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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF NEVADA, TRUCKEE BRANCH**

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11
12 IN RE THE MARRIAGE OF:)
13)
14 PETITIONER:) **MEMORANDUM OF POINTS**
15 KATHERINE ESTEL DE FIORI) **AND AUTHORITY IN SUPPORT**
16) **OF RESPONDENT’S MOTION FOR**
17 and) **CHILD SUPPORT AND OTHER**
18) **ORDERS**
19 RESPONDENT:)
20 NICOLAS EROS DE FIORI)
21) Yvette Durant, Commissioner
22) Department B

23 **1. INTRODUCTION**

24 The statewide uniform guidelines and legal framework governing child support
25 and discovery in family law matters seek to limit judicial discretion in order to protect
26 children’s best interests by requiring parents act in good faith to honestly, accurately and
27 fully disclose assets and income, and diligently seek and obtain gainful employment to
28 “ensure children actually receive fair, timely and sufficient child support.” (Fam. Code
4053(1))

1 To help ensure compliance the law provides legal remedies, including contempt of
2 Court and issuing of civil bench warrants, to compel parents who willfully attempt to
3 circumvent the law and shirk their primary obligation to support their children to act in
4 good faith.

5
6 **1. BACKGROUND**

7 The Petitioner is the biological mother of the Petitioner and the Respondent's two
8 children, now ages 10 and 14. The preponderance of evidence presented in the
9 Respondent's declaration strongly indicates that the reason the Petitioner suddenly and
10 inexplicably rejected her children in September 2014 after being a loving, caring (albeit
11 alcoholic) mother, was to be able to become a full time sex worker and live an alternative
12 singles' lifestyle with her now fiancée, Karl William Jesse. The Petitioner's entrance into
13 sex working also explains why the Petitioner is clearly avoiding gainful employment and
14 avoiding paying child support because doing so would put the Petitioner's lucrative
15 income as a sex worker that the Petitioner and Mr. Jesse are now enjoying at risk.

16 The manner in which the Court has thus far exercised its discretion has served to
17 further the Petitioner's ability to live her chosen lifestyle at the expense of the Petitioner
18 supporting her children

19 The Respondent submits this memorandum of points and authority in support of a
20 motion to request orders to require the Petitioner to: (1) seek and obtain gainful
21 employment, (2) pay child support, (3) provide complete and accurate income and
22 expense statements for the current and two prior periods, and (4) bifurcate the division of
23 community property to permit the Respondent to sell the property without the Petitioner's
24 consent.

25
26 **2. SEEK WORK AND CHILD SUPPORT ORDERS**

27 Fam. Code §4505 states "(a) A Court may require a parent who alleges that the
28 parent's default in a child or family support order is due to the parent's unemployment to

1 submit to the appropriate child support enforcement agency or any other entity designated
2 by the Court, including, but not limited to, the Court itself, each two weeks, or at a
3 frequency deemed appropriate by the Court, *a list of at least five different places the*
4 *parent has applied for employment [emphasis added].”*

5 Bench Guide (§203.86) states, in part: “*After considering the earning capacity of*
6 *each parent [emphasis added]* in calculating child support, the court may require a parent
7 to participate in job training, vocational rehabilitation, or work placement programs (Fam
8 C §3558), or require an unemployed parent who has defaulted in support payments to
9 submit to periodic proof of applications for employment (Fam C §4505(a)).”

10 The Court has the discretion to “render any judgment and make orders that are
11 appropriate concerning.... [t]he support of children for whom support may be ordered”
12 (Fam. Code, §2010 and 2010 subd. (a)). Use of the Court’s discretion should “.... place
13 the interests of children as the state's top priority” (Fam. Code, § 4053, subd. (e)) to “....
14 ensure that children actually *receive fair, timely, and sufficient support [emphasis added]*
15 *....*” (Fam. Code, § 4053, subd. (l)). As such, default in child support payments is not a
16 prerequisite for the court to order the Petitioner seek work.

17 Lastly, “It is up to the Court to manage the cases involving seek-work orders, as it
18 deems appropriate, including by calendaring regular compliance review dates as needed.
19 The party is ordered to return to Court for work-search review, *and a failure to appear*
20 *may result in the issuance of a civil bench warrant.*” (Bench Guide §203.86)

21
22 **Earning Capacity** - Statewide uniform guidelines require a parent support their
23 children taking “into account each parent's actual income and level of responsibility for
24 the children.” stating that “[e]ach parent should pay for the support of the children
25 according to his or her ability.” (Fam. Code, § 4053, subds. (a), (d)).

26 In order to determine a parent’s earning capacity, it must first be shown that a
27 parent has:

- 28
- The *ability* to work, considering factors such as the parent’s age, occupation,

- 1 skills, education, health, background, work experience, and qualifications; *and*
2 • “An *opportunity to work*. *Marriage of Regnery* (1989) 214 CA3d 1367, 1372–
3 1373, 263 CR 243. A parent has an opportunity to work if there is a reasonable
4 likelihood that the party could, with reasonable effort, apply his or her education,
5 skills, and training to produce income. *Marriage of Smith, supra*, 90 CA4th at 82.”
6 (Bench Guide §201.19)

7 The figures for earning capacity cannot be drawn from thin air; they must have
8 some tangible evidentiary foundation (*Marriage of Cohn* (1998) 65 CA4th 923, 931, 76
9 CR2d 866) and the court must consider the economic realities of the job market
10 (*Marriage of Serna* (2000) 85 CA4th 482, 486, 102 CR2d 188) (Bench Guide §201.21).

11 The evidence to prove that the Petitioner has the opportunity to work may include
12 help-wanted ads from newspapers (*Marriage of LaBass & Munsee* (1997) 56 CA4th
13 1331, 1338–1339, 66 CR2d 393), and the Court may consider the Petitioner’s
14 employment history and failure to comply with support orders in evaluating the
15 credibility of the Petitioner’s claim to be unable to find gainful employment (*Marriage of*
16 *Regnery* (1989) 214 CA3d 1367, 1373–1376, 263 CR 243).

17
18 The following Exhibits evidence that the Petitioner has the opportunity to obtain
19 gainful employment at her earning rate:

- 20 • Exhibits A and B– Unemployment Rates
- 21 ○ Exhibit A - As of September 2015 the unemployment rate in Nevada
22 County was 4.7% which is below the State average of 5.5%. Nevada
23 County’s unemployment rate was tied with three other counties as being the
24 14th lowest out of 55 counties in the State. The State’s unemployment rate
25 has fallen from 12.4% in September 2010, 10.5% in September 2012 and
26 7.2% in September 2014. The Congressional Budget Office’s latest
27 projections place the unemployment rate of full employment at 5.5%, well
28 above the current unemployment rate in Nevada County.

- 1 ○ Exhibit B -The unemployment rate in Reno NV was 5.1% in September
2 2105, the lowest it has been since December 2007.
- 3 ● Exhibits C and D – Employment and Wage Rates. Based upon the most recent
4 California Occupational Employment Statistics (OES) survey results
5 (Employment – May 2014 and Wages – 1st quarter 2015) for:
- 6 ○ Exhibit C - The Northern Mountain Region which includes Nevada County,
7 there were 330 Executive Secretaries and Administrative Assistants with an
8 average annual salary of \$46,337, and 960 Secretaries and Administrative
9 Assistants with an average annual salary of \$34,595.
- 10 ○ Exhibit D – For comparison, the state of California there were 99,740
11 Executive Secretaries and Administrative Assistants with an average annual
12 salary of \$60,584, and 206,900 Secretaries/Administrative Assistants with
13 an average annual salary of \$39,497.
- 14 ● Exhibits E and F – Employment and Wage Rates. Based upon the most recent
15 Nevada Occupational Employment Statistics (OES) survey results (Employment –
16 May 2014 and Wages – 1st quarter 2015) for:
- 17 ○ Exhibit E – In the Carson City MSA (which includes Las Vegas-Paradise,
18 Reno-Sparks and Carson City) there were 4,810 Office and Administrative
19 Support Occupations with an average annual salary of \$35,340, and 70
20 Executive Secretaries and Executive Administrative Assistants with an
21 average annual salary of \$50,840, and 960 Secretaries and Administrative
22 Assistants with an average annual salary of \$36,580.
- 23 ○ Exhibit F – For comparison, in the state of Nevada there were 187,360
24 Office and Administrative Support Occupations with an average annual
25 salary of \$34,470, and 2,790 Executive Secretaries and Executive
26 Administrative Assistants with an average annual salary of \$53,330, and
27 135,520 Secretaries and Administrative Assistants with an average annual
28 salary of \$37,140.

- 1 • Exhibit G – Commuter Statistics. Based upon the 2000 U.S. Census, there were
2 10,000 commuters going out from Nevada County to work and 4,000 coming into
3 the county for a net out flux rate that is 2.5 times the rate of influx evidencing the
4 common need for the residences of Nevada County to have to commute for gainful
5 employment. Approximately 50% commute to Placer County, 20% commute to
6 Sacramento County and 11% commute to Washoe County with commute times of
7 30 minutes, one hour and two hours, respectively.
- 8 • Exhibits H, I, J and K – Help wanted ads in the Petitioner’s local geographic
9 region (Truckee, Reno and the greater Lake Tahoe region).
 - 10 ○ Exhibit H – LinkedIn. 14 opportunities
 - 11 ○ Exhibit I – LinkedIn – 2 opportunities (Apple One)
 - 12 ○ Exhibit J – Craigslist – 23 opportunities
 - 13 ○ Exhibit K – Monster.com – 21 opportunities

14
15 **Conclusion:** Based upon the relevant facts and circumstances presented in the
16 Respondent’s declaration, the preponderance of evidence indicates that the Petitioner’s
17 assertion of voluntarily unemployment and impoverishment with no money, no
18 transportation and no income is not creditable. It is clear that the Petitioner is not willing
19 to work and not making a diligent effort to obtain gainful employment in an attempt to
20 avoid supporting her children.

21 Furthermore, the evidence clearly demonstrates that the Petitioner has the ability
22 to work and retains highly marketable skills as an office administrator with an annual
23 earning capacity of at least \$35,000.

24 Lastly, the evidence also clearly demonstrates that the Petitioner has the
25 opportunity to be gainfully employed at her earning capacity, and employment at
26 anything less than would not be in the children’s best interest as the support amount
27 provided would not meets the children’s needs.

28 Therefore, based upon all relevant facts and circumstances, it is in the children’s

1 best interests and within the Court's authority and discretion to:

- 2 1. Order the Petitioner make five (5) applications for employment directly to
3 employers each week and order the Petitioner to expeditiously obtain gainful
4 employment at the Petitioner's earning capacity,
- 5 2. Hold the Petitioner in contempt for the Petitioner's continued willful violation
6 of orders and rulings to avoid gainful employment and avoid supporting the
7 Petitioner's children, including issuance of a civil bench warrant if the
8 Petitioner fails to attend future seek work and/or child support hearings.

9
10 **3. INCOME AND EXPENSE STATEMENT ORDER**

11 California policy favors liberal application of discovery rights. As such, the
12 relevance standard is broadly construed. Doubts as to relevance are usually resolved in
13 favor of permitting discovery. This approach is particularly evident in marital actions,
14 given the codified policy favoring full and truthful disclosures so as to assure a proper
15 division of the community estate and "fair and sufficient" child and spousal support
16 awards. (Ca Fam § 2100).

17 California civil and family codes and procedures provide broad rights if it is
18 reasonable that discovery actions will lead to admissible evidence. (Ca Civ Pro §
19 2017.010). So long as the information sought "appears reasonably calculated" to reveal
20 admissible evidence, it is within the allowable scope of discovery. (Ca Civ Pro §
21 2017.010; Schnabel v. Super.Ct. (Schnabel), supra, 5 Cal.4th at 711, 21 Cal.Rptr.2d at
22 203).

23 Financial declarations are the primary means for the Court to assess a parent's
24 financial circumstances and to determine if the parent is acting in good faith by fully
25 disclosing all assets and income. An income and expense declaration is the foundation for
26 a husband, wife or parent's testimony to the Court about his or her income and expenses
27 in order to assist the Court in determining a fair and sufficient child support award that is
28 in compliance with Statewide guidelines.

1 California Family Code states, in part, “In order to provide full and accurate
2 disclosure of all assets and liabilities in which one or both parties may have an interest,
3 each party to a proceeding for dissolution of the marriage or legal separation of the
4 parties shall serve on the other party a preliminary declaration of disclosure under Section
5 2104 and a final declaration of disclosure under Section 2105...” (Fam. Code §2103).

6 Furthermore, “[T]o ensure fair and sufficient child and spousal support awards”, it
7 is the sound policy of the State of California to reduce “the adversarial nature of marital
8 dissolution and the attendant costs by fostering full disclosure and cooperative
9 discovery”. Such public policy shall promote “a full and accurate disclosure of all assets
10 and liabilities in which one or both parties have or may have an interest must be made...”
11 (Fam. Code §2101 subd (a)(2), (b) and (c)).

12 In addition, the parties are required to provide “a preliminary declaration of
13 disclosure under Section 2104 or a final declaration of disclosure under Section 2105...”
14 with “...sufficient particularity...” (Fam. Code §2107 subd (a)).

15 Both California and Nevada County Rules of Court provide specific guidance that
16 clearly define each party’s responsibilities and obligations to provide financial
17 declarations with sufficient particularity.

- 18 • “Except as provided below, for all hearings involving child, spousal, or
19 domestic partner support, both parties *must complete, file, and serve*
20 *[emphasis added]* a current Income and Expense Declaration (form FL-
21 150) on all parties.” (California Rule 5.260(B)),
- 22 • “If financial relief is requested, an Income and Expense Declaration in
23 compliance with, and as required by Rule 5.11(B) must be filed and served
24 by each party with the moving pleadings...” (Local Rule 5.03(F))
- 25 • “[a] *current and complete Income and Expense Declaration is required for*
26 *any trial or hearing [emphasis added]* in which the financial circumstances
27 of one or more of the parties is relevant....An Income and Expense
28 Declaration is *complete if all blanks are filled in [emphasis added]* and all

1 required attachments are attached...” (Local Rule 5.11(B)).

2 **Conclusion:** Based upon the relevant facts and circumstances presented in the
3 Respondent’s declaration, and based upon applicable statute, case law and other legal
4 authority presented herein, it is in the children’s best interests and within the Court’s
5 authority and discretion to order the Petitioner provide financial declarations that are
6 complete, accurate and properly served, including income and expense statements for the
7 current period and the two prior time periods requested in the Respondent’s declaration.
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9 **4. BIFURCATION AND SALE PROPERTY ORDER**

10 Family Code Section 721(b) states, in part: “...in transactions between themselves,
11 spouses are subject to the general rules governing fiduciary relationships that control the
12 actions of persons occupying confidential relations with each other. This confidential
13 relationship imposes a duty of the highest good faith and fair dealing on each spouse, and
14 neither shall take any unfair advantage of the other....”

15 Furthermore, Family Code Section 1101 (e) states that “In any transaction
16 affecting community property in which the consent of both spouses is required, the Court
17 may, upon the motion of a spouse, dispense with the requirement of the other spouse's
18 consent if both of the following requirements are met: (1) The proposed transaction is in
19 the best interest of the community. (2) Consent has been arbitrarily refused or cannot be
20 obtained due to the physical incapacity, mental incapacity, or prolonged absence of the
21 nonconsenting spouse.”
22

23 **Conclusion:** Based upon the relevant facts and circumstances presented in the
24 Respondent’s declaration and related Exhibits L, M and N (Exhibit L – stipulation and
25 property market values, Exhibit M – POD’s invoices, and Exhibit N - Respondent’s
26 father’s loan notes), and based upon applicable statute, case law and other legal authority
27 presented herein, it is:

- 28 1. fiducially prudent for the Respondent to divide and sell the property, and

1 2. within the Court's jurisdiction, authority and discretion to order the division
2 and sale of the property as requested in the Respondent's declaration.
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4 Respectfully submitted,
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7 DATED: _____
8 Nicolas Eros De Fiori, Respondent
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