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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

In re the Marriage of:

Petitioner: MITCHEL GOLDMAN

and

Respondent: HEDY GOLDMAN

) Case No. D 422986 JXS

) RESPONSIVE DECLARATION OF
) MITCHEL GOLDMAN RE: ORDER TO
) SHOW CAUSE (FILED BY
) RESPONDENT ON 11/20/98)

) DATE: 2/3/99
) DEPT: 25 (220 W. Broadway)
) TIME: 9 a.m.

I, MITCHEL GOLDMAN, make the following declaration of facts based upon my own knowledge, and if called upon can testify competently thereto except where the same are stated upon my information and belief, as to which facts I believe them to be true.

1. The parties have engaged in protracted litigation since the Petition for Dissolution was filed on November 21, 1995. On October 27, 28, 29 and November 19, 1997, the matter came on for long cause trial before the Honorable Janis Sammartino. Following four days of testimony and argument, the case was taken under submission. Thereafter, on December 11, 1997 Judge Sammartino issued a Statement of Intended Decision.

2. HEDY objected to the entry of the Intended Decision resulting in the passage of an additional year without Judgment. Initially HEDY submitted a proposed Statement of Decision which did not address many crucial issues outlined in the Court's Intended

1 Decision. For instance, the proposed decision completely omitted the Court's findings as
2 to value and equalization payment in connection with Dermatology Associates, Rilissa, FRG
3 Leasing. The proposed decision omitted the Court's findings regarding ESCMF stock and
4 the tax penalties associated with its division. The proposed decision completely omitted the
5 Court's ruling on private school for the school year 1997 through 1998.

6 3. After over a year of negotiation, a Statement of Decision was entered on
7 December 2, 1998, adopting essentially verbatim the Court's written Intended Decision of
8 one year earlier. See **Exhibit "A"** attached hereto and incorporated by reference.

9 **CURRENT ISSUES BEFORE THE COURT.**

10 **I. MODIFICATION OF CHILD AND SPOUSAL SUPPORT**

11 **(MITCHEL'S INCOME)**

12 4. I agree there is a need for the Court to review the current orders for child and
13 spousal support. My income has declined significantly since the Court's finding of \$21,824
14 per month gross (\$261,888 per year). My personal gross income for the calendar year 1998
15 was approximately \$203,000. This represents a decline of over \$61,000 since the Court last
16 considered child and spousal support. My financial well-being has deteriorated in three
17 areas:

18 a. My income from Dermatology Associates has significantly decreased.

19 b. My income from Rilissa Enterprises, Inc. was a deficit of \$10,660 for the
20 fiscal year September 1, 1997 through August 31, 1998 (see Declaration of Don K. Vonk,
21 Certified Public Accountant). I have received no income from Rilissa since August 31, 1998.

22 c. My investments, most of which were in ESC stock are nearly gone. The
23 ESC stock went from a value of 30 to a value of 6. The total value of my liquid assets
24 (stocks, bonds, mutual funds, bank accounts) is now \$341,691. At trial the total value of
25 these liquid assets was \$1.3 million.

26 **(HEDY'S ABILITY TO WORK)**

27 5. There continues to remain a failure on the part of HEDY to recognize her
28 responsibility to make reasonable, good faith efforts to become self supporting. While I am

1 aware that HEDY will unlikely earn anywhere near my level, she has a legal responsibility
2 as earlier directed by the court, and a financial responsibility to assist with the support of our
3 children.

4 6. HEDY now says she recently "lost" her job. Factually, HEDY quit her job in July
5 1998. At the time, she was selling products for a homeless organization in downtown San
6 Diego. She was under employed in this position, and only worked part time. After quitting
7 her job, HEDY sent RISA to snowboarding school for two weeks, and then on to Atlantic City
8 and New York for three to four weeks. MELISSA our other daughter was sent to a camp in
9 Maine. HEDY then went on vacation, taking an Alaskan cruise for two weeks with her
10 girlfriend.

11 7. I request the court determine HEDY'S earning capacity, and impute income to
12 her based upon ability to earn. It is my opinion that HEDY can earn \$2,500 to \$3,500 gross
13 per month. HEDY has the qualifications, skill and time to be employed full time. Instead she
14 has gone from part-time employment to no employment.

15 8. As a part of my request, I now ask the court to set a termination date for spousal
16 support. In the alternative, I suggest that the court issue a Richmond order. While I
17 appreciate the fact that HEDY and I were married for over 20 years, ^{16y est} HEDY was given an
18 admonition under Family Code section 4320 that her goal should be self supporting within
19 a reasonable period of time. She has taken no position to accomplish that goal. The statute
20 provides that: "A reasonable period of time" for the purposes of this section generally shall
21 be one-half the length of the marriage.

22 9. HEDY has the appropriate education and training to teach, be a teacher's aide,
23 or do any number of things within the private or public school districts of San Diego County.
24 Since separation she has worked at Nordstroms and for a charitable agency. Our children
25 are in school full time, and they are attended to after school with activities and employment.
26 Though HEDY may say needs to supervise the children after school, she doesn't.
27 Additionally, it is clear that HEDY leaves the children during their most crucial times, three
28 to four evenings per week between the hours of 8 p.m. until long after midnight.

1 December 1998. The letter, clearly inappropriate for a parent to write to a child, is a telling
2 commentary as to how I must have in the past been degraded in the children's eyes by
3 HEDY. **Exhibit "C"** also addresses certain financial issues now brought forth by HEDY
4 such as her true feelings regarding RISA operating a motor vehicle, and the refusal to pay
5 for children's ordinary expenses.

6 14. While HEDY and our daughters' relationship is at an all time low, she has
7 recently eliminated RISA'S therapy with Mark E. Cooper, Ph.D. This is a therapist selected
8 by HEDY which she had touted as being someone I also needed to see. I thereafter met
9 with Dr. Cooper in an attempt to better my relationship with our children. HEDY now wants
10 to drop him. Attached hereto and marked as **Exhibit "D"**, is a letter from Dr. Cooper to
11 HEDY and I dated January 11, 1999, expressing his concern about HEDY'S decision that
12 RISA can no longer participate in therapy.

13 **II. REQUEST FOR EXTRACURRICULAR COSTS**
14 **AS AN ADD-ON TO CHILD SUPPORT**

15 **(PRIVATE SCHOOL)**

16 15. HEDY first requests that I pay one-half of all tuition and associated costs for our
17 two daughters to attend La Jolla Country Day School.

18 16. This very issue was addressed at the time of trial. HEDY and I were each
19 ordered to pay one-half of MELISSA'S tuition for only the 1997 through 1998 school year.
20 The Court specifically made no order for reimbursement of private school tuition after that
21 academic year. Thereafter, HEDY, without my consent, enrolled both of our children in La
22 Jolla Country Day for the school year 1998 through 1999. Excellent public schools were and
23 are available to both of our daughters. RISA can attend Torrey Pines High School in Del
24 Mar and MELISSA can attend Earl Warren Middle School. My current earnings are not
25 sufficient to pay both the generous amount of child and spousal support, and private school.

26 **(BAT MITZVAH)**

27 17. HEDY next requests that I pay for our daughter MELISSA'S Bat Mitzvah this
28 past December.

1 18. MELISSA had two Bat Mitzvahs. One was solely planned by HEDY and took
2 place on December 12, 1998. I cannot understand HEDY'S statement that "she could not
3 afford the \$10,000 cost" since she acknowledges having stocks, bonds and other liquid
4 assets exceeding \$750,000.

5 19. The second Bat Mitzvah planned by myself took place on December 25, 1998,
6 in Miami, Florida. Approximately 120 people attended the event. I solely paid approximately
7 \$10,000 for the Bat Mitzvah. See **Exhibit "E"** attached hereto and incorporated by
8 reference which is the invitation to MELISSA'S Bat Mitzvah. See **Exhibit "F"** attached
9 hereto and incorporated by reference, which is a letter from HEDY to me indicating her
10 assumption that we would have two separate events. (HEDY and I are unable to
11 communicate effectively on any issue, requiring each of us to have a Bat Mitzvah.
12 Additionally, her conduct has so alienated herself from my family that a second Bat Mitzvah
13 seemed both a sensible solution and a nice event for MELISSA.)

14 **(AUTOMOBILE)**

15 20. HEDY next requests I purchase for our daughter, RISA, a vehicle. This request
16 is another example of HEDY'S free-spending attitude. First, I do not believe our 15-year old
17 daughter should own a vehicle. Second, if HEDY disagrees she has significant resources
18 from which to make such a purchase. This is not a child support expense. Finally, if the
19 court reviews **Exhibit "C"** HEDY herself has told RISA she is not responsible to drive.

20 **III. CHILD AND SPOUSAL SUPPORT ARREARAGES PLUS INTEREST**

21 21. This issues has been settled. I did accumulate arrearages on child and spousal
22 support in part due to the original support order of March 1997 being retroactive to January
23 1997; and in part due to the subsequent modification of support. Though I do not believe
24 arrearages are owed in the amount of \$6,976.51, which includes interest through November
25 1, 1998, I have now tendered that amount to HEDY in order to resolve this issue.

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1 **IV. ARREARAGES RE: REIMBURSEMENTS**

2 22. Within this general category, HEDY seeks to charge me with certain expenses
3 apparently incurred by her (and not necessarily on behalf of our children) subsequent to July
4 1, 1997. She does this by referring to a pendente lite court order issued on March 19, 1997.

5 23. All pendente lite orders expired with the effective date of the child support
6 awarded at trial. The current child support order is effective July 1, 1997. With the
7 exception of the private school tuition for MELISSA for calendar year 1997/1998; the trial
8 Court did not continue the March 17, 1997, pendente lite orders or other pendente lite orders
9 issued during the course of this case. This was reasonable due to the fact that at the March
10 17, 1997, pendente lite hearing, our assets had yet to be divided. Additionally, my income
11 at that hearing was more than at trial, and HEDY was not employed. Further, as noted
12 below, a number of expenses HEDY claiming entitlement were either not ordered; or, if
13 ordered, proof is lacking that they were incurred for our children.

14 **(GOLDMAN MEDICAL/THERAPY)**

15 24. HEDY'S Exhibit "2" attempts to charge me for three payments to Blue Shield
16 for November 16, 1997; December 13, 1997; January 18, 1998. I maintain and pay the Blue
17 Shield insurance for the children. There, I believe this is HEDY'S insurance. First,
18 assuming these are payments for medical insurance, there was no order in existence at that
19 time requiring that I pay for medical insurance. HEDY was receiving a significant child and
20 spousal support award, and had received by her own admission \$1.3 million in assets.
21 Secondly, even if an order had been in existence, there is no verification that the payment
22 was for the benefit of our children, as opposed to HEDY.

23 25. HEDY'S Exhibit "2" also attempts to charge me for a December 3, 1997,
24 "therapy" with Judy Shester. Ms. Shester is HEDY'S therapist, not our daughter, RISA. It
25 is my understanding that Judy Shester's bill was paid in full. Ms. Shester was caught double
26 billing through my insurance, and she was reported to the State Board.

27 26. HEDY'S Exhibit "2" also attempts to charge me with a \$1,600 bill paid to Kay
28 Davidson, on about July 10, 1997. First, this is not a "Goldman medical/therapy" bill.

1 Though this may have been a bill in connection with RISA'S schooling, HEDY did not inform
2 me prior to incurring the expense. Secondly, the bill was incurred after July 1, 1997, and
3 there is no order requiring my payment.

4 27. Finally, in Exhibit "2" HEDY attempts to charge me \$440 for a bill from Mark
5 Cooper which she dates August 6, 1998. This was a bill HEDY incurred when she went to
6 Dr. Cooper. Dr. Cooper informed me that the visit was only about HEDY. Additionally,
7 RISA was in Atlantic City at the time. (Please see **Exhibit "D"** which is the most recent
8 letter from Dr. Cooper regarding therapy.)

9 28. In conclusion on the sub-issue of "Goldman Medical/Therapy", the above
10 charges by HEDY represent the type of concerns I have throughout her claims that she is
11 entitled to reimbursements. Not only do her claims post date July 1, 1997; but HEDY fails
12 to provide back up documentation showing that the expense was sole`ly for our child.

13 **(CREDIBILITY OF HEDY ON REIMBURSEMENT ISSUES)**

14 29. HEDY apparently recognized the meritlessness of her claims for these types of
15 reimbursement by not raising these issues at the time of trial. Therefore, I request the
16 entirety of reimbursements under "Goldman Medical/Therapy" be denied.

17 30. Since separation, I have paid the Blue Shield insurance for our children. There
18 have been times since separation when I have overpaid for the children's medical expenses.
19 One such time occurred just prior to September 1998. A refund check was issued in the
20 sum of \$106.81, but made payable to HEDY GOLDMAN. HEDY knew she was not entitled
21 to the check, yet cashed the same and did not inform me of the refund. Then the following
22 month she sent me a bill from the same provider, asking that I pay one-half of the \$106.88.
23 Attached hereto and marked as **Exhibit "G"** is both the check signed by HEDY, and the bill
24 she forwarded to me.

25 **(GOLDMAN PRIVATE SCHOOL/TUTORING)**

26 31. Exhibit "3" lists HEDY'S claim for reimbursement for "Goldman private school
27 tutoring". I have recently reimbursed the 5/7/97 tutoring of \$62.50.

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1 49. As a side note, the majority of Mr. Wallace's bill was due to his evaluation of
2 Dermatology and Associates, the main corporation of the parties. Rilissa was the entity
3 which collected royalties from my past writings, and any honoraria I received in connection
4 with speaking. Because Rilissa in March 1997 was owned solely by the parties, and a cash
5 entity, it was originally utilized to fund Mr. Wallace's evaluation.

6 **VI. REIMBURSEMENT FOR CRIMINAL DEFENSE LAWYER**

7 50. HEDY seeks reimbursement under Exhibit "8" alleging that she hired a criminal
8 defense lawyer to defend our daughter because I filed criminal charges against her. She
9 then attaches a statement from Grimes and Warwick dated January 3, 1998, indicating
10 \$1,000 in attorney's fees accruing between December 6, 1996, through January 2, 1997.

11 51. First, I have never filed or asked to have filed any criminal charges against my
12 children. My wife informed me that RISA took liquor from our house, but that occurred on
13 August 28, 1997. Therefore the liquor incident would have nothing to do with HEDY
14 incurring attorney's fees in 1996.

15 52. Secondly, it is my belief that Grimes and Warwick were HEDY'S attorney and
16 Exhibit "8" is her bill. Therefore, this is just another fraudulent attempt by HEDY to seek
17 reimbursements for which she is not entitled. As the court might recall, a number of
18 crime/incident reports were filed by my wife and I against HEDY between October 1996
19 through January 1997. HEDY broke the windshield and "keyed" my wife's car on December
20 27, 1996. In addition on October 21, 1998, HEDY was picking up RISA from my office and
21 knew I was away. HEDY knew where my car was parked, and when I returned I found a
22 large dent on the side of the car (police report No. 98-074223). In addition, both my vehicle
23 and Dianne's car had the same nails in the same left back tire which caused the tires to go
24 flat on October 17, 1998. I therefore believe that HEDY'S Exhibit "8" is her expense for
25 criminal representation, most likely involving one or more of these incidences. See **Exhibit**
26 **"I"** attached hereto and incorporated herein by reference.

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VII. ATTORNEY'S FEES AND COSTS

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2 53. Both HEDY and I have incurred significant attorney's fees post-judgment. From
3 the date I retained my current counsel March 19, 1998 through December 1, 1998, I
4 incurred attorney's fees of over \$24,000. A majority of these fees were incurred in getting
5 the Statement of Decision entered after HEDY announced she would not agree to the
6 Court's intended decision. My counsel was required to review my file, both the court file and
7 the file of my former attorney, in order to understand the complexities of the case. He
8 thereafter filed objections to HEDY'S proposed decision at trial.

9 54. As noted in my objections to HEDY'S proposed Statement of Decision, a
10 significant portion of the Statement was outright wrong. Many of the proposed rulings were
11 never ordered by the Court. Many of the Court's rulings found in the written Intended
12 Decision were left out of HEDY'S Statement of Decision. Prior to incurring what I knew
13 would be a substantial legal expense, my counsel proposed to HEDY'S then counsel, Janice
14 Pohl, that the Court's Statement of Intended Decision be entered. That proposal was never
15 accepted until after 180 days and \$24,000 was spent. See **Exhibit "J"** attached hereto and
16 incorporated by reference.

17 55. My proposal to end this matter in May 1998 was met with HEDY discharging her
18 attorney and that counsel filing a *Borson* motion. HEDY was requesting \$2,600 in
19 connection with the preparation of a defective Statement of Decision. HEDY was also
20 alleging she could not afford the \$2,600 then owing to Ms. Pohl. (She had over \$750,000
21 in liquid assets.) After appearing in court with my counsel, the *Borson* motion was denied.

22 56. HEDY'S current counsel entered the case on or about June 8, 1998. The
23 Statement of Decision was finally filed on December 2, 1998. The wording of that Decision
24 is the same as the Court's original Intended Decision, except for minor wording awarding the
25 community property in the businesses.

26 57. I have also incurred attorney's fees to Joseph Maiorano, because HEDY
27 refused to pay Ford Motor Credit Co. in connection with a leased vehicle she was using.
28 Early in these divorce proceedings, HEDY was given the temporary and exclusive use of the

1 leased vehicle. She then agreed to transfer the lease into her own name and make
2 payments on the vehicle. HEDY failed to make payments, resulting in Ford Motor Credit Co.
3 suing me on July 17, 1998. HEDY finally paid this sum but only after I incurred attorney's
4 fees through Mr. Maiorano's office.

5 58. I request that HEDY pay reasonable attorney's fees and costs. She clearly has
6 the ability to pay both her and my fees and costs from her liquid assets.

7 59. There is another major issue still for the Court to decide. On November 19,
8 1997, the Court designated Kim Cheatum to act as the special master for determination of
9 the division of furniture, furnishings and appliances. Mr. Cheatum's report was sent to the
10 Court on April 29, 1998. The report by the special master, to a large degree, addresses
11 disputed items of furniture, furnishings and collections not yet divided by the Court. The
12 special master divides these items into two categories: (1) my personal property in HEDY'S
13 possession; and (2) items given by HEDY to Goodwill.

14 a. With respect to the first category (my personal property in HEDY'S
15 possession), the special master concluded that my extensive coin collection, stamp
16 collection, silver platter and various gold items were my separate property, and are in
17 HEDY'S possession, custody or control. HEDY was directed to deliver these items to me
18 no later than May 31, 1998. As set forth in my separate declaration, she failed to deliver the
19 most expensive items (coin collection and stamp collection worth over \$143,480). The
20 special master's report found that HEDY repeatedly failed to answer questions regarding her
21 knowledge of location of these categories of separate property, and that her answers to
22 questions were evasive.

23 b. The second category addressed by the special master dealt with property
24 given without authorization to Goodwill. The special master found that HEDY'S answers
25 were evasive, misleading, and not candid. Mr. Cheatum found HEDY under a fiduciary duty
26 with respect to community property under her management and control. That duty alone
27 made her responsible to give a full, truthful account of what she did with the personal
28 property. The special master directed HEDY to pay me the sum of \$7,494 for my interest

1 in the items she unilaterally gave to Goodwill. The report directed HEDY to deliver to me
2 two Scott Alan paintings, one large Scott Alan lucite box and one painting from cruise, none
3 of which has been delivered.

4 60. I am requesting the Court adopt the determination of the special master. My
5 opinion is that the coin collection at separation had a fair market value exceeding \$131,000,
6 and that the stamp collection had a fair market value exceeding \$12,400.

7 61. I seek to have HEDY either return the coins and stamps as indicated in those
8 pleadings and Mr. Cheatum's determination; or to reimburse me for its value from HEDY'S
9 share of the community property. The court clearly has the jurisdiction to impress a lien
10 against the community proceeds of HEDY who has refused to return my separate property.

11 62. The current value of my stocks above-listed have not been tax impacted. If I
12 am forced to liquidate my stock accounts, without first receiving credit for the coin and stamp
13 collection, then I will pay federal and state taxes which may exceed \$100,000. Therefore,
14 payment of the equalization payment of \$228,000 without consideration of the value of my
15 separate coins and stamps leaves me without any funds plus a debt to the government. I
16 therefore ask that HEDY be restrained from collecting on the equalization payment until the
17 coin and stamp issue has been determined.

18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct and that this declaration was executed on January __, 1999,
20 at San Diego, California.

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23 MITCHEL GOLDMAN
24 Petitioner
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