

January 23, 2008

Barbara Timothy Bowen
5055 South 2100 East
Salt Lake City, Utah 84117

Re: Bowen v. Bowen (Case No. 034904094)

Dear Barbara:

You asked us to give you an outline of the things that have been accomplished since you retained our firm about a year ago. This firm was initially retained to represent you regarding only the financial issues in your case. We did not become involved in the custody matters until about May 2007. Thus, I'm going to break this outline into two parts: (1) the progress over the past year that we've been representing you with respect to the financial issues in your case; and (2) the progress over the past eight months that we've been representing you with respect to the custody and parent-time issues in your case. These outlines will be somewhat broad, and will cover the main points of our representation. For more specific details into the day-to-day work that we've provided, please refer to the firm's monthly billing statements.

With respect to the financial issues in your case, as of January 2007 when this firm became involved, you had received some incomplete discovery responses from Gordon regarding his bank accounts, credit car accounts, assets, etc. Gordon had also returned to you a number of his financial documents that you, yourself, had collected over the years. You had obtained Gordon's income tax returns through 2005. And you had obtained some financial information (e.g., financial statements, income tax returns, general ledgers, etc.) from McGarry Bowen. Since that time, we have taken the following actions with regard to these financial issues:

1. We have gotten ourselves up to speed on this matter, which has been going on for approximately three and a half years before we were retained;
2. We issued approximately 25 subpoenas to Gordon's financial institutions, insurance providers, etc., the majority of which have ultimately resulted in the production of documents and information by the recipients;
3. We have made substantial efforts to work with Gordon's counsel (through correspondence, requests to supplement his previous responses, etc.) to obtain complete responses to your previous discovery requests concerning Gordon's personal finances. As a result of these efforts, we have obtained a good deal of important information that we did not previously have. We

have also positioned ourselves to file a motion to compel the information that has not yet been produced;

4. We have made substantial efforts to work with Gordon's counsel to get from McGarry Bowen the substantial additional information necessary for us to obtain an accurate valuation of the company and to accurately assess Gordon's income, which information was recently produced to us by Gordon's counsel;
5. We have prepared and filed a Motion for Attorneys Fees and Costs, for which a hearing was held before Commissioner Blomquist on June 12, 2007. We objected to the commissioner's recommendation and the form of the order submitted by Gordon's counsel, and an evidentiary hearing on this issue was recently held before Judge Dever on January 9, 2008;
6. We have prepared and filed a motion for the modification of temporary support and the sale of the Haven Lane property, for which a hearing was held before Commissioner Blomquist on September 17, 2007. We objected to the commissioner's recommendation, and an evidentiary hearing on these issues was recently held before Judge Dever on January 9, 2008;
7. We prepared for and participated in the mediation between you and Gordon regarding these issues;
8. We have deposed Gordon on the financial issues in this matter;

With respect to the issues of custody and parent-time, as of May 2007 when we first became involved, the Court had already granted unsupervised daytime visitation to Gordon. Dr. Heather Walker had completed her parent-time evaluation. And Gordon, through his attorney, had filed a motion for normalized parent-time, with no supervision. Since that time we have taken the following actions with regard to the custody and parent-time issues in this case:

1. We prepared and filed an opposition to Gordon's motion for normalized parent-time, for which a hearing was held on May 30, 2007. We thereafter objected to the commissioner's recommendation and the form of the proposed order submitted by Gordon's counsel;
2. We convinced the Court to set the issue of supervised visitation for an evidentiary hearing, which included the preparation of a sizable hearing brief summarizing the numerous documents, affidavits, and expert's reports in this matter. An evidentiary hearing was initially scheduled for October 31, 2007, and was thereafter rescheduled by the Court for January 9, 2008. (This hearing was continued in light of the parties' recent settlement discussions.)
3. We filed an ex parte motion for immediate determination on Gordon's out-of-state visitation, for which a hearing was held on June 22, 2007;
4. We have researched and conducted discovery, including deposing Dr. Walker, in preparation for filing a motion to exclude her parent-time evaluation from evidence;
5. We have served additional discovery requests on the parties regarding the custody and parent-time issues;

HIRSCHI CHRISTENSEN

- 6. We filed a motion for contempt against Gordon for depriving you of your midweek visit during the week of Lily's birthday, for which a hearing was held on September 17, 2007;
- 7. We prepared and filed a petition for a child protective order, which resulted in the Court issuing an ex parte child protective order. A hearing was thereafter held on December 6, 2007;
- 8. We prepared for and participated in the mediation between you and Gordon regarding these issues;
- 9. We deposed Gordon regarding the a number of the custody and parent-time issues.

As I indicated above, this is a broad outline of our efforts over the past year. Please don't hesitate to contact us if you would like further details.

Sincerely,

HIRSCHI CHRISTENSEN, PLLC

Matthew B. Anderson

cc: Steve Christensen
Bob Alsop

HIRSCHI | CHRISTENSEN
ATTORNEYS AT LAW, PLLC

STEVE S. CHRISTENSEN
ssc@hclawfirm.net

February 29, 2008

Barbara Bowen
5055 So. 2100 East
Salt Lake City, UT 84117

Re: Bowen v. Bowen

Dear Barbara,

I am writing to summarize today's discussion. I understand that David Boyce is an attorney and that you have sought his legal advice along with that of your father Alma Boyce, making this a confidential communication. Matt Anderson gave to you a proposed list of work to do with time estimates and cost estimates.

From our discussion today, I understand that you have directed us to be careful going forward to consider with you the costs of the matters we work on. However, you have asked us to do the following for now: First, obtain a signed agreement to keep all settlement negotiations confidential from all persons, including the custody evaluator; second, to make a global settlement proposal to be approved by you later; third, to file the financial motions, including a motion for sale or mortgage of Haven Lane, reconsideration of alimony and disgorgement of the UPromise stock; fourth setting Gordon's deposition; fifth financial discovery including a deposition of Marshall Garber. Before we file a motion to compel a production of documents, I suggest that we discuss the cost of that undertaking.

We may wish to take the contempt motion for Monday off calendar. It is not going to benefit us in the near future and frankly can be reserved for trial. The best it will give us is a slap of the hands of Gordon. In the spirit of negotiation, we can hold off with this and save you immediate expense and gain some credibility with Kara that we have hope of settlement. We just received a letter from Kara that seems a lot more apologetic and anxious to cooperate, so our four page letter seems to have had the immediate intended effect.

During the meeting, it may have seemed that I was actually the devil's advocate on two issues. I restate those here for your further consideration. Although the consensus of the group made the decisions seem easy, for me the correct course of action is less obvious. I think all were agreed that a settlement would be welcome and that this case needs to settle, at least in part, but there was not a consensus on the terms that would be offered.

The first issue is custody and the second issue is finances. I have little faith that Gordon will offer an acceptable financial agreement. I indicated to you that this will have to be a Chinese negotiation if you are going to negotiate 25% of McGarrybowen. That means that we mirror their moves and give no more, i.e. start the negotiation by offering that you would receive 50% of McGarrybowen and work down from there. Others seemed to express advice that you start lower to bring Gordon to the table. If you are willing to accept less than 25% of McGarrybowen, you could start lower than asking for 50%, but I believe you will send the message that you will accept 20% if you start at 40%. Please be thinking of what you want to have us offer as your share of the company on sale of McGarrybowen. As Matt Anderson indicated in our meeting, he has reviewed Utah law and confirmed that *Bradford v. Bradford* is still good law. *Bradford* sets the standard for division of marital assets: Each party is presumed to be entitled . . . fifty percent of the marital property." *Bradford*, 1999 UT App 373 at ¶ 26. Although it is within the discretion of the trial court to distribute marital property unequally, it can only do so when it "memorializes in commendably detailed findings' the exceptional circumstances supporting its distribution." *Id.* at 27. Matt was unable to find any Utah cases where the claimant met the burden of showing "exceptional circumstances." My experience is that this is a very high burden. It would likely require a showing of exceptional need or exceptional bad acts by the penalized spouse, rather than exceptional entitlement. I also believe that the burden in your case is even higher to show exceptional circumstances because there is ample for both sides.

The following cases indicate when the court value the marital property: "While marital assets are generally valued as of the date of the divorce decree, " 'where one party has dissipated an asset, hidden its value or otherwise acted obstructively,' the trial court may, in the exercise of its equitable powers, value a marital asset at some time other than the time the decree is entered," such as at separation." *Thomas v. Thomas*, 987 P.2d 603, 609 (Utah Ct.App.1999) (quoting *Andersen v. Andersen*, 757 P.2d 476, 479 (Utah Ct.App.1988)). See *Marshall v. Marshall*, 915 P.2d 508, 516 n. 14 (Utah Ct.App.1996). Utah law clearly requires an equal division of assets on the date of divorce (in our case August 2007) unless the court finds "exceptional circumstances." I believe that it may be more likely to persuade a court to value the assets on a date other than divorce, than it would be to persuade a court to make an unequal distribution, but you have the better case to show an exception to valuing the case at divorce. However, at this time you have no incentive to do so because the value of the assets are increasing. The most likely result in your case is that the marital assets are divided equally but on the date of divorce, unless, McGarrybowen declines in value. Then the court would likely use the value at the time of trial. The court's discretion on both of these issues is severely limited by specific findings that must be made.

Second, there is disagreement among your advisors on the issue of whether to bifurcate and drive the custody issue to a settlement before resolving the financial issues. You will have to decide which approach you want to take (either way, we could certainly make a global offer and proceed with custody should a global proposal fail). The job of your advisors is to advise you so

you have reasonable information with which to make a decision. I try to lay out for you what we discussed. The risk of settling custody without settling the money is that you take some of Gordon's exposure off of the table. That is, he may feel very confident about fighting you on the financial issues if he does not have to fight custody. There is legitimate wisdom in this advice. I have no way of gauging whether a bifurcated settlement will entrench Gordon in an unreasonable position on finances. However, as expressed, I see at least the following potential benefits to a bifurcated settlement. First, we take the most divisive issue off of the table. This issue is close to being settled and should settle.

The settlement of this substantial issue of custody will have practical benefits. It will drastically affect the amount of fees you are incurring in the long run, and will help us focus on finances and finish the case sooner even if a financial settlement is not achieved. The other practical benefit is that you will not be emotionally tied in to proving that Gordon's rights should be limited. This would allow you to largely step away from your heavy involvement in the litigation. Second, it will focus the issues. Third it will potentially cause the parties to be more willing to settle the entire case by lowering the threshold that is now there (that is the parties are so focused on winning on all issues that they are not willing to concede on any). Fourth, I think that you do away with several risks: The risk of an adverse custody evaluation; the risk that you offend the judge by belaboring custody issues that you have insufficient evidence to support (he may even use unnecessary litigation on this issue as a reason to punish you in the overall financial award - finding that you caused Gordon unnecessary expense in the litigation); and the risk that prolonging the custody issues causes expenses to go up and your return to go down. So far, you have spent over \$200,000 in fees to 5 attorneys on custody issues. The focus on custody has taken away from time available to work on financial issues. The result is that you actually have less leverage against Gordon because he has momentum and you are drained. I think your real leverage is that you have a sound claim against Gordon for half of all of the marital property. I believe that the more we discover that Gordon has and the more we discover what he has squandered, the more leverage we will have because Gordon will want to prevent you from taking half.

I see settlement of custody issues as optimum and settlement of financial issues as premature. This is primarily due to my belief that Gordon is not yet willing to be reasonable on financial issues. I believe you would be in a better position to handle this case emotionally if the issues were narrowed. I believe that you would be better able to justify fighting on the financial case if they were litigated alone because you could weigh the cost in light of the expected return much more accurately.

The benefits in your case as I see them are that you have made a favorable impression as a witness to this judge. You have played by the rules. The law is in your favor and Judge Dever has no animosity towards you. He is not likely to give you more than he must under Utah law, but he is not likely to rule contrary to Utah law. As discussed with you, the caveat to these opinions is that Judge Dever has some discretion to divide property. Your judge's decisions will be reviewed on an abuse of discretion standard. That is the lowest standard, meaning it is the

easiest standard for a judge to meet. We have argued this issue on appeal. The unequal division was reversed. It is not unheard of to succeed on this issue in the court of appeals, especially when Gordon has the burden to show "exceptional circumstances". The court cannot just come up with any reason for an unequal distribution; it must find an exceptional reason in your case.

In other cases, although not exactly on point, husband's have claimed that have a superior entitlement to assets, but the court of appeals has ruled consistently that that argument is insufficient to show exceptional circumstances because the wife was contributing by raising the children and taking care of the household to enable the husband to be able to do his work. See the two cases attached to this email.

I hope Gordon seriously considers a global offer. We should make one to see if he will. I do not know whether Gordon's fear of exposure of his bad acts is keeping him in check. However, I do not sense that you have the stamina or patience to fight the battle on two fronts. It would be best for you to fight the issue where the law is in your favor. You have significant leverage on the financial issues because Utah law is in your favor on the timing and the division of marital property. Kara has struggled to find law to support her. She has tried to argue Haven Lane is a premarital asset. But her claim there is weak and she has not provided documents to justify her claim. She has tried to argue that the goodwill of McGarryBowen rests in Gordon Bowen and that Gordon's ownership is all goodwill that cannot be divided in a divorce, but that claim is also weak since 250 people work there, not just Gordon. We should note that this argument is a better argument than the argument that there is discretion of the judge to award an unequal share of the assets to Gordon. We should analyze this issue thoroughly and adjust your settlement expectations accordingly. I am not saying that your case is open and shut, but I am suggesting that your settlement proposal mirror your legal and emotional strength. Your circumstance legally is not desperate; there is no reason to lose heart now because of this last adverse decision. You have a strong financial case.

Gordon's bad acts may be leverage, but my experience with your case is that the court doesn't want to touch that issue; maybe the court doesn't want to sort through male pornography and sordidness. Attempts to prove Gordon's bad acts has distracted you significantly and even harmed your case—you have been portrayed by Kara as an alienating parent because of the significant effort put into that issue. I agree that protection of your children is paramount, but that protection is best left with you as their mother. The court is simply not qualified and apparently not willing to anticipate danger.

My advice to you remains that you quickly resolve all custody issues in a reasonable but deliberate negotiation. I also advise that you reasonably but aggressively fight for one half of your marital assets and that you compromise when Gordon makes a significant financial offer to you. Of course there is no guaranty of success in litigation. It may be that the judge does not agree with our financial case and the case must go on appeal. I realize that you need to live through this difficult litigation. It may take several years to see the financial case through to a conclusion. In deciding the amount you are willing to accept you need to factor in the cost of litigation emotionally and financially. But you can make those decisions as we go through the

Barbara Bowen

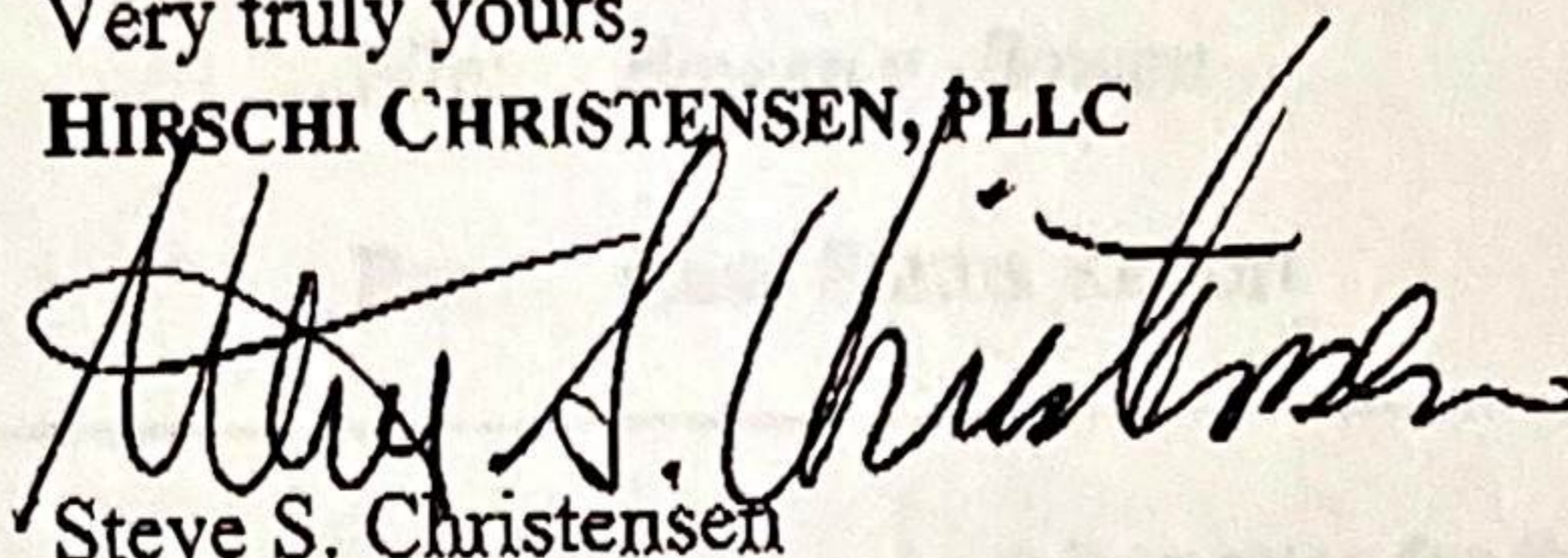
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HIRSCHI CHRISTENSEN
ATTORNEYS AT LAW, PLLC

process of negotiation. Only you can decide what settlement amount you will be satisfied with. Bob is preparing a global settlement offer. If it is rejected, we will confer with you on the next step to be taken.

Very truly yours,
HIRSCHI CHRISTENSEN, PLLC



Steve S. Christensen

Enclosures

SSC/mb

cc: Bob Alsop
Matt Tarkington
Matt Anderson
David Boyce

INTRAOFFICE MEMORANDUM

To: Steve Christensen; Barbara Bowen;
Bob Alsop; Matthew Tarkington

Date: February 27, 2008

File: *Bowen v. Bowen*

From: Matthew B. Anderson

Re: Case Status Report

The purpose of this memo is to articulate our litigation plan in this matter for the benefit of our client as well as for counsel. It will set forth what our objectives in this litigation are, where we currently stand on reaching these objectives, what courses of action we are currently pursuing in furtherance of these objectives and what courses of action we intend to pursue in the future, and how long we estimate it will take for us to complete these actions. If the parties to this litigation are unable to reach an agreement regarding issues such as custody of the children, spousal support, and the division of the marital estate in this matter, these issues will be decided by the Court at trial.

Objectives. Our efforts in this litigation have focused, and will continue to focus, on accomplishing two main objectives:

1. For Barbara to be awarded sole legal and physical custody of Lily and Caleb and for Gordon to either have no visitation with the children at all or supervised visitation with the children only.
2. For Barbara to be awarded a fair and equitable portion of the marital estate in this matter, including a fair and equitable portion of McGarry Bowen, LLC, and for Barbara to be awarded monthly support in an amount sufficient to maintain her lifestyle to which she became accustomed during the marriage.

Present Status. Our current status on these two objectives, which will be referred to hereafter as the custody issues and the financial issues, respectively, is set forth below:

Custody. Gordon is currently allowed statutory visitation with his children that is fully unsupervised. A final determination regarding custody and visitation has not been made.

1. The Court has recently denied Barbara's petition for a child protective order.
2. The Court has granted us an evidentiary hearing on our objection to Commissioner Blomquist's recommendation that Gordon be allowed fully unsupervised visitation. The date of the evidentiary hearing is pending.
3. Dr. Monica Christy is currently conducting a custody evaluation.
4. A hearing has been scheduled on March 3, 2007 at 10:00 a.m. before Commissioner Blomquist on our motion for contempt regarding Gordon's deprivation of Barbara's parent-time last summer.
5. We have deposed Gordon on some of the custody issues, and we anticipate completing the deposition on these issues shortly.

Finances. Gordon is currently paying \$1,400 per month in child support and \$4,250 per month in temporary support to Barbara pursuant to the Court's September 1, 2005 temporary order. A final determination regarding support and the division of the marital estate has not been made.

1. On February 22, 2008 the Court issued a new temporary order increasing the amount of monthly alimony that Gordon is required to pay to \$6,058.00 per month, effective March 1, 2008. The Court also ordered Gordon to pay Barbara and additional \$5,000.00 per month for legal fees incurred by Barbara. (The

Court reserved the right to charge this amount against the final settlement in this matter.)

2. The Court has granted our request for an evidentiary hearing on our motion for the sale of the Haven Lane property. The date of the evidentiary hearing is pending.
3. We've recently learned that Gordon has sold the parties' Upromise stock in violation of the Court's temporary order.
4. We've recently received from Gordon's financial expert much of the information and documents from McGarry Bowen that is necessary for conducting the valuation of the company.
5. We've deposed Gordon on a number of financial issues.
6. We've made a number of discovery requests regarding Gordon's personal finances that we still have not received complete answers to. Gordon's attorney has told us that she would arrange for us to meet with Gordon's accountants and financial advisors so that we can put together a complete picture of Gordon's personal financial status. We have since requested a telephonic deposition with Marshall Garber but have not yet heard back from Gordon's attorney.

Present Actions. We are presently pursuing the following courses of action on the custody and financial issues:

Custody. With respect to the custody issues, we are currently focusing our efforts on cooperating with Dr. Christy in the custody evaluation and attempting to persuade the Court and Dr. Christy to fully appreciate our concerns regarding Gordon's actions and behavior, past and present, in determining best interests of the children and in recommending and establishing the

temporary and final custody arrangements. We are currently taking the following specific actions towards this end:

1. We are finalizing a memo to Dr. Monica Christy emphasizing several issues that we believe are important to her custody evaluation, specifically identifying support for our position in the materials that we have provided to her, and providing her with additional information that we have recently received.
2. We will be filing a written request shortly asking the Court to reset the hearing on the issue of supervised visitation, which was continued on January 9, 2008.
3. We are preparing for the hearing on our motion for contempt for Gordon's deprivation of Barbara's parent-time last summer, which has been scheduled for March 3, 2008 at 10:00 a.m. before Commissioner Blomquist.
4. We are preparing to take the remainder of Gordon's deposition.

Financial. With respect to the financial issues, we are currently focusing our efforts on obtaining a complete picture of Gordon's financial status, including an accurate valuation of McGarry Bowen. We are currently taking the following specific actions towards this end:

1. We are seeking Kara Barton's cooperation in setting up a preliminary deposition with Marshall Garber, whom Gordon testified at his deposition is the man that handles all of Gordon's personal finances. The purpose of this deposition is to obtain information on Gordon's current financial accounts, debts, assets, spending, etc. We will conduct other similar depositions of other financial advisors, such as Erik Vukmirovich, as needed.
2. We have requested title reports for the Harvard Avenue, Yale Avenue, and Haven Lane properties.

3. We will be filing a written request shortly asking the Court to reset the hearing on the issue of the sale of Haven Lane, which was continued on January 9, 2008. We are preparing questions and exhibits for the evidentiary hearing on this issue.
4. We have prepared a motion for contempt for Gordon's sale of the Upromise stock in violation of the Court's previous temporary order, which we will file shortly.
5. We are currently seeking an expert who has both the qualifications and the experience to accurately value McGarry Bowen, LLC.
6. We are awaiting responses to the subpoenas that we sent out for the additional Amex accounts and the Chase Mastercard account that we discovered during Gordon's deposition.

Future Actions. Because of the unpredictability of the litigation process, it is somewhat difficult to fully predict all of the future actions that may become necessary. However, assuming this matter goes to trial, we anticipate taking the following actions between now and the end of the case:

Custody.

1. **Motions.** We intend to file the following motions between now and trial.
 - a. **Motion to Exclude Heather Walker's Evaluation.** Dr. Walker's deposition revealed a number of problems with respect to how she conducted the parent-time evaluation in this matter and how she how she reached her conclusions. For example, Dr. Walker explained that in making her recommendations she only went by her "clinical impressions" and by the information that she received from Renaissance. Given the unreliability of

Dr. Walker's evaluation, it is important that we file a motion with the Court to exclude the evaluation from evidence.

2. Discovery/Depositions. We intend to take the following depositions between now and trial.

a. Curly Hunsaker. Ms. Hunsaker may have relevant information regarding the visits between the children and Gordon that she supervised at Renaissance as well as preferential treatment received by Gordon there.

3. Trial.

a. Witnesses. We anticipate calling – and will need to prepare – the following witnesses for trial:

i. Barbara Bowen. Barbara can testify regarding the best interest of the children and Gordon's character and troubling behavior. Barbara can also testify regarding her own relationship with the children.

ii. Gordon Bowen. Gordon will have information regarding his own past actions, including visiting male prostitutes, forging Barbara's signature, putting the kids on the car, etc.

iii. Dr. Monica Christy. It may be beneficial for Dr. Christy to testify regarding the best interests of the children. However, depending on the result of her custody evaluation, we may decide that Dr. Christy's testimony is not beneficial.

iv. Dr. Haydee Mas. It may be beneficial for Dr. Mas to testify regarding her therapy sessions with Lily. However, we may decide

not to call Dr. Mas as a witness so as not to compromise her ability to continue to provide therapy for Lily.

- v. Dr. Juan Mejia. Dr. Mejia can testify regarding his evaluations of Lily and Caleb, as well as his evaluations of Barbara, Collin, and Eric, and the effect of Gordon's actions on the same.
- vi. Dr. Christopher Barden. Dr. Barden can testify regarding his evaluation of the threat that Gordon poses to the children based on his review of the affidavits, journal entries, and other information provided to him in this matter.
- vii. Collin Timothy. Collin can testify regarding Gordon's character and behavior in general, and particularly Gordon's dishonesty and sexually predatory behavior.
- viii. Adrian Pulfer. Mr. Pulfer can testify regarding Gordon's character and behavior in general, and particularly Gordon's dishonesty and sexually predatory behavior.
- ix. Ken Kenitzer. Mr. Kenitzer can testify regarding Gordon's character and behavior in general, and particularly Gordon's dishonesty and sexually predatory behavior.
- x. April Braack. Ms. Braack can testify regarding her direct observations of Gordon and the children.
- xi. Juncal Tortosa. Ms. Tortosa can testify regarding her direct observations of Gordon and the children.

- xii. Julie Thorsen. Ms. Thorsen can testify regarding her direct observations of Gordon and the children. Also, Ms. Thorsen may be able to contradict Gordon's previous assertion that on one Easter Sunday, while he was putting Lily in her car seat, Lily told him that Barbara said he was Satan.
- xiii. Dennis Webb. Mr. Webb can testify that he heard Gordon admit to calling escorts in Pasadena while Lily was in his care.
- xiv. Eric Timothy. Eric can testify regarding Gordon's character and behavior, particularly Gordon's sexually predatory behavior.
- xv. Alma Boyce. Mr. Boyce can testify that Gordon lied to him about his homosexuality prior to Gordon's marriage to Barbara.
- xvi. Shawna Daniels. Ms. Daniels can testify, if necessary, regarding Gordon's special treatment at Renaissance.
- xvii. Marsha Boyd. Ms. Boyd can testify, if necessary, regarding Gordon's special treatment at Renaissance.
- b. Exhibits. We anticipate offering at least the following exhibits as evidence:
 - i. Telephone records from Pasadena
 - ii. Internet webpage printout of escort called while in Pasadena
 - iii. Anatomical Measurements – Eric
 - iv. Modeling photo – Collin
 - v. Gordon's Handwritten Journals
 - vi. The Holy Dream

- vii. Willwin Notes
- viii. DCFS Report regarding the children on top of the car
- ix. Affidavits of Michael McLean, Kevin Kelly, Brad Nygren, & Scott Swofford.

Financial.

1. Motions. We intend to file the following motions between now and trial:
 - a. Motion to Compel Discovery Responses and for Sanctions. We have been seeking discovery responses from Gordon for the past several years. Gordon's excuse with respect to many of these has been that he has no knowledge of that information, as he has accountants who handle all of his personal finances. We have made repeated requests to Gordon's attorney to give us some dates when Marshall Garber can be available for a telephonic deposition. She has not responded. Moreover, we may not get complete financial information from Mr. Garber or any of Gordon's other accountants or financial advisors. Thus, it is fairly likely that we will need to file a motion to compel to get complete answers to these discovery requests. If we are forced to file this motion, we will seek sanctions against Gordon and Kara Barton's firm, such as asking the Court to reimburse you for the attorneys fees in costs associated that you've incurred in trying to secure this information.
2. Discovery/Depositions. We intend to take the following depositions between now and trial.

- i. Marshall Garber. As noted above, Mr. Garber supposedly handles all of Gordon's personal finances, as well as working as a controller for McGarry Bowen. We intend to take a preliminary deposition by telephone of Mr. Garber for the purpose of obtaining information on Gordon's accounts, debts and obligations, assets, etc. and finding out what documents Mr. Garber has. We will then request the documents in Mr. Garber's possession and subpoena the documents on any accounts, debts and obligations, assets, etc. that we don't already have. Once we have obtained these documents and have had the chance to review them, we will then take a more extensive deposition of Mr. Garber in person regarding this information.
- ii. Erik Vukmirovich. Mr. Vukmirovich is apparently the CFO of McGarry Bowen. Mr. Vukmirovich has also apparently had some experience with Mr. Bowen's personal finances.
- iii. Gassman & Golodny. This accounting firm has done Gordon's taxes for the past several years. He's testified that he doesn't use them for anything other than taxes. We need to find out what information they have.

3. Trial.

- a. Witnesses. We anticipate calling – and will need to prepare – the following witnesses:
 - i. Barbara Bowen. Barbara can testify regarding her personal finances, her lifestyle during the marriage, and Gordon's personal finances.

- ii. Gordon Bowen. Gordon can testify regarding his personal finances.
 - iii. Brad Townsend. Mr. Townsend can testify regarding Gordon and Barbara's personal finances. He may also testify regarding the value of McGarry Bowen.
 - iv. Business Valuation Expert. This expert will testify regarding the value of McGarry Bowen.
 - v. Marshall Garber. Mr. Garber may have information regarding Gordon's personal finances. Mr. Garber may also have information relevant to the valuation of McGarry Bowen.
 - vi. Erik Vukmirovich. Mr. Vukmirovich may have information relevant to the value of McGarry Bowen. Mr. Vukmirovich may also have information regarding Gordon's personal financial status.
 - vii. Alma Boyce. Mr. Boyce may have information regarding the Boyce's loan to Barbara and Gordon for the purchase of Haven Lane.
- b. Exhibits. We anticipate offering at least the following exhibits as evidence.
- i. Gordon's December 28, 2002 Proposal
 - ii. Haven Lane Settlement Docs
 - iii. Documents used by Brad Townsend in forming his opinion.
 - iv. McGarry Bowen Financial Statements
 - v. McGarry Bowen General Ledgers

- vi. McGarry Bowen Tax Returns
- vii. McGarry Bowen Operating Agreements
- viii. The report our expert prepares regarding his valuation of McGarry Bowen.
- ix. Documents used by our expert in forming his opinion regarding the value of McGarry Bowen.

Estimated Time & Costs. It is difficult to estimate with much precision the amount of time that will be needed to complete the above actions. However, based on our present outlook, we estimate that the time and attorneys fees to be the following:

1. Prepare for and take the preliminary deposition of Marshall Garber. Time: approximately 12 hours; Cost: approximately \$2,500. Estimated completion date – February 29, 2008.
2. Preparation for and attendance at hearing on motion for contempt re: parent-time. Time: approximately 8 hours; Cost: approximately \$1,600. Estimated completion date – March 3, 2008.
3. Prepare for and take the remainder of Gordon's deposition. Time: approximately 40 hours. Cost: approximately \$9,000. Estimated completion date – March 15, 2008.
4. Motion for Contempt re: Upromise stock. Time: approximately 15 hours; Cost: 3,100. Estimated completion date – April 15, 2008.
5. Preparation for and attendance at hearing on issue of supervised visitation. Time: approximately 30 hours; Cost: approximately \$6,200. Estimated completion date – April 30, 2008.

6. Preparation for and attendance at hearing on the sale of Haven Lane property. Time: approximately 30 hours; Cost: approximately \$6,200. Estimated completion date – April 30, 2008.
7. Follow-up deposition of Marshall Garber, depositions of Erik Vukmirovich & Gassman & Golodny. Time: approximately 60 hours; Cost: approximately \$12,500. Estimated completion date – May 15, 2008.
8. Deposition of Curly Hunsaker. Time: approximately 15 hours; Cost: approximately \$3,100. Estimated completion date – May 15, 2008.
9. Motion to Compel Discovery Responses. Time: approximately 75 hours; Cost: approximately \$15,500. Estimated completion date – May 30, 2008.
10. Motion to Exclude Heather Walker. Time: approximately 75 hours; Cost: approximately \$15,500. Estimated completion date – June 30, 2008.
11. Additional discovery and preparation. Time: approximately 100 hours. Cost: approximately \$21,000.
12. Responding to motions, discovery requests, etc. from Gordon. Time: approximately 100 hours. Cost: approximately \$21,000.
13. Prepare for and attend trial. Time: approximately 350 hours; Cost: approximately \$75,000. Estimated completion date – September 15, 2008.

Please also note that the above fees do not include the other costs in this matter, such as costs for experts and consulting attorneys, expert's reports, court reporter and transcript costs for depositions, travel and lodging costs, and other overhead costs like copying, transportation, and legal research. Such costs could easily add an additional \$100,000 or more to the costs set forth above before the end of this litigation.

Conclusion. As noted above, the purpose of this memo is to provide an approximation – based on where we currently stand in this litigation – of our objectives for the remainder of the litigation, the courses of action that we are currently pursuing, the courses of action that we intend to pursue in the future, and how long we estimate it will take for us to complete these actions. As such, the above listed actions and objectives are subject to change.

11:51:55 1 Q Uh-huh.

11:51:57 2 A No.

11:51:58 3 Q Okay. Did you do any --

11:51:58 4 A I'm sorry, her whole focus of her clinical

11:52:01 5 interview was all about Gordon. And then I did part of

11:52:04 6 the parent interview with her about her concerns about

11:52:07 7 Gordon. I made sure that I heard her concerns about

11:52:10 8 Gordon.

11:52:11 9 Q Okay. Did you rely on the statements or

11:52:13 10 information that Mr. Bowen provided you?

11:52:16 11 A For what?

11:52:19 12 Q In coming up with your recommendations and/or

11:52:22 13 your report?

11:52:22 14 A No.

11:52:24 15 Q No?

11:52:24 16 A Not necessarily. I take all the information

11:52:27 17 that is gathered, and I was very narrow in how I looked at

11:52:32 18 this case.

11:52:33 19 Q Okay. Define what you mean by "very narrow."

11:52:39 20 A I went by my clinical impressions of these

11:52:42 21 people. I talked to the agency who did most of the

11:52:47 22 observations of Gordon with his children.

11:52:48 23 Q That being Renaissance?

11:52:51 24 A Renaissance. So I put more faith in the data I

11:52:55 25 collect personally than what he said/she said. They could

11:54:56 1 quickly?

11:54:57 2 A It is an affidavit of Alma Boyce.

11:54:59 3 Q Do you know who Alma Boyce is?

11:55:01 4 A Nope.

11:55:02 5 Q Okay. I'll represent to you that it's

11:55:05 6 Mrs. Bowen's father.

11:55:07 7 A Oh, okay.

11:55:08 8 Q Were you provided with a copy of this affidavit?

11:55:11 9 A Probably.

11:55:12 10 Q Probably? You don't recall specifically?

11:55:14 11 A Nope.

11:55:15 12 Q Do you recall specifically whether or not you

11:55:16 13 reviewed this document?

11:55:19 14 A I reviewed -- what I reviewed were affidavits

11:55:26 15 that were written all on the same computer with people's

11:55:30 16 names on them that weren't signed made me question the

11:55:34 17 affidavits.

11:55:35 18 I don't put a lot of credence in people's

11:55:38 19 parents, so if I would have known that, I probably would

11:55:40 20 have looked, "Oh, that's her dad," and put it aside.

11:55:43 21 Q Okay. Let me ask you this. Are you aware that

11:55:45 22 Mr. Bowen was questioned by Mrs. Bowen's father prior to

11:55:52 23 the marriage specifically whether or not he was a

11:55:56 24 homosexual?

11:55:57 25 A No.

Tom Pratt
February 10

There was this English guy, David Warden who placed his trust in Gordon and then felt betrayed by him and became angry with him. I think David voted for Gordon's dismissal from McCann. At Ogilvy, David was an account management director over American Express as was Shelley Lazarus who is now President. David went over to McCann. I think David Warden left Ogilvy and went to McCann.


I was let go from Ogilvy and Gordon was sited as the reason. Gordon was let go of an Ogilvy I think because he had gone ahead with expensive campaigns with Merrill Streep and Paul Newman without first disclosing the cost and the agency got left holding the bill.

4

Tom Pratt

November 8, 2002

I always try to keep at a distance from Gordon. When I was first working at Y.R. Gordon called to say that he was checking into a hotel and didn't have his credit card. He asked if he could use mine just to check into the hotel. Later I found that he had used the credit card to pay for the hotel and other things. I had to confront him about it, but it finally got straightened out and he paid me back.

 I think there was something in the press about Gordon having been found tied to a bed when he was supposed to be at a client meeting. He was let go from McCann and maybe that was part of it. I might have appeared in Ad Week or Ad Age in about 1993. About a month after he was fired someone at McCann told Parry that the rumor was true.

Annie Pratt
January 9, 2003

I tried never to be financially beholden to Gordon. Others were, he owned part of their mortgage or other things, but it caused them a lot of trouble. He tried to pull us in but we wouldn't do it. Khaliel worshipped him. I understood it because he could be so charming, but I never got taken in.

He stayed at our apartment for a few weeks when he didn't have anywhere to stay. My oldest son was only about 3 or 4 at the time, but I've often looked back and wondered if anything happened. He's had trouble; he's been secretive and dishonest.

I remember when we stayed at Gordon's house in Salt Lake City. My parents were with me and we had been invited to dinner. Suddenly we saw this sickly, strange boy who said he was staying there. My mother later said, "That's not right. Something's wrong here." We all felt it.

Gordon was always the "uncle" to everyone. He was always involved with young children. When we'd visit, he ask the children to come and spend the night, tell them he had a giant slide and offer things to make them want to stay. We always declined.

I don't have a lot to add because we never let myself get too involved with Gordon. We knew better. When he married you, we all hoped that maybe he was turning over a new leaf and really making some changes in his life.

22 21-

Lynn Dangel
March 11, 2003

I met Gordon in Chicago while we were both working at J. Walter Thompson. He worked across the hall from me. He was always in his own world. I thought he was quirky. He prayed in his office everyday, but it was strange because he left his door open so everyone could see him praying, especially me. I realized that he wore his goodness on the outside.

When he moved to Salt Lake City he called me to see if I wanted to make a contribution working with him at Bonneville. He sent me some of Jim Gartner's work which was good, and I thought working at Bonneville would allow me to explore some new options. It was a big deal for me moving from Chicago to SLC. It was a strange little place, and I was not a Mormon, but in some ways it was wonderful.

Gordon was fired 6 months after I arrived. I remember marching up to Arch Madsen's house with the rest of the group that eventually moved and worked together in New York, and pleading with Arch to give Gordon back his job.

The group that moved to New York, we hung out together a lot. We had many dinners together and became very close. Then my brother came out to visit me. He said, "Are you aware that Gordon is calling our house everyday and speaking to Mom?" I was so surprised because Gordon had only met my mom once or twice. She would be a relative stranger to him. My brother, Kurt, then told me that he had eavesdropped on the conversations and told me that, "basically, Gordon keeps telling Mom that he's in love with you and he makes Mom vow not to talk." I didn't know what to do about this. It came from another world of reality that I was not privy to and it felt strange.

I finally confronted Gordon about it. He seemed uncomfortable. I found with him if you give him some truth, he'll give you some back. I quit my job and we dated for a while. But it was so difficult and strange. He would make a date and then never show up. He always had grandiose reasons why, and then tried to make up for it, not with a dozen flowers, but ten dozen flowers. He was always so elaborate. I've come to realize that it was to cover up something else.

D.I.D.
I trusted him completely. I had pledged my allegiance to him, had petitioned Arch Madsen to give him back his job. But I found myself in shifting sands of reality. Everything was such a huge drama. One night he was 4-5 hours late for dinner. This was typical. I'd have eaten two dinners by the time he showed up. I began to ask myself, "What's going on?" I came to the conclusion that there must be at least two Gordons, with one not aware of the other. Initially I bought into the incredible claims as to why he was late or absent. All I had was my own internal convictions. But I began asking, "Why is he 5-6 hours late?" If the dinner was set for five or six, he'd show up at 10:30.

He'd initiate all sorts of sexual stuff and then become livid that there were any sexual undertones. We never had sex. After all, he was the good Mormon. I was the token sinner. But he was always angry at the sexual undertones.

*
It finally came to a point where I had to draw the line. I had a horrible experience where I was attacked and strangled in my apartment and left for dead. I was so traumatized. This man had broken into my apartment and tried to kill me. Gordon called me two days after he heard about the incident and said, "Is there anything I can do?" I said, "Yes, I'm staying in a hotel because I'm too frightened to return to my apartment. Would you please just walk with me into my

X | apartment so I can face returning there?" His reply was, "I'd love to but I'm taking some American Express people to a Broadway play and so I just can't help you."

I cut off all my connections with Gordon after that. I chose not to do any work for him. When he called and invited me to your wedding, I told him I was happy for him and wished him happiness, but that I was not a friend and didn't trust him. Years later, Adrian Pulfer called to see if I wanted to collaborate on a project he was working on for Gordon. It was for Idea Exchange. But it ended up in chaos. Then we worked on a project for him for Upromise and a couple of others. But it always ended up in chaos. Gordon tends to rub off on others. He is teflon and nothing bad sticks to him. He is the Bill Clinton of the Mormons.

Read "People of the Lie." This is Gordon. Everything he told me wasn't true. But when I met him I thought he was so good. What he does in the name of goodness is really in the name of power. He likes power. He likes running people's lives. But all this is hard to prove in a court of law. You need to get people that would make great witnesses.

It was strange. I hadn't seen Gordon in 10 years and then within a week I heard three stories about him.

- 1) The first was from Helayne Spivak: Your son, Collin, apparently stayed with her for a while when he was in New York pursuing some modeling work. She said, "At times I feel like Gordon is more married to Collin than he is to Barbara." She told me that Collin was a very attractive young man and that walking down the streets of New York every gay man would turn his head to have a look at him. (Implying that if Gordon had that inclination, it would be easy to be attracted to him.) Anyway, she then told me that Gordon had told her that your whole family would get in the bed naked. She said that Gordon said that on Sunday mornings the family, including the grown boys, would hop into bed naked!
- 2) The next story came from Janene James. Apparently Gordon stayed at her house a couple of years ago or so. He sat on the edge of her bed one night, late, and he told her, "I just walked into the shower and Collin was in there."

I think it served Gordon to think that there was more of a relationship than there really was.

- 3) The third incident was when Collin came to L.A. for the Academy Awards or something. (Lynn may have meant Eric, since, to my knowledge, Collin never attended the academy awards with Gordon.) I arranged for two rooms for them which was difficult because everything was so booked. I called and told him proudly that I'd found two rooms, one for him and one for his son. He was adamant that they only needed one room and made me cancel the other room. The one room only had a king size bed. He was almost angry that I had found two rooms.

I also remember when there was a shoot that he was supposed to be on. He didn't show up for the shoot. Instead he and Collin drove Jaguars up and down the coast, Highway One. It seemed pretty irresponsible to miss work and to do something like that.

Gordon jeopardized my career. He took two years out of my life when I was dating him.

Gordon would show me picture of the boys, pictures that were rather provocative with their shirts off, modeling shots. He'd show me pictures of Collin that Bruce Webber had taken for modeling and I'd agree that Bruce Webber was a great photographer. But then it became strange. He only showed me those kinds of pictures. And I'd wonder, "why is there never a picture of Barbara?"

Gordon was very difficult to deal with financially. He never paid promptly for any project. I always had to fight him to get paid. With AmEx, the last job, he was supposed to pay in three installments. With the final installment, nothing came. I would call him and say, "We need to talk." He would become mean and angry and tell me that he didn't know when he could pay me. It was like, "How dare you ask?!" Adrian and I both had to work overtime for that job. And we had to do it for free. He billed AmEx \$240,000 for that job. He needed to lie to make up what he owed us. I finally did get a lawyer. He'd say to the lawyer that we were friends and that he shouldn't have to pay the rest. I would explain, "We are not friends, and I don't trust you."