

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

FAMILY DIVISION

IN RE: THE MARRIAGE OF :

ALDO COLLI, :

Petitioner/Husband, :

and :

CLAUDINE CLAUS, :

Respondent/Wife, :

and :

BENEFIT LIFE CORPORATION, :
a Florida Corporation and :
AEC FINANCIAL GROUP, LLC :

Respondents. /

CASE NO. 2014-015005 FC 48

FLORIDA BAR NO. 316857

**NOTICE OF FILING JURAT TO
WIFE'S ANSWER AND AFFIRMATIVE DEFENSES TO HUSBAND'S PETITION
FOR DISSOLUTION OF MARRIAGE AND WIFE'S VERIFIED COUNTER
PETITION FOR DISSOLUTION OF MARRIAGE AND OTHER RELIEF**

PLEASE TAKE NOTICE that the Respondent/Wife, CLAUDINE CLAUS, has
herewith filed the following:

**JURAT TO WIFE'S ANSWER AND AFFIRMATIVE DEFENSES TO HUSBAND'S
PETITION FOR DISSOLUTION OF MARRIAGE AND WIFE'S VERIFIED COUNTER
PETITION FOR DISSOLUTION OF MARRIAGE AND OTHER RELIEF**

(Answer served on Husband's counsel on February 9, 2015)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail this 9th day of March, 2015, to: Elizabeth S. Baker, Esquire, Emails: ebaker@hinshawlaw.com; dphangsang@hinshawlaw.com and carrese@hinshawlaw.com; Pablo S. Quesada, Esquire, and Peter Gonzalez, Esquire, SMGQ Law, Attorneys for Benefit Life Corporation, Emails: PQuesada@smgqlaw.com, PGonzalez@smgqlaw.com, and DMartinez@smgqlaw.com; Steven Grossbard, Esquire, E-mail: Stevejgd@bellsouth.net; Calianne Lantz, DCF, E-mail: Calianne.lantz@dcf.state.fl.us; Susan Somers, GALP, Email: susan.somers@gal.fl.gov; Charlene Pinkney, GALP, Email: Charlene.pinkney@gal.fl.gov; Russell Spatz, Esquire, Email: spatzlaw@comcast.net; and Special Master, Jorge J. Perez, , E-mails: jorge.perez@sqirepb.com and nancy.cedeno@sqirepb.com.

Respectfully Submitted,

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By: _____


Richard J. Preira

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G. The Court award the Wife such other and further relief as it may deem just, proper and appropriate.

I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this Verified Petition for Dissolution of Marriage, et al and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

DATED: 3/9/15

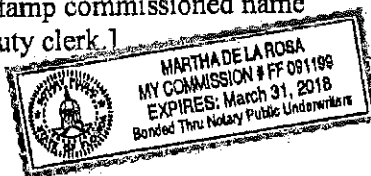
Claudine Claus
CLAUDINE CLAUS

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

Sworn to or affirmed and signed before me on 3/9/15 by CLAUDINE CLAUS.

Martha De La Rosa
NOTARY PUBLIC or DEPUTY CLERK

[Print, type, or stamp commissioned name of notary or deputy clerk.]



- Personally known
- Produced identification
- Type of identification produced FL DR. Lic.

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

FAMILY DIVISION

IN RE; THE MARRIAGE OF	:	CASE NO. :
	:	
Petitioner/Wife	:	
and	:	
	:	
Respondent/Husband,	:	

**HUSBAND'S ANSWER, AFFIRMATIVE DEFENSES, AND COUNTER-PETITION FOR
DISSOLUTION OF MARRIAGE AND RELATED RELIEF**

The Respondent/Husband, for his *Answer and Affirmative*

Defenses to Wife's Verified Petition for Dissolution of Marriage and for Other Relief states:

- 1.0 The Husband admits the allegations set forth in paragraphs 1, 2, 4, 5, 6, 7, 20, 27, 28 and 32.
- 2.0 The Husband admits the allegation of Paragraph 3 that Miami-Dade County is the proper venue for this action and denies the balance of the allegations as phrased.
- 3.0 The Husband denies the allegation of Paragraph 8 that the Wife's Notice of Social Security Number was filed concurrently with the Petition as she affirmatively represents, contrary to her representation under oath that it was included.
- 4.0 There is no Paragraph 9 and therefore the Husband cannot admit or deny same.
- 5.0 The Husband denies the allegation of Paragraph 10 that the Wife's Financial Affidavit

was filed concurrently with the Petition as she affirmatively represents, contrary to her representation under oath that it was included. The Husband further submits that upon inquiry as to the missing Financial Affidavit, the Wife declined to provide same.

6.0 The Husband admits the allegation of Paragraph 11 that pursuant to the current iteration of §61.08, Fla.Stat., the parties had a long-term marriage. The balance of the allegations are denied.

6.1. The Husband submits that the Wife entirely and irresponsibly misstates the law when she states that there is a presumption in favor of the Wife to receive permanent alimony. The applicable statutory and decisional law mandates a presumption *against* permanent alimony, regardless of the duration of the marriage or any other factors in §61.08, Fla.Stat.

6.2. The Husband further submits that the Wife initiated these proceedings prior to their marriage reaching their 23rd anniversary in contravention of the Wife's allegation; that the Wife initiated dissolution of marriage proceedings in 1997 and again in 2000; that the parties ceased their intact marriage and occupied separate parts of their residence as early as 2008; and that parties ceased residing together as Husband and Wife in May of 2010. Accordingly, the intact marriage effectively concluded in 2008.

7.0 The Husband denies the allegations of Paragraph 12 as phrased.

8.0 The Husband admits the allegation of Paragraph 13 that the parties are partners in the law firm of . The Husband denies that she ceased practicing law three (3) years ago. The Husband objects to the use of the term "Marital Law Practice" as that nomenclature mischaracterizes the firm's nature. The balance of the allegations are denied as phrased.

9.0 The Husband cannot admit or deny the allegation of Paragraph 14, which states that "The Marital Law Practice specializes in alcohol and tobacco licensing and the school, working for the Marital Law Practice is the only employment she has had as an attorney." It is an incomplete, incoherent sentence and no cohesive allegation is stated. As the Husband cannot admit or deny same, the allegation is denied.

10.0 The Husband admits the allegation of Paragraph 15 that the Wife stopped working. The Husband denies the balance of the allegations and submits that the Wife receives a salary (despite refusing to work) and is fully capable of working and being self-supporting.

11.0 The Husband admits the allegation of Paragraph 16 that the Wife has continued to receive a salary from the law firm and that the Husband has voluntarily provided additional funds to the Wife. The balance of the allegations are denied. The Husband submits that these internal inconsistencies in the Wife's allegations—where in Paragraph 15 the Wife alleges the Husband is the sole breadwinner and in Paragraph 16 the Wife alleges that she receive a salary—reflect that the Wife's careless allegations are crafted solely as a means to an end and made without regard to their truthfulness or accuracy.

12.0 The Husband admits the allegation of Paragraph 17 that the Wife was diagnosed with Type 1 diabetes and was in a car accident. The Husband denies the balance of the allegations as phrased. The Husband submits that the Wife broke one leg in 2011 (not both of her legs in 2010, as the Wife alleges in the document she signed under oath), underwent surgery to repair it, underwent a minor procedure to adjust a screw, and is entirely recuperated and mobile, as evidenced by her near daily shopping sprees at numerous area stores that she charges on the Husband's credit card.

13.0 The Husband responds to Paragraph 18 as follows:

13.1. The Husband admits the first allegation of Paragraph 18 that the Husband engaged in limited extramarital sexual encounters (as did the Wife) and the Husband expended a *de minimus* amount on such encounters, which occurred more than two (2) years prior to the filing of the Wife's Petition. Accordingly, the Wife's claim is barred by §61.075, Fla.Stat. The Husband denies the balance of the allegations and moves to have them stricken as scandalous and untrue.

13.2. The Husband vehemently denies the second allegation of Paragraph 18, which is the Wife's frivolous, irresponsible, and outright offensive allegation that the Husband managed "certain martial [*sic*] businesses and marital investments in a grossly negligent manner to a degree that rises to the level of intentional malfeasance." The allegation is scandalous and untrue and the Husband demands strict proof thereof.

13.2.1. The Husband submits that the Court should consider the juxtaposition of this fraudulent allegation that the Husband has squandered the parties' marital estate against the Wife's demands for, *inter alia*, an equitable distribution of the parties' residence, vacation homes in Key Largo and Pennsylvania, commercial property, and other financial interests.

13.2.2. The Wife clearly has no compunction about clamoring for permanent alimony and acknowledging that it is the Husband's blood, sweat, and tears as the sole breadwinner in the marriage ---after the Wife voluntary decided to cease employment in 2011, despite being a trained nurse, licensed massage therapist, and attorney---that she is even in a position to ask for an equitable distribution of, for example, not one, but two vacation homes.

13.2.3. This allegation encapsulates the Wife's apparent intent to embark in a

scorched-earth litigation tactic and wage any allegation that is convenient to whatever relief she seeks without any regard for the veracity of the allegations or their completely contradictory nature.

13.2.4. The Wife and her counsel should be sanctioned for their frivolous allegations and required to withdraw it.

14.0. The Husband denies the allegations of Paragraph 19 as phrased.

14.1. The Husband submits that the Wife is entirely capable of self-support and is trained and skilled in not one but three separate professions; the Wife is a licensed massage therapist, a trained nurse, and a licensed attorney.

14.2. The Husband submits that the Court should consider the Wife's extramarital affairs when considering the Wife's claim for alimony, in accordance with §61.08(1), Fla.Stat.

14.3. The Husband submits that when evaluating the Wife's allegation that she has "limited experience as an attorney in a specific and unique area of law" the Court should consider that the Wife handled all of the bookkeeping and management of the fiscal operations of the law firm and performed a multitude and variety of legal work before she refused to practice, including transactional corporate work and all legal matters collateral to the alcoholic and beverage practice. For example, among her many responsibilities, the Wife drafted closing documents for business transactions, including purchases and sales of businesses and liquor licenses; she prepared zoning public hearing applications; she prepared applications for local permitting; she formed and modified corporations; and she drafted stock transfer agreements. The Wife is a skilled and capable attorney who is also a licensed nurse and licensed massage therapist.

14.4. The Husband submits that with respect to the Wife's allegation that the Court

should consider the Wife's present medical conditions and prognosis as part of her overall claim that she has an "inability to work," the Court should consider the both parties have diabetes, not just the Wife, who was diagnosed more than ten years ago yet continued to remain employed thereafter; that both parties have leg injuries, where the Husband has an inoperable injury that requires him to wear a brace every day; and that in 2013 the Husband had surgery for a brain tumor wrapped around his pituitary gland pushing against his optic nerve. The Court should consider that the difference between them is that the Husband continues to go to work every single day while the Wife simply refuses.

14.5. The Husband submits that the Court should consider that the Wife tactically refused to return to work upon her recuperation from her leg injury once she decided to retain counsel in 2012 to negotiate a temporary support arrangement because she believed it was financially advantageous, not because she is incapable of self-support.

14.6. The Husband submits that the Wife's claim for spousal support based upon her alleged "inability to work" is specious and as ludicrous as if the Husband claimed that his similar medical conditions precluded him from working.

15.0 The Husband denies the allegations of Paragraph 21 as phrased. The Husband submits that the income as a mortgagor for liquor licenses the Wife references is not under his "sole control" insofar as the Husband voluntarily obligated himself to apply that income to pay all four (4) mortgages on the parties' jointly titled real property as part of their temporary support arrangement.

16.0 The Husband denies the allegations of Paragraph 22 as phrased.

17.0 The Husband responds to Paragraph 23 and its subsection as follows:

17.1. The Husband denies the allegation of Paragraph 23(A) that the Husband is well able to continue providing health insurance coverage for her, pendent lite and thereafter. The balance of the allegation is admitted.

17.2. The Husband denies the allegation of Paragraph 23(B) that the Wife requires support, ergo, she does not require a policy of insurance on the Husband's life. The Husband admits that he maintains an existing life insurance policy.

18.0 The Husband denies the allegation in the footnote to Paragraph 24 as scandalous and untrue as it has no basis in law or fact. The Husband submits that the Wife was in charge of the firm's finances and had access to all of the firm's financial records, and the Wife was in charge of the family finances. The Wife should be sanctioned for making an unsupported allegation that she knows to be false.

19.0 The Husband denies the allegation of Paragraph 24 that all of the parties' properties are subject to partition. The Husband admits the balance of the allegations and submits they are subject to the Husband's claim for an unequal distribution in accordance with §61.075, Fla.Stat.

20.0 The Husband admits the allegations of Paragraph 25 that he has enjoyed exclusive use of the former marital home since May 2010. The Husband denies the Wife's allegation that she was "forced to rent her living quarters." The Husband submits that he was out of the country on a family trip when he received an email from the Wife that she had elected to move out of their residence, which is in contravention of her characterization that she was "forced" to do anything. The Wife initially moved to a half million dollar home in the Gables (furnishing it with items she selected from the former marital residence and supplementing it with new furniture paid for by the Husband)

before moving to a waterfront property in Broward owned and rented to her by her first husband.

21.0 The Husband admits the allegation of Paragraph 26 that the Husband enjoys exclusive use of the vacation homes in Ocean Reef and Pennsylvania and submits that he does so pursuant to the parties' temporary financial support arrangement. The Husband submits that insofar as the Wife had free reign to use their vacation homes during the marriage and essentially declined to do so, the properties should be distributed to the Husband as part of the Court's overall equitable distribution scheme.

22.0 The Husband denies the allegations of Paragraph 27 as phrased insofar as the parties have already divided their furniture, furnishings, and fixtures. The Husband submits that the Wife's jewelry should be appraised and valued when the Court fashions an equitable distribution award.

23.0 The Husband denies the allegation of Paragraph 29 that there is no monetary value to the law firm that is subject to equitable distribution. The balance of the allegations are admitted.

24.0 The Husband admits the allegation of Paragraph 30 that he holds interests in other businesses and submits that he acquired an interest in these non-income generating business subsequent to the parties' separation. The Husband is without knowledge as to what information the Wife possesses, and must deny the allegation.

25.0 The Husband denies the allegations of Paragraph 31. The Husband submits that the law firm has no value or a *de minimus* value and no marital funds (or for that matter, any funds) were used to acquire an interest in any other businesses. If the Wife intends to pursue the retention of a forensic accountant, she should be solely required to pay 100% of any fees and costs incurred by either party in her pursuit of this issue.

26.0 The Husband admits the allegation of Paragraph 33 that the parties have incurred certain debts and denies that they should be satisfied solely by the Husband.

27.0 The Husband denies the allegations of Paragraph 34. The Husband submits that the Wife is voluntarily unemployed and continues to receive a salary and additional financial support. The Wife should be solely responsible to pay her attorney fees, suit monies and costs, including the two law firms she has hired to represent her in this action.

28.0 The Husband denies the allegation in Count II, Paragraphs 35-40 that the property should be partitioned. The Husband is without knowledge as to what the Wife has obligated to pay her attorneys and therefore denies the allegations of Paragraph 40. The balance of the allegations are admitted.

29.0 The Husband denies the allegation in Count III, Paragraphs 41-46, that the property should be partitioned. The Husband is without knowledge as to what the Wife has obligated to pay her attorneys and therefore denies the allegations of Paragraph 46. The balance of the allegations are admitted.

30.0 The Husband denies any allegations not specifically admitted, controverted, or denied herein.

AFFIRMATIVE DEFENSES

A. The Wife alleges in Paragraph 10 of her *Petition* that a Financial Affidavit was filed concurrently with the *Petition*. No document was incorporated in, attached as an Exhibit to the *Petition* served on the Husband, or filed concurrently with the *Petition*. Accordingly, any allegations

and related prayers for relief related to the Wife's financial needs that should have been substantiated by her Financial Affidavit should be dismissed.

B. Even if the parties are considered to have a long-term marriage due to the Wife's delay in filing her third dissolution of marriage action against the Husband after the parties separated, there is a presumption against permanent alimony in §61.08, Fla.Stat.

C. Even if the Wife elected to cease employment, income should be imputed based upon the Wife's recent work history, occupational qualifications, and prevailing earnings level in the community when considering her claim for spousal support.

D. Even if the Wife is unemployed, income should be imputed to her when evaluating her claim for spousal support, as she is voluntarily unemployed.

E. Pursuant to §61.075, Fla.Stat. "the Court must begin with the premise that the distribution should be equal, unless there is a justification for an unequal distribution based on all relevant factors, including: The intentional dissipation, waste, depletion, or destruction of marital assets *after the filing of the petition or within 2 years prior to the filing of the petition.* (emphasis supplied). The Husband denies expending more than a *de minimus* sum on any extramarital encounters and asserts that any encounters occurred and were known to the Wife more than two years prior to the Wife's filing of her Petition. However, even if the Wife's allegation that the Husband expended funds recklessly on such encounters were accurate (which it is not), the Wife is barred from seeking an unequal distribution for any funds expended more than two (2) years prior to the filing of the Wife's Petition pursuant to §61.075, Fla.Stat.

F. Even if the law firm has a monetary value, any value would be based upon the Husband's personal goodwill, which is a non-marital asset pursuant to Florida decisional law and not subject to equitable distribution.

WHEREFORE, the Husband respectfully requests that this Honorable Court enter a Final Judgment of Dissolution of Marriage and deny the remaining relief requested in the Wife's Petition.

HUSBAND'S COUNTER PETITION FOR DISSOLUTION OF MARRIAGE

The Counter-Petitioner/Husband, ("Husband"), states:

1.0 **Action**: This is an action for dissolution of marriage and other relief.

2.0 **Residency**: Both parties have been residents of the State of Florida for more than six (6) months prior to the filing of this Petition.

3.0 **Marriage**: The parties were married on November 30, 1990 in Miami-Dade County, Florida. The Wife initiated dissolution of marriage proceedings in 1997 and 2000. The parties physically separated in 2008 and ceased residing together in 2010.

4.0 **Marriage Irretrievably Broken**: Irreconcilable differences have arisen between the parties such that the marriage is irretrievably broken.

5.0 **Non Military Status**: Neither party is presently in the military service of the United States or any of its allies.

6.0 **Minor Children**: The parties' daughter has attained the age of majority and no further issue is contemplated.

7.0 Equitable Distribution of Marital Assets and Liabilities: The parties have acquired marital assets and debts during the course of their marriage which should be equitably distributed by the Court after consideration of all relevant factors pursuant to §61.075, Fla.Stat. The Court should set aside to each party his or her separate, non-marital and/or premarital property. The Husband is entitled to a disproportionate share of the marital assets due to his significant contribution to their acquisition from his non-marital funds and pursuant to the factors of §61.075., Fla.Stat.

8.0 Exclusive Use and Possession of : The Husband should be granted sole, exclusive use and operation of the law practice,

9.0 Attorney Fees and Costs: The Husband intends to amicably resolve this matter as expeditiously as possible. The Wife should be responsible for her own attorney fees and costs. The Wife should be responsible to reimburse to the Husband any fees and costs he may incur in the event he retains counsel to appear on his behalf as a result of litigious conduct on her part. The Husband is willing to proceed to an early mediation, if necessary, in order to resolve this matter.

WHEREFORE, based upon the foregoing, the Husband respectfully prays as follows:

A. A Final Judgment be entered by this Court dissolving the marriage of the parties, in *vinculo matrimonii*;

B. The Court identify the parties' marital and non-marital assets; determine their fair market values; determine each parties' respective right, title and interest in those assets based upon the doctrine of equitable distribution; and, distribute said assets between the parties in accordance

with applicable law, taking into consideration the Husband's request for a disproportionate share of the marital assets;

C. The Court provide the Husband with sole and exclusive use and operation of
and

D. The Court award the Husband such other and further relief as it may deem just, proper and appropriate.

IN RE THE MARRIAGE OF	:	IN THE CIRCUIT COURT OF THE 11TH
	:	JUDICIAL CIRCUIT, IN AND FOR
ROSANA ANABELLA ALMEIDA	:	MIAMI-DADE COUNTY, FLORIDA
	:	FAMILY DIVISION
Petitioner/Wife,	:	CASE NO.: 2016-004107 FC 04
and	:	FLA BAR NO. 316857
JOSE PATRICIO DAIRE BARRIOS,	:	
	:	
Respondent/Husband,	:	
and	:	
MAJESTIC PH 304, INC.	:	
	:	
Third Party Defendant,	:	
and	:	
SCREEN INVESTMENTS HOLDING, INC.	:	
	:	
Third Party Defendant.	:	

**HUSBAND'S VERIFIED MOTION TO DISMISS WIFE'S AMENDED VERIFIED
PETITION FOR DISSOLUTION OF MARRIAGE AND FOR OTHER RELIEF¹**

The Husband, JOSE PATRICIO DAIRE BARRIOS, states:

1.0 The *Wife's Amended Verified Petition for Dissolution of Marriage and for Other Relief* should be dismissed. Respectfully, this Court lacks subject matter jurisdiction over the marriage, lacks personal jurisdiction over the Husband, service of process was improper, and the case should be dismissed pursuant to the doctrine of *forum non conveniens*.

2.0 The Husband is Chilean, married the Wife in Chile, has resided in Chile for the duration of the parties' brief, childless marriage, and continues to reside in Chile. He is 62 years

¹ Pursuant to §92.525, Florida Statutes.

old, a businessman, and has five children from his two prior marriages with whom he enjoys a wonderful relationship, as he does with his two former spouses.

3.0 The Wife was 39 years old at the time she initiated these proceedings (she has since turned 40) and also resided in Chile for the duration of the parties' two year marriage, though she briefly stayed in New York in order to take classes. Her ability to be in the United States is disingenuously based upon her dual status as the holder of an F-1 student visa and a B1/B2 tourist visa, which, coupled with the circumstances in this matter, is inconsistent with the residency requirement to seek a dissolution of marriage in the State of Florida.

4.0 Several months after the parties separated, in January 2016, the Husband initiated dissolution of marriage proceedings in the Excmá Corte Suprema de Chile in accordance with Chilean law. After the Husband filed his proceedings and notified the Wife, she left Chile to come to Miami-Dade County, Florida. She initiated these proceedings two (2) weeks later.

5.0 Shortly after the Wife filed in Florida, the Judge presiding over the Chilean court action entered an Order determining Chile to have exclusive jurisdiction over the marriage and concomitant dissolution of marriage proceedings. Since the Chilean court has asserted its jurisdiction over the marriage and the parties and is prepared to adjudicate the case to conclusion, the Wife will suffer no prejudice when her action here is dismissed.

6.0 There is no legal or equitable basis to require the Husband, who resides in Chile, to subject himself to the jurisdiction of the Florida court. The Wife is unable to meet basic jurisdictional requirements or set forth any allegations that would compel this Court to usurp the authority of the Chilean Court in order to adjudicate the dissolution of marriage proceedings of a couple who married there and executed a marriage license to be bound by Chilean law as it

governs their rights of property and support. There is no legitimate purpose to require the parties to litigate in a foreign jurisdiction.

7.0 This Court should not endorse the Wife's forum shopping. It should not countenance her effort to create a time-consuming and costly procedural quagmire in a foreign jurisdiction to induce the Husband to provide her monies to which she is not entitled as a way for him to bring about an expedited conclusion to her invalid proceedings.

8.0 As a consequence of her career as an international model, her business venture through which she owns a high-end boutique in Chile, and the gifts she received during the marriage, the Wife has financial means with which to support herself. In addition to an effort to obtain funds from the Husband to which she is not entitled, her decision to leave Chile to avoid service of the Husband's dissolution action and to initiate an action here although she does not meet residency or other jurisdictional requirements, suggest she is also attempting to avoid the financial consequences of the separate property designation the parties elected on their Chilean marriage license and the fact that she is not entitled to spousal support under Chilean law

9.0 There was a six-month delay between the Wife's initiation of these proceedings and service of process, which, of course, had to be accomplished in Chile, where the Husband resides and has resided throughout the parties' two (2) year marriage. The Husband has not filed a responsive pleading, including an Answer or a Counter-Petition, seeking any affirmative relief. The Court has not conducted any hearings on any issues between the Husband and Wife. The Husband and Wife have not exchanged in any discovery. The parties have not filed Financial Affidavits. The parties have not exchanged mandatory disclosure.

10.0 The only actions in this case have been the jurisdictional challenges by the Third-Party Defendants and the entry of an *ex parte* Injunction entered at the Wife's request prior to the Husband being served in Chile. The Husband is appearing in the Florida action solely to contest jurisdiction and requests that the Florida court respect the authority and jurisdiction of the Chilean court to dissolve the parties' marriage.

The Court Lacks Subject Matter Jurisdiction

11.0 The Court does not have subject matter jurisdiction over the parties' two-year marriage in order to enter a judgment dissolving the marriage.

12.0 Pursuant to §61.021, Fla.Stat., "To obtain a dissolution of marriage, one of the parties to the marriage must reside 6 months in the state before the filing of the petition." Florida decisional law has defined "reside" under this statute to mean an "actual presence in Florida coupled with an intention *at that time* to make Florida the residence." See *Jenkins v. Jenkins*, 556 So.2d 441 (Fla. 4th DCA 1990).

13.0 The Wife alleged she was a resident of Miami-Dade County, Florida, for more than six months before she filed her Petition. She was not. She was not even here for six (6) months at the time she filed. Her allegation is unsupported by the facts of this case. The Wife cannot establish that she meets the residency requirements of Florida statutory and decisional law. Accordingly the case should be dismissed.

The Court Does Not Have Personal Jurisdiction Over the Husband

14.0 The Court does not have personal jurisdiction over the Husband in order to adjudicate the Wife's claims for support and equitable distribution. Florida's long-arm statute, §48.193, Fla.Stat., governs personal jurisdiction when the Respondent spouse resides outside of

Florida and the Petitioner asks the Court to adjudicate claims of alimony or equitable distribution.

15.0 The Wife's Petition omits any reference to the fact that the Husband is not a resident of Florida and is a resident of Chile, even though Chile is where the parties were married, lived together, and where the Husband continues to reside. Her Petition excludes any mention that the Court would need to exercise long-arm jurisdiction over the Husband pursuant to §48.193 in order to subject the Husband to the jurisdiction of this Court.

16.0 Since the Husband resides in Chile, the Wife is required to allege and prove pursuant to §48.193(1)(a)(5) that:

With respect to a proceeding for alimony, child support, or division of property in connection with an action to dissolve a marriage or with respect to an independent action for support of dependents, maintaining a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceding the commencement of the action, whether cohabiting during that time or not. This paragraph does not change the residency requirement for filing an action for dissolution of marriage.

17.0 The Wife cursorily mentions that the parties maintained a "matrimonial" domicile in Florida.² That allegation will not be supported by the facts of this case. The Court in *Forrest v. Forrest*, 839 So.2d 839 (Fla. 4th DCA 2003) rejected the Wife's attempt to have the Florida court assert personal jurisdiction over her Husband simply because he had purchased a house in Florida with the intent to possibly live there in the future, and defined a "matrimonial domicile" as follows:

² The Wife also alleged that "the Husband operates, conducts, engages in, and/or carries on a business or business venture here in Florida and has an office or agency here in Florida." The Wife added two business entities as Third-Party Defendants. The Third-Party Defendants separately filed a *Motion to Dismiss Petition for Lack of Subject Matter and Personal Jurisdiction and To Dissolve Temporary Injunction*.

A “[m]atrimonial domicile” is the place where the parties “live together as husband and wife either actually or constructively.” See *Farrell v. Farrell*, 710 So.2d 151, 152 (Fla. 3d DCA 1998)(quoting Black’s Law Dictionary 978 (6th ed.1990)). Here, the place where the parties lived together as husband and wife was Singapore; the wife’s allegation that the Florida home was the matrimonial domicile because the husband purchased the home with the intention of living there one year later is insufficient to establish jurisdiction. See *id.* Further, we reject the wife’s contention that the husband’s one-week stay in Florida makes him a Florida resident for the purpose of satisfying this jurisdictional requirement.

18.0 The Court in *Marshall v. Marshall*, 988 So.2d 644 (Fla. 4th DCA 2008) further defined a matrimonial domicile when it refused to exercise personal jurisdiction over a Husband who owned property in Florida, and held:

For Florida to have personal jurisdiction over the husband to resolve the various dissolution of marriage issues, the wife had to plead and prove either that the couple maintained a matrimonial domicile in Florida when she filed the petition for dissolution or that prior to filing the husband had resided in Florida. See § 48.193(1)(e); *Orbe*, 651 So.2d at 1296. The husband argues there are no facts to support that any place other than Missouri was the couple’s matrimonial domicile. The wife argues that the husband’s ownership and payment of taxes on the Boynton Beach property constituted the maintenance of a matrimonial domicile in Florida. We agree with the husband.

Domicile has been defined as: In whatsoever place an individual has set up his household goods and made the chief seat of his affairs and interests, from which, without some special avocation, he has no intention of departing; from which, when he has departed, he is considered to be away from home, and to which, when he has returned, he is considered to have returned home. *Wade v. Wade*, 93 Fla. 1004, 113 So. 374, 375 (1927) (citing Roman law as quoted in *Smith v. Croom*, 7 Fla. 81 (1857)). Factors evidencing domicile include: “income and other tax returns; homestead exemptions; voting registration; driver’s license; place of business affairs; use of ‘residence’; and number of days in the state.” *Weiler v. Weiler*, 861 So.2d 472, 477 n. 10 (Fla. 5th DCA 2003) (citing Christopher A. Tiso, *Long-Arm Jurisdiction in*

Support and Divorce Actions-The Unwary Beware, 76 Fla. B.J. 91
(2002)

19.0 Based on the standard established by Florida decisional law, the Wife cannot provide sufficient evidence that the parties maintained a matrimonial domicile in Florida in order to meet the jurisdictional requirements set forth by §48.193, Fla.Stat. Accordingly the case should be dismissed on this basis as well.

The Wife's Petition Should be Dismissed for Improper Service of Process

20.0 The Wife's *Petition* should be dismissed for improper service of process. As a threshold matter, there is no proof that the Husband was properly served as the "Return of Service" from the purported service on the Husband in Chile is unsigned.

21.0 Service was required to be done in accordance with Chilean law. Accordingly, the Court in Chile has undertaken the task to determine whether service was proper. The Husband will amend or supplement his Motion once the outcome of those proceedings has been established.

The Court Should Dismiss the Case in its Entirety Under the Doctrine Of Forum Non Conveniens.

22.0 The Court is vested with the authority to dismiss the Wife's *Petition* in its entirety pursuant to Rule 1.061, Fla.R.Civ.P. under the doctrine of *forum non conveniens*.

23.0 Although the Court does not have subject matter jurisdiction over the marriage or personal jurisdiction over the Husband, even if the Court finds that it has jurisdiction over the marriage or the Husband, that is insufficient to permit the Wife's action to remain pending in Florida.

24.0 The case should be dismissed pursuant to the doctrine of *forum non conveniens*

Rule 1.061, Fla.R.Civ.P, states that:

An action may be dismissed on the ground that a satisfactory remedy may be more conveniently sought in a jurisdiction other than Florida when:

- (1) the trial court finds that an adequate alternate forum exists which possesses jurisdiction over the whole case, including all of the parties;
- (2) the trial court finds that all relevant factors of private interest favor the alternate forum, weighing in the balance a strong presumption against disturbing plaintiffs' initial forum choice;
- (3) if the balance of private interests is at or near equipoise, the court further finds that factors of public interest tip the balance in favor of trial in the alternate forum; and
- (4) the trial judge ensures that plaintiffs can reinstate their suit in the alternate forum without undue inconvenience or prejudice.

25.0 This proceeding is the exact scenario that Rule 1.061 was designed to address when it was enacted. All of the factors set forth in Rule 1.061 are met, as follows:

25.1 A suit is already pending in the Chilean court, Excma Corte Suprema de Chile, such that the Wife will not experience any undue inconvenience or prejudice in instituting a suit; she merely has to respond to the Husband's already-filed and served Petition.

25.2 The Chilean court is a more than adequate alternate forum. It would be judicially wasteful to require the parties to litigate in both venues, when the Chilean court has the ability to adjudicate the entire case and is where the parties were married and resided during the marriage.

25.3 The Husband is a businessman who married, lives, and works in Chile. It would be disruptive to require the Husband to undergo extensive travel in order to facilitate his participation in a Florida proceeding. Meanwhile, the Wife is an international model who owns a high-end boutique in Chile and embarked on a tour of international travel and punitive

shopping on the Husband's credit cards after the parties separated in September 2015 until she returned to Chile before departing for Florida in February 2016, where she initiated these proceedings fewer than two weeks later.

25.4 The Husband initiated proceedings in Chile in January 2016 as a consequence of the parties' separation in September 2015. After the Wife was notified of the Husband's intent to dissolve their marriage, she left Chile where the parties resided and traveled to Florida. It would be punitive to the Husband to require him to travel to Florida to participate in these proceedings when he selected the appropriate forum and initiated proceedings. The Wife has attempted to circumvent all jurisdictional rules and engage in forum shopping.

26.0 The Court is empowered to dismiss a case pursuant to Rule 1.061, Fla.R.Civ.P even if it finds that it has personal jurisdiction over the respondent and service of process was proper. Accordingly, the Court may never need to make a determination of whether Florida is the proper forum due to its lack of jurisdiction over the marriage and the Husband. Florida decisional law permits the Husband to seek a dismissal under Rule 1.061 while concurrently seeking to dismiss the case on jurisdictional grounds.

26.1 See *Marcos v. Haecker*, 915 So.2d 703 (Fla. 3d DCA 2005) (We find that the filing of a motion to dismiss for *forum non conveniens* while a motion to quash service of process is pending does not constitute a waiver of the latter.).

26.2 See *Cortez v. Palace Resorts, Inc.*, 123 So.3d 1085 (Fla. 2013) (The common law doctrine of *forum non conveniens*, which translates to mean "inconvenient forum," is an equitable, judicially crafted rule designed to allow a court to dismiss, in certain limited circumstances, a lawsuit with little connection to Florida that would be better suited and fairly

litigated elsewhere.

26.3 See *Armas v. Banco Nacional De Credito, C.A.*, 129 So.3d 404 (Fla. 3d DCA 2013) (However, a finding of personal or subject matter jurisdiction in our courts is not a substitute for the existence of a “convenient forum.” See *Cortez v. Palace Resorts, Inc.*, 123 So.3d 1085, 1091 (Fla. Jun. 20, 2013) (holding that inquiry as to whether long-arm jurisdiction exists over defendant “is an important statutory and constitutional hurdle for the plaintiff to overcome and one that would precede an attempt to dismiss [a] case based on the equitable, judge-made doctrine of forum non conveniens”) (emphasis added).

27.0 The Husband is entitled to the entry of an Order that dismisses the Wife’s *Petition*.

WHEREFORE, the Husband seeks the entry of an Order that dismisses the Wife’s *Petition* for lack of subject matter jurisdiction, lack of personal jurisdiction, improper service of process, under the doctrine of *forum non conveniens*, and any other relief this Court deems just and proper.

**WRITTEN DECLARATION PURSUANT TO §92.525,
FLORIDA STATUTES**

Under penalties of perjury, I declare that I have read the foregoing *Husband's Verified Motion to Dismiss Wife's Amended Verified Petition for Dissolution of Marriage and for Other Relief* and that the facts stated in it are true to the best of my knowledge and belief.

TO BE PROVIDED
JOSE PATRICIO DAIRE BARRIOS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically served in compliance with Rule 2.516(a) and Administrative Order 13-49 through Florida Courts E-filing Portal this 4th day of October, 2016 to: Luis M. Padron, Esquire, The Padron Law Group, P.L.L.C., 135 San Lorenzo Avenue, Suite 650, Coral Gables, Florida 33146, E-mail: pleadings@padronlaw.com and mpadron@padronlaw.com; and Joseph L. Raia, Esquire, Gunster, Yoakley & Stewart, P.A., Brickell World Plaza, Suite 3500, 600 Brickell Avenue, Miami, Florida 33131, E-mail: jraia@gunster.com and acure@gunster.com.

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Telephone: (305) 789-2770
Richard.Preira@gmlaw.com
Kirawillig@gmail.com
Martha.Delarosa@gmlaw.com

By: _____
Richard J. Preira

IN RE THE MARRIAGE OF SAAM ZANGENEH, <i>Petitioner/Husband,</i> and MONIN MARTIN ZANGENEH, <i>Respondent/Wife.</i>	: : : : : : :	IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR MIAMI-DADE COUNTY, FLORIDA FAMILY DIVISION CASE NO.: 2014-011533 FC 47 FLA BAR NO. 316857
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**WIFE'S VERIFIED MOTION TO DISMISS *HUSBAND'S VERIFIED PETITION FOR
DISSOLUTION OF MARRIAGE***

The Wife, Monin Martin Zangeneh, states:

1.0 The Wife, who resides in California with the minor child, is entitled to a dismissal of the *Husband's Verified Petition for Dissolution of Marriage* that he initiated in Florida, based upon a lack of personal jurisdiction over the Wife, improper service of process, lack of jurisdiction over the minor child, and *forum non conveniens*.

2.0 There is no legal or equitable basis to require the Wife, who is a stay-at-home mother of the parties' two-year old daughter and who relies almost entirely upon the Husband for her financial support, to travel from California to Florida to defend herself against the Husband's legally deficient petition.

3.0 The Wife initiated dissolution of marriage proceedings against the Husband in California in October 2014 and obtained service of process on the Husband. As the California court has jurisdiction over the parties and the minor child and can adjudicate all claims, which the Florida court does not, the Husband will suffer no prejudice when his action here is dismissed.

Factual Background

4.0 The Wife's roots are in California. Her entire close-knit family live there, including her parents, sister, aunts, uncles, and cousins. She was born, raised, and educated there. While attending college at the University of San Francisco, she started a domestic staffing business in California. She has never held employment outside of California. After an extended long-distance relationship with the Husband while the Wife continued to reside in California, the parties married in the Wife's hometown of Napa, California, where she now resides. The Wife then took a leap of faith and moved to Florida to support her Husband's burgeoning legal career. The parties had a daughter in May 2012.

5.0 After a series of actions by the Husband during the Wife's pregnancy that caused an irretrievable breakdown of the parties' marriage, the Husband moved out, leaving the Wife to care for their one-month daughter. The Wife declines to include any details in the public record as the parties have a child together and the Husband is a member of the Florida Bar. Nonetheless, the Wife and their infant daughter traveled to California to stay with her mother, later returning to Miami to attempt a reconciliation of her marriage. The attempts at reconciliation failed and the parties agreed to separate for good.

6.0 In September of 2013, in furtherance of their separation, the parties listed their Florida residence for sale. The parties traveled together to California for two weeks in December 2013 in order to spend the holidays with the minor child and for the Wife to see her family.

7.0 With the Husband's consent, the Wife and minor child returned to California in January of 2014 to permanently reside there. In support of the relocation, the Husband shipped the Wife's automobile and all of her belongings to her in California.

8.0 The parties also reached a long-distance parenting plan for their daughter, which provided for weekend visits, where the Husband would visit the minor child in California and the Wife would periodically travel to Miami with the minor child. The parties have been complying with their agreement, and both parties have traveled to facilitate time-sharing. The Wife also has provided the Husband's parents, who live on the East Coast, with contact and access with the minor child. His parents have also traveled to California to assist the Husband during his weekend time-sharing. The Husband also enjoys daily Facetime or telephone calls with the minor child as well.

9.0 The parties closed on the sale of their residence on May 9, 2014. Within a week after the closing, the Husband secretly filed a *Verified Petition for Dissolution of Marriage* on May 14, 2014. He did not notify the Wife that he initiated dissolution of marriage proceedings. He did not make any efforts to serve the Wife with the *Petition*. After several months, the Wife discovered he had filed, and inquired of the Husband. The Husband informed her that he had done so purely as a tactical move in an effort to assert a jurisdictional advantage in the parties' dissolution of marriage and had no plans to serve her with the dissolution action.¹ After the Wife's discovery, the Husband cut her off financially, including her access to their credit cards.

10.0 However, the Husband's decision to file a petition is legally irrelevant. The Husband utterly and completely failed to comply with Florida statutory and decisional law governing the requisite jurisdictional allegations that must be included in a pleading in order for the Court to have personal jurisdiction over the Wife and to exercise jurisdiction over the minor child. The doctrine of *forum non conveniens* also mandates that the case be dismissed.

¹ It is a strategic, albeit frowned upon, technique for a party to initiate dissolution of marriage proceedings and delay notifying the other party in order to maneuver a financial and tactical advantage over the spouse who has no knowledge of the proceedings and its legal ramifications.

11.0 The Wife initiated dissolution of marriage proceedings against the Husband in California in October 2014 and obtained service of process on the Husband. The California court has jurisdiction over the parties and the minor child in Case No. 26-65133, Superior Court of California, County of Napa. *Exhibit "A."*

12.0 The Husband deprived the Florida court from exercising jurisdiction over the Wife. The UCCJEA prohibits Florida from exercising jurisdiction over the minor child. The existence of the California action further requires dismissal of the Husband's *Petition*. The Husband will suffer no prejudice when his case is dismissed, as he can obtain a dissolution of the marriage and any other relief he seeks in the California action.

The Court Does Not Have Personal Jurisdiction Over the Wife

13.0 The Husband committed the fatal pleading error of failing to allege any jurisdictional basis for the Court to exercise personal jurisdiction over the Wife in his *Petition*.

14.0 The Husband's omission mandates that the Court dismiss his *Petition* as to his requests that the Court adjudicate child support and equitable distribution.

15.0 Florida's long-arm statute, §48.193, Fla.Stat., governs personal jurisdiction when the Respondent spouse resides in a different state and the Petitioner asks the Court to adjudicate claims of alimony, child support, or equitable distribution.

16.0 The Wife resides in California. The Husband recognized this undisputed fact on the "Required Information Sheet" he filed with the Court, which lists the Wife's address in Napa, California. *Composite Exhibit "B."*

17.0 As a result of the Wife's residence in California, the Husband was required to allege pursuant to §48.193(1)(a)(5) that:

With respect to a proceeding for alimony, child support, or division of property in connection with an action to dissolve a marriage or with respect to an independent action for support of dependents, maintaining a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceding the commencement of the action, whether cohabiting during that time or not. This paragraph does not change the residency requirement for filing an action for dissolution of marriage.

18.0 Pursuant to the decisions in *Weiler v. Weiler*, 861 So.2d 472 (Fla. 5th DCA 2003) and *Anderson v. Anderson*, 845 So.2d 307 (Fla.2d DCA 2003), where a party seeks to obtain personal jurisdiction over another under the long arm statute in a dissolution of marriage action, the party must allege the requisite jurisdictional facts or the *Petition* is subject to dismissal and any Final Judgment entered would be void.

19.0 The Husband's *Petition* requests the Court to adjudicate child support and equitable distribution. However, the Husband failed to allege that the Court could exercise personal jurisdiction over the Wife and he did not make any allegations under §48.193, despite the undisputed fact that the Wife and minor child reside in California.

20.0 The Husband has never served the Wife with the *Petition*. The Wife has not filed a responsive pleading, including an Answer or a Counter-Petition, which seeks any affirmative relief. The Court has not conducted any hearings. The parties have not exchanged any discovery. The parties have not filed Financial Affidavits or Certificates of Compliance with Mandatory Disclosure. The parties have not exchanged mandatory disclosure. The parties have not filed Certificates of Completion of the parenting course. The Wife has appeared in the Florida action only in order to contest jurisdiction, obtain temporary support in the form of

attorney fees in order to litigate her jurisdictional defense, and request discovery related to her claim for temporary fees, (all of which the Husband summarily ignored and which remains outstanding). These are all legal steps the Wife is permitted by Florida decisional law to undertake while she simultaneously contests jurisdiction.

21.0 As a consequence of the Former Husband's failure to allege the long-arm statute in his *Petition*, the Court does not have personal jurisdiction over the Wife and the Husband's *Petition* should be dismissed.

The Husband's Petition Should be Dismissed for Improper Service of Process

22.0 The Husband's *Petition* should be dismissed for improper service of process.

23.0 The Husband did not attempt to serve the Wife with his *Petition* and has not issued a Summons. Any attempt to do so now would be void due to the *Petition's* failure to include the same jurisdictional allegations that also prevent the Court exercising personal jurisdiction over the Wife.

24.0 The Court in *McMahan v. McMahan*, 826 So.2d 1024 (Fla. 3d DCA 2001) held:

To effect service of process under section 48.193, the complaining party must make specific allegations demonstrating sufficient jurisdictional facts. Hargrave v. Hargrave, 495 So.2d 904, 905 (Fla. 1st DCA 1986). Under section 48.193(1)(e), this means having to allege either that the couple maintained their matrimonial domicile in Florida at the time the dissolution proceeding was commenced, or that the defendant (the husband in this case) resided in Florida before the action commenced. Hargrave, 495 So.2d at 905.

Failure to allege either of these voids any attempted service under the long-arm statute. Feder v. Feder, 526 So.2d 780, 781 (Fla. 3d DCA 1988).

Here, Wife's Petition fails to allege either of the jurisdictional facts

required under section 48.193(1)(e). Instead, the Petition merely alleges that Husband is a bonafide resident of the State of Florida for more than six months next before filing the Petition. Such an allegation is insufficient to comply with section 48.193(1)(e). See McCabe v. McCabe, 600 So.2d 1181 (Fla. 5th DCA 1992)(noting that even if defendant was a Florida resident, such a fact would not, ipso facto, result in personal jurisdiction over the defendant under section 48.193(1)(e)).

Since Wife did not allege either of the requisite jurisdictional facts, her service of process on Husband under Florida's long-arm statute is void. Hargrave, 495 So.2d at 906.

25.0 The Wife did not file a responsive pleading and accordingly, has not waived her right to contest the Husband's improper service of process. As previously noted, the Wife has appeared in order to contest jurisdiction, obtain temporary support in the form of attorney fees in order to litigate her jurisdictional defense, and request discovery related to her claim for temporary fees, all actions the Wife is legally permitted to undertake while simultaneously contesting jurisdiction and improper service of process.

26.0 The Husband's *Petition* should be dismissed for improper service of process due to his failure to include any of the mandatory jurisdictional allegations.

California is the Minor Child's Home State and Florida Does Not Have Jurisdiction Over the Minor Child

27.0 It is undisputed that California, where the minor child has continually resided since January 2014, is the Home State of the minor child, pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which governs child custody issues and resolves jurisdictional disputes.

28.0 The Husband's *Petition* does not ask the Court to exercise jurisdiction over the minor child, establish a parenting plan, or seek any other relief related to the care and custody of

established statutory and decisional law under the UCCJEA, and not in the minor child's best interests.

33.0 Further, as there is an action pending in California, the UCCJEA prohibits the Husband from asking Florida to exercise jurisdiction of the minor child, and Florida is prohibited from exercising such jurisdiction, pursuant to §61.519, Fla.Stat, which states:.

Simultaneous proceedings.—(1) Except as otherwise provided in s. 61.517, a court of this state may not exercise its jurisdiction under ss. 61.514-61.524 if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child had been commenced in a court of another state having jurisdiction substantially in conformity with this part, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under s. 61.520.

34.0 The Husband did not ask the Court to exercise jurisdiction over the minor child because there was no legal basis to do so. Even if we were to make a last-gasp plea to do so now, the Court, which would not have had jurisdiction initially, cannot take jurisdiction away from the California Superior Court or conduct simultaneous proceedings with the California Superior Court.

The Court Should Dismiss the Case in its Entirety Under the Doctrine Of Forum Non Conveniens.

35.0 The Court is vested with the authority to dismiss the Husband's *Petition* in its entirety pursuant to Rule 1.061, Fla.R.Civ.P.

36.0 The Court does not have jurisdiction over the minor child or the Wife. The only power this Court has due to the Husband's pleading is to dissolve the parties' marriage. The Husband properly alleged that he has been a resident of Florida for the six months that preceded the filing of his *Petition* and that the marriage is irretrievably broken pursuant to §61.021, Fl.Stat

and §61.052, Fla.Stat. That alone is insufficient to permit the Husband's action to remain pending in Florida.

37.0 Even if the Court finds that it has personal jurisdiction over the Wife or that service of process was proper, that too is insufficient to permit the Husband's action to remain pending in Florida.

38.0 The case should be dismissed pursuant to the doctrine of *forum non conveniens*

39.0 Rule 1.061, Fla.R.Civ.P, states that:

An action may be dismissed on the ground that a satisfactory remedy may be more conveniently sought in a jurisdiction other than Florida when:

- (1) the trial court finds that an adequate alternate forum exists which possesses jurisdiction over the whole case, including all of the parties;*
- (2) the trial court finds that all relevant factors of private interest favor the alternate forum, weighing in the balance a strong presumption against disturbing plaintiffs' initial forum choice;*
- (3) if the balance of private interests is at or near equipoise, the court further finds that factors of public interest tip the balance in favor of trial in the alternate forum; and*
- (4) the trial judge ensures that plaintiffs can reinstate their suit in the alternate forum without undue inconvenience or prejudice.*

40.0 This proceeding is the exact scenario that Rule 1.061 was designed to address when it was enacted. All of the factors set forth in Rule 1.061 are met, as follows:

40.1 The California court is a more than adequate alternate forum, particularly as it possesses jurisdiction over the entire case. This includes jurisdiction over both parties and as a result, property and support issues, which the Husband failed to plead in his petition. California also has jurisdiction over the child-related issues, which the Husband could not plead in his petition.

40.2 The Wife and minor child reside in California. The Wife is a stay-at-home mother who depends on the Husband for support. The Husband is a high-wage earner and owner

of his own law firm, such that he can set his own hours and travel schedule. He has demonstrated an ability to easily travel, both for his cases and to visit the minor child, which he usually does when he is already traveling to the West Coast for a client's case. It would be disruptive to the minor child to be left in the care of third parties or be required to undergo extensive cross-country travel in order to facilitate the Wife's participation in a Florida proceeding. It would be financially punitive to the Wife to require her to travel to Florida to participate in a proceeding. It would be judicially wasteful to require the parties to litigate in both venues, when the California court has the ability to adjudicate the entire case, and Florida does not.

41.0 A suit is already pending in the California Superior Court, such that the Husband will not experience any undue inconvenience or prejudice in instituting a suit; he merely has to respond to the Wife's already-filed and served Petition.

42.0 The Court is empowered to dismiss a case pursuant to Rule 1.061, Fla.R.Civ.P after a finding that it has personal jurisdiction over the respondent and service of process was proper. Accordingly, the Court may never need to make a determination of whether Florida is the proper forum due to its lack of jurisdiction over the Wife and minor child. However, decisional law permits the Wife to seek a dismissal under Rule 1.061 while concurrently seeking to dismiss the case on jurisdictional grounds.

42.1 See *Marcos v. Haecker*, 915 So.2d 703 (Fla. 3d DCA 2005) (We find that the filing of a motion to dismiss for forum non conveniens while a motion to quash service of process is pending does not constitute a waiver of the latter.);

42.2 See *Cortez v. Palace Resorts, Inc.*, 123 So.3d 1085 (Fla. 2013) (The

common law doctrine of forum non conveniens, which translates to mean “inconvenient forum,” is an equitable, judicially crafted rule designed to allow a court to dismiss, in certain limited circumstances, a lawsuit with little connection to Florida that would be better suited and fairly litigated elsewhere. See Kinney, 674 So.2d at 87 & n. 1. This doctrine comes into play only if the plaintiff has first obtained personal jurisdiction over each of the defendants in Florida by effecting service of process, which occurs where the defendant is present in, resides in, or has its principal place of business in Florida, or through application of the state's long-arm statute because, oftentimes, the defendant has committed a tortious act in Florida. See § 48.193, Fla. Stat. (2008) (setting forth the bases for the exercise of long-arm jurisdiction);

42.3 See *Armas v. Banco Nacional De Credito, C.A.*, 129 So.3d 404 (Fla. 3d DCA 2013) (However, a finding of personal or subject matter jurisdiction in our courts is not a substitute for the existence of a “convenient forum.” See *Cortez v. Palace Resorts, Inc.*, SC11-1908, 123 So.3d 1085, 1091 (Fla. Jun. 20, 2013) (holding that inquiry as to whether long-arm jurisdiction exists over defendant “is an important statutory and constitutional hurdle for the plaintiff to overcome and one that would precede an attempt to dismiss [a] case based on the equitable, judge-made doctrine of forum non conveniens”) (emphasis added).

43.0 The Wife is entitled to the entry of an Order that dismisses the Husband's *Petition*.

44.0 The Wife has incurred professional fees in the preparation and presentation of this Motion. The Husband, who is in a superior financial position to that of the Wife, should be obligated to reimburse her for same.

WHEREFORE, the Wife seeks the entry of an Order that dismisses the Husband's Petition for lack of personal jurisdiction, improper service of process, or alternatively, under the doctrine of *forum non conveniens*, for an award of professional fees, and any other relief this Court deems just and proper.

VERIFICATION


The Wife states that she has read the foregoing and the facts contained therein are true and correct to the best of her personal knowledge.


MONIN MARTIN-ZANGENEH

STATE OF FLORIDA)
): SS
COUNTY OF MIAMI-DADE)

BEFORE ME, the undersigned authority, personally appeared MONIN MARTIN-ZANGENEH personally known to me or produced California Driver License as identification, under penalties of perjury and having been sworn under oath, verifies that the above contents and information are true and correct to the best of her personal knowledge and that she executed this document on the 10 day of November, 2014.

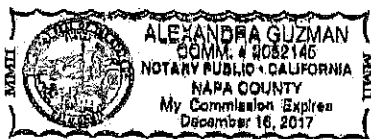
WITNESS my hand and seal in the State and County aforesaid this 10 day of November, 2014.



NOTARY PUBLIC, State of California
Print Name:

My Commission Expires:

Alexandra Guzman, Notary Public



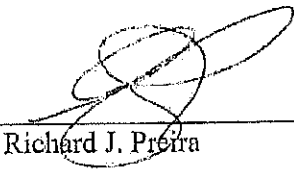
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically served in compliance with Rule 2.516(a) and Administrative Order 13-49 through Florida Courts E-filing Portal this 6th day of November, 2014 to: Enrique L. Yabor, Esquire, Law Office of Rick Yabor, P.A. Brickell Bay Club, 2333 Brickell Avenue, Suite A-1, Miami, Florida 33129, E-mail: rick.yabor@yaborlaw.com and Mauricio Padilla, Esquire, Padilla Law, 2200 South Dixie Highway, Suite 704, Coconut Grove, FL 33133, E-mail: mp@miaesq.com and mauriciopadilla@gmail.com.

Respectfully submitted,

SMGQ LAW
Managing Partner - Family Law Practice Group
Attorneys for Respondent/Wife
201 Alhambra Circle, Suite 1205
Coral Gables, FL 33134
Telephone: (305) 377-1000
Service E-mail Addresses:
Reception@smgqlaw.com,
RPreira@smgqlaw.com
CFernandez@smgqlaw.com

By: _____


Richard J. Preira

VERIFIED RETURN OF SERVICE

State of California

County of Miami

Superior Court

Case Number: 20-08133



Petitioner:
MOMIN MARTIN-ZANGANEH

vs.
Respondent:
SAAM ZANGANEH

For:
Anne L. Holland, Esq.,
ANNE L. HOLLAND ATTORNEY AT LAW
P.O. Box 408
St. Helena, CA 94574

Received by Priority One Process Service, Inc. on the 18th day of October, 2014 at 3:00 pm to be served on SAAM ZANGANEH, 777 BRICKELL AVE., #700, MIAMI, FL 33131.

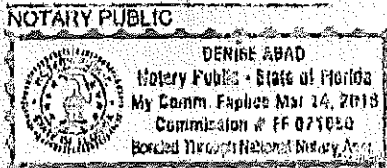
I, JOSE GARCELL, being duly sworn, depose and say that on the 20th day of October, 2014 at 10:15 am, I:

INDIVIDUALLY served by delivering a true copy of the Family Action Summons - Personal Service on a Natural Person, Petition for Dissolution of Marriage, Declaration Under the UCCJEA, Notice of Family Law Case Management, Case Management Conference Report, Response (Blank) with the date and hour of service endorsed thereon by me, to: SAAM ZANGANEH at the address of: 777 BRICKELL AVE., #700, MIAMI, FL 33131, and informed said person of the contents therein, in compliance with state statutes.

Additional information pertaining to this Service:
UNABLE TO MAKE CONTACT WITH ANYONE AT THE FIRST ADDRESS ATTEMPTED 2020 N. BAYSHORE DR., #1608, MIAMI, FL 33133. LOCATED AND SERVED AT THE SUBJECT'S POE 777 BRICKELL AVE., #400, MIAMI, FL 33131.

I certify that I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the Eleventh Judicial Circuit in which the process was served. "Under penalty of perjury, I declare that I have read the foregoing Affidavit of Service and that the facts stated in it are true."

Subscribed and Sworn to before me on the 20th day of October, 2014 by the affiant who is personally known to me.



3
JOSE GARCELL
Process Server C.P.S. #1172

Priority One Process Service, Inc.
5893 Sunset Drive
South Miami, FL 33143
(305) 669-1518

Our Job Serial Number: 2014025482
Re: ZANGANEH

Exhibit
66 A 99

66 Exhibit Textiles Vg Au

THE ELEVENTH JUDICIAL CIRCUIT OF MIAMI-DADE COUNTY, FLORIDA
REQUIRED INFORMATION PER ADMINISTRATIVE ORDER 91.35

CASE NO:

Petitioner's Name: Saam Zangeneh
Address: 2200 South Dixie Highway
City, State: Coconut Grove, FL Zip Code: 33133
Home Phone: (305) 856-1777 Work Phone:

Attorney: Rick Yabor Florida Bar No. 191019
Attorney's Address: 2200 South Dixie Highway, Suite 704
City, State: Coconut Grove, FL Zip Code: 33133
Phone No.: (305) 856-1777 Fax: (305) 856-2411

Respondent's Name: Monin Martin-Zangeneh
Address: 47 Wild Rye Way
City, State: Napa, CA Zip Code: 94558
Home Phone: (305) 915-1900 Work Phone:

Attorney (if known):
Attorney's Address:
City, State: Zip Code:
Phone No.: Fax:

Minor Children:
Name: I.A.M.. D.O.B. 5-15-2012
Name: D.O.B.
Name: D.O.B.

The Following information is requested for reporting to the Bureau of Vital Statistics:

Place of Marriage: State/Province: California County: Napa

Date of Marriage: MM: 11 DD: YY: 2008

Maiden Name of Wife: Martin

H:\Zangeneh v Zangeneh.DOM COUNTY REQUIRED INFO SHEET.wpd

Exhibit
"B"