

SUPREME COURT OF FLORIDA

CASE NUMBER: SC20-1195

SAMUEL SALOMON LEVY,

L. T. CASE NO. 3D19-73; 3D19-318;  
11-31255

Petitioner/Former Husband,  
vs.

EINATH BACH LEVY,

Respondent/Former Wife.  
\_\_\_\_\_ /

**PETITIONER'S APPENDIX**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via E- Mail to: ROBERT F. KOHLMAN, Esquire, 100 S.E. 2nd Street, Suite 3500, Miami, FL 33131, [robert.kohlman@kohlmanlaw.com](mailto:robert.kohlman@kohlmanlaw.com); this 10th day of March, 2021.

ABRAMOWITZ and ASSOCIATES  
3211 Ponce de Leon Boulevard  
Suite 202  
Coral Gables, Florida 33134  
Tel: 305-254-4500  
Email: [eserviceabramowitz@gmail.com](mailto:eserviceabramowitz@gmail.com)  
Fla. Bar # 748161

/s/ Evan L. Abramowitz

\_\_\_\_\_  
EVAN L. ABRAMOWITZ, Esquire

RECEIVED, 03/10/2021 06:17:33 PM, Clerk, Supreme Court

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**PROPERTY SETTLEMENT AND SUPPORT AGREEMENT**

THIS AGREEMENT is made by and between SAMUEL SALOMON LEVY (hereinafter referred to as the "Husband" or "Father") and EINATH BACH LEVY (hereinafter referred to as the "Wife" or "Mother").

**RECITALS**

WHEREAS the parties hereto were lawfully married to each other on August 16, 2007 in Miami, Florida; and

WHEREAS one child was born of this marriage, namely: Valentino Edward Levy, born March 20, 2008 (hereafter referred to as "Valentino"); and

WHEREAS Mother is pregnant with another child, expected to be named Lolita Levy (hereafter referred to as "Lolita", and together with Valentino referred to as "the minor children"); and

WHEREAS both Parties are over the age of eighteen (18); and

WHEREAS irreconcilable differences have arisen between the Parties which have made it impossible for them to live together as Husband and Wife, and they have decided to separate, and intend hereafter to live permanently separate and apart; and

WHEREAS each party hereto understands his or her right to have independent counsel review this Agreement and by execution of this Agreement acknowledge that they have been advised to have his or her own counsel and have in fact each been represented by counsel; and

WHEREAS the parties intend by this Property Settlement and Support Agreement (hereinafter referred to as the "Agreement") to make a complete and final determination of the rights and duties concerning their property rights; and to resolve all rights of support and maintenance by either party against the other which may have arisen as a

result of their marriage including, but not limited to dower, curtesy, augmented estate, spousal support and maintenance, child support and homestead rights; and

WHEREAS the Parties executed a Consent Custody and Visitation Agreement on May 18, 2010 (hereafter the "Custody Agreement"); and

WHEREAS the Parties believe that they have full knowledge of the extent, value and character of the property owned by them separately or jointly, and of their respective means, obligations and needs, and therefore waive formal discovery or any further/different disclose of assets/income/liabilities; and

WHEREAS the Parties hereto each warrant and represent to the other that they, and each of them, fully understands all of the terms, covenants, conditions, provisions and obligations incumbent upon each of them by virtue of this Agreement to be performed or contemplated by each of them hereunder, and each believes the same to be fair, just and reasonable under the circumstances.

### **AGREEMENT**

#### **1. SUPPORT AND MAINTENANCE OF THE MINOR CHILDREN.**

Commencing on August 1, 2010, and continuing on the first day of each month thereafter until automatically modified as set forth in the following paragraph, the Father shall pay to the Mother the sum of Eight Hundred Dollars (\$800.00) per month for the support and maintenance of Valentino. The Father shall pay his child support in two equal payments each month by paying \$400.00 on the 1st day of each month and \$400.00 on the 15th day of each month directly to the Mother. The Father shall pay his monthly child support obligation directly to the Mother and not by an Income Deduction Order.

Commencing on the first day of the first month after Lolita is born, the Father's child support obligation shall be One Thousand Two Hundred and Fifty Dollars (\$1,250.00) per month for both children. The Father shall pay his child support in two equal payments each month by paying \$625.00 on the 1st day of each month and \$625.00 on the 15th day of each month directly to the Mother.

Each party's child support obligation for the minor children shall continue until such time as each child reaches the age of eighteen years, except if upon the child's eighteenth birthday, he/she remains (i) a full-time high school student, (ii) not self-supporting and (iii) living in the home of the party seeking or receiving child support, then each party's child support obligation shall continue until the child turns nineteen (19) or graduates from high school, whichever first occurs.

For so long as he has a child support obligation, the Father shall also contribute Ten Percent (10%) of any Net Sales Commissions he receives as additional child support to a jointly titled financial account. The parties acknowledge that a component of Father's current income is a sales commission plan which entitles him to income above his base salary based upon any sales he makes ("Sales Commissions"). "Net Sales Commissions" shall be defined as the gross Sales Commissions father is paid minus all taxes withheld (federal, state, Social Security and FICA), minus health and life insurance premiums, minus retirement contributions and minus long term and short term disability. The Father shall make the payment of additional child support in one lump sum once each year, by January 31st, for the Sales Commissions he received in the previous calendar year. The parties shall mutually agree upon the type of account, and the account shall be held in both parties' names; the funds in the account shall only be used for

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educational expenses for the minor children (however, in a case of true need, the funds may be used for other expenses, such as extracurricular activities, clothing, and health expenses); neither party shall withdraw any funds from the account without the express written agreement of the other party; either party shall have the right to petition the Fairfax County Circuit Court if that party believes the other party is unreasonably withholding his/her consent.

For so long as she has a child support obligation, the Mother shall also contribute Ten Percent (10%) of any Net Income she receives as additional child support to the same jointly titled financial account referred to in the previous paragraph. "Net Income" shall be defined as Mother's gross income (as that term is defined in Virginia Code §20-108.2) from all sources minus all taxes withheld (federal, state, Social Security and FICA), minus health and life insurance premiums, minus retirement contributions and minus long term and short term disability. The Mother shall make the payment of additional child support in one lump sum once each year, by January 31st, for the Net Income she received in the previous calendar year.

There are no child support arrearages as of the date of the execution of this Agreement.

2. EXCHANGE OF FINANCIAL INFORMATION. The parties shall exchange by no later than April 15 of each year, beginning with year 2011, all documents including, but not limited to, federal and state tax returns, W-2s, 1099s, K-1s, and end of year pay stubs evidencing any and all income received by the parties in the previous year. Each party shall have the right to redact any information relating to a future spouse.

3. MEDICAL INSURANCE FOR THE MINOR CHILDREN. The Father

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shall maintain comprehensive hospitalization, dental and medical insurance for the minor children until such time as he no longer has a child support obligation for each child. The Father shall, at all times, promptly provide the Mother with the necessary insurance identification beneficiary cards as well as appropriate claim forms to facilitate any claim for or on behalf of the minor children.

If the Father loses his employer-provided insurance benefits through no fault of his own, then the parties will cooperate to select the most comprehensive and cost-effective insurance policies, and the parties will share the cost of the insurance premiums in the same proportion as their gross incomes used for purposes of determining child support.

4. THE MINOR CHILDREN'S UNREIMBURSED MEDICAL AND DENTAL EXPENSES. The parties agree to divide any of the minor children's reasonable and necessary unreimbursed medical and dental expenses that are in excess of \$250.00 for any calendar year in proportion to their gross incomes as used for calculating the monthly support obligation, until such time as they no longer have a child support obligation for each child. The Mother shall be solely responsible for paying for the first \$250.00 of each child's reasonable and necessary unreimbursed medical and dental expenses per year. The party incurring the expense shall provide proof to the other party of expenses he/she incurs and the explanation of benefits from the insurance company demonstrating the amount that the insurance company paid, and the non-incurring party shall reimburse the incurring party his/her share within 10 days of receipt of the proof of the expense. "Medical and dental expenses" shall include, but not be limited to, eyeglasses, prescription medication, prosthetics, orthodontics, and mental health or

developmental disabilities services, including but not limited to services provided by a social worker, psychologist, psychiatrist, counselor, or therapist. Co-pays shall be included in the definition of unreimbursed medical and dental expenses.

5. CLAIMING THE MINOR CHILDREN AS DEPENDENCY EXEMPTION AND TAX CREDIT. The parties agree that in 2010 and all even-numbered years, the Father (and not the Mother) shall be entitled to claim the minor children for purposes of the dependency exemptions and child tax credits on his federal and state income tax returns. The parties agree that in 2011 and odd-numbered years, the Mother (and not the Father) shall be entitled to claim the minor children for purposes of the dependency exemptions and child tax credit on her federal and state income tax returns (however, if Mother has adjusted gross income of less than \$20,000.00 in any such year, then Father, and not Mother, shall be entitled to claim the minor children). By February 1 of each year hereafter, the party not entitled to claim the minor children shall sign IRS Form 8332 or successor form (if no form exists, then a written declaration meeting the requirements of the IRS Code to allow the non-custodial parent to claim the child for purposes of the dependency exemptions and child tax credits) in order to enable the other party to claim the minor children for purposes of the dependency exemptions and child tax credits as set forth above.

6. MEDICAL AND DENTAL INSURANCE FOR THE PARTIES.  
The Husband shall maintain the Wife on his current employer-provided health/medical and dental insurance policies (or comparable policies if the current policies are no longer available) until the entry of a Final Decree of Divorce. However, if the Husband is terminated from his employment through no fault of his own, then he shall no longer be

obligated to maintain said insurance. Upon the entry of the Final Decree of Divorce, the Husband shall cooperate with the Wife so that the Wife can obtain health/medical and dental insurance coverage under COBRA at her request and at her sole expense.

Neither party shall have any obligation to pay for uninsured/unreimbursed health/medical or dental expenses for the other, and the parties shall each be responsible for his or her own uninsured/unreimbursed health/medical and dental expenses, whether incurred before or after the execution of this agreement. The Husband will defend, indemnify and hold harmless the Wife and the Wife's property from any liability related to the payment of the Husband's uninsured/unreimbursed health/medical and dental bills, and the Wife will defend, indemnify and hold harmless the Husband and the Husband's property from any liability related to the payment of the Wife's uninsured/unreimbursed health/medical and dental bills.

7. SPOUSAL SUPPORT. Commencing on September 1, 2010, and continuing each and every month thereafter until modified/terminated as set forth below, the Husband shall pay the Wife Four Thousand Two Hundred and Fifty Dollars (\$4,250.00) per month in spousal support. The Husband shall pay the Wife his support obligation in two equal payments each month: \$2,125.00 on the 1<sup>st</sup> day of each month and \$2,125.00 on the 15<sup>th</sup> day of each month. The Husband shall pay his monthly spousal support obligation directly to the Wife and not by an Income Deduction Order.

The Husband's spousal support obligation shall forever terminate upon the first of the following to occur: (1) Wife's remarriage; (2) the death of either party; (3) upon the Wife cohabiting with a person in a relationship analogous to a marriage for a period of one year or more unless the Wife proves by a preponderance of the evidence that

termination of support would be unconscionable, as set forth in Virginia Code §20-109; (4) July 31, 2013; or (5) upon further court order terminating the spousal support obligation in accordance with Virginia law. The amount of the Husband's spousal support obligation shall be modifiable pursuant to Virginia law. The Husband shall not be ordered to pay spousal support after July 31, 2013.

For purposes of income taxes, the spousal support payable by the Husband shall be deductible by the Husband on his federal and state income tax returns and shall be included as income by the Wife on her federal and state income tax returns.

The Husband hereby relinquishes and forever waives any right or claim that he has to alimony, spousal support, or any other lump sum or periodic form of support or maintenance from the other party, whether such right or claim be established by statute, common law or other legal means, including but not limited to a reservation of the right to request spousal support, due to the marriage between the parties. Further, the Husband shall not petition a court of competent jurisdiction, or other authority, at any time for an award of spousal support, either pendente lite or permanently, for any reason. This provision shall not be subject to modification by any court.

8. PROPERTY.

A. REAL PROPERTY. The parties do not own any real property. The Husband co-signed on the lease for the Wife's residence located at 2765 Centerboro drive Vienna, Apt 365, Virginia 22181. The Wife shall be solely liable for paying the rent and all other fees and expenses associated with her residence (including, but not limited to, utilities and rental insurance) for so long as Husband is obligated on the current lease, and shall defend, indemnify and hold harmless the Husband from all

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liability associated therewith. Within thirty (30) days of the execution of this Agreement, the Wife shall cause all utilities for her residence to be switched into her sole name.

B. Household furniture, furnishings and related Personal Property.

Each party shall keep any of his/her clothes and other personal effects, including his/her jewelry (no matter who purchased the jewelry) as his/her sole and separate property. As of the date of this Agreement, the parties have already divided their household furniture, furnishings, related personal property and all other personal effects (hereafter referred to in this subparagraph as “personal property”). The Husband shall keep all personal property in his possession as his sole and separate property, free and clear of any claim by the Wife and with the power to dispose of said personal property as fully and in all respects as if he were unmarried. The Wife shall keep all personal property in her possession as her sole and separate property, free and clear of any claim by the Husband and with the power to dispose of said personal property as fully and in all respects as if she were unmarried.

C. Automobiles. The Husband shall take the BMW 525xi, which is titled solely in his name, as his sole and separate property. The Husband shall indemnify, defend and hold the Wife and the Wife’s property harmless for any claim arising out of his use, possession or ownership of the BMW 525xi. The parties acknowledge that there is a loan secured by the BWM 525xi which is in the Husband’s sole name. The Husband shall be solely liable for payment of the loan and shall indemnify, defend and hold the Wife and the Wife’s property harmless for any claim arising out of the loan.

The Wife shall take the BMW X5, which is titled solely in the Husband’s name, as her sole and separate property. The Wife shall indemnify, defend and hold the

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Husband and the Husband's property harmless for any claim arising out of her use, possession or ownership of the BMW X5. The parties acknowledge that there is a loan secured by the BWM X5 which is in the Husband's sole name. The Wife shall be solely liable for payment of the loan and shall indemnify, defend and hold the Husband and the Husband's property harmless for any claim arising out of the loan. Within ninety (90) days of the execution of this Agreement, the Wife shall pay the loan in full, refinance the loan, assume the loan, or otherwise sell the BMW X5, thereby completely paying the loan in full and thereby removing the Husband from any and all liability thereon; until the Husband is removed from all liability, the Wife shall be solely liable for making the payments on the loan, and she shall pay the loan on-time. The Husband shall sign the title transferring his ownership to the Wife at the time that the Husband is released from all liability on the loan.

Each party shall be solely liable for maintaining automobile insurance and paying any personal property taxes for any automobile he/she owns pursuant to this Agreement or hereafter owns/drives.

D. Retirement Accounts. Each party shall keep and maintain as his or her sole and separate property any and all Individual Retirement Account(s) (IRAs), 401(K) account(s), KEOGH account(s), SEP account(s), defined contribution retirement accounts, defined benefit retirement accounts, pension(s), or other retirement account(s) in that party's name as of the date of the signing of this Agreement. Each party hereby irrevocably transfers, assigns and releases any and all right, title or interest he or she had, has, or may have at any time in the future to any and all Individual Retirement Account(s) (IRAs), 401(K) account(s), KEOGH account(s), SEP account(s), defined

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contribution retirement accounts, defined benefit retirement accounts, pension(s), or other retirement account(s) held in the name of the other party. Neither party shall remain as the beneficiary on any Individual Retirement Account(s) (IRAs), 401(K) account(s), KEOGH account(s), SEP account(s), defined contribution retirement accounts, defined benefit retirement accounts, pension(s), or other retirement account(s) owned by or titled in the name of the other, and each party hereby agrees to sign any and all documentation necessary to remove his or her name as beneficiary on any such retirement account owned by or titled in the name of the other party.

E. Bank Accounts. The parties agree that there are jointly titled checking, savings, money market, credit union or other depository accounts and that Wife will immediately remove her name from all accounts, and the Husband shall keep said accounts. The Husband shall keep any and all checking, savings, money market, credit union or other depository accounts in his name as his sole and separate property. The Wife shall keep any and all checking, savings, money market, credit union or other depository accounts in her name as her sole and separate property.

F. Debts. The parties agree that there are no loans, credit cards or other debts (hereafter in this paragraph collectively referred to as "debts") in both parties' names/upon which both parties are liable. Further, each party certifies that he/she has not incurred any debt in the name of the other party/upon which the other party is liable or any debt in the name of both parties/upon which both parties are liable. The Husband shall be solely responsible for any and all debts upon which he is solely liable and shall hold the Wife harmless, defend and indemnify the Wife and her property from any and all claims arising therefrom. The Wife shall be solely responsible for any and all debts upon

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which she is solely and shall hold the Husband harmless, defend and indemnify the Husband and his property from any and all claims arising therefrom..

If any debt(s) in both parties' names/upon which both parties are liable is/are subsequently discovered, the person who incurred said debt(s) shall be solely responsible for said debt(s), shall pay said debt within thirty (30) days of the discovery of said debt(s), and shall hold the other party harmless, defend and indemnify the other party and his/her property from any and all claims arising therefrom. If it is subsequently discovered that one party incurred any debt(s) in the name of the other party/upon which the other party is liable, the person who incurred said debt(s) shall be solely responsible for said debt(s), shall pay said debt within thirty (30) days of the discovery of said debt(s), and shall hold the other party harmless, defend and indemnify the other party and his/her property from any and all claims arising therefrom.

G. Each party shall keep any other assets not expressly mentioned above titled in his/her sole name or in his/her possession as his/her sole and separate property.

9. GREEN CARD. A permanent resident is someone who has been granted authorization to live and work in the United States on a permanent basis. As proof of that status, a person is granted a permanent resident card, commonly called a "green card." The Husband agrees to cooperate and actively support the Wife's "green card" (permanent resident) application and shall pay all reasonable associated costs, including reasonable attorneys' fees. The parties agree that nothing in this provision requires Husband to lie or otherwise commit fraud.

10. CHILDRENS' EDUCATIONAL EXPENSES. The parties acknowledge that a 529 plan has already been established for Valentino. The parties will immediately establish a 529 plan for Lolita. Each party shall contribute 2.5% of their gross income (as that term is defined by Virginia Code §20-108.2) to the plans on a monthly basis (each party shall contribute 1.25% of their gross income to each child's plan). The parties agree that the funds in the account shall be maintained and used solely to pay for costs of the minor children to attend college, university, trade, business or professional or other post-secondary school.

Further, each party shall be responsible for paying fifty Percent (50%) of the costs for the parties' minor children to attend college, university, trade, business, professional or other post high school educational institution, including, but not limited to, tuition, room, board, and books (hereafter "College Expenses") until such time as each minor child obtains a four-year undergraduate degree, or comparable degree. If Wife establishes by clear and convincing evidence that she is unable to reasonably afford any portion of her obligation, then Husband shall be responsible for whatever portion Wife is unable to reasonably afford, but only if and to the extent that Husband can reasonably afford to do so.

The parties agree that each party shall have standing to enforce this provision, no matter the age or the wishes of the parties' minor children. The parties further agree that if either party has to file suit with any court to enforce the provisions of this paragraph, that party shall be entitled to all remedies available, including the garnishment of the other's wages or other financial assets.

11. AGREEMENT NOT TO USE OR PLEDGE THE OTHER'S CREDIT.

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The parties agree that they will neither incur nor contract for any debt in the name or affecting the credit of the other party, nor will either party pledge the credit of the other in any manner after signing this Agreement. Each party shall hereafter be responsible for his or her respective obligations. If either party does in any way contract for any debt on behalf of the other party or pledge the credit of the other party in any way after the signing of this Agreement, then the party so contracting or pledging the credit shall defend, indemnify and hold harmless the other party as to said debt or obligation.

12. RELEASE OF MARITAL RIGHTS

A. Waiver of Interest in Property. Each party hereto releases and surrenders all of his or her right, title and interest (whether marital or otherwise) in and to the personal and real property now owned or hereafter acquired by the other party under the present or future laws of any jurisdiction, except as otherwise set forth in this Agreement. After the date of this Agreement, neither party shall have or acquire any right, title or interest in or to the property of the other; instead, each party shall hold all present and future properties, whether real or personal, free from any claim or right to courtesy, dower or augmented estate, statutory allowance, inchoate or otherwise, as though no marriage had taken place between them.

B. Waiver of Interest in Estate. Except as otherwise stated herein, each party hereby now and forever waives and releases in favor of the other all claims or demands arising out of the marriage relationship, including dower and curtesy rights, the right to elect against a will of the other, the right to claim an elective share in the surviving spouse's augmented estate under Virginia Code §64.10-13 (Michie 1950) or successor section, the right to any distribution of the estate of the other, the right to any

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distribution of payment related to life insurance, the right to inherit any property of the other by Will or by the laws of intestacy, the right to act as executor or administrator for the estate of the other, and any other such similar or related acts. These waivers are intended to be fully effective and binding both under general principles of law and Virginia Code §64.1-151.6 (Michie 1950) or successor section. This shall not constitute a bar or waiver of either party to take a bequest or to serve in any capacity according to the Will of the other if said Will was executed subsequent to the execution of this Agreement.

C. Waiver of Causes of Action. Each party hereby waives and forgives any claim or cause of action which each may have against the other due to or arising out of the parties' marriage or the dissolution thereof, and each hereby agrees that the consideration set forth herein includes full accord and satisfaction for any such claim, except for any cause of action for divorce and except for any claim that in the future each may have against the other based upon the provisions of this Agreement. Neither party will proceed to obtain a divorce based upon any fault-ground.

13. ENFORCEMENT. In the event that either party should take legal action against the other by reason of the other's failure to abide by this Agreement, the party who is found to be in violation of this Agreement shall pay to the other party who prevails in said action, the prevailing party's reasonable expenses incurred in the enforcement of this Agreement, said expenses to include, but not be limited to, reasonable attorney's fees, court costs, filing fees, court reporter appearance fees, copying costs, travel costs and transcription fees.

14. VOLUNTARY EXECUTION. Each party acknowledges that he or she

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has entered into this agreement freely and voluntarily, that they each understand its terms and assent to them and that signing this Agreement is not the result of any duress or undue influence.

15. INCORPORATION OF AGREEMENT IN DIVORCE DECREE. This Agreement shall not be construed to bar or prevent either party from suing for absolute or limited divorce. The parties agree that any action for divorce between them shall be subject to and governed by the terms of this Agreement, and that this Agreement shall be presented to an appropriate court for affirmation, ratification and incorporation by reference in any decree of divorce which may be entered in any action between the parties dissolving the marriage or concerning the conditions of the maintenance of the parties, or either of them, or establishing or imposing any other condition or consideration, monetary or non-monetary. This Agreement shall be deemed for all purposes to be a term of the decree and enforceable in the same manner as any provision of such decree; provided however, that this Agreement shall survive incorporation and shall not be merged into any such decree.

16. RESERVATION OF RIGHTS. The failure of a party to take advantage of any default or violation by the other of the promises and terms of this Agreement shall not constitute a waiver thereof or relinquishment of the right to require strict performance by the other party. Nor shall any custom or practice which may develop between the parties during the course of performance of this Agreement be construed to waive or lessen the right of either party to insist upon compliance with the provisions hereof by the other. All rights and remedies hereunder of either party shall be cumulative; the exercise of any one shall not be an election excluding the exercise of a different or inconsistent remedy at a

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different time or at the same time by agreement of the parties.

No waiver of any promise, conduct, privilege or condition herein shall imply or constitute any further waiver of the same at a later time.

17. EFFECT OF RECONCILIATION. In the event of reconciliation between the parties and a resumption of the marital relationship, all the provisions and terms of this Agreement, including but not limited to those for the settlement of property and support rights, shall nevertheless continue in full force and effect without abatement, except as is otherwise provided by written agreement duly executed by each of the parties.

18. MODIFICATION AND WAIVER. This Agreement constitutes the entire understanding between the parties. No modification, waiver or amendment of any of the terms of this Agreement shall be effective unless in writing and executed with the same formality as this Agreement (i.e. both parties have signed the modification and their signatures are notarized). No waiver of any breach or default under this Agreement shall be deemed to be a waiver of any subsequent breach or default of the same or similar nature.

19. SEVERABILITY. If any provision of this Agreement is held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect.

20. GOVERNING LAW. This Agreement and its terms shall be construed and interpreted in accordance with the laws of the Commonwealth of Virginia.

21. BINDING EFFECT. The effective date of this Agreement shall be the date upon which it has been executed by both parties hereto, and this agreement shall be binding upon the parties, their heirs, administrators, executors and assigns.

22. EXECUTION OF PROVISIONS OF AGREEMENT. Each party

expressly agrees that upon request of the other party, he or she will execute and deliver to that party any additional documents as are necessary to carry out the intent of this Agreement. Time will be of the essence regarding the execution and delivery of any additional documents necessary or desirable to carry out the intent of this Agreement.

23. LEGAL ADVICE. Each party to this Agreement represents that he or she has had the opportunity to seek legal advice by counsel of his or her own choosing. Each party fully understands the facts and circumstances surrounding the signing of this Agreement, and each party believes this Agreement to be fair, just and reasonable, and each party signs this Agreement freely and voluntarily.

24. WAIVER OF EQUITABLE RELIEF. The parties hereby waive any and all claims and rights which either may now or hereafter have against the other for an award in equitable distribution of the marital property of the parties, including a monetary award, or any other equitable relief in accordance with Section 20-107.3 of the Code of Virginia (1950 Ed., as amended), except as provided in this Agreement.

25. SUBSEQUENT PARTY TRANSACTIONS. Except as otherwise provided in this Agreement, both parties may at anytime hereafter acquire, possess, encumber, transfer, convey or otherwise deal with any and all classes of property, real or personal, tangible or intangible or mixed, whether now owned or possessed or hereafter acquired without the consent of the other party and with the same force and effect as though they were unmarried.

26. CAPTIONS AND HEADINGS. The captions and headings of the clauses in this Agreement are for convenience only and are not to be used to interpret or define the provisions thereof.



27. INSTRUMENTS. This Agreement may be executed simultaneously in one or more counterparts, each of which may be deemed an original, all of which together shall constitute one in the same instrument.

28. INTERPRETATION. No provision of this Agreement shall be interpreted for or against any party because that party, or the party's agent or legal representative, drafted this Agreement or the particular provision, and the parties hereby unconditionally waive such defense or claim regarding this Agreement. This stipulation may be used in Court regarding any claims or defenses based on this Agreement.

29. BANKRUPTCY. It is understood, mutually covenanted and mutually warranted that none of the financial duties and responsibilities of the parties to each other specified or referenced herein shall be dischargeable in bankruptcy as each party has given bona fide consideration and relinquished marital rights for same. The debts shall survive the filing of any petition in bankruptcy by either party, whether voluntarily or involuntarily, and all proceedings taken thereunder, as well as general assignment for the benefit of creditors or other proceedings based on solvency in any claims hereunder shall at all times remain in full force and effect and enforceable until performed and discharged in accordance with the terms of this Agreement. The parties further specifically intend any hold harmless, indemnification or debt agreements to be in the nature of the payment of alimony or spousal support and shall not be dischargeable in bankruptcy as such are not a division of property or a property settlement. Such a duty arising hereunder is the enforcement of a marital duty in accord with public policy.

30. ATTORNEY'S FEES. Except as otherwise set forth above in Paragraph 13, each party shall bear his or her own attorney's fees and costs incurred in the



negotiation, preparation, and execution of this Agreement, as well as his or her respective attorney's fees and costs incurred in obtaining an uncontested divorce.

Further, the parties acknowledge that the Husband is currently being sued by the parties' former landlord; the Husband shall be solely responsible for any legal fees he incurs relating to said lawsuit.

31. TAX INTENT AND TAX ADVICE. The Parties acknowledge that their attorneys have not rendered tax advice regarding the ramifications of this Agreement, and the Parties have been advised that they should contact competent tax professionals should they have any questions regarding the taxable effect of any payments, credits, or transactions specified in this Agreement, or other tax questions.

32. WAIVER OF DISCOVERY AND DISCLOSURE OF PROPERTY AND FINANCIAL OBLIGATIONS BY EACH PARTY: Each party acknowledges that the other party has not conducted formal discovery. The parties desire to fully and finally resolve all issues regarding each party's property interests and liabilities and do not wish to conduct discovery or further disclosure of property interests or liabilities. Neither party shall subsequently challenge the validity of this Agreement on the basis of any omission, disputed value, or similar basis. Each party hereby voluntarily and expressly waives any right to any further or different disclosure of the other's property interests and financial obligations beyond the disclosures that have been made prior to the execution of this Agreement, and each party hereby waives any right or defense he or she may have to object to the validity or enforceability of this Agreement, or to request further equitable distribution, a further monetary award, an award of spousal support, or the division of any property or liability on the grounds that the other failed to make a full and/or accurate



disclosure of his or her property and financial obligations.

33. If a Final Decree of Divorce has not yet been entered at the time of Lolita's birth, then this Agreement shall be affirmed, ratified and incorporated into the Final Decree of Divorce and shall resolve child support for both children. If a Final Decree of Divorce is entered before Lolita's birth, then the parties shall enter into a consent Child Support Order incorporating the child support provisions of this Order.

35. Paragraph 4(a) of the Custody Agreement is hereby modified and replaced in full as follows: Commencing on Friday, August 6, 2010, Father shall have visitation with the minor children every other weekend from Friday at 4:00 p.m. until Monday morning when Father shall return the minor children to the Mother's residence or to another location agreed to by the parties. If Father is available to commence his visitation earlier than 4:00 p.m. on Friday, Father shall notify Mother as early as possible, and the parties shall mutually agree upon a reasonable time for Father's visitation to commence; neither party will be unreasonable, and the Mother shall not unreasonably withhold her consent. If Father is unable to exercise any weekend visitation, then Father shall give notice to Mother as soon as possible before visitation and shall then be entitled to make-up visitation, which shall occur within one month or as soon as possible thereafter. The parties agree that Father will never lose weekend visitation because it has not been exercised and that the parties will make every effort to schedule make-up visitation as soon as possible. The parties also agree that they shall mutually agree upon the exact day(s) of the make-up visitation.

36. Paragraph 4(b)(i) of the Custody Agreement is hereby modified and replaced in full as follows: Father shall have visitation with the minor children 5 days each week.



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Two of those ~~three~~ days shall be overnight visits and Father shall return the minor children the next morning to the Mother's residence or to another location agreed to by the parties; the parties shall mutually agree upon which two days will be the overnight visits each week. On those weeks where Father has weekend visitation, the overnight visits will occur between Monday and Thursday since Friday is part of Father's weekend visitation. All weekday visits shall commence at 4:00 p.m. On the day when Father's visitation is not an overnight visit, the visit shall be from 4:00 p.m. until 7:00 p.m. (or 7:30 p.m. if the minor children are returned bathed and ready for bed). In all cases, if Father is available to commence his visitation earlier than 4:00 p.m., Father shall notify Mother as much in advance as possible, and the parties shall mutually agree upon a reasonable time for Father's visitation to commence; neither party shall be unreasonable, and the Mother shall not unreasonably withhold her consent.

If Father is unable to exercise any weekday visitation, then Father shall give notice to Mother as soon as possible before visitation and shall then be entitled to make-up visitation, which shall occur within one month or as soon as possible thereafter. The parties agree that Father will never lose weekday visitation because it has not been exercised and that the parties will make every effort to schedule make-up visitation as soon as possible. The parties also agree that they shall mutually agree upon the exact day(s) of the make-up visitation.


All other provisions of the Custody Agreement shall remain in full force and effect.

**SEE NEXT PAGE FOR SIGNATURES.**

Spousal and Child support payments to be paid on the 1 and 15 via direct deposit in HSBC bank account

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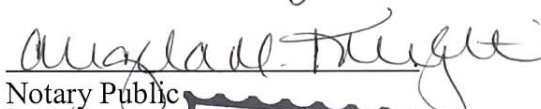
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\_\_\_\_\_  
SAMUEL SALOMON LEVY

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF Fairfax, to-wit:

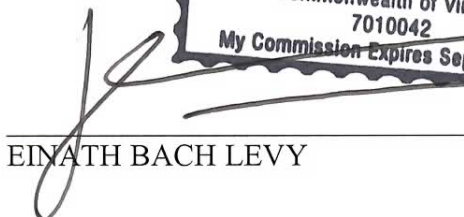
Before me, the undersigned Notary Public in and for the State and City/County aforesaid, personally appeared this day SAMUEL SALOMON LEVY, whose name is signed to the foregoing document, and acknowledged his signature thereto.

Subscribed and sworn to before me this 10<sup>th</sup> day of August, 2010.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 09/30/2014

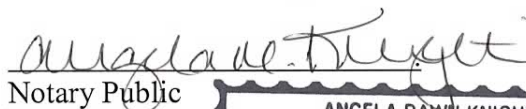


  
\_\_\_\_\_  
EINATH BACH LEVY

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF Fairfax, to-wit:

Before me, the undersigned Notary Public in and for the State and City/County aforesaid, personally appeared this day EINATH BACH LEVY, whose name is signed to the foregoing document, and acknowledged her signature thereto.

Subscribed and sworn to before me this 10<sup>th</sup> day of August, 2010.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 09/30/2014  
#1258454v1



IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

FAMILY DIVISION

CASE NO.: 11-031255 FC 16

IN RE: THE MARRIAGE OF :  
EINATH BACH LEVY, :  
Petitioner/Former Wife, :  
and :  
SAMUEL SALOMON LEVY, :  
Respondent/Former Husband. :

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**AGREED ORDER DOMESTICATING FOREIGN JUDGMENT**

UPON CONSIDERATION of the agreement of the parties to the entry of this *Agreed Order Domesticating Foreign Judgment*, the Court has reviewed the file and is otherwise fully advised in the premises. Accordingly, it is

**ORDERED and ADJUGED:**

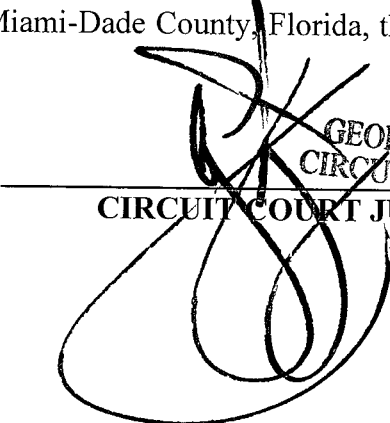
1.0 The Court finds that Respondent/Former Husband, Samuel Solomon Levy has complied with Fla. Stat. § 55.503 (2011). The Respondent/Former Husband has properly filed and recorded the *Final Order of Divorce* (dated March 25, 2011), *Consent Order* (dated September 13, 2010), *Consent Custody and Visitation Order* (dated June 1, 2010), *Affidavit of Respondent in Support of Petition to Domesticate Foreign Judgment*, and a *Notice of Recording* has been provided to the Petitioner/Former Wife.

2.0 The Petitioner/Former Wife has no objection to the domestication of the *Final Order of Divorce* (dated March 25, 2011), *Consent Order* (dated September 13, 2010), and

*Consent Custody and Visitation Order* (dated June 1, 2010), and has waived the thirty (30) day period in which to file an objection with the Clerk of Court.

3.0 This Court hereby domesticates the *Final Order of Divorce* (dated March 25, 2011), *Consent Order* (dated September 13, 2010), and *Consent Custody and Visitation Order* (dated June 1, 2010), which shall all have the same effect and shall be subject to the same rules of civil procedure, legal and equitable defenses, and proceedings for reopening, vacating, or staying judgments, and may be enforced, released, modified or satisfied, as judgments of a circuit or county court of this state.

**DONE AND ORDERED** in Chambers at Miami-Dade County, Florida, this 9th day of November, 2011.

  
GEORGE A. SARDUY  
CIRCUIT COURT JUDGE  
CIRCUIT COURT JUDGE

Copies Furnished to:  
Richard J. Preira, Esquire  
Einath Bach Levy, *pro se*

**CONSENT CUSTODY AND VISITATION AGREEMENT**

THIS AGREEMENT made and entered into this 18<sup>th</sup> day of May, 2010, by and between Einath Bach Levy ("Mother") and Samuel Salomon Levy ("Father").

WITNESSETH:

WHEREAS, the parties were lawfully married on August 16, 2007 in Miami, Florida.

WHEREAS, there is one infant child of the marriage, who is a citizen of the United States of America, namely: (a) Valentino Edward Levy, born March 20, 2008 (hereafter "Valentino"), in Miami, Florida.

WHEREAS, Mother is pregnant with another child, expected to be named Lolita (hereafter "Lolita").

WHEREAS, each party represents that he or she had independent advice by counsel of his or her own choosing to the extent deemed necessary by said party; that each fully understands the facts and have been fully informed of all legal rights and liabilities; that after such advice and knowledge, each believes this Agreement to be fair, just, reasonable, in Valentino's and Lolita's best interests, and that each signs this agreement freely and voluntarily; and

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

1. PREVENTION OF ALIENATION OF AFFECTIONS. One of the Parties' goals in entering into this Agreement is to provide for Valentino's best interests at all times. The parties shall at all times deal with one another with courtesy, dignity and respect and shall communicate in an open and honest manner as is necessary to promote Valentino's best interests. Neither party shall speak negatively of, or in any other way denigrate, ridicule, belittle, condemn or scorn the other party

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either to, in front of, or in earshot of Valentino. Neither party will put any obstacle in the way of the other party developing and/or maintaining a positive, nurturing and caring relationship with Valentino, and each party will strive to foster in Valentino's mind an attitude of love and affection for each of the parties. Neither party will advise or tell Valentino to keep secrets from the other party and neither party will use Valentino as a conduit for information or communication which should more appropriately be held between the parties themselves. The parties shall work together to ensure that the exchange of Valentino between the parties for visitations occurs as uneventfully as possible. Neither party will make arrangements regarding any visitation or changes to visitation with and/or through Valentino at any time without prior consultation with the other parent.

2. LEGAL CUSTODY OF VALENTINO. The parties shall have joint legal custody of Valentino. As joint legal custodians, the parties shall confer and discuss in good faith major issues affecting Valentino's health, education and welfare with the objective of adopting consistent policies and values designed to promote Valentino's best interests at all times.

Notwithstanding the above, however, each party shall have the ability to make minor day-to-day decisions concerning Valentino without consulting with or obtaining the consent of the other party such that each party may effectuate routine care of Valentino on a daily basis.

3. PHYSICAL CUSTODY OF VALENTINO. The Mother shall have primary physical custody of Valentino, subject to the Father's visitation, as set forth herein.

4. FATHER'S VISITATION. The Father shall have the right to reasonable and liberal visitation with Valentino, including but not limited to the following:

a. Alternating weekend visitation. Commencing on Friday, May 21, 2010,

Father shall have visitation with Valentino every other weekend from Friday at 4:00 p.m. until

  
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Sunday at 7:00 p.m. (or 7:30 p.m. if Valentino is returned bathed and ready for bed). If Father is available to commence his visitation earlier than 4:00 p.m. on Friday, Father shall notify Mother the prior evening, and the parties shall mutually agree upon a reasonable time for Father's visitation to commence; neither party will be unreasonable, and the Mother shall not unreasonably withhold her consent.

i. Holidays. If, prior to Valentino starting school, a Monday connected to Father's weekend is a federal holiday, Father's visitation shall end at 7:00 p.m. on Monday rather than Sunday (or 7:30 p.m. if Valentino is returned bathed and ready for bed). If, once Valentino commences attending school, he does not have school on a day/days that are connected to Father's weekend for any reason (or during the summer if a day connected to Father's weekend is a federal holiday), including but not limited to federal holidays and "teacher work days," Father's visitation shall commence at 4:00 p.m. on Valentino 's last day of school and shall end at 7:00 p.m. (or 7:30 p.m. if Valentino is returned bathed and ready for bed) on the day before school resumes. If Father is available to commence his visitation earlier than 4:00 p.m. on Valentino 's last day of school, Father shall notify Mother the prior evening, and the parties shall mutually agree upon a reasonable time for Father's visitation to commence; neither party will be unreasonable, and the Mother shall not unreasonably withhold her consent. By way of example and illustration only: if Valentino does not have school on a Friday and Monday connected to one of Father's weekends, Father shall have visitation from 4:00 p.m. on Thursday until 7:00 p.m. on Monday (or 7:30 p.m. if Valentino is returned bathed and ready for bed).

Mother may cancel Friday evening visitation or Monday evening visitation which connect to the weekends in which she has Valentino in her care for any reason. The Mother shall notify Father

  
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of the cancellation at least 48 hours in advance. In such instance, Father shall then be entitled to make-up visitation, which shall be scheduled within one month (and the parties shall mutually agree upon the day(s) of the make-up visitation).

If Father is unable to exercise any weekend visitation, then Father shall give notice to Mother the evening before visitation and shall then be entitled to make-up visitation, which shall occur within one month; the parties shall mutually agree upon the exact day(s) of the make-up visitation. If Father does not give notice the evening before a cancellation, he shall not be entitled to any make up visitation.

b. Weekday Visitation.

i. Father shall have visitation on Monday, Wednesday, and Friday each week from 4:00 p.m. until 7:00 p.m. (or 7:30 p.m. if Valentino is returned bathed and ready for bed). If Father is available to commence his visitation earlier than 4:00 p.m., Father shall notify Mother the prior evening, and the parties shall mutually agree upon a reasonable time for Father's visitation to commence; neither party shall be unreasonable, and the Mother shall not unreasonably withhold her consent.

ii. Cancellation. Mother may cancel Friday or Monday visitation which connects to the weekend in which she has Valentino in her care for any reason. In such instance, Father shall then be entitled to make-up visitation, which shall be scheduled within one month (and the parties shall mutually agree upon the day(s) of the make-up visitation).

If Father is unable to exercise any weekday visitation, then Father shall give notice to Mother the evening before visitation and shall then be entitled to make-up visitation, which shall occur within one month; the parties shall mutually agree upon the exact day(s) of the make-up visitation. If

  
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Father does not provide notice the evening before a cancellation, he shall not be entitled to any make up visitation.

c. Extended Visitation (Vacation). Each party shall be entitled to four (4) weeks of uninterrupted visitation with Valentino each year, with no more than two weeks to be exercised consecutively. Each party must provide the other party with at least fifteen (15) days advanced written notice of the week(s) he/she selects. Absent express written agreement of the parties, each party's weeks shall commence on Fridays that are his/her regularly scheduled Fridays at 4:00 p.m. and shall end on the following Friday at 4:00 p.m. If either party is available to commence their custodial time earlier than 4:00 p.m., that party shall notify the other the prior evening, and the parties shall mutually agree upon a reasonable time for the custodial time to commence; neither party shall unreasonably withhold his/her consent.

Absent express written agreement of the parties, neither party may select a week that is all or part of another holiday/special occasion as herein defined.

d. Thanksgiving - Thanksgiving shall be defined as the time period beginning on the Wednesday proceeding Thanksgiving Day at 4:00 p.m. and shall continue until Friday after Thanksgiving Day at 4:00 p.m. The parties shall alternate having Valentino every Thanksgiving, with the Mother having Valentino in her care in 2010 and all even-numbered years and the Father having Valentino in his care in 2011 and all odd-numbered years. If either party is available to commence their custodial time earlier than 4:00 p.m., that party shall notify the other the prior evening, and the parties shall mutually agree upon a reasonable time for the custodial time to commence; neither party shall unreasonably withhold his/her consent.

  
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e. Christmas Before Valentino is Enrolled in School - Christmas shall be defined as the period of time beginning at 4:00 p.m. on Christmas Eve and ending at 7:00 p.m. on December 26th. In 2010 and all even-numbered years, the Father shall have Valentino in his care from 4:00 p.m. on Christmas Eve until 2:00 p.m. on Christmas Day (when Mother shall pick up Valentino from Father's residence), and the Mother shall have Valentino in her care from 2:00 p.m. on Christmas Day until 7:00 p.m. on December 26th. In 2011 and all odd-numbered years, the Mother shall have Valentino in her care from 4:00 p.m. on Christmas Eve until 2:00 p.m. on Christmas Day (when Father shall pick up Valentino from Mother's residence), and the Father shall have the Valentino in his care from 2:00 p.m. on Christmas Day until 7:00 p.m. on December 26th. If either party is available to commence their custodial time earlier than 4:00 p.m., that party shall notify the other the prior evening, and the parties shall mutually agree upon a reasonable time for the custodial time to commence; neither party shall unreasonably withhold his/her consent.

f. Christmas/Winter Break After Valentino Commences Attending School - The Christmas/Winter break shall be divided into two parts ("A" and "B"). Part A shall start at the beginning of Valentino 's Christmas/Winter break from school and end at 2:00 p.m. on December 25th. Part B shall start on December 25th at 2:00 p.m. and continue until 4:00 p.m. on the last day of Valentino 's school break. During all even-numbered years, the Father shall have Valentino in his care for Part A of the break and the Mother shall have Valentino in her care for Part B. In all odd-numbered years, the Mother shall have Valentino in her care for Part A of the break and the Father shall have Valentino in his care for Part B. In all even-numbered years, the Mother shall pick up Valentino at the Father's residence at 2:00 p.m. on December 25th. In all odd-numbered years, the Father shall pick up Valentino at the Mother's residence at 2:00 p.m. on

  
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December 25th. If either party is available to commence their custodial time earlier than 4:00 p.m., that party shall notify the other the prior evening, and the parties shall mutually agree upon a reasonable time for the custodial time to commence; neither party shall unreasonably withhold his/her consent.

g. Spring Break – After Valentino commences attending school, the parties shall alternate having Valentino every Spring Break, with the Mother having Valentino in her care in 2010 and all even-numbered years and the Father having Valentino in his care in 2011 and all odd-numbered years.

h. Father's/Mother's Day - The Mother shall have Valentino in her care on Mothers' Day each year and the Father shall have Valentino in his care on Fathers' Day each year.

i. Yom Kippur - Yom Kippur shall be defined as the time period beginning on the day proceeding Yom Kippur at 4:00 p.m. or Sunset, whichever comes earlier, and shall continue until the following day at 8:30 p.m. The parties shall alternate having Valentino every Yom Kippur, with the Mother having Valentino in her care in 2010 and all even-numbered years and the Father having Valentino in his care in 2011 and all odd-numbered years. If either party is available to commence their custodial time earlier than 4:00 p.m., that party shall notify the other the prior evening, and the parties shall mutually agree upon a reasonable time for the custodial time to commence; neither party shall unreasonably withhold his/her consent.

j. Other Holidays and Special Occasions. The parties agree to share visitation, as equally as possible and in a manner to be specifically agreed upon, on all of the major holidays and special occasions including, but not limited to, the 4th of July, Halloween, each party's birthday and Valentino 's birthday.

  
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k. For the visitation/custodial times set forth above in subparagraphs (c) through (j), the parties agree that if either party is unable to exercise any portion of his/her visitation/custodial time, then that party shall give notice to the other party the evening before visitation/custodial time and shall then be entitled to make-up visitation/custodial time, which shall occur within six months; the parties shall mutually agree upon the exact day(s) of the make-up visitation/custodial time. If either party does not give notice the evening before a cancellation, then they shall not be entitled to any make up visitation/custodial time.

l. Transportation. The parties will make every effort to equally share pick up and drop off responsibilities. The parties acknowledge and agree that, to maintain flexibility and accommodate the needs and schedules of both parties and Valentino, a set transportation schedule is not in everyone's best interests. The parties agree to be reasonable in agreeing on the transportation arrangements each week, with the goal of sharing transportation as equally as possible. The parties agree that upon motion of either party, the Fairfax County Circuit Court shall have the jurisdiction and authority to order a specific transportation schedule if the parties are consistently unable to reach a mutual agreement.

m. All holiday and special occasion periods set forth above shall take precedence over the Father's regular visitation set forth above, but shall not alter the pattern of regular visitation.

5. RELOCATION: Either party who intends to relocate his or her residence shall give a sixty (60)-day advance written notice of any such intended relocation and of any intended change of address, said notice being given to both the other party and to this Court. The parties agree and acknowledge that this provision expands the requirement of Virginia Code § 20-124.5.

  
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The parties agree that neither party shall relocate to an address that is in excess from her/his current residence without the consent of the other, as such a relocation v Valentino's best interests as the relocation will necessarily make the current agreed-upon visitation schedule difficult/impossible. The parties agree that it is in Valentino's best interest that he spend time with both Mother and Father as much as possible.

6. Jurisdiction. As the Mother, Father and Valentino all currently reside in Virginia, the parties agree that Virginia currently has exclusive, continuing jurisdiction over the issues of custody and visitation of Valentino pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (Virginia Code §20-146, et. seq.). The parties agree and acknowledge that no other country has jurisdiction over the custody or visitation of Valentino, and that no other courts besides Virginia courts have the authority to make any orders regarding the custody or visitation of Valentino.

For purposes of the Hague Convention on the Civil Aspects of International Child Abduction (hereafter the "Convention"), the parties acknowledge and agree that: (a) as of the date of the execution of this Agreement, Valentino is a habitual resident of Virginia; and (b) the Father has a right of custody pursuant to Article 3 of the Convention as this Agreement awards Father joint legal custody and visitation rights.

7. HOME AND BUSINESS ADDRESSES AND TELEPHONE NUMBERS. Until such time as Valentino is fully emancipated, the Mother and Father shall at all times keep the other apprised of his or her permanent residential address and telephone number (both land-line and cellular telephone) and shall notify the other in writing no later than sixty (60) days prior to an intended change thereof (by providing the intended date of change of address, the specific street,

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route address, city or county, state and zip code and phone number of the intended new address), in the event that either party intends to permanently change his or her residence.

8. TELEPHONIC VISITATION. Each parent shall have the right to reasonable unmonitored telephonic visitation with Valentino each day when he is in the care of the other parent. At a minimum, each party agrees to a good morning, mid-day and good night phone conversation every day to say hello/goodnight to Valentino. If Valentino is not available to speak with a parent when he or she calls, the other parent shall promptly assist Valentino in returning the call as soon as possible and within the same day, so that Valentino has contact with both parents every day, either by telephone or in person. Neither parent shall interfere with Valentino's efforts to make telephone contact with the other parent. Neither parent shall place Valentino on speaker phone or otherwise listen in on or record conversations between the parent and Valentino. The parties shall respect the child's bedtimes and shall not initiate telephone calls to the child at or near such bedtimes.

9. RECORDS. Pursuant to Section 20-124.6, Code of Virginia, neither party shall be denied access to Valentino's academic, medical, hospital or other health records unless specifically set forth in this Agreement for good cause shown. The parties agree that there is no good cause.

Each parent shall be entitled to complete, detailed information from any teacher, school or other facility giving instruction to Valentino, or which Valentino attends, and upon request shall be furnished with copies of all reports given by any of them to the other parent. Each parent may contact any school that Valentino attends directly and speak with Valentino's teachers, counselors, and any other school-related personnel. In the event that any of Valentino's teachers, counselors or other school personnel require a meeting with one or both of the parties, then each party agrees to promptly notify the other of said meeting so that both parties may attend. Further, each parent shall

  
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have the right to attend all school functions and to be a fully participating parent in all of Valentino's school and organized leisure activities.

Both parties shall at all times provide one another with copies of all medical, educational (to include school report cards) and other records or notices (including schedules for Valentino's sports team, notices of schedule changes, etc.) received in connection with Valentino, same to be provided promptly upon receipt. The foregoing is not intended to put an undue burden upon either parent, but rather to provide a reasonable mechanism for both parents to be kept abreast of significant matters relating to Valentino, such as Valentino's progress in school, medical well-being and sporting and other special events.

10. NOTIFICATION OF MEDICAL TREATMENT. Each party agrees to inform the other of any major, significant medical problem or illness of Valentino. Notwithstanding, either party may consent to emergency medical attention and treatment of Valentino in situations where it would be impossible or impractical for the parent with whom Valentino is staying to consult with or obtain the consent of the other party before taking affirmative action thereon. The parent authorizing such medical treatment shall, however, contact the other parent as soon as possible thereafter of the type and extent of such medical treatment, the reason therefore, and the prognosis of such treatment.

Further, each party shall notify the other in the event of illness causing confinement to house/bed of Valentino for more than one (1) day or which requires medical examination, emergency treatment and/or hospitalization.

11. OVERNIGHT TRAVEL. Each party shall keep the other informed of Valentino's whereabouts, including the address and telephone numbers where that party and Valentino can be reached when that party and Valentino are away from that party's principal residence overnight. For

  
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all such periods, the party traveling with Valentino shall inform the other party thereof as soon as he/she becomes aware of the trip, and the parties shall use their best efforts to provide the information to the other party at least forty-eight (48) hours in advance.

12. COHABITATION. The parties agree that, while Valentino is present, neither will cohabit with a person with whom he or she is romantically involved, other than a spouse, and that neither will permit such an individual to share his or her bedroom (or the place where he/she and Valentino are staying overnight while Valentino is in his/her care) when Valentino is present. This prohibition shall not be construed to prevent either party from seeking court intervention should they believe that Valentino is being exposed to inappropriate behavior that is not in his best interests.

13. PASSPORTS. Mother shall hold Valentino's passports when Valentino is not traveling abroad with Father. Mother will not withhold Valentino's passport from Father for any reason and will immediately provide passport to Father upon request.

14. LOLITA. Mother is pregnant with another child, expected to be named Lolita. The parties agree that once this child is born, the terms of this Agreement shall also apply to custody and visitation of the new child, and a new agreement will not need to be executed by the parties concerning Lolita's custody and visitation. Thus, after Lolita is born, wherever this agreement says "Valentino", it shall be interpreted to mean "both minor children." Said custody and visitation arrangement shall remain in effect unless and until modified by a court of competent jurisdiction. If a Final Decree of Divorce has not yet been entered at the time of Lolita's birth, then this Agreement shall be affirmed, ratified and incorporated into the Final Decree of Divorce and shall resolve custody and visitation of both children.

  
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15. VOLUNTARY EXECUTION. Each party acknowledges that he/she has entered into this agreement freely and voluntarily, that they each understand its terms and assent to them and that signing this Agreement is not the result of any duress or undue influence.

16. INCORPORATION OF AGREEMENT IN COURT ORDER. The parties agree that any action for custody, visitation and/or divorce between them shall be subject to and governed by the terms of this Agreement, and that this Agreement shall be presented to an appropriate court for affirmation, ratification and incorporation by reference in any order which may be entered in any action between the parties. This Agreement shall be deemed for all purposes to be a term of the order and enforceable in the same manner as any provision of such order; provided however, that this Agreement shall survive incorporation and shall not be merged into any such order.

17. EFFECT OF RECONCILIATION. In the event of reconciliation between the parties and a resumption of the marital relationship, all the provisions and terms of this Agreement shall nevertheless continue in full force and effect without abatement, except as is otherwise provided by written agreement duly executed by each of the parties.

18. PRIOR AGREEMENTS INVALIDATED. The parties hereby cancel and invalidate all prior custody and visitation agreements made by them whether such agreements be oral or in writing.

19. MODIFICATION AND WAIVER. This Agreement constitutes the entire understanding between the parties. No modification, waiver or amendment of any of the terms of this Agreement shall be effective unless in writing and executed with the same formality as this Agreement (i.e. both parties have signed the modification and their signatures are notarized).

  
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20. SEVERABILITY. If any provision of this Agreement is held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect.

21. GOVERNING LAW. This Agreement and its terms shall be construed and interpreted in accordance with the laws of the Commonwealth of Virginia.

22. LEGAL ADVICE. Each party to this Agreement represents that he or she has had the opportunity to seek legal advice by counsel of his or her own choosing, and acknowledges that he/she has in fact been represented by competent counsel. Each party fully understands the facts and circumstances surrounding the signing of this Agreement, and each party believes this Agreement to be fair, just, reasonable, and in Valentino's best interests, and each party signs this Agreement freely and voluntarily.

23. CAPTIONS AND HEADINGS. The captions and headings of the clauses in this Agreement are for convenience only and are not to be used to interpret or define the provisions thereof.

24. INSTRUMENTS. This Agreement may be executed simultaneously in one or more counterparts, each of which may be deemed an original, all of which together shall constitute one in the same instrument.

25. INTERPRETATION. No provision of this Agreement shall be interpreted for or against any party because that party, or the party's agent or legal representative, drafted this Agreement or the particular provision, and the parties hereby unconditionally waive such defense or claim regarding this Agreement. This stipulation may be used in Court regarding any claims or defenses based on this Agreement.

  
EBL

  
SSL

26. ENFORCEMENT. In the event that either party should take legal action against the other by reason of the other's failure to abide by this Agreement, the party who is found to be in violation of this Agreement shall pay to the other party who prevails in said action, the prevailing party's reasonable expenses incurred in the enforcement of this Agreement, said expenses to include, but not be limited to, reasonable attorney's fees, court costs, filing fees, court reporter appearance fees, copying costs, travel costs and transcription fees. In the event that either party should challenge the validity of this Agreement, if the Agreement is ruled to be valid, then the party who challenged the validity shall pay to the other party who prevails in said action, the prevailing party's reasonable expenses incurred, said expenses to include, but not be limited to, reasonable attorney's fees, court costs, filing fees, court reporter appearance fees, copying costs, travel costs and transcription fees.

27. ATTORNEYS' FEES AND COSTS. The Father shall pay all of the Mother's attorneys' fees and costs incurred in connection with the legal representation of her thus far. To date, these fees are \$17,500.00.

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**SEE NEXT PAGE FOR SIGNATURES**

  
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WITNESS THE FOLLOWING SIGNATURES AND SEALS.

[Signature]  
Einath Bach Levy ("Mother")

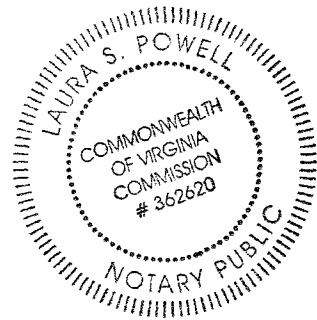
COMMONWEALTH OF VIRGINIA, at large;

SIGNED AND ACKNOWLEDGED before me on Laura S. Powell, 2010 by Einath Bach Levy.

[Signature]  
Notary Public

My commission expires: 2-28-2013

My registration number is: 362620



[Signature]  
Samuel Salomon Levy ("Father")

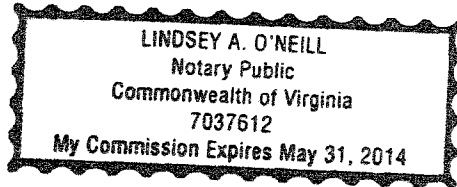
COMMONWEALTH OF VIRGINIA, at large;

SIGNED AND ACKNOWLEDGED before me on May 18, 2010 by Samuel Salomon Levy.

[Signature]  
Notary Public

My commission expires: May 31, 2014

My registration number is: 7037612



[Signature]  
EBL

[Signature]  
SSL

IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

FAMILY DIVISION

CASE NO. 11-031255 FC 16 PJ

IN RE: THE MARRIAGE OF	:	FLORIDA BAR NO. 316857
EINATH BACH LEVY,	:	
Petitioner/Former Wife,	:	
and	:	
SAMUEL SALOMON LEVY,	:	
Respondent/Former Husband.	:	

---

**MOTION TO COMPEL FORMER WIFE TO REIMBURSE THE FORMER  
HUSBAND FOR SUPPORT OVERPAYMENTS, CHILDREN’S EXPENSES,  
AND DEBT INCURRED IN THE NAME OF THE FORMER HUSBAND,  
MOTION FOR CREDIT AGAINST FUTURE SPOUSAL SUPPORT OBLIGATION  
AS A CONSEQUENCE OF MONEY ADVANCED TO THE FORMER  
WIFE, AND MOTION FOR ATTORNEY FEES AND COSTS**

The Former Husband, **SAMUEL SALOMON LEVY**, states:

1.0 The Former Husband requires this Court’s assistance to compel the Former Wife to reimburse Former Husband for spousal support overpayments, children’s expenses, debt incurred in the name of the Former Husband, costs incurred as a consequence of the Former Wife’s failure to share transportation duties equally with the Former Husband, and for a credit against the Former Husband’s future spousal support obligation as a result of money advanced to the Former Wife. The Former Husband also requests that the Former Wife be required to reimburse him for attorney fees and costs incurred as a result of her noncompliance with the parties’ *Property Settlement and Support Agreement and Consent Custody and Visitation Agreement*.

***Inadvertent Overpayment of Support***

2.0 The Former Husband is entitled to reimbursement from the Former Wife as a consequence of an inadvertent overpayment of spousal and child support.

3.0 Pursuant to the parties' *Property Settlement and Support Agreement* ("*Agreement*"), the Former Husband is required to pay his spousal and child support obligations to the Former Wife in two payments – one of the first day of each month in the amount of \$2750.00, and one on the fifteenth day of each month in the amount of \$2750.00. Due to an error in the online automatic payment schedule, the Former Wife received an extra payment of \$2750.00 in both September 2010 and March 2011.

4.0 The Former Husband brought the overpayments to the attention of the Former Wife, but she denied there was an error and insisted that support should be paid to her every fifteen days. However, the *Property Settlement and Support Agreement* is clear as to the frequency of payments.

5.0 To date, the Former Wife has not returned the sums inadvertently deposited into her bank account to the Former Husband. She should be compelled to forthwith return the money inadvertently deposited into her bank account in the total sum of \$5,500.00, or alternatively, the Former Husband should be entitled to a credit against his future spousal support obligation.

***Cash Advances to the Former Wife***

6.0 The Former Husband has made several advance payments of spousal support to the Former Wife, and he is entitled to a credit on his future spousal support obligation in connection with the advancements as follows:

6.1 The Former Husband advanced spousal support payments in the total sum of \$4750.00 to the Former Wife during the period of March 2011 through January 2012.

7.0 The Former Wife represented that the sums advanced to her were needed by her, and that she would credit the Former Husband back for the advances. However, the Former Wife now refuses to recognize the credit to which the Former Husband is entitled.

8.0 The Former Husband is entitled to a credit for payments advanced by him to the Former Wife in the total sum of \$4750.00.

***Children's Health Insurance and Unreimbursed Medical Expenses***

9.0 The Former Wife should be compelled to reimburse the Former Husband for the cost of the children's health insurance and unreimbursed medical expenses for the period of March 2012 to the present, and should be compelled pay the children's entire health insurance premium and all unreimbursed medical expenses until such a time that the Former Husband is earning an income and the costs can be equitably divided.

10.0 Paragraph 3 of the parties' *Property Settlement and Support Agreement* states:

If the Father loses his employer-provided insurance benefits through no fault of his own, then the parties will cooperate to select the most

comprehensive and cost-effective insurance policies, and the parties will share the cost of the insurance premiums in the same proportion as their gross incomes used for the purposed of determining child support.

11.0 The Former Husband lost his employer-provided insurance benefits in March 2012 when he was let go without cause. As such, because the Former Husband is in the process of starting his own company and he does not presently earn an income, the parties are required to share the cost of the children's insurance premiums.

12.0 Paragraph 3 of the parties' *Property Settlement and Support Agreement* states:

The parties agree to divide any of the minor children's reasonable and necessary unreimbursed medical and dental expenses that are in excess of \$250.00 for any calendar year in proportion to their gross incomes as used for calculating the monthly support obligation ... The Mother shall be solely responsible for paying the first \$250 of each child's reasonable and necessary unreimbursed medical and dental expenses per year.

13.0 Since the Former Husband became unemployed in March 2012, he has spent \$2,563.00 on children's health insurance premiums and has incurred \$5,020.04 in unreimbursed medical expenses on behalf of the minor children, for a total of \$7,583.04. This amount should have been divided pursuant to their gross incomes.

14.0 Despite the fact that he does not presently earn an income while he works toward starting his own company, the Former Husband has not reduced his \$4250.00 monthly support payments to the Former Wife. In effect, she is presently the only party that receives an income.

15.0 Due to the disparity in the parties' respective incomes, the Former Wife should be required to pay the children's health insurance premiums in the amount of \$233.00 per month,

and be responsible for all of the children's unreimbursed medical expenses. The Former Husband is also entitled to be reimbursed by the Former Wife for the health insurance premiums and unreimbursed medical expenses advanced by the Former Husband in the total sum of \$7,583.04 for the period of March 2012 to the present.

#### ***Children's Tuition***

16.0 The Former Wife should be compelled to reimburse the Former Husband for one-half of the minor son's tuition for the 2011-2012, and 2012-2013 school years.

17.0 As an exercise of shared parental responsibility, the parties jointly determined that the minor son would be enrolled in Le Petit Papillon Montessori School, and that they would equally split the costs of tuition for the school.

18.0 The parties' signed a *Tuition Commitment to the Full School Year* ("Tuition Commitment") on July 8, 2011 for the 2011-2012 school year, and on January 27, 2012 for the 2012-2013 school year.

19.0 The *Tuition Commitment* states as follows:

Tuition and Fees: I/we jointly and severally, hereby unconditionally, promise to pay tuition in the amount specified on the enrollment form in consideration for reserving a space for the Student for the school year...

20.0 In order to ensure that the parties' minor son would be timely enrolled in school and that he would continue to be enrolled throughout the year, the parties agreed that the Former Husband would advance 2011-2012 tuition in the amount of \$12,949.94 subject to later

reimbursement from the Former Wife for her one-half portion. The Former Husband also advanced tuition in the amount of \$13,000.00 for the 2012-2013 school year with the same condition. In total, the Former Husband has paid \$25,949.94 toward the minor son's tuition, half of which the Former Wife is required to pay.

21.0 To date, the Former Wife has not repaid the Former Husband for her one-half of the minor son's tuition. She should be compelled to forthwith reimburse the Former Husband for her one-half of tuition in the sum of \$12,974.97. Alternatively or in addition to this relief, the Former Husband should be issued a credit against his future spousal support obligation.

***Debt Incurred in the Former Husband's Name***

22.0 The Former Wife should be compelled to reimburse the Former Husband for debts incurred by her in the name of the Former Husband in violation of the parties' *Property Settlement and Support Agreement*.

23.0 Paragraph 4 of the parties' *Property Settlement and Support Agreement* states as follows:

If it is subsequently discovered that one party incurred any debt(s) in the name of the other party/upon which the other party is liable, the person who incurred said debt(s) shall be solely responsible for said debt(s), shall pay said debt within thirty (30) days of the discovery of said debt(s), and shall hold the other party harmless, defend and indemnify the other party and his/her property from any and all claims arising therefrom.

24.0 The Former Wife has incurred several debts in the Former Husband's name since the entry of the parties' *Final Order of Divorce*:

*Levy v. Levy*  
*Case No. 11-031255 FC 16 PJ*  
*Motion to Compel Former Wife to Reimburse the*  
*Former Husband for Support Overpayments, Children's*  
*Expenses, and Debt Incurred in the Name of the Former*  
*Husband, Motion for Credit Against Future Spousal Support*  
*Obligation as a Consequence of Money Advanced to the*  
*Former Wife, and Motion for Attorney Fees and Costs*  
*Page 7 of 14*

24.1 The Former Wife incurred \$939.00 in cable charges on the Former Husband's Verizon account. The Former Wife never changed the name on the cable account to her own name as she was required to do pursuant to the parties' *Agreement*. Despite the Former Husband's requests, the Former Wife never paid the charges. Consequently, the unpaid debt adversely affected the Former Husband's credit.

24.2 The Former Wife incurred \$231.00 in electricity charges on the Former Husband's Dominion electricity account. Like with the Verizon account, the Former Wife never changed the name on the account to her own name as she was required to do pursuant to the parties' *Agreement*. Despite the Former Husband's requests, the Former Wife never paid the charges. Consequently, the unpaid debt adversely affected the Former Husband's credit.

24.3 The Former Wife incurred \$1631.60 in telephone overage charges on a telephone that the Former Husband provided to the children in order to facilitate telephonic contact. The Former Wife commandeered the phone and used it for personal calls. Many of these calls were international calls to her family in South and Central America. The Former Husband requested that the Former Wife reimburse him for the charges she incurred and for the phone that she still has in her possession worth \$195.00, but the Former Wife refused.

24.4 The Former Wife received a parking citation on her vehicle in the amount of \$65.00. The Former Wife never paid the citation. Because the Former Wife failed to transfer ownership of the vehicle from the Former Husband to herself, the resulting debt from the unpaid

citation was charged to the Former Husband. When asked to pay the citation, the Former Wife refused.

24.5 The Former Wife incurred unreimbursed medical expenses in the name of the Former Husband in the sum of \$317.00. The Former Wife refused to pay the expense at the time it was incurred, and refused to reimburse the Former Husband for her share of this expense when requested to do so by the Former Husband after he received the bill.

25.0 The Former Wife should be compelled to pay the total sum of \$2,472.90 to the Former Husband forthwith, which represents the total amount of debt the Former Wife incurred in the Former Husband's name which has never been repaid.

#### ***Car Insurance and Car Title***

26.0 The Former Husband is entitled to a credit against future spousal support payments to the Former Wife in connection with automobile insurance and car titling expenses advanced by the Former Husband on behalf of the Former Wife.

27.0 Paragraph 8(c) of the parties' *Property Settlement and Support Agreement* states:

**Each party shall be solely liable for maintaining automobile insurance and paying any personal property taxes for any automobile he/she owns pursuant to this Agreement or hereafter owns/drives.**

28.0 The Former Wife refused to pay her automobile insurance for the period of July 2011 through March 2012. The Former Wife's request for the insurance cost advancement was compelling to the Former Husband given that instead of driving, the Former Wife was walking

around in the brutal South Florida heat with the children, and that in the event of an emergency involving the children (such as when the parties' son hit his head after slipping in the shower and the Wife had no way of taking him to the hospital), the Former Wife would need a vehicle. The total insurance payments advanced by the Former Husband, for which he is entitled to a credit from the Former Wife, total \$1,464.00.

29.0 In addition to insurance, the Former Wife requested that the Former Husband advance vehicle title fees in the amount of \$400.00 subject to a credit against the Former Husband's future spousal support obligation. The Former Husband agreed to the advancement, but like in the case of other sums advanced to the Former Wife, she refuses to recognize the credit to which the Former Husband is entitled.

30.0 The Former Husband is entitled to a credit for car insurance and car titling payments advanced by him on behalf of the Former Wife in the total sum of \$1,864.00.

***Attorney Fees and Costs Incurred Incident to Efforts to Enforce Property Settlement and Support Agreement and Consent Custody and Visitation Agreement***

31.0 The Former Husband has been forced to incur substantial attorney fees and costs as a result of the Former Wife's failure to comply with the parties' *Property Settlement and Support Agreement* and *Consent Custody and Visitation Agreement*, as well as substantial transportation costs that would not otherwise have been incurred but for the Former Wife's refusal to equally share transportation responsibilities with the Former Husband.

31.1 The Former Wife refused to share equal responsibility with the Former Husband for the transportation of the minor children. As such, the Former Husband was required to file a *Motion to Compel Former Wife to Comply with Consent Custody and Visitation Agreement with Respect to Shared Transportation*. The hearing on the motion was cancelled hours before the hearing was set to be heard by the Court as the result of a temporary agreement between the parties. It took substantial attorney fees to get to that point that would not otherwise been incurred but for the Former Wife's unreasonable refusal to adhere to the parties' agreements.

31.2 The Former Husband incurred substantial transportation costs as a consequence of the Former Wife's refusal to adhere to the parties' *Consent Custody and Visitation Agreement*. The Former Wife should be responsible for these costs. Specifically, for the period of March 2011 through March 2013, the Former Husband was required to make two round trips from Fort Lauderdale to Bal Harbour in a given week, rather than the one trip that was actually required under the *Consent Custody and Visitation Agreement*. This accounted for 104 additional trips of 45 miles per each round trip. Using the IRS mileage rates used to calculate deductions at 56.6 cents per mile, the Former Husband incurred \$2,648.88 (104 x 45 x .566) in transportation expenses that should be borne by the Former Wife.

31.3 The Former Wife refused to comply with the parties' timesharing arrangements as set forth in their *Property Settlement and Support Agreement* and *Consent*

*Custody and Visitation Agreement.* The Former Wife refused to coordinate weekly timesharing and make up timesharing with the Former Husband, attempted to unilateral impose changes to the timesharing schedule on the Former Husband, refused to comply with telephonic contact provisions of the parties' agreement, and otherwise tested the limits of the parties' agreements on a weekly basis.

31.4 The Former Husband paid over \$7,000.00 to a mediator in a futile attempt to work with the Former Wife and avoid the involvement of attorneys and the Court. The Former Wife, however, violated the patchwork resolutions reached at the multiple mediations, and the Former Husband was ultimately forced to involve his attorney. As a consequence of her bad faith with respect to her failure to honor the resolutions reached at mediation, the Former Wife should be required to reimburse the Former Husband for the costs he incurred in connection with the mediations.

32.0 After his initial attempts to resolve issues with the Former Wife directly and through the help of a mediator failed, the Former Husband had no choice but to involve the assistance of his counsel. The Former Wife simply refused to resolve issues with the Former Husband otherwise. The Former Wife was well aware that violations of the parties' agreements could result in taxation of the Former Husband's attorney fees against her – she just did not care.

33.0 Substantial attorney fees were incurred by the Former Husband to simply compel the Former Wife to do abide by the parties' agreements. It is not right, and the Former Wife's

failure to abide by the parties' agreement has devastated the Former Husband's ability to work and earn money to support the parties' children.

34.0 The Former Husband's attorney fees and costs associated with his efforts to compel the Wife's compliance with the parties' agreement, and costs incurred as a consequence of the Former Wife's failure to abide by the parties' *Consent Custody and Visitation Agreement* should be taxed to the Former Wife. Her blatant noncompliance is inexcusable, and the Former Husband should not suffer financial detriment as a result of the Former Wife's actions.

***Conclusion***

35.0 The Former Husband is entitled to the following reimbursements and credits:

Credit for Overpayment of Support	\$5,500.00
Credit for Cash Advances to the Former Wife	\$4,750.00
Reimbursement of Children's Insurance and Medical Expenses	\$7,583.04
Reimbursement of Children's Tuition	\$12,974.97
Reimbursement of Debt Incurred in the Former Husband's Name	\$2,472.90
Credit for Car Insurance and Car Title Advances	\$1864.00
<b>TOTAL</b>	<b>\$35,144.91</b>

36.0 In addition to the credits and reimbursements to which the Former Husband is entitled, he is entitled to recover attorney fees and costs from the Former Wife as a consequence

of the Former Wife's failure to adhere to the parties' *Property Settlement and Support Agreement* and *Consent Custody and Visitation Agreement* which necessitated substantial attorney involvement to resolve, as well as excess transportation costs incurred by the Former Husband as a consequence of the Former Wife's refusal to exercise equal transportation responsibilities with the Former Husband in the sum of \$2,648.88.

37. The Former Husband requests that this Court enter an order that compels the Former Wife to comply with the parties' *Property Settlement and Support Agreement* and shared parental responsibility and requires the Former to pay the sums delineated herein to the Former Husband, and awards him attorney fees and costs incurred as a result of the Wife's failure to adhere to the parties' agreements. Additionally, the Former Husband should be permitted to apply his remaining spousal support payments toward the sum owed to him by the Former Wife.

**WHEREFORE**, based upon the foregoing, the Former Husband, **SAMUEL SALOMON LEVY**, respectfully requests this Honorable Court grant the within motion, enter an order awards him a credit for money advanced to the Former Wife against his spousal support obligation, orders that the Former Wife repay all other sums delineated herein to the Former Husband, award the Former Husband with attorney fees and costs from the Former Wife, and any other relief that this Court deems just and proper in the favor of the Former Husband.

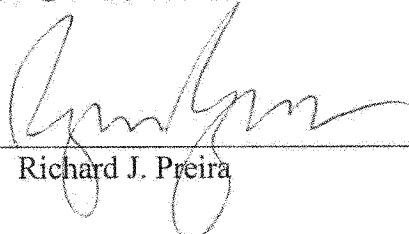
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail this 26<sup>th</sup> day of March, 2013 to: Sherley Haratz, Esquire, Haratz & Stubbe, PA, 20900 NE 30<sup>th</sup> Ave., Ste. 735, Aventura, FL 33180.

Respectfully submitted,

SMGQ LAW  
Managing Partner - Family Law Practice Group  
Attorneys for the Former Husband  
201 Alhambra Circle, Suite 1205  
Coral Gables, FL 33134  
Telephone: (305) 377-1000  
Service E-mail Address:  
[Reception@smgqlaw.com](mailto:Reception@smgqlaw.com)  
[Rpreira@smgqlaw.com](mailto:Rpreira@smgqlaw.com)  
[Rmarger@smgqlaw.com](mailto:Rmarger@smgqlaw.com)

By: \_\_\_\_\_

  
Richard J. Preira

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IN THE CIRCUIT COURT OF THE  
11<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

FAMILY DIVISION

IN RE: THE FORMER MARRIAGE OF:

CASE NO. 11-031255 FC 16 PJ

EINATH BACH LEVY,

Petitioner/Former Wife.

And

SAMUEL SALOMON LEVY,

Respondent/Former Husband.

HARVEY FRYIN  
CLERK, CIRCUIT & COUNTY CLERK  
MIAMI-DADE COUNTY, FLA.  
FAMILY DIVISION #2

2016 SEP -8 AM 11:56

FILED FOR RECORD

**REPORT AND RECOMMENDATIONS OF GENERAL MAGISTRATE**

**THIS CAUSE** came before the undersigned General Magistrate for hearing on May 14, 2014; September 23, 2014; and October 28, 2014; on the Former Wife's Emergency Motion for Contempt of Property Settlement and Support Agreement to Return Minors' Passports to Mother and Former Wife's Motion for Right to Travel with Minor Children, and on the Former Husband's Supplemental Petition to Modify the Consent Custody and Visitation Agreement pursuant to an Order of Referral.<sup>1</sup> Present before the Court were: the Former Husband, Samuel Salomon Levy; Former Husband's counsel, Jonathan Jonasz, Esq.; the Former Wife, Einath Bach; the Former Wife's counsels, Robert F. Kohlman, Esq., and Luisa Marques dos Santos, Esq. The undersigned General Magistrate, having heard the testimony of the Former Husband

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<sup>1</sup> The Former Husband also filed a Motion to Compel Former Wife to Reimburse the Former Husband for Support Overpayments, Children's Expenses, and Debt Incurred in the Name of the Former Husband, Motion for Credit Against Future Spousal Support Obligation as a Consequence of Money Advanced to the Former Wife, and Motion for Attorney's Fees and Costs. That Motion also was referred to the General Magistrate. Although testimony was taken as to issues raised in the Motion, the testimony was not completed. Accordingly, this Report and Recommendation includes no proposed findings of fact or recommendations of law as to that Motion.

and the Former Wife, reviewed the evidence presented, and being otherwise fully advised in the premises, makes the following:

**FINDINGS AND RECOMMENDATIONS:**

1. The parties have two minor children, a son, VL, age 6, and a daughter, LL, age 4.
2. The parties were divorced in Fairfax, Virginia by Final Order of Divorce dated March 25, 2011. The Final Order of Divorce adopted two agreements of the parties: the Consent Custody and Visitation Agreement dated May 18, 2010 ("Custody Agreement"), and the Property Settlement and Support Agreement dated August 10, 2010. Both agreements also were adopted by separate consent orders before being adopted in the Final Order of Divorce.
3. The Mother was pregnant with their second child when the two Agreements were signed. Although the Agreements refer only to the parties' son by name, each Agreement recognizes its application to their daughter upon her birth.
4. The Custody Agreement states in pertinent part:
  11. **OVERSIGHT TRAVEL:** Each party shall keep the other informed of [the minor children's] whereabouts, including the address and telephone numbers where that party and [the minor children] can be reached when that party and [the minor children] are away from the party's principal residence overnight. For all such periods, the party traveling with [the minor children] shall inform the other party thereof as soon as he/she becomes aware of the trip, and the parties shall use their best efforts to provide information to the other party at least forty-eight (48) hours in advance.

\*\*\*
  13. **PASSPORTS:** Mother shall hold [the minor children's passports] when [the minor children are] not traveling abroad with the Father. Mother will not withhold [the minor children's] passport[s] from Father for any reason and will immediately provide passport to Father upon request.

\*\*\*
  19. **MODIFICATION AND WAIVER:** This Agreement constitutes the entire understanding between the parties. No modification, waiver or amendment of any of the terms of this Agreement shall be effective unless

in writing and executed with the same formality as this Agreement (i.e. both parties have signed the modification and their signatures are notarized).

\*\*\*

26. ENFORCEMENT: In the event that either party should take legal action against the other by reason of the other's failure to abide by this Agreement, the party who is found to be in violation of the Agreement shall pay to the other party who prevails in said action, the prevailing party's reasonable expenses incurred in the enforcement of this Agreement, said expenses to include, but not limited to, reasonable attorney's fees, court costs, filing fees, court reporter appearance fees, copying costs, travel costs and transportation fees. . . .

5. The Custody Agreement specifically contemplates the Mother's international travel with the minor children.

6. Both parties are from Panama and have numerous relatives and friends in that country. The two minor children had United States passports.

7. After the March 25, 2011 Final Order of Divorce, the Former Wife traveled internationally with the children in April 2011, June 2011 and December 2011.

8. In 2011 the Former Husband petitioned this Court to domesticate the Virginia divorce decree. The Wife agreed. The Virginia Final Order of Divorce was domesticated by the Florida court in an Agreed Order Domesticating Foreign Judgment dated November 9, 2011. The Florida Order specifically domesticated the Final Order of Divorce as well as the two consent orders.

9. The Former Husband's Petition to domesticate the Virginia divorce decree did not request any other relief, such as prohibiting the Former Wife from traveling internationally with the minor children.

10. In December 2011 the parties traveled together with the children from Florida to Panama. However, the Father returned to Florida after only a few days. The Mother and

children remained in Panama and returned by themselves in January 2012.

11. In the spring of 2012, the Former Husband requested the children's passports so that he could travel with them to Panama. The Former Wife complied with the Former Husband's request and the Former Husband traveled with the children. Upon his return from Panama, the Former Husband refused the Former Wife's request for the return of the children's passports, as mandated by their Custody Agreement

12. Since then, the Former Wife has requested the passports on numerous occasions so that she could travel with the minor children, including for her father's 60<sup>th</sup> Birthday, a family wedding, and many other holidays and special occasions. The Former Husband refused each time.

13. On December 3, 2012, the Former Wife filed her Emergency Motion for Contempt of Property Settlement and Support Agreement to Return Minor's Passports to Mother and Motion for Right to Travel with the Minor Children.

14. The Court on March 18, 2013, entered an Agreed Order on Temporary Timesharing. The Agreed Order did not address international travel, and provided that "[e]xcept as modified by the terms herein, the parties' Property Settlement and Support Agreement and Consent Custody and Visitation Agreement remain in full force and effect."

15. On April 1, 2013 the Father filed the Former Husband's Supplemental Petition to Modify Consent Custody and Visitation Agreement. The Supplemental Petition sought the following relief: a) prevent the Mother from possessing the children's passports; b) prevent the Mother from leaving the country with the children; and c) award the Father his attorney's fees and costs from the Mother.

16. The Father did not file his Supplemental Petition until almost a year *after* he

refused to return the minor children's passports to the Mother, thereby effectively preventing (without benefit of a court order) her ability to travel internationally with the minor children. The Father's Supplemental Petition also only sought to prohibit the Mother's international travel with the minor children, but requested no restrictions whatsoever on his ability to travel with the minor children.

17. On May 14, 2014 and September 23, 2014, the General Magistrate conducted two full days of hearing on the Former Wife's Emergency Motion for Contempt of Property Settlement and Support Agreement to Return Minors' Passports to Mother and Former Wife's Motion for Right to Travel with Minor Children, as well as the Former Husband's Supplemental Petition to Modify the Consent Custody and Visitation Agreement.

18. During the hearing before the General Magistrate on September 23, 2014, the Father divulged that he had unilaterally destroyed both of the children's passports. The Father, in destroying the passports, violated orders of the Court and potentially committed a Federal crime pursuant to 18 U.S.C. 1361. The Father's testimony has no credibility on the issue of his desire to hold either of the children's passports.

19. During a recess in the hearing the afternoon of September 23, 2014, immediately after the Father revealed he had destroyed the passports, the parties reached a Partial Settlement Agreement that was dictated to a court reporter and later transcribed. The details of the Partial Settlement Agreement were intentionally not disclosed by the parties to the undersigned until after all the proceedings referenced in this Report were concluded.

20. The Partial Settlement Agreement did not resolve all the pending referred issues to the General Magistrate. A further hearing was held on October 28, 2014 on those remaining issues; however, the terms of the Partial Settlement Agreement were still not disclosed to the

undersigned.

21. Prior to the October 28, 2014 hearing the Mother and the minor children without incident traveled to, and returned from, Panama.

22. The Mother should continue to hold the minor children's passports. The Father should not be trusted with the children's passports.

23. The Father in his Supplemental Petition to Modify Consent Custody and Visitation Agreement has the burden to show that there has been a substantial, material, unanticipated, permanent change in circumstances since the Final Order of Divorce was entered on March 25, 2011. The Father has failed to meet his burden of proof.

24. The Mother is not a flight risk.

25. The Father testified there had been no problems with timesharing since the Agreed Order on Temporary Timesharing was entered on March 18, 2013.

26. Many of the allegations raised by the Father in support of his Supplemental Petition were of events that occurred prior to the entry of the Virginia Final Order of Divorce dated March 25, 2011. This includes the conversation dated February 2, 2010, the transcript of which was attached as Exhibit "B" to the Father's Supplemental Petition. Based on the doctrine of *res judicata*, the General Magistrate did not consider any allegation made by the Father of anything which occurred prior to March 25, 2011.

27. Moreover, several allegations made by the Father in support of his Supplemental Petition were readily foreseeable at the time the Final Order of Divorce was entered on March 25, 2011. This includes the Father's allegation that the Mother was a flight risk.

28. The Former Wife has an entitlement to reasonable attorney's fees, suit monies and costs pursuant to Paragraph 26 of the Custody Agreement for litigating her Emergency Motion

for Contempt of Property Settlement and Support Agreement to Return Minors' Passports to Mother and Motion for Right to Travel with Minor Children, as well as the Former Husband's Supplemental Petition to Modify Custody and Visitation Agreement.

29. No finding is made as to the Mother's entitlement to attorney's fees and costs pursuant to Florida Statute Section 61.16. The General Magistrate will consider testimony and argument on that issue at a later date, if necessary.

30. The Former Husband filed a Motion to Compel Former Wife to Reimburse the Former Husband for Support Overpayments, Children's Expenses, and Debt Incurred in the Name of the Former Husband, Motion for Credit Against Future Spousal Support Obligation as a Consequence of Money Advanced to the Former Wife, and Motion for Attorney's Fees and Costs. That Motion also was referred to the General Magistrate. Testimony was taken on that Motion, but was not completed. The parties have stipulated that if money is owed to the Former Husband from the Former Wife as requested in that Motion, those monies will be used as a set off against attorney's fees and costs awarded to the Former Wife but this shall not delay a hearing on the amount of the Former Wife's reasonable attorney's fees and costs.

31. That the Mother's Emergency Motion for Contempt of Property Settlement and Support Agreement to Return Minors' Passports to Mother and Motion for Right to Travel with Minor Children and Former Wife's Motion for Right to Travel with Minor Children is GRANTED in part as set forth herein.

32. That the Former Husband's Supplemental Petition to Modify Consent Custody and Visitation Agreement is DENIED.

33. That the Former Wife shall hold the children's passports.

34. That the Former Wife has an entitlement to reasonable attorney's fees, costs and


suit monies pursuant to Paragraph 26 of the Custody Agreement for litigating her Emergency Motion for Contempt of Property Settlement and Support Agreement to Return Minors' Passports to Mother and Motion for Right to Travel with Minor Children, as well as the Former Husband's Supplemental Petition to Modify Custody and Visitation Agreement.

35. The Father has indicated he intends to take Exceptions to this Report and Recommendations of the General Magistrate. The General Magistrate will hold in abeyance a determination as to the amount of the Mother's reasonable attorney's fees, suit monies and costs until such time as such Exceptions have been filed and ruled upon by the Circuit Court.

36. The General Magistrate will reserve ruling on all pending referred issues not disposed of by this Report including and not limited to the Former Wife's request for attorney's fees and costs pursuant to Florida Statutes Section 61.16.

**WHEREFORE**, the undersigned General Magistrate files this Report with the Clerk of the Court and recommends the adoption of same.

**DATED** in chambers in Miami-Dade County, Florida this SEP 08 2016 day of \_\_\_\_\_, 2016.

  
DEBORAH MAGID  
GENERAL MAGISTRATE

Copies furnished to:

Gilberto R. Izquierdo, Esq.  
Robert F. Kohlman, Esq.  
Emily J. Phillips, Esq.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT,  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

IN RE: THE FORMER MARRIAGE OF

FAMILY DIVISION

Case No.: 2011-031255-FC-04

Section: 16

EINATH BACH LEVY,

Petitioner/Former-Wife,

**REPORT OF GENERAL  
MAGISTRATE  
AND NOTICE OF FILING**

and

SAMUEL SALOMON LEVY,

Respondent/Former-Husband.

FILED FOR RECORD  
2018 SEP 28 PM 12:27  
HARVEY RUVIN  
CIRCUIT CLERK  
MIAMI-DADE COUNTY, FLA.

**THIS CAUSE** came on to be heard on July 25 and 26, 2018<sup>1</sup> before the undersigned on an Order of Referral to General Magistrate. Present at the hearing were: the Petitioner, the Respondent, the Petitioner's Counsel, and the Respondent's Counsel, and an interpreter. Prior counsel for the Respondent testified as a witness on July 26, 2018. The undersigned having reviewed the evidence and testimony presented as well as Memoranda of Law and written closing arguments (submitted on August 15, 2018), and being fully advised in the premises

**FINDS and RECOMMENDS:**

1. This Court has jurisdiction over the subject matter and the parties herein.
2. An Agreed Order Domesticating Foreign Judgment ("Agreed Order") was entered in this case on November 9, 2011.
3. The Agreed Order domesticated the parties' Final Order of Divorce ("Divorce") dated March 25, 2011 entered in the Circuit Court of Fairfax County, Virginia.

<sup>1</sup> Since the entry of the Report and Recommendations of General Magistrate on September 8, 2016; hearings were also held in this case on May 22, 2018; June 7, 2017 and July 16, 2018.

4. The parties' Divorce affirmed, ratified and incorporated the parties' May 18, 2010 Consent Custody and Visitation Agreement ("Custody Agreement") and their August 10, 2010 Property Settlement and Support Agreement ("PSA").

5. Paragraph 26 of the parties' Custody Agreement provides as follows:

[i]n the event that either party should take legal action against the other by reason of the other's failure to abide by this Agreement, the party who is found to be in violation of this Agreement shall pay to the other party who prevails in said action, the prevailing party's reasonable expenses incurred in the enforcement of this Agreement, said expenses to include, but not be limited to, reasonable attorney's fees, court costs, filing fees, court reporter appearance fees, copying costs, travel costs and transcription fees.<sup>2</sup>

This provision is not a blanket prevailing party provision, but rather a provision where reasonable expenses are only payable to the party who prevails in action against the party found in violation of the Custody Agreement.

6. A Report and Recommendations of General Magistrate ("Report") was entered on September 8, 2016<sup>3</sup> reserving ruling on all pending referred issues in Paragraph 36.

7. The issues reserved by the General Magistrate were: the determination of the Former Husband's Motion to Compel Former Wife to Reimburse the Former Husband for Support Overpayments, Children's Expenses, and Debt Incurred in the Name of the Former Husband, Motion for Credit against Future Spousal Support Obligation as a Consequence of Money Advanced to the Former Wife, and Motion for Attorney's Fees and Costs ("Motion to Compel") filed March 26, 2013 and determination of the Former Wife's attorney's fees and costs pursuant to entitlement found in Paragraph 28 of the Report.

<sup>2</sup> Paragraph 13 of the parties' PSA contains the same language of Paragraph 26 of the parties' Custody Agreement.

<sup>3</sup> The Former Husband filed Exceptions to the Report and Recommendations of General Magistrate ("Exceptions") on September 19, 2016. On January 10, 2017; the Former Husband filed a Notice of Filing Voluntary Dismissal with Prejudice of his Exceptions. An Order was entered ratifying the Report of General Magistrate on October 26, 2016.

8. The Former Husband's Motion to Compel is denied as to enforcement under Paragraph 26 of the parties' Custody Agreement as forth in this Report.

9. The Former Husband filed a Supplemental Motion to Compel Former Wife to Reimburse the Former Husband for Support Overpayments, Children's Expenses, and Debt Incurred in the Name of the Former Husband, Supplemental Motion for Credit against Future Spousal Support Obligation as a Consequence of Money Advanced to the Former Wife, and Supplemental Motion for Attorney's Fees and Costs, and Motion for Enforcement on July 25, 2017 ("Supplemental Motion") which is not pending before the undersigned. Any findings and recommendations in this Report are without prejudice to any new claims raised in the Former Husband's Supplemental Motion.

10. The first claim raised in the Former Husband's Motion to Compel is the inadvertent overpayment of support. The Former Husband's Motion to Compel is denied as to this issue. The fact that the Former Husband may have mistakenly overpaid his support obligation in September of 2010 and March of 2011 due to an error in an online automatic payment schedule is not the fault of the Former Wife and any overpayments could simply be applied towards future support. There was no clear and convincing evidence that the Former Husband has still overpaid his support obligation as of July of 2018.

11. The second claim raised in the Former Husband's Motion to Compel is credit for cash advances made to the Former Wife. The Former Husband's Motion to Compel is denied as to this issue. The Former Husband claimed that he advanced the Former Wife the sum of \$4,750.00 for spousal support. These monies constituted either a loan or a gift to the Former Wife and the Former Husband may have a right to seek reimbursement in small claims court; however, there is no right to seek enforcement of these monies under the terms of the parties' PSA.

12. The third claim raised in the Former Husband's Motion to Compel is "child's health insurance and unreimbursed medical expenses." The Former Husband's Motion to Compel is denied as to this issue. Paragraph 3 of the parties' PSA provides as follows:

the parties will share the costs of the [children's] insurance premiums in the same proportion as their gross incomes used for purposes of determining child support.

The Former Husband failed to prove by clear and convincing evidence that either party had knowledge of what the Former Wife's percentage share of costs would be based on the calculations used to determine the monthly support obligations at the time of their Virginia Divorce. Although his Motion to Compel was pending from 2013 to 2018, the Former Husband was never able to provide conclusive evidence as to the parties' gross incomes used to determine child support. The burden of proof is on the Former Husband who is seeking reimbursement especially since he has never given the Former Wife a fixed amount to reimburse. The PSA does not specify the proportionate share of each parties' income, does not include the gross income figures used, and no child support guidelines worksheet was attached to the Divorce. It remains unknown whether any income, such as alimony, was imputed to her under Virginia law. The Former Husband's Motion to Compel seeks reimbursement from the Former Wife of her "proportional share" of \$7,583.04, but does not specify what that share is as he has no idea how much she is to pay. The Former Wife was never put on notice of the amount of her obligation. In addition, the Former Wife testified that she had to get her own health insurance for the minor children because the Former Husband had refused to give her the children's insurance cards. She also testified that she paid at least \$250 per year toward the children's uncovered healthcare costs directly to the providers. Paragraph 4 of the parties' PSA provides:

[t]he parties agree to divide any of the minor children's reasonable and necessary unreimbursed medical and dental expenses that are in excess of \$250 for any calendar year in proportion to their gross incomes as used for calculating the monthly support obligation.

Paragraph 4 also provides that:

[t]he Mother shall be solely responsible for paying the first \$250 of each child's reasonable and necessary unreimbursed medical and dental expenses per year. The party

incurring the expense shall provide proof to the other party of expenses he/she incurs and the explanation of benefits from the insurance company demonstrating the amount that the insurance company paid, and the non-incurring party shall reimburse the incurring party his/her share within 10 days of receipt of the proof of the expense.

The Former Husband seeks reimbursement by the Former Wife for payment of the first \$250 in unreimbursed medical and dental expenses for each child in 2011 and 2012 in the total amount of \$1,000. The Former Wife produced records of payment for medical expenses for their daughter of \$100.72 and for their son of \$156.98 in 2011. She introduced into evidence pediatrician records and testified that she had made the copayments for many of those visits. She testified as to other payments noted on a schedule she had prepared. The Former Wife's testimony that she had spent well in excess of \$250 for each child in 2011 and 2012 was credible and un rebutted.

13. The fourth claim raised in the Former Husband's Motion to Compel is reimbursement of the child's tuition. The Former Husband's Motion to Compel is denied as to this issue. The Former Husband seeks the reimbursement of 50% of the cost of tuition for the parties' minor son for the 2011-2012 and 2012-2013 school years at Le Petit Papillon Montessori School based upon tuition commitment contracts signed by the parties. Paragraph 10 of the parties' PSA only provides for reimbursement of "College Expenses" including but not limited to college tuition. There is no right to seek enforcement of these monies under the terms of the parties' PSA under the theory of shared parental responsibility as argued in Paragraph 17 of the Former Husband's Motion to Compel.

14. The fifth claim raised in the Former Husband's Motion to Compel is reimbursement of debt incurred in the Former Husband's name by the Former Wife. The Former Husband's Motion to Compel is denied as to enforcement against the Former Wife; however, a set-off is granted. The Former Husband seeks reimbursement of the following amounts for debt incurred by the Former Wife in the name of the Former Husband alleging a violation of Paragraph 8F of the PSA. Paragraph 25 of the Former Husband's Motion to Compel alleges a total claim in the amount of \$2,472.90. However, the following

bills mentioned in the Motion actually total \$3,183.60. They are: a \$939 cable bill, a \$231 electricity bill, a \$65 parking ticket, a \$317 medical bill, and a \$1,631.60 long-distance telephone bill. The parties' PSA requires that the person who the incurs the debt "shall be solely responsible for said debt(s), shall pay said debt within thirty (30) days of the discovery of said debt(s), and shall hold the other party harmless, defend and indemnify the other party in his/her property from any and all claims arising therefrom." Paragraph 8F requires reimbursement by the Former Wife to the third-party creditors and not to the Former Husband. Here, the Former Husband is seeking reimbursement from the Former Wife for debts incurred that he has not yet paid and may not pay in the future. Since the Former Husband has not paid these debts, there is nothing for which he is entitled to reimbursement or enforcement. However, the parties agree that the \$3,183.60 of debt incurred by the Former Wife in the Former Husband's name can be used as a set-off against attorney's fees owed by the Former Husband directly to the Former Wife.

15. In his Motion to Compel's sixth claim, the Former Husband seeks reimbursement from the Former Wife for car insurance and car title payment. The Former Husband's Motion to Compel is denied as to enforcement against the Former Wife; however, a set-off is granted. On the last day of trial, more than five years after filing his Motion to Compel, the Former Husband produced documentation on how much he had paid for car insurance on behalf of the Former Wife. The Former Wife owes the Former Husband the sum of \$484.64 for reimbursement of a prorated portion of automobile insurance for three months. The Former Wife did not put on sufficient clear and convincing evidence regarding her entitlement to the \$600 she claimed the Former Husband received from the sale of the car. The amount of \$484.64 can be used as set-off against the attorney's fees owed directly to the Former Wife by the Former Husband. Since the parties' PSA was entered into in the State of Virginia, Paragraph 8C requiring that each party pay "any personal property taxes for any automobile he/she owns" is not sufficiently broad enough to encompass State of Florida car title fees of \$400 that the Former Husband seeks reimbursement for from the Former Wife.

16. In his Motion to Compel's last claim, the Former Husband seeks reimbursement for attorney's fees and costs incurred incident to efforts to enforce the parties' Custody Agreement related to timesharing and transportation issues. The Former Husband's request for attorney's fees in the amount of \$27,376.50 for the period of time from June 13, 2012 through the end of March 2013 is denied. The Former Husband's prior attorney testified that he believed the amount requested of \$27,376.50 was an understatement of the fees that the Former Husband incurred with respect to his February 12, 2013 Motion to Compel Former Wife to Comply with Consent Custody and Visitation Agreement with Respect to Shared Transportation and did not include the passport/travel issue. No retainer agreement or detailed billing statements were admitted into evidence or provided in advance of the last hearing date to opposing counsel even though the Former Husband has had five years to produce this evidence.<sup>4</sup> This alone is enough to serve as a basis to deny the Former Husband's request for fees.<sup>5</sup> Moreover, it is not clear as to what theory that Former Husband is claiming entitlement to reimbursement of these fees. The parties ultimately entered into an agreement regarding the February 12, 2013 Motion that specifically reserved on fees. However, the parties in that agreement did not agree to entitlement to the fees and there was not sufficient evidence presented to demonstrate entitlement under Paragraph 26 of the parties' Custody Agreement. Moreover, if reimbursement of these fees was being sought under § 61.16, Fla. Stat., there was insufficient evidence presented regarding the Former Husband's need and the Former Wife's ability to pay. The parties' financial affidavits were never introduced into evidence.

17. The Former Husband did not prevail on enforcement of the parties' PSA in his Motion to Compel. Since the Former Husband inaccurately claimed that he was owed the sum of \$35,144.91 as of March 26, 2013 (the date of his Motion to Compel's certificate of service) and, after extensive litigation, was only entitled to reimbursement of the sum of \$484.64; he cannot be viewed as the prevailing party

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<sup>4</sup> The Former Husband's Motion to Compel was filed on March 26, 2013 and the last hearing was held on July 25, 2018.

<sup>5</sup> "An award of attorney's fees requires competent and substantial evidence .... Competent evidence includes invoices, records and other information detailing the services provided as well as the testimony from the attorney in support of the fee." *Brewer v. Solovsky*, 945 So. 2d 610, 611 (Fla. 4th DCA 2006).

under Paragraph 13 of the parties' PSA. Additionally, the Former Wife was not even apprised prior to the last hearing of the amount being sought for car insurance. A Motion to Compel should reasonably imply that at least a good faith effort was made to communicate the exact debt owed so that repayment could have been made without the need to file enforcement proceedings. Since this is not the case with respect to the Former Husband's Motion to Compel, there is no entitlement to attorney's fees and costs against the Former Wife under Paragraph 13 of the parties' PSA.

18. The Former Wife in her written closing argument claims entitlement to prevailing party fees and costs in defending against the Former Husband's Motion to Compel. This type of relief is not encompassed in Paragraph 13 of the parties' PSA as entitlement to attorney's fees and costs is only contemplated against "the party who is found to be in violation of this Agreement."

19. The Court reserves ruling on whether attorney's fees and costs are appropriate with respect to the Former Husband's Motion to Compel under § 61.16, Fla. Stat. and this is without prejudice to either parties' claims or defenses.

20. Paragraph 28 of the Report found that the Former Wife has an entitlement to reasonable attorney's fees, suit monies and costs pursuant to Paragraph 26 of the parties' Custody Agreement for litigation regarding enforcement of Paragraphs 11 and 13 of the parties' Custody Agreement.

21. The Former Wife seeks attorney's fees and costs in the amount of \$106,542.82 for litigating enforcement of the passport/travel issue and \$62,007.61 in attorney's fees and costs (including expert fees and costs) in determining the amount of fees owed to the Former Wife (fees for fees).

22. The Former Husband stipulated that an hourly rate of \$425 per hour for Robert F. Kohlman and \$200 per hour for Luisa Santos were reasonable for the attorneys for the Former Wife.

23. It is well settled that attorney's fees may be awarded by a court only when authorized by the statute or by an agreement of the parties. *State Farm Fire & Casualty Co., v. Palma*, 629 So. 2d 830, 832 (Fla. 1993). All Attorney's fees and costs are only being sought by the Former Wife under Paragraph 26 of the parties' Custody Agreement and not under § 61.16, Fla. Stat. Paragraph 26 provides that the

prevailing party is entitled to “reasonable expenses incurred in the enforcement of this Agreement.” The amount of \$168,550.43 for fees and costs is not reasonable. The passport/travel issue was not complex as the burden of proof was on the Former Husband since the parties’ Custody Agreement provided for no travel restrictions and for the Former Wife to hold the children’s passports. The Former Husband was in clear violation of the parties’ Custody Agreement and it was improper for him to use self-help to the extent that he destroyed the children’s passports without first seeking Court intervention.

24. Both parties presented expert testimony on the issue of the amount of reasonable fees and costs to be awarded to the Former Wife. There was an enormous disparity between what the experts considered a reasonable amount of fees.

25. The Former Wife’s fees expert reduced the attorney’s fees from \$117,760 (requested in the Fourth Amended Affidavit of Robert F. Kohlman for Billed Attorney’s Fees and Costs for Buckner, Shifrin, Etter, Dugan, Bradfute & Kohlman, P. A.) to \$105,375 billed at 213.4 hours for Mr. Kohlman and 73.4 hours at \$200 an hour for Luisa Santos.

26. The Former Husband’s fees expert reduced the attorney’s fees to 64.1 hours for Mr. Kohlman for total of \$27,242.50 and recommended that no fees be awarded for Luisa Santos’s time.

27. The undersigned agrees with the argument of the Former Husband’s expert that there should be no fee award for attorney Santos’s time.

28. Often a less experienced attorney charging a lower hourly rate assists a more experienced attorney with a case to help reduce the overall bill for a client. However, that was not the case here. In fact, Ms. Santos’s participation amounts to duplicative, unnecessary billing and excessive handholding as is argued by the Former Husband. Ms. Santos attended all of the hearings and was involved in conferences with the client and with Mr. Kohlman. Ms. Santos representation of the Former Wife was solely on the financial issues in the Former Husband’s Motion to Compel. Although the matters were heard together, fees are not being awarded to the Former Wife for the Former Husband’s Motion to

Compel. Ms. Santos never argued the merits of the case regarding the passport/travel issue and her fees should not be awarded under Paragraph 26 of the Custody Agreement.

29. The Former Husband's expert testified as to the simplicity of the litigation regarding the passport/travel issues pointing out that the only two witnesses were the parties.

30. There were not novel or difficult issues involved with respect to the passport/travel matter, especially for an attorney with Mr. Kohlman's extensive experience. Moreover, only seven exhibits were admitted into evidence on the passport/travel issue and all were the Former Husband's exhibits.

31. In *Moore v. Kelso-Moore*, 152 So. 3d 681, 682 (Fla. 4th DCA 2014), the Fourth District Court, in determining the reasonableness of the hours billed in a dissolution of marriage action, frowned upon the use of block billing and "excessive hand holding" of the client used by the wife's law firm in expending 500.3 hours regarding a motion for temporary relief when the husband's firm had expended only 154.35 hours.

32. Similarly, the record reflects in the instant case that the Former Wife's law firm used block billing, "excessive hand holding" and expended significantly more hours than counsel for the Former Husband.

33. The use of block billing by the Former Wife's law firm has makes it very difficult to try to determine the reasonableness of the hours expended on the limited issue on which the Former Wife prevailed. Counsel for the Former Wife testified that all billing related to the pending petitions for modification were placed in a separate folder at his law firm and are not part of the billing statements admitted into evidence in this proceeding. However, the Former Wife is awarded fees solely on enforcement of the passport/travel issue and not on the Former Husband's Motion to Compel and the majority of the billing statements admitted simply do not specify which issue is being addressed. The matters were litigated concurrently. The attorney for the Former Husband in his written closing argument states that there are in excess of 175 billing entries that did not specify the issue being addressed for which reimbursement is being sought in these proceedings. The Former Husband also persuasively

argues that the nature of the billing entries make it almost impossible to determine from the entry what exactly the entry was for and whether it was related to the passport/travel issue.

34. An example of block billing used by the Former Wife's law firm is this billing entry for 4.2 hours at \$425 per hour for a total of \$1,785 by Mr. Kohlman on October 28, 2014:

[r]eview of additional billing records; redact and classify various time entries; preparation of Second Amended Fees Affidavit; conference with Luisa Santos regarding legal issues raised by Former Husband, testimony of Robert F. Kohlman as to fees billed; review of various pleadings and testimony relevant to trial of cause; multiple conferences with Luisa Santos and Cheryl Shine regarding trial issues; general trial preparation.

35. The Former Husband persuasively argues that in reviewing the time expended by the Former Wife's attorneys and the Former Husband's attorney for attending three hearings in 2014, the Former Wife's attorney still billed more than double the amount of fees than the Former Husband's attorney even when the fees for Ms. Santos are not included. The Former Wife's argument that the higher amount of hours billed were due to extra preparation that enabled the Former Wife to ultimately prevail does not serve as a justification in a case with simple facts requiring minimal research, a handful of exhibits and only the testimony of the parties.

36. In addition, there was "excessive handholding" for the Former Wife by her law firm. For example, all of the following separate entries were billed by Mr. Kohlman as occurring on the same day September 29, 2014: "[r]eview/respond multiple correspondence with client regarding travel;" "multiple correspondence with client regarding travel issue;" "numerous telephone conferences with client regarding travel issues."

37. Paragraph 26 of the parties' Custody Agreement provides that in addition to reasonable attorney's fees there is entitlement to "court costs, filing fees, court reporter appearance fees, copying costs, travel costs and transcription fees" to be reimbursed for a prevailing party who enforces the parties' PSA against the party who violated the PSA. The Former Wife seeks reimbursement in the sum of \$9,014.32

for costs incurred on behalf of the Former Wife by the firm of Buckner, Shifrin, Etter, Dugan, Bradfute & Kohlman, P. A. from September 11, 2013 through May 24, 2016. The majority of items on the expense records provided to the General Magistrate do not clearly indicate whether the expenditure was incurred because of the passport/travel issue. In fact, some of the expenses being requested clearly were not related to the passport/travel issue such as: the filing fees and service of process fees for the Former Wife's Petition for Modification and the costs of the court reporter for the deposition of Sherley Haratz, Esq. As a result, costs are awarded only for costs that can clearly be related to the passport/travel issue litigation in the amount of \$6,224.73.

38. The undersigned does not find that the Former Wife is entitled to fees to litigate the reasonable amount of fees to be awarded in this case as the award of fees is based on a unique prevailing party clause in Paragraph 26 of the parties' Custody Agreement and not on statutory authority under § 61.16, Fla. Stat.

39. In *State Farm Fire & Casualty Co., v. Palma*, 629 So. 2d 830, 833 (Fla. 1993), Florida Supreme Court determined that a party could be awarded attorney's fees for the time spent litigating the entitlement to attorney's fees, but not for time spent litigating the amount of fees. In *Palma*, the fees being sought for litigating fees were based upon § 627.428(1), Fla. Stat. that provides for a reasonable amount of fees to the prevailing party against an insurer. *Id.* at 832.

40. The Fourth District Court of Appeal in *Schneider v. Schneider*, 32 So. 3d 151, 156 (Fla. 4th DCA 2010), held that the *Palma* case was distinguishable and allowed an award of fees for fees in a family law case brought under § 61.16, Fla. Stat. because the statutory authority is a safeguard as it is based on need and ability to pay and not a prevailing party standard.

41. However, there is not a consensus in the District Courts on the fees for fees issue in family law cases, for the Second District Court in *Wight v. Wight*, 880 So 2d 692, 695 (Fla. 2d DCA 2004), declined awarding fees for fees in a post-dissolution proceeding under § 61.16, Fla. Stat. The Second District in reaching this conclusion opined that "[t]he rule limiting fees for fees for the advantage of encouraging

parties to litigate deeds in an efficient manner” and that “it is the role of the legislature, rather than the courts, to broaden the statute” to permit recovery for fees for fees. *Id.*

42. Counsel for the Former Wife relies heavily on the case of *Waverly at Las Olas Condominium Association, Inc. v. Waverly Las Olas, LLC*, 88 So. 3d 386 (Fla. 4th DCA 2012) as a basis to award fees for the entire litigation. In *Waverly*, the proceedings were to determine the amount of fees to be awarded to a developer by condominium association. *Id.* at 387. The fees for fees were awarded based on the following very broad prevailing party clause in the unit owners’ purchase agreements: “[i]n the event of any litigation between the parties under this Agreement, the prevailing party shall be entitled to reasonable attorneys’, paralegals’, and paraprofessionals’ fees and court costs at all trial and appellate levels.” *Id.* The *Waverly* case is clearly distinguishable from the case at bar as it does not involve family law litigation and the basis for the award is the uniquely broad contract language that awards fees for “any litigation.” *Id.*

43. The case of *Andrew Pretka et al. v. Kolter City Plaza II Inc.*, 2013 WL 12080754 (S.D. Fla. 2013), although also not a family law case; nevertheless, specifically addresses whether to award fees for fees in a case with the type of prevailing party clause encompassed by Paragraph 26 of the parties’ Custody Agreement in the case at bar. The *Pretka* court held that a prevailing party clause that awards fees for “‘litigation to enforce’ the terms and provisions of this Agreement[] does not encompass fees on fees.” *Id.*

44. Another reason for disallowing fees in the instant case is the unclear nature of the billing entries resulted in essentially all of the trial time with respect to the fees for fees litigation. This time would not have been necessary had the billing entries for the Former Wife specifically identified the time allotted to performing each professional service and the pending matter being addressed by each professional service.

45. In conclusion, the General Magistrate is reducing the fees being sought by the Former Wife by removing the fees charged by Ms. Santos for being duplicative and being in reference to the Former

Husband's Motion to Compel. After spending extensive time going through the billing entries for Mr. Kohlman and making sure to take into account the billing entry adjustments already made by Mr. Kohlman and the Former Wife's fee expert as of June 7, 2017; the General Magistrate is reducing the billable hours further by awarding only a portion of fees for unclear block billing entries and disallowing all fees for fees entries. Attorney's fees and costs of the Former Wife's expert are not awarded as they are not related to litigation regarding the entitlement to attorney's fees, but not for time spent litigating the reasonable amount of fees.

46. The number of hours reasonably expended by Mr. Kohlman is found to be 171.5 multiplied by the reasonable hourly rate of \$425 per hour produces a lodestar amount in this case of \$72,887.50 for the litigation of the passport/travel issue enforcement under Paragraph 26 of the parties' Custody Agreement.

47. Although it was not disclosed to the undersigned the amount of fees that have already paid by the Former Wife to her attorneys, the amount of \$3,183.60 (for debt set-off) and \$484.64 (for car insurance set-off) for a total of \$3,668.24 is to be deducted from the \$72,887.50 leaving a balance of \$69,219.26 being awarded to the Former Wife as reasonable attorney's fees plus costs in the amount of \$6,224.73.

48. Absent timely exceptions pursuant to Fla. R. Fam. L. P. 12.490, the Former Husband shall pay to the Former Wife the sum of \$75,443.99 in reasonable attorney's fees and costs for litigating the passport/travel issue plus prejudgment statutory interest retroactive to September 8, 2016 (the date of the Report granting the Former Wife entitlement to her reasonable attorney's fees and costs). Counsel for the Former Wife shall prepare the appropriate money judgment(s). The Court reserves jurisdiction to establish a payment plan on the \$75,443.99 owed by the Former Husband. The reservation of jurisdiction shall not be construed to preclude the issuance of execution relative to the money judgment(s) or preclude the Former Wife from seeking satisfaction of the money judgment(s) by all available legal means. Any payment plan should be established at the time of the determination of the pending modification actions.

49. The parties in this case have two minor children. The General Magistrate believes that it is the responsibility, as a matter of public interest, for the lawyers as well as any assigned judicial officer to be mindful about the amount being expended in this case for attorney's fees. The undersigned has repeatedly encouraged the parties to try to reach an amicable resolution of their case. Nevertheless, there are still several matters pending before the Honorable Court which will likely prove to be more complex to litigate than the passport/travel issue for which the Former Wife has expended in excess of \$168,550.43. The General Magistrate sincerely hopes that these parents will learn to co-parent more effectively so that they do not continue to deplete their assets by engaging in constant litigation especially considering that those assets could be used to ensure their children's prospects for a better lifestyle today and a fully paid college education in the future.

**WHEREFORE**, the undersigned files this Report with the Office of the Clerk of Court and recommends entry of an Order hereon.

**DATED** in Chambers at Miami-Dade County, Florida, this \_\_\_\_\_ day of <sup>SEP 27 2018</sup> \_\_\_\_\_, 2018.

  
General Magistrate

Cc: Parties' counsel via regular  
US mail

IN THE CIRCUIT COURT OF THE 11th  
JUDICIAL CIRCUIT IN AND FOR MI-  
AMI-DADE COUNTY, FLORIDA

FAMILY DIVISION  
CASE NO.: 11-031255-FC-16 PJ

IN RE: THE FORMER MARRIAGE OF:

EINATH BACH LEVY,  
Petitioner/Former Wife,  
and

SAMUEL SALOMON LEVY,  
Respondent/Former Husband

\_\_\_\_\_ /

**FORMER WIFE'S EXCEPTIONS TO THE  
"REPORT OF GENERAL MAGISTRATE AND NOTICE OF FILING"**

COMES NOW the Former Wife, EINATH BACH LEVY, and files these her *Exceptions* to the "Report of the General Magistrate and Notice of Filing" (hereinafter "Report") and as grounds therefore respectfully states:

**Introduction**

The Former Wife takes *Exceptions* to two legal conclusions in the Report, both which deal with payments of the Former Wife's reasonable attorney's fees and costs. The General Magistrate erred in failing to recommend that:

1. The Former Wife is entitled to prevailing party attorney's fees and costs after successfully defending against the Former Husband's allegations that she had breached the parties' Property Settlement and Support Agreement (hereinafter "Property Agreement" or "PSA").
2. The Former Wife is entitled to her reasonable attorney's fees and costs for litigating the amount of reasonable attorney's fees and costs pursuant to a finding that the Former Hus-

band had breached the parties Consent Custody and Visitation Agreement (“Custody Agreement”).

The Former Wife also takes an *Exception* in that the Report fails to address the costs incurred by Buchanan Ingersoll & Rooney as well as the fees and costs of the expert witness, Peter Kircher, Esq.

### **Statement of Facts**

This hearing before the General Magistrate involved two distinct issues which nonetheless were tried (at insistence of the Former Husband) at the same time: 1) the refusal of the Former Husband to allow the minor children to travel overseas with the Former Wife in violation of the Custody Agreement (“travel issue”), and 2) the Former Husband’s allegations that the Former Wife had breached numerous terms of the Property Agreement (“financial issues”).<sup>1</sup>

*The Former Wife prevailed on all issues.*

She sought attorney’s fees and costs from the Former Husband under the prevailing party provisions of both the Custody and Property agreements, as well as under Florida Statutes Section 61.16.

Paragraph 13 of the Property Agreement and paragraph 26 of the Custody Agreement both state in pertinent part:

In the event that either party should take legal action against the other by reason of the other’s failure to abide by this Agreement, the party who is found to be in violation of this Agreement shall pay to the other party who prevails in said action, the prevailing party’s reasonable expenses incurred in the enforcement of this Agreement, said expenses to

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<sup>1</sup> The Former Husband enumerated the financial issues in his *Motion to Compel Former Wife to Reimburse the Former Husband for Support Overpayments, Children’s Expenses, and Debt Incurred in the Name of the Former Husband, Motion for Credit Against Future Spousal Support Obligation as a Consequence of Money Advances to the Former Wife and Motion for Attorney’s Fees*. For convenience the Former Wife variously refers to this as the Former Husband’s *Motion to Compel*” or “financial issues.”

include, but not be limited to, reasonable attorney's fees, court costs, filing fees, court reporter appearance fees, copying costs, travel costs and transcription fees.

This case took eight full days of trial over a period of three years. The General Magistrate issued the first of her two Reports on September 8, 2016 which related to the "travel issues." She found the Former Husband had violated the Custody Agreement by preventing overseas travel of the minor children with their mother by, among other measures, destroying the children's passports. The Former Husband took *Exceptions* to that Report, but shortly before hearing dismissed them with prejudice.

The 2016 Report contained the following paragraph:

The Former Wife has an entitlement to reasonable attorney's fees, suit monies and costs pursuant to Paragraph 26 of the Custody Agreement for litigating her Emergency Motion for Contempt of Property Settlement and Support Agreement to Return Minors' Passports to Mother and Motion for Right to Travel with Minor Children, as well as the Former Husband's Supplemental Petition to Modify Custody and Visitation Agreement.

Subsequently, the General Magistrate conducted five full days of hearing to determine 1) the amount of reasonable attorney's fees and costs pursuant to the entitlement finding in the 2016 Report and 2) finish hearing the Former Husband's *Motion to Compel* compliance with the Property Agreement—i.e. the "financial issues." The hearing lasted so long in part because the Former Husband was represented by five different lawyers throughout the post-judgment litigation.

### **The 2018 Report**

The General Magistrate issued her "Report of General Magistrate and Notice of Filing" on September 27, 2018. In it, she recommended a finding that the Former Husband did not prevail on the financial issues, just as he had not prevailed on the custody issues. However, apply-

ing the exact same prevailing party fees provision, the General Magistrate found that while the Former Wife had an entitlement to fees on the custody issues, she did not on the financial issues.

The Report makes the following findings of fact:

The Former Husband did not prevail on enforcement of the Parties' PSA in his Motion to Compel. Since the Former Husband inaccurately claimed that he was owed the sum of \$35,144.91 as of March 26, 2013 (the date of his Motion to Compel's certificate of service) and, after extensive litigation, was only entitled to reimbursement of the sum of \$484.64 [for car insurance], he cannot be viewed as the prevailing party under paragraph 13 of the parties' PSA. Additionally, the Former Wife was not even apprised prior to the last hearing of the amount being sought for car insurance. A Motion to Compel should reasonably imply that at least a good faith effort was made to communicate the exact debt owed so that repayment could have been made without the need to file enforcement proceedings. Since this is not the case with respect to the Former Husband's Motion to Compel, there is no entitlement to attorney's fees and costs against the Former Wife under Paragraph 13 of the parties' PSA.

The Report, however, also makes two legal recommendations which caused the Former Wife to take *Exceptions*. Her first Exception is to the following recommended legal conclusion:

The Former Wife ... claims entitlement to prevailing party fees and costs in defending against the Former Husband's Motion to Compel. This type of relief is not encompassed in Paragraph 13 of the parties' PSA as entitlement to attorney's fees and costs is only contemplated "against the party who is found to be in violation of this Agreement."

Her second Exception is to the following recommended legal conclusion:

The undersigned does not find that the Former Wife is entitled to fees to litigate the reasonable amount of fees to be awarded in this case as the award of fees is based on a unique prevailing party clause in Paragraph 26 of the parties' Custody Agreement and not on statutory authority under Section 61.16, Fla. Stat.

The General Magistrate reserved ruling on “whether attorney’s fees and costs are appropriate with respect to the Former Husband’s Motion to Compel” under Florida Statute Section 61.16.

### **Standard of Review**

The errors of the General Magistrate are legal errors that appear on the face of the Report. The Former Wife is not contesting factual findings and therefore a transcript is unnecessary. This Court’s review is de novo.

### **Argument**

#### **Prevailing Party Fees Provision in Property Agreement is Reciprocal**

The Former Wife prevailed on all issues raised by the Former Husband in his *Motion to Compel*. As prevailing party, she is entitled to payment of her reasonable attorney’s fees and costs incurred in defense of the *Motion to Compel*. The General Magistrate erred in determining that only the party who alleges a breach of the Property Agreement is entitled to attorney’s fees and costs; the Former Wife, who prevailed by successfully *defending* against an allegation of a breach of the Property Agreement, has no entitlement to payment of her reasonable attorney’s fees and costs. This is both nonsensical and contrary to Florida Statutes.

Florida Statute Section 57.105(7) provides that prevailing party fees provisions in contracts (such as both the Custody and Property agreements) are reciprocal. If a contract provides that a party who is successful in proving a breach of contract is entitled to reasonable attorney’s fees and costs as prevailing party, then conversely the contract by statute also provides that a party who successfully defends against an allegation of breach of contract is entitled to reasonable attorney’s fees and costs, whether expressly stated in the contract or not.

Section 57.105(7) states:

If a contract contains a provision allowing attorney's fees to a party when he or she is required to take any action to enforce the contract, the court may also allow reasonable attorney's fees to the other party when that party prevails in any action, whether as plaintiff or defendant, with respect to the contract.

Florida's Courts have used this section to find entitlement to prevailing party attorney's fees and costs in situations, such as that of the Former Wife, where the party was successful in defending against an action for breach of contract, even if the contract contains explicit provisions that seemingly only permit the party seeking enforcement to obtain reasonable attorney's fees and costs. For example, the Court in Azalea Trace, Inc. v. Matos, 2018 Fla. App. LEXIS 7719 (Fla. 1st DCA 2018) held as follows:

Under section 57.105(7), when a contract provides prevailing-party fees for one party, the court may allow prevailing-party fees for the opposing party, even if the contract does not explicitly provide for them. In other words, the statute serves 'to statutorily transform a unilateral attorney's fees contract provision into a reciprocal provision.' Bank of New York Mellon Tr. Co., N.A. v. Fitzgerald, 215 So. 3d 116, 119 (Fla. 3d DCA 2017); accord Fla. Cmty. Bank, N.A. v. Red Rd. Residential, LLC, 197 So. 3d 1112, 1115 (Fla. 3d DCA 2016) ("[N]otwithstanding that the contractual fee provision is one-sided, entitling only one of the contract's parties to prevailing party fees, by operation of law section 57.105(7) bestows on the other party to the contract the same entitlement to prevailing party fees.").

Numerous other cases have reached the same conclusion with regard to defendant parties being entitled to attorney's fees and costs under a contract due to the application of Fla. Stat. 57.105. See Holiday Square Owners Ass'n v. Tsetsenis, 820 So. 2d 450, 2002 Fla. App. LEXIS 9766 (Fla. 5th DCA 2002) (association was entitled to an award of attorney fees under the reciprocity mandate of Fla. Stat. § 57.105(5), because attorney fees were provided for in the declara-

tion, and the association was the prevailing party in suit brought bY shopping plaza tenant); Ajax Paving Indus. v. Hardaway Co., 824 So. 2d 1026 (Fla. 2d DCA 2002)(stating that where a subcontract specified that only Hardaway would be entitled to fees for disputes arising from the contract, the pertinent statute provision “mandate[ed] that contractual fee provisions must impose reciprocal obligations and benefits on all parties to a given contract.”)

In her Report the General Magistrate made an explicit finding that the Former Husband did not prevail in his *Motion to Compel*. Implicit in that ruling is that the Former Wife is the prevailing party. As such, the Former Wife is entitled to payment of her reasonable attorney’s fees and costs for her successful defense of the Former Husband’s *Motion to Compel*, as provided for in paragraph 13 of the Property Agreement and Florida Statutes Section 57.105(7).

#### **Former Wife Is Entitled to Fees for Litigating Reasonableness of Fees**

The 2016 Report found that the Former Wife had an entitlement to payment of her reasonable attorney’s fees and costs regarding the “travel issue.” The Former Husband then spent almost four days—the hearing on the travel issue lasted just three days—arguing over the amount of reasonable attorney’s fees and costs for breach of the Custody Agreement. It is inequitable to require the Former Wife, the impecunious spouse, to bear the burden of paying her attorney’s fees and costs when she was wrongly drug into court, and the Court already has made an entitlement finding. It is often the case that the moneyed spouse—and this is a prime example—can seek to nullify a fees award by engaging in protracted litigation over reasonableness.

The appellate court addressed this issue in Schneider v. Schneider, 32 So. 3d 151, 153 (Fla. 4th DCA 2010), holding that a party in a dissolution of marriage action, unlike a civil case, does have an entitlement to “fees for fees.” As the Court held:

The assessment of fees in a marital distribution action is part of the court's duty to effect an equitable distribution of the parties' assets and income. The need and ability to pay requirement is tantamount to a finding of entitlement of one spouse to have the other spouse pay all or a portion of the spouse's fees. To determine that need and ability, however, the amount of those fees must also be considered. Therefore, the court in its discretion may assess fees for litigating both factors, as they are part and parcel of the equitable proceedings.

\* \* \*

...[T]he trial court has wide discretion in the award of reasonable and necessary fees. . . . [N]o ban on fees for litigating fees, as a matter of law, is contained either the statute or Rosen. . . . In this case, the court disallowed fees for litigating fees as a matter of law. Because we conclude that the court has discretion in that determination, we reverse and remand . . .

Id. at 157-158.

The fee entitlement in this case was by contract—the Custody Agreement—but this is still a Chapter 61 proceeding. As the Court held in Schneider, there are two factors to consider in a Chapter 61 case: there must be a finding of entitlement and then a determination of reasonableness. The first factor already has been established by this Court. The Schneider court made clear that a trial court has discretion to award fees for litigating this second factor, reasonableness. Without the ability to award fees for determining the amount of fees, the equitable distribution of income and assets is altered so that it no longer is an equitable result. Fees may be awarded for litigating fees because “they are part and parcel of the equitable proceedings.” Id. at 157.

The Schneider court distinguished Wight v. Wight, 880 So.2<sup>nd</sup> 692 (Fla. 2<sup>nd</sup> DCA 2004), which held that fees for fees was prohibited by the Florida Supreme Court's decision in State Farm Fire & Casualty Co. v. Palma, 629 So.2d 830 (Fla. 1993). Palma, however, is distinguish-

able on its facts: it dealt with contingency fees via a statute, not hourly fees as in family law cases. The statute in Palma was narrowly tailored to prevent attorneys from over-litigating. A Chapter 61 case, however, is different. First, the trial court has broad discretion to reduce fees if it believes a case has been over-litigated. Second and more importantly, the purpose of a fee award in a Chapter 61 proceeding is to level the playing field so that a wealthy spouse cannot prevail by default simply by running up the fees for collecting prevailing party fees.<sup>2</sup> As the Schneider court held:

The court in Wight theorized that permitting fees for litigating the amount of fees would give no incentive to the party who expected to win the award to limit its fees. We do not agree that this would routinely be the case. To the contrary, the party who expects to have to pay fees could litigate the amount of fees to excess, knowing that he or she would not be responsible to the other party for the fees incurred. It is also possible that the wealthier party may excessively litigate the fee amount for the purpose of harassing the other party.

Id. at 157. That is what occurred in this case; until a wealthy relative stepped in and loaned the Former Wife money to pay a portion of the fees she incurred, the Former Husband always had the advantage in any litigation as he was the only one who could afford a decent attorney, or one at all. The Former Wife, for instance, was unrepresented when the Custody and Property agreement were negotiated.

The Fourth District, however, went one step further than Schneider in its opinion Waverly at Las Olas Condominium Association, Inc. v. Waverly Las Olas, LLC, 88 So. 3d 386 (Fla. 4th DCA 2012), a contractual dispute that did not involve the equities of a Chapter 61 proceed-

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<sup>2</sup> The Second District subsequently recognized the split among the districts in a brief footnote in Baker v. Baker, 35 So. 3d 76, 78, (Fla. 2nd DCA 2010). The Baker court again applied Palma for the proposition that "limiting fees for fees has the advantage of encouraging parties to litigate fees in an efficient manner," but fails to acknowledge the equities in a Chapter 61 proceeding.

ing. Despite this, when considering a prevailing party fees provision similar to the one here, the Waverly court held that the reason such a provision was included was to “make whole” the non-breaching party. A party could only be “made whole” if *all* of its attorney’s fees and costs were paid, including those necessary to litigate the amount of fees.

In considering a fee award on appeal, the Fourth District acknowledged that, under Palma, prevailing parties are generally precluded from recovering “fees for fees.” But the plain and very broad contractual language in Waverly persuaded the court that the facts were distinguishable, and not controlled by Palma. The court explained that, “[u]nlike Palma, which relied upon a statute and limited fees to those incurred in litigating entitlement, the contractual provision here alone authorizes attorney’s fees for ‘any litigation’ between the parties under the agreement.” *Id.* at 389.

The prevailing party provision in this case involves a similarly broad contractual provision for prevailing party fees and encompasses all “reasonable expenses incurred in the enforcement of this Agreement said expenses **to include, but not limited to**, reasonable attorney’s fees, court costs, filing fees, court reporter appearance fees, copying costs, travel costs and transportation fees...” Custody Agreement, Paragraph 26 (emphasis added).

The language used in the Custody Agreement is sufficiently expansive to include any and all fees necessitated and, in any way related to, an enforcement action. This includes “fees for fees.” The General Magistrate erred as a matter of law in recommending that the Former Wife not be “made whole” by denying her the ability to recoup the fees she spent trying to effectuate the finding of entitlement to fees based upon the Former Husband’s breach of the Custody Agreement.

### **Failure to Address Fees and Costs**

The Former Wife also takes an *Exception* in that the Report fails to address the costs incurred by Buchanan Ingersoll & Rooney as well as the fees and costs of the expert witness, Peter Kircher, Esq. The Report does address the costs incurred by Buckner, Shifrin, Etter, Dugan, Bradfute & Kohlman, P.A.

### **Conclusion**

The General Magistrate erred as a matter of law in recommending to this Court that: the Former Wife should not recoup her reasonable attorney' fees and costs under the prevailing party provision in the Property Agreement after successfully defending against alleged breaches; and that the Former Wife was not entitled to payment of her reasonable attorney's fees and costs incurred in enforcing an entitlement finding after the Former Husband breached their Custody Agreement. The Report also fails to address the costs incurred by Former Wife's current attorney as well as the fees and costs incurred by her expert witness, Peter Kircher, Esq. It is respectfully requested that this Court grant the Former Wife's *Exceptions* on those three points, and remand to the General Magistrate for a determination of reasonable attorney's fees and costs for those issues.

WHEREFORE the Former Wife, EINATH BACH LEVY, requests this Court grant her *Exceptions* and the relief prayed for herein, award her reasonable attorney's fees and costs for bringing these *Exceptions*, and grant any other relief this Court deems equitable and just.

Levy v. Levy  
Case No. 11-031255 FC 16 PJ  
*Former Wife's Exceptions to General  
Magistrate Report*

Respectfully submitted,

**BUCHANAN INGERSOLL & ROONEY, PC**  
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By: s/ Robert F. Kohlman  
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*Counsel for former Wife, Einath Bach Levy*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument has been served via email on October 9, 2018, upon: Steven E. Blumenthal, Esq., Law Offices of Steven H. Blumenthal, P.A., 1930 Harrison Street, Suite 205, Hollywood. Florida 33020.

s/ Robert F. Kohlman.

BUCHANAN INGERSOLL & ROONEY PC

4840-5813-2087, v. 3

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT,  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

FAMILY DIVISION  
Case No.: 2011-031255-FC-04  
Section: 16

IN RE: THE FORMER MARRIAGE OF

EINATH BACH LEVY,

Petitioner/Former-Wife,

and

SAMUEL SALOMON LEVY,

Respondent/Former-Husband.

FORMER-HUSBAND'S CROSS-EXCEPTIONS  
TO REPORT OF GENERAL MAGISTRATE

COMES NOW, the Respondent/Former-Husband, SAMUEL SALOMON LEVY, by and through his undersigned attorney, and hereby files his Cross-Exceptions to Report of General Magistrate, and states as follows:

Introduction and Statement of Facts

1. Three pleadings were tried before the General Magistrate pursuant to the Court's Orders of Referral: (i) Former-Husband's Motion to Compel Former Wife to Reimburse the Former Husband for Support Overpayments, Children's Expenses, and Debt Incurred in the Name of the Former-Husband, Motion for Credit Against Future Spousal Support Obligation as a Consequence of Money Advanced to the Former-Wife, and Motion for Attorney's Fees and Costs (hereinafter, "Motion to Compel"); (ii) Former Wife's Emergency Motion for Contempt of Property Settlement and Support Agreement to Return Minor's Passports to Mother and Former Wife's Motion for Right to Travel with

Children (hereinafter, "Motion for Contempt"); and (iii) Former Husband's Supplemental Petition to Modify Consent Custody and Visitation Agreement.

2. The Former-Husband's Motion to Compel addressed: (i) amounts owing to the Former-Husband from the Former-Wife under the parties' Property Settlement and Support Agreement ("PSA"),<sup>1</sup> including contributions to children's expenses; (ii) timesharing, transportation, telephone contact and other violations by the Mother of the parties' Consent Custody and Visitation Agreement ("Custody Agreement"); and (iii) a request for attorney's fees.

3. The Mother's Motion for Contempt addressed the Father's violation of the Custody Agreement by not returning the children's passport, and the Mother's request to be permitted to travel with the children overseas.

4. The sole provision of the parties' Custody Agreement addressing the passports or international travel, Paragraph 13, provides: "Mother shall hold Valentino's passport when Valentino is not traveling abroad with the Father. Mother will not withhold Valentino's passport from Father for any reason and will immediately provide passport to Father upon request."

5. Return of the passports to the Mother and her being able to travel internationally with the children were resolved by the September 23, 2014 Agreement of the parties and September 30, 2014 Agreed Order on Applicability of the Uniform Custody Jurisdiction and Enforcement Act, which together provided substantial additional security to both parents to secure return of the children from international travel, including

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<sup>1</sup> The original settlement agreements and orders were entered in Virginia in 2010 and 2011.

providing clarification regarding application of Hague Convention provisions, and each parent's deeding real estate to the other to provide funds for the litigation of an international custody dispute if needed.

6. There were hearing before the General Magistrate on May 14, 2014, September 23, 2014 and October 28, 2014, followed by the September 8, 2016 Report of General Magistrate as ratified by the Court which ("2016 Report"): (i) denied the Father's Petition to Modify Custody<sup>2</sup>; (ii) granted the Mother's Motion for Contempt in part, did not find the Father in contempt, but provided that the Mother would continue to hold the passports; (iii) determined that the Former-Wife had an entitlement to reasonable attorney's fees, costs and suit monies pursuant to the attorney's fees prevailing party enforcement provisions in the parties' Custody Agreement; (iv) deferred ruling on the amount of reasonable fees, costs and suit monies; and (v) deferred ruling on the Former-Husband's Motion to Compel.

7. Following four (4) days of additional hearings culminating on July 25 and 26, 2018, the current September 27, 2018 Report of the General Magistrate was filed, setting forth its findings and recommended rulings regarding the Former-Husband' Motion to Compel, and fee and costs for the Former-Wife ("Report of the General Magistrate" or "Report").

8. The prevailing party enforcement provision in the Custody Agreement providing for fees is found in Paragraph 26 of the Agreement:

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<sup>2</sup> The Petition to Modify had originally sought to restrict international travel and provide for the Father's holding the passports, but following the parties' September 23, 2013 Agreement was limited to requesting that each parent hold one child's passport.

In the event that either party should take legal action against the other by reason of the other's failure to abide by this Agreement, the party who is found to be in violation of this Agreement shall pay to the other who prevails in this action, the prevailing party's reasonable expenses incurred in the enforcement of this Agreement, said expenses to include but not be limited to, reasonable attorney's fees, court costs, filing fees, court reporter appearance fees, copying costs, travel costs and transcription fees.

9. Despite the fact, as explained also in the Findings of the General Magistrate, that "[t]here were not novel or difficult issues involved with respect to the passport/travel matter, especially for an attorney with Mr. Kohlman's extensive experience" and that "[m]oreover, only seven exhibits were admitted into evidence on the passport/travel issue and all were the Former Husband's exhibits.....and "that the only two witnesses [regarding the passport/travel issue] were the parties,"<sup>3</sup> the Former-Wife sought an award of a total of \$168,550.43 for litigating this issue, including "fees for fees".

10. The Report of the General Magistrate, reduced the total fees and costs for the Former-Wife and denied fees for fees, leaving an award of fees and costs for the Former-Wife of \$79,112.23, which following set-offs for items in the Former-Husband's Motion to Compel, left a total of \$75,443.99 as the total recommended award to the Former-Wife.

11. The Former-Husband's cross exceptions as set forth herein will address grounds for significant further reductions of the fees and costs award to the Former-Wife; will address additional items from the Husband's Motion to Compel which should have been granted so as to provide a further set-off against any amounts owing to the Former-Wife; and will address an Exception to the July 25 and 26, 2018 hearing on this matter

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<sup>3</sup> September 27, 2018 Report of General Magistrate at para. 30, p. 10.

going forward and an award of fees to the Former-Wife, while the Former-Husband's Motion for Reconsideration of the 2016 Report of the General Magistrate was pending.

### Exceptions

#### Exception One – Pending Motion for Reconsideration and Determination of “Prevailing Party” Status

12. The Former-Husband renewed at the start of the hearing on July 25, 2018, his objections as set forth and based on his July 9, 2018 Motion for Reconsideration and July 10, 2018 Motion for Continuance. The Motion for Reconsideration is currently pending before the Court; a hearing date has been requested.

13. As set forth in the Motion for Reconsideration, the Court's Order ratifying the 9/8/16 Report of General Magistrate, because it set forth and entitlement to fees but not an amount, was a non-final order and subject to reconsideration by the Court.

14. As set forth in the Motion for Reconsideration, in determining which party is a prevailing party for awarding fees under the prevailing party enforcement provisions in the parties' agreements, the Court should look to which party prevails on the significant issues in the case. *See, e.g. Moritz v. Hoyt Enterprises, 604 So. 2d 807 (Fla. 1992)*; and the determination should be made at the conclusion of the case when all pending claims are resolved. *Newman v Guerra, 208 So. 3d 314 (Fla. 4th DCA, 2017)*.

15. As set forth further in the Motion for Reconsideration, when both parties prevail on significant issues in the case, it is appropriate for the Court to rule that there has been no “prevailing party” in a matter, for the purpose of determining a prevailing party for attorney's fees. *See, e.g. Radosevich v. Bank of N.Y. Mellon, 43 Fla. L. Weekly D 731 (Fla 3rd DCA, April 4, 2018)*; *Loy v. Loy, 904 So. 2d 482 (Fla. 3rd DCA, 2005)*;

*Zhang v. D.B.R. Asset Management*, 878 So. 2d 386 (Fla. 3rd DCA, 2004); *Terranova Corp. v. 1550 Biscayne Assocs. Corp.*, 912 So. 2d 347 (Fla. 3rd DCA, 2005); *Brevard County Fair Ass'n v. Cocoa Expo*, 832 So. 2d 147 (Fla. 5th DCA, 2002); *KICN, Inc. v. Canpro Investments*, 675 So. 2d 222 (Fla. 2nd DCA, 1996).

16. Here, the terms of the enforcement provisions in the parties' agreements provide for an award of fees based on a determination of which party is found to have violated the provisions of the Agreements.

17. Issues still currently pending before the Court include the Former-Husband's July 25, 2017 Supplemental Motion to Compel which alleges multiple timesharing, transportation and telephone contact violations by the Former-Wife, as well as the Former-Wife's ongoing violation of the Cohabitation provisions in the parties' Custody Agreement, and contributions to the children's health insurance owed by the Former-Wife.

18. As explained in the recent report of the General Magistrate, "there are still several matters pending before the Honorable Court which will likely prove to be more complex to litigate than the passport/travel issue...." September 27, 2018 Report of General Magistrate at para. 49, p. 15.

19. A significant rationale for applying the "significant issues" test set forth by Florida courts for determining an award of attorney's fees is to discourage needless litigation. *See, e.g., Trytek v. Gale Industries*, 3 So. 3d 1194 at p. 1203 (Fla. 2009).

20. In this matter before the Court, we have had a determination regarding attorney's fees for one prevailing party enforcement issue (the passport issue), when as

the General Magistrate points out there are still significant issues remaining to be adjudicated.

21. It could be argued that the harm if any has already been done; we are where we are at having spent numerous days litigating attorney's fees for one discrete issue, and should therefore simply proceed with this last step in making that determination

22. However, there is still significant harm that can be done if we remain on the current course – for example, multiple hours (or days) of litigation to determine prevailing party enforcement fees to be awarded to the Former-Husband if he prevails on the cohabitation and other timesharing, transportation and telephone contact violations addressed in the Former-Husband's Supplemental Motion to Compel.

23. It is significant to point out that the Supplemental Motion to Compel could have been heard as well before the General Magistrate, thus allowing an adjudication of all issues, but the Former-Wife objected to the Referral of this Motion.

24. In addition, as set forth in testimony before the General Magistrate and as will be established also in the hearing on the Former-Husband's Supplemental Motion to Compel (scheduled for December 11, 2018), the Former-Wife has a long history of violating nearly every provision of the parties' original Custody Agreement from Virginia as well as the Temporary Timesharing Order entered here in Florida, and the Former-Husband has been litigating these violations for years during the pendency of this action.

25. It is inequitable to award fees to the Former-Wife on one prevailing party enforcement issue while multiple remaining pending, versus following the proscription of

Florida appellate court rulings of determining which party has prevailed on the significant issues in the case, and that neither is a prevailing party if both prevail on significant issues.

26. It is important to note as well that the Former-Husband pays virtually all of the expenses for the children with little or no contribution from the Former-Wife, while the Former-Wife lives virtually expense free in a home provided by her brother who is a multi-millionaire, and who is also financing the Former-Wife's litigation in this matter.

27. It had been argued that the funds provided by the Former-Wife's brother are loans, with no evidence of any repayment or requirement to repay, as well as no explanation as to whether other amounts or items provided by the brother to the Former-Wife, with no evidence of any repayment – e.g. luxury yacht trips, trips to Europe, free use of a home, are loans as well.

#### Exception Two – Overpayment of Support

28. In his Motion to Compel the Former-Husband alleged overpayments of spousal support, and requested either a return of the overpayments or a credit for the amount overpaid.

29. The Report of the General Magistrate denied this request based on the overpayment not being the fault of the Former-Wife and there being no clear and convincing evidence that as of July, 2018 there still was a net overpayment by the Former-Husband.

30. The General Magistrate ruled during the proceedings that amounts recoverable for the Former-Husband were limited to amounts specifically pled by the Former-Husband in his Motion to Compel, and ruled multiple times, mostly in response

to objections from the Former-Wife, that evidence regarding amounts post March 23, 2013 – the date of the Motion to Compel, were inadmissible.

31. Therefore, based on the motions before the General Magistrate pursuant to the Court's Orders of Referral, as well as the rulings during the proceeding before the General Magistrate, the time-period and amounts in consideration were the amounts owing as of the date of the Former-Husband's Motion to Compel.

32. The evidence admitted into evidence in this matter on July 26, 2018, including a summary of amounts paid for spousal support by the Former-Husband prepared by the Former-Wife, established an overpayment of at least \$2500 as of the date of the Motion to Compel.

33. As set forth in the September 8, 2016 Report of the General Magistrate at paragraph 30, page 8: “[t]he parties have stipulated that if money is owed to the Former Husband from the Former Wife as requested in that Motion [to Compel], those monies will be used as a set off against attorney's fees and costs awarded to the Former Wife....”

34. Pursuant to this provision of the Report, the \$2500 should be available as a set-off against any fees awarded to the Former-Wife.<sup>4</sup>

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<sup>4</sup> In the alternative, the \$2500 should be available as set-off based simply on the overpayment by the Former-Husband and the availability of even voluntary overpayments as set-offs against other amounts owed. *See* further discussion in Exception Two. In addition, a clear and convincing evidentiary standard would not be applicable here, and the issue of the appropriateness of requested credits or set-offs should be decided with reference to the 2016 Report or Florida caselaw addressing set-offs or credits for overpayments, including voluntary overpayments. This is not an issue, for example, under section 61.075 of whether jointly titling non-marital property while the parties are married creates a gift. This objection or exception re: use of a clear and convincing standard applies to other uses of that standard in the Report.

### Exception Three – Cash Advances

35. The Former-Husband requested in his Motion to Compel a credit for cash advances he made to the Former-Wife at the request of the Former-Wife.

36. Although the evidence at the hearings on this matter established the existence of the \$4750 in advances, the Report finds that the monies were either a loan or a gift and that the Former-Husband may have a right to seek reimbursement in Small Claims Court, but that there is no right of enforcement under the Property Settlement Agreement.

37. The evidence established that the Mother made the requests to the Father in emails or texts indicating that she needed money for food for the children, or to have transportation or electricity.

38. The \$4750 advanced should be available as a credit as requested by the Former-Husband or as a set-off against any fees owed to the Former-Wife. *See, e.g. Garcia v. Gonzalez*, 654 So. 2d 1064 (Fla. 3<sup>rd</sup> DCA, 1995) and *State ex rel. Pittman v. Stanjeski*, 562 So. 2d 673 (Fla. 1990). *Pittman* specifically refers to payments made in response to exigencies of the family or a family emergency. The Former-Husband respectfully submits to the Court that the Mother's request for money for food for the children or to have transportation for the children should fall within the category of direct payments for family exigencies, and should support the availability of a credit or set-off for the Father.<sup>5</sup>

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<sup>5</sup> *See, also, Tash v. Oesterle*, 380 So. 2d 1316 (Fla. 3<sup>rd</sup> DCA, 1980) and *Department of Revenue ex rel. Cherta v. Cherta*, 711 So. 2d 1341 (Fla. 3<sup>rd</sup> DCA, 1998) (which reaffirms the standard position that voluntary payments are normally treated as gifts, but gave credit in that case because “there was competent substantial evidence to support the finding that the cash payments made to the minor child and/or the maternal grandmother were expressly for the child's support and in accordance with the former husband's agreement with the former wife regarding support.”) In

#### Exception Four – Former-Wife’s Share of Health Insurance Premium

39. As set forth in the Report of the General Magistrate, the parties’ Property Settlement Agreement provided for the parties sharing health insurance premiums in proportion to their gross incomes used in for purposes of determining child support.<sup>6</sup>

40. The Report denies reimbursement from the Former-Wife based on the Former-Husband’s failing to prove by clear and convincing evidence the gross incomes used to calculate child support at the time of the Virginia divorce, and therefore the Former-Wife’s share of the health insurance expenses.

41. Testimony at the hearings before the General Magistrate established that the Former-Husband’s annual income at the time of the Virginia Final Judgement was \$210,000, and that the Wife’s income was at least \$51,000 (her \$4250/mo. alimony multiplied by 12).<sup>7</sup>

42. The Husband testified as to his attorney having done the child support calculation as he understood using a Virginia website in which income amounts were

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this matter before your Honor, the FW knew of the payments, often requesting them due to family emergencies she reported to the FH; and the payments were clearly for the benefit of the children. In addition, and although the *Garcia, Pittman, Tash and Cherta* cases establish further exceptions, when credit or an offset is not provided it is sometimes on the basis that it would create a hardship on the child by reducing future support payments. Here opposite factors are at work: it is the Father that provides all or virtually all of the support for the children, and the Mother is seeking a large payment of fees from the FH, taking away from his ability to provide for the children, for fees which already have been paid or are being paid by her multi-millionaire brother. The General Magistrate noted at p. 117, beginning at line 13 of the transcript for the 9-23-14 hearing that: “What I’m looking at is – realistically in this case is, you know, the father is really meeting significant financial obligations”, and then referencing money spent for fees that the funds “could have helped a lot towards these two children.” *Id.* The Mother on the other hand has had the litigation financed by a multi-millionaire relative who also provides a home for the Mother as well as luxury yacht trips and travel to Europe. The FH is not requesting an affirmative payment from the FW, simply a set-off against attorney’s fees.

<sup>6</sup> The agreement provided initially for the Father’s paying for health insurance, but for sharing of costs upon the Father’s losing his employer provided insurance, which condition was met for the period of time in question in the proceedings before the General Magistrate.

<sup>7</sup> The Former-Husband was able to inquire regarding income amounts used in calculating child support at the time of the Virginia divorce, but consideration of this issue was limited at the July 26, 2018 hearing.

entered and that the website then “spits out” the child support amount. Transcript for 5-14-14 hearing, p. II-183, line 1. In addition, evidence was proffered at the July 26 hearing, but not admitted into evidence, that using a Virginia child support calculator, the incomes above yielded a child support amount almost exactly the same as the child support set forth in the parties’ PSA and ordered by the Virginia court.

43. The General Magistrate noted during the proceedings that the Former-Wife’s income used for calculating child support could have been \$0, but such an interpretation would yield meaningless the provision calling for the contribution in proportion to the gross incomes used for calculating child support. A provision in an agreement should not be interpreted so as to render the provision meaningless.<sup>8</sup>

44. The evidence before the General Magistrate established that the Former-Husband incurred \$2563 in health insurance premiums for the minor children during the time-period in question, and therefore the Former-Wife should be found to owe the 20% (51,000/261,000) of this amount -- \$512.60. This amount should be set off against any amounts owing by the Former-Husband for fees, pursuant to paragraph 30 of the 2016 Report of General Magistrate, or under Florida case law providing for set-offs or credits against amounts owed.

45. The Report of the General Magistrate references also testimony of the Former-Wife that she needed to obtain her own health insurance for the minor children, however no other evidence was presented to support this claim; there was no testimony or evidence as to the amount the Former-Wife paid for the claimed insurance; all

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<sup>8</sup> In addition, it would have been appropriate for the Court to determine each party’s share of the health insurance premiums based on each party’s share of income during the time-periods in question.

documentation of health expenses or office visits involving insurance payments submitted into evidence or testified to by either party was under health insurance provided by the Former-Husband with none of the visits or expenses under insurance provided by the Former-Wife; and the health insurance information for the policy provided by the Husband was on file with the children's doctor's office. Although it is not stated in the Report that this factor of potential health insurance provided by the FW would alone support denying the Father's claim regarding health insurance, a finding that the FW provided health insurance is not supported by the evidence at the hearing, and should not be accepted by the Court.

#### Exception Five – School Tuition

46. The Report of the General Magistrate denies reimbursement of amounts paid by the Former-Husband, based on the PSA only providing for reimbursement of College Expenses.

47. The PSA however, in paragraph 1, provides for the contribution of 10% of sales commissions by the Father and 10% of net income by the Mother to "educational expenses for the minor children." The payments were supposed to have been made via contributions to an account established by the parents, which was not done, but the provision nevertheless established the basis in the agreement for each party's contribution to educational expenses for the minor children, not just for College Expenses.

48. During all times in question, the Former Wife's gross income was at least \$51,000 per year, and her 10% contribution should at a minimum be calculated based on this amount, and available as a set-off to any fees owed by the FH.<sup>9</sup>

49. The evidence at the hearings clearly established that both parties signed the school tuition contracts with the school.

Exception Six – Debts Incurred in Former-Husband's Name, Car Insurance, and Car Title

50. The Report of General Magistrate finds that \$3183.60 in debt was incurred by the Former-Wife in the name of the Husband, not paid by the Former-Wife, and is therefore a set-off against attorney's fees owed by the Former-Husband. The Report, however, recommends denial of the Former-Husband's claim for enforcement under paragraph 8.F. of the PSA, because the Husband had not paid the debts and therefore the agreement would require the Former-Wife's payment to the third-party creditors but not to the Former-Husband.

51. The evidence at the hearings established that the Former-Wife was notified of the existence of the debts.

52. In addition, paragraph 8.F. requires the Wife to pay the debts within thirty (30) days of discovery, which the Wife failed to and to hold the Husband harmless with respect to the debts.

53. Therefore, based on the Former-Wife's having failed to pay the debts as required by the PSA, and also thereby failing to hold the Husband harmless (the Former-

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<sup>9</sup> The PSA also required the Mother to submit updated financial information yearly (paragraph 2) and make her 10% payment quarterly which the Mother failed to do. The total tuition the Father paid for the children during the years in question was \$25,949.94.

Husband testified as to the effect of the debts on his credit) the Former-Wife should be found to have violated the terms of the PSA, in addition to the set-off for the Former-Husband.

54. Similarly, paragraph 8.C. of the PSA requires the Former-Wife to hold the Husband harmless for any claim arising from the BMW X5 she was awarded, and to maintain insurance for the vehicle. The Former-Wife was required to refinance the car within 90 days, and failed to obtain insurance while the car was still in the name of the Husband, forcing him to pay for insurance, and also did not pay the cost to title the car.

55. The General Magistrate ruled that the Husband was entitled to a set-off of \$484.64 for the pro-rated amount of insurance he paid, but that the Former-Husband's Motion was denied as to enforcement.

56. The PSA, however placed on the Former-Wife an affirmative obligation to obtain insurance which she failed to do; the Former-Husband took legal action against the Former-Wife because of this failure; and the Former-Wife should be found to have violated the PSA, entitling the Former-Husband to attorney's fees and costs under the enforcement provision found in paragraph 13 of the PSA.

57. The Report denied the Former-Husband's claims for the \$400 for the title for the car, on the grounds that since the agreement was entered into in the State of Virginia, Paragraph 8.C. is not sufficiently broad to cover State of Florida car title fees. The parties agreed on the record however that the provisions of the domesticated Virginia agreements and orders are to be interpreted under Florida law; and in any event a provision providing that the FW holds the FH harmless with respect to all claims and also

is responsible for property taxes, based on the plain meaning of the terms, is broad enough to encompass car title fees. There is not a good reason to interpret a provision which on its face holds each party fully responsible for items with respect to the vehicle they received, to except out car title fees.

Exception Seven – Former-Husband’s Attorney’s Fees for Former-Wife’s Violations of Custody Agreement

58. The Report of the General Magistrate denies the Former-Husband’s request for attorney’s fees incurred, finding that no retainer agreement or detailed billing statements were admitted into evidence for the Former-Husband’s former attorney Richard Preira, Esquire.

59. Mr. Preira testified that he was retained by the Former-Husband, the matters for which he was retained, as to his hourly rate, and as to the fees incurred and paid by the Former-Husband.<sup>10</sup>

60. Mr. Preira’ detailed billing statements (105 pages) were filed by the Former-Husband with the Court on January 11, 2018 and served on the Former-Wife via a Notice of Intention to Use Charts and Summaries, and Mr. Preira’s Sworn Affidavit of Attorney’s Fees and Costs was filed with the Court the next day on January 12, 2018 (the Affidavit referred to the billing statements attached as Exhibit A, but did not attach the billing statements filed the previous day).

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<sup>10</sup> See also, e.g., *O’Malley v. Freeman*, 241 So. 3d 204, 206 (Fla. Dist. Ct. App. 4th Dist. April 4, 2018)(where no fee agreement attorney’s fees recoverable on quantum meruit basis). Although the transcript for the July 26 hearing is still to be reviewed, based on the undersigned’s recollection there was no objection by the Former-Wife during the hearing as to whether Mr. Preira had in fact been retained by the Former-Husband and as to Mr. Preira’s hourly rate billed to the Former-Husband, based on whether the retainer agreement was introduced into evidence.

61. The Former-Husband at the July 26, 2018 hearing sought to introduce into evidence the above billing statements of Mr. Preira, but the statements were not admitted into evidence based on minimal redactions in the statements (some small portions were “whited out”), despite their being no evidence that the statements failed to accurately reflect or describe the time and fees incurred and paid by the Former-Husband or that the minimal redactions prevented counsel from adequately reviewing the statements, and despite Mr. Preira’s testimony that: he had reviewed the billing statements; and that the amounts he was testifying to accurately reflected the work on the case and the fees incurred.

62. In addition, Mr. Preira testified as to the amounts of fees incurred as reflected on a separate prepared summary of fees incurred by month, after backing out the fees related to the passport/travel issue, and of the resulting total of the \$27,376.50 in fees claimed by the Former-Husband.<sup>11</sup> This summary was admitted into evidence.

63. Counsel for the Former-Wife had an opportunity to and cross-examined Mr. Preira regarding entries on the billing statements, which answers to cross examination confirmed the issues addressed by the items questioned by counsel, that the billing entries questioned were for issues on which the FH was seeking enforcement, and that the entries did not relate to the passport/travel issue on which the Former-Wife had prevailed.

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<sup>11</sup> Mr. Preira testified also that the \$27,376.50 reflected an additional \$3825 in reductions he had applied in his review in preparation of the hearing, for work on passport/international travel issues during the entire period of his representation of the Former-Husband up through the beginning of 2014, which had the effect of the \$27,376 reflecting a small understatement of the fees incurred by the Former-Husband for his Motion to Compel up through March 23, 2013, the time-period for which testimony was allowed into evidence at the July 26, 2018 hearing date.

64. Counsel for the Former-Husband finished his questioning of Mr. Preira, and then called the Former-Wife to testify

65. The billing statements for Mr. Preira should have been allowed into evidence. *See also, Executive Square, Ltd. v. Delray Executive Square, Ltd.*, 553 So. 2d 803, 803 (Fla. 4th DCA 1989)(ruling that it is not mandatory that billing statements or the fee contract be placed into evidence). Here the billing statements were filed with the Court and served on the Former-Wife in advance of the hearing, offered into evidence but not accepted, and Former-Wife's counsel cross-examined Mr. Preira on the billing statements.

66. If your Honor were to conclude that the billing statements and fee contract presented fatal errors for the Former-Husband's claim for fees, then, for several reasons, a subsequent hearing should be ordered to determine the amount of a fees for the Former-Husband, if it is determined that the Former-Husband has an entitlement to fees.

67. At the outset with regard to this issue, it is important to note that in family law cases pleading a request for fees generally includes an implicit request that the amount of fees be determined at a subsequent hearing, after an entitlement to fees is determined. *Evans v. Evans*, 801 So. 2d 130 (Fla. 4<sup>th</sup> DCA, 2001), *rehearing granted*, *Evans v. Evans*, 2001 Fla. App. LEXIS 19260 (Fla. Dist. Ct. App. 4th Dist. Dec. 21, 2001); *Perez v. Perez*, 846 So. 2d 685 (Fla. 4<sup>th</sup> DCA, 2003); *Seigel v. Seigel*, 715 So. 2d 326 (Fla. 2<sup>nd</sup> DCA, 1998); *Iribar v. Iribar*, 510 So. 2d 1023 (Fla. 3<sup>rd</sup> DCA, 1987).

68. In *Iribar* the Court explained, as part of the rationale for ruling that the "application for attorney's fees and costs implicitly carried with it a request for a separate

hearing on the *amount* of attorney's fees and costs (emphasis in original)" that such an approach is appropriate in dissolution cases because prior to litigating fees a party needs to know the results obtained in the case. *Iribar, supra*, at p. 1025.

69. Even were this not a rule that applied in all cases, without exception, it seems that the default rule which should have been applied in this case was scheduling a hearing on the amount of fees, versus denying fees.

70. This conclusion is particularly appropriate in this case. There had not been a determination yet that the Former-Husband was entitled to fees under the enforcement provision in the Custody Agreement (paragraph 26 of the Agreement). The Former-Husband had four prior attorneys who have represented him in litigating his Motion to Compel, and it is hard to see how the assumption would be here that it would appropriate or efficient to have the attorney's present, plus potentially an expert, to testify at the July 25 and 26 hearing dates, prior to a determination of entitlement to fees.<sup>12</sup>

71. In addition, it had been discussed at the prior hearing on May 22, 2018, that if the Former-Husband was found to have prevailed on issues of parenting plan violations by the Former-Wife, the parties would need a subsequent hearing to address attorney's fees, as was done with regard to the Wife's claims and her claim for fees (*see also*, Former-Husband's July 10, 2018 Motion for Continuance noting same);<sup>13</sup> and the Court

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<sup>12</sup> The initial intended purpose of Mr. Preira's testimony at the July 26, 2018 hearing was to rebut a claim by the Former-Wife's attorney's fees expert. The expert had claimed that because Mr. Preira fees were approximately a total of \$65,000 for the entire period of his representation, and Mr. Jonasz total fees were approximately \$30,000 for a combined amount of \$95,000, fees in excess of \$100,000 were appropriate for the Former-Wife. This testimony by the FW's expert was misleading to the Court, because only a fraction of the fees for Mr. Preira addressed the passport issue, while the preponderance of the fees as clearly testified to by Mr. Preira addressed enforcement efforts by the Former-Husband.

<sup>13</sup> There was discussion at the July 26, 2018 hearing as to whether this was just a point raised by counsel for the Former-Husband or whether the Court expressed agreement (the transcripts for these last 2 days are still to be

noted during the May 22, 2018 hearing that the Court was open to and time would be provided to the parties if they chose to continue their litigation, but that in their interest and the interests of the children they should seek to resolve their case.<sup>14</sup>

72. If the Court concludes that that inadequate evidence was submitted to support the fees testified to by Mr. Preira, original billing statements and other documentation can be provided at a subsequent hearing to address the amount of fees.

73. In any event, a subsequent fees hearing as to the amount of fees will be needed because the General Magistrate at the July 26 hearing limited testimony on fees to fees incurred on or before the March 23, 2013 date of the Former-Husband's Motion to Compel, on the rationale that the Court would address allegations regarding fees set forth in the body of the Motion to Compel as in a sense a damages claim, but withhold ruling and reserve on fees requested in the Wherefore clause of the Motion.

74. Findings of a General Magistrate can represent error and a denial of due process if there is inadequate time for the parties or a party to present their case. See, e.g., *Quincoces v. Quincoces*, 10 So. 3d 657 (Fla. 3<sup>rd</sup> DCA, 2009).

75. If fees are denied to the Former-Husband on this first basis stated in the Report of the General Magistrate, the Former-Husband in effect will have been denied an opportunity to fully present his case.

76. The Report of the General Magistrate states in addition a second rationale for denying an award of fees to the Former-Husband, to wit that it is not clear under what

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reviewed), but as argued herein and further below, it does not seem that the appropriate result would be to deny the Former-Husband an opportunity to present evidence for fees.

<sup>14</sup> The FH could have chosen to forgo cross-examination of counsel for the FW which continued through July 25 and half of the 26<sup>th</sup>, but as the Report of the General Magistrate indicated, addressing the FW's attorney's billing entries was important in reducing the fees awarded – the FW had been requesting in excess of \$168,550 in fees and costs.

theory the Former-Husband was claiming fees, and that there was not sufficient evidence presented to demonstrate entitlement to fees under Paragraph 26 of the parties' custody agreement.

77. Attorney's fees under Paragraph 26 of the Custody Agreement are available where a party who takes legal action by reason of the other party's not complying with the agreement and prevails, and the other party is found to be in violation of the agreement.

78. As set forth in testimony on July 26, 2018 by the Former-Husband and during hearing dates in 2014 as well, the Former-Wife repeatedly and continuously violated the timesharing, transportation, alienation of affection, and telephonic contact provisions of the parties' Custody Order.

79. Timesharing, alienation of affections, parental responsibility, transportation, telephonic contact and other violations of the Custody Agreement testified to by the Former-Husband during the hearings before the General Magistrate in 2013 and 2014 included:

a. Testimony by the Father regarding the Mother telling the parties' son that the Father was trying to take him away from her, that the Father was stopping them from going to Panama, and having the five (5) year old child tell the Father that the Mother is not going to kidnap him. Transcript, June 27, 2013 hearing, p. 14, beginning line 4.

b. Additional testimony by the Father regarding the Mother's discussing the pending case with the children and the parties' young child asking the Father about why they can't live in Panama. Transcript 5-14-14 hearing, p. I-80, line 7.

c. Testimony by the Former-Husband that the Former-Wife repeatedly communicated with him through the children – e.g. having the parties' five (5) year old child tell the Father that the Mother needs money for gas, needs the Father to pick the child up a certain time. Transcript, June 27, 2013 hearing, p. 14, beginning line 10. Paragraph 1 of the Custody Agreement proscribe such communications through the children.

d. The Mother's refusing to provide any transportation requiring the Father to provide all transportation for timesharing. Transcript 5-14-14 hearing, p. I-56, beginning line 23.<sup>15</sup>

e. The Mother's withholding or threatening to withhold timesharing based on incorrect claims that the Father has not paid adequate support. Transcript 5-14-14 hearing, p. I-58, beginning line 16.

f. The Mother's physically, in anger, ripping the parties' son out of the Father's arms outside a school event in December 2012, based on the Mother's incorrect assertion that it was her time for timesharing, requiring intervention by counsel to subsequently obtain the holiday timesharing for the Father. Transcript 5-14-14 hearing, p. I-59, beginning line 23.

g. Inability to obtain telephone contact with the children. Transcript 5-14-14 hearing, p. I-60, beginning line 15.

h. Multiple incidents of insulting the Father in front of the children. Transcript 5-14-14 hearing, p. I-61, beginning line 7.

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<sup>15</sup> References are to the Absolute Video transcripts for the 5-14-14 hearing.

i. The Mother's overstaying two-week timesharing in Panama by an additional three weeks. See discussion beginning on p. 1-74, line 23, 5-14-14 transcript.

j. The Mother's communicating that she has the greater right to make decisions regarding the children because she is the Mother. Transcript 5-14-14 hearing, p. I-101, beginning line 16.

80. In addition, Mr. Preira testified to violations of timesharing, telephone contact, transportation and other provisions by the Former-Wife, and to the efforts on behalf of the Father by Mr. Preira and his firm to address these violations, in pleadings filed with and hearings before the Court, as well as communication with the Former-Wife or counsel for the Former-Wife while represented

81. The hearing dates on July 25 and 26 were scheduled and noticed to complete cross examination of the Former-Wife's counsel regarding fees, and to hear testimony regarding the Former-Husband's Motion to Compel, because presentation of the Former-Husband's case had not been completed. In addition, the General Magistrate had noted it might be necessary for testimony again regarding issues due to the passage of time since the prior hearing.

82. The Former-Husband's testimony on July 26 began shortly before Mr. Preira's testimony – we switched to Mr. Preira when he was available at the Court; which

was followed by the Former-Wife's counsel's cross examination. The Former-Husband was never able to re-take the stand to complete his testimony.<sup>16</sup>

83. The Former-Husband during his testimony on July 26 testified to multiple Custody Agreement violations by the Former-Wife, and this testimony along with prior testimony presented ample examples of violations of the Custody Agreement by the Mother, sufficient to support an award of fees under Paragraph 26.

84. In addition, there were significant additional incidents and examples of violations by the Former-Wife which the Husband would have testified to if time had been available, including:

a. multiple incidents of alienation of affection via making negative comments regarding the Father in front of the children, including that he was disgusting and the Mother's threatening to break the Father's face.

b. Multiple incidents of denial of timesharing during the period of time adjudicated by the General Magistrate (up to the March 23, 2013 date of the FH's Motion to compel), including multiple incidents involving outright denial of timesharing, denial of timesharing requiring attorney intervention to obtain the timesharing, requiring the Father to travel to Panama if he wanted his timesharing, refusal to allow the Father's timeshare at the end of Winter break.

c. The Mother's unilaterally changing the Father's weekday timesharing from 4pm to 7:30pm to 4:00 to 5:30pm.

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<sup>16</sup> We were over the time the Court had set to end the proceedings for the day after the cross-examination of Mr. Preira, whereupon the Court at the request of the Former-Wife through counsel allowed the Former-Wife to briefly take the stand.

d. Multiple additional incidents of denial of telephone contact (in excess of 300 incidents) with at least 50 days when the Father was allowed no telephone contact at all.

85. The Father's prior counsel filed with the Court evidence of the violations, including emails and other written correspondence, and the Father, if time give the time, could have testified to each occurrence.

86. Based on the testimony that was offered into evidence in 2014 and on July 26, 2018, the record does not support the conclusion that insufficient evidence was submitted to demonstrate the Former-Husband's entitlement to fees under the enforcement provision in the Custody Agreement.

87. To the extent the Former-Husband was not permitted an opportunity to present his additional testimony, he was denied an opportunity to fully present his case.

Exception Eight – Fees Under Wherefore Clause of Motion to Compel

88. In addition, although not set forth in the Report of the General Magistrate, the General Magistrate ruled orally during the hearing on July 26, that testimony regarding attorney's fees for the Former-Husband for his Motion to Compel must be limited to fees incurred up through March 23, 2013 (the date of the Motion), that the Court would rule with respect to the fees incurred as alleged in paragraphs 31 through 34 of the Motion to Compel, but reserve ruling with respect to the fees request set forth in the "Wherefore" clause of the Motion. *Cf. Rorrer v. Orban*, 215 So. 3d 148 (Fla. 3<sup>rd</sup> DCA, 2017) and *Gosselin v. Gosselin*, 869 So. 2d 667 (Fla. 4<sup>th</sup> DCA, 2004)(providing for an award of fees

at the conclusion of a post judgment family law action involving extensive post-decretal motions and other actions).<sup>17</sup>

89. The Former-Husband submits that the evidence presented in the proceedings before the General Magistrate was sufficient to establish his award of fees, but that at a minimum such issue should be preserved for later determination.

90. By way of comparison, the Former-Wife claimed a total of 286.8 hours of attorneys time to litigate enforcement of the passport issue, and at least a full day to establish the amount of her fees, while the Former-Husband on the other hand was afforded perhaps an hour or two, at the end of the day, to seek to establish his claim to attorneys' fees.

91. The Former-Husband should be afforded an opportunity to establish his claim for fees.

Exception Nine – Fees for Former-Husband for Enforcement of Property Settlement Agreement

92. The Report of the General Magistrate finds that the Former-Husband did not prevail on enforcement of the PSA and therefore cannot be viewed as a prevailing party under the enforcement provision of the parties PSA – paragraph 13.

93. As set forth in Exceptions One through Six, the Former-Wife should be found to have violated multiple provisions of the PSA with the Former-Husband prevailing on his claims, and establishing an entitlement to attorney's fees for the Former-Husband.

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<sup>17</sup> The rationale it seems was that the Court treated the allegations regarding fees within the body of the Motion as a claim for damage, whereas fees requested in the Wherefore clause could be adjudicated later per the Court's explanation.

Exception Ten – Amount of Fees for Former-Wife

94. The General Magistrate, with ample justification, reduced the fees for the Former-Wife from the \$105,375 claimed by the Former-Wife (prior to claimed fees for fees) to \$72,887.50.

95. The Former-Husband respectfully submits to the Court that even the reduced amount of \$72,887.50 is not supported by the record of the case, and that significant further reductions are warranted.

96. The Report of the General Magistrate refers to 115 billing entries identified by the Former-Husband in his written closing argument as not specifying the issue being addressed.

97. The billing statements for the Former-Wife's attorney were submitted into evidence and are available for the Court's review. In addition, as set forth in the Exhibit to Written Closing Argument filed by the Former-Husband with the Court on August 29, 2018, there are in excess of 200 billing entries that either fail to identify the issues addressed, reflect duplicative or excessive billing, allocate time entirely to the passport issue when the billing item in fact addressed also issues on which the Former-Wife did not prevail, failed to allocate an appropriate amount of time to the non-prevailing issues, and other deficiencies.

98. Subtracting for the errors set forth in the Exhibit results in a total fees amount in line with the amount testified to by the Former-Husband's expert (\$27,242.50) and the amount billed by the Former-Husband's attorneys for this period for the passport/international travel issue.

99. As testified to by the Former-Wife's expert, the Former-Husband's prior attorney, Jonathan Jonasz' total fees were under \$35,000 – Mr. Jonasz represented the Former-Husband at all three hearings before the General Magistrate on the Former-Wife's Motion for Contempt, (other than time for producing the 2016 Report of General Magistrate and time addressing "fees for fees"). In addition, this amount for Mr. Jonasz was for litigating all of the issues in the case, including the Former-Husband's Motion to Compel and child support issues that were pending at the time.

100. Mr. Preira represented the Former-Husband at the outset of the litigation and testified that the vast majority of his time was addressing enforcement on behalf of the Husband, with limited time regarding the passport issue.

101. The Former-Wife's objection to Mr. Preira's testifying as to the exact amount incurred by the Former-Husband for passport/international was sustained. This objection should not have been sustained. Mr. Preira's testimony was appropriate rebuttal testimony and should have been allowed, and would have indicated the specific amount of his time regarding the passport issue, expanding on his testimony that it had been a small portion.

102. The Former-Husband respectfully requests that the Court find that a \$75,000 fee award to the Former-Wife, which the record reflects is three times or nearly three times the fees incurred by the Former-Husband, is not supported by the record.

103. Counsel for the Former-Wife testified that he and the Former-Wife should be afforded this premium in fees because of his expertise, because he "won" and out-prepared counsel for the Former-Husband. The General Magistrate, however, finds in

the report that the passport/travel issue was not complex, that only two witnesses testified regarding the issue (the parties), and that only seven (7) exhibits were entered into evidence on the issue – all by the Former-Husband.

104. In addition to the problems of block billing, excessive billing and other billing issues addressed in the Report of General Magistrate, the record requires a further reduction because the fees claimed by the Former-Wife include substantial time claimed for the period of time after the parties had already by Agreement provided for return of the passports to the Mother, via the parties' agreement on September 23, 2013.<sup>18</sup>

105. In addition, a close review of the fees provision in the Custody Agreement, reveals further rationale, as a matter of law, for the further reduction in the fees award requested herein.

106. The enforcement provision in the parties' Custody Agreement provides for an award of fees incurred in the enforcement of the Agreement.

107. The only provision in the Custody Agreement relating to passport or international travel provides that the Mother is to hold the children's passports when they are not traveling abroad with the Father, and provides also that the Mother will not withhold the passports from the Father.

108. The Father admitted that he withheld the passports, and in paragraph 6.3 on page 3 of his January 2013 Supplemental Petition to Modify Consent Custody

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<sup>18</sup> The Report does not address reducing fees based on this factor, and the Court's further reducing fees on this basis would not amount to substituting the fact finding of the Court for the factual conclusions of the General Magistrate, but rather taking a further reduction required by the record, but not addressed in the Report. In the alternative, the Court could order that the General Magistrate address whether this factor was considered in arriving at the \$75,000 amount, and if not that a further reduction be taken based on time incurred after the FW obtained enforcement of the passport provision via the Agreement of the parties.

Agreement, admitted that he destroyed the passports. This raises the question, how long a hearing would it take to establish that the Father violated a provision that requires return of the passports to the Mother, when the Father admitted he did not return the passports – 30 minutes, one hour, two hours?

109. The enforcement provision in paragraph 26 of the Custody Agreement does not provide prevailing party fees generally, nor fees for litigating a modification the Father sought in requesting that the Custody Agreement be modified to prevent the Mother from holding the passports or traveling abroad.

110. The Custody Agreement does not contain a provision guaranteeing to either parent the right to travel internationally with the children, and even if it did, the Father's seeking relief in the Court to restrict travel would not constitute a violation of the Custody Agreement triggering the enforcement clause.

#### Exception Eleven – Fees for Fees

111. In addition to the ample rationale set forth in the Report of General Magistrate for denying fees for fees in this case, such fees and related costs also should be denied based on the holding of in *Loy v. Loy*, 904 So. 2d 482 (Fla 3<sup>rd</sup> DCA, 2005)

112. In *Loy* one party suggested \$0 as an amount owing for child support, one argued \$16,500, the Court awarded \$6,600, and held that each party prevailed in apart and lost in part, and that neither was a prevailing party.

113. In the case before your Honor, the Former-Wife requested an award of \$105,000 for fees, the Former-Husband proposed \$27,500, and the General Magistrate

found that \$75,000 was an appropriate number, while agreeing with a majority of the substantive issues raised by the Former-Husband regarding the fees amounts claimed by the Former-Wife.

114. Where as here the Report recommends award of an amount near the midway point between the amounts argued by each side (the exact mid-point would be \$65,000), neither has prevailed regarding the “fees for fees” issue and neither should receive fees for litigating that issue.

Exception Twelve -- Terms of Payment of Any Fees Awarded

115. Still pending before the Court are the Petitions for Modification of Child Support filed by each party, the Former-Husband’s Supplemental Motion to Compel, addressing health insurance premiums owed by the Mother as well as substantial ongoing timesharing, telephone contact and transportation violations by the Mother (including the Mother refusing to provide transportation for timesharing exchanges nor for the historical extra-curricular activities in which the children had participated).

116. There should be a substantial retroactive child support modification available based on a substantial decrease in the Father’s income, as well as the large number of months the modification has been pending (there will be many retroactive months).

117. Payment of any fees by the Former-Husband should await a determination of the retroactive child support modification to allow that to be set off against any fees owing, and should await a determination of the prevailing party enforcement fees awarded to the Former-Husband in connection with the Supplemental Motion to Compel.

118. As set forth herein, the Former-Wife's fees have already been financed by her multi-millionaire brother; and the Former-Husband's income has significantly decreased while he continues to bear all or almost all of the expenses for the children. As the General Magistrate noted (see footnote 5, p. 11 herein), the Father is currently shouldering significant financial responsibilities for the children.<sup>19</sup>

I CERTIFY that a copy of the foregoing has been provided to the person(s) listed below via the State of Florida Eportal on October 15, 2018.

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<sup>19</sup> In addition, the Father currently owes fees to his former-attorney (see Motion for Charging Lien in this matter) and is behind to his current attorney.

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE  
COUNTY, FLORIDA

IN RE:

FAMILY DIVISION

EINATH BACH LEVY

Petitioner,

CASE NO. 11-31255 FC 16

And

SAMUEL SALOMON LEVY

Respondent.

ORDER ON REPORT OF GENERAL MAGISTRATE

THIS CAUSE came on to be heard upon the Report and Recommendations of General Magistrate, and the undersigned having considered the findings and recommendations therein, and being advised that no exceptions to the Report and Recommendation of General Magistrate have been filed with the ten (10) day period set forth in Florida Family Law Rule of Procedure 12.490(f), it is thereupon:

**ORDERED AND ADJUDGED:**

1. That the Report of General Magistrate dated 11/29/18 be, and the same is, hereby ratified and approved, adopted and incorporated herein by reference and made a part hereof, and the parties shall comply with the findings and recommendations contained in that Report.

2. That the exceptions filed by the Petitioner/Respondent on \_\_\_\_\_ are denied.

3. ~~That all prior Orders not inconsistent herewith are hereby reaffirmed.~~

DONE AND ORDERED at Miami, Dade County, Florida on this 10<sup>TH</sup> day of \_\_\_\_\_, 2018.

cc: All parties/

CIRCUIT COURT JUDGE

GEORGE A. SARDUY  
CIRCUIT COURT JUDGE