, so the orders entered by Utah are valid. Valid sister state judgments are entitled to full faith and credit meaning GERALD owes all missed payments of spousal support calculated using the highest order in existence at the time.

If this court want to further assure the correctness of its rulings, UIFSA facilitates this. Tribunals can communicate with each other. If it so desires, this court is certainly able to contact any appropriate court in Utah for assistance in resolving any matters in this case. (Fam. Code § 4931) Ultimately, the goal of resolving interstate family law issues must be a body of law that is founded on fundamental concepts shared by all states.

Respectfully submitted,



Barry J. Brooks

DECLARATION OF SERVICE

Case Name     *Lundahl v. Lundahl*  
Court           Court of Appeals, 4<sup>th</sup> Appellate Dist., Div. Three  
Case No        G030846

I declare.

On October 31, 2003, I served the following document:

**Letter Brief dated 10/31/03 to 4<sup>th</sup> District Court of Appeal, Division Three**

by placing it in the United States Postal Service that same day in the ordinary course of business, in a sealed envelope, postage fully postpaid, addressed as follows:

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Attorney(s) for Appellant

California Court of Appeal  
Fourth Appellate District, Division Three  
P. O. Box 22055  
Santa Ana, CA 92702  
(Original and 4 copies)

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Respondent - in pro per

Hon. Julee Robinson, Commr.  
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I declare under penalty of perjury the foregoing is true and correct and that this declaration was executed on October 31, 2003 at Austin, Texas.

Barry J. Brooks  
Name

  
Signature

BILL LOCKYER  
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October 31, 2003

Hon David G Sills, Presiding Justice  
Fourth Appellate District, Division Three  
925 Spurgeon Street  
Santa Ana, CA 92701

RE *Lundahl v. Lundahl*  
4<sup>th</sup> District Court of Appeal, Division 3, Case No. G030846

**LETTER BRIEF**

Dear Justice Sills:

As ordered by the court on September 30, 2003, respondent Orange County Department of Child Support Services files this letter brief on the following issues:

- 1) Whether an order denying a petition to vacate registration of an out-of-state support order is an appealable order;
- 2) Whether the Utah state court could issue independent spousal support orders on April 21, 1991 and April 13, 1995 without modifying, superceding, or nullifying the parties' 1977 California divorce decree or a 1994 California support order;
- 3) Whether the Utah state court proceedings that resulted in support orders from that court were conducted pursuant to the Revised Uniform Reciprocal Enforcement of Support Act (URESAs), the Utah Foreign Judgment Act (UFJA), or another statute; and
- 4) Whether the September 22, 2003 Utah state court order has been appealed and, if so, the effect of the pendency of that appeal in this proceeding.

## 1) APPEALABILITY

The court directed the parties to *Cowan v. Moreno* (Tex.Ct.App. 1995) 903 S.W.2d 119, 124 [order under Uniform Interstate Family Support Act not appealable], *Fishman v. Fishman* (1981) 117 Cal.App 3d 815, 819 [order under Sister State Money Judgment Act (SSMJA) appealable], and code of Civil Procedure section 1710.10, subdivision (c) [SSMJA not applicable to support orders]. The Department asserts this order is not appealable, but the purported appeal should be considered by this court as a petition for writ of prohibition. The Department takes this position because the current spousal support order became enforceable when the registration was confirmed thus placing Mr. Lundahl in a position of needing immediate relief if his argument is ultimately accepted. The Department also believes this course will conserve judicial resources because an appeal will be most likely be filed again after the trial court determines the arrears under the Utah orders.

The *Cowan* trial court confirmed the registration but specifically declined to rule on the decree's enforceability and did not set the arrears. (*Cowan v. Moreno, supra*, 903 S.W.2d at p. 121.) The Texas Court of Appeals held that the Uniform Interstate Family Support Act (UIFSA) controlled the registration because the registration was filed in Texas after its enactment. (*Id.* at p. 122.) The court went on to hold that under UIFSA, the petition to register raises the issue of enforcement of arrearages. (*Id.* at p. 123.) Furthermore, since the order to be registered was valid on its face, it could only be attacked upon specific limited grounds such as lack of personal jurisdiction or some procedural defect that would render the decree void. (*Ibid.*) ““There is no defense . . . to the registration of a valid foreign support order.’ UIFSA § 606, Comment, 9 U.L.A. 126, 160 (Supp. 1994).” (*Ibid.*) The court held that Cowan’s pleading challenged the amount of the arrears, which relates to enforceability rather than to the existence of the support order. (*Id.* at pp. 123-124.) Since the trial court expressly declined to establish the arrears, reserving the issue for later hearing, the order was interlocutory. (*Id.* at p. 124.) The appeal was dismissed because there was no jurisdiction to appeal an interlocutory order. (*Ibid.*)

This case stands on very nearly the same footing. The order on appeal denied Mr. Lundahl’s request to vacate the registration, but specifically continued the issue of the amount of arrears owed. (Appellant’s Appendix (AA) Vol. II, p. 394.) The issue of arrears was later taken off calendar until this appeal has been concluded. (Motion for Judicial Notice, Exhibit A.)<sup>1</sup> This is thus an interlocutory order and the appeal should be dismissed.

The order on appeal in *Fishman* was an order denying registration of a New York order for attorney fees in a dissolution action. (*Fishman v. Fishman, supra*, 117 Cal.App.3d at p. 818.)

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<sup>1</sup> The Department has filed a motion for judicial notice to include the minute order taking the issue of arrears off calendar simultaneously with this letter brief .

The obligee registered the order under the Sister State Money Judgment Act (Code Civil Proc., §§ 1710.10, et seq ) (*Ibid.*) The court held that this was appealable as an order on a motion to vacate the registration of a sister state money judgment. (*Id.* at p. 819.) The court did not analyze appealability under URESA. The court held that whether the New York order was a "support order" governed by URESA or not, it was properly registered under the SSMJA because URESA was not designed to limit remedies but to add remedies to obligees in support actions. (*Id.* at p. 821-822 ) The court summed up its holdings by stating that the New York order was a money judgment, it was final, for a liquidated sum, and it was nonmodifiable. (*Id.* at p. 823.) *Fishman* is thus distinguishable from this case because the order from Utah is a support order registered under UIFSA and not liquidated. Furthermore, it is clear that support orders are not included in the definition of "sister state judgment" in Code of Civil Procedure section 1710.10, subdivision (c). The analysis under *Fishman* does not apply in this case.

Mr. Lundahl argues that this case is appealable because the Utah orders, having been registered in California, are immediately enforceable. (Letter Brief, p. 2.) He looks for support of his contention in the holding from *In re Marriage of Adams* (1987) 188 Cal.App.3d 863 which stated that "Such postjudgment order, which relates to enforcement of the judgment, is appealable. [Citation.]" (*Id.* at p. 688.) However, "such postjudgment order" in that case related specifically to a postjudgment order granting or denying motions under former Civil Code section 5124, which related to community property settlements and military retirements within certain time limits. (*Id.* at p. 686, fn. 3.) This case does not involve any order of that type.

Generally, the main basis for appeals in family law and other civil matters is Code of Civil Procedure section 904.1, which codifies the "one final judgment rule" and provides that only final judgments are appealable. Labels affixed by the trial court cannot determine appealability, rather it is the substance and effect of the court's order or judgment that must be considered. (*In re Marriage of Loya* (1987) 189 Cal. App. 3d 1636, 1638.) Family Code section 3554 provides that "[a]n appeal may be taken from an order or judgment under this division [Division 9 Support] as in other civil actions." (Fam. Code, § 3554.) Nevertheless, a judgment must fully dispose of the litigated matter, i.e., there must be a final determination of the parties' rights, before an appellate court will entertain an appeal. (*In re Marriage of Griffin* (1993) 15 Cal. App. 4th 685, 689.)

This order does not fully dispose of the issues before the court because Mr. Lundahl's arrearage obligation was continued to a future date, since taken off calendar due to this appeal.

Having shown that this order is not appealable, the Department nonetheless requests this court to rule on the issues because Mr. Lundahl could be prejudicially harmed if this court declines to hear the matter now. The Utah spousal support order became enforceable immediately upon confirmation of registration. Mr. Lundahl's petition for writ of supercedeas was denied. Furthermore, an opinion from this court would promote judicial economy by making

unnecessary the filing of a new appeal after the trial court sets the arrears under the Utah orders. This court has jurisdiction to deem the appeal to be a petition for writ of prohibition (*Olson v. Cory* (1983) 35 Cal 3d 390, 400 ) The record is adequate to demonstrate that immediate review is necessary to protect all of the parties

**2) EFFECT OF THE 1991 AND 1995 UTAH ORDERS ON THE 1977 CALIFORNIA DISSOLUTION ORDER**

The Department adopts the argument of amicus curiae regarding this issue - the Utah orders did not modify the California orders, they were independent orders running concurrently and adds the following.

Under URESA, child and spousal support were treated identically. (Sampson, *Uniform Interstate Family Support Act* (1996) Fam. L. Q., Summer 1998, Prefatory Note, at 403.) It is well-settled law that the responding state in a URESA action could not modify a support order from another state without clearly stating that the new judgment modified the previous judgment and only then with proper notice and opportunity to be heard. (See former Fam. Code, § 4840 (repealed by stats. 1997, ch. 194, § 1); *In re Marriage of Ward* (1994) 29 Cal.App.4th 1452, 1456-1457; *In re Marriage of Popenhager* (1979) 99 Cal.App.3d 514, 521-522.) Instead the responding state entered a de novo order. (Kathleen A. Burdette, *Making Parents Pay: Interstate Child Support Enforcement after United States v. Lopez* (Apr. 1996), 144 U. Pa. L. Rev. 1469, 1484.) The two judgments ran concurrently and payments to one were credited against the other. (Former Fam. Code, § 4840.) If an obligor chose to pay on the lower order, arrears would accrue under the higher order to account for the difference. This is what happened in this case.

*Kammersell v. Kammersell* (Utah 1990) 792 P.2d 496 is in accord with this reasoning. In *Kammersell*, a Pennsylvania court, responding to a request from Utah to enforce a Utah order, entered a lower support amount. (*Kammersell, supra*, 792 P.2d at p. 496-497.) The Utah court held that Pennsylvania had not modified the Utah order because it did not specifically provide that it was a modification as required by URESA. (*Id.* at p. 498-499.) Since it was the Utah order that was higher, the court was not required to review the validity of the Pennsylvania order - arrears had accrued under the higher Utah order. (*Id.* at p. 498.)

As amicus curiae pointed out, Mr. Lundahl's reliance on *Rimensburger v. Rimensburger* (Utah.Ct.App. 1992) 841 P.2d 709 is misplaced. That opinion was interpreting Utah's intrastate transfer of jurisdiction and found that, internally, one district court did not have jurisdiction to modify the orders of another district court. (*Id.* at p. 710.) It did not address the issue of establishing a de novo order.



**3) WERE THE UTAH PROCEEDINGS CONDUCTED PURSUANT TO URESA, UFJA, OR OTHER STATUTE?**

The Department adopts the argument of amicus curiae that the Utah spousal support order was not issued pursuant to URESA or UFJA. In this case, the action in Utah began as a civil complaint by Mr. Lundahl to enforce his visitation rights. The Utah court had jurisdiction to entertain an order for support in such an action. (See, e g , Utah Codes Annotated 1953 § 30-3-3 [in any action to establish an order for parent-time, the court may order a party to provide support for the other party during the pendency of the action].)

**4) THE SEPTEMBER 22, 2003, UTAH ORDER HAS BEEN APPEALED.**

Respondent, Ruth Telford (Lundahl) filed a notice of appeal with the Utah Court of Appeals on October 2, 2003. (Motion for Judicial Notice, Exhibits B, C.)

The Department adopts and joins in the argument of amicus curiae regarding the errors of the 2003 Utah order

The order in Utah appears to be in response to a motion to strike respondent's order to show cause filed by Mr. Lundahl on March 4, 2003, while this appeal was pending. (Motion for Judicial Notice, Exhibit B, p. 13.) The Order to Show cause was issued on May 29, 2002, and Mr. Lundahl was served on June 22, 2002. (*Id.* at p. 11) These dates are significant when it is noted that the order on appeal in California was entered May 3, 2002, (AA Vol. II, p. 393), and the notice of appeal in California was filed on July 2, 2002 (AA Vol. II, pp. 396-397). Furthermore, at least part of the delay in hearing the order to show cause in Utah was because Mr. Lundahl filed a federal action, naming some of the judges in Utah as defendants, which required recusal. (Motion for Judicial Notice, Exhibit B, p. 12.)

**CONCLUSIONS**

1) This court should hear the matter on the merits, whether as an appeal or petition for writ of prohibition.

2) The Utah and California orders are concurrent orders, neither state having jurisdiction to modify the other state's judgments.

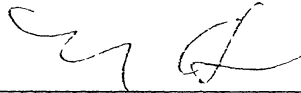
3) The Utah orders were entered in a civil action initiated by Mr. Lundahl to enforce his visitation rights.

Hon David G Sills, Presiding Justice  
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Page 6

4) The 2003 Utah order is on appeal and should not effect this court's consideration of the issues

Respectfully submitted,

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Attorney General  
JAMES M. HUMES  
Senior Assistant Attorney General  
THOMAS R. YANGER  
Supervising Deputy Attorney General



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MARY DAHLBERG  
Deputy Attorney General

cc: Jeffrey W. Doeringer, Esq.  
Ruth M. Telford  
Hon. Julee Robinson, Commr.  
Kevin Harrison, Esq.

MKD/gm  
I:\ALL\Dahlberg\Cases\Lundahl v Lundahl\letter brief.draft 10-31-03.wpd

**DECLARATION OF SERVICE**

Case Name: ***Lundahl v. Lundahl***  
Court: **Court of Appeals, 4<sup>th</sup> Appellate Dist., Div. Three**  
Case No. **G030846**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the Bar of this Court at which member's direction this service is made. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On October 31, 2003, I served the following documents:

**Letter Brief dated October 31, 2003**

by placing them in the internal mail collection system at the Office of the Attorney General, 1300 I Street, P.O. Box 944255, Sacramento, California 94244-2550, for deposit in the United States Postal Service that same day in the ordinary course of business, in a sealed envelope, postage fully postpaid, addressed as follows:

Jeffrey W. Doering, Esq.  
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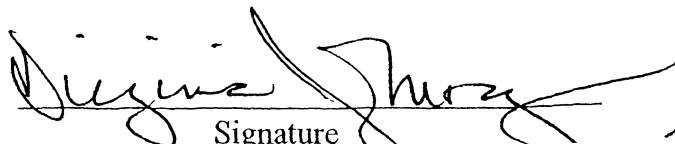
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I declare under penalty of perjury the foregoing is true and correct and that this declaration was executed on October 31, 2003, at Sacramento, California.

VIRGINIA J. MORGAN

Name

  
Signature