ATTORNEY INFORMATION

Attorneys for Plaintiff

*In Conjunction with Legal Aid Center of Southern Nevada Pro Bono Project*

DISTRICT COURT

CLARK COUNTY, NEVADA

PLAINTIFF NAME )

)

Plaintiff, ) Case No.: CASE NO.

)

vs. ) Dept. No.: DEPT. NO.

)

DEFENDANT NAME, )

)

Defendant. )

)

**ANSWER AND COUNTERCLAIM**

The Defendant, \_\_\_\_\_\_\_\_\_\_\_\_\_, by and through his/her attorney, \_\_\_\_, herein files his/her Answer and Counterclaim to Plaintiff’s Complaint for Divorce as follows:

**ANSWER**

1. Defendant admits the allegations contained in paragraphs \_\_\_\_\_\_\_\_\_\_\_\_\_ of the Complaint.

2. Defendant denies the allegations contained in paragraphs \_\_\_\_\_\_\_\_ of the Complaint.

3. Defendant is without knowledge as the allegations contained in paragraphs \_\_\_\_\_\_\_\_ of the Complaint and thereby denies the same.

4. Defendant denies each and every other allegation in Plaintiff’s Complaint not otherwise responded to herein.

///

**COUNTERCLAIM**

Having fully responded to Plaintiff Complaint, Defendant, as and for a Counterclaim against Plaintiff alleges as follows:

1. That Defendant, for a period of more than six weeks immediately preceding the filing of this action, has been and now is an actual, bona fide resident of the State of Nevada, County of Clark and has been actually physically present and domiciled in Nevada for more than six weeks prior to the filing of this action.

2. That Plaintiff and Defendant were married on the \_\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_\_ in \_\_\_\_\_\_\_, \_\_\_\_\_\_\_, and have been and still are husband and wife.

3. That there is a history of domestic violence in this marriage. Presently, there is a Temporary Protective Order issued against Plaintiff to protect Defendant, case number\_\_\_\_\_\_

4. That there are two (2) minor children who are the issue of this marriage or who have been adopted by the parties and Defendant is not currently pregnant. The names and dates of birth of the minor children are:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, born November 16, 1997; and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, born June 13, 1999.

The children’s habitual state of residence is the State of Nevada.

5. (*Use for children born to the parties prior to their marriage; otherwise leave out)* The Defendant is presumed to be the father of \_\_\_\_\_\_\_\_\_\_, born June 27, 2006 and\_\_\_\_\_\_\_\_\_\_\_\_\_, born July 18, 2008, prior to the parties marriage because the parties lived together during the period of conception and Defendant is named as the father on both children’s birth certificates and an Affidavit of Paternity was filed with the Office of Vital Statistics more than six months immediately preceding the filing of this action. The Affidavit of Paternity was not revoked within six (6) months from the date it was filed.

5. That the Defendant is a fit and proper person to be awarded SOLE LEGAL CUSTODY of the minor children to wit: \_\_\_\_\_\_\_\_\_\_\_ Due to Plaintiff’s history of domestic violence against Defendant and pursuant to NRS 125.480, it is not in the best interests of the children to award Plaintiff either joint or sole legal custody.

**OR**

5. The parties are fit and proper persons to be awarded JOINT LEGAL CUSTODY of the minor children to wit: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

6. Defendant is a fit and proper person to be awarded PRIMARY PHYSICAL CUSTODY of the minor children, to wit: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Due to Plaintiff’s history of domestic violence against Defendant and pursuant to NRS 125.480, it is not in the best interests of the children to award Plaintiff either joint or primary physical custody.

**OR**

6. That the parties should be awarded JOINT PHSYCIAL CUSTODY of the minor children, to wit: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

7. That Defendant should be granted permission to relocate from the State of Nevada to the State of \_\_\_\_\_\_\_\_\_. In \_\_\_\_\_\_\_\_\_, she has family, a support system, a place to live and has completed all of the licensing requirements to return to work in the \_\_\_\_\_\_\_\_\_field.

8. When both parties reside in Nevada, Plaintiff should have visitation as follows: OR

7. Plaintiff should have visitation as follows: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

8. That the holiday visitation, when in conflict with the \_\_\_weekly/monthly, etc.\_\_\_\_\_ visitation, will take precedence and should be as follows: as the parties can mutually agree; however if they are unable to agree, then pursuant to the Court’s Holiday Visitation Schedule attached hereto as Exhibit “A” )

8. If and when Defendant relocates from the State of Nevada, Plaintiff should have visitation as follows: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

9. That Plaintiff should pay child support in the amount of \_\_\_\_ % of his gross monthly income in compliance with NRS 125B.070. . Plaintiff is employed and believed to be earning \_\_\_\_\_\_\_\_. OR Defendant reserves the right to amend the amount of child support in the event Plaintiff should become employed.

**OR**

9. That Plaintiff should pay $100.00 per month per child for a monthly total of $\_\_\_\_\_\_\_\_\_\_as the statutory minimum and in compliance with NRS 125B.070. Plaintiff is employed and believed to be earning \_\_\_\_\_\_\_\_. OR Defendant reserves the right to amend the amount of child support in the event Plaintiff should become employed.

10. That Defendant has initiated a child support case with the Office of the District Attorney, Family Support Division,\_\_\_\_\_\_\_\_\_\_\_\_\_) against Plaintiff. Pursuant to an order entered on\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Plaintiff’s child support obligation is $\_\_\_\_\_\_.00 per month for the three (3) minor children. In addition, there is a total amount for child support arrearages in the amount of $\_\_\_\_\_\_\_\_\_\_.00. Plaintiff has been ordered to pay an additional $\_\_\_\_00 until such arrears are satisfied.

11. Pursuant to NRS 125.510, this amount should continue until the minor child reaches 18 years of age if no longer in high school, or if the child is still enrolled in high school, when the child reaches 19, years of age, or becomes emancipated or otherwise self supporting.

12. That there should be a wage assignment for child support pursuant to NRS 31A.250 and NRS 125.450, to attach any sums that may be earned by Defendant to satisfy Defendant’s child support obligations.

13. That Plaintiff pay child support from \_\_\_\_\_\_\_\_\_\_, the date the parties’ separated through the present and continuing, pursuant to NRS 125B.050 and that this amount be reduced to judgment. Plaintiff’s child support arrears are $\_\_\_\_\_\_\_\_\_\_ less \_\_\_\_\_\_ previously paid to Defendant as of \_\_\_\_\_\_\_\_\_\_\_\_.

13. That pursuant to Eighth Judicial District Court rule 5.07, Plaintiff and Defendant shall each successfully complete the Transparenting Class within forty-five (45) days of service of the initial Complaint or Petition upon Defendant, and that no action shall proceed to final hearing until a notice of completion of the class has been filed with the Court, provided that non-compliance by a parent who does not enter an appearance shall not delay a final hearing.

14. That Plaintiff/Defendant should maintain medical and dental insurance for the minor children, if available. Any unreimbursed medical, dental, optical, orthodontic or other health related expenses incurred for the benefit of the minor children is to be divided equally between the parties. Either party incurring an out-of-pocket expense shall provide a copy of the invoice/receipt to the other party within thirty days of incurring such expense. If the paid invoice/receipt is not tendered within the thirty day period, the Court may consider it as a waiver of reimbursement by the incurring party. The other party will then have thirty days within which to dispute the expenses or reimburse the incurring party for one-half of the out-of-pocket expenses. If not disputed or paid within the thirty day period, the party may be subject to a finding of contempt and appropriate sanctions.

**OR**

That PLAINTIFF AND/OR DEFENDANT should maintain medical and dental insurance for the minor children, if available at a reasonable cost. Any unreimbursed medical, dental, optical, orthodontic or other health related expenses incurred for the benefit of the minor children is to be divided equally between the parties. *(this version does not include the 30/30 rule, but still make the parties equally responsible for unreimbursed health expenses; it’s a personal preference if your client wants a time limit to submit and receive reimbursement)*

16. That there is community property to be adjudicated by the Court.

The following community property should be awarded to Plaintiff as Plaintiff’s sole and separate property:

a. All of the clothing, jewelry and other personal property in Plaintiff’s possession.

The following community property should be awarded to Defendant as Defendant’s sole and separate property:

aa. All of the clothing, jewelry and other personal property in Plaintiff’s possession;

bb. All of the clothing, jewelry, toys, school supplies and other personal property belonging to the parties’ minor children; and

cc. The \_\_\_\_\_\_\_\_\_\_ automobile, VIN \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ;

dd. All of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

There may be additional community assets of the parties, the exact amounts and descriptions of which are presently unknown to Defendant. Defendant asks permission of this Court to amend this Counterclaim to insert this information when it becomes known to Defendant or at the time of trial.

**OR**

16. That there is no community property to be divided by the Court.

17. That there are community debts to be adjudicated by the Court.

The following debts should be Plaintiff’s sole and separate debts:

a. One–half of the outstanding debt to \_\_\_\_\_\_\_\_\_\_\_\_ in the approximate amount of \_\_\_\_\_\_\_\_\_\_;

b. All of the outstanding debt to \_\_\_\_\_\_\_\_\_\_\_\_\_ in the approximate amount of \_\_\_\_\_\_\_\_\_\_\_ incurred for \_\_\_\_\_\_\_\_\_\_\_\_\_; and

c. Any and all debt incurred by Plaintiff in his name since \_\_\_\_\_\_\_\_\_, the date the parties separated.

The following debts should be Defendant’s sole and separate debts:

aa. One–half of the outstanding debt to \_\_\_\_\_\_\_\_\_\_\_\_ in the approximate amount of \_\_\_\_\_\_\_\_\_\_;

bb. All of the outstanding debt to \_\_\_\_\_ in the approximate amount of \_\_\_\_\_ incurred for \_\_\_\_\_; and

cc. Any and all debt incurred by Defendant in her name since \_\_\_\_\_, the date the parties separated.

There may be additional community debts of the parties, the exact amounts and descriptions of which are presently unknown to Defendant. Defendant asks permission of this Court to amend this Complaint to insert this information when it becomes known to Defendant or at the time of trial. Defendant requests that Plaintiff be ordered to pay any such community debts and to indemnify and hold Defendant harmless thereon.

**OR**

17. That there are no community debts to be divided by the Court.

18. That there is a house and real property located at \_\_\_\_\_, which was acquired and purchased by the parties during the marriage. Defendant has made payments on and maintained the home during the marriage and would like to be allowed to remain in exclusive possession of the residence until it is sold. In the event Plaintiff fails or refuses to sign the quitclaim deed for the sale of the home, Defendant respectfully requests that the Clerk of the Court be directed to sign the quitclaim deed. Further, Defendant should be awarded all furnishings within the home.

**OR**

18. That there is a house and real property located at \_\_\_\_\_, which was acquired and purchased by the parties during the marriage. Defendant has made payments on and maintained the home during the marriage. Defendant is requesting that the house be awarded to her as her sole and separate property. In the event Plaintiff fails or refuses to sign the Quitclaim deed to transfer ownership of the home, Defendant respectfully requests that the Clerk of the Court be directed to sign the quitclaim deed. Further, Defendant should be awarded all furnishings within the home.

19. That Defendant should be awarded one-half of the community interest in and to Plaintiff’s Pension, whether a single Plan or multiple Plans. Defendant’s community share in any and all retirement savings and/or benefits of the Plaintiff including rights of survivorship, vacation, sick and severance entitlements, cost of living increases and any other financial benefits owed to Plaintiff and including division of the 401(k) earned by the Plaintiff, JOHN DOE while employed at Beck Gaming. In the event the Plaintiff took out a loan from any retirement savings plan without the knowledge or consent of the Defendant, then the Plaintiff will be solely liable for any such loan and the loan repayment will be deducted from only the Plaintiff’s share of retirement proceeds.

The actual amount or percentage of the pension that will be paid over to JANE DOE will be determined upon receipt from the plan, a history of contributions to determine the marital and separate interests of the parties. The community share is determined by multiplying the benefits by a fraction, the numerator of which is the number of months Defendant was employed during which the parties were married and the denominator of which is the total number of months of time and service the Plaintiff was employed, pursuant to Gemma v. Gemma, 105 Nev. 458, 778 P.2d 429 (1989). This Court shall retain jurisdiction to determine the exact amount of benefits involved, if necessary. This Court shall also retain jurisdiction to issue a separate Qualified Domestic Relations Order, if such is required. That Plaintiff should pay half/total costs of preparation of a Qualified Domestic Relations Order or equivalent in order to facilitate enforcement of Defendant’s community interest in the retirement savings of the Plaintiff.

**OR**

That each party should retain their respective interests in their own pensions whether a single Plan or multiple Plans as their sole and separate property.

19. That neither party should be awarded spousal support. **OR**

That the Defendant should be awarded spousal support in the amount of \_\_\_\_\_\_\_\_\_\_ for \_\_\_\_\_years/months.

20. That Defendant never changed her name and should continue to use the name \_\_\_\_\_\_\_\_\_\_\_. **OR** That Defendant should have her former or maiden name of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ restored to her. **OR** That Defendant should not have her former or maiden name restored to her and should continue to use the surname \_\_\_\_\_\_\_.

21. That during the course of the marriage, the tastes, mental disposition, views, likes and dislikes of Plaintiff and Defendant have become so widely divergent that the parties have become incompatible in marriage to such an extent that it is impossible for them to live together as husband and wife; that the incompatibility between Plaintiff and Defendant is so great that there is no possibility of reconciliation between them.

WHEREFORE, Defendant prays for a Judgment as follows:

1. That the marriage existing between Plaintiff and Defendant be dissolved and that Defendant be granted an absolute Decree of Divorce and that each of the parties be restored to the status of a single, unmarried person;

2. That the Court grant the relief requested in this Answer and Counterclaim; and

3. For such other and further relief as this Court deems necessary and just.

DATED this DATE day of MONTH, YEAR.

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ATTORNEY INFORMATION

Attorneys for Defendant

*In Conjunction with Legal Aid Center of Southern Nevada Pro Bono Project* **VERIFICATION**

STATE OF NEVADA )

:ss.

COUNTY OF CLARK )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, under penalties of perjury, being first duly sworn, deposes and says: That I am the Defendant in the above-entitled action; that I have read the foregoing ANSWER AND COUNTERCLAIM and know the contents thereof; that the same is true of my own knowledge, except for those matters therein contained stated upon information and belief, and as to those matter, I believe them to be true.

DATED this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_, 2015.

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SUBSCRIBED and SWORN to before me

this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 2015, by

\_\_\_\_\_\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NOTARY PUBLIC

**ACKNOWLEDGEMENT**

STATE OF NEVADA )

:ss.

COUNTY OF CLARK )

On this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 2015, before, me, the undersigned Notary Public in and for the said County and State, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_, known to me to be the person described in and who executed the foregoing ANSWER AND COUNTERCLAIM and who acknowledged to me that she did so freely and voluntarily and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NOTARY PUBLIC