	SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION DOCKET NO. A-001567-24
AMANDA PARISI, Plaintiff/Respondent, v. DANIEL PARISI, Defendant/Appellant.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION-FAMILY PART UNION COUNTY Docket No. FM-20-1124-20 <u>CIVIL ACTION</u> SAT BELOW: HON. THOMAS J. WALSH, P.J.F.P.

DEFENDANT/APPELLANT'S AMENDED BRIEF

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PRELIMINARY STATEMENT

After the trial judge found that it was "impossible" to quantify the marital lifestyle due to the extreme generosity of Plaintiff's parents, this case was remanded for a new alimony analysis that was required to include a numerical finding of the marital lifestyle, reconsideration of Mallamo credits, child support, and equitable distribution. However, on remand, the presiding judge likewise claimed the quantification of the marital lifestyle could never be completed (i.e., it was a "Sisyphean" task) due to a lack of proofs adduced from the trial. The remand judge also did not have the benefit of oral argument or certifications from the parties, but nevertheless independently assigned a number to the marital lifestyle. Instead of relying on the credible evidence in the record, however, the judge used "rough estimates" based on "experience of hearing divorce cases" and "imagination" to quantify the marital lifestyle. This is problematic because the remand judge's marital lifestyle figure is not based on the actual circumstances of the parties *in this case* and thus does not accurately reflect *their* marital lifestyle. In fact, on remand, the presiding judge opined that "quantifying the marital lifestyle *helps not a whit* in determining the appropriate level of alimony," notwithstanding that quantification of the marital lifestyle is a touchstone factor which drives support awards. Accordingly, the same errors of the first trial judge continue to pervade the second judge's remand

decision. This case must be remanded for a plenary hearing to determine the actual amounts of the contributions made by Plaintiff's parents to the marital lifestyle, so that the marital lifestyle may be accurately quantified and alimony and the financial determinations which flow from alimony may be properly established as the circumstances of *this case* require. Defendant's appeal must be granted, and this case should serve as a road map for litigants and judges alike to follow when such extensive beneficence controls the pre and post-divorce marital lifestyle.

During the marriage, the extraordinary wealth of Plaintiff's parents supported an extravagant lifestyle. The support and "extreme generosity" of Plaintiff's parents allowed the parties to live in a multi-million-dollar mansion, paid for annual renovations of their home, their country club membership, their cars, their domestic help (i.e. housekeeper, landscaper, nanny), their children's activities and private school, and provided multiple lavish vacations several times each year via private jet to live in their luxurious Florida home, among many other lifestyle enhancements, including over $112,000 in cash gifts per year. Both the trial judge and the remand judge could not quantify the parties' extravagant marital lifestyle because they found it was "impossible to quantify" and "Sisyphean" with insufficient trial proofs, respectively.

As a result of not quantifying the marital lifestyle, the court's

determinations of *pendente lite* support, alimony, child support, and expense sharing were untethered to the marital lifestyle of the family and children, Plaintiff's need, and Defendant's ability to pay. At trial, Defendant's request for an alimony adjustment (Mallamo) in *pendente lite* support was denied. Defendant was ordered to pay alimony, above-guidelines child support, and a greater share of the children's expenses, without consideration of the significant financial support that Plaintiff's parents provided the family during the marriage, and which Plaintiff's parents have continued for Plaintiff and the children during Plaintiff's parenting time only.

The quantification of the marital lifestyle is the key figure when determining alimony. This figure drives not only the determination of alimony, but also child support, the percentage allocation Defendant pays for other expenses associated with child support, including the Parent Coordinator, Co-Parenting Counselor, activities, medical, education, and dependent claiming on taxes, the equitability of the distribution of marital assets, and whether a Mallamo payment needs to be assessed. The remand court erred when it adopted the trial judge's erroneous analysis and findings, failed to adequately assess the marital lifestyle of the parties, deemed the marital lifestyle irrelevant to the alimony analysis, and failed to conduct the requisite analyses which are tethered to the marital lifestyle figure, as directed by the Appellate Division.

PROCEDURAL HISTORY

Following an eleven-day trial, Judge Lisa F. Chrystal, J.S.C. (ret.) entered a Final Judgment of Divorce ("JOD") on May 24, 2022. (Da6; 1T4-14 to -15[1]). Defendant appealed and Plaintiff cross appealed. (Da118). The Appellate Division granted Defendant's appeal as to alimony, Mallamo, child support, and equitable distribution. The Court reversed the alimony award and remanded for a new analysis, which it directed "shall include a numerical finding as to the marital lifestyle and reconsideration of Mallamo credits." (Da118-Da119). The Appellate Division also reversed the child support award and the equitable distribution award. (Da119).

On remand, Judge Thomas J. Walsh, P.J.F.P. assigned the matter to himself. (Da5). Judge Walsh ordered the parties to submit briefs addressing the issues on remand. (Da6). The parties did not file certifications.

On January 23, 2025, without having heard oral argument, Judge Walsh entered an Order and Statement of Reasons addressing the issues on remand. (Da5-Da10). The Order reaffirmed the alimony award of $2,508/month paid by

[1] "1T" shall refer to the 9/27/21 transcript; "2T" shall refer to the 9/28/21 transcript; "3T" shall refer to the 9/29/21 transcript; "4T" shall refer to the 9/30/21 transcript; "5T" shall refer to the 10/12/21 transcript; "6T" shall refer to the 10/13/21 transcript; "7T" shall refer to the 10/14/21 transcript; "8T" shall refer to the 10/18/21 transcript; "9T" shall refer to the 10/19/21 transcript; "10T" shall refer to the 10/21/21 transcript; and "11T" shall refer to the 10/22/21 transcript.

Defendant, it reaffirmed the child support and Mallamo credits as previously ordered in the JOD, and it ordered that Defendant is entitled to an additional equitable distribution credit of $51,562.50. (Da5).

On January 27, 2025, Plaintiff's attorney wrote a three-page letter to Judge Walsh asking that he reconsider his decision and modify the order. (Da195-Da197). On January 29, 2025, Judge Walsh wrote to counsel that he is retiring on January 31, 2025, and "there is not enough time for the court to give the letter the proper attention it deserves." (Da198). He directed that any objections to the order should be put in the form of a motion for reconsideration, and advised that he would discuss the matter with the incoming Presiding Judge. (Da198).

On January 30, 2025, Defendant filed an appeal of the January 23, 2025 Order. (Da1). Plaintiff filed a cross appeal on February 6, 2025.

STATEMENT OF FACTS

The parties were married in September 2015. (Da119). They have three children, twins born in February 2017, and a son born in October 2018. (Da119).

The JOD was entered on May 24, 2022. (Da6). In her decision, Judge Chrystal found that the parties were afforded a lavish lifestyle using Plaintiff's parents' extreme wealth, a lifestyle Plaintiff enjoyed and was accustomed to her entire life. (Da11). She found that it was "impossible to quantify the joint marital lifestyle of the parties due to the generosity of the Plaintiff's parents" (Da245)

and that it was "impossible . . . to determine the actual need of Plaintiff" due to the "generous gifts that enhanced the lifestyle of Plaintiff, Defendant and the children." (Da290). Judge Chrystal also determined that Plaintiff did not prove her need for alimony, where she stated that "Plaintiff has not adequately articulated her specific need [for alimony], due to the numerous gifts from her parents." (Da12). She also found that "[n]either party will be able to maintain the marital lifestyle going forward without the gifts from Plaintiff's parents, which was the marital norm." (Da242). Judge Chrystal nevertheless ordered Defendant to pay Plaintiff three years of alimony on top of two years of *pendente lite* support. (Da12-Da13). Defendant appealed, and his appeal was granted as to alimony, Mallamo, child support, and equitable distribution.

On remand, the Appellate Division directed that a new alimony analysis shall be conducted "because the judge failed to quantify the marital lifestyle. . . ." (Da118). The Appellate Division stated that the new analysis "shall include a numerical finding as to the marital lifestyle and reconsideration of Mallamo credits." (Da118-Da119). The Appellate Division also reversed the child support award "because the judge utilized an erroneous alimony award in the child support analysis." (Da119). The Appellate Division provided Caplan v. Caplan[2] child support methodology to the remand judge. (Da165-Da166).

[2] 364 N.J. Super. 68, 89-90 (App. Div. 2003).

On remand, the matter was before a new judge, Judge Thomas J. Walsh, P.J.F.P., because the initial judge retired. (Da6). Judge Walsh did not take testimony or hold oral argument. (Da5). Judge Walsh entered an order on January 23, 2025 based solely on briefs submitted by counsel. (Da6; Da11; Da83).

Plaintiff argued that the court should conclude that the marital lifestyle is the amount reflected in her Case Information Statement ("CIS") of $21,615/month, or $259,380/year net. (Da7). Plaintiff claims that this is the amount the parties themselves paid and which excluded the generosity of her very wealthy parents. (Da7). Judge Walsh rejected Plaintiff's position. (Da7). Defendant argued that the marital lifestyle should be between $587,166/year and $627,476/year net, excluding the children's private school tuition of $137,700/year net. (Da27-Da29). Judge Walsh rejected Defendant's position because some of the information Defendant used to quantify the lavish shelter costs paid by Plaintiff's parents, a calculation not made at trial, was hearsay. (Da7).

Judge Walsh opined that based on Defendant's testimony, he had a windfall of $4,111.67/month. (Da9). That is incorrect, Defendant never testified to that figure; rather the $4,111.67 figure is found in a chart that Judge Chrystal created, not Defendant's testimony. (Da292). The chart takes Defendant's

inflated *gross* income ($16,666/month) and subtracts a *net* amount of lifestyle expenses from that figure ($12,555/month). (Da292). Defendant's adjusted gross 2020 post-complaint income was $155,478/year, which is $12,956.50/month gross. (DCa100). Judge Chrystal states that the amount of lifestyle expenses in the chart is taken from Defendant's CIS, but the figure in Defendant's CIS is $14,221/month net, not $12,555/month net. (DCa98). Judge Chrystal did not indicate in her decision that she was reducing Defendant's budget. (Da292).

Judge Chrystal found that "[t]here was no doubt that both parties testified to an extravagant lifestyle, *this Court finds was all as a result of Plaintiff's parent's generosity*, a lifestyle Plaintiff enjoyed and was accustomed to her entire life." (Da 241)(emphasis added). During the marriage, the parties received the benefit of living in a luxury home in Summit, NJ, owned by a trust controlled by Plaintiff's parents, where below-market rent was paid to the trust. (Da208; Da295; Da290). The marital residence was a $2.525 million dollar mansion with six bathrooms. (Da256; Da277). Plaintiff's parents, the Pooles, "gifted each of the parties lavishly . . . with cash gifts of $25,000 each in 2018 and $28,000 each in 2019." (Da277). The Pooles paid for the costs of the children's nanny, baby nurse, pre-school, activities, and lessons. (Da241; 8T138-11 to -15; 8T84-12 to -13). They paid for the parties' marriage counseling. (Da241). The Pooles also

paid for Plaintiff's country club and her two automobiles. (Da242). The Pooles paid for the parties to fly via private jet for vacations at their Florida home, where the parties stayed for 50 nights in 2017 and 51 nights in 2018. (Da328-Da361; 10T84-9 to -11; 3T58-22 to 59-4; 5T60-16 to -19). The Pooles paid for the parties and their children for at least seven round trips from New Jersey to Naples, Florida in 2020, and at least four roundtrips in 2021 for as long as 10 days/trip. (Da329; Da23). The average cost of each one-way private flight between Florida and New Jersey that the Poole's paid for was about $10,000, exclusive of the recurring monthly fees charged by the private jet service and other contractual costs, which were at least an additional $5,000 to $6,000/month. (Da329-Da361). Transportation, nannies, housekeeper, meals at restaurants, and airport staff were provided for the parties upon landing, at an additional cost to the Pooles. (Da345-Da346; Da22; 5T64-22; 5T65-6; 5T64-7; 5T64-15 to -16). Some trips to Florida also included excursions to Legoland and Disneyworld. (6T95-13 to -19; 6T96-7 to -9).

Post-divorce, Defendant resides in a two-bedroom apartment (Da312), while Plaintiff resides in a newly renovated home in Summit, NJ owned by one of the trusts set up by Plaintiff's parents and which is comparable to the $2.525 million-dollar marital home. (Da254; Da318; 9T89-17 to -22).

Judge Walsh adopted the lifestyle amount set forth in Plaintiff's CIS as

the "base amount of the parties' expenses, without the Pooles' [Plaintiff's parents] assistance. . . ." (Da7). However, Judge Walsh found that "[t]here is no question . . . that the Pooles greatly enhanced the parties' standard of living." (Da8). Judge Walsh added expenses to the base lifestyle amount. (Da7). He estimated the amount of these added expenses based on its "experience of hearing divorce cases" and not based on the evidence in the parties' case. (Da8). Judge Walsh ignored the proofs Defendant supplied from Zillow and Redfin to help quantify certain expenses and labeled them as "fanciful." (Da7). Based on what Judge Walsh stated were "rough estimates," he found that that the marital lifestyle was $32,346/month, or $388,152/year net. (Da8). He affirmed the prior alimony analysis and award of $2,508/month set forth in the JOD, without conducting his own alimony analysis. (Da9; Da5). Judge Walsh stated, "quantifying the marital lifestyle helps *not a whit* in determining the appropriate level of alimony." (Da8)(emphasis added).

Judge Walsh affirmed the prior child support award of $535/week because he did not modify alimony. (Da10; Da5). He also affirmed the allocation of all children's extracurricular expenses, unreimbursed medical bills, and professional fees (Parent Coordinator and Co-Parenting Counselor) with Defendant paying 69% and Plaintiff paying 31%. (Da5). Defendant's request for a Mallamo adjustment to the *pendente lite* support he paid was denied at trial

and again on remand. (Da5; Da9-Da10).

LEGAL ARGUMENT

POINT I

ON REMAND, THE TRIAL COURT ERRED WHEN IT FOUND THAT "QUANTIFYING THE MARITAL LIFESTYLE HELPS NOT A WHIT IN DETERMINING THE APPROPRIATE LEVEL OF ALIMONY" AND REAFFIRMED THE ALIMONY AND CHILD SUPPORT AWARDS, AND THE PERCENTAGE ALLOCATION OF OTHER EXPENSES WITHOUT FURTHER ANALYSIS. (Da5-Da9).

"It is beyond dispute that a trial judge has the responsibility to comply with pronouncements of an appellate court." Tomaino v. Burman, 364 N.J. Super. 224, 232 (App. Div. 2003)(citations omitted).Furthermore,

> It is the peremptory duty of the trial court, on remand, to obey the mandate of the appellate tribunal precisely as it is written. Although trial judges are privileged to disagree with our decisions, the privilege does not extend to non-compliance. In other words, trial judges are bound to follow the rulings and orders of the Appellate Division; they are not free to disregard them.
>
> [Ibid. (internal quotations and citations omitted).]

"Alimony is an economic right that arises out of the marital relationship and provides the dependent spouse with a level of support and standard of living generally commensurate with the quality of economic life that existed during the marriage." Quinn v. Quinn, 225 N.J. 34, 48 (2016)(internal quotations and citations omitted). "The basic purpose of alimony is the continuation of the

standard of living enjoyed by the parties prior to their separation." Ibid. (quotation and citation omitted). Courts may award alimony "as the circumstances of the parties and the nature of the case shall render fit, reasonable and just," considering fourteen statutory factors. N.J.S.A. 2A:34-23.

A court's finding of the parties' marital lifestyle is critically important in making its alimony determination. S.W. v. G.M., 462 N.J. Super. 522, 531 (App. Div. 2020). The marital standard is the court's determination of "the amount the parties needed during the marriage to maintain their lifestyle", regardless of the source. Weishaus v. Weishaus, 180 N.J. 131, 145 (2004).

> In a contested case, a trial judge may calculate the marital lifestyle utilizing the testimony, the CISs required by Rule 5:5-2, expert analysis, if it is available, and other evidence in the record. The judge is free to accept or reject any portion of the marital lifestyle presented by a party or an expert, or calculate the lifestyle utilizing any combination of the presentations.
>
> [S.W. v. G.M., 462 N.J. Super. at 532.]

"In contested divorce actions, once a finding is made concerning the standard of living enjoyed by the parties during the marriage, the court should review the adequacy and reasonableness of the support award against this finding." Crews v. Crews, 164 N.J. 11, 26 (2000).

> [T]he court shall also consider the practical impact of the parties' need for separate residences and the attendant increase in living expenses on the ability of

> both parties to maintain a standard of living reasonably comparable to the standard of living established in the marriage or civil union, to which both parties are entitled, with neither party having a greater entitlement thereto."
>
> [N.J.S.A. 2A:34-23(c).]

A. The court's numerical calculation of the parties' marital lifestyle was erroneous because it was an arbitrary figure that was not based on the credible evidence in the record.

On remand, Judge Walsh stated that "Judge Chrystal accepted Plaintiff's testimony that the parties' lifestyle, as detailed by Plaintiff's CIS, was approximately $21,000." (Da7). However, this is incorrect because Judge Chrystal did not accept the marital lifestyle set forth in Plaintiff's CIS. Judge Chrystal found that it was "impossible to quantify the joint marital lifestyle of the parties due to the generosity of the Plaintiff's parents." (Da280). Judge Walsh also did not consider the marital lifestyle figure in Defendant's CIS, which included line items that were paid for by Plaintiff's parents. (Da244).

Significantly, the marital budget in Plaintiff's CIS of $18,340/month net (DCa224), at a 35% tax rate, implies a gross marital income of approximately $338,585/year, which is twice Defendant's gross income in 2019 of $170,289/year. (DCa17; Da16). It is also more than twice Defendant's adjusted gross income in 2020 of $155,478/year, which he earned post complaint from his employment at Rothesay Asset Management, and which he began on

February 10, 2020. (DCa100; 2T119-19 to -25; Da16). Defendant earned even less in 2018 and 2017, earning $126,687 gross and $112,863 gross, respectively. (DCa17). In other words, Plaintiff's CIS's marital budget indicates Defendant's income alone was insufficient to fund expenses of $18,340/month net or $220,080/year net, implying that a significant portion of expenses was paid for by Plaintiff's parents ("the Pooles") because the parties did not have marital debt and were able to save $2,000/month, as indicated by Plaintiff's CIS. (DCa223). Therefore, Judge Walsh's finding that Plaintiff's marital budget was the "base amount of the parties' expenses, without the Pooles' assistance," was incorrect. (Da7). The mathematics show that it was not possible for Defendant's income alone to fund the lifestyle alleged by Plaintiff. This mathematical proof also supports the necessity of quantifying the marital lifestyle because Plaintiff's post-judgment lifestyle likely exceeds the extravagant marital lifestyle funded by her parents. Post-judgment, Plaintiff resides in a newly constructed 6-bedroom house, vacations by private jet, the children have more expensive private school tuition (with more vacations), and a country club membership. By comparison, following the divorce, Defendant's lifestyle plummeted to an old two-bedroom apartment. Such a disparity factors into the alimony and child support calculations. See N.J.S.A. 2A:34-23(b)(neither party has a greater entitlement to the marital standard of living than the other).

In addition, the expenses that Judge Walsh added on top of the erroneous base figure were not based on the evidence in the record; they were based on his "experience of hearing divorce cases." (Da8). While a judge's experience is certainly important in many aspects of a case, determining the specific numerical value of marital lifestyle budget items is not an appropriate area for experience to trump the evidence in the record. Marital budgets are different in every case, and they are dependent upon many factors. For example, Judge Walsh used $4,000/month as an "enhancement" to the cost of the marital home. (Da8). Judge Walsh's estimate based on "experience" is not more accurate than the estimates provided by Defendant from multiple legitimate real estate websites. Yet, Judge Walsh labeled Defendant's good-faith effort to provide proofs as "fanciful," and rejected them. (Da7). Moreover, it is unclear exactly what this means in terms of the line-item budget, however, because no further information was provided as to what figure was being "enhanced." If Judge Walsh was enhancing the amount of rent that the parties paid during the marriage, Judge Chrystal found that they paid "under market rent" of $3,425/month. (Da290). The $3,425 figure was to cover property taxes and insurance only. (Da120). These two figures total $7,425/month for rent for a $2.5 million dollar, six-bedroom, five-and-a-half-bathroom home in Summit, New Jersey. (Da211; 8T124-20 to -23). However, Defendant provided rental estimates from two separate real estate websites,

which showed rent of at least $9,377 and $11,717/month. (Da17). Judge Walsh flat-out ignored Defendant's evidence.

Judge Walsh also used $2,000/month for the vacation budget, noting that this amount was for "non-private aviation" and an "imagined . . . luxurious accommodation of the Pooles," (Da8). One problem with Judge Walsh's imagined figures is that parties never traveled on "non-private aviation" and always travelled for vacations using private jets (i.e. private aviation), which were contracted and paid for by Plaintiff's parents. Plaintiff's parents paid $5,000-$6,000/month in fees alone for access to the private aviation service, in addition to an average of $10,000 per one-way flight for the parties each time they travelled between New Jersey and Florida. (Da329-Da361). The Pooles flew the parties and their children to Florida and back multiple times each year during the marriage. Upon arriving in Florida, a car would be waiting for the parties at an additional cost paid for by the Pooles. Defendant's CIS stated that the parties' marital vacation budget was $9,900/month, paid for by the Pooles. (Da244). It was, therefore, improper for the court to use a figure that it made up out of thin air and which did not consider the cost of private aviation, transportation, or lodging for the parties' vacations. Nor did Judge Walsh consider the "source of funds that supported that lifestyle" to evaluate "whether there are sufficient presently available funds to sustain the marital standard."

Weishaus, 180 N.J. at 145. The court must look at the parties' actual standard of living and not extrapolate a sensible lifestyle. Ibid. (quotation and citation omitted).

Judge Walsh also erred by not adding the costs of psychiatric/psychological counseling, domestic help, extracurricular activities, and part of the children's lessons to the budget because these items were paid for by the Pooles. (DCa223; Da280). Furthermore, it cannot be ignored that Plaintiff's CIS does not report an accurate marital standard as it omits an unknown amount of expenses due to the "absence of statements for various expenses" paid for by her very generous and wealthy parents, as noted by the Appellate Division's Opinion in the first appeal on page 42. (Da158). In this regard, Judge Chrystal found that "many of the expenses paid for by Plaintiff's parents were unclear, due to the absence of statements for various things. . . ." (Da281). Judge Chrystal also did not permit Defendant to review the relevant proofs, even under a protective order. (Da149-Da152). That is, the proofs that showed which expenses were paid by the Pooles have been ascertained, but were not released to Defendant. It was therefore "impossible" for Judge Chrystal to quantify Plaintiff's need. Judge Walsh likewise claimed the quantification of the marital lifestyle could never be completed (i.e., it was a "Sisyphean" task) due to a lack of proofs adduced from the trial because Judge Chrystal blocked

Defendant's review of the relevant information. (Da149-Da152). Accordingly, it was improper for Judge Walsh to use arbitrary estimates to put a dollar amount on the marital lifestyle. A plenary hearing is required on remand to determine the actual amount of the contributions made by Plaintiff's parents to the marital lifestyle and to accurately quantify the marital lifestyle.

B. The Trial Court did not conduct a statutory alimony analysis that considered the numerical marital lifestyle finding.

The marital lifestyle "serves as the touchstone for the initial alimony award. . . ." Crews v. Crews, 164 N.J. 11, 16 (2000). In determining alimony, "the court shall consider and make specific findings on the evidence about all of the statutory factors. . . ." N.J.S.A. 2A:34-23(c). "[F]ailure to consider all of the controlling legal principles requires a remand." Boardman v. Boardman, 314 N.J. Super. 340, 345 (App. Div. 1998)(citations omitted). "Naked conclusions do not satisfy the purpose of R. 1:7-4. Rather, the trial court must state clearly its factual findings and correlate them with the relevant legal conclusions." Curtis v. Finneran, 83 N.J. 563, 570 (1980)(citations omitted).

In this case Judge Walsh did not conduct the required statutory alimony analysis, nor did he consider the numerical marital lifestyle figure in the alimony analysis because he found that quantifying the marital lifestyle was irrelevant to alimony. (Da8). Instead, Judge Walsh adopted Judge Chrystal's analysis as "reasonable" and affirmed her decision without considering how the marital

budget could impact the alimony analysis because the marital lifestyle was never quantified. (Da9). The analysis done by Judge Chrystal, which did not have a numerical marital lifestyle finding, cannot simply be adopted on remand. It does not make sense that the new numerical finding would have zero impact on the prior analysis. On remand, the court was directed to conduct a new alimony analysis which considered the numerical marital lifestyle finding. However, that did not occur in this case. Judge Walsh did not correlate his factual findings with his legal conclusions; he did not conduct a statutory alimony analysis; he did not analyze alimony with respect to the numerical marital lifestyle finding, and, in this regard, he defied the Appellate Division's instructions. Judge Walsh erroneously stated, "in a case like this *quantifying the marital lifestyle helps not a whit in determining the appropriate level of alimony*." (Da8) (emphasis added).

"The goal of alimony is to assist the supported spouse in achieving a lifestyle reasonably comparable to the one enjoyed during the marriage." J.E.V. v. K.V., 426 N.J. Super. 475, 485 (App. Div. 2012)(citations omitted). The first factor that the court is required to consider is "the **actual need** and ability of the parties to pay. . . ." N.J.S.A. 2A:34-23(b)(emphasis added). The party seeking alimony has the burden to establish a need for alimony. See Strahan v. Strahan, 402 N.J. Super. 298, 308 (App. Div. 2008)("Judges must be vigilant in providing

for 'needs' consistent with lifestyle without overindulgence."(internal quotation and citation omitted)(referencing "Three Pony Rule" in child support cases)).

In this case, Plaintiff did not demonstrate a need for alimony, as found by Judge Chrystal. Judge Chrystal stated that it was "impossible . . . to determine the actual need of Plaintiff" due to the "generous gifts that enhanced the lifestyle of Plaintiff, Defendant and the children" (Da290), and that "Plaintiff has not adequately articulated her specific need [for alimony], due to the numerous gifts from her parents." (Da12). Judge Chrystal's finding that Plaintiff did not demonstrate a need for alimony is inconsistent with her awarding alimony. Yet, this error was replicated by Judge Walsh.

Because Judge Walsh did not conduct an alimony analysis, he also did not determine Plaintiff's need for alimony. He opined that Defendant should not be relieved from an alimony obligation because the Pooles may continue to support their daughter. (Da9). However, Judge Chrystal found that "**Plaintiff lived and continues to live a lavish lifestyle due to her parents' generosity.**" (Da302)(emphasis added). Indeed, as Judge Chrystal found, post-divorce Plaintiff continues to live a lavish lifestyle as she did prior to the marriage. This statement is exemplified by the newly built, multi-million-dollar mansion in which Plaintiff resides, which is comparable to the marital home and which is funded by her parents. (Da318; 9T89-17 to 90-2; 9T114-14 to 117-13). Judge

Chrystal also found that at trial, Plaintiff provided no testimony as to why the $1,666/month in *pendente lite* alimony was not enough to fulfill her needs. (Da291). Plaintiff testified that "her father supports her children, her nanny, her country club, and her two (2) luxury automobiles." (Da242). She admitted to "annual gifts from her parents of $25,000 or $28,000 until the marital discourse [sic] began." (Da242). However, the court never quantified how frequently and in what quantum Plaintiff's parents gifted her, Defendant, and the children cash. Plaintiff testified that her father pays for her food, clothing, and medical expenses, including the family's concierge doctor. (8T80-8 to -14; 6T115-22 to 116-6).

Furthermore, although Plaintiff claimed at trial that she was "forced" to rely on "loans" from her parents to pay for her and the children's living expenses and her counsel fees, Judge Chrystal found that Plaintiff's testimony was not credible. (Da246). Judge Chrystal found that "Plaintiff has no income from which to repay the 'loans'"; Plaintiff's parents have been incredibly generous with gifts that they have bestowed on Plaintiff her entire life; "there is no evidence that she was ever called upon to 'repay' loans for her parents' generosity"; and, "[t]here was also no history of loan repayment." (Da246). Plaintiff's parents continue to fund Plaintiff's lavish lifestyle as they always have, including setting up multiple trusts for her and the children's benefit.

Plaintiff also uses a joint credit card with her father which she can charge whenever she wants without limit and her father will pay the bill. (DCa71; DCa365). Judge Chrystal found that Plaintiff "testified candidly *she does not want to become employed*." (Da283) (emphasis added). Although the court cannot compel Plaintiff's parents to continue to support her, they will continue to financially support her as they have throughout her entire life as evidenced by Plaintiff's testimony that she does not want to become employed. Moreover, the history of the Pooles' financial support of Plaintiff throughout her entire life is evidence that they will continue to support her financially. The court must take these facts into consideration when determining alimony.

Another statutory alimony factor that the court is required to consider is "[t]he standard of living established in the marriage or civil union and the likelihood that each party can maintain a reasonably comparable standard of living, with neither party having a greater entitlement to that standard of living than the other. . . ." N.J.S.A. 2A:34-23(b). For this factor, the court needed to numerically quantify the marital lifestyle. Judge Walsh found that the marital lifestyle was $32,346/month net, but he did not conduct any further analysis as to whether and to what extent the parties would be able to maintain this lifestyle and if so, with what funds. Defendant's income will not allow him to maintain a lifestyle of $32,346/month net, as Judge Walsh found he earns $16,666/month

gross. (Da292). Although Plaintiff was only imputed with gross income of $3,366/month, she is financially supported by her parents, who have provided her with a lavish lifestyle throughout her entire life. It was erroneous for Judge Walsh to find that the lifestyle enhancements provided to Plaintiff by her parents that allow her to live "above her means and the alimony (since concluded) has no effect" on the alimony figure. (Da9). If the generosity of Plaintiff's parents allows her to live a lifestyle that is at least comparable to the marital lifestyle, but Defendant's income does not allow him to live a lifestyle comparable to the marital lifestyle, it does not make sense that Defendant should be compelled to pay Plaintiff alimony. In stark contrast to the multi-million-dollar marital home, post-divorce, Defendant is residing in a two-bedroom apartment. Neither party is entitled to a greater standard of living; however, Plaintiff's lifestyle appears to be maintained and increased without constraint, as evidenced by her newly constructed house in Summit, New Jersey that is funded by a trust controlled by her parents and that is comparable to the marital home. Yet, by ignoring the fact that Plaintiff's parents continue to provide her with a lavish lifestyle, the court has improperly allowed Plaintiff to have a post-marital standard of living that is much greater than that of Defendant, an inequitable result.

Furthermore, the alimony figure is important notwithstanding that Plaintiff remarried, in turn terminating the alimony obligation early. (Da30). The

alimony figure is important because the marital lifestyle and subsequent alimony number drives child support and the percentage contribution to expenses by both parties. That is, if the alimony ordered was incorrect, it means that the child support and the parties' percentage contributions to other expenses are also incorrect. Similarly, without the appropriate marital lifestyle findings, including the sources funding the lifestyle, the court cannot properly determine the children's need for child support and the proper allocation of expenses.

For the foregoing reasons, the Trial Court erred when it did not conduct an alimony analysis using the statutory factors and the numerical marital lifestyle.

C. The prior child support award and allocation of expenses should not have been affirmed.

N.J.S.A. 2A:34-23(a) provides that the court shall consider the needs of the children, the standard of living, and the economic circumstances of each parent when determining the amount of child support for parties whose joint income exceeds $260,000+/year gross. The needs of the children must be addressed in the context of the standard of living of the parties. Isaacson v. Isaacson, 348 N.J. Super. 560, 581 (App. Div. 2002). Thus, the parenting time and PPR designation ought to be viewed as a subordinate criterion to the standard of living of the parties, especially given the enormous economic disparity that exists in this case. This is consistent with the income-oriented

child support methodology set forth in Caplan v. Caplan, 182 N.J. 250 (2005). In Caplan, the Supreme Court stated, "the fairness of a child support award is dependent on the accurate assessment of a parent's net income." Id. at 265 (quoting Child Support Guidelines, Pressler, Current N.J. Court Rules, Appendix IX-A to R. 5:6A (2005)). Here, Plaintiff's net income must be a function of the quantification of her lifestyle funded by her parents.

On remand, Judge Walsh did not reconsider child support or the allocation of expenses because he did not modify the alimony award nor quantify the children's expenses using Caplan v. Caplan. (Da10; Da166). However, this was improper because Judge Chrystal ordered Defendant to pay above guideline child support without considering the economic benefits that the children receive from Plaintiff and from the Pooles. Plaintiff's parents and the various trusts that they have set up to provide the children with luxurious homes, travel on private jets, benefits of country club memberships, new cars, a nanny, and various gifts such as paying for clothes, birthday parties, sports, lessons, preschool, and now private school at $45,900/year for each child. (DCa541-DCa546). Judge Walsh did not consider the income or economic benefits Plaintiff receives which, in turn, entitles the children to enjoy the wealth of her parents when determining child support.

Indeed, in determining child support, the court is required to consider not

only the needs of the children, but also the standard of living and economic circumstances of each parent, all sources of income and assets of each parent, and the reasonable debts and liabilities of each child and parent, among other factors. See N.J.S.A. 2A:34-23(a); Caplan, 182 N.J. at 266. These factors are why the court's determination of the marital lifestyle and alimony are critical to the child support determination, regardless of the ultimate duration of alimony. The marital lifestyle and subsequent alimony number drives child support and the contribution to expenses. That means that if the alimony figure is incorrect, it impacts the child support analysis, the child support award, and the allocation of expenses. Moreover, if the court did not consider the economic benefits Plaintiff and the children receive from the Pooles, then its decision improperly shifts the financial burden onto Defendant for things that are paid for voluntarily by the Pooles. The court must also consider that there is no indication that the Pooles will stop contributing to these expenses, which they have been paying since before the parties' divorce and which they have continuously continued to pay to date. The Pooles commitment to financially assisting Plaintiff and the children is evident from the numerous trusts they have set up for that exact purpose. The Pooles' significant and continuing financial assistance to Plaintiff and the children is a fact that cannot be ignored by the court.

The percentage allocations of the children's expenses are similarly unfair

because Plaintiff admitted that her parents willingly pay for the children's expenses, not her. Defendant was ordered to pay 69% of all unreimbursed medical expenses and all extracurricular activities, including summer camp, for the children without a limit. Post-divorce this allocation has forced Defendant to incur significant debt, to pay counsel fees for Plaintiff, to pay his own counsel fees, and drastically reduce his lifestyle and that of the children when they are with him because of the misallocation of income to Plaintiff and to Defendant in the JOD. (Da31). The economic benefits provided to the children by Plaintiff's parents, which create a significant economic disparity and provide Plaintiff with imputable income must be considered when allocating their expenses.

POINT II
ON REMAND, THE TRIAL COURT ERRED IN REAFFIRMING THE PRIOR JUDGE'S DETERMINATION AS TO MALLAMO AND RELATED CREDITS. (Da5; Da9-Da10).

Prior to the entry of a final judgment, and at the time of entry of final judgment, "*pendente lite* support orders are subject to modification." Mallamo v. Mallamo, 280 N.J. Super. 8, 12 (App. Div. 1995)(citations omitted). This is because "a judge will not receive a reasonably complete picture of the financial status of the parties until a full trial is conducted." Id. at 16. The purpose of a Mallamo credit is to adjust a *pendente lite* award which is "woefully inadequate

or obviously unjust. . . .” Slutsky v. Slutsky, 451 N.J. Super. 332, 368 (App. Div. 2017)(citation omitted). “[R]etroactive modification of a *pendente lite* support award is appropriate where subsequent facts are discovered during trial, which demonstrate that the earlier award was improper and must be adjusted as a matter of fairness.” Mallamo, 280 N.J. Super. at 16.

In the JOD, Judge Chrystal enforced the *pendente lite* support that Defendant was ordered to pay of $1,666/month from April 22, 2020 until May 1, 2022, plus Schedule A expenses while he was in the marital home. (Da318). Judge Chrystal found that Defendant did not pay $36,516 in support and, therefore, did not require Plaintiff to reimburse him 50% of the joint J.P. Morgan account ($43,477). (Da35; Da318; Da162). Plaintiff had unilaterally removed $86,953 from the parties’ joint J.P. Morgan account, preventing Defendant from accessing his portion of this joint marital asset. (Da35). Defendant was also ordered to pay $18,468.95 as a reimbursement of Schedule A expenses, for a total Mallamo credit to Plaintiff of $61,945. (Da319). Judge Chrystal ruled on the Mallamo issue without first having quantified the marital lifestyle, and the issue was reversed and remanded. (Da162-Da163).

On remand, Judge Walsh accepted the determination made by Judge Chrystal without any modifications. (Da9-Da10). Judge Walsh found that “Judge Chrystal based her decision on the level of support that was paid by

Defendant during the marriage, and not on the artificially enhanced lifestyle provided by Plaintiff's parents." (Da9-Da10). However, this is incorrect because Judge Chrystal did not make any findings in this regard. Defendant's income and the significant financial support from the Pooles *both* supported the marital enterprise – that is why the numerical marital lifestyle budget is critical to the analysis.

Judge Chrystal found that "Plaintiff's standard of living did not rely solely on Defendant's income" and that "it is difficult to determine [Plaintiff's] reliance on Defendant's income." (Da318). That is where her analysis stopped. Because she did not quantify the marital lifestyle, Judge Chrystal blindly enforced the *pendente lite* support that was ordered, which the Appellate Division determined was erroneous. (Da162-Da163). Judge Walsh's explanation that the *pendente lite* support was not based on the enhanced lifestyle provided by Plaintiff's parents is incorrect because Judge Chrystal *could not have* made that determination because Judge Chrystal did not quantify the marital budget. Judge Walsh adopted Judge Chrystal's error on remand without conducting his own analysis.

As set forth in detail above, the marital lifestyle that Judge Walsh adopted as the "base" budget paid for by Defendant's income alone is not mathematically possible. Plaintiff's lavish lifestyle is financially provided by her wealthy

parents, the trusts they have set up, and her unlimited spending on a credit card that is paid for by her father. Plaintiff failed to prove that the $1,666/month she received in *pendente lite* support was "woefully inadequate," which is required for a Mallamo credit. In fact, Judge Chrystal found that "**there was no testimony during the lengthy trial as to why this [$1,666/month] was not enough to fulfill Plaintiff's needs**, except for noncredible testimony by Plaintiff about loans from her parents." (Da125)(emphasis added). Accordingly, there is no basis to award a Mallamo credit to Plaintiff. Plaintiff was unjustly enriched when the court offset the purported $37,313 in arrears with 50% of the J.P. Morgan account in an amount that exceeded the alleged arrears ($43,477). (Da35; Da318; Da162). It was improper for the court to deny Defendant his share of equitable distribution of the J.P. Morgan account and to compel him to provide Plaintiff with a Mallamo credit of $61,945. Further, Defendant was permitted to use $17,125 from his share of the marital assets to pay "rental" arrears for June, July, August, September, and October 2020 as an advance on his share of equitable distribution, increasing an incorrect Mallamo adjustment in Plaintiff's favor of $79,070 from Defendant's share of equitable distribution, which must be recalculated. (Da37).

Plaintiff should be compelled to pay a Mallamo credit to Defendant for 100% of Schedule A expenses for the 25 months *pendente lite* support from

April 2020 to May 2022. Using Plaintiff's CIS Schedule A amount of $6,303/month and the unallocated pendente lite support of $1,666/month, totaling $7,969/month, the 24 months *pendente lite* support from April 22, 2020 to May 24, 2022 totals $193,647. (Da36). However, Defendant accepts the obligation to pay unallocated *pendente lite* support of $1,666/month, totaling $40,484, and does not seek a Mallamo credit for this portion, resulting in Defendant seeking only a credit for the *pendente lite* Schedule A portion of $153,163. (Da36). Defendant's request is supported by Judge Chrystal's finding that "there was no testimony during the lengthy trial as to why this [$1,666/month] was not enough to fulfill Plaintiff's needs, except for noncredible testimony by Plaintiff about loans from her parents." (Da125). Defendant was ordered to pay $193,647 net in *pendente lite* support, which is approximately $95,628/year net from his 2020 income of $178,333 gross. (2T119-19; Da38).

The promissory notes signed by Plaintiff, which Judge Chrystal found were "not believable" (Da241), demonstrate that the *pendente lite* support figure of $7,969/month or $95,628/year was unjust and must be adjusted as a matter of fairness. See Mallamo, 280 N.J. Super. at 16. The 12 *pendente lite* promissory notes totaled $358,832, 13 notes totaled $366,331 for "expenses" not repaid by Defendant over the course of 11.5 months. (Da39). That equates to

$31,113/month or $373,351/year net. The promissory notes demonstrate that Plaintiff's father continued to pay expenses for Plaintiff and the children and had **not** cut off their financial support. The promissory notes further demonstrate that Plaintiff's father had orchestrated a scenario whereby Plaintiff could argue and misrepresent that she was in "need" and Defendant was "not supporting his family" when, in fact, Plaintiff's father continued his cash transfers for Plaintiff and had not cut them off as Plaintiff certified. Contrary to her certification, Plaintiff was not in need. Under the disguise of promissory notes, Plaintiff's father continued to give her money for her expenses. Under the disguise of trust funds, her father continued to give her economic benefits via houses and private jets. The argument Plaintiff made that she had borrowed money was spurious as no promissory note could ever be paid by Plaintiff as she does not work, and she testified that she does not want to work. (Da283). That fact was noted by the court when it found her claim that she would have to repay the money "not believable" as there was "no history she was required to repay her parents and no credible evidence she would be required to do so." (Da254).

Plaintiff received approximately $31,113/month of monetary gifts via "loans" from her wealthy parents, on top of the $7,969/month in *pendente lite* support from Defendant, for a total of $39,082/month. Defendant should be reimbursed by Plaintiff for the Schedule A expenses ($6,303/month) for 25

months from the date of the *pendente lite* order (4/22/2020) to the judgment's commencement date (5/1/2022), totaling $153,163. (Da40). It is clear that Plaintiff funded the marital lifestyle, not Defendant, and Plaintiff's parents will continue to provide Plaintiff and the parties' children with a lavish lifestyle comparable to that of the marriage.

The facts revealed at trial demonstrate that the *pendente lite* award was unjust. The Mallamo adjustment given to Plaintiff should be vacated, Defendant should be reimbursed $79,070, and Plaintiff should be compelled to pay Defendant a Mallamo credit of $153,163 for an overpayment of *pendente lite* support.

CONCLUSION

For the foregoing reasons, Defendant's appeal should be granted. The matter should be remanded for the appropriate factual determinations and analyses, as the Appellate Division directed in the initial appeal.

Respectfully submitted,

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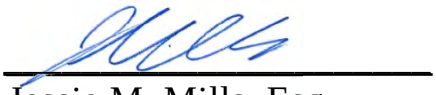
By: 
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	SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION DOCKET NO. A-001567-24
AMANDA PARISI, Plaintiff/Respondent/ Cross Appellant, v. DANIEL PARISI, Defendant/Appellant/Cross Respondent.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION-FAMILY PART UNION COUNTY Docket No. FM-20-1124-20 CIVIL ACTION SAT BELOW: HON. THOMAS J. WALSH, P.J.F.P.

PLAINTIFF/RESPONDENT/CROSS APPELLANT'S BRIEF

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Date Submitted: 5/27/2025

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PRELIMINARY STATEMENT

The instant appeal filed by Defendant is reminiscent of his distinctive and cavalier sense of financial entitlement, which has resonated since the commencement of the parties' protracted trial. Defendant's enduring, relentless focus on money, and in particular that of Plaintiff's parents ("the Pooles"), is the driving force behind this appeal. Defendant has repeatedly demonstrated that he was steadfast in his crusade to avoid having to pay alimony, child support, and his proportionate share of the children's expenses, while concurrently seeking to obtain certain credits that would necessarily compel the Plaintiff to pay him while earning no income of her own. These baseless claims are derived from a flawed reasoning that because Plaintiff's parents provided generous gifts during the marriage, he should not have to support his family. However, Defendant failed to recognize that these gifts did not supplant his earned income as the primary source of support for the family's day-to-day expenses. Further, Defendant failed to substantiate his proposed budget or otherwise justify the amount of credits he has sought. Instead, he has been operating under the misguided notion that Plaintiff lacks the requisite need for any support because of her parent's wealth – despite the fact that any such assistance to Plaintiff and the parties' children is not guaranteed nor can the Pooles be compelled by law to continue to make gifts to support the family.

The trial court made its findings as to the myriad factors delineated in N.J.S.A. 2A:34-23b relative to the appropriate amount of alimony payable by the Defendant to the Plaintiff for what ultimately amounted to an eighteen (18) month term; notably, since the time of the entry of the Final Judgment of Divorce ("FJOD"), the Plaintiff has remarried, thus ending Defendant's alimony obligation. As a result, and in conjunction with the fact that the Appellate Division found no error in the duration of the original alimony award, the Court on remand was relieved of the obligation to consider the award's duration. In its findings, the trial court analyzed the parties' respective Case Information Statements ("CIS") and underlying documentation, and the parties' own testimony in order to construct a reasonable marital lifestyle. The trial court, as affirmed by the Appellate Division, had also already conducted a thorough analysis of the statutory factors bearing on alimony, including, but not limited to, the Plaintiff's proposed prospective needs, the distribution of the parties' joint marital assets, and its effects on their respective monthly cash flows. On remand, it found no reason to disturb the amount of the original award, and in turn opted not to disturb the amount of child support. However, as alimony has since terminated, the trial court should have re-evaluated the Child Support Guidelines to ascertain and reconcile the parties' particular contributions to the children's expenses without the alimony income to Plaintiff.

The Defendant's brief fails to consider the entirety of the trial court's analysis and, notably, fails to explore the court's consideration of statutory factors other than need and maintenance of the marital lifestyle. The Appellate Division confirmed a full analysis was properly conducted and in turn its directive was such that only those factors deemed to have been improperly addressed were the focus on remand. As in trial, the Defendant fails to satisfy his burden of proof in overturning the trial court's alimony award, child support award, and determination as to Mallamo credits.

This appeal is retaliatory and simply a continuation of Defendant's pattern of conduct. More specifically, the portions of the Order that Defendant is now appealing were properly entered based on the trial court's determination of the marital lifestyle, which has now been quantified. The trial court delivered a well-reasoned, albeit succinct, Statement of Reasons in support of its entry of an Order in favor of Plaintiff. Ultimately, the trial court's decision that the marital lifestyle was quantifiable at an amount of $32,346 per month was neither an abuse of discretion nor was it arbitrary or capricious. The appeal should be dismissed in its entirety for Defendant's failure to demonstrate any abuse of discretion, erroneous and/or tainted findings or misapplication of law by the trial court that would warrant reversal or remand. At this juncture, Defendant's bad-faith pursuit of the issues on appeal have far exceeded the amount in controversy.

Plaintiff's Cross Appeal emanates solely from those obligations that the remand court outright failed to perform. Specifically, the trial court should have recalculated the Mallamo credits due to Plaintiff once the marital lifestyle was quantified and the alimony award confirmed. To facilitate the exchange of funds between the parties and reduce the number of transfers back and forth, the trial court should then have authorized those Mallamo credits be offset against the amount of Equitable Distribution due to Defendant. Further, once the marital lifestyle was quantified and the child support award was confirmed, the trial court then neglected to consider the fact that Plaintiff's alimony had ceased upon her remarriage on October 7, 2023. Thus, the corresponding reduction in income to her would unavoidably necessitate a reexamination of the parties' respective percentage shares for their contributions to the children's expenses. The trial court should have reconciled the child-related expenses due to Plaintiff with the adjusted proportionate share assigned to Defendant.

PROCEDURAL HISTORY

The parties were married on September 26, 2015. Da6. Plaintiff filed a Complaint for Divorce on January 21, 2020 which sought alimony, primary residential custody of the parties' three (3) children, child support, equitable distribution of marital assets and an award of counsel fees. Da208. On March 13,

2020, Defendant filed an Answer and Counterclaim for Divorce seeking, amongst other relief, alimony from the Plaintiff (a stay-at-home mother) and physical custody of the parties' young children even though he did not serve as the children's primary caregiver and had daily work obligations throughout the marriage. Da208. Numerous motions for *pendente lite* relief were filed in this matter, stemming from Defendant's enduring refusal to support the family, to cooperate with custody and parenting time issues, and to comply with Orders entered by the Court. Da124-Da126; Da319. This matter culminated in a trial on all issues before the Hon. Lisa F. Chrystal, P.J.F.P. (now retired) which transpired over an eleven (11) day period.[1]

On May 24, 2022, six (6) months after the conclusion of trial, the Court issued its Final Judgment of Divorce ("FJOD") and accompanying Letter Opinion. Da199-Da327. The Defendant appealed most of the provisions of the FJOD, including those pertaining to custody, alimony, child support and equitable distribution. Da118. He further sought to reopen discovery with respect to the assets owned by various trusts, which had been established by Plaintiff's parents prior to Plaintiff's relationship with

[1] 1T: 9/27/21 transcript; 2T: 9/28/21 transcript; 3T: 9/29/21 transcript; 4T: 9/30/21 transcript; 5T: 10/12/21 transcript; 6T: 10/13/21 transcript; 7T: 10/14/21 transcript; 8T: 10/18/21 transcript; 9T: 10/19/21 transcript; 10T : 10/21/21 transcript; and 11T : 10/22/21 transcript.

Defendant. Da127-Da130. Plaintiff filed a Notice of Cross Appeal, the focus of which was the trial court's denial of her counsel fee application. Da118.

The Appellate Court issued its decision On June 6, 2024, and in so doing rejected the Defendant's arguments on custody, parenting time, discovery regarding the Plaintiff's parents' trusts and counsel fees. Da118. The Appellate Court further reversed and remanded the trial court's decision, providing instruction as to the following limited issues: (1) the amount (but not the duration) of alimony must be reconsidered and recalculated because the trial Court failed to quantify the marital lifestyle when awarding Plaintiff alimony in the amount of $2,508.00 per month, and the Court must make a numerical finding as to marital lifestyle (Da118); (2) the amount of child support ordered in the amount of $535.00 per week must be reconsidered under the Child Support Guidelines ("CSG") because the judge utilized an erroneous alimony award in the child support analysis. Da119. By extension, each party's contributions to the children's expenses must be recalculated based on the child support to be established, as Defendant's alimony obligation terminated upon Plaintiff's remarriage on October 7, 2023 (Da157; Da169); (3) reconsideration as to the Mallamo credit awarded following the Court's quantification of the marital lifestyle and determination on alimony (Da163); (4) regarding equitable distribution, the Appellate Court found that the trial court erred by including the JP Morgan

brokerage account funds in the equitable distribution determination, because it had concurrently (and without error) provided that Plaintiff was entitled to Defendant's 50% share by way of a Mallamo adjustment. Da176. The Appellate Court also indicated that the judge's award was inconsistent with its January 12, 2021 Order, which provided Defendant would receive $17,125 as an advance on equitable distribution, but there was no consideration of this in its Letter Opinion. Da176.

Pending the disposition of the first appeal, Defendant violated the terms of the FJOD and post-judgment Orders numerous times, requiring Plaintiff to file several enforcement motions. Da86.

Hon. Thomas J. Walsh, P.J.F.P. (now retired) was assigned the matter on remand owing to the fact that Judge Chrystal had since retired. The parties attended a settlement/case management conference with the Court on October 21, 2024, however the parties were unable to resolve the multifarious issues on remand. Da6. By consent, the lower court established that the remand issues would be decided on the papers by way of submissions, rather than oral argument or a hearing. Da5-Da6. Both counsels provided the lower court with their respective submissions on December 10, 2025. Da11-Da42; Da83-Da116.

The lower court issued its Order and Statement of Reasons on January 23, 2025. Da5-Da10. The trial court ultimately reaffirmed the award of $2,508 per

month in limited term alimony, the term of which was shortened to eighteen months by virtue of Plaintiff's remarriage. Da5. The trial court further ordered, upon numerically quantifying the marital lifestyle, that the FJOD would also remain in full force and effect as ordered with regard to child support and Mallamo credits. Da5. The trial court additionally found Defendant would be entitled to an equitable distribution credit in the amount of $51,562.50. Da5.

Following the lower court's determination, Plaintiff's counsel submitted a letter dated January 27, 2025 seeking to have the remand Order and decision amended to address and incorporate certain issues not considered (which are now the basis of Plaintiff's Cross Appeal): (1) that Plaintiff was entitled to credits under Mallamo for those periods when Defendant failed to provide support for the family, or provided insufficient support *pendente lite* based on his earnings (Da195); (2) that properly calculated credits should have been offset by Plaintiff's share of the parties' marital JP Morgan accounts which Plaintiff had been forced to withdraw to support the family and which the Appellate Division confirmed had been properly awarded to her as a Mallamo credit (Da196); and (3) the lower Court did not address the reallocation of each party's respective share of the children's expenses as of the date of Plaintiff's remarriage on October 7, 2023 and in light of Plaintiff's alimony ending, which should have been revised to reflect the proper proportionate

contributions of 83% to Defendant and 17% to Plaintiff. Da196. By way of letter dated January 29, 2025, Judge Walsh advised counsel of his impending retirement, and suggested that a Motion for Reconsideration be filed so the incoming Presiding Judge could address them with the proper attention. Da198. Defendant filed his Notice of Appeal on January 30, 2025 and in so doing abrogated Plaintiff's ability to seek reconsideration of the January 23, 2025 Order because jurisdiction of the issues in dispute were now deferred to the Appellate Court. Da1-Da4. Accordingly, Plaintiff filed a Notice of Cross Appeal on February 6, 2025.

STATEMENT OF FACTS

The parties were married on September 26, 2015. Da119. This was a marriage of four (4) years and four (4) months in duration. Da208. At the time of trial, Plaintiff was 32 years of age and Defendant was 33 years of age. Da208. Three minor children were born of the marriage: twins T.P. and G.P. (DOB: February 27, 2017); and J.W.P. (DOB: October 24, 2018). Da208. This was an ordinary and routine matter involving two young adults who began a life together, had three small children in a short period, and moved to the suburbs to raise their family. Da209. It was mutually decided between the parties that Plaintiff would forego her career to be a homemaker, while Defendant took on the role of breadwinner and advanced his career. Da209.

The "twist" in this case continues to be the generosity of Plaintiff's parents, John, and Sharon Poole (the "Pooles"), and their willingness during the marriage to assist their daughter, son-in-law and grandchildren in helping them become their own family. Da86; 6T:18:9-15. However, the Pooles' gifts did not support the family. Rather, they provided gifts that enhanced the parties' lifestyle, as Plaintiff established at trial. Da241; Da278. The trial court further recognized that this generosity bolstered Defendant's ability to both earn and to save. Da284.

Subsequent to the birth of their children, Plaintiff did not work outside the home or actively pursue her interior design business, instead focusing her efforts on caring for the parties' young children and managing all of their needs, as well as maintaining the parties' home. Da209; Da248. The proofs elicited at trial confirmed she never received earnings higher than $44,000. Da307. In accordance with the New Jersey Occupational Wage Guidelines, Plaintiff was imputed income for the purposes of calculating support in the amount of $40,400 per year. Da291. Conversely, Defendant's career trajectory and earnings flourished during the marriage, leading to Defendant's current full-time position at Rothesay Asset Management (RAM) where in 2020, he earned $279,000 in salary ($200,000.00) and bonus ($79,000.00), with increased earnings expected in 2021 and the ability to "earn a handsome income in the future". Da306; Da240; Da249. Plaintiff relied on

Defendant's earnings as the principal source of support from which the day-to-day living expenses were paid. Da90. At trial, Defendant candidly acknowledged (1) the funds provided by Plaintiff's parents were gifts, (2) the Pooles had no obligation to support his family, and (3) they made no promises (in writing or otherwise) to support the family. Da241.

When the FJOD was entered on May 24, 2022, Judge Chrystal analyzed all of the requisite statutory factors in accordance with N.J.S.A. 2A:34-23(c). Da155. She found that Plaintiff had, in fact, established both a need for alimony and Defendant's ability to pay said alimony. Da293. The trial court opined that Plaintiff could not "adequately articulate her *specific* need," but at no point did it ever imply the outright absence of a need. Da275. The Appellate Court confirmed this in the June 6, 2024 Opinion, citing Judge Chrystal's acknowledgment that she had previously found Plaintiff to have established a need for alimony in entering the *pendente lite* award, and that Judge Chrystal's overall finding on Plaintiff's need for alimony "centered around the parties' CIS's, and to a lesser extent their testimony pertaining to marital lifestyle." Da156. According to the trial court, Defendant had the economic ability to pay support, given his salary, savings, and retirement obtained through employment at RAM. Da246. The Appellate Division unequivocally confirmed an

award of alimony was proper in this case, as it declared it found "no error in the durational alimony award." Da157.

The FJOD required Defendant to pay Plaintiff child support in the amount of $535 per week, after analyzing all of the applicable statutory factors, finding Defendant to be "a high-income earner in his own right" Da300. The trial court found the children to be in need of support, specifically commenting on the fact that in spite of their generosity, the Pooles have no obligation to support the children. Da301. With Defendant's net earnings themselves being "over the guidelines," the trial court deviated from the CSG and provided for supplemental child support, which it deemed to be appropriate under the circumstances. Da313. Based on the parties' respective percentages of net income, Judge Chrystal had ordered that Defendant pay 69% and Plaintiff pay 31% of any child-related expenses not covered by child support, such as unreimbursed medical expenses, extracurricular activities, and summer camps. The Appellate Division lauded the trial court for its thoughtful analysis of each of the factors and in making "reasonable findings supported by the record." Da169.

The proofs at trial reflected that in early 2020 (and prior), Defendant refused to adequately support his family. Da294. Plaintiff, as a result, had resorted to utilizing jointly held JP Morgan Chase funds to meet the expenses for herself and

the children. Da294. During this period, and at the expense of his family, Defendant contributed on an accelerated basis the maximum amount allowable to his 401K plan with RAM. Defendant continued this exercise in 2021, such that his post-complaint retirement assets had a value of $100,000. Da294. At the time of trial, Defendant was no longer paying Schedule A expenses. Da316. Accordingly, Judge Chrystal ascertained that for the four (4) month period prior to her April 22, 2020 *pendente lite* order, Defendant should have paid Plaintiff a minimum of $36,516.00 but failed to do so. Da317. For this reason, and in conjunction with other expenses Defendant had not been paying, the court deemed it equitable that Defendant not be awarded a credit for his 50% share of the JP Morgan accounts and that this sum would instead be a Mallamo credit to Plaintiff. Da317-Da318. The trial court further required that $18,468.95 in expenses advanced by Plaintiff should be deducted from equitable distribution, as Defendant had violated, and did not deny violating, the Court Orders of August 7, 2020 and January 12, 2021 for *pendente lite* support. Da319.

On remand, the Appellate Division stated that the trial court "shall include a numerical finding as to the marital lifestyle and reconsideration of Mallamo credits" Da118-Da119. The Appellate Division reversed the child support award for recalculation after the marital lifestyle was determined. Da169. It further remanded

on the equitable distribution award, only because the trail court omitted a credit awarded to plaintiff and an advance of funds awarded to defendant. Da119.

Judge Walsh entered his remand Order and Statement of Reasons on January 23, 2025. Da5-Da10. Judge Walsh quantified the marital lifestyle as directed by the Appellate Division, and in so doing reaffirmed the amounts of the alimony award, the child support, and the Mallamo credits. Da5. The remand Opinion once again confirmed the "simple fact is that during the marriage the parties utilized Defendant's income to pay most of their living expenses. Defendant cannot argue that he should be relieved of an alimony obligation because the Pooles' in their discretion, may continue to support their daughter." Da8-Da9. The proofs elicited at trial confirm that the alimony award of $2,508 per month was much less than the marital lifestyle quantified by the Plaintiff on her CIS and accepted by the Court. Da7.

In acknowledging the generosity of the Pooles, Judge Walsh adroitly noted that there were some components of their financial assistance that were sporadic, and some which were fixed. Da7. With this in mind, the remand court began its analysis of the marital lifestyle with the base amount of the parties' expenses without the Pooles' assistance – which it determined was roughly the number expressed in Plaintiff's CIS. Da7. It then added an additional $10,731 to the lifestyle for the

"fixed" expenses contributed by the Pooles: $4,000 towards a rent enhancement for the property in Summit where the parties' resided; $3,225 for the cost of the nanny; $421 for school costs; $200 for a cellphone imputation; $885 for Canoe Brook Golf Club dues; and $2,000 for a vacation budget – which brought its marital lifestyle figure to $32,346 per month. Da8. With this figure in mind, the court then focused on its determination of an appropriate level of alimony, documenting that while it was apparent the Pooles enhanced the parties' standard of living, it was equally apparent the parties had monthly expenses they paid without contribution of the Plaintiff's parents. Da8. Judge Walsh outright rejected Defendant's argument that because the Pooles have the ability to pay all of Plaintiff's expenses, alimony would be an unnecessary "windfall" to her and there should be no award. Da8. He instead reasoned that the parties did, in fact, utilize Defendant's income to pay the bulk of their living expenses, and Defendant should not be absolved of this obligation because the Pooles may in their discretion continue to support the Plaintiff. Da9. In balancing the parties' testimony and the parties' respective CIS's, the court's awarding of an alimony figure that considered both Plaintiff's budget shortfall and Defendant's budget surplus was reasonable and fair to each of the parties. Da9. With the marital lifestyle and alimony award in mind, Judge Walsh then declined to amend child support or the Mallamo credit to Plaintiff. Da9-Da10. As to the Mallamo credit,

same was based on the portion of the expenses the parties were accustomed to paying plus and additional $1,666 for other expenses. Da10. The court found if *pendente lite* support were based on an artificially enhanced lifestyle, it would result in Defendant paying an excessive award, but reducing his obligation because of the Pooles' generosity would undermine the concept of *pendente lite* support. Da10.

Judge Walsh affirmed the allocation of all children's extracurricular expenses, unreimbursed medical bills, and professional fees (Parent Coordinator and Co-Parenting Counselor) with Defendant paying 69% and Plaintiff paying 31%, but did so without revising the CSG worksheet and taking into account the effect that Plaintiff's remarriage and the termination of alimony would have on the parties' respective shares of the combined net income. Da5; Da84. On remand, the Plaintiff submitted spreadsheets detailing the expenses owed by Defendant along with an itemization of the dates, description and costs of the specific children's expenses taken from the invoices Plaintiff sent to Defendant along with the appropriate reallocations. Da114; Da188. This was unaddressed by the remand court. Da5. Plaintiff's request to recalculate and amend the proper Mallamo credit and equitable distribution awards, and to then offset the credits to each party, was also unaddressed by the remand court. Da84-Da85.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT DID NOT ERR IN QUANTIFYING THE MARITAL LIFESTYLE AND IN REAFFIRMING THE ALIMONY AND CHILD SUPPORT AWARDS (Da5-Da9).

The New Jersey Appellate Division has time and again reaffirmed the established principles governing the award of limited duration alimony, and in so doing has pronounced that such awards ". . . consider the length of the marriage, the period of economic dependency during the marriage, and the skills and education necessary to return to the workforce *rather than an overriding emphasis on the marital lifestyle and the ability to replicate the marital lifestyle at the end of the chosen term*." J.E.V. v. K.V., 426 N.J. Super. 475, 480 (App. Div. 2012). This is the guiding principle by which the instant matter should be analyzed, as it enters its fifth (5th) year of litigation following a marriage that endured for only four years and four months, in conjunction with an alimony term that concluded after approximately eighteen months. While the overarching principles that guide alimony endure, the instant matter at its core is not on par and is distinguishable from the likes of S.W. v. G.M., 462 N.J. Super. 522, 532 (App. Div. 2020) (a twenty-seven-year marriage); Crews v. Crews, 164 N.J. 11, 16 (2000) (a fourteen-year marriage); Cox v. Cox, 335 N.J. Super. 465, 477 (a twenty-two-year marriage); Quinn v. Quinn, 225 N.J. 34

(2016) (a twenty-three-year marriage); Weishaus v. Weishaus, 180 N.J. 131 (2004) (a fifteen-year marriage) and J.E.V. v. K.V., 426 N.J. Super. 475 (a nine-year marriage) upon which Defendant relies.

The legislative amendment that added limited duration alimony as a support option was "to be used in those cases involving shorter-term marriages where permanent or rehabilitative alimony would be inappropriate or inapplicable but *where, nonetheless, economic assistance for a limited period of time would be just*." Cox v. Cox, 335 N.J. Super. 465, 477 (quoting S. No. 54, at 6-7, 208th Leg. (N.J. 1998) (statement of Sens. Kavanaugh & Martin) (emphasis added)). Limited duration alimony is thus awarded in recognition of a dependent spouse's contributions to a relatively short-term marriage that demonstrated attributes of a "marital partnership." Id. at 483. Both limited duration and permanent alimony reflect the policy that marriage is an economic and social partnership, and that the financial and non-financial contributions of both spouses should be recognized. Id. at 479.

In this case, the parties' short-term marriage warranted an equally short-term transitional period during which Defendant, who had been the only wage earner and was, by the time of the divorce, a high wage earner, would assist Plaintiff. Plaintiff's testimony at trial was that she had been dependent upon Defendant – not her parents

– for her and the children's support. Da270. In fact, Plaintiff confirmed that the parties were self-sufficient while living in their first home, and had no need to rely on the Pooles, as they could afford going out to dinner, babysitters, groceries and anything else they required. 6T:17:1-5. It was not until Plaintiff became pregnant with twins and the parties contemplated a larger home for their growing family that the Pooles began providing some financial gifts - the intention of which was to initially assist the parties in moving, procuring furniture, repainting and the like. 6T:17:22-25. Plaintiff confirmed that even with the intermittent gifts, the parties would have to make financial trade-offs and choices, but could enjoy their lives on Defendant's income rather than having the entirety of his earnings absorbed by their rent. 6T:17:16-21. To this end, the Pooles explicitly conveyed to Defendant that their periodic gifts were not to replace his income; Defendant would remain the head of the household and maintain his role as the breadwinner. 6T:18:7-15; lT:10:5-18. Plaintiff herself had no income, having ceased working when the parties' older children were born in February, 2017. Da275. Plaintiff further testified that she deferred her career to raise the parties' children, and should be compensated with the alimony award that Defendant could afford while still maintaining his lifestyle. Da270. Defendant's testimony confirmed there were no proofs to indicate that Plaintiff ever earned income higher than $44,000. Da275; 2T:167:19-22.

Conversely, while Plaintiff maintained the home and tended to the children, Defendant's earnings were on an upward trajectory, from $110,345 in 2015 to $279,000 at the time of the divorce in 2020, and with expected earnings to be in excess of $200,000 plus a discretionary bonus in 2021. Da88; Da274; 2T:142:20 to 2T:143:11. These are the precise conditions upon which limited duration alimony is premised.

With the above in mind, the overriding purpose of the alimony and equitable distribution statute, N.J.S.A. 2A:34-23, is to give "'a matrimonial judge broad discretion and authority to fashion sagacious remedies on a case by case basis, which will achieve justice and fulfill the needs of the litigants.'" Graf v. Graf, 208 N.J. Super. 240, 243 (Ch. Div. 1985). Therefore, it is well established that the determination of alimony is left to the broad discretion of the trial court. Steneken v. Steneken, 367 N.J. Super. 427, 435 (App. Div. 2004). If consistent with the law, an award of alimony "will not be disturbed unless it is 'manifestly unreasonable, arbitrary, or clearly contrary to reason or to other evidence, or the result of whim or caprice.'" Raynor v. Raynor, 319 N.J. Super. 591, 605 (App. Div. 1999). The court may order alimony "as the circumstances of the parties and the nature of the case shall render fit, reasonable and just." N.J.S.A. 2A:34-23. "[A]limony is neither a punishment for the payor nor a reward for the payee . . . it is a right arising out of

the marriage relationship to continue to live according to the economic standard established during the marriage as far as economic circumstances will allow." Innes v. Innes, 117 N.J. 496, 503 (1990); Mahoney v. Mahoney, 91 N.J. 488, 501-502 (1982); Mani v. Mani, 183 N.J. 70, 80 (2005). "[T]he goal of a proper alimony award is to assist the supported spouse in achieving a lifestyle that is reasonably comparable to the one enjoyed while living with the supporting spouse during the marriage." Crews v. Crews, 164 N.J. 11, 16 (2000). It involves the quality of economic life to which one spouse is entitled, which then becomes the obligation of the other. Mahoney, 91 N.J. at 501-02; see also Khalaf v. Khalaf, 58 N.J. 63, 67 (1971).

As it pertains to the marital standard of living, New Jersey precedent defines this as "the way the couple actually lived, whether they resorted to borrowing and parental support, or if they limited themselves to their earned income." Hughes v. Hughes, 311 N.J. Super. 15, 34 (App. Div. 1998). A determination as to marital lifestyle must be articulated numerically: "To the extent Crews and Hughes implicitly required that marital lifestyle be determined numerically, we now explicitly state a finding of marital lifestyle must be made by explaining the characteristics of the lifestyle and quantifying it." S.W. v. G.M., 462 N.J. Super. 522, 532 (App. Div. 2020).

In this case, the court as required properly established the amount the parties needed during the marriage to maintain their lifestyle over the course of its four year and four month term. Its statement of reasons now contains a numeric finding as to what that marital lifestyle was. Judge Walsh appropriately foreclosed upon Defendant's unfounded notion that he should be relieved of any alimony obligation because the Pooles – at their discretion – may (or may not) continue to support Plaintiff. Da9. Likewise, Judge Walsh affirmed the prior child support award of $535/week because he did not modify alimony. Da10; Da5. Judge Walsh did so after the Appellate Division plainly commended Judge Chrystal in its June 6, 2024 Opinion for "conducting a thorough analysis of the child support statute and making reasonable findings supported by the record." Da169.

A. The Trial Court's numerical calculation of the parties' marital was not arbitrary as it was based on credible evidence in the records.

Once a finding has been made as to marital lifestyle, a court "should review the adequacy and reasonableness of the support award against this finding." Crews, 164 N.J. at 26. Numerically articulating the marital standard of living in contested divorce matters may necessitate that a trial court judge obtain and consider relevant testimony, which may include expert testimony, and review Case Information Statements and supporting financial documents, among other relevant evidence.

S.W., 462 N.J. Super. At 532. However, numerically articulating the marital standard of living does not equate to simply identifying and equalizing the net income of the parties. To the contrary, N.J.S.A. 2A:34-23(b)(4) does not signal the Legislature intended income equalization or a formulaic application in alimony cases, even where the parties spent the entirety of their income. The Legislature declined to adopt a formulaic approach to the calculation of alimony. See Assemb. 845, 216th Leg., 2014 Sess. (N.J. 2014) (declining to enact legislation computing the duration of alimony based upon a set percentage). Id. This analysis is based upon the premise that expenses incurred during the marriage are frequently not attributable to both parties, and under some circumstances, neither party. To that end, and per the Appellate Division in S.W., "[t]he portion of the marital budget attributable to a party is likewise not subject to a formula. Contained in most marital budgets are expenses, which may not be associated with either the alimony payor or payee, including those associated with children who have since emancipated or *whose expenses are met by an asset or a third-party source having no bearing on alimony* . . . [T]here are expenses which only one party incurred during the marriage." Id. (emphasis added). For these reasons, "after finding the marital lifestyle, a judge must attribute the expenses that pertain to the supported spouse. Only then may the judge consider the supported spouse's ability to contribute to his

or her own expenses and the amount of alimony necessary to meet the uncovered sum." Crews, 164 N.J. at 32-33.

The way Plaintiff and Defendant lived during the marriage was that the lifestyle was funded by Defendant's income first and foremost, and at times supplemented by the generosity of the Pooles. The trial court found that Plaintiff's September 21, 2021 pre-trial CIS accurately estimated the marital lifestyle. DCa223-224. Plaintiff's CIS further opined on market rental costs and some of the children's expenses paid by the Pooles. DCa221-223. While Plaintiff noted the payments provided by her parents on her CIS, her budget calculation itself did not include these expenses paid by the Pooles in establishing her need and the marital lifestyle, both of which were supported by Defendant's earnings. Da89; DCa223. Again, by email of April 12, 2019, Plaintiff's father had made exceedingly clear he expected the parties to be their own family and any gifts would not replace Defendant's income or his status as the breadwinner of the family. 6T:16:12 to 6T:18:15. The trial court confirmed the base amount of the parties' expenses approximated the figures proffered by Plaintiff on her CIS, or $21,615 per month. Da7. Judge Walsh then went on to apportion an additional monthly lifestyle amount of $10,731 (for a total lifestyle quantified at $32,346 per month), which was attributable to the specific and regular assistance provided by the Pooles, such as a rental enhancement ($4,000),

nanny ($3,225) and school costs ($421), cell phone ($200), club dues at Canoe Brook Golf Club ($885), and a vacation budget ($2,000). Da8.

Defendant's repudiation of the marital lifestyle figure once quantified on remand is not a basis to overturn the decision. The finding of the marital standard is just that – a finding that is put to use in two settings: at the time of the court's equitable determination of an initial alimony award, ... or later when a party seeks a modification of alimony. Weishaus, 180 N.J. at 145. The trial court has now made an equitable determination of the initial alimony based on the marital standard. Alimony ended after only eighteen months, wholly negating any future need for the reliance upon a marital lifestyle determination to modify alimony. Quite frankly, it is unclear what effect the determination of the lifestyle at $3,000 per month, or $30,000 per month, or $300,000 per month would have on the instant case. "The judge is *free to accept or reject any portion of the marital lifestyle presented by a party* or an expert, or calculate the lifestyle utilizing any combination of the presentations." S.W., 462 N.J. Super. at 532 (emphasis added). Judge Walsh, as permitted by case law and within his discretion, rejected the excessive portions of the marital lifestyle attributable to the Pooles – which were the result of only occasional gifting, which the court could not mandate be continued, which trial testimony and CIS's confirmed had ended as of January 2020 (Da120; 6T:41:18-23),

and which would have unnecessarily driven the lifestyle figure upwards. Once the marital lifestyle has been determined, the court may then focus on "establishing the amount of support required by the dependent spouse to maintain it. It is at this point that the supporting spouse's current earnings become relevant." Weishaus, 360 N.J. Super. at 291. In tum, Judge Walsh "reviewed the adequacy and reasonableness of the support award" against its finding (Crews, 164 N.J. at 26), opining that notwithstanding the generosity and gifts from the Pooles, it was apparent the parties had regular monthly expenses they paid without contribution from Plaintiffs parents. Da8. Inasmuch as Defendant was the only one who was gainfully employed, the Court concluded that the income necessary to meet the parties' expenses came from Defendant's income ($279,000 per year). Da274; Da9. Judge Walsh therefore inherently accepted the portions of the marital lifestyle borne by the parties and paid predominantly with Defendant's earnings, and determined the $2,508 per month alimony award was more than reasonable in light of these findings. The trial court correctly surmised that the bottom line in this case was the fact that during the parties' short-term marriage, there was no question Defendant's income was utilized to pay the majority of the parties' own living expenses and he could afford this alimony award. Da8-Da9.

B. The Trial Court was not required to conduct a full statutory alimony analysis, as it was tasked with quantifying the numerical marital lifestyle and accepted the analysis as set forth in the parties' Judgment of Divorce and Statement of Reasons.

The trial court has a "peremptory duty" to obey the mandate of the appellate tribunal precisely as written. It is not permitted to deviate from or disregard the appellate court's instructions, even if it disagrees with the decision. Tomaino v. Burman, 364 N.J. Super. 224 (App. Div. 2003). This principle ensures that the trial court's actions align with the appellate court's directives.

In the decision of June 6, 2024, the Appellate Division opined that "because the judge failed to quantify the marital lifestyle, we reverse the alimony award and remand for a new analysis, *which shall include a numerical finding as to the marital lifestyle and reconsideration of Mallamo credits*." Da118-Da119. (emphasis added). The Appellate Division went on to further clarify the Trial Court's error:

> In this case, the judge failed to "establish[] the amount the parties needed during the marriage to maintain their lifestyle." Weishaus, 180 N.J. at 145. *Her opinion does not contain a numerical finding as to what the marital lifestyle was*. Although the judge reviewed each party's CIS and reduced their current lifestyle budgets based on discrepancies brought out in defendant's testimony, those calculations should have been undertaken in relation to the judge's determination of what the marital lifestyle was.

Da159. (emphasis added). In his January 23, 2025 decision, Judge Walsh aptly noted that "[t]he appellate court largely affirmed Judge Chrystal's decision, remanding the

matter regarding the amount (but not duration) of alimony based on the failure of the court to ascertain the marital lifestyle, the amount of any Mallamo credit, child support, and an equitable distribution credit." Da6. Accordingly, and as set forth in greater detail above, Judge Walsh provided a thorough assessment to arrive at the computed figure for the parties' lifestyle of $32,346 per month in spite of his musings that to do so would be a "Sisyphean" task. Da8, Da7. The marital lifestyle was calculated "using the testimony, the Case Information Statements as required by R. 5:5-2 . . . and other evidence in the record." S.W. v. G.M., 462 N.J. Super. at 532. Thereafter, and "[o]nce a finding is made concerning the standard of living enjoyed by the parties during the marriage, the court should review the adequacy and reasonableness of the support award against this finding." Crews, 164 N.J. at 26. Once more, this is precisely what Judge Walsh did in declining to amend the final alimony decision made by Judge Chrystal. The Appellate Court did not mandate another full statutory analysis of all fourteen factors be performed, which would be duplicative and unnecessary in light of the fact that (a) the Defendant only challenged the adequacy of the judge's findings with respect to factors (1)(Actual Need and Ability of Parties to Pay), (2)(Duration of the Marriage), (4)(Marital Lifestyle) and (13)(Mallamo adjustment) (Da155); (b) the Appellate Court agreed not only that "[i]n her opinion, the judge addressed each of the requisite statutory

factors" (Da155) but also that she "offered a thorough analysis of each of the N.J.S.A. 2A:34-23(a) factors." (Da167); and (c) the Appellate Court found "no error in the durational alimony award" and "no error in the judge's determination of the duration of the alimony award." (Da157). With regard to these four factors contested by the Defendant, the Appellate Division addressed each in tum. Da155-Dal63.

As it pertains to Defendant's challenging of the adequacy of statutory factor (1), the Appellate Division acknowledged Judge Chrystal's finding that Plaintiff did not "adequately articulate her specific need for alimony" due to various gifts from her parents. Da155-Da156. However, there is no language in the Appellate Division's opinion in this matter that can be reasonably understood not to have affirmed the finding of the court below regarding Plaintiff's needs. On the contrary, the Appellate Division unequivocally recognized Judge Chrystal's own declaration that she had entered a *pendente lite* award of $1,666 per month (plus Schedule A expenses, auto and health insurance) "*after previously finding that plaintiff established a need for alimony, and defendant had an ability to pay*." Da156; Da273. (emphasis added). The Appellate Division verified that Judge Chrystal's finding on Plaintiff's need for alimony "centered around the parties' CIS's and, to a lesser extent, their testimony pertaining to marital lifestyle." Da156. Thus, there was no need for Judge Walsh to re-analyze this statutory factor.

As to Defendant's challenging of statutory factor (2), Judge Chrystal awarded alimony for a duration of three (3) years, commencing as of May 1, 2022 and continuing until May 1, 2025. Da293. The Appellate Court's June 6, 2024 decision confirms that Judge Chrystal both adequately addressed this factor, and did not err in setting the duration of alimony at three years:

> Pendente lite support and alimony are different legal concepts. N.J.S.A. 2A:34-23 does not require the court to consider the combined duration of pendente lite support and alimony vis-à-vis the duration of the marriage. Instead, the duration of pendente lite support is merely one factor to consider in the alimony analysis, and the judge expressly considered this factor in her opinion. Therefore, *we find no error in the judge's determination of the duration of the alimony award*.

Da157. (emphasis added). The only caveat offered by the Appellate Court was that Judge Walsh was specifically instructed on remand to consider the change of circumstances insofar as Plaintiff had remarried a year and a half after the alimony payments were ordered by the FJOD. Da157. Judge Walsh accepted that alimony properly terminated approximately eighteen (18) months after it was ordered. Da6. Accordingly, there was no need for Judge Walsh to re-analyze this statutory factor.

As it pertains to Defendant's challenging of factors (4) and (13), these factors were the bases for specific remand instructions from the Appellate Division. The Appellate Division found that as to factor (4), Judge Chrystal failed to establish the amount the parties needed during the marriage to maintain their lifestyle and her

opinion did not contain a numerical finding to this end. Da159. Judge Walsh properly abided by the explicit command that he quantify the lifestyle to complete the trial court's analysis of this factor.

Judge Walsh remarked that the ultimate determination as to the level of support was premised upon the actual level of support paid by Defendant during the marriage, rather than the "artificially enhanced lifestyle" that would have included any contributions stemming from the generosity of Plaintiff's parents. Da9-Da10. The Trial Judge rationalized that the base amount of the parties' expenses – without parental assistance – was in line with the number calculated by Plaintiff in her CIS. Da7. Judge Walsh then extrapolated that there were certain added expenses that could be quantified or reasonably estimated based on judicial experience, such as rent, private school costs, a cell phone imputation, club dues at Canoe Brook Golf Club, and a reasonable vacation budget. Da7-Da8. The result of this evaluation was to add an additional $10,731 to the Plaintiff's CIS budget to derive the $32,346 per month figure. The driving force behind culling the financial assistance from the Pooles was that the Trial Court determined that some portions "can reasonably be said to have been sporadic and some fixed." Da7. This was well within the Judge's discretion, as he was ". . .free to accept or reject any portion of the marital lifestyle presented by a party or an expert, or calculate the lifestyle utilizing any combination

of the presentations." S.W., 462 N.J. Super. at 532. In quantifying the marital lifestyle and reconfirming the award of alimony, Judge Walsh intrinsically adopted those additional statutory findings properly addressed by Judge Chrystal.

As it pertains to factor (13), the Appellate Division remanded the issue of Mallamo credits for reconsideration following the trial judge's quantification of the marital lifestyle finding. The need for reevaluation was premised upon the fact that Mallamo adjustments are "necessarily calculated in relation to, and dependent upon, the judge's final determination of the marital lifestyle." Slutsky v. Slutsky, 451 N.J. Super. 332, 368-69 (App. Div. 2017). Da161. Plaintiff shall address this issue in greater detail both in Point II and in Point III of the Cross-Appeal section, below. However, this was the only other statutory factor which Judge Walsh was required to address on remand. Again, the remaining factors were deemed to be sufficiently addressed by the Appellate Division.

In contrast to Defendant/Appellant's statements, the prior decision by Judge Chrystal did not suggest that Plaintiff did not demonstrate *any* need for alimony; rather it found Plaintiff could not "articulate her specific need." To put it another way, it was not that Plaintiff categorically did not demonstrate a need for alimony, but that the particular extent of the need was unidentifiable. In analyzing the statutory factors, Judge Chrystal made note of Plaintiff's contention that the "proofs

elicited at trial confirm that the *status quo* of the parties' marriage is the Defendant primarily supported the parties and their children on his earnings from his employment." Da272. This is consistent with the Appellate Division's confirmation that an award of alimony was proper, but the lifestyle had to be quantified before establishing (and then reinforcing) the amount of the award. Once again, the Appellate Division confirmed they found "no error in the durational alimony award. . ." Da157. Additionally, as with all alimony analyses, this factor would not have been "elevated in importance over any other factor unless the court finds otherwise. . ." N.J.S.A. 2A:34-23. Judge Chrystal addressed each of the fourteen factors, reviewed the financial circumstances and Schedule A, B and C expenses of both parties, imputed income to Plaintiff in accordance with the New Jersey Occupational Wage Guidelines at $40,400 annually, assessed Defendant's income at above $200,000 annually, and made the decision to award alimony in the amount of $2,508 per month. Da291-Da293. But for the failure to explicitly state that the marital lifestyle was $21,615 per month (Plaintiff's CIS amount for the parties' monthly expenditures), there would have been no error by the trial court.

C. The prior child support award was properly affirmed, however a re-allocation of expenses resulting from the termination of alimony erroneously was not addressed by the trial court.

Child support awards and modifications are left to the sound discretion of the trial court, and we are limited to determining whether there was an abuse of discretion. Innes v. Innes. 117 N.J. 496, 504 (1990); Raynor v. Raynor, 319 N.J. Super. 591, 605 (App. Div. 1999). "The trial court has substantial discretion in making a child support award." Tannen v. Tannen, 416 N.J. Super. 248, 278 (App. Div. 2010). A child support determination will not be set aside unless shown to be unreasonable, unsupported by substantial evidence, or "'the result of whim or caprice.'" Id. A court must attach a Guidelines worksheet to its decision and also provide a statement of reasons for its decision. Fodero v. Fodero, 355 N.J. Super. 168, 170 (App. Div. 2002).

Rule 5:6A provides that the Guidelines "shall be applied in an application to establish child support" and may only be modified for good cause shown. Where the family income exceeds $187,200, "the court shall apply the [G]uidelines up to $187,200 and supplement the [G]uidelines-based award with a discretionary amount based on the remaining family income" together with the factors specified in N.J.S.A. 2A:34-23. Child Support Guidelines, Pressler & Verniero, Current N.J. Court Rules, Appendix IX-A to R. 5:6A (2024). See also Isaacson v. Isaacson, 348

N.J. Super. 560, 581 (App. Div. 2002) (the "maximum amount provided for in the [G]uidelines should be 'supplemented' by an additional award determined through application of the statutory factors set forth in N.J.S.A. 2A:34-23(a)").

Nevertheless, it is well within the judge's discretion to determine "the choice of the methodology to employ in arriving at a child support award when the total income of the parties exceeds the [G]uidelines," recognizing that the "goal is to calculate a child support award that is in the best interest of the child after giving due consideration to the statutory factors and the [G]uidelines." Caplan v. Caplan, 182 N.J. 250, 272 (2005). In determining whether to supplement the Guidelines-based award with a discretionary amount, a judge's decision is informed by the following general principles: "Both parents have a shared obligation to support their children." Strahan v. Strahan, 402 N.J. Super. 298, 306 (App. Div. 2008). That duty is a continuous obligation. Caplan, 364 N.J. Super. at 90. "[W]here the parties have the financial wherewithal to provide for their children, the children are entitled to the benefit of financial advantages available to them." Isaacson, 348 N.J. Super. 560. Stated another way, "[c]hildren are entitled to not only bare necessities, but a supporting parent has the obligation to share with his [or her] children the benefit of his [or her] financial achievement." Id. at 580.

On remand, the Appellate Division delegated the trial court with recalculating child support after the marital lifestyle was determined and the alimony award was reconsidered. However, Judge Walsh after quantifying the marital lifestyle and confirming alimony would remain unchanged, declined to modify the child support. This was permissible, as there was ultimately no recalculation of alimony which would warrant a recalculation of child support. There was nothing in the Appellate Division's instructions to suggest that if alimony did not change, the trial court would be tasked with again considering the child support factors and conducting an analysis under Caplan v. Caplan. In fact, the Appellate Division commended Judge Chrystal for "conducting a thorough analysis of the child support statute and making reasonable findings supported by the record." Da169. The opinion by the Appellate Division specifically remarked:

> [t]he judge offered a thorough analysis of each of the N.J.S.A. 2A:34-23(a) factors. As to the children's needs, **the judge found they were in need of support and plaintiff's parents had no obligation to support them**. Specifically, the judge found their needs were set forth on plaintiff's September 2021 CIS, as part of Schedule A, B, and C expenses, and also included preschool tuition and extracurricular activities. The judge credited plaintiff's testimony about the children's additional needs including food, prescription drugs, clothing, and entertainment.

Da167. (emphasis added). There is nothing proffered by the Appellate Division to suggest that if alimony did not change, the thoughtful and detailed analysis by Judge

Chrystal would not stand. The Appellate Division confirmed that Judge Chrystal made specific findings as to the standard of living and economic circumstances of each parent, sources of income and assets of each parent, and the earning ability of each parent. Da167-Da168. More specifically, the trial court reiterated the "upward trajectory" of Defendant's income, including his current compensation which at the time of trial was $279,000 per year. Da274; Da168. The Appellate Division verified that Judge Chrystal had attached a child support worksheet to her opinion, which utilized Defendant's income of $279,000 per year and imputed income to Plaintiff of $40,400 per year and resulted in a base child support award of $434 per week. Da168. It is plain fact and undisputed that Defendant's 2020 gross income of $279,000 exceeds the $187,200 cap, which permits the trial court to supplement the Guidelines-based award with a discretionary amount as determined by evaluation of the statutory factors. Isaacson, 348 N.J. Super. at 581. Judge Chrystal performed her "thorough" analysis of the factors and calculated a supplemental award of 10% ($27,900 per year) in light of Defendant's earnings, for a total child support award of $535.07 per week. Da313; Da168. There was no error noted by the Appellate Division as to this calculation.

The Defendant here quite conspicuously attempts to take a second bite at the apple in seeking to equalize what he perceives to be a disparate lifestyle from what

the children enjoy when they are with Plaintiff. As confirmed by the Appellate Division in its opinion, Judge Chrystal rejected this claim by denying Defendant his request for child support, "finding no legal or factual support for such an award." Da305; Da167. Contrary to Defendant's claims, there need not be any indication as to whether or not the Pooles will stop contributing towards the children's expenses, because the fact remains there is no basis in law or in fact to mandate the Pooles be responsible for the children's support. Defendant himself conceded at trial that he agreed the Pooles have no obligation to support Plaintiff and no obligation to support the children. 3T:9:4-9. Judge Walsh appropriately noted that that Judge Chrystal based her decision on the level of support borne by the parties and paid by Defendant during the marriage, and utilizing the support of the Pooles to reduce Defendant's obligation both undermines and is inimical to the concept of support. Da9-Da10.

The trial court's conclusion as to the marital lifestyle, Plaintiff's need for alimony, and Defendant's ability to pay alimony is well founded in the record and the decision in this regard should be affirmed. However, "based on the parties' respective percentages of income" on the worksheet, the trial court had ordered that Defendant pay 69%, and Plaintiff pay 31%, of any child-related expenses not covered by child support, such as unreimbursed medical expenses, extracurricular activities, and summer camps. Da313; Da169. As alimony to Plaintiff has since

terminated as of October 7, 2023, the trial court should have reconciled each party's share of the net income and their contributions to the children's expenses with this income no longer deriving to Plaintiff. This shall be discussed in detail, below.

POINT II

ON REMAND, THE TRIAL COURT DID NOT ERR IN REAFFIRMING THE PRIOR JUDGE'S DETERMINATION AS TO MALLAMO AND RELATED CREDITS, BUT ERRED IN NOT RECALCULATING SAME ONCE THE MARITAL LIFSTYLE HAD BEEN QUANTIFIED AND THE ALIMONY AND CHILD SUPPORT AWARDS WERE CONFIRMED. (Da5; Da9-Da10).

"[P]endente lite support orders are subject to modification prior to entry to final judgment . . ., and at the time of entry of final judgment. . . ." Mallamo, 280 N.J. Super. 8, 12 (App. Div. 1995) (citations omitted). "In many instances the motion judge" hearing a *pendente lite* application "is presented reams of conflicting and, at times, incomplete information concerning the income, assets and lifestyles of the litigants." Id. at 16. Often "a judge will not receive a reasonably complete picture of the financial status of the parties until a full trial is conducted." Id. In analyzing a request for a Mallamo adjustment, "[a]ny changes in the initial orders rest with the trial judge's discretion" and are therefore reviewed under an abuse of discretion standard. Slutsky, 451 N.J. Super. at 368.

Defendant is not entitled to credits under Mallamo, as he was underpaying support for the vast majority of the *pendente lite* period. At trial, Plaintiff counsel entered a spreadsheet into evidence, without objection, illustrating bills as well as numerous other expenses not captured under her Schedule A. Da279. Plaintiff further introduced additional Schedule A maintenance bills for $1,218.19, $662.32, $331.75, $93.83, and $85.30, as well as a lawn care bill for $4,536. The Appellate Division confirmed the Schedule A spreadsheet items in conjunction with these additional bills total the $18,468.95 the trial court required Defendant to pay, thereby affirming a credit to Plaintiff was both warranted and proper. Da161.

The Appellate Division further endorsed Judge Chrystal's explanation that Defendant's nominal estimate of the parties' Schedule A and B expenses, which he should have been paying, combined with the $1,666 ordered in *pendente lite* support, totaled $9,129 per month. Da162. In accordance with his own figures, Defendant at a minimum should have paid $36,516 during the period from January 2020 to the time the *pendente lite* order went into effect on April 22, 2020 – but instead paid nothing. Da162. It was a proper use of discretion, upon quantifying the marital lifestyle, for Judge Walsh to uphold the Mallamo credit decision scrupulously analyzed by Judge Chrystal. Both decisions by the trial court judges provided commentary as to the fundamental concept that underlies all of the determinations

made by both judges: there was undeniably a baseline level of support provided by Defendant during the marriage regardless of the generous enhancements provided by Plaintiff's parents, and the awards (or denial of awards) to each party relied on that portion of the lifestyle actually borne by the parties. Da9-Da10. These gifts permitted Defendant the ability to earn and save. Da284. Judge Walsh surmised that to base *pendente lite* support on an enhanced lifestyle would have the deleterious effect of requiring Defendant to pay support in excess of what he actually did or could have done during the marriage. Da10. Conversely, extracting the sporadic generosity of the Pooles from the lifestyle to reduce Defendant's obligation would undermine the entire concept of *pendente lite* support. Da10. By all accounts, Defendant was required to support Plaintiff and the children, but made a unilateral decision to withhold or underpay these funds. The undisputable result is he is not entitled to any sum of Mallamo credits himself.

Again, Defendant's assertions that "there was no testimony during the lengthy trial as to why this [$1,666/month] was not enough to fulfill Plaintiff's needs" is untenable. It is undisputed that Plaintiff does have a need for support, and that the Pooles have no obligation to provide that support. The Appellate Division confirmed the trial court properly addressed and opined on Plaintiff's needs, stating the judge had "acknowledged she entered a pendente lite award of $1,666 per month (plus

Schedule A expenses and insurance) *after previously finding that plaintiff established a need for alimony*, and defendant had an ability to pay." Da156. (emphasis added). The Appellate Division also addressed Plaintiff's verified need in stating that the trial court "observed that plaintiff left her job to care for the children, and even when working, she never earned more than $44,000 annually. *The judge's finding on the need for alimony centered around the parties' CISs, and to a lesser extent, their testimony pertaining to marital lifestyle*." Da156. (emphasis added). The Appellate Division also reinforced that Defendant "admitted that he financially supported plaintiff and the children, and that plaintiff's parents had no obligation to do so." Da134. Defendant's continued reliance on the Plaintiff having no need for alimony is unfounded. No matter the quantification of the marital lifestyle, to only provide $1,666 per month once the Beekman home was sold in June 2021 and once the Schedule A costs associated with the marital residence were no longer being paid by Defendant, was grievously below the amount Plaintiff and the children required to sustain the monthly budget for their needs. During that same period, Defendant received the benefit of living in the 32 Beekman Road home while only paying certain utilities and $3,425 per month in rent on his substantial earnings. Da294.

Plaintiff further addresses the issue of the Mallamo credits due to her as a result of Judge Walsh quantifying the marital lifestyle, confirming the alimony and

child support awards, but then failing to then perform a recalculation as ordered by the Appellate Division at length, below.

CROSS APPEAL

POINT III

FOLLOWING A DETERMINATION ON MARITAL LIFESTYLE, THE TRIAL COURT SHOULD HAVE CONSIDERED THE TIME PERIOD DURING WHICH DEFENDANT FAILED TO OR INADEQUATELY SUPPORTED HIS FAMILY TO QUANTIFY THE MALLAMO CREDIT DUE TO PLAINTIFF AND SHOULD HAVE OFFSET SAME AGAINST THE EQUITABLE DISTRIBUTION PAYMENT OWED TO HIM. (Da5-Da10; Da84)

Pendente lite support provides the means to preserve the *status quo* in a matrimonial matter pending a full investigation of the case. Mallamo, 280 N.J. Super. at 11-12. "Maintenance of the *status quo* involves payment of the marital bills and expenses necessary to maintain the dependent spouse at the standard of living enjoyed during the course of the marriage." Rose v. Csapo, 359 N.J. Super. 53, 60 (Ch. Div. 2002). The temporary nature of the *pendente lite* support order is illustrated by the general rule that provisions of a *pendente lite* order do not survive the entry of a judgment of divorce unless expressly preserved in it or reduced to a judgment prior to entry of final judgment. Mallamo, 280 N.J. Super. at 12.

A *pendente lite* decision is arrived at based on the facts that are before the

Court at the time, and can be modified prior to the final judgment of divorce and at the time that the final judgment of divorce is entered. Mallamo, 280 N.J. Super. at 12. This stems from the fact that absent agreement between the parties, a judge will not receive a reasonably complete picture of the financial status of the parties until a full trial is conducted. Id. at 16.

The proofs at trial revealed that beginning in January 2020, while Defendant refused to support the family, Plaintiff's only recourse to meet the necessary expenses for her and the children was to remove funds from the parties' jointly held JP Morgan Chase accounts (-9005) and (-2007) in the amount of approximately $86,000.00. Da294. She utilized these funds between January 2020 through May 2020 when they were exhausted. 6T:20:11 to 6T:21:2. Plaintiff's position at trial was that Defendant's lack of support warranted that he not receive a credit for 50% of those funds. Da294. Of the approximately $86,000.00 removed from the joint JP Morgan Chase accounts, $32,616.80 was applied towards Plaintiff's counsel fees. During the same period, Defendant utilized $35,687.88 of marital assets to pay his attorneys. Da260.

The trial Court agreed with Plaintiff and determined that Defendant was not entitled to his 50% share of the JP Morgan accounts and it would instead serve as a credit to Plaintiff under Mallamo, 280 N.J. Super. at 12. Da318.

In April 2020, Plaintiff filed an application for pendente lite support and other relief, which resulted in Defendant being ordered to directly pay all Schedule A expenses totaling $6,189.00 per month for so long as he was also residing in the Beekman Road home in addition to paying $1,666.00 per month to Plaintiff representing his share of support for Plaintiff and the children. Da278-Da279. Defendant was also ordered to pay the parties' auto insurance expenses totaling $226.00 per month and maintain health insurance for the family through his employment. Da269; DCa35. Accordingly, Defendant's obligation to pay Schedule A ($6,189.00), auto insurance ($226.00) and direct support ($1,666.00 per month) totaled $8,081.00 per month.

On June 30, 2021, the Dynasty Trust sold the Beekman Road home, at which point Defendant ceased paying Schedule A expenses. Da317. Other than maintaining the health insurance through his employment, from July 1, 2021 through May 1, 2022, Defendant provided Plaintiff with only $1,666.00 in per month in direct support and paid her ½ share of the $226 per month auto insurance ($113.00 per month), or $1,779.00 total. Da94. That is to say, Defendant paid less than 8% of his income while his earnings were $279,000.00 per year. DCa209. Defendant's trial testimony confirmed that he was netting approximately $16,966.00 per month in take-home pay. 11T:47:12 to 11T:48:13. Defendant's $1,666 per month payments

were woefully inadequate for what Plaintiff and the children required, were far below what Defendant could afford to pay, and were undeniably paltry in comparison to the now quantified marital lifestyle of $32,346.

The deficiency in support forced Plaintiff to rely on loans from the Pooles to pay the daily livings expenses of her and the children. These loans ballooned to $366,332.00 and were evidenced as loans by duly signed promissory notes. 9T:99:1-19; DCa326-DCa364. It is important to note these loans included funds for Plaintiff's extraordinary legal expenses and counsel fees, inclusive of the eleven-day trial; but for the litigation, the loans would have been far less substantial. DCa230. Accordingly, any reliance by the Defendant upon the loan amounts as a baseline for Plaintiff maintaining the lifestyle or to suggest the totality of these funds "supported the family" is unfounded and cannot be substantiated. Db3 l-Db32. Each promissory note included the amount of annual interest payable from Plaintiff to the Pooles and a payment schedule. DCa326-DCa364. Plaintiff made all payments due under the terms of the promissory notes in accordance with each schedule so as to avoid defaulting and/or any associated tax repercussions to her parents. 9T:102:8 to 9T:103:8. While Plaintiff was dependent upon borrowing and incurring the loan-related debts, Plaintiff was able to enrich himself, stockpiling his earnings and depositing the maximum amount permitted into his post-complaint 401K plan, such

that this asset reached a value of $100,000, as well as other pre-tax accounts. Da294.

The Appellate Division remanded the Mallamo credit issue for reconsideration following the judge's quantification of the marital lifestyle finding. Undeniably, Defendant paid nominal *pendente lite* support and Plaintiff demonstrated that Defendant enriched himself in the process. It is evident the court-ordered *pendente lite* support fell far short of both the marital lifestyle, which Judge Walsh quantified in the amount of $32,346.00 per month, and Plaintiff's needs. Although Judge Walsh declined to amend the decision of Judge Chrystal, Plaintiff contends the award was still in error. Plaintiff is due additional credits under Mallamo beyond what the trial Court previously awarded, and same should be offset against the Equitable Distribution payment owed to Defendant. Pursuant to Judge Chrystal's Letter Opinion, it would have been inequitable for Defendant to receive a credit for 50% of the JP Morgan Chase funds ($41,405 – half of the approximate balance of $82,810 held therein) when he refused to support his family. Da316. Defendant was ordered to pay $1,660/month from April 22, 2020 (entry of the *pendente lite* Order) until trial, plus Schedule A expenses while he was in the marital home – but he neglected to do so. Da318. The trial court calculated Defendant's arrears to be $37,313 through November 1, 2021, and determined Defendant would not receive a credit for his 50% share of the JP Morgan accounts, which in turn

would satisfy the arrearages and serve as the Mallamo credit in this case. Da318.

On remand, Plaintiff provided a breakdown as to what the proper Mallamo credit due and owing to her should have been as a result of Defendant's vast underpayment of *pendente lite* support and expenses:

1. From January 2020 (the filing of the Complaint for Divorce) through April 2020 (when the *pendente lite* Order went into effect): Defendant failed to support the family or contribute to the expenses on the Beekman Road home, despite the benefits inured to Defendant by way of him residing therein. Da212; Defendant should have been paying support and/or supporting the household. Based on the marital lifestyle ($32,346 per month) and Defendant's ability to pay ($200,000.00 per year base at the time plus a $79,000 bonus) Defendant should have been paying at minimum the amount of *pendente lite* support and expenses awarded pursuant to the Court's August 7, 2020 Amended Order, which totaled $8,081.00 per month between the $1,666 per month support and Schedule A expenses. Therefore, Defendant should have paid Plaintiff total pendente lite support of $32,324.00 ($8,081.00 x 4 months). Da100; Da240; Da245.

2. From April 22, 2020 (effective date of the Court's *pendente lite* Order through June 31, 2021 (the date the Beekman Road home sold): For this time period, Plaintiff does not seek a Mallamo adjustment because Defendant was obligated to

pay Plaintiff the equivalent of $8,081.00 per month, and he was living in the home with Plaintiff and the children (Schedule A expenses of $6,189.00 per Plaintiff's CIS (DCa38) + $1,666/month in direct pendente lite support and $226.00 per month for auto insurance for the parties plus medical insurance for the family). Da100; Da245. Based on the marital lifestyle ($32,346.00 per month and Defendant's net earnings of approximately $16,667 per month as confirmed by him at trial, Defendant had the ability to pay this combined *pendente lite* support obligation. Da100; Da292.

3. From July 1, 2021 (when Defendant stopped paying Schedule A expenses because the Beekman Road home was sold) through May 1, 2022 (the effective date of Defendant's alimony and child support obligations pursuant to the FJOD): Based on his net earnings of almost $17,000.00 per month ($279,000 per year gross), Defendant was only paying Plaintiff $1,666.00 per month along with maintaining the parties' automobile insurance ($226.00 per month total, or approximately $113.00 for Plaintiff), totaling $1,779.00 per month. Da101. This is the period during which Plaintiff began to rely upon loans from her parents. 9T:99:1-19; DCa326-DCa364. Pursuant to Mallamo, he should have been paying Plaintiff the equivalent of the $4,808.50 per month in *pendente lite* support for (10) months ($2,508.00 per month alimony awarded on remand, plus child support on remand of $2,300.50 per month [$535.00 per week] = $4,808.50). Da5; Da315. After deducting

the $1,779.00 per month Defendant was paying, the difference is $3,029.50 per month ($4,808.50 - $1,779.00 = $3,029.50). The difference in the amount Defendant should have paid over ten (10) months was $30,295.00 ($3,029.50 x 10).

Based on the foregoing, the appropriate Mallamo credit due to Plaintiff from Defendant, which should have been properly re-calculated on remand once the marital lifestyle was quantified, and the alimony and child support amounts were confirmed, should be $62,619.00 ($32,324.00 + $30,295.00 = $62,619.00), as opposed to Judge Chrystal's award of $37,313. Da318.

On remand, the Trial Court was given ample opportunity to receive a reasonably complete picture of the financial status of the parties, should have conducted an analysis once it quantified the marital lifestyle and once it left the alimony and child support awards undisturbed, and should have appropriately determined a credit to Plaintiff was warranted. Defendant erroneously insisted that there should be no Mallamo credit due and owing to Plaintiff, because it was Plaintiff who funded the marital lifestyle and not the Defendant. Pa33. This is a ludicrous statement in light of the fact that Plaintiff earns no income, and has been forced to rely on the generosity of her parents *as a direct result* of the fact that Defendant has provided inadequate support. The *pendente lite* support was instead based directly on the marital earnings of Defendant.

The trial court appropriately enforced its *pendente lite* Orders after remarking that Defendant himself did not deny violating the Court Orders of August 7, 2020 and January 12, 2021, and compelled Defendant to reimburse Plaintiff $18,468.95 for arrears towards the Schedule A expenses he refused to provide while living in the same residence as Plaintiff. Da319. The trial court ordered that these expenses be deducted from equitable distribution. Da319. Had these arrears not been ordered, then Plaintiffs claim for credits under Mallamo would be increased. Judge Walsh should have addressed this in his decision, but failed to do so. Instead, he cited to only two (2) figures ($86,000 and $17,125) for which he determined Defendant should receive a fifty percent (50%) credit. Da10. Neither of these figures represent sums from which Defendant should have an automatic 50% entitlement. This is addressed in more detail, below, as Plaintiff on remand ultimately sought to have all of the marital accounts and the advances made to the parties during litigation evaluated in order to arrive at a proper Equitable Distribution award from which the parties' respective credits (including the proper Mallamo credit to Plaintiff of $62,619.00) could be determined. This holding should be remanded for a recalculation in line with that set forth above.

A. Once a proper Mallamo credit to Plaintiff was determined, the credit should have been offset against the Equitable Distribution payment owed to Defendant.

Under N.J.S.A. 2A:34-23.1(i), in making an equitable distribution of marital property, the court shall consider, "[t]he contribution of each party to the acquisition, dissipation, preservation, depreciation or appreciation in the amount or value of the marital property, or the property acquired during the civil union as well as the contribution of a party as a homemaker . . . ."; see also Vander Weert v. Vander Weert, 304 N.J. Super. 339, 349 (App. Div. 1997) ("[A]s a general matter, the distributable marital estate is deemed to include assets diverted by one of the spouses in contemplation of divorce and for the purpose of diminishing the other spouse's distributable share").

All other equitable distribution relief set forth in the FJOD was left undisturbed by the Appellate Court. Da179. Under the FJOD, the equalization of the marital bank accounts was set forth in a chart prepared on behalf of Plaintiff entered into evidence by stipulation of both parties. Da192-Da193.

The error at the time of trial and on remand in P-132 (Da192) was that Defendant did not receive his proper credit for the funds Plaintiff withdrew from the JP Morgan accounts (-9005) and (-2007), and for three (3) other small brokerage accounts which Plaintiff maintained. On remand, Plaintiff proposed a recalculation

to equalize the marital bank/brokerage accounts, which was unaddressed by Judge Walsh in his January 23, 2025 Order and associated Statement of Reasons. Da5.

According to the listing of marital bank accounts set forth in P-132 at trial, the total value of marital bank accounts were $283,122 (each party was entitled to half of the total value, or $141,561). Da192. Plaintiff had access to the two joint JP Morgan Bank accounts (-9005) and (-2007) from which she withdrew $86,618.00. Plaintiff also retained three (3) other JP Morgan accounts in her name (-7313, -0260, -1092) with minimal balances totaling $3,995.00. The funds in all five (5) accounts together had a sum of $90,611.00. The remaining bank accounts, totaling $192,511.00, were all held in Defendant's name. Da192.

The trial court found, and the Appellate Division affirmed, that from the JP Morgan accounts -9005 and -2007, Plaintiff paid counsel fees of $32,616.80. Da177; Da179. Likewise, Defendant paid his counsel fees of $35,687.88 from marital accounts held in his name, so those funds were already accounted for in the analysis. Da177; Da193. However, the amounts paid by each party from marital funds for their respective counsel fees must be equalized, as Judge Chrystal had directed in her Letter Opinion and which the Appellate Division did not disturb or find to be erroneous. Da260; Da177. Defendant owed Plaintiff a credit of 50% of the difference

in the fees paid, or $1,535.54, which represents 50% of the differential in fees paid by both parties from marital accounts ($3,071.08). Da260; Da177.

Plaintiff provided a full analysis on remand which included reducing the total account values by the amounts advanced to both parties *pendente lite*, and then reconciling the appropriate credit owed by Defendant to Plaintiff along with the equalization in counsel fees paid from marital accounts. Again referring to the information proffered at trial on P-132 (Da192), the correct reconciliation would have been as follows (Da106):

	DEFENDANT	PLAINTIFF
Each party's 50% share of marital bank/brokerage accounts totaling $283,122	$141,561.00	$141,561.00
Funds held by each party by way of accounts titled in their respective names	$192,511.00 (all Ally bank accounts; all Live Oak Bank accounts; Lending Club and Schwab accounts listed on D192)	$90,611.00 (JP Morgan Chase accounts -9005, -2007, -7313, -0260, - 1092 listed on D192)
Surplus (S) to Defendant /Deficit (D) to Plaintiff	$50,950.00	($50,950.00)
Advances for counsel fees to each party per 9/14/2020 & 3/9/2021 Order	($45,000.00)	$45,000.00
Sub-Total	$5,950.00	($5,950.00)
Equalization of counsel fees (Plaintiff $32,616.80 / Defendant $35,687.88 as per FJOD)	($1,535.54)	+$1,535.54

TOTAL	$4,415.00	**$7,485.54 – Defendant owes Plaintiff to equalize the marital bank accounts.**

Based on the foregoing analysis, which was before Judge Walsh at the time of remand, Defendant owed Plaintiff $7,485.54 to equalize the marital bank accounts after putting everything back into the pot (including the $86,000 in JP Morgan accounts Plaintiff transferred into her own name and from which she paid $32,616,80 in counsel fees and was awarded a Mallamo credit. Da285; Da318). Pursuant to the FJOD, Defendant has already paid Plaintiff the $63,944.20 previously ordered by the trial court.

Plaintiff requested on remand that the Mallamo credits due and owing to her, as calculated and set forth above in Point III, be offset against the Equitable Distribution credit due and owing to Defendant. Da114. This exercise went altogether unaddressed by the trial court. Plaintiff is owed a total of $88,573.49 for the following credits: $62,619 in Mallamo credits as calculated in Point III, above; $18,468.95 for reimbursement of Schedule A expenses ordered and unpaid in accordance with the FJOD; $7,485.54 to equalize the marital bank accounts per the chart, above. As indicated, Defendant paid $63,944 per the FJOD, and thus owes Plaintiff **$24,629.29** in order to satisfy all of the parties' respective credits and cure

the overall equitable distribution. These omissions by the trial court are beyond refute. Insofar as the trial court did not perform any analysis of the Mallamo credits and the recalculation of Equitable Distribution of the parties' accounts, this issue should be remanded and an order entered in accordance with the proper analyses.

As a final note, the Appellate Court indicated that a finding must be made as to the $17,125.00 advance on Defendant's share of equitable distribution to pay arrears of rent to the Dynasty Trust pursuant to the Court's January 12, 2021 Order. Da176. Defendant should not receive any credit for this, as it was an advance from his share of the marital assets charted above, and is therefore included in the Plaintiffs recalculations to equalize the marital bank accounts. Judge Walsh failed to provide any analysis to account for this figure, and/or specify how this advance in equitable distribution would be accounted for in his January 23, 2025 decision as per the Appellate Division's instruction.

POINT IV

THE COURT ERRED IN FAILING TO RE-ALLOCATE THE PERCENTAGE CONTRIBUTION REQUIRED OF EACH PARTY TOWARDS THE CHILDREN'S EXPENSES AFTER ALIMONY TERMINATED.

The Appellate Division upheld the trial Court findings in establishing child support for an above Child Support Guidelines (CSG) case. According to Appendix IX-A to New Jersey Rule 5:6A:

> [i]f the combined net income of the parents is more than $187,200.00 per year, the court shall apply the guidelines up to $187,200 and supplement the guidelines-based award with a discretionary amount based on the remaining family income (i.e., income in excess of $187,200.00) and the factors specified in N.J.S.A. 2A:34-23. Thus, the maximum guidelines award in Appendix IX-F represents the minimum award for families with net incomes of more than $187,200 per year. An award for a family with net income in excess of $187,200 per year shall not be less than the amount for a family with a net income of $187,200.

Pressler & Verniero, Current N.J. Court Rules, Appendix IX-A to R. 5:6A, Comment 20(b)(2025). Because this is an "above the guidelines" case, a supplemental child award of child support beyond that calculated under the CSG by the trial Court in this matter was and is appropriate. This combined approach of utilizing the guidelines and the factors in N.J.S.A. 2A:34-23(a) to determine supplemental child support was, and is still, intended to yield a fair award of child support that is in the best interests of the children. See Caplan v. Caplan, 182 N.J. 250, 266 (2005). In Caplan, the Supreme Court held that

> [w]e leave to the trial court's discretion the choice of the methodology to employ in arriving at a child support award when the total income of the parties exceeds the guidelines…[T]he trial court's goal is to calculate a child support award that is in the best interest of the child after giving due consideration to the statutory factors and the guidelines.

Id. at 272. Further, The guidelines assume parents are sharing in the children's expenses and provide for parents to do so "in proportion to their relative incomes

and . . . based on [their] combined net income . . . ." Caplan, 182 N.J. at 264. "The guidelines generally define 'net income' as 'gross income minus income taxes, mandatory union dues, mandatory retirement, previously ordered child support orders, and, when appropriate, a theoretical child support obligation for other dependents.'" Id.

The Court determined Defendant's child support obligation to the Plaintiff under the CSG's sole custody worksheet was $434.00 per week, premised upon evidence as to Defendant's earnings, imputed earnings to Plaintiff, the non-taxable alimony awarded and the allocation of overnight parenting time to each party. Da312. The trial court applied the facts elicited at trial to the factors of N.J.S.A. 2A:34-23(a) in determining Defendant's supplemental child support obligation of $101 per week ($5,252.00 per year) for a total child support award of $535.00 per week. The Court explained its reasoning in its Letter Opinion. Da313.

The Appellate Court directed that on remand, child support should be recalculated using the potentially revised alimony award after the marital lifestyle was ascertained. However, the trial court did not provide an updated CSG to reflect the fact that alimony has terminated and as such, the $2,508 in income to Plaintiff now inures to the benefit of Defendant, who no longer has that financial obligation. The discontinuation of alimony to Plaintiff would reasonably (and unmistakably)

have an affect on each parties' proportionate share of the total net income. In contemplation of this shifting of income, the respective contributions towards the children's expenses by the parties must likewise be reallocated and the trial court should have performed this task. On remand, Plaintiff submitted an updated CSG reflecting the recalculated base child support upon her remarriage on October 7, 2023. The guideline as run, removing alimony from the equation, came to $537.00 per week (Da185), roughly the same amount of child support as undisturbed from Judge Chrystal's decision and upheld on remand once Judge Walsh quantified the marital lifestyle.

Based on this revised CSG worksheet, the allocation of the parties' contributions towards the children's expenses excluding alimony is 83% to Defendant and 17% to Plaintiff. Da185.

A. Once the parties' respective contributions to the children's expenses had been reconsidered, the trial court should have then reconciled those expenses based on the revised CSG worksheet.

Once again, "[t]hat both parents share the obligation to support their children . . . is well established in this state." Pascale v. Pascale, 140 N.J. 583, 593 (1995). "Child support is the right of the child and the responsibility of both parents." Id. The basic child support amounts contained in Appendix IX-F "represent the average amount that intact families spend on their children [including] the child's share of

expenses for housing, food, clothing, transportation, entertainment, unreimbursed health care up to and including $250 per child per year, and miscellaneous items." Child Support Guidelines, Pressler & Verniero, Current N.J. Court Rules, Appendix IX-A to R. 5:6A (2024).

The parenting worksheets contained in Appendix IX-C of the Court Rules, and the related line instructions contained in Appendix IX-B, reflect that once the basic child support amount is obtained from Appendix IX-F, the support amount is then allocated between the parents based on the percentage of their individual net income. Child Support Guidelines, supra, Appendix IX-B to R. 5:6A; Appendix IX-C to R. 5:6-A. Even where the parents' combined income exceeds the child support guidelines, the maximum support under the guidelines must be allocated between the parents based on their relative net incomes. Caplan, 364 N.J. Super. at 89.

According to the spreadsheets provided by Plaintiff to the trial court on remand, Plaintiff incurred a total of $51,693.47 in medical and activity-related expenses between November 2023 and November 2024[2]. Da188. In accordance with the revised CSG, which no longer attribute alimony to Plaintiff, Defendant

[2] This spreadsheet itemizing the expenses was submitted to the trial court pursuant to N.J.R.E. 1006. Plaintiff had noted she was in possession of the lengthy back up documentation to provide if the Court should it so required. Neither the trial court nor Defendant requested same.

would be responsible for his 83% share of the total, or $42,905.58. Da118. During that same time period from November 2023 to November 2024, Defendant remitted only $2,880.06 to the Plaintiff. Accordingly, **Plaintiff is still owed $40,025.52** for Defendant's reallocated share of the children's unreimbursed medical and activity-related expenses. The trial court should have provided an updated CSG that accounted for the cessation of alimony, should have noted what each parent's proportionate share of contributions to the expenses would then be, and should have undertaken an analysis of the expenses towards which Defendant has a financial obligation to contribute. The trial court performed none of these functions, which was an egregious omission. Thus, the matter should be remanded for an order to be entered in accordance with these proper undertakings.

CONCLUSION

Based on the foregoing, the Plaintiff submits that the unrefuted proofs elicited on remand confirm that the Court's determinations as to the amounts of the alimony and child support awards, as well as the fact that a Mallamo credit should inure to the Plaintiff and not the Defendant, must not be disturbed on appeal. Defendant's appeal of the Court's decisions on these issues are premised solely on the fact that every discretionary decision was made to his detriment, and are rooted in his compulsion to "win" in this litigation. The appeal is driven by spite, as he seeks to

receive a windfall at the expense of Plaintiff (or her parents) and to avoid his rightful obligations to his family. To the contrary, Plaintiff's Cross Appeal seeks only to recalculate a proper Mallamo credit as awarded by the trial court and upheld on remand and have this sum offset against the equitable distribution payments owed to Defendant. It further seeks to remedy the oversight by the trial court to recalculate the parties' respective contributions to the children's expenses as a result of the fact that the term of alimony has ended upon Plaintiff's remarriage. Once the proper figures are in place, the expenses outstanding should have been assessed with the new percentage figures and Defendant ordered to pay his proportionate share.

Accordingly, Defendant's appeal must be denied in its entirety, and Plaintiff's cross appeal properly warrants a reversal and remand.

Respectfully submitted,
JAVERBAUM, WURGAFT, HICKS, KAHN, WICKSTROM & SININS, P.C.

By:_____
LIZANNE J. CECONI

DATED:

JAVERBAUM, WURGAFT, HICKS, KAHN, WICKSTROM & SININS, P.C.

By:_____
ELISSA W. LEVINE

DATED:

	SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION DOCKET NO. A-001567-24
AMANDA PARISI, Plaintiff/Cross Appellant, v. DANIEL PARISI, Defendant/Appellant.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION-FAMILY PART UNION COUNTY Docket No. FM-20-1124-20 CIVIL ACTION SAT BELOW: HON. THOMAS J. WALSH, P.J.F.P.

DEFENDANT/APPELLANT'S CROSS RESPONDENT BRIEF

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Date submitted: 6/26/25

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PRELIMINARY STATEMENT

The court made a finding that was not possible based on the evidence in the record, and its finding was therefore erroneous. Plaintiff argues that Defendant's appeal is in bad faith and stems from his financial entitlement, notwithstanding that his claims are objectively supported by basic math. Meanwhile, she is seeking a Mallamo credit for *pendente lite* expenses, which she did not pay, but were paid with marital funds. Plaintiff also spends over twenty pages trying to distract this Court from the fact that the marital lifestyle the Trial Court attributed without sufficient evidence to Defendant's income actually *exceeded* Defendant's income during the marriage and thus cannot be accurate. These are facts that cannot be ignored when the marital lifestyle and alimony are being calculated because otherwise the result will be unjust.

On remand, Judge Walsh opined that "quantifying the marital lifestyle *helps not a whit* in determining the appropriate level of alimony," notwithstanding that quantification of the marital lifestyle is a touchstone factor which drives support awards. Judge Walsh claimed the quantification of the marital lifestyle could never be completed (i.e., it was a "Sisyphean" task) due to a lack of proofs adduced from the trial. He nevertheless assigned a number to the marital lifestyle, relying on "rough estimates" based on his "experience of hearing divorce cases" and "imagination" to quantify it. Simply put, the judge's

findings are not based on credible evidence in the record.

Judge Chrystal found that Plaintiff's parents provided her with an extravagant lifestyle, which she "enjoyed and was accustomed to *her entire life*." Both parties testified to an extravagant marital lifestyle, which Judge Chrystal found was due to Plaintiff's parents' generosity. Judge Chrystal also found that Plaintiff's parents continued to provide Plaintiff with an extravagant lifestyle throughout the divorce, and continuing post-judgment.

This case must be remanded for a plenary hearing to determine the actual amounts of the contributions made by Plaintiff's parents to the marital lifestyle, so that the marital lifestyle may be accurately quantified and alimony and the financial determinations which flow from alimony may be established appropriately as the circumstances of *this case* require. Accordingly, Defendant's appeal must be granted, and Plaintiff's cross-appeal must be denied.

PROCEDURAL HISTORY

Defendant shall rely primarily on the statement of Procedural History in his merits brief. Plaintiff's vague reference to Defendant's alleged post-judgment violations of the FJOD and post-judgment orders is supported only by one sentence in her remand letter brief submission, not a certification, but regardless, her post-judgment allegations are not part of this appeal. (Pb7[1];

[1] "Pb" shall refer to Plaintiff's brief.

Da86). Plaintiff does not provide any reference to an adjudication on the merits to support her claims. (Pb7).

Following the first appeal, the Appellate Division found that Defendant's arguments regarding alimony, Mallamo, and child support were meritorious. (Da118-Da119). It found that "the judge misapplied her discretion in calculating the initial alimony award requiring remand to address that issue." (Da160; Pb6). The child support award was vacated and remanded "for a recalculation after the marital lifestyle is determined and the amount of the alimony award is considered anew." (Da169; Pb6).

On remand, Judge Walsh conferenced the matter to try and reach a settlement. (Da6). "When that effort failed, the parties were ordered to submit briefs." (Da6; Pb7).

Judge Walsh instructed Plaintiff's counsel to submit her three-page letter objecting to the January 23, 2025 Order in the form of a motion for reconsideration. (Da198; Pb8-Pb9).

COUNTERSTATEMENT OF FACTS

Defendant relies primarily on the Statement of Facts in his merits brief.

The Complaint for Divorce was filed on January 21, 2020. (Da208).

In the FJOD, Judge Chrystal found that the parties' "roles during this marriage were clearly defined that Plaintiff stayed home with the children and

Defendant worked outside the home." (Da209; Pb9). She did not find that the parties mutually agreed Plaintiff would stay home or that Defendant was the primary breadwinner; instead, those were things that "Plaintiff insisted" and "Plaintiff contended" during trial. (Da209; Pb9).

Defendant was 32 years old at the time of trial and 33 years old when the FJOD was entered. (DCa88; Pb9).

Plaintiff's claim that Defendant's earnings paid the day-to-day living expenses is supported only by her letter brief on the remand and is not supported by the FJOD or her trial testimony. (Pb10-Pb11). In the FJOD Judge Chrystal found that it was "impossible to quantify the joint marital lifestyle of the parties due to the generosity of the Plaintiff's parents" (Da245) and that it was "impossible . . . to determine the actual need of Plaintiff" due to the "generous gifts that enhanced the lifestyle of Plaintiff, Defendant and the children." (Da290; Pb10). Judge Chrystal also determined that Plaintiff did not prove her need for alimony, where she stated that "Plaintiff has not adequately articulated her specific need [for alimony], due to the numerous gifts from her parents." (Da275; Pb11). She also found that "[n]either party will be able to maintain the marital lifestyle going forward without the gifts from Plaintiff's parents, which was the marital norm." (Da242). Judge Chrystal found that "Plaintiff admitted there was assistance from the Dynasty Trust, although never quantified same by

a numerical amount."[2] (Da277; Pb10-Pb11). In addition, Plaintiff's parents, the Pooles allowed the parties to live in a $2.5 million dollar home, with six (6) bedrooms and five and a half (5.5) baths for below-market rent. (Da290; Da208; Da295; Da256; Da277).

Significantly, Plaintiff testified that the parties knew they would need financial help, "so my parents were willing to start helping so that we had some additional income, um, since I was not working. . . . Um, and so right before we moved, they started gifting us some money so that we had money . . . to help supplement [Defendant]'s income." (6T17-12 to 18-2). She testified that in 2018 her parents gave the family $100,000 which was "deposited and moved into our joint account, and we used them for our living." (6T42-4 to -18). Plaintiff's attempt to make a distinction between "support" and "lifestyle enhancements" received from the Pooles is misplaced; Judge Chrystal found that "it is impossible to quantify the joint marital lifestyle of the parties due to the generosity of the Plaintiff's parents." (Pb10; Da245).

Following trial, Judge Chrystal found that "Plaintiff's testimony that she has been living off of 'loans' that she is repaying is not credible." (Da246; Pb46;

[2] Judge Chrystal also denied Defendant's access to discovery regarding the trusts, which put Plaintiff in a position where vague answers without supporting documentation sufficed. (Da118; Da127-Da129). Judge Chrystal declined to consider the trusts for alimony purposes, notwithstanding Plaintiff's admission that there was assistance from the Dynasty Trust. (Da289; Da277).

Pb49). Judge Chrystal found that "Plaintiff has no income from which to repay the 'loans'"; Plaintiff's parents have been incredibly generous with gifts that they have bestowed on Plaintiff her entire life; "there is no evidence that she was ever called upon to 'repay' loans for her parents' generosity"; and, "[t]here was also no history of loan repayment." (Da246; Pb46; Pb49).

The marital budget in both Plaintiff's April 4, 2020 CIS and her September 21, 2021 CIS is $18,340. (DCa38; DCa224; Pb24; Pb33). Judge Walsh found that the marital budget in Plaintiff's CIS is $21,615. (Da7; Pb24; Pb33).

The Appellate Division stated, "[w]e remand that Mallamo credit issue for reconsideration following the judge's quantification of the marital lifestyle finding." (Da163; Pb13-Pb14).

LEGAL ARGUMENT

POINT I

PLAINTIFF IS UNABLE TO REBUT THE OBJECTIVE MATHEMATICAL ERRORS AND THE ABSENCE OF RELEVANT LEGAL ANALYSIS IN THE TRIAL COURT'S DECISION, WHICH ARE ERRORS THAT NECESSITATE A REMAND. (Da5-Da9).

Judge Walsh found that the base amount of the parties' marital lifestyle expenses without the Pooles' assistance was $21,615/month, which is $259,380/year net. The most Defendant earned before the Complaint was filed was $170,289 gross, which was in 2019. (DCa17; Da16). Defendant earned $126,687 gross in 2017, $112,863 gross in 2018, and his adjusted gross income

was $155,478 in 2020. (DCa17; DCa100; compare Pb26). It is impossible to pay nearly $260,000/year in net expenses with a gross income of $170,289 or less, which is what Defendant earned during the marriage.

Judge Walsh found that the figure of $21,615/month is the figure set forth in Plaintiff's CIS as the marital budget absent any contribution from the Pooles. This is an error because both of Plaintiff's CISes list the marital budget as $18,340/month net, or $220,080/year net, not $21,615/month net. This marital budget amount also significantly exceeds Defendant's annual earnings during the marriage, which were $170,289 **gross** during Defendant's best year. These figures demonstrate that Judge Walsh's finding of the "base" marital lifestyle budget without any contributions from the Pooles is not correct because the parties did not have marital debt and were able to save $2,000/month per Plaintiff's CIS. (DCa223). They also had the following assets to divide up for equitable distribution: $283,122 in marital bank and brokerage accounts as of the date of Complaint; $12,912 in income tax refunds for 2019; over $20,000 in 529/custodial accounts maintained for the benefit of the children; and over $400,000 in various IRAs, each of which included marital funds the court deemed subject to equitable distribution. (Da258-Da259; Da260; Da261; Da204). Judge Walsh further erred when he sought to calculate the numerical marital budget, including the Pooles' assistance, by adding additional expenses

to the already incorrect figure which were not based on the credible evidence in the record. These issues are explained in greater detail in Point I of Defendant's merits brief.

The marital lifestyle characteristics – how the parties actually lived, regardless of the financial source – are critically important to the alimony determination. Weishaus v. Weishaus, 180 N.J. 131, 145 (2004); S.W. v. G.M., 462 N.J. Super. 522, 531 (App. Div. 2020). After determining the marital lifestyle, the court must consider the "source of funds that supported that lifestyle" to evaluate "whether there are sufficient presently available funds to sustain the marital standard." Weishaus, 180 N.J. at 145. Judge Walsh stated that "quantifying the marital lifestyle helps *not a whit* in determining the appropriate level of alimony" (Da8) (emphasis added), a sentiment which Plaintiff echoes in her brief. (Pb25). However, quantifying the marital lifestyle is important because only then can the source of funds and whether that marital standard can be maintained be determined. Moreover, once the appropriate level of alimony is determined, then the court can determine the Mallamo adjustments that need to be made. Mallamo v. Mallamo, 280 N.J. Super. 8, 12 (App. Div. 1995)("*pendente lite* support orders are subject to modification." (citations omitted)).

Plaintiff tries to make a distinction between "support" and "lifestyle

enhancements" received from the Pooles, to argue that the Pooles did not financially support the parties. (Pb10). However, it is clear that an economic benefit arises from direct financial support in addition to lifestyle enhancements received from the Pooles. See Reese v. Weis, 430 N.J. Super. 552, 557-58 (App. Div. 2013)(holding that lifestyle enhancements and financial support are economic benefits in the context of cohabitation). The economic benefit provided by the Pooles must be considered in the marital lifestyle analysis because it is part of how the parties actually lived. Weishaus, 180 N.J. at 145.

Plaintiff argues that Judge Walsh was not required to conduct a full statutory alimony analysis after making a numerical marital lifestyle finding. (Pb27). However, the Appellate Division reversed the alimony award and "remand[ed] for *a new analysis*. . . ." (Da118)(emphasis added). If the marital lifestyle is the "touchstone for the initial alimony award" (Crews v. Crews, 164 N.J. 11, 16 (2000)), then a proper alimony analysis cannot be completed without this figure. Judge Chrystal's analysis was made without having determined the marital lifestyle budget, because she found that it was "impossible to quantify . . . due to the generosity of the Plaintiff's parents." (Da245). It was therefore improper for Judge Walsh to adopt Judge Chrystal's alimony analysis without further review in light of the new marital lifestyle figure it then calculated.

The Appellate Division did not affirm Judge Chrystal's finding regarding

Plaintiff's need for alimony, as Plaintiff argues. (Pb29). The Appellate Division noted Judge Chrystal's finding that "Plaintiff has not adequately articulated her specific need [for alimony], due to the numerous gifts from her parents." (Da275; Da155-Da156). It noted that "the judge acknowledged that she entered a *pendente lite* award of $1,666 per month after previously finding that plaintiff established a need for alimony, and defendant had an ability to pay." (Da156). However, a trial court's *pendente lite* findings regarding alimony cannot be relied upon for a final determination because "a judge will not receive a reasonably complete picture of the financial status of the parties until a full trial is conducted." Mallamo, 280 N.J. Super. at 16. How can Plaintiff's need for alimony be determined before the marital lifestyle is established and before the sources of the marital lifestyle are identified?

Judge Walsh was also required to consider "the likelihood that each party can maintain a reasonably comparable standard of living, with neither party having a greater entitlement to that standard of living than the other. . . ." N.J.S.A. 2A:34-23(b). For this factor, the court needed to numerically quantify the marital lifestyle. Judge Walsh adopted Plaintiff's figure of $21,615/month as the "base amount" of the parties' expenses without contribution from the Pooles, and added $10,731 using "rough estimates," to find that the marital lifestyle was $32,346/month net. (Da7-Da8). But he did not conduct any further analysis as

to whether and to what extent the parties would be able to maintain this lifestyle and if so, with what funds. If Plaintiff is living a post-judgment lifestyle that is greater than or equal to the marital lifestyle, then she does not have a need for alimony. If Plaintiff cannot "adequately articulate[]" her need for alimony due to the "numerous gifts from her parents," then she does not have a need for alimony. (Da275). Post-divorce, Plaintiff resides in a newly renovated 6-bedroom home in Summit, NJ owned by one of the trusts set up by Plaintiff's parents and which is comparable to the $2.525 million-dollar marital home. (Da254; Da318; 9T89-17 to -22). Defendant resides in a two-bedroom apartment. (Da312). Judge Walsh's failure to conduct the appropriate alimony analysis on remand gives Plaintiff the more fortunate windfall at Defendant's expense.

POINT II
THE CHILD SUPPORT AWARD AND THE ALLOCATION OF THE CHILDREN'S EXPENSES MUST CONSIDER THE FACTUAL ECONOMIC CIRCUMSTANCES OF PLAINTIFF AND THE CHILDREN, AS WELL AS THE MARITAL LIFESTYLE. (Da10; Da166).

When determining child support, the court is required to consider not only the needs of the children, but also the standard of living and economic circumstances of each parent, all sources of income and assets of each parent, and the reasonable debts and liabilities of each child and parent, among other

factors. See N.J.S.A. 2A:34-23(a); Caplan v. Caplan, 182 N.J. 205, 266 (2005). The marital lifestyle and subsequent alimony number drives child support and the contribution to expenses. If the alimony figure is incorrect, it impacts the child support analysis, the child support award, and the allocation of child-related expenses, which must be recalculated. In addition, the Pooles provide significant economic benefits to Plaintiff and the children, which cannot be ignored.

Plaintiff's argument centers on the Pooles not having any *obligation* to support Plaintiff and the children. (Pb38). Whether the Pooles' generosity is an obligation is not the issue. The issue is that, *factually*, the Pooles provide significant support to Plaintiff and the children, and they will continue to do so as they have provided an extravagant lifestyle to Plaintiff for her entire life, per Judge Chrystal's specific finding. (Da241). Judge Chrystal found that "[t]here was no doubt that both parties testified to an extravagant lifestyle, this Court finds was *all as a result of Plaintiff's parent's generosity, a lifestyle Plaintiff enjoyed and was accustomed to her entire life*." (Da 241)(emphasis added).

In an analysis of the needs of the children, the standard of living, and the economic circumstances of each parent, the Pooles' significant financial contributions are *facts* that cannot be ignored. See N.J.S.A. 2A:34-23(a)(identifying factors to consider in above guidelines child support cases).

Plaintiff's net income must be a function of the quantification of her lifestyle funded by her parents when determining child support. Otherwise, the calculation is not equitable. It is not relevant that the Pooles are not obligated to contribute because in the highly unlikely event that they stop providing their generous financial support, Plaintiff can make a motion to the court just like any other litigant who experiences a change in circumstances. See Lepis v. Lepis, 83 N.J. 139, 151 (1980)(demonstration of changed circumstances warrants modification of child support)(citations omitted).

Plaintiff's parents and the various trusts that they have set up provide the children with luxurious homes, cars, travel on private jets, lodging on vacation, benefits of country club memberships, new cars, a nanny, and various gifts such as paying for clothes, birthday parties, sports, lessons, preschool, and now private school at $45,900/year for each child. (DCa541-DCa546). If the court did not consider the economic benefits Plaintiff and the children receive from the Pooles, then its decision improperly shifts the financial burden onto Defendant for things that are and have been paid for voluntarily by the Pooles. The court must also consider that there is no indication that the Pooles will stop contributing to these expenses, which they have been paying since before the parties' divorce and which they have continuously continued to pay to date for as long as the children have been alive.

For the same reasons, the percentage allocations of the children's expenses are unfair because Plaintiff admitted that her parents willingly pay for the children's expenses, not her. Defendant was ordered to pay 69% of all unreimbursed medical expenses and all extracurricular activities, including summer camp, for the children without a limit. Plaintiff alleges that she incurred $51,693.47 in "medical and activity-related expenses" for the children in just **one** year. (Pb60-Pb61). How is it fair that Plaintiff can enroll the children in any activity regardless of price because her parents are paying for it and then demand reimbursement from Defendant who does not have the same unlimited funds as Plaintiff? The economic benefits provided to the children by Plaintiff's parents, which create a significant economic disparity and provide Plaintiff with imputable income, must be considered when allocating their expenses.

Plaintiff's calculation of child support and the allocation of the children's expenses are incorrect because they do not take into account the Pooles' continued generous financial support. (Pb56-Pb59).

A. Plaintiff's request for reimbursement of the children's expenses is beyond the scope of the remand and the Trial Court correctly declined to adjudicate her claim. (Pb59-Pb61).

"Notice and an opportunity to respond to an issue raised by a party or a court are fundamental elements of due process and a fair hearing." Silviera-Francisco v. Board. of Educ. of City of Elizabeth, 224 N.J. 126, 141

(2016)(citation omitted). In this case, the Appellate Division tasked the Trial Court with recalculating child support consistent with the recalculation of alimony on remand. (Da169). Plaintiff's request for reimbursement of alleged expenses for the children exceeded the scope of the remand. As a result, Defendant did not have notice or the opportunity to respond to Plaintiff's allegations. The parties each were permitted to file one submission and there was no oral argument. Plaintiff's claims were not supported by a certification, only her attorney's brief and a self-created spreadsheet without the underlying proofs. No testimony was taken. Plaintiff's claims should be filed as a motion if the issue cannot be resolved so that Defendant receives adequate notice and has an opportunity to respond. Accordingly, the court correctly declined to address the issue of alleged reimbursements, as doing so would have been a violation of Defendant's right to due process and beyond the scope of the remand.

POINT III
THE DETERMINATION OF MALLAMO AND OTHER CREDITS WERE ERRONEOUSLY MADE WITHOUT REFERENCE TO THE MARITAL LIFESTYLE, AND ERRONEOUSLY AFFIRMED WITHOUT FURTHER ANALYSIS ON REMAND. (Da5; Da9-Da10).

The purpose of a Mallamo credit is to adjust a *pendente lite* award which is "*woefully* inadequate or obviously *unjust*. . . ." Slutsky v. Slutsky, 451 N.J. Super. 332, 368 (App. Div. 2017)(citation omitted)(emphasis added). *Pendente*

lite support orders are subject to modification because "a judge will not receive a reasonably complete picture of the financial status of the parties until a full trial is conducted." Mallamo, 280 N.J. Super. at 12-16 (citations omitted). Retroactive modification of *pendente lite* support awards is appropriate as a matter of fairness when facts are discovered during trial that demonstrate the earlier award was improper and must be adjusted. Id. at 16.

In this case, Judge Chrystal made the Mallamo determination in the FJOD without having quantified the marital lifestyle. Judge Walsh erroneously affirmed Judge Chrystal's finding without further analysis. If *pendente lite* support is to continue the marital *status quo*, and the marital *status quo* (i.e. lifestyle) is not determined, how can the court properly make a Mallamo adjustment?

In adopting Judge Chrystal's analysis as his own, Judge Walsh stated that "Judge Chrystal's decision on the level of support that was paid by Defendant during the marriage, and not on the artificially enhanced lifestyle provided by Plaintiff's parents." (Da9-Da10). The problem is that Defendant *was* ordered to pay for an artificially enhanced lifestyle. Using Plaintiff's CIS Schedule A amount of $6,303/month and the unallocated pendente lite support of $1,666/month, which total $7,969/month, the 24.3 months *pendente lite* support from April 22, 2020 to May 1, 2022 totals $193,647. (Da36). That means

Defendant was ordered to pay $193,647 net in *pendente lite* support, which is approximately $95,628/year net from his 2020 income of $178,333 gross. (2T119-19; Da38). Defendant also earned less income pre-complaint than he did in 2020, further demonstrating the erroneous nature of the *pendente lite* support ordered, that Defendant did not have the ability to pay, and that *pendente lite* support was not based on Defendant's marital earnings. (Pb50). Simply put, Defendant did not earn enough money during the marriage to pay for the marital lifestyle that the court attributed to his income.

A. Plaintiff is not owed a Mallamo credit because Judge Chrystal found that she provided no testimony that the $1,666/month in *pendente lite* support was not enough to fulfill her needs. (Da291; Pb43-Pb56).

Plaintiff is not owed a Mallamo credit because she did not have a need for additional *pendente lite* support. A retroactive increase in *pendente lite* support should be considered only if that amount is later determined to be "woefully inadequate" or "obviously unjust". Slutsky v. Slutsky, 451 N.J. Super. 332, 368 (App. Div. 2017)(citation omitted). Judge Walsh adopted Judge Chrystal's findings as his own on remand. (Da9-Da10). Judge Chrystal found "there was no testimony during the lengthy trial as to why this [$1,666/month] was not enough to fulfill Plaintiff's needs, except for noncredible testimony by Plaintiff about loans from her parents." (Da291)(emphasis added). Plaintiff's claim that the *pendente lite* support order "fell short" of her needs is not supported by the

evidence in the record. (Pb47). If Plaintiff did not articulate once during trial that the *pendente lite* support she received was not enough, then the *pendente lite* support could not have been "woefully inadequate or obviously unjust" and a Mallamo credit to her is not appropriate. See Slutsky, 451 N.J. Super. at 368. For this reason alone, Plaintiff's argument fails.

In support of her argument, Plaintiff states that Defendant's monthly payments were inadequate "for what Plaintiff and the children required, were far below what Defendant could afford to pay, and were undeniably paltry in comparison to the now quantified marital lifestyle of $32,346." (Pb46). Plaintiff's claim about Defendant's earnings is misleading because Plaintiff's calculation of his available monthly income included a discretionary annual bonus and excluded his retirement contributions and his commuter expenses. (Pb45; Pb48; Pb49; DCa90). Money that is put into retirement is not available for spending. The discretionary bonus is received one time, which means that until it is paid out Defendant does not have access to that money. By including Plaintiff's bonus and excluding his other expenses, Plaintiff created a significantly inflated calculation of Defendant's monthly take home pay. Moreover, Defendant's monthly take home pay is not relevant under circumstances where Plaintiff has failed to demonstrate a need for support. Plaintiff states later in her brief that "[t]he *pendente lite* support was instead

based directly on the marital earnings of Defendant" (Pb50), further contradicting her position that his post-complaint income warrants a Mallamo adjustment. (Pb45-Pb46).

Plaintiff also uses the numerical lifestyle finding calculated by Judge Walsh of $32,346 to claim that the *pendente lite* support was "paltry." (Pb46; Pb48). However, this argument is misleading because the marital lifestyle calculation is how the parties actually lived, regardless of the sources funding that lifestyle. Judge Chrystal found it was "impossible . . . to determine the actual need of Plaintiff" due to the "generous gifts that enhanced the lifestyle of Plaintiff, Defendant and the children." (Da290). The marital lifestyle was significantly funded by Plaintiff's parents, and Defendant never earned more than $170,289 gross during the marriage before the Complaint was filed. It is therefore inappropriate and inaccurate to compare a misleading recitation of Defendant's post-complaint income to a marital lifestyle figure that was heavily funded by the Pooles. Most significantly, Plaintiff cannot now claim on appeal that the support for her and the children was inadequate when Judge Chrystal found that she did not provide any testimony in this regard at any time during the trial. (Da291; Pb47).

Judge Chrystal found that Plaintiff's testimony regarding loans from her parents was not credible because Plaintiff would never be called upon to repay

the "loans." (Pb46; Pb49). Plaintiff's CIS indicates that the "loans" were used to support the family in addition to paying her legal expenses. (DCa230). Plaintiff did not provide evidence to show how much of the "loans" went towards family expenses versus how much went towards counsel fees, if any. Accordingly, the significant amounts of money the Pooles gifted to Plaintiff as "loans" cannot be ignored when calculating the marital lifestyle because that money supported Plaintiff and the children's lifestyle in a manner similar to the marital lifestyle.

Plaintiff is not owed a Mallamo credit. (Pb49). Plaintiff seeks a Mallamo credit based on the alimony and child support awarded on remand. However, Plaintiff failed to demonstrate a need for additional *pendente lite* support, other than non-credible testimony about "loans" from her parents. Therefore, a Mallamo credit is not appropriate.

Plaintiff is also disingenuously seeking a Mallamo credit of $32,324 for the time period where she admittedly used joint marital funds to pay for her and the children's expenses and legal fees, January 2020-April 2020. (Pb48). Plaintiff's request constitutes a double dip because Judge Chrystal found that Plaintiff already used approximately $54,000 in joint marital funds for living expenses and $32,000 for legal expenses during that time. (Da174). Plaintiff is not owed any Mallamo credit because she did not need additional support as she

already used marital funds to pay expenses.

B. Plaintiff's calculations for a Mallamo/Equitable Distribution credit offset are incorrect and misleading. (Pb52-Pb56).

Plaintiff's Mallamo calculation is erroneous and constitutes an improper double dip. This erroneous calculation forms the basis of her request for a credit offset, and therefore her entire calculation is flawed. Plaintiff also adds on a request for $18,468, which was erroneously awarded as a Mallamo credit in the FJOD, as addressed in greater detail below. (Da35).

Plaintiff's calculation of the equitable distribution credit she alleges she is owed fails to account for the error noted by the Appellate Division. (Pb54-Pb55). Namely, her calculation includes the two brokerage accounts that Plaintiff received via the Mallamo adjustment, which the Appellate Division determined was an error. (Da176). The case was remanded in part to correct this error, yet Plaintiff's calculation nevertheless includes these accounts just like Judge Chrystal's calculation.

As to the $17,125 in marital assets Defendant received as an advance on equitable distribution, this was used to pay "rental" arrears for June, July, August, September, and October 2020. (Da126). In other words, it was a Mallamo adjustment. It was therefore erroneous for this money to be included in the equitable distribution calculation and excluded as a Mallamo adjustment. Judge Chrystal's equitable distribution calculation included all of the parties'

marital assets as of the date of Complaint, which means that the $17,125 was included as well. (Da258-Da259). Therefore, the $17,125 must be treated the same as the two brokerage accounts. (Da126). Plaintiff is not owed any payment for "credits." (Pb55-Pb56).

C. The facts at trial revealed that the *pendente lite* support was unjust: the Mallamo adjustment to Plaintiff should be vacated, Defendant should be reimbursed $79,070, and Plaintiff should be compelled to pay Defendant a Mallamo credit of $153,163 for overpayment of *pendente lite* support.

Defendant is entitled to a Mallamo credit for his overpayment of support. Defendant accepts the obligation to pay unallocated *pendente lite* support of $1,666/month, totaling $40,484, and does not seek a Mallamo credit for this portion as his contribution to the support of his children. However, Defendant should not have been compelled to pay Plaintiff above and beyond the fulfillment of her needs. The promissory notes signed by Plaintiff and her parents demonstrate that her parents continued to fund her lifestyle during the divorce just as they did throughout the marriage, and as they have throughout Plaintiff's entire life. Judge Chrystal found that Plaintiff will never be called upon to repay these "loans" because her parents have always been incredibly generous and Plaintiff does not have any income from which to repay the loans. (Da246; Pb46; Pb49). Plaintiff's parents continue to fund Plaintiff's lavish lifestyle as they always have. Plaintiff received approximately $31,113/month

of monetary gifts via "loans" from her wealthy parents, on top of the $7,969/month in *pendente lite* support from Defendant, for a total of $39,082/month. Defendant should be reimbursed by Plaintiff for the Schedule A expenses ($6,303/month) for 24.3 months from the date of the *pendente lite* order (4/22/2020) to the judgment's commencement date (5/1/2022), totaling $153,163. (Da40).

The promissory notes demonstrate that Plaintiff orchestrated a scenario where she could misrepresent that she was in "need" and Defendant was "not supporting his family." Judge Chrystal made a finding following trial that Plaintiff's testimony that she would have to repay the loans "not believable" as there was "no history she was required to repay her parents and no credible evidence she would be required to do so." (Da254). This finding, coupled with the finding that Plaintiff did not demonstrate a need for more than $1,666/month in support (Da125), show that the facts elicited at trial do not support a Mallamo credit to Plaintiff and that the *pendente lite* support award was unjust. They also show that Plaintiff funded the marital lifestyle, not Defendant, and Plaintiff's parents will continue to provide Plaintiff and the parties' children with a lavish lifestyle comparable to that of the marriage.

D. Plaintiff was unjustly enriched when the court offset the purported $37,313 in arrears with 50% of the J.P. Morgan account in the amount of $43,477, which exceeded the alleged arrears. (Da35; Da318; Da162).

It was improper for the court to deny Defendant his share of equitable distribution of the J.P. Morgan account and to compel him to provide Plaintiff with a Mallamo credit of $61,945. In addition, Defendant was permitted to use $17,125 from his share of the marital assets to pay "rental" arrears for June, July, August, September, and October 2020 as an advance on his share of equitable distribution, increasing an incorrect Mallamo adjustment in Plaintiff's favor of $79,070 from Defendant's share of equitable distribution, which must be recalculated. (Da37). The Mallamo adjustment given to Plaintiff should be vacated and Defendant should be reimbursed $79,070.

CONCLUSION

For the foregoing reasons, Defendant's appeal should be granted. The matter should be remanded for the appropriate factual determinations and analyses, as the Appellate Division directed in the initial appeal.

Respectfully submitted,

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	SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION DOCKET NO. A-001567-24
AMANDA PARISI, Plaintiff/Respondent/ Cross Appellant, v. DANIEL PARISI, Defendant/Appellant/Cross Respondent.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION-FAMILY PART UNION COUNTY Docket No. FM-20-1124-20 CIVIL ACTION SAT BELOW: HON. THOMAS J. WALSH, P.J.F.P.

PLAINTIFF/RESPONDENT/CROSS APPELLANT'S REPLY BRIEF

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Date Submitted: 7/15/2025

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REPLY PRELIMINARY STATEMENT

Plaintiff/Respondent/Cross Appellant (hereinafter "Plaintiff") relies largely upon the Cross Appellant Brief filed May 27, 2025. With the culmination of the parties' submissions on the second appeal in this matter, it bears repeating that the costs expended in connection with quantifying the lifestyle of a four-year and four-month marriage has surely exceeded the amount in controversy, particularly since the term of alimony ended after only eighteen months. Appellant must be held accountable for his actions, his disregard for his family, and his financial obligations to them. What should remain at the forefront of any determination in this particular case is not a quantification of some marital lifestyle that meets the exacting standards demanded by Defendant. Rather, the issue at the core of this case is whether any determination of marital lifestyle after only four years of marriage should entitle the Defendant to be absolved of obligations to his wife and children solely because certain funds utilized (predominantly for the children) emanated from gifts. The fact that Defendant continues to argue that (1) the marital lifestyle ascribed to the parties' income exceeded Defendant's own income during the marriage and thus "could not possibly be accurate", while (2) *concurrently and repeatedly proffering that the extravagant marital lifestyle far exceeded the quantified amount* as a result of the Plaintiff's parents ("the Pooles") financial assistance, is nonsensical. Hypothetically, had the Court accepted Defendant's preposterous claims that the marital lifestyle number "must be at least $587,166/net year and could be as much as $627,476/net

year," the Court would still have been well within its discretion to then reject any portion thereof, particularly in light of the fact that the Pooles still have "not a whit" of obligation to provide support. Assuredly, the "unjust result" would only have derived from quantifying the marital lifestyle above Defendant's income and then awarding alimony based upon *that* figure alone.

What Judge Chrystal and Judge Walsh both recognized, and the Appellate Division acknowledged, was that at the time of the divorce Plaintiff had no earned income, that Defendant's income was on an upward trajectory and he could earn a handsome income in the future, that the Pooles had no obligation to support Plaintiff or the children, and throughout this short-term marriage, regular marital expenses were paid using Defendant's income. These are the very bases upon which the trial court was undoubtedly permitted to calculate a lifestyle, and then subsequently make an adequate and reasonable award of support against its finding. The alimony award of $2,508 per month ($30,096 per year) was fair and equitable under the circumstances, whether the marital lifestyle was $18,340 per month (Plaintiff's 9/21/2021 CIS budget), or $52,078 per month (Defendant's 2/24/2020 CIS), or somewhere in the range of the $48,930.50 to $52,289.67 figure Defendant estimated on remand. The simple fact is the trial court noted that during the marriage, the parties utilized Defendant's income to pay the majority of their living expenses, and Defendant could afford to pay the $2,508 per month in alimony for what amounted to a year and a half based on his rising earnings.

REPLY PROCEDURAL HISTORY

Plaintiff shall rely primarily on the statement of Procedural History set forth in her May 27, 2025 Cross Appellant Brief. By way of letter dated January 29, 2025, Judge Walsh advised counsel of his impending retirement, and suggested to the extent Plaintiff was seeking to correct the Court's Remand Order, or have addressed specific issues omitted from the Court's determinations, that a Motion for Reconsideration be filed. Da198. Defendant filed his Notice of Appeal on January 30, 2025. Da1-Da4. Procedurally, this effectively precluded Plaintiff from filing any such motion in the trial court, as it lacked jurisdiction to do so pursuant to R. 2:9-1(a). Principles of judicial economy mitigate against reconsideration motions while an appeal is pending, because any such motion could then affect, impair or destroy the subject matter of the appeal. Accordingly, Plaintiff filed a Notice of Cross Appeal on February 6, 2025.

REPLY STATEMENT OF FACTS

Plaintiff relies primarily on the Statement of Facts set forth in her May 27, 2025 Cross Appellant Brief. The below is offered to correct the numerous misstatements made by Defendant.

Contrary to Defendant's assertions that Judge Chrystal did not find the parties mutually agreed Plaintiff would stay home or that Defendant was the primary

breadwinner (DCRb4[1]), she did find the parties mutually agreed Plaintiff would remain home, opining that "[f]rom the parties' sincere testimony, the Court finds they agreed to this plan." Da248. Judge Chrystal further opined in the FJOD that the parties' "roles during this marriage were clearly defined that Plaintiff stayed home with the children and Defendant worked outside the home." Da209. The Appellate Division confirmed that Defendant "admitted that he financially supported plaintiff and the children, and that plaintiff's parents had no obligation to do so." Da134. There is no other logical deduction or takeaway to be gleaned from this information than Defendant was the primary wage earner, and his income contributed materially to the day-to-day living expenses of the family.

That Defendant's earnings paid the regular living expenses for the family is, in fact, bolstered and supported by Plaintiff's trial testimony. Plaintiff distinctly attested to the fact that the sources of money upon which she and Defendant relied through the term of marriage "for all of [the] household expenses" and "to make ends meet" was their combined earnings – and then just Defendant's when Plaintiff stopped working in 2017. 3T:121:9 to 3T:124:25; 3T126:1-12. This is markedly incongruous with Defendant's contention that there is no support in the FJOD or in Plaintiff's trial testimony that his earnings paid daily living expenses. (DCRb4).

Defendant's claims that Plaintiff did not prove a need for alimony are, likewise, overtly fallacious. Judge Chrystal's Letter Opinion as written is not

[1] "DCRb" shall refer to Defendant's Cross Respondent Brief.

construed to suggest the Court confirmed the nonexistence of any need for alimony. The logical conclusion drawn from the commentary that "Plaintiff has not adequately articulated her specific need" is that *some* need is implied, but the *specific amount* remained in question – it does not equate to there being no need at all. This is reinforced by the Appellate Division's observation that Judge Chrystal had "emphasized the upward trajectory of defendant's income *in support of her finding on the need for alimony*" and further that "the judge stressed that the parties' standard of living was supplemented by plaintiff's parents and she "*carefully analyzed the needs and ability to pay after considering both parties' testimony*." Da156. That a "need" existed has been sufficiently exhibited.

While Judge Chrystal remarked that "[n]either party will be able to maintain the marital lifestyle going forward without the gifts from Plaintiff's parents," (DCRb4) this is not where her analysis ended. The trial court went on to specifically articulate another crucial element stemming from the Pooles' largesse: "But the support and generosity of Plaintiff's parents who helped Defendant early in his career, also allowed Defendant to develop a lucrative, successful career, where he earns in excess of $200,000 per year (plus bonuses), and has contributed the maximum to his 401K." Defendant has already reaped significant financial benefit from the Pooles' gifts which in turn augmented his post-judgment lifestyle.

As to Defendant's focus on the fact that Plaintiff "admitted there was assistance from the Dynasty Trust, although never quantified same with a numerical

amount" (DCRb4-DCRb5), this is yet another misinterpretation of the court's Letter Opinion. Judge Chrystal definitively concluded she "found Plaintiff's testimony credible that the only payments from any Trusts that Plaintiff received from her parents is a reimbursement from the Dynasty Trust in the amount of $47.99 for a piece of hardware she advanced for 32 Beekman Road." Da247; 3T:19:20 to 3T:20:3; 3T:113:18 to 3T:114:23. The "assistance" from the Dynasty Trust solely related to the homes where the parties resided during the marriage, for which they paid below market rent. *This* is the figure that had not been quantified. Judge Walsh, in his January 23, 2025 Opinion, provided for a $4,000 enhancement towards the rental property. Defendant's disdain for this figure does not negate the fact that the trial court advanced a "numerical amount" in quantifying the lifestyle. Indeed, the Appellate Division confirmed "[i]n this case, the record established that plaintiff and the children have not received any guaranteed income from the Dynasty Trust or the GRAT and will not receive income until they reach age sixty-five. The spreadsheets in evidence showed the distributions from these trusts and confirmed this information." Da151. Defendant's references to the denial of Defendant's access to discovery regarding the trusts is improper and these allegations are not part of the instant appeal, as the Appellate Division affirmed that the trial court did not abuse its discretion on any discovery matters. Da152. The suggestion that "Judge Chrystal declined to consider the trusts for alimony purposes, notwithstanding Plaintiff's admission that there was assistance from the Dynasty Trust" is misplaced; the

Appellate Division articulated it was "mindful of the fact that the information is irrelevant on the issue of alimony because a party's beneficial interest in a trust is not an asset held by that person, and income shall not be imputed based on that beneficial interest in determining an alimony obligation." Da151-Da152.

Defendant's recitation of Plaintiff's trial testimony pertaining to the $100,000 contributed by the Pooles conveniently omits pertinent information as to its donative intent. The full testimony of Plaintiff explains that "they started gifting us some money so that we had money for a move, furniture, we were painting, um, things like that, and then, um, going forward for the upkeep on our hou—on our home, um, and whatnot, to help supplement Daniel's income." 6T:17:22 to 6T:18:2. The money was not to supplement Defendant's income in some overall general manner – there was assuredly a designated purpose: to ease the parties' transition into the home and for enhancements to the home owned by the Trust.

As it pertains to the trial court's findings on the loans, while the Court may have deemed Plaintiff's testimony as not credible, there was ample testimony to indicate Plaintiff had been making payments on the loans. 8T:19:18 to 8T:20:23; 8T:25:1 to 8T:26:24. What the trial court failed to recognize (and the Appellate Division may take judicial notice of) is that if the notes go unpaid, and the IRS accordingly considers the $366,332 as a gift, this would result in significant tax implications to the Pooles and the associated need to file and pay gift taxes on the funds. At the time of the divorce in 2021 the gift tax exclusion was only $15,000 –

significantly below the sums loaned to the Plaintiff. Further, if the promissory notes are not paid, and the debt is "forgiven" as the court suggests, there would be significant tax implications to Plaintiff, as these funds would be considered taxable income to her. Either way, to suggest that the loans are in some way a sham would be illogical due to the associated tax repercussions.

LEGAL ARGUMENT

POINT I
THE ALLEGED MATHEMATICAL INCONSISTENCIES ARE HARMLESS ERROR AS THE MARITAL LIFESTYLE WAS QUANTIFIED AND THE TRIAL COURT WAS WITHIN ITS DISCRETION TO REJECT THE ENHANCEMENTS FROM THE POOLES IN SETTING AN EQUITABLE ALIMONY AWARD. (Da5-Da9)

Historically, there often appeared to be a dominant focus on maintaining the prior standard of living. Terms such as "marital lifestyle", and "status quo" rise to the forefront of nearly every legal argument for alimony, in an amount necessary to maintain that which the parties had become accustomed during the marriage. Prior to the 2014 amendments, various judicial opinions stressed the goal of alimony was "to assist in achieving a lifestyle that is reasonably comparable to the one enjoyed during the marriage." Crews v. Crews, 164 N.J. 11, 16 (2000); Weishaus v Weishaus, 180 N.J. 131 (2004). Once again noting the aforementioned cases dealt with a fourteen- and fifteen-year marriage respectively, the marital standard of living was a relevant and appropriate factor for consideration. Crews, 164 N.J. at 16, 25. While prior court opinions emphasized the importance of marital lifestyle, nowhere in Crews,

Weishaus, or any other precedential opinion was there any pronouncement that alimony should be considered in a factual and legal vacuum, focusing on certain factors to the exclusion of others – for example, the ability to maintain the former marital lifestyle to the total exclusion of the supported spouse's similar right to seek maintenance based on the supporting spouse's ability to pay and earning capacity. Even before enactment of the 2014 amendments to the alimony statute, "marital lifestyle" was never the sole and exclusive factor for consideration in an alimony analysis. See Dudas v. Dudas, 423 N.J. Super 69, 73 (Ch. Div. 2011). N.J.S.A. 2A:34-23(b) in its pre-2014 form, provided for a multi-level analysis of alimony which included thirteen factors, with the marital "standard of living" as only one of many considerations in an alimony claim.

In 2014, the Legislature enacted several amendments supporting the concept of a court considering all applicable statutory criteria under N.J.S.A. 2A:34-23 in an alimony analysis. While marital standard of living remains a relevant statutory factor, there are at least three amendments to the statute which ensure clarity and underscore the concept that the prior standard of living is not, and never was, the paramount consideration in an alimony case: (1) the statute now directs courts to consider "the practical impact of the parties' need for separate residences and the attendant increase in living expenses on the ability of both parties to maintain a standard of living reasonably comparable to the standard of living established in the marriage" N.J.S.A. 2A:34-23(c); (2) the amendment expressly provides neither party has "a greater

entitlement to that standard of living than the other." N.J.S.A. 2A:34-23(b)(4); (3) the statute declares that "no factor shall carry more weight than any other factor unless the court finds otherwise" N.J.S.A. 2A:34-23(b).

As it pertains to the focus of Defendant as to whether the marital standard can be maintained, this is a matter of simple mathematics. Ultimately, as in any case, there may not be enough marital money to support two separate households at the same financial level they could jointly afford and became accustomed to while benefitting from the economies of shared living expenses. See Dudas, 423 N.J. Super at 74-75. This reality often exists without consideration of the additional fact that both parties may also be incurring significant new costs in restructuring their lives, including the burden of ongoing litigation expenses. In short, while the marital lifestyle may have arguably once temporarily "belonged" to both parties, the ability to actually and separately maintain such lifestyle often functionally and necessarily expires and disappears with the practical end of the marriage itself.

Defendant misquotes Weishaus in suggesting that after determining the marital lifestyle, the court *must* consider "the source of funds that supported that lifestyle" to evaluate "whether there are sufficient presently available funds to sustain the marital standard." DCRb8. Rather, Weishaus declares "[i]n the determination of the marital standard, the court establishes the amount the parties needed during the marriage to maintain their lifestyle. That is separate from the identification of the source of funds that supported that lifestyle . . ." The Weishaus court goes on to opine that as it

pertains to whether there are funds to sustain the marital standard (or lack thereof): "[i]f not, due in part to the loss of previous sources of income that cannot be replenished from other sources, then obviously the marital standard cannot be maintained." Weishaus, 180 N.J. at 145-146. There is no presumption that the marital standard must be maintained, just as there is no presumption that the Pooles must provide support to Plaintiff in lieu of Defendant; the Pooles are not "presently available funds to sustain the marital standard." Although Weishaus discussed whether gifts from third parties should be considered in the determination of the marital lifestyle, it could not require the court to add parental gifts to a party's income.

Against this backdrop, the trial court properly conducted its alimony analysis. The alleged "need" of the Plaintiff and the marital lifestyle cannot be the only considerations, and indeed there is no authority to do so. The court quantified the marital lifestyle at $32,346 although this is still not acceptable to Defendant. For clarification, the $21,615 figure was derived from deducting the monthly savings component ($2,000) and adding back in to Plaintiff's $18,340 budget the Schedule C line items covered by the Pooles: $421 for private school, $1,510 for counseling, $3,225 for the nanny and $119 for the cell phone – totaling $5,275. Da89. The reason the math is harmless error, and why, "in full recognition of these principles" (referencing Weishaus and S.W. v. G.M., 462 N.J. Super. 522 (App. Div. 2020)) quantifying the marital lifestyle "helps not a whit in determining the appropriate level

of alimony" is because, particularly in this case, a strict adherence to the level of marital lifestyle ignores all other considerations already made by the court, including but not limited to: (1) while the Pooles were a generous source of gifts, they have no obligation to support this family (Da8-Da9); (2) the "generous gifts of [the Pooles] enhanced Defendant's ability to earn and save" and "these gifts cannot be considered in determining alimony" (Da284); (3) it was "equally apparent that the parties had expenses monthly they paid without contribution of Plaintiff's parents" (Da8), (4) Defendant could not be relieved of an alimony obligation (Da9); (5) the support and generosity of the Pooles allowed Defendant to develop a lucrative, successful career where he earns in excess of $200,000 per year (plus a bonus of approximately $79,000) and contributed the maximum to his 401k (Da242); (6) the trial court "emphasized the upward trajectory of defendant's income in support of [its] finding on the need for alimony" and "carefully analyzed the needs and ability to pay after considering both parties' testimony" (Da156); (7) there was no error in the duration of alimony (Da157); (8) Alimony should be based on Defendant's current earnings based on "momentum of a marriage" (Da278); (9) the court imputed income to Plaintiff of $40,400 in contemplation of its alimony award (Da282); (10) Plaintiff has been out of the job market since 2017 (Da282); (11) with the distribution and each party's assets, each will be able "to live a very comfortable lifestyle going forward" (Da284); (12) Plaintiff's beneficial interest in the Pooles' trusts are not assets held by her from which income can be imputed to her for purposes of alimony and child

support (Da289) and so on. Clearly, in this case, the bulk of the factors considered by both trial courts weigh in favor of the alimony award no matter the lifestyle quantification.

Particularly for this short-term marriage of only four years and four months, where alimony endured for only eighteen (18) months before it terminated, a literal reading and application of S.W. would create an unrealistic and almost unwritten right to appeal. No matter the quantification of the marital lifestyle, it is always limited by the supporting party's ability to pay. Here, the court's determination of alimony is a direct function of Defendant's income and capacity to earn, as both the case law and the trial court support the obvious fact that the Pooles have no support obligation. To the extent the Pooles may have contributed gifts during the marriage, they are not and cannot be required to continue supplementing Plaintiff's income post-divorce. Ultimately, what Defendant's argument suggests is that Plaintiff's parents should stand in the shoes of the alimony payor and relieve him of his obligation. It seems because Defendant could not force the issues surrounding the Trusts, he now seeks to have the Pooles act in the stead of the Trusts and himself as a source of income to Plaintiff. It is important to remember lifestyle is more than merely dollars spent. It encompasses lifestyle choices and expectations of the parties – common sense would dictate the longer the marriage, the greater weight that has to be given to the consequences of those choices.

As to Defendant's contention that a full alimony analysis was mandated by the

Appellate Division, it is again reiterated that the Appellate Division confirmed the judge "addressed each of the requisite statutory factors" and went on only to address those factors for which Defendant had challenged the adequacy of the findings. Da155. It would be somewhat pointless for the Appellate Division to suggest that a full analysis was again required when it addressed only specific factors and concurrently noted it found no error in the judge's determination of the duration of the alimony award. Additionally, in light of everything set forth above, there is nothing that precluded Judge Walsh, after quantifying the marital lifestyle, from then agreeing with the analysis of Judge Chrystal, whose limited duration alimony figure "was fair to both of the parties." Da9.

As a final note, Defendant's reliance upon Reese v. Weis, 430 N.J. Super. 522 (App. Div. 2013) is both inapplicable and inapposite to the instant matter. Alimony awards by their very nature recognize that *marriage* is "a shared enterprise, a joint undertaking, that in many ways is akin to a partnership." Rothman v. Rothman, 65 N.J. 219, 229 (1974). The financial support that becomes an economic benefit in the context of cohabitation is not the same as a parent who owes no duty to support. One's relationship with their parents is not akin to marriage. To the extent that Reese v. Weis is applicable, Defendant has already reaped the benefit of such a cohabitation between Plaintiff and her current husband by way of his alimony term ending upon her remarriage.

POINT II

THE CHILD SUPPORT AWARD SHOULD NOT BE DISTURBED AS THE COURT DID NOT ABUSE ITS DISCRETION IN ORDERING DEFENDANT TO PAY CHILD SUPPORT ONCE THE MARITAL LIFESTYLE WAS QUANTIFIED. (Da5-Da10; Da166-Da177).

Defendant fails to provide any factual or legal basis to appeal the Court's award of child support. The existing law of the State of New Jersey provides that discretionary gifts from the Pooles cannot be considered in the calculation for alimony and child support, *even if the marital lifestyle included such gifts.* Once again, in Weishaus, 360 N.J. Super. at 286, the Wife claimed that the parties' marital lifestyle was supported, at least in part, by the husband's wealthy mother. The court ruled that although it was clear that the husband's mother supplemented the couple's standard of living, it could not impute those monetary gifts as part of the standard of living because the court could not force the husband's mother to continue making such gifts. The determination of the original amount of child support should be based on the physical and social condition of the parties, as well as the income and assets of the parties. Lepis v. Lepis, 83 N.J. 139, 150 (1980). Notably, the law of Lepis does not provide for consideration of the income or assets of third-parties. In spite of the speculation that the Pooles will continue to provide such gifts because they have always done so, it remains palpably incorrect for Defendant to suggest that the Pooles' generosity is in any way relevant to his appeal as to the child support awarded. The Defendant seeks to ignore the prevailing case law, which makes clear

that neither the Pooles' contributions nor the existence of the Pooles' trusts is a basis to impute further income to Plaintiff nor do they weigh in to the child support award. Again, this is precisely why the strict adherence to quantifying the marital lifestyle in this particular case "helps not a whit" in determining the child support award.

There is no legal basis to suggest that Plaintiff's net income – which remains $0 in spite of the $40,400 imputed to her for purposes of alimony and child support calculations – "must be a function of the quantification of her lifestyle funded by her parents." DCRb13. This is in stark contravention to any existing case law, and there is no authority upon which Defendant can plausibly advocate such is the case. To suggest that Plaintiff "can make a motion to the court just like any other litigant who experiences a change in circumstances" pursuant to Lepis is ludicrous. On what basis could Plaintiff possibly argue a change in circumstances in the event her parents cease to provide financial support, when any attempt to bring such an absurd application would be wholly inconsistent with the dictates of Tannen v. Tannen, 416 N.J. Super. 248 (App Div. 2010)? Plaintiff cannot argue a decrease to her income, as it is well established the Pooles' generosity cannot constitute income to the Plaintiff.

As to Defendant's suggestion that the request for reimbursement of alleged expenses for the children exceeded the scope of remand, such is also not the case. The Appellate Division's remand contemplated a recalculation of child support and recalibration of the children's expenses, as it noted that "plaintiff remarried approximately a year and a half after the alimony payments were ordered in the JOD.

Although we find no error in the durational alimony award, on remand, the judge shall take this change of circumstance into consideration." Da157. The termination of alimony directly impacts child support and child-related expenses, and the remand instructions dictated that the trial court address these issues.

Plaintiff further refers the Court to the arguments pertaining to child support in the May 27, 2025 Brief. The child support ordered herein is appropriate and the Defendant can well afford to pay the amount awarded. His mere dissatisfaction with the amount ordered does not warrant a reversal of the award.

POINT III

THE TRIAL COURT DID NOT ERR IN REAFFIRMING THE PRIOR JUDGE'S DETERMINATION AS TO MALLAMO AND RELATED CREDITS, BUT ERRED IN NOT RECALCULATING SAME ONCE THE MARITAL LIFSTYLE HAD BEEN QUANTIFIED AND THE ALIMONY AND CHILD SUPPORT AWARDS WERE CONFIRMED. (Da5; Da9-Da10).

Plaintiff relies largely upon the arguments pertaining to the Mallamo credits as set forth in the May 27, 2025 Cross Appellant Brief. While Defendant argues he was ordered to pay for an artificially enhanced lifestyle, such is not the case. Both Judge Chrystal and Judge Walsh based their decisions "on the level of support that was paid by Defendant during the marriage." Da9. Nothing in the Defendant's Schedule A, totaling $6308 per month, reflected anything other than the regular home-related expenses paid by the parties during the marriage. DCa221-DCa222. Had alimony been premised upon the "enhanced lifestyle", assuredly it would have been higher. As Judge Walsh confirmed:

> Judge Chrystal ordered Defendant to pay the schedule A expenses that the parties were accustomed to paying pursuant to their lease for the property, plus $1,667 for other expenses. Thus, in making her decision, she was relying on that portion of the lifestyle actually borne by the parties. To do otherwise would have made no sense. If the PL support was based on the enhanced lifestyle, that would have resulted in Defendant having to pay support in excess of what they did, or likely could have done, during the marriage. Da10.

Defendant's suggestion that he did not earn enough money to pay for the portion of the marital lifestyle attributable to his income is disingenuous in light of the trial court's findings that Defendant was able to develop a lucrative, successful career where he earns in excess of $200,000 per year – plus a $79,000 bonus – and contributed the maximum to his 401k (Da242). This finding is of great consequence, because while income is the primary source considered in setting the amount of alimony, his or her property, capital assets and capacity to earn are also proper elements for consideration. Innes v. Innes, 117 N.J. 496, 503 (1990). Ergo, the repeated claims that Defendant did not have an ability to pay based solely on his 2020 income are misleading.

Defendant's assertions that "there was no testimony during the lengthy trial as to why this [$1,666/month] was not enough to fulfill Plaintiff's needs" is untenable. It is undisputed that Plaintiff has a need for support, and that the Pooles have no obligation to provide that support. The Appellate Division confirmed the trial court properly addressed and opined on Plaintiff's needs, noting "the upward trajectory of defendant's income" in support of its finding on the need for alimony. The judge

stressed that the parties' standard of living was supplemented by Plaintiff's parents and that she "carefully analyzed the needs and ability to pay after considering both parties' testimony." Da156. As it pertains to Plaintiff's testimony about her "need" or why the $1,666 was insufficient, Defendant has only provided partial references from the record below. To outright convey that "Judge Chrystal found that "she did not provide any testimony in this regard at any time during trial" is fallacious. DCRb19. The reference cited, in its entirety, states not that the testimony was completely devoid of any explanation as to the sufficiency of the support, but rather the testimony was deemed not credible because it pertained to loans taken from Plaintiff's parents. Da291. There undoubtedly was testimony as to why Plaintiff could not make ends meet based on $1,666 in support, with a personal budget of at least $5,390, to which Plaintiff responded she had "gone into debt" by taking out money from her parents. 6T:64:16 to 6T:65:1.

As set forth above, the loans incurred by Plaintiff reflect actual debt which must be repaid, lest either the Pooles or Plaintiff face the significant associated tax repercussions. To the extent Defendant suggests there was no evidence provided to show how much of the loans went towards family expenses versus how much went towards counsel fees (DCRb20), the Plaintiff assuredly provided Defendant with a Certification of Services at trial reflecting the total amount of counsel fees.

The suggestion that credits sought by Plaintiff pursuant to Mallamo v. Mallamo, 280 N.J. Super. 8 (App. Div. 1995) of $32,345 is "disingenuous" is yet

another erroneous claim made by Defendant. DCRb20. This does not constitute a "double dip" because Judge Chrystal "also found that Defendant used approximately $35,000 from marital funds for his own legal fees." Da175. Thus, Defendant received comparable credit for the use of marital funds. The calculations made by the Plaintiff are not flawed or inaccurate. What Defendant fails to contemplate is the method by which Plaintiff seeks to correct the errors set forth by the Appellate Division. Plaintiff provided a full analysis on remand which included reducing the total account values by the amounts advanced to both parties *pendente lite*, and then reconciling the appropriate credit owed by Defendant, along with the equalization in counsel fees paid from marital accounts. Stated another way, what Plaintiff endeavored to do was to put *everything* (i.e. all joint marital assets, including the $17,125 advance to Defendant which is contained under the line item labeled "Advances to each party per 9/14/2020 and 3/9/2021 Order" – although it is now noted that the Order permitting Defendant to use marital funds to pay rent arrearages was dated March 12, 2021) back into the marital pot, and then reallocate it based on the proper credits to each respective party. This seemed a far less Sisyphean task than trying to address each individual credit on its own.

CONCLUSION

For the foregoing reasons, Defendant's appeal must be denied in its entirety, and Plaintiff's cross appeal properly warrants a reversal and remand.

Respectfully submitted,

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By:_____
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