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IN THE CIRCUIT COURT OF THE COUNTY OF SAINT LOUIS
STATE OF MISSOURI

IN RE THE MARRIAGE OF:	)	
NATHANIEL L. BURKEMPER, **SSN: XXX-XX-1201**	)	**Cause No.: 21SL-DR00111**
Petitioner,	)	**Division No.: 31**
and	)	
SARAH L. BURKEMPER, **SSN: XXX-XX-8152**	)	
Respondent.	)	

RESPONDENT'S MOTION TO SET ASIDE JUDGMENT ENTERED BY THE COURT ON JANUARY 23, 2023

COMES NOW Respondent, SARAH L. BURKEMPER, and for her Motion to Set Aside the Judgment, states as follows:

1. Petitioner, NATHANIEL L. BURKEMPER, filed his Petition for Dissolution of Marriage on January 7, 2021.
2. Respondent, SARAH L. BURKEMPER, filed her Answer to the Petition for Dissolution of Marriage and Counter-Petition for Dissolution of Marriage on March 3, 2021.
3. Respondent, SARAH BURKEMPER, also filed on March 3, 2021, her Motion and Affidavit for Temporary Child Custody, Temporary Maintenance, Temporary Child Support, Attorneys' Fees, to Exclude Petitioner from Residing at the Marital Residence and Temporary Injunctive Relief Pendente Lite.
4. On April 9, 2021, Petitioner, NATHANIEL BURKEMPER, filed his answer to Petitioner's Motion Affidavit for Temporary Child Custody, Temporary Maintenance, Temporary Child Support, Attorneys' Fees, to Exclude Petitioner from Residing at the Marital Residence and Temporary Injunctive Relief Pendente Lite.
5. On January 28, 2022, the parties entered into a Consent Interim Order ordering Petitioner to pay $400.00 per month to Respondent, ordering Petitioner to pay 100% of the monthly mortgage, internet and basic monthly utilities for the

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marital home, ordering Petitioner to pay 100% of any and all personal property taxes owed by the parties, ordering Petitioner to pay 100% of the cost for medical, dental and vision insurance for the minor children and the parties, ordering Petitioner to pay 100% of the cost to maintain the minor children's cell phones and cell phone coverage and ordering Petitioner and Respondent to equally divide any uncovered medical, dental and vision expenses and extracurricular/extraordinary child rearing expenses that are agreed to in writing by the parties for the minor children.

6. On January 13, 2023, the parties submitted a Judgment of Dissolution of Marriage, Marital Settlement and Separation Agreement and Parenting Plan Parts A and B along with Affidavits of Judgment to this Court. The Court entered its Judgment of Dissolution of Marriage of the parties on January 23, 2023.

7. Pursuant to the Marital Settlement and Separation Agreement, paragraph 2.24(b)(1), The City of Saint Louis Public Employees Deferred Compensation Plan in the name of Nate: "SARAH is awarded an amount equal to fifty percent (50%) of the marital portion of the account balance of said Plan (defined as from the date of marriage to the date of dissolution of marriage) (or the closest valuation date thereto), plus any earning or losses attributable to SARAH's awarded interest subsequent to the date of dissolution of marriage until the date of total distribution."

8. Respondent's counsel prepared a Qualified Domestic Relations Order and sent it to Empower, the Plan Administrator for The City of Saint Louis Public Employees Deferred Compensation Plan, for pre-approval on or about September 1, 2023.

9. On or about October 25, 2023, Empower advised that they could not locate an account in either Petitioner's name or by using his Social Security number.

10. On or about October 27, 2023, Respondent's counsel advised Petitioner's counsel that Empower indicated Petitioner, NATHANIEL BURKEMPER, does not have a deferred compensation plan through the City of Saint Louis and requested verification of Petitioner's account number or documentation of said Plan from Petitioner.

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11. Respondent's counsel has sent numerous emails requesting said information from Petitioner's counsel since October 27, 2023 requesting information from Petitioner.
12. To date, Petitioner has failed to provide any documentation and/or evidence, an account number or any information of the existence of his participation in The City of Saint Louis Public Employees Deferred Compensation Plan to Respondent.
13. Petitioner signed the Judgment of Dissolution of Marriage and Marital Settlement and Separation Agreement knowing he did not possess a deferred compensation plan.
14. Respondent relied on Petitioner's statement that he contributed to a deferred compensation plan throughout their 16-year marriage and believed she would be awarded 50% of the marital portion of said deferred compensation plan.
15. Petitioner was awarded 100% of his Saint Louis Police Department Pension Plan, the only other retirement account the parties possessed.
16. Respondent requests this Court set aside the Judgment and award her an asset equal to the value of the deferred compensation plan she awarded in the Judgment of Dissolution of Marriage plus an additional sum for Petitioner's misrepresentation.
17. Failure to set aside the Judgment of Dissolution of Marriage would result in substantial injustice to Respondent.
18. Respondent has incurred attorney fees in the filing and prosecution of this Motion for which Petitioner should be ordered to pay.

WHEREFORE, Petitioner prays this Court set aside the parties' Judgment of Dissolution of Marriage based on Petitioner's false representation that he participated in a deferred compensation plan; award Respondent an asset equal to the value of the deferred compensation plan she was originally awarded in the Judgment of Dissolution of Marriage entered by this Court on January 23, 2023 plus an additional sum for Petitioner's misrepresentation; order Petitioner to pay Respondent's attorney's fees in bringing this Motion, and for such other and further Orders as the Court deems just and proper.

LAW OFFICES OF MARY ANN WEEMS

By: _____
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CERTIFICATE OF SERVICE/SIGNATURE

The undersigned hereby certifies and agrees that a copy of the above and foregoing was served upon all parties of record via the MO Electronic Filing System pursuant to Supreme Court Rule 103.08 on this 6th day of December, 2023, to:

Mr. Jonathan D. Marks
Attorney for Petitioner
4 CityPlace Drive, Ste. 497
Creve Coeur, MO 63141
jdm@themarkslawfirm.com

and that the original signed filing(s) will be maintained at the Law Offices of Mary Ann Weems pursuant to Supreme Court Rule 55.03(a).

MAW

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