

ORIGINAL

## In the Supreme Court of the State of Nevada

INDICATE FULL CAPTION: )

CHRISTINA CALDERON STIPP, )

Appellant, )

vs. )

MITCHELL DAVID STIPP, )

Respondent. )

Supreme Court No. 57327

District Court Case No. D-389203

### DOCKETING STATEMENT CIVIL APPEALS

**FILED**

JAN 11 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY J. Malone  
DEPUTY CLERK

### GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

### WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. Failure to attach documents as requested in this statement, completely fill out the statement, or to fail to file it in a timely manner, will constitute grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

This court has noted that when attorneys do not take seriously their obligation under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District: Eighth  
Judge: Frank Sullivan

Department: M County: Clark  
District Ct. Docket No. D-389203

2. Attorney filing this docket statement:

Attorney: Patricia L. Vaccarino, Esq.  
Firm: Vaccarino Law Office  
Address: 8861 W. Sahara Ave., Suite 210  
Las Vegas, Nevada 89117  
Client(s): Christina Calderon Stipp

Telephone: (702) 258-8007

If this is a joint statement completed on behalf of multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondent(s):**

Attorney: Radford J. Smith  
Firm: RADFORD J. SMITH, CHARTERED  
Address: 64 N. Pecos Rd., #700  
Henderson, Nevada 89074

Telephone: (702)990-6448

Client(s): Mitchell David Stipp

Attorney

Telephone

Firm

Address

Client(s)

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- ☐ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☐ Summary judgment
- ☐ Default judgment
- ☐ Dismissal
- ☐ Lack of jurisdiction
- ☐ Failure to state a claim
  - ☐ Failure to prosecute
  - ☐ Other (specify)

- ☐ Grant/Denial of NRCP 60(b) relief
- ☐ Grant/Denial of injunction
- ☐ Grant/Denial of declaratory relief
- ☐ Review of agency determination
- ☐ Divorce decree:
  - ☐ Original
  - ☐ Modification
- ☒ Other disposition (specify): Order and Judgment after post-divorce motion hearing

**5. Does this appeal raise issues concerning any of the following: N/A**

- ☒ Child custody
- ☐ Termination of parental rights
- ☐ Venue
- ☐ Grant/denial of injunction or TRO
- ☐ Adoption
- ☐ Juvenile matters

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal: D-389203.

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition: N/A

**8. Nature of the action.** Briefly describe the nature of the action, including a list of the causes of action pleaded, and the result below: This is a post-divorce action concerning a request by Respondent for modification of custody. A modification was granted without an evidentiary hearing or properly accepting evidence and/or testimony.

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal:

- a. Did the Court err in modifying custody without properly accepting evidence without conducting an evidentiary hearing and in wrongfully considering facts occurring prior to the last, stipulated custody Order was entered?
- b. Did the Court err when it failed to properly apply the facts of this case, Nevada Law and authority in granting, in part, Respondent's Motion to modify timeshare arrangement?
- c. Did the Court deny Appellant her legal and continuing rights in entering a decision which is not in accordance with Nevada law and the Nevada and United States Constitutions?

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised: N/A

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer of employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A xx Yes \_\_\_\_\_ No \_\_\_\_\_

If not, explain

12. **Other issues.** Does this appeal involve any of the following issues?

- ☐ Reversal of well-settled Nevada precedent (on an attachment, identify the case(s)):
- ☒ An issue arising under the United States and/or Nevada Constitutions
- ☐ A substantial issue of first-impression
- ☒ An issue of public policy
- ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- ☐ A ballot question

If so, explain: Can the Court change the parties' true custodial status and specific timeshare when the Movant has failed to evidence the allegations referenced in the Motion alleging modification is warranted, and the Court has refused and failed to properly admit evidence supporting a final Decision?

13. **Trial.** If this action proceeded to trial, how many days did the trial last?

Was it a bench or jury trial?

14. **Judicial disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice? No.

## TIMELINESS OF NOTICE OF APPEAL

15. **Date of entry of written judgment of order appealed from:** Attach a copy. If more than one judgment or order is appealed from, attach copies of each judgment or order from which an appeal is taken. November 4, 2010. See Tab "1".

(a) If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

16. **Date written notice of entry of judgment or order served:** Attach a copy, including proof of service, for each order or judgment appealed from. (Order entered and received from Court. See Tab "1".)

(a) Was service by delivery \_\_\_\_\_ or by mail xx (specify).

17. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59),**

(a) Specify the type of motion, and the date and method of service of the motion, and date of filing. N/A

NRCP 50(b)	_____	Date served _____	By delivery _____	or by mail _____	Date of filing _____
NRCP 52(b)	_____	Date served _____	By delivery _____	or by mail _____	Date of filing _____
NRCP 59	_____	Date served _____	By delivery _____	or by mail _____	Date of filing _____

### Attach copies of all post-trial tolling motions.

(b) Date of entry of written order resolving tolling motion:

(c) Date written notice of entry of order resolving motion served:

(i) Was service by delivery \_\_\_\_\_ or by mail \_\_\_\_\_ (specify).

18. **Date notice of appeal was filed:**

(a) If more than one party has appealed from the judgment or order, list date each notice of appeal was filed and identify by name the party filing the notice of appeal: December 2, 2010

19. **Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), NRS 155.190, or other:** NRAP 4(a).

## SUBSTANTIVE APPEALABILITY

20. **Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**



NRAP 3A(b)(1) xx NRS 155.190 \_\_\_\_\_ (specify subsection) \_\_\_\_\_  
NRAP 3A(b)(2) \_\_\_\_\_ NRS 38.205 \_\_\_\_\_ (specify subsection) \_\_\_\_\_  
NRAP 3A(b)(3) \_\_\_\_\_ NRS 703.376 \_\_\_\_\_ (specify subsection) \_\_\_\_\_

Explain how each authority provides a basis for appeal from the judgment or order: A final custody and relocation Order was entered in the post-divorce action commenced in the court in which the Decree was entered.

**COMPLETE THE FOLLOWING SECTION ONLY IF MORE THAN ONE CLAIM FOR RELIEF WAS PRESENTED IN THE ACTION (WHETHER AS A CLAIM, COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM) OR IF MULTIPLE PARTIES WERE INVOLVED IN THE ACTION. Attach separate sheets if necessary.**

**21. List all parties involved in the action in the district court:** Christina Calderon Stipp, Plaintiff; Mitchell David Stipp, Defendant.

(a) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other: N/A

**22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the trial court's disposition of each claim, and how each claim was resolved (*i.e.*, order, judgment, stipulation), and the date of disposition of each claim. Attach a copy of each disposition.**

On August 7, 2009 the parties filed a Stipulated Order concerning custody and timeshare. (See Tab "2".)

Respondent: Respondent filed a Motion to Confirm Parties as Joint Physical Custodians and to Modify Timeshare Arrangement on October 29, 2009. (See Tab "3".) The Court ordered a full evaluation and psychological evaluations. After much delay under advisement, the Court, in part, granted Respondent's Motion. (See Tab "1".)

Appellant: Appellant filed a Countermotion to Set Aside August 7, 2009 Stipulation and Order Due to Defendant's Fraud Upon the Court, Grant Discovery, Partition Undisclosed Marital Assets, and for Sanctions and Opposition to Defendant's Motion to Confirm Parties As Joint Custodians and to Modify Timeshare Arrangement. (See Tab "4".) Appellant was granted leave to conduct limited discovery on her Countermotion. (See Tab "5".)

**23. Attach copies of the last-filed version of all complaints, counterclaims, and/or cross-claims filed in the district court.**

See attached documents in Tabs "3" and "4".

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action below:**

Yes\_\_\_\_No xx .

**25. If you answered "No" to the immediately previous question, complete the following:**

(a) Specify the claims remaining pending below:

The Court addressed custody and timeshare issues. However, the Court failed to address the issues raised of a Parenting Coordinator which was recommended by the Court-ordered evaluator and each parties' requests to be awarded fees and costs.

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b):

Yes xx No \_\_\_\_\_ **If Yes, attach a copy of the certification or order, including any notice of entry and proof of service.**

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment:

Yes \_\_\_\_\_ No \_\_\_\_\_

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Christina Calderon Stipp

Name of appellant

January 7, 2011

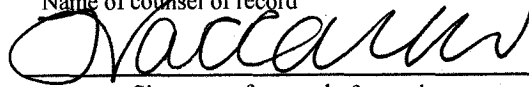
Date

Clark County, Nevada

State and county where signed

Patricia L. Vaccarino, Esq.

Name of counsel of record



Signature of counsel of record

## CERTIFICATE OF SERVICE

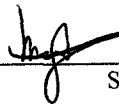
I certify that on the 7<sup>th</sup> day of January 2011, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es):

Radford J. Smith, Esq.  
64 N. Pecos Rd., #700  
Henderson, Nevada 89074

Dated this 7<sup>th</sup> day of January 2011.



Signature



**EIGHTH JUDICIAL DISTRICT COURT**

**FAMILY DIVISION  
601 NORTH PECOS  
LAS VEGAS, NEVADA 891012408**

**DEPARTMENT O  
(702) 455-1334  
FACSIMILE (702) 455-1338**

**FACSIMILE TRANSMISSION FORM**

**November 4, 2010**

**TO: Patricia Vaccarino, Esq. & Radford Smith, Esq.**

**Fax #: (702) 258-8840 & (702) 990-6456**

**RE: Order from May 6, 2010 hearing and Notice of Entry of Order**

**# of Pages: 21 (Including Cover Sheet)**

**FROM: Randall Forman, Law Clerk to the Honorable Frank P. Sullivan**

**SPECIAL INSTRUCTIONS:**

**IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CONTACT:**

**NAME: Randall Forman**

**PHONE: (702) 455-1336**

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DISTRICT COURT  
CLARK COUNTY, NEVADA

*Sharon A. Sullivan*  
Clerk

CHRISTINA STIPP,

Plaintiff,

vs.

MITCHELL STIPP,

Defendant.

CASE NO. D-08-389203-Z  
DEPT. NO. O

NOTICE OF ENTRY OF ORDER

To:

Patricia Vaccarino, Esq.  
8861 W. Sahara Ave. #210  
Las Vegas, NV 89117

Radford Smith, Esq.  
64 N. Pecos Rd. #700  
Henderson, NV 89074

PLEASE TAKE NOTICE that an Order from the May 6, 2010 hearing was  
duly entered in the above-referenced case on the 4th day of November, 2010.

Dated this 4th day of November, 2010.

*[Signature]*

Randall Forman, Esq.  
Law Clerk  
Department O

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*[Signature]*  
CLERK OF DISTRICT COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

CHRISTINA STIPP,

Plaintiff,

vs.

MITCHELL STIPP,

Defendant.

CASE NO. D-08-389203-Z  
DEPT. NO. O

Date of Hearing: May 6, 2010  
Time of Hearing: 10:00 a.m.

This matter having come before this Court on May 6, 2010, on Defendant's Motion to Confirm Parties as Joint Physical Custodians and to Modify Timeshare Arrangement; and Plaintiff's Countermotion to set Aside August 7, 2009 Stipulation, Grant Discovery, Partition Undisclosed Marital Assets, and for Sanctions; with Christina C. Stipp, Plaintiff, appearing and being represented by Donn W. Prokopius, Esq.; and Mitchell D. Stipp, Defendant, appearing and represented by Radford J. Smith, Esq.; and the Court being duly advised in the premises, having reviewed Plaintiff's Motion, Defendant's Opposition and Countermotion, Plaintiffs' Opposition to Countermotion, Plaintiff's Supplement to Motion, Defendant's Supplement to Countermotion, and having heard oral argument, and good cause being shown,

1           **THE COURT HEREBY FINDS** that the parties have two children in  
2 common, Mia, born on October 19, 2004, and Ethan, born on March 24, 2007.

3           **THE COURT FURTHER FINDS** that on February 20, 2008, the parties  
4 entered into a Marital Settlement Agreement (MSA) that provided that they shall have  
5 joint legal and physical custody of the children.  
6

7           **THE COURT FURTHER FINDS** that the MSA provided that Defendant  
8 (husband) would have the children on Fridays from 6:00 p.m. until Sundays at 6:00  
9 p.m., however, the Plaintiff (wife) would have the right to have the children on the  
10 first weekend of every month upon three (3) days prior written notice.  
11

12           **THE COURT FURTHER FINDS** that the MSA further provided holiday  
13 visitation as follows:

14           (a) Martin Luther King (MLK) Day Weekend: MLK Day is to be  
15 celebrated on the third Monday in January with the weekend  
16 commencing at 6:00 p.m. on the Friday before the holiday and ending  
17 at 6:00 p.m. on the holiday. Plaintiff is to have the children in even-  
18 numbered years and Defendant in odd-numbered years.

19           (b) President's Day Weekend: President's Day is to  
20 be celebrated on the third Monday in February with the weekend  
21 commencing at 6:00 p.m. on the Friday before the holiday and ending  
22 at 6:00 p.m. on the holiday. Plaintiff is to have the children in odd-  
23 numbered years and the Defendant in even-numbered years.

24           (c) Easter Day: Easter Day is to be celebrated on Sunday with the  
25 Defendant having the children on Easter Sunday until 2:00 p.m. and  
26 Plaintiff having the children after 2:00 p.m.

27           (d) Memorial Day Weekend: Memorial Day is to be celebrated on the  
28 last Monday in May with the weekend commencing at 6:00 p.m. on  
the Friday before the holiday and ending at 6:00 p.m. on the holiday.  
Plaintiff is to have the children in even-numbered years and Defendant  
in odd-numbered years.

(e) Father's Day/Mother's Day: Defendant is to have the children on Father's Day from 9:00 a.m. until 6:00 p.m. and Plaintiff is to have children on Mother's Day from 9:00 a.m. until 6:00 p.m.

(f) Independence Day: Independence Day is to commence at 6:00 p.m. on the day before the holiday and end at 9:00 a.m. on the day after the holiday. Plaintiff is to have the children in even-numbered years and Defendant in odd-numbered years.

(g) Labor Day Weekend: Labor Day is to be celebrated on the first Monday in September with the weekend commencing at 6:00 p.m. on the Friday before the holiday and ending at 6:00 p.m. on the holiday. Defendant is to have the children in even-numbered years and Plaintiff in odd-numbered years.

(h) Halloween Night: Halloween night will commence at 3:00 p.m. on the holiday and end at 8:30 p.m. on the holiday. Plaintiff is to have the children in even-numbered years and Defendant in odd-numbered years.

(i) Veterans Day: Veterans Day is to be observed on November 11<sup>th</sup> with visitation commencing at 6:00 p.m. on the day immediately preceding the holiday and ending at 6:00 p.m. on the holiday.

(j) Thanksgiving Weekend: The Thanksgiving holiday is to be divided into two periods, with Period One commencing at 4:00 p.m. on Thanksgiving Day and ending at 6:00 p.m. on the Saturday immediately following Thanksgiving Day. Period Two is to commence at 6:00 p.m. on the Saturday following Thanksgiving Day and ending at 6:00 p.m. on the Sunday immediately following Thanksgiving Day. Defendant is to have the children during Period One and Plaintiff Period Two in all years.

(k) Christmas Holiday: The Christmas holiday is to be divided into two periods, with Period One commencing at 9:00 a.m. on December 24<sup>th</sup> and ending at 9:00 a.m. on December 25<sup>th</sup>. Period Two is to commence at 9:00 a.m. on December 25<sup>th</sup> and end at 6:00 p.m. on the 25<sup>th</sup>. Plaintiff is to have the children during Period One and Defendant during Period Two in all years.

(l) New Year's Day: New Year's Day is to be celebrated on January 1<sup>st</sup> with holiday visitation commencing at 6:00 p.m. on the day immediately preceding the holiday and ending at 6:00 p.m. on the holiday. Defendant is to have the children in even-numbered years and Plaintiff in odd-numbered years.



(m) Children's Birthdays: Plaintiff, upon three (3) days prior written notice, is to have the children on the Saturday immediately proceeding a child's birthday, in which case, Defendant will have his normal visitation from 9:00 a.m. until 6:00 p.m. on Sunday.

(n) Parents' Birthdays: Each party, upon three (3) days prior written notice, is to have the children from 9:00 a.m. until 6:00 p.m. on their respective birthdays.

(o) Vacation Visitation: Each party is permitted to have the children for two (2) consecutive weeks for the purpose of taking a vacation.

**THE COURT FURTHER FINDS** that the parties filed a Joint Petition for Divorce on February 28, 2008.

**THE COURT FURTHER FINDS** that on March 6, 2008, a Decree of Divorce was granted which fully incorporated the Marital Settlement Agreement into such Decree.

**THE COURT FURTHER FINDS** that on December 17, 2008, Plaintiff filed a Motion to Confirm Plaintiff as the De Jure Primary Physical Custodian, for Modification of the Divorce Decree Regarding Child Custody, Visitation and Other Parent/Child Issues, for Defendant's Reimbursement of One-Half of the Children's Medical Costs, for Mediation Regarding Dispute Over Dividing the Minor Children's Education and Other Costs, and for Attorney's Fees and Costs.

**THE COURT FURTHER FINDS** that on January 9, 2009, Defendant filed an Opposition to Plaintiff's Motion to Confirm Plaintiff as the De Jure Primary Physical Custodian and a Countermotion to Strike Inadmissible Evidence from Plaintiff's Motion, to Resolve Parent/Child Issues, for a Temporary Protective Order Addressing Plaintiff's Harassment of Defendant, and for Sanctions and Attorney's Fees.

1           **THE COURT FURTHER FINDS** that on January 9, 2009, Plaintiff filed a  
2 Motion for Leave to Take the Depositions of Mitchell Stipp (Defendant) and William  
3 Plise.  
4

5           **THE COURT FURTHER FINDS** that on February 11, 2009, Plaintiff filed  
6 a Reply to Defendant's Opposition and Defendant's Countermotion.

7           **THE COURT FURTHER FINDS** that on February 24, 2009, the Court  
8 heard oral argument on all pending Motions and Countermotions.

9           **THE COURT FURTHER FINDS** that by Order dated April 3, 2009, the  
10 Court denied all pending Motions and Countermotions, but Ordered Defendant to  
11 reimburse Plaintiff the sum of three hundred twenty-six dollars and forty-five cents  
12 (\$326.45) as and for unreimbursed medical expenses incurred on behalf of the  
13 children.  
14

15           **THE COURT FURTHER FINDS** that on April 27, 2009, Defendant filed a  
16 motion for Reconsideration, Motion for Rehearing; Or in the Alternative, Motion to  
17 Modify Joint Timeshare.  
18

19           **THE COURT FURTHER FINDS** that on June 3, 2009, Plaintiff filed an  
20 Opposition to Defendant's Motion for Reconsideration, Motion for Rehearing and, in  
21 the Alternative, Motion to Modify Joint Timeshare.

22           **THE COURT FURTHER FINDS** that on June 4, 2009, the Court heard oral  
23 argument on Defendant's Motion and Plaintiff's Opposition to the Motion and  
24 Ordered the parties to the Family Mediation Center for confidential mediation and  
25 scheduled an Evidentiary Hearing for October 27, 2009.  
26  
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1           **THE COURT FURTHER FINDS** that on June 18, 2009, Defendant filed a  
2           Motion for an Order to Show Cause alleging that the Plaintiff had violated the  
3           custodial agreement by keeping the children from Defendant on his visitation day of  
4           Friday, June 12, 2009.

6           **THE COURT FURTHER FINDS** that on July 23, 2009, the parties  
7           submitted a Stipulation and Order Resolving Defendant's Motion for an Order to  
8           Show Cause resolving the matter by awarding Defendant an additional nine (9) hours  
9           of visitation on Friday June 26, 2009, with Defendant receiving the children at 9:00  
10          a.m. instead of 6:00 p.m.

12          **THE COURT FURTHER FINDS** that on August 7, 2009, the parties  
13          submitted a Stipulation and Order which didn't change the joint legal and physical  
14          custody designation included in the Marital Settlement Agreement, but modified the  
15          timeshare arrangement provided for in the MSA as follows:

16                   (a) Defendant is to have the children on the first, third and fifth (when  
17                   there is a fifth weekend in the month) weekends of each month from  
18                   Friday 6:00 p.m. until Sunday at 6:00 p.m., however, the Plaintiff,  
19                   upon three (3) days prior written notice, is entitled to have the children  
20                   on the first weekend of each month. In the event that Plaintiff  
21                   exercises her right to have the children on the first weekend of the  
22                   month, then Defendant will have the children commencing at 6:00  
23                   p.m. on the Wednesday preceding the first weekend of the month until  
24                   6:00 p.m. on the Friday preceding the first weekend of the month.

25                   (b) Defendant is to have the children on the second and fourth  
26                   weekends of the month from Thursday at 6:00 p.m. until Sunday at  
27                   6:00 p.m.

28          **THE COURT FURTHER FINDS** that pursuant to the Stipulation and Order  
filed on August 7, 2009, the Court dismissed Defendant's pending Motion for

1 Reconsideration and Rehearing and vacated the Evidentiary Hearing set for October  
2 27, 2009.

3  
4 **THE COURT FURTHER FINDS** that on October 29, 2009, Defendant filed  
5 a Motion to Confirm Parties as Joint Physical Custodians and to Modify Timeshare  
6 Arrangement.

7 **THE COURT FURTHER FINDS** that Defendant's Motion to Confirm  
8 Parties as Joint Custodians and to Modify Timeshare Arrangement essentially alleged  
9 that the parties' daughter, Mia, was being emotionally abused by Plaintiff by her  
10 continued attempts to alienate the children from Defendant by making disparaging  
11 remarks about Defendant and his current wife, Amy, (Defendant is a cheater, Amy  
12 stole Defendant away from Plaintiff, Amy is married to someone other than  
13 Defendant, and Plaintiff hates Amy) which has caused Mia to have severe mood  
14 swings, significant anger management issues, and frequent emotional outbursts.

15  
16 **THE COURT FURTHER FINDS** that on November 30, 2009, Plaintiff filed  
17 an Opposition to Defendant's Motion to Confirm Parties as Joint Custodians and to  
18 Modify Timeshare Arrangement and filed a Countermotion to Set Aside August 7,  
19 2009, Stipulation and Order Due to Defendant's Fraud upon the Court, to Grant  
20 Discovery, to Partition Undisclosed Marital Assets, and for Sanctions.

21  
22 **THE COURT FURTHER FINDS** that Plaintiff's Opposition and  
23 Countermotion and Countermotion to Set Aside August 7, 2009, Stipulation and  
24 Order, and to Grant Discovery and Partition Undisclosed Marital Assets essentially  
25 alleged that Defendant is blatantly attempting to re-litigate the custodial arrangement  
26 which is barred by res judicata, failed to disclose his post-divorce arrest for DUI and  
27

28

1 subsequent conviction for Reckless Driving which evidences that Defendant abuses  
2 alcohol, and fraudulently concealed significant marital assets and/or post divorce  
3 distributions.  
4

5 **THE COURT FURTHER FINDS** that on December 7, 2009, Defendant  
6 filed a Reply to Opposition to Defendant's Motion to Confirm Parties as Joint  
7 Custodians and Opposition to Plaintiff's Countermotion to Set Aside August 7, 2009,  
8 Stipulation and Order.

9 **THE COURT FURTHER FINDS** that on December 8, 2009, the Court  
10 heard oral argument on the pending Motions and Countermotions and, based upon the  
11 allegations raised by each party, directed that a Child Custody Evaluation be  
12 performed by Dr. John Paglini.  
13

14 **THE COURT FURTHER FINDS** that on December 18, 2009, Defendant  
15 filed a Supplement to Opposition to Countermotion to Set Aside August 7, 2009,  
16 Stipulation and Order.

17 **THE COURT FURTHER FINDS** that on January 28, 2010, Plaintiff filed a  
18 Motion to Stay Discovery concerning the ongoing child custody dispute, specifically  
19 seeking to Stay Discovery regarding Dr. Melissa Kalodner, Dr. Joel Mishalow,  
20 School Records, and Plaintiff's deposition.  
21

22 **THE COURT FURTHER FINDS** that on February 2, 2010, Defendant filed  
23 an Opposition to Plaintiff's Motion to Stay Discovery alleging that such discovery  
24 was necessary to completely and fairly conduct the child custody evaluation.

25 **THE COURT FURTHER FINDS** that a Hearing was held on February 3,  
26 2010, at which time the Court Ordered that Discovery may be conducted on a limited  
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28

1 basis to obtain school records, obtain records from Dr. Mishalow and Dr. Koladner,  
2 and depose Dr. Mishalow as some of his records were illegible.

3  
4 **THE COURT FURTHER FINDS** that on February 16, 2010, Plaintiff filed  
5 a Motion to Rehear/Reconsider the Hearing of December 8, 2009, and/or to Clarify  
6 the Court's Rulings from that Hearing requesting that the Court rehear or reconsider  
7 its Order for an Outsource Evaluation to be conducted by Dr. Paglini as there was no  
8 evidence that Mia had been emotionally abused.

9  
10 **THE COURT FURTHER FINDS** that on March 8, 2010, Defendant filed an  
11 Opposition to Plaintiff's Motion to Rehear/Reconsider the Hearing of December 8,  
12 2009, and Countermotion for Sanctions.

13 **THE COURT FURTHER FINDS** that on April 12, 2010, Plaintiff filed a  
14 Reply to Defendant's Opposition to Plaintiff's Motion to Rehear/Reconsider the  
15 Hearing of December 8, 2009.

16 **THE COURT FURTHER FINDS** that on April 13, 2010, the Court heard  
17 oral argument on Plaintiff's Motion to Rehear/Reconsider the Hearing of December  
18 8, 2009, and denied Plaintiff's request for rehearing and reconsideration and refused  
19 to modify its Order for an Outsource Evaluation and refused to otherwise limit the  
20 scope of Dr. Paglini's assessment. Such Order of the Court was submitted on May 24,  
21 2010.

22  
23 **THE COURT FURTHER FINDS** that pursuant to the direction of the Court,  
24 Dr. John Paglini performed a Child Custody Evaluation dated April 29, 2010.

25 **THE COURT FURTHER FINDS** that on April 30, 2010, Plaintiff filed a  
26 Motion to Rehear/Reconsider the Hearing of February 3, 2010, alleging that the Order  
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1 submitted by Defendant's counsel for the Hearing held on February 3<sup>rd</sup> included  
2 conclusions not found by the Court, that Plaintiff's counsel was not afforded an  
3 opportunity to review the Order prior to its submittal, and that Defendant had  
4 admitted to non-disclosure of marital assets in Dr. Paglini's Child Custody Evaluation  
5 by stating that he had received a \$5 million dollar payment from the end of 2004  
6 through the middle of 2007.

8 **THE COURT FURTHER FINDS** that on May 3, 2010, Defendant filed a  
9 Supplement to Motion to Confirm Parties as Joint Physical Custodians and to Modify  
10 Timeshare Arrangement.

12 **THE COURT FURTHER FINDS** that on May 5, 2010, Plaintiff filed a  
13 Supplement to Countermotion to Set Aside August 7, 2009, Stipulation and Order and  
14 Opposition to Defendant's Motion to Confirm Parties as Joint Custodians.

15 **THE COURT FURTHER FINDS** that on May 6, 2010, the Court heard oral  
16 argument on all pending Motions and Countermotion and, based upon Dr. Paglini's  
17 recommendation, the Court determined that there was not a need to conduct an  
18 Evidentiary Hearing.

19 **THE COURT FURTHER FINDS** that on June 3, 2010, Defendant filed an  
20 Opposition to Plaintiff's Motion to Rehear/Reconsider the Hearing of February 3,  
21 2010, and Countermotion for Sanctions alleging that Plaintiff's Motion was filed  
22 merely to harass Defendant and Plaintiff was well aware of Defendant's financial  
23 compensation at the time of divorce as she received a settlement of \$2.2 million,  
24 including \$1.8 million in cash.

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**THE COURT FURTHER FINDS** that on June 15, 2010, Plaintiff filed a Reply in Support of Plaintiff's Motion to Rehear/Reconsider the Hearing of February 3, 2010, and Opposition to Defendant's Countermotion for Sanctions.

**THE COURT FURTHER FINDS** that on June 18, 2010, Defendant filed a Reply to Opposition to Countermotion for Sanctions.

**THE COURT FURTHER FINDS** that on June 22, 2010, the Court held a hearing on Plaintiff's Motion to Rehear/Reconsider the Hearing of February 3, 2010 and Defendant's Countermotion for Sanctions and heard argument regarding the language included in the Order from the February 3, 2010 hearing, the need for discovery as to alleged non-disclosed marital assets, Defendant's retirement status, the Wells Fargo loan, Section 5 of the divorce Decree, the Aquila Investment business, the business tax returns, and attorney fees.

**THE COURT FURTHER FINDS** that after entertaining oral argument on June 22, 2010, the Court denied Plaintiff's request to modify the Order from the hearing held on February 3, 2010; allowed Plaintiff to hire a forensic accountant to review Aquila Investments tax returns for the 2007 and 2008 tax years; found no proof of fraud being perpetrated upon the Court; denied Defendant's request for sanctions; but awarded Defendant attorney fees as the prevailing party.

**THE COURT FURTHER FINDS** that after Plaintiff contacted Dr. Melissa Kalodner and decided not to have Mia treated by Dr. Kalodner, Defendant brought Mia to Dr. Kalodner for psychological treatment on or about September 11, 2009, without Plaintiff's knowledge or permission.



1           **THE COURT FURTHER FINDS** that Defendant sought treatment for Mia  
2 with Dr. Kalodner to address the re-manifestation (Mia's issues as to clothing had  
3 commenced in December of 2008) of Mia's issues with clothing (insisting that  
4 clothing was too tight, demanding that her clothing be stretched out, refusing to wear  
5 clothing unless it was many sizes too big, refusing to wear underwear, refusing to  
6 wear her school uniform) and behavior issues relating to Mia's defiant behavior when  
7 made to wear clothing, anger outbursts and emotional meltdowns.  
8

9           **THE COURT FURTHER FINDS** that Dr. Kalodner noted, in a letter dated  
10 December 4, 2009, that Mia made spontaneous statements during treatment sessions,  
11 such as:  
12

13           a) "I want to spend more time with my dad, but mommy says we can't  
14 change the rules".

15           b) "I want to spend more time with my dad, but the judge won't let  
16 me"

17           c) "Mommy does not like Amy" (stepmother).

18           d) "Mommy says Amy is bad, but I like her".

19           **THE COURT FURTHER FINDS** that with the knowledge and permission  
20 of each parent, Mia was being treated for her clothing and behavior issues by Dr. Joel  
21 Mishalow from September 25, 2009, through December of 2009, however, Defendant  
22 failed to advise Dr. Mishalow that Mia was also being treated by Dr. Kalodner.

23           **THE COURT FURTHER FINDS** that after being advised of the fact that  
24 Mia was being treated by Dr. Kalodner, Dr. Mishalow decided that he no longer  
25 wanted to treat Mia given all of the psychological treatment that she had already  
26 undergone and due to the many dynamics going on within the family.  
27  
28

1           **THE COURT FURTHER FINDS** that Kalodner consulted with Dr. Beasley  
2  
3           pertaining to Mia's treatment issues and Dr. Beasley recommended a referral to the  
4           Achievement Therapy Center for assessment as to possible sensory deficit disorder.

5           **THE COURT FURTHER FINDS** that on November 17, 2009, Defendant,  
6           without the knowledge or permission of Plaintiff, brought Mia to Dr. Stegen-Hansen,  
7           a pediatric occupational therapist, for evaluation as to possible sensory deficit  
8           disorder.

9           **THE COURT FURTHER FINDS** that Mia has been receiving treatment at  
10           the Achievement Therapy Center since January 2010 and is making excellent  
11           progress in treating her clothing and behavioral issues.

12           **THE COURT FURTHER FINDS** that based upon concerns raised by  
13           Plaintiff regarding Defendant having an ongoing problem with alcohol abuse, Mr.  
14           Stipp was referred to Dr. Michael Levy for an assessment as to alcohol dependence  
15           and substance abuse.

16           **THE COURT FURTHER FINDS** that after subjecting Defendant to a  
17           comprehensive metabolic panel, complete blood count, and a GGTP (a very sensitive  
18           test to detect recent use of alcohol), Dr. Levy opined the following:

19  
20                   a) That the results of the laboratory data recorded no biological  
21                   markers associated with recent or chronic use of alcohol.

22                   b) That based upon the DSM IV criteria for alcohol abuse, there is no  
23                   data to support that Mr. Stipp currently has a substance abuse problem,  
24                   or at any time throughout his drinking history, met the clinical criteria  
25                   for alcohol dependence.

26           **THE COURT FURTHER FINDS** that Dr. Paglini's Child Custody  
27           Evaluation, which was based upon extensive clinical interviews, review of discovery  
28

1 documentation, extensive collateral interviews of family and friends, psychological  
2 testing of both parents, brief interviews of Mia, home visits and family observations,  
3 concluded the following:  
4

5 a) That based upon the spontaneous comments made by Mia to Dr.  
6 Kalodner, Mia is either hearing negative comments directly from her  
7 mother, or overhearing negative comments in her environment and  
8 interpreting impressions from her parents, but that such comments,  
while inappropriate, do not reach the level of emotional abuse or  
alienation as alleged by Defendant.

9 b) That although alcohol usage by Mr. Stipp was a significant relevant  
10 issue during the course of their marriage, based upon the evaluation of  
11 Dr. Levy and numerous collateral interviews, alcohol usage by Mr.  
12 Stipp is not currently a problem as alleged by Plaintiff.

13 c) That the children are very bonded with Plaintiff, Defendant and  
14 Amy Stipp.

15 d) That both parents provide excellent care for the children, excellent  
16 homes for the children, and are very involved in the children's lives.

17 e) That the children are surrounded by a lot of love, despite an  
18 acrimonious post-divorce relationship between the parents.

19 f) That unresolved issues tend to re-emerge during day-to-day  
20 communications between the parents and if they are unable to resolve  
21 their issues, it is likely that their children will be emotionally affected  
22 in the future.

23 g) That if the parents could resolve their issues and co-parent  
24 effectively and assist their daughter with frustrations as they emerge in  
interpersonal relationships, this will likely resolve Mia's anger issues  
without the need for additional therapy.

25 h) That if the parents are not able to resolve their issues, this could  
26 create additional difficulties for Mia which could result in her acting  
27 out.

28 **THE COURT FURTHER FINDS** that Dr. Paglini's report noted that  
Plaintiff feared that if Defendant received more time with the children, that he

1 eventually will request to relocate to Texas to join his former business partner and  
2 take the children with him.

3  
4 **THE COURT FURTHER FINDS** that based upon Plaintiff's expressed fear  
5 about Defendant's possible relocation in the future, it appears that Plaintiff's  
6 opposition to maintaining the joint physical custodian designation at this time is based  
7 upon a potential relocation issue and not based upon a concern for best interest of the  
8 children.

9  
10 **THE COURT FURTHER FINDS** that based upon Dr. Paglini's Child  
11 Custody Evaluation in which he found that the children are very bonded with each  
12 parent, that both parents provide excellent care for the children, that both parents  
13 provide excellent homes for the children, that both parents are very involved in the  
14 children's lives, and that the children are surrounded by lots of love in each parental  
15 household, it is apparent that joint legal and physical custody is in the best interest of  
16 the children.

17  
18 **THE COURT FURTHER FINDS** that the fact that the parents have agreed  
19 to an award of joint legal and physical custody on two separate occasions as  
20 evidenced by the Marital Settlement Agreement (February 20, 2008) and subsequent  
21 Stipulation and Order (August 7, 2009), further supports the finding that joint legal  
22 and physical custody is in the best interest of the children.

23  
24 **THE COURT FURTHER FINDS** that pursuant to Rivero v. Rivero, 216  
25 P.3d 213 (Nev. 2009):

26 a) This Court "should calculate the time during which a party has  
27 physical custody of a child over one calendar year."  
28

b) That "in calculating the time during which a party has physical custody of the child, the district court should look at the number of days during which a party provided supervision of the child, the child resided with the party, and during which the party made day-to-day decisions regarding the child."

c) That a determination of joint physical custody can only be made when each parent has physical custody of the child for at least 40% of the year, which equals 146 days.

**THE COURT FURTHER FINDS** that pursuant to the Marital Settlement

Agreement entered into by the parties on February 20, 2008, and the Stipulation and Order filed on August 7, 2009, the time-share arrangement leads to the following calculation of time over a calendar year:

a) That depending on whether it is an even or odd year, what day of the week the year starts on, and whether or not it is a leap year, Defendant always has between 131 and 134 custodial days per year.

b) That depending on whether or not Christian Stipp foregoes her visitation for Martin Luther King Day, President's Day, Memorial Day and/or Labor Day, and whether it is an even or odd year, Defendant may have an additional 8 days of custody per year.

c) That depending on whether Plaintiff's and Defendant's birthday fall on one of their custodial days, and whether they request to have custody of the children on their birthday, Defendant may have an additional day of custody per year.

**THE COURT FURTHER FINDS** that based upon the current time-share agreement, Defendant has a minimum of 131 days of physical custody per year with a maximum amount of 143 days per year depending upon whether Plaintiff decides to forego her holiday visitations (MLK Day, President's Day, Memorial Day, and/or Labor Day), which would fall a few days short of the 40% time-share requirement mandated by Rivero.

1                   **THE COURT FURTHER FINDS** that assuming that a joint physical  
2  
3 custody arrangement does not currently exist, the following facts evidence a  
4 substantial change in circumstances affecting the welfare of the children supporting a  
5 change in custody to joint physical custody:

6                   a) Mia's re-manifestation of issues with clothing; namely, insisting  
7 that clothing was too tight, demanding that her clothing be stretched  
8 out, refusing to wear clothing unless it was many sizes too big,  
9 refusing to wear underwear, refusing to wear her school uniform;  
behavior issues relating to her defiant behavior when made to wear  
clothing, anger outbursts and emotional meltdowns.

10                  b) The need for Mia to undergo extensive psychological treatment  
11 from Dr. Kalodner, Dr. Mishalow, Dr. Stegen-Hansen, and the  
12 ongoing sensory deficit processing treatment being provided by the  
Achievement Therapy Center.

13                  c) The spontaneous statements made by Mia to Dr. Kalodner  
14 indicating that she wanted to spend more time with her dad but her  
mommy or the judge wouldn't let her.

15                  d) The parties' extremely litigious nature resulting in the children  
16 becoming embroiled in the proceedings as evidenced by Mia's  
17 spontaneous statements to Dr. Kalodner indicating that Plaintiff  
doesn't like Amy and that Amy is bad.

18                  e) Dr. Paglini's report reflecting that the parents have unresolved  
19 issues that tend to re-emerge and that if they are unable to resolve their  
20 issues, it is likely that their children will be emotionally affected in the  
future.

21                   **THE COURT FURTHER FINDS** that in the best interest of the children,  
22 Defendant should be awarded additional time-share consisting of the Friday  
23 proceeding the third weekend of each month, commencing at 9:00 a.m. instead of  
24 6:00 p.m. as currently provided for in the Stipulation and Order filed on August 7,  
25 2009.  
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1           **THE COURT FURTHER FINDS** that awarding the Defendant the  
2 additional custodial time equates to an additional 12 days of custody per year as the  
3 Defendant will have the responsibility of making the day-to-day decisions for the  
4 children on the Fridays preceding the third weekend of each month.

5           **THE COURT FURTHER FINDS** that after being awarded an additional 12  
6 days of custody per year, the Defendant will have between 143 and 146 days of  
7 custody every year and may have up to 155 days of custody per year depending upon  
8 whether Plaintiff decides to forego her holiday visitations.

9           **THE COURT FURTHER FINDS** that under the applicable law in *Rivero*,  
10 these parties have been motivated to calculate the physical custodial days of the year  
11 instead of "calculating" a custodial time-share that is best interest of their minor  
12 children.

13           **THE COURT FURTHER FINDS** that the parties are very intelligent, highly  
14 educated lawyers whose children would be better served by the parties resolving their  
15 issues between themselves without the need for legal and/or therapeutic intervention.

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1                   **THEREFORE, IT IS HEREBY ORDERED** that Defendant is awarded  
2 additional time-share consisting of the Friday proceeding every third weekend of each  
3 month commencing at 9:00 a.m. instead of at 6:00 p.m. as currently provided for in  
4 the Stipulation and Order filed on August 7, 2009.  
5

6                   **IT IS FURTHER ORDERED** that the parties will continue to be designated  
7 as joint legal and joint physical custodians.  
8  
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10                   Dated this 4<sup>th</sup> day of November, 2010

11                     
12                   \_\_\_\_\_  
13                   Frank P. Sullivan  
14                   District Court Judge  
15                   Dept. O  
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STATE OF NEVADA  
EIGHTH JUDICIAL DISTRICT COURT  
FAMILY DIVISION

FAMILY MEDIATION CENTER  
JOYCE GALLINA, MSW  
MANAGER



FAMILY COURTS & SERVICES CENTER  
601 N PECOS ROAD, BLDG 8  
LAS VEGAS, NV 89101-2408  
(702) 455-4186  
(702) 455-2158 - FAX

July 8, 2009

Honorable Frank P. Sullivan  
District Judge, Department O  
Eighth Judicial District Court,  
Family Division  
601 North Pecos Road  
Las Vegas, NV 89101-2408

Re: Stipp v. Stipp  
Case No. D-08-389203-Z

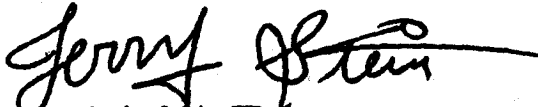
RETURN COURT DATE: 8-7-09

Dear Judge Sullivan:

On June 4, 2009 the above-referenced matter was referred to the Family Mediation Center for mediation services.

The parties have met in mediation and formulated the attached Stipulation and Order. Both parties made representations that they are current member of the State Bar of Nevada and both were actively involved in the development of the enclosed Stipulation and Order. In light of the aforementioned, FMC is closing our case in this matter.

Respectfully submitted,

  
Jerry Stein, MA, JD  
Family Mediation Specialist

c1 Radford J. Smith, Attorney for Plaintiff  
James J. Jimmerson, Attorney for Defendant ✓

ORIGINAL

DISTRICT COURT  
CLARK COUNTY, NEVADA

FILED

AUG 7 10 24 AM '09

MITCHELL D. STIPP,

Plaintiff

vs

CHRISTINA C. STIPP,

Defendant

Case No. D-08389203-Z  
Department No. O

STIPULATION AND ORDER

Date of Hearing: 8-7-09  
Time of Hearing: 11:00 a.m.

The parties hereby desire to modify certain provisions of the Marital Settlement Agreement dated February 20, 2008 ("MSA"), and any provisions not specifically and expressly modified herein shall remain in full force and effect. The parents have met in mediation and have agreed to a Stipulation and Order that will cover timeshare, the right of first refusal, telephone communications with the children, and completion of a C.O.P.E. class. The intent of this Stipulation and Order is to promote healthy relationships between the children, Mia E. Stipp, DOB: 10-19-04, Ethan C. Stipp, DOB: 3-24-07, and their parents. Each of the parents, Christina C. Stipp, natural mother, and Mitchell D. Stipp, natural father, agree that co-parenting requires the acceptance of mutual responsibilities and rights as far as the children are concerned.

TIMESHARE PROVISIONS

The parties agree to modify their "Normal Visitation" schedule as defined in Exhibit A of the MSA, as follows:

1. On the first, third and, if there is one, fifth weekend of each month the father shall have the children in his care from Friday at 6:00 p.m. until Sunday at 6:00 p.m., provided, however, that upon three days prior written notice to father, mother

1 shall have the right to have the children in her care on the first weekend of the  
2 month. If mother exercises said right, father shall have the children in his care  
3 from the Wednesday preceding the first weekend of the month at 6:00 p.m. until  
4 the Friday preceding the first weekend of the month at 6:00 p.m.

5 2. Father shall have the children in his care during the second and fourth weekends  
6 of the month from Thursday at 6:00 p.m. until Sunday at 6:00 p.m.

7 3. Mother shall have the children in her care at all times not specifically provided to  
8 father above or otherwise provided to father in Exhibit A of the MSA not  
9 specifically modified herein.

10 **SPECIAL PROVISIONS**

11 **Right Of First Refusal**

12 The parents agree that they shall have a right of first refusal to the exclusion of all  
13 other third parties. Should either parent be unable to provide care for the children (or either of them)  
14 during his or her custodial time for a period of four hours or more, the other parent shall have the  
15 right to provide care for the children. The parent unable to provide care shall notify the other parent  
16 as soon as reasonably possible so as to allow that party the option of providing care for the children.

17 **Telephone Communications With The Children**

18 The parents agree to facilitate reasonable telephonic communication with the children  
19 such that the non-custodial parent shall have at least one phone call per day with the children. The  
20 call must be placed by the custodial parent between the hours of 7:00 a.m. and 10:00 p.m. They  
21 further agree to refrain from interfering with the children's right to privacy during such telephone  
22 conversations.

23 **Attendance At C.O.P.E. Class**

24 Although the mother has recently attended a C.O.P.E. class, the parents agree that  
25 both of them will complete a C.O.P.E. class prior to October 1, 2009.

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Dismissal With Prejudice

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The parties' desire, by this Stipulation and Order, to resolve all issues raised in father's Motion for Rehearing; Or in the Alternative, Motion to Modify Joint Timeshare filed on April 27, 2009.

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Educational Cost Sharing

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The parties have not reached an agreement on educational cost sharing.

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MODIFYING THE STIPULATION AND ORDER

The terms and conditions of this Stipulation and Order may be modified, in writing, as the needs of the children and/or the circumstances of the parents change. However, the parents understand that the concurred changes do not modify this Court Order. The parents are encouraged to utilize mediation to resolve parenting issues prior to seeking Court intervention.

\*\*\*\*\*

The above agreement reflects the Stipulation and Order formulated in mediation. The parents realize they have the right to review this document with an attorney prior to its being reviewed and adopted by the Court.

Mitchell D. Stipp  
Mitchell D. Stipp  
Father

Christina Calderon-Stipp  
Christina Calderon-Stipp  
Mother

DATE July 8, 2009

DATE July 8, 2009

The above and foregoing Stipulation and Order is acceptable to the parties.

Radford J. Smith  
Radford J. Smith  
Attorney for Plaintiff

Sharon M. Holm  
James J. Jimmerson  
Attorney for Defendant

DATE 8/5/09

DATE 7/17/09

ORDER

Based upon the agreement of the parties and good cause being shown, IT IS HEREBY ORDERED that the terms and conditions of the above Stipulation and Order are adopted.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the father's Motion for Rehearing; Or in the Alternative, Motion to Modify Joint Timeshare shall be DISMISSED with prejudice and the hearings currently set for August 7, 2009 and October 27, 2009 shall be VACATED.

DATED this 6 day of August, 2009.

[Signature]  
District Court Judge sp

  
CLERK OF THE COURT

MOT  
RADFORD J. SMITH, CHARTERED  
RADFORD J. SMITH, ESQ.  
Nevada Bar No. 002791  
64 N. Pecos Road, Suite 700  
Henderson, Nevada 89074  
T: (702) 990-6448  
F: (702) 990-6456  
rsmith@radfordsmith.com  
*Attorneys for Defendant*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

CHRISTINA CALDERON STIPP,

Plaintiff,

vs.

MITCHELL DAVID STIPP,

Defendant.

CASE NO.: D-08-389203-Z

DEPT NO.: O

**FAMILY DIVISION**

ORAL ARGUMENT REQUESTED

YES ☐ NO ☒

NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDER-SIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE.

**DEFENDANT'S MOTION TO CONFIRM PARTIES AS JOINT PHYSICAL CUSTODIANS  
AND TO MODIFY TIMESHARE ARRANGEMENT**

DATE OF HEARING: December 8, 2009

TIME OF HEARING: 10:00 a.m.

COMES NOW, Defendant MITCHELL D. STIPP ("Mitchell"), by and through his attorney Radford J. Smith, Esq., of the firm of Radford J. Smith, Chartered, and submits the following points and authorities in support of his motion for an order confirming the parties as joint physical custodians of their minor children and granting him additional timeshare with the minor children.

1 This motion is made and based upon the points and authorities attached hereto, the affidavits of  
2 Mitchell Stipp and Megan Cantrell attached as Exhibits A and B, respectively, all pleadings, and papers  
3 on file in this action, and any oral argument or evidence adduced at the time of the hearing of this  
4 matter.  
5

6 DATED this 29<sup>th</sup> day of October 2009.

7 RADFORD J. SMITH, CHARTERED  
8 

9 RADFORD J. SMITH, ESQ.  
10 Nevada Bar No. 002791  
11 64 N. Pecos Road, Suite 700  
12 Henderson, Nevada 89074  
13 (702) 990-6448  
14 Attorneys for Defendant  
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NOTICE OF MOTION

TO: CHRISTINA CALDERON STIPP, Plaintiff;

TO: JAMES J. JIMMERSON, ESQ. and SHAWN M. GOLDSTEIN, ESQ., attorney's for Plaintiff;

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for hearing before the above-entitled Court on the 8<sup>TH</sup> day of December 2009, at the hour of 10:00 a.m. or as soon thereafter as counsel may be heard.

DATED this 29<sup>th</sup> day of October, 2009

  
RADFORD J. SMITH, CHARTERED

RADFORD J. SMITH, ESQ.  
Nevada State Bar No. 002791  
64 N. Pecos Rd. - Ste. 700  
Henderson, NV 89074  
(702) 990-6448  
*Attorney for Defendant*



I.

INTRODUCTION

Both under the Court's Decree entered March 6, 2008, and subsequent order filed August 7, 2009, the court has confirmed the parties, Plaintiff Christina Calderon Stipp ("Christina") and Defendant Mitchell David Stipp ("Mitchell"), as the joint physical custodians of their two minor children, Mia Elena Stipp ("Mia"), now age 5, and Ethan Christopher Stipp ("Ethan"), now age 2.5. On July 8, 2009, the parties renegotiated a parenting plan with the goal of remaining joint physical custodians, and because of the court's previous orders were based in part upon the court's decision in *Rivero v. Rivero*, 124 Nev. Adv. Op. No. 84, 195 P.3d 328 (2008), Mitchell seeks confirmation of his status as a joint physical custodian in light of the new definition of joint physical custody set forth in *Rivero v. Rivero*, 125 Nev. Adv. Rep. 34, 216 P.3d 213 (2009) ("Rivero II")

More importantly, the parties' daughter Mia is now suffering the ill effects of a constant barrage of disparagement about Mitchell from Christina. Mia's problems have become so severe that the parties have placed her into psychological counseling. This court has never adjudicated the issue of Christina's disparagement, and her marginalization of Mitchell's parental role with the children. While Mitchell had hoped that entering into a resolution would calm Christina, she has become worse. As shown below, her statements and actions demonstrate that it is the best interest of the children that this court confirm the parties as joint physical custodians under the current orders, set forth a plan of visitation consistent with an equal timeshare arrangement, and order an assessment of the parties' minor children to determine the basis of Mia's emotional problems she is now manifesting.

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II.

STATEMENT OF FACTS

The parties have two children, Mia, born October 19, 2004, and Ethan, born March 24, 2007. This Court entered the parties' Decree of Divorce on March 6, 2008 (the "Decree") upon their joint petition for divorce filed in February of 2008. The Decree incorporates the terms and conditions of the parties' marital settlement agreement entered into and dated as of February 20, 2008 ("MSA"). From the date of the entry of the Decree in March of 2008 until December of 2008, a period of approximately ten (10) months, Mitchell tried to obtain more visitation time with the children without litigation. Christina refused to provide Mitchell more time and instead filed a motion to confirm herself as the primary physical custodian on December 17, 2008,<sup>1</sup> even after Mitchell made a request for and this Court ordered mediation in December of 2008.

Mitchell vigorously opposed Christina's motion and filed a countermotion seeking additional time with the children. The parties attended mediation and no resolution occurred. At the hearing of February 24, 2009, this Court denied each parties' motions, but nevertheless stated its belief that Mitchell should have more time with the children. After unsuccessful negotiations, on April 27, 2009 Mitchell filed his motion for reconsideration or in the alternative a motion to modify the timeshare arrangement. At the hearing on Mitchell's motion held on June 4, 2009, this Court again ordered the parties to attend mediation. The parties attended mediation and modified the terms of the MSA through a stipulation and order signed by the parties on July 8, 2009 and entered by this Court on August 7, 2009

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<sup>1</sup> Christina did not seek to move out of state, she did not seek to alter the timeshare arrangement, and she did not seek to alter the child support obligations of Mitchell, which are the primary instances in which the status of physical custody matter.

1 ("SAO"). Mitchell is moving to confirm the parties as joint physical custodians of their minor children  
2 and for a change in visitation or timeshare.<sup>2</sup>

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4 *A. Christina's Emotional Abuse of Mia, and Her Manipulation of the Therapeutic Process.*

5 Christina has emotionally abused Mia.<sup>3</sup> Mia only recently began to show signs of this trauma.  
6 She has severe mood swings and significant anger management issues. Mia is prone to frequent  
7 emotional outbursts (or meltdowns). Mitchell believes this behavior is the result of Christina's past and  
8 continued attempts to alienate the children from Mitchell. Even after the parties entered into the SAO,  
9 Mia continued to tell Mitchell that Christina says he is a cheater, that Amy Stipp ("Amy"), Mitchell's  
10 wife and the children's stepmother, stole him away from Christina, that Amy is really married to  
11 someone else and not Mitchell,<sup>4</sup> that Christina hates Amy, and that the men Christina's dates will be  
12 Mia's new dad. Mitchell believes that Christina continues to communicate these items (and likely  
13 others) to Mia to harass Mitchell and Amy using Mia as a tool. These bad acts have caused Mia to  
14 suffer significant emotional trauma, which is now manifesting itself as severe mood swings and anger.  
15 During the occurrence of such an episode, Mia will grind her teeth and growl, clench her fists, and shake  
16 her arms and head violently.  
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24 <sup>2</sup> Mitchell has not requested a change of custody to award him primary physical custody of the children. However, if this  
25 Court believes a temporary change is warranted based on the facts of this case, Mitchell requests it subject to liberal visitation  
of the children by Christina on the terms and conditions determined by this Court. Unlike Christina, Mitchell does not want  
to prevent Christina from visiting the children.

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27 <sup>3</sup> It is unclear whether Ethan also has been abused (although there is no doubt he has been exposed to it). At the present time,  
primarily due to his age, Ethan does not show any signs of abuse; however, this may change as he grows older.

28 <sup>4</sup> Amy was previously married. Neither Amy nor Mitchell ever communicated this fact to Mia. There is absolutely no reason  
why they would do so. However, Mia knows the name of Amy's ex-husband and continuously asks Amy and Mitchell about  
him.

1 Christina recently observed that Mia has issues that require mental health services. At the time,  
2 she only communicated to Mitchell that Mia had clothing issues.<sup>5</sup> She communicated to Mitchell that  
3 she wanted Mia to see a mental health provider. Mitchell has recognized this same problem and agreed  
4 that Mia needed an evaluation (which he had expected would also identify Mia's emotional trauma).  
5 Christina provided to Mitchell the names of referrals she obtained to consider for Mia's treatment and  
6 began scheduling appointments to interview the therapists.

8 The first appointment she scheduled was with Melissa Koladner, Psy.D., RPT-S, BCPC, a  
9 child/adolescent psychologist. Mitchell separately investigated and interviewed Dr. Koladner, paid \$200  
10 for the initial consultation, and approved her to treat Mia. At the meeting, Dr. Koladner informed  
11 Mitchell that Christina also approved of her and that Mitchell could now schedule an appointment for  
12 Mia. After the meeting, Dr. Koladner contacted Christina to inform her that Mitchell consented to Mia's  
13 treatment and that he scheduled Mia's first appointment. It is then that Christina demonstrated that she  
14 had no interest in an impartial review of Mia's issues.

17 According to Dr. Koladner, when she called Christina, Christina was irate. Christina  
18 communicated to Dr. Koladner that she, Christina, would not permit Dr. Koladner to evaluate Mia  
19 unless she, Christina, alone could accompany Mia to the appointment and be present in the evaluation  
20 room. Dr. Koladner informed Christina that it was immaterial who accompanied Mia to the  
21 appointment, that she wanted to evaluate Mia *without* the presence of either parent, and that Mitchell  
22 already scheduled an appointment for Mia during her next available time (which happened to occur on  
23 the day Mia would be in Mitchell's care). At that point, Christina cancelled the appointment and  
24 informed Dr. Koladner that she could not treat Mia.

28 <sup>5</sup> Mia refuses to wear clothing she perceives as too tight. Her clothing is several sizes larger than a child her age and size would wear. She also only wears certain outfits (only dresses and specific kinds of shoes).

1 Christina later misrepresented her concerns about Dr. Koladner to Mitchell. She falsely claimed  
2 to Mitchell that she did not want to engage Dr. Koladner because she could not afford to pay Dr.  
3 Koladner's hourly rate of \$200 per hour, when in reality the treatments would have been covered under  
4 the insurance Mitchell provides, and/or Mitchell was willing to share in the costs. In reality, Christina  
5 would only secure treatment for Mia on Christina's terms. Mitchell believes that Christina was  
6 concerned about Dr. Koladner learning of Christina's bad acts (e.g., disparaging Mitchell and Amy in  
7 front of the children). Christina is too focused on protecting her own interests by hiding her abuse of  
8 Mia rather than seeking impartial treatment for Mia from a qualified provider.  
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11 Mia is currently being treated by Dr. Joel Mishalow, Ph.D, but Christina has undermined that  
12 treatment. Christina selected Dr. Mishalow to assist Mia with her clothing issues.<sup>6</sup> Mitchell separately  
13 investigated and interviewed Dr. Mishalow, paid his initial consultation fee of \$150, and consented to  
14 his treatment of Mia. Unfortunately, Mitchell has not been given a meaningful opportunity to  
15 participate in Mia's therapy. Christina schedules all of Mia's appointments without notifying Mitchell  
16 of the appointments. She has insisted that she sit in and attend all of Mia's appointments. Mitchell is  
17 concerned that Christina has tainted the evaluation and treatment process. Mitchell's only interest is the  
18 welfare of Mia and does not believe that Mia's emotional abuse by Christina is being properly evaluated  
19 and treated with Christina's demanding that she be present at every session with Mia.  
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22 To his credit, Dr. Mishalow has provided phone updates to Mitchell on Mia's progress, and he  
23 has advised Mitchell of Christina's admission that Mia's problems go far beyond clothing issues.  
24 Indeed, Christina has stated to Dr. Mishalow that Mia has emotional outbursts and anger management  
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28 <sup>6</sup> Dr. Mishalow has indicated that Mia's clothing issues may be related to an obsessive compulsive disorder. In the event that  
Mia is diagnosed with this condition, Mitchell believes that it is being aggravated by the conduct of Christina. Children with  
this disorder may perform certain acts (or rituals) to address feelings of insecurity. These feelings of insecurity may be  
aggravated by Christina's alienation of the children from Mitchell.

1 issues, but Christina is coy about admitting that to Mitchell. Christina is more concerned about hiding  
2 the true reasons for Mia's problems than determining appropriate treatment for Mia's issues.

3 ***B. Mitchell's Lack of Daily Contact Since the Most Recent Order has Exacerbated Mia's***  
4 ***Problems***

5 Mitchell used to visit both Mia and Ethan at school every day, and Mia looked forward to those  
6 visits. He can no longer do so (Christina's constant protests to school administrators about his visits  
7 likely caused them to stop the practice), and this has affected both children. Mia, for example, used to  
8 look forward to school, and delighted in sharing her daily events with Mitchell. Now, Mia, who attends  
9 school at Alexander Dawson, frequently communicates to Mitchell that she does not like school, that  
10 school is boring, and that she does not want to go to school anymore. These feelings are very different  
11 from her feelings of happiness expressed about attending Temple Beth Shalom last year when Mitchell  
12 was able to visit her every day.  
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15 Mitchell did not anticipate this change, or perhaps more importantly, did not anticipate the affect  
16 of the change upon Mia and Ethan. Mia has now become extremely reluctant to leave Mitchell. She  
17 cries and refuses to leave during each exchange back to Christina. Christina continuously fills Mia's  
18 head with notions that increase Mia's anxiety, such as advising her that she will have "a new daddy" and  
19 expressing her continued hatred of Mitchell's wife Amy, who she falsely blames for the break up of the  
20 parties' marriage. Mia needs more frequent and stable contact with Mitchell. A 5 year old should not  
21 be having the type of anxiety expressed by Mia, and the court should find the underlying cause of this  
22 problem through an impartial investigation by a trained and qualified forensic psychologist.  
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25 Mitchell strongly believes that Christina's anger toward Mitchell and his wife Amy are fueling  
26 Mia's problems. If the court has any doubt about Christina's feelings toward Mitchell and Amy, the  
27 court can review her motion for primary physical custody filed December 17, 2008 in which she spends  
28 the bulk of the brief trashing Mitchell and his family. Indeed, the court may recall that it had to

1 admonish Christina (a licensed attorney) at the hearing of February 24, 2009 to stop her angry and  
2 agitated behavior. The court's admonishments to Christina that she needed to move on from her anger  
3 have fallen on deaf ears. As evidenced in Christina's recent writings, she is still intent on personal  
4 attacks against Mitchell, Amy and his family and has no ability to control her behavior in  
5 communication with Mitchell, or her communication with the children.  
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7 **C. *Mitchell is Now Always Available to Care for the Children, a Substantial Change in***  
8 ***the Circumstances that Existed at Both the Time of the Entry of the Decree and the***  
9 ***Mediated Settlement.***

10 Mitchell has, for all intents and purposes, retired. He has sufficient means to provide for his  
11 family through investments, and it is his desire to ensure that he is always available to care for the  
12 children. This fact constitutes a material change that can substantially and positively affect the welfare  
13 of the children by his further contact with them.

14 Mitchell's work hours have continually decreased since the time of the entry of the Decree. At  
15 the time of the entry of the Decree, Mitchell was the Chief Operating Officer and General Counsel for  
16 Plise Development & Construction, LLC ("PLISE"), which is owned and/or controlled by William Plise.  
17 PLISE became insolvent as a result of the real estate and global credit crisis of 2008. Mitchell resigned  
18 his position at PLISE in July of 2008, formed MSJM Advisors with James Moore, and MSJM Advisors  
19 entered into consulting arrangements with PLISE and its affiliates. Mitchell's workload at MSJM  
20 Advisors required no more than 20 hours per week, he had absolute control over his schedule, and he  
21 worked primarily from his residence.  
22

23 MSJM Advisors' work with PLISE ended in December of 2008; however, MSJM Advisors  
24 continued providing consulting services to certain former partners of Mr. Plise who acquired control and  
25 ownership of the eight-story office building that is part of Rainbow Sunset Pavilion located on the  
26 northwest corner of Rainbow Boulevard and Sunset Road in Las Vegas, Nevada. This consulting  
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1 arrangement ended when the building was substantially complete in October of 2009. MSJM Advisors  
2 has no other clients or work.

3  
4 Over the last couple of months, Mitchell has evaluated his career opportunities. Mitchell has  
5 concluded that none of these opportunities will provide the personal fulfillment he desires by devoting  
6 his time to his family (specifically raising his children). Therefore, Mitchell has decided not to return to  
7 work, and he is now always available to the children. Mitchell's decision not to work will not affect his  
8 ability to meet his obligations (including paying \$2,000 per month for the support of his children), and  
9 Mitchell is not seeking to change his support obligations through this motion. Unfortunately, Christina  
10 will not modify the current timeshare arrangement to provide Mitchell more time, something that Mia  
11 would substantially benefit from now that she cannot see Mitchell daily.

### 12 13 III.

#### 14 THE COURT SHOULD CONFIRM THE PARTIES AS JOINT PHYSICAL CUSTODIANS

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16 The parties agreed in the MSA that they would have joint physical custody of the children. The  
17 terms and conditions of the MSA were incorporated into the Decree except where changed by the SAO.<sup>7</sup>  
18 Since the parties entered into the SAO, the Nevada Supreme Court issued its new opinion in *Rivero v.*  
19 *Rivero*, 125 Nev. Adv. Op. 34, 216 P.3d 213 (2009), modifying the definition of joint physical custody  
20 it had expressed in its first *Rivero* opinion that the parties were operating under when negotiating their  
21 resolution.

22  
23 Under *Rivero II*, the terms of a parties' custody arrangement will control except when the  
24 parties move the Court to modify the custody arrangement. 125 Nev. Adv. Op. 34 at 22. In that  
25 circumstance, the court must apply the definitions of custody set forth in *Rivero II*. Essentially, the  
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7 The SAO did not change the custody status of the children.



1 court must review the parties' custody arrangement under the "40% annually" standard that the court  
2 prescribed in that case.

3 Under the formula in *Rivero II*, joint physical custody is defined as a party having a child in his  
4 or her "physical custody" approximately three days per week. *Rivero II*, 125 Nev. Adv. Op. 34-35.  
5 Mitchell's current timeshare arrangement with the children provides him normal visitation<sup>8</sup> with the  
6 children weekends from 6:00 p.m. on Fridays until 6:00 p.m. on Sundays except as follows: (1) on the  
7 first weekend of the month, Christina has the right to have the children on the weekend in which case  
8 Mitchell's time is Wednesday at 6:00 p.m. until Friday at 6:00 p.m.; and (2) on the second and fourth  
9 weekends of the month, Mitchell's weekend visitation begins on Thursdays at 6:00 p.m. Thus, Mitchell  
10 has the children in his physical custody all or part of three or four days each week.  
11

12 The fact that Mitchell has the children in his physical custody only six hours on some of those  
13 days is irrelevant under the *Rivero II* criteria. The *Rivero II* court stated:  
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15 In calculating the time during which a party has physical custody of the child, the district  
16 court should look at the number of days during which a party provided supervision of the  
17 child, the child resided with the party, and during which the party made the day-to-day  
18 decisions regarding the child. The district court should not focus on, for example, *the*  
19 *exact number of hours the child was in the care of the parent*, whether the child was  
20 sleeping, or whether the child was in the care of a third-party caregiver or spent time with  
21 a friend or relative during the period of time in question

22 125 Nev. Adv. Op. 28-29 [Emphasis added]. On these days (like all other times Mitchell has visitation  
23 with the children), he provides for their supervision, they reside at his home, and he makes day-to-day  
24 decisions regarding activities, clothing, food, bathing, and sleep.

25 Thus, because the parties continue to share joint physical custody under the *Rivero II* formula,  
26 Mitchell's request for modification of the current timeshare must be reviewed under the criteria  
27 applicable to that timeshare. Specifically, Mitchell must show that the change in the custody

28 <sup>8</sup> The MSA and SAO use the term "normal visitation" to describe visitation that is not holiday or vacation visitation.

1 arrangement is in the children's best interest. NRS 125.510(2); *Truax v. Truax*, 110 Nev. 437, 438-39,  
2 874 P.2d 10, 11 (1994).

3  
4 IV.

5 **A MODIFICATION OF THE CURRENT TIMESHARE, AND A CUSTODY ASSESSMENT, IS**  
6 **IN THE BEST INTEREST OF THE CHILDREN**

7 ***A. The Court Should Order an Assessment of the Minor Children***

8 Mia is 5 years old, and Ethan is 2.5 years old. While it has only been approximately 4 months  
9 since the parties signed the SAO, Christina's constant disparagement of Mitchell has had a significant  
10 impact on Mia. This time period is crucial in the children's development. Much of the early years of  
11 life are spent in the creation of a child's first "sense of self" or the building of a first identity. This is a  
12 crucial part of the children's makeup—how they first see themselves, how they think they should  
13 function, and how they expect others to function in relation to them. If the children do not receive  
14 sufficient parental interaction during this crucial period, or receive a warped view of the role of the  
15 parents, it may leave the children with a developmental deficit that hampers their success in life. The  
16 children must receive positive attention and affection from both of their parents to develop in a healthy  
17 manner. Mitchell believes that an assessment of the parties' relative interaction with the children will  
18 demonstrate that Christina's conscious and unconscious undermining of the children's relationship with  
19 Mitchell and his family is harming the best interest of the children, and causing Mia's emotional  
20 problems.  
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23 The SAO entered by this Court provided Mitchell more visitation time; however, the SAO was a  
24 compromise reached by the parties in mediation after a nearly eighteen (18) month long dispute, eight  
25 (8) months of which were in litigation. Settlements are by their nature imperfect and cannot be viewed  
26 as representative of the desired results of the parties. There were no winners between the parties, but the  
27 children appear to be the only losers. The SAO reflects the maximum time Christina was willing to give  
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1 Mitchell and the minimum time Mitchell was willing to accept at the time without the financial and  
2 emotional cost and expense of continued litigation. The reality of the situation is that Christina did not  
3 want to provide Mitchell any additional time, and Mitchell wanted equal time. Both compromised, and  
4 with that compromise, Mitchell expected Christina to cooperate with Mitchell as a co-parent without the  
5 bitterness, anger, and hostility that existed from the time of their divorce. Mitchell did not anticipate  
6 that Christina would continue emotionally abusing Mia and the impact on Mia would be so severe.

8 Mitchell believes that the continued emotional abuse by Christina of Mia and the resulting  
9 impact on Mia is now manifesting itself as severe mood swings and significant anger management  
10 problems. The problems are severe enough that both Christina and Mitchell believe that Mia requires  
11 the assistance of a mental health service provider. Mia is currently being treated by Dr. Mishalow;  
12 however, Mitchell does not have a significant role in the treatment and Christina's interests are not  
13 aligned with Mia. It is impossible for Mia to be fully and fairly evaluated when Christina controls the  
14 appointments and interferes in the sessions. The fact that Mia communicates to Mitchell that Christina  
15 says he is a cheater, that Amy stole him away from Christina, that Amy is really married to someone  
16 else and not Mitchell, that Christina hates Amy, and that the men that Christina dates will be Mia's new  
17 dad may only be the tip of the iceberg in terms of the abuse. Mitchell believes that more time with Mia  
18 (and Ethan) will provide the necessary stable and positive influence in the children's lives that they so  
19 desperately need. Mitchell intends to use the additional time with Mia to deal with her mood swings and  
20 anger management issues beyond treatment and to prevent any such problems with Ethan.

24 Mia is also having significant difficulty adjusting to her new school. Mitchell is not permitted to  
25 visit Mia (or Ethan) at school on a daily basis as he has done so in the past. The children expected  
26 Mitchell to visit them when they started school in August of this year. Christina has also aggravated  
27 Mia's circumstances by communicating to Mia that Mitchell was trying to force her to attend full days  
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1 when Mia really only wanted to attend half days. Christina is less concerned with co-parenting with  
2 Mitchell and more concerned with reprising her role as the victim divorcee who selflessly devotes her  
3 life to her children. This role is manufactured and is far from the truth. Christina's conduct of blaming  
4 Mitchell for forcing Mia to attend school full days (which caused Mia to be angry and upset) and  
5 lobbying school officials to prevent Mitchell from visiting the children at school reflects the kind of  
6 parent Christina really is: Christina puts her needs before the children. This conduct has severe  
7 consequences on Mia's welfare.

9 ***B. The Best Interests of the Children are Served by a Modification of the Current Timeshare***

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11 Virtually all psychological studies of post divorce child rearing suggest that the parents' ability  
12 to cooperate after divorce is the single most important factor in the children's well being.

13 High-conflict harms children whether it originates with the parents or is fueled by others  
14 in the adversarial system. The level and intensity of parental conflict is now thought to be  
15 the most important factor in a child's postdivorce adjustment and single best predictor of a  
16 poor outcome. Highly conflicted custody cases disrupt and distort the development of  
17 children, placing them at risk for depression and mental disorders, educational failure,  
18 alienation from parents, and substance abuse.

19 *Paradigm Shifts and Pendulum Swings in Child Custody*, Family Law Quarterly, Vol. 42, No. 3, Fall  
20 2008, page 388. The Nevada Legislature and the Nevada Supreme Court have progressively moved  
21 toward an environment that recognizes that the post divorce involvement of both parents is an essential  
22 element of the welfare of the children. In 1981, the Nevada legislature enacted NRS 125.460 in which it  
23 stated that the express policy of the state of Nevada to ensure that minor children have "frequent  
24 associations and a continuing relationship with both parents", and that "both parents share the rights and  
25 responsibilities of child rearing." The Nevada Supreme Court later found that the enactment of NRS  
26 125.460 was a "remarkable historical event," because "throughout most history legislatures and courts  
27 have been blind to the reality that most children are in most cases much better off, after their parents  
28 separate, if they can continue to have two parents rather than only one." *Mosley v. Figliuzzi*, 113 Nev.

51, 62, 930 P.2d 1110, 1117 (1997). In *Mosley v. Figliuzzi*, the Nevada Supreme Court eloquently expressed the broader meaning of the policy underlying NRS 125.460:

The realization that children are better off with both parents has been a long time in coming. Throughout most child-custody litigation in the past, the child was "awarded" to one parent or the other; one parent "won" custody, and the other "lost." In either case, the child lost because the child was in many cases unnecessarily deprived of one parent. Courts, until recently, seem to have been unable to grasp the rather simple fact that most children have two loving parents and are entitled to the love of both -- to the greatest extent possible -- in the event that the two parents decide not to live together in one household.

[...]

There is presently a broad political and scientific consensus that children do better when they have two actively involved parents. By encouraging 'frequent associations and a continuing relationship with both parents' and by enacting the joint custody preference statute our legislature was recognizing the importance of encouraging family preservation after separation and divorce and the vital necessity for maintaining both paternal and maternal influences on children to the greatest extent possible. The legislature has recognized that the key to preserving the 'best interests' of the child lies in accepting the principle that it is not necessary for the courts, in child custody decrees, to perform a 'parentectomy.'

113 Nev. at 63-64. (citations omitted).

The following is an analysis of the factors listed under NRS 125.480 as required as part of the court's consideration of the "best interests" of the children:

(a) *The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his custody.*

The children are not of sufficient age to have a controlling view of their custodial relationship; however, the children's preferences should not be disregarded. Mia has complained to Mitchell and his wife Amy that she does not get to spend enough time with them, that her visits are too short, and that she wants to stay longer but that Christina will not allow her. Mia has expressed these preferences on a regular basis but more frequently starting in August of 2009. These feelings have been exacerbated by the fact that Mitchell is no longer permitted to visit the children at school and with Christina's emotional

1 abuse of Mia. The children are very emotional when Mitchell informs them that his visitation time with  
2 them is over on Sunday nights and they have to return to Christina's home. Mia often cries  
3 uncontrollably when told she has to return to Christina's house. Mia has also expressed anger on  
4 multiple occasions that Christina will not allow her to stay longer because "rules are the rules and we  
5 cannot change them."

7 Attached, as Exhibit B is the Affidavit of Megan Stipp who is Mitchell's sister and with whom  
8 Mitchell assigns the primary responsibility of picking up and dropping off the children during Mitchell's  
9 visitation to avoid conflicts with Christina and her family members. As Megan's affidavit demonstrates,  
10 Mia is extremely happy when Megan picks up the children at Christina's house but is extremely sad and  
11 often cries in the car when she returns the children to Christina. When the children arrive at Christina's  
12 house, many times Mia does not want to get out of the car and often fights and struggles with Christina  
13 and her relatives. The children are clearly suffering as a result of the current timeshare arrangement and  
14 will only benefit if Mitchell has equal time with them. The children have never expressed to Mitchell  
15 while in his care that they wanted to go to Christina's home (or did not want to be with him), or that they  
16 wanted to spend more time with Christina and less time with Mitchell.

19 *(b) Any nomination by a parent or a guardian for the child.*

20 Not applicable.

22 *(c) Which parent is more likely to allow the child to have frequent associations and a  
23 continuing relationship with the noncustodial parent.*

24 Again, one only needs to view Christina's actions in this matter, her attempt to continuously limit  
25 Mitchell's time with the children, and her repeatedly stated hatred of Mitchell and his wife Amy to  
26 understand that she does not intend to foster a relationship between Mitchell and the children.

27 Mitchell has provided in Subsection (d) below an email in which Christina simply "goes off" on  
28 Mitchell after he had sent her a reply email regarding the children's telephone communication.

1 Specifically, the SAO requires the custodial parent to facilitate daily telephonic communication between  
2 the non-custodial parent and the children by placing at least one (1) telephone call per day. Neither  
3 party has complied with the terms of this provision. While seemingly a good idea, the presence of this  
4 provision in the SAO has granted Christina continued opportunities to harass Mitchell and his wife Amy  
5 in front of Mia. Indeed, within weeks of reaching that agreement, Christina began to create conflict by  
6 refusing to permit the children to speak to his wife Amy (who happens to be the children's stepmother)  
7 on the telephone and disconnecting the calls if Amy spoke to the children during Mitchell's calls (even  
8 if the children asked to speak to her).  
9

10  
11 Furthermore, Christina would attempt compliance with the letter of the agreement but ignore the  
12 spirit by placing calls when the children were otherwise preoccupied (e.g., watching favorite television  
13 program, immediately before guests arrived, dinner, or snack time, or when one of the children was  
14 sleeping) so that the children would immediately want to end the call or would not participate  
15 meaningfully in the conversation, and placing calls from various phone numbers, blocked telephone  
16 identification numbers and after hours with the expectation that Mitchell would not answer. Mitchell  
17 would return all messages left by the children or call back if calls were disconnected, but Christina  
18 would never accept Mitchell's calls or have the children return his messages even when he called back  
19 multiple times (in some instances less than 30 seconds after missing a call or a call was disconnected).  
20  
21 Many times Christina or her family members caring for the children would disconnect the calls in the  
22 middle of Mitchell's conversation with the children.  
23

24 The issue of forcing the children to call the non-custodial parent became overly burdensome  
25 given Christina's bad intentions and gamesmanship. Mitchell ultimately reasoned that neither party  
26 should force the children to call the other parent, but that each should facilitate specific requests by the  
27 children to speak to the other. On each occasion when the children have asked to call Christina,  
28

1 Mitchell placed the call, and Mitchell has taught Mia how to use the phone and Christina's telephone  
2 number. If the children do not connect with Christina, he tries her again and always answers Christina's  
3 return telephone calls. Christina, on the other hand, does not place calls to Mitchell for the children any  
4 longer, and Mitchell has only spoken to the children once on the phone in several weeks (which did not  
5 even include Mia's birthday on October 19, 2009).

7 Mitchell attempted to communicate his position to Christina via email. The emails started  
8 cordially, but Christina erupted almost immediately when Mitchell requested that she refrain from  
9 making inappropriate comments to the children. The tone of Christina's emails (quoted below) are a  
10 perfect representation of why she cannot facilitate, and refuses to permit, frequent associations between  
11 Mitchell and the children.  
12

13 *(d) The level of conflict between the parents.*

14 The level of conflict between the parents is high. This Court should simply review the previous  
15 pleadings in this matter to understand that Christina is a bitter, angry and hostile person. She still cannot  
16 deal with the damage to her pride caused by the parties' divorce and Mitchell's remarriage, and so she  
17 has sought to minimize his role as a parent through personal attacks and emotional abuse of the children.  
18 Below is a series of emails exchanged by and between Mitchell and Christina during August 1, 2009  
19 through August 3, 2009 (a little over a month after the parties entered into the SAO) which demonstrates  
20 Christina's continued bitterness, anger and hostility toward Mitchell and his wife, Amy, and the  
21 emotional impact on Mia:  
22  
23

24 On Saturday, August 1, 2009 at 10:18 PM, Christina Calderon-Stipp  
25 <[ccstipp@gmail.com](mailto:ccstipp@gmail.com)> wrote:

26 Mitchell,

27 As I emailed you earlier today to remind you, I did not receive a telephone call from our  
28 children today. I waited all day. As you know, according to the agreement we reached  
on July 8, 2009, and submitted to the Court as a Stipulation and Order, you are obligated  
to facilitate at least one call to me when the children are in your care, as they are today.



1 I hope that your deliberate violation is not a continuation of the venom and hostility you  
2 unleashed at me and my attorneys yesterday. Please note that when the children are in  
3 my care, I always make sure that they call you. I simply ask that you reciprocate, as you  
4 are now legally required to do.

5 How are our children?

6 --Christina

7 On Sunday, August 2, 2009 at 10:39 PM, Mitchell Stipp  
8 <[mitchell.stipp@yahoo.com](mailto:mitchell.stipp@yahoo.com)> wrote:

9 I did not receive an email from you on Saturday other than the one attached below. With  
10 respect to the telephone call, I asked if the children wanted to call you and they declined.  
11 I have made it clear before that I will not force them to call you.

12 I also thought you should know that Mia was very upset on Friday. She informed me that  
13 you were going on a date and that the unidentified man was going to be her "new dad."  
14 She was very confused and extremely sad. I hope you understand that putting these  
15 things in Mia's head only hurt her feelings.

16 On Monday, August 3, 2009 at 1:53 PM, Christina Calderon-Stipp  
17 <[ccstipp@gmail.com](mailto:ccstipp@gmail.com)> wrote:

18 Mitchell,

19 With respect to your comments about my personal life, please keep them to yourself from  
20 now on. Mia is apparently intensely insecure about the possibility of me dating and then  
21 quickly marrying another person, NOT because I tell her these things, but because  
22 THAT'S WHAT YOU DID TO HER WITH AMY.

23 You brought Amy, with whom you had been having an affair during our marriage, into  
24 our marital bed and shared it with Mia less than 1 month after I had moved out of our  
25 family home. Mia was shocked that "Daddy's friend from work" was spending the night  
26 in Mommy's bed. Amy then moved all her clothes into Mia's Mommy's closet less than  
27 2-3 months after Mommy moved out. All this when Amy was still married to another  
28 man. THEN, if that wasn't enough, Mia's Daddy ran off and quickly married Amy less  
than 7 months after Mommy moved out, all without telling Mia or Ethan beforehand, and  
without ever giving them the chance to be part of what should have been a "family"  
ceremony for them.

Given this history, isn't it clear to you where Mia's fears come from? Mia saw me  
dressed up on Friday night and came to her own conclusions about me and a date. Sadly,  
from your email to me, it appears that she is traumatized by her father's break up of her  
family and actions in introducing someone new into the home in record time, all directly  
contrary to what our family counselor told you and all manner of studies say is healthy  
for children of divorce.

1 These are the consequences of your infidelity and continuing poor judgment. Amy  
2 wasn't the first; she was just the last. Instead of falsely accusing me of wrongdoing, look  
3 at yourself in the mirror next time and continue with your psychiatric help. It is clear that  
4 you need it.

5 --Christina

6 On Monday, August 3, 2009 at 2:45 PM, Mitchell Stipp  
7 <[mitchell.stipp@yahoo.com](mailto:mitchell.stipp@yahoo.com)> wrote:

8 You have my position on the issue. If the children want to speak to you, I will facilitate  
9 the call and dial your number. This will be my last email on this issue.

10 On Monday, August 3, 2009 at 3:05 PM, Mitchell Stipp  
11 <[mitchell.stipp@yahoo.com](mailto:mitchell.stipp@yahoo.com)> wrote:

12 Your allegations are false. They are simply assumptions based on your insecurity and  
13 apparently never ending investigation into the "truth." What did your investigation find?  
14 Here is the truth: You asked for a divorce; we got one; I married somebody that I love;  
15 and You hate your lonely pathetic life. Your perception is warped. It is very clear from  
16 your email who is hurting the children. Mia is well adjusted to the changes in my life and  
17 loves Amy very much. She is not traumatized by my relationship with her. She appears  
18 only to be affected by your actions and feelings regarding Amy. Mia is very smart and  
19 communicates regularly your hatred and hostility toward Amy. I think a child assessment  
20 would demonstrate these facts (which is why you did not want it). I welcome it. I have  
21 nothing to hide. I am not the crazy one. You may have Pee Wee Herman (Shawn  
22 "Super" Gaystein) fooled, but no sane person believes that you are mentally stable. This  
23 is also my last email on this issue.

24 On Monday, August 3, 2009 at 3:49 PM, Christina Calderon-Stipp  
25 <[ccstipp@gmail.com](mailto:ccstipp@gmail.com)> wrote:<sup>9</sup>

26 Mitchell,

27 You are a deeply insecure and intensely co-dependent pathetic little man. You always  
28 were, I just wanted to believe otherwise. Money will never make up for your  
insecurities. You can only feel good about yourself by putting down other people down,  
including my attorneys for some insane and unprovoked reason. You have always had a  
Napoleon/Willow complex and have always been the negative one about every little thing  
in your life even though you were truly blessed to have met and been with me for so  
long.

What you say about Mia is false. I have to deal with her questions on a daily basis,  
questions no 4-year-old should have to ask or wonder about like: Are you going to marry  
Dada again? Did you know he wears two rings, one for you and one for Amy? Amy

<sup>9</sup> Christina asserts in this email that she is forced to answer questions from Mia like "Why did Amy leave her husband?"  
Please see infra footnote 4. The only person that would have communicated to Mia that she was previously married is  
Christina.

1 says she's sorry about what she did. Why did Dada marry Amy? Why did Amy leave her  
2 husband? If Dada married you and then she chose Amy, who is next?

3 You only want an evaluation so that you can continue to mentally abuse Mia and Ethan.  
4 You want it so that you can try to rewrite history to anyone who will listen. This isn't  
5 1984. No one believes your lies anymore.

6 No one believes that you moved on with your secretary "after" our divorce, no matter  
7 how many times you say it, just as no one believes that she is with you for any reason  
8 other than your bank account.

9 My investigation revealed this: That my husband was unfaithful and spent what should  
10 have been family time chasing women he couldn't even pay to overlook his physical and  
11 mental inadequacies. You settled on an uneducated, trashy cheater just like yourself.  
12 The daughter of an alcoholic who traded in her devoted blue collar husband for her  
13 attorney boss. A man that courted her by spitting gum at her on his way past her office  
14 and giving her a Cartier watch and a \$7500 cash bonus for Christmas for her "services."

15 It is clear that you throw Amy at the children and vice versa because you fear that like  
16 you did to me, and she did to James, she will dump your ass as soon as the next best  
17 indecent proposal comes her way. Maybe you feel that having her next to you like velcro  
18 and ingratiated into the lives of our children will prevent her from leaving. Guess what?  
19 She will.

20 You bought Heather, the leasing coordinator who preceded Amy, a brand new BMW, but  
21 she dumped your ass anyway in favor of her felon live-in boyfriend (not to be confused  
22 with the estranged husband she had that you paid Paul Lemcke to get her divorced from).  
23 She wasn't even a U.S. citizen and had a criminal record. She and her boyfriend told me  
24 that you wouldn't stop calling her even after she let you go. You finally did when the  
25 felon threatened to kick your ass, which he should have done.

26 Then there was Pamela, your buddy Jon Field's sloppy seconds. She was a stripper at the  
27 Rhino who loved your relation\$\$\$hip until you probably maxed out your credit cards on  
28 her. But that didn't stop you from calling her 20 times a day for three months.

29 Then there were the Redstone grille/Sammy's/Kobe sushi/Starbucks waitresses who  
30 always seemed to go for your taller, charming and sexier boss over you. Can you blame  
31 them? I don't.

32 So what did you wind up with after I caught your pathetic phone call to Amy, your  
33 subordinate employee, complaining about why she didn't answer your weekend calls and  
34 asking whether she fucked her own husband or not after your tiff with her??? You got  
35 yourself the uneducated daughter of an alcoholic. Mexican trash from Texas looking to  
36 snag herself a rich man to put her through the prestigious University of Phoenix. This  
37 when you cry about not wanting to pay for your own children's preschool.

38 Looks like you're the real winner here. :-) You may not be "alone," but let me tell  
you something, you will always be lonely and so will she, because you are both terrible,

1 empty people. Indecent home wreckers who deserve each other and the misery you will  
2 both bring to each other.

3 Trust me. I can buy myself a male Amy. They are a dime a dozen out here. I'm sure  
4 Amy considers marriage to you as just a promotion. At first she was "only" getting 80k a  
5 year (straight out of high school) to be your "secretary." The nominal sum you criticize  
6 Shawn for making. Now she gets half of your \$\$\$ in exchange for providing the same  
7 services. Can you blame her for jumping ship? Not in your sick world you can't.

8 It's funny how you say one thing in writing but another in person when she's not around,  
9 like how incredibly unhappy you are with her, how you regret your actions and misdeeds  
10 towards me and how you think about them every day of your life.

11 You *should* think about it. You lost the best thing, besides our children, that will ever  
12 happen to you. You never deserved me. No one thought so, it just took me a while to see  
13 it too. And as for having a "lonely, pathetic life," only you would say or wish such a  
14 thing. I have never been happier to be free from the torture of being around you.  
15 Divorce liberated me from what would have been a lifetime of pain and misery.  
16 Hallelujah!

17 (See emails collectively attached as Exhibit C hereto).

18 Christina's own words represent an intense need to insult Mitchell and his wife Amy and  
19 demonstrate the merit of Mitchell's concerns about her improper statements and behavior toward the  
20 children, particularly Mia. Christina's reaction to Mitchell's email completely ignores Mitchell's  
21 concern about the emotional impact upon Mia. Mia's conclusion that Christina's date was going to be  
22 her "new dad" likely came from Christina, and if it did not, Christina could have assured Mitchell that  
23 she would talk to Mia when she returned home and explain to her that it was not the case. Instead,  
24 Christina told Mitchell to mind his own business and unleashed an unprovoked attack on Mitchell and  
25 Amy while at the same time asserting that Mitchell was the hostile one and in need of psychological  
26 help.

27 Christina's personal feelings about the parties' divorce continue to affect her and the children.  
28 Mitchell requests that the court direct the parties to a plan granting each equal time and frequent  
associations with the children so that he can better address the problems Christina's actions and words

1 are causing Mia. Moreover, the court should direct an assessment under which a forensic psychologist  
2 can get to the bottom of the emotional problems that Mia is exhibiting.

3 *(e) The ability of the parents to cooperate to meet the needs of the child.*

4 Mitchell has done everything he can do to cooperate with Christina on issues affecting the  
5 children; however, Christina insists on complete control of parenting matters and often disregards  
6 Mitchell's input or suggestions and/or uses the children to attack Mitchell when he fails to agree or  
7 otherwise asserts his opinion.  
8

9 Mia is being treated by Dr. Mishalow for clothing and anger management issues. Mitchell has  
10 participated in the process of engaging Dr. Mishalow, but Christina has excluded Mitchell from Mia's  
11 treatment. Christina is likely the source of Mia's emotional issues and is not the proper person to  
12 facilitate Mia's treatment.  
13

14 Mitchell regularly communicates to Christina any healthcare matters affecting the children while  
15 the children are in his care and responds to all of Christina's emails regarding the same. Mitchell has  
16 actively participated in the process of selecting schools for the children for the next school year.  
17 Attached as Exhibit D is the email correspondence by and between Mitchell and Christina (including  
18 correspondence with Mia's school) regarding health and school matters affecting the children.  
19

20 *(f) The mental and physical health of the parents.*

21 Christina's continued bitterness, anger and hostility may suggest psychological problems. As  
22 part of any assessment of the problems Mia is suffering, it is likely that the parties will be  
23 psychologically tested, and Mitchell would welcome such examination to determine the extent of  
24 Christina's hostility, and its effect on the children.  
25  
26  
27  
28

1           (g)     *The physical, developmental and emotional needs of the child.*

2           Mitchell's consistent and regular contact with the parties' very young children is supported,  
3 again, by virtually all psychological studies, which studies uniformly suggest that contact between  
4 parents and young children be frequent and meaningful, and include overnights. See, e.g., the  
5 comprehensive study of the body of psychological data on infants and toddlers found in Family and  
6 Conciliation Courts Review; Los Angeles Jul 2000 Joan B Kelly; Michael E Lamb; Volume: 38 Issue:  
7 3: 297-311, Sage Publications. ISSN: 1047569. Under the current timeshare plan, Mitchell is now  
8 precluded from seeing the children for several days at a time. He no longer is permitted to visit them  
9 while at school, and he does not have any communication with the children while they are in the care of  
10 Christina. It is since that regular contact ended that Mia has begun to show the ill effects of Christina's  
11 actions and words.  
12

13  
14           (h)     *The nature of the relationship of the child with each parent.*

15           The children both have a loving and warm relationship with Mitchell and seemingly with  
16 Christina; however, Mia is starting to appreciate the emotional trauma Christina has caused her. Mia  
17 recently told Mitchell that she wanted to "punch her mother in the face." Mitchell does not believe that  
18 this type of directed anger, and the accompanying histrionics, are normal for a 5 year old. The court  
19 needs to investigate and develop a better understanding of the root of these issues.  
20

21  
22           (i)     *The ability of the child to maintain a relationship with any sibling.*

23           Neither party is suggesting that the children be split; however, Mitchell and his wife, Amy, are  
24 planning to have children and would like the children to have a significant role in their lives.

25           (j)     *Any history of parental abuse or neglect of the child or a sibling of the child.*

26           None; however, Mitchell believes that Christina's alienation of the children from Mitchell constitutes  
27 emotional abuse. Christina's behavior has not changed since the parties' divorce or after the SAO.  
28

1       (k)    *Whether either parent or any other person seeking custody has engaged in an act*  
2       *of domestic violence against the child, a parent of the child or any other person*  
3       *residing with the child.*

4       Mitchell has not engaged in any act of domestic violence; however, Christina continues to harass  
5       Mitchell and his wife, Amy, and emotionally abuse the children.

6       As can be seen from an application of the appropriate factors, there is adequate basis on the  
7       issue of Mitchell's request for additional time (an equal timeshare) with the children, and a child  
8       custody assessment. Mitchell believes that Mia's emotional issues arise from Christina's undisguised  
9       hatred of Mitchell and Amy, but regardless of the parties positions on that issue, the fact remains that a  
10      5 year old is acting in a manner that both parties believe requires her to attend therapy. The court  
11      should intervene and make efforts to determine the root of the problem, and enter its orders in the best  
12      interest of the children.  
13  
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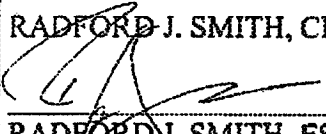
CONCLUSION

Based upon the foregoing, Mitchell requests that this court:

1. Confirm the parties' status as joint physical custodians;
2. Modify the timeshare of the children to grant the parties equal time and more frequent associations with the children; and,
3. Order a child custody assessment to determine the root of the parties' children's emotional problems.

DATED this 29<sup>th</sup> day of October 2009.

RADFORD J. SMITH, CHARTERED

  
RADFORD J. SMITH, ESQ.

Nevada Bar No. 002791

64 N. Pecos Road, Suite 700

Henderson, Nevada 89074

(702) 990-6448

Attorneys for Defendant Mitchell D. Stipp

...  
...  
...



**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Radford J. Smith, Chartered ("the Firm"). I am over the age of 18 and not a party to the within action. I am "readily familiar" with firm's practice of collection and processing correspondence for mailing. Under the Firm's practice, mail is to be deposited with the U.S. Postal Service on the same day as stated below, with postage thereon fully prepaid.

I served the foregoing document described as "DEFENDANT'S MOTION TO CONFIRM PARTIES AS JOINT PHYSICAL CUSTODIANS AND TO MODIFY TIMESHARE ARRANGEMENT" on this 29<sup>th</sup> day of October 2009, to all interested parties as follows:

☒ BY MAIL: Pursuant To NRCP 5(b), I placed a true copy thereof enclosed in a sealed envelope addressed as follows;

☒ BY FACSIMILE: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document this date via telecopier to the facsimile number shown below;

☒ BY ELECTRONIC MAIL: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document this date via electronic mail to the electronic mail address shown below;

☒ BY CERTIFIED MAIL: I placed a true copy thereof enclosed in a sealed envelope, return receipt requested, addressed as follows:

James J. Jimmerson, Esq. and  
Shawn M. Goldstein, Esq.  
415 S. Sixth Street #100  
Las Vegas, Nevada 89101  
Fax: 702-387-1167  
Attorneys for Plaintiff

  
An employee of Radford J. Smith, Chartered

**MOTION  
EXHIBIT “A”**

STATE OF NEVADA )  
COUNTY OF CLARK ) ss:

1. That I have personal knowledge of the facts contained herein, and I am competent to testify thereto. I am the Defendant in the case of *Stipp v. Stipp*, case number D08-389203-Z in the Eighth Judicial District Court, State of Nevada. I submit this affidavit in support of my Motion to Confirm Parties as Joint Physical Custodians and to Modify Joint Timeshare Arrangement.

Christina did not seek to move out of state, she did not seek to alter the timeshare arrangement, and she did not seek to alter my child support obligations, which are the instances in which the status of physical custody matter.

1 occurred. The Court denied our motions at a hearing held on February 24, 2009 during which the Court  
2 indicated that I should have more time with the children. I later filed a motion for reconsideration or in  
3 the alternative a motion to modify the timeshare arrangement on April 27, 2009. At the hearing on my  
4 motion held on June 4, 2009, the Court again ordered us to attend mediation. We attended mediation  
5 and modified the terms of the MSA through a stipulation and order signed on July 8, 2009 and entered  
6 by the Court on August 7, 2009 ("SAO"). Under the MSA and SAO, Christina and I have joint physical  
7 custody of the children. However, since we entered into the SAO, Nevada law regarding physical  
8 custody has changed. Christina and I never intended to have custody of the children other than as joint  
9 physical custodians. I also never expected the definition of "joint physical custody" to change at the  
10 time I signed the SAO which now unfairly imposes upon me additional legal burdens that previously  
11 failed to exist in order to change the current visitation schedule.

14 3. Christina's bad acts have likely caused Mia to suffer emotional trauma.<sup>2</sup> Mia only  
15 recently began to show signs of this trauma as severe mood swings and emotional outbursts or  
16 meltdowns. I believe this behavior is the result of Christina's continued attempts to alienate the children  
17 from me. Even after we entered into the SAO, Mia continued to tell me that Christina still says I am a  
18 cheater, that Amy Stipp ("Amy"), my wife and the children's stepmother, stole me away from Christina,  
19 that Amy is really married to someone else and not me,<sup>3</sup> that Christina hates Amy, and that any man that  
20 Christina dates will be Mia's new dad. I believe that Christina continues to communicate these items  
21  
22  
23

24 .....  
25 <sup>2</sup> Mia shows signs of emotional trauma; however, the source of Mia's trauma has not been determined by a qualified  
26 psychologist.

27 <sup>3</sup> Amy was previously married to James Upp. Amy and I never communicated this fact to Mia. There is absolutely no reason  
28 why we would ever do so. However, Mia knows the name of Amy's ex-husband and continuously asks Amy and me about  
"James."

1 (and likely others) to Mia to harass Amy and I using Mia as a tool. Mia now also regularly reports to  
2 Amy and I that Christina often shows her wedding pictures of Christina and me when we were married.

3 4. When Mia confronts Amy or me with these items described in paragraph 3 above, which  
4 occurs almost every visitation period since Christina and me entered into the SAO, Amy and I try to  
5 explain them to Mia to the extent appropriate. Amy and I tell Mia that I am not a cheater, that I was  
6 married to Christina but now am married to Amy, that Amy and I like Christina and that Christina really  
7 does like Amy, that Christina is a good person and loves Mia very much, that Amy was married before  
8 to "James" but now she is married to me, and that I am her dad but may be some day she will have a  
9 stepdad if Christina re-marries. Mia often refuses to accept these explanations provided by Amy and  
10 me. She will become argumentative and will say that "you are wrong, "that is not true" and "you are  
11 lying."

12 5. These discussions described in paragraph 4 above all have been initiated by Mia without  
13 warning. Since Christina and I entered into the SAO, Mia has been swimming in the pool, driving in the  
14 car, using the toilet in the bathroom stall of a department store, or finishing a bath, and out of no where  
15 confront Amy and me with these alleged "truths" that Mia communicates Christina told her. By the end  
16 of such a discussion, Mia instantly transforms into an out of control child. Mia will grind her teeth and  
17 growl, clench her fists, and shake her arms and head violently. I deal with these meltdowns by  
18 embracing her and telling her that I love her and not to be mad until she eventually begins to cry  
19 uncontrollably. These episodes sometimes last as long as thirty (30) or forty-five (45) minutes. Many  
20 times afterwards Mia is physically exhausted and will lie down in her bed, on the couch, or fall asleep in  
21 her car seat.

1           6.       Since the SAO, Christina observed that Mia has issues that she believed required mental  
2 health services. At the time, she only communicated to me that Mia had clothing issues.<sup>4</sup> She  
3 communicated to me that she wanted Mia to see a mental health provider. I recognized this same  
4 problem and agreed that Mia needed an evaluation (which I had expected would also identify Mia's  
5 emotional trauma). Christina provided to me the names of referrals she obtained to consider for Mia's  
6 treatment and began scheduling appointments to interview the therapists. The first appointment she  
7 scheduled was with Melissa Koladner, Psy.D., RPT-S, BCPC, a child/adolescent psychologist. I  
8 separately investigated and interviewed Dr. Koladner, paid \$200 for the initial consultation, and  
9 approved her to treat Mia. At the meeting, Dr. Koladner informed me that Christina also approved of  
10 her and that I could now schedule an appointment for Mia. After the meeting, Dr. Koladner contacted  
11 Christina to inform her that I consented to Mia's treatment and that I scheduled Mia's first appointment.  
12 According to Dr. Koladner, Christina was irate. Dr. Koladner communicated to me that Christina would  
13 not permit her to evaluate Mia unless Christina alone could accompany Mia to the appointment and also  
14 be present in the evaluation room. Dr. Koladner informed me that she communicated to Christina that it  
15 was immaterial who accompanied Mia to the appointment, that she wanted to evaluate Mia without the  
16 presence of either parent, and that I already scheduled an appointment for Mia during her next available  
17 time (which happened to occur on the day Mia would be in my care). At that point, Christina cancelled  
18 the appointment and according to Dr. Koladner told her that she could not treat Mia. Christina later  
19 emailed me that she did not want to engage Dr. Koladner because she could not afford to pay Dr.

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27       <sup>4</sup> Mia refuses to wear clothing she perceives as too tight. Her clothing is several sizes larger than a child her age and size  
28 would wear. She also only wears certain outfits (only dresses and specific kinds of shoes).

1 Koladner's hourly rate of \$200 per hour.<sup>5</sup> It is clear that Christina would only secure treatment for Mia  
2 on her terms. Mitchell believes that Christina was concerned about Dr. Koladner learning of Christina's  
3 bad acts (e.g., disparaging Mitchell and Amy in front of the children). Christina is too focused on  
4 protecting her own interests rather than seeking treatment for Mia from a qualified provider which is in  
5 the best interests of Mia.  
6

7 7. Mia is currently being treated by Dr. Joel Mishalow, Ph.D. Christina selected Dr.  
8 Mishalow to assist Mia with her clothing issues.<sup>6</sup> I separately investigated and interviewed Dr.  
9 Mishalow, paid his initial consultation fee of \$150, and consented to his treatment of Mia.  
10 Unfortunately, I have not been given a meaningful opportunity to participate in Mia's therapy. Christina  
11 schedules all of Mia's appointments; however, Dr. Mishalow has spent little to no time evaluating Mia  
12 without the presence of Christina. I have been provided telephonic updates from Dr. Mishalow  
13 regarding Mia's progress (including the fact that Christina has communicated to Dr. Mishalow that Mia  
14 has anger management issues); however, I am concerned that Christina has tainted the evaluation and  
15 treatment process and that the existence of Mia's emotional trauma will not be uncovered and treated.  
16 My only interest is the welfare of Mia, and I do not believe that Mia's mental health issues are being  
17 properly evaluated and treated with Christina's exclusive control of the process.  
18  
19

20 8. Both Mia and Ethan attend pre-school. Mia attends Alexander Dawson and Ethan  
21 attends Temple Beth Shalom ("TBS") for the 2009-2010 school year. During the 2008-2009 school  
22 year, I visited the children on a daily basis at pre-school for approximately one (1) hour each day. I  
23

---

24 <sup>5</sup> I pay for medical insurance for the children and have not asked Christina to reimburse me for the premiums. Mia's  
25 treatments would be covered by insurance. I am also willing to pay directly for these costs and expenses.

26 <sup>6</sup> Dr. Mishalow has indicated to me that Mia's clothing issues may be related to an obsessive compulsive disorder. In the  
27 event that Mia is diagnosed with this condition, I believe that such a condition may be aggravated by the bad conduct of  
28 Christina.

1 value daily contact with the children and the children enjoyed seeing me everyday. At the time, both  
2 Mia and Ethan attended TBS and their teachers and administration welcomed my attendance and  
3 participation. Unfortunately, the teachers and administration at TBS and Alexander Dawson do not  
4 permit me to have daily visits. Christina vehemently objected to me visiting the children while at school  
5 during the 2008-2009 school year, and I believe that Christina has influenced the teachers and  
6 administrators at Alexander Dawson to adopt her view and in the case of TBS change their position. In  
7 fact, since the start of the school year at the end of August of 2009, I have not been able to visit the  
8 children while at school. Furthermore, Christina does not permit me to have visitation with the children  
9 other than as set forth in the current timeshare arrangement. Therefore, under these circumstances, I no  
10 longer have daily visitation with the children and the children are suffering as a result of it (especially  
11 Mia). Mia frequently communicates to me that she does not like school, that school is boring, and that  
12 she does not want to go to school anymore. These feelings are very different than her feelings of  
13 happiness expressed about attending TBS last year when I was able to visit her every day.

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17 9. Christina asserts control over all matters related to the children's school. According to  
18 Christina, Mia apparently expressed a desire to attend school full days rather than half days for the  
19 current school year. I supported the idea if Mia wanted to attend. Christina allowed Mia to attend full  
20 days with the school's permission on a trial basis for a few days. According to Christina, Mia's teachers  
21 informed Christina that Mia did well and that they recommended to Christina that Mia make the  
22 transition to full days. At that time, Christina contacted me to inquire whether I would pay one-half  
23 (1/2) of the increased costs of tuition and set a deadline for my response. I timely responded and offered  
24 to pay one-half (1/2) of the amount. After doing so, Christina communicated to me that Mia changed  
25 her mind over the weekend and that she would not be making the transition. As far as I knew, Mia did  
26 well during the days she attended full time, and the school recommended to Christina to make the  
27  
28



1 transition. Christina did not communicate to me that she had any reservations or issues with Mia  
2 attending school full time. Accordingly, I told Christina not to wait but immediately enroll Mia full  
3 time. Later in the week, Mia called me and informed me that she was mad at me because Christina told  
4 her that I was forcing her to go to school full time and that she did not want to go. Why kind of parent  
5 would tell a child this? Mia was already having difficult adjusting to school and believed that I was  
6 forcing her to attend school for even more time.  
7

8 10. I responded to Mia's telephone call by sending Christina a private email that Christina  
9 simply ignored at the time but inappropriately forwarded to Alexander Dawson's Early Childhood  
10 Center Director, Tara Hall. This act was clearly designed to embarrass me and drive a wedge between  
11 the school and me since I addressed Christina with severe criticism. I was clearly upset by Christina's  
12 manipulation of Mia and mismanagement of this parental matter. Simply put, Christina was not acting  
13 in the best interests of Mia. While there is no excuse for this reaction, every person has a breaking  
14 point, and I should not have to endure Christina's use of the children to attack him, and Mia should not  
15 have to suffer as a result of Christina's tactics. Ultimately, I withdrew his support for Mia to attend full  
16 days because she was clearly affected by the idea of me forcing her to attend full days and  
17 communicated to Christina my extreme displeasure with the situation. While my choice of words is not  
18 preferable, it demonstrates my frustration with Christina who only sees me as a bank account and not a  
19 parent who cares about the children. Christina's manipulation of Mia is a prime example of using Mia  
20 to alienate me from her (and driving a wedge between Mia's teachers and administration and me).  
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24 11. The current timeshare arrangement fails to provide me the time I desire to spend with  
25 the children, and I am unable to reach a resolution with Christina. Notwithstanding these issues, my  
26 ability to have daily contact with the children should not depend on the discretion of the teachers and  
27 administrators of the children's school (which may change from school to school and year to year).  
28

1 also now recognize that it may not be feasible to visit the children at school during the next twelve (12)  
2 years of their elementary and secondary education. At least with equal time, however, I will have an  
3 opportunity to drop off and pick up the children at school and interact with the school administrators and  
4 teachers on a weekly basis.  
5

6 12. MSJM Advisors, LLC ("MSJM Advisors") was a real estate consulting firm I started  
7 with James Moore in June of 2008. Previously, I was the Chief Operating Officer and General Counsel  
8 for Plise Development & Construction, LLC ("PLISE"), which is owned and/or controlled by William  
9 Plise. PLISE became insolvent as a result of the real estate and global credit crisis of 2008. I resigned  
10 my position at PLISE in July of 2008, formed MSJM Advisors with Mr. Moore, and MSJM Advisors  
11 entered into consulting arrangements with PLISE and its affiliates. My workload at MSJM Advisors  
12 required no more than twenty (20) hours per week, I had absolute control over my schedule, and I  
13 worked primarily from my residence. MSJM Advisors' work with PLISE ended in December of 2008;  
14 however, MSJM Advisors continued providing consulting services to certain former partners of Mr.  
15 Plise who acquired control and ownership of the eight story office building that is part of Rainbow  
16 Sunset Pavilion located on the northwest corner of Rainbow Boulevard and Sunset Road in Las Vegas,  
17 Nevada. This consulting arrangement ended when the building was substantially complete in October of  
18 2009. MSJM Advisors has no other clients or work. Over the last couple of months, I have evaluated  
19 my career opportunities. I have been offered lucrative positions with other real estate developers. I also  
20 explored returning to private practice at a law firm. I have concluded that none of these opportunities  
21 will provide the personal fulfillment I desire by devoting my time to my family (specifically raising my  
22 children). Therefore, I have decided not to return to work and would like to spend more time with my  
23 children. My decision not to work will not affect my ability to meet my obligations (including paying  
24 \$2,000 per month for the support of my children), and I am not seeking to change my support  
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1 obligations through this motion. Unfortunately, Christina will not modify the current timeshare  
2 arrangement to provide me more time.

3  
4 13. Mitchell is married to Amy. Amy and I have decided to have children. I would like Mia  
5 and Ethan to have significant roles in their siblings' lives beginning at birth. Under the current  
6 timeshare arrangement, Mia and Ethan will have limited opportunities to spend time with their siblings.

7 14. Mia has complained to Amy and me that she does not get to spend enough time with us,  
8 that her visits are too short, and that she wants to stay longer but that Christina will not allow her. Mia  
9 has expressed these preferences on a regular basis starting at the beginning of the 2009-2010 school  
10 year. The children are very emotional when I inform them that my visitation time with them is over on  
11 Sunday nights and they have to return to Christina's home. Mia often cries uncontrollably when told she  
12 has to return to Christina's house. Mia has also expressed anger on multiple occasions that Christina  
13 will not allow her to stay longer because "rules are the rules and we cannot change them." The children  
14 are clearly suffering as a result of the current timeshare arrangement and will only benefit if I have equal  
15 time with them. The children have never expressed to me while in my care that they wanted to go to  
16 Christina's home (or did not want to be with me), or that they wanted to spend more time with Christina  
17 and less time with me.

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20 15. Christina and I have not complied with the SAO which requires the custodial parent to  
21 facilitate daily telephonic communication between the non-custodial parent and the children by placing  
22 at least one (1) telephone call per day. Any statement by Christina that she has complied (either  
23 materially or substantially) with the SAO would be false. The fact is that Christina insisted on having  
24 this provision in the SAO simply to harass Amy and me. Within weeks after reaching this agreement,  
25 Christina began to create conflict by refusing to permit the children to speak to Amy (who happens to be  
26 the children's stepmother) on the telephone and disconnecting the calls if Amy spoke to the children  
27  
28

1 during my calls (even if the children asked to speak to her). Furthermore, Christina would place calls  
2 when the children were otherwise preoccupied (e.g., watching favorite television program, immediately  
3 before guests arrived, dinner, or snack time, or when one of the children was sleeping) so that the  
4 children would immediately want to end the call or would not participate meaningfully in the  
5 conversation, and place calls from various phone numbers, blocked telephone identification numbers  
6 and after hours with the expectation that I would not answer. I would return all messages left by the  
7 children or call back if calls were disconnected, but Christina would never accept my calls or have the  
8 children return my messages even when I called back multiple times (in some instances less than thirty  
9 (30) seconds after missing a call or a call was disconnected). Many times Christina or her family  
10 members caring for the children would disconnect the calls in the middle of my conversation with the  
11 children.  
12

13  
14 16. The issue of forcing the children to call the non-custodial parent became overly  
15 burdensome given Christina's bad intentions and gamesmanship. I ultimately decided that I would not  
16 force the children to call Christina but would only facilitate specific requests by the children to speak to  
17 their mother. I have taught Mia, and Mia knows how to use the telephone and dial Christina's telephone  
18 number. In the past, when the children asked to call their mother, I placed the call and if I could not  
19 connect with Christina, I would call multiple times on behalf of the children, and I always answered  
20 Christina's return telephone calls. The end result of this decision is that Christina does not place calls to  
21 me for the children any longer, and I have only spoken to the children once on the phone in several  
22 weeks (which did not include Mia's birthday on October 19, 2009). While I would welcome the  
23 opportunity to speak to the children daily, I am not willing to be harassed by Christina. Given the  
24 disparity in the timeshare arrangement, I depend more on receiving telephone calls from the children;  
25 however, it is entirely too painful to wait all day for the children to call and not be able to speak to them.  
26  
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1 to have calls disconnected in the middle of conversations, or to have to explain to Mia why she cannot  
2 speak to Amy on the phone. It is for these reasons that having equal time with the children is so  
3 important to me.  
4

5 17. I have done everything I can do to cooperate with Christina on issues affecting the  
6 children; however, Christina insists on complete control of parenting matters and often disregards my  
7 input or suggestions and/or uses the children to attack me when I fail to agree or otherwise assert my  
8 opinion.  
9

10 18. I regularly communicate to Christina any health and welfare matters affecting the  
11 children while the children are in my care and respond to all of Christina's emails regarding the same.<sup>7</sup>  
12

13 19. I have actively participated in the process of selecting schools for the children for the  
14 2010-2011 school year.  
15

16 20. Mia has expressed significant anger toward Christina. Mia recently told me that she  
17 wanted to "punch her mother in the face."  
18

19 21. I have not engaged in any act of domestic violence; however, Christina continues to  
20 harass Amy and me.  
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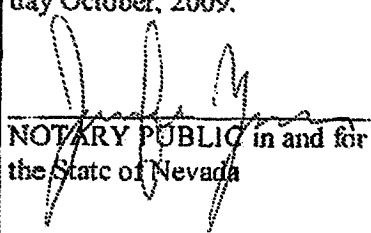
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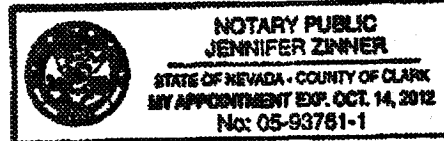
25 <sup>7</sup> I have prepared a form email response which is sent automatically when I receive an email from Christina. I also do not  
26 accept text messages from Christina. I only respond specifically to emails concerning the health and welfare of the children.  
27 All other email responses receive the automatic response as the only response. Text messages are not received. I believe that  
28 restricting written communication in this manner has significantly reduced the "war of words" between the Christina and me.

1  
2 FURTHER, AFFIANT SAYETH NOT.  
3

4   
5 MITCHELL DAVID STIPP  
6

7 Subscribed and sworn before me this 26th  
8 day October, 2009.  
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10   
11 NOTARY PUBLIC in and for  
12 the State of Nevada  
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**MOTION  
EXHIBIT “B”**

AFFIDAVIT OF MEGAN CANTRELL

STATE OF NEVADA )

) ss:

COUNTY OF CLARK)

I, MEGAN CANTRELL, being first duly sworn, deposes and states:

1. That I have personal knowledge of the facts contained herein, and I am competent to testify thereto. I am the sister of Mitchell D. Stipp ("Mitchell"), Defendant in the case of *Stipp v. Stipp*, case number D08-389203-Z in the Eighth Judicial District Court, State of Nevada. I submit this affidavit in support of Mitchell's Motion to Confirm Parties as Joint Physical Custodians and to Modify Joint Timeshare Arrangement.

2. I have picked up and dropped off Mia Stipp and Ethan Stipp before and after Mitchell's visitation times with the children regularly for several months. When I pick the children up from Christina Stipp's ("Christina") house, the children are very happy and excited to see Mitchell and Amy Stipp, Mitchell's wife. Christina and her relatives never have any problems getting the children into the car for the rides to Mitchell's house. During the car rides back to Christina's house, however, Mia has complained to me that she does not get to spend enough time with Mitchell and Amy, that her visits are too short, and that she wants to stay longer but that Christina will not allow her. Mia has made these statements to me on a regular basis starting at the end of August or beginning of September of 2009. Ethan will often say "I miss Daddy." The children are very emotional during these times, and I have never seen the children so sad and unhappy. Mia often cries and expresses anger that Christina will not allow her to stay longer. When I drop the children off at Christina's house, many times Mia does not want to get out of the car and often fights and struggles with Christina and her relatives. Mia has confronted Christina about her desires, and Christina has informed Mia in my presence that "there is nothing she can do" and "rules are the rules and we cannot change them." The children clearly desire to spend more time with Mitchell.

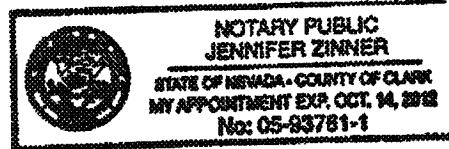


1  
2 FURTHER, AFFIANT SAYETH NOT.  
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4   
5 MEGAN CANTRELL  
6

7 Subscribed and sworn before me this 26  
8 day October, 2009.  
9

10 NOTARY PUBLIC in and for  
11 the State of Nevada  
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**MOTION  
EXHIBIT “C”**

10/29/2009

here.

I am not saying that I don't want the children to ever speak to Amy on the phone, I simply ask that you not force the children to speak to Amy, or anyone else for that matter, if they don't ask to speak to her/them. I don't pass the phone around like a hot potato when it's my turn to talk to the kids when they are in your care. I have more consideration for your time with the children than you do towards me. I simply ask you to reciprocate.

From: Christina Calderon-Stipp <<mailto:ccstipp@gmail.com>  
ccstipp@gmail.com>  
To: Mitchell Stipp <<mailto:mitchell.stipp@yahoo.com>  
mitchell.stipp@yahoo.com>  
Sent: Saturday, August 1, 2009 10:18:51 PM  
Subject: Violation of Stipulation and Order--No Telephone Call 8.1.09

Mitchell,

As I emailed you earlier today to remind you, I did not receive a telephone call from our children today. I waited all day. As you know, according to the agreement we reached on July 8, 2009, and submitted to the Court as a Stipulation and Order, you are obligated to facilitate at least one call to me when the children are in your care, as they are today.

I hope that your deliberate violation is not a continuation of the venom and hostility you unleashed at me and my attorneys yesterday. Please note that when the children are in my care, I always make sure that they call you. I simply ask that you reciprocate, as you are now legally required to do.

How are our children?

--Christina

On Sun, Aug 2, 2009 at 10:39 PM, Mitchell Stipp <

10/29/2009

<mailto:mitchell.stipp@yahoo.com> mitchell.stipp@yahoo.com> wrote:

I did not receive an email from you on Saturday other than the one attached below. With respect to the telephone call, I asked if the children wanted to call you and they declined. I have made it clear before that I will not force them to call you.

I also thought you should know that Mia was very upset on Friday. She informed me that you were going on a date and that the unidentified man was going to be her "new dad." She was very confused and extremely sad. I hope you understand that putting these things in Mia's head only hurt her feelings.

From: Christina Calderon-Stipp [mailto:ccstipp@gmail.com]  
Sent: Monday, August 03, 2009 1:34 PM  
To: Mitchell Stipp  
Subject: Re: Violation of Stipulation and Order--No Telephone Call 8.1.09

Mitchell,

With all due respect, your email response below is complete and utter bullshit. It sets out your old position, prior to our July 8th mediation, in which you claimed that you would not place a call to me on behalf of our extremely young children unless they "asked you to."

In practice, this equated with the reality that from February 24, 2009 until June 4, 2009, the two most recent hearings in our case, you facilitated exactly ONE telephone call to me. In contrast, I was facilitating very regular, if not daily, contact between the children to you when I had them.

I didn't agree with your position on facilitating telephonic communication then, which, by the way, is clearly required by the MSA that you drafted and now by the most recent Stip and Order, and I do not agree with it now.

We resolved our dispute on this issue when we met with the Family Court mediator on July 8, 2009 at which time you signed your name to a stipulation that now requires you to place a telephone call to me to allow me to talk to our kids when you have them "at least once per day."

It is hard to believe that you could not have had the children call me once this entire weekend in which you had them. In addition, you could have very easily written me a text or email responding to my request for a phone call promptly, but chose, instead, to wait two days to do so, when you no longer had the children.

I recognize this as yet another attempt by you at creating yet another one of your unending conflicts, and I ask you to reconsider your position not only because it is contrary to law, but because it will only hurt our children to have your animosity towards me continue to affect their communication with me.

Thanks,

Christina

From: Christina Calderon-Stipp [mailto:ccstipp@gmail.com]  
Sent: Monday, August 03, 2009 1:53 PM  
To: Mitchell Stipp  
Subject: Re: Violation of Stipulation and Order--No Telephone Call 8.1.09

Mitchell,

With respect to your comments about my personal life, please keep them to yourself from now on. Mia is apparently intensely insecure about the possibility of me dating and then quickly marrying another person, NOT because I tell her these things, but because THAT'S WHAT YOU DID TO HER WITH AMY.

You brought Amy, with whom you had been having an affair during our marriage, into our marital bed and shared it with Mia less than 1 month after I had moved out of our family home. Mia was shocked that "Daddy's friend from work" was spending the night in Mommy's bed. Amy then moved all her clothes into Mia's Mommy's closet less than 2-3 months after Mommy moved out. All this when Amy was still married to another man. THEN, if that wasn't enough, Mia's Daddy ran off and quickly married Amy less than 7 months after Mommy moved out, all without telling Mia or Ethan beforehand, and without ever giving them the chance to be part of what should have been

a "family" ceremony for them.

Given this history, isn't it clear to you where Mia's fears come from? Mia saw me dressed up on Friday night and came to her own conclusions about me and a date. Sadly, from your email to me, it appears that she is traumatized by her father's break up of her family and actions in introducing someone new into the home in record time, all directly contrary to what our family counselor told you and all manner of studies say is healthy for children of divorce.

These are the consequences of your infidelity and continuing poor judgment. Amy wasn't the first; she was just the last. Instead of falsely accusing me of wrongdoing, look at yourself in the mirror next time and continue with your psychiatric help. It is clear that you need it.

--Christina

From: Mitchell Stipp [mailto:mitchell.stipp@yahoo.com]  
Sent: Monday, August 03, 2009 2:45 PM  
To: 'Christina Calderon-Stipp'  
Subject: RE: Violation of Stipulation and Order--No Telephone Call 8.1.09

You have my position on the issue. If the children want to speak to you, I will facilitate the call and dial your number. This will be my last email on this issue.

From: Mitchell Stipp [mailto:mitchell.stipp@yahoo.com]  
Sent: Monday, August 03, 2009 3:06 PM  
To: 'Christina Calderon-Stipp'  
Subject: RE: Violation of Stipulation and Order--No Telephone Call 8.1.09

Your allegations are false. They are simply assumptions based on your insecurity and apparently never ending investigation into the "truth." What did your investigation find? Here is the truth: You asked for a divorce; we got one; I married somebody that I love; and You hate your lonely

10/29/2009

pathetic life. Your perception is warped. It is very clear from your email who is hurting the children. Mia is well adjusted to the changes in my life and loves Amy very much. She is not traumatized by my relationship with her. She appears only to be affected by your actions and feelings regarding Amy. Mia is very smart and communicates regularly your hatred and hostility toward Amy. I think a child assessment would demonstrate these facts (which is why you did not want it). I welcome it. I have nothing to hide. I am not the crazy one. You may have Pee Wee Herman (Shawn "Super" Gaystein) fooled, but no sane person believes that you are mentally stable. This is also my last email on this issue.

From: Christina Calderon-Stipp [mailto:ccstipp@gmail.com]  
Sent: Monday, August 03, 2009 3:49 PM  
To: Mitchell Stipp  
Subject: Re: Violation of Stipulation and Order--No Telephone Call 8.1.09

Mitchell,

You are a deeply insecure and intensely co-dependent pathetic little man. You always were, I just wanted to believe otherwise. Money will never make up for your insecurities. You can only feel good about yourself by putting down other people down, including my attorneys for some insane and unprovoked reason. You have always had a Napoleon/Willow complex and have always been the negative one about every little thing in your life even though you were truly blessed to have met and been with me for so long.

What you say about Mia is false. I have to deal with her questions on a daily basis, questions no 4-year-old should have to ask or wonder about like: Are you going to marry Dada again? Did you know he wears two rings, one for you and one for Amy? Amy says she's sorry about what she did. Why did Dada marry Amy? Why did Amy leave her husband? If Dada married you and then she chose Amy, who is next?

You only want an evaluation so that you can continue to mentally abuse Mia and Ethan. You want it so that you can try to rewrite history to anyone who will listen. This isn't 1984. No one believes your lies anymore.

No one believes that you moved on with your secretary "after" our divorce, no matter how many times you say it, just as no one believes that she is with you for any reason other than your bank account.

My investigation revealed this: That my husband was unfaithful and spent what should have been family time chasing women he couldn't even pay to overlook his physical and mental inadequacies. You settled on an uneducated, trashy cheater just like yourself. The daughter of an alcoholic who traded in her devoted blue collar husband for her attorney boss. A man that courted her by spitting gum at her on his way past her office and giving her a Cartier watch and a \$7500 cash bonus for Christmas for her "services."

It is clear that you throw Amy at the children and vice versa because you fear that like you did to me, and she did to James, she will dump your ass as soon as the next best indecent proposal comes her way. Maybe you feel that having her next to you like velcro and ingratiated into the lives of our children will prevent her from leaving. Guess what? She will.

You bought Heather, the leasing coordinator who preceded Amy, a brand new BMW, but she dumped your ass anyway in favor of her felon live-in boyfriend (not to be confused with the estranged husband she had that you paid Paul Lemcke to get her divorced from). She wasn't even a U.S. citizen and had a criminal record. She and her boyfriend told me that you wouldn't stop calling her even after she let you go. You finally did when the felon threatened to kick your ass, which he should have done.

Then there was Pamela, your buddy Jon Field's sloppy seconds. She was a stripper at the Rhino who loved your relation\$\$\$hip until you probably maxed out your credit cards on her. But that didn't stop you from calling her 20 times a day for three months.

Then there were the Redstone grille/Sammy's/Kobe sushi/Starbucks waitresses who always seemed to go for your taller, charming and sexier boss over you. Can you blame them? I don't.

So what did you wind up with after I caught your pathetic phone call to Amy, your subordinate employee, complaining about why she didn't answer your weekend calls and asking whether she fucked her own husband or not after



your tiff with her??? You got yourself the uneducated daughter of an alcoholic. Mexican trash from Texas looking to snag herself a rich man to put her through the prestigious University of Phoenix. This when you cry about not wanting to pay for your own children's preschool.

Looks like you're the real winner here. :-) You may not be "alone," but let me tell you something, you will always be lonely and so will she, because you are both terrible, empty people. Indecent home wreckers who deserve each other and the misery you will both bring to each other.

Trust me. I can buy myself a male Amy. They are a dime a dozen out here. I'm sure Amy considers marriage to you as just a promotion. At first she was "only" getting 80k a year (straight out of high school) to be your "secretary." The nominal sum you criticize Shawn for making. Now she gets half of your \$\$\$ in exchange for providing the same services. Can you blame her for jumping ship? Not in your sick world you can't.

It's funny how you say one thing in writing but another in person when she's not around, like how incredibly unhappy you are with her, how you regret your actions and misdeeds towards me and how you think about them every day of your life.

You should think about it. You lost the best thing, besides our children, that will ever happen to you. You never deserved me. No one thought so, it just took me a while to see it too. And as for having a "lonely, pathetic life," only you would say or wish such a thing. I have never been happier to be free from the torture of being around you. Divorce liberated me from what would have been a lifetime of pain and misery. Hallelujah!

Cheers to you guys and your future. To true soul mates.

From: Mitchell Stipp [mailto:mitchell.stipp@yahoo.com]  
Sent: Saturday, August 08, 2009 2:53 PM  
To: 'Christina Calderon-Stipp'  
Subject:

Attached is itinerary. I will not have access to email but will have my phone.

**MOTION  
EXHIBIT “D”**

10/29/2009

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**From:** "Mitchell Stipp" <mitchell.stipp@yahoo.com>  
**To:** <mitchell.stipp@yahoo.com>  
**Sent:** 10/26/2009 3:51PM  
**Subject:** FW: Emails Re: Health and Education (Final)

From: Mitchell Stipp [mailto:mitchell.stipp@yahoo.com]  
Sent: Wednesday, October 21, 2009 12:33 PM  
To: 'mitchell.stipp@yahoo.com'  
Subject: FW: Emails Re: Health and Education (Final)

From: Mitchell Stipp <mitchell.stipp@yahoo.com>  
To: Christina Calderon-Stipp <ccstipp@gmail.com>  
Sent: Sun, July 12, 2009 5:37:51 PM  
Subject: RE: Weekend of 07.09.09

Mia had dinner; Ethan did not. Mia had a bath; Ethan did not. Ethan has a cold. I gave him Children's Zyrtec yesterday and today (max dosage for 24 hour period) and one dose of motrin this morning (temperature was 99.5). His main symptom is a runny nose. Ethan slept from 12:30pm to 2pm. Mia had Miralax Friday and Saturday. She had regular bowel movements each day (including today).

From: Mitchell Stipp [mailto:mitchell.stipp@yahoo.com]  
Sent: Wednesday, October 21, 2009 12:14 PM  
To: mitchell.stipp@yahoo.com  
Subject: Emails Re: Health and Education

-----Original Message-----

From: Christina Calderon-stipp [mailto:ccstipp@gmail.com]  
Sent: Wednesday, August 05, 2009 12:40 PM  
To: Mitchell Stipp  
Subject: Kids check ups

10/29/2009

I took kids to doctor today for their required physical exams for school. Everything went fine. MIA in 25% for height n weight. Ethan 50% for weight, 75% for height.

MIA needed 4 shots. Won't need anymore b4 kindegarten. Ethan needed 1.

I had to get quick appt to squeeze them in b4 u take them tomorrow.

Schools want immunizations by the 10th.

Sent from my iPhone

From: Christina Calderon-Stipp [mailto:ccstipp@gmail.com]  
Sent: Thursday, August 06, 2009 5:09 PM  
To: Mitchell Stipp  
Subject: Mia's Immunization Reaction and Constipation

Mitch,

Mia has a reaction to the Chicken Pox vaccine. It is a raised red swelling at the site of the injection. It itches her. The nurse (I called today) said to have her sit in tepid bathwater and/or administer cold compress to it (4x a day) to reduce swelling. She also said to give her Motrin. I gave her a dose of Motrin at 11am and a bath. I tried the cold compresses this afternoon, but she doesn't like them.

Also, Mia is suffering from constipation again. She had a BM on Monday, but none since. I have given her Miralax daily, along with fresh fruit and juices. I would have given her a suppository today, but she said that she would rather leave it for you to do tonight. She is actively holding in the poop. She is hiding when the urge hits her. Please give her a suppository tonight.

10/29/2009

I would like you to update me on the progress of Mia's health conditions while you have her.

Ethan seems to be ok with his shot, although I did give him Motrin last night.

Please acknowledge receipt of this email.

--Christina

-----Original Message-----

From: Mitchell Stipp [mailto:mitchell.stipp@yahoo.com]  
Sent: Friday, August 07, 2009 9:22 AM  
To: 'Christina Calderon-stipp'  
Subject: RE: Kids check ups

Thank you for the update.

From: Mitchell Stipp [mailto:mitchell.stipp@yahoo.com]  
Sent: Friday, August 07, 2009 9:22 AM  
To: 'Christina Calderon-Stipp'  
Subject: RE: Mia's Immunization Reaction and Constipation

I received it. Thank you for the information.

From: Christina Calderon-Stipp [mailto:ccstipp@gmail.com]  
Sent: Friday, August 07, 2009 6:07 PM  
To: Mitchell Stipp  
Subject: Re: Mia's Immunization Reaction and Constipation

10/29/2009

Mitch,

Did the swelling go down at the site of Mia's chicken pox immunization? Did she continue to itch it last night/today? Also, did she have a BM yet?

How is Ethan? He was terrified of Dan yesterday. It took some coaxing to get him into his car seat.

Thanks,

Christina

From: Mitchell Stipp [mailto:mitchell.stipp@yahoo.com]  
Sent: Friday, August 07, 2009 8:06 PM  
To: 'Christina Calderon-Stipp'  
Subject: RE: Mia's Immunization Reaction and Constipation

Both children are doing fine.

From: Christina Calderon-stipp [mailto:ccstipp@gmail.com]  
Sent: Thursday, August 20, 2009 10:33 PM  
To: Mitchell Stipp  
Subject: Re: Labor Day Offer

Did ethan have diarrhea with u? He has had it here three times and says his tummy hurts.

Sent from my iPhone

From: Mitchell Stipp [mailto:mitchell.stipp@yahoo.com]  
Sent: Friday, August 21, 2009 6:52 AM  
To: 'Christina Calderon-stipp'  
Subject: RE: Labor Day Offer

10/29/2009

No.

-----Original Message-----

From: Christina Calderon-stipp [mailto:ccstipp@gmail.com]

Sent: Monday, August 24, 2009 9:17 AM

To: Mitchell Stipp

Subject: Ethan's first day

Fyi.

He did great. No tears, but wanted his puppy n finger in mouth b4 we

left. Good thing is that there were no crying babies like last year.

He got up right on time at 7 too. He'll be back on schedule for early

nap and early bedtime as will MIA.

MIA doing well too. Misses her old teachers.

Sent from my iPhone

From: Christina Calderon-Stipp [mailto:ccstipp@gmail.com]

Sent: Friday, August 28, 2009 5:56 PM

To: Mitchell Stipp

Subject: Kids' Update

Mitch,

10/29/2009

Ethan bit Mia last night. She has a bruise on her back. He didn't break the skin. Watch out for his sudden attacks.

Both kids ate today around 4pm. Ethan has pooped twice today. Mia is struggling to poop. She didn't go yesterday, but has been regular prior to that. I give her Miralax daily, including today.

Be careful of too much sun if you take them outdoors this weekend. There's supposed to be a heat warning I heard. Sunscreen please.

Both kids had baths at 5.

--Christina

-----Original Message-----

From: Christina Calderon-stipp [mailto:ccstipp@gmail.com]

Sent: Monday, August 31, 2009 9:20 AM

To: Mitchell Stipp

Subject: MIA

Mitch,

Did MIA have bm over the weekend? She seemed to be struggling last night?

Today's school drop off was her hardest so far. She is struggling with her dressing issues and new environment. As I have mentioned before, I would like to take her to a doctor for the clothing issues.



Does she still favor one dress while at your house? The rainbow one?

She only wants to wear two when with me.

Luc's mom is a psychiatrist and will be giving me a referral. I'll keep u posted.

-christina

Sent from my iPhone

-----Original Message-----

From: Mitchell Stipp [mailto:mitchell.stipp@yahoo.com]

Sent: Monday, August 31, 2009 6:27 PM

To: 'Christina Calderon-stipp'

Subject: RE: MIA

She did not have a bowel movement. I gave her miralax and fiber vitamins each day. At this point, you may try an enema (which you can buy over the counter for kids at Albertsons). I did this the day before the start of our vacation. She thought it was a suppository. It cleared her out completely. After that, she used the bathroom daily (sometimes 2x per day) while on vacation.

Feel free to make an appointment with a child psychologist regarding the clothes issue. She struggles with me as well. She wants to wear only one dress (rainbow one) and one swimsuit and wants her underwear constantly stretched. This weekend I stopped stretching her underwear and made her do it (if she wanted it stretched). As far as the clothes, I have also been working with her. I tell her in advance that she has to wear something else the following days when she chooses her rainbow dress so she can anticipate the change. I have had some success with this (especially when we were on vacation). She wore 5 different dresses without much fuss. She also is wearing new shoes and has a new jacket (new versions of her old ones). I lied to her about the shoes and told her they were sent out to be cleaned

10/29/2009

and delivered to your house. She complained a lot about it but eventually let it go (but I think only because we were at Disneyland). I am not sure if she has recognized the new jacket isn't her old one. I have had no success with the swimsuit.

I want to know who the psychologist is and when she has an appointment.

From: Christina Calderon-Stipp [mailto:ccstipp@gmail.com]  
Sent: Wednesday, September 02, 2009 10:06 AM  
To: Mitchell Stipp  
Subject: Sierra

Sierra Health is calling you. They need you to give me permission to release information regarding Mia since I'm not on your policy.

From: Christina Calderon-Stipp [mailto:ccstipp@gmail.com]  
Sent: Wednesday, September 02, 2009 10:30 AM  
To: Mitchell Stipp  
Subject: Re: MIA

Mitch,

I was about to use either an enema or a suppository on Mia yesterday, but she insisted that I allow her to try on her own. She had two BM's yesterday on her own. I have been trying to encourage lots of fresh fruits and have continued daily Miralax use. I also purchased Pedialax gummies per Dr. DeSimone's recommendation, but she does not like them.

On Mia's psychiatrist. Dr. Carli Snyder, Luc's Mom, referred me to a Dr. McNaus. Unfortunately, she does not take patients as young as Mia. McNaus referred me to two different psychiatrists who do, Dr. Gravely and Dr. Kalodner.

Dr. Gravely is not taking new patients, but referred me to a Dr. Herbs. Dr. Herbs is taking new patients and does take Sierra Health. Dr. Kalodner is

also taking new patients, but is not a provider for Sierra. Kalodner said that through Sierra, she thinks we would have to satisfy a \$500 deductible and pay \$135 per session, but that if we did cash pay, she would work with us.

I called Sierra and got an authorization for Dr. Herbs and was transferred to Member Services where I wanted to ask them how much we would have to pay for Herbs, deductibles, etc., but they won't talk to me about Mia's benefits without your permission. Please call them and grant this. Their number is 364-1484 Behavioral Healthcare Options.

Carli has not heard of Herbs, but she said she has heard good things about Dr. Kalodner. I don't know what you want to do. On the one hand, out of network provider could be very costly, but by using Kalodner on a cash pay, we would also be able to control the fact of her treatment, which may be detrimental to her in the future. Also, and more importantly, Dr. Kalodner has a good reputation and I want Mia to get the best help.

I'll call Kalodner and ask what the cash pay price is. I don't mind meeting with both, comparing credentials and seeing which one I think after one session would be a better fit for Mia. Herbs is on East Flamingo. Kalodner is in Seven Hills.

Mia's dressing issues have intensified as the new school year started. She absolutely hates putting on her new uniform, no matter which variation I put on her. Yesterday, I pulled her from the car kicking and screaming. As I was closing the door, she tried to leap back into the car and caught her finger in the car door. It didn't close completely on it, i.e., she managed to pull it out but not before it was pinched. I applied ice to it and it is fine now.

She is perfectly normal prior to putting on her uniform and by the time I pick her up, she is fine when I pick her up from school. She even expresses the desire to stay full day although then backs off of this when I try to make arrangements to see if she can try out full day.

Her frustration and anger at the uniform sours her outlook on school in general. I don't like this. I also hate to see her struggle every day with simple things like this.

She also struggles here with the underwear issues. When I give up because I am tired of stretching, poor Ethan tries to help too, she cries, "I can't help it, momma, I just can't help it."

She told me her jacket is new. She wears it to cover up her uniform sometimes, and new dresses that I may make her wear on occasion, but it is less helpful this year than last. As for new shoes, I bought an identical new pair as well, but was not able to get her to switch them out for the old ones. I was waiting until school started and was going to pull something like you did with the old ones.

When she is home, she loves to be in underwear only. Although when guests arrive or when we leave to go out, she knows it's time to dress. She prefers her ladybug dress although when she came home from your house on Sunday she was upset that it had "shrunk."

She will only wear one bathing suit here too, even though I have purchased many new ones, like other clothes, in different sizes.

Dr. McNaus listened to my issues with Mia briefly. She said it sounded to her like mild OCD. Carli said not to jump on the OCD diagnosis too quickly. She would like to rule out acting out due to the divorce situation and also, possible, touch related sensory issues.

Let me know what you think in terms of Kalodner v. Herbs.

--Christina

From: Christina Calderon-Stipp [mailto:ccstipp@gmail.com]  
Sent: Wednesday, September 02, 2009 10:44 AM  
To: Mitchell Stipp  
Subject: Mia Psych

10/29/2009

Mitch,

I talked to Kalodner. She says her initial visit is \$250, but \$200 cash pay. Office visits are \$200, cash pay \$150 or less depending on financial need. She says that she wouldn't recommend going through Sierra either or any insurance at that (she says she has a 15yr old who she does not use her insurance for counseling), because then the child has a record. She qualifies this by saying that she would use insurance if the psychiatric diagnosis is something like bipolar where long term treatment is required.

She seemed really friendly and easy to talk to. I am inclined to go with her versus Herbs because of her reputation and giving Mia a record issue. What do you think?

--Christina

From: Mitchell Stipp [mailto:mitchell.stipp@yahoo.com]  
Sent: Wednesday, September 02, 2009 4:11 PM  
To: 'Christina Calderon-Stipp'  
Subject: RE: Mia Psych

I do not have any problem with you interviewing Dr. Kalodner. However, I do not want you to engage her services unless I approve. I also want to meet with her separately and interview her. Please provide her contact information.

I agree that cash payments are the best option.

From: Christina Calderon-stipp [mailto:ccstipp@gmail.com]  
Sent: Friday, September 04, 2009 9:48 AM  
To: Mitchell Stipp  
Subject: Re: Mia Psych

310-8787. Google her on the Internet for additional contact and background

10/29/2009

info. Her name is melissa kalodner. I'm meeting her today on my own. She wants to meet the parents before she sees Mia. I told her to expect your call.

Sent from my iPhone

From: Christina Calderon-Stipp [mailto:ccstipp@gmail.com]  
Sent: Monday, September 07, 2009 6:57 PM  
To: Mitchell Stipp  
Subject: Health Update

Mitch,

I just got the kids from your sister at 6pm. Megan indicated that you gave Mia Zyrtec over the three-day weekend. When exactly did you first and last administer the medicine so that I know when it's safe to treat her apparent runny nose, sneezing and fever with appropriate medicine. Mia now has a 100 degree fever. Did you happen to give her anything for that? I want to give her Motrin right now, but I want to make sure you didn't already give her something for fever. Did you give Ethan any medicine this weekend? He sounds stuffy and is a little warm, but doesn't appear sick.

—Christina

From: Mitchell Stipp <mitchell.stipp@yahoo.com>  
To: Christina Calderon-Stipp <ccstipp@gmail.com>  
Sent: Mon, September 7, 2009 7:05:58 PM  
Subject: RE: Health Update

Ethan had a fever on Friday when we picked him up. He also had a runny nose on Saturday which we treated with zyrtec. Mia had no symptoms until last night. She had a runny nose. I gave her zyrtec last night and this morning. I gave her the maximum dosage for 24 hours each time. I was not aware that Mia had a fever.

10/29/2009

From: Christina Calderon-Stipp [mailto:ccstipp@gmail.com]  
Sent: Thursday, September 10, 2009 2:12 PM  
To: Mitchell Stipp  
Subject: Mia's Psychologist

Mitch,

I spoke with Dr. Kalodner today. She left me a message yesterday telling me that you had apparently met with her and had made an appointment for Mia on Friday.

Prior to committing Mia to treatment with her, I wanted to share with you your thoughts on Dr. K after meeting with her and express my desire to meet with at least one other provider as I am not sure Dr. K would be the best fit for Mia.

I am also troubled by Dr. K's actions in committing to treat Mia at one price when she met with me, her self-proclaimed cash price, and then increasing it after meeting with you. It struck me as unprofessional and unwarranted.

—Christina

From: Christina Calderon-Stipp [mailto:ccstipp@gmail.com]  
Sent: Thursday, September 10, 2009 6:34 PM  
To: Mitchell Stipp  
Subject: Kids 09.10.09

Mitch,

I told Megan the following: both kids need dinner and baths. They both had BM's this afternoon. I didn't give Mia any laxative today.

I say the following because it's your first time taking them to school this year. I'd advise an 8 or 9pm at the latest bedtime so they can get up in time for school tomorrow. They are usually up at 7am at my house.

I'm assuming you have your own uniforms for them. Remember that Ethan needs to wear Shabbat shirt on Fridays. Mia prefers the red polo and checkered jumper out of all of the options Dawson has for girls' uniforms. Just an FYI. Let me know if you want to know what sizes I got for them.

Try hard to get Mia to eat something healthy for breakfast in the morning. She doesn't get lunch at Dawson and is always hungry when I pick her up. I bring her lunch everyday which she eats in the car on the way to pick up Ethan. Usually PB&J.

On a side note, Mia will beg and plead not to have to go to school. Please don't give in to her because it will set a precedent.

Thanks,

Christina

From: Christina Calderon-Stipp [mailto:ccstipp@gmail.com]  
Sent: Friday, September 11, 2009 2:15 PM  
To: Mitchell Stipp  
Subject: Mia's Psychologist

Mitch,

If you have any referrals or recommendations for possible providers, please let me know. I'm going to investigate Diane Herbs, who I mentioned before, and a Dr. Hopper with the Hopper Institute, who was also referred to me.



Thanks,

Christina

From: Christina Calderon-Stipp [mailto:ccstipp@gmail.com]  
Sent: Friday, September 11, 2009 2:46 PM  
To: Mitchell Stipp  
Subject: 2009-2010 School Year & Beyond

Mitch,

Today was the first day of the school year that you took the kids to school. I thought this might be a good time to talk about what your thoughts are on their schools, their reactions to you about them, and to discuss future schooling.

As I told you previously, Mia is struggling in her adjustment with her new school, Dawson. I'm not sure how much of it is related to her issues with the new uniforms, but I am reserving judgment. I have noticed that Mia's new teachers are much more reserved than Ms. Gerst and Mr. West, as well as her previous teachers at TBS, so that may have to do with it as well. I have communicated to Ms. Klein, one of her teachers this year, my concerns about Mia, specifically, that she says that she doesn't like school, that it is "boring," that "she doesn't want to go to school." I will continue to work with the teachers on her transition, but I am sure it is just a matter of time. She's already bonded with a new friend who we used to play with at MyGym when they were both 2, Ava. Just to let you know ahead of time though, if Mia doesn't seem to be thriving at Dawson as she did at TBS, I don't want her to continue there.

Ethan, on the other hand, seems to be doing very well at TBS. His first two weeks were uneventful in terms of any negative reactions to school. This week was harder for him. Ms. Garvin said that he cried for me a lot on Tuesday and whined on Wednesday. By Thursday he was better. It might have to do with him being with you over the long weekend and then starting school right after. Today Ms. Helberg said that Ethan was his worst ever in terms of crying all morning, but I'm sure it's because he is not used to going to school when you have them. Overall, both Ethan and Mia love TBS and Ethan

seem to be doing well there.

Unfortunately, the kids can't continue at TBS beyond pre-k because they are not Jewish, so we have to think about other Kindergarten-high school options.

1) Public Schools. I am zoned for Givens Elementary. It has a good reputation. High parent involvement.

2) St. Elizabeth Ann Seton, K-8th grade with Gorman for high school. I would love for the kids to have a solid Catholic religious education and know, firsthand, that parochial schools provide a solid education for a comparatively reasonable cost, \$8k v. \$19k. Since you have now reneged on committing in writing to pay for the kids' school in the future and want to decide that on a year by year basis, it makes sense for me to consider affordable schooling options since it wouldn't make sense for the kids to start at a school like the Meadows, or continue at Dawson (whose tuition for Mia doubles next year), and have to go elsewhere if you decide not to help one year. They will have application packets available in October. Preference is given to parishioners. I am registered here and have been trying to establish a regular church attendance pattern for personal reasons, but also to help the kids' chances of going here. They also require individual assessments which occur in January.

3) Meadows. I know you expressed your preference for this school in the past. I'm not sure if you have toured the lower school or beginning schools, but I toured the beginning school and you know my thoughts on it for Mia. However, I am planning on touring the lower school, k-6th grade, and doing what I have to to keep this school open as an option for kindergarten next year. Kids have to pass a test to be considered for Kindergarten. They conduct these tests in January. They begin the required school touring now.

If Mia goes to Meadows next year, it would make sense to send Ethan there as well. I think that Ethan would do well at either Meadows or TBS. Again, cost of schooling and Mia's adjustment at Dawson will be a factor.

Just wanted you to know my thoughts on the very important subject of our children's present and future education. I welcome your input and

10/29/2009

independent research.

Thanks,

Christina

-----Original Message-----

From: Christina Calderon-stipp [mailto:ccstipp@gmail.com]

Sent: Monday, September 14, 2009 7:55 AM

To: Mitchell Stipp

Subject: Ethan

Mitch,

Ethan had diarrhea last night. He and MIA say that he threw up at your house this weekend.

Is this true? Did he exhibit any other signs of illness?

-christina

Sent from my iPhone

-----Original Message-----

From: Mitchell Stipp [mailto:mitchell.stipp@yahoo.com]

Sent: Monday, September 14, 2009 10:45 AM

To: 'Christina Calderon-stipp'

Subject: RE: Ethan

Mia was constipated. Other than that, both children were fine this weekend.

10/29/2009

Neither threw up or exhibited any signs of illness.

Let me know if you took them to school or to the doctor (and if to the doctor, any illnesses diagnosed).

From: Christina Calderon-Stipp [mailto:ccstipp@gmail.com]  
Sent: Monday, September 14, 2009 1:10 PM  
To: Mitchell Stipp  
Subject: Re: Ethan

Ethan appeared fine this morning and continues in apparent good health. Both went to school. No doctor.

From: Christina Calderon-Stipp [mailto:ccstipp@gmail.com]  
Sent: Wednesday, September 16, 2009 9:50 AM  
To: Mitchell Stipp  
Subject: Mia Update

Mitch,

Mia is trying full day again today. She doesn't like the nap time, but seems to enjoy lunch with the class and afternoon activities that she's missing out on like library and music & movement. I love having her in only half day, but she's been expressing her desire to attend full day. What is your opinion on this? If she continues to want to make full day a permanent thing, will you be willing to share in the cost? I don't know how much extra it is, but I'll ask once she makes up her mind.

She continues to struggle with constipation. I believe that it may be related to her issues with sensory disorder. She holds it in to the point that she hardens what she has in there and thereby exacerbates the constipation. I told her teachers to watch for her struggling to hold it and to encourage her to use the potty today.

10/29/2009

I am setting up appointments with other referred psychologists, by myself, as I indicated to you earlier. They are Dr. Mishalow, Dr. Hopper, and Dr. Herbs. Will let you know how it goes. Let me know if you are willing to meet with them at the same time or not, otherwise I'll let you set up your own interviews/evaluations.

Thanks,

Christina

From: Mitchell Stipp (mailto:mitchell.stipp@yahoo.com)  
Sent: Wednesday, September 16, 2009 4:19 PM  
To: 'Christina Calderon-Stipp'  
Subject: RE: 2009-2010 School Year & Beyond

I received your email below. I am happy that Ethan is doing well at TBS. His recent emotional state probably has little to do with me having him an extra day over the weekend or taking him to school that Friday. Ethan was happy all weekend and I had no trouble dropping him off or picking him up at school.

As far as Mia, I am disappointed that her experience at Alexander Dawson is not as enjoyable. I have noticed that her teachers are reserved. I believe this is making the transition more difficult for Mia. Unfortunately, all teachers cannot be like Mia's teachers at TBS (although it is certainly worth complaining about). While I believe that it is entirely too early to conclude that she should not return, I think it is important to consider Mia's happiness and preferences (especially if her experience this year is not good).

With respect to schools for next year, I am not opposed to public school for Mia. Givens is a great elementary school, and I think Mia would do well there. However, I would like to keep her options open (so we should continue to investigate alternatives and complete necessary evaluations and applications).

For the record, I have not reneged on paying for the children to attend private school. I have paid my share last year and this year. As you know, private school tuition is very expensive, and I am more concerned that you will not have the resources to continue to pay your share.

At this point, I am not very interested in the children attending any catholic school. However, I am not opposed to the idea of the children attending a religious school. I have been researching options for the children and would ask that you consider International Christian Academy. The cost is approximately \$6,000 per year per child. The children would receive a religious education. But more importantly, the school uses the "love and logic" approach to classroom management.

Given your past position on the Meadows, I think this option will not work for Mia and Ethan. We should, however, consider Las Vegas Day School which tends to be the alternative for parents who like the Meadows.

From: Christina Calderon-Stipp [mailto:ccstipp@gmail.com]  
Sent: Thursday, September 17, 2009 11:17 AM  
To: Mitchell Stipp  
Subject: Re: 2009-2010 School Year & Beyond

Mitchell,

Thank you for responding to my email concerning the very important matter of our children's future education. Here are my thoughts as to your response.

1) Dawson. I think we should definitely, as I said before and you agreed below, reserve judgment on the school at this early stage in the school year. It's only been 3 weeks since school started. Thankfully, Mia has begun to show signs of truly bonding with her new classmates and teachers. While she misses her old school, she seems to be more accepting of the change of schools. Today will be the third day in a row that she has elected to stay for the entire day. I am not pushing it at all, but rather, am letting her decide when she is ready to take this enormous step. As I

told you in a separate email yesterday, she enjoys being with her class for lunch and afternoon activities and expresses reluctance to leave at half day. Ms. Hall, the head of the ECEC, told me upon enrollment that most half-day kids (and apparently there are not many) transition to full day by Thanksgiving.

2) TBS. What an amazing school this has been for the kids. As you saw yesterday, Ms. Garvin and Ms. Helberg are outstanding teachers, who genuinely seem to care for our kids and love teaching. The school has a great community feel to it as well. My observations about Ethan's behavior on Friday come first-hand from his teachers. Ms. Garvin speculates that his recent crying in the mornings has to do with the new transitioning of Dad bringing him to school. He has progressively improved since Friday and, in fact, transitioned easily into the classroom from me this morning. No tears. No needing to be held by Ms. Helberg. Like Mia, he is adjusting to change as well. I did not intend for you to take this observation as an insult. I am sure he did well over the weekend with you.

3) Public School. Another option for public school, in addition to Givens, would be Goolsby. You are zoned for it and, I believe it is a good school too.

4) Catholic School. I'm curious, what is the basis for your opposition to Catholic school? I would respectfully ask that you reconsider and please undertake the effort to investigate St. Elizabeth Ann Seton before ruling it out. We were both baptized, celebrated communion, were confirmed, and married in the Catholic church. We baptized both of our children there as well. Is it the faith you have an issue with? Please take a tour, talk to parents, read reviews. I just ask that you give it a chance. It's how I found out first-hand how great a school TBS would be. There's nothing better than seeing a school in person, talking to teachers and administrators, and getting an overall feel for it.

4) Meadows. I never toured the Lower School. Have you? I reserve judgment on this school until I've had an opportunity to do so. We shouldn't rule it out completely given it's incredible reputation for being one of the best college prep schools in the city.

6) Thank you for referring me to LVDS and the International Christian Academy. I will look into both. I've never heard of ICA. I'll check it out in person. What I read on-line about ICA, however, gives me some

10/29/2009

reservations about the school. I paste below some negative reviews of the school posted by parents on the Internet. I also question the conservative Christian Protestant-fundamentalist base of the school. Did you know they preach the philosophy of Bob Jones? How did you hear of the school? Do you or someone you know attend church at the congregation affiliated with this school? or do you know of a family with children at this school? As for



1 **OPP**

CHRISTINA C. STIPP

2 Nevada Bar No. 007929

11757 Feinberg Place

3 Las Vegas, Nevada 89138

Telephone: (702) 610-0032

4 Facsimile: (702) 240-4937

5 **In Proper Person**

6 **DISTRICT COURT**

7 **FAMILY DIVISION**

8 **CLARK COUNTY, NEVADA**

9  
10 CHRISTINA CALDERON STIPP,  
11 Plaintiff,

CASE NO.: D-08-389203-Z  
DEPT. O

12 vs.

13 MITCHELL DAVID STIPP,  
14 Defendant.

Hearing Date: December 8, 2009  
Hearing Time: 10:00 a.m.

15 **COUNTERMOTION TO SET ASIDE AUGUST 7, 2009 STIPULATION AND ORDER**  
16 **DUE TO DEFENDANT'S FRAUD UPON THE COURT, GRANT DISCOVERY,**  
17 **PARTITION UNDISCLOSED MARITAL ASSETS, AND FOR SANCTIONS**  
18 **AND**  
19 **OPPOSITION TO DEFENDANT'S MOTION TO CONFIRM PARTIES AS JOINT**  
20 **CUSTODIANS AND TO MODIFY TIMESHARE ARRANGEMENT**

21 **I. INTRODUCTION**

22 MITCH'S immediate, repetitive, and serial motion requesting this Court's  
23 "confirmation" of custodial status, modification of timeshare and micromanagement of the  
24 parties' lives via Court-ordered psychiatric assessment has no support in either fact or law. Its  
blatant relitigation of adjudicated claims is absolutely prohibited by the doctrine of *res judicata*.

1 In addition, it is clear that MITCH has no genuine objection to the current timeshare; in fact, he  
2 stipulated to it not once, but twice, in the last six months. As the Court will recall, it last saw  
3 MITCH and his counsel at the June 4, 2009 hearing on MITCH'S Motion for Reconsideration,  
4 which raised all of the same claims under substantially all of the same circumstances as are  
5 present here. At the hearing, MITCH vehemently argued that the Court should enforce the  
6 current timeshare because, as he claimed, the parties agreed to it in an "email settlement,"  
7 cognizable under E.D.C.R. 7.50. A month later, at the parties' July 8, 2009 mediation, MITCH,  
8 a Nevada licensed attorney represented by experienced family law counsel, stipulated, yet again,  
9 to the identical timeshare after considering all the same issues he raises now.

10 MITCH'S current dissatisfaction is, in fact, actually aimed only at the custodial  
11 "title" the current timeshare clearly accords him under *Rivero v. Rivero*, 125 Nev. Adv. Op. 34  
12 (2009) (*Rivero II*), that of "nonprimary physical custodian" given his approximately 30%  
13 timeshare. MITCH perceives himself to have "lost" his self-perpetuating "battle" for a custodial  
14 "title" in the wake of *Rivero II* (requiring a minimum 40% time for "joint physical custody") and  
15 now asks this Court, for the third time in nine months, to modify the parties' timeshare in order to  
16 "confirm" him with his desired "title." Nevada law clearly prohibits such a disruption in the  
17 custodial stability of the children's lives, especially for something as superficial as assuaging  
18 one's pride.

19 Further, the thoroughly baseless nature of the motion supports the Court's denial  
20 thereof upon a finding that its sole purpose is to further harass CHRISTINA and/or retaliate  
21 against her for initiating post-divorce litigation aimed at getting MITCH to honor his promised  
22 support of their children's education, a promise that he stipulated to in his "email settlement," but  
23 later reneged upon and refused to commit to writing at the July mediation. CHRISTINA also  
24

1 posits that MITCH may be planning to relocate and is positioning himself for that endeavor  
2 given a recent admission that he "travels a lot" and, though he denies it, a trip to Utah with his  
3 new wife so she could take a teaching exam.

4           Underlying motivations aside, however, as a preliminary matter, it is important to  
5 address the fundamentally flawed premise upon which MITCH makes his third request for  
6 custodial modification in nine months, to wit, that he is a "fit" parent deserving of custody of the  
7 parties' children. MITCH is not a fit parent. His claims to the contrary should be heavily  
8 scrutinized by the Court given the fraud he continues to perpetrate upon the Court by way of his  
9 continuing failure to disclose the very relevant fact, as CHRISTINA only recently discovered, of  
10 his post-divorce alcohol-related arrest and subsequent 9-month prosecution for the crime of  
11 "Driving and/or Being in Actual Physical Control While Under the Influence of Intoxicating  
12 Liquor," hereafter "DUI." Unbeknownst to CHRISTINA or the Court, MITCH underwent  
13 prosecution for the DUI nearly simultaneously with the parties' recent post-divorce custody  
14 litigation from December 2008 until August 2009. Moreover, MITCH also continues to fail to  
15 disclose his post-settlement conviction of reckless driving, reached via plea bargain, and recent  
16 moving violation received while driving with the parties' children.

17           MITCH also appears to have fraudulently concealed significant marital assets  
18 and/or post-divorce distributions he contractually agreed to share with CHRISTINA as set forth  
19 in the parties' Divorce Decree, entered on May 2, 2008. MITCH told this Court that his share of  
20 the "equitable apportionment" of the parties' marital estate included \$500,000 in assets plus a  
21 (now evaporated) \$1 million in home equity. In his present motion, he now claims that he is  
22 "retired" at the age of 34, even though his company filed bankruptcy immediately following the  
23 parties' divorce, and, as he now admits, MITCH has only been working minimally over the past  
24

1 two years overseeing the completion of an office building on behalf of his insolvent company.  
2 MITCH is either lying about the true extent of the marital estate and/or post-divorce distributions  
3 he is required to share, or he is lying about his "retirement." Public records filed in his  
4 company's bankruptcy action suggest that MITCH was the recipient of at least \$6.9 million in  
5 distributions received prior to the parties' divorce. CHRISTINA requests discovery to determine  
6 the full extent of such extrinsic fraud and/or the truth behind his "retirement," and countermoves  
7 the Court for partitionment of any undisclosed property, as specifically provided for in Section V  
8 of the parties' Marital Settlement, incorporated into the Decree.

9 For the foregoing reasons, as well as those to be discussed in detail below,  
10 CHRISTINA respectfully requests that the Court deny MITCH'S vexatious motion and grant  
11 CHRISTINA'S countermotions, set forth in detail below, requesting vacatur of the SAO due to  
12 MITCH'S fraud upon the Court, sanctions, discovery, and partitionment of undisclosed assets.

## 13 **II. STATEMENT OF FACTS**

### 14 **A. Background**

15 The parties married on July 18, 1997. Prior to their divorce on May 2, 2008, the  
16 parties had been together for over eighteen years, married for almost 11. They welcomed their  
17 daughter, Mia Elena Stipp ("Mia"), into the world on October 19, 2004, and their son, Ethan  
18 Christopher Stipp ("Ethan"), on March 24, 2007. Mia is now 5, and Ethan is 2. The parties  
19 entered into a Marital Settlement Agreement ("MSA") on February 20, 2008, which was  
20 incorporated into the Decree. The Court entered the Decree on May 2, 2008, not March 6, 2008,  
21 as MITCH disingenuously asserts in order to fraudulently protect from disclosure and partition a  
22 \$750,000.00 bonus he received on March 12, 2008. See Notice of Entry of Order and Attached  
23 Decree, a true and correct copy of which is attached hereto as Exhibit 2.

1           **B.      Procedural History: MITCH'S Immediate, Repetitive and Serial**  
2                   **Requests for Custodial Modification**

3                   On December 17, 2008, CHRISTINA filed a motion requesting, primarily, that  
4           the Court confirm her as the parties' primary physical custodian and enforce the parties'  
5           educational cost-sharing agreement, which, up until then, MITCH had refused to honor, choosing  
6           instead to condition his promised support on CHRISTINA'S execution of what the Court later  
7           agreed was a completely unnecessary protective order, i.e., his coveted "gag order." On January  
8           8, 2009, MITCH filed an Opposition and purely defensive Countermotion in which he opposed  
9           CHRISTINA'S motion and requested modification of the parties' then-less-than-year-old 80%  
10          (CHRISTINA)/20% (MITCH) timeshare, raising many of the same arguments he repeats now.  
11          See Letter from CHRISTINA'S counsel to MITCH'S counsel, dated January 6, 2009, attached  
12          hereto as Exhibit 3 (documenting MITCH'S gamesmanship and defensive nature of his  
13          countermotion). On February 24, 2009, the Court held a hearing, heard argument, and denied all  
14          motions/countermotions.

15                  On April 27, 2009, MITCH filed a Motion for Reconsideration requesting, yet  
16          again, that the Court modify the parties' timeshare based on, with the exception of MITCH'S DUI  
17          arrest and reckless driving record, the same issues and claims MITCH raises again in his present  
18          motion. The Court assigned MITCH'S motion a hearing date of June 4, 2009. On June 3, 2009,  
19          CHRISTINA filed a Brief Opposition and Motion to Continue the June 4, 2009 hearing given  
20          MITCH'S unjustified and unprofessional refusal to grant her an unconditional two-week  
21          extension of time within which to respond to his motion. Later that same day, on June 3, 2009,  
22          MITCH filed an Opposition/Response to CHRISTINA'S Motion to Continue claiming that the  
23          parties' had reached a settlement via email on May 1, 2009, that the Court was obligated to  
24          enforce, hereafter the "email settlement;" that CHRISTINA was alienating the children from

1 MITCH; and requesting, as he does here, that the Court appoint a psychologist to conduct an  
2 assessment of the parties and their children. All the same issues and substantially the same  
3 circumstances as were present in his Opposition/Response are mirrored in the current motion.

4 At the June 4, 2009 hearing on the matter, the Court heard arguments by both  
5 parties, agreed to continue the hearing to provide CHRISTINA time to respond, and ordered the  
6 parties to attend a second Family Mediation Center (FMC) mediation with the hope that they  
7 would resolve their dispute. Uninformed of MITCH'S criminal record, and, thus, explicitly  
8 stating that "fitness" did not appear to be an issue, the Court indicated that, in the absence of bad  
9 faith, it wanted MITCH to have more time with the children. Prior to attending mediation, on  
10 June 18, 2009, MITCH filed a vicious and completely unnecessary Motion for Order to Show  
11 Cause claiming that CHRISTINA should be held in contempt for being 1.5 hours late  
12 exchanging the children following their participation in her sister's wedding as the flower girl  
13 and ring bearer, respectively. MITCH had prior notice of the event, but claimed that the Court  
14 had directed him at the June 4, 2009 hearing to act in such a manner. Not surprisingly, MITCH  
15 quickly resolved the issue with CHRISTINA and withdrew his ridiculous motion.

16 On July 8, 2009, the parties met for their appointed FMC mediation. They  
17 resolved their dispute in its entirety and, together, drafted and executed a stipulation  
18 documenting their agreement. See SAO, attached hereto as Exhibit 4. The Court entered the  
19 parties' stipulated judgment on August 7, 2009.<sup>1</sup> On October 29, 2009, less than three months  
20 after the entry of the SAO, MITCH filed his present motion with absolutely no adherence  
21 whatsoever to EDCR 5.11. MITCH'S repetitive, time-barred and meritless motion should be

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22 <sup>1</sup> An FMC mediator, not the parties' respective counsel, submitted the SAO to the Court. As such, no formal Notice  
23 of Entry of Order was filed. However, MITCH admits in his present motion that the Court "entered" the SAO on  
24 August 7, 2009. See Mot. at 5, ll. 22-23. CHRISTINA accepts his statement as fact.

1 denied for the reasons set forth below, and the Court should grant CHRISTINA'S  
2 countermotions directed at MITCH'S fraud.

3 **ARGUMENT**

4 **III. COUNTERMOTION**

5 **A. MITCH AND HIS COUNSEL COMMITTED, AND CONTINUE TO**  
6 **COMMIT, FRAUD UPON THE COURT WHICH MANDATES VACATUR**  
7 **OF THE SAO AND SANCTIONS**

8 **1. The DUI Fraud**

9 Following the entry of the SAO, CHRISTINA independently discovered that on  
10 or about May 13, 2008, *after* the May 2, 2008 entry of the parties' Decree (the parties' physically  
11 separated for the last time on or about March 5, 2008), MITCH was arrested in Clark County,  
12 Nevada, and charged with the crime of DUI. *See* Certified Copy of Criminal Complaint, filed  
13 December 2, 2008, Minute Orders, and Hearing Transcripts, dated December 30, 2008, May 27,  
14 2009, and August 26, 2009 (hereafter collectively "Criminal Records"), true copies of which are  
15 attached hereto as Exhibit 5; and CHRISTINA Aff., Ex. 1. MITCH not only spent at least one  
16 night in jail for the crime, but he also underwent criminal prosecution for the DUI from  
17 December 2, 2008, until August 26, 2009, a time period that was nearly simultaneous with the  
18 parties' recent post-divorce custody litigation, commencing on December 17, 2008, and ending  
19 on August 7, 2009.

20 At no time whatsoever, throughout the entire prior custody litigation in which  
21 MITCH twice requested of the Court custodial and timeshare modification on the asserted basis  
22 that he was a "fit" parent, did MITCH or his counsel, both Nevada licensed attorneys and officers  
23 of the Court, disclose the fact of MITCH'S arrest, criminal charge or pending prosecution for  
24 DUI, notwithstanding CHRISTINA'S assertions that MITCH had a drinking problem and drove

1 recklessly. See CHRISTINA'S Motion, filed Dec. 17, 2008. Shockingly, MITCH'S present  
2 motion, containing his third serial and vexatious request for custodial and timeshare modification  
3 in nine months, is also bereft of such highly relevant information. See Mot. It also fails to  
4 disclose 1) MITCH'S post-settlement conviction<sup>2</sup> on August 26, 2009, of "reckless driving"  
5 pursuant to his plea bargain, see Certified Copy of Proof of Conviction, attached as Ex. 6, or 2)  
6 what CHRISTINA believes to be MITCH'S recent traffic violation, which also occurred post-  
7 settlement, while driving a car occupied by the parties' children. See CHRISTINA Aff., Ex. 1.

8 MITCH and his attorney's misconduct did not stop at mere silence, however. Not  
9 content to simply keep mum about the arrest, prosecution, and resulting conviction, MITCH and  
10 his counsel went even further, and instead, engaged in a scheme to defraud CHRISTINA and the  
11 Court by affirmatively making false and misleading misrepresentations of material fact  
12 concerning MITCH'S post-divorce alcohol use and driving habits. See MITCH'S  
13 Opposition/Counter-motion, filed Jan. 8, 2009, and Reply, filed Feb. 20, 2009. Specifically, on  
14 January 8, 2009, only one week after being arraigned on the charge of DUI, MITCH filed his  
15 Opposition/Counter-motion with the Court and made the following statements:

16 Mitchell desires to dispense with three (3) allegations summarily. First, Mitchell denies  
17 that he is an alcoholic or drinks too much alcohol. *In fact, Mitchell now rarely*  
18 *consumes alcohol. In the unlikely event that Mitchell consumes alcohol, he does so*  
19 *responsibly* and never during the days and times that Mitchell has visitation with the  
20 children... And finally, Mitchell has never been cited by any law enforcement agency for  
21 violating any traffic law while driving an automobile occupied by the children.

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22 <sup>2</sup>An attorney has an affirmative duty to inform bar counsel, within 30 days, "[u]pon being convicted of a crime by a  
23 court of competent jurisdiction, other than a misdemeanor traffic violation not involving the use of alcohol or a  
24 controlled substance." SCR 111(2). "Conviction" includes, as here, MITCH'S plea of "no contest" to the reduced  
charge of reckless driving. SCR 111(1). As of the filing of this Opposition/Counter-motion, the State Bar could not  
confirm to CHRISTINA whether MITCH reported his conviction as he was required by law to do.



1 See MITCH'S Opposition/Counter-motion, at 30, ll. 14 (emphasis added). These statements were  
2 repeated and supported by MITCH in his affidavit attached to his Opposition/Counter-motion.  
3 MITCH further capitalized upon CHRISTINA'S ignorance of MITCH'S post-divorce criminal  
4 record claiming that, "[s]he continues to promote the notion that Mitchell...is an  
5 alcoholic...(allegations for which she has provided no support whatsoever)." MITCH'S Reply,  
6 filed Feb. 20, 2009, at 19. Although MITCH was correct in stating that CHRISTINA had no  
7 evidence of post-divorce alcohol abuse or reckless driving, MITCH and his counsel certainly had  
8 such information at hand but affirmatively chose not to disclose it in violation of their duty of  
9 candor to the tribunal.

10 MITCH and his counsel then coupled their fraudulent statements with repeated  
11 requests that the Court "strike" from the record any and all statements made by CHRISTINA or  
12 her family and friends concerning, among other things, MITCH's pre-divorce alcohol or reckless  
13 driving concerns citing the same doctrine of law that absolutely forecloses this Court's  
14 consideration of his present motion, the doctrine of *res judicata*.

15 CHRISTINA spent over \$100,000.00 in attorney's fees for the previous 9 months  
16 of custodial litigation, for which the Court should order compensation from MITCH pursuant to  
17 the parties' Decree, EDCR 7.60, and/or the inherent power of the Court to sanction misconduct.  
18 See Decree, Ex. 2, at Sec. 4.7 of MSA (expressly providing for attorney's fees). In addition, this  
19 Court wasted countless hours reading the voluminous pleadings on file, heard hours of argument  
20 by counsel at not one, but two separate hearings, gave direction to, and issued orders in this case  
21 without having full disclosure of all relevant information before it as MITCH and his attorney  
22 were required by law to provide.

1                   **2. The Duty of Candor to the Tribunal**

2                   Nevada Rules of Professional Conduct address the duties of Nevada licensed  
3 attorneys with respect to the disclosure of information to the tribunal. Rule 3.3(a), N.R.P.C., sets  
4 forth an attorney's "duty of candor" to the tribunal. The rule provides, in pertinent part, that "a  
5 lawyer shall not knowingly: (1) [m]ake a false statement of fact or law to a tribunal or fail to  
6 correct a false statement of material fact or law previously made to the tribunal by the lawyer...or  
7 (3) [o]ffer evidence that the lawyer knows to be false. N.R.C.P. 3.3(a)-(d). Even in an ex parte  
8 proceeding, analogous to the case here where MITCH withheld relevant information unknown to  
9 CHRISTINA, an attorney is obligated to inform the Court of "all material facts known to the  
10 lawyer that will enable the tribunal to make an informed decision, whether or not the facts are  
11 adverse." N.R.C.P. 3.3(d).

12                   It is professional misconduct for a lawyer to, as MITCH and his counsel do here:

- 13                   (a) Violate or attempt to violate the Rules of Professional Conduct...;  
14                   (b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness  
15                   or fitness as a lawyer in other respects;  
16                   (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;  
17                   (d) Engage in conduct that is prejudicial to the administration of justice;

18                   See N.R.P.C. 8.4 (a)-(d). A lawyer who knows that another lawyer has committed a violation of  
19 the Nevada Rules of Professional Conduct that raises a substantial question as to that lawyer's  
20 "honesty, trustworthiness or fitness as a lawyer in other respects, shall inform," as CHRISTINA  
21 does here, "the appropriate professional authority." N.R.P.C. 8.3(a); CHRISTINA Aff, Ex. 1  
(acknowledging the State Bar's direction that the matter be addressed by this Court given the  
22 pending nature of the litigation).  
23  
24

1 Here, MITCH and his counsel violated their duty of candor to the Court pursuant  
2 to NRCPC 3.3(a), and their actions constitute "fraud upon the court," the consequences of which  
3 mandate vacatur of the SAO and reinstatement of the parties' original timeshare.

### 4 3. Violation of the Duty of Candor Constitutes Fraud Upon the Court

5 The Nevada Supreme Court has recognized that, "[a] court cannot effectively  
6 conduct its business if every statement by counsel must be verified, and so great reliance is  
7 placed on a lawyer's candor. Candor encompasses more than a mere absence of lies; it  
8 connotes full disclosure of all relevant information..." See *In re Hagendorf*, No. 41417 (Nev.  
9 2003) (approving disciplinary plea agreement in case involving attorney litigant's misconduct in  
10 violating, among other things, his duty of candor to the tribunal) (emphasis added). Recently, on  
11 the same day that MITCH filed his present motion, the Nevada Supreme Court affirmed a district  
12 court's finding of attorney fraud as a basis to set aside a judgment procured by such fraud under  
13 Nev. R. Civ. P. 60(b)'s saving's clause. See *Valley Hospital v. Garner*, 125 Nev., Adv. Op. 50  
14 (Oct. 29, 2009) (affirming order vacating stipulated judgment due to attorney's fraud in  
15 misrepresenting as genuine a fraudulent settlement to the court and, thereafter, absconding with  
16 settlement funds). In addition to an attorney's duties to his clients, the Nevada Supreme Court in  
17 *Valley Hosp.* stated that, "a lawyer owes a duty of 'loyalty to the court, as an officer thereof,  
18 [that] demands integrity and honest dealing with the court. And when he departs from that  
19 standard in the conduct of a case, he perpetrates fraud upon the court.'" *Id.* (citations omitted).

20 Rule 60(b), Nev. R. Civ. P., which provides, in pertinent part, that

21 [o]n motion and upon such terms as are just, the court may relieve a party or a party's  
22 legal representative from a final judgment, order, or proceeding for the following reasons:  
23 (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence  
24 which by due diligence could not have been discovered in time to move for a new trial  
under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic),  
misrepresentation or other misconduct of an adverse party... .

1 Nev. R. Civ. P. 60(b). It is of little consequence whether the fraud complained of by  
2 CHRISTINA here falls under Rule 60(b)'s subsection (3), fraud by an adverse party, which has a  
3 six-month deadline, or its "saving's clause's," or both, given that CHRISTINA'S present  
4 challenge of the SAO has been made within six months of its entry. *Id.*

5 CHRISTINA and the Court relied upon MITCH and his counsel's  
6 misrepresentations and crafty scheme to defraud the Court to the detriment of the children's  
7 health and safety. *See* June 4, 2009 Hearing (in preliminarily considering MITCH'S April 27,  
8 2009 Motion for Reconsideration, the Court stated that parental "fitness" did not appear to be an  
9 issue). Far from counseling in favor of granting MITCH his third requested custodial  
10 modification contained in his present motion, such fraud upon the Court mandates that the Court  
11 set aside the SAO, reinstitute the original timeshare, sanction MITCH, and make such additional  
12 orders as are just to accommodate CHRISTINA'S safety concerns.<sup>3</sup>

13 **B. RELEVANT FINANCIAL DISCOVERY AND PARTITIONMENT OF**  
14 **ASSETS IS WARRANTED WHERE, AS HERE, MITCH**  
15 **FRAUDULENTLY CONCEALED MARITAL ASSETS**

16 **1. MITCH'S "Retirement" Presents an Anomaly that Can Only Be**  
17 **Explained by Fraud**

18 MITCH'S fraudulent conduct is not limited to drinking and driving. If Mitch is  
19 "retired" at age 34, as he now claims, then it appears that he either lied about the full extent of  
20 the parties' marital estate, or he is lying now about his "retirement." Though possible, it is  
21 unlikely that MITCH received significant post-divorce distributions given his company's

22 <sup>3</sup> In fashioning any such order, the Court should consider MITCH'S record of reckless driving. *See* Insurance  
23 Reports, dated November 7, 2006, attached hereto as Exhibit 7 (documenting Mitch's alcohol-related single car  
24 crash resulting in over \$10,000.00 in damages to one of his many luxury cars); and Las Vegas Justice Court printout,  
attached hereto as Ex. 8 (detailing, in just one jurisdiction, MITCH'S multiple traffic citations reduced to "parking  
tickets" from 2003 until the present).

1 immediate bankruptcy filing the month following the parties' divorce, his admission on his  
2 February 19, 2009 Financial Disclosure Form ("FDF") as to making only \$2,000 per month in  
3 income, and his current claims to have only been working minimally for his insolvent company  
4 overseeing the completion of a single office building over the past two years. *See* Mot.; and  
5 Defendant's FDF, attached hereto as Exhibit 9. Even if he did receive post-divorce distributions  
6 by virtue of his ownership interest in Aquila Investments, LLC, however, he is contractually  
7 obligated to share them with CHRISTINA via their Decree. *See* Decree, Ex. 2 (MSA, at 5, II.  
8 2.1(b)(iii)). MITCH'S claims concerning his ability to support a new wife, the parties' two  
9 children, and newly-desired future children by living off "investments" in this the world's worst  
10 economy since the Great Depression, begs the questions, what is the principal of those  
11 investments, and when was it earned? Either way, MITCH opened the door and CHRISTINA  
12 needs discovery in order to defend against his claims.

13 MITCH's "equitable apportionment" of the marital estate was approximately  
14 \$500,000 in assets as of May 2, 2008, *see* Decree, at Ex. 2 (MSA at 5, II. 2.1(b)(i)), and (a now  
15 evaporated) \$1 million in home equity. *Id.* at 5, II. 2.1. At the time of the parties' divorce,  
16 "[e]ach party represent[ed] and warrant[ed] that he or she ha[d] made full, complete and accurate  
17 disclosure of all the assets of the Parties." *Id.* at 6, II. 2.1(c). MITCH'S representations upon  
18 divorce and to this Court thereafter, *see* FDF, Ex. 9, do not explain his present ability to maintain  
19 estimated expenses of approximately \$35,000 per month for the past two years in the absence of  
20 fraud. *See* MITCH'S Affidavit of Financial Condition, filed November 20, 2006 (documenting  
21 \$21,000/month expenses which were made with substantially the same obligations he has now,  
22 but did not include MITCH'S new \$5,000/month car payment; college expenses for his new wife;

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1 \$2,000 child support obligation; or private school tuition for his now-preschool-aged children);  
2 and Defendant's FDF, Ex. 9. Moreover, in July 2009, MITCH appears to have purchased a  
3 brand-new home for his parents to live in at a cost of \$221,990.00. *See* Clark County Assessor  
4 Report and Nevada Secretary of State Printout, attached hereto collectively as Exhibit 10 (listing  
5 MITCH as the manager of the limited liability company, which owns the home his parents now  
6 live in).<sup>4</sup>

7                   **2. Proof that MITCH Received Significant Assets Pre-Divorce May Exist**  
8                   **But Discovery is Needed Given the Non-Public Nature of the**  
9                   **Information**

10                   When analyzed against available, though extremely limited, public records filed  
11 in the bankruptcy action of the asset-holding branch of his former company, City Crossing I,  
12 LLC ("City Crossing"), which commenced on June 2, 2008, exactly one month after the entry of  
13 the parties' Decree, the statements MITCH makes flaunting his extreme wealth, including, most  
14 recently, "retirement" at age 34, reveal that MITCH was the recipient of substantial assets he  
15 fraudulently concealed from CHRISTINA prior to the parties' divorce. CHRISTINA believes  
16 that such assets include an undisclosed \$6.9 million he received prior to the May 2, 2008 entry of  
17 the parties' Decree. See City Crossing's Statement of Financial Affairs (S.O.F.A.), filed June 17,  
18 2008, United States Bankruptcy Court, District of Nevada, Case No. 08-15780, attached hereto  
19 as Exhibit 11, at 34 of 40, #23 (listing distributions made by City Crossing to insider Aquila  
20 Investments, LLC, within one year prior to commencement of the bankruptcy action). Tellingly,  
21 the \$6.9 million in distributions made by City Crossing to insider Aquila Investments, LLC,  
22 owned in part by MITCH, in the year prior to filing bankruptcy, includes a \$750,000.00  
23 distribution made on March 12, 2008, exactly six days after the parties' Decree was filed (but not

24                   <sup>4</sup> Mitch's parents owned two homes in Las Vegas that were foreclosed upon earlier this year.

1 entered), in the exact amount of a bonus MITCH was expecting to receive in December 2007 but  
2 falsely told CHRISTINA he would not be receiving once the specter of divorce entered the  
3 picture. *See* CHRISTINA Aff., Ex. 1; and Excerpt of Transcript of First Meeting of Creditors,  
4 filed as Exhibit 1 to Response of Community Bank of Nevada to Debtor's Motion to Dismiss,  
5 filed November 11, 2008, attached hereto as Exhibit 12 (containing testimony by both MITCH  
6 and William Plise ("BILL") concerning ownership interests).

7 MITCH told CHRISTINA, prior to their divorce, that he had not received, and  
8 would not receive, anything by way of his 10% interest in Aquila Investments unless and until  
9 the 126 acres of Henderson land owned by City Crossing that was to have been developed into a  
10 \$1 billion mixed-use project was sold. CHRISTINA Aff., Ex. 1. In the Decree, the parties  
11 agreed that MITCH would give CHRISTINA a 50% interest in any distribution(s) MITCH  
12 would ever receive in the future by way of his interest in Aquila, acknowledging to CHRISTINA  
13 that the interest was community property and making her believe by way of his  
14 misrepresentations of fact as to the extent of the marital estate that he had not received any  
15 distribution, but would honor his word by sharing jointly in any future distributions. *Id.*; and  
16 Decree, Ex. 2 (MSA, 2.1(b)(iii), Ex. D). What MITCH failed to disclose to CHRISTINA was  
17 that he had already received \$6.2 million in 2007 (the distributions listed in the S.O.F.A. less the  
18 \$750,000 bonus in 2008) as his 10% interest in the loan proceeds BILL acquired after BILL  
19 bought out other partners, who owned the City Crossing land, with the \$200 million in financing  
20 MITCH, BILL'S General Counsel and Chief Operating Officer, helped secure for him. *See*  
21 MITCH'S Opposition/Counter-motion, filed January 8, 2009 (admitting that BILL defaulted on  
22 "\$200 million of debt"), at 22-23; CHRISTINA Aff., Ex. 1 (documenting MITCH'S claims that  
23  
24

1 BILL bought out his partners at \$1.1 million per acre for the 126 acres, leaving him with \$62  
2 million in proceeds, 10% of which totals MITCH'S \$6.2 million distributions in 2007).

3           Thereafter, MITCH obtained his \$750,000 bonus 6 days following the filing of  
4 the Decree, under the mistaken presumption by MITCH, a transactional attorney, that the Decree  
5 became effective upon its filing and not upon its entry. *See* CHRISTINA Aff., Ex. 1. (explaining  
6 MITCH'S eagerness to rush the Court's approval of the Decree). As further proof of his  
7 duplicity, the Court should note MITCH'S repeated, though false, insistence throughout his  
8 Motion and previously filed documents that the parties' Decree was entered on March 6, 2008,  
9 the date of its filing, and not May 2, 2008, the date of its entry. *See* Mot. at 4, l. 3. MITCH and  
10 BILL then walked away from the property leaving lenders and investors in the lurch and BILL as  
11 the main target of multiple pending collection actions in Clark County, Nevada, due to his  
12 personal guarantees of such loans. *See* Blackstone Printout, attached hereto as Exhibit 13 (listing  
13 past and present litigation against BILL and his affiliates, including one action, Clark County  
14 District Court Case No. 07A545946, in which investors also sued MITCH directly). MITCH  
15 and/or BILL, or others on their behalf, have already characterized the \$6.9 million distribution in  
16 one or more of the various cases filed against them, but such admissions and supporting  
17 documentation are not available in public records filed with the courts. *See* Community Bank's  
18 Opposition/Counter-motion to Compel, filed July 2, 2008, attached hereto as Exhibit 14  
19 (challenging the \$6.9 million as "fraudulent transfers" to insiders). Hence, the necessity for  
20 discovery.

21           CHRISTINA also countermoves for the Court to partition such marital property,  
22 the nondisclosure of which the parties' explicitly agreed would be considered "extrinsic fraud,"  
23 and for which they agreed to provide each other the remedy of partitionment. *See* Decree, Ex. 2,



1 at 8, Sec.V, "UNDISCLOSED PROPERTY." The parties also contractually agreed that no  
2 statute of limitations would begin to run on such an action until "actual discovery" of such  
3 property was made; a circumstance that has yet to occur. *Id.*

4 Pending partitionment, CHRISTINA requests that the Court enter a temporary  
5 injunction preventing MITCH from: transferring, encumbering, concealing, selling or otherwise  
6 disposing of any of the undisclosed community property of the parties or any property which is  
7 the subject of CHRISTINA'S claim of community interest, without the written consent of  
8 CHRISTINA or the permission of the Court.

9 **C. MITCH'S "WORD" SHOULD MEAN NOTHING TO THIS COURT**

10 In sum, MITCH asks this Court, once again, to "take his word for it" that he is a  
11 "fit" parent and requires custodial and timeshare modification, notwithstanding the fact that the  
12 parties' reached a settlement less than two months and three weeks prior to the filing of his  
13 instant motion. As will be fully explained below, the only issues not considered, and therefore,  
14 not "already adjudicated" by this Court and CHRISTINA are MITCH'S fraud as detailed above.  
15 Regardless of whether or not the Court finds that MITCH committed "fraud upon the court,"  
16 which he clearly did, the Court should deny MITCH'S present motion in its entirety given that it  
17 was filed without reasonable grounds to do so, its transparent purpose being solely to harass  
18 CHRISTINA at all cost, and its consideration being absolutely precluded by the doctrine of *res*  
19 *judicata*.

20 **IV. OPPOSITION**

21 **A. MITCH'S MOTION IS TIME-BARRED**

22 E.D.C.R. 2.24(a) provides that "[n]o motions once heard and disposed of may be  
23 renewed in the same cause, nor may the same matters therein embraced be reheard, unless by  
24

1 leave of the court granted upon motion therefor, after notice of such motion to the adverse  
2 parties." Moreover, a "party seeking reconsideration of a ruling of the court, other than any order  
3 which may be addressed by motion pursuant to N.R.C.P. 50(b), 52(b), 59 or 60, must file a  
4 motion for such relief within 10 days after service of written notice of the order or judgment  
5 unless the time is shortened or enlarged by order... ." E.D.C.R. 2.24(b).

6 MITCH'S present motion seeks reconsideration and rehearing of all of the matters  
7 embraced by MITCH'S Motion for Reconsideration, filed on April 27, 2009, and heard on June  
8 4, 2009. MITCH'S Motion for Reconsideration resulted in this Court's August 7, 2009 entry of  
9 the parties' stipulated judgment. Even assuming, *arguendo*, that MITCH is permitted to request  
10 "reconsideration" of his "Motion for Reconsideration," which he is clearly not permitted to do by  
11 the plain language of E.D.C.R. 2.24(a)-(b), he did not bring such request to the Court's attention  
12 within the clear 10-day deadline. In fact, two months and 3 weeks had already passed between  
13 the entry of the Court's order and the filing of MITCH'S present motion. MITCH'S Motion,  
14 therefore, is not only substantively deficient, as will be detailed below, but it is absolutely time-  
15 barred.

16  
17 **B. MITCH'S MOTION TO MODIFY CUSTODY SHOULD BE DENIED**  
18 **BECAUSE THERE IS NO "ADEQUATE CAUSE" TO WARRANT ITS**  
19 **CONSIDERATION**

20 As he erroneously concluded in his previously-filed and already adjudicated  
21 Motion for Reconsideration, challenging this Court's denial of his first countermotion to modify  
22 custody, and which erroneous assertion of law he reasserts in the present motion, the Court is  
23 not mandated to automatically entertain every motion to modify custody, regardless of the type  
24 of custody involved, that MITCH decides to throw at the Court and serve on CHRISTINA, at his

1 whim, whenever he feels like it, over and over again. See *Rooney v. Rooney*, 853 P.2d 123, 124,  
2 109 Nev. 540 (1993). In *Rooney*, the Nevada Supreme Court held that "a district court has the  
3 discretion to deny a motion to modify custody without holding a hearing unless the moving party  
4 demonstrates 'adequate cause' for holding a hearing." This "adequate cause" standard forms the  
5 first layer of protection against litigants, like MITCH here, who desire to abuse and exploit the  
6 "best interest of the child" standard, which is to be considered in custodial modification cases  
7 regardless of the type of custody involved, as set forth in NRS 125.510 and its provisions.

8 In *Rooney*, the parties initially stipulated to a primary physical custody  
9 arrangement, with the mother having primary physical custody, which was incorporated into  
10 their divorce decree. *Id.* at 123. Two months later, the father moved to modify custody. A  
11 hearing was held two months later, and the district court awarded physical custody to the father.  
12 *Id.* at 124. A month after the hearing, the mother filed a motion to modify custody claiming  
13 changed circumstances subsequent to last hearing. Without holding a hearing, the district court  
14 denied the mother's motion on the basis that it was filed, as is the case here, without reasonable  
15 grounds or solely to harass the other party. *Id.* The district court further stated that "[d]eclining  
16 to entertain said Motion at this time will protect the best interests of [the child]."

17 The *Rooney* court held that "adequate cause" requires "something more than  
18 allegations which, if proven, might permit inferences sufficient to establish grounds for a custody  
19 change." *Id.* at 125 (citations omitted). It arises only where the moving party presents a prima  
20 facie case for modification. *Id.* To constitute a prima facie case, the *Rooney* court held that "it  
21 must be shown that: (1) the facts alleged in the affidavits are relevant to the grounds for  
22 modification; and (2) the evidence is not merely cumulative or impeaching." *Id.* (citations  
23 omitted). In *Rooney*, a prima facie case of adequate cause was not even established based upon,  
24

1 among other things, the statement that, as asserted by the mother, the father had appeared at the  
2 mother's home stating that he did not want custody of their child, signed a piece of paper so  
3 declaring, and left the child with the mother (although he returned for the child the next  
4 morning). *Id.*

5           There is no adequate cause to entertain MITCH'S third custodial modification  
6 motion in nine months because none of the facts upon which he bases the motion is true and/or  
7 such evidence is cumulative where, as here, it was already previously adjudicated under the  
8 parties' stipulated judgment entered less than 2 months and 3 weeks prior to his present  
9 challenge. Furthermore, it is clear from his Motion, that it is filed without reasonable grounds  
10 and is intended solely to harass CHRISTINA.

11           To the extent that MITCH claims, with no citation to authority, that a stipulation  
12 does not constitute "adjudication," he is dead wrong. It is well-settled law that an action ending  
13 in a stipulated judgment or order satisfies the issue preclusion prong of *res judicata* as being  
14 "actually litigated." *See Willerton v. Bassham, et al.*, 889 P.2d 823, 111 Nev. 10 (1995)  
15 ("Generally, a judgment entered by the court on consent of the parties after settlement or by  
16 stipulation of the parties is as binding a judgment between the parties as if the matter had been  
17 fully tried, and bars later action on the same claim or cause of action as the initial suit.")  
18 (citations omitted). In *Willerton*, the Nevada Supreme Court, considering United States Supreme  
19 Court precedent, recognized that "consent judgments do have *res judicata* effect on the parties to  
20 a consent judgment, barring later suit on the same claims or causes of action as those asserted in  
21 a prior proceeding." *Id.* at 111 Nev. 17. To hold otherwise, as MITCH would have this Court  
22 do, would mean that settlements between parties' would have no binding or preclusive effect  
23 whatsoever.

1            *Rooney* is still good law. The recently re-decided case of *Rivero II*, and its new  
2 definition of joint physical custody as requiring a minimum 40% timeshare, does not overturn it.  
3 MITCH cites *Rivero* and seems to suggest that a hearing is required, automatically, every time a  
4 litigant moves to modify custody. However, *Rooney* is in place and permits the Court to  
5 properly address instances where, as here, a vexatious litigant chooses to use the judicial system  
6 as a means of harassment.

7            **E.       NOTWITHSTANDING MITCH'S FALSE ASSERTIONS TO THE**  
8            **CONTRARY, CHRISTINA IS THE PRIMARY PHYSICAL CUSTODIAN**  
9            **UNDER NEVADA LAW**

10           Assuming, *arguendo*, that MITCH'S motion would even pass muster under the  
11 "adequate cause" standard set forth above, which it does not, and the Court were to consider it,  
12 which it should not, it is incumbent upon the Court to first define the custodial arrangement  
13 between the parties, as such definition will determine the appropriate standard for modifying  
14 physical custody.<sup>5</sup> *Rivero II*, at 12. The Court may modify joint physical custody if it is in the  
15 best interest of the child. *Id.* at n.4 (citing NRS 125.510(2); *Potter v. Potter*, 121 Nev. 613, 618,  
16 119 P.3d 1246, 1249 (2005)). However, "to modify a primary physical custody arrangement, the  
17 court must find that it is in the best interest of the child and that there has been a substantial  
18 change in circumstances affecting the welfare of the child." *Id.* (emphasis in original).

19           In assessing the true nature of the parties' arrangement, the Court must 1) first,  
20 disregard the parties' definition of their own custody arrangement, and 2) second, determine the  
21 parties' actual custody arrangement by applying the terms and definitions provided under Nevada  
22 law. *Rivero* at 22. Under *Rivero II*, joint physical custody under Nevada law now "requires that  
23 each party have physical custody of the child at least 40 percent of the time." *Id.* at 3. The 40

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24           <sup>5</sup> The definition is also critical when dealing with relocation and/or child support awards. *Rivero II*, at 11-12.

1 percent rule, according to the *Rivero II* Court, best approximated its desired 50/50 timeshare as  
2 reflecting "joint custody," while still allowing for "necessary flexibility." *Id.* at 17.

3 Here, the parties' MSA contains the "in-name-only" designation "joint physical  
4 custody," but it, as well as the Decree in which the MSA is incorporated, contain child support,  
5 relocation and timeshare provisions, 80% (CHRISTINA)/20% (MITCH) that substantiate the  
6 parties' intent that CHRISTINA be the *de facto* primary physical custodian of their minor  
7 children. Notably, other than the timeshare, which he only marginally increased, MITCH left  
8 these provisions untouched by the SAO. He now claims, falsely, that CHRISTINA intended by  
9 the SAO that they "remain joint physical custodians." Mot. at 4, l. 8. CHRISTINA adamantly  
10 denies this assertion. See CHRISTINA Aff., Ex. 1. The record is clear that CHRISTINA never  
11 considered the parties' "joint physical custodians" upon their divorce, nor did she consider them  
12 so upon and after executing the SAO. *Id.*

13 Under MITCH'S subsequent May 1, 2009 "email settlement," the parties agreed,  
14 according to MITCH, to provide MITCH four additional "days" a month, i.e., an approximate  
15 30%<sup>6</sup> timeshare for MITCH. See Emails comprising the alleged "email settlement," attached as  
16 Exhibit 15 (CHRISTINA disputed the "email settlement" given the bad faith MITCH engaged in  
17 when he tried to re-write the entire Decree under the guise of purportedly documenting the  
18 limited "email settlement"). On July 8, 2009, the parties executed the SAO providing MITCH  
19 the identical timeshare modification contemplated by the "email settlement." See SAO, Ex.4.  
20 Given MITCH'S 30% timeshare, therefore, he is not a "joint physical custodian" under Nevada  
21 law, regardless of the designation contained in the MSA.

22  
23 <sup>6</sup> CHRISITNA calculated this percentage by multiplying MITCH'S set 10 days a month by 12 months and dividing  
24 it by 365 days. *Rivero II*. CHRISTINA also took into consideration the parties' annual and holiday visitation. *Id.*

1 MITCH recognizes that he is not a "joint physical custodian" under Nevada law.  
2 His motion's likely previously-considered title, DEFENDANT'S MOTION TO CONFIRM  
3 PARTIES AS JOINT PHYSICAL CUSTODIANS AND TO CONFORM TIMESHARE WITH  
4 DEFINITION OF JOINT PHYSICAL CUSTODY, provides great insight into the true  
5 motivations underlying the present motion. See Certificate of Service, filed November 6, 2009.  
6 First, it contains MITCH'S admission that the present timeshare is not reflective of joint physical  
7 custody, and secondly, and more importantly, it reveals that his primary emphasis is on a "title"  
8 with a "modification" being only secondary and in furtherance of his quest for a title. MITCH  
9 further clumsily declares in his supporting affidavit that

10 [u]nder the MSA and SAO, Christina and I have joint physical custody of the children.  
11 However, since we entered into the SAO, Nevada law regarding physical custody has  
12 changed. Christina and I never intended to have custody of the children other than as  
13 joint physical custodians. I also never expected the definition of "joint physical custody"  
to change at the time I signed the SAO which now unfairly imposes upon me additional  
legal burdens that previously failed to exist in order to change the current visitation  
schedule.

14 See MITCH Aff., attached as Exhibit A to his Mot.

15 MITCH struggles to make the straight-face argument that he is a joint custodian  
16 even under his new 30% timeshare. He does so by misapplying the facts and the law of *Rivero II*  
17 to the present case and giving lip-service to the idea of "changed circumstances" in order to  
18 justify his ridiculous request to have the Court change a timeshare that has already been in place  
19 for 6 months, contrary to the best interests of the children in terms of custodial stability. MITCH  
20 currently has the children from 6:00 pm. on Friday until 6:00 p.m. on Sunday during the first and  
21 third [and fifth if there is one] weekends of the month.<sup>7</sup> This constitutes 48 hours, or two days a

22  
23 <sup>7</sup> The parties' agreed to maintain the option providing CHRISTINA with the first weekend of the month, should she  
decide to take it, on the condition that if she does, MITCH gets make-up time to be taken from 6:00 p.m. on the  
Wednesday immediately preceding the first weekend of the month until Friday at 6:00 p.m.

1 week. On the second and fourth weekends of the months, MITCH has the children from 6:00  
2 p.m. on Thursday until 6:00 p.m. on Sunday. This constitutes 72 hours, or three days a week.  
3 Thus, the parties essentially share the children on an alternating 5/2, 4/3 basis, with CHRISTINA  
4 having alternating 5-day/4-day weeks, and MITCH having alternating 2-day/3-day weeks with  
5 the children. MITCH claims, however, contrary to logic and law, that he should have credit for  
6 the entire day even if he picks up the children at 6:00 p.m. Under his rationale, he has the  
7 children, as he claims, "all or part of three or four days each week." Mot. at 12, l. 12. Under his  
8 misreading of *Rivero II*, he claims that "'joint physical custody' is defined as a party having a  
9 child in his or her "physical custody" approximately three days per week." *Id.* at 12. Therefore,  
10 he claims, he is a joint physical custodian. *Id.* at 12. In truth, MITCH has an alternating 2-  
11 day/3-day weekly timeshare. Even he knows this. To find otherwise would suggest that  
12 CHRISTINA has a 6-day/5-day weekly timeshare, but there are only seven days in one week, not  
13 nine.

14 In fact, if taken to its illogical conclusion, under MITCH'S definition, this Court  
15 need not modify the timeshare at all because MITCH'S admission that he already has an  
16 alternating 3-day, 4-day weekly timeshare, which he does not have, would mean that the parties  
17 already have a 50/50 timeshare, which they do not. His motion would be moot (note how  
18 MITCH absolutely avoids assigning a percentage timeshare to himself because he knows it  
19 would defeat his argument and entire motion). Further, this Court already determined that  
20 custodial "confirmations" where no relocation or modification is required will not be awarded.  
21 See Hearing, February 24, 2009.

22 The Court should not heed MITCH'S false pleas that he never expected Nevada's  
23 definition of joint physical custody to change. At the February 24, 2009 hearing in this case, the  
24



1 parties' counsel, as well as the Court, discussed the fact that *Rivero I* was on appeal. This fact  
2 was also mentioned at the parties' June 4, 2009 hearing in the case. MITCH knew what he  
3 signed when he signed the SAO. To the extent that the Court fails to vacate the SAO on the  
4 basis of MITCH'S fraud, the Court should deny MITCH'S motion for what he apparently states it  
5 is, a means to "renegotiate" a deal he, a Washington College of Law trained lawyer, represented  
6 by experienced family law counsel, agreed to. Imagine the floodgates that the Court would open  
7 if it allowed litigants, unhappy with their custody arrangements, to flock to the Family Court,  
8 paying lip-service to "change" in some manner, and requesting renegotiation/reconsideration of  
9 their custody due to *Rivero II*.

10 C. THE COURT SHOULD NOT LIGHTLY GRANT AN APPLICATION TO  
11 MODIFY CUSTODY; CUSTODIAL STABILITY IS OF PARAMOUNT  
12 IMPORTANCE WHEN CONSIDERING THE BEST INTEREST OF THE  
13 CHILD

13 Custodial stability is of paramount importance under either standard of custodial  
14 modification in Nevada, primary physical or joint physical custody, as such stability has been  
15 determined to be in the best interest of the child. In Nevada, when a district court determines the  
16 custody of a minor child, "the sole consideration of the court is the best interest of the child."

17 *Ellis v. Carlucci*, 161 P.3d 239 (Nev. 2007) (citing NRS 125.480(1)). As a preliminary matter,  
18 the *Ellis* Court noted that

19 [u]nder NRS 125.480(4), '[i]n determining the best interest of the child, the court shall  
20 consider and set forth its specific findings concerning, among other things...(g) The  
21 physical, developmental and emotional needs of the child.'

22 *Id.* In the interest of judicial economy, CHRISTINA incorporates by reference, the detailed  
23 analysis she previously submitted to the Court of the NRS 125.480 factors as applied in this case  
24 given the fact that substantially the same issues and circumstances as were present then remain  
the same now. *See* Reply/Opposition, filed February 18, 2009, at 22-28. The *Ellis* Court further

1 cautioned, however, that although "the court may...[a]t any time modify or vacate its order' upon  
2 the 'application of one of the parties,' *because numerous courts have documented the*  
3 *importance of stability in promoting the developmental and emotional needs of children, we*  
4 *acknowledge that courts should not lightly grant applications to modify custody."* *Id.* (emphasis  
5 added).

6           The "changed circumstances" prong of the test for determining whether a change  
7 of custody is warranted in the primary custody setting, i.e., "that there is a substantial change in  
8 circumstances affecting the welfare of the child," serves "the important purpose of guaranteeing  
9 stability unless circumstances have changed to such an extent that a modification is appropriate."  
10 *Ellis*, at 243. Moreover, notes the *Ellis* Court, the "changed circumstances" prong should not be  
11 taken lightly and "any change in circumstances must generally have occurred since the last  
12 custody determination because the 'changed circumstances' prong "is based on the principle of  
13 *res judicata*" and "prevents 'persons dissatisfied with custody decrees [from filing] immediate,  
14 repetitive, serial motions until the right circumstances or the right judge allows them to achieve a  
15 different result, based on essentially the same facts.'" *Id.* (citing *Castle v. Simmons*, 120 Nev. 98,  
16 103-04, 86 P.3d 1042 (2004) (quoting *Mosley v. Figliuzzi*, 930 P.2d 1110, 1114, 113 Nev. 51, 58  
17 (1997)).

18           One exception to the *res judicata* aspect of the "changed circumstances" prong of  
19 the primary custodial modification test is a situation where, as here, a criminal act, while having  
20 been committed prior to the last custodial determination in the case, was unknown to one party.  
21 *See Castle*, at 105, 86 P.3d at 1047. In *Castle*, the Nevada Supreme Court found that a district  
22 court could properly consider evidence of domestic abuse that occurred before a previous  
23  
24

1 custody determination, but which was unknown to the moving party or the Court at the time of  
2 the prior determination. *Id.*

3 *Res judicata* is a principle of law that is alive and well in the single-pronged joint  
4 custody "best interest of the child" modification test as well. It merits discussion below, to the  
5 extent that MITCH argues, albeit disingenuously, that the parties are currently joint physical  
6 custodians under Nevada law.

7 **D. MODIFICATION IS NOT WARRANTED WHERE, AS HERE, THE**  
8 **SAME SET OF CIRCUMSTANCES THAT WERE PRESENT AT THE**  
9 **TIME THE PARTIES ENTERED INTO THE SAO REMAIN IN EFFECT**

10 MITCH'S filing of his motion constituting his third request for custodial  
11 modification in nine months is surprising for many reason, among which is his counsel's repeated  
12 and enthusiastic statements made to the Court in MITCH'S previous filings and at prior hearings  
13 in this matter concerning his intimate familiarity with the Nevada Supreme Court case, *Mosley v.*  
14 *Figliuzzi*, 930 P.2d 1110, 113 Nev. 51 (1997), as well as his repeated boilerplate citation to the  
15 case throughout his previously filed papers to, in many instances, wrongly preclude this Court  
16 and CHRISTINA from considering the relevant and deliberately hidden fact of MITCH'S alcohol  
17 problem and reckless driving record. *See* Opp., filed January 8, 2009, and Reply and Opp., filed  
18 February 20, 2009. Someone as intimately familiar with *Mosley*, should well know that the  
19 holding of the case absolutely precludes MITCH, even assuming, *arguendo*, that he were to be  
20 considered a "joint physical custodian," which he is clearly not, from seeking the relief he  
21 requests now, that is, custodial modification where substantially the same set of circumstances  
22 that were present at the time the parties voluntarily and knowingly entered into the SAO remain  
23 in effect.

1 In *Mosley*, a mother, unhappy with the custodial designation and, like MITCH,  
2 the timeshare the parties' stipulated to and the district court twice ordered, filed her fourth serial  
3 motion affecting custody less than three weeks after the entry of the court's third joint custody  
4 decree. The district court acted on the mother's fourth request by neither granting or denying her  
5 motion, but rather, by terminating the father's custodial rights and granting sole custody to the  
6 mother. *Id.* at 1111. In addition to the obvious procedural defect of terminating the father's  
7 custody without notice or proper motion to do so before it, the Nevada Supreme Court reversed  
8 the judgment of the district court but took the time to clarify its position in *Truax v. Truax*, 110  
9 Nev. 437, 438, 874 P.2d 10, 11 (1994), reaffirming its commitment to the doctrine of *res*  
10 *judicata* in child custody matters in Nevada. The *Mosely* court, as cited to by the *Ellis* Court,  
11 *supra.*, stated that while it said in *Truax* that:

12 'if it is shown that the best interest of the child requires modification or termination' of a  
13 joint custody, '[a]ny order for joint custody may be modified or terminated by the court  
14 upon the petition of one or both parents or on the court's own motion.' *This did not mean*  
15 *that we abandoned the doctrine of res adjudicata in child custody matters and that*  
16 *persons dissatisfied with custody decrees can file immediate, repetitive, serial motions*  
17 *until the right circumstances or the right judge allows them to achieve a different*  
18 *result, based on essentially the same facts.* "The moving party in a custody proceeding  
19 must show that circumstances have substantially changed since the most recent custodial  
20 order.... Events that took place before the proceeding [are] inadmissible to establish a  
21 change of circumstances." [citations omitted]

22 *Id.* at 1114-1115 (emphasis added).

23 Given MITCH'S intense animosity toward CHRISTINA, it is also important to  
24 note that in *Mosley*, which involved "chronically conflicting parents," the Nevada Supreme Court  
cautioned that:

[q]uite obviously the courts should not grant custody to the first parent who [like MITCH  
here] comes in and claims that the child should be awarded to the complaining party  
because he or she cannot get along with the other parent. To permit this to happen would  
permit one parent to sabotage [] custody merely by convincing the court that his or her

1 bickering with the other parent has created a situation in which the 'best interests of the  
2 child' requires that the child be 'awarded' to the complaining party

3 *Id.* at 1120. Like the unhappy mother in *Mosely*, MITCH attempts to sabotage the parties'  
4 stipulated custodial timeshare by constantly and mercilessly generating conflict and running to  
5 the Court, time and time again, to request custodial modification based on the conflict he  
6 continues to incite. The Court should stop MITCH'S sabotage attempts by summarily denying  
7 his motion and granting CHRISTINA the sanctions she requests against MITCH.

8 No matter how artfully MITCH attempts to repackage as "new," old claims and  
9 issues, the truth of the matter is that there are no new facts or circumstances present that justify  
10 custodial modification in this case, save MITCH'S criminal conduct, which counsels not in favor  
11 of an enlargement of time to MITCH, but rather, a reduction or restriction of visitation to him to  
12 safeguard the children. In addition, the reduction would be achieved not by modifying the  
13 parties' current timeshare, but rather, would occur as a consequence of vacating the SAO, which  
14 would leave the parties' original timeshare intact. In any event, MITCH'S credibility regarding  
15 his "new" claims and changed circumstances, is suspect, but CHRISTINA will address them  
16 below in order to preserve custodial stability in the lives of the parties' children.

17 **1. PARENTAL ALIENATION AND REQUEST FOR  
18 PSYCHOLOGICAL ASSESSMENT**

19 MITCH already raised the issue of parental alienation, which CHRISTINA  
20 adamantly denies has ever occurred on her part, in his Opposition/Response to Motion for  
21 Continuance, filed June 3, 2009. MITCH'S counsel also explicitly argued the claim at the June  
22 4, 2009 hearing on MITCH'S Motion for Reconsideration, repeating, verbatim, many of  
23 statements MITCH now falsely claims CHRISTINA makes to their daughter Mia. In addition to  
24 the record in this case, on the eve of the parties' July 8, 2009 mediation, MITCH admittedly

1 explicitly considered the issue of parental alienation prior to executing the SAO the next day.  
2 See Email from MITCH to CHRISTINA'S counsel, dated July 7, 2009, attached as Ex. 16  
3 (rejecting CHRISTINA'S request for parenting coordinator and admitting that "[t]o be honest, I  
4 am capable of attending classes and seeking family counseling on my own to assist with the  
5 issues raised by Christina's alienation of the children").

6 At the same hearing on MITCH'S Motion for Reconsideration, MITCH'S counsel  
7 further argued, as he does now, that the Court should direct a psychological assessment of the  
8 parties and their children. See Opp./Response, filed June 3, 2009. CHRISTINA opposed the  
9 request then, as she does now. The Court denied MITCH'S request for such an assessment.

10 To the extent that MITCH contends that CHRISTINA is continuing alienation,  
11 and as such, this constitutes a new circumstance, his email admissions, in addition to  
12 demonstrating MITCH'S intense and uncontrollable hatred of CHRISTINA, prove otherwise.  
13 On September 23, 2009, MITCH wrote to CHRISTINA, and in addition to reaffirming his  
14 intention of previously calling CHRISTINA a "bitch," specifically stating that, "I do not regret  
15 calling you a bitch or that Tara [Mia's school director] thinks that I think you are one because it  
16 is the truth," and telling CHRISTINA that, "[a]s far as your other suggestions, it would be better  
17 if you just go fuck yourself," MITCH admitted that "Mia now claims you [CHRISTINA] like  
18 Amy. We know this is not true, but I really do not care. I think it is good for Mia to believe  
19 that...." See Email from MITCH to CHRISTINA, dated September 23, 2009, attached as Ex. 17  
20 (vaguely referenced in, but not attached, for obvious reasons, to MITCH'S present motion).

## 21 2. MIA'S CLOTHING ISSUES

22 Time and again, the facts reveal that MITCH is untruthful to the Court and to  
23 CHRISTINA. Not surprisingly, MITCH lies to the Court when he states, throughout his motion,  
24

1 that Mia has only recently begun to exhibit clothing and emotional issues, including, "mood  
2 swings," "outbursts," and "meltdowns." MITCH does so in support of his contention that  
3 CHRISTINA'S alienation of the children, allegedly past and present, is now, post-SAO, resulting  
4 in trauma to Mia, and this is a factor, he argues, that counsels in favor of his requested  
5 modification. *See* Mot. What MITCH fails to tell the Court is that Mia's clothing and emotional  
6 issues have been in existence since the parties' initial separation in 2006, and is, more likely than  
7 not, as stated to CHRISTINA by Mia's teachers, school administrators, family counselor, and  
8 psychologist, a manifestation of Mia's processing the trauma of her parents' divorce and physical  
9 separations, including her father's immediate cohabitation and subsequent remarriage to another  
10 woman within months of the parties' separation and divorce.

11 In point of fact, although MITCH attempts to now educate the Court about the  
12 importance of OCD and its possible diagnosis as to Mia, it was CHRISTINA, and not MITCH,  
13 who first recognized, *nearly a year ago*, Mia's strange and angry reactions to clothing, seatbelts,  
14 shoes, etc. *See* Emails between CHRISTINA and MITCH, dated December 5, 2008, attached as  
15 Exhibit 18. CHRISTINA not only consulted with Mia's pediatrician, as she has historically  
16 always been the parent to affirmatively and consistently seek medical treatment for the children  
17 whether it be on an emergency basis or for routine care,<sup>8</sup> but she also reached out to her co-  
18 parent for consultation. *Id.* MITCH responded by completely shooting CHRISTINA down,  
19 dismissing her legitimate concerns, lying about his lack of similar problems, and, if that was not  
20 enough, insulting her by blaming her "deficient" parenting skills in failing to address what, as he  
21 characterized it to be, the "problem." *Id.*

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23 <sup>8</sup> CHRISTINA immediately notified MITCH when she suspected Ethan had "knock knees," promptly took him to  
24 the pediatrician, and, thereafter, sought expert care for him. *See* Knock Knee Emails, dated April 28, 2009, attached

1 Contrary to his present claims that Mia's behaviors warrant medical care and have  
2 only recently-manifested, MITCH told CHRISTINA that

3 Mia's issues with clothes have little to do with any mental illness and everything to do  
4 with a desire to do things on her own terms. I have been able to get her to wear a variety  
5 of dresses. She also will buckle or strap her shoes when she needs to. Of course she wears  
extra large panties and won't wear tights. I think a therapist [sic] is only good if he or  
she provides you parenting tools necessary to resolve the "problem."

6 *Id.* (emphasis added). Thus, it appears that Mia's mental health is only important to MITCH  
7 when he can use it to further his own best interests, here, to harass CHRISTINA.

### 8 3. MIA'S ANGER ISSUES

9 MITCH'S claims of Mia's "hidden" anger issues being "newly-arising" are equally  
10 false. Such falsity is demonstrated, again, by MITCH'S own previous email admissions made  
11 almost a year ago. In a December 14, 2008 email MITCH sent to CHRISTINA, provided below  
12 in pertinent part and attached hereto in full as Exhibit 26, MITCH explained in alarming detail  
13 how he spent an entire weekend punishing Mia for her angry "outbursts" and "meltdowns,"  
14 culminating in him delivering punishment upon her in the form of what he called a "pat" across  
15 Mia's cheek, but which Mia described to CHRISTINA to be a "really hard slap across [her]  
16 face." See CHRISTINA Aff., Ex. 20. The angry email reads as follows:

17 From MITCHELL to CHRISTINA, December 14, 2008:

18 I have tried in good faith since our divorce to coparent with you. You are not really  
19 interested in that. You are only interested in telling me how to be a parent. You only  
20 sent the emails because you believe that you can use them to your advantage in your  
21 ridiculous attempt to obtain primary physical custody of the children. If you really cared  
about the matter, why didn't you pick up the telephone and call me? Instead, you decided  
it made more sense to email me multiple times to establish some sort of record of  
"reaching out" and fill them with self serving language about your coparenting techniques

22  
23 hereto as Exhibit 19. Though MITCH claimed he had noticed Ethan's condition for months, he chose not to  
communicate the information to CHRISTINA or to seek medical help on his own.



1 and attack me. Since your motives are now clear, I will now provide you the written  
2 response you have desperately requested.

3 With respect to the events of this weekend, there were many circumstances that resulted  
4 in my decision to spank Mia. I will described in detail the final event. I was giving Mia  
5 a bath. While in the bath, Ethan came into the bathroom. While next to the tub, Mia  
6 poured a cup of water on Ethan. I scolded Mia and asked her to get out of the tub so I  
7 can dry her. She refused. Ultimately, I had to physically remove Mia from the tub. She  
8 would not allow me to dry her. She covered up in her towel and laid on the floor. I told  
9 her that I was upset at her behavior. She informed me that she "did not like me  
10 anymore" and that I was a "jerk." I dried her off and tried to get her dressed. I tried  
11 to dress her for 15 minutes. During this time period, I threatened to spank her multiple  
12 times. She refused to cooperate. Finally, I spanked Mia on her rear end. She  
13 continued to disobey and say inappropriate things like "you are a lair [sic]."

14 Obviously, I was not getting through to her. I then patted my hand across her cheek.  
15 She was not hit or spanked 10 times. She was not physically touched by anything  
16 but my hand. She was not smacked, punched, kicked, cut, burned, poked or scratched.  
17 Her face was not bright red. I did not examine her butt, but I do not expect she had any  
18 swelling or bruising. If she did, I am sure I would have heard about it from you. Mia  
19 was not abused.

20 Mia had a difficult weekend. She refused to get dressed. She had a meltdown in the  
21 parking lot at the mall because she wanted to go home. She used inappropriate language  
22 (jerk, loser, and silly bitch) regularly despite being told to use "good words.". None of  
23 these instances resulted in a spanking (although I warned her several times that one was  
24 imminent).

See Email from MITCH to CHRISTINA, dated Dec. 14, 2008, Ex. 20.

In addition to documenting Mia's long-standing emotional issues, MITCH'S email  
demonstrates his own inability to handle his anger appropriately. *Id.*; see also CHRISTINA'S  
Motion, filed December 17, 2008, and its supporting affidavits (documenting witness accounts of  
MITCH'S legendary anger-management issues). Alarminglly, according to the children, MITCH  
and his new wife regularly hit them. See CHRISTINA Aff., Ex.1.

Like OCD, Mia's anger issues could, quite possibly, be genetic. Studies show that  
there is a strong genetic component to OCD, an anxiety disorder. "Obsessive-Compulsive  
Disorder," February 6, 2008, NY Times. Research confirms that close relatives of people with  
OCD are up to nine times more likely to develop OCD themselves. *Id.* Though MITCH fails to

1 disclose this fact to the Court, he has suffered from anger issues, often played out in "road rage"  
2 situations and in his reckless and aggressive driving style in general, and OCD for decades. *See*  
3 CHRISTINA Aff., Ex. 1.

4 MITCH claims that CHRISTINA is being "coy" about Mia's anger issues. The  
5 emails he references from CHRISTINA to him on the subject prove otherwise. *See* Emails  
6 MITCH attaches to his Mot. (documenting CHRISTINA'S candid descriptions of Mia's angry  
7 reactions). MITCH'S claims that CHRISTINA is "hiding" Mia's angry reactions is absurd not to  
8 mention, as it appears from MITCH'S own motion, a complete projection of what he is doing  
9 with such information to CHRISTINA. The first time CHRISTINA has ever heard about the  
10 seemingly traumatic angry and emotional episodes that Mia is allegedly enduring while under  
11 MITCH'S care is in the 76-page motion he filed with the Court without any adherence to EDCR  
12 5.11. Incredibly, MITCH also filed his meritless motion after Mia had been to only two sessions  
13 with the psychologist they both agreed should treat her, Dr. Joel Mishalow. Although  
14 CHRISTINA clearly opened the door to such discussion when she shared with MITCH  
15 important information about Mia's behavior that was continuing to concern her, MITCH kept  
16 mum about his own issues. He even failed to divulge his "concerns" about Mia to Dr. Joel  
17 Mishalow. *See* CHRISTINA Aff., Ex. 1.

18 MITCH'S "lay-in-wait" approach to Mia's therapy, i.e., keep quiet to  
19 CHRISTINA and Dr. Mishalow and hope that MITCH'S coaching of Mia on the issue of  
20 alienation works, apparently backfired on him. Dr. Mishalow has not found that CHRISTINA  
21 has been abusing Mia. Hence, MITCH'S present ridiculous request for the Court to, once again,  
22 micromanage the parties lives and appoint yet a different mental health provider, who, MITCH  
23  
24

1 likely hopes, may be more amenable to his manipulations. The Court should see through  
2 MITCH'S transparent game-playing and deny his motion.

3 **3. MITCH'S DESPERATE CLAIMS OF THERAPEUTIC**  
4 **MANIPULATION BY CHRISTINA**

5 MITCH claims that CHRISTINA has manipulated Mia's therapy process by,  
6 among other things, not selecting Dr. Melissa Kalodner<sup>9</sup> as a treatment provider for Mia and  
7 excluding MITCH from Mia's therapy sessions. Not surprisingly, MITCH'S claims are not only  
8 unequivocally and demonstrably false, but they defy logic as well. If CHRISTINA were truly  
9 "abusing" Mia as MITCH viciously claims of the devoted mother of his children, why would  
10 CHRISTINA subject herself to "exposure" by informing MITCH of Mia's behaviors or seeking  
11 help for Mia from a treatment provider who could potentially "uncover" CHRISTINA'S alleged  
12 abuse? It doesn't make sense because it simply is not true. CHRISTINA'S concerns for Mia's  
13 health and well-being have been always been genuine. As is evident by his motion, MITCH  
14 cannot say the same.

15 As confirmed by the attached emails between the parties, MITCH well knows that  
16 1) he has always been welcome to attend any and all therapy sessions, notwithstanding the fact  
17 that he refuses to do so even when asked by Dr. Mishalow; 2) that CHRISTINA has  
18 accommodated MITCH'S unjustified hostility toward her, even going so far as to offer to bring  
19 Mia to therapy during her timeshare so that MITCH can attend a session with Mia to the  
20 exclusion of CHRISTINA; 3) that CHRISTINA has never insisted on being present in the room  
21 at all times with Mia, and, in fact, waited in the waiting room for the majority of Mia's first of

22 \_\_\_\_\_  
23 <sup>9</sup> CHRISTINA'S refusal to select Dr. Kalodner is nothing more than an adult exercise of CHRISTINA'S discretion  
24 in not choosing to give business to a service provider who arbitrarily raised the agreed-upon price of therapy and  
then reacted unprofessionally when CHRISTINA questioned her about it. See Email from CHRISTINA to MITCH,

1 only two pre-filing appointments with Dr. Mishalow; 4) that CHRISTINA has informed MITCH  
2 of past appointments in addition to updating MITCH on Mia's amazing progress; and that, 5)  
3 prior to filing his monstrous motion with the Court, MITCH never bothered to tell CHRISTINA,  
4 or Dr. Mishalow, of the apparently intense emotional trauma Mia is suffering while in his care.  
5 See Emails to and from CHRISTINA to MITCH, dated November 10, 2009, Ex. 22; see also  
6 Letter from CHRISTINA to DR. MISHALOW, dated October 26, 2009, attached as Exhibit 23  
7 (documenting CHRISTINA'S efforts to keep MITCH apprised of Mia's therapeutic process  
8 through Dr. Mishalow notwithstanding his refusal to join CHRISTINA in Mia's therapy).

9 In fact, MITCH'S November 10, 2009 email to CHRISTINA on the subject  
10 demonstrates MITCH'S continued faith in Dr. Mishalow to treat Mia's issues as well as  
11 documents his ability to, as a parent and as an adult, communicate concerns to a health care  
12 provider instead of running to Court with self-generated exhibits in his apparently never-ending  
13 quest to continue to "battle" CHRISTINA. *Id.*

14 Moreover, even if the Court were to conclude, and it should not, that Mia's  
15 emotional and anger issues are "new," and constitute a "substantial change in circumstances  
16 affecting the welfare of the child," which they are not, a modification is still only appropriate to  
17 the extent that it furthers the best interests of the child. Where, as here, all the evidence proves,  
18 as admitted by MITCH, that it is CHRISTINA who is responsible for identifying the behavioral  
19 issues, consulting with her coparent and Mia's pediatrician, interviewing four different  
20 psychologists and consulting with others to get the best medical care for Mia, a modification  
21 enlarging MITCH'S more time would not be warranted. See *Ellis*, 161 P.3d 239, 244 (affirming  
22

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23 dated September 10, 2009.Ex. 21. CHRISTINA never claimed she couldn't afford her, nor is it true that MITCH'S  
24 insurance would have covered her given that she is an out-of-network provider, as he well knows.

1 district court's modification of primary custody granting father more time where the evidence  
2 showed that it was the father who was actively involved in addressing the substantial change in  
3 circumstances, a decline in academic performance). Moreover, it is under CHRISTINA'S  
4 vigilant care that Mia has already achieved great progress. *See* Email from Mia's teacher, dated  
5 October 22, 2009, attached as Exhibit 24; and Mishalow Letter, Ex. 23.

6 **4. MITCH'S LACK OF DAILY PHONE CONTACT IS A**  
7 **CONSEQUENCE OF HIS OWN MAKING**

8 MITCH seems to suggest that a "new" circumstance justifying the Court's  
9 modification of the parties' stipulated timeshare is the fact that he no longer receives daily phone  
10 calls from the children while they are in CHRISTINA'S care. He admits, however, that he is the  
11 cause of this present circumstance given that he refuses to facilitate daily phone calls from the  
12 children to CHRISTINA when they are in his care even though he explicitly recognizes that he is  
13 required to do so pursuant to the SAO. *See* Mot. at 18; SAO, Ex. 4. MITCH claims, again  
14 falsely, that CHRISTINA simply made it too difficult to comply with the SAO, so, as he  
15 rationalizes it, he simply chooses not to abide by the Order of the Court. *Id.* at 18.

16 CHRISTINA fought vigorously for the inclusion of the telephone provision in the  
17 SAO given MITCH'S prior and continuing history of refusing to facilitate telephonic  
18 communication. *See* CHRISTINA Aff., Ex. 1. CHRISTINA'S "going off email," as MITCH  
19 describes it, the centerpiece of his meritless motion, was provoked, among other things, by  
20 MITCH'S blatant contempt of Court on this issue. The email written by CHRISTINA, and  
21 deliberately omitted from this Court's consideration by MITCH, that preceded the "going off"  
22 email, documents CHRISTINA'S frustration with MITCH'S post-SAO harassment, including his  
23 decision to simply disregard certain provisions of the SAO less than a month after its entry. *See*  
24 Emails from CHRISTINA, attached hereto as Exhibit 25.

1 In fact, contrary to MITCH'S statements of non-provocation, in addition to  
2 constantly calling CHRISTINA "lonely" and "pathetic," as well as defending his new wife's  
3 actions in screaming at CHRISTINA while she was on the phone with MIA, MITCH further  
4 demonstrated his never-ending thirst for conflict, as well as his complete disregard for the  
5 Nevada Rules of Professional conduct, by personally attacking her attorneys, just as he had done  
6 during the parties' mediation, while insisting that he was not going to follow the SAO regarding  
7 phone calls. On July 30, 2009, MITCH stated that

8 I really do not have anything more to say except that Shawn Goldstein is a complete idiot  
9 and joke as a lawyer. Shawn just kisses your ass and collects your money. Jim just  
10 shows up to court clueless and bills you \$500 an hour. Shawn should be giving you the  
11 advice that Radford has trained him to give instead of becoming a clone of "Greasy Hair"  
12 Jimmerson. And just so you know, it is not a violation of the Nevada professional rules  
13 to characterize Shawn or Jim this way (notwithstanding the fact that it is also true).

14 See Email from CHRISTINA to MITCH, dated July 30, 2009, attached hereto as Exhibit 26. In  
15 August 2009, MITCH also unjustifiably refused to permit CHRISTINA to take her second week  
16 of vacation with the children claiming, arbitrarily, that she "waived" her second week. See  
17 Exhibit 27. CHRISTINA requests the Court grant her permission to take this vacation.

18 Likewise, judging from MITCH'S motion, and his continuing hostility and refusal  
19 to coparent, CHRISTINA doubts that MITCH complied with the SAO's requirement that the  
20 parties attend COPE class prior to October 1, 2009, a requirement CHRISTINA also fought for  
21 in the hope of quenching MITCH'S insatiable quest for conflict.<sup>10</sup> CHRISTINA hereby requests  
22 that MITCH produce proof of his compliance with this requirement of the SAO or be sanctioned

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23 <sup>10</sup> It should be noted that the parties have been able to attend several school functions post-SAO, jointly, and with  
24 no conflict. It is MITCH who perpetuates animosity by arbitrarily refusing to join CHRISTINA at Mia's therapy  
sessions, insists on separate parent-teacher conferences, refuses to allow or facilitate telephonic communication  
between the parties, and now refuses to attend an upcoming medical appointment for Ethan given his one-sided  
hatred of CHRISTINA, and his hope that perpetuation of such conflict will further his litigation cause. Given the  
circumstances that led to the parties' divorce, CHRISTINA does not understand the reasons behind MITCH'S anger,  
but does not let it deter her from attempting to coparent with MITCH whenever possible.

1 by the Court for his contempt. CHRISTINA hereby attaches proof of her compliance with the  
2 provision. See Certificate, dated September 26, 2009, attached as Exhibit 28. CHRISTINA has  
3 voluntarily attended not one, but two, COPE classes. MITCH would only agree to attend COPE  
4 under the SAO, if CHRISTINA went again because he said he wanted to make her "jump  
5 through hoops." See CHRISTINA Aff., Ex. 1.

6 Simply put, MITCH should not be permitted to argue that his own contempt of  
7 Court should be considered a substantial change in circumstances supporting custodial  
8 modification to enlarge his time.

9 **5. MITCH'S EVER-DECREASING WORK SCHEDULE AND EVER-**  
10 **INCREASING AVAILABILITY FOR FATHERHOOD HAS**  
11 **ALREADY BEEN ADJUDICATED**

12 MITCH'S claims of having a post-divorce, minimal, flexible, and at-home work  
13 schedule, over which he had "absolute control," has been raised by MITCH not only in the  
14 present Motion, but in almost every post-divorce filing he has made in this case as well as at both  
15 previous hearings in this matter. See e.g., Mot. at 10. The fact that MITCH has now, apparently,  
16 gone from working 15-20 hours a week under such an open work arrangement to not working at  
17 all, is not a "substantial change" in circumstances meriting custodial or timeshare modification.  
18 In fact, MITCH currently admits that his "work hours have continually decreased since the time  
19 of the Decree." See Mot. at 10, ll. 14-15. Clearly, MITCH considered the decreasing nature of  
20 his work schedule prior to executing the SAO.

21 **6. MIA'S RELUCTANCE TO RETURN HOME**

22 MITCH claims that Mia has only recently become reluctant to leave him and  
23 return to CHRISTINA when his visitation with the children is over. See Mot. at 9, ll. 16-18. He  
24 attributes such "recent" reluctance on his perpetual but completely unsupported "alienation-by-

1 CHRISTINA" claims. Like many of his other "new circumstance" claims, MITCH'S  
2 "reluctance" claim is refuted by direct statements he has made to the contrary on the very same  
3 issue. In this case, MITCH previously alleged in his January 8, 2009 affidavit, filed in support of  
4 his Opposition/Counter-motion, that Mia exhibited reluctance to return to CHRISTINA when his  
5 visitation with her was over. *See* MITCH Aff., Ex. A to his Opp., at para. 37, filed January 8,  
6 2009. However, far from crediting his theory of alienation as he does now, he admitted that "I  
7 understand, however, that reluctance to change households, particularly when young children are  
8 having fun at one or the other, is a common event." *Id.* MITCH'S visitation time with the  
9 children is often filled with such fun activities as Adventuredome, Chuck-E-Cheese's, the park,  
10 even on school days when MITCH is supposed to, but often does not, take the children to school.  
11 etc. *See* Emails, dated July 24, 2009, attached hereto as Ex. 29 (documenting a typical "fun" day  
12 with MITCH).

13 Thus, MITCH'S claims of "recent reluctance" is clearly disproven by MITCH'S  
14 own prior admissions. His financially-motivated sister/employee's affidavit on the subject does  
15 nothing to change this fact.

16 **7. MITCH'S Lack of Daily School Contact is Not a Changed**  
17 **Circumstance**

18 MITCH contends that he can no longer visit the children at school on a daily basis  
19 because, as he falsely claims, CHRISTINA likely lobbied the children's respective schools to  
20 prevent his visits. *See* Mot. at 9. In reality, Ethan's teachers are restricting parental visits, as  
21 MITCH well knows but chose not to disclose, to address fundamental social delays Ethan is  
22 exhibiting in the areas of independence and self-confidence.<sup>11</sup> *See* Parent/Teacher Conference

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23 <sup>11</sup> Perhaps MITCH'S nondisclosure of Ethan's developmental problems is reflective of his recognition that his  
24 previous visits to Ethan were, indeed, disruptive of his social and emotional development.



1 Report, dated November 4, 2009, attached hereto as Exhibit 30 ("[Ethan] likes to spend his time  
2 with adults the majority of the time; we will interact with him and encourage him to join with the  
3 other children"/"At times Ethan seems anxious"). Mia's school's parental visitation policy was in  
4 effect prior to Mia's enrollment in the school and has nothing to do with MITCH. Although  
5 CHRISTINA urged MITCH to tour Mia's new school and to investigate its program and policies  
6 prior to her enrollment, MITCH chose not to do so. See Email from CHRISTINA to MITCH,  
7 dated February 4, 2009, attached hereto as Exhibit 31. His deliberate ignorance on the subject  
8 does not legitimize his claims.

9 MITCH unavailingly argues that the loss of such school visits is a "change" that  
10 he failed to anticipate. Incredibly, he claims to only "now recognize that it may not be feasible to  
11 visit the children at school during the next twelve (12) years of their elementary and secondary  
12 education." MITCH Aff., Ex. A to Mot., at para. 11. MITCH'S claims are simply not credible  
13 given common sense as well as the fact that he entered into the SAO in the middle of the summer  
14 during a time when, as he explicitly argued to the Court, then as a basis to justify his refusal to  
15 grant CHRISTINA a continuance, that the children were not in school and he would not be able  
16 to see them on a daily basis. See MITCH'S Opp./Response, filed June 3, 2009. In addition, this  
17 Court forewarned the parties of such an eventuality at the hearing on February 24, 2009, when it  
18 stated that it would not issue any orders regarding MITCH'S school visits, but rather, that it was  
19 leaving such visits to the discretion of the individual schools. Thus, MITCH entered into the  
20 SAO, in the middle of the summer when he had no opportunity to engage in school visits,  
21 knowing that such future visits would continue only at the discretion of the children's schools.

22 In addition, MITCH and CHRISTINA have no agreement on educational cost-  
23 sharing in the future. MITCH refused to honor his own "email settlement's" codification of such  
24

1 an agreement at the mediation claiming that the FMC mediator had no jurisdiction over such  
2 issues and he would not agree to commit any such agreement to writing because, in his words, "a  
3 win is a win." Sadly, the Court well knows that MITCH has been running away from his  
4 responsibility in this regard since the parties' divorce. As it stands now, the parties have no  
5 agreement as to whether and when Ethan, who has three more years of preschool before he can  
6 attend Kindergarten, will continue in preschool absent MITCH'S contribution to his education.  
7 MITCH knew this fact when he signed the SAO; thus, he cannot now claim that there was any  
8 indefinite "guarantee" of daily school visits that has now, somehow, changed.

9 Nevada law clearly prohibits MITCH'S present attempt to relitigate this clearly  
10 adjudicated issue indefinitely.

#### 11 8. MITCH'S ATROCIOUS SCHOOL ATTENDANCE RECORD

12 Though not a "changed circumstance," MITCH'S abysmal record of not taking the  
13 children to school on the minimal weekdays that he has them merits discussion. MITCH claims  
14 that "[a]t least with equal time...I will have an opportunity to drop off and pick up the children at  
15 school and interact with the school administrators and teachers on a weekly basis." *Id.*  
16 MITCH'S words are belied by his current actions. MITCH failed to take the children to school a  
17 single full day in October, and continues the same pattern in November. In addition, MITCH  
18 recently sent CHRISTINA an email documenting his intention to take the children out-of-town  
19 on December 11, 2009, another school day he apparently intends to ignore. *See* Emails between  
20 MITCH and CHRISTINA, dated Nov. 15-16, 2009, attached as Exhibit 32. As usual, MITCH'S  
21 email travel "notice" also fails to contain one iota of the required specificity for an "itinerary"  
22 this Court (June 4, 2004 Order) and the MSA require for out-of-state-travel, an ongoing issue  
23 with MITCH. *Id.* Mia recognizes her father's willingness to discount the importance of school  
24

1 when she repeatedly claims to CHRISTINA that "Dada says I don't have to go to school when  
2 I'm with him," or that "Dada didn't take us to school because he says we slept too late." *See*  
3 CHRISTINA Aff., Ex. 1. It is not surprising that MITCH claims Mia tells him that she "hates  
4 school," given that it appears that his response to her statements is to simply not take her at all.

5 An increase of weekday custodial time with MITCH, it would seem, would mean  
6 an increase in the children's unexcused absences from school, which would clearly not be in their  
7 best interest.

### 8 **III. CONCLUSION**

9 For all of the foregoing reasons, CHRISTINA requests that MITCH'S immediate,  
10 repetitive, and serial motion be denied in its entirety. Further, CHRISTINA countermoves for  
11 the following orders:

- 12 1. Vacating the SAO and, thereby, reinstituting the parties' original 80%/20%  
13 timeshare based upon N.R.C.P. 60(b) and MITCH and his counsel's fraud upon the Court;
- 14 2. Restricting MITCH'S visitation to accommodate safety concerns associated with his  
15 alcohol abuse and reckless driving record;
- 16 3. Granting CHRISTINA discovery to uncover any other omissions regarding MITCH'S  
17 criminal record and alcohol abuse;
- 18 4. Sanctioning MITCH and his counsel for their professional misconduct and for the  
19 filing of MITCH'S baseless motion pursuant to EDCR 7.60 and the inherent power of the  
20 Court to sanction misconduct before it;
- 21 5. Awarding CHRISTINA attorney's fees, pursuant to the parties' Marital Settlement  
22 agreement, hereafter MSA, incurred from December 2008 until the present;
- 23 6. Granting CHRISTINA relevant financial discovery to a) substantiate MITCH'S claims  
24 of wealth as it pertains to his stated availability to care for the parties' children more, and  
b) to determine the extent to which MITCH defrauded CHRISTINA of her rightful share  
of the marital estate and/or of post-divorce distributions she was and is entitled to receive  
pursuant to the Decree; and
7. Granting a temporary injunction preventing MITCH from: transferring, encumbering,  
concealing, selling or otherwise disposing of any of the undisclosed community property

1 of the parties or any property which is the subject of CHRISTINA'S claim of community  
2 interest, without the written consent of CHRISTINA or the permission of the Court;

3 8. Partitioning any "undisclosed property" pursuant to the express terms of the Decree;

4 9. Compelling MITCH to provide proof of attendance at COPE class prior to  
5 October 1, 2009, and in the absence of such proof, sanctioning MITCH for contempt of  
6 the SAO; and

7 10. Granting CHRISTINA the one week of vacation with the parties' children that  
8 MITCH has unjustifiably denied her taking this year.

9 BY:

  
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Facsimile: (702) 240-4937

**In Proper Person**

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**CERTIFICATE OF SERVICE**

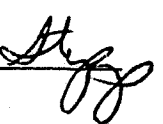
Pursuant to Nev. R. Civ. P. 5(b), I certify that on this 30th day of November, 2009, I caused to be hand delivered, a true copy of the following enclosed in a sealed envelope:

**COUNTERMOTION TO SET ASIDE AUGUST 7, 2009 STIPULATION AND ORDER**  
**DUE TO DEFENDANT'S FRAUD UPON THE COURT, GRANT DISCOVERY,**  
**PARTITION UNDISCLOSED MARITAL ASSETS, AND FOR SANCTIONS**  
**AND**  
**OPPOSITION TO DEFENDANT'S MOTION TO CONFIRM PARTIES AS JOINT**  
**CUSTODIANS AND TO MODIFY TIMESHARE ARRANGEMENT**

TO:

RADFORD J. SMITH, CHARTERED  
RADFORD J. SMITH, ESQ.  
64 N. Pecos Road, Suite 700  
Henderson, Nevada 89074  
*Attorneys for Defendant*

DATED this 30th day of November 2009.

By Christina Calderon 

**OPPOSITION/COUNTERMOTION**  
**EXHIBIT 1**

STATE OF NEVADA )  
 ) ss:  
COUNTY OF CLARK )

3. On December 17, 2008, I filed a motion requesting, primarily, that the Court confirm me as the primary physical custodian of our children and enforce our educational cost-sharing agreement, which, up until then, Mitch had refused to honor, choosing instead to condition his promised support on my execution of what the Court later agreed was a completely unnecessary protective order. On January 8, 2009, Mitch filed an Opposition and purely

1 defensive Countermotion in which he opposed my motion and requested modification of our  
2 then-less-than-year-old 80%/20% timeshare, raising many of the same arguments he repeats in  
3 his present motion. On February 24, 2009, the Court held a hearing, heard argument, and denied  
4 all motions/countermotions.

5 4. Following the hearing, Mitch called me and threatened me that if I did not  
6 voluntarily modify the timeshare, he was going to "continue the litigation between us  
7 indefinitely," because he had the "time, money and desire" to do so. He told me that he knew  
8 that my money was "dwindling" and mockingly stated that I had to support my family.

9 5. On April 27, 2009, Mitch filed a Motion for Reconsideration requesting, yet  
10 again, that the Court modify our timeshare based on, with the exception of his hidden DUI arrest  
11 and reckless driving record, the same issues and claims he raises again in his present motion.  
12 The Court assigned Mitch a hearing date of June 4, 2009, in connection with his motion.

13 6. On June 3, 2009, I filed a Brief Opposition and Motion to Continue the June 4,  
14 2009 hearing given Mitch's unjustified and unprofessional refusal to grant me an unconditional  
15 two-week extension of time within which to respond to his motion. Later that same day, on June  
16 3, 2009, Mitch filed an Opposition and Response to my Motion to Continue claiming that we had  
17 reached a settlement via email on May 1, 2009, that the Court was obligated to enforce, hereafter  
18 the "email settlement;" that I was alienating the children from Mitch; and requesting, as he does  
19 in his present motion, that the Court appoint a psychologist to conduct an assessment of us and  
20 our children. All the same issues and substantially the same circumstances as were referenced in  
21 his Opposition/Response are mirrored in his present motion.

22 7. At the June 4, 2009 hearing on the matter, the Court heard arguments by both  
23 parties, agreed to continue the hearing to provide me time to respond, and ordered the parties to  
24



1 attend a second Family Mediation Center (FMC) mediation with the hope that we would resolve  
2 our dispute. Uninformed of MITCH'S criminal record, the Court indicated that, in the absence of  
3 bad faith, he wanted Mitch to have more time with the children.

4 8. Prior to attending mediation, on June 18, 2009, Mitch filed a vicious and  
5 completely unnecessary Motion for Order to Show Cause claiming that I should be held in  
6 contempt for being 1.5 hours late exchanging our children following their participation in my  
7 sister's wedding as the flower girl and ring bearer, respectively. I gave Mitch prior notice of the  
8 event, but he claimed that the Court had directed him at the June 4, 2009 hearing to act in such a  
9 manner. Not surprisingly, Mitch quickly resolved the issue with me and withdrew his ridiculous  
10 motion before the Court could decide on it. Prior to doing so, however, Mitch threatened me  
11 that the contempt motion was an example of how hard the ensuing months would be if I did not  
12 voluntarily modify our timeshare.

13 9. It was during the time of my sister's wedding that Mia, naturally, became  
14 interested in learning of her own parents' wedding. Mia inquired about such things as what  
15 Mitch and I looked like, who was present, who was our flower girl, and where we married. I  
16 showed Mia pictures of our wedding. Contrary to Mitch's revealing statements protesting such  
17 actions contained in his motion and supporting affidavit, I do not think there is anything wrong  
18 with Mia learning about her parents' wedding. I do not have a problem with either Mia or Ethan  
19 learning such an important part of their history.

20 10. Perhaps Mitch's feelings against such candor stem from his own past. When his  
21 parents divorced when he was 12 years-old, an event that precipitated his own obsessive  
22 compulsive disorder (Mitch engaged in rituals fearful that his stepfather would leave the family),  
23 his mother immediately remarried a man, who adopted Mitch and two of his three siblings.

1 Mitch's mother cut out pictures of Mitch's biological father from all of their family photos and  
2 proceeded to tell Mitch's then eight and four-year old siblings that the stepfather was their real  
3 father. Mitch was too old to be deceived, but he was forced to support the deception. This lie  
4 resulted in adolescent rebellion when his younger siblings reached their teenage years and finally  
5 realized the truth about their parentage. I do not want do this to our children. I do not think it is  
6 normal or healthy to pretend, as Mitch apparently wants to now, that we were never married or  
7 that such a fact should be hidden from our children.

8 11. On July 8, 2009, we met for our appointed FMC mediation. I listened to  
9 the Court and went into mediation, in good faith, resolved that I was not going to leave without a  
10 complete resolution of our issues. Mitch was not only openly surprised by my willingness to  
11 settle, but he was also noticeably disappointed and distressed at the thought of ending the  
12 litigation.

13 12. Though we ultimately resolved our dispute in its entirety and, together,  
14 drafted and executed a stipulation documenting our agreement, hereafter ("SAO"), Mitch could  
15 not resist hurling personal insults denigrating my attorneys and threatening to report them to the  
16 state bar for calling him a liar with regard to the Utah trip I have reason to believe he took with  
17 our children in April 2009, but which he and his attorney continue to deny. Specifically, he  
18 stated that Shawn Goldstein was an "idiot," and "only made \$80,000/year." He called Mr.  
19 Goldstein "Pee Wee Herman," and, later, via email, "Gaystein." He then called Jim Jimmerson a  
20 "greasy haired old man" who did not know anything about my case and was ripping me off. He  
21 repeated these insults to me and my counsel via email on July 30, 2009, defending his contempt  
22 of Court in not honoring the terms of the SAO to facilitate daily phone calls when he had our  
23 children. See Email, attached as Exhibit 26 to Opp./Countermtot.

1           13.     During the mediation, we spent little time on the timeshare, quickly  
2 agreeing to settle on the identical time set forth in the "email settlement." My refusal to sign off  
3 on the "email settlement" was based on Mitch's bad faith. Specifically, Mitch completely re-  
4 wrote the Decree and presented it to me as the codification of the very limited terms of our 4-  
5 point alleged "email settlement." I agreed to immediately begin practicing the new timeshare  
6 that gave Mitch a total of ten days a month, up from his initial six days a month.

7           14.     I was able to secure certain coparenting concessions that made me feel  
8 comfortable with the additional time allotted Mitch under the SAO. Namely, I convinced Mitch  
9 to agree to facilitate a daily phone call from the children to me when they were in his care, and  
10 vice versa. Prior to that, Mitch's record of such telephonic communication was atrocious. From  
11 February 24, 2009 until the day of the mediation, he had facilitated exactly one telephone call  
12 from the children to me, which he conveniently placed to me the weekend prior to having to  
13 appear in court at the June 4, 2009 hearing on his Motion for Reconsideration.

14           15.     The Court entered the parties' stipulated judgment on August 7, 2009.

15           16.     However, at no time prior to the entry of the SAO, did I know of Mitch's  
16 post-divorce arrest and ensuing prosecution for the crime of DUI. At the time that I entered into  
17 the SAO, I also did not know that Mitch had agreed with State prosecutors to attend DUI school,  
18 a victim impact panel, and to pay various fines and fees associated with his criminal conduct in  
19 drinking and driving. With regard to Mitch's breach of his duty of candor to the tribunal, the  
20 State Bar of Nevada directed me to seek appropriate relief directly from this Court because  
21 litigation was currently pending before it.

22           17.     I only learned of Mitch's crime after entering into the SAO. Specifically,  
23 on or about September 2009, I was driving in my car alone with our children. Suddenly, a police  
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1 car sped by us with its lights on and sirens flashing. Mia and Ethan both excitedly began to tell  
2 me that their Dad had been pulled over by the police for speeding and that he had been given a  
3 ticket. They confirmed that they were in the car and witnessed the event. They said that Amy  
4 had also been present. They could not tell me exactly when this occurred, because they are so  
5 young. This prompted me to research public records to find out the truth about this violation.  
6 Shortly thereafter, I discovered that Mitch had been arrested and had been prosecuted in the Las  
7 Vegas Justice Court for the crime of DUI over the nearly identical time period of our prior  
8 custody litigation, December 2008 through August 2009.

9 18. I could not find evidence of the "speeding ticket," but I have reason to  
10 believe that it might have been issued in California during Mitch's two week vacation with the  
11 children in August 2009.

12 19. Although I specifically raised the issue to the Court of Mitch's past  
13 drinking problems and history of reckless driving, he and his attorney successfully engaged in a  
14 scheme to defraud the Court into believing that such issues were no longer relevant or a problem  
15 following our divorce. Specifically, they made misrepresentations of fact to this effect in their  
16 filings with the Court and encouraged the Court to strike my concerns, and those similarly raised  
17 by my family and close friends, citing to the doctrine of res judicata.

18 20. I believe that Mitch is an alcoholic. His drinking problem began in  
19 college when he was first introduced to alcohol. He joined a fraternity and engaged regularly in  
20 binge drinking. From that point on, Mitch could never control his drinking and would frequently  
21 leave social and business functions where alcohol was present thoroughly intoxicated, to the  
22 point of throwing up. He often drove in this state, but had escaped detection from the law  
23 throughout the years of our marriage.

1           21.     I believe that Mitch's alcoholism poses a safety threat to our children. I  
2 also believe that Mitch's reckless driving also poses a safety threat to our children. Mitch has  
3 historically driven fast, often racing other cars, and has engaged in many "road rage" situations  
4 during the entire 18 years I was with him. His record with the Las Vegas Justice Court reveals  
5 how chronic his traffic violations have become. More alarmingly, the children now report to me  
6 that they have been present when Mitch has similarly broken the law. The Court should fashion  
7 appropriate orders to address the safety threat Mitch poses to our children.

8           22.     In addition, I spent over \$100,000.00 in attorney's fees for the previous 9  
9 months of custodial litigation in which I was not permitted to consider the relevant evidence of  
10 Mitch's criminal conduct prior to making arguments, appearing before the Court for hearing, or,  
11 most egregiously, prior to entering into a stipulation in which I voluntarily modified our  
12 timeshare to enlarge Mitch's time with our children. I request that the Court order Mitch to  
13 compensate me for these fees. Mitch and his counsel's conduct of nondisclosure and  
14 misrepresentation constitute fraud upon the Court. The Court likely wasted countless hours  
15 reading the voluminous pleadings on file, heard hours of argument by counsel at not one, but two  
16 separate hearings, gave direction to, and issued orders in this case without having full disclosure  
17 of all relevant information before it as MITCH and his attorney were required by law to provide.

18           23.     On October 29, 2009, less than three months after the entry of the SAO,  
19 MITCH filed his present motion with, not only no mention of the DUI, but also absolutely no  
20 adherence whatsoever to EDCR 5.11. I received not one telephone call, email, text message or  
21 letter from either Mitch or his counsel attempting to discuss, let alone resolve, in any manner, the  
22 issues set forth in Mitch's meritless and time-barred motion prior to its filing. This is not the first  
23 time Mitch has filed a motion and completely disregarded his obligations pursuant to EDCR  
24

1 5.11. His contempt motion relating to my sister's wedding was filed without any attempt  
2 whatsoever to discuss or resolve the dispute before being filed with this Court. I hope that the  
3 Court will grant me the sanctions I request against Mitch in my Opposition/Counter-motion in  
4 order to punish Mitch and deter future violations of this Court's rules.

5 24. Mitch's nondisclosure of his criminal record and related  
6 misrepresentations are not the only fraud upon the Court committed by Mitch. Mitch's recent  
7 statements, filed in his Motion, concerning his extreme wealth, most recently, that he is now  
8 "retired" at age 34, prompted me to investigate his financial claims. As a result of my research, I  
9 discovered evidence contained in public records, attached to my Opposition/Counter-motion at  
10 Exhibits 9-14, which suggest, if not prove, that Mitch fraudulently concealed at least \$6.9 million  
11 from me that he received prior to the entry of our May 2, 2008 Decree. This amount includes a  
12 \$750,000 bonus, paid to Mitch on March 12, 2008, that is in the exact amount of a bonus that  
13 Mitch repeatedly told me that he had been expecting to receive in December 2007 as his  
14 "Christmas bonus," and, when that didn't happen, sometime in early 2008.

15 25. The timing of the bonus' distribution explains Mitch's eagerness at the  
16 time of the filing of our Decree to have the Judge sign it. Mitch reported to me that he called the  
17 law clerk repeatedly for status updates as to its signing. When the Decree was finally signed,  
18 Mitch called me to inform me. He sounded inordinately pleased. Sometime later, I told Mitch  
19 that we still needed to file a Notice of Entry of Order of the Decree (NEOJ), and that the Decree  
20 was not effective until its entry. Mitch, a transactional attorney by trade, sounded both angry and  
21 confused about this requirement. Now I know why.

22 26. I also believe that Mitch received the remaining \$6.2 million, set out in his  
23 company's bankruptcy records, as his 10% interest in his boss and partner, William Plise's  
24

1 ("BILL'S") cash-out-refinance on the City Crossing property, which happened in 2007. At the  
2 time, Mitch told me that BILL bought out his partners at \$1.1 million per acre, which would have  
3 left him with \$62 million in proceeds, 10% of which totals MITCH'S \$6.2 million distributions.

4 27. Not only does the fraud I mention above not counsel in favor of granting  
5 Mitch's present motion to "confirm" us as "joint physical custodians" and to modify the  
6 timeshare this Court entered less than three months ago, but Nevada law clearly prohibits his  
7 actions in attempting to relitigate the same issues where substantially all of the same facts and  
8 circumstances that were present at the time he entered into the SAO are present now.

9 28. Mitch knows we are not "joint physical custodians" under Nevada law.  
10 He filed a certificate of service in this case containing what appears to be a previous version of a  
11 title to his motion and a recognition of this fact, to wit, "DEFENDANT'S MOTION TO  
12 CONFIRM PARTIES AS JOINT PHYSICAL CUSTODIANS AND TO CONFORM  
13 TIMESHARE WITH DEFINITION OF JOINT PHYSICAL CUSTODY," filed November 6,  
14 2009. It is this recognition, coupled with his insatiable quest for a "title" that motivates him to  
15 file the present meritless motion.

16 29. In any event, it is not the current timeshare with which Mitch has a problem.  
17 It is a timeshare that Mitch willingly agreed to not once, but twice, in the last 6 months. What  
18 Mitch doesn't like about the timeshare is the "title" it accords him under Nevada law. However,  
19 contrary to his claims, I never intended upon signing the SAO that we would be considered "joint  
20 physical custodians" under Nevada law. I did not think we were when I signed the MSA, and I  
21 did not think that changed after our modification.

22 30. Moreover, Mitch's petulance does not justify this Court's requested action  
23 of disrupting our children's lives once again. They have adjusted to the new timeshare that has  
24

1 now been in place for six months. Modifying it to enlarge Mitch's time further contravenes  
2 Nevada's clear record in prioritizing custodial stability as being of paramount concern in the  
3 "best interests of children" analysis. The Court should not disregard the clear terms of the  
4 agreement Mitch entered into willingly, knowingly and voluntarily. Mitch is a Washington  
5 College of Law trained lawyer with, as he claims, many lucrative job prospects. He was also  
6 represented by experienced family law counsel, who had an opportunity to and did review the  
7 SAO prior to its entry. If the Court decides not to vacate the SAO on the basis of Mitch's fraud  
8 upon the Court, then it should leave it in place and deny Mitch's modification motion.

9           31. None of the claims that allegedly support Mitch's claims are true, nor are  
10 they new claims or substantially changed circumstances that warrant modification under either  
11 standard of custodial modification in Nevada, i.e., either primary physical custody or joint  
12 physical custody. Mitch already raised the issue of parental alienation, which I adamantly deny  
13 has ever occurred on my part, in his Opposition/Response to Motion for Continuance, filed June  
14 3, 2009. Mitch's counsel also explicitly argued this claim at the June 4, 2009 hearing on Mitch's  
15 Motion for Reconsideration, repeating, verbatim, many of statements Mitch now falsely claims I  
16 makes to our daughter Mia. In addition to the record in this case, on the eve of our July 8, 2009  
17 mediation, Mitch admittedly explicitly considered the issue of parental alienation prior to  
18 executing the SAO and committed that consideration to writing in an email he sent to my counsel  
19 the night before the mediation. *See Exhibit 16 to Opp./Counter-mot.*

20           32. At the same hearing on Mitch's Motion for Reconsideration, Mitch's  
21 counsel further argued, as he does in the present motion, that the Court should direct a  
22 psychological assessment of us and our children. *See Opp./Response*, filed June 3, 2009. I  
23 opposed the request then, as I do now. The Court already denied Mitch's request for such an  
24



1 assessment once before; it should not have to consider such a request again, nor should I have to  
2 continually defend against the same request.

3           33. To the extent that Mitch contends that I am continuing alienation, and as  
4 such, this constitutes a new circumstance, his email admissions, in addition to demonstrating  
5 Mitch's intense and uncontrollable hatred of me, prove otherwise. On September 23, 2009,  
6 Mitch wrote to me, and in addition to reaffirming his intention of previously calling me a "bitch,"  
7 specifically stating that, "I do not regret calling you a bitch or that Tara [Mia's school director]  
8 thinks that I think you are one because it is the truth," and telling me that, "[a]s far as your other  
9 suggestions, it would be better if you just go fuck yourself," Mitch admitted that "Mia now  
10 claims you like Amy. We know this is not true, but I really do not care. I think it is good for  
11 Mia to believe that...." See Email from MITCH to CHRISTINA, dated September 23, 2009,  
12 attached as Ex. 17 to Opp./Counter-mot. Mitch vaguely references this email in that he "severely  
13 criticized me," but does not attach it to his motion, for the obvious reason that it shows that less  
14 than 24 hours after agreeing to pay additional funds for Mia's education, Mitch angrily "blew up"  
15 at me for not acting quickly enough to suit him, called me vulgar names, and immediately  
16 thereafter withdrew his promised educational support once again for our children. I do not  
17 understand why a man, who is as wealthy as Mitch claims to be, continually runs away from  
18 paying for something as important as our children's education.

19           34. I was reluctant to enroll Mia from half-day to full-time following her  
20 sudden yet vehement protestations against it considering her ongoing behavioral issues, and  
21 Mitch's final agreement, more than a year after I initially consulted him about them, to permit  
22 psychological treatment for Mia, which only began last month. In fact, Mia had only seen the  
23 treatment provider we had agreed upon to treat Mia, Dr. Joel Mishalow, two times before Mitch  
24

1 ran to Court requesting relitigation of already adjudicated claims and micromanagement of our  
2 parenting relationship.

3 35. Mitch lies to the Court when he states, throughout his motion, that Mia has  
4 only recently begun to exhibit clothing and emotional issues, including, "mood swings,"  
5 "outbursts," and "meltdowns." Mitch does so in support of his contention that my alienation of  
6 the children, allegedly past and present, is now, post-SAO, resulting in trauma to Mia, and this is  
7 a factor, he argues, that counsels in favor of his requested modification. What Mitch fails to tell  
8 the Court is that Mia's clothing and emotional issues have been in existence since our initial  
9 separation in 2006, and is, more likely than not, as stated to me by Mia's teachers, school  
10 administrators, family counselor, and psychologist, a manifestation of Mia's processing the  
11 trauma of our divorce and physical separations.

12 36. Although Mitch attempts to now educate the Court about the importance  
13 of Obsessive Compulsive Disorder (OCD) and its possible diagnosis as to Mia, it was me, and  
14 not Mitch, who first recognized, *nearly a year ago*, Mia's strange and angry reactions to clothing,  
15 seatbelts, shoes, etc. *See* Emails between CHRISTINA and MITCH, dated December 5, 2008,  
16 attached as Exhibit 18 to Opp./Counter-mot. I not only consulted with Mia's pediatrician, as I  
17 have historically always been the parent to affirmatively and consistently seek medical treatment  
18 for the children whether it be on an emergency basis or for routine care, but I also reached out to  
19 Mitch, my co-parent, as I did regarding the on-going behavior two months ago, for consultation.  
20 Mitch responded by completely shooting me down, dismissing my legitimate concerns, lying  
21 about his lack of similar problems, and, if that was not enough, insulting me by blaming my  
22 "deficient" parenting skills in failing to address what, as he characterized it to be, the "problem."

1                   37.     When Mia's angry reactions to her new school uniform reappeared at the  
2 beginning of the school year following an entire summer spent at home, I immediately turned to  
3 Mitch to inform him of the continuing behaviors, consult with him about possible treatment, and  
4 obtain his input. I did not even knowing that he had completely dismissed my concerns a year  
5 ago. It is understandable that Mia's anxiety level was high given the start of the new school year  
6 at a new school, a completely new environment than she had become accustomed to over the  
7 past two years. Mia does not respond well to change. Her behavioral issues first presented  
8 themselves upon our divorce and physical separation.

9                   38.     Mitch falsely claims that Mia's anger issues are "newly-arising." Such  
10 falsity is demonstrated, again, by Mitch's own previous email admissions made almost a year  
11 ago. In a December 14, 2008 email Mitch sent to me, he explained in alarming detail how he  
12 spent an entire weekend punishing Mia for her angry "outbursts" and "meltdowns," culminating  
13 in him delivering punishment upon her in the form of what he called a "pat" across Mia's cheek,  
14 but which Mia described to me to be a "really hard slap across [her] face." See CHRISTINA  
15 Aff., Exhibit 19. to Opp./Counterpart.

16                  39.     In addition to documenting Mia's long-standing anger issues, Mitch's  
17 email demonstrates his own inability to handle anger appropriately. Alarming, according to  
18 the children, Mitch and his new wife regularly hit them. Mia tells me that Amy regularly spansks  
19 her in order to force her to sit in a seat without her car seat, so that she can put the seatbelt on.  
20 Mia tells me that she doesn't like to ride in Mitch's car without a car seat, but that Mitch often  
21 travels with her in that manner. Mia tells me that Mitch also hits her with the belt. On  
22 November 29, 2008, Mitch's sister returned the children to me and told me that Mitch had  
23  
24

1 scratched Ethan's earlobe with his fingernail. The explanation does not explain the multiple  
2 bloody gauges left on Ethan's ear and causes me great concern.

3 40. Mitch claims that I am being "coy" about Mia's anger issues. As it  
4 appears from Mitch's own motion, however, such claims appear to be a complete projection of  
5 what he is doing with such information to me. The first time I have ever heard about the  
6 seemingly traumatic angry and emotional episodes that Mia is allegedly enduring while under  
7 Mitch's care is in the 76-page motion he filed with the Court without any adherence to EDCR  
8 5.11, after Mia had only two sessions with Dr. Mishalow. Although I clearly opened the door to  
9 such discussion when I shared with Mitch important information about Mia's continuing  
10 behavioral issues, Mitch kept mum about his own issues. As Dr. Mishalow told me, Mitch even  
11 failed to divulge his "concerns" about Mia to her psychologist.

12 41. Dr. Mishalow has not found that I have been abusing Mia. Hence, Mitch's  
13 present ridiculous request for the Court to, once again, micromanage our lives and appoint yet a  
14 different mental health provider, who, Mitch likely hopes, may be more amenable to his  
15 manipulations.

16 42. MITCH claims that I have manipulated Mia's therapy process by, among  
17 other things, not selecting Dr. Melissa Kalodner as a treatment provider for Mia and excluding  
18 Mitch from Mia's therapy sessions. Again, these claims are false, and as such, do not support  
19 modification of our timeshare. I did not approve of Dr. Kalodner because she arbitrarily raised  
20 the agreed-upon price of therapy and then reacted unprofessionally when I questioned her about  
21 it. See Email from CHRISTINA to MITCH, dated September 10, 2009, Exhibit 21 to  
22 Opp./Countermt. At the time of the rejection, Mitch never protested my dissatisfaction with Dr.  
23 Kalodner, and I assumed, therefore, that he had no objection to her rejection. I never claimed  
24

1 that I could not afford her services, nor is it true that Mitch's insurance would have covered her  
2 given that she is an out-of-network provider, as he well knows, and we had agreed, in any event,  
3 not to use insurance. I accept Mitch's offer to share equally in the cost of Mia's treatment,  
4 however. In the past, the record is clear that whenever I ask Mitch to contribute anything,  
5 including half of unreimbursed medical expenses, all I get are his objections, hostility, and  
6 conjured up expenses that he then "offsets" my expenses against.

7           43. As confirmed by the emails between us, Mitch well knows that 1) he has  
8 always been welcome to attend any and all therapy sessions, notwithstanding the fact that he  
9 refuses to do so even when asked by Dr. Mishalow; 2) that I have accommodated Mitch's  
10 unjustified hostility toward me, even going so far as to offer to bring Mia to therapy during my  
11 timeshare so that Mitch can attend a session with Mia to my exclusion; 3) that I have never  
12 insisted on being present in the room at all times with Mia, and, in fact, waited in the waiting  
13 room for the majority of Mia's first of only two pre-filing appointments with Dr. Mishalow; 4)  
14 that I have informed Mitch of past appointments in addition to updating him on Mia's amazing  
15 progress; and that, 5) prior to filing his monstrous motion with the Court, Mitch never bothered  
16 to tell me, or Dr. Mishalow, of the apparently intense emotional trauma Mia is suffering while in  
17 his care. *See* Emails to and from CHRISTINA to MITCH, dated November 10, 2009, Ex. 22 to  
18 Opp./Countertermot.; *see also* Letter from CHRISTINA to DR. MISHALOW, dated October 26,  
19 2009, attached as Exhibit 23 to Opp./Countertermot.

20           44. In fact, Mitch's November 10, 2009 email to me on the subject  
21 demonstrates Mitch's continued faith in Dr. Mishalow to treat Mia's issues as well as documents  
22 his ability to, as a parent, communicate concerns to a health care provider instead of running to  
23 Court for micromanagement.

1           45. Mitch admits that I am the one who is responsible for helping Mia. I  
2 interviewed four different psychologists and consulting with Mitch to get the best medical care  
3 for her. In such a case, a modification enlarging Mitch's more time would not be warranted.

4           46. Mitch seems to suggest that a "new" circumstance justifying the Court's  
5 modification of our stipulated timeshare is the fact that he no longer receives daily phone calls  
6 from the children while they are in my care. He admits, however, that he is the cause of this  
7 present circumstance given that he refuses to facilitate daily phone calls from the children to me  
8 when they are in his care even though he explicitly recognizes that he is required to do so  
9 pursuant to the SAO.

10           47. As discussed above, I fought vigorously for the inclusion of the telephone  
11 provision in the SAO given Mitch's prior and continuing history of refusing to facilitate  
12 telephonic communication. My "going off email," as Mitch describes it, the centerpiece of his  
13 meritless motion, was provoked, among other things, by Mitch's blatant contempt of Court on  
14 this issue. The emails written by me, and deliberately omitted from this Court's consideration by  
15 Mitch, that preceded the "going off" email, document my frustration with Mitch's post-SAO  
16 harassment, including his decision to simply disregard certain provisions of the SAO less than a  
17 month after its entry. Although I tried for months to honor the SAO, with the hope of  
18 reciprocity, none was forthcoming.

19           48. In addition to withholding telephone communication, Mitch's harassment  
20 includes constantly calling me "lonely" and "pathetic." Mitch further demonstrated his never-  
21 ending thirst for conflict, as well as his complete disregard for the Nevada Rules of Professional  
22 conduct, by personally attacking my attorneys via email, just as he had done during our  
23  
24

1 mediation, all the while insisting that he was not going to follow the SAO regarding phone calls.

2 He called them "Gaystein," "idiot," "Pee Wee Herman," and "greasy hair old man."

3           49. Judging from Mitch's motion, and his continuing hostility and refusal to  
4 coparent, I doubt that Mitch complied with our agreement, another one that I fought to be  
5 implemented, that we attend a COPE class prior to October 1, 2009. I request in my  
6 Opposition/Counter-motion that Mitch produce proof of his compliance with this requirement of  
7 the SAO or be sanctioned by the Court for his contempt. I have voluntarily attended not one, but  
8 two, COPE classes, the last of which I went to on September 26, 2009 in compliance with the  
9 SAO. Mitch would only agree to attend COPE under the SAO, if I went again, because, as he  
10 said, he wanted to make me "jump through hoops."

11           50. Mitch's work schedule, or lack thereof, and its affect on his ever-increasing  
12 availability for fatherhood is also not a new circumstance warranting a change in custody. In  
13 fact, Mitch currently admits that his "work hours have continually decreased since the time of the  
14 Decree." *See* Mot. at 10, ll. 14-15. Clearly, Mitch considered the decreasing nature of his work  
15 schedule prior to executing the SAO.

16           51. Mitch claims that Mia has only recently become reluctant to leave him and  
17 return to me when his visitation with the children is over. *See* Mot. at 9, ll. 16-18. He attributes  
18 such "recent" reluctance on his perpetual but completely unsupported "alienation " claims. Like  
19 many of his other "new circumstance" claims, Mitch's "reluctance" claim is refuted by direct  
20 statements he has made to the contrary on the very same issue. In this case, Mitch previously  
21 alleged in his January 8, 2009 affidavit, filed in support of his Opposition/Counter-motion, that  
22 Mia exhibited reluctance to return to me when his visitation with her was over. *See* MITCH Aff.,  
23 Ex. A to his Opp., at para. 37, filed January 8, 2009. However, far from crediting his theory of  
24

1 alienation as he does now, he admitted that "I understand, however, that reluctance to change  
2 households, particularly when young children are having fun at one or the other, is a common  
3 event." *Id.* Mitch's visitation time with the children is often filled with such fun activities as  
4 Adventuredome, Chuck-E-Cheese's, the park, even on school days when Mitch is supposed to,  
5 but often does not, take the children to school.

6           52. Moreover, Mia does not always express reluctance to return home to me.  
7 More often than not, Mia jumps up and down with joy when she sees me. Recently, on  
8 November 6, 2009, Mitch sent me an email telling me that Mia did not want to come home to me  
9 and that she had struggled to get into the car. When she arrived on my driveway, however, it  
10 appeared that her "reluctance," if it was ever there in the first place, had completely disappeared.  
11 She was overjoyed to see me. She then asked her aunt, Mitch's sister, to whom he assigns the  
12 task of taking the children to me and picking them up, to take a picture of her, smiling and  
13 happy, to send to her father. She did so. Unlike Mitch, I do not try to wring tears out of Mia to  
14 appease my own ego. Nor do I allow Mia to engage in any debates concerning our timeshare,  
15 regardless of whether they are, as is often the case, pleas to stay with me longer and not have to  
16 go to her father, or the opposite. Mia needs to know that she has a set schedule that we all have  
17 to live by, and that it is not open to modification at anyone's whim for any reason.

18           53. Mitch claims that "[a]t least with equal time...I will have an opportunity to  
19 drop off and pick up the children at school and interact with the school administrators and  
20 teachers on a weekly basis." *Mot.* Mitch's words are belied by his current actions. Mitch failed  
21 to take the children to school a single full day in October, and continues the same pattern in  
22 November. In addition, Mitch recently sent me an email documenting his intention to take the  
23 children out-of-town on December 11, 2009, another school day he apparently intends to ignore.



1 As usual, Mitch's email travel "notice" also fails to contain one iota of the required specificity for  
2 an "itinerary" this Court (June 4, 2004 Order) and the MSA require for out-of-state-travel, an  
3 ongoing issue with Mitch.

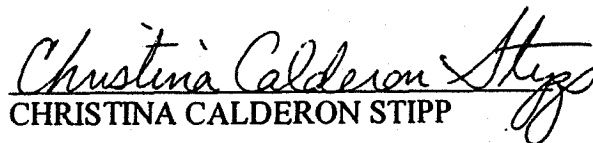
4 54. Mia recognizes her father's willingness to discount the importance of  
5 school when she repeatedly claims to me that "Dada says I don't have to go to school when I'm  
6 with him," or that "Dada didn't take us to school because he says we slept too late." It is not  
7 surprising, therefore, that Mitch claims Mia tells him that she "hates school," given that it  
8 appears that his response to her statements is to simply not take her at all. An increase of  
9 weekday custodial time with Mitch, it would seem, would mean an increase in the children's  
10 unexcused absences from school, which would clearly not be in their best interest.

11 55. Mitch contends that he can no longer visit the children at school on a daily  
12 basis because, as he falsely claims, I likely lobbied the children's respective schools to prevent  
13 his visits. *See* Mot. at 9. In reality, Ethan's teachers are restricting parental visits, as Mitch well  
14 knows but chose not to disclose, to address fundamental social delays Ethan is exhibiting in the  
15 areas of independence and self-confidence. Perhaps Mitch's nondisclosure of Ethan's  
16 developmental problems is reflective of his recognition that his previous visits to Ethan were,  
17 indeed, disruptive of his social and emotional development. Mia's school's parental visitation  
18 policy was in effect prior to Mia's enrollment in the school and has nothing to do with Mitch.  
19 Although I urged Mitch via email to tour Mia's new school and to investigate its program and  
20 policies prior to her enrollment, MITCH chose not to do so. His deliberate ignorance on the  
21 subject does not legitimize his claims.

22 56. In addition, Mitch entered into the SAO in the middle of the summer  
23 during a time when, as he explicitly argued to the Court, then as a basis to justify his refusal to  
24

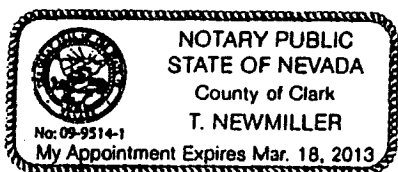
1 grant me a continuance, that the children were not in school and he would not be able to see them  
2 on a daily basis. See MITCH'S Opp./Response, filed June 3, 2009. In addition, this Court  
3 forewarned us of such an eventuality at the hearing on February 24, 2009, when it stated that it  
4 would not issue any orders regarding Mitch's school visits, but rather, that it was leaving such  
5 visits to the discretion of the individual schools. Finally, as it stands now, we have no agreement  
6 as to whether and when Ethan, who has three more years of preschool before he can attend  
7 Kindergarten, will continue in preschool absent Mitch's contribution to his education. Mitch  
8 knew this fact when he signed the SAO; thus, he cannot now claim that there was any indefinite  
9 "guarantee" of daily school visits that has now, somehow, changed.

10 57. Nevada law clearly prohibits Mitch's present attempt to relitigate all of the  
11 clearly adjudicated issues raised in his motion indefinitely. The Court should deny his motion  
12 and grant my counter motion.

13  
14   
15 CHRISTINA CALDERON STIPP

16  
17 SUBSCRIBED and SWORN to before  
18 me this 30 day of November, 2009.  
19 Signed by -Christina C. Stipp -

20   
21 NOTARY PUBLIC, State of Nevada



**OPPOSITION/COUNTERMOTION**

**EXHIBIT 2**

ORIGINAL

FILED

2008 MAY -2 P 2:31

CLERK OF DISTRICT COURT

CERT  
CHRISTINA CALDERON STIPP  
11757 Feinberg Place  
Las Vegas, Nevada 89138  
Petitioner In Proper Person

MITCHELL DAVID STIPP  
2055 Alcova Ridge Drive  
Las Vegas, Nevada 89135  
Petitioner in Proper Person

DISTRICT COURT  
FAMILY DIVISION

CLARK COUNTY, NEVADA

In the Matter of the Joint Petition of  
CHRISTINA CALDERON STIPP and  
MITCHELL DAVID STIPP,  
Joint Petitioners.

CASE NO. D-08-389203-Z  
DEPT NO. L

NOTICE OF ENTRY OF DECREE OF DIVORCE  
AND  
CERTIFICATE OF MAILING

TO: CHRISTINA CALDERON STIPP, Petitioner; and

TO: MITCHELL DAVID STIPP, Petitioner:

PLEASE TAKE NOTICE that a Decree of Divorce was entered in the above-  
entitled matter on March 6, 2008, a copy of which is attached hereto.

Elena Calderon  
ELENA CALDERON

ORIGINAL

FILED

2008 MAY -2 P 2: 37

CLERK OF DISTRICT COURT

CERT  
CHRISTINA CALDERON STIPP  
11757 Feinberg Place  
Las Vegas, Nevada 89138  
Petitioner In Proper Person

MITCHELL DAVID STIPP  
2055 Alcova Ridge Drive  
Las Vegas, Nevada 89135  
Petitioner in Proper Person

DISTRICT COURT  
FAMILY DIVISION

CLARK COUNTY, NEVADA

In the Matter of the Joint Petition of )  
CHRISTINA CALDERON STIPP and )  
MITCHELL DAVID STIPP, )  
Joint Petitioners. )

CASE NO. D-08-389203-Z  
DEPT NO. L

NOTICE OF ENTRY OF DECREE OF DIVORCE  
AND  
CERTIFICATE OF MAILING

TO: CHRISTINA CALDERON STIPP, Petitioner; and

TO: MITCHELL DAVID STIPP, Petitioner:

PLEASE TAKE NOTICE that a Decree of Divorce was entered in the above-  
entitled matter on March 6, 2008, a copy of which is attached hereto.

Elena Calderon  
ELENA CALDERON

CERTIFICATE OF MAILING

I HEREBY CERTIFY that service of the Decree of Divorce entered in this matter on March 6, 2008, was made on March 31, 2008, pursuant to NRCP 5(b), by depositing a copy of same in the United States Mail in Las Vegas, Nevada, postage prepaid, addressed as follows:

CHRISTINA CALDERON STIPP  
11757 Feinberg Place  
Las Vegas, Nevada 89138

and

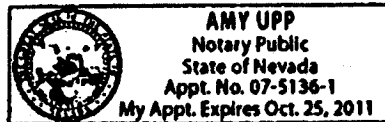
MITCHELL DAVID STIPP  
2055 Alcova Ridge Drive  
Las Vegas, Nevada 89135

DATED this 31 day of March, 2008.

Elena Calderon  
ELENA CALDERON

Subscribed and sworn to before me  
this 31 day of March, 2008.

Amy Upp  
Notary Public in and for said  
County and State.



FILED  
MAR 6 9 48 AM '08  
CLERK OF THE COURT

1 DECD  
2 CHRISTINA CALDERON STIPP  
2055 Alcova Ridge Drive  
3 Las Vegas, Nevada 89135  
Home Telephone No.: (702) 304-0275  
4 Cellular Telephone No.: (702) 610-0032  
Petitioner in Proper Person

5 MITCHELL DAVID STIPP  
2055 Alcova Ridge Drive  
6 Las Vegas, Nevada 89135  
Home Telephone No.: (702) 304-0275  
7 Cellular Telephone No.: (702) 378-1907  
8 Petitioner in Proper Person

9  
10 DISTRICT COURT  
FAMILY DIVISION

11 CLARK COUNTY, NEVADA

12 In the Matter of the Joint Petition of )

13 CHRISTINA CALDERON STIPP and )  
14 MITCHELL DAVID STIPP, )

15 Joint Petitioners. )  
16

CASE NO. D-08-389203 Z  
DEPT NO. L

17 DECREE OF DIVORCE

18 The above-entitled cause having been submitted to the above-entitled Court for decision  
19 pursuant to Chapter 125 of the Nevada Revised Statutes, and based upon the Joint Petition for  
20 Divorce (the "Joint Petition") filed by Petitioner CHRISTINA CALDERON STIPP and Petitioner  
21 MITCHELL DAVID STIPP, and all of the papers and pleadings on file in this action, the Court  
22 finds as follows:

- 23 1. That all of the allegations contained in the Joint Petition and other papers and  
24 documents on file with this Court are true.
- 25 2. That all of the requirements of NRS 125.181 and NRS 125.182 have been met.
- 26 3. That this Court has complete jurisdiction as to the parties and the subject matter  
27 thereto.
- 28

1           4.       That Petitioner CHRISTINA CALDERON STIPP has been and is now an actual  
2 bona fide resident of Clark County, Nevada, and has actually been domiciled in Clark County for  
3 more than six (6) weeks immediately prior to the commencement of this action.

4           5.       That Petitioner MITCHELL DAVID STIPP has been and is now an actual bona fide  
5 resident of Clark County, Nevada, and has actually been domiciled in Clark County for more than  
6 six (6) weeks immediately prior to the commencement of this action.

7           6.       That the parties were married in Las Vegas, Nevada, on July 18, 1997.

8           7.       That the parties are incompatible in marriage and are entitled to a Decree of Divorce  
9 on the grounds of incompatibility.

10          8.       That the parties have two (2) minor children born the issue of their marriage,  
11 namely: Mia Elena Stipp, born October 19, 2004, and Ethan Christopher Stipp, born, March 24,  
12 2007. That Petitioner CHRISTINA CALDERON STIPP is not pregnant, and the parties have no  
13 other children the issue of the parties' relationship, including any adopted children, who have yet  
14 to reach the legal age of majority as of the date of the entry of this Decree of Divorce.

15          9.       That the parties entered into a Marital Settlement Agreement on February 20, 2008,  
16 a copy of which is attached hereto as EXHIBIT 1 (the "Marital Settlement Agreement"). That by  
17 way of the parties' said Marital Settlement Agreement, the parties have resolved between  
18 themselves all questions and issues relating to the custody, visitation, and support of the parties'  
19 minor children, as well as all questions and issues pertaining to the division of the parties' property,  
20 the assumption of their debts, the payment of alimony, and all other issues and claims, marital and  
21 otherwise, that exist between the parties. That the parties' said Marital Settlement Agreement is  
22 hereby ratified, confirmed and approved by the Court, and the same merged into this Decree of  
23 Divorce, thereby becoming a part of this Decree to the extent as if same were set forth in this  
24 Decree in full.

25          10.       That the parties have waived their rights to written Notice of Entry of Decree of  
26 Divorce, to appeal, to Findings of Fact and Conclusions of Law, and to move for a new trial.

27               Thus, with good cause appearing therefor, the Court hereby enters the following Orders:

28                     I. TERMINATION OF THE PARTIES' MARRIAGE



1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the bonds of matrimony  
2 heretofore and now existing between Petitioner CHRISTINA CALDERON STIPP and Petitioner  
3 MITCHELL DAVID STIPP be dissolved, set aside, and forever held for naught, and that Petitioner  
4 CHRISTINA CALDERON STIPP and Petitioner MITCHELL DAVID STIPP be, and the both  
5 hereby are, awarded and decreed an absolute and final Decree of Divorce from each other, and that  
6 the parties, and each of them, is hereby restored to the status of a single, unmarried person.

7 **II. CHILD CUSTODY**

8 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Petitioner CHRISTINA  
9 CALDERON STIPP and Petitioner MITCHELL DAVID STIPP shall have joint legal custody of  
10 the parties' minor children, Mia Elena Stipp, born October 19, 2004, and Ethan Christopher Stipp,  
11 born, March 24, 2007, with the physical custody, visitation, and timeshare arrangements being as  
12 set forth in Section 1 of the parties' Marital Settlement Agreement attached to this Decree as  
13 **Exhibit 1.** IT IS FURTHER ORDERED that the parties' said agreement as to the custody,  
14 visitation, and timeshare arrangements set forth in Section 1 of the attached Marital Settlement  
15 Agreement is further ratified, confirmed, and approved by the Court at this time, and the same is  
16 incorporated into this Decree of Divorce as though the same were set forth in this Decree in full.

17 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to NRS  
18 125C.200, should Petitioner CHRISTINA CALDERON STIPP intend to permanently move her  
19 residence to a place outside the State of Nevada, and take the minor children with her, she must,  
20 as soon as possible, and before the planned move, attempt to obtain the written consent of  
21 Petitioner MITCHELL DAVID STIPP to move the children from the State. If Petitioner  
22 MITCHELL DAVID STIPP refuses to give such consent, Petitioner MITCHELL DAVID STIPP  
23 shall, before she leaves the State with the minor children, petition the Court for permission to move  
24 the children.

25 IT IS FURTHER ORDERED that the parties are subject to the following provisions of NRS  
26 125.510(6) for violation of the Court's Order:

27 **PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION,**  
28 **CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS**  
**ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN**

1 NRS 193.130. NRS 200.359 provides that every person having a limited right of  
2 custody to a child or any parent having no right of custody to the child who  
3 willfully detains, conceals or removes the child from a parent, guardian or other  
4 person having lawful custody or a right of visitation of the child in violation of an  
5 order of this court, or removes the child from the jurisdiction of the court without  
6 the consent of either the court or all persons who have the right to custody or  
7 visitation is subject to being punished for a category D felony as provided in NRS  
8 193.130.

9 IT IS FURTHER ORDERED that, pursuant to NRS 125.510(7) and (8), the terms of the  
10 Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague Conference on  
11 Private International Law, are applicable to the parties. IT IS FURTHER ORDERED that the  
12 minor children's habitual residence is located in the County of Clark, State of Nevada, within the  
13 United States of America. NRS 125.510(7) and (8) specifically provide as follows:

14 Section 7. In addition to the language required pursuant to subsection 6,  
15 all orders authorized by this section must specify that the terms of the Hague  
16 Convention of October 25, 1980, adopted by the 14th Session of the Hague  
17 Conference on Private International Law, apply if a parent abducts or wrongfully  
18 retains a child in a foreign country.

19 Section 8. If a parent of the child lives in a foreign country or has  
20 significant commitments in a foreign country:

21 (a) The parties may agree, and the Court shall include in the Order for  
22 custody of the child, that the United States is the country of habitual residence of  
23 the child for the purposes of applying the terms of the Hague Convention as set  
24 forth in Subsection 7.

25 (b) Upon motion of the parties, the Court may order the parent to post  
26 a bond if the Court determines that the parent poses an imminent risk of wrongfully  
27 removing or concealing the child outside the country of habitual residence. The  
28 bond must be in an amount determined by the Court and may be used only to pay  
for the cost of locating the child and returning him to his habitual residence if the  
child is wrongfully removed from or concealed outside the country of habitual  
residence. The fact that a parent has significant commitments in a foreign country  
does not create a presumption that the parent poses an imminent risk of wrongfully  
removing or concealing the child.

### 23 III. CHILD SUPPORT

24 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Petitioner MITCHELL  
25 DAVID STIPP pay child support to Petitioner CHRISTINA CALDERON STIPP as provided in  
26 Section 1 of the Marital Settlement Agreement attached to this Decree as Exhibit 1.

27 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Petitioners each pay  
28 one-half (½) of all their minor children's medical, surgical, dental, orthodontic, optical, and

1 psychological expenses, as provided in Section 1 of the Marital Settlement Agreement attached to  
2 this Decree as Exhibit 1.

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the child support  
4 provisions set forth in the Section 1 of the parties' Marital Settlement Agreement (EXHIBIT 1),  
5 specifically including, but not necessarily limited to, the provisions of Sections 1.2, 1.3, 1.4, and  
6 1.5(a), are ratified, confirmed, and approved by the Court at this time, and the same are  
7 incorporated into this Decree of Divorce as though the same were set forth in this Decree in full.

8 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the provisions for child  
9 support provided in this Decree and in the parties' attached Marital Settlement Agreement are  
10 subject to wage assignment with Petitioner MITCHELL DAVID STIPP's employer pursuant to the  
11 provisions of Chapter 31A of the Nevada Revised Statutes and NRS 125.450.

12 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the provisions of NRS  
13 125B.145 allow the Court to modify the child support obligations provided in this Decree at least  
14 every three years, without the need of making a finding of a change of circumstances. NRS  
15 125B.145 provides as follows:

16 1. An order for the support of a child must, upon the filing of a request  
17 for review by:

18 (a) The welfare division of the department of human resources,  
19 its designated representative or the district attorney, if the welfare division or the  
20 district attorney has jurisdiction in the case; or

21 (b) A parent or legal guardian of the child,  
22 be reviewed by the court at least every 3 years pursuant to this section to determine  
23 whether the order should be modified or adjusted. Each review conducted pursuant  
24 to this section must be in response to a separate request.

25 2. If the court:

26 (a) Does not have jurisdiction to modify the order, the court may  
27 forward the request to any court with appropriate jurisdiction.

28 (b) Has jurisdiction to modify the order and, taking into account  
the best interests of the child, determines that modification or adjustment of the  
order is appropriate, the court shall enter an order modifying or adjusting the  
previous order for support in accordance with the requirements of NRS 125B.070  
and 125B.080.

3. The court shall ensure that:

1 (a) Each person who is subject to an order for the support of a  
2 child is notified, not less than once every 3 years, that he may request a review of  
the order pursuant to this section; or

3 (b) An order for the support of a child includes notification that  
4 each person who is subject to the order may request a review of the order pursuant  
to this section.

5 4. An order for the support of a child may be reviewed at any time on  
6 the basis of changed circumstances.

7 5. As used in this section "order for the support of a child" means such  
an order that was issued or is being enforced by a court of this state.

8 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the provisions of NRS  
9 125B.095 shall apply to any delinquent child support obligation required to be paid pursuant to this  
10 Decree. In this regard, NRS 125B.095 provides as follows:

11 **NRS 125B.095 Penalty for delinquent payment of installment of**  
12 **obligation of support.**

13 1. Except as otherwise provided in this section and NRS 125B.012, if  
14 an installment of an obligation to pay support for a child which arises from the  
15 judgment of a court becomes delinquent in the amount owed for 1 month's support,  
16 a penalty must be added by operation of this section to the amount of the  
17 installment. This penalty must be included in a computation of arrearages by a  
court of this State and may be so included in a judicial or administrative proceeding  
of another state. A penalty must not be added to the amount of the installment  
pursuant to this subsection if the court finds that the employer of the responsible  
parent or the district attorney or other public agency in this State that enforces an  
obligation to pay support for a child caused the payment to be delinquent.

18 2. The amount of the penalty is 10 percent per annum, or portion  
19 thereof, that the installment remains unpaid. Each district attorney or other public  
20 agency in this State undertaking to enforce an obligation to pay support for a child  
shall enforce the provisions of this section.

21 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party shall provide  
22 the information required by NRS 125.130, NRS 125.230, and NRS 125B.055 on a separate form  
23 to be submitted to the Court and the Welfare Division of the Department of Human Resources  
24 ("Welfare Division") within ten days from the date of the entry of this Decree of Divorce. IT IS  
25 FURTHER ORDERED that each party shall update such information submitted to this Court and  
26 the Welfare Division within ten days should any of the information required to be provided become  
27 inaccurate. IT IS FURTHER ORDERED that such information shall be maintained by the Clerk  
28 of this Court and the Welfare Division in a confidential manner, and the same shall not be part of

1 the public records.

2 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court retains  
3 jurisdiction of the parties and the subject matter hereof for the purpose of making such other and  
4 further orders as relates to the care, custody, support and maintenance of the minor children of the  
5 parties as to the Court may seem meet and proper from time to time hereafter during the minority  
6 of said children.

7 IV. MERGER OF MARITAL SETTLEMENT AGREEMENT

8 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Marital Settlement  
9 Agreement, a copy of which is attached to this Decree as EXHIBIT 1, be, and the same hereby is,  
10 ratified, confirmed, and approved by this Court. As noted above in this Decree, by way of their  
11 said Marital Settlement Agreement, the Court finds that the parties have settled and resolved all  
12 questions and issues relating to the custody, visitation, and support of the parties' minor children,  
13 as well as all questions and issues pertaining to the division of the parties' property, the assumption  
14 of their debts, the payment of alimony, and all other issues relating or incident to their marriage to  
15 each other. Therefore, pursuant to the express terms of the parties' Marital Settlement Agreement,  
16 IT IS FURTHER ORDERED that, by this reference, the parties' Marital Settlement Agreement  
17 *shall be merged and incorporated into and become a part of this Decree of Divorce* to the same  
18 extent as if the Marital Settlement Agreement, in its entirety, were set forth in this Decree in full.

19 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party hereby is  
20 directed to execute such certificates of title, deeds, bills of sale, or such other documentation as  
21 may be required to transfer any right, title or interest he or she may have to the property of the party  
22 entitled thereto by virtue of the division of assets as set forth in the parties' Marital Settlement  
23 Agreement.

24 V. UNDISCLOSED PROPERTY

25 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, should it be discovered  
26 that there are any assets, real, personal, or mixed, or any choses in action, securities, or other such  
27 intangible property, not herein disposed of, then, upon discovery of the existence of the same, each  
28 party shall be entitled to one-half (½) interest therein as his or her community interest, the same

1 to be disposed of, and the proceeds divided equally; or at the option of the one who possesses the  
2 same, to pay the other for his or her one-half interest therein, and failure to do so shall entitle either  
3 to appropriate Court relief, with all costs and attorneys' fees to be awarded to the prevailing party.  
4 IT IS FURTHER ORDERED that, should it be discovered that there exist such other community  
5 or jointly owned assets which have not been disclosed and divided pursuant to this Decree, either  
6 party may move the Court (or a court having competent jurisdiction) for a partition of such asset(s)  
7 at any time hereafter. IT IS FURTHER ORDERED that the failure of either party to disclose any  
8 asset(s) constitutes extrinsic fraud, which will invoke the jurisdiction of the Court (or a court  
9 having competent jurisdiction) to partition such undisclosed asset(s) at any future time. IT IS  
10 FURTHER ORDERED that the party who does not have the actual physical possession or control  
11 of the undisclosed asset (i.e., the "non-possessing party") shall be entitled to have his or her one-  
12 half interest in any such property determined, at the election of the said non-possessing party, as  
13 being equal to one-half of (i) the fair market value of such property on the date of the entry of this  
14 Decree or Divorce; or (ii) the fair market value of such property at the time the non-possessing  
15 party discovers that he or she has an interest in such property; or (iii) the total proceeds received  
16 by the parties from the sale of the property. IT IS FURTHER ORDERED that the statute of  
17 limitation applicable to any proceeding seeking to enforce rights pursuant to this paragraph shall  
18 not begin to run until the non-possessing party's actual discovery of such additional property.

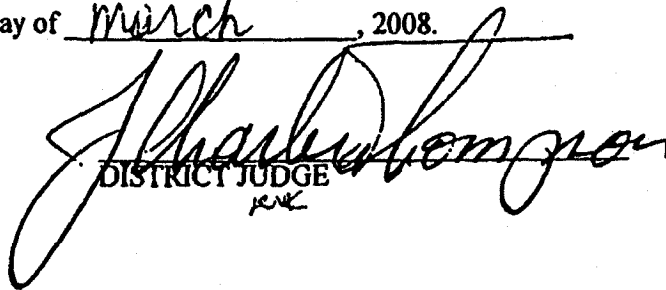
19 VI. ADDITIONAL ORDERS

20 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Petitioner CHRISTINA  
21 CALDERON STIPP shall continue to be known as CHRISTINA CALDERON-STIPP, with the  
22 hyphenation of her last name, to wit: CALDERON-STIPP.

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1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Court's files and all papers,  
2 records, proceedings, evidence, including exhibits, and any testimony transcripts be sealed  
3 forthwith pursuant to NRS 125.110, and the same shall remain sealed until further order of this  
4 Court.


5 DATED this 5<sup>th</sup> day of March, 2008.


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7   
8 DISTRICT JUDGE  
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10 The parties to this action, Petitioner CHRISTINA CALDERON STIPP and Petitioner  
11 MITCHELL DAVID STIPP, hereby STIPULATE AND AGREE to the Court's entry of the  
12 Decree of Divorce set forth above, and each party agrees to fully comply with the same.

13 DATED: February 25, 2008

DATED: February 25, 2008

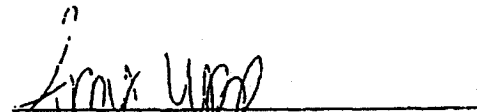
14   
15 CHRISTINA CALDERON STIPP  
16 2055 Alcova Ridge Drive  
17 Las Vegas, Nevada 89135  
18 Petitioner in Proper Person

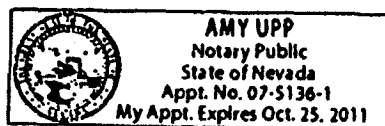
14   
15 MITCHELL DAVID STIPP  
16 2055 Alcova Ridge Drive  
17 Las Vegas, Nevada 89135  
18 Petitioner in Proper Person

19 STATE OF NEVADA )  
20 ) SS:  
21 COUNTY OF CLARK )

22 On this 25th day of February, 2008, before me, the undersigned Notary Public in and for  
23 said County and State, personally appeared CHRISTINA CALDERON STIPP and MITCHELL  
24 DAVID STIPP, both known to me to be the persons described in and who executed the foregoing  
25 immediately above, each of whom acknowledged to me that he or she did so freely and voluntarily  
26 and for the uses and purposes therein mentioned.

27 Witness my hand and official seal.

28   
Notary Public



# EXHIBIT 1

ATTACHED IS A TRUE AND CORRECT COPY OF THE PARTIES'  
MARITAL SETTLEMENT AGREEMENT  
WHICH HAS BEEN MERGED INTO THIS DECREE OF DIVORCE

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## MARITAL SETTLEMENT AGREEMENT

THIS MARITAL SETTLEMENT AGREEMENT (this "Agreement") is made and entered into as of this 20th day of February 2008 (the "Effective Date") by and between Mitchell David Stipp ("Husband"), and Christina Calderon Stipp ("Wife" and, together with Husband, the "Parties," or individually, a "Party").

### RECITALS

- A. The Parties were married in Las Vegas, Clark County, State of Nevada on July 18, 1997.
- B. The Parties have two (2) minor children of the marriage: Mia Elena Stipp ("Mia"), born on October 19, 2004, and Ethan Christopher Stipp ("Ethan" and, together with Mia, "Children," or individually, a "Child"), born on March 24, 2007.
- C. Wife filed for divorce against Husband in the Eighth Judicial District Court of the State of Nevada, Clark County District Court Case No. D360352, Department L, in July/August of 2006 (the "Action"). The Action was subsequently stayed and/or dismissed by mutual agreement of the Parties.
- D. The Parties have numerous disputes and differences and desire and intend to separate and live separate and apart one from the other.
- E. It is the mutual wish and desire of the Parties that a full and final adjustment and settlement of their property rights, interests and claims against each other be had, settled and determined by entering into this Agreement, including all issues described in the Action and support and maintenance of the Parties and Children.

NOW, THEREFORE, in consideration of the mutual promises, agreements, covenants, understandings, undertakings, representations and warranties hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree that the recitals set forth above are true and correct and are expressly incorporated and made a part of this Agreement, and further covenant and agree as follows:

### I. MAINTENANCE AND SUPPORT OF CHILDREN

1.1. **CHILD CUSTODY.** The Parties shall have joint legal and physical custody of the Children. The Parties shall comply with the visitation schedule attached hereto as Exhibit A and incorporated herein by this reference. The Parties shall also comply with the following specific terms:

- (a) Each Party shall make every effort to maintain free access and unhampered contact between the Children and the other Party. Neither Party shall do anything which shall estrange the Children from the other Party; injure the Children's opinion of the other Party; attempt to denigrate or degrade the other Party; or otherwise impair the natural development of the Children's love and respect for each of the Parties. Both Parties understand that parenting requires the acceptance of mutual responsibilities and rights insofar as the Children are concerned. Each Party agrees to communicate and cooperate with the other Party with respect to all matters relating to the Children. The Parties understand and agree that the best interests of the Children will be served by the Parties continuing to openly and freely communicate with each other in a civil manner and to cooperate with each other in raising the

Children. The Parties acknowledge and agree that their respective roles as joint legal custodians of the Children entail the following rights and responsibilities:

(i) Each Party shall consult and cooperate with the other in substantial questions relating to the religious upbringing, educational programs (including placement in, and removal from those programs), significant changes in social environment, and healthcare of the Children. Each Party shall have access to medical and school records pertaining to the Children and be permitted to independently consult with any and all professionals involved with the Children.

(ii) All schools, health care providers, day care providers, and counselors shall be selected jointly by the Parties. The Parties shall promptly keep each other apprised, in advance, of the Children's appointments with all medical providers, and shall be given a reasonable opportunity to participate therein, in person or telephonically.

(iii) Each Party shall be empowered to obtain emergency health care for the Children without the consent of the other Party. Each Party is to notify the other Party as soon as reasonably practicable of any illness requiring medical attention, or any emergency involving the Children.

(iv) Each Party is to provide the other Party, within fourteen (14) days of receipt, with any information concerning the well-being of the Children, including, but not limited to, copies of report cards; school meeting notices; vacation schedules; class programs; requests for conferences; results of standardized or diagnostic tests; notices of activities involving the Children; samples of school work; order forms for school pictures; all communications from health care providers and the names, addresses, and telephone numbers of all schools, health care providers, regular day care providers, and counselors. With regard to the exchange of medical documentation related to any claim of reimbursement for out-of-pocket medical expenses, the Parties shall be required to exchange such documentation within thirty (30) days of receipt, and shall pay requested reimbursement within thirty (30) days of receipt.

(v) Each Party shall advise the other Party of any and all school, athletic, church, and social events in which the Children participate and each Party agrees to so notify the other within a reasonable time after first learning of the future occurrence of any such event so as to allow the other Party to make arrangements to attend the event if he or she chooses to do so. Both Parties may participate in all such activities for the Children, such as open house, attendance at an athletic event, etc.

(b) Each Party is to provide the other Party with the address and telephone number at which the Children reside and to immediately notify the other Party prior to any change of address and further, to provide the telephone number of such address change as soon as it is assigned.

(c) Each Party shall provide the other Party with a travel itinerary (including trip dates, planned destination by address, and an estimated date and time of arrival back at the Children's place of residence), and, whenever reasonably possible, telephone numbers at which the Children can be reached whenever the Children will be away from that Party's home for a period of two (2) nights or more.

(d) The Parties shall encourage liberal and unhampered communication between the Children and the other Party. Each Party shall be entitled to reasonable telephone communication with the Children, at reasonable times of the day and night.

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1.2. **CHILD SUPPORT.** Subject to Section 1.4 below, Husband shall pay to Wife the sum of \$1,000.00 per month for each Child as and for child support beginning on the first day of the calendar month after the date in which the Decree of Divorce is entered by the Court in the Action until such time as the Child reaches the age of eighteen (18) years old [or the age of nineteen (19) if still enrolled in high school], marries, or becomes otherwise emancipated. The Parties certify that the amount of child support set forth in this Section 1.2 is consistent with the formula set forth in NRS 125B.070; provided, however, that the amount of child support exceeds the presumptive maximum amount set forth in NRS 125B.070.

1.3. **HEALTH CARE EXPENSES FOR WIFE AND THE CHILDREN.** Subject to Section 1.4 below, the Parties shall be equally responsible for the Children's health care expenses (medical, surgical, dental, orthodontic, and/or optical), and any premiums, deductibles, and co-pays associated therewith; provided, however, that Husband shall maintain medical, dental and optical insurance for Wife and each Child for as long as that coverage remains available through his employment at no cost or expense to Husband.

1.4. **REVIEW OF SUPPORT OBLIGATIONS.** Pursuant to NRS 125B.145, the Parties agree that the support obligations of the Parties as set forth in Sections 1.2 and 1.3 above may be reviewed by the Court to determine whether the support obligations should be modified or adjusted. Each review conducted pursuant to this Section 1.4 must be in response to a separate request by a Party.

1.5. **OTHER TERMS AND CONDITIONS.** The Parties further agree that they are subject to the following:

(a) The provisions of NRS 31A.025 to 31A.350, inclusive, regarding the withholding or assignment of wages and commissions for delinquent payments of child support.

(b) The provisions of NRS 200.359 for violation of the Court's Order are applicable to the Parties:

**PENALTY FOR VIOLATION OF ORDER:**

The abduction, concealment or detention of a child in violation of this Order is punishable as a category D felony as provided in NRS 193.130. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having no right to the child who willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this court, or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished for a category D felony as provided in NRS 193.130.

(c) Pursuant to NRS 125.510(7) and (8), the terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague Conference on Private International Law are applicable to the Parties:

"Section 8. If a parent of the child lives in a foreign country or has significant commitments in a foreign country:

(a) The parties may agree, and the Court shall include in the Order for custody of the child, that the United

States is the country of habitual residence of the child for the purposes of applying the terms of the Hague Convention as set forth in Subsection 7.

- (b) Upon motion of the parties, the Court may order the parent to post a bond if the Court determines that the parents pose an imminent risk of wrongfully removing or concealing the child outside the country of habitual residence. The bond must be in an amount determined by the Court and may be used only to pay for the cost of locating the child and returning him to his habitual residence if the child is wrongfully removed from or concealed outside the country of habitual residence. The fact that a parent has significant commitments in a foreign country does not create a presumption that the parent poses an imminent risk of wrongfully removing or concealing the child."

- (d) The State of Nevada is the habitual residence of the Children.

## II. COMMUNITY PROPERTY AND DEBT

2.1. **COMMUNITY PROPERTY.** In order to achieve an equitable apportionment of the community property acquired by the Parties during the period of their marriage, the following division of community property shall apply beginning on the Effective Date:

- (a) Husband grants, transfers, conveys and assigns to Wife all of his right, title and interest in and to the following property which shall be the sole and separate property of Wife, free and clear of any and all rights, interests, and claims of Husband (including any marital or other property rights), as of the Effective Date:

- (i) The sum of \$1,826,000.00.

- (ii) Wife's 401(k) as part of Morris Pickering & Peterson Retirement Plan in the approximate amount of \$60,000.00.

- (iii) The membership interests owned by Stipp Family Trust dated October 13, 2004 (the "Trust"), in 1005 Hickory Park, LLC, a Nevada limited liability company ("Hickory Park"), which owns the real property designated by the Clark County Assessor's Office as APN 137-35-815-011 and all improvements thereon including the 1,943 square foot residential dwelling (the "Secondary Residence"). Husband and Wife as trustees of the Trust shall execute and deliver the form of assignment of membership interests attached hereto as Exhibit B and incorporated herein by this reference pursuant to which Husband shall resign as manager of Hickory Park and Wife shall become the sole manager and member of Hickory Park. The value of the Secondary Residence is approximately \$325,000 as of the Effective Date. The Secondary Residence is not subject to any mortgage. Wife through her ownership of Hickory Park shall own the Secondary Residence.

- (iv) The membership interests owned by the Trust in Stipp Law Group, Ltd, a Nevada professional corporation ("Stipp Law"). Husband and Wife as trustees of the Trust shall

execute and deliver the form of assignment of stock attached hereto as Exhibit C and incorporated herein by this reference pursuant to which Wife shall become the sole stockholder of Stipp Law. The value of Stipp Law is approximately \$100.00 as of the Effective Date.

(v) All checking, savings, money market or other accounts in the name of Wife and/or Stipp Law in existence as of the Effective Date.

(vi) Leasehold interest in 2008 Range Rover.

(vii) Wife's clothing, jewelry and personal items.

(viii) Wife's Loan (as defined in Section 2.2(c)).

(b) Wife grants, transfers, conveys and assigns to Husband all of her right, title and interest in and to the following property which shall be the sole and separate property of Husband, free and clear of any and all rights, interests, and claims of Wife (including any marital or other property rights), as of the Effective Date:

(i) All remaining cash in bank account at Wells Fargo, N.A., in the name of Husband, which after the payment(s) made by Husband to Wife as set forth in Section 2.1(a)(i), will be approximately \$508,500.00.

(ii) Husband's 401(k) as part of Kummer Kaempfer Bonner Renshaw & Ferrario's 401(k) Profit Sharing Plan and Plise Companies' Retirement Plan in the approximate amounts of \$55,000.00 and \$95,000.00, respectively.

(iii) The membership interests owned by the Trust, in Stipp Investments, LLC, a Nevada limited liability company ("Husband LLC"), which owns a profit interest in Aquila Investments, LLC, a Nevada limited liability company ("Aquila"). Aquila owns membership interests in several limited liability companies which own various real estate developments in Las Vegas and Henderson, Nevada. Husband and Wife as trustees of the Trust shall execute and deliver the form of assignment attached hereto as Exhibit D and incorporated herein by this reference. The value of Husband LLC's profit interest in Aquila is approximately \$100.00 as of the Effective Date.

(iv) The membership interests owned by the Trust, in 2055 Alcova Ridge, LLC, a Nevada limited liability company ("Alcova Ridge"), which owns the real property designated by the Clark County Assessor's Office as APN 164-02-220-014 and all improvements thereon including the 5,224 square foot residential dwelling ("Marital Residence"). Husband and Wife as trustees of the Trust shall execute and deliver the form of assignment of membership interests attached hereto as Exhibit E and incorporated herein by this reference pursuant to which Husband shall become the sole member of Alcova Ridge. The value of Alcova Ridge is approximately \$2,000,000.00 as of the Effective Date. The Marital Residence is subject to a mortgage from Countrywide Home Loans (Account No. 112575809) in the approximate amount of \$1,000,000.00 (the "Marital Residence Mortgage").

(v) All contents of the Marital Residence including, without limitation, all furniture, furnishings, appliances, fixtures, and equipment located in or used in connection with the Marital Residence but expressly excluding the items identified in Section 2.1(a)(vii) above and the clothing and personal items of the Children. Husband and Wife as trustees of the Trust and individually shall execute and deliver the form of bill of sale attached hereto as Exhibit F and incorporated herein by

this reference pursuant to which Husband shall become the sole owner of the items described in this Section 2.1(b)(v).

(vi) Leasehold interest in 2008 BMW M6.

(vii) Leasehold, license or other use right in 2007 Mercedes S65 AMG leased by Plise Companies.

(viii) Husband's clothing, jewelry, tools, guns, and personal items.

(c) Each Party represents and warrants that he or she has made full, complete and accurate disclosure of all the assets of the Parties that have value that exceeds individually or in the aggregate the sum of \$10,000.00.

(d) Husband and Wife shall close all joint accounts and all accounts in the name of the Trust on or before the date in which the Decree of Divorce is entered by the Court in the Action.

(e) Husband and Wife hereby acknowledge that, based upon the mutual representations made to each other, the distribution of their community property estate herein is a substantially equal division of the community property and both hereby confirm the property identified in Sections 2.1(a) and (b) above to the other, as appropriate, as his or her sole and separate property.

(f) Any and all property acquired by either of the Parties from and after the Effective Date shall be the sole and separate property of the Party acquiring the same and each of the Parties hereby confirms to the other Party that all such acquisitions of property shall be the sole and separate property of the Party acquiring the same.

(g) Each of the Parties shall have an immediate right to dispose of or bequeath by will his or her respective interests in and to any and all property belonging to him or her from and after the Effective Date, and that such right shall extend to all property acquired after the Effective Date as well as to all property identified in Sections 2.1(a) and (b) above.

(h) Each of the Parties hereby waives and releases any and all right to the estate of the other left at his or her death and forever grants, transfers, conveys and assigns any and all right to share in the estate of the other by the laws of succession, and each of the Parties hereby waives and releases the other Party from all rights to inherit from the other. Furthermore, the Parties hereby renounce, one to the other, all right to be administrator or administratrix, executor or executrix, of the estate of the other, and the Parties hereby waive and release any and all right to the estate or any interest in the estate of the other by way of inheritance, or otherwise, for family allowance therein or therefrom, to a probate or other homestead upon any property of the other, and to have set aside to him or her any property of the other exempt from execution, and from the Effective Date to the end of the world, the waiver and release by each of the Parties in the estate of the other Party shall be effective, and the Parties shall have all the rights of single persons and maintain the relationship of such toward each other.

2.2. ASSUMPTION OF COMMUNITY DEBTS. Husband and Wife agree that there are no known community debts of the Parties other than the debts encumbering the property awarded to each other as set forth in Section 2.1 above, and that each Party accepts their respective property "as-is" and "with all faults," including, without limitation, the encumbrances of any community debt.

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(a) Wife hereby individually and solely assumes and agrees to keep, perform, fulfill and observe all of the terms, covenants, obligations, agreements and conditions required to be kept, performed, fulfilled and observed by Husband and/or Wife with respect to any and all debts, obligations and liabilities arising from or in any way connected with the property identified in Section 2.1(a) above. Wife agrees and acknowledges that Wife shall be individually and solely responsible for any and all debts, obligations and liabilities which may be due and payable and which were incurred by Wife subsequent to the Effective Date. Wife agrees to indemnify, defend, and hold Husband harmless from and against any and all liability, loss, cost, damage and expense (including, without limitation, reasonable attorneys' fees and costs) directly or indirectly arising out of Wife's failure to keep, perform, fulfill, and observe any of the terms, covenants, obligations, agreements, and conditions required to be kept, performed, fulfilled, and observed by Wife pursuant to this Section 2.2(a).

(b) Husband individually and solely assumes and agrees to keep, perform, fulfill and observe all of the terms, covenants, obligations, agreements and conditions required to be kept, performed, fulfilled and observed by Husband and/or Wife with respect to any and all debts, obligations and liabilities arising from or in any way connected with the property identified in Section 2.1(b) above, including, without limitation, the Marital Residence Mortgage. Husband agrees and acknowledges that Husband shall be individually and solely responsible for any and all debts, obligations and liabilities which may be due and payable and which were incurred by Husband subsequent to the Effective Date. Husband agrees to indemnify, defend, and hold Wife harmless from and against any and all liability, loss, cost, damage and expense (including, without limitation, reasonable attorneys' fees and costs) directly or indirectly arising out of Husband's failure to keep, perform, fulfill, and observe any of the terms, covenants, obligations, agreements, and conditions required to be kept, performed, fulfilled, and observed by Husband pursuant to this Section 2.2(b).

(c) Within fifteen (15) days after the Effective Date, Wife shall provide a loan to Alcovia Ridge from the sum received in Section 2.1(a)(i) above which shall be secured by the Marital Residence and guaranteed by Husband ("Wife's Loan") to refinance the Marital Residence Mortgage. Wife's Loan shall be in the amount of \$1,000,000.00 and accrue interest at 6.375% per year for a term of thirty (30) years subject to Wife's sole and exclusive right to advance the maturity of the loan to any time after the first twelve (12) months from initial funding with ninety (90) days' written notice. Alcovia Ridge shall be required to make interest only payments under Wife's Loan which shall be due and payable monthly in arrears.

(d) Husband and Wife shall not borrow from and shall close all lines of credit in their joint names on or before the date in which the Decree of Divorce is entered by the Court in the Action, including, without limitation, the line of credit provided by Bank of America, N.A. and secured by the Parties' former marital residence located at 3250 Santolina Drive, Las Vegas, Nevada 89135 and the line of credit provided by Countrywide Home Loans secured by the Marital Residence.

### 2.3. TAX PROVISIONS.

(a) Husband and Wife shall file a joint return for the tax year of 2007. Husband shall cause the tax returns to be prepared and timely filed for Husband LLC, Stipp Law and the joint return for Husband and Wife subject to the review and approval of Wife, which approval shall not be unreasonably withheld, conditioned or delayed. Husband shall provide Wife copies of these returns at least fourteen (14) days prior to any filing deadline (or extension thereof) to review and approve any such tax return. Husband and Wife shall be equally responsible for the costs and expenses of preparing and filing these tax returns as well as any tax obligations or liabilities for the tax year of 2007 or any prior tax year.

(b) Husband and Wife shall file separate tax returns for the tax year of 2008. Husband shall claim all income actually earned by Husband for the tax year of 2008 on his tax return, and Wife shall claim all income actually earned by Wife for the tax year of 2008 on her tax return.

(c) Husband and Wife shall be entitled to and share equally all refunds, overpayments, tax loss carry forwards and benefits that exist with regard to previous tax returns filed for Husband and Wife, Husband LLC and Stipp Law.

(d) Husband shall be entitled to claim the Children as dependents on his tax return for the tax year of 2008. Husband shall be entitled to claim Mia as a dependent and Wife shall be entitled to claim Ethan as a dependent on their respective tax returns for all tax years thereafter.

(e) Husband shall be entitled to the interest expense deduction related to the Marital Residence Mortgage on his tax return for the tax year of 2008.

(f) Husband and Wife hereby elect to have the division of their marital estate treated as a non-taxable transfer between spouses.

(g) Husband and Wife agree and acknowledge that each of them has had an opportunity to discuss with independent tax advisors concerning the income and estate tax implications and consequences with respect to the agreed upon division of property and indebtedness as set forth in this Agreement.

### III. MUTUAL RELEASE

3.1. **RELEASE BY WIFE.** Wife, individually and in her capacity as an officer of Stipp Law, hereby fully releases and discharges Husband and Husband LLC and their respective insurance carriers and sureties and their respective affiliates, successors and assigns and their respective officers, directors, managers, members, stockholders, employees, representatives, agents, attorneys and professional advisors (in their individual and representative capacities) of and from all manner of action or actions, cause or causes of action, suits, judgments, demands, rights, debts, agreements, promises, liabilities, losses, damages (whether general, special or punitive), attorneys' fees (whether incurred prior to or after the Effective Date), liens, indemnities, costs and expenses, of every nature, character, description and amount, without limitation or exception, whether known or unknown, suspected or unsuspected, whether based on theories of contract, breach of contract, breach of the covenant of good faith and fair dealing, tort, violation of statute or ordinance, or equitable theory of recovery, or any other theory of liability or declaration of rights whatsoever as of the Effective Date (collectively, "Wife Claims"). Wife acknowledges and agrees that Wife's Claims expressly include all rights and claims against Husband for temporary or permanent alimony and/or support.

3.2. **RELEASE BY HUSBAND.** Husband, individually and in his capacity as an officer of Husband LLC, Chaparral Contracting, Inc., a Nevada corporation, and Aquila Management, LLC, a Nevada limited liability company, for itself and as the manager of all limited liability companies related to or affiliated with William W. Plise, hereby fully releases and discharges Wife and her insurance carriers and sureties and their respective affiliates, successors and assigns and their respective officers, directors, managers, members, stockholders, employees, representatives, agents, attorneys and professional advisors (in their individual and representative capacities) of and from all manner of action or actions, cause or causes of action, suits, judgments, demands, rights, debts, agreements, promises, liabilities, losses, damages (whether general, special or punitive), attorneys' fees (whether incurred prior to or after the Effective Date), liens, indemnities, costs and expenses, of every nature, character,



description and amount, without limitation or exception, whether known or unknown, suspected or unsuspected, whether based on theories of contract, breach of contract, breach of the covenant of good faith and fair dealing, tort, violation of statute or ordinance, or equitable theory of recovery, or any other theory of liability or declaration of rights whatsoever as of the Effective Date (collectively, "Husband Claims" and, together with the Wife Claims, the "Claims").

**3.3. COMPROMISE OF CLAIMS.** The Parties, and each of them, acknowledge that they may hereafter discover facts different from, or in addition to, those facts that they now believe to be true with respect to any and all of the Claims released. Nevertheless, the Parties, and each of them, hereby agree that the releases set forth in Sections 3.1 and 3.2 above shall be and remain effective in all respects pursuant to the terms and conditions of this Agreement, notwithstanding the discovery of such different or additional facts. To that end, the Parties specifically and voluntarily waive any statutory or legal right, rule, decision or doctrine limiting the scope of the releases to include only Claims known or suspected by the Parties as of the date of the release, regardless of whether any unknown or unsuspected Claims would have materially affected the Parties' decision to enter into this Agreement. The Parties agree and acknowledge that this Agreement is intended to settle finally, conclusively and forever the rights of the Parties in all respects arising out of their marital relationship. Notwithstanding anything to the contrary contained herein, the Parties do not release one another from their respective duties, obligations and liabilities under this Agreement, or the agreements contemplated hereby. Each Party expressly reserves all of its rights and remedies with respect to the performance of this Agreement by the other Party.

#### **IV. MISCELLANEOUS**

**4.1 ACKNOWLEDGEMENT.** Each Party acknowledges that he or she has been given a reasonable period of time to study this Agreement before signing it and has had an opportunity to secure counsel of his or her own. Each Party certifies that he or she has fully read and completely understands the terms, nature, and effect of this Agreement. Each Party further acknowledges that he or she is executing this Agreement freely, knowingly, and voluntarily and that his or her execution of this Agreement is not the result of any fraud, duress, mistake, or undue influence whatsoever. In executing this Agreement, each Party does not rely on any inducements, promises, or representations by the other Party other than that which are stated in this Agreement.

**4.2 FURTHER ASSURANCES.** Each of the Parties shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder to carry out the intent of the Parties. Should either Party fail to execute and/or deliver any of the documents contemplated hereby to transfer the property described in Section 2.1 above, this Agreement shall constitute a full and complete transfer of the property as herein provided.

**4.3 ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the Parties and supersedes all prior agreements, understandings, discussions, negotiations and undertakings, whether written or oral, between the Parties with respect to the subject matter contained herein. This Agreement shall be taken as the full and final marital settlement agreement between the Parties, and it is agreed that a copy of this Agreement shall be offered to the Court in the Action, and the Court shall be requested to ratify, confirm and approve the same, and this Agreement shall by reference be merged into and become a part of the Decree of Divorce to be entered by the Court as if fully set forth therein.

**4.4 AMENDMENT OR WAIVER.** This Agreement cannot be changed, modified or amended without the consent in writing of both of the Parties. No waiver by either Party at any time of any breach by the other Party of any condition or provision of this Agreement shall be deemed a waiver of a similar

or dissimilar condition or provision at the same or at any prior or subsequent time. Any waiver must be in writing and signed by the waiving Party.

**4.5 NOTICES.** Any and all notices and demands required or desired to be given hereunder shall be in writing and shall be validly given only if personally delivered; deposited in the United States mail, certified or registered, postage prepaid, return receipt requested; made by Federal Express or similar delivery service which keeps records of deliveries and attempted deliveries; or by email. Service shall be conclusively deemed made on the first business day delivery is attempted or upon receipt, whichever is sooner, and addressed as follows:

IF TO HUSBAND:

Mitchell Stipp  
5550 Painted Mirage Road, Suite 500  
Las Vegas, Nevada 89149  
Email: Mitchell@plise.com

IF TO WIFE:

Christina Stipp  
3136 Donnegal Bay Drive  
Las Vegas, Nevada 89117  
Email: ccstipp@hotmail.com

The address to which such notices and demands are to be given pursuant to this Section 4.3 may be changed at any time by a written notice given in the manner aforesaid, which notice of change of address shall not become effective, however, until the actual receipt thereof by the addressee.

**4.6. SEVERABILITY.** The provisions of this Agreement shall be severable and the invalidity, illegality or unenforceability of any provision of this Agreement shall not affect, impair or render unenforceable this Agreement or any other provision hereof, all of which shall remain in full force and effect. If any provision of this Agreement is determined to be invalid, illegal or otherwise unenforceable, but such provision may be made enforceable by a limitation or reduction of its scope, the Parties agree to abide by such limitation or reduction as may be necessary so that said provision shall be enforceable to the fullest extent permitted by law.

**4.7. ATTORNEYS' FEES.** If there is any legal action or proceeding, including any mediation or arbitration proceeding, to enforce or interpret any provision of this Agreement or to protect or establish any right or remedy of any Party hereto, the unsuccessful Party to such action or proceeding, whether such action or proceeding is settled or prosecuted to final judgment, shall pay to the prevailing Party as finally determined, all costs and expenses, including reasonable attorneys' fees and costs, incurred by such prevailing Party in such action or proceeding, in enforcing such judgment, and in connection with any appeal from such judgment. Husband and Wife agree to pay his or her respective attorneys' fees and costs incurred in the preparation of this Agreement and in the representation of each in the Action.

**4.8. SURVIVAL.** The respective rights and obligations of the Parties shall survive any expiration or termination of this Agreement to the extent necessary to the intended preservation of such rights and obligations.

**4.9. GOVERNING LAW.** This Agreement shall be governed by and construed under the substantive and procedural laws of the State of Nevada, disregarding any principles of conflicts of law that would otherwise provide for the application of the substantive law of another jurisdiction. The

Parties submit to the exclusive jurisdiction of the state and federal courts located in Clark County, Nevada for the purposes of any and all legal proceedings arising out of or relating to this Agreement or the transactions contemplated thereby. Each Party hereby irrevocably waives any objection to venue and any claim that such a proceeding has been brought in an inconvenient forum, with respect to any such proceeding that is brought in the state and federal courts located in Clark County, Nevada.

**4.10. HEADINGS.** The headings of the sections contained in this Agreement are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Agreement.

**4.11. COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**4.12. BINDING EFFECT.** Every covenant, term, and provision of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, transferees, assigns, heirs and personal representatives.

**4.13. NEUTRAL INTERPRETATION.** The provisions contained herein shall not be construed in favor of or against any Party because that Party or its counsel drafted this Agreement, but shall be construed as if all Parties prepared this Agreement, and any rules of construction to the contrary are hereby specifically waived.

**4.14. EFFECTIVENESS.** This Agreement shall take effect upon the Effective Date; provided, however, that the terms and conditions of this Agreement that require the approval of the Court in the Action shall be subject to such approval. Notwithstanding the foregoing, in the event that the Decree of Divorce is not entered by the Court in the Action, the Parties hereby agree that the provisions governing the disposition of community property, liability for community debt, and mutual release of claims as set forth in this Agreement shall remain in full force and effective as a post-nuptial agreement between the Parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written.

Mitch Stipp

Mitchell Stipp, individually and for purposes of Section 3.2, as an officer of Stipp Investments, LLC, Chaparral Contracting, Inc., a Nevada corporation, and Aquila Management, LLC, a Nevada limited liability company, for itself and as the manager of all limited liability companies related to or affiliated with William W. Plise.

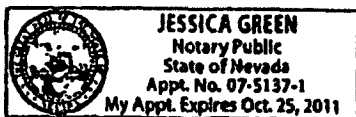
Christina Calderon Stipp

Christina Calderon Stipp, individually and for purposes of Section 3.1, as an officer of Stipp Law Group, Ltd.

#### ACKNOWLEDGEMENT

STATE OF NEVADA } ss.  
COUNTY OF CLARK

This instrument was acknowledged before me on this 20<sup>th</sup> day of February 2008 by Mitchell Stipp.



J. Green  
Notary Public in and for Said County and State

STATE OF NEVADA } ss.  
COUNTY OF CLARK

This instrument was acknowledged before me on this 20<sup>th</sup> day of February 2008 by Christina Calderon Stipp.



J. Green  
Notary Public in and for Said County and State

(12)

CCS MB

## EXHIBIT A

### Visitation Schedule

1. **Normal Visitation:** Wife shall have the Children from 6:00 p.m. on Sundays until 6:00 p.m. on Fridays, and Husband shall have the Children from 6:00 p.m. on Fridays until 6:00 p.m. on Sundays; provided, however, that upon three (3) days' prior written notice to Husband, Wife shall have the right to have the Children on the first weekend of every month in which case Husband shall not have normal visitation.
2. **Holiday Visitation:** In the event one Party's right to exercise holiday visitation conflicts with the other Party's right to exercise normal or vacation visitation, the holiday visitation shall take precedence over the normal or vacation visitation. The Parties shall have holiday visitation with the Children as follows:
  - (a) **Martin Luther King Day Weekend:** Martin Luther King Day is celebrated on the third Monday in January. The weekend will be defined as commencing at 6:00 p.m. on the Friday before the holiday and ending at 6:00 p.m. on the holiday. Wife will have the Children for Martin Luther King Weekend in all even-numbered years and Husband will have the Children for this weekend in all odd-numbered years. Wife shall have the right to forego visitation of the Children on Martin Luther King Day Weekend upon three (3) days' prior written notice to Husband in which case normal visitation rules apply.
  - (b) **Presidents Day Weekend:** Presidents Day is celebrated on the third Monday in February. The weekend will be defined as commencing at 6:00 p.m. on the Friday before the holiday and ending at 6:00 p.m. on the holiday. Husband will have the Children for Presidents Day Weekend in all even-numbered years and Wife will have the Children for this weekend in all odd-numbered years. Wife shall have the right to forego visitation of the Children on Presidents Day Weekend upon three (3) days' prior written notice to Husband in which case normal visitation rules apply.
  - (c) **Easter Day:** Easter Day is celebrated on Sundays. Husband will have the Children until 2:00 p.m. on Easter Day and Wife will have the Children after 2:00 p.m. on Easter Day.
  - (d) **Memorial Day Weekend:** Memorial Day is celebrated on the last Monday in May. The weekend shall be defined as commencing at 6:00 p.m. on the Friday before the holiday and ending at 6:00 p.m. on the holiday. Wife will have the Children for the Memorial Day Weekend in all even-numbered years and Husband will have the Children for this weekend in all odd-numbered years. Wife shall have the right to forego visitation of the Children on Memorial Day Weekend upon three (3) days' prior written notice to Husband in which case normal visitation rules apply.
  - (e) **Father's Day/Mother's Day:** These holidays are celebrated on Sundays and will be defined as commencing at 9:00 a.m. and ending at 6:00 p.m. on the holidays. Husband will have the Children each year on Father's Day and Wife will have the Children each year on Mother's Day.
  - (f) **Independence Day:** Independence Day will be defined as commencing at 6:00 p.m. on the day before the holiday and ending at 9:00 a.m. on the day after the holiday. Wife

A-1

ccs *MS*

will have the Children for Independence Day in all even-numbered years and Husband will have the Children for this holiday in all odd-numbered years.

- (g) **Labor Day Weekend:** Labor Day is celebrated on the first Monday in September. The weekend shall be defined as commencing at 6:00 p.m. on the Friday before the holiday and ending at 6:00 p.m. on the holiday. Husband will have the Children for the Labor Day Weekend in all even-numbered years and Wife will have the Children for this weekend in all odd-numbered years. Wife shall have the right to forego visitation of the Children on Labor Day Weekend upon three (3) days' prior written notice to Husband in which case normal visitation rules apply.
- (h) **Halloween Night:** Halloween Night will be defined as commencing at 3:00 p.m. on the holiday and ending at 8:30 p.m. on the holiday. Wife will have the Children for Halloween Night in all even-numbered years and Husband will have the Children for Halloween Night in all odd-numbered years.
- (i) **Veterans Day:** Veterans Day is generally observed on November 11th every year. For the purposes of this schedule, Veterans Day will be defined as commencing at 6:00 p.m. on the day immediately preceding the holiday and ending at 6:00 p.m. on the holiday. Husband will have the Children for Veterans Day in all even-numbered years and Wife will have the Children for Veterans Day in all odd-numbered years.
- (j) **Thanksgiving Weekend:** The Thanksgiving holiday will be divided into two periods, with Period One commencing at 4:00 p.m. on Thanksgiving Day and continuing to 6:00 p.m. on the Saturday immediately following Thanksgiving Day; and Period Two commencing at 6:00 p.m. on the Saturday immediately following Thanksgiving Day and ending at 6:00 p.m. on the Sunday immediately following Thanksgiving Day. Husband will have the Children during Period One and Wife will have the Children during Period Two in all years.
- (k) **Christmas Holiday:** The Christmas holiday shall be divided into two periods, with Period One commencing at 9:00 a.m. on December 24th and continuing to 9:00 a.m. on December 25th, and Period Two commencing at 9:00 a.m. December 25th and continuing to 6:00 p.m. on the same day. Wife will have the Children during Period One and Husband will have the Children during Period Two in all years.
- (l) **New Year's Day:** New Year's Day is observed on January 1st every year. For the purposes of this schedule, New Year's Day will be defined as commencing at 6:00 p.m. on the day immediately preceding the holiday and ending at 6:00 p.m. on the holiday. Husband will have the Children for New Year's Day in all even-numbered years and Wife will have the Children for New Year's Day in all odd-numbered years.
- (m) **Children's Birthdays:** Wife shall have the right upon three (3) days' prior written notice to Husband to have the Children on the Saturday immediately preceding a Child's birthday in which case Husband's normal visitation shall be from 9:00 a.m. to 6:00 p.m. on Sunday.
- (n) **Parents' Birthdays:** Each Party shall have the right upon three (3) days' prior written notice to the other Party to have the Children from 9:00 a.m. to 6:00 p.m. on their respective birthdays.

(A-2)

CCS N80

3. **Vacation Visitation:** In the event one Party's right to exercise vacation visitation conflicts with the other Party's right to exercise normal visitation, vacation visitation shall take precedence over normal visitation. Each Party shall be permitted to have the Children for two (2) consecutive weeks for the purpose of taking a vacation. The Party wishing to exercise such vacation visitation must provide the other Party with at least fifteen (15) days' written notice of intent to do so.

4. **Other Visitation:** The Parties shall have other visitation at such times and days upon which the Parties shall agree.

**EXHIBIT B**  
**[SEE ATTACHED]**

(B-1)

ccs *ms*



**ASSIGNMENT OF INTEREST IN LIMITED-LIABILITY COMPANY**  
**1005 Hickory Park, LLC**

Mitchell Stipp and Christina Stipp, as Trustees of the Stipp Family Trust dated October 13, 2004, hereby assign, transfer, and convey (collectively, the "Transfer") all of the rights, title, interest, and estate in and to one hundred percent (100%) ownership interest (the "Interests") in 1005 Hickory Park, LLC, a Nevada limited liability company (the "Company"), to Christina Calderon Stipp, as her sole and separate property. The Transfer of the Interests in the Company is to be effective as of February 20, 2008 (the "Effective Date").

Stipp Family Trust dated October 13, 2004

By: Mitchell Stipp

Name: Mitchell Stipp

Its: Trustee

By: Christina Calderon Stipp

Name: Christina Stipp

Its: Trustee

**ACKNOWLEDGEMENT, WAIVER AND RESIGNATION**

The undersigned hereby (a) acknowledges and consents to the Transfer of the Interests in the Company, (b) waives any marital rights or other property rights that the undersigned may have with respect to the ownership of the Interests in the Company, and (c) resigns as manager of the Company effective as of the Effective Date.

Mitchell Stipp

Mitchell Stipp

ccs MB

**EXHIBIT C**  
**[SEE ATTACHED]**

(C-1)

ccs *ms*

**ASSIGNMENT OF STOCK**  
**Stipp Law Group, Ltd.**

Mitchell Stipp and Christina Stipp, as Trustees of the Stipp Family Trust dated October 13, 2004, hereby assign, transfer, and convey (collectively, the "Transfer") all of the rights, title, interest, and estate in and to one hundred percent (100%) ownership interest (the "Interests") in Stipp Law Group, Ltd., a Nevada professional corporation (the "Company"), to Christina Calderon Stipp, as her sole and separate property. The Transfer of the Interests in the Company is to be effective as of February 20, 2008 (the "Effective Date").

Stipp Family Trust dated October 13, 2004

By: Mitchell Stipp  
Name: Mitchell Stipp  
Its: Trustee

By: Christina Calderon Stipp  
Name: Christina Stipp  
Its: Trustee

**ACKNOWLEDGEMENT, WAIVER AND RESIGNATION**

The undersigned hereby (a) acknowledges and consents to the Transfer of the Interests in the Company, (b) waives any marital rights or other property rights that the undersigned may have with respect to the ownership of the Interests in the Company, and (c) resigns as an officer and/or director of the Company effective as of the Effective Date.

Mitchell Stipp  
Mitchell Stipp

ccs MS

**EXHIBIT D**  
**[SEE ATTACHED]**

(21)

ccs *MS*

**ASSIGNMENT**  
**Stipp Investments, LLC**

THIS ASSIGNMENT (this "Assignment") is entered into as of this 20th day of February, 2008 (the "Effective Date") by and among Mitchell Stipp and Christina Stipp, as Trustees of the Stipp Family Trust dated October 13, 2004 ("Assignor"), Mitchell Stipp, an individual ("Assignee"), Christina Calderon Stipp, an individual ("Spouse of Assignee"), and Stipp Investments, LLC, a Nevada limited liability company (the "Company").


NOW THEREFORE, in consideration of the mutual agreements, covenants, and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignment. Assignor hereby assigns, transfers, and conveys (collectively, the "Transfer") all of the rights, title, interest, and estate in and to one hundred percent (100%) ownership interest (the "Interests") in the Company to Assignee, as his sole and separate property, subject to the rights of Spouse of Assignee set forth in Section 2 below. The Transfer of the Interests in the Company is to be effective as of the Effective Date.

2. Rights of Spouse of Assignee. As of the Effective Date, Spouse of Assignee shall have as her sole and separate property the rights only to fifty percent (50%) of the distributions received by the Company from Aquila Investments, LLC, a Nevada limited liability company and its successors and assigns ("Aquila"); provided, however, that Spouse of Assignee shall not be entitled to receive and hereby waives and releases her rights to any portion of the first \$250,000.00 in distributions received from Aquila after the Effective Date (the "Spouse's Rights"). Spouse of Assignee shall be obligated to pay and be liable for all federal, state and local taxes arising out of the payment of any distributions to Spouse of Assignee as part of the Spouse's Rights. The Company shall pay to Spouse of Assignee within five (5) days of receipt any distributions required to be paid to Spouse of Assignee hereunder. The Spouse's Rights expressly exclude any and all other property or economic rights (allocations of profits, losses and other distributions) and the rights of a member of the Company under the Nevada Revised Statutes, as amended, or the organizational documents of the Company, including, without limitation, any voting, consent or approval rights. The term "distributions" as used in this Section 2 shall have the meaning assigned to it in Aquila's Amended and Restated Operating Agreement effective January 1, 2006 which is incorporated herein by this reference.

3. Acceptance and Consent. As of the Effective Date, the Company consents to the Transfer of the Interests in the Company to Assignee and Assignee hereby accepts the same subject to Spouse's Rights. Spouse of Assignee accepts the Spouse's Rights and waives any marital rights or other property rights that she may have with respect to the ownership of the Interests in the Company except with respect to the Spouse's Rights. Assignee waives any marital rights or other property rights that he may have with respect to the Spouse's Rights.

4. No Assignment. Except as permitted in writing by the Company and Assignee, Spouse of Assignee shall not transfer all or a part of the Spouse's Rights by any sale, exchange, assignment, bequeath, gift, pledge, hypothecation, encumbrance, transfer, or other alienation in any manner, whether voluntary, involuntary or by operation of law (including, without limitation, the laws of bankruptcy, insolvency, intestacy, descent, marital property division and distribution and succession) (each, a "Prohibited Transfer"). Upon the occurrence of a Prohibited Transfer, the Spouse's Rights shall expire, lapse and/or terminate.

ccs 

5. Further Assurances. The parties hereto each covenant that said party will, at any time and from time to time following a written request therefor, execute and deliver any additional or confirmatory instruments and take such further acts as the other parties may reasonably request to evidence fully the Transfer of the Interests in the Company and the Spouse's Rights.

6. Nevada Law. This Assignment shall be governed by and construed under the substantive and procedural laws of the State of Nevada, disregarding any principles of conflicts of law that would otherwise provide for the application of the substantive law of another jurisdiction.

7. Counterparts. This Assignment may be executed in multiple counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have entered into this Assignment as of the Effective Date.

ASSIGNOR

Stipp Family Trust dated October 13, 2004

By: Mitchell Stipp  
Name: Mitchell Stipp  
Its: Trustee

By: Christina Calderon Stipp  
Name: Christina Stipp  
Its: Trustee

ASSIGNEE

Mitchell Stipp  
Mitchell Stipp

SPOUSE OF ASSIGNEE

Christina Calderon Stipp  
Christina Calderon Stipp

COMPANY

Stipp Investments, LLC, A Nevada limited liability company

By: Mitchell Stipp  
Name: Mitchell Stipp  
Its: Manager

ccs NB

**EXHIBIT E**

**[SEE ATTACHED]**

(1-3)

ccs

*[Handwritten signature]*

**ASSIGNMENT OF INTEREST IN LIMITED-LIABILITY COMPANY**  
**2055 Alcova Ridge, LLC**

Mitchell Stipp and Christina Stipp, as Trustees of the Stipp Family Trust dated October 13, 2004, hereby assign, transfer, and convey (collectively, the "Transfer") all of the rights, title, interest, and estate in and to one hundred percent (100%) ownership interest (the "Interests") in 2055 Alcova Ridge, LLC, a Nevada limited liability company (the "Company"), to Mitchell Stipp, as his sole and separate property. The Transfer of the Interests in the Company is to be effective as of February 20, 2008 (the "Effective Date").

Stipp Family Trust dated October 13, 2004

By: Mitchell Stipp  
Name: Mitchell Stipp  
Its: Trustee

By: Christina Calderon Stipp  
Name: Christina Stipp  
Its: Trustee

**ACKNOWLEDGEMENT AND WAIVER**

The undersigned hereby (a) acknowledges and consents to the Transfer of the Interests in the Company, and (b) waives any marital rights or other property rights that the undersigned may have with respect to the ownership of the Interests in the Company.

Christina Calderon Stipp  
Christina Calderon Stipp

ccs MS



**EXHIBIT F**  
**[SEE ATTACHED]**

(F-1)

as *ms*

## BILL OF SALE

THIS BILL OF SALE (this "Bill of Sale") is made this 20th day of February 2008 by Mitchell Stipp and Christina Stipp, as individuals and Trustees of the Stipp Family Trust dated October 13, 2004, ("Seller"), to Mitchell Stipp, as his sole and separate property ("Buyer").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby sells, transfers, conveys and assigns to Buyer all of Seller's right, title and interest in and to all contents of the residence located at 2055 Alcova Ridge, Las Vegas, Nevada 89135 (the "Residence"), including, without limitation, all furniture, furnishings, appliances, fixtures, and equipment located in or used in connection with the Residence but expressly excluding Christina Calderon Stipp's clothing, jewelry and personal items and the clothing and personal items of Mia and Ethan Stipp.

This Bill of Sale has been executed by Seller in favor of Buyer and shall be effective on the date first above set forth.

Stipp Family Trust dated October 13, 2004

By: Mitchell Stipp  
Name: Mitchell Stipp  
Its: Trustee

By: Christina Calderon Stipp  
Name: Christina Stipp  
Its: Trustee

Mitchell Stipp  
Mitchell Stipp

Christina Calderon Stipp  
Christina Stipp

## ACKNOWLEDGEMENT AND WAIVER

The undersigned hereby (a) acknowledges and consents to this Bill of Sale, and (b) waives any marital rights or other property rights that the undersigned may have with respect to the items that are subject to this Bill of Sale.

Christina Calderon Stipp  
Christina Calderon Stipp

CCS MS

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Court's files and all papers,  
2 records, proceedings, evidence, including exhibits, and any testimony transcripts be sealed  
3 forthwith pursuant to NRS 125.110, and the same shall remain sealed until further order of this  
4 Court.


5 DATED this 5<sup>th</sup> day of March, 2008.

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10 DISTRICT JUDGE  
11 *KK*


12 The parties to this action, Petitioner CHRISTINA CALDERON STIPP and Petitioner  
13 MITCHELL DAVID STIPP, hereby STIPULATE AND AGREE to the Court's entry of the  
14 Decree of Divorce set forth above, and each party agrees to fully comply with the same.

15 DATED: February 25, 2008

16 DATED: February 25, 2008

17   
18 CHRISTINA CALDERON STIPP

19 2055 Alcova Ridge Drive  
20 Las Vegas, Nevada 89135  
21 Petitioner in Proper Person

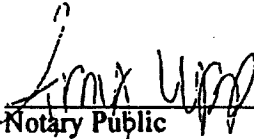
22   
23 MITCHELL DAVID STIPP

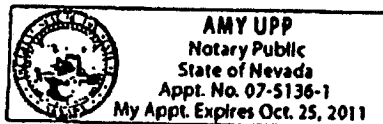
24 2055 Alcova Ridge Drive  
25 Las Vegas, Nevada 89135  
26 Petitioner in Proper Person

27 STATE OF NEVADA )  
28 ) SS:  
COUNTY OF CLARK )

On this 25th day of February, 2008, before me, the undersigned Notary Public in and for  
said County and State, personally appeared CHRISTINA CALDERON STIPP and MITCHELL  
DAVID STIPP, both known to me to be the persons described in and who executed the foregoing  
immediately above, each of whom acknowledged to me that he or she did so freely and voluntarily  
and for the uses and purposes therein mentioned.

Witness my hand and official seal.

  
Notary Public



**OPPOSITION/COUNTERMOTION**

**EXHIBIT 3**



James J. Jimmerson \*  
Lynn M. Hansen \*  
Mario P. Lovato \*  
Michele L. Roberts  
Saraya M. Veiga  
\*ALSO ADMITTED IN CALIFORNIA

January 6, 2009

**Via Facsimile**  
(702) 990-6445

Radford J. Smith, Esq.  
SMITH LAW OFFICE  
64 N. Pecos Road, Ste. 700  
Las Vegas, NV 89074

Re: Christina Calderon-Stipp v. Mitchell David Stipp  
Case No. D-08-389203

Dear Radford:

In regards to your ex-parte request for mediation on the above-referenced matter, this is to notify you and your client that, because our client received no prior notification from you of this request, she was unable to change a conflicting medical appointment and FMC has rescheduled the mediation for February 3, 2008 at 1:00 p.m. if the Court requires it.

Our client and our firm has attempted in good faith to communicate with you regarding the custody and visitation issues raised in our motion prior to filing it. Ms. Stipp informed us she had sent you a letter on or around the 1<sup>st</sup> of December pursuant to EDCR 5.11, attempting to resolve the issue with you directly before resorting to litigation. She never received a response from either you nor Mitch. You were then notified by letter from our firm on December 11, 2008 that we had been contacted by Ms. Stipp with regard to post-divorce issues between her and your client. Now we are just discovering that the very next day, December 12, 2008, you filed your request for FMC Mediation, without notifying us, our client or even attempting to stipulate to mediation on the matter.

After receiving no response from you or your client, we were left with no choice but to file our motion on December 17, 2008. Even upon your receipt of our motion, you did not give us the professional courtesy of notifying us that you had already filed a request for mediation on these very same issues, which our client only became aware of late last week. Instead you requested an extension to file a response to our motion until January 7, 2009, which we gave you the courtesy of granting, knowing full well that a mediation was scheduled for that same day, and our client would therefore be forced to go into a mediation without knowing what issues were to be discussed or knowing your client's position on the same. While you have taken the position that you "didn't have to" give either us or our client any notice that you requested mediation, we strongly disagree and

S:\Stipp\Correspondence\Opposing Counsel\1.8.08 to Radford Smith sp .wpd

Radford J. Smith, Esq.  
Re: Stipp v. Stipp  
January 5, 2009  
Page 2

feel that notice is absolutely required. It certainly would have given a mediation a better chance of success if our client was aware of the issues being discussed.

Sincerely,

JIMMERSON HANSEN, P.C.

A handwritten signature in cursive script, appearing to read "Michele L. Roberts".

Michele L. Roberts, Esq.

MLR/smp

cc: Christina Calderon-Stipp

**OPPOSITION/COUNTERMOTION**

**EXHIBIT 4**

ORIGINAL

DISTRICT COURT  
CLARK COUNTY, NEVADA

FILED

Aug 7 10 24 AM '09

MITCHELL D. STIPP,

Plaintiff

vs

Case No. D-08-389203-Z  
Department No. O

CHRISTINA C. STIPP,

Defendant

## STIPULATION AND ORDER

Date of Hearing: 8-7-09

Time of Hearing: 11:00 a.m.

The parties hereby desire to modify certain provisions of the Marital Settlement Agreement dated February 20, 2008 ("MSA"), and any provisions not specifically and expressly modified herein shall remain in full force and effect. The parents have met in mediation and have agreed to a Stipulation and Order that will cover timeshare, the right of first refusal, telephone communications with the children, and completion of a C.O.P.E. class. The intent of this Stipulation and Order is to promote healthy relationships between the children, Mia E. Stipp, DOB: 10-19-04, Ethan C. Stipp, DOB: 3-24-07, and their parents. Each of the parents, Christina C. Stipp, natural mother, and Mitchell D. Stipp, natural father, agree that co-parenting requires the acceptance of mutual responsibilities and rights as far as the children are concerned.

TIMESHARE PROVISIONS

The parties agree to modify their "Normal Visitation" schedule as defined in Exhibit A of the MSA, as follows:

1. On the first, third and, if there is one, fifth weekend of each month the father shall have the children in his care from Friday at 6:00 p.m. until Sunday at 6:00 p.m., provided, however, that upon three days prior written notice to father, mother

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shall have the right to have the children in her care on the first weekend of the month. If mother exercises said right, father shall have the children in his care from the Wednesday preceding the first weekend of the month at 6:00 p.m. until the Friday preceding the first weekend of the month at 6:00 p.m.

2. Father shall have the children in his care during the second and fourth weekends of the month from Thursday at 6:00 p.m. until Sunday at 6:00 p.m.
3. Mother shall have the children in her care at all times not specifically provided to father above or otherwise provided to father in Exhibit A of the MSA not specifically modified herein.

### SPECIAL PROVISIONS

#### Right Of First Refusal

The parents agree that they shall have a right of first refusal to the exclusion of all other third parties. Should either parent be unable to provide care for the children (or either of them) during his or her custodial time for a period of four hours or more, the other parent shall have the right to provide care for the children. The parent unable to provide care shall notify the other parent as soon as reasonably possible so as to allow that party the option of providing care for the children.

#### Telephone Communications With The Children

The parents agree to facilitate reasonable telephonic communication with the children such that the non-custodial parent shall have at least one phone call per day with the children. The call must be placed by the custodial parent between the hours of 7:00 a.m. and 10:00 p.m. They further agree to refrain from interfering with the children's right to privacy during such telephone conversations.

#### Attendance At C.O.P.E. Class

Although the mother has recently attended a C.O.P.E. class, the parents agree that both of them will complete a C.O.P.E. class prior to October 1, 2009.

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1Dismissal With Prejudice

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The parties' desire, by this Stipulation and Order, to resolve all issues raised in father's Motion for Rehearing; Or in the Alternative, Motion to Modify Joint Timeshare filed on April 27, 2009.

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Educational Cost Sharing

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The parties have not reached an agreement on educational cost sharing.

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MODIFYING THE STIPULATION AND ORDER

The terms and conditions of this Stipulation and Order may be modified, in writing, as the needs of the children and/or the circumstances of the parents change. However, the parents understand that the concurred changes do not modify this Court Order. The parents are encouraged to utilize mediation to resolve parenting issues prior to seeking Court intervention.

\*\*\*\*\*

The above agreement reflects the Stipulation and Order formulated in mediation. The parents realize they have the right to review this document with an attorney prior to its being reviewed and adopted by the Court.

Mitchell D. Stipp  
Mitchell D. Stipp  
Father

Christina Calderon-Stipp  
Christina Calderon-Stipp  
Mother

DATE July 8, 2009

DATE July 8, 2009

The above and foregoing Stipulation and Order is acceptable to the parties.

Radford J. Smith  
Radford J. Smith  
Attorney for Plaintiff

James J. Jimmerson  
James J. Jimmerson  
Attorney for Defendant

DATE 8/5/09

DATE 7/17/09

ORDER

Based upon the agreement of the parties and good cause being shown, IT IS HEREBY ORDERED that the terms and conditions of the above Stipulation and Order are adopted.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the father's Motion for Rehearing; Or in the Alternative, Motion to Modify Joint Timeshare shall be DISMISSED with prejudice and the hearings currently set for August 7, 2009 and October 27, 2009 shall be VACATED.

DATED this 6 day of August, 2009.

[Signature]  
District Court Judge ga

**OPPOSITION/COUNTERMOTION**

**EXHIBIT 5**

1 JUSTICE COURT, LAS VEGAS TOWNSHIP

2 **FILED**  
CLARK COUNTY, NEVADA

3 THE STATE OF NEVADA,

4 Plaintiff,

5 -vs-

6 MITCHELL DAVID STIPP #2598202,

7 Defendant.

2008 DEC -2 A 7 52

JUSTICE COURT  
LAS VEGAS, NEVADA

BY JSP

CASE NO: 08M14158X

DEPT NO: 3

8 CRIMINAL COMPLAINT

9 The Defendant above named having committed the crime of DRIVING AND/OR  
10 BEING IN ACTUAL PHYSICAL CONTROL WHILE UNDER THE INFLUENCE OF  
11 INTOXICATING LIQUOR (Misdemeanor - NRS 484.379), in the manner following, to-wit:

12 That the said Defendant, on or about the 13th day of May, 2008, at and within the County of  
13 Clark, State of Nevada, did then and there wilfully and unlawfully drive and/or be in actual  
14 physical control of a motor vehicle, to-wit: a 2007 Mercedes, bearing Nevada License No.  
15 LV336F, on a highway, or on premises to which the public has access, to-wit: Paradise and  
16 Desert Inn, Las Vegas, Clark County, Nevada, while under the influence of intoxicating  
17 liquor to any degree, however slight, which rendered him incapable of safely driving and/or  
18 exercising actual physical control and/or while he had a concentration of alcohol of .08 or  
19 more in his blood or breath, and/or when the Defendant was found to have a concentration of  
20 alcohol of .08 or more in his blood sample which was taken within two (2) hours after  
21 driving and/or being in actual physical control of said vehicle.

22 All of which is contrary to the form, force and effect of Statutes in such cases made  
23 and provided and against the peace and dignity of the State of Nevada. Said Complainant  
24 makes this declaration subject to the penalty of perjury.

25  
26  
27 08M14158X/td  
28 LVMPD EV# 0805133482  
(TK3)

11/17/2008



# Justice Court, Las Vegas Towns.

STATE VS. STIPP, MITCHELL DAVIDCASE NO. 08M14158X

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO

MAY 13, 2008	DEFENDANT RELEASED PER JUDGE JANSEN	8-12-08 8:00 #3
DECEMBER 2, 2008	CRIMINAL COMPLAINT FILED: DRIVING AND/OR BEING IN ACTUAL PHYSICAL CONTROL WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR	JCC
DECEMBER 30, 2008 T. ABBATANGELO D. RINETTI, DA F. CREMEN, ESQ. (CONFIRMS) R. SILVAGGIO, CR S. ROBINSON, CLK	INITIAL ARRAIGNMENT DEFENDANT NOT PRESENT IN COURT DEFENSE ADVISED OF CHARGES/WAIVES READING OF COMPLAINT PLEA OF NOT GUILTY, SET FOR TRIAL WRITTEN ACKNOWLEDGMENT TO BE FILED  NO BAIL POSTED	5-21-09 10:00 #3  JCC RIM IMAGEL AA
MAY 21, 2009 T. ABBATANGELO P. SAMPLES, DA F. CREMEN, ESQ. R. SILVAGGIO, CR S. ROBINSON, CLK	TIME SET FOR TRIAL DEFENDANT NOT PRESENT IN COURT DEFENSE MOTION TO CONTINUE - NO OBJECTION BY STATE - GRANTED CONTINUED FOR STATUS CHECK ON POSSIBLE NEGOTIATIONS  NO BAIL POSTED	5-27-09 8 AM #3  SR
MAY 27, 2009 T. ABBATANGELO C. PANDELIS, DA F. CREMEN, ESQ. D. MCCORD, CR S. ROBINSON, CLK	DEFENDANT PRESENT IN COURT PLEA OF NOLO CONTENDRE - ADJUDICATION WITHHELD DEFENDANT TO STAY OUT OF TROUBLE DEFENDANT TO ATTEND DUI SCHOOL AND VICTIM IMPACT PANEL \$403 FINE \$100 AA \$7 SAA \$10 FAA \$60 ANALYSIS FEE \$580 TOTAL DUE DEFENDANT GIVEN CREDIT FOR 2 DAYS SPENT IN JAIL CASE TO BE REDUCED TO RECKLESS DRIVING DATE SET	8-26-09 8:00 #3  JCC
	NO BAIL POSTED	

# JUSTICE COURT, LAS VEGAS TOWNSHIP

STATE VS. STIPP, MITCHELL DAVID

CASE NO. 08M14158X

PAGE:

DATE, JUDGE  
OFFICERS OF COURT  
PRESENT

**APPEARANCES - HEARING**

CONTINUED TO:

MAY 27, 2009	\$580 CASH BAIL POSTED BY MITCHELL STIPP	8-26-09 8:00 #3
		JCC
AUGUST 26, 2009 T. ABBATANGELO G. O'BRIEN, DA F. CREMEN, ESQ. R. SILVAGGIO, CR S. ROBINSON, CLK	DEFENDANT NOT PRESENT IN COURT MOTION BY STATE TO AMEND COMPLAILNT TO RECKLESS DRIVING – GRANTED \$520 FINE, \$60 ANALYSIS FEE – TOTAL DUE \$580 – PAID OUT OF CASH BAIL DUI SCHOOL AND VICTIM IMPACT PANEL – COMPLETED CASE CLOSED	DP

1 CASE NO.

2 DEPT. NO. 3

3 CERTIFIED  
4 COPY

5  
6 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP

7 COUNTY OF CLARK, STATE OF NEVADA

8  
9  
10 THE STATE OF NEVADA, )

11 Plaintiff, )

Case No. 08M14158X

12 -vs- )

13 MITCHELL DAVID STIPP, )

14 Defendant. )

15 REPORTER'S TRANSCRIPT  
16 OF  
17 INITIAL ARRAIGNMENT

18 BEFORE THE HONORABLE TONY L. ABBATANGELO  
19 JUSTICE OF THE PEACE

20 Tuesday, December 30, 2008, 8:00 a.m.

21 APPEARANCES:

22 For the State:

DENA RINETTI, ESQ.  
Deputy District Attorney

23 For the Defendant:

24 FRANK CREMEN, ESQ.  
Attorney at Law

25 Reported by: RENEE SILVAGGIO, C.C.R. NO. 122



1 CASE NO.  
2 DEFT. NO. 3

4  
5  
6 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP  
7 COUNTY OF CLARK, STATE OF NEVADA  
8

9 THE STATE OF NEVADA, )  
10 Plaintiff, ) Case No. 36M14158X  
11 -vs- )  
12 )  
13 MITCHELL DAVID STIPP, )  
14 Defendant. )

15 REPORTER'S TRANSCRIPT  
16 OF  
17 INITIAL APPEARANCE

18 BEFORE THE HONORABLE TONY L. ABBATANGELO  
19 JUSTICE OF THE PEACE

20 Tuesday, December 30, 2008, 8:00 a.m.

21 APPEARANCES:

22 For the State: DENA RINETTI, ESQ.  
23 Deputy District Attorney  
24 For the Defendant: FRANK CREMEN, ESQ.  
25 Attorney at Law

26 Reported by: RENEE SILVAGGIO, C.C.R. NO. 122

1 Las Vegas, Clark County, Nevada  
2 Tuesday, December 30, 2008, 8:00 a.m.

3 PROCEEDINGS  
4 \*\*\*\*\*

5  
6  
7 THE COURT: Mitchell Stipp, S-t-i-p-p, AM14158X.

8 Mr. Cremen to counsel.

9 MR. RINETTI: Yes, I can confirm as counsel, enter a  
10 plea of not guilty, and ask for a trial date.

11 THE CLERK: The trial is set for 10:00 a.m.

12 MR. CREMEN: Thank you.

13 THE COURT: You are welcome.

14  
15  
16 His Honor has been seated.

17 \*\*\*\*\*

18 APPROVED: Will, true and correct transcript of proceedings.

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IN THE JUSTICE'S COURT OF LAS VEGAS TOWNSHIP

4

COUNTY OF CLARK, STATE OF NEVADA

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STATE OF NEVADA,

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Plaintiff,

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vs.

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Defendant.

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**REPORTER'S TRANSCRIPT**

14

**OF**

15

**DUI PLEA**

16

BEFORE THE HONORABLE TONY L. ABBATANGELO  
JUSTICE OF THE PEACE

17

WEDNESDAY, MAY 27, 2009

18

19

APPEARANCES:

20

21

For the State:

CHRISTOPHER PANDELIS, ESQ.  
Deputy District Attorney

22

23

For the Defendant:

FRANK CREMEN, ESQ.

24

25

Reported by: Donna J. McCord, CCR #337

Donna J. McCord

CCR #337

(702) 671-3365

1 LAS VEGAS, NEVADA, MAY 27, 2009, 8:00 A.M.

2

3

\* \* \* \* \*

4

5 THE COURT: Mitchell Stipp, 8M14158X.

6

MR. CREMEN: Good morning, your Honor.

7

Frank Cremen appearing on his behalf. This is on

8

for change of plea. I have an acknowledgment form

9

here. Your Honor, this is a deferred adjudication.

10

There were proof problems.

11

THE COURT: And what are we going to do on

12

this one? What's the sentence I mean?

13

MR. CREMEN: The minimums, your Honor.

14

THE COURT: Withhold adjudication and a

15

reckless?

16

MR. CREMEN: Yes.

17

THE COURT: Mr. Stipp -- well, first of

18

all, Mr. Pandelis, do you have the notes in the

19

file?

20

MR. PANDELIS: Yes, your Honor. Mr.

21

Cremen's statement of the negotiation was correct.

22

THE COURT: And Mr. Stipp, do you

23

understand your negotiations?

24

THE DEFENDANT: Yes.

25

THE COURT: Do you understand if you do

Donna J. McCord

CCR #337

(702) 671-3365

1     what we ask you to do you will end up with a  
2     reckless driving?

3                 THE DEFENDANT:   Yes.

4                 THE COURT:   And if not you will be  
5     convicted of a first offense DUI?

6                 THE DEFENDANT:   Yes.

7                 THE COURT:   Did you understand your  
8     admonishment?

9                 THE DEFENDANT:   Yes.

10                THE COURT:   Today by -- nolo or guilty?

11                MR. CREMEN:   No contest, your Honor.

12                THE COURT:   And today by pleading no  
13     contest and us withholding adjudication you're  
14     giving up or waiving your right to a trial.  At that  
15     trial the State would have to prove beyond a  
16     reasonable doubt that you committed the alleged  
17     crime of driving while under the influence of  
18     alcohol.  You're also waiving your right to confront  
19     and cross-examine the State's witnesses through the  
20     assistance of your attorney.  You're waiving your  
21     right to testify on your own behalf.  You're waiving  
22     your right to present any evidence to defend  
23     yourself on your own behalf as well and the right to  
24     file an appeal except for on constitutional or  
25     jurisdictional grounds.

1 Do you understand by pleading no  
2 contest you're waiving these rights?

3 THE DEFENDANT: Yes.

4 THE COURT: The range of punishment for a  
5 first offense has a two-day minimum sentence up to  
6 six months in jail; or 48 hours of community service  
7 but not more than 96 hours; DUI school, Victim  
8 Impact Panel. If your blood or breath alcohol level  
9 was .18 or more the Court will require an alcohol  
10 and drug dependency evaluation and assess a \$100  
11 fee. The Department of Motor Vehicles will revoke  
12 or suspend your license for 90 days and impose a \$35  
13 civil penalty.

14 Do you understand that's the range of  
15 punishment for a first offense?

16 THE DEFENDANT: Yes.

17 THE COURT: When you read and signed the  
18 admonishment of rights form did you understand the  
19 range of punishment for a second offense?

20 THE DEFENDANT: Yes.

21 THE COURT: And did you understand that it  
22 is still a misdemeanor in the State of Nevada?

23 THE DEFENDANT: Yes.

24 THE COURT: When you read and signed the  
25 admonishment of rights form did you understand that

1 a third offense conviction within the State of  
2 Nevada within seven years in the State of Nevada is  
3 a felony?

4 THE DEFENDANT: Yes.

5 THE COURT: And did you understand that  
6 range of punishment?

7 THE DEFENDANT: Yes.

8 THE COURT: Has anybody made a promise or  
9 a threat to you to enter a plea today?

10 THE DEFENDANT: No.

11 THE COURT: Are you entering this plea  
12 because you want to freely and voluntarily?

13 THE DEFENDANT: Yes.

14 THE COURT: Are you entering this plea  
15 knowingly and intelligently?

16 THE DEFENDANT: Yes.

17 THE COURT: And Mr. Cremen, does the  
18 defense stipulate the State could prove the facts  
19 stated within the complaint beyond a reasonable  
20 doubt?

21 MR. CREMEN: Yes, your Honor, it does.

22 THE COURT: And Mr. Pandelis, does the  
23 State stipulate they can prove those facts beyond a  
24 reasonable doubt?

25 MR. PANDELIS: Yes, your Honor.

1 THE COURT: How do you want to plead to  
2 the charge, sir?

3 THE DEFENDANT: No contest.

4 THE COURT: We'll accept the no contest  
5 plea and withhold adjudication which means you're  
6 pleading guilty without admitting the facts and you  
7 are not found guilty. If you do the requirements  
8 we'll amend it to reckless. Mr. Cremen can appear  
9 for you. You will not have to come back. If in 90  
10 days it's all done case closed. If in 90 days you  
11 have the DUI school done and the Victim Impact Panel  
12 done but need more time to pay the fine we'll work  
13 with you as long as you're remaining trouble free as  
14 well.

15 THE CLERK: August 26th, 8:00 a.m.

16 MR. CREMEN: Your Honor, may he do the DUI  
17 school by correspondence? He travels a lot.

18 THE COURT: Yes, Justice Court has it by  
19 Internet and Legal Rehab is also certified by DMV to  
20 do it as well.

21 MR. CREMEN: Thank you, your Honor. I  
22 appreciate it.

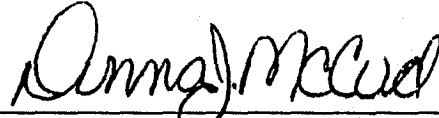
23 THE COURT: You're welcome.

24 ///

25 ///

\* \* \* \* \*

Attest: Full, true, accurate transcript of  
proceedings.



DONNA J. McCORD CCR #337



CERTIFIED  
COPY

1 CASE NO.

2 DEPT. NO. 3

3  
4  
5 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP  
6 COUNTY OF CLARK, STATE OF NEVADA  
78  
9 THE STATE OF NEVADA, )

10 Plaintiff, )

Case No. 08M24258X

11 -vs- )

12 MITCHELL DAVID STIPP, )

13 Defendant. )

14  
15 REPORTER'S TRANSCRIPT  
OF  
16 MOTION TO AMEND COMPLAINT17 BEFORE THE HONORABLE TONY L. ABBATANGELO  
JUSTICE OF THE PEACE

18 Wednesday, August 26, 2009, 9:00 a.m.

## 19 APPEARANCES:

20 For the State:

HETTY WONG, ESQ.  
Deputy District Attorney

22 For the Defendant:

FRANK CREMEN, ESQ.  
Attorney at Law23  
24  
25 Reported by: RENEE SILVAGGIO, C.C.R. NO. 122

1 CASE NO.  
2 DEFT. NO. 3  
3  
4

IN THE JUSTICE COURT OF LAS VEGAS, NEVADA  
COUNTY OF CLARK, STATE OF NEVADA

5 THE STATE OF NEVADA,                     1  
6                     Plaintiff,                     2 Case No. 08MC4258X  
7                     -vs-                     3  
8                     MITCHELL DAVID STIPP,                     4  
9                     Defendant,                     5

10 REPORTER'S TRANSCRIPT  
11 OF  
12 MOTION TO AMEND COMPLAINT

13 BEFORE THE HONORABLE TONY L. ABBATANGELO  
14 JUSTICE OF THE PEACE

15 Wednesday, August 26, 2009, 9:00 a.m.

16 APPEARANCES:

17 For the State:                     HETTY WONG, ESQ.  
18                     Deputy District Attorney

19 For the Defendant:                     FRANK CREMEN, ESQ.  
20                     Attorney at Law

21 Reported by: RENEE SILVAGGIO, C.C.R. NO. 122

1  
2  
3  
4 ATTEST: Full, true and accurate transcript of proceedings.  
5  
6  
7  
8  
9

10 RENEE SILVAGGIO, C.C.R. 122  
11 Official Court Reporter  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 Las Vegas, Clark County, Nevada  
2 Wednesday, August 26, 2009, 9:00 a.m.  
3

4 P R O C E E D I N G S

5 \* \* \* \* \*

6  
7 THE COURT: Mitchell Stipp, 8M14158X.

8 MR. FREMEN: Frank Cremen appearing on his behalf.

9 He's done everything.

10 You should have a receipt in the file or I could  
11 provide you documentation with the Victim Impact Panel and proof  
12 of courts --

13 THE COURT: And we have proof of the OUI School being  
14 paid for and completed, Legal Rehab, as well as Stop OUI. So we  
15 have all the requirements.

16 MR. CREMEN: Okay.

17 THE COURT: Has the defendant remained trouble free?

18 MR. CREMEN: He has.

19 MS. WONG: Yes, sir.

20 THE COURT: As to the charge of: Reckless driving,  
case closed.

21 MR. CREMEN: Thank you, Your Honor.

22 THE COURT: You are welcome.  
23  
24

25 (Proceedings concluded.)

**OPPOSITION/COUNTERMOTION**

**EXHIBIT 6**

C5082421  
J5082421-REPORT 2A

PAGE: 11  
08/29/2009

JUSTICE COURT, LAS VEGAS TOWNSHIP  
CLARK COUNTY REGIONAL JUSTICE CENTER  
200 LEWIS AVENUE  
LAS VEGAS, NEVADA 89101  
COURT 128  
DISPOSITION NOTICE AND JUDGMENT

CASE NUMBER - 08M14158X

STATE VS: STIPP, MITCHELL DAVID

ID #: 02598202

AKA: STIPP, MITCHELL DAVID

DR NUMBER:

START DATE: 05/13/2008

ARRESTED BY: GOSLAR, RICHARD D

ARREST DATE: 05/13/2008

SUBMITTED BY: NO SUBMITTING OFFICER

SUBMIT DATE: 05/13/2008

PROSECUTOR: HETTY WONG

DISPO DATE: 08/26/2009

001 CHARGE: 484.3791 M DUI-ALCOHOL-1ST OFFENSE  
DISPOSITION: -----GUILTY----- RECKLESS DRIVING

SENTENCED: 08/26/2009

FINED: \$ 580

EXCUSED: \$ 0

JAIL TIME: MOS

DAYS

HRS

CONS/CONC:

CTS : MOS

DAYS 002 HRS

COMM SERV: DAYS

HRS

MIN

RESTITUTION: \$

0

CONTRIBUTION: \$

0

DRUG FEE: \$ 60

EDUCATION: DUI SCHOOL/VICTIM IMPACT PANEL

CITATION: 0805133482

PCN: 0025052531

SEQ: 001

*Tony Abbot*

The document is a true and correct  
copy of the original and of record  
in Justice Court of Las Vegas Township,  
in and for the County of Clark, State of  
Nevada.

Sgt. *[Signature]* Deputy  
Date: NOV 24 2009

3 c

**OPPOSITION/COUNTERMOTION**

**EXHIBIT 7**

STIPP

205589135

UNDERWRITING REVIEW

NOVEMBER 07, 2006  
2061DRIVER  
STIPP, CHRISTINA

SSN: [REDACTED]

122199 CLEAR

STIPP, MITCHELL

SSN: [REDACTED]

122199 HIT

CALDERON, ANTHONY

SSN: [REDACTED]

081605 HIT

102402 012403 CONV SPEED 1-10 OVER LIMIT

CALDERON, ELENA

SSN: [REDACTED]

071003 CLEAR

081299 090899 CONV SPEED 1-10 OVER LIMIT

BIRTHDATE LICENSE NUMBER

DRL EXP ST MVR  
Y-E NV 12/99

Y-E NV 12/99

3 Y-S NV 08/05

Y-S NV 07/03

## VEHICLE

## CLASS

## PRIN DOB

## OCC/REG DOB

1. 05 CADILLAC

ESCALADE

1D3H40I

02/05/1975

2. 07 MERCEDES

SL55 AMG

1A3010I

04/01/1975

L DOL

CLAIM NO.

DRIVER OR POLICY

COVERAGES OR CAUSE

AMT PD

A 10/26/2006

28-3293-937

STIPP, MITCHELL

GR

10645 C

F:INSURED WAS LEAVING WORK AND WENT AROUND A CORNER AND THERE WAS WATER ON THE  
PAVEMENT AND HE SLEW INTO CURB A: 100% INSD C:403 501 CTLU (Y/N):403Y501Y S:

A 04/06/2004

CX-2739-761

CALDERON, ANTHONY

AB

996 C

LHR SUBJECT CLAIM, REF #: 05629123243067, PRIOR INS: MERCURY INSURANCE CO

A 01/21/2003

28-3130-846

STIPP, CHRISTINA

GRC

3148 CS

I WAS STOPPED IN THE RT HAND LANE AS TRAFFIC WAS STOPPED AND V#2 HIT V#3 PUSH  
ING V#3 OUT OF THE TRAFFIC LANE AND THEN V#2 HIT V#1 PUSHING V#1 INTO V#4.



RBZ00032  
date: 11-07-06  
time: 02:15 PM

route to: Sanchez, Barbara

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

## VEHICLE DAMAGE REPORT

claim number

28-3293-937

date of loss  
10-26-06

```
*****  
* Estimate Vehicle Info *  
*  
* Vehicle Owner: STIPP, MITCHELL *  
* Vehicle Description: 07 Mercedes-Ben SL55 2D Conv BLACK *  
*  
*****
```

Date: 10/31/2006 09:57 AM  
Estimate ID: 28-3293-93701  
Estimate Version: 0  
Committed  
Profile ID: CUSTOMIZED

I. Labor Subtotals	Units	Rate	Add'l Labor Amount	Sublet Amount	Totals	II. Part Replacement Summary	Amount
Body	6.6	40.00	0.00	0.00	264.00	Taxable Parts	6,358.50
Refinish	6.0	40.00	0.00	0.00	240.00	Sales Tax @ 7.750%	492.78
Mechanical	18.4	125.00	0.00	0.00	2,300.00	Non-Taxable Parts	1,001.00
Non-Taxable Labor					2,804.00	Total Replacement Parts Amount	7,852.28
Labor Summary	31.0				2,804.00		
II. Additional Costs					Amount	IV. Adjustments	Amount
Taxable Costs					162.00	Insurance Deductible	250.00-
Sales Tax @ 7.750%					12.56	Customer Responsibility	250.00-
Non-Taxable Costs					5.00		
Total Additional Costs					179.56		
					I. Total Labor:		2,804.00
					II. Total Replacement Parts:		7,852.28
					III. Total Additional Costs:		179.56
					Gross Total:		10,835.84
					IV. Total Adjustments:		250.00-
					Net Total:		10,585.84

Point(s) of Impact

1 LEFT FRONT CORNER (P)

Inspection Site: FLETCHER JONES IMPORTS  
Inspection Date: 10/31/2006

ESTIMATE RECALL NUMBER: 10/31/2006 10:13:09 28-3293-93701

Mitchell Data Version: OCT\_06\_A  
UltraMate Version: 5.0.215

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All Rights Reserved

Page 3 of 4



**OPPOSITION/COUNTERMOTION**

**EXHIBIT 8**

# Traffic Case Records Search Results

Logout Search Menu New Traffic Citation Search

Search Criteria: stipp, mitchell

Location : Traffic Help

Case Number	Citation Number	Defendant Info	Filed/Location	Type/Status	Charge(s)
<u>1S0110645</u>	1S0110645	STIPP, MITCHELL	C 10/14/2004	Traffic	ILLEGAL PARKING
	1S0110645		Traffic	Closed	DISMISSED CHARGE
<u>102877799</u>	102877799	STIPP, MITCHELL	01/24/2003	Traffic	ILLEGAL PARKING
			Traffic	Closed	
<u>103334651</u>	103334651	STIPP, MITCHELL	C 01/28/2004	Traffic	ILLEGAL PARKING
			Traffic	Closed	
<u>103639788</u>	103639788	Stipp, Mitchell David	10/24/2006	Traffic	ILLEGAL PARKING
			Traffic	Closed	
<u>103763386</u>	103763386	STIPP, MITCHELL	05/31/2007	Traffic	ILLEGAL PARKING
	103763386		Traffic	Closed	INSURANCE REQUIRED
<u>E06191075704677</u>	E06191075704677	STIPP, MITCHELL	C 07/10/2006	Traffic	INSURANCE REQUIRED
	E06191075704677		Traffic	Closed	ILLEGAL PARKING
<u>E07297090403668</u>	E07297090403668	STIPP, MITCHELL	C 10/26/2007	Traffic	ILLEGAL PARKING
			Traffic	Closed	
<u>E08134234104068</u>	E08134234104068	STIPP, MITCHELL	C 05/16/2008	Traffic	EXPIRED LICENSE PLATE
	E08134234104068		Traffic	Closed	RESTRICTED LICENSE

**OPPOSITION/COUNTERMOTION**

**EXHIBIT 9**

CODE: \_\_\_\_\_  
Radford J. Smith, Chartered  
Nevada Bar No. 002791  
64 North Pecos Road Suite #700  
Henderson, NV 89074  
Attorney for Defendant

IN THE FAMILY DIVISION  
OF THE EIGHTH JUDICIAL DISTRICT COURT  
IN AND FOR THE COUNTY OF CLARK, STATE OF NEVADA

CHRISTINA CALDERON STIPP  
Plaintiff or Petitioner

Case No. D-08-389203-Z

Dept. No. O

MITCHELL DAVID STIPP  
Defendant or Respondent  
\_\_\_\_\_ /

FINANCIAL DISCLOSURE FORM

Financial Statement of: MITCHELL DAVID STIPP

First name Middle Last name

Occupation: Attorney

Employed by: MSJM Advisors, LLC From: 6/2008 To: Present

Previously Employed by: PLISE From: 12/2003 To: 6/2008

Age & Date of Birth: 33 and April 1, 1975

Level of Education: J.D. (Law School)

Level of Disability, If Any: None

Marriage Date, If Applicable: Married to Amy Stipp, 10/08/08

Present Home Address: 2055 Alcova Ridge Drive, Las Vegas, Nevada 89135

How many adults (over 18) live with you? 1

How much do you receive from each of them each month? \$0.00

I have paid my attorney a retainer of \$0.00; and his/her hourly rate is \$350 to 450

I am the \_\_\_\_\_ Plaintiff/Petitioner X Defendant/Respondent in the above action. I swear under penalty of perjury, that the contents of this Financial Declaration are true to the best of my knowledge as of this date. I understand that by my signature I verify the material accuracy of the contents. I also understand that any willful misstatements may be contemptuous and could result in my punishment by the Court. I understand I have a duty to supplement this form upon discovering additional assets or debts or upon changed circumstances within 10 days of discovery.

I declare under penalty of perjury that the foregoing and following are true and correct.

Executed on: 2-19-2009

Signature: Mitchell Stipp

## PERSONAL INCOME SCHEDULE

### IF SELF-EMPLOYED OR BUSINESS OWNER PLEASE FILL IN THE BUSINESS INCOME/EXPENSE SCHEDULE

#### YOUR OWN INCOME

#### AMOUNT

**EMPLOYMENT INCOME** (if paid weekly multiply by 52 and divide by 12; if paid every two weeks, multiply by 26 and divide by 12)

NOTE: ATTACH COPIES OF  
 YOUR THREE MOST RECENT  
 PAY STUBS.

1	Average Gross Monthly Income from Employment (all employment income including salary \$ _____ + bonuses \$ _____ + overtime \$ _____ + commissions \$ _____ + tips \$ _____ + other \$ _____) =	0
2	Average Monthly Paycheck Deduction-Income Taxes	0
3	Average Monthly Paycheck Deduction-Social Security	0
4	Average Monthly Paycheck Deduction-Medicare	0
5	Average Monthly Paycheck Deduction-Health Insurance	0
6	Average Monthly Paycheck Deduction-Retirement Plan or 401(k)	0
7	Average Monthly Paycheck Deduction-Savings Account	0
8	Average Monthly Paycheck Deduction(s)-Other	0
9	Total Paycheck Deductions per Month (Add lines 2-8 above)	0
10	Average Net Monthly Income from Employment (Subtract line 9 from line 1)	0
<b>OTHER INCOME</b>		
11	Monthly Spousal Support/Alimony Awarded by a Court	0
12	Monthly Child Support: court ordered \$ _____ + other/voluntary child support \$ _____ =	0
13	Investment Income (Dividends, interest and capital gains)	2,000
14	Rental Income (Enter the Amount of Depreciation Claimed in Computing Rental Income Here: \$ _____)	0
15	Retirement Income Including Defined-Benefit Distributions, 401(k) Distributions, military retirement	0
16	Social Security Retirement	0
17	Social Security Disability/military disability	0
18	Supplemental Security Income (SSI)	0
19	Unemployment Benefits	0
20	Workers Compensation Payments	0
21	Other Sources of Income (Describe: such as direct contributions from roommates or indirect payment of expenses by roommates)	0
22	Total Other Income Per Month (Add lines 11-21)	2,000
23	<b>TOTAL INCOME PER MONTH</b> (Add lines 10 and 22)	2,000

**PERSONAL EXPENSE SCHEDULE (NOTE: ALL EXPENSES LISTED BELOW SHOULD BE ON AN AVERAGE MONTHLY BASIS: annual payments divided by 12; semiannual payments divided by 6, and quarterly payments divided by 3)**

**TOTAL AMOUNT**

1	<b>Mortgage or Rent:</b> 1st Mtg. \$ _____ + 2nd Mtg. \$ _____ + line of credit \$ _____ + taxes \$ _____ + insurance \$ _____ =	
2	<b>Utilities:</b> Gas/Oil \$ _____ + electricity \$ _____ + TV/cable \$ _____ + water \$ _____ + garbage \$ _____ =	
3	<b>Telephone:</b> landline \$ _____ + cellular \$ _____ + Internet \$ _____ + fax \$ _____ + other \$ _____ =	
4	<b>Food, Groceries &amp; Incidentals</b> (not including entertainment or dining out)	
5	<b>Transportation:</b> monthly payment/lease \$ _____ + gas and oil \$ _____ + repairs and maintenance, tires \$ _____ + insurance \$ _____ + license/registration \$ _____ + parking \$ _____ + public transportation \$ _____ + other \$ _____ =	
6	<b>House Maintenance:</b> housekeeping \$ _____ + garden/lawn care \$ _____ + snow removal \$ _____ + repairs & maintenance \$ _____ + other \$ _____ =	
7	<b>Entertainment:</b> dining out \$ _____ + movies, shows \$ _____ + music/videos \$ _____ + other \$ _____ =	
8	<b>Dues, Memberships, Fees:</b> Professional \$ _____ + memberships (health club country club) \$ _____ + homeowners \$ _____ + fraternal \$ _____ + business \$ _____ + other \$ _____ =	
9	<b>Health/exercise:</b> clothing/shoes \$ _____ + fees/passes (health clubs etc.) \$ _____ + other \$ _____ =	
10	<b>Clothing:</b> self \$ _____ + children \$ _____ + cleaning \$ _____ =	
11	<b>Vacations</b>	
12	<b>Pets:</b> Food \$ _____ + boarding \$ _____ + healthcare \$ _____ + grooming \$ _____ + other \$ _____ =	
13	<b>Healthcare:</b> Insurance \$ _____ + unreimbursed; medical \$ _____ + dental \$ _____ + orthodontic \$ _____ + medications \$ _____ + counseling \$ _____ + physical therapy \$ _____ + chiropractic \$ _____ + other \$ _____ =	
14	<b>Appearance:</b> hair \$ _____ + nails \$ _____ + facials/massage \$ _____ + cosmetics \$ _____ + other \$ _____ =	
15	<b>Insurance:</b> life \$ _____ + disability \$ _____ + other \$ _____ =	
16	<b>Books, Newspapers &amp; Magazines</b>	
17	<b>Church/Charitable</b>	
18	<b>Accounting &amp; Tax Preparation</b>	
19	<b>Support of Others:</b> Ordered Child Support \$ _____ + voluntary child support \$ _____ + court ordered spousal support \$ _____ + eldercare \$ _____ =	
20	<b>Miscellaneous:</b> Gifts \$ _____ + storage \$ _____ + flowers \$ _____ + savings \$ _____ + Lawyers fees \$ _____ + Other \$ _____ =	
21	<b>Education:</b> Tuition, Books & Fees \$ _____ + extracurricular \$ _____ + sports \$ _____ + music \$ _____ + other \$ _____ =	
22	<b>Childcare:</b> day care \$ _____ + preschool \$ _____ + other \$ _____ =	
23	<b>Minimum Charge Card Payments and other consumer/installment debt:</b> credit card #1 \$ _____ + credit card #2 \$ _____ + credit card #3 \$ _____ + credit card #4 \$ _____ + other debt \$ _____ =	
24	<b>TOTAL MONTHLY EXPENSES</b> (Add lines 1-23 above)	

Case No. \_\_\_\_\_  
Dept. No. \_\_\_\_\_

<b>INCOME/EXPENSE SUMMARY SCHEDULE</b>	
--	--

Total Monthly Income from Personal Income Schedule Line 23	
--	--

Add: Total Average Net Monthly Income from Self-Employment or Business Schedule Line 30	
---	--

Less: Total Monthly Expenses from Personal Expense Schedule line 24	
---	--

Net Monthly Income or (Loss)	
------------------------------	--

**OPPOSITION/COUNTERMOTION**

**EXHIBIT 10**



GENERAL INFORMATION	
<b>PARCEL NO.</b>	164-02-713-101
<b>OWNER AND MAILING ADDRESS</b>	1990 GRANEMORE L L C 2055 ALCORA RIDGE DR LAS VEGAS NV 89135-0000
<b>LOCATION ADDRESS CITY/UNINCORPORATED TOWN</b>	1990 GRANEMORE ST SUMMERLIN
<b>ASSESSOR DESCRIPTION</b>	SUMMERLIN VILLAGE 19 ENCLAVE 2 LOT 3 PLAT BOOK 127 PAGE 4 LOT 147  SEC 02 TWP 21 RNG 59
<b>RECORDED DOCUMENT NO.</b>	* 20090727:02123
<b>RECORDED DATE</b>	07/27/2009
<b>VESTING</b>	NO STATUS

\*Note: Only documents from September 15, 1999 through present are available for viewing.

ASSESSMENT INFORMATION AND SUPPLEMENTAL VALUE	
<b>TAX DISTRICT</b>	420
<b>APPRAISAL YEAR</b>	2009
<b>FISCAL YEAR</b>	09-10
<b>SUPPLEMENTAL IMPROVEMENT VALUE</b>	0
<b>SUPPLEMENTAL IMPROVEMENT ACCOUNT NUMBER</b>	N/A

REAL PROPERTY ASSESSED VALUE		
<b>FISCAL YEAR</b>	2008-09	2009-10
<b>LAND</b>	76125	16844
<b>IMPROVEMENTS</b>	0	0
<b>PERSONAL PROPERTY</b>	0	0
<b>EXEMPT</b>	0	0
<b>GRDSS ASSESSED (SUBTDAL)</b>	76125	16844
<b>TAXABLE LAND+IMP (SUBTDAL)</b>	217500	48126
<b>COMMON ELEMENT ALLOCATION ASSD</b>	0	192
<b>TOTAL ASSESSED VALUE</b>	76125	17036
<b>TOTAL TAXABLE VALUE</b>	217500	48674

ESTIMATED LOT SIZE AND APPRAISAL INFORMATION	
<b>ESTIMATED SIZE</b>	0.07 Acres
<b>ORIGINAL CONST. YEAR</b>	2009
<b>LAST SALE PRICE MONTH/YEAR</b>	221990 07/09
<b>LAND USE</b>	1-10 RESIDENTIAL SINGLE FAMILY
<b>DWELLING UNITS</b>	1

PRIMARY RESIDENTIAL STRUCTURE					
<b>TOTAL LIVING SQ. FT.</b>	2083	<b>CARPORT SQ. FT.</b>	0	<b>ADDN/CONV</b>	NONE
<b>1ST FLOOR SQ. FT.</b>	1013	<b>STORIES</b>	TWO STORY	<b>POOL</b>	NO
<b>2ND FLOOR SQ. FT.</b>	1070	<b>BEDROOMS</b>	3	<b>SPA</b>	NO
<b>BASEMENT SQ. FT.</b>	0	<b>BATHROOMS</b>	3 FULL	<b>TYPE OF CONSTRUCTION</b>	FRAME STUCCO
<b>GARAGE SQ. FT.</b>	452	<b>FIREPLACE</b>	0	<b>ROOF TYPE</b>	CONCRETE TILE

# 1990 GRANEMORE, LLC

## Business Entity Information

Status:	Active	File Date:	7/20/2009
Type:	Domestic Limited-Liability Company	Entity Number:	E0385692009-8
Qualifying State:	NV	List of Officers Due:	7/31/2010
Managed By:	Managers	Expiration Date:	
NV Business ID:	NV20091048410	Business License Exp:	

## Registered Agent Information

Name:	1990 GRANEMORE, LLC	Address 1:	2055 ALCOVA RIDGE DRIVE
Address 2:		City:	LAS VEGAS
State:	NV	Zip Code:	89135
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Noncommercial Registered Agent		

## Financial Information

No Par Share Count:	0	Capital Amount:	\$ 0
No stock records found for this company			

## Officers

☐ Include Inactive Officers

Manager - MITCHELL STIPP			
Address 1:	2055 ALCOVA RIDGE DRIVE	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89135	Country:	USA
Status:	Active	Email:	

## Actions\Amendments

Action Type:	Articles of Organization		
Document Number:	00002362072-42	# of Pages:	2
File Date:	7/20/2009	Effective Date:	
(No notes for this action)			
Action Type:	Initial List		
Document Number:	20090602408-81	# of Pages:	1
File Date:	8/06/2009	Effective Date:	
(No notes for this action)			

**OPPOSITION/COUNTERMOTION**

**EXHIBIT 11**

# United States Bankruptcy Court

## \_\_\_\_ District Of Nevada

In re City Crossing 1, LLC,  
Debtor

Case No. 08-15780

Chapter 11

### SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors also must complete the "Statistical Summary of Certain Liabilities and Related Data" if they file a case under chapter 7, 11, or 13.

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A - Real Property	Yes	1	\$ 241,990,000.00		
B - Personal Property	Yes	3	\$ 35,172.94		
C - Property Claimed as Exempt	No				
D - Creditors Holding Secured Claims	Yes	6		\$ 182,786,925.88	
E - Creditors Holding Unsecured Priority Claims (Total of Claims on Schedule E)	Yes	3		\$ 298,015.49	
F - Creditors Holding Unsecured Nonpriority Claims	Yes	3		\$ 11,116,593.23	
G - Executory Contracts and Unexpired Leases	Yes	4			
H - Codebtors	Yes	2			
I - Current Income of Individual Debtor(s)					\$
J - Current Expenditures of Individual Debtors(s)					\$
<b>TOTAL</b>		22	\$ 242,025,172.94	\$ 194,201,534.60	

## United States Bankruptcy Court

District Of Nevada

In re City Crossing 1, LLC,  
DebtorCase No. 08-15780Chapter 11

## STATISTICAL SUMMARY OF CERTAIN LIABILITIES AND RELATED DATA (28 U.S.C. § 159)

If you are an individual debtor whose debts are primarily consumer debts, as defined in § 101(8) of the Bankruptcy Code (11 U.S.C. § 101(8)), filing a case under chapter 7, 11 or 13, you must report all information requested below.

☐ Check this box if you are an individual debtor whose debts are NOT primarily consumer debts. You are not required to report any information here.

This information is for statistical purposes only under 28 U.S.C. § 159.

Summarize the following types of liabilities, as reported in the Schedules, and total them.

Type of Liability	Amount
Domestic Support Obligations (from Schedule E)	\$
Taxes and Certain Other Debts Owed to Governmental Units (from Schedule E)	\$
Claims for Death or Personal Injury While Debtor Was Intoxicated (from Schedule E) (whether disputed or undisputed)	\$
Student Loan Obligations (from Schedule F)	\$
Domestic Support, Separation Agreement, and Divorce Decree Obligations Not Reported on Schedule E	\$
Obligations to Pension or Profit-Sharing, and Other Similar Obligations (from Schedule F)	\$
<b>TOTAL</b>	<b>\$ 0.00</b>

## State the following:

Average Income (from Schedule I, Line 16)	\$
Average Expenses (from Schedule J, Line 18)	\$
Current Monthly Income (from Form 22A Line 12; OR, Form 22B Line 11; OR, Form 22C Line 20)	\$

## State the following:

1. Total from Schedule D, "UNSECURED PORTION, IF ANY" column	\$
2. Total from Schedule E, "AMOUNT ENTITLED TO PRIORITY" column.	\$
3. Total from Schedule E, "AMOUNT NOT ENTITLED TO PRIORITY, IF ANY" column	\$
4. Total from Schedule F	\$
5. Total of non-priority unsecured debt (sum of 1, 3, and 4)	\$ 0.00

In re City Crossing 1, LLC,  
DebtorCase No. 08-15780 (BAM)  
(If known)**SCHEDULE A - REAL PROPERTY**

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a co-tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
Approximately 126 Acres of Vacant Land in Henderson, Nevada	Sole owner		241,990,000.00	
Total >			241,990,000.00	
(Report also on Summary of Schedules.)				

In re City Crossing 1, LLC,  
 Debtor

Case No. 08-15780 (BAM)  
 (If known)

## SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "X" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	H U S B A N D W I F E J O I N T O R C O M M U N I T Y	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand.	X			
2. Checking, savings or other financial accounts, certificates of deposit or shares in banks, savings and loan, thrift, building and loan, and home- stead associations, or credit unions, brokerage houses, or cooperatives.		Community Bank of Nevada Account # 1002001056 (\$1,623.79)  US Bank Account # 153751161883 (\$5,372.15)		6,995.94
3. Security deposits with public utilities, telephone companies, landlords, and others.		Nevada Power Company Project # 0000186581 Refundable deposit 6725 W. Sahara Ave., Las Vegas, NV 89146		28,177.00
4. Household goods and furnishings, including audio, video, and computer equipment.	X			
5. Books; pictures and other art objects; antiques; stamp, coin, record, tape, compact disc, and other collections or collectibles.	X			
6. Wearing apparel.	X			
7. Furs and jewelry.	X			
8. Firearms and sports, photographic, and other hobby equipment.	X			
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10. Annuities. Itemize and name each issuer.	X			
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c); Rule 1007(b)).	X			

B6B (Official Form 6B) (12/07) -- Cont.

In re City Crossing I, LLC,

Debtor

Case No. 08-15780

(If known)

**SCHEDULE B - PERSONAL PROPERTY**

(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.	X			
13. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and non-negotiable instruments.	X			
16. Accounts receivable.	X			
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.	X			
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	X			
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			



In re City Crossing 1, LLC,

Debtor

Case No. 08-15780

(If known)

## SCHEDULE B - PERSONAL PROPERTY

(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41 A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers, and other vehicles and accessories.	X			
26. Boats, motors, and accessories.	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.	X			
29. Machinery, fixtures, equipment, and supplies used in business.	X			
30. Inventory.	X			
31. Animals.	X			
32. Crops - growing or harvested. Give particulars.	X			
33. Farming equipment and implements.	X			
34. Farm supplies, chemicals, and feed.	X			
35. Other personal property of any kind not already listed. Itemize.	X			
<p>0 continuation sheets attached Total &gt;</p> <p>(Include amounts from any continuation sheets attached. Report total also on Summary of Schedules.)</p>				\$ 35,172.94

B6D (Official Form 6D) (12/07)

In re City Crossing 1, LLC,

Debtor

Case No. 08-15780 (BAM)

(If known)

**SCHEDULE D – CREDITORS HOLDING SECURED CLAIMS**

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is the creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H – Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim Without Deducting Value of Collateral" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion, if Any" on the Statistical Summary of Certain Liabilities and Related Data.



Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER (See Instructions Above)	CODEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. Alper Limited Partnership, Eliot A. Alper, General Partner; Eliot A. Alper Revocable Trust, Dated March 22, 1999, Eliot A. Alper, Trustee; Susan J. Vermillion Separate Property Trust Dated April 24, 1997, Susan J. Vermillion, Trustee; Tina A. Alper Revocable Trust, Dated June 22, 1999, Tina E. Alper, Trustee; Spacefinders Realty, Inc.; and Victor E. Cohen and Diane S. Cohen Revocable Family Trust Dated April 24, 1992, Victor E. Cohen and Diane S. Cohen, Trustees 3265 E. Warm Springs Rd. Las Vegas, NV 89120		4/10/07 Promissory note secured by deed of trust (City Crossing parcels 13, 14 & 15) and personal guaranty by William W. Plise VALUE \$30,640,000.00				23,500,000.00	0.00
ACCOUNT NO. 10-00338-8 Aspen Financial Services, LLC 7900 W. Sahara Ave. Suite 200 Las Vegas, NV 89117		3/16/07 Promissory note secured by deed of trust (City Crossing parcel 9) and personal guaranty by William W. Plise VALUE \$12,770,000.00				6,986,478.89	0.00
ACCOUNT NO. 60-00305-3		3/16/07				2,600,000.00	0.00

Aspen Financial Services, LLC 7900 W. Sahara Ave. Suite 200 Las Vegas, NV 89117			Promissory note secured by deed of trust (City Crossing 9) and personal guaranty by William W. Plise					
			VALUE \$12,770,000.00					
3 continuation sheets attached			Subtotal ► (Total of this page)				\$ 33,086,478.89	\$ 0.00
			Total ► (Use only on last page)				\$	\$

(Report also on Summary of  
Schedules.)(If applicable, report  
also on Statistical  
Summary of Certain  
Liabilities and Related  
Data.)

B6D (Official Form 6D) (12/07) – Cont.

In re City Crossing 1, LLC,  
DebtorCase No 08-15780 (BAM)

(If known)

**SCHEDULE D – CREDITORS HOLDING SECURED CLAIMS**  
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER (See Instructions Above)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. 10-00343-3 Aspen Financial Services, LLC 7900 W. Sahara Ave. Suite 200 Las Vegas, NV 89117			3/16/07 Promissory note secured by deed of trust (City Crossing parcel 10) and personal guaranty by William W. Plise VALUE \$8,390,000.00				4,832,000.00	0.00
ACCOUNT NO. 60-00314-0 Aspen Financial Services, LLC 7900 W. Sahara Ave. Suite 200 Las Vegas, NV 89117			3/16/07 Promissory note secured by deed of trust (City Crossing parcel 10) and personal guaranty by William W. Plise VALUE \$8,390,000.00				1,850,000.00	0.00
ACCOUNT NO. 60-00315-9 Aspen Financial Services, LLC 7900 W. Sahara Ave. Suite 200 Las Vegas, NV 89117			3/16/07 Promissory note secured by deed of trust (City Crossing parcel 11) and personal guaranty by William W. Plise VALUE \$12,640,000.00				2,800,000.00	0.00
ACCOUNT NO. 60-00316-2 Aspen Financial Services, LLC 7900 W. Sahara Ave. Suite 200 Las Vegas, NV 89117			3/16/07 Promissory note secured by deed of trust (City Crossing parcel 12) and personal guaranty by William W. Plise VALUE \$5,940,000.00				1,244,574.23	0.00
ACCOUNT NO. 41450414 Clayton Mortgage & Investment 3041 W. Horizon Ridge Parkway, Suite 155 Henderson, NV 89052			6/8/07 Promissory note secured by deed of trust (City Crossing parcel 11) and personal guaranty by William W. Plise VALUE \$12,640,000.00				4,000,000.00	0.00
Subtotal ► (Total of this page)							\$ 14,726,574.23	\$ 0.00
Total ► (Use only on last page)							\$	\$

Sheet no. 1 of 3 continuation  
sheets attached to Schedule of  
Creditors Holding Secured  
Claims(Report also on  
Summary of Schedules.)(If applicable,  
report also on  
Statistical Summary  
of Certain  
Liabilities and  
Related Data.)

B6D (Official Form 6D) (12/07) - Cont.

In re City Crossing 1, LLC,  
DebtorCase No. 08-15780 (BAM)  
(If known)**SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS**  
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER (See Instructions Above)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. 41450414-1 Clayton Mortgage & Investment 3041 W. Horizon Ridge Parkway, Suite 155 Henderson, NV 89052			7/2/07 Promissory note secured by deed of trust (City Crossing parcel 11) and personal guaranty by William W. Plise VALUE \$12,640,000.00				3,270,000.00	0.00
ACCOUNT NO. 41450415 Clayton Mortgage & Investment 3041 W. Horizon Ridge Parkway, Suite 155 Henderson, NV 89052			4/30/07 Promissory note secured by deed of trust (City Crossing parcel 12) and personal guaranty by William W. Plise VALUE \$5,940,000.00				3,225,000.00	0.00
ACCOUNT NO. 9013011681 Community Bank of Nevada 8945 W. Russell Road Suite 300 Las Vegas, NV 89148			4/10/07 Promissory note secured by deed of trust (City Crossing parcels 4 and 5) and guarantees by William W. Plise, Aquila Investments, LLC and Plise Companies, LLC VALUE \$47,340,000.00				29,893,788.20	0.00
ACCOUNT NO. Eliot A. Alper Revocable Trust Eliot Alper, Trustee 3265 E. Warm Springs Rd. Las Vegas, NV 89120			4/10/07 Promissory note secured by deed of trust (City Crossing parcel 1) and personal guaranty by William W. Plise VALUE \$16,030,000.00				14,000,000.00	0.00
ACCOUNT NO. 1301378-001 First National Bank of Nevada 4950 W. Flamingo Rd. Las Vegas, NV 89103			4/9/07 Promissory note secured by deed of trust (City Crossing parcel 2) and guarantees by William W. Plise, Aquila Investments, LLC and Aquila Management, LLC VALUE \$36,580,000.00				25,340,590.67	0.00
Subtotal ▶ (Total of this page)							\$ 75,729,378.87	\$ 0.00
Total ▶ (Use only on last page)							\$	\$

Sheet no. 2 of 3 continuation  
sheets attached to Schedule of  
Creditors Holding Secured  
Claims

B6D (Official Form 6D) (12/07) – Cont.

In re City Crossing 1, LLC,  
DebtorCase No. 08-15780 (BAM)

(If known)

**SCHEDULE D – CREDITORS HOLDING SECURED CLAIMS**  
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER (See Instructions Above)	CODEBTR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. 130139001 First National Bank of Nevada 4950 W. Flamingo Rd. Las Vegas, NV 89103			8/10/07 Promissory note secured by deed of trust (City Crossing parcels 6, 7 & 8) and personal guarantees by William W. Plise, Aquila Investments, LLC and Aquila Management LLC VALUE \$48,590,000.00				31,568,692.00	0.00
ACCOUNT NO. 1301378002 First National Capital 17600 N. Perimeter Dr. Scottsdale, AZ 85255			4/9/07 Promissory note secured by deed of trust (City Crossing parcel 2) and guarantees by William W. Plise, Aquila Investments, LLC and Aquila Management, LLC VALUE \$36,580,000.00				4,433,236.50	0.00
ACCOUNT NO. 1301378002 First National Capital 17600 N. Perimeter Dr. Scottsdale, AZ 85255			8/10/07 Promissory note secured by deed of trust (City Crossing parcels 6, 7 and 8) and guarantees by William W. Plise, Aquila Investments, LLC and Aquila Management, LLC VALUE \$48,590,000.00				7,381,000.00	0.00
ACCOUNT NO. 63321 Silver State Bank 2250 Corporate Circle Drive Suite 350 Henderson, NV 89074			4/10/07 Promissory note secured by deed of trust (City Crossing parcel 3) and personal guaranty by William W. Plise VALUE \$23,070,000.00				15,861,565.39	0.00
ACCOUNT NO.			VALUE \$					
Sheet no. <u>3</u> of <u>3</u> continuation sheets attached to Schedule of Creditors Holding Secured Claims							Subtotal ► (Total of this page)	\$ 59,244,493.89 \$ 0.00

Total ►  
(Use only on last page)

\$ 182,786,925.88	\$ 0.00
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(Report also on  
Summary of Schedules.)

(If applicable,  
report also on  
Statistical Summary  
of Certain  
Liabilities and  
Related Data.)

B6E (Official Form 6E) (12/07)

In re City Crossing 1, LLC,  
DebtorCase No. 08-15780 (BAM)  
(if known)**SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS**

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

**TYPES OF PRIORITY CLAIMS** (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

☐ **Domestic Support Obligations**

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

☐ **Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$10,950\* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).



B6E (Official Form 6E) (12/07) – Cont.

In re City Crossing 1, LLC,

Debtor

Case No. 08-15780 (BAM)

(if known)

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to \$5,400\* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

☐ **Deposits by individuals**

Claims of individuals up to \$2,425\* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

☒ **Taxes and Certain Other Debts Owed to Governmental Units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

☐ **Commitments to Maintain the Capital of an Insured Depository Institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507 (a)(9).

☐ **Claims for Death or Personal Injury While Debtor Was Intoxicated**

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

\* Amounts are subject to adjustment on April 1, 2010, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

1 continuation sheets attached

B6E (Official Form 6E) (12/07) – Cont.

In re City Crossing 1, LLC,

Debtor

Case No. 08-15780 (BAM)

(If known)

**SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS**

(Continuation Sheet)

Type of Priority for Claims Listed on This Sheet

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBETOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM	AMOUNT ENTITLED TO PRIORITY	AMOUNT NOT ENTITLED TO PRIORITY, IF ANY
Account No. Department of Taxation 555 E. Washington Ave. Suite 1300 Las Vegas, NV 89101			March 5, 2008				298,015.49	298,015.49	0.00
Account No. Internal Revenue Services Attn: Bankruptcy Unit Stop 5028 110 City Parkway Las Vegas, NV 89106									
Account No.									
Account No.									
Account No.									
Account No.									
Subtotals> (Totals of this page)							\$ 298,015.49	\$ 298,015.49	0.00
Total> (Use only on last page of the completed Schedule E. Report also on the Summary of Schedules.)							\$ 298,015.49		
Totals> (Use only on last page of the completed Schedule E. If applicable, report also on the Statistical Summary of Certain Liabilities and Related Data.)								\$ 298,015.49	\$ 0.00

Sheet no. 1 of 1 continuation sheets attached to Schedule of  
Creditors Holding Priority Claims

B6F (Official Form 6F) (12/07)

In re City Crossing I, LLC,

Debtor

Case No. 08-15780 (BAM)

(If known)

**SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. GY Property Holdings, LLC Nielson Investments, LLC David Senior Attn: Steven Nielson 299 South Main Street, Suite 2490 Salt Lake City, UT 84111			Pursuant to Promissory Note dated July 27, 2007				9,750,000.00
ACCOUNT NO. Northwest Landscape Construction, Inc. 2450 St. Rose Pkwy, Suite 200 Henderson, NV 89074							
ACCOUNT NO. Applied Utility Services 7651 N. Jones Blvd. Las Vegas, NV 89131			Invoice 1173 March 20, 2007				2,800.00
ACCOUNT NO. Architects Orange 144 N. Orange Street Orange, CA 92866			Invoice 2802161 February 29, 2008 Invoice 2803038 March 25, 2008				1,620.13

Subtotal &gt; \$ 9,754,420.13

Continuation sheets attached

Total >  
(Use only on last page of the completed Schedule F.)  
(Report also on Summary of Schedules and, if applicable, on the Statistical  
Summary of Certain Liabilities and Related Data.)

B6F (Official Form 6F) (12/07) - Cont.

In re City Crossing 1, LLC,

Debtor

Case No. 08-15780 (BAM)

(If known)

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. BJG Architecture & Engineering 6995 Sierra Center Pkwy Suite 200 Reno, NV 89511			Invoice 36417 May 15, 2008				3,000.00
ACCOUNT NO. CB Richard Ellis 3993 Howard Hughes Pkwy Suite 700 Las Vegas, NV 89169			Invoice 032608 March 26, 2008 Invoice 08-45934701 February 7, 2008				36,000.00
ACCOUNT NO. Lochsa Engineering 6345 S. Jones Blvd. Suite 100 Las Vegas, NV 89118			Invoice 25883 April 24, 2008				510.00
ACCOUNT NO. Plise Dev & Construction 5550 Painted Mirage Road Suite 500 Las Vegas, NV 89149			Inv. 2082 3/20/08 Inv. 2086 3/20/08 Inv. 2087 3/20/08 Inv. 2105 4/30/08 Inv. 2108 4/30/08 Inv. 2109 4/30/08 Inv. 2110 4/30/08 Inv. 2052 12/31/07				1,244,610.61
ACCOUNT NO. Plise Companies 5550 Painted Mirage Road Suite 500 Las Vegas, NV 89149			Invoice 1286 January 1, 2007				11,001.62
Sheet no. <u>1</u> of <u>2</u> continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims							Subtotal > \$ 1,295,122.23
Total > (Use only on last page of the completed Schedule F.) (Report also on Summary of Schedules and, if applicable on the Statistical Summary of Certain Liabilities and Related Data.)							\$

B6F (Official Form 6F) (12/07) - Cont.

In re City Crossing I, LLC,

Debtor

Case No. 08-15780 (BAM)

(If known)

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM	
ACCOUNT NO. Restrepo Consulting Group 3960 Howard Hughes Parkway Suite 130 Las Vegas, NV 89109			Invoice 08-01-31-26 January 31, 2008 Invoice 08-02-01-10 February 1, 2008 Invoice 08-03-04-12 March 4, 2008				4,420.00	
ACCOUNT NO. WRG Design, Inc. 3011 W. Horizon Ridge Pkwy. Suite 100 Henderson, NV 89052			Outstanding Invoices from January 31, 2008 to April 30, 2008				73,633.09	
ACCOUNT NO.								
ACCOUNT NO.								
ACCOUNT NO.								
ACCOUNT NO.								
Sheet no. 2 of 2 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims							Subtotal >	\$ 78,053.09
(Use only on last page of the completed Schedule F.) (Report also on Summary of Schedules and, if applicable on the Statistical Summary of Certain Liabilities and Related Data.)							Total >	\$ 11,116,593.23

B6G (Official Form 6G) (12/07)

In re City Crossing I, LLC  
DebtorCase No. 08-15780 (BAM)  
(if known)**SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no executory contracts or unexpired leases.

NAME AND MAILING ADDRESS, INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT.
City of Henderson P.O. Box 95050, MSC 422 240 Water Street Henderson, Nevada 84009-5050 Attn: City Manager and City Attorney	Development Agreement
WRG Design Inc. 3011 W. Horizon Ridge Pkwy., Suite 100 Henderson, NV 89052	Civil Engineering - Local Improvement District #376.21
WRG Design, Inc. 3011 W. Horizon Ridge Pkwy., Suite 100 Henderson, NV 89052	Civil Engineering - Permission to Grade/Storm Drain #376.19
WRG Design, Inc. 3011 W. Horizon Ridge Pkwy., Suite 100 Henderson, NV 89052	Civil Engineering - Executive Airport Drive ROW #376.18
WRG Design, Inc. 3011 W. Horizon Ridge Pkwy., Suite 100 Henderson, NV 89052	Civil Engineering - Revised Phase I On-Site Civil Documents #376.32
WRG Design, Inc. 3011 W. Horizon Ridge Pkwy., Suite 100 Henderson, NV 89052	Civil Engineering - Vacate DOA & Embarq Easements #376.53
WRG Design, Inc. 3011 W. Horizon Ridge Pkwy., Suite 100 Henderson, NV 89052	Civil Engineering - Vacate A & Dedicate Bruner Avenue #376.51

B6G (Official Form 6G) (12/07)

In re City Crossing 1, LLC

Debtor

Case No. 08-15780 (BAM)

(if known)

**SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no executory contracts or unexpired leases.

NAME AND MAILING ADDRESS, INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT.
WRG Design, Inc. 3011 W. Horizon Ridge Pkwy., Suite 100 Henderson, NV 89052	Civil Engineering - CLOMR/LOMR #376.20
WRG Design, Inc. 3011 W. Horizon Ridge Pkwy., Suite 100 Henderson, NV 89052	Civil Engineering - Perimeter Street & Offsite Utilities #376.30
WRG Design, Inc. 3011 W. Horizon Ridge Pkwy., Suite 100 Henderson, NV 89052	Civil Engineering - Traffic Lights #376.84
Applied Utility Services 7651 N. Jones Boulevard Las Vegas, NV 89131	Dry Utility Consultant - Hourly Contract
Ventajas 5836 South Pecos Road Las Vegas, NV 89120	BLM Consulting Services - On-Call Hourly
Development Planning & Financing Group, Inc. 3277 East Warm Springs Road Las Vegas, NV 89120	LID-TIA Consultant
BJG Architecture + Engineering 1301 Green Valley Pkwy., Suite 120 Henderson, NV 89074	Architectural Services - Garage Design

B6G (Official Form 6G) (12/07)

In re City Crossing I, LLC  
DebtorCase No. 08-15780 (BAM)  
(if known)**SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no executory contracts or unexpired leases.

NAME AND MAILING ADDRESS, INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT.
Architects Orange 144 N. Orange Street Orange, CA 92866	Architectural Design - Phase 1 Retail
Architects Orange 144 N. Orange Street Orange, CA 92866	Architectural Design - Phase 1 Site Plan
Vedelago Petsch Architects, Inc. Subchapter S Corporation 3535 Executive Terminal Drive, Suite 310 Henderson, NV 89052	Architectural Services - Office Building 1
Plise Development & Construction, LLC 5550 Painted Mirage Road, Suite 500 Las Vegas, NV 89149	Construction Agreement - Offsite Water Main & Sanitary Sewer Laterals - Phase 1
Plise Development & Construction, LLC 5550 Painted Mirage Road, Suite 500 Las Vegas, NV 89149	Construction Agreement - Temporary Roadway & Clearing Improvements
Plise Development & Construction, LLC 5550 Painted Mirage Road, Suite 500 Las Vegas, NV 89149	Construction Agreement - Embarq Easement Remediation
Plise Development & Construction, LLC 5550 Painted Mirage Road, Suite 500 Las Vegas, NV 89149	Construction Agreement - Temporary Construction Power



B6G (Official Form 6G) (12/07)

In re City Crossing 1, LLC  
DebtorCase No. 08-15780 (BAM)  
(if known)**SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no executory contracts or unexpired leases.

NAME AND MAILING ADDRESS, INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT.
Nevada Power Company 6226 W. Sahara Avenue Las Vegas, NV 89146	Rule 9 Line Extension Agreement - Temporary Construction Power
Nevada Power Company 6226 W. Sahara Avenue Las Vegas, NV 89146	Design Approval Agreement - Phase I Permanent Power
EMBARQ Construction Claims Center P.O. Box 47604 Plymouth, MN 55447	Work Authorization 24198681 Re-Route Fiber and Copper Cables to Clear for Development
Plise Development & Contruction, LLC; William Plise; Stipp Investment, LLC; Mitch Stipp; American Vista Development Corp.; James Moore 5550 Painted Mirage #500 Las Vegas, NV 89149	Development & management agreement

In re City Crossing 1, LLC,  
DebtorCase No. 08-15780 (BAM)  
(if known)**SCHEDULE H - CODEBTORS**

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by the debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight-year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR
William W. Plise and Tennille Plise 5550 Painted Mirage Road, Suite 500 Las Vegas, NV 89149	<p>First National Bank of Nevada Flamingo – Commercial Lending 4950 West Flamingo Road Las Vegas, NV 89103</p> <p>First National Capital FNC 17600 North Perimeter Drive Scottsdale, AZ 85255</p> <p>Community Bank of Nevada Attn: Commercial Real Estate Manager 8945 W. Russell Road, Suite 300 Las Vegas, NV 89148</p> <p>Silver State Bank 2250 Corporate Circle Drive, Suite 350 Henderson, NV 89074</p> <p>Aspen Financial 7900 West Sahara Avenue Suite 200 Las Vegas, NV 89117</p> <p>Clayton Mortgage 3041 West Horizon Ridge Parkway, Suite 155 Henderson, NV 89052</p> <p>Alper Limited Partnership, a Nevada limited partnership, Eliot A. Alper, General Partner; Eliot A. Alper Revocable Trust, Dated March 22, 1999, Eliot Alper, Trustee; Susan J. Vermillion Separate Property Trust Dated April 24, 1997, Susan J. Vermillion, Trustee; Tina E. Alper Revocable Trust, Dated June 22, 1999, Tina E. Alper, Trustee; Spacefinders Realty, Inc., a Nevada corporation; Victor E. Cohen and Diane S. Cohen Revocable Family Trust Dated April 24, 1992, Victor E. Cohen and Diane S. Cohen, Trustees 3265 East Warm Springs Road Las Vegas, NV 89120</p>

Case: 08-15780-  
Aquila Investments, LLC  
5550 Painted Mirant Road, Suite 500  
Las Vegas, NV 89149

Doc #: 58

Filed: 06/17/2009 Page: 24 of 40

First National Bank of Nevada  
Flamingo – Commercial Lending  
4950 West Flamingo Road  
Las Vegas, NV 89103

First National Capital  
FNC  
17600 North Perimeter Drive  
Scottsdale, AZ 85255

Community Bank of Nevada  
Attn: Commercial Real Estate Manager  
8945 W. Russell Road, Suite 300  
Las Vegas, NV 89148  
First National Bank of Nevada  
Flamingo – Commercial Lending  
4950 West Flamingo Road  
Las Vegas, NV 89103

First National Capital  
FNC  
17600 North Perimeter Drive  
Scottsdale, AZ 85255  
Community Bank of Nevada  
Attn: Commercial Real Estate Manager  
8945 W. Russell Road, Suite 300  
Las Vegas, NV 89148

Aquila Management, LLC  
5550 Painted Mirant Road, Suite 500  
Las Vegas, NV 89149

Plise Companies, LLC  
5550 Painted Mirant Road, Suite 500  
Las Vegas, NV 89149

B7 (Official Form 7) (12/07)

## UNITED STATES BANKRUPTCY COURT

\_\_\_\_ DISTRICT OF NEVADA

In re: City Crossing I, LLC,  
DebtorCase No. 08-15780 (BAM)  
(if known)

## STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. To indicate payments, transfers and the like to minor children, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. If the answer to an applicable question is "None," mark the box labeled "None." If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

## DEFINITIONS

**"In business."** A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

**"Insider."** The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

## I. Income from employment or operation of business

None  
☒

State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the two years immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE

**2. Income other than from employment or operation of business**None  
☒

State the amount of income received by the debtor other than from employment, trade, profession, operation of the debtor's business during the two years immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE

**3. Payments to creditors***Complete a. or b., as appropriate, and c.*None  
☒

**a. Individual or joint debtor(s) with primarily consumer debts:** List all payments on loans, installment purchases of goods or services, and other debts to any creditor made within 90 days immediately preceding the commencement of this case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$600. Indicate with an asterisk (\*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR

DATES OF  
PAYMENTSAMOUNT  
PAIDAMOUNT  
STILL OWINGNone  
☐

**b. Debtor whose debts are not primarily consumer debts:** List each payment or other transfer to any creditor made within 90 days immediately preceding the commencement of the case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$5,475. If the debtor is an individual, indicate with an asterisk (\*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments and other transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR

DATES OF  
PAYMENTS/  
TRANSFERSAMOUNT  
PAID OR  
VALUE OF  
TRANSFERSAMOUNT  
STILL  
OWING

See attached

None  
☐

**c. All debtors:** List all payments made within one year immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR  
AND RELATIONSHIP TO DEBTOR  
See attachedDATE OF  
PAYMENTAMOUNT  
PAIDAMOUNT  
STILL OWING

**4. Suits and administrative proceedings, executions, garnishments and attachments**None  
☒

a. List all suits and administrative proceedings to which the debtor is or was a party within one year immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT  
AND CASE NUMBER

NATURE OF PROCEEDING

COURT OR AGENCY  
AND LOCATIONSTATUS OR  
DISPOSITIONNone  
☒

b. Describe all property that has been attached, garnished or seized under any legal or equitable process within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS  
OF PERSON FOR WHOSE  
BENEFIT PROPERTY WAS  
SEIZEDDATE OF  
SEIZUREDESCRIPTION  
AND VALUE  
OF PROPERTY**5. Repossessions, foreclosures and returns**None  
☒

List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS  
OF CREDITOR OR SELLERDATE OF REPOSSESSION,  
FORECLOSURE SALE,  
TRANSFER OR RETURNDESCRIPTION  
AND VALUE  
OF PROPERTY**6. Assignments and receiverships**None  
☒

a. Describe any assignment of property for the benefit of creditors made within 120 days immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS  
OF ASSIGNEEDATE OF  
ASSIGNMENTTERMS OF  
ASSIGNMENT  
OR SETTLEMENT

None  
☒

b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY
----------------------------------	--	------------------	---

## 7. Gifts

None  
☒

List all gifts or charitable contributions made within one year immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT
--	--------------------------------------	-----------------	----------------------------------

## 8. Losses

None  
☒

List all losses from fire, theft, other casualty or gambling within one year immediately preceding the commencement of this case or since the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS
---	--	-----------------

## 9. Payments related to debt counseling or bankruptcy

None  
☐

List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of a petition in bankruptcy within one year immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYER IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
White & Case LLP 633 West Fifth Street, Suite 1900 Los Angeles, California 90071	February 29, 2008 - May 31, 2008	\$756,777.66

Schwartz & McPherson Law Firm  
2850 S. Jones Blvd., Suite 1  
Las Vegas, Nevada 89146

\$50,000.00

#### 10. Other transfers

None  
☒

a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within two years immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
---	------	--

None  
☒

b. List all property transferred by the debtor within ten years immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

NAME OF TRUST OR OTHER DEVICE	DATE(S) OF TRANSFER(S)	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY
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#### 11. Closed financial accounts

None  
☒

List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within one year immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING
------------------------------------	--	--

#### 12. Safe deposit boxes

None  
☒

List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY
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**13. Setoffs**None  
☒

List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within 90 days preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF
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**14. Property held for another person**None  
☒

List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY
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**15. Prior address of debtor**None  
☒

If debtor has moved within three years immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY
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**16. Spouses and Former Spouses**None  
☒

If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within eight years immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

**17. Environmental Information.**

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law.

None  
☒

a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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None  
☒

b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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None  
☒

c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION
--	---------------	--------------------------

**18. Nature, location and name of business**

None  
☒

a. *If the debtor is an individual*, list the names, addresses, taxpayer-identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession, or other activity either full- or part-time within six years immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within six years immediately preceding the commencement of this case.

*If the debtor is a partnership, list the names, addresses, taxpayer-identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within six years immediately preceding the commencement of this case.*

*If the debtor is a corporation, list the names, addresses, taxpayer-identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within six years immediately preceding the commencement of this case.*

NAME	LAST FOUR DIGITS OF SOCIAL-SECURITY OR OTHER INDIVIDUAL TAXPAYER-I.D. NO. (ITIN) COMPLETE EIN	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES
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None  
☒

b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME	ADDRESS
------	---------

The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within six years immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership, a sole proprietor, or self-employed in a trade, profession, or other activity, either full- or part-time.

*(An individual or joint debtor should complete this portion of the statement only if the debtor is or has been in business, as defined above, within six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)*

#### 19. Books, records and financial statements

None  
☐

a. List all bookkeepers and accountants who within two years immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS	DATES SERVICES RENDERED
See attached	

None  
☒

b. List all firms or individuals who within two years immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME	ADDRESS	DATES SERVICES RENDERED
------	---------	-------------------------

None  
☐

c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME

ADDRESS

See attached

None  
☐

d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued by the debtor within two years immediately preceding the commencement of this case.

NAME AND ADDRESS

DATE ISSUED

Community Bank of Nevada  
5785 Centennial Center Blvd.  
Las Vegas, NV 89149  
US Bank  
P.O. Box 1800  
St. Paul, MN 55101-0800

**20. Inventories**None  
☒

a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY

INVENTORY SUPERVISOR

DOLLAR AMOUNT  
OF INVENTORY  
(Specify cost, market or other  
basis)

None  
☒

b. List the name and address of the person having possession of the records of each of the inventories reported in a., above.

DATE OF INVENTORY

NAME AND ADDRESSES OF CUSTODIAN  
OF INVENTORY RECORDS

**21. Current Partners, Officers, Directors and Shareholders**None  
☒

a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS

NATURE OF INTEREST

PERCENTAGE OF INTEREST

None  
☐

b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS

TITLE

NATURE AND PERCENTAGE  
OF STOCK OWNERSHIP

William W. Plise  
5550 Painted Mirage Road, Suite 500  
Las Vegas, NV 89149

Member of  
Member

100% Indirect membership interest

Aquila Investments, LLC  
5550 Painted Mirage Road, Suite 500  
Las Vegas, NV 89149

Member

100% Membership Interest

---

**22. Former partners, officers, directors and shareholders**

None  
☒

a. If the debtor is a partnership, list each member who withdrew from the partnership within one year immediately preceding the commencement of this case.

NAME	ADDRESS	DATE OF WITHDRAWAL
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None  
☒

b. If the debtor is a corporation, list all officers or directors whose relationship with the corporation terminated within one year immediately preceding the commencement of this case.

NAME AND ADDRESS	TITLE	DATE OF TERMINATION
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**23. Withdrawals from a partnership or distributions by a corporation**

None  
☐

If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during one year immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
Aquila Investments, LLC 5550 Painted Mirage Rd., Ste. 500 Las Vegas, NV 89149	7/27/07	2,800,930.22
Aquila Investments, LLC 5550 Painted Mirage Rd., Ste. 500 Las Vegas, NV 89149	6/13/07	3,414,313.15
Aquila Investments, LLC 5550 Painted Mirage Rd., Ste. 500 Las Vegas, NV 89149	3/12/08	750,000.00

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**24. Tax Consolidation Group.**

None  
☒

If the debtor is a corporation, list the name and federal taxpayer-identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within six years immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION	TAXPAYER-IDENTIFICATION NUMBER (EIN)
----------------------------	--------------------------------------

**25. Pension Funds.**None  
☒

If the debtor is not an individual, list the name and federal taxpayer-identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within six years immediately preceding the commencement of the case.

NAME OF PENSION FUND

TAXPAYER-IDENTIFICATION NUMBER (EIN)

\* \* \* \* \*

*[If completed by an individual or individual and spouse]*

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Date \_\_\_\_\_

Signature \_\_\_\_\_  
of Debtor

Date \_\_\_\_\_

Signature \_\_\_\_\_  
of Joint Debtor  
(if any)

*[If completed on behalf of a partnership or corporation]*

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct to the best of my knowledge, information and belief.

Date June 16, 2008Signature 

William W. Plise, Manager of Manager  
Print Name and Title

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

5 continuation sheets attached

Penalty for making a false statement: Fine of up to \$500,000 or Imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571

**DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)**

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) If rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.

Printed or Typed Name and Title, if any, of Bankruptcy Petition Preparer \_\_\_\_\_

Social-Security No. (Required by 11 U.S.C. § 110.) \_\_\_\_\_

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social-security number of the officer, principal, responsible person, or partner who signs this document.

**City Crossing1, LLC**  
**Case No. 08-15780 (BAM)**  
**Attachment to Statement of Financial Affairs**

**3. Payments to creditors.**

**b. Debtor whose debts are not primarily consumer debts:**

NAME AND ADDRESS OF CREDITOR	DATES OF PYMTS	AMOUNT PAID	AMOUNT STILL OWING
Nevada Power	03/05/08	30,688.00	0.00
State of Nevada P.O. Box 52614 Phoenix, AZ 85072	03/05/08	1,500.00	0.00
Restrepo Consulting Group 3960 Howard Hughes Pkwy. Ste. 130 Las Vegas, NV 89109	03/06/08	17,500.00	0.00
Las Vegas Review Journal P.O. Box 920 Las Vegas, NV 89125	03/11/08	8,272.00	0.00
Architects Orange 144 N. Orange St. Orange, CA 92866	03/12/08	38.91	0.00
KKE of Nevada, Inc. 300 First Avenue North Minneapolis, MN 55401	03/12/08	118.27	0.00
Mercury LDO 3325 Pepper Lane Las Vegas, NV 89120	03/12/08	18.86	0.00
WRG Design, Inc. 3011 W. Horizon Ridge Pkwy Ste. 100 Henderson, NV 89052	03/12/08	5,015.04	0.00
City of Henderson	03/12/08	2,000.00	0.00
Clark County Recorder	03/19/08	188.62	0.00
State of Nevada P.O. Box 52614 Phoenix, AZ 85072	03/20/08	200.00	0.00
Timekeeping Systems, Inc. 30700 Bainbridge Rd., Ste. H Solon, OH 44139	03/20/08	106.70	0.00
Matteson Media 2255-A Renaissance Drive Las Vegas, NV 89119	03/31/08	22,707.00	0.00

Alter Ego 2707 E. Craig Rd., Ste. E N. Las Vegas, NV 89030	04/01/08	175.53	0.00
Mass Media, LLC 4065 E. Post Rd. Las Vegas, NV 89120	04/09/08	24,709.55	0.00
France Publications 3500 Piedmont Rd., Ste. 415 Atlanta, GA 30305	04/21/08	16,704.75	0.00
Henderson Chamber of Commerce 590 S. Boulder Highway Henderson, NV 89015	04/21/08	1,950.00	0.00
International Council of Shopping Centers P.O. Box 26958 New York, NY 10087	04/21/08	17,271.00	0.00
In Business Las Vegas 2290 Corporate Circle Ste. 250 Henderson, NV 89074	04/21/08	39,900.00	0.00
Las Vegas Publications, Inc. 8689 W. Sahara Ave. Ste. 260 Las Vegas, NV 89117	04/21/08	2,695.50	0.00
Las Vegas Review Journal P.O. Box 920 Las Vegas, NV 89125	04/21/08	18,612.00	0.00
Nevada Business Journal 375 N. Stephanie St., Bldg. 23 Ste. 2311 Las Vegas, NV 89014	04/21/08	2,990.00	0.00
Penton Media, Inc. 2105 Reliable Parkway Chicago, IL 60686	04/21/08	31,431.00	0.00
Community Bank of Nevada 5785 Centennial Center Blvd. Las Vegas, NV 89149	04/24/08	4,000.00	0.00
Aspen Financial, LLC 7900 W. Sahara Ave. Ste. 200 Las Vegas, NV 89117	05/12/08	29,957.88	0.00
City of Henderson	05/19/08	132.98	0.00



## 3. Payments to creditors.

## c. All debtors:

NAME AND ADDRESS OF CREDITOR/ RELATIONSHIP	PYMT DATE	AMT. PAID	AMT. STILL OWING
Plise Companies, LLC 5550 Painted Mirage Rd., Ste. 500 Las Vegas, NV 89149 Common ownership	07/10/07	19,078.66	0.00
Plise Companies, LLC 5550 Painted Mirage Rd., Ste. 500 Las Vegas, NV 89149 Common ownership	07/18/07	7,306.47	0.00
Plise Companies, LLC 5550 Painted Mirage Rd., Ste. 500 Las Vegas, NV 89149 Common ownership	09/18/07	288,000.00	0.00
Plise Companies, LLC 5550 Painted Mirage Rd., Ste. 500 Las Vegas, NV 89149 Common ownership	11/08/07	150,000.00	0.00
Rainbow Sunset Developers, LLC 5550 Painted Mirage Rd., Ste. 500 Las Vegas, NV 89149 Common ownership	12/12/07	100,000.00	0.00
Plise Companies, LLC 5550 Painted Mirage Rd., Ste. 500 Las Vegas, NV 89149 Common ownership	12/20/07	112,000.00	0.00
Plise Development & Construction, LLC 5550 Painted Mirage Rd., Ste. 500 Las Vegas, NV 89149 Common ownership	12/20/07	42,497.69	0.00
Plise Development & Construction, LLC 5550 Painted Mirage Rd., Ste. 500 Las Vegas, NV 89149 Common ownership	12/20/07	235,486.53	0.00
Centennial Corporate Center, LLC 5550 Painted Mirage Rd., Ste. 500 Las Vegas, NV 89149 Common ownership	01/22/08	34,000.00	0.00
Rainbow Sunset Developers, LLC 5550 Painted Mirage Rd., Ste. 500 Las Vegas, NV 89149 Common ownership	01/22/08	226,000.00	0.00

Rainbow Sunset Developers, LLC 5550 Painted Mirage Rd., Ste. 500 Las Vegas, NV 89149 Common ownership	02/05/08	193,000.00	0.00
Centennial Corporate Center, LLC 5550 Painted Mirage Rd., Ste. 500 Las Vegas, NV 89149 Common ownership	02/07/08	220,000.00	0.00
Plise Development & Construction, LLC 5550 Painted Mirage Rd., Ste. 500 Las Vegas, NV 89149 Common ownership	03/17/08	313,300.31	0.00
Plise Development & Construction, LLC 5550 Painted Mirage Rd., Ste. 500 Las Vegas, NV 89149 Common ownership	04/07/08	440,977.89	0.00
Plise Development & Construction, LLC 5550 Painted Mirage Rd., Ste. 500 Las Vegas, NV 89149 Common ownership	04/08/08	530,758.91	0.00
Plise Companies, LLC 5550 Painted Mirage Rd., Ste. 500 Las Vegas, NV 89149 Common ownership	04/09/08	100,000.00	0.00
Plise Companies, LLC 5550 Painted Mirage Rd., Ste. 500 Las Vegas, NV 89149 Common ownership	05/30/08	445,000.00	0.00

## 19. Books, records and financial statements

a.

NAME AND ADDRESS	SERVICE DATES
James Moore 5550 Painted Mirage Rd., Ste. 500 Las Vegas, NV 89149	06/02/06 – 06/02/08
Nanette Miller 5550 Painted Mirage Rd., Ste. 500 Las Vegas, NV 89149	06/05/06 – 09/24/07
Michael Grey 5550 Painted Mirage Rd., Ste. 500 Las Vegas, NV 89149	09/24/07 – 06/02/08

c.

NAME	
James Moore	5550 Painted Mirage Rd., Ste. 500 Las Vegas, NV 89149
Nanette Miller	5550 Painted Mirage Rd., Ste. 500 Las Vegas, NV 89149
Michael Grey	5550 Painted Mirage Rd., Ste. 500 Las Vegas, NV 89149

**OPPOSITION/COUNTERMOTION**

**EXHIBIT 12**

FILED  
ELECTRONICALLY

11/10/08

1 SHEA & CARLYON, LTD.  
2 CANDACE C. CARLYON, ESQ.  
3 Nevada Bar No. 002666  
4 TRACY M. O'STEEN, ESQ.  
5 Nevada Bar No. 010949  
6 701 Bridger Avenue, Suite 850  
7 Las Vegas, Nevada 89101  
8 Telephone: (702) 471-7432  
9 Facsimile: (702) 471-7435

10 *Counsel for Secured Creditor, Community Bank of Nevada*

11 UNITED STATES BANKRUPTCY COURT

12 DISTRICT OF NEVADA

13	In re:	)	Case No. BK-S-08-15780-BAM
14		)	Chapter 11
15	CITY CROSSING I, LLC, a Nevada limited	)	DATE: November 12, 2008
16	liability company	)	TIME: 9:30 a.m.
17	Debtor.	)	

18 **RESPONSE OF COMMUNITY BANK OF NEVADA TO DEBTOR'S MOTION TO**  
19 **DISMISS (REQUEST FOR DISMISSAL)**

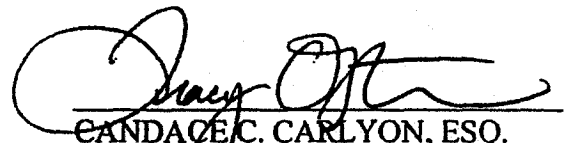
20 Community Bank of Nevada ("CBN"), by and through its counsel, Candace C. Carlyon,  
21 Esq. and Tracy M. O'Steen, Esq., of the law firm of Shea & Carlyon, Ltd., hereby files this  
22 Response to the Debtor's pending Motion to Dismiss ("Response").

23 This Response is made and based on 11 U.S.C. §1112, the Points and Authorities filed  
24 herewith, the pleadings, papers and records on file in this case and its related adversary  
25 proceeding, and any oral argument the Court may entertain at the time of the hearing of the  
26 Motion to Dismiss.

1  
2 For the reasons set forth below, CBN requests that the Court grant the motion and  
3 dismiss the case.

4 DATED this 10<sup>th</sup> day of November, 2008.

5 SHEA & CARLYON, LTD.

6  
7 

8 CANDACE C. CARLYON, ESQ.

9 Nevada Bar No. 002666

10 TRACY M. O'STEEN, ESQ.

11 Nevada Bar No. 010949

12 701 E. Bridger Avenue, Suite 850

13 Las Vegas, NV 89101

14 *Counsel for CBN*

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I.**

17 **BACKGROUND**

18 Following approximately five months of litigation, two formal settlement conferences,  
19 an agreed upon resolution of the case, and the scheduling of the confirmation hearing, Debtor  
20 announced on October 28, 2008, that it planned to abandon the reorganization effort and move  
21 for dismissal of this case (and set a hearing thereon for November 18, 2008). CBN believes  
22 that dismissal is appropriate given the facts and circumstances of this case.

23 This Case was filed on June 2, 2008.

24 The following information is excerpted from the Debtor's First Amended Disclosure Statement  
(the "Amended Disclosure Statement") filed on October 3, 2008 as Docket No. 153.

25 On June 2, 2008, the Debtor commenced an adversary proceeding against  
26 its Lenders seeking temporarily to prevent such Lenders from enforcing their  
27 rights against the Guarantors. ...Debtor voluntarily dismissed the adversary  
28 proceeding on June 9, 2008.

...

1 The Debtor filed an initial plan with an initial disclosure statement on  
2 July 2, 2008 that provided for the retention of a broker to professionally market  
3 and sell the City Crossing Project as an integrated whole over the eighteen  
4 months following the effective date of the Plan. Under the initial plan, the  
5 proceeds of the sale would be distributed to creditors in order of priority.

6 The initial plan also contained a provision that eliminated the Lenders'  
7 credit bid rights. This provision was essential to the Plan, but was strenuously  
8 opposed by the Lenders....

9 In order to attempt to resolve this and other disputes, the Debtor filed a  
10 motion on July 8, 2008, seeking a Court-ordered settlement conference. The  
11 motion was granted, and a settlement conference was scheduled for July 21, 2008  
12 before the Honorable Gregg W. Zive in Reno, Nevada. After a full day of  
13 negotiations at the settlement conference, the Debtor agreed to make certain  
14 modifications to the Plan and to arrange a meeting among the Lenders, the  
15 Debtor's proposed broker and the Debtor. The parties also agreed to continue  
16 their negotiations in respect of the Plan, to stay most matters in this case during  
17 the negotiation process and to reconvene in Reno on September 18, 2008 for a  
18 continued settlement conference. The foregoing is memorialized in an order  
19 entered in this case on July 24, 2008 (the "Settlement Conference Order").

20 In compliance with the Settlement Conference Order, during August and  
21 the early part of September, the Debtor arranged a meeting among the Lenders,  
22 the broker and the Debtor, circulated a new plan and disclosure statement to the  
23 Lenders and has continued to engage the Lenders in negotiations. ...

24 The parties reconvened the settlement conference on September 18, 2008  
25 to discuss the new plan and disclosure statement. At the conclusion of the  
26 settlement conference, the Debtors and the Lenders had made substantial  
27 progress in respect of a consensual plan and the Plan reflects the compromises  
28 made at the settlement conference. ...

Amended Disclosure Statement at 22-24.

## II.

### LEGAL ANALYSIS

#### A. Cause Exists for Dismissal

As set forth in the Motion, enumerated cause exists both for failure to pay post-petition  
taxes (§ 1112(b)(4)(I)) and due to a continuing loss to or diminution of the estate and the  
absence of a reasonable likelihood of rehabilitation (§ 1112 (b)(4)(A)). Further, "cause" for

1 dismissal is demonstrated by the Debtor's conduct in this case. As the Court is aware, prior to  
2 the filing, Debtor effected a merger of numerous entities, including CBN's borrowers, into the  
3 entity which is the Debtor in this case. (See, e.g., Amended Disclosure Statement at p. 20.)  
4 CBN expressed its concern that such action was taken in order to escape the responsibilities  
5 (particularly the effect of § 362(d)(3)) of a single asset real estate debtor. While the testimony  
6 of the Debtor indicated that, even as a combined entity, the Debtor is, in fact, a single asset real  
7 estate entity,<sup>1</sup> Debtor did not so indicate in its petition. Further, as a part of the good faith  
8 settlement efforts of secured creditors, the Court issued an Order re Continued Settlement  
9 Conference, Stay of Litigation, and Limited Relief From Stay entered on July 28, 2008, as  
10 Docket No. 105, specifically including a prohibition on filing a motion to determine that the  
11 debtor is a Single Asset Real Estate Debtor. At the continued settlement conference, CBN  
12 believed that it had reached a settlement with the Debtor and its guarantors, which was  
13 incorporated into the Debtor's Amended Plan of Reorganization, which the Debtor  
14 subsequently abandoned on October 28, 2008. In the meantime, the deadline to object to  
15  
16  
17  
18  
19  
20

---

21 <sup>1</sup> See §101(51B)(definition of single asset real estate, encompassing a property or project which generates  
22 substantially all of the debtor's gross income and on which no substantial business is being conducted. This  
23 includes non-income producing property. See, e.g., In re Oceanside Mission Assoc., 192 B.R. 232 (Bankr. S.D.  
24 Cal. 1996)(holding that raw land was "single asset real estate"). Debtor's business is "holding real estate and  
25 developing infrastructure." Transcript of First Meeting of Creditors ("341 Meeting"), excerpt filed as Exhibit 1  
26 hereto, at p. 25, lls. 4-10. "The business of City Crossing is to develop approximately 126 acres of raw land  
27 located in Henderson, Nevada, into a mixed use project." Deposition of Debtor's Most Knowledgeable Person,  
28 James Moore ("Moore Deposition"), excerpt filed as Exhibit 2 hereto, at p. 29, lls. 23-25; p. 30, l. 1. Furthermore,  
it was represented that from a Generally Accepted Accounting Principles ("GAAP") perspective, the Debtor has  
no income producing operations. Moore Deposition, pg. 30, lls. 8-18. The primary purpose behind the formation  
of the limited liability company was to simply raise capital for this mixed-use project. Id. The Debtor simply has  
no income from any source (Moore Deposition, p. 31, lls. 2-3), nor does it have any employees, (Moore  
Deposition, p. 31, lls. 4-5).



1 Debtor's failure to denote itself a single asset real estate entity arguably expired pursuant to  
2 Fed.R.Bankr.P. Rule 1020(b).<sup>2</sup>

3 It is submitted that the Debtor's repeated and aborted efforts in this case have served  
4 simply to delay the efforts of CBN and the other lenders to realize on their collateral to the  
5 great expense and detriment of those creditors. "The Bankruptcy Court provides a safe harbor  
6 for a debtor only so long as it continues to be evident that the effective rehabilitation of the  
7 enterprise is reasonably possible. It will soon become evident to the court when a debtor  
8 intends only frivolous or unwarranted delay and not effective reorganization, and the case will  
9 be dismissed pursuant to §1112." In re Eden Assoc's, 12 B.R. 578, 585 (Bankr. S.D.N.Y.  
10 1981).

11  
12 **B. Dismissal is in the Best Interests of the Creditors and the Estate**

13  
14 Once cause is established, §1112(b)(1) directs<sup>3</sup> that the case be dismissed or converted,  
15 "whichever is in the best interest of creditors and the estate."

16 The primary creditors involved in this case are lenders who made loans to the individual  
17 "City Crossing" entities in an amount estimated by the Debtor to be in excess of \$182 million<sup>4</sup>  
18 (the "Secured Lenders"). The Secured Lenders have faced not only the delays inherent to the  
19 bankruptcy process, but the increased expense of the abandoned adversary proceeding;  
20 settlement conferences; and amended plan process. In the meantime, while administrative  
21

22  
23  
24  
25 <sup>2</sup> In the event the case is not dismissed, CBN requests that the Court exercise its discretion pursuant to  
26 Fed.R.Bankr.P. 9006(b)(1) to extend that deadline.

27 <sup>3</sup> Such relief appears to be mandatory except upon a showing in accordance with §1112(b)(2), including that the  
28 debtor or another party in interest establish a reasonable likelihood that a plan will be timely confirmed.

<sup>4</sup> See Amended Disclosure Statement at 10-16.

1 claims of Debtor's professionals likely exceeds half a million dollars in this case,<sup>5</sup> property  
2 values have declined significantly and Debtor has not paid real property taxes, which, as of  
3 October 17, totaled approximately \$300,000.<sup>6</sup> Clearly, dismissal is in the best interest of the  
4 Secured Lenders.

5        Additionally, the unsecured creditors in this case consist primarily of current and former  
6 insiders and affiliates, whose interests presumably favor dismissal. While Debtor's schedules  
7 list over \$11.1 million in general unsecured claims,<sup>7</sup> all but approximately \$122,000 of that  
8 debt is owed to current or former insiders and affiliates.<sup>8</sup> Further, it is likely that these  
9 obligations were incurred by either Aquilla Development, LLC or Plise Development &  
10 Construction, since those entities appear to be the "operating" entities prior to May 31, 2008.  
11 See Moore Deposition (Exhibit 2 hereto), at pps. 120-121. None of those non-affiliated  
12 unsecured creditors has filed a proof of claim or appeared in the case. Cf. In re AC Rentals,  
13 Inc., 325 B.R. 339, 2005 WL 1220496, \*3 (10<sup>th</sup> Cir. BAP 2005)(unpublished disposition)<sup>9</sup>("It  
14 is appropriate for a bankruptcy court, in determining whether conversion or dismissal is in the  
15 best interest of creditors and the estate, to take into account the fact that no creditors have  
16 opposed a motion to dismiss or independently moved to convert the case."), citing Hall v.  
17  
18  
19  
20

21 <sup>5</sup> While Debtor's most recent monthly operating account does not reflect the amount of accrued professional fees  
22 (see Docket #171, p. 4 at l. 28); Debtor's lead counsel recently obtained court approval of fees and expenses  
23 totaling approximately \$432,000 for the period June 2, 2008 through August 31, 2008.

24 <sup>6</sup> CBN requests that this Court take judicial notice, pursuant to FRE 201, of proof of claim 102 and 102 filed by  
25 the Clark County Treasurer, indicating an original secured claim of \$19,608.29 as of June 9, 2008, and an  
26 amended secured claim as of 10/127/09 in the amount of \$298,015.49, both plus accruing penalties, interest &  
27 fees.

28 <sup>7</sup> Debtor also owes prepetition real property taxes; however, these constitute a first priority lien on the various  
parcels of real property.

<sup>8</sup> The only unsecured claims filed to date are those of GY Property Holding, LLC (Claim #25) pursuant to an  
obligation of five of the city crossing entities to buy out a former insider's interest (see Amended Disclosure  
Statement at p. 19), and the unsecured portion of the secured claim of Silver State Bank (now FDIC)(Claim #11)  
and claims which indicate by attachment the existence of deeds of trust (Claim ##27, 31).

<sup>9</sup> For the Court's convenience, a copy of that decision is attached hereto as Exhibit 3.

1 Vance, 887 F. 1041, 1044-45 (10<sup>th</sup> Cir. 1989)(“...all creditors had notice of the motions to  
2 dismiss...if conversion were in the best interest of the creditors, they would have so  
3 moved...”).

4 **III.**

5 **CONCLUSION**

6  
7 For the reasons stated above, CBN requests that the Court dismiss the case. In the event  
8 the case is not dismissed, CBN requests that the Court extend the deadline for determining the  
9 Debtor to be a single asset real estate entity, and shorten the time to hear that motion as well as  
10 to consider granting relief from the automatic stay.

11 DATED this 10th day of November, 2008.

12 SHEA & CARLYON, LTD.

13  
14 

15 CANDACE C. CARLYON, ESQ.

16 Nevada Bar No. 002666

17 TRACY M. O'STEEN, ESQ.

18 Nevada Bar No. 010949

19 701 E. Bridger Avenue, Suite 850

20 Las Vegas, NV 89101

21 Counsel for CBN

# **EXHIBIT 1**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADAIn re:  
CITY CROSSING 1, LLC,Case No. 08-15780-BAM  
CHAPTER 11 CASE

Debtor and Debtor-in-Possession.

11 USC§ 341 (A) MEETING OF CREDITORS  
Las Vegas, Nevada  
Thursday, July 10, 2008  
2:00 p.m.Reported By:  
Ellen L. Ford, RPR, CRR  
CSR No. 846  
Job No. 92030

Page 1

## 1 APPEARANCES:

2

3 Hearing Officer:

4

U.S. DEPARTMENT OF JUSTICE  
OFFICE OF THE UNITED STATES TRUSTEE  
BY: SCOTT ANDREW FARROW, ESQ.  
300 Las Vegas Boulevard, South  
Suite 4300  
Las Vegas, Nevada 89101  
(702) 388-6600 ext. 224  
E-mail: Scott.a.farrow@usdoj.gov

6

7

8

9 For Debtors:

10 WHITE & CASE  
BY: ROBERTO KAMPFNER  
633 5th Street  
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Los Angeles, California 90071  
(213) 620-7729  
E-mail: Rkempfner@whitecase.com

13 AND

14 SCHWARTZER & McPHERSON  
BY: LENARD E. SCHWARTZER, ESQ.  
2880 South Miller  
Las Vegas, Nevada 89117  
(702) 228-7590

16

17

18 For Community Bank of Nevada:

19 SHEA & CARLYON, LTD.  
BY: CANDACE C. CARLYON, ESQ.  
701 Bridger Avenue  
Suite 850  
Las Vegas, Nevada 89101  
(702) 471-7432  
E-mail: Ccarlyon@sheacarlyon.com

22

23

24

25

Page 3

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADAIn re: Case No. 08-15780-BAM  
CITY CROSSING 1, LLC, CHAPTER 11 CASE

Debtor and Debtor-in-Possession.

11 USC§ 341(A) Meeting of Creditors, taken at the  
Foley Building, U.S. Courthouse, 300 Las Vegas Boulevard  
South, Suite 1500, Las Vegas, Nevada, beginning at  
2:00 p.m. and ending at 3:30 p.m. on Thursday, July  
10th, 2008, before Ellen L. Ford, Certified Shorthand  
Reporter No. 846.

Page 2

## 1 APPEARANCES:

2

3 Also Present: William Plise, Debtor

4 Mitchell Stipp, Debtor

5 Jim Moore, CFO of Debtor

6 Edward J. Hanigan, Alper LP and

7 Alper Trust

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Natalie Cox, Aspen Financial  
Services, LLC  
Ogonna Atamoh, Tina Alper and  
Suzie VermillionSusan L. Myers, Lionel Sawyer &  
Collins

Page 4

1 (Pages 1 to 4)

1 Q. And there is a resolution attached to the  
2 petition; is that right?  
3 A. Yes.  
4 Q. City Crossing I, LLC. Its business is to hold  
5 dirt and to improve it; is that right?  
6 A. Well, City Crossing, LLC is a 126-acre mixed  
7 use project, but --  
8 Q. What's its current status?  
9 A. Current status is holding the real estate and  
10 developing the infrastructure, yes.  
11 Q. And what is the status of the land? How  
12 developed is it?  
13 A. How developed? The land has been light-graded  
14 at this point; rock crushed, meaning most of the large  
15 rock and debris has been removed from the surface;  
16 infrastructure in the way of utilities; sewer and water  
17 have been installed in the street frontages; power to  
18 Phase I was under way before we filed and stopped work;  
19 Embarq -- there was some telephone communication lines  
20 in Phase I which we need to get those moved.  
21 That's about it in the way of utilities today.  
22 So graded with light utilities in Phase I, and a portion  
23 of Phase II, and ongoing street improvements.  
24 But everything has stopped with the exception  
25 of one small project that's being finished up now on the

Page 25

1 water line.  
2 Q. Are there any physical structures -- permanent  
3 physical structures on the land at this stage?  
4 A. No.  
5 Q. Are there any -- is there any permanent fencing  
6 on the land at this stage?  
7 A. Temporary fencing --  
8 Q. Okay.  
9 A. -- and barricading.  
10 Q. Is there insurance on the property?  
11 A. Yes.  
12 Q. What kind of insurance?  
13 A. Liability insurance, course of construction  
14 probably.  
15 Q. Do you feel that the liability insurance is  
16 adequate to protect the public and the estate should a  
17 claim be made?  
18 A. Yes.  
19 Q. The debtor is an LLC; is that correct?  
20 A. Correct.  
21 Q. What year was it formed in?  
22 A. 2000 --  
23 MR. STIPP: 7, I think.  
24 MR. PLISE: City Crossing?  
25 MR. STIPP: Mm-hmm.

Page 26

1 A. 2007.  
2 Q. And is it currently in good standing?  
3 A. It is.  
4 Q. Can you just tell me, who are the members of  
5 the LLC?  
6 A. Aquila Investments I think is 100 percent  
7 member.  
8 Q. And who owns Aquila Investments?  
9 A. Myself and Mitchell Stipp.  
10 Q. Now, is this where you own the 100 percent of  
11 Class I and Class II is divided 90 percent, 10 percent,  
12 you holding 90 percent and Mr. Stipp holding 10 percent?  
13 A. Yes.  
14 Q. And the managing member is who of this debtor?  
15 A. That's Aquila Management.  
16 MR. STIPP: It's not a member, but it's the  
17 manager.  
18 A. It's the manager.  
19 Q. Manager without being a member.  
20 A. Correct.  
21 Q. And that's Aquila Management, LLC?  
22 A. Yes.  
23 Q. And Aquila Management, LLC, what is its  
24 ownership structure?  
25 A. 100 percent Aquila Investments.

Page 27

1 Q. So Aquila Investments, LLC owns 100 percent of  
2 Aquila Management, LLC, the manager. And then we talked  
3 about you own 100 percent of the Class I stock and  
4 90 percent of the Class II, and Mr. Stipp owns  
5 10 percent of the Class II.  
6 A. Correct.  
7 Q. In the last year -- well, let me back up.  
8 With respect to this debtor, has there been any  
9 modification of the members or the management since it  
10 was formed in 2007?  
11 A. No.  
12 Q. Have there been any other owners or members of  
13 this debtor in the last two years?  
14 A. Of City Crossing I?  
15 Q. Yes.  
16 A. No.  
17 Q. How about Aquila Management, LLC?  
18 A. No.  
19 Q. How about Aquila Investments, LLC?  
20 A. No.  
21 Q. Was there a specific event that triggered the  
22 filing of this bankruptcy case?  
23 A. Yes.  
24 Q. What was that?  
25 A. It was a -- we hit our maturity default dates,

Page 28

# **EXHIBIT 2**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

In re:

CITY CROSSING I, LLC, Case# BK-S-08-15780-BAM  
Debtors.

2004 EXAMINATION OF JAMES L. MOORE  
Las Vegas, Nevada  
Friday, July 11, 2008  
Volume 1

Reported by:  
BARBARA JUSTL  
CCR No. 878  
Job No. 91922

Page 1

1 APPEARANCES:

2  
3 For Creditor Community Bank of Nevada:

4 SHEA & CARLYON, LTD.  
BY: CANDACE C. CARLYON  
5 Attorney at Law  
701 Bridger Avenue  
6 Las Vegas, Nevada 89101  
(702) 471-7432

7  
8 For Creditors Susie Vermillion and Tina Alper:

9 SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON  
BY: OGONNA M. ATAMOH  
10 Attorney at Law  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
11 (702) 791-0308

12 For Creditor Aspen Financial:

13 KOLESAR & LEATHAM, CHTD.  
BY: NILE LEATHAM  
14 Attorney at Law  
3320 West Sahara Avenue, Suite 380  
15 Las Vegas, Nevada 89102  
(702) 362-7800

16 For Creditor Silver State:

17 TIFFANY & BOSCO P.A.  
18 BY: JEFFREY A. SANDELL  
Attorney at Law  
19 (Morning session via speakerphone)  
BY: ANDREW M. ELLIS  
20 Attorney at Law  
(Afternoon session via speakerphone)  
21 2525 East Camelback Road, Third Floor  
Phoenix, Arizona 85016  
22 (602) 255-6000  
23  
24  
25

Page 3

1 UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

2  
3  
4 In re:

5 CITY CROSSING I, LLC, Case# BK-S-08-15780-BAM  
6 Debtors.  
7  
8  
9  
0  
1  
2

3  
4  
5  
6  
7 2004 Examination of JAMES L. MOORE, Volume 1,  
8 taken on behalf of Creditor, Community Bank of Nevada,  
9 at Shea & Carlyon, Ltd., 701 Bridger Avenue, Suite 850,  
10 Las Vegas, Nevada, beginning at 9:34 a.m. and ending at  
11 4:30 p.m. on Friday, July 11, 2008, before Barbara  
12 Justl, Certified Court Reporter No. 878.  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Page 2

1 APPEARANCES (continued):

2  
3 For the Debtors:

4 WHITE & CASE  
BY: ROBERTO J. KAMPFNER  
5 Attorney at Law  
633 West Fifth Street, Suite 1900  
6 Los Angeles, California 90071  
(213) 629-7729

7  
8 Also present:

9 MITCHELL STIPP

10 TRACY OSTEN  
11  
12  
13  
14  
15  
16  
17  
18  
19  
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22  
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24  
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Page 4

1 (Pages 1 to 4)



1 A Yes.  
 2 Q What was the purpose of the merger?  
 3 A To consolidate the operations of the real  
 4 estate project known as City Crossing.  
 5 Q That merger happened in 2008; is that  
 6 correct?  
 7 A I believe that's the time.  
 8 Q Prior to that date, how were the operations  
 9 conducted or held?  
 10 A I don't understand the question.  
 11 Q You said that the operations were  
 12 consolidated with the merger. What was the difference  
 13 between the operations before and after the merger?  
 14 A Your question, as I understand it, is which  
 15 entities were merged in? I don't really understand the  
 16 question you're asking me.  
 17 Q I'm asking you what changed as a result of  
 18 the merger.  
 19 A The accounting changed from several entities  
 20 to one entity.  
 21 Q Anything else?  
 22 A I don't know.  
 23 Q The -- what is the business of City Crossing  
 24 I, LLC?  
 25 A To develop approximately 126 acres in West

Page 29

1 A No.  
 2 Q Interest income? Any kind of income?  
 3 A No.  
 4 Q And does the debtor have any employees?  
 5 A No.  
 6 Q Does the debtor have a telephone number?  
 7 A The mailing address is as I gave you earlier,  
 8 5550 Painted Mirage. The manager of that entity, as I  
 9 told you earlier, was Aquila Management. They have a  
 10 phone number.  
 11 Q So the debtor does not have its own telephone  
 12 number?  
 13 A There was a marketing phone number that was  
 14 used at one time. I don't know what the status of that  
 15 is now.  
 16 Q Other than the marketing number used at one  
 17 time, the debtor doesn't have an independent telephone  
 18 number; is that correct?  
 19 A That's correct.  
 20 Q And a marketing telephone number was the  
 21 telephone number for what entity?  
 22 A For City Crossing.  
 23 Q City Crossing I?  
 24 A City Crossing, the project. There was a  
 25 marketing number that was put up for the benefit of

Page 31

1 Henderson into a mixed use project.  
 2 Q Does the debtor have any source of income?  
 3 MR. KAMPFNER: Objection, ambiguous as to  
 4 what "income" is.  
 5 THE WITNESS: As far as operations, no. If I  
 6 can go back to the question you asked earlier.  
 7 BY MS. CARLYON:  
 8 Q Let's finish this one and then we will.  
 9 Is there income from some source other than  
 10 operations?  
 11 A No.  
 12 MR. KAMPFNER: Objection as to the word  
 13 "income." Ambiguous to the word "income."  
 14 THE WITNESS: From a GAAP perspective, there  
 15 is no income-producing operations on that project.  
 16 Earlier you asked me the purpose of merging those  
 17 entities. The primary purpose was to raise capital for  
 18 the project.  
 19 BY MS. CARLYON:  
 20 Q When you say "raise capital," what do you  
 21 mean?  
 22 A To refinance the existing debt.  
 23 Q When I asked you about income, you said from  
 24 a GAAP standpoint there's no operational income. Is  
 25 there any other income? Investment income?

Page 30

1 potential end users of the project, and then it was  
 2 provided to them so they could call our marketing  
 3 people.  
 4 Q When you say "our marketing people," what  
 5 does "our" mean?  
 6 A The employees of Plise Development &  
 7 Construction.  
 8 Q Did Plise Development & Construction  
 9 undertake marketing with regard to the City Crossing  
 10 project?  
 11 A Yes.  
 12 Q Did they pay for that phone number?  
 13 A Yes.  
 14 Q And was it listed as a phone number of Plise  
 15 Development & Construction?  
 16 A I don't know what the listing was, or if it  
 17 was listed. It was provided on the job site.  
 18 Q How many employees does Plise Development &  
 19 Construction have?  
 20 A Today, probably 20.  
 21 Q Has there been a variance in that number over  
 22 the last year or two?  
 23 A Yes.  
 24 Q Tell me about that.  
 25 A We've had staff reductions.

Page 32

Pages 29 to 32)

1 A Yes.  
 2 Q The second is Silver. Does that represent  
 3 Silver State Bank?  
 4 A Can I go back?  
 5 Q Of course.  
 6 A I don't get a copy of the cumulative balance,  
 7 I get a copy of the amount that's taken out on a  
 8 monthly basis.  
 9 Q Do you know if there are bank statements?  
 10 A It just shows the balance in the interest  
 11 reserve.  
 12 Q Does that account have a bank account number,  
 13 are you aware?  
 14 A I am not aware of it.  
 15 Q Is there interest earned on that bank  
 16 account?  
 17 A No.  
 18 Q How do you know that it's a physical funding  
 19 of an account rather than just a reserve set aside from  
 20 borrowing availability?  
 21 A I don't.  
 22 Q With regard to Silver, is that Silver State  
 23 Bank?  
 24 A Yes.  
 25 Q And do you know whether that's a physical

Page 117

1 bank account or whether that's a reserve from the loan  
 availability?  
 A Same response as --  
 Q You don't know?  
 A -- First National. I do not know.  
 Q With regard to C-o-m-m-u-n-i, does that  
 reference Community Bank Nevada?  
 A Yes.  
 Q Do you know whether that's a physical reserve  
 account or a reserve against loan availability?  
 A Same response as the First National Bank.  
 Q So you don't know?  
 A I don't know.  
 Q And the next line says Aspen and the number  
 1. What does that refer to?  
 A I don't know the specific accounts. It would  
 probably refer to an Aspen first mortgage versus an  
 Aspen second.  
 Q So the next line that says just Aspen, your  
 best recollection at this time is that would refer to  
 an interest reserve with regard to one or more second  
 deeds of trust?  
 A It could, yes.  
 Q What would we need to look at to know?  
 A I'd have to go back to the roll-up of the

Page 118

1 account to find out what the actual account is.  
 2 Q And when you say "go back to the roll-up of  
 3 the accounts," would you be going back to the  
 4 individual May 31st, 2008, printouts for the 15 City  
 5 Crossing entities?  
 6 A Probably.  
 7 Q Is that what you looked at to compile the  
 8 first two pages of Exhibit 6?  
 9 A Yes.  
 10 Q And did you actually print those out or have  
 11 someone print those out?  
 12 A I have not.  
 13 Q Did you look at them on the computer?  
 14 A They were -- they were combined on the  
 15 computer.  
 16 Q And in what format are they ordinarily  
 17 kept?  
 18 A I don't understand your question.  
 19 Q Is it an Excel document, a Word document, a  
 20 Quick Books document?  
 21 A No, they're maintained in Timberline.  
 22 Q And the next few lines say "Due from," and  
 23 particular parcel numbers 1 through 15. Do you see  
 24 that?  
 25 A I do.

Page 119

1 Q What do those lines refer to?  
 2 A Those refer to the allocations of development  
 3 cost that are applied to individual parcels, so when  
 4 the entities were kept separate before the merger,  
 5 there were 15 parcels, entities, and each of those  
 6 would be responsible for an allocated share of the  
 7 development cost. Some were funded through advances  
 8 from Aquila Investments, so there would be a due to/due  
 9 from from the individual accounts.  
 10 Q Were some of the development costs funded by  
 11 borrowings?  
 12 A Yes.  
 13 Q And when you say development costs, what  
 14 costs are you referring to?  
 15 A The cost of developing the City Crossing  
 16 project. It could be their soft costs. There's  
 17 architectural costs, there's engineering costs, there's  
 18 advertising costs, there's hard costs, infrastructure  
 19 costs, interest costs.  
 20 Q What about management fees?  
 21 A Management fees.  
 22 Q What about administrative expenses that  
 23 are -- such as the office? Is that paid from the  
 24 management fee or in addition to the management fee?  
 25 A That's typically paid as part of the

Page 120

(Pages 117 to 120)

1 management fee.

2 Q So the management fee includes incidental  
3 costs, such as salary, utilities, rent, that kind of  
4 thing?

A Yes.

6 Q And what is the management fee that was paid  
7 or accrued in 2008 prior to the merger?

8 A I don't know what the entirety was paid. The  
9 amount that's charged by parcel is \$15,000 per parcel  
10 per month.

11 Q And that goes -- and that would be payable to  
12 what entity or entities?

13 A Plise Development & Construction.

14 Q And is Plise Development & Construction also  
15 the general contractor for City Crossing?

16 A Yes.

17 Q And does City Crossing pay Plise Development  
18 & Construction for its services as general  
19 contractor?

20 A Yes.

21 Q And that's above and beyond the services as  
22 manager? I'm sorry, not as manager, the services with  
23 regard to management and administration?

24 A There's two different issues. One is  
25 development costs, which include administering and

Page 121

1 managing the soft costs with respect to the project,  
2 the entitlements, the zoning, the procurement of  
3 financing, et cetera, that would all be part of the  
4 management fee.

5 The others is the hard costs; construction,  
6 bringing in the water lines, utility lines, power  
7 lines, building roads, hardscape, et cetera, that's  
8 part of PD&C's contract.

9 Q And are those paid generally out of  
0 construction-controlled loan funds?

1 A Yes.

2 Q And does PDC get a flat fee or a percentage  
3 of the hard costs, or does it vary?

4 A I believe it's a cost-plus contract. I  
5 haven't reviewed the contract recently.

6 Q And I have a number of contracts. I'm sure  
7 we have the ability to do that together if we need to.

8 A Okay.

9 Q With regard to the "Due from Rainbow Sunset"  
0 line on the first page of Exhibit 6, what does that  
1 relate to?

A I don't know the specifics that comprise that  
amount. There are funds that are paid on behalf of  
City Crossing by Rainbow Sunset Developers. There's  
costs paid by Rainbow Sunset Developers on behalf of

Page 122

1 City Crossing, et cetera.

2 In this case, it looks like funds were  
3 advanced to City Crossing or advanced to Rainbow Sunset  
4 by City Crossing.

5 Q Is it the net number?

6 A No.

7 Q So on the liabilities, does it also reference  
8 Rainbow Sunset?

9 A Yes.

10 Q So there's \$300,000 due to Rainbow Sunset  
11 Development, and there's \$526,000 due from Rainbow  
12 Sunset Development; is that correct?

13 A Yes.

14 Q And does Rainbow Sunset Development have  
15 assets with which to repay the money that's owed to the  
16 debtor?

17 MR. KAMPFNER: If you know.

18 THE WITNESS: I don't know.

19 BY MS. CARLYON:

20 Q Do you perform any financial services or have  
21 you ever performed any financial services with regard  
22 to Rainbow Sunset?

23 A Aquila Management is the manager of Rainbow  
24 Sunset Developers.

25 Q And that being so, do you perform financial

Page 123

1 services with respect to that entity?

2 A I'm the CFO of Aquila Management. Aquila  
3 Management is the manager of Rainbow Sunset  
4 Developers.

5 Q So why is it that you don't know whether  
6 Rainbow Sunset has the ability to repay the amount it  
7 owes the debtor?

8 A I don't know.

9 Q Do you know whether it has a bank account?

10 A It does.

11 Q Do you know the approximate balance in the  
12 bank account?

13 A Right now, I don't know.

14 Q Why do you say "right now"?

15 A It varies.

16 Q Is that an active entity?

17 A It is.

18 Q Does it own real property?

19 A It owns entities that own real property.

20 Q Does it achieve income on an ongoing basis?

21 A At the present time, no.

22 Q There's a due from Sage Mountain I of  
23 \$458,000. Do you see that?

24 A I do.

25 Q And I believe you told me that Sage Mountain

Page 124

# **EXHIBIT 3**

Westlaw.

325 B.R. 339

325 B.R. 339, 2005 WL 1220496 (10th Cir.BAP (Okla.))

(Table, Text in WESTLAW), Unpublished Disposition

Page 1

**H**

NOTICE: THIS IS AN UNPUBLISHED OPINION. (The Court's decision is referenced in a "United States Bankruptcy Appellate Panel for the Tenth Circuit Decisions Without Reported Opinions" table appearing in the Bankruptcy Reporter. Use F1 CTA10 BAP Rule 8018-6 for rules regarding the citation of unpublished opinions.)

United States Bankruptcy Appellate Panel for the Tenth Circuit.

In re AC RENTALS, INC., An Oklahoma Corporation, Debtor.

AC RENTALS, INC., Appellant,  
v.

UNITED STATES TRUSTEE, Ashley H. Hough,  
Steve Powell, and Jolene Powell, Appellees.

No. 04-098, 02-10540-WV.

May 12, 2005.

Appeal from the United States Bankruptcy Court for the Western District of Oklahoma.

Before CLARK, BROWN, and MCNIFF, Bankruptcy Judges.

**ORDER AND JUDGMENT <sup>FN\*</sup>**

<sup>FN\*</sup> This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. 10th Cir. BAP L.R. 8018-6(a). PER CURIAM.

\*1 The parties did not request oral argument, and after examining the briefs and appellate record, the Court has determined unanimously that oral argument would not materially assist in the determination of this appeal. Fed. R. Bankr.P. 8012. The case is therefore ordered submitted without oral argument.

The debtor appeals an Order of the United States

Bankruptcy Court for the Western District of Oklahoma dismissing its Chapter 11 case. For the reasons stated herein, the bankruptcy court's Order is **AFFIRMED**.

**I. Background**

The debtor corporation is owned by Charles Hough (Hough). The bankruptcy court's Order dismissing the debtor's Chapter 11 case is based on facts, which have not been disputed, related to Hough's divorce from Ashley Hough (Ashley), and the debtor's acts and omissions as a debtor in possession. These undisputed facts, as well as the procedural history giving rise to the bankruptcy court's Order dismissing the debtor's case, are summarized below.

**1. The Divorce Lien**

Hough and Ashley divorced in 2000. Pursuant to a settlement, Ashley was granted a lien against the debtor's real property in the divorce (Divorce Lien). However, before the Divorce Lien was finalized and recorded, Hough filed a Chapter 13 petition. Ashley was granted relief from the automatic stay in Hough's Chapter 13 case to finalize and perfect her Divorce Lien (Relief Order). Hough appealed the Relief Order, and this Court affirmed that Order. In January, 2002, several weeks after this Court issued its Order and Judgment, <sup>FN1</sup> the debtor filed its Chapter 11 petition.

<sup>FN1</sup> *In re Hough*, BAP No. WO-01-059, 2002 WL 518687 (10th Cir.BAP Jan.8, 2002).

The debtor commenced an adversary proceeding against Ashley, seeking to avoid the Divorce Lien pursuant to 11 U.S.C. § 544. The bankruptcy court entered judgment in favor of the debtor, avoiding the Divorce Lien. This Court affirmed the bankruptcy court's judgment, <sup>FN2</sup> and Ashley's appeal of

325 B.R. 339

325 B.R. 339, 2005 WL 1220496 (10th Cir.BAP (Okla.))  
(Table, Text in WESTLAW), Unpublished Disposition

Page 2

our Order and Judgment is currently pending before the Court of Appeals.

FN2.*In re AC Rentals, Inc.*, BAP No. WO-03-096, 2004 WL 1182254 (10th Cir.BAP May 28, 2004).

## 2. Acts and Omissions of the Debtor in Possession

The debtor does business as "Outer Limits" (OL), a bar located in Oklahoma. OL, although possibly conceived by Hough prior to the filing of the debtor's Chapter 11 petition, commenced operation postpetition without obtaining bankruptcy court authorization. Neither OL nor its liquor licence is listed as an asset in the debtor's Schedules. OL maintains a non-debtor-in-possession checking account, and income and expenses in the account are not reported in the debtor's monthly operating accounts. Hough and Paula Edens (Edens), another former spouse of Hough, are the authorized signatories on OL's bank account. The debtor pays OL's labor expenses, including payments to Edens, but it does not keep records of time worked or cash paid.

From January, 2002, when the debtor's petition was filed, until at least June 2003, the debtor in possession made monthly payments averaging \$4,000 in amount to "AC Air" (Air), a sole proprietorship owned by Hough, for "contract labor." The debtor in possession does not pay Hough a salary, but Hough has paid the trustee in his Chapter 13 case over \$60,000. The debtor borrowed money from Air, but no records were maintained of inter-company transactions and bankruptcy court authorization was not obtained.

\*2 The debtor in possession failed to file tax returns, and was habitually late in filing its Monthly Operating Reports. Many checks issued by the debtor in possession were returned for insufficient funds, and insurance on some of its assets lapsed during the postpetition period. Although the debtor in possession proposed a Chapter 11 plan, numerous objections to its confirmation were filed, and the debtor has admitted that it cannot obtain con-

firmation of the plan.<sup>FN3</sup>

FN3. Objection to UST's Third Motion to Dismiss Case and Brief in Support, in Appellant's Appendix at 56; Appellant's Brief at 7.

## 3. Procedural History Related to Dismissal of the Debtor's Case

In July, 2002, seven months after the debtor filed its petition, the United States trustee (UST) sought to convert the debtor's Chapter 11 case to Chapter 7, or to dismiss the case (First Motion). The debtor objected to the First Motion, and shortly thereafter filed Monthly Operating Reports for the months of January through July, 2002. The bankruptcy court denied the First Motion.

Several months later, in May, 2003, the UST again moved to convert the debtor's Chapter 11 case to Chapter 7, or dismiss the case (Second Motion). The Internal Revenue Service (IRS) also moved to convert or dismiss the debtor's case at this time (IRS Motion). After these Motions were filed, the debtor filed Monthly Operating Reports for October, 2002 through July, 2003. The bankruptcy court subsequently entered an Order denying the Second Motion and the IRS Motion.

A third motion to convert the debtor's Chapter 11 case to Chapter 7 or to dismiss it was filed by the UST in March, 2004 (Third Motion). The debtor objected to the Third Motion, and filed Monthly Operating Reports for December, 2003 through February, 2004, whereupon the Third Motion was withdrawn by the UST.

Steve Powell, as an "interested party" (Powell), filed a motion to convert the debtor's Chapter 11 case to Chapter 7 in April, 2004 (Powell Motion).<sup>FN4</sup> The debtor and Hough objected to the Powell Motion. The Powell Motion was never noticed for hearing, and no order was entered disposing of it.

FN4. A motion filed by Powell indicates

325 B.R. 339

325 B.R. 339, 2005 WL 1220496 (10th Cir.BAP (Okla.))  
(Table, Text in WESTLAW), Unpublished Disposition

Page 3

that he and his spouse are the owners of the real property on which OL does business. Motion to Convert Case to Chapter 7 at 1, in Appellant's Appendix at 58; *see also* Transcript at 3, in Appellant's Appendix at 3. The bankruptcy court found, and it is undisputed, that the debtor and Powell are either partners, or have a joint venture related to OL. *See* Appellee's Appendix at 59. The debtor in possession commenced an adversary proceeding against Powell seeking injunctive relief. *Id.* at 9/10/03, in Appellee's Appendix at 11.

In September, 2004, the UST moved to dismiss the debtor's Chapter 11 case pursuant to 11 U.S.C. § 1112(b) (Motion to Dismiss). Ashley filed a statement supporting the UST's Motion to Dismiss. The debtor objected to the Motion to Dismiss, stating that although it could not confirm a plan, it would be in the best interests of creditors to convert its Chapter 11 case to Chapter 7. At that time, the debtor also filed Monthly Operating Reports for March, 2004, through August, 2004. None of the debtor's creditors opposed the Motion to Dismiss, or filed papers in support of the debtor's request to convert. Powell and his spouse, as "interested parties," moved to convert the debtor's case to Chapter 7 while the Motion to Dismiss was pending, but their motion was never noticed for hearing.

The bankruptcy court held a hearing on the UST's Motion to Dismiss in November, 2004. None of the debtor's creditors appeared to oppose the Motion to Dismiss, or to support the debtor's request for conversion. Of the parties who appeared (the debtor, the UST, Powell and Ashley), none argued that the Chapter 11 case should continue. Rather, the dispute centered on whether the Chapter 11 case should be converted to Chapter 7, as requested by the debtor, or whether it should be dismissed for the reasons stated in the Motion to Dismiss. Although the UST requested that the debtor's Chapter 11 case be dismissed in its Motion to Dismiss, it refused to

take a position at the hearing as to whether it should instead be converted; but pointed out that if the case were converted, most of the debtor's assets would be used to pay administrative claimants, and unsecured creditors would receive little, if any, distribution. The debtor agreed with the UST that unsecured creditors would not receive a meaningful distribution if its case were converted to Chapter 7.<sup>FN5</sup> Notwithstanding, the debtor argued that conversion was more appropriate than dismissal because Ashley's Divorce Lien would be reinstated if the case were dismissed.<sup>FN6</sup> Powell supported conversion because he wanted a trustee to administer the debtor's assets. At the close of the hearing, the bankruptcy court took the matter under advisement.

FN5. Transcript at 18, in Appellant's Appendix at 18.

FN6. *See* 11 U.S.C. § 349(b).

\*3 In December, 2004, the bankruptcy court reconvened the hearing on the Motion to Dismiss, and granted the Motion, issuing its findings of fact and conclusions of law on the record. Subsequently, the bankruptcy court entered a separate Order granting the Motion to Dismiss, incorporating by reference its findings of fact and conclusions of law made on the record (Dismissal Order).

The debtor timely appealed the bankruptcy court's final Dismissal Order.<sup>FN7</sup> The parties have consented to this Court's jurisdiction because they have not elected to have this appeal heard by the United States District Court for the Western District of Oklahoma.<sup>FN8</sup>

FN7.28 U.S.C. § 158(a)(1); Fed. R. Bankr.P. 8002(a).

FN8.28 U.S.C. § 158(b)-(c); Fed. R. Bankr.P. 8001(e).

## II. Discussion

The bankruptcy court dismissed the debtor's Chapter 11 case pursuant to 11 U.S.C. § 1112(b),

325 B.R. 339

Page 4

325 B.R. 339, 2005 WL 1220496 (10th Cir.BAP (Okla.))  
(Table, Text in WESTLAW), Unpublished Disposition

which states:

[O]n request of a party in interest or the United States trustee or bankruptcy administrator, and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause, including-

(1) continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation;

(2) inability to effectuate a plan;

(3) unreasonable delay by the debtor that is prejudicial to creditors;

....

(10) nonpayment of any fees or charges required under chapter 123 of title 28.<sup>FN9</sup>

FN9. 11 U.S.C. § 1112(b)(1)-(3), (10).

Under this section, when "cause" exists, a bankruptcy court has broad discretion to either convert a Chapter 11 case to Chapter 7, or to dismiss the case, depending on the best interest of creditors and the estate.<sup>FN10</sup> It is appropriate for a bankruptcy court, in determining whether conversion or dismissal is in the best interest of creditors and the estate, to take into account the fact that no creditors have opposed a motion to dismiss or independently moved to convert the case.<sup>FN11</sup>

FN10. *Hall v. Vance*, 887 F.2d 1041, 1044 (10th Cir.1989) ("The bankruptcy court has broad discretion under § 1112(b)" to dismiss or convert a case) (citing S.Rep. No. 95-989, at 117, (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5903); H.R.Rep. No. 95-595, at 405 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6361 (§ 1112(b)"gives wide discretion to the court

to make an appropriate disposition of the case when a party in interest requests.... The court will be able to consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases."); accord *In re Preferred Door Co.*, 990 F.2d 547, 549 (10th Cir.1993) ("Under section 1112(b)... a bankruptcy court has broad discretion to convert a Chapter 11 case to a Chapter 7 proceeding or to dismiss a case for several causes, including the debtor's inability to effectuate a plan."); *Frieouf v. United States (In re Frieouf)*, 938 F.2d 1099, 1102 (10th Cir.1991) ("Section 1112(b) provides a nonexhaustive list of grounds upon which a bankruptcy court may dismiss a Chapter 11 case for 'cause.'").

FN11. *Hall*, 887 F.2d at 1044-45 (in response to the argument that the bankruptcy court abused its discretion in choosing to dismiss a Chapter 11 case, as opposed to appointing a Chapter 11 trustee, the Court of Appeals stated: "[A]ll creditors had notice of the motions to dismiss, yet during the three months between the filing of those motions and the hearing on them, none filed objections or moved to convert. If conversion were in the best interest of the creditors, they would have so moved prior to the ... hearing.")

All parties below agreed that the debtor's Chapter 11 case should be dismissed or converted to Chapter 7. Thus, there is no question that "cause" exists under § 1112(b). The question herein is whether the bankruptcy court erred in choosing to dismiss the case, as opposed to converting it to Chapter 7. We review this decision for abuse of discretion.<sup>FN12</sup>

FN12. *Id.* at 1045.

The bankruptcy court made the following findings of fact and conclusions of law related to its decision



325 B.R. 339

Page 5

325 B.R. 339, 2005 WL 1220496 (10th Cir.BAP (Okla.))  
(Table, Text in WESTLAW), Unpublished Disposition

to dismiss the debtor's case, as opposed to converting it to Chapter 7:

[U]nder section 1112(b), the Court has the discretion to either convert the case ... to one under Chapter 7 or to dismiss the case. And in the words of the statute, quote, "whichever is in the best interest of creditors and the estate."

According to Collier on Bankruptcy, ... if all the parties agree, the Court should grant their desire. The parties in interest here would be the creditors. Here, Ashley ... while she's listed as a creditor in the schedule, is not actually a creditor of the estate but is a lien holder pursuant to the divorce decree I mentioned earlier. Ashley ..., although not a creditor, favors dismissal. Steve Powell favors conversion to Chapter 7, but he's not a creditor either, but rather a partner or joint venturer in the [OL] investment. The [UST] does not take a position with respect to conversion or dismissal, and the debtor favors conversion.

\*4 The only unsecured creditors listed in the schedules are three in number if Ashley ... is excluded, as she should be, and also Kent Klingenberg should be excluded because he also is not a creditor of this estate. So, if you eliminate those, the three unsecured creditors, the total debt of those unsecured creditors is roughly \$13,000. None of the unsecured creditors have appeared in support of or in opposition to the [UST's] motion. Washita State Bank is a secured creditor, who in the schedules is shown as having a partial unsecured claim, but the bank's not taken a position either.

The debtor's statement of financial affairs indicates that there was no pending litigation or collection activity when bankruptcy was filed. The statement of financial affairs does not indicate any preferential payments. So, if that's correct, there would be nothing to pursue if the case were converted.

If the case were dismissed, there would not be

any continuing additional administrative expenses to be paid. If the case were dismissed, the secured creditors could pursue foreclosure or collection activity. There are a small amount of unsecured claims, and unsecured creditors again have not indicated, have not initiated any collection activity.

Dismissal of the estate rather than conversion would maximize the estate's value; thus, it seems that the case should be dismissed.<sup>FN13</sup>

FN13. Transcript at 9-11, in Appellant's Appendix at 31-33.

The bankruptcy court did not abuse its discretion under § 1112(b) because from these findings of fact and conclusions of law we do not have "a definite and firm conviction that [it] made a clear error of judgment or exceeded the bounds of permissible choice in the circumstances."<sup>FN14</sup> Accordingly, we affirm the Dismissal Order.

FN14. *Moothart v. Bell*, 21 F.3d 1499, 1504 (10th Cir.1994) (citation omitted).

In addition to the findings and conclusions supporting its decision to dismiss, as opposed to convert, the debtor's Chapter 11 case, the bankruptcy court stated that dismissal was warranted under § 1112(b) because the case was filed in bad faith. The debtor attacks this conclusion, stating that the bankruptcy court improperly imputed Hough's acts to the debtor-corporation. This argument fails because even if we disregarded the bad faith conclusion, the undisputed findings of fact set out above support the Dismissal Order.

The debtor contends that dismissal of its Chapter 11 case denied it its constitutional right to bankruptcy protection. This argument is without merit as a matter of law, as it is well-established that there is no constitutional right to a bankruptcy discharge.<sup>FN15</sup>

FN15. See, e.g., *United States v. Kras*, 409 U.S. 434, 446-477, 93 S.Ct. 631, 34

325 B.R. 339

Page 6

325 B.R. 339, 2005 WL 1220496 (10th Cir.BAP (Okla.))  
(Table, Text in WESTLAW), Unpublished Disposition

L.Ed.2d 626 (1973); *In re Stewart*, 175  
F.3d 796, 811 (10th Cir.1999).

The debtor also argues that it was denied due process because the bankruptcy court "employed several fact findings that the debtor was not given an opportunity to attempt rebuttal."<sup>FN16</sup> This argument is without merit. Not only has the debtor failed to set forth with any specificity the fact findings that it would rebut, but it misunderstands the process. The debtor had notice of the Motion to Dismiss, and it opposed that Motion, arguing that its Chapter 11 case should be converted to Chapter 7 instead of being dismissed. As the proponent of conversion, it had the burden to show that conversion, rather than dismissal, was in the best interest of creditors and the estate at the noticed hearing on the Motion to Dismiss. The debtor failed to present any evidence at that hearing. Significantly, the debtor admitted at the hearing that unsecured creditors would not likely receive a distribution if its case were converted to Chapter 7. It was this admission, together with representations made by the debtor in papers filed in its case, including admissions made in a fact stipulation filed with the UST in conjunction with the Third Motion (summarized above), that formed the basis of the bankruptcy court's decision to dismiss, as opposed to convert, the case. This being so, the debtor cannot complain that it did not have an opportunity to rebut facts.

FN16. Appellant's Brief at 4.

\*5 Finally, the debtor makes two arguments related to Ashley and the Divorce Lien, both of which are without merit. The debtor first maintains that dismissal of its case "is tantamount to circumventing the appeals process, by effectually undoing the Bankruptcy Court's summery judgement [sic] granted [the debtor] regarding Ashley Hough's liens."<sup>FN17</sup> The appeal process is not circumvented by dismissal of the debtor's case, but rather is rendered moot because Ashley's Divorce Lien is reinstated by the Dismissal Order as a matter of law pursuant to 11 U.S.C. § 349(b). There being ample grounds to dismiss the case resulting from the debt-

or in possession's admitted acts and omissions, it cannot complain about the effect of § 349(b) as only debtors who comply with the Bankruptcy Code are entitled to its benefits.

FN17. Appellant's Brief at 7.

The debtor also argues that the bankruptcy court erred in dismissing its case because Ashley was the only party who requested dismissal and she lacked standing to do so. This argument lacks merit for numerous reasons, the most important of which is that the bankruptcy court did not dismiss the debtor's case on Ashley's motion, and in fact, discounted Ashley's role, holding that she was not a "creditor" to which the § 1112(b) "best interest" test applied. The Motion to Dismiss was made by the UST, and it has not been nor can it be disputed that the UST may request dismissal.<sup>FN18</sup> Although the UST refused to take a position at the hearing on its Motion as to whether dismissal or conversion was appropriate, it did not withdraw its Motion to Dismiss, and its argument favored dismissal. Indeed, it was the UST's argument that conversion would result in increased administrative expenses and little or no distribution to unsecured creditors that compelled the bankruptcy court to dismiss the case.

FN18. 11 U.S.C. § 1112(b).

III. Conclusion

The bankruptcy court's Dismissal Order is AFFIRMED.

10th Cir.BAP (Okla.), 2005.

*In re AC Rentals, Inc.*

325 B.R. 339, 2005 WL 1220496 (10th Cir.BAP (Okla.))

END OF DOCUMENT

**OPPOSITION/COUNTERMOTION**

**EXHIBIT 13**

# Civil Case Records Search Results

Logout Search Menu New District Civil Search

Search Criteria: Plise, William

Location : District Court Civil Help

Case Number	Style	Filed/Location	Type/Status
<u>01A444214</u>	William Paulis vs Nellis Cab Co, Sun Cab Inc, et al	12/21/2001 Department 6	Negligence - Auto Closed
<u>02A447355</u>	Rosen Auto Leasing Inc vs William Polk	03/04/2002 Department 19	Foreign Judgment - Civil Closed
<u>04A485453</u>	John Isola, Rich Isola vs William Plise	05/12/2004 Department 13	Breach of Contract Closed
<u>04A487600</u>	William Plise vs Big-Tex Nevada Inc	06/22/2004 Department 2	Breach of Contract Closed
<u>05A504616</u>	Antonio Chavez vs Plise Development And Construction LLC, William Plise	05/26/2005 Department 4	Business Court Closed
<u>05A512672</u>	Cardiuvascular Imaging Center LLC, Nevada Imaging Partners LLC, et al vs Garey McLellan MD, Patricia McLellan, et al	11/04/2005 Department 11	Business Court Reopened
<u>06A525992</u>	Heritage Capital Management LLC, Covenant Bancorp Inc, et al vs Val Southwick, Vescor Capital Inc, et al	08/04/2006 Department 12	Breach of Contract Reopened
<u>07A536665</u>	Michael Mather, Alice Crut, et al vs Val Southwick, Vescor Capital Inc, et al	02/23/2007 Department 25	Business Court Open
<u>07A536707</u>	Wanda Marks, L Parmenter, et al vs Val Southwick, Vescor Capital Inc, et al	02/26/2007 Department 21	Breach of Contract Open
<u>07A540834</u>	SOP 871 LLC, Siena Office Park 2 LLC vs William Plise, Siena Office Park 3 LLC, et al	05/08/2007 Department 21	Other Civil Filing Closed
<u>07A544792</u>	Eagle Management And Investment, William Plise vs Craig Johnson, William Snyder	07/18/2007 Department 13	Business Court Closed
<u>07A545946</u>	William Snyder, Michael Federighi, et al vs William Plise, Mitchell Stipp, et al	08/07/2007 Department 13	Business Court Closed
<u>07A550206</u>	William Plise vs AJR Inc, Antigone Rahi, et al	10/18/2007 Department 24	Other Civil Filing Closed
<u>08A557513</u>	Aquila Investments LLC, William Plise vs United Medical Imaging LLC, Radiology Consultants Imaging LLC, et al	02/20/2008 Department 11	Business Court Closed
<u>08A562444</u>	Aquila Investments LLC, William Plise vs United Medical Imaging LLC, Radiology Consultants Imaging LLC, et al	05/05/2008 Department 11	Business Court Closed
<u>08A566676</u>	Community Bank Of Nevada vs Plise Companies LLC, Aquila Investments LLC, et al	07/02/2008 Department 13	Business Court Open
<u>08A567117</u>	Aquila Investments LLC vs Cracked Egg LLC, Goteegs Inc, et al	07/09/2008 Department 11	Business Court Closed
<u>08A569571</u>	Eliot Alper, Eliot A Alper Revoc Trust, et al vs William Plise	08/13/2008 Department 16	Breach of Contract Open
<u>08A571079</u>	Precision Concrete vs Rainbow Sunset Pavilion Building B LLC, Plise Development & Construction LLC	09/05/2008 Department 16	Title to Property Closed
<u>08A572600</u>	R P Weddell And Sons Co vs William Plise, City Crossing 13 LLC, et al	09/30/2008 Department 16	Title to Property Open
<u>08A576642</u>	Travelers Casualty And Surety Co vs William Plise, Tenille Plise, et al	11/26/2008 Department 2	Breach of Contract Open
<u>08A577157</u>	Bank Of George vs William Plise, Aquila Investments LLC	12/05/2008 Department 3	Other Civil Filing Reopened
<u>08A578085</u>	Bank Of Nevada vs William Plise	12/17/2008 Department 18	Breach of Contract Open
<u>09A581939</u>	Banc Of America Leasing And Capital LL vs Plise Companies LLC, William Plise	02/05/2009 Department 10	Breach of Contract Open
<u>09A587379</u>	Plise Development And Construction LLC, William Plise vs Nevada Dept Of Business And Industry	04/09/2009 Department 18	Civil Petition for Judicial Rev Open
<u>91A292737</u>	Joseph Steward, Brenda Steward vs Ryan Paulos, William Paulos	02/15/1991 Department 2	Negligence - Auto Closed

<u>93A318134</u>	Jeff Haas, Stephanie Haas vs William Plise, Bruce Wilson	04/07/1993 Department 12	Civil Conversion Case Type Closed
<u>93A319044</u>	Jones Jones Close And Brown vs William Plise	05/05/1993 Department 10	Civil Conversion Case Type Closed
<u>93A319226</u>	Bonanza Materials Inc vs William Plise, Robert Plise, et al	05/11/1993 Department 9999	Breach of Contract Closed
<u>93A325226</u>	In the Matter of the Compromise of Minor's Claim by Jessica McKay	02/18/1992 Department 2	Negligence - Auto Closed
<u>96A358946</u>	Cassandra Jones vs William Palsey	05/02/1996 Department 4	Negligence - Auto Closed
<u>96A368180</u>	William Pollack, Cheryl Pollack vs Harry McKinnon MD, Jeffrey Hunter MD, et al	12/31/1996 Department 13	Negligence - Medical/Denta Closed
<u>97A371542</u>	Clark County Of vs Paris Investments Ltd, George LaForge, et al	03/27/1997 Department 13	Condemnation/Eminent Dor Closed
<u>98A390657</u>	William Pollack, Cheryl Pollack vs Harry McKinnon MD, Jeffrey Hunter MD, et al	07/10/1998 Department 13	Negligence - Medical/Denta Closed
<u>A-09-591861-C</u>	Eliot Alper, Plaintiff(s) vs. William Plise, Defendant(s)	06/05/2009 Department 5	Breach of Contract Open
<u>A-09-593457-C</u>	City Crossing 10 Second Irrevocable Business Trust, Plaintiff(s) vs. William Plise, Defendant(s)	06/26/2009 Department 2	Breach of Contract Open
<u>A-09-593459-C</u>	City Crossing 12 Irrevocable Business Trust, Plaintiff(s) vs. William Plise, Defendant(s)	06/26/2009 Department 9	Breach of Contract Open
<u>A-09-593527-C</u>	City Crossing 9 Second Irrevocable Business Trust, Plaintiff(s) vs. William Plise, Defendant(s)	06/26/2009 Department 20	Breach of Contract Open
<u>A-09-593528-C</u>	City Crossing II Irrevocable Business Trust, Plaintiff(s) vs. William Plise, Defendant(s)	06/26/2009 Department 10	Breach of Contract Open
<u>A-09-594381-C</u>	Premier Traffic Control Inc, Plaintiff(s) vs. Chaparral Construction Inc, Defendant(s)	06/30/2009 Department 18	Other Civil Filing Closed
<u>A-09-594503-B</u>	FNBN-CMLCON I LLC, Plaintiff(s) vs. William Plise, Defendant(s)	07/01/2009 Department 11	Business Court Open
<u>A-09-595555-C</u>	Cardno Wrg Inc, Plaintiff(s) vs. William Plise; Plise Development & Construction LLC; Plise Companies LLC; Playa Del Sol LLC; Sage Mountain Parcel 2 LLC; Sage Mountain Parcel 3 LLC; Sage Mountain Parcel 4 LLC; Sage Mountain Parcel 5 LLC; Sage Mountain Parcel 6 LLC; Sage Mountain Parcel 7 LLC; Sage Mountain Parcel 8 LLC; City Crossing 1 LLC; City Crossing 3 LLC; City Crossing 4 LLC; City Crossing 6 LLC; City Crossing 7 LLC; City Crossing 8 LLC; Eliot Alper; Revocable Trust; Alper Ltd Partnership; Ronald C Arndt Living Trust; Ronald Arndt; Donna Arndt; Bruce E Addis Family Trust; Bruce Addis; City Crossing 9 2nd Irrovable Business Trust; Rogers-Barnett Family Trust; Community Bank Of Nevada, Defendant(s)	07/20/2009 Department 8	Title to Property Open
<u>A-09-598088-C</u>	Westar Fire Protection Inc, Plaintiff(s) vs. William Plise; Plise Development & Construction LLC; GY Rainbow Holdings LLC, Defendant(s)	08/27/2009 Department 19	Title to Property Open

**OPPOSITION/COUNTERMOTION**

**EXHIBIT 14**

SHEA & CARLYON, LTD.  
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ELECTRONICALLY FILED  
JULY 2, 2008

*Counsel for Community Bank of Nevada*

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:	)	CASE NO. BK-S-08-15780-BAM
	)	Chapter 11
CITY CROSSING I, LLC,	)	
	)	DATE: OST PENDING
Debtor.	)	TIME: OST PENDING
	)	

**OPPOSITION TO MOTION OF DEBTOR: (1) TO CONTINUE THE EXAMINATION  
DATE IN CONNECTION WITH THE SUBPOENA ISSUED TO DEBTOR'S MOST  
KNOWLEDGEABLE PERSON AND OBTAIN A PROTECTIVE ORDER IN  
CONNECTION THEREWITH; AND (2) TO QUASH SUBPOENA ISSUED TO  
WILLIAM PLISE; COUNTERMOTION TO COMPEL WILLIAM PLISE TO  
COMPLY WITH SUBPOENA**

Community Bank of Nevada, by and through its counsel, Candace C. Carlyon, Esq. of the law firm of Shea & Carlyon, Ltd., hereby files its opposition to the Motion of Debtor: (1) To Continue the Examination Date in Connection With The Subpoena Issued to Debtor's Most Knowledgeable Person and Obtain a Protective Order in Connection Therewith; and (2) to Quash Subpoena Issued to William Plise (the "Motion") and Countermotion to Compel Production.<sup>1</sup>

<sup>1</sup> As Counsel for the Debtor has indicated that Debtor and Mr. Plise will comply with the Court's ruling, a formal separate Countermotion and request for Order Shortening Time has not been filed. Counsel have been very cooperative in attempting to narrow and resolve issues relative to the 2004 requests, and CBN seeks this Court's indulgence with regard to the informality of this procedure and the discussion below, in light of the shortened time involved.

1 This Opposition and Countermotion is made and based upon the attached Points and  
2 Authorities, the pleadings papers and records on file in this matter and any oral argument which  
3 may be considered at the time of the hearing of the Opposition and Countermotion.

4 DATED this 2<sup>nd</sup> day of July, 2008.

5 SHEA & CARLYON, LTD.

6  
7  
8 CANDACE C. CARLYON, ESQ.  
9 Nevada Bar No. 002666  
10 701 E. Bridger Avenue, Suite 850  
11 Las Vegas, NV 89101

12 **POINTS AND AUTHORITIES**

13 **I. BACKGROUND**

14 As the Court may recall, upon filing the Bankruptcy the Debtor immediately filed an  
15 adversary proceeding seeking to enjoin any action against Mr. William Plise (and other affiliates)  
16 on their guarantors of the Debtor's obligations. The Court granted a Temporary Restraining  
17 Order, set a hearing on the Debtor's Motion for Preliminary Injunction, and approved expedited  
18 discovery. On the eve of the discovery response deadline, the Debtor dismissed the request.  
19 However, the Debtor has represented that Insider and Affiliate funding will be "essential to a  
20 successful reorganization." See Debtor's Complaint in adversary #08-01177, ¶32.

21 In addition, Debtor has represented that:

22 Mr. Plise is not just the owner of Plise Development and the Debtor. He is the  
23 driving force behind those entities. Indeed, Mr. Plise is indispensable and he  
24 takes an extremely active role in each of the projects developed by Plise  
25 Development, including City Crossing. Mr. Plise oversees every aspect of the  
26 development process from the acquisition, planning, financing, construction,  
27 leasing and sale of each of the projects. Among other things, Mr. Plise  
28 currently spends up to sixty hours a week reviewing development plans,  
directing construction activities and working on financing issues in respect of  
City Crossing. Put simply, Mr. Plise's expertise is essential to the success of  
City Crossing.



1 Id. at paragraph 32.

2 On June 17, Debtor filed amended schedules and statements reflecting almost \$7 million  
3 in distributions to insiders within a year of the petition. See Docket # 57, Statement of Financial  
4 Affairs ("SOFA"), Item. 23. Although not totaled, it appears that additional transfers to insiders  
5 in the approximate amount of \$3 million were made to insiders within one year of the petition.  
6 SOFA, #3(b).

## 8 II. LEGAL ARGUMENT

### 9 A. Scope of 2004.

10 Bankruptcy Rule 2004 provides in pertinent part:

- 11 (a) Examination on Motion. On motion of any party in interest  
12 the court may order the examination of any entity.  
13 (b) Scope of Examination. The examination of an entity under  
14 this rule or of the debtor under § 343 of the Code may relate  
15 only to the acts, conduct, or property or to the liabilities and  
16 financial condition of the debtor, or to any matter which may  
17 affect the administration of the debtor's estate, or to the  
18 debtor's right to a discharge. In a ... reorganization case  
19 under chapter 11 of the Code, other than for the reorganization  
20 of a railroad, the examination may also relate to the operation  
21 of any business and the desirability of its continuance, the  
22 source of any money or property acquired or to be acquired by  
23 the debtor for purposes of consummating a plan and the  
24 consideration given or offered therefor, and any other matter  
25 relevant to the case or to the case or to the formulation of a  
26 plan.

21 The cases addressing Bankruptcy Rule 2004 uniformly hold that the language of Rule  
22 2004 contemplates a broad scope of inquiry. See, e.g., In re Valley Forge Plaza Associates, 109  
23 B.R. 669 (Bankr. E.D. Penn. 1990) ("The scope of a R2004 examination is even broader than  
24 that of discovery permitted under the F.R.Civ.P., which themselves contemplate broad, easy  
25 access to discovery."); In re Szadkowski, 198 B.R. 140 (Bankr. D. Maryland 1996) ("A Rule  
26 2004 examination allows a broad "fishing expedition" into an entity's affairs for the purpose of  
27 obtaining information relevant to the administration of the bankruptcy estate").  
28

1 The documents required in the 2004 Orders are appropriate to the examination of the  
2 Debtor's financial affairs, operations, ability to reorganize, recovery of insider transfers, and  
3 whether a trustee or examiner should be appointed in this case.<sup>1</sup>

4 **B. Specific Objections to Production of Documents**

5 Unfortunately, the Debtor filed the Motion for Protective Order prior to the already  
6 scheduled "meet and confer" discussion. As is the intent of, inter alia, LR 7026(g)(2), counsel  
7 are expected to attempt to resolve discovery disputes **before** requesting court intervention.  
8

9 Following such discussions, it appears that the following are the present resolutions,  
10 offers, and outstanding offers of CBN relative to this matter, and the authorities for CBN's  
11 position relative to specific issues.

12 **REQUEST NO. 1:**

13 *Produce a general ledger and check register for the period March 1, 2003 through June*  
14 *2, 2008 for each of the City Crossing Entities.*

15 Debtor states that such documents have been produced; however, as discussed below,  
16 the production in "tiff" format has made review prior to the deadline for this opposition  
17 virtually impossible. This issue is discussed in Section C, below.  
18

19 **REQUEST NO. 2:**

20 *Produce all Documents reflecting the transfer or expenditure of any sums received by*  
21 *You, or any of your Affiliates or Insiders, directly or indirectly, from any loan or sales proceeds*  
22 *with respect to the City Crossing Property, from and after March 1, 2003.*  
23

24  
25  
26 <sup>1</sup> 11 U.S.C. §1104(c) provides that "If the court does not order the appointment of a trustee under this section,  
27 then at any time before the confirmation of a plan, on request of a party in interest or the United States trustee, and  
28 after notice and a hearing, the court shall order the appointment of an examiner to conduct such an investigation of  
the debtor as is appropriate, including an investigation of any allegations of fraud, dishonesty, incompetence,  
misconduct, mismanagement, or irregularity in the management of the affairs of the debtor of or by current or  
former management of the debtor, if...the debtor's fixed, liquidated, unsecured debts, other than debts for goods,  
services, or taxes, or owing to an insider, exceed \$5,000,000." Such is the case here.

Debtor states it has produced all of the closing statements which reflect the initial disbursement of such funds, and information regarding transfers. CBN requests that any documents reflecting subsequent transfers by insiders and affiliates be produced, and that the production include the actual source documents (i.e., cancelled checks, records of transfer and receipts of wires, etc.). **This issue remains outstanding.**

**REQUEST NO. 3:**

*Produce copies of all Documents reflecting outstanding invoices or debts owing by any of the City Crossing Entities.*

Debtor declines to produce any of the requested documents, claiming that it would be overly burdensome offer to review all of the Debtor's accounts payable files. CBN has requested that the Debtor produce at this time the source documents relied upon in preparing the schedules; and that the Debtor set a time for Counsel to review the accounts payable files at the Debtor's convenience, so as to minimize any burden to the Debtor.

**REQUEST NO. 4:**

*Produce copies of any contracts or other Documents which refer or relate to any development, entitlement, or other work or acts which must be completed prior to commencing construction of improvements as the City Crossing Property.*

Debtor offered to produce only the entitlement agreement with the City of Henderson, and copies of all of Debtor's executory contracts. CBN responded that the development agreement, previously filed in the adversary case, need not be produced, but that documents demonstrating work necessary to bring the project to the condition contemplated for sale or refinancing to be produced, offering to provide additional time for such production. Debtor's Second Production included only the development agreement. **This issue remains outstanding.**

REQUEST NO. 5:

*Produce copies of all financial statements (including drafts) prepared within the last 12 months for each of the City Crossing Entities and any Affiliate or Insider.*

Debtor represents that all Debtor's final financial statements have been produced. CBN requests that the financial statements of the insiders who received transfers from the Debtors be produced. **This issue remains outstanding.**

REQUEST NO. 6:

*Produce copies of the escrow closing statement with respect to the closing of any sale, or transfer, or refinancing of any part of the City Crossing Property.*

Debtor represents that these documents have been produced with regard to the most recent transactions, and CBN has requested that all such documents be produced. Debtor agreed, but has not yet produced the additional documents.

REQUEST NO. 7:

*Produce copies of all Documents reflecting the disposition of all proceeds of sale or financing of any the City Crossing Property.*

Debtor indicates that the closing statements and bank statements contain this information.

REQUEST NO. 8:

*Produce Copies of all Documents relating to the possible sale or refinancing of the City Crossing Property.*

Debtor refuses to produce such documents, stating that they are confidential. However, CBN and the Debtor previously negotiated, and CBN executed, a confidentiality agreement in this case. This issue is key to whether the probability of success of a reorganization. **This issue remains outstanding.**

1 *REQUEST NO. 9:*

2 *Produce Copies of all documents reflecting the transfer or disposition of any money or*  
3 *property in excess of \$10,000 in any single transaction; or \$100,000 in the aggregate, by You*  
4 *or any Affiliate or Insider between June 1, 2007 and June 2, 2008.*

5 Debtor represents that the check ledgers relative to all transfers have now been  
6 produced.

7  
8 *REQUEST NO. 10:*

9 *Produce every Document which reflects or relates to the value of the City Crossing*  
10 *Property.*

11 Debtor has produced no responsive documents, and CBN requests that the Court order  
12 such production.

13  
14 *REQUEST NO. 11:*

15 *Produce all contracts, invoices, or other evidence of any business transactions or*  
16 *relationship between Debtor and any Affiliate or Insider.*

17 Debtor has produced no responsive documents specific to this request, and CBN  
18 requests that the Court order such production.

19  
20 *REQUEST NO. 12:*

21 *Produce copies of all bank records for each of the City Crossing Entities for the time*  
22 *period March 1, 2008 through June 2, 2008.*

23 Debtor indicates that these records have been produced.

24  
25 *REQUEST NO. 13:*

26 *Produce copies of all insurance policies currently in effect for the Debtor.*

27 Debtor indicates that these records have been produced.

REQUEST NO. 14:

For the period March 3, 2008 through June 30, 2008, produce copies of all documents reflecting communications by, between, or among any of the following:

- a. Any of the City Crossing Entities
- b. Any creditor of any of the City Crossing Entities
- c. Any prospective purchaser, lender, investor or joint venturer with respect to the City Crossing Property.
- d. Any Affiliate or Insider (excepting non-business communications)
- e. Any governmental branch, agency, department, or municipality.

Debtor has refused to produce any such documents, on the basis that the request is burdensome. CBN has requested that the Debtor produce communications with any governmental branch, agency, department, or municipality, and seeks leave to defer consideration of any ruling as to the balance of the request pending CBN's oral examination of the Debtor and its principal.

C. Other Issues

1. Date of Examination.

Debtor has requested that the date of the examinations be continued until after the §341 meeting, which is scheduled for July 10. CBN has offered to move the date of the examinations to Friday, July 11.

2. Appearance of Mr. Plise

Debtor apparently asserts that Mr. Plise's testimony would be duplicative of Mr. Moore's. CBN disagrees, as a factual matter, given the Debtor's prior judicial admissions regarding the necessity of an infusion of financing by Mr. Plise and his unique control of the development of

1 the project and potential reorganization. Further, such an objection is simply not a cognizable  
2 defense to a discovery request.

3 3. Guarantor Claims

4 Debtor seems to suggest that it is seeking to prohibit examination of Mr. Plise through a fear  
5 that CBN is utilizing the 2004 process to assist with collection efforts relative to Mr. Plise's  
6 guaranty of the Debtor's obligations rather than to investigate matters within the scope of rule  
7 2004. However, CBN has offered to stipulate that questioning regarding Mr. Plise's financial  
8 condition (and that of non-debtor affiliates) will be limited to matters which may relate to (1)  
9 disposition and current location of funds received from Debtors or the City Crossing project; (2)  
10 transactions and relationship with the Debtor (inclusive of its predecessors); (3) ability  
11 and willingness to fund the Debtor's reorganization; and (4) matters relating to potential alter  
12 ego claims of the Debtor estate.  
13  
14

15 It is submitted that the existence of a separate litigation is not sufficient to overcome the  
16 right to examine the Debtor's principal, whose financial infusion is essential to the Debtor's  
17 reorganization; and who is uniquely in "control of the development of the project and potential  
18 reorganization."  
19

20 This issue was discussed by Judge Haines in In re Fibercom, Inc., 283 B.R. 290, Bankr.  
21 D. Ariz. 2002):

22 [C]ounsel for [the creditor] argued that the discovery sought is  
23 broader than that of the pending litigation and likely that there  
24 will be additional claims uncovered. This is precisely in line with  
25 the purpose of Rule 2004, "to allow the court to gain a clear  
26 picture of the condition and the whereabouts of the bankrupt's  
27 estate." *Moore v. Lang (In re Lang)*, 107 B.R. 130, 132  
(Bankr.N.D.Ohio 1989)(citing *Cameron v. United States*, 231  
28 U.S. 710, 34 S.Ct. 244, 58 L.Ed. 448 (1914)). Consequently when  
the Rule 2004 examination relates not to the pending adversary  
litigation, but to another matter, the "pending proceeding" rule  
does not apply. *In re M4 Enters., Inc.*, 190 B.R. 471, 475  
(Bankr.N.D.Ga.1995); see also *In re Buick*, 174 B.R. 299, 305

(Bankr.D.Colo.1994). Counsel for AT & T disputed Liberty's argument that the discovery sought is broader than any pending litigation, but has not convinced this Court that that is the case.

More importantly, however, the purpose of the "pending litigation" rule would not be served by precluding discovery here. The reason for the rule is to avoid Rule 2004 usurping the narrower rules for discovery in a pending adversary proceeding. *See, e.g., First Fin. Sav. Assoc. v. Kipp (In re Kipp)*, 86 B.R. 490 (Bankr.W.D.Tex.1988). (stating that once an adversary proceeding is initiated, a party to it "could no longer use Rule 2004 to obtain discovery relevant to the adversary"). However, the court holds the ultimate discretion whether to permit the use of Rule 2004, and courts have for various reasons done so despite the existence of other pending litigation. *In re M4 Enters., Inc.*, 190 B.R. 471 (Bankr.N.D.Ga.1995); *In re Sun Med. Mgmt., Inc.*, 104 B.R. 522, 524 (Bankr.M.D.Ga.1989), (allowing Rule 2004 examination when there is possible fraud and quoting *In re Table Talk, Inc.*, 51 B.R. 143 at 145 (Bankr.D.Mass.1985), as stating, "Bankruptcy Rule 2004 examinations are allowed for the purpose of discovering assets and unearthing frauds").

## 2. Shotgun Objections

CBN requests that the Court overrule the Debtor's twelve "shotgun" objections which contain no analysis and are asserted as blanket objections to the requested discovery. Such discovery tactics are universally rejected.

"[O]bjections should be plain enough and specific enough so that the court can understand in what way the interrogatories are alleged to be objectionable. Davis v. Fendler, 650 F.2d 1154, 1160 (9th Cir. 1981).

All objections must be stated with specificity and any objection not raised is waived. Fed.R.Civ.P. 33(b)(4). "Mere recitation of familiar litany that interrogatory is 'overly broad, burdensome, oppressive, and irrelevant' " does not suffice as specific objection... While Rule 34 of the Federal Rules of Civil Procedure does not contain the same specificity and waiver provisions as Rule 33 of the Federal rules of Civil Procedure, the Advisory Committee notes to Rule 34 states that "the procedure provided for in Rule 34 is essentially the same as that in Rule 33."

Fisher v. Baltimore Life Ins. Co., 235 F.R.D. 617, 622-23 (N.D.W.Va. 2006)(internal citations omitted).



1 [Defendant] objects generally to this interrogatory as "overly  
2 broad, burdensome, oppressive and irrelevant", a complaint which  
3 [Defendant] echoes with virtually every other interrogatory. To  
4 voice a successful objection to an interrogatory, [Defendant]  
5 cannot simply intone this familiar litany. Rather, [Defendant]  
6 must show specifically how, despite the broad and liberal  
7 construction afforded the federal discovery rules, each  
8 interrogatory is not relevant or how each question is overly broad,  
9 burdensome or oppressive, by submitting affidavits or offering  
10 evidence revealing the nature of the burden...General objections  
11 without specific support may result in waiver of the objections.

12 Roesberg v. Johns-Manville Corp., 85 F.R.D. 292, 296-97 (D.C. Pa. 1980)(internal citations  
13 omitted).

### 14 3. Refusal to Produce Documents in Their Native Format

15 Debtor ultimately produced approximately 5,000 pages of documents in "tiff" format,  
16 which requires each page to be individually opened (essentially as a "photograph"). Even prior  
17 to counsel's conference held on Monday, June 30, counsel for CBN requested that the  
18 documents be produced in paper or "native format." The producing party has an obligation to  
19 refrain from altering the form of documents in a manner which makes review more difficult and  
20 expensive. See, e.g., US v. O'Keefe, 537 F.Supp 2<sup>nd</sup> 14, 23(D.C. Cir. 2008).

## 21 III. CONCLUSION

22 Based upon the foregoing, it is respectfully requested that the Motion be denied; that the  
23 Countermotion be granted; and that William Plise be compelled to comply with the subpoena  
24 and produce the following documents:

25 1. Documents reflecting subsequent transfers by insiders and affiliates be produced,  
26 and that the production include the actual source documents (i.e., cancelled checks, records of  
27 transfer and receipts of wires, etc.).  
28

2. Source documents relied upon in preparing the schedules.
3. Documents demonstrating work necessary to bring the project to the condition contemplated for sale or refinancing to be produced.
4. Financial statements of the insiders who received transfers from the Debtors.
5. Produce copies of all escrow closing statements with respect to the closing of any sale, or transfer, or refinancing of any part of the City Crossing Property.
6. Copies of all Documents relating to the possible sale or refinancing of the City Crossing Property.
7. Every Document which reflects or relates to the value of the City Crossing Property.
8. All contracts, invoices, or other evidence of any business transactions or relationship between Debtor and any Affiliate or Insider.
9. All communications with any governmental branch, agency, department, or municipality

DATED this 2<sup>nd</sup> day of July, 2008.

SHEA & CARLYON, LTD.

/s/  
CANDACE C. CARLYON, ESQ.  
Nevada Bar No. 002666  
701 E. Bridger Avenue, Suite 850  
Las Vegas, NV 89101

**OPPOSITION/COUNTERMOTION**

**EXHIBIT 15**



Christina Calderon-Stipp <ccstipp@gmail.com>

---

## Settlement of Child Visitation Issues

---

Mitchell Stipp <mitchell.stipp@yahoo.com>

Fri, May 1, 2009 at 8:14 AM

To: ccstipp@gmail.com

Christina: I wanted to write in an attempt to resolve our dispute concerning timeshare with the children. I would like to settle the matter if you modify the arrangement to provide me credit for the weekend visitation you may take on the first weekend of the month and for one (1) additional day of visitation. Please let me know if this offer is acceptable. Of course, this offer (along with all prior offers) is protected by the settlement privilege.

Thanks.

---



Christina Calderon-Stipp &lt;ccstipp@gmail.com&gt;

---

## Settlement of Child Visitation Issues

---

Mitchell Stipp <mitchell.stipp@yahoo.com>  
To: Christina Calderon-Stipp <ccstipp@gmail.com>  
Cc: rsmith@radfordsmith.com

Fri, May 1, 2009 at 6:00 PM

Christina: I have carefully considered your counter-proposal, and while it does not provide me the additional time I think I should have with the children, I accept the terms and will have Radford prepare a stipulation regarding the same and provide it to your counsel on Monday. In order to expedite the matter, I ask you to inform your counsel of the settlement and that he timely reviews the proposed stipulation and you sign the same.

I am satisfied that we were able to work out a resolution on this matter and hope that we can put the animosity behind us.

---

**From:** Christina Calderon-Stipp <ccstipp@gmail.com>  
**To:** Mitchell Stipp <mitchell.stipp@yahoo.com>  
**Sent:** Friday, May 1, 2009 4:45:16 PM  
**Subject:** Re: Settlement of Child Visitation Issues

Ok. I think we have both made good faith efforts to resolve our custody dispute, and I thank you for this. The following is what I see as the best compromise given our respective positions, i.e., it's more than I had originally been comfortable with giving and less than what you clarified you wanted, however, I think it gives us both what we want in the end and, most importantly, will be best for our children (Note that you will get a total of (4) additional days a month on an alternating 2 day, 3 day weekly basis):

- 1) 1st weekend of the month: If I exercise it, then you get the thurs and fri immediately preceding (wed. at 6 to fri at 6);
- 2) You get to tack on two (2) additional Fridays to your normal visitation during the month. I propose the second and fourth Fridays of every month (thurs at 6 to sunday at 6);
- 3) ROR (4 hours with someone else---school doesn't count);
- 4) Split educational costs and expenses;
- 5) Withdraw your pending motion.

--Christina

On Fri, May 1, 2009 at 4:30 PM, Mitchell Stipp <mitchell.stipp@yahoo.com> wrote:

Yes. I sent you a follow up email. I was not sure if the one below was sent from my phone. I am on the computer now.

---

**From:** Christina Calderon-Stipp <ccstipp@gmail.com>  
**To:** Mitchell Stipp <mitchell.stipp@yahoo.com>  
**Sent:** Friday, May 1, 2009 4:26:15 PM

**Subject:** Re: Settlement of Child Visitation Issues

Ohhhh...in addition to the make up days for 1st weekend of the month?

On Fri, May 1, 2009 at 4:19 PM, Mitchell Stipp <[mitchell.stipp@yahoo.com](mailto:mitchell.stipp@yahoo.com)> wrote:  
I may have miscommunicated, but I was asking for one (1) extra day per week

---

**OPPOSITION/COUNTERMOTION**

**EXHIBIT 16**



Christina Calderon-Stipp &lt;ccstipp@gmail.com&gt;

## Explanation for Rejected Settlement

Mitchell Stipp &lt;mitchell.stipp@yahoo.com&gt;

Tue, Jul 7, 2009 at 6:23 PM

To: smg@jimmersonhansen.com, rsmith@radfordsmith.com

Cc: ccstipp@gmail.com

Shawn:

I sent an email rejecting Christina's proposed settlement of our outstanding issues. In that email, I indicated that I would separately provide an explanation for my decision. This email shall serve as that explanation and is protected by all applicable privileges and court rules regarding settlement.

The stipulation is been proffered in bad faith. Any settlement offer should only contain an offer of more time and NOTHING ELSE. Judge Sullivan made it clear in his minute order that he was directing the parties to mediation to address ONLY the issue of providing me additional time with the children. I do not need to remind you that your client wrongly rescinded our prior settlement agreement (although I am still reserving the right to enforce it); however, six weeks later and less than one day before our scheduled mediation, you re-packaged it with an offer of less time with the children and new conditions.

First, two additional days per month is not sufficient time. I am available and willing to care for the children every single day of their lives. I am fit to do so and there is absolutely no reason why I should not have more time (despite you and your client's attempts to manufacture issues). I desire to have 50% of the time; however, in the interest of settlement I am (and have been willing) to accept less. This willingness is reflective of my goal of compromise and good faith. Judge Sullivan has indicated that he believes I should have more time with the children. Read the transcripts. While I previously agreed in the prior settlement to accept two additional days, I did so to settle the matter and Christina was also willing to provide me credit for visitation time taken by her for the first weekend of the month. Christina rejected this settlement without explanation and now is offering less time. Why? At minimum, Christina should have honored the prior settlement terms by offering at least the time to which we previously agreed. It is absolutely bad faith to proffer a settlement with less time and additional conditions. That is simply ridiculous. Second, while I am interested in co-parenting our children, your reliance on a statement I made in an email regarding my desire to co-parent with Christina is misplaced. I am uninterested in jumping through any hoops. Judge Sullivan has already indicated that he would not order me to participate in any such classes. Read the transcripts. To be honest, I am capable of attending classes and seeking family counseling on my own to assist with the issues raised by Christina's alienation of the children. Third, this issue of telephonic communication with the children has already been addressed in our marital settlement agreement and in separate emails exchanged between Christina and me. For the record, Christina has never provided or even facilitated daily contact with the children despite my desire. If the children want to speak to Christina while they are in my care, they are free to do so and I am absolutely willing to facilitate it. However, I am not going to agree to force the children to call her. And finally, Christina has again asked that I pay 1/2 of the costs and expenses of the children's private school education. To date, I have already paid for my share of their private school tuition without obligation to do so. Further, Judge Sullivan has made it very clear that he will not order me to pay these costs and expenses. Read the transcripts. While I have agreed to pay for their private



school tuition in our last settlement, Christina rejected the deal.

To summarize, Judge Sullivan has said that I should have more time with the children. He has also indicated that he would not order me to pay private school costs and expenses or attend co-parenting classes. Clearly, you have some reading to do. His position is very clear. Judge Sullivan also has scheduled an evidentiary hearing for October 27. What do you think all of this means? Given your client's offer, I honestly believe that I will receive more time with the children from Judge Sullivan. I also have the right to move to enforce the prior settlement agreement or appeal any adverse rulings after the evidentiary hearing. There is absolutely no benefit to me to agree to a settlement that provides less time and these new conditions.

Having explained the reasons for the current settlement rejection, I now feel obligated to provide a counteroffer. I agree to dismiss my motion for reconsideration with prejudice and waive the right to enforce the prior settlement agreement IF AND ONLY IF Christina provides (i) one additional 24 hour period per week either immediately before or after my normal weekend visitation and (ii) credit for any visitation time exercised by Christina that ordinarily falls during my regularly scheduled weekend visitation (including the first weekend of the month or holiday time). This is my bottom line. I really do not think Judge Sullivan will find objectionable my request. Your client still has more than 50% of the time. I fully expect Christina to be able to address this offer at our scheduled mediation tomorrow and for you to provide in writing the reasons for its rejection (assuming that it is).

---

**From:** Christina Calderon-Stipp <[ccstipp@gmail.com](mailto:ccstipp@gmail.com)>  
**To:** Mitchell Stipp <[mitchell.stipp@yahoo.com](mailto:mitchell.stipp@yahoo.com)>  
**Sent:** Tuesday, July 7, 2009 12:51:21 PM  
**Subject:** Stipulation

Mitch,

Attached is correspondence and a proposed stipulation Shawn forwarded to Rad. I am sending it to you separately to avoid a delay in transmission. Please review it tonight. I believe, and I hope you will to, that it fully and adequately addresses all of our outstanding issues.

Thanks,  
Christina

**OPPOSITION/COUNTERMOTION**

**EXHIBIT 17**



Christina Calderon-Stipp <ccstipp@gmail.com>

## Keep MIA out of the Middle

Mitchell Stipp <mitchell.stipp@yahoo.com>  
To: Christina Calderon-stipp <ccstipp@gmail.com>

Wed, Sep 23, 2009 at 2:37 PM

I received your email below. I never coached Mia to call you and ask for more time. If you can believe it (and you probably do not), she did it on her own. Every Sunday when I tell her she has to go to your house she complains that she did not get to stay long enough or wants to stay longer. This last weekend she specifically asked to call you and I facilitated the call. I did not know she intended only to call you to ask for more time.

Next time, I will simply tell her that she can talk to you about this issue when she returns home. Problem solved. Notwithstanding these facts, our timeshare arrangement does not mean you should ignore your daughter's pleas to spend more time with me (even though you have ignored mine for more than a year). I am the children's father and desire to spend as much time with them as possible. It blows my mind that you hinder this. Most mothers would be happy that the father of their children wants to be as involved as I do. You are simply too insecure and hell bent on control to allow the children to fully experience this.

The issue of Mia attending school full days has been completely mismanaged by you. You never responded to my email asking you to make her go. Mia called me yesterday and the first thing she said to me was that you told her that I was "forcing" her to go full days. That is what Mia said you told her. So, apparently Mia was not telling the truth according to you (which I doubt) or she was simply repeating what you told her. Why would she make this up? This is very different from your "version" of the facts below (and very different from facts you use to support your assertion that I put the kids in the middle of our disputes).

As far as Mia dealing with our divorce, she has only been affected by your actions and comments. I do not think Mia handled very well your communications to her that I am a cheater, that I stole all your money, and that you do not like Amy, etc. Mia loves us. She struggled a great deal when you prohibited her from talking to Amy and/or hung up the phone in the middle of phone calls. She also is confused because she does not understand why Amy is married to me and not James, who Mia does not even know. I suppose you will still deny telling Mia these things. Bottom line...these are bad things you have done to her and are the primary cause of Mia's emotional issues. I did not cause them; you did. It is interesting to me that Mia now claims you like Amy. We know this is not true, but I really do not care. I think it is good for Mia to believe that, but that is not why you claim to like her. It has everything to do with Mia's prospective visits to a psychologist. I do not think Mia will lie when these issues are un-covered. What will you do then? Is that why you asked me not to use Mia's treatment for litigation purposes? Why would you care if you have been the perfect mother you claim to be? I do not have a problem with anything that I have done.

Sending my email to you to Tara Hall was probably funny to you (but I think only embarrassed you in the end). I do not regret calling you a bitch or that Tara thinks that I think you are one because it is the truth. I spent an enormous amount of time last year with the children's teachers and the administration at TBS undoing your bad behavior and trash talking. I am not going to pay for the opportunity to do it this year (or any other). What kind of mother pulls their kids out of school just so their father cannot see them during the week claiming financial hardship?

I do not want to cause Mia any more stress or anxiety over this issue. She gets enough from you. I was absolutely fine with Mia going to school before if that was something she wanted and her teachers and you supported. The fact that she does not want to go and now believes that I am the one who is forcing her to go (and is mad at me for it) is why I no longer support the idea. Do not write me any more about it. Do not ask me for money. As far as your other suggestions, it would be better if you just go fuck yourself.

-----Original Message-----

From: Christina Calderon-stipp [mailto:[ccstipp@gmail.com](mailto:ccstipp@gmail.com)]  
Sent: Wednesday, September 23, 2009 10:43 AM

To: Mitchell Stipp  
Subject: Keep Mia out of the Middle

Mitchell,

Please refrain from calling me a "bitch" and cease any other name-calling in the future. Let's focus on the kids. You need to get a hold of your continuing animosity toward me.

I find it hypocritical that you accuse me of putting adult decisions to Mia when you are guilty of exactly that misconduct. You did not allow me to speak to Mia the entire past weekend, except that one hour before the child exchange you coached Mia to call me with the specific purpose of telling me that I needed to give her more time with you. In the past she had communicated to me that you tell her I am not "sharing" her with you fairly.

We agreed on a timeshare modification on July 8th. Please do not put Mia in the middle of your dissatisfaction with the custodial arrangement as you did and have done many times in the past. Not surprisingly, your actions caused Mia to exhibit tremendous anger and anxiety upon her return home to me on Sunday. I believe that this contributed greatly to her reluctance to continue full-day at preschool, or, at minimum, caused her unnecessary and avoidable distress.

If it was up to Mia, she would choose to live with both of us, in the same home, forever. Unfortunately for her, she has to come to terms with the fact of the divorce, and we, as her parents, need to do everything on our part to facilitate and not hinder this.

I did not tell Mia that you were forcing her to go to school full-time. I told her that you supported her going full-time just as I told her that her teachers and friends did as well.

I suggest that we give her a date certain in the future, one that we jointly decide on, and together we prepare her for that transition. I met with Ms. Hall this morning and she agreed. She said to expect some regression, but giving her a set future date was a good idea.

-Christina

Sent from my iPhone

On Sep 22, 2009, at 7:44 PM, "Mitchell Stipp"  
<[mitchell.stipp@yahoo.com](mailto:mitchell.stipp@yahoo.com)> wrote:

- > You told me last week that Mia wanted to go to school full days.
- > She tried it out and apparently liked it according to you and her
- > teacher. When I asked her about it this weekend, Mia said she liked
- > it and wanted to continue. You asked me to pay ½ of the additional
- > cost and to make this decision by Monday. I agreed to do so as requ
- > ested. However, Mia has attended school only ½ days this week becau
- > se apparently she does not want to go full days anymore. I asked yo
- > u to take her anyway (assuming that you, her teacher and me know wha
- > t is best for her). You have offered no good reason why she should
- > not go full days (and apparently you have left this decision entirel
- > y to the whims of Mia). To make matters worse, today on the telepho
- > ne Mia informed me that you told her that I am "forcing" her to

- > go full days and she scolded me for it. Your decision to tell Mia t
- > hat is poor judgment and just bad parenting.
- >
- >
- >
- > Tara Hall has confirmed that no arrangements have been made by you
- > for Mia to attend full days. It is clear that you do not intend to
- > take her and Mia no longer wants to go full days. Therefore, my
- > offer to pay 1/2 of the additional cost is withdrawn. If Mia decides
- > she wants to go or you decide to send her later, you can pay for it
- > yourself. I do not want to be part of a situation where I am "forci
- > ng" Mia to go to school full days. I am only trying to help and you
- > are just being a bitch.
- >
- >
- >
- >

**OPPOSITION/COUNTERMOTION**

**EXHIBIT 18**

**RE: Kids' Health**

From: **Mitchell Stipp** (mstipp@msjmadvisors.com)  
Sent: Fri 12/05/08 10:01 AM  
To: Christina Calderon-Stipp (ccstipp@hotmail.com)

Thanks for the reply.

Ethan has had difficulty sleeping at night. I have had to rock him back to sleep when he wakes up or bring him to my bed. I do not think removing the crib tent is a good idea for now. He is too small to be wandering the house at night (and certainly won't stay in his bed for naps).

Mia's issues with clothes have little to do with any mental illness and everything to do with a desire to do things on her own terms. I have been able to get her to wear a variety of dresses. She also will buckle or strap her shoes when she needs to. Of course she wears extra large panties and won't wear tights. I think a therapist is only good if he or she provides you parenting tools necessary to resolve the "problem."

Give mia and ethan mucinex for their cough along with a vaporizer at night. You will notice that ethan will get sick more often and the symptoms will be worse because he is in school. When I visited ethan this week I noticed that several kids had coughs and runny noses (especially isaac who is always hugging and kissing ethan).

With regard to your recent letter to radford (which I have not read), I expect you will receive a reply in the next several days.

Be advised that plise's offices are closing today and that I will no longer be providing any services. Please direct any further communication to my home number at 7023040275 (no more texts) and my email address at mitchell.stipp@yahoo.com.

Give the kids my best and I hope you enjoy your time with them. I certainly will miss them greatly.

-----Original Message-----

From: Christina Calderon-Stipp <ccstipp@hotmail.com>  
Sent: Friday, December 05, 2008 8:24 AM  
To: mstipp@msjmadvisors.com <mstipp@msjmadvisors.com>  
Subject: RE: Kids' Health

Mitchell,

The doctor checked out the kids. Ethan has a very red throat. They checked him for strep, came back negative. Mia shows no signs of infection. She prescribed some cough/congestion medication for both kids. One for daytime, one for night usage as it has codeine.

Ethan has been very cranky. He is obviously in pain. He is having difficulty sleeping. He wants to be held by me all the time and now wants to be rocked to sleep. He has woken up in the middle of the night the past few nights and won't return to his crib. I think I may have to remove the crib tent and convert it to a toddler bed. Do you still have the crib tent? You may want to consider the same if he reacts the same with you.

He skipped his nap yesterday and overall slept better with the codeine, but was up in the middle of the night and early this morning.

Mia reacted poorly to the codeine. She hated the taste and when she took a big swallow, she threw up her entire day's worth of food all over herself and her bed just before bedtime. She was ok after that. Her cough appears to have lessened.

I asked Dr. about Mia's tactile aversion issues. Although we have never spoke of this, I did talk to your sister a couple of times at drop off and have spoken to her teachers several times about Mia's abnormal reactions to tight underwear, buckling her shoes, seatbelts, and any clothes other than the one polka dot dress she favors. This started over the summer. Given the change in weather, I have been unable to convince her to wear tights, leggings, or pants of any kind. Her reaction is strong and loud. She screams and struggles and will tear the offending clothes off. Nothing seems to work. Not bribes, encouragement, threats, or spanking. If you hadn't noticed, she will no longer wear her skort uniform, thus, I purchased a week's worth of jumpers and she wears those every day now to school.

Dr. said this didn't seem right. She said not to be alarmed, but she had one other patient with similar behavior that was diagnosed as bi-polar. In any event, she is working on giving me a referral.

Also, re Ethan. He's 20 mos. old. He should be off of bottles. I give them to him at night and in a.m., but we should eliminate them completely. I'm not sure what you do with bottles and Ethan.

Sippy cups. I think we should transition Mia off of them by now. She is 4. Also, she says you give her milk to drink at night. I only allow water. Recall that milk has sugar.

Please keep up the 2x a day brushing of teeth for both kids. I got a reminder card for Mia's 6 mos. dental check up. Ethan should be taken in as well.

I will be keeping Ethan home today.

Thanks,

Christina> From: mstipp@msjmadvisors.com> Subject: RE: Kids' Health> Date: Thu, 4 Dec 2008 10:19:29 -0800> To: ccstipp@hotmail.com> > I am concerned as well. I went to visit the kids at school and they were not there. Let me know if there is anything I can do. I hope they feel better. > > -----Original Message-----> From: Christina Calderon-Stipp <ccstipp@hotmail.com>> Sent: Thursday, December 04, 2008 9:49 AM> To: mstipp@msjmadvisors.com <mstipp@msjmadvisors.com>> Subject: Kids' Health> > > Mitchell,> > The kids continue to be ill. Ethan's cough concerns me. He is having trouble sleeping at night. Mia's cough also continues. They both have green mucus. I'm taking them to the doctor's today.> > FYI.> > --Christina> > Send e-mail

anywhere. No map, no compass.> [http://windowslive.com/Explore/hottmail?](http://windowslive.com/Explore/hottmail?ocid=TXT_TAGLM_WL_hottmail_acq_anywhere_122008)  
[ocid=TXT\\_TAGLM\\_WL\\_hottmail\\_acq\\_anywhere\\_122008](http://windowslive.com/Explore/hottmail?ocid=TXT_TAGLM_WL_hottmail_acq_anywhere_122008)

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Send e-mail anywhere. No map, no compass.  
[http://windowslive.com/Explore/hottmail?](http://windowslive.com/Explore/hottmail?ocid=TXT_TAGLM_WL_hottmail_acq_anywhere_122008)  
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**OPPOSITION/COUNTERMOTION**

**EXHIBIT 19**



Christina Calderon-Stipp &lt;ccstipp@gmail.com&gt;

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## knock knees

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Christina Calderon-Stipp <ccstipp@gmail.com>  
To: Mitchell Stipp <mitchell.stipp@yahoo.com>

Tue, Apr 28, 2009 at 1:15 PM

Mitch,

As I told you via voicemail earlier today, Ethan's pediatrician said she definitely thought it was knock knees. She said it was the most severe case she had ever seen. She was also concerned that one leg looked longer than the other. As I anticipated, she referred us to a specialist.

His name is Dr. David G. Stewart. He's a board certified Pediatric Orthopedist. His phone number is 434-6920. I don't have his exact Summerlin address, but the scheduling person said Tower 2 in the Summerlin Hospital Medical Center. His appt. is on Tues., May 12 at 12:30.

In the future, if you ever notice anything about the children that seems out of the norm, please communicate it to me, even if you think it's obvious or not a big deal. On that same note, I asked the pediatrician about Ethan's recent stuttering. Have you noticed it? She said it didn't seem to be a problem and was normal for his age. They are processing the words quicker than they can speak them at his age.

Thanks,  
Christina

On Mon, Apr 27, 2009 at 7:51 PM, Christina Calderon-stipp <ccstipp@gmail.com> wrote:

Thanks for the offer, but as I said when I called you tonight with my concerns about his legs, I can take him. It looks like he will have to see a pediatric orthopedist. As always, I'll keep you updated.

Christina

Sent from my iPhone

On Apr 27, 2009, at 7:01 PM, Mitchell Stipp <mitchell.stipp@yahoo.com> wrote:

I did the same and feel comfortable that while knock knees is normal he should be taken to a doctor as a precaution. I am happy to take him if you prefer.

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**From:** Christina Calderon-Stipp <ccstipp@gmail.com>  
**Sent:** Monday, April 27, 2009 6:53 PM  
**To:** Mitchell Stipp <mitchell.stipp@yahoo.com>  
**Subject:** knock knees

I just researched and found that his legs look like he has knock knees, which is the opposite of bowleg. His knees touch and his ankles are apart. Just an FYI if you want to read up on it.

**OPPOSITION/COUNTERMOTION**

**EXHIBIT 20**

**Re: Mia's Punishment on 12.14.08****From:** Mitchell Stipp (mitchell.stipp@yahoo.com)**Sent:** Wed 12/17/08 5:55 PM**To:** Christina Calderon-Stipp (ccstipp@hotmail.com)

I have tried in good faith since our divorce to coparent with you. You are not really interested in that. You are only interested in telling me how to be a parent. You only sent the emails because you believe that you can use them to your advantage in your ridiculous attempt to obtain primary physical custody of the children. If you really cared about the matter, why didn't you pick up the telephone and call me? Instead, you decided it made more sense to email me multiple times to establish some sort of record of "reaching out" and fill them with self serving language about your coparenting techniques and attack me. Since your motives are now clear, I will now provide you the written response you have desperately requested.

With respect to the events of this weekend, there were many circumstances that resulted in my decision to spank Mia. I will described in detail the final event. I was giving Mia a bath. While in the bath, Ethan came into the bathroom. While next to the tub, Mia poured a cup of water on Ethan. I scolded Mia and asked her to get out of the tub so I can dry her. She refused. Ultimately, I had to physically remove Mia from the tub. She would not allow me to dry her. She covered up in her towel and laid on the floor. I told her that I was upset at her behavior. She informed me that she "did not like me anymore" and that I was a "jerk." I dried her off and tried to get her dressed. I tried to dress her for 15 minutes. During this time period, I threatened to spank her multiple times. She refused to cooperate. Finally, I spanked Mia on her rear end. She continued to disobey and say inappropriate things like "you are a lair." Obviously, I was not getting through to her. I then patted my hand across her cheek. She was not hit or spanked 10 times. She was not physically touched by anything but my hand. She was not smacked, punched, kicked, cut, burned, poked or scratched. Her face was not bright red. I did not examine her butt, but I do not expect she had any swelling or bruising. If she did, I am sure I would have heard about it from you. Mia was not abused.

Mia had a difficult weekend. She refused to get dressed. She had a meltdown in the parking lot at the mall because she wanted to go home. She used inappropriate language (jerk, loser, and silly bitch) regularly despite being told to use "good words.". None of these instances resulted in a spanking (although I warned her several times that one was imminent).

Regardless of our differences, you know that I am a good father. You have your explanation now. While I appreciate your concerns regarding the welfare of Mia and Ethan, I do not need to obtain your permission to punish them or justify the punishment. I have never abused Mia or Ethan. You know that. I know that. I do not question you when you have spanked Mia or slapped her. I trust your judgement. You have no reason not to trust mine.

It has been over a month since I asked you for the passports. Please provide them.

**From:** Christina Calderon-Stipp <ccstipp@hotmail.com>**To:** mitchell.stipp@yahoo.com**Sent:** Wednesday, December 17, 2008 2:35:32 PM**Subject:** Mia's Punishment on 12.14.08

Mitch,

I am very concerned that you have not responded to my emails asking to discuss this weekend's incident where Mia said you slapped her across the face and spanked her 10 times, really hard. I was trying not to overreact, but Mia's face and behind were bright red and this is very disturbing to me. While I don't have an issue with corporal punishment in general, the severity of the spanking and the action of slapping her across the face concerns me as it constitutes abuse. Your silence about it makes me even more concerned.

Mia is only 4 years old and weighs only 30 lbs. A slap across the face from an adult such as yourself could cause severe injuries, even death. You just cannot slap our children across the face or otherwise inflict physical trauma to them. I can only assume your silence is an admission of your actions, and I am really alarmed about this.

I don't understand why you won't discuss with me what happened and keep refusing to coparent with me. This is serious. Please reconsider as it will only benefit our children if we can have an open dialog as to discipline and behavior issues, among other things.

Thank you,  
Christina

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**OPPOSITION/COUNTERMOTION**

**EXHIBIT 21**



Christina Calderon-Stipp <ccstipp@gmail.com>

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## Mia's Psychologist

Christina Calderon-Stipp <ccstipp@gmail.com>

Thu, Sep 10, 2009 at 2:11 PM

To: Mitchell Stipp <mitchell.stipp@yahoo.com>

Mitch,

I spoke with Dr. Kalodner today. She left me a message yesterday telling me that you had apparently met with her and had made an appointment for Mia on Friday.

Prior to committing Mia to treatment with her, I wanted to share with you your thoughts on Dr. K after meeting with her and express my desire to meet with at least one other provider as I am not sure Dr. K would be the best fit for Mia.

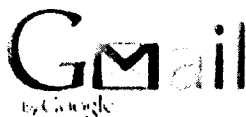
I am also troubled by Dr. K's actions in committing to treat Mia at one price when she met with me, her self-proclaimed cash price, and then increasing it after meeting with you. It struck me as unprofessional and unwarranted.

--Christina

**OPPOSITION/COUNTERMOTION**

**EXHIBIT 22**





Christina Calderon-Stipp &lt;ccstipp@gmail.com&gt;

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## Dr. Mishalow

Mitchell Stipp <mitchell.stipp@yahoo.com>  
To: Christina Calderon-stipp <ccstipp@gmail.com>

Tue, Nov 10, 2009 at 12:55 PM

I received your message below.

When I met with Dr. Mishalow initially, I expressed to him my concerns regarding Mia's clothing and anger issues. I communicated to him very specifically the statements you have made to Mia (as detailed in my motion and in numerous emails to you) and that I believe that your conduct has caused Mia emotional trauma (which manifests itself as anger). I also told him that I was concerned about you manipulating the evaluation and treatment process. Remember—you refused to allow Mia to see Dr. Kalodner not because of her hourly rate (\$200 vs. \$175 for Dr. Mishalow) but because I scheduled the first appointment and she wanted to evaluate Mia without our presence. Dr. Mishalow assured me that I would be involved in the treatment process. Until today, I felt excluded.

You and Mia have met with Dr. Mishalow approximately 3 times. At no time did you invite me to attend any such appointment (and in one instance I was not even aware of it). You have scheduled, attended and participated in all of Mia's appointments. Dr. Mishalow has only invited me to attend the last appointment to discuss the "reward chart system" you are using to address Mia's clothing issues. I told Dr. Mishalow that I preferred not to meet with him and you in front of Mia to discuss this technique. Due to the level conflict and hostility that has existed in the past between us, I was concerned that any conflict, argument or outburst in Mia's presence could impact Mia. Therefore, I asked Dr. Mishalow to meet with me separately to discuss the "reward chart system." This appointment did not occur until today. Attached is the letter I sent to Dr. Mishalow regarding the scheduling of this appointment.

You appear to be concerned about Mia's clothing issues and have simply ignored Mia's anger problems. The "reward chart system" may be a good technique to begin to address Mia's clothing issues. However, the source of the problem is still unknown (whether it is obsessive compulsive or sensory integration disorder or something else). It should be identified and treated. While I believe that Mia has made progress (i.e., she puts her school uniform on) since your use of the chart and with my own positive reinforcement techniques, Mia still wears clothes (including underwear, shoes and school uniform) that are several sizes too large. Furthermore, this technique will not address Mia's anger issues.

At my meeting with Dr. Mishalow today, we discussed the chart, Mia's anger issues, and the best way to schedule appointments to ensure my participation. Dr. Mishalow also informed me that you provided him a copy of my motion and we discussed that as well. I suggested to Dr. Mishalow that you can schedule ALL of the appointments provided we alternate attendance/participation in them. It is too difficult to coordinate with you because you always have too many conditions (e.g., not during school, only during my timeshare, or only if you can bring Mia if during your timeshare, etc.). With respect to the appointments Dr. Mishalow desires my attendance/participation, I will bring Mia during my timeshare and pick up

and drop off Mia at your house (or any location you determine) if the appointment is scheduled during your timeshare. I do not think Mia will be comfortable expressing her feelings (and the source of the anger) if you take her to the appointments, participate in them, or wait in the lobby or in the parking lot. I hope you understand and can accommodate my request.

I was able to schedule an appointment with Dr. Mishalow at noon on Friday, November 13th.

-----Original Message-----

From: Christina Calderon-stipp [mailto:[ccstipp@gmail.com](mailto:ccstipp@gmail.com)]

Sent: Tuesday, November 10, 2009 10:51 AM

To: Mitchell Stipp

Subject: Dr. Mishalow

Mitch,

As you are well aware, you have always been welcome to attend any session that I have made with dr. Mishalow. Confirm this with Dr. M. It was one of the principles I insisted on prior to consenting to his treatment of MIA. I have never insisted on exclusive treatment of and with her. In fact, MIA's first appointment was almost solely with MIA while I waited outside.

At MIA's second appointment with dr. M two weeks ago, he expressed his desire that you join us at her third appointment. He wanted us all to share in mia's amazing progress. He informed me that you refused to see him if I am present.

Your recently-filed motion contains alarming statements that I have only heard for the first time in the court document you filed without first speaking to me about MIA's behavior when she is with you and your concerns about my "manipulating" her treatment.

I will address those concerns with the court, but in the meantime, I urge you to accept dr. M as well as my entreaties to become part of the process of helping MIA.

At dr. M's request, I sent him a letter on october 26th describing MIA's reward chart system that I implemented months ago, have told you repeatedly about, and which has helped achieve great results for MIA that I have informed you about, her teachers and dr. M. Dr M asked me to do so so that he could speak to you separately about it and go over what I've been doing with MIA and how it's been helping.

Dr. M's assistant is working to get you a Friday appt with MIA. If that is not available, I would be more than happy to take her to dr. M's office for you to take her in and exclude me if you insist.

I can wait in the parking lot for you and you can take her in alone. Also, please try to make the appointment for a non-school hour. I have an appointment set for next wed the 18th that you can have if nothing else is available. It's at 12:30.

Thanks,  
Christina

Sent from my iPhone

**OPPOSITION/COUNTERMOTION**

**EXHIBIT 23**

10/26/09

Dear Dr. Mishalow,

Per your request, enclosed you will find an example of the reward chart that Mia enjoyed using last month. She couldn't bear to part with the original, so we sent you a new one instead. Tell Mitch he can find this one, and others, on [www.supernanny.com](http://www.supernanny.com).

*You can  
make them  
bigger too.*

As we discussed, Mia gets a small prize mid-way through and a bigger prize when she reaches number 10. She gets to circle each number each day that she puts on her uniform without great struggle. Occasionally, she gets to circle the number for other things like trying on a new outfit and wearing it out, i.e., pants and a t-shirt to her birthday party.

We discuss her desired rewards ahead of time, so she knows what she is working towards. Her first prizes were Ni Hao Kai Lan dolls. She is not interested in the chart every day, but it helps to have it there for encouragement. I place it at eye-level for her, on a wall near our garage exit door. Ethan gets one too.

She is encouraged to personalize it with stickers and coloring. At the end, they become well-used works of art that both she and Ethan treasure. We are now using an alien-themed one and she is eager to finish it so she can move on to the fairy princess one.

Let me know if I can provide any additional helpful information. It has really helped open the door for Mia to be more, as you said at our last session, flexible in terms of wardrobe choices. I noticed that she is willingly wearing many new things.

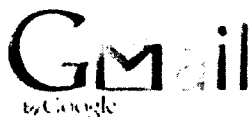
Also, significantly, she has started to realize that the size 10's are too big for her and has expressed a desire for more size-appropriate clothing. Yippee!!!

Sincerely,

Christina C. Stipp

**OPPOSITION/COUNTERMOTION**

**EXHIBIT 24**



Christina Calderon-Stipp &lt;ccstipp@gmail.com&gt;

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**Mia 10.22.09****Maria Amalfitano <mamalfitano@adsrm.org>****Wed, Oct 21, 2009 at 6:58 AM****To: Christina Calderon-Stipp <ccstipp@gmail.com>**

Hi Christina,

I am happy to hear about Mia's progress. She is doing a great job in the classroom too. She seemed to really enjoy celebrating her birthday at school as well. It was the first time a parent brought in photos and the kids loved it. Thank you for that. I did email Mitch about picture day on Friday. I would not want her to miss out on that either. I posted some photos of the field trip on-line. Be sure to check them out!

Thank you,

Mrs. Stoehr

Maria Amalfitano Stoehr  
Lead Teacher, ECEC  
Alexander Dawson School  
(702) 949-3600 x428

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**OPPOSITION/COUNTERMOTION**

**EXHIBIT 25**



Christina Calderon-Stipp &lt;ccstipp@gmail.com&gt;

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## Phone Calls

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**Christina Calderon-Stipp <ccstipp@gmail.com>****Thu, Jul 30, 2009 at 2:41 PM****To: Mitchell Stipp <mitchell.stipp@yahoo.com>****Cc: smg@jimersonhansen.com, rsmith@radfordsmith.com**

Mitchell,

It was quite clear at our mediation on July 8, 2009, that you were greatly disappointed by the end of the litigation given my bending over backwards to reach a settlement with you. You commented several times that you were surprised that I settled with you and could not hide your thirst for continuing the litigation by throwing out personal insults left and right about my counsel and threatening to report them to the state bar even though we had resolved our substantive legal issues.

It should not have been surprising, but was still disappointing to find, that you waited less than 2 weeks before you created this new telephone "dilemma" so that you could justify involving attorneys and gearing up for Court again.

Notwithstanding this fact, I then made the effort to resolve your faux "dilemma" by accommodating your request to allow the kids to speak to Amy. When that didn't work to put out your internal fire for conflict, you kicked it up a notch by now requiring the kids to speak to her every time they talk to you.

I hope that your attorney reappears in the picture once again and can give you some sorely needed practical advice. I am still waiting for him step up and abide by his continuing professional obligation to correct the false statement of material fact he committed to writing prior to our last hearing in our case. Despite several requests by my counsel that he do so, he has remained silent on the matter. Your angry emails to my counsel do not absolve his ethical obligations.

You make several admissions in your email below. One, that you were present when Amy screamed at me over the phone while Mia was speaking to me. I don't know why she needed to say anything when you were the one instructing Mia as to disconnecting the call. Second, you reveal that even though Mia wanted to leave the call with you this morning, you made her stay on the line to talk to Amy. Why didn't you just let Mia go and let her talk to Amy on your time?

I disagree with your factual allegations regarding Amy. Your statement that Amy has treated me with respect is absolutely false, but is not relevant here.

I am not saying that I don't want the children to ever speak to Amy on the phone, I simply ask that you not force the children to speak to Amy, or anyone else for that matter, if they don't ask to speak to her/them. I don't pass the phone around like a hot potato when it's my turn to talk to the kids when they are in your care. I have more consideration for your time with the children than you do towards me. I simply ask you to reciprocate.

--Christina

[Quoted text hidden]



**OPPOSITION/COUNTERMOTION**

**EXHIBIT 26**



Christina Calderon-Stipp &lt;ccstipp@gmail.com&gt;

## Phone Calls

**Mitchell Stipp** <mitchell.stipp@yahoo.com>

Thu, Jul 30, 2009 at 3:53 PM

To: Christina Calderon-Stipp &lt;ccstipp@gmail.com&gt;

Cc: smg@jimersonhansen.com, rsmith@radfordsmith.com

I do not think anybody believes that I was disappointed to settle the dispute over timeshare with the children and that I truly desired continued litigation. Yes, I was surprised that you settled because despite my offers of settlement before and your subsequent agreements, each time you backed out. The record is clear on this. As far as the issue of telephone communications with the children and Amy, I am not sending you emails complaining. You are. I am simply responding to them (which to be quite honest I prefer not to do).

Radford is not obligated to correct any statements he made based on representations I made to him that you allege without any evidence are false. Your assertions of unethical practice and conduct is misplaced. You are a lawyer; you should read the rules. He has already addressed the matter in correspondence to Shawn and no further response is needed. The truth is the truth; your allegations to the contrary do not change that.

With respect to Amy, Amy is free to speak in our home to Mia while on the phone with you and assist her with disconnecting it even if I am present. Furthermore, you were not even home this morning when I spoke with Mia. Your characterization of what happened is second-hand. Bottom line: If Amy asks to speak to Mia, I will accommodate her. It was less than 10 seconds and occurred at the end of the call today.

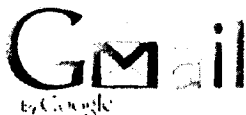
May be one day you will move on with your life. If you are fortunate enough to have another relationship, I am sure you do not expect me to treat him the same as you have treated Amy. You sent emails to me about how great Jose was and how he made you feel. I never responded. Mia talked about him and his children, Mia and Little Jose. I never complained. You never received a call or email from me about him or his contact with our children. Mia even said recently you were going to marry Jose. I told her "great." Funny thing...you and I both know while there may have been a Jose 6 to 9 months ago, there isn't one now (which explains why you do not play hot potato with the phone). How do you think that affects Mia? She thinks you are going to marry someone who is not even in your life. May be life alone is what you want. That is your choice. I do not, and I have chosen to move on after our divorce and be with Amy. You need to accept that. She is a good person and is good to the children. They love her and she loves them. You should be happy about that.

I really do not have anything more to say except that Shawn Goldstein is a complete idiot and joke as a lawyer. Shawn just kisses your ass and collects your money. Jim just shows up to court clueless and bills you \$500 an hour. Shawn should be giving you the advice that Radford has trained him to give instead of becoming a clone of "Greasy Hair" Jimmerson. And just so you know, it is not a violation of the Nevada professional rules to characterize Shawn or Jim this way (notwithstanding the fact that it is also true).

**From:** Christina Calderon-Stipp <ccstipp@gmail.com>

**OPPOSITION/COUNTERMOTION**

**EXHIBIT 27**



Christina Calderon-Stipp <ccstipp@gmail.com>

**Re:**

Mitchell Stipp <mitchell.stipp@yahoo.com>  
To: Christina Calderon-Stipp <ccstipp@gmail.com>

Fri, Aug 7, 2009 at 9:29 AM

I received your notice below. As I understand it, vacation time occurs 2 consecutive weeks per year pursuant to our marital settlement agreement. You previously gave notice of your 2 week vacation. While you later notified me that you were only taking 1 week in Oregon, you waived the additional week. Therefore, the time below occurs during my normal visitation schedule and I will have the children.

**From:** Christina Calderon-Stipp [mailto:ccstipp@gmail.com]  
**Sent:** Sunday, August 02, 2009 5:19 PM  
**To:** Mitchell Stipp  
**Subject:** Re:

Mitchell,

I will be taking the children from 6pm on August 21, 2009 until 6pm on August 23, 2009 for vacation. I will provide you an itinerary of out-of-state travel plans, if any, 15 days prior to such travel.

--Christina

On Wed, May 20, 2009 at 3:20 PM, Mitchell Stipp <mitchell.stipp@yahoo.com> wrote:

This email will serve to notify you of my intention to have the kids for vacation from 6pm on August 7, 2009 until 6pm on August 21, 2009. I will provide you an itinerary of any travel plans on or before any date of travel out of state.

**OPPOSITION/COUNTERMOTION**

**EXHIBIT 28**

**District Court**  
**FAMILY DIVISION**  
**CLARK COUNTY, NEVADA**

Christina C. Stipp  
PLAINTIFF

-vs-

Mitchell D. Stipp  
DEFENDANT

CASE NO. D-08-389203-Z

DEPARTMENT 0

**NOTICE OF SEMINAR COMPLETION - EDCR 5.07**

PLEASE TAKE NOTICE THAT Stipp, Christina C.  
(Name)

SUCCESSFULLY COMPLETED THE MANDATORY DIVORCE EDUCATION SEMINAR ON

September 26, 2009  
(Date)

*Family Solutions Inc.*  
Family-Children-Life  
702 205 1111

W. Doherty

PROGRAM REPRESENTATIVE

9/26/2009  
DATE

**OPPOSITION/COUNTERMOTION**

**EXHIBIT 29**



Christina Calderon-Stipp <ccstipp@gmail.com>

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## Telephone call today--7/24/09

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Mitchell Stipp <mitchell.stipp@yahoo.com>  
To: Christina Calderon-stipp <ccstipp@gmail.com>

Fri, Jul 24, 2009 at 2:50 PM

Mia was not upset at all. She was distracted by television. I also told her that she could not go to the park and chuck e cheese until she finished speaking to you. After she hung up, she was fine.

-----Original Message-----

From: Christina Calderon-stipp <ccstipp@gmail.com>  
Sent: Friday, July 24, 2009 1:26 PM  
To: Mitchell Stipp <mitchell.stipp@yahoo.com>  
Subject: Telephone call today--7/24/09

Mitchell,

Thank you for allowing MIA and Ethan to talk to me today. MIA seemed very upset and communicated that she missed me and wanted to be with me.

Can you tell me why she seemed so upset?

I am always willing and available to see and talk to the kids at any time. If you think she needs me, please let me know, and I can take her early, talk to her more via phone, or just visit her somewhere neutral for a short visit.

--Christina

Sent from my iPhone



**OPPOSITION/COUNTERMOTION**

**EXHIBIT 30**

# Family Conference Form

Checkpoint:

Child: Ethan Stipp

<p><b>To Learn About Self and Others</b></p> <p>Ethan understands what behavior is expected, with increasing regularity; at drop off he gives puppy a big squeeze and puts him in the backpack, we will catch him through the day peeking in the bag, and he will tell us that he was checking on puppy.</p> <p>Ethan will participate in group experiences; he enjoys when we have an experiment or cooking project.</p> <p>While outside Ethan looked for Audrey then joined her in filling buckets full of sand. He participates in coordinated play with other children some of the time. He likes to spend his time with adults for the majority of the time; we will interact with him and encourage him to join in with the other children.</p>	<p><b>To Learn About Moving</b></p> <p>Gross motor: Ethan is able to jump over hurdles one foot at a time and run around the cones in movement class, but on some of the days he needs extra encouragement to participate. We try not to do it for him; we will start with him and then pull away after he begins.</p> <p>He is able to catch a ball thrown to him majority of the time and he is also able to kick a ball while keeping his balance.</p> <p>Fine motor: Ethan uses hand-eye coordination while doing complex tasks; at the tracing table we had different shapes. Ethan was able to trace the shape and the name of the shape under it with increasing control. He enjoyed tracing.</p>
<p><b>To learn about the World</b></p> <p>Ethan is able to match similar objects together; red bears to a red bowl. He also sorts animals that fly in the sky and who swims in the water. He enjoyed talking about the animals that we were sorting; he added his own stories to the discussion.</p> <p>Ethan will watch others problem solve and then he will attempt the same activity. We encourage him to challenge himself and to not give up too easily; Ethan was doing a puzzle, a piece did not go in the first time he wanted to give up and give it to another child to do, I told him to try again, but turn the piece.</p> <p>He likes when others do projects and problem solving for him.</p>	<p><b>To Learn About Communicating</b></p> <p>Ethan demonstrates interest in print; when we hold up the first letters in our names for a game he will say "for me" when I hold up most of the letters, but when it comes to the letter E he looks at it like he knows but not quite sure with himself. While he is drawing he asks for us to write his name, we say it out loud as we write it on his paper.</p> <p>Ethan will participate with a teacher and a few children in a conversation for 2 or more times. He was talking to a friend "where are you going?" the child said "to the beach, want to go?" Ethan said "yes" and told me that he was going to the beach and he went to that child.</p>
<p><b>Favorite Activities and Special Interests</b></p> <ul style="list-style-type: none"> <li>*sensory table-anything he can touch</li> <li>*cooking in the kitchen</li> <li>*helping the teachers</li> </ul>	<p><b>Situations or Experiences That Cause Distress</b></p> <p>At times Ethan seems anxious. Throughout the day he repeatedly asks "When is lunch coming?" beginning as soon as he is dropped off. He knows that after lunch mom or dad comes back. We remind him that if he stays busy it will be here faster.</p>
<p><b>Family Comments and Special Circumstances</b></p>	<p><b>Next Steps at the Program and at Home</b></p> <p>We will continue to encourage him to try new things or branch out with the other children in the room. Keeping a consistent routine is important so that Ethan knows what to expect. If his routine is going to change, try to let him know ahead of time; if this is not possible, talk about it with him afterward.</p>

Teacher Signature:	Date:
Family Signature:	Date:

**OPPOSITION/COUNTERMOTION**

**EXHIBIT 31**



Christina Calderon-Stipp &lt;ccstipp@gmail.com&gt;

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## Dawson Appointment

---

Mitchell Stipp &lt;mitchell.stipp@yahoo.com&gt;

Wed, Feb 4, 2009 at 9:56 PM

To: Christina Calderon-Stipp &lt;ccstipp@gmail.com&gt;

Thank you for the information. I will schedule time to meet with the school regarding Mia's application and the program.

---

**From:** Christina Calderon-Stipp <ccstipp@gmail.com>

**To:** Mitchell Stipp <mitchell.stipp@yahoo.com>

**Sent:** Wednesday, February 4, 2009 8:48:20 PM

**Subject:** Dawson Appointment

Mitch,

Mia's individual assessment is scheduled for 11 am on Tuesday the 10th. The focus is to be between Mia and the administrator of the Early Childhood Education Center, but they asked that a parent stick around just in case. I don't remember the administrator's name. You are more than welcome to attend. I encourage you to tour the facility as well, if you haven't already. You need to schedule it separately. For the group assessment this Sat. they don't want the parents to stick around. It's at 10:15am on Sat. to about 11, I think.

--Christina

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**OPPOSITION/COUNTERMOTION**

**EXHIBIT 32**



Christina Calderon-Stipp <ccstipp@gmail.com>

---

**(no subject)**

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Christina Calderon-stipp <ccstipp@gmail.com>

Mon, Nov 16, 2009 at 5:02 PM

To: Mitchell Stipp <mitchell.stipp@yahoo.com>

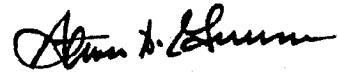
The kids have school on December 11th.

Sent from my iPhone

On Nov 15, 2009, at 10:33 PM, Mitchell Stipp <[mitchell.stipp@yahoo.com](mailto:mitchell.stipp@yahoo.com)> wrote:

I will be taking the children out of town on December 10, 2009 through December 13, 2009.

---

  
CLERK OF THE COURT

1 **ORDR**  
2 RADFORD J. SMITH, CHARTERED  
3 RADFORD J. SMITH, ESQ.  
4 Nevada Bar No. 002791  
5 64 N. Pecos Road, Suite 700  
6 Henderson, Nevada 89074  
7 Office: (702) 990-6448  
8 Facsimile: (702) 990-6456  
9 rsmith@radfordsmith.com  
10 Attorney for Defendant, Mitchell Stipp

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 CHRISTINA STIPP,

14 Plaintiff,

15 v.

16 MITCHELL STIPP,

17 Defendant.

CASE NO.: D-08-389203-Z  
DEPT NO.: O

FAMILY DIVISION

18 **ORDER RE: PLAINTIFF'S MOTION TO REHEAR/RECONSIDER THE HEARING OF**  
19 **FEBRUARY 3, 2010; AND/OR TO CLARIFY THE COURT'S RULINGS FROM THAT**  
20 **HEARING; FOR PLAINTIFF'S ATTORNEY'S FEES; AND RELATED RELIEF AND**  
21 **DEFENDANT'S COUNTERMOTION FOR SANCTIONS UNDER E.D.C.R. 7.60**

22 DATE OF HEARING: June 22, 2010  
23 TIME OF HEARING: 10:00 a.m.

24 This matter coming on for hearing on Plaintiff's Motions and Defendant's Countermotion  
25 referenced above; Plaintiff CHRISTINA STIPP ( "Christina"), being present and represented by DONN  
26 W. PROKOPIUS, ESQ., and Defendant, MITCHELL STIPP ( "Mitchell"), being present and  
27 represented by RADFORD J. SMITH, ESQ., of RADFORD J. SMITH, CHARTERED; the Court,  
28 having reviewed the pleadings on file, having heard the arguments of counsel, and being fully advised in  
the premises, and good cause appearing therefor, FINDS AND ORDERS AS FOLLOWS:

1           1.     Christina has moved to rehear or clarify the Court's order of April 13, 2010 arising from  
2 the hearing of February 3, 2010. In that order, the Court indicated its denial of Christina's  
3 Countermotions filed November 30, 2009, requesting both discovery and the partition of alleged omitted  
4 assets, but permitted Christina to view, subject to a Confidentiality Agreement, the tax returns of Aquila  
5 Investments, LLC ("Aquila Investments") that had been submitted *in camera* by Mitchell. Christina  
6 argues, in sum, that the order issued by the Court on April 13, 2010, does not accurately reflect the  
7 Court's ruling at the time of the February 3, 2010 hearing regarding her Countermotions, and that new  
8 "evidence" suggests that Mitchell concealed assets during the time of the parties' divorce. For the  
9 reasons stated below, the Court denies those motions, denies Mitchell's countermotions for sanctions  
10 pursuant to EDCR 7.60, but grants Mitchell's request for attorney's fees pursuant to the terms of the  
11 Marital Settlement Agreement incorporated into the Court's Decree of Divorce.

14           2.     Christina's November 30, 2009, Countermotion sought a partition of omitted assets under  
15 *Amie v. Amie*, 106 Nev. 541, 796 P.2d 233 (1990) and the terms of the parties Decree of Divorce. In  
16 her countermotion, she identified three factors justifying her motion: 1) that Mitchell had purchased a  
17 home for his parents subsequent to the parties' divorce; 2) had stated he was "retired" after the divorce,  
18 though the funds he received in the parties' March 6, 2008 divorce did not justify such retirement; and  
19 3) that public records suggested that Aquila Investments, a company in which Stipp Investments, LLC,  
20 an asset granted to Mitchell in the divorce, held a profits interest, distributed \$6.9 million to Mitchell  
21 before or shortly after the divorce that Mitchell failed to disclose. Only the third of these claims alleged  
22 that an asset held during the marriage had been undivided (the claimed distribution from Aquila  
23 Investments to Mitchell). In his Opposition to Christina's original Countermotion to Partition Assets,  
24 Mitchell explained the information in the public records that Christina had attached to her  
25 Countermotion, and further provided the tax returns of Aquila Investments for the years 2007 and 2008  
26 demonstrating that Aquila Investments had not made any distributions to Mitchell or Stipp Investments  
27  
28



1 during those years. (See, Supplement to filed December 18, 2009). The Court held a hearing on  
2 Plaintiff's Countermotion on February 3, 2010, and subsequently entered its written Order on April 13,  
3 2010.

4  
5 3. Christina's current motion seeks to "clarify" the Court's order of April 13, 2010. The  
6 Court has reviewed its order and finds no need for clarification. At the time of the February 3, 2010  
7 hearing and in its order, the Court found that Christina had not stated a basis for a claim of "omitted  
8 assets," but instead she must demonstrate "fraud upon the court" in order to sustain her claim to  
9 readdress the division of assets under the fraud theory she advocated in her motion. Specifically the  
10 Court stated in its April 13, 2010 order, page 2-3:

11  
12 4. The Court does not intend to re-litigate the financial issues between the parties,  
13 and is inclined to deny Christina's Motion to partition omitted assets. The Court is not  
14 willing to re-open the litigation unless it can be shown that a fraud was committed upon  
15 the Court. Christina has provided no evidence of such fraud. Christina's motion to open  
16 discovery is based upon her allegations relating to Aquila Investments, LLC. The court  
17 notes that Christina was aware of the Aquila Investments, LLC, and its assets prior to the  
18 parties' divorce. She had sufficient opportunity to explore and investigate that asset  
19 during any discovery process prior to divorce. Her failure to do so does not constitute a  
20 fraud committed upon the Court by Mitchell.

21  
22 5. Mitchell has provided the court with tax returns from Aquila Investments for the  
23 years 2007 and 2008. Christina's counsel may review those tax returns in chambers, and  
24 he alone shall be provided access to the returns upon the parties' entry into a mutually  
25 acceptable Confidentiality Agreement drafted by Mitchell's counsel.

26  
27 Contrary to Christina's present argument, the text of the Order prepared by counsel for Mitchell is  
28 accurate and properly sets forth the findings and order of the Court. The order will stand as written, and  
Christina's motion for clarification is denied.

4. Christina further argues that the Court should reconsider its April 13, 2010 order based upon a  
comment attributed to Mitchell by Dr. John Paglini during an interview associated with Dr. Paglini's  
child custody assessment. The meaning and import of the comment is in dispute, and the Court does not  
find the alleged statement to be adequate grounds to reopen discovery or find an omitted asset. Christina

1 claims again that Mitchell's "retirement" suggests that he hid assets during the divorce, and thus she is  
2 justified in seeking discovery. The Court never took the reference to "retirement" to mean that Mitchell  
3 had retired for life, but only that he was not working based upon the employment opportunities he  
4 currently faces. The Court does not find these, or any other grounds stated by Christina in her pleadings  
5 supporting her motion, to be adequate evidence to justify either rehearing of the Court's April 13, 2010  
6 order, nor an adequate basis for the opening of discovery relating to Christina's claim for partition of  
7 omitted assets. The Court thus denies Christina's present motions.  
8

9 5. Mitchell has countermoved for sanctions. The Court does not find that Christina has brought  
10 her motion in bad faith, and thus denies that request. Mitchell, however, is entitled to an award of fees  
11 as the prevailing party in this litigation. (See Marital Settlement Agreement, incorporated into the  
12 Court's March 6, 2008 Decree of Divorce, at page 10, ¶17). Mitchell's counsel shall file a statement of  
13 fees and costs incurred in relation to Christina's Motion for Reconsideration and related countermotions  
14 to the Court within ten (10) days of hearing.  
15  
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28

1 6. Counsel for Christina has requested that the Court permit an accounting expert (a CPA) to  
2 review the tax returns of Aquila Investments submitted by Mitchell to the Court, and Mitchell has no  
3 objection to that request. Consequently, the Court shall permit either counsel for Christina and/or her  
4 accounting expert to examine the Aquila Investment's tax returns in a manner consistent with the terms  
5 of the Court's April 13, 2010 order.  
6

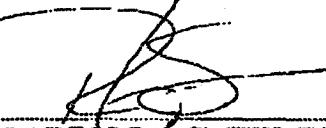
7  
8 IT IS SO ORDERED this 6 day of October, 2010.  
9

10   
11 DISTRICT COURT JUDGE

12 FRANK P. SULLIVAN

13 Submitted by:

14 RADFORD J. SMITH, CHARTERED

15   
16  
17 RADFORD J. SMITH, ESQ.  
18 Nevada State Bar No. 002791  
19 64 N. Pecos Road - Suite 700  
20 Henderson, Nevada 89074  
21 Attorneys for Defendant  
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28