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FAMILY DIVISION

**IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA**

Family Division

Case No. 501971DR004137XXDIFD

**In Re Marriage of
WILLIAM A. CABANA
Petitioner, Former Husband, pro se**

and

**SHARON ANN MAYO f/k/a
SHARON ANN CABANA
Respondent/Former Wife.**

**Former Husband's Objection To Former Wife's Answer To
Supplemental Petition For Modification Of Alimony And Counter
Petition For Award Of Attorney's Fees, Costs And Litigation Expenses**

**COMES NOW WILLIAM A. CABANA, pro se, respectfully objects To Former Wife's
Answer and Counter Petition. In support he offers,**

1. In Former Wife's Counter Petition, Former Husband denies the allegations in paragraph 2. These allegations are groundless and meant to prejudice this court. No evidence has been produced to substantiate these claims.
2. Former Husband denies the allegations in paragraph 3. Former Husband is not liable for the obligations incurred by Former Wife 33 years after dissolution of marriage.
3. Former Husband denies the unsupported allegation in paragraph 4. Former wife has introduced no evidence showing he has greater ability to pay Former Wife's attorney's fees. It is the Former Wife who has the greater ability to pay as shown by attached Exhibits A and B.

4. Former Husband's financial affidavit, filed June 9, 2005, indicating his financial status, i.e. he has income below the United States Department of Health and Human Services 2004 poverty income level for a single person. The financial affidavit indicates his assets and liabilities and income.

5. A comparison chart between Former Wife and Former Husband's income, assets and liabilities is shown as follows:

	<u>Sharon Mayo</u>	<u>William Cabana</u>
Monthly Income	\$5,249 (Exhibit A)	\$745
Assets	\$635,818 (Exhibit B)	\$1,322
Liabilities	\$85,733 (Incl. Investment Prop.)	\$23,950

6. The hardship of Former Husband's financial situation is significant and precludes him from paying any legal expenses other than that of what is incurred by him in his pro se defense.

7. Former Wife's attorney's fees are the result of her attempt to intimidate, harass, and burden Former Husband. Most all of her attorney fees have been incurred due to Former Husband's efforts to defend himself as allowed by law and was only exercising the opportunity to protect his federal and state constitutional rights of privacy.

8. Former Wife has filed 35 motions and notices against Former Husband. Out of these 35 documents, only 3 had any mention of Florida Rules of Civil Procedure and nowhere were mentioned any references to the Florida Statutes or relevant case law cites.

9. Former Husband has filed 46 motions, notices and memorandums of law against Former Wife. Of these, 3 documents referred to the Florida Rules of Civil Procedure and

22 were supported by references to case law cites, the Florida Constitution and the Florida Statutes. In summary:

	<u>Mayo</u>	<u>Cabana</u>
Primary Motions	8	6
Memorandums of Law	0	6
Answers/Replies	5	20
Notices and Procedural Motions	22	14

10. Motions or notices can be classified as frivolous within the guidelines of *Visoly v. Sec. Pacific Credit Corp.*, 768 So. 2d 482, 491 (Fla. 3d DCA 2000) (footnotes omitted) which states:

“Florida caselaw reveals that there are established guidelines for determining when an action is frivolous. These include where a case is found: (a) to be completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law; (b) to be contracted by overwhelming evidence; (c) as having been undertaken primarily to delay or prolong the resolution of the litigation, or to harass or to maliciously injure another; or (c) [sic] as asserting material factual statements that are false.”

Neither former Wife nor this court has provided any case law or other substantiation showing that any of Former Husband’s motions or notices fall within these guidelines and therefore cannot be construed as being frivolous.

11. An example of a motion that falls within all of the frivolous guidelines *Id.* is Former Wife’s Mayo's Emergency Motion For Injunctions, For Sanctions, and for Other Relief filed July 18, 2005 (DE 218), presented to this court on an ex parte basis for hearing without prior noticing Former Husband. In contrast, Former Husband’s Motion

to Deny Former Wife's Emergency Motion, filed August 31, 2005 (DE 228) offers case law and other substantiation to support the allegations in his motion.

12. Former Wife has been shown to have unclean hands with regards to substantial material misrepresentations in her financial affidavits as demonstrated in the Summary of Former Wife's Financial Data Material Errors, filed August 29, 2005.

With the exception of items A and B, all the allegations below are supported in the Summary Of Former Wife's Financial Data Material Errors and represent only a portion of the errors contained therein:

- A. Income claimed on her amended financial affidavit of \$1,237/mo. is understated as compared with her bank deposits showing an average of \$5,249/mo. (Attached Exhibit A)
- B. Former Wife's IRS tax returns for 2003 and 2004 have never been submitted per Former Husband's Request to Produce filed June 6, 2005.
- C. The value of her real estate assets on her amended financial affidavit is understated by at least \$152,347 based on current property values published by the respective County Appraisers. (Attached Exhibit B)
- D. A \$50,000 personal loan, secured by her home on Almeria, from Gold Coast Credit Union was obtained January 15, 2003. Nowhere does this money show up in her financial affidavit of Aug. 14, 2003, other than as an expense for the mortgage on her home.
- E. On the personal loan in (C), the account is held in the name of her daughter Tawny Mayo-Poppel and herself.

F. The Washington Mutual Home Loan statement shows the account for the Saturn rental property loan in the name of Former Wife and her son, Peter Mayo. Ms. Mayo has claimed the full amount of the loan payment for this and the Gold Coast Credit Union loan on her financial affidavits.

G. Ms. Mayo has indicated a total value for personal property and household furnishings in the total amount of \$900. A State Farm Insurance invoice shows a homeowner's insurance premium of \$746 for the Almeria home and \$431 premium for a rental dwelling. It appears inconsistent that she would pay \$1,177 insurance each year to cover only \$900 worth of personal and household property.

H. Former Wife has indicated the value of her '91 Toyota Camry as \$625. The Kelly Blue Book value of this vehicle shows \$3,435.

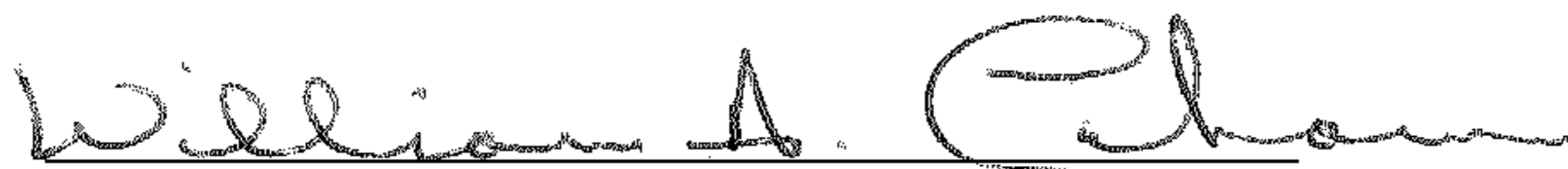
13. In addition to misrepresentations on Former Wife's financial affidavits, she has been shown to have unclean hands with regards to misrepresentations made in her Emergency Motion For Injunctions, For Sanctions, and for Other Relief, filed August 18, 2005 (DE 228). A preponderance of evidence and substantiation of this allegation is contained within Former Husband's Motion to Deny Former Wife's Emergency Motion filed August 31, 2005.

14. Former Husband would like to make reference to *Rubin v. Rubin*, 204 Conn. 224, 527 A.2d 1184 (1987). In order to pay any court ordered attorney's fees, he would need to have the ability to pay. He does not have the ability to pay. Therefore, he submits that her request be denied.

WHEREFORE WILLIAM A. CABANA prays that the Court take jurisdiction over this matter, enter such orders as are appropriate to expedite consideration of this motion, and:

1. Deny Former Wife's request for attorney fees, costs and litigation expenses or such other and further relief.
2. Awarding WILLIAM A. CABANA all costs pursuant to F.S. §86.011 and F.S. §57.041, for the defense of this motion.

Respectfully submitted,



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Certificate of Service

I certify that a copy of this Objection To Former Wife's Answer To Supplemental Petition For Modification Of Alimony And Counter Petition For Award Of Attorney's Fees, Costs And Litigation Expenses was mailed to Cathy L. Kamber, P.A., Attorneys for former wife., 1675 Palm Beach Lakes Boulevard, The Forum, Tower A, Suite 700, West Palm Beach, FL 33401 this 13th day of September, 2005



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Wachovia Bank Deposits For Sharon Ann Mayo

Compiled from bank statements submitted by Ms. Mayo per Request to Produce

Date	Total Monthly Deposits	Average Monthly Income
2005		
4/26 - 5/24	\$12,012.36	
3/26 - 4/25	\$4,213.60	
2/24 - 3/25	\$3,784.03	
1/27 - 2/23	\$4,433.63	
12/28 - 1/26	\$1,884.92	
Total for 5 months	\$26,328.54	\$5,265.71
2004		
11/24 - 12/27	\$9,220.66	
10/27 - 11/23	\$1,762.80	
9/28 - 10/26	\$1,248.05	
8/25 - 9/27	\$6,077.85	
7/28 - 8/24	\$8,360.62	
6/25 - 7/27	\$5,273.48	
5/25 - 6/24	\$4,201.66	
4/27 - 5/24	\$3,839.11	
3/25 - 4/26	\$1,978.51	
2/25 - 3/24	\$8,738.30	
1/28 - 2/24	\$3,313.94	
12/25 - 1/27	\$778.42	
Total for year	\$54,793.40	\$4,566.12
2003		
11/22 - 12/24	\$17,583.21	
10/28 - 11/21	\$3,553.79	
9/25 - 10/27	\$11,913.74	
8/26 - 9/24	\$887.05	
7/26 - 8/25	\$2,928.44	
6/26 - 7/25	\$9,837.86	
5/28 - 6/25	\$1,585.05	
4/25 - 5/27	\$3,344.96	
3/27 - 4/24	\$5,646.46	
2/26 - 3/26	\$3,841.85	
1/28 - 2/25	\$3,944.67	
Total for 11 months	\$65,067.08	\$5,915.19
For period from 1/28/03 to 5/24/05		\$5,249.00

Exhibit A

28. TOTAL MONTHLY EXPENSES (add ALL monthly amounts in A through F above) \$3,405.49

SUMMARY

29. TOTAL PRESENT MONTHLY NET INCOME (from line 27 of SECTION I. INCOME) 29. \$ 1,237.41
30. TOTAL MONTHLY EXPENSES (from line 28 above) 30. \$ 3,405.49
31. SURPLUS (If line 29 is more than line 30, subtract line 30 from line 29. This is the amount of your surplus. Enter that amount here.) 31. \$
32. (DEFICIT) (If line 30 is more than line 29, subtract line 29 from line 30. This is the amount of your deficit. Enter that amount here.) 32. (\$ 2,168.08)

SECTION III: ASSETS AND LIABILITIES

A. ASSETS:

DESCRIPTION OF ITEM(S). List a description of each separate item owned by you (and/or your spouse, if this is a petition for dissolution of marriage).	Current Fair Market Value	Nonmarital (✓ correct column)	
		husband	wife
<input type="checkbox"/> Cash (on hand)	\$ 10		✓
<input type="checkbox"/> Cash (in banks or credit unions) Gold Coast	193		✓
	Wachovia	911	✓
<input type="checkbox"/> Stocks, Bonds, Notes: Bank of America 5/31/05	2,852		✓
	American Funds 5/31/05	1,618	✓
<input type="checkbox"/> Real estate: (Home) 220 Almeria Road (estimate)	350,000		✓
<input type="checkbox"/> (Other) 4401 Saturn (estimate)	84,000		✓
	Okeechobee Lot (estimate)	18,750	✓
<input type="checkbox"/> Automobiles 1991 Toyota Camry	625		✓
<input type="checkbox"/> Other personal property- Household furnishings	900		✓
<input type="checkbox"/> Retirement plans (Profit Sharing, Pension, IRA, 401(k)s, etc.) Vanguard 401k (3/31/05)	155,317		✓
	FPL pension	5,848	✓
	FPL thrift	14,794	✓
<input type="checkbox"/> ✓ here if additional pages are attached.			
Total Assets (add column B)	\$ 635,818		