

of the property of one or both of the parties."²¹ In addition, the parties were *authorized* to engage in [*31] acts reasonable and necessary to the conduct of the parties' usual business and occupation; make expenditures and incur indebtedness for reasonable attorney's fees; and make expenditures and incur indebtedness for [**32] reasonable and necessary living expenses for food, clothing, shelter, transportation, and medical care.²²

²¹ See, Paragraph (2) (b) of Order dated December 23, 2011

²² *id.* at Paragraph 5.

Dr. Wright-Francis argues that Mr. Francis excessively spent and wasted assets. Dr. Wright-Francis submitted reports and sworn testimony analyzing Mr. Francis' income and expenses.²³

²³ See, Respondent's Exhibits 3 and 3A.

[13] Although there is some evidence that Mr. Francis withdrew Two Hundred Twenty Thousand One Hundred Seventy Nine Dollars and Ninety Three Cents (\$220,179.93) between 2011 and 2012, there is no evidence Mr. Francis deliberately destroyed, concealed or harmed the parties property. The money Mr. Francis withdrew from his annuity was used to pay expenses, including expenses associated with his children's care, the marital homestead, businesses and living expenses, they are reasonable and necessary.²⁴ The Court also considers the fact that Mr. Francis was terminated from his employment with VINGN and used his investments [*32] to support his obligations and standard of living.

²⁴ Petitioner's bank statements submitted at Deposition show payment to his attorney and reasonable and necessary business and living expenses.

[14] Moreover, the Supreme Court in *Walters v. Walters* explains that there must be sufficient evidence that a party intentionally disobeyed a Court order to be held in contempt. To clarify its position, The *Walters* Court quotes the Court of the Second Circuit of Appeals: [HN10] "A party may be held in civil contempt for failure to comply with a court order if '(1) the order the contemnor failed to comply with is clear and unambiguous, (2) the proof of noncompliance is clear and convincing, and (3) the contemnor has not diligently attempted to comply in a reasonable manner.'" *Id.* at 352 (*quoting Paramedics Electromedicina Comercial, Ltda. v. GE Med. Sys. Info. Techs., Inc.*, 369 F.3d 645, 655 (2d Cir. 2004)).

Accordingly, it is not unreasonable to expect Mr. Francis to use his available resources to finance his daily and regular obligations. Dr. Wright-Francis fails to provide clear and convincing evidence of intent to harm marital assets. For that reason, the Court cannot find that Mr. Francis excessively spent and wasted marital assets in 2011 and 2012, in violation of the Court Order entered on December 23, 2011.

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