

2003

Lundahl v. Lundahl : Brief of Appellant

Utah Court of Appeals

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Marlene Telford (Lundahl); Pro Se.

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Blue Appellants' Brief

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UTAH COURT OF APPEALS
BRIEF

UTAH
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DOCKET NO. 20030800-CA

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
)
)
)
)
)
) Fourth Judicial District Court
)
) Case No 784449259
)
) Judge Claudia Laycock

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

APPELLANT'S OPENING BRIEF

FILED
Utah Court of Appeals

DEC - 1 2003

Paulette Stagg
Clerk of the Court

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Separate jurisdictions enforcement of family support. NRS 130.090; State ex rel. Welfare Div v. Vine 99 Nev. 278, 283, 662P 2d. 295, 198 (1983). 238

SEE anotation, Construction and Effect of Provision of Uniform Reciprocal Enforcement of/Support Act. NRA 139.280 (1) directs that: A support order of this state pursuant to this chapter does not nullify and is not nullified by a support order made by a court of this state pursuant to any other law or by a court of any other state pursuant to a substantially similar law or any other law, regardless of priority of issuance 31nALR 4th 347, 351 (1984) citing Uniform Reciprocal Enforcement of Support Act. Commissioner;s Prefatory note, 9B U.L.A 382 (1968) see also NRS 130.280; Vix V. State of Wisconsin 100 Nev 495 686 P 2s 226 (1984). 238

In URESA proceedings, a court *only has jurisdiction to order enforcement of pre-existing duties of support*. Moreover, the remedies provided by the act are “**in addition to** and not in substitution for any other remedies. NRS 130-050

The Act further provides that it “shall be so interpreted and construed as to effectuate it general purpose t6o make uniform the law of those states which enact it.” See NRS 130-020. (Emphasis) **PII** URESA’S choice of law provision provided that the duties of support . . . are those imposed . . . under the laws of any state where the obligor was present during the period for which support is sought. UTAH Code Ann.@ 77-31-7 (1995) repealed 1997 . Thus under URESA Utah’s Statute of limitations would govern the duration for which support could be recovered . . . However, **UIFSAS’S** choice of law provision states that “in a proceeding for arrearages, the statute of limitation under the laws of this state or of the issuing state, whichever is the longer applies.” Utah Code Ann @77.45F 604 (Supp 1998) (emphasis) 238

P.12) The Utah Supreme Court has stated that “Statutes of limitations are essentially procedural in nature and . . . do not abolish a substantive right to sue . . . “Lee v. Gaufin, 867 P.2d 572 (Utah 1993); See also Financial Bancoorp Inc. V. Pingree & Dahls [**] Inc. 880 P 2d 14m 16 Utah Ct App 1994 (stating that Utah follows majority position that limitation periods are general procedural in nature)” Similarly, “UIFSA choice of law provision does not establish a substantive right or create a duty of support, but simply changes the mechanism by which support orders are enforced by

instructing the court as to which law to apply in calculating arrearages. UIFSA merely provides a framework for enforcing one states support order in another jurisdiction. Undoubtdly, the out come may differ depeding on which statute of limitations is applied; however, thr rights created and possessed by the parties are found in provisions separatate and apart from the choice of law section “full faith and credit “ provisions. 238

A party seeking arrearages may only collect past due amounts going back eight years after the date the last installment was due; See Coulon v. Coulon, 915 P 2d. 1069, 1073, (Utah crt. App 1996) 241

* * *

The Utah Court may modify the child support order if “ ”the child, the individual ogligee, and or’ obligor reside in the issuing state. . . . [and] a petitioner who is a nonresident of this state seeks modification . . . [and the [plaintiff] is subject to the personal jurisdiction of the tribunal of this state . . . Utah id.@ 7845f0 611 (P25) 241

Spousal Support Obligation. . .

Utah Code Ann. @ 78-45f 206 (2) Supp. (1998) In Utah, a court may only modify a spousal support order issued by another state if the Utah court has “continuing, exclusive jurisdiction” over the spousal support order. The method of which a Utah Court obtains” continuing exclusive jurisdiction over a spousal support order is by issuing a support order consistent with the law of this state. 241

Under California Law (UIFSA) a Spousal Support is modifiable only in the state where it is entered. When the Plaintiff registered the California Dissolution Order in the State of Utah, Utah became the State of jurisdiction 599

Utah Rule 60(b). Whitaker V. Nichols, 699 p.2d 685 The Plaintiff had ample time to communicate with the Respondent. 555

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Under Utah law McLane v. McLane 570 P.2d 692 (1977). With the respect to divorce decrees the Utah Statute provides that:

The Court shall have continuing jurisdiction to make such subsequent changes or new orders with respect to the support and maintenance of the parties, the custody of children and their support and maintenance. . as shall be reasonable and necessary. Even though the decree is res judicata as the circumstances existing at the time of the decree if there are changed circumstances so requiring there can be further adjudication thereon. A Courts decision concerning the amount of support can, however, be modified at any time during the support payment period (Civil Code 4801 (a) in re marriage of Morrison 143 Cal Rptr 139 573 P.2d41. (1978)

85

California statute and Law: (Jurisdiction)

In rendition of a judgment, court must remain within its jurisdiction and power, where it grants some relief *which it has no power to grant*, judgment is void and may be reached by collateral attack. Vasquea v Vasquea (1952) 240 P.2d 319, 109 C.A.2d 280

Judgment entered without jurisdiction is void and void judgment may be set aside at any time. Milrot v. Stamper Medical Corporation (App 2 Dist 1996 51 Cal Rptr 2d 424, 44 Cal. App 4th 182 (Emphasis added)

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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

Introduction

RUTH M. TELFORD (LUNDAHL) declare:

I am the Respondent in the above referenced matter and am personally familiar with all of the facts stated herein below. If called to testify as to these facts, I could and would do so competently of my own firsthand knowledge.

I would like to preempt my declaration with a statement about the Plaintiff. He and I were married for 25 years and had 12 children together. The Appellee was a benevolent husband and a kind father, always responding to the needs of those whom he loved. I fought vigorously to keep the marriage together and literally begged him to stay with the family. The Plaintiff's decision to divorce me was in a like manner "divorcing his own children., while knowingly denying them the daily contact and supervision of a father. This ordeal not only came as a shock but served to be very traumatic for all of us. Our journey has been long, difficult and painful. My children don't know who to believe, me or their father since our "stories" often contradict each other. I was in so much pain that I didn't realize that my children were also equally afflicted. As a result our children have

1 bonded together as shown by their behavior. They are true "survivors." Moreover,
2 most of my children have provided a welcome fortress of emotional support for
3 me. The Plaintiff's affair with a married woman who became his second wife
4 caused irreparable damage not only to the family but to the Plaintiff himself. The
5 man I was once married to--who at one time exemplified integrity, courage and
6 kindness is not the same person today. It seems as though his five marriages
7 have driven him in a downward spiral which has changed his character
8 substantially to the extent that he's almost a "stranger"

9 I do not take satisfaction in "taking" the Plaintiff's money which has
10 become an obsession with him, but I see no other option. My health has
11 deteriorated to the point that I no longer have the mobility I once had and I have
12 become disabled; this was in large part due to my internalizing the divorce
13 causing severe depression, esophageal spasm's and now I have Spinosus of the
14 spine and related problems. I feel it is his responsibility to provide for me as he
15 promised he would when we were going through the divorce "stating that he
16 would *never* drop my income below \$2000 per month even after the children were
17 raised." This promise along with his insistence that I move out of the state of
18 California with our children, so I wouldn't be involved in his "new life" was a
19 promise that I have come to depend on.

20 2. The real issue before the Appellate Court is the primary issue of which
21 venue controls in the issue of jurisdiction pertaining to the matter of support for
22 the Respondent by the Plaintiff. The Respondent's focus will be to provide
23 evidence, fact and law that should convince the court that Utah jurisdiction is and
24 *has been the proper venue for the last 27 years* since the dissolution of the
25 marriage in 1977. The Respondent moved to Utah from California with eight of
26 her 12 children within two weeks after the divorce was final. Two of the older
27 children were on missions for the LDS church and two were away at college.
28 The Respondent will proceed to show that the Plaintiff **voluntarily and**

1 **deliberately** acquiesced to the Utah jurisdiction filing and responding to motions
2 supplemented with affidavits, memorandum, petitions to modify, etc for the last
3 26 years .See schedule of Utah Orders

4 3. (see **R.A. 511-512 Vol, 1) (R.A. 120-128, Vol, 11)**

- 5 1. -----June, 1979
- 6 2. April 28, 1980
- 7 3. Stipulation-June 30, 1980
- 8 4. July 7, 1980
- 9 5. 1980
- 10 6. Ruling August 4, 1981
- 11 7. Nov., 27, 1981
- 12 8. July 14, 1983
- 13 9. 1983
- 14 10. April 24, 1984
- 15 11. Stipulation November 30, 1984
- 16 12. April 24, 1991
- 17 13. Aug., 26, 1991
- 18 14. March 10 1993
- 19 15. July 28, 1994
- 20 16. April 13, 1995
- 21 17. April 28, 1999

22 Also it might be well to indicate additional activity as *representative* of actions
23 in the Utah Court, with both the Plaintiff and Respondent appearing and represented by
24 Counsel (**R.A. 515-538, Vol, 1)**

- | | | |
|---|--------------------------|------|
| 25 1) Affidavit, Respondent | December, 18 | 1990 |
| 26 2) Petition to Modify, Respondent | January, 4 th | 1991 |
| 27 3) Order to Show Cause | January 23, | 1991 |
| 28 4) Petition to Modify, Plaintiff | February 5 th | 1991 |
| 1 5) Order on Order to show cause | April 24 th | 1991 |
| 2 6) Affidavit, Respondent | July, 19 th | 1991 |
| 3 7) Order to show Cause | August 20 th | 1991 |
| 4 8) Order & Judgement | August 25, | 1991 |
| 5 9) Petition to Modify, Plaintiff | April 7 th | 1992 |
| 6 10) Affidavit, Respondent | January 8, | 1993 |
| 7 11) Notice of Conference Settlement | January 26, | 1993 |
| 8 12) Judgement | March 3, | 1993 |
| 9 13) Pre-Trial Order | March 10, | 1993 |
| 10 14) Order , Sanction of Plaintiff | July 28, | 1994 |
| 11 15) Memorandum of Law | September 2 | 1994 |
| 12 16) Final Pre-trial | December 1, | 1994 |
| 13 17) Plaintiff withdrawal of Counsel | January 3 rd | 1995 |
| 14 18) Hearing | January 27, | 1995 |
| 15 19) Order | April 3 rd | 1995 |
| 16 20 Affdiavit, Respondent | | 1998 |

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

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

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

-1-

California Attorney General's conclusion (R.A 182-185, Vol, 11) p.2, last line
"Therefore, it appears to be established that Utah has continuing, exclusive jurisdiction". (Emphasis)

6. It was after a meeting with the Orange County child support officers that the Plaintiff made the decision to file a motion with the Orange County Superior Court requesting a hearing regarding the registration of the Utah Orders, citing jurisdiction and the Doctrine of Laches as his argument. (**R.A. 1-23, Vol, 11**) He failed.

7. The Orange County Superior Court ruled in favor of the Defendant after hearing both arguments and **reading** the pleadings of both parties. After considerable deliberation the trial court ruled that both Utah and California have

1 concurrent jurisdiction, allowing the Utah support Orders to be registered, lifting
2 all stays against them. (R.A. B24-B26, Vol, 11) It was at this point that the
3 Plaintiff decided to file an appeal in the Appellate Court, Fourth District, Division
4 Three, the State of California.

5 8. In the current litigation before the Appellate Court, Fourth District,
6 Division Three, State of California the Plaintiff is attempting to go back to a past
7 ruling of the 1997 appellate Court, where the Appellant,(Respondent) Marlene
8 Telford (Lundahl) attempted to have a 1994 Order set aside from a previous
9 California ruling on the basis she was denied the opportunity to appear before the
10 California Court. The issue of jurisdiction was not before the Appellate Court.

11 See Opinion dated **August 26, 1997 (R.A. 656-661, Vol, 1)**. Whereas the
12 Plaintiff asserts that the California Appellate Court in its Opinion of 1997 states
13 that "California has exclusive Jurisdiction over Spousal Support" which is not
14 accurate. The Honorable Commissioner Julee Robinson, of the the Superior
15 Court of Orange County, California who heard the current case reprimanded
16 Counsel for Plaintiff 's suggesting she read the California Opinion again. (See
17 Transcript of Court Proceedings (**R.A. 32-53): 35,36, Vol, 11**

18 The Court: I just have one question, I believe it's directed to you Ms.
19 Garland in some of the argument that you put forward you cited in
20 the original----and this may be wrong but I thought were you citing
21 the original decision that had been made by our court, Fourth District
Court of Appeal, which was Exhibit "G" which was filed on August
26th, 1997 for the authority that the court found that there was
exclusive jurisdiction.

22 I read that Opinion thoroughly and I didn't find any such dicta
23 regarding one court or the other *having exclusive jurisdiction*.

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

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

1 So, the only reference I find in that Court, our own court of Appeals
2 Decision, was basically saying it would be by virtue of dicta. It's not
3 essential to the holding that there was some representation at the
4 Hearing.

5 Anyway, that jurisdiction was not an issue, that there was jurisdiction
6 all over the place and that Mrs. Lundahl's Counsel, at least, seems
7 to feel there was concurrent jurisdiction at that time. Do you note
8 that as well?

9 Also in the court transcript (R.A.37, Vol , 11) the Plaintiff's Counsel declares the
10 following:

11 The enforcement is occurring now and I believe that under the
12 circumstances that it's appropriate to follow UIFSA and conclude *that*
13 *the 1994 California Order is the controlling order* because it could not
14 be superceded by the 1995 Order.. . .

15 . . . Unless she [Defendant] advised the court that as to the issue of
16 retroactivity that the Utah Court had made UIFSA retroactive to the
17 cases that have been filed before it was enacted and I think it would
18 be very interesting that if this were occurring in Utah, where Mrs
19 Lundahl lives she could not enforce this registration of these orders
20 in that state because UIFSA, would be the controlling venue and the
21 *California order would not be the controlling order.*

22 Regarding the above dicta the previous Utah Orders were valid under URESA.
23 UIFSA was not ratified by the Utah legislature until April 6, 1996 and not until
24 January 1, 1998 by the state of California. *Utah support orders were honored by*
25 *the Riverside County ORS under URESA.* Therefore, the additional support
26 Arrearage, of \$3500, \$29,200, \$61, 100, \$62, 991 all fall under the federal
27 statutes of URESA.

28 9) California Dissolution order filed in Utah by Plaintiff as part of
Utah Decree

However, the *California Dissolution Order* was submitted and filed in
Utah by the Plaintiff when he and his Utah Counsel Mr. Wooton appeared
before the Utah Court in 1978 where the Plaintiff acquiesced to Utah
Jurisdiction by submitting a complaint along with the registration in Utah of
the California 1977 Dissolution Order requesting that the Utah Court act as
the controlling venue. (R.A. 54-68, Vol ,11) Along with a Complaint (R.A. 69-

1 **Vol, 11)** lines 18-26. *Note the upper right corner of page one, where the*
2 *dissolution document has been stamped by the Utah Court. This document is*
3 *certified by the Utah Court.*

4 The Plaintiff is entitled to a Judgment and Decree of this Court
5 incorporating the provisions of the Judgement and *Decree of the*
6 *Superior Court of the State of California* and to have said Judgment
and Decree *incorporated into* and made a part of a Decree of this
[Utah]Court

7 WHEREFORE, Plaintiff prays for a judgement and Decree of this
8 court incorporating the provisions of the Decree of the Superior Court
of the State of California in and for the County of Los Angeles in
Case No SE D336650 **(R.A. 70, (5, Vol,11)**

9
10 Also the Plaintiff states in 1983:

11 On May 17, 1977, Petitioner filed a Complaint in the Fourth District Court of
12 Utah County, State of Utah, case number: 499259 for the purpose of
establishing the California judgment. **(R.A 54-58, Vol, 11)** item (6)-

13 -3-

14 10. The Defendant's argument is that Utah has taken jurisdiction of both the
15 Defendant and the Appellee in divorce matters since 1978, See Utah Court
16 Docket **(R.A. 72-86, Vol, 11)**

17 11) In the Respondents SUPPLEMENTAL MEMORANDUM (R.A.
18 **Attachment A, B,C,)** the Respondent makes reference to the argument that the
19 *Utah Courts* previously ruled that the Utah court has both personal and SUBJECT
20 MATTER JURISDICTION (see **R.A. 559, and R.A. 560-563, Vol 1, 87, lines 21-**
21 **22 Vol 11)**, the court and the counsel of both parties had a discussion on the
22 subject of *Utah jurisdiction* and on-going alimony. In pertinent part

23 Findings

24 "The Court finds that this Court has continuing
jurisdiction of the subject matter and of the Plaintiff."

25 **(560-563, Vol 1)**

26 The Plaintiff has appeared personally, hired Utah Counsel to represent him
27 and many times has been the moving party. See SCHEDULE OF VARIOUS
28 UTAH PLEADINGS-PLAINTIFF **(R.A. 71- 72, Vol,11)**

1 8. The Plaintiff's first Utah Counsel was Noelle Wooton, followed by Robert
2 Moody, Donald Jensen, Richard Allred, Dana Burroughs, Sean Egan, Esq and
3 David Drake. These parties represented the Plaintiff in his many Utah motions the
4 Plaintiff has filed and responded to in the Utah jurisdiction.

5 -4

6 **Jurisdiction vs jurisdiction**

7 9) The primary issue is whether the California Order of 2002 along with the
8 long list of Utah orders (17) **(R.A. 120-128 , Vol, 11)** are valid. See also the
9 1995 and 1998 Utah orders summarizing arrearage that the Plaintiff owes the
10 Defendant). **(R.A. Attachment "E")**

11 -5-

12 **Plaintiff's insistence on Utah jurisdiction.**

13 10. There is a long history of motions that have been filed by the Plaintiff
14 in the Utah courts. The Plaintiff's purpose in submitting to and *even requesting*
15 *the jurisdiction of the Utah courts* was based on the courts' reputation for being
16 conservative in its judgements and rulings, See Vol 11, R.A. 188-196. Plaintiff's
17 **declaration of his wanting Utah jurisdiction). See Loose copy R.A. 127-199**

18 ~~Vol 11~~ *attachment*

19 The Plaintiff declares:

20 I have voluntarily traveled all of the way to Utah for the purpose of
21 submitting *myself to the jurisdiction of the State of Utah . . .*

22 "Respondent is till presently a resident of the State of Utah and I
23 have indicated in previous declarations and or pleadings that I would
be willing to submit myself to the Utah Courts"

24 Equally important the Plaintiff asserts:

25 11. In a motion filed by the Plaintiff in the Superior Court of the State of
26 California, for the County of Los Angeles, December 18, 1986, the Plaintiff
27 proceeds to establish facts demonstrating that California does not have
28 jurisdiction to hear matters regarding issues of divorce by the parties, through

1 chronologically submitting numerous dates where the parties filed motions and
2 appeared in the State of Utah. (R.A. 188-196 Vol, 11)

3 1. THIS COURT [California] MUST DISMISS
4 RESPONDENT'S ORDER TO SHOW CAUSE TO
5 MODIFY A UTAH ORDER ON THE GROUNDS THAT
6 THE RESPONDENT HAS FAILED TO ESTABLISH
7 THE UTAH ORDER AS A FOREIGN JUDGMENT IN
8 THE STATE OF CALIFORNIA.

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

13 "The effect of a judicial record of a sister state. . . can
14 only be enforced here by an action or a special
15 proceeding."

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

19 "It is now the settled law and policy of California that
20 foreign—created alimony and support obligations, as
21 well as child custody awards, unless established as a
22 foreign judgment in this state not be both enforced and
23 modified in the California forum" (emphasis)

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

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

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

2. THIS COURT MUST DISMISS PLAINTIFF'S

1 ASSERTION THAT ONLY CALIFORNIA HAS
2 EXCLUSIVE CONTINUING JURISDICTION, ON THE
3 GROUND THAT THE CALIFORNIA COURT LACKS
4 SUBJECT MATTER JURISDICTION

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

10 As a matter of fact:

11 12. The Plaintiff has appeared before the Utah Court on numerous
12 occasions as both the moving and responding party. As a result of one such
13 appearance, on **July 14, 1983**, (In response to Respondent’s motion to modify
14 support) the Fourth Judicial District Court, of Utah County, Provo, Utah made a
15 support order which has continued in full force and effect until the present time.
16 Since the Plaintiff has subjected himself to the jurisdiction of the State of Utah,
17 and since the Respondent and all of the minor children lived in the state of Utah,
18 it was declared that the State of Utah had continuing jurisdiction to decide all
19 issues regarding support of former spouse and children of the marriage.

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

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

The Plaintiff in the current matter falls under this directive when he

1 registered the California Dissolution Order in the state of Utah, as a Utah Order
2 requesting Utah be the venue of jurisdiction.

3 13. Historically, both the Plaintiff and the Respondent entered into a
4 number of stipulations in the Utah court. The Plaintiff also appeared in Utah to
5 have his deposition taken. The Utah Courts have repeatedly asserted personal
6 jurisdiction over support and over the Appellee himself, who is domiciled in
7 California but who has willingly submitted himself to the jurisdiction of the State of
8 Utah. Since the three of the Support orders pertains to "family" support a reading
9 of Civil Code Section 5152 is necessary:

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

13 (a) This state (i) is the *home state of the child* at the time
14 of commencement of the proceeding, or (ii) had been
15 the child's home state within six months before
16 commencement of the proceedings and the child is
absent from this state because of his removal or
retention by a person claiming his custody or for other
reasons, and a parent or person acting as parent
continues to live in this state.

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

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

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

28 Since the children of the marriage have resided continuously in the State of

1 Utah since 1978 up to their year of majority when they left their home to attend
2 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 took 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
Plaintiff is willing to litigate elsewhere; a stay is the more
common remedy.”

16 Another case of equal importance is Hafer v. Superior Court, (1981) 126
17 Cal.App.3d 856. The Original Dissolution was made in San Diego Superior Court.
18 The Court awarded custody of the minor children to the father. Thereafter, the
19 father moved with the minor children to the state of Idaho, where they lived
20 except for a brief period when the mother fled with the children and took them to
21 Florida. Mother then filed a modification action in the San Diego Superior Court.
22 At the time, the children were living with their mother in San Diego. The San
23 Diego Court *assumed jurisdiction on the ground that since the Court had*
24 *rendered the original custody Decree, it retained continuing jurisdiction to modify*
25 *provided that there was no pending proceeding in the State of Idaho.* Father, on
26 the other hand, argued that the California Court lacked modification of jurisdiction
27 under UCCJA precisely because **California was no longer the children’s home**
28 **state and they had no substantial contacts with California.** He also argued

1 the fact that the San Diego Court who had made the original Decree was not a
2 basis for jurisdiction in the modification action. In granting a writ of prohibition to
3 prevent further proceedings in California, the Court of Appeals agreed that there
4 was no basis for jurisdiction in California since Idaho was now the Children's
5 home state. The court also stated that under UCCJA, the intent of the legislation
6 was to prevent bringing modification procedures and unsuitable forums without
7 making a bonafide attempt to invoke the jurisdiction of the correct court. Hafer, Id.
8 at 662. The Court went on to declare.

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

17 The present case is a classical example of what the Plaintiff is attempting
18 to do to the Respondent. Just because the Original Divorce Decree was
19 entered in the state of California, is not reason enough for the California Court to
20 maintain jurisdiction, particularly in the light of:

18 1) The Children along with the Respondent moved to Utah,
19 immediately after the Divorce Decree was filed in California. All
20 became residents of that State in 1977

20 2) The Plaintiff took with him to Utah the Original California
21 Dissolution Order and filed it in Utah, requesting that Utah take
22 jurisdiction making the Dissolution order part of the Utah Decree.
23 The fact that both the parties, the Appellee and the Respondent,
24 continued to litigate in Utah, with both retaining Utah legal Counsel is
25 evidence that Utah was the proper forum to hear issues relating to
26 child custody, support matters and legal discovery on both parties.

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

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

6 **Any one of the above scenarios could and should apply to the present**
7 **case.**

8 14. And finally *both* legal Counsels for Plaintiff and Respondent signed a
9 Stipulation agreeing to Utah jurisdiction obeying the Utah Courts (**R.A. 132-136,**
10 **Vol ,11**) See p.4, lines 3, 4, and 5. See also same Document p.4 (c) Where the
11 Support payments are *frozen!*

12 . . . On each and every occasion described herein, Petitioner appeared in
13 the State of Utah and *submitted himself to the jurisdiction in the State of*
14 *Utah* for the purpose of allowing that State to modify support orders
regarding both the Respondent and the minor children in her care and
custody...(**R.A. 194 Vol, 11**) lines 1-5.

15 -6-

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

17 14. In 1992 The Attorney General of Utah wrote a letter to the Riverside,
18 California ORS stipulating that Utah does have jurisdiction. (**R.A.129,130, Vol,**
19 **11**) The Utah AG cited the circumstances and filings by the Appellee in the Utah
20 courts.

21 In 1996, the Utah ORS sent the ORS in California a stipulation verifying
22 that the Custodial parent, the Respondent was in need of arrears owed her. (**R.A.**
23 **172, Vol, 11**)

24 -7-

25 **California Courts stays Plaintiff's California motions in favor of Utah**
26 **jurisdiction**

27
28 15. *Superior Court of Orange County.* (**R.A. 117-(a) Vol, 11**)

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

4 *Los Angeles County, Norwalk Court: (R.A. 139-140, Vol 11) Hosp decl.*

5 All of Dr. Lundahl's actions for modification of the child custody case
6 have been *stayed*. Dr Lundahl has 60 days in which to file a motion
7 for modification in the Utah District Court; during that 60 day period
you are awarded custody of the minor child Christian
See also Respondent's Affidavit, (R.A. 145-148 Vol, 11)

8 **Note Respondent's Utah Activity summary of divorce matters**
9 **in Utah as well as California (R.A. 78-80) concurrently (R.A. 139, 140; 141-**
10 **144, Vol, 11) (Utah minute Entries) (R.A. 236, 239, Vol, 1)**

11 At the time of the deposition Plaintiff's legal counsel was Sandra Rhodes.
12 **(Dep p.24 lines 7-11) Attachment):**

13 **Miss Rhodes:** *In case youre interested, there's also an URESA action pending*
14 *in Riverside all involving Marlene, as we say, a little forum shopping to see how*
15 *we can do in which jurisdiction, I think. Im not involved in that, but I know it is*
16 *pending. If the Court will peruse the entire deposition the Court will discover the*
17 *Appellee's strategy of eternally filing motions in his relentless efforts to frustrate*
18 *and exploit the courts as well as the Respondent. See also Civil Suit filed by*
19 *Appellee on Respondent (R.A. 853-854 Schedule of Exhibits)*

20 16. The Plaintiff is clearly "guilty" of "shopping" other forums. In **August**
21 **of 1983** he filed a motion in the Superior Court of Los Angles, Norwalk Division.
22 The Plaintiff was represented by Barry Wishart, in his petition for custody of the
23 minor children. However as early as **July 6, 1983** the Plaintiff initiated custody
24 modification proceedings **in Utah**. The matter was originally scheduled to be
25 heard on **July 14, 1983**, and the court made certain orders with respect to an
26 increase in child support payments and a modification of visitation rights.
27 However, the court did not rule on the custody modification, but continued that
28

1 aspect of the proceeding until August 15, 1983. On July 16, 1983, *but two*
2 *days after* the hearing in the Utah matter, the Plaintiff filed an order to show
3 cause for modification of child custody in the California jurisdiction. It was brought
4 to the attention of the California Court and eventually the Court *permanently*
5 *stayed the proceeding since the same action was pending in the state of Utah*.

6
7 a) Declaration of Hosp and the California Courts decision to stay the
8 proceedings in California pending the outcome of the Utah Court's
9 decisions. Petitioner ordered to return minor children to Respondent
10 b) Letter from Wishart indicating Dr. Lundahl's willingness to return
11 Christian
12 c Minute entry, Utah, Custody of children denied Dr. Lundahl; (**R.A. 139-**
13 **140, Vol11)** (**R.A. 192, Vol 1)**

14 (See also RESPONDENT MOTION TO QUASH, Utah minute entry, and
15 Affidavit, Respondent (**R.A. 513- 517, Vol, 11 (765-769 Schedule)**).



18 17) Another time the California Court referred back to Utah jurisdiction was
19 on **November 16, 1987**, County of Los Angeles, Honorable Commissioner Frank
20 F. Fasel presiding who ordered the following: (**R.A. 116-119-Vol 1)**

21 With respect to the scenario where Respondent, Mrs. Lundahl, is going to
22 return to the State of Utah, the Court finds that if she does in fact return to
23 the State of Utah with the minor children that there is no change in
24 circumstances and prior {Utah} custody Orders issued and filed on August
25 24, 1987 shall remain in full force and effect.

26 18. In **1987** the Plaintiff filed a declaration with the California court
27 stipulating to Utah as the venue of jurisdiction and the Plaintiff's willingness to
28 have the Respondent collect from his Corporation as well as from him personally,
on support orders . (See RESPONDENT'S MOTION TO QUASH- Plaintiff's
Declaration **R.A. 188-196- Vol, 11)** See also California Stipulation of Plaintiff's
liability both personally and corporately (**Exhibit #1, Attachment**)

. . . I have voluntarily traveled 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.

1 Note **1987 California Order, Utah jurisdiction** which is incorporated by
2 reference as though fully set forth herein.

3 19. While the support issues were being heard in Utah, (1993, 1994, 1995)
4 The Plaintiff filed another OSC dated January 15, 1993 before the *Riverside*
5 *County Court* in an attempt to modify the Utah family support order. The Plaintiff
6 failed in his effort as the court ruled the Plaintiff would have to return to Utah to
7 modify the family support order **since Utah had jurisdiction over the matter.**
8 Again on February 22, 1993, **one month after the hearing in Riverside**, (see
9 **p. 27 lines 1-3) of California Deposition, Attachment "A"**) The Plaintiff filed
10 another OSC in the Orange County Superior Court with a different Counsel
11 Sandra Rhodes representing him. The issue was custody of the minor child
12 Kwinci. At the time that this motion was filed the Plaintiff was in contempt of a
13 Utah Court order mandating he place a **\$500 bond in the event he initiated**
14 **removing a minor child beyond the state lines** without notice to me.
15 Essentially that is exactly what the Plaintiff did when he arranged for Kwinci to fly
16 to California without me having any knowledge of where my daughter was. See
17 **(Utah order \$500 R.A.850-851 p.2. Item 3, Schedule** where Utah had taken
18 "continuing jurisdiction" regarding the custody of the minor children of the Plaintiff
19 and myself with the California Courts upholding Utah jurisdiction having
20 *previously permanently staying* any efforts on the part of the Plaintiff to have
21 custody issues heard in the California courts. The California court (1983) referred
22 back to Utah as the venue of jurisdiction on this issue. See **(Hosp Declaration**
23 **R.A. 766-769 SCHEDULE p. 2, lines 1-7)**

24 20) On July 8, 1994, the Plaintiff filed another motion in the Orange County
25 Superior court with the purpose of terminating child support & asking for attorney
26 fees. The matter was heard on **August 8, 1994**. The Plaintiff filed still another
27 motion on December 27, 1994 in the *Civil Court* in the Superior Court of Orange
28 County charging me with breach of contract, common counts (money received

1 and owed back—\$100,000) and fraud. Kent Tibbetts, my California Counsel who
2 represented me “specially” when attempting to set aside the order of November
3 16, 1994 represented me in this matter also. Mr. Tibbetts filed a motion for
4 Judgment on the Pleadings; Points and Authorities with Request for Judicial
5 Notice. Mr. Tibbetts also filed an answer & counter-claim. The motion was
6 granted and the case dismissed. See **(Civil Suit answer and counter-claim**
7 **R.A. 853-854 sCHEDULE)**

8 This is a total of seven different petitions initiated by the Plaintiff in a period
9 of two years if the Utah petition is included. It is important the court remember
10 that any motions filed in California was in direct conflict of the authority of the
11 Utah courts and the statutes of URESA’s position on jurisdiction. It is my opinion
12 that this is a clear indication of “harassment” by the Plaintiff in order to frustrate
13 me –purposefully using the California courts to serve his own purpose’s hoping
14 to win by “ attrition” alone.

15 -11-

16
17 **California state-wide director of family support cites Utah jurisdiction in**
18 **modifying orders (R.A. 157- 164) (159 par #2) Vol, 11**

19
20 . . . effective with the enactment of the new UIFSA in California as of
21 January 1, 1998, a spousal support order will be modifiable only in
22 the State which it was entered. If the California Court of Appeals
23 rules that the Orange County Superior Court does not have
24 jurisdiction over you or the modification of your support order
because Utah has acquired jurisdiction after January 1, 1998 Dr.
Lundahl will be able to seek modification of your Utah spousal
support order only in the Utah courts. (Emphasis)

25 The Respondent hopefully and respectfully anticipates the Utah Appellate
26 Court, after reading the above 11 reasons why Utah should remain the venue of
27 jurisdiction, will rule accordingly.

28 21. The Respondent requests the Court take judicial notice of the entire

1 packet of Exhibits (39) of the Defendants Pleadings (**R.A. 752-925 Schedule**)
2 along with her SUPPLEMENTAL DECLARATION AND SUPPLEMENTAL
3 MEMORANDUM OF POINTS AND AUTHORITY, (**R.A. 720-750, Vol, 11**))and
4 the attached exhibits thereto. See also RESPONDENTS ADDENDUM TO
5 DECLARATION, POINTS OF AUTHORITY **R.A. 697-699 Schedule**)

7 PLAINTIFF'S LACK OF RESPECT FOR THE JUDICIAL SYSTEMS OF
8 BOTH UTAH AND CALIFORNIA JURISDICTIONS.

10 22.It is indeed unfortunate that the Plaintiff feels such contempt for justice
11 and the rule of Law that he "attempts" to manipulate the court system bending
12 when he can the infrastructure of the very system that protects our society and
13 guarantees it's citizens individual freedoms, without any regard to the
14 consequences of those he hurts.

15 23. Depending on the circumstances, the Plaintiff's efforts are sometimes
16 unpredictable, particularly when it adversely affects him. The Plaintiff in 1993,
17 after acquiring joint custody of our youngest daughter, Kwinci, who never lived
18 one minute with him and his third wife, after he paid for her plane ticket to
19 California, leaving the Respondent distraught and anxious not knowing where her
20 daughter was, Kwinci spent the next three years living with her brother, Brigham
21 and his family, attending Temecula High School in California, with my explicit
22 permission. I went to California to register her. Notice the dichotomy the plaintiff
23 explores in his California deposition taken in California by his second wife, Ruth
24 Carlson Lundahl. (**R.A. Attachment "J" Appellee's Deposition p.25, lines 1-**
25 **5**). It's in this moment of transparency that he claim's that Custody jurisdiction is
26 in California and support issues are in the Utah jurisdiction. **Since there are no**
27 **longer children at home, this leaves the investigator with the impression by**
28 **the Plaintiff own admission** that support issues are to be litigated in Utah.

1 **Utah.** See also **California Minute Order** which supports this thesis. "*Court finds*
2 *California had jurisdiction over issue of custody.*" **Included in attachment.** See
3 also **letter from the Honorable Judge Myron Brown of the California**
4 **Superior Court defining the same resolution. (Included in attachment)** In
5 the same deposition, the Plaintiff 's arrogance surfaces once again. (**Dep. p 34**
6 **Attachment**) .

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

8 **A** Yes.

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

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

12 (Deposition Extracts, Petitioner, Attachment "A"). See p. 24, lines 24-
13 **25**

14 **Q . . .** "Do you have an action pending to modify the California order? See all of
15 **p.25, lines 1-5.**

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

20 24.It was only a few months ago that my Utah Counsel, Michael Esplin,
21 called me to come into his office. He angrily slapped his desk with some
22 documents. He had been served with a Summons by the Plaintiff. The
23 PLAINTIFF had filed in the United State District Court, Central District of
24 California, Santa Ana Division, (Attachment "C") motions citing does 1-though
25 20 accusing certain parties of fraud, conspiracy, racketeering & corruption. Along
26 with the Respondent, the Plaintiff lists *three* Utah attorneys, Esplin, Petty, and
27 Fugal and their respective law offices which have successfully represented the
28 Respondent. Also included in the Plaintiff's "black" list are *four* judges of the

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

22 25. The Plaintiff has the propensity to go as far as he can in "bragging"
23 about the things he –"gets away with–concerning the courts. A further review of
24 the 1993 Deposition clarifies this statement:

25
26 THE PLAINTIFF WITH DELIBERATE CUNNING HAS MADE FALSE
27 STATEMENTS, WITHHELD EVIDENCE, AND CONSTRUCTED FALSE
28 DOCUMENTS IN ORDER TO PUT HIMSELF IN A FAVORABLE LIGHT

1 BEFORE THE COURT.

2
3 22. In 1993-94 when the Plaintiff appeared before the Fourth District Court
4 in Utah he made false statements in his Utah deposition regarding his M.D.Diet
5 Centers (**Dep. p. 31 -attachment**) The various issues addressed were:

6 a) Plaintiff's Purchase of diet Center in Moreno Valley California (1994)
7 \$47,500 (**Schedule, R.A. 855-877**) while claiming his only income is \$1570
8 per month.

9 b Diet Centers registered in the State of Nevada under Imperial Products
10 under. Appellee's 5th wife Mary Ann Hadley, Sec/treasurer. President: Robert
11 Rohrbock, (who through affidavit claims he has met the Plaintiff only once,
12 denying he was ever involved in a business venture with Plaintiff). (**R.A.- 761,**
13 **763, 764,766, Vol, 111**)

14 c) Construction of a stipulation under the direction of the Plaintiff through
15 his Utah Counsel Dana Burroughs claims Plaintiff's only income is \$1,570 per
16 month. (**R.A. 800-805 Schedule**)

17 d) The Marketing of M.D. Diet (**R.A. 865- 878 Schedule of Exhibits**)
18 Ownership of M.D. Diet Centers by Plaintiff is a published fact;

19 e) Claim by Plaintiff that he had sold the diet centers to a "man" named
20 L.G. Hinds, who turned out was Plaintiffs 3rd or 4th wife. (**R.A. 879-881 Schedule**)
21 see Marriage Licence: "*false*" bulk sale to L.G. Hinds (Plaintiff's wife)

22 f) Certificate of Delinquency on *Imperial Products* [cured]. Sec of State
23 Nevada.(**R.A. 878 Schedule**)

24 g) Plaintiff's affidavit submitted o Utah Court for lying. (**R.A. 899-903**
25 **Schedule**)

26 h) Respondent's Utah legal Counsel's affidavits and memorandum to strike
27 Plaintiff's pleadings(**R.A. 883-898 Schedule**). successful.

28 i) Utah Court Sanctions Plaintiff for dishonesty and false claims (**See**

Attachment Exhibit # 3)

j) Plaintiff's false financial declarations. (R.A. 910-923 Schedule)

Compare to Bank Statements (R.A. 924-983 Schedule)

k) Plaintiff's non-registering of any diet entities in any agencies in the state of California (R.A. 904-909 Schedule)

l) Deception by Plaintiff revealing he made hundreds of thousand of dollars in 1993-1994 (R.A. 924-983 Schedule) in direct contradiction of financial declarations filed with the court and Plaintiff's testimony of financial status to Utah court and the information submitted in the Plaintiff's Stipulation which the Respondent refused to sign (R.A. 800-805 See Schedule)

PLAINTIFF'S DENIAL OF BEING IN UTAH ON CERTAIN DATES,
AND DENIAL OF EVER BEING SERVED A SUMMONS

23.The Plaintiff'S California Pleadings AMENDED REPLY TO AMENDED RESPONSE is laced with falsehoods. (R.A. 610-620 Vol 1) .

a) Plaintiff's allegation that he was not served, service went to a former attorney.(R.A. 356 Schedule) Fact: Service received by Plaintiff (R.A. 791, Schedule of Exhibits) Patterson letter, (R.A. 792 Schedule)

b) Utah did not modify California order, because Utah was the venue of jurisdiction. At time Plaintiff had retained Utah Counsel, Bob Moody. Fact: Plaintiff files a Petition to Modify in Utah courts. (R.A. 149-150 Schedule of Exhibits)

c) The Plaintiff's denial that he was ever in Utah at the time the hearings occurred, nor was he ever served (R.A. 791 Schedule Fact: At the time the Plaintiff was in Salt Lake City to attend a "self-help" group seminar (415 Bearcat Drive) and was staying at the Marriott Hotel in Salt Lake City. (R.A. 793-795 Schedule) (75 South West Temple where he was served.)

1 HEREAFTER, all evidence will be attached to the plaintiff's American Express
2 card)

3 d) The Plaintiff asserts he was not in Utah on January 16, 1994. Fact: (
4 **R.A. 796).** & (**R.A. 795**), **797-798 Schedule**) clearly shows he was in Utah. See
5 also **R.A. 496 Schedule**) denies ever being served Fact: (**R.A. 796**)

6 e) It is interesting to note that the Plaintiff who declares that he only makes
7 \$1550 per month has an American Express Card account (**R.A 806-849**) which
8 indicates that he paid an average of \$6000 *per month* against his American
9 Express Card.

10 f) The Plaintiff declares he never knew that he owed the Respondent
11 \$29,2000. (**R.A. 802 Schedule of Exhibits**) Bottom of page. Fact: In the
12 Stipulation that the Plaintiff wanted the Respondent to sign in 1993-4) shows
13 *other wise.* (**R.A. 802 Schedule**) Obviously, the Plaintiff has developed a habit of
14 telling half-truths and more often than not complete untruths.

15 g) The root problem of all this lengthy and costly litigation go's back to
16 October 31, 1994 when a hearing was held in the Orange County Superior Court
17 regarding an OSC that the Plaintiff had filed on July 6, 1994. When the Plaintiff's
18 Counsel and the Respondent, In pro per was told by the Plaintiff's Counsel, Carol
19 McHale in August of that year that the Defendant would not be required to go to
20 any more California Hearings since the issue of jurisdiction had been settled by
21 the two judges: Judge Guy Burningham and the California judge. See Affidavits of
22 Michael Esplin, Defendant's Utah Counsel and the Honorable Judge Guy
23 Buringham (**R.A. 152-156, Vol 11**)

24 h) Referring again to the court transcript (**R. A. 37, Vol 11**) the Plaintiff
25 declares the following:

26 The enforcement is occurring now and I believe that under the
27 circumstances that it's appropriate to follow UIFSA and conclude that the
28 **1994 California Order is the controlling order because it could not be**
superceded by the 1995 Order.

1 **URESSA not UIFSA controls the arrearage of support monies owed by**
2 **Plaintiff**

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

7 Also the Plaintiff mentions the November 16, 1994 order in his argument,
8 In his AMENDED REPLY TO AMENDED RESPONSE, wherein the Plaintiff
9 asserts:

10 When the matter came on for hearing on October 31, 1994, the
11 Respondent was not present. The California Court modified spousal
12 support and the amount of \$500 per month commencing July 8,
13 1994. This order was filed with the court on November 17, 1994

14 Nowhere in the Plaintiff's OSC of July 8, 1994 is there mention of "modification"
15 of "What" order. See Plaintiff July 6, 1994 OSC (**R.A 650-652-Vol 11**) (See also
16 November 16, Order, 1994 Plaintiff's Pleadings. It is the understanding of the
17 Respondent that the Plaintiff would have had to return to Utah to modify any
18 support order since the Utah jurisdiction was the last venue to rule. The void 1994
19 Order has since been superceded by the current order of the California Court in
20 2002.

21 26) It should be noted here that the Plaintiff successfully attempted to
22 deceive and confuse the court by unilaterally stating in his Supplemental
23 Memorandum of Points of Authority (**R.A. 227-234 Vol 1**)

24 . . . a Judgment determining property and support issues was entered in
25 California September 14, 1977. Thereafter, spousal support was modified
26 by the California Court in 1987 at the [Respondent's] request. . . (**R.A.**
229-lines 17-22 Vol 1)

27 This entire statement is flawed and incorrect. The Plaintiff took advantage of the
28 court in his pleadings giving the impression to the California court that 1987 was

1 the *second* time that the parties were in court since the 1977 dissolution order.
2 The term "thereafter" is the key in which the Plaintiff asserts in his false claim.
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. (See, **R.A. 705- 719 Vol 111**) MOTION
6 TO QUASH -- DECLARATION OF RESPONDENT. The only Exceptions was
7 when the final Divorce Decree was filed in 1977 In Los Angeles County and
8 *subsequently registered by the Plaintiff in the jurisdiction of the Utah court.* See
9 also (**R.A. 139-140 Vol 11**) where the California Courts referred back to Utah on
10 Custody matters, followed later by the appearances of both parties in 1987 in the
11 California courts.

12 During the 1994 hearing in California, the Defendant made a "special"
13 appearance to notify the court that the "same "issues" before the California Court
14 was being litigated in the state of Utah. The Court suggested to the Respondent
15 that she and the Plaintiff's Counsel meet outside the court room and see if they
16 could reconcile the matters before the court reconvened. The Plaintiff's Counsel
17 told the Respondent she didn't have time. The Plaintiff's Counsel handed the
18 Respondent a business card to give to ^{her} my Utah Counsel and have the Utah judge
19 call the California Judge to discuss the matter of jurisdiction. Mr. Esplin,
20 Respondent's Counsel followed the instructions and called Judge Burningham.
21 (See affidavit of Mr Esplin and the Honorable Judge Burningham (**R. A. 152-156,**
22 **Vol 11**)

23 Later Information surfaced which proved that the Plaintiff had not told the
24 truth in his deposition and had given false testimony before the Utah Court.
25 After the Plaintiff admitted lying to the Utah court through affidavit, (**See R.A.**
26 **Court Sanction, Exhibit 1, in Attachments**) the Court sanctioned the Appellee
27 for lying and dishonesty and ordered him to place in a trust fund \$3000 for the
28 purpose of depositions on the parties involved with the M.D,. Diet business

1 located in the state of California, which the Appellee owns. (The Respondent's
2 Utah Counsel, Mr. Michael Esplin, was expected to go to California for the
3 purpose of taking depositions.) See also Plaintiff's affidavit to the Utah Court
4 admitting to lying before the (**Attachment, Exhibit 'f'**)

5 28) The incorporated findings of the Utah court were that Utah had
6 continuing jurisdiction of the parties; that the Plaintiff had failed to obey court
7 orders, had given admittedly false testimony at his deposition and had failed to
8 purge himself of the court's contempt order. (See SUPPLEMENTAL
9 DECLARATION, RESPONDENT P.3 (**R.A. 723-751 Vol 111**). The Defendant
10 has added this evidence of jurisdiction by the Utah Court attached to this pleading
11 also (Calendar of Utah activity) See Utah Docket.

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

15 -2-

16 DOCTRINE OF LACHES

17 29. Currently, in the California Courts the Plaintiff claims the Doctrine of
18 Laches in his support of his attempt to avoid honoring the Utah Orders.(**R.A.**
19 **222-234, Vol 1**)However, not only has the Respondent in this matter attempted
20 through litigating on numerous occasions but through correspondence *was denied*
21 *assistance by the Utah Office of Recovery in her attempt to get satisfaction*
22 *regarding the registration and collection of orders.(R.A. 610-620 Vol 1).* Under
23 normal circumstances the Office of Recovery in Utah must process court orders
24 through the Office of Recovery in the jurisdiction of the Obligor. However, the
25 Department of Health and Human Services in Utah would not avail the
26 Respondent of their office claiming that it was against the policy of the Utah
27 agency. At the same time the Utah Human Services Office which is the tribunal
28 for the collecting of support orders suggested that the Respondent appeal to the

1 California Agencies.

2 With this suggestion and with Extracts from the *Handbook on Child Support*
3 *Enforcement (R.A. 179-181 Vol 11)* distributed by the Department of Health and
4 Human Resources, Washington, D.C. the respondent appealed to the Attorney
5 General of the state of California. The Attorney General of California sent
6 instructions to the Orange County District Attorney's office to begin collection on
7 the Utah orders. Any authorized agency mandated to collect on family support
8 matters is backed up by California Codes of Civil procedure. (See **Exhibit # 2, 7**
9 **pages) attachment)**

10 **Respondent's List of written communication to local, regional and federal**
11 **agencies**

- 12 1) Department of Recovery Services, 1996.
- 13 2) Letter from Judge David Gray to Orrin Hatch, 1996
- 14 3) Department of Social Services, Sacramento, Calif. June 1996
- 15 4) Administration for Children & Families, San Francisco, CA Sept 27,
1996
- 16 5) Department of Health & Human Services (also Riverside ORS) Feb., 10,
1997
- 17 6) Department of Social Services; Sacramento, CA May 7, 1997
- 18 7) Director, Department of Human Services. 1997
- 19 8) Department of Health & Human Services, Washington D.C. April, 27,
1998
- 20 9) Department of Health & Human Services, Washington D.C. Aug 8, 1997
- 21 10) Department of Health & Human Services, Washington D.C. April, 27,
1998
- 22 11) Administration for Children & Families, Washington, D.C. April 27,
1988
- 23 12) Regional Depart of Human Services, (Denver) Co, September 26,
- 24 13) Director, Department of Human Services, Utah, 2001 **(R.A. 572-601**
Vol 1)

22 These letters are but a *reflection* of the efforts made by the Respondent to
23 register and collect on arrearage owed by the Appellee **(See R.A.235-246, Vol 1)**
24 **also (R.A. 688-699 Vol 111) See also (R.A. 720- 751, Vol 111)** As a result of this
25 activity I felt any attempt by the Plaintiff to vacate the Utah Orders should be
26 dismissed. All attempts by the Respondent during the years of 1996 through 2001
27 was made in a timely manner. The Orange County District Attorney's Office
28 became involved being the tribunal to collect on Utah orders. Fortunately they too

1 filed motions. (R.A. 763-764-California Deputy Attorney General, Mary
2 Dahlberg. Vol II

3 The battle continues. The Plaintiff filed additional motions (See R.A. 624-
4 636, Vol 111. An Active motion is submitted by the *Orange County District*
5 *Attorney's Office* (R.A. 800-804) acting as Intervenor. See also (R.A.803-812, Vol
6 111) and again. . . (R.A. 817-824, Vol 111)

7 In letters to Carol Ann White, former director of *support services of the*
8 *State of California*, under the direction of the Attorney General's office wrote the
9 Respondent several times communicating the options available. (R.A. 157-164
10 Vol 11) . Regarding the statute of limitations recognizing the collection of
11 arrearage, the Respondent defers to the Utah Supreme Court in their
12 deliberations.

13 -2-

14 Regarding the Plaintiff's current Pleadings:

15 (R.A.) . . . the Predjudice to the Petitioner is the difference in the amounts of
16 Spousal Support between the 1995 Order and the 1994 California Order is
17 substantial. Had the Respondent not unreasonably delayed enforcement action,
the Petitioner would have been in a position *to mitigate his damages by paying*
the Utah Support Order in a timely manner or modifying the Utah Order.

18 The above statement by the Plaintiff all but admits his responsibility in paying
19 the Utah Orders.

20 Jurisdiction vs. Jurisdiction

21 Utah Attorney General on Utah jurisdiction. (R.A. 129F-130))

22 Plaintiff Designation of Record on Appeal to Utah Supreme Court)

23 Utah Stipulation (Counsels for Plaintiff and Respondent.) (R.A. 132-136)

24 Lundahl Dissolution: Letter from California Counsel Hosp for Respondent
25 California action stayed (R.A. 139-140)

26 Utah Minute Entries, August 15, 1983: (R.A. 141-144)

27 Affidavit of Respondent: Chronology of California and Utah Actions: (R.A. 145-
28 148; 177 (a);

1 Plaintiff's verification to Riverside Family Support by deposition that Utah has
2 Jurisdiction. (R.A.120 128 E)

3 Plaintiff's admission of "forum" shopping. (Dep p. 23)

4 Plaintiff's Constant filing of motions

5 Plaintiff's false declaration of income. (R.A. 533-655)

6 -----
7 -3-

8 **Additional Evidence of Dishonesty of Plaintiff in submitting false**
9 **statements to California Court**

10 30. The evidence included in the current pleadings of the Plaintiff along
11 with those accompanying other pleadings of this case provides evidence that the
12 Plaintiff misrepresented facts and constructed false documents in his effort to win
13 the favor of the court: (See RESPONDENT'S SUPPLEMENTAL DECLARATION
14 **(720- 251 Vol 111)**

Middle Pages

15 In the Plaintiff's Amended Reply to Amended Response **(R.A. 607-615 Vol 111)**

16 . . . In 1991 the Respondent filed a Petition in the State of Utah to seek a
17 modification of the 1987 Order. However, **I was not personally served**
18 **with the petition**, Instead a copy of the Petition was mailed to my former
attorney, Roger Patterson, who represented me until approximately 1983
at which time he was substituted out of the case.

19 First of all the Utah Court was not modifying the California Order of 1987. See
20 **(R.A. 70-71 Vol 11)** Which refers to Utah activity from 1979 through 1999.

21 Secondly, the California Court had referred jurisdiction back to Utah . . . **(R.A.**
22 **117, 139 Vol 11)** lines 10 16.

23
24 With respect to the scenario where Respondent, Mrs. Lundahl, is going to
25 return to the **State of Utah** the court finds that if she does in fact return to
26 the State of Utah with the minor children that there is no change in
circumstances and prior custody orders issued and filed on August 24,
1987 [Utah] shall remain in full force and effect.

27 Thirdly, the Plaintiff's claim that he was not served is false. **(R.A. 791 Schedule)** .

28 . . proof of service to Plaintiff. Additionally, the Plaintiff's reply and Petition to

1 Modify dated February 5th of 1991 is a matter of record. Plaintiff had retained
2 representation by Robert Moody . And finally, the Plaintiff's reference to Mr.
3 Patterson is faulty. The Defendant's legal Counsel had received a letter from Mr.
4 Patterson, dated April 1, 1982 informing Mr. Esplin that he has withdrawn as
5 Plaintiff's Counsel. (**R.A. 792 Schedule**).

6 Moreover, the Plaintiff stipulates again that service to him in Salt Lake City was
7 false, since he didn't live in Salt Lake City. However, the Plaintiff was attending a
8 self-help Seminar at the address 415 Bearcat Drive in Salt Lake. The Plaintiff was
9 served at that address, after the service official discovered he was at the Bearcat
10 Drive from the check in desk at the Marriott hotel @ 75 w. South Temple, SLC.
11 **(R.A. 793-794 Schedule)** In Plaintiff's AMENDED REPLY TO AMENDED
12 RESPONSE –

13 *I was not even in Utah January 16, 1993 . . . (R.A. 794Schedule)*

14 Once again the Plaintiff's claims are refuted. See Plaintiff's American
15 Express Card **(R.A. 795-Schedule)** In further substantiation further investigation
16 shows he was staying at the Utah Marriott Hotel, checking out on January 30th,
17 1993 and had previously booked rooms at the Bonneville Inn Motel (2) times; and
18 meals at Ho Ho Gourmet, and Village Inn. **(R.A. 795- Schedule)**. Further there is
19 more evidence that the Plaintiff was in Utah in after again being served by a
20 California Marshall. (**R.A. 796 Schedule**). Yet, the Plaintiff alleges:

21
22 . . . I had no knowledge of the Hearing on February 23, 1993, and I was not
23 present even though the Court Order indicated that I was. **(R.A. 797**
Schedule) lines 17- 20.

24 Once again the Plaintiff's own American Express Card verifies the Plaintiff's
25 attempt to manipulate the facts. The Plaintiff's credit card shows him in Utah on
26 **February 12, 21, 23, 24, 26, and the 27th. (R.A. 797 Schedule)**. Contrary to the
27 Plaintiffs claim that he was not in Utah nor was he served.

28 Another document which verifies that the Plaintiff was fully aware of the

1 \$29,200 order was when he and his attorney Dana Burroughs constructed a
2 stipulation which the Plaintiff wanted me to sign, on the premise that he only
3 made \$1570.00 per month. The Stipulation was faxed to my counsel Mr.
4 Esplin. (R.A. 800-805 (802 Schedule) I had found evidence that the Plaintiff
5 was not telling the truth and refused to sign it. Obviously the Plaintiff was earning
6 more than \$1570 per month. See American Express monthly payments, which is
7 in dramatic excess of what he claimed he made, averaging in the neighborhood
8 of \$8000 per month charged on his American Express Credit Card. (118-
9 161Schedule). Nevertheless, on page 3, item 12 the \$2900,200 is mentioned
10 which again proves the Plaintiff was aware of this order: (R.A. 802 Schedule)
11 presently has a judgment against the Plaintiff in the amount of
12 \$29,200 as entered by the Court on March 10, 1993, . . . As satisfaction for
13 that judgment, the Lundahl Trust shall pay to Defendant a lump sum of
14 \$5,000 . . .

15 SUMMARY OF FALSEHOODS BY PLAINTIFF

16 (R.A. (87-279)

- 17 1) Proof of service to Plaintiff by California Marshall
- 18 2) Proof of Service @ Marriott Hotel to Plaintiff
- 19 3) Denial by Plaintiff of his various stays in Utah
- 20 4) Notice of Utah Hearing service to Plaintiff
- 21 5) Plaintiff's False Financial declarations to court
- 22 6) Plaintiff's Contempt of Utah Court
- 23 7) Plaintiff's affidavit of lying to Utah Court
- 24 8) Defendants successful Utah motions against Plaintiff
- 25 9) Plaintiff's Falsely constructed bulk sale of M.D. Diet to L.G. Hinds, who the
- 26 Plaintiff said was a man, but in actuality was Lucille Gerakos Hinds the
- 27 Plaintiff's third or (?) fourth

PLAINTIFF'S OPENING BRIEF

The Plaintiff 's opening brief has deliberately withheld important information as well as incorrectly stating facts. The Defendant "Ruth" will follow the argument put forth by the Plaintiff "Gerald" in an effort to clearly state the "real" facts as well as presenting her argument. (See page two of Plaintiff's brief:) Ruth, however, brought actions in the same subjects in Utah which the Orange County Superior Court.

Correction: It was Gerald who was the *first* party to file a motion in the state of Utah, not Ruth. In Gerald's first Motion before the Utah court he filed a complaint along with the 1977 California dissolution order . As the court will note there has been a long history of court activity, representing some 66 documents, including OSC's, Petitions to modify, stipulations, memorandums, declarations and affidavits by both parties.

Gerald is declaring the Utah orders as void, when in fact the Utah Court has taken jurisdiction of both Gerald and Ruth. There have been in each case, where Gerald either appeared personally or hired counsel to represent him, and more often than not Gerald appeared along with his legal counsel in the Utah jurisdiction. Further more, according to "Family law codes and statues" jurisdiction is where the children reside. (See UIFSA statutes -----

In EVERY action in the Utah courts, Gerald always filed a responding document. (See p. 3, Plaintiff's (Gerald) Opening brief.

There were substantial actions brought in California thereafter in which both Ruth and Gerald participated.

This statement is misleading: Both parties where present in California when the Dissolution judgment was handed down in 1977. In 1978 Gerald filed the Dissolution judgment in the **Utah** jurisdiction. Again in 1983, Gerald attempted to get custody of one of our sons filing a motion in Los Angeles County, Downy division. *The court ruled that California did not have jurisdiction see (R.A. 765-*

1 **769, Schedule**)and as a consequence the Motion was transferred to Utah where
2 the children of the marriage resided and where Gerald had simultaneous filed for
3 custody in the Utah court . In 1987 Ruth was in California for nine months where
4 one of her daughters trained in Tennis, and Gerald brought Ruth back to the
5 California court regarding additional custody matters. The Court ruled that if Ruth
6 went back to Utah, Utah jurisdiction would again apply to all divorce matters.
7 Shortly thereafter Ruth returned to Utah.

8 In August 1994 Ruth made a "special" appearance before Judge Myron Browns
9 Court, in Orange County Superior Court. The court continued the case until
10 August 31, 1994. Ruth did not appear for reasons explained above. In 1994-5
11 Gerald was represented by Utah Counsel Dana Burroughs. In fact, Gerald was
12 still filing pleadings in the Utah court when Ruth made her special appearance in
13 California.

14 When Ruth filed an order to set aside, she lost on her motion. Subsequently,
15 Ruth filed an appeal with the Court of Appeal, Fourth District, Division Three. The
16 Appeals Court upheld the order of 1974, denying Ruth any relief. Gerald in his
17 opening Brief states that the Appeal Court ruled that pursuant to the dissolution
18 judgment, maintained jurisdiction over the parties and spousal support. However,
19 the issue of jurisdiction was not before the Appellate Court at that time. Moreover,
20 the court makes the statement: . . *because the court, pursuant to the dissolution*
21 *judgment, maintained jurisdiction of the parties and the spousal support.*

22 Unfortunately, the court never had any evidence showing that Utah had
23 jurisdiction over the parties the last 27 years. **Moreover, the basis for this**
24 **ruling was the 1977 California dissolution order which the Plaintiff filed in**
25 **the Utah courts in 1978, requesting that Utah take jurisdiction. This action**
26 **by the Plaintiff voided any further California jurisdiction.** Additionally Gerald
27 filed a complaint with the 1977 dissolution order stating: (**R.A. 69 Schedule**)

28 The Plaintiff is entitled to a Judgment and Decree of this [Utah] Court

1 incorporating the provisions of the Judgment and Decree of the Superior Court
2 of the state of California and to have said judgment and Decree incorporated
into and made a part of a Decree of this [Utah] Court.

3 Contrary to what Gerald assumes in his Opening Brief there was NEVER a
4 motion dealing with just spousal support issues per se in the state of California
5 other than the 1994 hearing in the Orange County Superior Court. Additionally,
6 the " Appeals court was *not* aware of the history of court actions that involved
7 Gerald filing various and sundry motions in both jurisdictions of Utah and
8 California, where many of the motions required simultaneous hearings in both
9 jurisdictions . All the activity of the Orange County Superior Court and the
10 Appeals Court ruled with what little information that Gerald had provided to the
11 courts in California, giving the impression, as stated previously, that the next
12 hearing regarding divorce issues was in 1987, when in fact during the years 1978
13 to 1997 litigation was occurring in the Utah jurisdiction.

14 Again, in Gerald's Opening Brief, p.5, additional deceit occurs. "*After that*
15 *appeal-----*

16 "*. . There was an action brought by Riverside District Attorney (for Ruth) which*
17 *culminated--*"

18 This statement is totally incorrect. The collections made by Riverside on behalf
19 of Ruth was through URESA and occurred in 1991-2 and 3. **The Appeal was**
20 **heard in 1996.**

21 The Orange County District Attorney's Office registered the orders (April,
22 1999 April 1995, March 1993, August 1991, and April 1991 as mandated by the
23 California Attorney Generals's Office after considerable deliberation and following
24 Federal Statues under the Enforcement of Child Support, along with the support
25 of UIFSA, Uniform Interstate Family Support Act. California ratified this Act in
26 January 1998 and Utah in 1996. Until that Act was ratified the support orders
27 were submitted and collected with the authority of URESA.

28 Gerald in order to look "innocent" asserts he was attempting to defend "this

onslaught” of litigation with Ruth when in fact it was Gerald who initiated the majority of motions in California as well as in Utah.

I assert that any continuing jurisdiction arising from the dissolution terminated when both parties willingly litigated the issue of family and spousal support as well as custody matters in the State of Utah. Both parties have litigated in the Utah jurisdiction since 1978, with the exception of a temporary stay in California where I located while my daughter trained for tennis. Even then, I claimed Utah as my residence and paid taxes there.

MEMORANDUM OF POINTS AND AUTHORITY.

PRINCIPLES OF COMITY AND THE DOCTRINE OF FORUM NON CONVENIENS REQUIRED THE CALIFORNIA COURT TO STAY THE MOTION OF PETITIONER’S OSC IN 1994 EVEN “IF” THE COURT HAD JURISDICTION.

The California action in 1994 should have been stayed as a matter of comity in favor of the Utah trial (Witkin, California Procedure, Jurisdiction. Section 354(2), p. 776) The doctrine of forum non conveniens is ancillary to the issue of jurisdiction. It requires that jurisdiction exists in two different forums or states (Cf. In Re Marriage of Fox (1986) 180 Cal.App.3d 862, 873 [225 CR 823]) This rule of law is codified in Code of Civil Procedure Section 410.30 which provides, in pertinent part: “When a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, *the court shall stay or dismiss the action in whole or in part on any conditions that may be just.*” “There must be jurisdiction over the defendant and the assurance that the action will not be barred by a statute of limitations. (Stangvik, supra, 54 Cal.3d at p. 752); (Shiley Inc. v Superior Court (1992) 4

1 Cal.App.4th 126, 133 [6CR2 38]) Although the Defendant raised a question of
2 jurisdiction in California, she pointed to the pendency of the same action in Utah
3 (Cf. Atlantic Richfield Company v. Superior Court (1975) 51 Cal.App.3d 168, 176
4 [124 CR 63])- motion to dismiss for forum non conveniens held to include motion
5 to dismiss for lack of jurisdiction arising from failure to include an indispensable
6 party.)

7 Consider:

8 Once it is established that the defendant has engaged in activity of the
9 requisite quality and nature in the forum state and the cause of action is
10 sufficiently connected with this activity, the assumption of jurisdiction (i.e.,
11 limited jurisdiction) depends upon a balancing of the convenience to the
12 defendant in having to defend herself in the forum as against the interest
13 of the plaintiff in suing locally, and the interest of the state to provide a
14 forum for its residents. (Cits omitted) In other words, once the threshold
of sufficient activity of the defendant has been passed, the assumption of
jurisdiction depends on the principles of "Forum Conveniens." (Rice
Growers Association v. First National Bank (1985) 167 Cal.App.3d 559
[214 CR 468]). See also, Prince v. Urban, supra, 49 Cal.App.4th 1095,
1073 [57 CR2 181]) Crosby, Justice-concurring, forum non conveniens
part of resolution of jurisdiction issue.

15 In a case in which the juvenile court's jurisdiction was not raised the Court
16 of Appeal indicated that if an objection based on forum non conveniens was not
17 made in the trial court the issue was waived. (In re Christopher B. (1996) 43
18 Cal.App.4th 551, 558-559 [51 CR2 43]) The appellate court distinguished a
19 decision from the California Supreme Court in re Stephanie M.. (1994) 7 Cal.4th
20 295 [27 CR2 595]) The Supreme Court had considered a forum non conveniens
21 argument in that case noting that ". . . the Court of Appeal erred in assuming that
22 without notice of a pending Mexican proceeding, the juvenile court was under no
23 obligation to consider whether it was the appropriate forum." (In re Stephanie M.,
24 supra, 7 Cal.4th 295, 312 [27 CR2 595]) In The Defendant's case *the court was*
25 *aware of the pending Utah litigation.*

26
27 A JUDGMENT OR ORDER MAY BE VOID BECAUSE IT WAS PROCURED BY
28 FRAUD.

1
2 A Judgment or order may be void because it was procured by fraud.
3 Thus, it has been said that fraud practiced on the court is always ground for
4 voiding or vacating a judgment, as where the court is deceived or misled as to
5 material circumstances, or its process is abused, resulting in the rendition of a
6 judgment that would not have been given if the whole conduct of the case had
7 been fair. Steiner v. Flournoy (1972) 23 Cal. App. 3d 1051, 1055.

8
9 A MOTION UNDER FAMILY CODE SECTION 2121 LIES WHERE A
10 JUDGMENT OR ORDER WAS ENTERED AGAINST A PARTY AS THE
11 RESULT OF FRAUD. (1994 hearing)

12
13 “(a) In proceedings for dissolution of marriage, for nullity of marriage, or
14 for legal separation of the parties, the court may, on any terms that may
15 be just, relieve a spouse from a judgment, or any part or parts thereof,
16 adjudicating support or division of property, after the six-month time limit
or Section 473 of the Code of Civil Procedure has run, based on the
grounds, and within the time limits, provided in this chapter.”

17 Family Code Section 2121

18 The grounds and time limits for a motion to set aside a judgment, or any
19 parts thereof, are governed by this section and shall be one of the
20 following: (a) Actual fraud where the defrauded party was kept in
21 ignorance or in some other manner, other than his or her own lack of care
or attention was fraudulently prevented from fully participating in the
proceeding.

22 **Cal.App. 1964** General elements of cause of action for fraudulent
23 representation are misrepresentation, including false representation,
concealment, or non-disclosure, and knowledge of falsity, intent to induce.

24 **Cal.App. 1982** “Fraud” and dishonesty” are closely synonymous, and
25 “fraud” may consist in misrepresentation or concealment of material facts
26 or statement of fact made with consciousness of its falsity. Fort. V Board of
Medical Quality Assur. Of State of Cal., 185 Cal.Rptr 836 136 C.A.3d 12

27 **C.A.9 (Cal.) 1987** Mental state embracing intent to deceive, manipulate, or
28 defraud, i.e., scienter, is satisfied if petitioner acts recklessly in his fraud.

1 S.E.C. v Burns, 816 F.2d 118.

2 **C.A.Cal. 1970** Intent to defraud is an essential element of common-law
3 fraud. U.S v. Mead, 426 F.2d 118

4 **Cal.App. 1975** Fraudulent representations require "scienter," an
5 intentional, conscious misrepresentation. Hale v George A. Hormel & Co.,
6 121 Cal.Rptr. 144, 48 C.A. 3d 73.

7 **3) Deceptive statements or acts.**

8 **C.A.Cal. 1958** Under California Law, constructive fraud comprises all
9 acts, omissions and concealment involving a breach of legal or equitable
10 duty, trust or confidence, resulting in damage to another. Grenier v.
11 Harley, 250 F.2d 539.

12 **4) Nature in General-----**

13 **Cal.App. 1 Dist. 1986** Among the elements of a common-law cause of
14 action for negligent misrepresentation are that defendant has made an
15 untrue representation as to a past or existing material fact. Insurance
16 Underwriters Clearing House, Inc v. Natomas Co., 228 Cal.Rptr. 449, 184
17 C.A.3d 1520

18 **Cal.App. 2 Dist 1987** Misrepresentation must be material and knowingly
19 false representation of fact. Handel v. U.S. Fidelity and Gaur. Co., 237
20 Cal. Rptr. 667, 192 C.A.3d 684,

21 **5) Falsity and knowledge thereof.**

22 **Cal. 1961.** Even negligence of petitioner in failing to discover falsity of
23 statement is no defense when misrepresentation is intentional, rather than
24 negligent. Smith V. Williams, 361 P2d. 241, 12 Cal. Rptr. 665, 55 C.2d
25 617

26 **Cal.App. 1964** While a person may not be under duty to speak, he does
27 have moral as well as a legal duty to speak truth if he does so. Balfour,
28 Buthrie & Co v. Hansen, 38 Cal. Rptr. 525, 227 C.A.2d 173.

6) Fraudulent concealment.

C.A.9. (Cal.) 1988 In order for a mere omission to constitute actionable
fraud, defendant must demonstrate that plaintiff had a duty to disclose
the fact(s) at issue. Cohen.v. Wedbush, Noble, Cooke, Inc., 841 F.2d 282

1 The vital question in such a case (where equitable relief is sought based on
2 extrinsic fraud or mistake) is whether the successful party by inequitable conduct,
3 either direct or insidious in nature, lulled the other party into a state of false
4 security, thus causing the latter to refrain from appearing in court or asserting
5 legal rights. Aheroni v. Maxwell (1988) 205 Cal. App. 3d 284, 291

6 Equity's jurisdiction to interfere with final judgments is based upon the
7 absence of a fair, adversary trial in the original action. It was a settled
8 doctrine of the equitable jurisdiction—and is still the subsisting doctrine
9 except where it has been modified or abrogated by statute. . . that where
10 the legal judgment was obtained or entered through fraud, mistake, or
11 accident, or where the defendant in the action, having a valid legal
12 defense on the merits, was prevented in any manner from maintaining it
13 by fraud, mistake, or accident, and there had been no negligence, laches,
14 or other fault on his part, or on the part of his agents, then a court of
15 equity will interfere at his suit, and restrain proceedings on the judgment
16 which cannot be conscientiously enforced. Typical of the situations in
17 which equity has interfered with final judgment are the cases where the
18 lack of a fair adversary hearing in the original action is attributed to
19 matters outside the issues adjudicated therein which prevented one party
20 from presenting his case to the court, as for example, where there is
21 extrinsic fraud. Caldwell v. Taylor, 218 Cal. 471 [23 Pac. (2d) 758, 99 A.
22 L.R. 1194; McGuiness v. Superior Court, 196 Cal. 222 [237] Pac. 42, 40
23 A.L.R. 1110; (1921) 9 Cal L. Rev. 156; (1934) 23 Cal L. Rev. 79; 15 Cal
24 Jur. 14 et seq) 3 Freeman, Judgments [5th ed], p.2562, et seq) or intrinsic
25 mistake.

26 Additionally

27 There are four grounds which a court utilizing its equity capacity may rely
28 upon to provide relief from a default. Those areas are: (1) Void judgment,
(2) Extrinsic fraud, (3) Constructive service, and (4) Extrinsic mistake. (5
Witkin, Cal.Procedure (2ed. 1971) Attack of Judgment in Trial Court,
Section 182 p. 3751; Section 183, p. 3752; Section 169, p. 3740; Section
187, p.3757.

The Supreme Court has indicated that original negligence in allowing the
default to be taken will be excused if the aggrieved party makes a strong
showing of diligence in seeking relief soon after discovering entry of the
judgement. (Hallett v. Slaughter (194) 22 Cal.2d 552, 140 P.2d 3,)

A judgment, whether by litigation or consent, may be attacked where
extrinsic fraud was employed to secure it. Civic Western Corp. v Zila
Industries, Inc. (App 2 Dist. (1977) 135 CalRptr. 915 66 Ca; App.3d 1.

7) Equitable Relief—Proceedings—Action or Motion.—

One who has been prevented by extrinsic factors from presenting his or her
case to the court may bring an *independent action in equity* to secure relief
from the judgment entered against him or her, or where the court that

1 rendered the Judgment possesses general jurisdiction in law and equity, he
2 may invoke equity jurisdiction by a motion addressed to such court. Olivera
3 v. Grace 19 c. 2d 570 (Contrary language i. United States District Attorney
4 , 148 cal 773, 84 Pac. 152, 113 Am. St. Rep 354, declared inaccurate)

5 ARGUMENT AGAINST CALIFORNIA JURISDICTION

6
7 **Subject matter jurisdiction** can be attacked at any time, in addition to in
8 personam jurisdiction and this does not constitute a general appearance.

9 (Boisclair v. Superior Court, (1990)) 51 Cal.3d 1140, 1144, fn.1 [276 CR 62])

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

13 The judgment of a court may always be impeached for want of jurisdiction, and
14 when the judgment is upon a subject matter over which the court could, under no
15 circumstances, have any jurisdiction, the objection may be taken at any time
16 when such a judgment is invoked. (Rogers v. Cady (1894) 104 C. 288, 291, 292
17 [38 P. 81]); See also Witkin, California Procedure, 4th ed., Jurisdiction, sections
18 338, 339, pp. 926-929)

19 During the period when the Defendant was in California asserting that the
20 California Court had no jurisdiction because there was a case pending in Utah
21 (1994-95-96) the Court incorrectly asserted that the California courts had in
22 personam jurisdiction as a result of the dissolution judgement in 1978, when in
23 fact that dissolution judgment was filed in the State of Utah, in 1978 by the
24 Plaintiff acquiescing to Utah jurisdiction .

25 The Defendant asserts that any continuing jurisdiction arising from the
26 dissolution **terminated** when both parties willingly litigated the issue of family and
27 spousal support as well as custody matters in the State of Utah. Both parties
28 have litigated in the Utah jurisdiction since 1978.

1 See Solley v. Solley (1964) 227 Cal.App.2d 522, 529 [38 CR 802] -both
2 parties entered into a property settlement agreement in California, then
3 invoked the jurisdiction of the State of Nevada for their divorce and
4 incorporation of the property settlement agreement. When wife later filed suit
5 in California for an accounting, the Court of Appeal determined that the
6 Nevada decree was binding on the parties and California had no jurisdiction.

7 See also (Cf. Leverett v. Superior Court (1963) Cal.App.2d 126 [34 CR 784] -
8 continuing jurisdiction where wife registered Washington judgment in California
9 then opposed California jurisdiction.

10 A California court can exercise personal jurisdiction “on any basis not
11 inconsistent with the Constitution of this state or the United States. (California
12 Code of Civil Procedure section 410.0) The only federal limitation on California
13 courts assertion of long-arm jurisdiction is “Whether the party has “minimum
14 contacts” with the state so that prosecuting the suit locally “does not offend
15 “traditional notions of fair play and substantial justice.” (Kulko v. California
16 Superior Court (1978) 436 U.S. 84, 92 [56 L. Ed.2d 132m 141m 98.Ct. 1690])
17 Application of this minimum contact standard requires that there be some act by
18 which the nonresident “purposefully avails” herself of the privilege of conducting
19 activities within the forum state. (Kulko v. California Superior Court, supra, 436
20 U.S. at pp. 93-94 [56 L.Ed 2d at pp.142 143]).

21 The fairness question necessitates balancing the burden of inconvenience
22 to the Defendant against the states interest in resolving the dispute. (Id. At pp.
23 97-101 [56 L.Ed.2d at pp 144-147]). It was not fair to force the Defendant to
24 litigate the *same* matter in California that was pending in the State Court of Utah.
25 (In Re Marriage of Aaron, Supra, 224 Cal. App.3d 1086, 1095 [274 CR 357])

26 **Subject matter jurisdiction** refers to a court’s authority, i.e.,
27 competency, to adjudicate the type of controversy involved. (Witkin, California
28 Procedure, 4th ed., Jurisdiction, section 6(c), p. 552]). The actions of a court
without subject matter jurisdiction are void and may be set aside at any time.
(Estate of Buck, supra., 29 Cal.App.4th 1846, 1854 [35CR2 442]). If as
contended California lacked subject matter jurisdiction there was no

1 concurrent jurisdiction involved and Utah had exclusive jurisdiction. (Witkin,
2 California Procedure, 4th ed., Jurisdiction, section 427(1),p. 1042))

3 The California Supreme court has indicated that making a special appearance
4 and a motion to quash, is a procedure limited to attacking a lack of personal
5 jurisdiction and is inappropriate in attacking an absence of subject jurisdiction
6 (Greener v. Workers' Compensation Appeals Board (1993) 6 Cal.4th 1028, 1035
7 [25CR2 539]) A motion to quash service of summons lies on the ground that the
8 court lacks personal, not subject matter jurisdiction over the moving party. (Code
9 Civ. Proc., Section 418.10; Cal.4th at p. 1036) Personal or in personam
10 jurisdiction depends upon three factors: (A) Jurisdiction of the state. (B) Due
11 process, i.e., notice and opportunity for hearing. (C) Compliance with statutory
12 jurisdiction requirements of process (Witkin, California Procedure, Jurisdiction,
13 section 80, pp. 45-451.) Jurisdiction is based on an underlying principle of
14 "relationship to the state" which makes the exercise of jurisdiction "reasonable."
15 (Witkin, California Procedure, Jurisdiction, section 82, p. 452.) The Defendant
16 and the children of the marriage have been residents of the state of Utah since
17 1977. A special appearance requires no particular form and the argument and
18 relief sought, i.e., objection to personal jurisdiction, control over a designation.
19 (Witkin, California Procedure, Jurisdiction, sections 149-151, 160, pp. 534-537,
20 545-546)

21 In some situations the assertion of other grounds besides the lack of
22 personal jurisdiction can constitute a general appearance or a waiver of the
23 personal jurisdiction issue. May the Defendant remind the Court of the
24 Defendants assertion that the trial court should have deferred to the pending
25 action in Utah. This is in the nature of a forum non conveniens argument. (RT,
26 8:9-24) However, raising such an objection does not waive the lack of personal
27 jurisdiction defense. (Witkin, California Procedure, Jurisdiction, section 166, p.
28 551)

1 Once the Defendant raised the issue of lack of personal jurisdiction the
2 burden should have shifted to the Plaintiff to establish minimum contacts with the
3 state such that the maintenance of the suit does not offend traditional notions of
4 fair play and substantial justice. (The Court of Appeal, Crea. V. Busby (1966) 48
5 Cal.App.4th 509, 514 [55 CR2 513])

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

8 **1.**

9 **“URESА” IS THE CONTROLLING AUTHORITY IN THE MATTER OF THE**
10 **1995 UTAH ORDER SINCE JURISDICTION OF ALL SUPPORT MATTERS**
11 **REGARDING THE PLAINTIFF AND THE RESPONDENT WAS TAKEN BY**
12 **THE UTAH COURTS.**

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

25 **-2-**

26 **THE UTAH SUPREME COURT RE: ISSUES OF URESА**

27 The purpose of [URESА] is to improve and extend by reciprocal legislation in
28 separate jurisdictions the enforcement of existing duties of family support. See

1 NRS 130.030; State ex rel. Welfare Div v. Vine, 99 Nev. 278, 283, 662 P.2d
2 295, 298 (1983). Generally speaking, [URESA] itself “creates no duties of family
3 support, but is concerned solely with the *enforcement of the already existing*
4 *duties* when the person to whom a duty is owed is in one state and the person
5 owing the duty is in another.” See Annotation, Construction and Effect of
6 Provision of Uniform Reciprocal Enforcement of Support Act. NRS 130.280 (1)
7 directs that: A support order made by a court of this state pursuant to this
8 chapter **does not nullify and is not nullified** by a support order made by a court
9 of this state pursuant to any other law or by a support order made by a court of
10 any other state pursuant to a substantially similar law or any other law,
11 **regardless of priority of issuance . . .** (Emphasis) . 31 ALR 4th 347, 351 (1984)
12 citing Uniform Reciprocal Enforcement of Support Act. Commissioner’s
13 Prefatory Note, 9B U.L.A. 382 (1968); see also NRS 130.280; Vix V. State of
14 Wisconsin, 100 Nev. 495 686 P.2s 226 (1984) (in URESA proceedings, a court
15 only has jurisdiction to order enforcement of pre-existing duties of support).
16 Moreover, the remedies provided by the act are “**in addition to and not in**
17 **substitution for any other remedies.**” See NRS 130-050. The act further
18 provides that it “shall be so interpreted and construed as to effectuate its general
19 purpose to make uniform the law of those states which enact it.” See NRS
20 130.020. (Emphasis) **P11 [**6]** URESA’s choice of law provision provided that
21 the “duties of support . . . are those imposed . . . under the laws of any state
22 where the obligor was present during the period for which support is sought.”
23 Utah Code Ann. @ 77-31-7 (1995) (repealed 1997). Thus under URESA, Utah’s
24 statute of limitations would govern the duration for which support could be
25 recovered. . . . However, UIFSA’s choice of law provision states that “**in a**
26 **proceeding for arrearages, the statute of limitation under the laws of this**
27 **state or of the issuing state, whichever is the longer, applies.**” Utah Code
28 Ann. @ 78-45F-604 (Supp. 1998).

1 (P.12). The Utah Supreme Court has stated that “statutes of limitations are
2 essentially procedural in nature and do not abolish a substantive right to sue
3” Lee v. Gaufin, 867 P.2d 572, 575 (Utah 1993); See also Financial Bancorp.
4 Inc. V. Pingree & Dahle, [**7] Inc., 880 P2d 14m 16 (Utah ct. App. 1994) (stating
5 “Utah follows majority position that limitations periods are generally procedural in
6 nature”). Similarly, UIFSA’s choice of law provision does not establish a
7 substantive right or create a duty of support, but simply changes the mechanism
8 by which support orders are enforced by instructing the court as to which law to
9 apply in calculating arrearages. UIFSA merely provides a framework for
10 enforcing one states support order in another jurisdiction. Undoubtedly, the
11 outcome may differ depending on which statute of limitations is applied; however,
12 the rights created and possessed by the parties are found in provisions separate
13 and apart from the choice of law section. . “Full faith and credit” provisions
14 are outlined in the United [*943] States Constitution. (Emphasis)

15 B. Spousal Support Obligation

16 Utah Code Ann. @ 78-45f-206 (2) (Supp. 1998). (P26) makes it clear in it’s
17 reference to Spousal Support. In Utah, a court may only modify a spousal support
18 order issued by another state if the Utah court has “continuing, exclusive
19 jurisdiction” over the spousal support order. The method of which a Utah court
20 order obtains “continuing, exclusive jurisdiction” over a spousal support order is
21 by [*946] “Issuing [**19] a support order consistent with the law of this state . .
22 .” Utah id. @ 78-45f-205 (6). Thus, a Utah court cannot obtain “continuing,
23 exclusive jurisdiction unless it issues the spousal support order. . 6). . A
24 tribunal of this state issuing a support order consistent with the law of this
25 state has continuing, exclusive jurisdiction over a spousal support order
26 THROUGHOUT THE EXISTENCE OF THE SUPPORT OBLIGATION! Since
27 1980 the “family Support” orders issued by the state of Utah and collected upon
28 by the Riverside ORS included both Child support and alimony. All other orders

1 which are now in dispute are family support orders, with the exception of the 1998
2 Support Order. The 1995 Order stipulated the amount of spousal support but all
3 arrearage was family support. (**See Attachment**)

4
5 FACTS REGARDING UTAH RULINGS ON JURISDICTIONAL ISSUES AS
6 UPHELD IN THE UTAH COURTS

7
8 THE UTAH COURT MAY PROPERLY EXERCISE JURISDICTION BECAUSE A
9 FOREIGN DIVORCE DECREE CAN BE MODIFIED BY A SHOWING OF
10 CHANGE OF CIRCUMSTANCES.

11 The Plaintiff asserted the Utah court lacked jurisdiction because the
12 decree which the Defendant sought to modify was originally rendered in a
13 California Court. This is clearly not the law. The Utah Supreme Court stated that
14 Utah Courts have the jurisdiction to modify the provisions of a foreign divorce
15 decree if such decree could be modified under the law of the rendering state and
16 under Utah Law. McLane v. McLane 570 P.2d 692 (1977).

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

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

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

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

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

13 Under this statute and case law the California Court had no right to hear a custody
14 matter in 1993 since (1) California Courts had previously ruled in this matter
15 (1983) saying that only Utah had jurisdiction.(2) the Utah courts had taken
16 personum jurisdiction on the Plaintiff as well as the Defendant and the children of
17 the marriage. (3) The Plaintiff had willingly submitted to the jurisdiction of the
18 Utah Court.

19 ALL OTHER JURISDICTIONAL REQUIREMENTS WERE MET BECAUSE
20 THE DEFENDANT [RESPONDENT] AND THE CHILDREN OF THE PARTIES
21 WERE RESIDENTS OF THE STATE OF UTAH AND THE PLAINTIFF HAD
22 VOLUNTARILY SUBMITTED TO THE JURISDICTION OF THE STATE OF
23 UTAH BY BRINGING ADDITIONAL ACTIONS.

24 Family Code

25 **Section 3453 Full faith and credit; Enforcement of another states custody**
26 **determination.** A court of this state shall accord full faith and credit to an order
27 issued by another state, and consistent with this part, enforce a child custody
28 determination by a court of another state unless the order has been vacated,
stayed or modified by a court having jurisdiction to do so under Chapter 2
(commencing with Section 3421)

Section 4320. Circumstances to be considered in ordering Spousal
Support. In ordering spousal support under this part, the court shall consider
all of the following circumstances. (a) The extent to which the earning capacity

of each party is sufficient to maintain the standard of living established during the marriage, taking into account all of the following: (2) The extent to which supported party's present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported party to devote time to domestic duties (12 children) (b) The extent to which the supported party contributed to the attainment of an education, training, a career position, or a license by the supporting party. (See Exhibit 42-Main Action- Respondant's declaration to court) (c) The ability to pay of the supporting party, taking into account the supporting party's earning capacity, earned and unearned income, assets, and standard of living, (d) The needs of each party based on the standard of living established during the marriage. (f) The duration of the marriage [25 years] (h) the age and health of the parties, including, but not limited to, consideration of emotional distress----(due to withholding support payments) (j) The balance of the hardships to each party.

Section 4909 Continuing jurisdiction. (2) until all of the parties who are individuals have filed *written consents with the tribunal of this state* for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction (see Exhibits "2" & "3" Main action where Petitioner pleads before the court that he is subject to the jurisdiction of the Utah courts) (3)–(d) A tribunal of this state issuing a support order consistent with the law of this state has continuing jurisdiction over a spousal support order throughout the existence of the support obligation (See UIFSA- where this same statute applies to Utah jurisdiction. Since all spousal support orders have been initiated in the Utah jurisdiction for 25 years with one exception where the Respondent was temporarily in California in support of her daughters tennis career) Yet the Respondent claimed residency in the state of Utah.

A summary outline of jurisdictional issues.

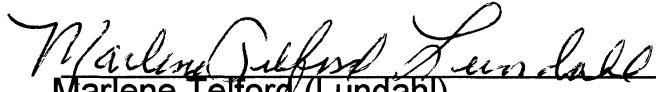
Pleading	Action	YR
Def: Motion to Quash	Plaintiff Register of California Order	1977
California Dissolution order	Registered in Utah	1978
Calif Order: back to Utah		1983
Hosp letter; Utah custody		1983
List of Utah Orders		1978-----1998
Utah Jurisdiction,	Utah Attorney General	1992
Judge Brown on Calif custody		1993
Plaintiff:	Utah Petition to Modify	1993
Federal Handbook statutes		
Calif AG Office on registering of Utah 2001 orders		2001
Notice to Salt Lake Attorney (Plaintiff)		1998
Declaration: Plaintiff submits to Utah		1987

Plaintiff's motion: California Does not have jurisdiction.

1983

Respectfully,

Date 12/1 2003


Marlene Telford (Lundahl)
In pro Se

p.s. An ADDENDUM will follow with supporting motions and statements from the California Attorney Generals Office and an Amicus Curiae Brief from the Attorney Generals Office in Texas, filed in the California courts per California AG Office., Also copies of three (3) letter briefs to be filed in the Appellate Court of California in deference to a request from the bench. The California AG; Barry Brooks Amicus Brief and myself are the participants.

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

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**

) **ADDENDUM TO**
) **OPENING BRIEF**

) Fourth Judicial District Court

) Case No 784449259

) Judge Claudia Laycock

I

The Plaintiff has filed an appeal in the California Court of Appeals District 4, Division 3. Officers of some California Agencies have filed with the California Courts documents upholding jurisdiction in Utah. I have chosen to submit these documents to the Utah Court of Appeals since the people involved include, Mary Dahlberg, California Deputy Attorney General of California, and Barry Brooks the Attorney General of Texas. Both have written and submitted briefs upholding Utah as the venue of jurisdiction.

Ms Dahlberg is handling this case since the Plaintiff, Gerald Lundahl, M.D. filed an appeal against the California Superior Court of Orange California, the Honorable Julee Robinson presiding. Miss Dahlberg's official duties are to over-see Family Law in the state of California.

Mr. Barry Brooks of the Attorney General's office of Texas, who was the "official observer" directing UIFSA (Uniform Interstate Family Support Act) and giving direct input to the UIFSA mandates. Mr. Barry Brooks is considered an expert on family law. See the following documents attached in the *Attachment* of this matter.

1 **See Respondent's Attachment**

2 In pertinent part

- 3
- 4 5) Amicus Curiae Brief ,Barry Brooks, Attorney General of Texas
- 5 6) Amicus Letter Brief to California Appellate Court (invitation by the court)
- 6 7) Letter Brief, California Deputy Attorney General, Mary Dahlberg

- 7 -----
- 8 21. California AG--Opposition to Appellant's request for judicial Notice.
- 9 22. California AG--"Respondent Intervenor" Brief.
- 10 23. California AG--Opposition to writ of Supersedeas
- 11 24. California AG- Motion for Judicial Notice
- 12 20. Orange County District Attorney's Office-Response to Plaintiff's motion to
- 13 vacate.
- 14 25. Orange County District Attorney's Office- Response to Plaintiff's Motion to
- 15 stay proceedings supplemental as ordered by Court.

16

17 Respectfully,

18 *Marlene Telford Lundahl*

19 _____

 Date: 12/20/03 2003

20 Marlene Telford (Lundahl)

21 4139 North Devonshire

 Prove, Utah, 84604

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(Orange County for Respondent)

Hon Clerk
Utah Supreme Court
450 South, State
Salt Lake City, Utah 84114

[10 copies]

Appellate Court
450 South State
Salt Lake City Utah, 84114

[8 copies]

Barry J. Brooks
3500 Cassava Drive
Austin, TX 78746-6691

Amicus Brief, Letter Brief

Judge Claudia Laycock
Fourth District Court, Utah County
125 North, 100 West
Provo, Utah, 84601


PROOF OF SERVICE

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

On December 1, 2003 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 serving personally the same on the interested parties in this action.

Executed on December 1, 2003 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