

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT  
PROBATE AND FAMILY COURT DEPARTMENT

WORCESTER DIVISION

DOCKET NO. WOXXXXXXX

**WEBBER,**  
*Plaintiff*

v.

**WEBBER,**  
*Defendant*

**JUDGMENT**

*(on Complaint for Modification filed August 23, 2017)*

The above captioned matter came before the Court (German, J.) for trial on April 18, 2018. The plaintiff, Webber, was present and represented by Attorney Michael M. Franklin. The defendant, Webber, was present and represented by Attorney Brian M. Flynn. At trial, the Court accepted 10 exhibits into evidence. The parties were the only witnesses. Upon consideration of the evidence and the applicable statutes and case law, and after assessing the credibility of the witnesses, it is hereby **ORDERED** and **ADJUDGED** as follows.

1. Defendant Webber shall pay alimony to plaintiff Webber in the amount of \$896.00 a week until the death of the plaintiff, the death of the defendant, or the remarriage of the plaintiff.
2. The defendant shall pay the plaintiff retroactive alimony in the amount of \$896.00 a week *Nunc pro tunc* to date of service of the plaintiff's complaint, September 5, 2017.
3. The defendant shall maintain a life insurance policy in the amount of \$650,000.00, naming the Plaintiff as beneficiary, for so long as he has an alimony obligation.
4. All prior judgments not modified herein shall remain in full force and effect.

Date: \_\_\_\_\_

\_\_\_\_\_  
Geoffrey R. German, Justice  
Worcester Probate and Family Court

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THE TRIAL COURT  
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**WORCESTER DIVISION**

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**WEBBER,**  
*Plaintiff*

**v.**

**WEBBER,**  
*Defendant*

**FINDINGS OF FACT and RATIONALE**  
*(on Complaint for Modification filed August 23, 2017)*

The above captioned matter came before the Court (German, J.) for trial on April 18, 2018. The plaintiff, Webber (hereinafter "K"), was present and represented by Attorney Michael M. Franklin. The defendant, Webber (hereinafter "R"), was present and represented by Attorney Brian M. Flynn.

At trial, the Court accepted 10 exhibits into evidence. The parties were the only witnesses. Upon consideration of the evidence and the applicable statutes and case law, and after assessing the credibility of the witnesses, the Court hereby enters the following findings of fact, rationale, and conclusions of law.

**I. FINDINGS OF FACT**

***Background and Procedure***

1. The parties were married on 1986, in, Massachusetts.
2. On September 11, 2006, the parties filed a Joint Petition for Divorce and a separation agreement.
3. On November 23, 2006, the Court (Hart, J.) entered a Judgment of Divorce Nisi incorporating and merging the separation agreement. Pursuant to the agreement,

R was ordered to pay \$600.00 per week in child support and K waived past and present alimony.

4. On August 23, 2017, K filed a Complaint for Modification, requesting alimony and alleging that R no longer paid child support because the parties' children were emancipated, that her income is insufficient to meet her living expenses, that her expenses have increased, and that, upon information and belief, R's income has increased.
5. The parties filed a Stipulation of Uncontested Facts at trial, which is hereby incorporated into and made part of these findings.
6. Two children were born of the parties' marriage. Both children were emancipated as of trial.

***The Age and Health, of the Parties and the Length of their Marriage***

7. K was born on xxxxxxxx, and was 54 years old at the time of trial.
8. R was born on xxxxxxxx and was 53 years old at the time of trial.
9. K is in good health.
10. R was diagnosed with irritable bowel syndrome and Crohn's disease in 1995 at the age of 31. He exhibited symptoms of these for years before he was diagnosed. These conditions require R to obtain regular medical care. However, R has nonetheless excelled in his career and earns substantial income. He has earned substantial income for an extended period of time. R has saved a significant amount of money in anticipation of extensive future medical bills or an early retirement.
11. The parties were married in excess of 20 years.

***Station and Lifestyle of the Parties and Conduct of the Parties during the Marriage***

12. The parties enjoyed a comfortable middle-class lifestyle and station during the marriage.
13. Both R and K made significant financial and domestic contributions to their household during their marriage. The parties maintained joint bank accounts to which they both contributed and from which marital expenses were paid.

14. K worked part-time throughout the marriage, with the exception of a two-year hiatus that she took to care for her elderly parents. early in their marriage, she worked for insurance companies or insurance agencies for a period of about 7 years. During some of this period, R attended school.
15. The parties purchased the former marital home in or around August of 1992, using funds provided by R's grandmother for their down payment.
16. K performed a majority of the cooking, cleaning, shopping and laundry. She was primarily responsible for the parties' children. K was "fantastic with the children," according to R.
17. R occasionally cooked for the family.
18. After the birth of the parties' second child in September of 1993, K ran a daycare from the parties' home. She stopped running the daycare in or around January of 2001 in order to be with and help her parents, as her father was dying from cancer.
19. When she returned to work, K first began to substitute-teach elementary school in September of 2003 before obtaining a part-time position at the local library in September of 2004.
20. In 2006, K obtained full time position at the library and stopped teaching.
21. R did most of the exterior housework, although K occasionally mowed the lawn or snow-blowed the driveway.
22. At one point, R enlisted the assistance of a close friend and that friend's brother for extensive renovations to the home. The renovations took place over a 2 1/2 to 3-year period and included pouring a foundation and installing a roof on a garage.
23. During the marriage, the parties took annual family vacations. They went to Ogunquit, Maine; Cape Cod, Massachusetts; Florida; Jamaica; Sutton, Massachusetts for camping; and on trips to visit K's mother in Maine and R's father in Florida.
24. Although the parties frequently stayed for free with relatives, and although R characterized the vacations as "not expensive," K credibly testified that she never worried about how vacations would be paid for or whether they could afford them.

25. The parties went out eat during the marriage, although they only went to expensive restaurants on special occasions.
26. The parties purchased two cars for K during the Marriage. Both were new at the time of purchase.
27. At the time of the divorce, R was represented by counsel and K was not. R filled out K's financial statement for her and she signed it.

***The Parties' Incomes, Occupations, Vocational Skills, and Employability***

28. At the time of the divorce, K's gross weekly income was \$981.30, including \$600.00 in weekly child support and \$381.30 in pay from the library. (Exhibit 1).
29. K's gross weekly income was \$782.45 as of the date of trial. (Exhibit 3). She earns \$524.10 a week from her job as a librarian for the Town of Charlton and \$258.35 per week as a part-time editor for a publishing company.
30. K's work as an editor is pursuant to a contract and will end sometime this year. K credibly testified that she will seek another secondary job thereafter.
31. K took one year of education in pursuit of a teaching certificate but did not complete the program. She credibly testified that she has not returned to school because she could not afford to do so.
32. K is employable at the level of her current employment, and likewise has vocational skills suited thereto.
33. R has worked continuously in high earning banking positions throughout much of the parties' marriage, and from their divorce until trial on this matter.
34. R is the Executive Vice President and Chief Executive Lending Officer of Cornerstone Bank.
35. At the time of the divorce, R earned gross weekly income of \$3,366.35. (Exhibit 2).
36. He now earns \$6,406.87 per week in gross income, pursuant to his financial statement. (Exhibit 4).
37. In 2017, R's W-2 reflects gross earnings of \$531,692.93. (Exhibit 6). However, R reported only \$302,769.89 in gross income from 2017 on his financial statement.

(Exhibit 4). R testified the discrepancy represents formerly established funds, set aside by his employer before 2017, which were untaxable until a corporate merger required their inclusion in R's 2017 tax filings. He also testified that he has no access to this money and that his actual receipt of said funds is contingent and not guaranteed. This explanation is not footnoted or otherwise explained on R's financial statement.

38. During the parties' marriage, R went to Worcester State College for his Bachelor's Degree. He then went to graduate school at Suffolk University. R has extensive vocational skills and is employable in well-compensated executive banking positions.

### ***The Parties' Estates***

39. At the time of divorce, K reported total assets of \$302,482.00. (Exhibit 3).

40. At trial, she reported total assets of \$255,050.72, including:

- a) the former marital home, located at 56 Haggerty Road in Charlton, Massachusetts, with \$172,636.21 in equity;
- b) her Honda Civic, valued at \$4,881.00;
- c) a Massachusetts Deferred Compensation Smart Plan valued at \$21,824.61;
- d) a Fidelity IRA valued at \$18,708.91;
- e) two savings accounts, containing \$3,000.00 and \$31,900.00; and
- f) a checking account containing \$1,100.00.

41. At the time of divorce, R reported total assets of \$252,065.38. (Exhibit 4).

42. At trial, R reported total assets of \$1,864,221.49, including:

- a) unencumbered real property located at 123 South Street, Auburn, Massachusetts, jointly owned by R and his wife, with a fair market value of \$325,000.00;
- b) real property held by Anita Oxford, LLC, of which R owns 56.91% and the parties' son owns the remainder, located at 30 Thayer Pond Dr., North Oxford, Massachusetts, with a fair market value of \$123,000.00 and an outstanding mortgage of \$73,975.24, leaving equity of \$49,024.76;

- c) a 2017 Jeep Wrangler valued at \$14,081.72 after the deduction an outstanding loan of \$10,918.28;
- d) a Cornerstone Bank defined benefit plan valued at \$138,746.14;
- e) a Cornerstone Bank 401 (k) defined contribution plan valued at \$237,448.54;
- f) a Cornerstone Bank joint checking account containing \$362.43;
- g) an Ally Bank joint savings account containing \$10,287.38;
- h) two Central Federal Credit Union accounts, containing \$3,775.49 and \$7,467.37;
- i) a Wells Fargo Advisors joint non-qualified retirement savings plan meant to mitigate R's extensive anticipated future healthcare expenses valued at \$122,841.90;
- j) a Capital One joint money market account for the benefit of his step-son's future college expenses, containing \$173,831.22;
- k) a Wells Fargo Advisors IRA valued at \$401,001.44;
- l) a Cornerstone Bank SERP valued at \$222,706.18 as of December 14, 2017;
- m) an Ally bank joint account containing \$142, 246.92;
- n) \$3,000.00 in tools and equipment; and
- o) \$10,000.00 in home furnishings.

***K's Needs, Liabilities, and her Ability to Maintain the Marital Lifestyle***

- 43. At the time of the divorce in 2006, K reported total itemized weekly deductions from pay of \$67.86, and other weekly deductions of \$34.32, leaving net weekly income of \$879.12, including \$600.00 per week in child support.
- 44. Also, at the time of the divorce, K reported total weekly expenses not deducted from pay of \$630.47.
- 45. Accordingly, K had a surplus of \$248.65 per week.

46. At trial, K credibly reported itemized weekly deductions from pay of \$140.18, and other weekly deductions of \$91.67, leaving net weekly income of \$550.60.
47. Also, at trial, K credibly reported that her total weekly expenses not deducted from pay are \$655.30, leaving a weekly deficit of \$104.70.
48. K contributes \$67.17 per week into her retirement account, \$20.00 of which is voluntarily.
49. The Court notes that these expenses were incurred following the emancipation of the parties' children and the termination of K's child support award.
50. On cross-examination, K credibly explained how she calculated her weekly expenses and the reason for several recent increases to these expenses. For example, K replaced her dog groomer, who had suffered an injury, and her dog food, which had made her dog sick. Similarly, she reported that her heating expenses increased when she renewed her heating contract, and that she had recently incurred incidental plumbing expenses.
51. K has a Chase credit card on which she owes \$60.50 and towards which she pays \$13.97 per week.
52. K also watches the parties' granddaughter every week, from Friday until Saturday, and purchases food and clothes for her.
53. K attempts to maintain a middle-class lifestyle through frugality and restraint. Since her divorce, she has attempted to limit her expenses and, out of necessity, taken on a second job to make ends meet. However, she credibly testified that she filed this complaint for modification when frugality became insufficient to meet her needs and she was unable to pay her bills with her income.
54. K still resides in the parties' former home, located at 56 Haggerty Road in Charlton, Massachusetts, awarded to her in the divorce.
55. K drives a used 2010 Honda Civic. She took out a loan to purchase the vehicle and has not purchased any others following the parties' divorce in 2006.
56. Similarly, K refinanced her mortgage at some point, in order to obtain a lower rate and reduce her payments.



57. K saves and later eats leftovers when she goes out to eat. For entertainment, K borrows DVDs from the library at no cost and tends to her pool and flower garden.
58. K has not gone on a vacation since she went to Jamaica in 2003, during her marriage to R.
59. K sets her thermostat to 65 Fahrenheit to reduce heating costs in the winter.
60. K's home requires repairs or renovations that she cannot afford to make, including new floors, new painting and spackling, repair to the garage floor, and power washing the house and pool. The home also needs a new washing machine and a new refrigerator.
61. K replaced her roof by saving money earned from her second job.
62. K does not appear to have any discretionary expenses. She credibly testified that her expenses have increased and that, despite her frugality and dual employment, she has not been able to maintain her lifestyle without spending down her assets.

***R's Needs, Liabilities, and his Ability to Maintain the Marital Lifestyle and Pay Alimony***

63. At the time of the divorce in 2006, R reported total weekly deductions from pay of \$1,900.53, leaving net weekly income of \$1,465.84.
64. Also, at the time of the divorce, R reported total weekly expenses not deducted from pay of \$859.45.
65. Accordingly, R had a surplus of \$606.39 per week.
66. As of the date of trial, R credibly reported total weekly deductions from pay of \$3,963.46, leaving net weekly income of \$2,443.41.
67. R makes extensive weekly contributions to retirement and savings accounts, including \$1,067.49 in savings, \$423.08 in retirement, \$500.00 in contributions towards his step-son's college education, \$500.00 toward a healthcare savings account, and \$500.00 toward a joint retirement savings account.
68. R credibly reported that his total weekly expenses not deducted from pay are \$2,404.00, leaving a weekly surplus of \$39.41.
69. R spends \$100.00 per week on entertainment and \$77.00 per week on vacations.

70. R reported total liabilities of \$74,775.24, toward which he pays \$293.18 per week, and which include a Barclays Mastercard on which he owes \$800.00 and toward which he pays

\$200.00 per week, and a Saver's Bank loan securing the parties' son's condominium on which R owes \$73,975.24 and toward which he pays \$93.18 per week. However, the mortgage, taxes, insurance, and other costs appear to be mitigated---- with the exception of \$4.76 per week---- by rent that R receives for the property.

71. R has remarried. He now has a 16-year-old step-son. His wife earns approximately \$65,000.00 per year and contributes to 9% of the household expenses, according to R's credible testimony.
72. R and his wife take vacations. They have been to Naples, Florida, Nashville, Tennessee, Niagara Falls, New York, and on several trips to visit R's father in Barry, Florida. They also camp in Sutton, Massachusetts.
73. R has wisely saved extensively to mitigate against future healthcare expenses.
74. R has the ability to maintain, and indeed significantly exceed, the marital lifestyle. R also has the ability to pay alimony to K without impeding his ability to maintain his lifestyle and save for his future and his family's future.

***The Opportunity of each Party for the Future Acquisition of Capital Assets and Income***

75. K has little or no opportunity to acquire capital assets or additional income in the future. As discussed above, she has suffered a reduction in net assets since the parties' divorce, despite conscientiously limiting her spending to conform, as much as possible, to her limited income.
76. R, however, has ample opportunity to acquire future capital assets and income. He is lucratively employed and has dramatically increased his assets and income since the parties' divorce.

**II. RATIONALE**

***Applicable Law***

Where "the parties entered into a separation agreement, which was incorporated and merged into the judgment of divorce" and where "the agreement included a waiver by the wife of any claims to present and past alimony, but a reservation of the right to make a claim for alimony in the future," the later complaint for alimony is treated as "one for modification, rather

than as an initial complaint for alimony." Flor v. Flor, 92 Mass. App. Ct. 360, 365 (2017) (citing Buckley v. Buckley, 42 Mass. App. Ct. 716 (1997)). Here, the parties' separation agreement is merged with the judgment, and the Court (Hart, J.) found at the time of divorce that "[t]he agreement makes proper provisions for custody, support and maintenance, alimony and disposition of marital property." However, the agreement does not include a specific reservation of the right to seek alimony in the future. Instead, it provides:

1. Alimony to Wife: The Wife hereby expressly waives and releases all claim and demand upon the Husband for alimony, support or maintenance, or payment for any and all hospital, medical and dental services, and for any other claim of any nature whatsoever that she may have against the Husband, past or present.

Nonetheless, because the parties "expressly addressed the issue of alimony" in their separation agreement, "it [is] proper to treat the complaint as one for modification, rather than as an initial complaint for alimony" and any "alimony award[ed] here is a modification of the November 23, 2006 Judgment of Divorce Nisi. See Flor, 92 Mass. App. Ct. at 365-366.

"[A]n order for alimony in a divorce judgment that entered prior to March 1, 2012, includes, as part of its terms, the standards for modification existing at the time the judgment entered, unless the parties explicitly agreed otherwise, or the alimony reform act itself unequivocally provides a specific exception that a provision governing modification is to have retroactive effect." Chin v. Merriot, 470 Mass. 527, 535. Accordingly, the Court applies G. L. c. 208, & 37, which 'governs alimony judgments entered prior to the [alimony reform] act's effective date, under the material change in circumstances standard then in effect." Id. at 537.

### ***Change in Circumstances***

"After a judgment for alimony or an annual allowance for the spouse or children, the court may, from time to time, upon the action for modification of either party, revise and alter its judgment relative to the amount of such alimony or annual allowance and the payment thereof, and may make any judgment relative thereto which it might have made in the original action." G.L. c. 208, & 37. "Although the power. . . to modify an alimony judgment under G. L. c. 208, & 37, is broad and general, it has nevertheless been held repeatedly. . . that no modification can be made unless the party seeking modification shows a change of circumstances since the entry of the earlier judgment." Kelley v. Kelley, 64 Mass. App. Ct. 733 (2005) (quoting Binder v. Binder, 7 Mass. App. Ct. 751, 754 (1979)) (some alterations in original, internal quotation marks omitted).

The emancipation of the parties' children, and the subsequent effect on K's income, constitute a material change in circumstances for the purpose of modifying alimony. See Flor v. Flor, 92 Mass. App. Ct. 360, 364 (2017). Whether a material change has occurred rests with the discretion of the trial judge. See Bush v. Bush, 402 Mass. 406, 411 (1988). Where a child support recipient retained the right to raise the issue of alimony upon the emancipation of her child in a prior agreement, the Massachusetts Appeals Court "perceive[d] no sound reason why a child's emancipation, and the resulting loss of child support to a party, may not . . . be considered by a judge in determining whether there has been a material change in circumstances that would warrant the imposition of. . .an order for alimony." Downey v. Downey, 55 Mass. App. Ct. 812, 817 (2002). In Flor v. Flor, the Appeals Court extended this to agreements containing a general reservation of the right to revisit alimony, as is "in keeping with the general rule that '[c]hanged circumstances are those that occur subsequent to the judgment of divorce or subsequent to prior modification.'" 92 Mass. App. Ct. at 364 (quoting Pizzino v. Miller, 67 Mass. App. Ct. 872 (2006), alterations in original). That general rule applies here, and the Court will not deprive K of her right to seek alimony pursuant to her increased need for support where she made no waiver of same---only of past and present alimony at the time of the divorce.

Here, the material circumstances have changed since the judgment of divorce entered in 2006. K's gross and net income have both decreased since her waiver of alimony in 2006, even as her expenses and the cost of living have increased. K used the child support to maintain a home and life for the children. Beginning in or around 2014 and until August of 2016, K received rental income from her son and his fiancé who lived with her. She no longer receives any child support or rental income. Now, K is unable to maintain a lifestyle approximating what she enjoyed during the marriage, and filed the present complaint when she began to be unable to pay her bills, despite her frugality.

### ***Alimony Award***

Under the "standards for modification existing at the time the judgment entered," whose application is required by Chin v. Merriot, 470 Mass. at 535, "[i]n determining whether to modify a support or alimony order, a probate judge must weigh all relevant circumstances," which include the considerations proscribed by G. L. c. 208, & 34. See Kelley v. Kelley, 64 Mass. App. Ct. 733, 739 (2005). G. L. c. 208, & 34, as appearing in St. 1989, c.287, & 59, authorized the award of alimony at the time of the parties' divorce and controls the "relevant circumstances" to be considered in modifying K's waiver here. It provided that "[i]n determining the amount of alimony, if any, to be paid . . . the court . . . shall consider the length of the marriage, the conduct of the parties during the marriage, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties and the opportunity of each for the future acquisition of capital assets and income."

"While the judge must consider and weigh all the factors . . . 'the statutory authority of a court to award alimony continues to be grounded in the recipient spouse's need for support and the supporting spouse's ability to pay.'" Pierce v. Pierce, 455 Mass. 286, 296 (2009) (quoting Gottsegen v. Gottsegen, 397 Mass. 617, 624 (1986)). " If a supporting spouse has the ability to pay, the recipient spouse's need for support is generally the amount needed to allow that spouse to maintain the lifestyle he or she enjoyed prior to termination of the marriage. 'The standard of need is measured by the 'station' of parties--by what is required to maintain a standard of living comparable to the one enjoyed during the marriage.'" Id. (quoting Grubert v. Grubert, 20 Mass. App. Ct. 811, 819 (1985), additional citations omitted).

The Court has considered each of the factors listed above and finds that K has a need for alimony and R has an ability to pay. The parties are middle-aged. K struggles to maintain a middle class or lower-middle class lifestyle and station. She exercises extensive frugality and has depleted assets to pay her bills. She has foregone vacations, new vehicles, and required home repairs---all of which were available to her during the marriage. She took a second job to make ends meet, a measure she never took during the marriage. Indeed, she had the flexibility while married to R to take time off to care for her parents. Although the parties were not living an upper-class lifestyle during their marriage, K's lifestyle and standard of living are each significantly reduced relative to her lifestyle and standard of living during the marriage.

R has easily maintained and, indeed, improved his lifestyle, due to his substantial income and growing assets. R has the resources to contribute to those expenses that K cannot meet absent further depletion of her assets. There is a large disparity in the parties' opportunities for future acquisition of capital assets and income as R is in the position to earn substantial income and acquire substantial future assets while K is not. R earns 8 times the weekly pay that K earns working two jobs. His wife earns \$65,000.00 a year and pays some of their household expenses.

R's assets have increase sevenfold since the divorce while K's have decreased. He has ample assets for retirement, while K struggles to contribute \$67.17 a week into her meager retirement funds. He pays \$1,067.00 a week into savings, \$423.00 a week into his retirement, \$500.00 a week into a joint retirement fund with his wife, \$500.00 a week into a college account for his step-son, spends \$100.00 a week on entertainment, \$76.92 on vacations, and gives \$76.92 a week to charities. In addition to his higher current earnings and assets, R is employable in significantly more lucrative positions, with education and substantial experience. K's career opportunities are limited. K maintains her own health insurance through her job as a librarian. R maintains his own medical, dental, and vision insurance through his employer. Finally, K is in good health, but R suffers from Crohn's disease and irritable bowel syndrome. However, R's health has not interfered with his ability to earn a substantial income and he has mitigated against any speculative financial effects of his illness in the future by saving extensively.

The purpose of alimony is to allow a former spouse to enjoy the lifestyle that she maintained during the marriage, as much as possible. Therefore the Court is ordering alimony using the financial statements of the parties at the time of divorce and calculating 30% of the difference in their gross incomes, absent child support.<sup>1</sup> Although the "provision of the [alimony reform] act" that limits alimony awards to 30% to 35% of the difference between the parties' incomes 'is inapplicable to proceedings to modify a judgment that predates the act," the figure is reasonable, within R's ability to pay, and based on K's need for support. See *Bambauer v. Bambauer*, 89 Mass. App. Ct. 1111 (March 8, 2016) (Rule 1:28) (citing *Chin v. Merriot*, 470 Mass. 527, 535 (2015); *Rodman v. Rodman*, 470 Mass. 539, 546 (2015); and *Doktor v. Doktor*, 470 Mass. 547, 548 (2015)). This award will allow K to eliminate her weekly deficit, plan for retirement, repair her home, and begin to enjoy a lifestyle more closely approximating the marital lifestyle, including travel, entertainment, and a measure of financial flexibility. It is not equitable that K be required to work 2 jobs to maintain her lifestyle, nor should she be financially prevented from grand-parenting the parties' grandchild. The award will not allow her to "enjoy a lifestyle beyond what . . . she experienced in the marriage." See *Young v. Young*, 478 Mass. 1, 8 (2017). As such and taking into consideration the factors pursuant to G. L. c. 208, & 34, as they were at the time of divorce, R is ordered to pay K \$896.00 a week in alimony, retroactive to the date of service of the Complaint for Modification and continuing until R attains full retirement age, the death of either party, or K's remarriage.

### **III. CONCLUSIONS OF LAW**

1. Although there is no prior alimony award "it [is] proper to treat [K's] complaint as one for modification, rather than as an initial complaint for alimony" and any "alimony award[ed] here is a modification of" the November 23, 2006 Judgment of Divorce Nisi. See *Flor v. Flor*, 92 Mass. App. Ct. 360, 365-366 (2017).

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<sup>1</sup>  $(\$3366.35 - \$381.00) * 0.30 = \$895.61$ , rounded to \$896.00