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**FILED**  
LOS ANGELES SUPERIOR COURT  
SEP 18 2009  
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BY Michael P. [Signature]  
DEPUTY

SUPERIOR COURT OF CALIFORNIA  
IN AND FOR THE COUNTY OF LOS ANGELES  
CENTRAL DISTRICT

11 HUGH M. HEFNER,  
12 Petitioner,  
13 v.  
14 KIMBERLY C. HEFNER,  
15 Respondent.

Case No. BD 511943  
**REPLY TO RESPONDENT/PLAINTIFF'S  
RESPONSE TO NOTICE OF RELATED  
CASE**  
[California Rules of Court, Rule 3.300;  
Los Angeles Superior Court Rule 7.3(f)]  
Filed: September 4, 2009  
Dept.: 63

16 KIMBERLY C. HEFNER,  
17 Plaintiff,  
18 v.  
19 HUGH M. HEFNER,  
20 Defendant.  
21

Case No. BC 420360  
Filed: August 21, 2009  
Dept.: 17

23 Hugh M. Hefner, Petitioner/Defendant submits the following in reply to Kimberly C. Hefner,  
24 Respondent/Plaintiff's Response to the Notice of Related Case.

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28 ///

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. MRS. HEFNER FAILS TO CITE ANY LEGAL AUTHORITY FOR HER POSITION.**

Mrs. Hefner's Response fails to cite any legal authority for a civil law department to hear a family law matter. To the contrary, the statute is clear that because the Civil Action and the Dissolution Action deal with matters arising under the Family Code, both actions belong in the Family Law Department:

"14.1 MATTERS ASSIGNED TO FAMILY LAW DEPARTMENTS

All matters arising under the Family Code are assigned to the Family Law Departments, except adoption, freedom from parental custody and other matters specifically assigned to other departments by these rules or order of court...

And the Family Law Department has the necessary authority to render a decision as to all the issues raised by Mrs. Hefner in her civil complaint:

Fam. Code § 2010. Authority of court

In a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties, the court has jurisdiction to inquire into and render any judgment and make orders that are appropriate concerning the following:

- (a) The status of the marriage.
- (b) The custody of minor children of the marriage.
- (c) The support of children for whom support may be ordered, including children born after the filing of the initial petition or the final decree of dissolution.

**(d) The support of either party.**

**(e) The settlement of the property rights of the parties.**

(f) The award of attorney's fees and costs. (Emphasis added).

In Neal v. Superior Court (2001) 90 Cal.App.4th 22, a former husband filed a civil action against his former wife and a collection agency to which Wife had sold a promissory note. Claiming that he had satisfied certain support obligations pursuant to the Judgment of Dissolution, the former husband asserted causes of action for declaratory relief, fraud, breach of contract, imposition of a constructive trust, and abuse of process. The trial court overruled the wife's Demurrer in which she asserted that the Family Law Court had jurisdiction over the issues. The Court of Appeal reversed the trial court, and directed the trial court to sustain the Demurrer to the first, second, third and fifth causes

1 of action without leave to amend.

2 The Court stated:

3 "A recurrent theme in the family law opinions of this court is the  
 4 disfavoring of civil actions which are really nothing more than reruns  
 5 of a family law case. Not only Askew, but Bidna v. Rosen (1993) 19  
 6 Cal.App.4th 27, and D'Elia v. D'Elia (1997) 58 Cal.App.4th 415 all  
 7 stand for the central idea that family law cases should not be allowed  
 8 to spill over into civil law, regardless of whether the family law  
 9 matter may be characterized as an action for fraud (Askew),  
 10 malicious prosecution (Bidna), or securities law violation (D'Elia).  
 11 Almost all events in family law litigation can be reframed as civil law  
 12 actions if a litigant wants to be creative with various causes of action.  
 13 It is therefore incumbent on courts to examine the substance of  
 14 claims, not just their nominal headings." (Emphasis added.)

15 **II. ALL OF THE CLAIMS IN THE CIVIL ACTION BELONG IN, AND WILL BE**  
 16 **RESOLVED BY, THE DISSOLUTION ACTION.**

17 Here, Mr. Hefner has filed an action for dissolution of marriage. Part and parcel of that action  
 18 will be a determination of Mrs. Hefner's support rights, and a determination of the parties' property  
 19 rights under their Prenuptial Agreement and Separation Agreement, the latter of which amends the  
 20 former.

21 **A. Claims Under The Prenuptial Agreement.**

22 Once the dissolution of marriage action is determined, there will be **nothing** left of the Civil  
 23 Action. In the Civil Action, Mrs. Hefner seeks a declaration regarding the amount to which she claims  
 24 to be entitled under the Prenuptial Agreement, which provides for payments of \$250,000 per year for  
 25 each year of the marriage after the fourth, payable only upon the death of Mr. Hefner or entry of a  
 26 judgment of dissolution. Mr. Hefner contends that the Separation Agreement provided for a payment  
 27 of \$750,000 to Mrs. Hefner in full satisfaction of any obligation he had to Mrs. Hefner under the  
 28 Prenuptial Agreement with respect to its \$250,000 payments; and his Order to Show Cause for spousal

1 support, filed in the Dissolution Action, attaches a letter from his counsel to Mrs. Hefner's counsel,  
2 enclosing the \$750,000 check and stating that it is in full satisfaction of his obligation under the  
3 Prenuptial Agreement as confirmed by the Separation Agreement. In any event, as noted in Mrs.  
4 Hefner's Civil Complaint, according to the Prenuptial Agreement, the payments after the fourth year of  
5 the marriage are to be paid upon Mr. Hefner's death or upon entry of a judgment of dissolution. (See  
6 Civil Complaint, ¶4, lines 8-13). As the amount due Mrs. Hefner, if any, is payable upon entry of a  
7 judgment of dissolution of marriage, obviously, any disagreements or disputes as to the amount owed  
8 would be handled in the dissolution action. Once the Family Law Court determines the amount, if any,  
9 due Mrs. Hefner under the Prenuptial Agreement, Mrs. Hefner has no need for "declaratory relief"  
10 regarding that fact. Nor will she have any claim for "damages" for she will have been awarded in the  
11 Dissolution Action any amount due her. In short, the Civil Action evaporates.

12 **B. Claims For "Support."**

13 Mrs. Hefner's argument regarding a distinction between prospective support and "past support"  
14 is a red herring.

15 Mrs. Hefner claims on page five (5) of her response to the Notice of Related Case that her "civil  
16 case seeks to recover any spousal support due to Kimberly Hefner under the parties' contractual  
17 arrangements..." and tries in Footnote 1 on page three (3) to distinguish between support due under the  
18 agreement and "prospective" support due under the Family Code. What Mrs. Hefner does not provide  
19 to the Court is the language of her civil complaint that specifically requests *prospective* support:

20 "Plaintiff is also entitled under the agreement to \$40,000 in support for  
21 each month after September 2009 that the parties remain married until a  
22 Court action is initiated either by plaintiff or defendant, and the  
23 agreement is superseded by Court order..." ¶ 21 of the Civil Complaint.  
(Emphasis added.)

24 There is no claim in the Civil Complaint for support arrearages; nor are there any allegations  
25 that any support is unpaid. The amount sought is all prospective.<sup>1</sup> Thus, even under Mrs. Hefner's  
26 theory, the support issue belongs only in the Dissolution Action.

27 <sup>1</sup> Mr. Hefner spells out in his Order to Show Cause, filed on September 4, 2009, that not only are there  
28 no arrearages, but he has provided Mrs. Hefner, since the Separation Agreement was signed, funds  
totaling over \$1,000,000 **in excess** of his support obligations under the Separation Agreement.

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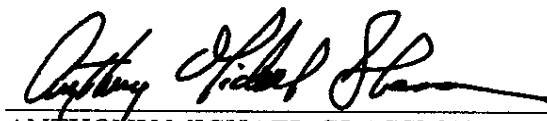
**C. Reimbursement Claims Regarding Mapleton Under The Separation Agreement.**

The only remaining piece of the Civil Action is Mrs. Hefner's claim for reimbursements for monies expended on the Mapleton property. The Court in the Dissolution Action will have to decide each party's claims for reimbursements against the other. Once it makes that determination, her claims for "declaratory relief" and "damages" are moot. Again, contrary to Mrs. Hefner's suggestion, interpretation of rights under prenuptial and separation agreements is the bread and butter of a family law action. Mr. Hefner has filed an action for dissolution of marriage, and that is where disputes regarding amounts due under a prenuptial agreement or a separation agreement get determined and resolved. See, e.g. Family Code Sections §1500 [property rights of spouses may be altered by premarital or other marital property agreement]; §1600-1620 [Uniform Premarital Agreement Act]; §2010 [Authority of Court]; §2650 [division of jointly held separation property]; §§4320-4323 [spousal support].

DATED: September 17, 2009

GLASSMAN, BROWNING, SALTSMAN & JACOBS, INC.

By:



ANTHONY MICHAEL GLASSMAN  
RICHELLE L. KEMLER  
Attorneys for Petitioner, Hugh M. Hefner

**PROOF OF SERVICE BY MAIL AND FACSIMILE TRANSMISSION**

I certify and declare as follows:

At the time of service described below, I was over the age of 18 and not a party to this action. My business address is 360 North Bedford Drive, Suite 204, Beverly Hills, California 90210-5157, which is located in the County of Los Angeles, State of California, where the service described below took place.

I am "readily familiar" with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

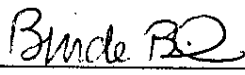
On September 18, 2009, at the above business address, I placed true copies of the foregoing document described as REPLY TO RESPONDENT/PLAINTIFF'S RESPONSE TO NOTICE OF RELATED CASE for deposit in the United States Postal Service in sealed envelope(s), with postage fully prepaid, addressed as shown below. In addition, I transmitted said document, together with an unsigned copy of this declaration, by facsimile transmission from a facsimile transmission machine whose telephone number is (310) 271-6041, to the following persons at the following facsimile telephone numbers:

Hillel Chodos, Esq.  
1559 S. Sepulveda Blvd.  
Los Angeles, CA 90025  
Facsimile: (310) 473-2726

The envelope(s) were placed for collection and mailing on that date following ordinary business practices.

Executed on September 18, 2009, at Beverly Hills, California.

- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (Federal) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

  
Brenda Bilson

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